



REVIEW RESEARCH PAPER

Procedures of becoming legal practitioners in somalia: analytical reflection

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ABSTRACT

A legal career in Somalia is a very complicated profession that requires a number of phases of both study and practice, needed to be finalized in order to become a qualified lawyer. More so, Somalia has a humongous legal system which consists of at least four different systems which include inter alia; Islamic Sharia law, civil law, common law and customary law or clan-based system. Such systems make confusion over jurisdiction that often becomes controversial.

INTRODUCTION

A legal career in Somalia is a very complicated profession that requires a number of phases of both study and practice, needed to be finalized in order to become a qualified lawyer. More so, Somalia has a humongous legal system which consists of at least four different systems which include inter alia; Islamic Sharia law, civil law, common law and customary law or clan-based system. Such systems make confusion over jurisdiction that often becomes controversial.¹

LAWYER AND AN ADVOCATE

In the legal fraternity, the phrase ‘Lawyer’ and ‘Advocate’ are frequently used as synonyms. But it is important to identify that there are slightly differences in the senses of the two words. In the Somalia’s context, a lawyer is someone who has studied law and earned a Bachelor of Laws (LL. B) degree or **Bachelor of Sharia law**. A Lawyer can sometimes not be eligible to stand before the courts of law to represent a client.

According to **Black's Law Dictionary** an advocate means a person who learned the law, and duly admitted to practice or assists his client with advice, and pleads for him in open court or tribunal. In Somalia an advocate can also be called Counsel. The **Somali advocate (Amendment) bill, 2018** (hereinafter referred to as “the Bill”) was sponsored by the Ministry of Justice and Judicial Affairs, which is now, before the House of the People of Somalia for its first reading. *As per article 3 of the said bill*, states that an advocate means a lawyer who practices legal Professionalisms, registered with the Somali Bar Association and dully enrolled in the General Registrar of advocate in the Federal Supreme Court or the advocate shall be registered in the Supreme Court of the Federal Member States.²

During the colonial period in Somalia, there was a common Italian word referring to an *Avvocato*, i.e., a professional licensed of Italian lawyer. An Italian lawyer *Avvocato* most likely studied law at the university, trained law in an Italian Law Firm and passed the national Italian Solicitor qualification exam.³

¹ Andre Le Sage, 2005, 'Stateless Justice in Somalia: Formal and Informal Rule of Law Initiatives' Centre for Humanitarian Dialogue, Geneva available at https://www.files.ethz.ch/isn/20303/Somalia_stateless_justice.pdf. Accessed 6th April 2022

² There is no clear structure of the Somali court systems since the country adopted the federal system of governance. Under article 108 of the Somalia constitution provides that there shall be three court systems which includes the constitutional court, the federal government level court and the federal member states’ level courts.

³ Studio Legale Matta, ‘Italian Solicitor’ (2020) available at <https://www.studiolegalemetta.com/en/italian-solicitor/>. Accessed 3/April/2022

However, all these three steps mentioned above of becoming an Italian lawyer '*Avvocato*' also is reflected with similar approaches or per se the wording as an *Avvocato* in the present-day Somalia. For example, if you want to become a legal practitioner in Somalia, then you should first earn a bachelors of law or in sharia law, have been trained law in Somali law firms and should pass an examination set by the Ministry of justice and judicial affairs in conjunction with the Somali bar association.

PROCEDURES OF BECOMING AN ADVOCATE AT NATIONAL LEVEL

Somali lawyers are one of the most unfortunate and unlucky nobles who profess the legal professionalism in the world.⁴ They lack a proper legal training, public distrust of formal judiciary as well as working under contradictory laws or sometimes ungazetted⁵ is at its peak. For example, on 23rd of October 2021, Justice Salah Dhiblawe of the Federal High Court of Somalia filed a letter of complaint against one of the city lawyers in Mogadishu through the Somali bar association. Justice Salah in his written letter reads that, "...when the court interrogated lawyer Ali Ibrahim Abdi about his case, he sat down without responding to the honorable court, the judge described him as disrespectful or contempt of court..." On 1st of March 2022, the Committee of the Bar Association of Somali ordered aforementioned Counsel Ali to have his practicing license suspended for about Six months and could not appear before any courts in the country.

Unfortunately, in the above scenario, there is no writ law or procedures in which the Bar Association or the High Court had followed to dismiss the lawyer. Regrettably, the federal high court of Somalia lowered in its legal capacity as the third-highest arm of government to try any case of any value or crime of any magnitude and foremost to ensure fair trial. **Under article 105 of the Somali constitution** provides that the powers of the judiciary are vested in the courts. The judiciary shall be independent whilst fulfilling its judicial functions and the judiciary shall be subjected only to the law.

⁴The 1975 of the Advocate law commends that one to be an advocate; he should be someone who supports the socialist principle (See, article 6).

⁵ Under article 40 of the Somali constitution as amended in 2012, clearly says that, when the court interprets the rights found in this constitution, then the court may consider the Sharia law, international law and decision of courts in other jurisdictions, though not bound but to use it as a persuasive manner. So, a lawyer or judiciary may choose decisions from other countries in the world to draw their attentions before the courts of law.

The advocate (Amendment) bill, 2018, has no difference in its contradictory approach. Before a person is conferred with the title of an advocate, there are certain requirements to be fulfilled.

A. The Legal Practitioners At National Level

The legal practitioner's license may be granted to anyone who meets the following requirements as **per Article 9 of the advocate (Amendment) bill, 2018**

(a) He should be a Somali Muslim.

This bill does not mention whether the applicant should be a Somali citizen as per article 6 of the 1975 and 1986 Somali advocate law but rather a Somali Muslim.

(b) Applicant must not be less than twenty-five years old,

(c) Applicant must be sound mind,

(d) Applicant must not have been convicted of a crime for the last five years and sentenced by a competent court;

(e) Applicant must be a person of good character and conduct;

(f) Applicant must have a degree in Law (Sharia or Law) such as, LLB, LLM or equivalent from a recognized University;

(g) Applicant must have passed the examination conducted by the Ministry of Justice and the Bar Association at the Federal or Federal Member States (FMS), unless he is among the persons eligible for the exemption referred to Article 13 of this Law;

(h) Applicant must have been trained as a lawyer for at least 1 (one) year, unless he / she is one of the eligible candidates under Article 13 of this Law.

(i) Applicant must write a cover letter to the Federal Government or Federal Member States' licensing and registration committees in accordance with article 11.

Although this advocate bill or the other previous advocate law were silent whether the applicant has no high school certificate of education but it is prima facie case that he or she is not eligible to apply at any university in the country if such is not met or attained. It is after all this that now makes one become eligible to apply for a law degree or any higher learning institute or university

B. Non-Exempt Procedure

Under **article 13 of the Advocate (Amendment) bill, 2018** sets out another tough and rigid requirement. It gives some individuals not to follow the rules referred above. These includes:-

1. An applicant who holds a Doctorate degree in law (L.L.D / PhD) or in a possession of sufficient legal experience shall be exempted to sit for the exam. However, the bill does not define what amounts to be a sufficient legal experience.
2. An applicant who has been practicing law for a period of five years or worked for a government agency or other legal entity, and has had a legal degree recognized by this law, shall also be exempted to sit for the exam.
3. A person who has been a University Lecturer for a period of five years, and has had a law degree recognized by this law shall be exempted to sit for the exams and can be granted permission to possess a legal certificate.

C. The Legal Practitioner at Federal Member States

Under **article 4 (2) of the advocate (amendment) bill** sets out the process of becoming an advocate at the federal member states of Somalia which is broken down into the following steps: -

- a) Applicant who wants to be an advocate at federated states shall be needed to submit his request to the Bar Association of federal member states in accordance with article 9 of this bill,
- b) Procedure of issuing of the advocate's license at federal member states (FMS) shall be approved by a panel of members from Bar Association, Court of appeal and the Ministry of justice of federal member states (FMS)
- c) The advocate's license at federal member states, shall be granted by the court of appeal

This bill was promulgated under the auspices of the Somali Ministry of Justice and Judicial Affairs to stipulate in the process of obtaining a practicing certificate of a lawyer/advocate at federal level. However, it equates the process and procedures for those seeking legal professionalism at national level and federal member states while sometimes differentiating or giving dissimilar instructions.⁶

⁶ See, article 4 (1) and article 4 (2) as well as article 9 of the Advocate (Amendment) Bill 2018

D. Restriction on Advocates

Under **article 23 of the advocate bill** provides that an advocate shall not personally engage in any litigation proceedings before the courts of law, unless such specific functions were indicated in his/her practicing certificate. These limitations include

- a) An advocate shall only have powers to exercise litigation in criminal court proceedings,
- b) An advocate shall only have powers to exercise litigation in civil court proceedings,
- c) An advocate shall only have powers to exercise litigation in matrimonial court proceedings and
- d) Senior Advocate or General Advocate is the highest level of an advocate in Somalia: Where an advocate who has been in practice before the federal high court for a period of Nine (9) years can be conferred the title of 'General Advocate' and shall entertain any case of any matter in any courts throughout the country as per the article 14 of the bill.

In other countries an advocate after receiving the practicing certificate, he or she can practice law in higher courts of their countries. Once they have successfully passed the qualification examination, advocates can automatically exercise powers of litigation over any legal matter nationwide. Again, once qualified and registered as an advocate they can conduct proceedings in all courts, including civil courts, criminal courts, labor courts, bankruptcy courts, administration courts, tax courts and courts for minors among others.

E. Foreign Advocates

Under article 18 of the advocate (Amendment) bill, any foreign advocate is permitted to be admitted before the courts of law in Somalia with the exemption that the matter involves foreign elements however subject to approval of the Somali Ministry of Justice and judicial affairs. The same provision also provides that, the native country of that foreign advocate should similarly allow Somali lawyers to do the same to practice and argue before the courts of law of theirs.

Nonetheless, the dew can never change into rain even when the dew is on the grass, rain will never come to pass and the same applies to this article 18 of the advocate (Amendment) bill. A number of logic reasons should not be applicable into the Somalian legal system. The major one is that Somalia belongs to a dualistic

principle where it kept away any foreign law *vis-à-vis* international law which is essentially two distinct legal systems.⁷

Similarly, one to be admitted to practice law in a particular jurisdiction, you have to demonstrate competence and expertise in that jurisdiction's laws. Additional difficulty is the fact that several states restrict the ability of foreign legal practitioners to practice law within their borders unless they have a solid background in local law.

In Kenya for example which are few kilometers away from the borders of Somalia does not allow foreign lawyers to practice law unless they have been admitted as an advocate in the country. Foreign law firms cannot establish their own offices in Kenya.⁸

SHORTAGE OF LAWYERS IN SOMALIA

Somalia has in several years suffered political instability, undemocratic institutions, and difficulties facing the justice administration system of the country at large as well as shortage of lawyer's in demand. *Mutatis Mutandis*, legal officers are associated in the administration of justice. They are therefore obliged to protect the rule of law, in addition to their obligations to the courts of law and their clients.⁹ However, the upcoming *Advocate (Amendment) bill* would make matters worse if it comes into force as this law further complicates who can be legal practitioners in Somalia.

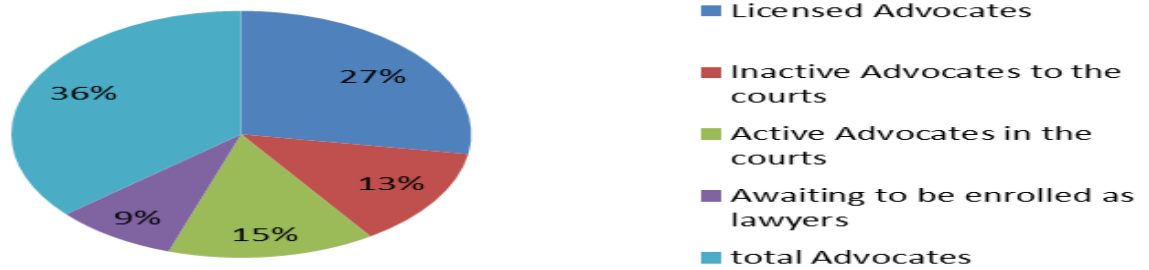
Shortage of lawyers in the country results in a significant clog-up in the process of justice delivery. Demand for lawyers is expected to continue to rise in every aspect of Somali citizens' interest per individual, business entities and all governmental institutions as they require legal services in many areas.

⁷ Ahmed Kheir O., 'International Law and Its Applicability in The Somalian Legal Systems' (2021), Published by the Law Brigade Company, International Journal of Legal Developments and Allied Issues, Volume 7 Issue 5, at 122-131

⁸ Kenyan law society, 'Doing legal Business in Kenya' (2020) available at electronically <https://www.lawsociety.org.uk/en/topics/international/doing-legal-business-in-kenya>. Accessed on 7th April 2022

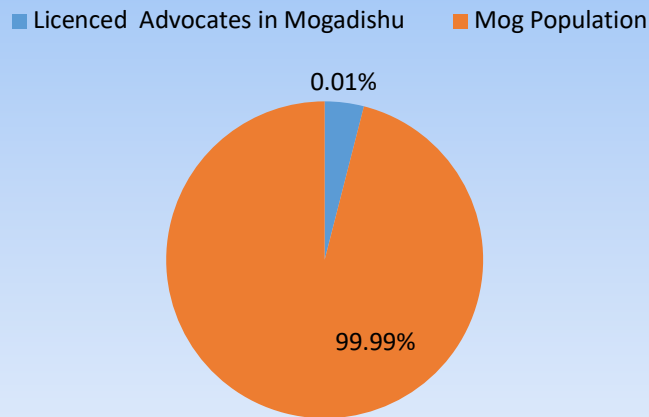
⁹ Martin T. Katzman, 'There Is A Shortage Of Lawyers' published by Association of American Law Schools, *Journal of Legal Education* Vol. 21, No. 2 (1968), pp. 169-176 (8 pages) available at <https://www.jstor.org/stable/42891939>. Accessed on 30/March/2022

The Ministry of Justice and Judicial Affairs of Somalia as of April 2022



Mogadishu is the biggest and the capital city of Somalia with an estimated population of 2,497 Million as recorded in 2022 ¹⁰ Currently the city only has 322 registered lawyers. Ordinarily if every inhabitant must have a lawyer, then the lawyer to inhabitant ratio is 1: 7755 as depicted in the figures below identify number 2.

Percentage of Advocates in Mogadishu Population



¹⁰ UN Population Projections ‘Mogadishu, Somalia Metro Area Population’ (2022) available at <https://www.macrotrends.net/cities/22477/mogadishu/population> Accessed 26/4/2022

Conclusion

Lawyers are like engine oil in domestic and international entities or in every sphere of life. A lawyer is always called a learned friend for a reason, to advice or helps to design everything or keeps you out of trouble. Lawyers also exist not only to resolve problems, but to read a potential danger and advice on how you can avoid it. As we discussed above, there is a shortage of lawyers in the whole country. The government of Somalia should increase the legal profession and educational institutions to ensure that lawyers have appropriate education and training in a way that all persons are entitled to get the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of both criminal and civil proceedings.

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