

Reaping from the Sweat of Journalists: The Case of Emasculation of Media Workers

*Working conditions and labour rights of media
workers at Radio Bar-Kulan (RBK)*

National Union of Somali Journalists (NUSOJ)

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The National Union of Somali Journalists (NUSOJ) is a fervent champion for media freedom, the rights of journalists, workers' rights and for social justice in Somalia. Member journalists work across the whole industry as reporters, editors, sub-editors and photographers. NUSOJ has 525 members that work in broadcasting, newspapers and in the new media.

NUSOJ systematically monitors and conducts investigations into violations of press freedom and human rights of journalists. The union provides accurate, prompt and impartial information concerning attacks on journalists such as killings, arrests, death threats and harassments, as well as acts of aggression against media organizations.

NUSOJ is a full member of the International Federation of Journalists (IFJ), Federation of African Journalists (FAJ) and Eastern Africa Journalists Association (EAJA). It is also a member of International Freedom of Expression eXchange (IFEX) and partner with Reporters without Borders.

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I. Introduction

The National Union of Somali Journalists (NUSOJ) has in the recent past been receiving disturbing allegations of labour rights violations within Radio Bar-Kulan (RBK), a radio station set up and funded by the United Nations.

These grievous complaints have been received from both current and former employees of Bar-Kulan Radio station. The complaints received range from journalists who were either sacked or forced to resign, discrimination at the work place; reduction of salaries without prior notice or negotiation, abuse at work and exploitation of workers.

The union carried out meticulous investigations by inquiring from journalists affected by the said allegations and also engaged the management of RBK with regards to the same and requested the management to respond to these allegations.

RBK is managed by Albany Associates International UK Limited under UN Funding through Bell Pottinger. Albany Associates International UK Limited, a UK based company with offices in Nairobi, and is therefore a United Nations contracted company through Bell Pottinger that provides strategic communications support to the African Union Mission in Somalia (AMISOM).

The report looks at complaints of abuses of labour rights and exploitations of journalists working at RBK. This report focuses on discussions with current and former workers of RBK as well as the management of RBK.

These complaints have put into question the perception that journalists working at RBK enjoy good working conditions and get higher salaries than elsewhere in the Somali media industry, and has attracted the attention of the union to examine the working conditions and labour rights of RBK workers.

Omar Faruk Osman

NUSOJ Secretary General

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NUSOJ Secretary for Labour Issues

II. Editorial freedom and Freedom of Conscience

There can be no democratic and just society where journalists operate in an environment of oppression, professional subjugation and fear. In the interests of fair, honest, accurate and complete newsgathering and reporting and to ensure access for the broadest spectrum of opinion and expression and to protect editors from professional retribution, the editorial freedom of journalist must be protected in all spheres and at all cost. However this is contrary to RBK journalists who spoke to NUSOJ stating that there is no written editorial policy that guarantees editorial independence of the RBK from political interference and therefore journalists cannot work independently.

There has been a well-known case where the former Information Minister of Transitional Federal Government, Abdikarim Jama, reportedly complained to a UN officer about a broadcast by RBK over his controversial deal over the Somalia internet domain name (dot so) and this led to the sacking of the journalist who published the story because a Minister in government was aggrieved and thus complained.

The protection of the media, from editorial manipulation of news and information, hiring discrimination, and dis-information and omission is deemed of paramount importance to democratic practices and values. Therefore, editorial influence, retribution, and content dictation or omission is a breach of journalist freedom of conscience and an onslaught on their professional discretion.

Journalists at RBK also reported to NUSOJ that the management instructed them to avoid reporting internal wrangles within the Transitional Federal Institutions (TFIs), which journalists understood was to avoid having a clash with major players at the TFIs, who are known for regular, long and complicated disputes. “We just tell good stories of what is happening within TFIs and AMISOM,” said one editor.

It is because of this that RBK cannot air factual and accurate news and programs that touch on both Transitional Federal Government (TFG) and African Union Peacekeeping operations because RBK was basically set up to be a “propaganda tool” for these institutions, a journalist working at RBK.

The import of this is that RBK is not independent since it lacks any written editorial policy and has failed to protect itself from malicious and mischievous political interferences.

III. Discrimination in Hiring: Biasness in Recruitment

The freedom of equality and freedom from discrimination are fundamental human rights that must be protected at all costs. The recruitment procedure at RBK is uncouth and biased. Reports to the union indicate that majority of journalists recruited for the work were interviewed on their clan or tribe backgrounds which disturbed several journalists when interviewed.

At least three journalists accused the RBK management for exploiting clan or tribal divisions within the Somali society and stated that the RBK management were using “tribalism” as a key factor when deciding whether or not to employ a journalist.

It was recently put to the attention of the union that the management was reported of saying journalists from particular tribe are dominating the radio station, an allegation which created anxiety in the hearts of journalists, and thus constitutes human rights violations.

It is also alleged that recently after an RBK official visited Puntland, one politician reportedly demanded RBK to employ someone at the senior editorial position otherwise there would be severe consequences.

IV. Salary Reduction

In December 2010, journalists employed by RBK were informed that their salaries would be slashed by more than 50%. For instance a journalist who was paid 2000 USD per month had their salaries reduced to 900 USD per month. The revision of salaries was done unilaterally without any prior notice, negotiations or consultation.

In a written communication to NUSOJ, the RBK management stated that this were “salary adjustments”, adding, “Some salaries were increased, some were reduced, in line with the rationalisation of the whole RBK structure”.

The reason reportedly given by one senior management officer of RBK was that Somali private Radio Station owners complained that RBK was “spoiling the labour market” through “hefty salaries” to journalists and that “Somali refugee journalists” have no right to earn a salary of \$2000 per month while their counter parts in Somalia get a maximum of \$200.

The argument by Bar-Kulan or their “rationalization of salaries” which was ostensibly based on complaints by Somali private Radio Station “ignored the social and economic realities of Nairobi” said a journalist who left RBK because of this reduction.

Journalists at RBK strongly opposed the said “adjustments”, saying that the issue of the alleged complaints by private media owners in Somalia was being used as a cover up for RBK’s conspiracy to reduce their salaries without any reasonable justification.

“The journalists tried to convene a meeting with the management of RBK to discuss and consult on the reduction in their salaries but their calls fell on deaf ears and the management questioned the journalists’ audacity to convene a meeting and dismissed their claim as frivolous,” said by journalists.

An attempt by the journalists to address this matter through a three-member committee that had been set up to negotiate with the management was scuttled by the management and disbanded. Some members of the committee were allegedly offered “incentives” to stop negotiating while the management also used the journalists’ clan affiliations to weaken the solidarity among the journalists and threatened those demanding for better pay with a sack. .

The RBK management indicated the committee of three people were assembled with back-up from the management and had free access to negotiate, liaise, and act with a collective voice, and in all other ways, carry out their best endeavours to represent the staff. “They were encouraged and even advised by some management on how to negotiate,” said RBK management.

A current employee of RBK states that in as much as the hand of the RBK management was involved in the formation of the committee, they did not want it to function well, hence their spirited attempts at dismantling it through promoting internal divisions and creating antagonism among committee members.

The unjustified salary revision plan went ahead and some journalists were put in a situation of “take it or leave it”. Some of the interviewed journalists stated thus: “I have no option but to take whatever salary they give me because I need to feed my family but this management is harsh and discourteous to us”.

“We are repeatedly told ‘the door is open’, meaning we can leave the station, no negotiation at all,” said another journalist.

v. Statutory Deductions of Salaries

The Income Tax Act of Kenya places on employers an obligation to deduct and remit monthly, income tax for resident employees earning above Kshs 10,164/= per month.

For example, the gross salary for a journalist at RBK is 4,000 USD however after tax deductions the net earned is 2800 USD. The employees have never received pay slips to show the manner in which the deductions are made yet it

is a requirement under the Kenyan law that every employee should be issued with pay slips.

“Without pay slips, and without clearly calculated deductions, it is obvious that they are withholding part of the staff salaries” said one journalist.

The statutory deductions in Kenya are PAYE, NHIF and NSSF of which remittance by the employer must be filed with the respective government departments. The current employment contracts of RBK don’t enumerate or expound on the deductions and therefore the employees cannot account for their net salaries.

VI. RBK Journalists: Illegal Workers

Majority of journalists at RBK based in Nairobi are foreigners and must acquire work permits to work legally in Kenya. Foreigners who want own, or run a business in Kenya, need to have a work permits from the Ministry of Immigration or risk arrest, imprisonment and deportation.

It is illegal for any non-Kenyan to enter or work in Kenya without a valid work permit. The exact provisions of the Immigration Act (Cap 172, Laws of Kenya) are as follows: -Section 4 (1) “Subject to this Section, no person who is not a citizen of Kenya shall enter Kenya unless he is in possession of a valid entry permit or a valid pass.”(2) “...the presence in Kenya of any person who is not a citizen of Kenya shall, unless otherwise authorized under this Act, be unlawful unless that person is in possession of a valid entry permit or a valid pass.”

Section 13(2) (f): “A person who, not being a citizen of Kenya, engages in any employment, occupation, trade, business or profession, whether or not for profit or reward, without being authorized to do so by an entry permit.... shall be guilty of an offence and be liable to a fine not exceeding twenty thousand shillings or imprisonment for a term not exceeding one year or to both.”

Section 13(2) (g) provides for a similar penalty for “Any person who employs any person (whether or not for reward) whom he knows or has reasonable cause to believe is committing an offence under paragraph (f) by engaging in that employment. “If convicted of either of these two offences, deportation will invariably follow. The fact that an application for a work permit has been lodged does not entitle someone to work in Kenya, and cannot therefore be a defence in the event of a criminal prosecution.

Most of the Somali journalists at RBK are working illegally since they do not have work permits and thus constitute illegal workers. RBK journalists who go out for assignment to Somalia are issued with visit visa.

RBK management reportedly told working journalists that they would be issued with work permits through the UN, despite the fact that the journalists at RBK do not have contracts with the UN and are not employed under the terms and conditions of UN staff but with a company called Albany Associates.

RBK said, “No indication of exceptional treatment through the UN has been given to RBK staff”, and added “One former employee had to leave RBK when it was discovered that this entry stamp into Kenya was a forgery”.

It is the obligation of Albany Associates, which runs RBK and has contracts with journalists, to ensure that its employees abide by the Kenyan immigration laws and therefore RBK, and the company that runs it - Albany Associates, have failed in this capacity.

VII. Intimidations and Work Related Abuses

Almost half of the journalists working at RBK have reportedly received warnings for dismissal, an allegation rejected by RBK management. A journalist at RBK said, “We are standing on hanging by the thread”, implying that they are on the verge of being sacked.

Journalists claim they are forced to work for long hours contrary to the provisions of their job contracts and any complaint with this regards leads to summary dismissal or sacking.

Majority of journalists who spoke to NUSOJ stated that they were intimidated at work since they do not have the right of self-expression or association through which they can raise their grievances or complains.

Workers’ right of privacy has also been disregarded by the management of the radio station which insists that its journalists have to write on a notice board at RBK offices on their whereabouts even if they want to “go out to the lavatory”, which, the journalists complained, is a breach of their privacy. But the management of RBK stated that they do this for the security of both RBK and workers.

Journalists who were forced to leave or who were sacked said that whenever there is any labour dispute, it is always the management that is supposedly correct. More than five journalists repeatedly stated that the management threatened them by saying: “the door is open”, which meant they were free to leave their jobs if they felt dissatisfied.

Workers of RBK also alleged that they were mocked by the management’s claims that they had a broad array of options from persons who could offer “cheap labour” would be called on duty “from Eastleigh”. A crowded suburb of Nairobi hosting many Somalis, which the journalists took to mean their

services were not valued and that they were compared to the cheap labour out in the neighbourhood.

VIII. Analysis of Journalists' Contracts

All fixed-term and permanent employees are entitled to a minimum of 21 working days per year of leave with full pay. However the contracts stipulate that every employee is entitled to 1.5 days leave per month, which is way below the stipulated requirement in the employment Act.

Every employee is entitled to a Sick leave of at least 7 days with full pay, thereafter 7 days with half-pay in each year. However the RBK contract is silent on this issue yet journalist get injured in the course of their duties therefore the contract should capture in its entirety the issues of sick leave.

The Minimum statutory termination notice period for monthly employment is one month where no notice is given by the contract; in which case there should be payment of wages for the notice period in lieu of notice by the party terminating. Under the current RBK contract it proposes a two weeks notice, which is contrary to the legislated one-month period. Moreover Employees are entitled to moneys, allowances and benefits earned while in employment, e.g. salary, accrued leave payments, bonuses, retirement benefits.

IX. Correspondents without Contracts

Journalists working for RBK as stringers in Somalia typically work without written contracts, spelling out their conditions of work. The stringers also do not possess identification cards that specify who they work for. The journalists who spoke to NUSOJ stated that they are like “standby force” who have to respond to the call from Nairobi even if it is very early morning or late night.

“We don’t know our employment rights, responsibilities and duties,” said one correspondent. “If there is a dispute, they (RBK) will stop calling me and taking my stories and I can not claim any rights because I have no written employment contract,” said another correspondent.

The RBK management stated that they could not give them written contracts as part of their “security” protection from Al-Shabaab militants, but the disputing journalists said that even journalists working for international broadcasters, such as BBC and VOA, have written contracts, and Al-Shabaab evidently targeted VOA and BBC journalists much more than RBK journalists.

X. Case of “Forced” Resignation

On 29 November, the Radio Bar Kulan (RBK) aired live discussions between journalists and the Force Commander (FC) of African Union peacekeeping

troops in Mogadishu (AMISOM), without the journalists' knowledge.

Some 22 journalists and cameramen attended the discussions with the AMISOM Force Commander, which concerned the militant group and its strategies. Unknown to them, the voices of the journalists who spoke to the commander were recorded by Al-Shabaab's propaganda machinery, Radio Andalus.

According to the journalists who attended the discussions with the AMISOM FC and spoke to NUSOJ, they were invited to a press conference on security in Mogadishu, held by the commander and other Somali military officials.

It turned out to be partially a discussion between the FC and journalists on how they could work together in order to improve security in Mogadishu and defeat Al-Shabaab. Prior to the discussions, all the journalists were asked to switch off their recording devices and put down their notebooks. Journalists' cell phones were also switched off. The discussions between FC and the journalists were supposed to be off the record. But in a clear act of breach of trust, all the discussions, as well as questions and answers between the FC and the local journalists, were aired live by RBK.

To rectify this dangerous mistake, the Management of Radio Bak Kulan forced senior editor/Program coordinator, Farah Lamaane, to resign from his position. On 28 November, Lamaane reportedly refused to leave the live transmission equipment after being requested by a senior official of Albany Associates, which runs RBK, and after this official insisted, Lamaane went on to inform senior management of RBK. With no response from senior management of RBK, shift editor of RBK was reportedly authorised to go ahead with the live transmission.

In his "forced" resignation letter, Farah lamaane said:

1- Live Transmission Authorization: You have personally authorized and instructed Aways (the shift editor) to air the live press conference in AMISOM base live, without responding my email in the previous night, which I sought your advice, and I clearly suggested that it is not worth to be aired live.

2- Fabricated letter to NUSOJ over the live transmission of a press conference held in AMISOM compound on 29 November, which resulted huge repercussion: You and I are aware that I've not drafted, sent, and to the worst signed the letter. You've never told me how you have obtained my signature, which the admin office has it. On the other hand, the message never came from my work email f.lamaane@bar-kulan.com, or my personal emails.

3- Manipulation and unnecessary pressure: Throughout your investigation, you were sending me strict orders of what to say or to do, in which case I did it accordingly. These orders were conflicting and confusing. You informed me that Richard Bailey will talk to the journalists and write an apology letter. On the contrary, you've drafted a letter of false pretence, with my name and signature at the bottom. You've even objected to make changes in the wording.

4- Take the blame or face consequence: In our meeting on 6 December, 13:10, you've clearly told me that I should admit the responsibility of the live transmission you've instructed and authorized without any form of notification to me, that endangered the lives of innocent Somali journalists, or to face consequence, which I opted for the later.

Lamaane formally complained to NUSOJ about forced resignation, exploitation, fabrication of his signature for official communication by Steve Turner, exposure to risk of his life and abuse of power.

NUSOJ spoke to several journalists within RBK who, speaking in condition of anonymity because they dreaded the repercussions of being sacked from their jobs, confirmed that Lamaane was against the live transmission, he did not authorise the live transmission and officially communicated this to the management of RBK. Lamaane was not present at the scene of the live transmission because he neither authorised nor was he informed. The journalists working at RBK stated that the management has been failing to use corrective or progressive discipline for workers.

Farah Lamaane insisted that he was forced to resign, having no other choice and he did render resignation letter because he wanted to get out of the bad situation with his employer, but he maintains it is the fault of the management of RBK. Lamaane stated that he wanted to solve the matter informally and amicably with the management in vain. He was neither able to raise a grievance procedure nor follow it through to its conclusion because there is no such procedure in place.

Lamaane complained about unfair procedure given the way the management handled the matter. The same official of RBK, Steve Turner, who is alleged to have authorised it, is the one who carried out investigations. As such RBK failed to meet even the basic tenets of natural justice. Lamaane was therefore used as a “scapegoat” to cover up for some other person who committed this “grave and unprofessional mistake”. Lamaane stated that he was not given fair hearing and did not get enough time to prepare for a hearing.

More than 10 people confirmed to NUSOJ that Farah Lamaane did not commit gross insubordination or dishonesty or intentional damage to the RBK property. He did not put journalists' safety at risk because he neither authorized nor was he present at the live transmission.

XI. Divide and Rule Strategy

Journalists working at RBK complained about the divide-and-rule strategy by the management, which was accused of inciting journalists against one another along tribal or clan lines. This created confusion and suspicions against journalists with allegations that some editors favoured some journalists against others because they belong to the same clan or tribe.

RBK workers similarly alleged that the management has been meeting clan leaders with the guidance of journalists working at RBK and in these meetings, it was alleged that clan leaders encouraged clan-based employment.

This situation has had spill over effect on Somali journalists in Kenya after it emerged that the journalists in Kenya were grouping on clan basis, which NUSOJ strongly objects.

Recently, in its efforts to wriggle out of widespread criticism on labour violations and human rights abuses, RBK resorted to claims that NUSOJ Solidarity Office in Nairobi is the one criticizing RBK, which allegations are unfounded and reckless. This was meant to cloud RBK funder, UN, and the international community and project a misleading picture. In this move, RBK and its management decision to make such statement was also a sophisticated tactic to interfere with a legitimate union's staunchness to defend journalists.

NUSOJ as a trade union of one leadership is producing this report on the working conditions and labour rights of media workers at Radio Bar-Kulan, including journalists based on the reports and complaints which it has received from journalists. It would be unethical and highly irregular to let such protests by journalists go unvoiced.

None of the RBK journalists and other media workers shall be victimized for expressing their opinion to NUSOJ and it is a matter of right for any worker to express his/her opinion and seek union's intervention.

XII. Conclusion and Recommendations

It is clear from the onset of these occurrences that RBK station is in total breach of the fundamental human rights, the Constitution of Kenya and the Labour Laws on the limbs of freedom of expression and association. As a matter of fact the manner of employment, dismissal or sacking it has employed is against the stipulated procedure as per the Employment Act of Kenya.

Journalists who worked or who are working at the moment at the RBK are victims of unfair and often abusive treatment. Accounts of maltreatment as well as abuse are horrifying and unacceptable especially from a company that was contracted to help contribute the stabilization of Somalia, but which has now put the lives of journalists in miserable conditions of work.

NUSOJ states that journalists at RBK are overworked, unprotected, and they are not granted occupational health and safety. RBK urgently needs to protect, respect and recognise the journalists' right to a safe and professional work environment.

Albany Associates International UK Limited, which has contracts with RBK journalists & others workers, thus as an employer, has vicariously breached all the above legal requirements and has gone ahead to sack and frustrate its employees.

RBK and the company that runs it – Albany Associates International UK Limited, must guarantee social protection schemes for journalists in a transparent manner and provide the journalists with pay slips that enumerate the calculations of statutory deductions as per the requirement of Kenyan laws.

RBK management should shield the journalists and the radio station from political interferences and allow journalists to exercise their freedom of conscience.

RBK and its managers from Albany Associates International UK Limited must cease exploitation of clan or tribal divisions within Somali society, and stop asking journalists their clans/tribes in the job recruitment processes.

Albany Associates must end illegal employment of media workers by expeditiously providing all non-Kenyan media workers the work permits to carry on their media work legally. This recommendation is just fair expectation that should not warrant unfair employment termination or dismissal.

In view of the fact that there have been hefty salary reductions of workers' salaries, NUSOJ calls on Albany Associates to re-open constructive renegotiations of salaries with its workers.

Albany Associates International UK Limited and the managers of RBK should publicly and openly state their acceptance, recognition and respect of trade union rights of the workers and allow trade union negotiations and representations for the collective interest of media workers.

Kenyan labour inspectors should urgently visit RBK to examine how national labour standards are applied inside RBK and its newsrooms and advise Albany Associates and the concerned media workers on how to improve the application of national law in such matters as working time, wages, occupational safety and health. The inspectors, after their visit(s) to RBK, should bring to the notice of concerned national authorities of Kenya loopholes and defects in national law and international standards.

The resignation of Farah Lamaane is involuntary resignation forced on him due to the unacceptable behaviour of other(s), and Albany Associates International UK Limited must pay Lamaane damages as dismissal compensation. Failure to do so, the union and Lamaane will be forced to go to Industrial or Employment Tribunal in Kenya to press for his rights. Lamaane may as well sue Albany Associates International UK Limited and RBK by filing the case of defamation over claims that he was responsible for the 29 November 2011 incident and calculate the loss, because of impact of this forced resignation on his professional and personnel life.

Albany Associates, the company that manages RBK, should urgently review its contracts with Nairobi-based journalists working for RBK and make them in line with labour laws of Kenya and International Labour standards.

Albany Associates International UK Limited should provide written contracts to stringers and other workers working for RBK who are in Somalia in line with Somali labour code, law number 65, and the contracts should adequately specify: hours of work; agreed remuneration; duration and conditions of probation and period of notices; rules governing bonuses, overtime, and rates of payment; conditions of safety, security, health and rest of the workers; procedure for conciliation or arbitration in case of disputes; procedures by which and conditions on which it may be terminated, renewed or revised; and measures of promoting trade union representation of media workers.

As a condition precedent to release and utilization of the funds, the United Nations should be satisfied that the funds should be used in accordance to the international labour standards, improving the general welfare of media workers to promote decent working conditions at RBK. There should also be proper mechanism to assess the compliance of these conditions.

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