

# The Long Road to Justice: Part 2

by Kathy Roberts

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*Dr. Roberts is a member of the Anglo-Somali Society and in the last issue of the Society's Journal she wrote about the 'long road to justice' in the Yousuf v. Samantar case; from filing in 2004 to the \$21 million judgment awarded to the CJA's clients in 2012. As she noted then, the journey is still far from over. Today [10 September 2013], the hard-won judgment in the Samantar case is still at risk. Meanwhile, the Ahmed v. Magan case has reached a successful, and final, conclusion.*

## Yousuf v. Samantar

On 1 March 2013, less than two months after the United States recognised the Federal Government of Somalia, the Somali Prime Minister sent a letter to the U.S. State Department, requesting that Samantar be granted immunity from suit. Three days later, Samantar filed a petition for *certiorari* with the U.S. Supreme Court, seeking review of the Fourth Circuit Court of Appeals decision denying him immunity under the common law (meaning, roughly, according to customary international law as recognised in U.S. legal practice).

Samantar's lawyers argue that the Supreme Court should review the Fourth Circuit's decision for several reasons, including that U.S. officials might also be denied immunity in foreign courts if the decision is permitted to stand. The letter from the newly recognised government of Somalia figures prominently in the brief. The Kingdom of Saudi Arabia, the Democratic Socialist Republic of Sri Lanka and three former Attorneys General of the United States have filed briefs in support of Samantar. CJA and our *pro bono* co-counsel Akin Gump Strauss Hauer and Feld, LLP filed our opposition to Samantar's petition on 24 May 2013. On 24 June, the Supreme Court requested the views of the Solicitor General (representing the Executive Branch of government). We have urged the Department of State and the Solicitor General not to change course on immunity for Samantar, who has now conceded legal responsibility for serious human rights crimes and against whom a federal court has already issued a judgment based on evidence presented at trial. We await the Solicitor General's brief and after that, the Supreme Court's decision as to whether it will entertain an appeal from the Fourth Circuit's ruling. We also await the Fourth Circuit's ruling on Samantar's final appeal.

## Ahmed v. Magan

On 20 August, 2013, U.S. Federal Judge Mark Abel ordered former Somali Colonel Abdi Aden Magan to pay \$15 million in damages to CJA Client Professor Abukar Hassan Ahmed. In 1988, Professor Ahmed was arbitrarily detained by Colonel Magan's men and kept shackled in painful stress positions in a squalid prison cell for nearly three months. He was tortured, and subjected to cruel treatment on Colonel Magan's orders by men under his command. Nearly 25 years after his torture, Professor Ahmed has finally found justice in a U.S. court.

After discovering that his torturer resided in Columbus Ohio, Professor Ahmed, a former constitutional law professor and human rights advocate in Somalia, contacted CJA and filed a case against Magan for torture, cruel treatment, and arbitrary detention. On 20 November 2012, the trial court found the former National Security Service (NSS) investigations chief liable for torture, cruel treatment, and arbitrary detention. This judgment was historic in that it was the first judgment ever in a court of law to hold a member of the notorious and widely feared Somali NSS accountable for human rights violations. Attorneys from CJA and *pro bono* co-counsel Chadbourne & Parke, LLP and Latham & Watkins, LLP presented evidence at the hearing on 30 May to assess damages.

Judge Abel's decision emphasises the importance of human rights in civil society:

*It is no easy task to quantify damages for human rights abuses because basic human rights are the bare minimum freedoms from arbitrary state action that permit individuals and those they are in community with to congregate, work together to improve the lives of each other and others subject to the state's authority, and use their talents,*

*vigor and ideals to live flourishing lives as vital members of their community. When those basic rights are trammled by the state's brute force, the victim is stripped of his dignity and prevented from exercising those precious human and political rights. The loss is incommensurable. The victim's trust that his country will always recognize his worth and protect him from cruel, arbitrary degradation and injury is crushed. Perhaps worse, the fragile faith judges, lawyers, police, military and government officials must have in the state's commitment to human rights is undermined, if not destroyed, and their willingness - and courage - to protect those rights is undermined - given the frailties of our common human nature - perhaps irrevocably.*

On 11 October 2013, in recognition of his persistence in promoting human rights and the rule of law, Professor Ahmed will receive the International Bar Association's Annual Human Rights Award, which is awarded annually to an attorney who in the course of legal practice has made an outstanding contribution to the promotion, protection and advancement of human rights.