

UPR SUBMISSION LAWYERS FOR LAWYERS – UNITED REPUBLIC OF TANZANIA – NOVEMBER 2021

A. Introduction

1. Lawyers for Lawyers (L4L) submits this report on the state of human rights in the United Republic of Tanzania (“Tanzania”), particularly in respect of the legal profession, with recommendations for the 39th session of the Universal Periodic Review (UPR) Working Group in the UN Human Rights Council in October/November 2021.
2. L4L is an independent and non-political foundation based in the Netherlands, established in 1986 and merely funded by lawyers’ donations. L4L promote the proper functioning of the rule of law through the free and independent exercise of the legal profession around the world. L4L has special consultative status with ECOSOC since 2013.

B. Executive summary

3. This submission highlights key concerns regarding Tanzania’s compliance with its international human rights obligations to guarantee the right to independent counsel as set out in the UN Basic Principles on the Role of Lawyersⁱ (Basic Principles) and other international rights instruments, focusing on threats to the independence of the Bar Association and the lack of effective guarantees for the functioning of lawyers.

C. Normative and institutional framework of the State

4. The adequate protection of human rights and fundamental freedoms requires that every citizen has effective access to justice and legal assistance. Legal assistance can only be provided effectively in a judicial system where lawyers, along with judges and prosecutors, are free to carry out their professional duties independently of the government and political pressure. This follows, *inter alia*, the Charter of the United Nations, the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights (ICCPR).
5. Furthermore, on 22 June 2017 the Human Rights Council (HRC) passed a resolution condemning in general “the increasingly frequent attacks on the independence of [lawyers], in particular threats, intimidation and interference in the discharge of their professional functions.” The HRC expressed its deep concern “about the significant number of attacks against lawyers and instances of arbitrary or unlawful interference with or restrictions to the free practice of their profession” and called upon States “to ensure that any attacks or interference of any sort against lawyers are promptly, thoroughly and impartially investigated and that perpetrators are held accountable.”ⁱⁱ
6. In its task of promoting and ensuring the proper role of lawyers, the Government of Tanzania should respect the Basic Principles within the framework of its national legislation and practice. The Basic Principles provide for a concise description of international standards relating to key aspects of the right to independent counsel. Adherence to the Basic Principles is considered a fundamental pre-condition to fulfilling the requirement that all persons have effective access to independent legal assistance.ⁱⁱⁱ
7. During the second UPR cycle in 2016, Tanzania received^{iv} and accepted^v recommendations concerning the need to ensure that civil society^{vi} can operate in a safe and enabling environment where it can exercise its rights, including the right to freedom of assembly in a manner which allows legitimate and peaceful dissent^{vii}, and that it should provide for financial and structural support to civil society organizations^{viii}. Tanzania has

taken note of the recommendations to take appropriate measures to ensure that human rights defenders can operate in a safe and enabling environment free from reprisals and to lift restrictions impeding their work, e.g. by ensuring the rights to freedom of expression, association and assembly in accordance with international human rights standards^{ixx}. Tanzania opted not to submit a mid-term report for the assessment on the implementation of recommendations made during the UPR cycle in 2016^{xi}. A mid-term report developed by Tanzania's Civil Society Organizations stated that there was a generally "positive move towards full implementation of the accepted recommendations" and noted several accepted recommendations on protection of civil society as having been partially implemented^{xii}.

8. However, reports gathered by L4L including information received from various lawyers in Tanzania, demonstrate that Tanzania does not uphold the necessary guarantees for the proper functioning of the legal profession as set out in the Basic Principles. Consequently, lawyers encounter serious difficulties in carrying out their professional duties independently. This also undermines the proper functioning of the judicial system, including the right to fair trial and effective access to justice.

D. Threats to the Independence of the Bar Association

9. In the preamble of the Basic Principles, it is stated that "professional associations of lawyers have a vital role to play in upholding professional standards and ethics, protecting their members from prosecution and improper restrictions and infringements, providing legal services to all in need of them."
10. In mainland Tanzania the legal profession is governed by the Tanganyika Law Society Act, Cap 344. (TLS).^{xiii} The TLS is the leading Bar association in Tanzania mainland with the authority and role to protect members of the legal profession and to maintain and improve the standards of conduct of the legal profession.^{xiv} The internal organization of the TLS is set out in the TLS Act.^{xv} Additionally, the legal profession in mainland Tanzania is governed by the Advocates Act.^{xvi}
11. Multiple lawyers have informed L4L that the TLS used to be a vibrant bar association that was vocal in addressing human rights violations and threats to the rule of law, but that since 2015 the TLS has increasingly faced pressure and undue influence from the Tanzanian government. L4L has been informed of two concerning consequences of this external pressure; the first relates to the unilateral amendment of the Tanganyika Law Society (Elections) Regulation by the Attorney General in 2018, and the second relates to the independence of the disciplinary proceedings for disbarring advocates for misconduct (for the latter, see below under 'Concerns about impartiality of the disciplinary committee').
12. In 2018, the Tanganyika Law Society (Elections) Regulations^{xvii} was passed, in which certain sections had been unilaterally inserted by the Attorney General without the consent of the TLS. One of those sections prohibits members of the TLS of running for positions within the TLS if they are at that time 'a public servant, a member of parliament, a ward counsellor or holding a leadership position in a registered political party.^{xviii} We were informed this clause was reportedly aimed at preventing the 2018 President of the TLS, Mr Lissu, from being able to continue his presidency. Mr Lissu is a member of parliament of the opposition and has issued statements that are critical of the government. The next elections for the TLS President are planned for April 2021.
13. According to Article 24 of the Basic Principles, lawyers are entitled to join self-governing professional associations of which the 'executive body shall be elected by its members and shall exercise its functions without external interference.' The TLS should be able to

independently organize its internal organization without unilateral interference by officials from the executive branch, such as the current intervention by the Attorney General through the Tanganyika Law Society (Elections) Regulations.

E. No Effective Guarantees for the Functioning of Lawyers

a. Concerns about impartiality of the disciplinary committee

14. Article 28 of the Basic Principles provides that: “disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority or before a court, and shall be subject to an independent judicial review.”
15. The Advocates Act of 1955 contains regulations concerning disbarment of advocates for misconduct. Section 13 of the Advocates Act states that the ‘Advocates Committee’ is responsible for hearing and determining ‘any allegation of misconduct made against any advocate by any person’ and that it can remove an advocate from ‘the Roll of advocates’ if such allegations are deemed true. Section 4 of the Advocates Act establishes that the Advocates Committee is made up of a judge of the High Court; the Attorney General, or the Deputy Attorney General or the Director of Public Prosecutions; and a practicing advocate nominated by the TLS. A quorum, however, can be established by two of these members. This means that disciplinary proceedings can take place without a TLS member being present.
16. Currently, the government of Tanzania has tabled a new amendment bill^{xix} which is set out to, amongst others, amend the Advocates Act. The amendment bill establishes Regional Advocates Ethics Committees that will handle disciplinary proceedings against advocates on a regional level. The Advocates Committee, which will be renamed the National Advocates Committee, will serve as an appellate body and handle appeals from those Regional Advocates Committees.
17. However, the amendments retain the same members of the Advocates Committee and a TLS member is still not needed to duly constitute the quorum. Various lawyers have expressed their concerns to L4L that the proposed amendments will therefore not resolve the problems regarding the independence and/or impartiality of the disciplinary proceedings.

b. Disbarment proceedings on improper grounds

18. According to Article 16 of the Basic Principles, “Governments shall ensure that lawyers [...] shall not suffer, or be threatened with, prosecution or administrative, economic, or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.”
19. L4L has received information by multiple lawyers that the disbarment proceedings have worked well for a long time, but have become increasingly politicized in recent years. L4L has been informed that lawyers have been threatened with or subjected to disbarment or other disciplinary proceedings on improper grounds such as the expression of critical views or the nature of the cases they are involved in. This is illustrated by the following examples:

a. *Fatma Karume*

Fatma Karume is an experienced lawyer, who has participated in landmark cases and was President of the TLS from April 2018 to April 2019.

Ms Karume was first suspended as a lawyer by the Tanzanian High Court on the basis of alleged professional misconduct in September 2019.^{xx} Her suspension was a response to statements made by Ms Karume as a legal representative of the Alliance for Change and Transparency (ACT) in the course of preparation of pleadings before the court, which challenged the appointment of Adelardus Kilangi as the Attorney General of Tanzania.^{xxi} These statements were a legitimate exercise of Ms Karume's right to freedom of expression.^{xxii} Ms Karume was disbarred following a decision of 23 September 2020 of the Advocates Committee.^{xxiii}

b. *Jebra Kambole*

The lawyer Jebra Kambole posted a critical message about the Kisutu Resident Magistrate's court on social media.

On 8 October 2020, the Attorney General applied to the Advocates committee to have Mr Kambole disbarred for "gross professional misconduct" with regard to disrespecting the Kisutu Resident Magistrate's Court.^{xxiv} This disciplinary proceeding against Mr Kambole is an infringement of his right to freedom of expression that he enjoys as a lawyer, which also covers statements that are critical of a government or court. Mr Kambole's case is still pending at the Advocates Committee.

c. *Edson Kilatu*

On 8 August 2020, the lawyer Edson Kilatu allegedly posted a message on Facebook that was critical of the Court of Appeal of Tanzania. This message remained within Mr Kilatu's right to freedom of expression.

On 8 October 2020, the Attorney General applied to the Advocates Committee to have Mr Kilatu disbarred for "gross professional misconduct", similarly to Mr Kambole.^{xxv} His case is still pending at the Advocates Committee.

c. Freedom of Expression of Lawyers

20. Lawyers, like any other individual, have the right to freedom of expression and assembly. The UN Basic Principles on the Role of Lawyers provide that "lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession."^{xxvi}

21. The freedom of expression that lawyers enjoy in connection to their professional functions should not only be guaranteed in the light of the rights of the lawyer, but also in protection of the rights of their clients. As illustrated above, some lawyers in Tanzania have faced disciplinary proceedings in connection to them exercising their right to freedom of expression and assembly.
22. The examples mentioned under point 19 a, b and c constitute violations of lawyer's freedom of expression.

d. Lack of lawyer-client confidentiality

23. The Basic Principles provide that "all arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, *without delay, interception or censorship and in full confidentiality*". Such consultations may be "within sight, but not within the hearing, of law enforcement officials" and "governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential"^{xxvii} Furthermore, the UN Human Rights Committee stated in its General Comment No.32 on Article 14 of the ICCPR that "the right to communicate with counsel requires that the accused is granted prompt access to counsel. Counsel should be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications."^{xxviii} Additionally, the Tanzanian Advocates (Professional Conduct and Etiquette) Regulation, 2018, regulation 29 states that "an advocate shall not render effective professional service to the client unless there is full and unreserved communication between the advocate and a client."^{xxix}
24. Multiple lawyers have informed L4L that confidentiality between lawyers and their clients is not always guaranteed. Lawyers stated that when speaking to clients who are in detention, they are deprived of meeting rooms where they can have confidential meetings with their clients, as a prison guard must be present at all times within hearing distance.
25. A second problem with lawyer-client confidentiality brought to L4L's attention are the 2019 Anti-Money Laundering (Electronic Funds Transfer and Cash Transactions Reporting) Regulations.^{xxx} Under these regulations, lawyers must report any electronic fund transfers by their clients that exceed USD 1000, and any financial transaction that exceeds USD 10.000 to the Financial Intelligence Unit. ^{xxxi} These provisions raise concerns among the lawyer's community in Tanzania, as they could be perceived as disproportional and potentially put the lawyer-client privilege at risk.

F. Recommendations to the Government of Tanzania

- **Repeal the Tanganyika Law Society (Elections) Regulations to ensure the independence of the legal profession and maintenance of professional standards in accordance with the provisions of the Basic Principles on the Role of Lawyers.**
- **Make adequate amendments to the Advocates Act to ensure the Advocates Committee and/or any Regional Advocates Ethics Committee is an impartial disciplinary committee established by the legal profession, subjecting lawyers to an independent judicial review according to Article 28 of the Basic Principles on the Role of Lawyers.**
- **Take immediate measures to guarantee the effective protection of the right of freedom of expression of lawyers as set out in article 23 of the Basic Principles on the Role of Lawyers, in particular their right to take part in public discussion of matters concerning**

the law, the administration of justice and the promotion and protection of human rights, without suffering professional restrictions by reason of their lawful action.

- **Refrain from any actions that may constitute harassment, persecution, or undue interference in the work of lawyers, including their criminal prosecution on improper grounds such as the expression of critical views or the nature of the cases that the lawyer is involved in.**

- **Immediately take effective measures to ensure that all communications and consultations between lawyers and their clients within their professional relationship are confidential, including when visiting clients in detention, as set out in article 22 of the Basic Principles on the Role of Lawyers.**

ⁱ The UN Basic Principles on the Role of Lawyers provide a concise description of international norms relating to the key aspects of the right to independent counsel. The Basic Principles were unanimously adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Havana, Cuba on September 7 1990. Subsequently, the UN General Assembly “welcomed” the Basic Principles in their ‘Human rights in the administration of justice’ resolution, which was adopted without a vote on December 18 1990 in both the session of the Third Committee and the plenary session of the General Assembly.

ⁱⁱ UN Human Rights Council, Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers, A/HRC/RES/35/12, 22 June 2017, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/35/L.20.

ⁱⁱⁱ During its 29th session (from 15 June – 3 July 2015), the Human Rights Council adopted without a vote a resolution on the independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers. While recalling the Basic Principles on the Role of Lawyers and condemning the increasingly frequent attacks on the independence of lawyers, in particular threats, intimidation and interference in the discharge of their professional functions, the Human Rights Council reminded all States of their duty “to uphold the integrity of [lawyers] and to protect them, as well as their families and professional associates, against all forms of violence, threat, retaliation, intimidation and harassment resulting from the discharging of their functions, and to condemn such acts and bring the perpetrators to justice”. See UN Human Rights Council, Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers, A/HRC/RES/29/6, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/29/L.11.

^{iv} Report of the Working Group on the Universal Periodic Review of Tanzania, A/HRC/33/12, 14 July 2016, p. 13-27.

^v 2RP: Responses to Recommendations & Voluntary Pledges, United Republic of Tanzania, 22 September 2016, https://www.upr-info.org/sites/default/files/document/tanzania_united_republic_of/session_25_-_may_2016/recommendations_and_pledges_tanzania_2016.pdf

^{vi} As stated in the OHCHR’s ‘A Handbook for Civil Society’, human rights defenders and lawyers are part of civil society (p. vii). https://www.ohchr.org/EN/AboutUs/CivilSociety/Documents/Handbook_en.pdf

^{vii} Recommendation 134.98 Create and maintain a safe and enabling environment where members of all political parties and civil society organizations can exercise their rights, including to freedom of assembly in a manner which allows legitimate and peaceful dissent (Ireland)

^{viii} Recommendation 136.22 Provide financial and structural support to civil society organisations (Haiti)

^{ix} 2RP: Responses to Recommendations & Voluntary Pledges, United Republic of Tanzania, 22 September 2016, https://www.upr-info.org/sites/default/files/document/tanzania_united_republic_of/session_25_-_may_2016/recommendations_and_pledges_tanzania_2016.pdf

^x Recommendation 137.68 Take appropriate measures to ensure that civil society, especially human rights defenders, may operate in a safe and enabling environment free from reprisals and to remove restrictions impeding their work, both in law and in practice, including by guaranteeing the rights to freedom of expression, association and assembly in accordance with international human rights standards (Finland)

Recommendation 136.24 Guarantee freedom of expression and association through amending the media laws (that is the Cybercrime Act, Statistics Act, both of 2015 and Newspaper Act of 1976) and to ensure a conducive environment for civil society organizations, human rights defenders and media to operate freely in accordance with the Constitution of the United Republic of Tanzania and the United Nations declaration on human rights defenders (Netherlands)

^{xi} Tanzania CSOs UPR Mid Term Report, October 2019, p. 1, https://www.ohchr.org/Documents/HRBodies/UPR/NGOsMidTermReports/Tanzania_CoalitionCSOsHRDefenders.pdf

^{xii} Tanzania CSOs UPR Mid Term Report, October 2019, p. ii, https://www.ohchr.org/Documents/HRBodies/UPR/NGOsMidTermReports/Tanzania_CoalitionCSOsHRDefenders.pdf

^{xiii} in Zanzibar, which enjoys a certain amount of political autonomy, the Zanzibar Law Society is the relevant organization^{xiii}. The lawyers that L4L has spoken to were able to provide information about the status of the legal

profession in mainland Tanzania, so this report is focused on the mainland of Tanzania.

^{xiv} Tanganyika Law Society: <https://tls.or.tz>

^{xv} TLS Act: https://tls.or.tz/wp-content/uploads/2019/09/TLS_ACT.pdf

^{xvi} Advocates Act: <https://tls.or.tz/wp-content/uploads/2019/09/The-Advocate-Act-Cap.341-R.E-2002.pdf>

^{xvii} The Tanganyika Law Society (Elections) Regulations, 2018: <https://tanzlii.org/content/tanganyika-law-society-elections-regulations2018-made-under-section-31-tanganyika-law>

^{xviii} Art 8(e) of the Tanganyika Law Society (Elections) Regulations, 2018.

^{xix} The Written Laws (Miscellaneous amendments) (No. 2) Act, 2021:

[https://www.parliament.go.tz/uploads/documents/whatsons/en/1613197560-THE%20WRITTEN%20LAWS%20\(MISCELLANEOUS%20AMENDMENTS\)%20\(NO.%202\).pdf](https://www.parliament.go.tz/uploads/documents/whatsons/en/1613197560-THE%20WRITTEN%20LAWS%20(MISCELLANEOUS%20AMENDMENTS)%20(NO.%202).pdf)

^{xx} Lawyers for Lawyers: Joint statement on the Suspension of Fatma Karume: <https://lawyersforlawyers.org/joint-statement-suspension-of-fatma-karume/>

^{xxi} The American Bar Association: American Bar Association Statement of Concern on Permanent Disbarment of Tanzanian Lawyer, Fatma Karume https://www.americanbar.org/groups/human_rights/reports/tanzania--american-bar-association-statement-of-concern-on-perma/

^{xxii} The Law Society: Disbarment, arrest and detention of lawyers in Tanzania:

<https://www.lawsociety.org.uk/campaigns/international-rule-of-law/intervention-letters/disbarment-arrest-and-detention-of-lawyers-in-tanzania>

^{xxiii} Lawyers for Lawyers: Disbarment Fatma Karume: <https://lawyersforlawyers.org/disbarment-fatme-karume/>

^{xxiv} The Law Society: Disbarment, arrest and detention of lawyers in Tanzania

<https://www.lawsociety.org.uk/campaigns/international-rule-of-law/intervention-letters/disbarment-arrest-and-detention-of-lawyers-in-tanzania>

^{xxv} Ibid.

^{xxvi} UN Basic Principles on the Roles of Lawyers, Principle 23.

^{xxvii} UN Basic Principles on the Roles of Lawyers, Principle 8 and Principle 22

^{xxviii} CCPR/C/CG/32. UN Human Rights Committee. 23 August 2007.

^{xxix} Advocates (Professional Conduct and Etiquette) Regulation, 2018 <https://tanzlii.org/content/advocates-professional-conduct-and-etiquette-regulations2018-made-under-section-69band-c>

^{xxx} The Anti-Money Laundering (Electronic Funds Transfer and Cash Transactions Reporting) Regulations, 2019: https://www.fiu.go.tz/ELECTRONIC_FUNDS_TRANSFER_AND_CASH_TRANSACTION_REPORTING_REGULATIONS_2019.pdf

^{xxxi} The Anti-Money Laundering (Electronic Funds Transfer and Cash Transactions Reporting) Regulations, 2019, regulation 5, provision 4.