



# Warning Shots: Threats to the Independence of the Legal Profession in Tanzania

April 2018

Joint report of the American Bar Association Center for Human Rights, the International Bar Association's Human Rights Institute, the International Commission of Jurists, the East Africa Law Society, the Pan African Lawyers Union and the Southern Africa Development Community Lawyers Association.

This report has been compiled in accordance with the Lund-London Guidelines 2009 ([www.factfindingguidelines.org](http://www.factfindingguidelines.org))



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# Glossary of terms

## Acronyms

ABA CHR	American Bar Association Center for Human Rights
CCM	Chama Cha Mapinduzi party
CHADEMA	Chama cha Demokrasia na Maendeleo (Swahili for Party for Democracy and Progress)
DPP	Director of Public Prosecutions
EALS	East Africa Law Society
IBAHRI	International Bar Association's Human Rights Institute
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Commission of Jurists
NGO	non-governmental organisation
PALU	Pan African Lawyers Union
SADC	Southern Africa Development Community
SADCLA	SADC Lawyers Association
TLS	Tanganyika Law Society
UN	United Nations

## Abbreviations

African Charter	African Charter on Human and Peoples' Rights
African Commission	African Commission on Human and Peoples' Rights
Lund-London Guidelines	Guidelines on International Human Rights Fact-Finding Visits and Reports
Principles on Fair Trial in Africa	Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa
Tanzania	United Republic of Tanzania
TLS Act	Tanganyika Law Society Act

## Executive summary

In October 2017, six organisations – the American Bar Association Center for Human Rights (ABA CHR), International Bar Association’s Human Rights Institute (IBAHRI), International Commission of Jurists (ICJ), East Africa Law Society (EALS), Pan African Lawyers Union (PALU) and Southern Africa Development Community (SADC) Lawyers Association (SADCLA) – undertook a joint fact-finding mission to the United Republic of Tanzania (Tanzania). The purpose of the mission was to assess the state of the independence of the legal profession in Tanzania, particularly the existence and functioning of an independent, self-governing association, the ability of lawyers to carry out their professional duties without retaliation, harassment or intimidation or being associated with their client’s causes, and the rights of lawyers in Tanzania to engage in matters of public interest.

The mission was precipitated by several concerning events in 2017, including proposed amendments to the regulation of the legal profession in Tanzania, public officials’ threats to abolish the Tanganyika Law Society (TLS), and verbal and physical attacks against members of the legal profession, most notably the bombing of IMMMA Advocates’ offices and a shocking assassination attempt on then-President of the TLS, Mr Tundu Lissu, which raised extremely grave concerns not only regarding the independence of the legal profession, but Tanzania’s respect for the core principles of democracy and the rule of law.

In June 2017, the government of Tanzania circulated a consultation paper (the ‘Matrix’) to various organisations and departments listing 15 areas related to the legal profession that it had identified for ‘reform’. One of the government’s central proposals was the introduction of a new ‘Regulatory Board for Lawyers’, which would exercise many of the oversight and disciplinary functions presently reserved for the bar and the judiciary. Although not absolutely clear from the Matrix itself, which is silent on the composition of the Board, it was the understanding of many individuals interviewed during the mission that, under this new structure, the regulation of the legal profession would be under the authority of the Minister of Constitutional and Legal Affairs.

The introduction of the Matrix followed earlier remarks by then-Minister of Constitutional and Legal Affairs, Dr Harrison Mwakyembe, threatening to abolish the TLS on the basis that the TLS was undertaking ‘activities of political activism’. The Minister’s statements reportedly came in the wake of news that several members of the opposition party, Chama cha Demokrasia na Maendeleo (CHADEMA), were vying for leadership positions within the TLS ahead of their 2017 annual elections. In March 2017, the TLS elected as its President Mr Lissu, who also held the position of Chief Whip and Legal Advisor to CHADEMA. At this stage, the already tense relationship between the government and the TLS intensified, with the former viewing and treating the TLS – and by extension the legal profession – as an opposing force. The Matrix was criticised as an attempt by the government to control the regulation of the legal profession, particularly with powers to strike lawyers off the roll.

In the recently passed Tanganyika Law Society (Elections) Regulations, in March 2018, the Attorney General is accused of unilaterally modifying certain sections of the draft regulations submitted by the TLS, to include provisions prohibiting members of the TLS that are ‘public servants, members of parliament, a ward councillor or holding a leadership in a registered political party’ from contesting in the TLS’ internal elections. During the mission, the delegation heard that Mr Lissu was elected as

President of the TLS by an overwhelming majority of members not because of his political affiliation with CHADEMA, but because his campaign best represented the concerns of many members of the law society. The imposed prohibition of certain classes of individuals from holding office within the TLS is concerning. Lawyers, like all other citizens, have the right to freedom of association. Furthermore, the Attorney General's actions amount to an interference by the executive in the internal affairs of the law society, in contravention of recognised international standards for the independence of the legal profession.

At the same time, there was some consensus among lawyers interviewed that there is a genuine need to revisit and improve the overall self-regulation of the legal profession in Tanzania, including strengthening the enforcement of professional ethics among lawyers, and continuing legal education programmes for lawyers. Such initiatives should be pursued without government involvement.

Concerning the shooting of Mr Lissu and the bombing of the offices of IMMMA Advocates and Prime Attorneys, all within a short space of time, it was evident to the delegation that the attacks caused disquiet among members of the legal profession. Lawyers reported high levels of fear regarding openly criticising the government or representing clients that are in dispute with the government, and a sense of rising lawlessness in Tanzania. As of the date of this report, there have been no significant developments in the investigation of the shooting of Mr Lissu or on the attack on IMMMA Advocates. There is significant scepticism among various members of the legal profession that, absent an independent body tasked with thoroughly investigating these crimes, there will be no justice for these acts. The government of Tanzania has a duty to ensure that lawyers are not harassed, intimidated or threatened by the government or third parties in retaliation for carrying out their legal work. The failure to disassociate lawyers from their clients and generally to respect, protect and promote the role of lawyers undermines their ability to perform freely their professional duties, which in turn has a direct impact on the effective functioning of Tanzania's justice system.

Freedom of expression is a fundamental right guaranteed in Tanzania's Constitution and several international human rights treaties to which it is a party. In the absence of this right, citizens cannot express and exchange information, or share views, that enable them to engage effectively on policies that affect them. Lawyers, like other citizens, are entitled to freedom of expression; however, the numerous criminal cases against Mr Lissu in response to him publicly criticising President Magufuli concerningly exhibits an intolerance for criticism and dissenting views. Regional and international bodies have consistently held that criticism of public officials and statements on matters of public interest should be afforded the highest level of protection.

While the delegation's mission was primarily to examine the state of the independence of the legal profession in Tanzania, it is increasingly evident that the threats to the profession reflect an alarmingly broader threat to the rule of law, democracy and human rights in Tanzania. In recent months, journalists, university students and musicians have faced charges for 'insulting the president'. Opposition rallies have been banned and various non-governmental organisations (NGOs) and churches have been threatened with deregistration. In December 2017, a journalist disappeared under mysterious circumstances and, in February 2018, two members of the opposition party, CHADEMA, were brutally murdered. Most recently, six leaders of the CHADEMA opposition party were arrested for allegedly participating in an unlawful gathering and charged with 'rebellion' and 'sedition'.

Tanzania has long been regarded as one of the more politically stable countries in the region and, in the last two decades, Tanzania has enjoyed steady economic growth. The ongoing situation in Tanzania threatens these achievements. This report and its recommendations serve to encourage Tanzania to respect fundamental freedoms, such as freedom of expression, which foster public debate and thereby strengthen government policy. An independent legal profession plays an important role in ensuring rule of law and democracy, which are strong pillars for sustainable development.

# Recommendations

## To the Tanzanian government:

- Refrain from interfering in the internal affairs of the TLS.
- Immediately repeal the recently passed Tanganyika Law Society (Elections) Regulations, particularly the sections unilaterally inserted by the Attorney General.
- Ensure that the power to censure lawyers for misconduct, admit them to the roll and disbar them is in the hands of an independent, impartial body, free of politicisation and that lawyers are not potentially subjected to disciplinary proceedings in a politically motivated manner.
- Refrain from making statements that undermine the professional role of lawyers, whose role is to help ensure access to justice for all.
- Urgently investigate reports that lawyers have been intimidated, harassed and even detained when attempting to visit clients being held in police custody. Following this investigation, the government should make its findings public and set out concrete steps to ensure a conducive environment for lawyers and that they are not harassed and intimidated by state agents or non-state actors in retaliation for carrying out their professional duties.
- Urgently appoint an independent authority to investigate and publicise the findings of:
  - the shooting of Mr Lissu, President of the Tanganyika Law Society; and
  - the bombing of the offices of IMMMA Advocates.
- Take steps to decriminalise criticism of the executive, in line with Tanzania's international legal obligations.

## To the African Commission on Human and Peoples' Rights:

- Raise and follow up issues highlighted in this report during its promotional and protective activities, in light of Tanzania's obligations under the African Charter on Human and Peoples' Rights.
- Engage with Tanzanian authorities on the issues detailed in this report, during its state reporting procedure.

## To the Tanganyika Law Society:

- Vehemently guard its independence from the executive branch that would seek to minimise the independence of organisations and ultimately that of the legal profession.
- Ensure and protect the best interests of their members in accordance with the TLS Founding Act.



- In the event that members are engaged in political activities, clear steps must be taken to ensure that their political activities do not overlap with their duties at the TLS and that this distinction is evident to the public.
- Ensure that members of the TLS maintain the highest standards of professionalism and ethics to their clients and that steps are taken to ensure that the system for disciplining lawyers who fall short of professional and ethical standards is effective, impartial and properly enforced in practice, in line with international standards.

### **To Tanzanian lawyers:**

- Uphold the highest standards of independence, professionalism and ethical conduct at all times.
- Continue to support publicly the rule of law, including the independence of the legal profession in Tanzania.

### **To the international community:**

- Using diplomatic channels, communicate concern that the Tanzanian authorities should respect the rule of law and the independence of the legal profession.
- Provide technical and financial assistance to the government of Tanzania, the TLS and various other stakeholders of Tanzania's legal system to ensure that any reforms to the framework governing the legal profession are carried out in line with international best practices and standards.
- Provide technical assistance to the TLS to strengthen its role as a member organisation to ensure the independence of the legal profession and the continued strengthening of the skills and capacity of its members.

# Introduction

1. This report has been prepared following a fact-finding mission to Tanzania in October 2017 by a delegation of representatives from five organisations (the ‘delegation’): the American Bar Association Center for Human Rights (ABA CHR), East Africa Law Society (EALS), International Bar Association’s Human Rights Institute (IBAHRI), International Commission of Jurists (ICJ), Pan African Lawyers Union (PALU) and Southern Africa Development Community (SADC) Lawyers Association (SADCLA).
2. The mission’s purpose was ‘to assess the state of the independence of the legal profession in Tanzania, particularly the existence and functioning of an independent self-governing association, the ability of lawyers to carry out their professional duties without retaliation, harassment or intimidation or being associated with their client’s causes, and the rights of lawyers in Tanzania to engage in matters of public interest’.<sup>1</sup>
3. In doing so, the delegation was asked to analyse the following for compliance with international standards and the promotion of the independence of the legal profession in Tanzania:
  - (a) the current domestic legal framework, including the Tanganyika Law Society Act (the ‘TLS Act’) and the Advocate Act; and
  - (b) any proposed legislative changes to the legislation affecting the legal profession, including the Matrix of proposed changes.
4. It was also tasked with gathering information on reported physical and oral attacks on lawyers and/or law firms and to assess the ability of lawyers to exercise freely the right to freedom of expression, belief, association and assembly.
5. This report is the result of that mission. Its findings are based primarily on the information gathered during the meetings held in the course of the delegation’s visit to Tanzania between 16–19 October 2017. They are also based on information received in written form either during or after the visit. An analysis of applicable domestic and international legal instruments, secondary sources, including non-governmental organisations (NGOs) and United Nations human rights reports, academic articles and media reports, was also undertaken. The report was compiled in accordance with the Guidelines on International Human Rights Fact-Finding Visits and Reports (the ‘Lund-London Guidelines’).
6. The report sets out the delegation’s observations and conclusions in respect of these concerns, as well as recommendations for the improvement of the situation regarding the legal profession in the country.

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<sup>1</sup> Fact Finding Mission to Tanzania, Terms of Reference.

# Background

7. Tanzania is a country in East Africa with a population of approximately 55 million people. Tanzania was formed in 1964 as a union between Tanganyika (the mainland in present-day Tanzania) and Zanzibar (an archipelago near the coast of East Africa). Although it is a united republic, the Tanzanian Constitution and system of government afford a certain amount of political autonomy to Zanzibar. For example, Zanzibar has its own head of government, known as the President of Zanzibar, its own representative body and its own Attorney General.
8. As a result of this history, the legal profession in the Tanzanian mainland is governed separately from Zanzibar. Of greatest relevance to the immediate report is the existence of two separate legal frameworks for the legal profession and two separate representative organisations: on the mainland, the relevant organisation is the TLS; in Zanzibar, the equivalent body is the Zanzibar Law Society. Additionally, the legal profession on the mainland is governed mainly by the Advocates Act (about which more is said below), whereas Zanzibar maintains separate legal requirements. This division also means that the proposed changes to the law discussed in this report are of far greater immediate relevance on the Tanzanian mainland than in Zanzibar.
9. Tanzania has a democratic system of governance, with multi-party elections held periodically. The presidential term of office is for five years, renewable once. Tanzania's last presidential elections were in October 2015, when President John Pombe Joseph Magufuli was elected President of Tanzania. He formally replaced outgoing President Jakaya Mrisho Kikwete on 5 November 2015. President Magufuli belongs to the Chama Cha Mapinduzi (CCM) party, which has been in power in Tanzania since the party's establishment in 1977. CCM has gone on to win every presidential election held in Tanzania since the re-establishment of multi-party democracy in 1992.

# Threats to the legal profession in Tanzania

## Background context

10. In February 2017, the then-Minister of Constitutional and Legal Affairs in Tanzania, Dr Harrison Mwakyembe, in a televised interview, threatened to ban the TLS on the basis that the organisation was engaging in political activities.<sup>2</sup> Following this, in June 2017, the government circulated a Matrix listing 15 areas for potential reform in the legal profession to various stakeholders in Tanzania, including the TLS, requesting their comment. A copy of the translated Matrix is annexed hereto as Annex B. The Matrix made clear that the areas listed were earmarked for reform under a new law governing the legal profession, though the nature of that reform was not set out explicitly in the body of the document. Instead, the document simply lists areas without spelling out exactly what reforms are proposed.

## Current legal provisions regulating the legal profession in Tanzania

11. The Tanzanian Constitution makes limited provision for the position, or conduct of, the legal profession. It makes general provision for the conduct of legal proceedings at Articles 107A and 107B.<sup>3</sup> Article 107A provides, among other things, that legal proceedings should observe certain basic principles, including, for example, ‘impartiality to all without due regard to one’s social or economic status’ and ‘not to delay dispensation of justice without reasonable ground’.
12. More detailed provisions regarding the legal profession in Tanzania are reserved for statute. At present, the legal profession in Tanzania is governed by two laws:
  - (a) the TLS Act; and
  - (b) the Advocates Act.
13. The TLS Act established the TLS in 1954.<sup>4</sup> It renders membership of the TLS automatic for all advocates with a practising certificate.<sup>5</sup> It also charges the TLS with, among other things, representing, protecting and assisting ‘members of the legal profession in Tanzania as regards conditions of practice or otherwise’,<sup>6</sup> and it sets the structure of the society, its membership and the frequency of its meetings.<sup>7</sup>
14. The Advocates Act governs the practice of law in Tanzania. It empowers the Chief Justice to admit individuals with the requisite qualifications as advocates.<sup>8</sup> It also establishes a ‘Council for Legal Education’ comprising the Chief Justice, Attorney General, Dean of the Faculty

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2 ‘Lawyers fault Mwakyembe’s threat to ban TLS’ *The Citizen* (17 February 2017), available at [www.thecitizen.co.tz/News/Lawyers-fault-Mwakyembe-s-threat-to-ban-TLS/1840340-3816756-yyoi77z/index.html](http://www.thecitizen.co.tz/News/Lawyers-fault-Mwakyembe-s-threat-to-ban-TLS/1840340-3816756-yyoi77z/index.html).

3 Section 107B states that, ‘[i]n exercising the powers of dispensing justice, all courts shall have freedom and shall be required only to observe the provisions of the Constitution and those of the laws of the land’.

4 TLS Act, section 3.

5 TLS Act, section 7.

6 TLS Act, section 4.

7 TLS Act, sections 15–30.

8 TLS Act, section 8.

of Law of Dar es Salaam University and two advocates nominated by the TLS.<sup>9</sup> The role of the Council for Legal Education is ‘to exercise general supervision and control over legal education in Tanzania’.<sup>10</sup>

15. The Advocates Act further places registration and disbarment of lawyers in Tanzania under the control of the Chief Justice. An advocate seeking admission to the roll must apply to the Chief Justice.<sup>11</sup> Equally, as set out above, the Chief Justice currently has the power to remove an advocate from the roll in cases of misconduct.<sup>12</sup> The Act also establishes a supervisory committee called the ‘Advocates Committee’.<sup>13</sup> According to Article 4 of the Act, the Advocates Committee comprises:

- (a) a judge of the High Court;
- (b) the Attorney General, or the Deputy Attorney General or the Director of Public Prosecutions; and
- (c) a practising advocate nominated by the TLS.

The Advocates Committee has the power, among other things, to determine complaints of misconduct made against advocates and applications for the removal of an advocate’s name from the roll.<sup>14</sup> It can also suspend an advocate for a temporary period.<sup>15</sup>

These acts became law in 1954 and 1955, respectively, meaning that they pre-date Tanzanian independence.<sup>16</sup>

## A. Proposal to reform the legal profession

### *The Matrix*

16. In summary, the Matrix proposed to establish a new body called the ‘Registration Board of Lawyers’ and to give this body authority over various matters, which we set out below.
17. According to the Matrix and to individuals with whom the organisations met, the Registration Board of Lawyers would be responsible for the full range of regulatory oversight over the legal profession, including:
- (a) managing the registration of lawyers and maintaining a register of all legal professionals;
  - (b) approving and revoking licences to practise;
  - (c) improving legal education and checking that lawyers are complying with their continuing professional education requirements; and

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9 Advocates Act, section 5A.

10 Advocates Act, section 5B.

11 Advocates Act, section 8.

12 Advocate Act, section 22.

13 Advocates Act, section 4.

14 Advocates Act, section 13.

15 Advocates Act, section 13(4).

16 Tanzania became independent on 9 December 1961.

- (d) conducting ad hoc inspections of law firms and legal offices to ensure that they are complying with the law.
18. According to the Matrix, these functions would be carried out by the Registration Board of Lawyers ‘cooperating with’ the Chief Justice. At present, it is unclear what the proposed composition of the Registration Board of Lawyers would be or to whom it would report, though the organisations heard fears that it would likely be controlled by, and report to, the Ministry of Justice.
19. The delegation heard concerns that the proposed introduction of this Registration Board of Lawyers would effectively provide the government (through the Minister of Constitutional and Legal Affairs) with the same powers currently exercised by the Chief Justice. Several people with whom the delegation met with expressed the view that this would mean, in effect, that the government could remove lawyers from the roll as a form of retribution if they were to take on cases for individuals or groups opposed to government policy.

### *Relevant international standards governing disbarment*

20. Other than the discretion given to governments to introduce a legislative requirement that lawyers should hold the nationality of the country in which they practise, the means by which individuals gain entry to the legal profession should not permit discrimination of any kind, including on political grounds.<sup>17</sup>
21. Once lawyers have been admitted to the bar, the Office of the Special Rapporteur on the Independence of Judges and Lawyers – the mechanism set up by the UN to identify, monitor and respond to threats against the legal profession – has made it clear that disbarment and other forms of disciplinary measures against lawyers for misconduct should not be carried out by a politicised body or for political motives.<sup>18</sup> The Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (the ‘Principles on Fair Trial in Africa’) further require disciplinary proceedings against lawyers (including disbarment) be ‘brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or even before a judicial body, and... be subject to an independent judicial review’.<sup>19</sup>

### *Relevant provisions of Tanzanian law*

22. At present, registration and disbarment of lawyers in Tanzania is overseen by the Chief Justice. An advocate seeking admission to the roll must apply to the Chief Justice.<sup>20</sup> Equally, as set out above, the Chief Justice has the power to remove an advocate from the roll in cases of misconduct.<sup>21</sup>
23. According to the Matrix of proposed changes to the legislation governing the legal profession, these powers may, in future, be given to a new Regulatory Board of Lawyers, which would cooperate with the Chief Justice. It is unclear, on the basis of the Matrix, whether and how

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17 UN Basic Principles on the Role of Lawyers, Article 9 and Principles on Fair Trial in Africa, Principle I. Independence of Lawyers, (a).

18 Report of the Special Rapporteur on the Independence of Judges and Lawyers, A/64/181, para 55.

19 Principles on Fair Trial in Africa, Principle I. Independence of Lawyers, (o).

20 Advocates Act, section 8.

21 Advocate Act, section 22.

the Minister of Constitutional and Legal Affairs would be allowed to exercise any powers in relation to the legal profession.

### *The organisations' observations*

24. As a preliminary matter, the delegation notes that there has been no official indication that the government of Tanzania intends to grant disciplinary (or any other) power over the legal profession to the Ministry of Justice. As noted above, the organisations heard this rumour from individuals with whom they met in Tanzania, none of whom were representatives of the government. It is not reflected in any of the government's own pronouncements about potential reform, nor in the Matrix of areas for reform. The delegation requested the government's comment in relation to these rumours, and in relation to the issues raised by the Matrix more widely, but received no response.
25. Notwithstanding that these rumours have not been confirmed, in light of the prejudice of such rumours and concerns raised, the delegation considered it worthwhile addressing these briefly. If it is true that the government of Tanzania is considering granting powers over the legal profession to the Ministry of Justice, then the delegation urges it to reconsider and to ensure that whatever reform is put in place complies with the international legal standards set out elsewhere in this report.
26. The delegation does not wish to speculate on whether the government would abuse the power to register and disbar lawyers in circumstances where this power was transferred to the Minister of Constitutional and Legal Affairs. However, providing the executive with control over disciplinary proceedings for lawyers, including disbarment, runs counter to international standards. As the UN Special Rapporteur on the Independence of Judges and Lawyers has stated, in order to maintain the independence of the legal profession, the power to register and disbar lawyers should not be exercised by members of the executive branch or a political party.<sup>22</sup> It should, instead, remain with the Chief Justice and/or an independent panel composed of individuals who are independent of the government. The same is true for powers related to entry into the legal profession.

## **B. Interference with and threats to abolish the Tanganyika Law Society**

### *Background context*

27. As noted above, prior to the delegation's visit, there had been a rapid increase in tension between the TLS and the government. One of the key points of tension was the TLS' internal election in March 2017. In February 2017, the government began to express concern at the prospect of CHADEMA's Chief Legal Officer and one of the most vocal critics of government policy in Tanzania, Mr Lissu, being elected to the leadership of the TLS.<sup>23</sup> Tension between the government and the TLS during this period culminated in a statement by then Minister

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<sup>22</sup> Report of the Special Rapporteur on the Independence of Judges and Lawyers, A/64/181, para 55.

<sup>23</sup> 'EA law society: Minister wrong to intimidate TLS' *The Citizen* (23 February 2017), available at [www.thecitizen.co.tz/News/EA-law-society-Minister-wrong-to-intimidate-TLS/1840340-3824496-14u34nf/index.html](http://www.thecitizen.co.tz/News/EA-law-society-Minister-wrong-to-intimidate-TLS/1840340-3824496-14u34nf/index.html).



of Constitutional and Legal Affairs, Dr Harrison Mwakyembe, threatening to shut down the TLS on the grounds that it was undertaking ‘activities of political activism’.<sup>24</sup> In that speech, Dr Mwakyembe reportedly sarcastically taunted the TLS, calling for it to re-register as a political party if it insisted on behaving politically.<sup>25</sup>

28. In March 2017, during the TLS’ annual general meeting, Mr Lissu was elected to the presidency of the TLS, winning 1,411 votes out of 1,682.<sup>26</sup> The delegation heard from several individuals that on or immediately before the election, Mr Lissu was arrested. Many were of the opinion that the arrest of Mr Lissu just before the election was an attempt to prevent him from being present and to block his election as President of the TLS. Several online media reports covered Mr Lissu’s arrest and made similar remarks.<sup>27</sup>
29. The delegation also heard that during the annual meeting, on the day members of the TLS were going to cast their votes, several suspected state security agent forces were present and that members of the police on horseback surrounded the venue. The delegation heard that, as a result of the presence of the security forces, the atmosphere was tense as some members of the legal profession felt intimidated with the police presence, which they felt was possibly meant to influence the voting process. As with several other issues relevant to this report, the organisations have invited the government of Tanzania to comment on the reported interference in the elections of the TLS. In a follow-up letter to the Inspector General of Police, the organisations enquired as to why there was heavy police presence during the TLS election, and if this was standard police procedure for the TLS’ annual general meetings or if there was a particular security concern. As of the date of this report, there has been no response from the government.
30. According to several individuals with whom the organisations met, this warning served to bolster the resolve of many members of the TLS to vote for Mr Lissu, leading to an even higher number of votes for Mr Lissu than might otherwise have been expected.
31. According to several interviewees, the government treated Mr Lissu’s victory with dismay and this possibly cemented the government’s earlier opinion that the TLS had become politicised in favour of the opposition to President Magufuli. The delegation also heard that, prior to March 2017, the TLS’ leadership had been regarded as dominated by individuals affiliated with CCM, President Magufuli’s party. It was unclear to the organisations whether, either before or after March 2017, the leadership of the TLS had taken decisions motivated by political considerations.
32. In early September 2017, six months after having been elected head of the TLS, Mr Lissu was shot outside his home in Dodoma.<sup>28</sup> As far as the delegation is aware, the identity of the

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24 ‘EA law society: Minister wrong to intimidate TLS’ *The Citizen* (23 February 2017), available at [www.thecitizen.co.tz/News/EA-law-society-Minister-wrong-to-intimidate-TLS/1840340-3824496-14u34nf/index.html](http://www.thecitizen.co.tz/News/EA-law-society-Minister-wrong-to-intimidate-TLS/1840340-3824496-14u34nf/index.html). See also: ‘Tanzania threatens law society over “politicking”’ *The East African* (20 February 2017), available at [www.theeastafrican.co.ke/news/2558-3820956-9rvli9z/index.html](http://www.theeastafrican.co.ke/news/2558-3820956-9rvli9z/index.html). The Minister reportedly stated that, ‘[i]f TLS purports to have grown enough to engage itself in additional responsibilities of political activism, the government will not hesitate to revoke all laws and regulations that enable its existence’.

25 ‘Tanzania: Lawyers Fault Mwakyembe’s Threat to Ban TLS’ *allAfrica.com* (17 February 2017), available at <http://allafrica.com/stories/201702170233.html>.

26 ‘Lissu wins TLS presidency’ *The Citizen* (18 March 2017), available at [www.thecitizen.co.tz/News/Lissu-wins-TLP-presidency/1840340-3854644-ugsugcz/index.html](http://www.thecitizen.co.tz/News/Lissu-wins-TLP-presidency/1840340-3854644-ugsugcz/index.html).

27 ‘Lissu arrested again as TLS election D-Day draws near’ *IPPmedia.com* (17 March 2017), available at <https://ippmedia.com/en/news/lissu-arrested-again-tls-election-d-day-draws-near>.

28 ‘Tanzania’s Tundu Lissu recovering after gun attack’ *Al Jazeera* (8 September 2017), available at [www.aljazeera.com/news/2017/09/tanzania-tundu-lissu-recovering-gun-attack-170908185550801.html](http://www.aljazeera.com/news/2017/09/tanzania-tundu-lissu-recovering-gun-attack-170908185550801.html).



perpetrators remains unknown. Many individuals that the delegation spoke with expressed grave concern that the attack on Mr Lissu was in response to his leadership of the TLS, as well as his role in CHADEMA, where he has publicly criticised the government on several issues. See below for a full discussion.

33. It recently came to the attention of the organisations that, sometime in March 2018, the government of Tanzania published the Tanganyika Law Society (Election) Regulations 2018.<sup>29</sup> According to a public statement by the Governing Council of the TLS on the publication of the regulations, the TLS submitted a draft of its regulations to the Attorney General.<sup>30</sup> The published version, however, included several clauses that essentially prohibited members of the TLS from running for positions within the TLS if at the time they are ‘a public servant, a member of parliament, a ward counsellor or holding a leadership position in a registered political party’.<sup>31</sup>
34. According to the statement, these and other amendments to the original draft regulations by the TLS were unilaterally made by the Attorney General.

### *Relevant international standards*

35. Lawyers are entitled to form independent, self-governing professional bodies ‘to represent their interests’.<sup>32</sup> Those professional associations should cooperate with the government ‘to ensure that everyone has effective and equal access to legal services and that lawyers are able, without improper interference, to counsel and assist their clients in accordance with the law and recognized professional standards and ethics’.<sup>33</sup> Such bodies should remain independent of government and other political influences.
36. At the same time, lawyers are entitled to freedom of expression, belief, association and assembly. They may participate in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and may join or form local, national or international organisations and attend their meetings. In so doing, however, lawyers are required to be mindful of their professional obligations and the recognised standards and ethics of the legal profession.<sup>34</sup>
37. The office of the Special Rapporteur on the Independence of Judges and Lawyers has, on a number of occasions, expressed concern about the existence of state-controlled associations of lawyers, which the office sees as seriously undermining the independence of lawyers. The office has further emphasised the need for associations of lawyers to be independent from the executive branch and called upon states to ‘recognize that freedom of expression and association

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29 P E Mselewa, Statement of the Governing Council of Tanganyika Law Society on the Publication of the Tanganyika Law Society (Elections) Regulations of 2018 in the Government Gazette, JamiiForums, available at [www.jamiiforums.com/threads/tanganyika-law-society-issues-statement-on-the-publication-of-tls-elections-rules-2018.1413138/page-2](http://www.jamiiforums.com/threads/tanganyika-law-society-issues-statement-on-the-publication-of-tls-elections-rules-2018.1413138/page-2).

30 *Ibid.*

31 The Tanganyika Law Society (Elections) Regulations 2018, available at <http://tls.or.tz/publication/view/tanganyika-law-society-elections-regulations-2018>.

32 UN Basic Principles on the Role of Lawyers, Article 24.

33 UN Basic Principles on the Role of Lawyers, Article 25.

34 UN Basic Principles on the Role of Lawyers, Article 23.

of lawyers constitute essential requirements for the proper and independent functioning of the legal profession and must be established and guaranteed by law and in practice'.<sup>35</sup>

38. Furthermore, international standards are clear that 'the executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference'.<sup>36</sup>
39. Finally, associations of lawyers, such as the TLS, should operate, as far as possible, independently, which is to say without permitting government or political influence over its affairs. The Special Rapporteur has further stated that membership of the executive body of lawyers associations should be pluralistic 'so that they are not dependent upon one political party's interests, a situation which clearly undermines the integrity and credibility of the profession'.<sup>37</sup>

### *The organisations' observations*

40. The organisations are concerned about the apparent unwarranted interference with the independence of the legal profession in the country as manifested by:
- (a) the verbal threats by the government to abolish the TLS;
  - (b) government allegations that the TLS had become politicised; and
  - (c) government interference in the election process at the TLS and the recent gazetting of the Tanganyika Law Society (Elections) Regulations, 2018.
41. The delegation notes that lawyers, like other citizens, are entitled to hold political views and to exercise their rights to freedom of opinion, expression and assembly. The fact, or perception, that a majority of lawyers are sympathetic to the policies of a political movement cannot justify hostility towards the legal profession or the TLS by the government.
42. The delegation considers it wholly inappropriate that the authorities should seek to interfere with elections internally at the TLS. As noted above, one of the key guarantors of an independent legal profession is the existence of an independent law society to represent its members. The government must ensure that the TLS is free to determine how it is organised internally, including with respect to the identity of its leadership.
43. The delegation is thus deeply concerned with the promulgation of the regulations, particularly the unilateral inclusion of the clauses barring certain individuals from running for office within the TLS based on their political affiliations. This development appears to confirm allegations of discrimination against lawyers on the grounds of political affiliation. It suggests a targeted, unjustified and unwarranted restriction of freedom of association and expression only for members of the TLS. This is not in conformity with the Constitution of Tanzania, or its binding international and regional treaty obligations.

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35 See the report of the Special Rapporteur on the Independence of Judges and Lawyers, A/64/181 of 28 July 2009, paras 19–27 and 111–112.

36 Principles on Fair Trial in Africa, Principle I. Independence of Lawyers, (I).

37 Report of the Special Rapporteur on the Independence of Judges and Lawyers, A/64/181, para 27.

44. However, it is important that the TLS takes seriously its institutional role as an apolitical representative of the legal profession. In the event that TLS members are engaged in political activities, the TLS leadership must take steps to ensure that these political activities do not overlap with their duties at the TLS and that this distinction remains evident to the public in a way that avoids conflating the TLS with any particular political party or movement.

## C. Verbal and physical attacks on lawyers and the legal profession

### *Context of attacks*

45. As well as coming soon after the circulation of the Matrix, the mission to Tanzania came in the context of a period of social and political tension in Tanzania. President Magufuli to date has been focused on tackling economic and social issues facing Tanzania. He has undertaken a high-profile anti-corruption drive aimed at ending endemic corruption and absenteeism by employees of government departments.<sup>38</sup> He has also been responsible for a confrontation between the Tanzanian government and large, international mining corporations, culminating in July 2017 in a controversial series of new laws aimed at ensuring that a greater proportion of the profits of mining companies are retained for the Tanzanian public purse.<sup>39</sup>
46. At the time of the delegation's visit to Tanzania, they were also told that President Magufuli's focus on the economy has led to criticism that his government is ignoring, and on occasion undermining, civil and political rights in Tanzania. Although these matters are outside the scope of the organisations' terms of reference, they are noted here by way of setting the context for the attacks on lawyers and the legal profession, as discussed below. A series of statements and actions by the government apparently attacking the rights of vulnerable groups in Tanzania have attracted strong criticism by NGOs in Tanzania and beyond. For example, in February 2017, the Tanzanian government ordered the closure of 40 private health clinics that were providing HIV-related medical services on the grounds that their existence served to promote gay sex.<sup>40</sup> In June 2017, President Magufuli announced a new government policy preventing students who fall pregnant during their studies from returning to school at the expense of the state.<sup>41</sup> Persistent verbal attacks by government officials on NGOs attempting to assist affected groups led 22 organisations, including Human Rights Watch and Amnesty International, to issue a joint statement in July 2017 calling on the government to 'immediately stop threatening the work of nongovernmental organizations'.<sup>42</sup>
47. The Tanzanian government has also recently taken steps that limit the ability of media organisations, NGOs and opposition leaders to undertake their work free from government

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38 'What has Tanzania's Magufuli done during his year in office?' *BBC News* (4 November 2016), available at [www.bbc.co.uk/news/world-africa-37822740](http://www.bbc.co.uk/news/world-africa-37822740).

39 'Tanzania: Magufuli's mining reforms are a masterclass in political manoeuvring' *African Arguments* (17 July 2017), available at <http://africanarguments.org/2017/07/17/tanzania-magufulis-mining-reforms-are-a-masterclass-in-political-manoeuvring>.

40 'Tanzania stops 40 health centres from offering AIDs services fearing they promote gay sex' *ITV News* (17 February 2017), available at [www.itv.com/news/2017-02-17/tanzania-stops-40-health-centres-from-offering-aids-services-fearing-they-promote-gay-sex](http://www.itv.com/news/2017-02-17/tanzania-stops-40-health-centres-from-offering-aids-services-fearing-they-promote-gay-sex).

41 'Activists want govt to reconsider its decision, allow teen mothers back to school' *The Citizen* (29 June 2017), available at [www.thecitizen.co.tz/News/Activists-want-govt-to-reconsider-its-decision-/1840340-3992324-3b5i4dz/index.html](http://www.thecitizen.co.tz/News/Activists-want-govt-to-reconsider-its-decision-/1840340-3992324-3b5i4dz/index.html).

42 'Tanzania: Stop Threatening Rights Groups' Human Rights Watch (6 July 2017), available at [www.hrw.org/news/2017/07/06/tanzania-stop-threatening-rights-groups](http://www.hrw.org/news/2017/07/06/tanzania-stop-threatening-rights-groups).

oversight and control, severely limiting the scope for criticism of government policies in Tanzania. In November 2016, for example, the government passed a new media law that, among other things, created a new government-run board charged with accrediting journalists and vetting stories that touch on issues of ‘national importance’.<sup>43</sup> In June 2017, the Tanzanian police announced an indefinite ban on opposition rallies and meetings, which continues to be in effect as at the date of this report.<sup>44</sup> In August 2017, the government announced that NGOs were required to register with the government in order to allow the government to ‘vet’ them – those that failed to register, or that failed the ‘vetting’ procedure, were shut down.<sup>45</sup>

48. More recently, two leaders of the CHADEMA opposition party were brutally murdered. In early February 2018, Daniel John, who was responsible for the CHADEMA party in Hananasif ward, Dar es Salaam, was kidnapped by a group of men and later found dead from machete wounds to the head.<sup>46</sup> A witness who was kidnapped at the same time says they were tortured and questioned for supporting CHADEMA. Two weeks later, Godfrey Luena, a CHADEMA councillor, was brutally murdered outside his home.<sup>47</sup> Regional police confirmed the murder but stated that the motive was unknown.<sup>48</sup> Some members of CHADEMA have reportedly accused the ruling party of being responsible for the attacks.<sup>49</sup> In March, six members of the same party were arrested and charged with sedition for participating in an alleged illegal protest.<sup>50</sup> On 13 March, the government of Tanzania introduced the Electronic and Postal Communications Regulation 2018 to regulate online content. The regulations give power to the Tanzania Communication Regulatory Authority to control all online content and make it mandatory for online platform users such as bloggers and YouTubers to pay an annual fee of USD \$900 and obtain a licence.<sup>51</sup> The regulations are viewed as part of President Magufuli’s clamp down on social media and freedom of expression at large.<sup>52</sup>
49. All this has led to strong criticism of Tanzania in reports recently published by international human rights NGOs. In its July 2017 statement, for example, Human Rights Watch stated that ‘Tanzania’s president and other top officials should be focusing on how to build the country by helping everyone complete their education and ending discrimination’, rather than undermining existing rights.<sup>53</sup> Attacks on freedom of expression have also led to Tanzania’s ranking in the World Press Freedom Index falling by 12 places – from 71st place in 2016 to 83rd

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43 ‘JPM signs contentious Media Bill into law’ *The Citizen* (18 November 2016), available at [www.thecitizen.co.tz/News/JPM-signs-contentious-Media-Bill-into-law/1840340-3456590-cfi7jaz/index.html](http://www.thecitizen.co.tz/News/JPM-signs-contentious-Media-Bill-into-law/1840340-3456590-cfi7jaz/index.html).

44 ‘Opposition fury as Tanzania bans opposition rallies’ *Daily Monitor* (8 June 2016), available at [www.monitor.co.ug/News/World/Opposition-fury-as-Tanzania-bans-opposition-rallies/688340-3240082-hpnpmfz/index.html](http://www.monitor.co.ug/News/World/Opposition-fury-as-Tanzania-bans-opposition-rallies/688340-3240082-hpnpmfz/index.html).

45 ‘Tanzania requires NGOs to verify their registration status’ *EY* (16 August 2017), available at [www.ey.com/gl/en/services/tax/international-tax/alert-tanzania-requires-ngos-to-verify-their-registration-status](http://www.ey.com/gl/en/services/tax/international-tax/alert-tanzania-requires-ngos-to-verify-their-registration-status).

46 ‘Tanzanian opposition Chadema party leader beaten to death’ *Daily Nation* (14 February 2018), available at [www.nation.co.ke/news/africa/Tanzania-CHADEMA-leader-murdered/1066-4304584-r209f1/index.html](http://www.nation.co.ke/news/africa/Tanzania-CHADEMA-leader-murdered/1066-4304584-r209f1/index.html).

47 ‘Second opposition politician killed in Tanzania’ *Daily Nation* (28 February 2018), available at [www.nation.co.ke/news/africa/Opposition-politician-killed-in-Tanzania/1066-4317646-731mgdz/index.html](http://www.nation.co.ke/news/africa/Opposition-politician-killed-in-Tanzania/1066-4317646-731mgdz/index.html).

48 *Ibid.*

49 *Ibid.*

50 ‘Six Tanzania opposition leaders charged with sedition’ *Reuters* (28 March 2018), available at [www.reuters.com/article/us-tanzania-politics/six-tanzanian-opposition-leaders-charged-with-sedition-idUSKBN1H4286](http://www.reuters.com/article/us-tanzania-politics/six-tanzanian-opposition-leaders-charged-with-sedition-idUSKBN1H4286).

51 ‘Tanzania: RSF decries law that will kill off Tanzania’s blogosphere’ *Reporters Without Borders* (12 April 2018), available at <https://rsf.org/en/news/tanzania-rsf-decries-law-will-kill-tanzanias-blogosphere>.

52 ‘Tanzanian government demands \$930 fee from bloggers in internet clampdown’ *CNN* (13 April 2018), available at [www.cnn.com/2018/04/12/africa/tanzania-blogging-internet-freedom-africa/index.html](http://www.cnn.com/2018/04/12/africa/tanzania-blogging-internet-freedom-africa/index.html).

53 ‘Tanzania: Stop Threatening Rights Groups’ Human Rights Watch (6 July 2017), available at [www.hrw.org/news/2017/07/06/tanzania-stop-threatening-rights-groups](http://www.hrw.org/news/2017/07/06/tanzania-stop-threatening-rights-groups).

in 2017.<sup>54</sup> Such developments are broadly in line with information that the delegation heard while in Tanzania – interviewees were overwhelmingly negative about the impact of measures being put in place by the government, with some expressing the view that civil and political rights in Tanzania were likely to be further undermined in future.

50. As noted above, although it is outside of the delegation’s terms of reference to comment in detail on these developments, it is undeniable that these developments are extremely concerning and the organisations encourage the government to act rapidly and robustly to reinforce its support for fundamental human rights and civil liberties in all areas.
51. This report will now turn to the physical and verbal attacks on lawyers, bearing in mind the restricted environment outlined above. In addition to the increased tension with the TLS in 2017, the delegation heard that there was a concerning increase in the number of violent incidents perpetrated against members of the legal profession:
  - (a) On 26 August 2017, the offices of a well-known Tanzanian law firm, IMMMA Advocates, were bombed during the night. IMMMA Advocates had acted as local counsel in an international case brought by a mining company against the government of Tanzania. Although the delegation understands that the investigation into this incident remains ongoing, many of the individuals with whom the organisations met privately expressed the view that IMMMA Advocates may have been targeted because of its representation of a company with interests opposed to those of the government.
  - (b) Three weeks after the attack on IMMMA Advocates, on 12 September 2017, the offices of Prime Attorneys were broken into by four unknown assailants.<sup>55</sup> Several documents were stolen as well as cash in the sum of 3.7 million shillings. At the time of the break in, Prime Attorneys was representing a well-known businessman, Yusuph Manji.<sup>56</sup> Mr Manji and several accused persons were facing criminal charges for alleged economic sabotage.<sup>57</sup> While news reports indicate that none of the documents stolen belonged to Mr Manji, several individuals the delegation spoke with were concerned that the break in targeted Prime Attorneys because of its representation of Mr Manji. The delegation heard that the criminal case against Mr Manji was potentially in retaliation to a dispute he had with the government of Tanzania. The charges against Mr Manji and his co-accused were dropped after the Director of Public Prosecutions entered a certificate of *nolle prosequi*.<sup>58</sup> On 19 September, the press reported that several suspects had been arrested in connection with the break in but, due to ongoing investigations, the police were unable to reveal further details.<sup>59</sup> Similar to the incident involving IMMMA Advocates, several interviewees expressed concern that Prime Attorneys may have been targeted because of its representation of a client with adverse interests to the government.

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54 See “‘Bulldozing’ the media” *Reporters Without Borders*, available at <https://rsf.org/en/tanzania>.

55 ‘Tanzania: Suspected bandits raid office block hosting Manji’s attorneys’ *The Citizen* (12 September 2017), available at [www.thecitizen.co.tz/News/Tanzania-Suspected-bandits-raid-office-block-hosti/1840340-4092210-cyemk4/index.html](http://www.thecitizen.co.tz/News/Tanzania-Suspected-bandits-raid-office-block-hosti/1840340-4092210-cyemk4/index.html).

56 *Ibid.*

57 ‘Case against Manji, 3 co-accused dropped’ *Daily News* (15 September 2017), available at <http://dailynews.co.tz/index.php/home-news/52988-case-against-manji-3-co-accused-dropped>.

58 *Ibid.*

59 ‘Tanzania: Police Arrest Five in Connection to the Raid of Manji’s Lawyers’ Office’ *allAfrica.com* (19 September 2017), available at <http://allafrica.com/stories/201709200355.html>.

- (c) In addition to the attacks on IMMMA Advocates and Prime Attorneys, the delegation also heard reports of the bombing of the law offices of advocate Said Omar Shaaban, who is current President of the Zanzibar Bar, on 7 April 2016.<sup>60</sup> The perpetrators of the attack have not been apprehended.<sup>61</sup>
- (d) The delegation also heard of lawyers being arrested for attending to clients who were being investigated or had been arrested by the police. This was in conjunction with statements made by the President to arrest lawyers representing unsavoury clients.
- (e) On 7 September 2017, Mr Lissu was shot in Dodoma. As of the date of this report, the investigation into that shooting was still pending, with no arrests. The delegation also heard of the previous murders of two lawyers, Professor Jwani Mwaikusa and Dr Sengondo Mvungi. Although the murders happened a few years ago, these still resonate within the profession. Also mentioned was the disappearance of a lawyer named Philbert Patrick Gwagilo, who is still missing.<sup>62</sup>

52. While in Tanzania, the organisations heard differing views and opinions about the likely perpetrators of these attacks and the likely reasons for them. Some individuals with whom the organisations spoke believed that the attacks were a manifestation of the government's increasing hostility towards lawyers. They interpreted the attack on IMMMA Advocates as a form of 'reprisal' for that firm's participation in a case that went against the government's interests (see above). The organisations heard from several individuals that the attack on Mr Lissu was effectively a warning to the TLS, of which he was the President. Others with whom the organisations met believe that Mr Lissu was shot due to his political activism (Mr Lissu was a prominent member of CHADEMA for some time) and not in connection with his activities as President of the TLS.
53. While the organisations do not have enough information to come to any firm conclusions on the motives behind the physical attacks on the lawyers and the law firms, the organisations understand that, save for the arrests in relation to the bombing of Prime Advocates, there have been no other arrests or significant developments reported and the investigations remain pending.
54. The organisations requested the government's response to the concerns raised regarding the standstill in the investigations, but no response was received.

### *Relevant regional and international standards*

55. Article 2 of the International Covenant on Civil and Political Rights (ICCPR) provides for the right to an effective remedy when one's rights are violated. Further, states have the obligation to protect the right to life. In order to ensure protection of this right and to facilitate access to an effective remedy, states must ensure prompt and effective investigations are carried out into cases

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<sup>60</sup> Tanganyika Law Society, Letter to the Chief Justice of Tanzania, 28 August 2017.

<sup>61</sup> According to the Letter by the Law Society, no report or updates of the investigations have been made public.

<sup>62</sup> *Ibid.* According to the individuals that the organisations spoke to, the perpetrators of these acts have not been apprehended, nor have the police made public the status of the investigations.



of murder or attempted murder. Failure of authorities to investigate such attacks constitutes a failure of the state's international and national human rights obligations.

56. Article 7(1)(a) of the African Charter on Human and Peoples' Rights (the 'African Charter') provides that every individual shall have the right to have his cause heard, including 'a right to an appeal to competent national organs against acts of violating his fundamental rights as recognised and guaranteed by convictions, laws, regulations and customs in force'. The African Commission on Human and Peoples' Rights (the 'African Commission') has noted that Article 7 of the African Charter is not limited to the protection of rights of arrested and detained persons but encompasses the rights of every individual to access the relevant judicial bodies competent to have their causes heard and be granted adequate relief.<sup>63</sup>
57. The right to protection against intimidation, retaliation and reprisals is an integral component of victims' right to redress and a condition precedent to obtaining justice in the African Commission's General Comment on the Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment.<sup>64</sup>
58. The African Commission has urged states to protect human rights defenders, including lawyers who undertake human rights work, in its Resolution on the Situation of Human Rights Defenders in Africa.<sup>65</sup> The Resolution calls on states to provide human rights defenders with a conducive environment to be able to carry out their activities without fear of acts of violence, threat, intimidation, reprisal, discrimination, oppression and harassment from state and non-state actors.<sup>66</sup>

### *The organisations' observations*

59. While the delegation was not able to conclude on the motives of the attacks, it was very evident to the delegation that, as a result of these incidents, there exists a climate of fear among lawyers in Tanzania, and a belief that their physical integrity may be at risk if they take on incidents adverse to, or that otherwise appear to challenge, government policy.
60. In the delegation's view, violent attacks on members of the legal profession that are aimed at intimidating them from performing their duties, or otherwise harassing them, are reprehensible. Lawyers must never be associated with their client's causes. It is imperative that the government acts urgently to investigate the incidents that have taken place already, to publicise the findings and bring perpetrators to justice. The government should also make a public statement condemning these attacks and providing a commitment to the protection of lawyers regardless of their identity or political affiliations, or the identity of their clients. These incidents have fuelled a regrettable perception by some lawyers working in Tanzania that the government is openly

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63 African Commission, *Zimbabwe Human Rights NGO Forum v Zimbabwe*, Communication 245/02, para 213. The African Commission held further that 'where the competent authorities put obstacles on the way which prevent victims from accessing the competent tribunals, they would be held liable'. See African Commission, *Sudan human rights organisation & Centre on Housing Rights and Evictions (COHRE) v Sudan*, Communications 279/03 and 296/05, para 181.

64 African Commission, General Comment No 4 on the African Charter on Human and Peoples' Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Article 5), available at [www.achpr.org/files/instruments/general-comment-right-to-redress/achpr\\_general\\_comment\\_no\\_4\\_english.pdf](http://www.achpr.org/files/instruments/general-comment-right-to-redress/achpr_general_comment_no_4_english.pdf).

65 ACHPR/Res. 376 (LX) 2017, available at [www.achpr.org/sessions/60th/resolutions/376](http://www.achpr.org/sessions/60th/resolutions/376).

66 *Ibid*, Recommendation 2.

hostile to the TLS and the wider legal community; positive steps by the government would do much to counter that perception.

## D. Freedom of expression for lawyers

### Background

61. Prior to Mr Lissu's shooting, he was facing several criminal charges including sedition. On 20 July 2017, Mr Lissu was arrested at the Julius Nyerere International Airport on his way to Kigali, Rwanda, where he was to attend a summit held by the EALS. Mr Lissu was charged with insulting President Magufuli for comments he made three days prior, where he likened President Magufuli to a 'dictator'.<sup>67</sup> Police authorities said that Mr Lissu was arrested for 'making anti-government speeches that could lead to unrest'.<sup>68</sup>
62. In another case, Mr Lissu was charged with sedition after publishing a 2016 article titled 'Machafuko yaja Zanzibar' (roughly translated as 'Chaos is Coming to Zanzibar').<sup>69</sup>
63. In March 2017, the Director of Public Prosecutions (DPP) issued a *nolle prosequi* to terminate a previous sedition case against Mr Lissu, where the state alleged that Mr Lissu had, at a public rally, stated that 'all Zanzibar presidents were handpicked in Tanganyika and residents of the islands have no voice on who should lead them'. After dropping the prior charges, the DPP then rearrested Mr Lissu the following day under new sedition charges for allegedly saying that 'what happened during the 2015 elections in Zanzibar was akin to offering Muslims pork'. On 22 August 2017, Mr Lissu was charged with several counts relating to false public statements against the President.
64. The open cases against Mr Lissu have been temporarily suspended as he still out of the country receiving medical treatment from the serious injuries he suffered during the shooting.

### Relevant regional and international standards

65. Tanzania's Constitution provides that '[e]very person has a freedom, to freely and peaceably assemble, associate and cooperate with other persons, and for that purpose, express views publicly and to form and join with associates or organizations formed for purposes of preserving or furthering his beliefs or interests or any other interests'.<sup>70</sup>
66. The right to freedom of expression is protected by both the ICCPR and the African (Banjul) Charter on Human and Peoples' Rights, to which Tanzania is a State Party.

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67 At the press conference on 17 July, Mr Lissu accused President Magufuli of building 'a system based on favoritism, nepotism, tribalism and regionalism' and called on the international community to cut aid to President Magufuli's administration in order to compel respect for principles of democracy, rule of law and human rights in Tanzania.

68 'Defiant Lissu says ready to pay high price' *The Citizen* (28 July 2017), available at [www.thecitizen.co.tz/News/Defiant-Lissu-says-ready-to-pay-high-price/1840340-4035206-1glw1az/index.html](http://www.thecitizen.co.tz/News/Defiant-Lissu-says-ready-to-pay-high-price/1840340-4035206-1glw1az/index.html).

69 'Tanzania: Court Threatens Cancellation of Tundu's Bail in Seditious Trial' *allAfrica.com* (21 September 2016), available at <http://allafrica.com/stories/201609210567.html>.

70 United Republic of Tanzania Constitution, chapter one, part III, section 20(1) (2005), available at <http://zlsr.or.tz/documents/tanzania%20constitution-%202009.pdf>.



67. 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’ and that they ‘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’.<sup>71</sup>

### *The organisations’ observations*

68. The delegation is concerned that the criminal cases brought against Mr Lissu, which were directly in response to his public criticism of the government of Tanzania and President Magufuli, violate his fundamental right to freedom of expression. Freedom of expression, particularly on matters of public interest, is not only a basic individual right but necessary to a free and just society. The UN Human Rights Committee has succinctly explained: ‘Freedom of expression is a necessary condition for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights.’<sup>72</sup>
69. The importance of freedom of expression in a democratic society cannot be overemphasised, particularly in conversations of public interest and public figures in the political domain.<sup>73</sup> Respect for freedom of expression leads to greater public transparency and accountability, as well as to good governance and the strengthening of democracy.<sup>74</sup> The value of public debate, especially concerning figures in the political domain, is thus very high. The African Commission has explained that ‘[a] higher degree of tolerance is expected when it is a political speech and an even higher threshold is required when it is directed towards the government and government officials’.<sup>75</sup>

The delegation urges the government of Tanzania to drop all criminal charges against Mr Lissu that relate to his criticism of the government. Tanzania must also respect, protect and promote the right to freedom of expression for all citizens, which includes revising restrictive legislation such as the Cybercrimes Act and the Media Services Act, 2016 to ensure they do not violate the right to freedom of expression.

## **E. Access to legal advice and representation by members of the public**

### *Background*

70. Many of the issues identified in this report are relevant to the question of whether the Tanzanian public has proper access to legal advice, as well as the extent to which Tanzanian lawyers habitually observe their own laws and codes of ethics. The delegation met several impressive lawyers in Tanzania who were evidently honest, talented and hard-working. Some of them

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71 UN Basic Principles on the Role of Lawyers, Principle 23.

72 UN Human Rights Committee, General Comment No 34: Article 19 Freedom of Opinion and Expression.

73 See also *Zeljko Bodrozic v Serbia and Montenegro*, UN Human Rights Committee 1180/2003, para 7.2, UN Doc A/61/40, Vol II, at 288 (HRC 2005), available at [www.worldcourts.com/hrc/eng/decisions/2005.10.31\\_Bodrozic\\_v\\_Serbia\\_and\\_Montenegro.htm](http://www.worldcourts.com/hrc/eng/decisions/2005.10.31_Bodrozic_v_Serbia_and_Montenegro.htm).

74 African Commission on Human and Peoples’ Rights, Declaration of Principles on Freedom of Expression in Africa of 2002, ACHPR/Res.62 (XXXII) 02.

75 *Kenneth Good v Botswana*, Communication No 313/05, 28th ACHPR AAR Annex (Nov 2009–May 2010).

reported having to work long hours and in difficult conditions. The delegation was encouraged by the self-evident contributions of these individuals to the administration of justice in Tanzania.

71. However, it was made clear to the delegation by a number of interviewees that some lawyers in Tanzania, as is true in every country, do not always observe the high professional and ethical standards that are required of the profession. The delegation was told repeatedly that many lawyers do not respect codes of conduct applicable to them, and that the TLS has failed to properly discipline or censure them when such codes are breached. The delegation heard from several people with whom it met that this was a key area of the legal profession requiring improvement.
72. Another concern raised was the impact of intimidation and harassment against lawyers. The delegation heard evidence from several individuals that criminal sanctions, or temporary detention, have recently been used by the authorities as a form of retribution or intimidation against lawyers who represent clients with interests against those of the government. Several individuals with whom the delegation met reported instances of intimidation of lawyers by police. These varied in their seriousness. The delegation heard, for example, that lawyers are frequently verbally abused by police officers and hassled before they are allowed to see detained clients. More troublingly, the delegation was informed by several interviewees that at least one lawyer had to endure temporary detention at a police station when attempting to visit a client held there.

### *Relevant regional and international standards*

73. Guidance on the right to a fair trial and the right to be represented by counsel of one's own choosing are provided in a number of texts including the Constitution of Tanzania.<sup>76</sup> Particularly relevant to Tanzania are the ICCPR, African Charter, UN Basic Principles on the Role of Lawyers, Principles on Legal Aid and the Principles on Fair Trial in Africa.<sup>77</sup> These provide for, among other things, equality of arms before an impartial tribunal and the right to be represented by a qualified legal representative at all stages of proceedings.<sup>78</sup> Applicable parts of guidelines and standards are set out below under the relevant sub-headings.
74. The right of access to justice and to legal representation is enshrined in the ICCPR<sup>79</sup> and the African Charter.<sup>80</sup> Access to the legal profession must be universal, without discrimination on any basis.<sup>81</sup> To that end, governments and professional bodies are required to ensure that lawyers are adequately trained in the law of the jurisdiction in which they practise and that they are 'made aware of the ideals and ethical duties' of their profession.<sup>82</sup> Lawyers' training

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76 See Constitution of the Republic of Tanzania, Section 13(6)(a), which reads: 'when the rights and duties of any person are being determined by the court or any other agency, that person shall be entitled to a fair hearing and to the right of appeal or other legal remedy against the decision of the court or of the other agency concerned'.

77 Principles on Fair Trial in Africa, adopted in 2001, available at [www.achpr.org/files/instruments/principles-guidelines-right-fair-trial/achpr33\\_guide\\_fair\\_trial\\_legal\\_assistance\\_2003\\_eng.pdf](http://www.achpr.org/files/instruments/principles-guidelines-right-fair-trial/achpr33_guide_fair_trial_legal_assistance_2003_eng.pdf).

78 Principles on Fair Trial in Africa, Articles 2–5.

79 Article 14.

80 Article 7.

81 UN Basic Principles on the Role of Lawyers, Articles 1–2.

82 UN Basic Principles on the Role of Lawyers, Article 9; see also Principles on Fair Trial in Africa, Principle I. Independence of Lawyers, (a).

should include information on human rights recognised domestically and recognised by international law.<sup>83</sup>

75. In giving legal advice and representation, lawyers are expected to behave as ‘essential agents of the administration of justice’.<sup>84</sup> They are expected to act in the best interests of their client, to ‘uphold human rights and fundamental freedoms’ and to assist clients before courts, tribunals or administrative authorities.<sup>85</sup> In doing so, lawyers should ‘exercise independent, unbiased professional judgment’ and ‘maintain the highest standards of honesty, integrity and fairness’.<sup>86</sup>
76. In order to allow lawyers to discharge their functions, governments must ensure that lawyers:
  - (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference;
  - (b) are able to travel and to consult with their clients freely both within their own country and abroad; and
  - (c) do not suffer, and are not threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognised professional duties, standards and ethics.<sup>87</sup>
77. Where an individual faces criminal proceedings, further protections should be applied to their right to consult with legal counsel. They should, for example, be given access to a lawyer, in a private setting, within 48 hours of arrest or detention whether or not they have been charged.<sup>88</sup>

### *Relevant provisions of Tanzanian law*

78. The Tanzanian Constitution enshrines the basic principles underpinning the right to a fair trial at Article 13(6), though it does not make express reference to the right of individuals to access legal advice and representation.<sup>89</sup>
79. The TLS Act gives the TLS specific statutory responsibility ‘to represent, protect and assist members of the legal profession in Tanzania as regards conditions of practice and otherwise’ and ‘to protect and assist the public in Tanzania in all matters touching, ancillary or incidental to the law’.<sup>90</sup>
80. Lawyers in Tanzania are required to abide by the code of conduct of the TLS. The disciplinary process for lawyers who breach their ethical and professional obligations is governed by provisions in the TLS Act, the Advocates Act and the Advocates (disciplinary and other

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83 *Ibid.*

84 UN Basic Principles on the Role of Lawyers, Article 12.

85 UN Basic Principles on the Role of Lawyers, Articles 12–14. Similar provisions are in the Principles on Fair Trial in Africa, Principle I. Independence of Lawyers.

86 IBA International Principles on Conduct for the Legal Profession, Principles 1–2.

87 UN Basic Principles on the Role of Lawyers, Article 16; Principles on Fair Trial in Africa, Principle I. Independence of Lawyers, (b); and Principle 12, section 36 of the Principles on Legal Aid.

88 UN Basic Principles on the Role of Lawyers, Article 7; see also Article 14 (3) (b), which requires clients have adequate time and facilities to communicate with their counsel and Principles on Fair Trial in Africa, Principle 3.

89 Constitution of Tanzania, Article 6.

90 TLS Act, section 4.

proceedings) Rules 1955. As stated above, these laws provide for two potential means by which lawyers may be disciplined in Tanzania:

- (a) *Discipline via the courts.* The Advocates Act provides an express power to the Chief Justice and judges of the High Court to deal directly with misconduct by lawyers.<sup>91</sup> Judges are permitted to admonish lawyers for misconduct and suspend them from practice; the Chief Justice may ‘for any reasonable cause’ admonish advocates, suspend them and/or make an order removing their name from the roll.<sup>92</sup>
- (b) *Discipline via the Advocates Committee.* As stated above, the Advocates Committee has the power to determine complaints of misconduct made against advocates and applications for the removal of an advocate’s name from the roll.<sup>93</sup> It further has broad powers of censure against advocates, including suspension of an advocate for a temporary period.<sup>94</sup>

### *The organisations’ observations*

- 81. The delegation considers the numerous concerns from individuals interviewed of frequent misconduct by lawyers to be troubling. They are also disappointed at reports that the present framework for the disciplining of lawyers – which, on paper (as set out above), is seemingly sound – is not fully enforced. The delegation urges all relevant parties to take action to ensure that lawyers uphold, and are held to, the highest standards of professionalism and ethical conduct, and that the system for disciplining lawyers who breach professional standards is properly implemented.
- 82. Specifically, the delegation encourages the TLS and other relevant organisations to take robust steps to ensure that the system for disciplining lawyers who fall short of professional and ethical standards is effective and properly enforced in practice, in line with international standards. It is clear to the delegation that the perception of a lack of disciplining of lawyers has undermined public confidence in the quality and independence of lawyers in Tanzania.
- 83. The delegation also considers it imperative that the government investigate reports regarding members of the police impeding the ability of lawyers to have access to their clients. This is an extremely concerning hindrance both to the rights of the accused – who should be entitled to legal advice and representation regardless of their identity – and to the independence of the legal profession.

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91 Advocates Act, section 22.

92 Advocates Act, section 22(2).

93 Advocates Act, section 13.

94 Advocates Act, section 13(4).

## Conclusion

It is an established principle that the independence of the legal profession plays an important role in safeguarding the rule of law and the protection of fundamental human rights. The ability of lawyers to represent clients is essential to maintaining the international norms of equal justice and due process. The delegation commends the invitation by the Minister of Justice and Constitutional Affairs of the United Republic of Tanzania, Hon Prof Palamagamba J A M Kabudi, to various stakeholders, including the TLS, to make submissions with regard to proposed amendments to the laws regulating the legal profession in Tanzania and acknowledges that there may exist a need to restructure and improve the regulation of the legal profession in Tanzania, to better meet international best practices.

The delegation, however, is concerned that, because of a deep mutual mistrust between the legal profession and the executive branch of government, the amendment process and results thereof threaten to undermine the independence of the profession. Furthermore, the hostile rhetoric and physical attacks against certain members of the legal profession has had a chilling effect on the ability of lawyers to represent clients, and heightened the delegation's concerns not only for the continued existence of a strong and independent legal profession, but the functioning of a system guided by the rule of law. The delegation thus urges the Tanzanian government, members of the legal profession and other stakeholders to work objectively and impartially on strengthening the legal profession in Tanzania in accordance with recognised regional and international standards. Furthermore, the delegation strongly urges Tanzania to take immediate steps to respect, protect and promote the independence of the legal profession, including independently and thoroughly investigating criminal attacks against lawyers.

# Annex A

## Terms of reference and organisation representatives

1. This report has been prepared following a fact-finding mission to Tanzania in October 2017 by a delegation of representatives from six organisations: the American Bar Association Center for Human Rights (ABA CHR), the East Africa Law Society (EALS), the International Bar Association's Human Rights Institute (IBAHRI), the International Commission of Jurists (ICJ), the Pan African Lawyers Union (PALU) and the Southern Africa Development Community (SADC) Lawyers Association (SADCLA).
1. The mission's terms of reference were 'to assess the state of the independence of the legal profession in Tanzania, particularly the existence and functioning of an independent self-governing association, the ability of lawyers to carry out their professional duties without retaliation, harassment or intimidation or being associated with their client's causes, and the rights of lawyers in Tanzania to engage in matters of public interest'.
2. In doing so, the organisations were required to analyse for compliance with international standards and the promotion of the independence of the legal profession in Tanzania:
  - (a) the current domestic legal framework, including the Tanganyika Law Society Act<sup>95</sup> and the Advocates Act;<sup>96</sup> and
  - (b) any proposed legislative changes to the legislation affecting the legal profession, including the Matrix of proposed changes.
3. It was also required to gather information on reported physical and oral attacks on lawyers and/or law firms and to assess the ability of lawyers to carry out their work without fear or favour, as well as to exercise the right to freedom of expression, belief, association and assembly.
4. The findings in this report are based primarily on the information gathered during the meetings held in the course of the organisations' visit to Tanzania in October 2017. They are also based on information received in written form either during or after the visit by the organisations. The organisations attempted to meet with government officials during the fact-finding mission, but without success. Following the mission, the organisations wrote to relevant state authorities requesting further information on concerns that arose during the mission. However, no responses were received from any of the authorities
5. An analysis of applicable domestic and international legal instruments, secondary sources, including NGO and UN human rights reports, academic articles and media reports was also undertaken and the report was compiled in accordance with the Lund-London Guidelines.

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<sup>95</sup> The Tanganyika Law Society Act, chapter 37, available at <http://tls.or.tz/laws>.

<sup>96</sup> The Advocates Act, chapter 341, available at <http://tls.or.tz/laws>.

## *Organisation representatives*

The ABA CHR, IBAHRI, ICJ, EALS, PALU and SADCLA were represented during this mission by Mooya Lynn Nyaundi, Mark Wassouf, Stella Ndirangu, Hanningtone Amol, Eric Mutua and Stanley Nyamanhindi, respectively.

### **MISSION RAPPORTEUR**

Mark Wassouf was the Mission Rapporteur for this report. He is an English barrister practising at 3 Verulam Buildings in London. He has a broad commercial and public international law practice, with significant experience acting as counsel in cases and matters involving complex questions of public international law. Mark has advised governments, NGOs and individuals on sovereign treaty obligations. He has acted on a number of matters involving questions of pure public international law, most recently acting as counsel in a complex application to the UN Human Rights Committee submitted under the First Optional Protocol to the ICCPR.

Mark has served as a delegate for the IBAHRI on previous missions. He was a rapporteur on the IBAHRI's report on the independence of the Cambodian judiciary and legal profession, and an assistant to the rapporteur on the IBAHRI's report on the independence of the Egyptian judiciary.

## *Acknowledgements*

The ABA CHR, IBAHRI, ICJ, EALS, PALU and SADCLA would like to express their gratitude to all those who met with the delegation during its mission for their cooperation and hospitality, and to the staff of the PALU and EALS, who provided invaluable assistance in arranging the meetings and logistics of the mission.



## Annex B

### **Tanganyika Law Society's opinion on the Ministry of Justice and Constitutional Affairs' Proposal in the Commentary showing specific areas of the proposed law enforcement legislation in the country\***

*\* This is an unofficial translation provided by the ABA CHR. The text has not been edited, save for minor formatting changes for the purposes of this report.*

#### **Introduction**

The Tanzanian Law Society recognizes Advocates as Tanzanian Court officials while carrying out the functions of their work, the Chief Justice of Tanzania is the specific authority that regulates all registered Advocates, administering their discipline and their rights in carrying out their duties. As in the case of the Court of First Instance of the Judiciary in the execution of its judicial functions; in the case of the advocates, the independence of Lawyers must be respected as they carry out their (Independent Bar). This independence is the basis for the honor that is in line with the Law enforcement legislation, and all Intellectual Property should comply with these Principles. The High Court Advisors and Courts under the Supreme Court, except the First Courts, perform a function of lawsuits under the law of the Advocates with the supervision of the Chief Justice.

This system and procedure have been in use in the country since the Law of advocates was initially introduced, and is consistent with the culture and customs used in the Commonwealth. Theories and many of the literary texts support the governing concept that this is a system that should be free and managed by the Courts as Lawyers registered in terms of the Lawyers Act are Court Officials.

Lawyers registered in terms of the Law of Advocates are guided by the Protection of the Judicial Court while performing the functions of the Advocate, as they are accountable to the Supreme Court and to the Chief Justice. The existing law gives authority to the Chief Justice to carry out the work. The bill will be used by the Ministry for commenting; it suggests that there is a tool for registering all the people working in the law enforcement sector in the country, including lawyers. Since Advocates are the Judicial Officers as we have stated above, their independence should be protected, as it is now in order to join the independent legal education bodies from elected leaders and their own members without interference by other authorities outside of the Parties. In addition, as seen in various international principles, the (UN Basic Principles on the Role of Lawyers, adopted in 1990), states the following:

- a) you should have an Arm for Human Rights in full and the Independence of the Legal Profession;
- b) the work of lawyers in practice is to defend human rights in their freedom of mind and self-reliance. And lawyers in independent bodies led by elected leaders and members carry out the defense that is not under the control of other Authorities; and



- c) the legal profession of lawyers: lawyers are required to form and join an independent body that is responsible for protecting their interests. Their Governing Body should be elected by the members themselves to perform their duties independently without interference by other authorities.

Therefore, the proposal to abolish the Law of Advocates, and the Law of the Tanganyika Lawyers Act and all Law enforcement legislation, does not comply with the constitutional framework of our country as well international and regional instruments (laws, principles and procedures that our country has agreed with by signing and incorporating it into part of the laws of our country). Various international and regional laws require the existence of 'Independence of the Legal Profession' and 'Independence of the Bar'.

### ***References:***

- a) Article 14(1) of the International Convention on Civil and Political Rights, 1966;
- b) Articles 7, 8 and 10 of the African Charter on Human and Peoples Rights, 1985;
- c) UN Basic Principles on the Role of Lawyers adopted in 1990;
- d) Article 201(1) of the Universal Declaration of Human Rights;
- e) Articles 21 and 22 of the International Convention on Civil and Political Rights;
- f) Article 8 of the International Convention on Economic, Social and Cultural Rights;
- g) Articles 6(d) and 7(2) of the Treaty for the Establishment of the East African Community, 1999;
- h) United Nations General Assembly Resolution 40/32 of 29 November 1985;
- i) United Nations General Assembly Resolution 40/146 of 13 December 1985;
- j) The Human Rights Commission Resolutions 2000/42 of 20 April 2000, 2001/39 of 23 April 2001, 2002/43 of 23 April 2002, 2003/43 of 23 April 2003 and 2004/33 of 19 April 2004;
- k) UN Draft Principles on the Independence of the Judiciary, 1981;
- l) International Bar Association's Minimum Standards of the Judicial Independence, 1982;
- m) Beijing Basic Principles on the Role of Lawyers, 1990;
- n) Bangalore Principles of Judicial Conduct, 2002; and
- o) Cairo Declaration on Judicial Independence and Access to Justice of 2004.

So our opinion is that changes in the law of Advocates in some areas are a matter of concern but that change should not be made in a manner that will discriminate against the control of the Chief Justice for the Attorneys or in the manner that will make the Association of Lawyers a part of the (Executive) and to cause this Body to lose its independence as an independent Body of lawyers acting on behalf of the Chief Justice in accordance with the Act. After this introduction, the Party/Body Comments of the Attorneys on the Appeals contained in the bill are as follows:

No	Name	Topic	Terms of use
1	TLS	Creating a Body known as the Registration Board of Lawyers, or the Registrar of Lawyers, managing law enforcement in the country and enforcing law enforcement bodies by cooperating with the Chief Justice	<p>With the existing legislation, there are already entities governing the Lawyers. These tools are:</p> <ul style="list-style-type: none"> <li>• Chief Justice</li> <li>• Council of Legal Education (CLE)</li> <li>• Advocates Committee</li> <li>• Ethics Committee</li> <li>• Remuneration Committee</li> </ul> <p>Lawyers as Court Officials should be part of the Court's independence. That is why they have a systematic regulatory authority through the Chief Justice. The procedure is stipulated under Act 341. It is therefore wrong to combine the control of lawyers under the jurisdiction of the Court and the control of other lawyers who are not the Judicial Officers. Since such a proposal violates the concept of independence of the Judiciary and the Independence of the Bar. In addition, we agree that the importance of enacting Law Enforcement Law, including approving education, teachers, buildings and (continued Legal Education) as well as establishing the Council of Legal Education Secretariat and setting up a budget for running such entities.</p>
2	TLS	Addressing the application for registration and keeping the Register of all persons working in the Legal society	The Registrar of Lawyers and the Roll of Advocates is under the supervision of the Chief Justice under Act 341 of Lawyers. The control of other paralegal working in the field of law is under their employment authority. As we have said above, it is not appropriate to combine the registration and maintenance of the Registrar of Lawyers and all other persons working in the legal field.
3	TLS	The regulation of public servants engaging in legal matters of including personal representation in court, oaths and confirmation of various documents	The process of regulating public servants is set up in various rules governing their service. Public servants who are lawyers registered as Lawyers are not licensed to serve as lawyers until they cease to serve as public servants. However, there are public servants working as lawyers with the consent of their employers. We suggest that they do so in the work that relates to their jobs and not otherwise.
4	TLS	Provision and cancelation of licenses in conjunction with the Chief Justice	The License cancelation Authority's jurisdiction is under the Chief Justice under of Act 341 of the law. The proposed procedure contradicts the grounds for having an independent Bar in the provision of justice made by judicial entities.
5	TLS	To receive complaints and conduct investigations, deal with lawsuits of lawyers and act in partnership with the Chief Justice, and for Public Service Lawyers, ministries and Government institutions in accordance with the Public Service Act.	There is a procedure for addressing the disciplinary matters of Lawyers by the Advocates Committee, which appeals to the Supreme Court through the Court of Appeal. In addition to the Tanganyika Law Society there is an internal system for disciplinary action through the Ethics Committee. So we see the existing process consistent with the requirements of the grounds for having independent instruments of justice. Discipline of other legal practitioners who are not Lawyers are under their employers and their Employment and Disciplinary Authorities
6	TLS	To Develop, promote, evaluate, manage, approve, track and evaluate the implementation of the law that governs lawyers in the country.	
7	TLS	Improve legal education by consulting with institutions that deal with the development of legal education in the country	This is the main function of the Council of Legal Education (CLE) although it is currently not functionally responsible for such factors as non-secretary, human resources and financial management. We recommend that the CLE be restored and properly implemented so that it can carry out its functions properly. It is also appropriate, to enact specific laws on legal education issues under the CLE.
8	TLS	Determining fees, contributions, and deductions for the work of the Counselor and the payment procedures of such claims.	Procedures are contained in the Law of Lawyers, the Law of the Tanganyika Lawyers Association and the Advocates Remuneration Order, 2015. The Chief Justice and the Governing Body of the Tanganyika Law Society administer fees and Contributions. The Remuneration Committee under the authority of the Chief Justice administers deductions. This process also reflects consistency with cultural, and international standards of practice.

No	Name	Topic	Terms of use
9	TLS	To conduct an audit in the offices of the Attorneys to ensure compliance with the requirements of the law	The procedure exists and we wish it to continue. The Chief Justice examines advocates because they are the Judicial Officers in accordance with section 66 of Law 341. This process also reflects consistency with cultural, and international standards of practice.
10	TLS	To collaborate with institutions responsible for education issues in verification of legal professionalism and continuous law education in the country.	In the current process, all applications for registration are referred to the Chief Justice who has the authority to verify and certify professional certificates for advice by the CLE. In this process the Chief Justice collaborates with TCU for lawyers who studied law education abroad.  Since this process reflects consistency with regional, international and cultural practices, we recommend it continue.
11	TLS	To enable people in the law field to register with national, regional and international Bodies	Enabling is an important function and should be done by CLE and TLS. However CLE has failed to perform this function due to the challenges we described in Part 7 of the bill. We recommend CLE to be restored in order to perform this function effectively.
12	TLS	Addressing regional and international consistency issues and providing guidelines on such issues	Currently TLS is a member of the regional and International Bar Associations, the International Bar Association, the East African Law Society, the SADC Lawyers Association, the Pan African Lawyers Association and the American Bar Association. So it can continue to address those issues that concern its members who are Lawyers.
13	TLS	To strike off the roll the names of Advocates in conjunction with the Chief Justice for the following reasons:  a) Poisoning the earth; b) Failure to perform advocacy functions in the Republic. Because of the incapability to perform legal proceedings for more than five years; c) Failure to obtain for over two years (2) the required accreditation to continue practicing, and the reason under paragraphs (b) and (c) may be repealed if the participant will apply for the application and specify the reasons for the occurrence of the incident resulting in failure to comply with the provisions of the law.	These functions are performed by the Chief Justice as the custodian and the Registrar of the Advisory Board in accordance with Act 341 of the law. According to the Law of Advocates, the Advocate can be struck off the roll for disciplinary reasons or upon request by the Advocate. The order to remove the Advocate from the roll is issued by the Advocates Committee after following the procedure in accordance with the law and then referred to the Chief Justice for the removal of the name of the relevant Advocate. So we recommend this process to continue in order to protect the independence of Lawyers.
14	TLS	To set conditions for establishing and opening up corporate law firms	The current procedure satisfies the requirements of the law, especially the Law of Contract Cap. 345 and the Business Names Registration Act. 213. In the legal procedures and profession, it is not permitted to separate the Council and its client by using the company shadow. The lawyer is responsible for his or her actions and can not transfer the responsibility to the company.
15	TLS	Promoting law enforcement policies in the country including the Act of the Attorney General, the Law of Advocates, the Law of the Tanganyika Lawyers Association, the Law of Officials, the law that governs lawyers and the Law of Court Management.	Our proposals are that the existing system continues to exist but should be implemented as recommended. The basis for our opinion is that the current system is consistent with regional and international standards, practices and principles. TLS, in the past, prepared a number of proposed amendments to the law enforcement law in the country and handed it over to the government. We will re-submit our recommendations once improvements have been made. In addition we recommend the incorporation of a law enforcement law and (legal education) as we recommend in our opinion within this Bill.



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