



NOTE VERBALE

Ref. No. NC291/738/02

The Permanent Mission of the United Republic of Tanzania to the United Nations Office and other International Organisations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights and with reference to the latter's letter dated 13 November 2020 with reference No. AL TZA 5/2020, has the honour to submit, herewith enclosed, a response of the Government of the United Republic of Tanzania in the form of a letter by Hon. Prof. Palamagamba Kabudi, Minister for Foreign Affairs and East African Cooperation and a document containing detailed explanations on the issues contained in the aforementioned letter.

The Permanent Mission of the United Republic of Tanzania to the United Nations Office and other International Organisations in Geneva avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 25 February 2021

Office of the United Nations High Commissioner
for Human Rights
GENEVA



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In reply please quote:

Ref. No. CLA 663/738/01

24th February, 2021

**Mr. Diego García –Sayán,
Special Rapporteur on the
Independence of Judges and Lawyers.**

I acknowledge receipt of your Joint Communication AL TZA 5/2020 dated 13th November, 2020 concerning the disbarment of a Tanzanian lawyer, Ms. Fatma Amani Karume and sought Government clarification on the same.

The United Republic of Tanzania is aware of its obligation to protect Lawyers derived from our Constitution and various international human rights instruments. We are mindful among others of our obligation to ensure that lawyers perform their professional functions without intimidation, hindrance, harassment or improper interference as set by Principle 16 (a) of the UN Basic Principles on the Role of Lawyers. The Parliament of the United Republic of Tanzania through the Advocates Act, CAP 341 and the Advocates (Professional Conduct and Etiquette) Regulations, 2018, has put in place legal and institutional framework that guides lawyers in the performance of their duties and provides a mechanism for dealing with professional misconduct by lawyers.

It is through that established legal and institutional framework, the Advocates Committee handled and decided the application on the suspension and disbarment from practice of Ms. Fatma Karume by following due process of the law. I wish to further bring to your attention Section 24A (1) of the Advocates Act, Cap 341 which provides for the right of appeal against the decision by the Advocate's Committee of which Ms. Fatma Karume has already exercised through Miscellaneous Civil Appeal Case No. 2 of 2020 titled in the High Court of Tanzania at Dar es Salaam.

While noting the issues of your concern in the communication, there are number of facts regarding the issue of Ms. Karume that you either advertently or inadvertently

missed and taken position in disregard to our established legal and institutional framework pertaining to lawyers in Tanzania in conformity with our Constitution and Laws. Notwithstanding, I wish to assure you that, the Government is committed to ensure all lawyers perform their professional functions without intimidation, hindrance, harassment or improper interference and any complaint or disciplinary actions against lawyers are handled by due process of the law.

Attached to this letter, please find a detailed clarification and response on the issues raised in your communication, which I hope will clear all your concerns.

Please accept, Special Rapporteur on the Independence of Judges and Lawyers, the assurances of my highest consideration.



Prof. Palamagamba J. A. M. Kabudi (MP)
MINISTER

GOVERNMENT RESPONSE ON THE DISBARMENT OF MS. FATMA KARUME

No.	REQUIRED INFORMATION	RESPONSE
1.	Provide additional information and/or comment(s) on the allegation	<p>a) The disbarment of Ms. Fatma Karume was arrived at after a due process of law. The presiding judge in Misc. Civil Cause No. 29 of 2018 (██████████) (Petitioner) versus H.E. Dr. John Pombe Joseph Magufuli, President of the United Republic of Tanzania, and Hon. Prof. Adelardus Lubango Kilangi, the Attorney General of the United Republic of Tanzania (Respondents), temporarily suspended Ms. Karume upon allegations of professional misconduct.</p> <p>b) The matter was then referred to the Advocates Disciplinary Committee where it was heard on merit. The Committee found that statements made by Ms. Karume in the exercise of the legal profession were not made in good faith as it is being alleged. In this regard, the allegation is misconceived, baseless and unfounded.</p>
2.	Provide detailed information on the facts that led to the suspension of Ms. Karume, and explain in which way can the decision of the High Court of the United Republic of Tanzania of 20 September 2019 be regarded as consistent with international and regional standards on the independence of the legal profession	<p>a) In 2018, Ms. Fatma Amani Karume represented Mr. ██████████ (Petitioner) in a petition vide Misc. Civil Cause No. 29 of 2018 against H.E. Dr. John Pombe Joseph Magufuli, President of the United Republic of Tanzania, and Hon. Prof. Adelardus Lubango Kilangi, the Attorney General of the United Republic of Tanzania (Respondents). The petition was filed on 5 February 2018, before the High Court of the United Republic of Tanzania at Dar es Salaam (min Registry) under the provisions of the Basic Rights and Duties Enforcement Act, Cap. 3 RE 2002 and articles 26(2) and 30(3) of the Constitution of the United Republic of Tanzania of 1977.</p> <p>b) The petitioner sought an order of the Court to declare that, the President of Tanzania violated the Constitution by appointing Hon. Prof. Adelardus Lubango Kilangi, to be the Attorney General of the United Republic of Tanzania.</p>

	<p>c) Preliminary Objections on points of law were raised by the Solicitor General of the United Republic of Tanzania against the tenability of the Petition. The hearing of those points of Preliminary objection was conducted by way of the written submissions. In the reply submission of the Advocate for the Petitioner, it was stated among others, to wit:</p> <p>i. "...The Constitution cannot be used as a shield to protect unconstitutional conduct, as article 26 (1) of the Constitution requires every person including the President to uphold the Constitution. So, mark my words, in the event this case fails on a Preliminary Point, it is not over. <u>If the President's unconstitutional conduct is protected by the Court on ground that he is the President, we shall test it again once he leaves office, be it in 2020 or 2025 and in the latter case, the bench will also be different one. That is a beauty of time.</u>"(Emphasis is supplied).</p> <p>ii. Also, Ms. Karume added that "...this Attorney General is far too junior to garner that kind of respect from the Bar...; given his lack of experience and junior position, Adelardus Kilangi has been woefully disappointing legal advisor to the government at cost of the rule of law and Constitution supremacy; In this Adelardus Kilangi has failed. A matter that is not surprising given his inexperience..."</p> <p>d) It is the latter part of the quotation that made the Solicitor General to complain to Court through a Rejoinder Submission that, Ms. Karume acted unprofessionally and disrespectfully by advancing personal vindications to the Solicitor General and the Honorable Attorney General contrary to the advocates' professional conduct and etiquette.</p>
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	<p>e) According to section 66 of the Advocates Act, any person duly admitted as an advocate is an officer of the High Court and is subjected to its jurisdiction, for that matter, advocate's duty to the court like in other jurisdictions has remained paramount.</p> <p>f) Consequently, the presiding judge acted under section 22(2) (b) of the Advocates Act Cap 341 and temporarily suspended the learned advocate, Ms. Fatma Amani Karume from practice pending reference of the professional misconduct to Advocate Disciplinary Committee.</p> <p>g) Under the prevailing legislative framework governing advocates in Tanzania, the High Court has mandate over professional conduct of advocates in two instances. First, when an advocate commits any professional misconduct during the proceedings in the High Court, a presiding judge is empowered to suspend the advocate pending reference to the Advocates Committee or disallowance by the High Court or admonish or order removal of the name from the Roll of Advocates.¹ Second, the High Court constituted of three judges may deal with professional misconduct of advocates when such advocate is referred to the High Court by a presiding judge or through an appeal upon such advocate being aggrieved by decision of the Advocates Committee.</p> <p>h) The presiding judge in the matter involving Ms. Karume exercised a very limited disciplinary powers i.e. temporary suspension of an advocate pending determination of the matter on merits either by a panel of three judges or the Advocates Committee as the case may be. It is an action intended to allow full hearing of the matter by competent bodies. This nature of decision does not require inquiry on the merits of the professional misconduct allegations rather taking temporary action to allow proper handling of the matter by adducing evidence before a properly constituted disciplinary authority.</p>
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¹ Section 22 (1) and (2) (b) of the Advocates Act, Cap 341.

	<p>i) The presiding judge was mindful of the need to allow competent authority to determine the matter of professional misconduct allegations. In order to allow such process to be triggered, suspension of Ms. Karume was inevitable given the fact that the Solicitor General had raised the matter for the attention of the Court.</p> <p>j) The Judge having noted that Ms. Fatma Karume was entitled to have opportunity to be heard stated that: "Obedient to my oath to the office and mindful of my duty to uphold the principles of natural justice, I find it apt that, the complained of unethical reply submission by Ms. Karume be dealt with by a proper and unfettered forum which, during hearing, can justly draw a line from which the independence of Judiciary has optimal protection against the rights of advocates and other Court users are entitled to in mounting critiques to the Judiciary on one hand and to the adjudicating Judicial Officers."²</p> <p>k) The decision of the High Court to temporarily suspend from practice Ms. Karume did not in any manner violate international and regional standards on independence of lawyers. Indeed, the decision intended to pave the way to ensure that administration of justice is upheld by allowing allegations to be determined by competent authority. Principle 12 of the Basic Principles on the Role of Lawyers is categorically clear that "Lawyers are duty bound at all times to maintain the honour and dignity of their profession as essential agents of the administration of justice."</p> <p>l) The decision of the High Court to suspend Ms. Karume under laws of Tanzania is not final. It could be challenged by virtue of Section 22(2) (c) (i) of Advocates Act which provides that:</p>
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² See ruling in *Ado Shaibu versus Honourable John Pombe Joseph Magufuli (President of the United Republic of Tanzania), Adeldardus Lubango Kilangi and the Attorney General*, Miscellaneous Civil Cause No. 29 of 2018 before the High Court of Tanzania (Main Registry) at Dar es Salaam, at page 36 of 37. (Annex A to the Summary Report).

		<p>“...any advocate aggrieved by any decision or order of the Chief Justice or a judge of the High Court made in pursuance to paragraph (a), may, within thirty days of such decision or order appeal in the case of a decision or order by a judge of the High Court, to the Advocates’ Committee.”</p> <p>m) The Complainant Ms. Karume had an opportunity to challenge the suspension from practice. However, she decided not utilize such avenue to challenge the decision of the High Court. She was aware that such decision is of a temporary nature.</p> <p>n) The United Republic of Tanzania has in place a legislative framework which recognises and accommodates an avenue to challenge a decision against lawyers even those of temporary nature. Such recognition embodies the country’s resolve to promote rule of law and respect human rights including the rights of the lawyers.</p> <p>o) The process undertaken by both the High Court and the Advocates Committee are in consonance with international standards governing the legal profession. The provisions of Principles 26, 27, 28 and 29 of the Basic Principles on the Role of Lawyers have been fully adhered to in the entire process of dealing with the matter of allegations on professional misconduct by advocate Ms. Karume.</p> <p>a) The Attorney General instituted before the Advocates Committee Application No. 29 of 2019 filed on 11 October 2019 against Ms. Fatma Amani Karume (Roll No. 848). The Attorney General sought the following reliefs: a declaration that Ms Karume has committed gross professional misconduct; an order of removal of the Respondent’s name from the Roll of Advocates; the costs of the application; and any other relief(s) that the Honourable</p>
3.	Provide detailed information on the decision adopted by the Advocate Disciplinary Committee on 23 September 2020 to disbar Ms. Karume and explain how this decision can be reconciled with international and regional standards	

<p>on the independence of the legal profession</p>	<p>Committee may deem fit and just to grant in favour of the Application.</p> <p>b) Grounds of the Complaint/Application included that:</p> <ul style="list-style-type: none"> i. Learned advocate in facie curiae acted unprofessionally and disrespectfully by adducing personal vindication to the Solicitor-General, the Attorney General and the Court; ii. On diverse dates from the date of the Ruling suspending Ms. Karume from practice, Ms. Karume embarked on conducting herself in highly unprofessional and unethical manner contrary to ethical principles of Advocates as stipulated under the Advocates Act, Cap 341 and the Advocates (Professional Conduct and Etiquette) Regulations, 2018. In the main, Ms. Karume has been ex facie curiae commenting and allowing comments by other people on her social media accounts in total disrespect to the Court, the Attorney General and the general public at large. To say the least, Ms. Karume's comments on social media aimed at undermining public confidence in the judicial system (i.e. "scandalizing the court" by social media trial). c) The Attorney General argued that, Ms. Karume violated Regulations 4 and 5 of the Advocates (Professional Conduct and Etiquette) Regulations which require that every advocate must be a person of high integrity and he must discharge his duties with integrity towards (a) the court and administration of justice; (b) the client; (c) the public; (d) another advocate; and (e) the profession. d) The Advocates Committee on 23 September 2020 delivered a ruling to disbar Ms. Karume for gross professional misconduct. This decision was arrived at after having heard the matter regarding the allegations of professional
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		<p>misconduct on merit.</p> <p>e) The Committee's decision was based on both oral and documentary evidence adduced by four witnesses who were called upon to testify in establishing the professional misconduct of Ms. Karume. Testimonies of all the four witnesses proved beyond any reasonable doubt that Ms. Karume had committed gross professional misconduct warranting disbarment from practice.</p> <p>f) The witnesses in this matter appeared in person to give oral testimonies and the Counsel for Ms. Karume was availed all the opportunities to cross examine them. However, Ms. Karume, aware of her professional misconduct, did not have the temerity to make oral submission in her defense before the Advocates Committee.</p> <p>g) It was the Committees' finding that Ms. Karume in her reply/counter affidavit to the application before the Advocates Committee did not object to the evidence that statements she made were personal vindication to the Attorney General, public officers, Bench and the Judiciary.</p> <p>h) The Committee was convinced that Ms. Fatma Karume statements in social media attacked the Chief Justice, the Principal Judge, the Bench, the Judiciary, the Attorney General and public officers.</p> <p>i) Moreover, video recordings of Ms. Karume speaking with her voice and identity being visible and audible-all pointing out to the statements which contained professional misconduct were tendered before the Committee.</p> <p>j) Finally, the extract of the Citizen Newspaper dated 22 September 2019 which published interview of Ms. Karume had recorded statements that contravened professional conduct. Ms. Karume never denied to have adduced such statements.</p>
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		<p>k) Despite the fact that every person is entitled to freedom of expression and personal views, yet lawyers must adhere to professional standards pertaining to exercise of such rights. Indeed, it is not expected that exercise of freedom of expression would in any way be justifiable in circumstances where a lawyer utters statements which are intended to create unnecessary mistrust by the public to the bench and judiciary as well as public officers.</p> <p>l) Principle 16 of the Basic Principles on the Role of Lawyers restricts freedom of expression when the same is made in good faith. However, evidence tendered before the Advocates Committee established statements made by Ms. Karume constituted lack of integrity by committing disgraceful or morally reprehensible acts that affects the advocate's integrity; using abusive and or inappropriate language in court or public setting; conducts of an advocate that brings the advocate's integrity into question and thereby bringing disrepute upon the profession; and knowingly or with reckless disregard for the truth, makes any false or disparaging or misleading statement against any judicial officer, fellow advocates, public leaders or any other member of the public. That being the case, the same were not made in good faith.</p> <p>m) Principle 20 of the Basic Principles on the Role of Lawyers provides for freedom of expression when the same is made in good faith. It means that when freedom of expression is exercised maliciously and with intent to ridicule the rule of law and independence of judiciary, one cannot find refuge on the right to freedom of expression.</p> <p>n) Evidence tendered before the Advocates Committee established statements made by Ms. Karume constituted lack of integrity by committing disgraceful or morally reprehensible acts that affects the advocate's integrity; using abusive and or inappropriate language in court or public setting; conducts of an advocate that brings the advocate's integrity into question and thereby bringing disrepute upon the profession; and knowingly or with reckless disregard for the truth, makes any false or disparaging or misleading statement against any judicial officer, fellow advocates, public leaders or any</p>
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		<p>other member of the public. That being the case, the same were not made in good faith.</p> <p>o) The decisions was consistent with Principle 12 of the Basic Principles on the Role of Lawyers which states that;</p> <p><i>"Lawyers shall at all times maintain the honour and dignity of their profession as essential agents of the administration of justice."</i></p> <p>p) The Committee found that Ms. Karume used words that were improper, unprofessional and the same amounted to professional misconduct. She failed to uphold her integrity and professionalism for using statements which were disrespectful and unprofessional contrary to the Advocates code of conduct. It was a further finding of the Committee that Ms. Karume disrespectfully and unprofessionally continued to attack the Chief Justice, Principal Judge, members of the Bench, the judiciary and other public officers.³</p>
4.	<p>Provide detailed information on the composition and functioning of the Advocate Disciplinary Committee.</p> <p>To what extent is such Commission independent from other State institutions, including the judiciary?</p> <p>Can its decision be appealed before an independent court or tribunal?</p>	<p>a) The Advocates Committee is a statutory and an independent quasi-judicial institution established under Section 4 of the Advocates Act, Chapter 341. It is established to deal with enquiring into any allegation of misconduct made against any advocate.</p> <p>b) The Advocates Committee is composed of three members representing different tiers of the legal profession in Tanzania. These are Judge of the High Court appointed by the Chief Justice who should be the Chairman of the Committee; the Attorney General or Deputy Attorney General or the Director of Public Prosecutions;⁴ and a Practising advocate nominated by the Council of the Law Society i.e. Tanganyika Law Society.</p>

³ See the Advocates Committee ruling at pp.29 -35.

⁴ Appearance of a member representing public i.e. the Attorney General or Deputy Attorney General or the Director of Public Prosecutions is in alternative.

c) Throughout the hearing of the matter of Ms. Karume, the Committee was constituted by a High Court Judge, Director of Public Prosecutions and a Practising member nominated by the Council of the Law Society. All the three members constituting the Advocates Committee to determine the allegations of professional misconduct by Ms. Karume are not working for or reporting to or receiving instructions from the Attorney General.

d) The Secretary of the Committee is a public officer i.e. A State Attorney from the National Prosecutions Services. By the mere fact that this matter was instituted by the Attorney General, neither the Attorney General nor his Deputy constituted the membership to the Advocates Committee to determine the matter against Ms. Karume. The Secretary of the Committee neither works in the Office of the Attorney General nor is under the supervision of the Attorney General.

e) Decision making process of the Advocates Committee is always by consensus except where the members are not in agreement whereby may be necessary and the majority vote forms the decision of the Committee. The Committee operates as an independent quasi-judicial body guided by rule of law and adherence to principles of natural justice.

f) It is important to underscore and reiterate that the Director of Public Prosecutions (DPP) is an independent constitutional office established under Article 59B of the Constitution of the United Republic of Tanzania, 1977. He is the head of the National Prosecutions Services which is independent and autonomous public office as per Order 2 of the National Prosecutions Services (Establishment) Order, GN. 49 dated 13 February 2018. The DPP is

		<p>neither an office within the Office of the Attorney General nor receives any directives from the Attorney General in exercising his duties.⁵</p> <p>g) Additionally, the decision of the Advocates Committee is not final. There are avenues to challenge any decision under the Advocates Act which states that:</p> <p>“...Any advocate aggrieved by any decision or order of the Committee under this Act may, within thirty days of such decision or order, appeal to the High Court against such decision or order.”⁶</p> <p>h) To ensure fairness and rule of law, the composition of the High Court must involve a full bench of three judges. Neither of the three judges determining an appeal arising from the Advocates Committee must have participated in the matter in the Advocates Committee.⁷ The appellate panel is therefore independent from the Advocates Committee in the sense that,</p> <ol style="list-style-type: none"> i. First, the appellate panel must be composed of three judges unlike the Advocates Committee having a single judge and other two members who are not judges. ii. Second, a judge was sat at the Advocates Committee or who in any manner had dealt with the matter is precluded to sit in the appellate panel. i) Thus, any decision against an advocate whether such decision is of temporary or permanent nature is reviewable by an independent authority. Every decision can be challenged through an appeal.
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⁵ See Article 59B (4) of the Constitution of the United Republic of Tanzania, 1977.

⁶ Section 24A (1) of the Advocates Act, Cap 341.

⁷ See section 24A(4) of the Advocates Act.

		<p>j) Indeed, Ms. Karume has already taken action to challenge the decision of the Advocates Committee by lodging an appeal to the High Court.</p> <p>k) The hearing is pending determination before a full bench of three judges.</p>
5.	<p>Provide detailed information on the legislative and other measures adopted by the United Republic of Tanzania to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference (Principle 16 (a) of the Basic Principles of the Role of Lawyers) and that they enjoy civil and penal immunity for any statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority (Principle 20).</p>	<p>a) Advocates are generally regulated by the Advocates Act and its regulations. However, there are other pieces of legislation with a bearing of protecting lawyers in Tanzania. These include the Constitution of the United Republic of Tanzania and the Tanganyika Law Society Act.</p> <p>b) The Constitution of the United Republic of Tanzania, Cap 2 of 1977</p> <p>Tanzania being a democratic state is governed by the Constitution as a fundamental law of the land. The Constitution of the United Republic of Tanzania provides for bill of rights. The bill of rights caters for various human rights and obligations including equality before the law,⁸ the right to freedom of expression,⁹ and the right to association. Other rights include the right to personal freedom, right to free movement, right to privacy and personal security, rights to work etc.</p> <p>These rights are applicable to all persons including lawyers/advocates.. Lawyers are entitled to these rights in discharging their legal functions thus guaranteeing them independence to exercise their profession without any hindrances.</p> <p>Existence of these rights ensures that advocates/lawyers exercise their roles without any kind of intimidation, harassment or improper interference.</p>

⁸ Article 13 of the Constitution of United Republic of Tanzania. This entails prohibitions to enactments of discriminatory laws, right to presumption of innocence, the right to fair hearing and right of appeal or other remedy where rights of persons are being determined, freedom for torture and inhuman treatment etc.

⁹ Article 18.

Furthermore, Advocates are Officers of the Court who assist the court to dispense justice.¹⁰ Therefore as officers of the Court, Advocates enjoy the same privileges as Judges and any other officers of the Court. Advocates cannot be sued or instituted against any Criminal or Civil Proceedings for the act committed during the dispensing of justice in the court of law or any statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.

c) The Tanganyika Law Society Act, Cap 307 R.E. 2002

In order to allow advocates/lawyers to exercise their profession without hindrances, the Tanganyika Law Society Act is in place. This law contains provisions that relate to establishment of Tanganyika Law Society as an independent bar association for mainland Tanzania.

Under this law, the Society operates its activities through its governance structures in form of the Governing Council, Annual General Meetings, committees and Chapters. These activities of the Society are performed independently from any influence, control or directives from the State organs/institutions.

Existence of Tanganyika Law Society as an independent bar association for Mainland Tanzania reflects accommodation of international and regional standards on the Role of Lawyers particularly Principles 24 and 25.

d) The Evidence Act, Cap 6

The Evidence Act recognizes that communication between advocate and

¹⁰ S.66 of The Advocates Act (CAP 314 R.E 2019), Article,20, 30(2)d and Article 107B of The Constitution of United Republic of Tanzania (CAP 2 R.E 2020

		<p>his client are privileged and confidential to promote the advocates/lawyers to exercise their profession without any interference.¹¹ These provisions coupled with constitutional provision on the right to privacy and personal security ensure that lawyers provide legal services as per international and regional standards.</p> <p>These provisions reflect contents of Principle 22 of the Basic Principles on the Role of Lawyers thus clearly adhering to international and regional standards.</p>
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¹¹ See sections 134, 135, 136, and 137 of the Evidence Act, Cap 6 R.E. 2018.