

**Mandates of the Special Rapporteur on the independence of judges and lawyers**

REFERENCE:  
AL TZA 5/2020

13 November 2020

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolutions 44/8.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning the **disbarment of a Tanzanian lawyer, Ms. Fatma Amani Karume, allegedly as a result of statements she made in good faith in the legitimate exercise of the legal profession.**

Ms. Karume is a legal practitioner. Prior to her disbarment, she used to be a senior partner at IMMMA Advocates, a corporate and commercial law firm in Dar es Salaam. She was also the president of the Tanganyika Law Society.

According to the information received:

In 2018, Ms. Karume filed a written submission to the High Court of the United Republic of Tanzania (hereinafter, "the High Court") on behalf of one of her clients to challenge the appointment of the new Attorney-General of Tanzania. In the submission, Ms. Karume argued that the President of the Republic "failed to adhere to his duty to abide by the Constitution (...) by appointing a person who [did] not have requisite qualifications to be Attorney-General".

On 20 September 2019, the High Court ruled that the petition submitted by the applicant was "frivolous" and "vexatious", as it aimed at causing unnecessary anxiety, trouble and expenses" to the respondents, the President of the Republic and the Attorney-General.

In the same ruling, the High Court addressed the complaint raised by the State's counsel on the language used by Ms. Karume in her written submissions. The State's counsel considered that Ms. Karume acted unprofessionally and disrespectfully "by advancing personal vindications to the Solicitor General and the Hon. Attorney-General" when she made the following submissions:

"this Attorney General is far too junior to garner that kind of respect from the Bar...";

"Given his lack of experience and junior position, [the Attorney-General] has been a woefully disappointing legal advisor to the Government at the cost of the rule of law and Constitution supremacy";

"In this [the Attorney-General] has failed. A matter that is not surprising given his experience...".

In its ruling, the High Court noted that the complaint made against Ms. Karume was made in the State's rejoinder submissions and as such she was not afforded an opportunity to respond on record. For this reason, the Court found that it was "unjustified to adjudicate the complainant" and further explained that, in its view, Ms. Karume's response to the complaint should instead be dealt with by a "proper and unfettered forum which, during hearing, can justly draw a line from which the independence of the Judiciary has optimal protection against the rights advocates and other Court users are entitled to in mounting critiques to the judiciary on one hand and to the adjudicating judicial officers".

Having noted that the request for disciplinary measures was outside the scope of its purview, the court decided to suspend Ms. Karume from the roll, prohibiting her from practicing under Section 22 (2) (b) of the Advocates Act of Tanzania. The Court then referred the matter of Ms. Karume's alleged misconduct to the Advocate Disciplinary Committee for determination.

Following the Court's decision, on 11 October 2019 the Attorney-General filed an application before the Advocate Disciplinary Committee to request the removal of Ms. Karume from the Roll of Advocates.

On 22 June 2020, Ms. Karume appeared before the Advocate Disciplinary Committee assisted by her legal counsel. She allegedly declined to defend her innocence, and decided not to summon any witness.

On 23 September 2020, the Committee found that the statements made by Ms. Karume prior to and after her suspension in September 2019 constituted a violation of the professional code of conduct, and that the defendant "grossly misbehaved before [the] Committee during the hearing of the application." Consequently, the Committee ordered that Ms. Karume be permanently removed from the Roll of Advocates.

While I do not want to prejudge the accuracy of these allegations, I express my serious concerns at the disbarment of Ms. Karume, allegedly in response of statements made in good faith in the legitimate exercise of the legal profession. If confirmed, the events described above would amount to a serious breach of a number of international and regional standards relating to the free and independent exercise of the legal profession.

According to these standards, States must put in place all appropriate measures to ensure that lawyers (i) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference, and (ii) are not subject to, or threatened with, prosecution or any administrative, economic or other sanctions for any action taken in accordance with recognised professional duties, standards and ethics. In particular, international and regional standards provide that lawyers enjoy civil and penal immunity for relevant 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.

In relation to the negative statements made by Ms. Karume in relation to the qualification and experience of the Attorney-General, I would like to stress that these remarks were made in the context of a matter of great public interest - the constitutionality of the appointment of the Attorney-General. In this regard, it is generally recognized that public officials, by virtue of the positions they occupy, should have a higher degree of tolerance to criticism and even offensive language. Furthermore, the principle of proportionality should be respected in determining sanctions for disciplinary offences allegedly committed by a lawyer in the legitimate exercise of his or her functions.

The suspension and subsequent disbarment of Ms. Karume may also have a deeply chilling effect on other lawyers, who may feel intimidated or threatened in the exercise of their right to freedom of expression and, more in general, in the exercise of their duties as a lawyer, out of fear of being subject to disciplinary proceedings for the action taken and the statements made in defence of their clients.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to our attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please 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.
3. Please 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 on the independence of the legal profession.
4. Please provide detailed information on the composition and functioning of the Advocate Disciplinary Committee. To what extent is such Commission independent from other State institutions, including the judiciary? Can its decision be appealed before an independent court or tribunal?
5. Please provide detailed information on the legislative and other measures adopted by the United Republic of Tanzania to ensure that lawyers able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference (Principle 16 (a) of the Basic Principles on 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).

I would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of my highest consideration.

Diego García-Sayán  
Special Rapporteur on the independence of judges and lawyers

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, I would like to draw your attention to the International Covenant on Civil and Political Rights (ICCPR), acceded on 11 June 1976.

Article 14 provides a set of contain procedural guarantees that must be made available to persons charged with a criminal offence, including the right of accused persons to have access to, and communicate with, a counsel of their own choosing.

In its General Comment No. 32 (2007), the Human Rights Committee explained that the right to communicate with counsel enshrined in article 14 (3) (b) requires that the accused is granted prompt access to counsel. Counsel should be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications. S/he should also be able “to advise and to represent persons charged with a criminal offence in accordance with generally recognised professional ethics without restrictions, influence, pressure or undue interference from any quarter” (CCPR/C/GC/32, para. 34).

I would also like to refer your Excellency’s Government to the UN Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana (Cuba) from 27 August to 7 September 1990.

Principle 16 requires States to take all appropriate measures to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference, and to prevent that lawyers be threatened with prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics. Where the security of lawyers is threatened as a result of discharging their functions, the Basic Principles provide that they must be adequately safeguarded by the authorities (principle 17).

Principle 20 provides that lawyers must enjoy civil and penal immunity for relevant 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, while principle 23 states in more general terms that like other citizens, lawyers are entitled to freedom of expression, and shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights.

The Basic Principles contain a number of provisions concerning disciplinary proceedings against lawyers:

- charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate procedures, and lawyers shall have the right to a fair hearing, including the right to be assisted by a lawyer of their choice (principle 27);

- disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review (principle 28); and
- disciplinary proceedings shall be determined in accordance with the code of professional conduct and other recognized standards and ethics of the legal profession and in the light of these principles (principle 29).

Similar standards are included in the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, adopted by the African Commission on Human and Peoples' Rights in 2005, particularly in Principle G, letters (b), (e), (f), (k), (n), (o) and (p).

In a report on bar associations, I have stressed that disbarment should only be imposed in the most serious cases of misconduct, as provided in the professional code of conduct, and only after a due process in front of an independent and impartial body granting all guarantees to the accused lawyer (A/73/365, para. 73; see also A/71/348, para. 96). On a number of occasions I have raised concerns that in many countries, lawyers are exposed to the threat of disbarment or other forms of intimidation and harassment. Such threats aim at preventing the discharge of their professional duties, or constitute an act of reprisal for activities carried out in the legitimate exercise of their responsibilities.