

**Mandates of the Special Rapporteur on the independence of judges and lawyers; the Working Group on Arbitrary Detention; and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression**

REFERENCE:  
AL TZA 2/2021

11 February 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the independence of judges and lawyers; Working Group on Arbitrary Detention; and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolutions 44/8, 42/22 and 43/4.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning a number of **attacks on lawyers and the independence of the legal profession in Tanzania**, which take the form of disbarment, arrest and arbitrary detention.

The Special Rapporteur on the independence of judges and lawyers has raised similar concerns in a recent communication addressed to your Excellency's Government in relation to the disbarment of Ms. Fatma Amani Karume, allegedly as a result of statements she made in good faith in the legitimate exercise of the legal profession (AL TZA 5/2020). We regret not having received, to date, any response to the concerns raised in that letter.

Concerns in relation to the arbitrary arrest and detention of Mr. Tito Elia Magoti have already been raised in a joint communication sent by a number of mandate holders on 31 January 2020 (AL TZA 1/2020). We thank your Excellency's Government for the reply received on 2 July 2020, but continue to be concerned about the lack of appropriate measures to implement the recommendations made by the Working Group on Arbitrary Detention in its Opinion No. 38/2020, which found the arrest and detention of Mr. Magoti to be arbitrary.

According to the information received:

*Disbarment procedure against advocate Jebra Kambole*

Mr. Jebra Kambole is an advocate of the High Court of the United Republic of Tanzania who has defended a number of opposition leaders in the past.

In February 2018, the Kisutu Resident Magistrate's Court charged nine opposition party leaders with several criminal offences, including conspiracy to commit offences, unlawful assembly, rioting and sedition.

On 10 March 2020, the Kisutu Resident Magistrate's Court found the defendants guilty, and sentenced them to fines amounting to a total of 350 million Tanzanian schillings (approximately 151,000 USD) or to a five-month prison term.

Following the decision of the Court, Mr. Kambole, in his capacity as legal counsel of some of the defendants, allegedly posted a message on his Twitter account referring to the Kisutu Resident Magistrate's Court as the "Kisutu Revenue Authority". The comment was allegedly supported by a number of Twitter users, and still appears to be on the Twitter account of the advocate.

On 8 October 2020, the Attorney-General of Tanzania filed an application to the Advocates' Disciplinary Committee, arguing that the comment made by Mr. Kambole on the Kisutu Resident Magistrate's Court was "contemptuous and dismissive", and constituted a criminal act aimed at bringing "hatred and contempt against the administration of justice in Tanzania".

In the Attorney-General's opinion, Mr. Kambole also conducted himself in a "highly unprofessional and unethical matter" contrary to the ethical principles of advocates, as stipulated under the Advocates' Act (Cap. 341 R.E. 2002) and the Advocates (Professional Conduct and Etiquette) Regulations, 2018. The Attorney-General requested the Advocates' Committee to declare that the defendant had committed a "gross professional misconduct" and, consequently, to order his removal from the Roll of Advocates.

#### *Disbarment procedure against advocate Edson Kilatu*

Mr. Edson Kilatu is an advocate of the High Court of the United Republic of Tanzania.

On 8 August 2020, Mr. Kilatu allegedly posted a lengthy comment on his Facebook account entitled "The Supreme Court of Tanzania: an accomplice to injustice?" In that comment, the advocate made critical remarks on a decision adopted by the Supreme Court in a case involving an independent political candidate.

On 8 October 2020, the Attorney-General of Tanzania filed an application to the Advocates' Committee against Mr. Kilatu, contending that the comments made by the advocate "malign[ed] the confidence of the Court of Appeal of the United Republic of Tanzania, the legal profession and public respect for law and justice". In the Attorney-General's opinion, the words posted by the advocate were in violation of the Advocates (Professional Conduct and Etiquette) Regulations, 2018.

The Attorney-General requested the Advocates' Committee to declare that the defendant had committed a "gross professional misconduct" and, consequently, to order his removal from the Roll of Advocates.

#### *Arrest and detention of Mr. Tito Elia Magoti*

Mr. Tito Elia Magoti is a human rights lawyer employed as programme officer for mass education at the Legal and Human Rights Centre, an organisation that advocates for human rights and good governance in Tanzania.

On 20 December 2019, Mr. Magoti was allegedly abducted in Dar es Salaam by four unidentified men. He was handcuffed and driven away in a civilian vehicle. Prior to his abduction, Mr. Magoti had reportedly received a text

message from a colleague, who had been used by the police to lure him to the place of the event.

In the evening of 20 December 2019, the Dar es Salaam Special Zone Police Commander issued a press release indicating that Mr. Magoti was in police custody with several other individuals. The police did not disclose his whereabouts nor the legal basis for his arrest. Mr. Magoti was reportedly denied access to a legal representative and his family.

On 23 December 2019, an urgent petition was filed against the Dar es Salaam Special Zone Police Commander and the Attorney General demanding the release of Mr. Magoti, whose whereabouts and charges had yet to be revealed.

On 24 December 2019, Mr. Magoti, along with one of his colleagues, who was also arrested, was brought before Kisutu Resident Magistrates' Court in Dar es Salaam. The petition was then withdrawn.

Mr. Magoti was first transferred to Tazara police station and then to Mbweni station. During this transfer, he was blindfolded. At the police station, he was interrogated by the police about his use of social media and his association with certain individuals who had publicly criticised the Government of Tanzania.

Mr. Magoti was charged with a number of criminal offences, including "leading organised crime" (para. 4(1)(a) of the First Schedule and Sections 57(1) and 60(2) of the Economic and Organized Crimes Control Act), "possession of a computer program designed for the purpose of committing an offence" (Section 10(1)(e) of the Cyber Crimes Act) and money-laundering (Sections 12(d) and 13(a) of the Anti-Money Laundering Act), all of which are non-bailable charges under Tanzanian law.

In August 2020, the Working Group on Arbitrary Detention concluded that the arrest and detention of Mr. Magoti were arbitrary, and requested the Government of Tanzania to take the steps necessary to remedy the situation of Mr. Magoti without delay and bring it into conformity with the relevant international norms. The Working Group also called upon the Government to take urgent action to ensure the immediate release of Mr. Magoti (Opinion No. 38/2020, paras. 61-63).

Since the arrest, Mr. Magoti remained at Segerea Remand Prison for more than a year, while case was adjourned 26 times by the magistrate court.

On 5 January 2021, the Dar es Salaam Resident Magistrate's Court at Kisutu ordered the release of Tito Magoti after he pleaded guilty to one count of "leading organised crime with intent to earn illegal income" and paid a 17.3 million Tanzanian shillings fine (approximately 6.000 Euros) as part of a plea bargain deal. As part of this deal, the other charges, including money laundering, were dropped.

While we do not want to prejudge the accuracy of these allegations, we express our serious concerns at the different forms of threats and intimidation that the above-mentioned lawyers appear to have been subject to as a result of 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, these standards recognise that lawyers are entitled to freedom of expression on an equal basis with others, and that this freedom include the right to express their opinions on matters concerning the law, the administration of justice and the promotion and protection of human rights.

With regard to the application filed by the Attorney-General to the Advocates' Committee against advocates Kambole and Kilatu, we note with concerns that the composition of the Advocates' Committee, which include only one representative of the legal profession among its members, is not in line with international standards, which require that disciplinary proceedings against lawyers be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court.<sup>1</sup>

The threatened disbarment, arbitrary arrest and detention of the alleged victims of this communication may 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 criminal, administrative or 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 our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we 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 initiation of a disbarment procedure against Messrs. Jebra Kambole and Edson Kilatu, and explain in which way this procedure can be regarded as consistent with international and regional standards on the independence of the legal profession. Please further explain how the

---

<sup>1</sup> According to article 4 (1) of the Advocates' Act, the Advocates' Committee consists of three members: a judge of the High Court nominated by the Chief Justice, who presides the Committee; the Attorney-General, the deputy Attorney-General or the Director of Public Prosecution; and a practicing advocate nominated by the Council of the Law Society.

measures taken against Messrs. Jebra Kambole and Edson Kilatu comply with international human rights norms related to freedom of expression.

3. Please provide detailed information on the procedure before the Advocates' Committee and explain whether, and to what extent, this procedure can be reconciled with international and regional standards on disciplinary proceedings against lawyers for alleged professional misconduct in the exercise of their functions.
4. Please provide detailed information on the composition and functioning of the Advocates' 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 measures adopted by your Excellency's Government to implement the recommendations made by the Working Group on Arbitrary Detention in its Opinion No. 38/2020, especially those relating to the payment of compensation. Please explain, in particular, to what extent the decision of the Kisutu magistrate court to release Mr. Magoti after entering into a plea bargain can be regarded as being consistent with the recommendations made by the Working Group, which considered his arrest and detention arbitrary.
6. Please 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 and do not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognised professional duties, standards and ethics. (Principle 16 (a) and (c) of the Basic Principles on the Role of Lawyers).

We 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, we 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 our highest consideration.

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

Elina Steinerte  
Vice-Chair of the Working Group on Arbitrary Detention

Irene Khan  
Special Rapporteur on the promotion and protection of the right to freedom of opinion  
and expression

## **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 by the United Republic of Tanzania on 11 June 1976.

Article 9 (1) of the Covenant provides that everyone has the right to liberty and security of person, and that no one shall be subjected to arbitrary detention. Paragraphs 2 to 5 set out specific safeguards for the protection of liberty and security of person, which apply to all persons deprived of liberty (e.g. right to be informed of the reasons for the arrest and the charges against him or her; right to be brought promptly before a judge; right to review by a court of the legality of detention).

Article 14 of the Covenant provides that everyone is entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law, and that in the determination of any criminal charge against him or her, everyone is entitled to a number of minimum guarantees, including the right to be informed promptly and in detail a language which s/he understands of the nature and cause of the charge against him/her, the right to have adequate time and facilities for the preparation of one's defence and to communicate with counsel of his/her own choosing and the right to be assisted by a lawyer of one's own choice.

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).

Article 19 of the Covenant enshrines the right to freedom of expression, including the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of one's choice. As stated by the Human Rights Committee, "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", CCPR/C/GC/34, para. 3. In this context, we recall that, under article 19 (3) of the Covenant, limitations must be determined by law and must conform to the strict test of necessity and proportionality must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.

Similar provisions are included in the African Charter on Human and Peoples' Rights, ratified by Tanzania on 1<sup>st</sup> June 1981.

Article 6 of the African Charter provides that every individual has the right to liberty and to the security of his person. No one may be deprived of his or her freedom except for reasons and conditions previously laid down by law, and in

particular, no one may be arbitrarily arrested and detained.

Article 7 recognises the right of every individual to have his or her cause heard. This right comprises: a) the right to an appeal to competent national organs against acts of violating his/her fundamental rights; b) the right to be presumed innocent until proved guilty by a competent court or tribunal; c) the right to defence, including the right to be defended by counsel of his/her choice; d) the right to be tried within a reasonable time by an impartial court or tribunal.

I would also like to refer your Excellency's Government to the 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 7 provides that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention. Any such persons who do not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services (principle 6).

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.

Principle 23 provides 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.