

Mandates of the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the rights to freedom of peaceful assembly and of association

Ref.: AL UGA 2/2024
(Please use this reference in your reply)

3 April 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the rights to freedom of peaceful assembly and of association, pursuant to Human Rights Council resolutions 53/12, 52/9 and 50/17.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning restrictions imposed on members of the Uganda Law Society to hold extraordinary general meetings to discuss issues related to the independence of the judiciary, by the Civil Division of the High Court of Kampala.

The Uganda Law Society (ULS) is the Bar Association for lawyers in Uganda. It is a membership organization established by the Uganda Law Society Act, seeking to excel as a professional body in the development of the legal profession and promotion of justice in Uganda. Its mission is to improve the professional standards of members of the legal profession and to promote human rights and the rule of law, by assisting the government and the judiciary in the administration and practice of law in Uganda.

According to the information received:

Recent efforts by members of the ULS to hold extraordinary general meetings and discuss current events related to the independence of the judiciary were enjoined by the Civil Division of the High Court of Kampala.

Suspension of ULS Extraordinary General Meeting of 6 February 2024

On 6 February, at about 10.00 a.m. the High Court in Kampala issued by e-mail a temporary injunction to stop an extraordinary general meeting (EGM) of the ULS aimed at discussing threats to the independence of the Judiciary, on grounds that the meeting “*may*” lead to the passing of “*illegal resolutions*”.

The order to suspend the EGM was issued by the Head of the Civil Division of the High Court, Judge [REDACTED], and followed a successful application by one of the members of ULS. The petition reads that such a meeting could lead to the passing of resolutions that are not only illegal and outrageous but absurd - bringing disgrace and embarrassment to the society of which he would suffer as a member. Further, as indicated in the ruling¹, the applicant argued that it is in the interest of justice and to all members of ULS for the

¹ <https://ulii.org/akn/ug/judgment/ughccd/2024/26/eng@2024-02-05/source.pdf>

application to be granted to save the respondent “from being bombarded with endless petitions whose objects do not meet the threshold under law and are against the constitutional order”.

Further, the petition reportedly requested a temporary injunction pending the determination of an application for judicial review which challenged the legality of such extraordinary meetings aimed at discussing issues that the petitioner considered outside the mandate of lawyers. The High Court allowed the application and ordered ULS to halt the planned meeting.

In response, through the affidavit of their secretary, ULS opposed the application, saying that section 3(c) of the Uganda Law Society Act mandates the society to represent, protect and assist members of the legal profession in Uganda as regards conditions of practice and otherwise. According to ULS, the matter raised in the petition for the extraordinary general meeting concerns the rule of law, a topic which ULS has a mandate to discuss, and concerning which it may pass resolutions.

The ULS indicated it received a petition signed by 17 people and was satisfied that the petitioners had met the requirements under the ULS Act that warrant convening of an extraordinary general meeting. The ULS stated the intended extraordinary general meeting would only discuss and pass resolutions which are within their mandate as provided under the ULS Act.

The issues that were scheduled for discussion were related to the independence of the judiciary and the letter sent by the President of Uganda to the Chief Justice in December 2023.

Said letter was reportedly dated 7 December 2023, and in it, President Yoweri Museveni allegedly wrote to Chief Justice ██████████ regarding the management and handling of a case concerning property of the Uganda Muslim Supreme Council.

The information suggests that President Yoweri Museveni asked Chief Justice ██████████ to personally review a decision by the High Court and Court of Appeal allowing the sale of properties belonging to the Uganda Muslim Supreme Council. Museveni reportedly wrote that he was taken aback by the decision of the court to allow for the sale of Muslim properties including the National Mosque because of a mistake committed by individuals.

This is the second time the High court has blocked an extraordinary general meeting called by the ULS in 2024.

Suspension of ULS Extraordinary General Meeting of 12 January 2024

In January 2024, the High Court issued an order blocking ULS from convening an event that sought to consider issues related to the management and conduct of the case ‘Tilenga Oil’, which is pending before the Hoima High Court.

On 20 December 2023, a group of lawyers petitioned the Judicial Service Commission accusing one Justice of judicial misconduct, incompetence, and bias in one of the Tilenga Oil Land Dispute cases. The petition urged the commission to take necessary disciplinary measures against the judge and prevent him from presiding over cases related to oil in the future.

In their petition, the lawyers cited seven grounds on which they believe the justice exhibited misconduct, incompetence, bias, and irregularities. The lawyers argued that the judge did not afford a fair hearing to the respondents.

The petition stems from a ruling from 8 December 2023 against 42 landowners who had declined the compensation rates proposed by the government. The compensation was intended to facilitate the relocation of the landlords to pave the way for the development of oil infrastructure under the Tilenga project by TotalEnergies.

In his verdict, the judge ruled that the government, represented by the Ministry of Energy and the Attorney General, could deposit compensation funds with the court and directed the possession of a 59.674-acre tract of land for petroleum activities under the Tilenga project.

It is following these events that the High Court in Kampala issued, on 12 January 2024, an order blocking ULS EGM, which sought to discuss alleged gross misconduct in the management of the Tilenga Oil Case. According to the directives issued by the Acting Registrar of the High Court Civil Division, the order is to stay in place until the determination of an application challenging the legality of the ULS meeting.

The order was issued after a petition from the Attorney General who asserted that the ULS lacked the appropriate jurisdiction to address issues related to judicial misconduct. Reportedly, the Attorney General further indicated that such cases should be handled by the Judicial Service Commission in line with article 144 of the Constitution.

The application of the Attorney General was reportedly supported by an affidavit of the State Attorney indicating he was not notified prior to the convening of the meeting, despite the fact that he was a member of the ULS Council.

Order from the High Court to ULS

According to the information we received, this is the third order that has been issued against the ULS by the same court this year. On 2 February 2024, the Civil Division issued an order directing ULS to stop sending representatives to statutory bodies without those representatives being elected by all the members.

While we do not want to prejudge the accuracy of these allegations, we express our serious concerns at the allegations that describe restrictions to lawyers' freedom of expression; and the possibility that these restrictions may lead to censorship of those exercising the legal profession.

This kind of interference with the legal profession may not only impede the Law Society's work; it may also harm the right of people in Uganda to be informed of legal and judicial affairs.

If confirmed, the restrictions brought about by the judicial decisions and injunctions would amount to a serious breach of a number of international and regional standards. These standards provide that the legal profession and its free exercise are an essential element of the rule of law, the protection of human rights, and the functioning of an independent judicial system.

In accordance with the human rights guaranteed under the International Covenant on Civil and Political Rights, lawyers and members of Bar Associations, are like other individuals entitled to freedom of expression.

Further, the free exercise of the legal profession contributes to ensuring access to justice, oversight of state power, protection of due process and judicial guarantees. According to international standards, States must guarantee that those who practice law can do so free from intimidation, obstacles, harassment or interference. States must put in place all appropriate measures to ensure that lawyers are not subject to, or threatened with, prosecution or any administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

We wish to recall that without the protection provided by an independent bar association, lawyers are extremely vulnerable to attack and to restrictions on their independence.

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 information about the measures taken or foreseen to ensure that lawyers in Uganda can exercise their freedom of expression free from intimidation or undue interference.
3. Please provide detailed information on the legislative and other measures adopted by Uganda to ensure that lawyers able to perform their professional functions without intimidation, hindrance, harassment or improper interference (principle 16 (a) of the Basic Principles on the Role of Lawyers).
4. Please provide information on the measures taken to ensure the independence of the Bar Association in Uganda.

We would appreciate receiving a response within 60 days. Past 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.

Margaret Satterthwaite
Special Rapporteur on the independence of judges and lawyers

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

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, the independence of the judiciary is prescribed, among others, in the International Covenant on Civil and Political Rights (ICCPR), ratified by Uganda on 21 June 1995.

Article 14 of the ICCPR provides that “everyone has the right to a fair and public hearing by an independent and impartial tribunal established by law.” Your country's accession to this treaty means that it must, among other things, adopt all appropriate measures to guarantee the independence of the judiciary and protect judges from any form of political influence in their decision-making. In addition, article 14 of the ICCPR 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. She 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).

In its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, the Human Rights Committee noted that the requirement of independence refers, in particular , to the procedure for appointing judges; guarantees relating to their security of tenure; the conditions for promotion, transfer, suspension and termination of their functions; and the real independence of the judiciary from political interference by the executive and legislature. A situation where the functions and powers of the judiciary and the executive are not clearly distinguished, or where the latter is able to control or direct the former, is incompatible with the notion of an independent tribunal (para. 19).

We would like to recall that article 19 of the ICCPR guarantees the right to opinion and expression. In the general comment 34, the Human Rights Committee stated that States parties to the ICCPR are required to protect the right to freedom of opinion and expression, including inter alia 'political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism', subject only to admissible restrictions as well as the prohibition of propaganda for hatred and incitement to hatred, violence and discrimination, provided for under article 19 (3) and 20 of the ICCPR.

We 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 (Havana (Cuba), 27 August-7 September 1990).

Principle 16 requires governments 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 lawyers from being threatened with prosecution or administration.

Principle 18 provides that lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions. This principle must be read in conjunction with principle 16 (c), referred to above, which requires national authorities to adopt all appropriate measures to ensure that lawyers are not subject to, or threatened with prosecution or any other administrative, economic or disciplinary sanctions for actions undertaken in good faith in the exercise of their professional duties and responsibilities.

On the matter of bar associations, in his report on the subject, the former Special Rapporteur on Independence of Judges and Lawyers noted that "Bar associations should be independent and self-governing professional associations of lawyers, set up to promote and protect the independence and the integrity of lawyers and to safeguard their professional interests. Their status and important functions should be recognized and supported by States, which should refrain from interfering in their work and functioning" (A/71/348, paragraph 112).

Article 21 of the International Covenant on Civil and Political Rights (ICCPR) guarantees the right to freedom of peaceful assembly. It states that "[t]he right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law, and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others". Article 22 of the ICCPR protects the right to freedom of association with others. As stated in a report by the Special Rapporteur on the rights to freedom of peaceful assembly and of association, States not only have a negative obligation to abstain from unduly interfering with the rights of peaceful assembly and of association but also have a positive obligation to facilitate and protect these rights in accordance with international human rights standards [A/HRC/17/27, para. 66; and A/HRC/29/25/Add.1].