

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

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

22 August 2024

Excellency,

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

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning allegations of threats and harassment of Advocate Boniface Mwabukusi, with the Attorney General allegedly initiating a professional ethics procedure against him and seeking to get him removed by court order from the Roll of Advocates, reportedly as retaliation for opinions expressed in the course of his professional activities.

Mr. Boniface Mwabukusi, is a Tanzanian lawyer who has consistently expressed his views on matters related to natural resources governance, democracy, public participation, and the observance of human rights in Tanzania.

According to the information received:

In October 2022, the President of the United Republic of Tanzania and the CEO of a logistics company acting on behalf of the Emirate of Dubai in the United Arab Emirates signed an Inter-governmental Agreement ("Agreement") allowing the logistics company to manage major Tanzanian ports. This Agreement was reached with the aim of "developing, improving, managing and operating the sea and lake ports in areas like special economic zones, logistic parks and trade corridors."

On 10 June 2023, Tanzania's national assembly endorsed the Agreement.

*Threats and judicial harassment of critics of the Agreement*

In early July 2023, the authorities held a press conference during which they threatened to "eliminate" a well-known lawyer if he did not stop criticizing the Agreement.

On 12 July 2023, Mr. Mwabukusi held a press conference in Dar es Salaam during which he criticized the Agreement and called for support from the wider public in holding the government accountable for entering into the deal.

In mid-July 2023, Mr. Mwabukusi, was summoned to present himself before the police for interrogation regarding his statements concerning the Agreement. He was interrogated for eight hours and his electronic communication devices were seized prior to his release.

That same month, Mr. Mwabukusi represented four Tanzanians before the High Court of Tanzania in their legal challenge to the Agreement. In their petition, the applicants claimed the Agreement violated the Constitution of

United Republic of Tanzania and applicable domestic law on multiple grounds, including for handing the management of natural resources to a foreign entity. The government opposed the petition, arguing that neither the sovereignty nor the laws of Tanzania were violated by the Agreement.

On 10 August 2023, the High Court of the Mbeya region determined that none of the six arguments of the Petitioners held merit. The court declared that the Agreement was legally sound and could proceed without hindrance.

On 12 August 2023, reports indicate that Mr. Mwabukusi was abducted by police officials. The incident allegedly occurred in the Morogoro region at 3 a.m., while he was traveling from Mbeya to Dar es Salaam with two other human rights defenders. The three individuals were taken to Mikumi National Park and subjected to interrogation and intimidation regarding their criticism of the authorities. The police gave public notice of their arrest for interrogation later in the afternoon and their whereabouts were disclosed in the evening when they were transferred back to Mbeya. Mr. Mwabukusi was detained by the police in Mbeya for more than five days without contact with his relatives or legal counsel, and without being brought before a judge. He was informed on the second day of detention that he was being held on treason charges.

On 14 August 2023, the detention of Mr. Mwabukusi was made public, leading to widespread public outcry, with international human rights organizations, denouncing his arrest and calling for his release.

On 18 August 2023, Mr. Mwabukusi was released on the condition that he remain within the confines of Mbeya.

*Proceedings seeking to remove Mr. Mwabukusi from the Roll of Advocates*

On 2 August 2023, Mr. Mwabukusi was notified of a summons to appear before the Advocates Committee of the Tanganyika Law Society on the basis of an allegation of professional misconduct. According to the summons, the Attorney General claimed that some remarks made by Mr. Mwabukusi regarding the hearings before the High Court of Tanzania held in July 2023 constituted unprofessional conduct and requested his removal from the Roll of Advocates. In support of this complaint, the Attorney General quoted several statements allegedly attributed to Mr. Mwabukusi:

*“The Speaker and Prime Minister have no clue what they have passed in parliament, even Chief [...] knew what he had signed is a contract... the government is lying to the people that it has signed an agreement and not a contract.”*

*“[...] (Minister of Works and Transport) and his Permanent Secretary should vacate office, they are risking the properties of the Tanganyikans”.*

According to the Attorney General, these statements were seditious and violated criminal and ethical domestic norms, because they allegedly were “made to bring into hatred and contempt against the administration of justice in Tanzania capable of inciting the public or a large portion of it to cause a breach of the peace against the state authorities”.

On 20 and 21 November 2023, Mr. Mwabukusi appeared before the Advocates Committee to defend himself against the ethics complaint seeking to remove him from the Roll of Advocates. According to the source, the Advocates Committee was composed of a judge of the High Court nominated to serve as its chairperson by the Chief Justice, the Director of Public Prosecution, the Attorney General and Deputy Attorney General, and one member of the Tanganyika Law Society appointed by the society.

Reports indicate that Mr. Mwabukusi's legal team encountered a hostile environment at the courthouse. They were allegedly the sole lawyers subjected to searches by security personnel, while the state attorneys were not searched.

At the beginning of the hearing, the chairperson disregarded six preliminary objections raised by the defense team. According to the sources, the lead counsel subsequently expressed his intent to appeal against the dismissal of the preliminary objections, as instructed by his client. In response, the chairperson immediately suspended the lead counsel from practicing law for six months.

During the hearing, the five lawyers representing Mr. Mwabukusi allegedly asked to withdraw from representing him, citing concerns about the chairperson's impartiality and actions towards the lead counsel, and noting that they could not effectively represent their client in this situation. Reports indicate that the request for withdrawal was approved. Mr. Mwabukusi allegedly asked the chairperson to recuse himself for lack of impartiality on the basis of the aforementioned actions concerning the lead counsel. This request was denied and the case was set to proceed the following day. Mr. Mwabukusi sought an adjournment to find new counsel as he had no lawyer to represent him, but it was denied.

Reports indicate that similar complaints from the Attorney General alleging unprofessional conduct by lawyers in cases opposing Government actions led to the removal of multiple advocates from the Roll of Advocates. These incidents were criticized by other members of the legal profession as alleged instrumentalization of the disciplinary system to suppress dissent. The former Law Society President, alongside several other advocates, was allegedly removed from the Roll of Advocates for having criticized the instrumentalization of the disciplinary system.

While we do not wish to prejudge the accuracy of these allegations, we express our serious concerns regarding the threats and intimidation that Mr. Mwabukusi has reportedly been subject to, apparently as reprisal for his legitimate exercise of the legal profession and his freedom of expression. If confirmed, the events described above would amount to a serious breach of several international and regional standards relating to the free and independent exercise of the legal profession.

We express our serious concern regarding the allegations that Mr. Mwabukusi was subjected to a temporary enforced disappearance. We wish to recall that under international law, a deprivation of liberty (including in the form of incommunicado detention), followed by the failure or refusal to acknowledge a deprivation of liberty by State agents or the concealment of the fate and whereabouts of the person, which

places the person outside the protection of the law, are constitutive elements of an enforced disappearance, regardless of the duration of the deprivation of liberty or concealment concerned.

The reported detention of Mr. Mwabukusi in Mbeya appears to violate the minimum guarantees in criminal proceedings provided by article 9 of the ICCPR, ratified by the United Republic of Tanzania in 1976. According to article 9 of the ICCPR, everyone has the right to liberty and security of person, and no one shall be subjected to arbitrary arrest or detention. Article 9(2) provides that anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him. Pursuant to article 9(3), anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. Pretrial detention is an exceptional measure and must be assessed on an individual basis. As affirmed by the Human Rights Committee, we recall that: any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances (General comment no. 35, para. 33).

Further concerns arise in relation to the alleged threats and pattern of disciplinary procedures initiated against lawyers defending critics of the Agreement by the authorities. We underscore the critical importance of the legal profession: its free exercise is an essential element of the rule of law, the protection of human rights and the functioning of an independent judicial system.

The request for disbarment by the Attorney General against Mr. Mwabukusi raises concerns regarding retaliation for opinions expressed in the course of his professional activities. We would like to recall that international law clearly establishes that lawyers, like other individuals, are entitled to freedom of expression, belief, association and peaceful assembly. In particular, lawyers 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. If the disbarment proceeding against Mr. Mwabukusi was initiated on the basis of statements he made in exercising this right, it would amount to retaliation for his exercise of his right to freedom of expression.

According to the Basic Principles on the Role of Lawyers,<sup>1</sup> lawyers are entitled to perform their professional functions without any threat, intimidation, harassment or interference, and without suffering, or being threatened with, prosecution or any administrative or disciplinary sanctions for actions undertaken in accordance with professional duties and ethical standards (principle 2) and where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities (principle 17).

The potential chilling effect of the ethical proceedings against Mr. Mwabukusi on other lawyers could constitute interference with the free exercise of the legal profession who may be concerned about exercising their right to freedom of expression, or representing their clients in matters concerning the Agreement or other official conduct.

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<sup>1</sup> Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Havana, Cuba on September 7, 1990.

We also wish to underline that certain issues arising from the conduct of the ethics complaint hearings against Mr. Mwabukusi could amount to violations of international law obligations. Specifically, the facts here suggest that he was deprived of the rights recognized by principles 27 and 28 of the Basic Principles on the Role of Lawyers, which include the right for lawyers to have a fair hearing before an impartial disciplinary committee and to be assisted by a lawyer of their choice.<sup>2</sup>

Finally, we would also like to underline that this mandate has previously emphasized that disbarment should only be imposed in the most serious cases of misconduct, as provided in the professional code of conduct. This should occur only after due process before an independent and impartial body, granting all guarantees to the accused lawyer. (A/73/365, para. 73; see also A/71/348, para. 96).

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 my 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 Mr. Mwabukusi and explain in which way this procedure can be regarded as consistent with international and regional standards on the independence of the legal profession and the right to freedom of expression.
3. Please provide detailed information on the composition and functioning of the Tanganyika Law Society's Advocates Committee. To what extent is such Committee independent from other State institutions, including the judiciary? Can its decision be appealed before an independent court or tribunal?
4. Please provide detailed information on the measures taken to ensure that the hearings related to Mr. Mwabukusi's ethics complaint are consistent with applicable international and regional standards on disciplinary proceedings against lawyers.
5. Please indicate what measures have been taken to ensure that lawyers, especially those who work on human rights issues, are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.

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<sup>2</sup> Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Havana, Cuba on September 7, 1990.

6. Please provide updated information on the investigations initiated regarding the enforced disappearance of the individuals mentioned above. If no investigations have been initiated, please state why.

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

## **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 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.

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 16 of the Basic Principles 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, they shall be adequately safeguarded by the authorities (principle 17). Additionally, lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions (principle 18).

Principle 23 of the UN Basic Principles spells out the freedom of expression and association applicable to lawyers in clear terms: "Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they 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 and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession."

The Basic Principles also contain a number of provisions concerning disciplinary proceedings against lawyers. Principle 27 states that 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. 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). Additionally, 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).

In a report on bar associations, the former Special Rapporteur on the independence of judges and lawyers, Diego García-Sayán, 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 he 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.

Finally, we draw your attention to the United Nations Declaration on the Protection of All Persons from Enforced Disappearances articles 9-13, which estate that identifying the authority ordering or carrying out the deprivation of liberty is required to prevent enforced disappearances under all circumstances (article 9) and sets out the necessary protection relating to the rights to be held in an officially recognized place of detention; to be brought before a judicial authority promptly after detention; to accurate information on the detention of persons and their place of detention being made available to their family, counsel or other persons with a legitimate interest; and to the maintenance in every place of detention of official up-to-date registers of all detained persons (article 10).