



JOINT STATEMENT OF THE PAN AFRICAN LAWYERS UNION (PALU), EAST AFRICAN LAW SOCIETY (EALS) AND SADC LAWYERS ASSOCIATION (SADCLA) ON RECENT DEVELOPMENTS IN THE INTERACTION BETWEEN THE LEGAL PROFESSION AND SELECT JUDICIAL INSTITUTES ON THE AFRICAN CONTINENT.

The above Continental and Regional Bar Associations wish to jointly express our position regarding recent developments in named African jurisdictions that raise grave concern for the constitutional requirement for judicial independence and impartiality as well as the need for strong and independent Bar Associations. Particularly in Uganda, Tanzania, Kenya and Botswana as briefly accounted for below:

UGANDA

In the very recent past, the Uganda Law Society (ULS) sought to hold two Extraordinary General Meetings (EGM) to discuss executive interference in judicial conduct in several cases that could potentially bring the independence and impartiality of the Judiciary into disrepute. As regards the first EGM scheduled for January 2024, the Attorney General (AG) of Uganda filed a petition to seeking injunction against the conduct of the meeting by the ULS. The grounds for this petition were that the meeting could potentially cause prejudice to the AG. The High Court granted this application and issued an interim order blocking the meeting.

Another EGM was subsequently scheduled for February 2024, to discuss concerns regarding the independence of the judiciary more generally. However, a Ugandan lawyer approached the court seeking an injunction on grounds that the objectives of the meeting was outside of ULS's mandate and would bring the judiciary to disrepute. The High Court held that the meeting was prima facie illegal, granting a temporary injunction preventing the convening of the EGM.

The ULS also found itself under pressure from the courts as a result of a recent decision to the effect that appointment of ULS representatives to parastatal organisations must now only be done via an election.¹ This brought to three the number of court actions directed at the ULS. In the result there was a perception from other sections of the ULS membership that the judiciary and AG's actions compromise the independence of the Bar Association and unfairly curtails its right to convene and administer its own affairs in terms of the constitution and its own constituting act. The ULS subsequently issued a statement calling on its members to boycott the official opening of the Uganda Legal

¹ Kalali Steven v Uganda Law Society, Miscellaneous cause No. 129 of 2023



Year in exercise of their right to resist encroachment on their rights as a universitas.

[PLEASE READ THE FULL STATEMENT OF THE UGANDA BAR ASSOCIATION HERE.](#)

TANZANIA

The situation in the United Republic of Tanzania is similarly concerning. We observed deliberate actions aimed at preventing the Tanzanian Law Society (TLS) from convening its EGM, to discuss issues of concern to lawyers in the Country. The meeting, which was scheduled for December 2023, [could not go on](#) after a petitioned to suspend the meeting was granted by the High Court of Tanzania.

Moreover, in recent years legal practitioners have faced a myriad of attacks from different angles including executive, legislative and judicial institutions. The involvement of the executive in the legal profession can be traced back before 2015, due to the provisions of the Advocates Act.

The provisions of the Act, including Section 4, grants powers to the Attorney General (AG) or Deputy Attorney General (DAG) and the Director of Public Prosecution (DPP) over disciplinary measures of legal practitioners by making part of the composition of the Advocates Committee whose mandate is to take disciplinary proceedings against lawyers in the country. Other notable provisions of this Act include the structure of the Committee, decision-making by a simple majority, the quorum requirements, and the broad discretion granted to the AG in scheduling meetings and initiating misconduct proceedings against advocates.

Although the Advocates Act² was amended in 2019, the provisions on disciplinary measures on Advocates remains. Since then, we have documented numerous instances of retaliatory administrative actions against lawyers, particularly by the Advocates' Committee. These include the suspension of licenses and other forms of professional reprisals. We have also noted several instances of intimidation tactics such as arbitrary arrests, detention and threats employed against lawyers in the country.

Since 2019, we have recorded at least thirteen cases of reprisals against lawyers in Tanzania. These include six proceedings initiated by the AG at the Advocates Committee, resulting in four suspensions between 2020 and now. Additionally, there have been cases involving threats to life—one of which forced a lawyer to temporarily seek exile—and several instances of arbitrary arrests and detention.

KENYA

² Advocates Act, CAP. 341 of 2019 - [HERE](#)



We are deeply concerned about recent developments targeting the independence of the judiciary and the Rule of Law in Kenya. Over the past year, the Law Society of Kenya (LSK) has issued four advocacy statements in response to threats to the Judiciary, increased instances of disregard for judicial orders. On one occasion, the High Court declared the current enactment of the newly proposed housing levy as unconstitutional. Notwithstanding, the relevant executive authorities, in direct contradiction to the court's order, proceeded with the enactment. In the aftermath of this, key Executive officials made public and inflammatory

remarks targeting the Judiciary, including threats of using "the sword" on those who oppose the levy. (Read the LSK's statement [HERE](#)).

Furthermore, the LSK has reported several incidences of inflammatory remarks by Executive officials, threats to parties litigating before the courts, and harassment of advocates representing clients in these cases. The LSK notes the cumulative effect of these intimidation tactics leading to coerced withdrawal of cases. (Read the statements of the LSK [HERE](#))

We have also noted with concern incidents of targeted attacks on lawyers including the mysterious deaths in the last two years, as well as the shooting of a Lawyer by unknown gunmen this year. Additionally, the arbitrary restriction of practicing licenses, such as the one imposed on a Kenyan lawyer and lawyers within his Firm. This restriction is particularly concerning as it was done without due process. It sets a dangerous precedent that can serve to increase the risk of reprisals against lawyers and judicial actors in Kenya.

BOTSWANA

The Law Society of Botswana (LSB) also issued a strong statement announcing its decision to withdraw from participation in the proceedings of the official opening of the Judicial Calendar in Botswana. The LSB cited lack of commitment on the part of the Judiciary to facilitate constructive engagement to find ways of bridging impasse over perceived challenges with judicial independence. (Read the statement of the LSB [HERE](#).)

The above accounts demonstrate a series of unfortunate outcomes that seriously undermine capacity of the concerned Bar Associations to effectively play their role in



defence of the constitution and ensuring the existence of an independent and impartial judiciary. The most unfortunate aspect is the positive role played by the judiciary by both omission and commission that has the impact of compromising the role of the legal profession as provided for in international, Africa Regional, Sub-Regional and national standards. These standards specifically provide for the role of a strong and independent legal profession and stipulate the need for judicial independence and impartiality.³

At no juncture is the prerogative of citizens to approach the courts for any relief challenged, but if the impact of any act or omission by a court has the effect of restraining the right of a Bar Association from formally convening to discuss matters that affect its membership and administration of the law, then this does not augur well for the rule of law. We emphasize that there cannot be rule of law, constitutionalism and democracy in the absence of strong, independent and impartial judiciaries supported by strong and independent Bar Associations

working together within the confines of the law to promote equal access to justice for all. There is no doubt that access to justice is a critical link for the achievement of sustainable development for Africa.⁴

The PALU, EALS and SADCLA hereby appeal to the relevant authorities—including the judiciary— of the named jurisdictions to continue to observe the constitutional and statutorily stipulated role of the legal profession, and to priorities engagement to facilitate solution finding where challenges are perceived to have arisen. At a time when there are grave external threats to independence and impartiality of the Judiciary and the traditional role of Bar Associations, it is imperative for both institutions to join hands to repel capture, corruption, mutually identified capacity deficits and other threats to independence and impartiality.

While these recent events seem to indicate a trend in the named jurisdictions, we eagerly express our fervent hope that these incidents remain isolated, and do not characterize the otherwise prevalently courteous and collaborative customary relationship between the two institutions of justice.

³ The UN Basic Principles on the Role of Lawyers (paragraph 23) and IBA Standards for Independence of the Legal Profession guarantee the right of Members of Bar Associations, collectively or individually, to take part in public discussion of matters concerning the law and administration of justice.

⁴ The realization of the UN Sustainable Development goals rely on strong institutions such as the court. <https://sdgs.un.org/goals/goal16> SDG 16 in particular advocates for promotion of peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.



We reiterate our appeal to the respective governments and the concerned Judiciaries in Uganda, Tanzania, Kenya, Botswana to immediately seek constructive engagement to find lasting solutions for the sustainable development of our justice delivery systems. We call upon all progressive Judiciaries, Bar Associations, Civic partners, individual jurists, lawyers and citizens to speak out against actions that compromise the essential independence and impartiality of Judiciaries and Bar Associations, and to support efforts to create a seamless collaboration between the Judiciaries and Bar Associations across our beloved African Continent.

Signed this 5th Day of July 2024

By:

East Africa Law Society (EALS)
SADC- Lawyers Association (SADCLA)
Pan African Lawyers Union (PALU)