

**Individual submission to the United Nations Universal Periodic Review**

**UGANDA**

40<sup>th</sup> session of the Working Group on the UPR

Human Rights Council

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## UPR SUBMISSION LAWYERS FOR LAWYERS – UGANDA (July 2021)

### A. Introduction

1. Lawyers for Lawyers ("L4L") submits this report on the state of human rights in the Republic of Uganda ("Uganda"), particularly focusing on the legal profession, with recommendations for the 40<sup>th</sup> session of the Universal Periodic Review ("UPR") Working Group in the United Nations Human Rights Council ("HRC") in January 2022.
2. L4L is an independent and non-political foundation based in the Netherlands, established in 1986 and merely funded by donations from lawyers. L4L promotes the proper functioning of the rule of law through the free and independent exercise of the legal profession around the world. L4L has special consultative status with ECOSOC since 2013.

### B. Executive summary

3. This submission highlights L4L's key concerns regarding Uganda's compliance with its international human rights obligations to guarantee the right to independent counsel as set out in the United Nations Basic Principles on the Role of Lawyers<sup>i</sup> ("**Basic Principles**") and other international rights instruments<sup>ii</sup>, focusing on the following issues:
  - (a) lack of access to clients (section D);
  - (b) lack of lawyer-client confidentiality (section E);
  - (c) harassment of lawyers (section F);
  - (d) identification with clients (section G); and
  - (e) lawyers working for NGO's (section H).

### C. Normative and institutional framework

4. The adequate protection of human rights and fundamental freedoms requires that every citizen has effective access to justice and legal assistance. Legal assistance can only be provided effectively in a judicial system where lawyers, along with judges and prosecutors, can carry out their professional duties independently of the government and free from political pressure. This is recognized in, *inter alia*, the Charter of the United Nations, the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights ("**ICCPR**").
5. Furthermore, on 22 June 2017 the HRC passed a resolution condemning "*the [worldwide] increasingly frequent attacks on the independence of [lawyers], in particular threats, intimidation and interference in the discharge of their professional functions.*" The HRC expressed its deep concern "*about the significant number of attacks against lawyers and instances of arbitrary or unlawful interference with or restrictions to the free practice of their profession*" and called upon States "*to ensure that any attacks or interference of any sort against lawyers are promptly, thoroughly and impartially investigated and that perpetrators are held accountable.*"<sup>iii</sup>

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6. In order to fulfil its task of promoting and ensuring the proper role of lawyers, Uganda must respect the Basic Principles within the framework of its national legislation and practice. The Basic Principles provide a concise description of international standards relating to key aspects of the right to independent counsel. Adherence to the Basic Principles is considered a fundamental pre-condition to ensure that all persons have effective access to independent legal assistance.<sup>iv</sup>
7. During the second UPR cycle in 2016<sup>v</sup>, Uganda received and accepted recommendations concerning the need to ensure that civil society and human rights defenders<sup>vi</sup> can operate in a safe environment,<sup>vii</sup> that the legitimacy of their work should be explicitly recognized,<sup>viii</sup> and that all allegations of intimidation, harassment and violence against human rights defenders should be fully investigated.<sup>ix</sup>
8. However, reports gathered by L4L – including information from various lawyers in Uganda – indicate that Uganda does not uphold the necessary guarantees for the proper functioning of the legal profession as set out in the Basic Principles. Consequently, lawyers encounter serious difficulties in carrying out their professional duties independently. This undermines the proper functioning of the judicial system, including the right to a fair trial and effective access to justice.

### D. Lack of access to clients

9. The Basic Principles require Uganda to ensure "*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*" and "*all arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship.*"<sup>x</sup>
10. It has been reported to L4L that Uganda fails to uphold these obligations and that in certain cases – especially those concerning the LGBTQ+ community and sex workers – lawyers are discouraged from visiting their clients and face intimidation during such visits. Moreover, it has been reported that it is customary for lawyers to pay guards in order to obtain (full) access to their clients.
11. L4L has been informed that these issues exacerbated during the Corona pandemic as lawyers were not recognized as essential workers. As a result, it was more difficult for lawyers to visit their clients. Although L4L realizes that the Corona pandemic is an extraordinary situation, it emphasizes the importance of upholding the Basic Principles also, if not especially, in times of hardship.

### E. Lack of lawyer-client confidentiality

12. The Basic Principles provide that communication between lawyers and their clients must take place "*in full confidentiality*" and that "*governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential*"<sup>xi</sup> Furthermore, the HRC stated in its General Comment No.32 on Article 14 ICCPR that "*the right to communicate with counsel requires that the accused is granted prompt access to counsel. Counsel should be able to meet their clients in private*

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*and to communicate with the accused in conditions that fully respect the confidentiality of their communications.*"<sup>xii</sup>

In this context, L4L is specifically concerned about the regular occurrence of office break-ins, as elaborated upon in section [18] below. Particularly striking in the reports is that during these break-ins, information carriers rather than valuables were stolen indicating that the assailants were actively looking for information. In this context, the lack of government action to investigate such break-ins is extra worrisome.

### F. Harassment of Lawyers

13. Principle 16 Basic Principles states that “[g]overnments shall ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference [...] and shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics”. Furthermore, the Basic Principles require authorities to adequately safeguard the security of lawyers who are threatened because of discharging their functions.<sup>xiii</sup>
14. L4L received information that lawyers in Uganda are increasingly hindered in carrying out their professional functions, by both private actors and state actors. Especially lawyers working on human rights cases, politically sensitive cases and land grabbing cases face arbitrary arrests, intimidation, hindrance through arbitrary restrictions, harassment and improper interference, *i.a.* as a result of recurring office break-ins and ineffective governmental interference.
15. These difficulties occur systemically but worsen especially during election time. Against the backdrop of the January 2021 general elections, various NGOs reported that 680 persons have gone missing and have been held incommunicado, without access to a lawyer or a fair trial. There are several accounts of human rights defenders and lawyers arbitrarily arrested across Uganda around the same time.<sup>xiv</sup>
16. L4L has received information regarding arrests of several Ugandan lawyers on improper grounds such as the expression of critical views or due to the nature of the cases they are involved in. On numerous occasions, lawyers were cuffed and physically assaulted in police vans during their arrests. This is illustrated by the following examples:

*Nicholas Opiyo*

Nicholas Opiyo is an experienced lawyer and human rights defender, active as the Executive Director of Chapter Four Uganda, a civil rights charity.

Mr. Opiyo was arbitrarily arrested on 22 December 2020, was not informed of the reason for his arrest and effectively held in incommunicado detention for a prolonged period. He was later charged under section 3 (c) Anti-Money Laundering Act on allegations that he acquired USD 340,000 through the bank account of Chapter Four Uganda, knowing that “*the said funds were proceeds*

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*of crime*". Chapter Four Uganda has confirmed that these are legitimate donor funds.<sup>xv</sup> The proceedings are still pending.

17. Moreover, L4L has been informed of approximately 40 office break-ins at NGOs and law firms across Uganda over the past three years. L4L is concerned these are not isolated incidents but part of a systemic pattern of actions and attacks against NGOs and associated lawyers. NGOs and lawyers have repeatedly requested the Ugandan authorities to interfere and to ensure swift and transparent investigations.<sup>xvi</sup> However, there have been no meaningful efforts to investigate these incidents and the break-ins remain largely unresolved. Reference is made to the examples below:

### *Chapter Four Uganda*

In the early morning of Thursday March 18, 2021 unknown assailants broke into the offices of Chapter Four Uganda in Kololo, Kampala. The assailants accessed the reception area of the office and stole one office desktop computer.<sup>xvii</sup>

### *TRIUMPH Uganda*

On Tuesday December 10, 2019, unknown assailants broke into the offices of the Robust Initiative for Promoting Human Rights – TRIUMPH Uganda in Mbale, Uganda. The assailants stole computer hard disks (information carriers) but left valuables, such as the computers themselves, behind.

## **G. Identification with clients**

18. Principle 18 Basic Principles requires the government of Uganda to ensure that "*lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions*".
19. However, it has been reported to L4L that Ugandan lawyers representing members of LGBTQ+ community and sex workers as well as lawyers representing clients in politically sensitive cases and land ownership cases are often identified with their clients and seen as 'immoral' by other lawyers and society at large.<sup>xviii</sup> As a result, these lawyers are intimidated, harassed and hindered in performing their professional duties, as L4L will elaborate upon in this report.
20. In this context, L4L is specifically concerned about the Sexual Offences Bill 2019, which was passed in the Parliament of Uganda on 3 May 2021 and further criminalizes sex work and same-sex relationships.<sup>xix</sup> In particular, clause 11(a) Sexual Offences Bill 2019 – which criminalizes 'unnatural offences' defined as (i.a.) 'sexual act with another person contrary to the order of nature' – is expected to be interpreted in a manner that criminalizes consensual same sex relationships. As such, the Sexual Offences Bill 2019 will further stigmatize these groups and thereby also justify the hindrance and mistreatment of their lawyers.<sup>xx</sup>

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### H. Lawyers working for NGOs

21. L4L was informed that lawyers in Uganda working for NGOs, and NGOs in general, are facing difficulties when exercising their professional activities. This is partly due to legislation which imposes several restrictive obligations on NGOs active in Uganda, such as the Non-Governmental Organizations Act 2016 (the "**NGO Act**").<sup>xxi</sup> For instance, Section 44(f) NGO Act imposes an obligation on NGOs to not "*engage in any act, which is prejudicial to the interests of Uganda and the dignity of the people of Uganda*". It is not specified what should be understood by 'the interests of Uganda and the dignity of the people of Uganda'.<sup>xxii</sup> Also, Section 44(g) NGO Act requires NGOs to be non-partisan prohibits NGOs from supporting or opposing political parties, or candidate for an appointive office or elective political office, nor propose or register a candidate for elective political office. In effect, however, NGOs are also discouraged from actively participating in the election process by means of teaching on current political topics and lawyers belonging to such NGOs are put at risk to breach this provision when legitimately carrying out their civil function.
22. The NGO Act further requires all Ugandan NGOs to register at the newly established NGO Bureau and to apply for a permit to be allowed to work in Uganda.<sup>xxiii</sup> Together with Sections 7 and 30 NGO Act, which respectively state that the NGO Bureau has the power to revoke an NGO's permit and that it has the power to refuse to register an NGO, the newly established NGO Bureau has been attributed a very broad competence to stop NGOs from performing their functions. The decisions of the NGO Bureau are subject to review by the adjudication committee established under Section 53 NGO Act. The members of this adjudication committee are appointed by the Minister for Internal Affairs. Thus, the adjudication committee cannot be considered an independent judicial body. Moreover, it has been brought to L4L attention that the application review process takes much longer than the required three months, forming a barrier to the work of NGOs.
23. L4L is concerned that the NGO Act does not only hamper the work of NGOs,<sup>xxiv</sup> but also that of lawyers working with NGOs. Several lawyers interviewed by L4L indicated that NGOs are generally viewed negatively by the state and, consequently, so are the lawyers working with NGOs. This is especially the case for NGOs and lawyers working on politically sensitive cases.
24. Furthermore, the NGO Act makes it even more difficult for lawyers in the NGO sector to obtain all required licenses. L4L has been informed that it is increasingly difficult for lawyers working with or on behalf of NGOs to obtain a license to practice as an advocate in Uganda, and that the Uganda Law Society ("**ULS**") does not provide the same support to members associated with NGOs, as it provides to its 'regular' members.
25. The preamble of the Basic Principles states that "*professional associations of lawyers have a vital role to play in upholding professional standards and ethics, protecting their members from prosecution and improper restrictions and infringements, providing legal services to all in need of them.*" From the Basic

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Principles it furthermore follows that lawyers shall be entitled to form and join self-governing professional associations to represent their interests and that such associations must cooperate with governments to ensure that everyone has effective and equal access to legal services and that lawyers are able, without improper interference, to counsel and assist their clients in accordance with the law and recognized professional standards and ethics.<sup>xxv</sup>

26. The **ULS** acts as the overall regulatory body of the legal profession in Uganda (the bar association) and has the mandate to issue practicing licenses as well as to organize the entry (bar) exam.<sup>xxvi</sup> The ULS also acts as a representative of its members in matters that concern the legal profession.
27. L4L commends that the ULS has spoken out about the arrests and arraignments of some of its members emphasizing the need to respect lawyers' rights, regardless of the nature of the case.<sup>xxvii</sup> L4L is also pleased to note that according to its sources, the ULS's focus on the protection of lawyers appears to have increased since the appointment of the new president of the Uganda Law Society in September 2020.
28. L4L emphasizes the importance of consistent and meaningful representation of the interests of lawyers by a bar association, regardless of the elected board members, and encourages Uganda to make efforts to ensure this on a continuous basis. This includes the representation of lawyers working with or on behalf of NGOs.

### **I. Recommendations to the Government of Uganda**

- a. **Repeal Clause 11(a) on 'unnatural offences' of the Sexual Offences Bill 2019.**
- b. **Repeal the clauses of the NGO Act enabling the NGO Bureau to revoke the licenses of NGOs or refuse to register NGOs based on vague criteria and create an effective and independent judicial control over decisions by the NGO Bureau.**
- c. **Take immediate measures to ensure sufficient safeguards are in place, both in law and in practice, to guarantee the full independence and safety of lawyers (including lawyers working with or on behalf of NGOs) and their effective protection against any form of retaliation in connection with their professional activity.**
- d. **Immediately take measures to ensure that crimes, harassment, and hindrance of lawyers are effectively investigated and publicly condemned, and the perpetrators are prosecuted.**
- e. **Refrain from harassment of lawyers, persecution of lawyers on improper grounds, and undue interference in their work.**
- f. **Take immediate measures to ensure that lawyers have full access to their clients and to ensure full confidentiality of communication between lawyers and their clients.**



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- g. Ensure consistent and meaningful representation of the interests of all lawyers in Uganda, including lawyers working with or on behalf of NGOs, in accordance with the Basic Principles.**

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<sup>i</sup> The UN Basic Principles provide a concise description of international norms relating to the key aspects of the right to independent counsel. The Basic Principles were unanimously adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Havana, Cuba on September 7 1990. Subsequently, the UN General Assembly “welcomed” the Basic Principles in their ‘Human rights in the administration of justice’ resolution, which was adopted without a vote on December 18 1990 in both the session of the Third Committee and the plenary session of the General Assembly. Source:

<https://www.ohchr.org/en/professionalinterest/pages/roleoflawyers.aspx>

<sup>ii</sup> Examples include Article 14 of the International Covenant on Civil and Political Rights (ICCPR), Article 7 of the African Charter on Human and Peoples' Rights (ACHPR) and Principle 3 of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.

<sup>iii</sup> UN Human Rights Council, Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers, A/HRC/RES/35/12, 22 June 2017,

[http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/35/L.20](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/35/L.20)

<sup>iv</sup> During its 29th session (from 15 June – 3 July 2015), the Human Rights Council adopted without a vote a resolution on the independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers. While recalling the Basic Principles and condemning the increasingly frequent attacks on the independence of lawyers, in particular threats, intimidation and interference in the discharge of their professional functions, the Human Rights Council reminded all States of their duty “to uphold the integrity of [lawyers] and to protect them, as well as their families and professional associates, against all forms of violence, threat, retaliation, intimidation and harassment resulting from the discharging of their functions, and to condemn such acts and bring the perpetrators to justice”. See UN Human Rights Council, Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers, A/HRC/RES/29/6,

[http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/29/L.11](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/29/L.11)

<sup>v</sup> Report of the Working Group on the Universal Periodic Review of Uganda, A/HRC/34/10, 27 December 2016. Hereinafter: the “UPR report 2016”

<sup>vi</sup> The term 'human rights defenders' encompasses the legal profession.

<sup>vii</sup> UPR report 2016, recommendation 115.94: "Ensure that civil society organizations and human rights defenders can operate in a safe environment and that all allegations of intimidation, harassment and violence are fully investigated (Ireland)"

<sup>viii</sup> UPR report 2016, recommendation 115.110: "Explicitly recognize the legitimacy of the work carried out by human rights defenders, publicly support their work and provide protection for them (Uruguay)"

<sup>ix</sup> Ibid., fn. 7.

<sup>x</sup> UN Basic Principles, Principles 7 and 8.

<sup>xi</sup> UN Basic Principles, Principle 8 and Principle 22.

<sup>xii</sup> CCPR/C/CG/32. UN Human Rights Committee. 23 August 2007.

<sup>xiii</sup> Article 17 of the Basic Principles

<sup>xiv</sup> Joint CSO Statement on enforced disappearances of Ugandan citizens since November 2020 dated 16 March 2021. Source: <https://chapterfouruganda.org/sites/default/files/downloads/Joint-Statement-Joint-CSO-statement-on-enforced-disappearances-of-Ugandan-citizens-since-November-2020.pdf>

<sup>xv</sup> Reference is made to the seven statements issued by Chapter Four on the frivolous charges against Nicholas Opiyo. Source: <https://chapterfouruganda.org/news>. Further reference is made to the statements made by international organizations, including L4L, regarding the spurious charges against Nicholas Opiyo:

<https://lawyersforlawyers.org/joint-statement-on-the-charges-against-nicholas-opiyo/> (L4L),

<https://www.frontlinedefenders.org/en/case/arrest-advocate-nicholas-opiyo-and-four-colleagues> (Frontline

Defenders) and <https://actionaid.org/news/2020/actionaid-international-condemns-arrest-nicholas-opiyo>

(ActionAid International)



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<sup>xvi</sup> For example: Letter from 31 Ugandan and International Organizations to the Inspector General of Police, Uganda Police Force dated June 13, 2016. Source:

<https://chapterfouruganda.org/sites/default/files/downloads/Letter-From-31-Ugandan-and-International-Organizations-On-NGO-Break-Ins.pdf>

<sup>xvii</sup> Sources (inter alia): <https://chapterfouruganda.org/articles/2021/03/18/statement-office-break-chapter-four-uganda> and <https://africandefenders.org/uganda-statement-on-office-break-in-at-chapter-four-uganda/>

<sup>xviii</sup> Reference is made to the recommendations made to Uganda in UPR Report 2016 with regard to the discrimination of and violence against LGBTQ+ persons in Uganda, *inter alia* recommendation 117.27: "Investigate and prosecute State actors and individuals perpetrating violence against LGBTI persons (Iceland)" (noted, but not supported by Uganda)

<sup>xix</sup> The Sexual Offences Bill 2019 is available online via: <http://parliamentwatch.ug/wp-content/uploads/2019/11/The-Sexual-Offences-Bill-2019.pdf>. Reference is made to the blog published by Lawyers for Lawyers on 10 May 2021, titled 'Concerns about Sexual Offences Bill in Uganda':

<https://lawyersforlawyers.org/concerns-about-sexual-offences-bill-in-uganda/>

<sup>xx</sup> Reference is made to the recommendations made to Uganda in UPR Report 2016 to decriminalize consensual same-sex (sexual) relations, *inter alia* recommendations 117.31 (Mexico), 117.38 (Norway) 117.46 (Slovenia), 117.48 (Spain) and 11.59 (Australia) (noted, but not supported by Uganda)

<sup>xxi</sup> The NGO Act is available online via: <http://www.mia.go.ug/sites/default/files/download/The-Non-Governmental-Organisations-Act-2016%20comp.pdf>

<sup>xxii</sup> Source: <https://chapterfouruganda.org/articles/2015/04/21/uganda-ngo-bill-threatens-rights-independent-groups>

<sup>xxiii</sup> See articles 5, 29 and 31 of the NGO Act, 2016.

<sup>xxiv</sup> Reference is made to the recommendations made to Uganda in UPR Report 2016, *inter alia* recommendations 117.2 (Canada), 117.18 (Germany), 117.35 (the Netherlands) and 117.50 (Switzerland)

<sup>xxv</sup> UN Basic Principles, Principles 24 and 25.

<sup>xxvi</sup> It has been reported to L4L that the process of obtaining a license is very slow and needs to be repeated on a yearly basis, forming a burden on lawyers.

<sup>xxvii</sup> ULS Statement on the arrest of advocate Musangala Simon Peter dated 21 February 2021, source:

<https://www.facebook.com/UgandaLawSociety/posts/uls-statement-on-the-arrest-of-advocate-musangala-simon-peter/4053357208030258/>; ULS Statement on the illegal arrest of advocate Nicholas Opiyo dated 22

December 2020, source: <https://kmaupdates.com/wp-content/uploads/2020/12/UGANDA-LAW-SOCIETY-STATEMENT-ON-THE-ILLEGAL-ARREST-OF-ADVOCATE-NICHOLAS-OPIYO.pdf>; ULS Statement on the arrest and

detention of advocate Ambrose Tebyasa, source: <https://minbane.wordpress.com/2020/09/27/https-wp-me-p1xtjg-f0o/>