

Uganda

Human Rights Committee Consideration of the 2nd Periodic Report of Uganda

Submission by the Lawyers for Lawyers Foundation

Amsterdam, The Netherlands 29 May 2023

Lawyers for Lawyers P.O. Box 15732 1001 NE Amsterdam The Netherlands

T +31(0)207171638

E Info@lawyersforlawyers.org @ www.lawyersforlawyers.org

I Introduction

1. Lawyers for Lawyers is an independent civil society organization, supported by contributions from private individuals and organizations related to the legal profession. Established in 1986, Lawyers for Lawyers has special consultative status with ECOSOC since 2013¹.
2. Our mission is to promote and preserve the independence of the legal profession worldwide and to defend the professional rights of lawyers enabling them to provide legal services safely and independently, without fear of reprisal. We safeguard the lawyers' role in protecting the rule of law and human rights and ensuring effective justice for all².
3. To achieve our mission, we advocate for adherence to core values underpinning the legal profession in accordance with internationally recognized laws and standards, including but not limited to the International Covenant on Civil and Political Rights ('Covenant')³ and the Basic Principles on the Role of Lawyers ('Basic Principles')⁴.
4. At its 135th session (27th June 2022 - 27th July 2022), the Human Rights Committee ('Committee') adopted the list of issues in relation to the second periodic report of Uganda (List of Issues)⁵. On 31 January 2023, Uganda ('State party') submitted its replies to the List of Issues (Replies)⁶. The Committee will consider the State party's second periodic report at its 138th session (26th June 2023 - 28th July 2023).

Executive summary

5. Before the adoption of the List of Issues, Lawyers for Lawyers submitted a report to the Committee on Uganda's implementation of the Covenant (**also attached as Annex 1 to this submission**)⁷. The report focused on lawyers as a central theme - particularly Uganda's failure to ensure that lawyers have access to their clients⁸ and to lawyer-client confidentiality⁹. Lawyers for Lawyers' submission highlighted breaches of these obligations, particularly in cases concerning the LGBTQ+ community and sex workers. The submission also focused on the systematic harassment of lawyers working on politically sensitive cases, who can face arbitrary detention, intimidation and other interference in their work as a legal professional.
6. In its List of Issues, the Committee requested the authorities of Uganda to respond to reports that lawyers are discouraged from visiting their clients (especially those representing the LGBTQ+

¹ For more information visit our website: <https://lawyersforlawyers.org/en/about-us/>.

² For more information visit our website: <https://lawyersforlawyers.org/en/about-us/>.

³ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.

⁴ Basic Principles on the Role of Lawyers, adopted by the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990. See also General Assembly 45/166 of 18 December 1990, in which the Assembly welcomed the Basic Principles on the Role of Lawyers and invited Governments to respect them and to take them into account within the framework of their national legislation and practice.

⁵ List of Issues in relation to the second periodic review of Uganda, Human Rights Committee, 13 April 2023, CCPR/C/UGA/Q/2. ('List of Issues')

⁶ Uganda's responses to the List of Issues for the second periodic report, 31 January 2023, CCPR/C/UGA/RQ/2. ('State party response to the List of Issues')

⁷ Submission on the List of Issues by the Lawyers for Lawyers Foundation, 2 May 2022. ('L4L submission to the List of Issues')

⁸ UN Basic Principles, Principles 7 and 8.

⁹ UN Basic Principles, Principle 8 and Principle 22.

community and sex workers), by having to pay guards to gain access to their clients and facing intimidation during visits.¹⁰ The Committee further requested the authorities to respond to allegations of lawyers working on human rights cases facing arbitrary detention, intimidation and harassment. The Committee also asked the Uganda to respond to allegations of targeted break-ins at lawyers' places of work and the failure to investigate those break-ins.¹¹

7. The Ugandan authorities have stated that the constitution protects the legal representation of one's choice to all persons whether in detention or not. The constitution also allows persons to either represent themselves or choose a legal representative. The authorities claim that access by lawyers to their clients in detention is free.¹² Uganda further responded stating that "There is no arbitrary detention, intimidation and harassment of lawyers including those working on human rights cases".¹³ The authorities further claim that the office break-ins were investigated, but no suspects and evidence were found.
8. However, Lawyers for Lawyers has received information showing that access to clients, and arbitrary detention and harassment of lawyers remains an issue, and that office break-ins have still not received proper investigations. The authorities of Uganda have thus not adequately responded to the Committee's questions from the List of Issues. Lawyers for Lawyers remains gravely concerned about the situation of lawyers in Uganda, as set out in our submission on the List of Issues¹⁴. Since submitting our report for the adoption for the List of Issues in May 2022, new cases of interference with the work of lawyers have been brought to the attention of Lawyers for Lawyers, as described below. We call on the Committee to ask the authorities of Uganda to provide adequate answers to the questions listed in the List of Issues and make the following recommendations:

Uganda should take measures to prevent the harassment of lawyers and attempts to impede or interfere on improper grounds with their defense of clients, in accordance with Article 14 of the Covenant and article 16 of the Basic Principles on the Role of Lawyers. These measures should include the protection of lawyers working on sensitive cases involving the LGBTQ+ community and sex workers.

Uganda should take all necessary measures to prevent that lawyers suffer or be threatened with prosecution or other sanctions on improper grounds, in accordance with article 14 of the Covenant and article 16 of the Basic Principles on the Role of Lawyers.

Uganda should recognize and ensure that lawyers and their clients are granted adequate opportunities, time and facilities to communicate and consult with each other, without delay, interception or censorship and in full confidentiality, in accordance with article 14 of the Covenant and article 8 of the Basic Principles on the Role of Lawyers.

Uganda should recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential in accordance with article 14 of the Covenant and articles 8 and 22 of the Basic Principles on the Role of Lawyers. Such consultations may be within sight, but not within the hearing, of law enforcement officials.

¹⁰ List of Issues, paragraph 20.

¹¹ List of Issues, paragraph 20.

¹² State party response to the List of Issues, paragraph 88.

¹³ State party response to the List of Issues, paragraph 89.

¹⁴ L4L submission to the List of Issues, 2 May 2022.

Methodology

9. Lawyers for Lawyers has been closely following the situation of lawyers in Uganda. The information for this submission is collected through ongoing desk-research, interviews, and engagement with and reports from Ugandan lawyers and other local and international stakeholders.
10. In this report, Lawyers for Lawyers will provide updated and targeted information on the issues and questions raised in the List of Issues that have an impact on the proper functioning of lawyers and the consequences thereof in Uganda.

II Substantive part – The implementation of article 14 of the Covenant by Uganda

A. Effective Mechanisms for the Protection of Human Rights

11. 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, are able to carry out their professional activities independently. This follows from – amongst other international instruments - the Covenant.
12. Interference in the work of lawyers may lead to violations of the right to a fair trial under Article 14 of the Covenant, as has been recognized by the Committee.¹⁵ In particular, the Committee has stated that "*lawyers should be able to advise and to represent persons charged with a criminal offence in accordance with generally recognized professional ethics without restrictions, influence, pressure or undue interference from any quarter*".¹⁶ Lawyers should also be able to "*meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications*".¹⁷
13. The right to a fair trial also entails the principle of equality of arms. In the view of the Committee, this means that "*the same procedural rights are to be provided to all the parties unless distinctions are based on law and can be justified on objective and reasonable grounds, not entailing actual disadvantage or other unfairness to the defendant*".¹⁸
14. In its task of promoting and ensuring the proper role of lawyers, the government of Uganda should respect and consider the Basic Principles within the framework of its national legislation and practice.¹⁹ Adherence to the Basic Principles is considered a fundamental precondition to fulfilling the requirement that all persons have effective access to independent legal assistance.²⁰

¹⁵ Human Rights Committee, General Comment No.32, CCPR/C/GC/32, para.34. See also Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, especially article 12.

¹⁶ Ibid, paragraph 34.

¹⁷ Ibid, paragraph 34.

¹⁸ Ibid, paragraph 13.

¹⁹ Basic Principles, Preamble, paragraph 11.

²⁰ Basic Principles, Preamble, paragraph 9.

15. In May 2022, Lawyers for Lawyers submitted a report for the adoption of the List of Issues on Uganda.²¹ In this report we described that, in recent years, repressive tactics have been used to discourage lawyers' access to clients through intimidation (especially in cases concerning the LGBTQ+ community). There are also serious concerns over breaches of lawyer-client confidentiality, specifically due to the regular occurrence of office break-ins, the subsequent lack of government action, and failure of the police to investigate. Lawyers for Lawyers also expressed concern over the general harassment, especially for lawyers working on human rights cases, LGBTQ+ cases, politically sensitive cases and land grabbing cases, who have been facing arbitrary arrests, intimidation, hindrance through arbitrary restrictions, harassment and improper interference.
16. In its List of Issues, the Committee asked the Ugandan authorities to respond to reports that lawyers are discouraged from visiting their clients, especially those representing the LGBTQ+ community and sex workers. They further asked them to respond to the allegations of frequent arbitrary detention, intimidation and harassment of lawyers, particularly those working on human rights cases, including cases involving lesbian, gay, bisexual, transgender and intersex persons, land grabbing and natural resource extraction. The authorities were further asked to provide information on the allegations of targeted break-ins at lawyers' places of work in order to steal confidential case-related information, and the alleged failure by police to investigate such break-ins. Lastly, the Ugandan authorities were asked to respond to reports that the intimidation of lawyers increased during the general election period in 2020–2021, including cases of lawyers having been cuffed and physically assaulted in police vans during their arrests.²²
17. In their reply to the List of Issues, the Ugandan authorities denied allegations of arbitrary intimidation and harassment. However, since the last submission of L4L, new information on interference in the work of lawyers carrying out their profession have been brought to our attention. This ongoing harassment immediately impacts the right to effective legal representation as enshrined in Article 14 of the Covenant.

B. No effective guarantees for the functioning of lawyers

i. Lack of access to clients in detention and lack of lawyer-client confidentiality

18. As set out in our submission on the List of Issues, lawyers in Uganda who are working on sensitive cases regularly face office break-ins. Even though the incidents were reported to the police in a timely fashion, the police have reportedly not properly investigated the break-ins. In this context, the lack of government action and failure of the police to investigate such break-ins is especially worrisome. It has come to L4L's attention that due to this insufficient investigation of break-ins, lawyers are uncertain how and where to securely save their files.
19. Uganda must recognize and respect that all communications and consultations between lawyers and their clients within their professional relationships are confidential.²³ Nonetheless, in their State Replies, the Ugandan government writes that "Many of the alleged cases of break-ins were

²¹ L4L submission to the List of Issues.

²² List of Issues, paragraph 20.

²³ Human Rights Committee, General Comment No.32, CCPR/C/GC/32, paragraph 34. In particular, the Committee has stated that lawyers should also be able to "meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications." See also Principle 22 of the Basic Principles.

never reported to police. For those that were reported, investigations were conducted but the suspects were never identified and evidence remained insufficient for meaningful prosecution and the cases remain open.”²⁴

20. Furthermore, lawyers from Uganda have reported that they face problems when accessing clients in detention in the form of hostilities from police officers. Visits often get postponed, leading to a time and money consuming process that hinders a timely access to justice. Lawyers for Lawyers also keeps receiving reports of lawyers being required to pay off police or prison personnel (bribes) to visit their clients. Besides that, Lawyers for Lawyers received reports that insufficient measures are taken by prison personnel to guarantee the confidential nature of the meetings of lawyers with their clients. Often prison guards or other prisoners are in the same room while consultations that fall under attorney-client privilege take place. Especially in regard to politically sensitive cases and cases involving the LGBTQ+ community, this forms a severe threat to both lawyers and their clients.

ii. Harassment and intimidation of lawyers

21. As set out in our submission on the List of Issues, lawyers in Uganda who are working on sensitive cases (such as cases involving the LGBTQ+ community and sex workers) are sometimes subjected to attempts by investigative authorities to harass and disrupt their work. They face intimidation in connection with their legitimate activities as lawyers.
22. In its List of Issues, the Committee asks Uganda to respond to the allegations of frequent arbitrary detention, intimidation and harassment of lawyers, particularly those working on human rights cases, including cases involving lesbian, gay, bisexual, transgender and intersex persons, land grabbing and natural resource extraction.
23. To this, Uganda replied that there is no arbitrary detention of persons irrespective of their profession or political affiliation. Furthermore, Uganda replied that its government strongly disassociates herself from the alleged arbitrary and incommunicado detention of people and that the law enforcement and security agencies only detain suspects in compliance with Article 23 of the Constitution. With this, Uganda has not adequately replied to the Committee’s questions on frequent arbitrary detention of lawyers working on LGBTQ+ cases.
24. The Basic Principles provide that governments "*shall ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference.*"²⁵
25. Since our last report in May 2022, L4L has received reports about lawyers being followed by security personnel on the streets, as well as other acts of intimidation and (attempted) bribery to get lawyers to drop or otherwise manipulate their case. Because of these acts of intimidation, it has come to our attention that some lawyers fear taking on cases from the opposition. This severely undermines the proper functioning of the rule of law and the adequate protection of rights to which all persons are entitled.

²⁴ State party response to the List of Issues, paragraph 89.

²⁵ Basic Principle 16(a) of the Basic Principles.

iii. Identification with clients

26. In paragraph 6, the Committee asked the Ugandan authorities to provide information “on the number of arrests, prosecutions, convictions and sanctions imposed for same-sex sexual relations in the past five years, and indicate whether the State party intends to repeal the criminalization of consensual same-sex relationships between adults to ensure compliance with its obligations under articles 2, 17 and 26 of the Covenant.”²⁶
27. In its reply to the List of Issues, the Ugandan authorities state that Uganda “does not arrest or prosecute any persons on the basis of their sexual orientation”.²⁷ However, on the date of this submission, the Anti-Homosexuality Bill has been officially signed into law by the Ugandan President.
28. Lawyers for Lawyers has many concerns about this Anti-Homosexuality Bill. One particular concern for Lawyers for Lawyers is the provision on failing to report a witnessed homosexual act which has a maximum penalty of 6 months imprisonment. Even though the Bill states that lawyers acting in their official capacity are exempted from this duty to report, Lawyers for Lawyers has received reports about this article being a threat for lawyers in properly exercising legal duties. Citizens not working in the capacity of a lawyer, but holding other positions in the law firm, would not be exempted from this duty.

III. Conclusions and recommendations

29. The authorities of Uganda do not always uphold the necessary guarantees for the proper functioning of the legal profession in practice. Lawyers are regularly subject to intimidation and improper interference. Some lawyers are even subjected to criminal proceedings, in connection to their legitimate professional activities. As a result, lawyers are not in an equal position to represent their clients. This violates the right to a fair trial as set out in article 14 of the Covenant.

Recommendations

Uganda should take measures to prevent the harassment of lawyers and attempts to impede or interfere on improper grounds with their defense of clients, in accordance with Article 14 of the Covenant and article 16 of the Basic Principles on the Role of Lawyers. These measures should include the protection of lawyers working on sensitive cases involving the LGBTQ+ community and sex workers.

Uganda should take all necessary measures to prevent that lawyers suffer or be threatened with prosecution or other sanctions on improper grounds, in accordance with article 14 of the Covenant and article 16 of the Basic Principles on the Role of Lawyers.

Uganda should recognize and ensure that lawyers and their clients are granted adequate opportunities, time and facilities to communicate and consult with each other, without delay, interception or censorship and in full confidentiality, in accordance with article 14 of the Covenant and article 8 of the Basic Principles on the Role of Lawyers.

²⁶ List of Issues, paragraph 6.

²⁷ State party response to the List of Issues, paragraph 27.

Uganda should recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential in accordance with article 14 of the Covenant and articles 8 and 22 of the Basic Principles on the Role of Lawyers. Such consultations may be within sight, but not within the hearing, of law enforcement officials.