

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

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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.

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Submission on the List of Issues by the Lawyers for Lawyers Foundation

Amsterdam, The Netherlands
2 May 2022

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I. Introduction

Addressing the issue

1. Lawyers for Lawyers (**'L4L'**) is an independent, non-governmental organization, supported by contributions from private individuals and organizations related to the legal profession. Established in 1986, Lawyers for Lawyers has had special consultative status with ECOSOC since 2013.¹
2. Lawyers for Lawyers promotes and protects the independence of the legal profession through the support and empowerment of lawyers around the world who face reprisals, improper interferences, and undue restrictions, as a result of discharging their professional functions.² In doing so, we advocate for adherence to core values underpinning the legal profession, in conformity with internationally recognized human rights laws, norms and standards, including but not limited to the International Covenant on Civil and Political Rights (**'ICCPR'**)³ and the United Nations (**'UN'**) Basic Principles on the Role of Lawyers (**'Basic Principles'**).⁴

Concerning

3. In November 2020, Uganda submitted its second report on its implementation of the ICCPR.⁵ At this 135th session, the Human Rights Committee (**'the Committee'**) will adopt a List of Issues on Uganda (**'State party'**). Lawyers for Lawyers welcomes the opportunity to contribute to the List of Issues on the State party in preparation for the Committee's second periodic review by the Committee. Our submission focuses on the situation of lawyers in the State party who advocate human rights, and in particular the obstacles to the independent exercise of their profession and violations committed against them.

Methodology

4. L4L has been closely following the situation of lawyers in the State party. The information for this submission is collected through ongoing open-source research, interviews and engagement with and reports from Ugandan lawyers and other local and international stakeholders.

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

² For more information visit our website: <https://lawyersforlawyers.org/over-ons/wat-doen-wij/>.

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

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 (**'Basic Principles'**).

⁵ Second Periodic Report Submitted by Uganda Under Article 40 of the Covenant, 19 November 2020, CCPR/C/UGA/2.

II. Substantive Considerations – Implementation of the ICCPR and Related Issues

Issues of concern

5. In this submission, L4L sets out its concerns with regard to the State party's failure to comply with Article 14 of the ICCPR. Pursuant to this provision, the State party is required to uphold the right to equality before courts and tribunals as well as the right to a fair trial, which encompasses the obligation to guarantee effective access to legal services provided by an independent legal profession in accordance with the Basic Principles.⁶
6. Adherence to the Basic Principles is considered a fundamental pre-condition for the adequate protection of the human rights and fundamental freedoms to which all people are entitled.⁷ In its task of promoting and ensuring the proper role of lawyers, the State party must respect and take into account the Basic Principles within the framework of its national legislation and practice.⁸
7. Consequently, it is the State party's duty under the ICCPR to respect and guarantee that all people within its jurisdiction have effective and equal access to lawyers of their own choosing, and that lawyers are able to perform their professional functions without intimidation, hindrance, harassment or improper interference from any quarter, or without the threat of sanction for any action taken in accordance with lawyers' recognized professional duties, standard and ethics.⁹
8. The State party must also ensure that lawyers are adequately protected when their security is threatened because of carrying out their legitimate professional duties, and that they are not being identified with their clients or their clients' causes.¹⁰ In addition, the State party must recognize and respect that all communications and consultations between lawyers and their clients within their professional relationships are confidential.¹¹ The Basic Principles also affirm that lawyers, like other citizens, effectively exercise the right to freedom of expression and assembly.¹²

⁶ Interference in the work of lawyers may lead to violations of the right to a fair trial under article 14 of the ICCPR, as has been recognized by the Committee. Human Rights Committee, General Comment No.32, CCPR/C/GC/32, paragraph 34. 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.*" 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, in particular article 12.

⁷ Basic Principles, preamble, paragraph 9.

⁸ *Idem*, preamble, paragraph 11.

⁹ *Idem*, Principles 1,2 and 16.

¹⁰ *Idem*, Principles 17 and 18.

¹¹ 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.

¹² Principle 23 of the Basic Principles.

9. In its second periodic report, the State party made no statement with regards to lawyers. However, it made a number of statements with regards to human rights defenders. According to the UN Special Rapporteur on Human Rights Defenders, a human rights defender is someone who “seeks the promotion and protection of civil and political rights as well as the promotion, protection and realization of economic, social and cultural rights”.¹³ This expressly encompasses lawyers who work on human rights cases or have occasional links with human rights in their work. Therefore, the following statements made by the State Party in the state report apply to lawyers as well:

"106. Government has continued to take steps to provide a conducive and enabling environment for Human Rights Defenders as partners in development in line with SDG.

107. The NGO Act, 2016 was amended among others to provide a conducive and enabling environment for the NGO sector and to strengthen their partnership with government. The governance framework of the NGO Bureau was strengthened by setting it up as an autonomous organisation with distinct powers and a board of directors, where the NGO sector has two representatives.

108. UHRC and other HRDs have reviewed various bills including the Constitutional (Amendment) Bill 2017 which impact on the operating environment of HRDs and have presented their positions to various oversight mechanisms including Parliament.

109. UHRC set up a Human Rights Defenders Desk which monitors and reports on issues concerning HRDs. UHRC received and investigated complaints of human rights violations from HRDs including the media.

110. However as partners in development, the CSOs are expected to work within the laws of Uganda to enable smooth operation of Government programmes."

10. While the State party has indicated that some positive steps have been taken to provide a conducive and enabling environment for human rights defenders, according to our information, the State party fails to provide a such an environment for lawyers, and fails to fully respect and ensure the guarantees for the proper functioning of lawyers under Article 14 of the ICCPR.

¹³ OHCHR, UN Special Rapporteur on human rights defenders, 'About human rights defenders', consulted on 28 April 2022. Source: <https://www.ohchr.org/en/special-procedures/sr-human-rights-defenders/about-human-rights-defenders>.

11. This submission highlights the following issues that give rise to Lawyers for Lawyers' concerns:
 - A. Lack of access to clients (section A);
 - B. Lack of lawyer-client confidentiality (section B);
 - C. Harassment of lawyers (section C);
 - D. Identification with clients (section D);
 - E. Lawyers working for NGO's (section E).
12. These concerns support the conclusion that the professional rights and privileges of lawyers in the State party are violated systematically. The resulting impairment of lawyers' ability to provide effective legal representation and consequently severely undermines the proper functioning of the rule of law and access to justice for all persons through the adequate protection of rights to which all persons are entitled, including the rights to an effective remedy and a fair trial. This situation undermines public confidence in the administration of justice and to ensure effective justice for all people.
13. In addition to the violation of their professional rights and privileges under Article 14 of the ICCPR, these violations also encroach upon other rights that lawyers, like other citizens, are entitled to, including the right to security of person (Article 9), and the right to freedom of expression (Article 19).
14. Given the vital role lawyers play in the protection of the rule of law and the protection of rights, and given that lawyers in the State party are specifically targeted because of their work, L4L recommends that the Committee to specifically address the position of lawyers, as appropriate, when reviewing the State party's implementation of the ICCPR.

A. Lack of access to clients

15. The Basic Principles require the State party 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.*"¹⁴
16. It has been reported to L4L that the State party fails to uphold these obligations and that in certain cases – especially those concerning the LGBTQ+ community and sex workers –

¹⁴ UN Basic Principles, Principles 7 and 8.

lawyers are discouraged from visiting their clients and face intimidation during such visits in the form of threats from police officers. Moreover, it has been reported that it is customary for lawyers to pay guards in order to obtain (full) access to their clients.

17. L4L has been informed that these issues exacerbated during the Corona pandemic as lawyers were not recognized as essential workers until June 2021. 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.

B. Lack of lawyer-client confidentiality

18. 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”*.¹⁵ 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 and to communicate with the accused in conditions that fully respect the confidentiality of their communications.”*¹⁶
19. In this context, L4L is specifically concerned about the regular occurrence of office break-ins, as elaborated upon in section [24] below. Particularly striking in the reports is that during these break-ins, information carriers containing sensitive information about cases and human rights work rather than valuables were stolen, indicating that the assailants were actively looking for information. Even though the incidents were reported to the police in a timely fashion, the police have reportedly not properly investigated the break-ins.¹⁷ In this context, the lack of government action and failure of the police to investigate such break-ins is especially worrisome.

C. Harassment of Lawyers

20. 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

¹⁵ UN Basic Principles, Principle 8 and Principle 22.

¹⁶ CCPR/C/CG/32. UN Human Rights Committee. 23 August 2007.

¹⁷ <https://www.monitor.co.ug/uganda/special-reports/police-on-the-spot-as-break-ins-into-ngo-offices-remain-uninvestigated-1691384>

require authorities to adequately safeguard the security of lawyers who are threatened because of discharging their functions.¹⁸

21. L4L received information that lawyers in the State party are increasingly hindered in carrying out their professional functions, by both private actors and state actors. Especially lawyers working on human rights cases, LGBTQ+ 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 and failure of the police to investigate break-ins at NGO's.
22. 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 the State party around the same time.¹⁹
23. L4L has received information regarding arrests of several lawyers in the State party 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 example:

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 working to defend human rights and civil liberties in Uganda.

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. On 22 December 2020, plain clothed law enforcement officers who did not identify themselves seized Mr. Opiyo from a restaurant, along with four other individuals, including three lawyers. 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

¹⁸ Article 17 of the Basic Principles.

¹⁹ 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>.

proceeds of crime". Chapter Four Uganda has confirmed that these are legitimate donor funds.²⁰ The charges were dropped only nine months later.²¹

24. Moreover, L4L has been informed of approximately 40 office break-ins at NGOs and law firms across the State party over the past four 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 State party's authorities to interfere and to ensure swift and transparent investigations.²² However, there have been no meaningful efforts to investigate these incidents and the break-ins remain largely unresolved. Reference is made to the example 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.²³

25. According to reports gathered by L4L, lawyers in the State party representing client in environmental cases are increasingly often subject to harassment not only by companies but also by the authorities. In general, lawyers working on cases, amongst others against oil related projects, are subjected to threats and harassment by the government. Reference is made to the below example:

Africa Institute for Energy Governance (AFIEGO)

AFIEGO is involved in legal cases against oil projects, including a case against TotalEnergies.²⁴ In October 2021, six members of the AFIEGO's staff, amongst whom lawyer Dickens Kamugisha, were arrested and held in custody for three days. Thereafter, they were released by the police with a holding charge for "failure to produce documents". The State Party's Director of Prosecutions has, to date, not taken up the case and formally charged the AFIEGO staff. Representatives from

²⁰ 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).

²¹ Source: <https://www.rfi.fr/fr/afrique/20210914-ouganda-le-parquet-abandonne-les-poursuites-contre-l-activiste-nicholas-opiyo>.

²² 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>.

²³ 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/>.

²⁴ Source: <https://www.stopeacop.net/our-news/uganda-six-staff-members-of-our-partner-organisation-afiego-in-custody>.

AFIEGO believe that the arrest, detention and holding charges were meant to intimidate Mr. Kamugisha and his colleagues.

D. Identification with clients

26. Principle 18 Basic Principles requires the government of the State party to ensure that *“lawyers shall not be identified with their clients or their clients’ causes as a result of discharging their functions”*.
27. 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.²⁵ As a result, these lawyers are intimidated, harassed and hindered in performing their professional duties, as L4L will elaborate upon in this report.
28. 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. Although the State party's President Yoweri Museveni decided to return the bill to Parliament for reconsideration, L4L remains concerned that it will further criminalize sex work and same-sex relationships.²⁶ In particular, clause 11(a) of the latest version of the 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.²⁷

E. Lawyers working for NGOs

29. L4L was informed that lawyers in the State party 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 the State party, such as the Non-Governmental Organizations Act 2016 (the "**NGO Act**").²⁸ For instance,

²⁵ 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).

²⁶ 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/>.

²⁷ 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).

²⁸ The NGO Act is available online via: <http://www.mia.go.ug/sites/default/files/download/The-Non-Governmental-Organisations-Act-2016%20comp.pdf>.

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'.²⁹ 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.

30. 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 the State party.³⁰ 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, regardless of the composition of the Board of Directors. 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.
31. L4L is concerned that the NGO Act does not only hamper the work of NGOs,³¹ 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.
32. 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 the State party, and that the Uganda Law Society ("**ULS**") does not provide the same support to members associated with NGOs when they face difficulty, as it provides to its 'regular' members.
33. 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*

²⁹ Source: <https://chapterfouruganda.org/articles/2015/04/21/uganda-ngo-bill-threatens-rights-independent-groups>.

³⁰ See articles 5, 29 and 31 of the NGO Act, 2016.

³¹ 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).

from prosecution and improper restrictions and infringements, providing legal services to all in need of them.” From the Basic 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.³²

34. The ULS acts as the overall regulatory body of the legal profession in the State party (the bar association) and has the mandate to issue practicing licenses as well as to organize the entry (bar) exam. 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. The ULS also acts as a representative of its members in matters that concern the legal profession.
35. 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.³³ 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 ULS in September 2020.
36. 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 the State party to make efforts to ensure this on a continuous basis. This includes the representation of lawyers working with or on behalf of NGOs.

III. Conclusions and recommended questions

37. According to our information, the State party fails to fully respect and ensure the guarantees for the proper functioning of lawyers under Article 14 of the ICCPR. As a result, the lawyers' professional rights and privileges are violated. This impairs their ability to provide effective legal representation, makes lawyers increasingly wary of working on sensitive cases, and consequently severely undermines the proper functioning of the rule of law and the adequate protection of rights to which all persons are entitled, such as the right to effective remedy and fair trial as well as the right to freedom from torture and other cruel, inhuman or degrading treatment or punishment. The work of lawyers is indispensable

³² UN Basic Principles, Principles 24 and 25.

³³ 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/>.

for the public confidence in the administration of justice and to ensure effective justice for all persons in the State party.

38. In addition to the violations of their professional rights and privileges under Article 14 of the ICCPR, these violations also encroach on other rights that lawyers, like other citizens, are entitled to, including the right to security of person (Article 9) and the right privacy and unlawful attacks on a person's honor and reputation (Article 17).
39. Given the vital role of lawyers in the protection of the rule of law and the protection of rights, and the fact that lawyers in the State party are specifically targeted because of their work as a lawyer, Lawyers for Lawyers recommends the Committee to specifically address the position of lawyers, whenever appropriate, when reviewing the State party's implementation of the ICCPR.

Recommended Questions to State Party

- A. Please respond to reports of difficulties of lawyers with accessing their clients.
- B. Please respond to reports of office break-ins and related concerns with respect to the guarantee to lawyer-client confidentiality.
- C. Please respond to the reports of the lack of effective police investigations into the reported office break-ins in NGOs.
- D. Please provide information on what measures the State party has taken to ensure that lawyers are able to carry out their professional functions safely and independently without fear of threat, intimidation, hindrance, harassment, improper interference, reprisals, or criminal prosecution.
- E. Please report on the manner in which lawyers working for NGOs and subject to the NGO Act are protected from undue government interference.