

16 August 2017

STATEMENT

BHRC expresses concern over Freedom of Expression and the recent arrest of the President of the Law Society in Tanzania

The Bar Human Rights Committee (“BHRC”) expresses serious concern at the recent arrest of the President of the Tanganyika Law Society (TLS), Tundu Lissu.

Kirsty Brimelow QC, Chairwoman of BHRC said: “Freedom of expression means that we are free to criticise the State. In this case the State appears to have responded with the arrest of Mr. Lissu. This is in breach of international law. It is fundamental that Tanzania complies with its international human rights law commitments. The charge against Mr. Lissu appears to lack an evidence basis that indicates criminality. In such circumstances, his prosecution should be discontinued as a matter of urgency.”

Tundu Lissu was arrested on 20th July 2017 at the Julius Nyerere International airport in Dar es Salaam, when he was on his way to Kigali, Rwanda to represent the TLS at the East Africa Civil Society Governing Body Council Meeting. Mr Lissu was subsequently detained by the police.

At the police station, his lawyer was informed that he was charged with soliciting/inciting the commission of an offence, contrary to s.390 of the Penal Code. An “alleged offence” was not particularised any further and was still, according to the police, being investigated.

On 24th July 2017, Mr Lissu was brought to the Resident Magistrates Court of Dar es Salaam. He was thereby charged with hate speech contrary to s63C(1)(a) and (2) of the Penal Code. He was refused bail until the matter was reviewed by the Court on 27th July. Although Mr Lissu was granted bail, the charges against him were not dropped.

BHRC observes that Mr Lissu’s treatment is contrary to the Constitution of the United Republic of Tanzania. In particular, Article 18 which provides for and protects each person’s freedom of opinion and expression. This fundamental right is also guaranteed in international standards and treaties signed and ratified by Tanzania, namely the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights.

The latest event is one in a long line of events in Tanzania restricting freedom of expression and assembly. Since 2015, a number of laws have been passed which restrict freedom of expression across Tanzania. These include the Statistics Act 2015, Media Services Act 2016 and the Cybercrime Act 2015. Arbitrary limitations and denials have also been placed on both public and private assemblies which are deemed to cover political issues.

BHRC calls upon the Tanzanian authorities to ensure that any charge against Mr. Lissu be revoked with immediate and unconditional effect, unless it is fully and lawfully substantiated with cogent evidence and reasoning, providing proper and appropriate recourse for appeal.

BHRC further calls upon the Tanzanian government to ensure that its laws and actions are in compliance with its human rights obligations, respecting the freedom of expression and assembly.

Recalling the United Nations “Basic Principles on the Role of Lawyers”, which is based on recognised and accepted human rights standards enshrined in other international instruments. The role of the lawyer is a crucial element of any functioning democracy. Lawyers serve an essential role in the protection of human rights and constitutional principles and in furthering the ends of justice and the public interest.

BHRC urges Tanzania to take urgent steps to ensure that due process is followed and that human rights lawyers and civil society members are protected and not restricted, prosecuted or threatened with prosecution or with other sanctions for the exercise of their professional duties. The State must also ensure that lawyers are able to perform their legal functions without intimidation, hindrance, harassment or improper interference.

Notes:

On the 19th July, plain clothed policemen went to Mr. Lissu’s residence in Dar es Salaam to arrest him for criticisms of President Magufuli’s policies two days earlier at a Press Conference. Mr Lissu was at the time in court in Dodoma. When informed that police officers were outside the courtroom waiting to arrest him, he chose to remain in the courtroom and circulate a message to members of the TLS. In the statement he said,

“we’re either a Democracy in which free speech and political freedoms are respected; in which even the most vehement criticism of the President is tolerated, if not encouraged. Or we’re a Dictatorship, in which there’s no freedom and whatever the Big Man says is unchallenged. I’ve chosen Democracy over Dictatorship.”

The Regional Police Commander for Dodoma eventually entered the courtroom and reassured Mr Lissu that he had no instructions to arrest him. On the basis of his reassurance Mr Lissu decided to return to Dar es Salaam. He was then arrested.

In the charges against him presented to the Resident Magistrate Court on the 24th July, Mr Lissu is alleged to have used abusive words to stir up ethnic hatred on 17th July 2017. At the Press Conference on the 17th July, Mr Lissu accused President Magufuli's government of being discriminatory in the way it carried out administrative tasks such as issuing work permits and appointing government leaders. Mr Lissu ended his speech by calling the President a false Dictator.

Additional information on the LHRC led campaign can be found at: