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22nd February 2017

Hon. Dr. Harrison George Mwakyembe

Minister of Constitutional Affairs and Justice

The United Republic of Tanzania

11484 Dar es Salaam

Hon. Minister,

**OPEN LETTER ON THREATS TO THE CONTINUED EXISTENCE OF THE
TANGANYIKA LAW SOCIETY.**

Greetings from the East Africa Law Society.

By way of a reminder, the East Africa Law Society is the umbrella regional Bar Association for East Africa's Bar Associations including the Burundi Bar Association, Rwanda Bar Association, Law Society of Kenya, Tanganyika Law Society, Uganda Law Society, and the Zanzibar Law Society. Established in 1995, the East Africa Law Society works to advocate for an ethical, independent and capacitated legal profession in addition to advocacy for the rule of law and justice for all in East Africa.

Hon. Minister, we wish to convey our dismay at reports of recent statements attributed to you in the various media channels in Tanzania and in *The East African* Newspaper of February 18th to 24th, 2017 wherein you were quoted as, among others, calling into question the continued existence of the Law Society of Tanzania Mainland, the Tanganyika Law Society, due to its engaging in "activities of political activism".

Hon. Minister, if true, the statements attributed to you constitute a grievous affront to the well laid out principles of independence of the legal profession and run counter to our continued efforts to ensure dialogue and mutual respect between East Africa's governments and the different Bar Associations. The statements, coming on the heels of statements by the Country's President, questioning the long held principle of the presumption of innocence have the potential to

impede the long held cooperation between the Bar and the Executive. The independence of lawyers is a fundamental principle of international law that has been severally reinforced in numerous international and regional treaties¹, United Nations (UN) resolutions², and international statements³, 12 to which the United Republic of Tanzania is a signatory.

Of particular relevance in this instance are the provisions of the 1990 UN Basic Principles on the Role of Lawyers which call for, inter-alia;

- I. ***The independence of lawyers:*** “Adequate protection of the human rights and fundamental freedoms to which all persons are entitled ... requires that all persons have effective access to legal services provided by an independent legal profession.”
- II. ***Freedom of expression and association:*** “Lawyers shall be entitled to form and join self-governing professional associations ... The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference.”
- III. ***Confidentiality of communications between lawyers and their clients:*** “Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.”
- IV. ***Protection from unlawful interference:*** “Governments shall ensure that lawyers
 - a. Are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference;
 - b. Are able to travel and to consult with their clients freely both within their own country and abroad; and
 - c. ***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.***”
- V. ***Professional Associations of Lawyers:*** “ Lawyers shall be entitled to form and join self-governing professional associations to represent their interests...The executive body of the professional associations shall be elected by its members and shall exercise its functions without external influence”.

We wish to strongly urge you, Hon Minister, to reflect on the various conventions and treaties that your government has signed and to ensure that the provisions therein are upheld. The threat to disband the Tanganyika Law Society, undermines the rule of law given its potential to to deprive the general public of a competent, ethical and well governed legal profession. This would be tragic and must be avoided.

While we are the chief advocates of a legal profession that enjoys a cordial and consultative relationship with the Executive of each partner state, we also firmly believe in the need for a fully autonomous legal profession, separate from influence by the government and any other political parties. We further believe that any action forcing the law society in Tanzania, or anywhere else in East Africa, to restrict their leadership positions to

¹ Universal Declaration of Human Rights, art. 10; International Covenant on Civil and Political Rights, art. 14.1; Treaty for the Establishment of the East African Community, art. 6.d & 7(2); European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 6; African Charter on Human and Peoples’ Rights, art. 7; American Convention on Human Rights, art. 8; and Inter-American Democratic Charter, art.

² UN General Assembly Resolutions 40/32 (29 November 1985) and 40/146 (13 December 1985); UN Commission on Human Rights Resolutions 2004/33 (19 April 2004), 2003/43 (23 April 2003), 2002/43 (23 April 2002), 2001/39 (23 April 2001), and 2000/42 (20 April 2000)

³ The Suva Statement on the Principles of Judicial Independence and Access to Justice (2004); Cairo Declaration on Judicial Independence (2003); Bangalore Principles of Judicial Conduct (2002); UN Basic Principles on the Role of Lawyers (1990); Beijing Basic Principles on the Independence of the Judiciary (1985); International Bar Association's Minimum Standards of Judicial Independence (1982); and UN Draft Principles on the Independence of the Judiciary (1981).

people with no political affiliations whatsoever would be an exercise in futility given that we are all political beings with views on the politics of our respective countries. In addition, such a directive would serve to restrict leadership of a key pillar of justice and the rule of law to an exclusive cabal of persons which would directly impact on the ability of these societies to represent the multiplicity of opinions and affiliations inherent in their membership. Law Societies, much like other public institutions, do not operate in a vacuum but are instead shaped by the environment within which they operate.

Please accept, Hon. Minister, Assurances of our highest regard.


Richard Mugisha,

President

