

**A. Introduction**

1. Lawyers for Lawyers ('L4L') submits this report on the state of human rights, especially those regarding the legal profession, in the Russian Federation, with recommendations to the OHCHR for the 30<sup>th</sup> session of the UPR Working Group in the UN Human Rights Council in May 2018.
2. L4L is an independent, non-political foundation, established in 1986 to promote a free and independent exercise of the legal profession around the world, enabling lawyers to effectively fulfil their role in upholding the rule of law and the protection of human rights. L4L has special consultative status with ECOSOC since 2013.

**B. Executive Summary**

3. This submission highlights L4L's key concerns regarding the Russian Federation's compliance with its international and national human rights commitments to guarantee effective access to legal services provided by an independent legal profession as set out in the UN Basic Principles on the Role of Lawyers<sup>1</sup> ('Basic Principles'), focusing on two main themes: (i) no effective guarantees for the functioning of lawyers, and (ii) no effective access to legal assistance. Non-compliance with the Basic Principles undermines the proper functioning of the judicial system and the right to fair trial in particular.

4. Recommendations to the government:

**Regarding (i) no effective guarantees for the functioning of lawyers to:**

**(a) to recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential in accordance with article 22 of the Basic Principles on the Role of Lawyers and not force lawyers to act as a witness in cases in which they represent their clients.**

**(b) to take all measures necessary to prevent that lawyers are threatened, intimidated, hindered, harassed or subjected to improper interference while exercising their professional duties, in accordance with article 16(a) of the Basic Principles;**

**(c) to take all measures necessary to ensure that crimes, harassment and other violations against lawyers are effectively investigated, publicly condemned at all levels and perpetrators of such acts are prosecuted, in accordance with article 17 of the Basic Principles;**

**(d) to take all measures necessary to prevent that lawyers suffer or be threatened with prosecution, disciplinary action or other sanctions on improper grounds, in accordance with articles 16(c) and 26, 27, 28 and 29 of the Basic Principles;**

**Regarding (ii) no effective access to legal assistance:**

**(e) to continue to implement in legislation as well as in practice recommendations 140.186 – 140.187, 140.189 - 140.192 and 140.120 and 140.123 of the UPR cycle in 2013 to ensure the proper functioning of the judicial system and the right to a fair trial.**

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1 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 7 September 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 18 December 1990 in both the session of the Third Committee and the plenary session of the General Assembly.

### C. Normative and institutional framework of the State

5. 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 free to carry out their professional duties independently. This follows from the Charter of the United Nations, the Universal Declaration of Human Rights and Article 14 of the International Covenant on Civil and Political Rights to which the Russian Federation is a party.
6. In its task of promoting and ensuring the proper role of lawyers, the government of the Russian Federation should respect and take into account 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 fulfilling the requirement that all persons have effective access to independent legal assistance.
7. During its 29<sup>th</sup> 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 on the Role of Lawyers 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”.<sup>2</sup>
8. During the interactive dialogue in the UPR cycle of 2013, the Russian Federation accepted<sup>3</sup> recommendations 140.186 – 140.187 and 140.189 - 140.192<sup>4</sup> on the prompt, effective and impartial investigations into attacks on, or threats against human rights defenders, including lawyers, and the identification of those responsible to bring them to justice. Furthermore, the Russian Federation accepted recommendations 140.120<sup>5</sup> and 140.123<sup>6</sup>, on guaranteeing access to justice for all

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2 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)

3 Addendum to the Report of the Working Group on the Universal Periodic Review of the Russian Federation, A/HRC/24/14/Add.1, 2 September 2013

4 140.186. Investigate promptly, effectively and impartially all reports of attacks on or threats against human rights defenders, lawyers, journalists and civil society activists, and identify those responsible and bring them to justice (Norway);

140.187. Effectively investigate all cases of violence against human rights defenders, in order to hold the perpetrators accountable (Poland);

140.189. Ensure due investigation and prosecution of all alleged attacks against human rights defenders and independent journalists (Slovakia);

140.190. Effectively and promptly investigate all reports of attacks or threats against human rights defenders and journalists and bring perpetrators to justice (Czech Republic);

140.191. Investigate all cases of aggressions or threats against human rights defenders, journalists, and civil society activists (Netherlands);

140.192. Investigate with due diligence any complaints filed by journalists and human rights defenders for harassment or repression based on their work or activity, and bring to justice and punish perpetrators, if any (Spain);

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5 140.120. Pursue reforms of the Judiciary as well as its efforts to guarantee and facilitate access to justice for all its citizens (Morocco);

6 140.123. Guarantee the right to a fair trial by strengthening the independence of the Judiciary and by allowing detainees to freely consult a lawyer of their choice from upon arrest (France)

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citizens and the right to a fair trial by allowing detainees to freely consult a lawyer of their choice upon arrest. The Russian authorities commented on this recommendations that: *“the right to consult freely with counsel of the detainee’s choice immediately upon arrest is already laid down in article 48 of the Constitution and is realized in practice without any restrictions”*.<sup>7</sup>

9. However, reports gathered by L4L and information that we received from lawyers in the Russian Federation, demonstrate that the Russian Federation does not always uphold the necessary guarantees for the proper functioning of the legal profession<sup>8</sup> as set out in the Basic Principles. As a consequence, lawyers encounter difficulties in carrying out their profession independently. This also undermines the proper functioning of the judicial system, including the right to fair trial.

#### **D. Promotion and protection of human rights**

##### **(i) No effective guarantees for the functioning of lawyers<sup>9</sup>**

10. L4L has been informed about attempts by investigative authorities to harass and disrupt the work of lawyers in the Russian Federation. According to our information, in certain cases, lawyers may be arbitrarily removed from cases in which they represent clients in accordance with the law. One means of doing this is to name the lawyers as witnesses in cases in which they represent clients. Testifying as a witness creates a conflict of interest and the lawyer is prevented from representing a party in the case. This practice whereby lawyers are intentionally made witnesses to be removed from representing clients runs contrary to international standards on the role of lawyers and in particular violates the principle of confidential communication between lawyers and their clients. Authorities also put pressure on clients to replace the lawyer of their choice. This is illustrated by the following cases:

- a. **Georgy Antonov.** *On 22 July 2014, the International Commission of Jurists (ICJ) reported that the Russian investigative authorities were trying to impede the work of lawyer Georgy Antonov. Against his will Antonov was interrogated as a witness in his client’s case. Subsequently, the authorities removed him from the case in connection with ‘interrogation of the lawyer as a witness’. Hereafter, on 6 July 2014, authorities initiated criminal proceedings against Georgy Antonov for disclosure of evidence connected with the investigation, allegedly on the basis of media interviews he had given and appeals he made to state bodies<sup>10</sup>. His home was searched and legal documents in his possession were seized.<sup>11</sup> On 27 April*

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7 Addendum to the Report of the Working Group on the Universal Periodic Review of the Russian Federation: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, A/HRC/24/14/Add.1, 2 September 2013, page 17.

8 The United Nations Human Rights Committee drew similar conclusions after its review of the Russian Federation under the ICCPR in 2015. In its concluding observations of 2 April 2015 the Committee stated it: "remains concerned at reports of harassment, death threats, intimidation, physical violence and killing of lawyers, (...) in connection with their professional activities, and at the slow progress in investigating such cases". It called on the Russian Federation to: "take immediate steps to provide, in practice, effective protection to lawyers, (...) whose lives, safety and security are under threat due to their work in monitoring and reporting on human rights issues and on other matters of legal and public interest, and refrain from taking any measures that may constitute harassment or persecution or undue interference in the exercise of their work or of their right to freedom of opinion and expression. It should effectively investigate, prosecute and bring perpetrators of the above acts to justice." - Concluding observations on the seventh periodic report of the Russian Federation, Human Rights Committee, CCPR/C/RUS/CO/7 , 28 April 2015, par. 18.

9 Basic Principles on the Role of Lawyers, principles 16, 17, 18, 19, 20, 21, 22.

<sup>10</sup> International Commission of Jurists publication, 22 July 2014: <http://www.icj.org/russian-federation-icj-concerned-at-prosecution-of-lawyer-georgy-antonov/>

<sup>11</sup> International Commission of Jurists publication, 22 July 2014: <http://www.icj.org/russian-federation-icj-concerned-at-prosecution-of-lawyer-georgy-antonov/> and Lawyers for Lawyers publication, 24 July 2014: <http://www.advocatenvooradvocaten.nl/9663/russian-federation-l4l-concerned-at-prosecution-of-lawyer-georgy-antonov/>

2015, Georgy Antonov was convicted for the 'disclosure of confidential information'.<sup>12</sup>

b. **Mark Feygin, Ilya Novikov and Nikolay Polozov.** In 2014, Mark Feygin together with lawyers Ilya Novikov and Nikolay Polozov have defended Nadiya Savchenko, a Ukrainian air-force pilot who is held in Russian Federation and is charged with the killing of two Russian journalists. Russian investigators have tried to exclude Savchenko's attorneys from the case. They put pressure on Savchenko as well as her family members in order to have them replaced by other lawyers.

11. Some lawyers are subjected to arrests, criminal investigations and proceedings, in connection with their legitimate activities as attorneys:

d. **Mark Feygin, Ilya Novikov and Nikolay Polozov (also see under par. 10b).** In 2014, Russian authorities tried to initiate a criminal case against Mark Feygin under Art. 282 of the Criminal Code of the Russian Federation for publishing tweets on his twitter account that "have an extremist character". These tweets were, according to our sources, for the support of his clients (Nadiya Savchenko) case. The Ministry of Justice also requested the Moscow Bar Association to conduct an audit of Mark Feygin's activities, to establish whether these alleged "extremist statements" are in violation of the code of lawyer's ethics and could lead to disciplinary action.<sup>13</sup> In 2015, the Russian authorities decided to suspend their efforts to initiate a criminal case.

e. **Nikolay Polozov.** On 25 January 2017, agents from Russia's Federal Security Service's (FSB) Crimea Department detained lawyer Nikolay Polozov as he was on his way to represent his client in a hearing. Six agents approached him outside his hotel in Simferopol, forced him into a van, and drove him to the Simferopol office of the FSB to question him about the case against one of his other clients. Polozov refused to answer, citing attorney-client privilege. He was allowed to leave two-and-a-half hours later.<sup>14</sup>

12. Under the UN Basic Principles on the Role of Lawyers, where the security of lawyers is threatened as a result of discharging their professional functions, states should take measures to adequately safeguard the lawyers concerned. Lawyers in the Russian Federation have faced threats, intimidation and (physical) attacks in connection to their legitimate activities as attorneys. At least two lawyers have been killed. This is illustrated by the following cases:

a. **Murad Magomedov, Dagestan.** On 4 February 2015, a group of unidentified men attacked defense lawyer Murad Magomedov in Dagestan, causing serious injuries, including multiple jaw fractures. The attack took place in broad daylight during a break in a Supreme Court hearing in which Magomedov was defending his client, Akhmed Israpilov, who was on trial on charges of terrorism. Magomedov had previously received threats in connection with his work as a human rights lawyer.<sup>15</sup>

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12 <http://basman.mos.ru/presscenter/news/detail/1838269.html>

13 Lawyers for Lawyers publication, 14 March 2015 <http://www.advocatenvooradvocaten.nl/10312/russian-federation-investigators-increasingly-hinder-the-work-of-lawyers/> and Lawyers for Lawyers letter, 24 April 2015: <http://www.advocatenvooradvocaten.nl/actions/mark-feygin-l4l-letter/>

14 Lawyers for Lawyers publication 1 February 2017: <http://www.advocatenvooradvocaten.nl/12485/crimea-lawyers-harassed/>

15 Lawyers for Lawyers publication, 6 February 2015 <http://www.advocatenvooradvocaten.nl/10324/russian-federation-physical-attack-against-lawyer-in-dagestan/>

- b. **Vitaly Cherkasov.** *On 25 November 2014, human rights lawyer Vitaly Cherkasov<sup>16</sup> was attacked when defending an LGBTI rights activist in court. A group of approximately ten people identifying themselves as “Orthodox Church activists” verbally attacked Cherkasov and attempted to spray an unidentified liquid from two syringes into his face. Fortunately, Cherkasov managed to duck, having the liquid land on his clothes and hands. Cherkasov called the police but there was no response to his request for assistance. He went to the police station to lodge a complaint about the incident and asked for analysis of the liquid on his clothes, but the police refused to take samples.<sup>17</sup>*
- c. **Vitaliy Moiseyev and Tatiana Akimtseva.** *Lawyer Vitaliy Moiseyev and his wife Elena Moiseyeva were murdered on 24 October 2014. There is reason to believe that they were killed because of Moiseyev’s legitimate legal activities. Moiseyev represented Sergey Zhurba, a key witness in a case concerning a significant number of killings by members of a criminal organization active in Moscow particularly during the 1990s. The case concerned the head of the criminal gang, Dmitry Belking, and his accomplice Oleg Pronin. On 23 October 2014, Dmitry Belking and Oleg Pronin were found guilty of committing 22 murders and 11 attempted murders as well as a number of other crimes. Thus, the killing of Mr. Moiseyev happened the morning following the verdict against the leader of the gang. Moreover, the killing took place only a few hours before Mr. Moiseyev was to testify in court in relation to a separate case against leaders of the Orekhovskaya gang. This is the second killing of a lawyer representing Sergey Zhurba in this case. On 23 September 2014, lawyer Tatiana Akimtseva was shot near her apartment, after supposedly having received threats.<sup>18</sup>*
- d. **Magomed Guchuchaliev, Dagestan.** *On 12 July 2013, lawyer Magomed Guchuchaliev was killed by two unknown men in Makhachkala, Dagestan. Until September 2012, Magomed Guchuchaliev was working for Kavkaz (advokatskaya kollegiya ‘Kavkaz’), a law firm known for defending persons accused of membership of armed groups. Lawyers from Kavkaz repeatedly alleged that law enforcement agencies fabricated criminal evidence and used torture against their clients. For years, lawyers of this firm have been receiving threats in connection with their professional activities and have faced acts of harassment by members of the authorities.<sup>19</sup>*

13. The Russian authorities in these cases have sometimes failed to carry out prompt, thorough, impartial and transparent investigations into the threats, attacks and killings,

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16 At the time of the attack Vitaly Cherkasov was a member of the Interregional Association of Human Rights Organization "Agora", which provided legal aid to non-governmental organizations and civic activists, including LGBTI rights activists. Other Agora lawyers were also threatened. In 2011, Ilnur Sharapov received several death threats by phone. In 2012 and 2013, Sergey Golubok and Dmitri Dinze received threats in connection to their defense of LGBTI activists. On 10 February 2016, Agora was liquidated by a court decision as result of a lawsuit filed by the Ministry of Justice claiming Agora violated the Russian Foreign Agent Law. International Federation for Human Rights, 11 February 2016: <https://www.fidh.org/en/issues/human-rights-defenders/russia-first-human-rights-organisation-liquidated-by-court-for>.

17 Lawyers for Lawyers publication, 30 December 2014: <http://www.advocatenvooradvocaten.nl/9889/russian-federation-lawyer-attacked-after-defending-lgbti-activist/> and Lawyers for Lawyers letter: <http://www.advocatenvooradvocaten.nl/actions/vitaly-cherkasov-l4l-letter/>

18 Lawyers for Lawyers publication, 3 December 2014: <http://www.advocatenvooradvocaten.nl/9795/russian-federation-lawyer-killed-together-with-his-wife/> and Lawyers for Lawyers letter: , 2 December 2014: <http://www.advocatenvooradvocaten.nl/actions/vitaliy-moiseyev-l4l-letter/>

19 Guchuchaliev's colleague, Omar Saidmagomedov and his cousin were also killed in January 2012 by security officials. While in 2008, another colleague of Guchuchaliev, Konstantin Mudunov, survived an attempt on his life. The authorities reported the killing of Omar Saidmagomedov and his cousin as a killing of two members of an armed group, although there were allegedly strong allegations that Saigmagomedov was targeted in connection with his work and extra judicially executed. According to our information, these allegations have never been effectively investigated. In addition, a parallel investigation was requested by Omar Saidmagomedov’s colleagues to ensure that the authorities impartially investigated his death, but this led instead to themselves being harassed by investigation officials. Lawyers for Lawyers publication, 9 August 2013: <http://www.advocatenvooradvocaten.nl/8202/russia-lawyer-from-dagestan-killed/>

so as to identify all those responsible and bring them to justice. In addition to the direct effects on the lawyers in question, impunity has a “chilling effect” on other lawyers, negatively influencing the quality of their work, potentially forcing them to renounce certain kinds of cases, and work in the fear that they or their families may be at risk because of their work.<sup>20</sup>

Recommendations to the Russian Federation:

- (a) to recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential in accordance article 22 of the Basic Principles on the Role of Lawyers and not force lawyers to act as a witness in cases in which they represent their clients.**
- (b) to take all measures necessary to prevent that lawyers are threatened, intimidated, hindered, harassed or subjected to improper interference while exercising their professional duties, in accordance with article 16(a) of the Basic Principles;**
- (c) to take all measures necessary to ensure that crimes, harassment and other violations against lawyers are effectively investigated, publicly condemned at all levels and perpetrators of such acts are prosecuted, in accordance with article 17 of the Basic Principles;**
- (d) take all measures necessary to prevent that lawyers suffer or be threatened with prosecution, disciplinary action or other sanctions on improper grounds, in accordance with articles 16(c) and 26, 27, 28 and 29 of the Basic Principles;**

**(ii) No effective access to legal assistance**

14. The abovementioned violations of the Basic Principles do not only undermine the proper functioning of the role of lawyers, but also every person’s right to access to justice and a fair trial, of which the principles of equality of arms and effective access to legal assistance form an essential element.

Recommendation to the Russian Federation:

- (e) to continue to implement in legislation as well as in practice recommendations 140.186 – 140.187, 140.189 - 140.192 and 140.120 and 140.123 of the UPR cycle in 2013 to ensure the proper functioning of the judicial system and the right to access to justice and a fair trial.**

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<sup>20</sup> See also Gabriela Knaul, Preliminary observations on the official visit to the Russian Federation by the Special Rapporteur on the independence of judges and lawyers, 25 April 2013, at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13264&LangID=E>.