

Submission to the United Nations

Universal Periodic Review

Joint UPR submission

presented by

**LAWYERS FOR LAWYERS AND DÉFENSE DE LA DÉFENSE**

**Democratic Republic of the Congo**

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Human Rights Council

May 2019

Défense de la Défense (DdD) is a Congolese NGO, based in DRC, dedicated to defending the rights of lawyers. DdD was founded in June 2015 by a group of lawyers and now consists of more than 100 lawyers who are a member to different Bar Associations in DRC.



Lawyers for Lawyers (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.

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## LAWYERS FOR LAWYERS AND DÉFENSE DE LA DÉFENCE JOINT UPR SUBMISSION – DEMOCRATIC REPUBLIC OF THE CONGO – OCTOBER 2018

### A. Introduction

1. Défense de la Défense (hereinafter 'DdD') and Lawyers for Lawyers (hereinafter 'L4L') submit this report on the state of human rights, especially those regarding the legal profession, in the Democratic Republic of the Congo (DRC), with recommendations to the OHCHR for the 33<sup>th</sup> session of the UPR Working Group in the UN Human Rights Council in May 2019.
2. DdD is a Congolese NGO, based in DRC, dedicated to defending the rights of lawyers. DdD was founded in June 2015 by a group of lawyers and now consists of more than 100 lawyers who are a member to different Bar Associations in DRC.
3. 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

4. This submission highlights DdD and L4L's key concerns regarding DRC'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 one main theme: no effective guarantees for the functioning of lawyers. Non-compliance with the Basic Principles undermines the proper functioning of the judicial system and the right to fair trial in particular.
5. Recommendations to DRC:
  - (a) **Take immediate measures to ensure that sufficient safeguards are in place, both in law and in practice, to guarantee the full independence and safety of lawyers and their effective protection against any form of retaliation in connection with their professional activity, in accordance with article 16 of the Basic Principles on the Role of Lawyers,**
  - (b) **Refrain from any actions that may constitute harassment, persecution or undue interference in the work of lawyers including their suspension, disbarment or other disciplinary actions or criminal prosecution on improper grounds, such as the expression of critical views or the nature of cases they are involved in, in accordance with article 16(c) of the Basic Principles on the Role of Lawyers,**

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<sup>1</sup> 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) **Take immediate measures to prevent the identification of lawyers with their clients or their clients' causes as a result of discharging their functions, as set out in article 18 of the Basic Principles on the Role of Lawyers, since lawyers are essential agents of justice,**
- (d) **Take immediate measures to guarantee the effective protection of the right of freedom of expression of lawyers as set out in article 23 of the Basic Principles on the Role of Lawyers, in particular their right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights, without suffering professional restrictions by reason of their lawful action,**
- (e) **Take immediate measures to assure that sufficient safeguards are in place, both in law and in practice, to guarantee the full independence of the Bar Association of the Democratic Republic of the Congo and the other Bar Associations,**
- (f) **Accelerate the adoption and publication of the framework Advocates Act regulating the Bar Associations and ensure that this law is in compliance with the relevant UN-conventions and the Basic Principles on the Rule of Lawyers,**
- (g) **To continue to implement in legislation as well as in practice recommendations of the UPR-cycle in 2014 to ensure the protection of human rights defenders against undue interference in their work.**

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

6. 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 and free from reprisal and harassment. 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 DRC is a party.
7. On 22 June 2017, the Human Rights Council (HRC) passed a resolution condemning in general "the increasingly frequent attacks on the independence of [lawyers], in particular threats, intimidation and interference in the discharge of their professional functions". The HRC expressed its deep concern "about the significant number of attacks against lawyers and instances of arbitrary or unlawful interference with or restrictions to the free practice of their profession" and called upon States "to ensure that any attacks or interference of any sort against lawyers are promptly, thoroughly and impartially investigated and that perpetrators are held accountable".<sup>2</sup>

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<sup>2</sup> UN Human Rights Council, Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers, A/HRC/RES/35/12, 22 June 2017, [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/35/L.20](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/35/L.20)

8. Furthermore, the HRC expressed concerns about "situations where the entry into or continued practice within the legal profession is controlled or arbitrarily interfered with by the executive branch, with particular regard to the abuse of systems for the licensing of lawyers".<sup>3</sup>
9. In its task of promoting and ensuring the proper role of lawyers, the government of DRC 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.<sup>4</sup>
10. During the interactive dialogue in the UPR cycle of 2014 several recommendations with respect to the protection of human rights defenders against undue interference were supported by DRC<sup>5</sup>, including recommendations 134.26<sup>6</sup>, 134.52<sup>7</sup>, 134.133<sup>8</sup>, 134.135<sup>9</sup> and 134.136<sup>10</sup>. In reaction to these recommendations, the delegation of DRC reaffirmed "*that the Democratic Republic of the Congo remained committed to implement the UPR recommendations and all the commitments made under the international instruments that it had ratified.*"<sup>11</sup>
11. Reports since then gathered by DdD and L4L and received from lawyers in DRC indicate that DRC does not always uphold the necessary guarantees for the proper functioning of lawyers. As a consequence, lawyers encounter difficulties in carrying out their profession independently. This undermines the proper functioning of the judicial system, including the right to fair trial.

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<sup>3</sup> Un Human Rights Council, Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers, A/HRC/RES/35/12, 22 June 2017, [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/35/L.20](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/35/L.20)

<sup>4</sup> During its 29th 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". See 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)

<sup>5</sup> Report of the Working Group on the Universal Periodic Review Democratic Republic of the Congo, 7 July 2014, A/HRC/27/5.

<sup>6</sup> Recommendation 134.26. Ensure that human rights defenders can exercise their rights without interference and ensure the effective establishment of the NHRC (Switzerland);

<sup>7</sup> Recommendation 134.52. Take necessary measures to prevent any threat against human rights defenders and ensure their effective protection (Spain);

<sup>8</sup> Recommendation 134.133. Bring all perpetrators of violence against journalists and human rights defenders to justice and ensure that journalists and human rights activists are able to pursue their activities, including by expressing criticism of government policies, without intimidation and harassment (Austria);

<sup>9</sup> Recommendation 134.135. Enhance the engagement towards increasing the role of civil society, especially by widening the space for political debate and ensuring the right of human rights defenders, opposition parties and journalists to freely carry out their activities (Italy);

<sup>10</sup> Recommendation 134.136. Ensure that the rights to freedom of expression and peaceful assembly are respected and all citizens, including journalists and human rights defenders, are able to pursue their activities without intimidation (Romania);

<sup>11</sup> Report of the Human Rights Council on its twenty-seventh session, 22 December 2014, A/HRC/27/2, chapter VI, page 67.

## D. Promotion and protection of human rights

### (i) No effective guarantees for the functioning of lawyers<sup>12</sup>

12. DdD and L4L have been informed that the position of lawyers in DRC has significantly worsened over the last number of years. This coincides with a heightened level of oppression throughout the country. Lawyers are frequently subjected to threats, intimidation and improper interference or attempts to put pressure on them by members of law enforcement agencies (specifically the 'Agence Nationale de Renseignement', ANR – or secret service), the military and even the judiciary. Especially lawyers who are involved in politically sensitive cases endure difficulties in carrying out their professional activities without undue intervention. These threats and intimidations are sometimes also aimed at the lawyers' families.

13. This is demonstrated by the following cases:

#### a. Me Peter Ngomo Milambo

*As of 2009, Me Peter Ngomo has represented his fellow attorney Me Firmin Yangambi in highly politicised criminal proceedings. In the course of these proceedings, Me Ngomo has been subjected to several acts of intimidation. In 2010 he was forced to get into a car, subjected to an identity control and an involuntary body search by persons who stated they were members of the "Detection militaire des activités anti-patrie" after questioning the competence and ethical conduct of the representative of the public prosecution. In January 2013 he received death threats after giving an interview about the case to Radio Français International.*

*On 28 August 2014, Me Ngomo was defending another client, General Kakwavu Bakande, pleading that there was not enough evidence to convict him. Me Ngomo was threatened in court by General Mukunto Kiyana of the General Military Prosecution Office ('Auditorat Général') who said 'you have guts to come to the hearing'. Me Ngomo then left the hearing and heard that he risked imminent arrest on suspicion of subordination of a witness (up to 5 years imprisonment). He went into hiding for a while.<sup>13</sup> On 4 September 2014, officers of the secret service visited Me Ngomo's house in his absence, allegedly to obtain a sum of money he owed. A family member categorically refused to pay any money.*

#### b. Mes Richard Bondo, Jean-Marie Kabengela Ilunga, Elie Mbikayi Muamba, Peter Ngomo Milambo in the Chebeya case

*In 2014 and 2015, the aforementioned lawyers represented the civil parties of the family members of Floribert Chebeya and Fidele Bazana, executive director and member of Voix des Sans Voix<sup>14</sup>, who were killed in June 2010. Their alleged murderers were on trial. The lawyers received threats throughout the proceedings, which were enhanced in the period before the verdict on appeal on 17 September 2015. The lawyer for the state said in court that the lawyers were targeting the state, not the accused, and risked the same fate as*

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<sup>12</sup> Basic Principles on the Role of Lawyers, principles 16, 17, 18, 19, 20, 21, 22.

<sup>13</sup> [https://www.ccbe.eu/fileadmin/speciality\\_distribution/public/documents/HUMAN\\_RIGHTS\\_LETTERS/DRC\\_-\\_RDC/2014/FR\\_HRL\\_20140918\\_RDC\\_Peter\\_Ngomo\\_Milambo.pdf](https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/HUMAN_RIGHTS_LETTERS/DRC_-_RDC/2014/FR_HRL_20140918_RDC_Peter_Ngomo_Milambo.pdf)

<sup>14</sup> 'La Voix des Sans Voix pour les Droits de l'Homme' is a civil society organization, based in Kinshasa, that is frequently targeted by the government. <http://vsv-rdc.org/vsvnew/>

their clients. The threats began after the lawyers requested the appearance in appeal of Kalala Kalao, former driver of one of the suspect murderers and a key witness in the case. They reached their peak at the end of July, beginning of August 2015, when the lawyers made a reference in their final pleas to a massacre in 2008 of members of a political-religious organisation Bundu Dia Kongo, addressed by the Voix des Sans Voix, and the request by Chebeya to a colleague in Belgium to file a complaint about this massacre with the International Criminal Court in The Hague ("ICC"). Apart from death threats, military personnel visited the offices of lawyers Ngomo and Mbikayi.<sup>15</sup>

c. Me Olivier Bahemuke Ndoole

Me Olivier Ndoole, lawyer of the Goma bar and an active human rights defender, was the lawyer for a civil society movement called LUCHA. In 2015, LUCHA members protested in Goma because their leader, Fred Bahuma, was arrested in Kinshasa by the secret service. The protesters were then arrested and Me Ndoole represented them in court. Me Ndoole subsequently received death threats, allegedly by the secret services. He was also attacked once, on 17 March 2015, late in the evening outside of his house. He was severely beaten by three men who he believed were from the secret service ANR and ended up in hospital in Goma for 12 days and was subsequently evacuated to Nairobi.

Me Ndoole has returned to DRC and continues to practice law. Together with other lawyers, he is involved in a case involving the confiscation of a farm, in which he represents several local communities in Nyiragongo collectively, and is up against a number of military officials, ministers and other authorities at the opposite side. They have filed a complaint with the national human rights commission. This case is still pending. The lawyers received several intimidating messages in the course of their involvement in this case.

d. Me Shembo H.

Me Shembo H., member of the Kananga Bar and of the human rights organisation 'Mouvement citoyen lute pour le changement "LUCHA"', received anonymous death threats and threats to his family members including his young daughters, in a letter of 13 September 2018. The author suggested he should simply defend his client and stop his activities as a human rights defender. On 21 September 2018 he filed a complaint with the prosecutor but he has not received any news since.

e. Several lawyers in Katanga

On 7<sup>th</sup> October 2016, police officers sent by the public prosecution office of Katanga carried out police searches and dislodged law firms attached to the Lubumbashi bar, without informing the president of the Lubumbashi bar, Jacques Bakambe Shesha. Mr Shesha affirmed that searches in a law firm can only be carried out after informing the president of the bar, with the aim to protect confidential documents that are stored in the law firm. No reason for the search was given, other than that it was necessary for investigations. The lawyers concerned perceived this act as an arbitrary intervention by the public prosecution office.

f. Me Paul Kalumire

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<sup>15</sup> <https://www.fidh.org/fr/regions/afrique/rdc/rdc-menaces-et-actes-de-harcelement-al-encontre-des-avocats>

*Me Paul Kalumire represented the father of a kidnapped child. On 24th August 2017, he made a submission denouncing the insecurity of Goma and suggesting that the military authorities and soldiers as well as secret service agents are involved in the traffic of children and illicit exploitation of minerals. The same day, he made a similar declaration on Radio Okapi, implicating certain political-administrative members based on evidence he had gathered. That same day he received death threats by SMS on his phone. On 25th August, secret service agents visited him at his firm. On 26th August, anonymous persons visited his residence. The threats continued and so he fled the DRC for Rwanda where he is currently residing.*

*g. Me Jean Paul Lumbulumbu Mutanava*

*Jean Paul Lumbulumbu Mutanava, lawyer of Goma, member of the DRC bar at the level of the Courts of Appeal, states he was threatened by certain magistrates in Goma. On 23rd August 2017, he was a lawyer representing the victims in a case involving the kidnapping of three minors in Goma. During more than six months, many children were kidnapped in Goma. The tribunal found the perpetrators of these kidnappings guilty, convicted them, and sentenced them to 20 years of imprisonment. In his declaration to the media (Radio Okapi), Mr. Mutanava congratulated the civil justice system for this exemplary judgment and encouraged the military courts to follow this example in cases involving soldiers who are involved in killing civilians in Goma with impunity. On 26 August 2017 he had to appear before the military judicial authorities (Auditeur militaire superieur and the first President of the military court of Goma, the highest military magistrates of the province). He was called in their office and received a warning. On 31 August a complaint was filed against him with the President of the Bar Association of Goma, cc'ed to the Public Prosecutor and the First President of the Court of Appeals (the highest civil magistrates in the province). The Public Prosecution of Goma opened a case against him pursuant to R.I. 134/PG/EKI and he was ordered to appear in the beginning of September. He has been accused of citing the name of the auditeur superieur in his declaration of 23 August 2017, which he denies. Yet, he was accused of destabilising the institutions.*

*h. Me Cédrick Nsenda*

*On 23 June 2018 Me Cédrick Nsenda was arrested in Kananga at the Prosecutor-General's Office when he was assisting his client, who had been hurt during his arrest. Me Nsenda wanted to bring him to the hospital. When the prosecutor-general heard of this, he ordered the arrest of Me Nsenda. Me Nsenda was treated in a humiliating way: he had to hand over his gown, take off his shoes, and was paraded in a dishonourable way. Only hours later he was placed in pre-trial detention. He was released later that night, after lawyers of the Kananga Bar put pressure and conveyed their discontent to the procurator-general and to political authorities. Also, the President of the Bar of Kananga insisted and the Governor of the Province intervened.*

*i. Me Hippolyte Yulama Omekenge and Me Emmanuel Kokolomami*

*In December 2017, Me Hyppolite Yulama Omekenge and Me Emmanuel Kokolomami received death threats against themselves and family members, as a result of their involvement in cases regarding the nullification of land concessions in the community of Ngaliema. Me Emmanuel was even almost abducted by agents of DEMIAP, the former military intelligence organization of DRC. He could only escape because of the intervention*

of people standing at the bus stop where he was forced to enter a vehicle by people he did not know, but who claimed to have a warrant against him.

j. Me Véronique Tshiela

Me Véronique Tshiela, who is a member of the Bar Association of Kananga and a women's rights defender, has received several death threats because of her interventions for the accused in judicial proceedings against supporters of Kamwina Nsapu in 2016. She even had to flee for several months to the village where her husbands' family lives, disguising as a villager. She has been forced to leave Kananga and now lives in Kinshasa.

k. The lawyers in the criminal proceedings regarding Kamwina Nsapu

Other lawyers in the Kamwina Nsapu-case were, and continue to be threatened as well, sometimes even physically, or received nightly visits. Several lawyers have left the case because of these threats.

l. Me Patu Isungi

Me Patu Isungi, member of the Bar Association of Kinshasa Gombe, has also been threatened many times since 2016 for intervening in the legal cases against supporters of the political-religious movement of Ne Muanda Nsemi.

Some lawyers in the DRC are even subjected to arrests, criminal investigations and prosecutions. The following cases are examples of arbitrary arrests and prosecution of lawyers:

m. Me Firmin Yangambi

Me Firmin Yangambi has been detained since 2009, Me Yangambi is lawyer and member of the Conseil de l'Ordre du Barreau de Kisangani and in addition he is president of the foundation "Paix sur Terre" an organisation for the victims of war. He is convicted by the High Military Court of la Gombe to imprisonment for 20 years, for causing uprisings and the possession of illegal arms. However, from several reports it can be derived that his conviction is a consequence of him opposing the government and his presidency of Paix sur Terre. The case was brought to the Supreme Court, which has never issued a judgement Me Firmin Yangambi is still in prison today.<sup>16</sup>

n. Me David Lubugamba

On 5th September 2016 Me David Lubugamba was imprisoned in the central prison of Bukavu as a result of denouncing the malfunctioning of the judicial system in the South Kivu province. He was liberated because of pressure from human rights organisations and lawyers who also participate in civil society.

o. Me Sylva Mbikayi Kabanga and Me Jean-Marie Kalonji

On 23 June 2017 Maitre Sylva Mbikayi Kabanga was arrested in Kinshasa by the military intelligent agency when he was visiting his client, Me Jean-Marie Kalonji, member of Voix

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<sup>16</sup> <https://lawyersforlawyers.org/en/drc-lawyer-firmin-yangambi-still-imprisoned/>



*des Sans Voix. The two were then taken to the military intelligence headquarters. They were released no earlier than three weeks later, on 18 July 2017.<sup>17</sup>*

p. Me Jacques Kapanga

*On 6 September 2017, Jacques Kapanga was arrested by soldiers of the republican guards ('gardes republicaines') because he had declared publicly that President Kabila's presidential term had come to an end at the end of December 2016. He made this declaration in the course of his defence of a client who was accused of contempt of the President of the State. Mr Kapanga was held in detention by the special services of the police until 11 September 2017.*

q. Timothee Mbuya

*Timothee Mbuya, lawyer of the Lubumbashi bar and President of the NGO 'Justice asbi', a human rights organisation based in Lubumbashi, and co-founder of a coalition of 33 NGO's, was arrested on 31 July 2017. The reason for his arrest was that Justice asbi, together with other civil society groups in Haut Katanga, addressed a petition to the President of the Ceni to ask for publication of the electoral calendar. He was on his way to submit this petition when he was arrested with four colleagues: Patrick Mbuya, Jean Mulenda, Jean Pierre Tshibitshabo and Omba Omari. On the day of his arrest, there were many demonstrations all over the country, resulting in many arrests. However, most of those being arrested were released the same day. But Timothee Mbuya was not released, but charged and convicted for incitement of civil disobedience, punishable by article 135 bis of the Congolese Criminal Code. He was sentenced to 12 months imprisonment, whilst his colleagues received five months only. Eventually, Mbuya was released in February 2018, having served nearly half of his sentence. The others had been released at the end of 2017. It appears that the status of T. Mbuya as a lawyer has aggravated his situation.*

(ii) Bar Associations and disciplinary proceedings<sup>18</sup>

14. Professional associations of lawyers have a vital role to play in upholding professional standards and ethics and protecting their members from persecution and improper restrictions and infringements. The Bar Associations of the DRC should exercise its functions without external interference and cooperate with the government of DRC to ensure – amongst others – that lawyers are able, without improper interference, to counsel and assist their clients.<sup>19</sup>
15. Several Congolese Bar associations throughout the country are not always in a position to provide adequate protection. While by law the Congolese Bar associations are independent bodies with an independent legal personality, in reality this independent status is sometimes questionable.
16. Disciplinary action against lawyers must be based solely upon a code of professional conduct which is consistent with recognized ethical and professional standards including the Basic Principles. L4L has been informed that several lawyers in the DRC

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<sup>17</sup> <http://www.advocatenvooradvocaten.nl/12781/democratic-republic-of-congo-arrest-of-lawyer-sylva-mbikayi/>, <https://www.amnesty.org/download/Documents/AFR6266352017ENGLISH.pdf>

<sup>18</sup> Basic Principles on the Role of Lawyers, principles 24-29.

<sup>19</sup> Basic Principles, principle 25.

have been disbarred, or are facing disbarment or other disciplinary actions on improper grounds. This is demonstrated by the following cases:

a. Me Peter Ngomo Milambo

*Maitre Ngomo has received a disciplinary sanction for alleged misconduct. The judges ordered him to be seated separately from one of his clients, General Goda Sukpa, in the Ituri FNI-FRPI case. He had a disciplinary hearing on 23 September 2017 and was suspended as a lawyer for 1 month.*

b. Me Mbuyi Mbiye

*The former President of the National Bar Association Maitre Mbuyi Mbiye had a disciplinary lawsuit filed against him right after he lost the elections for the presidency of the National Bar Association. The outcome of this case was the removal of Maitre Mbuyi Mbiye from the list of attorneys, a decision that is interpreted by some lawyers as a "politically fuelled decision" of the National Bar Association because the former president identifies himself as a member of the political opposition while the newly elected president is a member of the presidential political party.*

c. Mes Richard Bondo, Jean-Marie Kabengela Ilunga, Elie Mbikayi Muamba, Peter Ngomo Milambo in the Chebeya case

*In the Chebeya-case the lawyers addressed a letter on 27 August 2015 to the President of the National Bar Association to inform him about the case and make complaints. The President reacted by not taking the situation serious and saying that after the case would finish 'they would find themselves settling the score'.<sup>20</sup>*

(iii) Freedom of expression of lawyers violated<sup>21</sup>

17. Lawyers, like any other individuals, have the right to freedom of expression. In particular, they have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights. The freedom of expression that lawyers enjoy in connection to their professional functions should not only be guaranteed in light of the rights of the lawyer, but also in protection of the rights of their client<sup>22</sup>.

18. Lawyers in the DRC, who have been reporting on human rights violations or the cases of their clients, have been experiencing difficulties. Me Peter Ngomo Milambo, for example, has been harassed and threatened several times because of interviews he gave about cases. In the case of his client Firmin Yangambi he received death threats in 2013 after giving an interview about the case to Radio Français International. In the Ituri FNI-FRPI proceedings, he was harassed when he gave an

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<sup>20</sup> <https://www.fidh.org/fr/regions/afrique/rdc/rdc-menaces-et-actes-de-harcelement-al-encontre-des-avocats>

<sup>21</sup> Basic Principles on the Role of Lawyers, principles 23.

<sup>22</sup> See also: Submission L4L - HRC Consideration of the fourth Periodic Report of Democratic Republic of the Congo, available on: <https://lawyersforlawyers.org/wp-content/uploads/Submission-Lawyers-for-Lawyers-HRC-Consideration-of-the-IV-Periodic-Report-on-the-Democratic-Republic-of-Congo.pdf>

interview to Radio Okapi in 2016, raising the subject that the presiding military judge had a conflict of interest. Also, the detention of lawyers David Lubugamba and Timothee Mbuya (see above) constitutes a violation of the right to freedom of expression of lawyers.

19. Today, civil society in DRC is threatened and restricted in a serious way by the government, that has submitted legislative proposals at the parliament that are labelled draconic by human rights defenders, including lawyers. These legislative proposals, which include an anti-terrorism law with a very broad definition of 'terrorist', have been examined by the parliamentarians in an emergency procedure and risk to have a chilling effect on lawyers and their freedom of expression.
20. The threats and intimidation of lawyers are increasing now that the elections are approaching, to prevent them from defending people accused of expressing opinions on credible and inclusive elections.

### **Recommendations to DRC:**

- (a) Take immediate measures to ensure that sufficient safeguards are in place, both in law and in practice, to guarantee the full independence and safety of lawyers and their effective protection against any form of retaliation in connection with their professional activity, in accordance with article 16 of the Basic Principles on the Role of Lawyers,**
- (b) Refrain from any actions that may constitute harassment, persecution or undue interference in the work of lawyers including their suspension, disbarment or other disciplinary actions or criminal prosecution on improper grounds, such as the expression of critical views or the nature of cases they are involved in, in accordance with article 16(c) of the Basic Principles on the Role of Lawyers,**
- (c) Take immediate measures to prevent the identification of lawyers with their clients or their clients' causes as a result of discharging their functions, as set out in article 18 of the Basic Principles on the Role of Lawyers, since lawyers are essential agents of justice,**
- (d) Take immediate measures to guarantee the effective protection of the right of freedom of expression of lawyers as set out in article 23 of the Basic Principles on the Role of Lawyers, in particular their right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights, without suffering professional restrictions by reason of their lawful action,**
- (e) Take immediate measures to assure that sufficient safeguards are in place, both in law and in practice, to guarantee the full independence of the Bar Association of the Democratic Republic of the Congo,**
- (f) Accelerate the adoption and publication of the framework Advocates Act regulating the Bar Associations and ensure that this law is in compliance**

**with the relevant UN-conventions and the Basic Principles on the Rule of Lawyers,**

- (g) To continue to implement in legislation as well as in practice recommendations of the UPR-cycle in 2014 to ensure the protection of human rights defenders against undue interference in their work.**