

Check against delivery

TAJIKISTAN

Oral Statement from Lawyers for Lawyers

Human Rights Committee's review of the third Periodic Report of Tajikistan
Formal NGO briefing – Geneva – 1 July 2019
Speaker: Ms. Judith Lichtenberg

Mister Chair, Excellencies, members of the Human Rights Committee, Ladies and Gentlemen,

Lawyers for Lawyersⁱ wish to bring to the Committee's attention the failure of the authorities of the Republic of Tajikistan to ensure that all persons have effective and equal access to legal services provided by an independent legal professionⁱⁱ.

First, the legal profession lacks institutional independence. The admission to and the continued practice within the legal profession is controlled by the executive branch. The Ministry of Justice has undue influence over the Qualification Commission, responsible for licensing lawyersⁱⁱⁱ.

The 2015 Law "On Advokatura and Advocates' Activities" required all lawyers to renew their accreditation and go through a new examination process, which must be redone every five years. Since the reform, the number of licensed lawyers in Tajikistan has fallen precipitously^{iv}. This seems detrimental to access to justice. The process also carries the risk of misuse by authorities seeking to exclude or disbar lawyers.

Secondly, professional rights and privileges of lawyers who are still able to practice law are violated. For example, lawyers are repeatedly denied access to clients in detention and to appropriate information, files and documents by law enforcement, including evidential materials collected by the government authorities against their clients^v. Lawyer-client confidentiality and lawyers' rights to freedom of expression and association are not respected^{vi}. As a result, lawyers are unable to provide effective legal representation.

Most problematically, lawyers involved in sensitive cases, including lawyers representing members of political opposition and victims of torture, are identified with their clients or their clients' causes. As a result, they face significant persecution. Lawyers have been subjected to intimidation, harassment as well as arbitrary arrests, prosecutions and convictions. Some of them are now in prison after closed, unfair trials, or were forced to flee the country due to fears of reprisal^{vii}. Families of these lawyers have also been targeted. This has a "chilling effect" on the legal profession; lawyers are increasingly wary of working on sensitive cases.

An emblematic case is the prosecution of Buzurgmehr Yorov, who is serving a combined sentence of 28 years in prison. He was convicted on trumped up charges of fraud, forgery and extremism^{viii}. Last month, the UN Working Group on Arbitrary Detention declared the detention of Yorov to be a violation of international law – the Working Group concluded that the charges against him were baseless and that his prosecution falls within a "distinct pattern in the attitude of the authorities towards those who belong to opposition parties or represent their interests".^{ix}

Shortly after the Working Group issued its opinion, the authorities informed Yorov that he was charged with new fraud related offences, putting him at risk of an even longer prison sentence. It is widely believed these new charges are in retaliation of the opinion of the Working Group.

Lawyers for Lawyers calls on the Committee to recommend the government of the Republic of Tajikistan to immediately release Yorov and to take effective 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, including prosecution, in connection with their professional activities. Lawyers for Lawyers supports the recommendations of the International Bar Association's Human Rights Institute (IBAHRI) and the International Commission of Jurists (ICJ) outlined in their joint submission^x to this Committee of June 3, 2019.

ⁱ For more information about Lawyers for Lawyers, please visit: www.lawyersforlawyers.org

ⁱⁱ As enshrined in Article 14 of the ICCPR. Adherence to the UN Basic Principles on the Role of Lawyers is considered a fundamental precondition to fulfilling the requirement that all persons have effective access to legal services provided by an independent legal profession. Basic Principles on the Role of Lawyers, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana (1990), UN Doc. A/CONF.144/28/Rev.1 at 118, available at: <http://www.advocatenvooradvocaten.nl/basic-principles/>

ⁱⁱⁱ The Qualification Commission is chaired by a Deputy Minister of Justice ex officio (article Article 13(3) of the Law "On Advokatura and Advocates' Activity") and all sessions of the Commission are convened by the Deputy Minister of Justice (Article 13(5) of the Law "On Advokatura and Advocates' Activity").

^{iv} In his 2017 report, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression noted "Due to the [2015] legislation, reportedly only approximately 30% of the lawyers practising before the law was passed are currently still in practice", Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on his mission to Tajikistan, 13 October 2017, A/HRC/35/22/Add.2, para. 53.

^v For example, Mr. Buzurgmehr Yorov's lawyer was reportedly not allowed to prepare for or present any meaningful defence. The prosecution removed 85 pages of evidence from the case file, preventing the defense from examining the alleged proof of Mr. Yorov's extremism. In addition, the evidence against Mr. Yorov was not disclosed to him before the trial. See also Amnesty Int'l, *Amnesty International Report 2015/2016 – Tajikistan* (24 February 2016), <http://www.refworld.org/docid/56d05b0ec.html>; U.S. Dep't of State, *Tajikistan 2016 Human Rights Report* 5–7, <https://www.state.gov/documents/organization/265762.pdf>.

^{vi} In the case against Mr. Buzurgmehr Yorov, for example, his private residence and office were searched without a warrant and various items, including computers and documents, seized by the authorities, which violated the lawyer-client confidentiality.

^{vii} Since 2014, authorities have arrested and detained at least six human rights lawyers: Shukhrat Kudratov, Fakhridin Zokirov, Buzurgmehr Yorov, Jamshed Yorov, Nuriddin Makhkamov, and Dilbar Dodojonova – as well as Firuz and Daler Tabarov, sons of Iskhok Tabarov, another prominent lawyer. Zokirov was released after two periods of imprisonment. Jamshed Yorov, Buzurgmehr's brother, was released on September 30, 2016 and fled the country. Kudratov was released in August 2018, but faced continued harassment. Nuriddin Makhkamov, Yorov's law partner, was tried alongside Yorov on extremism charges and sentenced to 21 years imprisonment. In May 2017, shortly after she had posted on Facebook an appeal to President Rahmon to halt his persecution of her imprisoned colleague Yorov, leading human rights lawyer Fayzinisso Vohidova was interrogated and blocked from leaving the country. Vohidova was ultimately allowed to leave Tajikistan, but sadly passed away in January 2019 before her law license was reinstated. More information: <https://lawyersforlawyers.org/wgad-decision-on-detention-yorov/>

^{viii} <https://lawyersforlawyers.org/en/tajikistan-lawyers-sentenced-to-23-and-21-years-in-prison/>

^{ix} "The Working Group therefore considers that there is a distinct pattern in the attitude of the authorities towards those who belong to opposition parties or represent their interests, as is the case of Mr. Yorov. The Working Group considers that this distinction discriminates on the basis of political or other opinion, in a manner that ignores the equality of human rights, a prohibited ground of discrimination under articles 2 (1) and 26 of the Covenant", Opinions adopted by the Working Group on Arbitrary Detention at its eighty-fourth session, 23 April–3 May 2019 - Opinion No. 17/2019 concerning Buzurgmehr Yorov (Tajikistan), par. 109, available on: https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session84/A_HRC_WGAD_2019_17.pdf

^x <https://www.icj.org/ici-and-ibahris-joint-submission-to-the-un-human-rights-committee-on-tajikistan/>