



**Democratic Republic of the Congo**

**Mid-term Report – Review of the implementation of recommendations with respect to the rule of law and the role of human rights defenders and lawyers accepted by the DRC during the UPR in 2019**

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## I. INTRODUCTION

1. Lawyers for Lawyers ('L4L') seeks to assess the human rights performance of states with respect to the rule of law and the role of lawyers through the Universal Periodic Review (the 'UPR'). The Report of the Working Group on the UPR dated 5 July 2019<sup>1</sup> (the '**Report**') contains eight (8) recommendations with respect to the rights of human rights defenders in the Democratic Republic of the Congo (**DRC**). In the corresponding addendum to the Report dated 9 September 2019<sup>2</sup> (the '**Addendum**'), the DRC responded by accepting all these recommendations (set out below under III).
2. According to the Universal Declaration on Human Rights Defenders, article 9, in the promotion and protection of human rights, everyone has the right to an effective remedy and to be protected in the event of violation of such rights. This encompasses the right to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms. Therefore, the recommendations made by the Working Group apply to lawyers.<sup>3</sup>
3. This submission makes reference to the DRC's obligations under the Universal Declaration of Human Rights ('**UDHR**'), the International Covenant on Civil and Political Rights ('**ICCPR**') which the DRC signed on 1 November 1976<sup>4</sup>, and the United Nations ('**UN**') Basic Principles on the Role of Lawyers ('**Basic Principles**').<sup>5</sup>

## II. EXECUTIVE SUMMARY

4. During the 2018 UPR, the DRC received and accepted eight recommendations pertaining to
  - a. the effective protection of human rights defenders, including lawyers, against harassment;
  - b. access to justice; and
  - c. the right to freedom of expression of lawyers.

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<sup>1</sup> Report of the Working Group on the Universal Periodic Review: DRC, A/HRC/42/5, 5 July 2019.

<sup>2</sup> Report of the Working Group on the Universal Periodic Review: DRC: Addendum, A/HRC/42/5/Add.1, 9 September 2019.

<sup>3</sup> Resolution adopted by the General Assembly 53/144, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms A/RES/53/144, 8 March 1999, article 9(3)(c).

<sup>4</sup> The Vienna Convention on the Law of Treaties, 23 May 1969, in force on 27 January 1980, states in Article 18 that when a State signs a treaty it is "obliged to refrain from acts which would defeat the object and purpose of a treaty."

<sup>5</sup> The UN Basic Principles on the Role of Lawyers provide a concise description of international norms relating to the key aspects of the right to independent counsel. 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.

5. This submission outlines findings of L4L as to the extent to which the DRC has implemented eight accepted recommendations and concludes that the DRC has not adequately implemented them. The DRC has failed to respect the rights of lawyers by not adequately enabling them to perform their professional functions without intimidation, hindrance, harassment or improper interference. Furthermore, the DRC has failed to take substantive steps to uphold the right to a fair trial and to guarantee the equal right of everyone to effective access to justice and legal assistance of their choice.

#### **L4L RECOMMENDATIONS**

- a. Respect the rights of lawyers by guaranteeing that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference, and ensuring that lawyers are not being subjected to arbitrary detention, improper criminal charges, disbarment or other disciplinary measures on improper grounds, in accordance with Articles 16(a) and (c), 23 and 27 of the Basic Principles; Articles 7, 9, 14 and 19 of the ICCPR; and Articles 3, 5, 7, 11 and 19 of the UDHR. The DRC should implement recommendations 119.91, 119.100, 119.101, 119.103 and 119.126 fully and without any delay;
- b. Uphold the right to a fair trial, and guarantee everyone's right to effective access to justice and legal assistance of their choice, in line with the Preamble and Principle 1 of the Basic Principles, Article 14 of the ICCPR, and Article 11 of the UDHR. The DRC should implement recommendation 119.114 fully and without any delay;
- c. Guarantee that lawyers may exercise their right to freedom of expression, belief, association and peaceful assembly as set out in Article 23 of the Basic Principles; Articles 18, 19 and 21 of the ICCPR; and Articles 19 and 20 of the UDHR. The DRC should implement recommendations 119.96 and 119.97 fully and without any delay.

#### **III. UPR RECOMMENDATIONS ACCEPTED BY THE DRC**

6. In the Addendum, the DRC decided to accept the following recommendations (the 'Accepted Recommendations') pertaining to the rights of lawyers:
  - a. Ensure that members of political parties, journalists and human rights defenders can carry out their activities without intimidation, reprisal or harassment (Recommendation 119.91 – submitted by Canada);
  - b. Ensure journalists, opposition leaders, human rights defenders and other civil society actors are able to freely exercise their rights to freedom of expression, association and peaceful assembly without fear of harassment, intimidation or reprisals (Recommendation 119.96 – submitted by Ireland);

- c. Step up efforts to guarantee freedom of expression, assembly and association and adopt effective measures to ensure the protection of human rights defenders and journalists (Recommendation 119.97 – submitted by Italy);
  - d. Adopt legislation recognizing and effectively protecting the work of human rights defenders, and ensure exhaustive and independent investigations into the allegations of human rights violations against them (Recommendation 119.100 – submitted by Uruguay);
  - e. Adopt the law on the protection and responsibility of human rights defenders (Recommendation 119.101 – submitted by Burkina Faso);
  - f. Take concrete steps to create and maintain a safe and enabling environment for all human rights defenders (Recommendation 119.103 – submitted by Norway);
  - g. Ensure the functioning of an independent judicial system and facilitate victims’ effective access to justice (Recommendation 119.114 – submitted by Estonia); and
  - h. Investigate, prosecute and convict persons responsible for harassment, threats or intimidation against journalists and human rights defenders (Recommendation 119.126 – submitted by the Republic of Moldova).
7. L4L finds that, in fact, these recommendations have not been implemented as of November 2022. As discussed below, L4L has received reliable information about:
- a. A continuation of judicial harassment, including threats, intimidation and (armed) attacks against lawyers;
  - b. Identification with clients, especially for lawyers dealing with politically sensitive cases or cases involving a public official. lawyers who are involved in politically sensitive cases endure difficulties in carrying out their professional activities without undue intervention;
  - c. An increase in administrative sanctions, including administrative reprimand (expulsion or exclusion from the bar) on grounds of discourteousness;
  - d. Restrictions on lawyers during Covid, with increased difficulties for lawyers to have access to their clients;
  - e. Violations of the freedom of expression of lawyers.

#### **IV. THE IMPORTANCE OF EFFECTIVE MECHANISMS FOR THE PROTECTION OF HUMAN RIGHTS**

- 8. Lawyers are fundamental to improving human rights for all people in the DRC and must be able to work independently without fear of harassment or intimidation.
- 9. The adequate protection of human rights and fundamental freedoms requires that everyone has effective access to justice and legal assistance. In order to guarantee effective

access to justice and legal assistance, it is of paramount importance that a judicial system is in place in which lawyers, judges, and prosecutors are able to carry out their professional activities independently and without undue external pressure or interference.<sup>6</sup> This principle is grounded in the UDHR and the ICCPR and explicitly set out in the Basic Principles, among other international human rights standards.

10. In discharge of its obligation to promote and maintain an effective legal system, the government of the DRC is obligated to respect the UDHR, the ICCPR and the Basic Principles and use these documents as the cornerstones for the framework of its national legislation and practice. Adherence to the Basic Principles is a fundamental pre-condition for fulfilling the requirement that all persons have equal and effective access to legal assistance and representation.
11. L4L welcomes the DRC's commitment to the accepted recommendations. L4L believes that from this commitment to the Accepted Recommendations flows a commitment of the government of the DRC to ensure the protection of lawyers, as without this the implementation of the Accepted Recommendations cannot be realised.
12. However, according to reports gathered by L4L, the Accepted Recommendations have not been implemented both before and since the publication of the Addendum. Numerous reports of arbitrary detention and suppression of lawyers' rights convincingly indicate that, in practice, the DRC does not uphold safeguards necessary to ensure the proper functioning of the legal system and the role of lawyers. Lawyers in the DRC encounter severe restrictions and external pressure in carrying out their professional duties. Lawyers have experienced harassment, including physical threats and intimidation, administrative sanctions or other violations of their fundamental rights and freedoms as a result of their lawful representation of their clients.

## **V. HARASSMENT, INTIMIDATION AND (ARMED) ATTACKS AGAINST LAWYERS**

13. According to the latest report of the OHCHR, human rights defenders in the DRC are tracked while carrying out their professional duties by the Congolese National Police and National Intelligence Agency.<sup>7</sup> They are frequently subjected to threats, intimidation and improper interference by members of law enforcement agencies, the military and even the judiciary.<sup>8</sup> L4L has received reports that these experiences are also faced by lawyers. Lawyers further also face unlawful detention, criminal investigations and prosecutions. Especially lawyers

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<sup>6</sup> See for example the Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, submitted in accordance with Human Rights Council resolution 8/6, 28 July 2009, A/64/181, par. 12: 'lawyers are not expected to be impartial in the manner of judges yet they must be as free as judges from external pressures and interference. This is crucial if litigants are to have trust and confidence in them'.

<sup>7</sup> Annual report of the OHCHR and the Secretary-General, 'Human rights situation and the activities of the United Nations Joint Human Rights Office in the Democratic Republic of the Congo' A/HRC/51/61, consulted on 19 October 2022, par. 4.

<sup>8</sup> See for examples the report of the OHCHR (supra 7) par. 13

working on politically sensitive cases endure difficulties in carrying out their professional activities without undue intervention. These threats and intimidations are also sometimes aimed at the lawyers' families.

14. Based on Article 16 of the UN Basic Principles on the Role of Lawyers, "Governments must ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference" and "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".
15. According to the information received, lawyers have been physically assaulted by the military or unidentified armed groups on several occasions. Additionally, unlawful searches carried out by the police at the law firm, NGO or domicile of lawyers have also been reported to L4L. Yet there has been no meaningful effort to investigate these incidents by the authorities.
16. Lawyers in the DRC are increasingly facing judicial harassment. There have been several accounts of lawyers in the DRC who have been arrested and detained by the Agence Nationale de Renseignement (ANR), the state intelligence service, on improper grounds such as posing a threat to state security. As a result, lawyers in the DRC often feel compelled to censure their own arguments in courtrooms because they fear for their own safety. This threatens the proper functioning of the rule of law and the independence of the legal profession in the DRC. This is also an example of the limitation in expressing dissent which leads to a decrease of democratic space as has been a point of concern in the OHCHR's latest report on the DRC.<sup>9</sup>

## **VI. ADMINISTRATIVE SANCTIONS**

17. Professional associations of lawyers have a play a crucial role 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 the DRC to ensure – amongst others – that lawyers are able, without improper interference, to counsel and assist their clients.
18. In accordance with Principle 28 of the Basic Principles on the Role of Lawyers, 'disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review.'

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<sup>9</sup> Idem, par. 9

19. During the UPR of the DRC in 2018, L4L reported that Congolese bar associations throughout the country were not always in a position to provide adequate protection to their members. According to our information, the situation remains unchanged.
20. Lawyers in the DRC may face administrative sanctions on the grounds of ‘discourteousness’ (disrespect) which is neither written nor specified in the DRC’s 1979 law on the organization of the bar, the body of legal defenders and the body of state agents. This may lead to the arbitrary disbarment of lawyers.<sup>10</sup>
21. Furthermore, lawyers who wish to contest an administrative sanction must do so by appealing to the disciplinary board located in Kinshasa, which is remote and expensive to get to for many lawyers. As a result, the possibility of judicial review is not reasonably accessible to all lawyers.

## **VII. CONCLUSION & RECOMMENDATIONS**

- a. Respect the rights of lawyers by guaranteeing that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference, and ensuring that lawyers are not being subjected to arbitrary detention, improper criminal charges, disbarment or other disciplinary measures on improper grounds, in accordance with Articles 16(a) and (c), 23 and 27 of the Basic Principles; Articles 7, 9, 14 and 19 of the ICCPR; and Articles 3, 5, 7, 11 and 19 of the UDHR. The DRC should implement recommendations 119.91, 119.100, 119.101, 119.103 and 119.126 fully and without any delay;
- b. Uphold the right to a fair trial, and guarantee everyone’s right to effective access to justice and legal assistance of their choice, in line with the Preamble and Principle 1 of the Basic Principles, Article 14 of the ICCPR, and Article 11 of the UDHR. The DRC should implement recommendation 119.114 fully and without any delay;
- c. Guarantee that lawyers may exercise their right to freedom of expression, belief, association and peaceful assembly as set out in Article 23 of the Basic Principles; Articles 18, 19 and 21 of the ICCPR; and Articles 19 and 20 of the UDHR. The DRC should implement recommendations 119.96 and 119.97 fully and without any delay.

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<sup>10</sup> See also <https://lawyersforlawyers.org/joint-oral-statement-to-human-rights-council-on-the-democratic-republic-of-the-congo/>.