

**A. Introduction**

1. Lawyers for Lawyers (hereinafter 'L4L') submits this report on the state of human rights, especially those regarding the legal profession, in Tajikistan, with recommendations to the OHCHR for the 25<sup>th</sup> session of the UPR Working Group in the UN Human Rights Council in April/May 2016.
2. L4L is an independent and non-political Netherlands foundation, which was established in 1986 and is funded by lawyers' donations. L4L promotes the proper functioning of the rule of law through a free and independent exercise of the legal profession around the world and has special consultative status with ECOSOC since 2013.

**B. Executive Summary**

3. This submission highlights L4L's key concerns regarding Tajikistan'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 three main themes: (i) no effective guarantees for the functioning of lawyers, (ii) concerns over independence of new professional association of lawyers, and (iii) 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.

Recommendations to the government:

4. **Regarding (i) no effective guarantees for the functioning of lawyers:**
  - (a) **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;**
  - (b) **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;**
  - (c) **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) concerns about the independence of the professional association of lawyers**
  - (d) **Amend the Law on Advocacy and the Bar as follows: 1) ensure the Qualification Commission is no longer placed under the Ministry of Justice, and 2) ensure that the new qualification exam is not retrospective, forcing all current practising lawyers to re-qualify****Regarding (iii) no effective access to legal assistance**
  - (e) **That the Tajikistan government continues to implement in legislation as well as in practice recommendations 88.44 and 88.45 of the UPR cycle in 2011 to ensure the proper functioning of the judicial system.**

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<sup>1</sup> Basic Principles on the Role of Lawyers, adopted by the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

### 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 the International Covenant on Civil and Political Rights to which Tajikistan is a party.
6. In its task of promoting and ensuring the proper role of lawyers, the Tajikistan government 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 2011 the delegation of Tajikistan reported that the new Criminal Procedure was adopted in 2010 to bring it in line with international human rights standards, including the equality of arms. Also, several recommendations with respect to the proper functioning of the judicial system were supported by Tajikistan<sup>3</sup>, including recommendations 88.44<sup>4</sup> and 88.45<sup>5</sup>. According to Tajikistan, since 2007, the Government has “*implemented judicial and legal reforms to improve laws and procedures regulating the justice system, with the aim of further strengthening the judiciary and the status of judges*”<sup>6</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/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>3</sup> Report of the Working Group on the Universal Periodic Review Tajikistan, 12 December 2011, A/HRC/19/3, para. 88.

<sup>4</sup> Recommendation 88.44: “Undertake further and concerted efforts, including changes in legislation and administrative procedures, to strengthen the effectiveness and independence of the judiciary (Sweden)”, Report of the Working Group on the Universal Periodic Review Tajikistan, A/HRC/19/3.

<sup>5</sup> Recommendation 88.45: “Establish the necessary measures and legislation to reform the judicial system in conformity with international standards on justice, including a juvenile justice system, and, in particular, guarantee the tenure of judges and magistrates (Mexico)”, Report of the Working Group on the Universal Periodic Review Tajikistan, A/HRC/19/3.

<sup>6</sup> Report of the Working Group on the Universal Periodic Review Tajikistan, A/HRC/19/3, para. 19.

9. However, reports gathered by L4L and information that we received from lawyers in Tajikistan, demonstrate that Tajikistan does not always uphold the necessary guarantees for the proper functioning of the legal profession 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>7</sup>**

10. L4L has been informed that lawyers working on high profile cases in Tajikistan are regularly subjected to threats or physical attacks, intimidation and improper interference by public prosecutors or members of law enforcement agencies. Lawyers seem to be seen as an obstacle for the work those agencies are carrying out<sup>8</sup>. Lawyers are furthermore continuously identified with their clients or their clients' causes. This is demonstrated by the following cases:

Cases:

*In March 2014, lawyers Shukrat Qudratov and Iskhok Tabarov announced at a press conference that they had recently faced various threats and intimidation in connection with their representation of the former Minister of Industry, Zaid Saidov. The lawyers reported that the pressure on them had significantly increased in relation to a lawsuit they brought against the head of the State Finance Control and Anti-Corruption Agency.*

11. The cases of lawyers Shukrat Qudratov and Fakhriddin Zokirov show that lawyers are even subjected to criminal proceedings.

Cases:

*On January 13, 2015, a court of the Capital City of Dushanbe sentenced lawyer Shukrat Qudratov to nine years in a penal colony for bribery and fraud. Qudratov was arrested on 21 July 2014 and was held in pre-trial detention since.*

*The prosecution of Qudratov may be related to his legal assistance and defence of the former Minister Zaid Saidov, who was arrested in November 2013 after announcing the creation of a new opposition party in the run up to the December 2013 presidential elections. Qudratov is the second of Zaid Saidov's lawyers to be detained. In March 2014, Fakhriddin Zokirov, another lawyer defending Mr. Saidov, was arrested on forgery charges. He was released after eight months under the condition that he would no longer defend Saidov.<sup>9</sup>*

12. It was brought to L4L's attention that the prosecution plays a dominant role in criminal proceedings as a result of which lawyers are not in an equal position to represent their clients. One example is that lawyers only get limited access or no access at all to their clients' files. Statistics show that prosecutor's motions or requests, for example to hear

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<sup>7</sup> Basic Principles on the Role of Lawyers, principles 16, 17, 18, 19, 20, 21, 22.

<sup>8</sup> See also the report 'Independence of the Legal Profession in Central Asia', which states that: "The attitudes of judges and prosecutors towards lawyers who represent individuals suspected or accused of criminal offences are described by lawyers as aggressive and lacking respect". Report: Independence of the Legal Profession in Central Asia, International Commission of Jurists, ISBN 978-92-9037-184-6, page 75. Available on: <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2013/09/Independence-of-the-Legal-Profession-in-CA-Eng.pdf>

<sup>9</sup> <http://www.advocatenvooradvocaten.nl/10213/tajikistan-sentencing-of-lawyer-sukhrat-qudratov/>

witnesses, are almost always granted, while those from the defence are almost always rejected.<sup>10</sup>

13. Recommendations:

- (a) **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;**
- (b) **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;**
- (c) **to raise awareness of the Basic Principles among lawyers, judges and prosecutors, to ensure that its provisions are respected and taken into account before national courts and in pre-trial stages.**

(ii) **Concerns over independence of the professional association of lawyers**

14. Only since March 2015, there is a unified self-governing Bar Association representing all lawyers in the Tajikistan, which was established with the Law of the Republic of Tajikistan on Advocacy and the Bar. Before the adoption of this law, lawyers could practice their profession either as a member of a Collegium or as an independent lawyer-attorney on the basis of a license issued by the Ministry of Justice<sup>11</sup>.

15. According to Article 24 of the Basic Principles lawyers shall be entitled *'to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity'*. These associations of lawyers shall *'cooperate with Governments to ensure that everyone has effective and equal access to legal services and that lawyers are able, without improper interference, to counsel and assist their clients in accordance with the law and recognized professional standards and ethics'*.

16. During its 29<sup>th</sup> session (from 15 June – 3 July 2015) , the Human Rights Council adopted a resolution in which it recognized the *"importance of [bar associations] working in defence of the principle of the independence of [lawyers]"*.<sup>12</sup>

17. L4L welcomes the efforts of the Tajikistan government to conduct judicial reforms and to establish a national bar association, through the Law of the Republic of Tajikistan on Advocacy and the Bar. However, certain parts of this law are of concern to L4L for they could undermine the independence of the legal profession. <sup>13</sup>

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<sup>10</sup> See also: Report: Independence of the Legal Profession in Central Asia, International Commission of Jurists, ISBN 978-92-9037-184-6, page 75. Available on: <http://icj.wpenline.netdna-cdn.com/wp-content/uploads/2013/09/Independence-of-the-Legal-Profession-in-CA-Eng.pdf>

<sup>11</sup> See also the report 'Independence of the Legal Profession in Central Asia', which states that: "The law of Tajikistan provided for one form of lawyers' association—a Collegium of Lawyers. In 1998, the concept of a lawyer-attorney was introduced, being defined as a business person providing legal services on the basis of a license issued by the Ministry of Justice", *Ibid.* page 15

<sup>12</sup> 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>13</sup> In September 2013, the International Bar Association's Human Rights Institute raised similar concerns about the independence of the legal profession in connection to the 'Draft Law of the Republic of Tajikistan on Advocacy and the Bar'. It recommended the Tajikistan authorities to amend the Draft Law to ensure *"that the role of the Qualification Commission under the Draft Law be moved away from the auspices of the Ministry of Justice and vested in the new*

18.(1) The Law establishes a Qualification Commission under Tajikistan's Ministry of Justice, with the Chairman of the Qualification Commission being one of the Deputy Ministers of Justice<sup>14</sup>. This Commission has responsibility for conferring and withdrawing a lawyer's status. What the exact role of the Ministry in the Commission will be, is not laid down in the law. Lawyers' associations should have sufficient powers to be effective in protecting the independence of the profession. However, the prominent role of a member of the executive in the Qualification Commission could make the legal profession vulnerable to interference.

19. (2) The Qualification Commission is responsible for the new qualification process of lawyers. Furthermore, the Law requires that all persons wishing to practice as a lawyer in Tajikistan will be required to take a new exam (including the lawyers that are currently practising), with exemptions only for those with at least 15 years of professional experience as defence lawyers. L4L is concerned that lawyers currently working on controversial cases might be at risk of not having their lawyers' status reinstated due to executive interference.

Recommendation:

**(d) Amend the Law on Advocacy and the Bar as follows: 1) ensure the Qualification Commission is no longer placed under the Ministry of Justice, and 2) ensure that the new qualification exam is not retrospective, forcing all current practising lawyers to re-qualify**

20. No effective access to legal assistance

21. The above mentioned violations of the Basic Principles do not only undermine the proper functioning of the role of lawyers, but also every person's right to fair trial, of which the principles of equality of arms and effective access to legal assistance form an essential element.<sup>15</sup>

Recommendation:

**(e) That the Tajikistan government continues to implement in legislation as well as in practice recommendations 88.44 and 88.45 of the UPR cycle in 2011 to ensure the proper functioning of the judicial system.**

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*Union of Lawyers (the 'Union'), established by the Draft Law" and to "ensure that the new qualification exam is not retrospective, forcing all current and practising lawyers to re-qualify". However, the draft law was adopted in March 2015 without any amendments. See: 'IBAHRI Expert Opinion regarding the new Draft Law of the Republic of Tajikistan on Advocacy and the Bar', INTERNATIONAL BAR ASSOCIATION'S HUMAN RIGHTS INSTITUTE, September 2013, available on: [file:///C:/Users/Sophie/Downloads/Expert%20Opinion\\_Draft%20Law\\_ENG%20\(1\).pdf](file:///C:/Users/Sophie/Downloads/Expert%20Opinion_Draft%20Law_ENG%20(1).pdf)*

<sup>14</sup> Law on The Law of the Republic of Tajikistan on Advocacy and the Bar, Art 13

<sup>15</sup> Basic Principles on the Role of Lawyers, principles 1, 2, 7.