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Lovells**

**JOINT STAKEHOLDER SUBMISSION TO THE UN HUMAN RIGHTS COUNCIL, 44<sup>TH</sup> SESSION**

**UNIVERSAL PERIODIC REVIEW OF THE RUSSIAN FEDERATION**

Submitted by:

- (1) The International Bar Association's Human Rights Institute
- (2) Hogan Lovells International LLP

## 1. INTRODUCTION

- 1.1 This is a submission on the current state of human rights in the Russian Federation, focusing in particular on the treatment of Prisoners of War ("**POWs**"), including the use of torture and the failure to provide access to a fair trial; and on the independence and impartiality of the judiciary in the country, and the lack of fair trial guarantees in the prosecution of political dissidents and protestors. The submission is made jointly by the International Bar Association's Human Rights Institute (the "**IBAHRI**") and Hogan Lovells International LLP ("**Hogan Lovells**").
- 1.2 The International Bar Association ("**IBA**"), established in 1947, is the world's leading organisation of international legal practitioners, bar associations and law societies. The IBA influences the development of international law reform and shapes the future of the legal profession throughout the world. It has a membership of 80,000 individual lawyers and more than 190 Bar Associations and Law Societies, spanning all continents. The IBAHRI, an autonomous and financially independent entity, works with the global legal community to promote and protect human rights and the independence of the legal profession worldwide.
- 1.3 Hogan Lovells is an international law firm, with offices globally, including in the UK and US. Its lawyers contribute more than 150,000 hours each year to Pro Bono work, including conducting litigation, advising on human rights breaches and international humanitarian law, and undertaking research projects and writing reports in collaboration with partner institutions.

## 2. EXECUTIVE SUMMARY

- 2.1 This submission raises a number of significant concerns regarding Russia's obligations under international humanitarian law, and its progress towards implementing the recommendations of the previous cycle of the Universal Periodic Review ("**UPR**"). The submission focuses on two themes: (1) the treatment of POWs, including the use of torture, the administration of the death penalty, and the right to a fair trial, in the context of the conflict between Russia and Ukraine; and (2) the independence and impartiality of the judiciary, including the lack of fair trial guarantees in the prosecution of political dissidents and protestors.
- 2.2 A set of targeted recommendations is made at the end of each theme.

### **Theme 1: Treatment of POWs and Combatants**

## 3. NORMATIVE AND INSTITUTIONAL FRAMEWORK

- 3.1 The duty of a Member State to comply with all fundamental human rights is not excused by conflict, no matter how severe. The rights of combatants and non-combatants are equally important. The first part of this submission focusses on three issues: (1) the right to be free from torture, (2) the right to a fair trial, and (3) the use of the death penalty. These rights are interlinked.

### **TORTURE**

- 3.2 The right not to be subject to torture or degrading treatment is enshrined in the International Covenant of Civil and Political Rights ("**ICCPR**") (1966, Article 7); the Universal Declaration of Human Rights (1948, Article 5); the Declaration on the Protection of All Persons from Being Subjected To Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1975; and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 (the "**Convention against Torture**"). Russia ratified the Convention against Torture in 1987 but has not ratified the Optional Protocol which creates state-specific mechanisms for investigating and preventing torture in a Member State.

- 3.3 Article 2 of the Convention against Torture states that: (1) the duties of a State Party to prevent acts of torture extend to “any territory under its jurisdiction”; and (2) “No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.”<sup>1</sup>
- 3.4 Specific further protections for POWs are enshrined in the Geneva Convention Relative to the Treatment of Prisoners of War (1949) (the “**Third Geneva Convention**”). In particular, POWs must be treated humanely at all times, must not be subject to physical mutilation, and must be protected from violence and intimidation (Article 13).
- 3.5 In the third cycle of the UPR, Russia received 4 recommendations that it accede or consider acceding to the Optional Protocol to the Convention against Torture – from Liechtenstein (147.7); Denmark, Poland and Hungary (147.8); Senegal and Chile (147.9); and Portugal (147.10). Of these, it accepted only 147.9, which used the language of ‘considering’, while rejecting those which directly recommended ratification. It received further recommendations that it “ensure all investigations into cases of abductions, unlawful detentions, torture and other ill-treatment, as well as killings, are conducted thoroughly and effectively” (Austria, 147.110), and to “investigate allegations of torture and inhuman treatment in custody in a transparent manner and bring those responsible to justice” (Germany, 147.113), both of which it accepted.
- 3.6 In its response to the international recommendations on torture, Russia noted that: (1) its constitution decrees that no one shall be subjected to torture or violence; (2) the Russian criminal code provides that evidence obtained through torture shall be inadmissible; and (3) criminal liability shall be incurred for acts of coercion, including the use of violence, bullying, or torture. In 2016, Russia passed a law prescribing measures to monitor the use of “physical force, special devices and weapons” against convicts and detainees.

#### **THE RIGHT TO A FAIR TRIAL AND THE USE OF THE DEATH PENALTY**

- 3.7 The right to a fair trial is set out in the Universal Declaration of Human Rights (Articles 10 and 11) and the ICCPR (Articles 9 and 14). Pursuant to Article 14 of the ICCPR, a fair trial must, among other things: presume the defendant innocent until proven guilty, provide adequate time and facilities for the defendant to prepare their defence, and must not compel the defendant to testify against themselves.<sup>2</sup>
- 3.8 Specific protections for POWs are provided by the Third Geneva Convention (Articles 99 to 108), which restates the necessity of competent defence counsel, access to a competent interpreter, and of not exerting “any moral or physical coercion” to induce the defendant to admit guilt.
- 3.9 The use of the death penalty is considered by the Human Rights Council to be inconsistent with the right to life and the right to be free from inhumane or degrading treatment. Its use by member states is discouraged, and subject to strict controls against arbitrary use.<sup>3</sup> Member states are encouraged to ratify the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty (the “**Second Optional Protocol to the ICCPR**”), by which ratifying states agree to cease executions and to abolish the death penalty.
- 3.10 Russia has not ratified the Second Optional Protocol to the ICCPR, though the death penalty has been subject to a formal moratorium in Russia since 1996. Since that time, no formal death penalties have been sentenced by Russian courts.
- 3.11 Russia received recommendations regarding the death penalty during the Third Cycle of the UPR. 7 of these focussed on ratifying (Liechtenstein, Portugal, Togo, 147.11;)

<sup>1</sup> <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>

<sup>2</sup> <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

<sup>3</sup> See, for instance, General Comment 36 on Article 6 of the ICCPR:  
[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/GC/36&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/GC/36&Lang=en)

Namibia, 147.13; Rwanda, 147.14; and Costa Rica, 147.17) or considering the ratification of (147.12, Italy; 147.15, Uruguay, Romania; and 147.16, Benin) the Second Optional Protocol.

- 3.12 Of these, Russia accepted those which used the language of “considering”, and rejected those which directly recommended ratification. Russia also received a separate recommendation to abolish the death penalty (147.106, Honduras), which it rejected.

#### **GENERAL COMMENTS**

- 3.13 In line with the guidance for stakeholder submissions, this submission is concerned with Russia’s progress in acting towards recommendations it received at the third cycle of the UPR, and the recommendations this submission contains have been framed with the previous cycle in mind.
- 3.14 However, the third cycle of the UPR took place before the advent of Russia’s invasion of Ukraine. In a time of military conflict in which the number of people subject to detention and incarceration in Russia or by Russian soldiers will be far higher than at times of peace, Russia’s human rights obligations will be ever more consequential.
- 3.15 In particular, it is urgent and an essential element of international law that the rights of those civilians and soldiers in disputed territories are protected. In this submission, we focus particularly on human rights issues arising in the so-called “Donetsk People’s Republic” (the “**DPR**”). The DPR, formerly part of the sovereign territory of Ukraine, has been annexed by Russia as part of its invasion of Ukraine (commencing in 2014), and is now subject to Russian military control. Its independence and political status is contested.

#### **4. DEVELOPMENTS SINCE THE THIRD CYCLE OF THE UPR**

- 4.1 We have received first-hand evidence of violent and unlawful treatment of POWs by the Russian military, including the use of torture and inhumane treatment, the use of ‘show trials’ involving torture-tainted evidence, and the use of illegitimate death sentences. There is also evidence of extra-judicial killings. This evidence adds to the substantial body of evidence in the public domain of similar treatment.

#### **TORTURE**

- 4.2 Our reports demonstrate that combatants in the Ukrainian military captured by Russian or Russian-backed DPR forces are routinely subject to torture and inhumane treatment of concerning variety and cruelty. This includes:
- (a) beatings, stabbings, and mutilation by Russian and DPR soldiers;
  - (b) electrocutions, with improvised equipment, tasers, and cattle-prods;
  - (c) starvation, with prisoners at some sites being given only bread once per day for 5 weeks;
  - (d) holding prisoners in unsanitary conditions and failing to provide basic hygiene, including in some cases providing only yellow, worm-infested water as the sole source of water;
  - (e) refusing to give detainees proper medical care for their injuries;
  - (f) holding prisoners in overcrowded and unsuitable cells, with some cells not allowing prisoners to stand;
  - (g) sleep deprivation, enforced by Russian and DPR soldiers beating sleeping prisoners;
  - (h) forcing prisoners to stand or crawl in ‘stress positions’ for extended periods of time; and

- (i) other psychologically degrading treatment, including forcing prisoners to crawl and make 'train noises' each time they left their cells, enforced by beatings.
- 4.3 In contravention of Article 97 of the Third Geneva Convention, this treatment often takes place at 'black site' detention centres, rather than formal prisons, where guards are not subject to supervision. We have also received evidence that Russian and DPR guards deliberately remove patches signifying their rank and affiliation in order to prevent identification, though prisoners have since identified some of the perpetrators as Russian soldiers through identification sites such as the database maintained by the 'Centre for Research of Signs of Crimes against the National Security of Ukraine, Peace, Humanity, and the International Law'.<sup>4</sup>
- 4.4 Non-Ukrainian prisoners at 'black sites' are routinely coerced into recording videos for propaganda purposes, in which they are instructed to say that they are being treated well. Non-compliance with the script of such videos is enforced by beatings. The guards present at these recordings are armed, and may include guards specifically chosen because they have previously beaten or tortured the prisoner giving the interview. In some publicly available videos of these interviews, injuries sustained by the prisoners following their capture by Russian soldiers are visible.
- 4.5 Prisoners at detention centres are forced to sing the Russian national anthem, sometimes on repeat for long periods of time. Prisoners who make mistakes when singing, or who refuse to sing, are beaten.
- 4.6 In the case of one former prisoner, torture was used to coerce him into calling European politicians or civil servants, whose numbers were provided by Russian and DPR soldiers. The purpose of the calls was to encourage European politicians to arrange prisoner swaps for named prisoners.
- 4.7 This conduct adds to the substantial body of public evidence of torture. In an interview with the British Broadcasting Corporation on 2 February 2023, a Russian army officer described how the Russian army had tortured POWs.<sup>5</sup> Released POWs have described their experiences of torture while detained by the Russian military,<sup>6</sup> and a recent report by UN Human Rights Ukraine highlighted the torture of POWs on both sides.<sup>7</sup> Again, conflicts, including where multiple or all combatants are perpetrating human rights abuses, cannot excuse breaches of the Universal Declaration of Human Rights, ICCPR, or Third Geneva Convention.
- 4.8 We are concerned that Russia has allowed its war with Ukraine to enable a deeply troubling fall in human rights' standards. The use of torture and violence on POWs is widespread. Russian soldiers, alongside DPR soldiers, not only condone but actively perpetrate beatings, electrocutions, and many other forms of torture. That this conduct takes place at all is concerning; its use to coerce prisoners into giving interviews and video recordings which attempt to cover up the use of torture is particularly worrying.
- 4.9 Despite the recommendations made in the third cycle of the UPR, which Russia accepted, to investigate torture and inhumane treatment thoroughly and effectively (147.110, Austria), and to bring those responsible to justice (147.113, Germany), there is no evidence of Russia investigating the use of torture on POWs, nor of it bringing the soldiers responsible to justice. Although Russia agreed to recommendations that it consider ratifying the Optional Protocol to the Convention Against Torture, no apparent steps towards doing so have been made.

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<sup>4</sup> <https://myrotvorets.center/1588417-about-myrotvotrets-center/>

<sup>5</sup> <https://www.bbc.co.uk/news/world-europe-64470092>

<sup>6</sup> <https://www.cbsnews.com/news/ukraine-pow-russia-60-minutes-2023-03-05/>

<sup>7</sup> <https://ukraine.un.org/en/224744-un-human-rights-ukraine-released-reports-treatment-prisoners-war-and-overall-human-rights>

**THE RIGHT TO A FAIR TRIAL AND THE USE OF THE DEATH PENALTY**

- 4.10 Since the third cycle of the UPR, Russia has not ratified the Second Optional Protocol to the ICCPR, nor has it taken any steps in furtherance of doing so.
- 4.11 The moratorium on the use of the death penalty remains in place in Russia. The DPR also sustained a moratorium on the death penalty until July 2022, when it was lifted. The DPR reported at that time that the death penalty would be used from 2025 in deterrence of the most serious crimes.<sup>8</sup> On 7 June 2022, however, while the moratorium was still in place, a “court” claiming the jurisdiction of the DPR (a jurisdiction which is not internationally recognised as legitimate) sentenced Aiden Aslin, Shaun Pinner (both British nationals), and Brahim Saadouné, a Moroccan national, all soldiers in the Ukrainian army, to death for allegedly ‘being mercenaries’ and committing ‘terrorist acts’.<sup>9 10</sup>
- 4.12 Despite the severity of their sentence, none of these three men received a fair trial.
- 4.13 Proceedings were conducted in Russian, and the men were encouraged to sign documents in Russian that they did not understand. Though a translator was provided, their translation was not complete or accurate, according to prisoners fluent in Russian who attended the trial.
- 4.14 Though defence lawyers were provided, the men were not given time to discuss the case or instruct their lawyers during their trial, and the lawyers provided to them did not give evidence of their qualifications. The defence lawyers actively instructed the men to plead guilty, otherwise they would not be able to be exchanged in a prisoner swap, and because ‘everybody knew’ or they had ‘already shown’ that they were guilty. In one instance, the provided defence lawyer attempted to extort payment from the prisoner’s family in exchange for an appeal for his sentence.
- 4.15 The men were not permitted to ask questions or exhibit evidence at the trial. The trial itself was also very short, against the guidance of the OHCHR that expedited trials may not comply with article 6 of the ICCPR.<sup>11</sup>
- 4.16 Finally, the trial took place after all of the men involved had been detained and tortured for a period of several weeks. The use of torture to coerce prisoners into accepting charges or admitting guilt, whether overtly or not, cannot lead to fair trials or fair sentences.
- 4.17 Since that trial, a court claiming the jurisdiction of the DPR has reportedly tried five further men for similar crimes.<sup>12</sup> Though the outcome of that trial is unclear, we remain concerned that all purported trials conducted in the DPR are at serious risk of unfairness, do not comply with the mandatory standards of international humanitarian law, and are intended to pass sentences for political purposes.
- 4.18 Alongside the death sentences passed by courts claiming the jurisdiction of the DPR, there is widespread evidence of Russian and DPR soldiers committing extrajudicial killings.
- 4.19 In a report of November 2022, the OHCHR released a statement that there was evidence civilians and combatants had been summarily executed by both Russian and Ukrainian forces.<sup>13</sup> Videos of Russian soldiers executing prisoners of war and civilians have been

<sup>8</sup> <https://www.reuters.com/world/europe/russia-backed-separatists-start-using-death-penalty-2025-criminal-code-2022-07-01/>

<sup>9</sup> <https://www.theguardian.com/world/2022/jun/09/britons-sentenced-to-death-russian-occupied-ukraine-aiden-aslin-shaun-pinner>.

<sup>10</sup> After the sentences for Mr Aslin, Mr Pinner and Mr Saadouné were announced, the European Court of Human Rights granted interim measures, stating that Russia must (1) ensure that the death penalty was not carried out; (2) ensure appropriate conditions of their detention; and (3) provide them with any necessary medical assistance and medication.

The measures were granted on 16 June 2022 for Mr Saadouné, and on 30 June 2022 for Mr Aslin and Mr Pinner.

<sup>11</sup> <https://europeanconservative.com/articles/news/dpr-leader-says-british-fighters-sentenced-to-death-will-not-receive-pardons/>

<sup>12</sup> <https://tass.com/politics/1493847>

<sup>13</sup> <https://www.ohchr.org/en/press-briefing-notes/2022/11/ukraine-russia-prisoners-war>

widely circulated online,<sup>14</sup> and we have received testimony that such videos were shown to prisoners.

- 4.20 Other non-Ukrainian nationals have been held in similar circumstances to the three men set out above, some from aid-worker or NGO backgrounds, and also accused of mercenary activity. These include John Harding, Dylan Healey, and Andrew Hill (all British nationals). Paul Urey, a British national working in Ukraine as an aid worker, was captured in the DPR in July 2022 and died while in detention.<sup>15</sup> Evidence provided by a released POW who had been held in a nearby cell reports that Mr Urey's death followed repeated beatings and a failure by the Russian military to provide adequate medical care for his injuries.
- 4.21 As an overarching point, the jurisdiction of the DPR is not internationally recognised. The DPR is not recognised as a sovereign state, and its constitution and criminal code cannot be used to legitimate death sentences and killings which, on any view, have not been effected in compliance with the ICCPR, Universal Declaration of Human Rights and Third Geneva Convention.<sup>16</sup> That is truer still of extra-judicial killings which do not claim even illegitimate justification. Such killings are carried out without the required legal process (or any legal process at all), without charging, and for offences which do not properly attract the death penalty.
- 4.22 As in the case of the torture of POWs, these are gross breaches of human rights which are not only condoned but directly perpetrated by members of the Russian military, including officers, some of whom have been personally identified by former POWs. The accountability for these actions, and the duty to uphold human rights in areas controlled by the Russian military in general, falls squarely on Russia.

## 5. **RECOMMENDATIONS**

- 5.1 Considering Russia's obligations under international humanitarian law, and given the evidence of serious breaches of human rights being perpetrated against POWs, we make the following recommendations to Russia:
- (a) Ratify the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty.
  - (b) Ratify the Optional Protocol to the Convention against Torture.
  - (c) Investigate all reports of torture and mistreatment of prisoners by Russian and DPR soldiers, and take appropriate disciplinary and legal action against soldiers responsible.
  - (d) Uphold the moratorium on the death penalty in all areas under the military control of Russia.
  - (e) Confirm that there was no lawful basis for the death sentences given to any individuals purportedly sentenced by courts under the claimed jurisdiction of the DPR, including Aiden Aslin, Shaun Pinner, and Brahim Saadoune.

## **THEME 2: THE INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY**

### 6. **NORMATIVE AND INSTITUTIONAL FRAMEWORK**

- 6.1 The second part of this submission focusses on the issue of the independence and impartiality of the judiciary.

<sup>14</sup> See, for instance: <https://www.youtube.com/watch?v=1GUrNPPTSWM> (BBC News) and <https://www.nytimes.com/2022/12/22/video/russia-ukraine-bucha-massacre-takeaways.html> (New York Times).

<sup>15</sup> <https://www.theguardian.com/world/2022/oct/02/body-of-aid-volunteer-paul-urey-returned-from-ukraine-to-uk>

<sup>16</sup> <https://www.ibanet.org/IBA-and-IBAHRI-strongly-condemn-the-illegal-trial-and-sentencing-to-death-of-Aiden-Aslin-Shaun-Pinner-and-Brahim-Saadoun>



- 6.2 The rule of law forms the bedrock of the legal protection of all human rights and the independence of the judiciary is one of its key components. The United Nations General Assembly has repeatedly affirmed that ‘the rule of law and proper administration of justice [...] play a central role in the promotion and protection of human rights’, and that ‘an independent judiciary and legal profession in full conformity with applicable standards contained in international human rights instruments [...] are essential to the full and non-discriminatory realization of human rights’.<sup>17</sup>
- 6.3 The right to be tried by a fair and public hearing by an independent and impartial tribunal established by law is set out in the ICCPR (Article 14(1)); the UDHR (Article 10); the Basic Principles on the Independence of the Judiciary 1985;<sup>18</sup> the IBA Minimum Standards of Judicial Independence,<sup>19</sup> and the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms 1999.<sup>20</sup> Pursuant to Article 14(1) of the ICCPR, ‘all persons shall be equal before the courts and tribunals’ and that ‘in the determination of any criminal charge against him, or of his rights and obligations in a suit of law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law’.<sup>21</sup>
- 6.4 The Human Rights Committee has repeatedly stated that the right to an independent and impartial tribunal is ‘an absolute right that may suffer no exception’.<sup>22</sup> Additionally, the Human Rights Committee has taken the view that the rule of law and the principle of legality are intrinsic to the ICCPR.<sup>23</sup>
- 6.5 The first Principle of the Basic Principles on the Independence of the Judiciary stipulates that ‘the independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary’. Similarly, Article 2 of the IBA Minimum Standards of Judicial Independence states that ‘the Judiciary as a whole should enjoy autonomy and collective independence vis-à-vis the Executive’.
- 6.6 In the third cycle of the UPR, Russia received and accepted six recommendations regarding the right to a fair and public trial (Austria 147.140; France, 147.141) and the independence and impartiality of its judicial system (Sudan, 147.137; Angola, 147.138; Armenia, 147.139; Syria, 147.142).<sup>24</sup> Russia received and accepted an additional two recommendations concerning the effective protection of lawyers (Norway, 147.127; Botswana, 147.163).<sup>25</sup>

## 7. DEVELOPMENTS SINCE THE THIRD CYCLE OF THE UPR

- 7.1 While the Constitution of Russia provides for an independent judiciary<sup>26</sup> and the right to a fair and public trial,<sup>27</sup> the lack of safeguards to effectively guarantee such independence, coupled with the government’s disregard for human rights violations, translates into an arbitrary application of the law with perpetrators often enjoying impunity.<sup>28</sup>

<sup>17</sup> Resolutions 50/181 of 22 December 1995 and 48/137 of 20 December 1993, titled ‘Human rights in the administration of justice’

<sup>18</sup> United Nations Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

<sup>19</sup> <https://www.ibanet.org/MediaHandler?id=bb019013-52b1-427c-ad25-a6409b49fe29#:~:text=39%20A%20judge%20should%20refrain,and%20independence%20of%20the%20Judiciary>  
<sup>20</sup> <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-right-and-responsibility-individuals-groups-and>,

Article 9.

<sup>21</sup> <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

<sup>22</sup> Communication No. 263/1987, *M. Gonzalez del Rio v. Peru* (Views adopted on 28 October 1992), UN document CCPR/C/46/d/263/1987 (Jurisprudence), para. 5.2.

<sup>23</sup> Human Rights Committee, General Comment No. 29 – States of Emergency (article 4), para 16.

<sup>24</sup> [https://www.upr-info.org/sites/default/files/documents/2019-05/russian\\_federation\\_2rp.pdf](https://www.upr-info.org/sites/default/files/documents/2019-05/russian_federation_2rp.pdf).

<sup>25</sup> *Ibid.*

<sup>26</sup> The Constitution of the Russian Federation, 25 December 1993, Article 10.

<sup>27</sup> Articles 19, 46, 47, 49 and 123.

<sup>28</sup> <https://www.ecoi.net/en/document/2071123.html>.



- 7.2 The first symptom of a lack of judicial independence stems from the judicial appointment procedure. The way it is configured entails that the advancement of a judge's career is effectively tied to appeasing the Kremlin. Judges of the Constitutional and Supreme Courts are appointed by a Federation Council - i.e. the upper chamber of the Federal Assembly, the Russian parliament - upon nomination by the President of the Russian Federation.<sup>29</sup> Similarly, the appointment of judges to courts of general jurisdiction and commercial courts is controlled by the President, on the recommendation of the chairman of the Supreme Court.<sup>30</sup> Following constitutional amendments made in 2020, the President is also empowered to remove judges of the Constitutional and Supreme Courts with the support of the Federation Council.<sup>31</sup>
- 7.3 The above is in clear breach of the Basic Principles on the Independence of the Judiciary and the IBA Minimum Standards of Judicial Independence, which prescribe proper appointment and promotion procedures 'vested in a judicial body in which members of judiciary and the legal profession form a majority' or by a non-judicial body but only when 'by long historic and democratic tradition, judicial appointments and promotion operate satisfactorily'. There should be no influence of the executive over judicial functions; promotion should be based on objective factors; and there should be security of tenure.
- 7.4 Against this backdrop, safeguards protecting the right to due process and against arbitrary arrest are often ignored, particularly when prosecuting political dissidents and protestors who are perceived as a threat to the regime.<sup>32</sup> When representing clients prosecuted for political reasons, defence lawyers face a number of additional challenges, including pressure and removal from Court, electronic monitoring of their conversations with clients in detention, and denial of access to their clients in detention.<sup>33</sup> It is reported that trials often appear to be predetermined, with a remarkably low acquittal rate.<sup>34</sup> In 2020, 0.43 percent of defendants were acquitted in court.<sup>35</sup>
- 7.5 The failures of the Russian judicial system therefore have particularly strong repercussions on political dissidents and protestors who are typically prosecuted on trumped-up charges of 'extremism', 'terrorism', 'separatism' and 'espionage'.<sup>36</sup> Political pressure from the executive on the judiciary often leads to a violation of political dissidents and protestors' right to a fair and public trial.<sup>37</sup> Political prisoners tend to be subject to harder detention conditions and subject to punitive measures, including ill-treatment, solitary confinement, torture and psychological abuse, with the average period of imprisonment for a political prisoner being 5.3 years.<sup>38</sup>
- 7.6 As of 7 December 2021, the well-known Russian human rights organisation Memorial compiled a list of 426 names, including 343 individuals, who have been wrongfully imprisoned for exercising their right to freedom of religion or belief.<sup>39</sup> The actual number of wrongfully imprisoned political prisoners in Russia is estimated to be three to four times higher than that listed by Memorial.<sup>40</sup> Those included on Memorial's list of political prisoners include the opposition leader, lawyer, and anti-corruption activist Aleksey Navalny and those affiliated with him; journalists including those working for the student publication *DOXA* and Abdulmumin Gadzhiev, the editor of *Chernovik*, an independent newspaper that regularly publishes on Russia's misuse of terrorism charges against

<sup>29</sup> The Constitution of the Russian Federation, Articles 128(1), 83(f) and 102(g).

<sup>30</sup> For further discussion, see

[https://uk.practicallaw.thomsonreuters.com/w-010-2803?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/w-010-2803?transitionType=Default&contextData=(sc.Default)&firstPage=true).

<sup>31</sup> *Ibid.*, articles 83(f3) and 102(k).

<sup>32</sup> Oral evidence from a Russian lawyer received by the IBAHRI. See also: <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/russia/>.

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*

<sup>37</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1097986/RUS\\_CPIN\\_Critics\\_and\\_opponents\\_of\\_the\\_government.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1097986/RUS_CPIN_Critics_and_opponents_of_the_government.pdf)

<sup>38</sup> *Ibid.*

<sup>39</sup> See, e.g.,

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1097986/RUS\\_CPIN\\_Critics\\_and\\_opponents\\_of\\_the\\_government.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1097986/RUS_CPIN_Critics_and_opponents_of_the_government.pdf) and <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/russia/>

<sup>40</sup> <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/russia/>

Salafis; human rights defenders, including historian and activist Yuriy Dmitriyev; members of religious groups, including Jehovah's Witnesses and Muslim groups; and those who have expressed vocal opposition to Russia's occupation of Crimea, including Crimean Tatars.<sup>41</sup>

7.7 In the wake of Russia's full-scale invasion of Ukraine, Russian authorities have applied unprecedented pressure on political dissent with reports of mass detention and criminal prosecution of anti-war protestors.<sup>42</sup> OVD-Info, the Russian human rights watchdog monitoring freedom of assembly, reports that 'authorities are using the war as an excuse to crush dissent and totally cleanse civil society'.<sup>43</sup>

## 8. RECOMMENDATIONS

8.1 Considering Russia's obligations under international law to afford individuals the right to be tried by a fair and public hearing by an independent and impartial tribunal established by law, we make the following recommendations to Russia:

- (a) Strengthen the independence of the judiciary and end any form of political subordination of judicial actors, including by reforming the procedure for the appointment and promotion of judges to ensure it is vested in a judicial body.
- (b) Safeguard the right to a fair trial and access to justice, stop the practice of arbitrary detentions and ensure that effective remedies are available for alleged violations of these rights. Ensure that defence lawyers are granted the time, facilities, and resources to prepare a defence before an impartial tribunal and that, during the trial, equality of arms is guaranteed.

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<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

<sup>43</sup> [https://www.ecoi.net/en/file/local/2073690/ACCORD-2022-05-Russian\\_Federation\\_Protesters\\_and\\_Dissidents.pdf](https://www.ecoi.net/en/file/local/2073690/ACCORD-2022-05-Russian_Federation_Protesters_and_Dissidents.pdf).