

# Lawyers' Rights Watch Canada

*NGO in Special Consultative Status with the Economic and Social Council of the United Nations*

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Monday, December 13, 2010

The Honourable Hillary Clinton  
Secretary of State  
U.S. Department of State  
2201 C Street NW  
Washington, DC 20520

The Honourable Eric Holder  
Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Dear Secretary of State Clinton and Attorney General Holder;

**Re: Statement linking lawyer Jennifer Robinson with her client Julian Assange violates advocacy rights.<sup>1</sup>**

Lawyers Rights Watch Canada (LRWC) is a committee of lawyers who promote human rights and the rule of law internationally by protecting advocacy rights. LRWC campaigns for advocates in danger because of their human rights advocacy, engages in research and education and works in cooperation with other human rights organizations. LRWC has Special Consultative status with the Economic and Social Council of the United Nations.

LRWC is alarmed by actions of US State Department Legal Advisor Harold Hongju Koh that put British barrister Jennifer Robinson in jeopardy and interfere with the right of her client Julian Assange, to be represented.

LRWC calls on the US State Department and the Attorney General's office to remedy the harm caused by immediately publishing—as widely as was Mr. Koh's letter—a statement clarifying that:

a/ Ms Robinson is a lawyer, whose professional duty is to represent her client to the fullest extent allowed by law; and,

b/ the US is by law, mandated to protect and prohibited from interfering with, Ms Robinson's representation of her client and her client's right to be represented; and,

c/ Mr. Koh violated US and international standards when he wrongly identified Ms Robinson's with the allegations of criminal wrongdoing made by the US against her client; and,

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<sup>1</sup> *Basic Principles on the Role of Lawyers*, the *International Covenant on Civil and Political Rights*, Article 14; the *Declaration on Human Rights Defenders*.

LRWC calls on US Attorney General and State Department to remedy harm caused by Legal Advisor Koh.

d/ Mr. Koh has demonstrated professional irresponsibility by publishing exaggerated and unsubstantiated allegations of serious criminal acts against Ms Robinson and her client.

## **Background**

Mr. Koh, in his capacity as US State Department Legal Advisor, wrote a letter dated November 27, 2010 conflating British barrister Jennifer Robinson with her client, Wikileaks founder Julian Assange and on November 28, 2010 the State Department released the letter to the media and it was published online.<sup>2</sup> Mr. Koh's letter is addressed to, "Dear Ms. Robinson and Mr. Assange" and then goes on to use the pronoun "you" indicating that the impugned document release by Wikileaks is a joint enterprise of Ms Robinson and her client. Among the unsubstantiated, exaggerated and inflammatory accusations made against Robinson and her client is that they, "...endangered the lives of countless individuals..." by releasing documents.

The US State Department made Mr. Koh's letter public at a time when like accusations against Mr. Assange had provoked some Americans to call for Assange—as the person identified as responsible for the leaks—to be assassinated or executed. By wrongly identifying Ms Robinson as a person jointly engaged in the Wikileaks release of documents and by not specifically rejecting calls for Assange's execution as crimes themselves, Mr. Koh has invited upon Ms Robinson the denunciation and possible violence already directed at her client.

The intention to put Ms Robinson's personal and professional safety at risk and to interfere with Mr. Assange's right to be legally represented is inescapable.

Mr. Koh's position as the top legal advisor to the Secretary of State and to the President is one of the factors that heightens the potential harm caused by his letter and necessitates immediate remedial action. LRWC notes that Mr. Koh describes his current role as "counselor, conscience, defender of U.S. interests, and spokesperson for international law" and his office as "the greatest international law firm in the world."<sup>3</sup>

## **Law protecting advocacy rights**

Mr. Koh's letter and the State Department's action in widely publishing the letter violate advocacy rights recognized by US and international law as essential, namely;

1. the right of persons deprived of their liberty or accused of crimes to be represented by a lawyer empowered to effectively protect rights and achieve justice<sup>4</sup>; and,
2. the right of lawyers to perform their professional functions without intimidation, harassment or improper interference<sup>5</sup>; and,

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<sup>2</sup> <http://www.reuters.com/article/idUSTRE6AR1E420101128>

<sup>3</sup> "Legal Adviser Koh's Speech on the Obama Administration and International Law", March 25, 2010. [http://www.cfr.org/publication/22300/legal\\_adviser\\_kohs\\_speech\\_on\\_the\\_obama\\_administration\\_and\\_international\\_law\\_march\\_2010.html](http://www.cfr.org/publication/22300/legal_adviser_kohs_speech_on_the_obama_administration_and_international_law_march_2010.html)

<sup>4</sup> *The Basic Principles on the Role of Lawyers* U.N. Doc. A/CONF.144/28/Rev.1 at 118 (1990); Article 5, 6, 7, 8. *The International Covenant on Civil and Political Rights*, Article 14; *the Declaration of Human Rights Defenders*, Article 9.

3. the prohibition against identifying lawyers with their clients causes.<sup>6</sup>

Identifying lawyers with their client's causes or actions is absolutely prohibited by Article 18 of the *Basic Principles on the Role of Lawyers*,

"Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions."

The Model Rules of Professional Conduct of the American Bar Association, Rule 1.2 (b) states:

"A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities."

The *Basic Principles on the Role of Lawyers* provides specific substance to the due process guarantees recognized in the *Universal Declaration of Human Rights* and treaties such as the *International Covenant on Civil and Political Rights*.

The 1999 Declaration on Human Rights Defenders also imposes a duty on the US and other states to protect the right and duty of lawyers, "[t]o offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms."<sup>7</sup>

As a member of the bar (New York, District of Columbia and Connecticut), Mr. Koh is bound to obey and uphold the law including laws protecting advocacy rights and the due process rights of people with whom Mr. Koh and/or the US administration disagree.

The right of lawyers to fully and vigorously represent clients free from fear of adverse consequences is essential to the administration of justice. Mr. Koh has interfered with that right by falsely accusing Ms Robinson and exposing her to possible harm. LRWC calls on your office to demonstrate respect for the body of international and domestic law that protects the independence of lawyers and their right not to be intimidated and placed in jeopardy for discharging their professional duties by taking effective remedial action immediately.

Respectfully submitted,

Gail Davidson, Executive Director, LRWC

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<sup>5</sup> *The Basic Principles on the Role of Lawyers*, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, U.N. Doc. A/CONF. 144/28/Rev. 1 at 188. (1990), Article 16.

<sup>6</sup> *The Basic Principles on the Role of Lawyers*, Article 18.

<sup>7</sup> *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, adopted by the United Nations General Assembly 8 March 1999, A/RES/53/144, Article 9, section 3(c).

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