

## LRWC NEWSLETTER

June-July 2018 Edition

### LRWC SUCCESSES

#### LRWC MAKING A DIFFERENCE

While it is usually not possible to determine whether or to what extent LRWC's own and joint work contributed to a particular 'success', victims continue to report that LRWC work is vitally important to achieving justice, providing hope, and improving enforcement of internationally protected rights.

Successful developments for lawyers and other human rights defenders (HRDs) after LRWC *pro bono* advocacy and research during June and July include:

- **Canada:** Supreme Court of Canada rules in favour of equality and non-discrimination
- **Myanmar:** LRWC oral statement presented to UN Human Rights Council
- **Thailand:** 14 migrant workers and one journalist acquitted
- **Turkey:** Mustafa Aydın released
- **United Kingdom:** The fight for accountability for the murder of Patrick Finucane continues
- **Viet Nam:** Nguyễn Văn Đài and Lê Thu Hà released
- **See more about these successes below**

Visit our new successes webpage [here](#) and on [LRWC Instagram](#) (@lawyersrightswatchcanada).

### LRWC ACTION NEWS AND UPDATES

#### ARGENTINA

##### Delegation visits Milagro Sala and calls for her release

From 7-14 June 2018, a delegation, endorsed by LRWC, of lawyers and HRDs from Canada, Colombia and the United States visited Argentina to investigate the arbitrary detention of Milagro Amalia Ángela Sala and other HRDs. Members of the delegation visited Ms. Sala and other HRDs in prison and met with government officials and human rights organizations, with efforts concentrated on reviewing the legal situation of Ms. Sala and other detainees and securing their release. Meetings occurred with members of Argentine Congress, the Ambassador of Canada and the Deputy Chief of Mission for the US Embassy.



Photo of Milagro Sala taken during the delegation's visit

Ms. Sala is the indigenous leader of the Organización Barrial Túpac Amaru, a community organization delivering public services and protesting undemocratic governance and economy in Jujuy province. Her detention since 16 January 2016 and prosecution are regarded as means for the provincial government to continue to criminalize protests. The UN Working Group on Arbitrary Detention (WGAD) ruled in an Opinion released 2 November 2016 (A/HRC/WGAD/2016/31) that her detention was arbitrary and recommended immediate release and compensation. Ms. Sala and the other detainees appreciated the delegation's visits and efforts to secure their release.

## CAMEROON

### Journalist sentenced to 15 years for supporting Anglophone rights

On 12 July 2018, LRWC (Robert Lapper) sent [a letter](#) to authorities in Cameroon calling for the immediate and unconditional release of Mr. Mancho Bibixy, whose arrest, prosecution and sentencing are seen as based solely on his legitimate work as a journalist and his activism for Anglophone rights in Cameroon. Mr. Bibixy was arrested 9 January 2017 and arbitrarily detained for 18 months before being sentenced by a military court to 15 years in prison and a fine of 268 million CFA francs. Charges included “acts of terrorism,” “revolution,” and “hostility against the homeland.” The charges contravene international criminal law requirements of certainty, foreknowledge and notice, and the determination of the charges by a military court contravenes fair trial rights.



Mancho Bibixy Tse  
(Photo: International Federation for Human Rights)

### Activists held without charge

15 individuals have been arbitrarily arrested and detained as part of the recent crackdown by the Government of Cameroon in Anglophone regions. The 15 individuals are being held without charge, and have reportedly been subjected to torture and ill-treatment in detention. LRWC is also concerned with the

treatment in prison of Ordema Francis, Agbor Taku Joseph, and Kum Nestor, who are facing new allegations in connection with the protests. On 10 July 2018, LRWC (Gail Davidson) wrote [a letter](#) urging the Government of Cameroon to immediately and unconditionally release the 15 detained individuals, and ensure the rights of Ordema Francis, Agbor Taku Joseph, and Kum Nestor while they remain in jail.



Cameroon protest for Anglophone rights

## CANADA

### A big win for equality and non-discrimination (and LRWC) at the Supreme Court of Canada



The Supreme Court of Canada dismissed the appeal in [\*Trinity Western University v Law Society of Upper Canada\*](#) and allowed the appeal in [\*Law Society of BC v Trinity Western University\*](#). On 15 June 2018, the Supreme Court of Canada ruled that the Law Societies of Upper Canada and British Columbia have a statutory duty to protect the public interest in promoting equal access to the legal profession, supporting diversity, and preventing harm to members of the LGBTQ community. The decisions to refuse accreditation of the proposed TWU law school on the basis of the discriminatory Community Covenant represented proportionate balancing (Brown and Cote dissenting). LRWC, intervening in support of the law societies, filed a factum on international human rights law protections for equality, non-discrimination, privacy and family life, freedom of belief and freedom from coercion to adopt a belief other than by choice. Opinions about the extent to which the refusal to accredit the proposed law school restricts freedom of religion ranged from Rowe ruling that freedom of religion was not engaged or impacted to Brown and Cote ruling that the impact was profound.

### Revoke the Canada-US “Safe Third Country” agreement to allow asylum seekers



LRWC is calling on the Government of Canada to revoke the “Safe Third Country” agreement with the United States, which allows Canada to reject asylum seekers entering from the United States on the grounds that they should have applied for asylum in the US. This allows Canada to return refugees to the US, even when US authorities will then return them to the dangers of the countries they left. Given existing US policies and practices of prosecution and detention of

migrants and refugees, Canada’s continued application of the agreement puts Canada at risk of supporting grave violations of international human rights law against migrant and refugee children and their families. The treatment of migrants and refugees by American immigration officials has been a concern of human rights groups for years, but the situation has been exacerbated by the policies and practices of the current US administration. LRWC has sent [a letter](#) (26 June 2018) to the Canadian Government urging the end of the “Safe Third Country” agreement immediately.

## SAUDI ARABIA

### LRWC and others call for the immediate released of detained women’s rights activists

On 7 June 2018, LRWC (Maya Duvage & Gail Davidson) sent [a letter](#) calling on Canada to intervene on behalf of arbitrarily detained women’s rights activist Loujain Al-Hathloul and other women’s rights activists in Saudi Arabia. The [European Parliament](#) and a group of [United Nations \(UN\) Special Rapporteurs](#) have made calls for their immediate release.

In mid-May 2018, ten women's rights advocates, including former University of British Columbia student Loujain Al-Hathloul, were arrested for peaceful protests advocating for women's rights. Ms. Al-Hathloul and some of the other detainees have been prominent activists in relation to the ban on women driving and the male-guardianship laws in Saudi Arabia. After the driving ban was lifted 24 June 2018, Hatoon Al Fassi, an associate professor of women's history at King Saud University in Riyadh and the first woman to drive following the lift of the ban, was arrested ahead of an interview scheduled with French media *France 2* to talk about the lift of the driving ban. Lawyer Dr. Ibrahim al-Mudimigh, who was counsel for Ms. Al-Hathloul, has also been detained. The individuals have been accused of illegitimately broad and vague offences such as "organizing action that encroaches on religious and national principles," "suspicious communication with foreign entities," "recruiting people working in government positions" and "funding hostile groups abroad to undermine Saudi national security, stability, social peace and to destroy the social cohesion."



## THAILAND

### Migrant workers acquitted of criminal defamation charges



14 former migrant workers at a Thai chicken farm, owned by Thammakaset Co. Ltd., were acquitted by Don Muang Court in Bangkok, Thailand. The company had charged the workers with criminal defamation, after the workers had alleged that the company violated their human and labour rights. In dismissing the criminal defamation and other charges against the workers, the Court ruled that it was confident the workers' allegations of human and labour rights abuses were true. LRWC submitted [a joint open letter](#) to Thai authorities regarding this on 19 September 2017.

## TURKEY

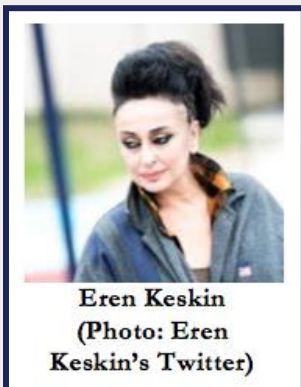
### Lawyer Mustafa Aydin released

Lawyer Mustafa Aydin, detained since 16 August 2016, was released on 27 June 2018. Mr. Aydin requires medical treatment for prostate cancer and a hernia. LRWC (Brian M. Samuels) called for his immediate release on [17 April 2018](#) and [26 June 2018](#), and signed a [joint letter](#) on 26 June 2018.





## Prominent human rights lawyer sentenced to 7.5 years in prison for her advocacy



Eren Keskin, co-president of the Human Rights Association, has been advocating for human rights in Turkey for almost thirty years. On 30 March 2018, Istanbul's 2nd Criminal Court of First Instance sentenced her to seven and a half years imprisonment for articles published during her time as co-editor-in-chief of *Özgür Gündem* on the basis that the articles in the publication 'degraded' the Turkish nation and 'insulted' the Turkish president. Over 120 cases have been lodged against Ms. Keskin in reprisal for her work as a lawyer and an editor and as of June 2018, 47 cases are still pending. Six cases resulted in convictions for illegitimate offences such as 'insulting the President' and 'failure to publish article corrections in the newspaper.' All appeal options have been exhausted. She has been found guilty in a further 69

cases for 'spreading propaganda for an armed terrorist organization,' 'insult' and 'revealing the identity of the accused,' among other similarly overly broad offences. Appeal processes against these convictions are still ongoing. Ms. Keskin is also one of nine defendants in an ongoing prosecution that includes terrorism-related offences, and the trial has been postponed until October 2018. On 8 May 2018, LRWC sent a [letter](#) (Brian M. Samuels & Gail Davidson) calling for Ms. Keskin's release, the withdrawal of charges, a stay of prosecution, and that all convictions and sentences are vacated.

## UNITED KINGDOM

### The UK Supreme Court hears application to quash the decision to not hold a public inquiry

The Supreme Court of the UK is hearing an application to quash the decision regarding the lack of a public inquiry into the assassination of Patrick Finucane. On 12 February 1989, Mr. Finucane was assassinated in front of his wife and children by two masked gunmen. Mr. Finucane was a lawyer in Northern Ireland who had acted as defense counsel on many politically sensitive cases, and many believe he was assassinated due to this work. In 2011, the former Prime Minister David Cameron decided to not hold a public inquiry into Mr. Finucane's assassination. Instead, Cameron ordered a review of the case by a senior lawyer, Sir Desmond de Silva QC, who reported that "the state had facilitated the killing and made relentless efforts to stop the killers being caught." LRWC work in this area includes [an open letter](#) (Hugh Gwillim) sent on 23 February 2005 calling for an immediate inquiry, and the 22 March 2005 [joint statement](#) titled "UK: The Inquiries Bill – the Wrong Answer" endorsed alongside Amnesty International, British Irish Rights Watch, the Committee on the Administration of Justice, Human Rights First, the Human Rights Institute of the International Bar Association, Inquest, Justice, the Law Society of England and Wales, Pat Finucane Centre, and Scottish Human Rights Centre. More history about the call for an inquiry can be found [here](#).



## UNITED STATES

### The US withdraws from the United Nations Human Rights Council

On 19 June 2018, the United States announced it was leaving the UN Human Rights Council (UNHRC). This withdrawal from the UNHRC follows the Trump administration's pattern of abandoning international obligations, which has included announcements to withdraw from the Paris Climate Accord, UNESCO, and the Iran nuclear deal. No country has ever left the UNHRC voluntarily. This announcement to leave the UNHRC came one day after the UN high commissioner for human rights Zeid Ra'ad al-Hussein [denounced](#) the US separation of migrant children from their parents in his opening statement at the 38<sup>th</sup> session of the UNHRC.



## VIET NAM

### Nguyễn Văn Đài and Lê Thu Hà released and exiled to Germany

On 7 June 2018, HRDs Nguyễn Văn Đài and Lê Thu Hà were released from prison. Both are now exiled in Germany along with Nguyễn Văn Đài's wife. Nguyễn Văn Đài had been in prison since arrest on 18 December 2015. In April 2018, both Nguyễn Văn Đài and Lê Thu Hà were found guilty of 'carrying out activities aimed at overthrowing the people's administration,' and Nguyễn Văn Đài was sentenced to a 15-year prison sentence and subsequent house arrest. Both were detained, prosecuted and sentenced solely for their peaceful human rights advocacy. LRWC has advocated for the release of Nguyễn Văn Đài since shortly after his detention through letters and communications with UN human rights monitoring bodies. Advocacy on behalf of Nguyễn Văn Đài can be found [here](#).

### Joint letter sent to the Council of the European Union and to the Members of the European Union

On 6 June 2018, [a letter](#) signed by LRWC and 90 other NGOs was sent to the Council of the European Union and to the Members of the European Union, urging the European Union member countries to reject the pending free trade agreement with the Socialist Republic of Viet Nam. Over the last year, the Vietnamese authorities have arbitrarily detained many activists and bloggers, and have sentenced human rights defenders to harsh prison sentences for peacefully exercising the rights to freedom of expression and association. The letter states that considering the [European Parliament's resolution](#) on addressing the issues of freedom of expression in Viet Nam last December, it would be a disgrace to ratify free trade with a country lacking respect of rights to freedom of expression, press, and association. The letter recommends that the EU only expand its economic relationships with Viet Nam after the Hanoi government releases all political prisoners and demonstrates full respect for freedom of information and freedom of association.



## LRWC PUBLICATIONS

*[Protective Measures in The Inter-American Human Rights System](#)*, Isabela Piacentini de Andrade, Lawyer, PhD in International Law (Université Paris II), Paris 10 July 2018, LRWC.

Dr. Piacentini de Andrade, LRWC member and former Director updated her 2010 guide. The information in the 2018 guide will be included in the toolkit for human rights defenders being prepared by the International Bar Association Human Rights Monitoring Group.

## UN HUMAN RIGHTS COUNCIL PARTICIPATION

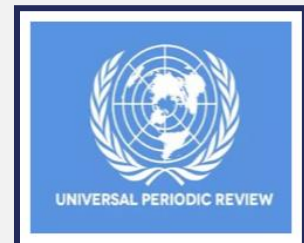
### 38<sup>TH</sup> SESSION OF THE UN HUMAN RIGHTS COUNCIL, 18 JUNE – 6 JULY 2018

Although no LRWC representatives attended the 38<sup>th</sup> session of the UN Human Rights Council, LRWC was able to make two oral statements with the help of colleagues from other NGOs.

- **Myanmar: The global crisis of impunity for atrocities in Myanmar.** This [oral statement](#) by LRWC (Catherine Morris & Gail Davidson) was presented Héléne Ramos dos Santos of the International Bar Association Human Rights Institute (IBAHRI) on 27 June 2018. A video clip of the statement can be viewed [here](#). The text of the Special Rapporteur's oral update on Myanmar can be found [here](#).
- **Turkey: Widespread violations against lawyers in Turkey.** This [joint statement](#) of the IBAHRI, Law Society of England and Wales, Bar Human Rights Committee, Union Internationale des Avocats, Lawyers for Lawyers and LRWC (Catherine Morris & Gail Davidson) was presented by Héléne Ramos dos Santos on 22 June 2018.

### UNIVERSAL PERIODIC REVIEW

[Joint submissions](#) for consideration on the Universal Periodic Review (UPR) of Viet Nam during January and February 2019 were filed by LRWC and Lawyers for Lawyers on 12 July 2018. LRWC's contribution to the report (Gail Davidson, Joshua Lam, Eileen Skinnider) focused on recommendations that Viet Nam repeal sections of the Penal Code routinely used to wrongly convict and imprison lawyers and other HRDs for periods of up to 15 years as a means of punishing and silencing their lawful advocacy, and recommendations for the release and revocation of sentences imposed on Nguyễn Văn Đài, Lê Thu Hà, and other HRDs. The report seeks repeal of Penal Code provisions such as sections 109 and 117 (formerly Articles 79 and 88) that are too broad to allow foreknowledge, notice of charges, objective determination or a defense and result in automatic and arbitrary convictions. These offences (carrying out activities aimed at overthrowing the people's administration and conducting propaganda against the State) are used to criminalize any statement or information that could be considered critical of the state. During the last UPR, Canada and several other countries called for the repeal of these provisions and for all other amendments necessary to bring the Penal Code into compliance with international law. These impugned provisions were used in April to impose sentences of 15 years in prison on Nguyễn Văn Đài and nine years in prison on Lê Thu Hà.



## INTERNATIONAL CRIMINAL COURT NEWS

### 20<sup>th</sup> anniversary and addition of ‘crime of aggression’

17 July 2018 was the 20th anniversary of the Rome Statute, which established the International Criminal Court (ICC) and its jurisdiction over war crimes, crimes against humanity and genocide. On this anniversary, the crime of aggression (waging war) was added to the crimes within the ICC’s jurisdiction. The Rome Statute and the ICC came into force on 1 July 2002. In the past sixteen years, the ICC has heard 26 cases and had eight convictions, two of which were acquitted. Currently eleven situations and ten preliminary examinations are under investigation, including circumstances in Burundi, Colombia, Gabon, Guinea, Iraq/United Kingdom, Nigeria, Palestine and Ukraine. A decision is pending on the request by the Office of the Prosecutor, made after a decade-long preliminary investigation, to open an investigation of torture in the territory of Afghanistan and other State Parties, by members of the US Armed Forces, the CIA and Afghan authorities. Read more [here](#).



## IN MEMORIAM



### CAROLYN McCOOL

Carolyn McCool, lawyer and human rights advocate, passed away on 29 May 2018. Carolyn will be sadly missed by LRWC and many other organizations and individuals that benefited from her contributions and support. Carolyn had been an active LRWC member since 2014. She served as a Director, Monitor of human rights in Turkey and as a member of the LRWC Intervention Team. In the latter role, Carolyn worked on the LRWC intervention in the Trinity Western University cases recently decided by the Supreme Court of Canada. Her work as a lawyer left a legacy: her death leaves a gap. Carolyn’s obituary can found [here](#) and LRWC’s in memoriam can be found [here](#).

## NOTABLE DECISIONS & ARTICLES

### DECISIONS

**Decision:** *Canada Without Poverty v. Attorney General of Canada*, 2018 ONSC 4147

On 16 July 2018, the Ontario Supreme Court delivered their judgment in *Canada Without Poverty v. Attorney General of Canada*. Justice Ed Morgan declared that federal tax authorities cannot set a limit on the amount that a charity devotes to public activity. The Canada Revenue Agency currently restricts charities to utilizing no more than ten percent of their resources on political advocacy. Justice Morgan declared that this is an unconstitutional limit on freedom of expression. Justice Morgan stated that all political activities are



charitable activities as long as the groups are advocating “in pursuit of the overall charitable purpose.” This decision does not alter the prohibitions on charities from engaging in partisan activities. Canada Without Poverty is a charitable organization with the purpose of relieving poverty through public advocacy for policy and attitudinal change. The organization first began this challenge in 2016 after they were audited as part of the former Conservative government’s political-activities audit program, and faced the revocation of their charitable status.



## ARTICLES

### [Article:](#) “Kavanaugh Scorns International Law and Loves Executive Power” by Marjorie Cohn

Two primary sources of international law are treaties and customary international law. Firstly, under the US Constitution, ratified treaties are part of domestic US law. Secondly, customary international law has long been established to be part of US law. However, US Supreme Court nominee Brett Kavanaugh has stated, “The Federal courts are not roving enforcers of international law. And the federal courts are not empowered to smuggle international law into the U.S. Constitution and then wield it as a club against Congress and the President in wartime.” Jordan Paust, international law scholar and professor emeritus at the University of Houston Law Center, says that Kavanaugh “prefers a radical and dangerous view that ‘courts may not interfere with the President’s exercise of war powers based on international-law norms that



the political branches have not seen fit to enact into domestic U.S. law.” In a 2014 law review article, Kavanaugh wrote that the President is required to enforce the law “at least unless the President deems the law unconstitutional, in which event the President can decline to follow the statute until a final court order says otherwise.” Professor Cohn cautions that if Kavanaugh is confirmed to the Supreme Court, his “frightening theory will encourage the President to disobey any law he deems unconstitutional, including customary and treaty-based international law.”

## MEMBERS WORKING PRO BONO DURING JUNE-JULY 2018

Gail Davidson, Maya Duvage, Hugh Gwillim, Joshua Lam, Robert Lapper, Catherine Morris, Michael Mulligan, Renée Mulligan, Isabela Piacentini de Andrade, Brian Samuels, Eileen Skinnider, Luiza Teixeira, and Melissa Tessler.

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Monthly donations increase LRWC's ability both to respond quickly and plan ahead.

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