

LRWC NEWSLETTER

June 2014 Edition

LRWC ACTION NEWS

BAHRAIN

LRWC joined with the Media Legal Defence Initiative and eight other NGOs to send [a follow-up](#) to the [December 2013 Letter of Allegation](#). The follow-up asks UN Special Rapporteurs for Freedom of Expression and the Working Group on Arbitrary Detention to investigate the arrests, detention and torture of journalist Mohammed Hassan, photographer Hussain Hubail and cameraman Qassim Zain Aldeen. All were charged with participating in, reporting on or photographing demonstrations. Mohammed Hassan was released in October 2013 and is seeking asylum in the U.K.. Hussain Hubail, who was arrested in July 2013 shortly after receiving a prize for his photograph of protestors running through a cloud of tear gas, was sentenced to five years in prison on 28 April 2014. His appeal was apparently heard on 22 June with judgment expected in August. Mr Zain Aldeen has been convicted on two charges of participating in allegedly illegal gatherings and went to trial on a third charge on 20 May with judgment set for delivery on 24 September. All three men have been subjected to a variety of abuses in custody including torture and denial of due process. The statutory provisions underlying the charges violate international human rights laws and have been cited as illegitimate by LRWC and many other observers.



Hussain Hubail | adhrb.org

CANADA

Members of the Law Society of BC (LSBC) rejected approval of a law school at Trinity Western University (TWU) by a 77% majority at the Special Meeting held on 10 June 2014. Members approved a resolution directing LSBC Benchers to “declare...that [TWU] is not an approved faculty of law” by a vote of 3,210 for and 968 against. LSBC President Jan Lindsay Q.C. responded by saying, “The benchers will give today’s members meeting serious and thoughtful consideration.” A motion directing compliance with the resolution passed by members—from Benchers opposing TWU approval—will be presented to the Benchers of the LSBC at their 11 July meeting and voted on at the 27 September meeting. The controversy arises from admission and discipline policies of TWU that discriminate on the basis of sexual orientation. TWU claims the *Charter*, which prohibits discrimination on the basis or sexual orientation,

doesn't apply to private universities and that, in any event, religious freedom rights entitle TWU to discriminate. Opponents disagree and maintain that access to the legal profession must not be restricted through discrimination. Under section 13 of the *Legal Professions Act*, the 10 June 2014 resolution is not binding on the Benchers. However, if the resolution is not "substantially implemented" within 12 months, 5% of the LSBC members could force a binding referendum on the matter. LRWC submissions opposing accreditation of TWU can be viewed [here](#).

THAILAND

On 20 June, LRWC released [a statement](#) expressing alarm at human rights violations taking place in Thailand following the military coup which occurred on 22 May 2014. Royal Thai Army generals, operating under the name of National Council for Peace and Order (NCPO), have taken over all legislative, executive, and judicial functions in Thailand. Under the NCPO, hundreds of persons have been arbitrarily detained for periods ranging from hours to weeks in secret military locations without access to family members, lawyers or independent courts. The NCPO has also severely curtailed rights to freedoms of expression and assembly. All criticism of the NCPO is forbidden, as are political gatherings of more than five persons. Those disobeying NCPO orders are subject to military trials, and all civilian courts have been ordered to operate under NCPO directives. LRWC called upon the NCPO to restore civilian rule and to respect Thailand's human rights obligations. LRWC also called on other States to publicly condemn the coup and to suspend all bilateral assistance to, or cooperation with Thailand pending the restoration of democracy and compliance with human rights.



A Thai anti-coup protestor holds a sign during a protest at Victory Monument in Bangkok | [straitstimes.com](#)



Andy Hall

Judicial harassment of human rights defender, Andy Hall, by Natural Fruit Co. Ltd - On 29 June, LRWC released [a statement objecting to the wrongful prosecution](#) in Thailand of UK human rights defender, Andy Hall, by Natural Fruit Co. Ltd., a Thai-based corporation. In January 2013, Natural Fruit launched a series of criminal and civil defamation actions as reprisals against Hall for his research reported in a January 2013 publication released by the European NGO Finnwatch, entitled *Cheap Has a High Price*. The research exposed serious human rights violations by Natural Fruit and other corporations producing food for global markets.

Reported violations include smuggling of undocumented migrant workers into Thailand, child labour, payment below the minimum wage, forced overtime, confiscation of migrant workers' passports and work permits, and violence against migrant workers. If convicted, Hall faces imprisonment and hefty fines. Thailand's criminal defamation laws allow powerful corporations or individuals to criminalize and thereby silence the lawful exercise of freedom of expression. Hall's case is complicated by the 22 May military coup. The military rulers suspended the Constitution and subjected Thailand's courts to the junta's orders, which effectively precludes independent judicial decisions and fair trial rights. LRWC also wrote a letter to the United Kingdom urging consular protection for Hall.

TURKEY

“...[W]hile being deprived of our liberty, having you alongside made us happy, gave us courage and moral that is so hard to verbalise.... Thank you again from the bottom of our hearts for your efforts and solidarity.”

LRWC received this thank you email from the Platform for a Free Defence sent on behalf of the lawyers charged in the mass trial, all of whom have now been released.

During November and December 2011, 41 lawyers and one journalist were arrested. Charges relating to the legal representation of Abdullah Ocalan, jailed leader of the Kurdistan Workers’ Party (PKK), were laid against 46 lawyers, three law offices employees and one journalist. LRWC and others objected to the prosecution and the detentions. By the end of December 2013, the journalist and 36 of the lawyers remained in custody. LRWC, in cooperation with other NGOs, had responded with letters, statements, press releases and reports. LRWC prepared an analysis of [Turkey’s international law obligations](#) to ensure pre-trial release in August 2012. The UN Human Rights Committee, in response to the September 2012 [joint report of LRWC and FIDH/OMCT](#), directed Turkey to “reduce the legal period of pre-trial detention in compliance with article 9 of the [ICCPR], and ensure that it is only used as an exceptional measure.” Releases occurred as follows: nine lawyers were released in July 2012; one lawyer was released in January 2013; four lawyers were released in March 2013; seven lawyers were released in June 2013; four lawyers were released in December 2013; one lawyer was released without a hearing on 25 February 2014; one lawyer was released without a hearing on 4 March 2014; after a hearing in March 2014, the remaining nine lawyers and the journalist were released. Denial of due process has foreclosed any opportunity to prepare and present a full defense. LRWC communications on the Lawyers Trial can be accessed [here](#).

ZIMBABWE

The Zimbabwe National Prosecuting Authority (NPA) has appealed the acquittal of Beatrice Mtetwa on charges of defeating or obstructing the course of justice. The trial judge ruled that the NPA had failed to establish even a *prima facie* case against the award-winning human rights lawyer.

UN HUMAN RIGHTS COUNCIL – 26th SESSION, 11-27 JUNE 2014

STATEMENT BY UN HIGH COMMISSIONER OF HUMAN RIGHTS NAVI PILLAY

In her [opening and last statement](#) Navi Pillay praised vigorous civil society activism and deplored international inaction, stating, “[r]egrettably, the international community remains unable to consistently react strongly and quickly to crises, including situations of grave human rights violations with high potential for regional overspill.” She cautioned that human rights defenders and civil society activists—including journalists, whistleblowers and individuals engaging in peaceful protest—remain under threat. Abusive tactics masquerading under the rubric of counter-terrorism and counter-insurgency, corporate and government attempts to create a surveillance society and the global climate crisis were identified as critical threats to human rights.



Navi Pillay | therepublicsquare.com

LRWC PARTICIPATION

Although LRWC did not have a representative attending this session of Council, LRWC prepared and presented three oral interventions at the June session of Council in cooperation with Lawyers for Lawyers (L4L), the Asian Legal Resource Centre (ALRC) and Fair Trial Watch. A fourth statement on Viet Nam's failure to follow recommendations of the Working Group on Arbitrary Detention was not presented because of scheduling changes. In May LRWC, in cooperation with other NGOs, filed four written statements: *Canada: The Shrinking Space for Dissent in Canada*; *Colombia: Failure to Fulfill Duties*; *Iran: Wrongful Detention of Lawyers*; *Viet Nam: Failure to Comply with UPR Recommendations*. For more information on the written statements see the [LRWC May newsletter](#). The written statements can be accessed [online](#).

ORAL INTERVENTIONS

- 12 June 2014 – [*Prosecution and Imprisonment of Lawyers for Discharging Their Functions*](#): Moon Jeong Ho of ALRC presented this joint statement by LRWC, L4L and ALRC on the need for Council to take effective action to free lawyers wrongfully prosecuted and imprisoned for their human rights work. Examples highlighted were lawyers imprisoned in Iran, Russia and Turkey. This statement is part of ongoing work to achieve justice for lawyers in Iran and Turkey targeted with reprisal prosecutions. Watch the [video of the presentation](#).



- 13 June – [*Failure to Prevent and Punish Murder of Lawyers in Colombia*](#), L4L Executive Director Adrie van de Streek presented this joint statement of LRWC and L4L to Council during the clustered dialogue following presentation of the report of the Special Rapporteur on extra-judicial and summary executions. The statement called on Council to ensure that Colombia “conduct exhaustive and impartial investigations of the recent murders of 15 lawyers in Colombia” and “adopt all necessary measures, to put an end to impunity.” This statement is part of LRWC work to support lawyers working in Cali and the Valle del Cauca Department of Colombia, 13 of whom were murdered in 2013. Watch the [video of the presentation](#).



- 23 June - [*Thailand: The Council Must Declare the Coup Illegal*](#), Mr. Budi Tjahjono of Franciscan International presented a joint statement by LRWC and ALRC about the human rights crisis caused by the 22 May military overthrow of the elected government in Thailand and the need for Council to declare the coup illegal. This statement is part of LRWC's ongoing monitoring of rule of law issues in Thailand. Watch the [video of the presentation](#) at #10.

UNIVERSAL PERIODIC REVIEW (UPR) OF TURKEY

LRWC, L4L, the Law Society of England and Wales and Fair Trial Watch submitted a [joint report](#) to the Office of the High Commissioner for Human Rights for consideration during the second UPR of Turkey. The joint report cited cases of dozens of lawyers harassed, prosecuted and imprisoned solely for discharging their professional duties as lawyers for clients unpopular with, or seen as opponents of, the Government of Turkey.

NOTABLE DECISION – TSILHQOT’IN NATION V. BC



Tsilhqot’in Nation v. British Columbia, Supreme Court of Canada, 2014 SCC 44, 26 June 2014.

In a unanimous decision the Supreme Court of Canada has held that the Tsilhqot’in First Nation has Aboriginal title to a significant portion of their traditional territory. This landmark decision comes 168 years after the recognition of crown sovereignty over the traditional lands of the First Nations in British Columbia. The Court stated, “What is at stake is nothing less than justice for the aboriginal group and its descendents and the reconciliation between the group and

broader society”. For the first time in the history of Canada and British Columbia, the First Nations land rights have been legally recognized on the ground. The Supreme Court of Canada rejected the reasoning of the British Columbia Court of Appeal that aboriginal title only exists over intensively used small areas. They accepted the findings of the trial judge that Aboriginal title exists over territories that were used for various purposes such as hunting, fishing and gathering. The court expanded on the tests the First Nations must meet in order to establish Aboriginal Title.

In discussing the legal characterization of Aboriginal title, the Court held that the European assertion of sovereignty resulted in the Crown acquiring a radical underlying title to all the land in the province, but this is burdened by the pre-existing Aboriginal title. Aboriginal title is an independent legal interest which gives rise to a fiduciary duty on the Crown. Aboriginal title confers the exclusive right to decide how the land will be used, enjoyment and occupancy of the land, the right to possess the land, the right to the economic benefit of the land, and the right to proactively use and manage the land. The Court clarified that the content of the Crown’s radical or underlying title is what is left when Aboriginal title is subtracted from it. The Crown does not retain a beneficial interest in Aboriginal title land.

The court found that once title is confirmed, the lands are vested in the Aboriginal group and the lands are no longer Crown lands. As such the forests in the Tsilhqot’in title lands are no longer Crown timber and therefore the *British Columbia Forest Act* does not apply. However the Court stated that it is open for British Columbia to amend the *Forest Act* to apply to Aboriginal title lands. They further stated that the Crown has a fiduciary trust duty to act in a way that respects the Aboriginal interests in the Aboriginal title land. Therefore, before any incursion on Aboriginal title land occurs, the government must obtain the consent of the Aboriginal people or must meet a strict justification test. Any incursion by government for a compelling and substantial public purpose must be consistent with this fiduciary duty towards Aboriginal people.

--By Tl’ul’htut Robert Morales, Chief Negotiator Hul’qumi’num Treaty Group

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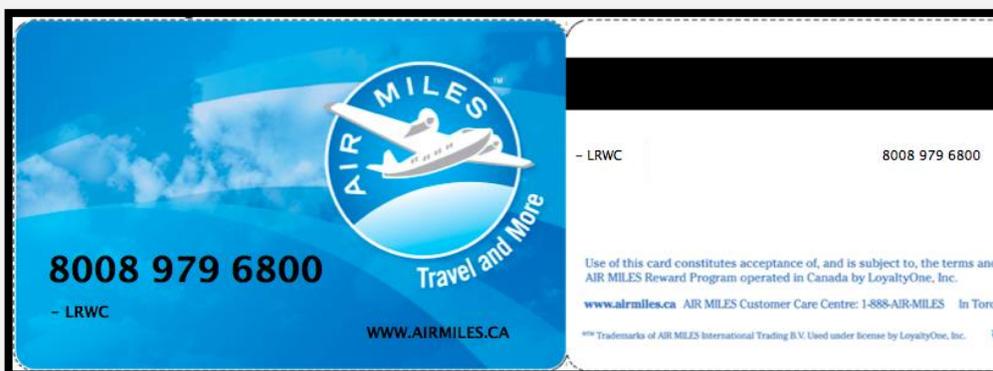
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