

Lawyers' Rights Watch Canada

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

October 2012 Edition

LRWC ACTION NEWS

COLOMBIA

On October 26, 2012, Lawyers for Lawyers and LRWC sent a [joint letter](#) in Spanish to Mr. Germán Vargas Lleras, Colombian Minister of the Interior and Justice, in order to express their condemnation of the recent death threats made against human rights lawyers, Eliecer Molano Rodríguez and German Romero Sánchez. The threats relate to Molano and Romero's involvement in the case of army commanders Major Josue Yobanni Linares and Captain Julio Cesar Alvarez Pedreros, who are being prosecuted for the killing of Alex Ramirez and Darvey Mosquera. According to the client of Molano and Romero, who is the mother of one of the deceased, she was accosted by an individual armed with pistol and told, "Tell the lawyer that he is going to die and you too." In their letter, Lawyers for Lawyers and LRWC call on the Colombian government to abide by the Declaration on Human Rights Defenders and the Basic Principles on the Role of Lawyers by taking the actions necessary to protect those involved in the case and end the intimidation that threatens to impede their important work.



HAITI

Lawyers for Lawyers and LRWC sent a [joint letter](#) to Jean Renel Sanon, the Haitian Minister of Justice and Public Security, on October 26, 2012, regarding recent death threats and acts of intimidation by state police towards lawyers, Mr. Mario Joseph, Mr. Newton St-Juste, and Mr. André Michel. Mr. Joseph is an internationally recognized human rights lawyer, and Mr. St-Juste and Mr. Michel have been involved in anti-corruption cases against the presidential family and members of the Haitian government. Lawyers for Lawyers and LRWC called on the government of Haiti to adhere to the universally applicable Basic Principles on the Role of Lawyers, which states that governments have an obligation to ensure that lawyers:



- (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely

both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

INDONESIA

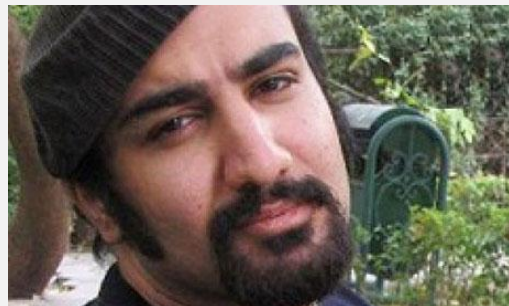
On October 10, 2012, LRWC and Lawyers for Lawyers sent a [joint letter](#) to Inspector General Mr. Sam L. Tobing calling for the Indonesian government to intervene and end the harassment of lawyer, Olga Hamadi. Ms. Hamadi has been the subject of physical and psychological harassment by police as the result of her representation of five men in Wamena, Papua, who were allegedly tortured or ill-treated in detention by police, in order to force them to confess their involvement in a murder. Lawyers for Lawyers and LRWC urged the government to adhere to its commitments under international law by protecting and supporting its lawyers, as required by international legal instruments, including the *International Covenant on Civil and Political Rights* and the *Basic Principles on the Role of Lawyers*. The Principles state that governments must ensure that lawyers “are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference” (Article 16).



IRAN

Hugh Gwillim and Thomas Brown [wrote a letter](#) demanding the release of human rights reporter Kouhyar Goudarzi. In July, 2011, Mr. Goudarzi was arrested in Tehran and his whereabouts remained unknown for several weeks, which amounted to enforced disappearance. On February 26, 2012, he was sentenced by the Islamic Revolutionary Court to five years' imprisonment to be served in internal exile in the remote southeastern city of Zabul. He was convicted on charges of “propaganda against the system” because of an interview he gave to the German magazine *Der Spiegel*, in which he spoke about his hunger strike in solidarity with his former cellmates from a previous imprisonment. He was also convicted on charges of “assembly and collusion against the system.”

On April 12, 2012, after spending more than nine months in detention, including two months in solitary confinement, Mr. Goudarzi was released on bail pending his appeal. The Tehran Province Court of Appeals upheld the five-year sentence on September 15, 2012. His lawyer, Dr. Alizadeh Tabatabaei, was previously told by the appeal judge that he would issue an acquittal verdict. Dr. Tabatabaei believes that the upholding of Mr. Goudarzi's sentence is the result of the unlawful influence of the Ministry of Intelligence over the Court of Appeals. Mr. Goudarzi now faces arrest. LRWC's letter calls on Iran to honour the Declaration on Human Rights Defenders and respect fundamental freedoms by immediately ceasing the harassment of Mr. Goudarzi and reversing his five-year sentence.



SPAIN

On October 5, 2012, Pedro Fausto Canales Bermejo, represented by Rights International Spain, filed a complaint with the European Court of Human Rights (ECtHR) regarding the case of his father, who was the victim of enforced disappearance during the Spanish Civil War that brought dictator Francisco

Franco to power.

The decision to file the complaint with the ECtHR comes as the result of the recent historical decision of Spain's Supreme Court in the Baltazar Garzón case. In 1998, Baltazar Garzón, then a senior investigative judge in Spain's Audiencia Nacional Court, opened an investigation into over 114,000 thousand unresolved disappearances and murders carried out by the Franco regime. Private parties filed complaints against Garzón for criminal malfeasance on the grounds that, by opening the investigation, Garzón was violating the Ley Amnestia passed by Spain's first elected assembly during the transition to democracy after the death of Franco.



The State never denied the core allegations but simply stated that the amnesty law protected the perpetrators from exposure, prevented the victims from remedies and the public from knowing the truth, and made investigation by judges a crime.

On February 27, 2012, the Supreme Court acquitted Garzón, but also denied any potential domestic remedies to victims and precluded the possibility of judges carrying out investigations into the enforced disappearances and extrajudicial killings that occurred during the Spanish Civil War and under Franco's regime. This will be the first case relating to Franco-era crimes that the ECtHR will hear since the Supreme Court's February decision. It is hoped by both victims and Rights International Spain that the ECtHR will admit the case and take this opportunity to evaluate and make pronouncement on Spain's obligations under international law to remedy enforced disappearances and extra-judicial killings.

LRWC produced several complaints and reports on the Garzón case (to view letters and statements regarding Garzón, click [here](#)) several of which were produced in cooperation with the executive director of Rights International Spain and representatives of other international human rights organizations.

TURKEY

The mass trial of 46 lawyers, three law office employees, and one journalist will recommence on November 6, 2012, in Silivri, Turkey. Twenty-eight of those charged (27 lawyers and the journalist) have been refused pre-trial release since their arrests in November 2011. The trial proceedings commenced July 16-18 in Istanbul amidst considerable chaos that was occasioned by a variety of factors, including inadequate space, disagreements on translation rights, and confusion about the indictment. Members of the Dutch organization Lawyers for Lawyers (L4L) will monitor the November proceedings as the joint representatives of L4L, LRWC, the Dutch Bar Association, the Solicitors International Human Rights Group, and the Amsterdam Bar Association. They plan to focus on the situation of five of the accused lawyers who are still in jail.



UN PARTICIPATION

UNIVERSAL PERIODIC REVIEW (UPR)

UPR OF CANADA: REPORT TO THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

On October 9, 2012, LRWC, in collaboration with the BC Freedom of Information and Privacy Association (BCFIPA), Canadian Journalists for Free Expression (CJFE), the Centre for Law and Democracy (CLD), and PEN Canada submitted a [report](#) on the state of freedom of expression in Canada to the 16th Session of the Universal Periodic Review (UPR).

The UPR is a process by which the United Nations Human Rights Council reviews every UN member state every four years in order to assess their compliance with international human rights laws and standards, including compliance with the *Universal Declaration on Human Rights*, the *International Covenant on Civil and Political Rights*, and the *International Covenant on Social and Economic Rights*. The UPR was created through the UN General Assembly on March 15, 2006 by resolution [60/251](#), the same resolution that established the Human Rights Council. The last UPR of Canada was held February 3, 2009.



Leading up to the review, NGOs may file reports with the Office of the High Commissioner for Human Rights (OHCHR). The OHCHR then produces an omnibus summary of the NGO reports (though every NGO concern may not be included) and a compilation of information from treaty bodies, special procedures, and a summary of UN instruments ratified.

The LRWC joint [report](#), identifies significant shortcomings in Canadian law and policy regarding freedom of expression with respect to areas such as the protection of journalist's sources, internet access for First Nations' communities, criminal defamation laws, the right to information, freedom of assembly, and whistleblower protection. Acknowledging the relative strength of Canadian democracy and respect for human rights, the report calls on Canada to avoid complacency regarding its poor record on the right to information.

The report was recently noted by the Ottawa Citizen, in its October 12th coverage. To read the full story on the report of LRWC, CLD, CJFE, BCFIPA, and PEN Canada, click [here](#).

LRWC joined [another report](#) filed with the OHCHR by a coalition of NGOs that includes Amnesty International Human Rights Watch, Oxfam Canada, and the Canadian Centre for International Justice. The report, titled, "Empty Words and Double Standards: Canada's Failure to Respect and Uphold International Human Rights," addresses: (1) Canada's failure to adopt effective means of ensuring implementation of its international obligations, and (2) Canada's recent pattern of asserting that the UN should avoid scrutiny of Canada's human rights record because other member states present more serious human rights issues.

UPR OF SRI LANKA: RHETORIC AND REALITY

LRWC member Vani Sevalrajah attended the 14th Session of the UPR of Sri Lanka October 30-November 1 in Geneva. The UPR provided an opportunity to review efforts made by Sri Lanka to fulfill obligations human rights obligations and to address on-going problems regarding: loss of independence of key national institutions including the Sri Lankan Human Rights Commission; erosion of the independence of the judiciary; and impunity. While Government rhetoric suggests that all is well in Sri Lanka, observations by Sri Lankan civil society and international organizations reflect a very different reality.

An October 31st [side event](#) in Geneva, “Rhetoric and Reality,” highlighted the urgent need for action to remedy serious human rights violations carried out during the conflict and to stop ongoing violations. The event was organised by the International Movement Against All Forms of Discrimination and Racism (IMADR) and co-sponsored by Amnesty International, Asian Legal Resource Centre, Franciscans International, Human Rights Watch and Lawyers Rights Watch Canada.

IMPLEMENTATION OF TREATY BODY RECOMMENDATIONS - CANADA

Committee on the Eliminations of Racial Discrimination (CERD)

LRWC, together with the BC CEDAW group, made submissions in February to CERD on violence against Aboriginal women and girls. CERD published its [Concluding Observations on Canada](#) 9 March 2012. In response to a request from the Department of Canadian Heritage, LRWC and BC CEDAW provided [a further report](#) outlining suggestions for implementation of CERD recommendations. This report was sent to the Continuing Committee of Officials on Human Rights (CCOHR) recommends that Canada establish a national inquiry into the murders and disappearances of Aboriginal women and girls that is grounded in a thorough and careful examination of the root causes of the violence, including the historic discrimination and the disadvantaged social and economic conditions of Aboriginal women and girls that make them vulnerable to extreme violence. The inquiry should be developed through consultation with the Native Women’s Association of Canada (NWAC) and other Aboriginal and women’s organizations, which must be assured of funded counsel of their own choosing. The communication also endorses NWAC’s recommendation that the inquiry “should include a review of practices and measures related to child welfare, social assistance, housing, criminal justice, policing, and incarceration and identify where systemic correction is needed to dismantle institutionalized sexism and racism.”

Committee Against Torture (CAT)

LRWC provided [a report](#) to the Continuing Committee of Officials on Human Rights (CCOHR) on the implementation of recommendations by CAT in reference to Canada’s handling of the Omar Khadr case. In April LRWC and ICLMG filed [a joint report](#) with the UN Committee against Torture (CAT) highlighting Canada’s violations of the Convention against Torture in the Omar Khadr case. CAT released its [Concluding Observations](#) on 25 June 2012. LRWC’s report to the Department of Canadian Heritage recommends that Canada adopt measures to ensure: a/ a commission of inquiry to determine violations, the involvement of Canadian officials and remedies; b/ adequate education and training about the Convention for judicial and law enforcement officials; c/ better cooperation with CAT and civil society on implementation and enforcement of Convention obligations; and, d/ ratification of the Optional Protocol to the Convention.



INTERNATIONAL CRIMINAL COURT

Ontario lawyer Arghavan Gerami will attend, as LRWC's representative, the 11th Session of the Assembly of State Parties (ASP) to the Rome Statute of the International Criminal Court in the Hague, Netherlands, November 14-22, 2012. In addition to addressing key issues such as the election of the Deputy Prosecutor, the election of the Board of Directors of the Trust Fund for Victims, and the Court's budget, the 11th ASP session will focus on the adequacy of the current global scheme aimed at preventing and punishing Rome Statute crimes. Attendees will discuss accountability for crimes against children as well as the need for meaningful participation and legal representation of victims of international crimes. The overall aim of the 11th session will be to raise awareness of these issues among the 121 member ASP and the Coalition for the International Criminal Court as well as to work towards solutions addressing such issues thereby improving the functioning of the International Criminal Court. Ms. Gerami's report on this important event will be featured in next month's newsletter.



SPECIAL RAPPORTEUR ON THE PROMOTION OF TRUTH, JUSTICE, REPARATION AND GUARANTEES OF NON-RECURRENCE

Pablo de Grieff, Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, has announced the launch of his website, which can be viewed [here](#).

UN HUMAN RIGHTS COMMITTEE

Review of Turkey: FIDH/OMCT attended the Human Rights Committee's review of Turkey's compliance with the International Covenant on Civil and Political Rights (ICCPR) on October 17-18 in Geneva on behalf of themselves and LRWC. FIDH/OMCT and LRWC had filed a joint report for consideration by the Committee during the review. The report, [Briefing to the Human Rights Committee, 106th Session](#), examined violations by Turkey of the right to pre-trial release guaranteed by the ICCPR.

UPCOMING EVENT

RIGHTS UNDER THREAT – 64TH ANNIVERSARY OF UNIVERSAL DECLARATION OF HUMAN RIGHTS

Don't miss the Day of Dissent at SFU Harbour Centre on December 7, 2012 from 1:00 – 4:00 pm. Hear Pearl Eliadis human rights lawyer and civil liberties lecturer at McGill University, talk about the Voices-Voix Coalition's work [documenting attacks on civil society](#), dissent and advocacy in Canada. Panelists will examine the democratic right to engage in dissent and instances of state and corporate actions to stifle dissent in Canada and abroad. The event is organized by LRWC, Amnesty International, and BC Civil Liberties Association and co-sponsored by the Council of Canadians and the New Media Journalism Program, SFU Continuing Studies. An e-book of materials on the law and facts will be available for participants. [Pre-registration for the free event](#) is available. Email lrwc@portal.ca for more information.

IMPORTANT DECISION

***Hamdan v. United States of America*, United States Court of Appeals for Columbia Circuit, October 16, 2012.**

In this decision, the Court of Appeals for the Columbia Circuit overturned the Guantánamo Bay Military Tribunal conviction of Salim Ahmed Hamdan. Mr. Hamdan, the former driver of Osama Bin Laden, was captured in Afghanistan in 2001 and transferred to Guantánamo Bay Prison, where he was detained as an enemy combatant. He was eventually convicted of ‘providing material support to terrorism’ contrary to the Military Commissions Act of 2006. In vacating the Military Tribunal conviction of Mr. Hamdan, the Court of Appeals ruled that ‘providing material support to terrorism’ was not a war crime under either U.S. or international law prior to enactment of the Military Commissions Act of 2006 and prosecution was barred by the prohibition on *ex post facto* prosecutions. According to the Court of Appeals, the Military Commissions Act of 2006 "does not authorize *retroactive* prosecution for conduct committed before enactment of that Act unless the conduct was already prohibited under existing U.S. law as a war crime triable by military commission" (*Hamdan* at p. 18) (emphasis in original). To view the full decision, please click [here](#).



IN THE NEWS

UNDERMINING THE RULE OF LAW: THE CASE OF OMAR KHADR

On October 10, 2012, the Toronto Star featured [an article](#) by LRWC member Catherine Morris titled “Undermining the Rule of Law: The Case of Omar Khadr.” Following the recent repatriation of Omar Khadr, Ms. Morris discusses the Canadian government’s acquiescence to and participation in, the flagrant violations of Mr. Khadr’s rights under Canadian and international law that have occurred over the last ten years. In the article, Ms. Morris addresses, *inter alia*, the *ex post facto* nature of the 2006 Military Commissions Act offences for which Mr. Khadr was convicted (Mr. Khadr was captured in Afghanistan in 2002), and the Supreme Court of Canada’s condemnation of the actions of the government as “[offending] the most basic Canadian standards about the treatment of detained youth suspects.”

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