

NEWS FROM

LAWYERS' RIGHTS WATCH CANADA

By Catherine Morris*

ACCESS TO JUSTICE: DEFENDING DEFENDERS AND TRUTH-TELLERS IS FUNDAMENTAL TO THE RULE OF LAW

Equality of access to independent and impartial remedies for injustices is fundamental to international law understandings of the rule of law.¹ Equal access to justice requires the independence of judges and lawyers, integrity of legal systems, recognition of the right to legal aid,² and laws that respect and implement international human rights law.³ Attacks on lawyers and human rights defenders have the effect of denying clients their internationally protected right to independent, effective legal representation and fair trials.⁴ Since LRWC's last report in the *Advocate* in May 2021, LRWC has intervened in a number of situations, including (in alphabetical order) Afghanistan, Canada, China, Myanmar and the Philippines.

Afghanistan: Reprisals Against Judges, Lawyers, Human Rights Defenders and Journalists

International focus on the grave human rights situation in Afghanistan intensified after the Taliban's armed takeover of the country on August 15, 2021. Those who have advocated for implementation of international human rights and the rule of law are in particular danger, including judges, prosecutors, lawyers, human rights defenders, parliamentarians and journalists. Women jurists and defenders are especially at risk.⁵ Others in grave danger are religious and ethnic minorities,⁶ as are LGBTQ+ people.⁷

There are also fears for the safety of victims and witnesses of atrocity crimes⁸ and those who collected evidence⁹ of war crimes allegedly com-

* Catherine Morris has been the transitional executive director of Lawyers' Rights Watch Canada ("LRWC") on a pro bono basis since June 2020. She has volunteered with LRWC for more than two decades and serves as its Main Representative at the UN Human Rights Council. LRWC has held special consultative status with the UN Economic and Social Council since 2005.

mitted over the past 20 years.¹⁰ Suspected perpetrators include the Taliban, the Afghan National Security Forces and the Northern Alliance in Afghanistan, as well as nationals of other countries including the United States,¹¹ Canada,¹² Australia¹³ and the United Kingdom.¹⁴ Without the securing of evidence, victims of war crimes and other atrocities have no access to justice.

LRWC volunteers intervened at the UN Human Rights Council in August and September 2021,¹⁵ joining the UN High Commissioner for Human Rights¹⁶ and many non-governmental organizations (“NGOs”)¹⁷ calling on the council to establish an independent international mechanism to protect and preserve evidence of past, present and future atrocity crimes and human rights violations. Protection of human rights reporters and defenders, and the collection and preservation of evidence for use in fair trials of suspected perpetrators, including at the International Criminal Court (“ICC”), are essential to ensure access to justice for victims of war crimes and other international atrocity crimes.¹⁸

Canada: Access to Justice for Atrocities Against Indigenous Children and Their Families

Many Canadians have been deeply shaken by this year’s revelations of more than 1,300 unmarked graves of Indigenous children who died in or disappeared from residential institutions run by the Canadian government and churches for more than a century. While Canadians have been shocked into unprecedented awareness of undocumented deaths of First Nations’ children, this was not new information.

For decades, the peoples of Canada’s First Nations have been grieving the disappearances of family members and demanding truth and justice. The 2015 report of Canada’s Truth and Reconciliation Commission (“TRC”) documented concerns about thousands of undocumented deaths of Indigenous children in Canada’s residential institutions.¹⁹ The 2021 revelations have resulted in unprecedented awareness of the credibility and gravity of claims of crimes against humanity and genocide made by Indigenous truth-tellers about violations perpetrated by authorities and churches in Canada. Yet those revealing these truths continue to be subjected to “denialism”²⁰ by those not ready to acknowledge the magnitude of the violations.

LRWC issued a statement²¹ in June 2021 emphasizing that the families of disappeared children have the right to truth and the right of access to remedies for any unlawful deaths. LRWC’s statement pointed out Canada’s international law obligations to ensure thorough, prompt, impartial investigations of the circumstances of all undocumented deaths with full respect for victims’ families and communities. Canada’s duty to investigate also

applies to each unsolved case of missing and murdered Indigenous women and girls. International human rights standards require investigations to be capable of providing evidence sufficient to bring to justice all those found to be involved in unlawful deaths and ensuring redress to families of victims.²²

LRWC is also concerned about the rights of Indigenous land rights defenders to advocate and peacefully protest without being threatened, attacked or criminalized.²³ LRWC has been concerned about attacks against Indigenous land rights defenders while engaged in peaceful protests against the use of their lands for pipelines or other purposes without free, prior and informed consent as prescribed by the *UN Declaration on the Rights of Indigenous Peoples* (“UNDRIP”).²⁴

LRWC volunteers intervened²⁵ at the September 2021 session of the UN Human Rights Council,²⁶ underlining the findings of UN experts that denial of Indigenous peoples’ right to self-determination is “a root cause of atrocities, such as residential schools, murdered and missing indigenous women and girls or stolen children, as well as the negative impacts on health, economic and social well-being and justice”.²⁷ While Canada and British Columbia have passed legislation toward implementing UNDRIP, Canada has failed to take adequate steps to ensure full redress for Canada’s violations of Indigenous peoples’ rights, including rights to land and resources.

China’s Persecution of Lawyers and Defenders: A Strategy to Deny Access to Justice

LRWC continues to express grave concerns about China’s thwarting of access to remedies for violations of human rights, particularly since the beginning of the “709 Crackdown” (July 9, 2015) against hundreds of human rights lawyers.²⁸ China actively persecutes lawyers, defenders and journalists, subjecting them to arbitrary detention, enforced disappearance (incommunicado detention in unknown locations) and severe forms of torture. China also actively works to water down or resist UN resolutions addressing human rights violations in countries such as Afghanistan, Myanmar and the Philippines.²⁹

Myanmar: Continued Increases in Extrajudicial Killings and Arbitrary Detentions

The situation in Myanmar continues to deteriorate. Since our report in the May 2021 edition of the *Advocate*, the military junta’s extrajudicial killings of civilians, including children, have increased to more than 1,100. Arbitrary detentions increased to more than 8,200. LRWC continued its advocacy for lawyers and defenders in danger in Myanmar by joining with other international NGOs in a statement to the September sessions of the Human Rights Council seeking a UN Security Council referral of the situation in Myanmar to the ICC.³⁰

The Philippines: Impunity for Murders of Lawyers Continues

Lawyers and defenders in the Philippines continue to suffer attacks and murders, the most recent being the murders of two human rights lawyers on August 26, 2021³¹ and September 15, 2021.³² Since 2016, dozens of lawyers and hundreds of human rights defenders have been murdered with impunity in the Philippines, as part of a systematic pattern of thousands of extrajudicial killings associated with President Duterte's "war on drugs". On September 15, 2021, the ICC Pre-Trial Chamber authorized the ICC Office of the Prosecutor to open an investigation into crimes against humanity in the Philippines.³³ The court found sufficient evidence to support an investigation into "widespread and systematic attack against the civilian population ... pursuant to or in furtherance of a state policy".³⁴ The Duterte government announced that it will not cooperate with the investigation, so in September 2021, LRWC joined numerous other international NGOs in an intervention at the UN Human Rights Council seeking a parallel investigative mechanism to support the collection and preservation of evidence for use in trials of suspected perpetrators of crimes against humanity.

LRWC's other interventions can be seen on its website at <www.lrwc.org/category/publications/campaigns/countries/> .

ENDNOTES

1. United Nations, "What Is the Rule of Law?", online: <www.un.org/ruleoflaw/what-is-the-rule-of-law-archived/>.
2. Lawyers' Rights Watch Canada, *The Right to Legal Aid: A Guide to International Law Rights to Legal Aid* (Vancouver: LRWC, 2014), online: <www.lrwc.org/wp-content/uploads/2014/09/International-Rights-to-Legal-Aid-Sept.19.BN_1.pdf>.
3. United Nations, "Access to Justice", online: <www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/>.
4. UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, art 14(3)(b), online: <www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>. See also UN Human Rights Council, *Report of the Special Rapporteur on the Independence of Judges and Lawyers, Gabriela Knaul, A/HRC/23/43*, 15 March 2013, online: <undocs.org/A/HRC/23/43>.
5. For a summary of the situation in mid-September, see Catherine Morris, "Protect Afghanistan's Truth-Tellers: Human Rights Defenders in a World of Diplomatic Doublespeak", *Slaw* (15 September 2021), online: <www.slaw.ca/2021/09/15/protect-afghan-istans-truth-tellers-human-rights-defenders-in-a-world-of-diplomatic-doublespeak/>.
6. Michelle Bachelet, UN High Commissioner for Human Rights, "Oral Update on the Situation of Human Rights in Afghanistan", 48th Session of the Human Rights Council, 13 September 2021, online: <www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27445&LangID=E>.
7. Ritu Mahendru, "The Taliban Will Have No Mercy': LGBTQ+ Afghans Go into Hiding", *The Guardian* (20 September 2021), online: <www.theguardian.com/global-development/2021/sep/20/taliban-lgbtq-afghans-go-into-hiding>.
8. The term "atrocities crimes" is used internationally to refer to crimes against humanity, genocide and war crimes. See United Nations, *Framework of Analysis for Atrocity Crimes: A Tool for Prevention* (Geneva: UN, 2014), online: <www.un.org/en/genocideprevention/documents/about-us/Doc.3_Framework%20of%20Analysis%20for%20Atrocity%20Crimes_EN.pdf>.
9. Nema Milaninia, "Evidence Destruction and the Crisis in Afghanistan", *Just Security* (20 August 2021), online: <www.justsecurity.org/77831/evidence-destruction-and-the-crisis-in-afghanistan/>.
10. International Criminal Court, "Afghanistan: Situation in the Islamic Republic of Afghanistan" (ICC-02/17), online: <www.icc-cpi.int/afghanistan>.
11. Lawyers' Rights Watch Canada, "USA: Attack on International Criminal Court: The US Must Immediately Lift Sanctions Against ICC Personnel" (29 March 2021), online: <www.lrwc.org/usa-attack-on-international-criminal-court-the-us-must-immediately-lift-sanctions-against-icc-personnel-statement/>.
12. Murray Brewster, "Former MP to Ask International Criminal Court to Investigate Canada's Afghan War

- Conduct", CBC (27 November 2017), online: <www.cbc.ca/news/politics/afghan-detainees-icc-1.4418269>.
13. Inspector-General of the Australian Defence Force, *Afghanistan Inquiry Report* (Commonwealth of Australia, 2020), online: <afghanistandinquiry.defence.gov.au/sites/default/files/2020-11/IGADF-Afghanistan-Inquiry-Public-Release-Version.pdf>.
 14. Clive Baldwin, "UK War Crime Revelations in Afghanistan Expose Justice Failings", Human Rights Watch (5 August 2020), online: <www.hrw.org/news/2020/08/05/uk-war-crime-revelations-afghanistan-expose-justice-failings>.
 15. Lawyers' Rights Watch Canada, "Afghanistan: LRWC Statements to Human Rights Council" (August–September 2021), online: <www.lrwc.org/afghanistan-statement-to-human-rights-council/>.
 16. UN Human Rights Council, "High Commissioner for Human Rights Urges Special Session of the Human Rights Council on Afghanistan to Establish a Dedicated Mechanism to Closely Monitor the Evolving Human Rights Situation in Afghanistan" (24 August 2021), online: <www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=27406&LangID=E>.
 17. Human Rights Watch, "Preserve Evidence of Potential Rights Abuses in Afghanistan" (30 August 2021), online: <www.hrw.org/news/2021/08/30/preserve-evidence-potential-rights-abuses-afghanistan>.
 18. Lawyers' Rights Watch Canada, "Serious Human Rights Concerns and Situation in Afghanistan. Oral Statement to the 31st Special Session of the UN Human Rights Council from Lawyers' Rights Watch Canada, the International Bar Association, and The Law Society, NGOs in Special Consultative Status" (24 August 2021), online: <www.lrwc.org/afghanistan-statement-to-the-un-human-rights-council-seeks-fact-finding-mechanism-joint-statement/>.
 19. Truth and Reconciliation Commission of Canada, *Canada's Residential Schools: Missing Children and Unmarked Burials. The Final Report of the Truth and Reconciliation Commission of Canada*, vol 4 (2015), online: <publications.gc.ca/collections/collection_2015/trc/IR4-9-4-2015-eng.pdf>.
 20. Nathan M Greenfield, "First Nations Search for Thousands of Child Graves", *University World News* (15 September 2021), online: <www.universityworldnews.com/post.php?story=2021091511011377>.
 21. Lawyers' Rights Watch Canada, "Canada Must Conduct Thorough, Independent Investigation of All Undocumented Deaths of Indigenous Children" (27 June 2021), online: <www.lrwc.org/canada-must-conduct-thorough-independent-investigations-of-all-undocumented-deaths-of-indigenous-children-statement/>.
 22. For more detail and references, see *ibid*.
 23. Human Rights Council, *Annual Report of the Expert Mechanism on the Rights of Indigenous Peoples*, A/HRC/48/73, 9 August 2021, at para 20, online: <undocs.org/A/HRC/48/73>.
 24. Lawyers' Rights Watch Canada, "Canada: International Law Obligations to Suspend Construction of Pipeline and Stop Use of Force Against Wei'suwei'en 1 Legal Brief" (17 March 2020), online: <www.lrwc.org/canada-legal-brief-international-law-wet-suwei'en-1>.
 25. Lawyers' Rights Watch Canada, "Canada: Respect Indigenous Peoples' Right to Self-Determination" (27 September 2021), online: <www.lrwc.org/canada-respect-indigenous-peoples-right-to-self-determination/>.
 26. Lawyers' Rights Watch Canada, "Canada: Right to Self-Determination of Indigenous Peoples. Oral Video Statement to the UN Human Rights Council" (27 September 2021), online: <www.lrwc.org/canada-right-to-self-determination-of-indigenous-peoples-oral-video-statement-to-the-un-human-rights-council/>.
 27. Human Rights Council, *Efforts to Implement the United Nations Declaration on the Rights of Indigenous Peoples: Indigenous Peoples and the Right to Self-Determination – Report of the Expert Mechanism on the Rights of Indigenous Peoples*, A/HRC/48/75, 4 August 2021, online: <undocs.org/A/HRC/48/75>.
 28. Humanitarian China et al, *China: The Persecution List*, video shown at the 5th China Human Rights Lawyers Day Conference, 7 July 2021, online: <www.lrwc.org/china-the-persecution-list-video/>.
 29. Morris, *supra* note 5.
 30. The International Bar Association's Human Rights Institute, the Law Society of England and Wales, Lawyers for Lawyers, and Lawyers' Rights Watch Canada, "Myanmar: Widespread, Systematic Gross Human Rights Violations. Joint Oral Statement to the UN Human Rights Council" (23 September 2021), online: <www.lrwc.org/myanmar-widespread-systematic-gross-human-rights-violations/>.
 31. Art Lubiano, "NUPL, IBP, Groups Mourn Death of Cebuano Human Rights Lawyer", *Rappler* (26 August 2021), online: <www.rappler.com/nation/nupl-ibp-groups-mourn-death-cebuano-human-rights-lawyer>.
 32. Rommel Rebolledo, "NBI Starts Separate Probe into Macababba Slay", *Rappler* (21 September 2021), online: <www.rappler.com/nation/nbi-starts-separate-probe-juan-macababba-slay>.
 33. International Criminal Court, "Situation in the Philippines: ICC Pre-Trial Chamber I Authorises the Opening of an Investigation" (15 September 2021), online: <www.icc-cpi.int/Pages/item.aspx?name=PR1610>.
 34. Ted Regencia, "ICC to Open Full Investigation into Duterte's 'War on Drugs'", *Al Jazeera* (15 September 2021), online: <www.aljazeera.com/news/2021/9/15/philippines-icc-agrees-to-probe-dutertes-war-on-drugs>.