

Lawyers' Rights Watch Canada

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

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LRWC NEWS – November 2009

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Letters for Lawyers

Philippines: On November 23, 2009, 57 people including two women lawyers, Concepcion (Connie) Brizuela and Cynthia Oquendo, were abducted and brutally executed while enroute to file nomination papers for the May 2010 election. LRWC issued a joint statement with the Asian Legal Resource Centre, [Human Rights groups condemn massacre and call for an international inquiry](#). The Philippine government has not investigated any of the over 800 extrajudicial killings (including 15 judges and 22 lawyers) that have occurred since 2001. Neither has the Philippine government implemented witness protection measures recommended in 2007 by UN Special Rapporteur Philip Alston. LRWC has requested, through a letter (Gail Davidson) to Canadian Ambassador to the Philippines Desjardins and Minister of Foreign Affairs Cannon, that Canada immediately provide protection for the witnesses to the massacre.

Syria: Syria monitor Michael Macaulay sent letters regarding two Syrian lawyers, Muhannad al-Hassani and Haytham al-Maleh. Mr. al-Hassani has been the subject of arrest, denial of access to a lawyer, malicious prosecution (e.g., declarations aimed at weakening patriotic feelings) and disciplinary proceedings. On November 10, 2009 he was permanently disbarred, ostensibly for heading an unlicensed human rights organization without the prior approval of the bar association, and for monitoring sessions of the State Security Court. Mr. Al-Hassani's lawyer, Haytham al-Maleh was arrested October 14th and charged with similar political offences ("conveying false news within Syria that could debilitate the morale of the nation," "weakening national sentiment" and "slandering" a governmental body). The 78-year-old Mr. al-Maleh, one of Syria's most respected human rights activists, was imprisoned from 1980 until 1986 for his work for the Freedom and Human Rights Committee of the Syrian Lawyers' Union. Syria has been under Emergency Measures since 1963.

Follow-up: In the Canadian case of Robert Lee, LRWC (Brian Samuels) wrote to the Office of the Alberta Child and Youth Advocate objecting to the denial of Mr. Lee's request to be placed on the Legal Representation for Children and Youth roster. Constance Marlatt wrote a follow-up letter calling for charges against Philippine lawyer Remigio Saladero to be withdrawn, in the absence of any reasonable grounds legitimating the charges. (see September newsletter)

Publications and Research

[States Duty to Investigate Extra-Judicial Killings](#). A new edition of the 2007 *The Duty of the Philippine's Government to Investigate Extra-Judicial Killings*, by Matthew Stacey, is now available. The November 2009 edition summarizes jurisprudence and analyses the duty of states to ensure the identification and punishment of the perpetrator(s) of violent deaths through investigations that are thorough, independent, transparent and accountable, followed by appropriate prosecutions and trials. The 2007 edition was prepared for NGOs working to end seven years of extra-judicial killings in the Philippines. The 2009 edition will be distributed to NGOs and to UN Human Rights Council Special Mandate holders.

[Protesters' Guide to the Law of Civil Disobedience in B.C.: Olympic Edition](#). This important civil liberties guide was produced by LRWC Director Leo McGrady QC. The new Olympic edition, an update of the 2002 edition, is available for copying and distribution without copyright restrictions other than acknowledgment of authorship.

Emergency Measures: Are They Ever Legitimate? An analysis of jurisprudence and opinions that highlights the need for international standards that are unambiguous and enforceable by Meghan Clarke and Gail Davidson, is nearing completion.

Duty to Protect: the Omar Khadr Case. Fara McLaren is producing a paper outlining developments in the Omar Khadr case since January 2009 in both Canada and the U.S. including the *2009 Military Commissions Act* that purports to legitimate continuing denial of fair trial rights for Khadr and other U.S. prisoners.

Education

In Toronto: On Monday November 16, 2009 LRWC and Amnesty International/Canada co-sponsored a panel discussion *Illusionary Justice: Threats to the Rule of Law and Human Rights in Sri Lanka* held in the Donald Lamont Learning Centre at the Law Society of Upper Canada, Toronto. The panel discussion, moderated by the senior associate editor of the Toronto Sun, Lorrie Goldstein, featured Dr. Paikiasothy Saravanamuttu, the executive director of the Centre for Policy Alternatives in Sri Lanka and guest lecturer at the University of Toronto; Yolanda Foster, South Asia researcher for Amnesty International/UK and principal author of *Twenty Years of Make-Believe: Sri Lanka's Commissions of Inquiry*; and Sharryn Aikien, associate professor of law at Queen's University. Approximately 80 lawyers, law students, academics, and human rights activists attended the panel discussion that included a lively discussion session followed by a wine and cheese reception. The event was organized by LRWC members Harini Savalingam and Gary Adanansangaree. LRWC is very pleased to have brought together such eminent Sri Lanka specialists.

In Vancouver: Gail Davidson gave a workshop on *War and Law: The Development of Human Rights Law after WW II* and a talk on *Crime and Punishment: An End to Impunity?* at the World Peace Forum annual Teach-in, *From Crash to Catastrophe*, held in Vancouver, November 7, 8 & 11, 2009. The workshop and the talk were well received: students and other participants expressed frustration with the lack of access to human rights education and training.

Online: The Sri Lanka event and Gail's talk were video taped for re-broadcast on cable television networks and online distribution. Gail's speaking notes are also available.

Sri Lanka Country Monitoring Profile

Since becoming LRWC's Sri Lanka monitor in May 2009, Harini Savalingam has done exemplary work advocating for the safety of human rights defenders engaged in restoring rights and remedying violations, and for the return of internally displaced people to their traditional villages. Her work has included attending the 11th Special Session of the UN Human Rights Council (HRC) on Sri Lanka and the 12th Session of the HRC, making oral presentations at those HRC sessions, writing letters, researching and writing reports, meeting with UN officials, representatives of NGOs and members of

government missions in Geneva and organizing the Toronto event, *Illusions of Justice: The Rule of Law and Human Rights in Sri Lanka*. (see full [Sri Lanka Country Monitoring Report](#))

Human Trafficking Monitoring

Trisha Aplan has been building relationships with and monitoring the activities of NGOs fighting the trafficking and sexual exploitation of women and children based in India (GURIA), Thailand (ECPAT), Cambodia (Action Pour Les Enfants) and Canada (Beyond Borders). GURIA, based in Varanasi, has invited LRWC to contribute to the design and delivery of a human rights training programme for people working on trafficking issues within the legal system.

Burma News

Burma Monitor Paul Copeland reports that since the sentencing of Daw Aung San Suu Kyi for allowing American John Yettaw to stay in her home there have been some ongoing developments regarding economic sanctions against Burma, including some significant American diplomatic involvement with the National League for Democracy (NLD) and State Peace and Development Council (SPDC) officials regarding sanctions. A senior SPDC official has met with Aung San Suu Kyi and she has been allowed to meet with senior Australian diplomatic officials. Senior members of the NLD have met with officials from the European Union. Elections are scheduled for 2010 pursuant to the flawed constitution adopted in the aftermath of Cyclone Nargis.

Notable Cases

[Padilla v. Yoo](#) U.S. District Court for the Northern District of California. In this case, Jose Padilla claims damages for deprivation of constitutional rights against John Yoo who, during his tenure in the Office of Legal Counsel for the U.S. Justice Department, authored memos purporting to legally justify “enhanced interrogation techniques” used on Padilla. Yoo wrote, for example, the August 2002 advice that interrogation methods were not torture unless they caused pain “equivalent to the intensity of the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death.” The U.S. District Court refused Yoo’s preliminary application to dismiss the suit, ruling that “... government lawyers are responsible for the foreseeable consequences of their conduct” (p.32) and that courts are not barred for hearing such suits “during war-time.” Citing decisions holding lawyers liable for advice justifying unconstitutional conduct, Judge White went on to find that Yoo had “...set in motion events that resulted in the deprivation of Padilla’s constitutional rights” (p.34). Yoo has appealed the June 2009 decision to the 9th Circuit Court of Appeals. Given the issues raised, the case may ultimately be decided by the U.S. Supreme Court.

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