

Lawyers' Rights Watch Canada

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

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Promoting human rights by protecting those who defend them

LRWC NEWSLETTER – MAY 2011 EDITION

LRWC Action News

Bahrain: Human rights advocates, Mr. Abdulla Alderazi and Mr. Essa Al-Ghayeb have recently been the victims of intimidation by the government of Bahrain for their peaceful involvement in human rights activities. Mr. Alderazi, the Secretary General of the Bahrain Human Rights Society (BHRS), was subject to an unlawful interrogation by the Office of the Military Prosecution, suspension from his teaching duties and has been charged with “spreading false information about Bahrain” under the Criminal Code of Bahrain, and offence punishable by jail and/or fines. Mr. Al-Ghayeb, the Deputy Secretary General of the BHRS has been banned from travel, preceding his attempts to travel to Kuwait to participate in a seminar on the death penalty in Kuwait. No reasons have been provided for the ban, nor is any mechanism available to Mr. Al-Ghayeb to challenge the ban. On May 31, LRWC sent a letter to Cheikh Hamad bin Issa Al Khalifa, King of Bahrain, urging Bahrain authorities to: remedy these violations, safeguard the liberty and freedom of speech and association of Messrs. Alderazi and al-Ghayeb.

Brazil: On May 31, LRWC wrote to Brazilian President, Dilma Vana Rousseff, in response to the May 24, 2011 assassinations of Mr. José Cláudio Ribeiro da Silva and Mrs. Maria do Espírito Santo da Silva. Both were gunned down close to their home in Pará State apparently in reprisal for their opposition to illegal logging and charcoal production in the Amazon rainforest and their advocacy for sustainable use of forest resources. Mr. and Mrs. da Silva were members of the National Council of Extractive Populations and leaders of the Agro-extractive Project Praialta-Piranheira. They had received death threats in November 2010 as a result of their work. LRWC called for a public, thorough investigation to bring those responsible to trial. LRWC also queried why the two victims were not receiving protection under Brazil’s National Protection Programme for Human Rights Defenders.

Cambodia: A controversial law on the formation, registration, and operation of NGOs in Cambodia is being drafted for a third time. A second draft of the legislation released March 24, 2011, and was heavily criticized during by more than 60 human rights organizations. On May 23 was rejected as “unacceptable” in a statement by 574 Cambodian NGOs because of its restrictions on the freedom and independence of NGOs working within Cambodia. The draft law was also criticized for requiring foreign NGOs to collaborate with government on project planning, implementation, monitoring and evaluation. Foreign donors to Cambodia joined in the criticism of the NGO law and other human rights concerns at a Phnom Penh meeting on April 20. LRWC had previously issued an April 8 [joint statement](#) with the Centre for Law and Democracy criticizing the draft law for its provisions to prohibit unregistered groups from operating, and at the same time creating potential for public officials to deny registration on illegitimate or unreasonable grounds. The Executive Director of the Cooperation Committee for Cambodia, Lun Borithy, reported on May

24 that Nouth Sa An, Secretary of State at the Ministry of Interior, had promised earlier this year that any third draft would be available for review by civil society organizations prior to being sent to the Council of Ministers, after which it is not expected to be available for public consultation. As of May 31, the third draft has not yet been released for consultation. LRWC will continue to monitor the situation, including any future drafts.

China: Lawyer Teng Biao was released 1 May 2011. Teng was arrested 19 February 2011 as part of an effort to prevent a 'Jasmine Revolution'. Teng had been involved with clients and causes unpopular with Chinese officials including membership in the Chinese Christian Rights Defense Association and the defense of Chen Guangcheng, a public critic of enforced abortions. LRWC wrote a [letter](#) and filed a complaint with the Working Group on Enforced or Involuntary Disappearances (WGEID) on behalf of Teng and two other lawyers, Jian Tianyong and Tang Jitian. In April Jian was released and Tang put under house arrest.

Colombia: Colombian Judge, Maria Cristina Trejos has been the subject of public criticism by Colombian President, Juan Manuel Santos Calderón for her recent decision to sentence retired army general, Jesús Armando Arias Cabrales, to 35 years in prison for his role in the enforced disappearance of 11 people in November 1985. LRWC and Lawyers Without Borders Canada sent a [joint letter](#) on 24 May to President Calderon, calling for him to:

- abide by international law standards that safeguard the independence of judges;
- ensure that protective measures are issued to guarantee Justice Trejos's safety as well as that of other judges ruling on high-profile cases;
- use his position as President of Colombia to reinforce the principle of the independence of the judiciary, rather than undermine it;
- issue a statement withdrawing the remarks about Judge Trejos, and articulate the importance of her and other judges having the respect and security necessary for them to act independently.

Zimbabwe: Ms. Florence Ndlovu and Mr. Walter Dube were arrested on May 23 for participation in and remarks made at a meeting being held by the human rights group ZimRights. The meeting was meant to raise awareness amongst the villagers of torture and its effects. Ms. Ndlovu has been detained because of statements she allegedly made to the effect that Zimbabwean police are guilty torture and assault. LRWC sent a letter to President Robert G. Mugabe expressing concern for the physical and psychological well-being of Ms. Ndlovu, who has yet to be released, and calling for her immediate release.

UN Human Rights Council 17th Session: LRWC hosts Side Event on impunity

LRWC, the Asian Legal Resource Centre (ALRC) and el Grupo de Trabajo sobre Justicia Internacional y Derechos Humanos (el Grupo) have organized and are hosting a side event on [Combating Impunity: The Role of Judges and Lawyers](#). Human Rights Watch and the International Commission of Jurists have joined us as co-sponsors of the event which will take place Friday 3 June, in Room VIII at Palais des Nations in Geneva, from 2:00-4:00 pm. Guest speakers are Spanish Judge Baltasar Garzón on, *Combating Impunity: Perspectives from the Bench* and Wolfgang Kaleck Secretary General of the [European Center for Constitutional and Human Rights](#), on *Universal jurisdiction to combat impunity for serious human rights violations constituting crimes under international law: The role of lawyers and NGOs*. Both of these jurists have formidable experience in bringing suspected perpetrators of international crimes to trial. This side event is a follow-up of the Geneva event organized and hosted by LRWC, ALRC, el Grupo and 6 other NGOs on *The International Convention for the Protection of All Persons from Enforced Disappearances: Now What? The Problem of Continuing Impunity*.

Judge Baltasar Garzón is one of the most famous jurists promoting the enforcement of laws to combat impunity. As a judge of Spain's Audiencia Nacional – the highest level criminal court in Spain, he has approved investigations and prosecutions of many controversial cases involving widespread crimes against humanity and human rights. He is the judge who issued an arrest warrant for former Chilean dictator Augusto Pinochet, then in England. More recently opened an investigation of a criminal torture complaint against former U.S. Attorney General Alberto Gonzales and five other legal advisors who helped plan the use of torture and the means to get away with it.¹ Judge Garzón has also written extensively about the consequences of impunity. In his 2005 book, *Un Munda sin Miedo*, he wrote, “A system which is based on the bodies of victims who still await justice to rest in peace is an illegitimate system condemned to suffer eventually the same fate.”² Famous for using the law to investigate and prosecute state officials for criminal violations of internationally protected rights faces criminal charges for opening an investigation in 2008 into an estimated 114,000 thousand extra-judicial executions and enforced disappearances carried out by Franco's officials during the civil war and dictatorship.

Wolfgang Kaleck is a German human rights lawyer well known for representing victims of state crimes. Kaleck represented German victims of former Argentine President Jorge Videla who was charged with the torture and killing of thousands during his rule in the late 1970's and 1980s. He also represents 11 victims of torture and other human rights abuses, as well as about 40 human rights activists and organizations who are co-plaintiffs in a criminal complaint for torture against Rumsfeld, Tenet, Gonzales and other high ranking US officials filed in Germany in November 2006. Mr. Kaleck was president of the Republican Lawyers Association. Kaleck is the author of the comprehensive review, *From Pinochet to Rumsfeld: Universal Jurisdiction in Europe, 1998-2008*, 30 (3) *Michigan Journal of International Law* 927, June 2009.

LRWC members Cara Gibbons and Gary Anandasangaree will attend the event and part of the 17th session of the UN Human Rights Council as LRWC representatives.

New Publication

Maureen Webb, *The Constitutional Question of Our Time: Extraterritorial Application of the Charter Afghan Detainees Case*, [National Journal of Constitutional Law](#), 235 (2011)

With Canada indefinitely engaged with other states in fighting a protracted “war on terrorism,” the question of whether and how the Charter applies to Canadian officials when they operate extraterritorially is pressing. The author argues that the Supreme Court of Canada's doctrine on extraterritoriality to date, fails to provide an answer that is fully consonant with existing Charter analysis or international law. Canvassing the Canadian cases, including the Supreme Court of Canada's two decisions concerning Guantanamo detainee Omar Khadr, as well as recent international, American and British jurisprudence, the author argues a doctrine that looks to causation and contribution, and not location, is the only defensible one given the purpose of

¹ Others charged are: William Haynes II, former general counsel for the Department of Defense; John Yoo, the former Justice Department lawyer who wrote secret legal opinions saying President George W. Bush had the authority to circumvent the Geneva Conventions; Douglas Feith, former undersecretary of defense for policy; Jay Bybee, Yoo's former boss at the Justice Department's Office of Legal Counsel; and David Addington, chief of staff and legal adviser to ex-Vice President Dick Cheney.

² B. Garzon, *Un Munda sin Miedo*, random House Mondadori 2005, p. 171. Translated and referred to by Peter Burbidge, *Waking the Dead of the Spanish Civil War – Judge Baltasar Garzón and the Spanish Law of Historical Memory*, University of Westminster School of Law, Research Paper No. 10-30.

constitutional documents (to establish responsible government) and the principle of state responsibility that governs extraterritorial state action in international law. She demonstrates further the capacity of ordinary Charter analysis — in its approach to the contents of rights, sensitivity to functional considerations, and proportionality tests under s. 1 — to provide sophisticated solutions to the problems inherent in applying domestic constitutions and regional human rights instruments abroad. If the Supreme Court were to faithfully employ all the steps in this analysis to extraterritorial cases, she argues, rather than trying to frontload all of their concerns onto the interpretation of s. 32(1) (the Charter’s application clause), Canadian jurisprudence could lead the way in this emerging area of the law.

Maureen Webb, who practices labour, constitutional and human rights law with Champ and Associates in Ottawa, is a Director of LRWC and past Co-Chair of the International Civil Liberties Monitoring Group. Maureen speaks on legal and national security matters across North America.

LRWC in the News

Human Rights Monitoring Group: upholding the rule of law and providing a watchful eye, Ontario Lawyers Gazette, Spring 2011, Vol. 15. No.1, featured interviews with LRWC directors Paul Copeland and Gail Davidson on the need for the Law Society of Upper Canada’s HRMG. Davidson noted that post 9/11, “the personal and professional safety of judges and lawyers promoting adherence to the law in cases involved allegations of wrongdoing by state actors are at heightened risk” and praised the work of the HRMG as necessary and effective.

LRWC Volunteers

Christopher Gully is finishing a three month internship with LRWC, having worked on the monthly newsletter, assisting with the annual general meeting and report, assisting with UN Human Rights Council involvement, and contributing to research on an LRWC project on human rights education and training. Christopher recently moved to Vancouver after graduating with a Masters of International Relations, and has worked on a variety of research, writing, and advocacy projects at organizations including the International Service for Human Rights, Amnesty International (Vancouver), and the International Labour Organization. LRWC wishes Christopher the best of luck as he looks for employment and takes the next steps in his career.

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- Monthly donations increase LRWC’s ability both to respond quickly and plan ahead.
Airline points donated to LRWC qualify as a tax-deductible donation!