

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

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LETTERS FOR LAWYERS

CANADA: MISSING WOMEN COMMISSION OF INQUIRY – INEQUALITY OF LEGAL FUNDING

BC Attorney General Shirley Bond replied to LRWC's Sept. 19, 2011 letter outlining BC's duty to provide legal funding to impecunious non-government groups with standing to enable their full participation in the inquiry. The Missing Women Commission of Inquiry (inquiry) is examining allegations that the RCMP, Vancouver Police Department and the Criminal Justice branch, between 23/1/97 and 5/2/02, failed to provide poor and disadvantaged women in the Downtown Eastside women with protection of their rights to life equal to that provided to others and as a result more women were murdered than might have been. Commissioner Oppal had recommended that in order for certain grass roots and human rights groups to participate fully in the inquiry, it was necessary for such groups receive public funding to hire lawyers to represent them at the inquiry. In spite of Commissioner Oppal's recommendation and of the fact that state agents' groups all have publicly funded lawyers, the Attorney General of BC refused to provide legal funding to these groups. Eighteen grass roots and human rights subsequently withdrew because lack of legal funding limits their ability to participate effectively. Attorney General Bond's reply to LRWC indicated that BC provides legal aid only when Charter rights are engaged and the outcome was likely to affect rights to liberty or security. [LRWC's reply](#) of October 22, 2011 pointed out that the inquiry engages rights to life, equality and non-discrimination and the right to effective investigations of extra-judicial killings: rights protected by the Charter and international law. By not providing groups making the allegations of wrongdoing with legal funding equal to that provided to state agents, BC is continuing the very practices of inequality and discrimination under review and undermining the legitimacy of the inquiry.

IN-COUNTRY INVESTIGATIONS

THAILAND

LRWC monitor and researcher, Catherine Morris visited Thailand during October. While the threat of flooding in Bangkok prevented some visits, she was able to meet with a number of human rights defenders in Thailand. Priority issues for LRWC in Thailand include freedom of expression and protection of human rights defenders.

Freedom of expression is hampered by use of lèse majesté laws to suppress dissent including provisions in Thailand's Penal Code and the 2007 Computer Crimes Act.



The trial of editor and human rights defender, Chiranuch Premchaiporn, on charges under the Computer Crimes Act, which Ms. Morris was registered to attend, was adjourned to February 2012 because of flooding.

In addition to the need for continued advocacy on freedom of expression, Ms Morris has identified a need for increased research and advocacy as to the manifestations of and reasons for impunity for attacks and murders of human rights defenders, particularly community activists. At least 20 human rights defenders have been killed or disappeared since 2003. The enforced disappearance of human rights lawyer Mr. Somchai Neelapaichit, in 2004 continues to be of concern as does the 2006 murder of environmental activist Mr. Thongnak Sawekchinda. At particular risk are activists seeking to protect their lands from damage related to economic development.

[To read more...](#)

CAMBODIA

LRWC monitor and researcher, Catherine Morris, visited Cambodia during the month of October to discuss with human rights workers their priority concerns for protection of human rights defenders. The main concerns are curbs on freedom of expression and assembly, particularly of human rights defenders and community leaders involved in initiatives to protect of community land rights and prevent forcible evictions.

The main form of abuse of human rights defenders is judicial harassment facilitated by a judiciary that lacks independence, especially in cases involving wealthy or politically powerful persons. Laws used to penalize criticism of government include Penal Code crimes of defamation (Article 305), “Public Insult” (article 307), “Incitement to Commit a Crime” (Art. 495) and “Incitement not leading to a Crime.” Community-based activists are particularly vulnerable to violence and threats of criminal charges. The draft Law on Associations and Non-Governmental Organisations (“NGO law”) has been roundly criticized for its apparent intention to restrict freedom NGOs’ freedom to pursue lawful advocacy and human right education.

LRWC continues to monitor the progress of the draft NGO law and monitors cases of human rights workers and community activists subject to threat. [To read more...](#)



UNITED NATIONS COMMITTEE ON TORTURE (CAT)

LRWC files report on Sri Lanka.

LRWC made [submissions](#) to CAT for consideration on CAT’s 3rd and 4th periodic review of Sri Lanka’s implementation of the Convention against Torture conducted under to Art. 19. The LRWC submissions to CAT were prepared by Gary Anandasangaree and Vani Selvarajah. Other NGOs providing written submissions to CAT included Amnesty International, the International Commission of Jurists, the Asian Human Rights Commission and Freedom From Torture. LRWC recommends that Sri Lanka become a party to the Optional Protocol to the Torture Convention and adopt measure to ensure the prompt, independent and effective investigations of all torture complaints. CAT hearings of NGO submissions

and Sri Lanka's response will take place on November 8 & 9 in Geneva.

[United Nations Human Rights Council: Oral statement on Enforced Disappearances, Presented at the 18th Session](#) – Link posted

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS (IACHR)

Landmark Hearing.

October 28, 2011. Heather Neun, on behalf of LRWC was present in Washington, D.C. at the historic and potentially ground breaking hearing by the IACHR of the Hul'qumi'num Treaty Group's (HTG) petition. The HTG's petition against Canada claims violations of the HTG's rights to property, culture, religion, due process and equality under the American Declaration on the Rights and Duties of Man. The case involves the 1884 seizure of some 237,000 hectares of the Hul'qumi'num people's traditional lands, most of which are now privately owned by three forestry corporations. These lands are not on the B.C. treaty negotiations table that the HTG has sat at for many years. Moreover, in recent years, clear-cutting and development projects have caused irreparable harm to these lands. The Commission is expected to release their decision within the next year. Before that time, LRWC may have an opportunity to reply in writing to some questions raised by the Commission during the hearing.



The Hul'qumi'num Treaty Group delegation.

LRWC filed an amicus brief in support of the HTG which elaborated on the proper approach to the right to equality and non-discrimination within the Inter-American human rights system. LRWC argued that the right to equality and non-discrimination, as a peremptory norm and jus cogens principle under international human rights law, obliges Canada to guarantee all other rights (including the right to property) on an equal and non-discriminatory footing.

“Canada cannot credibly demand that other states live up to international standards for the protection of human rights -- including the fundamental right to equality and non-discrimination -- while dismissing

those same standards at home,” said Neun.

Amnesty International also filed an amicus brief, which provided a comprehensive overview of the obligation under international law to recognize indigenous rights. Craig Benjamin attended the hearing on behalf Amnesty.

LRWC's attendance at the hearing presented a unique opportunity to engage with HTG's counsel and other First Nations supporters over key legal issues and strategies. The HTG delegation appreciated having amici like LRWC and Amnesty International present as observers. The focus prior to the Commission's decision, will be on public education about the need to remedy wrongful land seizures and legislated and consequential discriminatory treatment, in accordance with the principles and jurisprudence of the Inter-American human rights system.

Canada's compliance with its domestic and international human rights obligations towards First Nations peoples such as the Hul'qumi'num is long overdue.

"Fair and timely resolution of land and resource disputes is essential for reconciliation of Indigenous and non-Indigenous peoples in Canada and for closing the unacceptable gap in standard of living facing so many Indigenous communities. We hope that the intervention of the international human rights body can be a catalyst for rethinking government policies and approaches that have so blatantly failed Indigenous peoples and the cause of justice." – Grand Chief Matthew Coon Come, Grand Council of the Cree (Eeyou Istchee)

LRWC will monitor developments and contribute to initiatives to provide public education on the factual and legal issues raised in these proceedings.



Heather Neun accepting a gift for LRWC.

INTERNATIONAL HUMAN RIGHTS EDUCATION & TRAINING

The need for international human rights education and training for elected representatives, police and journalists was amply demonstrated at the visits to Canada of admitted torturers, former US vice president Dick Cheney and of former US president George W. Bush. Prior Bush October 20 visit to Surrey BC, various groups sent letters and briefs to those in control of law enforcement advising that, in light of conclusive evidence that Bush had authorized, directed and failed to prevent the widespread use of torture, Canada was legally obliged to either bar him from Canada or arrest and prosecute him on arrival.

Groups providing this advice along with analyses of the applicable law and relevant evidence were [Lawyers against the War](#) (LAW) by letter on Aug. 25/11, the Center for Constitutional Rights (CCR) and the Canadian Centre for International Justice (CCIJ) by [letter](#) and [indictment](#) on Sept. 29/11 and Amnesty International (AI) via a brief on Oct. 12/11. The CCR and CCIJ indictment was signed by over 50 organizations from 30 countries and was supported by 4,000 pages of evidence. CCR and CCIJ filed a 4-count torture information against Bush on Oct. 20 which was 'stayed' by the AGBC on the same day. Earlier LAW had provided a similar analysis regarding Dick Cheney.

Elected representatives at all levels ignored the law, apparently in the belief that the prohibition against torture doesn't apply to torturers in high places. All who made public statements demonstrated poor to no understanding of the non-derogability of the global ban on torture, universal jurisdiction, the equal application of the law and the duty to enforce the law.

RCMP and Vancouver police officers had been led to believe that George W. Bush and Dick Cheney are internationally protected people; a Vancouver City Councillor thought barring Cheney would violate the presumption of innocence; Mayor Diane Watts apparently thought freedom of expression trumped any criminal law torture prohibitions; some journalists thought torture was 'still a matter of public debate.' Minister of Immigration Jason Kenney dubbed the call for law enforcement as a 'stunt'.

LRWC is preparing a report on state duties to provide international human rights education and training that examines performance of this duty in BC.

NOTABLE PUBLICATIONS

GHOST DANCING WITH COLONIALISM: Decolonization and Indigenous Rights at the Supreme Court of Canada

By Grace Li Xiu Woo (Vancouver: UBC Press, 2011) ISBN 978-0-7748-1887-2

Is Canada post-colonial? Not according to the Indigenous people caught in endless struggles for political and territorial recognition.

This book explains some of the reasons for the stalemate and it could change the way Aboriginal rights cases are presented and argued. British tradition included two conflicting models for "the rule of law". One, based on popular consent, is the foundation for democracy and equality rights. The other, based on the use of force, produced colonialism and genocide.

Ghost Dancing uses international law to define these contradictory models for legality in concrete terms. The results are surprising. It is now possible to identify the colonial elements that continue to haunt celebrated Supreme Court of Canada decisions on Indigenous rights making it obvious that Canada still has a long way to go before it can claim to be a fully democratic post-colonial state.

The book may be ordered from UBC Press at <http://www.ubcpress.ca/>. Hard cover \$85.00. Paper-back available in 2012 for \$35.00. Profiles of the 96 S.C.C. judgments analyzed are available at <http://circle.ubc.ca/handle/2429/34959>. Amazon offers the book at a slight discount.

Grace Woo is a member of LRWC and one of the authors of LRWC's HTG amicus brief.

LRWC PUBLICATIONS

- [*Cambodia: Human Rights Report*](#), Catherine Morris, BA, JD, LLM October 2011
- [*Thailand: Human Rights Report*](#), Catherine Morris, BA, JD, LLM October 2011
- *Sri Lanka: 3rd & 4th Periodic Report on the Implementation of the Convention Against Torture, Submission from Lawyers' Rights Watch Canada to the Committee Against Torture*, by Gary Anandasangaree and Vani Selvarajah.

We welcome feedback on Newsletter content, format and delivery. Mail subscriptions are also available.

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