

# 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

### November 2011 Edition

#### LETTERS FOR LAWYERS

##### BURMA

LRWC wrote a [letter](#) to Lt-Gen. U Thein Sein welcoming the release of approximately 200 political prisoners on 12 October 2011 and expressing concern that the vast majority of political prisoners are still imprisoned. LRWC called for the immediate release of all political prisoners and highlighted concerns with prison conditions, the failure to adhere to minimum international standards regarding arrest, detention and trial, and the lack of an independent judiciary. Subsequently Burma's new Human Rights Commission issued a statement claiming that as few as 300 of the nation's suspected 2,000 political prisoners are still incarcerated. Human rights organizations have expressed skepticism with the accuracy of this statement. For example, Thailand's Assistance Association for Political Prisoners has documented 1,667 political prisoners still in prison after the mass release. According to Amnesty International, some of the discrepancy can be explained by a disagreement over which prisoners are being held for political reasons and which are alleged to have committed crimes. Such a situation calls for the Burmese authorities to disclose all the names in a transparent manner.



Lt-Gen Thein Sein

##### CAMBODIA

LRWC and the Centre for Law and Democracy (CLD) sent [recommendations](#) for the fourth draft of the Law on Associations and Non-Governmental Organizations. LRWC and CLD sent [recommendations](#) regarding earlier drafts of the NGO law (April 8, May 31 and September 12). The November 12, 2011 [letter](#) from LRWC and CLD was in response to government indications that civil society groups could provide feedback. The LRWC and CLD recommendations regarding the requirements and process for NGOs to register were focused mainly on: first, measures to ensure that the NGO law not be used as a tool to curtail dissent or otherwise restrict freedom of expression and association; and second on measures to ensure the NGO law safeguards the right of NGOs and other associations of people to engage in human rights advocacy free from harassment, interference or punishment.

##### COLOMBIA

LRWC and 24 other NGOs from Canada, the U.S. and Colombia published a [public statement](#) on November 21, 2011 criticizing President Santos for publicly branding lawyers for the José Alvear Restrepo Lawyers Collective (CCAFAR) as 'opportunists', as 'corrupt' and as seeking to 'enrich themselves at the cost of the public resources of the state' for their representation of victims of the 1997

Mapiripán massacre. General Lejandro Ordóñez also accuses CCAJAR lawyers of conduct ‘characteristic of criminal groups specializing in defrauding the Colombian state’ in the course of representing massacre victims. These statements defamatory statements were made after one of the victims represented by CCAJAR changed her evidence. The Inter-American Human Rights Court ruled in 2005 that the massacre was carried out by the Colombian United Self-Defence Forces (AUC) with the collaboration and acquiescence of the Colombia army and that identification of victims was the responsibility of the government. At the sentencing before a Colombian court, of 9 members of AUC convicted of participating in the massacre, one of the victims changed her evidence stating that the deaths of her sons and husband were not related to the massacre. LRWC also sent a letter focused on the prohibition in the Basic Principles on the Role of Lawyers against identifying lawyers with the actions or causes of their clients and pointing out the statements put the personal and professional safety of the lawyers at risk.

## GREECE

LRWC wrote a [letter](#) expressing concern about threats and racist messages directed towards lawyer Mr. Thanassis Tartis, counsel for the Greek Helsinki Monitor (GHM) GHM spokesperson, Mr. Panayote Dimitras. GHM was one of the organizations that lodged complaints leading to criminal charges against 39 members of the Hellenic Coast Guard for racist remarks made at the Greek Independence Day Parade on March 25, 2011 (see LRWC letter for remarks). On September 20, a group outside the courthouse where the trial was taking place shouted slogans in support of the accused, including repeating the same racist slogans that led to the trial. After the hearing, Mr. Tartis was pursued and verbally assaulted by the supporters of the accused coastguardsmen; while the on-site police remained inactive and offered no protection to the victim. Following that incident, abusive and racist content aimed at Mr. Tartis and Mr. Dimitras appeared on the internet. Many of the messages called for violence against Messrs. Tartis and Dimitras and contained threats on their lives. LRWC called on Greek authorities to take prompt action to protect Tartis and Dimitras, to remedy the violations against them and to ensure adherence to human rights standards established under international law.

## PHILIPPINES

On the occasion of the first International Day against Impunity on November 23, 2011, LRWC joined Canada-Philippines Solidarity for Human Rights (CPSHR) and 23 other individuals and groups in sending a [letter](#) to President Aquino calling for a number of measures to end in impunity in the Philippines. The letter highlighted the failure to prevent and punish extra-judicial killings of government critics including the failure to prosecute the perpetrators of the November 23 2009 massacre in Maquindanao, Southern Philippines of 58 people including 32 journalists and 2 lawyers and continuing atrocities by private militias.



## THAILAND

LRWC contributed to a [joint letter](#) expressing concern about the situation of human rights defender and magazine editor Mr. Somyot Prueksakasemsuk. The letter was written in partnership with Front Line Defenders, Protection International, Clean Clothes Campaign, Asian Forum on Human Rights and Development, FIDH - International Federation for Human Rights, World Organisation against Torture, and the Southeast Asia Press Alliance. Mr. Somyot Prueksakasemsuk is a longtime labour rights activist, is affiliated with the Democratic Alliance of Trade Unions, and is the editor of Voice of the Oppressed (Voice of Taksin). He is charged contravening the lèse majesté law or Section 112 of the Thai Criminal Code which states that “whoever defames, insults or threatens the King, the Queen, the Heir-apparent or the Regent, shall be punished with imprisonment of three to fifteen years”. If convicted, Mr. Somyot

Prueksakasemsuk is facing a maximum of 30 years' imprisonment. To date, he has been in pre-trial detention for six and a half months and has been denied bail on four occasions. Mr. Somyot Prueksakasemsuk is known for his active support for the empowerment of the workers' movement and the right to freedom of association both in Thailand and internationally. Mr. Prueksakasemsuk's arrest came only five days after he held a press conference in Bangkok launching a campaign to collect 10,000 signatures to petition for a parliamentary review of Section 112 of the Criminal Code, which he claims contradicts democratic and human rights principles. LRWC and its partners called on the Thai authorities to: 1. Immediately drop all charges against Mr. Somyot Prueksakasemsuk, or at



least, grant him the right to bail in accordance with fair trial standards under domestic and international law; 2. review the lèse majesté law to ensure its conformity with Thailand's international human rights obligations; and 3. guarantee in all circumstances that all human rights defenders in Thailand are able to carry out their legitimate human rights activities without fear of reprisals and free of all restrictions, including judicial harassment. LRWC has learned on 30 November of reports of improved treatment of Mr. Somyot Prueksakasemsuk at Sa Kaeo Provincial Prison. The improvement is believed to be the result of the joint appeal sent to Thai authorities. The appeal letter also appeared in a local newspaper which one prison guard shared with Mr. Somyot Prueksakasemsuk.

## UNITED NATIONS COMMITTEE AGAINST TORTURE

### COMMITTEE AGAINST TORTURE CONCLUDING OBSERVATIONS ON SRI LANKA

The Committee against Torture (CAT) conducted its periodic review of Sri Lanka's adherence to obligations under the Convention against Torture on November 8-9 2011 in Geneva and released its [report on Sri Lanka](#) on November 26. LRWC had a report submitted citing the widespread use of torture by state agents and detention conditions in breach of minimum international standards. LRWC recommended, inter alia, a register of people in custody and effective prevention and punishment of allegations of torture and other crimes by state agents. CAT identified the on-going use of torture and unresolved enforced disappearances as critical problems in Sri Lanka. Regarding torture, CAT recommended that the government of Sri Lanka: ensure effective and timely investigations and prosecutions, enact laws prohibiting the use of evidence obtained by torture, publicly condemn torture and ensure wide awareness of the personal criminal liability for torture. With respect to enforced disappearances, CAT recommended the government of Sri Lanka: make enforced disappearances a crime, investigate and punish enforced disappearances, ensure that victims receive information and compensation and allow the Working Group on Enforced Disappearances to visit. CAT also recommended a register of people under detention and adherence to minimum international standards including timely access to counsel. Noting "the extremely hostile environment for human rights defenders, lawyers, journalists and other civil society actors in Sri Lanka," CAT recommended protection coupled with effective investigations prosecutions and punishment.

## UNITED NATIONS HUMAN RIGHTS COUNCIL

## UN HUMAN RIGHTS COUNCIL: UNIVERSAL PERIODIC REVIEW OF CANADA AND CHINA

A Geneva-based NGO, UPR.Info.org, is conducting reviews of state responses to recommendations made during the first round of Universal Periodic Reviews (UPR) of UN member states. UPR refers the periodic (every 4 years) review by the UN Human Rights Council of each UN member state's human rights practices. In 2008, LRWC filed reports for consideration on the UPRs of China and Canada both

of which took place in 2009. For the UPR.Infor.org follow-up, LRWC filed a report on China and will file a report on Canada outlining on government action or inaction to address recommendations made during the UPR relating to the issues raised by the 2008 LRWC reports. LRWC's report for the UPR of Canada was entirely focused on Canada's non-compliance with various human rights obligations in the handling of the Omar Khadr case. LRWC's UPR report on China was primarily focused on the lack of an independent judiciary in China.



## EDUCATION

### HUL'QUMI'NUM TREATY GROUP PRESENTATION

On 12 November 2011, Amnesty International organized and LRWC co-sponsored a meeting at the Round House Community Arts and Recreation Centre in Vancouver to help educate people about the precedent setting petition of the Hul'qumi'num Treaty Group (HTG) to the Inter-American Commission on Human Rights. Robert Morales, legal counsel to the HTG, explained the application process and the need for greater understanding of the Inter-American Human Rights system among members of the legal profession and the judiciary. He also described the devastation that is being created by clear-cut logging on traditional HTG territory that is subject to unresolved land claims and discussed [\*Sawhoyamasa Indigenous Community v. Paraguay\*](#) which dealt with a situation similar to that confronting the HTG. Other speakers at the event were Grand Chief Stewart Philips from the Union of B.C. Indian Chiefs and his wife Joan who described the difficulties faced by members of their reserve who had to survive on a stipend of only \$90 a month. As pointed out by Amnesty International, support for Indigenous rights is consistent with international law stating that a healthy environment is a human right.

## UPCOMING EVENTS

### GHOST DANCING WITH COLONIALISM

LRWC and the Vancouver Public Library are sponsoring a talk by LRWC member Grace Woo about her book, *Ghost Dancing with Colonialism: Decolonization and Indigenous Rights at the Supreme Court of Canada*, (UBC Press, 2011). Although Prime Minister Stephen Harper recently declared that Canada has no history of colonialism, Dr. Woo has demonstrated that colonialism is deeply rooted in Anglo Canadian legal tradition and, despite its renunciation in international law, continues to haunt Supreme Court reasoning. This event takes place on Thursday, January 12, 2012, 7:00 p.m. in the Alma Van Dusen room, lower level, Vancouver Public Library, Central Branch, 350 West Georgia St. Vancouver. UBC Press will be present to sell copies of the book.

## INTERNATIONAL HUMAN RIGHTS DAY

On December 10th 2011, celebrate the 64th anniversary of the Universal Declaration of Human Rights. Become a human rights defender by making a donation to [LRWC](http://www.lrwc.org).  
<http://www.ohchr.org/EN/NewsEvents/Day2011/Pages/HRD2011.aspx>

## NEW RESEARCH TOOL

### BASIC PRINCIPLES ON THE ROLE OF LAWYERS DATABASE LAUNCHED

The Dutch organization Lawyers for Lawyers (L4L) has recently launched an exciting new research tool. L4L has developed a [database](#) of documents referencing the UN Basic Principles on the Role of Lawyers. The Basic Principles provide a concise description of international norms relating to the key aspects of the right to independent counsel and the right of lawyers to conduct their professional duties free from interference. These principles were unanimously adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Havana, Cuba on 7 September 1990. Subsequently, the UN General Assembly “welcomed” the Basic Principles in their ‘Human rights in the administration of justice’ resolution, which was adopted without a vote on 18 December 1990 in both the session of the Third Committee and the plenary session of the General Assembly.

To date, information on the Basic Principles, including literature and case law, has not been easily accessible. L4L’s database seeks to rectify this problem by providing a comprehensive search engine with access to international and regional reports and decisions on the interpretation, application and violations of the principles. The database allows users to search by keyword, organization, country, document type, principle, or document number. L4L hopes that the availability of the information contained in the database will contribute to improved implementation or and adherence to the principles.

## JUDGE BALTAZAR GARZON

### SPAIN – JUDGE BALTAZAR GARZÓN CHARGES SET FOR TRIAL

The trial of criminal charges against Judge Baltasar Garzón under article 446 of the Spain’s Penal Code for ‘prevaricación’ or malfeasance is scheduled to begin in Spain on January 24, 2012. LRWC hopes to have a representative attend to monitor the trial. It is alleged that by opening an investigation into over 100,000 unresolved executions and enforced disappearances carried out by the Franco regime, Judge Garzón violated *Ley de Amnestia* of 1977 (AL/77) and violated art. 446 which prohibits ‘knowingly dictating an unjust sentence or resolution’. The test for ‘unjust’ appears to be a decision flagrantly unsupported by any reasonable interpretation of the law. AL/77 was passed during the transition to democracy after the death of Franco and the debate its legitimacy and applicability to serious domestic and international crimes has been ongoing since.



The prosecution has all the trappings of a politically motivated attempt to punish Judge Garzón and to prevent other judges from opening investigations involving allegations of wrongdoing by those in power. Garzón’s 68-page decision to open the investigation relied on Spain’s international law obligations and the jurisprudence of international tribunals and treaty monitoring bodies which have uniformly rejected



the applicability of amnesty laws to crimes involving widespread loss of life. In October 2008, when the Ministerio Público challenged the decision, Garzón immediately withdrew and ceded any further investigations to territorial courts. The Ministerio Público has since petitioned unsuccessfully to have the charges dismissed as baseless.

LRWC has opposed the prosecution and suspension of Judge Garzón as contrary to international law regarding many issues key to the integrity of legal systems and the enforcement of international human rights law, including the: right to an independent and impartial judiciary; right to life and liberty; rights to effective remedies and investigations; the inalienable individual and societal right to truth, jurisprudence establishing the impotence of amnesty laws to shield state actors from accountability for widespread international crimes and state duties to prevent and punish international crimes. LRWC actions on the Garzón case to date include:

- May 2010 - a [Report on Behalf of Judge Garzón and Judicial Independence](#) to the UN Human Rights Council;
- May 2010 - a [UN Formal Complaint for Consideration and Action re: Judge Baltasar Garzón](#), to six UN special mandate holders filed jointly with nine other international NGOs;
- September 2010 - an article, Criminalizing Judicial Independence: [The Prosecution of Judge Baltasar Garzón in Spain](#), presented to a conference of lawyers in the Philippines and in February 2011,
- February 2011 - a report, [Judges and the Rule of Law: the prosecution of Judge Garzón in Spain](#) filed for consideration at the 16<sup>th</sup> session of the Human Rights Council by LRWC and two other NGOs.
- June 2011 - a side event in Geneva, on [Combating Impunity: the role of judges and lawyers](#) with Judge Garzón as the keynote speaker, hosted by LRWC and four other NGOs. Podcasts of [Judge Garzón's presentation](#) at the side event are available on LRWC's website.

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