

# Lawyers' Rights Watch Canada

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

[www.lrwc.org](http://www.lrwc.org) – [lrwc@portal.ca](mailto:lrwc@portal.ca) – Tel: +1 604 738 0338 – Fax: +1 604 736 1175

## LRWC NEWSLETTER

### February 2012 Edition

#### LETTERS FOR LAWYERS

##### THAILAND

Chiranuch and Somyot trials update: LRWC, OBS, CRD, Forum-Asia, Protection International, and Clean Clothes Campaign wrote a [joint statement](#) to the Thai government expressing their concerns about the ongoing use of the lèse majesté law, which reads: “Whoever, defames, insults or threatens the King, the Queen, the Heir-apparent or the Regent, shall be punished with imprisonment” (Section 112 of the Thai Penal Code). The statement, a follow-up of a joint letter on 15 November 2011, was issued in the week before the trial two high-profile lèse majesté cases resumed. Ms. Chiranuch Premchaiporn, Executive Director of the online news website Prachatai, faces up to 20 years imprisonment if found guilty of failing to quickly remove anonymous third-party posts on Prachatai deemed offensive to the monarchy. Mr. Somyot Prueksakasemsuk, Editor of Voice of the Oppressed (Voice of Taksin), has been accused of publicizing two articles that allegedly made negative references to the monarchy. He will serve a maximum of 30 years imprisonment if found guilty. Mr. Somyot Prueksakasemsuk’s trial has repeatedly been moved from province to province, which both places undue physical and psychological burden on him and undermines his fair trial rights. Having been denied bail on seven applications, he has now been detained for ten months.



Somyot’s son, Tai, went on a 112 hour hunger strike to protest his father’s treatment. At the end the hunger strike, Somyot was returned to Bangkok Remand Prison, but has once again been denied bail. For updates on the case, please refer to the website [www.freesomyot.wordpress.com](http://www.freesomyot.wordpress.com).

## ONGOING LAW TALK SERIES: FIRST NATIONS' RIGHTS

### ROBERT MORALES TALK A GREAT SUCCESS

On 23 February 2012, Robert Morales delivered a lecture, entitled, "Seeking Justice Elsewhere: The Hul'qumi'num Treaty Group case before the Inter-American Commission on Human Rights" to an enthusiastic and engaged audience at the Vancouver Public Library. In his talk, Mr. Morales addressed the seizure of the [Hul'qumi'num Treaty Group](#) (HTG)'s lands and resources by the Canadian government, and the HTG's continuing struggle for compensation for the lands and remediation of the damages consequent on the seizure. Mr. Morales focused on educating the audience about indigenous rights in the Inter-American Human Rights System and the importance of the HTG case before the [Inter-American Commission on Human Rights](#) (IACHR).



Many in the audience were interested to learn that the IACHR, in its [preliminary finding](#) on the admissibility of the HTG complaint, waived the requirement to exhaust domestic remedies on the grounds that both negotiation and litigation were demonstrably ineffective to either settle the claims alleged or to protect the lands and resources in question from degradation by third parties. The IACHR ruled that because Canadian courts have never ordered demarcation, recording of title or compensation in respect of lands claimed by indigenous people, litigation is ineffective as a remedy under general principles of international law. (paras. 37-41)

Submissions on the merits of the case were heard in October and a decision is expected soon.

### UPCOMING TALK BY KENNETH DEER ON UNDRIP

At 7:00 pm on **Monday, March 19th, 2012**, Kenneth Deer will present: "[Indigenous Rights in the UN System: Development of the UN Declaration on the Rights of Indigenous People.](#)" Mr. Deer's talk is part of an on-going series co-sponsored by LRWC, Amnesty International, the Hul'qumi'num Treaty Group and the Vancouver Public Library. Mr. Deer will explain the development of the [UN Declaration on the Rights of Indigenous Peoples](#) and its 25-year passage through the UN system. Mr. Deer will discuss why Indigenous Peoples went to the UN, the obstacles they faced, what Canada's involvement has been, and whether the declaration is binding on states.

The lecture will be held in the Alice MacKay Room, lower level of the Central Library (350 West Georgia St). **Admission is free.** This talk qualifies for CPD credits. See [LSBC webpage](#) for more details.

Kenneth Deer is a Member of the Bear clan of the Mohawk Nation and the founding editor of Kahnawake's award-winning *Eastern Door* newspaper. He attended most of the meetings held to develop UNDRIP over a period of over 25 years. Mr. Deer organized the UN Indigenous Caucus in both Geneva and New York and has been involved in various other capacities at the international level, including serving as Chairman/Rapporteur of the UN workshop on Indigenous Media, attending the World Summit on the Information Society, the



Photo by Martin A. Luff

World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, and World Summits on Sustainable Development. Currently, he sits on the Board of Trustees of the UN Voluntary Fund on Indigenous Populations.

### CONTINUING INTEREST IN TALK BY DR. GRACE WOO

Interest in the presentation by Grace Woo, *Ghost Dancing with Colonialism*, remains high. Additional presentations are scheduled for: 1 March 2012 at 6:00 pm, in the Chief Simon Baker Room, Vancouver Aboriginal Friendship Centre, 1607 E. Hastings St. Vancouver; 7 March 2012 at 6:00 pm, at Musqueam Nation (by invitation only); and 16 March 2012 at noon, at the UBC Faculty of Law. Grace has also done radio and television interviews. An interview on “Investigative News and Current Affairs with Cheryl MacKenzie airs 23 March 2012: (5:30 & 11 p.m., on channel 70 cable in Vancouver).

The video of Grace Woo’s 12 January 2012 talk on *Ghost Dancing with Colonialism* is available [here](#).

## GARZÓN UPDATE

### UNITED NATIONS HUMAN RIGHTS EXPERTS EXPRESS CONCERN OVER GARZÓN CASE

On 8 February 2012, Gabriela Knaul, Special Rapporteur on the independence of judges and lawyers and other UN experts, released a joint statement expressing concern over the prosecution of Garzón for malfeasance. Ms. Knaul reminded the government of Spain that, under international law, errors in judicial decision-making may not lead to the removal of a judge or a criminal prosecution and that enforced disappearances are considered ongoing, serious violations of international law that may not be the subject of domestic amnesty laws. The full story is available [here](#).

### GARZÓN ACQUITTED OF MALFEASANCE CHARGES



On February 27, Judge Baltasar Garzón was acquitted of malfeasance by a 7-judge panel of the Spanish Supreme Court with one dissenting and one concurrent decision. The Court ruled that while Garzón was wrong to open the investigation into 114,266 unresolved enforced disappearances and extra-judicial killings carried out by the Franco regime, his action was not criminal. The Court held that Spain’s *Ley de Amnistía* of 1977 allowed prosecutions of such crimes only when there is live suspect and, as Franco and his ministers are dead, there was no jurisdiction. The Court observed that the investigation was now a matter

for historians and not for the courts. The Court also ruled that enforced disappearances cannot be considered as crimes against humanity because that concept entered Spanish law after the crimes Garzón sought to investigate were committed. This ruling appears to ignore the fact that unresolved disappearances are considered continuing crimes and prosecutions are not restricted by limitations and

*ex post facto* principles. Earlier this month Garzón was convicted of overstepping jurisdiction in a domestic corruption investigation by authorizing wiretaps of conversations between prisoners and their lawyers and suspended from the bench for 11 years.

A [joint statement](#) expressing relief at Garzón's acquittal and concern over outstanding jurisdiction issues was published, in English and [Spanish](#), on 27 February by a number of groups: LRWC, the International Commission of Jurists, the Center for Constitutional Rights, the European Centre for Constitutional and Human Rights, the World Organization against Torture, the International Federation of Human Rights, Asociación Por Derechos Humanos de España, Asociación España para el Derecho Internacional de los Derechos Humanos, and Rights International Spain.

## UN HUMAN RIGHTS COUNCIL 19th SESSION (Feb 27 to Mar 23)

### LRWC FILES TWO REPORTS FOR CONSIDERATION AT UNHRC 19TH SESSION

As an NGO with Special Consultative Status, LRWC is entitled to file written statements of 1,500 words for consideration by the HRC. LRWC filed follow-up reports on the Omar Khadr case and on the prosecution of Judge Garzón for malfeasance.

#### **The Omar Khadr Case Report:**

LRWC's written statement outlined the persistent failure to prevent and remedy ongoing violations of Khadr's internationally protected rights. A Canadian citizen captured at the age of 15 by US Armed forces in Afghanistan, Khadr has been imprisoned since July 2002, first in Bagram prison and since October 2002 in Guantánamo Bay prison. For almost 10 years virtually all Khadr's internationally protected rights have been violated including rights to liberty, habeas corpus, due process, counsel, a fair trial, freedom from torture and arbitrary detention and rights under the *Convention on the Rights of the Child* (CRC). The Federal Court, Federal Court of Appeal, and Supreme Court Canada have confirmed violations of Khadr's rights under the Convention against Torture, the CRC and the Geneva Conventions and the complicity of Canadian officials in some of these violations. Violations of rights to due process and habeas corpus have been confirmed by the US Supreme Court. In October 2010 Khadr accepted a plea agreement that was to allow him to be transferred to Canada after one year. He remains imprisoned in Guantánamo Bay

#### **The Garzón Case Report:**

LRWC filed a report calling on the HRC to investigate allegations of US interference with judicial and prosecutorial independence in Spain in relation to the malfeasance prosecution of Garzón. The report examines diplomatic cables released by Wikileaks and the [opinion](#) of legal experts (European Centre for Constitutional and Human Rights and Center for Constitutional Rights), that the cables, "unquestionably demonstrate that senior U.S. officials...actively and surreptitiously met with senior members of the Spanish Government, Administration and prosecutorial authorities...in an attempt to interfere in the judicial process and ...thereby prejudice the [criminal]cases in favour of the American defendants." Prior to his suspension, Garzón was in charge of two high profile cases involving allegations that US government officials, as part of US policy, had created, authorized and executed gross human rights violations at Guantánamo Bay and elsewhere, and had devised extra-legal means to prevent remedies for victims and accountability for perpetrators. Both these cases are now stalled.

## LRWC ATTENDANCE AT THE 19TH SESSION OF THE UNHRC

Three LRWC members will attend the 19th session of the UNHRC. Gary Anandasangaree is attending February 27-March 2 and may return later. Vani Selvarajah of Toronto will attend the entire session as an LRWC intern. Gail Davidson will attend March 4-14. Gary Anandasangaree will attend the High Level Meeting on Sri Lanka. Gail has meetings scheduled with a number of special mandate holders to discuss issues of concern: Chairs of the Working Groups on Enforced Disappearances and Arbitrary Detention, Special Representative on Human Rights Defenders, the assistant to the Special Representative to the Secretary General on Violence against Children, NGOs with which LRWC is working and others.

## NEWS & EVENTS

### LRWC CERD PUBLICATION

The [shadow report](#) submitted by LRWC and the BC CEDAW Group for consideration on the review of Canada's compliance with the *Convention to end all Forms of Racial Discrimination* has been published on the UN website.

The [press release](#) issued by LRWC and BC CEDAW on 22 February, "Failure to address missing and murdered Aboriginal Women a disgrace", was covered by several media outlets across Canada including the [Sault Star](#), [Toronto Sun](#), [CNews](#), [Welland Tribune](#) and [NationTalk](#).

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

- Fees and donations can be made by cheque, PayPal, or [Canada Helps](#).
- Monthly donations increase LRWC's ability both to respond quickly and plan ahead.
- Airline points donated to LRWC qualify as a tax-deductible donation! [follow on Twitter](#) [friend on Facebook](#)

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**Contact us at:**  
lrwc@portal.ca  
Telephone: +1 604 738 0338  
Fax: +1 604 736 1175