

Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations
Promoting human rights by protecting those who defend them

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Thursday, January 22 2015

King Abdullah bin Abdul Aziz Al Saud
The Custodian of the two Holy Mosques
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His Royal Highness Prince Mohammed bin Naif bin Abdul Aziz Al Saud
Ministry of the Interior
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Your Majesty and Excellency:

Re: Wrongful conviction and arbitrary detention of lawyer Waleed Abu al-Khair

Lawyers' Rights Watch Canada (LRWC) is a committee of lawyers who promote human rights and the rule of law through advocacy, education and research. LRWC is an NGO in Special Consultative Status with the Economic and Social Council (ECOSOC) of the United Nations (UN).

LRWC writes to request the immediate release of Waleed Abu al-Khair. LRWC is of the opinion that the detention of Waleed Abu al-Khair is arbitrary and contravenes Saudi Arabia's international law obligations arising from Saudi Arabia's membership in the United Nations (24/10/45) and in the League of Arab States (22/03/45). The internationally protected rights referred to in his letter are guaranteed by the United Nations *Universal Declaration of Human Rights* (UDHR) and by the *Arab Charter of Human Rights*¹ (Charter) to which Saudi Arabia is a party.

The Kingdom of Saudi Arabia, as a party to the Charter, is bound by the following rights and freedoms guaranteed by the Charter. Under the Charter, Saudi Arabia has committed to placing "human rights at the centre" of national concern and entrenching all human rights as "universal, indivisible, interdependent and interrelated" (Art1). The Kingdom of Saudi Arabia has an obligation to grant the right to a fair trial (Art 13) and protect against

¹ League of Arab States, *Arab Charter on Human Rights*, 15 September 1994, available at: <http://www.refworld.org/docid/3ae6b38540.html> [accessed 21 January 2015]

arbitrary arrest and detention (Art 14). Furthermore, the Charter guarantees the right to freedom of “thought, conscience and religion” (Art 30) as well as the freedom of opinion and expression “through any medium, regardless of geographical boundaries” (Art 32). The only limitations permitted are for the protection of “national security, public order and public health or morals”.

Reports available to LRWC indicate that Mr. Abu al-Khair was: prosecuted for peacefully exercising his internationally protected right to freedom of expression; held incommunicado and charged with overly vague offences for which there is no effective defense. He was denied the rights: to a fair trial, to be tried by a competent, impartial and independent court; to pre-trial release; to the presumption of innocence; to timely, and confidential access to counsel; and, to freedom from arbitrary detention. In addition, reports indicated that Mr. Abu al-Khair was subjected to treatment prohibited by the United Nations Convention against Torture, to which Saudi Arabia is a party. UN High Commissioner for Human Rights Navi Pillay has stated that “Abu Al-Khair’s case is a clear illustration of the continuing trend of harassment of Saudi human rights defenders, several of whom have been convicted for peacefully promoting human rights”.² Mr. Abu al-Khair’s conviction represents a worrying trend of increasing human rights violations by the Kingdom of Saudi Arabia.

Background

Mr. Abu al-Khair is an internationally respected human rights lawyer who has acted for many victims of human rights abuses, including Raif Badawi, recently convicted of insulting Islamic religious figures by creating and managing an online forum and breaking Saudi Arabia’s strict technology laws and sentenced to 10 years in prison, 1,000 lashes, and a fine amounting to 250,000 USD.³ In 2012, Waleed Abu al-Khair received the Olof Palme Memorial Fund for International Understanding and Common Security for his “strong, self-sacrificing and sustained struggle to promote respect for human and civil rights for both men and women in Saudi Arabia.” In 2009, Waleed Abu Al-Khair created “Monitor of Human Rights in Saudi Arabia,” a Saudi Human Rights organization, which the Saudi government has claimed to be an unrecognized, unlicensed organization.

Waleed Abu Al-Khair was arrested and imprisoned on 15 April 2014 and was not provided with reasons for his arrest. He was then held incommunicado without access to a lawyer for approximately 10 days. On 11 August 2014, Waleed Abu Al-Khair was taken from the Preaman prison in Jeddah to Almalaz prison in Riyadh. A reliable source stated that during his transfer to Almalaz, Waleed was “beaten and dragged violently” with shackles on his feet, causing deep wounds on his ankles. Since his imprisonment, he has spent at least 10 days in solitary confinement. He has been denied access to medical care, and the dietary restrictions imposed by his diabetes have not been accommodated.

²Saudi Arabia: Pillay concerned by harsh sentences against human rights defenders - 10 July 2014 - See more at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14846#sthash.aZ3AHlYt.hrO1fukF.dpuf>

³ Mr. Badawi was accused of ridiculing Saudi Arabia’s religious police, the Commission on the Promotion of Virtue and Prevention of Vice – as well as failing to remove ‘offensive’ posts by other contributors <https://www.amnesty.org.uk/actions/saudi-arabia-free-raif-badawi-flogged-blogger>

Waleed Abu Al-Khair was convicted before the Specialized Criminal Court on charges of ‘insulting the legitimacy of the country’s judicial system’ and ‘harming the reputation of the state by communicating with international organizations’ and ‘inciting public opinion’. On 6 July 2015 he was sentenced to 15 years in prison and fined 200,000 [riyals](#) (\$65,689 CDN). The court then suspended five years of the term.

The charges against Waleed Abu al-Khair are vague and overbroad and fail to meet the test of certainty for criminal offences. Such charges encourage arrests and convictions that are arbitrary and preclude both the defendant and the court from giving any sensible meaning to the prohibited acts. Vagueness and over-breadth prevent an effective defense and force the courts to engage in subjective arbitrariness. The standardless sweep created by such offences provides Saudi Arabia with a tool to arbitrarily imprison human rights advocates such as Waleed Abu al-Khair for engaging in protected activities such as expression.

The Specialized Criminal Court is not competent to provide a fair trial in accordance with international law standards and in particular cannot ensure a determination by a “competent, independent and impartial tribunal” as required by the UDHR and the Charter. Established in 2008 to deal with terrorism issues, the Specialized Criminal Courts have been used to prosecute peaceful protestors and human rights activists without any regard for due process.⁴

Saudi Arabia has violated Theodor and Charter rights of Waleed al-Khair and denied him a fair trial by:

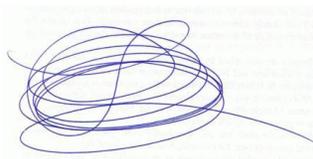
1. Charging him with offences that are so vague and over broad as to preclude an effective defense and require the court to act arbitrarily in order to make a determination of guilt, in contravention of rights to liberty, to be presumed innocent and to a fair trial as articulated by the UDHR and the Charter;
2. Denying him pre-trial release and the presumption of innocence between his arrest on 15 April 2014 and the sentencing on 6 July 2014;
3. Denying him timely access to a lawyer after his arrest;
4. Failing to inform him promptly and in sufficient detail of the nature and cause of the charges against him in sufficient detail to facilitate the preparation of a full defense capable of being effective;
5. Subjecting him to treatment in violation of the UDHR art. 5 prohibition that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,” and the Charter, art. 8;
6. Holding him incommunicado in violation of the UDHR art. 3 “right to life, liberty and security of the person”;
7. Denying “a fair and public hearing by an independent and impartial tribunal [established by law], in the determination of any criminal charge against him.” guaranteed by the UDHR art. 14;

⁴ Human Rights Watch, “Saudi Arabia: Abolish Terrorism Court,” Apr. 27, 2012, <<http://www.hrw.org/news/2012/04/27/saudi-arabia-abolish-terrorism-court>>.

8. Arresting, prosecuting, convicting and sentencing Waleed Abu al-Khair as a result of his peacefully exercising his right to freedom of expression guaranteed by the UDHR and the Charter.

Consequently the conviction of Waleed Abu al-Khair is illegitimate and his detention is arbitrary. LRWC urges the Government of Saudi Arabia to ensure that Waleed Abu al-Khair is released immediately and the convictions vacated.

Sincerely,



LRWC, Executive Director

Copied to:

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