

# 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**

**www.lrwc.org – lrwc@portal.ca – Tel: +1 604 736 1175 – Fax: +1 604 736 1170**

**3220 West 13<sup>th</sup> Avenue, Vancouver, B.C. CANADA V6K 2V5**

December 20, 2016

**VIA FAX TO:**

His Majesty King Salman bin Abdul Aziz Al Saud  
King of Saudi Arabia and Custodian of the Two Holy Mosques  
Office of His Majesty the King  
Royal Court, Riyadh  
Kingdom of Saudi Arabia  
Fax (via Ministry of the Interior): + 966 11 403 3125

His Royal Highness Prince Mohammed bin Naif bin Abdul Aziz Al Saud  
Minister of the Interior, Ministry of the Interior  
P.O. Box 2933, Airport Road, Riyadh 11134  
Kingdom of Saudi Arabia  
Fax: + 966 11 403 3125

His Excellency Shaykh Dr Mohammed bin Abdulkareem Al-Issa Minister of Justice  
Ministry of Justice  
University Street, Riyadh 11137  
Kingdom of Saudi Arabia  
Fax: + 966 11 401 1741 / + 966 11 402 0311

Your Majesties and Excellency:

**Re: Request for Release of Waleed Abu al-Khair, Recipient of the Law Society of Upper Canada 2016 Human Rights Award**

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Lawyers' Rights Watch Canada (LRWC) is a committee of lawyers and others who promote international human rights and the rule of law through advocacy, education and research. LRWC campaigns for lawyers and other human rights defenders in jeopardy because of their human rights advocacy. LRWC is a non-governmental organization in Special Consultative Status with the Economic and Social Council of the United Nations (UN).

Waleed Abu al-Khair has been selected as a recipient of the Law Society of Upper Canada 2016 Human Rights Award in recognition of his,

*extraordinary contributions to the advancement of human rights and promotion of democracy and the rule of law in Saudi Arabia over the course of his career as an advocate, made at high personal cost, [which] demonstrate the highest ideals of the legal profession.*

The Law Society of Upper Canada, in a letter from Paul B. Schabas, Treasurer of the Law Society of Upper Canada,<sup>1</sup> has invited Waleed Abu al-Khair to attend in person to accept the award at the award ceremony on 22 February 2017 in Toronto, Ontario, Canada.

LRWC asks the Kingdom of Saudi Arabia (Saudi Arabia) to comply with its international law obligations and to:

1. Immediately and unconditionally release Waleed Abu al-Khair;
2. Remove the travel ban prohibiting Waleed Abu al-Khair from leaving Saudi Arabia for 15 years after his release and vacate the SAR 200,000 fine; and,
3. Ensure all other measures necessary to allow and enable Waleed Abu al-Khair to attend in person to accept the Law Society of Upper Canada 2016 Human Rights Award at the ceremony on 22 February 2017 in Toronto, Ontario, Canada.

### **Release of Waleed Abu al-Khair**

Waleed Abu al-Khair was arrested on 14 April 2014 and subsequently sentenced to 15 years in prison, a travel ban of 15 years following completion of the prison sentence and a fine of SAR 200,000. He had been charged under the *Penal Law for Crimes of Terrorism and its Financing* with a variety of vague and over-broad offenses based on and aimed at, sanctioning his peaceful advocacy for recognition of human and democratic rights. The charges were either too vague to allow avoidance or defense or did not relate to criminal activity. Examples of the former were, ‘seeking to discredit state legitimacy’ and ‘preparing, storing and sending what would prejudice public order’ – of the latter, ‘running an unauthorized association and being its chairman speaking on its behalf and issuing statements and communicating through it.’

Leading members of the international human rights community have concluded his imprisonment lacks any legal justification, is arbitrary and constitutes a violation of all applicable international law provisions binding on Saudi Arabia. This conclusion was confirmed by the 2015 Opinion of the UN Working Group on Arbitrary Detention.

### **The Law Society of Upper Canada 2016 Human Rights Award**

On 15 November 2016 the Law Society of Upper Canada announced Waleed Abu al-Khair as one of two recipients of its biennial 2016 Human Rights Award. The Law Society of Upper Canada was created by an act of the Legislative Assembly of Canada, and is the regulatory body representative of more than 49,000 lawyers and over 7,900 licensed paralegals in Ontario, Canada. Established in 2013, the award recognizes outstanding contributions to the advancement of human rights and/or the promotion of the rule of law provincially, nationally or internationally. The award is granted every two years to individuals for their devotion to these principles over a long term, or for a single, outstanding act of service.

The nomination of Waleed Abu al-Khair for the 2016 Human Rights Award was submitted jointly by LRWC and the Union Internationale des Avocats (UIA). The nomination was endorsed by the Human Rights Committee of the Law Society of England and Wales, and accompanied by letters of support from Alex Neve, O.C., LL.D., LL.M., Secretary General, Amnesty International Canada and Adam Coogler, Middle East Researcher Middle East and North Africa Division, Human Rights Watch

The Law Society of Upper Canada 2016 Human Rights Award was granted on the basis that Waleed Abu al-Khair is one of the best-known and respected advocates for democratic and human rights reform in Saudi Arabia. He is the founder of Monitor of Human Rights in Saudi Arabia (MHRSA), an independent human rights organization registered in Ontario, Canada. He was also active in the human rights work of the Saudi Civil and Political Rights Association. The Law Society of Upper Canada Human Rights Award recognizes his use of the written and spoken word, coupled with his

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<sup>1</sup> Letter from Paul B. Schabas, Treasurer of the Law Society of Upper Canada to Waleed Abu al-Khair dated November 15, 2016.

legal knowledge, to peacefully and fearlessly advocate for reforms to improve the lives of all in Saudi Arabia by calling on the Government of Saudi Arabia to allow its citizens to enjoy internationally protected rights to freedom of expression, association, assembly and the right to participate directly and indirectly in public affairs. He has done this work through writing and public speaking, by providing a safe space for peaceful discussion of issues of public concern and by providing an example of responsible advocacy for justice for all. The award acknowledges his representation of causes and clients unpopular with the Government of Saudi Arabia, including providing legal representation to people characterized as activists and reformists. One such client was Raif Badawi, founder of the Saudi Liberal Network internet discussion group. Mr. Badawi's wife and children were granted political asylum and reside in Canada. At the risk of his own personal and professional safety and security, Waleed Abu al-Khair persisted in using his knowledge, training and skills as a lawyer to be an outspoken advocate for an elected parliament, an independent judiciary, a constitutional monarchy and for recognition of internationally protected human rights. The Law Society of Upper Canada 2016 Human Rights Award celebrates his legal advocacy on behalf of prisoners of conscience and his authorship of many articles identifying human rights abuses and the need for legal reform. The award praises his reliance on the rule of law and proper legal procedures to effect reform and settle disputes and differences of opinion and the fact that he has never advocated or engaged in violence.

The Law Society of Upper Canada 2016 Human Rights Award is the third such human rights award granted to Waleed Abu al-Khair in recognition of his peaceful human rights advocacy in Saudi Arabia. In 2012, he was awarded the Olof Palme Prize for

... his strong, self-sacrificing and sustained struggle to promote respect for human and civil rights for both men and women in Saudi Arabia. Together with like-minded citizens and colleagues, Waleed Sami Abu al-Khair does so with the noble goal of contributing to a just and modern society in his country and region.<sup>2</sup>

In 2015, Waleed Abu al-Khair was awarded the XX<sup>th</sup> Ludovic-Trarieux Human Rights International Prize,<sup>3</sup> Europe's most prestigious tribute to human rights activism initially bestowed on Nelson Mandela.

### **International Human Rights Obligations to Release Waleed Abu al-Khair**

The UN Working Group on Arbitrary Detention (WGAD), in an Opinion dated 26 October 2015,<sup>4</sup> determined that the detention of Waleed Abu al-Khair is arbitrary, being in contravention of the *Universal Declaration of Human Rights* (UDHR) Articles 9 (freedom from arbitrary arrest and detention), 10 (fair trial rights), 19 (freedom of expression) and 20 (freedoms of assembly and association) and recommended that Saudi Arabia immediately release him. In rendering this Opinion, the WGAD, concluded that Waleed Abu al-Khair and other human rights activists, were imprisoned not for criminal activity, but rather in reprisal for their work protecting and defending human rights. The WGAD concluded that Waleed Abu al-Khair was imprisoned "solely for exercising ... rights to freedom of expression, peaceful assembly and freedom of association" and that his deprivation of liberty resulted from grave and systematic violations of fair trial rights. The WGAD specifically identified violations of Waleed Abu al-Khair's right to a fair and public hearing by an impartial, independent and competent tribunal and to have criminal offences against him defined with sufficient precision to allow avoidance and defense.

Saudi Arabia's international law obligations arise from a variety of sources. As a member of the UN (24/10/45), Saudi Arabia is legally obligated to respect the provisions of the UDHR and other uncontroversial instruments identifying state duties to protect and ensure the fulfilment of

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<sup>2</sup> Olof Palmes Minnesfond, 2012, online: <<http://www.palmefonden.se/2012-radhia-nasraoui-och-waleed-sami-abu-alkhair-2/>>.

<sup>3</sup> The XX<sup>th</sup> "Ludovic-Trarieux" Human Rights International Prize 2015, online: <<http://www.ludovictrarieux.org/uk-page3.callplt2015.htm>>.

<sup>4</sup> (A/HRC/WGAD/2015).

fundamental rights and freedoms and the advocacy rights of lawyers. These include the UN *Declaration on Human Rights Defenders*<sup>5</sup> and the *Basic Principles on the Role of Lawyers*.<sup>6</sup> As a member of the UN Human Rights Council, Saudi Arabia has agreed, and is mandatorily obliged to “uphold the highest standards in the promotion and protection of human rights.”<sup>7</sup> The UN General Assembly may suspend a member of the Human Rights Council that commits gross and systematic violations of human rights. The imprisonment of Waleed Abu al-Khair is such a violation.

As a member of the League of Arab States (22/03/45) and a party to the *Arab Charter on Human Rights*, (Charter)<sup>8</sup> Saudi Arabia is bound to ensure enjoyment of the 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” (Article 1). Saudi Arabia has an obligation to grant the right to a fair trial (Article 13) and to protect against arbitrary arrest and detention (Article 14). Furthermore, the Charter guarantees the right to freedom of “thought, conscience and religion” (Article 30) as well as the freedom of opinion and expression “through any medium, regardless of geographical boundaries” (Article 32). The only limitations permitted are for the protection of “national security, public order and public health or morals”.

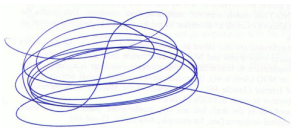
## Conclusion

LRWC calls on Saudi Arabia to take all steps necessary to remedy violations of its international law obligations in the case of Waleed Abu al-Khair and to:

4. Immediately and unconditionally release Waleed Abu al-Khair;
5. Remove the travel ban prohibiting Waleed Abu al-Khair from leaving Saudi Arabia for 15 years after his release and vacate the SAR 200,000 fine; and,
6. Ensure all other measures necessary to allow and enable Waleed Abu al-Khair to attend in person to accept the Law Society of Upper Canada 2016 Human Rights Award at the ceremony on 22 February 2017 in Toronto, Ontario, Canada.

Thank you.

Sincerely,



Gail Davidson, Executive Director, LRWC



Maya Duvage, LRWC member

Copied to:

H.E. Mr. Mr. Abdulaziz Alwasil, Ambassador  
Permanent Mission of the Kingdom of Saudi Arabia to  
the United Nations Office in Geneva  
Email: [saudiامission@bluewin.ch](mailto:saudiامission@bluewin.ch)

<sup>5</sup> UN General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: resolution adopted by the General Assembly*, 8 March 1999, A/RES/53/144.

<sup>6</sup> UN *Basic Principles on the Role of Lawyers*, 7 September 1990, adopted by the Eighth UN Congress on the Prevention of Crime and Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

<sup>7</sup> Resolution adopted by the General Assembly, 60/251. Human Rights Council, 3 April 2006, A/RES/60/251, at para. 9.

<sup>8</sup> League of Arab States, *Arab Charter on Human Rights*, 15 September 1994, online: <http://www.refworld.org/docid/3ae6b38540.html> accessed 21 November 2016.

H.E. Mr. Abdulrahman S. Alahmed, Ambassador  
Embassy of Saudi Arabia in Brussels  
Email: [beemb@mofa.gov.sa](mailto:beemb@mofa.gov.sa)

Mr. Michel Forst  
Special Rapporteur on the Situation of Human Rights  
Defenders  
Email: [urgent-action@ohchr.org](mailto:urgent-action@ohchr.org)

Mr. David Kaye  
Special Rapporteur on the Promotion and Protection of  
the Right to Freedom of Opinion and Expression  
Email: [freedex@ohchr.org](mailto:freedex@ohchr.org)

Mr. Maina Kiai  
Special Rapporteur on the Rights to Freedom of  
Peaceful Assembly and of Association  
Email: [freeassembly@ohchr.org](mailto:freeassembly@ohchr.org)

Ms. Mónica Pinto  
Special Rapporteur of the Human Council on the  
Independence of Judges and Lawyers  
Email: [SRindependenceJL@ohchr.org](mailto:SRindependenceJL@ohchr.org)

Mr. Juan Mendez  
Special Rapporteur on Torture  
Email: [sr-torture@ohchr.org](mailto:sr-torture@ohchr.org)

Working Group on Arbitrary Detention  
Email: [wgad@ohchr.org](mailto:wgad@ohchr.org)

Arab Commission for Human Rights  
Email: [achr@noos.fr](mailto:achr@noos.fr)

The Right Honourable Justin Trudeau  
Prime Minister of Canada  
Email: [pm@pm.gc.ca](mailto:pm@pm.gc.ca)

The Honourable Stéphane Dion  
Minister of Foreign Affairs of Canada  
Email: [stephane.dion@parl.gc.ca](mailto:stephane.dion@parl.gc.ca)

Mr. Dennis Horak  
Canadian Ambassador to Saudi Arabia  
Email: [ryadh@international.gc.ca](mailto:ryadh@international.gc.ca)

His Honourable Naif Bin Bandir Alsudairy  
Canadian Ambassador to Saudi Arabia  
Email: [amboffice.ott@mofa.gov.sa](mailto:amboffice.ott@mofa.gov.sa)

The Right Honourable Theresa May MP  
Prime Minister of the United Kingdom  
Email: [mayt@parliament.uk](mailto:mayt@parliament.uk)

The Right Honourable Boris Johnson MP  
Secretary of State for Foreign and Commonwealth  
Affairs  
Email: [fcocorrespondence@fco.gov.uk](mailto:fcocorrespondence@fco.gov.uk)

Antoine Bernard, FIDH CEO within the framework of  
the Observatory for the Protection of  
Human Rights Defenders  
c/o Alexandra Poméon O'Neill, Head of The  
Observatory for the Protection of

Email: [apomeon@fidh.org](mailto:apomeon@fidh.org)

Jean-Jacques Uettwiller, President  
Union Internationale des Avocats  
c/o Romina Bossa-Abiven  
Human Rights and Legal Profession Project Assistant  
Email: [rbossa@uianet.org](mailto:rbossa@uianet.org)

Adam Coogle, Middle East Researcher  
Middle East and North Africa Division  
Human Rights Watch  
Email: [coogle@hrw.org](mailto:coogle@hrw.org)

Alex Neve, Secretary General  
Amnesty International Canada (English Canada)  
Email: [aneve@amnesty.ca](mailto:aneve@amnesty.ca)

Miguel Martín Zumalacárregui  
Coordinator, Observatory for the Protection of Human  
Rights Defenders  
Human Rights Adviser, OMCT Europe  
Email: [mmz@omct.org](mailto:mmz@omct.org)

Ms. Jeanne Mirer, President  
International Association of Democratic Lawyers  
Email: [jeanne@jmiererlaw.com](mailto:jeanne@jmiererlaw.com)

Ms. Adrie van de Streek, Executive Director  
Lawyers for Lawyers  
Email: [A.vandesStreek@lawyersforlawyers.nl](mailto:A.vandesStreek@lawyersforlawyers.nl)

Janet Minor, Treasurer, Law Society of Upper Canada  
c/o Josée Bouchard, Director Equity, The Law Society  
of Upper Canada  
Email: [jbouchar@lsuc.on.ca](mailto:jbouchar@lsuc.on.ca)

Adam Coogle, Middle East Researcher  
Human Rights Watch  
Email: [cooglea@hrw.org](mailto:cooglea@hrw.org)

Julie Goffin, Human Rights Coordinator  
Union Internationale des Avocats  
Email: [j.goffin@avocat.be](mailto:j.goffin@avocat.be)

Tony Fisher  
Chairperson, Human Rights Committee, Law Society of  
England and Wales  
Email: [TFisher@fjg.co.uk](mailto:TFisher@fjg.co.uk)

The Honourable Irwin Cotler, PC, OC  
Founder and Chair, Raoul Wallenberg Centre for  
Human Rights  
Email: [irwincotler@rwchr.org](mailto:irwincotler@rwchr.org)