

# 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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14 August 2018

## **VIA EMAIL TO:**

Honourable Chrystia Freeland  
Minister of Foreign Affairs  
Global Affairs Canada  
125 Sussex Drive  
Ottawa, ON K1A 0G2  
[chrystia.freeland@international.gc.ca](mailto:chrystia.freeland@international.gc.ca)

Dear Minister:

## **Re: Release of Imprisoned Women's Rights Activists in Saudi Arabia**

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Lawyers' Rights Watch Canada (LRWC) writes further to its letter to you dated 7 June 2018 and its letters to Saudi Arabia dated 2 August 2018 and 3 August 2018, in which it called upon the Government of Canada (Canada) and the Government of Saudi Arabia (Saudi Arabia) to immediately release wrongly imprisoned women's rights defenders including human rights lawyer **Waleed Abu al-Khair** and former University of British Columbia student **Loujain Al-Hathloul**.

### **Commendation for Canada's position**

Since our letter of 7 June 2018, Saudi Arabia has intensified its brutal crackdown on women's rights activists. Days after lifting the women's driving ban, on 24 June 2018 Saudi Arabia arrested **Hatoon Al Fassi**, a prominent Saudi advocate for women's rights and an associated professor of women's history, days ahead of a scheduled interview with French media France 2. Women's rights activists **Samar Badawi** and **Nassima al-Sadah** were arrested last week. Ms. Badawi is the former wife of Waleed Abu al-Khair, sister of infamously flogged human rights blogger Raif Badawi, and recipient of the International Women of Courage award.

LRWC notes Canada's stance in recent weeks and the escalating disagreement between Canada and Saudi Arabia.

Saudi foreign ministry:

- Expelled the Canadian ambassador from Saudi Arabia

- Recalled its ambassador from Canada
- Suspended new trade and investment with Canada
- Canceled direct flights to Toronto by Saudi's state airline
- Began selling off its Canadian assets
- Announced a plan to relocate Saudi scholarship students in Canada to other countries
- Began to transfer all Saudi patients out of Canadian hospitals
- Purported that Canada is attempting to interfere with its internal affairs under guise of immunity under sovereignty

LRWC highly commends your principled stance and insistence upon upholding the foremost importance of the rule of law and human rights, including women's rights. LRWC encourages you to hold steadfast and disregard Saudi Arabia's unfounded claims that purport that Canada is attempting to interfere with its internal affairs, claims which are made under the false guise of immunity under sovereignty.

### **International human rights law obligations of Saudi Arabia**

Saudi Arabia's international human rights law (IHRL) obligations arise from a variety of sources. As a member of the UN (24 October 1945), Saudi Arabia is legally obligated to respect the provisions of the Charter of the United Nations (Charter), the Universal Declaration on Human Rights (UDHR), and *Convention on the Elimination of all Forms of Discrimination against Women* (ratified, 7 September 2000). As a member of the UN Human Rights Council, Saudi Arabia has specifically accepted a heightened duty to, "uphold the highest standards in the promotion and protection of human rights" and to "fully cooperate with Council".<sup>1</sup>

Saudi Arabia is also a founding member of the League of Arab States and a party to the *Arab Charter on Human Rights*, which guarantees freedom from "physical or mental torture or cruel, inhuman or degrading treatment" (Article 13), freedom of expression, opinion and belief (Article 26), and specifically affirms the principles of: the UN Nations Charter and the UDHR and the provisions of the UN International Covenant on Civil and Political Rights, the UN International Covenant on Economic, Social and Cultural Rights; and, the Cairo Declaration on Human Rights in Islam. The Arab Charter on Human Rights guarantees freedom from "physical or mental torture or cruel, inhuman or degrading treatment" (Article 13), freedom of expression, opinion and belief (Article 26).

While a member of the UN Human Rights Council (2013 – 2019), Saudi Arabia failed and refused to comply with its additional obligation to "uphold the highest standards in the promotion and protection of human rights." Saudi Arabia's membership on the UN Commission on the Status of Women (CSW), as well as its future seat on the Executive Council of the CSW beginning in January 2019, highlights the dangerous hypocrisy of its actions against the Women's Rights Defenders.

### **Criticisms of Saudi Arabia by United Nations bodies**

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<sup>1</sup> Resolution adopted by the General Assembly, 3 April 2006, A/RES/60/251, at para. 9.

United Nations (UN) High Commissioner for Human Rights Navi Pillay. On July 10, 2014<sup>2</sup> Ms. Pillay denounced the continuing trend of harassment and Saudi Arabia's use of overbroad and vague counter-terrorism legislation to imprison innocent human rights defenders. She stated: "Proceedings against human rights defenders in the Specialised Penal Court, as well as in other courts in Saudi Arabia, have fallen short of international fair trial standards."

Saudi Arabia's *Penal Law for Crimes of Terrorism and its Financing* undermines the UDHR and international human rights norms which entitle citizens to: due process, legal representation, to know the nature of the charges against them, the right to make full answer and defense, freedom from ex post facto charges, freedom from arbitrary detention, the presumption of innocence and the right to have rights and criminal charges determined by an independent, competent and impartial tribunal. The UN Special Rapporteur report on human rights and counter-terrorism concluded that this law "fails to comply with international human rights standards of legal certainty" and "strongly condemns use of counter terrorism legislation with penal sanctions against individuals peacefully exercising their rights to freedom of expression, as well as freedom of ... belief and freedom of peaceful association and assembly."<sup>3</sup> The report calls on Saudi Arabia to re-examine the cases of people sentenced for peacefully exercising internationally protected rights and to commute all sentences.

The 9 March 2018 concluding observations of the Committee on the Elimination of All Forms of Discrimination against Women, on review of the third and fourth periodic reports of Saudi Arabia recommended that Saudi Arabia adopt measures "to promote the equal and full participation of women in political and public life and in decision-making at the national and local levels" and to:

- (a) Refrain from reprisals against women human rights defenders and their relatives;
- (b) Ensure that any sanctions imposed on women who peacefully exercise their right to freedom of expression and association are immediately discontinued and that the women are compensated and rehabilitated;
- (c) Ensure that women activists are able to exercise their right to freedom of expression and association and that the Counter-Terrorism Law (2014) ...<sup>4</sup>

The Working Group report on the 2009 Universal Periodic Review of Saudi Arabia, noting that Saudi Arabia has acceded to UNCAT and that corporal punishment, such as flogging, is incompatible with UNCAT and international customary law, recommends that Saudi Arabia "abolish corporal punishment, and cruel, inhuman, and degrading treatment in general, and public

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<sup>2</sup> July 10, 2014 Statement of UN High Commissioner for Human Rights available online at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14846>.

<sup>3</sup> UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism concludes visit to Saudi Arabia, Preliminary findings of the visit to Saudi Arabia, March 2018.

<sup>4</sup> CEDAW/C/SAU/CO/3-4, online: UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism concludes visit to Saudi Arabia, Preliminary findings of the visit to Saudi Arabia, March 2018.

floggings, eye gouging, flogging of school children, and amputation of limbs in particular.”<sup>5</sup> Saudi Arabia rejected this recommendation.

In the second Universal Periodic Review of Saudi Arabia in 2013,<sup>6</sup> the Working Group reports concerns with criminal law and procedure that violate international law provisions of the UDHR and UNCAT including the use of judicially sanctioned corporal punishment. Many states recommended that Saudi Arabia amend its law to comply with international law obligations. For example, Canada recommended that Saudi Arabia:

Draft and implement a penal code and amend the Law of Criminal Procedure to comply with all its obligations under international law, including prohibitions on judicially sanctioned corporal punishment and the execution of juvenile offenders (Canada);<sup>7</sup>

Although Saudi Arabia agreed to study the recommendations and respond to them, no remedial action has been taken to date.

On 2 January 2018, five UN experts decried Saudi Arabia’s persistent use of anti-terror law to persecute peaceful activists and noted that repeated calls for reform from the Human Rights Council remained unheeded.<sup>8</sup>

Saudi Arabia is also responsible for propagating the conflict in Yemen, one of the worst humanitarian crises in the world. The UN Secretary General confirmed in April 2018 that Yemen represents the worse humanitarian crisis with over 22 million in need of humanitarian assistance to address injuries, cholera, malaria, malnutrition and starvation.<sup>9</sup> The responsibility of Saudi Arabia for civilian conflict-caused casualties—conservatively estimated at 6,100 killed and 9,683 injured—has been identified by the Office of the High Commissioner of Human Rights (OHCHR). The OHCHR has concluded that the majority (now over 61%) of civilian casualties were caused by air strikes by the Saudi-led coalition.<sup>10</sup> In March 2017, Save The Children stated that Saudi actions

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<sup>5</sup> Report of the Working on the Universal Periodic Review of Saudi Arabia, 4 March 2009, A/HRC/11/23 at para. 27.

<sup>6</sup> Report of the Working Group on the Universal Periodic Review of Saudi Arabia, 26 December 2013, A/HRC/25/3, at para. 138.45.

<sup>7</sup> Report of the Working Group on the UPR of Saudi Arabia, 26 December 2013, A/HRC/25/3 at para. 138.45.

<sup>8</sup> UN experts decry Saudi Arabia’s persistent use of anti-terror laws to persecute peaceful activists, The UN experts: Mr. Michel Forst, Special Rapporteur on the situation of human rights defenders; Mr. José Antonio Guevara Bermúdez, Chair-Rapporteur of the Working Group on Arbitrary Detention; Mr. David Kaye, Special Rapporteur on the right to freedom of opinion and expression; Mr. Ahmed Shaheed, Special Rapporteur on freedom of religion or belief; and Ms. Fionnuala D. Ní Aoláin, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, 2 January 2018.

<sup>9</sup> Secretary-General’s remarks to the Pledging Conference on Yemen [as delivered], 3 April 2018.

<sup>10</sup> See: Situation of human rights in Yemen, including violations and abuses since September 2014, Report of the United Nations High Commissioner for Human Rights, A/HRC/36/33, at para. 28; Introduction to country reports/briefings/updates of the Secretary-General and the High Commissioner Addresses by Ms. Kate Gilmore, United Nations Deputy High Commissioner for Human Rights 37th at the 37<sup>th</sup> session of the Human Rights Council; and, Report of the United Nations High Commissioner for Human Rights, Advance Edition, A/HRC/33/38, 4 August, 2016.at para. 13.

delaying delivery of life saving supplies (antibiotics, surgical equipment, medicine to treat malaria and cholera, supplies for malnourished children), were “killing children” and “turning aid and commercial supplies into weapons of war.”<sup>11</sup> The OHCHR in a recent address to the UN Human Rights Council, stated that the “malicious imposition of blockades and restrictions on imports and humanitarian assistance” continued.<sup>12</sup>

### **Criticisms of Saudi Arabia other bodies**

On 31 May 2018 the European Parliament passed a resolution<sup>13</sup> condemning the arrests of the Women’s Rights Defenders and calling for their release and an end to all forms of harassment, including at the judicial level, against Women’s Rights Defenders, their lawyers and all other human rights defenders in Saudi Arabia, so that they are able to carry out their legitimate work without unjustified hindrance and fear of reprisal.

### **Importance of Canadian human rights values and the Rule of Law**

As a country devoted to human rights, women’s rights, freedom of expression and the rule of law, Canada sets an example on the global stage as a country at the forefront.

Prime Minister Trudeau voiced Canada’s steadfast commitment to women’s equality and human rights issues, especially in regards to foreign policy. These values are central to Canadian society and indeed to ensuring peace and justice for the global population.

### **Call for action**

LRWC urges Canada maintain its position and to continue to urge Saudi Arabian authorities to release the Women’s Rights Defenders including **Waleed Abu al-Khair, Loujain al-Hathoul, Hatoon Al Fassi, Samar Badawi and Nassima al-Sadah.**

Saudi Arabia’s persecution of the Women’s Rights Defenders flagrantly violates international human rights law. Canada and other states cannot sit idly by and has a duty to stand by its principles.

An inventory of our letters setting out legal opinions on Saudi Arabia’s actions is available on our website at: <https://www.lrwc.org/category/countries/saudi-arabia-letters/>. We urge you to review these.

We are available to discuss Saudi Arabia’s international legal obligations with you and can be contacted via the information below.

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<sup>11</sup> Saudi Delays Yemen Aid Killing Children, Save the Children, 1 March 2017.

<sup>12</sup> Introduction to country reports/briefings/updates of the Secretary-General and the High Commissioner Addresses by Ms. Kate Gilmore, United Nations Deputy High Commissioner for Human Rights 37th at the 37<sup>th</sup> session of the Human Rights Council.

<sup>13</sup> European Parliament resolution on women’s rights defenders in Saudi Arabia ([2018/2712\(RSP\)](#))

Sincerely,



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**Maya Duvage**, Saudi Arabia Monitor

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**Lawyers' Rights Watch Canada (LRWC)** is a committee of lawyers and others who promote human rights and the rule of law internationally by: protecting advocacy rights; campaigning for jurists in danger because of their human rights advocacy; engaging in research and education; and working in cooperation with other human rights organizations. LRWC has Special Consultative status with the Economic and Social Council of the United Nations.

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