

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 13th Avenue, Vancouver, B.C. CANADA V6K 2V5

Thursday, August 2, 2018

VIA FAX and EMAIL TO:

His Majesty, King Salman bin Abdulaziz Al Saud
King of Saudi Arabia and Custodian of the two Holy Mosques
Fax: (via Ministry of the Interior) +966 11 403 3125
Email: info@moi.gov.sa

His Excellency Mohammad Bin Salman Al Saud
Crown Prince of Saudi Arabia
Fax: (via Ministry of the Interior) +966 11 403 3125
Email: info@moi.gov.sa

His Excellency Waleed bin Mohammad Al Samaani
Minister of Justice, Kingdom of Saudi Arabia
Fax: + 966 11 405 7777
Email: info@moj.gov.sa

His Royal Highness Prince Abdulaziz Bin Saud Bin Naif Bin Abdulaziz
Minister of Interior, Kingdom of Saudi Arabia
Fax: + 966 11 401 1111 / + 966 11 401 1944 / + 966 11 403 1125
Email: info@moi.gov.sa

His Excellency Adel bin Ahmed El Jubeir
Minister of Foreign Affairs
Fax: + 966 11 403 0645
Email: info@mofa.gov.sa

His Excellency Abdulaziz Alwasil
Ambassador, Permanent Mission of the Kingdom of Saudi Arabia to the United Nations Office in Geneva, Switzerland
Fax: +41 22 758 00 00
Email: saudiamission@bluewin.ch

His Excellency Abdulrahman bin Soliman Al-Ahmed
Ambassador, Embassy of Saudi Arabia in Brussels, Belgium
Fax: +32 2 6468538
Email: beemb@mofa.gov.sa

Your Majesties and Excellencies:

Re: Release of Waleed Abu al Khair and other Imprisoned Activists

Lawyers' Rights Watch Canada (LRWC) calls upon Saudi Arabia to immediately release Waleed Abu al-Khair and other human rights defenders, arrested, detained and sentenced to prison in flagrant contravention of international human rights law.

Waleed Abu al-Khair

In 2015, after being subjected to an unfair trial on illegitimate charges Saudi lawyer **Waleed Abu al Khair** was sentenced by the Specialized Criminal Court to 15 years in prison, a fine and a 5 year travel ban on release for his peaceful work as a criminal defense lawyer and his writing and advocacy promoting improved rights in Saudi Arabia. Mr. Abu al Khair was charged and sentenced under the *Penal Law for Crimes of Terrorism and its Financing* for overly broad charges which fail to comply with international law requirements of certainty, notice and foreknowledge: charges that preclude an effective defense and result in automatic and arbitrary convictions. LRWC notes that in recent years the Saudi government has, purportedly to counter terrorism, created overly broad 'offences' that allow criminalization of the peaceful exercise of internationally protected rights to expression, association, assembly, to participate in public affairs and engage in human rights advocacy.

Mr. Abu al Khair, who wrote and spoke about the need for improved rights, including women's rights and called for a constitutional monarchy, was the first person convicted under the above noted law.¹ His arrest and sentencing is part of widespread and systematic repression of human rights through misuse of the 'legal system' and the state powers of detention to punish human rights defenders in Saudi Arabia.

His extraordinary contributions to human rights and legal advocacy have been recognized by the following human rights awards: the 2012 Olof Palme Prize, 2015 XXth Ludovic-Trarieux Human Rights International Prize, 2015 Swiss Freethinker Prize and the 2017 Law Society of Ontario Human Rights Award.

The United Nations (UN) Commissioner for Human Rights denounced Saudi Arabia's use of overbroad counter-terrorism legislation to imprison innocent human rights defenders, stating, "[p]roceedings 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."² Ms. Pillay urged Saudi authorities to release Mr. Abu al Khair and others arbitrarily detained for peaceful advocacy of human rights.

¹ The 'offences' against Waleed Abu al-Khair were: a/ seeking to discredit state legitimacy; b/ abuse of public order in the state and its officials; c/ inciting public opinion and insulting the judiciary; d/ publicly defaming the judiciary and discrediting Saudi Arabia through alienating international organizations against the Kingdom and making statements and documents to harm the reputation of the Kingdom; e/ adopting an unauthorized association and being its chairman speaking on its behalf and issuing statements and communicating through it; f/ preparing, storing and sending what would prejudice public order.

² 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>>.

In October 2015, the UN Working Group on Arbitrary Detention (WGAD) concluded that the detention of Waleed Abu al Khair was arbitrary and in contravention of the *Universal Declaration of Human Rights* (UDHR) Articles 9 (freedom from arbitrary arrest and detention), 10 (right to fair trial), 19 (freedom of opinion and expression) and 20 (freedom of association and assembly). The WGAD recommended immediate release and compensation for his arbitrary detention. Saudi Arabia, while a member of the UN Human Rights Council, has refused to comply with the WGAD recommendation to release and compensate Mr. Abu al Khair.

Saudi Arabia has further punished Mr. Abu al-Khair in detention by refusing medical treatment, subjecting him to torture and other ill-treatment, restricting visits and communications with family, friends and advocates and by continuing to threaten him. In May 2016, the UN Committee against Torture noted that reports made in 2014 of the in-custody torture of Mr. al Khair have not been investigated and remedied as required by the *Convention against Torture* (UNCAT).³

Saudi Arabia has also ignored repeated calls for the immediate and unconditional release of Waleed Abu al Khair from LRWC and other knowledgeable and respected international human rights organizations, including: Amnesty International, Human Rights Watch, the Human Rights Committee of the Law Society of England and Wales, the Law Society of Ontario, Union Internationale des Avocats, Lawyers for Lawyers, the International Federation for Human Rights (FIDH) and the World Organization Against Torture (OMCT) within the framework of their joint programme the Observatory for the Protection of Human Rights Defenders and the International Association of Democratic Lawyers

Arrest and detainment of peaceful women's rights activists

In mid-May 2018 several prominent women's rights activists, including former Canadian university student **Loujain Al-Hathloul**,⁴ were arrested for peacefully advocating for women's rights. Four of the activists, **Dr. Aisha al-Manea**, **Dr. Hessa al-Sheikh**, **Dr. Madeha al-Ajroush** and **Walaa' al-Shubbar** were reportedly subsequently released with conditions of release unknown. The remaining activists, including **Loujain Al-Hathloul**, **Iman al-Nafjan**, **Aziza al-Youssef**, **Mohammad al-Rabea**, **Mohammed al-Bajadi**, **Nouf Abdulaziz**, **Mayya Al-Zahrani**, **Eman al-Nafjan**, and **Abdulaziz Al-Mesha'al** are reportedly being detained without charge and without access to their families or lawyers. Also detained is lawyer **Dr. Ibrahim al-Mudimigh**, who previously acted as legal counsel for Ms. al-Hathloul (referred collectively with Hatoon Al Fassi as the "Women's Rights Defenders").

On 24 June 2018, **Hatoon Al Fassi** was arrested and held incommunicado. Ms. Al Fassi is a prominent Saudi advocate for women's rights, including women's participation in municipal elections and women's right to drive, and an associated professor of women's history at King Saud University in Riyadh. Ms. Al Fassi was the first woman to drive after the driving ban was officially lifted on 24 June 2018 and was scheduled to be interviewed by French media France 2 to talk about the lift of the driving ban.

Although some Saudi media outlets reported that the Women's Rights Defenders have been arrested under vague accusations of "suspicious contacts with foreign entities" and "financial

³ Committee Against Torture, Concluding Observations on the second periodic review of Saudi Arabia, Advance Unedited Version, Adopted by the Committee at its fifty-seventh Session 18 April – 13 May 2016 at paras. 6 and 7.

⁴ Michelle Ghoussoub, "Incredibly fierce' UBC graduate among activists detained in Saudi Arabia", CBC News (29 May 2018) online: <<http://www.cbc.ca/news/canada/british-columbia/incredibly-fierce-ubc-graduate-among-activists-detained-in-saudi-arabia-1.4681151>>.

support to enemies overseas”, no formal charges have yet been reportedly pressed against them. The individuals are reportedly all detained in solitary confinement, without access to their lawyers and minimal contact with their families.

Conflicting reports of the arrests have been circulated by international media. Some outlets have reported that as many as 17 citizens have been arrested in recent weeks and that eight have been “temporarily” released and nine remain in custody.⁵⁶ The uncertainty promulgated by lack of media access to the country and witness’ unwillingness to identify themselves for fear of reprisals is testament to Saudi Arabia’s lack of transparency. Indeed, many are left to wonder where their family members are being held and on what grounds.

The arrests were made in advance of implementation of the September 2017 edict by King Saud announcing a plan to lift the ban - the only one in the world - prohibiting women from driving in Saudi Arabia. On 8 May 2018, the Kingdom announced that as of 24 June 2018, any woman 18 years of age or older can apply for a driving license. This long-overdue change is one small step towards bringing Saudi Arabia in line with international law norms and obligations.

Saudi Arabia in breach of international law obligations

As a member of the United Nations (24 October 1945), Saudi Arabia is legally obligated to respect the provisions of the UDHR, the 1998 *United Nations Declaration on Human Rights Defenders* (UNDHRD) and treaties to which it is a State Party such as the *Convention on the Elimination of all Forms of Discrimination against Women* (7 September 2000) and UNCAT (acceded to 23 September 1997).

Saudi Arabia’s arbitrary detention of Waleed Abu al Khair and the Women’s Rights Defenders violates the UDHR as well as the UNDHRD Articles 1 (right to promote human rights and fundamental freedoms, 6(c) (right to study, discuss, form, hold opinions and draw public attention to the observance of human rights and fundamental freedoms), and 12.2 (state obligation to protect human rights promoters from adverse discrimination, pressure or arbitrary action).

In addition to UN membership, Saudi Arabia is a member of the League of Arab States and a party to the Arab Charter on Human Rights, which affirms the principles of: the *United Nations Charter*; the UDHR; the provisions of the two UN International Covenants, on *Civil and Political Rights* and on *Economic, Social and Cultural Rights*; and, the *Cairo Declaration on Human Rights in Islam*. The arbitrarily detained people referred to in this letter were exercising internationally protected rights to engage in peaceful activities protected by these instruments and their detentions are in direct contravention of Saudi Arabia’s legal obligations under all the above noted instruments.

⁵ “1st Saudi women receive driver's licences amid crackdown”, The Associated Press (4 June 2018) online: <<http://www.cbc.ca/news/world/saudi-arabia-first-women-receive-drivers-licences-1.4691423>>.

⁶ Bijan Hosseini, “Saudi Arabia ‘temporarily’ frees activists who want women to be able to drive”, CNN (3 June 2018) online: <<https://www.cnn.com/2018/06/03/middleeast/saudi-women-activists-released/index.html>>.

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.

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 4 May 2017 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.”⁷ The report called on Saudi Arabia “to end the prosecution of people including human rights defenders, writers and bloggers simply for expressing non-violent views”.

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) ...⁸

On 31 May 2018 the European Parliament passed a resolution⁹ 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.

⁷ Preliminary findings of the visit to Saudi Arabia, UN Human Rights Commissioner (4 May 2017) online: <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21584&LangID=E>>.

⁸ CEDAW/C/SAU/CO/3-4, online: <<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqkKb7yhskcAJS%2fU4wb%2bdIVicvG05RzUx5HJCvs6GLm%2fn4BpIuylk74g1MO90gFIGidqEkhl4pKVjutmT28BZIvc7YPVDi5QAIazpF8fPsOaF4BIZsLm>>.

⁹ 2018/2712(RSP) online: <<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2018-0232+0+DOC+PDF+V0//EN>>.

Conclusion

LRWC condemns Saudi Arabia's widespread and systematic repression and arbitrary detention of human rights defenders through misuse of its laws and legal system and prison systems. The arrest, detention and imprisonment of human rights lawyers such as Waleed Abu al Khair and Dr. Ibrahim al-Mudimigh indicates an appalling situation where victims of rights violations by state actors are denied access to both remedies and to legal representation. They risk arbitrary detention for the peaceful exercise of rights and lawyers risk the same fate for providing legal representation. It is of utmost importance that lawyers have the ability to engage in independent advocacy and to promote and enhance the implementation and enforcement of internationally protected human rights, to protect the rights of individuals and groups and assist them to obtain legal remedies for violations by state actors.

LRWC urges Saudi Arabia to:

- i. Immediately and unconditionally release Waleed Abu al Khair;
- ii. 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;
- iii. Immediately provide Waleed Abu al Khair with the medical care and treatment he requires and ensure him access to the medical doctors of choice and to treatment in a civilian hospital;
- iv. Guarantee in all circumstances the physical and psychological integrity of the Women's Rights Defenders, as well as of all detained human rights defenders in Saudi Arabia;
- v. Immediately disclose the whereabouts of Hatoon Al Fassi, Nouf Abdulaziz, Mayya Al-Zahrani and Mohamed al-Bejadi;
- vi. Ensure all detained human rights defenders have unhindered access to their family and lawyers;
- vii. Immediately and unconditionally release the Women's Rights Defenders,;
- viii. Put an end to all forms of harassment, including at the judicial level, against Mr. Abu al Khair, the Women's Rights Defenders;
- ix. Comply in all circumstances with all the provisions of the UDHR, UNCAT, UDHRD; ; and
- x. More generally, ensure in all circumstances the respect for human rights and fundamental freedoms in accordance with international human rights standards and instruments.

Sincerely,



Gail Davidson, Executive Director, LRWC
Sincerely,

A handwritten signature in blue ink, appearing to read "Maya Duvage", is shown below a small blue checkmark.

Maya Duvage, LRWC member

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.

Prime Minister of Canada
Mr. Justin Trudeau
justin.trudeau@parl.gc.ca

Canadian Minister of Foreign Affairs
Ms. Chrystia Freeland
chrystia.freeland@international.gc.ca

Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression
Mr. David Kaye
freedex@ohchr.org

Special Rapporteur on the rights to freedom of peaceful assembly and of association
Ms. Annalisa Ciampi
freeassembly@ohchr.org

Special Rapporteur on the situation of human rights defenders
Mr. Michel Forst
defenders@ohchr.org

Special Rapporteur on the independence of the judges and lawyers
Mr. Diego Garcia-Sayan
SRindependenceJL@ohchr.org

Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism
Ms. Fionnuala Ni Aolain
srct@ohchr.org

Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment
Mr. Nils Melzer
sr-torture@ohchr.org

United Nations Working Group on Arbitrary Detention
Mr. José Guevara
Ms. Leigh Toomey
Ms. Elina Steinerte
Mr. Sètondji Adjovi
Mr. Seong-Phil Hong
wgad@ohchr.org