

# 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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## **Draft Working Paper on the Arbitrary Detention of Samar Badawi**

### **Background**

1. Samar Badawi is known and respected internationally as a human rights advocate. She has been a prominent advocate for women's rights since 2010, advocating from the right to vote and to drive and for an end to male guardianship, She has also vigorously advocated for the release of imprisoned human rights defenders including Raif Badawi and Waleed Abu al-Khair, She worked with the Monitor of Human Rights in Saudi Arabia until it was closed down by Saudi Arabia. .
2. In recognition of her advocacy to promote human rights in Saudi Arabia, Samar has been awarded:
  - The International Women of Courage Award from the United States State Department for work on women's rights in 2012; and,
  - The Hrant Dink Foundation award in 2015 for “starting many campaigns like right to vote and right to drive for women in her country and [becoming] the symbol of the women rights activists in Saudi Arabia by bringing the problems of women to the international agenda.”

### **Relationship with Raif Badawi and Waleed Abu al-Khair.**

3. Samar Badawi has been subjected to travel ban preventing her from leaving Saudi Arabia since on or about December 2014. The travel ban was imposed after Samar attended the September 2014 session of the UN Human Rights Council to speak about the need for improved human rights in Saudi Arabia. Her arrest and detention in 2016 and her detention since July 2018 may be part of an effort by Saudi authorities to force confessions of wrongdoing from imprisoned human rights advocates Raif Badawi and Waleed Abu al-Khair.

### **Raif Badawi**

4. **Samar Badawi** is the sister of **Raif Badawi**, human rights activist arbitrarily imprisoned since 16 June 2012. She was married to lawyer **Waleed Abu al-Khair**, arbitrarily imprisoned since arrest on 15 April 2014. Prior to the arrest of Mr. Abu al-Khair on 14 April 2014, Ms Badawi had worked with her husband on human activities associated with the Monitor of Human Rights in Saudi Arabia, a non-government human rights organization registered in the Province of Ontario and operating out of Saudi Arabia.
5. Raif Badawi is a human rights activist and the founder of the *Saudi Liberal Network*, an online forum for social and political debate. He was arrested on 12 January 2012 and has been detained since.

6. On 29 July 2013, Raif Badawi was convicted<sup>1</sup> by the Criminal Court in Jeddah of "setting up a website that undermines general security", "ridiculing Islamic religious figures", and "going beyond the realm of obedience" and sentenced to 7 years in prison and 600 lashes. On 7 May 2014 the sentenced was increased to 10 years in prison, 1,000 lashes, a 10-year travel ban following his prison term, and a fine of 1 million Saudi Riyals (325,890.00 CAD). Mr. Badawi was not present at the 7 May 2014 proceedings and was not represented as his lawyer Waleed Abu Al-Khair who had been arrested and detained himself on 15 April 2014. On 9 January 2015, Raif Badawi was subjected to 50 lashes outside Al-Jaffali mosque in Jeddah;<sup>2</sup> further lashings were suspended after the first session and the case was referred to the Saudi Supreme Court for review. On 7 June 2015, the Supreme Court upheld Mr. Badawi's sentence. Mr. Badawi was not present or represented by a lawyer at the 7 June 2015 review of sentence by the Supreme Court. There is no further appeal possible in the Saudi courts. Lashings has been postponed since but not suspended or revoked.
7. Mr. Badawi's wife Ensaf Haider and children are Canadian citizens residing in Quebec. Ms. Haider has vocally advocated for her husband's release. In 2018 Saudi Arabia illegally hacked into Ms. Haider's telephone.
8. The United Nations (UN) Working Group on Arbitrary Detention (WGAD) determined in an Opinion dated 26 October 2015 that the detentions of Raif Badawi and Waleed Abu al-Khair violated the Universal Declaration of Human Rights Articles 9, 10, 19 and 20 and was arbitrary and recommended immediate release.<sup>3</sup> The 2015 Opinion also determined that the detentions of seven other prominent human rights defenders were also arbitrary and recommended immediate release.<sup>4</sup> One year later the WGAD, with the support of three UN Special Rapporteurs (Michel Forst on the situation of human rights defenders, David Kaye on the promotion and protection of the right to freedom of opinion and expression, and Maina Kiai on the rights to freedom of peaceful assembly and of association) again called on Saudi Arabia to immediately release Raif Badawi, Waleed Abu al-Khair and the seven other human rights defenders. The UN experts noted that the nine men "had been arbitrarily deprived of their liberty as a result of exercising their rights to freedom of expression and peaceful assembly, and some had not received fair trials." The WGAD expressed, "concern about the consistent pattern of arbitrary arrests and detention in Saudi Arabia and the persecuting human rights defenders in retaliation of their work." Saudi Arabia did not comply with the recommendations to release the men.<sup>5</sup>

### **Waleed Abu al-Khair**

9. Samar Badawi was married to Waleed Abu al-Khair and they have a daughter born June 2014 after the April 2014 arrest of Waleed Abu al-Khair. Prior to Waleed's arrest Samar and Waleed worked

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<sup>1</sup> Raif Badawi was convicted of insulting religious symbols, creating and managing an online forum, criticizing state authorities and violating information technology laws.

<sup>2</sup> "Saudi blogger receives first 50 lashes of sentence for 'insulting Islam'", The Guardian, 10 January 2015. <https://www.theguardian.com/world/2015/jan/09/saudi-blogger-first-lashes-raif-badawi>

<sup>3</sup> UN Human Rights Council, *Opinions adopted by the Working Group on Arbitrary Detention at its 70th session, 31 August – 4 September 2015: No. 38.2015 (Saudi Arabia)*, A/HRC/WGAD/2015, 26 October, 2015, at paras. 84-86..

<sup>4</sup> The WGAD Opinion of 26 October 2015 determined that none nine human rights defenders were arbitrarily detained and recommended immediate release for: Sheikh Suliaman al-Rashudi, Abdullah al-Hamid, Mohammed al-Qahtani, Abdulkareem Yousef al-Khoder, Mohammed Saleh al-Bajadi, Omar al-Hamid al-Sa'id, Raif Badawi, Fadhel al-Manasif, and Waleed Abu al-Khair

<sup>5</sup> *One year on: UN group renews call for Saudi Arabia to release human rights activists*, 17 November 2016, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20886&LangID=E>

together to promote improved human rights in Saudi Arabia and both worked partly through the Monitor of Human Rights in Saudi Arabia.

10. Waleed Abu al-Khair is a world renowned human rights lawyers and democracy advocate. In recognition of his extraordinary human rights advocacy, Waleed Abu al-Khair has received four prestigious international human rights awards:
  - a. The 2012 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” (Olof Palmes Minnesfond, 2012, online:<sup>6</sup>
  - b. The 2015 XXth Ludovic-Trarieux Human Rights International Prize (the XXth “Ludovic-Trarieux” Human Rights International Prize 2015, online: <http://www.ludovictrarieux.org/uk-page3.callplt2015.htm>).<sup>7</sup> The award is Europe’s most prestigious tribute to human rights activism and was initially bestowed on Nelson Mandela;
  - c. The 2017 Law Society of Ontario’s Human Rights Award for working as a lawyer and the founder of the Monitor for Human Rights in Saudi Arabia, “tirelessly to defend human rights and the rule of law for all—in the face of extreme adversity and at the cost of his own freedom”; and
  - d. The 2018 Right Livelihood Award (known as the “Alternative Nobel’), along with two other laureates, Abdullah al-Hamid and Mohammad Fahad al-Qahtani, “for their visionary and courageous efforts, guided by universal human rights principles, to reform the totalitarian political system in Saudi Arabia.”<sup>8</sup> On 15 April 2014 Mr. Abu al-Khair was arbitrarily arrested and detained (see WGAD Opinion of 26 October 2015) and was convicted on 6 July 2015 by the Specialized Criminal Court and sentenced to 15 years’ imprisonment with five years suspended to be followed by a 15-year travel ban and a fine of two hundred thousand Saudi riyals on charges solely related to peacefully exercising his right and carrying out his duty to promote better human rights implementation and enforcement in Saudi Arabia.
11. The WGAD conducted a second review of the legality of Waleed Abu al-Khair’s detention, this time reviewing all aspects of the arrest, prosecution, charges, trial, sentencing and appeal. In a carefully reasoned Opinion dated 4 July 2018,<sup>9</sup> the WGAD concluded that the detention of Waleed Abu al-Khair was arbitrary under Categories I, II, III, IV and V and called for his immediate release.
12. Saudi Arabia has not complied with the recommendations of the WGAD to release Waleed Abu al-Khair of Raif Badawi.

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<sup>6</sup> Olof Palmes Minnesfond, 2012, online: <<http://www.palmefonden.se/2012-radhia-nasraoui-och-waleed-sami-abu-alkhair-2/>>.

<sup>7</sup> The XXth “Ludovic-Trarieux” Human Rights International Prize 2015, online: <<http://www.ludovictrarieux.org/uk-page3.callplt2015.htm>>.

<sup>8</sup> The WGAD October 2015 Opinion concluded that the detention of all three laureates, Waleed Abu al-Khair, Mohammed al-Qahtani and Abdullah al-Hamid was arbitrary and recommended immediate release.

<sup>9</sup> UN Human Rights Council, *Opinions adopted by the Working Group on Arbitrary Detention at its 81<sup>st</sup> session, 17-26 April 2018, No. 10/2018 concerning Waleed Abulkhair*, A/HRC/WGAD/2018/10, 4 July 2018 at para.

## **Samar Badawi**

### **January 2016 Arrest**

13. On 12 January 2016, Ms. Badawi was arrested and along with her infant daughter was taken to the police station in Jeddah where Ms Badawi was interrogated and then transferred to Dhaban prison. Her infant daughter was taken away from her at some point and turned over to a relative. Ms. Badawi was released the next day. Reports indicate that she was likely questioned about a Twitter account in the name of Waleed Abu al-Khair that had published photos of Waleed Abu al-Khair and two other wrongly imprisoned human rights defenders. The middle of the night arrest and detention of Ms Badawi and her daughter could also have been a means of forcing Waleed Abu al-Khair to agree to admit wrongdoing, apologize and be silent on human rights and democracy issues in the future

### **Warrantless Arrest and Search of Premises in July 2018**

14. Samar Badawi was again arrested by Saudi authorities on or about 30 July 2018. The exact date of the arrest is not known. At approximately 1:00 am, apparently on an order from Crown Prince Mohammed bin Salman, several men entered her apartment building and stood outside the door to her apartment. Some of the men were masked and some were wearing civilian clothes. Two men had visible weapons on them. Ms. Badawi asked to see an arrest warrant. The men stated they were state security forces and that they had directions from the Crown Prince Md bin Salman to take Ms. Badawi with them. The men forced their way into the apartment and then proceeded to search the apartment, while filming all stages of the search. The men instructed Ms. Badawi to telephone her daughter's grandmother, who arrived to pick up Ms Badawi's daughter at approximately 2:15 am. At 2:50 am Ms. Badawi was arrested and taken away.
15. The WGAD Opinion of July 2018 concerning Waleed Abulkhair stated that an order from an official does not form the legal basis for an arrest and thus, any such arrest and subsequent detention is therefore arbitrary.<sup>10</sup> In that case the arrest had been authorized by the Minister of the Interior.
16. Earlier in 2018, prior to the prohibition of women driving was lifted, women's' rights activists had received phone calls warning them to be silent. In July 2018 Saudi authorities arrested dozens of women's rights defenders, both male and female, including Ms. Badawi, who had campaigned against the driving ban. After the January 2016 arrest, Ms Badawi remained a vocal advocate for the release of Waleed Abu al-Khair and others. One of her campaigns was a t-shirt campaign and posters showing Ms Badawi and her infant daughter both wearing t-shirts bearing the text, "Free Waleed Al-Khair from prison in Saudi Arabia."
17. Approximately one month prior to the July 2018 arrest, Saudi authorities had re-imposed a travel ban on her. Saudi security forces also conducted surveillance of her apartment by installing security cameras at her apartment building.
18. In arresting Ms Badawi Saudi Arabia ignored the conclusion of the WGAD, in its July 2018 Opinion concerning Mr. Abu al-Khair that "any deprivation of liberty without a valid arrest warrant issued by a competent, independent and impartial judiciary authority is arbitrary and lacks legal basis."<sup>11</sup> In that case an order by the Minister of the Interior was not a legal basis for arrest.

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<sup>10</sup> UN Human Rights Council, *Opinions adopted by the Working Group on Arbitrary Detention at its 81th session, 17 April – 26 April 2018: No. 10.2018 (Saudi Arabia), A/HRC/WGAD/2018/10, 4 July, 2018, at paras. 46-47.*

<sup>11</sup> *Supra* Note 8 at para. 46.

19. It is not known where Ms. Badawi has been detained. She is believed to be detained in Dhaban Mabath Prison, a maximum security prison near Dahaban, Jeddah, in Saudi Arabia..
20. Samar Badawi has been subjected to prolonged indefinite arbitrary detention. Because of the secrecy surrounding her arrest, detention and charges, it can only be assumed that she has been detained incommunicado without timely and confidential or any access to a lawyer of her choice and without regular or any contact with her daughter, family and friends. Saudi authorities have not provided a reason for arrest or detention, accused her of any acts or omissions that could or might constitute criminal offences or given notice of criminal charges that would enable preparation of a defense. She has not been brought before an independent, impartial and competent court to determine her right to pre-trial release and the legality of her detention and treatment.
21. In November 2018, Amnesty International and Human Rights Watch<sup>12</sup> reported that detained women activists had been subjected to torture, threats and sexual harassment by prison and state officials. Amnesty International reported that according to three separate testimonies, officials at Dhahban Prison repeatedly tortured the detained women by electrocution and flogging, and sexual threats and harassment. Some were left unable to walk or stand properly and with uncontrolled shaking of the hands and marks on the body. Samar Badawi was among the women believed to have been tortured and subjected to prohibited ill-treatment.
22. On 27 June 2019, Samar Badawi reportedly appeared in closed proceedings before the Special Criminal Court in Riyadh, Saudi Arabia. The appearance and the nature of the proceeding could not be confirmed. She is rumoured to be accused of or charged with working for an unlicensed organization and communication with foreign entities hostile to Saudi Arabia. Neither of these constitutes legitimate criminal charges but could result in an illegitimate conviction and lengthy sentence.
23. In 2016, The Committee Against Torture had expressed concern with the independence of the Specialized Criminal Court and recommended that Saudi Arabia,<sup>13</sup>

“[s]trengthen the independence of the Specialized Criminal Court from the Ministry of the Interior and ensure that judges are made aware of their obligation to consider defendants’ allegations that they were subjected to torture or ill treatment by investigators for the purpose of obtaining confessions...”
24. In 2018, the WGAD agreed that the Specialized Criminal Court “is insufficiently independent of the Ministry of the Interior ” The WGAD then concluded, on the basis of the lack of independence of the Specialized Criminal Court coupled with 10 days of incommunicado detention and the use of threats

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<sup>12</sup> See: “Saudi Arabia tortured female right-to-drive activists, says Amnesty,” Associated Press, 21 November 2018. Online at <https://www.theguardian.com/world/2018/nov/21/saudi-arabia-tortured-female-right-to-drive-activists-says-amnesty>; “Saudi Arabia: Access for independent monitors urgently needed amid more reports of torture of activists,” Amnesty International 25 January 2019. Online at <https://www.amnesty.org/en/latest/news/2019/01/saudi-arabia-access-for-independent-monitors-urgently-needed-amid-more-reports-of-torture-of-activists/> ;

“Saudi Arabia: Detained Women Reported Tortured, Human,” Rights Watch 20 November 2018. Online at <https://www.hrw.org/news/2018/11/20/saudi-arabia-detained-women-reported-tortured>

<sup>13</sup> Committee against Torture in its concluding observations on the second periodic report of Saudi Arabia (CAT/C/SAU/CO/2 and Corr.1) at paras. 17 & 18.

and coercion in attempts to force a confession, that his right to a fair trial had been so gravely violated as to render his detention arbitrary.<sup>14</sup>

25. Following this reported appearance, Ms. Badawi was reportedly returned to prison, the location of which is unknown.
26. In August 2019 news reports indicated that the detained women activists had rejected demands from Saudi officials to provide statements denying allegations and reports that they had been subjected to torture or other cruel, inhuman or degrading treatment or punishment. In return for written and video-taped statements denying ill-treatment, Saudi authorities reportedly promised release.<sup>15</sup>
27. Human Rights Watch reported that the same demand for retraction had been made to Samar Badawi. This is the same offer made repeatedly to Waleed Abu al-Khair.

### **International calls for the immediate release of Samar Badawi**

28. The European Parliament passed a resolution on 31 May 2018 condemning earlier arrests of defenders of women's rights, calling for their release and for 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.<sup>16</sup>
29. On 6 June 2018, the UN Special Rapporteur on human rights and counter-terrorism concluded that Saudi Arabia's anti-terrorism law did not comply with international standards, and concluded that Saudi Arabia "must urgently review the definition of terrorism in the 2017 Counter-Terrorism Law and bring it into line with international human rights norms. In particular, it must ensure that its provisions are defined with precision and cannot serve as a basis for prosecuting individuals engaged in non-violent expression and political advocacy." (para. 71(a), A/HRC/40/XX/Add.2).
30. On 2 August 2018, Canada's Foreign Affairs Minister Chrystia Freeland tweeted that she was "very alarmed to learn that Samar Badawi, Raif Badawi's sister has been imprisoned in Saudi Arabia. Canada stands together with the Badawi family in this difficult time and we continue to strongly call for the release of both Raif and Samar Badawi". The next day, Global Affairs Canada tweeted, "Canada is gravely concerned about additional arrests of civil society and women's rights activists in Saudi Arabia, including Samar Badawi. We urge the Saudi authorities to immediately release them and all other peaceful human rights activists."<sup>17</sup> Saudi Arabia responded almost immediately, not by releasing the people unlawfully detained but by announcing suspension of trade with Canada, severance of diplomatic relations expulsion of Canada's ambassador and recalling its ambassador to Canada. Saudi Arabia also announced that it was suspending flights by the Saudi Arabia Airlines to

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<sup>14</sup> WGAD Opinion No. 10/2018 concerning Waleed Abulkhair (Saudi Arabia), A/HRC/WGAD/2018/10, 4 July 2018, at para.s 73. 77.

<sup>15</sup> Women's rights activist rejected Saudi release deal that included denial of prison torture, family says, Thomson Reuters, CBC News, 13 August 2019. <https://www.cbc.ca/news/canada/british-columbia/loujain-al-hathloul-ubc-prison-release-deal-1.5245381>

<sup>16</sup> European Parliament resolution of 31 May 2018 on the situation of women's rights defenders in Saudi Arabia (2018/2712(RSP)) <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2018-0232&language=EN&ring=P8-RC-2018-0259>

<sup>17</sup> Press Briefing notes on Syria and Saudi Arabia. 31 July 2018 at <https://reliefweb.int/report/syrian-arab-republic/press-briefing-notes-syria-and-saudi-arabia> <sup>17</sup>

and from Canada, stopping purchase of Canadian wheat and barley and ordering Saudi students in Canada home.

31. On 12 October 2018 , eight UN Special Rapporteurs and all members of the Working Group on Arbitrary Detention and the [Working Group on the issue of discrimination against women in law and in practice](#) publically stated<sup>18</sup>, “We condemn in the strongest possible terms the actions of the Saudi authorities against these women human rights defenders and we call on them, as a matter of urgency, to immediately release and drop the charges against all of them,” The experts confirmed that, Ms. Samar Badawi, Ms. Nassima Al-Sadah, Ms. Nouf Abdulaziz, Ms. Mayya Al-Zahrani, and Ms. Hatoon Al-Fassi are all being held in incommunicado detention and stated, “We urge the Saudi authorities to immediately make the whereabouts of these five human rights defenders known and to grant them access to their families and lawyers,”
32. In January 2019, [UN experts decried](#) Saudi Arabia’s persistent use of anti-terror laws to persecute peaceful activists noting a “worrying pattern of widespread and systematic arbitrary arrests and detention in Saudi Arabia”. Experts also pointed to Saudi Arabia’s failure to implement two recent opinions ([A/HRC/WGAD/2015/38](#) and [A/HRC/WGAD/2017/63](#)) of the WGAD which deemed the detentions of 10 individuals by Saudi Arabia arbitrary. Repeated calls by the UN Human Rights Council to curb repression of peaceful criticism have gone ignored by Saudi Arabia.
33. In January 2019 a group of United Kingdom Members of Parliament and British lawyers specializing in international law asked Saudi Arabia for permission to visit the detained women’s rights activists to determine their treatment and medical conditions. Permission was not granted.<sup>19</sup>
34. During the [40<sup>th</sup> Regular Session](#) of the UN Human Rights Council in March 2019, Fionnuala Ni Aolain, the current UN Special Rapporteur on protecting human rights while countering terrorism, called Saudi Arabia’s counterterrorism laws “[unacceptably wide and unacceptably vague](#)”. She added “These laws are used to directly attack and limit the rights of prominent human rights defenders, religious figures, writers, journalists, academics, civil activists and all of these groups have been targeted by this law”.
35. During the same session, Michel Forst, the UN Special Rapporteur on the situation of human rights defenders [raised concerns](#) about the “crackdown” on women human rights defenders in Saudi Arabia.
36. On 7 March 2019, Iceland presented to the UN Human Rights Council the [joint statement](#) of 36 States joining with the High Commissioner and Special Rapporteurs in calls on Saudi Arabia to release women’s’ rights defenders, including Samar Badawi, and all others “detained for exercising their fundamental freedoms.” The extraordinary joint statement condemned and called for accountability for the murder of Jamal Khashoggi and called on Saudi Arabia “to take meaningful steps to ensure that all members of the public, including human rights defenders and journalists, can

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<sup>18</sup> *Saudi Arabia must immediately release all women’s rights defenders, say UN experts*, 12 October 2018.

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23719&LangID=E>

<sup>19</sup> Detention Review Panel into Women Activist Detainees in Saudi Arabia - Report, February 2019

<https://static1.squarespace.com/static/5a9301ef0dbda346e74d0bf9/t/5c54a707e2c483db6d77a645/1549051658028/DRP+report+-Women+Activist+Detainees+in+Saudi+Arabia+February+2019.pdf>

freely and fully exercise their rights to freedoms of expression, opinion and association, including online, without fear of reprisals.”<sup>20</sup>

37. On 4 June 2019 39 NGOs, released a [joint letter](#) identifying gross human rights abuses in Saudi Arabia. Highlighted as examples was the unlawful detention of human rights defenders including women defenders and the ongoing impunity for serious human rights violations, including torture. The letter was sent to 44 countries urging States to present a resolution at the UN Human Rights Council to establish a monitoring mechanism over the human rights abuses in Saudi Arabia, to call on Saudi Arabia to immediately release all individuals detained for exercising their fundamental freedoms, including Samar Badawi and other named women defenders, to conduct prompt and credible investigations into allegations of torture, to abolish the male guardianship system and to establish a moratorium on the use of the death penalty with an aim towards its abolition

### **Incommunicado Detention**

38. Incommunicado detention violates rights under the UDHR to freedom from arbitrary arrest and detention and, when lengthy as in this case, protected rights to humane treatment, access to counsel, freedom from torture and other ill-treatment and fair trial.

39. The UN Human Rights Committee has determined that

Incommunicado detention that prevents prompt presentation before a judge inherently violates [paragraph 9.3]. Depending on its duration and other facts, incommunicado detention may also violate other rights under the Covenant, including articles 6, 7, 10 and 14. States parties should permit and facilitate access to counsel for detainees in criminal cases from the outset of their detention.<sup>21</sup>

40. The WGAD has confirmed that incommunicado detention and denial of access to a lawyer for a period of 10 day constitutes a violation of the UDHR Articles 8, 10 and 11 and could constitute a violation of freedom from torture.<sup>22</sup>

### **Breach of the Right to Freedom of Opinion and Freedom of Expression**

41. Ms. Badawi’s arrests and harassment by Saudi authorities are aimed to silence her and end her support for the rights of women and human rights defenders through the Monitor of Human Rights in Saudi Arabia and other means. Through these actions, Saudi Arabia has subjected Ms. Badawi and others to deprivation of liberty, torture and other cruel, inhuman and degrading treatment and punishment for lawfully exercising internationally protected rights to freedom of expression, thought or opinion, association, assembly and participation in the conduct of public affairs contrary to UDHR Articles 19, 20 AND 21.

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<sup>20</sup> The countries that signed this joint statement are: Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Czech Republic, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

<sup>21</sup> UN Human Rights Committee (HRC), *General comment no. 35, Article 9 (Liberty and security of person)*, 16 December 2014, CCPR/C/GC/35 at para. 35, available at: <http://www.refworld.org/docid/553e0f984.html> [accessed 9 November 2018]

<sup>22</sup> *Supra* Note 8 at paras. 48 and 75.

42. Saudi Arabia's covert surveillance of Ms. Badawi and their intrusion into her home on 28 or 29 July 2018 without a warrant constitutes arbitrary interference with her privacy, family and home contrary to UDHR Article 12.

### **Enforced Disappearance**

43. Ms. Badawi has been effectively subjected to enforced disappearance given that that Saudi Arabia has failed since her arrest on or about 30 July 2018 to confirm the place of, reason(s) for, and conditions of her detention and has denied access to the judicial review required by international law. It is assumed that Samar Badawi since being arbitrarily arrested by Saudi authorities has been subjected to:
- a.
  - b. Denial of liberty and violation of freedom from arbitrary detention;
  - c. Denial of timely, confidential and adequate access to a lawyer of choice to represent her;
  - d. Denial of legal aid;
  - e. Denial of access to an independent court to review the legality of her detention and treatment and her right to pre-trial release;
  - f. Denial of communications with family, friends and other visitors of choice required by the Nelson Mandela Rules;
  - g. No notice of charges;
  - h. Illegitimate charges that do not comply with the principle of legality regarding notice and enable notice and objective determination of the prohibited conduct;
  - i. Torture and other cruel, inhuman and degrading treatment or punishment;
  - j. Closed proceedings before the Specialized Criminal Court which has been determined incompetent to ensure a fair trial.
44. All this is against the known fact that there are no allegations and no known facts of her involvement in criminal activities and the known fact that her engagement in human rights advocacy has been lawful and well within the bounds of activities allowed by international human rights law as reflected by the Universal Declaration of Human Rights (UDHR) and many human rights treaties from the United Nations, Organization of American States, African Union, and European Union.

### **Arbitrary Detention**

45. Ms. Badawi has been subject to treatment prohibited by the UDHR and the United Nations Convention Against Torture and deprived of protected rights to:
- a. Life, liberty and security of the person (UDHR Article 3);
  - b. Freedom from arbitrary arrest (UDHR Article 9);
  - c. A full and fair hearing before an independent, impartial and competent tribunal to determine the legality of detention and treatment (Article 10);
  - d. Freedom from incommunicado detention; and
  - e. Freedom from exposure to the likelihood of torture and other cruel, inhuman or degrading treatment or punishment (UNCAT Article 16).

46. The detention of Ms. Badawi is arbitrary for the following reasons:

- a. Arrest without warrant: Authorities arrested her without a warrant or a properly authorized warrant;<sup>23</sup>
- b. Incommunicado detention: Ms. Badawi has been detained incommunicado and denied the “right to notify and communicate with family and a lawyer in accordance with principles 15, 16, 17, 18 and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention”<sup>24</sup>
- c. Denial of judicial oversight: Ms. Badawi has been denied the right of access to an independent court to review and remedy any illegality of her detention and treatment; (UDHR Article 10); and
- d. No notice of charges:

### **Breach of the Right to Due Process**

47. Ms. Badawi has been deprived of access to a lawyer, in violation of international fair trial standards.
48. Ms. Badawi has not been permitted access to independent judicial oversight to determine the legality of her detention.

### **Call to suspend Saudi Arabia from UN Human Rights Council**

49. Saudi Arabia must honour its obligations as a member of the UN Human Rights Council to “uphold the highest standards in the promotion and protection of human rights, [and to] fully cooperate with the Council...during their term of membership.” As part of those duties, Saudi Arabian must cease all harassment and intimidation of Samar Badawi including ceasing all interrogations, summons to appear for interrogation, threat or initiation of criminal proceedings and any other actions that threaten their liberty or the safety.<sup>25</sup>
50. In view of Saudi Arabia continuing to commit and refuse to remedy gross and systematic human rights violations, it should be suspended from the Human Rights Council. Council passed a resolution in 2011

Reaffirming further that all Member States of the United Nations Human Rights Council should uphold the highest standards in the promotion and protection of human rights and that the United Nations General Assembly may suspend the rights of membership in the Council of a member that commits gross and systematic violations of human rights; Council has af should uphold the highest standards in the promotion and protection of human rights and that the United Nations General Assembly may suspend the rights of membership in the Council of a member that commits gross and systematic violations of human rights;<sup>26</sup>

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<sup>23</sup> WGAD Opinion No. 10/2018 concerning Waleed Abulkhair (Saudi Arabia), A/HRC/WGAD/2018/10, 4 July 2018, at para. 46.

<sup>24</sup> *Ibid* at para. 74.

<sup>25</sup> Human Rights Council, A/Res/60/251, UNGAOR, 60<sup>th</sup> Sess, paras 2-4 &9. Online: <[http://www2.ohchr.org/english/bodies/hrcouncil/docs/A.RES.60.251\\_En.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/A.RES.60.251_En.pdf)>

<sup>26</sup> Resolution adopted by the Council at its fifteenth special session S-15/1. Situation of human rights in the Libyan Arab Jamahiriya, A/HRW/RES/S-15/1, 25 February 2011 at Preamble. Online at <https://www.ohchr.org/Documents/HRBodies/HRCouncil/SpecialSession/Session15/A-HRC-S-15-1.pdf>

## **Conclusion**

51. Due to these egregious violations of international law, the UN General Assembly must immediately suspend Saudi Arabia from the UN Human Rights Council.
52. To honour Saudi law and its international law obligations, Saudi Arabia should:
  - a. immediately disclose Ms. Badawi's whereabouts;
  - b. guarantee in all circumstances the physical and psychological integrity of Ms. Badawi;
  - c. immediately and unconditionally release Samar Badawi, who remains in prison solely as a result of working to advance the enjoyment of rights for all in Saudi Arabia;
  - d. lift the travel ban imposed upon Ms. Badawi; and,
  - e. permanently cease the persistent harassment of Ms. Badawi.

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Released for feedback