

# 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

June 27, 2016

**VIA EMAIL TO:**

The Honourable Stéphane Dion  
Minister of Foreign Affairs  
125 Sussex Drive  
Ottawa, ON K1A 0G2  
<Stephane.Dion@parl.gc.ca>

Dear Minister Dion;

**Re: Call for Release of Imprisoned Human Rights Lawyer Waleed Abu al-Khair**

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Lawyers' Rights Watch Canada (LRWC) writes to inquire what action has been taken on our letter of 26 May 2016 asking you to request Saudi Arabia to immediately release wrongly imprisoned human rights defenders Waleed Abu al-Khair and Raif Badawi. In making that request, LRWC joined Amnesty International Canada, which has identified both Mr. Badawi and Mr. Abu al-Khair as prisoners of conscience. LRWC writes to repeat our request that your office take action directed at ensuring the immediate and unconditional release from prison of Waleed Abu al-Khair and Raif Badawi.

**Background**

Waleed Abu al-Khair is a world renowned human rights lawyer, democracy advocate and the founder of Monitor for Human Rights in Saudi Arabia (MHRSA). Raif Badawi is widely known as a human rights and democracy activist and founder of the Saudi Arabian Liberals online forum. Mr. al-Khair acted as Mr. Badawi's lawyer during Mr. Badawi's trial in 2012.

Waleed Abu al-Khair has received awards for his extraordinary human rights work. 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>1</sup> In 2015, Waleed Abu al-Khair was awarded the XXth Ludovic-Trarieux Human Rights International Prize.<sup>2</sup> The award is Europe's most prestigious tribute to human rights activism and was initially bestowed on Nelson Mandela.

Raif Badawi has also received numerous awards for his work. In 2015 he was the recipient of the Sakharov Prize from the European Parliament for the defence of freedom of thought and human rights. In the same year he was also awarded the Sir Karl Popper Prize, the PEN Pinter Prize, the Strasbourg Award Medal of Honor, the Franco-German Journalism Prize, the Thomas Dehler medal, the Press Freedom Prize from Reporters Without Borders, the Freedom of Speech Award from Deutsche Welle, the Courage Award from the Geneva Summit for Human Rights and Democracy and

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<sup>1</sup> Olof Palmes Minnesfond, 2012, online: <<http://www.palmefonden.se/2012-radhia-nasraoui-och-waleed-sami-abu-alkhair-2/>>.

<sup>2</sup> The XXth "Ludovic-Trarieux" Human Rights International Prize 2015, online: <<http://www.ludovictrarieux.org/uk-page3.callplt2015.htm>>.

the Aikenhead Award from the Scottish Secular Society. He was awarded the One Humanity Award from PEN Canada and the Netizen Prize from Reporters without Borders in 2014.

The arbitrary detention of Mr. Abu al-Khair has continued since 15 April 2014 and that of Mr. Badawi since 17 June 2012. In July 2014, Mr. Abu al-Khair was sentenced to 15 years in prison, a 15 year travel ban to begin on his release and a fine of SAR 200,000 (approximately \$68,000 CAD). Mr. Badawi was sentenced on 30 July 2013 to 7 years in prison and 600 lashes. The sentence was increased on 7 May 2014 to 10 years in prison and 1,000 lashes.

### **International Human Rights Obligations**

The imprisonments of Waleed Abu al-Khair and Raif Badawi constitute grave and continuing violations by Saudi Arabia of its international human rights obligations and cannot be justified by any reasonable interpretation of the domestic law of Saudi Arabia. The United Nations Working Group on Arbitrary Detention (WGAD) concluded in October 2015 that the detentions of Waleed Abu al-Khair and Raif Badawi are arbitrary and in contravention of the *Universal Declaration of Human Rights* (UDHR). The WGAD determined that the imprisonment of Mr. Abu al-Khair contravenes the 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) and the imprisonment of Mr. Badawi contravenes Articles 9 and 10 of the UDHR. The WGAD recommended that Saudi Arabia immediately release both men.<sup>3</sup> Saudi Arabia has refused to comply with the WGAD recommendation. While in prison, both men continue to be at risk of being subjected to torture and other treatment prohibited by the UDHR and the *UN Convention against Torture*. The UN Committee against Torture and the UN Human Rights Committee have both determined that flogging, part of the sentence arbitrarily imposed on Mr. Badawi, is prohibited by the *Convention against Torture*.<sup>4</sup> 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*.<sup>5</sup>

Saudi Arabia's international law obligations arise from a variety of sources. As a member of the United Nations, Saudi Arabia is legally obligated to respect the provisions of the UDHR and other uncontroversial instruments identifying state duties to protect and ensure the fulfillment of fundamental rights and freedoms, including rights protected by the UDHR. As a party to the *Convention against Torture* (23 September 1997), Saudi Arabia is legally bound to prevent and punish all treatment prohibited by the Convention. As a current 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>6</sup> The UN General Assembly may suspend a member of the Human Rights Council that commits gross and systematic violations of human rights. The arrests, convictions and sentencing of Waleed Abu al-Khair are grave examples of gross and systemic human rights violations by Saudi Arabia against people seeking to engage in peaceful human rights advocacy through the exercise of internationally protected freedoms of expression, association, assembly and dissent.

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<sup>3</sup> Opinions of the Working Group on Arbitrary Detention at its seventy-third Session, 31 August – 4 September 2015, No. 38/2015 (Saudi Arabia), Advance Unedited Version, A/HRC/WGAD/2015, 26 October 2015 at paras. 82 to 84.

<sup>4</sup> See *Conclusions and recommendations of the Committee against Torture: Saudi Arabia*, 06/12/2002, CAT/C/CR/28/5, paras. 4, 8; *Conclusions and recommendations of the Committee against Torture, Qatar*, U.N. Doc. CAT/C/QAT/CO/2 (2013), para. 12; and decisions of the UN Human Rights Committee in *George Osbourne v. Jamaica*, Communication No. 759/1997, U.N. Doc. CCPR/C/68/D/759/1997 (2000), 15 March 2000 at paras. 9.1, 11; and, *Boodlal Sooklal v. Trinidad and Tobago*, Communication No. 928/2000 (2 February 2000), CCPR/C/73/D/928/2000, 25 October 25 2001 at para. 4.6.

<sup>5</sup> 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.

<sup>6</sup> Resolution adopted by the General Assembly, 60/251. Human Rights Council, 3 April 2006, A/RES/60/251, at para. 9

These violations of international human rights obligations by Saudi Arabia continue while Canada's economic relationship with Saudi Arabia expands. Canada has announced plans to affirm the contract made "between the Conservative government of Stephen Harper and the Saudi regime, [giving] General Dynamics Land Systems Canada a 15-year contract to sell light armoured vehicles to the Saudi Arabian National Guard."<sup>7</sup> According to recent rankings, Canada has become the second largest arms dealer in the world to the Middle East, following only the United States in total sales.<sup>8</sup> Canada continues to trade with Saudi Arabia despite a number of factors: a/ Minister Dion's commitment before the United Nations Security Council and on behalf of Canada, to protect civilians in conflict zones;<sup>9</sup> b/ evidence that Canadian-manufactured weapons are being used against civilians in Saudi Arabia;<sup>10</sup> and, c/ the "bedrock principle of Canadian export control policy ... that Canadian arms exports would not contravene international law including UN arms embargoes, would not contribute to gross human rights abuses and would not undermine international peace and security".<sup>11</sup> The Canadian Association of Defence and Security Industries has stated that it is merely following the rules set in place by the government.<sup>12</sup> Having chosen to be an economic partner with Saudi Arabia, Canada cannot ignore Saudi Arabia's violations of international human rights obligations.

In addition, Canada has a duty to encourage Saudi Arabia to comply with its human rights obligations, arising from Article 1.3 of the *Charter of the United Nations*, which obliges member states to promote and encourage "respect for human rights and for fundamental freedoms for all." As a party to the *Convention against Torture*, Canada's duty to prevent and punish torture is owed *erga omnes* and therefore to both Mr. Abu al-Khair and Mr. Badawi. The Prime Minister had recently confirmed that "it's part of Canada's identity that we stand up for human rights."<sup>13</sup> Canada is not honouring its obligations under the *Charter of the United Nations*, the UDHR and the *Convention against Torture* to promote and encourage respect for human rights in Saudi Arabia and to take effective action to prevent and punish torture wherever it happens. By ignoring Saudi Arabia's gross human rights violations in the cases of Waleed Abu al-Khair, Raif Badawi and others, Canada sends a message of political support for those and other violations.

Canada's responsibility to request the immediate and unconditional release of Waleed Abu al-Khair and Raif Badawi is enhanced by significant Canadian involvement in both of these cases. Mr. Badawi's wife and children have resided in Canada since 2013 and have been granted refugee status. Mr. Abu al-Khair's attempt to establish registration of MHRSA in Canada is one of the 'offences' for which he was sentenced to 15 years in prison. In 2012, MHRSA was registered as a society in the Province of Ontario after registration had been refused in Saudi Arabia. Mr. Abu al-Khair's subsequent request to the King of Saudi Arabia for recognition of MHRSA sparked an investigation by the Interior Ministry, which resulted in Mr. Abu al-Khair being charged and wrongly convicted of six illegitimate charges one of which was a charge of 'setting up and supervising an unlicensed association, referring to MHRSA.'

LRWC calls on Canada to request that Saudi Arabia immediately and unconditionally release Waleed Abu al-Khair and Raif Badawi from prison.

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<sup>7</sup> Paul Wells, "Justin Trudeau defends Saudi deal — 'We're not a banana republic'", *The Toronto Star* (10 June 2016) online: <<https://www.thestar.com/news/canada/2016/06/10/trudeau-defends-saudi-deal-were-not-a-banana-republic-wells.html>>.

<sup>8</sup> Steven Chase, "Canada now the second biggest arms exporter to Middle East, data show", *The Globe and Mail* (14 June 2016) online: <<http://www.theglobeandmail.com/news/politics/canada-now-the-second-biggest-arms-exporter-to-middle-east-data-show/article30459788/>>.

<sup>9</sup> Global Affairs Canada, "Address by Minister Dion to the United Nations Security Council", Government of Canada website (10 June 2016) online: <<http://news.gc.ca/web/article-en.do?nid=1083739>>.

<sup>10</sup> Chase, above at note 4.

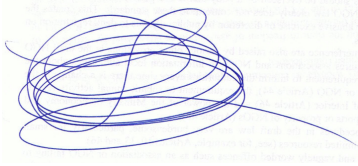
<sup>11</sup> *Ibid.*

<sup>12</sup> The Canadian Press, "Canadian defence industry defends controversial Saudi Arabian arms deal", *Macleans*'s (25 May 2016) online: <<http://www.macleans.ca/news/canada/canadian-defence-industry-defends-controversial-saudi-arabian-arms-deal/>>.

<sup>13</sup> *Supra* note 7.

We thank you in advance for your prompt action and look forward to your response.

Sincerely,



Gail Davidson, Executive Director, **LRWC**



**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 human rights defenders in danger because of their 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.

Copied to:

Hélène Laverdière  
NDP Critic, Foreign Affairs  
Helene.Laverdiere@parl.gc.ca;

The Honourable Tony Clement  
Conservative Critic, Foreign Affairs  
Tony.Clement@parl.gc.ca;

Luc Thériault  
Bloc Québécois Critic, Foreign Affairs  
Luc.Theriault@parl.gc.ca;

Lisa Barrett  
Green Party of Canada Critic, International Affairs  
lisa.barrett@greenparty.ca;

Ms. Mónica Pinto,  
Special Rapporteur on the independence of judges and lawyers  
SRindependenceJL@ohchr.org ;

Mr. Maina Kiai,  
Special Rapporteur on the rights to freedom of peaceful assembly and of association  
freeassembly@ohchr.org;

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

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

Mr. Juan Ernesto Méndez,  
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment  
sr-torture@ohchr.org;

Rosemary McCarney  
Canadian Ambassador to Geneva  
genev-gr@international.gc.ca;

H.E. Ambassador Naif Bin Bandir Alsudairy  
Saudi Arabia Ambassador to Canada  
amboffice.ott@mofa.gov.sa;

Ambassador Dennis Horak  
Canadian Ambassador to Saudi Arabia  
ryadh@international.gc.ca;

The Honourable Irwin Cotler, PC, OC  
Founder and Chair, Raoul Wallenberg Centre for Human Rights  
irwincotler@rwchr.org;