

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

Draft Working Paper on the Arbitrary Detention of Samar Badawi

Background

1. Samar Badawi is known and respected internationally as a human rights advocate. Her past peaceful and lawful human rights works has included advocacy for: women's' rights, the release of imprisoned human rights defenders Raif Badawi and Waleed Abu al-Khair and work with the Monitor of Human Rights in Saudi Arabia. In 2012, Samar Badawi received the International Women of Courage Award from the United States State Department for work on women's rights.
2. **Samar Badawi** is the sister of **Raif Badawi**, human rights activist arbitrarily imprisoned since 16 June 2012 and 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 formerly operating out of Saudi Arabia.
3. 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.
4. On 29 July 2013, Mr. Raif Badawi was convicted¹ 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, 1000 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 had been arrested and detained on 15 April 2014. On 9 January 2015, Raif Badawi received 50 lashes outside Al-Jaffali mosque in Jeddah; the 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.

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

5. 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.
6. The United Nations (UN) Working Group on Arbitrary Detention (WGAD) determined in an Opinion dated 26 October 2015 that the detentions of Raif Badawi, Waleed Abu al-Khair violated the Universal Declaration of Human Rights Articles 9, 10, 19 and 20 and arbitrary and recommended immediate release.² The 2015 Opinion also determined that the detentions of seven other prominent human rights defenders were arbitrary and recommended immediate release.³ 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 other human rights defenders.⁴
7. Waleed Abu al-Khair is a world renowned human rights lawyers and democracy advocates. On 6 July 2014 Mr. Abu al-Khair was convicted 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. 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:⁵
 - 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>).⁶ 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

² 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..

³ 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

⁴ *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>

⁵ Olof Palmes Minnesfond, 2012, online: <<http://www.palmefonden.se/2012-radhia-nasraoui-och-waleed-sami-abu-alkhair-2/>>.

⁶ The XXth “Ludovic-Trarieux” Human Rights International Prize 2015, online: <<http://www.ludovictrarieux.org/uk-page3.callplt2015.htm>>.

- 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.”⁷
8. 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 2018,⁸ the WGAD concluded that the detention of Waleed Abu al-Khair was arbitrary under Categories I, II, III, IV and V and called for immediate release.
9. Ms. Badawi and Mr. Abu al-Khair have a daughter, born in June 2014.
10. On 12 January 2016, Ms. Badawi and her infant daughter were arrested and 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

11. Samar Badawi was again arrested by Saudi authorities on 28 or 29 July 2018 at approximately 1:00 am, apparently on an order from Crown Prince Mohammed bin Salman. Men entered her apartment building and stood outside her apartment door. Some men were masked or 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 to take Ms. Badawi with them. The men forced their way into the apartment and searched it, while filming all stages of the search. The men instructed Ms. Badawi to telephone the child’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. The WGAD opinion No.10/2018 concerning Waleed Abulkhair stated that such an order does not form the legal basis for an arrest and thus, any such arrest and subsequent detention is therefore arbitrary.⁹
12. 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 and 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 her former husband. 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.”

⁷ 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.

⁸ UN Human Rights Council, *Opinions adopted by the Working Group on Arbitrary Detention at its 81st session, 17-26 April 2018, No. 10/2018 concerning Waleed Abulkhair, A/HRC/WGAD/2018/10, 4 July 2018* at para.

⁹ UN Human Rights Council, *Opinions adopted by the Working Group on Arbitrary Detention at its 81st session, 17 April – 26 April 2018: No. 10.2018 (Saudi Arabia), A/HRC/WGAD/2018/10, 4 July, 2018, at paras. 46-47.*

13. Approximately one month prior to the July 2018 arrest, Saudi authorities imposed a travel ban on her. Saudi security forces also conducted surveillance of her apartment by installing security cameras at her apartment building.
14. In arresting Ms Badawi Saudi Arabia ignored the conclusion of the WGAD, in its second 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.”¹⁰ In that case an order by the Minister of the Interior was not a legal basis for arrest.
15. It is not known where Ms. Badawi is currently being detained. Sources indicate she may be detained in Dhaban Mabath Prison.
16. In arresting Ms Badawi Saudi Arabia also ignored the Resolution of the European Parliament 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.¹¹
17. On 2 August 2018, 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.”¹² Saudi Arabia responded almost immediately, announcing that they were expelling Canada’s ambassador, and that they would cease flights to Canada and suspend student exchange programs.
18. 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.
19. During the [40th 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”. 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.

¹⁰ *Supra* Note 8 at para. 46.

¹¹ 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>

¹² 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> ¹²

20. 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 freely and fully exercise their rights to freedoms of expression, opinion and association, including online, without fear of reprisals."¹³
21. Ms. Badawi has not been charged to the knowledge of human rights organizations.

Incommunicado Detention

22. 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 stated¹⁴, "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,"
23. 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.
24. 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.¹⁵

¹³ 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.

¹⁴ *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>

¹⁵ 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]

25. 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.¹⁶

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

26. 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 and possibly torture for lawfully exercising internationally protected rights to freedom of expression, thought or opinion, and peaceful assembly contrary to UDHR Article 19.
27. 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).
28. 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

29. Ms. Badawi has been effectively subjected to enforced disappearance given the following facts:
 - a. Nothing is known about the place or conditions of her detention, including access to a lawyer of her choice;
 - b. She has likely been denied access to an independent court to review the legality of her detention and treatment and her right to pre-trial release;
 - c. She has likely been denied visits from her daughter and relatives.
30. 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

31. 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);

¹⁶ *Supra* Note 8 at paras. 48 and 75.

- 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).
32. Since the arrest, Ms. Badawi has effectively disappeared and is assumed to be detained incommunicado — i.e. without visits from family and friends and confidential access to a lawyer of her choice. She is therefore considered to be in heightened danger of torture and other ill-treatment.
33. 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 (see para. 46 WGAD Opinion);
 - 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” (para. 74 of the WGAD Opinion);
 - 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 para. /// WGAD); and
 - d. No notice of charges:

Breach of the Right to Due Process

34. Ms. Badawi has been deprived of access to a lawyer, in violation of international fair trial standards.
35. 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

36. 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 (UN General Assembly, Human Rights Council, 3 April 2006, A/res/60/251, para 9).
37. Should Saudi Arabia fail to honour its human rights obligations, the UN General Assembly must immediately suspend Saudi Arabia from UN Human Rights Council (UN General Assembly, Human Rights Council, 3 April 2006, A/res/60/251, para 9).

Conclusion

38. Due to these egregious violations of international law, the UN General Assembly must immediately suspend Saudi Arabia from the UN Human Rights Council.
39. 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.

Wednesday, March 27, 2019
Released for feedback