

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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Thursday, June 07, 2018

Honourable Chrystia Freeland
Minister of Foreign Affairs
Global Affairs Canada
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Dear Minister:

Saudi Arabia: Loujain Al-Hathloul & others arbitrarily detained and accused.

Lawyers' Rights Watch Canada (LRWC) calls upon the Government of Canada (Canada) to compel its trade partner Saudi Arabia to immediately release wrongly imprisoned women's rights defenders. Saudi Arabia arrested and detained these individuals in contravention of international human rights law obligations. In making this request, LRWC joins calls from the European Parliament, Amnesty International Canada and Human Rights Watch.

Arrest and detainment of peaceful activists

In mid-May ten prominent women's rights activists, including former University of British Columbia student **Loujain Al-Hathloul**,¹ were arrested for peacefully advocating for women's rights. Four of the activists, **Dr. Aisha al-Manea**, **Dr. Hessa al-Sheikh**, **Dr. Madeha al-Ajrourh** and **Walaa' al-Shubbar** were reportedly subsequently released with conditions of release unknown. The remaining six, including **Loujain Al-Hathloul**, **Iman al-Nafjan**, **Aziza al-Youssef**, **Mohammad al-Rabea** and **Mohammed al-Bajadi** are 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 as the Women's Rights Defenders).

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 that eight have been "temporarily" released and nine remain in custody.^{2 3} 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.

¹ 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>.

² "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>.

³ 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>.

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 of several measures being attributed to the Crown Prince Mohammed bin Salman, seeking to portray himself as a “reformer”, while carrying out a harsh crackdown against human rights defenders, activists and anyone speaking critically of the Saudi regime.

Saudi authorities have previously arrested advocates of women’s driving and have reportedly sought to silence other such activists by warning activists not to speak to the media and by hacking and shutting down websites criticizing the government. Saudi Arabia is also infamous for using executive-controlled courts to impose draconian sentences for the peaceful exercise of internationally protected rights. The overly broad charges contravene certainty and notice requirements and cannot be avoided or defended. The Women’s Rights Defenders have been accused of ‘offences’ such as: “organized action that encroaches on religious and national principles,” “suspicious communication with foreign entities,” “recruiting people working in government positions” and “funding hostile groups abroad to undermine Saudi national security, stability, social peace and to destroy the social cohesion.”

In 2011, citizen Shaima Jastaina was sentenced to ten lashes for driving without male permission. The Kingdom’s approach is accompanied by a media strategy aimed at repressing discussion and intimidating critics. For example, Kingdom-backed media have launched a campaign to characterize the Women’s Rights Defenders as “traitors” posing a threat to state security. Such media allege they were arrested for their “contact with foreign entities with the aim of undermining the country’s stability and social fabric.”⁴ Although the accusations are without bases, they may well result, if charged, in automatic convictions and harsh sentences.

The arrests are part of widespread repression of human rights through misuse of the ‘legal system’ in Saudi Arabia. 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 and to participate in public affairs and engage in human rights advocacy. The *Penal Law for Crimes of Terrorism and its Financing* is one such law used to arbitrarily convict and sentence human rights defenders, people reporting human rights violations and other critics. In 2014 Saudi Arabia sentenced blogger Raif Badawi to 10 years in prison and 1,000 lashes for “insulting Islam through electronic channels”. Mr. Badawi’s wife Ensaf Haidar currently resides in Sherbrooke and has been campaigning for his release ever since. On 28 May 2018 the city of Montreal granted Mr. Badawi honorary citizenship.

In 2015 Raif Badawi’s lawyer Waleed Abu al Khair, who defender many advocates, wrote and spoke about the need for improved rights, including women’s right and called for a constitutional monarchy, was the first person convicted under this law.⁵ Waleed Abu al-Khair was sentenced 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 human rights advocacy. In recognition of his extraordinary human rights and legal advocacy, Mr. Abu al-Khair was awarded the 2012 Olof Palme Prize, 2015 XXth Ludovic-Trarieux Human Rights International Prize, 2015 Swiss Freethinker Prize And, the 2016 Law Society of Ontario Human Rights Award.

⁴ “Saudi Arabia: Chilling smear campaign against women’s rights defenders”, Amnesty International (19 May 2018) online: <https://www.amnesty.org/en/latest/news/2018/05/saudi-arabia-chilling-smear-campaign-tries-to-discredit-loujain-al-hathloul-and-other-detained-womens-rights-defenders/>.

⁵ 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.

Both men remain in prison. Mr. Abu al-Khair has been deprived of medical attention and subject to in-custody torture. The United Nations Working Group on Arbitrary Detention (WGAD) concluded in 2015 that Saudi Arabia's detention of Waleed Abu al-Khair and Raif Badawi was arbitrary and in contravention of the Universal Declaration of Human Rights of 1948 (the UDHR). The WGAD has determined that the imprisonment of Mr. Abu al-Khair contravenes UDHR Articles 9 (freedom from arbitrary arrest and detention), 10 (fair trial rights), 19 (freedom of expression) and 20 (freedoms of assembly and association). The imprisonment of Mr. Badawi contravenes Articles 9 and 10. LRWC wrote to your Ministry on May 26, 2016, June 27, 2016, July 29, 2016 and December 20, 2016 calling for you to urge Saudi Arabia to release these wrongly imprisoned men. We have not yet received your response.

Saudi Arabia in breach of international law obligations

The ban on women driving is but one example of deeply entrenched measures prohibiting women and criminalizing equality for women. Women are still subject to the male guardianship system and may not travel, engage in paid work or higher education, or marry without the permission of a male relative or guardian.

As a member of the United Nations (24 October 1945), Saudi Arabia is legally obligated to respect the provisions of the UDHR, treaties to which it is a State Party such as UN Convention on the Elimination of all Forms of Discrimination against Women (7 September 2000) and other instruments such as the Basic Principles on the Role of Lawyers and the 1998 United Nations Declaration on Human Rights Defenders. Saudi Arabia is also a member of the League of Arab States and a party to the Arab Charter on Human Rights, which affirms the principles of: the UN 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 detained activists were exercising internationally protected rights to engage in peaceful activities protected by these instruments and their arrests are in direct contravention to Saudi Arabia's obligations under all the above noted instruments.

As a member of the UN Human Rights Council (2013 – 2019), Saudi Arabia has also accepted the obligation to “uphold the highest standards in the promotion and protection of human rights.” Saudi Arabia's controversial 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, highlight the hypocrisy of its actions against the Women's Rights Defenders.

Saudi Arabia's *Penal Law for Crimes of Terrorism and its Financing* undermines international human rights norms which entitle citizens to: due process, legal representation, to know the nature of the charges against them, to have access to their families and to be brought before an independent, competent and impartial tribunal for determination of charges and rights. 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.”⁶ 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”.

⁶ 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>).

The 9 March 2018 concluding observations of the Committee on the Elimination of All Forms of Discrimination against Women,⁷ 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) ...

On 31 May 2018 the European Parliament passed a resolution⁸ 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.

Saudi Arabia is also in violation of international humanitarian law in Yemeni by, inter alia, killing thousands of civilians and targeting medical facilities. To date more than 10,000 people have died in the conflict, which has brought about unprecedented levels of starvation and disease, including the world’s most severe cholera epidemic. Saudi Arabia is obligated under international humanitarian law to protect civilians and civilian infrastructure, and to allow access to humanitarian aid within Yemen. The \$930 million provided by Saudi Arabia and UAE to Yemen Humanitarian Fund in March 2018⁹ by no means excuses or makes right Saudi Arabia’s egregious humanitarian crimes against Yemeni civilians.

These international reports and calls for action have so far failed to persuade Saudi Arabia from carrying out brutal campaign against human rights defenders. It is the responsibility of all States to use diplomatic measures to intervene on behalf of the Women’s Rights Defenders and others.

Canada’s relationship with Saudi Arabia

These violations of international law and principles continue in the midst of Canada’s expanding economic relationship with Saudi Arabia. Despite international outcry the Liberal government has continued the policy of the Conservative government to build economic relations with Saudi Arabia while turning a blind eye to its human rights violations.

It is unconscionable for Canada to continue to provide armed vehicles to Saudi Arabia per the controversial \$15-billion contract. The takeover of the Canadian Wheat Board by a Saudi company in 2015 is another example of Canada placing higher value on economic trade than on its overarching duty under the UN Charter to “achieve international cooperation...in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion” (Article 1.3).

⁷ CEDAW/C/SAU/CO/3-4, online:

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhskcAJS%2fU4wb%2bdIVicvG05RzUx5HJCvs6GLm%2fn4Bpluylk74g1MO90gFIGidqEkhl4pKVjutmT28BZlvc7YPVDi5QAIazpF8fPsOaF4BIZsLm>.

⁸ 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>.

⁹ “UN receives nearly \$1 billion from Saudi Arabia and UAE for humanitarian response to Yemen crisis”, UN News (28 March 2018) online: <https://news.un.org/en/story/2018/03/1006131>.

The Saudi political and social system remains undemocratic and discriminatory, makes women second-class citizens, allows no freedom of religion and belief, seriously discriminates against women and severely represses all voices of dissent. Saudi Arabia's message of promoting human rights in the UN and other fora is completely false. The misrepresentation is a breach of the trust and mutual respect which form basis of trade relationship between Canada and Saudi Arabia. Canada and Saudi Arabia's other trade partners cannot ignore these gross and systemic violations.

Prime Minister Trudeau assigned great responsibility to you via your February, 1 2017 mandate letter to achieve "the overarching goal...to restore constructive Canadian leadership in the world and to promote Canada's interests and values" and to "support the deeply held Canadian desire to make a real and valuable contribution to a more peaceful and prosperous world." The federal government's outlook on international relations envisions Canada as a world leader on global issues such as gender inequality and rights to freedom of speech. As Minister of Foreign Affairs, you are assigned to work with various ministers "to champion the values of inclusive and accountable governance, including by promoting human rights, women's empowerment and gender equality, and peaceful pluralism ...". We invite you to embrace these challenges by making it clear to Saudi Arabia that Canada will not trade with states who infringe human rights including women's equality and the right to peaceful protest.

The arrest, detention and imprisonment of human rights lawyers in particular stands counter to the rule of law, a fundamental and paramount cornerstone on which Canadian Constitution is built. Dr. Ibrahim al-Mudimigh and Waleed Abu al-Khair, as lawyers defending those who attempt to have a voice, are particularly vulnerable. It is of utmost importance that we protect their ability to engage in independent advocacy and to promote and enhance the rule of law.

Minister, you stated in the House of Commons on May 24, 2018 that Canada is "extremely disappointed" with Saudi authorities' arrests and that its actions are contrary to its rhetoric.¹⁰ With respect, Canada must do more than express disappointment. Canada must seize the opportunity to set a world class example by living up to its international law obligations and its responsibilities as a country devoted to the rule of law. As stated by the Prime Minister "it's part of Canada's identity that we stand up for human rights."¹¹ By ignoring Saudi Arabia's human rights violations and violations against the Women's Rights Defenders, Canada sends out a message of political support for those actions.

LRWC calls on Canada to stand by its commitments and urge Saudi Arabian authorities to release the Women's Rights Defenders still in prison and to ensure their freedom from prosecution and to release Raif Badawi, Waleed Abu al-Khair, and other prisoners of conscience whose detention has been designated as arbitrary by the UN Working Group on Arbitrary Detention. The actions of the state of Saudi Arabia violate international law obligations. Saudi Arabia is punishing the Women's Rights Defenders and others for espousing rights and freedoms. Canada cannot continue to ignore or acquiesce to Saudi Arabia's egregious human rights breaches.

We would welcome the opportunity to discuss this important matter with you. Please contact LRWC via the contact information below.

Sincerely,



Gail Davidson, Executive Director, LRWC



Maya Duvage, LRWC member

¹⁰ Levon Sevunts, "Canada 'extremely disappointed' by arrests of Saudi activists, says Freeland", Radio Canada International (24 May 2018) online: <http://www.rcinet.ca/en/2018/05/24/canada-saudi-arabia-activists-arrested-freeland/>.

¹¹ 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>.

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

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