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Promoting human rights by protecting those who defend them
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Union Internationale des Avocats
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Unión Internacional de Abogados

November 24, 2017

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Your Majesties and Excellency:

Re: Release Waleed Abu al-Khair and allow medical treatment

Lawyers' Rights Watch Canada (LRWC), Lawyers for Lawyers (L4L) and the Union Internationale des Avocats (UIA) write to request again that Saudi Arabia, in accordance with its international law obligations:

1. Immediately and unconditionally release Walled Abu al-Khair; and,
2. Vacate the conviction and sentence wrongly imposed on 6 July 2014.

LRWC, L4L and UIA are particularly concerned that Waleed Abu al-Khair be released immediately from prison to enable him access to the competent medical care and treatment needed to restore his health and wellbeing and prevent further deterioration.

Background

On 6 July 2014 the Specialized Criminal Court sentenced prominent human rights lawyer Waleed Abu al-Khair to 15 years in prison, a SAR 200,000 fine, a travel ban of 15 years following release and a five year suspension of the prison sentence. On 15 February 2015 the Specialized Criminal Court of Appeal reversed the 5-year suspension. The charges, trial process and sentence were not in accordance with international norms of due process and Mr. Abu al-Khair's detention is arbitrary, based solely on his human rights and legal advocacy. Furthermore, treatment of Mr. Abu al-Khair constitutes and a gross violation of Saudi Arabia's international human rights obligations.

Release Waleed Abu al-Khair & ensure access to medical care and treatment

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International call for release

The gravity of the continuing human rights abuses against Mr. Abu al-Khair has been noted by state and civil society bodies around the world including former United Nations (UN) High Commissioner for Human Rights Navi Pillay. On July 10, 2014¹ Ms. Pillay denounced the continuing trend of harassment and Saudi Arabia's use of overbroad and vague counter-terrorism legislation to imprison innocent human rights defenders. She stated: "Proceedings against human rights defenders in the Specialised Penal Court, as well as in other courts in Saudi Arabia, have fallen short of international fair trial standards." Ms. Pillay expressed deep concern over Mr. Abu al-Khair's imprisonment and urged Saudi authorities to release him and others arbitrarily detained for peaceful advocacy of human rights.

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*.² In October 2015, the UN Working Group on Arbitrary Detention (WGAD) concluded that the detention of Waleed Abu al-Khair was arbitrary and in contravention of the *Universal Declaration of Human Rights* (UDHR) Articles 9 (freedom from arbitrary arrest and detention), 10 (right to fair trial), 19 (freedom of opinion and expression) and 20 (freedom of association and assembly). The WGAD recommended immediate release and compensation for his arbitrary detention. Saudi Arabia, while a member of the UN Human Rights Council, has refused to comply with the WGAD recommendation to release and compensate Mr. Abu al-Khair.

The international human rights community has expressed admiration and support for Waleed Abu al-Khair and approbation for Saudi Arabia's illegal actions against him by issuing written and oral statements calling for release and remediation and by recognizing the excellence and global value of his human rights work. Prior to imprisonment, Waleed Abu al-Khair was awarded the Olof Palme Prize in 2012 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".³ After imprisonment, he was awarded the Ludovic-Trarieux Human Rights International Prize in 2015,⁴ Europe's most prestigious tribute to human rights activism, initially bestowed on Nelson Mandela. In 2017, he received the Law Society of Ontario's Human Rights Award.

Civil Society organizations calling for release and remediation include: the Law Society of Ontario, Law Society of England and Wales, International Association of Independent Lawyers, Union Internationale des Avocats, Human Rights Watch, Amnesty International, Lawyers' Rights Watch Canada, Lawyers for Lawyers, The International Federation for Human Rights (FIDH), and the World Organization Against Torture (OMCT).

The imprisonment of Waleed Abu al-Khair is recognized internationally as a grave and continuing violation by Saudi Arabia of its international human rights obligations: violations that cannot be justified by any reasonable interpretation of the domestic law of Saudi Arabia.

Saudi Arabia's International human rights law obligations

Saudi Arabia's international law obligations arise from a variety of sources. As a member of the UN (24 October 1945), Saudi Arabia is legally obligated to respect the provisions of the UDHR and other uncontroversial instruments that impose State duties to protect and ensure rights, including the: UN

¹ July 10, 2014 Statement of UN High Commissioner for Human Rights available online at: <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14846>>.

² 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.

³ Olof Palme Minnesfond, 2012, online: <<http://www.palmefonden.se/2012-radhia-nasraoui-och-waleed-sami-abu-alkhair-2/>>.

⁴ The XXth "Ludovic-Trarieux" Human Rights International Prize 2015, online: <<http://www.ludovictarrieux.org/uk-page3.callplt2015.htm>>.

Convention against Torture; UN *Standard Minimum Rules for the Treatment of Prisoners*;⁵ the *Basic Principles for the Treatment of Prisoners* and the *Basic Principles on the Role of Lawyers*.⁶ 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.

While enjoying the benefits of UN membership, Saudi Arabia refuses to comply with its obligations to ensure and protect human rights. As a member of the UN Human Rights Council, Saudi Arabia has specifically accepted a heightened duty to, “uphold the highest standards in the promotion and protection of human rights” and to “fully cooperate with Council”.⁷ The imprisonment of Waleed Abu al-Khair is a grave example of gross and systemic human rights violations by Saudi Arabia against human rights defenders.

International law obligations to provide medical care

In addition to continuing to arbitrarily imprison Mr. Abu al-Khair, Saudi Arabia has failed and refused to provide medical care and treatment necessary to ensure his health and well-being. International human rights law requires States to ensure the lives and wellbeing of all prisoners by, inter alia, providing the most appropriate medical treatment in accordance with professional medical standards.⁸

Mr. Abu al-Khair suffers from diabetes and a chronic colon disorder. Both these serious maladies require adherence to recommended diet and exercise and careful medical monitoring to prevent and address deterioration. Saudi authorities have placed Mr. Abu al-Khair’s health and wellbeing in jeopardy by failing or refusing to provide the food, exercise and monitoring recommended and in accordance with professional medical standards. Since December 2015 Saudi authorities have denied requests for medical examination, access to medication and the food required to control both of Mr. Abu al-Khair’s medical conditions. Authorities have not provided opportunities for the recommended daily exercise. As a result Mr. Abu al-Khair has experienced significant weight loss and his health has deteriorated. In response to a recent flare-up of his colon disorder, he was taken briefly to a hospital where the attending doctor advised that his condition would worsen if he didn’t follow the recommended diet. Emergency medical treatment to arrest further deterioration and maximize restoration of his vision is urgently needed.

The UN *Standard Minimum Rules for the Treatment of Prisoners* (approved by the Economic and Social Council in 1957 and again in 1977) entitles prisoners to prompt and effective medical attention and treatment. Article 22 (2) states: “Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals.”

The UN Human Rights Committee’s (HR Committee) has determined⁹ that adequate or appropriate and timely medical care must be provided to all prisoners as an integral part of state duties to ensure the

⁵ Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977

⁶ Adopted unanimously by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Havana, Cuba on 7 September 1990. The UN General Assembly “welcomed” the Basic Principles in the ‘Human rights in the administration of justice’ resolution, adopted 18 December 1990 in the Third Committee and Plenary sessions.

⁷ Resolution adopted by the General Assembly, 3 April 2006, A/RES/60/251, at para. 9.

⁸ Lines, Rick, “The right to health of prisoners in international human rights law,” *International Journal of Prisoner Health*, March 2008; 4(1): 3_53, available at http://www.ahrn.net/library_upload/uploadfile/file3102.pdf, citing *Lantsova v. Russian Federation* (26 March 2002) UN Doc CCPR/C/74/763/1997 para 9.2.

⁹ See also the following decisions and Concluding Observations (CO) of the HR Committee *CO: Georgia* (2002) UN Doc A/57/40 vol I 53 para 78(7); *Pinto v. Trinidad and Tobago* (Communication No. 232/1987), Report of the HR Committee vol 2 UN Doc A/45/40 p. 69 para 12.7; *Kelly v. Jamaica* (2 April 1991) UN Doc CCPR/C/41/D/253/1987 para 5.7; HR Committee *CO: Portugal* (2003) UN Doc A/58/40 vol I 56 para 83(11); HR Committee ‘Concluding Observations: Cambodia’ (1999) UN Doc A/54/40 vol I 57 para 306; HR Committee *CO:*

enjoyment by all persons of rights to life, freedom from torture or cruel, inhuman or degrading treatment and punishment, and to humane treatment. Interpretations by the HR Committee of rights guaranteed by the *International Covenant on Civil and Political Rights* should be taken as an authoritative guide to the state duties to ensure rights recognized by the UDHR.

Saudi Arabia has a duty to be proactive in providing adequate medical care. The HR Committee has also stated that

[I]t is incumbent on States to ensure the right of life of detainees, and not incumbent on the latter to request protection...the essential fact remains that the State party by arresting and detaining individuals takes responsibility to care for their life. It is up to the State party by organizing its detention facilities to know about the state of health of the detainees as far as may be reasonably expected.¹⁰

By arresting and detaining a person, a State takes full responsibility to ensure the lives and wellbeing of detainees¹¹ and to provide timely, adequate and appropriate medical care.¹²

Withholding of medical care and treatment is considered an additional form of punishment and is prohibited.

Saudi Arabia must now release Waleed Abu al-Khair to allow him to resume the diet, exercise, medical monitoring, medical examinations, medication and daily routines required to restore his health and prevent further deterioration.

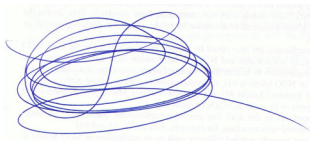
Conclusion

LRWC, L4L and UIA call on Saudi Arabia to take all steps necessary to remedy violations of its international law obligations in the case of Waleed Abu al-Khair and to:

1. Immediately and unconditionally release Waleed Abu al-Khair;
2. Remove the travel ban prohibiting Waleed Abu al-Khair from leaving Saudi Arabia for 15 years after his release and vacate the SAR 200,000 fine;
3. Immediately provide Waleed Abu al-Khair with the medical care and treatment he requires and ensure him access to the medical doctors of choice and to treatment in a civilian hospital.

Thank you.

Sincerely,



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-and- Mr. Pedro Pais de Almeida, UIA President

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Congo (2000) UN Doc A/55/40 vol I 43 para 282; HR Committee *CO: Mongolia* (2000) UN Doc A/55/40 vol I 49 para 332; HR Committee *CO: Syrian Arab Republic* (2001) UN Doc A/56/40 vol I 70 para 81(13).

¹⁰ *Supra* note 8 *Lantsova v Russian Federation* at para 9.2.

¹¹ *Supra* note 8.

¹² *Supra* note 9. .

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