

PLEA FOR THE RELEASE OF RAÏF BADAWI

October 30, 2015

INTRODUCTION

1. Raif Badawi is a Saudi blogger who was accused, under a Saudi Arabian law against cybercrime, of creating and administering an Internet site and publishing comments on his Facebook page that "infringe on religious values".
2. In July 2013, the Criminal Court of Jeddah, in Saudi Arabia, found Mr. Badawi guilty of the charges against him and sentenced him to seven years in prison and 600 lashes. Following the appeal of this judgment, brought by Mr. Badawi's lawyer, the Court of Appeal of Jeddah sent the file back to the Criminal Court of Jeddah.
3. In May 2014, the Criminal Court of Jeddah once again convicted Mr. Badawi and sentenced him to a more severe punishment of 10 years in prison, 1,000 lashes, and a fine of 1 million riyals (about Can\$289,000¹), together with a subsequent ban on travel and on the use of multimedia devices for a period of 10 years. This judgment was affirmed by the Court of Appeal of Jeddah on 1 September 2014.
4. Since the sentence of 1,000 lashes is to be carried out at the rate of 50 lashes every Friday, Mr. Badawi underwent the first flogging session on 9 January 2015. Saudi authorities postponed all subsequent sessions, giving medical reasons for doing so.
5. In response to a request by the King of Saudi Arabia, the Supreme Court of Saudi Arabia conducted a "review" of the case and rendered a judgment on 7 June 2015, upholding the conviction of Mr. Badawi rendered by the Court of Appeal of Jeddah on 1 September 2014.
6. The legal arguments contained in the present submission are based on the following:
 - a. The pleadings, exhibits and other evidence of the court file to which LWBC could access;
 - b. The judgement rendered by justice Abdulrahim bin Ibrahim Almuhaytef of the Jeddah Criminal Tribunal in May 2014 and confirmed by the Court of Appeal and the Supreme Court of Saudi Arabia; and
 - c. Saudi domestic law and the international legal norms to which Saudi Arabia is bound.
7. On the basis of Saudi law and the international law binding on Saudi Arabia, this Plea shows that :

¹ The rate of exchange used for the conversion was that in effect in May 2014 (1 riyal = \$Can 0.2897).

- a. Saudi Arabia failed to comply with its national and international legal obligations relating to Mr. Badawi's right to a fair trial due the irregularities which tainted the legal proceedings that led to Mr. Badawi's conviction.
- b. By convicting Mr. Badawi for making comments on his website and Facebook page that "infringe on religious values", Saudi Arabia violated his right to opinion and his right to free expression.
- c. By sentencing Mr. Badawi to flogging sessions, which constitute acts of torture and cruel, inhuman or degrading treatment, Saudi Arabia has breached its international undertakings pertaining thereto.

BREACH OF THE RIGHT TO A FAIR TRIAL

8. The legal proceedings conducted against Mr. Badawi suffered from procedural defects that affected his right to a fair trial. Saudi Arabia ignored its international obligations by not guaranteeing Mr. Badawi the right to be judged by a competent court, the right to legal assistance of his own choosing, the right to be informed of all the charges brought against him, as well as the right to have the adequate time and facilities for the preparation of his defense.
9. Saudi law provides for measures that guarantee the right to a fair trial. Thus, the Saudi *Basic Law of Governance* protects the right to be judged by an independent authority.² Similarly, the Saudi *Law of Criminal Procedure* guarantees a person's right to be assisted by a lawyer or legal representative to defend him during the investigation and trial stages.³ In addition, it provides that the accused must be informed by the court of the offense of which he is charged and must read and explain to him the memorandum of the charges.⁴
10. The *Arab Charter on Human Rights*⁵ (hereinafter the "*Arab Charter*") contains provisions guaranteeing the right to a fair trial, including article 13 to the effect that "[e]veryone has the right to a fair trial that affords adequate guarantees before a competent, independent and impartial court." Article 16 of the *Arab Charter* states that:

Everyone charged with a criminal offence shall be presumed innocent until proved guilty by a final judgment rendered according to law and, in the course of the investigation and trial, he shall enjoy the following minimum guarantees:

- a) The right to be informed promptly, in detail and in a language which he understands, of the charges against him;
- b) The right to have adequate time and facilities for the preparation of his defense [...] and;
- c) The right to be tried in his presence before an ordinary court and to defend himself in person or through a lawyer of his own choosing with whom he can communicate freely and confidentially;

[...].

² *The Basic Law of Governance*, 26 Sha'ban 1412, [1^{er} March 1992], art. 46.

³ *Law of Criminal Procedure*, Royal Decree No. (M/39), 28 Rajab 1422, [16 October 2001], Umm al-Qura No. (3867), 17 sha'ban 1422, [3 November 2001], articles 4, 70 and 140.

⁴ *Idem.*, art. 161.

⁵ *Arab Charter on Human Rights*, League of Arab States, 22 May 2004 (date of coming into force: 15 March 2008).

11. By ratifying the *Arab Charter* in 2009, Saudi Arabia undertook to ensure "to all individuals subject to its jurisdiction the right to enjoy the rights and freedoms set forth" in the Charter [...] and to "take the requisite measures to guarantee effective equality in the enjoyment of all the rights and freedoms enshrined in the present Charter".⁶ By failing to guarantee Mr. Badawi's right to a fair trial, Saudi Arabia violated the provisions of the *Arab Charter* and breached its international obligations.

The right to be tried by a competent court

12. The right to a fair trial includes the right to be judged by a competent court. In this case, the Criminal Court of Jeddah which convicted Mr. Badawi did not have the material competence to hear the case and render judgment.
13. In convicting Mr. Badawi of having created and administered the website "Free Saudi Liberals",⁷ the Criminal Court of Jeddah held that he had impinged on public order, Muslim religious values as well as the divinity, Allah, and that he had insulted and mocked certain religious symbols, including the Grand Mufti of the Kingdom [...],⁸ thereby infringing article 6, paragraph 1, and article 9 of the *Anti-Cyber Crime Law*.⁹ Article 6, paragraph 1 of this law reads as follows:

Any person who commits one of the following cyber crimes shall be subject to imprisonment for a period not exceeding five years and a fine not exceeding three million riyals or to either punishment:

 1. Production, preparation, transmission, or storage of material impinging on public order, religious values, public morals, and privacy, through the information network or computers.
14. The provisions dealing with the jurisdiction of the courts are found in the *Law of the Judiciary*,¹⁰ the *Law of Criminal Procedure*¹¹ as well as the *Law of Procedure before Shari'ah Courts*.¹²
15. Article 9 of the *Law of the Judiciary* provides that the rules on the jurisdiction of the courts are found in the *Law of Criminal Procedure* and the *Law of Procedure before Shari'ah Courts* and that Specialized Courts may be created by Royal Decree upon the recommendation of the Supreme Judicial Council. Similarly, article 2049 in the compendium of provisions, *Majallat al-Ahkam ash-Shari'ah*,¹³ codifying the rules of the Hanbalist school of Shari'ah, which is in force in Saudi Arabia,¹⁴ provides that the "sovereign may limit the jurisdiction of the judge [court] in time and in space [our translation]", meaning that the sovereign has the power to remove certain matters from the jurisdiction of the judge under the common law and assign it to another specialized tribunal.

⁶ *Arab Charter on Human Rights*, art. 3 a) and b).

⁷ This was the name used in the indictment. A distinction should be made between this site and the site known as the "Saudi Liberal Network", which was not referred to in the indictment against Mr. Badawi.

⁸ General motion list in case number 29/2/57 entered in the criminal dockets as number 29/173/242

⁹ *Anti-Cyber Crime Law*, Royal Decree No. (M/17), 8 Rabia al awal 1428, [26 March 2007].

¹⁰ *Law of the Judiciary*, Royal Decree No. (M/78), 19 Ramadan 1428, [1 October 2007].

¹¹ *Law of Criminal Procedure*, Royal Decree No. (M/39), 28 Rajab 1422, [16 October 2001], Umm al-Qura No. (3867), 17 sha'ban 1422, [3 November 2001].

¹² *Law of Procedure before Shari'ah Courts*, Royal Decree No. (M/1), 22 Mouharram 1435, [25 November 2013].

¹³ Ahmed bin Abdullah Al Kari et al, *Majallat al-Ahkam ash-Shari'ah*, Tohama Publication, first edition, Jeddah, Saudi Arabia, 1401, [1981].

¹⁴ William Ballantyne, *Essays and addresses on Arab Laws*, 2000, Curzon Press, Richmond, p. 99.

16. In this case, the *Law of Printed Materials and Publication*¹⁵ and *Royal Decree A-93*¹⁶ provide that complaints concerning issues related to electronic publications must be heard by special committees of the Ministry of Culture and Information.¹⁷ Furthermore, *Royal Decree A-93* explicitly states that the examination of issues related to electronic publications is not a matter under the jurisdiction of the Shari'ah courts, including the Criminal Court of Jeddah, but falls under the exclusive jurisdiction of special committees of the Ministry of Culture and Information.
17. Mr. Badawi's case ought therefore to have been heard by a special committee of the Ministry of Culture and Information¹⁸, and not the Criminal Court of Jeddah.
18. *Judicial Circular No. 13/C/3784*,¹⁹ distributed by the Minister of Justice, contained a reminder that the courts are prohibited from hearing matters and rendering judgments outside their jurisdiction. By rendering a decision outside its area of jurisdiction, the Criminal Court of Jeddah therefore also infringed the directives of the Minister of Justice.
19. *Royal Decree A-93* specifies that no judgment rendered in violation of the said decree shall be taken into consideration and is therefore null and void. *Judicial Circular No. 13/C/3784* is to the same effect: it requires the cancellation of any judgment rendered by a court outside its jurisdiction. The lack of material competence of the Criminal Court of Jeddah should therefore result in the dismissal of the file or quashing of the judgment under articles 187 and 189²⁰ of the *Law of Criminal Procedure* which respectively state: "Any action that is inconsistent with the principles of Shari'ah or the laws derived therefrom shall be invalid" and "if the invalidity is attributable to a correctable defect in the proceedings, the court shall correct it. If it is attributable to an uncorrectable defect, the action shall be held invalid."

Right of access to legal assistance of his own choosing

20. Mr. Badawi was deprived of his right to legal assistance of his own choosing and had no legal representation during the hearings before the Criminal Court of Jeddah. The representative chosen by Mr. Badawi, the human rights defender Waleed Abu al-Khair, was imprisoned in April 2014 and sentenced to 15 years in prison, together with a subsequent 15-year travel ban and a fine of 200,000 riyals²¹ for "breaking allegiance to and disobeying the ruler", "offending the judiciary", "inciting international organisations against the Kingdom" and

¹⁵ *Law of Printed Materials and Publication*, Royal Decree No. (M/32), 3 Ramadan 1421, [29 November 2000].

¹⁶ *Royal Decree No. (A/93)*, the late King Abdullah bin Abdulaziz Al Saoud, 25 Jomada al oula 1432, [29 April 2011].

¹⁷ Committee on Transportation, Communications and Information Technology, website of the Shura Council, Committees of Islamic and Judicial Affairs, available online at <http://www.shura.gov.sa/wps/wcm/connect/shuraen/internet/committees>; sample application for trial on irregularities relating to electronic and audiovisual editions, Ministry of Culture and Information, available online at <http://www.info.gov.sa/EServices.aspx>.

¹⁸ Provided that the procedure complies with the guarantees of a fair trial. This Legal Memorandum, however, does not address this specific issue.

¹⁹ *Judicial circular no. N3/C/3784* dated 8/11/1430, Ministry of Justice, Riyadh Journal published on 19 Jomada oula 1431 (3 May 2010) no. 15288.

²⁰ The same articles were numbered 188 and 190 respectively at the time of Mr. Badawi's trial. Only the numbering has changed; the contents of the articles are identical.

²¹ About \$Can58,000

infringing the *Anti-Cyber Crime Law*.²² Since the arrest of Waleed Abu al-Khair, Mr. Badawi has been deprived of his right to assistance of his own choosing capable of providing him with a full and complete defense. This situation prejudiced the accused and constitutes a violation of the right to a fair trial.

21. As noted above, Saudi Arabia is bound to respect the rights guaranteed by the *Arab Charter*, including the right to defend oneself in person or through a lawyer of one's own choosing.²³
22. This right to legal assistance of one's own choosing is one of the international standards imposed on States. Thus, the resolution adopted by the United Nations General Assembly in 1988 entitled *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* provides that "[a] detained person shall be entitled to have the assistance of a legal counsel"²⁴ and "[a] detained or imprisoned person shall be allowed adequate time and facilities for consultation with his legal counsel."²⁵
23. The *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*²⁶ describe the standards for States to achieve in terms of good practices concerning access to legal aid. This document sets out the principles on which the right to counsel is based and highlights the importance for States of ensuring the fulfillment of this right. The first principle guarantees the right to legal aid as follows:

Recognizing that legal aid is an essential element of a functioning criminal justice system that is based on the rule of law, a foundation for the enjoyment of other rights, including the right to a fair trial, and an important safeguard that ensures fundamental fairness and public trust in the criminal justice process, States should guarantee the right to legal aid in their national legal systems at the highest possible level, including, where applicable, in the constitution.²⁷

24. The Human Rights Committee, the body responsible for the application of the *International Covenant on Civil and Political Rights* (hereinafter the "*Covenant*") published a general comment – a tool for interpreting the provisions of the *Covenant* – on the right to equality before the tribunals and courts of law and the right to a fair trial.²⁸ The Human Rights Committee indicates that, among other things, the *Covenant* guarantees "equality of arms [which] means that the same procedural rights are to be provided to all the parties unless distinctions are based on law and can be justified on objective and reasonable grounds, not entailing actual disadvantage or other unfairness to the defendant. [...] The principle of equality between parties [...] demands, inter alia, that each side be given the opportunity to contest all the arguments and evidence adduced by the other party."²⁹ While Saudi Arabia has not ratified the *Covenant*, it can be used to interpret Saudi Arabia's obligations under the *Arab Charter*, particularly

²² The Ludovic-Trarieux Human Rights International Prize, *Waleed Abu al-Khair – Saudi Arabia*, [online] <http://www.ludovictrarieux.org/uk-page3.callplt2015.htm> (Page consulted on 14 July 2015).

²³ *Arab Charter on Human Rights*, art. 16(c).

²⁴ *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, UN General Assembly resolution 43/173 of 9 December 1988, principle 17.

²⁵ *Idem.*, principle 18.2.

²⁶ *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, United Nations Office on Drugs and Crime, New York, 2013.

²⁷ *Ibid.*, principle 1, para. 14.

²⁸ General comment no. 32: Article 14: Right to equality before courts and tribunals and to a fair trial, Off. Doc. HRC UN, 90th sess., Doc. CCPR/C/GC/32.

²⁹ *Idem.*, para. 13.

since the preamble of the *Arab Charter* reaffirms the provisions of the *Covenant*.³⁰

25. By not permitting Mr. Badawi to have access to a representative of his choosing able to provide him with a full answer and defense throughout the legal proceedings, Saudi Arabia therefore contravened its own domestic law as well as its international commitments. This failure was not rectified by the higher courts. The country's highest court, the Supreme Court of Saudi Arabia, did not inform Mr. Badawi of the developments in the review process of the file ordered by the King and did not permit his representative to make submissions. Saudi law is silent with respect to the procedure and judicial guarantees offered to the accused during the review process. However, insofar as the Supreme Court was required to rule on the legality of the lower courts' decisions and sanction the procedural irregularities, as the case may be³¹, Saudi Arabia infringed Saudi standards as well as its international obligations by shutting out Mr. Badawi and his representative from this review process.

The right to be informed of all the charges and to have adequate time and facilities for the preparation of one's defense

26. Mr. Badawi was convicted of having authored comments published on his Facebook page that "impinge on religious values". However, no charge relating to the publication of comments on Mr. Badawi's Facebook page was recorded on the prosecutor's list of charges. This situation constitutes a violation of the right to a fair trial because Mr. Badawi was deprived of the right to be informed of all the charges brought against him and, consequently, did not have the time and means necessary to prepare his defense.
27. Furthermore, Mr. Badawi's Facebook account was hacked into on various occasions and third parties published their own comments on it, particularly while Mr. Badawi was incarcerated. During his trial, Mr. Badawi mentioned that he no longer had control over the contents or comments published on his Facebook page. However, some of these comments by third parties were used in the charges against Mr. Badawi and for his conviction.
28. Under the rules set forth in the Qur'an and which are binding on the Saudi judiciary, "no bearer of burdens will bear the burden of another"³² and "[w]hoever is guided is only guided for [the benefit of] his soul. And whoever errs only errs against it. And no bearer of burdens will bear the burden of another."³³ Thus, one should understand from the teaching of the Quranic scripture that no one should be punished for a crime they have not authored.
29. Since Mr. Badawi was convicted, among other things, on the basis of the publication of certain comments that were not made by him, this thereby vitiates the judgment rendered by the Criminal Court of Jeddah.

³⁰ As well as the principles of the *Universal Declaration of Human Rights*.

³¹ *Law of the Judiciary*, Royal Decree No. (M/78), 19 ramadan 1427 [12 October 2006], article 11. See also: Supreme Court, Grounds for application for judicial review [our translation], website of the Ministry of Justice, Arab version available online at <http://www.moj.gov.sa/ar-sa/Courts/Pages/HighCourt.aspx>.

³² The Noble Qur'an and the English translation thereof, English translation by the Quranic Arabic Corpus (<http://quran.com/>), Language Research Group, University of Leeds, verse no. 38.

³³ *Idem*, verse no. 39.

30. In the same vein, the Criminal Court of Jeddah used excerpts from texts taken from the "Free Saudi Liberals" website in assessing the evidence that led to Mr. Badawi's conviction. As Mr. Badawi's representative argued before he was imprisoned, the Criminal Court of Jeddah erred in considering this evidence because this website was never referred to in the prosecutor's list of charges. By agreeing to assess this evidence and including it in the judgment, the Criminal Court of Jeddah failed to abide by the rule laid down in article 101 of the *Law of Procedure before Shari'ah Courts* which states that "[f]acts intended for verification during proceedings must be relevant, material to the case and admissible". Thus, the Criminal Court of Jeddah ought to have rejected all of the evidence relating to Mr. Badawi's Facebook page and the "Free Saudi Liberals" website.
31. Other violations of Saudi procedural and evidentiary rules also tainted Mr. Badawi's trial. These irregularities were argued by Mr. Badawi's lawyer before his imprisonment, but were ignored by the court. Thus, there was no compliance with the rule of "screening of witnesses" (*Tazkiya*), which provides that a witness's credibility must be attested by two men.³⁴ In Mr. Badawi's case, only one person attested to the credibility of two other witnesses. This contravention of one of the main conditions for the validity of testimony under Saudi law – the credibility of witnesses – vitiates the evidence of the offense under article 6(1) of the *Anti-Cyber Crime Law* on which Mr. Badawi's conviction is based.
32. The Criminal Court of Jeddah therefore rendered a judgment contrary to Islamic law, Saudi procedural rules and the national and international standards on the right to a fair trial. Hence, the judgment should be null and void under articles 187 and 189 of the *Law of Criminal Procedure*.

RIGHT TO FREEDOM OF OPINION AND FREEDOM OF EXPRESSION

33. By creating the "Free Saudi Liberals" website in 2008, Mr. Badawi provided a virtual platform for Internet users to express themselves freely on various subjects, including human rights and democracy. Mr. Badawi described his website as being "a liberal forum aimed at adopting a discourse based on intellect and reason, free from the influence of religious authorities [our translation]".
34. Mr. Badawi used the space provided by the Internet to express his opinions and concerns on various subjects in the news, including the freedoms of expression and religion and the place of women in society.
35. By ratifying the *Arab Charter*, Saudi Arabia undertook to abide by the rights this Charter protects. Article 32, paragraph a), of the *Arab Charter* guarantees "the right to information and to freedom of opinion and expression, as well as the right to seek, receive and impart information and ideas through any medium, regardless of geographical boundaries."
36. This language of the *Arab Charter* is very similar to that of the *Universal Declaration of Human Rights* which states that "Everyone has the right to

³⁴ A hermeneutics of the Islamic tradition: Rawdat Al-Talibayn, Al Imam Muhyiddin Abu Zakariyya Yahya ibn Sharaf An-Nawawi, 631-676 A.H. (1233-1277), volume no. 8, Alam Al-Kotob edition, Saudi Arabia, 1423 A.H (2003), Page 102.

freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."³⁵

37. The right to freedom of opinion and expression is a fundamental right of its own accord and is an enabler of other civil and political rights such as the right of association and assembly, as well as economic, social and cultural rights such as the right to education, the right to take part in cultural life and the right to enjoy the benefits of scientific progress and its applications.³⁶
38. The Human Rights Committee published a general comment on the right to freedom of opinion and the right to freedom of expression which states that "[t]he harassment, intimidation or stigmatization of a person, including arrest, detention, trial or imprisonment for reasons of the opinions they may hold, constitutes a violation [of the right to hold opinions without interference]"³⁷ and the right to free expression includes "the right to seek, receive and impart information and ideas of all kinds regardless of frontiers."³⁸
39. In light of Saudi Arabia's international obligations and the tools for interpreting international treaties, Mr. Badawi's conviction constitutes a violation of the rights of freedom of opinion and freedom of expression.
40. While there are recognized limits to freedom of expression, such as hate propaganda and defamation of another person, when a person is sanctioned for making critical comments, asking questions or expressing personal doubts, such sanctions violate the principles which are at the very heart of the instruments aimed at protecting fundamental human rights.³⁹
41. Similarly to the provisions aimed at prohibiting hate propaganda against groups that are identifiable by a personal characteristic, only when the offense of blasphemy targets an extreme category of statements made against a religion can it be found to be compatible with freedom of expression. Only statements or words aimed at inciting hatred or detestation toward institutions or adherents of a particular religion (or aimed at ridiculing them in such manner that it is possible to allege a violation of the dignity of the targeted persons or institutions) may be sanctioned.⁴⁰
42. Furthermore, these principles were clearly affirmed in the general comment of the Human Rights Committee in the following terms: "Prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in article 20, paragraph 2,⁴¹ of the Covenant [and which must comply with strict conditions for their application]. Thus, for instance, it would be

³⁵ *Universal Declaration of Human Rights*, 10 December 1948, A/RES/217 A (III), Doc. UN A/810, p. 71), art. 19.

³⁶ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Off. Doc. UN General Assembly, 17th sess., Doc. A/HRC/17/27 (2011) para. 22.

³⁷ General comment no. 34: Article 19: Freedoms of opinion and expression, Off. Doc. UN HRC, 102nd sess., Doc. CCPR/C/GC/34 para. 9.

³⁸ *Idem.*, para. 11.

³⁹ See in particular: Stephanie FARRIOR, "Molding the Matrix: The Historical and Theoretical Foundations of International Law concerning Hate Speech", (1996) 14 *Berkeley Journal of International Law* 1, pp. 3-11.

⁴⁰ *Idem.*

⁴¹ Article 20 para. 2: "Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."

impermissible for any such laws to discriminate in favour of or against one or certain religions or belief systems, or their adherents over another, or religious believers over non-believers. Nor would it be permissible for such prohibitions to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith."⁴²

43. The statements Mr. Badawi was condemned for do not come close to meeting the minimum threshold of "inciting hatred or detestation". He was convicted in order to sanction open speech and his decision to offer a discussion forum for exchanging with others on themes such as democracy, freedom of expression and human rights, including the rights of women in particular. Such activities should not constitute offenses and should not be criminalized under any circumstances.
44. Based on the foregoing, by convicting and maintaining Mr. Badawi incarcerated because of his opinions, Saudi Arabia does not respect its national and international obligations relating to freedom of opinion and expression.

RIGHT NOT TO BE SUBJECTED TO TORTURE

45. Mr. Badawi was sentenced to 1,000 lashes spread out over 50 sessions, to be administered every Friday in front of the Al-Jafali Mosque in the city of Jeddah. The first flogging session was held on January 9, 2015. Mr. Badawi's health condition was the reason given by Saudi Arabia for the postponement of the 50 lashes planned for the following week. Subsequent flogging sessions have since all been postponed.
46. The administration of lashes is contrary to the absolute prohibition against torture. By imposing such corporal punishment, Saudi Arabia is violating its international commitments.
47. Torture and other cruel punishments or treatments are defined in the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (hereinafter the "*Convention Against Torture*"). Article 1 of the *Convention Against Torture* states that the term "torture" means "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed [...]". Corporal punishments such as amputation, stoning and flogging are recognized, within the meaning of this definition, as acts that constitute torture.⁴³
48. This definition of torture is binding on Saudi Arabia, which ratified the *Convention against Torture* on 23 September 1997.⁴⁴ By adhering to this legal instrument, Saudi Arabia undertook to "take effective legislative, administrative,

⁴² General comment no. 34, para. 48.

⁴³ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Off. Doc. UN GA, 60th sess., Doc. A/60/316 (2005), para. 18.

⁴⁴ At the time of ratification, Saudi Arabia issued two reservations relating to the recognition of the jurisdiction of the Committee against Torture and the arbitration clause in article 30, para. 1, of the Convention.

judicial or other measures to prevent acts of torture in any territory under its jurisdiction."⁴⁵

49. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment stated in his report presented to the United Nations General Assembly⁴⁶ "that corporal punishment is inconsistent with the prohibition of torture and other cruel, inhuman or degrading treatment or punishment enshrined, inter alia, in the *Universal Declaration of Human Rights*, [...] [and] the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*."⁴⁷
50. Saudi Arabia has previously stated that the condemnations legally rendered by a court under Shari'ah law do not constitute torture, and, therefore, that the punishment of flogging should not be assimilated to the definition contained in the *Convention Against Torture*.⁴⁸ Saudi Arabia has also asserted that, in accordance with article 1 *in fine* of the *Convention Against Torture*, the definition of torture does *not* extend to "pain or suffering arising only from, inherent in or incidental to lawful sanctions."
51. However, the Special Rapporteur, who has surveyed the case law of human rights bodies, including the Committee against Torture, pointed out "that the term "lawful sanctions" in article 1, paragraph 1, of the *Convention against Torture* must be interpreted as referring both to domestic and international law."⁴⁹ In addition, a line of cases⁵⁰ affirming the legal value of documents issued by bodies such as the Committee against Torture and the Human Rights Committee, has confirmed that such documents must be used in interpreting international conventions and that States are bound by them.⁵¹
52. In summary, while flogging may be the result of a sanction issued by a competent court, it constitutes an act of torture as defined by international law. Thus, article 1 *in fine* of the *Convention against Torture* cannot be used to legitimize corporal punishments in Saudi Arabia.
53. The *Arab Charter* also contains a provision which expressly states that "No one shall be subjected to physical or psychological torture or to cruel, degrading, humiliating or inhuman treatment."⁵²

⁴⁵ *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, 1465 U.N.T.S. 85, art. 2, para. 1.

⁴⁶ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Off. Doc. UN GA, 60th sess., Doc. A/60/316 (2005).

⁴⁷ *Ibid.*, para. 26.

⁴⁸ Report submitted by the Special Rapporteur, Nigel S. Rodlev, pursuant to resolution 1995/37 of the Commission on Human Rights, Off. Doc. UN HRC, 53rd sess., Doc. E/CN.4/1997/7Add.1 (1997), para. 435.

⁴⁹ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Off. Doc. UN GA, 60th sess., Doc. A/60/316 (2005), para. 27.

⁵⁰ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, I.C.J. Reports 2004, p. 136, para. 109-111; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, judgment, I.C.J. Reports 2005, p. 168, paras. 215-216; *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Merits, Judgment, I.C.J. Reports 2010, p. 639, para. 66.

⁵¹ International Law Association, Berlin Conference (2004), 71 Int'l L. Ass'n Rep. Conf. 621 2004; International Law Association, Washington Conference (2014), 75 Int'l L. Ass'n Rep. Conf. 470 2014.

⁵² *Arab Charter on Human Rights*, League of Arab States, 22 May 2004, art. 8.

54. Consequently, the sentence of 1,000 lashes to be inflicted on Mr. Badawi constitutes torture and cruel, degrading and inhuman treatment under international law and contravenes the absolute prohibition against torture pursuant, inter alia, to the *Convention against Torture* and the *Arab Charter*, international treaties both ratified by Saudi Arabia.
55. Saudi Arabia must comply with its international obligations and cease administering lashes to Mr. Badawi.

CONCLUSION

56. By convicting Mr. Badawi for creating and administering the website "Free Saudi Liberals" and for publishing comments on his Facebook page that "impinge on religious values" and by sentencing him to be flogged, Saudi Arabia has failed to abide by its international obligations and has violated Mr. Badawi's fundamental human rights, including his right to a fair trial, his rights to freedom of opinion and freedom of expression, and his right not to be subjected to torture.
57. The legal proceedings that led to Mr. Badawi's conviction were tainted with irregularities affecting the validity and legality of the judgment:
 - a. Under Saudi laws, including the *Anti-Cyber Crime Law* and the *Law of Printed Materials and Publication*, it was not the Criminal Court of Jeddah but the special committees of the Ministry of Culture and Information that ought to have adjudicated the case.
 - b. Mr. Badawi's right to the legal assistance of his own choosing, capable of providing him with a full answer and defense during the judicial process, was not respected.
 - c. All of the charges against Mr. Badawi were not disclosed, comments not made by him were used to convict him, and the obligation of "screening of witnesses" to attest the credibility of witnesses was not complied with.

These contraventions of Saudi procedural and evidentiary rules had the effect of violating Mr. Badawi's right to a fair trial, a right recognized by Saudi and international standards.

58. The conviction of Mr. Badawi for creating and administering the "Free Saudi Liberals" website and for making statements on his Internet site and Facebook page that "impinge on religious values" constitutes a violation of the rights to freedom of opinion and freedom of expression that are protected by international instruments and which Saudi Arabia is bound to comply with.
59. By subjecting Mr. Badawi to sessions of flogging, Saudi Arabia is violating its international obligations because flogging constitutes an act of torture, as defined by the international law applicable in Saudi Arabia.
60. Considering the above, Saudi Arabia must release Mr. Badawi at once in order to remedy the violations of his human rights and to comply with its legal obligations based both on Saudi law and the international law standards binding on Saudi Arabia.

Lawyers Without Borders Canada (LWBC) is a non-governmental international development organisation whose mission is to support the defence of human rights for the most vulnerable individuals, through the reinforcement of access to justice and legal representation. LWBC is currently or has been active in more than 15 countries.

This written argument was prepared with the support of the following organizations:

The Quebec Bar: The Quebec Bar is the professional corporation of some 25,500 Quebec lawyers. To ensure the protection of the public, the Barreau du Québec oversees professional legal practice, promotes the rule of law, enhances the image of the profession and supports members in their practice.

Lavery: An independent law firm, offering the full range of legal services to business. More than 200 lawyers in Montreal, Quebec City, Sherbrooke, Trois-Rivières and Ottawa.

