



a joint programme



The Observatory
for the Protection
of Human Rights Defenders



The Law Society
of England and Wales

Lawyers' Rights Watch Canada

Tuesday, June 30, 2015

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Re: Raif Badawi - Arbitrary Detention and Illegal Treatment

Your majesty and Ministers of Justice and Interior;

The sentence of lashing and imprisonment imposed on Raif Badawi violates Saudi Arabia's international law obligations and must be rescinded. Lawyers' Rights Watch Canada, the Law Society of England and Wales and the International Federation for Human Rights - FIDH and the World Organisation Against Torture - OMCT - within the framework of their joint programme the Observatory for the Protection of Human Rights Defenders call on the Government of Saudi Arabia and the international community to take effective action to ensure the immediate and unconditional release from prison of Raif Badawi and his protection from lashings.

Both aspects of the sentence imposed by courts in Saudi Arabia on Raif Badawi—ten years' imprisonment and 1,000 lashes—constitute egregious violations of Saudi Arabia's international law obligations arising under a variety of instruments. Judicially sanctioned corporal punishments, such as floggings or lashings, are a form of torture or ill-treatment and are banned under international law. Lashing is prohibited by and contravenes, the *Convention against Torture and other cruel, inhuman or degrading treatment or punishment* (UNCAT), the *Universal Declaration of Human Rights* (UDHR) and the *Basic Principles for the Treatment of Prisoners* (Basic Principles).

The prosecution, conviction and sentencing of Raif Badawi for peacefully exercising rights protected by the UDHR, Articles 19 and 21 violate Saudi Arabia's obligation to respect and ensure the enjoyment of those rights by all citizens. The trial and appeal procedures that resulted in a conviction violate and contravene fair trial procedures determined by the UDHR, Articles 9, 10 and 11, customary international law and widely accepted criminal law principles. The sentencing also contravenes the *Arab Charter on*

Human Rights (Arab Charter)¹ to which Saudi Arabia is a party, which guarantees freedom from “physical or mental torture or cruel, inhuman or degrading treatment” (Article 13), freedom of expression, opinion and belief (Article 26).

As a member of the United Nations, Saudi Arabia is legally obligated to respect the provisions of the UDHR, the HRD Declaration and the Basic Principles. As a party to the UNCAT (23 September 1997), Saudi Arabia is legally bound to prevent and punish treatment prohibited by that Convention. Saudi Arabia is legally bound to adhere to the provision of the Arab Charter as a state party.

The Vienna *Convention on the Law of Treaties*, Article 27 prohibits states, including Saudi Arabia, from invoking internal law as a justification for failure to perform or violations of treaty obligations.

Background

On 17 June 2012, Mr. Raif Badawi was arrested on several charges including “apostasy” by insulting Islam through electronic channels. The charges stem from a website Mr. Raif Badawi created in 2006, called *Saudi Liberal Network*, devoted to freedom of speech, human rights activism and legitimate criticism of government officials.

On 29 July 2013, Mr. Raif Badawi was sentenced to 7 years in jail and 600 lashes by the Criminal Court in Jeddah. However, on 12 December 2013 the Court of Appeals ordered a retrial. On 7 May 2014, Mr. Raif Badawi was sentenced 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). Raif Badawi was not present at the 7 May 2014 proceedings and was not represented by a lawyer. His lawyer Waleed Abu Al-Khair was arrested on 15 April 2014 and has been continuously in prison since.

On 9 January 2015, Mr. 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.

International law obligations to prevent and punish flogging

Sentences imposing any form of flogging (lashing, whipping, beating) are prohibited by the UDHR, Article 5 and by UNCAT, Articles 2 and 16 as constituting torture or prohibited cruel, inhuman or degrading treatment or punishment (ill-treatment). The *Basic Principles for the Treatment of Prisoners*² confirms that the individual’s freedom from torture and other prohibited treatment and the state duty to prevent and punish such treatment applies to prisoners. Article 5 provides:

Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and, where the State concerned is a party, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations covenants.

The Committee against Torture (CAT) has determined that sentences of flogging violate the UNCAT. In 2002 CAT concluded that sentences of flogging in Saudi Arabia violate the UNCAT and recommended re-examination of the imposition of flogging and other corporal punishment.³ CAT has not conducted a second review of Saudi Arabia’s compliance with UNCAT because Saudi Arabia has not filed the reports

¹ The Arab Charter was adopted by the Council of the League of Arab States on 15 September 1994.

² Adopted and proclaimed by General Assembly resolution 45/111 of 14 December 1990.

³ *Conclusions and recommendations of the Committee against Torture: Saudi Arabia*. 06/12/2002. CAT/C/CR/28/5, paras. 4, 8, online:

<[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/a1d3cd6a1c89d294c1256bd00055bac6?OpendocumentCAT](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/a1d3cd6a1c89d294c1256bd00055bac6?OpendocumentCAT)>

due in 2006. In 2013 CAT confirmed that sentences of flogging imposed in Qatar violate both UNCAT and customary international law and recommended:

The State party should put an end to its imposition of corporal punishment, which constitutes a breach of the Convention, and modify its legislation accordingly. The State party should ensure that criminal sanctions are in full conformity with the Convention.⁴

The right to freedom from flogging is non-derogable. CAT has determined that the UNCAT prohibitions of both torture (Article 2) and ill treatment (Article 16) are non-derogable and cannot be justified by any national law or circumstances including religious dictates.

In practice, the definitional threshold between ill-treatment and torture is often not clear. Experience demonstrates that the conditions that give rise to ill-treatment frequently facilitate torture and therefore the measures required to prevent torture must be applied to prevent ill-treatment. Accordingly, the Committee has considered the prohibition of ill-treatment to be likewise non-derogable under the Convention and its prevention to be an effective and non-derogable measure.⁵

CAT has further determined in General Comment No. 2 that states are obligated to eliminate obstacles that impede eradication of torture and ill-treatment (para.4) and to adopt effective measure to prevent public authorities (para. 17) from authorizing, failing to prevent or otherwise enabling the use of torture or cruel, inhuman or degrading punishment or treatment,

Saudi Arabia allows for the punishment of flogging in a wide range of crimes. In the penal system, corporal punishment is lawful as a sentence for crime under Sharia law. The Juvenile Justice Act (1975) provides for corporal punishment of young persons under the age of 18, including flogging, stoning and amputation. Corporal punishment is also lawful as a disciplinary measure in penal institutions. The Detention and Imprisonment Regulations (1977) prohibit torture or other cruel, inhuman or degrading treatment or punishment but allow for flogging. There is no prohibition of corporal punishment in the Detention and Imprisonment Act of 1398 (1978) or the Juvenile Justice and Social Surveillance Centre Regulations. Corporal punishment is also lawful in alternative care settings.⁶

The United Nations Human Rights Committee (HR Committee) also determined that the use of flogging contravenes the international law prohibition on the use of torture in the International Covenant on Civil and Political Rights (ICCPR) Article 7. The wording of this article and Article 5 of the UDHR are identical, “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

The HR Committee, considering a complaint from an adult in Jamaica who had been sentenced to be whipped for a violent crime, concluded that whipping violated the ICCPR.

Irrespective of the nature of the crime that is to be punished, however brutal it may be, it is the firm opinion of the Committee that corporal punishment constitutes cruel, inhuman and degrading treatment or punishment contrary to article 7 of the Covenant. The Committee finds that by imposing a sentence of whipping with the tamarind switch, the State party has violated the author's rights under article 7.

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⁴ Conclusions and recommendations of the Committee against Torture, Qatar, U.N. Doc. CAT/C/QAT/CO/2 (2013), para. 12, online: <<http://www1.umn.edu/humanrts/cat/observations/qatar2013.html>>.

⁵ Committee Against Torture, General Comment 2, Implementation of article 2 by States Parties, U.N. Doc. CAT/C/GC/2/CRP. 1/Rev.4 (2007), at para. 3. online: <http://www1.umn.edu/humanrts/cat/general_comments/cat-gencom2.html>.

⁶ Global Initiative to End All Corporal Punishment of Children, “Country Report for Saudi Arabia” (February 2015), online: <<http://www.endcorporalpunishment.org/progress/country-reports/saudi-arabia.html>>.

The State party is also under an obligation to refrain from carrying out the sentence of whipping upon Mr. Osbourne. The State party should ensure that similar violations do not occur in the future by repealing the legislative provisions that allow for corporal punishment.⁷

The HR Committee confirmed that any flogging is prohibited treatment in a 2001 decision.

The Committee notes that the author was sentenced to 12 strokes of the birch and recalls its decision in *Osbourne v. Jamaica* in which it decided that irrespective of the nature of the crime that is to be punished, however brutal it may be, it is the firm opinion of the Committee that corporal punishment constitutes cruel, inhuman or degrading treatment or punishment contrary to article 7 of the Covenant. In the present case, the Committee finds that by imposing a sentence of whipping with the birch, the State party has violated the author's rights under article 7.⁸

In 2002 the HR Committee ruled that a convicted person subjected to a sentence of whipping was entitled to compensation for violation of the right to freedom from torture.

... the State party is under an obligation to provide the author with an effective remedy, including refraining from carrying out the sentence of whipping upon the author or providing appropriate compensation if the sentence has been carried out. The State party should ensure that similar violations do not occur in the future by repealing the legislative provisions that allow for corporal punishment.⁹

The Working Group report on the 2009 Universal Periodic Review of Saudi Arabia, noting that Saudi Arabia has acceded to UNCAT and that corporal punishment, such as flogging, is incompatible with UNCAT and international customary law, recommends that Saudi Arabia “abolish corporal punishment, and cruel, inhuman, and degrading treatment in general, and public floggings, eyegouging, flogging of school children, and amputation of limbs in particular.”¹⁰ Saudi Arabia rejected this recommendation.

In the second Universal Periodic Review of Saudi Arabia in 2013,¹¹ the Working Group reports concerns with criminal law and procedure that violate international law provisions of the UDHR and UNCAT including the use of judicially sanctioned corporal punishment. Many states recommended that Saudi Arabia amend its law to comply with international law obligations. For example, Canada recommended that Saudi Arabia:

Draft and implement a penal code and amend the Law of Criminal Procedure to comply with all its obligations under international law, including prohibitions on judicially sanctioned corporal punishment and the execution of juvenile offenders (Canada);¹²

Saudi Arabia agreed to study the recommendations and respond to them but no response has been made to date.

⁷ *George Osbourne v. Jamaica*, Communication No. 759/1997, U.N. Doc. CCPR/C/68/D/759/1997 (2000), 15 March 2000 at paras. 9.1 and 11, online: <<https://www1.umn.edu/humanrts/undocs/session68/view759.htm>>.

⁸ *Boodlal Sooklal v. Trinidad and Tobago*, Communication No. 928/2000 (2 February 2000), CCPR/C/73/D/928/2000. 25 October 25 2001 at para. 4.6., online: <<http://www1.umn.edu/humanrts/undocs/928-2000.html>>.

⁹ *Mr. Malcolm Higginson v. Belarus*, Communication No. 792/1998, U.N. Doc. CCPR/C/74/D/792/1998 (2002), adopted 28 March 2002 at para. 6, online: <<http://www1.umn.edu/humanrts/undocs/792-1998.html>>.

¹⁰ Report of the Working Group on the Universal Periodic Review of Saudi Arabia, 4 March 2009, A/HRC/11/23 at para. 27, online: <<http://www.ohchr.org/EN/HRBodies/UPR/Pages/SASession4.aspx>>.

¹¹ Report of the Working Group on the Universal Periodic Review of Saudi Arabia, 26 December 2013, A/HRC/25/3, at para. 138.45 online: <<http://www.ohchr.org/EN/HRBodies/UPR/Pages/SASession17.aspx>>

¹² Report of the Working Group on the UPR of Saudi Arabia, 26 December 2013, A/HRC/25/3 at para. 138.45, online:

<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A-HRC-25-3_en.doc>.

The UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, a former permanent representative of Jordan to the United Nations, said: "Flogging is, in my view, at the very least, a form of cruel and inhuman punishment. Such punishment is prohibited under international human rights law, in particular the Convention against Torture, which Saudi Arabia has ratified."

As a member of the UN Human Rights Council Saudi Arabia has agreed and is mandatorily obliged to "uphold the highest standards in the promotion and protection of human rights".¹³ The UN General Assembly may suspend a member that commits gross and systematic violations of human rights. The prosecution and sentencing of Raif Badawi is just one of many instances of gross and systemic human rights violations by Saudi Arabia against people for peacefully exercising internationally protected rights to expression, association and assembly.

The immediate release and pardoning of Raif Badawi may signal an intention by Saudi Arabia to bring its laws and practice into compliance with its international law obligations including legal obligations arising from the UDHR and the UNCAT.

The undersigned organizations call on the Government of Saudi Arabia and the international community to take effective action to ensure the immediate and unconditional release from prison of Raif Badawi and his protection from lashings and his reunification with his family.

Endorsed by the following on behalf of FIDH, OMCT, LRWC and the Law Society of England and Wales:

Karim Lahidji,
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within the framework of the Observatory
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Gail Davidson,
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Sarah J. Smith,
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FIDH is a non-governmental federation for human rights organizations. FIDH's core mandate is to promote respect for all the rights set out in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. Its priority areas include protecting human rights defenders and fighting impunity.

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The World Organisation Against Torture (OMCT) created in 1986, is today the main coalition of international non-governmental organisations (NGO) fighting against torture, summary executions,

¹³ Resolution adopted by the General Assembly, 60/251. Human Rights Council, 3 April 2006, A/RES/60/251, at para. 9 online: < http://www2.ohchr.org/english/bodies/hrcouncil/docs/A.RES.60.251_En.pdf>.
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enforced disappearances and all other cruel, inhuman or degrading treatment. With 282 affiliated organisations in its SOS-Torture Network and many tens of thousands correspondents in every country, OMCT is the most important network of non-governmental organisations working for the protection and the promotion of human rights in the world.

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Lawyers Rights Watch Canada (LRWC) is a committee of lawyers 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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The Law Society of England and Wales is the professional body representing more than 166,000 solicitors in England and Wales. Its concerns include the independence of the legal profession, the rule of law and human rights throughout the world. The Law Society has Special Consultative Status with the Economic and Social Council of the United Nations since 2014.

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