Mandates of Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE: UA
SAU 11/2015:

11 December 2015

Excellency,

We have the honour to address you in our capacity as First Vice-Chair of the Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on freedom of religion or belief; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 24/7, 25/2, 24/5, 22/20, 25/18, and 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **convictions and sentences of Mr. Raef Badawi and Mr. Miklif bin Daham al Shammari.**

Mr. **Miklif bin Daham al Shammari** (also known as Mr. Muklif al Shammari and Mr. Mokhlif Shammari) is a prominent journalist, blogger and writer. He is also a member of the Saudi Human Rights Commission and the National Family Safety Programme, where he assists victims of domestic violence. Mr. Al Shammari was previously the subject of joint urgent appeals sent on 1 March 2012 (case no. SAU 6/2012, see A/HRC/20/30); 3 May 2012 (case no. SAU 7/2012, see A/HRC/21/49); 12 July 2012 (case no. SAU 9/2012, see A/HRC/22/67); 12 September 2013 (case no. SAU 8/2013, see A/HRC/25/74); and 8 December 2014 (case no. SAU 14/2014, see A/HRC/29/50). We acknowledge receipt of your Excellency's Government's responses of 1 February 2013, 12 December 2014, 12 January 2015, 26 January 2015 and 12 February 2015.

Mr. **Raef Badawi** is an online blogger and activist. He is the founder of the website 'Free Saudi Liberals' and has published many articles advocating for human rights. Mr. Badawi was previously the subject of several joint urgent appeals sent on 12 July 2012 (case no. SAU 9/2012, see A/HRC/22/67); 31 January 2014 (case no. SAU 2/2014, see A/HRC/26/21); 31 October 2014 (case no. SAU 13/2014, see A/HRC/28/85); 22 January 2015 (case no. SAU 1/2015, see A/HRC/29/50); and 12 June 2015 (case no. SAU 3/2015). We acknowledge receipt of your Excellency's Government's responses of 12 February 2014, 26 January 2015 and 17 June 2015, which we analyze further below.

Mr. Badawi was also the subject of opinion No. 38/2015 of the Working Group on Arbitrary Detention issued on 4 September 2015 (A/HRC/WGAD/2015/38). Opinion No. 38/2015 also concerned the cases of Messrs. Suliaman al-Rashudi, Abdullah al-Hamid, Mohammed al-Qahtani, Abdulkareem Yousef al-Khoder, Mohammed Saleh al-Bajadi, Omar al-Hamid al-Sa'id, Fadhel al-Manasif and Waleed Abu al-Khair. In its opinion, the Working Group concluded that the rights of the nine individuals concerned to freedom of opinion and expression, and freedom of peaceful assembly and association, under articles 19 and 20 of the Universal Declaration of Human Rights were violated. Also, the Working Group concluded that the breaches of articles 9 and 10 of the Universal Declaration of Human Rights in the case of the nine individuals concerned are of such gravity as to give his deprivation of liberty an arbitrary character. Those conclusions were reached by the members of the Working Group following a thorough investigation of the information submitted by both parties to the case, namely the source and your Excellency's Government, in accordance with the Working Group's Methods of Work (A/HRC/30/69). Based on that, the Working Group found that the deprivation of liberty of the nine individuals was arbitrary and requested your Excellency's Government to release them immediately, including in the case of Mr. Badawi.

According to the information received:

The case of Mr. Miklif bin Daham al Shammari

Since 2007, Mr. Miklif bin Daham al Shammari has been detained three times, including twenty months in incommunicado detention, and in March 2012, he was the subject of a foreign travel ban. It is alleged that he was subjected to ill-treatment while in detention. On 17 June 2013, Mr. Al Shammari was sentenced to 5 years' imprisonment, a 10 year travel ban and a ban from appearing in the media, which was upheld on appeal. On 22 September 2014, Mr. Al Shammari was allegedly coerced into deactivating his Twitter account, @Mikhlif, by the authorities.

On 6 November 2014, after a single hearing in a separate case, Mr. Al Shammari was sentenced to two years' imprisonment and 200 lashes. He was convicted of,

inter alia, "stirring public opinion by sitting with the Shi'a" and "violating instructions by the rulers by holding a private gathering and tweeting". After his conviction, the court amended the first charge to "stirring up public opinion by sitting with trouble makers from the Shi'a." Mr. Al Shammari was informed that such amendments were at the discretion of the judge and that he could not oppose or appeal the change. Mr. Al Shammari remains in detention and he has been informed that his sentence has been referred for execution. He may be publicly flogged at any time.

The case of Mr. Raef Badawi

On 17 June 2012, Mr. Raef Badawi was arrested and detained in Jeddah Prison. He was convicted by the Criminal Court of Jeddah under the Repression of Cybercrime Act for 'insulting Islam', allegedly for writing and publishing several articles on his blog, Free Saudi Liberals. His conviction was in accordance with Article 39 of Saudi Arabia's Basic Law of Governance, which reportedly allows for restrictions on the right to freedom of opinion and expression. On 7 May 2014, Mr. Badawi was sentenced to 10 years' imprisonment, 1 million Saudi Riyal fine (approximately US $266,500), 1000 lashes, a 10 year travel ban after his release and a 10 year ban on appearing in the media. On 1 September 2014, the sentence was upheld on appeal.

On 9 January 2015, Mr. Badawi was flogged with 50 lashes, which he was to receive on a weekly basis, administered with "extreme severity". As a result of Mr. Badawi's poor health, the lashes were suspended after the first flogging. The King of Saudi Arabia ordered the Supreme Court to review the case and on 7 June 2015, the sentence was upheld. The Supreme Court's decision has resulted in renewed threats that he will again face public flogging, which would negatively impact his health further. Mr. Badawi remains in detention and may be publicly flogged at any time.

We express grave concerns regarding a number of issues raised by the information brought to our attention, including the imminent public flogging of Mr. Badawi and Mr. Al Shammari, which amounts to torture; the arbitrary detention of Mr. Badawi, and allegedly, Mr. Al Shammari, and their convictions; as well as the reported reasons for their detention and convictions, which are based on the exercise of rights to freedom of opinion and expression and freedom of thought, conscience, religion or belief on the internet, as well as their human rights activities; and rights to fair trial and due process, including Mr. Al Shammari's right to adequate time to mount a defence and equality before the law, relating to subsequent amendments to the judgement issued to him.

We are also referring to the Opinion of the Working Group on Arbitrary Detention (ref. A/HRC/WGAD/2015/38) shared with your Excellency's Government on 28 October 2015, which found that the deprivation of liberty of Messrs. Al-Rashudi, Al-Hamid, Al-Qahtani, Al-Khoder, Al-Bajadi, Al-Sa'id, Al-Manasif, Al-Khair and Badawi as arbitrary and recommending to your Excellency's Government to release them immediately. We are concerned that this Opinion, which has thoroughly reviewed the detention of these persons, has not been complied with to date.

While the information suggests significant interferences with the rights of Mr. Badawi and Mr. Al Shammari to enjoy fundamental rights, we also have serious concerns about the broader effect of such interferences, including a situation of fear and self-censorship for human rights activists, individuals and groups. We are concerned about what appears to be an ongoing crackdown on individuals who express dissenting opinions critical of the Government. The effect appears to undermine and repress the legitimate exercise of the rights to hold opinions without interference and to seek, impart and receive information and ideas of all kinds regardless of frontiers and through any media. Further concern is expressed for the lack of sufficient precision and predictability of criminal offences without a domestic criminal code and the reportedly arbitrary criminalisation of acts, which violate the principle of equality before the law.

In relation to the case of Mr. Raef Badawi, we appreciate the response of your Excellency's Government received on 26 January 2015 (see case no. 13/2014, A/HRC/28/85) and the analysis provided. In the reply, your Excellency's Government stated that Article 39 of the Basic Law of Governance is "consistent with the relevant international standards including article 29, paragraph 2, of the Universal Declaration of Human Rights… and article 19 of the International Covenant on Civil and Political Rights".

We would like to reiterate our concern with the substance and application of Article 39 of the Basic Law of Governance, which states that "mass media and all other means of expression shall employ civil and polite language, comply with the State's legislation and contribute to the education and unity of the nation. Acts which lead to disorder and schism, prejudice the State's security of public relations, or undermine human dignity and human rights, are prohibited." We would like to remind your Excellency's Government that Article 29(2) of the UDHR and Article 19 of the UDHR and that Article 19 of the ICCPR require that restrictions on the right to freedom of opinion and expression be necessary and proportionate to protect a specific legitimate interest. Restrictions on the right to freedom of expression must not jeopardize the right itself, and must be of sufficient precision to be understood by individuals for them to behave accordingly. We are especially concerned that Article 39 of the Basic Law is excessively vague, leaving substantial discretion with officials to restrict expression without adequate legal constraints. The Law's restriction of expression to that which would "contribute to the education and unity of the nation" appears to be used to limit

those who dissent from conventional thinking. We seek further clarity on the compliance of Article 39 of the Basic Law of Governance with international standards in the questions below.

In your Excellency's response dated 26 January 2015, it was asserted that the Repression of Cybercrime Act is also compatible with international norms and standards, including the right to freedom of opinion and expression and freedom of thought, conscience, religion or belief, as mentioned above. We would like to reiterate our concern with the substance and application of Article 6(1) of the Repression of Cybercrime Act, which states, "anyone who produces material prejudicial to public order, religious values, public morals or the sacrosanct nature of private life or who prepares, transmits or stores such material by internet or computer shall be liable". As your Excellency's Government stated, Mr. Badawi was charged with "setting up a website with content prejudicial to public order and incompatible with Islamic values" under Article 6(1). We would like to remind your Excellency's Government of the Human Rights Committee's General Comment No. 22, which asserts that public order and public morals may not be limited to those of a single tradition and should be read in light of the principle of non-discrimination. We seek further clarification on the compliance of the Repression of Cybercrime Act with international standards in the questions below.

Additionally, in your Excellency's response dated 26 January 2015, it was explained that Mr. Badawi was issued with "a further discretionary penalty of 5 years' imprisonment and 1,000 lashes in public, spread over 20 sessions". We reiterate our grave concern for this sentence and would like to remind your Excellency's Government of the Committee Against Torture's General Comment No. 2, which states that "no exceptional circumstances whatsoever may be invoked by a State Party to justify acts of torture" due to the absolute and non-derogable nature of the prohibition on torture. The current Special Rapporteur on torture reaffirmed in his 2012 report that corporal punishment is contrary to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment (para. 28 A/67/279) and therefore, corporal punishment for the exercise of the right to freedom of expression are never compatible with international human rights norms and standards. Such actions jeopardize the right to freedom of opinion and expression itself and create an environment of fear and intimidation of their legitimate exercise. As referred to in your Excellency's response, the penalty of 1,000 lashes is not contained within the Repression of Cybercrime Act for which Mr. Badawi was sentenced, but was applied at the discretion of the judge. We would like to refer your Excellency's Government to the requirement that any restriction on the right to freedom of expression must be prescribed in law and must be necessary and proportionate to protect a specific legitimate interest. We seek further on the compliance of Mr. Badawi's sentence with international standards in the questions below.

Under the mandates provided to us by the Human Rights Council, we would like to refer your Excellency's Government to Articles 18, 19 and 20 of the Universal

Declaration of Human Rights, as well as Articles 30 and 32 of the Arab Charter ratified by Saudi Arabia on 15 April 2009, which guarantee the rights to freedom of thought, conscience, religion or belief, association, and opinion and expression. We would also like to refer your Excellency's Government to Article 29(2) of the UDHR. We would like to remind you of the recommendations accepted at the first cycle of the Universal Periodic Review of Saudi Arabia (see A/HRC/11/23) to protect freedom of expression and remove any obstacles, including recommendations 5 and 34. We regret that no recommendations on the right to freedom of expression were fully adopted at the second cycle of the Universal Periodic Review of Saudi Arabia (see A/HRC/25/3/Add.1).

We would also like to remind your Excellency's Government of Articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Saudi Arabia acceded to on 23 September 1997 and Article 8 of the Arab Charter, which provide for the absolute and non-derogable prohibition of torture. We would like to draw the attention of your Excellency's Government to paragraph 7a of Resolution 8/8 of the Human Rights Council reminded Governments that corporal punishment can amount to cruel, inhuman or degrading punishment or even to torture. Both the Human Rights Committee and the Committee against Torture have called for the abolition of judicial corporal punishment. In paragraph 5 of General Comment No. 20 (1992), the Human Rights Committee stated that the prohibition of torture and ill-treatment must extend to corporal punishment.

We also wish to refer your Excellency's Government to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders, in particular articles 1, 2, 5, 6 and 8.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.

2. Please provide detailed information, and where available the results, of any medical examinations of Mr. Badawi, including periodical medical check-ups

in accordance with Article 5 of the Prison and Detention Regulations. If no inquiries have taken place, or if they have been inconclusive, please explain why.

3. Please provide information about the measures your Excellency's Government has undertaken to implement the Opinion of the Working Group, in particular, in regards to its call to release Messrs. Al-Rashudi, Al-Hamid, Al-Qahtani, Al-Khoder, Al-Bajadi, Al-Sa'id, Badawi, Al-Manasif, Al-Khair and Badawi immediately, and to provide them reparation for the harm caused by the grievances.

4. Please provide in-depth information, and where available the results, of any investigations carried out in relation to the cases of Mr. Al Shammari and Mr. Al Badawi, in accordance with international law norms and standards, including the rights to freedom of expression and freedom of thought, conscience, religion or belief.

5. Please provide information concerning the legal grounds for the sentences of public flogging issued to Mr. Badawi and Mr. Al Shammari, and how these measures are compatible with the above-mentioned international norms and standards. Please include references to the legal basis for their sentences and explain the legal basis for any judicial discretion exercised in this regard, including the additional sentence of five years imprisonment and 1000 lashes issued to Mr. Badawi. Please elaborate on the precision, predictability and accessibility of the applicable laws in the cases of Mr. Badawi and Mr. Al Shammari.

6. Please provide information relative to the measures taken to ensure the physical and psychological integrity of Mr. Badawi and Mr. Al Shammari.

7. Please provide further information about the amendments made to Mr. Al Shammari's sentence at the judge's discretion, after it was issued and how this complies with international norms and standards, including the right to equality before the law and the guarantees of due process.

8. Please provide detailed information about the restrictions on the right to freedom of expression and thought, conscience, religion or belief, under Article 39 of the Basic Law of Governance and how the restrictions are necessary to protect a legitimate interest under international human rights law. In particular, please elaborate and clarify with reference to restricting the right to freedom of opinion and expression to "civil and polite language" and the prohibition on "acts which lead to disorder and schism, prejudice the State's security or public relations, or undermine human dignity and human rights",

as well as what is meant by "education and unity of the nation". Please elaborate on the precision, predictability and accessibility of the Basic Law of Governance, including Article 9.

9. Please provide detailed information about the restrictions on the right to freedom of expression and thought, conscience, religion or belief, under the Repression of Cybercrime Act and how the restrictions are strictly necessary and proportionate, and the least intrusive means to protect a specific interest in compliance with Article 29(2) of the UDHR. In particular, please elaborate and clarify what is meant by "material prejudicial to public order, religious values, public morals or the sacrosanct nature of private life" in this context. Please elaborate on the precision, predictability and accessibility of the Basic Law of Governance, including Articles 6 and 13 of the Repression of Cybercrime Act.

10. Please provide information on the measures taken to guarantee and protect the rights to freedom of opinion and expression, and freedom of thought, conscience, religion or belief, including the rights of individuals and human rights defenders with dissenting opinions and those who disagree with a single tradition, that are in compliance with international norms and standards. Please include analysis in consideration of your explanation to Questions 8 and 9 above.

11. Please provide detailed information of any measures taken to guarantee the precision, predictability and accessibility of laws in the country, in particular, the Repression of Cybercrime Act, Basic Law of Governance and the criminal law. Please provide information of any plans to adopt a criminal code.

While awaiting a reply, in view of the seriousness of the allegations and the urgency of the matter, we urge your Excellency's Government to that take all necessary interim measures to halt the imminent resumption the public flogging of Mr. Badawi and Mr. Al Shammari, and protect their physical and psychological integrity, in accordance with international human rights norms and standards. We urge your Excellency's Government to initiate steps towards the abolition of corporal punishment and to guarantee the legitimate and peaceful exercise of their human rights, in particular their rights to freedom of thought, conscience, religion or belief, opinion and expression, without unjustified hindrance or fear of reprisals.

We are intending to publicly express our concerns in the near future as we are of the view that the information upon which the press release is going to be based is sufficiently reliable to indicate a matter warranting immediate attention. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

José Guevara
First Vice-Chair of the Working Group on Arbitrary Detention

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Heiner Bielefeldt
Special Rapporteur on freedom of religion or belief

Michel Forst
Special Rapporteur on the situation of human rights defenders

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Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment