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# SAUDI ARABIA: COUNTERTERROR COURT TARGETS ACTIVISTS

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# EXECUTIVE SUMMARY

## EXECUTIVE SUMMARY

The Kingdom of Saudi Arabia's repressive tactics have received widespread attention due to the recent execution of 37 detainees, the detention of nearly a dozen women's rights activists and the killing of the Saudi journalist, Jamal Khashoggi last year. Many of these activists have been charged with terrorism offenses and face prosecution in the Saudi Specialized Criminal Court, following a longstanding pattern of misusing counterterrorism resources to stifle dissent. In addition to wasting resources on frivolous cases, there is a growing body of evidence that Saudi counterterrorism authorities have failed to effectively investigate and prosecute terrorism financing emanating from the Kingdom. Long-term stability in the Kingdom will depend upon systemic reforms ensuring that Saudi authorities fully investigate terrorism networks in the Kingdom and permit human rights advocacy aimed at resolving legitimate grievances through peaceful means.

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<sup>1</sup> Lori Plotkin Boghardt, *From ISIS to Activists: New Security Trials in Saudi Arabia*, WASHINGTON INSTITUTE FOR NEAR EAST POLICY (2016), <http://www.washingtoninstitute.org/policy-analysis/view/from-isis-to-activists-new-security-trials-in-saudi-arabia>; see also *Saudi Arabia: Abolish Terrorism Court*, HUMAN RIGHTS WATCH, (2012), <https://www.hrw.org/news/2012/04/27/saudi-arabia-abolish-terrorism-court> ("The Specialized Criminal Court was established in 2008 by the Supreme Judicial Council to try thousands of terrorism suspects, many of whom had languished in the kingdom's domestic intelligence jails for years without charge, trial, or prospect of release.").

In the Kingdom of Saudi Arabia, authorities created the Specialized Criminal Court (SCC) in 2008 to prosecute terrorism detainees, thousands of whom had been languishing in detention without charge since being rounded up in the wake of terrorist attacks inside the Kingdom, claimed by al-Qaeda, in 2003.<sup>1</sup> However, the Court's caseload was quickly expanded from alleged violent extremists to include political dissidents, religious minorities and human rights activists.<sup>2</sup>

In 2014, the Court was provided express jurisdiction through adoption of the Penal Law for Terrorism and Its Financing (the anti-terror decree), in apparent response to concerns in the United States and elsewhere that Saudi Arabia was not seriously investigating financing of terrorist groups.<sup>3</sup> Bizarrely, the first defendant convicted under the new law by the SCC was a Saudi human rights lawyer, Waleed abu al-Khair, after whose case the SCC soon convicted another three lawyers, in apparent retaliation for their human rights

<sup>2</sup> See, e.g., HUMAN RIGHTS WATCH, *supra* note 2 (discussing several cases of human rights activists charged and tried in the SCC as of 2012).

<sup>3</sup> Madawi al-Rasheed, *Saudi Arabia New Terror Law Not Enough*, AL-MONITOR, February 2014, <http://www.al-monitor.com/pulse/originals/2014/02/saudi-anti-terror-law.html> ("The deterioration of the situation in both Syria and Iraq raised many questions over Saudi involvement, and Riyadh remains accused of sponsoring radical groups and undermining diplomatic efforts. In an attempt to change this image, judge and Consultative Council member Issa al-Ghaith explained that the royal decree sends a clear message to the West that Saudi Arabia is serious about fighting terrorism.")(emphasis added).

activities, including representing defendants before the SCC and tweeting about fair trial concerns in Saudi Arabia.<sup>4</sup> Despite Saudi Arabia's attempts to improve the 2014 anti-terror decree, a new decree adopted in October 2017, also failed to codify terrorism offenses in a manner consistent with international standards.

The American Bar Association Center for Human Rights (Center) has interviewed individuals familiar with proceedings in the SCC and reviewed judgments, public reports, press statements, and other materials concerning the court. It has concluded that the SCC routinely convicts individuals of terrorism charges without any meaningful evidence. Notwithstanding the fact that some defendants were accused of serious violent crimes, credible witnesses, victims, or physical evidence were not produced in the cases reviewed by the Center. Indeed, in several judgments reviewed, Shia protestors were given the death sentence solely on the basis of confessions alleged to have been produced through torture.

While this report focuses on the prosecution of protestors and human rights advocates by the court, the high number of alleged Sunni extremists convicted by the court in a relatively short amount of time raises questions about whether the court is basing its judgments on individualized evidence of guilt. Long-standing concerns about the quality of the counterterrorism investigations underpinning these prosecutions were confirmed by a recent

report of the Financial Action Task Force, a multilateral body that monitors implementation of counter terror finance and anti-money laundering efforts. In 2018, the Task Force found that Saudi authorities had “not yet tackled” the issue of third party financing of terrorist activities.<sup>5</sup>

## **The Specialized Criminal Court routinely convicts individuals on terrorism charges without any meaningful evidence.**

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Concerns regarding the quality of Saudi counterterrorism investigations and prosecutions compromise the Saudi government's ability to secure public support for its counterterrorism efforts. It is necessary not only for Saudi authorities to collect general intelligence about alleged terrorists but also to exhaustively collect credible evidence of individualized guilt and present it publicly in court. Only through a public accounting of such evidence will Saudi citizens and the international community have confidence that those convicted were in fact those responsible, not mere scapegoats.

It is therefore essential that Saudi Arabia's counterterrorism partners engage with Saudi authorities to re-focus efforts on the prosecution of violent extremists in a

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<sup>4</sup> Waleed abu al-Khair, Abdulrahman al-Subaihi, Bandar al-Nogithan, and Abdulrahman al-Rumaih were all tried and convicted by the SCC in relation to public statements regarding human rights violations in Saudi Arabia, among other human rights activities. See *The Specialized Criminal Court: How the Saudi Government Targets Human Rights Defenders* AMERICANS UNITED FOR DEMOCRACY

AND HUMAN RIGHTS IN BAHRAIN, (2015), [http://www.adhrb.org/wp-content/uploads/2015/02/2015.23.01\\_SCC-Backgrounder\\_Final.pdf](http://www.adhrb.org/wp-content/uploads/2015/02/2015.23.01_SCC-Backgrounder_Final.pdf).

<sup>5</sup> *Anti-money laundering and counter-terrorist financing measures, Kingdom of Saudi Arabia: Mutual Evaluation Report*, FATF-MENA (2018), 85.

manner consistent with the due process of law. The anti-terror decrees should be revised to conform with international standards and the court should only prosecute terrorist suspects, not human rights defenders. All previous death sentences should be suspended, all allegations of torture investigated and all detainees convicted merely for participating in protests or engaging in dissent should be released. Saudi Arabia's membership in the Financial Action Task Force should be conditioned upon implementation of these recommendations.

# SAUDI ARABIA: COUNTERTERROR COURT TARGETS ACTIVISTS

## INTRODUCTION

The Specialized Criminal Court routinely violates the fair trial rights of defendants due to several different institutional weaknesses, including an overbroad definition of terrorism and lack of independence from the Ministry of the Interior. These institutional deficiencies contribute to the misuse of counterterrorism charges against activists and religious minorities, disparate sentencing and failure to adhere to best practices in terror financing prosecutions. While the court has been used to target activists since at least 2012, it has continued to be the venue of choice during the recent crackdown, including the politically-motivated convictions of civil society leaders for conduct that allegedly occurred years ago.

## VAGUE ANTI-TERROR LAW

The jurisdiction of the court was formally established in a 2014 anti-terror decree

that was modified in 2017. Unfortunately, neither the 2014 nor the 2017 decree limit terrorism offenses to those involving terrorist acts or support of terrorists or terrorist organizations. Both contravene the recommendations of the U.N. Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. The Special Rapporteur has recommended that all counterterror laws be drafted in a manner that is “accessible, formulated with precision, applicable to counter-terrorism alone, non-discriminatory, and non-retroactive.”<sup>6</sup> In particular, “[c]rimes not having the quality of terrorism (as earlier characterized), regardless of how serious, should not be the subject of counter-terrorist legislation.”<sup>7</sup> This ensures that acts of terrorism are treated with the degree of gravity that they warrant.

The 2014 anti-terror decree did not comply with international legal standards and best practices for the prevention, investigation and punishment of terrorism related offenses.<sup>8</sup> The 2017 decree failed to fix these flaws.<sup>9</sup> Like its predecessor, the

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<sup>6</sup> Martin Scheinin (Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism), *Rep. on Promotion and Protection of Human Rights*, ¶ 50, U.N. Doc. E/CN.4/2006/98 (Dec. 28, 2005).

<sup>7</sup> *Id.* ¶ 47.

<sup>8</sup> *A Legal Assessment of the Penal Law for Terrorism and its Financing*, Michael Newton, VANDERBILT L. SCH. (June 14, 2015), [http://www.esohr.org/en/wp-content/uploads/2018/08/May\\_2018\\_A\\_Legal\\_Assessment\\_of\\_the.pdf](http://www.esohr.org/en/wp-content/uploads/2018/08/May_2018_A_Legal_Assessment_of_the.pdf). The U.N. Special Rapporteur on the promotion and protection of

human rights and fundamental freedoms while countering terrorism has suggested a model definition of terrorism that, if adopted by the Kingdom, would prevent the misapplication of terrorism charges for minor offenses. See Martin Scheinin (Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism), *Rep. on Ten areas of best practices in countering terrorism*, ¶ 27, U.N. Doc. A/HRC/16/51 (Dec. 22, 2010), <http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-51.pdf>.

<sup>9</sup> Law of Terrorism and Its Financing, Royal Decree M/16, Saudi Arabia (2017) (revising the definition

2017 law 1) has inadequate provisions to prevent arbitrary enforcement; 2) contains overly broad definitions of offenses that encompass minor crimes and lawful expression of dissent; 3) provides vague definitions that fail to provide notice to potential perpetrators that the conduct may be subject to sanctions; 4) does not require proof of intent to perpetrate a crime; and 5) allows for the arbitrary and incommunicado detention of suspects.<sup>10</sup> These failings in the law are compounded by the fact that the SCC routinely applies the law in a manner that violates basic fair trial rights for defendants, including access

to counsel and the right to cross examine witnesses.

## LACK OF JUDICIAL INDEPENDENCE

Since its inception, observers have noted that proceedings before the court are flawed, with little due process, and that the Ministry of the Interior appears to influence the court's decision-making.<sup>11</sup> The U.N. Committee Against Torture, the body charged with implementation of the Convention Against Torture, recently found that the SCC was not sufficiently independent from the Ministry of the Interior.<sup>12</sup>

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of terrorism to add the following italicized text: "Any act carried out either by an individual or collective criminal project, whether directly or indirectly, with the purpose of disrupting public order; harming the security and stability of the community; risking national unity; disabling the Basic Law or any of its articles; harming the reputation or status of the country; damaging public facilities and natural resources; forcing or obstructing authorities; or to harm or cause death of any person when the purpose- by its nature and context- is to intimidate people or force the government or an international organization to act or refrain from doing any act; or threatening or inciting the commission of any of the aforementioned acts." (Unofficial translation).

<sup>10</sup> Articles 20 and 21 of the 2017 anti-terror decree authorize restrictions on family visits and access to counsel. Art. 20 states that "[w]ithout violating the right to inform the family of the accused, the Public Prosecution may order that the accused be denied contact or visit for a period not to exceed ninety days if that was found necessary for the investigation. If the investigation requires a longer period of detention, the matter shall be referred to the competent court for to decide." Art. 21 states that "[w]ithout violating the right of the accused to seek assistance of a lawyer or representative for his defense, the public prosecutor may at the investigative stage restrict this right whenever the investigation necessitates this." Such broad discretion to deny access to counsel and family is not justified given alternatives to address legitimate security concerns. The U.N. Committee on Human Rights has stated that "[t]he protection of the detainee

also requires that prompt and regular access be given to doctors and lawyers and, under appropriate supervision when the investigation so requires, to family members." U.N. H.R. Comm. (HRC), *CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)* (March 10, 1992),

<http://www.refworld.org/docid/453883fb0.html>.

<sup>11</sup> See, e.g., HUMAN RIGHTS WATCH, *supra* note 2; see also Lori Plotkin Boghardt, *Saudi Terrorism Trials and the Executions*, THE WASHINGTON INSTITUTE FOR NEAR EAST POLICY (Jan. 24, 2016),

<http://www.washingtoninstitute.org/policy-analysis/view/saudi-terrorism-trials-and-the-executions> ("The court has tried more than six

thousand defendants on terrorism charges since its creation, according to Saudi statements, with acquittals being issued infrequently. The trials generally have been closed and suffered from a lack of due process, with defendants sometimes being denied legal advocates at critical times.")

<sup>12</sup> U.N. Comm. Against Torture [CAT], *Concluding Observations on the second periodic report of Saudi Arabia*, ¶ 17, U.N. Doc CAT/C/SAU/CO/2 (June 8, 2016) ("In addition, the Committee is concerned that the Specialized Criminal Court, which was established in 2008 to try cases of terrorism, is insufficiently independent of the Ministry of the Interior. The Committee notes the reports received that judges of the Court have repeatedly refused to act on claims made by defendants facing terrorism charges that they were subjected to torture or ill-treatment during interrogations for the purpose of compelling a confession, including in the cases of Fadel al-



The fundamental right to be tried before an independent, impartial tribunal is universally recognized.<sup>13</sup> Whether a tribunal is in fact independent or impartial may be determined by its formal structure, its published opinions, and other external indicators. Where courts sit outside the usual court system, there is a heightened need to ensure that the usual fair trial guarantees are met.<sup>14</sup> Specialized courts are usually defined by the need for specialized knowledge on the part of the decision-maker or other practical consideration. It is vital that their jurisdiction be defined in sufficient detail to ensure that any special authorities afforded the court for security reasons are not inappropriately applied to those who pose no security threat.

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Manasef, Ali al-Nimr, Dawoud al-Marhoun and Abdullah al-Zaher (arts. 2 and 15).”).

<sup>13</sup> U.N. H. R. Comm., *General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial*, ¶ 19, U.N. Doc. CCPR/C/GC/32, (2007) (“The requirement of competence, independence and impartiality of a tribunal in the sense of article 14, paragraph 1, is an absolute right that is not subject to any exception. ... A situation where the functions and competencies of the judiciary and the executive are not clearly distinguishable or where the latter is able to control or direct the former is incompatible with the notion of an independent tribunal.”)

<sup>14</sup> *Id.* at ¶22.

The SCC has a chequered history in this regard as it has routinely issued sentences for “crimes” that are clearly unrelated to terrorism and it had no publicly available definition of its jurisdiction for the six years between its founding in 2008 and the issuance of the anti-terror decree.

The discriminatory application of its jurisdiction is apparent upon a cursory review of its caseload, including instances where activists have been tried and convicted in the regular criminal courts of Saudi Arabia only to have their cases removed for retrial to the SCC, reportedly in order to seek longer sentences.<sup>15</sup> Activists have been tried and convicted by the SCC on non-terrorism related charges, including insulting the judiciary and setting up an unauthorized human rights organization.<sup>16</sup>

<sup>15</sup> In Waleed abu al-Khair’s case, he was initially tried in the regular criminal court in Riyadh. After the judge sentenced him to only a few months in prison for his activities, the case was transferred to the SCC, where he was retried and sentenced to 15 years in prison. *Country Reps. On Human Rights Practices for 2015: Saudi Arabia*, U.S. DEPT. OF STATE (2015), 14 (“In January 2014 authorities retried human rights lawyer Waleed abu al-Khair before the SCC, and in July 2014 the court gave him to a 15-year sentence. Previously, a Jeddah criminal court sentenced him to a three-month prison term on a virtually identical set of charges.”). Similarly, Mohammed al-Bajadi, a founding member of the Saudi Civil and Political Rights Association (ACPHR) was initially sentenced to four years in prison in a regular criminal court for his participation in a peaceful protest. Since that time he has been transferred to a “rehabilitation center” for terrorists. See *Saudi Arabia: Counter terror court sentences human rights activist in relentless onslaught against civil society*, AMNESTY INTERNATIONAL (Apr. 24, 2016), <https://www.amnesty.org/en/latest/news/2016/04/saudi-arabia-issa-al-hamid-sentenced-to-nine-years/>.

<sup>16</sup> AMNESTY INTERNATIONAL, *supra* note 16 (discussing the sentencing of Issa al-Hamid, a founding member of the Saudi Civil and Political Rights Association (APRA) in April 2016). It is important to note that the SCC had been targeting the members



In addition, there is concern regarding the housing of both the investigating and prosecuting authorities within the Ministry of the Interior.<sup>17</sup> In 2003, the United Nations Special Rapporteur on the independence of lawyers and judges noted that “[T]he vesting of responsibility for law enforcement and the prosecution of crime in the same ministry undermines the prosecution’s ability to perform its role impartially and it will not be seen to be doing so, even with its independent status.”<sup>18</sup>

## HEIGHTENING SECTARIAN TENSIONS AND FEULING EXTREMISM

The threat of prosecution as a “terrorist” in the SCC has been used to punish and deter any opposition to Saudi government policy,

including calls for legal reform and greater recognition of the rights of Saudi Arabia’s significant Shia minority. For example, a Sunni advocate was convicted by the SCC for having shown public solidarity with his

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of the APRA for several years, including prior to the passage of the anti-terror law. For example, Muhammad al-Bajadi, a founding member of a human rights organization, the Saudi Association for Civil and Political Rights, was convicted and sentenced to four years in prison by the SCC in 2012 on charges of establishing an “illegal” human rights organization and obtaining banned publications. See AMERICANS FOR DEMOCRACY AND HUMAN RIGHTS IN BAHRAIN, *THE SPECIALIZED CRIMINAL COURT: HOW THE SAUDI GOVERNMENT TARGETS HUMAN RIGHTS DEFENDERS* (2015), [http://www.adhrb.org/wp-content/uploads/2015/02/2015.23.01\\_SCC-Backgrounder\\_Final.pdf](http://www.adhrb.org/wp-content/uploads/2015/02/2015.23.01_SCC-Backgrounder_Final.pdf).

<sup>17</sup> See, e.g., *Mapping the Saudi State*, Chapter 3: Ministry of the Interior (Part 2), AMERICANS UNITED FOR DEMOCRACY AND HUMAN RIGHTS IN BAHRAIN (June 2, 2015), <http://www.adhrb.org/2015/06/mapping-the-saudi-state-chapter-3-the-moi-part-2/>.

<sup>18</sup> Dato’ Param Cumaraswamy (Special Rapporteur on the independence of lawyers and judges), *Rep.*

## By foreclosing peaceful avenues for the redress of legitimate grievances and failing to investigate allegations of torture, the SCC is contributing to the threat of violent extremism in Saudi Arabia.

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Shia countrymen after he tweeted his intent to attend a Shia mosque.<sup>19</sup> While Sunni and Shia activists have both been prosecuted, there have been a series of high profile trials, many resulting in death sentences, of Shia advocates since 2014. According to at least one observer, this may be an attempt to appease Saudi Sunnis who are angry over the executions of Sunnis with links to extremist Sunni groups, such as al-Qaeda, as well as a

tactic to deter further protests and calls for reform from the largely disenfranchised Shia minority.<sup>20</sup>

*on the Mission to the Kingdom of Saudi Arabia (20-27 October 2002)*, ¶ 90, U.N. Doc. No. E/CN.4/2003/65/Add.3, (Jan. 14, 2003).

<sup>19</sup> The SCC sentenced Mikhlif bin Daham al-Shammari to two years in prison and 200 lashes after he was found guilty on two key charges: “stirring public opinion by sitting with the Shi’a” and “violating instructions by the rulers by holding a private gathering and tweeting”. The first charge stemmed from his visit in early 2013 to the father of a Shi’a Muslim protester killed in the Eastern Province, and a tweet where he mentioned his intention to pray in a Shi’a mosque. See *Urgent Action: Human Rights Defender Sentenced Again*, AMNESTY INTERNATIONAL (Nov. 17, 2014), <https://www.amnesty.org/en/documents/mde23/031/2014/en/>.

<sup>20</sup> See Boghardt, *supra* note 12 (“A primary reason for the inclusion of the sheikh and three other Saudi Shiites among the group of forty-seven may have been to ‘balance’ the execution of the forty-three al-Qaeda-linked Sunnis. ... The warning

Classically short-sighted, these efforts have only increased sectarian tensions within Saudi Arabia and the region as a whole.<sup>21</sup> In fact, recent polling has shown that “corrupt, repressive and unrepresentative governments” are viewed as a top driver of religious extremism across the Middle East and North Africa region, with participants in Saudi Arabia citing it as the single most important driver of religious extremism.<sup>22</sup> The same poll showed that 83% of respondents in Saudi Arabia felt that the most important effort needed to defeat violent extremism is “changing the political and social realities that cause young people to be attracted to extremist ideas.”<sup>23</sup> It is relevant to note that across the region, the United States is viewed as playing a negative role in combating sectarian violence by large majorities of those polled.<sup>24</sup>

A growing body of empirical research has demonstrated that “harsh and brutal rule” as well as restrictions on the exercise of “civil and political rights” are leading causes of violent extremism.<sup>25</sup> By foreclosing peaceful avenues for the redress of legitimate grievances and failing

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aspect of the four Shiite executions vis-a-vis Saudi Shiite (and other) activism would have been an important secondary message.”).

<sup>21</sup> See, e.g. David A. Graham, *Sheikh Nimr al-Nimr and the Forgotten Shiites of Saudi Arabia*, THE ATLANTIC (Jan. 5, 2016), <http://www.theatlantic.com/international/archive/2016/01/nimr-al-nimr-saudi-arabia-shiites/422670/>.

<sup>22</sup> *Middle East 2015, Current and Future Challenges* ZOGBY RESEARCH SERVICES, 32, (2015) (showing polling results where majorities of those interviewed in every Middle East country cited corrupt governments as a top three driver of violent extremism, with participants in Saudi Arabia and the United Arab Emirates citing it as the single most important driver.)

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 34.

to investigate allegations of torture, the SCC is contributing to the threat of violent extremism in Saudi Arabia. Below are specific examples of how the current counter-terrorism investigations and cases before the SCC appear to be fundamentally flawed.

## SILENCING PEACEFUL REFORMERS

In 2014, attorney Waleed abu al-Khair was given a 15 year sentence for such activities as denouncing inhumane detention conditions and maintaining a Facebook page for his human rights work.<sup>26</sup> It is indicative of the flaws in the anti-terror decree that he was the first person convicted and sentenced under the decree. It sent a very clear message to human rights lawyers and advocates of reform. Indeed, lawyers interviewed by the Center immediately after Abu al-Khair’s sentence was pronounced indicated that the SCC’s jurisdiction over the case and application of the anti-terror decree, carrying with it a potential death penalty, had a major chilling effect on the willingness of lawyers to represent criminal defendants or engage in any public dialogue on human rights or

<sup>25</sup> *Guide to Drivers of Violent Extremism*, USAID (2009), v; see also Alan B. Krueger, *What Makes a Terrorist*, CENTER FOR STRATEGIC INTERNATIONAL STUDIES (2007), 48; *Turning Point: A New Comprehensive Strategy for Combatting Violent Extremism*, CENTER FOR STRATEGIC INTERNATIONAL STUDIES (2016) (stating that “[a]n empowered civil society is one of the best defenses against violent extremism, serving as a powerful bulwark against the pernicious influences and narratives of extremist groups.”).

<sup>26</sup> *Saudi Activist Waleed abu al-Khair Sentenced to Prison*, BBC NEWS (July 7, 2014), <http://www.bbc.com/news/world-middle-east-28200195> (“In addition to the charge of ‘undermining the regime’, Mr. abu al-Khair was found guilty of ‘inflaming public opinion’, ‘insulting the judiciary’, ‘harming public order’, founding an unlicensed organisation, and violating the anti-cybercrime law.”).

legal reform, a critical and peaceful outlet for dissent. This chilling effect was compounded by the SCC's conviction of three additional human rights lawyers, tried together just after Abu al-Khair, for tweeting concerns regarding the fairness of trials for clients.<sup>27</sup>

In an apparent escalation of threats against peaceful activists, Mohammed al-Otaibi, was arrested in 2017 for tweeting a demand for internet reform and calling for a constitutional monarchy. He has since been charged under Saudi's Anti-Cyber Crimes law and sentenced to 14 years imprisonment followed by a 14 year travel ban and an indefinite ban on publishing on the internet. Since December 2018, well over a dozen journalists, bloggers and internet activists have been arrested and detained, many for articles, reports or op-eds they had published years before their arrests.<sup>28</sup> The timing of the arrests, years after the publication of the articles, suggests an intensification in efforts to stifle dissent. The execution of 37 activists in April, 2019 – including the execution of one individual who was a minor at the time

of the alleged crime – underscores the severity of the ongoing crackdown.

## MINORITY PROTESTORS: SENTENCED TO DEATH

Beginning in 2011, inspired in part by the calls for reform sweeping through the Arab world at that time and triggered by ongoing repression of the minority Shia community,<sup>29</sup> protests broke out in the Eastern Province of Saudi Arabia, where the majority of Saudi Arabia's Shia population reside.<sup>30</sup> As a result, there was a severe crackdown and militarization of the region.<sup>31</sup> Protests have continued sporadically since that time and hundreds have been arrested and detained. Many of these cases are now making their way through the SCC. There are credible reports that these detainees, including minors, were tortured in detention and forced to sign prepared confessions.<sup>32</sup>

A review of the judgments by the Center in the cases of seven such defendants, including four who were minors at the time

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<sup>27</sup> See *The Specialized Criminal Court: How the Saudi Government Targets Human Rights Defenders* AMERICANS UNITED FOR DEMOCRACY AND HUMAN RIGHTS IN BAHRAIN (Jan. 1, 2015), [http://www.adhrb.org/wp-content/uploads/2015/02/2015.23.01\\_SCC-Backgrounder\\_Final.pdf](http://www.adhrb.org/wp-content/uploads/2015/02/2015.23.01_SCC-Backgrounder_Final.pdf) (“The SCC also sentenced three lawyers, Abdulrahman al-Subaihi, Bandar al-Nogithan, and Abdulrahman al-Rumaih, to between five and eight years in prison in October 2014 after they publicly criticized the judiciary on Twitter. The lawyers had previously been fined 1 million Saudi riyals (\$266,666) for the same offense. Under the new terrorism law, they were charged with “disobeying the ruler,” “violating judicial integrity”, “contempt of courts and judicial independence” and, under article 6 of the 2007 Anti-Cyber Crime Law, that could endanger public order, religious values or public morals.”)

<sup>28</sup> *Saudi Arabia Detains 3 more bloggers*, CPJ (April 18, 2019), <https://cpj.org/2019/04/saudi-arabia-detains-3-more-bloggers.php>. (“[Ali] Al-Saffar and

[Redha] al-Boori have not published in recent years, and [Naif' al-Hindas's blog has been dormant since 2018.”)

<sup>29</sup> Kayleigh Lewis, *Ali Mohammed al-Nimr: Saudi Arabia on verge of beheading protester 'tortured as a child into confessing'*, THE INDEPENDENT (Feb. 8, 2016),

<http://www.independent.co.uk/news/world/ali-mohammed-al-nimr-protester-who-was-tortured-into-making-a-confession-will-be-executed-within-a6860696.html>.

<sup>30</sup> Safa Alahmad, *Reporting Saudi Arabia's Hidden Uprising*, BBC NEWS (May 30, 2014),

<http://www.bbc.com/news/world-middle-east-27619309>.

<sup>31</sup> See, e.g., Nassra al-Ahmed, *My Heart is Exhausted: A Mother's Story of Death Row in Saudi Arabia*, AMNESTY INTERNATIONAL (Feb. 2016), <https://www.amnesty.org/en/latest/campaigns/2016/02/my-heart-is-exhausted-a-mothers-story-of-death-row-in-saudi-arabia/>.

<sup>32</sup> *Id.*

of their alleged crimes, reveals a pattern of fair trial and other human rights violations. In each of the cases reviewed, the SCC has relied almost exclusively on confessions to convict defendants for lawful conduct related to the expression of political views, such as helping to coordinate protests through social media and providing instructions on how to provide first aid to protesters, and violent crimes, such as destruction of property and the use of Molotov cocktails.

In each case, defendants were denied access to counsel during all pretrial proceedings; confessions obtained during this time were written by investigators and signed by detainees prior to being brought before a judge; pretrial detention lasted several months prior to any charges being brought; and allegations of torture were ignored by the SCC.<sup>33</sup> In addition, the SCC imposed the death penalty – and ultimately executed – several minors in violation of international law.

Critically, the SCC convicted every defendant on the basis of their “confessions” alone, absent any additional evidence of the alleged crimes and although such evidence should have been readily available based upon the prosecution’s assertions. For example, an

examination of a defendant’s phone or social media accounts, eye witness testimony, or physical evidence of the alleged destruction caused were not submitted to the court although such evidence would have been ostensibly easy to supply.<sup>34</sup>

One of the minors sentenced to death in this manner is Ali al-Nimr, the nephew of Sheikh Nimr al-Nimr, a well-known Shia cleric who was executed in January 2016 in a mass execution of “terrorists.” Nimr al-Nimr was a vocal Shia leader in the Eastern Province of Saudi Arabia who openly criticized the al-Saud ruling family and called for greater Shia rights and the peaceful transition of power to the people.<sup>35</sup> His execution was met by widespread protests in both Saudi Arabia and Iran and precipitated a crisis in sectarian tension throughout the region.<sup>36</sup> Ali al-Nimr and others who were minors at the time of the alleged misconduct have been sentenced to death. Several remain on death row at this time.

Shia cleric, Sheikh Mohammed Hassan al-Habib, a prominent supporter of Nimr al-Nimr was among those detained and held incommunicado in the January 2016 crackdown on religious dissidents arrested allegedly under the guise of terrorism

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<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> Observers agree that Sheikh Nimr al-Nimr had called for demonstrations but had carefully avoided calling for violence. See, e.g., Merrit Kennedy, *Who was the Shiite Sheikh Executed by Saudi Arabia?*, NPR (Jan. 4, 2016), <http://www.npr.org/sections/thetwo-way/2016/01/04/461912757/who-was-the-shiite-sheikh-executed-by-saudi-arabia>; see also *Saudi Arabia supreme court upholds death sentence on Shia cleric*, THE GUARDIAN, (Oct. 25, 2015) available at <https://www.theguardian.com/world/2015/oct/25/saudi-arabia-supreme-court-upholds-death-sentence-on-shia-cleric>.

<sup>36</sup> Merrit Kennedy, *supra* note 35.

threats. Mohammed al-Habib, an advocate for social justice reforms, used his position as imam to one of the largest mosques in the Eastern Province to frequently call for an end to anti-Shia sectarian discrimination.<sup>37</sup> Habib was released in January and rearrested later that year for allegedly violating the terms of his previous conviction in addition to inciting a rebellion and plotting against the government. Habib, whose health continues to deteriorate due to age and his detention, has remained in solitary confinement since 2016, in violation of international legal standards on the right to not be subjected to cruel and unusual punishments.<sup>38</sup> If convicted, he will be sentenced to death. The judgments reviewed highlight the inappropriately enmeshed relationship of the SCC with the Ministry of the Interior. A properly functioning and independent court would have ordered the investigation of any allegations of torture and excluded any torture-derived evidence.<sup>39</sup> No such investigations were ordered. Instead, the SCC failed to address any of the concerns

raised by defense counsel and relied exclusively on the confessions in convicting and sentencing young men to death.<sup>40</sup>

Politically-motivated prosecutions of those advocating on behalf of the rights of religious minorities have continued as part of the recent crackdown.<sup>41</sup> These flawed proceedings have only added further legitimacy to complaints by the Shia community of their mistreatment within Saudi Arabia.

## ARREST OF WOMEN'S RIGHTS ACTIVISTS

Since 2013, sporadic arrests of women's rights activists, including Israa al-Ghomgham and Samar al-Badawi, the recipient of the United States' International Women of Courage Award, have cast doubt on the Kingdom's reported attempts at domestic reform.<sup>42</sup> In 2018, Saudi Arabia's superficial embrace of progressive reforms was no

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<sup>37</sup> See, *Saudi Arabia Arbitrary Detains Sheikh Al Habib Who is Human Rights defender and Sends him to a Court Specified for Terrorism Cases*, ESOHR, (Nov. 30, 2016), available at <https://www.esohr.org/en/?p=471>

<sup>38</sup> Article 7 of the International Covenant on Civil and Political Rights states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. ..." UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at:

<https://www.refworld.org/docid/3ae6b3aa0.html>  
See also, UN General Assembly Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85. See also, Article 16(1) of the Convention Against Torture

<sup>39</sup> Article 15 of the Convention Against Torture states: "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a

person accused of torture as evidence that the statement was made."

<sup>40</sup> *Id.*

<sup>41</sup> See e.g. European Saudi Organization for Human Rights, *Saudi Arabia sentences human rights defender Sheikh Al-Habib to seven years imprisonment for demanding human rights and criticizing official hate speech*, (July 11, 2018), <https://www.esohr.org/en/?p=1890>; see also U.S. Commission on International Religious Freedom, *Saudi Arabia: Tier 1 – USCIRF Recommended Countries of Particular Concern* (2017).

<sup>42</sup> The same week Saudi Arabia's General Entertainment Authority announced 2019 as the 'Year of Entertainment' in the Kingdom, reports of torture and sexual abuse of female activists held in detention centers surfaced. See SAUDI ARABIA: INDEPENDENT INVESTIGATION URGENTLY NEEDED AMID MORE REPORTS OF TORTURE AND SEXUAL ABUSE OF ACTIVISTS, AMNESTY (Jan. 24, 2019), <https://www.amnestyusa.org/press-releases/saudi-arabia-independent-investigation-urgently-needed-amid-more-reports-of-torture-and-sexual-abuse-of-activists/>



longer able to distract from the Kingdom's escalating persecution of peaceful activists. Weeks before a driving ban on women was to be lifted in June 2018, over a dozen women's rights activists, who had been involved in such activities as campaigning for women's right to drive and protesting male guardianship laws, were arrested and detained without initial notice of their charges.<sup>43</sup> After the widespread crackdown on women's rights activists, international actors took note of an alarming escalation in the persecution of peaceful activism of female activists.<sup>44</sup> The magnitude of the crackdown and severity of the charges<sup>45</sup> represented an assault on women activists without precedent in Saudi courts.<sup>46</sup>

A review of public records indicates that each of the defendant's cases were impacted by a series of fair trial violations and infringement of due process rights, including denial of counsel, failure to inform the accused of charges brought against them in a timely manner, and neglecting to investigate torture allegations.<sup>47</sup> Based on available information, the SCC has failed to investigate or remedy any of the aforementioned allegations of physical, mental and sexual abuse, in direct contravention of the Kingdom's duties under international law, including the Convention on the Elimination of Discrimination against Women (CEDAW) to which Saudi Arabia ratified in 2000.

One of the women activists whose detention predates the 2018 crackdown is

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<sup>43</sup> See, *Saudi Arabia: Crackdown on Saudi women human rights defenders sets off alarms*, GULF CENTER FOR HUMAN RIGHTS (June 6, 2018), <https://www.gc4hr.org/news/view/1880> (Arrested individuals included "advocates and supporters of the #Oct26driving, #Right2Drive and #IAmMyOwnGuardian campaigns that dared to speak openly about human rights violations in Saudi Arabia and have criticised state discrimination against women in Saudi Arabia.") Activists include, among others, Loujain al-Hathloul, Eman al-Nafjan, Aziza al-Yousef, Nouf Abdelaziz, Mayaa al-Zahrani, Nassima al-Saada, Hatoun al-Fassi, Shadan al-Onezi, Amal al-Harbi, and Mohammed al-Rabea)

<sup>44</sup>See Durbin, *Senators Call On Saudi Arabia To Release Political Prisoners*, DICK DURBIN (March 19, 2019), <https://www.durbin.senate.gov/imo/media/doc/March19%20Letter%20to%20Saudi%20King.pdf> See also, STATEMENT UNDER AGENDA ITEM 2: INTERACTIVE DIALOGUE WITH THE HIGH COMMISSIONER 40TH SESSION OF THE UN HUMAN RIGHTS COUNCIL DELIVERED BY H.E. HARALD ASPELUND (ICELAND), (March 7, 2019), <https://www.government.is/library/01-Ministries/Ministry-for-Foreign-Affairs/Myndir/Joint%20Statement%20on%20Saudi%20Arabia%20-%207%20March%202019.pdf>

<sup>45</sup> Mansour Al-Shihri, *3 Major Crimes, Pursuing the 9 Defendants*, OKAZ (June 5, 2018), <https://www.okaz.com.sa/article/1646456/9> ("According to [unpublicized records], the accused violated paragraphs 5-7, 8,11 of the Royal Order (A/44 dated 3/4/1435) [which set the penalty of the offense to] not less than 3 years and not more than 20 years" for offenses including supporting and communicating with terrorist groups.

<sup>46</sup> See *Saudi Arabia: Internet activist Naimah Al-Matrod sentenced to six years in prison*, GULF CENTER FOR HUMAN RIGHTS (Nov. 15, 2017), <https://www.gc4hr.org/news/view/1731> (Pro-democracy activist Naimah Almatrod was the first woman to be convicted by the SCC in November 2017 on charges related to organizing and attending protests. She received a six year prison sentence which is to be succeeded by a six year travel ban once released.)

<sup>47</sup> See, *Saudi human rights commission interviews detainees, including women's rights activists, over alleged torture, report says*, BUSINESS INSIDER (Dec. 19, 2018), <https://www.businessinsider.com/saudi-human-rights-commission-interviews-detainees-over-alleged-torture-2018-12> ("a close adviser to Crown Prince Mohammed bin Salman (MBS), had overseen 'some aspects of the torture', threatening one of the activists with rape and death.").

Israa al Ghomgham, well known for her advocacy related to countering discrimination against Saudi Arabia's Shiite Muslim minority. Al Ghomgham, who has been arrested several times for her advocacy, has remained in detention since 2015 on charges which include organizing and participating in protests.<sup>48</sup> An analysis of the indictment against al Ghomgham, the first woman to be charged with the death penalty in the SCC, reveals an unsettling criminalization of free speech and association, reliance on uncorroborated confessions as admissions of guilt<sup>49</sup> and the pursuit of the death penalty for non-serious crimes.<sup>50</sup>

As of the time of publication, three of the eleven activists who had campaigned against the driving ban have been granted temporary release and the trial of at least one of the defendants was transferred out of the SCC and to a regular criminal court where there are more robust procedural protections.<sup>51</sup> No reason was provided for either decision and the fate and whereabouts of the remaining activists remain unknown. Prosecutors have likewise indicated they will not pursue the death penalty against al Ghomgham.<sup>52</sup>

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<sup>48</sup> Oliver Windridge, *MEMORANDUM IN ANTICIPATION OF UPCOMING HEARING IN THE CASE OF AL-GHAMGHAM AND OTHERS*, ESOHR (Jan. 10, 2019), <http://www.esohr.org/en/wp-content/uploads/2019/01/Legal-Analysis-of-Charges-Against-Israa-al-Ghomgham-1.pdf>

<sup>49</sup> *Id.* (“Concerns have been raised on a number of previous occasions that those facing trial before the SCC have been subjected to torture to extract similar confessions.”); See also, *Saudi Arabia to behead disabled man arrested after protests*, REPRIEVE (Nov. 4, 2016), <https://reprieve.org.uk/press/saudi-arabia-behead-disabled-man-arrested-protests/> (“Research last year by human rights organization Reprieve found that, of those identified as facing execution in Saudi Arabia [not limited to the SCC], some 72% were sentenced to death for non-violent

While these latest developments are positive, such ameliorative efforts are insufficient. A properly functioning court intended to try terror suspects should not continue to detain women’s and minority rights activists whose alleged criminal actions involve peaceful advocacy for human rights. Instead, it should, at a minimum, immediately order their release and investigate credible allegations of fair trial violations.

## DISPARATE TREATMENT AND SECTARIAN SENTENCING

A review of press reports of 19 cases before the court concerning allegations of violent extremism, including allegations that the defendants traveled to fight for extremist groups in Syria, found that the vast majority received sentences 10 years or less.<sup>53</sup> In contrast, the human rights attorney, Waleed abu al-Khair, was sentenced to 15 years imprisonment for non-violent conduct. Shia youth were sentenced to death based on forced confessions. Women’s rights activists may be sentenced to decades in prison for peaceful protests. This disparate treatment calls into question the impartiality of the court’s sentencing practices.

alleged crimes, while torture and forced ‘confessions’ were common.”)

<sup>50</sup> Windridge, *supra* note 46, (“[A] ban on the imposition of the death penalty for crimes other than the most serious is recognised as an international standard” and because “the [a]ccused are charged with offences relating solely to the organisation of rallies or protests... the offences alleged in the Indictment fall well short of the “most serious” standard.”)

<sup>51</sup> Dalia Mortada, *Saudi Women’s Rights Activists Appear In Riyadh Court*, NPR, (Mar. 13, 2019), <https://www.npr.org/2019/03/13/702943562/saudi-womens-rights-activists-appear-in-riyadh-court>

<sup>52</sup> *Ibid.*

<sup>53</sup> Boghardt, *supra* note 1, at 4.



## PAST FAILURES CALL INTO QUESTION COMMITMENT TO REFORM

Many of the fair trial violations documented in the SCC had previously been raised with Saudi authorities, who responded by committing to implementing safeguards to prevent such abuses. For example, in 2002, the U.N. Committee Against Torture (CAT) noted that Saudi authorities had committed to revising the Code of Criminal Procedure to ensure access to counsel at all stages of the proceedings, including investigation.<sup>54</sup> Nonetheless, the 2014 anti-terror decree allows for incommunicado detention, including denying access to counsel, for up to 90 days.<sup>55</sup> In the judgments reviewed by the Center, all of the Shia youth protestors claimed that they were held incommunicado without access to counsel. A review of existing literature revealed similar treatment of recently detained women's rights activists.

In 2016, the CAT asked whether the counterterrorism decree included safeguards against torture mandated by the Convention Against Torture, including the prohibition on incommunicado detention. Saudi Arabia replied falsely that the terrorism law "does not affect the fundamental safeguards contained in the Code of Criminal Procedure."<sup>56</sup> It further stated that the SCC upholds the right to

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<sup>54</sup> *Conclusions and recommendations of the Comm. Against Torture, Saudi Arabia*, U.N. Comm. Against Torture, U.N. Doc. No. CAT/C/CR/28/5 (June 12, 2002) ("The Committee welcomes, in particular, that the Code of Criminal Procedure guarantees every accused person the right to avail himself or herself of the services of a lawyer at all stages of an investigation and trial.").

<sup>55</sup> Newton, *supra* note 9 at ¶ 16.

<sup>56</sup> *Replies of the Kingdom of Saudi Arabia to the list of issues (CAT/C/SAU/Q2/Add.1) in*

access to counsel but refused to answer questions specifically about alleged denials of the right to counsel in two specific cases, including the case of Waleed abu al-Khair.<sup>57</sup>

Saudi officials claim that relevant authorities have been trained on the Convention Against Torture and the Istanbul Protocol, which establishes procedures for the investigation of allegations of torture.<sup>58</sup> They also report that the General Department of Forensic Medicine Centers has procedures requiring medical examinations where torture is suspected.<sup>59</sup> Notwithstanding these commitments – and purported capacity to implement Saudi Arabia's treaty obligations – no such medical examinations were conducted in any of the cases reviewed, despite credible allegations of torture in those cases.

Saudi Arabia reported that the Bureau of Investigation and Public Prosecution had investigated 519 cases of alleged torture since 2009.<sup>60</sup> It cited another 2,570 cases of reported torture.<sup>61</sup> It is unclear whether those were investigated.<sup>62</sup> Saudi authorities refused to answer direct inquiries by the Committee Against Torture concerning the number of investigations resulting in prosecutions.<sup>63</sup>

In January 2015, Saudi authorities previewed to an ABA Delegation an extensive closed-circuit television system

*consideration of its second periodic report (CAT/C/SAU/2)*, ¶ 20. U.N. Doc.

CAT/C/SAU/Q/2/Add.2 (Feb. 12, 2016).

<sup>57</sup> *Id.* at ¶¶ 8 – 16.

<sup>58</sup> *Id.* at ¶¶ 50 & 51.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* at ¶ 70.

<sup>61</sup> *Id.*

<sup>62</sup> *Replies of the Kingdom of Saudi Arabia, supra* note 60.

<sup>63</sup> *Id.*

in courtrooms.<sup>64</sup> Yet, in 2016, Saudi authorities reported they were in the first stage of “installing closed circuit television cameras to record in sound and pictures what transpires in investigation offices during interrogations.”<sup>65</sup> It is unclear why Saudi authorities prioritized the installation of closed circuit televisions in courtrooms rather than in interrogation sites, especially as the Committee Against Torture first expressed concerns about lack of safeguards against torture in pre-trial detention in 2002 and Saudi authorities had committed to implementing safeguards in pre-trial detention at that time.

This pattern of committing to implementing safeguards and then implementing reforms in a manner that leaves detainees without meaningful safeguards calls into question the commitment of Saudi authorities to reform. The failings of the SCC therefore appear to result not from lack of capacity but lack of political will.

## **FAILURE TO COLLECT EVIDENCE INDICATES INADEQUATE INVESTIGATIONS**

In addition to the concerns raised by the heightening of sectarian tensions and gross violations of human rights outlined above, the failures of the SCC in these cases raise larger concerns about the quality of Saudi counterterror investigations and prosecutions. If Saudi Arabia is truly committed to identifying and disabling networks of violent extremists, then it must properly adjudicate terrorism

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<sup>64</sup>*Minister of Justice Receives American Bar Association*, AL-RIYADH (Jan. 15, 2015), <http://www.alriyadh.com/1013356>.

<sup>65</sup> U.N. Doc CAT/C/SAU/Q/2/Add.2, *supra* note 60 at ¶ 14.

<sup>66</sup> Such public prosecutions have been successfully conducted in the United States while

cases rather than simply rounding up large numbers of individuals or equating dissent with extremism.

While Saudi authorities are widely credited with collecting and sharing important intelligence on terrorist networks, it remains unclear whether prosecutors are presenting individualized evidence of guilt in cases before the SCC. It is insufficient to simply collect intelligence. Officials must also follow investigative leads and build a “case”, as required for the purpose of criminal prosecution. An independent SCC committed to due process would not convict individuals without meaningful evidence. It would require prosecutors to prove their case in court and thereby build public support for the government’s counterterrorism efforts.<sup>66</sup>

Credible investigations of such activity, and public accounting of the evidence in criminal proceedings, is necessary to ensure confidence that Saudi authorities are fully investigating allegations of terrorism.

## **FAILURE TO INVESTIGATE TERROR FINANCING**

Concerns about the quality of Saudi counterterror investigations and prosecutions were recently confirmed by the Financial Action Task Force’s (FATF), a multilateral body charged with monitoring the efforts of member states to counter terrorist financing and implement anti-money laundering (TF/AML) measures. In 2018, a regional affiliate of FATF

protecting sensitive information concerning intelligence sources and methods through procedures established by the Classified Information Procedures Act. See Title 18, U.S.C. App. III.

conducted an evaluation of Saudi Arabia's implementation of its TF/AML regime to determine whether it is sufficiently effective to warrant Saudi Arabia's admission into the Task Force. Membership in FATF would expand Saudi Arabia's access to global financial markets.

The evaluation concluded that Saudi Arabia does not currently have strong enough anti-money laundering provisions in place to qualify for membership. It also concluded that, "[w]ith the exception of [foreign terrorist fighters] cases, Saudi Arabia has not yet tackled the risk of financing of terrorism by third-parties and facilitators, and the financing by individuals for terrorist organisations outside the country."<sup>67</sup> FATF noted that the Kingdom may be "missing the opportunity to use criminal justice tools and powers to uncover and disrupt further elements of terrorist networks, either in Saudi Arabia or overseas."<sup>68</sup>

The finding is consistent with public reporting on SCC cases concerning violent extremists. According to Saudi authorities, by January 2016, the SCC had convicted 6,122 defendants in 2,225 cases during the first eight years of the court's existence.<sup>69</sup> That amounts to over 700 individuals processed per year. Questions began to emerge about the quality of these proceedings as early as 2014, when 145 individuals arrested or involved in terrorist incidents were found to have been previously arrested on terrorism related

charges.<sup>70</sup> The high rate of convictions in a short amount of time and the significant number of individuals returning to acts of terror raise concerns about the quality of the investigations and prosecutions in the SCC.

Former Senator Bob Graham, co-chair of the joint congressional investigation of the 9/11 terror attacks, noted the failure of Saudi Arabia to investigate the source of terror financing "suggest[ing] that the Kingdom is targeting foot soldiers, not the financiers."<sup>71</sup> This indicates a disturbing disregard for uncovering the true roots of terror threats.

The FATF also found that the lack of focus within the SCC was due in part to the vagueness of the counterterror decrees. It concluded that the counterterror decrees are "overly broad" and "it is possible that the authorities pursue cases of financing of acts that would not be included in universal counter-terrorism instruments, and as such divert attention and resources to specious cases from more important cases of TF."<sup>72</sup> FATF found that "virtually all convictions for TF included a confession or a denunciation by an implicated witness" and recommended that the Kingdom "should reduce reliance on confessions to secure convictions[.]"<sup>73</sup> Finally, it concluded that the counterterror decree "has allowances for authorities to keep the accused away from contacts with any external person, including a lawyer, for up to 90 days at the decision of the investigative authority in the

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<sup>67</sup> *Anti-money laundering and counter-terrorist financing measures, Kingdom of Saudi Arabia: Mutual Evaluation Report*, FATF-MENA (2018), 85.

<sup>68</sup> *Id.* at 11.

<sup>69</sup> Boghardt, *supra* note 1 at 1 (citing ROYAL EMBASSY OF SAUDI ARABIA, FACT SHEET: EXECUTIONS AND NIMR AL-NIMR, (January 2016).

<sup>70</sup> *Id.* at 5 (describing four different incidents in which 50% or more of those arrested in connection to terrorist attacks had previously been detained).

<sup>71</sup> Bob Graham & Fionnuala Ní Aoláin, *U.S. Should Condition Saudi Membership in Elite Financial Club on Progress Prosecuting Terrorists and Observing the Rule of Law*, JUST SECURITY (Oct. 13, 2018), <https://www.justsecurity.org/61035/u-s-condition-saudi-membership-elite-financial-club-progress-prosecuting-terrorists-observing-rule-law/>

<sup>72</sup> *Id.* at 82.

<sup>73</sup> *Id.* at 86.

interest of the investigation, and even longer periods at the decision of the Special Court.”<sup>74</sup>

Saudi Arabia must now prepare an action plan to address the deficiencies in its AML regime. It is not required to address the deficiencies in the TF regime because, despite all the concerns noted by FATF, the Kingdom was found to be compliant with relevant standards. The full membership of FATF will determine whether the action plan is sufficient to warrant Saudi membership in the Task Force.

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<sup>74</sup> *Id.* at 90 – 91.

# CONCLUSIONS & RECOMMENDATIONS

## CONCLUSIONS

It is vital that Saudi counterterrorism partners urge Saudi authorities to re-focus the work of the court and counterterrorism investigators on the adjudication of terrorism cases on the basis of a public accounting of individualized evidence of guilt. This will help prevent the diversion of resources to inappropriate cases and ensure greater public support for counterterrorism prosecutions.

In particular, Saudi Arabia's counterterrorism partners, including the United States, should take a strong stand in opposition to the misuse of the anti-terror law and court. While the U.S. State Department has criticized the work of the SCC and expressed "concerns" about the execution of the Shia cleric, Nimr al-Nimr,<sup>75</sup> more could be done to ensure that this message is delivered consistently and by high-level counterterrorism experts, not just those with human rights responsibilities. At a minimum, States supporting Saudi counterterrorism efforts must ensure that they are not associated

th these abuses.<sup>76</sup> For example, in light of the fact that the United States has praised Saudi Arabia's use of the Terrorist Financing Law, it is essential that it distance itself from the misuse of the law against activists by calling for investigations into their torture and their release.<sup>77</sup>

Given the long history of misapplication of Saudi counterterror laws to legitimate activity, any change in the law will also require the release of those wrongfully imprisoned. International law requires that "[i]f, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby."<sup>78</sup> In this case, none of the human rights activists who have been convicted would have been sentenced under a properly drafted counterterrorism law. It therefore follows that, once the law is revised to be consistent with international standards, Saudi Arabia will need to release these individuals to ensure compliance with its treaty obligation to provide the benefit of the lighter penalty.

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<sup>75</sup> Press Statement, Saudi Executions, US DEP'T OF STATE, January 2, 2016, *available at* <http://www.state.gov/r/pa/prs/ps/2016/01/250934.htm>

<sup>76</sup> 9/11 COMMISSION, *supra* note 56, at 18 ("Where Muslim governments, even those who are friends, do not offer opportunity, respect the rule of law, or tolerate differences, then the United States needs to stand for a better future.")

<sup>77</sup> See e.g., US DEP'T OF STATE, COUNTRY REPORTS ON TERRORISM 2014, 208 (2015), *available at* <http://www.state.gov/documents/organization/239631.pdf>.

<sup>78</sup> International Covenant on Civil and Political Rights, Art. 15; see also Arab Charter on Human Rights, Art. 15 ("In all circumstances, the law most favorable to the defendant shall be applied.")

## RECOMMENDATIONS

A review of the Specialized Criminal Court's judgments and the anti-terror decrees has shown a court that is a flagrant tool for repression. It is exacerbating sectarian tension where it could be serving an ameliorating role. As one analyst noted, "[c]onvictions for peaceful expression of political, social, and religious beliefs will continue to represent a black mark for the [court] and the kingdom in the international

community until different policies are pursued."<sup>79</sup>

An independent and transparent court could show Saudi Arabia's Shia and reform-minded citizenry, and international allies, that the State is committed to actually addressing violent extremism and promoting the rule of law in the conduct of counter-terrorism measures. The following recommendations would help address these concerns:

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- 1 Restructure the Specialized Criminal Court to ensure its independence from the Ministry of the Interior;
  - 2 Remove prosecutorial functions from the Ministry of Interior;
  - 3 Revise the anti-terror decrees to ensure compliance with procedural safeguards, including the prohibition on incommunicado detention;
  - 4 Revise the definition of terrorism to be consistent with the model definition recommended by the U.N. Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism;
  - 5 Ensure video recordings of all interrogations and disclosure of such videos to defense counsel;
  - 6 Investigate all allegations of torture in a manner compliant with the Istanbul Protocol; Review all death sentences and cases in which allegations of torture were not investigated to determine whether the defendants should be released or re-tried;
  - 7 Review all death sentences and cases in which allegations of torture were not investigated to determine whether the defendants should be released or re-tried;
  - 8 Release all those convicted for merely participating in protests, criticizing the government or forming an association; and
  - 9 Commute the death sentences of all individuals who were youths at the time of the alleged misconduct.
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<sup>79</sup> Boghardt, *supra* note 2, at 8.



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WASHINGTON, DC**

**APRIL 2019**