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Saudi Arabia: Counter-terror law continues to provide legal cover to silence dissent a year on

On its first anniversary, the Law for the Crimes of Terrorism and its Financing has provided a legal cover for the Saudi Arabian authorities to abuse the country's justice system and silence peaceful dissent, said Amnesty International.

The law, which took effect on 1 February 2014 after the late King Abdullah bin Abdulaziz Al Saud ratified it, was followed by an executive decree by the Ministry of Interior on 7 March 2014 that provided further details to the law and its implementation.

Both the law and the executive decree use broad and vague definitions of "terrorist crimes" and further extend the Ministry of Interior's sweeping powers which have enabled it to silence and imprison peaceful activists.

Amnesty International and other human rights organizations had announced their concerns regarding the law in March 2014 and warned that it would legalize existing pattern of abuses targeting peaceful dissent and human rights activists, most of whom were sentenced on charges that came to be later defined as "terrorist crimes" under the law. A year after the law came into effect, these fears have been fully realized as a number of peaceful activists have been imprisoned under the law and others have been charged and are currently undergoing trials for "offences" defined as "terrorist crimes" under it. In July 2014, Waleed Abu al-Khair, became the first human rights activist to be sentenced under the law.

Since its enactment, the law has been invoked in the cases of a number of activists, including women's rights activists Loujain al-Hathloul and Maysaa al-Amoudi, who are currently in prison awaiting trial probably in front of the Specialized Criminal Court (SCC) for driving their cars to the Saudi Arabian border from the United Arab Emirates. The law is also currently invoked in the retrial of Mohammed al-Bajadi, member of the Saudi Civil and Political Rights Association (ACPRA), and the trial of Abdulaziz al-Shubaily, who is one of the very few ACPRA members not yet imprisoned.

The first human rights activist to have been tried and sentenced under this law was Waleed Abu al-Khair, a prominent human rights activists and a lawyer representing a number of other prominent activists, including of Raif Badawi. The SCC sentenced Waleed Abu al-Khair under the counter-terror law on 6 July 2014 to 15 years in prison on charges similar to the ones for which the Criminal Court in Jeddah had sentenced him to three months in prison on 29 October 2013.

It is feared that the introduction of the retroactive effect of the law through the Ministry of Interior's March 2014 decree, will lead to the retrial and sentencing of more human rights activists, including all those prominent ones currently serving long prison terms. By adding a retroactive effect to the law, the decree has enabled the prosecution and conviction under the counter-terror law of anyone suspected of committing, or convicted of, past offences that the law now considers "terrorist crimes."

Criminalising peaceful expression, assembly and association as "terrorist crimes"

The Law for Crimes of Terrorism and its Financing, defined "terrorist crimes" in an overly broad and vague manner and in doing so criminalized all forms of peaceful expression as "terrorist crimes" and violated the international legal principle of legal certainty. The law did not precisely define terrorism but stated in articles 1 and 3 that acts, including words, deemed by the authorities to be, directly or indirectly, "disturbing" public order, "destabilising the security of society or the stability of the state", "exposing its national unity to danger", "revoking the basic law of government or any of its articles", or "harming the reputation of the state or its standing" are considered terrorist acts. Anyone, including Saudi Arabians and other nationals both inside the country and abroad accused of such conduct could be prosecuted as terrorists inside Saudi Arabia.

The decree promulgated by the Ministry of Interior in March 2014 extended the law's already overly broad definition of terrorism and criminalized the exercise of the rights to freedom of peaceful assembly and association, such as organizing peaceful protests or forming human rights organizations. The decree added to the list of terrorist acts "calling for, participating, publicizing, or inciting protests, demonstrations, gatherings, or group petitions" and "attending conferences, lectures, or gatherings inside or outside [the country] that targets the security and stability of the country and incites strife in society". It also deemed "calling for atheist thought" and "inciting states, or bodies, or international organizations against the Kingdom" to constitute acts of terror.

Sweeping Powers to the Ministry of Interior

The law also extended the Ministry of Interior's already sweeping powers to combat "terrorist crimes" by legalizing incommunicado detention and in fact enabling torture and other ill-treatment through, among other things, Article 6, which states that suspects can be held for 90 days with no contact with the outside world beyond a single phone call to their family. This includes not having access to a lawyer during interrogations. Article 5 allows the Ministry of Interior to hold terror suspects without charge or trial for six months – renewable to a year – without the ability to appeal the decision. Indefinite detention in excess of a year is also allowed by the Specialized Criminal Court, which

operates in secrecy. Article 7 furthermore adds that suspects cannot be released without an order from the Minister of Interior, even if the judge overseeing the case at the SCC ordered so.

The law also liberates the Ministry of Interior from any judicial oversight. Article 16 allows the “Minister of Interior or those representing him... permission to enter residences and offices for search and seizure... without the need for a warrant if necessary...”. Article 17 further adds to these powers “monitoring letters, communication, publications, packages and all forms of communication and phone calls and recording them...” without a court order and as long as there is a reason to do so. According to Article 18, the Minister of Interior can also order seizure of a suspect’s money, property and other assets for three months, subject to indefinite renewal, also without a court order.

Waleed Abu al-Khair: The first human rights activist to be sentenced under the counter-terror law

Prominent human rights defender and lawyer, Waleed Abu al-Khair first faced trial in late 2011 after years of harassment and intimidation by the authorities and for signing a statement criticizing the authorities’ persecution of 16 reformists. On 29 October 2013 he was sentenced to three months’ imprisonment by the Criminal Court in Jeddah on charges that included “insulting the judiciary and questioning the integrity of a judge”, “harming the reputation of the Kingdom by giving an international organization false details”, “attempting to influence a court’s decision by discussing the case in the media”. On 6 February 2014 the Court of Appeal in Mecca upheld his sentence.

On 6 October 2013, only three weeks before his sentencing by the Jeddah Criminal Court, the prosecution brought a similar list of charges against Waleed Abu al-Khair, but this time under the counter-terror law and in front of the SCC. On 6 July 2014, the SCC sentenced him on those charges, but under the counter-terror law, to 15 years in prison, a 15-year travel ban, and a fine of 200,000 Saudi Arabian riyals (about US\$53,000) after it found him guilty of “disobeying the ruler and seeking to remove his legitimacy”, “insulting the judiciary and questioning the integrity of judges”, “setting up an unlicensed organization”, “harming the reputation of the state by communicating with international organizations” and “preparing, storing and sending information that harms public order”.

Waleed Abu al-Khair who is currently serving his prison sentence after the SCC’s appeal judge upheld his sentence in January 2015, was arrested on 15 April 2014 after appearing at the fifth court hearing of his trial before the SCC in the capital, Riyadh. The SCC judge who can order the arrest of a suspect but not his release under the counter-terror law, provided no reason for ordering his arrest neither to him nor to his defence team who went to the court on 22 April to make enquiries as to why he had been detained, and found him there, attending a sixth hearing.

Mohammed al-Bajadi and Abdulaziz al-Shubaily: two human rights activists currently on trial or retrial under the counter-terror law

Both Mohammed al-Bajadi and Abdulaziz al-Shubaily are currently being tried by the SCC

on charges defined as “terrorist crimes” under the counter-terror law.

Mohammed al-Bajadi who is one of ACPRA’s founders, was brought to the SCC for a retrial on 23 October 2014. He was presented with the same charges for which he had already been convicted and is currently serving a four-year sentence. He is being accused of, among other things, participating in founding an unlicensed organization, harming the image of the state through the media, calling on the families of political detainees to protest and hold sit-ins, contesting the independence of the judiciary, and having banned books in his possession.

Mohammed al-Bajadi’s retrial came months before his expected release after serving his four-year sentence to which, along with a five-year travel ban, he was sentenced by the SCC in a secret trial on 10 April 2012. Without informing Mohammed al-Bajadi or his lawyer, the SCC’s appeal division had rejected the sentence handed down by the court’s first instance division and sent the case back to the same court for retrial. He only learnt about his retrial when he was called to the first instance division of the court to attend a hearing in August 2013. He however refused to appear in court without his lawyer, who was only finally allowed to attend over a year later in October 2014. All trial sessions remained closed to members of the public.

Of the 15 founding ACPRA members, the only remaining active and currently non-imprisoned member is Abdulaziz al-Shubaily. He has also been charged with a list of offences similar to that of other human rights activists and is currently on trial before the SCC.

Before the law came into force, human rights activists had in 2013 been sentenced and imprisoned on charges that came to be defined as “terrorist crimes” under this law. Of the dozen or so human rights activists sentenced to lengthy prison terms in 2013 - the majority of whom are members of ACPRA - almost all were charged with similar offences such as “breaking allegiance to and disobeying the ruler”, “seeking to disrupt security and inciting disorder by calling for demonstrations” as well as “disseminating false information to foreign groups” and “forming or participating in forming an unlicensed organization,” and sentenced to up to 15 years in prison. The new law considers these “crimes” and similarly vaguely worded acts as “terrorist crimes.”

Loujain al-Hathloul and Maysaa al-Amoudi: two women’s rights advocates detained and charged with offences that fall under the counter-terror law

In addition to activists being tried and sentenced under the counter-terror law, the law seems to have also been used in detaining and charging two advocates of women’s right to drive.

Loujain al-Hathloul and Maysaa al-Amoudi have been recently referred to the SCC by a judge at the Criminal Court in al-Ahsa, eastern Saudi Arabia, after being charged with offences listed as “terrorist crimes” under the counter-terror law. It remains unclear if they will be tried before the SCC or another criminal court.

Loujain al-Hathloul was arrested on 1 December 2014 when she attempted to defy the

ban on women driving cars by driving to the Saudi Arabian border from the United Arab Emirates (UAE). Security officers at al-Batha border city, in eastern Saudi Arabia, confiscated her passport and forced her to stay overnight in her car. The following morning, Maysaa al-Amoudi, a Saudi Arabian journalist and presenter, was also arrested when she drove from the UAE to al-Batha to provide Loujain al-Hathoul with basic supplies, despite the fact that she had told the Saudi Arabian border authorities that she did not intend to drive inside Saudi Arabia. Within hours, both women were reportedly taken to a police station at al-Batha where they were interrogated before being transferred for further interrogations and currently remain in detention pending the outcome of their trial after it proceeds in front of a competent court, which seems likely to be the SCC.

Both women's detention was extended without explanation beyond the five days legally permitted by Saudi Arabian laws, and both women were interrogated without their lawyers in violation of Saudi Arabian laws, and despite Maysaa al-Amoudi's lawyer's repeated requests to see his client.