



One Farragut Square
1634 I Street NW Suite 1000
Washington, DC 20006
202 481 6927

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Mr. Tom Neylan
Senior Policy Analyst – *AML/CFT*
Financial Action Task Force
2, rue André Pascal
75775 Paris Cedex 16 FRANCE

RE: Mutual Evaluation of Saudi Arabia

Dear Mr. Neylan:

On behalf of the Charity & Security Network (C&SN) I am writing to share information relevant to the Financial Action Task Force's (FATF) mutual evaluation of Saudi Arabia. We understand that FATF is reviewing the Kingdom of Saudi Arabia in preparation for an on-site visit. We wish to contribute pertinent information regarding Saudi Arabia's problematic implementation of FATF recommendations, particularly FATF Recommendation 5 on terrorist financing and Recommendation 8 on nonprofit organizations (NPOs).

C&SN members have a long-standing concern about human rights and respect for humanitarian principles globally, with several members focusing on research and advocacy in this area. In addition, U.S. government resources provide extensive information about human rights issues globally. As a result, we have taken a particular interest in FATF's evaluation of Saudi Arabia, as the problematic human rights record described below presents a particular challenge for evaluating implementation of FATF standards.

Although we recognize that FATF is not a human rights enforcement agency, these issues require FATF's attention. All FATF member states and the countries it evaluates are legally bound by international human rights and humanitarian law. FATF has recognized this in its Best Practices Paper on Recommendation 8 (R8), which notes "countries' obligations to respect freedom of association, assembly, expression, religion or belief, and international humanitarian law." Implementation must be consistent with these principles. If it is not, FATF objectives are undermined.

Based on a review of public records concerning legal proceedings in Saudi Arabia brought under the 2014 Penal Law for Crimes of Terrorism and its Financing (counterterrorism law) and adjudicated by the Specialized Criminal Court (SCC), we are concerned that Saudi counterterrorism financing resources are being diverted from their intended purpose and instead used to silence dissent. Due to the broad definition of terror crimes in the Saudi counterterrorism law, Saudi counterterrorism resources have been consistently misused for the prosecution of human rights

advocates engaged in legitimate expressive activities. Targeting of activists and violations of fair trial rights in Saudi Arabia's counterterrorism efforts is contrary to FATF standards and counterproductive to countering violent extremism. FATF should examine these to determine whether they are plagued by ineffective investigations or disproportionately weak sentences.

In addition, our review and analysis of Saudi Arabia's implementation of Recommendation 8 (R8) on nonprofit organizations (NPOs) suggests that the kingdom has not taken the risk-based approach R8 requires, as the essential elements identified in Immediate Outcome 10 of FATF's Evaluation Methodology are lacking.

We recognize the importance of FATF's work and hope that its evaluation of Saudi Arabia will contribute to a more targeted and effective application of the 2014 counterterrorism law to those alleged to have supported internationally-recognized terrorist organizations.

The following analysis outlines our findings.

The 2014 Terrorist Financing Law is not appropriately targeted to terrorist activity as required by Recommendation 5 and the Terrorist Financing Convention

The 2014 counterterrorism law was adopted to respond to a clear need to address the flow of terrorist financing from Saudi Arabia. It criminalizes material support of terrorist organizations, including but not limited to the financing of terrorism. Unfortunately, the law is both overbroad and vague. For example, the law prohibits any act that "directly or indirectly" seeks to harm "the reputation or status of the country." Such vague language is susceptible to arbitrary or discriminatory enforcement and does not provide sufficient notice to a potential perpetrator of the conduct that may be subject to criminal sanctions. As such, the law does not comply with Recommendation 5.1 which says that "countries should criminalise TF on the basis of the Terrorist Financing Convention."¹

Article 2 of the Convention provides a carefully tailored definition of the offenses covered by the Convention, namely willful or knowing support of certain delineated, serious offenses.² In contrast, the Saudi counterterrorism law criminalizes a broad range of conduct without requiring proof that the activity was undertaken with the aim of furthering criminal activity or in the knowledge of the intention of a group to commit a criminal offence. An in-depth analysis prepared by an independent expert found that this overly broad definition permits an application of the law that could "deviate from its laudable and necessary purposes and be used as a pretext to prevent parts of the population from enjoying the appropriate range of freedom of expression, freedom of thought and belief, and free exercise of religion."³ The broad language of the law facially criminalizes expressive activities by essentially equating dissent with terrorism; the effect has in fact been the application of the counterterrorism law against human rights activists and others who are critical of Saudi policies for a

¹ METHODOLOGY FOR ASSESSING TECHNICAL COMPLIANCE WITH THE FATF RECOMMENDATIONS AND THE EFFECTIVENESS OF AML/CTF SYSTEMS 5.1, FATF (2017).

² International Convention for the Suppression of the Financing of Terrorism, G.A. Res. 54/10, U.N. GAOR, 4th Sess., 2178 U.N.T.S. 197 (Dec . 1999).

³ MICHAEL NEWTON, A LEGAL ASSESSMENT OF THE PENAL LAW FOR TERRORISM AND ITS FINANCING "[11(f)] (June 14, 2015). <http://www.esohr.org/en/wp-content/uploads/2015/11/A-Legal-Assessment-of-the-Saudi-Penal-Law-for-Terrorism-and-its-Financing.pdf>

variety of reasons.⁴

The UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms has expressed concern about the prosecution of individuals in connection with their expression of non-violent views and due process violations in trials before the Specialized Criminal Court (SCC), including trials that resulted in death sentences.⁵ Based on a review of official press statements and other records, one study found that the SCC is increasingly investigating, prosecuting, and sentencing activists.⁶ In light of this trend, there are significant grounds for concern that the adjudication of cases against activists by the SCC is diverting the court's resources from important terrorism cases and undermining the legitimacy of the court.

Investigative authorities are not subject to safeguards required by the UN Terrorist Financing Convention

Recommendations 30 and 31 require States to enact appropriate investigative authorities. The Saudi counterterrorism law provides for such authorities but unfortunately does so in a manner that conflicts with basic fair trial and due process rights. Article 17 of the UN Terrorist Financing Convention requires that "[a]ny person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international human rights law." In addition, UN Security Council Resolution 2178 says that "[m]ember States must ensure that any measures taken to counter terrorism comply with all their obligations under international law, in particular international human rights law, international refugee law, and international humanitarian law."⁷

In direct contravention of this requirement, the Saudi counterterrorism law authorizes, inter alia, incommunicado detention, detention without judicial review for up to a year and the denial of access to counsel.⁸ According to the U.S. Department of State, "[t]he counterterrorism law allows the Ministry of Interior to access a terrorism suspect's private communications as well as banking information in a manner inconsistent with the legal protections provided by criminal procedure law."⁹ The law should be revised to ensure compliance with relevant international standards.

The poor quality of prosecutions in the Specialized Criminal Court calls into question whether sanctions under the counterterrorism law are effective, proportionate or dissuasive, as required by R5.

The Interpretive Note for Recommendation 5 states that "[a]ll sanctions should be effective,

⁴ UN Special Rapporteur O11 the promotion and protection of human rights and fundamental freedoms while countering terrorism concludes visit to Saudi Arabia, U.N. OFFICE HIGH COMM'R (May 4, 2017), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21584&LangID=E>,

⁵ *Id.*

⁶ Lori Boghardt, *From ISIS to Activists: New Security Trials in Saudi Arabia*, 33 WASH. INST. FOR NEAR. POL'Y RES. NOTES 3, at 3 (2016).

⁷ S.C. Res. 2178, preambular ¶ 7, ¶ 5, U.N. Doc. S/RES/2178 (Sep. 24, 2014).

⁸ See Newton, *supra* n. 4, para. 13- 18.

⁹ U.S. Department of State, Human Rights Report for the Kingdom of Saudi Arabia (2016).

proportionate and dissuasive."¹⁰ Based on a review of public reports on proceedings before the court, we are concerned that many of its judgments have not been effective, proportionate or dissuasive. For the reasons outlined below, we recommend a review of judgments in terrorist financing cases to determine whether the evidence underpinning those cases was reliable and based on an exhaustive investigation.

- Effectiveness

The Specialized Criminal Court was established in 2008 in response to concerns that a significant number of terrorism suspects had been detained without trial for years. According to Saudi authorities, by January 2016, the SCC had convicted 6,122 defendants in 2,225 cases.¹¹ That amounts to over 750 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 but subsequently released.¹² In 2015, Saudi authorities arrested an individual who had participated in an attack on the northern border. He had previously been arrested on suspicions of ties to al Qaeda but had been released on bail, presumably by the SCC.¹³ These reports raise concerns about the effectiveness of counterterrorism prosecutions generally.

There is cause for concern that - at least in cases against activists - the court habitually bases its judgments solely on forced confessions, even in cases where the defendants were accused of violent crimes that should have produced physical evidence. In one judgment reviewed by an independent expert (analysis attached), the conviction for money laundering rested entirely on allegedly forced confessions (based on torture and no justification was offered for the failure to provide corroborating evidence. Additionally, no investigation into the allegations of torture were ordered by the court, as required by law and despite repeated requests from defense counsel.

The failure to investigate allegations of torture appears to be a common problem. In its response to inquiries by the UN Committee Against Torture, Saudi Arabia reported that the Bureau of Investigation and Public Prosecution had investigated 519 cases of alleged torture since 2009.¹⁴ It cited another 2,570 cases of reported torture.¹⁵ It is unclear whether those were investigated.¹⁶ Saudi authorities refused to answer direct inquiries by the UN Committee Against Torture concerning the number of investigations of torture resulting in prosecutions.¹⁷

It is unclear whether the admission of inherently unreliable evidence, such as forced

¹⁰ Interpretive Note to Recommendation 5 (B)(8) & (9).

¹¹ Lori Boghardt, *From /SIS to Activists: New Security Trials in Saudi Arabia*, 33 WASH. INST. FOR NEARE. POL'Y RES. NOTES 3, at I(2016)(citing ROYAL EMBASSY OF SAUDI ARABIA, FACT SHEET: EXECUTIONS AND NIMR AL-NIMR, (January 2016)).

¹² *Id* at 5 (describing incidents in which 50% or more of those arrested in connection with terrorist attacks had previously been detained).

¹³ *Id.*

¹⁴ Replies of the Kingdom of Saudi Arabia to the list of issues (CAT/C/SAU/Q2/Add.I) in consideration of its second periodic report (CAT/C/SAU/2), para.70. CAT/C/SAU/Q/2/Add.2 (12 February 2016).

¹⁵ *Id*

¹⁶ *Id*

¹⁷ *Id*

confessions, is also occurring in cases concerning terrorist financing. In the cases against activists, the failure to present corroborating evidence of any kind suggests that the court's admission of forced confessions into evidence may be inadvertently incentivizing reliance on such confessions. Where courts hold prosecutors to relevant fair trial standards and exclude unreliable evidence, including forced confessions, prosecutors necessarily engage in ore exhaustive evidence collection to sustain their cases. Should the SCC uphold such standards, it would decrease the risk that dangerous individuals will evade accountability or that innocent individuals will be imprisoned where there is a significant risk of radicalization. If nothing else, adhering to fair trial standards would increase public confidence in the legitimacy of the proceedings and likely enhance public cooperation with authorities in counterterrorism investigations.

- Proportionality

There are also concerns about the proportionality of the court's sentences. A review of press reports of 19 cases before the court concerning allegations of violent extremism, including allegations that the defendants traveled to Syria to fight for extremist groups, found that the vast majority received sentences of 10 years or less.¹⁸ In contrast, activists convicted simply for criticizing the government were sentenced to death or 15 years in prison.¹⁹

Disproportionate sentencing may contribute to radicalization in some cases. The court has sentenced a number of people apparently on the basis of communications over social media. Some of these individuals have been given relatively long sentences. For example, two individuals were sentenced to 9 years for statements on social media while two others accused of financing terrorism or fighting in Syria received sentences of less than 6 years.²⁰ Given the risk of terrorist recruitment in prison,²¹ the court's sentencing practices should be examined to ensure that sentencing is proportionate to the severity of crimes committed.

- Dissuasiveness

Lack of rigor in prosecutions before the court and disproportionate sentencing may also undermine the dissuasive effect of the SCC's sentencing. While Saudi Arabia is credited with having a relatively low recidivism rate of less than 20 percent, a decrease in public reporting in 2016 has made it more difficult to assess whether this is increasing or decreasing.²² A comprehensive review of judgments in terrorist financing cases would help determine whether the relevant sentences were appropriate and dissuasive.

The misuse of the court and the counterterror law to suppress dissent is likely to be

¹⁸ Boghardt, *supra* note 2, at 4.

¹⁹ See, e.g., *Saudi activist Waleed abu Al-Khair sentenced to prison*, BBC News (July 7, 2014) at <http://www.bbc.com/news/world-middle-east-28200195>

²⁰ Boghardt at 4.

²¹ See, e.g., Plan of Action to Prevent Violent Extremism- Report of the Secretary-General, U.N. Doc. No. A/70/674, ¶ 31 (2015) ("Safeguards need to be put in place to prevent the spread of extremist ideologies to other prisoners while upholding the protection afforded under international law to persons deprived of their liberty, including with respect to international standards and norms relating to solitary confinement.").

²² *Id.*

counterproductive to overall efforts to dissuade terrorist financing. 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.²³ After conducting significant polling in Muslim-majority countries around the world, the Center for Strategic International Studies concluded 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."²⁴ In short, providing peaceful avenues for the redress of grievances has proven to be the most effective way to dissuade the resort to violence.

To counteract the perception that defendants are dealt with in a harsh and brutal way, it is essential that all claims of torture are fully investigated and result in transparent results, including prosecutions where appropriate. Saudi authorities should also be encouraged to refocus counterterrorism resources on terrorist organizations and ensure that these resources are not used to foreclose the exercise of civil and political rights or the activities of civil society.

Saudi Arabia has not implemented R8 on NPOs with a risk-based approach

In researching Saudi Arabia's FATF compliance with R8 on nonprofit organizations, we were unable to find a national risk assessment or any separate assessment of the NPO sector as a whole that would identify the types of NPOs that are at risk by virtue of their activities or characteristics. Similarly, there was no published review of the adequacy of domestic laws and regulations that would explain how they address risk. Instead, it appears that Saudi Arabia is taking a one-size-fits-all approach that is at odds with the risk-based approach.

Changes that have been made since the 2010 Mutual Evaluation are insufficient to meet the criteria of R8. The International Center for Not-for-Profit Law (ICNL) notes that a new civil society law went into effect on March 17, 2016. Although it provides a comprehensive legal framework for regulation of NPOs and streamlines some requirements, overall it imposes disproportionate restrictions that discourages and disrupts the work of legitimate organizations. ICNL states:

"[T]he law and regulations also promulgate vaguely-worded phrases to limit CSO registration, including all violations to Islamic Sharia, contradictions to public morals, and breaches of national unity. Further, the law and regulations prohibit foreign foundations and associations from establishing branches inside Saudi Arabia, place constraints on the contact of domestic associations and foundations with foreign organizations, and subject associations and foundations to extensive government interference in internal affairs."²⁵

FATF has recognized that such broad-brush restrictions are inconsistent with the risk-based approach, as seen in the evaluation of Ethiopia. The following FATF evaluation of regulation of NPOs in Ethiopia bears a strong similarity with Saudi Arabia's current regulatory regime on NPOs:

²³ USAID, *Guide to Drivers of Violent Extremism*, at v (2009); see also Alan B. Krueger, *What Makes a Terrorist*, (2007).

²⁴ Center for Strategic International Studies, *Turning Point: A New Comprehensive Strategy for Combatting Violent Extremism*, at 48 (2016)

²⁵ International Center for Not-for-Profit Law, *Civic Freedom Monitor: Saudi Arabia (Jan. 10, 2017)* <http://www.icnl.org/research/monitor/saudiarabia.html>.

"142. With regard to the oversight of NPOs, Ethiopia has very detailed provisions and directives outlining procedures for licensing, requirements for annual reporting of activities, statement of accounts, and audit, the categories of operational and administrative costs, as well as the powers of the Charities and Societies Agency or the FIC to supervise and sanction NPOs. These provisions apply to all charities and societies regardless of risks, the portion of the financial resources under the sector, or the share of the sector's international activities. While the licensing and regulation of NPOs is the prerogative of the government, such a broad level of oversight is not required from an AMUCF perspective. The current blanket approach is in any event not justified by assessed TF risks. Some NPOs have indicated a disruption of legitimate activities resulting due to Proc. No. 621/2009. For example, Foreign Charities and Ethiopian Resident Charities and Societies -- NGOs that receive more than 10% of their financing from foreign sources -- are prohibited from engaging in essentially all human rights and advocacy activities. However, Ethiopian Authorities argue that the Proc. No.62/2009 does not prohibit these NGOs from performing their humanitarian activities, but rather that it only prohibits these NGOs from interfering in the internal political affairs of the country."²⁶

We urge the FATF evaluation to undertake a similar analysis of Saudi Arabia's regulation of the NPO sector.

In the absence of a publicly available National Risk Assessment or assessment of the NPO sector, a review of FATF's 2014 Risk of Abuse of Terrorist Organizations typology report and U.S. assessments on terrorist financing and money laundering that cite Saudi Arabia provide some insight on which to measure the degree to which Saudi Arabia has implemented a proportionate, risk-based approach. This analysis leads to the conclusion that it has not.

For instance, the FATF typology report finds that the primary risks are associated with service organizations operating in proximity to a terrorist threat.²⁷ Both the letter of Saudi law and the track record of enforcement demonstrate that these risks are not targeted. Instead, the case history above, indicates that expressive organizations appear to be heavily targeted by enforcement agencies. This finding is supported by the annual human rights reports of the U.S. Department of State which have for several years described the prosecution of journalists, lawyers and activists seeking to form human rights organizations.

The U.S. National Terrorist Risk Assessment notes that private donations from the Persian Gulf states are a source of terrorist financing²⁸ and goes on to note that sham organizations and fraud are the biggest emerging threat of terrorist abuse of NPOs. Similarly, the U.S. Department of State's Money Laundering Assessment in 2014 noted that "turmoil in Syria and Iraq and sophisticated usage of social media have facilitated charities outside of Saudi Arabia with ties to extremists to solicit

²⁶ Eastern and Southern Africa Anti-Money Laundering Group, *Mutual Evaluation: Anti-Money Laundering and Combating the Financing of Terrorism*, 45-46 (May 2015), <http://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/WB-ESAAMLG-Mutual-Evaluation-Report-Ethiopia-2015.pdf>

²⁷ Financial Action Task Force, *Risk of Terrorist Abuse in Non-Profit Organisations* (June 2014), <http://www.fatf-gafi.org/media/fatf/documents/reports/Risk-of-terrorist-abuse-in-non-profit-organisations.pdf>.

²⁸ U.S. Department of the Treasury, *National Terrorist Financing Risk Assessment*, 16 (2015), <https://www.treasury.gov/resource-center/terrorist-illicit-finance/Documents/National%20Terrorist%20Financing%20Risk%20Assessment%20E2%80%93%2006-12-2015.pdf>.

donations from Saudi donors."²⁹ Given this situation, a targeted, risk-based approach in Saudi Arabia should be focusing on these threats and not on organizations doing legitimate charitable work or expressive organizations attempting to assert rights guaranteed by international human rights law.

Saudi Arabia has been rated as a "Closed" country to CIVICUS's Civic Space Monitor.³⁰ In this environment, it is not possible for Saudi Arabia to effectively meet the outreach requirement in R8. It is not possible to have sustained outreach in an environment where NPO representatives may not feel it is safe to openly participate. ICNL notes that most charities in Saudi Arabia are government-affiliated, and that "[c]ivil society remains underdeveloped, largely because it has been subject to a restrictive legal framework and capricious implementation that allowed some organizations to form and register, but not others."³¹

To ensure meaningful outreach for NPOs and compliance with R8.2, Saudi authorities must desist from prosecuting individuals merely for trying to form an association.

Conclusion

We respectfully recommend that FATF engage with Saudi authorities to re-focus efforts on the prosecution of terrorists in a manner consistent with the due process of law. The counterterrorism law should be revised to conform to FATF Recommendations and relevant UN conventions. SCC judgments in terrorist financing cases should be reviewed to determine whether they are supported by reliable evidence based on an exhaustive investigation free from torture and other procedural violations, and that sentences are proportionate to the severity of crimes committed. Finally, Saudi Arabia should be admonished not to use its terrorist financing laws to penalize peaceful social and political activity; such practices are contrary to UN Counterterrorism standards and counter-productive to efforts to combat terrorism. Saudi Arabia's full membership in FATF should be conditioned on meaningful progress in conforming its counterterrorism law and practice to international standards.

Thank you in advance for consideration of our views. Please do not hesitate to contact us with any questions.

Sincerely,



Kay Guinane, Director

²⁹ U.S. Department of State, Bureau for International Narcotics and Law, *2015 International Narcotics Control Strategy Report (JNCSR)*, <https://www.state.gov/j/inl/rls/nrcrpt/2015/supplemental/239294.htm>

³⁰ CIVICUS, *Country Report: Saudi Arabia* (June 19, 2017), <https://monitor.civicus.org/country/saudi-arabia/>

³¹ *Supra* n. 25 at note 1.