

PETITION TO:

UNITED NATIONS WORKING GROUP ON ARBITRARY DETENTION

Mr. Mads Andenas (Norway), Chair-Rapporteur

Mr. José Guevara (Mexico)

Mr. Seong-Phil Hong (Republic of Korea)

Mr. Sètonджи Adjovi (Benin)

Mr. Vladimir Tochilovsky (Ukraine) Vice-Chair

HUMAN RIGHTS COUNCIL UNITED NATIONS GENERAL ASSEMBLY

In the matter of

Waleed Abulkhair

v.

The Kingdom of Saudi Arabia

**Petition for Relief Pursuant to Commission on Human Rights Resolutions 1997/50, 2000/36,
2003/31, and Human Rights Council Resolutions 6/4 and 15/1**

Submitted by:

Lawyers' Rights Watch Canada

Lawyers for Lawyers

The Law Society of England and Wales

The Law Society of Upper Canada

**The International Federation for Human Rights (FIDH) and the World Organization
Against Torture (OMCT) within the framework of their joint programme the Observatory
for the Protection of Human Rights Defenders**

The International Association of Democratic Lawyers

MODEL QUESTIONNAIRE TO BE COMPLETED BY PERSONS ALLEGING ARBITRARY ARREST OR

In the Matter of Waleed Abulkhair v. The Kingdom of Saudi Arabia

1

DETENTION

I. IDENTITY

1. Family name: Abulkhair
2. First name: Waleed
3. Sex: (Male)
4. Birth date or age (at the time of detention): 17 June 1979
5. Nationality/Nationalities: Saudi
6. (a) Identity document (if any): 1003141635
(b) Issued by: Jeddah - Saudi Arabia
(c) On (date): 1-2-1995
(d) No.: 27-4-2018
7. Profession and/or activity (if believed to be relevant to the arrest/detention):

Waleed Abulkhair (the Petitioner) was prosecuted and deprived of his liberty for peacefully exercising rights guaranteed by the Universal Declaration of Human Rights (UDHR) to freedom of opinion and expression (Article 19), freedom of association (Article 20) and freedom to take part in the government of his country (Article 21). No evidence was presented and no allegations were made that the Petitioner had engaged in or promoted any violence or caused any harm to any person.

As stated by the (then) UN High Commissioner for Human Rights Navi Pillay, “Abu Al-Khair’s case is a clear illustration of the continuing trend of harassment of Saudi human rights defenders, several of whom have been convicted for peacefully promoting human rights”.¹

The Petitioner is one of the best-known voices for democratic and human rights reform in Saudi Arabia. He is a lawyer and has been an outspoken advocate for an elected parliament, an independent judiciary, a constitutional monarchy and recognition of human rights. He has also advocated on behalf of prisoners of conscience and written many articles identifying human rights abuses and the need for legal reform. In 2012 he was awarded the Olof Palme Prize for

...his strong, self-sacrificing and sustained struggle to promote respect for human and civil rights for both men and women in Saudi Arabia. Together with like-minded citizens and colleagues, Waleed Sami Abu Al-Khair does so with the noble goal of contributing to a just and modern society in his country and region.²

In 2011 he was named as one of the top 100 Arab activists on Twitter, having more than 40,000 followers, according to Forbes Middle East.

In April 2012 the Government of Saudi Arabia banned him from traveling outside Saudi Arabia. Some of the advocacy for recognition of human rights and democratic reform that led to his prosecution and imprisonment include:

¹ Saudi Arabia: Pillay concerned by harsh sentences against human rights defenders - 10 July 2014 - See more at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14846#sthash.aZ3AHIYt.hrO1fukF.dpuf>

² Olof Palmes Minnesfond, 2012. <http://www.palmefonden.se/2012-radhia-nasraoui-och-waleed-sami-abu-alkhair-2/>

- In 2007 he signed the *Features of a Constitutional Monarchy* a petition calling for a constitutional monarchy;
- In 2008 he founded the Monitor for Human Rights in Saudi Arabia (MHRSA). MHRSA and the Saudi Civil and Political Rights Association (ACPRA) became the first to highlight the plight of prisoners of conscience in Saudi Arabia;
- In 2008 he initiated a 48-hour hunger strike for prisoners of conscience which led to sit-ins and demonstrations;
- In 2011 he signed *Towards a State of Rights and Institutions*, a 9-point petition calling for elections, an independent judiciary and the establishment of civil society institutions and labour unions. The petition was posted on a dedicated website and Facebook and signed by over 9,000 before it was removed online;
- In 2012 he began hosting weekly meetings in his home called ‘samood’ (which connotes resistance or steadfastness) to discuss social, political and philosophical issues. The Petitioner was arrested temporarily in October 2013 as a result of these meetings. These sessions began in reaction to the government clamp down on gatherings in public places following the 8 February 2012 arrest of journalist Hamza Kashgari;
- In 2012 he publically criticized the “war” on freedom of expression and the “criminalization” of thought in Saudi Arabia;
- In 2013 he publically criticized the lack of codified laws and interference by the Minister of the Interior as factors contributing to “religious extremism and intolerance among the judiciary” and the conviction of human rights and civil society advocates;³
- He has represented Raif Badawi, organizer of the Saudi Liberal Network internet discussion group, who was convicted of insulting Islam and sentenced to 10 years in prison, a fine, and 1,000 lashes to be administered 50 lashes at a time; and
- He has attended meetings regarding human rights concerns with the Gulf Cooperation Council (GCC).

8. Address of usual residence:

Jeddah, Saudi Arabia

II. ARREST

1. Date of arrest: 15 April 2014

2. Place of arrest (as detailed as possible):

On 15 April 2014, the Petitioner was arrested while appearing at the fifth session of his trial before the Specialized Criminal Court in Riyadh.

3. Forces who carried out the arrest or are believed to have carried it out:

Arrest was made by a detective.

4. Did they show a warrant or other decision by a public authority?

No. The Petitioner was not shown any warrant for his arrest.

³ “The legal system is based on uncodified principles of Islamic law, which leaves judges largely free to decide what actions, in their view, are crimes, as well as the appropriate punishments. I believe that the Interior Ministry actively encourages religious extremism and intolerance among the judiciary, recognizing that judges with these views are far more willing to convict human rights and civil society advocates of vague religious and social offenses.” Waleed Abu Alkhair, *Sentenced in Saudi Arabia for peaceful activism*, Washington Post, 26 November 2013. http://www.washingtonpost.com/opinions/sentenced-in-saudi-arabia-for-peaceful-activism/2013/11/26/95fbcc6e-507b-11e3-9fe0-fd2ca728e67c_story.html

5. Authority who issued the warrant or decision:

The order to arrest the Petitioner was made by, Minister of Interior Affairs for Saudi Arabia, Prince Mohammed bin Nayef bin Abdulaziz.

6. Reasons for the arrest imputed by the authorities:

On 28 May 2014, at the seventh session of the Petitioner's trial before the Specialized Criminal Court, Judge Yousef Al-Ghamdi stated that the Petitioner on 15 April 2014 had been arrested by order of the Minister of Interior Affairs and that the Petitioner's release was under the jurisdiction of the Minister as provided by the *Penal Law for Crimes of Terrorism and its Financing*, Royal Decree No. 44 (12/2013). The law took effect on 1 February 2014 after King Abdullah ratified it. Subsequently, an executive decree was issued by the Minister of Interior Affairs on 7 March 2014 providing further details to the law and its implementation.

7. Legal basis for the arrest including relevant legislation applied (if known):

There was no legal basis for the arrest of the Petitioner on 15 April 2014. The arrest contravened rights guaranteed by the UDHR to liberty (Article 3), freedom from arbitrary arrest (Article 9) to be presumed innocent until proven guilty according to law (Article 11(1)). The arrest did not comply with the *Penal Law for Crimes of Terrorism and its Financing*.

III. Detention

1. Dates of detention:

The Petitioner has been in prison continuously since 15 April 2014.

-On 15 April 2014 the Petitioner was arrested during his trial and before conviction.

-On 6 July 2014 the Petitioner was convicted and sentenced.

-On 15 February 2015, the Specialized Criminal Court of Appeal in Riyadh upheld the conviction and sentence.

2. Duration of detention (if not known, probable duration): The 6 July 2014 sentence imposed by the Specialized Criminal Court as modified by the Court of Appeals would not expire until 5 July 2029. The 15-year ban prohibiting the Petitioner from traveling outside Saudi Arabia would extend to 2044.

3. Forces holding the detainee under custody:

The Government of Saudi Arabia.

4. Places of detention (indicate any transfer and present place of detention):

The Petitioner was transferred to prisons in Riyadh and Jeddah, and is now in al Ha'ir prison in Riyadh:

- a. 15 April 2014 the Petitioner was arrested in court during his trial and taken to al Ha'ir prison south of Riyadh.
- b. 24 April 2014 the Petitioner was transferred from al Ha'ir prison to the Criminal Investigations detention centre in Riyadh.
- c. 27 April 2014 the Petitioner was transferred to Al Malaz Prison in Riyadh.
- d. The Petitioner was then transferred to the Buraiman Prison in Jeddah until 11 August.
- e. On August 11 the Petitioner was transferred to al-Malaz prison in Riyadh.
- f. On 4 February 2015, the Petitioner was transferred to al Ha'ir prison in Riyadh.

5. Authorities that ordered the detention:

The arrest of the Petitioner on 15 April 2014 was ordered by the Minister of Interior Affairs Prince Mohammed bin Nayef bin Abdulaziz.

The sentencing of the Petitioner on 6 July 2014 was ordered by Judge Yousef Al-Ghamdi of the Specialized Criminal Court.

6. Reasons for the detention imputed by the authorities:

On 6 July 2014, during the 10th session of the Specialized Criminal Court, Judge Yousef Al-Ghamdi sentenced the Petitioner to 15 years in prison, a fine and a 15-year travel ban. The judge suspended 5 years of the prison sentence. The Court of Appeals did not approve that suspension.

At the 6 July 2014 proceedings, the Judge stated, “I have found evidence of the following charges against the defendant Waleed Abulkhair”

- i) Seeking to discredit state legitimacy.
- ii) Abuse of public order in the state and its officials.
- iii) Inciting public opinion and insulting the judiciary.
- iv) Publicly defaming the judiciary and discrediting Saudi Arabia through alienating international organizations against the Kingdom and make statements and documents to harm the reputation of the Kingdom to incite and alienate them.
- v) Adopting an unauthorized association and being its chairman speaking on its behalf and issuing statements and communicating through it.
- vi) Preparing, storing and sending what would prejudice public order.

The judge then stated, “Accordingly, we make our final judgment as follows”

- a. 15 years in prison starting from the date of his detention with 5 years suspended;
- b. A fine of two hundred thousand Saudi riyals (SR) in accordance with Article 21 of the crimes of terrorism;
- c. A ban preventing him from traveling outside Saudi Arabia for 15 years starting from the expiry of the term of imprisonment.
- d. An order shutting down all Web sites related to him.

On 15 February 2015, the Specialized Criminal Court of Appeal in Riyadh, which deals with terrorism cases, confirmed the sentence of 15 years in prison, a travel ban of equal duration following completion of the prison term, and a fine of SR 200,000.

7. Legal basis for the detention including relevant legislation applied (if known):

According to the 28 May 2014 pronouncement of the judge, the 15 April 2014 arrest and detention was made under authority of the *Penal Law for Crimes of Terrorism and its Financing*⁴ and by order of the Minister of Interior Affairs.

The 6 July 2014 sentencing appears to have been made under authority of the *Penal Law for Crimes of Terrorism and its Financing*. On 28 May 2014, Judge Yousef Al-Ghamdi of the

⁴ See Appendix, page 6. The English translation of the *Penal Law for Crimes of Terrorism and its Financing* referred to in these submissions is included in the Appendix and was accessed online on 13 April 2015 at http://www.google.ca/url?url=http://alandaluslaw.com/documents/terrorlaw.pdf&rct=j&frm=1&q=&esrc=s&sa=U&ei=FAosVYTINcPVoATi0IHgCA&ved=0CBMQFjAA&sig2=eD8GRa7IEs5IofIOmHuG8g&usg=AFQjCNE6MWxq7-HTbRd9o5nVd_g5Ge101Q

Specialized Criminal Court indicated that the 15 April 2014 arrest had been ordered by the Minister of Interior Affairs under the *Penal Law for Crimes of Terrorism and its Financing*. However, the trial of the charges against the Petitioner commenced 29 October 2013 and therefore the charges could not have been initiated under the *Penal Law for Crimes of Terrorism and its Financing* which did not come into force until 1 February 2014. The charge sheet contained one reference, in charge number 5, to the *Anti-Cyber Crime Law* (8Rabi 1, 1428/26 March 2007) and no reference to the *Penal Law for Crimes of Terrorism and its Financing*.

At least from 15 April 2014 on, the Specialized Criminal Court and the Minister of Interior Affairs proceeded as though the Petitioner had been charged under the *Penal Law for Crimes of Terrorism and its Financing*. Article 4, under which the Petitioner was arrested applies to "anyone suspected of having committed the offences set forth in this law..." Article 8 grants the Specialized Criminal Court jurisdiction, "over all offenses defined by this law..." The suspension by the Specialized Criminal Court of part of the Petitioner's sentence and the subsequent rejection of the suspension by the Specialized Court of Appeals appears to have taken place under the authority of Article 21. The wording of Article 21 indicates that the authority of the court to suspend or remit part of the sentence applies to defendants convicted of committing an offense "under this law."

IV. Describe the circumstances of the arrest.

V. Indicate reasons why you consider the arrest and/or detention to be arbitrary. Specifically provide details on whether:

The Petitioner has been deprived of liberty as a result of the exercise of his rights and freedoms guaranteed by articles 19, 20 and 21 of the UDHR.

The Petitioner has been denied totally compliance with the international norms relating the right to a fair trial guaranteed by Articles 9 and 10 of the UDHR.

The Kingdom of Saudi Arabia (Saudi Arabia as a member of the United Nations (24 October 1945) is legally obligated to respect and ensure the right guaranteed by the UDHR. The duty of Saudi Arabia to ensure the rights guaranteed by the UDHR for all people within its territory is heightened by Saudi Arabia's membership in the UN Human Rights Council.

V.1 The 15 April 2014 arrest and detention of the Petitioner was contrary to the UDHR, not authorized by law and carried out for an extra-legal purpose.

V.1.a Contrary to the UDHR

The arrest and detention were in violations of the UDHR guarantees of liberty (Article 3), freedom from arbitrary detention (Article 9), right to be presumed innocent until proven guilty according to law (Article 11(1)) and right to an effective remedy (Article 8). There were no allegations or evidence of any risk to the public or to the legal proceedings of the Petitioner remaining at liberty during the trial. The Petitioner was not given notice of the authority under which he had been arrested until 28 May 2014 and was not advised of the reason why his arrest was necessary to protect the public interest. He was not given an opportunity to make submissions as to his right to remain at liberty during the trial.

Rights under the UDHR to liberty (Article 3) and the presumption of innocence (Article 11(1)) require that pre-trial detention be the exception and be used only when necessary to prevent an established risk (of flight, interference with evidence or recurrence) **and** there is no alternative that would prevent the established risk(s). The Article 11(1) guarantee that every one charged with a crime has the right to be presumed innocent until proven guilty according to law requires that before and during trial, defendants must be treated in accordance with their innocent status.

Saudi Arabia is obliged to respect the right of all persons to liberty and security of the person and their freedom from arbitrary arrest, detention or exile. As principles of customary international law, these obligations pertain to States, whether or not they have ratified or otherwise adhered to a particular human rights treaty.

To be lawful under international human rights law, arrests and detentions must be carried out in accordance with both formal and substantive rules of domestic and international law, including the principle of non-discrimination, and must not be arbitrary.

“Arbitrariness” has been defined to include an element of *inappropriateness, injustice, lack of predictability* and *lack of due process of law*. A remand in custody, therefore, must not only be lawful but reasonable and necessary in all of the circumstances, for example, to prevent flight, interference with evidence or the recurrence of crime.

The United Nations (UN) Human Rights Committee (HR Committee), interpreting paragraph 9 (1) of the International Covenant on Civil and Political Rights (ICCPR), confirmed that

“ ‘arbitrariness’ is not to be equated with ‘against the law’, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law...this means that remand in custody pursuant to lawful arrest must not only be lawful but reasonable in all the circumstances... Remand in custody must further be necessary in all the circumstances. – HR Committee in *Albert Womah Mukong v. Cameroon, Communication No. 458/1991*, at para. 9.8

V.1.b Not authorized by law

Penal Law for Crimes of Terrorism and its Financing - The 15 April 2014 arrest and detention of the Petitioner violated the *Penal Law for Crimes of Terrorism and its Financing* and the *Law of Criminal Procedure*.⁵ Articles 4 and 5 appear to authorize investigative pre-trial detention for up to six-twelve months with the approval of the Specialized Criminal Court being necessary for an extension. Issuance of an arrest warrant is mandatorily required by Article 4. Article 5 authorizes arrests for the specific purpose of permitting “investigation of the offense under this law.” Article 7 grants exclusive authority over release of suspects to the Minister of Interior Affairs.

The trial of the charges against the Petitioner began on 29 October 2013 and was in its fifth session when the arrest took place. There was no suggestion that the Petitioner’s arrest was made for the stipulated purpose of investigation or that any investigation was carried out between 15 April 2014 and the date of sentencing on 6 July 2014. Although the arrest was conducted by order of the Minister of Interior Affairs acting under the *Penal Law for Crimes of Terrorism and its Financing*, no arrest warrant was shown to the Petitioner.

⁵ An English translation of the *Law of Criminal Procedure*, [2001], Royal Decree No.(M/39), 28 Rajab 1422 [16 October 2001] Umm al-Qura No.(3867), 17 Sha'ban 1422 [3 November 2001], referred to in these submissions was accessed online on 13 April 2015 at <http://www.saudiembassy.net/about/country-information/laws/CriminalProcedures2001-1of3.aspx>

Article 4 Arrest Warrants

The Minister of the Interior shall issue an arrest warrant for anyone suspected of having committed the offences set forth in the law and may establish guidelines for the issuance of such warrants.

Article 5 Investigative Detention

Detention of those so arrested shall be for an initial period of up to six months in the aggregate to permit the investigation of the offense under this law. If the investigation so requires, the period of investigative detention may be extended for an additional period of six month in accordance with the regulations. Cases that require an additional investigative period must be referred to the Specialized Criminal Court for approval of the request for additional investigative detention.

...

Article 7 Bail Pending Investigations

Provisional release of a detainee is not authorized except by order of the Minister of the Interior or his authorized representative.

There were no allegations or evidence of any risk to the public or to the legal proceedings of the Petitioner remaining at liberty during the trial. The *Penal Law for Crimes of Terrorism and its Financing Act*.

The *Penal Law for Crimes of Terrorism and its Financing* has been criticized as “designed to legitimize already-existing extra-judicial practices of the Saudi state by cloaking them in the rule of law”⁶ and as a tool to silence peaceful dissent and repress growing public debate about the need for reform.⁷

Law of Criminal Procedure - Article 35 of the *Law of Criminal Procedure* requires authorities to ensure that persons arrested are informed of the reason for arrest, allowed to communicate with lawyers and others and protected from maltreatment. The Article provides, "Any such person shall be treated decently and shall not be subjected to any bodily or moral harm. He shall also be advised of the reasons of his detention and shall be entitled to communicate with any person of his choice to inform him of his arrest."

Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment - In contravention of the UDHR Articles, 3 (right security of the person), 5 (freedom from torture or cruel, inhuman or degrading treatment or punishment) and, 11 (right of access to legal counsel), the Convention against Torture (ratified by Saudi Arabia on 23 September 1997) and the *Law of Criminal Procedure* Articles 35, 38, 39, 4 and 70 the Petitioner was subjected, between 15 April 2014 and 6 July 2014 to:

- incommunicado detention,
- denial of access to required diabetes medication,
- denial of access to a lawyer,
- enforced sleep deprivation by exposure to constant bright light, and
- solitary confinement.

⁶ Al-Amer, Saleh (2012). *The Draft Anti-Terrorism Law in Saudi Arabia: Legalizing the Abrogation of Civil Liberties*, Jadaliyya. Accessed on 11 Mar. 15 at http://www.jadaliyya.com/pages/index/4839/the-draft-anti-terrorism-law-in-saudi-arabia_legal

⁷ Amnesty International, Saudi Arabia: Counter-terror law continues to provide legal cover to silence dissent a year on, 2 February 2015.

Authorities did not investigate or remedy the alleged treatment even after the Petitioner reported the treatment to the presiding judge on 28 May 2014. Investigation and remediation of the treatment is required by Article 8 of the UDHR. The Convention against Torture, under Articles 12 and 13 requires Saudi Arabia to “proceed to a prompt and impartial investigation” of credible reports of torture or other cruel, inhumane or degrading punishment or treatment.

The prohibition against torture is absolute and nonderogable. The UN Committee against Torture (CAT) “emphasizes that *no exceptional circumstances whatsoever* may be invoked by a State Party to justify acts of torture” including “threat of terrorist acts”. CAT

rejects absolutely any efforts by States to justify torture and ill-treatment as a means to protect public safety or avert emergencies in these and all other situations. Similarly, it rejects any religious or traditional justification that would violate this absolute prohibition.⁸

The determination of the HR Committee that the ICCPR prohibition against torture obliges states to prevent, investigate and punish torture applies to the Convention and the UDHR. The HR Committee has determined,

The right to lodge complaints against maltreatment prohibited by article 7 must be recognized in the domestic law. Complaints must be investigated promptly and impartially by competent authorities so as to make the remedy effective. The reports of States parties should provide specific information on the remedies available to victims of maltreatment and the procedure that complainants must follow, and statistics on the number of complaints and how they have been dealt with.⁹

V.1.c Improper Purpose

The Petitioner was arrested on 15 April 2014 after he refused demands to sign a pledge promising to stop his human rights advocacy.¹⁰ The Petitioner’s statement to the court (para. 3) on 28 May 2014 indicates that the Minister of Interior Affairs had asked the Petitioner to sign a pledge and that the prosecutor had threatened that the Petitioner would ‘be in jail for years’ if he refused to sign. The Petitioner’s report that he was then subjected to incommunicado detention for 10 days, enforced sleep deprivation, denial of access to his lawyer and denial of access to required medications for diabetes, coupled with the failure of authorities to investigate and the absence of any evidence that his arrest was necessary, support a conclusion that authorities arrested the Petitioner for the improper purpose of securing his agreement to stop his human rights advocacy. The detention can also be reasonably seen as having (and achieving) the purpose of hampering his ability to defend the charges against him.

⁸ Committee Against Torture, General Comment 2, Implementation of article 2 by States Parties, U.N. Doc. CAT/C/GC/2/CRP. 1/Rev.4 (2007), para. 5. http://www1.umn.edu/humanrts/cat/general_comments/cat-5.

⁹ Human Rights Committee, General Comment 20, Article 7 (Forty-fourth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 30 (1994), para. 14. <http://www1.umn.edu/humanrts/gencomm/hrcom20.htm>

¹⁰ Reference to attempts by the prosecutor to get the Petitioner to sign a pledge to stop his human rights activities is made in: Statement by the Monitor for Human Rights about Waleed Abu-Alkhair Trial, 26 June 2014, and the Statement of the Petitioner to the Specialized Criminal Court on 28 May 2014 which is in the Appendix at page 1.

V.2 Detention following the 6 July 2014 conviction and sentencing.

V.2.a The Charges

The charges against the Petitioner were:

- inciting public opinion against the state and its people,
- undermining the judicial authorities,
- inciting international organisations against the Kingdom with the intent of ruining its reputation,
- setting up and supervising an unlicensed association referring to MHRSA,
- participating in the creation of another unlicensed organisation, namely The Saudi Civil and Political Rights Association (ACPRA), and
- preparing, storing and sending information that prejudices public order.

Human Rights Watch reported that the charge sheet consisted of “little more than excerpts from statements [the Petitioner] had made to various media outlets and tweets that criticize Saudi Arabia’s treatment of peaceful dissidents, especially harsh sentences against them by Saudi courts.”¹¹

The trial on these charges before the Specialized Criminal Court commenced on 4 November 2013 and was continued for 10 sessions until sentencing on 6 July 2014.

V.2.a Charges are Vague and overbroad

The charges against the Petitioner are vague and overbroad and fail to meet the test of certainty for criminal offences. As such the charges provide a standardless sweep that requires prosecutors and judges to apply subjective standards to determine what constitutes an offence, confers unrestricted judicial discretion and allows prosecutors and judges to pursue personal agendas. The principle of fundamental justice that precludes a standardless sweep in any provision that authorizes imprisonment is the foundation of the right not to be deprived of liberty except in accordance with law and rights to notice, make full answer and defense and fair trial before an impartial and independent tribunal.

Courts have recognized that a criminal provision is void for vagueness under several heads: if it fails to give a person notice that certain conduct is prohibited, encourages arbitrary and erratic arrests and convictions,¹² prevents people from engaging in protected activities,¹³ or precludes fair notice and allows unrestricted discretion.¹⁴

Saudi Arabia has no written code of criminal offences. The *Law of Criminal Procedure 2001*¹⁵ Article 1 directs,

¹¹ Human Rights Watch, Saudi Arabia: 15-Year Sentence for Prominent Activist: Peaceful Rights Advocate Convicted on Vague Charges, 7 July 2014. Accessed on 11 March 2015 at <http://www.hrw.org/news/2014/07/07/saudi-arabia-15-year-sentence-prominent-activist>

¹² *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972) at 170.

¹³ Daniels, *Valid Despite Vagueness: The Relationship Between Vagueness and Shifting Objective* (1994), 58 Sask. L. Rev. 101 at 109, referring to *Grayned v. City of Rockford*, 408 U.S. 104 (U.S.S.C. 1972).

¹⁴ The Supreme Court of Canada in: *Irwin Toy v. Quebec Attorney General* [1989] 1 S.C.R. 927 at 983; *Nova Scotia Pharmaceutical Society*, [1992] 2 S.C.R. 606 at 636; *R. v. Morales*, [1992] 3 S.C.R. 711; *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*, [2004] 1 SCR 76, 2004 SCC 4 at para. 17.

¹⁵ See *Law of Criminal Procedure*, note 5.

Courts shall apply Shari'ah principles, as derived from the Qur'an and Sunnah (the traditions of Prophet Muhammad, peace be upon him) to the cases that are brought before them. They shall also apply laws promulgated by the state that do not contradict the provisions of the Qur'an and Sunnah, and shall comply with the procedure set forth in this Law. The provisions of this Law shall apply to criminal cases that have not been decided and to proceedings that have not been completed prior to the implementation thereof.

Article 3 provides that “No penal punishment shall be imposed on any person except in connection with a forbidden and punishable act, whether under Shari'ah principles or under the statutory laws”.

Prosecutors are free to lay charges based on allegations that lawful acts have violated Islamic law. Courts must then apply subjective standards to interpret Shari'ah principles and determine whether the act(s) alleged are “forbidden and punishable” and therefore constitute a crime.

The charges were declared to be brought under the *Penal Law for Crimes of Terrorism and its Financing*. The Act does not define or even name¹⁶ any specific acts that could constitute a crime of terrorism and therefore be subject to its provisions. Article 1.A lists two extremely broad categories of intended consequences that could render acts or omissions criminal:

- a. acts/omissions intended to ‘disturb public order; undermine the security of society and the stability of the state; and endanger national unity.’
- b. defaming the state or a position, or attempting to compel an officer from taking action within the scope of his duties’. It appears that intent may not be an element of these consequences.

None of the terms—security, stability, public order, criminal enterprise, taking action within the scope of his duties—are defined. These categories are so broad they require subjective definition and enable the criminalization of virtually any peaceful exercise of expression, association or assembly seen as having the potential to stimulate criticism of government or debate of issues of public interest. There are not qualifiers that would enable objective assessment of what would constitute an offense. The peaceful exercise of protected rights to assembly, expression, association and participation in government are not excluded.

Article 1.A defines terrorist crime as encompassing acts (committed in furtherance of a criminal enterprise) intended to disturb public order or undermine security and acts that defame the state. Article 1.A defines terrorist crime.

Terrorist Crime

An act committed by an offender in furtherance of a criminal enterprise, whether individually or collectively, directly or indirectly, which is intended to disturb public order, or undermine the security of society and the stability of the state or which endangers national unity, the Constitution (Basic Law) or any part thereof, or which defames the state or position, or causes damage to a state facility or natural resource, or which attempts to compel an officer or employee to take action or refrain from taking action within the scope of his duties due to threats.

¹⁶ Article 3 extends the application of the *Penal Law for Crimes of Terrorism and its Financing* to acts committed outside Saudi Arabia. See Appendix page 6 flg.

The impugned statements and acts which form the basis of such charges are often not in dispute but because the determination of whether such acts constitute crimes is so subjective, it is not possible to present a defense.

V.2.b Right to Notice of Criminal Charges Denied

The right to a fair hearing in the determination of criminal charges guaranteed by the UDHR Article 10 requires that a person receive notice of the charges in enough detail to enable preparation of a full and potentially effective defense. The HR Committee interpreting the notice provisions of the right to a fair trial under Article 14 of the International Covenant on Civil and Political Rights has determined that notice is ‘the first minimum guarantee’ in criminal proceedings.

The right of all persons charged with a criminal offence to be informed promptly and in detail in a language which they understand of the nature and cause of criminal charges brought against them, enshrined in paragraph 3 (a), is the first of the minimum guarantees in criminal proceedings of article 14.

...

The specific requirements of subparagraph 3 (a) may be met by stating the charge either orally - if later confirmed in writing - or in writing, provided that the information indicates both the law and the alleged general facts on which the charge is based.¹⁷ (underlining added)

No such notice was provided to the Petitioner. Given the vague and overbroad nature of the ‘charges’ such notice was perhaps not possible.

V.2.c Right to freedom from *Ex Post Facto* prosecution denied

The decision to proceed as though the Petitioner were charged under the *Penal Law on Crimes of Terrorism and its Financing* was communicated to the Petitioner on 28 May 2014, over five months after the trial had started and after the alleged acts that formed the basis of the charges had taken place. The Act did not come into force until 4 February 2014, three months after the trial had started. Such a prosecution and any resulting conviction is contrary to the UDHR Article 11 (2) which provides,

No one shall be held guilty of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

The *Basic Law of Governance*¹⁸ prohibits the imposition of punishment *ex post facto* thereby protecting defendants from punishment under a law that creates either a crime or a greater punishment after the impugned act(s) took place.

Article 38:

No-one shall be punished for another's crimes. No conviction or penalty shall be inflicted without reference to the Sharia or the provisions of the Law. Punishment shall not be imposed *ex post facto*.

¹⁷ *CCPR General Comment No. 32*, Article 14: Right to equality before courts and tribunals and to a fair trial, U.N. Doc. CCPR/C/GC/32 (2007) at para. 31.

¹⁸ See Appendix, page 17. The *Basic Law of Governance* No: A/90, Dated 27th Sha'ban 1412 H (1 March 1992). The English translation referred to in these submissions is included in the Appendix and was accessed online on 13 April 2015 at http://www.saudiembassy.net/about/country-information/laws/The_Basic_Law_Of_Governance.aspx

The charges (set out in paragraph V.2.a above) were laid after the Petitioner refused a direction to attend the Mohammed bin Nayed Centre or Rehabilitation and the trial of these second set of charges commenced on 4 November 2013. On 29 October 2013 the Petitioner had been convicted of contempt of the judiciary and inciting public opinion against the state (first set of charges) and sentenced to three months in prison. That sentence, which was not implemented, was confirmed by the Court of Appeals on 4 February 2014.

The sentence imposed on the Petitioner exceeded the maximum allowed by the *Anti-Cyber Crime Law*.

V.2.d Right to a fair hearing by an independent tribunal in the determination of criminal charges denied.

The Specialized Criminal Court is not competent to provide a fair trial in accordance with international law standards and in particular cannot ensure a determination by a “competent, independent and impartial tribunal” as required by the UDHR.

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. There is no statute that has been released to the public setting up the court or specifying its jurisdiction other than provisions of the *Penal Law for Crimes of Terrorism and its Financing*. Judges are individually selected to sit on a panel constituting the court. Saudi Arabia’s judicial code stipulates that specialized courts may be established by royal decree to deal with infractions of government regulations not covered by the Shari’ah. Since the reign of Abd al Aziz, kings have created various secular tribunals outside of the Shari’ah court system to deal with violations of administrative rules.

The *Penal Law for Crimes of Terrorism and its Financing* while granting the Specialized Criminal Court jurisdiction over ‘all offences defined by this law’ (Article 8) restricts the courts ability to allow or ensure fair trial and due process rights to “anyone suspected of having committed the offenses set forth in this law”, and obliges the court to carry out arbitrary decisions made by the Minister of Interior Affairs.

- Article 4 grants to the Minister of Interior Affairs the power to issue arrest warrants for pre-trial detention;
- Article 7 grants exclusive power to order the release of detained suspects to the Minister;
- Article 6 restricts the Specialized Criminal Court’s power over pre-trial detention to approving requests, presumably from the Minister, for extensions of investigative pre-trial detention in excess of 12 months;
- Article 6 raises the current legal limit on the time officials may hold a suspect in pre-trial investigative detention from 6 months to 12, with power to the Specialized Criminal Court to grant an unlimited extension;
- Article 5 restricts the power of the Specialized Criminal Court to review and remedy incommunicado detention to approving an extension of a 90 day incommunicado ordered presumably by the Minister;
- Article 12 gives the court the authority to hear witnesses and experts without the presence of the defendant or the defendant’s lawyer and to convict on evidence that the defendant is incapable of knowing or challenging. There is no requirement to inform the defendant or his/her lawyer of the content of the testimony;

- Article 6 restricts a suspect's right to access to a lawyer for an undefined time, the period to be determined by the investigating agency. This would deny access to a lawyer during interrogation in contravention of the provisions of the Saudi criminal procedure law;
- The act contains no restriction or guidelines on sentencing other than Article 21 that empowers the court to remit part of a defendant's sentence subject to the approval of the Court of Appeal.

VI. Indicate internal steps, including domestic remedies, taken especially with the legal and administrative authorities, particularly for the purpose of establishing the detention and, as appropriate, their results or the reasons why such steps or remedies were ineffective or why they were not taken.

The Petitioner did not appeal the conviction or sentence. The Petitioner believes that an appeal would be futile given there is no law in Saudi Arabia that protects the right of citizens to voice their opinions and to advocate for human rights and the Government of Saudi Arabia does not respect the provisions or the UDHR or the international human rights treaties to which Saudi Arabia is a party. Saudi Arabia is immune from accountability because of political relations. The Petitioner did not initiate or participate in the process that resulted in the Specialized Criminal Court of Appeal confirming the conviction and sentencing on 15 February 2015.

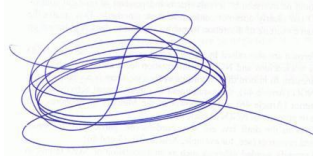
On 26 June, during the eighth session of the Petitioner's trial before the Specialized Criminal Court, the Petitioner stated that he would not attempt to further respond to the case against him.¹⁹ The Petitioner cited a failure by the prosecutor and the court to respond to defenses and objections raised by the Petitioner in relation to:

- lack of jurisdiction of the Specialized Criminal Court over the charges;
- autrefois convict* - the fact that the Petitioner had already been convicted and sentenced (to 3 month in prison) on similar charges, some of which depended on exactly the same allegations. The prohibition against double jeopardy (*non bis in idem*) prevents a person from being charged or otherwise 'put in jeopardy' twice for the same offence(s);
- arbitrariness - use of multiple prosecutions on similar charges to impose multiple and greater punishments and ignoring the refusal to accept jurisdiction over the earlier charges by four judges, two from the Specialized Criminal Court and two from the Criminal Court;
- discriminatory treatment - on the charge of participating in establishing the Saudi Civil and Political Rights Association, being treated differently than others charged with that offence;
- right to pre-trial release - the Petitioner was subjected to pre-trial detention without proper or any reasons given and without any opportunity for judicial review;
- prohibited treatment during pre-trial detention - the Petitioner reported being subjected to physical and psychological torture and other mistreatment and that the Court and other authorities failed to investigate or otherwise respond to, determine or remedy the Petitioner's allegations.

The appeal division of the Specialized Criminal Court upheld the sentence on 15 February 2015. The appeal does not consist of a new hearing of the case, it is merely a review of the verdict and sentence by other judges.

¹⁹ See the Appendix, page 1. An English translation and the Arabic original of the Petitioner's statement to the Specialized Criminal Court on 28 May 2014 are in the Appendix.

VII. Full name, postal and electronic addresses of the person(s) submitting the information (telephone and fax number, if possible).



Date: 13 April 2015

Signature of Gail Davidson

Names of persons submitting:

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Lawyers Rights Watch Canada (LRWC) is a committee of lawyers who promote human rights and the rule of law internationally by: protecting advocacy rights; campaigning for jurists in danger because of their human rights advocacy; engaging in research and education; and working in cooperation with other human rights organizations. LRWC has Special Consultative status with the Economic and Social Council of the United Nations.

Lawyers for Lawyers is an independent and non-political Dutch foundation and is funded by lawyers' donations. The foundation was established in 1986 and has special consultative status with ECOSOC since 2013.

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

The Law Society of Upper Canada The Law Society of Upper Canada is the governing body for more than 47,000 lawyers and 7,000 paralegals in the province of Ontario, Canada. The Law Society is committed to preserving the rule of law and to the maintenance of an independent Bar. Due to this commitment the Law Society established a Human Rights Monitoring Group (the Monitoring Group). The Monitoring Group has a mandate to review information of human rights violations that target members of the legal profession and the judiciary as a result of the discharge of their legitimate professional duties.

The International Federation of Human Rights (Fédération internationale des ligues des droits de l'Homme) (FIDH) is a non-governmental federation for human rights organizations. FIDH's core mandate is to promote respect for all the rights set out in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. Its priority areas include protecting human rights defenders and fighting impunity.

The World Organisation Against Torture (OMCT) created in 1986, is today the main coalition of international non-governmental organisations (NGO) fighting against torture, summary executions, enforced disappearances and all other cruel, inhuman or degrading treatment. With 282 affiliated organisations in its SOS-Torture Network and many tens of thousands correspondents in every country, OMCT is the most important network of non-governmental organisations working for the protection and the promotion of human rights in the world.

International Association of Democratic Lawyers (IADL) is a non governmental organization of lawyers and jurists from all parts of the world which was founded in 1946 by lawyers who were committed to promoting the goals and rights contained in the Charter of the United Nations. One of our aims is to defend and promote human and peoples' rights in particular through the strictest adherence to the rule of law and the independence of the judiciary and the legal profession. IADL has affiliates and members in over 90 countries and has special consultative status at ECOSOC, UNESCO and UNICEF.