

IN THE NAME OF “TERRORISM”:
SILENCING DISSENT IN SAUDI ARABIA

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* Princess Diaz-Birca is a third year law student at Northeastern University School of Law, class of 2023. This paper began as an essay written for the Valerie Gordon Student Essay Award at Northeastern. A distinguished alum, Valerie Gordon’s legacy promotes fierce advocacy for social justice, both domestically and internationally. First and foremost, I recognize her and the legacy she created. During my time at Northeastern, I have also become a fierce advocate for social justice issues with a special interest in juvenile justice and post-conviction work. I strive to dedicate my career to a lifetime of challenging powerful institutions and pushing for reform for both my client and others similarly situated. This Note would not possible without the love and support from my husband and parents, the amazing *Northeastern University Law Review* team who worked countless hours with me on this paper, and encouragement from life-long friends. Finally, an incredibly special shout out goes to Professor Victoria McCoy Dunkley, without whom I would have never finished the essay much less have had the foundational skills needed to push myself further and develop the writing that has now become this Note.

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*The balance between human rights and security can be found within human rights law itself, for “[l]aw is the balance, not a weight to be measured.”*¹

INTRODUCTION

The act of terrorism has been used as a political tool designed to instill fear in others. Terrorism remains a very real threat that continues to perpetuate instability in regions across the world; however, fear mongering and abuse of power have often led to a boundless legal definition of terrorism. As a case study, the Kingdom of Saudi Arabia (KSA or Kingdom) exemplifies the grim implications associated with an ill-defined terrorism statute. The alarming ease with which the KSA has persecuted activists, political opponents of the crown, and religious minorities, can serve only as a warning to countries that have similarly failed to ensure protections against an expanded definition of terrorism. Terrorism laws can be defined in a way that both protects citizens from the expanding power of the state, while also holding alleged terrorists accountable. Legal reforms, such as (1) narrowly defining terrorism, (2) increasing accountability, and (3) fostering an independent and transparent judicial system, are just a few simple steps countries can take to protect their citizenry from the unwarranted expansion of terrorism statutes. Despite the growing scope of terrorism statutes, countries continue to misuse the charge of terrorism and fail to ensure protections against the misapplication of terrorism laws.

In recent years, the KSA has abused its power within political and judicial institutions and pursued charges against its citizens under the guise of combatting terrorism.² The recent decision to exclude the KSA from the United Nations (UN) Human Rights Council may be directly linked to the Kingdom's high-profile human rights violations regarding these vulnerable populations.³ Often, the KSA has cited its commitment to the precepts of Islam when declining to implement international laws or agreements that could be used to ensure compliance with international human rights

1 Martin Scheinin (Special Rapporteur on Counter Terrorism and Human Rights), *Rep. of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism*, ¶ 12, U.N. Doc. A/HRC/16/51 (Dec. 22, 2010), https://digitallibrary.un.org/record/704287/files/A_HRC_16_51-EN.pdf.

2 See Natasha Turak, *Saudi Arabia Loses Vote to Stay on UN Human Rights Council; China, Russia and Cuba Win Seats*, CNBC (Oct. 14, 2020), <https://www.cnbc.com/2020/10/14/saudi-arabia-loses-vote-for-un-human-rights-council-seat-china-russia-win.html>; Bethan McKernan, *Saudi Arabia Using Secret Court to Silence Dissent, Amnesty Finds*, GUARDIAN (Feb. 5, 2020), <https://www.theguardian.com/world/2020/feb/06/saudi-arabia-using-secret-court-to-silence-dissent-amnesty-finds>.

3 See Turak, *supra* note 2.

standards.⁴ Although the KSA claims to have maintained its commitment to human rights, several of the crown's initiatives have granted additional power to police and judicial actors to the detriment of vulnerable populations.⁵ One such initiative was the creation of a presidential task force known as the State Security Presidency (SSP).⁶ The SSP, a covert police force often found at the center of many human rights violations, was originally tasked with investigating matters related to domestic and international terrorism.⁷ Echoing themes found in American national security policies post-September 11th, the KSA's reliance on covert police forces, accompanied by the adoption of policies which increased police and judicial powers, enabled a breakdown in justice by creating a system that lacks transparency, proper oversight, and mechanisms to ensure accountability.⁸

This paper will explore the human rights violations perpetuated by the KSA under the guise of the rule of law, the victims affected by the Kingdom's actions, the themes mirrored in American policies, and the potential legal reforms moving forward. Beginning first with a discussion of the history of terrorism and policies related to terrorism in the KSA, Part I of this paper explores how terrorism has shifted from a viable threat in the Kingdom to a political tool used to silence dissent. Part II of the paper defines terrorism and explores how an expanded definition threatens human rights standards. Part III highlights a few, of many, victims that are known to have suffered from the KSA's adoption of flawed policies against domestic terrorism. Part IV connects the dangerous rhetoric and overbroad policies to similar United States (U.S.) policies against domestic terrorism—highlighting the reliance on police forces with little to no oversight and the persecution of political dissenters. Lastly, Part V suggests potential avenues for legal reforms both in the U.S. and the KSA.

4 HUMAN RIGHTS WATCH, WORLD REPORT 1992, at 820 (1991).

5 United Nations Hum. Rts. Council, *Human Rights Council Adopts Universal Periodic Review Outcomes of Saudi Arabia, Senegal, the Congo and Nigeria*, UNITED NATIONS (Mar. 14, 2019), <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=24336&LangID=E>; see AM. BAR ASS'N CTR. FOR HUM. RTS., SAUDI ARABIA: COUNTERTERROR COURT TARGETS ACTIVISTS 2–4 (2019), https://www.americanbar.org/content/dam/aba/administrative/human_rights/justice-defenders/saudi-court-targets-activists.pdf.

6 BUREAU OF DEMOCRACY, HUM. RTS. & LAB., U.S. DEP'T OF STATE, SAUDI ARABIA 2018 HUMAN RIGHTS REPORT 10 (2019), <https://www.state.gov/wp-content/uploads/2019/03/SAUDI-ARABIA-2018.pdf>.

7 *Id.*

8 See *id.* at 9 (describing the SSP's "broad authority to arrest and detain persons indefinitely without judicial oversight, notification of charges, or effective access to legal counsel or family").

I. HISTORY

A. *Domestic Terrorism*

Following the September 11th attacks, the terrorist cell known as al-Qaeda turned its attention to the Kingdom of Saudi Arabia, perpetrating acts of terrorism that rocked the capital city of Riyadh from 2003 to 2008.⁹ During this period, 30 attacks were successfully carried out in the capital, and over 160 attacks were thwarted by the KSA.¹⁰ In an effort to deter future attacks, the Kingdom mobilized the Public Security's Special Emergency Forces to identify and combat terrorist cells in the region.¹¹ These forces, designed to be highly mobile in case of an unexpected threat, received specialized training in counterterrorism and counterinsurgency.¹² Additionally, the Mubahith, typically regarded as a religious or secret police force, was tasked with investigating issues related to domestic security.¹³ In 2007, the Interior Minister announced that 9,000 suspects had been detained on suspicion of ties to al-Qaeda due to efforts by Saudi security forces.¹⁴ Both the Public Security's Special Emergency Forces and the Mubahith reported directly to the Ministry of the Interior.¹⁵

Notably, the role of Interior Minister is currently filled by a political actor that is granted the oversight of police operations, policies, and use of force.¹⁶ The politicization of an enforcement agency can create a vacuum of power that, without proper oversight, leads to the absence of transparency and unanswered questions relating to abuse of power. The cases of KSA

9 Lori Plotkin Boghardt, *From ISIS to Activists: New Security Trials in Saudi Arabia*, WASH. INST. FOR NEAR E. POL'Y, May 2016 at 1, 2.

10 *Id.*

11 See Anthony H. Cordesman & Nawaf Obaid, *Saudi Internal Security: A Risk Assessment*, CTR. FOR STRATEGIC & INT'L STUD. 18 (May 30, 2004), https://csis-website-prod.s3.amazonaws.com/s3fs-public/legacy_files/files/media/csis/pubs/sis_ariskassessment.pdf.

12 *Id.*

13 *Id.* at 17 (describing the Mubahith, a specialized police unit also referred to as General Security Service). Note that the General Security Service was later consolidated under the SSP and is now referred to as the General Directorate of Investigations (GDI). While I recognize that the Mubahith can be called by many different names, hereinafter I will be solely using Mubahith to describe the actions of the religious covert police team operating under the SSP.

14 Boghardt, *supra* note 9, at 2; OFF. OF THE COORDINATOR FOR COUNTERTERRORISM, U.S. DEP'T OF STATE, COUNTRY REPORTS ON TERRORISM 2007, at 127 (2008), <https://2009-2017.state.gov/documents/organization/105904.pdf>.

15 Cordesman & Obaid, *supra* note 11, at 17.

16 *Id.* at 15.

citizens charged with terrorism following the 2003–2008 attacks on Riyadh highlight this lack of transparency. In total, roughly 9,000 citizens were detained by Saudi police for suspected ties to al-Qaeda.¹⁷ Although these arrests began in 2003, by the end of 2007, thousands remained incarcerated without formal charges or trials.¹⁸ The names of those arrested, their precise charges, and information on their trials remain, in most cases, unreleased to this day.¹⁹

B. *KSA Specialized Criminal Court*

In response to the number of detainees following the Riyadh attacks, the KSA established the Specialized Criminal Court (SCC) in late 2008.²⁰ This judicial reform aimed to create a system for trying cases related to terrorism.²¹ Although the influx of detained citizens created a need for an additional adjudicatory body to avoid overwhelming the already-established judiciary, the SCC's jurisdiction was not publicly defined until the establishment of the anti-terror decree in 2014.²² From 2008 to 2014, transparency surrounding SCC jurisdiction was non-existent, enabling the violation of human rights and diminishing judicial independence.²³

The SCC falls under the jurisdiction of the Supreme Judicial Council; however, SCC judges are appointed by the Saudi Ministry of the Interior.²⁴ The Interior Minister was additionally tasked with creating policies for detaining suspected domestic terrorists, overseeing police forces in charge of investigating and arresting alleged criminals, and managing departments tasked with prosecuting and convicting said suspects.²⁵ Less than a year after the SCC's formation, the Kingdom announced 330 defendants had been tried with few, if any, defendants acquitted.²⁶ Many defendants faced prison sentences and travel restrictions, while one defendant faced death.²⁷ Some viewed the formation of the SCC as a sign that the KSA had

17 Boghardt, *supra* note 9, at 2.

18 *Id.*; OFF. OF THE COORDINATOR FOR COUNTERTERRORISM, *supra* note 14, at 127.

19 Boghardt, *supra* note 9, at 1.

20 *Id.* at 2.

21 OFF. OF THE COORDINATOR FOR COUNTERTERRORISM, *supra* note 14, at 127.

22 AM. BAR ASS'N CTR. FOR HUM. RTS., *supra* note 5, at 7; Boghardt, *supra* note 9, at 2.

23 See U.N. Comm. Against Torture, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Concluding Observations on the Second Periodic Report of Saudi Arabia, U.N. Doc. CAT/C/SAU/CO/2, at 4–6 (June 8, 2016).

24 Boghardt, *supra* note 9, at 2.

25 See AM. BAR ASS'N CTR. FOR HUM. RTS., *supra* note 5, at 8; Cordesman & Obaid, *supra* note 11, at 17–18 (discussing Ministry of Interior's oversight of special police forces).

26 Boghardt, *supra* note 9, at 2–3.

27 *Id.* at 3.

gained control in its fight against domestic terrorism.²⁸ However, human rights organizations quickly became concerned about the SCC's power and expanding caseload.²⁹

The KSA's lack of transparency during the SCC's early years contributed significantly to growing concerns that the court had shifted from an adjudicatory forum for terrorism cases to a mechanism by which the government could target activists and oppress dissenters.³⁰ The many cases rapidly adjudicated during the SCC's first year—a majority of which fell under the broad purview of domestic terrorism—often lacked specificity regarding the crimes committed, causing many to question whether the SCC was subject to sufficient oversight.³¹ Laws previously enacted to ensure public safety were interpreted broadly by the court, redefining the meaning of terrorism in the region and allowing for the arrest of those criticizing the crown or crown policies.³² Human rights organizations often cite 2011 as the year the court began exercising broader jurisdiction and became a means through which the KSA could punish critics of the government.³³ It was during this year that the court's caseload shifted to include political activists and adversaries of the Kingdom's polices.³⁴ Notably, this was a contentious period of time for countries surrounding the KSA as well—throughout the Middle East, activists were demanding greater rights and protesting against oppressive regimes.³⁵ In response, the Interior Minister banned all public protests, calling for the arrest of anyone participating in, or organizing a protest for “disobeying the ruler.”³⁶

The court's expanding jurisdiction and increased power could,

28 *Id.* at 2.

29 *See* AM. BAR ASS'N CTR. FOR HUM. RTS., *supra* note 5, at 17; AMNESTY INT'L, MDE 23/1633/2020, MUZZLING CRITICAL VOICES: POLITICIZED TRIALS BEFORE SAUDI ARABIA'S SPECIALIZED CRIMINAL COURT 7–11 (2019), <https://www.amnesty.org/en/wp-content/uploads/2021/05/MDE2316332020ENGLISH.pdf>.

30 Boghardt, *supra* note 9, at 3, 6; *see* AMNESTY INT'L, *supra* note 29, at 7–8; *see also* *The Specialized Criminal Court: How the Saudi Government Targets Human Rights Defenders*, AM. FOR DEMOCRACY & HUM. RTS. BHR. (2015), https://www.adhrb.org/wp-content/uploads/2015/02/2015.23.01_SCC-Background_Final.pdf.

31 AMNESTY INT'L, *supra* note 29, at 7–8; *see also* AM. BAR ASS'N CTR. FOR HUM. RTS., *supra* note 5, at 8 (discussing the role of the Ministry of Interior in overseeing the offices of both the prosecution and the judiciary).

32 AMNESTY INT'L, *supra* note 29, at 8 (“[A]uthorities have also resorted extensively to the 2007 Anti-Cyber Crime Law when prosecuting government critics and human rights defenders before the SCC, citing tweets and other online messages as evidence.”).

33 *See id.* (citing 2011 as the year the SCC has been used as an instrument of oppression, beginning with the trial of 16 “Jeddah reformists”).

34 *Id.* at 9; AM. BAR ASS'N CTR. FOR HUM. RTS., *supra* note 5, at 8.

35 Boghardt, *supra* note 9, at 3.

36 AMNESTY INT'L, *supra* note 29, at 17.

therefore, be seen as a direct signal to the Kingdom's citizens—that protests and calls for increased human rights would be met with harsh penalties, including a possible death sentence. Notably, the American Bar Association (ABA) has questioned the court's "discriminatory application of its jurisdiction," especially in cases where activists have been re-tried under SCC jurisdiction only to receive longer or harsher penalties.³⁷ The ill-defined jurisdiction of the SCC, coupled with the almost unfettered power held by the Interior Minister, raises several concerns. As the UN notes, "the 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."³⁸

II. ERADICATING "TERRORISM": A SYSTEM OF LAWFUL OPPRESSION

A. *Defining Terrorism: An International Proposal*

Despite the severe consequences of improperly defining terrorism, there has yet to be a universal definition adopted by the UN.³⁹ Countries throughout the world have adopted their own laws, definitions, and penalties related to terrorism.⁴⁰ Many have additionally signed on to treaties or conventions that are designed to address the definition of specific terrorist activities, in an effort to reach a consensus on a broader, more encompassing definition.⁴¹ One major barrier to the adoption of a universal definition is the constant evolution, and highly politicized nature, of terrorist activities.⁴² For the purposes of international law, the three most common characteristics found across a myriad of terrorism definitions are: (1) "a fundamental motive to make political/societal change," (2) using "violence or illegal force" against a civilian population by a "non-state" or "subnational actors," (3) with the goal of creating change in society.⁴³

Before evaluating the application of counterterrorism laws, examining the word "terrorism" and how it is defined is crucial. Although the

37 AM. BAR ASS'N CTR. FOR HUM. RTS., *supra* note 5, at 7.

38 Dato' Param Kumaraswamy (Special Rapporteur on the Independence of Judges and Lawyers), *Rep. on the Mission to the Kingdom of Saudi Arabia*, ¶ 90, U.N. Doc. E/CN.4/2003/65/Add.3 (Jan. 14, 2003); *see also* AM. BAR ASS'N CTR. FOR HUM. RTS., *supra* note 5, at 8.

39 Hum. Rts. Council Advisory Comm., *Negative Effects of Terrorism on the Enjoyment of Human Rights*, U.N. Doc. A/HRC/AC/24/CRP.1, at 3 (Jan. 22, 2020).

40 *Id.*

41 *Id.* at 6.

42 *Id.* at 3.

43 *Id.* at 5.

definitions proposed internationally and highlighted by the UN have merit, for the purposes of this Note, a narrower definition is proposed. Terrorism is: (1) political; (2) violence, or the threat of violence; (3) “designed to have far-reaching psychological repercussions beyond the immediate victim or target.”⁴⁴ The last element represents a specific mens rea requirement that governments should adopt when defining terrorism. The intent, or goal, of the action must be to inspire fear in a wide range of people.⁴⁵ Other definitions of terrorism include additional factors, such as specifying that terrorism can only be perpetrated by non-state actors or that the targets must be civilians.⁴⁶ In the definition proposed here, the mens rea requirement sufficiently narrows the scope of terrorism without absolving state actors from the risk of being defined as terrorists.

B. *Defining Terrorism: The KSA “Counter-Terror” Laws*

Given the history of the Riyadh attacks, the KSA has a genuine interest in protecting its citizens and regions of the Kingdom from acts of domestic terrorism.⁴⁷ However, the methods used to combat terrorism may challenge humanitarian goals, and international laws on human rights, if incorrectly applied.⁴⁸ The UN Office of the High Commissioner for Human Rights noted:

[In the pursuit of domestic security,] States have engaged in torture and other ill-treatment to counter terrorism, while the legal and practical safeguards available to prevent torture, such as regular and independent monitoring of detention centres[,] have often been disregarded. . . . The independence of the judiciary

44 Daniel Byman, *Who Is a Terrorist, Actually?*, VOX (Sept. 22, 2020) (quoting BRUCE HOFFMAN, *INSIDE TERRORISM* 40 (2006), <https://www.vox.com/identities/21449415/antifa-terrorists-violence-patriot-prayer-black-lives-matter-protests-portland-kenosha>) (suggesting that the definition of terrorism often shares four common characteristics). Three of these characteristics have been listed above. The missing characteristic is the element which requires terrorism to be defined only by the actions of non-state actors. *Id.* For reasons explained above, I do not consider this element.

45 *Id.*

46 *Id.* (explaining that state-actors refer to people who work as an agent of a recognized government).

47 See U.N. COUNTER-TERRORISM IMPLEMENTATION TASK FORCE (CTITF), WORKING GRP. ON PROTECTING HUM. RTS. WHILE COUNTERING TERRORISM, BASIC HUMAN RIGHTS REFERENCE GUIDE: CONFORMITY OF NATIONAL COUNTER-TERRORISM LEGISLATION WITH INTERNATIONAL HUMAN RIGHTS LAW 7 (2014), <https://www.ohchr.org/EN/newyork/Documents/CounterTerrorismLegislation.pdf> (“[T]errorism constitutes one of the most serious threats to international peace and security . . .”).

48 *Id.*

has been undermined, in some places. . . . Repressive measures have been used to stifle the voices of human rights defenders, journalists, minorities, indigenous groups, and civil society.⁴⁹

Despite this warning from the UN and various legal scholars, the Kingdom has adopted several policies that threaten human rights in the country. The 2014 Penal Law for Crimes of Terrorism and its Financing (2014 Counter Terror Law), is vague and overbroad legislation that has led to various human rights violations.⁵⁰ The law allows the SCC to prosecute any person who “disturbs public order, shakes the security of society or subjects its national unity to danger, or obstructs the primary system of rule or harms the reputation of the state.”⁵¹ A 2011 draft of the law was revamped to remove language that explicitly criminalized peaceful protesting; however, ambiguous language used within the statute allows for the prosecution of persons who make statements critical of the KSA.⁵²

The new law additionally increases the power held by the Interior Minister, allowing for the arrest of terrorism suspects without oversight from the prosecutor, granting additional access to private individuals’ information, and minimizing judicial oversight.⁵³ The SCC also benefited from the passage of the 2014 Counter Terror Law. The law includes provisions that grant the SCC “the authority to hear witnesses and experts without the presence of the defendant or the defendant’s lawyer . . . hampering their right to challenge this evidence.”⁵⁴ The 2014 Counter Terror Law additionally gives the SCC sole jurisdiction over those accused of violating the law and the

49 *Id.* at 7–8.

50 *Saudi Arabia: Terrorism Law Tramples on Rights*, HUM. RTS. WATCH (Feb. 6, 2014), <https://www.hrw.org/news/2014/02/06/saudi-arabia-terrorism-law-tramples-rights#>; *The Specialized Criminal Court: How the Saudi Government Targets Human Rights Defenders*, *supra* note 30.

51 *The Specialized Criminal Court: How the Saudi Government Targets Human Rights Defenders*, *supra* note 30; *see Saudi Arabia: Terrorism Law Tramples on Rights*, *supra* note 50 (explaining that the translated version of the law, provided by Human Rights Watch, states that terrorism is now defined as: “Any act carried out by an offender in furtherance of an individual or collective project, directly or indirectly, intended to disturb the public order of the state, or to shake the security of society, or the stability of the state, or to expose its national unity to danger, or to suspend the basic law of governance or some of its articles, or to insult the reputation of the state or its position, or to inflict damage upon one of its public utilities or its natural resources, or to attempt to force a governmental authority to carry out or prevent it from carrying out an action, or to threaten to carry out acts that lead to the named purposes or incite [these acts].”).

52 *Saudi Arabia: Terrorism Law Tramples on Rights*, *supra* note 50.

53 *Id.*

54 *Id.*

ability to apply the counter terrorism legislation retroactively.⁵⁵

In late 2017, the 2014 Counter Terror Law was replaced by the Penal Law for Crimes of Terrorism and its Financing; however, much of the language enabling human rights violations remained.⁵⁶ The 2017 version failed to rectify the overbroad and vague language used to define “terrorism.”⁵⁷ Moreover, new provisions in the 2017 version introduced penalties for “directly or indirectly insulting the King or Crown Prince in a way that impugns religion or justice,” thereby criminalizing freedom of speech and adopting language originally stricken from the draft of the 2014 Counter Terror Law.⁵⁸ The law also restructures the organization of the government, reallocating several powers to the King, rather than to the Interior Ministry, under the umbrella organizations of the SSP and Office of Public Prosecution (PPO or Public Prosecution).⁵⁹ The SSP was created to consolidate agencies related to counterterrorism, state security, and financial investigations.⁶⁰ Per the order, the PPO and special forces under the SSP are directly overseen by the King.⁶¹ This political move substantially increases the legal authority of the King by granting significant oversight to every institution related to the arrest, detainment, and trial of alleged terrorists. The failure to establish independent and separate agencies with proper oversight has enabled the abuse of human rights within the KSA, often leaving little to no remedy for victims of government-sanctioned offenses.

55 AMNESTY INT’L, *supra* note 29, at 18.

56 *Id.*

57 *Id.*; see also *Saudi Arabia: New Counterterrorism Law Enables Abuse*, HUM. RTS. WATCH (Nov. 23, 2017), <https://www.hrw.org/news/2017/11/23/saudi-arabia-new-counterterrorism-law-enables-abuse> (explaining that, though “insulting the reputation of the State” is no longer stipulated within the definition of terrorism, crimes considered terrorism in the KSA are comprehensive and include: “critic[izing] [] the king and the crown prince [in a manner of] ‘bring[ing] religion or justice into disrepute,’” “disrupting public order,” and a penalty of at least 15 years for those “misus[ing] their status in any way either academic or social status or media influence to promote terrorism”).

58 AMNESTY INT’L, *supra* note 29, at 8; *Saudi Arabia: Terrorism Law Tramples on Rights*, *supra* note 50 (stating the 2011 draft version criminalized “defamation statements” made against the King, but that those criminal provisions were not included in the 2014 version that was adopted into law).

59 *Saudi Arabia: New Counterterrorism Law Enables Abuse*, *supra* note 57.

60 BUREAU OF DEMOCRACY, HUM. RTS. & LAB., U.S. DEP’T OF STATE, *supra* note 6, at 10.

61 *Id.* at 10, 12.

C. *Institutional Violence: Systemic Violations of Human Rights*

Human rights violations begin with the SSP or subsets of the SSP, such as the Mubahith.⁶² SSP agents have been reported to be in plain clothes while they execute searches or arrests without warrants.⁶³ Those detained, and their families, are rarely told the reason for their arrest.⁶⁴ The KSA ensured the legality of many of these actions through the passage of the 2017 version of the counter-terrorism law, granting the SSP the necessary power to make arrests, detain citizens, monitor communications, and suspend people from travel without notification.⁶⁵ Human rights organizations have accused the SSP and its subsidiaries of failing to conduct adequate investigations, functionally “rounding up large numbers of individuals or equating dissent with extremism.”⁶⁶ Further, the SSP has power to monitor the actions of the Mubahith, the police division that is responsible for overseeing the detainment of those awaiting trial.⁶⁷

Once an individual is detained by the Mubahith, the force’s deviation from international human rights standards all but ensures a conviction for those placed under its supervision. Detainees are often denied access to communication with family, friends, and outside counsel while held in solitary confinement or in other harsh conditions.⁶⁸ Detainment can range from a period of months to years, often without the opportunity to protest the detention.⁶⁹ Legally, detainment by the Mubahith can extend to a period of up to almost four years without granting those detained the right to arraignment or ability to claim their innocence.⁷⁰ This policy has extended even to youth activists, arrested and charged for their association with Shi’a protests, who were held without access to communication for

62 AMNESTY INT’L, *supra* note 29, at 31 (referring to the Mubahith as “Mutawa’een,” another name for the religious police sector operating under the control of the SSP).

63 *Id.* at 38 (explaining that most defendants in cases reviewed by Amnesty International were arrested by officials who did not produce warrants).

64 *See id.* at 10, 37–38 (describing how the wife of one detainee felt traumatized by her experience with the SSP). The wife discussed how twenty-five police officials arrived at her home with no notice and forbid her from talking to her husband. *Id.* at 38. She and her children had no idea as to the charges her husband was facing, or why he was being detained. *Id.*

65 *Saudi Arabia: New Counterterrorism Law Enables Abuse, supra* note 57.

66 AM. BAR ASS’N CTR. FOR HUM. RTS., *supra* note 5, at 16.

67 BUREAU OF DEMOCRACY, HUM. RTS. & LAB., U.S. DEP’T OF STATE, *supra* note 6, at 10–11.

68 AMNESTY INT’L, *supra* note 29, at 24–25.

69 *Saudi Arabia: New Counterterrorism Law Enables Abuse, supra* note 57; *see also, e.g.*, AMNESTY INT’L, *supra* note 29.

70 AMNESTY INT’L, *supra* note 29, at 10.

several weeks following their arrests.⁷¹ Some of the men associated with Shi'a or Sahwa protests were detained for months, or even years, without access to a lawyer.⁷² In the cases of sixty-eight defendants reviewed by Amnesty International, not one was granted access to a lawyer at the time of arrest or interrogation.⁷³ For many detainees, access to legal counsel was only granted in the minutes before the start of their trial.⁷⁴

The SCC notably retains much of the same power it originally had under the 2014 Counter Terror Law.⁷⁵ Under the 2017 law, those accused of terrorism or supporting terrorism can be held for up to twelve months leading up to trial.⁷⁶ The twelve-month holding period becomes arbitrary, however, since the SCC is allowed to extend the time period an unlimited amount of times.⁷⁷ Additionally, the law allows the Public Prosecution to hold suspects for up to ninety days without access to outside communication from lawyers and family.⁷⁸

D. *Institutional Violence: Torture and Coerced Confessions*

These human rights violations undermine the validity and impartiality of the rule of law as a social institution. The most egregious violations include the use of torture by the SSP while detainees are awaiting trial.⁷⁹ In the case of Yusuf al-Mushaikhass, a Shi'a activist executed for his participation in protests, the SSP was able to obtain a "confession" for his crimes through the use of torture.⁸⁰ Before his execution, Yusuf claimed that he was tortured to the point that visible scars were left on his body.⁸¹ Prolonged hanging left him unable to move his wrist and he was physically abused by several officers.⁸² In further violation of his autonomy, Yusuf described awaking in his cell, following a session of torture, to find ink on his thumb—an indication that he had fingerprinted a document while he was unconscious.⁸³ His family subsequently learned about his execution during

71 AM. BAR ASS'N CTR. FOR HUM. RTS., *supra* note 5, at 15.

72 AMNESTY INT'L, *supra* note 29, at 10.

73 *Id.*

74 *Id.* at 39.

75 *Saudi Arabia: New Counterterrorism Law Enables Abuse*, *supra* note 57.

76 *Id.*

77 *Id.*

78 *Id.*

79 See AMNESTY INT'L, *supra* note 29, at 9–10 (describing numerous incidents of pretrial torture).

80 *Id.* at 40.

81 *Id.*

82 *Id.*

83 *Id.*

a publicized government broadcast.⁸⁴ The UN Special Rapporteur on Torture found that the KSA frequently uses torture to extract confessions.⁸⁵ Although Saudi Arabia denies these practices and has enacted legislation protecting citizens from torture, dissenters are still subject to torture through institutions directly overseen by the King.⁸⁶

Amnesty International has criticized the SCC's "unquestioning reliance on torture-tainted 'confessions.'"⁸⁷ Hussein al-Rabi, a defendant brought before the court with several protesters from the Shi'a region of the Kingdom, reported his confession was obtained through the use of torture.⁸⁸ The court failed to recognize the unlawful use of torture in obtaining the confession, even after al-Rabi produced evidence of hospitalization stemming from torture perpetuated by Mubahith agents.⁸⁹ The court instead chose to move forward with the prosecution, likely accepting the validity of the confession, resulting in al-Rabi's execution in April of 2019.⁹⁰ Hussein al-Rabi is not the only political dissenter silenced by the KSA through the use of the legal system; however, the SCC continuously refuses to acknowledge or investigate any claims of torture brought forth by defendants.⁹¹ Amnesty International reports that in at least twenty cases against Shi'a Muslim men, defendants were sentenced to death based on coerced confessions.⁹²

E. *Marginalization and Further Implications In The KSA*

In addition to accepting confessions compelled by the SSP, the SCC and other courts in the region devalue testimony given by minorities.⁹³ For example, the voices of women are continuously stifled in court.⁹⁴ Although exceptions exist, a woman's testimony before a court may count as only half that of a man's testimony.⁹⁵ Further, judges are not required to give weight to

84 *Id.* at 43.

85 *Saudi Arabia: New Counterterrorism Law Enables Abuse, supra* note 57.

86 United Nations Hum. Rts. Off. of the High Comm'r, Committee Against Torture Reviews Report of Saudi Arabia (Apr. 25, 2016), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19876&LangID=E>.

87 AMNESTY INT'L, *supra* note 29, at 10.

88 *Id.*

89 *Id.* at 10, 40–41 (recounting that defendant was denied access to food and water until he agreed to sign a confession).

90 *Id.* at 10.

91 *Id.* at 39.

92 *Id.* at 42 (highlighting that seventeen of these men have since been executed).

93 BUREAU OF DEMOCRACY, HUM. RTS. AND LAB., U.S. DEP'T OF STATE, *supra* note 6, at 16, 45.

94 *Id.*

95 *Id.*

any testimony made by religious minorities, including nonpracticing Sunni Muslims, Shi'a, and those who practice other religions.⁹⁶ Shi'a Muslims are left disadvantaged, often unable to have their voices or testimony heard in court.⁹⁷ The danger of such policies are readily apparent, having disparate impact on Shi'a minorities and women's rights activists. Concentrated power, with oversight solely from the King, allows for egregious abuse of the judiciary in the Kingdom's pursuit to stifle the voices of political dissenters.

The 2014 and 2017 anti-terror laws expanded the KSA's persecution of human rights advocates, peaceful protesters, and religious minorities.⁹⁸ However, the KSA has held the power to suppress the voices challenging the Kingdom since the passage of the 2007 Anti-Cyber Crime Law.⁹⁹ The 2014 and 2017 counter-terror laws became increasingly dangerous to KSA citizens given the interplay between the expanded definition of terrorism and the retroactive application of the 2007 Anti-Cyber Crime law. Whereas a violation of the 2007 Anti-Cyber Crime law can result in a fine or imprisonment,¹⁰⁰ the 2014 and 2017 counter-terror laws allow for any crimes that are considered "terrorist crimes" to be punished severely, even going so far as to introduce the death penalty in the 2017 version.¹⁰¹

The counter-terror laws also allow for the SCC to retroactively apply the law, retry individuals who have already been convicted under the Anti-Cyber Crime law, and sentence those citizens to death even if the violation occurred years ago.¹⁰² The ABA notes that "[s]ince December 2018 . . . activists have been arrested and detained . . . for articles, reports, or op-eds they had published years before their arrests."¹⁰³ Waleed abu al-Khair, a human rights lawyer, is a prime example of a conviction under the 2014 Counter Terror Law due, in part, to his tweets about "fair trial concerns in Saudi Arabia."¹⁰⁴ Although the creation of the 2017 counter-terror decree presented an opportunity to reform the legal definition of terrorism or acts of terrorism, the KSA failed to seize this chance to redefine the offense in a way that aligns with internationally recognized human rights standards.¹⁰⁵ The failure to reform the law to comport to those standards gave latitude to the SCC to continue convicting citizens of terrorism without credible

96 *Id.* at 16.

97 *Id.*

98 AMNESTY INT'L, *supra* note 29, at 8.

99 *Id.*

100 *Id.* at 19.

101 *Id.* at 18–19.

102 *See* AM. BAR ASS'N CTR. FOR HUM. RTS., *supra* note 5, at 10.

103 *Id.*

104 *Id.* at 2–3.

105 *Id.* at 3.

evidence.¹⁰⁶ An overly broad terrorism law, retroactively applying to citizens and targeting the most vulnerable populations, directly violates international human rights standards and highlights the danger emphasized by the UN Special Rapporteur on Human Rights.¹⁰⁷

III. VICTIMS

The groups and individuals discussed below represent just a few of the victims that the KSA has held, tried, and obtained convictions for via the SCC. This section especially aims to highlight the disproportionate effect the Kingdom's policies have on members of internationally protected classes, such as women and religious minorities. The use of expanded judicial and police powers have historically, and continuously, enabled the disparate implementation of laws codifying acts of domestic terrorism.¹⁰⁸ Most notably, women, journalists, religious minorities, and human rights activists have felt the brunt of the Kingdom's human rights violations.¹⁰⁹

A. Human Rights Organizations

In its report, *Saudi Arabia: Muzzling Critical Voices*, Amnesty International claims that "virtually all Saudi Arabian human rights defenders and independent voices, male and female, are behind bars serving lengthy sentences handed down by the SCC."¹¹⁰ Even before the 2014 and 2017 versions of the anti-terror laws were passed, the KSA had persecuted members of civil rights organizations such as the Saudi Association for Civil and Political Rights (ACPRA).¹¹¹ In its early formation, the ACPRA encouraged protesting in front of the Ministry of Interior and often coordinated with other youth activists and the families of those detained by the SCC.¹¹² Many leaders of the ACPRA were able to successfully

106 *Id.*

107 *Saudi Arabia: New Counterterrorism Law Enables Abuse*, *supra* note 57 (expressing concern over the KSA's "unacceptably broad definition of terrorism and the use of Saudi Arabia's 2014 counter-terrorism law and other national security provisions against human rights defenders, writers, bloggers, journalists, and other peaceful critics" (quoting Ben Emmerson, U.N. Special Rapporteur on Counter Terrorism and Human Rights)).

108 *See id.*

109 AMNESTY INT'L, *supra* note 29, at 7.

110 *Id.* at 8.

111 AM. BAR ASS'N CTR. FOR HUM. RTS., *supra* note 5, at 7 n.16.

112 *See* Stéphane Lacroix, *Comparing the Arab Revolts: Is Saudi Arabia Immune?*, J. DEMOCRACY, Oct. 2011, at 48, 56 (referring to the ACPRA by the alternative name, the "Saudi Civil and Political Rights Association" or "SCPRA").

advocate for their agenda, in part, due to their online mobilization efforts through forums such as Facebook, blogs, and magazines.¹¹³ It is suspected that founding members of the ACPRA were targeted by the KSA through the SCC and convicted of vague charges such as “acquiring banned books, organising a protest by the families of prisoners and publishing material that would ‘prejudice public order.’”¹¹⁴ Organizations such as Amnesty International, the ABA, and Human Rights Watch have all condemned the systemic dismantling of the ACPRA through the KSA’s conviction of its leaders and founding members.¹¹⁵

Notable convicted ACPRA members and their charges (if known):

1. Muhammad al-Bajadi, founding member of ACPRA charged with establishing a human rights organization, slandering the KSA, possessing restricted books, and inciting disorder.¹¹⁶
2. Dr. Abdullah al-Hamid, ACPRA co-founder charged with crimes related to disturbing public order, such as inciting protest or questioning the integrity of state officials, and sentenced to eleven years in prison.¹¹⁷
3. Mohammad al-Qahtani, ACPRA co-founder charged with disturbing public order and sentenced to ten years in prison.¹¹⁸
4. Dr. Abdulkareem al-Khoder, ACPRA co-founder charged for “disobeying the ruler” and “founding an unlicensed organization,” retried by the SCC in 2014 and sentenced to ten years in prison.¹¹⁹

113 See *id.* at 48, 51.

114 *Saudi Arabia Jails Human Rights Activist Mohammed al-Bajadi*, GUARDIAN (Mar. 11, 2015), <https://www.theguardian.com/world/2015/mar/11/saudi-arabia-jails-human-rights-activist-mohammed-al-bajadi>.

115 See, e.g., AMNESTY INT’L, *supra* note 29; AM. BAR ASS’N CTR. FOR HUM. RTS., *supra* note 5, at 7; *Saudi Arabia: Terrorism Law Tramples on Rights*, *supra* note 50.

116 *The Specialized Criminal Court: How the Saudi Government Targets Human Rights Defenders*, *supra* note 30.

117 AMNESTY INT’L, *supra* note 29, at 17, 26; *Urgent Action: Sentence Overturned, but Still in Prison*, AMNESTY INT’L (Mar. 7, 2014), <https://www.amnesty.org/en/wp-content/uploads/2021/06/mde230052014en.pdf>; see also *Saudi Arabia: New Counterterrorism Law Enables Abuse*, *supra* note 57.

118 AMNESTY INT’L, *supra* note 29, at 17, 26; *Urgent Action: Sentence Overturned, but Still in Prison*, *supra* note 117; see also *Saudi Arabia: New Counterterrorism Law Enables Abuse*, *supra* note 57.

119 AMNESTY INT’L, *supra* note 29, at 17; *Urgent Action: Sentence Overturned, but Still in Prison*, *supra* note 117.

5. Fuad al-Farhan, blogger and member of ACRPA sentenced in 2007.¹²⁰
6. Muhammad al-Abd al-Karim, published critic of the government and member of ACRPA sentenced in December 2010.¹²¹

All eleven founding members of the ACPRA were eventually tried and sentenced for their work related to human rights.¹²² In 2013, the ACPRA and four other independent human rights organizations were forced to shut down on orders from the SCC.¹²³ By the end of the year many activists and leaders of independent human rights organizations in the KSA had been arrested or detained without trial.¹²⁴ In a final effort to deter remaining human rights activists, the 2015 Law on Associations and Foundations constructively banned the formation of new and independent human rights organizations.¹²⁵

B. *Women's Rights Activists*

The KSA began persecuting prominent women's rights activists in May 2018, just one month before lifting the ban on women driving.¹²⁶ In the weeks before the ban was lifted, more than twelve women's rights activists were arrested on charges related to the defense of women's rights.¹²⁷ Amnesty International reported on the arrest of at least ten of these women's rights activists.¹²⁸ Of the cases Amnesty International reported on, charges levied against the women included "promoting reforms and women's rights; demanding an end to the male guardianship system through participating on online and offline campaigning," and disseminating information to human rights organizations and journalists willing to report on the human rights

120 See Lacroix, *supra* note 112, at 48, 51.

121 See *id.*

122 AMNESTY INT'L, *supra* note 29, at 26.

123 *Id.* at 14, 23 n.48.

124 *Id.* at 25–30 (detailing the arrest and conviction of another prominent human rights defender, Waleed Abu al-Khair, founder of the independent human rights organization Monitor of Human Rights in Saudi Arabia).

125 *Id.* at 23. The law delegates power to the Ministry of Social Affairs to deny or disband organizations that have the potential to harm "national unity." *Id.* Since its enactment, the only human rights organizations that have legally continued to operate are the Human Rights Commission and the National Society for Human Rights, both government organizations under the authority of the KSA. *Id.*

126 *Id.*

127 *Id.* at 24.

128 *Id.*

violations happening within the KSA's borders.¹²⁹

As a result of their charges, many of the activists were slandered in the media upon arrest.¹³⁰ In a grievous abuse of human rights standards, many women report the use of sexual harassment and torture while detained and awaiting trial.¹³¹ One activist was reported to have been hung from the ceiling, while another was reported to have been “sexually harassed by interrogators wearing face masks.”¹³² Other forms of torture left the women permanently disabled, “unable to walk or stand properly.”¹³³ It has been alleged that the Crown Prince Mohammed bin Salman (MBS or Crown Prince) was not only aware of the human rights violations, but also had an active role in the torture—“threatening one activist with rape and death.”¹³⁴ Women were systematically targeted for their peaceful dissent from the KSA, in an unprecedented display of SCC power and disregard for international human rights laws.¹³⁵

Notable women's cases:

1. Al Ghomgham, detained since 2015, arrested in connection with her advocacy work.¹³⁶ First woman charged with the death penalty by the SCC.¹³⁷
2. Loujain Alhathloul, arrested May 2018, tortured and sexually harassed while in custody, jailed for driving and advocating for women's rights.¹³⁸
3. Iman al-Nafjan, detained without charges from May 2018 to

129 *Id.*

130 *Id.*

131 *Id.*

132 *Id.*

133 *Id.*

134 Al Jazeera, *Saudi Human Rights Commission Interviews Detainees, Including Women's Rights Activists, over Alleged Torture, Report Says*, INSIDER (Dec. 19, 2018), <https://www.businessinsider.com/saudi-human-rights-commission-interviews-detainees-over-alleged-torture-2018-12>; *see also* AM. BAR ASS'N CTR. FOR HUM. RTS., *supra* note 5, at 13 n.47 (highlighting that an advisor to the crown claimed that MBS has “overseen ‘some aspects of the torture’”).

135 AM. BAR ASS'N CTR. FOR HUM. RTS., *supra* note 5, at 12–13.

136 *Id.* at 14.

137 *Id.*

138 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>. Loujain Alhathloul was first arrested in 2014 for driving when it was illegal in the KSA for women to drive. *Id.* She famously recorded herself driving in protest of the law. *Id.* Her case has gained global attention and in 2018 her case was moved from the SCC to the criminal court in Riyadh. *Id.*

March 2019, leader for women's right to drive campaign and persecuted for human rights work.¹³⁹

4. Aziza al-Youssef, human rights advocate detained without charges from May 2018 to March 2019.¹⁴⁰ In 2016 she led a petition signed by 15,000 supporters, denouncing the male guardianship system in the KSA.¹⁴¹
5. Nassima al-Sada, civil, political, and women's rights activist detained without charge from July 2018 to June 2019.¹⁴² Unlike Iman al-Nafjan and Aziza al-Youssef, who were also held close to twelve months without formal charge, Nassima al-Sada remains in custody without formal charges pending a future trial.¹⁴³

C. *Journalists*

The SCC and other courts in the KSA have also been used to target journalists, often criminalizing speech that either criticizes the government or highlights injustices activists have faced within the Kingdom.¹⁴⁴ Since late 2018, activists, including journalists and bloggers, have been persecuted by the government for publishing material that criticizes Kingdom policies or offends the values of the crown.¹⁴⁵ Many activists who were targeted had, in fact, produced printed or online pieces deemed illegal by the 2014 Counter Terror Law years prior; however, the retroactive effect of the 2014 law in conjunction with the 2007 Anti-Cyber Crime law, allowed for their arrests.¹⁴⁶ The intensified persecution of women's rights advocates and journalists suggests a message is being sent to activists throughout the Kingdom of the KSA's power and willingness to stifle the voices of dissenters.

According to the U.S. Department of State, the Kingdom has implicitly directed judges on the SCC to harshly punish those who "challenge government and societal norms," such as journalists and other activists

139 *Saudi Arabia: Free Women Human Rights Defenders Immediately!*, AMNESTY INT'L (June 21, 2018), <https://www.amnesty.org/en/latest/campaigns/2018/06/saudi-arabia-release-women-human-rights-defenders/>.

140 *Id.*

141 *Id.*

142 *Id.*

143 *Id.*

144 Boghardt, *supra* note 9, at 7

145 AM. BAR ASS'N CTR. FOR HUM. RTS., *supra* note 5, at 10; AMNESTY INT'L, *supra* note 29, at 15.

146 AMNESTY INT'L, *supra* note 29, at 15, 23.

or reformers.¹⁴⁷ The UN Committee Against Torture has additionally expressed concerns regarding the persecution of those reporting on human rights violations.¹⁴⁸ In one of the most publicized examples, *Washington Post* journalist Jamal Khashoggi was brutally executed on Saudi Arabian soil in late 2018.¹⁴⁹ In October of 2018, Khashoggi entered a Saudi Arabian consulate in Istanbul, Turkey, and was never seen alive again.¹⁵⁰ A special inquiry by the UN determined that he was deliberately murdered by officials of the KSA, citing evidence implicating specific officials and the Crown Prince.¹⁵¹ Initially, the KSA denied involvement in his murder.¹⁵² Eventually, the Kingdom launched an investigation into his death; however, the investigation lasted less than a week and resulted in a finding that Khashoggi died after engaging in a “‘fist-fight’ inside the consulate.”¹⁵³

In his last article, Khashoggi wrote of the danger of suppressing the voice of the media.¹⁵⁴ He highlighted the importance of providing a platform for Arab voices to be heard worldwide and emphasized the key educational role journalism could provide.¹⁵⁵ Khashoggi worried about the “Iron Curtain” that had fallen over Saudi Arabia and much of the Arab world.¹⁵⁶ He reflected, with sadness, on the state control of information in many Arab countries, and longed for the hope that the Arab Spring once brought to the region.¹⁵⁷ Khashoggi was just one of many voices that has been stifled by the KSA. The disregard for the rule of law—and the planned execution of an esteemed journalist who wrote from afar to criticize the

147 Boghardt, *supra* note 9, at 6; BUREAU OF DEMOCRACY, HUM. RTS. & LAB., U.S. DEP’T OF STATE, SAUDI ARABIA 2014 HUMAN RIGHTS REPORT 13 (2014).

148 U.N. Comm. Against Torture, *supra* note 23, at 4.

149 BUREAU OF DEMOCRACY, HUM. RTS. & LAB., U.S. DEP’T OF STATE, *supra* note 6, at 2–3; Joyce Lee & Dalton Bennett, *The Assassination of Jamal Khashoggi*, WASH. POST (Apr. 1, 2019), <https://www.washingtonpost.com/graphics/2019/world/assassination-of-jamal-khashoggi-documentary/> (explaining that although Khashoggi was in Turkey at the time of his murder, officially his murder occurred within the bounds of the Saudi Arabian consulate which is considered to be Saudi Arabian soil).

150 AMNESTY INT’L, *supra* note 29, at 15.

151 *Id.*; see Lee & Bennett, *supra* note 149 (concluding Jamal Khashoggi was murdered and dismembered for his speech against the Kingdom, after entering a Saudi consulate to gather documents for his impending marriage in late 2018).

152 AMNESTY INT’L, *supra* note 29, at 15 n.2.

153 *Id.*

154 Jamal Khashoggi, Opinion, *What the Arab World Needs Most Is Free Expression*, WASH. POST (Oct. 17, 2018), https://www.washingtonpost.com/opinions/global-opinions/jamal-khashoggi-what-the-arab-world-needs-most-is-free-expression/2018/10/17/adfc8c44-d21d-11e8-8c22-fa2ef74bd6d6_story.html.

155 *Id.*

156 *Id.*

157 *Id.*

policies of the KSA—represent some of the most flagrant human rights violations perpetrated by the Kingdom.

D. *Religious and Political Minorities*

1. Shi'a

The KSA has also persecuted religious minorities advocating for equal rights in the Kingdom.¹⁵⁸ Citizens of the KSA who identify as part of the Shi'a, or Shiite, religious minority have long been subject to discrimination.¹⁵⁹ The KSA strictly adheres to the Wahhabi interpretation of Sunni Islam which governing parties believe to be incompatible with the Shi'a faith.¹⁶⁰ Members of the Shi'a religion have been denied freedom of religion, barred from public services, and discriminated against in the hiring for important societal roles such as judges.¹⁶¹

The Arab Spring of 2011, a movement led primarily by young Shi'a activists, sparked protests against the repression of religious minorities.¹⁶² These activists mobilized through the use of social media platforms and online forums with demands for “political, economic and social reforms.”¹⁶³ In early 2011, the KSA responded to the activists' demands by deploying a large number of troops to the Eastern Province of the Kingdom where a majority of Shi'a reside.¹⁶⁴ Some Shi'a activists were subsequently arrested and detained for a year or more without charge or trial before being brought before the SCC.¹⁶⁵ Since 2011, over one hundred Shi'a Muslims have been arrested by covert forces and brought before the SCC because of their criticism of the government or participation in peaceful protests.¹⁶⁶ Tensions continued to mount between the KSA and the Shi'a minority as the number of wrongfully detained Shi'a grew, sparking an order from the Ministry of Interior approving and promoting the use of deadly force by police.¹⁶⁷ As a

158 See Lacroix, *supra* note 112, at 52–54.

159 See *id.* at 52 (explaining that the Shi'a represent between ten to fifteen percent of the KSA's population); see also AMNESTY INT'L, *supra* note 29, at 31.

160 AMNESTY INT'L, *supra* note 29, at 31.

161 *Id.*

162 AM. BAR ASS'N CTR. FOR HUM. RTS., *supra* note 5, at 10 (The ABA reviewed seven cases before the SCC court related to the persecution of the Shi'a protesters, four of which were youth.); see also Lacroix, *supra* note 112, at 52.

163 See AMNESTY INT'L, *supra* note 29, at 31; see also Lacroix, *supra* note 112, at 52.

164 AMNESTY INT'L, *supra* note 29, at 31 n.63; see also AM. BAR ASS'N CTR. FOR HUM. RTS., *supra* note 5, at 10.

165 AMNESTY INT'L, *supra* note 29, at 31.

166 *Id.* at 9.

167 See *id.* at 32 (emphasizing that police were authorized to take “all measures needed”

result, in the months following this order, more than ten Shi'a men were shot and killed under "unclear circumstances."¹⁶⁸

Members of the Shi'a minority have been disparately treated by the state, in some cases facing the death penalty for acts as simple as exercising the right of free speech.¹⁶⁹ Human rights organizations have drawn attention to the use of the death penalty when trying Shi'a community members.¹⁷⁰ Further, there has been outrage surrounding the detention and harsh sentencing of youth.¹⁷¹ Shi'a youth detained by the KSA claim they were subjected to forced confessions as a result of torture, being held without access to communication with friends, family, or legal counsel, and disparate application of the death penalty.¹⁷² In persecuting the Shi'a minority, the SCC often relies on confessions defendants claim were only obtained by covert police forces through torture or coercion.¹⁷³ Based on these confessions, the SCC sentenced three youth to death for, among other charges, anti-government protests.¹⁷⁴ All three youth maintained that their confessions were obtained through torture.¹⁷⁵

Notable Shi'a juvenile cases:

1. Ali al-Nimr, arrested for participation in protests for Shi'a rights at the age of seventeen, sentenced to death in 2014.¹⁷⁶ Ali al-Nimr is the nephew of Nimr Baqir al-Nimr, prominent Shi'a cleric sentenced to death by the SCC in October of the same year.¹⁷⁷

against protesters found to "contradict Islamic Shari'a law and the values and traditions of Saudi society" (quoting Ministry of Interior statement)).

168 *Id.*

169 *Id.* at 33.

170 *See, e.g., id.*

171 *See* AM. BAR ASS'N CTR. FOR HUM. RTS., *supra* note 5, at 14–15; Adam Coogle, *Saudi Arabia's Troubling Death Sentence*, HUM. RTS. WATCH (Sept. 26, 2015), <https://www.hrw.org/news/2015/09/26/saudi-arabias-troubling-death-sentence>.

172 AM. BAR ASS'N CTR. FOR HUM. RTS., *supra* note 5, at 3, 14–15.

173 *Id.* at 11–12, 15.

174 *Saudi Arabia: Fears Grow that Three Young Activists Could Soon Be Executed*, AMNESTY INT'L (Oct. 16, 2015), <https://www.amnesty.org/en/latest/news/2015/10/saudi-arabia-three-young-activists-could-soon-be-executed/>.

175 *Id.*

176 *Id.* *But see Saudi Arabia: Withdrawal of Death Sentences for Three Shi'a Activists Arrested as Teenagers a Welcome Move*, AMNESTY INT'L (Feb. 8, 2021), <https://www.amnesty.org/en/latest/news/2021/02/saudi-arabia-withdrawal-of-death-sentences-for-three-shia-activists-arrested-as-teenagers-a-welcome-move/> (reporting that the death sentences have since been commuted, but all three youths remain in custody despite the Kingdom stating that they could be released as early as 2022).

177 *Saudi Arabia: Fears Grow that Three Young Activists Could Soon Be Executed*, *supra* note 174.

2. Abdullah Hasan al-Zaher, sixteen year-old anti-government protestor, arrested for participation in anti-government protests, armed robbery, and use of Molotov cocktails against police officers.¹⁷⁸ Sentenced to death by the SCC in 2014.¹⁷⁹
3. Dawood Hussein al-Marhoon, seventeen year-old youth activist arrested on the same charges as Abdullah Hassan al-Zaher.¹⁸⁰ Sentenced to death by the SCC in 2014.¹⁸¹
4. Nimr Baqir al-Nimr, Shi'a rights advocate executed for his role in the protests calling for increased rights.¹⁸² On January 2, 2016, the KSA announced Nimr Baqir al-Nimr's execution, along with the execution of forty-six other prisoners on death row.¹⁸³
5. In 2017 and 2019, many Shi'a were arrested, detained, and those convicted by the court were executed.¹⁸⁴ Of the thirty-seven men executed in April 2019, a majority were Shi'a,¹⁸⁵ one was a minor,¹⁸⁶ and at least one of the bodies was hung outside on display as a warning to citizens.¹⁸⁷

2. Sahwa

Broadly speaking, the Sahwa represent an intersection of scholars who identify with “the political ideology of the Muslim Brotherhood” and “local Wahhabi religious ideas.”¹⁸⁸ The crown has called for covert police forces to arrest religious minorities, such as the Sahwa, in connection to

178 *Id.*

179 *Id.*

180 *Id.*

181 *Id.*

182 AMNESTY INT'L, *supra* note 29, at 32–33.

183 *Id.* at 33.

184 *Id.*

185 *Id.*

186 *Id.* at 34.

187 *Saudi Arabia Executes 37 in Connection with Terrorism*, AL JAZEERA (Apr. 27, 2019), <https://www.aljazeera.com/news/2019/4/27/saudi-arabia-executes-37-in-connection-with-terrorism>.

188 See Lacroix, *supra* note 112, at 48–49; see also Zachary Laub, *Egypt's Muslim Brotherhood*, COUNCIL ON FOREIGN RELS., <https://www.cfr.org/background/egypts-muslim-brotherhood> (Aug. 15, 2019) (“Founded in Egypt in the 1920s, the Brotherhood is one of the most influential Islamist organizations in the world, mixing religious teaching with political activism and social welfare programs.”).

domestic terrorism since the beginning of the 2003 attacks on Riyadh.¹⁸⁹ When the attacks began, Sahwa leaders circulated more than twelve petitions to submit to the KSA, arguing that human rights violations were the cause for violence in the region.¹⁹⁰ The writers of these petitions were persecuted, many arrested, charged, imprisoned, and banned from travel, due to their political ideologies and disruption of public peace.¹⁹¹ Despite the arrests, Sahwa members persisted—publishing texts calling for a constitutional monarchy and organizing for the creation of a new political party.¹⁹²

In recent years, Sahwa ideologies have been spread through the use of online forums such as Facebook and other social media platforms.¹⁹³ The Sahwa have also focused their efforts on those who are inhumanely detained by the SCC and the KSA.¹⁹⁴ Their recent mobilization efforts have been directed towards the family members of those who remain detained without trial and often without advocates to guide them.¹⁹⁵ Notably, youth were once again found at the center of many of these changes within the Sahwa community.¹⁹⁶

The Kingdom, in response, has persecuted high profile figures within the Sahwa community. Outlined below are a few, of many, notable cases:

189 Jonathan Hoffman, *Religion, the State and Politics in Saudi Arabia*, MIDDLE E. POL'Y, Fall 2019, at 45, 48. The term Sahwa represents “an umbrella term for a group that was heavily influenced by Muslim Brotherhood networks in the kingdom and fused Brotherhood [political] ideology with local Wahhabi tradition.” Toby Matthiesen, *Saudi Arabia*, in RETHINKING POLITICAL ISLAM 2 (Shadi Hamid & William McCants eds., 2017); see Hoffman, *supra*, at 49. Members of this group often participate in demonstrations, protesting for reform to Muslim institutions. Hoffman, *supra*, at 49. Religious leader, Saudi Grand Mufti, Sheikh Abdel Aziz Ibn Abudllah Alasheikh warned that demonstrations in the KSA are strictly prohibited “because the ruler here rules by God’s will.” Caryle Murphy, *Heavy Police Presence Deters Protesters in Saudi Arabia*, WORLD (Mar. 11, 2011), <https://theworld.org/stories/2011-03-11/heavy-police-presence-deters-protesters-saudi-arabia>; see Hoffman, *supra*, at 49.

190 Hoffman, *supra* note 189, at 48.

191 *Id.*; see PROJECT ON MIDDLE E. POL. SCI., THE ARAB MONARCHY DEBATE 21 (2012), https://pomeps.org/wp-content/uploads/2012/12/POMEPS_BriefBooklet16_Monarchies_web.pdf.

192 See Lacroix, *supra* note 112, at 49. It should also be noted that the Sahwa have been criticized for failing to support the Shi’a minority. This article additionally argues that the Sahwa have benefited from the current political structure within the KSA and notes a failed revolutionary attempt against the government as one potential motive for their reluctance to join calls of new insurrections. *Id.* at 55.

193 Hoffman, *supra* note 189, at 50.

194 *Id.*

195 *Id.*; AMNESTY INT’L, *supra* note 29, at 44.

196 Hoffman, *supra* note 189, at 50–51.

1. Salman al-Awada, religious cleric charged several times by the KSA and tried before the SCC for thirty-seven crimes, including participation in petitions, and affiliation with the Muslim brotherhood.¹⁹⁷ Salman al-Awada's case has been postponed by the court numerous times, as the prosecution prepares to seek the death penalty for his crimes of "stirring public discord and inciting people against the ruler."¹⁹⁸
2. Hassan Farhan al-Maliki, charged in late 2018 for vague charges including: expressing religious ideas in contradiction of the crown, writing books published outside of the Kingdom, violating the country's cybercrime law, and attending discussion groups in Saudi Arabia.¹⁹⁹
3. Essam al-Zamil, a prominent Sahwa economist, likely arrested in connection to his criticism of the Crown Prince.²⁰⁰
4. Ahmed al-Amari, Sahwa member²⁰¹ arrested after a raid of his home by "security forces," and held in solitary confinement.²⁰² Ahmed al-Amari died in early 2019, after suffering a brain hemorrhage while in confinement.²⁰³

E. *The Death Penalty and Youth Activists*

The death penalty is a controversial form of punishment in countries throughout the world, including the U.S. Several human rights organizations, such as Amnesty International, condemn the use of the death penalty in any circumstance regardless of guilty status or the alleged crime committed.²⁰⁴

197 AMNESTY INT'L, *supra* note 29, at 30. Salman al-Awada's house was raided by men in plain clothes, assumed to be SSP members, who did not have a warrant. *Id.* at 38.

198 *Trial of Saudi Scholar Salman al-Awdah Postponed, Says Son*, AL JAZEERA (July 28, 2019), <https://www.aljazeera.com/news/2019/7/28/trial-of-saudi-scholar-salman-al-awdah-postponed-says-son>.

199 *Saudi Arabia: Religious Thinker on Trial for His Life*, HUM. RTS. WATCH (June 23, 2019), <https://www.hrw.org/news/2019/06/23/saudi-arabia-religious-thinker-trial-his-life>; *see also* Hoffman, *supra* note 189, at 47, 50.

200 Hoffman, *supra* note 189, at 52.

201 *Id.* at 48.

202 *Saudi Cleric Detained in Crackdown Dies: Activists*, REUTERS (Jan. 21, 2019), <https://www.reuters.com/article/us-saudi-arrests/saudi-cleric-detained-in-crackdown-dies-activists-idUSKCN1PF1QM>.

203 *Id.*

204 *Saudi Arabia: Halt Imminent Execution of Young Man*, AMNESTY INT'L (June 8, 2021) (updated June 15, 2021), <https://www.amnesty.org/en/latest/press-release/2021/06/saudi->

However, as applied to youth or child activists, there is broader consensus and greater sense of outrage when a sentence of death is handed down for crime committed before the age of eighteen.²⁰⁵ In March 2020, the KSA announced that they would no longer implement the death penalty against juveniles who committed crimes in their youth.²⁰⁶ This same year, there was an eighty-five percent drop in executions as the Kingdom sought to reform its image during its term as G20 president in 2020.²⁰⁷ Despite this reduction in 2020, the KSA has recommitted to upholding death sentences ordered by the SCC, moving forward with the execution of at least forty people in the first half of 2021 alone.²⁰⁸ In February 2021, the state funded human rights commission announced that the ban against carrying out the death penalty on youth only applied to lesser crimes in the Kingdom.²⁰⁹ Despite being charged and convicted for lesser crimes that were suspected to have been committed when he was seventeen, the ban was not applied and Mustafa Hashem al-Darwish was executed.²¹⁰ Like many, al-Darwish alleged that his confession—which he later recanted in court—was obtained through torture.²¹¹ Despite the controversy surrounding his age when the crimes were committed, the use of torture to obtain a confession, and the passage of the 2020 decree against executing those convicted for crimes in their youth, Mustafa Hashem-al Darwish’s sentence was carried out in June 2021 with no advance notice to the public or his family.²¹²

The incarceration, torture, and execution of Saudi Arabian youth, activists, political dissenters, religious minorities, and women are egregious violations of international human rights standards and norms. The foundation for this genocide is grounded in the expansive definition of the word terrorism and acts that are considered to constitute terrorism in the KSA, in the lack of judicial independence, in the failure to promote

arabia-halt-imminent-execution-of-young-man/.

205 International law, for instance, “strictly prohibits the use of the death penalty for people who were under 18 years old” at the time the crime was committed. *Id.* (quoting Lynn Maalouf, Deputy Dir. for the Middle E. & N. Afr., Amnesty Int’l).

206 Raya Jalabi, *S. Arabia Executes Man for Offences Rights Groups Say He Committed as Minor*, REUTERS (June 15, 2021), <https://www.reuters.com/world/middle-east/s-arabia-executes-man-offences-rights-groups-say-he-committed-minor-2021-06-15/>.

207 *S. Arabia Increases Executions in 2021 After 2020 Fall - Rights Group*, REUTERS (Aug. 3, 2021), <https://www.reuters.com/world/middle-east/s-arabia-increases-executions-2021-after-2020-fall-rights-group-2021-08-03/>.

208 *Id.*

209 Jalabi, *supra* note 206.

210 *Id.*

211 *Id.*

212 *Id.* The parents of al-Darwish learned of his death via an online news article. *Id.* In a statement, the family has said “[s]ince his arrest, we have known nothing but pain.” *Id.*

transparency and accountability measures within police forces, and in the unbridled power held by the King. Although the western world has condemned the Kingdom for the violation of international human rights standards, I argue that many of the systemic failures which have allowed the KSA to persecute their citizens can be found paralleled in U.S. I use the U.S. as an example of a western country which purports to uphold internal human rights standards, condemns the acts of the KSA, and yet echoes dangerous rhetoric and precedent that set the Kingdom on the path they remain on today.

IV. U.S. PARALLELS

A. *Defining Terrorism*

Like Saudi Arabia, the U.S. has a genuine interest in protecting its citizens from terrorist attacks and threats. Nevertheless, broadly defining terrorism can undermine legitimate institutions and enable persecution of peaceful, non-violent protesters.²¹³ An open-ended terrorism statute, or a vague inclination as to how terrorism is defined, allows the state to criminalize actions, thoughts, or people that do not conform with the “status quo.”²¹⁴ In fact, the U.S. definition of “terrorism” is broad enough that, “[i]f someone alleges that you have said something threatening to them and caus[ed] them fear for their life, you can be charged . . . with terrorism.”²¹⁵ Similar to Saudi Arabia, the threat of future terrorist attacks in the wake of September 11th led to the hasty enactment of legislation that dangerously expanded executive branch power with little to no oversight of how those powers affect the citizenry’s fundamental rights.²¹⁶

Comparable to the KSA’s Antiterrorism laws, the USA PATRIOT Act (Patriot Act) also conflates acts of domestic terrorism with day to day criminal investigations, allowing for probes into simple crimes that circumvent

213 U.N. COUNTER-TERRORISM IMPLEMENTATION TASK FORCE (CTITF), *supra* note 47, at 16–18.

214 See Ronisha Browdy, *Patrisse Khan-Cullors’s And When They Call You a Terrorist: A Black Lives Matter Memoir: Storytelling as Black Feminist Counter-Attack on Mis-labelling of Black Identity*, 40 PROSE STUD. 15, 31 (2018). The author of “And When They Call You A Terrorist: A Black Lives Matter Memoir” experienced the danger of broadly defining terrorism when her schizophrenic brother was arrested for “terrorism” after he had a fender bender during an episode. *Id.* Although her brother did not physically harm anyone, he was charged for terrorism. *Id.*

215 See *id.*

216 See, e.g., CATO INST., CATO HANDBOOK FOR CONGRESS 117–18 (2003), <https://www.cato.org/sites/cato.org/files/serials/files/cato-handbook-policymakers/2003/9/hb108-12.pdf>.

constitutional protections if disguised as a matter of national security.²¹⁷ Passed shortly after September 11th, the Patriot Act expanded the definition of terrorism and the power of federal agencies to investigate suspected terrorists.²¹⁸ Under the Act, “domestic terrorism” consists of acts intended to: “(i) intimidate or coerce a civilian population; (ii) influence the policy of a government by intimidation or coercion; or (iii) to affect the conduct of a government by mass destruction, assassination or kidnapping.”²¹⁹ The Act further expanded the investigatory powers of the federal government in a way that diminishes a citizen’s Fourth Amendment rights, allowing for easier access to electronic surveillance than ever before.²²⁰ Now, the bar for accessing enhanced surveillance, originally reserved to investigate matters of national security, is lower than the probable cause standard needed to arrest a suspect in a criminal investigation.²²¹ The ACLU notes that the overly broad language of the Patriot Act could qualify the work of activist organizations in the U.S. as acts of terrorism.²²²

B. *Accountability in Counterterrorism Measures*

U.S. policies have enabled the growth of police and state power in a similar fashion to that of the Kingdom. The parallels between the KSA and U.S. policies are best seen through the lived experiences of majority-minority communities. Despite the U.S.’s vocal commitment to human rights and the rule of law, minority groups have been disenfranchised and face continuous persecution from legal actors. As seen in the KSA, when local police power grows, the relationship between law enforcement, legal institutions, and civil liberties becomes increasingly strained due to lack of accountability and oversight.²²³ In the wake of the September 11th attacks, the mobilization of local police forces raised concerns that efforts to combat domestic terrorism would result in abuses of power.²²⁴ The KSA sets a clear example of how this abuse of power can escalate into wide-spread suppression of dissenting opinions and voices. With little to no oversight, KSA anti-terrorism forces were able to arrest those suspected of terrorism,

217 *Id.* at 119.

218 *How the USA Patriot Act Redefines “Domestic Terrorism,”* ACLU, <https://www.aclu.org/other/how-usa-patriot-act-redefines-domestic-terrorism> (last visited May 12, 2022).

219 *Id.*

220 CATO INST., *supra* note 216, at 119.

221 *Id.*

222 *How the USA Patriot Act Redefines “Domestic Terrorism,”* *supra* note 218.

223 Matthew C. Waxman, *Police and National Security: American Local Law Enforcement and Counterterrorism After 9/11*, 3 J. NAT’L SEC. L. & POL’Y 377, 378 (2009).

224 *Id.* at 379.

releasing little to no information regarding the arrest, charge, or length of detainment. Despite this fact, the U.S. continues to heavily rely on local police forces because the federal government values their knowledge of the immediate community and the number of officers they can provide in emergency situations.²²⁵ However, scholars, researchers, and advocates have justifiably raised concerns about the unchecked powers granted to local police forces and government agencies in the wake of the September 11th attacks.²²⁶ The KSA notably used the September 11th attacks and subsequent attacks in the Kingdom to justify expansive policies that undermine civil liberties. In the U.S., the use of decentralized police forces continues to raise complex issues in the balancing of state powers and civil liberties.²²⁷ This threatens the already weakened systems of accountability and transparency within legal institutions.²²⁸

Within communities, many local advocates have fought for increased

225 *Id.* at 386.

226 *See, e.g.*, STEPHEN J. SCHULHOFER, *THE ENEMY WITHIN: INTELLIGENCE GATHERING, LAW ENFORCEMENT, AND CIVIL LIBERTIES IN THE WAKE OF SEPTEMBER 11*, at 3–4 (2002); *Surveillance Under the USA/Patriot Act*, ACLU, <https://www.aclu.org/other/surveillance-under-usapatriot-act> (last visited May 12, 2022) (expressing concern over the increased government power post-September 11th, as a result of the Patriot Act and the decreased privacy individuals and organizations have under the law); N.Y. ADVISORY COMM., U.S. COMM’N ON C.R., *CIVIL RIGHTS IMPLICATIONS OF POST-SEPTEMBER 11 LAW ENFORCEMENT PRACTICES IN NEW YORK* 2, 26, 28 (2004), <https://www.usccr.gov/files/pubs/sac/ny0304/ny0304.pdf>. Reporting in their capacity as an independent, bipartisan agency, the United States Commission on Civil Rights has expressed concerns over racial profiling practices in New York State, and an increasing dependance on local law enforcement agencies. N.Y. ADVISORY COMM., U.S. COMM’N ON C.R., *supra*. They note that some commenters have attributed the rise of racial profiling to changes in federal policy, post-September 11th, that has increased the power of federal agencies. *Id.* They further acknowledge the role of the N.Y. courts in lowering the threshold needed for the NYPD to investigate political organizations—eliminating the need for federal consent and creating additional barriers to transparency. *Id.*

227 Waxman, *supra* note 223, at 396, 406.

228 One example of the lack of transparency and accountability in the U.S. judicial system is highlighted in studies that show judges who face re-election will be affected in their judicial opinions. *See, e.g.*, Paul L. Friedman, *Threats to Judicial Independence and the Rule of Law*, A.B.A. (Nov. 18, 2019), <https://www.americanbar.org/groups/litigation/initiatives/committee-on-american-judicial-system/in-the-news/threats-to-judicial-independence-and-rule-of-law/>. Further, the lack of transparency within the federal system has led to a decline in trust that the American people have in the judicial system. *Id.* “Only 34 percent [of people] now believe that federal judges act independently and issue rulings based on the law as written, and 55 percent of the American people believe that the Supreme Court is motivated by politics.” *Id.*; *see also, e.g.*, *Police Reform Ideas*, SANTA CLARA U. LIBR., <https://libguides.scu.edu/c.php?g=1048085&p=7605822> (Nov. 3, 2021) (“Transparency and accountability are major issues in policing and have been for decades.”).

accountability by pressuring their politicians to opt out of federal policies or initiatives for fear of losing the increased transparency and accountability measures that they have won over the years.²²⁹ This increased activism is in part due to the lack of accountability for federal and local police entities, and the failure of the judiciary to ensure greater protections for its citizens. In opting out of federal policies and initiatives, community leaders seek to ensure that federal agencies who rely on collaboration with local police adhere to local policies regarding police accountability and transparency.²³⁰ However, although counter-terrorism policies have been adopted by many local law enforcement agencies,²³¹ critics have raised concerns that local accountability is not a sufficient check on federal power.²³² Counter-terrorism surveillance practices are designed to be secretive, and therefore are inherently difficult to monitor.²³³ Moreover, journalist Corey Robin has warned that collaboration between federal and state enforcement allows for “[local] police to provide a legitimizing gloss of national security to their own pet projects of repression.”²³⁴

Federally, the executive branch is granted broad power to create policies regarding the arrest and detainment of suspected terrorists, particularly in times of war.²³⁵ Following September 11th, the Bush administration determined that the proper forum for suspected terrorists would be military commissions, “[d]eeming U.S. criminal courts too cumbersome and insufficient to handle terrorism cases.”²³⁶ Just six years later, the Bush administration once again expanded these powers, limiting protections and compliance with the Geneva Convention for any persons associated with known terrorist organizations.²³⁷ The U.S. Supreme Court (SCOTUS) has placed some limits on the ability for the U.S. to detain suspected terrorists; however, the label of “enemy combatant” allows for a U.S. citizen to be held for the duration of a conflict.²³⁸ While the U.S. government would claim that this expansive power is necessary, especially in

229 Waxman, *supra* note 223, at 395; Tom Lininger, *Federalism and Antiterrorism Investigations*, 17 STAN. L. & POL'Y REV. 391, 391 n.3 (2006).

230 Waxman, *supra* note 223, at 395–96.

231 LOIS M. DAVIS ET AL., LONG-TERM EFFECTS OF LAW ENFORCEMENT'S POST-9/11 FOCUS ON COUNTERTERRORISM AND HOMELAND SECURITY, 1 (2010).

232 Waxman, *supra* note 223, at 396.

233 *Id.* at 396–97.

234 *Id.* at 396.

235 See Tanja Porčnik, *Detainee Rights: The Judicial vs. Congressional Check on the President in Wartime*, J. COMPAR. POL., July 2019, at 69.

236 *Id.* at 72.

237 *Id.* at 74.

238 *Id.* at 79; see *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004); see also *Doe v. Mattis*, 928 F.3d 1, 15 (D.C. Cir. 2019).

times of war, the precedent set is a slippery slope. Adjudication on the rights of American citizens who have been labeled “enemy combatants” continue to this day, but the court has never clarified what constitutes war, and to what extent the executive branch can circumvent U.S. courts in favor of military proceedings.²³⁹ These facts are especially concerning with regard to protests and movements happening in local communities. Although many citizens view protests as a peaceful exercise of constitutional rights, the executive branch has described Black Lives Matter (BLM) protests as “riot[s],” “angry mob[s],” and “criminals . . . committing acts of domestic terrorism.”²⁴⁰

C. *Criminalization of Black Activism*

In 2017, the Federal Bureau of Investigation’s (FBI) counter-terrorism division identified “Black identity extremists” (BIE) as a growing threat against law enforcement.²⁴¹ The term “Black identity extremists” is a term created by law enforcement that, until the release of the FBI report, has had little to no recognition in the broader U.S. community.²⁴² The leaked report stated that it was “very likely [BIEs] perceptions of police brutality against African Americans spurred an increase in premeditated, retaliatory lethal violence against law enforcement”²⁴³ A former official of Homeland Security found no basis for the designation.²⁴⁴ BLM advocates have noted that this is just one example of oppressive targeting that Black activists²⁴⁵

239 *Mattis*, 928 F.3d at 14–15.

240 Katy Steinmetz, ‘A War of Words.’ *Why Describing the George Floyd Protests as ‘Riots’ Is so Loaded*, TIME (June 8, 2020), <https://time.com/5849163/why-describing-george-floyd-protests-as-riots-is-loaded/>.

241 Jana Winter & Sharon Weinberger, *The FBI’s New U.S. Terrorist Threat: ‘Black Identity Extremists’*, FOREIGN POL’Y (Oct. 6, 2017), <https://foreignpolicy.com/2017/10/06/the-fbi-has-identified-a-new-domestic-terrorist-threat-and-its-black-identity-extremists/>.

242 *Id.*

243 *Id.*

244 *Id.*

245 The following source, *infra* note 246, refers to the Black Liberation Army (BLA) and their classification as a terrorist organization by the FBI. The author of that source and others have insinuated that the persecution of the BLA could be a result of the violence used by BLA members against the state and its officers, rather than because of their political or social agenda. Some may argue, or believe, that the comparison of the BLA’s persecution by the state and BLM’s persecution by the state are not analogous because the BLA used violence as a form of protest and BLM often calls for peaceful forms of protests that denounces the use of violence. However, it is this authors opinion that there is no one legitimate way to protest. I am not in the position to dictate to those who’ve experienced structural violence at the hands of the state and their officers, as to what a legitimate protest should look like. I, nor anyone else, is in a position to claim that their form of protest is incorrect; or, that the BLA members do not deserve

have faced at the hands of the FBI.²⁴⁶ Historically, the FBI has targeted and investigated Black activists for their participation in civil rights movements.²⁴⁷ The policy of prioritizing government resources to identify, monitor, and investigate Black activists, rather than allocating those resources toward viable threats to national security, exemplify the politicization of investigating claims of domestic terrorism.²⁴⁸ The definition of domestic terrorism in the Patriot Act allows institutions to dangerously conflate activism and terrorism and abuse domestic terrorism laws to suppress the voices of civil rights activists.

Not only has the FBI attempted to categorize the BLM movement as a terrorist organization, but the criminalization of peaceful protest and dissent has become increasingly forceful and pervasive.²⁴⁹ Activists attending BLM protests have reported that law enforcement in unmarked clothing and unmarked vans have detained and searched citizens attending peaceful protests.²⁵⁰ Per U.S. law, participation, or suspected participation, in a peaceful protest is insufficient grounds for arrest.²⁵¹ The right to peacefully protest was emphasized in 2014, when a federal judge issued a temporary restraining

to have the terrorism perpetuated by the state against them recognized for what it is. The State's perpetration of terrorism against the BLA led to their political actions and ideology to be classified as terrorism. The State's perpetration of terrorism against BLM led to their political actions and ideology to be classified as terrorism. I don't believe that there's a correct form of protest, especially in consideration of the long and complex history in the United States between those who have power, and those who are systemically denied power. Therefore, in this paper, I will not differentiate between the state's targeting of either organization.

246 Winter & Weinberger, *supra* note 241. (noting examples of racism within the FBI such as the monitoring of Black writers, the wiretap of Martin Luther King Jr., and the labeling of Black activists as terrorists while overlooking the real threat of white supremacist groups); *see also* William Rosenau, "Our Backs Are Against the Wall": *The Black Liberation Army and Domestic Terrorism in 1970s America*, 36 *STUD. CONFLICT & TERRORISM* 176 (2013) (citing the FBI's pursuit, criminalization, and murders of the Black Liberation Army (BLA) and Black Panther members and clarifying that although the FBI did not classify members of the BLA as terrorists, the FBI claimed that the goal of the BLA was radical revolution and disruption of power in the U.S.).

247 Mike German, *The FBI Has a History of Targeting Black Activists. That's Still True Today*, *GUARDIAN* (June 26, 2020), <https://www.theguardian.com/commentisfree/2020/jun/26/fbi-black-activism-protests-history>.

248 *See id.*; Winter & Weinberger, *supra* note 241.

249 *See* Katie Shepherd & Mark Berman, "It Was Like Being Preyed Upon": *Portland Protesters Say Federal Officers in Unmarked Vans Are Detaining Them*, *WASH. POST* (July 17, 2020), <https://www.washingtonpost.com/nation/2020/07/17/portland-protests-federal-arrests/>.

250 *Id.* (describing one activist who was pulled off of the street, driven to a courthouse, held in detention, asked if he would waive his Miranda rights, and subsequently released when he refused).

251 *Id.*

order (TRO) against law enforcement officials from three different police departments near Ferguson, Missouri.²⁵² Ruling in favor of the protestors, the judge found that local law enforcement inhibited the ability of protestors to lawfully assemble and practice their constitutional right of free speech.²⁵³ The TRO found that the interest in protecting the right of citizens to gather peacefully and protest, outweighed the potential harm police departments would face if stripped of the authority to use aggressive dispersal tactics without warning.²⁵⁴ Unfortunately, a setback for police intimidation and dispersal tactics in Missouri is only one small step forward and bares no binding precedent on policies in other U.S. states. BLM activists continue to face pervasive tactics from police forces in an effort to intimidate protesters and discourage civic participation.²⁵⁵ Even federal agencies, as recent as 2020, were seen using unmarked vans to target individuals at a protest in Portland, Oregon.²⁵⁶ Whether it be protests in 2014, 2017, 2020, or so on—police departments continue to militarize their response to protests and disregard constitutional protections designed to safeguard protestors.²⁵⁷

Oregon's police force does not stand alone in its disregard for protestors' constitutional rights. That same month, the New York Police Department (NYPD) engaged in similar tactics during a protest in New York.²⁵⁸ In that instance, plainclothes officers of the NYPD arrested a protester who was, ironically, attending a demonstration against police brutality.²⁵⁹ The demonstration, led by BLM organizers, came to a halt for one protester when she was "tackl[ed] . . . to the ground, pull[ed] . . . into an unmarked minivan and driv[en] away."²⁶⁰ The list of charges against her

252 Temporary Restraining Order, *Templeton v. Dotson*, No. 4:14-cv-2019 (E.D. Mo. Dec. 11, 2014) (granting temporary restraining order).

253 *Id.* at 2.

254 *Id.* at 2–3.

255 Lam Thuy Vo, *The Black Lives Matter Protests in New York City Have Slowed Down. The NYPD Hasn't*, BUZZFEED NEWS (Nov. 2, 2020), <https://www.buzzfeednews.com/article/lamvo/nypd-black-lives-matter-protests-harrasment>.

256 Jonathan Levinson et al., *Federal Officers Use Unmarked Vehicles to Grab People in Portland, DHS Confirms*, NPR (July 17, 2020), <https://www.npr.org/2020/07/17/892277592/federal-officers-use-unmarked-vehicles-to-grab-protesters-in-portland>.

257 See EDWARD R. MAGUIRE & MEGAN OAKLEY, *POLICING PROTESTS: LESSONS FROM THE OCCUPY MOVEMENT, FERGUSON & BEYOND 10*, 34–38 (2020), <https://www.hfg.org/wp-content/uploads/2021/06/PolicingProtests.pdf>.

258 Ben Chapman & Katie Honan, *NYPD Criticized for Using Plainclothes Officers, Unmarked Van for Protest Arrest*, WALL ST. J. (July 29, 2020), <https://www.wsj.com/articles/nypd-criticized-for-using-plainclothes-officers-unmarked-van-for-protest-arrest-11596046901>.

259 *Id.*

260 *Id.*

were all related to protest activities that the eighteen year-old activist had partaken in over the past two months.²⁶¹

D. Institutional Barriers

1. Protection of State Actors

The actions of local police departments are perhaps emboldened by federal abuse of power and a failure to create substantive accountability measures for police misconduct. Federal agencies like the DEA and Secret Service have been implicated in a broad range of police misconduct claims.²⁶² The DEA's failure to pursue action against culpable agents, and enforce internal accountability measures, has been described as an "epidemic."²⁶³ In civil court, federal agents have repeatedly been held to a lower standard of justice—leading one judge to observe that "[i]f you wear a federal badge, you can inflict excessive force on someone with little fear of liability."²⁶⁴

Two federal statutes, 18 U.S.C. § 242 and 42 U.S.C. § 1983, provide avenues for government actors to be held accountable for their actions.²⁶⁵ Civil charges against these actors can be sought via § 1983, or government agents may also face criminal charges per § 242.²⁶⁶ Originally, these sections were designed to be broad in scope in order to ensure federal rights in a state context; however, the scope of both sections have been extensively narrowed by judicial precedent.²⁶⁷ Further, although individuals may report violations of § 242 to the Department of Justice (DOJ), the discretion lies solely with

261 *Id.*

262 *Analyzing Misconduct in Federal Law Enforcement: Hearing Before the Subcomm. on Crime, Terrorism, Homeland Sec., & Investigations of the H. Comm. on the Judiciary*, 114th Cong. 1 (2015) (statement of Sen. F. James Sensenbrenner, Jr., Chairman, H. Subcomm. on Crime, Terrorism, Homeland Sec., & Investigations); Brad Heath & Meghan Hoyer, *DEA Agents Kept Jobs Despite Serious Misconduct*, USA TODAY (Sept. 27, 2015) <https://www.usatoday.com/story/news/2015/09/27/few-dea-agents-fired-misconduct/72805622/>; *US Secret Service Agents' Alleged Scandals Since 2004 Revealed*, GUARDIAN, (June 15, 2012), <https://www.theguardian.com/world/2012/jun/15/us-secret-service-scandals-revealed>.

263 *Analyzing Misconduct in Federal Law Enforcement*, *supra* note 262.

264 Opinion, *It's Hard to Hold Police Accountable. For Federal Agents, It's All but Impossible.*, WASH. POST (Sept. 22, 2021), <https://www.washingtonpost.com/opinions/2021/09/22/its-hard-to-hold-police-accountable-federal-agents-its-all-impossible/>.

265 18 U.S.C. § 242; 42 U.S.C. § 1983.

266 *Id.*

267 TARYN A. MERKL, BRENNAN CTR. FOR JUST., PROTECTING AGAINST POLICE BRUTALITY AND OFFICIAL MISCONDUCT 3–6 (2021), <https://www.brennancenter.org/media/7558/download>.

federal prosecutors to determine whether to pursue charges.²⁶⁸ Precedent coupled with prosecutorial discretion has, in practice, stifled the effectiveness of § 242, one of the only federal statutes that criminalizes the misconduct of government actors.²⁶⁹

To prevail in a § 242 case, the government must show, beyond a reasonable doubt, that the defendant's actions were: (1) under the color of law, (2) willful, and (3) intended to deprive another of their legal or constitutional right.²⁷⁰ An act can typically be classified as occurring "under color of law" if the accused official acted within their official government capacity or under the pretense of lawful actions.²⁷¹ For a defendant's actions to be willful, they must act with the "specific intent" to deprive another of their rights.²⁷² Further, those rights which are deprived must have previously been enumerated in the constitution or other laws, so to show that the defendant acted "in open defiance or in reckless disregard" of an established decision or rule.²⁷³ This standard, requiring a display of intent by the official accused, has been described as one of the highest standards and often proves difficult overcome.²⁷⁴

Individuals seeking justice for discrimination perpetuated by government actors may decide to pursue civil action via § 1983.²⁷⁵ Although the elements differ from § 242, plaintiffs are still required to show that the constitutional or legal right was "clearly established law" to overcome the affirmative defense of qualified immunity.²⁷⁶ In creating qualified immunity, critics have argued that SCOTUS has enabled state actors by reducing the potential for civil liability and creating a "culture of near-zero accountability."²⁷⁷ As an affirmative defense, if proven, qualified immunity shields government actors from liability, even if their actions were illegal.²⁷⁸ The qualified immunity doctrine is a two-part test, with courts first asking whether the state actor violated a constitutional right.²⁷⁹ In cases where

268 See JOANNA R. LAMPE, CONG. RSCH. SERV., LSB10495, FEDERAL POLICE OVERSIGHT: CRIMINAL CIVIL RIGHTS VIOLATIONS UNDER 18 U.S.C. § 242 (2020).

269 MERKL, *supra* note 267, at 6.

270 *Id.*

271 *Id.* at 5.

272 *Screws v. United States*, 325 U.S. 91, 103 (1945).

273 *Id.* at 105.

274 MERKL, *supra* note 267, at 7.

275 *Id.*

276 See *id.*; Jay Schweikert, *Qualified Immunity*, A.B.A. (Dec. 17, 2020), https://www.americanbar.org/groups/public_education/publications/insights-on-law-and-society/volume-21/issue-1/qualified-immunity/.

277 Schweikert, *supra* note 276.

278 *Id.*

279 Nathaniel Sobel, *What Is Qualified Immunity, and What Does It Have to Do with Police Reform?*,

the plaintiff claims that an officer used excessive force in violation of the Fourth Amendment, the doctrine could be interpreted as disregarding the first prong all together.²⁸⁰ The next question asks whether the officers knew they were violating “clearly established law.”²⁸¹ The Court has justified the creation of qualified immunity by citing common-law doctrines, such as requiring parties to show that the officer was not acting in “good faith” when the violation of rights occurred.²⁸² However, many argue that court interpretation has unprecedentedly expounded on these protections.²⁸³

The court’s interpretation of “clearly established” law is one example of judicial interpretation that has broadened protections for officers who may have otherwise been liable for violating another’s constitutional right.²⁸⁴ Similar to the third element of § 242, requiring a finding that the right violated be previously enumerated or interpreted by the court, establishing that the government official violated “clearly established” law is a significant barrier to justice.²⁸⁵ Precedent set by SCOTUS has interpreted “clearly established law” as requiring petitioners to show that the court has already found factually similar police actions to have been illegal.²⁸⁶ This interpretation has caused even the U.S. Court of Appeals to note that the qualified immunity doctrine allows for public officials to avoid the consequences of their actions, as long as they remain “the *first* to behave badly.”²⁸⁷ This crucial failure to hold officers and federal agents accountable erodes trust and confidence in the judiciary to achieve justice for victims of excessive force.

2. Failure to Uphold International Law

As a signatory to several international human rights treaties, the U.S. is bound by international and domestic law to uphold human rights, guarantee equal protection for all citizens, and protect against the use of

LAWFARE (June 6, 2020), <https://www.lawfareblog.com/what-qualified-immunity-and-what-does-it-have-do-police-reform/>; see also *Qualified Immunity*, CORNELL L. SCH., https://www.law.cornell.edu/wex/qualified_immunity (last visited Apr. 15, 2022).

280 Sobel, *supra* note 279; *Pearson v. Callahan*, 555 U.S. 223 (2009).

281 Sobel, *supra* note 279.

282 Schweikert, *supra* note 276.

283 Jay R. Schweikert, *Qualified Immunity: A Legal, Practical, and Moral Failure*, CATO INST. 6 (Sept. 14, 2020), <https://www.cato.org/sites/cato.org/files/2020-09/pa-901-update.pdf>. See generally *Kisela v. Hughes*, 138 S. Ct. 1148 (2018) (Sotomayor, J., dissenting).

284 See *Black People Terrified of US Cops Who Can Shoot & Walk Free Under Qualified Immunity*, PRESS TV (June 15, 2020), <https://www.presstv.ir/Detail/2020/06/15/627490/US-cops-who-can-pull-trigger-walk-free-qualified-immunity%E2%80%999>.

285 See MERKL, *supra* note 267, at 7–8.

286 Schweikert, *supra* note 276.

287 Schweikert, *supra* note 283, at 13.

excessive force by state actors.²⁸⁸ Two international treaties, both ratified by the U.S. in the 1990s, explicitly prohibit the use of excessive force by state actors.²⁸⁹ Finding a pattern of concerning behavior exhibited by U.S. police forces, the Human Rights Committee has previously urged the U.S. to conform with international standards and investigate systemic solutions to address violations.²⁹⁰

In the U.S., the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) provides greater protection against discrimination for minorities and activist groups than U.S. domestic law.²⁹¹ U.S. law protects against racial discrimination if both a discriminatory effect *and* discriminatory intent are proven.²⁹² Essentially, this requires that parties asserting discrimination show that the law is discriminatory and that it was created with the intention of being discriminatory. CERD, however, only requires a showing of discriminatory effect *or* discriminatory intent.²⁹³ If CERD were fully implemented in the U.S., parties would need only to show a discriminatory effect on minority communities in order to trigger CERD protections.²⁹⁴ The adoption of CERD would provide a welcome legal framework for activist organizations to challenge local policies which discriminate against minorities and secure civil liberties on a state and federal level.

Federally, the U.S. government has come under criticism for their continued use of Guantanamo Bay to detain suspected enemy combatants.²⁹⁵ UN experts emphasized their distain at the U.S. circumvention of international laws and called for President Biden to address the concerns

288 *See Shielded from Justice: Police Brutality and Accountability in the United States: Overview*, HUM. RTS. WATCH (June 1998), <https://www.hrw.org/legacy/reports98/police/uspo14.htm>.

289 *Shielded from Justice: Police Brutality and Accountability in the United States: International Human Rights Standards*, HUM. RTS. WATCH (June 1998), <https://www.hrw.org/legacy/reports98/police/uspo38.htm#TopOfPage>; G.A. Res. 2200A (XXI), International Covenant on Civil and Political Rights (Dec. 16, 1966); G.A. Res. 39/46, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Dec. 10, 1984).

290 *Shielded from Justice: Police Brutality and Accountability in the United States: International Human Rights Standards*, *supra* note 289.

291 *See id.*

292 *Id.*

293 *Id.*

294 The U.S. has often ratified many of these international treaties with the qualification that they are not self-executing, meaning that Congress must pass additional legislation in order for the treaties' protections to be enforceable in U.S. courts. *Id.*

295 United Nations Hum. Rts. Off. of the High Comm'r, United States: Guantanamo Bay Review Must Ensure Closure and Appropriate Remedies for Those Tortured and Detained, Say UN Experts (Feb. 23, 2021), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26783&LangID=E>.

of ongoing human rights violations.²⁹⁶ Although embracing President Biden's announcement that the administration will work towards closing the detention facility, experts called for further investigation into allegations of arbitrary detention, torture, and the denial of fundamental rights.²⁹⁷ While President Biden's promise to close Guantanamo may be welcomed by the UN and international bodies, whether the facility will actually close has yet to be seen. President Obama, for whom Biden served as Vice President, also condemned the Guantanamo facility; however, the administration failed to shut down the detention center in their eight years of office.²⁹⁸

E. *Conclusion on American Parallels*

Despite international laws and standards created to protect human rights, the U.S. has failed to adequately secure codified legal protections for U.S. citizens against the expanding backdrop of defining domestic terrorism and the minimization of civil liberties. As in the KSA, members of minority communities who have advocated for equal rights have been classified by government institutions as "terrorists" or participating in "domestic terrorism." The U.S. Constitution, created by the Founding Fathers with the intention of protecting citizens from unjust persecution by their government, has been interpreted by SCOTUS to protect state actors even if a citizen's constitutional right has been violated. The result is a universal message, from Saudi Arabia to the United States, that the pursuit of domestic terrorism may be used as justification for violations of basic human rights and that state actors will rarely, if ever, be held accountable.

In spite of clear violations of international human rights standards, both the U.S. and Saudi Arabia largely continue to maintain the status quo, facing only nominal backlash from the international community. In 2019, the KSA faced "unprecedented international criticism" related to the Kingdom's disregard of human rights standards in political, judicial, and social spheres.²⁹⁹ Despite disdain from the international community over human rights abuses, Saudi Arabia was still permitted to host leaders from around the world for the G20 summit in 2020.³⁰⁰ Hosting the G20 was a

296 *Id.*

297 *Id.*

298 *Id.*

299 *Saudi Arabia: Events of 2019*, HUM. RTS. WATCH, <https://www.hrw.org/world-report/2020/country-chapters/saudi-arabia> (last visited Apr. 8, 2022).

300 *Saudi Arabia: Events of 2020*, HUM. RTS. WATCH, <https://www.hrw.org/world-report/2021/country-chapters/saudi-arabia> (last visited Apr. 8, 2022). The G20 summit was moved to a virtual platform in light of the emergence of COVID-19; however, Saudi Arabia was still considered to be the hosting country. *Id.*; *see also*

source of “great national pride” for the country and is only one of many lavish events the KSA has held in an attempt to distract the international community from the Kingdom’s record of human rights abuses.³⁰¹ Just as the KSA has disavowed the place of the international community to criticize their judiciary, the U.S., under the Trump administration, ignored communication from UN Special Rapporteurs, denounced the authority of the ICC to pursue a case against U.S. officials for crimes arising out of conflicts abroad, and threatened ICC officials with sanctions should they choose to pursue an investigation into U.S. citizens.³⁰² After failing to comply with UN investigations, the U.S. Department of State “unilaterally redefine[d] what human rights mean” in a 2018 report rejecting the authority and framework of the UN and other international human rights bodies.³⁰³ Economic status and international positionality has allowed states like the Kingdom and United States to essentially “buy [their] way out of accountability.”³⁰⁴ Although framed with the egregious human rights violations of the KSA in mind, the principles behind the legal solutions listed below may be applicable not only to Saudi Arabia but also to all states, including the United States of America.

V. LEGAL SOLUTION

A. Domestic Reforms within the KSA

The first step to increased transparency in the KSA should address accessibility of information from the courts and detention centers.³⁰⁵ All interviews with suspected offenders should be recorded, and those recordings should be made available to the detainee and their legal counsel.³⁰⁶ Additionally, detainees should be granted immediate access to contact with family members and legal counsel upon request. A welcome

Caroline Hawley, *G20: Saudi Arabia’s Human Rights Problems that Won’t Go Away*, BBC NEWS (Nov. 21, 2020), <https://www.bbc.com/news/world-middle-east-55002921>.

301 Hawley, *supra* note 300.

302 *Id.*; *United States of America*, AMNESTY INT’L, <https://www.amnesty.org/en/location/americas/north-america/united-states-of-america/report-united-states-of-america/> (last visited Apr. 8, 2022); Ed Pilkington, *Trump Administration Ignoring Human Rights Monitors, ACLU Tells UN*, GUARDIAN (Mar. 18, 2019), <https://www.theguardian.com/law/2019/mar/18/trump-administration-ignoring-human-rights-monitors-aclu>.

303 *USA*, AMNESTY INT’L, <https://www.amnestyusa.org/countries/usa/> (last visited Apr. 8, 2022).

304 *See* Hawley, *supra* note 300.

305 AM. BAR ASS’N CTR. FOR HUM. RTS., *supra* note 5, at 20.

306 *Id.* Currently requests from detainees for surveillance video, when said video exists, have been denied. AMNESTY INT’L, *supra* note 29, at 41.

step towards transparency would also allow for journalists and human rights organizations to access trials, obtain court transcripts, and acquire detention records. Allowing for greater access to trials in the KSA could put pressure on the Kingdom's judiciary to ensure a fair trial and may help to bring the Kingdom into compliance with Article 10 of the Universal Declaration of Human Rights.³⁰⁷

Accountability is the next crucial step to reform in the KSA. To ensure the legal rights of detainees while awaiting trial, officers must be held accountable for their actions. Those accused of violating human rights, including state actors, should be held accountable per the Genocide Convention.³⁰⁸ Additional measures could include a thorough investigation of all allegations of torture by an independent organization.³⁰⁹

Further, there should be full judicial independence in the KSA. Investigatory divisions, such as the SSP, should be separate and distinct from the judicial branch, including the SCC and PPO. Human rights activists have asserted that the SCC has been explicitly instructed on more than one occasion to harshly sentence political and religious dissenters.³¹⁰ The King should have no control or influence over either of these separate and independent departments. The separation of power between these three government entities would help to insulate the judiciary and minimize the control that politics and the King have in the KSA.

Lastly, to ensure the innate rights of KSA citizens, the Kingdom should narrow its definition of terrorism. The persecution of human rights leaders and activists under the guise of pursuing terrorists is a flagrant violation of human rights standards.³¹¹ Although Saudi Arabia has claimed that their government meets international law standards and that their counterterrorism efforts do not violate those standards,³¹² the persecution of

307 G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948), <https://daccess-ods.un.org/tmp/7868337.63122559.html>. However, it should also be noted that an increased public presence, including permitting foreign entities to monitor the trial, does not in and of itself guarantee a fair trial. See *Saudi Authorities Insist on Holding Secret Trials, with International Observers Denied Access*, ALQST (Apr. 17, 2020), <https://www.alqst.org/en/secret-trials>.

308 G.A. Res. 260 (III) A, Convention on the Prevention and Punishment of the Crime of Genocide (Dec. 9, 1948) [hereinafter Genocide Convention], <https://daccess-ods.un.org/tmp/4884483.51621628.html>.

309 AM. BAR ASS'N CTR. FOR HUM. RTS., *supra* note 5, at 20.

310 BUREAU OF DEMOCRACY, HUM. RTS. & LAB., U.S. DEP'T OF STATE, *supra* note 6, at 13.

311 See U.N. COUNTER-TERRORISM IMPLEMENTATION TASK FORCE (CTITF), *supra* note 47, at 7–8.

312 *Human Rights*, GOV.SA, <https://www.my.gov.sa/wps/portal/snp/careaboutyou/humanright> (Nov. 24, 2021) (stating that the Human Rights Commission, which serves directly under the King, has been granted power to ensure that all government

religious minorities and activists throughout the country suggest otherwise.³¹³ A definition which aligns more closely to the UN's definition of terrorism, or one which is more narrow as I have proposed, would restrict the use of the term terrorism as a way to silence minority groups and/or political dissenters. In a good faith showing, the KSA should immediately release all parties wrongfully imprisoned or convicted due to the court's reliance on torture-based confessions.³¹⁴

B. *Remedies in International Law*

States must urge the KSA to observe international human rights laws and standards in combatting terrorism.³¹⁵ Although the Kingdom claims to be committed to human rights, the KSA has refused to sign the UN Declaration of Human Rights due to its calls for freedom of religion.³¹⁶ If the KSA were to become a signatory to the UN Declaration of Human Rights, per the declaration, KSA citizens would be provided guarantees against torture, protection from arbitrary arrest, expansion of freedom of speech rights, the ability to seek asylum, including many other expansions of basic human rights.³¹⁷ The loss of Saudi Arabia's seat on the UN Human Rights Council³¹⁸ may be used as leverage for the KSA to adhere to international human rights norms. The plans for Saudi Arabian future policy, seen through MBS's "Vision 2030" reform platform, hinges on the Kingdom's ability to maintain their public image in order to attract investors to the region.³¹⁹ Observers have noted that "[w]ithout international investors there can be no Vision 2030."³²⁰

Allies and other institutions, such as the U.S., should leverage their power to pressure the Kingdom into adhering to international human rights standards. Although President Biden has suggested a policy change from the last administration, statements "affirm[ing] the importance the United States places on universal human rights and the rule of law" are not strong

agencies are implementing applicable laws related to human rights and in accordance with international human rights treaties to which the KSA is a signatory).

313 See U.N. COUNTER-TERRORISM IMPLEMENTATION TASK FORCE (CTITF), *supra* note 47, at 8.

314 AM. BAR ASS'N CTR. FOR HUM. RTS., *supra* note 5, at 20.

315 AMNESTY INT'L, *supra* note 29, at 51.

316 HUMAN RIGHTS WATCH, *supra* note 4.

317 G.A. Res. 217 (III) A, *supra* note 307.

318 Turak, *supra* note 2.

319 *Id.*

320 *Id.*

enough to create substantive change.³²¹ Historically, America's reliance on Saudi oil has hindered U.S. policymakers from taking a tougher stance against what appear to be clear violations of international human rights standards.³²² Some U.S. Presidents, like Presidents Biden and Kennedy, have indirectly confronted Saudi politicians by leveraging military assistance in exchange for improved human rights in the region.³²³ Others, like President Eisenhower, focused on the foundation of the allyship between the U.S. and remained largely silent on allegations of human rights abuses in the KSA.³²⁴ President Biden has taken a similar approach; however, critics have argued more should be done, such as adopting sanctions, to hold MBS accountable.³²⁵ U.S. sanctions and ardent opposition to Saudi Arabian human rights practices would directly affect MBS's Vision 2030 and create serious doubt internationally about the KSA's ability to reform.

Finally, in an effort to repair relationships between citizens and the SSP, Mubahith, and other state controlled forces, the Kingdom may consider the implementation of the four main principles of international human rights law standards.³²⁶ These principles require: (1) action to be based on law, (2) an element of necessity in the restriction of human rights, (3) police action to be proportional to their goals of law and order, and (4) accountability for all actors despite institutional roles.³²⁷ The Human Rights Council could leverage financial funding and a key stakeholder role in the implementation of Vision 2030, with the explicit requirement that human rights standards be promoted and upheld in the Kingdom. To incentivize the Kingdom, the Council may suggest that if, by 2030, the KSA has reformed the current policies surrounding terrorism, detention, judicial oversight, and transparency, there will once again be an opportunity for the country to secure a seat on the Human Rights Council.

Should the KSA fail to reasonably reform their policies, signatories to the Genocide Convention should submit that the International Court of

321 Nicholas DeAntonis, *Joe Biden Is Making Clear that Saudi Human Rights Violations Won't Be Ignored*, WASH. POST (Mar. 11, 2021), <https://www.washingtonpost.com/outlook/2021/03/11/joe-biden-is-making-clear-that-saudi-human-rights-violations-wont-be-ignored/>.

322 *Id.*

323 *Id.*

324 *Id.*

325 *Id.*

326 Akshita Tiwary, *Police Brutality and Use of Force: An International Human Rights Law Perspective*, BERKELEY J. INT'L L. (Sept. 28, 2020), <https://www.berkeleyjournalofinternationalallaw.com/post/police-brutality-and-use-of-force-an-international-human-rights-law-perspective>.

327 *Id.*

Justice open a formal inquiry as to the KSA's failure to fulfill the obligations of the convention. Per the convention, genocide is defined as "acts committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group."³²⁸ Signatories to the Genocide Convention, including Saudi Arabia,³²⁹ have acceded to uphold the convention by providing effective penalties for those found to be in violation of the convention.³³⁰ States further commit to prosecuting parties who have committed, conspired to commit, or who were complicit in genocide, regardless of political status or title.³³¹ Parties to the Genocide Convention may at any point submit to the International Court of Justice a dispute regarding a failure to uphold the convention.³³² The signatories of the Genocide Convention have the power to collectively submit a dispute claiming that Saudi Arabia is in violation of the Genocide Convention and seek for the International Court of Justice to investigate Saudi Arabia's failure to comply.

CONCLUSION

Terrorism is a constantly evolving tool used to incite fear with the goal of furthering a political message. Citizens rely on their states to protect them from these horrific acts; but unfortunately, many state actors have abused this authority across the globe as a way to expand and exercise power. International bodies and treaties have been signed to ensure protection of human rights; however, both the U.S. and the KSA have continued to negate their duties as signatories and shirk their responsibility to preserve the rights of every citizen regardless of title, status, or opinion. In the name of terrorism, innocent people have lost their lives, freedom, and civil liberties.

Given the egregious acts happening to this day in the Kingdom, it is important to note that the KSA has experienced firsthand the devastation that results from acts of terrorism since the early 2000s. Fear is a powerful tool. Rather than uniting the country against the common goal of expelling terrorists from their territory, the KSA instead chose to harness the fear of terrorism against its own citizens. No semblance of justice can be found in arresting and detaining citizens without formal charge or trial dates for periods of time ranging from months to years. No genuine balance of rights is weighed in the decision to execute members of society who question the King. No action can justify the decision to torture another human being.

328 Genocide Convention, *supra* note 308, at art. II.

329 HUMAN RIGHTS WATCH, *supra* note 4.

330 Genocide Convention, *supra* note 308, at art. V.

331 *Id.* at art. IV.

332 *Id.* at art. VIII, IX.

And no international body can, or should, justify the abuse of power the KSA has exercised.

As it stands, the U.S. and other western countries are poised to make the same mistakes. The failure of the United States to protect marginalized communities and to ensure access to justice for all citizens, regardless of race, fundamentally undermines confidence in the judiciary and further disenfranchises afflicted parties. Institutional barriers to justice enable state actors to act without fear of accountability measures or consequences for their actions. Qualified immunity, and stringent judicial interpretation, ensure that even when a citizen's constitutional right is violated, government actors will rarely, if ever, face punishment. Further, an ill-defined terrorism statute places marginalized communities and political dissenters in a precarious position, allowing for government agencies or presidential administrations to arbitrarily classify similarly situated groups of protestors as terrorist organizations.

Although the UN has recognized human rights abuses in both the Kingdom and the U.S., little to no action has been taken which would substantially alter the positionality of either country. The international world has largely remained silent as the KSA has continued to repeatedly, and flagrantly, violate international human rights laws. Under the guise of safety, the KSA and the U.S., to varying degrees, has stripped its citizens of their humanity and voices while simultaneously eroding trust in the rule of law. The KSA's punishment and persecution of religious minorities, members of civil society, and non-violent political actors must immediately come to an end. Discriminatory practices of local, state, and federal law enforcement agencies in the U.S. must be condemned. Further, judicial bodies in both countries must ensure accountability for government actors and enshrine greater protections for *all* citizens.

In the name of terrorism, antithetical voices and viewpoints have been suppressed by the State. In the name of terrorism, governments have shirked their responsibility to ensure adherence to international human rights laws and standards. In the name of terrorism, trust in judicial institutions has eroded, as State actors are repeatedly granted deference despite an established pattern of violence and abuse of power. When the crime of terrorism is ill-defined, perhaps citizens have more to lose in the name terrorism, or state protection from terrorism, than without.

