

## Silencing the Arab Spring with Co-opted Counterterrorism

David Ferguson

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# Silencing the Arab Spring with Co-opted Counterterrorism

David Ferguson\*

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## INTRODUCTION

Terrorism terrifies. Five years after the largest terrorist attack against the United States, officials declared terrorism the greatest threat to national

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security.<sup>1</sup> Countries have capitalized on fear of terrorism to quietly target non-terrorist threats, writing or rewriting antiterrorism statutes to criminalize acts such as nonviolent political protests in the name of national security. Three Middle Eastern states — Egypt, Saudi Arabia, and Jordan — have recently capitalized on this trend. Between 2014 and early 2015, they each published new antiterrorism laws that present an alarming development in the global war against terrorism. The recent legal changes in these authoritarian states suggest that their campaigns against terrorism have become campaigns to quash political dissent.

Egypt, Saudi Arabia, and Jordan each have long histories of silencing political dissenters through abusive laws and their enforcement. Within that context, the recent antiterrorism laws are new chapters in an old story. These three states have manipulated the fears that terrorism conjures to shift their fight against terrorists to imprisoning journalists, sentencing activists, and silencing nonviolent activists, particularly those associated with the Arab Spring. What follows is an examination of those laws, their evolution, and significant events surrounding their enactment.

First, a note on analyzing definitions of terror is in order. A chief concern in identifying terrorist acts is deciding what constitutes a terrorist act. There is already extensive scholarship on the topic, but it is without consensus.<sup>2</sup> The United States federal system alone uses nineteen different definitions of terrorism.<sup>3</sup> The United Nations offers six possible definitions for member-states to adopt.<sup>4</sup> From a meta-definitional approach, Geoffrey Leavitt has suggested that all terrorism definitions that seek to broadly define terrorism, have three components.<sup>5</sup> First, “a substantive element containing the prohibited conduct;” second, “an intent or motivation requirement;” and third, “a jurisdictional element.”<sup>6</sup>

While Leavitt’s components represent the minimal requirements of a terrorism definition, terrorism definitions may have further elements. Most of those presented here do. To make their comparison easier, each definition discussed here will be divided into three elements. First, the statute’s *prohibited conduct*, meaning whether the act which the statute

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1. Sara Wood, *Terrorism Biggest Threat to National Security, Officials Say*, DoD News, Feb. 28, 2006, <http://www.defense.gov/news/newsarticle.aspx?id=14735>

2. Nicholas J. Perry, *The Numerous Federal Legal Definitions of Terrorism: The Problem of Too Many Grails*, 30 J. Legis. 249, 250 (2004).

3. *Id.* at 255.

4. UNODC, *Model Legislative Provisions Against Terrorism*, 23-6 (Feb. 2009), <http://www.unodc.org/unodc/en/legal-tools/model-treaties-and-laws.html>.

5. Perry, *supra* note 2, at 250.

6. *Id.*

prohibits must be, for example, an act that is violent in nature, independently criminal, simply a threat, or even an omission to act. The second is the *intended result* that the suspected terrorist attempts to achieve via the act, such as to influence a government policy or intimidate a civilian population. The third is the *list of means*. Most antiterrorism statutes discussed in this analysis include a number of ways that the suspected terrorist must connect the *prohibited conduct* to the *intended result* in order to qualify the act as terroristic. For example, by damaging the environment, jeopardizing civilian lives, or obstructing the acts of government officials. For most of the statutes discussed, the *prohibited conduct* must also do something in the statute's *list of means* (to accomplish a prohibited *intended result*) for the act to be terroristic. While these three elements do not precisely fit all of the terrorism discussed here, they help to highlight the similarities and differences of their most notable features.

On a final note about methodology, all of the terrorism definitions discussed here—with the exception of the definition given in the Arab Convention on the Suppression of Terrorism—have been altered somewhat for readability. Portions of the definitions are divided into a parenthetical list, itemized alphabetically: (a), (b), (c), etc. to make referencing portions of the definitions easier.

The remainder of this article proceeds as follows. Part I gives an overview of how the threat of terrorism has influenced the United States into enacting laws that implicate protected rights and how Middle Eastern dictators have observed and reacted in stride. Part II begins with the concept of state terrorism developed in revolutionary France and then presents the alarming evolution of antiterrorism statutes in Egypt, Saudi Arabia, and Jordan over the last two decades and plausible motivations for these changes. The article concludes with a case study on a theme of political protest, which all three states have sought to quell through antiterrorism enforcement.

## I.

### THE FEAR OF TERRORISM IN THE UNITED STATES AND ITS (DIS)PROPORTIONATE EFFECTS

Three days after the Boston Marathon bombings in 2013, law enforcement identified two suspects.<sup>7</sup> Within a few hours, Tamerlan

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7. Conor Friedersdorf, *Why it Was Wrong to Shut Down Boston After the Bombing*, *The Atlantic*, Apr. 24, 2015, <http://www.theatlantic.com/politics/archive/2015/04/shutting-down-boston-was-the->

Tsarnaev died in a gunfight with police officers. A manhunt began for his younger brother, Dzhokhar. City and state officials met to discuss how to find Dzhokhar. Fearing that he might take a bus to the subway station and escape law enforcement, the group discussed shutting down a bus route close to where Dzhokhar had last been seen. One group member argued that the entire area's transit system should be shut down declaring, "This is an all or nothing proposition."<sup>8</sup> Unsure about the size of the threat facing them, the group's fear escalated until the majority adopted the drastic approach, shutting down transit in a 20-block area.

While a partial shutdown would have been prudent, the large-scale shutdown was a choice born out of fear that did not aid in finding Dzhokhar. It cost Boston tens of millions of dollars and left many Bostonians stranded without transit.<sup>9</sup> Meanwhile, local, state, and federal law enforcement, along with 19,000 National Guard troops, searched the streets for Dzhokhar who was found on a police tip.<sup>10</sup> The enormous human and financial resources dedicated to a one-person manhunt were unprecedented in American history. Yet, there is no consensus on whether the response was proportional to the actual danger or whether the costs of such a response can feasibly be replicated in future similar circumstances.<sup>11</sup>

The reaction taken to the Boston Bomber at the state level aligns with federal policymaking, where the pursuit of terrorists may come at great financial cost<sup>12</sup> or entail infringement on civil liberties. Since 9/11, both Congress and the President have enacted policies to set aside otherwise protected rights in the interest of fighting terrorism.<sup>13</sup> For example,

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wrong-decision/391388/.

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*; Radly Balko, *Was the Police Response to the Boston Bombing Really Appropriate?*, The Washington Post, Apr. 22, 2014, <http://www.washingtonpost.com/news/the-watch/wp/2014/04/22/the-police-response-to-the-boston-marathon-bombing/>.

12. Mark Thompson, *The \$5 Trillion War on Terror*, Time, June 29, 2011, <http://nation.time.com/2011/06/29/the-5-trillion-war-on-terror/>; see also Tom Engelhardt, *What George Orwell Got Wrong About the New Surveillance State*, Mother Jones, Sep. 3, 2013. <http://www.motherjones.com/politics/2013/09/george-orwell-1984-war-on-terror> (suggesting that if Americans during the Cuban Missile Crisis were informed that America would one day build its military and surveillance programs beyond anything imagined in the Cold War in order to fight scattered militants in Yemen and elsewhere, they would have likely balked at the notion).

13. Owen Fiss, *Aberrations No More*, Utah L. Rev. 1085 (2010) (presenting a history of how US counterterrorism policy since 9/11 has violated a number of constitutional

instituting mass surveillance of citizens' telephones, initiating a program well outside the scope of the authorizing law.<sup>14</sup> While most Americans have stated an unwillingness to relinquish their rights pursuant to the war on terror,<sup>15</sup> public opinion polls show that the majority of Americans approved of torture, even after the shocking revelations of the Senate Intelligence Community report on torture.<sup>16</sup> Many Americans have also expressed approval of mass surveillance, so long as they shared a political affiliation with the President in charge at the time they were polled.<sup>17</sup> These results should come as no surprise. The 18th century political philosopher Adam Ferguson noted, "The desire of public safety, is, at all times, a powerful motive of conduct; but it operates most when combined with occasional passions, when provocations inflame, when successes encourage, or mortifications exasperate."<sup>18</sup> The American zeal for pursuing terrorists through massive undertakings and at the expense of protected rights— often with widespread public support—exemplifies Ferguson's observations.

Most importantly for this analysis, this zeal has been noted elsewhere in the world. It has already been a tool for dictators to legitimize drastic actions to protect their rule. In the 2011 events of the Arab Spring, three dictators — Zine al-Abidine Ben Ali in Tunisia, Muammar Gaddafi in Libya, and Bashar al-Assad in Syria — appealed to the international community by claiming that protesters against their regimes were actually terrorists.<sup>19</sup> Undoubtedly, the leaders gambled that if the international

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rights).

14. Ellen Nakashima, *NSA Program on Phone Records is Illegal, Court Rules*, The Washington Post, May 7, 2015, [https://www.washingtonpost.com/world/national-security/appeals-court-rules-nsa-record-collection-violates-patriot-act/2015/05/07/c4fabfb8-f4bf-11e4-bcc4-e8141e5eb0c9\\_story.html](https://www.washingtonpost.com/world/national-security/appeals-court-rules-nsa-record-collection-violates-patriot-act/2015/05/07/c4fabfb8-f4bf-11e4-bcc4-e8141e5eb0c9_story.html).

15. Balko, *supra* note 11. 47% were willing to give up some of their rights shortly after 9/11, but only 25% were willing as of 2012.

16. Adam Goldman & Peyton Craighill, *New Poll Finds Majority of Americans Think Torture was Justified After 9/11 Attacks*, The Washington Post, Dec. 16, 2014, [http://www.washingtonpost.com/world/national-security/new-poll-finds-majority-of-americans-believe-torture-justified-after-911-attacks/2014/12/16/f6ee1208-847c-11e4-9534-f79a23c40e6c\\_story.html](http://www.washingtonpost.com/world/national-security/new-poll-finds-majority-of-americans-believe-torture-justified-after-911-attacks/2014/12/16/f6ee1208-847c-11e4-9534-f79a23c40e6c_story.html).

17. Scott Clement & Aaron Blake, *Who Loves Surveillance? It Depends Who's in the White House*, The Washington Post, June 11, 2013, <http://www.washingtonpost.com/blogs/the-fix/wp/2013/06/11/who-loves-surveillance-it-depends-whos-in-the-white-house/>.

18. Adam Ferguson, *An Essay on the History of Civil Society, Eighth Edition*, Part 6, sect. 2 (<http://www.gutenberg.org/cache/epub/8646/pg8646.html>).

19. For Ben Ali: Mathias Vermeulen, *Ben Ali Calls Violence in Tunisia a Result of Terrorists, but Changes His Assessment Three Days Later*, The Lift, Jan. 14, 2011, <https://legalift.wordpress.com/2011/01/14/ben-ali-calls-violence-in-tunisia-a-result-of->

community bought the claim, then the dictators would not only convince the international community to withhold support to the alleged terrorists, but also that the international community would excuse the dictators' harsh responses to the revolutionary fervor.<sup>20</sup> In both Gaddafi's and Assad's cases, the dictators' claims turned out to have merit—militants with terrorist ties participated in the violent revolutions against each dictator. However, both leaders cried terrorism long before the claims had grounding in reality. Authoritarian regimes increasingly use antiterrorism laws and policies to legitimize authoritarian measures, even absent a terrorist threat. The recent fortification of antiterrorism laws in Egypt, Saudi Arabia, and Jordan demonstrate that laws intended to combat terrorism can be co-opted to terrorize civilians into submission.

## II.

### STATE TERRORISM IN EGYPT, SAUDI ARABIA, AND JORDAN

The idea of using terror to force a state's citizens or subjects into submission originated in the midst of the French Revolution, when a member of the French Convention announced, "Terror is on the agenda today" (*la Terreur est à l'ordre du jour*).<sup>21</sup> As Professor Mallat noted, "The French Conventionalists established *Terreur* as an official state policy that drove suspects to the guillotine with no other form of process than the prosecutor's action on the basis of an unchecked information, a vindictive neighbor's tip, a rumor, or his own whims. It removed due process while ascribing terror to whomever it decided to consider an enemy."<sup>22</sup> The Grande Terreur was the Convention's declared commitment to silence would-be dissenters by terrorizing the French populace into compliance with the aims of the revolution.<sup>23</sup>

The antiterrorism laws of Egypt, Saudi Arabia, and Jordan add a modern twist to the French Convention's policy. These three states do not describe themselves as terrorists. Their laws are not advertised as laws of

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terrorists-but-changes-his-assessment-three-days-later/. For Assad: Zachariah Rivenbark, *Peaceful Protests and Crackdowns in Syria*, *Jurist*, July 20, 2013, <http://jurist.org/feature/2013/07/peaceful-protests-and-crackdowns-in-syria.php>. For Gaddafi: Ian Black, *Libya Rebels Reject Gaddafi's al-Qaida Spin*, *The Guardian*, March 1, 2011, <http://www.theguardian.com/world/2011/mar/01/gaddafi-libya-al-qaida-lifg-protesters>.

20. Chibli J Mallat, *Philosophy of Nonviolence: Revolution, Constitutionalism, and Justice Beyond the Middle East* 70 (2015).

21. *Id.* at 71-71 ft. 5.

22. *Id.* at 73.

23. *Id.* at 71-73.

terror but as laws against terror. However, their recently adopted laws serve both functions. This section will examine how these laws allow for tremendous leeway to prosecute political dissenters. The recently adopted laws are analyzed in the context of prior antiterrorism legislation and significant events that led up to the recent changes.

## A. EGYPT

### 1. *The 1992 Antiterrorism Law*

Egypt adopted its first antiterrorism statute in 1992, the same year that the United States adopted a definition for international terrorism.<sup>24</sup> The statute begins with the definition of terrorism:

Terrorism in the application of the provisions of this law [Article 86 of the penal code] means any use of force, violence, threat, or intimidation, to which an offender resorts, pursuant to an individual or collective criminal enterprise, with the intent to disrupt public order or endanger the safety and security of society, if doing so would:

- (a) harm people, frighten them, or expose their lives, freedoms or security to danger;
- (b) damage, occupy, or seize the environment, communications, transportation, assets (al-amwāl), or public or private property;
- (c) prevent or obstruct the work of public authorities, houses of worship, or educational institutions; or
- (d) thwart the application of the Constitution, laws, or regulations.<sup>25</sup>

The *prohibited conduct* is “any use of force, violence, threat, or intimidation . . . pursuant to an individual or collective criminal enterprise.” It is unclear whether a threat pursuant to a criminal enterprise must be violent or forceful, possibly making the *prohibited conduct* any

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24. For the U.S. date: Reuven Young, *Defining Terrorism: The Evolution of Terrorism as a Legal Concept in International Law and Its Influence on Domestic Definitions in Domestic Legislation*, 29 B.C. Int'l & Comp. L. Rev. 23, 78 (2006). Amnesty International, *The Arab Convention for the Suppression of Terrorism: A Serious Threat to Human Rights* 23 ft. 48 (Jan. 9, 2002), <https://www.amnesty.org/en/documents/ior51/001/2002/en/> [hereinafter *The Arab Convention*]. For Egypt's decision to legislate against terrorism in response to the international community: Lynn Welchman, *Rocks, hard places and human rights: anti-terrorism law and policy in Arab states*, in *Global Anti-Terrorism Law and Policy* 634 (Victor V. Ramraj et al. eds., 2d ed. 2012), <http://reader.eblib.com.ezproxy.lib.utah.edu/>.

25. Law No. 58 of 1937 (Criminal Code) (as amended up to Law No. 95 of 2003), *al-Waqā'i' al-Miṣrīyah*, (art. 86) (Egypt) (unofficial translation available at <http://www.refworld.org/docid/3f827fc44.html>).

kind of criminal act.<sup>26</sup> The *intended result* must be “to disrupt public order or endanger the safety and security of society.” Many of the items on the statute’s *list of means* are concerning from a human rights perspective. For example, what it may mean to “obstruct the work of public authorities” (line (c)). The UN Human Rights Committee warned, “The definition of terrorism contained in that law is so broad that it encompasses a wide range of acts of differing gravity.”<sup>27</sup> While a violent act that “exposes” people’s “lives to danger” is likely a grave offense, a threat to “damage public or private property,” or “obstruct the work of public authorities,” to “disrupt public order,” could include a number of minor offenses.

The law’s most alarming aspects are found in its subsections. The opportunities for prosecuting individuals increases when a suspect is part of a group. A person who joins a group that conducts any of the acts under lines (a), (c)-(d) of the terrorism definition—for example, any non-criminal act that obstructs the “work of public authorities”—and who joins knowing of the group’s “purposes,” can face five years imprisonment for associating with the group, even without having participated in the act.<sup>28</sup> If the group’s acts involving any of items (a), (c)-(d) satisfy the other two elements of the terrorist definition—conducting a criminal act and intending to disrupt public order or endanger others—then the associate’s sentence changes from imprisonment to hard labor.<sup>29</sup> In essence, the law codifies the old cliché: guilt by association.

## 2. *The Emergency Law*

By itself, the 1992 antiterrorism law gave Egypt’s dictator great flexibility in controlling political dissent, but president Hosni Mubarak also benefited from the Emergency Law that he implemented after his predecessor’s assassination in 1981.<sup>30</sup> The Emergency Law gave Mubarak a number of powers not otherwise granted to the executive.<sup>31</sup> Among them were the powers to prohibit demonstrations, detain suspects indefinitely, try suspects in front of a military tribunal, retry suspects in front of a military tribunal if the desired outcome was not obtained through a civilian

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26. Welchman, *supra* note 24, at 634.

27. *Id.* at 633.

28. Law No. 58 of 1937, *supra* note 25, at Art. 86 bis.

29. *Id.* at bis(A).

30. Welchman, *supra* note 24, at 636-37.

31. E.g. Sadiq Reza, *Endless Emergency: The Case of Egypt*, 10 NEW CRIM. L. REV. 532, 538 (2007).

court, conduct surveillance, and censor news agencies.<sup>32</sup> The law was highly controversial, and in 2005 Mubarak promised to enact a new antiterrorism law while nullifying the Emergency Law.<sup>33</sup> He then reneged.

Mubarak not only renewed the Emergency Law, but he also amended the Constitution so that he could refer terror suspects to any court of his choosing, even if the Emergency Law was rescinded, thereby granting himself a new permanent executive power.<sup>34</sup> The amendment was not only symbolic of the manner in which Mubarak retained absolute power, but it also served a practical purpose. In 2008, 40 members of the Muslim Brotherhood were charged with terrorism-related offenses and acquitted before a civilian court.<sup>35</sup> Mubarak then exercised his constitutional authority to have the defendants retried before a military tribunal.<sup>36</sup> In effect, Mubarak stacked the antiterrorism law, the Emergency Law, and the Constitution in his favor to preserve his control over Egypt.

### 3. *The 2015 Antiterrorism Law*

Despite Mubarak's broad, self-granted powers, he was unable to prevent the 2011 revolution that toppled him.<sup>37</sup> Egypt's youth, gathered together as the April 6 Movement, spearheaded the Arab Spring's arrival into Egypt.<sup>38</sup> With some initial hesitation, Egypt's long-surviving opposition group, the Muslim Brotherhood, declared its support for the revolution.<sup>39</sup> Following the revolution, both groups turned towards politics.

The Muslim Brotherhood performed strongly in the elections that

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32. *Egypt: Cosmetic Changes Can't Justify Keeping Emergency Law*, Human Rights Watch, May 13, 2010, <http://www.hrw.org/news/2010/05/12/egypt-cosmetic-changes-can-t-justify-keeping-emergency-law>.

33. Welchman, *supra* note 24, at 636-37.

34. *Id.*

35. *Egypt: Jailing 800 Activists Casts Doubt on Elections*, Human Rights Watch, March 30, 2008, <http://www.hrw.org/news/2008/03/29/egypt-jailing-800-activists-casts-doubt-elections>.

36. *Id.*

37. *Timeline: Egypt's Revolution*, Al-Jazeera, February 14, 2011, <http://www.aljazeera.com/news/middleeast/2011/01/201112515334871490.html>.

38. Kristen McTighe, *Egypt's April 6 Movement Bloodied but Unbowed*, DW, May 5, 2014, <http://www.dw.de/egypts-april-6-movement-bloodied-but-unbowed/a-17612820>.

39. Ernesto Londono & Leila Fadel, *Egypt's Muslim Brotherhood Faces Prospect of Democracy Amid Internal Discord*, THE WASHINGTON POST, February 21, 2011, [http://www.washingtonpost.com/world/egypts-muslim-brotherhood-faces-prospect-of-democracy-amid-internal-discord/2011/02/21/ABfLDZQ\\_story.html](http://www.washingtonpost.com/world/egypts-muslim-brotherhood-faces-prospect-of-democracy-amid-internal-discord/2011/02/21/ABfLDZQ_story.html).

followed Mubarak's ouster.<sup>40</sup> Along with a similarly-aligned party, it secured a majority in Parliament.<sup>41</sup> Its candidate for president, Muhammad Morsi, won the presidential contest.<sup>42</sup> While awaiting the finalization of a new constitution, Morsi made a number of constitutional decrees, including a controversial security power granting him "any measures he sees fit in order to preserve and safeguard the revolution, national unity or national security."<sup>43</sup> The decree was an unpopular step, reminiscent of the Emergency Law, and did little to endear him to Egypt's non-Brotherhood revolutionaries.<sup>44</sup>

Over the course of Morsi's year as president, he enacted a number of other policies that deepened his unpopularity, leading to calls for his removal from office.<sup>45</sup> General Abdel Fattah al-Sisi took advantage of Morsi's and the Muslim Brotherhood's unpopularity, conducting a military coup in July 2013.<sup>46</sup> An interim government presided over Egypt until the following year, at which point General al-Sisi was elected President.<sup>47</sup> During the interim year, the Muslim Brotherhood was declared a terrorist organization for alleged attacks against state and military facilities, although Muslim Brotherhood leaders vigorously denied the unsubstantiated accusations.<sup>48</sup> The police held Morsi and other Muslim Brotherhood leaders in incommunicado detention before being put on trial. They also cracked down on protests, leading to over one thousand deaths and the arrest of tens of thousands of Muslim Brotherhood

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40. Ahmet Yusuf Özdemir, *From Hasan Al-Banna to Mohammad Morsi; The Political Experience of Muslim Brotherhood in Egypt 85-86* (July 2013) (unpublished thesis, Middle East Technical University), [etd.lib.metu.edu.tr/upload/12616165/index.pdf](http://etd.lib.metu.edu.tr/upload/12616165/index.pdf).

41. *Id.* at 86.

42. *Id.* at 104.

43. *Id.* at 117.

44. *Id.* at 118.

45. David D. Kirkpatrick, *Army Ousts Egypt's President; Morsi is Taken into Military Custody*, NEW YORK TIMES, July 3, 2013, [http://www.nytimes.com/2013/07/04/world/middleeast/egypt.html?\\_r=0](http://www.nytimes.com/2013/07/04/world/middleeast/egypt.html?_r=0).

46. *Id.*

47. *Id.* (giving information related to the interim government). For Sisi's election results: Evan Hill, *Sisi Declared Egyptian President Following Predicted Landslide Election*, ALJAZEERA AMERICA, June 3, 2014, <http://america.aljazeera.com/articles/2014/6/3/sisi-wins-egyptianpresidencyinlandslide.html>.

48. Hill, *supra* note 47; Erin Cunningham, *Egypt's Military-Backed Government Declares Muslim Brotherhood a Terrorist Organization*, The Washington Post, December 25, 2013, [http://www.washingtonpost.com/world/middle\\_east/egypts-military-backed-government-declares-muslim-brotherhood-a-terrorist-organization/2013/12/25/7cf075ca-6da0-11e3-aecc-85cb037b7236\\_story.html](http://www.washingtonpost.com/world/middle_east/egypts-military-backed-government-declares-muslim-brotherhood-a-terrorist-organization/2013/12/25/7cf075ca-6da0-11e3-aecc-85cb037b7236_story.html).

supporters.<sup>49</sup> General al-Sisi's presidential campaign included a promise to end the Muslim Brotherhood.<sup>50</sup> Members of the Muslim Brotherhood were barred from participating in the election, as were members of the April 6 Movement, which the interim government accused of espionage.<sup>51</sup> With the two leading groups of the revolution banned, al-Sisi won by a landslide.<sup>52</sup>

In early 2015, al-Sisi pushed through a revamped antiterrorism law that reflected his campaign to dissolve the Muslim Brotherhood.<sup>53</sup> Unlike the 1992 law, which began by defining the crime of terrorism, the 2015 law begins by defining the crime of being a terrorist entity. In at least that respect, the law put the Muslim Brotherhood in the crosshairs.

Article 1 of the antiterrorism law begins:

**Terrorist Entity:** means associations, organizations, groups, gangs, cells (al-khilāyā), or other gatherings, either de jure or de facto, and either inside or outside of the country, that intends to carry out, or calls for:

- (a) harming or frightening individuals, or putting individuals' lives, freedoms, rights, or safety in danger;
- (b) harming, occupying, or seizing the environment, natural resources, antiquities, communications, land, sea, or air transportation, assets (al-amwāl), or public or private buildings or property;
- (c) preventing or obstructing the work of public authorities, agencies, judicial bodies, government interests, or local units, houses of worship, hospitals, educational facilities, or other public facilities;
- (d) preventing or obstructing diplomatic or consular missions or organizations, regional or international bodies in Egypt;
- (e) obstructing public or private transportation;
- (f) obstructing, disrupting, or endangering by any means public order, safety, or its security;
- (g) obstructing or disrupting the Constitution, the laws, or preventing one of the state's institutions or public authorities

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49. Hill, *supra* note 47.

50. *Id.*

51. Dahlia Kholaiif, *Egypt Outlaws Anti-Mubarak April 6 Movement*, Al-Jazeera, April 28, 2014, <http://www.aljazeera.com/news/middleeast/2014/04/egypt-outlaws-anti-mubarak-april-6-movement-20144281135421761.html>.

52. Damien Gayle, *Ex-Army Chief Abdel Fatah al-Sisi Wins Landslide 96% of Vote in 'Sham' Election to Become Egypt's New President as Firework Celebrations Break Out Among Supporters in Tahrir Square*, The Daily Mail, June 3, 2014, <http://www.dailymail.co.uk/news/article-2647666/Ex-army-chief-Abdel-Fatah-al-Sisi-wins-landslide-96-vote-Egypt-s-new-president.html>.

53. MEE Staff, *Sisi Official Approves Egypt's Anti-Terrorist Law*, Middle East Eye, Feb. 25, 2015, <http://www.middleeasteye.net/news/sisi-officially-approves-egypt-s-anti-terrorist-law-1284094471>.

- from acting;
- (h) assaulting the personal freedom of a citizen or another public right and freedom guaranteed by the Constitution and the law; or
  - (i) harming national unity, societal peace, or national security.

This applies to entities or individuals when they carry out or intend to carry out any of these acts even if the acts are not targeted against the Arab Republic of Egypt.

**Terrorist:** Any natural person who commits, attempts to commit, incites, threatens, or plans, either at home or abroad, a terrorist offense by any means, either individually, or in a joint criminal enterprise, or who takes command, leadership, management, creates, establishes, or participates as a members of any of the terrorist entities stipulated in Article (1) of this Act, or who provides funding for, or knowingly contributes to it.<sup>54</sup>

The law creates a unique twist on standard terrorism definitions. Rather than defining the act of terrorism, the law defines terrorist entities and then terrorists. Resultantly, the law's emphasis shifts from illicit conduct to illicit status. The 1992 antiterrorism law had the underpinnings of this shift already written into it—making affiliation with a purportedly terrorist organization grounds for punishment<sup>55</sup>—whereas the 2015 law makes this its primary feature.

There are a number of possible reasons why the law's emphasis changed to highlight status over conduct. It may have been to reflect public approval for tough measures against terrorists. By analogy, robbery is a universally despised crime, but it is the robbers themselves who stoke public outcry. Alternatively, it may have been a careless departure from traditional statutory construction. There are several quirks in the law to indicate that its drafters did not think carefully about the law they wrote. First, the definition of terrorist entities gives six superfluous synonyms to the word "entity," presumably to ensure that no group of terrorists would escape punishment. Second, the updated *list of means* includes a number of bizarre redundancies. In the 1992 law, "damaging, occupying, or seizing transportation" was a prohibited activity; the 2015 law clarifies the generic term "transportation" with "land, air, or sea transportation" (see line (b)) and later lists "public or private transportation" (e). "Public buildings" (b) and "public facilities" (e) are separately listed for protection. One is prohibited from harming the freedom of individuals (a) and also from assaulting the "freedom of a citizen" (h). It is not only a crime to obstruct the "work of public authorities" (c) but also to prevent

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54. Law No. 8 of 2015, available at *al-qānūn al-kānāt "al-irhābīah" al-maṣrī*, Al-Jazeera, <http://tinyurl.com/199pmcc>.

55. Law. No. 58 of 1937, *supra* note 25, at Art. 86 bis(A).

“public authorities from acting” (g).<sup>56</sup> Third, when examining the definition of a terrorist, the reader will find that a terrorist is, among other things, someone who commits a terrorist offense, but the reader will not find the definition for a terrorist offense. Instead, the reader must extrapolate what a terrorist offense is from the definition on terrorist entities. Even then, the extrapolation is only a logical assumption since the statute gives no direction on figuring this out.

For all its anomalies, the law dramatically expands the crime of terrorism. The 1992 law’s *prohibited conduct* requires “any use of force, violence, threat, or intimidation . . . pursuant to a criminal enterprise.”<sup>57</sup> The 2015 law’s *prohibited conduct* depends on whether a person is part of a terrorist entity or not. If a person participates in a terrorist entity, and the terrorist entity—or presumably any of its members—intends or urges any act on the *list of means*, then the person is guilty of terrorism. Troublingly, the law does not explain what it means to participate in a terrorist entity, leaving all participants liable for what any member does allegedly in the group’s name. The 1992 law marginally protected against this situation by requiring that the individual participant must know of the group’s “purposes” to be guilty by association,<sup>58</sup> whereas the 2015 law drops this requirement.

For solo actors, the terror suspect must simply try in some way to commit any of the acts under the *list of means*, which signals another significant change from the 1992 law. The 2015 law combines the *list of means* with the *intended result*. Thus, a terrorist or terrorist entity under the 2015 law need not have a larger motive when obstructing “the work of a public authority” (c); the very act of trying to “obstruct the work of a public authority” is an act of terrorism.<sup>59</sup> As is the equally obscure act of trying to “obstruct government interests” (c). In essence, the law gives courts the power to declare acts of civil disobedience acts of terrorism.

While the law adds a number of ways in which a person can commit a terrorist act to the 1992 law, the most astonishing is line (i), which makes the act of “harming national unity” an act of terrorism. It is difficult to imagine a more powerful deterrent to political dissent than to make “harming national unity” an act of terrorism against the state. After all, there would have been no Arab Spring had the youth of the April 6 Movement not harmed “national unity.”

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56. Law No. 8 of 2015, *supra* note 54.

57. Law. No. 58 of 1937, *supra* note 25.

58. *Id.*

59. Law No. 8 of 2015, *supra* note 54.

Other provisions of the law have also raised concern among human rights activists. Article 2 of the law authorizes the public prosecutor to create a list of “terrorist entities.”<sup>60</sup> An organization indicted on the list is prohibited from engaging in politics for three years, after which the prosecutor must persuade a court to extend the length of time the organization remains on the list.<sup>61</sup> Preventing a terrorist organization from entering politics may serve the interests of national security. However, since the prosecutor may bar any suspected terrorist organization from entering into politics for three years on an indictment alone, the provision allows for the executive to prevent unwelcome opposition from entering politics for a significant period of time, without any sort of non-executive check on this authority.

The law’s power to convict participants of terrorist entities is particularly troublesome for Muslim Brotherhood members, even those who have renounced their affiliation with the group.<sup>62</sup> Professor Kbeish has pointed out, “It is complicated for an individual to prove that he is not affiliated with an entity such as the Muslim Brotherhood, as these entities do not dismiss their members by virtue of legal papers recognized by the public prosecution or the judiciary.”<sup>63</sup> Thus, even if al-Sisi’s fight against the Muslim Brotherhood was based on actual terrorist activities, a member of the Brotherhood unconnected to the activities would have a difficult time distancing himself from it if charged with being affiliated with the Muslim Brotherhood. The guilt by association rationale has also been used to imprison a number of journalists who were purportedly affiliated with the Muslim Brotherhood.<sup>64</sup>

While Egypt’s 1992 antiterrorism law was already worded to reach any affiliates of a terrorist organization, the 2015 law’s vague and expansive language all but guarantees that Egyptian authorities will be

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60. *Id.*

61. *Id.*

62. Ahmed Fouad, *Egypt Passes New Law on ‘Terrorist’ Entities*, Al-Monitor, Dec. 10, 2014, <http://www.al-monitor.com/pulse/originals/2014/12/egypt-law-terrorist-entities-muslim-brotherhood.html#ixzz3YYMbdCce>.

63. *Id.*

64. *Anti-Muslim Brotherhood Witch Hunt Exact Heavy Toll*, Reporters Without Borders, Sep. 17, 2014, <http://en.rsf.org/egypte-anti-muslim-brotherhood-witch-hunt-17-09-2014,46967.html>; *Egypt Urged to Free Two Other Al-Jazeera Journalists*, Reporters Without Borders, Feb. 2, 2015, <http://en.rsf.org/egypt-egypt-urged-to-free-two-other-al-02-02-2015,47552.html>; After the new law came into being: Amira El-Fekki, *Photojournalist Facing Trial on Terrorism Charges*, Daily News Egypt, March 2, 2015, <http://www.dailynewsegypt.com/2015/03/02/photojournalist-facing-trial-on-terrorism-charges/>.

able to easily punish anyone who obstructs government interests, frightens individuals, or harms national unity.

## B. SAUDI ARABIA

### 1. *The Arab Convention for the Suppression of Terrorism*

Until 2014, Saudi Arabia had no formal law against terrorism. Rather than promulgating a penal code, the kingdom gave judges latitude to apply the law according to their interpretations of Islamic scriptures.<sup>65</sup> This latitude allowed judges to convict and sentence defendants for crimes such as, “breaking allegiance with the ruler,” “attempting to distort the reputation of the kingdom,” “insulting the judiciary,” and “inciting public opinion against the state.”<sup>66</sup> In 2008, the kingdom implemented a Special Criminal Court to begin trying cases of terrorism and political activism.<sup>67</sup> Since the court has the discretion to close proceedings to the public, there is little available information on how Saudi Arabian courts understood and interpreted the crime of terrorism between 2008 and the country’s first antiterrorism law in 2014.<sup>68</sup> Nevertheless, a useful beginning point is the Arab Convention for the Suppression of Terrorism of 1998, to which Saudi Arabia was a signatory.<sup>69</sup> The Convention offers, at least, theoretical guidance on how Saudi Arabian courts may have applied the crime of terrorism until 2014. The Convention defines terrorism as:

Any act or threat of violence, whatever its motives or purposes, that occurs in the advancement of an individual or collective criminal agenda and seeking to sow panic among people, causing fear by harming them, or placing their lives, liberty or security in danger, or seeking to cause damage to the environment or to public or private installations or property or to occupying or seizing them, or seeking to jeopardize a national resources.<sup>70</sup>

The definition draws from the 1992 antiterrorism law of Egypt with slight modifications.<sup>71</sup> The *prohibited conduct* of the Egyptian law includes “any

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65. Human Rights Watch, *Challenging the Red Lines* at 3 (Dec. 17, 2013), <http://hrw.org/node/121373> [hereinafter *Challenging the Red Lines*].

66. *Id.* at 2.

67. *Id.* at 3; Human Rights Watch, *Saudi Arabia: Abolish Terrorism Court* (April 27, 2012), <http://www.hrw.org/news/2012/04/27/saudi-arabia-abolish-terrorism-court>; Human Rights Watch, *Human Rights and Saudi Arabia’s Counterterrorism Response* at 18 (August 2009), <http://www.hrw.org/sites/default/files/reports/saudi-arabia0809web.pdf> [hereinafter *Saudi Arabia’s Counterterrorism Response*].

68. *Challenging the Red Lines*, *supra* note 65, at 3.

69. The Arab Convention, *supra* note 24, at 5-6.

70. *Id.* at 56.

71. *Id.* at 23.

use of force, violence, threat, or intimidation . . . pursuant to a criminal enterprise.”<sup>72</sup> Under Egyptian law then, threatening to commit a criminal act is not necessarily violent. By contrast, the Convention’s definition requires that the act or threat pursuant to a criminal enterprise be a violent one. Furthermore, while the Egyptian definition separated the remaining content of its definition into the *intended result* and a *list of means* to achieve that result, the Convention’s definition appears to combine the two elements. As a result, there is little room to distinguish crimes of terror from virtually any crime that causes physical damage or is threatening to a person.

The Convention does, however, provide an exception for acts that would otherwise be considered terrorism:

All cases of struggle by whatever means, including armed struggle, against foreign occupation and aggression for liberation and self-determination, in accordance with the principles of international law, shall not be regarded as an offence. This provision shall not apply to any act prejudicing the territorial integrity of any Arab State.<sup>73</sup>

The exception is likely in reference to the Palestinian armed struggle against the Israeli occupation.<sup>74</sup> Interestingly, any struggle, armed or otherwise, against an Arab state does not qualify as part of the exception. The exception allows Arab states to support Palestinian action against Israel while ensuring their sovereign right to quash similar uprisings against Arab states.

## 2. *The Response to Terrorism after 2001*

Saudi Arabia had experienced terrorist attacks before 9/11. However, incidents of terrorism took an upswing after the U.S. invasion of Afghanistan in 2001, which resulted in the return of Saudi supporters of the Taliban hostile to the ruling al-Saud family.<sup>75</sup> Saudi nationals returning home from fighting abroad in Chechnya, Bosnia, and elsewhere exacerbated the national security threat.<sup>76</sup> To curtail these threats, the kingdom instituted a policy of mass arrests and indefinite detention. Between 2003 and 2007, authorities arrested 9,000 people through counterterrorism enforcement; by 2007, it kept a little over 3,000 in custody.<sup>77</sup> It was not until the following year, in 2008, that the Kingdom

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72. Law. No. 58 of 1937, *supra* note 25.

73. The Arab Convention, *supra* note 24, at 57.

74. Welchman, *supra* note 24, at 631.

75. *Saudi Arabia’s Counterterrorism Response*, *supra* note 67, at 4.

76. *Id.*

77. *Id.* at 11.

began trying terrorists in court.<sup>78</sup>

Instead, beginning in 2003, Saudi Arabia placed terror suspects directly into rehabilitation centers.<sup>79</sup> Admitted suspects underwent through a six-week course to learn aspects of non-violent Islam and allegiance to the ruler, among other subjects.<sup>80</sup> Saudi Arabia initially claimed that the centers totally eliminated recidivism.<sup>81</sup> More recently, it claimed that the recidivism rate hovers around 20%.<sup>82</sup> However, a number of factors suggest that the true success rate of rehabilitating radicals is even lower: some prisoners refuse enrollment,<sup>83</sup> others complete the program but are refused release by Saudi officials.<sup>84</sup> Furthermore, since terrorism suspects were not tried before a court until 2008, it is unclear how many enrollees had actually participated in an act of terrorism. Even after 2008, it remains unclear how many enrollees sentenced to the rehabilitation centers participated in acts of terrorism, given that no written law defined terrorism until 2014. In short, it is impossible to know if the low recidivism rate that Saudi Arabia boasts reflects the centers' actual success rate or merely reflects the possibility that most people who graduate from the rehabilitation centers were never actually threats to begin with.

In 2008, government officials announced that Riyadh's General Court would hear terrorism cases.<sup>85</sup> Shortly thereafter, the court's docket swelled with nearly 1,000 suspects.<sup>86</sup> Within the year, the state created the Special Criminal Court to oversee all terrorism cases.<sup>87</sup> Yet, as human rights activists have observed, the court's jurisdiction grew to include any act of political dissent, including non-violent acts.<sup>88</sup> As a senior researcher at Human Rights Watch pointed out, "The trial of peaceful reformers in a

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78. *Id.* at 18.

79. Rob Wagner, *Rehabilitation and Deradicalization: Saudi Arabia's Counterterrorism Successes and Failures*, University for Peace and Conflict Monitor, Aug. 1, 2010, [http://www.monitor.upeace.org/innerpg.cfm?id\\_article=735](http://www.monitor.upeace.org/innerpg.cfm?id_article=735).

80. *Saudi Arabia's Counterterrorism Response*, *supra* note 67, at 6.

81. *Saudi Arabia*, The American Foreign Policy Council's World Almanac of Islamism, <http://almanac.afpc.org/Saudi-Arabia#>, (last updated Sep. 6, 2013).

82. Holly Williams, *Saudi Reform Center for Jihadists Offers Alternatives to Extremists*, CBS NEWS, Nov. 18, 2014, <http://www.cbsnews.com/news/saudi-reform-center-for-jihadists-offers-alternatives-to-extremists/>.

83. Wagner, *supra* note 79.

84. *Saudi Arabia's Counterterrorism Response*, *supra* note 67, at 7.

85. *Id.* at 18.

86. *Id.*

87. *Id.* at 18-19

88. *Saudi Arabia: Abolish Terrorism Court*, *supra* note 67.

terrorism court underlines the political nature of this court.”<sup>89</sup> The Special Criminal Court hearings are typically closed to the public, with hearings scheduled without advanced notice to the defendant, and often without the defendant’s lawyer being allowed to attend.<sup>90</sup> The state in fact pressures lawyers to dismiss themselves from representing terrorism suspects.<sup>91</sup> Despite the typically opaque nature of the court’s proceedings, one of the hearings in the trial of two Saudi Arabian human rights activists, Abdullah al-Hamid and Mohammad al-Qahtani, was opened to the public. It offered a glimpse into the hearings of the Special Criminal Court.<sup>92</sup>

Al-Hamid and al-Qahtani are the co-founders of the Saudi Civil and Political Rights Association (“ACPRA”).<sup>93</sup> In April 2012, they circulated a petition demanding that Crown Prince Nayef, who was the Minister of the Interior at the time, be removed from the influential office because he was “not fit to be the next king.”<sup>94</sup> The petition claimed that the prince oversaw the mistreatment of tens of thousands of detainees while at the ministry, and that he helped transform counterterrorism police into a “henchman to terrorize the people.”<sup>95</sup> The two activists were arrested and brought to trial in September 2012.<sup>96</sup> They were initially charged with “impeding the country’s development.”

The trial began with statements by the defendants. Al-Qahtani first offered a statement he had prepared in writing, arguing that he and other activists were not guilty of “impeding the country’s development,” but rather “the corrupt are those who have brought our development to a halt.”<sup>97</sup> He accused the Bureau of Investigation and Public Prosecution of helping the state conduct illegal detentions. He offered to admit the statements of witnesses present in the courtroom, who were family members of detainees, to support his claim.<sup>98</sup> He further stated that the charges brought against him were of malicious intent, again offering to

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89. *Id.*

90. *Saudi Arabia’s Counterterrorism Response*, *supra* note 67, at 19-21.

91. *Id.*

92. Nora Abdulkarim, *Trial of Civil Rights Activists Mohammad al-Qahtani and Abdullah al-Hamid*, *Jadaliyyah*, Sep. 3, 2012, <http://www.jadaliyya.com/pages/index/7174/trial-of-saudi-civil-rights-activists-mohammad-al->.

93. *Challenging the Red Lines*, *supra* note 65, at 33.

94. *Id.* at 34.

95. *Id.*

96. Abdulkarim, *supra* note 92.

97. *Id.*

98. *Id.*

admit the statements of present witnesses to substantiate his claim.<sup>99</sup> At the close of his argument, the judge said, “How could you prove that the charges against you were of malicious intent? All you have done is read fifteen pages to me, your statement of defense is an insufficient response to the claims put forth against you.”<sup>100</sup> Al-Qahtani responded dryly, “Actually, it was twenty-five pages.”<sup>101</sup> The judge then ruled that the defense was “an inadequate, ill-prepared response to the charges,”<sup>102</sup> and called for the submission of a revised version the next day.

Al-Hamid then rose to offer his statement of defense, beginning by stating, “We know the charges were raised against us with malicious intent because we filed a complaint against the Minister of Interior himself,”<sup>103</sup> referring to Crown Prince Nayef, the subject of their petition. He continued, “It would have been more transparent of [Prince Nayef] to have filed these charges against us under his own name, rather than under the guise of governmental institutions.”<sup>104</sup> Al-Hamid went on to call the court’s independence into question. The judge ruled that al-Hamid’s statement, like al-Qahtani’s, was an incomplete defense. He again called for a revised submission the next day. Furthermore, he barred the public from attending future hearings, due to the defendants’ supporters violating the court’s prohibition on cell phone use.<sup>105</sup> Supporters had used their cell phones to take pictures and send Twitter updates during the proceedings.

In October 2013, the two activists were convicted of “breaking allegiance with the ruler,” “spreading chaos and destabilizing public order,” “setting up an unlicensed organization,” “questioning the integrity of officials,” and “disseminating false information to foreign groups.”<sup>106</sup> Al-Hamid was sentenced to five years imprisonment, an additional five year travel ban, and six more years on his sentence (previously suspended on the condition that he stop all activism).<sup>107</sup> Al-Qahtani was sentenced to ten years imprisonment with an additional ten year travel ban after his release.<sup>108</sup> During the activists’ final hearing, the judge referred to the two defendants as “deviants” and compared them to al-Qaida for seeking to

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99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. *Challenging the Red Lines*, *supra* note 65, at 34-35.

107. *Id.*

108. *Id.*

change the regime, although he conceded that the activists had acted peacefully.<sup>109</sup> The judge ordered the closure of the ACPRA and all affiliated social media accounts, as well as the seizure of its assets.<sup>110</sup> As of November 2014, eleven members of ACPRA were either in prison or on trial.<sup>111</sup>

### 3. *The 2014 Antiterrorism Law*

While al-Hamid and al-Qahtani were tried by a terrorism court and compared to terrorists, they were not convicted of the crime of terrorism—although the crime of “spreading chaos” and “destabiliz[ing] public order” may stand in as a close proximate to Saudi Arabia’s construal of terrorism. In 2011, the kingdom had been close to implementing a antiterrorism that might have been used against the activists. However, a draft of the law was leaked to the public, prompting an outcry among rights activists.<sup>112</sup> The draft law was quietly put aside.<sup>113</sup>

The draft law was extensive.<sup>114</sup> Some of its features, in particular its definition of terrorism, as well as the lack of judicial oversight over investigations and prosecutions eventually became part of the 2014 law.<sup>115</sup> Other, more controversial parts were dropped, such as a provision that identified “insulting the monarch” as an act of terrorism, as well as “organizing a demonstration, participating in its organization, assisting, calling for, or inciting it.”<sup>116</sup> Furthermore, the draft law stipulated that if a person knew about an act of terrorism that involved “kidnapping, murder, destruction, explosion or smuggling of weapons or explosives” and failed

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109. *Id.*

110. *Id.*

111. Amnesty International, *Muzzling Dissent: Saudi Arabia’s Efforts to Choke Civil Society* (October 9, 2014), <https://www.amnesty.org/en/articles/news/2014/10/muzzling-dissent-saudi-arabia-s-efforts-choke-civil-society/>

112. For reference to the leak: Human Rights Watch, *Saudi Arabia: Terrorism Law Targets Peaceful Speech* at 5 (December 31, 2013), <http://www.hrw.org/news/2013/12/30/saudi-arabia-terrorism-law-targets-peaceful-speech>. For reference to the outcry: Human Rights Watch, *Saudi Arabia’s Draft Counterterrorism Law a Setback for Human Rights*, (August 2, 2011), <http://www.hrw.org/news/2011/08/02/saudi-arabia-s-draft-counterterrorism-law-setback-human-rights>.

113. *Saudi Arabia: Terrorism Law Targets Peaceful Speech*, *supra* note 112.

114. *Saudi Arabia’s Draft Counterterrorism Law a Setback for Human Rights*, *supra* note 112.

115. *Saudi Arabia: Terrorism Law Targets Peaceful Speech*, *supra* note 112.

116. *Saudi Arabia’s Draft Counterterrorism Law a Setback for Human Rights*, *supra* note 112.

to inform the authorities, the person would face the same penalty as the terrorist, presumably including the death penalty.<sup>117</sup>

The most obvious carryover into the 2014 law was its definition of terrorism. The 2014 law defines terrorism against the state, perpetrated within the state's borders as:

Any act carried out by a perpetrator in furtherance, either directly or indirectly, of an individual or collective criminal enterprise, intended to:

- (a) disturb public order;
- (b) shake the security of society or the stability of the state;
- (c) expose its national unity to danger;
- (d) obstruct the basic law of governance or some of its articles;
- (e) harm the reputation of the state or its position;
- (f) damage one of the state's public utilities or its natural resources;
- (g) attempt to force one of the state's officials to do or to abstain from any action; or
- (h) threaten to carry out acts towards the above-mentioned goals or to incite any of these acts.<sup>118</sup>

The *prohibited conduct* is any direct or indirect act in furtherance of a criminal enterprise intended to cause any item in lines (a)-(g), or as stipulated in line (h). Unlike the Arab Convention for the Suppression of Terrorism, which prohibits acts or threats of violence, the 2014 law does not require that a prohibited act be violent. However, like the Convention, the 2014 law combines the *intended results* with the *list of means*. The acts on this list appear to have drawn inspiration from a number of sources. Lines (a), (b), and (d) resemble parts of Egypt's 1992 antiterrorism law.<sup>119</sup> Line (f) resembles part of the Convention's definition of terrorism.<sup>120</sup> Line (g) appears to have been inspired by Jordan's 2001 antiterrorism discussed in the next section. The two vaguest lines, (c)'s exposing the state's "national unity to danger" and (e)'s harming its "reputation," were evidently conceived of by Saudi Arabian lawmakers.

Two other points of clarification are in order. While (b) is likely inspired by Egypt's 1992 law, the Saudi rendering changes the verb from "endangering" to "shaking the security of society or the stability of the

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117. *Id.*

118. Law No. 63 of 1435 (Council of Ministers Resolution), *Um Al-Qura* (Saudi Arabia).

119. *Cf.* Law. No. 58 of 1937, *supra* note 25 ("with the intent to disrupt public order or endanger the safety and security of society, if doing so would . . . thwart the application of the Constitution, laws, or regulations").

120. *Cf.* The Arab Convention, *supra* note 24, at 56 ("seeking to cause damage to the environment or to public or private installations or property or to occupying or seizing them, or seeking to jeopardize a national resources").

state.” What it means for a person to shake security or stability is vague; the Arabic term *al-za‘za‘a* connotes a violent or extreme shaking. Furthermore, line (d)’s prohibition on “obstructing the basic law of governance” refers to Saudi Arabia’s constitution-like document that provides a synopsis of the king’s powers over the state.<sup>121</sup> Presumably, any act made with the intention to interfere with the king’s absolute power constitutes an act of terrorism.

While the 2014 antiterrorism law gives the principle definition of terrorism in Article 1, which covers acts committed *inside* the kingdom, Article 3 of the law gives a separate definition for acts committed *outside* of the kingdom. The Article 3 definition, while also troublingly vague in some portions, defines terrorism more narrowly than Article 1.

Article 3 prohibits a person from committing a crime, or otherwise assisting in or inciting its commission, or even being aware of its commission, with the intention to:

1. Change the system of governance in the kingdom;
2. Obstruct the basic law of governance or some of its articles;
3. Force the state to commit an act or to abstain from it;
4. Commit attacks on Saudis abroad;
5. Damage public property of the state abroad, including its embassies or other diplomatic places, or its consulates;
6. Undertake terrorist acts abroad on a means of transport registered with the kingdom or flying its flag; or
7. Infringe on the interests of the kingdom, its economy, or its national or social security.<sup>122</sup>

Article 3’s definition of *prohibited conduct* thus opens the range of culpability to include being aware of a crime’s commission. Its combined *intended results* and *list of means* does not include some of the more egregious items from the Article 1 definition, such as “exposing [the state’s] national unity to danger.” Yet, and perhaps equally broad, its line seven prohibits an act that infringes on “the interests of the kingdom [or] its economy.” Since Article 3 applies not only to Saudis abroad, but all people living outside of the kingdom, Saudi Arabia’s terrorism definition may cover virtually any criticism against the kingdom. As Joe Stork, the deputy Middle East director at Human Rights Watch noted, “The new terrorism law sends a chilling message not only to Saudi activists on the

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121. The Basic Law of Governance, [http://www.saudiembassy.net/about/country-information/laws/The\\_Basic\\_Law\\_Of\\_Governance.aspx](http://www.saudiembassy.net/about/country-information/laws/The_Basic_Law_Of_Governance.aspx) (Saudi Arabia).

122. Council of Ministers Resolution No. 63, *supra* note 118.

ground, but also to international journalists and organizations abroad that scrutinize Saudi Arabia's human rights record that they could be targeted for prosecution in the kingdom."<sup>123</sup>

In terms of criminal procedures, the law gives the Minister of the Interior the power to directly order the arrest of terrorism suspects, access their private records without judicial oversight, and put suspects into rehabilitation centers, even if they are not convicted of terrorism.<sup>124</sup> The Special Criminal Courts are authorized to hear testimony against a suspect without the suspect, or the suspect's lawyer, being present.<sup>125</sup> The law further modifies standard Saudi criminal procedure, increasing the time a suspect may be held in pre-trial detention from six to twelve months, and giving law enforcement discretion over when a suspect may see his or her lawyer.<sup>126</sup> Furthermore, the suspect may also be held in incommunicado detention for sixty to ninety days after the arrest.<sup>127</sup>

A month after the 2014 law's enactment, the Ministry of Interior released a communiqué, with the king's endorsement, elaborating on the antiterrorism law (although without expressly citing to it).<sup>128</sup> The communiqué gives a list of prohibited terrorist organizations as well as a list of eleven illegal acts presumably fitting under the crime of terrorism.

The list includes (1) "preaching any atheistic thought in whatever form or casting doubt on the unchangeable principles of Islam upon which this country has been founded," (2) pledging allegiance to an organization or individual outside of the kingdom, (3) "participating in or calling for . . . combat in any conflict zone in other countries," (4-5) supporting terrorist or extremist groups including through the use of social media or finance, (6) "communicating with any of the groups . . . deemed hostile to the Kingdom," (7) communicating with a foreign state with the intent of "undermining the unity . . . of the Kingdom," (8) "seeking to destabilize the social matrix and national unity, or calling for or participating in . . . protests or demonstrations . . . that undermines the unity and stability of the kingdom," (9) "attending conferences or symposia" that

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123. Human Rights Watch, *Saudi Arabia's Terrorism Law Tramples on Rights* at (February 6, 2014), <http://www.hrw.org/news/2014/02/06/saudi-arabia-terrorism-law-tramples-rights>.

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.*

128. Human Rights Watch, *Saudi Arabia: New Terrorism Regulations Assault Rights* (March 20, 2014), <http://www.hrw.org/news/2014/03/20/saudi-arabia-new-terrorism-regulations-assault-rights>.

provokes “sedition within society,” (10) abusing “other states and their leaders,” and (11) “inciting other states or associations or international organizations against the Kingdom.”<sup>129</sup>

While the communiqué’s list of offenses mentions terrorism in only a few of the examples, many of the offenses touch on acts like undermining societal unity or colluding with groups that seek to harm the reputation of the state, which overlap with offenses found in the antiterrorism law. In that light, the Ministry of Interior’s list appears to be more of an elaboration on the crime of terrorism than a subsequent list of similar crimes. It is difficult to imagine an act of political dissent or criticism that would escape through the net of the antiterrorism law and the Ministry of Interior communiqué. Saudi Arabia’s first codified antiterrorism law, and the related communiqué, may have successfully insulated the kingdom from any reverberations of the Arab Spring in its borders.

### C. JORDAN

#### 1. The 2001 Antiterrorism Law

Prior to 2001, Jordan’s antiterrorism law closely resembled Syria’s.<sup>130</sup> However, in the month after 9/11, King Abdullah II ordered the cabinet to revamp the penal code through a host of temporary laws while parliament waited to reconvene and vote the laws into permanence.<sup>131</sup> Among these temporary laws, Jordan issues its first distinct antiterrorism law.<sup>132</sup> The law drew from aspects of Egypt’s 1992 law and the 1998 Arab Convention for the Suppression of Terrorism:

Terrorism means the use or threat of violence, whatever its motivations and purposes, pursuant to an individual or collective criminal enterprise with the intent to endanger the safety and security of society if doing so would:

- (a) spread fear among the people, intimidate them, or expose their lives to danger;
- (b) harm or occupy the environment, public facilities and property, private property, international facilities or diplomatic missions;
- (c) endanger or seize national resources; or

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129. Middle East Monitor, *Full Text of the Communiqué Issued by the Saudi Interior Ministry on Proscribed Organizations*, (March 9, 2014), <https://www.middleeastmonitor.com/news/middle-east/10189-full-text-of-the-communicue-issued-by-the-saudi-interior-ministry-on-proscribed-organisations>.

130. Welchman, *supra* note 24, at 641-42.

131. *Id.* at 642.

132. *Id.*

- (d) compel the government or any international or regional organization to perform or abstain from performing an act.<sup>133</sup>

The law prohibits the *conduct* of any “use or threat of violence” intended to *result* in endangering “the safety and security of society.” The *list of means* is influenced by Egypt’s 1992 law but also draws from the Arab Convention’s more condensed version. For example, Egypt’s 1992 law specifically mentions damaging, occupying, or seizing transportation, a redundancy which the Arab Convention left out (presumably because damaging, occupying, or seizing either public or private property would include transportation).<sup>134</sup> The 2001 Jordanian law follows the Arab Convention in this regard, although, as shown below, its revamped and expanded 2006 reformulation includes a reference to transportation.<sup>135</sup>

Aside from its terrorism definition in Article 147 of the Penal Code, Article 149 included other prohibited terrorist offenses, such as any act that would “undermine the governance of the kingdom,” or “incite opposition to it.”<sup>136</sup> Article 149’s charges have been used against political activists, although the state has not always succeeded in persuading judges to turn those charges into convictions.<sup>137</sup> The state made Article 149 arrests to crackdown on protests in 2011 and 2012, but courts reduced the charges in most instances to lighter offenses.<sup>138</sup> However, since many of those cases were not resolved until two or three years after the initial arrest, Article 149 charges proved useful in the state’s arsenal to arrest, detain, and frighten political activists with a serious crime.<sup>139</sup>

## 2. *The 2006 Antiterrorism Law*

The events of 9/11 appear to have influenced Jordan’s decision to create its own antiterrorism law. After a devastating terror attack on Jordanian soil in 2005, Jordan revamped its law in frightening ways.<sup>140</sup> In

133. Law No. 16 of 1960 (Criminal Code), The Official Gazette, No. 1487, 1 Jan. 1960, art. 147 (as amended by Law No. 8 of 2011 in The Official Gazette, No. 5090, 2 May 2011) (Jordan).

134. Law No. 58 of 1937, *supra* note 25.

135. Law No. 55 of 2006 (Prevention of Terrorism Act), qānūn man’a al-irhāb (jo), <http://tinyurl.com/l6w56rd> (Jordan).

136. Radād Al-Qalāl, *al-ḥakumah la’hayumān rāyts wuatsḥ: al-ḥurīāt al-’āmah maṣūnah*, Al-Arab Al-Yawm, Dec., 15 2014, <http://alarabalyawm.net/?p=409441>.

137. Human Rights Watch, *Jordan*, World Report 2015, <http://www.hrw.org/world-report/2015/country-chapters/jordan?page=1> (last visited May 8, 2015).

138. *Id.*

139. *Id.*

140. Areej Abuqudairi, *Jordan Anti-Terrorism Law Sparks Concern*, Al-Jazeera, Apr. 25, 2014, <http://www.aljazeera.com/news/middleeast/2014/04/jordan-anti-terrorism-law->

November of that year, under the direction of Abu Musab al-Zarqawi, four members of al-Qaida in Iraq conducted suicide bombings on three Jordanian hotels.<sup>141</sup> Scores died and over one hundred people were wounded.<sup>142</sup>

The bombings profoundly affected how Jordanians felt about terrorism. Before the attack, 57% of Jordanian Muslims felt that “suicide attacks can often or sometimes be justified.” That number dropped to 29% after the attack and has since fallen to 15%.<sup>143</sup> The Jordanian parliament reacted the following year by enacting its 2006 antiterrorism law. The law defines terrorism as:

Any deliberate act committed by any means that

- (a) leads to the killing or physical injury of any person; or
- (b) causes damage to public or private property, to a means of transportation, the environment, infrastructure, the facilities of international organizations or diplomatic missions; and
- (c) is intended to
  - (i) breach public order,
  - (ii) jeopardize the safety and security of society,
  - (iii) obstruct the application of the Constitution’s provisions or laws
  - (iv) influence the policy of the state or government,
  - (v) force it [the state or government] to perform or refrain from performing a specific act, or
  - (vi) breach national security through intimidation, terrorization, or violence.<sup>144</sup>

The law changed the *prohibited conduct* of the 2001 law from “any use or threat of violence” to “any deliberate act” that leads to killing, injury, or which causes damage.<sup>145</sup> It is unclear whether a “deliberate act” can include a (violent) threat. If not, the 2006 law was more restrictive in this area than the 2001 law. Whether the restriction was intentional or an

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sparks-concern-201442510452221775.html; Jonathan Finer & Naseer Mehdawi, *Bombings Kill Over 50 at 3 Hotels in Jordan*, The Washington Post, Nov. 10, 2005, <http://www.washingtonpost.com/wp-dyn/content/article/2005/11/09/AR2005110901185.html>.

141. Richard Wike, *Widespread Concerns About Extremism in Muslim Nations, and Little Support for It*, Pew Research Center, Feb. 5 2015, <http://www.pewresearch.org/fact-tank/2015/02/05/extremism-in-muslim-nations/>.

142. JT, *Jordan Remembers Victims of 2005 Hotel Bombings*, The Jordan Times, Nov. 8, 2014, <http://jordantimes.com/jordan-remembers-victims-of-2005-hotel-bombings>. Curiously, one attacker, who failed to detonate her device and was later sentenced to death, was not convicted of the crime of terrorism.

143. Wike, *supra* note 141.

144. Law No. 55 of 2006, *supra* note 135.

145. *Id.*

oversight, legislators of the 2014 law reintroduced the term “threat” in the law’s prohibited conduct, providing reason to believe that they did not intend to rule out threats as prosecutable conduct.

The law’s *intended result* section greatly expanded the 2001’s section, introducing several new and vague terms. Whereas the 2001 law required that criminal actor intend to “endanger the safety and security of society,” before the act qualified as terrorism, the 2006 law included in its list of illegal intentions, among other possibilities, to “breach public order” or “obstruct the application of the Constitution’s provisions.”<sup>146</sup> By contrast, the 2001 law’s *list of means* was shortened in the 2006 amendment, offering the state a more restrictive list of ways in which it might classify a terrorist act. For example, while damaging transportation was added to the list, “endangering or seizing natural resources” was dropped.<sup>147</sup> The 2001 law included frightening, intimidating, or endangering the lives of people as part of its *means* list; the 2006 law drops these terms and puts “jeopardizing the safety and security society” within its *intended results* element.<sup>148</sup> The sum of these changes drastically altered the law’s structure and character. After the 2006 changes, the law no longer resembled Egypt’s 1992 law or the Arab Convention from which it originally drew inspiration. Despite the possible oversight in failing to include threats as a prohibited conduct and shortening the *list of means*, the expansion of the *intended result* section with a number of vague terms made the law more expansive in its scope of prosecutable offenses than its predecessor.

Like the 2001 law, other provisions of the 2006 law present its most troubling features. The law established that State Security Courts would have exclusive jurisdiction over terrorism cases.<sup>149</sup> The State Security Courts are semi-military tribunals consisting of a panel of two military judges and once civilian judge. The judges are appointed by the chief of staff of the armed forces and the prime minister. They are not independent from the executive.<sup>150</sup> Furthermore, the Prosecutor General wields substantial power over the treatment of terrorism suspects. Upon receiving information connecting a person or group to terrorist activities, the Prosecutor General may authorize surveillance, prohibit travel, conduct

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146. *Id.*

147. *Id.*

148. *Id.*

149. *Id.*

150. Christopher Wilke, *The Flaws of Jordan’s Largest Terrorism Trial*, Human Rights Watch, Nov. 21, 2011, <http://www.hrw.org/news/2011/11/21/flaws-jordan-s-largest-terrorism-trial>.

searches of any place where the suspect is present, and seize funds suspected be linked with terrorism for a period of up to one month.<sup>151</sup> A suspect may, however, challenge the Prosecutor General's decision before the State Security Court and appeal to the Court of Cassation if the challenge fails.<sup>152</sup> Thus, while the law gives judicial oversight over the Prosecutor General, the oversight exists only after the fact and the Prosecutor's burden is merely to show "reliable information."<sup>153</sup> Additionally, the Prosecutor General may arrest and detain a suspect without prior judicial authorization.<sup>154</sup> A suspect can be held without charges or access to legal counsel for up to thirty days.<sup>155</sup> Judges do not have power to review the lawfulness of pre-trial detention.<sup>156</sup>

The 2006 law drew its share of criticism.<sup>157</sup> While political opposition did not succeed in persuading the parliament to reform the 2006 law, in early 2014, Jordan reduced State Security Court jurisdiction to a handful of crimes, including terrorism.<sup>158</sup> Before the jurisdiction change, State Security Courts heard cases on a controversial terrorism-related crime, Article 118 of the penal code, which prohibits acts that harm "relations with a foreign state."<sup>159</sup> Subjects charged with this crime included journalists who criticized officials and the policies of other governments, and Jordanians who demonstrated support for protesters in Egypt.<sup>160</sup> As the Syrian revolution escalated, Jordanian officials became concerned with Jordanian subjects going to Syria to fight and then returning home as

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151. Law No. 55 of 2006, *supra* note 135, at Art. 4.

152. *Id.*

153. *Id.*

154. *Practice of Pre-Trial Detention and the Role of Prosecutors in Jordan*, Human Rights Watch, Dec. 21, 2010, <http://www.hrw.org/news/2010/12/21/practice-pre-trial-detention-and-role-prosecutors-jordan>.

155. *Amnesty International: Jordan's New Anti-Terrorism Law Opens Door for Rights Violations*, USA Today, Nov. 8, 2006, [http://usatoday30.usatoday.com/news/world/2006-11-08-jordan-terror\\_x.htm](http://usatoday30.usatoday.com/news/world/2006-11-08-jordan-terror_x.htm).

156. *Practice of Pre-Trial Detention and the Role of Prosecutors in Jordan*, *supra* note 154.

157. *Jordan Enacts New Anti-Terror Law*, UPI, May 9, 2006, [http://www.upi.com/Business\\_News/Security-Industry/2006/05/29/Jordan-enacts-new-anti-terror-law/48981148912585/](http://www.upi.com/Business_News/Security-Industry/2006/05/29/Jordan-enacts-new-anti-terror-law/48981148912585/); Amnesty International, *Jordan's New Anti-Terrorism Law Opens Door for Rights Violations*, *supra* note 155.

158. *Jordan: Terrorism Amendments Threaten Rights*, Human Rights Watch, May 18, 2014, <http://www.hrw.org/news/2014/05/17/jordan-terrorism-amendments-threaten-rights>.

159. *Id.*

160. *Id.*

battle-hardened opponents of the monarchy.<sup>161</sup> Until the amendment to the State Security Courts' jurisdiction, Jordan used Article 118 charges to arrest dozens of Jordanians returning from Syria, imprisoning those the state deemed particularly threatening for up to five years.<sup>162</sup> However, since Article 118 did not fall within the crime of terrorism, State Security Courts lost the ability to hear Article 118 cases after the 2014 amendment.<sup>163</sup>

The crisis in Syria did not abate after the 2014 amendment and neither did Jordanian fears about extremists within its borders. In August of that year, Jordan issued a revised antiterrorism law<sup>164</sup> which, among other things, included Article 118's prohibition into its antiterrorism law, returning offenders to State Security Court jurisdiction.<sup>165</sup>

### 3. *The 2014 Antiterrorism Law*

Jordan's 2014 antiterrorism law once again changed the state's definition of terrorism, this time bringing back aspects of its 2001 definition:

[Terrorism means] any deliberate act, abstention of an act, or threat of an act, regardless of its motivation, objective, or means committed to carry out a criminal act collectively or individually that would

- (a) jeopardize the safety and security of society;
- (b) cause disorder by disturbing public order, cause terror among the people, intimidate them, or jeopardize their lives;
- (c) cause harm to or occupy the environment, public facilities, public or private property, or facilities of international or diplomatic missions;
- (d) jeopardize national resources, or pose an economic risk;
- (e) force a regional or national governor to perform or refrain from performing an act; or
- (f) disable the application of the constitution, laws, or regulations.<sup>166</sup>

The law expanded on the 2006 law's *prohibited conduct*. The 2006 law prohibited "any deliberate act" that lead to killing, physical injury, or

161. Suleiman Al-Khalidi, *Jordanian Jihadis Returning from Syria War Rattle U.S.-Aligned Kingdom*, Reuters (Apr. 17, 2014), <http://www.reuters.com/article/2014/04/17/us-jordan-syria-militants-insight-idUSBREA3G16H20140417>.

162. *Id.*

163. *Jordan: Terrorism Amendments Threaten Rights*, *supra* note 158.

164. Law No. 18 of 2014, nuṣ qānūn man 'a al-irhāb m 'a ākhir t 'adīlāti-hi li-sannat (jo), 2015, <http://tinyurl.com/op6yqm6> (Jordan).

165. *Id.*

166. Law No. 18 of 2014, *supra* note 164.

which causes damage. The 2014 law prohibits “any deliberate act, abstention of an act, or threat of an act . . . to carry out a criminal act.”<sup>167</sup> This change resembles the 2001 law which included “threats of violence,” and required that the act be “pursuant to a criminal enterprise.”<sup>168</sup> However, the 2014 law is more expansive than the 2001 law; as, unlike either the 2001 or 2006 laws, it does not require that the act, omission, or threat be violent or lead to a violent result. Thus, any criminal act, provided it satisfies the other elements, could be terroristic.

The 2014 law combines the *intended result* of the act with the *list of means*, making criminality easier to prove. The list largely matches the 2006 list of *intended results*, with a few notable changes. The 2014 law adds “jeopardiz[ing] natural resources” and “pos[ing] an economic risk” to the list.<sup>169</sup> It also adds items listed in line (b): causing terror, intimidating, or jeopardizing the lives of people to the list.<sup>170</sup> Line (b) expands on the 2006 law, which required that an attack that harms people must actually physically harm them or kill them, not merely intimidate them.<sup>171</sup> The law drops two possible acts of terror from the 2006 law. It no longer recognizes “affecting the policy of the state or government” as a possible act of terrorism, which would be laudable if the law were not so vague in other areas. It also returns to the 2001 law by leaving out a reference to transportation; although, causing harm to “public or private property”<sup>172</sup> would undoubtedly cover transportation, as the drafters of the 2001 law likely recognized.

Aside from its definition of terrorism, the law names several acts that fall within the scope of terrorism.<sup>173</sup> As noted above, among those acts is the former Article 118 crime of “harming relations with foreign states.” By making this an act of terrorism, the state not only returned the crime to the jurisdiction of the State Security Courts, but also aided political authorities in characterizing political dissent as “terrorism.”

In November of 2014, Jordanian authorities arrested Bani Irsheid, a leader of the Jordanian Muslim Brotherhood’s political party, for criticizing United Arab Emirates leaders in a Facebook post. Irsheid condemned the UAE for labeling the Muslim Brotherhood as a terrorist organization, accusing the country’s leaders of serving “the role of the US’

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167. *Id.*

168. *Id.*

169. *Id.*

170. *Id.*

171. Law No. 55 of 2006, *supra* note 135.

172. Law No. 18 of 2014, *supra* note 164.

173. Jordan: Terrorism Amendments Threaten Rights, *supra* note 158.

policeman in the region” and working in collusion with Israel.<sup>174</sup> He further claimed that the UAE supports coups abroad, surveillance of its own citizens, and Westernization.<sup>175</sup> Finally, he called for the UAE to be excluded from several regional organizations, including the Arab League and Gulf Cooperation Council.<sup>176</sup> The authorities promptly arrested Irsheid and he received an eighteen-month prison sentence.<sup>177</sup>

Members of the Muslim Brotherhood protested the arrest, claiming that Irsheid was being held as a political prisoner.<sup>178</sup> Jordan’s prime minister responded, “He was not arrested for expressing his views but rather for his harmful remarks that would sour the relation between Jordan and a friendly country,” and that Irsheid “should have read the law before making the post.”<sup>179</sup> He further noted that Irsheid’s post could have harmed, “economic, political, and commercial ties with the UAE,” possibly in reference to the 2014 law’s prohibition on posing an economic risk.<sup>180</sup> The Minister of Political and Parliamentary Affairs also commented on the arrest of Irsheid and others stating, “The term ‘political prisoner’ is confused. It is only when people are arrested for their opinions that they are called ‘political prisoners’. This has never been the case in Jordan.”<sup>181</sup> Instead, the Minister claimed that Irsheid and others were arrested for violating “security-related crimes.”<sup>182</sup> Such remarks reveal a disturbing irony: The crime of “harming relations with a foreign state” originally existed independently of the antiterrorism law and was used to protect the state against violent Islamic extremists. Its recent inclusion within the antiterrorism law helps politicians to conflate the crime of “harming relations with a foreign state” with matters of national security. Not only must Jordanians fear criticizing their own state, but also criticizing any other state friendly to Jordan.

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174. Al-Qalāl, *supra* note 136; *Jordan: 18 Months for Criticizing UAE*, Human Rights Watch, Feb. 19, 2015, <http://www.hrw.org/news/2015/02/19/jordan-18-months-criticizing-uae>.

175. *Jordan: 18 Months for Criticizing UAE*, *supra* note 174.

176. *Id.*

177. *Id.*

178. Raed Omari, *No Political Prisoners in Jordan—Minister*, The Jordan Times, Dec. 1, 2014, <http://jordantimes.com/no-political-prisoners-in-jordan—minister>.

179. Omar Obeidat, *Bani Rsheid Should Have Read the Law—PM*, The Jordan Times, Nov. 26, 2014, <http://jordantimes.com/bani-rsheid-should-have-read-the-law—pm>.

180. *Id.*

181. Omari, *supra* note 178.

182. *Id.*

## CONCLUSION

After General al-Sisi's military coup against Egyptian President Muhammad Morsi in 2013, tens of thousands of protesters gathered to condemn the overthrow of Egypt's first democratically-elected president.<sup>183</sup> The protesters set up a tent city surrounding the Rabaa al-Adawiya mosque in Cairo.<sup>184</sup> State security forces attempted to negotiate the tent city's removal; when that failed, they fired on the protesters, "killing at least 817 and likely more than 1,000."<sup>185</sup> The Rabaa massacre, as it was later called, reverberated throughout the Middle East. Activists and others show solidarity with the massacred by raising four fingers in the air—rabaa means four—or by displaying a picture of a black hand with four raised fingers cast against a yellow background.<sup>186</sup>

It should come as no surprise that all three countries have charged or threatened to charge activists who have shown these symbols with engaging in terrorism or a terrorism-related offense. In January 2014, an Egyptian doctor wore a pin with the rabaa symbol on it inside the hospital where she worked.<sup>187</sup> Her husband explained that she wore the pin in remembrance of a neighbor who died in the massacre.<sup>188</sup> Among other things, she was charged with belonging to the Muslim Brotherhood — a terrorist offense under Egypt's antiterrorism law — and sentenced to two years imprisonment.<sup>189</sup> A month later, an official in Saudi Arabia's Ministry of Justice cautioned that displaying the rabaa symbol would be considered a terrorist offense under the 2014 antiterrorism law.<sup>190</sup> As for Jordan, even before the new antiterrorism law had been implemented,

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183. Patrick Kingsley, *Egypt's Rabaa Massacre: One Year On*, The Guardian, Aug. 16, 2014, <http://www.theguardian.com/world/2014/aug/16/rabaa-massacre-egypt-human-rights-watch>.

184. *Id.*

185. *All According to Plan: The Rab'a Massacre and Mass Killings of Protesters in Egypt*, Human Rights Watch, Aug. 12, 2014, <https://www.hrw.org/report/2014/08/12/all-according-to-plan/raba-massacre-and-mass-killings-protesters-egypt>.

186. *'Four-Finger Salute' Shows Solidarity With Egypt's Muslim Brotherhood*, Radio Free Europe: Radio Liberty, May 9, 2015, <http://www.rferl.org/content/egypt-four-finger-salute/25085068.html>.

187. *2 Year Prison Sentence for Doctor Wearing Rabaa Al-Adawiya Pin*, Middle East Monitor, Feb. 24, 2014, <https://www.middleeastmonitor.com/news/africa/9943-2-year-prison-sentence-for-doctor-wearing-rabaa-al-adawiya-pin>.

188. *Id.*

189. *Id.*

190. Eman al-Nafjan, *Saudi Activists Criticize New Counter-Terror Law*, Al-Monitor, Feb. 2, 2014, <http://www.al-monitor.com/pulse/ar/originals/2014/02/saudi-terror-law-activist-rights.html#ixzz3YpdB02sv>.

Jordanian officials tried three Jordanians for displaying the rabaa sign under Article 118 of the criminal code, which prohibited acts that harm “relations with a foreign state.”<sup>191</sup> While Article 118 was not a terrorist offense at the time, Jordan added it to the crime of terrorism the following year to ensure that such acts would be tried before a hybrid military court.

The recently implemented antiterrorism statutes in Egypt, Saudi Arabia, and Jordan have perhaps made each state’s respective fight against terrorism easier, but the changes must be viewed as an evolution of how each state characterizes and punishes human rights activists, journalists, and political opponents. For Arab Spring activists in these countries, counterterrorism is terrorism.

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191. Alice Su, *Jordan Tightens Grip on Opposition Activism*, Al-Monitor, Oct. 25, 2013, <http://www.al-monitor.com/pulse/originals/2013/10/jordan-targets-online-activists.html#>.