



# WHO WILL BE LEFT TO DEFEND HUMAN RIGHTS?

PERSECUTION OF ONLINE  
EXPRESSION IN THE GULF  
AND NEIGHBOURING COUNTRIES



Berkeley  
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Law Clinic



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## **PERSECUTION OF ONLINE EXPRESSION IN THE GULF AND NEIGHBOURING COUNTRIES**

**NOVEMBER 2021**

## THE GULF CENTRE FOR HUMAN RIGHTS

The Gulf Centre for Human Rights (GCHR) is an independent, non-profit NGO that provides support and protection to human rights defenders (HRDs) in order to promote human rights, including but not limited to freedom of expression, association and peaceful assembly. GCHR is based in Lebanon and documents the environment for HRDs in the Gulf region and neighbouring countries, specifically Bahrain, Kuwait, Iran, Iraq, Jordan, Oman, Qatar, Saudi Arabia, Syria, the United Arab Emirates and Yemen. GCHR was founded in 2011.

## INTERNATIONAL HUMAN RIGHTS LAW CLINIC

The International Human Rights Law Clinic (IHRLC) designs and implements innovative human rights projects to advance the struggle for justice on behalf of individuals and marginalized communities through advocacy, research, and policy development. The IHRLC employs an interdisciplinary model that leverages the intellectual capital of the university to provide innovative solutions to emerging human rights issues. The IHRLC develops collaborative partnerships with researchers, scholars, and human rights activists worldwide. Students are integral to all phases of the IHRLC's work and acquire unparalleled experience generating knowledge and employing strategies to address the most urgent human rights issues of our day.



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### DEDICATION

To human rights defenders in the Gulf states and neighbouring countries who, in the face of enormous obstacles, continue to struggle for human rights, and for a more just and equitable world.

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## EXECUTIVE SUMMARY

Human Right Defenders (HRDs) in the Gulf region and neighbouring countries face an increasingly hostile environment for exercising freedom of expression online. This report by the Gulf Centre for Human Rights and the International Human Rights Law Clinic at the University of California, Berkeley, School of Law documents 225 incidents between May 2018 and October 2020, evidencing how governments in the region used anti-cybercrime and other laws, along with specialised law enforcement institutions, to criminalise online expression in violation of international law.

States have enacted anti-cybercrime legislation that restricts and criminalises protected online expression, including by extending the application of problematic penal restrictions existing in other laws to online communication and assembly. In addition, governments used against HRDs criminal defamation and insult laws, as well as vague and overbroad criminal prohibitions of expression that officials consider threatening to public order, national security, or other similar interests. Equipped with this broad legal arsenal, governments arrested, prosecuted, and imposed stiff sentences, including the death penalty, on defenders engaged in the legitimate and valuable activity of promoting human rights through online expression. This study found 225 credible incidents of online freedom of expression (FOE) violations against HRDs between May 2018 and October 2020. There is a clear pattern throughout the region of governments seeking to strictly control and limit expression of which they disapprove.

The States included in this study are Bahrain, Iran, Iraq, Jordan, Kuwait, Oman, Qatar, Saudi Arabia, Syria, and the United Arab Emirates. For each, this report analyses their domestic anti-cybercrime and other relevant laws against international human

rights law and standards and identifies the trends of violating online freedom of expression among the reported incidents.

### International Legal Background

The targeted repression of HRDs by criminalising or restricting online expression of dissenting views implicate domestic and international institutions and standard setting. The United Nations has encouraged international cooperation and regional harmonisation of laws in combating cybercrime as a necessary crime control tool but has not prevented countries from including in domestic legislation restrictions on online content that are incompatible with international law and standards. The United Nations Economic and Social Commission for Western Asia (ESCWA) effectively endorsed a proposed model cybercrime legislation drafted for the region by the United Arab Emirates (UAE) and adopted by the League of Arab States in 2004.<sup>1</sup> Articles 20-22 of the model law criminalise online content that is “contrary to the public order and morals,” facilitates assistance of terrorist groups, as well as accesses or discloses confidential government information related to national security or the economy.<sup>2</sup> These criminalised

content restrictions have been widely replicated in domestic laws throughout the region which have greatly expanded the ability of governments to sanction online views of which they disapprove. The commitment of States to a regional approach to cybercrimes is further evidenced by the 2010 Arab Convention on Combating Information Technology Offences (ACC), which all 22 Arab State members of the League of Arab States have signed.<sup>3</sup>

At the same time as the international community effectively facilitated State criminalisation of online expression through national cybercrime laws, UN human rights mechanisms drew attention to the threat to HRDs of internet and communication regulations. The UN Human Rights Council adopted its 2012 resolution affirming the protection of online freedom of expression,<sup>4</sup> and the UN Special Rapporteur on the promotion and protection of freedom of expression (SR on FOE) has issued several reports on the topic. International human rights institutions continue to affirm the importance of HRDs to the ecosystem of rights protections even as States too often fail to observe their obligations to provide a safe and enabling environment to HRDs.<sup>5</sup> Given the centrality of online communication to human rights work, this report focuses on incidents in which the government targeted online expression by HRDs. However, government persecution of defenders violates multiple rights. Therefore, the report also examines the impacts of such targeting on other international rights including the right to freedom of association, peaceful assembly, the right to privacy protection from unwarranted surveillance, as well as violations of physical integrity associated with arbitrary arrests including incommunicado detention, enforced disappearance, and torture.

## Methodology

The dataset for this study consists of two components: (1) the anti-cybercrime and other relevant laws the ten States used to create a hostile climate for online freedom of expression of HRDs; and (2) the 225 credible reports within our period of study of online freedom of expression violations

against HRDs. To identify credible evidence of violations, researchers consulted a range of independent sources documenting such violations, including published responses from UN Special Procedures communications alleging FOE violations; human rights reports from international and regional human rights organisations; as well as media reports from international, regional, and national outlets.<sup>6</sup>

Given the limited number of sources and the difficulty of reporting on human rights violations in these countries, it is fair to assume that this study does not capture all incidents of violations of the right to online freedom of expression that occurred during the period under study. Nevertheless, the findings below are based on the representative sample of the reported incidents and demonstrate consistent patterns of the suppression of free expression.

## Findings

Looking across all ten countries under study, the clear trend that emerges is of authorities relying on a variety of laws that impermissibly restrict online expression to target HRDs for communicating views online that are critical of the government or its policies.

### *Arbitrary Laws Restricting Freedom of Expression*

The States in this study (except Iraq where an anti-cybercrime law has been considered but not adopted) have enacted anti-cybercrime laws that criminalise internationally protected expression—including criticism or insult of public officials and institutions, or religious speech—to arrest, charge, and prosecute HRDs. However, anti-cybercrime laws are only one legal tool governments used. Governments also relied on impermissibly vague, overbroad, or disproportionate criminal provisions contained in other laws, including penal codes, anti-terrorism laws, telecommunications laws, and/or media and press laws. Such laws include, for example, provisions that impose criminal rather than civil penalties on defamation, prohibitions on speech that “threatens public order,” fake news, or expression deemed as “glorifying” terrorism. These prohibitions criminalise



expression that is affirmatively protected under international law.

### ***What Type of Online Human Rights Activities Are Targeted?***

Governments principally targeted online expression that is critical of the government or its policies. Journalists were frequently victims. Authorities violated the FOE rights of journalists in all countries, including for reporting on public protests against the government through news stories, videos, and social media. Officials in Bahrain, Jordan, Oman, Saudi Arabia, and UAE also criminally charged HRDs for criticising the foreign policy or interests of the government.

Advocates for minority rights and women's rights were also targeted. Jordan, Kuwait, Oman, Qatar, and Saudi Arabia took legal action against HRDs for their online advocacy for the rights of minority communities in their countries. And in all countries, authorities targeted women human rights defenders and/or others who advocated online for women's rights. For example, in May 2018, authorities in Saudi Arabia carried out mass arrests of women HRDs for their support of women's rights, including through online activism. Officials charged all of these women defenders under the cybercrime law, and, charged, tried and convicted some for violating the counter-terrorism law.

### ***Additional Human Rights Violations***

The human rights violations in addition to freedom of expression that State actors committed across the region while repressing online FOE exhibit the following trends.

#### **Arbitrary arrests**

Because authorities invoked laws that arbitrarily restricted online content in arresting HRDs, governments in all countries additionally violated the prohibition against arbitrary arrests when officials took defenders into custody for alleged violations of those restrictions.

#### **Surveillance**

Online surveillance of HRDs was a common State practice. Governments in Kuwait, Oman, Qatar, Saudi Arabia, and UAE reportedly surveilled or gained access to private communications of HRDs who the government targeted for their online activism. During the reporting period, the Citizen Lab at the University of Toronto found evidence of suspected infections by the Pegasus spyware program of mobile phones in Oman, Saudi Arabia, and UAE, which would have allowed those governments to survey the infected individuals' private communications.<sup>7</sup>

#### **Freedom of Association**

Governments violated the freedom of association rights of HRDs by targeting their online expression. In Iraq and Jordan there were credible reports that law enforcement targeted HRDs for social media posts organising anti-government protests. Additionally, in Kuwait, Qatar, and Saudi Arabia authorities arrested groups of defenders that were working on the same cause, which raises concerns regarding the protection of these HRDs' right to association. And in UAE, the anti-cybercrime law implicates freedom of association by prohibiting online expression calling for "unauthorised" protests.

#### **Incommunicado Detention, Enforced Disappearances, and Torture**

There was a disturbing pattern of gross violations of human rights related to the arrest of HRDs for legitimate online expression, including incommunicado detention, enforced disappearances, and torture. There were credibly reported cases of one or more of each type of violation in every country except Bahrain (where there were no reported incidents that included allegations of incommunicado detention, enforced disappearance, or torture). Iran executed Ruhollah Zam for his reporting on government protests via an online news channel, and Saudi Arabia murdered journalist Jamal Khashoggi at the Saudi consulate in Turkey.

### *Specialised Legal Infrastructure*

Most States under study have created specialised enforcement units or courts to investigate and/or prosecute violations of online content restrictions. In all nine of the countries with cybercrime laws (Bahrain, Iran, Jordan, Kuwait, Oman, Qatar, Saudi Arabia, Syria, and UAE), authorities have established these institutions capable of surveilling, arresting, prosecuting, and ultimately convicting HRDs for their online advocacy. Many of these units engaged in widely publicised mass enforcement campaigns, signaling to HRDs and the population in general that their online activity is monitored.

Courts dedicated to prosecuting cybercrimes posed distinct threats to HRDs due to their inadequate due process protections. For example, in Saudi Arabia, the Specialised Criminal Court is seemingly empowered to extend pre-trial and incommunicado detention to

lengthy periods of time, is reported to have relied on confessions obtained through torture, and is described by human rights bodies as insufficiently independent of the executive.<sup>8</sup> Weak judicial protections for HRDs enable State repression of defenders.

### *Transnational Collaboration Targeting HRDs*

The study found several reported incidents in which governments collaborated with each other to punish online advocacy they found detrimental to their allies or to their own foreign policy. There is credible evidence that Iran, Kuwait, Saudi Arabia, and UAE, worked across borders with other governments to repress HRDs, at least partially for their online advocacy. One egregious example is the cooperation between Iraqi intelligence officials and Iranian authorities to arrest and abduct Iranian journalist Ruhollah Zam from Iraq and bring him to Iran where Zam was tried, convicted, and executed.

## CONCLUSIONS AND RECOMMENDATIONS

This report captures a snapshot of the consequences for HRDs of the hostile legal environment that governments have effectuated to repress online expression that they find objectionable. This pattern of misconduct illustrates the extent to which States disregarded their international duties to create a safe and enabling environment, including online environment, for HRDs. States must cease violations and safeguard HRDs.

Toward this end, we offer the following general recommendations and country-specific recommendations.

### General Recommendations

#### *To Governments of Gulf States and Neighbouring Countries:*

- ♦ Eliminate laws and articles in national legal frameworks that criminalise online freedom of expression protected under international human rights law, specifically:
  - All laws including anti-cybercrime, anti-terrorism, communications, media, penal, and technology laws that restrict online or offline expression through provisions to protect public order, national security, or the national economy; insults laws; and laws that criminalise fake news, that do not conform to international human rights standards and satisfy the principles of legality, legitimacy, necessity and proportionality;
  - Decriminalise the offense of defamation;
  - Revise anti-cybercrime laws to include affirmative protection for the legitimate online expression of HRDs, including journalists.
- ♦ Cease using deportation and travel bans as tools for targeting HRDs for their online human rights advocacy, and refrain from infringing on their right to freedom of movement.
- ♦ Reform legal institutions, including the criminal legal system, to promote the independence and autonomy necessary for:
  - Investigating human rights violations committed against HRDs by law enforcement, such as engaging in unlawful surveillance of HRDs, enforced disappearances, holding HRDs in unlawful detention, incommunicado, and subjecting them to ill-treatment and torture.
  - Ensuring that HRDs', citizens', and residents' right to freedom of movement is not violated.
  - Ensuring the judiciary upholds international standards guaranteeing the right to fair trial.

#### *To the UN Human Rights Council:*

- ♦ Instruct the UN Office of the High Commissioner for Human Rights to undertake a study of the transnational cooperation among governments to affect the apprehension and rendering of foreign HRDs to their countries of origin for prosecution of online expression that is protected under international law.
- ♦ Instruct the UN Office of the High Commissioner for Human Rights to undertake a study to identify and track developments in the surveillance regimes in each State in the region. The governments in question should cooperate in this study. The study should identify third party actors including business enterprises and other States that contribute to advancing the surveillance infrastructure in each State concerned. State and non-State actors complicit in illegal surveillance of HRDs by governments should be held accountable.

**To All States:**

- Implement an immediate moratorium on the use, acquisition, sale and transfer of surveillance technology. This moratorium should extend until adequate global controls and safeguards against abuse are in place.

**Country Recommendations**

In addition to the above recommendations, States should revise their domestic laws and institutions to ensure compliance with international human rights standards regarding online freedom of expression as indicated below.

**Bahrain**

**We call on the government of Bahrain to create a safe and enabling environment for HRDs including by taking the following steps:**

- Eliminate laws and articles in Bahrain’s legal frameworks that criminalise online freedom of expression protected under international human rights law, or that are inconsistent with the right to due process and a fair trial, including:
  - 1976 Penal Code, articles 133–134, 160, 165, 168, 209, 214–16, 309, 310, 370;
  - 2002 Media Regulation Law;
  - 2002 Telecommunications Law, article 75(1);
  - 2006 Antiterrorism Law, articles 1, 2, 9, 11, 26, 27;
  - 2014 Law on Information Technology Crimes, articles 9, 23.

**Iran**

**We call on the government of Iran to create a safe and enabling environment for HRDs including by taking the following steps:**

- Eliminate laws and articles in Iran’s legal

frameworks that criminalise online freedom of expression protected under international human rights law, or that are inconsistent with the right to due process and a fair trial, including:

- 1986 Press Law, articles 6(1), 6(2), 6(7), 6(9);
- 2009 Computer Crimes Act, articles 14, 16–19, 27;
- Islamic Penal Code, articles 498–500, 508, 513, 609, 697, 698, 700.

**We call on OHCHR to:**

- Initiate a special working group in cooperation with civil society to address the role of Iran and other governments in the region in cooperating in the apprehension and rendering of foreign HRDs to their countries of origin for prosecution of online expression that is protected under international law.

**Iraq**

**We call on the government of Iraq to create a safe and enabling environment for HRDs including by taking the following steps:**

- Eliminate laws and articles in Iraq’s legal frameworks that criminalise online freedom of expression protected under international human rights law, or that are inconsistent with the right to due process and a fair trial, including:
  - 2010 Penal Code, articles 156, 210, 433, 434;
  - 2014 Media Broadcasting Rules, Section 2, articles 1(a), 1(j);
  - 2008 Kurdistan Regional Government Law to Prevent the Misuse of Telecommunications Equipment, article 2;
- Ensure that any anti-cybercrime legislation adopted fully complies with international protections of online freedom of expression.

### *Jordan*

**We call on the government of Jordan to create a safe and enabling environment for HRDs including by taking the following steps:**

- ✦ Eliminate laws and articles in Jordan's legal frameworks that criminalise online freedom of expression protected under international human rights law, or that are inconsistent with the right to due process and a fair trial, including:
  - 2015 Cybercrime Law, articles 11 and 15;
  - 2006 Anti-Terrorism Law, articles 2, 3, 7, 8;
  - 1995 Telecommunications law, article 75(a);
  - 1960 Penal Code, articles 118, 122, 132, 149, 191, 195;
  - 2019 Cyber Security Law.

### *Kuwait*

**We call on the government of Kuwait to create a safe and enabling environment for HRDs including by taking the following steps:**

- ✦ Eliminate laws and articles in Kuwait's legal frameworks that criminalise online freedom of expression protected under international human rights law, or that are inconsistent with the right to due process and a fair trial, including:
  - 2006 Press and Publications Law, articles 19–21, 27(3);
  - 2014 Establishment of the Communication and Information Technology Regulatory Authority, article 61;
  - 2015 Cybercrime Law, articles 2–7;
  - 2016 Regulation of Electronic Media Law, articles 6, 8, 9, 17, 70.

### *Oman*

**We call on the government of Oman to create a safe and enabling environment for HRDs including by taking the following steps:**

- ✦ Eliminate laws and articles in Oman's legal frameworks that criminalise online freedom of expression protected under international human rights law, or that are inconsistent with the right to due process and a fair trial, including:
  - 2011 Cyber Crime Law, article 19;
  - 2018 Penal Law, articles 116, 118, 125;
  - Royal Decree No. 64/2020, article 6.

### *Qatar*

**We call on the government of Qatar to create a safe and enabling environment for HRDs including by taking the following steps:**

- ✦ Eliminate laws and articles in Qatar's legal frameworks that criminalise online freedom of expression protected under international human rights law, or that are inconsistent with the right to due process and a fair trial, including:
  - 2019 Law on Combating Terrorism, articles 4, 24, 25;
  - 2014 Cybercrime Prevention Law, articles 6, 8, 53;
  - 2004 Penal Code, articles 134, 136, 136(bis), 138, 326, 327, 330;
  - 2003 Law on the State Security Service, article 2;
  - 2002 Law on Protection of Community, article 1;
  - 1979 Press and Publications Law, articles 46, 47, 82–84.
- ✦ Eliminate the laws and articles in Qatar's legal frameworks that restrict the labour rights

of migrant low-wage workers and threaten them with deportation for advocating for their human rights online, including:

- 2014 Cybercrime Law, article 52;
- The Kafala system used for migrant workers, which underwent significant reform in 2019 and 2020, but continues to enable systemic rights violations of migrants.

### *Saudi Arabia*

**We call on the government of Saudi Arabia to create a safe and enabling environment for HRDs including by taking the following steps:**

- ✦ Eliminate laws and articles in Saudi Arabia’s legal frameworks that criminalise online freedom of expression protected under international human rights law, or that are inconsistent with the right to due process and a fair trial, including those in:
  - 2007 Anti-Cyber Crime Law, articles 3(5), 6(1), 7 and 13;
  - 2017 Law on Combatting Terrorism Crimes and Its Financing, articles 1, 3, 19–21, 27, 30, 34, 43, 44, 88, 89.
- ✦ Ensure that any application of law, including uncodified Islamic law, is consistent with principles of legality, legitimacy, necessity, and proportionality.

**We call on OHCHR to:**

- ✦ Initiate a special working group in cooperation with civil society to address the role of Saudi Arabia and other governments in the region in cooperating in the apprehension and rendering of HRDs for prosecution of online expression that is protected under international law.

### *Syria*

**We call on the government of Syria to create a safe and enabling environment for HRDs including by taking the following steps:**

- ✦ Eliminate laws and articles in Syria’s legal frameworks that criminalise online freedom of expression protected under international human rights law, or that are inconsistent with the right to due process and a fair trial, including:
  - 2011 Media Regulation Law, articles 3, 4, 12, 22, 78, 79, 95, Chapter VI;
  - 2012 Counter-Terrorism Law, articles 1, 4, 8;
  - 2012 Online Communications and Combating Cybercrimes, articles, 2, 5, 30;
  - 2018 Anti-Cybercrime Law, articles 2, 6;
  - 1949 Penal Code articles, 285, 286, 287, 309, 376, 378.

**We call on the de facto authorities of the Autonomous Administration of North and East Syria controlling territory in the country to create a safe and enabling environment for HRDs including by taking the following steps:**

- ✦ Eliminate laws and articles in its legal frameworks that criminalise online freedom of expression protected under international human rights law, or that are inconsistent with the right to due process and a fair trial, including:
  - 2016 Media Law in Al-Jazira Province, article 2;
  - Ban on content that challenges religious values.

**We call on the de facto authorities of the Syrian Salvation Government controlling territory in the country to create a safe and enabling environment for HRDs including by taking the following steps:**

- ✦ Eliminate laws and articles in its legal frameworks that criminalise online freedom of expression protected under international human rights law, or that are inconsistent with the right to due process and a fair trial, including:
  - 2019 Communications Law, Ch. II, IX, XI, article 60.

*United Arab Emirates*

**We call on the UAE government to create a safe and enabling environment for HRDs including by taking the following steps:**

- ✦ Eliminate laws and articles in UAE's legal frameworks that criminalise online freedom of expression protected under international human rights law, or that are inconsistent with the right to due process and a fair trial, including:
  - 1987 Penal Code, articles 176, 180, 181, 182(bis), 197(bis), and 372;
  - 2012 Cybercrime Law, articles 20, 24, 26–30, 32, 37, and 38.
- ✦ Eliminate the laws and articles in UAE's legal frameworks that restrict the labour rights of migrant low-wage workers and threaten them with deportation for advocating for their human rights online, including:
  - The Kafala system used for migrant workers;
  - 1987 Penal Code article 325;
  - 2012 Cybercrime Law article 42.

**We call on OHCHR to:**

- ✦ Initiate a special working group in cooperation with civil society to address the role of the UAE and other governments in the region in cooperating in the apprehension and rendering of foreign HRDs to their countries of origin for prosecution of online expression that is protected under international law.

## NOTES

- 1 Econ. & Social Comm'n for W. Asia, *Models for Cyber Legislation in ESCWA Member Countries*, 34, U.N. Doc. E/ESCWA/ICTD/2007/8 (June 27, 2007); United Arab Emirate Guiding Law on Combating Crimes Information Systems Technology and the Like of 2004 pmb. [hereinafter UAE Model Law] (unofficial English translation on file with author).
- 2 UAE Model Law, *supra* note 1.
- 3 Arab Convention on Combatting Information Technology, adopted by the League of Arab States (Dec. 21, 2010) (unofficial English translation).
- 4 The Promotion, Protection and Enjoyment of Human Rights on the Internet, Human Rights Council Res. 20/8, U.N. Doc. A/HRC/RES/20/8 (July 16, 2012).
- 5 Declaration on the Right and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, G.A. Res. 53/144, U.N. Doc. A/RES/53/144 (Mar. 8, 1999); Michel Forst (Special Rapporteur on the Situation of Human Rights Defenders), *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, ¶ 77, U.N. Doc. A/HRC/31/55 (Feb. 1, 2016).
- 6 For each country under study researchers searched the following international media outlets and human rights organizations that document human rights violations for incidents describing violations of online freedom of expression between May 2018 and October 2020: Amnesty International, Al Jazeera, ARTICLE 19, British Broadcasting Corporation, Committee to Protect Journalists, Front Line Defenders, Gulf Centre for Human Rights, and Human Rights Watch. Researchers also searched for communications from special procedures mandate holders regarding incidents alleging violations of freedom of expression in each country under study in the UN database of communications. Researchers also searched for articles published by major, English-language national media outlets.
- 7 BILL MARCZAK & JOHN SCOTT-RAILTON, *THE CITIZEN LAB, THE MILLION DOLLAR DISSIDENT: NSO GROUP'S IPHONE ZERO-DAYS USED AGAINST AS UAE HUMAN RIGHTS DEFENDER* (2016); BILL MARCZAK ET AL., *THE CITIZEN LAB, HIDE AND SEEK: TRACKING NSO GROUP'S PEGASUS SPYWARE TO OPERATIONS IN 45 COUNTRIES* (2018); BILL MARCZAK ET AL., *THE CITIZEN LAB, THE KINGDOM CAME TO CANADA: HOW SAUDI-LINKED DIGITAL ESPIONAGE REACHED CANADIAN SOIL* (2018).
- 8 Comm. against Torture, *Concluding Observations on the Second Periodic Report of Saudi Arabia*, ¶ 17, U.N. Doc. CAT/C/SAU/CO/2 (June 8, 2016); see also Ben Emmerson (Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism), *Visit to Saudi Arabia: Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism*, ¶ 47, U.N. Doc. A/HRC/40/52/Add.2 (Dec. 13, 2018); Working Grp. on Arbitrary Det., *Opinion No. 71/2019 Concerning Issa al-Nukhefi, Abdulaziz Youssef Mohamed al-Shubaili and Issa Hamid al-Hamid (Saudi Arabia)*, ¶ 44, U.N. Doc. A/HRC/WGAD/2019/71 (Feb. 14, 2020).



WHO WILL BE LEFT TO DEFEND HUMAN RIGHTS? PERSECUTION OF  
ONLINE EXPRESSION IN THE GULF AND NEIGHBOURING COUNTRIES



## INTRODUCTION

Governments in the Gulf and neighboring countries are targeting human right defenders (HRDs) for their advocacy by increasing the scope of criminalized online expression in violation of international law. States have enacted anti-cybercrime legislation that restricts and criminalises protected online expression, including by extending the application of problematic penal restrictions existing in other laws to online communication and assembly.

Broadening their legal arsenal, governments have intensified a repressive climate in which they arrest, prosecute, and impose stiff sentences, including the death penalty, on HRDs engaged in the legitimate, valuable, and internationally protected activity of promoting human rights through online expression. Focus on this legal infrastructure draws attention to the need for reform of current laws. It also draws attention to the need for increased vigilance to prevent the pretextual deployment of crime control strategies against human rights defenders. Given the centrality of online communication, States must ensure HRDs have full enjoyment of the international right to freedom of online expression to carry out their vital work.

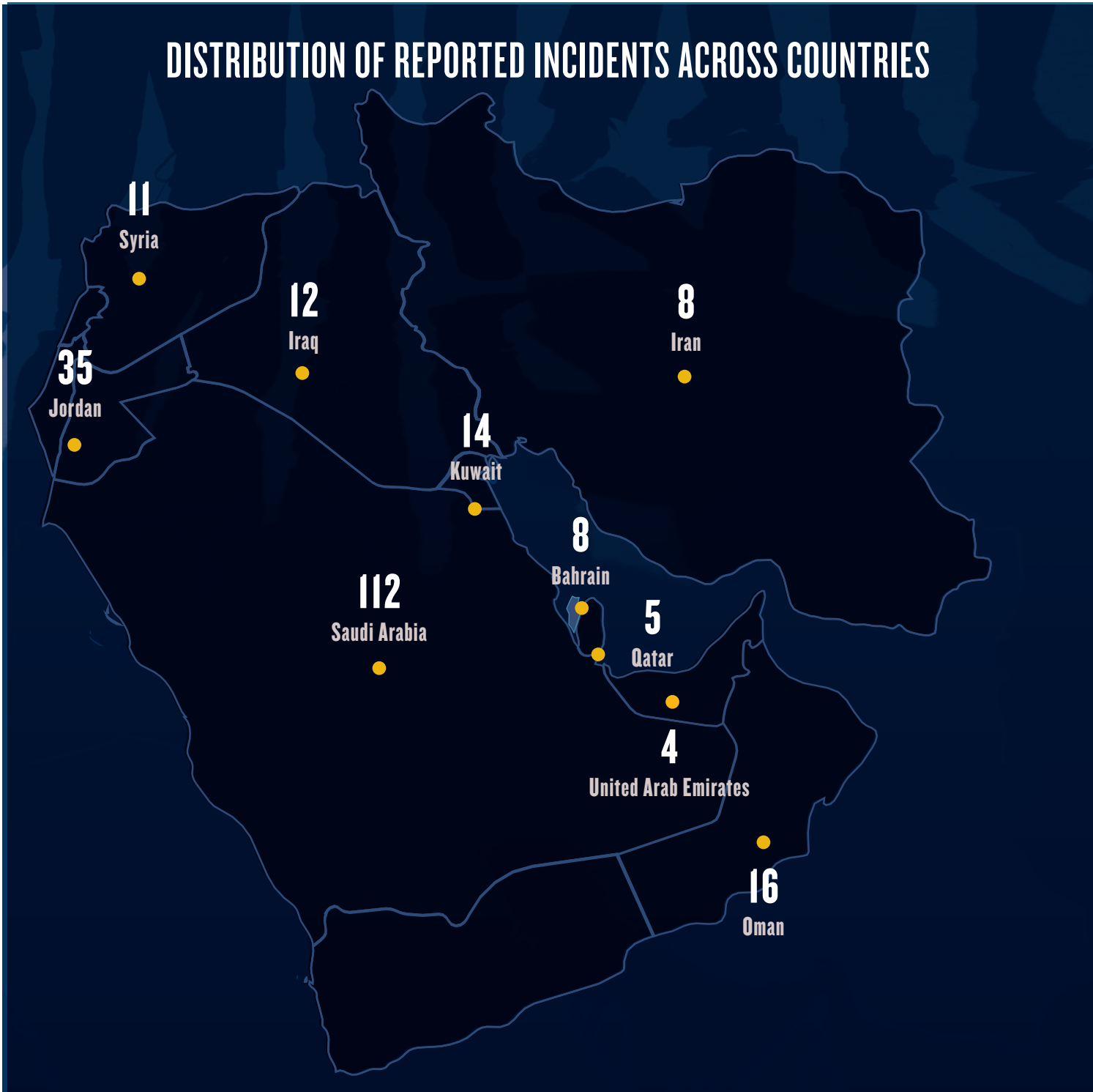
The States included for analysis are Bahrain, Iran, Iraq, Jordan, Kuwait, Oman, Qatar, Saudi Arabia, Syria, and the United Arab Emirates (UAE). Governments in these countries have enacted or recently have considered anti-cybercrime laws. They also are governed by monarchies, authoritarian governments, or weak democracies with long histories of systemically repressing civic space and dissident voices. The current report builds on the 2018 report published by the Gulf Centre for Human Rights (GCHR) entitled *Mapping Cybercrime Laws and Violations of Digital Rights in the Gulf and Neighboring Countries*, which examined domestic cybercrime laws

and specialised legal institutions as well as reported on related arrests and prosecutions of HRDs.<sup>1</sup> The present study is a collaboration between GCHR and the International Human Rights Law Clinic, University of California, Berkeley.

This report makes two contributions to address State persecution of HRDs. First, it offers a human rights analysis of domestic anti-cybercrime and other relevant laws that make up the legal climate under which HRDs carry out their work. Second, based on 225 reported credible incidents of online freedom of expression violations against HRDs between May 2018 and October 2020, the report documents current trends in the persecution of HRDs in the region. Considering these two contributions together, the report offers a sobering picture. Government authorities targeted HRDs who exposed human rights violations or expressed views which ran counter to those of the government. For example, across the region there were credible reports of authorities targeting journalists, including for online coverage of protests against government corruption and economic distress, activists who demanded protection of minority rights, and feminist activists who used the internet to organise or raise public awareness. The research indicates that throughout the region, governments utilised a combination of cybercrime

laws and specialised institutions, together with laws regulating offline content to crackdown on human rights activism and create a hostile

environment for HRDs. The goal is to tightly control expression to repress opposition or views contrary to government orthodoxy.



# INTERNATIONAL LEGAL BACKGROUND TO CRIMINALIZATION OF ONLINE FREEDOM OF EXPRESSION

The targeted repression of HRDs by criminalising or restricting online expression of dissenting views implicates international institutions and standard setting. On the one hand, the international community has promoted common national standards and approaches to combatting cybercrimes. In the Gulf and neighboring countries this has included a regional treaty promoted by the international community as well as model legislation promoted by regional government; each of which failed to safeguard online freedom of expression.

On the other hand, international human rights institutions have established human rights standards that apply to the online expression of HRDs. They have elaborated on the special protections that States owe to HRDs due to the unique role that defenders play in promoting rights and freedoms. They have also established several pertinent protections, including the right to freedom of online expression, which States are violating through their persecution of defenders. Taken together, this legal background illustrates the need for human rights standards to be fully integrated into national anti-cybercrime law and policy.

## Regional Development of Model Cybercrime Legislation

The United Nations has encouraged international cooperation and regional harmonisation in combating cybercrime as necessary to keep pace with the use of online technologies by criminal networks and designated terrorist groups. In 2003, the United Nations Economic and Social Commission for Western Asia (ESCWA)<sup>2</sup> and the UNESCO Cairo Office for Arab States authored the Beirut Declaration, a statement of principles to guide

development of information and communication technology throughout the region.<sup>3</sup> ESCWA also became involved in subsequent efforts to promote standardised domestic cybercrime laws in the region.<sup>4</sup>

ESCWA effectively endorsed the proposed model cybercrime legislation drafted by UAE and adopted by the League of Arab States in 2004. In its study of regional laws, ESCWA stated that UAE national law (which was based on its proposed model law) complied with the European Union's standards on cybercrime legislation.<sup>5</sup> In its report, ESCWA acknowledged concerns about content restriction laws in general, but did not offer recommendations that cybercrime laws should comply with international obligations in this regard.<sup>6</sup> Articles 20-22 of the UAE-drafted model law criminalise online content that is "contrary to the public order and morals," that facilitates assistance of terrorist groups, or that accesses or discloses confidential government information related to national security or the economy.<sup>7</sup> These content restrictions have been widely replicated in domestic cybercrime laws throughout the region which have greatly expanded the ability of governments to criminalise online views of which they disapprove.

In 2006, UAE adopted its cybercrime law, Federal Law No. 2.<sup>8</sup> The following year, Saudi Arabia enacted its cybercrime law with criminal content restrictions similar to those in the UAE model law.<sup>9</sup> Iran and Jordan adopted cybercrime laws in 2009 and 2010, respectively, each with similar restrictions.<sup>10</sup> At the end of 2010, the League of Arab States finalised the Arab Convention on Combating Information Technology Offences (ACC), which has been signed by all 22 Arab State members. The Convention aims to "enhance and strengthen cooperation between the

# GENEALOGY OF CYBERCRIME LAW



Arab States in the area of combating information technology offences” and protection of the national security of Arab States.<sup>11</sup> Bahrain, Kuwait, Oman, Qatar, and Syria have since developed their own cybercrime laws containing elements that can be traced back to UAE’s model law.<sup>12</sup> The Iraqi Parliament has considered multiple proposals for a cybercrime law, the latest of which is undergoing further revision due to continued objections to its content restrictions. The push for regional harmonisation has fostered the spread of online criminalised content restrictions and international involvement in cybercrime standard setting has been ineffective in preventing this dangerous development.

In 2011, the UN General Assembly tasked the Commission on Crime Prevention and Criminal Justice (CCPCJ) to convene an intergovernmental expert group to conduct a study on the state of cybercrime legislation and regulation.<sup>13</sup> The 2013 report reviewed regional conventions, including the ACC, but did not strongly critique the convention for its potential to violate international human rights.<sup>14</sup> The ten-page human rights section stressed the “balancing” nature of human rights and noted

that a “margin of appreciation” would be applied to countries, which allowed them “leeway” to set “boundaries of acceptable expression in line with their own cultures and legal traditions.”<sup>15</sup> However, the report did not offer a forceful critique of the justifications by States for their laws restricting content to protect public safety, morals, and prevention of disorder, despite the recognition of a “number of high-profile cases” of human rights violations.<sup>16</sup> The expert group “expressed concern” about *lese majesty*, *desacato*, and laws criminalising “disrespect for authority, disrespect for flags and symbols, defamation of the head of state, and the protection of the honour of public officials.”<sup>17</sup> At best, this was a missed opportunity for the experts to offer their assessment of the safeguards needed to prevent violations of human rights and to safeguard their online freedom of expression, among other rights protections. At worst, the intergovernmental expert group provided international imprimatur on standards susceptible to manipulation and abuse.

## International Human Rights Regime for Online Freedom of Expression for HRDs

At the same time as the international community failed to mobilise against States in the region criminalising protected online expression through national cybercrime laws, UN human rights mechanisms elevated the threat that internet and communication regulations posed to HRDs. The UN Human Rights Council adopted Resolution 20/8 in 2012 affirming that the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) protect the right to freedom of expression for online expression.<sup>18</sup> Since 2011, the Special Rapporteur on the promotion and protection of freedom of opinion and expression (SR on FOE) has issued several reports on the topic.<sup>19</sup> Noting in 2011, that while the online communication is “essential” to freedom of expression, the SR on FOE also observed that “the power of the Internet to awaken individuals to question and challenge the status quo and to expose corruption and wrongdoing has generated fear among the powerful. As a result, Governments are increasingly censoring information in cyberspace ...”<sup>20</sup> The SR on FOE has interpreted the contours of the online right to freedom of expression to provide States guidance on how to balance the need for legitimate restrictions with individual rights.<sup>21</sup>

Of particular concern to international human rights mechanisms has been the threat to HRDs of online content restrictions. A human rights defender is “any person who, individually or in association with others, acts or seeks to act to promote, protect or strive for the protection and realisation of human rights and fundamental freedoms, at the local, national, regional or international levels. Human rights defenders advocate, vindicate, enforce, protect and promote human rights.”<sup>22</sup> HRDs are protected by universal human rights, which the United Nations has interpreted and elaborated in the Declaration on Human Rights Defenders. Art. 18 (2) of that instrument recognises that HRDs “have an important

role to play and a responsibility in safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the promotion and advancement of democratic societies, institutions and processes.”<sup>23</sup>

The Declaration does not create new rights but reflects human rights that are set out in international and regional human rights treaties and form part of customary international law.<sup>24</sup>

The SR on Human Rights Defenders has opined about the significance of the Declaration, stating that because human rights violations to anyone are a threat to everyone:

we each have a vested interest in the protection of human rights and have the right to participate in their discussion and promotion, in their monitoring and advocacy, and in ensuring their implementation. The Declaration [on HRDs] reminds us that the human rights obligations of States are erga omnes in the broadest possible sense of the term: not just owed by a State to the right holder, nor only owed to the international community, but owed to us all by virtue of our shared humanity.<sup>25</sup>

The Declaration sets out nine core rights of HRDs:

- (1) the right to be protected;
- (2) the right to freedom of assembly;
- (3) the right to freedom of association;
- (4) the right to access and communicate with international bodies;
- (5) the right to freedom of opinion and expression;
- (6) the right to protest;
- (7) the right to develop and discuss new human rights ideas;
- (8) the right to a remedy; and
- (9) the right to access funding.<sup>26</sup>

The right to exercise freedom of expression is crucial for HRDs. The UN Commentary to the Declaration quotes favorably the observation of the Inter-American Court of Human Rights that freedom of expression

is a cornerstone upon which the very existence of a democratic society rests. It is indispensable for the formation of public opinion. It is also a condition sine qua non for the development of political parties, trade unions, scientific and cultural societies and, in general, those who wish to influence the public. It represents, in short, the means that enable the community, when exercising its opinions, to be sufficiently informed. Consequently, it can be said that a society that is not well informed is not a society that is truly free.<sup>27</sup>

States are the primary duty-bearers to ensure HRDs may exercise their rights.<sup>28</sup> Part of this responsibility is to create “an enabling environment” for the work of HRDs “through legislative, administrative and other steps.”<sup>29</sup> These duties apply to non-State actors controlling territory and exercising government-like authority over residents.<sup>30</sup> This duty is particularly significant in Syria where non-State actors have de facto control over some territories.

Human rights experts have recognised the opportunities and the challenges presented by the internet. On the one hand, the internet is a medium that contributes to an “enabling environment” for HRDs to exercise their rights to free expression, association, and peaceful assembly by connecting across borders, sharing ideas and information.<sup>31</sup> On the other hand, the internet can also be used by State authorities to surveil, target, and prosecute HRDs for their advocacy.<sup>32</sup> While this report focuses primarily on how governments repress online expression as a violation of the right to freedom of expression, the report also examines impacts of such targeted repression on other freedoms protected under international human rights law including the right to freedom of association, peaceful assembly, and privacy protection from unwarranted surveillance. The next section provides a general overview of these

obligations, which are enshrined in the UDHR and ICCPR. These norms and related violations that arise in national contexts are discussed in greater detail in each country chapter.

## Freedom of Expression and Other Relevant International Human Rights

### *The right to freedom of expression*

The right to freedom of expression is protected under article 19 of both the UDHR and the ICCPR.<sup>33</sup> According to the SR on FOE, the right “is broad and inclusive, and encapsulates the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers and through any media, offline or online.”<sup>34</sup> According to the UN Human Rights Committee, the right to freedom of expression protects a range of expression, including: “political discourse, commentary on one’s own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse.”<sup>35</sup> This right is crucial to the protection of other inter-connected rights, including the right to freedom of association and the right to defend rights.<sup>36</sup>

International law permits States to limit the right to freedom of expression through a range of restrictions, including penal sanctions, censorship, internet shut downs, and surveillance.<sup>37</sup> To conform to international human rights standards, any such restrictions must satisfy the principles of legality, legitimacy, necessity and proportionality.<sup>38</sup> These principles require that the restriction be defined by precise and accessible laws that enable individuals to know how to behave, and that constrain the discretion of authorities enforcing the law.<sup>39</sup> The restriction may only be imposed to protect the rights or reputation of others, national security, public order, public health, or public morals.<sup>40</sup> And finally, the restriction must be “necessary” for those enumerated purposes, as well as proportional to those purposes: “they must be appropriate to achieve their protective



function; they must be the least intrusive instrument amongst those which might achieve their protective function; they must be proportionate to the interest to be protected.”<sup>41</sup> When a State invokes one of the enumerated purposes to justify a restriction on the right to freedom of expression, it must show “the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.”<sup>42</sup>

### ***The right to freedom of peaceful assembly and of association***

The right to freedom of peaceful assembly and of association are protected under article 20 of the UDHR and articles 21 and 22 of the ICCPR,<sup>43</sup> and States have the responsibility to respect and protect these rights online as well as offline.<sup>44</sup> The Special Rapporteur on the rights to freedom of peaceful assembly and of association (SR on FPAA) has noted that the internet provides multiple avenues for individuals to exercise these rights: by facilitating the exercise of the rights “offline,” for example as a tool to mobilise people to engage in offline protests,<sup>45</sup> and by creating primarily online spaces for assembly and association.<sup>46</sup> Any restriction on the exercise of these rights online must satisfy the principles of legality, legitimacy, necessity, and proportionality.<sup>47</sup> The SR on FPAA has identified a number of government actions that threaten these rights, including vague and overbroad cybercrime and terrorism laws that enable authorities to “conflate calls for peaceful assemblies on social media with the creation of instability” or with terrorism, arbitrary blocking of online content, and unnecessary surveillance and government-sponsored cyberattacks.<sup>48</sup>

### ***The right to privacy and freedom from unwarranted surveillance***

This report describes several incidents in which authorities used surveillance technologies to track and target HRDs, with the aim of silencing their human rights advocacy and criticism of public policy or institutions. Individuals who are subjected to surveillance experience an interference with a range

of human rights, including their right to privacy, protected under article 17 of the ICCPR and article 12 of the UDHR, their right to freedom of peaceful assembly and of association, their right to freedom of expression, and their right to defend rights.<sup>49</sup> As such, any surveillance of HRDs must meet the principles of legality, legitimacy, necessity, and proportionality.<sup>50</sup> States also have the duty to protect individuals against third-party interference with their rights to privacy and freedom of expression.<sup>51</sup> However, the SR on FOE has raised concerns about States’ use of surveillance technology developed and supported by private companies to aid in the silencing of HRDs, and, given the gravity of this problem, has called for a moratorium on the export of such technology.<sup>52</sup>

### ***Additional human rights violations***

The surveillance, arrest, detention, and prosecution of HRDs for their online expression can result in a range of additional human rights violations, as described in country chapters of this report. These include violations of the prohibitions against arbitrary deprivation of life, enforced disappearances, arbitrary and incommunicado detention, torture and cruel, inhuman, and degrading treatment, and the rights to a fair trial, due process, freedom of movement, and children’s rights. The international legal frameworks related to those rights are further discussed in respective chapters.

### ***Abuses by non-State actors***

While the vast majority of reported incidents involve actions by State actors, this report also discusses abuses and potential human rights violations by non-State actors, particularly in Syria. In areas where non-State actors exercise de facto control, the Commission of Inquiry on the Syrian Arab Republic has stated that they too are responsible for upholding customary international law,<sup>53</sup> which includes the prohibition against torture, the right to freedom of thought, conscience, and religion, and additional due process rights enshrined in the ICCPR,<sup>54</sup> and may include the right to freedom of expression.<sup>55</sup>

# METHODOLOGY

The dataset for this study consists of two components: (1) the anti-cybercrime and other relevant laws the ten States are using to create a hostile climate for online freedom of expression of HRDs; and (2) the 225 credible reports within our period of study of online freedom of expression violations against HRDs. The methodology used to create each component is described below.

## Anti-Cybercrime and Other Relevant National Laws

Researchers identified the cybercrime laws adopted or introduced in each country. Researchers identified additional national laws relevant to the enjoyment of online freedom of expression through reports, resolutions, communications, and other documents generated by international human rights mechanisms; reports from international, regional, and domestic human rights organizations; as well as newspaper articles and similar secondary sources. Researchers analysed the extent to which these laws complied with international human rights standards.

## Reported Incidents of Online Freedom of Expression Violations

To identify credible evidence of violations or abuses of HRD's online freedom of expression during the study period, researchers consulted a range of independent sources documenting such violations including: published responses from UN Special Procedures to communications alleging FOE violations; human rights reports from international and regional human rights organizations; as well as media reports from international, regional, and national outlets.<sup>56</sup>

For each country, researchers consulted the UN Special Procedures database and reports from a common set of international human rights organizations. The regional or national human rights organizations consulted varied by country and are listed in each country chapter. All human rights groups were selected for their reputable documentation of human rights conditions.

In searching news sources, researchers used search terms including (but not limited to): "arrest," "freedom of expression," "post," "video," "cybercrime," and "human rights defender." Once researchers identified an incident, researchers conducted general internet searches on Google to gather additional information about the incident. We documented the following details about the incidents, where available: name and demographics of the victim, the underlying conduct that led to State action, dates of State action (abduction, arrest, charge, trial, release, etc.), the law(s) used to arrest or detain the individual, additional relevant details about arrest and detention (duration and conditions of detention, torture, etc.), sentence imposed, and date of release. These details were chosen to aid in the identification of relevant trends. After compiling these incidents, we identified trends including which laws were most often used to target online expression, what type of expression was targeted, what groups were targeted, and what human rights obligations have been or may have been violated.

Researchers used the reported date at which the authorities first targeted the HRD to determine whether the incident fell within the timeframe of this study, even if the underlying conduct fell outside of the timeframe. The report includes incidents in which

the targets of State action were HRDs, including activists, journalists, and academics. If a *single reported incident involved multiple specified individuals*, we counted this as *multiple incidents*. Where the number of people targeted was *unknown*, we counted this as *one incident*.

## Limitations

Given the limited number of sources and the difficulty of reporting on human rights violations in these countries, it is fair to assume that this study does not capture all incidents of violation of the right to online freedom of expression that occurred during the period under study. Researchers relied on English-language sources, which may report a smaller number of incidents or focus on a certain type of incident. Nevertheless, the findings are based on the representative sample of the reported incidents and demonstrate consistent patterns of the suppression of free expression.

Additionally, even those incidents reported contained varying levels of detail. For example, reports rarely included detail on the legal bases for arresting HRDs, much less on the specific legal provision that authorities used to charge them. Finally, there were generally a greater number of reported violations concerning men HRDs than HRDs of other genders. It is unclear whether this reflects a greater number of prominent male HRDs in the respective countries, more targeting of men HRDs, or an under-reporting of government action taken against HRDs of other genders.

## FINDINGS

Looking across all ten countries under study, the clear trend that emerges is of authorities principally targeting online expression that is critical of the government or its policies. Advocates for minority rights and women's rights are also targeted. The human rights violations in addition to freedom of expression that State actors commit in the course of repressing online FOE also exhibit a disturbing regional trend. Online surveillance of HRDs is a common State practice. There is also a pattern of State violation of the rights to liberty and physical integrity through arbitrary arrests, incommunicado detention, enforced disappearances, and torture. Further, the legal infrastructure States invoke against HRDs is similar across the region, with governments regulating online expression through anti-cybercrime, media, anti-terrorism, and penal laws. These laws contain provisions that restrict content on their face or as applied. The vast majority of States have created specialised enforcement units or courts to investigate and/or prosecute violations of online content restrictions. Taken together, the picture that emerges is one in which States with long histories of repression and stifling human rights offline are using these tactics to control and chill online civic and political life. In other words, governments are ensuring that the potential of the internet to be a liberating space for civil society in the region is not fully realised. As HRDs use online communications to organise, protest, and advocate for human rights, governments are adapting their laws and enforcement strategies to stifle expression and quash online dissent.

### Targeted Expression

In each of the ten countries, governments principally targeted online expression in which HRDs were critical of the government. Authorities violated the FOE rights of journalists in all countries, including for reporting on public protests against the government through news stories, videos and social media. In one particularly severe incident, in December 2020, Iranian authorities carried out the death penalty against an Iranian journalist. Iranian agents abducted Ruhollah Zam from Iraq, who the Iranian government held responsible for instigating the 2017-18 anti-government protests after Zam released information online about alleged government corruption and posted videos of protests to an online news channel.<sup>57</sup> The Syrian government also targeted journalists for reporting to a global online audience on the civil war or other occurrences within Syria impacting human rights (e.g., military airstrikes).<sup>58</sup>

Another trend discerned was governments criminally charging HRDs for criticising the foreign policy or interests of the government: Bahrain, Jordan, Oman, Saudi Arabia, and UAE. For example, in Bahrain, authorities detained columnist Ibrahim al Sheikh for criticising the accuracy of Bahraini press coverage of the Saudi-led military campaign in Yemen.<sup>59</sup> In three States (Jordan, Oman, UAE), domestic HRDs who criticised the normalisation of relations between Israel and the State or third-party States in the region, faced government reprisals; advocacy for Palestinian rights was similarly targeted in Oman

## TARGETED ACTIVISM OR EXPRESSION

	Expression re Offline Protests	Criticism of Government	Expression re Minority/ Migrants' Rights	Journalists	Women's rights and WHRDs
Bahrain	✓	✓*		✓	✓
Iraq	✓	✓		✓	✓
Iran	✓	✓		✓	✓
Jordan	✓	✓*	✓	✓	✓
Kuwait	✓	✓	✓	✓	✓
Oman		✓*	✓	✓	✓
Qatar		✓	✓	✓	✓
Saudi Arabia		✓*	✓	✓	✓
Syria		✓		✓	✓
UAE		✓*		✓	✓

\*Including criticism of foreign government

and Saudi Arabia. The reported incidents in Oman indicate that the government arrested several HRDs for social media posts about Palestinian rights from October to December 2018, coinciding with Israeli Prime Minister Benjamin Netanyahu's visit to the country that October.<sup>60</sup> Additionally, there were a few incidents reported in Iraq and in Jordan of the government sanctioning HRDs, including journalists, for online criticism of the government's response to the COVID-19 pandemic.

There was a pattern in Jordan, Kuwait, Oman, Qatar, and Saudi Arabia of government repression of online expression by HRDs who advocated for the rights of minority communities in their countries. Authorities in Kuwait and Qatar arrested individuals as well as groups of advocates for stateless people in those countries.

There were incidents reported in all countries of online FOE violations against women HRDs and/or others who advocated for women's human rights. For example, in May 2018, authorities in Saudi Arabia carried out mass arrests of women HRDs, and charged, tried, and convicted them of violating the counter-terror law and the cybercrime law.<sup>61</sup> The government in Iran sentenced three women HRDs to lengthy prison terms for appearing in a video without their headscarves to protest the compulsory veiling laws.<sup>62</sup> On other occasions, the form of government reprisal against women activists was gendered, as when a well-known Bahraini security officer reportedly threatened a woman human rights activist with rape if she did not cease her work.<sup>63</sup>

## Attendant Violations to Online Freedom of Expression Violations

This study focuses on violations of online FOE against HRDs. In all countries, the authorities violated international freedom of expression by invoking arbitrary laws that prohibit protected expression against HRDs. Therefore, in each country, governments additionally violated the prohibition against arbitrary arrests. Patterns emerged of associated violations related to the methods governments used to target HRDs. For example, governments in Kuwait, Oman, Qatar, Saudi Arabia, and UAE reportedly surveilled or gained access to private communications of HRDs who the government targeted for their online activism. During the reporting period, the Citizen Lab at the University of Toronto found evidence of suspected infections of the Pegasus spyware program for mobile phones in Oman, Saudi Arabia, and UAE, which would have allowed those governments to survey the infected individuals’ private communications.<sup>64</sup>

The right to freedom of expression often is linked to freedom of association as HRDs organise collective action to promote human rights. Consequently, government violation of online FOE is linked to violations of the international right to associate. We found reports that law enforcement targeted activists in Iraq and Jordan for posting communications on social media organising anti-government protests. In UAE, the anti-cybercrime law implicates freedom of association by prohibiting online expression calling for “unauthorized” protests. In this way, governments are targeting off-line activism by accusing HRDs of violating online content restrictions related to public order and national security. Additionally, in Kuwait, Qatar, and Saudi Arabia authorities arrested groups of defenders who were working on the same cause, which raises concerns regarding the protection of their right to association.

There is a disturbing pattern of gross violations of human rights related to the arrest of HRDs for legitimate online expression, including incommunicado detention, enforced disappearances,

## HUMAN RIGHTS VIOLATIONS

	Privacy & Surveillance	Arbitrary Detention	Incommunicado Detention	Enforced Disappearance	Torture	Arbitrary Deprivation of Life	Fair Trial
Bahrain		✓					✓
Iraq		✓	✓	✓	✓		✓
Iran		✓	✓	✓		✓	✓
Jordan		✓	✓	✓	✓		✓
Kuwait	✓	✓	✓	✓	✓		✓
Oman	✓	✓	✓	✓	✓		✓
Qatar	✓	✓	✓		✓		✓
Saudi Arabia	✓	✓	✓	✓	✓	✓	✓
Syria		✓			✓		✓
UAE	✓	✓	✓	✓			✓

and torture. There were reported cases of one or more of each type of violation in every country except Bahrain (where there were no reported incidents that included allegations of incommunicado detention, enforced disappearance, or torture). Iran executed Ruhollah Zam for his reporting on government protests via an online news channel, and Saudi Arabia murdered journalist Jamal Khashoggi at the Saudi consult in Turkey.<sup>65</sup>

In eight of the ten countries, government authorities reportedly held HRDs detained for exercising online expression incommunicado (Iraq, Iran, Jordan, Kuwait, Oman, Qatar, Saudi Arabia and UAE). When authorities hold someone incommunicado, the victim is prevented from outside contact and is unable to access judicial protection. This is a serious violation often associated with grave harm. The Special Rapporteur on torture has observed that torture is practiced “most frequently practiced during incommunicado detention.”<sup>66</sup> In this study, torture of HRDs in the custody of State or Non-State actors was evidenced in Syria and in several countries in which there was a report of incommunicado detention (Iraq, Jordan, Kuwait, Oman, Saudi Arabia). There was no case of reported torture in Iran among the incidents in this study. We also noted that among the FOE violations, enforced disappearances were reported in seven of the ten countries: Iraq, Iran, Jordan, Kuwait, Oman, Saudi Arabia, and UAE.

A common pattern emerged in eight of the ten countries (Iraq, Jordan, Kuwait, Oman, Qatar, Saudi Arabia, Syria, and the UAE) in which officials arrested journalists and activists for their online expression and released them without charge. Even where incidents report incommunicado detention and/or torture, State agents reportedly released the defender without pursuing charges. This trend suggests that the goal of arbitrary arrests and abuse is to dissuade HRDs from activism rather than to impose formal sanctions. Repressive measures short of prosecutions also avoid the negative publicity that generally comes with international scrutiny of trials and convictions of HRDs.

In fact, public prosecutions of HRDs for posting views or content online that run counter to government policy were highly criticised by domestic and international human rights monitors. In all States, there was credible evidence that authorities violated the international due process rights of the targeted HRDs. These violations included the failure to inform HRDs of the charges against them, denying them access to an attorney, in absentia trials conducted without adequate notice, trials conducted in quasi-military courts, and the use by courts of confessions obtained through torture. The choice by States to target online expression of HRDs through legal processes stigmatises the defenders and human rights work. HRDs stand accused as law breakers and criminals. The denial of due process then further hampers their ability effectively to defend themselves in legal proceedings. Indeed, a review of the cases indicated that it is exceedingly rare that courts acquit HRDs at trial. This in turn draws attention to the legal infrastructure used by the States under study, which facilitates legalised oppression of online expression by HRDs.

## Repressive Domestic Legal Environment

This report describes laws in each of the ten countries that were most often used to target HRDs’ online expression during the study period, as well as those laws that, though not reportedly used during the study period, have a chilling effect on online advocacy. While each country chapter discusses the relevant cybercrime law, it also discusses a range of other problematic laws, many of which pre-date the cybercrime law. This demonstrates that while it is crucial for States to amend or repeal their cybercrime laws, it is just as critical to do the same for other laws not explicitly fashioned as cybercrime laws, but which nonetheless empower authorities to improperly restrict HRDs’ online expression.

## PROBLEMATIC LEGAL PROVISIONS AND INSTITUTIONS

	Criminal Defamation	Cybercrime Law	Public Order	Specialised Law Enforcement Units
Bahrain	✓	✓	✓	✓
Iraq	✓	~	✓	
Iran	✓	✓	✓	✓
Jordan	✓	✓	✓	✓
Kuwait	✓	✓	✓	✓
Oman	✓	✓	✓	✓
Qatar	✓	✓	✓	✓
Saudi Arabia	✓	✓	✓	✓
Syria	✓	✓	✓	✓
UAE	✓	✓	✓	✓

Every country included in this report has enacted an anti-cybercrime law, except for Iraq where a draft anti-cybercrime law was under consideration until May 2021.<sup>67</sup> This trend of enacting anti-cybercrime laws began as early as 2006, five years before the beginning of the Arab Spring, when UAE adopted its anti-cybercrime law. This report demonstrates how the anti-cybercrime laws in each of the countries have been used to arrest, charge, and prosecute HRDs. In Oman, authorities targeted HRDs in 2018 and charged them under article 19 of the anti-cybercrime law, which prohibits anyone from using information technology to “prejudice the public order or religious values.”<sup>68</sup> Iraq’s most recent attempt at enacting a cybercrime law reflects that governments in the region continue to direct increasing legislative attention to online activity. Alongside the Syrian government (which has cybercrime laws and a media regulation

law), authorities in the alternative self-administration known as the Autonomous Administration of North and East Syria (NES or Rojava) and the regime known as the Syrian Salvation Government (SSG) also target online content of journalists through legal mechanisms these authorities have created.<sup>69</sup>

There are two other trends that this report reveals. First, cybercrime laws in most countries often replicate provisions that already exist in other laws, and/or expand the reach of existing provisions onto the internet. For example, in UAE, both the 1987 penal code and the 2012 cybercrime law criminalise expression that harms or prejudices “the public order.”<sup>70</sup> Similarly, in Qatar both the 2004 penal code and the 2014 cybercrime law impose criminal penalties for defamation.<sup>71</sup> In Bahrain, the 1976 penal code, the 2002 media regulation law, the 2002 telecommunications law, and the 2006 anti-terrorism law all include problematic content restrictions.<sup>72</sup>



Bahrain has expanded the reach of those restrictions onto the internet by enacting a cybercrime law that simply provides that anyone who violates any other law using information technology will be punished.<sup>73</sup>

Second, while some countries used the cybercrime law itself to target online expression, all countries just as often (if not more often) relied on criminal provisions contained in other laws, including penal codes, anti-terrorism laws, telecommunications laws, and/or media and press laws. These laws prohibit expression that is affirmatively protected under international law, including criticism or insult of public officials and institutions, or religious speech. For example, authorities in Iran used prohibitions against blasphemy to arrest, detain, and convict a journalist for content posted on social media.<sup>74</sup> These prohibitions existed long before the cybercrime law, in Iran's 1986 Press Law and in its 1996 Penal Code. In Saudi Arabia, officials used the 2017 counter-terror law routinely against HRDs for their online advocacy.<sup>75</sup> Additionally, all countries had laws (in addition to their cybercrime laws) that described prohibited conduct in language that human rights experts agree are impermissibly vague, overbroad, or disproportionate. Such language included provisions that imposed criminal rather than civil penalties on defamation, prohibitions on speech that "threatens public order," fake news provisions, or expression deemed as "glorifying" terrorism. In Iraq, where there is no cybercrime law, authorities often arrested HRDs and charged them for their online expression under the penal code, including article 434 which prohibits insult and defamation.<sup>76</sup>

## Specialised Institutions Targeting HRDs' Online Expression

In nine out of ten countries (Bahrain, Iran, Jordan, Kuwait, Oman, Qatar, Saudi Arabia, Syria, and UAE), authorities have established specialised law enforcement units and/or specialised courts to

surveil, arrest, prosecute, and ultimately convict HRDs for their online advocacy. The increasing number of institutions specialised in investigating and prosecuting cybercrimes demonstrates how States have prioritised directing their law enforcement resources toward targeting online activity. Many of these units engaged in widely publicised mass enforcement campaigns, signaling to HRDs and the population in general that their online activity is monitored. For example, in Bahrain, the Cyber Safety Directorate publicly announced in 2020 that it was investigating social media accounts that were alleged to have shared "false news" regarding COVID-19.<sup>77</sup> Such units have also specialised in using surveillance technology to monitor and intimidate HRDs. For example, human rights organisations and journalists have documented how UAE's Development Research Exploitation and Analysis Department, which was created with the help of former US White House and National Security Agency officers, engaged in cyber espionage against Ahmed Mansoor, Loujain al-Hathloul, and other HRDs.<sup>78</sup>

In Jordan and Saudi Arabia, specialised courts, created to try national security-related cases, were used to prosecute HRDs for their online human rights advocacy. Such courts are especially concerning because of their fundamental deficiencies in due process protections. For example, in Saudi Arabia, there were several documented cases in which human rights advocates were tried in the Specialised Criminal Court (SCC),<sup>79</sup> which was created to try individuals charged with terrorism-related crimes.<sup>80</sup> The SCC is seemingly empowered to extend pre-trial and incommunicado detention to lengthy periods of time, is reported to have relied on confessions obtained through torture, and is described by human rights bodies as insufficiently independent of the executive.<sup>81</sup> Several women HRDs who were targeted in mass arrest campaigns in May 2018 were tried and convicted in the SCC and sentenced to five years and eight months in prison, and a travel ban for their online human rights advocacy.<sup>82</sup>

## Transnational Collaboration Targeting HRDs

In Iran, Kuwait, Saudi Arabia, and UAE there were reports of the State reaching beyond its territorial jurisdiction and working with other governments to punish HRDs, at least partially for their online advocacy. This demonstrates how authorities in the Gulf and neighbouring countries are collaborating to punish online advocacy they find detrimental to their allies or to their own foreign policy. Iraqi intelligence officials cooperated with Iranian authorities to arrest and abduct Iranian journalist Ruhollah Zam from Iraq and bring him to Iran where he was tried, convicted, and executed.<sup>83</sup> In UAE, Loujain al-Hathloul was arrested and transferred to Saudi Arabia, where she would subsequently be detained incommunicado, tortured, convicted, and sentenced to several years in prison and have a travel ban imposed for her human rights advocacy and criticism of Saudi policy.<sup>84</sup> Additionally, Saudi and UAE-led coalition authorities also detained two HRDs in Yemen, prohibiting them from traveling to Europe for a human rights conference.<sup>85</sup>

## CONCLUSIONS AND RECOMMENDATIONS

This report captures a snapshot of the consequences for HRDs in the Gulf and neighbouring countries of the hostile legal environment that governments have effectuated to repress online expression that they find objectionable. Governments have incorporated into their anti-cybercrime laws, penal laws, and other legislation vaguely worded, overly broad, and arbitrary restrictions on expression that is protected under international human rights law. Carrying criminal sanctions and often stiff penalties, governments are able to direct this legal arsenal against human rights defenders, including journalists. The study found 225 credible incidents in which governments had violated the rights of HRDs to online freedom of expression by arbitrarily arresting them for protected online expression.

Furthermore, there is credible evidence that across the region, when governments violated HRDs' right to freedom of online expression, they also used illegal surveillance, which violated HRDs' right to privacy. In addition, authorities subjected defenders targeted to incommunicado detention, enforced disappearances, torture, and breaches of international due process rights. This pattern of misconduct illustrates the extent to which States are disregarding their international duties to create a safe and enabling environment for HRDs. It also underscores the urgent need for governments to cease criminalising the work of HRDs through arbitrary laws and actions and enable human rights activities to flourish.

Toward this end, we recommend the following general recommendations, noting that country-specific recommendations are included in each country chapter:

### **To Governments of Gulf States and Neighbouring Countries:**

Eliminate laws and articles in national legal frameworks that criminalise online freedom of

expression protected under international human rights law, specifically:

- ✦ All laws including anti-cybercrime, anti-terrorism, communications, media, penal, and technology laws that restrict online or offline expression through provisions to protect public order, national security, or the national economy; insults laws; and laws that criminalise fake news, that do not conform to international human rights standards and satisfy the principles of legality, legitimacy, necessity and proportionality;
- ✦ Decriminalise the offense of defamation;
- ✦ Revise anti-cybercrime laws to include affirmative protection for the legitimate online expression of HRDs, including journalists.
- ✦ Cease using deportation and travel bans as tools for targeting HRDs for their online human rights advocacy, and refrain from infringing on their right to freedom of movement.

Reform legal institutions, including the criminal legal system, to promote the independence and autonomy necessary for:

- ✦ Investigating human rights violations committed against HRDs by law enforcement, such as engaging in unlawful surveillance of HRDs, enforced disappearances, holding HRDs in unlawful detention, incommunicado, and subjecting them to ill-treatment and torture.
- ✦ Ensuring that HRDs', citizens', and residents' right to freedom of movement is not violated.
- ✦ Ensuring the judiciary upholds international standards guaranteeing the right to fair trial.

### **To the UN Human Rights Council:**

Instruct the UN Office of the High Commissioner

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for Human Rights to undertake a study of the transnational cooperation among governments to affect the apprehension and rendering of foreign HRDs to their countries of origin for prosecution of online expression that is protected under international law.

Instruct the UN Office of the High Commissioner for Human Rights to undertake a study to identify and track developments in the surveillance regimes in each State in the region. The governments in question should cooperate in this study. The study should identify third party actors including business enterprises and other States that contribute to advancing the surveillance infrastructure in each State concerned. State and non-State actors complicit in illegal surveillance of HRDs by governments should be held accountable.

### *To All States:*

Implement an immediate moratorium on the use, acquisition, sale and transfer of surveillance technology. This moratorium should extend until adequate global controls and safeguards against abuse are in place.

## NOTES

- 1 GULF CENTRE FOR HUMAN RIGHTS (GCHR), *MAPPING CYBERCRIME LAWS AND VIOLATIONS OF DIGITAL RIGHTS IN THE GULF AND NEIGHBOURING COUNTRIES* (2018). The report examined the Gulf countries of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates, as well as the neighboring countries of Jordan, Lebanon, and Syria.
- 2 The ESCWA chiefly works to support economic development, cooperation, and regional integration in Western Asia. *About ESCWA*, UNITED NATIONS ECON. & SOC. COMM'N FOR W. ASIA.
- 3 Western Asian Preparatory Conference for the World Summit on the Information Society, *Towards an Information Society in Western Asia: Declaration of Principles (Beirut Declaration)*, Doc. WSIS/PC-2-DOC/8-E (Feb. 6, 2003).
- 4 The ESCWA has spear-headed an initiative, the “Regional Harmonisation of Cyber Legislation to Promote the Knowledge Society in the Arab World” to enhance regional integration and strengthen the capacity of member States to develop legal and regulatory structures related to the internet, and has existed in various forms from 2009 to the present. *ESCWA Directives for the Regional Harmonization of Cyber Legislation*, UNITED NATIONS ECON. & SOC. COMM'N FOR W. ASIA. According to ESCWA, after Oman adopted its cybercrime law in 2008, “most cyber legislation activity was prompted by the initiatives of ESCWA.” United Nations Econ. & Soc. Comm'n for W. Asia, *The ESCWA Cyber Legislation Digest* (2013).
- 5 Econ. & Social Comm'n for W. Asia, *Models for Cyber Legislation in ESCWA Member Countries*, 31, U.N. Doc. E/ESCWA/ICTD/2007/8 (June 27, 2007) [hereinafter *ESCWA Models for Cyber Legislation*]. The Arab League also has promoted regional cooperation to combat transnational crimes and strengthen domestic legal infrastructure to prosecute online and offline criminal conduct. The UAE model law and its explanatory note were adopted at the League of Arab States meeting in October 2004. United Arab Emirate Guiding Law on Combating Crimes Information Systems Technology and the Like of 2004 pmb. [hereinafter UAE Model Law] (unofficial English translation on file with author).
- 6 *ESCWA Models for Cyber Legislation*, *supra* note 5, at 17-18, 31 (noting the issues of censorship and freedom of expression are “totally and intentionally ignored in the countries of the ESCWA region”).
- 7 UAE Model Law, *supra* note 5.
- 8 Federal Law No. 2 of 2006 on the Prevention of Information Technology Crimes (U.A.E.) (unofficial English translation).
- 9 *Compare* Anti-Cyber Crime Law, Royal Decree No. M/17 of 2007 arts. 6(1), 7(1), 7(2) [hereinafter Saudi Arabian Cybercrime Law] (Saudi Arabia) (official English translation), *with* UAE Model Law, *supra* note 5, at arts. 20-22.
- 10 Computer Crimes Act Law No. 71063 of 2009 (Iran) (unofficial English translation on file with author); Cybercrime Law of 2010, amended in 2015, §§ 10, 11(a)-(b) (Jordan) (official Arabic version; unofficial English translation on file with author).
- 11 Arab Convention on Combatting Information Technology, adopted by the League of Arab States, ch. 1, art. 1 (Dec. 21, 2010) (unofficial English translation).
- 12 Law No. 60 of 2014 Concerning Information Technology Crimes [hereinafter Bahraini Cybercrime Law] (Bahr.) (official Arabic version; unofficial English translation); Law No. 63 of 2015 Combatting Cybercrime [hereinafter Kuwaiti Cybercrime Law] (Kuwait) (official Arabic version; unofficial English translation on file with author); Royal Decree No. 12/2011 Issuing the Cyber Crime Law [hereinafter Omani Cyber Crime Law] (Oman) (official English translation); Law No. 14 of 2014 Promulgating the Cybercrime Prevention Law [hereinafter Qatari Cybercrime Law] (Qatar) (unofficial English translation); Law No. 9 of 2018 Establishing Specialized Courts for Information and Communications Crimes (2018) (Syria) (official Arabic version; unofficial English translation on file with authors).
- 13 Twelfth United Nations Congress on Crime Prevention and Criminal Justice, G.A. Res. 65/230, U.N. Doc. A/RES/65/230, ¶¶ 9-10 (Apr. 1, 2011).
- 14 United Nations Off. on Drugs & Crime, *Comprehensive Study on Cybercrime: Draft* (2013) (unpublished report). This report, titled “draft” appears to be the only report generated by the intergovernmental expert group.

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- The experts' critique echoed the ESCWA commentary of the ACC and the domestic cybercrime legislation that had already been adopted and did not raise new or deeper concerns. See Nibal Idlebi, Econ. & Soc. Comm'n for W. Asia, *Policy Note: Development and Harmonization of Cyber Legislation in the Arab Region*, U.N. Doc. E/ESCWA/ICTD2013/Technical Paper.2 (July 4, 2013).
- 15 United Nations Off. on Drugs & Crime, *supra* note 14, at 107.
- 16 *Id.* at 109-10.
- 17 *Id.* at 115. Furthermore, while the report recognised that “national criminal laws are not to be excluded from the oversight of international human rights law,” it also only stressed that “the use of vague terms such as ‘glorifying’ or ‘promoting’ terrorism” in cybercrime laws “may be problematic” *Id.* at 107, 114 (emphasis added). Such terms “may not be sufficiently narrow or precise to serve as a basis for criminal sanctions.” *Id.* at 114 (emphasis added).
- 18 The Promotion, Protection and Enjoyment of Human Rights on the Internet, Human Rights Council Res. 20/8, U.N. Doc. A/HRC/RES/20/8 (July 16, 2012) [hereinafter H.R.C. Res. 20/8].
- 19 Abid Hussain (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, Mr. Abid Hussain, Submitted in Accordance with Commission Resolution 2001/47, U.N. Doc. E/CN.4/2002/75 (Jan. 30, 2002); Press Release, United Nations Special Rapporteur on the Promotion & Protection of the Right to Freedom of Op. & Expression, “At This Historic Juncture, Governments Must Choose Reform over Repression,” State UN Expert on World Press Freedom Day Speech by Frank LaRue for World Press Freedom Day (May 2, 2011); Frank LaRue (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, Frank La Rue, U.N. Doc. A/HRC/17/27 (May 16, 2011); Frank La Rue (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, Frank La Rue, U.N. Doc. A/HRC/20/17 (June 4, 2012); David Kaye (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Promotion and Protection of the Right to Freedom of Opinion and Expression*, U.N. Doc. A/71/373 (Sept. 6, 2016); David Kaye (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, U.N. Doc. A/HRC/35/22 (Mar. 30, 2017); David Kaye (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, U.N. Doc. A/HRC/38/35 (Apr. 6, 2018); Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, *Surveillance and Human Rights: Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, U.N. Doc. A/HRC/41/35 (May 28, 2019) [hereinafter SRFOE Report of May 2019]; David Kaye (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Promotion and Protection of the Right to Freedom of Opinion and Expression*, U.N. Doc. A/74/486 (Oct. 9, 2019).
- 20 Press Release, *supra* note 19.
- 21 See reports cited *supra* note 19.
- 22 Michel Forst (Special Rapporteur on the Situation of Human Rights Defenders), *Situation of Human Rights Defenders*, ¶ 15, U.N. Doc. A/73/215 (July 23, 2018) [hereinafter SRHRD Report of July 2018].
- 23 Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, G.A. Res. 53/144, U.N. Doc. A/RES/53/144 (Mar. 8, 1999).
- 24 SRHRD Report of July 2018, *supra* note 21, ¶ 18.
- 25 *Id.* ¶ 25.
- 26 Margaret Sekaggya (Special Rapporteur on the Situation of Human Rights Defenders), *Human Rights Defenders*, U.N. Doc. A/66/203 (July 28, 2011); SRHRD Report of July 2018, *supra* note 21, ¶ 18.
- 27 UN SPECIAL RAPPORTEUR ON THE SITUATION OF HUM. RTS. DEFS., COMMENTARY TO THE DECLARATION ON THE RIGHT AND RESPONSIBILITY OF INDIVIDUALS, GROUPS AND ORGANS OF SOCIETY TO PROMOTE AND PROTECT UNIVERSALLY RECOGNIZED HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS 58 (2011).
- 28 Michel Forst (Special Rapporteur on the Situation of Human Rights Defenders), *Report of the Special*

- Rapporteur on the Situation of Human Rights Defenders*, ¶ 77, U.N. Doc. A/HRC/31/55 (Feb. 1, 2016) (“In accordance with the Declaration on Human Rights Defenders, the Special Rapporteur believes that the State, as the main duty-bearer, holds the main responsibility for ensuring that defenders can enjoy a safe and enabling environment. Other actors, however, also play an important role in supporting States, independently and in partnership, to achieve this goal. An enabling environment for defenders must be one in which their work is rooted in the broad support of society and in which the institutions and processes of government are aligned with their safety and the aim of their activities. Both are essential for the creation of an environment in which perpetrators of violations of defenders’ rights are held to account and are not allowed to enjoy impunity for their actions.”).
- 29 The UN General Assembly has further interpreted the Human Rights Declaration to require that States: “(a) Recognize the value and important contribution of human rights defenders to peace, sustainable development and human rights; (b) Respect human rights defenders on a non-discriminatory basis, protect them against any arbitrary action as a consequence of the legitimate exercise of the rights referred to in the Declaration, and ensure access to effective remedies in the case of violations and prompt and impartial investigations of alleged violations; (c) Reinforce their work by creating an enabling environment, through legislative, administrative and other steps, promoting public understanding of human rights, creating independent national institutions for the promotion and protection of human rights and promoting the teaching of human rights.” U.N. Secretary-General, *Twentieth Anniversary of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: Report of the Secretary-General*, ¶ 7, U.N. Doc. A/73/230 (Sept. 27, 2018) (General Assembly Resolution on HRDs 2018).
- 30 Special Rapporteur on the Situation of Human Rights Defenders, *Human Rights Defenders Operating in Conflict and Post-Conflict Situations: Report of the Special Rapporteur on the Situation of Human Rights Defenders*, ¶ 13, U.N. Doc. A/HRC/43/51 (Dec. 30, 2019) (“[N] on-State actors exercising government-like functions and control over a territory are obliged to respect human rights norms when their conduct affects the human rights of the individuals under their control. This includes provisions of the Declaration on Human Rights Defenders, which is addressed to all individuals, groups and organs of society.”).
- 31 Frank La Rue (Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression), *Promotion and Protection of the Right to Freedom of Opinion and Expression*, ¶ 10, U.N. Doc. A/66/290 (Aug. 10, 2011) [hereinafter *SRFOE Report of Aug. 2011*].
- 32 *Id.* ¶ 11; Clément Nyaletsossi Voule (Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association), *Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association*, ¶¶ 31-57, U.N. Doc. A/HRC/41/41 (May 17, 2019) [hereinafter *SRFPAA Report of May 2019*] (describing how states can interfere with the right to freedom of peaceful assembly and of association online).
- 33 International Covenant on Civil and Political Rights art. 19, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter *ICCPR*]; Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/810, at art. 19 (Dec. 10, 1948) [hereinafter *UDHR*].
- 34 Irene Khan (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Disinformation and Freedom of Opinion and Expression: Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, Irene Khan, ¶ 33, U.N. Doc. A/HRC/47/25 (Apr. 13, 2021); *see also* H.R.C. Res. 20/8, *supra* note 18, ¶ 1.
- 35 Hum. Rts. Comm., *General Comment No. 34: Article 19: Freedoms of Opinion and Expression*, ¶¶ 11, 25, U.N. Doc. CCPR/C/GC/34 (Sept. 12, 2011) [hereinafter *HRC General Comment No. 34*].
- 36 *Id.* ¶ 4; Margaret Sekaggya (Special Rapporteur on the Situation of Human Rights Defenders), *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, Margaret Sekaggya, ¶ 66, U.N. Doc. A/HRC/25/55 (Dec. 23, 2013).
- 37 *SRFOE Report of Aug. 2011*, *supra* note 30, ¶¶ 38-40; *SRFOE Report of May 2019*, *supra* note 19, ¶ 21.
- 38 *HRC General Comment No. 34*, *supra* note 34, ¶ 22.
- 39 *Id.* ¶¶ 22, 25; *SRFOE Report of May 2019*, *supra* note 19.
- 40 *ICCPR*, *supra* note 32, at art. 19.
- 41 *HRC General Comment No. 34*, *supra* note 34, ¶¶ 22, 33-34.
- 42 *Id.* ¶ 35.

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- 43 UDHR, *supra* note 32, at art. 20; ICCPR, *supra* note 32, at arts. 21-22.
- 44 Promotion, Protection, and Enjoyment of Human Rights on the Internet, Human Rights Council Res. 38/7, U.N. Doc. A/HRC/RES/38/7, pmbll., ¶ 8 (July 17, 2018).
- 45 SRFCAA Report of May 2019, *supra* note 31, ¶¶ 21-23.
- 46 *Id.*
- 47 The Rights to Freedom of Peaceful Assembly and of Association, Human Rights Council Res. 15/21, U.N. Doc. A/HRC/RES/15/21, ¶ 4 (Oct. 6, 2010); Hum. Rts. Comm., *General Comment No. 37 (2020) on the Right of Peaceful Assembly (Article 21)*, ¶ 36, U.N. Doc. CCPR/C/GC/37 (Sept. 17, 2020).
- 48 SRFCAA Report of May 2019, *supra* note 31, ¶¶ 31-57.
- 49 ICCPR, *supra* note 32, at arts. 17, 19, 21-22; UDHR, *supra* note 32, at arts. 12, 19-20; SRFOE Report of May 2019, *supra* note 19, ¶ 21; SRFCAA Report of May 2019, *supra* note 31, ¶¶ 55-57.
- 50 SRFOE Report of May 2019, *supra* note 19, ¶ 24 (Article 17 and article 19 require that interferences with the right to privacy and the right to freedom of expression satisfy the tests of legality, legitimacy, necessity, and proportionality).
- 51 *Id.* ¶ 27.
- 52 *Id.* ¶¶ 2, 27.
- 53 Indep. Int’l Comm’n of Inquiry on the Syrian Arab Republic, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, ¶ 10, U.N. Doc. A/HRC/21/50 (Aug. 16, 2012).
- 54 See Hum. Rts. Comm., *General Comment No. 24: General Comment on Issues Relating to Reservations Made upon Ratification or Accession to the Covenant or the Optional Protocols Thereto, or in Relation to Declarations Under Article 41 of the Covenant*, ¶ 8, U.N. Doc. CCPR/C/21/Rev.1/Add.6 (Nov. 11, 1994).
- 55 The International Law Association observed that the UDHR “is universally regarded as an authoritative elaboration of the human rights provisions of the United Nations Charter” and concluded that “many if not all of the rights elaborated in the...Declaration... are widely recognized as constituting rules of customary international law.” Hurst Hannum, *The UDHR in National and International Law*, 3 HEALTH & HUM. RTS. 148 (1998).
- 56 For each country under study researchers searched the following international media outlets and human rights organizations that document human rights violations for incidents describing violations of online freedom of expression between May 2018 and October 2020: Amnesty International, Al Jazeera, ARTICLE 19, British Broadcasting Corporation, Committee to Protect Journalists, Front Line Defenders, Gulf Centre for Human Rights, and Human Rights Watch. Researchers also searched for communications from special procedures mandate holders regarding incidents alleging violations of freedom of expression in each country under study in the UN database of communications. Researchers also searched for articles published by major, English-language national media outlets.
- 57 See Iran chapter.
- 58 See Syria chapter.
- 59 See Bahrain chapter.
- 60 See Isabel Kershner, *Israeli Prime Minister Visits Oman, Offering a Possible Back Channel to Iran*, N.Y. TIMES (Oct. 26, 2018).
- 61 See Saudi Arabia chapter.
- 62 See Iran chapter.
- 63 See Bahrain chapter.
- 64 BILL MARCZAK & JOHN SCOTT-RAILTON, *THE CITIZEN LAB, THE MILLION DOLLAR DISSIDENT: NSO GROUP’S IPHONE ZERO-DAYS USED AGAINST AS UAE HUMAN RIGHTS DEFENDER* (2016); BILL MARCZAK ET AL., *THE CITIZEN LAB, HIDE AND SEEK: TRACKING NSO GROUP’S PEGASUS SPYWARE TO OPERATIONS IN 45 COUNTRIES* (2018); BILL MARCZAK ET AL., *THE CITIZEN LAB, THE KINGDOM CAME TO CANADA: HOW SAUDI-LINKED DIGITAL ESPIONAGE REACHED CANADIAN SOIL* (2018).
- 65 See Iran chapter; Saudi Arabia chapter.
- 66 Theo van Boven (Special Rapporteur on Torture), *Report of the Special Rapporteur on the Question of Torture Submitted in Accordance with Commission Resolution 2002/38*, ¶ 26(g), U.N. Doc. E/CN.4/2003/68 (Dec. 17, 2002).
- 67 In May 2021, consideration of the proposed cybercrime law was suspended pending further amendments. See Kristen Sibbald, *Iraq Parliament Suspends Draconian Cybercrimes Bill: Bill Would Have Criminalized Wide Range of Peaceful Expression*, HUM. RTS. WATCH (May 7, 2021).



WHO WILL BE LEFT TO DEFEND HUMAN RIGHTS? PERSECUTION OF  
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- 68 Omani Cyber Crime Law, *supra* note 12, at art. 19.
- 69 See Syria chapter.
- 70 Federal Law No. 3 of 1987 Concerning the Penal Code art. 197 (bis)(2) (U.A.E) (official English translation); Federal Decree Law No. 5 on Combating Cybercrimes, amended 2018, art. 28 (U.A.E.) (official English translation).
- 71 Law No. 11 of 2004 Issuing the Penal Code arts. 326-27, 330 (Qatar) (unofficial English translation); see Qatari Cybercrime Law, *supra* note 12, at art. 6.
- 72 See Bahrain chapter for further discussion.
- 73 Bahraini Cybercrime Law, *supra* note 12, at art. 23.
- 74 *Iran Detains Freelance Photographer and Culture Reporter Nooshin Jafari*, COMM. PROTECT JOURNALISTS (Aug. 12, 2019); *Iran Is the World's Biggest Jailer of Women Journalists*, REPS. WITHOUT BORDERS (Aug. 27, 2019); *Iranian Journalist Nooshin Jafari Begins 4-Year Jail Term on Propaganda and Insult Charges*, COMM. PROTECT JOURNALISTS (Feb. 18, 2021).
- 75 Law on Combating Crimes of Terrorism and Its Financing of 2017 (Saudi Arabia) (unofficial English translation).
- 76 Penal Code, No. 111 of 1969, amended 2010, art. 434 (Iraq) (unofficial English translation).
- 77 AMNESTY INT'L, AMNESTY INTERNATIONAL REPORT 2020/21: THE STATE OF THE WORLD'S HUMAN RIGHTS 77 (2021).
- 78 Joel Schectman & Christopher Bing, *White House Veterans Helped Gulf Monarchy Build Secret Surveillance Unit*, REUTERS (Dec. 10, 2019); *CPJ Concerned by Report that UAE 'Project Raven' Surveilled Journalists*, COMM. TO PROTECT JOURNALISTS (Jan. 30, 2019).
- 79 See Saudi Arabia chapter.
- 80 Comm. against Torture, *Concluding Observations on the Second Periodic Report of Saudi Arabia*, ¶ 17, U.N. Doc. CAT/C/SAU/CO/2 (June 8, 2016).
- 81 *Id.*; see also Ben Emmerson (Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism), *Visit to Saudi Arabia: Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism*, ¶ 47, U.N. Doc. A/HRC/40/52/Add.2 (Dec. 13, 2018);
- Working Grp. on Arbitrary Det., *Opinion No. 71/2019 Concerning Issa al-Nukhefi, Abdulaziz Youssef Mohamed al-Shubaili and Issa Hamid al-Hamid (Saudi Arabia)*, ¶ 44, U.N. Doc. A/HRC/WGAD/2019/71 (Feb. 14, 2020).
- 82 See Saudi Arabia chapter.
- 83 See Iran chapter.
- 84 Working Grp. on Arbitrary Det., *Opinion No. 33/2020 Concerning Loujain Alhathloul (United Arab Emirates and Saudi Arabia)*, ¶ 7, U.N. Doc. A/HRC/WGAD/2020/33 (June 25, 2020).
- 85 *Joint Statement by Human Rights and Civil Liberties Groups*, HUM. RTS. WATCH (June 19, 2018).



# BAHRAIN



# BAHRAIN SCORECARD

## Targeted Activism or Expression



Expression re Offline Protests



Criticism of Government\*



Journalists



Women's Rights and WHRDs

## Human Rights Violations



Arbitrary Detention



Fair Trial

## Problematic Legal Provisions and Institutions



Criminal Defamation



Cybercrime Law



Public Order



Specialised Law Enforcement Units

8

Number of incidents that fit the inclusion criteria of this study

\*Including criticism of foreign government

# INTRODUCTION

Between 01 May 2018 and 31 October 2020, there were eight documented incidents of violations of the right to freedom of expression online in Bahrain that fit this study's inclusion criteria.<sup>1</sup> Bahrain is an Islamic constitutional monarchy.<sup>2</sup> The reported credible incidents indicate that authorities target online expression critical of the government and its policies, including domestic pro-reform protests and opposition to the Saudi-led war in Yemen.

Authorities apply penal and anti-terrorism laws to repress criticism disseminated via social media and online publications by human rights defenders (HRDs), including journalists, lawyers, and human rights activists. The incidents indicate the Bahraini government uses the Penal Code and anti-terrorism laws to target HRDs although reporting does not always indicate the specific provisions charged. The anti-cybercrime law also criminalises protected expression and contributes to a hostile legal environment. Thus, this research finds credible evidence that the government has violated its obligation to respect online freedom of expression and additional associated rights of HRDs. These violations also constitute breaches of the duty of the State, pursuant to the United Nations (UN) Charter, "as the main duty-bearer" to ensure "defenders enjoy a safe and enabling environment" and that government institutions and processes "are aligned with their safety and the aim of their activities."<sup>3</sup>

Internet use in Bahrain is widespread, with 1.71 million internet users and 1.5 million social media users out of a population of 1.72 million as of January 2021.<sup>4</sup> Facebook estimates that it has an audience of 820,000, and Twitter estimates that it has an audience of 324,000.<sup>5</sup>

Bahrain is a party to several international human rights treaties protecting the right to freedom of expression, including the International Covenant on Civil and Political Rights (ICCPR)<sup>6</sup> and the Arab Charter on Human Rights.<sup>7</sup> As a UN member State, Bahrain is also bound by the UN Charter and has pledged to adhere to the principles reflected in the Universal Declaration of Human Rights (UDHR), including article 19, which enshrines the right to freedom of opinion and expression.<sup>8</sup>

# LEGAL ENVIRONMENT FOR ONLINE EXPRESSION IN BAHRAIN

Bahrain has enacted extensive legislation that empowers authorities to target HRDs who express dissent and advocate for human rights, including its Penal Code, terrorism law, media regulation law, telecommunications law, and cybercrime law. In most reported incidents, the specific charges cited by authorities are unclear. In cases where the government released charging data, the primary laws used are provisions from the Penal Code. Since at least 2011, these laws have been aided by systems of surveillance and specialised regulatory bodies, including the Cyber Safety Directorate, that are aimed at targeting online expression.

## Laws Related to Online Expression

### *1976 Penal Code*

Bahrain's Penal Code includes several vague and overbroad provisions that enable the criminalisation of protected online expression.<sup>9</sup> The UN Human Rights committee has criticised the Penal Code for its "broad provisions" that prohibit criticism of public officials and the publication and dissemination of rumours and false news.<sup>10</sup> Under both article 19 of the ICCPR and the UDHR, criminal laws that restrict freedom of expression must be sufficiently precise to enable individuals to determine how to comply with the law and to limit the discretion conferred on authorities enforcing it.<sup>11</sup> Vaguely and broadly worded provisions have been found by UN Special Procedures mandate holders to violate this requirement, allowing authorities to use their excessive discretion to target protected expression, and encouraging individuals to engage in self-censorship.<sup>12</sup>

The Penal Code includes content restrictions that prohibit vague and overbroad categories of expression. Article 133 prohibits spreading "false or malicious"

information during wartime that damages military preparations, causes panic, or "weakens the nation's perseverance," with a punishment of imprisonment of up to 10 years.<sup>13</sup> Article 134 punishes with at least three months' imprisonment and/or a fine of BHD 100 (USD 265) anyone who spreads "false or malicious" information that "undermine[s] financial confidence in the State or adversely affect[s] its prestige or position, or exercises in any manner whatsoever activities that are harmful to the national interests."<sup>14</sup> Article 168 punishes with up to two years' imprisonment and/or a fine of up to BHD 200 (USD 531), anyone who shares "false" or "malicious" information that seeks to "damage public security, terrorise the population, or cause damage to public interest," as well as the possession of such information with the intention of distribution, and the possession of devices intended for the distribution of such information.<sup>15</sup>

Similarly, article 160 prohibits "favour[ing] or advocat[ing] in any manner whatsoever, the overthrow or change of the country's political, social, or economic system," punishable by up to 10 years in prison.<sup>16</sup> And article 165 prohibits inciting others to "develop hatred of the ruling regime or show contempt towards it," punishable by imprisonment.<sup>17</sup>

UN Special Rapporteurs have criticised as overly vague provisions that prohibit individuals from using the internet to "upset social order" or "harm the public interest," or from publishing "articles or photos that could harm national security, public order, public health or public interest, incite violence, constitute sedition or have negative consequences for the financial climate of the country."<sup>18</sup> International human rights experts, including the Special Rapporteur on freedom of opinion and expression (SR on FOE), have also urged States to abolish

general prohibitions on disseminating “false news” because of their vagueness.<sup>19</sup>

The Penal Code also includes harsh criminal penalties for defamation. Article 370 prohibits any offensive publication related to an individual’s private life, even if the published information is true, punishable by up to six months’ imprisonment and/or a fine of up to BHD 50 (USD 132).<sup>20</sup> The UN Human Rights Committee and the SR on FOE have cautioned that laws on defamation should be crafted carefully so that they do not restrict freedom of expression, and have recommended the decriminalisation of defamation.<sup>21</sup> The UN Human Rights Committee has interpreted ICCPR article 19 to require that “the application of criminal law should only be countenanced in the most serious of cases, and imprisonment is never an appropriate penalty.”<sup>22</sup> Finally, it has stated that defamation laws should include the defence of public interest in the subject matter of the criticism, the defence of truth, and, at least in the case of expression related to public figures, the defence of error.<sup>23</sup>

The Penal Code provides additional protections to public officials and institutions against defamation and insult. Articles 214, 215, and 216 prohibit anyone from offending: the monarch, the flag, or the national emblem;<sup>24</sup> a foreign country or international organisation based in Bahrain, or its president, representative, flag or emblem;<sup>25</sup> or any government bodies, including the National Assembly, army, or court.<sup>26</sup> These provisions carry penalties including lengthy prison terms, or a fine of up to BHD 10,000 (USD 26,551).<sup>27</sup> Human rights bodies have emphasised the value of public debate concerning public institutions and public figures in particular, who should not be granted a higher level of protection against defamation.<sup>28</sup> The UN Human Rights Committee has expressed particular concern about “laws on such matters as, *lese majesty*, *desacato*, disrespect for authority, disrespect for flags and symbols, defamation of the head of State and the protection of the honour of public officials” and laws prohibiting “criticism of institutions, such as the army or the administration.”<sup>29</sup>

Finally, the Penal Code includes blasphemy provisions, which are inconsistent with protections on the right to freedom of expression, opinion, conscience, and religion under articles 19 and 20 of the ICCPR.<sup>30</sup> Article 309 prohibits any “expression against one of the recognised religious sects or ridicules the rituals thereof.”<sup>31</sup> Article 310 prohibits the publication of religious scripture whose text is altered with the aim of “changing the meaning” of it or “ridiculing it,” it prohibits insulting a religious figure, and it prohibits imitating a religious ritual with the intent of ridiculing it.<sup>32</sup> These offenses carry a punishment of imprisonment of up to one year or a fine of up to BHD 100 (USD 265).<sup>33</sup>

### **2002 Media Regulation Law**

The Media Regulation Law 47 was enacted in 2002 with broad and vague provisions regarding the regulation of the press, printing, and publishing, which the UN Human Rights Committee expressed concern about during Bahrain’s 2018 periodic review.<sup>34</sup> Article 1 of the law protects the right to expression, under the condition that it respects “the fundamentals of Islam[,]” and avoids divisionism and sectarianism.<sup>35</sup> Under article 68, journalists and activists could be sentenced to up to five years in prison for “criticizing the king,” “violation against the country’s official religion,” or “instigating the overthrowing of regime or its change.”<sup>36</sup> The law also includes other vague provisions, including prohibitions on “violating the respect of individuals or private lives;”<sup>37</sup> asserting “imperfection against a king or head of an Arab or Islamic State, or any other country that” has diplomatic relations with Bahrain; “disrespecting or humiliating” government bodies; and publishing false news that aims to “disrupt[] public security and effect[] public interests.”<sup>38</sup> These mirror several of the vague and overbroad provisions in the Penal Code, described above.

In April 2021, Bahrain amended the Media Regulation law.<sup>39</sup> Bahraini news agencies report that the amendments include a major section regarding the regulation of digital media, and that the amendments abolish imprisonment as a punishment

for journalists.<sup>40</sup> However, researchers were unable to obtain a copy of the amendments to verify these news reports.

### **2002 Telecommunications Law**

The Telecommunications Law, enacted in 2002, includes vague restrictions on online expression. Article 75(1) prohibits using telecommunications equipment or networks to “send any message” with the knowledge that “the contents of the message are false, misleading, offensive to public policy or morals, endanger the safety of third parties or prejudice the efficiency of any service,” punishable with a fine of up to BHD 10,000 (USD 26,550).<sup>41</sup> As described above, Special Rapporteurs have criticised similar provisions, including prohibitions on sharing “false news,” as overly vague.<sup>42</sup>

### **2006 Antiterrorism Law**

In 2006, Bahrain enacted Law No. 58 on Protecting Society from Acts of Terrorism (Terrorism Law).<sup>43</sup> In 2018, the UN Human Rights Committee criticised the law for its overly broad definition of terrorism, enabling Bahraini authorities arbitrarily to enforce the law to silence protected expression, including that of HRDs and political activists, in violation of the ICCPR.<sup>44</sup> Similarly, the UN Office of the High Commissioner for Human Rights and other stakeholders heavily criticised the law for its overbreadth and vagueness during Bahrain’s 2017 Universal Periodic Review.<sup>45</sup>

UN Special Procedures mandate holders repeatedly have criticised the law’s overbroad definition of terrorism in articles 1 and 2, beginning as early as 2006.<sup>46</sup> Specifically, the Special Rapporteur on human rights and counterterrorism (SR on HR&CT) noted that there were two significant deficiencies in the draft law’s definition of terrorism: “there was no requirement of a specific aim to further an underlying political or ideological cause and some acts were qualified as terrorist without the intention of causing death or serious bodily injury.”<sup>47</sup> These deficiencies persist in the terrorism law today.<sup>48</sup>

Additionally, the terrorism law includes vague and overbroad provisions prohibiting incitement to terrorism. Article 9 prohibits using “a private organization, association, institution, or corporation” to call for the commission of “any of the crimes stipulated in this law,” with a punishment of imprisonment.<sup>49</sup> Article 11 of the law, most recently amended on 23 May 2019, reportedly punishes “anyone who has done anything to promote, glorify, maximise, justify, favour or encourage acts constituting a punishable terrorist activity, whether inside or outside the Kingdom” with up to five years’ imprisonment and a fine between BHD 2000-5000 (USD 5310 – 13,245).<sup>50</sup>

While States are free under international law to adopt provisions that prohibit incitement to terrorism, such provisions must meet a strict standard to satisfy article 19 of the ICCPR.<sup>51</sup> The SR on FOE and the SR on HR&CT have specifically noted that provisions prohibiting incitement to terrorism “must be prescribed by law in precise language, and avoid vague terms such as ‘glorifying’ or ‘promoting’ terrorism.”<sup>52</sup> The overbroad incitement provisions in Bahrain’s terrorism law have been criticised by the SR on HR&CT since its introduction to parliament in 2005 as a draft bill.<sup>53</sup> The 2019 amendment suggest that the government will continue to have its terrorism law deviate from international human rights standards.

Finally, the terrorism law raises concerns related to the right to due process. Under article 27, individuals can be held by an investigation officer for up to 28 days without charge.<sup>54</sup> After that period, the investigation officer can send the individual to the Prosecutor of Terrorist Crimes,<sup>55</sup> who in turn can hold the individual in detention for up to six months.<sup>56</sup> Cumulatively, an individual may be detained for up to seven months without the opportunity to challenge their detention in court. Such delay is inconsistent with fundamental principles of due process, which include universal rights to seek competent, independent, impartial judicial review of the arbitrariness and lawfulness of



deprivations of liberty and to obtain without delay adequate and appropriate remedies.<sup>57</sup>

### **2014 Law on Information Technology Crimes**

In 2014, Bahrain enacted a law on Information Technology Crimes (cybercrime law).<sup>58</sup> Enforced in conjunction with other laws described above, it extends the reach of vague and overbroad restrictions on expression contained in other laws to the internet. For example, article 23 of the cybercrime law provides that anyone who violates any other law using information technology shall be punished under that law, and article 9 prohibits anyone from using “encryption in order to commit or conceal any of the crimes stipulated in this law or any other law.”<sup>59</sup> Under these provisions, Bahraini authorities are empowered to prosecute individuals for online expression that violates the vague and overbroad provisions of the Penal Code, terrorism law, media regulation law, telecommunications law, and other laws.

the Bahraini government has deepened its capacity to surveil and target HRDs. For example, since 2011, human rights organisations and journalists have documented the use of German surveillance technology by Bahraini authorities to surveil, detain, and interrogate Bahraini activists.<sup>64</sup> In 2013, the Bahraini government created a Cybersecurity and Technical Affairs Directorate within the Telecommunications Regulatory Authority to monitor websites and social media networks.<sup>65</sup> Finally, in 2020, through Decree No. 65 of 2020, the government created a new agency under the Ministry of the Interior: the National Cyber Security Centre, which also includes Cyber Policies and Cyber Security directorates.<sup>66</sup> These agencies have adapted to target online activity disfavoured by Bahraini authorities. Most recently in March 2020, the Ministry of the Interior announced that the Cyber Security Directorate was investigating social media accounts that were alleged to have shared “false news” related to COVID-19.<sup>67</sup>

## **Political Context and Policy Development**

The prodemocracy popular movement in Bahrain began in 2011, to which Bahraini authorities responded by using a diversity of measures to clamp down on advocacy for political change.<sup>60</sup> In 2018, the UN Human Rights Committee expressed concern over reports of excessive use of force by Bahraini authorities to suppress the 2011 protests and the increase in use of force against HRDs since then.<sup>61</sup> In the years following the protests, international human rights groups have continued to document the government’s curtailment of political and civil rights.<sup>62</sup>

Bahraini laws criminalising expression, including expression through telecommunications, press, and other media existed long before 2011. Specialised law enforcement units also existed before 2011. In 2004, for example, the Bahraini government created the General Directorate of Anti-Corruption and Economic & Electronic Security, including a Cybercrime Directorate as a sub-agency, within the Ministry of the Interior.<sup>63</sup> But in the last decade,

# TRENDS EMERGING FROM INCIDENTS OF REPRESSION OF ONLINE EXPRESSION IN BAHRAIN

The reported incidents in Bahrain indicate a trend of government sanctions against online expression by HRDs critical of government policies. Those targeted included journalists, lawyers, and other HRDs. Under the jurisprudence of article 19 of the ICCPR, freedom of expression protects political discourse, commentary on public affairs, discussion of human rights, and religious discourse in all means of expression.<sup>68</sup> But the charges brought by the Bahraini government often relied on provisions criminalising protected expression using vague language related to public order specifically.

## Violations of the Right to Online Freedom of Expression

A significant number of the reported incidents concern the criminalisation of online expression relating to criticism and protest of government actions or policies. The Human Rights Council repeatedly has held that suppression of opinions critical of “government policies and political debate,” “corruption in government,” and “peaceful demonstrations” are impermissible and violate the right to freedom of expression.<sup>69</sup> Under international law, States are responsible for creating a safe and enabling environment for HRDs, such as journalists and activists, to carry out their work.<sup>70</sup> Bahrain has failed to fulfil its obligations to HRDs and, instead, has targeted journalists and HRDs.

On 12 June 2018, commando forces, Criminal Investigation Directorate (CID) officers, and plainclothes police officers apprehended photojournalist Hasan Mohamed Qambar when they raided the house in which he was staying.<sup>71</sup> Authorities took him into custody for in absentia convictions on charges related to his filming pro-reform protests and disturbances years earlier.<sup>72</sup>

Reuters, a Russian State-owned outlet (RT Arabic), and other news outlets had published Qambar’s video footage of protests and abuses by Bahraini security officers.<sup>73</sup> Reportedly, prior to June 2018, Bahraini authorities convicted Qambar in absentia of seven charges, including burning tires, assaulting a police officer, and participating in a terrorist organisation.<sup>74</sup> Authorities sentenced Qambar to a combined total of over 100 years in prison for the in absentia convictions.<sup>75</sup> Qambar remains in prison.<sup>76</sup>

In April 2019, Bahraini authorities detained another journalist, Ibrahim al Sheikh, a columnist for *Akhbar al-Kaleej*, a privately owned daily publication based in Bahrain.<sup>77</sup> In a column, al Sheikh had written critically about Bahraini press coverage of the Saudi-led military campaign in Yemen, drawing comparisons to Egyptian State media claims that the country prevailed in the Six Day War and Iraqi officials’ claims of victory against the 2003 U.S. invasion.<sup>78</sup> The public prosecutor’s office announced that it detained an unnamed journalist, whom dissident groups confirmed to be al Sheikh, for having “cast doubt on the capabilities of the defence forces and the coalition.”<sup>79</sup> It is unclear whether authorities released al-Sheikh and, if so, when.

Yet another example is the arrest of lawyer Abdullah Al-Shamlawi, who has represented prominent political opposition figures, such as Sheikh Ali Salman, the imprisoned leader of the al-Wefaq political party.<sup>80</sup> Abdullah al-Shamlawi posted two tweets expressing critical views on religious practices relating to fasting and Ashura, the most important religious commemoration for Shi’a in 2019.<sup>81</sup> Al-Shamlawi was convicted on charges of “incit[ing] hatred of a religious sect” and “misusing a telecommunications device”<sup>82</sup> and sentenced to eight months in prison, to be suspended by payment of 100BD (approximately USD 265).<sup>83</sup> The

government also dropped the charge of “misusing a telecommunications device,” after Al-Shamlawi reached a settlement with the complainant.<sup>84</sup> The Third High Criminal Court, in adjudicating Al-Shamlawi’s appeal, suspended his prison sentence.<sup>85</sup> International human rights monitors report that Al-Shamlawi’s arrest is a part of the Bahraini government’s campaign of “judicial harassment” against attorneys, including defence lawyers like Al-Shamlawi, who are critical of the Bahraini government.<sup>86</sup>

Bahraini authorities pressed charges against lawyer and internet activist Abdullah Hashim on 15 May 2019.<sup>87</sup> Hashim had posted tweets between May 2017 and April 2019, concerning social and political issues in Bahrain, including government corruption.<sup>88</sup> On the day of his arrest, Hashim tweeted: “My phone has been seized as an instrument of crime.... This means that the case is pending and this release does not mean the end of the case.”<sup>89</sup> The Public Prosecutor charged Hashim with “publishing false and unfounded news that would harm the public order, cause confusion and instability among the community as well as questioning the performance of the authorities and their ability to maintain security and protect society.”<sup>90</sup> Authorities detained Hashim for one week.<sup>91</sup> The outcome of the case is unknown.

There is one reported incident in which the Bahraini government prosecuted a political opposition figure and former prisoner of conscience, Ibrahim Sharif, for a tweet critical of a foreign leader.<sup>92</sup> The UN Office of the High Commissioner of Human Rights considers that politicians may be considered HRDs when they act to condemn corruption.<sup>93</sup> In this case, a court convicted Sharif, a member of Parliament who serves as a member of the Central Committee of the non-sectarian National Democratic Action Society (Wáad),<sup>94</sup> and sentenced him to six months in prison and fined him 500 dinars (USD 1,300) for a tweet criticising the human rights record of Sudanese President Omar al-Bashir.<sup>95</sup> Thus the government arguably targeted Sharif for acting as an HRD. According to authorities, this act was a violation of

article 215 of the Bahraini Penal Code, under which anyone can be imprisoned for up to two years for “publicly insulting a foreign country... or its leader.”<sup>96</sup>

The Human Rights Committee has expressed concern regarding the serious restrictions posed on the freedom of expression and the large number of arrests and prosecutions of individuals criticising Bahraini State authorities or political figures, including through social media.<sup>97</sup> The government’s targeting of activists who criticise Bahraini authorities and political figures violates online freedom of expression. The SR on FOE has stressed that protection of the State and its officials from criticism is not sufficient justification to restrict this right.<sup>98</sup>

## Additional Human Rights Violations

The reported incidents in Bahrain indicate that State actions repressing online freedom of expression also bring violations of other human rights standards, such as reprisal, arbitrary detention, and fair trial standard violations.

### *Reprisal*

There is evidence that Bahraini authorities have engaged in reprisals against HRDs in violation of their international law commitments. Following women’s HRD Ebtisam Al Saegh’s posting a series of tweets highlighting a range of human rights concerns in Bahrain, she began receiving threatening messages after July 2018, from a well-known Bahraini security officer, ordering her to close her accounts and to stop her human rights work, under threat of public defamation and rape.<sup>99</sup> Her case is consistent with pattern of reprisals against HRDs and journalists because of their work and one which the Human Rights Committee noted in its 2018 report on Bahrain.<sup>100</sup> The High Commissioner for Human Rights recommends that Bahrain take action and “[a]bstain from taking restrictive measures or reprisals against HRDs.”<sup>101</sup> UN criticism underscores that Bahraini reprisals against human rights activists violate the State’s human rights obligations.

***Arbitrary detention***

Arbitrary deprivation of liberty is prohibited under article 9 of the ICCPR, customary international law, and this prohibition is a *jus cogens* norm, meaning it applies universally and without exception.<sup>102</sup>

A deprivation is arbitrary including when it is without a legal basis as well as when it results from the exercise of freedom of expression.<sup>103</sup> As the UN Working Group on Arbitrary Detention has reiterated, any measure depriving an individual of liberty must meet strict standards of lawfulness, necessity, and proportionality to avoid arbitrariness.<sup>104</sup> Deprivations may be arbitrary when they are based on discriminatory grounds against HRDs and activists, violating the rights to equality before the law and the right to equal protection under article 26 of the ICCPR.<sup>105</sup>

Hassan Qambar, Ibrahim Al Sheikh, Abdullah al-Shamlawi, Abdullah Hashim, and Ibrahim Sharif were all subjected to arbitrary detention because they were arrested and/or convicted for exercising protected expression under article 19.<sup>106</sup>

***Due process violations***

The rights and standards enveloped in the right to a fair trial are procedural safeguards that States may not limit.<sup>107</sup> Access to justice means that no individual can be deprived of their right to claim justice in procedural terms.<sup>108</sup>

When adjudicating a criminal case, those being charged and tried are entitled to, among other rights, be present at their own trial and be allowed to present a defence.<sup>109</sup> The conditions of Qambar's arrest and trial violate fair trial rights. The right to a fair trial is captured in article 14 of the ICCPR, and requires that no individual be deprived of their right to claim justice in procedural terms.<sup>110</sup> Bahraini authorities tried and convicted Qambar in absentia prior to detaining him in 2018.<sup>111</sup> Under article 14 (3)(a) of the ICCPR, an individual can only be tried in absentia so long as all due steps have been taken to

inform accused persons of the charges and to notify them of the proceedings.<sup>112</sup> There is no indication that the authorities took the requisite "all due steps" to inform Qambar prior to his trial, thus violating international law.<sup>113</sup>

# CONCLUSIONS AND RECOMMENDATIONS

The Bahraini government has promulgated antiterrorism, cybercrime, and media regulation laws and created specialised agencies that restrict online freedom of expression in contravention of international law and standards. These laws are vague, overbroad, and criminalise protected expression in violation of article 19 of the ICCPR. The reported incidents provide credible evidence of a pattern of government violation of the right of HRDs to online freedom of expression by sanctioning defenders for disseminating views critical of the government's policies. The government response has violated additional rights of HRDs through reprisals, arbitrary arrests, and due process violations.

To address these concerns, we offer the following general recommendations and country-specific recommendations.

## General Recommendations

### *To Governments of Gulf States and Neighbouring Countries:*

- ✦ Eliminate laws and articles in national legal frameworks that criminalise online freedom of expression protected under international human rights law, specifically:
  - All laws including anti-cybercrime, anti-terrorism, communications, media, penal, and technology laws that restrict online or offline expression through provisions to protect public order, national security, or the national economy; insults laws; and laws that criminalise fake news, that do not conform to international human rights standards and satisfy the principles of legality, legitimacy, necessity and proportionality;
  - Decriminalise the offense of defamation;
  - Revise anti-cybercrime laws to include affirmative protection for the legitimate online

expression of HRDs, including journalists.

- ✦ Cease using deportation and travel bans as tools for targeting HRDs for their online human rights advocacy, and refrain from infringing on their right to freedom of movement.
- ✦ Reform legal institutions, including the criminal legal system, to promote the independence and autonomy necessary for:
  - Investigating human rights violations committed against HRDs by law enforcement, such as engaging in unlawful surveillance of HRDs, enforced disappearances, holding HRDs in unlawful detention, incommunicado, and subjecting them to ill-treatment and torture;
  - Ensuring that HRDs', citizens', and residents' right to freedom of movement is not violated;
  - Ensuring the judiciary upholds international standards guaranteeing the right to fair trial.

### *To the UN Human Rights Council:*

- ✦ Instruct the UN Office of the High Commissioner for Human Rights to undertake a study of the transnational cooperation among governments to affect the apprehension and rendering of foreign HRDs to their countries of origin for prosecution of online expression that is protected under international law.
- ✦ Instruct the UN Office of the High Commissioner for Human Rights to undertake a study to identify and track developments in the surveillance regimes in each State in the region. The governments in question should cooperate in this study. The study should identify third party actors including business enterprises and other States that contribute to advancing the surveillance infrastructure in each State concerned. State and non-State actors complicit in illegal surveillance of HRDs by governments should be held accountable.

***To All States:***

- ✦ Implement an immediate moratorium on the use, acquisition, sale and transfer of surveillance technology. This moratorium should extend until adequate global controls and safeguards against abuse are in place.

**Country Recommendations**

In addition to the above recommendations, States should revise their domestic laws and institutions to ensure compliance with international human rights standards regarding online freedom of expression as indicated below.

**We call on the government of Bahrain to create a safe and enabling environment for HRDs including by taking the following steps:**

- ✦ Eliminate laws and articles in Bahrain’s legal frameworks that criminalise online freedom of expression protected under international human rights law, or that are inconsistent with the right to due process and a fair trial, including:
  - 1976 Penal Code articles 133–134, 160, 165, 168, 209, 214–16, 309, 310, 370;
  - 2002 Media Regulation Law;
  - 2002 Telecommunications Law article 75(1);
  - 2006 Antiterrorism Law articles 1, 2, 9, 11, 26, 27;
  - 2014 Law on Information Technology Crimes articles 9, 23.

## NOTES

- 1 Researchers identified reported incidents of violations of online freedom of expression by conducting searches for cases involving Bahrain between May 2018 and October 2020, from the following international media outlets and human rights organisations that document human rights violations: Amnesty International, Al Jazeera, ARTICLE 19, British Broadcasting Corporation, Committee to Protect Journalists, Front Line Defenders, Gulf Centre for Human Rights, and Human Rights Watch. Researchers also searched for communications from special procedures mandate holders regarding incidents alleging violations of freedom of expression in Bahrain in the UN database of Communications. Researchers supplemented international research by consulting the following domestic media outlets: *The Daily Tribune*, *Gulf Daily News*, *Bahrain News Gazette*, and *BizBahrain*, and used the embedded search functions to retrieve news updates using these keywords: freedom of expression, digital expression, digital, online, post, tweet, Twitter, Facebook, arrest, expression, and human rights defender during the relevant period of study. The domestic sources provided no relevant results. After finding cases using the international sources, researchers conducted additional searches using Google search engine of the victim's name (with various English spellings) to find additional case information. See methodology section for more information.
- 2 Charles Gordon Smith & Jill Ann Crystal, *Bahrain: Government and Society*, BRITANNICA. This characterization of the political system of the country is offered for descriptive purposes; a normative evaluation of the political system as such is beyond the scope of this chapter. The Kingdom of Bahrain, formerly a protectorate of the United Kingdom (UK), declared independence from the UK in 1971. *Bahrain: History*, BRITANNICA. Initially governed by an emir, in 2002, Bahrain became an Islamic constitutional monarchy. *Bahrain: Government and Society*, *supra*.
- 3 Michel Forst (Special Rapporteur on the Situation of Human Rights Defenders), *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, ¶ 77, U.N. Doc. A/HRC/31/55 (Feb. 1, 2016); Civil Society Space, Human Rights Council Res. 27/31, U.N. Doc. A/HRC/RES/27/31, ¶ 3 (Oct. 3, 2014); Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, G.A. Res. 53/144, U.N. Doc. A/RES/53/144 (Mar. 8, 1999) [hereinafter G.A. Res. 53/144].
- 4 Simon Kemp, *Digital 2021: Bahrain*, DATAREPORTAL (Feb. 11, 2021).
- 5 *Id.*
- 6 International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR]. *UN Treaty Body Database: Ratification Status for Bahrain*, OHCHR.ORG. Bahrain has not ratified the optional protocols to the ICCPR. *Id.* It has ratified the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women, International Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Rights of the Child along with both optional protocols on the involvement of children in armed conflict, and the sale of children child prostitution and child pornography, and the Convention on the Rights of Persons with Disabilities. *Id.*
- 7 League of Arab States, Arab Charter on Human Rights, May 22, 2004, reprinted in 12 Int'l Hum. Rts. Rep. 893 (2005) (entered into force Mar. 15, 2008); *League of Arab States: Key Legal Texts*, INT'L CTR. FOR NOT-FOR-PROFIT L. (Sept. 25, 2021).
- 8 World Conference on Human Rights, *Vienna Declaration and Programme of Action*, pmbl. at 20-21, §§ I(1), I(3), I(8), U.N. Doc. A/CONF.157/24 (Part 1) (Oct. 13, 1993); Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/810, at art. 19 (Dec. 10, 1948) [hereinafter UDHR].
- 9 Amiri Decree No. 15 of 1976, Bahrain Penal Code [hereinafter Penal Code] (Bahr.) (unofficial English translation); *Bahrain: Grim Human Rights Violations Behind the Glamour of the Grand Prix*, AMNESTY INT'L (Mar. 27, 2019) (reporting that Bahraini authorities have used articles 134, 160, 165, 168, 214-16, 310 and others to target protestors and government critics).
- 10 Hum. Rts. Comm., *Concluding Observations on the Initial Report of Bahrain*, ¶ 53, U.N. Doc. CCPR/C/BHR/CO/1 (Nov. 15, 2018) [hereinafter *HRC Concluding Observations Report of Nov. 2018*].
- 11 Hum. Rts. Comm., *General Comment No. 34: Article*

- 19: *Freedoms of Opinion and Expression*, ¶ 25, U.N. Doc. CCPR/C/GC/34 (Sept. 12, 2011) [hereinafter *HRC General Comment No. 34*]; David Kaye (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, ¶ 7, U.N. Doc. A/HRC/32/38 (May 11, 2016) [hereinafter *SRFOE Report of May 2016*]; Working Grp. on Arbitrary Det., *Opinion No. 71/2019 Concerning Issa al-Nukhefi, Abdulaziz Youssef Mohamed al-Shubaili and Issa Hamid al-Hamid (Saudi Arabia)*, ¶ 73, U.N. Doc. A/HRC/WGAD/2019/71 (Feb. 14, 2020) (“vaguely and broadly worded provisions ... which cannot qualify as *lex certa*, violate the due process of law undergirded by the principle of legality in article 11 (2) of the Universal Declaration of Human Rights.”); UDHR, *supra* note 8, at arts. 11, 19; ICCPR, *supra* note 6, at art. 19.
- 12 *SRFOE Report of May 2016, supra* note 11, ¶ 39; Frank La Rue (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, Frank La Rue, ¶ 34, U.N. Doc. A/HRC/17/27 (May 16, 2011) [hereinafter *SRFOE Report of May 2011*].
- 13 Penal Code, *supra* note 9, at art. 133; CIVICUS, Bahrain Ctr. for Hum. Rts. & Gulf Ctr. for Hum. Rts., *Bahrain: Joint Submission to the UN Universal Periodic Review, 27th Session of the UPR Working Group*, ¶ 3.3 (Sept. 22, 2016) [hereinafter *Joint Submission on Bahrain to the UN Universal Periodic Review*] (noting the use of article 133 of the Penal Code by Bahraini authorities to target HRDs).
- 14 Penal Code, *supra* note 9, at art. 134.
- 15 *Id.* at art. 168 (amended by Legislative Decree No. 9 of 1982 with Respect to the Amendments to the Penal Code of 1976, art. 1 [hereinafter 1982 Legislative Decree No. 9] (Bahr.) (unofficial English translation of the Penal Code and its 1982 amendments on pp. 89, 92 of the translation)).
- 16 *Id.* at art. 160 (amended by 1982 Legislative Decree No. 9, *supra* note 15 (unofficial English translation of the Penal Code and its 1982 amendments on pp. 89, 91 of the translation)).
- 17 *Id.* at art 165 (amended by 1982 Legislative Decree No. 9, *supra* note 15 (unofficial English translation of the Penal Code and its 1982 amendments on pp. 89, 91 of the translation)). Article 165 of the Penal Code does not specify the length of the prison sentence. Both articles 52 and 54 of the Penal Code address the prison term that applies when not otherwise provided by the law. *Id.* at arts. 52, 54. There appears to be a conflict between these two provisions and thus the sentence for a violation of article 165 is unclear. Article 52 of the Penal Code states that “imprisonment” can include a life sentence or “a term of temporary imprisonment” which “shall not be less than 3 years and shall not be more than 15 years unless the law provides otherwise,” *id.* at art. 52, whereas article 54 states that “a prison sentence shall not be less than 10 days and shall not be more than 3 years unless the law otherwise provides,” *id.* at art. 54.
- 18 *SRFOE Report of May 2016, supra* note 11, ¶ 39; Margaret Sekaggya (Special Rapporteur on the Situation of Human Rights Defenders), *Situation of Human Rights Defenders*, ¶ 24, U.N. Doc. A/67/292 (Aug. 10, 2012) [hereinafter *SRHRD Report of Aug. 2012*].
- 19 U.N. Special Rapporteur on Freedom of Op. & Expression, Org. for Sec. & Co-operation in Eur. Representative on Freedom of the Media, Org. of Am. States Special Rapporteur on Freedom of Expression & African Comm’n on Hum. & Peoples’ Rts. Special Rapporteur on Freedom of Expression & Access to Info., *Joint Declaration on Freedom of Expression and “Fake News”, Disinformation and Propaganda*, ¶ 2(a) (Mar. 3, 2017) [hereinafter *Joint Declaration on Freedom of Expression and Fake News, Disinformation, and Propaganda*].
- 20 Penal Code, *supra* note 9, at art. 370.
- 21 *HRC General Comment No. 34, supra* note 11, ¶ 47. See also *SRFOE Report of May 2011, supra* note 12, ¶ 36 (“defamation should be decriminalized”).
- 22 *HRC General Comment No. 34, supra* note 11, ¶ 47.
- 23 *Id.* ¶ 47. See also Frank La Rue (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, Frank La Rue, ¶¶ 83-88, U.N. Doc. A/HRC/20/17 (June 4, 2012) [hereinafter *SRFOE Report of June 2012*].
- 24 Penal Code, *supra* note 9, at art. 214.
- 25 *Id.* at art. 215.
- 26 *Id.* at art. 216.
- 27 *Id.* at arts. 52, 54, 214-216; *Joint Submission on Bahrain to the UN Universal Periodic Review, supra* note 13, ¶ 4.5 (describing 2013 amendment to article 214 which extends the prison sentence for violating that provision to



- 1-7 years). Article 216 of the Penal Code does not specify the length of the prison sentence. Both articles 52 and 54 of the Penal Code address the prison term that applies when not otherwise provided by the law. Penal Code, *supra* note 9, at arts. 52, 54. There appears to be a conflict between articles 52 and 54 and therefore the sentence for a violation of article 216 is unclear. Article 52 of the Penal Code states that “imprisonment” can include a life sentence or “a term of temporary imprisonment” which “shall not be less than 3 years and shall not be more than 15 years unless the law provides otherwise,” *id.* at art. 52, whereas article 54 states that “a prison sentence shall not be less than 10 days and shall not be more than 3 years unless the law otherwise provides,” *id.* at art. 54.
- 28 HRC General Comment No. 34, *supra* note 11, ¶ 38; SRFOE Report of June 2012, *supra* note 23, ¶ 88; David Kaye (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Promotion and Protection of the Right to Freedom of Opinion and Expression*, ¶ 33, U.N. Doc. A/71/373 (Sept. 6, 2016).
- 29 HRC General Comment No. 34, *supra* note 11, ¶ 38.
- 30 *Id.* ¶ 48 (“Prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in article 20, paragraph 2, of the Covenant”); Hum. Rts. Council, *Freedom of Religion or Belief: Report of the Special Rapporteur on Freedom of Religion or Belief*, ¶¶ 21, 23, U.N. Doc. A/HRC/40/58 (Mar. 5, 2019) (“These initiatives underscore the growing consensus in the international human rights community that anti-blasphemy laws run counter to the promotion of human rights for all persons.”); ICCPR, *supra* note 6, arts. 19-20.
- 31 Penal Code, *supra* note 9, at art. 309.
- 32 *Id.* at art. 310.
- 33 *Id.* at art. 309-10.
- 34 HRC Concluding Observations Report of Nov. 2018, *supra* note 10, ¶ 53.
- 35 Legislative Decree No. 47 of 2002 on Organizing the Press, Printing and Publishing, art. 1 (Bahr.) (unofficial Arabic version; unofficial English translation on file with authors).
- 36 *Id.* at art. 68.
- 37 *Id.* at art. 69.
- 38 *Id.* at art. 70.
- 39 Bahrain Abolishes Jailing Journalists in Major Amendments to Press Law, ARAB NEWS (Apr. 6, 2021); *Amendments to Press Law Reinforce Freedom, Strengthen Right to Information*, BAHRAIN NEWS AGENCY (Apr. 6, 2021).
- 40 Bahrain Abolishes Jailing Journalists in Major Amendments to Press Law, *supra* note 39; *Amendments to Press Law Reinforce Freedom, Strengthen Right to Information*, *supra* note 39.
- 41 Legislative Decree No. 48 of 2002 Promulgating the Telecommunications Law, art. 75(1) (Bahr.) (unofficial English translation current as of Apr. 12, 2009).
- 42 Joint Declaration on Freedom of Expression and Fake News, Disinformation, and Propaganda, *supra* note 19, ¶ 2(a); SRFOE Report of May 2016, *supra* note 11, ¶ 39; SRHRD Report of Aug. 2012, *supra* note 18, ¶ 24 (“Provisions that criminalize the publication of articles or photos that could harm national security, public order, public health or public interest, incite violence, constitute sedition or have negative consequences for the financial climate of the country are overly broad and restrictive.”).
- 43 Law No. 58 of 2006 with Respect to Protecting the Society from Terrorist Acts [hereinafter Terrorism Law] (Bahr.) (unofficial English translation); see also INFORMATION NOTE ON INTERNATIONAL TERRORISM (2020) (English translation).
- 44 HRC Concluding Observations Report of Nov. 2018, *supra* note 10, ¶ 29.
- 45 Working Grp. on the Universal Periodic Rev., *Report of the Working Group on the Universal Periodic Review: Bahrain*, ¶ 114.70–114.71, U.N. Doc. A/HRC/36/3 (July 10, 2017); Letter from Zeid Ra’ad Al Hussein, High Comm’r for Hum. Rts., U.N. Office of the High Comm’r for Hum. Rts., to Abdulla Bin Faisal Bin Jabur Al Doseri, Assistant Minister for Foreign Affs., Kingdom of Bahr. annex at 3 (Sept. 29, 2017) [hereinafter Sept. 2017 Letter from the OHCHR to Bahrain]; U.N. Off. of the High Comm’r for Hum. Rts., *Summary of Stakeholders’ Submission on Bahrain: Report of the Office of the United Nations High Commissioner for Human Rights*, ¶ 16, U.N. Doc. A/HRC/WG.6/27/BHR/3 (Feb. 20, 2017).
- 46 Frank La Rue (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression) et al., Communication to Bahrain, at 1, 3, Ref. No. BHR 5/2013 (Aug. 14, 2013) (describing communications sent to Bahraini government on the draft law in March and June 2006); Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism,

- Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism: Addendum—Communications with Governments*, ¶¶ 14-15, U.N. Doc. A/HRC/4/26/Add.1 (Mar. 15, 2007) [hereinafter *SRHRCT Report of Mar. 2007*] (expressing concern at the vagueness and overbreadth of articles 1 and 2 of the draft law).
- 47 *SRHRCT Report of Mar. 2007*, *supra* note 46, ¶ 15.
- 48 Terrorism Law, *supra* note 43, at arts. 1-2.
- 49 *Id.* at art. 9.
- 50 *Bahrain: Targeting of Human Rights Defenders and Online Activists Accelerates*, GCHR (May 27, 2019).
- 51 According to the SR on HR&CT and the SR on FOE, such provisions:
- (a) must be limited to the incitement to conduct that is truly terrorist in nature; (b) must restrict freedom of expression no more than is necessary for the protection of national security, public order and safety or public health or morals; (c) must be prescribed by law in precise language, and avoid vague terms such as “glorifying” or “promoting” terrorism; (d) must include an actual (objective) risk that the act incited will be committed; (e) should expressly refer to intent to communicate a message and intent that this message incite the commission of a terrorist act; and (f) should preserve the application of legal defences or principles leading to the exclusion of criminal liability by referring to “unlawful” incitement to terrorism.
- Ben Emmerson (Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism), *Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism*, ¶ 24, U.N. Doc. A/HRC/31/65 (Apr. 29, 2016) [hereinafter *SRHRCT Report of Apr. 2016*]; Frank La Rue (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Promotion and Protection of the Right to Freedom of Opinion and Expression*, ¶ 34, U.N. Doc. A/66/290 (Aug. 10, 2011) [hereinafter *SRFOE Report of Aug. 2011*].
- 52 *SRHRCT Report of Apr. 2016*, *supra* note 51, ¶ 24; *SRFOE Report of Aug. 2011*, *supra* note 51, ¶ 34.
- 53 *SRHRCT Report of Mar. 2007*, *supra* note 46, ¶¶ 14-15 (expressing concern at article 12 of Bahrain’s draft terrorism law, tabled before parliament in 2005: “criminalizing the promotion or approval in any way of a crime committed for terrorist purposes”).
- 54 Terrorism Law, *supra* note 43, at art. 27.
- 55 *Id.*
- 56 *Id.* at art. 26.
- 57 Working Grp. on Arbitrary Det., *Report of the Working Group on Arbitrary Detention: United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court*, annex, princ. 1, U.N. Doc. A/HRC/30/37 (July 6, 2015) [hereinafter *WGAD Report of July 2015*]; Hum. Rts. Comm., *General Comment No. 32: Article 14, Right to Equality Before Courts and Tribunals and to Fair Trial*, ¶¶ 15, 19, 31-34, 38, U.N. Doc. CCPR/C/GC/32 (Aug. 23, 2007) [hereinafter *HRC General Comment No. 32*]; ICCPR, *supra* note 6, at art. 14.
- 58 Law No. 60 of 2014 Concerning Information Technology Crimes, arts. 9, 23 [hereinafter *Cybercrime Law*] (Bahr.) (official Arabic version; unofficial English translation).
- 59 *Id.*
- 60 *Freedom of Opinion and Expression in Bahrain: Where to?*, BAHRAIN CTR. FOR HUM. RTS. (Sept. 28, 2020).
- 61 *HRC Concluding Observations Report of Nov. 2018*, *supra* note 10, ¶ 35.
- 62 *Bahrain: Dreams of Reform Crushed 10 Years After Uprising*, AMNESTY INT’L (Feb. 11, 2021); *Freedom of Opinion and Expression in Bahrain: Where to?*, *supra* note 60; *Freedom on the Net 2020: Bahrain*, FREEDOM HOUSE. From 2016 through 2018, the Bahraini government disbanded Al-Wefaq, the largest political opposition party, and clamped down on opposition political and religious leaders, suppressing the political electorate. *Bahrain: Widespread Pre-Election Clampdown on Political Opposition and Activists*, AMNESTY INT’L (Nov. 23, 2018); *Freedom of Opinion and Expression in Bahrain: Where to?*, *supra* note 60.
- 63 *Cyber Security*, BAHRAIN.BH.
- 64 Vernon Silver & Ben Elgin, *Torture in Bahrain Becomes Routine with Help from Nokia Siemens*, BLOOMBERG (Aug. 22, 2011); Trevor Timm & Jillian C. York, *Surveillance Inc.: How Western Tech Firms Are Helping Arab Dictators*, ATLANTIC (Mar. 6, 2012); *OECD Complaint: Trovicor Exporting Surveillance Technology to Bahrain*, PRIV. INT’L (Feb. 1, 2013).
- 65 *Bahrain: The “Cyber Safety Directorate” Monitors Internet Activity in Style Similar to Big Brother*, BAHRAIN CTR.

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- FOR HUM. RTS. (Nov. 25, 2013); *Executive Structure, TELECOMMS. REGUL. AUTH. KINGDOM BAHRAIN.*
- 66 *HM King Issues Decree, Restructuring Interior Ministry, BAHRAIN NEWS AGENCY* (Oct. 14, 2020).
- 67 AMNESTY INT’L, AMNESTY INTERNATIONAL REPORT 2020/21: THE STATE OF THE WORLD’S HUMAN RIGHTS 77 (2021).
- 68 ICCPR, *supra* note 6, at art. 19(1); HRC General Comment No. 34, *supra* note 11, ¶¶ 11-12.
- 69 Hum. Rts. Council Resolution 12/16, U.N. Doc. A/HRC/RES/12/16, ¶ 5(p)(i) (Oct. 12, 2009) (freedom of opinion and expression).
- 70 G.A. Res. 53/144, *supra* note 3, at art. 2(2); Michel Forst (Special Rapporteur on the Situation of Human Rights Defenders), *Situation of Human Rights Defenders*, ¶¶ 15, 36, U.N. Doc. A/73/215 (July 23, 2018); Margaret Sekaggya (Special Rapporteur on the Situation of Human Rights Defenders), *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, Margaret Sekaggya, ¶ 32, U.N. Doc. A/HRC/19/55 (Dec. 21, 2011); Margaret Sekaggya (Special Rapporteur on the Situation of Human Rights Defenders), *Report of the Special Rapporteur on the Situation of Human Rights Defenders Margaret Sekaggya*, ¶¶ 90-91, U.N. Doc. A/HRC/25/55 (Dec. 23, 2013) (stating that there is a need to pay particular attention to human rights defenders who face extraordinary risks due to their work, and that the SR is appalled that journalists and media workers are targeted because of their reports on human rights violations; the SR is also concerned that restrictions on media and press freedom could foster a climate of intimidation, stigmatization, violence, and self-censorship).
- 71 *Profiles in Persecution: Hasan Mohamed Qambar*, AMS. FOR DEMOCRACY & HUM. RTS. BAHR. (July 13, 2018) [hereinafter *Profiles in Persecution*].
- 72 *Hassan Qambar: Imprisoned*, COMM. PROTECT JOURNALISTS; *Profiles in Persecution*, *supra* note 71.
- 73 *Hassan Qambar: Imprisoned*, *supra* note 72.
- 74 *Id.*; *Profiles in Persecution*, *supra* note 71; *Bahraini Photographer Sentenced to More than 100 Years in Prison*, REPS. WITHOUT BORDERS (Dec. 13, 2018).
- 75 *Bahraini Photographer Sentenced to More than 100 Years in Prison*, *supra* note 74.
- 76 *Hassan Qambar: Imprisoned*, *supra* note 72; *Bahraini Photographer Sentenced to More than 100 Years in Prison*, *supra* note 74.
- 77 *Bahraini Journalist Ibrahim al-Sheikh Believed to Be Detained on False News Charges*, COMM. TO PROTECT JOURNALISTS (Apr. 17, 2019).
- 78 *Id.*
- 79 *Id.*
- 80 *Bahrain: Lawyers Prosecuted on Speech Charges*, HUM. RTS. WATCH (Sept. 9, 2020).
- 81 *Id.* Ashura is the religious commemoration of the martyrdom of Hussein, a grandson of the Prophet Muhammad, and is a major religious commemoration for Shia Muslims. *What Is Ashura?*, BBC (Dec. 6, 2011).
- 82 *Bahrain: Lawyers Prosecuted on Speech Charges*, *supra* note 80; *Abdullah Al-Shamlawi Avoids Prison Sentence for Social Media Posts*, LAWS. FOR LAWS. (Sept. 18, 2020); *Bahrain: GCHR Declares Solidarity with Human Rights Lawyer Abdullah Al-Shamlawi, Sentenced to Prison for Tweets*, GCHR (Sept. 15, 2020).
- 83 *Bahrain: Lawyers Prosecuted on Speech Charges*, *supra* note 80; *Bahrain: GCHR Declares Solidarity with Human Rights Lawyer Abdullah Al-Shamlawi, Sentenced to Prison for Tweets*, *supra* note 82.
- 84 *Bahrain: GCHR Declares Solidarity with Human Rights Lawyer Abdullah Al-Shamlawi, Sentenced to Prison for Tweets*, *supra* note 82; *Prominent Bahraini Lawyer Avoids Prison Sentence for Tweets*, BAHR. INST. FOR RTS. & DEMOCRACY (Sept. 14, 2020).
- 85 *Bahrain: GCHR Declares Solidarity with Human Rights Lawyer Abdullah Al-Shamlawi, Sentenced to Prison for Tweets*, *supra* note 82; *Prominent Bahraini Lawyer Avoids Prison Sentence for Tweets*, *supra* note 84.
- 86 *Bahrain: Lawyers Prosecuted on Speech Charges*, *supra* note 80.
- 87 *Id.*; *Bahrain: Targeting of Human Rights Defenders and Online Activists Accelerates*, *supra* note 50.
- 88 *Bahrain: Lawyers Prosecuted on Speech Charges*, *supra* note 80.
- 89 *Bahrain: Targeting of Human Rights Defenders and Online Activists Accelerates*, *supra* note 50.
- 90 *Id.*; *Bahrain Charges Lawyer of Sharing “Fake News” for His Tweets*, AP NEWS (May 15, 2019).
- 91 *Bahrain Charges Lawyer of Sharing “Fake News” for His Tweets*, *supra* note 90.

- 92 *Bahrain: Opposition Leader Sentenced for “Publicly Insulting” Sudanese President*, AMNESTY INT’L (Mar. 13, 2019).
- 93 UNITED NATIONS, HUMAN RIGHTS DEFENDERS: PROTECTING THE RIGHT TO DEFEND HUMAN RIGHTS, FACT SHEET NO. 29, at 8 (“A politician who takes a stand against endemic corruption within a Government is a human rights defender for his or her action to promote and protect good governance and certain rights that are threatened by such corruption.”).
- 94 *Bahrain: Opposition Leader Sentenced for “Publicly Insulting” Sudanese President*, *supra* note 92; Hassan M. Fattah, *In Bahrain, a Referendum on Promises*, N.Y. TIMES (Nov. 25, 2006).
- 95 The tweet reads: “Get out of here, man.. 30 years ago, Omar al-Bashir came on the back of a tank claiming ‘salvation’. During his reign, civil wars have piled up, the South seceded, and he has impoverished, starved and degraded the kind and noble Sudanese people. The time has come for freedom for the Sudanese and the departure of the dictatorial president. #Cities\_of\_Sudan\_Are\_Rising\_Up.” *Bahrain: Opposition Leader Sentenced for “Publicly Insulting” Sudanese President*, *supra* note 92.
- 96 *Id.*
- 97 HRC Concluding Observations Report of Nov. 2018, *supra* note 10, ¶ 53. The committee has also stated that it is concerned about the significant restriction of digital rights, including the power to publish material that can be seen as encroaching on religions and jeopardising public peace.
- 98 Frank La Rue (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Expression, Mr. Frank La Rue*, ¶¶ 81(i), 82, U.N. Doc. A/HRC/14/23 (Apr. 20, 2010); *SRFOE Report of May 2011*, *supra* note 12, ¶ 37.
- 99 Elina Steinerte (Vice-Chair of the Working Group on Arbitrary Detention) et al., *Communication to Bahrain*, at 2, Ref. No. AL BHR 7/2018 (Jan. 17, 2019) [hereinafter *Jan. 2019 Communication to Bahrain*].
- 100 The Committee received a number of reports of reprisals against journalist and human rights defenders, including continuing reports of travel bans, harassment or intimidation, death threats, violence, arrests, and arbitrary detention, which appear to have escalated in the last few years. *HRC Concluding Observations Report of Nov. 2018*, *supra* note 10, ¶ 59.
- 101 The High Commissioner recommends specific actions to refrain from restrictions and reprisals against HRDs including strengthening legislative frameworks, releasing of HRDs unlawfully detained, and decriminalising defamation. Sept. 2017 Letter from the OHCHR to Bahrain, *supra* note 45, at 4.
- 102 *WGAD Report of July 2015*, *supra* note 57, ¶ 11; Hum. Rts. Comm., *General Comment No. 35: Article 9 (Liberty and Security of Person)*, ¶¶ 17, 22-23, 53, U.N. Doc. CCPR/C/GC/35 (Dec. 16, 2014).
- 103 *WGAD Report of July 2015*, *supra* note 57, ¶ 10; UDHR, *supra* note 8, at art. 19; ICCPR, *supra* note 6, at art. 19.
- 104 *WGAD Report of July 2015*, *supra* note 57, ¶ 11.
- 105 Working Grp. on Arbitrary Det., *Report of the Working Group on Arbitrary Detention*, ¶ 46, U.N. Doc. A/HRC/36/37 (July 19, 2017); UDHR, *supra* note 8, at art. 7; ICCPR, *supra* note 6, at art. 26.
- 106 *Hassan Qambar: Imprisoned*, *supra* note 72; *Bahraini Journalist Ibrahim al-Sheikh Believed to be Detained on False News Charges*, *supra* note 77; *Bahrain: Opposition Leader Sentenced for “Publicly Insulting” Sudanese President*, *supra* note 92; *Bahrain: Lawyers Prosecuted on Speech Charges*, *supra* note 80; Jan. 2019 *Communication to Bahrain*, *supra* note 99, at 2.
- 107 HRC General Comment No. 32, *supra* note 57, ¶ 2.
- 108 *Id.* ¶ 9.
- 109 *Id.* ¶¶ 36-38.
- 110 *Id.* ¶ 9.
- 111 *Hassan Qambar: Imprisoned*, *supra* note 72.
- 112 HRC General Comment No. 32, *supra* note 57, ¶ 30.
- 113 *Hassan Qambar: Imprisoned*, *supra* note 72.

## NOTES



# IRAN



# IRAN SCORECARD

## Targeted Activism or Expression



Expression re Offline Protests



Criticism of Government



Journalists



Women's Rights and WHRDs

## Human Rights Violations



Arbitrary Detention



Incommunicado Detention



Enforced Disappearance



Arbitrary Deprivation of Life



Fair Trial

## Problematic Legal Provisions and Institutions



Criminal Defamation



Cybercrime Law



Public Order



Specialised Law Enforcement Units

8

Number of incidents that fit the inclusion criteria of this study



# INTRODUCTION

Between 01 May 2018 and 30 October 2020, there were eight reported violations of the right to freedom of expression online in Iran that fit this study’s inclusion criteria.<sup>1</sup> Since the 1979 revolution that overthrew the monarchy, Iran has been a unitary republic and a theocracy led by a chief cleric, with majority-clergy entities overseeing the executive, judicial, and legislative branches of government.<sup>2</sup> There is credible evidence that authorities utilised arbitrary laws to repress online criticism of the government by Iranian human rights defenders (HRDs) during the timeframe of this study.

The main targets of prosecution were journalists disseminating critical reports through broadcast, social media, blog posts and Telegram—the private messaging app.<sup>3</sup> The Iranian government has largely applied provisions of the Islamic Penal Code relating to national security, corruption, and propaganda against the State, to prosecute individuals exercising freedom of expression to repress dissenting voices. At the same time, authorities arrested and detained HRDs without presenting formal charges or affording HRDs adequate due process. Women human rights defenders (WHRDs) in particular were targeted for their human rights activities, including demanding women’s rights. The government executed one journalist for reporting on government protests via an online news channel. The reported incidents provide credible evidence that the government has violated its obligation to respect online freedom of expression and additional associated rights of HRDs. These violations also constitute breaches of the duty of the

State, pursuant to the United Nations (UN) Charter, “as the main duty-bearer” to ensure “defenders enjoy a safe and enabling environment” and that government institutions and processes “are aligned with their safety and the aim of their activities.”<sup>4</sup>

Iran is a party to several international human rights treaties protecting the right to freedom of expression, including the International Covenant on Civil and Political Rights (ICCPR).<sup>5</sup> As a UN member State, Iran is also bound by the UN Charter and has pledged to adhere to the principles reflected in the Universal Declaration of Human Rights (UDHR), including article 19, which enshrines the right to freedom of opinion and expression.<sup>6</sup>

# LEGAL ENVIRONMENT FOR ONLINE EXPRESSION IN IRAN

Iran utilised a combination of laws and agencies to target HRDs who express dissent or advocated for human rights online.<sup>7</sup> Much of the government's scrutiny is focused on journalists and those who criticise the government.

## Laws Related to Online Expression

Iran has three primary laws limiting online expression: the 1986 Press Law;<sup>8</sup> the Computer Crimes Act enacted in 2009;<sup>9</sup> and the Islamic Penal Code enacted in 1996 and amended in 2013.<sup>10</sup>

### *1986 Press Law*

The 1986 Press Law regulates publications and news media,<sup>11</sup> and states that the press may enjoy freedom of expression so long as it does not violate "Islamic principles and codes."<sup>12</sup> Under both article 19 of the ICCPR and the UDHR, criminal laws (the Press Law carries criminal sanctions) that restrict freedom of expression must be sufficiently precise so as to enable individuals to determine how to comply with the law and to limit the discretion of authorities enforcing it.<sup>13</sup> Vaguely and broadly worded provisions have been found by UN Special Procedures mandate holders to violate this requirement, allowing authorities to use their excessive discretion to target protected speech, and encouraging individuals to engage in self-censorship.<sup>14</sup> The Press Law suffers from this problem. It stipulates that media are prohibited from: "[p]ublishing atheistic articles or issues which are prejudicial to Islamic codes..., [p]ropagating obscene and religiously forbidden acts...[i]nsulting Islam and its sanctities... [and] [c]ommitting plagiarism or quoting articles from the deviant press, parties and groups which oppose Islam (inside and outside the country) in such a manner as to propagate such ideas (the limits of such offenses shall be defined by the executive by-law)."<sup>15</sup> The UN Human Rights

Council has stated that governments should never restrict "expression of opinion and dissent, religion or belief"<sup>16</sup> as is criminalised by the Press Law. Further, under the Press Law violators may be subject to punishments under article 698 of the Islamic Penal Code, which permits sanctions of up to two years in prison and up to seventy-four lashes.<sup>17</sup>

### *2009 Computer Crimes Act*

The 2009 Computer Crimes Act contains 56 articles regulating internet usage and online content.<sup>18</sup> The Act includes broad definitions of criminal defamation, contains no defence for individuals acting in the public interest, and gives authorities discretion to target HRDs and criminalise internationally protected expression.<sup>19</sup> For instance, article 16 criminalises the use of information technology to alter or "distort" the image of another in a way that brings disrepute to the subject,<sup>20</sup> and article 17 similarly criminalises use of computers or communications technology to publish private information (images, audio files, etc) about an individual or their family.<sup>21</sup> Moreover, article 18 imposes penalties for the dissemination of "lies" with the intent to damage the public order or harm public officials' "state of mind."<sup>22</sup> These substantive terms are not defined, violating the requirements of article 19 of the ICCPR and the UDHR that criminal laws that restrict freedom of expression must be sufficiently precise so as to enable individuals to determine how to comply with the law and to limit the discretion conferred on authorities enforcing it.<sup>23</sup> Similarly, international human rights experts, including the UN Special Rapporteur on the freedom of opinion and freedom of expression (SR on FOE), have urged States to abolish general prohibitions on disseminating "false news" because of their vagueness.<sup>24</sup> Further, the UN Human Rights Committee has interpreted ICCPR article 19 to require that defamation laws include the defence of

public interest in the subject matter of the criticism, the defence of truth, and, at least in the case of expression related to public figures, the defence of error.<sup>25</sup> The UN Human Rights Committee and the SR on FOE have cautioned that laws on defamation should be crafted carefully so that they do not restrict freedom of expression, and have recommended the decriminalisation of defamation.<sup>26</sup> The Committee has interpreted ICCPR article 19 to require that “the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty.”<sup>27</sup>

The UN Human Rights Council has stipulated that “[d]iscussion of government policies and political debate; reporting on human rights, [or] government activities and corruption in government” should never be restricted.<sup>28</sup> The content restrictions in the Computer Crimes law violated international freedom of expression and jeopardise HRDs because authorities may enforce these vague provisions against journalists and human rights activists disseminating information disfavoured by the government.

The Act carries stiff punishments for individuals for these offenses, including fines of up to IRR 40 million (USD 950) and two years’ imprisonment.<sup>29</sup> Article 27 states that, if an individual has violated the Act on two or more occasions, a court can bar the person from using the internet, mobile telephone usage, and electronic banking.<sup>30</sup> In addition, the creation of a cybercrime police unit (FATA), as included in the Computer Crimes Act, contributes to a hostile legal climate for HRDs.<sup>31</sup>

The Computer Crimes Act is particularly concerning because it stipulates the imposition of capital punishment for expression protected under international human rights law. Notably, in chapter 4 of the law, concerning Crimes against Public Chastity and Morality, article 14 prohibits disseminating or saving “vulgar” content or “obscene material” online.<sup>32</sup> The SR on FOE has criticised a similar Saudi law, requiring that all online expression use “civil” language, on the grounds that such a term is “capacious and subjective,” and thus not an acceptable basis for a restriction under article 19(3) of the ICCPR.<sup>33</sup> This

offence carries the possibility of the death penalty, in the case of individuals who are found to be “mofsed-e fel-arz” (“corrupt on earth”), and who engage in acts prohibited under article 14 “professionally or systematically.”<sup>34</sup> As explained by the Iran Human Rights Documentation Centre, this designation “can be understood as any conduct that causes the degeneration, destruction and deviation of the society from its natural course.”<sup>35</sup> The group notes that authorities use it as a “catchall indictment of political dissent.”<sup>36</sup>

UN experts and international human rights monitors have criticised the Computer Crimes Act for containing vague definitions and thus criminalising protected online freedom of expression.<sup>37</sup> More generally, of relevance to the punitive bans on internet usage, the SR on FOE has noted that, in accordance with the requirement of proportionality under article 19 of the ICCPR, any “restrictive measures” must be the “least intrusive” option to protect a legitimate interest.<sup>38</sup>

### **2013 Islamic Penal Code**

The Islamic Penal Code authorises harsh penalties on HRDs who work collectively. For example, article 498 mandates between two and ten years in prison as punishment for leading a group of more than two persons that “aims to perturb the security of the country.”<sup>39</sup> Likewise, article 499 stipulates that a member of such an organisation will receive a sentence between three months and five years in prison.<sup>40</sup> In addition, article 500 states that “[a]nyone who engages in any type of propaganda against the Islamic Republic of Iran or in support of opposition groups and associations, shall be sentenced to three months to one year of imprisonment.”<sup>41</sup> Furthermore, article 508 stipulates a penalty of one to ten years in prison for “[a]nyone who cooperates by any means with foreign States against the Islamic Republic of Iran.”<sup>42</sup>

The Penal Code also includes several criminal insult and defamation offenses that suffer from the same substantive flaws as similar provisions in Press Law and Computer Crimes Act. Article 513

mandates either the death penalty or one to five years' imprisonment, depending on whether the expression is an insult to the Prophet, for "[a]nyone who insults the sacred values of Islam or any of the Great Prophets or [twelve] Shi'ite Imams or the Holy Fatima."<sup>43</sup> Furthermore, article 609 states that individuals who "insult[] any of the Heads of three powers [of the Executive, Judiciary and Legislature]" or a wide array of other public officials may be subject to seventy-four lashes.<sup>44</sup> Moreover, article 697 mandates between a month and a year in prison, up to seventy-four lashes, or both punishments for "[a]nyone who. . . attributes something to a person which is a crime under law and fails to prove" that their statements are true.<sup>45</sup> Similarly, article 698 punishes with two months to two years in prison or up to seventy-four lashes "[lying] or falsely attribut[ing] some acts to an individual or a legal person or officials, whether explicitly or implicitly."<sup>46</sup> Lastly, article 700 states that "[a]nyone who satirizes an individual. . . shall be sentenced to one to six months' imprisonment."<sup>47</sup> Human rights bodies have emphasised the value of public debate concerning public institutions and public figures in particular, who should not be granted a higher level of protection against defamation.<sup>48</sup> The UN Human Rights Committee has expressed particular concern about "laws on such matters as, *lese majesty*, *desacato*, disrespect for authority, disrespect for flags and symbols, defamation of the head of state and the protection of the honour of public officials" and laws prohibiting "criticism of institutions, such as the army or the administration."<sup>49</sup> Iran's Penal Code contravenes international legal authority on freedom of expression.

In accordance with article 19 of the ICCPR, restrictions on freedom of expression must be provided by law and narrowly defined to limit the discretion of authorities, and they must also provide the public with guidance in how to abide by the law.<sup>50</sup> Vague, broad terms are impermissible as they enable arbitrary government action.<sup>51</sup> The UN SR on FOE has stressed that restrictions with respect to discussion of government activities and corruption in government are never permissible and

the protection of the State and its officials from public criticism is not a sufficient justification.<sup>52</sup> However, the Islamic Penal Code criminalises "propaganda against the state"<sup>53</sup> while offering no definition of the term or providing objective criteria, such as a list of particular actions resulting in violations, to define what expression violates the law.<sup>54</sup> For these reasons, the SR on FOE has stated that the limitations on freedom of expression in the Islamic Penal Code do not conform to the permissible restrictions listed in article 19(3) of the ICCPR.<sup>55</sup>

UN entities have documented a pattern of government enforcement of the Islamic Penal Code to repress freedom of expression.<sup>56</sup> The UN Human Rights Council has previously criticised the role of the Islamic Penal Code, among other laws, in breaches of due process and restriction of freedom of expression.<sup>57</sup> In addition, UN Special Rapporteurs have expressed serious concern at the pattern of prosecutions based on legal provisions that can be interpreted arbitrarily due to their vagueness.<sup>58</sup>

The Islamic Penal Code is cited most often in the reported incidents here, but the Press Law and the Computer Crimes Act may be used in unreported incidents. Furthermore, all three laws are likely to have a chilling effect on freedom of expression given the scale of punishment authorised under the laws.

## Political Context and Policy Development

Following elections in recent years, economic concerns, allegations of electoral fraud, and political dissatisfaction have led to nationwide protests in 2017, 2018, and 2019, resulting in crackdowns by Iranian authorities.<sup>59</sup>

The Iranian government operates a sophisticated internet censorship regime.<sup>60</sup> Reporters Without Borders and Freedom House have identified Iran as one of the worst countries in the world for press and internet freedom with its limitations on Internet access, filtering of content, and imprisonment of bloggers.<sup>61</sup> The Supreme Cyberspace Council, which oversees the three principal government

bodies responsible for upholding and enforcing the censorship regime, introduced regulations in August 2017.<sup>62</sup> Two of these bodies, the Commission to Determine Instances of Criminal Content and the Iranian Revolutionary Guard Corps, control censorship policies and are responsible for blocking websites that violate the Computer Crimes Law and carrying out Iran's cyberattacks.<sup>63</sup> The Iran Cyber Police (referred to in English by the acronym FATA) is the unit primarily responsible for upholding compliance with the State's cybercrime laws.<sup>64</sup>

According to researchers, FATA's responsibilities include tracking and combatting cybercrime, gathering intelligence on internet users, protecting and preserving the religious and national identity of Iran, and enforcing legally prescribed societal norms and values.<sup>65</sup> In the first few years of its creation by the commander of national police force, FATA was active in tracking and arresting HRDs and activists on the internet.<sup>66</sup> In recent years, FATA reportedly has shifted its focus and assists other law enforcement units, including the Iran Revolutionary Guard Corps.<sup>67</sup>

The type and degree of censorship varies depending on the content being censored and the circumstances of censorship. For example, human rights reports document that internet speed is reduced or online access is diminished during political demonstrations with the effect of preventing the circulation of images and information regarding protests.<sup>68</sup> The Iranian government has censored tens of thousands of websites since 2009, including foreign news outlets, human rights organisations, and political opposition groups, among others.<sup>69</sup> International NGOs have found the government censors online content by blocking access to websites, filtering out topics that are not aligned with State doctrine, and removing political content.<sup>70</sup> In particular, the Iranian government has targeted foreign popular social networks such as Facebook, Twitter, YouTube, WordPress, and Blogger.<sup>71</sup> With few options for messaging and social media, Iranian citizens have turned to Telegram, which has an estimated 40 million monthly users.<sup>72</sup> As Telegram has become more popular, the Iranian government has introduced

more restrictions on content and has even tried to block it entirely during heightened protests.<sup>73</sup> The UN Human Rights Committee expressed its concern for the lack of independence of media, the arrest and detention of journalists, the monitoring of internet use and content, blocking of websites that carry political news and analysis, slowing down of internet speeds and jamming of foreign satellite broadcasts.<sup>74</sup> The Special Rapporteur on Iran has criticised the internet shutdowns and blanket blocking of websites and applications as violations of the right to freedom of expression.<sup>75</sup>

The UN Human Rights Committee has repeatedly called upon Iran to end harassment of political opponents, HRDs, including women's rights defenders, and journalists, among others.<sup>76</sup> The UN Human Rights Council has emphasised that States have the obligation to respect and protect the rights to freedom of assembly and association both offline and online.<sup>77</sup> The UN Human Rights Committee has underscored that the protection of activities associated with the right to peaceful assembly, including information dissemination, communication between participants, and broadcasting, is crucial to the exercise of that right.<sup>78</sup> The UN Human Rights Committee also previously has stated that freedom of assembly and association are "severely limited" in Iran.<sup>79</sup>

# TRENDS EMERGING FROM INCIDENTS OF REPRESSION OF ONLINE EXPRESSION IN IRAN

Several of the reported incidents in Iran include journalists the government has prosecuted for publishing information critical of Iranian officials or the government.<sup>80</sup> There were also a significant number of incidents relating to gender-based offenses. Authorities restricted activists' access to an attorney. In all observed instances, authorities arrested HRDs, but reports did not always make clear the specific charges activists faced. When authorities did disclose the charges pressed, they often relied on the Islamic Penal Code, specifically on provisions relating to national security and corruption.

## Violations of the Right to Online Freedom of Expression

### *Targeting of journalists*

Under international law, States are responsible for creating a safe and enabling environment for HRDs, including journalists, to carry out their work.<sup>81</sup> However, Iran has failed to fulfil its obligations and in fact, continues to target journalists.<sup>82</sup> The Special Rapporteur on Iran has denounced the Iranian government's continued targeting of journalists and writers.<sup>83</sup>

The most egregious example is the case of a journalist, Ruhollah Zam, who was living in Paris as a refugee after fleeing Iran in 2011. On 14 October 2019, Iranian authorities abducted Zam with the assistance of Iraqi intelligence officials, hours after he arrived in Iraq.<sup>84</sup> Reportedly, authorities arrested Zam for operating the news channel AmadNews on Telegram.<sup>85</sup> AmadNews reportedly published leaked information exposing government corruption and had posted videos of demonstrations during the 2017-18 protests.<sup>86</sup> According to human rights organisations, the government blamed AmadNews

for instigating the protests. The online news source had 1.4 million subscribers at the time, leading authorities to target Zam.<sup>87</sup> Amnesty International reports that court documents alleged Zam was a spy for Israel and France, and cooperated with the United States, among other charges of national security violations.<sup>88</sup> On 30 June 2020, Branch 15 of the Revolutionary Court in Tehran sentenced Zam to death under the Islamic Penal Code for "spreading corruption on earth" through his news channel.<sup>89</sup> The UN Human Rights Council repeatedly has held that suppression and prosecution of opinions critical of "government policies and political debate," "corruption in government," and "peaceful demonstrations" are impermissible and violate the right to freedom of expression.<sup>90</sup> The UN Human Rights Council and special procedure mandates repeatedly have denounced the Iranian government's pattern and practices in this regard.<sup>91</sup>

Four days after losing his appeal, on 12 December 2020, authorities carried out the execution.<sup>92</sup> International law reserves the death penalty for the most serious of crimes involving intentional killing, which the government violated in this case.<sup>93</sup> The UN Human Rights Committee repeatedly has expressed concern regarding the high and increasing number of death sentences imposed and carried out by the State for a wide range of offenses with arbitrary or vaguely defined misconduct.<sup>94</sup> The Special Rapporteur on Iran also has expressed concern about the issuance of long prison or death sentences.<sup>95</sup> But Zam's case, as well as the other reported incidents of prosecutions of journalists indicate that the government continues to impose death sentences or long prison sentences for expression that is protected under article 19.

Another example of harsh punishment of journalists is the case of Kioomars Marzban, who was arrested in September of 2018 for "collaborating" with the

United States government as a result of his work with Freedom House.<sup>96</sup> Marzban, a satirical journalist for Iranian diaspora media, had been living in Malaysia since 2009 but was arrested after returning to Iran for a visit.<sup>97</sup> The Iranian Revolutionary Guard Corps accused Marzban of participating in “a project of American intelligence to push the issue of human rights internationally through media organisations ... as part of the legs and arms of their psychological warfare.”<sup>98</sup> Iran does not maintain any law that bans Iranian citizens from writing for websites from the United States, but Iranian citizens can be prosecuted for “collaborating” with the US government.<sup>99</sup> In his defence, Marzban argued that he was unaware that a project for which he had written satirical content had received funding from the United States.<sup>100</sup> Authorities sentenced Marzban to over twenty years in prison for communicating with the US government, insulting the sacred, insulting the Supreme Leader (the highest political and religious authority in the government), producing propaganda against the State,<sup>101</sup> and insulting officials.<sup>102</sup> In addition, officials imposed a two-year foreign travel ban and two-year ban on Marzban using social networks for publishing media.<sup>103</sup> All charges were brought under the Islamic Penal Code.<sup>104</sup>

Independent human rights organisations documented several other cases against journalists during the study period. Authorities arrested Mohammad Mosaed, a journalist, in 2019 and released him on bail in February of 2020.<sup>105</sup> Mosaed was arrested over social media posts critical of the government’s response to the coronavirus outbreak and the limited number of candidates in Iran’s 21 February parliamentary elections, and his exposure of two of the candidates as former members of the Iranian Revolutionary Guard Corps.<sup>106</sup> Mosaed’s social media accounts were suspended and Mosaed was charged with “colluding against national security” and “spreading propaganda against the system.”<sup>107</sup> Authorities imposed a four-year-and-nine-month prison sentence, a two-year ban on journalism activities, and a two-year ban on using all communications devices.<sup>108</sup> On 03 August 2019, government agents arrested Nooshin Jafari, a journalist, for allegedly running an anti-State Twitter

account and charged her with “insulting Islam’s sacred values,” “spreading anti-establishment propaganda,” and “insulting sanctities.”<sup>109</sup> After losing her appeal, a court sentenced her on 13 February 2021 to a total of four years in prison, and she was arrested three days later and taken to the notorious Qarchak Prison.<sup>110</sup>

Finally, in June 2018, authorities arrested and charged journalist Hengameh Shahidi with “acting against national security” after posting about the lack of justice in the Iranian judicial system on the Paineveste blog.<sup>111</sup> The UN Human Rights Committee repeatedly has noted that, under ICCPR article 19, States must not enact laws that prohibit criticism of institutions, including religious or governmental institutions.<sup>112</sup> Nevertheless, after a closed door trial, on 1 December 2018, the court sentenced Shahidi to twelve years in prison, in violation of these standards.<sup>113</sup> Shahidi served more than two years before being pardoned and released in February 2021.<sup>114</sup>

These cases of criminalization of online expression critical of the government offer credible evidence that the Iranian government continues to use its enforcement power to silence its online critics in contravention of its human rights obligations.

### *Gender-based freedom of expression violations*

The reported incidents in Iran indicate that the freedom of expression rights of women are uniquely implicated.<sup>115</sup> The government has a longstanding pattern of repression of women in Iran, including those who have peacefully advocated for their rights.<sup>116</sup> Reporters Without Borders has found that the Islamic Republic of Iran is now the world’s biggest jailer of female journalists.<sup>117</sup>

In April 2019, the government arrested three women after they appeared in a video protesting the compulsory veiling laws in conjunction with International Women’s Day. In the video, Yasaman Aryani, Monireh Arabshahi and Mojgan Keshavarz are seen without their headscarves.<sup>118</sup> The Iranian government charged and found the three women guilty under articles 500, 513, 610 and 639 of the

Islamic Penal Code and article 265 of the Code of Criminal Procedure.<sup>119</sup> On 31 July 2019, judges of branch 28 of Tehran's Revolutionary Court sentenced the three WHRDs to prison for their peaceful activities.<sup>120</sup> Aryani and Arabshahi both received sentences of sixteen years in prison, while Keshavarz has been sentenced to twenty-three years and six months.<sup>121</sup> The court that condemned them is presided over by a notorious judge, Mohammad Moqisseh, who reportedly has a reputation for imposing harsh verdicts relying solely on the reports from intelligence agents.<sup>122</sup> The Iranian courts have imposed decades-long prison sentences on WHRDs, particularly those involved in activism against mandatory veiling (hijab).<sup>123</sup> In addition, on 11 March 2019, prominent Iranian lawyer and women's HRD Nasrin Sotoudeh was sentenced to 148 lashes and thirty-eight years in prison, including for her defence of the women arrested for protesting compulsory veiling during "White Wednesday" protests.<sup>124</sup>

FATA announced on 13 May 2020 that women, including public and private figures, are in breach of provisions of the Islamic Penal Code on public morality for participating in deviant behaviour and moral offenses when they appear without a hijab on social media.<sup>125</sup> International law requires that morality laws restricting expression must be strictly necessary and narrowly defined.<sup>126</sup> Iran's laws do not meet these standards, contribute to the gender-based discrimination, and encourage both fear and self-censorship.<sup>127</sup> Under the General Assembly Resolution 68/181, States have an obligation to protect WHRDs and create a safe and enabling environment for them for the defence of human rights with a gender perspective and ensure that they can engage in peaceful protest.<sup>128</sup> The actions of the Iranian government do not satisfy those obligations.

## Additional Human Rights Violations

The reported incidents in Iran indicate that violations of digital online expression consistently bring

violations of other human rights, including arbitrary arrest and detention, and due process rights.

### *Arbitrary arrest, arbitrary detention, incommunicado detention, enforced disappearance*

Arbitrary deprivation of liberty is prohibited under article 9 of the ICCPR, customary international law, and is a *jus cogens* norm applicable to all States.<sup>129</sup> A deprivation is arbitrary including when it is without a legal basis as well as when it results from the exercise of freedom of expression.<sup>130</sup> As the UN Working Group on Arbitrary Detention has reiterated, any measure depriving an individual of liberty must meet strict standards of lawfulness, necessity, and proportionality to avoid arbitrariness.<sup>131</sup> Deprivations may be arbitrary when they are based on discriminatory grounds against HRDs and activists, violating the rights to equality before the law and the right to equal protection under article 26 of the ICCPR.<sup>132</sup> Since the arrests identified during the reporting period were based on protected forms of expressions, these constitute separate violations of article 9 of the ICCPR.<sup>133</sup>

There was also one reported case of an enforced disappearance and incommunicado detention. Iranian authorities arrested Nooshin Jafari, a photojournalist and culture reporter, on 03 August 2019, and took her to an unknown location without formally announcing any charges<sup>134</sup> in relation to her alleged anti-government Twitter account.<sup>135</sup> Enforced disappearance is an international crime and is prohibited by customary law<sup>136</sup> as well as treaty.<sup>137</sup> An enforced disappearance has three elements: (1) a deprivation of liberty; (2) by State officials or with their consent; followed by (3) the refusal to acknowledge the deprivation of liberty, or to disclose information on the fate or location of the disappeared.<sup>138</sup> Jafari reportedly was held incommunicado for an unknown period of time and her family was not able to contact her or locate her,<sup>139</sup> constituting an enforced disappearance as well as incommunicado detention.<sup>140</sup> The Special



Rapporteur on torture has observed that torture is “most frequently practiced during incommunicado detention,”<sup>141</sup> and it is outlawed by international law.<sup>142</sup> The Special Rapporteur on torture has stated that “[i]n all circumstances, a relative of the detainee should be informed of the arrest and place of detention within 18 hours.”<sup>143</sup> The Committee to Protect Journalists reported in February 2021, that after an unsuccessful appeal, Jafari is now serving a four-year sentence for spreading “propaganda” and violating insult laws.<sup>144</sup>

### *Due process violations*

Fundamental principles of fair trials are protected under international law at all times.<sup>145</sup> Individuals have universal rights to seek competent, independent, impartial judicial review of the arbitrariness and lawfulness of deprivations of liberty and to obtain without delay adequate and appropriate remedies.<sup>146</sup> Those detained enjoy a number of procedural safeguards of their rights including the right to be informed of rights, the right to initiate court proceedings without delay, the right to legal assistance of counsel of their choice from the moment of apprehension.<sup>147</sup> The Special Rapporteur on Iran expressed concern about the pattern of reported violations related to due process and fair trial in the State, particularly with respect to HRDs, journalists, and political prisoners.<sup>148</sup>

In several of the identified incidents, the authorities violated these guarantees. Jafari, who authorities arrested on 03 August 2019 for “insulting Islam’s sacred values” on her Twitter account, was held on no formal charges for at least 11 days.<sup>149</sup> Ruhollah Zam was held without contact with lawyers for nine months, and was only allowed to meet a court-appointed lawyer in the presence of intelligence and security officials.<sup>150</sup> The Special Rapporteur on Iran has previously drawn attention to the fact that under the Islamic Penal Code, those accused of national security offences have limited rights to a lawyer.<sup>151</sup> HRDs prosecuted for protected expression are subjected to harsh treatment in the criminal

legal system. For example, judicial authorities had not informed Zam or his family of the scheduled execution, which took place days after authorities denied Zam’s appeal.<sup>152</sup> Taken together, the incidents attest to a pattern of State violation of international due process and fair trial standards for HRDs prosecuted for protection online expression.

# CONCLUSION AND RECOMMENDATIONS

Iran's Islamic Penal Code, Press Law and Cybercrime laws contain provisions that are vague and overbroad in violation of article 19 of the ICCPR, which enable authorities to illegally and arbitrarily criminalise online expression by HRDs critical of political authorities. There is credible evidence that Iran's enforcement of those laws, particularly against journalists and WHRDs violates its international human rights obligations. The reported instances involve evidence of additional human rights violations including arbitrary arrests, online surveillance, incommunicado detention, as well as evidence of violations of due process and fair trial standards, including the imposition of the death penalty for nonviolent offenses.

To address these concerns, we offer the following general recommendations and country-specific recommendations.

## General Recommendations

### *To Governments of Gulf States and Neighbouring Countries:*

- ✦ Eliminate laws and articles in national legal frameworks that criminalise online freedom of expression protected under international human rights law, specifically:
  - All laws including anti-cybercrime, anti-terrorism, communications, media, penal, and technology laws that restrict online or offline expression through provisions to protect public order, national security, or the national economy; insults laws; and laws that criminalise fake news, that do not conform to international human rights standards and satisfy the principles of legality, legitimacy, necessity and proportionality;
  - Decriminalise the offense of defamation;
  - Revise anti-cybercrime laws to include

affirmative protection for the legitimate online expression of HRDs, including journalists.

- ✦ Cease using deportation and travel bans as tools for targeting HRDs for their online human rights advocacy, and refrain from infringing on their right to freedom of movement.
- ✦ Reform legal institutions, including the criminal legal system, to promote the independence and autonomy necessary for:
  - Investigating human rights violations committed against HRDs by law enforcement, such as engaging in unlawful surveillance of HRDs, enforced disappearances, holding HRDs in unlawful detention, incommunicado, and subjecting them to ill-treatment and torture;
  - Ensuring that HRDs', citizens', and residents' right to freedom of movement is not violated;
  - Ensuring the judiciary upholds international standards guaranteeing the right to fair trial.

### *To the UN Human Rights Council:*

- ✦ Instruct the UN Office of the High Commissioner for Human Rights to undertake a study of the transnational cooperation among governments to affect the apprehension and rendering of foreign HRDs to their countries of origin for prosecution of online expression that is protected under international law.
- ✦ Instruct the UN Office of the High Commissioner for Human Rights to undertake a study to identify and track developments in the surveillance regimes in each State in the region. The governments in question should cooperate in this study. The study should identify third party actors including business enterprises and other States that contribute to advancing the surveillance infrastructure in each State concerned. State and non-State actors

complicit in illegal surveillance of HRDs by governments should be held accountable.

**To All States:**

Implement an immediate moratorium on the use, acquisition, sale and transfer of surveillance technology. This moratorium should extend until adequate global controls and safeguards against abuse are in place.

## Country Recommendations

In addition to the above recommendations, States should revise their domestic laws and institutions to ensure compliance with international human rights standards regarding online freedom of expression as indicated below.

**We call on the government of Iran to create a safe and enabling environment for HRDs including by taking the following steps:**

- ♦ Eliminate laws and articles in Iran's legal frameworks that criminalise online freedom of expression protected under international human rights law, or that are inconsistent with the right to due process and a fair trial, including:
  - 1986 Press Law, articles 6(1), 6(2), 6(7), 6(9);
  - 2009 Computer Crimes Act, articles 14, 16–19, 27;
  - Islamic Penal Code, articles 498–500, 508, 513, 609, 697, 698, 700.

**We call on OHCHR to:**

- ♦ Initiate a special working group in cooperation with civil society to address the role of Iran and other governments in the region in cooperating in the apprehension and rendering of foreign HRDs to their countries of origin for prosecution of online expression that is protected under international law.

## NOTES

- 1 Researchers identified reported incidents of violations of online freedom of expression by conducting searches for cases involving Iran between May 2018 and October 2020, from the following international media outlets and human rights organizations that document human rights violations: Amnesty International, Al Jazeera, ARTICLE 19, British Broadcasting Corporation, Committee to Protect Journalists, Front Line Defenders, Gulf Centre for Human Rights, and Human Rights Watch. Researchers also searched for communications from special procedures mandate holders regarding incidents alleging violations of freedom of expression in Iran in the UN database of Communications. Researchers supplemented international research by consulting the following domestic media outlets: *Tehran Times*, *Iran Daily*, *Kayhan International*, *Islamic Republic News Agency*, *Iran News*, and *Iran Economy News*, and researchers used the embedded search functions to retrieve news updates using these keywords: freedom of expression, digital expression, digital, online, post, tweet, Twitter, Facebook, arrest, expression, and human rights defender during the relevant period of study. The domestic sources provided no relevant results. After finding cases using the international sources, researchers conducted additional searches using the Google search engine of the victim's name (with various English spellings) to find additional case information. See methodology section for more information.
- 2 Khosrow Mostofi et al., *Iran: Government and Society*, BRITANNICA (July 21, 2021). This characterization of the political system of the country is offered for descriptive purposes; a normative evaluation of the political system as such is beyond the scope of this chapter.
- 3 Telegram is a web platform that allows sharing of media files such as photos and videos in private and group messaging, and it enables the creation of channels for broadcasting to unlimited audiences. *Telegram FAQ: Q: What Is Telegram? What Do I Do Here?*, TELEGRAM. The service also provides end-to-end encryption. *Id.*
- 4 Michel Forst (Special Rapporteur on the Situation of Human Rights Defenders), *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, ¶ 77, U.N. Doc. A/HRC/31/55 (Feb. 1, 2016) [hereinafter *SRHRD Report of Feb. 2016*]; Civil Society Space, Human Rights Council Res. 27/31, U.N. Doc. A/HRC/RES/27/31, ¶ 3 (Oct. 3, 2014); Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, G.A. Res. 53/144, U.N. Doc. A/RES/53/144 (Mar. 8, 1999) [hereinafter *Declaration on Human Rights Defenders*].
- 5 International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter *ICCPR*]; *UN Treaty Body Database: Ratification Status for Iran (Islamic Republic of)*, OHCHR.ORG. Iran also has ratified the Covenant of the Elimination of All Forms of Racial Discrimination (CERD), the Covenant on Economic, Social and Cultural Rights (CESCR), the Convention on the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities. *UN Treaty Body Database: Ratification Status for Iran (Islamic Republic of)*, *supra*.
- 6 World Conference on Human Rights, *Vienna Declaration and Programme of Action*, pmbl. at 20-21, §§ I(1), I(3), I(8), U.N. Doc. A/CONF.157/24 (Part 1) (Oct. 13, 1993); Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/810, at art. 19 (Dec. 10, 1948) [hereinafter *UDHR*].
- 7 Javaid Rehman (Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran), *Situation of Human Rights in the Islamic Republic of Iran*, ¶¶ 24, 31, U.N. Doc. A/73/398 (Sept. 27, 2018) [hereinafter *SRI Report of Sept. 2018*].
- 8 Press Law of 1986 [hereinafter *Press Law*] (Iran) (unofficial English translation).
- 9 Computer Crimes Act Law No. 71063 of 2009 [hereinafter *Computer Crimes Act*] (Iran) (unofficial English translation on file with author). Law No. 71063 on Computer Crimes was adopted on 26 May 2009, according to NATLEX, the International Labour Organisation's database of national labour, social security, and human rights legislation. *NATLEX: Iran (Islamic Republic of) (168)—Law No. 71063 on Computer Crimes*, INT'L LAB. ORG. A report by the NGO ARTICLE 19 also confirms that Iran's Parliament passed the Computer Crimes Law in 2009. ARTICLE 19, *COMPUTER CRIMES IN IRAN: ONLINE REPRESSION IN PRACTICE* 6 (2013).
- 10 Islamic Penal Code Books One & Two of 1996, amended 2013 [hereinafter *Islamic Penal Code Books One & Two*] (Iran) (unofficial English translation); Islamic Penal Code Book Five of 1996, amended 2013 [hereinafter *Islamic Penal Code Book Five*] (Iran) (unofficial English translation).

- 11 Including online and digital publications. Press Law, *supra* note 8, at art. 1, note 3 (“All electronic publications are subject to this law.”).
- 12 *Id.* at art. 6.
- 13 Hum. Rts. Comm., *General Comment No. 34: Article 19: Freedoms of Opinion and Expression*, ¶ 25, U.N. Doc. CCPR/C/GC/34 (Sept. 12, 2011) [hereinafter *HRC General Comment No. 34*]; David Kaye (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, ¶ 7, U.N. Doc. A/HRC/32/38 (May 11, 2016) [hereinafter *SRFOE Report of May 2016*]; Working Grp. on Arbitrary Det., *Opinion No. 71/2019 Concerning Issa al-Nukhefi, Abdulaziz Youssef Mohamed al-Shubaili and Issa Hamid al-Hamid (Saudi Arabia)*, ¶ 73, U.N. Doc. A/HRC/WGAD/2019/71 (Feb. 14, 2020) [hereinafter *WGAD Opinion No. 71/2019*] (“vaguely and broadly worded provisions ... which cannot qualify as *lex certa*, violate the due process of law undergirded by the principle of legality in article 11 (2) of the Universal Declaration of Human Rights”); UDHR, *supra* note 6, at arts. 11, 19; ICCPR, *supra* note 5, at art. 19.
- 14 *SRFOE Report of May 2016*, *supra* note 13, ¶ 39; Frank La Rue (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, Frank La Rue, ¶ 34, U.N. Doc. A/HRC/17/27 (May 16, 2011) [hereinafter *SRFOE Report of May 2011*].
- 15 Press Law, *supra* note 8, at arts. 6(1), 6(2), 6(7), 6(9).
- 16 Freedom of Opinion and Expression, Human Rights Council Res. 12/16, U.N. Doc. A/HRC/RES/12/16, ¶ 5(p)(i) (Oct. 12, 2009) [hereinafter H.R.C. Res. 12/16].
- 17 Press Law, *supra* note 8, at art. 6, note 2; Islamic Penal Code Book Five, *supra* note 10, at art. 698.
- 18 The Computer Crimes Act criminalises the following conduct: (1) “illegal access” to data, computers, or telecommunications systems; (2) “illegal access” to content transmitted by non-public communications; (3) the sharing of confidential government information; (4) attempts to access confidential government information; (5) the knowing use of falsified data; (6) the concealment of data from authorised individuals; (7) the production, distribution, or saving of obscene content through computer or telecommunications devices; (8) the use of computers or telecommunications devices or portable data storage devices for the commission of crimes; (9) the use of a computer or telecommunications device to manipulate an image or video or other media in a way to bring disrepute to a person; (10) the sharing of another’s media without their consent in a way to bring disrepute to a person; (11) dissemination of lies or the use of a computer or telecommunication system to associate someone, such as an official authority, with a lie; (12) failure by internet providers to filter content that “generates crime.” Computer Crimes Act, *supra* note 9. For an analysis of the law under ICCPR article 19, see ARTICLE 19, ISLAMIC REPUBLIC OF IRAN: COMPUTER CRIMES LAW (2011).
- 19 Computer Crimes Act, *supra* note 9, at arts. 14-18.
- 20 *Id.* at art. 16.
- 21 *Id.* at art. 17.
- 22 *Id.* at art. 18.
- 23 *HRC General Comment No. 34*, *supra* note 13, ¶ 25; *SRFOE Report of May 2016*, *supra* note 13, ¶ 7; *WGAD Opinion No. 71/2019*, *supra* note 13, ¶ 73 (“vaguely and broadly worded provisions ... which cannot qualify as *lex certa*, violate the due process of law undergirded by the principle of legality in article 11 (2) of the Universal Declaration of Human Rights”); UDHR, *supra* note 6, at arts. 11, 19; ICCPR, *supra* note 5, at art. 19.
- 24 U.N. Special Rapporteur on Freedom of Op. & Expression et al., *Joint Declaration on Freedom of Expression and “Fake News”, Disinformation and Propaganda*, ¶ 2(a) (Mar. 3, 2017).
- 25 *HRC General Comment No. 34*, *supra* note 13, ¶ 47. See also Frank La Rue (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, Frank La Rue, ¶¶ 83-88, U.N. Doc. A/HRC/20/17 (June 4, 2012) [hereinafter *SRFOE Report of June 2012*].
- 26 *HRC General Comment No. 34*, *supra* note 13, ¶ 47. See also *SRFOE Report of May 2011*, *supra* note 14, ¶ 36 (“defamation should be decriminalized”).
- 27 *HRC General Comment No. 34*, *supra* note 13, ¶ 47.
- 28 H.R.C. Res. 12/16, *supra* note 16, ¶ 5(p)(i).
- 29 Computer Crimes Act, *supra* note 9, at arts. 16-19.

- 30 *Id.* at art. 27. HRC/14/23 (Apr. 20, 2010) [hereinafter *SRFOE Report of Apr. 2010*].
- 31 ARTICLE 19, *supra* note 9, at 21.
- 32 Computer Crimes Act, *supra* note 9, at art. 14.
- 33 David Kaye (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Promotion and Protection of the Right to Freedom of Opinion and Expression*, ¶ 27, U.N. Doc. A/71/373 (Sept. 6, 2016) [hereinafter *SRFOE Report of Sept. 2016*].
- 34 Computer Crimes Act, *supra* note 9, at art. 14; ARTICLE 19, *supra* note 18, at 22.
- 35 ARTICLE 19, *supra* note 18, at 22.
- 36 *Id.*
- 37 *SRI Report of Sept. 2018*, *supra* note 7, ¶ 24 (stating that the mandate seeks further information on the Computer Crimes Law with respect to freedom of opinion and expression and access to information); ARTICLE 19, *supra* note 9, at 21.
- 38 *SRFOE Report of May 2016*, *supra* note 13, ¶ 7.
- 39 Islamic Penal Code Book Five, *supra* note 10, at art. 498.
- 40 *Id.* at art. 499.
- 41 *Id.* at art. 500.
- 42 *Id.* at art. 508.
- 43 *Id.* at art. 513.
- 44 *Id.* at art. 609. Fines range between IRR 50,000-1 million (USD 1.20-2.40). *Id.*
- 45 *Id.* at art. 697.
- 46 *Id.* at art. 698.
- 47 *Id.* at art. 700.
- 48 *HRC General Comment No. 34*, *supra* note 13, ¶ 38; *SRFOE Report of June 2012*, *supra* note 25, ¶ 88; *SRFOE Report of Sept. 2016*, *supra* note 33, ¶ 33.
- 49 *HRC General Comment No. 34*, *supra* note 13, ¶ 38.
- 50 *SRFOE Report of May 2016*, *supra* note 13, ¶ 7.
- 51 Frank La Rue (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Expression, Mr. Frank La Rue*, ¶ 79(d), U.N. Doc. A/HRC/14/23 (Apr. 20, 2010) [hereinafter *SRFOE Report of Apr. 2010*].
- 52 *Id.* ¶¶ 81(i), 82. *SRFOE Report of May 2011*, *supra* note 14, ¶ 37.
- 53 Islamic Penal Code Book Five, *supra* note 10, at art. 500; Ambeyi Ligabo (Special Rapporteur on the Right to Freedom of Opinion and Expression), *Report Submitted by the Special Rapporteur on the Right to Freedom of Opinion and Expression, Ambeyi Ligabo: Addendum—Mission to the Islamic Republic of Iran*, ¶ 29(a), U.N. Doc. E/CN.4/2004/62/Add.2 (Jan. 12, 2004) [hereinafter *SRFOE Report of Jan. 2004*] (identifying article 500 as providing prison sentences for “anyone who undertakes any form of propaganda against the State”).
- 54 *SRFOE Report of Jan. 2004*, *supra* note 53, ¶¶ 94-95 (stating that restrictions on freedom of expression must be precisely identified and defined; emphasizing human rights resolution 2003/42 that criticises the unjustified invocation of national security in restricting the right to freedom of expression; stating that the limitations from these provisions lack any objective criteria and clear definition, and thus are open to subjective and arbitrary interpretation upon implementation); see Islamic Penal Code Books One & Two, *supra* note 10, at art. 286.
- 55 *SRFOE Report of Jan. 2004*, *supra* note 53, ¶ 95. The Special Rapporteur has stated that the limitations to the exercise of the right to freedom of expression in the Islamic Penal Code, particularly articles dealing with national security, defamation, and publication of false news, do not conform to permissible restrictions and have a direct negative impact on the exercise of freedom of expression. *Id.* ¶ 29. The Special Rapporteur on human rights defenders (SR on HRDs) has stated that the criminalisation of defamation has a chilling effect on freedom of expression and can lead to self-censorship, particularly for journalists. Margaret Sekaggya (Special Rapporteur on the Situation of Human Rights Defenders), *Report of the Special Rapporteur on the Situation of Human Rights Defenders, Margaret Sekaggya: Addendum—Mission to Togo*, ¶ 24, U.N. Doc. A/HRC/25/55/Add.2 (Feb. 26, 2014).
- 56 The Islamic Penal Code allows imprisonment pending trial, loss of civil rights, banishment, and withdrawal of authorization to carry out a profession or activity. Working Grp. on Arbitrary Det., *Report of the Working Group on Arbitrary Detention: Addendum—Visit to the Islamic Republic of Iran (15-27 February 2003)*, ¶ 28, U.N. Doc. E/CN.4/2004/3/Add.2 (June 27, 2003) [hereinafter *WGAD Report of June 2003*]. The provisions in the Penal Code restricting freedom of expression are “far too extensive” to enable an effective exercise of

the right to freedom of opinion and expression by the written press. *SRFOE Report of Jan. 2004*, *supra* note 53, ¶ 41. The Special Rapporteur has also noted that many peaceful press offenses are punishable by prison sentences, flogging, and other corporal punishment, which are contrary to international human rights norms and standards, are clearly disproportionate to the exercise of freedom of expression, and “should not be permissible.” *Id.* ¶¶ 29, 33-34; ARTICLE 19, *supra* note 9, at 6 (noting that the Iranian government particularly relies on the Islamic Penal Code to intimidate and punish digital activists).

- 57 Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran, *Report of the Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran*, ¶¶ 18, 47-48, U.N. Doc. A/HRC/43/61 (Jan. 28, 2020) (paragraph 18: stating that the Islamic Penal Code does not limit the application of the death penalty to only the most serious crimes, defined by those that involve intentional killing; paragraph 47: stating that articles of the Iranian Code of Criminal Procedure contain provisions that can serve as a serious impediment to due process and the right to fair trial; paragraph 48: stating that the Islamic Penal Code appears to encourage confessions extracted through torture and duress and allows judicial reliance on these confessions and that “the Special Rapporteur is concerned that the combined effect of the aforementioned provisions of the Islamic Penal Code and the Code of Criminal Procedure has led to a strong institutional expectation of extracting confessions and reliance on confessions as the basis of convictions, resulting in serious breaches of criminal justice and the rights of the accused”).
- 58 *SRFOE Report of Jan. 2004*, *supra* note 53, ¶ 95; see Javaid Rehman (Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran), *Report of the Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran*, ¶ 8, U.N. Doc. A/74/188 (July 18, 2019) [hereinafter *SRI Report of July 2019*].
- 59 MICHAEL AXWORTHY, *A HISTORY OF IRAN: EMPIRE OF THE MIND* 325-51 (2008); Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran, *Report of the Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran*, ¶ 4, U.N. Doc. A/HRC/40/67 (Jan. 30, 2019).
- 60 Simurgh Aryan, Homa Aryan & J. Alex Halderman, *Internet Censorship in Iran: A First Look* (paper presented at the 3rd USENIX Workshop on Free and Open Communications on the Internet (FOCI’13), 2013); Javaid Rehman (Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran), *Report of the Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran*, *Javaid Rehman*, ¶ 19, U.N. Doc. A/HRC/46/50 (Jan. 11, 2021) [hereinafter *SRI Report of Jan. 2021*] (stating that the SR remains concerned at the repeated disruption of telecommunications by authorities and the government’s continued censorship of websites and social media platforms).
- 61 In 2020, Reporters Without Borders ranked Iran 173 out of 180 countries, making it among the most repressive regimes in the world for journalists. *2020 World Press Freedom Index*, REPS. WITHOUT BORDERS. Freedom House rated Iran 15 of 100 (“Not Free”) in terms of restrictions on internet freedom. *Freedom on the Net 2020*, FREEDOM HOUSE.
- 62 The Supreme Cyberspace Council introduced regulations increasing surveillance capabilities and requiring social media and messaging platforms to either move their servers to the country or face blocking orders. Asma Jahangir (Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran), *Report of the Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran*, ¶ 31, U.N. Doc. A/HRC/37/68 (Mar. 12, 2018).
- 63 The Commission to Determine the Instances of Criminal Content (CDICC) is responsible for identifying web content to be filtered and blocked. The CDICC creates lists of illegal websites that violate public morals, contradict Islam, threaten national security, criticise public officials or organizations, or promote either cybercrimes or the use of circumvention tools. The Iranian Revolutionary Guard Corps is a branch of the Iranian military with an intelligence wing. This intelligence wing is widely understood to be involved in supporting and coordinating the offensive cyber-warfare activities. Kyle Bowen & James Marchant, *Internet Censorship in Iran: Preventative, Interceptive, and Reactive*, in *REVOLUTION DECODED: IRAN’S DIGITAL LANDSCAPE* 15, 20 (Bronwen Robertson & James Marchant eds.); FREEDOM HOUSE, *FREEDOM ON THE NET: IRAN 7* (2017).
- 64 FATA, ‘the New Unit of the Iranian’ Police to Control the Internet Space, BBC (2011) (primary document unavailable). Research does not indicate FATA involvement in the incidents identified in this report.
- 65 SMALL MEDIA, *IRANIAN INTERNET INFRASTRUCTURE AND POLICY REPORT 3* (2013).
- 66 *Id.*; FATA, ‘the New Unit of the Iranian’ Police to Control the Internet Space, *supra* note 64.
- 67 SMALL MEDIA, *supra* note 65, at 6. The Iranian

Revolutionary Guard Corps were the identified law enforcement unit in four out of nine identified incidents included in this report. Research did not indicate the law enforcement units involved in the other five incidents.

- 68 REPS. WITHOUT BORDERS, *ENEMIES OF THE INTERNET* 6 (2014).
- 69 Stephanie MacLellan, *What You Need to Know About Internet Censorship in Iran*, CTR. FOR INT’L GOVERNANCE INNOVATION (Jan. 9, 2018); FREEDOM HOUSE, *supra* note 63, at 6.
- 70 FREEDOM HOUSE, *supra* note 63, at 6-8.
- 71 MacLellan, *supra* note 69; SRI Report of Jan. 2021, *supra* note 60, ¶ 19 (discussing the government’s continued censorship of websites and social media platforms).
- 72 MacLellan, *supra* note 69.
- 73 *Id.*
- 74 Hum. Rts. Comm., *Concluding Observations of the Human Rights Committee: Islamic Republic of Iran*, ¶ 27, U.N. Doc. CCPR/C/IRN/CO/3 (Nov. 29, 2011) [hereinafter *HRC Concluding Observations of Nov. 2011*].
- 75 SRI Report of Jan. 2021, *supra* note 60, ¶ 19.
- 76 Situation of Human Rights in the Islamic Republic of Iran, G.A. Res. 73/181, U.N. Doc. A/RES/73/181, ¶ 14 (Jan. 15, 2019) [hereinafter G.A. Res. 73/181].
- 77 Promotion, Protection, and Enjoyment of Human Rights on the Internet, Human Rights Council Res. 38/7, U.N. Doc. A/HRC/RES/38/7, ¶ 1 (July 17, 2018). Those rights are protected under article 20 of the Universal Declaration of Human Rights, *supra* note 6, and articles 21 and 22 of the International Covenant on Civil and Political Rights, *supra* note 5.
- 78 Hum. Rts. Comm., *General Comment No. 37 (2020) on the Right of Peaceful Assembly (Article 21)*, ¶ 33, U.N. Doc. CCPR/C/GC/37 (Sept. 17, 2020).
- 79 *HRC Concluding Observations of Nov. 2011*, *supra* note 74, ¶ 26.
- 80 The Special Rapporteur on Iran has repeatedly received reports of arrests and intimidation of journalists and media workers. SRI Report of July 2019, *supra* note 58, ¶ 25. Journalists have reported long-standing harassment and persecution, including personal and gendered attacks. *Id.* Journalists have also reported increased reprisals as a result of engagement with the United Nations human rights mechanisms, in some cases involving even family members of journalist staff. *Id.* In response, the Iranian government has stated that journalists, in particular BBC Persian staff, had “perpetrated many destructive activities beyond the sphere of media activity.” *Id.* ¶ 26. These allegations by the Iranian government are unsubstantiated. *Id.*
- 81 Declaration on Human Rights Defenders, *supra* note 4, at art. 2(2); Michel Forst (Special Rapporteur on the Situation of Human Rights Defenders), *Situation of Human Rights Defenders*, ¶¶ 15, 36, U.N. Doc. A/73/215 (July 23, 2018); Margaret Sekaggya (Special Rapporteur on the Situation of Human Rights Defenders), *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, Margaret Sekaggya, ¶ 32, U.N. Doc. A/HRC/19/55 (Dec. 21, 2011); Margaret Sekaggya (Special Rapporteur on the Situation of Human Rights Defenders), *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, Margaret Sekaggya, ¶¶ 90-91, U.N. Doc. A/HRC/25/55 (Dec. 23, 2013) (stating that there is a need to pay particular attention to HRDs who face extraordinary risks due to the work that they do and that the SR is appalled that journalists and media workers are targeted because of their reports on human rights violations; the SR is also concerned that restrictions on media and press freedom could foster a climate of intimidation, stigmatization, violence, and self-censorship).
- 82 Between June and September 2020, the government sentenced eight journalists on charges connected to their reporting; it is unclear whether their reporting was in print or online. SRI Report of Jan. 2021, *supra* note 60, ¶ 20. This is a longstanding issue as the Working Group on Arbitrary Detention noted in 2003 that persecution of the press in Iran was on the rise. WGAD Report of June 2003, *supra* note 56, ¶ 64(4).
- 83 SRI Report of Jan. 2021, *supra* note 60, ¶ 20.
- 84 *Iran: Execution of Journalist Rouhollah Zam a ‘Deadly Blow’ to Freedom of Expression*, AMNESTY INT’L (Dec. 12, 2020); *Iran Abducts Paris-Based Iranian Opposition News Provider*, REPS. WITHOUT BORDERS (Oct. 17, 2019).
- 85 *Iran Abducts Paris-Based Iranian Opposition News Provider*, *supra* note 84.
- 86 *Id.* (Telegram shutting down AmadNews); *Iran: Execution of Journalist Rouhollah Zam a ‘Deadly Blow’ to Freedom of Expression*, *supra* note 84. Citizens and residents of Iran took to the streets in 2017-18 to protest economic hardship and political repression under President Rouhani’s government. Protests took place in fifty cities and turned violent in some. Hundreds were arrested and at least twenty-one were killed. *Iran Protests: Why Is There Unrest?*, BBC (Jan. 2, 2018); Marwa



- Eltagouri, *Tens of Thousands of People Have Protested in Iran. Here's Why.*, WASH. POST (Jan. 3, 2018). According to Reporters Without Borders, at the request of the Iranian government, Telegram shut down AmadNews at the height of the protests in December 2017. The news channel resumed operating on Telegram under a new name, and the Telegram owner refused to close it down again because the site called for peaceful protest. *Iran Abducts Paris-Based Iranian Opposition News Provider*, *supra* note 84.
- 87 *Iran Abducts Paris-Based Iranian Opposition News Provider*, *supra* note 84 (government accusation against AmadNews). The Human Rights Committee has repeatedly called upon Iran to end harassment of political opponents, HRDs, and journalists, among others. G.A. Res. 73/181, *supra* note 76, ¶ 14. The Human Rights Committee also previously has stated that freedom of assembly and association is “severely limited” in Iran. *HRC Concluding Observations of Nov. 2011*, *supra* note 74, ¶ 26.
- 88 *Iran: Execution of Journalist Rouhollah Zam a ‘Deadly Blow’ to Freedom of Expression*, *supra* note 84.
- 89 *Id.*; *Ruhollah Zam: Iran Sentences Journalist to Death for Fanning Unrest*, BBC (June 30, 2020); Islamic Penal Code Books One & Two, *supra* note 10, at arts. 286-88 (criminalising “corruption on earth” as a felony carrying the death sentence).
- 90 H.R.C. Res. 12/16, *supra* note 16, ¶ 5(p)(i).
- 91 *SRI Report of Jan. 2021*, *supra* note 60, ¶¶ 19-20 (providing examples of the government targeting and prosecuting individuals); Javaid Rehman (Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran), *Situation of Human Rights in the Islamic Republic of Iran*, ¶¶ 5, 7, U.N. Doc. A/75/213 (July 21, 2020) (noting the “unprecedented” use of excessive force in November 2019 by the government to suppress protestors).
- 92 *Iran: Execution of Journalist Rouhollah Zam a ‘Deadly Blow’ to Freedom of Expression*, *supra* note 84. This was not the first time authorities have imprisoned Zam for his reporting. In 2009, officials arrested and imprisoned Zam after the disputed presidential election. *Ruhollah Zam: Iran ‘Arrests Exiled Journalist’ for Fanning Unrest*, BBC (Oct. 14, 2019). President Ahmadi-Nejad won re-election in 2009, sparking nationwide protests over allegations of electoral fraud. AXWORTHY, *supra* note 59, 350-66.
- 93 ICCPR, *supra* note 5, at art. 6(2). The Human Rights Committee reserves the imposition of the death penalty to the most serious of crimes, defined as crimes involving intentional killing. Under no circumstances can the death penalty be applied against political opposition groups or for offending the head of State. Hum. Rts. Comm., *General Comment No. 36: Article 6: Right to Life*, ¶¶ 33, 35-36, U.N. Doc. CCPR/C/GC/36 (Sept. 3, 2019).
- 94 *HRC Concluding Observations of Nov. 2011*, *supra* note 74, ¶¶ 12; G.A. Res. 73/181, *supra* note 76, ¶ 10.
- 95 U.N. Off. of the High Comm’r for Hum. Rts., *Compilation on the Islamic Republic of Iran: Report of the Office of the United Nations High Commissioner for Human Rights*, ¶¶ 29, 36, U.N. Doc. A/HRC/WG.6/34/IRN/2 (Aug. 30, 2019) [hereinafter *OHCHR Report of Aug. 2019*] (stating that the Special Rapporteur on Iran expressed concern about the issuances of long prison or death sentences based on charges related to espionage or national security; content-based offenses such as “propaganda against the state” and “insulting Islam” were not clearly defined in relation to the rights of children thus limiting the right to freedom of expression).
- 96 *Iran: Satirist Kioomars Marzban Sentenced to 11 Years*, ARTICLE 19 (Oct. 16, 2019).
- 97 *Id.*
- 98 *Id.*
- 99 *Id.* Islamic Penal Code Book Five, *supra* note 10, at art. 508 (stating that anyone who cooperates with foreign States against the Islamic Republic of Iran can be sentenced to one to ten years imprisonment).
- 100 *Iran: Satirist Kioomars Marzban Sentenced to 11 Years*, *supra* note 96.
- 101 *Id.* The Human Rights Committee has previously expressed concern that content-based offenses in Iran, such as propaganda against the State, were not clearly defined or interpreted. *OHCHR Report of Aug. 2019*, *supra* note 95, ¶ 36.
- 102 The specific sentences for each conviction of Marzban are as follows: Marzban was sentenced to 11 years for “communication with America’s hostile government,” 7 years and 6 months for “insulting the sacred,” 3 years for “insulting the [supreme] leader, 1 year and 6 months for “propaganda against the state,” and 9 months for “insulting officials.” *Iran: Satirist Kioomars Marzban Sentenced to 11 Years*, *supra* note 96. Marzban will only be serving 11 years out of the total sentencing. *Id.*
- 103 *See Id.*
- 104 *Id.*

- 105 *Iranian Authorities Detain Journalist Mohammad Mosaed Again for Social Media Posts*, COMM. PROTECT JOURNALISTS (Feb. 27, 2020).
- 106 *Mohammad Mosaed, Iran*, COMM. PROTECT JOURNALISTS.
- 107 *Id.*
- 108 *Iranian Authorities Detain Journalist Mohammad Mosaed Again for Social Media Posts*, *supra* note 107; *Iranian Press-Freedom Awardee Sentenced to More than Four Years in Prison*, RADIO FREE EUR./RADIO LIBERTY (Sept. 3, 2020); *Mohammad Mosaed, Iran*, *supra* note 106; Islamic Penal Code Book Five, *supra* note 10, at art. 500 (charging those who engage in any type of propaganda against the Islamic Republic of Iran to three months to one year of imprisonment).
- 109 *Iran Detains Freelance Photographer and Culture Reporter Nooshin Jafari*, COMM. PROTECT JOURNALISTS (Aug. 12, 2019); *Iran Is the World's Biggest Jailer of Women Journalists*, REPS. WITHOUT BORDERS (Aug. 27, 2019); *Iranian Journalist Nooshin Jafari Begins 4-Year Jail Term on Propaganda and Insult Charges*, COMM. PROTECT JOURNALISTS (Feb. 18, 2021).
- 110 *Iranian Journalist Nooshin Jafari Begins 4-Year Jail Term on Propaganda and Insult Charges*, *supra* note 109; Islamic Penal Code Book Five, *supra* note 10, at art. 500.
- 111 *Iran Is the World's Biggest Jailer of Women Journalists*, *supra* note 109; *Iran: Decline for Free Expression Requires Increased Support for UN Scrutiny*, ARTICLE19 (Mar. 6, 2019). The ARTICLE 19 report mentions an earlier arrest of 2017, but it refers to a June 2018 report by the Centre for Human Rights in Iran, *Iranian Journalist and Political Activist Detained for Criticizing Iran's Judiciary*, CTR. FOR HUM. RTS. IRAN (June 28, 2018), which gives details of her June 2018 arrest included in our study.
- 112 *HRC General Comment No. 34*, *supra* note 13, ¶ 38; see H.R.C. Res. 12/16, *supra* note 16, ¶ 5(p)(i).
- 113 *After Hengameh Shahidi's Pardon, RSF Asks Supreme Leader to Free All Imprisoned Journalists*, REPS. WITHOUT BORDERS (Feb. 25, 2021).
- 114 *Id.*; *Iran: Decline for Free Expression Requires Increased Support for UN Scrutiny*, *supra* note 111.
- 115 The SR on HRDs has discussed the uniquely gendered risks that WHRDs face as a result of entrenched gender stereotypes and deeply held ideas and norms about who women are and how women should be; in this climate, women defenders are often the first to come under attack. Michel Forst (Special Rapporteur on the Situation of Human Rights Defenders), *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, ¶¶ 6-7, U.N. Doc. A/HRC/40/60 (Jan. 10, 2019) [hereinafter *SRHRD Report of Jan. 2019*].
- 116 Protests against the compulsory veiling laws have gone viral and resulted in at least thirty-two arrests since January 2018. The protestors were mostly charged with national-security related crimes, such as “collusion and conspiracy,” “encouraging prostitution by promoting being unveiled,” and “propaganda against the regime.” *SRI Report of July 2019*, *supra* note 58, ¶ 23.
- 117 *Iran Is the World's Biggest Jailer of Women Journalists*, *supra* note 109.
- 118 *SRI Report of July 2019*, *supra* note 58, ¶ 24. Yasaman Aryani, Monireh Arabshahi, and Mojgan Keshavarz are still in detention for this video. *Id.*
- 119 *Id.* The women are sentenced to the lengthiest single sentence imposed for the most serious charge, which is five years and six months for “inciting and facilitating corruption and prostitution.” Nikita White, *It's Been One Year Since Yasaman Aryani Was Jailed in Iran for Taking off Her Headscarf. Here's What You Need to Know*, WOMEN'S AGENDA (Mar. 12, 2020). The Iranian government also arrested four individuals in May 2018, for posting content on social media that went against expectations of female modesty because it featured women without their headscarves or while dancing. According to Amnesty International the government uses article 638 of the Islamic Penal Code to charge dancing in public as a sinful act punishable by two months imprisonment and seventy-four lashes. *Iran: Arrest of Instagram Celebrities Part of Efforts Towards Filtering the Platform*, ARTICLE19 (July 11, 2018); see Islamic Penal Code Book Five, *supra* note 10, at art. 638.
- 120 *Radio Farda, Three Women Sentenced to 55 Years for Defying Compulsory Hijab in Iran*, RADIO FARDA (Aug. 2, 2019); *Iran: Take Action: Release Women's Rights Defenders and Feminist Activists of Iran's #WhiteWednesdays Campaign!*, GCHR (Oct. 31, 2019).
- 121 *Iran: Take Action: Release Women's Rights Defenders and Feminist Activists of Iran's #WhiteWednesdays Campaign!*, *supra* note 120.
- 122 *Radio Farda*, *supra* note 120.
- 123 On 01 June 2020, women's rights activist Saba Kord Afshari was sentenced to fifteen years in prison by an appeals court after having been acquitted on 17 March 2020 by the Evin Prosecutor's Office. *Saba Kord Afshari Ends Hunger Strike*, FRONT LINE DEFS.; *Iran: Shocking Charges Against Jailed Women's Rights Activists, Who*

- Must Be Released Amid Second COVID-19 Peak*, GCHR (June 22, 2020). Authorities sentenced her for “promoting corruption and prostitution through appearing without a headscarf in public,” for her role in the “White Wednesday” protest movement against mandatory veiling. *Iran: Shocking Charges Against Jailed Women’s Rights Activists, Who Must Be Released Amid Second COVID-19 Peak*, *supra*. Kord Afshari is already serving a nine-year sentence. *Id.*
- 124 *Iran: Women Human Rights Defenders Ailing in Prison as a Result of Solitary Confinement and Hunger Strikes*, GCHR (July 23, 2019).
- 125 *Iran: Policing Women on Social Media*, ARTICLE19 (May 22, 2020). Authorities reportedly arrested high-profile Instagram “celebrities.” *Iran: Arrest of Instagram Celebrities Part of Efforts Towards Filtering the Platform*, *supra* note 123. The content of the posts was unclear, but one of those arrested reportedly had posted a video of herself dancing, which the government has prosecuted as a “sinful” act under article 638 of the Penal Code. *Id.*; see Islamic Penal Code Book Five, *supra* note 10, at art. 638 (criminalising the commission in public of a “*harām* (sinful) act”).
- 126 SRFOE Report of Apr. 2010, *supra* note 51, ¶¶ 74, 79(g).
- 127 SRI Report of Jan. 2021, *supra* note 60, ¶ 2; *Iran: Policing Women on Social Media*, *supra* note 125.
- 128 Promotion of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: Protecting Women Human Rights Defenders, G.A. Res. 68/181, U.N. Doc. A/RES/68/181, ¶ 8 (Jan. 30, 2014); SRHRD Report of Jan. 2019, *supra* note 115, ¶ 19.
- 129 Working Grp. on Arbitrary Det., *Report of the Working Group on Arbitrary Detention: United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court*, ¶ 11, U.N. Doc. A/HRC/30/37 (July 6, 2015) [hereinafter *WGAD Report of July 2015*]; Hum. Rts. Comm., *General Comment No. 35: Article 9 (Liberty and Security of Person)*, ¶¶ 17, 22-23, 53, U.N. Doc. CCPR/C/GC/35 (Dec. 16, 2014).
- 130 *WGAD Report of July 2015*, *supra* note 129, ¶ 10; UDHR, *supra* note 6, at art. 19; ICCPR, *supra* note 5, at art. 19.
- 131 *WGAD Report of July 2015*, *supra* note 129, ¶ 11.
- 132 Working Grp. on Arbitrary Det., *Report of the Working Group on Arbitrary Detention*, ¶ 46, U.N. Doc. A/HRC/36/37 (July 19, 2017); UDHR, *supra* note 6, at art. 7; ICCPR, *supra* note 5, at art. 26.
- 133 ICCPR, *supra* note 5, at art. 9.
- 134 *Iran Detains Freelance Photographer and Culture Reporter Nooshin Jafari*, *supra* note 109.
- 135 *Id.*; *Iranian Journalist Nooshin Jafari Begins 4-Year Jail Term on Propaganda and Insult Charges*, *supra* note 109.
- 136 1 JEAN-MARIE HENCKAERTS & LOUISE DOSWALD-BECK, INT’L COMM. OF THE RED CROSS, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW Rule 98 (2005) (enforced disappearance).
- 137 International Convention for the Protection of All Persons from Enforced Disappearance, *opened for signature* Dec. 20, 2006, 2716 U.N.T.S. 3.
- 138 Article 2 of the Convention on Enforced Disappearances defines an enforced disappearance as the “arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.” *Id.* at art. 2.
- 139 *Iran Detains Freelance Photographer and Culture Reporter Nooshin Jafari*, *supra* note 109.
- 140 UDHR, *supra* note 6, at art. 6; ICCPR, *supra* note 5, at art. 16. Additionally, incommunicado detention violates the right to be brought promptly before a judge protected by ICCPR article 9(3) and the right to challenge the lawfulness of detention protected by ICCPR article 9(4). ICCPR, *supra* note 5, at arts. 9(3), 9(4).
- 141 Theo van Boven (Special Rapporteur on Torture), *Report of the Special Rapporteur on the Question of Torture Submitted in Accordance with Commission Resolution 2002/38*, ¶ 26(g), U.N. Doc. E/CN.4/2003/68 (Dec. 17, 2002) [hereinafter *SRT Report of Dec. 2002*].
- 142 Manfred Nowak (Special Rapporteur on Torture), *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak: Addendum—Study on the Phenomena of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in the World, Including an Assessment of Conditions of Detention*, ¶ 156, U.N. Doc. A/HRC/13/39/Add.5 (Feb. 5, 2010) (international law and standards prohibit “all secret and incommunicado detention”); see Torture

and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 72/163, U.N. Doc. A/RES/72/163, ¶ 16 (Dec. 19, 2017).

- 143 SRT Report of Dec. 2002, *supra* note 141, ¶ 26(g).
- 144 *Iranian Journalist Nooshin Jafari Begins 4-Year Jail Term on Propaganda and Insult Charges*, *supra* note 109.
- 145 Hum. Rts. Comm., *General Comment No. 32: Article 14: Right to Equality Before Courts and Tribunals and to Fair Trial*, ¶ 6, U.N. Doc. CCPR/C/GC/32 (Aug. 23, 2007) [hereinafter *HRC General Comment No. 32*].
- 146 WGAD Report of July 2015, *supra* note 129, at annex, princ. 1; *HRC General Comment No. 32*, *supra* note 145, ¶¶ 15, 19, 31-34, 38; ICCPR, *supra* note 5, at art. 14.
- 147 WGAD Report of July 2015, *supra* note 129, at annex, princs. 7-9; *HRC General Comment No. 32*, *supra* note 145, ¶ 10.
- 148 OHCHR Report of Aug. 2019, *supra* note 95, ¶ 29. This pattern is characterised by arbitrary arrest, prolonged solitary confinement, interrogation, denial of access to a lawyer of choice, short trials without a published verdict, and the issuance of long prison or death sentences. *Id.*
- 149 *Iran Is the World's Biggest Jailer of Women Journalists*, *supra* note 109.
- 150 *Iran: Execution of Journalist Rouhollah Zam a 'Deadly Blow' to Freedom of Expression*, *supra* note 84.
- 151 SRI Report of July 2019, *supra* note 58, ¶ 89.
- 152 *Iran: Execution of Journalist Rouhollah Zam a 'Deadly Blow' to Freedom of Expression*, *supra* note 84.

NOTES



# IRAQ



# IRAQ SCORECARD

## Targeted Activism or Expression



Expression re Offline Protests



Criticism of Government



Journalists



Women's Rights and WHRDs

## Human Rights Violations



Arbitrary Detention



Incommunicado Detention



Enforced Disappearance



Torture



Fair Trial

## Problematic Legal Provisions and Institutions



Criminal Defamation



Public Order

12

Number of incidents that fit the inclusion criteria of this study



# INTRODUCTION

Between 01 May 2018, and 31 October 2020, there were twelve reported incidents in Iraq and the Kurdistan Region of Iraq targeting human rights defenders (HRDs), including journalists, for their online expression that fit the inclusion criteria of this study.<sup>1</sup> Iraq is a parliamentary democracy, with two deliberative bodies and a separate judicial branch.<sup>2</sup> Most of the regulated expression occurred on the personal social media accounts of HRDs, Facebook being the primary surveilled website.

In addition to violations of freedom of expression, there is credible evidence that Iraq has committed torture as well as enforced disappearance. Reported incidents document that authorities target HRDs who use online platforms to support public protests as well as to share views critical of the government. Based on this research, the government has violated its obligation to respect online freedom of expression and additional associated rights of HRDs. These violations also constitute breaches of the duty of the State, pursuant to the United Nations (UN) Charter, “as the main duty-bearer” to ensure “defenders enjoy a safe and enabling environment” and that government institutions and processes “are aligned with their safety and the aim of their activities.”<sup>3</sup>

Iraq is a party to several international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR).<sup>4</sup> Moreover, as a UN member State, Iraq is bound by the UN Charter and has pledged to adhere to the principles reflected in the Universal Declaration of Human Rights (UDHR), including article 19, which establishes that “[e]veryone has the right to freedom of opinion and expression.”<sup>5</sup>

# LEGAL ENVIRONMENT FOR ONLINE EXPRESSION IN IRAQ

## Political Background

During the period under review, authorities in Iraq as well as in the Kurdistan Region have forcefully repressed national protests. The Kurdistan Region is an autonomous region in northern Iraq governed by the Kurdistan Regional Authority. Several national protests erupted in the country, beginning in October 2019, and continued intermittently for months.<sup>6</sup> In Iraq and the Kurdistan Region there are few independent media outlets, and journalists who reported on the protests have been vulnerable to arrest. The central focus of these protests was governmental corruption, poor economic conditions; and abuses of protestors by the armed forces fuelled further demonstrations.<sup>7</sup> Security forces repeatedly have opened fire on protestors and journalists gathering in public spaces.<sup>8</sup> According to the UN, authorities have detained, injured, or killed thousands during the protests.<sup>9</sup> Several UN human rights experts, including the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (SR on FOE) have denounced the violence against protestors, and called for accountability for perpetrators of unlawful use of force.<sup>10</sup>

In addition, authorities have responded to the COVID-19 pandemic in ways that have further restricted freedom of expression. To minimise the spread of infection, the government imposed strict lockdowns that brought much of the protest activity to a halt.<sup>11</sup> Security forces and law enforcement in the country, but particularly in the Kurdistan Region of Iraq, have been accused by opposition leaders and protestors of using the COVID-19 lockdowns as a pretext for banning protests and unnecessarily restricting the ability of protestors to attend.<sup>12</sup>

## Internet Shutdowns and Social Media Blocking

Iraq has a history of internet restrictions and country-wide shutdowns, particularly to quell anti-government activity.<sup>13</sup> The Iraqi government often relies on these tactics to restrict freedom of expression and limit communications.<sup>14</sup> Following the onset of the recent protests, authorities in Iraq and the Kurdistan Region ordered the closure of eight television and four radio stations for several months for allegedly violating media licensing rules.<sup>15</sup> At the same time, the Iraqi government began to block social media websites in all regions, a documented tactic of Iraqi authorities to limit free communication.<sup>16</sup> This is alarming as the SR on FOE previously stated that any measures by governments to intentionally prevent or disrupt access to online information in this manner violate international freedom of expression.<sup>17</sup>

## Laws Related to Online Expression

During the study period, Iraqi authorities primarily used provisions of the Iraqi Penal Code, and the Communications and Media Commission's Guidelines to punish online freedom of expression. In addition, Iraqi lawmakers have considered but not yet adopted a cybercrime law. Human rights groups criticised earlier proposed laws introduced in 2011, 2013, 2019, and 2020 for containing provisions that restricted online content or access to content in a manner that violated international law on their face or could be used to target HRDs.<sup>18</sup>

### *2010 Penal Code*

A set of key provisions of the Iraqi Penal Code that are worth noting include those that are used to target journalists reporting on government activities.<sup>19</sup> Article 156 criminalises acts that "violate

the independence of the country,” or the “security of its territory” and which are punishable by life imprisonment.<sup>20</sup> Article 210 prohibits broadcasts of “false information” that “endangers the public security,” and “disturbs the public peace” and violators are subject to detention and a fine.<sup>21</sup> Under both article 19 of the ICCPR and the UDHR, criminal laws that restrict freedom of expression must be sufficiently precise so as to enable individuals to determine how to comply with the law and to limit the discretion conferred on authorities enforcing it.<sup>22</sup> Vaguely and broadly worded provisions, like those here, have been found by UN Special Procedures mandate holders to violate this requirement, allowing authorities to exercise discretion arbitrarily to target protected speech, and encouraging individuals to engage in self-censorship.<sup>23</sup> Similarly, international experts, including the SR on FOE, have urged States to abolish general prohibitions on disseminating “false news” because of the vagueness and ambiguity of this term.<sup>24</sup>

The Penal Code also includes criminal offenses of defamation (article 433)<sup>25</sup> and insult (article 434).<sup>26</sup> They become more serious offenses if the offending content is published.<sup>27</sup> The UN Human Rights Committee has cautioned that laws on defamation should be “crafted with care” so that they do not restrict freedom of expression, and has recommended the decriminalisation of this offense.<sup>28</sup> It has interpreted ICCPR article 19 to require that “the application of criminal law should only be countenanced in the most serious of cases, and imprisonment is never an appropriate penalty.”<sup>29</sup> Moreover, the Committee has noted that “in circumstances of public debate concerning public figures in the political domain and public institutions, the value placed by the Covenant upon uninhibited expression is particularly high.”<sup>30</sup> These Penal Code provisions violate international freedom of expression, which the UN Human Rights Council has stipulated protects four types of expression: “[d]iscussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including

for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups... ”<sup>31</sup>

### ***2014 Communications and Media Commission – Media Broadcasting Rules***

The Communications and Media Commission (CMC), also known as National Communications and Media Commission of Iraq, was established by the Coalition Provisional Authority in 2004.<sup>32</sup> In 2014, the CMC, the primary body that oversees broadcast media regulations, issued country-wide guidelines.<sup>33</sup> The government updated and expanded the guidelines in 2019, which are known as the Media Broadcasting Rules.<sup>34</sup> The 2019 rules restrict content and govern the reporting processes of licensed media on a wide range of topics including the prevention of incitement of violence, maintenance of peace and security, upholding public standards of decency, prohibiting the dissemination of false news, and protecting the privacy of individuals in reporting on events.<sup>35</sup> Some of these provisions contain overly broad language which authorities have enforced against media outlets that covered anti-government protests,<sup>36</sup> in violation of the right to freedom of expression.

For example, section 2, article 1(a) of the Media Broadcasting Rules states that licensed media entities should “refrain from broadcasting any material that contains ... incitement to violence, hatred, or disturbance of civil order... or threatens the democratic system, civil peace, and democratic electoral process.”<sup>37</sup> Article 1(j) of the same section prohibits content “calling for or leading to ... provoking conflict between parties or the Iraqi society ... or materials that justify or encourage sectarian conflicts[,]” and the rules ban the broadcast of materials “promoting the opinions of the Baath Party.”<sup>38</sup> The SR on FOE has noted with concern that licensing regimes that contain vaguely and broadly worded provisions like these, which do not comply with human rights standards, promote censorship and self-censorship.<sup>39</sup> It is therefore unsurprising that the UN Human Rights Committee has held

that freedom of expression requires States to “avoid imposing onerous licensing conditions.”<sup>40</sup>

The recent actions of the Iraqi government illustrate how authorities can use licensing requirements to stifle online journalism. In October 2019, the CMC ordered several local and regional television channels to shut down, reportedly in an attempt to quell coverage of the protests.<sup>41</sup> The following month the CMC issued a statement explaining the shutdown was due to outlets “failing to comply with broadcasting rules and regulations” and warning several other channels to “correct their speech in a way that complied with regulations of media broadcasting.”<sup>42</sup> And in April 2020, the CMC issued a three-month suspension of Reuters’ media license for publishing an article which the government alleged overstated the number of COVID-19 cases in the country.<sup>43</sup> In each case, the CMC reportedly enforced the Broadcasting Rules against the media outlet to target protected expression.

### ***2020 Draft Anti-Cybercrimes Law***

On 23 November 2020, a draft Anti-Cybercrimes Law was introduced in the Iraqi Council of Representatives.<sup>44</sup> Human Rights Watch reported in May 2021 that the Iraqi Parliament suspended consideration of the draft law until it could be further amended to protect freedom of expression.<sup>45</sup> The November draft law substantially would have amended a cybercrimes law introduced in parliament in January 2019, which human rights groups also had harshly criticised.<sup>46</sup> The most recent draft is reviewed to highlight some of the persistent problems with lawmakers’ efforts to criminalize protected online expression.

First, article 4 of the most recent draft law guaranteed freedom of expression only “within the limits established by the constitution and the laws in force.”<sup>47</sup> This phrase is ambiguous and could be used to justify illegal application of Penal Code offenses of insult and defamation to HRDs. Second, article 6 introduced a new offense, punishable by up to ten years imprisonment, for accessing a website or a computer with the “intention of obtaining data ...

that affects the national security or economy ...”<sup>48</sup> The terms of “national security” and “economy” are vague and arbitrary, and thus violate the requirements of legality under international law which mandate laws to be sufficiently precise to enable individuals to comply with them and to limit the discretion conferred on authorities enforcing it.<sup>49</sup> Human rights groups expressed concern that article 4 could be used against HRDs seeking to exercise their rights to online freedom of expression by exposing corruption or human rights violations.<sup>50</sup> Third, article 22(3) of the draft law, “Crimes Related to Public Order and Morals,” penalised “violating the sanctity of private or family life” of an individual through use of a computer or information network to take photos or publish “news or audio or video recordings related to them even if they are real.”<sup>51</sup> Amnesty International and other NGOs pointed out that the draft law uses vague terms like “sanctity of family life,” made no exception for material disseminated in the public interest, and protected public figures from legitimate criticism in violation of the right to freedom of expression.<sup>52</sup>

As of the date of this writing, a revised draft law has not been introduced in parliament. However, ongoing scrutiny of similar proposals is warranted in light of the continued introduction of anti-cybercrime legislation that uses impermissibly vague terms to criminalise online content and access to information.

### ***2008 Kurdistan Regional Government Law to Prevent the Misuse of Telecommunications Equipment***

Authorities in the Kurdistan Region of Iraq have faced criticism in the last few years for the targeting, harassment, and intimidation of journalists in the region.<sup>53</sup> Prosecutors are using Kurdish regional laws including the Law to Prevent the Misuse of Telecommunications Equipment<sup>54</sup> to target journalists and other HRDs for online coverage of government protests and criticism of government policy.<sup>55</sup> Article 2 of the law authorises imprisonment and fines for misusing cell phones and email (or more broadly the internet) to “threaten someone, use profanities, spread misinformation, disclose private conversations or share images counter to the public’s

values, or take any other action that might harm someone's integrity or honor or motivate a crime or an immoral act."<sup>56</sup> Restrictions on freedom of expression must be narrowly drawn to be the least restrictive to achieve a legitimate protective function;<sup>57</sup> and the UN Human Rights Committee cautions that restrictions to protect morals or public order "must be understood in the light of universality of human rights and the principle of non-discrimination."<sup>58</sup> The telecommunications equipment law fails adequately to define the restricted content and thus facilitates arbitrary State violations of the right of online freedom of expression.

# LEGAL TRENDS EMERGING FROM INCIDENTS OF REPRESSION OF ONLINE EXPRESSION IN IRAQ AND THE KURDISTAN REGION

There is a clear pattern in the reported incidents of violations of online freedom of expression in Iraq and the Kurdistan Region. Authorities targeted HRDs, particularly journalists, for sharing personal views critical of the government's handling of the pandemic, the ongoing protests, or alleging corruption within the government. In several of the incidents, the charging law was not always identified, but reported facts suggest authorities used provisions of the Iraqi Penal Code. There were also reports of torture and arbitrary arrests of HRDs, as well as a report of an enforced disappearance.

## Violations of the Right to Online Freedom of Expression of Journalists

Journalists in Iraq and the Kurdistan Region operate in a dangerous political environment in the country.<sup>59</sup> Since 1992, over 190 journalists have been killed in Iraq.<sup>60</sup> In 2020 alone, the International Federation of Journalists reported over 100 cases of media rights violations in the Kurdistan Region, which included arbitrary arrests and physical attacks.<sup>61</sup> International human rights monitors have criticised the government for creating a hostile environment for journalists to exercise freedom of expression.<sup>62</sup>

### *Journalists in Iraq*

There were several reported cases of targeting of journalists for their online reporting or other protected online expression. One involves Hasan Sabah Muhammad, a journalist from Basra, the country's main port city in southeast Iraq. Muhammad worked for I NEWS, a private news outlet and later Dijlah TV.<sup>63</sup> In July 2018, Muhammad published a report detailing corruption in the Border Port Commission, which alleged the head of the port had bribed a local judge with a

gift.<sup>64</sup> The day after the report was released, Basra police arrived at Muhammad's house to arrest him, but he was not at home.<sup>65</sup> That night, however, armed men opened fire on his house.<sup>66</sup> Muhammad called the police to ask why he was wanted when he was informed that he was being charged under article 434 of the Iraqi Penal Code for a video he posted on his personal social media over a year prior about Basra airport taxis overcharging passengers.<sup>67</sup> Later that month, the head of the Basra Operations Command, a law enforcement agency that reports to both the Iraqi prime minister and minister of defence, wrote a letter to Muhammad's employer, Dijlah TV, prohibiting him from working as a journalist in Basra.<sup>68</sup> Only in October of 2018 was Muhammad able to start working as a journalist after the commander was replaced.<sup>69</sup>

Another example is that of Hussam al-Ka'abai, a journalist with NRT News in Najaf, a city just south of Baghdad.<sup>70</sup> On 07 March 2019, several officers from the National Security Service, an intelligence agency that reports to the prime minister, arrested al-Ka'abai without a reason given.<sup>71</sup> He was taken to the NSS local office before being transferred to a nearby police station where he was informed that he was being held due to a criminal complaint for violating "public integrity" under article 403 of the Iraqi Penal Code.<sup>72</sup> The national head of the NSS reportedly initiated a complaint against him for a Facebook post he made in which he criticised a NSS officer.<sup>73</sup> Al-Ka'abai stated that the NSS had sent all Najaf residents text messages to relay information about security issues but that authorities had misspellings in the text, to which he posted that the NSS should "get its spelling right."<sup>74</sup> Two days later, al-Ka'abai was released after his charges were dismissed by the judge.<sup>75</sup>

### *Journalists in the Kurdistan Region*

The targeting of journalists is also a concern in the Kurdistan Region. Bahroz Jafar is a Kurdish writer and journalist in Sulaymaniyah, a city in the east of the Kurdistan Region of Iraq.<sup>76</sup> Jafar works as a columnist for Peyser Press and is the director of the Sulaymaniyah-based Mediterranean Institute for Regional Studies (MIRS).<sup>77</sup> He routinely posts articles and opinion pieces to his Facebook page.<sup>78</sup> On 22 September 2020, authorities arrested Jafar and charged him with defaming the Iraqi president, who is a Kurdish politician from Sulaymaniyah,<sup>79</sup> in a column he posted. On 29 September 2020, officials released Jafar on bail.<sup>80</sup>

Another incident in the Kurdistan Region is of Sherwan Sherwani, journalist and civil society activist.<sup>81</sup> Sherwani provides political commentary on his personal Facebook account. On his account, Sherwani made a post criticizing the Kurdistan region's prime minister, Masrour Barzani, and urged legislators to ask the prime minister about killings of journalists and human rights activists in the region.<sup>82</sup> On 07 October 2020, 10 security officers raided Sherwani's home in Erbil and confiscated his computer, books, and other electronic devices.<sup>83</sup> Officers arrested Sherwani and took him to an undisclosed location, and refused to allow his family or his attorney to visit him.<sup>84</sup> Sherwani's wife stated that he was being held in a prison in Erbil run by the Asayish, and that authorities had charged Sherwani with two counts of "insulting the national security of the Kurdistan Region" and "receiving money from outside parties working against the Kurdistan Region."<sup>85</sup> Months later, Sherwani faced trial under different charges, specifically articles 47, 49, and 49 of the Iraqi Penal Code,<sup>86</sup> which state that any person who violates the independence, unity, or security of the country can be punished with life imprisonment,<sup>87</sup> as well as Penal Code article 156 as amended.<sup>88</sup> On 16 February 2021, Sherwani received a sentenced of six years in prison.<sup>89</sup>

Finally, on 16 January 2019, police arrested the journalist and director of NRT News's Erbil Office Rebwar Kaki Abd al-Rahman as he arrived at this

office.<sup>90</sup> Officers did not inform him of the reason for his arrest, in violation of his international due process rights.<sup>91</sup> They brought him to a nearby police station where a police officer first told him he was accused of threatening someone using his mobile phone.<sup>92</sup> An hour later, a police officer told him he was instead wanted for a report NRT had broadcast in September 2018 on corruption allegations linked to two pharmaceutical companies owned by senior political figures in the Kurdistan Region.<sup>93</sup> Kakai said that at court, the judge informed him he was being charged under article 2 of the Law to Prevent the Misuse of Telecommunications Equipment based on a complaint by the owner of one of the companies.<sup>94</sup> He was acquitted of charges and released on 26 January 2019.<sup>95</sup>

### **Violations of Online Freedom of Expression Against HRDs Organizing Protests**

Authorities in Iraq and the Kurdistan Region have targeted HRDs organising online to support public protests. Recognising the links between the freedom of expression of HRDs, public dissent, and the promotion of rights more broadly, the UN General Assembly has condemned violent suppression by State and non-State actors of peaceful protestors and arrests of journalists and media activists "covering demonstrations and protests[.]"<sup>96</sup>

#### *In Iraq*

Research identified several incidents during the reporting period involving HRDs organising protests online. One case concerns Samer Faraj, an HRD who posts online promoting political and civil rights and also participated in the protests.<sup>97</sup> Due to his involvement in 'Bent Al-Rafedain,' a women's rights organization, Iraqi authorities reportedly have targeted Faraj in the past for this work and for his social media posts.<sup>98</sup> On 27 October 2019, authorities raided Faraj's house and confiscated several of his electronic devices.<sup>99</sup> They arrested him and took him to a local police station in the city of Ramadi where he was accused of "inciting civil disobedience" for

posts made on his personal social media account.<sup>100</sup> Officials did not permit him to see his family or lawyer.<sup>101</sup> After spending over a month in detention, on 01 December 2019, officials released him.<sup>102</sup> Published reports do not specify the law under which Faraj was charged.

Another incident arose on 06 April 2020, when a protest movement organiser from the province of Muthana, Haitham Sulaiman, posted on Facebook exhorting the Muthana governor to investigate allegations of corruption within the health department linked to the purchase of COVID-19 masks.<sup>103</sup> In his post, Sulaiman called for a protest sit-in against the health department.<sup>104</sup> The next day, Interior Ministry intelligence officials came to his home while he was not there and warned his family that he should stop writing about corruption on Facebook otherwise he would be disciplined.<sup>105</sup> However, Sulaiman posted again on Facebook, this time describing the police visit and the threats made by the government agents.<sup>106</sup> Four days later, on 10 April 2020, four men in civilian attire came to Sulaiman's house, blindfolded and handcuffed him, and took him to the Muthana intelligence office where Sulaiman reports he was beaten after which he signed a forced confession stating that "the Iraqi protest movement had been bankrolled by the United States."<sup>107</sup> The next day, authorities brought him before a judge who told him he was charged under article 210 of the Iraqi Penal Code for wilfully sharing false or biased information that endangered public security and then released him after he paid a fee.<sup>108</sup> Officials did not allow Sulaiman to have a lawyer present.<sup>109</sup>

### *In the Kurdistan Region*

Badal Abdulbaqi Abu Baker is schoolteacher and protest organiser in Dohuk.<sup>110</sup> On 27 January 2019, officers of the Kurdish security forces arrested Abu Baker at his home, alleging he had participated in protests the day before.<sup>111</sup> The officers brought him to the Asayish Directorate in Dohuk where they accused him of working against the government and told him

to "leave the Kurdistan Region if he was not happy."<sup>112</sup> Officers brought him before an investigative judge after four days, who told him he was being charged under article 156 of the Iraqi Penal Code, which criminalises acts that violate national security.<sup>113</sup> Officials released Abu Baker after seventeen more days after he promised in writing not to engage in any "anti-government political activity."<sup>114</sup> Almost a year later, on 16 May 2020, armed members of the Asayish arrested Abu Baker without a warrant.<sup>115</sup> He was charged with "the misuse of electronic devices" for his role in organizing peaceful protests through social media platforms.<sup>116</sup>

Repression of HRDs throughout Iraq for expressing support of social protests online violates their right to online freedom of expression.<sup>117</sup> As the UN OHCHR found in its report: "Social media played a critical role as a site of online protest. In response to the limited safe space available for independent media to report on protests, they became the primary source of information on the demonstrations and a key platform for protesters, analysts and independent journalists to report on developments, including human rights violations and abuses."<sup>118</sup> Human rights defenders are recognised as fulfilling a critical role in rights promotion and States have special duties to ensure their protection.<sup>119</sup> Iraqi authorities have failed to their duties to do so with respect to HRDs, including journalists, disseminating online coverage of the protests.

## **Additional Human Rights Violations**

The violation of the right to freedom of expression online also implicates other human rights. The most evident of these associated rights which Iraqi authorities have violated are related to freedom of association, arbitrary arrest, arbitrary detention, enforced disappearance, due process, and the prohibition against torture and ill-treatment. In addition, authorities committed freedom-of-expression violations in its response to the COVID-19 pandemic.



### *Violation of the right to freedom of association*

Government crackdowns on HRDs for online freedom of expression related to the protests implicates violations of other fundamental freedoms including the right to freedom of association. The cases of HRDs in Iraq and the Kurdish Region all illustrate that the authorities sought to eliminate online support for the protests. Human rights bodies have emphasised that States have the obligation to respect and protect the rights to freedom of assembly and association both offline and online.<sup>120</sup> The UN Human Rights Committee has underscored that the protection of activities associated with the right to peaceful assembly, including information dissemination, communication between participants, and broadcasting, is crucial to the exercise of that right.<sup>121</sup>

### *Arbitrary detention*

The reported incidents reveal that authorities arbitrarily detained hundreds of protestors without due process.<sup>122</sup> Human rights monitors report that Iraqi authorities detained journalists and protestors for varying lengths of time only to release them hours or days later without charges.<sup>123</sup>

Authorities violated the liberty rights of HRDs through arbitrary detention. Arbitrary deprivation of liberty is prohibited under article 9 of the ICCPR, customary international law and is a *jus cogens* norm.<sup>124</sup> A deprivation is arbitrary including when it is without a legal basis as well as when it results from the exercise of freedom of expression.<sup>125</sup> All the reported arrests of HRDs, including journalists, are arbitrary because they are based on impermissibly vague laws and because the online expression which was the gravamen of the charges is protected under ICCPR article 19. As the UN Working Group on Arbitrary Detention has reiterated, any measure depriving an individual of liberty must meet strict standards of lawfulness, necessity, and proportionality to avoid arbitrariness.<sup>126</sup> Deprivations may be arbitrary when they are based on discriminatory

grounds against HRDs and activists, violating the rights to equality before the law and the right to equal protection under article 26 of the ICCPR.<sup>127</sup>

### *Incommunicado detention and enforced disappearances*

There were several reported cases of incommunicado detention and enforced disappearance of HRDs. Incommunicado detention “places an individual outside the protection of the law,”<sup>128</sup> in violation of article 6 of the ICCPR,<sup>129</sup> which protects the right to be recognised as a person before the law and receive judicial protection.<sup>130</sup> This is a serious violation often associated with grave harm. The Special Rapporteur on torture has observed that torture is “most frequently practiced during incommunicado detention,”<sup>131</sup> and it is outlawed by international law.<sup>132</sup> The UN Working Group on Arbitrary Detention considers incommunicado detention a form of arbitrary detention.<sup>133</sup> The Special Rapporteur on torture has stated that “[i]n all circumstances, a relative of the detainee should be informed of the arrest and place of detention within 18 hours.”<sup>134</sup> Iraq is a party to the International Convention for the Protection of All Persons from Enforced Disappearance, which sets out the obligations of States to prevent, investigate, and prosecute all enforced disappearances.<sup>135</sup> Enforced disappearance is an international crime and is prohibited by customary law<sup>136</sup> as well as treaty.<sup>137</sup> An enforced disappearance has three elements: (1) a deprivation of liberty; (2) by State officials or with their consent; followed by (3) the refusal to acknowledge the deprivation of liberty, or to disclose information on the fate or location of the disappeared.<sup>138</sup>

For example, Salman Khairallah “Al-Mansoori” Salman and Omar Al-Amri are two HRDs in Iraq who were also active and regular participants in the anti-corruption demonstrations which started in early October 2019.<sup>139</sup> On 11 December 2019, unknown individuals abducted Salman and Al-Amri in Baghdad when the two went to the Al-Khadhimiya district to buy tents for protesters in

Tahrir Square, the central hub of the protests.<sup>140</sup> Their last contact was with a female colleague and, according to Salman's relatives, the two men did not respond to their phones, which had been turned off.<sup>141</sup> The families have not been able to learn about their fate, despite their efforts to enquire with local authorities about their whereabouts and well-being.<sup>142</sup> It is not reported whether authorities initiated an investigation. Salman's family has shared that Salman had received indirect threats a few weeks prior that he was being watched but he had dismissed it.<sup>143</sup> Al-Amri's family said they believed the two activists were arrested by the security forces and are being held at Baghdad's al-Muthana airport detention facility for interrogation.<sup>144</sup> On 17 December, both Al-Amri and Salman were released with no clear charges and did not disclose publicly further information about their abductors.<sup>145</sup>

Another case is that of Ali Jassab Hattab Al-Heliji, an HRD and lawyer in the city of Amarah.<sup>146</sup> He represented individuals arrested in connection to the protests taking place all over Iraq.<sup>147</sup> On 08 October 2019, Al-Heliji received a call from a client, who asked to meet him in a main area of the Ammarahin al-Mayssan governate. After meeting with the client, armed men dragged him away from his car and drove him away in an unidentified truck.<sup>148</sup> Prior to his disappearance, Al-Heliji had received death threats and warnings from unknown callers<sup>149</sup> to stop speaking out on Facebook about the killing of people participating in the demonstrations.<sup>150</sup> The whereabouts of Al-Heliji remain unknown.<sup>151</sup> Al-Heliji's case fits the pattern of abductions of HRDs related to the protests to which international observers have attributed government responsibility. On 10 March, 2021, Al-Heliji's father and well-known poet, Jaseb Hattab Al-Heliji, was assassinated.<sup>152</sup> He led a campaign to locate his son directed at the militant group the family believed was responsible for their son's killing.<sup>153</sup> He was seeking justice for his son and as a result, was targeted and killed.<sup>154</sup> UN experts have called for an investigation into the murder of Jaseb Hattab Al-Heliji and alleged links of perpetrators to Iraqi security forces, and renewed their call for action to find Ali Al-Heliji.<sup>155</sup>

### ***Due process violations***

Additionally, the reported cases evidence widespread violations of international due process rights of HRDs arrested in breach of international freedom of expression. Fundamental principles of fair trials are protected under international law at all times.<sup>156</sup> These encompass a number of procedural safeguards including the right to be informed of rights, the right to initiate court proceedings without delay, and the right to legal assistance of counsel of their choice from the moment of apprehension.<sup>157</sup> For example, Kurdish Regional officials did not inform journalist Rebwat Kaki Abd al-Rahman of the reason for his arrest,<sup>158</sup> and Iraqi authorities denied Haitham Sulaiman access to his lawyer.<sup>159</sup>

### ***Torture***

Finally, there is at least one reported incident of torture. The prohibition against torture is absolute, non-derogable, and a *jus cogens* or preemptory norm of international law (i.e., it applies universally and without exceptions).<sup>160</sup> Iraqi authorities reportedly beat HRD Haitham Sulaiman and forced him to sign a statement that the United States was funding the protest movement.<sup>161</sup>

### ***Freedom of expression violations related to COVID-19***

The government's response to the COVID-19 pandemic has intersected with violations of online freedom of expression in at least two ways: the first is targeted repression for criticism of the government action related to the pandemic; the second is the government's failure adequately to protect arrested protestors and HRDs from exposure to COVID-19 in detention.

Authorities in Iraq and the Kurdish Region reportedly have targeted HRDs for online criticism of the government's response to the pandemic. For example, Kurdish Regional authorities arrested Kurdish HRD and journalist Hemin Mamand whose work focuses on corruption in the Kurdish government.<sup>162</sup> According to his attorney, on 24 March 2020, police arrested Mamand at his home

a day after he criticised the government's handling of pandemic lockdowns on his personal Facebook account.<sup>163</sup> He remained in detention for 13 days until authorities released him after he paid a fee.<sup>164</sup> However, police rearrested Mamand the following day after he posted on Facebook that the police had arrested him without identifying themselves or presenting a warrant.<sup>165</sup> Mamand remained under investigation in connection to a social media post where he criticised the economic measures taken by the Kurdish government in response to the pandemic as "violating the economic rights of the Kurdish people."<sup>166</sup> Officials charged him under article 2 of the Kurdistan Region's Law to Prevent the Misuse of Telecommunications Equipment for "encouraging people to break lockdown" for protests as well as also being charged with defamation under article 433 of the Penal Code.<sup>167</sup> Also, as described earlier, Iraqi authorities charged Haitham Sulaiman under the Iraqi Penal Code for spreading false news for his Facebook post alleging corruption within the health department linked to the purchase of COVID-19 masks.<sup>168</sup>

In addition, the overcrowded conditions in detention during the pandemic reportedly led to outbreaks of COVID-19, implicating violations of the rights to life and health of detained HRDs.<sup>169</sup>

# CONCLUSION AND RECOMMENDATIONS

Iraq and the Kurdistan Region have enforced several laws which restrict online expression in violation of international law. Applicable provisions of the Penal Code and the 2019 Media Broadcasting Rules are vague and overly broad, violating international standards on freedom of expression. The Iraqi government has targeted, arrested, and detained HRDs and journalists for political opinions expressed online, effectively criminalising dissent in the country, especially during anti-corruption protests. Through the reported incidents, there is credible evidence that the Iraq and Kurdistan Regional authorities have subjected HRDs to arbitrary deprivations of liberty, including enforced disappearances, along with other international due process rights violations.

To address these concerns, we offer the following general recommendations and country-specific recommendations.

## General Recommendations

### *To Governments of Gulf States and Neighbouring Countries:*

- ✦ Eliminate laws and articles in national legal frameworks that criminalise online freedom of expression protected under international human rights law, specifically:
  - All laws including anti-cybercrime, anti-terrorism, communications, media, penal, and technology laws that restrict online or offline expression through provisions to protect public order, national security, or the national economy; insults laws; and laws that criminalise fake news, that do not conform to international human rights standards and satisfy the principles of legality, legitimacy, necessity and proportionality;
  - Decriminalise the offense of defamation;
  - Revise anti-cybercrime laws to include

affirmative protection for the legitimate online expression of HRDs, including journalists.

- ✦ Cease using deportation and travel bans as tools for targeting HRDs for their online human rights advocacy, and refrain from infringing on their right to freedom of movement.
- ✦ Reform legal institutions, including the criminal legal system, to promote the independence and autonomy necessary for:
  - Investigating human rights violations committed against HRDs by law enforcement, such as engaging in unlawful surveillance of HRDs, enforced disappearances, holding HRDs in unlawful detention, incommunicado, and subjecting them to ill-treatment and torture;
  - Ensuring that HRDs', citizens', and residents' right to freedom of movement is not violated;
  - Ensuring the judiciary upholds international standards guaranteeing the right to fair trial.

### *To the UN Human Rights Council:*

- ✦ Instruct the UN Office of the High Commissioner for Human Rights to undertake a study of the transnational cooperation among governments to affect the apprehension and rendering of foreign HRDs to their countries of origin for prosecution of online expression that is protected under international law.
- ✦ Instruct the UN Office of the High Commissioner for Human Rights to undertake a study to identify and track developments in the surveillance regimes in each State in the region. The governments in question should cooperate in this study. The study should identify third party actors including business enterprises and other States that contribute to advancing the surveillance infrastructure in

each State concerned. State and non-State actors complicit in illegal surveillance of HRDs by governments should be held accountable.

***To All States:***

- ✦ Implement an immediate moratorium on the use, acquisition, sale and transfer of surveillance technology. This moratorium should extend until adequate global controls and safeguards against abuse are in place.

## Country Recommendations

In addition to the above recommendations, States should revise their domestic laws and institutions to ensure compliance with international human rights standards regarding online freedom of expression as indicated below.

**We call on the government of Iraq to create a safe and enabling environment for HRDs including by taking the following steps:**

- ✦ Eliminate laws and articles in Iraq's legal frameworks that criminalise online freedom of expression protected under international human rights law, or that are inconsistent with the right to due process and a fair trial, including:
  - 2010 Penal Code, articles 156, 210, 433, 434;
  - 2014 Media Broadcasting Rules, Section 2, articles 1(a), 1(j);
  - 2008 Kurdistan Regional Government Law to Prevent the Misuse of Telecommunications Equipment, article 2.
- ✦ Ensure that any anti-cybercrime legislation adopted fully complies with international protections of online freedom of expression.

## NOTES

- 1 Researchers identified reported incidents of violations of online freedom of expression by conducting searches for cases in Iraq and the Kurdistan Region between May 2018 and October 2020, from the following international media outlets and human rights organizations that document human rights violations: Amnesty International, Al Jazeera, ARTICLE 19, British Broadcasting Corporation, Committee to Protect Journalists, Front Line Defenders, Gulf Centre for Human Rights, and Human Rights Watch. Researchers also searched for communications from special procedures mandate holders regarding incidents alleging violations of freedom of expression in Iraq in the UN database of Communications. Researchers also searched for articles published by the *Iraq News Gazette*, *Iraqi News*, *Iraq Business News*, and *Iraq Sun* and used the embedded search functions to retrieve news updates using the terms: arrest, freedom of expression, post, video, human rights defender, online expression, journalist, digital expression, and protests. After finding cases using the international and domestic sources, researchers conducted additional searches using the Google search engine of the victim's name (with various English spellings) to find additional case information. See methodology section for more information.
- 2 John E. Woods et al., *Iraq: Government and Society*, BRITANNICA. This characterization of the political system of the country is offered for descriptive purposes; a normative evaluation of the political system as such is beyond the scope of this chapter.
- 3 Michel Forst (Special Rapporteur on the Situation of Human Rights Defenders), *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, ¶ 77, U.N. Doc. A/HRC/31/55 (Feb. 1, 2016); Civil Society Space, Human Rights Council Res. 27/31, U.N. Doc. A/HRC/RES/27/31, ¶ 3 (Oct. 3, 2014); Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, G.A. Res. 53/144, U.N. Doc. A/RES/53/144 (Mar. 8, 1999) [hereinafter Declaration on Human Rights Defenders].
- 4 International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR]. Iraq ratified the International Convention on Civil and Political Rights in 1971; the Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading Punishment or Treatment in 2011; the Convention on the Elimination of All Forms of Racial Discrimination in 1970; the Convention on the Elimination of All Forms of Discrimination Against Women in 1986; the Convention on the Rights of the Child in 1994; and the Arab Charter on Human Rights in 2013. *UN Treaty Body Database: Ratification Status for Iraq*, OHCHR.ORG.; League of Arab States, Arab Charter on Human Rights, May 22, 2004, reprinted in 12 Int'l Hum. Rts. Rep. 893 (2005) (entered into force Mar. 15, 2008); *League of Arab States: Key Legal Texts*, INT'L CTR. FOR NOT-FOR-PROFIT L. (Sept. 25, 2021).
- 5 World Conference on Human Rights, *Vienna Declaration and Programme of Action*, pmbl. at 20-21, §§ I(1), I(3), I(8), U.N. Doc. A/CONF.157/24 (Part 1) (Oct. 13, 1993); Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/810, at art. 19 (Dec. 10, 1948) [hereinafter UDHR].
- 6 U.N. ASSISTANCE MISSION FOR IRAQ (UNAMI), OFF. OF THE U.N. HIGH COMM'R FOR HUM. RTS., HUMAN RIGHTS VIOLATIONS AND ABUSES IN THE CONTEXT OF DEMONSTRATIONS IN IRAQ OCTOBER 2019 TO APRIL 2020, at 6, 14 (2020) [hereinafter UNAMI REPORT] (stating that at least 487 people were killed, including 34 children, and 7,715 injured during the protests).
- 7 *The Iraq Protests Explained in 100 and 500 Words*, BBC NEWS (Dec. 2, 2019).
- 8 *Iraq Protests: Security Forces Open Fire on Protestors*, BBC NEWS (Nov. 24, 2019).
- 9 UNAMI REPORT, *supra* note 6, at 14, 38 ("UNAMI/OHCHR recorded credible reports of the death of 487 protesters and 7,715 incidents of injury to protesters at, or in the vicinity of, demonstration sites from 1 October 2019 to 30 April 2020.").
- 10 *UN Experts Urge Iraq to Ensure Those Behind Violence Against Protesters Are Prosecuted*, U.N. HUM. RTS. OFF. HIGH COMM'R (Oct. 29, 2019) (noting that "over 220 civilians were reportedly killed, and thousands injured

NOTES

- when Iraqi security forces used excessive force to disperse protesters, including the use of live ammunition, rubber bullets and armoured vehicles” and that “there had also been indiscriminate use of less lethal weapons such as tear gas, water cannons and stun grenades”).
- 11 *COVID-19 Empties Iraq’s Protest Squares as Government Imposes Lockdown, Travel Bans*, ARAB WKLY. (Mar. 29, 2020).
- 12 Dana Taib Menmy, *Anger at ‘Politicisation’ of Coronavirus Provokes Unrest in Iraq’s Kurdish Region*, MIDDLE E. EYE (June 9, 2020).
- 13 *Iraq Shuts Down Internet Again as Protests Intensify*, NETBLOCKS (Nov. 4, 2019).
- 14 *Amid Massive Anti-Government Protests, a Near Total Internet Shutdown in Iraq*, ACCESSNOW (Oct. 4, 2019).
- 15 Hakeem Dawd Qaradaghi, *Iraq’s Kurdistan Region Is Not a Model for Free Speech*, AL JAZEERA (Sept. 25, 2020); *Iraq Media Regulator Orders Closure of 12 Broadcast News Outlets*, COMM. PROTECT JOURNALISTS (Nov. 25, 2019).
- 16 *Iraq: Teargas Cartridges Killing Protesters*, HUM. RTS. WATCH (Nov. 8, 2019).
- 17 David Kaye (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, ¶ 8, U.N. Doc. A/HRC/35/22 (Mar. 30, 2017) (“Internet and telecommunications shutdowns involve measures to intentionally prevent or disrupt access to or dissemination of information online in violation of human rights law.”).
- 18 AMNESTY INT’L, *IRAQ: FIST AROUND FREEDOM OF EXPRESSION TIGHTENS* (2019); HUM. RTS. WATCH, “WE MIGHT CALL YOU IN AT ANY TIME”: FREE SPEECH UNDER THREAT IN IRAQ 29-31 (2020); *Coalition of NGOs Call on the Iraqi Parliament to Withdraw or Sufficiently Amend Iraq’s Draft Law on Combating Cybercrime*, MENA RTS. GRP. (Dec. 17, 2020); see Ramzi Kaiss, *Iraq’s Draft Cybercrime Law Puts Free Speech in Grave Danger*, MIDDLE E. EYE (Jan. 21, 2021).
- 19 *See Iraqi Kurdistan: Wave of Arrests of Journalists Since Covid-19’s Arrival*, REPS. WITHOUT BORDERS (Apr. 17, 2020).
- 20 Penal Code, No. 111 of 1969, amended 2010, art. 156 [hereinafter Penal Code] (Iraq) (unofficial English translation) (“Any person who willfully commits an act with intent to violate the independence of the country or its unity or the security of its territory and that act, by its nature, leads to such violation is punishable by life imprisonment.”).
- 21 *Id.* at art. 210 (“Any person who willfully broadcasts false or biased information, statements or rumors or disseminates propaganda which, by its nature, endangers the public security, spreads panic among the population and disturbs the public peace is punishable by detention plus a fine not exceeding 300 dinars or by one of those penalties.”).
- 22 Hum. Rts. Comm., *General Comment No. 34: Article 19: Freedoms of Opinion and Expression*, ¶ 25, U.N. Doc. CCPR/C/GC/34 (Sept. 12, 2011) [hereinafter *HRC General Comment No. 34*]; David Kaye (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, ¶ 7, U.N. Doc. A/HRC/32/38 (May 11, 2016) [hereinafter *SRFOE Report of May 2016*]; Working Grp. on Arbitrary Det., *Opinion No. 71/2019 Concerning Issa al-Nukhefi, Abdulaziz Youssef Mohamed al-Shubaili and Issa Hamid al-Hamid (Saudi Arabia)*, ¶ 73, U.N. Doc. A/HRC/WGAD/2019/71 (Feb. 14, 2020) (“vaguely and broadly worded provisions . . . which cannot qualify as *lex certa*, violate the due process of law undergirded by the principle of legality in article 11 (2) of the Universal Declaration of Human Rights”).
- 23 *SRFOE Report of May 2016*, *supra* note 22, ¶ 39; Frank La Rue (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, Frank La Rue, ¶ 34, U.N. Doc. A/HRC/17/27 (May 16, 2011) [hereinafter *SRFOE Report of May 2011*].
- 24 U.N. Special Rapporteur on Freedom of Op. and Expression, et al., *Joint Declaration on Freedom of Expression and “Fake News,” Disinformation and Propaganda*, ¶ 2(a) (Mar. 3, 2017).
- 25 Penal Code, *supra* note 20, at art. 433 (“Defamation is the imputation to another in public of a particular matter which if true, would expose such person to punishment or cause him to be scorned by society. Any person who defames another is punishable by detention plus a fine or by one of those penalties. If such defamation is published

- in a newspaper or publication or other press medium it is considered an aggravating circumstance.”).
- 26 *Id.* at art. 434 (“Insult is the imputation to another of something dishonorable or disrespectful or the hurting of his feelings even though it does not include an imputation to him of a particular matter.”).
- 27 *Id.* at arts. 433-34.
- 28 *HRC General Comment No. 34*, *supra* note 22, ¶ 47. See *SRFOE Report of May 2011*, *supra* note 23, ¶ 36 (“defamation should be decriminalized”).
- 29 *HRC General Comment No. 34*, *supra* note 22, ¶ 47. See *SRFOE Report of May 2011*, *supra* note 23, ¶ 36 (“defamation should be decriminalized”).
- 30 *HRC General Comment No. 34*, *supra* note 22, ¶ 38.
- 31 Freedom of Opinion and Expression, Human Rights Council Res. 12/16, U.N. Doc. A/HRC/RES/12/16, ¶ 5(p)(i) (Oct. 12, 2009).
- 32 Coalition Provisional Authority Order 65 of 2004, Iraqi Communications and Media Commission (unofficial English translation).
- 33 Communications and Media Commission Guidelines of 2014 [hereinafter 2014 CMC Guidelines] (Iraq) (unofficial English translation) (the guidelines are listed in *The Communication and Media Commission Guidelines for the Management of Iraqi Mass Media During the War on Terror*, HUM. RTS. WATCH (July 2, 2014)).
- 34 The 2014 guidelines focused on regulating media coverage of the war on terror. 2014 CMC Guidelines, *supra* note 33; *Iraq: New Guidelines Silence Media*, HUM. RTS. WATCH (July 3, 2014). The recent rules establish a comprehensive set of broadcast licensing and reporting regulations. Communications and Media Commission Rules of 2019, sec. 2. [hereinafter 2019 CMC Rules] (Iraq) (unofficial English translation on file with author).
- 35 2019 CMC Rules, *supra* note 34, at sec. 2.
- 36 *Iraqi Media Regulator Orders Closure of 12 Broadcast News Outlets*, COMM. PROTECT JOURNALISTS (Nov. 25, 2019).
- 37 2019 CMC Rules, *supra* note 34, § 2, art. 1(a)
- 38 *Id.* § 2, arts. 1(j),1(l).
- 39 *SRFOE Report of May 2016*, *supra* note 22, ¶¶ 39-40.
- 40 *HRC General Comment No. 34*, *supra* note 22, ¶ 39.
- 41 *Iraqi Journalists Face Wrath of Authorities over Protest Coverage*, MIDDLE E. EYE (Nov. 29, 2019).
- 42 UNAMI REPORT, *supra* note 6, at 39; *Iraq Orders Closure of 12 News Outlets*, IRAQ-BUS. NEWS (Nov. 26, 2019).
- 43 *Iraq Suspends Reuters for Three Months over Report on Coronavirus Cases*, REUTERS (Apr. 14, 2020); HUM. RTS. WATCH, *supra* note 18, at 4. The government lifted the suspension early. *Iraq Lifts Suspension of Reuters License*, REUTERS (Apr. 19, 2020).
- 44 Draft Anti-Cybercrime Law of 2020 [hereinafter Draft Anti-Cybercrimes Law] (Iraq) (unofficial English translation on file with author).
- 45 Kristen Sibbald, *Iraq Parliament Suspends Draconian Cybercrimes Bill*, HUM. RTS. WATCH (May 7, 2021).
- 46 AMNESTY INT’L, *supra* note 18; HUM. RTS. WATCH, *supra* note 18, at 29-31; Kaiss, *supra* note 18. The most recent draft law corrected some of the most egregious freedom of expression violations. For example, the 2020 proposed amendments to the draft cybercrimes law removed the national security provision contained in the 2019 draft that had criminalised the intentional use of computer devices and an information network for the purpose of “undermining” the “independence” of the country, or its “supreme economic, political, military, or security interests,” and which carried a punishment of life imprisonment. Draft Anti-Cybercrimes Law, *supra* note 44, at ch. 2, art. 3.
- 47 Draft Anti-Cybercrimes Law, *supra* note 44, at ch. 1, art. 4; see *Iraq: Parliament Considers New Anti-Cybercrimes Bill*, LIBR. CONG. (Jan. 14, 2021).
- 48 Draft Anti-Cybercrimes Law, *supra* note 44, at ch. 2, art. 6.
- 49 *HRC General Comment No. 34*, *supra* note 22, ¶¶ 25, 30, 34.
- 50 *Coalition of NGOs Call on the Iraqi Parliament to Withdraw or Sufficiently Amend Iraq’s Draft Law on Combating Cybercrime*, *supra* note 18.
- 51 Draft Anti-Cybercrimes Law, *supra* note 44, at ch. 2, art. 22(3).
- 52 *Coalition of NGOs Call on the Iraqi Parliament to Withdraw or Sufficiently Amend Iraq’s Draft Law on Combating Cybercrime*, *supra* note 18.



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- 53 U.N. ASSISTANCE MISSION FOR IRAQ (UNAMI), OFF. OF THE U.N. HIGH COMM’R FOR HUM. RTS., FREEDOM OF EXPRESSION IN THE KURDISTAN REGION OF IRAQ 4 (2021).
- 54 Law to Prevent the Misuse of Communication Devices in the Kurdistan Region of 2008 [hereinafter Law to Prevent the Misuse of Telecommunications Equipment] (Kurdish regional law) (unofficial English translation on file with author).
- 55 Belkis Wille, *The KRG Needs to Listen to Critics, Not Arrest Them*, HUM. RTS. WATCH (June 15, 2020); *Iraqi Kurdistan: Broadcasting Ban Threatens Media Freedom*, INT’L FED’N JOURNALISTS (Dec. 9, 2020).
- 56 Law to Prevent the Misuse of Telecommunications Equipment, *supra* note 54, at art. 2; HUM. RTS. WATCH, *supra* note 18, at 33.
- 57 See HRC General Comment No. 34, *supra* note 22, ¶¶ 22, 25, 34.
- 58 *Id.* ¶ 32.
- 59 Joint Press Release, David Kaye, Special Rapporteur on the Freedom of Opinion and Expression, et al., International Freedom of Expression Rapporteurs Urge Stronger Protection of Journalists Covering Conflicts (Sept. 1, 2014); *Kurdistan Region of Iraq: Protestors Beaten, Journalists Detained*, HUM. RTS. WATCH (Apr. 15, 2018).
- 60 *190 Journalists Killed in Iraq Between 1992 and 2021*, COMM. PROTECT JOURNALISTS.
- 61 *Iraqi Kurdistan: KJS Reports 138 Cases of Media Rights Violations in 2020*, INT’L FED’N JOURNALISTS (Jan. 7, 2021).
- 62 *Iraq: Wave of Arrests of Journalists Covering Protests in Iraqi Kurdistan*, REPS. WITHOUT BORDERS (Dec. 16, 2020); Belkis Wille, *When Will Iraq Start Protecting Journalists?*, HUM. RTS. WATCH (Oct. 20, 2020).
- 63 HUM. RTS. WATCH, *supra* note 18, at 40.
- 64 *Id.* at 25.
- 65 *Id.*
- 66 *Id.* at 40.
- 67 *Id.* at 25.
- 68 *Id.* at 40.
- 69 *Id.*
- 70 *Iraqi Security Forces Harass Local Reporter*, COMM. PROTECT JOURNALISTS (June 1, 2018).
- 71 HUM. RTS. WATCH, *supra* note 18, at 22-23.
- 72 *Id.* at 23; Penal Code, *supra* note 20, at art. 403 (“Any person who . . . publishes . . . written material, drawing, picture, film, symbol or other thing that violates the public integrity or decency . . . is punishable by a period of detention not exceeding 2 years plus a fine not exceeding 200 dinars or by one of those penalties.”).
- 73 HUM. RTS. WATCH, *supra* note 18, at 23.
- 74 *Id.*
- 75 *Id.* at 32.
- 76 *Iraqi Kurdistan: Campaign Continues of Arbitrary Arrests Carried out by Local Authorities*, GCHR (Oct. 26, 2020).
- 77 *Iraqi Kurdish Journalist Jailed for Defaming Iraq’s President*, REPS. WITHOUT BORDERS (Sept. 25, 2020).
- 78 *Iraqi Kurdistan: Campaign Continues of Arbitrary Arrests Carried out by Local Authorities*, *supra* note 76.
- 79 *Iraqi Kurdish Journalist Jailed for Defaming Iraq’s President*, *supra* note 77.
- 80 *Iraqi Kurdistan: Campaign Continues of Arbitrary Arrests Carried out by Local Authorities*, *supra* note 76.
- 81 *Iraqi Kurdish Police Arrest Sherwan Amin Sherwani*, COMM. PROTECT JOURNALISTS (Oct. 8, 2020); *Iraqi Kurdistan: Campaign Continues of Arbitrary Arrests Carried out by Local Authorities*, *supra* note 76.
- 82 *Iraqi Kurdish Police Arrest Sherwan Amin Sherwani*, *supra* note 81; *Iraq: RSF and MRG Ask UN Experts to Press for Kurdish Journalist’s Release*, REPS. WITHOUT BORDERS (Dec. 1, 2020).
- 83 *Iraqi Kurdistan: Campaign Continues of Arbitrary Arrests Carried out by Local Authorities*, *supra* note 76; *Iraq: RSF and MRG Ask UN Experts to Press for Kurdish Journalist’s Release*, *supra* note 82.
- 84 *Iraqi Kurdistan: Campaign Continues of Arbitrary Arrests Carried out by Local Authorities*, *supra* note 76.

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- 85 *Id.*
- 86 *Kurdistan Region of Iraq: Flawed Trial of Journalists, Activists*, HUM. RTS. WATCH (Apr. 22, 2021).
- 87 Penal Code, *supra* note 20, at art. 156.
- 88 *Kurdistan Region of Iraq: Flawed Trial of Journalists, Activists*, *supra* note 86.
- 89 *Id.* The report identifies the names of two other journalists facing charges for freedom of expression. Their cases were not included in the incidents counted in this study because their cases were not reported on by one of our identified sources pursuant to our methodology. The other journalists were Ayaz Karam Brushki and Kohidar Mohammed Zebari. Along with Sherwani, the two were sentenced to six years in prison under articles 47, 48, and 49 of the Penal Code as well as an amended version of article 156 which criminalised infringements on governmental institutions. The convictions have since been appealed. *Id.*
- 90 HUM. RTS. WATCH, *supra* note 18, at 33.
- 91 *Id.*; Working Grp. on Arbitrary Det., *Report of the Working Group on Arbitrary Detention: United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court*, princs 7-9, U.N. Doc. A/HRC/30/37 (July 6, 2015) [hereinafter *WGAD Report of July 2015*]; Hum. Rts. Comm., *General Comment No. 32: Article 14: Right to Equality Before Courts and Tribunals and to Fair Trial*, ¶ 10, U.N. Doc. CCPR/C/GC/32 (Aug. 23, 2007) [hereinafter *HRC General Comment No. 32*].
- 92 HUM. RTS. WATCH, *supra* note 18, at 34; *Kurdistan Region of Iraq: Media Offices Shut Down*, HUM. RTS WATCH (Oct. 6, 2020).
- 93 HUM. RTS. WATCH, *supra* note 18, at 34.
- 94 *Id.*
- 95 *Id.*
- 96 Promotion and Protection of Human Rights and Fundamental Freedoms, Including the Rights to Peaceful Assembly and Freedom of Association, G.A. Res. 73/173, U.N. Doc. A/RES/73/173, ¶¶ 3-4 (Jan. 8, 2019).
- 97 *Human Rights Defenders Targeted Amidst Ongoing Protests*, FRONT LINE DEFS. (Nov. 1, 2019).
- 98 *Id.*
- 99 *Id.*
- 100 *Id.*
- 101 *Id.*
- 102 *Id.*
- 103 Belkis Wille, *Iraq's New Government Should Lift Barriers to Free Speech*, HUM. RTS. WATCH (June 5, 2020).
- 104 HUM. RTS. WATCH, *supra* note 18, at 3.
- 105 *Id.* at 19-20.
- 106 *Id.*
- 107 *Id.* at 3.
- 108 *Id.* at 20; Penal Code, *supra* note 20, at art. 210.
- 109 HUM. RTS. WATCH, *supra* note 18, at 20.
- 110 *Id.* at 32.
- 111 *Id.*
- 112 *Id.*
- 113 *Id.*; Penal Code, *supra* note 20, at art. 156.
- 114 HUM. RTS. WATCH, *supra* note 18, at 32.
- 115 AMNESTY INT'L, *supra* note 111.
- 116 *Id.*
- 117 AMNESTY INT'L, *IRAQ: FREEDOM OF SPEECH AND ASSEMBLY UNDER ATTACK AS OVER 100 KILLED, THOUSANDS INJURED AND HUNDREDS ARRESTED* (2019).
- 118 UNAMI REPORT, *supra* note 6, at 40.
- 119 Declaration on Human Rights Defenders, *supra* note 3, at art. 2(2).
- 120 The Promotion, Protection, and Enjoyment of Human Rights on the Internet, Human Rights Council Res. 38/7, U.N. Doc. A/HRC/RES/38/7, ¶ 1 (July 17, 2018).
- 121 Hum. Rts. Comm., *General Comment No. 37 (2020) on the Right of Peaceful Assembly (Article 21)*, ¶ 33, U.N. Doc. CCPR/C/GC/37 (Sept. 17, 2020).
- 122 *Iraq, Events of 2020*, HUM. RTS. WATCH.
- 123 UNAMI REPORT, *supra* note 6, at 24-26; ICCPR, *supra*

- note 4, at art. 4 (“In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law.”).
- 124 WGAD Report of July 2015, *supra* note 91, ¶ 11; Hum. Rts. Comm., *General Comment No. 35: Article 9 (Liberty and Security of Person)*, ¶¶ 17, 22-23, 53, U.N. Doc. CCPR/C/GC/35 (Dec. 16, 2014).
- 125 WGAD Report of July 2015, *supra* note 91, ¶ 10; UDHR, *supra* note 5, at art. 19; ICCPR, *supra* note 4, at art. 19.
- 126 WGAD Report of July 2015, *supra* note 91.
- 127 Working Grp. on Arbitrary Det., *Report of the Working Group on Arbitrary Detention*, ¶ 46, U.N. Doc. A/HRC/36/37 (July 19, 2017); UDHR, *supra* note 5, at art. 7; ICCPR, *supra* note 4, at art. 26.
- 128 Working Grp. on Arbitrary Det., *Report of the Working Group on Arbitrary Detention*, ¶ 60, U.N. Doc. A/HRC/39/45 (July 2, 2018) [hereinafter *WGAD Report of July 2018*].
- 129 ICCPR, *supra* note 4, at art. 6. The right to life is protected by article 6 of the ICCPR. *Id.* It provides that no one shall be arbitrarily deprived of his life and that the right shall be protected by law. *Id.* Article 6 imposes a duty on the State to protect life, which includes an obligation to protect life from all reasonably foreseeable threats. *See id.*
- 130 ICCPR, *supra* note 4, at art. 16. Additionally, incommunicado detention violates the right to be brought promptly before a judge protected by ICCPR article 9(3) and the right to challenge the lawfulness of detention protected by ICCPR article 9(4). *Id.* at arts. 9(3)-(4).
- 131 Theo van Boven (Special Rapporteur on Torture), *Report of the Special Rapporteur on the Question of Torture Submitted in Accordance with Commission Resolution 2002/38*, ¶ 26(g), U.N. Doc. E/CN.4/2003/68 (Dec. 17, 2002) [hereinafter *SRT Report of Dec. 2002*].
- 132 Manfred Nowak (Special Rapporteur on Torture), *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak: Addendum—Study on the Phenomena of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in the World, Including an Assessment of Conditions of Detention*, ¶ 156, U.N. Doc. A/HRC/13/39/Add.5 (Feb. 5, 2010) (international law and standards prohibit “all secret and incommunicado detention”); *see* Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 72/163, U.N. Doc. A/RES/72/163, ¶ 16 (Jan. 19, 2018).
- 133 WGAD Report of July 2018, *supra* note 128, ¶ 60.
- 134 SRT Report of Dec. 2002, *supra* note 131, ¶ 26(g).
- 135 International Convention for the Protection of All Persons from Enforced Disappearance, *opened for signature* Dec. 20, 2006, 2716 U.N.T.S. 3 [hereinafter *CED*].
- 136 1 JEAN-MARIE HENCKAERTS & LOUISE DOSWALD-BECK, INT’L COMM. OF THE RED CROSS, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW Rule 98 (2005) (enforced disappearance).
- 137 *CED*, *supra* note 135.
- 138 *Id.* at art. 2 (Article 2 of the Convention on Enforced Disappearances defines an enforced disappearance as the “arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.”).
- 139 *Arbitrary Detention of Omar Al-Amri and Salman Khairallah*, FRONT LINE DEFES. (Dec. 13, 2019).
- 140 *Iraq: End ‘Campaign of Terror’ Targeting Protestors*, AMNESTY INT’L (Dec. 13, 2019).
- 141 *Iraq: On International Human Rights Day, a Dangerous Escalation Against Human Rights Defenders and Activists in Iraq*, GCHR (Dec. 17, 2019).
- 142 *Iraq: End ‘Campaign of Terror’ Targeting Protestors*, *supra* note 140.
- 143 *Id.*
- 144 *Kidnapping, Lynching and Deliberate Killings: Iraq’s Protestors Live in Fear They ‘Could Be Next,’* INDEPENDENT (Dec. 14, 2019).

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- 145 *Arbitrary Detention of Omar Al-Amri and Salman Khairallah*, *supra* note 139.
- 146 AMNESTY INT’L, URGENT ACTION: HUMAN RIGHTS LAWYER FORCIBLY DISAPPEARED (2019).
- 147 *Id.*; see *8 Months Since Ali Jasseb Hattab Al-Heliji Has Forcibly Disappeared*, LAWS. FOR LAWS. (June 8, 2020).
- 148 AMNESTY INT’L, URGENT ACTION: FATE OF DISAPPEARED LAWYER REMAINS UNKNOWN (Nov. 5, 2020).
- 149 *8 Months Since Ali Jasseb Hattab Al-Heliji Has Forcibly Disappeared*, *supra* note 147.
- 150 AMNESTY INT’L, *supra* note 146.
- 151 *Ali Jaseb Hattab, HRD, Lawyer, Advocates for the Protesters Rights Commission*, FRONT LINE DEFS.
- 152 *Id.*; *Iraq: Popular Poet Jaseb Hattab Al-Helibi, Father of Kidnapped Human Rights Lawyer, Assassinated*, GCHR (Mar. 12, 2021).
- 153 *Iraq: UN Experts Appalled by Killing of Disappeared Human Rights Defender’s Father*, U.N. HUM. RTS. COUNCIL (Mar. 26, 2021). Jasib Al Heliji sought justice for his son’s disappearance, including “filing a court case naming the militia and individuals allegedly involved.” *Id.* He also reportedly stated in “a widely shared video on social media that he felt his own life was at risk.” *Id.*
- 154 *Id.*
- 155 Elina Steinerte (Vice-Chair of the Working Group on Arbitrary Detention) et al., *Communication to Iraq*, Ref. No. UA IRQ 6/2020 (Nov. 9, 2020).
- 156 *HRC General Comment No. 32*, *supra* note 91, ¶ 6.
- 157 *WGAD Report of July 2015*, *supra* note 91, at princs. 7-9; *HRC General Comment No. 32*, *supra* note 91, ¶ 10.
- 158 HUM. RTS. WATCH, *supra* note 18, at 33.
- 159 *Id.* at 20.
- 160 *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, 2012 I.C.J., ¶ 99 (July 20); *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, opened for signature Dec. 10, 1984*, 1465 U.N.T.S. 85; *Dire Tladi (Special Rapporteur), Fourth Report on Peremptory Norms of General International Law (Jus Cogens) by Dire Tladi, Special Rapporteur*, ¶ 69, U.N. Doc. A/CN.4/727 (Jan. 31, 2019).
- 161 HUM. RTS. WATCH, *supra* note 18, at 3.
- 162 *Iraq: Arbitrary Detention of Human Rights Defender Hemin Mamand*, IRAQI CIV. SOC’Y SOLIDARITY INITIATIVE (Apr. 5, 2020).
- 163 HUM. RTS. WATCH, *supra* note 18, at 35.
- 164 *Id.*
- 165 *Id.*
- 166 *Iraq: Arbitrary Detention of Human Rights Defender Hemin Mamand*, *supra* note 162.
- 167 HUM. RTS. WATCH, *supra* note 18, at 35.
- 168 *Iraq’s New Government Should Lift Barriers to Free Speech*, *supra* note 103.
- 169 See Ali Jawad, *31 Inmates Contract COVID-19 at Iraqi Prison*, ANADOLU AGENCY (July 5, 2020).

NOTES



# JORDAN



# JORDAN SCORECARD

## Targeted Activism or Expression



Expression re Offline Protests



Criticism of Government\*



Expression re Minority/Migrants' Rights



Journalists



Women's Rights and WHRDs

## Human Rights Violations



Arbitrary Detention



Incommunicado Detention



Enforced Disappearance



Torture



Fair Trial

## Problematic Legal Provisions and Institutions



Criminal Defamation



Cybercrime Law



Public Order



Specialised Law Enforcement Units

35

Number of incidents that fit the inclusion criteria of this study

\*Including criticism of foreign government



# INTRODUCTION

Between 01 May 2018 and 31 October 2020 there were 35 incidents in Jordan that fit this study's inclusion criteria.<sup>1</sup> Jordan is a constitutional monarchy with a parliamentary government.<sup>2</sup> The vast majority of reports were of Jordanian authorities targeting human rights defenders (HRDs), teachers and journalists.

The government generally punished HRDs for: online speech critical of the monarchy or of government policies; discussion of the impact of the COVID-19 pandemic on workers, including migrant workers; and, online advocacy related to offline protests. Jordanian authorities mostly targeted expression that appeared on Facebook, but also Twitter, online blogs, and other websites. Authorities used multiple laws to infringe on freedom of online expression, including: the Cybercrimes Law, the Penal Code, and the Prevention of Terrorism Act (Anti-Terrorism Law). Based on this research, there is credible evidence that the government has violated its obligation to respect online freedom of expression and additional associated rights of HRDs. These violations also constitute breaches of the duty of the State, pursuant to the United Nations (UN) Charter, "as the main duty-bearer" to ensure "defenders enjoy a safe and enabling environment" and that government institutions and processes "are aligned with their safety and the aim of their activities."<sup>3</sup>

Internet and social media use are significant in Jordan. As of January 2021, there were approximately 6.84 million internet users and 6.3 million active social media users, out of Jordan's total population of 10.20 million.<sup>4</sup> Facebook estimates that it has a domestic audience of 5.5 million people in Jordan, while Twitter estimates that its audience is 488.8 thousand.<sup>5</sup>

Jordan is a party to several international human rights treaties protecting the right to freedom of expression, including the International Covenant on Civil and Political Rights (ICCPR).<sup>6</sup> As a UN member State, Jordan is also bound by the UN Charter and has pledged to adhere to the principles reflected in the Universal Declaration of Human Rights (UDHR), including article 19, which enshrines the right to freedom of opinion and expression.<sup>7</sup>

# LEGAL ENVIRONMENT FOR ONLINE EXPRESSION IN JORDAN

The incidents reported between May 2018 and October 2020 demonstrate that the Jordanian authorities have used several laws to punish online human rights advocacy: the 2015 Cybercrime Law, which replaced the 2010 cybercrime law,<sup>8</sup> the 2006 Prevention of Terrorism Act as amended in 2014 (Anti-Terrorism Law),<sup>9</sup> and the 1960 Penal Code as amended in 2017.<sup>10</sup> There was also one reported case in which Jordanian authorities may have used the 1995 Telecommunications Law.<sup>11</sup> On top of this legal framework, Jordan has established specialised law enforcement units and courts that are used to target HRDs for their online expression. The enactment of the Cyber Security Law (Law No. 16 of 2019), which creates a National Cyber Security Council and a National Centre for Cyber Security, further signals Jordanian authorities' intention to control online expression.<sup>12</sup>

## 2015 Cybercrime Law

Several of the laws identified use overbroad and vague language to define prohibited conduct. Article 15 of the Cybercrime Law prohibits using the internet to commit “any crime punishable under any... legislation” or inciting someone else to do so, to be punished by the penalties stipulated in the relevant legislation.<sup>13</sup> This incitement provision in turn relies on vague and overbroad definitions of underlying crimes in the Cybercrime Law itself or in other statutes, some of which are described below, enabling Jordanian authorities to extend enforcement of such vague and overbroad provisions to the internet. Under article 19 of both the ICCPR and the UDHR, criminal laws that restrict freedom of expression must be sufficiently precise so as to enable individuals to determine how to comply with the law and to limit the discretion conferred on authorities enforcing it.<sup>14</sup> Vaguely and broadly worded provisions have been found by UN Special Procedures mandate holders

to violate this requirement, allowing authorities to use their excessive discretion to target protected speech and encouraging individuals to engage in self-censorship.<sup>15</sup> UN Special Rapporteurs have criticised as overly vague provisions that prohibit individuals from using the internet to “upset social order” or “harm the public interest,” or from publishing “articles or photos that could harm national security, public order, public health or public interest, incite violence, constitute sedition or have negative consequences for the financial climate of the country.”<sup>16</sup> In particular, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (SR on FOE) has expressed concern at vague formulations of provisions that prohibit incitement.<sup>17</sup>

The SR on FOE has criticised the Cybercrime Law for its criminalisation of defamation.<sup>18</sup> Article 11 of the Cybercrime Law states that anyone who “intentionally sends, resends, or publishes data or information through the computer network or the website” related to “defamation, slander or insulting of any person” will be punished by imprisonment of at least three months and a fine of JOD 300–5,000 (USD 423–7,050).<sup>19</sup> Additionally, the Cybercrime Law includes no protections for journalists or other media workers against penalties for defamation, which risks chilling journalistic investigation.<sup>20</sup> The UN Human Rights Committee and the SR on FOE have cautioned that laws on defamation should be crafted carefully so that they do not restrict freedom of expression, and have recommended the decriminalisation of defamation.<sup>21</sup> The UN Human Rights Committee has interpreted ICCPR article 19 to require that “the application of criminal law should only be countenanced in the most serious of cases, and imprisonment is never an appropriate penalty.”<sup>22</sup> Finally, it has stated that defamation laws should

include the defence of public interest in the subject matter of the criticism, the defence of truth, and, at least in the case of expression related to public figures, the defence of error.<sup>23</sup>

## 2006 Anti-Terrorism Law

The UN Human Rights Committee and the Committee against Torture have criticised the Anti-Terrorism Law, including the 2014 amendment,<sup>24</sup> for its overly broad and vague definition of terrorism which includes: “disturbing the public order,” “acts that sow discord,” “harming relations with a foreign state,” or using the internet or other media to create a website to facilitate a “terrorist act,” support an organisation or association that does so, or to support that organisation or association’s ideas.<sup>25</sup> Article 7 of the Anti-Terrorism law also criminalises “incitement to terrorism,” which in turn relies on a vague underlying definition of terrorism.<sup>26</sup> The Anti-Terrorism Law provides for a range of penalties, including temporary hard labour, life sentences with hard labour, and the death penalty in certain cases, including those resulting in death or destruction of a building.<sup>27</sup> Conduct that is prosecuted under this law is tried in the quasi-military State Security Court.<sup>28</sup>

## 1995 Telecommunications Law

The Telecommunications Law includes provisions that are overly broad and vague in violation of ICCPR article 19. Article 75(a) of the law prohibits the use of telecommunications to spread messages “contrary to the public morals,” punishable by a fine of JOD 300–2,000 (USD 423–2,820) and/or by imprisonment of one month to one year.<sup>29</sup> That same provision also prohibits “forward[ing] false information with the intent to cause panic.”<sup>30</sup> International human rights experts, including the SR on FOE, have urged States to abolish general prohibitions on disseminating “false news” because of their vagueness.<sup>31</sup>

## 1960 Penal Code

The Penal Code also includes vague and overbroad restrictions on expression, which are inconsistent with article 19 of the ICCPR. The SR on FOE

has criticised article 118 of the Penal Code for its vagueness.<sup>32</sup> Article 118 punishes expression “not authorised by the government” that could subject Jordan to the “risk of hostile acts” or “disrupt [Jordan’s] relations with a foreign state” with a sentence of at least five years in prison.<sup>33</sup> The Penal Code contains other similarly vague provisions. Article 149 prohibits any act that “undermines the political regime...” or “incites against it,” with a punishment of “temporary labour.”<sup>34</sup> The SR on FOE has identified provisions that criminalise, for example, “instigating hatred and disrespect against the ruling regime,” as being impermissibly vague.<sup>35</sup> Additionally, article 132 of the Penal Code punishes anyone who “disseminates, outside the country, news which he/she knows is false or exaggerated, and which may impact the country’s prestige or financial position” with imprisonment of at least six months and a fine of up to JOD 50 (USD 70), and imprisonment of at least a year if the false or exaggerated news is directed at the King, Crown Prince, or a throne regent. International human rights experts, including the SR on FOE, have called for the abolition of such vague provisions on “false news.”<sup>36</sup>

The Penal Code also imposes criminal penalties, as opposed to civil penalties, for defamation, and prohibits speech critical of public officials contrary to international standards.<sup>37</sup> The SR on FOE has criticised articles 122 and 195 of the Penal Code.<sup>38</sup> Article 122 punishes with up to two years of imprisonment anyone who insults a foreign State or head of State.<sup>39</sup> And article 195 punishes with between one to three years of imprisonment anyone who insults or slanders the King or his family online, through text, video, picture, or in person.<sup>40</sup> In addition to those provisions, article 191 of the Penal Code punishes defamation against public officials or bodies with imprisonment from three months to two years.<sup>41</sup> Human rights bodies have emphasised the value of public debate concerning public institutions and public figures in particular, who should not be granted a higher level of protection against defamation.<sup>42</sup> The UN Human Rights Committee has expressed particular concern about “laws on such matters as, *lese majesty*, *desacato*, disrespect for authority, disrespect

for flags and symbols, defamation of the head of State and the protection of the honour of public officials” and laws prohibiting “criticism of institutions, such as the army or the administration.”<sup>43</sup> The UN Committee Against Torture and the Human Rights Committee have criticised Jordan’s use of the Penal Code and the Anti-Terrorism Law to prosecute and sanction journalists, including those who express critical views including “insults to the king.”<sup>44</sup>

## Institutions Involved

Jordan has built an institutional framework, including courts and law enforcement units, to police HRDs’ and journalists’ online speech in violation of international human rights standards. The UN Human Rights Committee has expressed concern that improper prosecutions under the overbroad Anti-Terrorism law were facilitated by “the even wider network of security measures,” including arrests and detentions by the police and the intelligence services.<sup>45</sup> Additionally, cases brought under the Anti-Terrorism Law are under the jurisdiction of the State Security Court, a quasi-military court.<sup>46</sup> The UN Human Rights Committee and the Committee Against Torture have repeatedly criticised the State Security Court for its wide jurisdiction, its lack of independence and impartiality, and its failure to protect the right to a fair trial.<sup>47</sup>

Jordan’s law enforcement units similarly operate in a manner that is inconsistent with international human rights standards, rendering HRDs and journalists subject to arbitrary detention, and at risk of further human rights violations without adequate procedural safeguards.<sup>48</sup> At least ten of the relevant incidents identified involved the Jordanian Cybercrimes Unit (CCU), located inside the Public Security Directorate (PSD).<sup>49</sup> The Committee Against Torture has criticised the PSD and its General Intelligence Division (GID) over reports of their use of torture and ill-treatment to extract coerced confessions.<sup>50</sup> It has also criticised the GID and PSD for failing to ensure that individuals detained have timely and confidential access to lawyers, timely access to doctors, and the ability to notify a person of their choice of their detention, as well as for failing to bring detained

individuals in front of a competent authority within twenty-four hours as required by Jordanian law.<sup>51</sup>

Jordan recently enacted Cyber Security Law (Law No. 16 of 2019) which creates a National Cyber Security Council (Council) and a National Centre for Cyber Security (Centre), signalling Jordanian authorities’ intention to further control online expression.<sup>52</sup> As of this writing, there are no reports that the Council or Centre have been created. The Centre would be under the direction of the Prime Minister’s office and have the power to create, execute, and enforce cybersecurity strategies, standards, and regulations.<sup>53</sup> The Council would serve to approve the Centre’s policies and would be made up of members from the PSD, the GID, the Armed Forces, and others.<sup>54</sup> The Centre and Council together would have the power to determine whether “a Cyber Security incident ... represents a threat to the security and integrity of the kingdom,”<sup>55</sup> an ambiguous provision that is incompatible with ICCPR article 19.<sup>56</sup> The Centre would have the power to act as “judicial police” and to enter, investigate, and seize items at “any place” where it is suspected that potential or actual threats or breaches of cybersecurity are taking place.<sup>57</sup> The Centre would also have unchecked power to “block, shut[] down, or suspend[]” the internet, telecommunication networks, and devices as well as the power to impose fines of up to USD 141,000.<sup>58</sup> If the Centre and Council are created, the concentration of broad policy-making, enforcement, and quasi-judicial powers within these two institutions will raise serious concerns regarding the right to freedom of expression online, the right to freedom of assembly, and the right to due process, all protected under international law, including by the ICCPR.<sup>59</sup>

# TRENDS EMERGING FROM INCIDENTS OF REPRESSION OF ONLINE EXPRESSION IN JORDAN

The documented incidents offer credible evidence that Jordan is violating its international obligation to create a safe environment for HRDs, including journalists, by targeting them for online criticism of the government and its foreign policies as well as for commentary on religion through enforcement of defamation and insult provisions as well as antiterrorism and telecommunications laws. In addition to those arrested and formally charged with a crime for their protected expression, many individuals reported being interrogated without being notified of the basis for their arrest and being called in for interrogation multiple times. Specialised units, such as the CCU or the State Security Court, reportedly handled several cases. Reports indicate that these arrests, detentions, and prosecutions have led to numerous other human rights violations including violations of the rights of the child, the right to a fair trial, the right to be free from arbitrary arrest and detention, and the right to be free from torture and other cruel, inhuman, and degrading treatment.

## Violations of the Right to Freedom of Expression

### *Targeting HRDs including journalists using defamation, slander, and insult provisions*

During the reporting period, Jordanian authorities continued to target HRDs, including journalists, under defamation and slander provisions for their criticism of the monarch and government policies. On 13 October 2019 the Cybercrimes Unit detained Moayad Al-Majali, an independent researcher and employee in the Ministry of Justice.<sup>60</sup> The CCU reportedly confiscated his electronic devices, and the public prosecutor accused him of insulting the King, slandering the King, and “inciting strife.”<sup>61</sup> These accusations stemmed from an article published on

a local news website about his research into State property registered under the King’s name and Al-Majali’s Facebook post about an alleged misuse of State land.<sup>62</sup> In December 2020, he was sentenced to one year in prison for insulting the Queen, a violation of the Penal Code, but acquitted of insulting the King.<sup>63</sup>

As another example, on 2 September 2019, Jordanian authorities arrested Abed al Karem Al-Shraideh, President of the Organization for Human Rights and Anti-Torture.<sup>64</sup> His arrest was reportedly based on a July 2019 Facebook video in which he allegedly criticised the King for interfering in and undermining tribal affairs, and accused the government of corruption.<sup>65</sup> A tribesperson who was also criticised in the video notified the CCU, which in turn showed the video to the Amman Prosecutor General.<sup>66</sup> Al-Shraideh was charged under the Penal Code for insulting the King and under the Cybercrimes Law for online defamation.<sup>67</sup> He was ultimately forced to delete the Facebook video.<sup>68</sup>

The Jordanian government has also punished members of the Hiraq Bani Hasan for criticising the government online.<sup>69</sup> On 25 October 2019, Jordanian authorities arrested Hisham Al-Saraheen and interrogated him at the PSD. He was then detained and charged by the State security prosecutor for “undermining the political regime.”<sup>70</sup> The charges were based on an online video of Al-Saraheen chanting during a protest.<sup>71</sup> On 27 October, Jordanian authorities detained Abdullah Al-Khalayleh and charged him with criticising the King and Queen and “undermining the political regime” as a consequence of videos he posted on Facebook.<sup>72</sup> And on 15 November Jordanian authorities detained Abdulrahman Shdeifat who was active on social media.<sup>73</sup> He was taken to the PSD in Amman where

he was interrogated for hours about his political views and engagement in human rights activities.<sup>74</sup> He was then brought before the State security prosecutor who ordered him detained for “undermining the political regime,” “inciting civil strife,” and “insulting the King and Queen.”<sup>75</sup>

Jordanian authorities have also used defamation laws to target journalists who criticise the government. On 14 March 2020 Jordanian authorities arrested Hiba Abu Taha, a contributor to various news outlets such as *Jordan Today*, *Al-Jazeera*, *Daraj*, and *Al-Araby al-Jadeed*.<sup>76</sup> She was arrested for slander and defamation based on statements she made in an interview in 2012, available on YouTube, where she called for a change in government in Jordan.<sup>77</sup> However, Abu Taha believes that the arrest is actually in retaliation for an interview she conducted with Prime Minister Dr. Omar Al-Razzaz in July of 2019 in which she asked him about a corruption scandal.<sup>78</sup>

#### ***Punishing human rights advocacy and political discourse as terrorism and incitement***

Reported incidents provide credible evidence that the Jordanian Government has used its terrorism law and charges of incitement to stifle speech discussing government policies and human rights contrary to its international obligations.<sup>79</sup>

Since the COVID-19 pandemic, Jordanian authorities have targeted journalists who report on the situation of workers, including migrant workers, impacted by the government’s policies related to the pandemic. On 14 April 2020 Jordanian authorities arrested Salim Akash, a Bangladeshi journalist for *BanglaTV* and news website *Jago News*, for posting a video to Facebook criticising Jordan’s coronavirus lockdown measures for their impact on the livelihood of Bangladeshi migrant workers.<sup>80</sup> He was charged under Jordan’s Telecommunications and Anti-Terrorism laws.<sup>81</sup> The Ministry of Interior also reportedly issued a deportation order against him.<sup>82</sup> The use of deportation as a measure of retaliation for human rights-related expression and advocacy risks interfering with the rights to freedom of expression, association, and peaceful assembly.<sup>83</sup>

On 9 April, the Jordanian military arrested the owner and news director, respectively, of *Roya TV*, Fares Al-Sayegh and Mohammad Al-Khalidi, for a news report that was aired on *Roya News* and posted on social media accounts.<sup>84</sup> Although online information about their cases is limited, a Jordanian journalist stated that the report was about unemployment as a result of the pandemic.<sup>85</sup> Charges pressed against the two media workers were related to incitement under the Anti-Terrorism Law.<sup>86</sup>

Jordanian authorities have not only targeted individuals who are directly critical of State policies but also those who criticise State allies. On 26 August 2020, Jordanian authorities arrested and detained Emad Hajjaj, a cartoonist, for publishing a satirical cartoon about the Israeli-United Arab Emirates diplomatic agreement on his website and social media.<sup>87</sup> The cartoon depicted a dove with an Israeli flag spitting in the face of UAE Crown Prince Mohammed bin Zayed.<sup>88</sup> Hajjaj was charged with “disturbing [Jordan’s] relations with a foreign state,” under article 3(b) of the Anti-Terrorism Law.<sup>89</sup> That provision has been criticised by the Committee Against Torture as overly broad.<sup>90</sup> At least two other individuals were charged under the Anti-Terrorism Law with incitement and disturbing relations with a foreign State: Hasham Al-Saraheen and Abdulrahman Shdeifat whose cases are described in section III(A)(1).

#### ***Punishing religious expression***

Two of the cases examined involved the punishment of religious speech, or speech critical of religion, as blasphemy. This conduct is inconsistent with international protections on the right to freedom of expression, opinion, conscience, and religion, including articles 19 and 20 of the ICCPR.<sup>91</sup> On 19 December 2019, Jordanian juvenile police detained and interrogated seventeen-year-old Tujan Al-Bukhaiti, who is a Yemeni refugee, after the CCU sent them a report regarding her social media posts.<sup>92</sup> The juvenile police interrogated her without the presence of her parents or lawyers.<sup>93</sup> She was then tried by Jordanian authorities for “blasphemy” and “insulting religious feelings” in connection with a Facebook post

that included her father's writings, and in November 2020 she was acquitted of those charges.<sup>94</sup> Another unidentified individual was arrested by the CCU for publishing "offensive" posts about Islamic symbols and religion.<sup>95</sup>

### *Punishing expression related to protests*

Throughout 2019 and 2020, Jordan has cracked down on online expression related to offline protests against the government, violating the right to freedom of expression as well as the right to freedom of association and peaceful assembly enshrined in the UDHR and ICCPR.<sup>96</sup> The UN Human Rights Council has emphasised that States have the obligation to respect and protect the rights to freedom of assembly and association both offline and online.<sup>97</sup> The UN Human Rights Committee has underscored that the protection of activities associated with the right to peaceful assembly, including information dissemination, communication between participants, and broadcasting, is crucial to the exercise of that right.<sup>98</sup> The UN General Assembly has condemned the arrests of activists and those "covering demonstrations and protests."<sup>99</sup> Additionally, the Special Rapporteur on the rights to freedom of peaceful assembly and of association has criticised a law that "forbids providing 'assistance' to 'illegal' assemblies, including by 'means of communication'" as being overly broad, "potentially making it a crime to promote, discuss, seek or link to information regarding a protest event."<sup>100</sup>

On 13 March 2019, Jordanian authorities detained Ahmed Tabanja for broadcasting a Facebook live video of a protest organised by unemployed Jordanians, which took place in front of the royal court complex in Amman.<sup>101</sup> He was released after two days, but then arrested again on 27 March and charged with "insulting an official agency" for a series of Facebook posts.<sup>102</sup> He was held in detention until 21 May 2019.<sup>103</sup>

Similarly, on 25 October 2019 Jordanian police arrested activist Alaa Malkawi while he was on his way to a protest near the Prime Minister's office.<sup>104</sup> The CCU accused him of "insulting the king and taking part in an illegal gathering."<sup>105</sup> His lawyers

believe that his arrest was based on a video of him posted online in 2018, in which he is shown at a protest criticising the Jordanian government.<sup>106</sup>

In 2020, Jordanian authorities made a wave of arrests during a mass protest by the Teachers' Syndicate after the government rescinded its promise to raise teachers' salaries.<sup>107</sup> On 25 July 2020, police closed all branches of the Teachers' Syndicate and arrested all thirteen board members.<sup>108</sup> The Attorney General stated that one of the bases for the arrests was a video posted to social media by the Deputy Head of the Syndicate, Nasser Al-Nawasra.<sup>109</sup> Weeks earlier, General Intelligence Division (GID) officials threatened Al-Nawasra with detention if he did not stop his activism.<sup>110</sup> The board members' attorney stated that the basis of the arrests was "electronic crimes[.]"<sup>111</sup> The Attorney General imposed a gag order on any reporting of the case, including through social media.<sup>112</sup>

Authorities arrested dozens of others after 25 July.<sup>113</sup> One journalist was called into questioning after reporting on Al-Nawasra's case, violating the gag order.<sup>114</sup> Another man was ordered to report to the Public Security Directorate's (PSD) Criminal Investigation Division over his 29 July Facebook post supporting the teacher protests.<sup>115</sup> When he appeared the next day, authorities detained him for "inciting illegal gathering."<sup>116</sup> Officials held him for two nights, and then released him after his father signed a pledge stating that he would no longer support the teachers' syndicate or protests on social media under penalty of a fine.<sup>117</sup>

## **Additional Human Rights Violations**

In their efforts to silence human rights advocacy and political discourse, credible reports indicate Jordanian authorities have violated the rights of children, they have committed acts of arbitrary arrest and detention, incommunicado detention, and they have violated the right to be free from torture and other cruel, inhuman, and degrading treatment.

### *Violation of the rights of the child*

Article 13 of the Convention on the Rights of the Child (CRC) protects children's right to freedom of expression.<sup>118</sup> Article 40(3) of the CRC establishes States' obligation to ensure "laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognised as having infringed the penal law..."<sup>119</sup> Specifically, the Committee on the Rights of the Child has stated that those under the age of eighteen should be subject to a child justice system<sup>120</sup> and should have access to legal assistance and parental support during questioning.<sup>121</sup> Yet Tujan Al-Bukhaiti, a seventeen-year-old Yemeni refugee (see section III(A)(3)), was detained and interrogated by Jordanian authorities without the presence of her parents and a lawyer.<sup>122</sup> She was tried as an adult for "blasphemy" and "insulting religious feelings" in connection with a Facebook post that included her father's writings.<sup>123</sup> This is inconsistent with both her right to freedom of expression and her right to be tried in a juvenile justice system.

### *Arbitrary arrest and detention*

Arbitrary deprivation of liberty is prohibited under article 9 of the ICCPR, customary international law, and as a *jus cogens* norm.<sup>124</sup> A deprivation is arbitrary when it is without a legal basis as well as when it results from the exercise of freedom of expression.<sup>125</sup> As the UN Working Group on Arbitrary Detention (WGAD) has reiterated, any measure depriving an individual of liberty must meet strict standards of lawfulness, necessity, and proportionality to avoid arbitrariness.<sup>126</sup> Deprivations may be arbitrary when they are based on discriminatory grounds against HRDs and activists, violating the rights to equality before the law and the right to equal protection under article 26 of the ICCPR.<sup>127</sup>

Reported incidents provide credible evidence that Jordan has arrested individuals without any legal basis, on the basis of vague laws, or on the basis of their protected expression, and their arrests are presumptively arbitrary under international law.<sup>128</sup> Jordanian authorities use their investigative powers to question, harass, and intimidate victims from further activism. While those arrested have a right

to promptly be informed of the charges against them and have the right to post bail, many are not afforded these rights as a form of intimidation.<sup>129</sup>

The detention of HRD Abdulrahman Shdeifat (see section III(A)(1)) illustrates this trend. In 2016, the GID called him in for questioning about social media posts.<sup>130</sup> He was kept in detention for two weeks without formal charges.<sup>131</sup> On 10 November 2019, Shdeifat was once again arrested, surrounded by seven masked men and taken after a job interview in Mafraq.<sup>132</sup> He was not presented with a warrant nor given the opportunity to speak with family or a lawyer, and he was interrogated for hours.<sup>133</sup> Nine days later, he was brought before the State Security Prosecutor who ordered him detained, but he was not promptly informed of the charges and was detained for a period of five months before having the option of release on bail.<sup>134</sup> Shdeifat's case is just one example where Jordanian authorities have reportedly arbitrarily arrested and detained activists for online expression.<sup>135</sup>

### *Incommunicado detention*

Incommunicado detention "places an individual outside the protection of the law,"<sup>136</sup> in violation of article 6 of the UDHR and article 16 of the ICCPR,<sup>137</sup> protecting the right to be recognised as a person before the law.<sup>138</sup> The Special Rapporteur on torture has observed that torture is "most frequently practiced during incommunicado detention,"<sup>139</sup> and it is outlawed by international law.<sup>140</sup> WGAD considers incommunicado detention a form of arbitrary detention.<sup>141</sup> The SR on torture has stated that "[i]n all circumstances, a relative of the detainee should be informed of the arrest and place of detention within 18 hours."<sup>142</sup> Jordanian authorities held Journalist Salim Akash for three days with no access to his attorney or ability to contact his family.<sup>143</sup>

### *Enforced disappearance*

Enforced disappearance is an international crime and is prohibited by customary law<sup>144</sup> as well as international treaties.<sup>145</sup> An enforced disappearance has three elements: (1) a deprivation of liberty; (2) by State officials or with their consent; followed



by (3) the refusal to acknowledge the deprivation of liberty, or to disclose information on the fate or location of the disappeared.<sup>146</sup> An individual may be held incommunicado but is not considered to be disappeared unless the State does not disclose any one of the following pieces of information: whether the person is detained, where the person is detained, and if the person is alive or dead. During the reporting period Jordan violated this prohibition. In one example, Jordanian authorities arrested Abdulrahman Shdeifat and held him in detention for five days before his location was publicised.<sup>147</sup> He was denied access to an attorney and his family during that time.<sup>148</sup> Special Procedures mandate holders described this as a “short-term enforced disappearance.”<sup>149</sup>

### *Due process violations*

Fundamental principles of fair trials are protected under international law at all times.<sup>150</sup> Individuals have universal rights to seek competent, independent, and impartial judicial review of the arbitrariness and lawfulness of deprivations of liberty and to obtain without delay adequate and appropriate remedies.<sup>151</sup> Those detained enjoy a number of procedural safeguards of their rights including the right to be informed of rights, the right to initiate court proceedings without delay, and the right to legal assistance of counsel of their choice from the moment of apprehension.<sup>152</sup>

Abdulrahman Shdeifat was tried without a lawyer, evidence, or witnesses; he was not allowed to make a personal defence; and the basis for his charges were not made clear to him.<sup>153</sup> Taha Daqamseh, an activist who was detained by Jordanian authorities and charged with insulting the King under the Cybercrimes Law, was also tried without a lawyer and sentenced in May 2019 to one year in prison.<sup>154</sup>

Several reported incidents included individuals whose cases were heard by or referred to the State Security Court, a quasi-military tribunal, where prosecutions are conducted by a military prosecutor.<sup>155</sup> The Human Rights Committee and Committee Against Torture have expressed concern about the State

Security Court, including the fact that civilians are tried in a military court that is not independent or impartial<sup>156</sup> and does not meet the ICCPR article 14 requirements of fair trial.<sup>157</sup>

### *Torture and cruel, unusual, and degrading treatment*

The prohibition against torture is absolute, non-derogable, and a *jus cogens* norm of international law.<sup>158</sup> Several individuals who were targeted for their online expression were reported to have been detained by the GID and the PSD’s Criminal Investigations Division.<sup>159</sup> Both of these departments have been reported to use torture and ill treatment to extract information or confessions during investigations for criminal proceedings.<sup>160</sup>

Abdulrahman Shdeifat was one identified victim of cruel, unusual, and degrading treatment.<sup>161</sup> After his imprisonment in November 2019, he went on a hunger strike for eleven days and was hospitalised four times during the strike, but Jordanian authorities did not notify his family.<sup>162</sup> He was not provided the salt and water he requested during his hunger strike,<sup>163</sup> which constitutes ill treatment under international law.<sup>164</sup>

# CONCLUSION AND RECOMMENDATIONS

During the reporting period, Jordan consistently used the Cybercrimes Law, Anti-Terrorism Law, and Penal Code to punish online speech that is protected under international law. Despite international criticism, Jordan continues to use overly broad and vague provisions within these laws to detain and arrest journalists and HRDs. These laws are also used to prohibit collective speech and expression through crackdowns on protest movements. These reports represent credible evidence that Jordan is in violation of its obligation to promote and protect human rights and to create a safe environment for HRDs, including journalists. Furthermore, there is credible evidence that HRDs face infringements on their rights including arbitrary arrest and detention, enforced disappearance, unfair trials, and torture and other cruel, inhuman, and degrading treatment. The enactment of Cyber Security Law as well as the possibility of a future Centre and Council is especially troubling for freedom of online expression in Jordan.

To address these concerns, we offer the following general recommendations and country-specific recommendations.

## General Recommendations

### *To Governments of Gulf States and Neighbouring Countries:*

- ◊ Eliminate laws and articles in national legal frameworks that criminalise online freedom of expression protected under international human rights law, specifically:
  - All laws including anti-cybercrime, anti-terrorism, communications, media, penal, and technology laws that restrict online or offline expression through provisions to protect public order, national security, or the national economy; insults laws; and laws that criminalise fake news, that do not conform to international human rights standards and satisfy the principles of legality, legitimacy, necessity and proportionality;
  - Decriminalise the offense of defamation;
  - Revise anti-cybercrime laws to include affirmative protection for the legitimate online expression of HRDs, including journalists.
- ◊ Cease using deportation and travel bans as tools for targeting HRDs for their online human rights advocacy, and refrain from infringing on their right to freedom of movement.
- ◊ Reform legal institutions, including the criminal legal system, to promote the independence and autonomy necessary for:
  - Investigating human rights violations committed against HRDs by law enforcement, such as engaging in unlawful surveillance of HRDs, enforced disappearances, holding HRDs in unlawful detention, incommunicado, and subjecting them to ill-treatment and torture;
  - Ensuring that HRDs', citizens', and residents' right to freedom of movement is not violated;
  - Ensuring the judiciary upholds international standards guaranteeing the right to fair trial.

### *To the UN Human Rights Council:*

- ◊ Instruct the UN Office of the High Commissioner for Human Rights to undertake a study of the transnational cooperation among governments to affect the apprehension and rendering of foreign HRDs to their countries of origin for prosecution of online expression that is protected under international law.
- ◊ Instruct the UN Office of the High Commissioner for Human Rights to undertake a study to identify and track developments in the surveillance regimes in each State in the region. The governments in question should cooperate in this study. The

study should identify third party actors including business enterprises and other States that contribute to advancing the surveillance infrastructure in each State concerned. State and non-State actors complicit in illegal surveillance of HRDs by governments should be held accountable.

***To All States:***

- Implement an immediate moratorium on the use, acquisition, sale and transfer of surveillance technology. This moratorium should extend until adequate global controls and safeguards against abuse are in place.

## **Country Recommendations**

In addition to the above recommendations, States should revise their domestic laws and institutions to ensure compliance with international human rights standards regarding online freedom of expression as indicated below.

**We call on the government of Jordan to create a safe and enabling environment for HRDs including by taking the following steps:**

- Eliminate laws and articles in Jordan's legal frameworks that criminalise online freedom of expression protected under international human rights law, or that are inconsistent with the right to due process and a fair trial, including:
  - 2015 Cybercrime Law, articles 11 and 15;
  - 2006 Anti-Terrorism Law, articles 2, 3, 7, 8;
  - 1995 Telecommunications law, article 75(a);
  - 1960 Penal Code, article 118, 122, 132, 149, 191, 195;
  - 2019 Cyber Security Law.

## NOTES

- 1 Researchers identified reported incidents of violations of online freedom of expression by conducting searches for cases involving Jordan between May 2018 and October 2020, from the following international media outlets and human rights organizations that document human rights violations: Amnesty International, Al Jazeera, ARTICLE 19, British Broadcasting Corporation, Committee to Protect Journalists, Front Line Defenders, Gulf Centre for Human Rights, and Human Rights Watch. Researchers also searched for communications from special procedures mandate holders regarding incidents alleging violations of freedom of expression in Jordan in the UN database of communications. Researchers also searched for articles published by *Jordan News Agency*, *Petra* (Jordan), *Jordan Times*, *Albawaba.com*, and *The Star* (Amman, Jordan), using the terms: arrest, freedom of expression, post, video, human rights defender, Facebook, Twitter, and social media during the relevant period. After finding cases using the international sources, researchers conducted additional searches using the Google search engine of the victim's name (with various English spellings) to find additional case information. See methodology section for more information.
- 2 Verity Elizabeth Irvine, Ian J. Bickerton & Kamel S. Abu Jaber, *Jordan: Government and Society*, BRITANNICA. This characterization of the political system of the country is offered for descriptive purposes; a normative evaluation of the political system as such is beyond the scope of this chapter.
- 3 Michel Forst (Special Rapporteur on the Situation of Human Rights Defenders), *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, ¶ 77, U.N. Doc. A/HRC/31/55 (Feb. 1, 2016); Civil Society Space, Human Rights Council Res. 27/31, U.N. Doc. A/HRC/RES/27/31, ¶ 3 (Oct. 3, 2014); Declaration on the Right and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, G.A. Res. 53/144, U.N. Doc. A/RES/53/144 (Mar. 8, 1999).
- 4 Simon Kemp, *Digital 2021: Jordan*, DATAREPORTAL (11 Feb. 2021).
- 5 *Id.*
- 6 International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR]. Jordan acceded to CAT in 1991, CEDAW in 1992, CERD in 1974, and CRC in 1991. *UN Treaty Body Database: Ratification Status for Jordan*, OHCHR.ORG.; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *opened for signature* Dec. 10, 1984, 1465 U.N.T.S. 85 [hereinafter CAT]; Convention on the Elimination of All Forms of Discrimination against Women, *opened for signature* Dec. 18, 1979, 1249 U.N.T.S. 13; International Convention on the Elimination of All Forms of Racial Discrimination, *opened for signature* Mar. 7, 1966, 660 U.N.T.S. 195; the Convention on the Rights of the Child, *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC]. Jordan is a party to the Arab Charter on Human Rights. League of Arab States, Arab Charter on Human Rights, May 22, 2004, reprinted in 12 Int'l Hum. Rts. Rep. 893 (2005) (entered into force Mar. 15, 2008); *League of Arab States: Key Legal Texts*, INT'L CTR. FOR NOT-FOR-PROFIT L. (Sept. 25, 2021).
- 7 World Conference on Human Rights, *Vienna Declaration and Programme of Action*, pmbl. at 20-21, §§ I(1), I(3), I(8), U.N. Doc. A/CONF.157/24 (Part 1) (Oct. 13, 1993); Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/810, at art. 19 (Dec. 10, 1948) [hereinafter UDHR].
- 8 Cybercrime Law of 2015 [hereinafter Cybercrime Law] (Jordan) (unofficial English translation on file with author).
- 9 Anti-Terrorism Law No. 55 of 2006, amended in 2014 [hereinafter Anti-Terrorism Law] (Jordan) (Arabic version and unofficial English translations of the relevant provisions from the Anti-Terrorism Law are on file with author).
- 10 Penal Code of 1960, amended in 2017 [hereinafter Penal Code] (Jordan) (unofficial English translation from 2011; several provisions of the Penal Code have been amended since 2011, and relevant amended provisions are on file with author).
- 11 Telecommunications Law No. 13 of 1995, amended 2011, art. 75(a) [hereinafter Telecommunications Law] (Jordan) (unofficial English translation).
- 12 Cyber Security Law No. 16 of 2019, art. 3 [hereinafter Cyber Security Law] (Jordan) (unofficial English translation on file with author).

- 13 Cybercrime Law, *supra* note 8, at art. 15.
- 14 Hum. Rts. Comm., *General Comment No. 34: Article 19: Freedoms of Opinion and Expression*, ¶ 25, U.N. Doc. CCPR/C/GC/34 (Sept. 12, 2011) [hereinafter *HRC General Comment No. 34*]; David Kaye (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, ¶ 7, U.N. Doc. A/HRC/32/38 (May 11, 2016) [hereinafter *SRFOE Report of May 2016*]; Working Grp. on Arbitrary Det., *Opinion No. 71/2019 Concerning Issa al-Nukhefi, Abdulaziz Youssef Mohamed al-Shubaili and Issa Hamid al-Hamid (Saudi Arabia)*, ¶ 73, U.N. Doc. A/HRC/WGAD/2019/71 (Feb. 14, 2020) (“vaguely and broadly worded provisions ... which cannot qualify as *lex certa*, violate the due process of law undergirded by the principle of legality in article 11 (2) of the Universal Declaration of Human Rights.”); UDHR, *supra* note 7, at arts. 11, 19; ICCPR, *supra* note 6, at art. 19.
- 15 *SRFOE Report of May 2016*, *supra* note 14, ¶ 39; Frank La Rue (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, Frank La Rue, ¶ 34, U.N. Doc. A/HRC/17/27 (May 16, 2011) [hereinafter *SRFOE Report of May 2011*].
- 16 *SRFOE Report of May 2016*, *supra* note 14, ¶ 39; Margaret Sekaggya (Special Rapporteur on the Situation of Human Rights Defenders), *Situation of Human Rights Defenders*, ¶ 24, U.N. Doc. A/67/292 (Aug. 10, 2012) (“Provisions that criminalize the publication of articles or photos that could harm national security, public order, public health or public interest, incite violence, constitute sedition or have negative consequences for the financial climate of the country are overly broad and restrictive.”).
- 17 Frank La Rue (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, ¶ 29, U.N. Doc. A/66/290 (Aug. 10, 2011) [hereinafter *SRFOE Report of Aug. 2011*] (stating that “vague formulations that prohibit incitement” that do not “meet the criterion of legal clarity” include: “‘inciting to violation,’ ‘instigating hatred and disrespect against the ruling regime,’ ‘inciting subversion of state power’ and ‘offences that damage public tranquility’”).
- 18 David Kaye (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Communication to Jordan*, at 3, Ref. No. OLJOR 3/2018 (Dec. 7, 2018) [hereinafter *Dec. 2018 Communication to Jordan*].
- 19 Cybercrime Law, *supra* note 8, at art. 11; *Dec. 2018 Communication to Jordan*, *supra* note 18, at 3.
- 20 Frank La Rue (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, Frank La Rue, ¶ 86, U.N. Doc. A/HRC/20/17 (June 4, 2012) [hereinafter *SRFOE Report of June 2012*].
- 21 *HRC General Comment No. 34*, *supra* note 14, ¶ 47. See also *SRFOE Report of May 2011*, *supra* note 15, ¶ 36 (“[D]efamation should be decriminalized . . .”).
- 22 *HRC General Comment No. 34*, *supra* note 14, ¶ 47.
- 23 *Id.* See also *SRFOE Report of June 2012*, *supra* note 20, ¶¶ 83-88.
- 24 Hum. Rts. Comm., *Concluding Observations on the Fifth Periodic Report of Jordan*, ¶¶ 12–13, U.N. Doc. CCPR/C/JOR/CO/5 (Dec. 4, 2017) [hereinafter *Hum. Rts. Comm. Concluding Observations of Dec. 2017*]; Hum. Rts. Council, *Compilation on Jordan: Report of the Office of the United Nations High Commissioner for Human Rights*, ¶ 14, U.N. Doc. A/HRC/WG.6/31/JOR/2 (Aug. 24, 2018) [hereinafter *Aug. 2018 Compilation on Jordan*]; Comm. against Torture, *Concluding Observations on the Third Periodic Report of Jordan*, ¶ 29, U.N. Doc. CAT/C/JOR/CO/3 (Jan. 29, 2016) [hereinafter *Comm. against Torture Concluding Observations of Jan. 2016*].
- 25 Anti-Terrorism Law, *supra* note 9, at arts. 2, 3(b), 3(e).
- 26 *Id.* at art. 7 § F.
- 27 *Id.* at art. 7.
- 28 *Id.* at art. 8.
- 29 Telecommunications Law, *supra* note 11, at art. 75(a).
- 30 *Id.*
- 31 U.N. Special Rapporteur on Freedom of Op. & Expression et al., *Joint Declaration on Freedom of Expression and “Fake News”, Disinformation and Propaganda*, ¶ 2(a) (Mar. 3, 2017) [hereinafter *Joint Declaration on Freedom of Expression and “Fake News”, Disinformation, and Propaganda*].

- 32 Dec. 2018 Communication to Jordan, *supra* note 18, at 3.
- 33 Penal Code, *supra* note 10, at art. 118; *Freedom on the Net 2020: Jordan*, FREEDOM HOUSE.
- 34 Penal Code, *supra* note 10, at art. 149(1). Article 20(2) of the Penal Code states that the minimum term of “temporary labor” is three years, and the maximum is twenty years. *Id.* at art. 20(2).
- 35 SRFOE Report of Aug. 2011, *supra* note 17, ¶ 29.
- 36 *Joint Declaration on Freedom of Expression and “Fake News,” Disinformation, and Propaganda*, *supra* note 31, ¶ 2(a) (“General prohibitions on the dissemination of information based on vague and ambiguous ideas, including “false news” or “non-objective information,” are incompatible with international standards for restrictions on freedom of expression, as set out in paragraph 1(a), and should be abolished.”).
- 37 HRC General Comment No. 34, *supra* note 14, ¶ 38; SRFOE Report of June 2012, *supra* note 20, ¶ 88; David Kaye (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Promotion and Protection of the Right to Freedom of Opinion and Expression*, ¶ 33, U.N. Doc. A/71/373 (Sept. 6, 2016) [hereinafter *SRFOE Report of Sept. 2016*]; Leigh Toomey (Vice Chair of the Working Grp. on Arbitrary Det.) et al., Communication to Jordan, at 4, Ref. No. AL JOR 1/2019 (Oct. 15, 2019) [hereinafter Oct. 2019 Communication to Jordan] (stating in the case of Abed al Kareem Al-Shraideh that the application of criminal law should only be for the most serious of cases of defamation and that imprisonment is never appropriate in these circumstances).
- 38 Dec. 2018 Communication to Jordan, *supra* note 18, at 3.
- 39 Penal Code, *supra* note 10, at art. 122.
- 40 *Id.* at art. 195(1).
- 41 *Id.* at art. 191.
- 42 HRC General Comment No. 34, *supra* note 14, ¶ 38; SRFOE Report of June 2012, *supra* note 20, ¶ 88; SRFOE Report of Sept. 2016, *supra* note 37, ¶ 33; Oct. 2019 Communication to Jordan, *supra* note 37, at 4 (stating in the case of Abed al Kareem Al-Shraideh that the application of criminal law should only be for the most serious of cases of defamation and that imprisonment is never appropriate in these circumstances).
- 43 HRC General Comment No. 34, *supra* note 14, ¶ 38.
- 44 Hum. Rts. Comm. Concluding Observations of Dec. 2017, *supra* note 24, ¶ 26; *Comm. against Torture Concluding Observations of Jan. 2016*, *supra* note 24, ¶ 29.
- 45 Aug. 2018 Compilation on Jordan, *supra* note 24, ¶ 14.
- 46 Hum. Rts. Comm. Concluding Observations of Dec. 2017, *supra* note 24, ¶ 26; *Jordan: Crackdown on Political Activists*, HUM. RTS. WATCH (June 4, 2019).
- 47 Hum. Rts. Comm. Concluding Observations of Dec. 2017, *supra* note 24, ¶ 26; *Comm. against Torture Concluding Observations of Jan. 2016*, *supra* note 24, ¶¶ 29, 35, 37.
- 48 *Comm. against Torture Concluding Observations of Jan. 2016*, *supra* note 24, ¶ 29.
- 49 Despite the use of these institutions to punish protected expression, the UN Office of Drugs and Crime has supported the CCU’s awareness campaigns about cybercrime and has conducted anti-terror trainings with Jordanian law enforcement. See *Jordan: Releasing a Video on Cyber-Security Awareness Raising*, U.N. OFF. ON DRUGS & CRIME; *Supporting Jordan’s Efforts in Countering the Use of the Internet for Terrorist Purposes*, U.N. OFF. ON DRUGS & CRIME.
- 50 *Comm. against Torture Concluding Observations of Jan. 2016*, *supra* note 24, ¶ 23.
- 51 *Id.* ¶¶ 17, 23; Rules of Penal Trials Code No. 9 of 1961 (Criminal Procedures Code), amended 2001, art. 100(b) (Jordan) (unofficial English translation).
- 52 Cyber Security Law, *supra* note 12, at art. 3.
- 53 *Id.* at arts. 5-6.
- 54 *Id.* at art. 3.
- 55 *Id.*
- 56 See SRFOE Report of May 2016, *supra* note 14, ¶ 7 (describing the requirement of precision under international human rights standards).
- 57 Cyber Security Law, *supra* note 12, at art. 13.
- 58 *Id.* at 16.
- 59 Hum. Rts. Council, *Joint Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association and the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions on the Proper Management of Assemblies*, ¶ 75, U.N. Doc. A/HRC/31/66 (Feb. 4, 2016) (“Restrictions to online access or expression must be necessary and proportionate and applied by a body independent of any political, commercial or other unwarranted influences, and there

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should be adequate safeguards against abuse . . . . The practice of blocking communications – impeding the organization or publicising of an assembly online – rarely satisfies these requirements . . . .”).

- 60 *Jordan: New Arrests of Activists*, HUM. RTS. WATCH (Nov. 28, 2019); *Jordan: Access to Information Is a Fundamental Right, Calling for Immediate Release of Moayad Al-Majali*, SKYLINE INT’L FOR HUM. RTS. (Oct. 16, 2019).
- 61 *Jordan: New Arrests of Activists*, *supra* note 60; *Jordan: Access to Information Is a Fundamental Right, Calling for Immediate Release of Moayad Al-Majali*, *supra* note 60.
- 62 *Jordan: New Arrests of Activists*, *supra* note 60.
- 63 *Jordanian Accounts on Twitter Reported that a Jordanian Court Had Issued a General Prison Sentence for “Moayad Al-Majali” on Charges of Insulting Queen Rania*, WATAN NEWSPAPER (Dec. 6, 2020).
- 64 Oct. 2019 Communication to Jordan, *supra* note 37, at 1.
- 65 *Id.*; *Jordan: New Arrests of Activists*, *supra* note 60.
- 66 Oct. 2019 Communication to Jordan, *supra* note 37, at 1.
- 67 *Id.* at 1.
- 68 *Id.* at 2.
- 69 The Bani Hasan are a large tribe in Jordan and the hirak is a coalition organising for political reforms. *Jordan: New Arrests of Activists*, *supra* note 60.
- 70 *Id.*
- 71 *Id.*
- 72 *Id.*
- 73 Michel Forst (Special Rapporteur on the Situation of Human Rights Defenders) et al., Communication to Jordan, at 2, Ref. No. AL JOR 1/2020 (Mar. 31, 2020) [hereinafter Mar. 2020 Communication to Jordan].
- 74 *Id.*
- 75 *Id.*
- 76 *Jordanian Journalist Hiba Abu Taha Charged with Slander over 2012 Interview*, COMM. TO PROTECT JOURNALISTS (Mar. 19, 2020).
- 77 *Id.*
- 78 *Id.*
- 79 Freedom of Opinion and Expression, Human Rights Council Res. 12/16, U.N. Doc. A/HRC/RES/12/16, ¶¶ 5(o), 5(p)(i) (Oct. 12, 2009) (stating that, under ICCPR article 19, governments must not impose restrictions on discussion of government policies, political debate, human rights, and other topics).
- 80 *Jordan: Authorities Should Release Bengali Journalist Arbitrarily Detained*, SKYLINE INT’L FOR HUM. RTS. (May 13, 2020); *Bangladeshi Journalist Held in Jordan Without Lawyer Since April*, COMM. TO PROTECT JOURNALISTS (June 1, 2020).
- 81 *Bangladeshi Journalist Held in Jordan Without Lawyer Since April*, *supra* note 80.
- 82 *Id.*
- 83 Hum. Rts. Comm., *General Comment No. 15: The Position of Aliens Under the Covenant (Twenty-Seventh Session, 1986)*, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, at 141-42, ¶¶ 7, 10, U.N. Doc. HRI/GEN.A/Rev.7 (May 12, 2004) (noting that non-citizens have “the right to hold opinions and to express them,” and that ICCPR article 13 is meant “to prevent arbitrary expulsions”); Clément Nyaletsossi Voulé (Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association), *Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association*, ¶ 42, U.N. Doc. A/74/349 (Sept. 11, 2019) (“stress[ing] that there is no basis in international law for completely divesting non-citizens of their assembly rights”).
- 84 Heba Abou Taha, *Jordan: Settling Scores with Critics Within “Coronavirus” Outbreak*, DARAJ (May 25, 2020); *The Arrest of the General Manager of Roya TV and Its News Director*, ROYA NEWS (Apr. 13, 2020); Ali Younes, *Jordan Military Arrests TV Executives for Airing Virus Complaints*, AL JAZEERA (Apr. 10, 2020); *Jordan: Free Speech Threats Under Covid-19 Response*, HUM. RTS. WATCH.
- 85 Abou Taha, *supra* note 84.
- 86 *Id.* In another case, Rafat Alkhateeb, a cartoonist, was forced to remove a cartoon he had posted to his Facebook page due to government threats of arrest under the Cybercrimes Law. The cartoon depicted Prime Minister Omar Razzaz kneeling on the neck of the poor, likening him to Derek Chauvin, the US police officer who kneeled on the neck of George Floyd. The cartoon was in response to the COVID-19 laws which limited the employment opportunities of blue-collar workers. See Riham Darwish, *Is Jordan Using Its COVID-19 Defense Laws to Silence Critics?*, AL BAWABA (June 4, 2020).

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- 87 *Jordan Release Prominent Cartoonist*, HUM. RTS. WATCH (Aug. 28, 2020).
- 88 *Id.* The cartoon was in response to news that Israel had urged the United States to refuse war planes sales to the UAE even though the UAE and Israel struck a deal to normalise diplomatic relations.
- 89 *Id.*; Anti-Terrorism Law, *supra* note 9, at art. 3(b).
- 90 *Comm. against Torture Concluding Observations of Jan. 2016*, *supra* note 24, ¶ 29.
- 91 *HRC General Comment No. 34*, *supra* note 14, ¶ 48 (“Prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in article 20, paragraph 2, of the Covenant”); Ahmed Shaheed (Special Rapporteur on Freedom of Religion or Belief), *Report of the Special Rapporteur on Freedom of Religion or Belief*, ¶¶ 21, 23, U.N. Doc. A/HRC/40/58 (Mar. 5, 2019) (“These initiatives underscore the growing consensus in the international human rights community that anti-blasphemy laws run counter to the promotion of human rights for all persons.”); ICCPR, *supra* note 6, at arts. 19-20.
- 92 AMNESTY INT’L, URGENT ACTION: MINOR ON TRIAL OVER SOCIAL MEDIA POSTS (Feb. 12, 2020); *Outrage over Jordan Trial for Yemeni Teenager’s ‘Blasphemous’ Facebook Posts*, NEW ARAB (Jan. 23, 2020).
- 93 AMNESTY INT’L, *supra* note 92; *Outrage over Jordan Trial for Yemeni Teenager’s ‘Blasphemous’ Facebook Posts*, *supra* note 92.
- 94 AMNESTY INT’L, *supra* note 92; *Outrage over Jordan Trial for Yemeni Teenager’s ‘Blasphemous’ Facebook Posts*, *supra* note 92; *Jordan: Further Information: Yemeni Teenager “Not Guilty” over Speech Charges: Tujan Al-Bukhaiti*, AMNESTY INT’L (Nov. 25, 2020).
- 95 *Man Arrested for Publishing Posts Offensive to Religious Beliefs*, JORDAN NEWS AGENCY (Oct. 27, 2020).
- 96 Those rights are protected under article 20 of the UDHR, *supra* note 7, and articles 21 and 22 of the ICCPR, *supra* note 6.
- 97 Promotion, Protection, and Enjoyment of Human Rights on the Internet, Human Rights Council Res. 38/7, U.N. Doc. A/HRC/RES/38/7, ¶ 1 (July 17, 2018).
- 98 Hum. Rts. Comm., *General Comment No. 37 (2020) on the Right of Peaceful Assembly (Article 21)*, ¶ 33, U.N. Doc. CCPR/C/GC/37 (Sept. 17, 2020).
- 99 Promotion and Protection of Human Rights and Fundamental Freedoms, Including the Rights to Peaceful Assembly and Freedom of Association, G.A. Res. 73/173, U.N. Doc. A/RES/73/173, ¶19 (Jan. 8, 2019).
- 100 Clément Nyaletsossi Voulé (Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association), *Rights to Freedom of Peaceful Assembly and of Association: Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association*, ¶ 37, U.N. Doc. A/HRC/41/41 (May 17, 2019).
- 101 *Jordan: Crackdown on Political Activists*, *supra* note 46.
- 102 *Id.*
- 103 *Id.*
- 104 *Jordan: New Arrests of Activists*, *supra* note 60.
- 105 *Id.*
- 106 *Id.*
- 107 *Jordan: Teachers’ Syndicate Closed; Leaders Arrested*, HUM. RTS. WATCH (July 30, 2020).
- 108 *Id.*; *Amman Prosecutor Orders 2-Year Closure of Teachers Association*, JORDAN NEWS AGENCY (July 25, 2020).
- 109 *Jordan: Teachers’ Syndicate Closed; Leaders Arrested*, *supra* note 107; *Amman Prosecutor Orders 2-Year Closure of Teachers Association*, *supra* note 108.
- 110 *Jordan: Teachers’ Syndicate Closed; Leaders Arrested*, *supra* note 107.
- 111 *Id.*
- 112 *Id.*
- 113 *Id.*
- 114 *Jordan: Escalating Repression of Journalists*, HUM. RTS. WATCH (Aug. 18, 2020).
- 115 *Jordan: Arrests, Forced Dispersal at Teacher Protests*, HUM. RTS. WATCH (Aug. 27, 2020).
- 116 *Id.*
- 117 *Id.*
- 118 CRC, *supra* note 6, at art. 13; Comm. on the Rights of the Child, *General Comment No. 25 (2021) on Children’s Rights in Relation to the Digital Environment*, ¶ 60, U.N. Doc. CRC/C/GC/25 (Mar. 2, 2021) (“Children should not be prosecuted for expressing their opinions [digitally]...”).



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- 119 CRC, *supra* note 6, at art. 40(3).
- 120 Comm. on the Rights of the Child, *General Comment No. 24 (2019) on Children's Rights in the Child Justice System*, ¶ 29, U.N. Doc. CRC/C/GC/24 (Sept. 18, 2019).
- 121 *Id.* ¶ 60.
- 122 AMNESTY INT'L, *supra* note 92; *Outrage over Jordan Trial for Yemeni Teenager's 'Blasphemous' Facebook Posts*, *supra* note 92.
- 123 AMNESTY INT'L, *supra* note 92; *Outrage over Jordan Trial for Yemeni Teenager's 'Blasphemous' Facebook Posts*, *supra* note 92.
- 124 Working Grp. on Arbitrary Det., *Report of the Working Group on Arbitrary Detention: United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court*, ¶ 11, U.N. Doc. A/HRC/30/37 (July 6, 2015) [hereinafter *WGAD Report of July 2015*]; Hum. Rts. Comm., *General Comment No. 35: Article 9 (Liberty and Security of Person)*, ¶¶ 17, 22-23, 53, U.N. Doc. CCPR/C/GC/35 (Dec. 16, 2014) [hereinafter *HRC General Comment No. 35*].
- 125 *WGAD Report of July 2015*, *supra* note 124, ¶ 10; UDHR, *supra* note 7, at art. 19; ICCPR, *supra* note 6, at art. 19.
- 126 *WGAD Report of July 2015*, *supra* note 124, ¶ 11.
- 127 Working Grp. on Arbitrary Det., *Report of the Working Group on Arbitrary Detention*, ¶ 46, U.N. Doc. A/HRC/36/37 (July 19, 2017); UDHR, *supra* note 7, at art. 7; ICCPR, *supra* note 6, at art. 26.
- 128 Working Grp. on Arbitrary Det., *Report of the Working Group on Arbitrary Detention*, ¶¶ 38, 63, U.N. Doc. A/HRC/22/44 (Dec. 24, 2012) (stating that detentions authorised by law may be arbitrary if the legislation is arbitrary); *HRC General Comment No. 35*, *supra* note 124, ¶ 5 (calling police custody an arbitrary deprivation of liberty).
- 129 Mar. 2020 Communication to Jordan, *supra* note 73, at 2.
- 130 *Id.*
- 131 *Id.*
- 132 *Id.*
- 133 *Id.*
- 134 *Id.*
- 135 See, e.g., *Jordan: Access to Information Is a Fundamental Right, Calling for Immediate Release of Moayad Al-Majali*, *supra* note 60 (discussed in greater detail in section III(a)(i) above).
- 136 Working Grp. on Arbitrary Det., *Report of the Working Group on Arbitrary Detention*, ¶ 60, U.N. Doc. A/HRC/39/45 (July 2, 2018) [hereinafter *WGAD Report of July 2018*].
- 137 UDHR, *supra* note 7, at art. 6; ICCPR, *supra* note 6, at art. 6.
- 138 UDHR, *supra* note 7, at art. 6; ICCPR, *supra* note 6, at art. 16. Additionally, incommunicado detention violates the right to be brought promptly before a judge protected by ICCPR article 9(3) and the right to challenge the lawfulness of detention protected by ICCPR article 9(4). ICCPR, *supra* note 6, at arts. 9(3)-9(4).
- 139 Theo van Boven (Special Rapporteur on Torture), *Report of the Special Rapporteur on the Question of Torture Submitted in Accordance with Commission Resolution 2002/38*, ¶ 26(g), U.N. Doc. E/CN.4/2003/68 (Dec. 17, 2002) [hereinafter *SRT Report of Dec. 2002*].
- 140 Manfred Nowak (Special Rapporteur on Torture), *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak: Addendum—Study on the Phenomena of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in the World, Including an Assessment of Conditions of Detention*, ¶ 156, U.N. Doc. A/HRD/13/39/Add.5 (Feb. 5, 2010) (international law and standards prohibit “all secret and incommunicado detention”); see *Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, G.A. Res. 72/163, U.N. Doc. A/RES/72/163, ¶ 16 (Dec. 19, 2017).
- 141 *WGAD Report of July 2018*, *supra* note 136, ¶ 60.
- 142 *SRT Report of Dec. 2002*, *supra* note 139, ¶ 26(g).
- 143 *Bangladeshi Journalist Detained in Jordan*, JAGONEWS24.COM (Apr. 16, 2020); *Bangladeshi Journalist Held in Jordan Without Lawyer Since April*, *supra* note 80; *Jordan: Authorities Should Release Bengali Journalist Arbitrarily Detained*, *supra* note 80.
- 144 1 JEAN-MARIE HENCKAERTS & LOUISE DOSWALD-BECK, INT'L COMM. OF THE RED CROSS, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW Rule 98 (2005) (enforced disappearance).

- 145 International Convention for the Protection of All Persons from Enforced Disappearance, *opened for signature* Dec. 20, 2006, 2716 U.N.T.S. 3.
- 146 Article 2 of the Convention on Enforced Disappearances defines an enforced disappearance as the “arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.” *Id.*
- 147 Mar. 2020 Communication to Jordan, *supra* note 73, at 2.
- 148 *Id.*
- 149 *Id.*
- 150 Hum. Rts. Comm., *General Comment No. 32: Article 14: Right to Equality Before Courts and Tribunals and to Fair Trial*, ¶ 6, U.N. Doc. CCPR/C/GC/32 (Aug. 23, 2007) [hereinafter *HRC General Comment No. 32*].
- 151 WGAD *Report of July 2015*, *supra* note 124, annex, princ. 1; *HRC General Comment No. 32*, *supra* note 150, ¶¶ 15, 19, 31-34, 38; ICCPR, *supra* note 6, at art. 14.
- 152 WGAD *Report of July 2015*, *supra* note 124, annex, princs. 7-9; *HRC General Comment No. 32*, *supra* note 150, ¶ 10.
- 153 Mar. 2020 Communication to Jordan, *supra* note 73, at 1.
- 154 *Jordan: Crackdown on Political Activists*, *supra* note 46; *Jordan: Blocking Is the Solution*, ARABIC NETWORK FOR HUM. RTS. INFO. (Apr. 22, 2020).
- 155 *Jordan: Publisher, Journalist Charged in State Security Court*, HUM. RTS. WATCH (Apr. 25, 2012).
- 156 *Comm. against Torture Concluding Observations of Jan. 2016*, *supra* note 24, ¶ 37.
- 157 *Hum. Rts. Comm. Concluding Observations of Dec. 2017*, *supra* note 24, ¶ 26.
- 158 Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Judgment, 2012 I.C.J., ¶ 99 (July 20); CAT, *supra* note 6, at art. 2; Dire Tladi (Special Rapporteur), *Fourth Report on Peremptory Norms of General International Law (Jus Cogens) by Dire Tladi, Special Rapporteur*, ¶ 69, U.N. Doc. A/CN.4/727 (Jan. 31, 2019).
- 159 Manfred Nowak (Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment), *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak: Addendum—Mission to Jordan*, U.N. Doc. A/HRC/4/33/Add.3 (Jan. 5, 2007).
- 160 *Comm. against Torture Concluding Observations of Jan. 2016*, *supra* note 24, ¶ 23.
- 161 Mar. 2020 Communication to Jordan, *supra* note 73, at 1.
- 162 *Id.*
- 163 *Id.*
- 164 *Id.*

NOTES



# KUWAIT



# KUWAIT SCORECARD

## Targeted Activism or Expression



Expression re Offline Protests



Criticism of Government



Expression re Minority/ Migrants' Rights



Journalists



Women's Rights and WHRDs

## Human Rights Violations



Privacy & Surveillance



Arbitrary Detention



Incommunicado Detention



Enforced Disappearance



Torture



Fair Trial

## Problematic Legal Provisions and Institutions



Criminal Defamation



Cybercrime Law



Public Order



Specialised Law Enforcement Units

14

Number of incidents that fit the inclusion criteria of this study

# INTRODUCTION

Between 01 May 2018 and 31 October 2020, there were fourteen reported incidents in Kuwait that fit this study's inclusion criteria for violations of the rights to online freedom of expression of human rights defenders (HRDs).<sup>1</sup> Kuwait is a constitutional monarchy led by an emir, who appoints members of the Council of Ministers.<sup>2</sup> The National Assembly serves a legislative function.<sup>3</sup>

The reported incidents suggest that during the relevant time period, the government primarily targeted defenders advocating online for Bedoon (stateless) rights. Much of the expression to which the government objected occurred on Twitter. While there is limited information about which domestic laws authorities are utilising, the incidents appear to reflect use of the Kuwaiti cybercrime law and laws criminalising defamation. The incidents show three patterns of government targeting: targeting Bedoon activists on Twitter, arresting HRDs in groups, and arresting those who speak out against corruption in Kuwait. These patterns offer credible evidence that the Kuwaiti government violates the right of HRDs and activists to online freedom of expression by enforcing national laws that violate international standards. While violating the right to freedom of expression, reports indicate that the government commits acts of torture and enforced disappearance. Based on this research, there is credible evidence that the government has violated its obligation to respect online freedom of expression

and additional associated rights of HRDs. These violations also constitute breaches of the duty of the State, pursuant to the United Nations (UN) Charter, "as the main duty-bearer" to ensure "defenders enjoy a safe and enabling environment" and that government institutions and processes "are aligned with their safety and the aim of their activities."<sup>4</sup>

Kuwait is a party to several international human rights treaties protecting the right to freedom of expression, including the International Covenant on Civil and Political Rights (ICCPR).<sup>5</sup> As a UN member State, Kuwait is also bound by the UN Charter and has pledged to adhere to the principles reflected in the Universal Declaration of Human Rights (UDHR), including article 19, which enshrines the right to freedom of opinion and expression.<sup>6</sup>

# LEGAL ENVIRONMENT FOR ONLINE EXPRESSION IN KUWAIT

Kuwait utilises a combination of laws and agencies to target HRDs who express dissent or advocate for human rights online.<sup>7</sup> Four primary laws restrict online expression: Law No. 63 of 2015 Combatting Cybercrime;<sup>8</sup> Law No. 3 of 2006 on Press and Publications;<sup>9</sup> Law No. 8 of 2016 Regarding the Regulation of Electronic Media;<sup>10</sup> and Law No. 37 of 2014 Regulating the Establishment of the Communication and Information Technology Regulatory Agency (CITRA).<sup>11</sup> The government has created the Department of Cybercrime as a specialised agency within the Kuwaiti Department of the Interior, and it is instrumental in enforcing these laws.<sup>12</sup> Citizens may anonymously report suspected violations of these media laws to the Cybercrime Department.<sup>13</sup> This department has been involved in at least one reported incident of a journalist detained during the study period.<sup>14</sup>

## 2015 Cybercrime Law

The Cybercrime Law is specified as the law applied in two of the fourteen reported incidents in our study, making it the most frequently cited of any law. However, because reporting is often unclear about the laws used, there may be as many as thirteen incidents in which authorities applied the Cybercrime Law. Much of the Cybercrime Law extends provisions of the Press and Publications Law to electronic media, thus criminalising online expression in addition to print. In particular, article 6 of the Cybercrime Law restricts freedom of expression online and is the provision most often cited among the incidents in our dataset.<sup>15</sup> In the context of reviewing the government's compliance with its obligations under the ICCPR, the Human Rights Committee in 2016 specifically determined that the Cybercrime Law contained overly "restrictive, vague and broadly worded provisions to prosecute activists, journalists, bloggers, and other individuals for expressing critical views."<sup>16</sup>

Under both article 19 of the ICCPR and the UDHR, criminal laws that restrict freedom of expression must be sufficiently precise so as to enable individuals to determine how to comply with the law and to limit the discretion conferred on authorities enforcing it.<sup>17</sup>

Article 6 of the Cybercrime Law criminalises online expression that insults Islam, the emir, the Constitution, public prosecution, or public morals.<sup>18</sup> Additionally, the law criminalises online publication of views that "disparage" the judicial system; makes public news about the government without permission from officials; publicises information that "influences" the value of national currency; discloses the contents of secret meetings or documents; or contains views that negatively affect international relations with Kuwait.<sup>19</sup> Violations are punishable by fines of between KWD 3,000-10,000 (USD 10,000-33,000).<sup>20</sup> In the provision prohibiting publication of the content of secret meetings or documents, truth is explicitly prohibited as a defence.<sup>21</sup> This means that HRDs may be prosecuted for online publication of information that authorities deem critical of government, even if that information is true. The UN Human Rights Committee has expressed particular concern about "laws on such matters as, *lese majesty*, *desacato*, disrespect for authority, disrespect for flags and symbols, defamation of the head of State and the protection of the honour of public officials" and laws prohibiting "criticism of institutions, such as the army or the administration."<sup>22</sup> Further, the UN Human Rights Committee and the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (SR on FOE) have cautioned that laws on defamation should be crafted carefully so that they do not restrict freedom of expression, and have recommended the decriminalisation of defamation.<sup>23</sup> The UN Human Rights Committee has interpreted ICCPR article 19



to require that “the application of criminal law should only be countenanced in the most serious of cases, and imprisonment is never an appropriate penalty.”<sup>24</sup> Finally, it has stated that defamation laws should include the defence of public interest in the subject matter of the criticism, the defence of truth, and, at least in the case of expression related to public figures, the defence of error.<sup>25</sup>

## 2014 Regulating the Establishment of the Communication and Information Technology Regulatory Agency (CITRA) Law

The CITRA Law establishes a legal framework for the regulation and investigation of online expression such as the crimes outlined in the Regulation of Electronic Media Law.<sup>26</sup> CITRA works in tandem with the Regulation of Electronic Media Law, which establishes an administrative apparatus to control licenses of web-based publications<sup>27</sup> and codifies duties of regulated online media operators to curate the content they disseminate.<sup>28</sup> Under CITRA’s provisions, electronic media users that have “intentionally abused” telecommunications may be imprisoned for a maximum of one year.<sup>29</sup> The CITRA Law establishes an administrative body to process telecommunications license applications and outlines punishment for related telecommunications crimes.<sup>30</sup> The CITRA Law and Regulation of Electronic Media Law are therefore closely intertwined. The Human Rights Committee has found CITRA is likely to “further curb the right to freedom of expression and opinion and extend State control and restrictions on Internet-based expressions.”<sup>31</sup>

Kuwait has promulgated a complement of laws that, together, tightly restrict online freedom of expression. The Human Rights Committee expressed concern that the Cybercrime law was passed to “further curb the right to freedom of expression and opinion,” along with the CITRA Law, and recommended that Kuwait repeal the laws and clarify key terms,<sup>32</sup> which the government has not yet done. By prohibiting the media from online publishing of information critical

of the government, Kuwait is violating ICCPR article 19. Criminalising unauthorised online publication of information regarding the government cripples the possibility of a free, uncensored press, which the Human Right Committee has hailed as “one of the cornerstones of a democratic society” and therefore admonished States “to encourage an independent and diverse media.”<sup>33</sup> The SR on FOE has stated that vague language in laws regulating digital content gives “broad discretion to authorities to determine what kinds of online expression would violate their terms. As a result, individuals and businesses are likely to err on the side of caution in order to avoid onerous penalties, filtering content of uncertain legal status and engaging in other modes of censorship and self-censorship.”<sup>34</sup>

## Primary Targets of Enforcement

The reported incidents centre almost exclusively on online expression by HRDs regarding Kuwait’s Bedoon population. “Bedoon” is the term used for the stateless residents in Kuwait. These are individuals to whom the government did not grant citizenship when the country established its independence in 1961, as well as their descendants.<sup>35</sup> Thousands of Bedoon children are born in Kuwait without any citizenship rights from other countries.<sup>36</sup>

The government of Kuwait claims that most Bedoon people are not Kuwaiti, but rather citizens of other States living in Kuwait illegally.<sup>37</sup> Bedoon people are often unable to obtain birth and marriage certificates and are unable to receive education or medical care as a result.<sup>38</sup> As of the beginning of 2020, there were over 100,000 Bedoons living in Kuwait who were registered with governmental authorities.<sup>39</sup> In 2010, Kuwait promised to grant Kuwaiti citizenship to Bedoon who can prove their ancestry as living in Kuwait since 1965, but even this reform would provide relief to only 34,000 Bedoons.<sup>40</sup> As of 2020, even those 34,000 Bedoons whom the policy should have made eligible for citizenship are not naturalised.<sup>41</sup> Members of the Bedoon community have protested through sit-ins, online advocacy, and non-governmental organisations in support of their

rights against statelessness, which often has led to the arrest of activists and the censorship of human rights organisations.<sup>42</sup> Amidst the onset of the COVID-19 pandemic in 2020, the Kuwaiti government initiated an enhanced crackdown on non-citizens, by ordering the deportation of an estimated 360,000 migrant workers.<sup>43</sup>

While Bedoons are the most frequently targeted group among the reported incidents, social media posts are the digital communications most frequently targeted by authorities. Social media use is widespread in Kuwait, with 4.2 million active social media users out of a population of 4.24 million.<sup>44</sup> A significant number of residents use multiple mobile devices.<sup>45</sup> Facebook users in Kuwait number 2.7 million, 1.9 million are on Instagram, 1.85 million are on Snapchat, and 2.11 million are on Twitter.<sup>46</sup> The only private messaging application utilised in the reported incidences is WhatsApp. The identified cases in the reporting period almost uniformly consisted of political expression on Twitter. As Facebook has over 500,000 more users than Twitter in Kuwait, the targeting of Twitter communications suggests that platform may be more popular among political activists and/or more closely monitored by the government.<sup>47</sup> The widespread use of social media and mobile connections underscores the observation by the SR on FOE that: "Internet companies have become central platforms for discussion and debate, information access, commerce and human development."<sup>48</sup>

# TRENDS EMERGING FROM INCIDENTS OF REPRESSION OF ONLINE EXPRESSION IN KUWAIT

The overwhelming majority of reported incidents (12 of 14) involved arrests of HRDs for expressing political views via Twitter. The Twitter posts that reportedly led to arrests have either been deleted or the content was not specified in the reporting. As reported, authorities arrested most of the individuals for posting views critical of Kuwait's treatment of the Bedoon people or alleging corruption within the Kuwaiti government. This online expression is protected by article 19 of the ICCPR, as clarified in General Comment 34.<sup>49</sup> The charging law is often not specified in the reporting, but where a law is cited, it is generally the Cybercrime Law. While the Kuwaiti government's actions infringe primarily on freedom of expression, there is one reported incident of torture or cruel, inhuman or degrading treatment and one reported instance of an enforced disappearance.

## Violations of the Right to Freedom of Expression

### *Targeting of Bedoon activists*

Of the fourteen identified incidents in Kuwait, at least nine cases involve prosecution of Bedoon activists for online expression. The most prominent example during the reporting period is the case of Mohamed Al-Ajmi, a member of the National Committee for Monitoring Violations, an organisation that reports on freedom of expression violations in Kuwait.<sup>50</sup> Al-Ajmi is also an advocate for Bedoon human rights.<sup>51</sup> In August of 2020, authorities reportedly summoned Al-Ajmi for questioning.<sup>52</sup> According to Front Line Defenders, the government interrogated Al-Ajmi and detained him for two days before charging him with "insulting religion" and releasing him.<sup>53</sup> Al-Ajmi has stated that he believes his most recent arrest is in reprisal for his human rights work.<sup>54</sup> Charges of blasphemy and insulting religion are not permissible

restrictions to freedom of expression protected by article 19.<sup>55</sup> The UN Human Rights Committee clarified in its General Comment No. 34 that article 19 specifically protects "religious discourse" in all mediums, including internet-based expression.<sup>56</sup> Furthermore, the Committee found that blasphemy laws are "incompatible with the Covenant," and article 19 prohibits censorship or punishment for criticism of religious leaders, doctrine, or tenets of faith unless that criticism amounts to incitement to discrimination, hostility, or violence.<sup>57</sup>

This incident was not the first time that officials have arrested Al-Ajmi for his human rights activities. Authorities have charged Al-Ajmi with "defamation, insulting and slandering" at some point in the past three years for his online human rights advocacy, according to Front Line Defenders.<sup>58</sup> In 2014, officials charged him with "blasphemy" after he tweeted about the Kuwaiti government policy of withdrawing citizenship.<sup>59</sup> He was detained for ten days in that instance, but authorities ultimately dropped the charge.<sup>60</sup> In both cases, the original posts that led to the arrests are unknown. While Al-Ajmi is one example, there are others who have faced multiple arrests for similar acts of expression through electronic media, which are protected expression under article 19.<sup>61</sup>

### *Group arrests*

Another trend discerned from the reported incidents is the tendency of the government to arrest HRDs in groups. One example of this occurred in September of 2019, when Kuwait issued arrest warrants for sixteen Bedoon activists.<sup>62</sup> One activist, Mohamed Wali Al-Anezi, avoided arrest because he is currently exiled from Kuwait.<sup>63</sup> Authorities charged Al-Anezi with crimes related to national unity, insulting the

Emir, and defamation.<sup>64</sup> It is unclear what specific online communication led to the arrest, but Al-Anezi describes himself as the “founder of the Kuwaiti Bidun Movement” on his Twitter page.<sup>65</sup> Authorities charged the other fifteen activists under four laws: The Penal Code for Public Meetings and Gatherings, the Cybercrime Law, the Press and Publications Law, and the CITRA Law.<sup>66</sup> The Penal Code for Public Meetings refers to live, face-to-face meetings.<sup>67</sup> The underlying activity authorities prosecuted them for was joining Al-Anezi’s group, using social media to incite others to violate law and order, engaging in unauthorised gatherings, demonstrations, and meeting, misusing communications, and conducting “hostile action” against Saudi Arabia, Egypt, Bahrain, Sudan, and the United Arab Emirates.<sup>68</sup> The reporting is not clear on what these hostile actions might be. Available information indicates that the government prosecuted these HRDs under arbitrary laws, thereby violating their right to freedom of online expression.

The Gulf Centre for Human Rights reported that on 28 January 2020, the Fourth Circuit Criminal Court of Kuwait issued rulings against the sixteen Bedoon HRDs, describing them as “illegal residents,” and sentenced Reda Thamer Al-Fadhli, and Hammoud Rabah Hamoud (Hamoud Al-Rabah) to harsh sentences of ten years in prison, followed by deportation, and sentenced Al-Anezi, in absentia, to life in prison.<sup>69</sup> The UN Human Rights Committee has identified “proportionality” as one factor to consider, in determining whether an arrest or detention is arbitrary, regardless of whether domestic law authorises it.<sup>70</sup> The Committee has explained that “[i]n the case of trials in absentia, article 14, paragraph 3(a) [of the ICCPR] requires that, notwithstanding the absence of the accused, all due steps have been taken to inform accused persons of the charges and to notify them of the proceedings.”<sup>71</sup> It does not appear from reporting that authorities complied with this requirement for Al-Anezi.

#### ***Arrest for online expression against corruption***

Yet another noteworthy incident is one in which the government targeted defenders who spoke out online

against corruption. Officials arrested journalist and writer Aisha Al-Rasheed in January of 2019. The Office of the Emir filed five formal complaints against Al-Rasheed to the Department of Cyber Crimes, leading to her arrest.<sup>72</sup> Al-Rasheed was recorded speaking about corruption of various public figures in government, although reports do not specify who recorded her.<sup>73</sup> Other Kuwaitis then shared the recordings through WhatsApp and other social media networks.<sup>74</sup> The government apparently charged Al-Rasheed under article 6 of the Cybercrime Law for “criticising the Emir.”<sup>75</sup> Al-Rasheed herself does not appear to have used electronic media at all but officials charged her for criticising corruption in the government in a speech that others circulated online. The SR on FOE has emphasised that States cannot limit the freedom of expression to prevent criticism against the government or its officials.<sup>76</sup>

## **Additional Human Rights Violations**

While this report focuses on violations of online freedom of expression, Kuwait has violated other human rights in conjunction with its targeting of online expression. All reported violations of online freedom of expression also involved arbitrary detention of HRDs and one involved an incommunicado detention.

Arbitrary deprivation of liberty is prohibited under article 9 of the ICCPR, customary international law and is a *jus cogens* norm.<sup>77</sup> A deprivation is arbitrary including when it is without a legal basis as well as when it results from the exercise of freedom of expression.<sup>78</sup> As the UN Working Group on Arbitrary Detention has reiterated, any measure depriving an individual of liberty must meet strict standards of lawfulness, necessity and proportionality to avoid arbitrariness.<sup>79</sup> Deprivations may be arbitrary when they are based on discriminatory grounds against HRDs and activists, violating the rights to equality before the law and the right to equal protection under article 26 of the ICCPR.<sup>80</sup> The government in Kuwait uses arbitrary laws, such as the Cybercrime Law, to arrest HRDs, like Mohamed

Al-Ajmi and Hamoud Al-Rabah, making their detentions arbitrary and in contravention of Kuwait's duties under the ICCPR.

Authorities also subjected Al-Rabah to incommunicado detention. Incommunicado detention "places an individual outside the protection of the law,"<sup>81</sup> in violation of article 6 of UDHR and article 16 of the ICCPR<sup>82</sup> protecting the right to be recognised as a person before the law.<sup>83</sup> The Special Rapporteur on torture has observed that torture is "most frequently practiced during incommunicado detention,"<sup>84</sup> and it is outlawed by international law.<sup>85</sup> The UN Working Group on Arbitrary Detention considers incommunicado detention a form of arbitrary detention.<sup>86</sup>

Al-Rabah is a member of the Bedoon community working as a journalist and activist for Bedoon rights.<sup>87</sup> On 23 July 2019, Al-Rabah posted several statements to his Twitter page in support of Bedoon civil rights and called for the release of Bedoon activists.<sup>88</sup> That night, while Al-Rabah was at a restaurant with his wife, a group wearing civilian clothes grabbed him, forced him into a vehicle, and drove away with sirens on.<sup>89</sup> It is unclear how long Al-Rabah was held incommunicado before further investigation revealed that he was in police custody.<sup>90</sup> Even when that fact became clear, it was not reported under what possible charge he was being held. The SR on Torture has stated that "[i]n all circumstances, a relative of the detainee should be informed of the arrest and place of detention within 18 hours."<sup>91</sup>

# CONCLUSION AND RECOMMENDATIONS

The government of Kuwait has passed several laws that violate online freedom of expression because they criminalise expressing opposition to government policies, religion, and figures, advocacy for minority groups, and freedom for all to participate in digital media expression. The government most commonly enforces its Cybercrime Law against HRDs, including journalists for their human rights and reporting activities. In particular, Kuwait has targeted defenders advocating for the rights of the stateless Bedoon people, especially on social media such as Twitter.

To address these concerns, we offer the following general recommendations and country-specific recommendations.

## General Recommendations

### *To Governments of Gulf States and Neighbouring Countries:*

- \* Eliminate laws and articles in national legal frameworks that criminalise online freedom of expression protected under international human rights law, specifically:
  - All laws including anti-cybercrime, anti-terrorism, communications, media, penal, and technology laws that restrict online or offline expression through provisions to protect public order, national security, or the national economy; insults laws; and laws that criminalise fake news, that do not conform to international human rights standards and satisfy the principles of legality, legitimacy, necessity and proportionality;
  - Decriminalise the offense of defamation;
  - Revise anti-cybercrime laws to include affirmative protection for the legitimate online expression of HRDs, including journalists.

- ♦ Cease using deportation and travel bans as tools for targeting HRDs for their online human rights advocacy, and refrain from infringing on their right to freedom of movement.
- ♦ Reform legal institutions, including the criminal legal system, to promote the independence and autonomy necessary for:
  - Investigating human rights violations committed against HRDs by law enforcement, such as engaging in unlawful surveillance of HRDs, enforced disappearances, holding HRDs in unlawful detention, incommunicado, and subjecting them to ill-treatment and torture;
  - Ensuring that HRDs', citizens', and residents' right to freedom of movement is not violated;
  - Ensuring the judiciary upholds international standards guaranteeing the right to fair trial.

### *To the UN Human Rights Council:*

- ♦ Instruct the UN Office of the High Commissioner for Human Rights to undertake a study of the transnational cooperation among governments to affect the apprehension and rendering of foreign HRDs to their countries of origin for prosecution of online expression that is protected under international law.
- ♦ Instruct the UN Office of the High Commissioner for Human Rights to undertake a study to identify and track developments in the surveillance regimes in each State in the region. The governments in question should cooperate in this study. The study should identify third party actors including business enterprises and other States that contribute to advancing the surveillance infrastructure in each State concerned. State and non-State actors complicit in illegal surveillance of HRDs by governments should be held accountable.

***To All States:***

- Implement an immediate moratorium on the use, acquisition, sale and transfer of surveillance technology. This moratorium should extend until adequate global controls and safeguards against abuse are in place.

## **Country Recommendations**

In addition to the above recommendations, States should revise their domestic laws and institutions to ensure compliance with international human rights standards regarding online freedom of expression as indicated below.

**We call on the government of Kuwait to create a safe and enabling environment for HRDs including by taking the following steps:**

- Eliminate laws and articles in Kuwait's legal frameworks that criminalise online freedom of expression protected under international human rights law, or that are inconsistent with the right to due process and a fair trial, including:
  - 2006 Press and Publications Law, articles 19-21, 27(3);
  - 2014 Establishment of the Communication and Information Technology Regulatory Authority, article 61;
  - 2015 Cybercrime Law, articles 2-7;
  - 2016 Regulation of Electronic Media Law, articles 6, 8, 9, 17, 70.

## NOTES

- 1 Researchers identified reported incidents of violations of online freedom of expression by conducting searches for cases involving Kuwait between May 2018 and October 2020, from the following international media outlets and human rights organisations that document human rights violations: Amnesty International, Al Jazeera, ARTICLE 19, British Broadcasting Corporation, Committee to Protect Journalists, Front Line Defenders, Gulf Centre for Human Rights, and Human Rights Watch. Researchers also searched for communications from special procedures mandate holders regarding incidents alleging violations of freedom of expression in Kuwait in the UN database of Communications. Researchers supplemented international research by consulting the following domestic media outlets: *Kuwait Times*, *Arab Times*, and *Kuna News Agency* and used the embedded search functions to retrieve news updates using these keywords: freedom of expression, digital expression, digital, online, post, tweet, Twitter, Facebook, arrest, expression, and human rights defender during the relevant period of study. Domestic sources provided no relevant results. After finding cases using international sources, researchers conducted additional searches using the Google search engine of the victim's name (with various English spellings) to find additional case information. See methodology section for more information.
- 2 William L. Ochsenwald et al., *Kuwait: Government and Society—Constitutional Framework*, BRITANNICA (July 8, 2021). This characterisation of the political system of the country is offered for descriptive purposes; a normative evaluation of the political system as such is beyond the scope of this chapter.
- 3 *Id.*
- 4 Michel Forst (Special Rapporteur on the Situation of Human Rights Defenders), *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, ¶ 77, U.N. Doc. A/HRC/31/55 (Feb. 1, 2016); Civil Society Space, Human Rights Council Res. 27/31, U.N. Doc. A/HRC/RES/27/31, ¶ 3 (Oct. 3, 2014); Declaration on the Right and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, G.A. Res. 53/144, U.N. Doc. A/RES/53/144 (Mar. 8, 1999).
- 5 Kuwait acceded to the ICCPR and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1996. *UN Treaty Body Database: Ratification Status for Kuwait*, OHCHR.ORG.; International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR]; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *opened for signature* Dec. 10, 1984, 1465 U.N.T.S. 85. Kuwait has also acceded to the Convention on the Elimination of All Forms of Discrimination against Women in 1994 and the Convention on the Elimination of All Forms of Racial Discrimination in 1968. *UN Treaty Body Database: Ratification Status for Kuwait*, *supra*; Convention on the Elimination of All Forms of Discrimination against Women, *opened for signature* Dec. 18, 1979, 1249 U.N.T.S. 13; International Convention on the Elimination of All Forms of Racial Discrimination, *opened for signature* Mar. 7, 1966, 660 U.N.T.S. 195. Kuwait is a party to the Arab Charter on Human Rights. League of Arab States, Arab Charter on Human Rights, May 22, 2004, reprinted in 12 *Int'l Hum. Rts. Rep.* 893 (2005) (entered into force Mar. 15, 2008); *League of Arab States: Key Legal Texts*, INT'L CTR. FOR NOT-FOR-PROFIT L. (Sept. 25, 2021).
- 6 World Conference on Human Rights, *Vienna Declaration and Programme of Action*, pmbl. at 20-21, §§ I(1), I(3), I(8), U.N. Doc. A/CONF.157/24 (Part 1) (Oct. 13, 1993); Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/810, at art. 19 (Dec. 10, 1948) [hereinafter UDHR].
- 7 See JOYCE HAKMEH, CYBERCRIME LEGISLATION IN THE GCC COUNTRIES: FIT FOR PURPOSE? 7-13 (2018); *Kuwait: Cybercrime Law a Blow to Free Speech*, HUM. RTS. WATCH (July 22, 2015); *Kuwait: New Cyber Crimes Law Restricts Free Expression and Targets Online Activists*, GCHR (Jan. 21, 2016); GULF CTR. FOR HUM. RTS., MAPPING CYBERCRIME LAWS AND VIOLATIONS OF DIGITAL RIGHTS IN THE GULF AND NEIGHBOURING COUNTRIES 7 (2018).
- 8 Law No. 63 of 2015 Combatting Cybercrime art. 7 [hereinafter Cybercrime Law] (Kuwait) (official Arabic version; unofficial English translation on file with author).
- 9 Law No. 3 of 2006 on Press and Publications [hereinafter Press and Publications Law] (Kuwait) (unofficial English translation).



- 10 Law No. 8 of 2016 Regarding the Regulation of Electronic Media art. 6 [hereinafter Regulation of Electronic Media Law] (Kuwait) (unofficial English translation).
- 11 Law No. 37 of 2014 Regulating the Establishment of the Communication and Information Technology Regulatory Authority [hereinafter CITRA Law] (Kuwait) (official English translation).
- 12 *Cyber Crime*, STATE KUWAIT MINISTRY INTERIOR.
- 13 *Id.*
- 14 *Kuwait: Journalist and Writer Aisha Al-Rasheed Detained Under Cyber Crimes Law*, GCHR (Jan. 8, 2019). Reports on other incidents in the study contain references to the “Cybercrime Unit” or the “Electronic and Cyber Crime Combatting Department.” *Charge Brought Against Human Rights Defender Mohamed Al-Ajmi*, FRONT LINE DEFS. (Sept. 4, 2020); *Kuwait: Authorities Continue to Target Human Rights Defenders Supporting Bedoon Rights*, GCHR (Feb. 13, 2019). These references may in fact refer to the Cybercrime Department; however, researchers have not been able to confirm this is the case. *Cyber Crime*, *supra* note 12.
- 15 Cybercrime Law, *supra* note 8, at arts. 2-5. In addition to criminalising tampering with electronic media, the law also criminalises forgery, obscenity, theft, and unauthorised access using electronic media.
- 16 Hum. Rts. Comm., *Concluding Observations on the Third Periodic Report of Kuwait*, ¶ 40, U.N. Doc. CCPR/C/KWT/CO/3 (Aug. 11, 2016) [hereinafter *HRC Concluding Observations of Aug. 2016*].
- 17 Hum. Rts. Comm., *General Comment No. 34: Article 19: Freedoms of Opinion and Expression*, ¶ 25, U.N. Doc. CCPR/C/GC/34 (Sept. 12, 2011) [hereinafter *HRC General Comment No. 34*]; David Kaye (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, ¶ 7, U.N. Doc. A/HRC/32/38 (May 11, 2016) [hereinafter *SRFOE Report of May 2016*]; Working Grp. on Arbitrary Det., *Opinion No. 71/2019 Concerning Issa al-Nukhefi, Abdulaziz Youssef Mohamed al-Shubaili and Issa Hamid al-Hamid (Saudi Arabia)*, ¶ 73, U.N. Doc. A/HRC/WGAD/2019/71 (Feb. 14, 2020) (“[V]aguely and broadly worded provisions ... which cannot qualify as *lex certa*, violate the due process of law undergirded by the principle of legality in article 11 (2) of the Universal Declaration of Human Rights.”); UDHR, *supra* note 6, at arts. 11, 19; ICCPR, *supra* note 5, at art. 19.
- 18 Articles 2 through 5 of Law No. 63 of 2015 on Combatting Cybercrime, *supra* note 8, extend to digital media the restrictions on expression in print media that are contained in articles 19 through 21 of Law No. 3 of 2006 on Press and Publications, *supra* note 9. Article 19 of the Press and Publications Law prohibits “meddling, defamation, slander, or mocking” matters of Islam. *Supra* note 9. Article 20 prohibits any “challenge” to the Emir by criticism or attribution of statements to him. *Id.* Article 21 prohibits publishing content that expresses a broad range of criticism of the government, including expression that would “disdain” or be in “contempt” of the constitution; “insult” or “disparage” the public prosecutor or the judicial system; or “insult” public morals. *Id.* It also prohibits publishing leaked communications of the government, or reporting on nonpublic government discussions, even if the information is true. *Id.* Article 21 (5) and (8) prohibit publication of news that would influence the value of national currency or harm to “the relationships between Kuwait and other Arab or friendly countries.” *Id.*
- 19 Cybercrime Law, *supra* note 8, at art. 7.
- 20 *Id.* at art. 6; Press and Publications Law, *supra* note 9, at art 27 (3).
- 21 Press and Publications Law, *supra* note 9; See *Kuwait: Cybercrime Law a Blow to Free Speech*, *supra* note 7 (noting that the Cybercrime Law lacks a defense of truth as required by international law).
- 22 HRC General Comment No. 34, *supra* note 18, ¶ 38.
- 23 *Id.* ¶ 47. See also Frank La Rue (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, Frank La Rue, ¶ 36, U.N. Doc. A/HRC/17/27 (May 16, 2011) (“defamation should be decriminalized”).
- 24 HRC General Comment No. 34, *supra* note 18, ¶ 47.
- 25 *Id.* See also Frank La Rue (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, Frank La Rue, ¶¶ 83-88, U.N. Doc. A/HRC/20/17 (June 4, 2012).
- 26 CITRA Law, *supra* note 11, at art. 61 (providing that CITRA shall inform the Public Prosecution of any potential crimes discovered during inspections).
- 27 Regulation of Electronic Media Law, *supra* note 10, at

- art. 6. Article 8 contains the requirements for license applicants which include they must be of good repute and may not have a conviction of a crime “that violates honor or trust”—the latter terms are not defined.
- 28 *Id.* at arts. 9, 17 (requiring managers of online media sites to be liable for violation of media regulations in published content and to publish free of charge a response by any government official mentioned in any posted content). The International Council Supporting Fair Trial and Human Rights identified the Regulation of Electronic Media Law, among others, as “restrictions on the right to expression that go far beyond those permitted under the International Covenant on Civil and Political Rights.” Hum. Rts. Council, *Written Statement Submitted by International Council Supporting Fair Trial and Human Rights, a Nongovernmental Organization in Special Consultative Status*, U.N. Doc. A/HRC/46/NGO/32 (Feb. 17, 2021).
- 29 See CITRA Law, *supra* note 11, at art. 70.
- 30 *Id.* at arts. 16, 66-82.
- 31 HRC Concluding Observations of Aug. 2016, *supra* note 17, ¶ 40.
- 32 *Id.* ¶ 40; see also Hum. Rts. Council Working Grp. on the Universal Periodic Rev., *Report of the Working Group on the Universal Periodic Review: Kuwait*, ¶¶ 157.49, 157.66, U.N. Doc. A/HRC/44/17 (Mar. 20, 2020) (criticising the Cybercrime Law and the Press and Publication Law on behalf of the United States of America and Iceland).
- 33 HRC General Comment No. 34, *supra* note 18, ¶ 14.
- 34 SRFOE Report of May 2016, *supra* note 18, ¶ 39.
- 35 *Kuwait: Jailed Bidun Activists on Hunger Strike*, HUM. RTS. WATCH (Aug. 30, 2019). See also Hum. Rts. Council, *Written Statement Submitted by International Council Supporting Fair Trial and Human Rights, a Nongovernmental Organization in Special Consultative Status*, U.N. Doc. A/HRC/46/NGO/33 (Feb. 17, 2021); Saad Obaid Jafar Al-Hajiri, *The Rights of the Stateless and Their Problems in State of Kuwait*, 3 J. SHARIAH L. RSCH. 177 (2018).
- 36 <sup>37</sup> HUM. RTS. WATCH, PRISONERS OF THE PAST: KUWAITI BIDUN AND THE BURDEN OF STATELESSNESS 14 (2011). Kuwait is not a party to the Convention on the Reduction of Statelessness, which requires States to grant nationality to those born in the State who would otherwise be stateless and to provide a period in which Stateless residents can apply for citizenship. Convention on the Reduction of Statelessness art. 1, *opened for signature* Aug. 30, 1961, 989 U.N.T.S. 175.
- 37 HUM. RTS. WATCH, *supra* note 37, at 4. See also Working Grp. on the Universal Periodic Rev., *Report of the Working Group on the Universal Periodic Review: Kuwait—Addendum—Views on the Conclusions and/or Recommendations and Voluntary Commitments and Responses by the State Under Review*, ¶ 4, recommendation 157-30, U.N. Doc. A/HRC/29/17/Add.1 (June 4, 2015) (explaining that Kuwait will not ratify the Conventions on Refugees and Stateless Persons because Bedoons are illegal residents, so the definition of stateless does not apply to them).
- 38 HUM. RTS. WATCH, *supra* note 37, at 5-6.
- 39 *Kuwait: Bidoon*, MINORITY RTS. INT’L.
- 40 HUM. RTS. WATCH, *supra* note 37, at 20.
- 41 *Kuwait: Bidoon*, *supra* note 40.
- 42 See HUM. RTS. WATCH, *supra* note 37, at 11; see also *Kuwait: Activists Arrested for Peaceful Sit-In*, HUM. RTS. WATCH (July 19, 2019).
- 43 Dominic Dudley, *Kuwait May Deport 360,000 Foreigners As Gulf’s Expat Exodus Continues*, FORBES (Aug. 11, 2020).
- 44 Simon Kemp, *Digital 2020: Kuwait*, DATAREPORTAL (Feb. 18, 2020).
- 45 See *id.* There are 7.38 million mobile connections in Kuwait, equivalent to 174% of the population.
- 46 *Id.*
- 47 See *id.*
- 48 David Kaye (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, ¶ 9, U.N. Doc A/HRC/38/35 (Apr. 6, 2018).
- 49 HRC General Comment No. 34, *supra* note 18, ¶ 12 (declaring online expression as protected under article 19 of the ICCPR).
- 50 *Charge Brought Against Human Rights Defender Mohamed Al-Ajmi*, *supra* note 14.
- 51 *Id.*
- 52 *Id.*
- 53 *Id.* It can be assumed that the charging law is Law No. 63 of 2015, as this is the only identified law that criminalises online expression insulting religion and government.

NOTES

- 54 *Id.*
- 55 See ICCPR, *supra* note 5, at art. 19(2).
- 56 HRC General Comment No. 34, *supra* note 18, ¶ 11 (specifying political and religious discourse as protected under article 19 of the ICCPR).
- 57 *Id.* ¶ 48.
- 58 *Charge Brought Against Human Rights Defender Mohamed Al-Ajmi*, *supra* note 14.
- 59 *Id.*
- 60 *Id.*
- 61 See *Kuwait: Human Rights Defenders Abdulhakim Al-Fadhli and Hamed Jameel Summoned for Cyber-Crime Investigation*, GCHR (Feb. 11, 2019); *Kuwait: Activists Arrested for Peaceful Sit-In*, *supra* note 43; see also *Kuwait: Human Rights Lawyer Hani Hussain Imprisoned*, GCHR (Feb. 22, 2020).
- 62 *Kuwait: Five Bedoon Activists Released While 10 Others Remain in Prison*, GCHR (Sept. 26, 2019).
- 63 *Id.*
- 64 *Id.*
- 65 Mohamed Alenezi (@kuwbedmov), TWITTER (also known as Mohamed Wali Al-Anezi).
- 66 *Kuwait: Five Bedoon Activists Released While 10 Others Remain in Prison*, *supra* note 63.
- 67 *Id.*
- 68 *Id.*
- 69 *Kuwait: Criminal Court Issues Rulings Against Human Rights Defenders from the Bedoon Community*, GCHR (Jan. 29, 2020). The Court acquitted Abdualhakim Al-Fadhli, Abdullah Al-Fadhli, Hamid Jamil, Ahmed Majeed Al-Onan, Yousif Obaid Al-Bashiq, Khalifa Al-Anezi, Awad Saleh Al-Onan, Jarallah Al-Fadhli, Yousif Badr Al-Osmi, Mutaib Sebhan Al-Onan, Ahmed Shaya Al-Anezi, Mohammad Khudair Al-Anezi and Badr Khudair Matar. *Id.*
- 70 Hum. Rts. Comm., *General Comment No. 35: Article 9 (Liberty and Security of Person)*, ¶ 12, U.N. Doc. CCPR/C/GC/35 (Dec. 16, 2014) [hereinafter *HRC General Comment No. 35*].
- 71 Hum. Rts. Comm., *General Comment No. 32: Article 14: Right to Equality Before Courts and Tribunals and to a Fair Trial*, ¶ 31, U.N. Doc. CCPR/C/GC/32 (Aug. 23, 2007).
- 72 *Kuwait: Journalist and Writer Aisha Al-Rasheed Detained Under Cyber Crimes Law*, *supra* note 14.
- 73 *Id.*
- 74 *Id.*
- 75 *Id.*
- 76 Frank La Rue (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Mr. Frank La Rue*, ¶ 82, U.N. Doc. A/HRC/14/23 (Apr. 20, 2010).
- 77 Working Grp. on Arbitrary Det., *Report of the Working Group on Arbitrary Detention: United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court*, ¶ 11, U.N. Doc. A/HRC/30/37 (July 6, 2015) [hereinafter *WGAD Report of July 2015*]; HRC General Comment No. 35, *supra* note 71, ¶¶ 17, 22-23, 53.
- 78 *WGAD Report of July 2015*, *supra* note 78, ¶ 10; UDHR, *supra* note 6, at art. 19; ICCPR, *supra* note 5, at art. 19.
- 79 *WGAD Report of July 2015*, *supra* note 78, ¶ 11.
- 80 Working Grp. on Arbitrary Det., *Report of the Working Group on Arbitrary Detention*, ¶ 46, U.N. Doc. A/HRC/36/37 (July 19, 2017); UDHR, *supra* note 6, at art. 7; ICCPR, *supra* note 5, at art. 26.
- 81 Working Grp. on Arbitrary Det., *Report of the Working Group on Arbitrary Detention*, ¶ 60, U.N. Doc. A/HRC/39/45 (July 2, 2018) [hereinafter *WGAD Report of July 2018*].
- 82 UDHR, *supra* note 6, at art. 6; ICCPR, *supra* note 5, at art. 6.
- 83 UDHR, *supra* note 6, at art. 6; ICCPR, *supra* note 5, at art. 16. Additionally, incommunicado detention violates the right to be brought promptly before a judge protected by ICCPR article 9(3) and the right to challenge the lawfulness of detention protected by ICCPR article 9(4). ICCPR, *supra* note 5, at arts. 9(3), 9(4).
- 84 Theo van Boven (Special Rapporteur on Torture), *Report of the Special Rapporteur on the Question of Torture Submitted in Accordance with Commission Resolution 2002/38*, ¶ 26(g), U.N. Doc. E/CN.4/2003/68 (Dec. 17, 2002) [hereinafter *SRT Report of Dec. 2002*].
- 85 Manfred Nowak (Special Rapporteur on Torture), *Report*

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*of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak: Addendum—Study on the Phenomena of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in the World, Including an Assessment of Conditions of Detention*, ¶ 156, U.N. Doc. A/HRC/13/39/Add.5 (Feb. 5, 2010) (international law and standards prohibit “all secret and incommunicado detention”); see *Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, G.A. Res. 72/163, U.N. Doc. A/RES/72/163, ¶ 16 (Dec. 19, 2017).

86 WGAD Report of July 2018, *supra* note 82, ¶ 60.

87 *Kuwait: Prominent Activist and Journalist Hamoud Al-Rabah Kidnapped Following Tweet*, GCHR (July 24, 2019).

88 *Id.*

89 *Id.*

90 *Kuwait: Jailed Bidun Activists on Hunger Strike*, *supra* note 36.

91 SRT Report of Dec. 2002, *supra* note 85, ¶ 26(g).

NOTES



# OMAN



# OMAN SCORECARD

## Targeted Activism or Expression



Criticism of Government\*



Expression re Minority/  
Migrants' Rights



Journalists



Women's Rights and WHRDs

## Human Rights Violations



Privacy & Surveillance



Arbitrary Detention



Incommunicado Detention



Enforced Disappearance



Torture



Fair Trial

## Problematic Legal Provisions and Institutions



Criminal Defamation



Cybercrime Law



Public Order



Specialised Law Enforcement Units

16

Number of incidents that fit the inclusion criteria of this study

\*Including criticism of foreign government



## INTRODUCTION

Between 01 May 2018 and 31 October 2020, there were sixteen reported violations of the rights of human rights defenders (HRDs) to freedom of expression online in Oman that fit this study's inclusion criteria.<sup>1</sup> Oman is a constitutional monarchy, with a sultan who serves as head of State as well as prime minister, and two advisory bodies: the Council of Ministers and the Consultative Council.<sup>2</sup>

These incidents suggest that the government heavily polices online expression in the country, with authorities using anti-cybercrime and penal laws to crack down on human rights activists. HRDs are often arrested and detained without facing any formal charges or receiving adequate due process. Authorities sentenced several activists to life imprisonment for exercising their international rights to online freedom of expression. Based on this research there is credible evidence that the government has violated its obligation to respect online freedom of expression and additional associated rights of HRDs. These violations also constitute breaches of the duty of the State, pursuant to the UN Charter, "as the main duty-bearer" to ensure "defenders enjoy a safe and enabling environment" and that government institutions and processes "are aligned with their safety and the aim of their activities."<sup>3</sup>

The Omani government has used article 19 of the Cyber Crime Law, which penalises a wide array of content, to prosecute HRDs for their protected online expression.<sup>4</sup> On at least one occasion, the government also utilised article 125 of the Omani Penal Law, which concerns national security offenses and carries harsh penalties of death and life imprisonment, against tribal activists calling for reforms to government policies affecting their communities.<sup>5</sup> Both provisions include impermissibly vague definitions of prohibited content and enable arbitrary enforcement.<sup>6</sup> In particular, the government has targeted HRDs for online expression about Palestinian rights and public corruption. There is not as much available information about women human rights defenders (WHRDs) as about men. However, available information suggests that WHRDs are often subjected to severe harassment and threats at the hands of government authorities.

In other cases, reports suggest that the government did not formally press charges but used other means to intimidate or sanction HRDs for online expression, such as incommunicado detention or harassment. Reported incidents suggest the Omani government often engaged in surveillance methods that international human rights law prohibits. Moreover, the recent creation of the Cyber Defence Centre suggests that the government intends to further strengthen its control over online expression.

The incidents documented below suggest that the government most often targeted expression defenders shared on Facebook and Twitter. As of January 2021, there were approximately 4.14 million social media users, out of Oman's total population of 5.16 million.<sup>7</sup> Facebook estimates that it has a domestic audience of 1.5 million people in Oman, while Twitter estimates that its audience is 700,000.<sup>8</sup>

Oman is party to a number of international and regional treaties protecting the right to freedom of expression.<sup>9</sup> Although Oman is not a party to the International Covenant on Civil and Political Rights (ICCPR), as a member of the United Nations it is bound by the UN Charter, and as such has committed to upholding fundamental human rights, including human rights principles contained in the Universal Declaration of Human Rights (UDHR).<sup>10</sup> The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (SR on FOE) has explained that, even though Oman has not acceded to the ICCPR, "the content of article 19 of the ICCPR should inform Oman's obligations" under the human rights treaties to which it is a party.<sup>11</sup> Yet, the trends described in this report indicate that Oman is in violation of its international human rights obligations to respect freedom of expression and associated rights.

# LEGAL ENVIRONMENT FOR ONLINE EXPRESSION IN OMAN

The primary laws that the Omani government utilises to penalise online expression of human rights activists are the Cyber Crime Law and the Penal Law. The new Cyber Defence Centre, established in 2020, has implications for the implementation of these substantive regulations on online expression.

## 2011 Cyber Crime Law

The Sultan of Oman issued Royal Decree No. 12/2011, which contains the country's Cyber Crime Law, on 6 February 2011.<sup>12</sup> Article 19 of the decree criminalises the use of information technology to “prejudice the public order or religious values.”<sup>13</sup> As written, article 19 of the Cyber Crime Law is overbroad and vague, in violation of international standards. Under both article 19 of the ICCPR and the UDHR, criminal laws that restrict freedom of expression must be sufficiently precise so as to enable individuals to determine how to comply with the law and to limit the discretion conferred on authorities enforcing it.<sup>14</sup> Vaguely and broadly worded provisions have been found by UN Special Procedures mandate holders to violate this requirement, allowing authorities to use their excessive discretion to target protected speech, and encouraging individuals to engage in self-censorship.<sup>15</sup> The SR on FOE has found laws like these to be too broad and vague to meet the requirement of “provided by law” under article 19 of the ICCPR.<sup>16</sup> Terms like “public order” need to be sufficiently defined to provide the public with guidance on how to abide by the law, as international standards mandate for any restriction on freedom of expression.<sup>17</sup>

## 2018 Penal Law

In 2018, the Omani government issued an amended version of its Penal Law, as promulgated in Royal Decree 7/2018.<sup>18</sup> In a public communication, the

SR on FOE raised concerns about three provisions of the decree: articles 116, 118, and 125. Article 116 states that “any person who establishes, organises, administers or finances an association, party, body, organisation” whose mission is to counter the State’s political, economic, security, or social principles shall face imprisonment between three and ten years.<sup>19</sup> According to the SR on FOE, this provision “is overly broad and fails to include any safeguards for the protection of rights to freedom of expression, the right to freedom of association, and many other fundamental rights.”<sup>20</sup> The UN Human Rights Council has stipulated four types of expression that should never be subject to restriction: “[d]iscussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups....”<sup>21</sup> These provisions of the penal code criminalise protected expression of HRDs.

Article 118 provides for imprisonment between six months and three years for anyone who possesses, creates, or disseminates publications which constitute “promotion” of any entity or mission counter to State security.<sup>22</sup> The SR on FOE warned that this provision “constitutes a major threat to the work of human rights defenders, online and offline activists and journalists,” and “clearly violates the right to freedom of opinion and expression.”<sup>23</sup> Lastly, article 125 states that “any person who intentionally commits an act which prejudices the independence, unity or territorial integrity of the country shall be punished with death or life imprisonment.”<sup>24</sup> The SR on FOE noted that, “[b]y not defining the scope of the term ‘prejudices,’ ‘unity’ or ‘territorial integrity,’ the Decree

grants vast discretion to the authorities to punish individuals for any action, even those protected by international human rights law.”<sup>25</sup>

## 2020 Cyber Defence Centre

The Sultan of Oman issued Royal Decree No. 64/2020 on 10 June 2020, establishing a new Cyber Defence Centre.<sup>26</sup> While reported incidents do not explicitly reference this law, the creation of this agency indicates the government is strengthening its control over cyberspace. Of particular concern is the law’s designation of the Internal Security Service (ISS), a notorious human rights violator, as the State authority in charge of the Cyber Defence Centre.<sup>27</sup> Article 6 describes the role of the new Cyber Defence Centre to include “taking whatever measures are necessary to deal with various types of cyber threats, whether from within or outside the Sultanate.”<sup>28</sup> Among the roles which article 6 gives the Cyber Defence Centre is: “[e]stablishing. . . functional standards, or technical specification of any cyber security-related devices or systems, and approving their use, import, or circulation in the Sultanate.”<sup>29</sup> As the Gulf Centre for Human Rights (GCHR) has noted, this provision effectively grants the Cyber Defence Centre, and thus the ISS, the power “to import advanced hardware and software that blocks websites or closely monitors human rights activists on the Internet.”<sup>30</sup> This suggests the possibility of further enhanced surveillance of HRDs (see section III(c)(i) on Surveillance).

Royal Decree No. 64/2020 represents a broad delegation of authority, signalling the possibility of an even more vigilant crackdown on dissent, with the ISS exercising seemingly unchecked power over internet users, including dissidents.<sup>31</sup> The Special Rapporteur on the rights to freedom of peaceful assembly and of association (SR on FPAA), who visited Oman in 2014, stated that the ISS “is primarily responsible for the reported harassment, abduction, unlawful detention and torture of peaceful protestors.”<sup>32</sup> Additionally, the SR on FPAA noted “the opaqueness with which the agency operates,” with even government officials telling the SR “that the

agency is a secret intelligence unit with an unknown configuration and budget that reports directly to the Sultan.”<sup>33</sup>

## Internet Access in Oman

As UNESCO reported during Oman’s 2021 Universal Periodic Review (UPR), the only internet provider in Oman is Omantel<sup>34</sup> (shorthand for Oman Telecommunications Company).<sup>35</sup> The Sultan of Oman is a majority shareholder in Omantel.<sup>36</sup> To utilise Omantel, users must sign the Internet Services Manual, which sets forth guidelines for what can and cannot be published online.<sup>37</sup> According to UNESCO, this situation is concerning, because it “allow[s] the Government to control Internet content.”<sup>38</sup>

# TRENDS EMERGING FROM INCIDENTS OF REPRESSION OF ONLINE EXPRESSION IN OMAN

As the Human Rights Committee has stated, the development of electronic modes of communication gives States a responsibility to foster the independence of electronic media and ensure that individuals have access to it.<sup>39</sup> Moreover, governments have an obligation to respect, protect, and fulfil the rights of HRDs.<sup>40</sup> The UN Human Rights Council has emphasised that States have the obligation to respect and protect the rights to freedom of assembly and association both offline and online,<sup>41</sup> which are integral to civil society defence of human rights. The UN Human Rights Committee has underscored that the protection of activities associated with the right to peaceful assembly, including information dissemination, communication between participants, and broadcasting, is crucial to exercise that right.<sup>42</sup> Yet, the Omani government has created a highly restrictive, intensely surveilled, digital environment and has used technology to crack down on any dissent.

Available information suggests that many HRDs who are subjected to violations of their right to freedom of expression are never formally charged. Rather, they are arrested, detained and released, sometimes months after the initial arrest. When the authorities did press charges against HRDs for online expression, they often relied on article 19 of the Cyber Crime Law and occasionally employed article 125 of the Penal Law as well, especially in prosecuting tribal activists. Article 125 carries a penalty of life imprisonment or death.<sup>43</sup> Omani authorities often penalised online expression related to the rights of tribes in Oman's Musandam region, Palestinian rights, and women's rights. In connection with violations of HRDs' right to freedom of expression, Omani authorities perpetrated additional rights violations, such as arbitrary detention, enforced disappearance, and torture.

## Cases Charged Under Article 19 of the Cyber Crime Law

The Omani government has used article 19 of the Cyber Crime Law to sanction internet activists and journalists. For instance, authorities arrested TV and radio presenter Adel Al-Kasbi on 25 February 2020, after he posted about rampant corruption within the Omani government on Twitter, a subject that he frequently addressed on social media.<sup>44</sup> Authorities charged him with "using information technology to spread harm to public order,"<sup>45</sup> which appears to correspond to article 19 of the Cyber Crime Law.<sup>46</sup> Al-Kasbi was convicted on 10 June 2020 and sentenced to one year in prison.<sup>47</sup> The charges against Abdel Al-Kasbi are also noteworthy because of his status as a journalist.<sup>48</sup> According to the UN Secretary-General, attacks on journalism and journalists are "fundamentally at odds" with protection of the freedom of opinion and expression.<sup>49</sup>

Authorities arrested four individuals for re-tweeting Al-Kasbi's tweet on corruption, including former Shura Council member Salem Al-Awfi.<sup>50</sup> Also known as the Consultative Council, the Shura Council is an 84-member advisory body elected by universal suffrage that has "limited powers to propose legislation."<sup>51</sup> Al-Awfi made other negative statements on Twitter about the government, including on the issue of tyranny.<sup>52</sup> As with Al-Kasbi, the government charged Al-Awfi with "using information technology to spread harm to public order."<sup>53</sup> He was convicted on 10 June 2020 and sentenced to one year in prison.<sup>54</sup>

Another relevant case is that of Awad Al-Sawafi, a prominent HRD who has spoken in favour of women's rights and against racism.<sup>55</sup> On 03 June

2020, Al-Sawafi was arrested for posting a tweet criticising Omani government mistreatment of residents.<sup>56</sup> On 09 June, the Ibri Court of First Instance released him on bail.<sup>57</sup> Authorities charged Al-Sawafi with “incitement” and “misuse of social media.”<sup>58</sup> The charge of “misuse of social media” appears to be under article 19 of the Cyber Crime Law.<sup>59</sup> On 16 June 2020, Al-Sawafi received a one-year suspended sentence and a ban on using social media.<sup>60</sup>

Article 19 of the Cyber Crime Law on its face and as applied in these cases violates international standards on the freedom of expression. The text of the law is overly broad and is susceptible to arbitrary application in violation of international law.<sup>61</sup> Furthermore, a law which restricts speech to shield the government from criticism is incompatible with article 19 of the ICCPR and the UDHR.<sup>62</sup> In addition, the Human Rights Council has condemned laws restricting discussion of “government activities and corruption in government,” which the Council considers inconsistent with article 19 of the ICCPR.<sup>63</sup>

The specific legal basis for the incitement charge against Al-Sawafi is unclear. However, the circumstances of Al-Sawafi’s case suggests that Oman’s incitement law is impermissibly vague and overbroad.<sup>64</sup> The UN Secretary-General has explained that an incitement charge based on speech or expression requires demonstration of a “close link between the expression and the resulting risk of discrimination, hostility or violence.”<sup>65</sup> The charge reportedly does not specify what Al-Sawafi was allegedly inciting others to do or what link the alleged actions had to any discrimination, hostility or violence in Oman.

Ultimately, these reported incidents indicate that authorities apply article 19 of the Cyber Crime Law arbitrarily, to penalise HRDs for political expression protected under international human rights standards.

## Targeting of Specific Human Rights Defender Groups

### *Human rights defenders in Musandam*

The government also has restricted online expression to punish critics of its controversial policies in the Musandam province. The province comprises the Musandam Peninsula, the northernmost part of Oman, which extends into the Strait of Hormuz, “one of the world’s most important oil choke points,”<sup>66</sup> and of strategic importance to the government. Musandam’s population includes members of the indigenous Shuhuh tribe.<sup>67</sup> According to Amnesty International, “[t]here have been waves of arbitrary detentions of Musandam residents championing the region’s local history and culture since 2015, and reliable reports of arbitrary detention of Shuhuh tribe members in Musandam dating back at least to 1991.”<sup>68</sup> The government has repeatedly demolished residents’ homes, under the guise of building code violations, and subsequently expropriated the lands for other purposes.<sup>69</sup>

The Omani government’s response to nonviolent tribal activism in Musandam has been harsh. For example, authorities arrested Mohammed Abdullah Al-Shahi, a member of the Shuhuh tribe.<sup>70</sup> He wrote articles for a now defunct website, khalejeat.net, which criticised the government’s policies in Musandam.<sup>71</sup> He also exchanged WhatsApp messages with other arrested HRDs about human rights conditions in Musandam.<sup>72</sup> Omani authorities also alleged that Al-Shahi was in contact with foreign NGOs, including Amnesty International, about conditions in Musandam.<sup>73</sup> For these acts, authorities charged Al-Shahi with violating article 125 of the Penal Law, for “intentionally committing an act which leads to the infringement of the country’s independence or unity or the sanctity of its territory” and article 19 of the Cyber Crime Law, for “infringing on religious values or public order.”<sup>74</sup>

During the first court hearing, officials questioned Al-Shahi without his attorney present.<sup>75</sup> Authorities did not inform him of his right to an attorney until after forcing him to answer questions.<sup>76</sup> Al-

Shahi's attorney was only present at one subsequent hearing.<sup>77</sup> According to Amnesty International, court documents indicate that he confessed to the alleged crimes, but other prisoners' accounts suggest that authorities may have subjected Al-Shahi to torture, in order to obtain the confession.<sup>78</sup> Sometime between August and November 2018, Al-Shahi was convicted on both counts and sentenced to life in prison, which is one of two possible punishments under article 125, the other being the death penalty.<sup>79</sup>

Al-Shahi's arrest and conviction coincided with a wave of government repression directed against activists in Musandam. In May 2018, authorities arrested Mohamed Abdullah Ahmad Al-Shehhi and Mohamed bin Sulaiman Bin Mazyoud Al-Shehhi after the two disseminated content online calling for reforms to government policy in the province.<sup>80</sup> On 24 September 2018, officials convicted both of prejudicing the security and unity of the country and its territories by using information technology.<sup>81</sup> They each received a sentence of life in prison, indicating that authorities charged them under article 125 of the Penal Law and article 19 of the Cyber Crime Law.<sup>82</sup>

In order to impose a penalty for expression, a government cannot rely on a law that uses terms that lack specific meaning, such as "unity" and "territorial integrity," as one cannot discern what conduct is prohibited.<sup>83</sup> Likewise, the Special Rapporteur on the situation of human rights defenders (SR on HRDs) has condemned laws which "criminalize the publication of articles or photos that could harm national security, public order, public health or interest."<sup>84</sup> Thus, the charges against Al-Shahi under article 125 of the Penal Law, and the possible charges against Ahmad Al-Shehhi and Bin Mazyoud Al-Shehhi under the same laws, contravene international standards.

The charges against HRDs in Musandam under article 125 of the Penal Law indicate the disproportionality of the two possible punishments under the law—life imprisonment and the death penalty. Any "restrictive measures" imposed on speech must be the "least intrusive instrument" of all options to protect the chosen interest.<sup>85</sup> With regard

to the death penalty option in article 125, ICCPR's provision on the right to life, article 6, restricts the death penalty to the "most serious crimes."<sup>86</sup> The UN Human Rights Committee has interpreted this article as permitting States to impose the death penalty as a punishment only for individuals convicted of crimes involving "intentional killing."<sup>87</sup>

Officials have arrested and detained some HRDs in Musandam but then released them without charge, raising the question of whether the government may be arbitrarily targeting activists to deter legitimate online expression. In May 2018, agents arrested Mohamed Salem Ahmad Al-Shehhi and detained him for one week for engaging in online activism calling for reforms in Musandam.<sup>88</sup> Authorities arrested Ali Sa'id Al-Hamoudi Al-Shehhi in July 2018, and detained him until August 2018, for the same reason.<sup>89</sup> Such restrictions on free expression, which are not based in any law or necessary to achieve a legitimate government aim, violate international standards.<sup>90</sup>

### *Palestinian rights advocacy*

The reported incidents indicate that the government arrested several HRDs for social media posts about Palestinian rights from October to December 2018, coinciding with Israeli Prime Minister Benjamin Netanyahu's visit to the country that October.<sup>91</sup> The government generally did not prosecute supporters of Palestinian human rights for violating any specific law but detained HRDs for lengthy periods of time. For instance, agents arrested Obeid bin Hashl Al-Hinai on 30 December 2018, after he posted content online critical of Oman's relations with Israel and in support of Palestinian civil and humanitarian rights.<sup>92</sup> Authorities released him on 10 January 2019.<sup>93</sup> Officials arrested Bader Al-Arimi on 19 December 2018, after he posted on social media in support of Palestinian rights and about unemployment in Oman.<sup>94</sup> The government released Al-Arimi on 17 January 2019.<sup>95</sup> In addition, on 07 November 2018, ISS agents arrested Uday Al-Omairi due to Facebook posts in support of Palestinian rights and opposing Oman's normalisation of relations with Israel.<sup>96</sup>

Officials released him on 06 December 2018.<sup>97</sup>

The targeting of online speech of HRDs who advocate for Palestinian rights violates international standards on freedom of expression. The government targeted defenders for their criticism of Omani foreign policy in contravention of international protection of online “[d]iscussion of government policies and political debate.”<sup>98</sup>

### *Women human rights defenders*

Article 3 of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), to which Oman is a party, obligates State Parties to enact measures “for the purpose of guaranteeing [women] the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.”<sup>99</sup> However, international human rights bodies have found the Omani government has failed to protect the rights of WHRDs, including their online freedom of expression. During its periodic review of Oman in November 2017, the CEDAW Committee noted that “women human rights defenders and their relatives have allegedly been subjected to various forms of harassment, violence and intimidation.”<sup>100</sup> Committee members urged the government to “[r]efrain from any reprisals against women human rights defenders and their relatives.”<sup>101</sup> The SR on FOE has written about “online and offline intimidation” and “harassment” as practices which interfere with the right to freedom of opinion.<sup>102</sup>

Yet, recent incidents illustrate that the Omani government’s harassment of WHRDs is ongoing. The human rights lawyer Basma Al-Keumy wrote about this pattern in a piece she published online on 09 January 2020, entitled: “I write in defense of my right!”<sup>103</sup> She described the government’s years-long harassment of her as a consequence of her work.<sup>104</sup> On 09 February 2020, an anonymous WHRD announced on Twitter that the Omani Feminists Twitter account was suspended due to “circumstances beyond our control.”<sup>105</sup> GCHR and the Omani Association for Human Rights (OAHR) reported that this suspension was due to threats by the Special Division, the executive arm of the ISS, as a reprisal for Omani Feminists’ advocacy for the defence and

promotion of the rights of women in the country.<sup>106</sup> This includes Omani Feminists’ tweet: “#Omani women demand that permits that restrict the movement of female university students in internal housing be cancelled.”<sup>107</sup>

## **Additional Human Rights Violations**

The violation of the right to freedom of expression online also implicates other human rights. The most evident of these associated rights which Omani authorities have violated are related to State surveillance, arbitrary detention, due process, and the prohibition against torture and ill-treatment.

### *Surveillance*

According to the SR on FPAA, the Omani government targets HRDs for surveillance. Surveillance of HRDs impacts a number of interrelated human rights, including their rights to freedom of expression and opinion, to peaceful assembly and association, to religion or belief, and to privacy.<sup>108</sup> The SR has noted that the Omani government’s surveillance of its citizens has the effect of “infringing the right to privacy and ‘chilling’ social interaction and political activity.”<sup>109</sup> This in turn has a chilling effect on expression and association.<sup>110</sup>

After a 2014 country visit, the SR gave an account of “hacked email and social media accounts and of civil society activists who were repeatedly summonsed to meet with intelligence officers, who had detailed knowledge of their movements and activities.”<sup>111</sup> The SR on FOE has identified “targeted surveillance” specifically as a State practice which impedes freedom of opinion.<sup>112</sup> According to the UN General Assembly, the right to privacy can be better realised through an “open, secure, stable, accessible and peaceful information and communications technology environment.”<sup>113</sup>

Such an environment clearly does not exist in Oman. Despite international criticism, the Omani government continues to engage in impermissible surveillance, as illustrated by its surveillance of



Mohammed Abdullah Al-Shahi's WhatsApp messages. In 2018, Citizen Lab at the University of Toronto found suspected infections in Oman of a spyware program for mobile phones named Pegasus.<sup>114</sup> The Omani government's ongoing practice of surveillance, including the use of spyware technologies, makes the broad delegation of power to the new Cyber Defence Centre, under the auspices of the ISS, all the more concerning.<sup>115</sup>

### *Arbitrary and incommunicado detention*

Arbitrary deprivation of liberty is prohibited under customary international law and is a *jus cogens* norm.<sup>116</sup> A deprivation is arbitrary including when it is without a legal basis as well as when it results from the exercise of freedom of expression.<sup>117</sup> As the UN Working Group on Arbitrary Detention has reiterated, any measure depriving an individual of liberty must meet strict standards of lawfulness, necessity and proportionality to avoid arbitrariness.<sup>118</sup> Deprivations may be arbitrary when they are based on discriminatory grounds against HRDs and activists, violating the right to equality before the law.<sup>119</sup> The laws under which the government detains HRDs, including article 19 of the Cyber Crime Law and article 125 of the Penal Law, contain impermissibly vague and thus arbitrary definitions of prohibited content. Therefore, detention under these laws also is arbitrary and illegal under international law.<sup>120</sup>

While in law enforcement custody, authorities often did not allow HRDs to have outside contact. For instance, on 23 October 2018, a few days before Israeli Prime Minister Netanyahu was to visit, Sultan Al-Maktoumi was summoned by the Special Division of Sohar Police Quarters, which is the executive arm of the ISS, and detained upon arrival.<sup>121</sup> Al-Maktoumi is an Internet activist who writes for the newspaper *Al-Raya* and the magazine *Al-Shabab Al-Toufahim*.<sup>122</sup> He has authored articles supporting democracy and Palestinian rights.<sup>123</sup> While detained, he was not allowed to communicate with family or lawyers.<sup>124</sup> Authorities released him on 07 November 2018.<sup>125</sup> Incommunicado detention "places an individual outside the protection of the law,"<sup>126</sup> in

violation of article 6 of the UDHR protecting the right to be recognised as a person before the law.<sup>127</sup> The Special Rapporteur on torture has observed that torture is "most frequently practiced during incommunicado detention,"<sup>128</sup> and it is outlawed by international law.<sup>129</sup> The UN Working Group on Arbitrary Detention considers incommunicado detention a form of arbitrary detention.<sup>130</sup>

In addition, authorities arrested Salem Al-Arimi without a warrant on 27 October 2018.<sup>131</sup> He was held by the Special Division of the Omani Police Command in Muscat, after being summoned for his writings calling for reform in Oman and opposing normalisation of Oman-Israel relations.<sup>132</sup> During his detention, he was not allowed to speak with family members or a lawyer.<sup>133</sup> He was released on 19 November 2018.<sup>134</sup>

Another activist who was held incommunicado is Ghazi Al-Awlaki. He was summoned on 19 June 2020 by the ISS to a police station, where authorities subsequently held him until his release on 07 September 2020.<sup>135</sup> Al-Awlaki is an internet activist who has posted statements on Facebook and Twitter that were critical of the government.<sup>136</sup> He was not allowed to talk to a lawyer or his family while detained.<sup>137</sup> Additionally, on 14 November 2019, the ISS arrested prominent writer and civil society activist Musallam Al-Ma'ashani when he crossed the border from Yemen, to return home to Oman.<sup>138</sup> The precise reason for his arrest is unclear. He was held until his trial was indefinitely postponed, due to COVID-19. He was released on 25 April 2020, on bail for OMR 3,000 (USD 7,800).<sup>139</sup> While detained, he was prevented from seeing a lawyer, denied medical treatment for allergies, and went on hunger strike.<sup>140</sup>

The Special Rapporteur on torture recommends that States be required to inform a relative of the arrest and place of detention of a detainee within 18 hours, for detention to not be considered enforced disappearance.<sup>141</sup> Therefore, Omani authorities' incommunicado detention of HRDs violates the relevant international legal standards on enforced disappearance.

### *Due process violations*

Fundamental principles of fair trials are protected under international law at all times.<sup>142</sup> Individuals have universal rights to seek competent, independent, impartial judicial review of the arbitrariness and lawfulness of deprivations of liberty and to obtain without delay adequate and appropriate remedies.<sup>143</sup> Those detained enjoy a number of procedural safeguards of their rights including the right to be informed of rights, the right to initiate court proceedings without delay, and the right to legal assistance of counsel of their choice from the moment of apprehension.<sup>144</sup> In a 2017 communication to the Omani government, the SRs on FOE and on the Situation of HRDs noted that, under articles 10 and 11 of the UDHR, “everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal.”<sup>145</sup> As the incidents discussed above indicate, many HRDs did not always receive fair trials. For instance, Mohammed Abdullah Al-Shahi was deprived of this right, because he was not given access to an attorney until close to the end of his proceedings.<sup>146</sup> Thus, the Omani government has violated international human rights standards on the right to a fair trial.

### *Torture and ill treatment*

The prohibition against torture is absolute, non-derogable, and a *jus cogens* norm of international law.<sup>147</sup> Much is unknown about conditions of confinement while HRDs are detained in Oman, especially since Omani authorities often hold HRDs incommunicado. The UN General Assembly has noted that “prolonged incommunicado detention ... can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment.”<sup>148</sup> This is especially pertinent given that Omani authorities seem to frequently hold individuals incommunicado for lengthy periods of time.<sup>149</sup>

GCHR and OCHR reported that during more than five months in detention, Musallam Al-Ma’ashani was denied medical treatment and went on hunger strike.<sup>150</sup> The Special Rapporteur on torture has

noted that torture and ill treatment can include denial of medical treatment, as well as denial of family contacts, which numerous detainees who were held incommunicado experienced.<sup>151</sup> Additionally, Amnesty International reported, based on the accounts of other detainees in the same prison as Mohammed Abdullah Al-Shahi, that authorities may have tortured Al-Shahi, in order to obtain a confession.<sup>152</sup> Therefore, during the reporting period there is credible evidence that Oman has violated its legal obligations under international law, with regards to torture and ill treatment.

# CONCLUSION AND RECOMMENDATIONS

Oman's anti-cybercrime and penal law provisions which restrict online expression are overbroad and vague as written, in violation of international standards on freedom of expression. Omani authorities have also violated these standards in the implementation of these laws by reportedly punishing peaceful online expression about government policy and human rights. Credible reports indicate the Omani government has further repressed free expression by arresting and detaining HRDs without charging them, evidencing an arbitrary practice of harassment to deter online expression. In carrying out punishments for free expression, credible evidence suggests the Omani government has violated international human rights law on surveillance, arbitrary detention, the right to a fair trial, enforced disappearance, and torture and ill treatment. Thus, authorities have utilised their powers to violate Oman's international human rights obligations and create a climate of repression.

To address these concerns, we offer the following general recommendations and country-specific recommendations.

## General Recommendations

*To Governments of Gulf States and Neighbouring Countries:*

- ✦ Eliminate laws and articles in national legal frameworks that criminalise online freedom of expression protected under international human rights law, specifically:
  - All laws including anti-cybercrime, anti-terrorism, communications, media, penal, and technology laws that restrict online or offline expression through provisions to protect public order, national security, or the national economy; insults laws; and laws that criminalise fake news, that do not conform to international human rights standards and satisfy the

principles of legality, legitimacy, necessity and proportionality;

- Decriminalise the offense of defamation;
  - Revise anti-cybercrime laws to include affirmative protection for the legitimate online expression of HRDs, including journalists.
- <sup>a</sup> Cease using deportation and travel bans as tools for targeting HRDs for their online human rights advocacy, and refrain from infringing on their right to freedom of movement.
- ✦ Reform legal institutions, including the criminal legal system, to promote the independence and autonomy necessary for:
    - Investigating human rights violations committed against HRDs by law enforcement, such as engaging in unlawful surveillance of HRDs, enforced disappearances, holding HRDs in unlawful detention, incommunicado, and subjecting them to ill-treatment and torture;
    - Ensuring that HRDs', citizens', and residents' right to freedom of movement is not violated;
    - Ensuring the judiciary upholds international standards guaranteeing the right to fair trial.

*To the UN Human Rights Council:*

- ✦ Instruct the UN Office of the High Commissioner for Human Rights to undertake a study of the transnational cooperation among governments to affect the apprehension and rendering of foreign HRDs to their countries of origin for prosecution of online expression that is protected under international law.
- ✦ Instruct the UN Office of the High Commissioner for Human Rights to undertake a study to identify and track developments in the surveillance regimes in each State in the region. The governments in question should cooperate in this study. The

study should identify third party actors including business enterprises and other States that contribute to advancing the surveillance infrastructure in each State concerned. State and non-State actors complicit in illegal surveillance of HRDs by governments should be held accountable.

***To All States:***

- ♦ Implement an immediate moratorium on the use, acquisition, sale and transfer of surveillance technology. This moratorium should extend until adequate global controls and safeguards against abuse are in place.

## Country Recommendations

In addition to the above recommendations, States should revise their domestic laws and institutions to ensure compliance with international human rights standards regarding online freedom of expression as indicated below.

**We call on the government of Oman to create a safe and enabling environment for HRDs including by taking the following steps:**

- ♦ Eliminate laws and articles in Oman’s legal frameworks that criminalise online freedom of expression protected under international human rights law, or that are inconsistent with the right to due process and a fair trial, including:
  - 2011 Cyber Crime Law, article 19;
  - 2018 Penal Law, articles 116, 118, 125;
  - Royal Decree No. 64/2020, article 6.

## NOTES

- 1 The initial case identification of reported incidents of violations of online freedom of expression resulted from searching for cases in Oman between May 2018 and October 2020, from the following international media outlets and human rights organisations that document human rights violations: Amnesty International, Al Jazeera, ARTICLE 19, British Broadcasting Corporation, Committee to Project Journalists, Front Line Defenders, Gulf Centre for Human Rights and Human Rights Watch. Researchers also searched for communications from special procedures mandate holders regarding incidents alleging violations of freedom of expression in Oman in the UN database of Communications. Researchers supplemented international research by consulting the following domestic media outlets and human rights reporting: *Oman Daily Observer*, *Times of Oman*, *Muscat Daily*, and the Omani Association for Human Rights and used the embedded search functions to retrieve news updates using these keywords: freedom of expression, digital expression, digital, online, post, tweet, Twitter, Facebook, arrest, expression, and human rights defender during the relevant period of study. After finding cases using the international sources, researchers conducted additional searches using the Google search engine of the victim's name (with various English spellings) to find additional case information as well as consulted online information posted on the CIVCUS website. See methodology section for more information.
- 2 Jill Ann Crystal et al., *Oman: Government and Society*, BRITANNICA (June 25, 2021). This characterisation of the political system of the country is offered for descriptive purposes; a normative evaluation of the political system as such is beyond the scope of this chapter.
- 3 Michel Forst (Special Rapporteur on the Situation of Human Rights Defenders), *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, ¶ 77, U.N. Doc. A/HRC/31/55 (Feb. 1, 2016) [hereinafter *SRHRD Report of Feb. 2016*]; Civil Society Space, Human Rights Council Res. 27/31, U.N. Doc. A/HRC/RES/27/31, ¶ 3 (Oct. 3, 2014); Declaration on the Right and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, G.A. Res. 53/144, U.N. Doc. A/RES/53/144 (Mar. 8, 1999).
- 4 Royal Decree No. 12/2011 Issuing the Cyber Crime Law, art. 19 [hereinafter *Cyber Crime Law*] (Oman) (official English translation).
- 5 Public Statement, Amnesty Int'l, Oman: Life Sentence for Prisoner of Conscience 1 (2019) [hereinafter *Amnesty Int'l Public Statement*].
- 6 Cyber Crime Law, *supra* note 4, at art. 19; David Kaye (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), Communication to Oman, 1-3, Ref. No. OL OMN 1/2018 (Mar. 26, 2018) [hereinafter *Mar. 2018 Communication to Oman*] (expressing concern about Oman's amended Penal Law, in particular the vague and overbroad provisions that could be used to criminalise peaceful expression).
- 7 Simon Kemp, *Digital 2021: Oman*, DATAREPORTAL (Feb. 12, 2021).
- 8 *Id.*
- 9 UN Treaty Body Database: Ratification Status for Oman, OHCHR.ORG. Oman acceded to the International Convention on the Elimination of All Forms of Racial Discrimination in 2003, to the Convention on the Elimination of All Forms of Discrimination Against Women in 2006, and to the International Covenant on Economic, Social and Cultural Rights in 2020. *Id.* In 2015, the Omani government indicated that the ICCPR was "currently being evaluated and studied by the relevant authorities." Hum. Rts. Council, *National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21: Oman*, ¶ 96, U.N. Doc. A/HRC/WG.6/23/OMN/1 (Sept. 8, 2015).
- 10 World Conference on Human Rights, *Vienna Declaration and Programme of Action*, pmbl. at 20-21, §§ I(1), I(3), I(8), U.N. Doc. A/CONF.157/24 (Part 1) (Oct. 13, 1993); Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/810, at art. 19 (Dec. 10, 1948) [hereinafter *UDHR*].
- 11 Mar. 2018 Communication to Oman, *supra* note 6, at 1.
- 12 Cyber Crime Law, *supra* note 4, at pmbl.

- 13 *Id.* at art. 19. The law stipulates a penalty of “imprisonment for . . . not less than one month and not exceeding three years and a fine not less than OMR one thousand and not exceeding OMR three thousands [sic]....” *Id.*
- 14 Hum. Rts. Comm., *General Comment No. 34: Article 19: Freedoms of Opinion and Expression*, ¶ 25, U.N. Doc. CCPR/C/GC/34 (Sept. 12, 2011) [hereinafter *HRC General Comment No. 34*]; David Kaye (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, ¶ 7, U.N. Doc. A/HRC/32/38 (May 11, 2016) [hereinafter *SRFOE Report of May 2016*]; Working Grp. on Arbitrary Det., *Opinion No. 71/2019 Concerning Issa al-Nukhefi, Abdulaziz Youssef Mohamed al-Shubaili and Issa Hamid al-Hamid (Saudi Arabia)*, ¶ 73, U.N. Doc. A/HRC/WGAD/2019/71 (Feb. 14, 2020) (“vaguely and broadly worded provisions . . . which cannot qualify as *lex certa*, violate the due process of law undergirded by the principle of legality in article 11 (2) of the Universal Declaration of Human Rights”); UDHR, *supra* note 10, at arts. 11, 19; International Covenant on Civil and Political Rights art. 19, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter *ICCPR*].
- 15 *SRFOE Report of May 2016*, *supra* note 14, ¶ 39; Frank LaRue (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, Frank La Rue, ¶ 34, U.N. Doc. A/HRC/17/27 (May 16, 2011).
- 16 *SRFOE Report of May 2016*, *supra* note 14, ¶ 39.
- 17 *Id.* ¶ 7.
- 18 Mar. 2018 Communication to Oman, *supra* note 6, at 1.
- 19 *Id.* at 2.
- 20 *Id.*
- 21 Freedom of Opinion and Expression, Human Rights Council Res. 12/16, U.N. Doc. A/HRC/RES/12/16, ¶ 5(p)(i) (Oct. 12, 2009) [hereinafter *H.R.C. Res. 12/16*].
- 22 Mar. 2018 Communication to Oman, *supra* note 6, at 2.
- 23 *Id.*
- 24 *Id.* at 3. Kaye observes that the provision of the death penalty and life in imprisonment violate article 19(3) because “the penalties provided by the penal code do not meet the proportionality requirement of article 19(3), as the penalties far outweigh the activities they are designed to sanction,” *id.* at 3. ICCPR article 6(2) restricts the death penalty to the most serious of crimes, which the Human Rights Committee interprets as including only “intentional killings.” Hum. Rts. Comm., *General Comment No. 36: Article 6: Right to Life*, ¶ 35, U.N. Doc. CCPR/C/GC/36 (Sept. 3, 2019) [hereinafter *HRC General Comment No. 36*].
- 25 Mar. 2018 Communication to Oman, *supra* note 6, at 3.
- 26 Royal Decree No. 64/2020 Establishing the Cyber Defence Centre and Promulgating Its System pmb. (2020) [hereinafter *Cyber Defence Centre Statute*] (Oman) (unofficial English translation on file with the author).
- 27 Khalid Ibrahim, *A New ‘Cyber Defence’ System in Oman Raises Human Rights Concerns*, GLOB. VOICES (Sept. 18, 2020).
- 28 *Cyber Defence Centre Statute*, *supra* note 27, at art. 6(8).
- 29 *Id.* at art. 6(5).
- 30 *Oman: Internal Security Service Establishes New Mechanism of Control over the Internet*, GCHR (July 13, 2020).
- 31 Ibrahim, *supra* note 28.
- 32 Maina Kiai (Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association), *Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association*, Maina Kiai: *Addendum—Mission to Oman*, ¶ 35, U.N. Doc. A/HRC/29/25/Add.1 (Apr. 27, 2015) [hereinafter *SRFPAA Report of Apr. 2015*].
- 33 *Id.* ¶ 35; see also Hum. Rts. Watch, *Human Rights Watch Submission to the Universal Periodic Review of Oman* ¶ 3 (July 2020) [hereinafter *Hum. Rts. Watch Submission on Oman to the UPR*] (noting that the ISS engages in operations which “target pro-reform activists, often for views they expressed on social media platforms like Facebook and Twitter”).
- 34 U.N. Off. of the High Comm’r for Hum. Rts., *Compilation on Oman: Report of the Office of the United Nations High Commissioner for Human Rights*, ¶ 25, U.N. Doc. A/HRC/WG.6/37/OMN/2 (Nov. 16, 2020) [hereinafter *OHCHR Report of Nov. 2020*].
- 35 *Government Stake in Omantel Transfers to OIF*, OMAN DAILY OBSERVER (Dec. 17, 2016).

- 36 As of December 2016, a sovereign wealth fund of the Sultan of Oman (Oman Investment Fund), owned a 51% stake in Omantel, after the Ministry of Finance transferred its shares. *Id.*
- 37 OHCHR Report of Nov. 2020, *supra* note 35, ¶ 25.
- 38 *Id.*
- 39 HRC General Comment No. 34, *supra* note 14, ¶ 15.
- 40 SRHRD Report of Feb. 2016, *supra* note 3, ¶¶ 77, 110.
- 41 Promotion, Protection, and Enjoyment of Human Rights on the Internet, Human Rights Council Res. 38/7, U.N. Doc. A/HRC/RES/38/7, ¶ 1 (July 17, 2018). Those rights are protected under article 20 of the Universal Declaration of Human Rights, *supra* note 10, and articles 21 and 22 of the International Covenant on Civil and Political Rights, *supra* note 14.
- 42 Hum. Rts. Comm., General Comment No. 37 (2020) on the Right of Peaceful Assembly (Article 21), ¶ 33, U.N. Doc. CCPR/C/GC/37 (Sept. 17, 2020).
- 43 See Mar. 2018 Communication to Oman, *supra* note 6, at 3.
- 44 *Oman: Freedom of Expression Continues to be Targeted*, OMANI ASS'N FOR HUM. RTS. (June 11, 2020). Al-Kasbi's post read: "I dreamed that I had become a minister and built a palace in Crimea but it was very, very expensive. The structure only cost me 13 million Omani Rials" (USD 33,764,601). *Id.*
- 45 Hum. Rts. Watch Submission on Oman to the UPR, *supra* note 34, ¶ 5.
- 46 See Cyber Crime Law, *supra* note 4, at art. 19. The reporting does not specify under what law Al-Kasbi was charged.
- 47 *Oman: Freedom of Expression Continues to be Targeted*, *supra* note 45.
- 48 *Id.*; *Oman: 2020*, AMNESTY INT'L.
- 49 Frank La Rue (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Promotion and Protection of the Right to Freedom of Opinion and Expression*, ¶ 35, U.N. Doc. A/66/290 (Aug. 10, 2011) [hereinafter SRFOE Report of Aug. 2011]. See also *Authorities Continue to Harass Human Rights Defenders and Impose Restrictions on Internet Activists*, GCHR (Jan. 29, 2019). This is not the only instance in which Omani authorities have violated the rights of journalists to engage in reporting. On 01 January 2019, two journalists were arrested and later release, while covering a protest in Muscat organised by unemployed individuals in front of Ministry for Labor. See *Promotion and Protection of Human Rights and Fundamental Freedoms, Including the Rights to Peaceful Assembly and Freedom of Association*, G.A. Res. 73/173, U.N. Doc. A/RES/73/173, ¶ 19 (Jan. 8, 2019) (condemning "attacks by States . . . against journalists and other media workers covering demonstrations and protesting").
- 50 *Oman: Government Must Stop Confiscating Books and Arresting Online Activists*, GCHR (Feb. 27, 2020); *Oman: 2020*, *supra* note 49.
- 51 SRFPAA Report of Apr. 2015, *supra* note 33, ¶ 5.
- 52 In a tweet from 07 July 2019, criticising the government for not allowing him to run for a seat on the Shura Council, Al-Awfi said: "They practise tyranny and criticise it by words so they are far from justice." *Oman: Freedom of Expression Continues to be Targeted*, *supra* note 45.
- 53 Hum. Rts. Watch Submission on Oman to the UPR, *supra* note 34, ¶ 5.
- 54 *Oman: Freedom of Expression Continues to be Targeted*, *supra* note 45.
- 55 *Id.* Al-Sawafi was also sentenced to one year in prison in 2012 after being convicted of defamation against the late Sultan Qaboos bin Said.
- 56 *Oman: 2020*, *supra* note 49; *Oman: Freedom of Expression Continues to be Targeted*, *supra* note 45. Al-Sawafi's tweet began: "Every week a government institution comes to us that threatens this nation, which is overpowered." It ended: "Let everyone know without exception, either we live with dignity on this land or not." *Oman: Freedom of Expression Continues to be Targeted*, *supra* note 45.
- 57 Hum. Rts. Watch Submission on Oman to the UPR, *supra* note 34, ¶ 4.
- 58 *Id.*
- 59 See Cyber Crime Law, *supra* note 4, at art. 19.
- 60 *Oman: Freedom of Expression Continues to be Targeted*, *supra* note 45.
- 61 See SRFOE Report of May 2016, *supra* note 14, ¶ 7.
- 62 SRFOE Report of Aug. 2011, *supra* note 50, ¶ 30.
- 63 H.R.C. Res. 12/16, *supra* note 22, ¶ 5(p)(i).
- 64 SRFOE Report of Aug. 2011, *supra* note 50, ¶ 29.

- 65 *Id.* ¶ 28. RES/73/175, at 2 (Jan. 23, 2019).
- 66 Gino Caspari et al., *Remote Sensing and Citizen Science for Assessing Land Use in the Musandam (Oman)*, 171 J. ARID ENV'TS 1, 1 (2019). 88 *Draconian Sentences Passed on Musandam Activists*, *supra* note 81.
- 67 Ali S. M. Al-Issa, *The Language Planning Situation in the Sultanate of Oman*, 21 CURRENT ISSUES LANGUAGE PLAN. 347, 362 (2020). See also John D. Battenberg, *The Status of Kumzari and Its Speakers: A Local Language of the Musandam Peninsula of Oman*, 37 LANGUAGE PROBS. & LANGUAGE PLAN. 18, 21 (2013). 89 *Id.*
- 68 Amnesty Int'l Public Statement, *supra* note 5, at 1. 90 SRFOE Report of May 2016, *supra* note 14, ¶ 7.
- 69 *Id.* 91 See Isabel Kershner, *Israeli Prime Minister Visits Oman, Offering a Possible Back Channel to Iran*, N.Y. TIMES (Oct. 26, 2018) (providing an account of the visit and theorising that the Israeli government hopes that the Omani government may facilitate communication with regional adversaries). Oman and Israel do not have formal diplomatic relations. Oman's government closed Israel's trade office in Oman in 2000 during the second Palestinian uprising. This was the first visit by an Israeli Prime Minister to Oman in twenty-two years.
- 70 *Id.* 92 Amnesty Int'l, *Oman: Human Rights Violations Persist: Amnesty International Submission to the UN Universal Periodic Review, 37th Session of the UPR Working Group, January 2021*, at 9 (Aug. 2020) [hereinafter *Amnesty Int'l Submission on Oman to the UPR*]; *Authorities Continue to Harass Human Rights Defenders and Impose Restrictions on Internet Activists*, *supra* note 50.
- 71 *Id.* 93 *Authorities Continue to Harass Human Rights Defenders and Impose Restrictions on Internet Activists*, *supra* note 50.
- 72 *Id.* 94 *Amnesty Int'l Submission on Oman to the UPR*, *supra* note 93, at 9; *Authorities Continue to Harass Human Rights Defenders and Impose Restrictions on Internet Activists*, *supra* note 50.
- 73 AMNESTY INT'L, URGENT ACTION: "NATIONAL SECURITY" TRIALS END IN LIFE SENTENCES (2019). 95 *Authorities Continue to Harass Human Rights Defenders and Impose Restrictions on Internet Activists*, *supra* note 50.
- 74 Amnesty Int'l Public Statement, *supra* note 5, at 1. 96 *Oman: Cycle Continues as Another Online Activist Detained, and Two Other Activists Released*, GCHR (Dec. 10, 2018).
- 75 *Id.* 97 *Id.*
- 76 *Id.* 98 H.R.C. Res. 12/16, *supra* note 22, ¶ 5(p)(i).
- 77 *Id.* at 1-2. 99 Convention on the Elimination of all Forms of Discrimination against Women art. 3, *opened for signature* Dec. 18, 1979, 1249 U.N.T.S. 13.
- 78 *Id.* at 2. 100 Comm. on the Elimination of Discrimination against Women, *Concluding Observations on the Combined Second and Third Periodic Reports of Oman*, ¶ 19, U.N. Doc. CEDAW/C/OMN/CO/2-3 (Nov. 22, 2017).
- 79 *Id.* at 1. 101 *Id.* ¶ 20.
- 80 *Draconian Sentences Passed on Musandam Activists*, OMANI CTR. FOR HUM. RTS. (Oct. 9, 2018). 102 David Kaye (Special Rapporteur on the Promotion
- 81 *Id.*
- 82 *Id.*
- 83 SRFOE Report of May 2016, *supra* note 14, ¶ 7; Mar. 2018 Communication to Oman, *supra* note 6, at 3.
- 84 Margaret Sekaggya (Special Rapporteur on the Situation of Human Rights Defenders), *Situation of Human Rights Defenders*, ¶ 24, U.N. Doc. A/67/292 (Aug. 10, 2012).
- 85 SRFOE Report of May 2016, *supra* note 14, ¶ 7.
- 86 ICCPR, *supra* note 14, at art. 6.
- 87 HRC General Comment No. 36, *supra* note 25, ¶ 35. The General Assembly has also expressed "deep concern" about states imposing capital punishment on "persons exercising their human rights." Moratorium on the Use of the Death Penalty, G.A. Res. 73/175, U.N. Doc. A/



- and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, David Kaye, ¶ 20, U.N. Doc. A/HRC/29/32 (May 22, 2015) [hereinafter *SRFOE Report of May 2015*].
- 103 *Authorities Continue to Harass Human Rights Defenders and Impose Restrictions on Internet Activists*, *supra* note 50.
- 104 *Id.*
- 105 *Oman: Artistic Censorship and Harassment of Online Activists Continues*, CIVICUS (June 11, 2020).
- 106 *Oman: Government Must Stop Confiscating Books and Arresting Online Activists*, *supra* note 51.
- 107 *Id.*
- 108 Special Rapporteur on the Right to Privacy, *Report of the Special Rapporteur on the Right to Privacy*, ¶ 28, U.N. Doc. A/HRC/40/63 (Oct. 16, 2019); Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, *Surveillance and Human Rights: Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, ¶ 21, U.N. Doc. A/HRC/41/35 (May 28, 2019) [hereinafter *SRFOE Report of May 2019*]; Hum. Rts. Comm., *Concluding Observations on the Sixth Periodic Report of Italy*, ¶ 36, U.N. Doc. CCPR/C/ITA/CO/6 (May 1, 2017); Privacy in the Digital Age, G.A. Res. 73/179, U.N. Doc. A/RES/73/179, at 3, (Jan. 21, 2019) [hereinafter G.A. Res. 73/179]; UDHR, *supra* note 10, at arts. 12, 18-20; ICCPR, *supra* note 14, at arts. 17-19, 21-22.
- 109 *SRFPAA Report of Apr. 2015*, *supra* note 33, ¶ 19(d).
- 110 *SRFOE Report of May 2019*, *supra* note 109, ¶ 21.
- 111 *SRFPAA Report of Apr. 2015*, *supra* note 33, ¶ 19(d).
- 112 *SRFOE Report of May 2015*, *supra* note 103, ¶ 20.
- 113 G.A. Res. 73/179, *supra* note 109, ¶ 34.
- 114 The Pegasus program was created by a company called the NSO Group. Citizen Lab's report details the findings of a study that "fingerprinted the behaviour of the exploit link and [command and control] servers in the sample sent to" a UAE-based HRD Ahmed Mansoor, an individual targeted with the spyware, who received this link in a text message. Researchers then "scanned the Internet for other matching front-end servers," finding 237. After researchers disclosed the exploits to Apple, the company "issued a patch blocking the Pegasus spyware," after which all Pegasus servers that researchers detected were shut down, apart from those in the sample Mansoor received. NSO Group modified its server code, and "[a]fter studying the behavior of several suspected new Pegasus servers," the researchers developed new fingerprints and a technique called Athena, to group fingerprint matches into 36 clusters. Researchers "believe that each cluster represents an operator of NSO Pegasus spyware." Researchers "then performed DNS cache probing to generate a list of countries in which there are Possible Infections associated with the operator." Researchers found suspected infections for one operator in the autonomous system number (ASN) ASN for the Omani Telecommunications Company and the Omani Qatari Telecommunications Company, both in Oman. Bill Marczak et al., *Hide and Seek: Tracking NSO Group's Pegasus Spyware to Operations in 45 Countries*, CITIZEN LAB (Sept. 18, 2018). In August 2020, the newspaper *Haaretz* reported that the NSO Group had signed contracts for the purchase of spyware with countries in the Gulf region, including Oman. Chaim Levinson, *With Israel's Encouragement, NSO Sold Spyware to UAE and Other Gulf States*, HAARETZ (Aug. 25, 2020). In 2018, the SR on FOE referenced Pegasus in a reporting on a mission to Mexico, noting that the spyware's targets "have included, among others, politicians, journalists, human rights defenders, lawyers, public health and anti-corruption experts, and even the international body established to investigate the mass disappearances of students in Iguala in 2014." Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression on His Mission to Mexico*, ¶ 52, U.N. Doc. A/HRC/38/35/Add.2 (Nov. 13, 2018).
- 115 See Ibrahim, *supra* note 28.
- 116 Working Grp. on Arbitrary Det., *Report of the Working Group on Arbitrary Detention: United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court*, ¶ 11, U.N. Doc. A/HRC/30/37 (July 6, 2015) [hereinafter *WGAD Report of July 2015*]; Hum. Rts. Comm., *General Comment No. 35: Article 9 (Liberty and Security of Person)*, ¶¶ 17, 22-23, 53, U.N. Doc. CCPR/C/GC/35 (Dec. 16, 2014).
- 117 *WGAD Report of July 2015*, *supra* note 117, ¶ 10; UDHR, *supra* note 10, at art. 19; ICCPR, *supra* note 14, at art. 19.
- 118 *WGAD Report of July 2015*, *supra* note 117, ¶ 11.
- 119 Working Grp. on Arbitrary Det., *Report of the Working Group on Arbitrary Detention*, ¶ 46, U.N. Doc. A/

- HRC/36/37 (July 19, 2017); UDHR, *supra* note 10, at art. 7.
- 120 Working Grp. on Arbitrary Det., *Report of the Working Group on Arbitrary Detention*, ¶¶ 38, 63, U.N. Doc. A/HRC/22/44 (Dec. 24, 2012) (stating that legislation may be arbitrary if it provides no limit or justification for detention).
- 121 *Two Internet Activists Arrested Due to Their Writings*, GCHR (Nov. 6, 2018).
- 122 *Id.*
- 123 *Id.*
- 124 *One Internet Activist Released and Another Detained, Leaving Many in Detention*, GCHR (Nov. 13, 2018).
- 125 *Id.*
- 126 Working Grp. on Arbitrary Det., *Report of the Working Group on Arbitrary Detention*, ¶ 60, U.N. Doc. A/HRC/39/45 (July 2, 2018) [hereinafter *WGAD Report of July 2018*].
- 127 UDHR, *supra* note 10, at art. 6; ICCPR, *supra* note 14, at art. 16.
- 128 Theo van Boven (Special Rapporteur on Torture), *Report of the Special Rapporteur on the Question of Torture Submitted in Accordance with Commission Resolution 2002/38*, ¶ 26(g), U.N. Doc. E/CN.4/2003/68 (Dec. 17, 2002) [hereinafter *SRT Report of Dec. 2002*].
- 129 Manfred Nowak (Special Rapporteur on Torture), *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak: Addendum—Study on the Phenomena of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in the World, Including an Assessment of Conditions of Detention*, ¶ 156, U.N. Doc. A/HRC/13/39/Add.5 (Feb. 5, 2010) (international law and standards prohibit “all secret and incommunicado detention”); see *Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, G.A. Res. 72/163, U.N. Doc. A/RES/72/163, ¶ 16 (Dec. 19, 2017) [hereinafter *G.A. Res. 72/163*].
- 130 *WGAD Report of July 2018*, *supra* note 127, ¶ 60.
- 131 *One Internet Activist Released and Another Detained, Leaving Many in Detention*, *supra* note 125.
- 132 *Id.*
- 133 *Id.*
- 134 *Oman: Cycle Continues as Another Online Activist Detained, and Two Other Activists Released*, *supra* note 97. The HRD Hatem A-Maliki was similarly detained on 06 December 2018 by an arm of the ISS for Facebook and Twitter posts critical of Oman’s relations with Israel and in support of Palestinian rights. He was held incommunicado and not released until 10 December 2018. *Id.*
- 135 *Oman: Internet Activist Ghazi Al-Awlaki Must Be Freed*, GCHR (Sept. 8, 2020).
- 136 *Id.*
- 137 *Id.*
- 138 *Oman: Trial of Writer and Civil Society Activist Musallam Al-Ma’ashani Postponed Indefinitely*, GCHR (June 2, 2020).
- 139 *Id.*
- 140 *Id.*
- 141 *SRT Report of Dec. 2002*, *supra* note 129, ¶ 26(g).
- 142 Hum. Rts. Comm., *General Comment No. 32: Article 14: Right to Equality Before Courts and Tribunals and to Fair Trial*, ¶ 6, U.N. Doc. CCPR/C/GC/32 (Aug. 23, 2007) [hereinafter *HRC General Comment No. 32*].
- 143 *WGAD Report of July 2015*, *supra* note 117, at annex, princ. 1; *HRC General Comment No. 32*, *supra* note 143, ¶¶ 15, 19, 31-34, 38; ICCPR, *supra* note 14, at art. 14.
- 144 *WGAD Report of July 2015*, *supra* note 117, at annex, princs. 7-9; *HRC General Comment No. 32*, *supra* note 143, ¶ 10.
- 145 David Kaye (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression) & Michel Forst (Special Rapporteur on the Situation of Human Rights Defenders), *Communication to Oman*, 3, Ref. No. UA OMN 1/2017 (Mar. 29, 2017).
- 146 Amnesty Int’l Public Statement, *supra* note 5, at 1-2.
- 147 *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, 2012 I.C.J., ¶ 99 (July 20); *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 2*, opened for signature Dec. 10, 1984, 1465 U.N.T.S. 85; Dire Tladi (Special Rapporteur), *Fourth Report on Peremptory Norms of General International Law (Jus Cogens) by Dire Tladi, Special Rapporteur*, ¶ 69, U.N. Doc. A/CN.4/727 (Jan. 31, 2019).
- 148 G.A. Res. 72/163, *supra* note 130, ¶ 28.

NOTES

- 149 See SRFPA Report of Apr. 2015, *supra* note 33, ¶¶ 20-21 (corroborating accounts of torture and ill treatment in Omani prisons).
- 150 *Oman: Trial of Writer and Civil Society Activist Musallam Al-Ma'ashani Postponed Indefinitely*, *supra* note 139.
- 151 Special Rapporteur, *Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Report of the Special Rapporteur*, ¶ 18, U.N. Doc. A/HRC/40/59 (Jan. 16, 2019).
- 152 Amnesty Int'l Public Statement, *supra* note 5, at 1.



# QATAR



# QATAR SCORECARD

## Targeted Activism or Expression



Criticism of Government



Expression re Minority/  
Migrants' Rights



Journalists



Women's Rights and WHRDs

## Human Rights Violations



Privacy & Surveillance



Arbitrary Detention



Incommunicado Detention



Torture



Fair Trial

## Problematic Legal Provisions and Institutions



Criminal Defamation



Cybercrime Law



Public Order



Specialised Law Enforcement Units

5

Number of incidents that fit the inclusion criteria of this study

## INTRODUCTION

Between 01 May 2018 and 31 October 2020 there were five reported incidents in Qatar that fit this study's inclusion criteria.<sup>1</sup> Qatar is ruled by a constitutional emirate.<sup>2</sup> These incidents provide credible evidence that Qatar has violated the freedom of online expression of human rights defenders (HRDs), including bloggers and journalists, who authorities viewed as criticising the government.

Officials punished these individuals and groups through criminal prosecution, fines, forced deactivation of Twitter accounts, summons, arrests (including arbitrary arrest and detention), and closing down organisations. While reporting does not identify the specific provisions enforced against defenders, the authorities in Qatar have enacted multiple laws that criminalise online expression.

Human rights advocacy is further limited in Qatar through the threat of surveillance, strict laws prohibiting collective political advocacy and associations, and the potential imposition of harsh penalties on the vast majority of Qatar's population who are migrant workers. Based on this research, the government has violated its obligation to respect online freedom of expression and additional associated rights of HRDs. These violations also constitute breaches of the duty of the State,

pursuant to the United Nations (UN) charter, "as the main duty-bearer" to ensure "defenders enjoy a safe and enabling environment" and that government institutions and processes "are aligned with their safety and the aim of their activities."<sup>3</sup>

Qatar is party to several international human rights treaties protecting the right to freedom of expression, including the International Covenant on Civil and Political Rights (ICCPR).<sup>4</sup> As a UN member State, Qatar is also bound by the UN Charter and has pledged to adhere to the principles reflected in the Universal Declaration of Human Rights (UDHR), including article 19, which enshrines the right to freedom of opinion and expression.<sup>5</sup>

# LEGAL ENVIRONMENT FOR ONLINE EXPRESSION IN QATAR

While none of the documented cases collected for this report indicate which laws the government enforced against HRDs, international human rights bodies and experts have criticised several laws in Qatar that restrict human rights, such as the exercise of the right to online expression by HRDs, including journalists.<sup>6</sup> These include the 2014 Cybercrime Prevention Act (“cybercrime law”), the 2004 Penal Code, the 1979 Press and Publications Law, and other laws that enable authorities to arbitrarily detain HRDs. In addition to this legal framework, the State Security Bureau has used its broad authority to detain individuals for online human rights advocacy. Civic space in Qatar is severely constrained, due to restrictions on the formation of civil society organisations, widespread government surveillance, and the threat of deportation that engagement in online human rights advocacy poses to Qatar’s majority, non-citizen population.

## Laws Related to Online Expression

### *2014 Cybercrime Prevention Act*

Qatar’s cybercrime law contains several vague and overbroad provisions, and one imposes criminal penalties, including imprisonment for defamation, contrary to Qatar’s obligations under ICCPR article 19.<sup>7</sup> It also requires service providers to assist the State in surveilling online communications, including by blocking content and retaining user data.<sup>8</sup> In its 2019 Universal Periodic Review, several countries and the UN High Commissioner on Human Rights urged Qatar to repeal or amend this law to meet its human rights obligations under ICCPR article 19.<sup>9</sup> The Qatari government took note of, but did not accept these recommendations.<sup>10</sup> As part of Qatar’s first upcoming ICCPR review, the Human Rights

Committee explicitly asked the State in August 2020 to respond to the criticism that the cybercrime law, article 136 (bis) of the Penal Code, and the Press and Publications Law lead to “severe restrictions on the freedom of expression and opinion, including in relation to the sharing of information online” that are incompatible with Qatar’s commitments under the ICCPR.<sup>11</sup>

Article 6 of the cybercrime law prohibits “set[ting] up or run[ning] a website to publish false news to threaten the safety and security of the state or its public order or domestic and foreign security” or “promot[ing], disseminat[ing] or publish[ing] in any way such false news for the same purpose.”<sup>12</sup> Under both article 19 of the ICCPR and the UDHR, criminal laws that restrict freedom of expression must be sufficiently precise so as to enable individuals to determine how to comply with the law and to limit the discretion conferred on authorities enforcing it.<sup>13</sup> Vaguely and broadly worded provisions have been found by UN Special Procedures mandate holders to violate this requirement, allowing authorities to use their excessive discretion to target protected expression, and encouraging individuals to engage in self-censorship.<sup>14</sup> UN Special Rapporteurs have criticised as overly vague provisions that prohibit individuals from using the internet to “upset social order” or “harm the public interest”, or from publishing “articles or photos that could harm national security, public order, public health or public interest, incite violence, constitute sedition or have negative consequences for the financial climate of the country.”<sup>15</sup> Similarly, international human rights experts, including the UN Special Rapporteur on freedom of opinion and expression (SR on FOE),



have urged States to abolish general prohibitions on disseminating “false news” because of their vagueness.<sup>16</sup>

Article 8 of the cybercrime law punishes anyone who “violates social values or principles, [or] publishes news, photos or video or audio recordings related to the sanctity of people’s private or family life, even if the same is true.”<sup>17</sup> Similar to article 6, this article is impermissibly vague and overbroad. Article 8 also imposes criminal penalties on anyone who “insults or slanders others.”<sup>18</sup> The UN Human Rights Committee and the SR on FOE have cautioned that laws on defamation should be crafted carefully so that they do not restrict freedom of expression, and have recommended the decriminalisation of defamation.<sup>19</sup> The UN Human Rights Committee has interpreted ICCPR article 19 to require that “the application of criminal law should only be countenanced in the most serious of cases, and imprisonment is never an appropriate penalty.”<sup>20</sup> Finally, it has stated that defamation laws should include the defence of public interest in the subject matter of the criticism, the defence of truth, and, at least in the case of expression related to public figures, the defence of error.<sup>21</sup>

Individuals convicted of offenses under these provisions could face significant penalties. Under article 6, if convicted of managing or creating a website with false news, individuals face sentences of up to three years in prison and/or a fine of up to QAR 500,000 (USD 138,000), while those convicted of spreading false news could receive an up to one year prison sentence and/or a fine of up to QAR 250,000 (USD 69,000).<sup>22</sup> Article 8 offenses carry sentences of up to three years in prison and/or a fine of up to QAR 100,000 (USD 28,000).<sup>23</sup> Under article 53, the court can close accounts or block websites involved in any offenses under the cybercrime law.<sup>24</sup> Article 52 provides that non-citizens may be deported for any of the offences found in the act.<sup>25</sup>

#### **2004 Penal Code**

Several relevant provisions of Qatar’s Penal Code, promulgated in 2004, are inconsistent with the ICCPR because they are overly broad and vague. In

2020, Qatar amended its penal code to add article 136 (bis), which imposes criminal penalties on individuals publishing, broadcasting, or spreading false or biased information “with the intention of harming national interests, provoking public opinion, or violating the social system or public order of the state.”<sup>26</sup> This article provides for sentences of up to five years in prison and a fine of up to QAR 100,000 (USD 28,000).<sup>27</sup> The SR on FOE and the Special Rapporteur on human rights defenders (SR on HRDs) expressed concern about the amendment’s vagueness.<sup>28</sup> The provision fails to define key terms like “national interests,” “public order,” “false,” “malicious,” “social system,” “rumours,” or “provoking public opinion,” which could “result in disproportionate restrictions on freedom of expression.”<sup>29</sup> It does not identify when expression would be considered “fake news” that sought to harm national interests, who would decide if it were, and through what the process.<sup>30</sup>

Article 136 of the Penal Code, which is distinct from the recently added article 136 (bis), allows the State to impose life imprisonment for anyone who “instigates by public means to overthrow the regime of the country, or conducts propaganda or calls by public means for the adoption of a doctrine aiming to destroy the fundamental values of the state, to change the social or economic system prevailing in the country by use of force or through any illegal means.”<sup>31</sup> Article 134 criminalises anyone who publicly criticises or challenges the authority of the Emir and other members of the royal family.<sup>32</sup> Individuals can be sentenced to up to five years in prison for this offense.<sup>33</sup> The UN Working Group on Arbitrary Detention (WGAD) and several Special Rapporteurs have criticised “the vagueness of the[se] provisions and their overly broad application,” with WGAD urging Qatar to revise them to conform to human rights obligations.<sup>34</sup> Specifically, they have condemned article 134 as incompatible with human rights law because it aims to silence criticism of a head of State, and it has been used to target HRDs.<sup>35</sup>

Article 138 of the Penal Code punishes those who destroy or insult flags of Qatar, non-hostile countries,

and other international and regional organisations with up to three years in prison and/or up to QAR 200,000 (USD 55,000) in fines.<sup>36</sup> The Human Rights Committee has noted concerns with laws prohibiting “disrespect for [State] flags and symbols” because they infringe on freedom of expression.<sup>37</sup>

Finally, the Penal Code also includes criminal defamation provisions, which are inconsistent with the ICCPR.<sup>38</sup> Articles 326, 327, and 330 criminalise defamation when accusing someone of a crime, defaming a public employee or their family’s reputation, or defaming or insulting someone in private, through phone, in a letter, or “in an indirect way.”<sup>39</sup>

### **1979 Press and Publications Law**

Qatar’s 1979 Press and Publications Law regulates the media.<sup>40</sup> Article 46 makes it a criminal offense to criticise the Emir.<sup>41</sup> Article 47 bars journalists “from publishing material that damaged the supreme interests of the country or anything that would offend public morals.”<sup>42</sup> It also allows for imprisonment for libel in certain cases.<sup>43</sup> The penalties for violating these provisions differ based on the activity, but they include sentences of between one and six months in prison and/or fines of QAR 1,000–300,000 (about USD 275–83,000), or other penalties outlined in the Penal Code.<sup>44</sup> Additionally, a court may close a media outlet or publishing house convicted of these provisions, and double the sentences for repeated violations.<sup>45</sup> These provisions are inconsistent with ICCPR article 19 because they are vague and overbroad, and/or prohibit expression critical of a public official.<sup>46</sup>

### **Other relevant laws**

Qatari authorities, including the State Security Bureau,<sup>47</sup> have arbitrarily detained HRDs for exercising their right to freedom of expression online. Such actions are enabled by a number of laws that allow for detention, including the Law on the State Security Service, the Law on Protection of Community, and the Law on Combating Terrorism.<sup>48</sup> The Law on the State Security Service (Law No. 5 of 2003) created the State Security Bureau and its

powers to detain individuals engaged in “activities which are harmful to the security and stability of the state and its relationship with other countries,” as well as Qatar’s economy and resources.<sup>49</sup>

The Law on Protection of Community (Law No. 17 of 2002) allows authorities to detain individuals on the basis of a well-founded belief they committed “crimes involving state security, honour, decency or public morals.”<sup>50</sup> The Law on Combating Terrorism (Law 27 of 2019) allows authorities to investigate, detain and criminalise individuals suspected of terrorism or recruiting, assisting or inciting others for terrorist activities outside general procedures for criminal investigations.<sup>51</sup> Article 4 specifies this law applies to activities online, while articles 24 and 25 authorise broad surveillance, including monitoring online communication and information systems, to investigate suspects.<sup>52</sup> The UN WGAD expressed concerns with these three laws as they allow detention for vaguely worded offences.<sup>53</sup> WGAD and the Committee Against Torture have criticised these laws for violating articles 9 and 14 of the ICCPR by providing broad executive powers to detain people for long periods without judicial oversight.<sup>54</sup>

## **Policy and Political Environment**

### ***Limited civil society***

Several additional Qatari laws limit freedom of association and restrict civic space, which in turn stifles human rights advocacy and online expression, as well as the reporting on such advocacy.<sup>55</sup> Qatar has erected barriers to the formation and operation of advocacy groups, political organisations, and labour unions, particularly those led by and for non-citizens.<sup>56</sup> Organisations are not allowed to engage in political activities, so civil society organisations that do exist often are focused on community, cultural or charitable activities.<sup>57</sup> Consequently, the Gulf Centre for Human Rights (GCHR) has noted a “distinct lack of oppositional civil society and a dearth of human rights activism in the country.”<sup>58</sup>

Qatari authorities further restrict online advocacy through laws and practices that force non-citizens to

choose between advocating for their human rights and facing deportation.<sup>59</sup> Ninety percent of Qatari residents are non-citizens, and 71% are low-wage workers whose livelihoods depend on their continued employment in the country.<sup>60</sup> These workers face serious human rights abuses as a result of what the Special Rapporteur on racism, racial discrimination, xenophobia and related forms of intolerance has described as a “de facto caste system based on national origin, which results in structural discrimination against non-citizens.”<sup>61</sup> However, non-citizens, both migrant workers and non-citizens working on the human rights of migrant workers, risk their residency status, detention, and deportation for their advocacy and writing.<sup>62</sup> The laws described above further enable these practices by giving Qatari authorities the power to deport individuals for online expression.<sup>63</sup> The threat of deportation for human rights-related expression and organised advocacy risks interfering with the rights to freedom of expression, association, and peaceful assembly of non-citizen workers’ and HRDs.<sup>64</sup>

### *Surveillance*

The surveillance of HRDs impacts a number of interrelated human rights, including their rights to freedom of expression and opinion, to peaceful assembly and association, to religion or belief, and to privacy.<sup>65</sup> The SR on FOE has noted that surveillance, if conducted for an unlawful purpose, “may be used in an effort to silence dissent, sanction criticism or punish independent reporting (and sources for that reporting).”<sup>66</sup> This in turn has a chilling effect on expression and association.<sup>67</sup>

Qatar has likely engaged in surveillance of residents, although the extent and priorities of this surveillance are unknown.<sup>68</sup> Qatar appears to have purchased surveillance and censorship technologies from Danish, British, American, and Canadian companies, including FinFisher, Evident, Netsweeper, and Blue Coat ProxySG.<sup>69</sup> The State also may have engaged in surveillance through ISPs, including Vodafone.<sup>70</sup> In 2020, human rights organisations raised concerns about mass government surveillance through the EHTERAZ app, which the Qatari government

required all citizens, residents, and visitors to download on their phones for contact tracing during the COVID-19 pandemic.<sup>71</sup>

### *Social media and internet*

Social media and internet usage in Qatar is high, reaching approximately 99% of the population.<sup>72</sup> Of the 2.91 million people living in Qatar in January 2021, 2.88 million were internet users and 2.87 million used social media.<sup>73</sup> While individuals in Qatar access many social media platforms, most of the cases identified for this report show that the Qatari government punished individuals for their expression on Twitter.<sup>74</sup>

# TRENDS EMERGING FROM INCIDENTS OF REPRESSION OF ONLINE EXPRESSION IN QATAR

The reported incidents reveal that since May 2018, Qatar has targeted HRDs with various identities and relationships to the State—some who have consistently been critical of the government, and some who were otherwise supportive of it—but all of the targeted expression was perceived by Qatari authorities as critical of government policy. Some of these individuals are members of marginalised groups, such as stateless communities and women. Although reports of these cases do not describe specific charges, two identify the State Security Bureau and Cybercrime Police in the Ministry of the Interior as enforcement agencies.<sup>75</sup> Individuals who faced violations of the right to freedom of expression often experienced additional rights violations, including arbitrary and incommunicado detention.

## Violations of the Right to Freedom of Expression

### *Targeting individuals for criticising government action or policy*

Across the reported incidents, officials targeted HRDs for their online expression politically critical of the Qatari government. This is inconsistent with article 19 of the ICCPR.<sup>76</sup>

On 04 October 2020, Mohammed Al-Sulaiti was detained by State Security Bureau officers and held incommunicado by the bureau for at least two weeks on unspecified “State Security Crimes.”<sup>77</sup> While Qatari authorities have not revealed why Al-Sulaiti was targeted, his detention followed tweets criticising the government, and his Twitter account was deleted while Qatari authorities held him.<sup>78</sup> Two years prior, Al-Sulaiti had been arbitrarily detained by Qatar’s

State Security Bureau<sup>79</sup> for five months.<sup>80</sup> Following his release, Al-Sulaiti was subjected to a travel ban without legal justification or recourse.<sup>81</sup> Leading up to his most recent detention, he had shared an Amnesty International statement about his travel ban online multiple times, criticised travel bans and government policy on social media, and launched a Twitter poll to connect with others who were impacted by travel bans.<sup>82</sup> His case was also raised with WGAD.<sup>83</sup> Al-Sulaiti’s case demonstrates the power the State Security Bureau—which reports directly to the Emir—has to enforce broad provisions allowing for long periods of administrative detention and restricting the right to freedom of expression online.<sup>84</sup> Qatar’s imposition of this travel ban also raises concerns regarding its obligations to protect HRDs’ freedom of movement. Article 13 of the UDHR provides that “[e]veryone has the right to freedom of movement” as well as “the right to leave any country, including his own.”<sup>85</sup> Similarly, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has criticised a trend of governments restricting the freedom of movement of civil society activists under the guise of national security concerns.<sup>86</sup>

Authorities also targeted Faisal Muhammad Al-Marzouki, a Qatari writer and blogger, for online expression, specifically tweets to his nearly 195,000 Twitter followers, officials considered critical of the Qatari government.<sup>87</sup> In June 2020, he tweeted “[n]othing equals the corruption of education,” critiquing the Qatari education system. In a March 2020 comment on Qatari stock exchange management, he tweeted “[t]he crash continues, and the stock market is running like a donkey carrying travels.”<sup>88</sup> Borrowing from a Quranic verse, this tweet criticised corruption

in the management of the stock market by suggesting its managers are in charge of something they do not understand. Al-Marzouki received a three-year-suspended prison sentence, his Twitter account was seized, and he was fined QAR 30,000 (about USD 8,250).<sup>89</sup>

### *Targeting marginalised groups for their online advocacy*

The Qatari government has also breached its human rights commitments by targeting members of marginalised groups including women and stateless members of the Al-Ghufran clan. The UN Human Rights Council and the SR on FOE have emphasised the importance of ensuring the right of marginalised communities to exercise freedom of expression, and the SR on FOE has highlighted the value of the internet, particularly where marginalised communities can assert their rights and provide their perspectives in public debate.<sup>90</sup> Group arrests of marginalised groups engaged in collective advocacy also raise concerns regarding their rights to freedom of assembly and association. The UN Human Rights Council has emphasised that States have the obligation to respect and protect the rights to freedom of assembly and association both offline and online.<sup>91</sup> The UN Human Rights Committee has underscored that the protection of activities associated with the right to peaceful assembly, including information dissemination, communication between participants, and broadcasting, is crucial to the exercise of that right.<sup>92</sup>

In 2019, Amnesty International reported the arbitrary detention of stateless members of the Al-Ghufran clan, who had “spoke[n] out on social media about their situation.”<sup>93</sup> Authorities later released them without charge.<sup>94</sup> Qatar stripped some Al-Ghufran clan members of their citizenship after they supported a failed coup in 1996.<sup>95</sup> Members of the Al-Ghufran clan face rights violations and restrictions in accessing housing, employment, healthcare, education, freedom of movement, and other areas

due to their loss of citizenship, and they do not have access to a transparent process to gain or regain Qatari citizenship.<sup>96</sup> Targeting stateless members of this clan for discussing human rights violations against their community online illustrates Qatar’s failure to uphold its obligations under the ICCPR.

Human Rights Watch and others have reported that, in August 2019, Qatari authorities summoned at least one of the women activists behind the @QatarFem (Qatari Feminists) Twitter account, and also summoned her parents.<sup>97</sup> The summons was apparently due to the account’s tweets on women’s rights issues, including male guardianship rules, other discriminatory laws, and domestic violence, and tweets challenging Qatar’s suitability as host of the 2022 World Cup given its human rights record.<sup>98</sup> Qatar’s National Human Rights Committee identified the Cyber Crime Police of the General Directorate of Criminal Investigation of the Ministry of the Interior as the agency involved.<sup>99</sup> The @QatarFem account was reportedly shut down after this summons, though it is now an existing but locked account.<sup>100</sup> Under CEDAW, Qatar must protect the rights of women human rights defenders (WHRDs) to freedom of expression, including online expression, and freedom from arbitrary detention,<sup>101</sup> but by targeting feminist Twitter users for their online expression, Qatar is violating these obligations. The SR on FOE and the SR on HRDs have condemned attacks targeting WHRDs for their advocacy on the internet and noted the heightened vulnerability of women online.<sup>102</sup>

## **Additional Human Rights Violations**

Arbitrary deprivation of liberty is prohibited under article 9 of the ICCPR and customary international law, and is a *jus cogens* norm.<sup>103</sup> A deprivation is arbitrary including when it is without a legal basis as well as when it results from the exercise of freedom of expression.<sup>104</sup> As WGAD has reiterated, any measure

depriving an individual of liberty must meet strict standards of lawfulness, necessity and proportionality to avoid arbitrariness.<sup>105</sup> Deprivations may be arbitrary when they are based on discriminatory grounds against HRDs and activists, violating the rights to equality before the law and the right to equal protection under article 26 of the ICCPR.<sup>106</sup>

While there is limited information regarding many of the reported incidents, at least two involve arbitrary deprivations of liberty, including arrests and detentions.<sup>107</sup> Qatari authorities arbitrarily detained several stateless members of the Al-Ghufran clan for online expression about their situation, and authorities also detained Mohammad Al-Sulaiti after he used social media to condemn the travel ban imposed on him.<sup>108</sup>

Detained individuals may have experienced other due process violations. Fundamental principles of fair trials are protected under international law at all times.<sup>109</sup> Individuals have universal rights to seek competent, independent, impartial judicial review of the arbitrariness and lawfulness of deprivations of liberty and to obtain without delay adequate and appropriate remedies.<sup>110</sup> Those detained enjoy a number of procedural safeguards of their rights including the right to be informed of rights, the right to initiate court proceedings without delay, and the right to legal assistance of counsel of their choice from the moment of apprehension.<sup>111</sup> Contrary to these obligations, the State Security Bureau subjected Al-Sulaiti to detention and Amnesty International reported there were no disclosed charges against him.<sup>112</sup> He was unable to contest his detention, and he was denied meaningful access to his lawyer.<sup>113</sup>

During his detention, Al-Sulaiti was also unable to communicate with his family for at least two weeks.<sup>114</sup> Incommunicado detention “places an individual outside the protection of the law,”<sup>115</sup> in violation of the article 6 of UDHR and article 16 of the ICCPR,<sup>116</sup> protecting the right to be recognised as a person

before the law.<sup>117</sup> The Special Rapporteur against torture has observed that torture is “most frequently practiced during incommunicado detention,”<sup>118</sup> and it is outlawed by international law.<sup>119</sup> The UN Working Group on Arbitrary Detention considers incommunicado detention a form of arbitrary detention.<sup>120</sup> The SR against Torture has stated that “[i]n all circumstances, a relative of the detainee should be informed of the arrest and place of detention within 18 hours.”<sup>121</sup>

# CONCLUSION AND RECOMMENDATIONS

The government of Qatar has enacted overly broad and vague laws and used arbitrary arrests and detention when enforcing these laws. The government reportedly has targeted and punished individuals for expressing criticism of government policies, speaking out about injustices they have faced personally, as well as speaking out about injustices experienced by members of marginalised groups in Qatar. Based on reported credible evidence, Qatar's actions in these cases violate its international human rights obligations, particularly under ICCPR article 19, to protect the freedom of expression, including online expression.

To address these concerns, we offer the following general recommendations and country-specific recommendations.

## General Recommendations

### *To Governments of Gulf States and Neighbouring Countries:*

- ✦ Eliminate laws and articles in national legal frameworks that criminalise online freedom of expression protected under international human rights law, specifically:
  - All laws including anti-cybercrime, anti-terrorism, communications, media, penal, and technology laws that restrict online or offline expression through provisions to protect public order, national security, or the national economy; insults laws; and laws that criminalise fake news, that do not conform to international human rights standards and satisfy the principles of legality, legitimacy, necessity and proportionality;
  - Decriminalise the offense of defamation;
  - Revise anti-cybercrime laws to include affirmative protection for the legitimate online expression of HRDs, including journalists.
- ✦ Cease using deportation and travel bans as tools for targeting HRDs for their online human rights advocacy, and refrain from infringing on their right to freedom of movement.
- ✦ Reform legal institutions, including the criminal legal system, to promote the independence and autonomy necessary for:
  - Investigating human rights violations committed against HRDs by law enforcement, such as engaging in unlawful surveillance of HRDs, enforced disappearances, holding HRDs in unlawful detention, incommunicado, and subjecting them to ill-treatment and torture;
  - Ensuring that HRDs', citizens', and residents' right to freedom of movement is not violated;
  - Ensuring the judiciary upholds international standards guaranteeing the right to fair trial.

### *To the UN Human Rights Council:*

- ✦ Instruct the UN Office of the High Commissioner for Human Rights to undertake a study of the transnational cooperation among governments to affect the apprehension and rendering of foreign HRDs to their countries of origin for prosecution of online expression that is protected under international law.
- ✦ Instruct the UN Office of the High Commissioner for Human Rights to undertake a study to identify and track developments in the surveillance regimes in each State in the region. The governments in question should cooperate in this study. The study should identify third party actors including business enterprises and other States that contribute to advancing the surveillance infrastructure in each State concerned. State and non-State actors complicit in illegal surveillance of HRDs by governments should be held accountable.

**To All States:**

- ♦ Implement an immediate moratorium on the use, acquisition, sale and transfer of surveillance technology. This moratorium should extend until adequate global controls and safeguards against abuse are in place.
- 2014 Cybercrime Law, article 52;
- The Kafala system used for migrant workers, which underwent significant reform in 2019 and 2020, but continues to enable systemic rights violations of migrants.

**Country Recommendations**

In addition to the above recommendations, States should revise their domestic laws and institutions to ensure compliance with international human rights standards regarding online freedom of expression as indicated below.

**We call on the government of Qatar to create a safe and enabling environment for HRDs including by taking the following steps:**

- ♦ Eliminate laws and articles in Qatar's legal frameworks that criminalise online freedom of expression protected under international human rights law, or that are inconsistent with the right to due process and a fair trial, including:
  - 2019 Law on Combating Terrorism, articles 4, 24, 25;
  - 2014 Cybercrime Prevention Law, articles 6, 8, 53;
  - 2004 Penal Code, articles 134, 136, 136(bis), 138, 326, 327, 330;
  - 2003 Law on the State Security Service, article 2;
  - 2002 Law on Protection of Community, article 1;
  - 1979 Press and Publications Law, articles 46, 47, 82–84.
- ♦ Eliminate the laws and articles in Qatar's legal frameworks that restrict the labour rights of migrant low-wage workers and threaten them with deportation for advocating for their human rights online, including:



## NOTES

- 1 Case information was compiled from the following international sources: Amnesty International, Al Jazeera, ARTICLE 19, British Broadcasting Corporation (BBC), Committee to Protect Journalists, Front Line Defenders, Gulf Centre for Human Rights, Human Rights Watch, and UN Communications to the State of Qatar. Researchers searched these sources for violations of freedom of expression online between 01 May 2018 and 31 October 2020. Researchers also searched for incidents in Qatari news sources: *Gulf Times*, *Qatar Tribune*, and *The Peninsula*. Using the search engine on each news source's website, researchers ran searches with the following terms: Qatar, freedom of expression, online expression, cybercrime, human rights defender, internet, free speech, prosecution, jail, prison, arrest, activist, trials, social media, and censor. Researchers searched "Qatar" to find cases on human rights organisations' websites. Once cases were identified, researchers conducted web searches using the names of those targeted to find more case details. See methodology section for more information.
- 2 Jill Ann Crystal & John Duke Anthony, *Qatar: Government and Society*, BRITANNICA (June 26, 2021). This characterisation of the political system of the country is offered for descriptive purposes; a normative evaluation of the political system as such is beyond the scope of this chapter.
- 3 Michel Forst (Special Rapporteur on the Situation of Human Rights Defenders), *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, ¶ 77, U.N. Doc. A/HRC/31/55 (Feb. 1, 2016); Civil Society Space, Human Rights Council Res. 27/31, U.N. Doc. A/HRC/RES/27/31, ¶ 3 (Oct. 3, 2014); Declaration on the Right and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, G.A. Res. 53/144, U.N. Doc. A/RES/53/144 (Mar. 8, 1999).
- 4 International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR]. Qatar also has ratified CEDAW in 2009, CERD in 1976, the ICESCR in 2018, CAT in 2000, the CRC in 1995, and the CPRD in 2008. *UN Treaty Body Database: Ratification Status for Qatar*, OHCHR.ORG. Qatar is a party to the Arab Charter on Human Rights. League of Arab States, Arab Charter on Human Rights, May 22, 2004, reprinted in 12 Int'l Hum. Rts. Rep. 893 (2005) (entered into force Mar. 15, 2008); *League of Arab States: Key Legal Texts*, INT'L CTR. FOR NOT-FOR-PROFIT L. (Sept. 25, 2021).
- 5 World Conference on Human Rights, *Vienna Declaration and Programme of Action*, pmbl. at 20-21, §§ I(1), I(3), I(8), U.N. Doc. A/CONF.157/24 (Part 1) (Oct. 13, 1993); Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/810, at art. 19 (Dec. 10, 1948) [hereinafter UDHR].
- 6 See e.g., Working Grp. on Arbitrary Det., *Visit to Qatar: Report of the Working Group on Arbitrary Detention*, ¶¶ 85-88, U.N. Doc. A/HRC/45/16/Add.2 (July 30, 2020) [hereinafter WGAD *Qatar Visit Report*]; David Kaye (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression) & Michel Forst (Special Rapporteur on the Situation of Human Rights Defenders), *Communication to Qatar*, Ref. No. OL QAT 1/2020 (Apr. 14, 2020) [hereinafter Apr. 2020 Communication to Qatar]; Hum. Rts. Council, *Report of the Working Group on the Universal Periodic Review: Qatar*, U.N. Doc. A/HRC/42/15 (July 11, 2019) [hereinafter WGAD *Report of July 2019*]; *New Cybercrime Law Could Have Serious Consequences for Press Freedom in Qatar*, COMM. TO PROTECT JOURNALISTS (Sept. 17, 2014); GULF CTR. FOR HUM. RTS., QATAR, CIVIL SOCIETY AND HUMAN RIGHTS: LACK OF CIVIL SOCIETY SPACE HINDERS WORK OF HUMAN RIGHTS DEFENDERS (2016); Amnesty Int'l, *Qatar: Promises Yet to Be Fulfilled—Amnesty International Submission for the Universal Periodic Review, 33rd Session of the UPR Working Group, May 2019*, at 5-6 (May 2019); CIVICUS & Gulf Ctr. for Hum. Rts., *Qatar: Joint Submission to the UN Universal Periodic Review, 33rd Session of the UPR Working Group* (Oct. 4, 2018) [hereinafter *Joint Submission on Qatar to the UPR*].
- 7 See Law No. 14 of 2014 Promulgating the Cybercrime Prevention Law, arts. 6, 8 [hereinafter Cybercrime Law] (Qatar) (unofficial English translation); Hum. Rts. Comm., *General Comment No. 34: Article 19: Freedoms of Opinion and Expression*, ¶¶ 22, 25, 34, 47, U.N. Doc. CCPR/C/GC/34 (Sept. 12, 2011) [hereinafter *HRC General Comment No. 34*].
- 8 Article 21 of the cybercrime law requires service providers to block objectionable content based on judicial requests. They are also required to retain user information for a year and other user data for a renewable period of ninety days. Cybercrime Law, *supra* note 7, at art. 21. The Cybercrime Law defines service

- provider as “[a]ny natural or legal person enabling users to communicate through information technology or processing any storing of information.” *Id.* The Special Rapporteur on Freedom of Opinion and Expression (SR on FOE) has said that mandatory data retention laws threaten the right to privacy and freedom of expression. See Frank La Rue (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Frank La Rue*, ¶¶ 65-67, U.N. Doc. A/HRC/23/40 (Apr. 17, 2013).
- 9 WGAD *Report of July 2019*, *supra* note 6, ¶¶ 134.100, 134.106, 134.107, 134.117; Letter from Michelle Bachelet, High Comm’r for Hum. Rts., U.N., to Excellency (Soltan bin Saad Al-Muraikhi) 4 (Nov. 29, 2019) [hereinafter Nov. 2019 Letter by the High Commissioner to Sultan bin Saad Al-Muraikhi] (Universal Periodic Review Third Cycle—Qatar).
- 10 See Working Grp. on the Universal Periodic Rev., *Report of the Working Group on the Universal Periodic Review: State of Qatar—Addendum—Views on Conclusions and/or Recommendations, Voluntary Commitments and Replies Presented by the State Under Review*, ¶ 6, U.N. Doc. A/HRC/42/15/Add.1 (Aug. 30, 2019).
- 11 Hum. Rts. Comm., *List of Issues in Relation to the Initial Report of Qatar*, ¶ 24, U.N. Doc. CCPR/C/QAT/Q/1 (Aug. 24, 2020).
- 12 Cybercrime Law, *supra* note 7, at art. 6.
- 13 ICCPR, *supra* note 4, at art. 19; UDHR, *supra* note 5, at arts. 11, 19; HRC General Comment No. 34, *supra* note 7, ¶ 25; David Kaye (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, ¶ 7, U.N. Doc. A/HRC/32/38 (May 11, 2016) [hereinafter SRFOE Report of May 2016]; Working Grp. on Arbitrary Det., *Opinion No. 71/2019 Concerning Issa al-Nukhefi, Abdulaziz Youssef Mohamed al-Shubaili and Issa Hamid al-Hamid (Saudi Arabia)*, ¶ 73, U.N. Doc. A/HRC/WGAD/2019/71 (Feb. 14, 2020) (“[V]aguely and broadly worded provisions ... which cannot qualify as *lex certa*, violate the due process of law undergirded by the principle of legality in article 11 (2) of the Universal Declaration of Human Rights.”).
- 14 SRFOE Report of May 2016, *supra* note 13, ¶ 39; Frank La Rue (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Frank La Rue*, ¶ 34, U.N. Doc. A/HRC/17/27 (May 16, 2011) [hereinafter SRFOE Report of May 2011].
- 15 SRFOE Report of May 2016, *supra* note 13, ¶ 39; Margaret Sekaggya (Special Rapporteur on the Situation of Human Rights Defenders), *Situation of Human Rights Defenders*, ¶ 24, U.N. Doc. A/67/292 (Aug. 10, 2012) (“Provisions that criminalize the publication of articles or photos that could harm national security, public order, public health or public interest, incite violence, constitute sedition or have negative consequences for the financial climate of the country are overly broad and restrictive.”).
- 16 U.N. Special Rapporteur on Freedom of Op. & Expression et al., Org. for Sec. & Co-operation in Eur. Representative on Freedom of the Media, Org. of Am. States Special Rapporteur on Freedom of Expression & African Comm’n on Hum. & Peoples’ Rts. Special Rapporteur on Freedom of Expression & Access to Info., *Joint Declaration on Freedom of Expression and “Fake News”, Disinformation and Propaganda*, ¶ 2(a) (Mar. 3, 2017); Apr. 2020 Communication to Qatar, *supra* note 6, at 3.
- 17 Cybercrime Law, *supra* note 7, at art. 8.
- 18 See Qatar: New Cyber Crime Law Poses Real Threat to Freedom of Expression, GCHR (Sept. 17, 2014); Cybercrime Law, *supra* note 7, at art. 8.
- 19 HRC General Comment No. 34, *supra* note 7, ¶ 47. See also SRFOE Report of May 2011, *supra* note 14, ¶ 36 (“defamation should be decriminalized”).
- 20 HRC General Comment No. 34, *supra* note 7, ¶ 47.
- 21 *Id.* See also Frank La Rue (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Frank La Rue*, ¶¶ 83-88, U.N. Doc. A/HRC/20/17 (June 4, 2012).
- 22 Cybercrime Law, *supra* note 7, at art. 6.
- 23 *Id.* at art. 8.
- 24 *Id.* at art. 53.
- 25 *Id.* at art. 52.
- 26 Law No. 2 of 2020 Amending Some Provisions of the Penal Code Issued by Law No. 11 of 2004, art. 2 [hereinafter 2020 Penal Code Amendment Adding Article 136 (bis)] (Qatar) (unofficial Arabic version); see also Apr. 2020 Communication to Qatar, *supra* note 6, at 1. In a letter, the SRs include an unofficial English

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- translation of article 136 *bis*: “A penalty of imprisonment for a period not exceeding five years and a fine of no more than (100,000) one hundred thousand riyals, or one of these two penalties, shall be imposed on anyone who broadcasts, or publishes or re-publishes rumours, statements, false or malicious news or propaganda, at home or abroad, with the intention of harming national interests, provoking public opinion, or violating the social system or public order of the state. The penalty stipulated in the previous paragraph shall be doubled if the crime occurred in wartime.” Apr. 2020 Communication to Qatar, *supra* note 6, at 1.
- 27 2020 Penal Code Amendment Adding Article 136 (bis), *supra* note 26; see also Apr. 2020 Communication to Qatar, *supra* note 6, at 1.
- 28 Apr. 2020 Communication to Qatar, *supra* note 6, at 3.
- 29 *Id.*
- 30 *Id.*
- 31 Law No. 11 of 2004 Issuing the Penal Code, art. 136 [hereinafter Penal Code] (Qatar) (unofficial English translation); see also Working Grp. on Arbitrary Det., *Opinion No. 48/2016 Concerning Mohammed Rashid Hassan Nasser al-Ajami (Qatar)*, ¶ 10, U.N. Doc. A/HRC/WGAD/2016/48 (Jan. 31, 2017) [hereinafter WGAD *Opinion No. 48/2016*].
- 32 Penal Code, *supra* note 31, at art. 134; see also WGAD *Qatar Visit Report*, *supra* note 6, ¶ 39; *Joint Submission on Qatar to the UPR*, *supra* note 6, ¶ 4.2.
- 33 Penal Code, *supra* note 31, at art. 134; see also *Joint Submission on Qatar to the UPR*, *supra* note 6, ¶ 4.2.
- 34 See WGAD *Opinion No. 48/2016*, *supra* note 31, ¶¶ 47, 62; Farida Shaheed (Special Rapporteur in the Field of Cultural Rights) et al., Communication to Qatar, at 2, Ref. No. AL QAT/2/2015 (Oct. 16, 2015).
- 35 See WGAD *Qatar Visit Report*, *supra* note 6, ¶¶ 39-41; WGAD *Opinion No. 48/2016*, *supra* note 31, ¶¶ 45-47.
- 36 See Law No. 22 of 2015 Amending Law No. 11 of 2004, art. 138 (Qatar) (unofficial Arabic version; unofficial English translation of this amendment on file with author); *Emir Issues Laws on Schools, Penal Code*, PENINSULA (Nov. 16, 2015); Amnesty Int’l, *supra* note 6, at 5.
- 37 See HRC General Comment No. 34, *supra* note 7, ¶ 38.
- 38 See Penal Code, *supra* note 31, at arts. 326-27, 330; HRC General Comment No. 34, *supra* note 7, ¶ 47.
- 39 Penal Code, *supra* note 31, at arts. 326-27, 330.
- 40 Law No. 8 of 1979 on Publications and Publishing (Qatar) (unofficial English translation).
- 41 *Id.* at art. 46.
- 42 *Id.* at art. 47.
- 43 *Id.* at arts. 47, 82.
- 44 *Id.* at arts. 80-82, 85.
- 45 *Id.* at arts. 83-84.
- 46 See HRC General Comment No. 34, *supra* note 7, ¶¶ 38, 47 (expressing concern regarding States’ criminalisation of criticism of public figures and criminalisation of defamation).
- 47 Different sources translate the name of the agency created by this law differently in English. Depending on the source, it is called the State Security Service, State Security Agency, or State Security Bureau. For consistency, this chapter includes the term Qatari State officials use for this institution, State Security Bureau. See *Entities Subject to Audit: Qatar State Security Bureau*, STATE AUDIT BUREAU–QATAR (June 21, 2019).
- 48 WGAD *Qatar Visit Report*, *supra* note 6, ¶ 68.
- 49 Law No. 5 of 2003 Establishing the State Security Service, amended 2008, art. 2 [hereinafter State Security Law] (Qatar) (unofficial English translation).
- 50 Law No. 17 of 2002 on Protection of Community, art. 1 [hereinafter Community Protection Law] (Qatar) (unofficial English translation).
- 51 Law No. 27 of 2019 Promulgating the Law on Combating Terrorism [hereinafter Anti-Terrorism Law] (Qatar) (unofficial English translation); see also WGAD *Qatar Visit Report*, *supra* note 6, ¶¶ 77, 94.
- 52 Anti-Terrorism Law, *supra* note 51, at arts. 4, 24-25.
- 53 WGAD *Qatar Visit Report*, *supra* note 6, ¶¶ 76, 94; see also Gabriela Knaul (Special Rapporteur on the Independence of Judges and Lawyers), *Report of the Special Rapporteur on the Independence of Judges and Lawyers, Gabriela Knaul: Addendum—Mission to Qatar*, ¶ 56, U.N. Doc. A/HRC/29/26/Add.1 (Mar. 31, 2015).
- 54 WGAD *Qatar Visit Report*, *supra* note 6, ¶¶ 76, 78, 102(a); Comm. against Torture, *Concluding Observations*

- on the *Third Periodic Report of Qatar*, ¶ 15, U.N. Doc. CAT/C/QAT/CO/3 (June 4, 2018).
- 55 See GULF CTR. FOR HUM. RTS., *supra* note 6; see also Comm. on the Elimination of Discrimination against Women, *Concluding Observations on the Second Periodic Report of Qatar*, ¶ 21, U.N. Doc. CEDAW/C/QAT/CO/2 (July 30, 2019) [hereinafter *Comm. on the Elimination of Discrimination against Women Concluding Observations of July 2019*] (expressing concern on the lack of independent women's rights organisations in Qatar and the burdensome requirements for registration as well as the prohibition on political advocacy).
- 56 *Joint Submission on Qatar to the UPR*, *supra* note 6, ¶¶ 2.2-2.5, 5.2; GULF CTR. FOR HUM. RTS., *supra* note 6, at 10; *Comm. on the Elimination of Discrimination against Women Concluding Observations of July 2019*, *supra* note 55, ¶ 21; AMNESTY INT'L, REALITY CHECK 2020: COUNTDOWN TO THE 2022 WORLD CUP—MIGRANT WORKERS' RIGHTS 25-26 (2020).
- 57 *Joint Submission on Qatar to the UPR*, *supra* note 6, ¶ 2.5; GULF CTR. FOR HUM. RTS., *supra* note 6, at 10.
- 58 GULF CTR. FOR HUM. RTS., *supra* note 6, at 8.
- 59 See, e.g., Nov. 2019 Letter by the High Commissioner to Sultan bin Saad Al-Murairi, *supra* note 9, at 5; GULF CTR. FOR HUM. RTS., *supra* note 6, at 8; see generally "How Can We Work Without Wages?: Salary Abuses Facing Migrant Workers Ahead of Qatar's FIFA World Cup 2022," HUM. RTS. WATCH (Aug. 24, 2020); AMNESTY INT'L, *supra* note 56; AMNESTY INT'L, "WHY DO YOU WANT TO REST?": ONGOING ABUSE OF DOMESTIC WORKERS IN QATAR (2020); AMNESTY INT'L, ALL WORK, NO PAY: THE STRUGGLE OF QATAR'S MIGRANT WORKERS FOR JUSTICE (2019).
- 60 Tendayi Achiume (Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance), *Visit to Qatar: Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance*, ¶ 6, U.N. Doc. A/HRC/44/57/Add.1 (Apr. 27, 2020) [hereinafter *SRR Report of Apr. 2020*].
- 61 See *id.* at Summary, ¶¶ 16-17.
- 62 Qatari authorities have arrested and deported, or threatened to deport, migrant workers for demanding better working conditions. See *Joint Submission on Qatar to the UPR*, *supra* note 6, ¶ 5.3; Gulf Ctr. for Hum. Rts. & CIVICUS, *The State of Qatar: Submission to the UN Universal Periodic Review, 19th Session of the UPR Working Group* ¶ 2.5 (Sept. 16, 2013). Qatari authorities also deport journalists for reporting on workers' rights. See AMNESTY INT'L, HUMAN RIGHTS IN THE MIDDLE EAST AND NORTH AFRICA: REVIEW IN 2018—QATAR 2 (2019). Women non-citizen residents considered censoring their online women's rights advocacy to protect their and their families' legal and employment status. See HUM. RTS. WATCH, "EVERYTHING I HAVE TO DO IS TIED TO A MAN" WOMEN AND QATAR'S MALE GUARDIANSHIP RULES 22 (2021).
- 63 See Cybercrime Law, *supra* note 7, at art. 52; see also *Qatar: Significant Labor and Kafala Reforms*, HUM. RTS. WATCH (Sept. 24, 2020). Qatar has enacted some reforms, but restrictive labour laws continue to limit migrant workers' rights. See *Qatar: Significant Labor and Kafala Reforms*, *supra*.
- 64 Hum. Rts. Comm., *General Comment No. 15: The Position of Aliens Under the Covenant (Twenty-Seventh Session, 1986)*, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, at 141-42, ¶¶ 7, 10, U.N. Doc. HRI/GEN.A/Rev.7 (May 12, 2004) (noting that non-citizens have "the right to hold opinions and to express them," and that ICCPR article 13 is meant "to prevent arbitrary expulsions"); Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, *Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association*, ¶ 42, U.N. Doc. A/74/349 (Sept. 11, 2019) ("stress[ing] that there is no basis in international law for completely divesting non-citizens of their assembly rights").
- 65 Special Rapporteur on the Right to Privacy, *Right to Privacy: Report of the Special Rapporteur on the Right to Privacy*, ¶ 28, U.N. Doc. A/HRC/40/63 (Oct. 16, 2019); Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, *Surveillance and Human Rights: Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, ¶ 21, U.N. Doc. A/HRC/41/35 (May 28, 2019) [hereinafter *SRFOE Report of May 2019*]; Hum. Rts. Comm., *Concluding Observations on the Sixth Periodic Report of Italy*, ¶ 36, U.N. Doc. CCPR/C/ITA/CO/6 (May 1, 2017); Privacy in the Digital Age, G.A. Res. 73/179, U.N. Doc. A/RES/73/179, at 3 (Jan. 21, 2019); UDHR, *supra* note 5, at arts. 12, 18-20; ICCPR, *supra* note 4, at arts. 17-19, 21-22.
- 66 *SRFOE Report of May 2019*, *supra* note 65, ¶ 21.
- 67 *Id.*
- 68 See generally, *Freedom in the World 2020: Qatar*, FREEDOM HOUSE (2020); *How BAE Sold Cyber-Surveillance Tools to Arab States*, BBC NEWS (June 15,

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- 2017); Press Release, Access Now et al., EU: European Parliament Must Vote to Stop Surveillance Equipment Going to Rights-Abusing Governments (Jan. 16, 2008); Ryan Gallagher, *Silicon Valley Investment Firm Profits from Surveillance States*, BLOOMBERG BUSINESSWEEK (Jan. 26, 2021); Morgan Marquis-Boire et al., *Planet Blue Coat: Mapping Global Censorship and Surveillance Tools*, CITIZEN LAB (Jan. 15, 2013); Peter Kovessy, *WikiLeaks: Qatar Spent QR3.2 Million on Computer Snooping Software*, DOHA NEWS (Sept. 15, 2014).
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- Freedom of Opinion and Expression*, ¶¶ 46-49, U.N. Doc. A/71/373 (Sept. 6, 2016) [hereinafter *SRFOE Report of Sept. 2016*]; *SRFOE Report of May 2011*, *supra* note 14, ¶¶ 37, 62.
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- 92 Hum. Rts. Comm., *General Comment No. 37 (2020) on the Right of Peaceful Assembly (Article 21)*, ¶ 33, U.N. Doc. CCPR/C/GC/37 (Sept. 17, 2020).
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- 94 *Id.*
- 95 *Qatar: Families Arbitrarily Stripped of Citizenship*, HUM. RTS. WATCH (May 12, 2019).
- 96 *SRR Report of Apr. 2020*, *supra* note 60, ¶¶ 56, 73.
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- 98 See *id.* at 23; David Harding, *Can Qatar's Feminists Go Where Saudi Arabia's Couldn't?*, OZY (June 22, 2020); *Did Qatar Govt. Force Feminists to Close Their Accounts on Twitter?*, AL BAWABA (Aug. 8, 2019).
- 99 Nat'l Hum. Rts. Comm., *supra* note 75, at 47; Harding, *supra* note 98. This discussion of the Cyber Crime Police likely refers to authorities in the Cybercrime Combating Centre. See *Qatar 2020 Crime & Safety Report*, OVERSEAS SEC. ADVISORY COUNCIL (May 8, 2020) (outlining several of the actors involved in cyber security prevention, education, response, surveillance, data collection, and enforcement, including that the "[Ministry of the Interior]'s Cybercrime Combating Centre provides data and security intelligence to roving security patrols to interdict and investigate criminal acts").
- 100 See *Did Qatar Govt. Force Feminists to Close Their Accounts on Twitter?*, *supra* note 98; Hum. Rts. Watch, *supra* note 62, at 23.
- 101 Convention on the Elimination of All Forms of Discrimination against Women, arts. 3, 7(c), *opened for signature* Dec. 18, 1979, 1249 U.N.T.S. 13.
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- 103 Working Grp. on Arbitrary Det., *Report of the Working Group on Arbitrary Detention: United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court*, ¶ 11, U.N. Doc. A/HRC/30/37 (July 6, 2015) [hereinafter *WGAD Report of July 2015*]; Hum. Rts. Comm., *General Comment No. 35: Article 9 (Liberty and Security of Person)*, ¶¶ 17, 22-23, 53, U.N. Doc. CCPR/C/GC/35 (Dec. 16, 2014).
- 104 *WGAD Report of July 2015*, *supra* note 103, ¶ 10; UDHR, *supra* note 5, at art. 19; ICCPR, *supra* note 4, at art. 19.
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- 106 Working Grp. on Arbitrary Det., *Report of the Working Group on Arbitrary Detention*, ¶ 46, U.N. Doc. A/HRC/36/37 (July 19, 2017); UDHR, *supra* note 5, at art. 7; ICCPR, *supra* note 4, at art. 26.
- 107 *SRHRD Report of Jan. 2019*, *supra* note 102, ¶ 95.
- 108 See AMNESTY INT'L, *supra* note 93, at 56; AMNESTY INT'L, *supra* note 74.
- 109 Hum. Rts. Comm., *General Comment No. 32: Article 14, Right to Equality Before Courts and Tribunals and to Fair Trial*, ¶ 6, U.N. Doc. CCPR/C/GC/32 (Aug. 23, 2007) [hereinafter *HRC General Comment No. 32*].
- 110 *WGAD Report of July 2015*, *supra* note 103, at annex, princ. 1; *HRC General Comment No. 32*, *supra* note 109, ¶¶ 15, 19, 31-34, 38; ICCPR, *supra* note 4, at art. 14.
- 111 *WGAD Report of July 2015*, *supra* note 103, at annex, prins. 7-9; *HRC General Comment No. 32*, *supra* note 109, ¶ 10.
- 112 AMNESTY INT'L, *supra* note 74. As of the date of writing researchers did not locate any further updates.
- 113 *Id.*
- 114 See *id.*
- 115 Working Grp. on Arbitrary Det., *Report of the Working Group on Arbitrary Detention*, ¶ 60, U.N. Doc. A/HRC/39/45 (July 2, 2018) [hereinafter *WGAD Report of July 2018*].
- 116 UDHR, *supra* note 5, at art. 6; ICCPR, *supra* note 4, at art. 6.

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- 117 UDHR, *supra* note 5, at art. 6; ICCPR, *supra* note 4, at art. 16. Additionally, incommunicado detention violates the right to be brought promptly before a judge protected by ICCPR article 9(3) and the right to challenge the lawfulness of detention protected by ICCPR article 9(4). ICCPR, *supra* note 4, at arts. 9(3), 9(4).
- 118 Theo van Boven (Special Rapporteur on Torture), *Report of the Special Rapporteur on the Question of Torture Submitted in Accordance with Commission Resolution 2002/38*, ¶ 26(g), U.N. Doc. E/CN.4/2003/68 (Dec. 17, 2002) [hereinafter *SRT Report of Dec. 2002*].
- 119 Manfred Nowak (Special Rapporteur on Torture), *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak: Addendum—Study on the Phenomena of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in the World, Including an Assessment of Conditions of Detention*, ¶ 156, U.N. Doc. A/HRD/13/39/Add.5 (Feb. 5, 2010) (international law and standards prohibit “all secret and incommunicado detention”); see *Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, G.A. Res. 72/163, U.N. Doc. A/RES/72/163, ¶ 16 (Dec. 19, 2017).
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- 121 *SRT Report of Dec. 2002*, *supra* note 118, ¶ 26(g).





# SAUDI ARABIA



# SAUDI ARABIA SCORECARD

## Targeted Activism or Expression



Criticism of Government\*



Expression re Minority/  
Migrants' Rights



Journalists



Women's Rights and WHRDs

## Human Rights Violations



Privacy & Surveillance



Arbitrary Detention



Incommunicado Detention



Enforced Disappearance



Torture



Arbitrary Deprivation of Life



Fair Trial

## Problematic Legal Provisions and Institutions



Criminal Defamation



Cybercrime Law



Public Order



Specialised Law Enforcement Units

# 112

Number of incidents that fit the inclusion criteria of this study

\*Including criticism of foreign government

# INTRODUCTION

Between 01 May 2018 and 30 October 2020 there were 112 reported incidents in Saudi Arabia that fit this study’s inclusion criteria.<sup>1</sup> Saudi Arabia is a monarchy, governed by a king who serves as head of State and government, and holds a combination of legislative, executive, and judicial power.<sup>2</sup>

The incidents reveal that despite the formal promise of reform in recent years, Saudi authorities continue to apply repressive laws, including cybercrime and counter-terrorism laws, aided by a system of digital surveillance and targeted enforcement campaigns, to target online expression by human rights defenders (HRDs).

During the reporting period, the government used its sweeping enforcement power to target HRDs including journalists in particular. Prosecutions under the cybercrime law and other criminal laws are generally carried out in ordinary criminal courts; however, individuals charged under the counter-terrorism law are tried in the notorious Specialized Criminal Court (SCC), described in greater detail below.<sup>3</sup> Based on this research, there is credible evidence that the government has violated its obligation to respect online freedom of expression and additional associated rights of HRDs. These violations also constitute breaches of the duty of the State, pursuant to the United Nations (UN) Charter, “as the main duty-bearer” to ensure “defenders enjoy a

safe and enabling environment” and that government institutions and processes “are aligned with their safety and the aim of their activities.”<sup>4</sup>

Internet and social media use is widespread in Saudi Arabia. As of January 2021, there were approximately 33.58 million internet users and 27.8 million active social media users, out of Saudi Arabia’s total population of 35.08 million.<sup>5</sup> Facebook estimates that it has a domestic audience of 13 million people in Saudi Arabia, while Twitter estimates that its audience is 12.45 million.<sup>6</sup>

Saudi Arabia is party to a number of international treaties protecting the right to freedom of expression.<sup>7</sup> Though Saudi Arabia is not a party to the International Covenant on Civil and Political Rights, it is a party to the Arab Charter on Human Rights and the UN Charter, and as such has committed to upholding fundamental human rights, including human rights principles contained in the Universal Declaration of Human Rights (UDHR).<sup>8</sup>

# LEGAL ENVIRONMENT FOR ONLINE EXPRESSION IN SAUDI ARABIA

Reported incidents between May 2018 and October 2020 indicate that Saudi Arabia primarily has used two laws to penalize online human rights activism: the 2007 Anti-Cyber Crime Law and the 2017 Law on Combatting Terrorism Crimes and Its Financing. In addition, the Saudi government has utilized uncodified Islamic law to target online human rights advocacy. In tandem with this legal framework, Saudi authorities in specialized law enforcement agencies have implemented sophisticated surveillance systems to crack down on dissent extralegally.

## 2007 Anti-Cybercrime Law

The 2007 Anti-Cyber Crime Law (Cybercrime Law) is one of the Gulf region's earliest cybercrime laws, predating the 2010 Arab Convention on Combatting Information Technology Offenses.<sup>9</sup> The Cybercrime Law came under intense scrutiny during Saudi Arabia's 2018 Universal Periodic Review, where a number of States recommended its amendment to avoid the criminalisation of protected expression.<sup>10</sup> The provision used most often in the cases examined in this report is article 6(1), which criminalises broad online activities such as using computers to store and disseminate "material impinging on public order, religious values, public morals, and privacy," with a penalty of up to five years in prison and a fine of up to SAR 3 million (USD 800,000).<sup>11</sup> Other provisions of this law also interfere with the right to freedom of expression. Article 3(5) of the law criminalises defamation and proscribes a penalty of up to one year in prison or SAR 500,000 (USD 133,300).<sup>12</sup> Article 7 of the law carries excessively harsh penalties: up to ten years in prison or a fine of up to SAR 5 million (USD 1.3 million) for creating or publicising websites for undefined "terrorist organizations" in order to, among other things, "promote their ideologies," or

unlawfully accessing data that jeopardizes national security or the "national economy."<sup>13</sup> Article 13 allows the government to confiscate equipment and software, and censor online content.<sup>14</sup>

The UN Working Group on Arbitrary Detention (WGAD) has expressed concern that the broad and vague definition of cybercrime in this law violates the principle of legality and due process of law, which is enshrined in article 11 of the UDHR.<sup>15</sup> Article 11 requires criminal laws to be sufficiently precise so as to enable individuals to determine how to comply with the law and to limit the discretion conferred on authorities enforcing it.<sup>16</sup> UN Special Rapporteurs have criticized as overly vague provisions that prohibit individuals from using the internet to "upset social order" or "harm the public interest," or from publishing "articles or photos that could harm national security, public order, public health or public interest, incite violence, constitute sedition or have negative consequences for the financial climate of the country."<sup>17</sup> Similarly, the UN Human Rights Council has stipulated four types of expression that should never be subject to restriction: "[d]iscussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups..."<sup>18</sup> WGAD noted that the Cybercrime Law allows authorities to prosecute individuals for expression protected under international human rights laws and norms, including article 19 of the UDHR.<sup>19</sup>

Finally, the law includes excessive penalties, including criminal, as opposed to civil, penalties for

defamation.<sup>20</sup> The UN Human Rights Committee and UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (SR on FOE) have cautioned that laws on defamation should be crafted carefully so that they do not restrict freedom of expression, and have recommended the decriminalisation of defamation.<sup>21</sup> The UN Human Rights Committee has interpreted ICCPR article 19 to require that “the application of criminal law should only be countenanced in the most serious of cases, and imprisonment is never an appropriate penalty.”<sup>22</sup> Finally, it has stated that defamation laws should include the defense of public interest in the subject matter of the criticism, the defense of truth, and, at least in the case of expression related to public figures, the defense of error.<sup>23</sup>

## 2017 Law on Combatting Terrorism Crimes and Its Financing

Saudi Arabia’s Law on Combatting Terrorism Crimes and Its Financing (Counter-Terrorism Law) was enacted in November 2017 and last amended in June 2020.<sup>24</sup> It replaced a 2014 Counter-Terrorism Law which had been internationally criticised, including by the UN Committee Against Torture (CAT).<sup>25</sup> But the new law did little to address international human rights concerns. The law continued to be heavily criticised during Saudi Arabia’s 2018 Universal Periodic Review and by UN Special Procedures mandate holders.<sup>26</sup>

Similar to the Cybercrime Law, the Counter-Terrorism Law is vague and overbroad, enabling the criminalisation of protected expression.<sup>27</sup> Article 1 of the Counter-Terrorism Law defines terrorism acts as those intended to “disturb public order, destabilize national security or state stability, endanger national unity, suspend the Basic Law of Governance or some of its articles, [or] undermine state reputation or status....”<sup>28</sup> Article 3 includes “undermin[ing] the interests of the Kingdom, its economy or national or societal security” as a terrorist aim.<sup>29</sup> Article 30 stipulates that “whoever describes, explicitly or implicitly, the King or the Crown Prince as infidel, or challenges him in his religion or justice

shall be sentenced to” a prison term of between five and ten years.<sup>30</sup> According to the UN Special Rapporteur on human rights and counter-terrorism (SR on HR&CT), under this article “expression of peaceful dissent can be prosecuted as terrorism.”<sup>31</sup> UN human rights bodies have emphasized the value of public debate concerning public figures in particular, who should not be granted a higher level of protection against defamation.<sup>32</sup> The UN Human Rights Committee has expressed particular concern that “laws on such matters as, *lese majesty*, *desacato*, disrespect for authority, disrespect for flags and symbols, defamation of the head of State and the protection of the honour of public officials” and laws prohibiting “criticism of institutions, such as the army or the administration” improperly restrict such public debate.<sup>33</sup>

Article 34 of the Counter-Terrorism Law prohibits calling for, expressing sympathy with, or publicizing terrorist ideology, a terrorist entity, or a terrorist crime, with a prison sentence of between three and eight years.<sup>34</sup> And article 43 prohibits using the internet to “promulgate [a terrorist entity’s] thoughts,” with a prison sentence of between five and twenty years.<sup>35</sup> While States are able under international law to adopt provisions that prohibit incitement to terrorism, the SR on FOE and the SR on HR&CT have stated that any offence of incitement to terrorism must meet strict standards to ensure that it is not vague and overbroad.<sup>36</sup> Special Procedures mandate holders have expressed concern that articles 34 and 43 risk being overbroad and disproportionate, potentially stifling public discussion, media coverage, and protected expression, and extending harsh punishment to expression on the internet.<sup>37</sup>

Article 44 stipulates that “whoever broadcast in any means news, a statement, [or] false or malicious rumour for implementing a terrorist crime, shall be sentenced to” a prison term of between one and five years.<sup>38</sup> This provision is also incompatible with the requirement of legal certainty, as international human rights experts, including the SR on FOE, have urged States to abolish general prohibitions on disseminating “false news” because of their vagueness.<sup>39</sup>

As UN Special Procedures mandate holders have pointed out, the Counter-Terrorism Law has an overly broad and vague definition of *who* constitutes a “terrorist,” criminalising not only those who commit terrorist crimes, but also those who “participate or contribute... indirectly.”<sup>40</sup> The provision fails to provide adequate guidance on who this might include.<sup>41</sup>

The Counter-Terrorism Law raises additional concerns regarding the rights to due process and a fair trial. UN Special Procedures mandate holders have expressed concern that articles 21 and 27 of the Counter-Terrorism Law. These provisions allow authorities to interrogate defendants without the presence of their lawyer, and allow authorities to take testimony of witnesses in court in the absence of the defendant and their lawyer – both articles are inconsistent with international standards on the right to a fair trial.<sup>42</sup> Additionally, the SCC, which tries cases brought under the Counter-Terrorism Law, has been repeatedly criticised as unfair, including by the Committee Against Torture. The Committee Against Torture reported that the SCC is insufficiently independent from the Ministry of the Interior, and that it relies on confessions obtained through torture and ill-treatment, contrary to due process and *jus cogens* (meaning it applies universally and without exception) norms.<sup>43</sup>

The Counter-Terrorism Law also grants Saudi authorities the power to detain individuals indefinitely on vague grounds, which is incompatible with the prohibitions against arbitrary detention, incommunicado detention, and enforced disappearance.<sup>44</sup> Article 19 of the law enables pre-trial detention by the prosecutor for up to a year, which can be further extended by the SCC.<sup>45</sup> Special Procedures mandate holders have described this length of pre-trial detention as going “far beyond what is reasonable.”<sup>46</sup> The Committee Against Torture and UN Special Procedures mandate holders have stated that article 20 of the law allows authorities to detain individuals incommunicado for up to ninety days.<sup>47</sup> The SCC can extend that period seemingly indefinitely, putting detainees at risk of enforced

disappearance and depriving them of safeguards against torture.<sup>48</sup> Furthermore, articles 88 and 89 enable the authorities to send anyone who has been *detained or convicted* under the law to “Specialized Centres” and “Correction and Rehabilitation Centres.”<sup>49</sup> In all, the law grants authorities the discretion to detain individuals under the vague terms of the law, send them to detention centres without convicting them of a crime, and coerce them into “correcting their ideas,” which is contrary to the right to freedom of opinion.<sup>50</sup>

## Uncodified Islamic Law

Finally, in addition to statutes that violate freedom of expression, Saudi authorities also have enforced uncodified Islamic law against human rights advocates.<sup>51</sup> Historically such laws are reported to have been used to target individuals’ expression related to sexuality or gender identity.<sup>52</sup> The unwritten nature of these laws is inconsistent with the principle of legal certainty, and leaves their interpretation entirely at the discretion of Saudi authorities enforcing the law.<sup>53</sup>

## Systems of Repression and Surveillance

Saudi Arabia’s repressive laws, aided by a system of surveillance and specialised law enforcement units, are deployed to punish and chill online human rights advocacy. These surveillance systems and specialised units, through recent restructuring efforts, are increasingly under the unchecked control of the King.<sup>54</sup>

Additionally, Saudi authorities’ use of targeted digital surveillance in the lead up to their killing of journalist Jamal Khashoggi at a Saudi consulate in Turkey in October 2018 has been well documented.<sup>55</sup> Saud al-Qahtani, a former royal advisor implicated in Khashoggi’s murder, was also the former head of the royal court’s Centre for Media Monitoring and Analysis and Centre for Studies and Media Affairs.<sup>56</sup> Al-Qahtani was integral to the development of Saudi

Arabia's surveillance capacity, which has received support from international corporations.<sup>57</sup> The UN Special Rapporteur on extrajudicial killings (SR on EJE) also reports that al-Qahtani significantly shaped Saudi Arabia's broader effort to monitor and crack down on human rights advocates online, which began over a year before Khashoggi's murder.<sup>58</sup> This effort reportedly included the targeting of women human rights defenders (WHRDs) and women's rights activists (discussed in more detail below).<sup>59</sup> Saudi authorities' use of spyware technology against critics of its human rights record reportedly has continued since Khashoggi's murder.<sup>60</sup>

The surveillance of HRDs may violate a number of interrelated rights, including their rights to freedom of expression and opinion, to peaceful assembly and association, to religion or belief, and to privacy.<sup>61</sup> The SR on FOE has noted that surveillance, if conducted for an unlawful purpose, "may be used in an effort to silence dissent, sanction criticism or punish independent reporting (and sources for that reporting)."<sup>62</sup> This in turn has a chilling effect on expression and association.<sup>63</sup> Successive Special Rapporteurs have urged governments to place a moratorium on the global export of surveillance technology to prevent such human rights abuses.<sup>64</sup>

# TRENDS EMERGING FROM REPRESSION OF ONLINE EXPRESSION IN SAUDI ARABIA

Beginning in at least 2017, Saudi Arabia launched a secret campaign to surveil and silence HRDs, including online activists.<sup>65</sup> The murder of Jamal Khashoggi in 2018 brought international attention to this initiative.<sup>66</sup> But reports of arrests well into 2019 and 2020, described in this report, demonstrate that this pattern has persisted since Khashoggi's murder. There is credible evidence that the government has violated repeatedly freedom of expression in social media, particularly Twitter,<sup>67</sup> blogs, and online news websites. The incidents examined offer credible evidence of an ongoing pattern of arrest, detention, punishment, and torture for engaging in legitimate human rights advocacy including criticism of Saudi policies in online fora. The Saudi government also has heavily targeted WHRDs and advocates for LGBTQ rights. Authorities have engaged in widespread surveillance and censorship, which has a chilling effect on expression. HRDs who have reportedly suffered violations of the right to freedom of expression have often experienced additional rights violations, including arbitrary deprivation of life, incommunicado detention, and torture.

## Violations of the Right to Freedom of Expression

### *Ongoing arrest campaigns targeting HRDs in 2019 and 2020*

International human rights law protects the right to freedom of expression of journalists and HRDs, and, in particular, the right to engage in political and religious discourse and to comment on public affairs, including to criticize their government institutions.<sup>68</sup> Despite international criticism for its secret campaign targeting HRDs, including WHRDs, since 2018, Saudi Arabia has persisted in mass arrests of human

rights advocates in targeted waves.<sup>69</sup> Credible reports of arrests of HRDs, journalists, intellectuals and others for their online expression, signals that authorities will respond to criticism of, or collective advocacy regarding, the government's human rights record with harsh punishment.

The recurrence of group arrests also raises concerns regarding the protection of the international right of HRDs to association and peaceful assembly. The UN Human Rights Council has emphasized that States have the obligation to respect and protect the rights to freedom of assembly and association both offline and online.<sup>70</sup> The UN Human Rights Committee has underscored that the protection of activities associated with the right to peaceful assembly, including information dissemination, communication between participants, and broadcasting, is crucial to the exercise of that right.<sup>71</sup>

In early 2019, Saudi authorities arrested sixty-eight Jordanians and Palestinians as well as thirteen Saudis involved in advocacy around human rights issues in Palestine.<sup>72</sup> Officials brought the HRDs before the Specialized Criminal Court in March 2020, and charged them under multiple articles of the Counter-Terrorism Law and article 6 of the Anti-Cyber Crime Law.<sup>73</sup> Authorities prohibited relatives, international observers, and independent lawyers from attending court proceedings; and many of the accused were denied access to medical care and held incommunicado.<sup>74</sup>

In April 2019, Saudi authorities arrested fifteen intellectuals, writers, HRDs including journalists, many of whom were or had been social media activists.<sup>75</sup> The list includes Saudi-American digital activist Salah Al-Haidar, son of prominent women's rights activist Dr. Aziza al-Yousef. He was arrested



for criticising the Saudi government on his Twitter account and provisionally released on 04 February 2021 ahead of a court hearing before the SCC.<sup>76</sup> The list also included writer Ayman Al-Drees, who likely was arrested in an attempt to intimidate his wife, Malak Al-Shehrihas, who lives in the U.S. and is a vocal critic of the Saudi regime on Twitter.<sup>77</sup>

Additionally, at the end of 2019, Saudi authorities arrested at least 10 more Saudi journalists and bloggers, several of whom engaged in online advocacy, including two women journalists – Zana Al-Shahri and Maha Al-Rafidi al-Qahtani.<sup>78</sup> Furthermore, in April 2020, Saudi authorities arrested several writers, journalists, and activists for tweeting condolences regarding the death of another HRD, Abdullah al-Hamid, who died in prison in the custody of Saudi authorities.<sup>79</sup>

These recent incidents offer credible evidence of a persistent pattern of government targeting HRDs for exercising their rights to online freedom of expression.

#### *Silencing WHRDs and advocates for LGBTQ rights*

Since 2017, the Saudi government has announced a number of major reforms related to women's rights.<sup>80</sup> However, despite its formal commitments to reform, there are credible incidents that evidence Saudi authorities continued to prosecute, disappear, detain, and torture WHRDs for their online advocacy and criticism of the government. This continued targeting of WHRDs should be interpreted in the context of the government's broader crackdown on HRDs, contrary to its international human rights obligations, including its treaty obligations under CEDAW and CAT.<sup>81</sup>

Beginning one month before Saudi Arabia lifted the ban on women driving, authorities arrested a number of WHRDs who had advocated online for this change, and for other women's rights reforms. On 15 May 2018, officials arrested bloggers and HRDs Loujain al-Hathloul,<sup>82</sup> Eman al-Nafjan, and Aziza Yousef, all of whom had advocated for women's rights.<sup>83</sup> They were part of a wave of arrests that occurred between May and July 2018, which would

result in mass charges under the Cybercrime Law.<sup>84</sup> Others arrested included Nouf Abdulaziz, Hatoon al-Fassi, Amal al-Harbi, Ruqayya al-Mohareb, Shadan al-Onezi, Nassima al-Sadah, Mayaa al-Zahrani, Samar Badawi, and Abeer Namankani.<sup>85</sup> The electronic communications of at least one of the women were reportedly surveilled prior to her arrest.<sup>86</sup> After their arrests, several WHRDs were reportedly subjected to a smear campaign launched on State media and social media.<sup>87</sup> They also reported having been tortured during their incarceration, including in unidentified and unofficial detention centres.<sup>88</sup>

On 13 March 2019, the trial of at least ten of the WHRDs began in front of the Riyadh Criminal Court, where officials charged them under the Cybercrime Law.<sup>89</sup> The initial hearings were scheduled for the SCC but were all transferred to the Criminal Court hours before they began.<sup>90</sup> Several of the WHRDs were conditionally released after the hearing.<sup>91</sup> Three of the women, al-Nafjan, al-Yousef, and Ruqayya al-Mohareb were released on 28 March 2019.<sup>92</sup>

Al-Hathloul's and al-Zahrani's cases were transferred back to the Specialized Criminal Court, and in December 2020 they were both sentenced to five years and eight months in prison.<sup>93</sup> Al-Zahrani was found guilty of charges related to her activism.<sup>94</sup> Al-Hathloul was found guilty of broad terrorism charges, including "spying with foreign parties," "conspiring against the kingdom," and "agitating for change."<sup>95</sup> She was sentenced to a five-year travel ban,<sup>96</sup> which was upheld by the Riyadh Appeals Court in March 2021,<sup>97</sup> and upheld again by the Supreme Court in May 2021.<sup>98</sup> On 10 February 2021, authorities conditionally released al-Hathloul.<sup>99</sup> Al-Zahrani remains in prison.<sup>100</sup>

The hearings of several more WHRDs, including Badawi and al-Sadah, began on 27 June 2019.<sup>101</sup> Authorities charged all of the WHRDs under the Cybercrime Law, including article 6 of the law.<sup>102</sup> In February 2020, Abdulaziz, Badawi, and al-Sadah all had a secret trial session.<sup>103</sup> In November 2020, the

Criminal Court in Riyadh sentenced Al-Sadah to five years and eight months in prison, half of which was suspended.<sup>104</sup> In March 2021, the Court of Appeal upheld her sentence.<sup>105</sup> There are no confirmed details about the sentence imposed on Badawi.<sup>106</sup> Reportedly Badawi and al-Sadah were released in 27 June 2021, but authorities have prohibited them from working in the field of human rights, publishing on social media, getting a job, or traveling outside Saudi Arabia.<sup>107</sup> Abdulaziz was also convicted for her social media activity, and eventually released on 10 February 2021.<sup>108</sup>

Despite receiving international criticism for the 2018 wave of arrests and ongoing detention of WHRDs, Saudi authorities reportedly have continued to target WHRDs who are critical of government policies. On 17 May 2020, at the command of the Crown Prince Mohammed bin Salman the Presidency of State Security arrested Saudi internet activist Amani Al-Zain.<sup>109</sup> The arrest came after a Twitter campaign called for her arrest in response to a 2019, video of Al-Zain in which she referred to the Crown Prince as the “father of the saw” because of his role in the recent murder of Jamal Khashoggi, who was dismembered with a saw.<sup>110</sup> These credible reports of arrests and detentions run counter to international human rights protections on the right of individuals to criticise their government, and the right of WHRDs to online freedom of expression and freedom of association.<sup>111</sup>

Saudi authorities also have deployed uncodified Islamic law to target individuals advocating for LGBTQ rights. On 08 April 2020, Yemeni blogger Mohamad al-Bokari, who posted a video on social media advocating for equal treatment of gay people, was arrested and later charged under uncodified Islamic law with violating public order and morals, “defending homosexuality online,” and “imitating women.”<sup>112</sup> On 20 July 2020, al-Bokari was sentenced to ten months’ imprisonment and a fine of SAR 10,000 (USD 2,700).<sup>113</sup> Al-Bokari is reported to have been tortured after his arrest.<sup>114</sup> He is also at risk of deportation to Yemen despite facing credible threat of death if he returns, which would be a violation of the principle of non-refoulement.<sup>115</sup> Reports of

al-Bokari’s arbitrary arrest for exercising his right to freedom of expression, torture during detention, and risk of deportation raise concerns that Saudi Arabia is violating several well-established principles of international law.<sup>116</sup>

### *Surveillance*

Saudi Arabia has continued its practice of electronic surveillance targeting HRDs. Credible reports of such surveillance offer evidence that Saudi Arabia has violated HRDs’ right to be free from unlawful interference with their privacy under article 12 of the UDHR, as well as a number of interrelated rights,<sup>117</sup> and chills freedom of expression.<sup>118</sup> For example, Omar Abdulaziz, a Saudi Arabian HRD residing in Canada who regularly communicated with Jamal Khashoggi, reportedly was subjected to surveillance using Pegasus spyware, developed by the Israeli NSO Group.<sup>119</sup> This allowed the Saudi authorities full access to Abdulaziz’s phone’s data, including communications, microphone, and camera, just a few months before Khashoggi’s murder.<sup>120</sup> Such spyware has reportedly been used by Saudi Arabia to target other HRDs around the world.<sup>121</sup> Additionally, at least one of the WHRDs arrested between May and June of 2018 reports having her electronic communications surveilled prior to her arrest.<sup>122</sup>

### *Censorship*

Saudi Arabia has enforced its Cybercrime Law to censor political and artistic content that is critical of the government, a practice incompatible with human rights protections on the right to freedom of expression.<sup>123</sup> In 2018, Netflix, an internet streaming service, removed an episode of the comedy show, “Patriot Act,” at the request of the Saudi government.<sup>124</sup> The removed episode featured an American comedian, Hasan Minhaj, speaking critically of the Saudi government in relation to the murder of Jamal Khashoggi.<sup>125</sup> The Saudi telecommunications regulator cited article 6(1) of the Cybercrime Law.<sup>126</sup> Similarly, HRDs have in the past been banned from social media as part of their punishment for violations of the Cybercrime Law.<sup>127</sup>

## Additional Human Rights Violations

There are credible incidents reported that in its efforts to repress online human rights advocacy between May 2018 and October 2020, the Saudi government arbitrarily arrested, disappeared, tortured, and killed HRDs.

### *Arbitrary deprivation of life*

Saudi Arabia has resorted to extrajudicial killing in its effort to silence human rights advocacy, in violation of the prohibition against the arbitrary deprivation of life, which is considered *jus cogens* and non-derogable under international law.<sup>128</sup> The brutal murder of journalist Jamal Khashoggi orchestrated by the Saudi government in October 2018 is one such example.<sup>129</sup> Khashoggi was a documented critic of the Saudi government.<sup>130</sup> In the months leading up to his murder, he had published opinion pieces criticizing Saudi Arabia's May 2018 arrest and subsequent treatment of WHRDs, and its responsibility for the human rights abuses caused by the Saudi-led war effort in Yemen.<sup>131</sup> In addition to Saudi officials who were criminally tried for Khashoggi's murder, the SR on EJE has reported on evidence that the Crown Prince Mohammed Bin Salman and his former royal advisor, Saud al-Qahtani, were also responsible for orchestrating Khashoggi's murder.<sup>132</sup>

### *Arbitrary deprivation of liberty, incommunicado detention, and enforced disappearance*

The prohibition against arbitrary deprivations of liberty is customary international law, considered *jus cogens*, and therefore non-derogable.<sup>133</sup> A deprivation is arbitrary including when it is without a legal basis as well as when it results from the exercise of freedom of expression.<sup>134</sup> As the UN Working Group on Arbitrary Detention has reiterated, any measure depriving an individual of liberty must meet strict standards of lawfulness, necessity, and proportionality to avoid arbitrariness.<sup>135</sup> Deprivations may be arbitrary when they are based on discriminatory grounds against HRDs, violating the right to equality before the law.<sup>136</sup> Saudi Arabia routinely violated this

prohibition by reportedly detaining individuals based on overbroad and vague laws, including the Counter-Terrorism Law and the Cybercrime Law, by detaining individuals with no legal basis at all, and by detaining individuals based on the exercise of their right to freedom of expression.

Incommunicado detention "places an individual outside the protection of the law,"<sup>137</sup> in violation of article 6 of the UDHR<sup>138</sup> protecting the right to be recognized as a person before the law.<sup>139</sup> The Special Rapporteur on torture has observed that torture is "most frequently practiced during incommunicado detention,"<sup>140</sup> and it is outlawed by international law.<sup>141</sup> The UN Working Group on Arbitrary Detention considers incommunicado detention a form of arbitrary detention.<sup>142</sup> The SR on torture has stated that "[i]n all circumstances, a relative of the detainee should be informed of the arrest and place of detention within 18 hours."<sup>143</sup> But as described above, the Counter-Terrorism Law enables incommunicado detention.<sup>144</sup> Saudi authorities have used this power to target online human rights advocates in several of the cases examined, including the WHRDs who the government arrested between May and June 2018.<sup>145</sup>

Enforced disappearance is an international crime and is prohibited by customary law<sup>146</sup> as well as treaty.<sup>147</sup> An enforced disappearance has three elements: (1) a deprivation of liberty; (2) by State officials or with their consent; followed by (3) the refusal to acknowledge the deprivation of liberty, or to disclose information on the fate or location of the disappeared.<sup>148</sup> An individual may be held incommunicado but is not considered to be disappeared unless the State does not disclose any one of the following pieces of information: whether the person is detained, where the person is detained, and if the person is alive or dead. In June 2018, Yemeni journalist and social media activist, Marwan Alif Naji Al Muraisy, was arrested by plainclothes officers<sup>149</sup> who did not present him with an arrest warrant, and subsequently detained him at an undisclosed location.<sup>150</sup> Al Muraisy's location remained unknown to his family until April 2019.<sup>151</sup> He was allowed contact with his family from May 2019 to April

2020, when contact was cut off in response to the COVID-19 pandemic.<sup>152</sup> He is held at Al-Ha'ir Prison.<sup>153</sup> Al Muraisy was charged under articles 2 and 5 of the Counter-Terrorism Law.<sup>154</sup> Additionally, the WGAD indicated that Loujain Al-Hathloul's transfer to an unknown hotel in Jeddah in May to July of 2018 also constituted an enforced disappearance.<sup>155</sup>

### *Due process violations*

Fundamental principles of fair trials are protected under international law at all times.<sup>156</sup> Individuals have universal rights to seek competent, independent, impartial judicial review of the arbitrariness and lawfulness of deprivations of liberty and to obtain without delay adequate and appropriate remedies.<sup>157</sup> Those detained enjoy a number of procedural safeguards of their rights, including the right to be informed of rights, the right to initiate court proceedings without delay, and the right to legal assistance of counsel of their choice from the moment of apprehension.<sup>158</sup>

The Specialised Criminal Court, which has tried several of the individuals mentioned in this chapter, has been repeatedly criticized as unfair. These criticisms arise out of reports of violations of a number of due process rights, including administering secret or closed trials, admitting evidence obtained through torture, and allowing trials to proceed in the absence of representation for all parties.<sup>159</sup>

### *Torture*

The prohibition against torture is absolute, non-derogable, and a *jus cogens* norm of international law.<sup>160</sup> Saudi Arabia is reported to have tortured individuals detained for their online expression, in violation of this prohibition. Several of the WHRDs arrested between May and June 2018 were reportedly subjected to electric shocks, sexual abuse, psychological abuse and other ill-treatment, and held in unofficial and unidentified detention centres.<sup>161</sup> At least some of the WHRDs report having seen Saud al-Qahtani, the royal advisor who was responsible for organizing Khashoggi's murder, in the torture chamber.<sup>162</sup> Additionally, the Yemeni blogger and

LGBTQ activist Mohamad al-Bokari, was reportedly subject to torture, including sexual abuse.<sup>163</sup> If he is deported, Saudi Arabia may additionally be violating the prohibition against non-refoulement in violations of its obligations under CAT.<sup>164</sup>

# CONCLUSION AND RECOMMENDATIONS

Despite its obligations under international human rights law, Saudi Arabia enforces its arbitrary penal laws to silence HRDs who advocate online for the protection of human rights. Reports of this suppression represent credible evidence of grave violations of the right to freedom of expression. Furthermore, there is also credible evidence that Saudi Arabia has carried out extrajudicial killings, torture, arbitrary arrests and detention, enforced disappearances, and due process violations in its efforts to suppress online freedom of expression of HRDs.

To address these concerns, we offer the following general recommendations and country-specific recommendations.

## General Recommendations

### *To Governments of Gulf States and Neighbouring Countries:*

- ✦ Eliminate laws and articles in national legal frameworks that criminalise online freedom of expression protected under international human rights law, specifically:
  - All laws including anti-cybercrime, anti-terrorism, communications, media, penal, and technology laws that restrict online or offline expression through provisions to protect public order, national security, or the national economy; insults laws; and laws that criminalise fake news, that do not conform to international human rights standards and satisfy the principles of legality, legitimacy, necessity and proportionality;
  - Decriminalise the offense of defamation;
  - Revise anti-cybercrime laws to include

affirmative protection for the legitimate online expression of HRDs, including journalists.

Cease using deportation and travel bans as tools for targeting HRDs for their online human rights advocacy, and refrain from infringing on their right to freedom of movement.

- ✦ Reform legal institutions, including the criminal legal system, to promote the independence and autonomy necessary for:
  - Investigating human rights violations committed against HRDs by law enforcement, such as engaging in unlawful surveillance of HRDs, enforced disappearances, holding HRDs in unlawful detention, incommunicado, and subjecting them to ill-treatment and torture;
  - Ensuring that HRDs', citizens', and residents' right to freedom of movement is not violated;
  - Ensuring the judiciary upholds international standards guaranteeing the right to fair trial.

### *To the UN Human Rights Council:*

- ✦ Instruct the UN Office of the High Commissioner for Human Rights to undertake a study of the transnational cooperation among governments to affect the apprehension and rendering of foreign HRDs to their countries of origin for prosecution of online expression that is protected under international law.
- ✦ Instruct the UN Office of the High Commissioner for Human Rights to undertake a study to identify and track developments in the surveillance regimes in each State in the region. The governments in question should cooperate in this study. The study should identify third party actors including business enterprises and other States that contribute

to advancing the surveillance infrastructure in each State concerned. State and non-State actors complicit in illegal surveillance of HRDs by governments should be held accountable.

To All States:

- ✦ Implement an immediate moratorium on the use, acquisition, sale and transfer of surveillance technology. This moratorium should extend until adequate global controls and safeguards against abuse are in place.

## Country Recommendations

In addition to the above recommendations, States should revise their domestic laws and institutions to ensure compliance with international human rights standards regarding online freedom of expression as indicated below.

**We call on the government of Saudi Arabia to create a safe and enabling environment for HRDs including by taking the following steps:**

- ✦ Eliminate laws and articles in Saudi Arabia's legal frameworks that criminalise online freedom of expression protected under international human rights law, or that are inconsistent with the right to due process and a fair trial, including those in:
  - 2007 Anti-Cyber Crime Law, articles 3(5), 6(1), 7 and 13;
  - 2017 Law on Combatting Terrorism Crimes and Its Financing, articles 1, 3, 19–21, 27, 30, 34, 43, 44, 88, 89.
- ✦ Ensure that any application of law, including uncodified Islamic law, is consistent with principles of legality, legitimacy, necessity, and proportionality.

## NOTES

- 1 In many of the incidents we examined, there were several individuals implicated, but we only counted those individuals who we could reasonably ascertain were targeted for their online expression. Researchers identified reported incidents of violations of online freedom of expression by conducting searches for cases involving Saudi Arabia between May 2018 and October 2020, from the following international media outlets and human rights organisations that document human rights violations: Amnesty International, Al Jazeera, ARTICLE 19, British Broadcasting Corporation, Committee to Protect Journalists, Front Line Defenders, Gulf Centre for Human Rights, and Human Rights Watch. We also conducted those searches on ALQST's website. Researchers also searched for communications from special procedures mandate holders regarding incidents alleging violations of freedom of expression in Saudi Arabia in the UN database of Communications. Additionally, we also reviewed English-language versions of the following sources to find incidents in Saudi Arabia: *Arab News*, *Riyadh Daily*, *Saudi Arabia News Gazette*, *Saudi Gazette*, and *Saudi Press Agency* using these keywords: freedom of expression, digital expression, digital, online, post, tweet, Twitter, Facebook, arrest, expression, and human rights defender during the relevant period of study. The domestic sources provided no relevant results. After finding cases using the international sources, researchers conducted additional searches using the Google search engine of the victim's name (with various English spellings) to find additional case information. See methodology section for more information.
- 2 Harry St. John Birdger, Joshua Teitelbaum & William L. Ochsenwarld, *Saudi Arabia: Government and Society*, BRITANNICA (May 29, 2021). This characterisation of the political system of the country is offered for descriptive purposes; a normative evaluation of the political system as such is beyond the scope of this chapter.
- 3 Comm. against Torture, *Concluding Observations on the Second Periodic Report of Saudi Arabia*, ¶ 17, U.N. Doc. CAT/C/SAU/CO/2 (June 8, 2016) [hereinafter *Comm. against Torture Concluding Observations of June 2016*]; Comm. against Torture, *Concluding Observations on the Second Periodic Report of Saudi Arabia: Corrigendum*, U.N. Doc. CAT/C/SAU/CO/2/Corr.1 (Nov. 3, 2016).
- 4 Michel Forst (Special Rapporteur on the Situation of Human Rights Defenders), *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, ¶ 77, U.N. Doc. A/HRC/31/55 (Feb. 1, 2016); Civil Society Space, Human Rights Council Res. 27/31, U.N. Doc. A/HRC/RES/27/31, ¶ 3 (Oct. 3, 2014); Declaration on the Right and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, G.A. Res. 53/144, U.N. Doc. A/RES/53/144 (Mar. 8, 1999).
- 5 Simon Kemp, *Digital 2021: Saudi Arabia*, DATAREPORTAL (Feb. 10, 2021).
- 6 *Id.*
- 7 Saudi Arabia is a party to the Convention on the Elimination of All Forms of Racial Discrimination, article 5 of which protects freedom of expression. International Convention on the Elimination of All Forms of Racial Discrimination art. 5, *opened for signature* Mar. 7, 1966, 660 U.N.T.S. 195. The country also is party to the Convention against Torture and the Convention on the Elimination of All Forms of Discrimination Against Women. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *opened for signature* Dec. 10, 1984, 1465 U.N.T.S. 85 [hereinafter CAT]; Convention on the Elimination of All Forms of Discrimination against Women, *opened for signature* Dec. 18, 1979, 1249 U.N.T.S. 13; *UN Treaty Body Database: Ratification Status for Saudi Arabia*, OHCHR.ORG.
- 8 World Conference on Human Rights, *Vienna Declaration and Programme of Action*, pmbl. at 20-21, §§ I(1), I(3), I(8), U.N. Doc. A/CONF.157/24 (Part 1) (Oct. 13, 1993); Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/810, at art. 19 (Dec. 10, 1948) [hereinafter UDHR]; League of Arab States, Arab Charter on Human Rights, May 22, 2004, reprinted in 12 Int'l Hum. Rts. Rep. 893 (2005) (entered into force Mar. 15, 2008) ("Reaffirming the principles of the Charter of the United Nations, the Universal Declaration of Human Rights and the provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and having regard to the Cairo Declaration on Human Rights in Islam."); *League of Arab States: Key Legal Texts*, INT'L CTR. FOR NOT-FOR-

- PROFIT L. (Sept. 25, 2021); Ben Emmerson (Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism), *Visit to Saudi Arabia: Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism*, ¶ 7, U.N. Doc. A/HRC/40/52/Add.2 (Dec. 13, 2018) [hereinafter *SRHRCT Report of Dec. 2018*] (describing Saudi Arabia's international legal obligations in December 2018).
- 9 Anti-Cyber Crime Law, Royal Decree No. M/17 of 2007 [hereinafter *Cybercrime Law*] (Saudi Arabia) (official English translation); Arab Convention on Combatting Information Technology, adopted by the League of Arab States (Dec. 21, 2010) (unofficial English translation).
- 10 Working Grp. on the Universal Periodic Rev., *Report of the Working Group on the Universal Periodic Review: Saudi Arabia*, at 15-19, U.N. Doc. A/HRC/40/4 (Dec. 26, 2018) [hereinafter *Working Grp. on the Universal Periodic Rev. Report of Dec. 2018*].
- 11 *Cybercrime Law*, *supra* note 9, at art. 6.
- 12 *Id.* at art. 3(5).
- 13 *Id.* at art. 7.
- 14 *Id.* at art. 13.
- 15 Working Grp. on Arbitrary Det., *Opinion No. 71/2019 Concerning Issa al-Nukhefi, Abdulaziz Youssef Mohamed al-Shubaili and Issa Hamid al-Hamid (Saudi Arabia)*, ¶¶ 23, 75, U.N. Doc. A/HRC/WGAD/2019/71 (Feb. 14, 2020) [hereinafter *WGAD Opinion No. 71/2019*]; UDHR, *supra* note 8, at art. 11.
- 16 *WGAD Opinion No. 71/2019*, *supra* note 15, ¶ 73 (“vaguely and broadly worded provisions ... which cannot qualify as *lex certa*, violate the due process of law undergirded by the principle of legality in article 11 (2) of the Universal Declaration of Human Rights.”); Hum. Rts. Comm., *General Comment No. 34: Article 19: Freedoms of Opinion and Expression*, ¶ 25, U.N. Doc. CCPR/C/GC/34 (Sept. 12, 2011) [hereinafter *HRC General Comment No. 34*]; David Kaye (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, ¶ 7, U.N. Doc. A/HRC/32/38 (May 11, 2016) [hereinafter *SRFOE Report of May 2016*]. Letter from Michelle Bachelet, High Comm’r for Hum. Rts., U.N., to Ibrahim Abdulaziz Al-Assaf, Minister of Foreign Affs., Kingdom of Saudi Arabia 4 (Apr. 29, 2019) (UPR recommendation regarding the amendment of the Cybercrime Law and the Counter-Terrorism Law).
- 17 *SRFOE Report of May 2016*, *supra* note 16, ¶ 39; Margaret Sekaggya (Special Rapporteur on the Situation of Human Rights Defenders), *Situation of Human Rights Defenders*, ¶ 24, U.N. Doc. A/67/292 (Aug. 10, 2012) (“Provisions that criminalize the publication of articles or photos that could harm national security, public order, public health or public interest, incite violence, constitute sedition or have negative consequences for the financial climate of the country are overly broad and restrictive.”).
- 18 Freedom of Opinion and Expression, Human Rights Council Res. 12/16, U.N. Doc. A/HRC/RES/12/16, ¶ 5(p)(i) (Oct. 12, 2009) [hereinafter *H.R.C. Res. 12/16*].
- 19 Fionnuala Ní Aoláin (Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism) et al., Communication to Saudi Arabia, at 3, Ref. No. OL SAU 12/2020 (Dec. 17, 2020) [hereinafter *Dec. 2020 Communication to Saudi Arabia*]; *WGAD Opinion No. 71/2019*, *supra* note 15, ¶ 74; UDHR, *supra* note 8, at art. 19.
- 20 *Cybercrime Law*, *supra* note 9, at art. 3(5).
- 21 *HRC General Comment No. 34*, *supra* note 16, ¶ 47. See also Frank LaRue (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, Frank La Rue, ¶ 36, U.N. Doc. A/HRC/17/27 (May 16, 2011) [hereinafter *SRFOE Report of May 2011*] (“defamation should be decriminalized”).
- 22 *HRC General Comment No. 34*, *supra* note 16, ¶ 47.
- 23 *Id.* See also Frank La Rue (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, Frank La Rue, ¶¶ 83-88, U.N. Doc. A/HRC/20/17 (June 4, 2012) [hereinafter *SRFOE Report of June 2012*].
- 24 Law on Combating Crimes of Terrorism and Its Financing of 2017 [hereinafter *Counter-Terrorism Law*] (Saudi Arabia) (unofficial English translation); Dec. 2020 Communication to Saudi Arabia, *supra* note 19, at 1 (describing recent amendment to the law).



NOTES

- 25 *Comm. against Torture Concluding Observations of June 2016*, *supra* note 3, ¶ 18; *SRHRCT Report of Dec. 2018*, *supra* note 8, ¶¶ 21-29.
- 26 Working Grp. on the Universal Periodic Rev., *supra* note 10, at 15-18; Dec. 2020 Communication to Saudi Arabia, *supra* note 19, at 23-24.
- 27 Dec. 2020 Communication to Saudi Arabia, *supra* note 19, at 6-8, 9-10; *SRHRCT Report of Dec. 2018*, *supra* note 8, ¶¶ 18-19 (urging Saudi Arabia to amend its 2014 Penal Law for Crimes of Terrorism to ensure that it does not allow for the criminalisation of peaceful expression, and identifying articles 30 and 44 of the law as enabling the prosecution of peaceful advocacy, including criticism of the King); *Comm. against Torture Concluding Observations of June 2016*, *supra* note 3, ¶ 16.
- 28 Counter-Terrorism Law, *supra* note 24, at art. 1(3). The Basic Law of Governance is considered Saudi Arabia's de facto constitution. Musawah, *Thematic Report on Muslim Family Law and Muslim Women's Rights in Saudi Arabia 4* (Feb. 2018) (submission to 69th CEDAW Session). It prohibits actions that might lead to division, requires citizens to express allegiance to the king, prohibits using impolite or uncivil language on mass media and other forms of expression, and several other vague acts that, when criminalised as terrorism, "constitute a restriction, not only on the freedom of thought, conscience and religion, but also to the freedom of opinion and expression." Dec. 2020 Communication to Saudi Arabia, *supra* note 19, at 9. See, e.g., Basic Law of Governance of 1992 arts. 6, 12, 39 (Saudi Arabia) (unofficial English translation).
- 29 Counter-Terrorism Law, *supra* note 24, at art. 3.
- 30 *Id.* at art. 30.
- 31 *SRHRCT Report of Dec. 2018*, *supra* note 8, ¶ 19.
- 32 *HRC General Comment No. 34*, *supra* note 16, ¶ 38; *SRFOE Report of June 2012*, *supra* note 23, ¶ 88; David Kaye (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Promotion and Protection of the Right to Freedom of Opinion and Expression*, ¶ 33, U.N. Doc. A/71/373 (Sept. 6, 2016).
- 33 *HRC General Comment No. 34*, *supra* note 16, ¶ 38.
- 34 Counter-Terrorism Law, *supra* note 24, at art. 34.
- 35 *Id.* at art. 43.
- 36 Ben Emmerson (Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism), *Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism*, ¶ 24, U.N. Doc. A/HRC/31/65 (Apr. 29, 2016); Frank LaRue (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Promotion and Protection of the Right to Freedom of Opinion and Expression*, ¶ 34, U.N. Doc. A/66/290 (Aug. 10, 2011) [hereinafter *SRFOE Report of Aug. 2011*].
- 37 Dec. 2020 Communication to Saudi Arabia, *supra* note 19, at 7, 12-13.
- 38 Counter-Terrorism Law, *supra* note 24, at art. 44.
- 39 U.N. Special Rapporteur on Freedom of Op. & Expression et al., *Joint Declaration on Freedom of Expression and "Fake News", Disinformation and Propaganda*, ¶ 2(a) (Mar. 3, 2017); Dec. 2020 Communication to Saudi Arabia, *supra* note 19, at 10.
- 40 Counter-Terrorism Law, *supra* note 24, at art. 47; Dec. 2020 Communication to Saudi Arabia, *supra* note 19, at 7.
- 41 Counter-Terrorism Law, *supra* note 24, at art. 47; Dec. 2020 Communication to Saudi Arabia, *supra* note 19, at 7.
- 42 Counter-Terrorism Law, *supra* note 24, at arts. 21, 27; Dec. 2020 Communication to Saudi Arabia, *supra* note 19, at 18, 20-22; *SRHRCT Report of Dec. 2018*, *supra* note 8, ¶¶ 40, 46.
- 43 *Comm. against Torture Concluding Observations of June 2016*, *supra* note 3, ¶ 17. See also *SRHRCT Report of Dec. 2018*, *supra* note 8, ¶ 47; *WGAD Opinion No. 71/2019*, *supra* note 15, ¶ 44; AMNESTY INT'L, MUZZLING CRITICAL VOICES: POLITICIZED TRIALS BEFORE SAUDI ARABIA'S SPECIALIZED CRIMINAL COURT (2019).
- 44 Dec. 2020 Communication to Saudi Arabia, *supra* note 19, at 20-22.
- 45 Counter-Terrorism Law, *supra* note 24, at art. 19.
- 46 Dec. 2020 Communication to Saudi Arabia, *supra* note 19, at 21.
- 47 Counter-Terrorism Law, *supra* note 24, at art. 20; *Comm. against Torture Concluding Observations of June 2016*, *supra* note 3, ¶ 16; Dec. 2020 Communication to Saudi Arabia, *supra* note 19, at 20-22; *SRHRCT Report of Dec. 2018*, *supra* note 8, ¶ 39.

- 48 Counter-Terrorism Law, *supra* note 24, at art. 20; Dec. 2020 Communication to Saudi Arabia, *supra* note 19, at 20-22.
- 49 Counter-Terrorism Law, *supra* note 24, at arts. 88-89.
- 50 Dec. 2020 Communication to Saudi Arabia, *supra* note 19, at 13-16.
- 51 *Saudi Arabia: Yemeni Blogger Convicted for Supporting LGBT Rights*, HUM. RTS. WATCH (JULY 27, 2020)
- 52 *Saudi Arabia: Events of 2017*, HUM. RTS. WATCH; *Saudi Arabia: Yemeni Blogger Convicted for Supporting LGBT Rights*, *supra* note 51 (“Saudi Arabia has no written laws concerning sexual orientation or gender identity, but judges use principles of uncodified Islamic law to sanction people suspected of having sexual relations outside marriage, including adultery, extramarital and homosexual sex, or other ‘immoral’ acts.”).
- 53 Yakin Etatürk (Special Rapporteur on Violence Against Women), *Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences*, Yakin Etatürk: Addendum—Mission to Saudi Arabia, ¶ 74-77, U.N. Doc. A/HRC/11/6/Add.3 (Apr. 14, 2009).
- 54 In 2017, Saudi Arabia’s prosecution and security apparatus were placed directly under the control of the King, and the counterterrorism and domestic intelligence services were consolidated under a newly-created apparatus—the Presidency of State Security, also directly under the control of the King. *Saudi Arabia Creates New Security Authority*, SAUDI GAZETTE (July 20, 2017); *SRHRCT Report of Dec. 2018*, *supra* note 8, at ¶ 12.
- 55 See BILL MARCZAK ET AL., *THE CITIZEN LAB, THE KINGDOM CAME TO CANADA: HOW SAUDI-LINKED DIGITAL ESPIONAGE REACHED CANADIAN SOIL* (2018).
- 56 (Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions), *Annex to the Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions: Investigation into the Unlawful Death of Mr. Jamal Khashoggi*, ¶¶ 201, 253, U.N. Doc. A/HRC/41/CRP.1 (June 19, 2019) [hereinafter *Annex to SREJE Report of June 2019*]; Middle E. Eye & Agencies, *MBS Messages Intercepted by CIA Bolster View Prince Targeted Khashoggi: Report*, MIDDLE E. EYE (Dec. 3, 2018). One open-source investigation into Saud Al-Qahtani revealed that in his role as Royal Advisor and head of the Centre for Media Monitoring and Analysis, he attempted to procure surveillance technology from the Italian company Hacking Team. See BELLINGCAT, *LORD OF THE FLIES: AN OPEN-SOURCE INVESTIGATION INTO SAUD AL-QAHTANI* 10.
- 57 Lorenzo Franceschi-Bicchierai, *How ‘Mr. Hashtag’ Helped Saudi Arabia Spy on Dissidents*, VICE (Oct. 29, 2018); BILL MARCZAK ET AL., *supra* note 55.
- 58 Al-Qahtani was reportedly active on social media, nicknamed “Mr. Hashtag,” and once urged his Twitter followers to assist him in drawing up a blacklist of those who criticised Saudi Arabia. *Annex to SREJE Report of June 2019*, *supra* note 56, ¶ 253. Al-Qahtani is also reported to have been responsible for torturing the six WHRDs discussed in greater detail below. *Id.* ¶ 254; Ayman Mohyeldin, *U.S. Citizens and Other Westerners Caught up in Saudi Arabia’s Fierce Crackdown on Dissenters*, NBC NEWS (July 29, 2019); Madawi al-Rasheed, *Saudi Arabia’s Mr Hashtag: Where Is Saud al-Qahtani?*, MIDDLE E. EYE (Sept. 3, 2019).
- 59 Mark Mazzetti & Ben Hubbard, *It Wasn’t Just Khashoggi: A Saudi Prince’s Brutal Drive to Crush Dissent*, N.Y. TIMES (Mar. 17, 2019).
- 60 *UN Experts Call for Investigation into Allegations that Saudi Crown Prince Involved in Hacking of Jeff Bezos’ Phone*, UNITED NATIONS HUM. RTS. OFF. HIGH COMM’R (Jan. 22, 2020).
- 61 Special Rapporteur on the Right to Privacy, *Report of the Special Rapporteur on the Right to Privacy*, ¶ 28, U.N. Doc. A/HRC/40/63 (Oct. 16, 2019) [hereinafter *SRP Report of Oct. 2019*]; Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, *Surveillance and Human Rights: Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, ¶ 21, U.N. Doc. A/HRC/41/35 (May 28, 2019) [hereinafter *SRFOE Report of May 2019*]; Hum. Rts. Comm., *Concluding Observations on the Sixth Periodic Report of Italy*, ¶ 36, U.N. Doc. CCPR/C/ITA/CO/6 (May 1, 2017) [hereinafter *HRC Concluding Observations of May 2017*]; *The Right to Privacy in the Digital Age*, G.A. Res. 73/179, U.N. Doc. A/RES/73/179, at 3 (Jan. 21, 2019) [hereinafter *G.A. Res. 73/179*].
- 62 *SRFOE Report of May 2019*, *supra* note 61, ¶ 21.
- 63 *Id.* ¶ 21.
- 64 *UN Experts Call for Investigation into Allegations that Saudi Crown Prince Involved in Hacking of Jeff Bezos’ Phone*, *supra* note 60.
- 65 HUM. RTS. WATCH, *THE HIGH COST OF CHANGE: REPRESSION UNDER SAUDI CROWN PRINCE TARNISHES REFORMS* 22 (2019); Mazzetti and Hubbard, *supra* note 59.

- 66 See HUM. RTS. WATCH, *supra* note 65, at 3-4.
- 67 Additionally, in 2019, two former Twitter employees were charged in U.S. Federal Court for acting as agents of the Saudi government and sharing with it confidential account information of Twitter users who criticized the Saudi government and members of the Saudi Royal Family. Criminal Complaint, *United States v. Abouammo*, No. 19-CR00621 (N.D. Cal. 2019), 2019 WL 8223829; *Ex-Twitter Employees Accused of Spying for Saudi Arabia*, BBC (Nov. 7, 2019).
- 68 H.R.C. Res. 12/16, *supra* note 18, ¶ 5(p)(i); HRC General Comment No. 34, *supra* note 16, ¶¶ 11-12; Michel Forst (Special Rapporteur on the Situation of Human Rights Defenders), *Situation of Human Rights Defenders*, ¶ 36, U.N. Doc. A/73/215 (July 23, 2018) [hereinafter *SRHRD Report of July 2018*]; *SRFOE Report of Aug. 2011*, *supra* note 36, ¶ 30.
- 69 See HUM. RTS. WATCH, *supra* note 65, at 3-4 (“The repressive side of MBS’s domestic record, however, was not given the international scrutiny it deserved until October 2018, when the violent murder of Saudi journalist and Washington Post columnist Jamal Khashoggi at Saudi Arabia’s Istanbul consulate shocked global opinion and led to a broader examination of the human rights situation in Saudi Arabia.”).
- 70 The Promotion, Protection, and Enjoyment of Human Rights on the Internet, Human Rights Council Res. 38/7, U.N. Doc. A/HRC/RES/38/7, ¶ 1 (July 17, 2018). Those rights are protected under article 20 of the UDHR, *supra* note 8.
- 71 Hum. Rts. Comm., *General Comment No. 37 (2020) on the Right of Peaceful Assembly (Article 21)*, ¶ 33, U.N. Doc. CCPR/C/GC/37 (Sept. 17, 2020).
- 72 *A Year of Arbitrary Detention and Rights Violations for Palestinians, Jordanians and Saudis Linked to the Palestinian Cause*, ALQST (Apr. 17, 2020).
- 73 *Id.* ALQST has confirmed that at least the sixty-eight Jordanians and Palestinians are facing the same charges, including under the Anti-Cybercrime law. *Id.*
- 74 *Id.*; Dec. 2020 Communication to Saudi Arabia, *supra* note 19, at 15 (“[C]ombined with the inability of individuals to communicate with and be visited by family, friends, medical staff and legal counsel in line with conditions established by law, the Terrorism Law may thereby increase the risk of enforced disappearances.”).
- 75 Leigh Toomey (Vice-Chair of the Working Group on Arbitrary Detention) et al., *Communication to Saudi Arabia*, at 1-3, Ref. No. UA SAU 9/2019 (July 15, 2019).
- 76 Aziz El Yaakoubi, *Saudi Arabia Frees Two Jailed Activists with U.S. Citizenship on Bail*, REUTERS (Feb. 5, 2021); *Riyadh Temporarily Releases Two Saudi-US Political Prisoners*, MIDDLE E. EYE (Feb. 5, 2021).
- 77 Roger LaPointe, ‘Forcibly Disappeared’ BGSU Grad Remains in Saudi Prison, SENTINEL-TRIB. (Jan. 9, 2020); F. Brinley Bruton, *Malak al-Shehri Speaks out After Saudi Arabia Detains Husband*, NBC NEWS (May 1, 2019).
- 78 *Saudi Arabia: In an Age of Cosmetic Reform, a New Wave of Arrests of Journalists*, GCHR (Dec. 4, 2019); *Seven More Journalists, Writers and Bloggers Arrested in Saudi Arabia*, REPS. WITHOUT BORDERS (Dec. 9, 2019).
- 79 *Journalists and Intellectuals Arrested for Expressing Condolences over the Death of Reformer Abdullah al-Hamid*, ALQST (July 21, 2020).
- 80 HUM. RTS. WATCH, *supra* note 65, at 5; Press Release, Amnesty Int’l, *Saudi Arabia: Women’s Rights Reforms Must Be Followed by Release of Detained Activists* (Aug. 2, 2019).
- 81 Comm. on the Elimination of Discrimination against Women, *Concluding Observations on the Combined Third and Fourth Periodic Reports of Saudi Arabia*, ¶ 55-56, U.N. Doc. CEDAW/C/SAU/CO/3-4 (Mar. 14, 2018) [hereinafter *Comm. on the Elimination of Discrimination against Women Concluding Observations of Mar. 2018*] (“The Committee is particularly concerned that women human rights defenders have reportedly been subjected to harassment, violence and intimidation by law enforcement officials, as well as detention and ill-treatment, for their civic engagement.”); *SRHRCT Report of Dec. 2018*, *supra* note 8, ¶¶ 32–41 (describing Saudi Arabia’s reported use of torture in violation of its absolute prohibition under international law).
- 82 Prior to her arrest in Saudi Arabia, Al-Hathloul was a student in the UAE, where she was arrested by UAE authorities, put onto an airplane, and transferred to Saudi Arabia. Working Grp. on Arbitrary Det., *Opinion No. 33/2020 Concerning Loujain Alhathloul (United Arab Emirates and Saudi Arabia)*, ¶ 7, U.N. Doc. A/HRC/WGAD/2020/33 (June 25, 2020) [hereinafter *WGAD Opinion No. 33/2020*]. See the UAE chapter in this report for additional information.
- 83 Resolution on the Situation of Women’s Rights Defenders in Saudi Arabia, European Parliament Res. 2018/2712 (RSP) (May 31, 2018); Mary Lawlor (Special Rapporteur on the Situation of Human Rights Defenders) et al., *Communication to Saudi Arabia*, at 1, 3, Ref. No. AL SAU 8/2020 (June 2, 2020) [hereinafter *June 2020 Communication to Saudi Arabia*]; AMNESTY

- INT'L, *supra* note 43, at 24; *Loujain Al-Hathloul Conditionally Released After More than 1000 Days*, FRONT LINE DEFS.; *Saudi Arabia: Abusive Charges Against Women Activists*, HUM. RTS. WATCH (Mar. 21, 2019). Mohammed al-Rabiah, who also campaigned against the male guardianship system and had posted tweets in support of women's rights, was also arrested in the sweep against WHRDs in May 2018, and subsequently tortured. On 9 May 2021, he was sentenced to six years in prison under the Cybercrime Law and the Counter-Terrorism Law. *Latest Crackdown Targets Top Names in Saudi Human Rights Movement*, ALQST (May 19, 2018); *Saudi Human Rights Defender Mohammed Al Rabiah Sentences to Six Years in Prison*, MENA RTS. GRP. (Apr. 20, 2021).
- 84 *Saudi Arabia: Abusive Charges Against Women Activists*, *supra* note 83; *Saudi Arabia: Take Action for Saudi Women's Rights Defenders Who Remain in Prison and on Trial*, GCHR (July 18, 2019).
- 85 Elina Steinerte (Vice-Chair of the Working Group on Arbitrary Detention) et al., Communication to Saudi Arabia, at 3, Ref. No. UA SAU 11/2018 (Oct. 10, 2018); *Saudi Arabia: Unrelenting Crackdown on Activists*, HUM. RTS. WATCH (June 20, 2018); *Nouf Abdulaziz*, COMM. PROTECT JOURNALISTS; *Woman Human Rights Defender Samar Badawi Released*, FRONT LINE DEFS.; *Nassima al-Sada*, COMM. PROTECT JOURNALISTS; *Saudi Arabia: Sentencing of Loujain al-Hathloul and Mayaa al-Zahrani*, FIDH (Jan. 5, 2021); *Saudi Arabia: Abusive Charges Against Women Activists*, *supra* note 83; June 2020 Communication to Saudi Arabia, *supra* note 83, at 3-4; *Two Years After the First Wave of Arrests of Women Human Rights Defenders in Saudi Arabia, We #StandWithSaudiHeroes and Campaign for Their Release*, ALQST (May 5, 2020).
- 86 David Kaye (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression) et al., Communication to Saudi Arabia, at 2, Ref. No. UA SAU 1/2019 (Feb. 8, 2019) [hereinafter Feb. 2019 Communication to Saudi Arabia].
- 87 *Id.* For a discussion of the human rights impacts of online violence against women, see Dubravka Šimonović (Special Rapporteur on Violence Against Women, Its Causes and Consequences), *Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences on Online Violence against Women and Girls from a Human Rights Perspective*, U.N. Doc. A/HRC/38/47 (June 18, 2018).
- 88 June 2020 Communication to Saudi Arabia, *supra* note 83, at 3; Feb. 2019 Communication to Saudi Arabia, *supra* note 86, at 2; HUM. RTS. WATCH, *supra* note 65, at 26-27; *Loujain Al-Hathloul Conditionally Released After More Than 1000 Days*, *supra* note 83.
- 89 June 2020 Communication to Saudi Arabia, *supra* note 83, at 3-4; *Saudi Arabia: Abusive Charges Against Women Activists*, *supra* note 83; *Loujain Al-Hathloul Conditionally Released After More Than 1000 Days*, *supra* note 83.
- 90 June 2020 Communication to Saudi Arabia, *supra* note 83, at 3.
- 91 *Saudi Arabia: Free Human Rights Defenders Immediately!*, AMNESTY INT'L (Apr. 15, 2021).
- 92 Press Release, Amnesty Int'l, Saudi Arabia: Provisional Release of Three Women Activists a Positive Step, but Bogus Charges Must Be Dropped (Mar. 28, 2019); *Saudi Arabia: Sentencing of Loujain al-Hathloul and Mayaa al-Zahrani*, *supra* note 85; *Vivian Nereim & Donna Abu-Nasr, Saudi Arabia Temporarily Releases Four Detained Women's Rights Activists*, TIME (May 2, 2019).
- 93 Elina Steinerte (Vice-Chair of the Working Group on Arbitrary Detention) et al., Communication to Saudi Arabia, at 5, Ref. No. AL SAU 3/2021 (Feb. 16, 2021) [hereinafter Feb. 2021 Communication to Saudi Arabia]; *Saudi Arabia: Sentencing of Loujain al-Hathloul and Mayaa al-Zahrani*, *supra* note 85.
- 94 Feb. 2021 Communication to Saudi Arabia, *supra* note 93, at 5; *Saudi Arabia: Continuing Judicial Harassment and Arbitrary Detention of Loujain al-Hathloul and Other WHRDs*, FIDH (Nov. 30, 2020); *Saudi Arabia: Loujain Al-Hathloul Faces Fabricated Charges Related to Her Peaceful Human Rights Activities*, GCHR (Dec. 17, 2020).
- 95 Press Release, Amnesty Int'l, Saudi Arabia: Loujain al-Hathloul's Sentencing, Partially Suspended, Is Still Cruel (Dec. 28, 2020); *Nouf Abdulaziz, Loujain Al-Hathloul, Eman Al-Nafjan*, PEN AM.; *Loujain Al-Hathloul Conditionally Released After More Than 1000 Days*, *supra* note 83.
- 96 *Saudi Arabia: Activism Is Not Terrorism: Free Saudi Activists Coalition Condemns the Sentencing of Saudi Women's Rights Defender Loujain Al-Hathloul*, GCHR (Dec. 28, 2020).
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- 98 *Aya Batrawy, Prominent Female Saudi Activist Summoned in Relation to Case*, AP NEWS (May 9, 2021).

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- 100 Rothna Begum, *Is Saudi Arabia Serious About Clemency for Women Activists?*, HUM. RTS. WATCH (Nov. 10, 2020); June 2020 Communication to Saudi Arabia, *supra* note 83, at 1-3. Additionally, Samar Badawi's brother Raif, also a prominent HRD, has been in prison since 2012. However, after Samar's arrest, the Saudi authorities opened a new investigation into his activities, while he was still in prison, accusing him of "influencing public opinion" and "damaging the reputation of the Kingdom." Tyler Dawson, *Jailed Saudi Blogger Raif Badawi Under New Probe for 'Damaging the Reputation of the Kingdom'*, NAT'L POST (Mar. 1, 2021).
- 101 June 2020 Communication to Saudi Arabia, *supra* note 83, at 3-4; *Woman Human Rights Defender Samar Badawi Released*, *supra* note 85.
- 102 June 2020 Communication to Saudi Arabia, *supra* note 83, at 3-4; *Loujain Al-Hathloul Conditionally Released After More Than 1000 Days*, *supra* note 83; *Saudi Arabia: Take Action for Saudi Women's Rights Defenders Who Remain in Prison and on Trial*, *supra* note 84; *Saudi Arabia: Abusive Charges Against Women Activists*, *supra* note 83; *Cybercrime Law*, *supra* note 9, at art. 6.
- 103 *Nassima al-Sadah*, ALQST. Abdulaziz was also reportedly convicted on 18 July 2019, before the February 2020 hearing, of charges related to her social media activity. *Nouf Abdulaziz*, ALQST.
- 104 *Nassima al-Sada*, *supra* note 85; *Nassima al-Sadah*, *supra* note 103.
- 105 *Saudi Arabia: Five-Year Sentence Upheld Against Women's Rights Defender Nassima Al-Sadah*, GCHR (Mar. 22, 2021).
- 106 *Saudi Arabia: Two Prominent Women Human Rights Defenders Released*, GCHR (June 27, 2021).
- 107 *Id.*
- 108 Osman, *supra* note 99.
- 109 *Saudi Arabia: Internet Activist Amani Al-Zain Arrested After a Large Twitter Campaign*, GCHR (May 27, 2020); Amani Alzain (@AmaniAlzain), TWITTER.
- 110 *Saudi Arabia: Internet Activist Amani Al-Zain Arrested After a Large Twitter Campaign*, *supra* note 109; MEE Staff, *Saudi Arabia Arrests Woman Who 'Insulted' Mohammed bin Salman, Says Rights Group*, MIDDLE E. EYE (May 27, 2020).
- 111 *Comm. on the Elimination of Discrimination against Women Concluding Observations of Mar. 2018*, *supra* note 81, ¶¶ 55-56; H.R.C. Res. 12/16, *supra* note 18, ¶ 5(p) (i); HRC General Comment No. 34, *supra* note 16, ¶¶ 11-12; SRHRD Report of July 2018, *supra* note 68, ¶ 36; SRFOE Report of Aug. 2011, *supra* note 36, ¶ 30.
- 112 Victor Madrigal-Borloz (Independent Expert on Protection against Violence and Discrimination Based on Sexual Orientation and Gender Identity) et al., Communication to Saudi Arabia, Ref. No. UA SAU 10/2020 (July 1, 2020) [hereinafter July 2020 Communication to Saudi Arabia]; *Saudi Arabia: Yemeni Blogger Convicted for Supporting LGBT Rights*, *supra* note 51; *Saudi Arabia: Release Yemeni Blogger*, HUM. RTS. WATCH (June 8, 2020).
- 113 *Saudi Arabia: Yemeni Blogger Convicted for Supporting LGBT Rights*, *supra* note 51.
- 114 July 2020 Communication to Saudi Arabia, *supra* note 112, at 1.
- 115 *Id.* at 4; *Saudi Arabia: Yemeni Blogger Convicted for Supporting LGBT Rights*, *supra* note 51.
- 116 July 2020 Communication to Saudi Arabia, *supra* note 112, at 2.
- 117 SRP Report of Oct. 2019, *supra* note 61, ¶ 28; SRFOE Report of May 2019, *supra* note 61, ¶ 21; HRC Concluding Observations of May 2017, *supra* note 61, ¶ 36; G.A. Res. 73/179, *supra* note 61, at 3; UDHR, *supra* note 8, at arts. 12, 18-20.
- 118 Surya Deva (Chair-Rapporteur of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises) et al., Communication to Saudi Arabia, at 5, Ref. No. AL SAU 10/2019 (July 5, 2019) [hereinafter July 2019 Communication to Saudi Arabia]; SRFOE Report of May 2019, *supra* note 61, ¶ 21.
- 119 July 2019 Communication to Saudi Arabia, *supra* note 118, at 1-2; BILL MARCZAK ET AL., *supra* note 55.
- 120 July 2019 Communication to Saudi Arabia, *supra* note 118, at 1-2; BILL MARCZAK ET AL., *supra* note 55. Additionally, since Saudi authorities hacked Omar Abdulaziz's phone, two of his brothers and several friends in Saudi Arabia were disappeared after explicit threats by Saudi authorities in an attempt to convince Abdulaziz to stop tweeting. Rosie Perper, *A Canadian Political Refugee Made Videos Criticizing Saudi Arabia – Now Saudi Authorities Have Arrested His Friends and Family*, BUS. INSIDER (Aug. 23, 2018).

- 121 *Annex to SREJE Report of June 2019, supra note 56, ¶¶ 68-71; SRFOE Report of May 2019, supra note 61, ¶ 9; HUM. RTS. WATCH, supra note 65, at 33-35; Amnesty International Among Targets of NSO-Powered Campaign, AMNESTY INT'L (Oct. 1, 2018). Saudi Arabia is also alleged to have paid Twitter employees to collect personal information about Twitter users, including Saudi government critics. *Ex-Twitter Employees Accused of Spying for Saudi Arabia, supra note 67. Activist Omar Abdulaziz filed suit in the United States against Twitter alleging that the social media company violated his privacy and facilitated Saudi Arabia's access to his personal information. Complaint at 10 –13, Abdulaziz v. Twitter*, No. 19-cv-06694-LB (N.D. Cal. 2021), 2019 WL 5310675. However, the suit against Twitter was dismissed 18 February 2021 on procedural grounds. Order Granting Motion to Dismiss at 13, *Abdulaziz v. Twitter*, No. 19-cv-06694-LB (N.D. Cal. 2021), 2021 WL 633812.*
- 122 Feb. 2019 Communication to Saudi Arabia, *supra note 86, at 2.*
- 123 *SRFOE Report of May 2011, supra note 21, ¶ 26.*
- 124 Press Release, Amnesty Int'l, Saudi Arabia: Censorship of Netflix Is Latest Proof of Crackdown on Freedom of Expression (Jan. 2, 2019).
- 125 *Id.*
- 126 *Id.*; Cybercrime Law, *supra note 9, at art. 6(1).*
- 127 *WGAD Opinion No. 71/2019, supra note 15, ¶ 10.*
- 128 *Annex to SREJE Report of June 2019, supra note 56, ¶¶ 193-97.*
- 129 *Id.*
- 130 Jamal Khashoggi, *Opinion: Read Jamal Khashoggi's Columns for The Washington Post*, WASH. POST (Oct. 6, 2018).
- 131 Jamal Khashoggi, *Opinion: Saudi Arabia's Crown Prince Must Restore Dignity to His Country – By Ending Yemen's Cruel War*, WASH. POST (Sept. 11, 2018); Jamal Khashoggi, *Opinion: Saudi Arabia's Women Can Finally Drive. But the Crown Prince Needs to Do Much More.*, WASH. POST (June 25, 2018).
- 132 *Annex to SREJE Report of June 2019, supra note 56, ¶¶ 201, 253-55.*
- 133 Working Grp. on Arbitrary Det., *Report of the Working Group on Arbitrary Detention: United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court*, ¶ 11, U.N. Doc. A/HRC/30/37 (July 6, 2015) [hereinafter *WGAD Report of July 2015*]; Hum. Rts. Comm., *General Comment No. 35: Article 9 (Liberty and Security of Person)*, ¶¶ 17, 22-23, 53, U.N. Doc. CCPR/C/GC/35 (Dec. 16, 2014).
- 134 *WGAD Report of July 2015, supra note 133, ¶ 10; UDHR, supra note 8, at art. 19.*
- 135 *WGAD Report of July 2015, supra note 133, ¶ 11.*
- 136 Working Grp. on Arbitrary Det., *Report of the Working Group on Arbitrary Detention*, ¶ 46, U.N. Doc. A/HRC/36/37 (July 19, 2017); UDHR, *supra note 8, at art. 7.*
- 137 Working Grp. on Arbitrary Det., *Report of the Working Group on Arbitrary Detention*, ¶ 60, U.N. Doc. A/HRC/39/45 (July 2, 2018) [hereinafter *WGAD Report of July 2018*].
- 138 UDHR, *supra note 8, at art. 6.*
- 139 *Id.* at art. 6; International Covenant on Civil and Political Rights art. 16, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171.
- 140 Theo van Boven (Special Rapporteur on Torture), *Report of the Special Rapporteur on the Question of Torture Submitted in Accordance with Commission Resolution 2002/38, ¶ 26(g)*, U.N. Doc. E/CN.4/2003/68 (Dec. 17, 2002) [hereinafter *SRT Report of Dec. 2002*].
- 141 Manfred Nowak (Special Rapporteur on Torture), *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak: Addendum—Study on the Phenomena of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in the World, Including an Assessment of Conditions of Detention*, ¶ 156, U.N. Doc. A/HRD/13/39/Add.5 (Feb. 5, 2010) (international law and standards prohibit “all secret and incommunicado detention”); see *Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, G.A. Res. 72/163, U.N. Doc. A/RES/72/163, ¶ 16 (Dec. 19, 2017).
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- 146 1 JEAN-MARIE HENCKAERTS & LOUISE DOSWALD-BECK, INT'L COMM. OF THE RED CROSS, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW Rule 98 (2005) (enforced disappearance).
- 147 International Convention for the Protection of All Persons from Enforced Disappearance, *opened for signature* Dec. 20, 2006, 2716 U.N.T.S. 3.
- 148 Article 2 of the Convention on Enforced Disappearances defines an enforced disappearance as the "arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law." *Id.* at art. 2.
- 149 The MENA Rights Group believes his arrest is linked to his journalistic activities and his 2016 interview with Islamic scholar Salman Al Odah who has been in prison since September 2017, when he was arrested for posting a tweet calling for "mediation between the Qatari and Saudi authorities in the context of the Gulf diplomatic crisis." *Where Is Marwan Al-Muraisy?*, MENA RTS. GRP. (May 31, 2019). Reporters Without Borders believes he was arrested because of his significant Twitter following and recent tweets critical of Saudi Arabia. *Saudi Authorities Asked to Explain Yemeni Writer's Disappearance*, REPS. WITHOUT BORDERS (Sept. 26, 2018).
- 150 Elina Steinerte (Vice-Chair of the Working Group on Arbitrary Detention) et al., Communication to Saudi Arabia, at 1, Ref. No. UA SAU 6/2019 (Apr. 1, 2019) [hereinafter Apr. 2019 Communication to Saudi Arabia].
- 151 *Id.* at 1.
- 152 *Marwan al-Muraisy*, ALQST.
- 153 *Id.*; Julia Legner, *Torture Casts a Shadow over the G20*, AL JAZEERA (July 12, 2020).
- 154 Apr. 2019 Communication to Saudi Arabia, *supra* note 150, at 1; Official Reply of the Government of the Kingdom of Saudi Arabia to the Communication from the Vice-Chair of the Working Group on Enforced or Involuntary disappearances No. G/SO 217/1 of 27 September 2017 Regarding Mr. Murwan Ali Naji Murshid (official English translation); *Where Is Marwan Al-Muraisy?*, *supra* note 149.
- 155 WGAD Opinion No. 33/2020, *supra* note 82, ¶¶ 73, 85.
- 156 Hum. Rts. Comm., *General Comment No. 32: Article 14: Right to Equality Before Courts and Tribunals and to Fair Trial*, ¶ 6, U.N. Doc. CCPR/C/GC/32 (Aug. 23, 2007) [hereinafter *HRC General Comment No. 32*].
- 157 WGAD Report of July 2015, *supra* note 133, at annex, princ. 1; *HRC General Comment No. 32*, *supra* note 156, ¶¶ 15, 19, 31-34, 38.
- 158 WGAD Report of July 2015, *supra* note 133, at annex, princs. 7-9; *HRC General Comment No. 32*, *supra* note 156, ¶ 10.
- 159 *Comm. against Torture Concluding Observations of June 2016*, *supra* note 3, ¶¶ 14-15; *SRHRCT Report of Dec. 2018*, *supra* note 8, at sec. IV.D; AMNESTY INT'L, *supra* note 43.
- 160 Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Judgment, 2012 I.C.J., ¶ 99 (July 20); CAT, *supra* note 7, at art 2; Dire Tladi (Special Rapporteur), *Fourth Report on Peremptory Norms of General International Law (Jus Cogens) by Dire Tladi, Special Rapporteur*, ¶ 69, U.N. Doc. A/CN.4/727 (Jan. 31, 2019).
- 161 HUM. RTS. WATCH, *supra* note 65, at 36-37.
- 162 Feb. 2019 Communication to Saudi Arabia, *supra* note 86, at 2-3.
- 163 *Saudi Arabia: Release Yemeni Blogger*, *supra* note 112.
- 164 July 2020 Communication to Saudi Arabia, *supra* note 112, at 4.





# SYRIA



# SYRIA SCORECARD

## Targeted Activism or Expression



Criticism of Government



Journalists



Women's Rights and WHRDs

## Human Rights Violations



Arbitrary Detention



Torture



Fair Trial

## Problematic Legal Provisions and Institutions



Criminal Defamation



Cybercrime Law



Public Order



Specialised Law Enforcement Units



Number of incidents that fit the inclusion criteria of this study

# INTRODUCTION

Between 01 May 2018 and 31 October 2020, there were eleven reported violations and abuses of the right of human rights defenders (HRDs) to the freedom of expression online that fit the inclusion criteria of this study.<sup>1</sup> Due to the ongoing armed conflict in Syria, these include violations by Syrian authorities, as well as abuses by non-State actors that control territories within the country.

The incidents suggest that journalists are the primary targets of infringement of online freedom of expression, by State and non-State actors, for reporting on local events and issues impacting human rights, criticism of governing authorities, and expression that the authorities deem offensive to public morals or religion. Authorities monitor and restrict journalists' web reports, broadcasts, and social media posts. There is limited information reported on which specific provisions State and non-State authorities use against journalists. However, the available information indicates enforcement of anti-cybercrime, media regulation, and counter-terrorism laws and policies.

Based on this research, there is credible evidence that the government has violated its obligation to respect online freedom of expression and additional associated rights of HRDs. These violations also constitute breaches of the duty of the State, pursuant to the United Nations (UN) Charter, "as the main duty-bearer" to ensure "defenders enjoy a safe and enabling environment" and that government institutions and processes "are aligned with their safety and the aim of their activities."<sup>2</sup>

Freedom of expression online is a particularly important right in Syria, due to its state of armed conflict and the heavy reliance by citizens and

residents on the internet for information. As of January 2021, about forty-seven percent of the population used the internet, primarily to access social media networks, content-sharing platforms, and news sites;<sup>3</sup> and thirty-seven percent of the Syrian population was active users of social media.<sup>4</sup> In conflict situations, online access to information is critical and integral to the work of HRDs. As the UN Special Rapporteur on human rights defenders (SR on HRDs) noted, HRDs "are also at the forefront in documenting, exposing and opposing civilian casualties and wider violations of international law" caused by State and non-State actors.<sup>5</sup> Journalists and other HRDs through "fact-finding and public advocacy work keep[] human rights, international humanitarian law and other relevant standards of international law on the agenda... . Their work is critical in unveiling the often-wide spectrum of underlying violations driving or aggravated by conflict."<sup>6</sup>

Syria is a party to several international human rights treaties protecting the right to freedom of expression, including the International Covenant on Civil and Political Rights (ICCPR).<sup>7</sup> As a UN member State, Syria is also bound by the UN Charter and has pledged to adhere to the principles reflected in the Universal Declaration of Human Rights (UDHR), including article 19, which enshrines the right to freedom of opinion and expression.<sup>8</sup> Moreover, the

Syrian government has human rights obligations regarding abuses by non-State actors of rights protected by the ICCPR and other human rights treaties to which Syria is a party.<sup>9</sup> The extent of these obligations is context-specific, but would include the duty to exercise due diligence to prevent, punish, investigate, or redress the harm caused by non-State entities.<sup>10</sup> Therefore, this report analyses non-State actors' abuses of HRDs' right to freedom of expression online to document the nature and extent of the problem, as well as to highlight evolving understandings in international law of the human rights responsibilities of non-state actors.

There are many non-State actors involved in the Syrian conflict, but a number of the reported incidents involve two groups in particular. One group is a de facto Kurdish self-administration called the Autonomous Administration of North and East Syria (NES, also known as Rojava).<sup>11</sup> NES is backed by the Syrian Democratic Forces, which receives military support from the United States. The other actor is an armed group in conflict with the al-Assad regime,<sup>12</sup> which calls itself the "Syrian Salvation Government" ("SSG").<sup>13</sup> The law enforcement and defence efforts of the SSG are supported by a UN-designated terrorist organisation called Hay'at Tahrir al-Sham (HTS)<sup>14</sup>—SSG and HTS hold control over the Idlib Governorate and parts of Western Aleppo.<sup>15</sup>

Only States may be parties to international human rights treaties. Nevertheless, international humanitarian law establishes that under certain circumstances, non-State actors in internal armed conflicts such as in Syria assume legal obligations to protect civilians.<sup>16</sup> More recently, there is emerging recognition throughout the UN system of the responsibilities of non-State actors regarding human rights protection.<sup>17</sup> In particular, the Independent International Commission of Inquiry on the Syrian Arab Republic (COI on Syria) stated that, in areas over which they exert de facto control, non-State actors are responsible for upholding customary international human rights law,<sup>18</sup> including the prohibition against torture and additional due process rights enshrined in the ICCPR.<sup>19</sup> Based on this

interpretation, de facto authorities in Syria may be obligated to respect the freedom of expression, as a right enshrined in the UDHR, which is recognised in its entirety by some human rights law commentators as customary law.<sup>20</sup> Even if the right to freedom of expression is not considered to fall under customary law, non-State actors may still be subject to human rights obligations when, in the course of their freedom-of-expression abuses, they violate other protected human rights that unquestionably carry customary status, for example, the right to be free from arbitrary arrest and deprivation of liberty.<sup>21</sup>

# LEGAL ENVIRONMENT FOR ONLINE EXPRESSION IN SYRIA

Both the Syrian government and non-State actors have constructed legal environments within the territories they control that enable regulation and restriction of free expression online. Below, we detail the media regulation, counter-terrorism, and anti-cybercrime laws and policies that State and non-State authorities are enforcing to target protected expression.

## Regulation of Online Freedom of Expression by the Syrian Government

The Syrian government has four primary laws that regulate online expression: Legislative Decree No. 108/2011 (Media Regulation Law);<sup>22</sup> Law No. 19/2012 (Counter-Terrorism Law);<sup>23</sup> Law No. 17/2012 (Law on Regulating Online Communications and Combating Cybercrimes);<sup>24</sup> and Law No. 9/2018 (Anti-Cybercrime Law).<sup>25</sup> The reported incidents in State-controlled territories do not identify the formal charges, but available information suggests that the government primarily enforces the Media Regulation Law to stifle online reporting of independent journalists. Published reports did not conclusively link the other three laws to particular incidents, these laws may be enforced in unreported incidents and, in any case, comprise the legal context within which HRDs must operate. Together, these laws regulating online expression create a hostile climate for free online expression in Syria.

### *2011 Media Regulation Law*

Article 3 of the Media Regulation law recognises the freedom of expression guaranteed by the Syrian Constitution and international law.<sup>26</sup> However, article 4 provides that respect for the freedom of expression is contingent on the media “exercise[ing] this freedom with awareness and responsibility”<sup>27</sup>—no definitions are provided for these terms. Articles 12 and 79 broadly ban media outlets (including electronic media) from publishing content that affects national unity and security, offends monotheistic religions and beliefs, or stirs sectarian strife;<sup>28</sup> incites crimes, acts of violence, terrorism, or hatred;<sup>29</sup> relates to the armed forces;<sup>30</sup> or affects the symbols of the State, in addition to all content that is already prohibited by the Syrian Penal Code.<sup>31</sup> Article 95 criminalises the spread of incorrect or fabricated news, but does not define what constitutes such news.<sup>32</sup> Article 78 also holds the owners, editors-in-chief, journalists, and spokespeople vicariously accountable for violations attributed to the media outlet with which they are affiliated, and prescribes fines of up to SYP 1 million (approximately USD 2,000).<sup>33</sup> Chapter six of the law lays out stringent accreditation and licensing requirements for any person wishing to produce media in Syria,<sup>34</sup> and article 22 entrusts the new National Media Council<sup>35</sup> to determine specific mechanisms for accrediting foreign correspondents.<sup>36</sup> The COI on Syria describes the law as “leav[ing] untouched the vaguely defined criminal offences described in articles 285–87 of the Penal Code that have long been used to punish and silence critical journalists, human rights defenders and political dissidents.”<sup>37</sup>

The Media Regulation Law conflicts with a range of international human rights standards regarding the freedom of expression.

First, under both article 19 of the ICCPR and the UDHR, criminal laws that restrict freedom of expression must be sufficiently precise so as to enable individuals to determine how to comply with the law and to limit the discretion conferred on authorities enforcing it.<sup>38</sup> Vaguely and broadly worded provisions have been found by UN Special Procedures mandate holders to violate this requirement, allowing authorities to use their excessive discretion to target protected speech, and encouraging individuals to engage in self-censorship.<sup>39</sup> Broad bans on the media content enumerated in articles 12, 79, and 95 are overly broad, undefined, and ambiguous, violating article 19 of the ICCPR. Reporters Without Borders has stated that the lack of definition of these terms leaves them “vague and imprecise,” thereby “allowing a great deal of scope for arbitrary interpretation.”<sup>40</sup>

Second, ban in the Media Regulation Law on content that offends monotheistic religions and beliefs also violates the requirement that the restriction be for a legitimate purpose—the protection of belief systems, religions, or institutions from criticism is not a legitimate purpose for restriction under the ICCPR.<sup>41</sup> Third, its ban on content about the Syrian armed forces provides a higher level of protection to public officials against media statements than that afforded to all citizens, which is impermissible under the ICCPR, as interpreted by the UN Special Rapporteur on the promotion and protection to the right to freedom of opinion and expression (SR on FOE).<sup>42</sup> Finally, the stringent requirements for government accreditation for media producers violate the standards prescribed in article 19 of the ICCPR, which, according to the Human Rights Committee, protects the ability of the media to comment on public issues without restraint and to inform public opinion, while also protecting the corresponding right of the public to receive media output.<sup>43</sup> Relatedly,

the Committee to Protect Journalists describes article 22’s establishment of the National Media Council as indicating “less of an effort by the Syrian authorities to encourage a free press, but more of a conscious attempt to mask repressive tactics as press freedoms.”<sup>44</sup>

### ***2012 Counter-Terrorism Law***

The Counter-Terrorism Law broadly defines a terrorist act as any action aimed to cause panic among people, disturb public security, or harm the State’s infrastructure “by means of any tool.”<sup>45</sup> Article 4 bans “financing terrorist acts,” which is defined to include any direct or indirect supplying of telecommunication means or information to be used in a terrorist act.<sup>46</sup> Article 8 goes on to penalise the act of “promoting terrorist acts,” holding that anyone who distributes publications or stores information of any form to promote terrorist actions; administers or uses a website for that purpose, shall be punished by temporary hard labour.<sup>47</sup>

This law’s use of overly broad and ambiguous definitions violates article 19 of the ICCPR, which requires that restrictions on the freedom of expression be the least intrusive instrument to achieve the purported aim and to protect the chosen interest.<sup>48</sup> The COI on Syria stated that “the ambit of prohibited acts enumerated under counter-terrorism Law No. 19 appears to be unduly broad and contains catch-all provisions which may potentially affect thousands more Syrian civilians.”<sup>49</sup> The Committee on the Elimination of All Forms of Discrimination Against Women also has found the law to be too broadly drafted,<sup>50</sup> and urged the government to amend it to avoid criminalising protected activities and conform with its obligations under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the ICCPR.<sup>51</sup>

### ***Cybercrime Laws: 2012 Law on Regulating Online Communications and Combating Cybercrimes and 2018 Anti-Cybercrime Law***

The Law on Regulating Online Communications and Combating Cybercrimes more broadly and definitively subjugates online content to the mandates of the Media Regulation Law.<sup>52</sup> The law regulates digital speech by prescribing certain responsibilities to internet service providers (ISPs), to ensure compliance with provisions of the Media Regulation Law that ban categories of media content (as identified above).<sup>53</sup> ISPs are required to clearly publish the names and details of the owners and administrators of content hosting websites,<sup>54</sup> and to save a copy of their content and traffic data to allow verification of the identities of persons who contribute online content.<sup>55</sup> Article 30 increases the penalty for cybercrimes that affect public stability, which is already penalised by the Media Regulation Law.<sup>56</sup> The COI on Syria stated that the law sets out “broad offences that restrict freedom of expression on the Internet.”<sup>57</sup>

The Anti-Cybercrime Law expands even further on the Law on Regulating Online Communications and Combating Cybercrimes,<sup>58</sup> mandating the creation of specialised courts of first instance for the prosecution of cybercrimes in every governorate,<sup>59</sup> and delegating the investigation and prosecution of such crimes to specially trained personnel and judges.<sup>60</sup>

These cybercrime-related laws intensify government control and repression of online expression, contrary to international human rights standards. The Law on Regulating Online Communications and Combating Cybercrimes effectively turns ISPs into private investigative adjuncts to the specialised cyber judicial system through its requirements for data collection to identify, track, and censor digital content contributors, which raises necessity and proportionality concerns.<sup>61</sup> Such government access to user data interferes with privacy in a manner that can directly and indirectly limit the freedom of development and exchange of ideas that is protected under the right to freedom of

expression.<sup>62</sup> Undue access to personal data implicitly warns users to think twice and possibly avoid controversial viewpoints, the exchange of sensitive information, and other exercises of freedom of expression that may be under government scrutiny.<sup>63</sup> These laws weaponise the more general laws restricting media content and combating terrorism, compounding their flaws of overly broad and vague restrictions on freedom of expression.<sup>64</sup> Additionally, the cybercrime-related laws infringe upon the human right to privacy which, as elaborated by the SR on FOE, is intertwined with the freedom of expression in the digital age.<sup>65</sup>

## **Regulation of Online Freedom of Expression by Non-State Actors**

Alongside the Syrian government, authorities in the alternative self-administration known as the Autonomous Administration of North and East Syria (NES or Rojava) and the regime known as the “Syrian Salvation Government” (“SSG”) are targeting online content disseminated by journalists through legal mechanisms these authorities have created. This report analyses the extent to which their laws and policies comply with international standards to comprehensively evaluate the legal environment in which journalists are working throughout Syria.

### ***NES: 2016 Media Law in Al-Jazira Province***

A number of the incidents occurred in territories controlled by the NES. Due to the state of armed conflict and the largely unrecognised nature of these non-State groups, information regarding their laws that target online expression are minimal and unclear. However, reporting on the incidents indicate that the NES relied on its Media Law in Al-Jazira Province (also known as the Law of Information in Al-Jazeera District) to regulate media licensing and journalist credentialing, as well as content of media communications within NES-controlled regions.<sup>66</sup> According to the Syrian Centre for Media and Freedom of Expression, article 2 outlines the principles to which a journalist must adhere, including the broad duty to not publish

“racist messages” or challenge “the religious values of society.”<sup>67</sup> Authorities reportedly restrict media from independent journalists by requiring journalists to obtain media cards issued by the NES.<sup>68</sup>

The Media Law in Al-Jazira Province conflicts with international human rights standards regarding the freedom of expression. The duty imposed by article 2 of the law is overly broad and ambiguous, contrary to the protections enshrined in article 19 of the ICCPR.<sup>69</sup> The Syrian Centre for Media and Freedom of Expression has criticised the law, noting that it is not “in line with the international principles guaranteeing freedom of expression and information.”<sup>70</sup> Additionally, its ban on content that challenges religious values violates the requirement that the restriction be for a legitimate purpose—as aforementioned, the protection of belief systems, religions, or institutions from criticism is not a legitimate purpose for restriction under the ICCPR.<sup>71</sup> Anti-blasphemy laws are “inherently vague, and leave the entire concept open to abuse,” and the Special Rapporteur urges governments to repeal such laws.<sup>72</sup>

### ***SSG: 2019 Communications Law***

Some of the incidents took place in territories controlled by the regime known as the SSG, the law enforcement and defence efforts of which are supported by a UN-designated terrorist organisation called Hay’at Tahrir al-Sham (HTS).<sup>73</sup> Again, information regarding non-State actor laws is minimal, and the reported incidents do not indicate that the SSG and HTS authorities cited specific legal provisions in the course of their arrests. Reportedly, in March 2019, SSG promulgated a twenty-five page Communications Law to regulate public communication networks.<sup>74</sup> Authorities have not made the law public, but a group of Syrian writers posted to its website.<sup>75</sup> The law establishes a Communications Regulatory Commission to regulate public and private communications networks, including by issuing licenses and imposing criminal sanctions against entities and individuals that operate

or use unlicensed networks.<sup>76</sup> It also criminalises posting online “immoral” content or “fabricated news” with the intent to cause “panic.”<sup>77</sup> Violators are subject to a minimum one-month prison sentence and fine of USD 500.<sup>78</sup> In addition to control over access to communications systems, the SSG engages in heavy institutional gatekeeping and repression of the media, requiring any media activity in the city of Idlib to obtain prior approval by the SSG authorities or the HTS security office.<sup>79</sup>

These prohibitions and charges conflict with a range of international human rights standards regarding freedom of expression. The requirement of prior government approval before any media activity violates the standards prescribed in article 19 of the ICCPR.<sup>80</sup> Additionally, controlling and censoring content on the internet without any legal basis or justification and/or in a way that is disproportionate and unnecessary to achieve the intended aim is *prima facie* incompatible with international human rights law.<sup>81</sup>



# TRENDS EMERGING FROM INCIDENTS OF REPRESSION OF ONLINE EXPRESSION IN SYRIA

The reports on the identified incidents reflect notable trends of how the Syrian government and non-State actors have violated and abused the right to freedom of expression of HRDs, as well as several related rights under international human rights law.

## Violations of Online Freedom of Expression by the Syrian Government

### *Targeting of journalist HRDs*

All the reported incidents in Syria included the detention or prosecution of journalists. The Syrian government in particular targeted journalists for reporting to a global online audience on armed conflicts, the war or other occurrences within Syria impacting human rights (e.g., military airstrikes). In the identified incidents, the journalists were targeted, regardless of whether the information they shared online was critical or approving of the Assad regime or not, suggesting that the objective of the government is to maintain broad control over information published on the internet.

One example is the case of news anchor Omar Kalo, arrested by Syrian military intelligence forces on 25 August 2018.<sup>82</sup> Although reports did not indicate the charges brought by the Syrian authorities, Kalo's recent broadcasts (shared on his Facebook page) had covered Saudi Arabian support for the NES.<sup>83</sup> Days before his arrest, he had also conducted a live Skype interview with a spokesman for the Free Syrian Army of the "Syrian Interim Government," discussing the negative impact of Syrian missile strikes.<sup>84</sup> According to reports, government authorities stopped Kalo at a checkpoint without reason, and took him to a military security branch in Damascus for more questioning.<sup>85</sup>

He was held for nearly two months before his eventual release on 04 October 2018.<sup>86</sup>

Another example is the case of Rabea Kalawandy, a social media influencer and war correspondent for a pro-Assad and Iran-based broadcasting network. Syrian Security forces arrested Kalawandy on 07 July 2019.<sup>87</sup> Kalawandy frequently posted pro-regime updates about the Syrian conflict on his Facebook and YouTube accounts.<sup>88</sup> Reports did not reveal the charge, but indicated that Kalawandy was arrested for failing to gain security approval from the government as a foreign journalist before conducting media activity within its borders, as required by the Media Regulation Law.<sup>89</sup> Although the date of his release is unclear, Kalawandy was back online sharing content one month later on 07 August 2019<sup>90</sup>—neither he nor his employer made any comment regarding his arrest.<sup>91</sup>

### *Additional human rights violations*

The reported incidents in government-controlled areas indicate that the violation of the right to freedom of expression online also implicates other human rights such as liberty and due process.

The arrests of journalists constitute arbitrary deprivations of liberty, which is prohibited under article 9 of the ICCPR, customary international law and is a *jus cogens* norm.<sup>92</sup> A deprivation is arbitrary including when it is without a legal basis as well as when it results from the exercise of freedom of expression.<sup>93</sup> As the UN Working Group on Arbitrary Detention has reiterated, any measure depriving an individual of liberty must meet strict standards of lawfulness, necessity and proportionality to avoid arbitrariness.<sup>94</sup> Deprivations may be arbitrary when they are based on discriminatory grounds

against HRDs and activists, violating the rights to equality before the law and the right to equal protection under article 26 of the ICCPR.<sup>95</sup>

Fundamental principles of fair trials are protected under international law at all times.<sup>96</sup> Those detained enjoy a number of procedural safeguards of their rights including the right to be informed of rights, the right to initiate court proceedings without delay, and the right to legal assistance of counsel of their choice from the moment of apprehension.<sup>97</sup> Because the Syrian government arrested journalists and other HRDs like Omar Kalo and Rabea Kalawandy for exercising their protected right to the freedom of expression, without informing them of their charges, it violated the prohibition of the arbitrary deprivation of liberty and international due process.

## Abuses of Online Freedom of Expression by Non-State Actors

States continue to have obligations to use due diligence to prevent, investigate, and punish violations of the rights of HRDs carried out by non-State actors during times of armed conflict. However, non-State actors exercising “government-like functions” have human rights obligations to those under their control.<sup>98</sup> The SR on HRDs has observed that in conflict and post-conflict situations, “[s]pecific protections, of a customary nature, exist for certain categories of defenders such as journalists ...”<sup>99</sup> The Special Rapporteur has found that freedom of expression may be “virtually nonexistent” in conflict and post-conflict contexts, with journalists targeted for their work,<sup>100</sup> making protection of journalists an urgent matter.

### *Targeting of expression criticising the authorities*

The incidents in territory controlled by non-State actors indicate that de facto authorities target journalists for online expression that criticises their policies, corruption, or administration.

One example is the case of social media activist and independent journalist Bilal Abdul-Kareem. HTS detained Abdul-Kareem on 13 August 2020.<sup>101</sup>

HTS authorities severely beat, handcuffed, and abducted him after he published online an interview he conducted with the wife of an aid worker who had allegedly been tortured by HTS.<sup>102</sup> On the day of his abduction, he also tweeted a video directly accusing HTS of torturing the same aid worker.<sup>103</sup> HTS reportedly charged Abdul-Kareem with working with groups that harm public security, inciting opposition against local authorities, and publishing and promoting lies that affect institutions without evidence.<sup>104</sup> HTS detained Abdul-Kareem at an unknown location for six months, during which he was permitted to see his family twice.<sup>105</sup> Reports indicated that local mediation was able to secure Abdul-Kareem’s release after a tribunal set up and run by HTS had sentenced him, although the details of the sentence are unknown.<sup>106</sup>

Another example is the case of Assyrian freelance writer Souleman Yousph, who was arrested by the Sutoro police of the NES on 30 September 2018.<sup>107</sup> The Sutoro police arrested Yousph at his home, and took him to an unknown location after raiding his apartment.<sup>108</sup> The police did not reveal the charge, but in the days prior to his arrest, Yousph had published a series of posts on an online forum<sup>109</sup> and his Facebook account, condemning abuse by Sutoro police and sharing photos and videos of police intimidation which gained tens of thousands of views.<sup>110</sup> In his posts he accused NES authorities of enacting policies to destroy the social, cultural, and educational structures of Assyrian society.<sup>111</sup> The day after the arrest, Sutoro police released a statement on Facebook which said that action had to be taken against those spreading lies, that democracy has rules and limitations, and that defamation is punishable by law in “western countries”—the statement did not specifically mention Yousph.<sup>112</sup> He was released five days later on 04 October 2018.<sup>113</sup>

Journalists like Abdul-Kareem and Yousph serve a vital function in conflict situations to report on human rights violations. The SR on HRDs notes that attacks on journalists in conflict situations deprive the public of “access to independent and reliable information.”<sup>114</sup>

**Targeting of speech offending morality or religion**

The incidents also indicate that non-State actors are targeting online expressions that allegedly offend morality or their interpretation of religious mores.

For example, the Media Office of NES suspended the press credentials of reporter Vivian Fatah on 10 May 2020, after she used the word “killed” rather than “martyred” when referring to fallen soldiers of the SDF during a news report posted online three days earlier.<sup>115</sup> The suspension order stated that Fatah had offended the deceased soldiers and their families, and that she refused to apologise for her language.<sup>116</sup>

Another example is the case of journalist Mohammed Fadl al-Janoudi, who HTS detained on 24 June 2018.<sup>117</sup> HTS seized his camera and cell phone, and took him to an unknown location.<sup>118</sup> Although neither HTS nor SSG authorities revealed the charge, sources indicated that the arrest likely was due to a picture Janoudi posted on Facebook on 21 June, which showed him in front of a celebration with boys and girls playing together, and female and male youth workers co-mingling.<sup>119</sup> It is unclear whether Janoudi has been released.

**Additional human rights violations**

The reported incidents in territories controlled by non-State actors indicate that the violation of the right to freedom of expression online also implicates other human rights. Non-State actors may be directly responsible for the below violations if the rights are protected under customary international human rights law,<sup>120</sup> and the Syrian government has ongoing human rights obligations pertaining to abuses by non-State actors during a state of armed conflict.<sup>121</sup>

**Prohibition of arbitrary deprivation of liberty**

The protection against arbitrary deprivation of liberty enshrined in treaty and customary law as *jus cogens*, applies to individuals in areas controlled by non-State actors.<sup>122</sup> In addition to the case of Bilal Abdul-Kareem, who HTS abducted and detained for six months without trial, HTS also detained journalist Maan Bakour on 24 June 2019 without charge—he was merely reported to be “under investigation”—and

his whereabouts are still unknown.<sup>123</sup> These reported incidents violate the customary law prohibition of arbitrary deprivation of liberty because an arrest or detention is presumptively arbitrary if it is the result of the exercise of rights and freedoms protected by article 19 of the ICCPR—here, SSG and NES arrested the aforementioned journalists for exercising their freedom of expression, a right protected by article 19.<sup>124</sup> Further, article 14 of the ICCPR regarding the liberty of a person also is a customary law norm.<sup>125</sup> It requires authorities to inform an individual arrested of the reasons for his arrest, and shall be entitled to trial or release within a reasonable time.<sup>126</sup>

**Prohibition of torture and ill treatment**

The prohibition against torture is absolute, non-derogable, and a *jus cogens* norm of international law<sup>127</sup> that applies to non-State actors.<sup>128</sup> Torture is defined in article 1 of the CAT as intentional infliction of severe pain or suffering—whether physical or mental—with the consent or acquiescence of a public official or other person acting in an official capacity, for the purpose of intimidating, coercing, or punishing the individual.<sup>129</sup> The UN Special Rapporteur on torture has interpreted that cruel, inhuman, or degrading treatment reaches the higher threshold of torture when, additionally, “severe pain or suffering is intentionally and purposefully inflicted on a powerless person.”<sup>130</sup> Further, this prohibition is not confined to acts carried out against persons deprived of their liberty, but also covers excessive police violence, such as during arrest. Thus “the universal customary prohibition of cruel, inhuman, or degrading punishment and, in situations of powerlessness, of torture are fully applicable to the extra-custodial use of force.”<sup>131</sup> HTS reportedly has violated the prohibition of torture and cruel, inhuman, or degrading treatment during its arrest of Bilal Abdul-Kareem, when armed, masked authorities pointed their guns at him and severely beat him during the course of his abduction.<sup>132</sup>

# CONCLUSION AND RECOMMENDATIONS

The legal environments of Syria, in areas under government control and those controlled by non-State actors, restrict online expression through laws and policies that use undefined, overbroad, or vague terms, in violation of international standards on freedom of expression. In practice, these laws and policies also violate international freedom-of-expression standards by targeting journalists, criticism of local authorities, and expression that offends morality or religion. Violations of freedom of expression seen in the credible reported incidents are accompanied with further human rights violations such as the apparent arbitrary deprivation of liberty, the use of torture and ill treatment, and the failure of authorities to protect the right to defend human rights. Thus, the report offers credible evidence that State and non-State actors across Syria have leveraged laws and policies targeting online expression in violation of international human rights obligations to create a climate of repression.

To address these concerns, we offer the following general recommendations and country-specific recommendations.

## General Recommendations

### *To Governments of Gulf States and Neighbouring Countries:*

- ♦ Eliminate laws and articles in national legal frameworks that criminalise online freedom of expression protected under international human rights law, specifically:
  - All laws including anti-cybercrime, anti-terrorism, communications, media, penal, and technology laws that restrict online or offline expression through provisions to protect public order, national security, or the national economy; insults laws; and laws that criminalise fake news, that do not conform to international human rights standards and satisfy the principles of legality, legitimacy, necessity and proportionality;
  - Decriminalise the offense of defamation;
  - Revise anti-cybercrime laws to include affirmative protection for the legitimate online expression of HRDs, including journalists.
- ♦ Cease using deportation and travel bans as tools for targeting HRDs for their online human rights advocacy, and refrain from infringing on their right to freedom of movement.
- ♦ Reform legal institutions, including the criminal legal system, to promote the independence and autonomy necessary for:
  - Investigating human rights violations committed against HRDs by law enforcement, such as engaging in unlawful surveillance of HRDs, enforced disappearances, holding HRDs in unlawful detention, incommunicado, and subjecting them to ill-treatment and torture;
  - Ensuring that HRDs', citizens', and residents' right to freedom of movement is not violated;
  - Ensuring the judiciary upholds international standards guaranteeing the right to fair trial.

### *To the UN Human Rights Council:*

- ♦ Instruct the UN Office of the High Commissioner for Human Rights to undertake a study of the transnational cooperation among governments to affect the apprehension and rendering of foreign HRDs to their countries of origin for prosecution of online expression that is protected under international law.
- ♦ Instruct the UN Office of the High Commissioner for Human Rights to undertake a study to identify and track developments in the surveillance regimes in each State in the region. The governments

in question should cooperate in this study. The study should identify third party actors including business enterprises and other States that contribute to advancing the surveillance infrastructure in each State concerned. State and non-State actors complicit in illegal surveillance of HRDs by governments should be held accountable.

**To All States:**

- ♦ Implement an immediate moratorium on the use, acquisition, sale and transfer of surveillance technology. This moratorium should extend until adequate global controls and safeguards against abuse are in place.

## Country Recommendations

In addition to the above recommendations, States should revise their domestic laws and institutions to ensure compliance with international human rights standards regarding online freedom of expression as indicated below.

**We call on the government of Syria to create a safe and enabling environment for HRDs including by taking the following steps:**

- ♦ Eliminate laws and articles in Syria’s legal frameworks that criminalise online freedom of expression protected under international human rights law, or that are inconsistent with the right to due process and a fair trial, including:
  - 2011 Media Regulation Law, articles 3, 4, 12, 22, 78, 79, 95, Chapter VI;
  - 2012 Counter-Terrorism Law, articles 1, 4, 8;
  - 2012 Online Communications and Combating Cybercrimes, articles, 2, 5, 30
  - 2018 Anti-Cybercrime Law, articles 2, 6
  - 1949 Penal Code articles, 285, 286, 287, 309, 376, 378.

**We call on the de facto authorities of the Autonomous Administration of North and East Syria controlling territory in the country to create a safe and enabling environment for HRDs including by taking the following steps:**

- ♦ Eliminate laws and articles in its legal frameworks that criminalise online freedom of expression protected under international human rights law, or that are inconsistent with the right to due process and a fair trial, including:
  - 2016 Media Law in Al-Jazira Province, article 2;
  - Bans on content that challenges religious values.

**We call on the de facto authorities of the Syrian Salvation Government controlling territory in the country to create a safe and enabling environment for HRDs including by taking the following steps:**

- ♦ Eliminate laws and articles in its legal frameworks that criminalise online freedom of expression protected under international human rights law, or that are inconsistent with the right to due process and a fair trial, including:
  - 2019 Communications Law, Ch. II, IX, XI, article 60.

## NOTES

- 1 Researchers identified reported incidents of violations of online freedom of expression by conducting searches for cases in Syria between May 2018 and October 2020, from the following international media outlets and human rights organisations that document human rights violations: Amnesty International, Al Jazeera, ARTICLE 19, British Broadcasting Corporation, Committee to Protect Journalists, Front Line Defenders, Gulf Centre for Human Rights. Researchers also searched for communications from special procedures mandate holders regarding incidents alleging violations of freedom of expression in Syria in the UN Office of the High Commissioner for Human Rights 'Special Procedure Communication Report and Search' database. Researchers supplemented international research by consulting domestic media outlets: *Arab News Service*, *The Syrian Observer*, and *Syria Times*. Researchers used each website's embedded search functions to retrieve updates using the following keywords: freedom of expression, digital expression, digital, online, post, tweet, Twitter, Facebook, arrest, expression, and human rights defender. The domestic sources provided no relevant results. After finding cases using the international sources, researchers conducted additional searches using the Google search engine of the victim's name (with various English spellings) to find additional case information. See the methodology section for more information.
- 2 Michel Forst (Special Rapporteur on the Situation of Human Rights Defenders), *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, ¶ 77, U.N. Doc. A/HRC/31/55 (Feb. 1, 2016); Civil Society Space, Human Rights Council Res. 27/31, U.N. Doc. A/HRC/RES/27/31, ¶ 3 (Oct. 3, 2014); Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, G.A. Res. 53/144, U.N. Doc. A/RES/53/144 (Mar. 8, 1999).
- 3 Simon Kemp, *Digital 2021: Syria*, DATAREPORTAL (Feb. 12, 2021). As of January 2021, social media and content-sharing platforms such as YouTube, Facebook, and Telegram, as well as news sites such as RT news and Syrian Arab News Agency, are among the top ten websites visited by Syrian internet users. *Id.*
- 4 *Id.*
- 5 Special Rapporteur on the Situation of Human Rights Defenders, *Human Rights Defenders Operating in Conflict and Post-Conflict Situations: Report of the Special Rapporteur on the Situation of Human Rights Defenders*, ¶ 6, U.N. Doc. A/HRC/43/51 (Dec. 30, 2019) [hereinafter *SRHRD Report of Dec. 2019*].
- 6 *Id.*
- 7 International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter *ICCPR*]; Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment, *opened for signature* Dec. 10, 1984, 1465 U.N.T.S. 85 [hereinafter *CAT*]. Syria has also acceded to the Committee on the Elimination of Racial Discrimination in 1969; the International Covenant on Economic, Social, and Cultural Rights in 1969; the Convention on the Rights of the Child in 1993; the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 2003; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families in 2005; and the Convention on the Rights of Persons with Disabilities in 2009. *UN Treaty Body Database: Ratification Status for Syrian Arab Republic*, OHCHR.ORG.; International Convention on the Elimination of All Forms of Racial Discrimination, *opened for signature* Mar. 7, 1966, 660 U.N.T.S. 195; International Covenant on Economic, Social, and Cultural Rights, *opened for signature* Dec. 16, 1966, 993 U.N.T.S. 3; Convention on the Rights of the Child, *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3; Convention on the Elimination of All Forms of Discrimination against Women, *opened for signature* Dec. 18, 1979, 1249 U.N.T.S. 13; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, *opened for signature* Dec. 18, 1990, 2220 U.N.T.S. 93; Convention on the Rights of Persons with Disabilities, *opened for signature* Dec. 13, 2006, 2515 U.N.T.S. 3. At the regional level, Syria is party to the Charter of the Arab League. League of Arab States, Arab Charter on Human Rights, May 22, 2004, reprinted in 12 Int'l Hum. Rts. Rep. 893 (2005) (entered into force Mar. 15, 2008); *League of Arab States: Key Legal Texts*, INT'L CTR. FOR NOT-FOR-PROFIT L. (Sept. 25, 2021). However, its membership in the league has been suspended since 2011. *League of Arab States: Key Legal Texts, supra.*

- 8 World Conference on Human Rights, *Vienna Declaration and Programme of Action*, pmbl. at 20-21, §§ I(1), I(3), I(8), U.N. Doc. A/CONF.157/24 (Part 1) (Oct. 13, 1993); Universal Declaration of Human Rights art. 19, G.A. Res. 217 (III) A, U.N. Doc. A/810 (Dec. 10, 1948) [hereinafter UDHR].
- 9 The positive obligations of State parties to the ICCPR, listed in article 2, are to respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the Covenant, without distinction of any kind; to take the necessary steps to adopt laws or other measures as necessary to give effect to the rights recognised in the Covenant; and to ensure effective remedy and avenues for redress. ICCPR, *supra* note 7, at art. 2; see Hum. Rts. Comm., *General Comment No. 31 [80]: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, ¶ 8, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (May 26, 2004) [hereinafter *HRC General Comment No. 31*] (stating that the positive obligations of States are only fully discharged if individuals are protected by the State, not just against violations by its own agents, but also against acts committed by private persons or entities that would impair the enjoyment of rights protected by the ICCPR); see also David Kaye (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Promotion and Protection of the Right to Freedom of Opinion and Expression*, U.N. Doc. A/71/373 (Sept. 6, 2016) [hereinafter *SRFOE Report of Sept. 2016*] (stating that the ICCPR requires States to ensure the protection of individuals in the face of rights violations by non-State actors).
- 10 *HRC General Comment No. 31*, *supra* note 9, ¶ 8.
- 11 Wladimir van Wilgenburg, *Syrian Democratic Forces (Syria)*, EUROPEAN COUNCIL FOREIGN RELS.
- 12 The so-called “Syrian Salvation Government” (“SSG”) is part of the broader Syrian opposition, which includes a number of different rebel groups that exert control over territory within Syria (including the Turkish-backed “Syrian Interim Government”). See Alaa Nassar, Ahmed Rahal & Justin Clark, *HTS-Backed Civil Authority Moves Against Rivals in Latest Power Grab in Northwest Syria*, SYRIA DIRECT (Dec. 13, 2017).
- 13 *Country Guidance: Syria—1.3. Anti-Government Armed Groups*, EUROPEAN ASYLUM SUPPORT OFF. (Sept. 2020).
- 14 *Al-Nusrah Front for the People of the Levant*, U.N. SEC. COUNCIL (June 5, 2018) (describing the terrorist group Al-Nusrah Front’s creation of HTS as a vehicle to advance its position in the Syrian insurgency).
- 15 Ali Darwish, *Innocent Here; Convict There: Two Separate Judiciaries in Northern Syria*, ENAB BALADI (Feb. 13, 2021).
- 16 Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, *opened for signature* Aug. 12, 1949, 75 U.N.T.S. 287 (“In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions....”). Syria is party to all four of the Geneva Conventions. *Treaties, States Parties and Commentaries: Syrian Arab Republic*, INT’L COMM. RED CROSS. For a fuller discussion of the obligations of armed opposition groups see Andrew Clapham, *Human Rights Obligations of Non-State Actors in Conflict Situations*, 88 INT’L REV. RED CROSS 491, 495 (2006).
- 17 The Declaration on the Right and Responsibility of Individuals, Group and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms is addressed not only to States, but to all groups in society. Margaret Sekaggya (Special Rapporteur on the Situation of Human Rights Defenders), *Human Rights Defenders*, U.N. Doc. A/65/223 (Aug. 4, 2010). Sekaggya observes that, because article 10 of this Declaration states that “no one shall participate, by act or by failure to act when required, in violating human rights and fundamental freedoms,” non-State actors are included and therefore have a responsibility to promote and respect the rights enshrined in the Declaration. *Id.* Non-State actors exercising government-like functions and control over a territory are therefore obliged to respect human rights norms when their conduct affects the human rights of the individuals under their control. *Id.*
- 18 Indep. Int’l Comm’n of Inquiry on the Syrian Arab Republic, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, ¶ 10, U.N. Doc. A/HRC/21/50 (Aug. 16, 2012) [hereinafter *COI on Syria Report of Aug. 2012*] (stating that although non-State actors cannot formally become parties to international human rights treaties, they are nevertheless obliged to respect fundamental human rights insofar as they form customary international law, where such actors exercise de facto control over a part of a State’s territory).
- 19 See Hum. Rts. Comm., *General Comment No. 24 (52) 1/: Addendum—General Comment on Issues Relating to Reservations Made upon Ratification or Accession to the Covenant or the Optional Protocol Thereto, or in Relation to Declarations Under Article 41 of the Covenant*, ¶ 8, U.N. Doc. CCPR/C/21/Rev.1/Add.6 (Nov. 11, 1994) [hereinafter *HRC General Comment No. 24*] (listing the rights protected by the ICCPR that are also protected

- by customary international law: “[P]rovisions in the Covenant that represent customary international law... may not be the subject of reservations. Accordingly, a State may not reserve the right to engage in slavery, to torture, to subject persons to cruel, inhuman or degrading treatment or punishment, to arbitrarily deprive persons of their lives, to arbitrarily arrest and detain persons, to deny freedom of thought, conscience and religion, to presume a person guilty unless he proves his innocence...”).
- 20 International law scholar Hurst Hannum asserts that the UDHR may have become accepted as customary international law, as the international community has accepted it as a binding norm over time. For example, a governmental conference held on the twentieth anniversary of the UDHR’s adoption, at which 84 States were represented, observed that the Declaration “constitutes an obligation for the Members of the international community.” Hurst Hannum, *The UDHR in National and International Law*, 3 HEALTH & HUM. RTS. 144, 148 (1998). Also, in 1994, the International Law Association observed that the UDHR “is universally regarded as an authoritative elaboration of the human rights provisions of the United Nations Charter” and concluded that “many if not all of the rights elaborated in the...Declaration...are widely recognized as constituting rules of customary international law.” *Id.* John Humphrey, who served as Director of the UN Human Rights Division during the drafting of the UDHR, affirmed that “the justiciable provisions of the Declaration, including certainly, those enunciated in articles two to twenty-one inclusive, have now acquired the force of law as part of the customary law of nations.” Brian D. Lepard, *Toward a New Theory of Customary International Human Rights Law*, in REEXAMINING CUSTOMARY HUMAN RIGHTS LAW 233, 250 (2017) (internal quotation marks and citation omitted). In a separate opinion for an ICJ case, Judge Fouad Ammoun observed that “the affirmations of the Declaration...can bind States on the basis of custom...because they constitute a codification of customary law...or because they have acquired the force of custom ... through a general practice accepted as law ...” *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, 1971 I.C.J. 16, 76 (June 21) (separate opinion by Ammoun, Vice President).
- 21 See HRC General Comment No. 24, *supra* note 19, ¶ 8 (listing the rights protected by the ICCPR that are also protected by customary international law: “[P]rovisions in the Covenant that represent customary international law... may not be the subject of reservations. Accordingly, a State may not reserve the right to engage in slavery, to torture, to subject persons to cruel, inhuman or degrading treatment or punishment, to arbitrarily deprive persons of their lives, to arbitrarily arrest and detain persons, to deny freedom of thought, conscience and religion, to presume a person guilty unless he proves his innocence...”); see also COI on Syria Report of Aug. 2012, *supra* note 18, ¶ 10.
- 22 Legislative Decree No. 108 of 2011 on the Media Law (2011) [hereinafter Media Regulation Law] (Syria) (unofficial Arabic version; unofficial English translation on file with authors).
- 23 Law No. 19 of 2012 on Counter-Terrorism [hereinafter Counter-Terrorism Law] (Syria) (unofficial English translation of the full text of this law can be found at VIOLATIONS DOCUMENTARY CTR. IN SYRIA, SPECIAL REPORT ON COUNTER-TERRORISM LAW NO. 19 AND THE COUNTER-TERRORISM COURT IN SYRIA: COUNTER-TERRORISM COURT: A TOOL FOR WAR CRIMES annex 1 ( 2015)).
- 24 Law No. 17 of 2012 Implementing the Provisions of the Law on Communication on the Network and Combating Information Crime [hereinafter Law on Regulating Online Communications and Combating Cybercrimes] (Syria) (official Arabic version; unofficial English translation on file with authors).
- 25 Law No. 9 of 2018 Establishing Specialized Courts for Information and Communications Crimes [hereinafter Anti-Cybercrime Law] (Syria) (official Arabic version; unofficial English translation on file with authors).
- 26 Media Regulation Law, *supra* note 22, at art. 3 (“The media work practice is based on the following basic rules... (1) Freedom of expression and basic freedoms are guaranteed in the constitution of the Syrian Arab Republic, the Universal Declaration of Human Rights and the relevant international agreements that have been ratified by the government of the Syrian Arab Republic.”).
- 27 *Id.* at art. 4 (“Media work is based on the use of media means to place media contents that do not have the character of personal correspondence available to the general public or a group of them, taking into account the following basic principles: (1) Respect for freedom of expression, provided that you exercise this freedom with awareness and responsibility...”); see also Freedom House, *Freedom of the Press 2016: Syria*, REF WORLD.
- 28 Media Regulation Law, *supra* note 22, at art. 12 (“Media outlets are prohibited from publishing... (1) Any content that affects national unity and national security, offends



- monotheistic religions and religious beliefs, or stirs sectarian strife...”).
- 29 *Id.* (“Media outlets are prohibited from publishing... (2) Any content that incites crimes, acts of violence and terrorism, or incites hatred and racism...”).
- 30 *Id.* (“Media outlets are prohibited from publishing... (3) News and information related to the army and the armed forces, except for what is issued by the army and the armed forces and is permitted to be published...”).
- 31 *Id.* (“Media outlets are prohibited from publishing... (4) All that is prohibited to be published in the General Penal Code, the legislation in force, and everything that the courts prevent from publishing...”); *see also* SYRIAN CTR. FOR MEDIA & FREEDOM OF EXPRESSION, LEGAL ENVIRONMENT FOR MEDIA IN SYRIA 25.
- 32 Media Regulation Law, *supra* note 22, at art. 95 (“Anyone who commits a mistake to public incorrect news or fabricated or forged papers shall be punished with a fine...”).
- 33 *Id.* at art. 78 (“(A) The editor-in-chief, the journalist, and the person speaking in the media are responsible for acts that constitute punishable crimes in this law and the laws in force, unless it is proven that one of them has not contributed to the crime. (B) The owner of the media outlet is responsible in solidarity with the editor-in-chief and the media person...”); *see also* Dahlia El Zein, *The ‘New’ Syrian Media Law Is Nothing New*, COMM. PROTECT JOURNALISTS (Sept. 7, 2011).
- 34 Media Regulation Law, *supra* note 22, at ch. VI (“Licensing, accreditation and procedures thereof”).
- 35 *Id.* at art. 19 (“[T]here will be a council called the National Media Council ... responsible for organizing the media sector in accordance with the provisions of this law.”).
- 36 *Id.* at art. 22 (“The council shall assume the following tasks and powers ... (15) Laying down the foundations and mechanisms necessary for accrediting Arab and foreign correspondents and media outlets that wish to practice any media activity within the territories of the Syrian Arab Republic.”).
- 37 Indep. Int’l Comm’n of Inquiry on the Syrian Arab Republic, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, U.N. Doc. A/HRC/19/69 (Feb. 22, 2012) [hereinafter *COI on Syria Report of Feb. 2012*]. Articles 285 to 287 of the Syrian Penal Code criminalise weakening the national sentiment or provoking racial or sectarian strife during a current or expected state of armed conflict; spreading false or exaggerated news that would affect the morale of the country (even if the “perpetrator” believed the news to be correct); or circulating false or exaggerated news outside of the country that may undermine the prestige or financial standing of the State. Penal Code of 1949, arts. 285–87 (1949) (Syria) (unofficial English translations of these articles are on file with the authors); *see also* FREEDOM HOUSE, FREEDOM ON THE NET 2014: SYRIA; *Freedom on the Net 2020: Syria*, FREEDOM HOUSE [hereinafter *Freedom on the Net 2020: Syria*]; El Hadji Malick Sow (Chair-Rapporteur of the Working Grp. on Arbitrary Det.) et al., Communication to the Syrian Arab Republic, Ref. No. SYR 13/2011 (Aug. 30, 2011).
- 38 Hum. Rts. Comm., *General Comment No. 34: Article 19: Freedoms of Opinion and Expression*, ¶ 25, U.N. Doc. CCPR/C/GC/34 (Sept. 12, 2011) [hereinafter *HRC General Comment No. 34*]; David Kaye (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, ¶ 7, U.N. Doc. A/HRC/32/38 (May 11, 2016) [hereinafter *SRFOE Report of May 2016*]; Working Grp. on Arbitrary Det., *Opinion No. 71/2019 Concerning Issa al-Nukhefi, Abdulaziz Youssef Mohamed al-Shubaili and Issa Hamid al-Hamid (Saudi Arabia)*, ¶ 73, U.N. Doc. A/HRC/WGAD/2019/71 (Feb. 14, 2020) (“vaguely and broadly worded provisions ... which cannot qualify as *lex certa*, violate the due process of law undergirded by the principle of legality in article 11 (2) of the Universal Declaration of Human Rights”); UDHR, *supra* note 8, at arts. 11, 19; ICCPR, *supra* note 7, at art. 19
- 39 *SRFOE Report of May 2016, supra* note 38, ¶ 39; Frank La Rue (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, Frank La Rue, ¶ 34, U.N. Doc. A/HRC/17/27 (May 16, 2011) [hereinafter *SRFOE Report of May 2011*].
- 40 *Government Announces Schizophrenic Media Law*, REPS. WITHOUT BORDERS (Jan. 20, 2016); Freedom House, *supra* note 27 (describing the law’s “broad wording” as “giv[ing] the authorities leeway to crack down on journalists if they wish.”)
- 41 *HRC General Comment No. 34, supra* note 38, ¶ 48 (“Prohibitions of displays of lack of respect for a religion or other belief system...are incompatible with the Covenant.... Thus, for instance, it would be impermissible for any such laws to discriminate in favour of or against one or certain religions or belief systems.... Nor would it be permissible for such prohibitions to be

- used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith.”); *see also* Frank La Rue (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Promotion and Protection of the Right to Freedom of Opinion and Expression*, ¶ 30, U.N. Doc. A/66/290 (Aug. 10, 2011) [hereinafter *SRFOE Report of Aug. 2011*].
- 42 Frank La Rue (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, Frank La Rue, ¶ 88, U.N. Doc. A/HRC/20/17 (June 4, 2012) [hereinafter *SRFOE Report of June 2012*].
- 43 *HRC General Comment No. 34*, *supra* note 38, ¶ 13.
- 44 El Zein, *supra* note 33.
- 45 Counter-Terrorism Law, *supra* note 23, at art. 1.
- 46 *Id.* (“Financing Terrorism: Any direct or indirect raising or supplying of money, arms, munitions, explosives, telecommunication means, information or any other object to be used in a terrorist act...”).
- 47 *Id.* at art. 8 (“Whoever distributes publications or stores information of any form with a view to promote terrorist actions shall be punished by temporary hard labor; the same penalty shall apply to those who administer or use a website for that purpose.”).
- 48 *SRFOE Report of May 2016*, *supra* note 38, ¶ 7.
- 49 Indep. Int’l Comm’n of Inquiry on the Syrian Arab Republic, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, ¶ 82, U.N. Doc. A/HRC/40/70 (Jan. 31, 2019).
- 50 Comm. on the Elimination of Discrimination against Women, *Concluding Observations on the Second Periodic Report of the Syrian Arab Republic*, ¶ 29(b), U.N. Doc. CEDAW/C/SYR/CO/2 (July 18, 2014) (stating the committee was “concerned at the broad definitions of acts of terrorism, terrorist organisations and financing of terrorism contained in Law No. 19/2012”).
- 51 *Id.* ¶ 30(d) (recommending amendment of the Law No. 19/2012 “to ensure that the Law is in conformity with [CEDAW] and other international human rights instruments, such as the International Covenant on Civil and Political Rights and that its scope does not, in practice, extend to activities which do not constitute terrorism”). Human Rights Watch has also criticised “the overbroad provisions in the Counterterrorism Law,” and its use to “convict peaceful activists on charges of aiding terrorists... under the guise of countering violent militancy.” *See Syria: Counterterrorism Court Used to Stifle Dissent*, HUM. RTS. WATCH (June 25, 2013). Human Rights Watch specifically notes that the reference to “any method” (or “any tool”) in the definition “opens the door to labelling virtually any act as a terrorist offense.” *Id.*
- 52 Law on Regulating Online Communications and Combating Cybercrimes, *supra* note 24.
- 53 *Id.* at art. 2 (stating that ISPs must save certain data for the National Agency for Network Services, to allow the Agency to regulation network communication “in accordance with the applicable Media Law in force.”); *see also* GULF CTR. FOR HUM. RTS., *MAPPING CYBERCRIME LAWS AND VIOLATIONS OF DIGITAL RIGHTS IN THE GULF AND NEIGHBOURING COUNTRIES* (2018).
- 54 Law on Regulating Online Communications and Combating Cybercrimes, *supra* note 24, at art. 5 (“Any person who provides network communication services in a professional capacity shall show clearly the following data on their website: (1) The name and address of the website owner or the network communication service provider, and his/her commercial register, if any. (2) The name and address of the website manager, and his/her contact information...”).
- 55 *Id.* at art. 2 (“Network service providers must save a copy of their stored content, if any, and save traffic data that allows for verification of identity of the people who contribute to publishing content online for a period specified by the agency...”); *see also* *Freedom on the Net 2020: Syria*, *supra* note 37.
- 56 Law on Regulating Online Communications and Combating Cybercrimes, *supra* note 24, at art. 30 (“Increased Penalties. The penalties are increased in the following cases, according to the general rules of severity stipulated in the penal code in force: (1) If the crime affects the country or public safety...”); GULF CTR. FOR HUM. RTS., *supra* note 53.
- 57 *COI on Syria Report of Feb. 2012*, *supra* note 37.
- 58 Anti-Cybercrime Law, *supra* note 25; *Syria: Newly Enacted Anti-Cybercrime Law Threatens Online Freedom of Opinion and Expression*, GCHR (May 16, 2018).
- 59 Anti-Cybercrime Law, *supra* note 25, at art. 2.
- 60 *Id.* at art. 6 (stipulating that the qualifications for judges should include those who have been “trained in combating

information crimes and telecommunications crimes”). According to reports, particular aspects of the training of these personnel and judges include filtering online content, especially on social media, and collecting data on computers, information systems, or storage devices. Syria: *Newly Enacted Anti-Cybercrime Law Threatens Online Freedom of Opinion and Expression*, *supra* note 58.

- 61 David Kaye (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, ¶¶ 19–20, U.N. Doc. A/HRC/35/22 (Mar. 30, 2017) [hereinafter *SRFOE Report of Mar. 2017*] (“Providers should only be compelled to release user data when ordered by judicial authorities certifying necessity and proportionality to achieve a legitimate objective... Laws that require private actors to create large databases of user data accessible to the government raise necessity and proportionality concerns.”).
- 62 Frank La Rue (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, Frank La Rue, ¶ 24, U.N. Doc. A/HRC/23/40 (Apr. 17, 2013); ICCPR, *supra* note 7, at art. 19 (“[T]his right [to freedom of expression] shall include freedom to seek, receive and impart information and ideas of all kinds...”).
- 63 *SRFOE Report of Mar. 2017*, *supra* note 61, ¶ 17.
- 64 *Id.* ¶ 18 (stating that laws enabling governments to access user data through ISPs “based on a mere assertion of national security,” make it so that users are “unable to predict with reasonable certainty the circumstances under which their communications and associated data may be disclosed to authorities”).
- 65 David Kaye (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Surveillance and Human Rights: Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, ¶ 24, U.N. Doc. A/HRC/41/35 (May 28, 2019). Online privacy serves as a “gateway to secure exercise of the freedom of opinion and expression,” and “encryption and anonymity are protected precisely because of its role in securing those rights.” David Kaye (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, David Kaye, ¶ 16, U.N. Doc. A/HRC/29/32 (May 22, 2015). Furthermore, ICCPR article 19(1) states that everyone shall have the right to hold opinions without interference. ICCPR, *supra* note 7, at art. 19(1); *see also* UDHR, *supra* note 8, at art. 1. The HRC has interpreted this right to include “the right to protection of the law against such interferences.” The Right to Privacy in the Digital Age, Human Rights Council Res. 28/16, U.N. Doc. A/HRC/RES/28/16, ¶ 14 (Mar. 26, 2015).
- 66 SYRIAN CTR. FOR MEDIA & FREEDOM OF EXPRESSION, *THE STATE OF MEDIA IN SYRIA* (2019), at 25. Researchers for this study were unable to locate a copy of this law. However, according to the Syrian Centre for Media and Freedom of Expression, the Joint Governance of Al-Jazeera District ratified the law by Decree No. 1 of 2016, which consists of thirty-three articles and includes duties and penalties for journalists as well as establishing a Media Council and a Supreme Information Council, the latter which issues licenses and media credentials. SYRIAN CTR. FOR MEDIA & FREEDOM OF EXPRESSION, *supra* note 31, at 47-48.
- 67 SYRIAN CTR. FOR MEDIA & FREEDOM OF EXPRESSION, *supra* note 31, at 47. This law is currently being re-drafted into a newer version, which is “scheduled to be announced during the net weeks,” according to the Syrian Democratic Council (the legislative body of the NES). *A Follow-Up Committee for the Outcomes of the People of Al-Jazeera and Euphrates Conference in Which Decisions Are Discussed and Others Are Implemented*, SYRIAN DEMOCRATIC COUNCIL; *see Dialogue Forum Held for Northeast Syria’s New Media Law*, N. PRESS AGENCY (Dec. 24, 2020); *Annual Report of the Executive Council for North and East Syria – 2020*, ROJAVA INFO. CTR. (Feb. 6, 2021).
- 68 *Three Actions Regarding Media Professionals in Three Areas of Control in Syria*, ENAB BALADI (Nov. 24, 2020) (translation on file with authors).
- 69 *SRFOE Report of May 2016*, *supra* note 38, ¶ 7.
- 70 SYRIAN CTR. FOR MEDIA & FREEDOM OF EXPRESSION, *supra* note 31, at 47.
- 71 *SRFOE Report of Aug. 2011*, *supra* note 41, ¶ 30.
- 72 Frank La Rue (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Promotion and Protection of the Right to Freedom of Opinion and Expression*, ¶ 53, U.N. Doc. A/67/357 (Sept. 7, 2012). The SR on FOE observed that “international human rights law protects individuals and not abstract concepts such as religion, belief systems, or institutions . . .” and noted that “the right to freedom of expression includes the right to scrutinize, debate openly, make statements that offend, shock and disturb,

- and criticize belief systems, including religious ones, provided that they do not advocate hatred that incites hostility, discrimination, or violence." *Id.* ¶ 53.
- 73 *Al-Nusrah Front for the People of the Levant, supra* note 14 (describing the Al-Nusrah Front's creation of HTS as a vehicle to advance its position in the Syrian insurgency).
- 74 Communications Law of 2019, Syrian Salvation Government [hereinafter Communications Law] (Arabic version; unofficial translation on file with authors).
- 75 Qasim Al Basri, *The Communications Liberation Commission in Northern Syria*, ALJUMHURIYA.NET (Dec. 4, 2019) (unofficial translation on file with author). According to the analysis, the law creates regulations and mechanisms to regulate operation and management of communications, including prices, and prohibits private communications networks from operating without permission from authorities. *Id.*
- 76 Communications Law, *supra* note 74, at chs. II, IX, XI.
- 77 *Id.* at art. 60.
- 78 *Id.*
- 79 SYRIAN CTR. FOR MEDIA & FREEDOM OF EXPRESSION, *supra* note 31, at 42; see *Three Actions Regarding Media Professionals in Three Areas of Control in Syria, supra* note 68 (authorities monitoring photographs and videos by media working with humanitarian relief organisations for posting images that "violate the dignity" of civilians and children and referring repeat violators to judicial authorities).
- 80 See *HRC General Comment No. 34, supra* note 38, ¶ 13.
- 81 *SRFOE Report of May 2011, supra* note 39, ¶ 26. The prohibitions on speech concerning the authorities are contrary to article 19, not only because they are overly broad and ambiguous, but also because they provide an impermissible higher level of protection to public officials against media statements than that afforded to all citizens. *SRFOE Report of June 2012, supra* note 42, ¶ 88.
- 82 *Syrian Military Intelligence Arrests Syrian Kurdish Journalist at Checkpoint*, COMM. PROTECT JOURNALISTS (Sept. 5, 2018).
- 83 *Id.*
- 84 *Id.*
- 85 *Rudaw Calls on Syrian Authorities to Release Journalist Omar Kalo*, RUDAW (Sept. 4, 2018).
- 86 *Syrian Officials Release Rudaw Anchor Omar Kalo in Damascus*, RUDAW (Oct. 4, 2018).
- 87 *Syrian Security Forces Arrest Pro-Assad Reporter Rabea Kalawandi*, COMM. PROTECT JOURNALISTS (July 10, 2019); Haid Haid, *Syria Wants Complete Control Over Information, Which Is Why Even Loyalist Journalists Can Be Arrested for Being 'Out of Order'*, SYNDICATION BUREAU (July 28, 2019).
- 88 *Syrian Security Forces Arrest Pro-Assad Reporter Rabea Kalawandi, supra* note 87.
- 89 *Russian Media in Syria: Organized Propaganda Breaking the Censorship Scissors*, ENAB BALADI (Sept. 4, 2019).
- 90 Kalawandy began tweeting and posting on his Facebook, beginning 7 August 2019. Researchers determined this after performing an advanced search on Twitter for tweets between 7 July 2019 and 8 August 2019 (results found here), and by applying a post filter on his Facebook page to check for posts he made in July and August 2019.
- 91 *Harassment of Pro-Government Journalists Growing in Syria*, REPS. WITHOUT BORDERS (July 16, 2019).
- 92 Working Grp. on Arbitrary Det., *Report of the Working Group on Arbitrary Detention: United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court*, ¶ 11, U.N. Doc. A/HRC/30/37 (July 6, 2015) [hereinafter *WGAD Report of July 2015*]; Hum. Rts. Comm., *General Comment No. 35: Article 9 (Liberty and Security of Person)*, ¶¶ 17, 22-23, 53, U.N. Doc. CCPR/C/GC/35 (Dec. 16, 2014) [hereinafter *HRC General Comment No. 35*].
- 93 *WGAD Report of July 2015, supra* note 92, ¶ 10; UDHR, *supra* note 8, at art. 19; ICCPR, *supra* note 7, at art. 19.
- 94 *WGAD Report of July 2015, supra* note 92, ¶ 11.
- 95 Working Grp. on Arbitrary Det., *Report of the Working Group on Arbitrary Detention*, ¶ 46, U.N. Doc. A/HRC/36/37 (July 19, 2017); UDHR, *supra* note 8, at art. 7; ICCPR, *supra* note 7, at art. 26.
- 96 Hum. Rts. Comm., *General Comment No. 32: Article 14, Right to Equality Before Courts and Tribunals and to Fair Trial*, ¶ 6, U.N. Doc. CCPR/C/GC/32 (Aug. 23, 2007) [hereinafter *HRC General Comment No. 32*].
- 97 *WGAD Report of July 2015, supra* note 92, annex, princs. 7-9; *HRC General Comment No. 32, supra* note 96, ¶ 10.
- 98 *SRHRD Report of Dec. 2019, supra* note 5, ¶ 13 (citing Security Council Res. 2286 (2016), U.N. Doc. S/RES/2286 (2016), ¶ 2 (May 3, 2016); Grp. of Eminent Int'l & Reg'l Experts, *Situation of Human Rights in*

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- Yemen, Including Violations and Abuses Since September 2014: Report of the Group of Eminent International and Regional Experts as Submitted to the United Nations High Commissioner for Human Rights*, ¶ 12, U.N. Doc. A/HRC/42/17 (Aug. 9, 2019); U.N. Off. of the High Comm’r for Hum. Rts., *Report of the Office of the United Nations High Commissioner for Human Rights on the Question of Human Rights in Cyprus*, ¶ 11, U.N. Doc. A/HRC/25/21 (Jan. 22, 2014); U.N. High Comm’r for Hum. Rts., *Report of the United Nations High Commissioner for Human Rights on Cooperation with Georgia*, ¶ 43, U.N. Doc. A/HRC/39/44 (Aug. 15, 2018)).
- 99 SRHRD Report of Dec. 2019, *supra* note 5, ¶ 15 (citing 1 JEAN-MARIE HENCKAERTS & LOUISE DOSWALD-BECK, INT’L COMM. OF THE RED CROSS, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW RULES 25, 27-32, 34 (2005)).
- 100 *Id.* ¶ 37.
- 101 *Hayat Tahrir Al-Sham Militants Abduct US Journalist Bilal Abdul-Kareem and Driver in Syria*, COMM. PROTECT JOURNALISTS (Aug. 17, 2020); *US Presenter of Social Media Channel Held by Jihadis in Idlib Province*, REPS. WITHOUT BORDERS (Aug. 19, 2020).
- 102 *US Presenter of Social Media Channel Held by Jihadis in Idlib Province*, *supra* note 101.
- 103 *Hayat Tahrir al-Sham Militants Abduct US Journalist Bilal Abdul-Kareem and Driver in Syria*, *supra* note 101.
- 104 Areeb Ullah & Harun al-Aswad, *Syria: US Journalist Bilal Abdul Kareem Released by HTS After Six Months*, MIDDLE E. EYE (Feb. 17, 2021).
- 105 Sarah El Deeb, *US Reporter Held by al-Qaida-Linked Group in Syria Released*, AP NEWS (Feb. 18, 2021).
- 106 *Id.* Human rights defenders, including journalists, are entitled to fundamental, non-derogable, due process protections even when proceedings are conducted by non-State actors exercising governmental functions. See SRHRD Report of Dec. 2019, *supra* note 5, ¶¶ 15-16.
- 107 *Prominent Syrian Writer Yousph Arrested in Northeastern Syria, Held for Five Days*, COMM. PROTECT JOURNALISTS (Oct. 9, 2018).
- 108 *Id.*
- 109 Souleman Yousph, *Assyrians and Christians in Wamishli: No to the “Kurdish Administration,”* ANKAWA.COM (Sept. 5, 2018) (original in Arabic, unofficial translation via Google).
- 110 *Prominent Syrian Writer Yousph Arrested in Northeastern Syria, Held for Five Days*, *supra* note 107; *Kurdish Self-Administration in Syria: Release Assyrian Journalist Souleman Yousph*, ASSYRIAN POL’Y INST. (Sept. 30, 2018) (note that his videos, which are linked in this article, have since been deleted).
- 111 *Prominent Syrian Writer Yousph Arrested in Northeastern Syria, Held for Five Days*, *supra* note 107; *Kurdish Self-Administration in Syria: Release Assyrian Journalist Souleman Yousph*, *supra* note 110. His Facebook posts condemning Kurdish policies towards Assyrian schools can be found by applying a September 2018 post filter to his Facebook page.
- 112 *Prominent Syrian Writer Yousph Arrested in Northeastern Syria, Held for Five Days*, *supra* note 107.
- 113 *Id.*
- 114 SRHRD Report of Dec. 2019, *supra* note 5, ¶ 33.
- 115 *Regional Authorities in Northeast Syria Suspend Rudaw TV Reporter’s Credentials for 2 Months*, COMM. PROTECT JOURNALISTS (May 11, 2020).
- 116 *Id.*
- 117 *Syrian Militia Detains Reporter in Western Idlib*, COMM. PROTECT JOURNALISTS (July 5, 2018).
- 118 *Id.*
- 119 *Id.*
- 120 COI on Syria Report of Aug. 2012, *supra* note 18, ¶ 10.
- 121 See HRC General Comment No. 31, *supra* note 9, ¶ 8; see also SRFOE Report of Sept. 2016, *supra* note 9.
- 122 WGAD Report of July 2015, *supra* note 92, ¶ 11; HRC General Comment No. 35, *supra* note 92, ¶¶ 17, 22-23, 53.
- 123 *Hayat Tahrir al-Sham Militant Group Detains Syrian Journalist Maan Bakour in Idlib*, COMM. PROTECT JOURNALISTS (June 26, 2019).
- 124 ICCPR, *supra* note 7, at art. 9; UDHR, *supra* note 8, at art. 19. The Working Group on Arbitrary Detention has noted that arrests in violation of the ICCPR are presumptively arbitrary. Working Grp. on Arbitrary Det., *Report of the Working Group on Arbitrary Detention: Addendum—Visit to the Islamic Republic of Iran*, ¶ 42, U.N. Doc. E/CN.4/2004/3/Add.2 (June 27, 2003); ICCPR, *supra* note 7, at art. 9.
- 125 See HRC General Comment No. 24, *supra* note 19, ¶ 8.
- 126 ICCPR, *supra* note 7, at art. 14(3).

- 127 Questions Relating to the Obligation to Prosecute or Extradite (*Belgium v. Senegal*), Judgment, 2012 I.C.J., ¶ 99 (July 20); CAT, *supra* note 7, at art. 2; Dire Tladi (Special Rapporteur), *Fourth Report on Peremptory Norms of General International Law (Jus Cogens) by Dire Tladi, Special Rapporteur*, ¶ 69, U.N. Doc. A/CN.4/727 (Jan. 31, 2019) [hereinafter *SR Report of Jan. 2019*].
- 128 CAT, *supra* note 7, at art. 2; *SR Report of Jan. 2019, supra* note 127, ¶ 69. Non-State actors in control of territory are obligated to respect human rights that are part of customary international law. *COI on Syria Report of Aug. 2012, supra* note 18, ¶ 10. See also Responsibility of States for Internationally Wrongful Acts, G.A. Res. 56/83, U.N. Doc. A/Res/56/83, art. 10(1) (Dec. 12, 2001) (“The conduct of an insurrectional movement which becomes the new government of a State shall be considered an act of that State under international law.”).
- 129 CAT, *supra* note 7, at art. 1.
- 130 Nils Melzer (Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment), *Extra-Custodial Use of Force and the Prohibition of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 33, U.N. Doc. A/72/178 (July 20, 2017).
- 131 *Id.* ¶¶ 34, 36. The Committee against Torture has repeatedly held that police brutality and excessive use of force outside the context of detention can fall within its purview. Comm. against Torture, *Report of the Committee against Torture*, ¶ 126, U.N. Doc. A/50/44 (1995); Comm. against Torture, *Concluding Observations on the Combined Third and Fourth Periodic Reports of the Bolivarian Republic of Venezuela*, ¶ 12, U.N. Doc. CAT/C/VEN/CO/3-4 (Dec. 12, 2014); Comm. against Torture, *Concluding Observations on the Fourth Periodic Reports of Turkey*, ¶ 15, U.N. Doc. CAT/C/TUR/CO/4 (June 2, 2016); Comm. against Torture, *Concluding Observations on the Combined Third to Fifth Periodic Reports of the Republic of Korea*, ¶ 13, U.N. Doc. CAT/C/KOR/CO/3-5 (May 30, 2017).
- 132 *Hayat Tahrir Al-Sham Militants Abduct US Journalist Bilal Abdul-Kareem and Driver in Syria, supra* note 101.

NOTES





# UNITED ARAB EMIRATES



# UAE SCORECARD

## Targeted Activism or Expression



Criticism of Government\*



Journalists



Women's Rights and WHRDs

## Human Rights Violations



Privacy & Surveillance



Arbitrary Detention



Incommunicado Detention



Enforced Disappearance



Fair Trial

## Problematic Legal Provisions and Institutions



Criminal Defamation



Cybercrime Law



Public Order



Specialised Law Enforcement Units

4

Number of incidents that fit the inclusion criteria of this study

\*Including criticism of foreign government

## INTRODUCTION

Between 01 May 2018 and 31 October 2020, there were four documented incidents of violations of the right to freedom of expression online in the United Arab Emirates (UAE), a federation of seven emirates,<sup>1</sup> that fit this study's inclusion criteria.<sup>2</sup> During this time period, the UAE targeted online expression regarding the country's foreign policy, including the war in Yemen.

Various factors have chilled human rights activism in the UAE, including trials earlier in the decade of prominent human rights defenders (HRDs), many of whom remain imprisoned. Also the vast majority of the population are non-citizens who risk deportation for participating in human rights advocacy. These factors may help explain the relatively small number of incidents reported since May 2018, which nevertheless constitute credible evidence that the government has violated its obligation to respect online freedom of expression and additional associated rights of HRDs". These violations also constitute breaches of the duty of the State, pursuant to the UN Charter, "as the main duty-bearer" to ensure "defenders enjoy a safe and enabling environment" and that government institutions and processes "are aligned with their safety and the aim of their activities."<sup>3</sup>

Internet and social media use is widespread in the UAE. As of January 2021, there were an estimated 9.84 million internet users and 9.84 million social media users, out of a total population of 9.94 million.<sup>4</sup> The incidents described in this chapter indicate that the UAE government has targeted Facebook users in particular. As of January 2021, Facebook estimated that it had a domestic audience of 7.80 million people in the country.<sup>5</sup>

The UAE is party to a number of international and regional treaties protecting the right to freedom of expression.<sup>6</sup> Although the UAE is not a party to the International Covenant on Civil and Political Rights (ICCPR), it is a party to the Arab Charter on Human Rights and the United Nations (UN) Charter, and as such has committed to upholding fundamental human rights, including human rights principles contained in the Universal Declaration of Human Rights (UDHR).<sup>7</sup>

# LEGAL AND POLITICAL ENVIRONMENT FOR ONLINE EXPRESSION IN THE UAE

The incidents reported within the study's time period, and a review of past patterns of enforcement, indicate that UAE Penal Code and Federal Decree Law No. 5 on Combatting Cybercrimes (Cybercrime Law), are the laws that authorities most frequently used to target online expression. In addition to this legal framework, specialised law enforcement agencies utilize surveillance technologies to target online human rights advocacy.

## 1987 Penal Code

The Penal Code, most recently amended in 2020, contains multiple provisions that restrict freedom of expression. Article 176 stipulates imprisonment for between fifteen and twenty-five years for "insult[ing] the President of the State."<sup>8</sup> Article 180 mandates execution or life imprisonment for anyone who establishes, provides funding to, or joins an organization that aims "to subvert the provisions of the Constitution or Law or to oppose the basic principles upon which the regime is based."<sup>9</sup> Article 181 mandates a sentence of death or life imprisonment for "establish[ing] . . . or participat[ing] in an . . . organisation . . . intending or seeking through its activity to prejudice the security or interests of the State."<sup>10</sup> Moreover, article 182 (bis)(1) mandates at least ten years imprisonment for "us[ing] religion to promote . . . ideas that tend towards insurrection or against the national unity or the civil peace."<sup>11</sup> Article 197 (bis)(2) provides that anyone "who uses . . . telecommunication or information technology . . . to publish information or news . . . that may inflict damages to the security of the State or prejudice the public order, shall be sentenced to temporary imprisonment."<sup>12</sup> Lastly, article 372, a criminal defamation provision, stipulates imprisonment of up to two years or a fine for "attribut[ing] to another, through a means of publicity, a fact that makes him

object of punishment or of contempt."<sup>13</sup> An individual receives a penalty of both imprisonment and a fine "in case the libel is perpetrated against a public servant."<sup>14</sup>

Multiple UN Special Procedures mandate holders wrote to the UAE's government in a 2017 communication characterising certain provisions of the Penal Code, as well as the Cybercrime Law, as "repressive legislation criminalizing the legitimate exercise of freedom of expression."<sup>15</sup> Under both article 19 of the ICCPR and the UDHR, criminal laws that restrict freedom of expression must be sufficiently precise so as to enable individuals to determine how to comply with the law and to limit the discretion conferred on authorities enforcing it.<sup>16</sup> Vaguely and broadly worded provisions have been found by Special Procedures mandate holders to violate this requirement, allowing authorities to use their excessive discretion to target protected speech and encouraging individuals to engage in self-censorship.<sup>17</sup> UN Special Rapporteurs have criticised as overly vague provisions that prohibit individuals from using the internet to "upset social order" or "harm the public interest," or from publishing "articles or photos that could harm national security, public order, public health or public interest, incite violence, constitute sedition or have negative consequences for the financial climate of the country."<sup>18</sup> Additionally, the UN Human Rights Council has stipulated four types of expression that should never be subject to restriction: "[d]iscussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups . . ."<sup>19</sup>

Of relevance to Penal Code articles 176 and 372, the UN Human Rights Committee and the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (SR on FOE) have cautioned that laws on defamation should be crafted carefully so that they do not restrict freedom of expression, and have recommended the decriminalization of defamation.<sup>20</sup> The UN Human Rights Committee has interpreted ICCPR article 19 to require that “the application of criminal law should only be countenanced in the most serious of cases, and imprisonment is never an appropriate penalty.”<sup>21</sup> It has stated that defamation laws should include the defence of public interest in the subject matter of the criticism, the defence of truth, and, at least in the case of expression related to public figures, the defence of error.<sup>22</sup> Additionally, human rights bodies have emphasised the value of public debate concerning public institutions and public figures in particular, who should not be granted a higher level of protection against defamation.<sup>23</sup> The UN Human Rights Committee has expressed particular concern about “laws on such matters as, *lese majesty*, *desacato*, disrespect for authority, disrespect for flags and symbols, defamation of the head of state and the protection of the honour of public officials” and laws prohibiting “criticism of institutions, such as the army or the administration.”<sup>24</sup> During the UAE’s most recent Universal Periodic Review (UPR), the Office of the High Commissioner for Human Rights (OHCHR) “recommended that the [UAE] decriminalize defamation and place it within a civil code.”<sup>25</sup>

The provision for the imposition of the death penalty in a number of UAE Penal Code provisions that restrict expression raises the issue of arbitrary deprivation of life. Article 6 of the ICCPR, which establishes the right to life, restricts the use of capital punishment to the “most serious crimes.”<sup>26</sup> According to the Human Rights Committee, article 6 allows States to impose the death penalty as a punishment only for individuals convicted of crimes involving “intentional killing.”<sup>27</sup>

## 2012 Cybercrime Law

The UAE’s Cybercrime Law was enacted in 2012, most recently amended in 2018, and superseded an earlier version of the law passed in 2006—the earliest cybercrime law in the region.<sup>28</sup> The Cybercrime Law also includes provisions that are vague and overbroad. Article 24 prohibits operating a website or publishing online anything that “would promote or praise any programs or ideas which would . . . damage the national unity or social peace or prejudice the public order and public morals.”<sup>29</sup> Article 28 prohibits using internet technology (IT) to “[publish] or [transmit] information, news or cartoon drawings or any other pictures which may endanger the national security and the higher interests of the State or . . . public order.”<sup>30</sup> Article 30 mandates life imprisonment for using IT to “oppose the basic principles which constitutes [sic] the foundations of the ruling system of the state.”<sup>31</sup>

The Cybercrime Law also broadly restricts online expression related to civil society activities not approved by the State, including organised protest. Article 26 provides for a penalty of ten to twenty-five years’ imprisonment and a fine for anyone who “establishes, manages or runs a website or publishes information” online in support of “any unauthorised group.”<sup>32</sup> It prohibits downloading or sharing such content, or “repeat[ing] its browsing” with a punishment of up to five years’ imprisonment and a fine.<sup>33</sup> Articles 27 and 32 prohibit using IT to collect donations without a license,<sup>34</sup> and “planning, organizing, promoting or calling for demonstrations or protests or the like” without a license.<sup>35</sup>

In addition to being vague and overbroad, these provisions of the Cybercrime Law also impede freedom of association and the rights of HRDs. The UN Human Rights Council has emphasised that States have the obligation to respect and protect the rights to freedom of assembly and association both offline and online.<sup>36</sup> The UN Human Rights Committee has underscored that the protection of activities associated with the right to peaceful assembly, including information

dissemination, communication between participants, and broadcasting, is crucial to the exercise of that right.<sup>37</sup> In particular, the Special Rapporteur on the rights of freedom of peaceful assembly and association has criticized a law that “forbids providing ‘assistance’ to ‘illegal’ assemblies, including by ‘means of communication’” as being overly broad, “potentially making it a crime to promote, discuss, seek or link to information regarding a protest event.”<sup>38</sup> The Special Rapporteur on the Situation of Human Rights Defenders (SR on HRDs) has noted that laws that impose criminal penalties on unregistered organizations are *prima facie* incompatible with international human rights standards, including the freedom of association.<sup>39</sup> The SR on HRDs has also noted that a regime of authorization of public assemblies is inconsistent with the right to assemble peacefully.<sup>40</sup> Finally, Special Procedures mandate holders have emphasized the importance of online platforms for associations’ fundraising efforts,<sup>41</sup> and expressed concern that State policies that require organizations to “seek authorization from the authorities before being permitted to conduct fundraising activities,” interfere with the work of HRDs.<sup>42</sup>

The Cybercrime Law also prohibits expression that inflicts reputational damage on the State or its leaders. Article 20 stipulates imprisonment for an unspecified amount of time, a fine, or both punishments for using IT to “[insult] or [accuse] another person of a matter of which he shall be subject to punishment or being held in contempt by others.”<sup>43</sup> Furthermore, “[i]f a slander or insult is committed against a public official or servant in the course of or because of his work, this shall be considered an aggravating factor.”<sup>44</sup> Articles 29 and 37 both stipulate “temporary imprisonment,” plus a fine in the case of article 38, for using IT to harm the reputation of the UAE, its leaders, or its symbols.<sup>45</sup> As with the Penal Code, the Cybercrime Law is inconsistent with the Human Rights Committee and the SR on FOE’s guidance that defamation laws be crafted with care,<sup>46</sup> and that public figures should not be granted a higher level of protection against defamation.<sup>47</sup>

## Restricted Civic Space in the UAE

Prior to May 2018, UAE authorities conducted multiple mass arrests and trials of HRDs. Those incidents do not fit this study’s inclusion criteria but provide important context on the UAE’s restricted civic space, which may partly explain the small number of cases reported since May 2018. In 2012, UAE authorities arrested a group of people who became known as the UAE 94, which included political activists, lawyers, teachers, students, HRDs, and academics.<sup>48</sup> Authorities wrongly accused, tried, and convicted most members of the UAE 94 of trying to overthrow the government for their advocacy of political reform.<sup>49</sup> Many UAE 94 members alleged that authorities tortured them, while holding them incommunicado for months in secret State security facilities, prior to their trials.<sup>50</sup>

In another case which also falls outside of this study’s timeframe, UAE security agents arrested Ahmed Mansoor, a renowned blogger and HRD who is on the advisory boards of the Gulf Centre for Human Rights (GCHR) and Human Rights Watch, after breaking into his apartment on 20 March 2017.<sup>51</sup> On 29 May 2018, the State Security Chamber of the Federal Appeal Court convicted Mansoor, sentencing him to 10 years in prison for “insulting the status and prestige of the UAE and its symbols including its leaders,”<sup>52</sup> “publishing false reports and information on social media,”<sup>53</sup> and “portray[ing] the UAE as a lawless land.”<sup>54</sup> His sentence was upheld on appeal on 31 December 2018 and he remained in an isolation cell.<sup>55</sup> Mansoor used Facebook and Twitter to speak about human rights abuses in the UAE and abroad.<sup>56</sup> He was also a target of a surveillance operation and cyberattacks conducted by the UAE’s Development Research Exploitation and Analysis Department, codenamed Project Raven.<sup>57</sup> According to Amnesty International, “until his arrest . . . Mansoor was the last remaining HRD in the UAE who had been able to criticize the authorities publicly.”<sup>58</sup> Therefore, it is possible that these mass arrests and violations of the right to freedom of expression created a chilling effect

on speech in the UAE, contributing to the relatively low number of reported incidents since May 2018.

It should be noted, however, that Mansoor, and prominent members of the UAE<sup>94</sup>, including human rights lawyer Dr. Mohammed Al-Roken and Dr. Mohammad Mansoori, continue to be persecuted for protesting human rights violations in prison, including torture.<sup>59</sup> For example, Mansoor remains in isolation with no bed or books<sup>60</sup> after more than four years in prison, and Mansoori and Al-Roken have been in and out of isolation. All of them, in addition to imprisoned academic Nasser Bin Ghaith, have resorted to hunger strikes<sup>61</sup> to protest their poor conditions.

The UAE's civic space and online human rights advocacy are further restricted by laws and policies that effectively force non-citizens to choose between advocating for their human rights or facing deportation. As of July 2020, foreign nationals comprised approximately ninety percent of the UAE's total population.<sup>62</sup> Most non-citizens are low-wage workers, who the UAE governs using the discriminatory and oppressive *kafala*, or sponsorship, system.<sup>63</sup> The UAE's migrant workers have no right to collectively bargain or to organise and are prohibited from going on strike.<sup>64</sup> Moreover, non-citizens face the added threat of deportation for their online human rights advocacy. Both article 325 of the Penal Code and article 42 of the Cybercrime Law allow deportation of non-citizens convicted of violating these laws.<sup>65</sup> The threat of deportation for human rights-related speech and collective advocacy risks interfering with these workers' rights to freedom of expression, association, and peaceful assembly.<sup>66</sup>

## Surveillance

There is evidence indicating that UAE authorities frequently utilise spyware technology to engage in surveillance against HRDs. This impacts a number of interrelated human rights, including their rights to freedom of expression and opinion, to peaceful assembly and association, to religion or belief, and to privacy.<sup>67</sup> The SR on FOE has noted that surveillance,

if conducted for an unlawful purpose, “may be used in an effort to silence dissent, sanction criticism or punish independent reporting (and sources for that reporting).”<sup>68</sup> This in turn has a chilling effect on expression and association.<sup>69</sup>

The UAE authorities have reportedly engaged in numerous cyber-surveillance campaigns. In 2019, Project Raven, the same operation that targeted Ahmed Mansoor and a Saudi WHRD living in the UAE, Loujain Al-Hathloul, discussed in greater detail below, carried out surveillance on “[a]t least four journalists.”<sup>70</sup> Reuters has characterised Project Raven as “a clandestine team” of “more than a dozen former United States (US) intelligence operatives recruited to help the [UAE] engage in surveillance of other governments, militants and human rights activists critical of the monarchy.”<sup>71</sup> To surveil the journalists, authorities used a tool called Karma to target iPhone messages.<sup>72</sup> The SR on FOE has reported that former United States National Security Agency employees allegedly aided the UAE in surveilling its political opponents.<sup>73</sup> Lastly, Citizen Lab at the University of Toronto has found evidence of the UAE's use of Pegasus, a spyware technology made by the NSO group which the SR on FOE has criticised, including to target Mansoor.<sup>74</sup>

# TRENDS EMERGING FROM INCIDENTS OF REPRESSION OF ONLINE EXPRESSION IN THE UAE

UAE authorities have used vague and arbitrary laws as well as extralegal punishments to restrict online speech, in violation of the right to freedom of expression. All four of the reported incidents from the study period counted here concerned political speech advocating for human rights abroad, criticizing an aspect of the UAE's foreign policy, or critiquing the policies of a foreign country. These violations of the right to free expression have also impinged on other associated rights, including the right to privacy, and freedom from arbitrary detention, enforced disappearance, and torture.

## Violations of the Right to Online Freedom of Expression

### *Assisting foreign governments to target HRDs*

In May 2018, Saudi authorities arrested Loujain Al-Hathloul, a women's rights activist and blogger from Saudi Arabia (see Saudi Arabia chapter).<sup>75</sup> Before her arrest, she was living in the UAE as a student at the Sorbonne University campus in Abu Dhabi.<sup>76</sup> During this time, UAE authorities subjected her to surveillance and cyberattacks, hacking into her email.<sup>77</sup> On 13 March 2018, while Al-Hathloul was driving on a highway, Abu Dhabi police stopped and arrested her.<sup>78</sup> They did not provide her with any information about the reason for her arrest.<sup>79</sup> Abu Dhabi police briefly detained Al-Hathloul, took her to an airfield, and put her on a Saudi private jet, staffed by personnel from Saudi Arabia.<sup>80</sup> UAE personnel did not allow Al-Hathloul to contact family or an attorney before her rendition to Saudi Arabia.<sup>81</sup> The jet then flew to Saudi Arabia, where Saudi authorities eventually imprisoned her and subjected her to torture.<sup>82</sup>

According to the UN Working Group on Arbitrary Detention (WGAD), the UAE "facilitat[ed] the persecution of Ms. Alhathloul for her legitimate exercise of rights and freedoms."<sup>83</sup> As a party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the UAE must abide by article 3, in which States vow to enact measures "for the purpose of guaranteeing [women] the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men."<sup>84</sup> The UAE's targeting of Al-Hathloul for her advocacy breaches this obligation.<sup>85</sup> Additionally, her targeted surveillance and hacking interfered with her right to hold opinions without interference.<sup>86</sup> Al-Hathloul's case demonstrates also how countries in the Gulf collaborate with each other to suppress criticism of their human rights record.

### *HRDs documenting the war in Yemen*

On 18 June 2018, authorities in Yemen detained Radhya Al-Mutawakel and Abdulrasheed Al-Faqih at the Seiyun City airport as the two attempted to travel to Oslo for an event by the Centre for Humanitarian Dialogue.<sup>87</sup> Both are Yemeni HRDs and leaders of the Mwatana Organization for Human Rights which monitors and documents human rights violations in Yemen and is based in Sana'a.<sup>88</sup> According to Human Rights Watch, the agents who detained the two HRDs told them that their arrests were at the behest of the Saudi/UAE coalition authorities.<sup>89</sup> Mwatana reported that Saudi/UAE-led coalition authorities confiscated Al-Mutawakel and Al-Faqih's passports.<sup>90</sup> Authorities detained Al-Mutawakel and Al-Faqih for about twelve hours before releasing them, never giving them a reason for their detention.<sup>91</sup> Authorities told the HRDs that they were not allowed to travel and threatened further detention upon their release.<sup>92</sup>



While Yemeni officials detained Al-Mutawakel and Al-Faqih outside of UAE territory, the UAE may still be responsible for violating the HRDs' right to freedom of expression by targeting them for their online human rights advocacy.<sup>93</sup> According to the Group of Experts established by the UN High Commissioner for Human Rights, with regard to the situation in Yemen, it has "reasonable grounds to believe that the Governments of Yemen, and the [UAE] and Saudi Arabia to the extent they have control, are responsible for human rights violations . . . including arbitrary detention . . . and violations of fundamental freedoms."<sup>94</sup> The Group of Experts has reported that "[g]overnment forces, including forces backed by the [UAE], . . . arbitrarily detain, threaten and otherwise target individuals who openly questioned or criticized them, including political opponents, journalists, human rights defenders, and religious leaders."<sup>95</sup>

Furthermore, the detention of Al-Mutawakel, a women's human rights defender (WHRD), is in line with the Group of Experts' finding that "[WHRDs], journalists and activists throughout Yemen continue . . . to be targeted by all sides as a consequence of their work."<sup>96</sup> Al-Mutawakel's detention as a result of her activism also contravenes the UAE's obligations under CEDAW.<sup>97</sup> And to the extent that either Al-Mutawakel or Al-Faqih were detained as a way to interfere with their participation in an international conference, this also interferes with their right to freedom of peaceful assembly.<sup>98</sup>

#### *Other political speech related to foreign relations under the pretext of national security*

The UN OHCHR stated during the UAE's most recent UPR that "under the pretext of national security, many activists had been prosecuted for allegations mainly related to a person's right to express his or her opinion and criticism of any public policy or institution."<sup>99</sup> This pattern is reflected in the cases of Ahmed Etoum and Dhabia Khamis Al-Maslamani.

On 14 May 2020, authorities arrested Ahmed Etoum, a Jordanian national who had lived with his family in the UAE for five years.<sup>100</sup> Etoum often posted

his views on Facebook, including criticism of the Jordanian government, intelligence agency, and royal family.<sup>101</sup> On 08 October 2020, a court convicted Etoum of using Facebook to commit acts "against a foreign state" that could "damage political relations" and "endanger national security," sentencing him to ten years in prison.<sup>102</sup> Such a sentence is extraordinarily disproportionate to the alleged offense, in violation of international human rights standards.<sup>103</sup> These were charges under the Penal Code and the Cybercrime Law.<sup>104</sup> He is currently held at Al-Wathba prison in Abu Dhabi.<sup>105</sup>

On 26 September 2020, UAE authorities banned writer and journalist Dhabia Khamis Al-Maslamani from traveling from Dubai to Cairo, due to her public stance against the UAE's normalization of relations with Israel.<sup>106</sup> She posted about the ban on her travel on her Facebook and Twitter.<sup>107</sup> Access to her Facebook page in the UAE was then blocked, as were all websites mentioning the travel ban.<sup>108</sup> On 29 September 2020, the Federal Public Prosecutor in Abu Dhabi notified her that she had to attend an investigation on a charge of publishing content that "disturbs national security on social media websites regarding normalization."<sup>109</sup> The UAE authorities' punishment of Al-Maslamani, a WHRD, as a result of her protected speech, violates the UAE's legal obligations under CEDAW.<sup>110</sup>

## **Additional Human Rights Violations**

### *Arbitrary and incommunicado detention, and enforced disappearance*

Arbitrary deprivation of liberty is prohibited under customary international law and is a *jus cogens* norm.<sup>111</sup> A deprivation is arbitrary including when it is *jus cogens* norm applicable to all states.<sup>112</sup> As WGAD has reiterated, any measure depriving an individual of liberty must meet strict standards of lawfulness, necessity, and proportionality to avoid arbitrariness.<sup>113</sup> Deprivations may be arbitrary when they are based on discriminatory grounds against HRDs and activists, violating the right to equality

before the law.<sup>114</sup> Therefore, detention of individuals under arbitrary, impermissibly vague laws like the Penal Code and Cybercrime Law constitutes arbitrary detention prohibited under international law.<sup>115</sup>

The available reports indicate that the UAE has violated international standards on arbitrary detention. Authorities did not give three individuals—Almutawakel, al-Faqih, and al-Hathloul—the reason for their detention.<sup>116</sup> WGAD determined that the UAE further violated international standards on arbitrary deprivation of liberty in al-Hathloul’s case, as she “was not afforded the right to take proceedings before a court by, or in, the [UAE] so that the court may decide without delay the lawfulness of her detention.”<sup>117</sup> The working group also concluded that her “forced transfer. . . , coordinated by both Governments, circumvented the regular extradition procedure and resulted in deprivation of her liberty without a legal basis.”<sup>118</sup>

Incommunicado detention “places an individual outside the protection of the law”<sup>119</sup> in violation of article 6 of the UDHR<sup>120</sup> that protects the right to be recognized as a person before the law.<sup>121</sup> The Special Rapporteur on torture has observed that torture is “most frequently practiced during incommunicado detention,”<sup>122</sup> and it is outlawed by international law.<sup>123</sup> WGAD considers incommunicado detention a form of arbitrary detention.<sup>124</sup> The SR on torture has stated that “[i]n all circumstances, a relative of the detainee should be informed of the arrest and place of detention within 18 hours.”<sup>125</sup> However, authorities did not allow Ahmed Etoum to contact his family until three weeks after his arrest.<sup>126</sup> Authorities held him in solitary confinement at an unknown location for at least four months and have continued to prohibit Etoum’s family members from visiting him.<sup>127</sup>

Enforced disappearance is an international crime and is prohibited by customary law<sup>128</sup> as well as treaty.<sup>129</sup> An enforced disappearance has three elements: (1) a deprivation of liberty; (2) by State officials or with their consent; followed by (3) the

refusal to acknowledge the deprivation of liberty, or to disclose information on the fate or location of the disappeared.<sup>130</sup> An individual may be held incommunicado but is not considered to be disappeared unless the State does not disclose any one of the following pieces of information: whether the person is detained, where the person is detained, and if the person is alive or dead. WGAD determined that al-Hathloul’s transfer from the UAE to Saudi Arabia resulted in her enforced disappearance.<sup>131</sup>

These incidents echo the report of the Special Rapporteur on the independence of judges and lawyers (SR on IJL) following her 2014 visit to the UAE. The SR on IJL expressed concern that the Code of Criminal Procedure “does not provide for a maximum limit for pretrial detention” that a judge can impose, and “the limited guarantees provided against arbitrary arrest and detention in the Code of Criminal Procedure do not apply to persons arrested on State security or terrorism-related charges.”<sup>132</sup> In this latter group of cases, the prosecution can “extend pretrial detention for up to three months before presenting the detainee to a judge.”<sup>133</sup>

### *Due process violations*

Fundamental principles of fair trials are protected under international law at all times.<sup>134</sup> Individuals have universal rights to seek competent, independent, and impartial judicial review of the arbitrariness and lawfulness of deprivations of liberty, and to obtain without delay adequate and appropriate remedies.<sup>135</sup> Those detained enjoy a number of procedural safeguards of their rights including the right to be informed of rights, the right to initiate court proceedings without delay, and the right to legal assistance of counsel of their choice from the moment of apprehension.<sup>136</sup> Yet, authorities did not provide Ahmed Etoum with an attorney until after his first court hearing on 12 August 2020 and have not allowed his attorney to visit him.<sup>137</sup> This is consistent with the observations of the SR on IJL following her 2014 visit to the UAE, who was “extremely concerned at reports that an accused person’s access to a lawyer

can be restricted by the police or the prosecution during the investigative phase,” which “reflect breaches of international human rights standards on the right to a fair trial and guarantees ensuring the free exercise of the legal profession.”<sup>138</sup>

### *Freedom of movement*

Article 13 of the UDHR provides that “[e]veryone has the right to freedom of movement” as well as “the right to leave any country, including his own.”<sup>139</sup> The UAE’s imposition of travel bans on Almutawakel, al-Faqih, and al-Maslamani raise concerns regarding the UAE’s fulfilment of its obligations to protect these HRD’s freedom of movement. The SR on HRDs has expressed concern that governments impose on HRDs “obstacles to their freedom of movement,” including when HRDs seek to leave their countries “to take part in international meetings.”<sup>140</sup> Similarly, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has criticised a trend of governments restricting the freedom of movement of civil society activists under the guise of national security concerns.<sup>141</sup>

### *Non-refoulement*

The prohibition against torture is absolute, non-derogable, and a *jus cogens* norm of international law.<sup>142</sup> As a party to the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (CAT), the UAE is bound by the principle of non-refoulement in article 3, meaning that the UAE cannot “expel, return (‘refouler’) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.”<sup>143</sup> WGAD concluded that al-Hathloul’s “forced transfer to Saudi Arabia by the United Arab Emirates violated the principle of non-refoulement as well as other obligations . . . under article 3” of the CAT because of the risk that she would be subjected to torture or ill treatment upon transfer to Saudi Arabia.<sup>144</sup> Additionally, during the UAE’s most recent UPR,

multiple Special Procedures mandate holders raised credible information that the UAE subjects detainees to torture and other forms of cruel, inhuman, or degrading treatment or punishment.<sup>145</sup>

# CONCLUSION AND RECOMMENDATIONS

The UAE's government employed vague and overbroad laws, as well as extralegal detention, to punish online expression that is protected under international human rights law. United Arab Emirates authorities' use of spyware technology has further contributed to unabating online repression. HRDs, who government authorities detain and imprison, suffer additional rights violations, including incommunicado detention and torture. Based on available incident reports, there is credible evidence that the UAE is in breach of international standards on freedom of expression, the right to privacy, and associated rights.

To address these concerns, we offer the following general recommendations and country-specific recommendations.

## General Recommendations

### *To Governments of Gulf States and Neighbouring Countries:*

- ♦ Eliminate laws and articles in national legal frameworks that criminalise online freedom of expression protected under international human rights law, specifically:
  - All laws including anti-cybercrime, anti-terrorism, communications, media, penal, and technology laws that restrict online or offline expression through provisions to protect public order, national security, or the national economy; insults laws; and laws that criminalise fake news, that do not conform to international human rights standards and satisfy the principles of legality, legitimacy, necessity and proportionality;
  - Decriminalise the offense of defamation;
  - Revise anti-cybercrime laws to include affirmative protection for the legitimate online expression of HRDs, including journalists.
- ♦ Cease using deportation and travel bans as tools for targeting HRDs for their online human rights advocacy, and refrain from infringing on their right to freedom of movement. Reform legal institutions, including the criminal legal system, to promote the independence and autonomy necessary for:
  - Investigating human rights violations committed against HRDs by law enforcement, such as engaging in unlawful surveillance of HRDs, enforced disappearances, holding HRDs in unlawful detention, incommunicado, and subjecting them to ill-treatment and torture;
  - Ensuring that HRDs', citizens', and residents' right to freedom of movement is not violated;
  - Ensuring the judiciary upholds international standards guaranteeing the right to fair trial.

### *To the UN Human Rights Council:*

- ♦ Instruct the UN Office of the High Commissioner for Human Rights to undertake a study of the transnational cooperation among governments to affect the apprehension and rendering of foreign HRDs to their countries of origin for prosecution of online expression that is protected under international law.
- ♦ Instruct the UN Office of the High Commissioner for Human Rights to undertake a study to identify and track developments in the surveillance regimes in each State in the region. The governments in question should cooperate in this study. The study should identify third party actors including

business enterprises and other States that contribute to advancing the surveillance infrastructure in each State concerned. State and non-State actors complicit in illegal surveillance of HRDs by governments should be held accountable.

**To All States:**

- ✦ Implement an immediate moratorium on the use, acquisition, sale and transfer of surveillance technology. This moratorium should extend until adequate global controls and safeguards against abuse are in place.

## Country Recommendations

In addition to the above recommendations, States should revise their domestic laws and institutions to ensure compliance with international human rights standards regarding online freedom of expression as indicated below.

**We call on the UAE government to create a safe and enabling environment for HRDs including by taking the following steps:**

- ✦ Eliminate laws and articles in UAE’s legal frameworks that criminalise online freedom of expression protected under international human rights law, or that are inconsistent with the right to due process and a fair trial, including:
  - 1987 Penal Code, articles 176, 180, 181, 182(bis), 197(bis), and 372;
  - 2012 Cybercrime Law, articles 20, 24, 26–30, 32, 37, and 38.
- ✦ Eliminate the laws and articles in UAE’s legal frameworks that restrict the labour rights of migrant low-wage workers and threaten them with deportation for advocating for their human rights online, including:
  - The Kafala system used for migrant workers;
  - 1987 Penal Code article 325;
  - 2012 Cybercrime Law article 42.

**We call on OHCHR to:**

- ✦ Initiate a special working group in cooperation with civil society to address the role of the UAE and other governments in the region in cooperating in the apprehension and rendering of foreign HRDs to their countries of origin for prosecution of online expression that is protected under international law.

## NOTES

- 1 *United Arab Emirates: Government and Society—Constitutional Framework*, BRITANNICA. The UAE is headed by the Federal Supreme Council comprised of the hereditary rulers of each emirate. *Id.* This characterization of the political system of the country is offered for descriptive purposes; a normative evaluation of the political system as such is beyond the scope of this chapter.
- 2 The initial case identification of reported incidents of violations of online freedom of expression resulted from searching for cases in the UAE between May 2018 and October 2020, from the following international media outlets and human rights organizations that document human rights violations: Amnesty International, Al Jazeera, ARTICLE 19, British Broadcasting Corporation, Committee to Protect Journalists, Front Line Defenders, and Gulf Centre for Human Rights, and Human Rights Watch. Researchers also searched for communications from special procedures mandate holders regarding incidents alleging violations of freedom of expression in Oman in the UN database of communications. Researchers supplemented international research by consulting the following domestic media outlets and human rights reporting: *Arabian Post*, *Gulf News*, and *Khaleej Times* and used the embedded search functions to retrieve news updates using these keywords: freedom of expression, digital expression, digital, online, post, tweet, Twitter, Facebook, arrest, expression, and human rights defender during the relevant period of study. After finding cases using the international sources, researchers conducted additional searches using the Google search of the victim's name (with various English spellings) to find additional case information, as well as consulted online information posted on the Americans for Democracy and Human Rights in Bahrain (ADHRB), CIVICUS, and Mwatana for Human Rights websites. Loujain al-Hathloul's case is described in this chapter, but is only counted toward the number of incidents in the Saudi Arabia chapter as her arrest in the UAE occurred before this study's temporal scope, while her arrest in Saudi Arabia occurred within the temporal scope.
- 3 Michel Forst (Special Rapporteur on the Situation of Human Rights Defenders), *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, ¶ 77, U.N. Doc. A/HRC/31/55 (Feb. 1, 2016); Civil Society Space, Human Rights Council Res. 27/31, U.N. Doc. A/HRC/RES/27/31, ¶ 3 (Oct. 3, 2014); Declaration on the Right and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, G.A. Res. 53/144, U.N. Doc. A/RES/53/144 (Mar. 8, 1999).
- 4 Simon Kemp, *Digital 2021: The United Arab Emirates*, DATAREPORTAL (Feb. 10, 2021).
- 5 *Id.*
- 6 *UN Treaty Body Database: Ratification Status for United Arab Emirates*, OHCHR.ORG. The UAE acceded to CERD in 1974, to CEDAW in 2004, and to CAT in 2012. *Id.*
- 7 World Conference on Human Rights, *Vienna Declaration and Programme of Action* Vienna Declaration and Programme of Action, pmb. at 20-21, §§ I(1), I(3), I(8), U.N. Doc. A/CONF.157/24 (Part 1) (Oct. 13, 1993); Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/810, at art 19" to read "A/810, at art. 19 (Dec. 10, 1948) [hereinafter UDHR] League of Arab States, Arab Charter on Human Rights, May 22, 2004, reprinted in 12 Int'l Hum. Rts. Rep. 893 (2005) (entered into force Mar. 15, 2008) ("Reaffirming the principles of the Charter of the United Nations, the Universal Declaration of Human Rights and the provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and having regard to the Cairo Declaration on Human Rights in Islam."); *League of Arab States: Key Legal Texts*, INT'L CTR. FOR NOT-FOR-PROFIT L. (Sept. 25, 2021).
- 8 Federal Law No. 3 of 1987 Concerning the Penal Code, art. 176 [hereinafter Penal Code] (U.A.E.) (official English translation). In addition, article 176 (bis) states that "[a]ny person who shows insolence, or who insults or damages the reputation or dignity of the State or of its emblem or national symbols or . . . establishments" will be jailed for between ten and twenty-five years, as well as fined. *Id.* at art. 176 (bis).

- 9 *Id.* at art. 180. Furthermore, article 180 (bis) mandates a sentence of fifteen to twenty-five years in prison for “[a]ny person who promotes by speech, writing or by any other method, for any of the acts or objectives set forth in Article 180.” *Id.* at art. 180 (bis).
- 10 *Id.* at art. 181. Article 181 (bis)(2) stipulates that anyone who joins an organization “knowing of its unlawful objective or that it is not licensed, shall be sentenced to temporary imprisonment and to a fine.” *Id.* at art. 181 (bis)(2).
- 11 *Id.* at art. 182 (bis)(1).
- 12 *Id.* at art. 197 (bis)(2). Likewise, article 198 (bis) mandates imprisonment of at least one year for “intentionally disseminat[ing] false or malicious news, statements or rumours or disruptive propaganda intending to prejudice the public security.” *Id.* at art. 198 (bis).
- 13 *Id.* at art. 372.
- 14 *Id.*
- 15 Elina Steinerte (Vice-Chair of the Working Group on Arbitrary Detention) et al., Communication to the United Arab Emirates, at 5, Ref. No. AL ARE 3/2017 (May 3, 2017) [hereinafter May 2017 Communication to the UAE].
- 16 Hum. Rts. Comm., *General Comment No. 34: Article 19: Freedoms of Opinion and Expression*, ¶ 25, U.N. Doc. CCPR/C/GC/34 (Sept. 12, 2011) [hereinafter *HRC General Comment No. 34*]; David Kaye (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, ¶ 7, U.N. Doc. A/HRC/32/38 (May 11, 2016) [hereinafter *SRFOE Report of May 2016*]; Working Grp. on Arbitrary Det., *Opinion No. 71/2019 Concerning Issa al-Nukhefi, Abdulaziz Youssef Mohamed al-Shubaili and Issa Hamid al-Hamid (Saudi Arabia)*, ¶ 73, U.N. Doc. A/HRC/WGAD/2019/71 (Feb. 14, 2020) (“vaguely and broadly worded provisions . . . which cannot qualify as *lex certa*, violate the due process of law undergirded by the principle of legality in article 11(2) of the Universal Declaration of Human Rights”); UDHR, *supra* note 7, at arts. 11, 19; International Covenant on Civil and Political Rights art. 19, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter *ICCPR*].
- 17 *SRFOE Report of May 2016*, *supra* note 1616, ¶ 39; Frank La Rue (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Frank La Rue*, ¶ 34, U.N. Doc. A/HRC/17/27 (May 16, 2011) [hereinafter *SRFOE Report of May 2011*].
- 18 *SRFOE Report of May 2016*, *supra* note 1616, ¶ 39; Margaret Sekaggya (Special Rapporteur on the Situation of Human Rights Defenders), *Situation of Human Rights Defenders*, ¶ 24, U.N. Doc. A/67/292 (Aug. 10, 2012) [hereinafter *SRHRD Report of Aug. 2012*] (“Provisions that criminalize the publication of articles or photos that could harm national security, public order, public health or public interest, incite violence, constitute sedition or have negative consequences for the financial climate of the country are overly broad and restrictive.”).
- 19 Freedom of Opinion and Expression, Human Rights Council Res. 12/16 Human Rights Council Res. 12/16, U.N. Doc. A/HRC/RES/12/16, ¶ 5(p)(i) (Oct. 12, 2009).
- 20 *HRC General Comment No. 34*, *supra* note 16, ¶ 47. See also *SRFOE Report of May 2011*, *supra* note 1717, ¶ 36 (“defamation should be decriminalized”).
- 21 *HRC General Comment No. 34*, *supra* note 1616, ¶ 47.
- 22 *Id.* See also Frank La Rue (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Frank La Rue*, ¶¶ 83-88, U.N. Doc. A/HRC/20/17 (June 4, 2012) [hereinafter *SRFOE Report of June 2012*].
- 23 *HRC General Comment No. 34*, *supra* note 1616, ¶ 38; *SRFOE Report of June 2012*, *supra* note 22, ¶ 88; David Kaye (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Promotion and Protection of the Right to Freedom of Opinion and Expression*, ¶ 33, U.N. Doc. A/71/373 (Sept. 6, 2016) [hereinafter *SRFOE Report of Sept. 2016*].
- 24 *HRC General Comment No. 34*, *supra* note 1616, ¶ 38.
- 25 Hum. Rts. Council, *Compilation on the United Arab Emirates: Report of the Office of the United Nations High Commissioner for Human Rights*, ¶ 30, U.N. Doc. A/

- HRC/WG.6/29/ARE/2 (Nov. 13, 2017) [hereinafter *Nov. 2017 Compilation on the UAE*].
- 26 ICCPR, *supra* note 16, at art. 6.
- 27 Hum. Rts. Comm., *General Comment No. 36: Article 6: Right to Life*, ¶ 35, U.N. Doc. CCPR/C/GC/36 (Sept. 3, 2019). The General Assembly has also expressed “deep concern” about States imposing capital punishment on “persons exercising their human rights.” *Moratorium on the Use of the Death Penalty*, G.A. Res. 73/175, U.N. Doc. A/RES/73/175, at 2 (Jan. 23, 2019).
- 28 Federal Law No. 2 on the Prevention of Information Technology Crimes (2006 Cybercrime Law) Federal Law No. 2 of 2006 on the Prevention of Information Technology Crimes (U.A.E.) (unofficial English translation); Federal Decree Law No. 5 of 2012 on Combating Cybercrimes, amended 2018, art. 24 [hereinafter *Cybercrime Law*] (U.A.E.) (official English translation).
- 29 *Cybercrime Law*, *supra* note 28, at art. 24. The provision imposes a penalty of “temporary imprisonment” for an unspecified duration of time, and a fine.
- 30 *Id.* at art. 28. The provision imposes a penalty of “temporary imprisonment” for an unspecified duration of time and a fine.
- 31 *Id.* at art. 30.
- 32 *Id.* at art. 26.
- 33 *Id.*
- 34 *Id.* at art. 27. The provision imposes a penalty of “imprisonment” of an unspecified duration of time, and a fine.
- 35 *Id.* at art. 32. The provision imposes a penalty of “imprisonment” of an unspecified duration of time, and a fine.
- 36 Promotion, Protection, and Enjoyment of Human Rights on the Internet, Human Rights Council Res. 38/7 Human Rights Council Res. 38/7, U.N. Doc. A/HRC/RES/38/7, ¶ 1 (July 17, 2018). Those rights are protected under article 20 of the Universal Declaration of Human Rights, UDHR, *supra* note 7, and articles 21 and 22 of the International Covenant on Civil and Political Rights, ICCPR, *supra* note 16.
- 37 Hum. Rts. Comm., *General Comment No. 37 (2020) on the Right of Peaceful Assembly (Article 21)* *General Comment No. 37 (2020) on the Right of Peaceful Assembly (Article 21)*, ¶ 33, U.N. Doc. CCPR/C/GC/37 (Sept. 17, 2020) [hereinafter *HRC General Comment No. 37*].
- 38 Clément Nyaletsossi Voule (Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association), *Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association* *Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association*, ¶ 37, U.N. Doc. A/HRC/41/41 (May 17, 2019) [hereinafter *SRFPAA Report of May 2019*].
- 39 *SRHRD Report of Aug. 2012*, *supra* note 1818, ¶¶ 41-42.
- 40 *Id.* ¶ 21.
- 41 *SRFPAA Report of May 2019*, *supra* note 3838, ¶ 42.
- 42 *SRHRD Report of Aug. 2012*, *supra* note 1818, ¶¶ 47, 49 (referencing that “article 13 of the Declaration on Human Rights Defenders, which states in clear terms that everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the Declaration”).
- 43 *Cybercrime Law*, *supra* note 28, at art. 20. United Arab Emirates-based sources characterize this as a prohibition on defamatory remarks about other individuals, made through electronic means. See, e.g., *Defamation Laws in UAE*, BIN EID ADVOCS. & LEGAL CONSULTANTS; Mahmood Shakir, *Defamation on Social Media Platforms in the UAE*, GALADARI L. (July 27, 2020).
- 44 *Cybercrime Law*, *supra* note 28, at art. 20.
- 45 *Id.* at arts. 29, 38.
- 46 *HRC General Comment No. 34*, *supra* note 1616, ¶ 47. See also *SRFOE Report of May 2011*, *supra* note 1717, ¶ 36 (“defamation should be decriminalized”).
- 47 *HRC General Comment No. 34*, *supra* note 1616, ¶ 38; *SRFOE Report of June 2012*, *supra* note 2222, ¶ 88; *SRFOE Report of Sept. 2016*, *supra* note 23, ¶ 33.
- 48 *United Arab Emirates at UN Human Rights Council: Adoption of Universal Periodic Review Report*, CIVICUS (June 28, 2018).
- 49 *UAE: End Relentless Crackdown on Critics Ahead of Abu Dhabi Grand Prix*, AMNESTY INT’L (Nov. 19, 2018) [hereinafter *End Relentless Crackdown on Critics*].
- 50 *Id.*; Hum. Rts Council Working Grp. of the Universal



- Periodic Rev., *Summary of Stakeholders' Submissions on the United Arab Emirates: Report to the Office of the United Nations High Commissioner for Human Rights*, ¶ 33, U.N. Doc. A/HRC/WG.6/29/ARE/3 (Nov. 3, 2017) [hereinafter *OHCHR Summary of Stakeholders' Submissions to the UPR*]. Reports do not specify under what provisions of UAE law the courts convicted the defendants.
- 51 José Guevara (Vice-Chair of the Working Group on Arbitrary Detention) et al., *Communication to the United Arab Emirates*, at 2, Ref. No. UA ARE 1/2017 (Mar. 27, 2017) [hereinafter *Mar. 2017 Communication to the UAE*].
- 52 *UAE: Ahmed Mansoor, Unlawfully Detained in Solitary Confinement for Three Years, Must Be Released*, AMNESTY INT'L (Mar. 20, 2020).
- 53 *Another Birthday Behind Bars: The UAE's Unjust Imprisonment of Ahmed Mansoor*, HUM. RTS. WATCH (Oct. 22, 2019) [hereinafter *The UAE's Unjust Imprisonment of Ahmed Mansoor*].
- 54 *End Relentless Crackdown on Critics*, *supra* note 49. Reports do not specify under which law Mansoor was convicted, but these appear to be charges under the Cybercrime Law and possibly the Penal Code.
- 55 *United Arab Emirates: A Look Inside Ahmed Mansoor's Isolation Cell After Two Years in Prison*, GCHR (May 18, 2019).
- 56 *The UAE's Unjust Imprisonment of Ahmed Mansoor*, *supra* note 5353.
- 57 ADHRB Staff, *Appointment of UAE Ministry of Interior Official to Presidency of INTERPOL*, A.M.S. FOR DEMOCRACY & HUM. RTS. IN BAHRAIN (Oct. 29, 2020); Joel Schectman & Christopher Bing, *White House Veterans Helped Gulf Monarchy Build Secret Surveillance Unit*, REUTERS (Dec. 10, 2019).
- 58 *End Relentless Crackdown on Critics*, *supra* note 4949. The UAE has a precedent of arresting individuals for online political expression, charging them under the Cybercrime Law, and sentencing them to years in prison. For example, in March 2014, a court convicted Khalifa al-Rabea and Othman al-Shehhi under the Cybercrime Law and Penal Code for posting on Twitter in support of political dissidents, including the UAE 94. Both were scheduled to be released in July 2018 but were still imprisoned as of 09 July 2019. *UAE: Prisoners Held After Sentences Served*, HUM. RTS. WATCH (July 9, 2019).
- 59 See *United Arab Emirates: UAE Must Be Held Accountable for Torture and Ill-Treatment of Human Rights Defenders and Activists*, GCHR (June 26, 2020); Gulf Ctr. for Hum. Rts. et al., *Joint Submission on the United Arab Emirates to the 71st Session of the UN Committee Against Torture* (June 26, 2020).
- 60 *United Arab Emirates: Ahmed Mansoor and Other Prominent Human Rights Defenders Should Be Released*, GCHR (Oct. 21, 2020)
- 61 *Id.*
- 62 Mustafa Qadri, *The UAE's Kafala System: Harmless or Human Trafficking?*, in *DUBAI'S ROLE IN FACILITATING CORRUPTION AND GLOBAL ILLICIT FINANCIAL FLOWS* (Matthew T. Page & Jodi Vittori eds., 2020).
- 63 *Id.* The Committee on the Elimination of Racial Discrimination has expressed concern about the treatment of workers in the *kafala* system, including reports of “withholding of passports, false imprisonment, substandard working conditions,” and “non-payment of wages of overtime.” See also *Comm. on the Elimination of All Forms of Racial Discrimination, Concluding Observations on the Combined Eighteenth to Twenty-First Periodic Reports of the United Arab Emirates*, ¶ 21, U.N. Doc. CERD/C/ARE/CO/18-21 (Sept. 13, 2017) (detailing the additional abuses that foreign workers face in the UAE).
- 64 *OHCHR Summary of Stakeholders' Submissions to the UPR*, *supra* note 5050, ¶ 71. See also *Comm. on the Elimination of Discrimination against Women, Concluding Observations on the Combined Second and Third Periodic Reports of the United Arab Emirates*, ¶ 43, U.N. Doc. CEDAW/C/ARE/CO/2-3 (Nov. 24, 2015) [hereinafter *Comm. on the Elimination of Discrimination against Women Concluding Observations of Nov. 2015*] (detailing the additional abuses that women migrant domestic workers in particular face).
- 65 Penal Code, *supra* note 8, at art. 325; Cybercrime Law, *supra* note 28, at art. 42.
- 66 Hum. Rts. Comm., *General Comment No. 15: The Position of Aliens Under the Covenant* (Twenty-Seventh Session, 1986), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, at 141-42, ¶¶ 7, 10, U.N. Doc. HRI/GEN.A/Rev.7 (May 12, 2004) (noting that non-citizens have “the right to hold opinions and to express them,” and that ICCPR article 13 is meant “to prevent arbitrary expulsions”); Clément Nyaletsossi Voulé (Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association), *Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association*, ¶ 42, U.N. Doc. A/74/349

- (Sept. 11, 2019) (“stress[ing] that there is no basis in international law for completely divesting non-citizens of their assembly rights”).
- 67 Special Rapporteur on the Right to Privacy, *Report of the Special Rapporteur on the Right to Privacy* Report of the Special Rapporteur on the Right to Privacy, ¶ 28, U.N. Doc. A/HRC/40/63 (Oct. 16, 2019); Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, *Surveillance and Human Rights: Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression* Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, ¶ 21, U.N. Doc. A/HRC/41/35 (May 28, 2019) [hereinafter *SRFOE Report of May 2019*]; Hum. Rts. Comm., *Concluding Observations on the Sixth Periodic Report of Italy*, ¶ 36, U.N. Doc. CCPR/C/ITA/CO/6 (May 1, 2017); Privacy in the Digital Age, G.A. Res. 73/179 G.A. Res. 73/179, U.N. Doc. A/RES/73/179, at 3 (Jan. 21, 2019); UDHR, *supra* note 7, at arts. 12, 18-20; ICCPR, *supra* note 16, at arts. 17-19.
- 68 *SRFOE Report of May 2019, supra* note 6763, ¶ 21.
- 69 *Id.* ¶ 21.
- 70 CPJ Concerned by Report that UAE ‘Project Raven’ Surveilled Journalists, COMM. TO PROTECT JOURNALISTS (Jan. 30, 2019) [hereinafter *CPJ Concerned About UAE Project Raven*]; ADHRB Staff, *supra* note 57.
- 71 Christopher Bing & Joel Schectman, *Project Raven: Inside the UAE’s Secret Hacking Team of American Mercenaries*, REUTERS (Jan. 30, 2019).
- 72 *CPJ Concerned About UAE Project Raven, supra* note 7066.
- 73 *SRFOE Report of May 2019, supra* note 6763, ¶ 20. In September 2021, three former U.S. intelligence operatives admitted to working on behalf of the UAE government to provide it with hacking and other surveillance systems that allowed the UAE government to access computers in the U.S. and in other countries. *3 Former U.S. Intelligence Operatives Admit Hacking For United Arab Emirates*, NPR (Sept. 14, 2021).
- 74 BILL MARCZAK & JOHN SCOTT-RAILTON, THE CITIZEN LAB, THE MILLION DOLLAR DISSIDENT: NSO GROUP’S IPHONE ZERO-DAYS USED AGAINST AS UAE HUMAN RIGHTS DEFENDER (2016); BILL MARCZAK ET AL., THE CITIZEN LAB, HIDE AND SEEK: TRACKING NSO GROUP’S PEGASUS SPYWARE TO OPERATIONS IN 45 COUNTRIES (2018); BILL MARCZAK ET AL., THE CITIZEN LAB, THE GREAT IPWN: JOURNALISTS HACKED WITH SUSPECTED NSO GROUP iMESSAGE ‘ZERO-CLICK’ EXPLOIT (2020); *SRFOE Report of May 2019, supra* note 6763, ¶ 9.
- 75 Working Grp. on Arbitrary Det., *Opinion No. 33/2020 Concerning Loujain Alhathloul (United Arab Emirates and Saudi Arabia)*, ¶ 7, U.N. Doc. A/HRC/WGAD/2020/33 (June 25, 2020) [hereinafter *WGAD Opinion No. 33/2020 Concerning Loujain Alhathloul*].
- 76 *Id.*
- 77 Schectman & Bing, *supra* note 5756; ADHRB Staff, *supra* note 57.
- 78 *WGAD Opinion No. 33/2020 Concerning Loujain Alhathloul, supra* note 75, ¶ 7.
- 79 *Id.*
- 80 *Id.*
- 81 *Id.* ¶ 30.
- 82 *Sisters of Freed Saudi Activist al-Hathloul Demand ‘Real Justice,’ Sisters of Freed Saudi Activist al-Hathloul Demand ‘Real Justice,’ AL JAZEERA* (Feb. 12, 2021); *WGAD Opinion No. 33/2020 Concerning Loujain Alhathloul, supra* note 7571, ¶ 7.
- 83 *WGAD Opinion No. 33/2020 Concerning Loujain Alhathloul, supra* note 7571, ¶ 60.
- 84 Convention on the Elimination of All Forms of Discrimination against Women art. 3, opened for signature Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter *CEDAW*].
- 85 See, e.g., *Comm. on the Elimination of Discrimination against Women Concluding Observations of Nov. 2015, supra* note 64, ¶ 19 (expressing concern about the harassment experienced by WHRDs in the UAE).
- 86 David Kaye (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, David Kaye, ¶ 20, U.N. Doc. A/HRC/29/32 (May 22, 2015) (“[i]ndividuals regularly hold opinions digitally, saving their views and their search and browse histories, for instance, on hard drives, in the cloud, and in e-mail archives”).
- 87 *Joint Statement by Human Rights and Civil Liberties Groups*, HUM. RTS. WATCH (June 19, 2018). At the time, both Almutawakel and al-Faqih were extremely active on Facebook, posting frequently about the war

- and humanitarian crisis in Yemen and other related issues. Today, they remain active on Facebook, and both also post frequently on Twitter, as does the organization they lead, Mwatana, which joined Twitter in June 2013. See Almutawakel's Facebook and Twitter pages; al-Faqih's Facebook and Twitter; and Mwatana's Twitter.
- 88 *Radhya Al-Mutawakel*, FRONT LINE DEFS. (2018); *Case History: Abdulrasheed al-Faqih*, FRONT LINE DEFS. (2018).
- 89 *Joint Statement by Human Rights and Civil Liberties Groups*, *supra* note 87.
- 90 MWATANA FOR HUM. RTS., *Arbitrary Procedures at Checkpoints at the Entrances of Southern Cities*, in WITHERING LIFE: HUMAN RIGHTS SITUATION IN YEMEN *Arbitrary Procedures at Checkpoints at the Entrances of Southern Cities*, in WITHERING LIFE: HUMAN RIGHTS SITUATION IN YEMEN, 2018, at 110, 111 (2019). Al-Faqih was also going to seek medical treatment and prepare for a workshop co-sponsored by the European Union. *Saudi-Led Coalition Must Immediately and Unconditionally Release al-Mutawakel and al-Faqih*, MWATANA FOR HUM. RTS. (June 18, 2018). Al-Faqih had previously been detained at a checkpoint on 14 June 2018 and by Houthi forces at Sana'a Airport in 2016. *Case History: Abdulrasheed al-Faqih*, *supra* note 8884.
- 91 *Joint Statement by Human Rights and Civil Liberties Groups*, *supra* note 8783.
- 92 *Id.*
- 93 In March 2015, at the request of Yemeni President Hadi, a coalition led by the UAE and Saudi Arabia, supported by the United States and United Kingdom, initiated military action in Yemen. Grp. of Eminent Int'l & Reg'l Experts, *Situation of Human Rights in Yemen, Including Violations and Abuses Since 2014: Report of the Group of Eminent International and Regional Experts as Submitted to the United Nations High Commissioner for Human Rights*, ¶ 17-19, U.N. Doc. A/HRC/42/17 (Aug. 9, 2019). The coalition intervened to fight against the Houthis and other armed forces that had captured Sana'a, Yemen's capital, in September 2014. *Id.*
- 94 *Id.* ¶ 94. The Group of Experts noted that, "[w]ith the coalition's intervention in 2015, its members became parties to the conflict as co-belligerents on the side of the Yemeni armed forces." *Id.* ¶¶ 1, 9.
- 95 The Group of Experts also notes that the government and UAE-backed forces "prevented journalists and human rights organizations from operating freely in Aden and along the west coast," and "the coalition continued to deny them access to United Nations flights." *Id.* ¶¶ 70-71.
- 96 At the time of the publication of the Group of Experts' report, there were pending "[i]nvestigations into some allegations of restrictions on freedom of movement imposed by parties to the conflict." *Id.* ¶¶ 71-72.
- 97 CEDAW, *supra* note 80, at art. 3.
- 98 HRC General Comment No. 37, *supra* note 37, ¶ 37 ("Activities conducted outside the immediate scope of the gathering but that are integral to making the exercise meaningful are also covered [by the protection of ICCPR art. 21 and related rights] . . . The obligations of State parties thus extend to actions such as participants' travelling to the event.").
- 99 *Nov. 2017 Compilation on the UAE*, *supra* note 25, ¶ 31. The SR on HRDs has also criticized laws that "criminalize the publication of articles or photos that could harm national security," as being impermissibly vague. *SRHRD Report of Aug. 2012*, *supra* note 18, ¶ 24. Additionally, according to the SR on FOE, laws prohibiting the criticism of foreign officials are "manifestly inconsistent with freedom of expression, and unjustifiable under article 19(3)" of the ICCPR. *SRFOE Report of Sept. 2016*, *supra* note 2323, ¶ 33.
- 100 *UAE: Jordanian Convicted for Criticizing Jordan on Facebook*, HUM. RTS. WATCH (Feb. 11, 2021).
- 101 *Id.*
- 102 *UAE Jails Jordanian for 10 Years for Criticising Jordan's Gov't*, AL JAZEERA (Feb. 14, 2021); *UAE: Jordanian Convicted for Criticizing Jordan on Facebook*, *supra* note 100.
- 103 *SRFOE Report of May 2016*, *supra* note 1616, ¶ 7 (any "restrictive measures" imposed on speech must be the "least intrusive instrument" possible to protect the legitimate aim in question, if one exists); *May 2017 Communication to the UAE*, *supra* note 15, at 2. During the UAE's most recent UPR, the OHCHR also expressed consternation at "the sentencing of prominent academic Nasser bin-Ghath to 10 years in prison for charges that included speech-related offences." *Nov. 2017 Compilation on the UAE*, *supra* note 2525, ¶ 33.
- 104 *UAE Jails Jordanian for 10 Years for Criticising Jordan's Gov't*, *supra* note 10298.
- 105 *UAE: Jordanian Convicted for Criticizing Jordan on Facebook*, *supra* note 10096.
- 106 *United Arab Emirates: Writer Dhabia Khamis Al-*

- Maslamani Banned from Traveling, GCHR (Oct. 1, 2020). Al-Maslamanu was previously imprisoned in 1987 over a magazine article she wrote, and she subsequently lived abroad for thirty years before returning to the UAE. *Id.*
- 107 *Id.*
- 108 *Id.*
- 109 *Id.*
- 110 CEDAW, *supra* note 80, at art. 3.
- 111 Working Grp. on Arbitrary Det., *Report of the Working Group on Arbitrary Detention: United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court*, ¶ 11, U.N. Doc. A/HRC/30/37 (July 6, 2015) [hereinafter *WGAD Report of July 2015*]; Hum. Rts. Comm., *General Comment No. 35: Article 9 (Liberty and Security of Person)*, ¶¶ 17, 22-23, 53, U.N. Doc. CCPR/C/GC/35 (Dec. 16, 2014).
- 112 *WGAD Report of July 2015*, *supra* note 111, ¶ 10; UDHR, *supra* note 7, at art. 19.
- 113 *WGAD Report of July 2015*, *supra* note 111, ¶ 11.
- 114 Working Grp. on Arbitrary Det., *Report of the Working Group on Arbitrary Detention*, ¶ 46, U.N. Doc. A/HRC/36/37 (July 19, 2017); UDHR, *supra* note 7, at art. 7.
- 115 Working Grp. on Arbitrary Det., *Report of the Working Group on Arbitrary Detention*, ¶¶ 38, 63, U.N. Doc. A/HRC/22/44 (Dec. 24, 2012) (stating that deprivation of liberty may be arbitrary if it is premised on an arbitrary piece of legislation).
- 116 *WGAD Opinion No. 33/2020 Concerning Loujain Alhathloul*, *supra* note 7571, ¶ 55; *Joint Statement by Human Rights and Civil Liberties Groups*, *supra* note 8783.
- 117 *WGAD Opinion No. 33/2020 Concerning Loujain Alhathloul*, *supra* note 7571, ¶ 56.
- 118 *Id.* ¶ 57.
- 119 Working Grp. on Arbitrary Det., *Report of the Working Group on Arbitrary Detention*, ¶ 60, U.N. Doc. A/HRC/39/45 (July 2, 2018) [hereinafter *WGAD Report of July 2018*].
- 120 UDHR, *supra* note 7, at art. 6; ICCPR, *supra* note 16, at art. 6.
- 121 UDHR, *supra* note 7, at art. 6; ICCPR, *supra* note 16, at art. 16.
- 122 Theo van Boven (Special Rapporteur on Torture), *Report of the Special Rapporteur on the Question of Torture Submitted in Accordance with Commission Resolution 2002/38*, ¶ 26(g), U.N. Doc. E/CN.4/2003/68 (Dec. 17, 2002) [hereinafter *SRT Report of Dec. 2002*].
- 123 Manfred Nowak (Special Rapporteur on Torture), *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Manfred Nowak, ¶ 156, U.N. Doc. A/HRD/13/39/Add.5 (Feb. 5, 2010) (international law and standards prohibit “all secret and incommunicado detention”); see *Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, G.A. Res. 72/163, U.N. Doc. A/RES/72/163, ¶ 16 (Dec. 19, 2017).
- 124 *WGAD Report of July 2018*, *supra* note 119, ¶ 60.
- 125 *SRT Report of Dec. 2002*, *supra* note 122, ¶ 26(g). See also Mar. 2017 Communication to the UAE, *supra* note 5151, at 3 (“[I]ncommunicado detention in a secret detention place jeopardizes the presumption of innocence, may facilitate the perpetration of torture or other forms of cruel, inhumane and degrading treatment or punishment, and can amount in itself to ill-treatment.”).
- 126 UAE: *Jordanian Convicted for Criticizing Jordan on Facebook*, *supra* note 10096.
- 127 *Id.*
- 128 1 JEAN-MARIE HENCKAERTS & LOUISE DOSWALD-BECK, INT’L COMM. OF THE RED CROSS, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW Rule 98 (2005) (enforced disappearance).
- 129 International Convention for the Protection of All Persons from Enforced Disappearance, *opened for signature* Dec. 20, 2006, 2716 U.N.T.S. 3.
- 130 Article 2 of the Convention on Enforced Disappearances defines an enforced disappearance as the “arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.” *Id.* at art. 2.
- 131 *WGAD Opinion No. 33/2020 Concerning Loujain Alhathloul*, *supra* note 75, ¶ 55-59.
- 132 Gabriela Knaul (Special Rapporteur on the Independence of Judges and Lawyers), *Report of*

*the Special Rapporteur on the Independence of Judges and Lawyers, Gabriela Knaul: Addendum—Mission to the United Arab Emirates*, ¶ 50, U.N. Doc. A/HRC/29/26/Add.2 (May 5, 2015) [hereinafter *SRIJL Report of May 2015*].

- 133 *Id.*
- 134 Hum. Rts. Comm., *General Comment No. 32: Article 14: Right to Equality Before Courts and Tribunals and to Fair Trial*, ¶ 6, U.N. Doc. CCPR/C/GC/32 (Aug. 23, 2007) [hereinafter *HRC General Comment No. 32*].
- 135 WGAD *Report of July 2015*, *supra* note 111107, at annex, princ. 1; *HRC General Comment No. 32*, *supra* note 134, ¶¶ 15, 19, 31-34, 38; ICCPR, *supra* note 16, at art. 14.
- 136 WGAD *Report of July 2015*, *supra* note 111107, at annex, princs. 7-9; *HRC General Comment No. 32*, *supra* note 134, ¶ 10.
- 137 *UAE: Jordanian Convicted for Criticizing Jordan on Facebook*, *supra* note 10096.
- 138 *SRIJL Report of May 2015*, *supra* note 132, ¶ 56.
- 139 UDHR, *supra* note 77, at art. 13.
- 140 Michel Forst (Special Rapporteur on the Situation of Human Rights Defenders), *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, ¶ 43, U.N. Doc. A/70/217 (July 30, 2015).
- 141 Fionnuala Ní Aoláin (Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism), *Impact of Measures to Address Terrorism and Violent Extremism on Civic Space and the Rights of Civil Society Actors and Human Rights Defenders: Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism*, ¶¶ 23-24, U.N. Doc. A/HRC/40/52 (Mar. 1, 2019).
- 142 Questions Relating to the Obligation to Prosecute or Extradite (*Belgium v. Senegal*), Judgment, 2012 I.C.J., ¶ 99 (July 20); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 2, *opened for signature* Dec. 10, 1984, 1465 U.N.T.S. 85 [hereinafter CAT]; Dire Tladi (Special Rapporteur), *Fourth Report on Peremptory Norms of General International Law (Jus Cogens) by Dire Tladi*, *Special Rapporteur*, ¶ 69, U.N. Doc. A/CN.4/727 (Jan. 31, 2019).
- 143 CAT, *supra* note 142, at art. 3(1). Article 3 stipulates that, “[f]or the purpose of determining whether there are such grounds, the competent authorities shall take

into account all relevant considerations including, where applicable, the existence in the State concerned of a pattern of gross, flagrant or mass violations of human rights.” *Id.* at art. 3(2). According to the Committee against Torture, “the Committee’s practice has been to determine that ‘substantial grounds’ exist whenever the risk of torture is ‘foreseeable, personal, present and real.’” Comm. against Torture, *General Comment No. 4 (2017) on the Implementation of Article 3 of the Convention in the Context of Article 22*, ¶ 11, U.N. Doc. CAT/C/GC/4 (Sept. 4, 2018).

- 144 WGAD *Opinion No. 33/2020 Concerning Loujain Alhathloul*, *supra* note 7571, ¶ 64.
- 145 *Nov. 2017 Compilation on the UAE*, *supra* note 25, ¶¶ 16, 18.

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