



WHO WILL BE LEFT TO DEFEND HUMAN RIGHTS?

PERSECUTION OF ONLINE
EXPRESSION IN THE GULF
AND NEIGHBOURING COUNTRIES



Berkeley
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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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Gulf Centre for Human Rights

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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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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.¹ Iraq is a parliamentary democracy, with two deliberative bodies and a separate judicial branch.² 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.”³

Iraq is a party to several international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR).⁴ 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.”⁵

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.⁶ 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.⁷ Security forces repeatedly have opened fire on protestors and journalists gathering in public spaces.⁸ According to the UN, authorities have detained, injured, or killed thousands during the protests.⁹ 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.¹⁰

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.¹¹ 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.¹²

Internet Shutdowns and Social Media Blocking

Iraq has a history of internet restrictions and country-wide shutdowns, particularly to quell anti-government activity.¹³ The Iraqi government often relies on these tactics to restrict freedom of expression and limit communications.¹⁴ 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.¹⁵ 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.¹⁶ 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.¹⁷

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.¹⁸

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.¹⁹ Article 156 criminalises acts that "violate

the independence of the country,” or the “security of its territory” and which are punishable by life imprisonment.²⁰ 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.²¹ 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.²² 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.²³ 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.²⁴

The Penal Code also includes criminal offenses of defamation (article 433)²⁵ and insult (article 434).²⁶ They become more serious offenses if the offending content is published.²⁷ 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.²⁸ 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.”²⁹ 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.”³⁰ 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... ”³¹

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 2004.³² In 2014, the CMC, the primary body that oversees broadcast media regulations, issued country-wide guidelines.³³ The government updated and expanded the guidelines in 2019, which are known as the Media Broadcasting Rules.³⁴ 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.³⁵ Some of these provisions contain overly broad language which authorities have enforced against media outlets that covered anti-government protests,³⁶ 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.”³⁷ 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.”³⁸ 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.³⁹ It is therefore unsurprising that the UN Human Rights Committee has held

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

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.⁴¹ 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.”⁴² 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.⁴³ 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.⁴⁴ 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.⁴⁵ 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.⁴⁶ 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.”⁴⁷ 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 ...”⁴⁸ 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.⁴⁹ 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.⁵⁰ 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.”⁵¹ 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.⁵²

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.⁵³ Prosecutors are using Kurdish regional laws including the Law to Prevent the Misuse of Telecommunications Equipment⁵⁴ to target journalists and other HRDs for online coverage of government protests and criticism of government policy.⁵⁵ 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."⁵⁶ Restrictions on freedom of expression must be narrowly drawn to be the least restrictive to achieve a legitimate protective function;⁵⁷ 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."⁵⁸ 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.⁵⁹ Since 1992, over 190 journalists have been killed in Iraq.⁶⁰ 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.⁶¹ International human rights monitors have criticised the government for creating a hostile environment for journalists to exercise freedom of expression.⁶²

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.⁶³ 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.⁶⁴ The day after the report was released, Basra police arrived at Muhammad's house to arrest him, but he was not at home.⁶⁵ That night, however, armed men opened fire on his house.⁶⁶ 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.⁶⁷ 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.⁶⁸ Only in October of 2018 was Muhammad able to start working as a journalist after the commander was replaced.⁶⁹

Another example is that of Hussam al-Ka'abai, a journalist with NRT News in Najaf, a city just south of Baghdad.⁷⁰ 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.⁷¹ 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.⁷² 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.⁷³ 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."⁷⁴ Two days later, al-Ka'abai was released after his charges were dismissed by the judge.⁷⁵

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.⁷⁶ Jafar works as a columnist for Peyser Press and is the director of the Sulaymaniyah-based Mediterranean Institute for Regional Studies (MIRS).⁷⁷ He routinely posts articles and opinion pieces to his Facebook page.⁷⁸ On 22 September 2020, authorities arrested Jafar and charged him with defaming the Iraqi president, who is a Kurdish politician from Sulaymaniyah,⁷⁹ in a column he posted. On 29 September 2020, officials released Jafar on bail.⁸⁰

Another incident in the Kurdistan Region is of Sherwan Sherwani, journalist and civil society activist.⁸¹ 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.⁸² On 07 October 2020, 10 security officers raided Sherwani's home in Erbil and confiscated his computer, books, and other electronic devices.⁸³ Officers arrested Sherwani and took him to an undisclosed location, and refused to allow his family or his attorney to visit him.⁸⁴ 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."⁸⁵ Months later, Sherwani faced trial under different charges, specifically articles 47, 49, and 49 of the Iraqi Penal Code,⁸⁶ which state that any person who violates the independence, unity, or security of the country can be punished with life imprisonment,⁸⁷ as well as Penal Code article 156 as amended.⁸⁸ On 16 February 2021, Sherwani received a sentenced of six years in prison.⁸⁹

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.⁹⁰ Officers did not inform him of the reason for his arrest, in violation of his international due process rights.⁹¹ 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.⁹² 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.⁹³ 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.⁹⁴ He was acquitted of charges and released on 26 January 2019.⁹⁵

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[.]"⁹⁶

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.⁹⁷ 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.⁹⁸ On 27 October 2019, authorities raided Faraj's house and confiscated several of his electronic devices.⁹⁹ 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.¹⁰⁰ Officials did not permit him to see his family or lawyer.¹⁰¹ After spending over a month in detention, on 01 December 2019, officials released him.¹⁰² 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.¹⁰³ In his post, Sulaiman called for a protest sit-in against the health department.¹⁰⁴ 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.¹⁰⁵ However, Sulaiman posted again on Facebook, this time describing the police visit and the threats made by the government agents.¹⁰⁶ 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."¹⁰⁷ 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.¹⁰⁸ Officials did not allow Sulaiman to have a lawyer present.¹⁰⁹

In the Kurdistan Region

Badal Abdulbaqi Abu Baker is schoolteacher and protest organiser in Dohuk.¹¹⁰ 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.¹¹¹ 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."¹¹² 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.¹¹³ Officials released Abu Baker after seventeen more days after he promised in writing not to engage in any "anti-government political activity."¹¹⁴ Almost a year later, on 16 May 2020, armed members of the Asayish arrested Abu Baker without a warrant.¹¹⁵ He was charged with "the misuse of electronic devices" for his role in organizing peaceful protests through social media platforms.¹¹⁶

Repression of HRDs throughout Iraq for expressing support of social protests online violates their right to online freedom of expression.¹¹⁷ 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."¹¹⁸ Human rights defenders are recognised as fulfilling a critical role in rights promotion and States have special duties to ensure their protection.¹¹⁹ 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.¹²⁰ 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.¹²¹

Arbitrary detention

The reported incidents reveal that authorities arbitrarily detained hundreds of protestors without due process.¹²² 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.¹²³

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.¹²⁴ 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.¹²⁵ 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.¹²⁶ 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.¹²⁷

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,”¹²⁸ in violation of article 6 of the ICCPR,¹²⁹ which protects the right to be recognised as a person before the law and receive judicial protection.¹³⁰ 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,”¹³¹ and it is outlawed by international law.¹³² The UN Working Group on Arbitrary Detention considers incommunicado detention a form of arbitrary detention.¹³³ 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.”¹³⁴ 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.¹³⁵ Enforced disappearance is an international crime and is prohibited by customary law¹³⁶ as well as treaty.¹³⁷ 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.¹³⁸

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 2019.¹³⁹ 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.¹⁴⁰ 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.¹⁴¹ 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.¹⁴² 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.¹⁴³ 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.¹⁴⁴ On 17 December, both Al-Amri and Salman were released with no clear charges and did not disclose publicly further information about their abductors.¹⁴⁵

Another case is that of Ali Jassab Hattab Al-Heliji, an HRD and lawyer in the city of Amarah.¹⁴⁶ He represented individuals arrested in connection to the protests taking place all over Iraq.¹⁴⁷ 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.¹⁴⁸ Prior to his disappearance, Al-Heliji had received death threats and warnings from unknown callers¹⁴⁹ to stop speaking out on Facebook about the killing of people participating in the demonstrations.¹⁵⁰ The whereabouts of Al-Heliji remain unknown.¹⁵¹ 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.¹⁵² He led a campaign to locate his son directed at the militant group the family believed was responsible for their son's killing.¹⁵³ He was seeking justice for his son and as a result, was targeted and killed.¹⁵⁴ 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.¹⁵⁵

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.¹⁵⁶ 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.¹⁵⁷ For example, Kurdish Regional officials did not inform journalist Rebwat Kaki Abd al-Rahman of the reason for his arrest,¹⁵⁸ and Iraqi authorities denied Haitham Sulaiman access to his lawyer.¹⁵⁹

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).¹⁶⁰ Iraqi authorities reportedly beat HRD Haitham Sulaiman and forced him to sign a statement that the United States was funding the protest movement.¹⁶¹

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.¹⁶² 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.¹⁶³ He remained in detention for 13 days until authorities released him after he paid a fee.¹⁶⁴ 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.¹⁶⁵ 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."¹⁶⁶ 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.¹⁶⁷ 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.¹⁶⁸

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.¹⁶⁹

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

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- 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).

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