



# WHO WILL BE LEFT TO DEFEND HUMAN RIGHTS?

PERSECUTION OF ONLINE  
EXPRESSION IN THE GULF  
AND NEIGHBOURING COUNTRIES



Berkeley  
Law

International  
Human Rights  
Law Clinic

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**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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Gulf Centre for Human Rights

GCHR staff members provided feedback, research, and contributions to text for this report. Special thanks and appreciation to the contributions of Kristina Stockwood.

### 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.

### DESIGN

Report design by Stoller Design Group

### ACKNOWLEDGMENTS

The authors express their everlasting appreciation to Roxanna Altholz for her strategic guidance, to Olivia Layug Balbarin for her tireless work preparing the manuscript, to Amy Utstein for her administrative leadership, to Sarah Weld for her copyediting assistance, to Gabriel Gonzalez and Montie Magree for their cybersecurity support, and to Marci Hoffman, Kristina Chamorro, and the many other Berkeley Law librarians who aided us immeasurably with their research expertise. We thank the Norwegian Human Rights Fund for their support of this collaboration.

Finally, we are grateful to Dean Erwin Chemerinsky of Berkeley Law and the individual and institutional donors to the International Human Rights Law Clinic and GCHR without whom this work would not be possible.

### SUGGESTED CITATION FORMAT

GULF CENTRE FOR HUMAN RIGHTS & INTERNATIONAL HUMAN RIGHTS LAW CLINIC,  
WHO WILL BE LEFT TO DEFEND HUMAN RIGHTS: PERSECUTION OF ONLINE EXPRESSION  
IN THE GULF AND NEIGHBOURING COUNTRIES (2021)

# 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 Ertürk (Special Rapporteur on Violence Against Women), *Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences*, Yakin Ertürk: 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).
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- 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).
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- 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].
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- 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).
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- 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.
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- 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.
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- 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).
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- 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.
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- 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.
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- 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.*
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- 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.
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ISBN# 978-1-938722-10-3



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