



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

WHO WILL BE LEFT TO DEFEND HUMAN RIGHTS?

PERSECUTION OF ONLINE EXPRESSION IN THE GULF AND NEIGHBOURING COUNTRIES

NOVEMBER 2021

THE GULF CENTRE FOR HUMAN RIGHTS

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

INTERNATIONAL HUMAN RIGHTS LAW CLINIC

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



Berkeley
Law

International
Human Rights
Law Clinic

AUTHORS AND ACKNOWLEDGMENTS

AUTHORS

Laurel E. Fletcher
Chancellor's Clinical Professor of Law
Co-Director, International Human Rights Law Clinic
University of California, Berkeley, School of Law

Astha Sharma Pokharel
Clinical Teaching Fellow, International Human Rights Law Clinic
University of California, Berkeley, School of Law

Gulf Centre for Human Rights

CONTRIBUTORS

International Human Rights Law Clinic

The following IHRLC interns, as well as those who wish to remain anonymous, contributed valuable research and text to the report: Sarah Abelow '22, Blake Danser '22, Ian Good '22, A.L., B.L.N., H.V.N., S.O., Harriet Steele '22, Hailey Yook '21.

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)

SYRIA



SYRIA SCORECARD

Targeted Activism or Expression



Criticism of Government



Journalists



Women's Rights and WHRDs

Human Rights Violations



Arbitrary Detention



Torture



Fair Trial

Problematic Legal Provisions and Institutions



Criminal Defamation



Cybercrime Law



Public Order



Specialised Law Enforcement Units



Number of incidents that fit the inclusion criteria of this study

INTRODUCTION

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

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

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

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

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

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

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

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

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

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

LEGAL ENVIRONMENT FOR ONLINE EXPRESSION IN SYRIA

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

Regulation of Online Freedom of Expression by the Syrian Government

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

2011 Media Regulation Law

Article 3 of the Media Regulation law recognises the freedom of expression guaranteed by the Syrian Constitution and international law.²⁶ However, article 4 provides that respect for the freedom of expression is contingent on the media “exercise[ing] this freedom with awareness and responsibility”²⁷—no definitions are provided for these terms. Articles 12 and 79 broadly ban media outlets (including electronic media) from publishing content that affects national unity and security, offends monotheistic religions and beliefs, or stirs sectarian strife;²⁸ incites crimes, acts of violence, terrorism, or hatred;²⁹ relates to the armed forces;³⁰ or affects the symbols of the State, in addition to all content that is already prohibited by the Syrian Penal Code.³¹ Article 95 criminalises the spread of incorrect or fabricated news, but does not define what constitutes such news.³² Article 78 also holds the owners, editors-in-chief, journalists, and spokespeople vicariously accountable for violations attributed to the media outlet with which they are affiliated, and prescribes fines of up to SYP 1 million (approximately USD 2,000).³³ Chapter six of the law lays out stringent accreditation and licensing requirements for any person wishing to produce media in Syria,³⁴ and article 22 entrusts the new National Media Council³⁵ to determine specific mechanisms for accrediting foreign correspondents.³⁶ The COI on Syria describes the law as “leav[ing] untouched the vaguely defined criminal offences described in articles 285–87 of the Penal Code that have long been used to punish and silence critical journalists, human rights defenders and political dissidents.”³⁷

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

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

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

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

2012 Counter-Terrorism Law

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

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

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

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

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

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

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

Regulation of Online Freedom of Expression by Non-State Actors

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

NES: 2016 Media Law in Al-Jazira Province

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

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

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

SSG: 2019 Communications Law

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

or use unlicensed networks.⁷⁶ It also criminalises posting online “immoral” content or “fabricated news” with the intent to cause “panic.”⁷⁷ Violators are subject to a minimum one-month prison sentence and fine of USD 500.⁷⁸ In addition to control over access to communications systems, the SSG engages in heavy institutional gatekeeping and repression of the media, requiring any media activity in the city of Idlib to obtain prior approval by the SSG authorities or the HTS security office.⁷⁹

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

TRENDS EMERGING FROM INCIDENTS OF REPRESSION OF ONLINE EXPRESSION IN SYRIA

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

Violations of Online Freedom of Expression by the Syrian Government

Targeting of journalist HRDs

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

One example is the case of news anchor Omar Kalo, arrested by Syrian military intelligence forces on 25 August 2018.⁸² Although reports did not indicate the charges brought by the Syrian authorities, Kalo's recent broadcasts (shared on his Facebook page) had covered Saudi Arabian support for the NES.⁸³ Days before his arrest, he had also conducted a live Skype interview with a spokesman for the Free Syrian Army of the "Syrian Interim Government," discussing the negative impact of Syrian missile strikes.⁸⁴ According to reports, government authorities stopped Kalo at a checkpoint without reason, and took him to a military security branch in Damascus for more questioning.⁸⁵

He was held for nearly two months before his eventual release on 04 October 2018.⁸⁶

Another example is the case of Rabea Kalawandy, a social media influencer and war correspondent for a pro-Assad and Iran-based broadcasting network. Syrian Security forces arrested Kalawandy on 07 July 2019.⁸⁷ Kalawandy frequently posted pro-regime updates about the Syrian conflict on his Facebook and YouTube accounts.⁸⁸ Reports did not reveal the charge, but indicated that Kalawandy was arrested for failing to gain security approval from the government as a foreign journalist before conducting media activity within its borders, as required by the Media Regulation Law.⁸⁹ Although the date of his release is unclear, Kalawandy was back online sharing content one month later on 07 August 2019⁹⁰—neither he nor his employer made any comment regarding his arrest.⁹¹

Additional human rights violations

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

The arrests of journalists constitute arbitrary deprivations of liberty, which is prohibited under article 9 of the ICCPR, customary international law and is a *jus cogens* norm.⁹² 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.⁹³ 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.⁹⁴ 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.⁹⁵

Fundamental principles of fair trials are protected under international law at all times.⁹⁶ 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.⁹⁷ Because the Syrian government arrested journalists and other HRDs like Omar Kalo and Rabea Kalawandy for exercising their protected right to the freedom of expression, without informing them of their charges, it violated the prohibition of the arbitrary deprivation of liberty and international due process.

Abuses of Online Freedom of Expression by Non-State Actors

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

Targeting of expression criticising the authorities

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

One example is the case of social media activist and independent journalist Bilal Abdul-Kareem. HTS detained Abdul-Kareem on 13 August 2020.¹⁰¹

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

Another example is the case of Assyrian freelance writer Souleman Yousph, who was arrested by the Sutoro police of the NES on 30 September 2018.¹⁰⁷ The Sutoro police arrested Yousph at his home, and took him to an unknown location after raiding his apartment.¹⁰⁸ The police did not reveal the charge, but in the days prior to his arrest, Yousph had published a series of posts on an online forum¹⁰⁹ and his Facebook account, condemning abuse by Sutoro police and sharing photos and videos of police intimidation which gained tens of thousands of views.¹¹⁰ In his posts he accused NES authorities of enacting policies to destroy the social, cultural, and educational structures of Assyrian society.¹¹¹ The day after the arrest, Sutoro police released a statement on Facebook which said that action had to be taken against those spreading lies, that democracy has rules and limitations, and that defamation is punishable by law in “western countries”—the statement did not specifically mention Yousph.¹¹² He was released five days later on 04 October 2018.¹¹³

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

Targeting of speech offending morality or religion

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

For example, the Media Office of NES suspended the press credentials of reporter Vivian Fatah on 10 May 2020, after she used the word “killed” rather than “martyred” when referring to fallen soldiers of the SDF during a news report posted online three days earlier.¹¹⁵ The suspension order stated that Fatah had offended the deceased soldiers and their families, and that she refused to apologise for her language.¹¹⁶

Another example is the case of journalist Mohammed Fadl al-Janoudi, who HTS detained on 24 June 2018.¹¹⁷ HTS seized his camera and cell phone, and took him to an unknown location.¹¹⁸ Although neither HTS nor SSG authorities revealed the charge, sources indicated that the arrest likely was due to a picture Janoudi posted on Facebook on 21 June, which showed him in front of a celebration with boys and girls playing together, and female and male youth workers co-mingling.¹¹⁹ It is unclear whether Janoudi has been released.

Additional human rights violations

The reported incidents in territories controlled by non-State actors indicate that the violation of the right to freedom of expression online also implicates other human rights. Non-State actors may be directly responsible for the below violations if the rights are protected under customary international human rights law,¹²⁰ and the Syrian government has ongoing human rights obligations pertaining to abuses by non-State actors during a state of armed conflict.¹²¹

Prohibition of arbitrary deprivation of liberty

The protection against arbitrary deprivation of liberty enshrined in treaty and customary law as *jus cogens*, applies to individuals in areas controlled by non-State actors.¹²² In addition to the case of Bilal Abdul-Kareem, who HTS abducted and detained for six months without trial, HTS also detained journalist Maan Bakour on 24 June 2019 without charge—he was merely reported to be “under investigation”—and

his whereabouts are still unknown.¹²³ These reported incidents violate the customary law prohibition of arbitrary deprivation of liberty because an arrest or detention is presumptively arbitrary if it is the result of the exercise of rights and freedoms protected by article 19 of the ICCPR—here, SSG and NES arrested the aforementioned journalists for exercising their freedom of expression, a right protected by article 19.¹²⁴ Further, article 14 of the ICCPR regarding the liberty of a person also is a customary law norm.¹²⁵ It requires authorities to inform an individual arrested of the reasons for his arrest, and shall be entitled to trial or release within a reasonable time.¹²⁶

Prohibition of torture and ill treatment

The prohibition against torture is absolute, non-derogable, and a *jus cogens* norm of international law¹²⁷ that applies to non-State actors.¹²⁸ Torture is defined in article 1 of the CAT as intentional infliction of severe pain or suffering—whether physical or mental—with the consent or acquiescence of a public official or other person acting in an official capacity, for the purpose of intimidating, coercing, or punishing the individual.¹²⁹ The UN Special Rapporteur on torture has interpreted that cruel, inhuman, or degrading treatment reaches the higher threshold of torture when, additionally, “severe pain or suffering is intentionally and purposefully inflicted on a powerless person.”¹³⁰ Further, this prohibition is not confined to acts carried out against persons deprived of their liberty, but also covers excessive police violence, such as during arrest. Thus “the universal customary prohibition of cruel, inhuman, or degrading punishment and, in situations of powerlessness, of torture are fully applicable to the extra-custodial use of force.”¹³¹ HTS reportedly has violated the prohibition of torture and cruel, inhuman, or degrading treatment during its arrest of Bilal Abdul-Kareem, when armed, masked authorities pointed their guns at him and severely beat him during the course of his abduction.¹³²

CONCLUSION AND RECOMMENDATIONS

The legal environments of Syria, in areas under government control and those controlled by non-State actors, restrict online expression through laws and policies that use undefined, overbroad, or vague terms, in violation of international standards on freedom of expression. In practice, these laws and policies also violate international freedom-of-expression standards by targeting journalists, criticism of local authorities, and expression that offends morality or religion. Violations of freedom of expression seen in the credible reported incidents are accompanied with further human rights violations such as the apparent arbitrary deprivation of liberty, the use of torture and ill treatment, and the failure of authorities to protect the right to defend human rights. Thus, the report offers credible evidence that State and non-State actors across Syria have leveraged laws and policies targeting online expression in violation of international human rights obligations to create a climate of repression.

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

General Recommendations

To Governments of Gulf States and Neighbouring Countries:

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

To the UN Human Rights Council:

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

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

To All States:

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

Country Recommendations

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

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

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

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

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

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

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

NOTES

- 1 Researchers identified reported incidents of violations of online freedom of expression by conducting searches for cases in Syria between May 2018 and October 2020, from the following international media outlets and human rights organisations that document human rights violations: Amnesty International, Al Jazeera, ARTICLE 19, British Broadcasting Corporation, Committee to Protect Journalists, Front Line Defenders, Gulf Centre for Human Rights. Researchers also searched for communications from special procedures mandate holders regarding incidents alleging violations of freedom of expression in Syria in the UN Office of the High Commissioner for Human Rights 'Special Procedure Communication Report and Search' database. Researchers supplemented international research by consulting domestic media outlets: *Arab News Service*, *The Syrian Observer*, and *Syria Times*. Researchers used each website's embedded search functions to retrieve updates using the following keywords: freedom of expression, digital expression, digital, online, post, tweet, Twitter, Facebook, arrest, expression, and human rights defender. The domestic sources provided no relevant results. After finding cases using the international sources, researchers conducted additional searches using the Google search engine of the victim's name (with various English spellings) to find additional case information. See the methodology section for more information.
- 2 Michel Forst (Special Rapporteur on the Situation of Human Rights Defenders), *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, ¶ 77, U.N. Doc. A/HRC/31/55 (Feb. 1, 2016); Civil Society Space, Human Rights Council Res. 27/31, U.N. Doc. A/HRC/RES/27/31, ¶ 3 (Oct. 3, 2014); Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, G.A. Res. 53/144, U.N. Doc. A/RES/53/144 (Mar. 8, 1999).
- 3 Simon Kemp, *Digital 2021: Syria*, DATAREPORTAL (Feb. 12, 2021). As of January 2021, social media and content-sharing platforms such as YouTube, Facebook, and Telegram, as well as news sites such as RT news and Syrian Arab News Agency, are among the top ten websites visited by Syrian internet users. *Id.*
- 4 *Id.*
- 5 Special Rapporteur on the Situation of Human Rights Defenders, *Human Rights Defenders Operating in Conflict and Post-Conflict Situations: Report of the Special Rapporteur on the Situation of Human Rights Defenders*, ¶ 6, U.N. Doc. A/HRC/43/51 (Dec. 30, 2019) [hereinafter *SRHRD Report of Dec. 2019*].
- 6 *Id.*
- 7 International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter *ICCPR*]; Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment, *opened for signature* Dec. 10, 1984, 1465 U.N.T.S. 85 [hereinafter *CAT*]. Syria has also acceded to the Committee on the Elimination of Racial Discrimination in 1969; the International Covenant on Economic, Social, and Cultural Rights in 1969; the Convention on the Rights of the Child in 1993; the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 2003; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families in 2005; and the Convention on the Rights of Persons with Disabilities in 2009. *UN Treaty Body Database: Ratification Status for Syrian Arab Republic*, OHCHR.ORG.; International Convention on the Elimination of All Forms of Racial Discrimination, *opened for signature* Mar. 7, 1966, 660 U.N.T.S. 195; International Covenant on Economic, Social, and Cultural Rights, *opened for signature* Dec. 16, 1966, 993 U.N.T.S. 3; Convention on the Rights of the Child, *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3; Convention on the Elimination of All Forms of Discrimination against Women, *opened for signature* Dec. 18, 1979, 1249 U.N.T.S. 13; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, *opened for signature* Dec. 18, 1990, 2220 U.N.T.S. 93; Convention on the Rights of Persons with Disabilities, *opened for signature* Dec. 13, 2006, 2515 U.N.T.S. 3. At the regional level, Syria is party to the Charter of the Arab League. League of Arab States, Arab Charter on Human Rights, May 22, 2004, reprinted in 12 Int'l Hum. Rts. Rep. 893 (2005) (entered into force Mar. 15, 2008); *League of Arab States: Key Legal Texts*, INT'L CTR. FOR NOT-FOR-PROFIT L. (Sept. 25, 2021). However, its membership in the league has been suspended since 2011. *League of Arab States: Key Legal Texts, supra.*

- 8 World Conference on Human Rights, *Vienna Declaration and Programme of Action*, pmbl. at 20-21, §§ I(1), I(3), I(8), U.N. Doc. A/CONF.157/24 (Part 1) (Oct. 13, 1993); Universal Declaration of Human Rights art. 19, G.A. Res. 217 (III) A, U.N. Doc. A/810 (Dec. 10, 1948) [hereinafter UDHR].
- 9 The positive obligations of State parties to the ICCPR, listed in article 2, are to respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the Covenant, without distinction of any kind; to take the necessary steps to adopt laws or other measures as necessary to give effect to the rights recognised in the Covenant; and to ensure effective remedy and avenues for redress. ICCPR, *supra* note 7, at art. 2; see Hum. Rts. Comm., *General Comment No. 31 [80]: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, ¶ 8, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (May 26, 2004) [hereinafter *HRC General Comment No. 31*] (stating that the positive obligations of States are only fully discharged if individuals are protected by the State, not just against violations by its own agents, but also against acts committed by private persons or entities that would impair the enjoyment of rights protected by the ICCPR); see also David Kaye (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Promotion and Protection of the Right to Freedom of Opinion and Expression*, U.N. Doc. A/71/373 (Sept. 6, 2016) [hereinafter *SRFOE Report of Sept. 2016*] (stating that the ICCPR requires States to ensure the protection of individuals in the face of rights violations by non-State actors).
- 10 *HRC General Comment No. 31*, *supra* note 9, ¶ 8.
- 11 Wladimir van Wilgenburg, *Syrian Democratic Forces (Syria)*, EUROPEAN COUNCIL FOREIGN RELS.
- 12 The so-called “Syrian Salvation Government” (“SSG”) is part of the broader Syrian opposition, which includes a number of different rebel groups that exert control over territory within Syria (including the Turkish-backed “Syrian Interim Government”). See Alaa Nassar, Ahmed Rahal & Justin Clark, *HTS-Backed Civil Authority Moves Against Rivals in Latest Power Grab in Northwest Syria*, SYRIA DIRECT (Dec. 13, 2017).
- 13 *Country Guidance: Syria—1.3. Anti-Government Armed Groups*, EUROPEAN ASYLUM SUPPORT OFF. (Sept. 2020).
- 14 *Al-Nusrah Front for the People of the Levant*, U.N. SEC. COUNCIL (June 5, 2018) (describing the terrorist group Al-Nusrah Front’s creation of HTS as a vehicle to advance its position in the Syrian insurgency).
- 15 Ali Darwish, *Innocent Here; Convict There: Two Separate Judiciaries in Northern Syria*, ENAB BALADI (Feb. 13, 2021).
- 16 Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, *opened for signature* Aug. 12, 1949, 75 U.N.T.S. 287 (“In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions....”). Syria is party to all four of the Geneva Conventions. *Treaties, States Parties and Commentaries: Syrian Arab Republic*, INT’L COMM. RED CROSS. For a fuller discussion of the obligations of armed opposition groups see Andrew Clapham, *Human Rights Obligations of Non-State Actors in Conflict Situations*, 88 INT’L REV. RED CROSS 491, 495 (2006).
- 17 The Declaration on the Right and Responsibility of Individuals, Group and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms is addressed not only to States, but to all groups in society. Margaret Sekaggya (Special Rapporteur on the Situation of Human Rights Defenders), *Human Rights Defenders*, U.N. Doc. A/65/223 (Aug. 4, 2010). Sekaggya observes that, because article 10 of this Declaration states that “no one shall participate, by act or by failure to act when required, in violating human rights and fundamental freedoms,” non-State actors are included and therefore have a responsibility to promote and respect the rights enshrined in the Declaration. *Id.* Non-State actors exercising government-like functions and control over a territory are therefore obliged to respect human rights norms when their conduct affects the human rights of the individuals under their control. *Id.*
- 18 Indep. Int’l Comm’n of Inquiry on the Syrian Arab Republic, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, ¶ 10, U.N. Doc. A/HRC/21/50 (Aug. 16, 2012) [hereinafter *COI on Syria Report of Aug. 2012*] (stating that although non-State actors cannot formally become parties to international human rights treaties, they are nevertheless obliged to respect fundamental human rights insofar as they form customary international law, where such actors exercise de facto control over a part of a State’s territory).
- 19 See Hum. Rts. Comm., *General Comment No. 24 (52) 1/: Addendum—General Comment on Issues Relating to Reservations Made upon Ratification or Accession to the Covenant or the Optional Protocol Thereto, or in Relation to Declarations Under Article 41 of the Covenant*, ¶ 8, U.N. Doc. CCPR/C/21/Rev.1/Add.6 (Nov. 11, 1994) [hereinafter *HRC General Comment No. 24*] (listing the rights protected by the ICCPR that are also protected

- by customary international law: “[P]rovisions in the Covenant that represent customary international law... may not be the subject of reservations. Accordingly, a State may not reserve the right to engage in slavery, to torture, to subject persons to cruel, inhuman or degrading treatment or punishment, to arbitrarily deprive persons of their lives, to arbitrarily arrest and detain persons, to deny freedom of thought, conscience and religion, to presume a person guilty unless he proves his innocence...”).
- 20 International law scholar Hurst Hannum asserts that the UDHR may have become accepted as customary international law, as the international community has accepted it as a binding norm over time. For example, a governmental conference held on the twentieth anniversary of the UDHR’s adoption, at which 84 States were represented, observed that the Declaration “constitutes an obligation for the Members of the international community.” Hurst Hannum, *The UDHR in National and International Law*, 3 HEALTH & HUM. RTS. 144, 148 (1998). Also, in 1994, the International Law Association observed that the UDHR “is universally regarded as an authoritative elaboration of the human rights provisions of the United Nations Charter” and concluded that “many if not all of the rights elaborated in the...Declaration...are widely recognized as constituting rules of customary international law.” *Id.* John Humphrey, who served as Director of the UN Human Rights Division during the drafting of the UDHR, affirmed that “the justiciable provisions of the Declaration, including certainly, those enunciated in articles two to twenty-one inclusive, have now acquired the force of law as part of the customary law of nations.” Brian D. Lepard, *Toward a New Theory of Customary International Human Rights Law*, in REEXAMINING CUSTOMARY HUMAN RIGHTS LAW 233, 250 (2017) (internal quotation marks and citation omitted). In a separate opinion for an ICJ case, Judge Fouad Ammoun observed that “the affirmations of the Declaration...can bind States on the basis of custom...because they constitute a codification of customary law...or because they have acquired the force of custom ... through a general practice accepted as law ...” *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, 1971 I.C.J. 16, 76 (June 21) (separate opinion by Ammoun, Vice President).
- 21 See HRC General Comment No. 24, *supra* note 19, ¶ 8 (listing the rights protected by the ICCPR that are also protected by customary international law: “[P]rovisions in the Covenant that represent customary international law... may not be the subject of reservations. Accordingly, a State may not reserve the right to engage in slavery, to torture, to subject persons to cruel, inhuman or degrading treatment or punishment, to arbitrarily deprive persons of their lives, to arbitrarily arrest and detain persons, to deny freedom of thought, conscience and religion, to presume a person guilty unless he proves his innocence...”); see also COI on Syria Report of Aug. 2012, *supra* note 18, ¶ 10.
- 22 Legislative Decree No. 108 of 2011 on the Media Law (2011) [hereinafter Media Regulation Law] (Syria) (unofficial Arabic version; unofficial English translation on file with authors).
- 23 Law No. 19 of 2012 on Counter-Terrorism [hereinafter Counter-Terrorism Law] (Syria) (unofficial English translation of the full text of this law can be found at VIOLATIONS DOCUMENTARY CTR. IN SYRIA, SPECIAL REPORT ON COUNTER-TERRORISM LAW NO. 19 AND THE COUNTER-TERRORISM COURT IN SYRIA: COUNTER-TERRORISM COURT: A TOOL FOR WAR CRIMES annex 1 (2015)).
- 24 Law No. 17 of 2012 Implementing the Provisions of the Law on Communication on the Network and Combating Information Crime [hereinafter Law on Regulating Online Communications and Combating Cybercrimes] (Syria) (official Arabic version; unofficial English translation on file with authors).
- 25 Law No. 9 of 2018 Establishing Specialized Courts for Information and Communications Crimes [hereinafter Anti-Cybercrime Law] (Syria) (official Arabic version; unofficial English translation on file with authors).
- 26 Media Regulation Law, *supra* note 22, at art. 3 (“The media work practice is based on the following basic rules... (1) Freedom of expression and basic freedoms are guaranteed in the constitution of the Syrian Arab Republic, the Universal Declaration of Human Rights and the relevant international agreements that have been ratified by the government of the Syrian Arab Republic.”).
- 27 *Id.* at art. 4 (“Media work is based on the use of media means to place media contents that do not have the character of personal correspondence available to the general public or a group of them, taking into account the following basic principles: (1) Respect for freedom of expression, provided that you exercise this freedom with awareness and responsibility...”); see also Freedom House, *Freedom of the Press 2016: Syria*, REF WORLD.
- 28 Media Regulation Law, *supra* note 22, at art. 12 (“Media outlets are prohibited from publishing... (1) Any content that affects national unity and national security, offends

- monotheistic religions and religious beliefs, or stirs sectarian strife...”).
- 29 *Id.* (“Media outlets are prohibited from publishing... (2) Any content that incites crimes, acts of violence and terrorism, or incites hatred and racism...”).
- 30 *Id.* (“Media outlets are prohibited from publishing... (3) News and information related to the army and the armed forces, except for what is issued by the army and the armed forces and is permitted to be published...”).
- 31 *Id.* (“Media outlets are prohibited from publishing... (4) All that is prohibited to be published in the General Penal Code, the legislation in force, and everything that the courts prevent from publishing...”); *see also* SYRIAN CTR. FOR MEDIA & FREEDOM OF EXPRESSION, LEGAL ENVIRONMENT FOR MEDIA IN SYRIA 25.
- 32 Media Regulation Law, *supra* note 22, at art. 95 (“Anyone who commits a mistake to public incorrect news or fabricated or forged papers shall be punished with a fine...”).
- 33 *Id.* at art. 78 (“(A) The editor-in-chief, the journalist, and the person speaking in the media are responsible for acts that constitute punishable crimes in this law and the laws in force, unless it is proven that one of them has not contributed to the crime. (B) The owner of the media outlet is responsible in solidarity with the editor-in-chief and the media person...”); *see also* Dahlia El Zein, *The ‘New’ Syrian Media Law Is Nothing New*, COMM. PROTECT JOURNALISTS (Sept. 7, 2011).
- 34 Media Regulation Law, *supra* note 22, at ch. VI (“Licensing, accreditation and procedures thereof”).
- 35 *Id.* at art. 19 (“[T]here will be a council called the National Media Council ... responsible for organizing the media sector in accordance with the provisions of this law.”).
- 36 *Id.* at art. 22 (“The council shall assume the following tasks and powers ... (15) Laying down the foundations and mechanisms necessary for accrediting Arab and foreign correspondents and media outlets that wish to practice any media activity within the territories of the Syrian Arab Republic.”).
- 37 Indep. Int’l Comm’n of Inquiry on the Syrian Arab Republic, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, U.N. Doc. A/HRC/19/69 (Feb. 22, 2012) [hereinafter *COI on Syria Report of Feb. 2012*]. Articles 285 to 287 of the Syrian Penal Code criminalise weakening the national sentiment or provoking racial or sectarian strife during a current or expected state of armed conflict; spreading false or exaggerated news that would affect the morale of the country (even if the “perpetrator” believed the news to be correct); or circulating false or exaggerated news outside of the country that may undermine the prestige or financial standing of the State. Penal Code of 1949, arts. 285–87 (1949) (Syria) (unofficial English translations of these articles are on file with the authors); *see also* FREEDOM HOUSE, FREEDOM ON THE NET 2014: SYRIA; *Freedom on the Net 2020: Syria*, FREEDOM HOUSE [hereinafter *Freedom on the Net 2020: Syria*]; El Hadji Malick Sow (Chair-Rapporteur of the Working Grp. on Arbitrary Det.) et al., Communication to the Syrian Arab Republic, Ref. No. SYR 13/2011 (Aug. 30, 2011).
- 38 Hum. Rts. Comm., *General Comment No. 34: Article 19: Freedoms of Opinion and Expression*, ¶ 25, U.N. Doc. CCPR/C/GC/34 (Sept. 12, 2011) [hereinafter *HRC General Comment No. 34*]; David Kaye (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, ¶ 7, U.N. Doc. A/HRC/32/38 (May 11, 2016) [hereinafter *SRFOE Report of May 2016*]; Working Grp. on Arbitrary Det., *Opinion No. 71/2019 Concerning Issa al-Nukhefi, Abdulaziz Youssef Mohamed al-Shubaili and Issa Hamid al-Hamid (Saudi Arabia)*, ¶ 73, U.N. Doc. A/HRC/WGAD/2019/71 (Feb. 14, 2020) (“vaguely and broadly worded provisions ... which cannot qualify as *lex certa*, violate the due process of law undergirded by the principle of legality in article 11 (2) of the Universal Declaration of Human Rights”); UDHR, *supra* note 8, at arts. 11, 19; ICCPR, *supra* note 7, at art. 19
- 39 *SRFOE Report of May 2016, supra* note 38, ¶ 39; Frank La Rue (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, Frank La Rue, ¶ 34, U.N. Doc. A/HRC/17/27 (May 16, 2011) [hereinafter *SRFOE Report of May 2011*].
- 40 *Government Announces Schizophrenic Media Law*, REPS. WITHOUT BORDERS (Jan. 20, 2016); Freedom House, *supra* note 27 (describing the law’s “broad wording” as “giv[ing] the authorities leeway to crack down on journalists if they wish.”)
- 41 *HRC General Comment No. 34, supra* note 38, ¶ 48 (“Prohibitions of displays of lack of respect for a religion or other belief system...are incompatible with the Covenant.... Thus, for instance, it would be impermissible for any such laws to discriminate in favour of or against one or certain religions or belief systems.... Nor would it be permissible for such prohibitions to be

- used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith.”); *see also* Frank La Rue (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Promotion and Protection of the Right to Freedom of Opinion and Expression*, ¶ 30, U.N. Doc. A/66/290 (Aug. 10, 2011) [hereinafter *SRFOE Report of Aug. 2011*].
- 42 Frank La Rue (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, Frank La Rue, ¶ 88, U.N. Doc. A/HRC/20/17 (June 4, 2012) [hereinafter *SRFOE Report of June 2012*].
- 43 *HRC General Comment No. 34*, *supra* note 38, ¶ 13.
- 44 El Zein, *supra* note 33.
- 45 Counter-Terrorism Law, *supra* note 23, at art. 1.
- 46 *Id.* (“Financing Terrorism: Any direct or indirect raising or supplying of money, arms, munitions, explosives, telecommunication means, information or any other object to be used in a terrorist act...”).
- 47 *Id.* at art. 8 (“Whoever distributes publications or stores information of any form with a view to promote terrorist actions shall be punished by temporary hard labor; the same penalty shall apply to those who administer or use a website for that purpose.”).
- 48 *SRFOE Report of May 2016*, *supra* note 38, ¶ 7.
- 49 Indep. Int’l Comm’n of Inquiry on the Syrian Arab Republic, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, ¶ 82, U.N. Doc. A/HRC/40/70 (Jan. 31, 2019).
- 50 Comm. on the Elimination of Discrimination against Women, *Concluding Observations on the Second Periodic Report of the Syrian Arab Republic*, ¶ 29(b), U.N. Doc. CEDAW/C/SYR/CO/2 (July 18, 2014) (stating the committee was “concerned at the broad definitions of acts of terrorism, terrorist organisations and financing of terrorism contained in Law No. 19/2012”).
- 51 *Id.* ¶ 30(d) (recommending amendment of the Law No. 19/2012 “to ensure that the Law is in conformity with [CEDAW] and other international human rights instruments, such as the International Covenant on Civil and Political Rights and that its scope does not, in practice, extend to activities which do not constitute terrorism”). Human Rights Watch has also criticised “the overbroad provisions in the Counterterrorism Law,” and its use to “convict peaceful activists on charges of aiding terrorists... under the guise of countering violent militancy.” *See Syria: Counterterrorism Court Used to Stifle Dissent*, HUM. RTS. WATCH (June 25, 2013). Human Rights Watch specifically notes that the reference to “any method” (or “any tool”) in the definition “opens the door to labelling virtually any act as a terrorist offense.” *Id.*
- 52 Law on Regulating Online Communications and Combating Cybercrimes, *supra* note 24.
- 53 *Id.* at art. 2 (stating that ISPs must save certain data for the National Agency for Network Services, to allow the Agency to regulation network communication “in accordance with the applicable Media Law in force.”); *see also* GULF CTR. FOR HUM. RTS., *MAPPING CYBERCRIME LAWS AND VIOLATIONS OF DIGITAL RIGHTS IN THE GULF AND NEIGHBOURING COUNTRIES* (2018).
- 54 Law on Regulating Online Communications and Combating Cybercrimes, *supra* note 24, at art. 5 (“Any person who provides network communication services in a professional capacity shall show clearly the following data on their website: (1) The name and address of the website owner or the network communication service provider, and his/her commercial register, if any. (2) The name and address of the website manager, and his/her contact information...”).
- 55 *Id.* at art. 2 (“Network service providers must save a copy of their stored content, if any, and save traffic data that allows for verification of identity of the people who contribute to publishing content online for a period specified by the agency...”); *see also* *Freedom on the Net 2020: Syria*, *supra* note 37.
- 56 Law on Regulating Online Communications and Combating Cybercrimes, *supra* note 24, at art. 30 (“Increased Penalties. The penalties are increased in the following cases, according to the general rules of severity stipulated in the penal code in force: (1) If the crime affects the country or public safety...”); GULF CTR. FOR HUM. RTS., *supra* note 53.
- 57 *COI on Syria Report of Feb. 2012*, *supra* note 37.
- 58 Anti-Cybercrime Law, *supra* note 25; *Syria: Newly Enacted Anti-Cybercrime Law Threatens Online Freedom of Opinion and Expression*, GCHR (May 16, 2018).
- 59 Anti-Cybercrime Law, *supra* note 25, at art. 2.
- 60 *Id.* at art. 6 (stipulating that the qualifications for judges should include those who have been “trained in combating

information crimes and telecommunications crimes”). According to reports, particular aspects of the training of these personnel and judges include filtering online content, especially on social media, and collecting data on computers, information systems, or storage devices. Syria: *Newly Enacted Anti-Cybercrime Law Threatens Online Freedom of Opinion and Expression*, *supra* note 58.

- 61 David Kaye (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, ¶¶ 19–20, U.N. Doc. A/HRC/35/22 (Mar. 30, 2017) [hereinafter *SRFOE Report of Mar. 2017*] (“Providers should only be compelled to release user data when ordered by judicial authorities certifying necessity and proportionality to achieve a legitimate objective... Laws that require private actors to create large databases of user data accessible to the government raise necessity and proportionality concerns.”).
- 62 Frank La Rue (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, Frank La Rue, ¶ 24, U.N. Doc. A/HRC/23/40 (Apr. 17, 2013); ICCPR, *supra* note 7, at art. 19 (“[T]his right [to freedom of expression] shall include freedom to seek, receive and impart information and ideas of all kinds...”).
- 63 *SRFOE Report of Mar. 2017*, *supra* note 61, ¶ 17.
- 64 *Id.* ¶ 18 (stating that laws enabling governments to access user data through ISPs “based on a mere assertion of national security,” make it so that users are “unable to predict with reasonable certainty the circumstances under which their communications and associated data may be disclosed to authorities”).
- 65 David Kaye (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Surveillance and Human Rights: Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, ¶ 24, U.N. Doc. A/HRC/41/35 (May 28, 2019). Online privacy serves as a “gateway to secure exercise of the freedom of opinion and expression,” and “encryption and anonymity are protected precisely because of its role in securing those rights.” David Kaye (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, David Kaye, ¶ 16, U.N. Doc. A/HRC/29/32 (May 22, 2015). Furthermore, ICCPR article 19(1) states that everyone shall have the right to hold opinions without interference. ICCPR, *supra* note 7, at art. 19(1); *see also* UDHR, *supra* note 8, at art. 1. The HRC has interpreted this right to include “the right to protection of the law against such interferences.” The Right to Privacy in the Digital Age, Human Rights Council Res. 28/16, U.N. Doc. A/HRC/RES/28/16, ¶ 14 (Mar. 26, 2015).
- 66 SYRIAN CTR. FOR MEDIA & FREEDOM OF EXPRESSION, *THE STATE OF MEDIA IN SYRIA* (2019), at 25. Researchers for this study were unable to locate a copy of this law. However, according to the Syrian Centre for Media and Freedom of Expression, the Joint Governance of Al-Jazeera District ratified the law by Decree No. 1 of 2016, which consists of thirty-three articles and includes duties and penalties for journalists as well as establishing a Media Council and a Supreme Information Council, the latter which issues licenses and media credentials. SYRIAN CTR. FOR MEDIA & FREEDOM OF EXPRESSION, *supra* note 31, at 47-48.
- 67 SYRIAN CTR. FOR MEDIA & FREEDOM OF EXPRESSION, *supra* note 31, at 47. This law is currently being re-drafted into a newer version, which is “scheduled to be announced during the net weeks,” according to the Syrian Democratic Council (the legislative body of the NES). *A Follow-Up Committee for the Outcomes of the People of Al-Jazeera and Euphrates Conference in Which Decisions Are Discussed and Others Are Implemented*, SYRIAN DEMOCRATIC COUNCIL; *see Dialogue Forum Held for Northeast Syria’s New Media Law*, N. PRESS AGENCY (Dec. 24, 2020); *Annual Report of the Executive Council for North and East Syria – 2020*, ROJAVA INFO. CTR. (Feb. 6, 2021).
- 68 *Three Actions Regarding Media Professionals in Three Areas of Control in Syria*, ENAB BALADI (Nov. 24, 2020) (translation on file with authors).
- 69 *SRFOE Report of May 2016*, *supra* note 38, ¶ 7.
- 70 SYRIAN CTR. FOR MEDIA & FREEDOM OF EXPRESSION, *supra* note 31, at 47.
- 71 *SRFOE Report of Aug. 2011*, *supra* note 41, ¶ 30.
- 72 Frank La Rue (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Promotion and Protection of the Right to Freedom of Opinion and Expression*, ¶ 53, U.N. Doc. A/67/357 (Sept. 7, 2012). The SR on FOE observed that “international human rights law protects individuals and not abstract concepts such as religion, belief systems, or institutions . . .” and noted that “the right to freedom of expression includes the right to scrutinize, debate openly, make statements that offend, shock and disturb,

- and criticize belief systems, including religious ones, provided that they do not advocate hatred that incites hostility, discrimination, or violence." *Id.* ¶ 53.
- 73 *Al-Nusrah Front for the People of the Levant, supra* note 14 (describing the Al-Nusrah Front's creation of HTS as a vehicle to advance its position in the Syrian insurgency).
- 74 Communications Law of 2019, Syrian Salvation Government [hereinafter Communications Law] (Arabic version; unofficial translation on file with authors).
- 75 Qasim Al Basri, *The Communications Liberation Commission in Northern Syria*, ALJUMHURIYA.NET (Dec. 4, 2019) (unofficial translation on file with author). According to the analysis, the law creates regulations and mechanisms to regulate operation and management of communications, including prices, and prohibits private communications networks from operating without permission from authorities. *Id.*
- 76 Communications Law, *supra* note 74, at chs. II, IX, XI.
- 77 *Id.* at art. 60.
- 78 *Id.*
- 79 SYRIAN CTR. FOR MEDIA & FREEDOM OF EXPRESSION, *supra* note 31, at 42; see *Three Actions Regarding Media Professionals in Three Areas of Control in Syria, supra* note 68 (authorities monitoring photographs and videos by media working with humanitarian relief organisations for posting images that "violate the dignity" of civilians and children and referring repeat violators to judicial authorities).
- 80 See *HRC General Comment No. 34, supra* note 38, ¶ 13.
- 81 *SRFOE Report of May 2011, supra* note 39, ¶ 26. The prohibitions on speech concerning the authorities are contrary to article 19, not only because they are overly broad and ambiguous, but also because they provide an impermissible higher level of protection to public officials against media statements than that afforded to all citizens. *SRFOE Report of June 2012, supra* note 42, ¶ 88.
- 82 *Syrian Military Intelligence Arrests Syrian Kurdish Journalist at Checkpoint*, COMM. PROTECT JOURNALISTS (Sept. 5, 2018).
- 83 *Id.*
- 84 *Id.*
- 85 *Rudaw Calls on Syrian Authorities to Release Journalist Omar Kalo*, RUDAW (Sept. 4, 2018).
- 86 *Syrian Officials Release Rudaw Anchor Omar Kalo in Damascus*, RUDAW (Oct. 4, 2018).
- 87 *Syrian Security Forces Arrest Pro-Assad Reporter Rabea Kalawandi*, COMM. PROTECT JOURNALISTS (July 10, 2019); Haid Haid, *Syria Wants Complete Control Over Information, Which Is Why Even Loyalist Journalists Can Be Arrested for Being 'Out of Order'*, SYNDICATION BUREAU (July 28, 2019).
- 88 *Syrian Security Forces Arrest Pro-Assad Reporter Rabea Kalawandi, supra* note 87.
- 89 *Russian Media in Syria: Organized Propaganda Breaking the Censorship Scissors*, ENAB BALADI (Sept. 4, 2019).
- 90 Kalawandy began tweeting and posting on his Facebook, beginning 7 August 2019. Researchers determined this after performing an advanced search on Twitter for tweets between 7 July 2019 and 8 August 2019 (results found here), and by applying a post filter on his Facebook page to check for posts he made in July and August 2019.
- 91 *Harassment of Pro-Government Journalists Growing in Syria*, REPS. WITHOUT BORDERS (July 16, 2019).
- 92 Working Grp. on Arbitrary Det., *Report of the Working Group on Arbitrary Detention: United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court*, ¶ 11, U.N. Doc. A/HRC/30/37 (July 6, 2015) [hereinafter *WGAD Report of July 2015*]; Hum. Rts. Comm., *General Comment No. 35: Article 9 (Liberty and Security of Person)*, ¶¶ 17, 22-23, 53, U.N. Doc. CCPR/C/GC/35 (Dec. 16, 2014) [hereinafter *HRC General Comment No. 35*].
- 93 *WGAD Report of July 2015, supra* note 92, ¶ 10; UDHR, *supra* note 8, at art. 19; ICCPR, *supra* note 7, at art. 19.
- 94 *WGAD Report of July 2015, supra* note 92, ¶ 11.
- 95 Working Grp. on Arbitrary Det., *Report of the Working Group on Arbitrary Detention*, ¶ 46, U.N. Doc. A/HRC/36/37 (July 19, 2017); UDHR, *supra* note 8, at art. 7; ICCPR, *supra* note 7, at art. 26.
- 96 Hum. Rts. Comm., *General Comment No. 32: Article 14, Right to Equality Before Courts and Tribunals and to Fair Trial*, ¶ 6, U.N. Doc. CCPR/C/GC/32 (Aug. 23, 2007) [hereinafter *HRC General Comment No. 32*].
- 97 *WGAD Report of July 2015, supra* note 92, annex, princs. 7-9; *HRC General Comment No. 32, supra* note 96, ¶ 10.
- 98 *SRHRD Report of Dec. 2019, supra* note 5, ¶ 13 (citing Security Council Res. 2286 (2016), U.N. Doc. S/RES/2286 (2016), ¶ 2 (May 3, 2016); Grp. of Eminent Int'l & Reg'l Experts, *Situation of Human Rights in*

NOTES

- Yemen, Including Violations and Abuses Since September 2014: Report of the Group of Eminent International and Regional Experts as Submitted to the United Nations High Commissioner for Human Rights*, ¶ 12, U.N. Doc. A/HRC/42/17 (Aug. 9, 2019); U.N. Off. of the High Comm'r for Hum. Rts., *Report of the Office of the United Nations High Commissioner for Human Rights on the Question of Human Rights in Cyprus*, ¶ 11, U.N. Doc. A/HRC/25/21 (Jan. 22, 2014); U.N. High Comm'r for Hum. Rts., *Report of the United Nations High Commissioner for Human Rights on Cooperation with Georgia*, ¶ 43, U.N. Doc. A/HRC/39/44 (Aug. 15, 2018)).
- 99 SRHRD Report of Dec. 2019, *supra* note 5, ¶ 15 (citing 1 JEAN-MARIE HENCKAERTS & LOUISE DOSWALD-BECK, INT'L COMM. OF THE RED CROSS, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW RULES 25, 27-32, 34 (2005)).
- 100 *Id.* ¶ 37.
- 101 *Hayat Tahrir Al-Sham Militants Abduct US Journalist Bilal Abdul-Kareem and Driver in Syria*, COMM. PROTECT JOURNALISTS (Aug. 17, 2020); *US Presenter of Social Media Channel Held by Jihadis in Idlib Province*, REPS. WITHOUT BORDERS (Aug. 19, 2020).
- 102 *US Presenter of Social Media Channel Held by Jihadis in Idlib Province*, *supra* note 101.
- 103 *Hayat Tahrir al-Sham Militants Abduct US Journalist Bilal Abdul-Kareem and Driver in Syria*, *supra* note 101.
- 104 Areeb Ullah & Harun al-Aswad, *Syria: US Journalist Bilal Abdul Kareem Released by HTS After Six Months*, MIDDLE E. EYE (Feb. 17, 2021).
- 105 Sarah El Deeb, *US Reporter Held by al-Qaida-Linked Group in Syria Released*, AP NEWS (Feb. 18, 2021).
- 106 *Id.* Human rights defenders, including journalists, are entitled to fundamental, non-derogable, due process protections even when proceedings are conducted by non-State actors exercising governmental functions. See SRHRD Report of Dec. 2019, *supra* note 5, ¶¶ 15-16.
- 107 *Prominent Syrian Writer Yousph Arrested in Northeastern Syria, Held for Five Days*, COMM. PROTECT JOURNALISTS (Oct. 9, 2018).
- 108 *Id.*
- 109 Souleman Yousph, *Assyrians and Christians in Wamishli: No to the "Kurdish Administration"*, ANKAWA.COM (Sept. 5, 2018) (original in Arabic, unofficial translation via Google).
- 110 *Prominent Syrian Writer Yousph Arrested in Northeastern Syria, Held for Five Days*, *supra* note 107; *Kurdish Self-Administration in Syria: Release Assyrian Journalist Souleman Yousph*, ASSYRIAN POL'Y INST. (Sept. 30, 2018) (note that his videos, which are linked in this article, have since been deleted).
- 111 *Prominent Syrian Writer Yousph Arrested in Northeastern Syria, Held for Five Days*, *supra* note 107; *Kurdish Self-Administration in Syria: Release Assyrian Journalist Souleman Yousph*, *supra* note 110. His Facebook posts condemning Kurdish policies towards Assyrian schools can be found by applying a September 2018 post filter to his Facebook page.
- 112 *Prominent Syrian Writer Yousph Arrested in Northeastern Syria, Held for Five Days*, *supra* note 107.
- 113 *Id.*
- 114 SRHRD Report of Dec. 2019, *supra* note 5, ¶ 33.
- 115 *Regional Authorities in Northeast Syria Suspend Rudaw TV Reporter's Credentials for 2 Months*, COMM. PROTECT JOURNALISTS (May 11, 2020).
- 116 *Id.*
- 117 *Syrian Militia Detains Reporter in Western Idlib*, COMM. PROTECT JOURNALISTS (July 5, 2018).
- 118 *Id.*
- 119 *Id.*
- 120 COI on Syria Report of Aug. 2012, *supra* note 18, ¶ 10.
- 121 See HRC General Comment No. 31, *supra* note 9, ¶ 8; see also SRFOE Report of Sept. 2016, *supra* note 9.
- 122 WGAD Report of July 2015, *supra* note 92, ¶ 11; HRC General Comment No. 35, *supra* note 92, ¶¶ 17, 22-23, 53.
- 123 *Hayat Tahrir al-Sham Militant Group Detains Syrian Journalist Maan Bakour in Idlib*, COMM. PROTECT JOURNALISTS (June 26, 2019).
- 124 ICCPR, *supra* note 7, at art. 9; UDHR, *supra* note 8, at art. 19. The Working Group on Arbitrary Detention has noted that arrests in violation of the ICCPR are presumptively arbitrary. Working Grp. on Arbitrary Det., *Report of the Working Group on Arbitrary Detention: Addendum—Visit to the Islamic Republic of Iran*, ¶ 42, U.N. Doc. E/CN.4/2004/3/Add.2 (June 27, 2003); ICCPR, *supra* note 7, at art. 9.
- 125 See HRC General Comment No. 24, *supra* note 19, ¶ 8.
- 126 ICCPR, *supra* note 7, at art. 14(3).

- 127 Questions Relating to the Obligation to Prosecute or Extradite (*Belgium v. Senegal*), Judgment, 2012 I.C.J., ¶ 99 (July 20); CAT, *supra* note 7, at art. 2; Dire Tladi (Special Rapporteur), *Fourth Report on Peremptory Norms of General International Law (Jus Cogens) by Dire Tladi, Special Rapporteur*, ¶ 69, U.N. Doc. A/CN.4/727 (Jan. 31, 2019) [hereinafter *SR Report of Jan. 2019*].
- 128 CAT, *supra* note 7, at art. 2; *SR Report of Jan. 2019, supra* note 127, ¶ 69. Non-State actors in control of territory are obligated to respect human rights that are part of customary international law. *COI on Syria Report of Aug. 2012, supra* note 18, ¶ 10. See also Responsibility of States for Internationally Wrongful Acts, G.A. Res. 56/83, U.N. Doc. A/Res/56/83, art. 10(1) (Dec. 12, 2001) (“The conduct of an insurrectional movement which becomes the new government of a State shall be considered an act of that State under international law.”).
- 129 CAT, *supra* note 7, at art. 1.
- 130 Nils Melzer (Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment), *Extra-Custodial Use of Force and the Prohibition of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 33, U.N. Doc. A/72/178 (July 20, 2017).
- 131 *Id.* ¶¶ 34, 36. The Committee against Torture has repeatedly held that police brutality and excessive use of force outside the context of detention can fall within its purview. Comm. against Torture, *Report of the Committee against Torture*, ¶ 126, U.N. Doc. A/50/44 (1995); Comm. against Torture, *Concluding Observations on the Combined Third and Fourth Periodic Reports of the Bolivarian Republic of Venezuela*, ¶ 12, U.N. Doc. CAT/C/VEN/CO/3-4 (Dec. 12, 2014); Comm. against Torture, *Concluding Observations on the Fourth Periodic Reports of Turkey*, ¶ 15, U.N. Doc. CAT/C/TUR/CO/4 (June 2, 2016); Comm. against Torture, *Concluding Observations on the Combined Third to Fifth Periodic Reports of the Republic of Korea*, ¶ 13, U.N. Doc. CAT/C/KOR/CO/3-5 (May 30, 2017).
- 132 *Hayat Tahrir Al-Sham Militants Abduct US Journalist Bilal Abdul-Kareem and Driver in Syria, supra* note 101.

Berkeley Law

International Human Rights Law Clinic

International Human Rights Law Clinic
University of California, Berkeley
School of Law
353 Law Building
Berkeley, CA 94720-7200
phone: (510) 643-4800
humanrightsclinic.org

ISBN# 978-1-938722-10-3



General inquiries info@gc4hr.org

Media inquiries media@gc4hr.org

GCHR on Facebook <https://www.facebook.com/gc4hr/>

GCHR on Twitter <https://twitter.com/GulfCentre4HR>