



WHO WILL BE LEFT TO DEFEND HUMAN RIGHTS?

PERSECUTION OF ONLINE
EXPRESSION IN THE GULF
AND NEIGHBOURING COUNTRIES



Berkeley
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International
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Law Clinic

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NOVEMBER 2021

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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.

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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)

UNITED ARAB EMIRATES



UAE SCORECARD

Targeted Activism or Expression



Criticism of Government*



Journalists



Women's Rights and WHRDs

Human Rights Violations



Privacy & Surveillance



Arbitrary Detention



Incommunicado Detention



Enforced Disappearance



Fair Trial

Problematic Legal Provisions and Institutions



Criminal Defamation



Cybercrime Law



Public Order



Specialised Law Enforcement Units

4

Number of incidents that fit the inclusion criteria of this study

*Including criticism of foreign government

INTRODUCTION

Between 01 May 2018 and 31 October 2020, there were four documented incidents of violations of the right to freedom of expression online in the United Arab Emirates (UAE), a federation of seven emirates,¹ that fit this study's inclusion criteria.² During this time period, the UAE targeted online expression regarding the country's foreign policy, including the war in Yemen.

Various factors have chilled human rights activism in the UAE, including trials earlier in the decade of prominent human rights defenders (HRDs), many of whom remain imprisoned. Also the vast majority of the population are non-citizens who risk deportation for participating in human rights advocacy. These factors may help explain the relatively small number of incidents reported since May 2018, which nevertheless constitute credible evidence that the government has violated its obligation to respect online freedom of expression and additional associated rights of HRDs". These violations also constitute breaches of the duty of the State, pursuant to the UN Charter, "as the main duty-bearer" to ensure "defenders enjoy a safe and enabling environment" and that government institutions and processes "are aligned with their safety and the aim of their activities."³

Internet and social media use is widespread in the UAE. As of January 2021, there were an estimated 9.84 million internet users and 9.84 million social media users, out of a total population of 9.94 million.⁴ The incidents described in this chapter indicate that the UAE government has targeted Facebook users in particular. As of January 2021, Facebook estimated that it had a domestic audience of 7.80 million people in the country.⁵

The UAE is party to a number of international and regional treaties protecting the right to freedom of expression.⁶ Although the UAE is not a party to the International Covenant on Civil and Political Rights (ICCPR), it is a party to the Arab Charter on Human Rights and the United Nations (UN) Charter, and as such has committed to upholding fundamental human rights, including human rights principles contained in the Universal Declaration of Human Rights (UDHR).⁷

LEGAL AND POLITICAL ENVIRONMENT FOR ONLINE EXPRESSION IN THE UAE

The incidents reported within the study's time period, and a review of past patterns of enforcement, indicate that UAE Penal Code and Federal Decree Law No. 5 on Combatting Cybercrimes (Cybercrime Law), are the laws that authorities most frequently used to target online expression. In addition to this legal framework, specialised law enforcement agencies utilize surveillance technologies to target online human rights advocacy.

1987 Penal Code

The Penal Code, most recently amended in 2020, contains multiple provisions that restrict freedom of expression. Article 176 stipulates imprisonment for between fifteen and twenty-five years for "insult[ing] the President of the State."⁸ Article 180 mandates execution or life imprisonment for anyone who establishes, provides funding to, or joins an organization that aims "to subvert the provisions of the Constitution or Law or to oppose the basic principles upon which the regime is based."⁹ Article 181 mandates a sentence of death or life imprisonment for "establish[ing] . . . or participat[ing] in an . . . organisation . . . intending or seeking through its activity to prejudice the security or interests of the State."¹⁰ Moreover, article 182 (bis)(1) mandates at least ten years imprisonment for "us[ing] religion to promote . . . ideas that tend towards insurrection or against the national unity or the civil peace."¹¹ Article 197 (bis)(2) provides that anyone "who uses . . . telecommunication or information technology . . . to publish information or news . . . that may inflict damages to the security of the State or prejudice the public order, shall be sentenced to temporary imprisonment."¹² Lastly, article 372, a criminal defamation provision, stipulates imprisonment of up to two years or a fine for "attribut[ing] to another, through a means of publicity, a fact that makes him

object of punishment or of contempt."¹³ An individual receives a penalty of both imprisonment and a fine "in case the libel is perpetrated against a public servant."¹⁴

Multiple UN Special Procedures mandate holders wrote to the UAE's government in a 2017 communication characterising certain provisions of the Penal Code, as well as the Cybercrime Law, as "repressive legislation criminalizing the legitimate exercise of freedom of expression."¹⁵ 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.¹⁶ Vaguely and broadly worded provisions have been found by Special Procedures mandate holders to violate this requirement, allowing authorities to use their excessive discretion to target protected speech and encouraging individuals to engage in self-censorship.¹⁷ UN Special Rapporteurs have criticised as overly vague provisions that prohibit individuals from using the internet to "upset social order" or "harm the public interest," or from publishing "articles or photos that could harm national security, public order, public health or public interest, incite violence, constitute sedition or have negative consequences for the financial climate of the country."¹⁸ Additionally, the UN Human Rights Council has stipulated four types of expression that should never be subject to restriction: "[d]iscussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups . . ."¹⁹

Of relevance to Penal Code articles 176 and 372, the UN Human Rights Committee and the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (SR on FOE) have cautioned that laws on defamation should be crafted carefully so that they do not restrict freedom of expression, and have recommended the decriminalization of defamation.²⁰ 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.”²¹ It has stated that defamation laws should include the defence of public interest in the subject matter of the criticism, the defence of truth, and, at least in the case of expression related to public figures, the defence of error.²² Additionally, human rights bodies have emphasised the value of public debate concerning public institutions and public figures in particular, who should not be granted a higher level of protection against defamation.²³ The UN Human Rights Committee has expressed particular concern about “laws on such matters as, *lese majesty*, *desacato*, disrespect for authority, disrespect for flags and symbols, defamation of the head of state and the protection of the honour of public officials” and laws prohibiting “criticism of institutions, such as the army or the administration.”²⁴ During the UAE’s most recent Universal Periodic Review (UPR), the Office of the High Commissioner for Human Rights (OHCHR) “recommended that the [UAE] decriminalize defamation and place it within a civil code.”²⁵

The provision for the imposition of the death penalty in a number of UAE Penal Code provisions that restrict expression raises the issue of arbitrary deprivation of life. Article 6 of the ICCPR, which establishes the right to life, restricts the use of capital punishment to the “most serious crimes.”²⁶ According to the Human Rights Committee, article 6 allows States to impose the death penalty as a punishment only for individuals convicted of crimes involving “intentional killing.”²⁷

2012 Cybercrime Law

The UAE’s Cybercrime Law was enacted in 2012, most recently amended in 2018, and superseded an earlier version of the law passed in 2006—the earliest cybercrime law in the region.²⁸ The Cybercrime Law also includes provisions that are vague and overbroad. Article 24 prohibits operating a website or publishing online anything that “would promote or praise any programs or ideas which would . . . damage the national unity or social peace or prejudice the public order and public morals.”²⁹ Article 28 prohibits using internet technology (IT) to “[publish] or [transmit] information, news or cartoon drawings or any other pictures which may endanger the national security and the higher interests of the State or . . . public order.”³⁰ Article 30 mandates life imprisonment for using IT to “oppose the basic principles which constitutes [sic] the foundations of the ruling system of the state.”³¹

The Cybercrime Law also broadly restricts online expression related to civil society activities not approved by the State, including organised protest. Article 26 provides for a penalty of ten to twenty-five years’ imprisonment and a fine for anyone who “establishes, manages or runs a website or publishes information” online in support of “any unauthorised group.”³² It prohibits downloading or sharing such content, or “repeat[ing] its browsing” with a punishment of up to five years’ imprisonment and a fine.³³ Articles 27 and 32 prohibit using IT to collect donations without a license,³⁴ and “planning, organizing, promoting or calling for demonstrations or protests or the like” without a license.³⁵

In addition to being vague and overbroad, these provisions of the Cybercrime Law also impede freedom of association and the rights of HRDs. The UN Human Rights Council has emphasised that States have the obligation to respect and protect the rights to freedom of assembly and association both offline and online.³⁶ 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.³⁷ In particular, the Special Rapporteur on the rights of freedom of peaceful assembly and association has criticized a law that “forbids providing ‘assistance’ to ‘illegal’ assemblies, including by ‘means of communication’” as being overly broad, “potentially making it a crime to promote, discuss, seek or link to information regarding a protest event.”³⁸ The Special Rapporteur on the Situation of Human Rights Defenders (SR on HRDs) has noted that laws that impose criminal penalties on unregistered organizations are *prima facie* incompatible with international human rights standards, including the freedom of association.³⁹ The SR on HRDs has also noted that a regime of authorization of public assemblies is inconsistent with the right to assemble peacefully.⁴⁰ Finally, Special Procedures mandate holders have emphasized the importance of online platforms for associations’ fundraising efforts,⁴¹ and expressed concern that State policies that require organizations to “seek authorization from the authorities before being permitted to conduct fundraising activities,” interfere with the work of HRDs.⁴²

The Cybercrime Law also prohibits expression that inflicts reputational damage on the State or its leaders. Article 20 stipulates imprisonment for an unspecified amount of time, a fine, or both punishments for using IT to “[insult] or [accuse] another person of a matter of which he shall be subject to punishment or being held in contempt by others.”⁴³ Furthermore, “[i]f a slander or insult is committed against a public official or servant in the course of or because of his work, this shall be considered an aggravating factor.”⁴⁴ Articles 29 and 37 both stipulate “temporary imprisonment,” plus a fine in the case of article 38, for using IT to harm the reputation of the UAE, its leaders, or its symbols.⁴⁵ As with the Penal Code, the Cybercrime Law is inconsistent with the Human Rights Committee and the SR on FOE’s guidance that defamation laws be crafted with care,⁴⁶ and that public figures should not be granted a higher level of protection against defamation.⁴⁷

Restricted Civic Space in the UAE

Prior to May 2018, UAE authorities conducted multiple mass arrests and trials of HRDs. Those incidents do not fit this study’s inclusion criteria but provide important context on the UAE’s restricted civic space, which may partly explain the small number of cases reported since May 2018. In 2012, UAE authorities arrested a group of people who became known as the UAE 94, which included political activists, lawyers, teachers, students, HRDs, and academics.⁴⁸ Authorities wrongly accused, tried, and convicted most members of the UAE 94 of trying to overthrow the government for their advocacy of political reform.⁴⁹ Many UAE 94 members alleged that authorities tortured them, while holding them incommunicado for months in secret State security facilities, prior to their trials.⁵⁰

In another case which also falls outside of this study’s timeframe, UAE security agents arrested Ahmed Mansoor, a renowned blogger and HRD who is on the advisory boards of the Gulf Centre for Human Rights (GCHR) and Human Rights Watch, after breaking into his apartment on 20 March 2017.⁵¹ On 29 May 2018, the State Security Chamber of the Federal Appeal Court convicted Mansoor, sentencing him to 10 years in prison for “insulting the status and prestige of the UAE and its symbols including its leaders,”⁵² “publishing false reports and information on social media,”⁵³ and “portray[ing] the UAE as a lawless land.”⁵⁴ His sentence was upheld on appeal on 31 December 2018 and he remained in an isolation cell.⁵⁵ Mansoor used Facebook and Twitter to speak about human rights abuses in the UAE and abroad.⁵⁶ He was also a target of a surveillance operation and cyberattacks conducted by the UAE’s Development Research Exploitation and Analysis Department, codenamed Project Raven.⁵⁷ According to Amnesty International, “until his arrest . . . Mansoor was the last remaining HRD in the UAE who had been able to criticize the authorities publicly.”⁵⁸ Therefore, it is possible that these mass arrests and violations of the right to freedom of expression created a chilling effect

on speech in the UAE, contributing to the relatively low number of reported incidents since May 2018.

It should be noted, however, that Mansoor, and prominent members of the UAE⁹⁴, including human rights lawyer Dr. Mohammed Al-Roken and Dr. Mohammad Mansoori, continue to be persecuted for protesting human rights violations in prison, including torture.⁵⁹ For example, Mansoor remains in isolation with no bed or books⁶⁰ after more than four years in prison, and Mansoori and Al-Roken have been in and out of isolation. All of them, in addition to imprisoned academic Nasser Bin Ghaith, have resorted to hunger strikes⁶¹ to protest their poor conditions.

The UAE's civic space and online human rights advocacy are further restricted by laws and policies that effectively force non-citizens to choose between advocating for their human rights or facing deportation. As of July 2020, foreign nationals comprised approximately ninety percent of the UAE's total population.⁶² Most non-citizens are low-wage workers, who the UAE governs using the discriminatory and oppressive *kafala*, or sponsorship, system.⁶³ The UAE's migrant workers have no right to collectively bargain or to organise and are prohibited from going on strike.⁶⁴ Moreover, non-citizens face the added threat of deportation for their online human rights advocacy. Both article 325 of the Penal Code and article 42 of the Cybercrime Law allow deportation of non-citizens convicted of violating these laws.⁶⁵ The threat of deportation for human rights-related speech and collective advocacy risks interfering with these workers' rights to freedom of expression, association, and peaceful assembly.⁶⁶

Surveillance

There is evidence indicating that UAE authorities frequently utilise spyware technology to engage in surveillance against HRDs. This impacts a number of interrelated human rights, including their rights to freedom of expression and opinion, to peaceful assembly and association, to religion or belief, and to privacy.⁶⁷ 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).”⁶⁸ This in turn has a chilling effect on expression and association.⁶⁹

The UAE authorities have reportedly engaged in numerous cyber-surveillance campaigns. In 2019, Project Raven, the same operation that targeted Ahmed Mansoor and a Saudi WHRD living in the UAE, Loujain Al-Hathloul, discussed in greater detail below, carried out surveillance on “[a]t least four journalists.”⁷⁰ Reuters has characterised Project Raven as “a clandestine team” of “more than a dozen former United States (US) intelligence operatives recruited to help the [UAE] engage in surveillance of other governments, militants and human rights activists critical of the monarchy.”⁷¹ To surveil the journalists, authorities used a tool called Karma to target iPhone messages.⁷² The SR on FOE has reported that former United States National Security Agency employees allegedly aided the UAE in surveilling its political opponents.⁷³ Lastly, Citizen Lab at the University of Toronto has found evidence of the UAE's use of Pegasus, a spyware technology made by the NSO group which the SR on FOE has criticised, including to target Mansoor.⁷⁴

TRENDS EMERGING FROM INCIDENTS OF REPRESSION OF ONLINE EXPRESSION IN THE UAE

UAE authorities have used vague and arbitrary laws as well as extralegal punishments to restrict online speech, in violation of the right to freedom of expression. All four of the reported incidents from the study period counted here concerned political speech advocating for human rights abroad, criticizing an aspect of the UAE's foreign policy, or critiquing the policies of a foreign country. These violations of the right to free expression have also impinged on other associated rights, including the right to privacy, and freedom from arbitrary detention, enforced disappearance, and torture.

Violations of the Right to Online Freedom of Expression

Assisting foreign governments to target HRDs

In May 2018, Saudi authorities arrested Loujain Al-Hathloul, a women's rights activist and blogger from Saudi Arabia (see Saudi Arabia chapter).⁷⁵ Before her arrest, she was living in the UAE as a student at the Sorbonne University campus in Abu Dhabi.⁷⁶ During this time, UAE authorities subjected her to surveillance and cyberattacks, hacking into her email.⁷⁷ On 13 March 2018, while Al-Hathloul was driving on a highway, Abu Dhabi police stopped and arrested her.⁷⁸ They did not provide her with any information about the reason for her arrest.⁷⁹ Abu Dhabi police briefly detained Al-Hathloul, took her to an airfield, and put her on a Saudi private jet, staffed by personnel from Saudi Arabia.⁸⁰ UAE personnel did not allow Al-Hathloul to contact family or an attorney before her rendition to Saudi Arabia.⁸¹ The jet then flew to Saudi Arabia, where Saudi authorities eventually imprisoned her and subjected her to torture.⁸²

According to the UN Working Group on Arbitrary Detention (WGAD), the UAE "facilitat[ed] the persecution of Ms. Alhathloul for her legitimate exercise of rights and freedoms."⁸³ As a party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the UAE must abide by article 3, in which States vow to enact measures "for the purpose of guaranteeing [women] the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men."⁸⁴ The UAE's targeting of Al-Hathloul for her advocacy breaches this obligation.⁸⁵ Additionally, her targeted surveillance and hacking interfered with her right to hold opinions without interference.⁸⁶ Al-Hathloul's case demonstrates also how countries in the Gulf collaborate with each other to suppress criticism of their human rights record.

HRDs documenting the war in Yemen

On 18 June 2018, authorities in Yemen detained Radhya Al-Mutawakel and Abdulrasheed Al-Faqih at the Seiyun City airport as the two attempted to travel to Oslo for an event by the Centre for Humanitarian Dialogue.⁸⁷ Both are Yemeni HRDs and leaders of the Mwatana Organization for Human Rights which monitors and documents human rights violations in Yemen and is based in Sana'a.⁸⁸ According to Human Rights Watch, the agents who detained the two HRDs told them that their arrests were at the behest of the Saudi/UAE coalition authorities.⁸⁹ Mwatana reported that Saudi/UAE-led coalition authorities confiscated Al-Mutawakel and Al-Faqih's passports.⁹⁰ Authorities detained Al-Mutawakel and Al-Faqih for about twelve hours before releasing them, never giving them a reason for their detention.⁹¹ Authorities told the HRDs that they were not allowed to travel and threatened further detention upon their release.⁹²

While Yemeni officials detained Al-Mutawakel and Al-Faqih outside of UAE territory, the UAE may still be responsible for violating the HRDs' right to freedom of expression by targeting them for their online human rights advocacy.⁹³ According to the Group of Experts established by the UN High Commissioner for Human Rights, with regard to the situation in Yemen, it has "reasonable grounds to believe that the Governments of Yemen, and the [UAE] and Saudi Arabia to the extent they have control, are responsible for human rights violations . . . including arbitrary detention . . . and violations of fundamental freedoms."⁹⁴ The Group of Experts has reported that "[g]overnment forces, including forces backed by the [UAE], . . . arbitrarily detain, threaten and otherwise target individuals who openly questioned or criticized them, including political opponents, journalists, human rights defenders, and religious leaders."⁹⁵

Furthermore, the detention of Al-Mutawakel, a women's human rights defender (WHRD), is in line with the Group of Experts' finding that "[WHRDs], journalists and activists throughout Yemen continue . . . to be targeted by all sides as a consequence of their work."⁹⁶ Al-Mutawakel's detention as a result of her activism also contravenes the UAE's obligations under CEDAW.⁹⁷ And to the extent that either Al-Mutawakel or Al-Faqih were detained as a way to interfere with their participation in an international conference, this also interferes with their right to freedom of peaceful assembly.⁹⁸

Other political speech related to foreign relations under the pretext of national security

The UN OHCHR stated during the UAE's most recent UPR that "under the pretext of national security, many activists had been prosecuted for allegations mainly related to a person's right to express his or her opinion and criticism of any public policy or institution."⁹⁹ This pattern is reflected in the cases of Ahmed Etoum and Dhabia Khamis Al-Maslamani.

On 14 May 2020, authorities arrested Ahmed Etoum, a Jordanian national who had lived with his family in the UAE for five years.¹⁰⁰ Etoum often posted

his views on Facebook, including criticism of the Jordanian government, intelligence agency, and royal family.¹⁰¹ On 08 October 2020, a court convicted Etoum of using Facebook to commit acts "against a foreign state" that could "damage political relations" and "endanger national security," sentencing him to ten years in prison.¹⁰² Such a sentence is extraordinarily disproportionate to the alleged offense, in violation of international human rights standards.¹⁰³ These were charges under the Penal Code and the Cybercrime Law.¹⁰⁴ He is currently held at Al-Wathba prison in Abu Dhabi.¹⁰⁵

On 26 September 2020, UAE authorities banned writer and journalist Dhabia Khamis Al-Maslamani from traveling from Dubai to Cairo, due to her public stance against the UAE's normalization of relations with Israel.¹⁰⁶ She posted about the ban on her travel on her Facebook and Twitter.¹⁰⁷ Access to her Facebook page in the UAE was then blocked, as were all websites mentioning the travel ban.¹⁰⁸ On 29 September 2020, the Federal Public Prosecutor in Abu Dhabi notified her that she had to attend an investigation on a charge of publishing content that "disturbs national security on social media websites regarding normalization."¹⁰⁹ The UAE authorities' punishment of Al-Maslamani, a WHRD, as a result of her protected speech, violates the UAE's legal obligations under CEDAW.¹¹⁰

Additional Human Rights Violations

Arbitrary and incommunicado detention, and enforced disappearance

Arbitrary deprivation of liberty is prohibited under customary international law and is a *jus cogens* norm.¹¹¹ A deprivation is arbitrary including when it is *jus cogens* norm applicable to all states.¹¹² As WGAD has reiterated, any measure depriving an individual of liberty must meet strict standards of lawfulness, necessity, and proportionality to avoid arbitrariness.¹¹³ Deprivations may be arbitrary when they are based on discriminatory grounds against HRDs and activists, violating the right to equality

before the law.¹¹⁴ Therefore, detention of individuals under arbitrary, impermissibly vague laws like the Penal Code and Cybercrime Law constitutes arbitrary detention prohibited under international law.¹¹⁵

The available reports indicate that the UAE has violated international standards on arbitrary detention. Authorities did not give three individuals—Almutawakel, al-Faqih, and al-Hathloul—the reason for their detention.¹¹⁶ WGAD determined that the UAE further violated international standards on arbitrary deprivation of liberty in al-Hathloul’s case, as she “was not afforded the right to take proceedings before a court by, or in, the [UAE] so that the court may decide without delay the lawfulness of her detention.”¹¹⁷ The working group also concluded that her “forced transfer. . . , coordinated by both Governments, circumvented the regular extradition procedure and resulted in deprivation of her liberty without a legal basis.”¹¹⁸

Incommunicado detention “places an individual outside the protection of the law”¹¹⁹ in violation of article 6 of the UDHR¹²⁰ that protects the right to be recognized as a person before the law.¹²¹ The Special Rapporteur on torture has observed that torture is “most frequently practiced during incommunicado detention,”¹²² and it is outlawed by international law.¹²³ WGAD considers incommunicado detention a form of arbitrary detention.¹²⁴ 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.”¹²⁵ However, authorities did not allow Ahmed Etoum to contact his family until three weeks after his arrest.¹²⁶ Authorities held him in solitary confinement at an unknown location for at least four months and have continued to prohibit Etoum’s family members from visiting him.¹²⁷

Enforced disappearance is an international crime and is prohibited by customary law¹²⁸ as well as treaty.¹²⁹ 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.¹³⁰ An individual may be held incommunicado but is not considered to be disappeared unless the State does not disclose any one of the following pieces of information: whether the person is detained, where the person is detained, and if the person is alive or dead. WGAD determined that al-Hathloul’s transfer from the UAE to Saudi Arabia resulted in her enforced disappearance.¹³¹

These incidents echo the report of the Special Rapporteur on the independence of judges and lawyers (SR on IJL) following her 2014 visit to the UAE. The SR on IJL expressed concern that the Code of Criminal Procedure “does not provide for a maximum limit for pretrial detention” that a judge can impose, and “the limited guarantees provided against arbitrary arrest and detention in the Code of Criminal Procedure do not apply to persons arrested on State security or terrorism-related charges.”¹³² In this latter group of cases, the prosecution can “extend pretrial detention for up to three months before presenting the detainee to a judge.”¹³³

Due process violations

Fundamental principles of fair trials are protected under international law at all times.¹³⁴ Individuals have universal rights to seek competent, independent, and impartial judicial review of the arbitrariness and lawfulness of deprivations of liberty, and to obtain without delay adequate and appropriate remedies.¹³⁵ 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.¹³⁶ Yet, authorities did not provide Ahmed Etoum with an attorney until after his first court hearing on 12 August 2020 and have not allowed his attorney to visit him.¹³⁷ This is consistent with the observations of the SR on IJL following her 2014 visit to the UAE, who was “extremely concerned at reports that an accused person’s access to a lawyer

can be restricted by the police or the prosecution during the investigative phase,” which “reflect breaches of international human rights standards on the right to a fair trial and guarantees ensuring the free exercise of the legal profession.”¹³⁸

Freedom of movement

Article 13 of the UDHR provides that “[e]veryone has the right to freedom of movement” as well as “the right to leave any country, including his own.”¹³⁹ The UAE’s imposition of travel bans on Almutawakel, al-Faqih, and al-Maslamani raise concerns regarding the UAE’s fulfilment of its obligations to protect these HRD’s freedom of movement. The SR on HRDs has expressed concern that governments impose on HRDs “obstacles to their freedom of movement,” including when HRDs seek to leave their countries “to take part in international meetings.”¹⁴⁰ Similarly, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has criticised a trend of governments restricting the freedom of movement of civil society activists under the guise of national security concerns.¹⁴¹

Non-refoulement

The prohibition against torture is absolute, non-derogable, and a *jus cogens* norm of international law.¹⁴² As a party to the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (CAT), the UAE is bound by the principle of non-refoulement in article 3, meaning that the UAE cannot “expel, return (‘refouler’) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.”¹⁴³ WGAD concluded that al-Hathloul’s “forced transfer to Saudi Arabia by the United Arab Emirates violated the principle of non-refoulement as well as other obligations . . . under article 3” of the CAT because of the risk that she would be subjected to torture or ill treatment upon transfer to Saudi Arabia.¹⁴⁴ Additionally, during the UAE’s most recent UPR,

multiple Special Procedures mandate holders raised credible information that the UAE subjects detainees to torture and other forms of cruel, inhuman, or degrading treatment or punishment.¹⁴⁵

CONCLUSION AND RECOMMENDATIONS

The UAE's government employed vague and overbroad laws, as well as extralegal detention, to punish online expression that is protected under international human rights law. United Arab Emirates authorities' use of spyware technology has further contributed to unabating online repression. HRDs, who government authorities detain and imprison, suffer additional rights violations, including incommunicado detention and torture. Based on available incident reports, there is credible evidence that the UAE is in breach of international standards on freedom of expression, the right to privacy, and associated rights.

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

General Recommendations

To Governments of Gulf States and Neighbouring Countries:

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

To the UN Human Rights Council:

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

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

To All States:

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

Country Recommendations

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

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

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

We call on OHCHR to:

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

NOTES

- 1 *United Arab Emirates: Government and Society—Constitutional Framework*, BRITANNICA. The UAE is headed by the Federal Supreme Council comprised of the hereditary rulers of each emirate. *Id.* This characterization of the political system of the country is offered for descriptive purposes; a normative evaluation of the political system as such is beyond the scope of this chapter.
- 2 The initial case identification of reported incidents of violations of online freedom of expression resulted from searching for cases in the UAE between May 2018 and October 2020, from the following international media outlets and human rights organizations that document human rights violations: Amnesty International, Al Jazeera, ARTICLE 19, British Broadcasting Corporation, Committee to Protect Journalists, Front Line Defenders, and Gulf Centre for Human Rights, and Human Rights Watch. Researchers also searched for communications from special procedures mandate holders regarding incidents alleging violations of freedom of expression in Oman in the UN database of communications. Researchers supplemented international research by consulting the following domestic media outlets and human rights reporting: *Arabian Post*, *Gulf News*, and *Khaleej Times* and used the embedded search functions to retrieve news updates using these keywords: freedom of expression, digital expression, digital, online, post, tweet, Twitter, Facebook, arrest, expression, and human rights defender during the relevant period of study. After finding cases using the international sources, researchers conducted additional searches using the Google search of the victim's name (with various English spellings) to find additional case information, as well as consulted online information posted on the Americans for Democracy and Human Rights in Bahrain (ADHRB), CIVICUS, and Mwatana for Human Rights websites. Loujain al-Hathloul's case is described in this chapter, but is only counted toward the number of incidents in the Saudi Arabia chapter as her arrest in the UAE occurred before this study's temporal scope, while her arrest in Saudi Arabia occurred within the temporal scope.
- 3 Michel Forst (Special Rapporteur on the Situation of Human Rights Defenders), *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, ¶ 77, U.N. Doc. A/HRC/31/55 (Feb. 1, 2016); Civil Society Space, Human Rights Council Res. 27/31, U.N. Doc. A/HRC/RES/27/31, ¶ 3 (Oct. 3, 2014); Declaration on the Right and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, G.A. Res. 53/144, U.N. Doc. A/RES/53/144 (Mar. 8, 1999).
- 4 Simon Kemp, *Digital 2021: The United Arab Emirates*, DATAREPORTAL (Feb. 10, 2021).
- 5 *Id.*
- 6 *UN Treaty Body Database: Ratification Status for United Arab Emirates*, OHCHR.ORG. The UAE acceded to CERD in 1974, to CEDAW in 2004, and to CAT in 2012. *Id.*
- 7 World Conference on Human Rights, *Vienna Declaration and Programme of Action* Vienna Declaration and Programme of Action, pmb. at 20-21, §§ I(1), I(3), I(8), U.N. Doc. A/CONF.157/24 (Part 1) (Oct. 13, 1993); Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/810, at art 19" to read "A/810, at art. 19 (Dec. 10, 1948) [hereinafter UDHR] League of Arab States, Arab Charter on Human Rights, May 22, 2004, reprinted in 12 Int'l Hum. Rts. Rep. 893 (2005) (entered into force Mar. 15, 2008) ("Reaffirming the principles of the Charter of the United Nations, the Universal Declaration of Human Rights and the provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and having regard to the Cairo Declaration on Human Rights in Islam."); *League of Arab States: Key Legal Texts*, INT'L CTR. FOR NOT-FOR-PROFIT L. (Sept. 25, 2021).
- 8 Federal Law No. 3 of 1987 Concerning the Penal Code, art. 176 [hereinafter Penal Code] (U.A.E.) (official English translation). In addition, article 176 (bis) states that "[a]ny person who shows insolence, or who insults or damages the reputation or dignity of the State or of its emblem or national symbols or . . . establishments" will be jailed for between ten and twenty-five years, as well as fined. *Id.* at art. 176 (bis).

- 9 *Id.* at art. 180. Furthermore, article 180 (bis) mandates a sentence of fifteen to twenty-five years in prison for “[a]ny person who promotes by speech, writing or by any other method, for any of the acts or objectives set forth in Article 180.” *Id.* at art. 180 (bis).
- 10 *Id.* at art. 181. Article 181 (bis)(2) stipulates that anyone who joins an organization “knowing of its unlawful objective or that it is not licensed, shall be sentenced to temporary imprisonment and to a fine.” *Id.* at art. 181 (bis)(2).
- 11 *Id.* at art. 182 (bis)(1).
- 12 *Id.* at art. 197 (bis)(2). Likewise, article 198 (bis) mandates imprisonment of at least one year for “intentionally disseminat[ing] false or malicious news, statements or rumours or disruptive propaganda intending to prejudice the public security.” *Id.* at art. 198 (bis).
- 13 *Id.* at art. 372.
- 14 *Id.*
- 15 Elina Steinerte (Vice-Chair of the Working Group on Arbitrary Detention) et al., Communication to the United Arab Emirates, at 5, Ref. No. AL ARE 3/2017 (May 3, 2017) [hereinafter May 2017 Communication to the UAE].
- 16 Hum. Rts. Comm., *General Comment No. 34: Article 19: Freedoms of Opinion and Expression*, ¶ 25, U.N. Doc. CCPR/C/GC/34 (Sept. 12, 2011) [hereinafter *HRC General Comment No. 34*]; David Kaye (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, ¶ 7, U.N. Doc. A/HRC/32/38 (May 11, 2016) [hereinafter *SRFOE Report of May 2016*]; Working Grp. on Arbitrary Det., *Opinion No. 71/2019 Concerning Issa al-Nukhefi, Abdulaziz Youssef Mohamed al-Shubaili and Issa Hamid al-Hamid (Saudi Arabia)*, ¶ 73, U.N. Doc. A/HRC/WGAD/2019/71 (Feb. 14, 2020) (“vaguely and broadly worded provisions . . . which cannot qualify as *lex certa*, violate the due process of law undergirded by the principle of legality in article 11(2) of the Universal Declaration of Human Rights”); UDHR, *supra* note 7, at arts. 11, 19; International Covenant on Civil and Political Rights art. 19, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter *ICCPR*].
- 17 *SRFOE Report of May 2016*, *supra* note 1616, ¶ 39; Frank La Rue (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Frank La Rue*, ¶ 34, U.N. Doc. A/HRC/17/27 (May 16, 2011) [hereinafter *SRFOE Report of May 2011*].
- 18 *SRFOE Report of May 2016*, *supra* note 1616, ¶ 39; Margaret Sekaggya (Special Rapporteur on the Situation of Human Rights Defenders), *Situation of Human Rights Defenders*, ¶ 24, U.N. Doc. A/67/292 (Aug. 10, 2012) [hereinafter *SRHRD Report of Aug. 2012*] (“Provisions that criminalize the publication of articles or photos that could harm national security, public order, public health or public interest, incite violence, constitute sedition or have negative consequences for the financial climate of the country are overly broad and restrictive.”).
- 19 Freedom of Opinion and Expression, Human Rights Council Res. 12/16 Human Rights Council Res. 12/16, U.N. Doc. A/HRC/RES/12/16, ¶ 5(p)(i) (Oct. 12, 2009).
- 20 *HRC General Comment No. 34*, *supra* note 16, ¶ 47. See also *SRFOE Report of May 2011*, *supra* note 1717, ¶ 36 (“defamation should be decriminalized”).
- 21 *HRC General Comment No. 34*, *supra* note 1616, ¶ 47.
- 22 *Id.* See also Frank La Rue (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Frank La Rue*, ¶¶ 83-88, U.N. Doc. A/HRC/20/17 (June 4, 2012) [hereinafter *SRFOE Report of June 2012*].
- 23 *HRC General Comment No. 34*, *supra* note 1616, ¶ 38; *SRFOE Report of June 2012*, *supra* note 22, ¶ 88; David Kaye (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Promotion and Protection of the Right to Freedom of Opinion and Expression*, ¶ 33, U.N. Doc. A/71/373 (Sept. 6, 2016) [hereinafter *SRFOE Report of Sept. 2016*].
- 24 *HRC General Comment No. 34*, *supra* note 1616, ¶ 38.
- 25 Hum. Rts. Council, *Compilation on the United Arab Emirates: Report of the Office of the United Nations High Commissioner for Human Rights*, ¶ 30, U.N. Doc. A/

- HRC/WG.6/29/ARE/2 (Nov. 13, 2017) [hereinafter *Nov. 2017 Compilation on the UAE*].
- 26 ICCPR, *supra* note 16, at art. 6.
- 27 Hum. Rts. Comm., *General Comment No. 36: Article 6: Right to Life*, ¶ 35, U.N. Doc. CCPR/C/GC/36 (Sept. 3, 2019). The General Assembly has also expressed “deep concern” about States imposing capital punishment on “persons exercising their human rights.” *Moratorium on the Use of the Death Penalty*, G.A. Res. 73/175, U.N. Doc. A/RES/73/175, at 2 (Jan. 23, 2019).
- 28 Federal Law No. 2 on the Prevention of Information Technology Crimes (2006 Cybercrime Law) Federal Law No. 2 of 2006 on the Prevention of Information Technology Crimes (U.A.E.) (unofficial English translation); Federal Decree Law No. 5 of 2012 on Combating Cybercrimes, amended 2018, art. 24 [hereinafter *Cybercrime Law*] (U.A.E.) (official English translation).
- 29 *Cybercrime Law*, *supra* note 28, at art. 24. The provision imposes a penalty of “temporary imprisonment” for an unspecified duration of time, and a fine.
- 30 *Id.* at art. 28. The provision imposes a penalty of “temporary imprisonment” for an unspecified duration of time and a fine.
- 31 *Id.* at art. 30.
- 32 *Id.* at art. 26.
- 33 *Id.*
- 34 *Id.* at art. 27. The provision imposes a penalty of “imprisonment” of an unspecified duration of time, and a fine.
- 35 *Id.* at art. 32. The provision imposes a penalty of “imprisonment” of an unspecified duration of time, and a fine.
- 36 Promotion, Protection, and Enjoyment of Human Rights on the Internet, Human Rights Council Res. 38/7 Human Rights Council Res. 38/7, U.N. Doc. A/HRC/RES/38/7, ¶ 1 (July 17, 2018). Those rights are protected under article 20 of the Universal Declaration of Human Rights, UDHR, *supra* note 7, and articles 21 and 22 of the International Covenant on Civil and Political Rights, ICCPR, *supra* note 16.
- 37 Hum. Rts. Comm., *General Comment No. 37 (2020) on the Right of Peaceful Assembly (Article 21)* *General Comment No. 37 (2020) on the Right of Peaceful Assembly (Article 21)*, ¶ 33, U.N. Doc. CCPR/C/GC/37 (Sept. 17, 2020) [hereinafter *HRC General Comment No. 37*].
- 38 Clément Nyaletsossi Voule (Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association), *Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association* *Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association*, ¶ 37, U.N. Doc. A/HRC/41/41 (May 17, 2019) [hereinafter *SRFPAA Report of May 2019*].
- 39 *SRHRD Report of Aug. 2012*, *supra* note 1818, ¶¶ 41-42.
- 40 *Id.* ¶ 21.
- 41 *SRFPAA Report of May 2019*, *supra* note 3838, ¶ 42.
- 42 *SRHRD Report of Aug. 2012*, *supra* note 1818, ¶¶ 47, 49 (referencing that “article 13 of the Declaration on Human Rights Defenders, which states in clear terms that everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the Declaration”).
- 43 *Cybercrime Law*, *supra* note 28, at art. 20. United Arab Emirates-based sources characterize this as a prohibition on defamatory remarks about other individuals, made through electronic means. See, e.g., *Defamation Laws in UAE*, BIN EID ADVOCs. & LEGAL CONSULTANTS; Mahmood Shakir, *Defamation on Social Media Platforms in the UAE*, GALADARI L. (July 27, 2020).
- 44 *Cybercrime Law*, *supra* note 28, at art. 20.
- 45 *Id.* at arts. 29, 38.
- 46 *HRC General Comment No. 34*, *supra* note 1616, ¶ 47. See also *SRFOE Report of May 2011*, *supra* note 1717, ¶ 36 (“defamation should be decriminalized”).
- 47 *HRC General Comment No. 34*, *supra* note 1616, ¶ 38; *SRFOE Report of June 2012*, *supra* note 2222, ¶ 88; *SRFOE Report of Sept. 2016*, *supra* note 23, ¶ 33.
- 48 *United Arab Emirates at UN Human Rights Council: Adoption of Universal Periodic Review Report*, CIVICUS (June 28, 2018).
- 49 *UAE: End Relentless Crackdown on Critics Ahead of Abu Dhabi Grand Prix*, AMNESTY INT’L (Nov. 19, 2018) [hereinafter *End Relentless Crackdown on Critics*].
- 50 *Id.*; Hum. Rts Council Working Grp. of the Universal

- Periodic Rev., *Summary of Stakeholders' Submissions on the United Arab Emirates: Report to the Office of the United Nations High Commissioner for Human Rights*, ¶ 33, U.N. Doc. A/HRC/WG.6/29/ARE/3 (Nov. 3, 2017) [hereinafter *OHCHR Summary of Stakeholders' Submissions to the UPR*]. Reports do not specify under what provisions of UAE law the courts convicted the defendants.
- 51 José Guevara (Vice-Chair of the Working Group on Arbitrary Detention) et al., *Communication to the United Arab Emirates*, at 2, Ref. No. UA ARE 1/2017 (Mar. 27, 2017) [hereinafter *Mar. 2017 Communication to the UAE*].
- 52 *UAE: Ahmed Mansoor, Unlawfully Detained in Solitary Confinement for Three Years, Must Be Released*, AMNESTY INT'L (Mar. 20, 2020).
- 53 *Another Birthday Behind Bars: The UAE's Unjust Imprisonment of Ahmed Mansoor*, HUM. RTS. WATCH (Oct. 22, 2019) [hereinafter *The UAE's Unjust Imprisonment of Ahmed Mansoor*].
- 54 *End Relentless Crackdown on Critics*, *supra* note 49. Reports do not specify under which law Mansoor was convicted, but these appear to be charges under the Cybercrime Law and possibly the Penal Code.
- 55 *United Arab Emirates: A Look Inside Ahmed Mansoor's Isolation Cell After Two Years in Prison*, GCHR (May 18, 2019).
- 56 *The UAE's Unjust Imprisonment of Ahmed Mansoor*, *supra* note 5353.
- 57 ADHRB Staff, *Appointment of UAE Ministry of Interior Official to Presidency of INTERPOL*, A.M.S. FOR DEMOCRACY & HUM. RTS. IN BAHRAIN (Oct. 29, 2020); Joel Schectman & Christopher Bing, *White House Veterans Helped Gulf Monarchy Build Secret Surveillance Unit*, REUTERS (Dec. 10, 2019).
- 58 *End Relentless Crackdown on Critics*, *supra* note 4949. The UAE has a precedent of arresting individuals for online political expression, charging them under the Cybercrime Law, and sentencing them to years in prison. For example, in March 2014, a court convicted Khalifa al-Rabea and Othman al-Shehhi under the Cybercrime Law and Penal Code for posting on Twitter in support of political dissidents, including the UAE 94. Both were scheduled to be released in July 2018 but were still imprisoned as of 09 July 2019. *UAE: Prisoners Held After Sentences Served*, HUM. RTS. WATCH (July 9, 2019).
- 59 See *United Arab Emirates: UAE Must Be Held Accountable for Torture and Ill-Treatment of Human Rights Defenders and Activists*, GCHR (June 26, 2020); Gulf Ctr. for Hum. Rts. et al., *Joint Submission on the United Arab Emirates to the 71st Session of the UN Committee Against Torture* (June 26, 2020).
- 60 *United Arab Emirates: Ahmed Mansoor and Other Prominent Human Rights Defenders Should Be Released*, GCHR (Oct. 21, 2020)
- 61 *Id.*
- 62 Mustafa Qadri, *The UAE's Kafala System: Harmless or Human Trafficking?*, in *DUBAI'S ROLE IN FACILITATING CORRUPTION AND GLOBAL ILLICIT FINANCIAL FLOWS* (Matthew T. Page & Jodi Vittori eds., 2020).
- 63 *Id.* The Committee on the Elimination of Racial Discrimination has expressed concern about the treatment of workers in the *kafala* system, including reports of “withholding of passports, false imprisonment, substandard working conditions,” and “non-payment of wages of overtime.” See also *Comm. on the Elimination of All Forms of Racial Discrimination, Concluding Observations on the Combined Eighteenth to Twenty-First Periodic Reports of the United Arab Emirates*, ¶ 21, U.N. Doc. CERD/C/ARE/CO/18-21 (Sept. 13, 2017) (detailing the additional abuses that foreign workers face in the UAE).
- 64 *OHCHR Summary of Stakeholders' Submissions to the UPR*, *supra* note 5050, ¶ 71. See also *Comm. on the Elimination of Discrimination against Women, Concluding Observations on the Combined Second and Third Periodic Reports of the United Arab Emirates*, ¶ 43, U.N. Doc. CEDAW/C/ARE/CO/2-3 (Nov. 24, 2015) [hereinafter *Comm. on the Elimination of Discrimination against Women Concluding Observations of Nov. 2015*] (detailing the additional abuses that women migrant domestic workers in particular face).
- 65 Penal Code, *supra* note 8, at art. 325; Cybercrime Law, *supra* note 28, at art. 42.
- 66 Hum. Rts. Comm., *General Comment No. 15: The Position of Aliens Under the Covenant (Twenty-Seventh Session, 1986)*, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, at 141-42, ¶¶ 7, 10, U.N. Doc. HRI/GEN.A/Rev.7 (May 12, 2004) (noting that non-citizens have “the right to hold opinions and to express them,” and that ICCPR article 13 is meant “to prevent arbitrary expulsions”); Clément Nyaletsossi Voulé (Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association), *Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association*, ¶ 42, U.N. Doc. A/74/349

- (Sept. 11, 2019) (“stress[ing] that there is no basis in international law for completely divesting non-citizens of their assembly rights”).
- 67 Special Rapporteur on the Right to Privacy, *Report of the Special Rapporteur on the Right to Privacy* Report of the Special Rapporteur on the Right to Privacy, ¶ 28, U.N. Doc. A/HRC/40/63 (Oct. 16, 2019); Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, *Surveillance and Human Rights: Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression* Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, ¶ 21, U.N. Doc. A/HRC/41/35 (May 28, 2019) [hereinafter *SRFOE Report of May 2019*]; Hum. Rts. Comm., *Concluding Observations on the Sixth Periodic Report of Italy*, ¶ 36, U.N. Doc. CCPR/C/ITA/CO/6 (May 1, 2017); Privacy in the Digital Age, G.A. Res. 73/179 G.A. Res. 73/179, U.N. Doc. A/RES/73/179, at 3 (Jan. 21, 2019); UDHR, *supra* note 7, at arts. 12, 18-20; ICCPR, *supra* note 16, at arts. 17-19.
- 68 *SRFOE Report of May 2019*, *supra* note 6763, ¶ 21.
- 69 *Id.* ¶ 21.
- 70 CPJ Concerned by Report that UAE ‘Project Raven’ Surveilled Journalists, COMM. TO PROTECT JOURNALISTS (Jan. 30, 2019) [hereinafter *CPJ Concerned About UAE Project Raven*]; ADHRB Staff, *supra* note 57.
- 71 Christopher Bing & Joel Schectman, *Project Raven: Inside the UAE’s Secret Hacking Team of American Mercenaries*, REUTERS (Jan. 30, 2019).
- 72 *CPJ Concerned About UAE Project Raven*, *supra* note 7066.
- 73 *SRFOE Report of May 2019*, *supra* note 6763, ¶ 20. In September 2021, three former U.S. intelligence operatives admitted to working on behalf of the UAE government to provide it with hacking and other surveillance systems that allowed the UAE government to access computers in the U.S. and in other countries. *3 Former U.S. Intelligence Operatives Admit Hacking For United Arab Emirates*, NPR (Sept. 14, 2021).
- 74 BILL MARCZAK & JOHN SCOTT-RAILTON, THE CITIZEN LAB, THE MILLION DOLLAR DISSIDENT: NSO GROUP’S IPHONE ZERO-DAYS USED AGAINST AS UAE HUMAN RIGHTS DEFENDER (2016); BILL MARCZAK ET AL., THE CITIZEN LAB, HIDE AND SEEK: TRACKING NSO GROUP’S PEGASUS SPYWARE TO OPERATIONS IN 45 COUNTRIES (2018); BILL MARCZAK ET AL., THE CITIZEN LAB, THE GREAT IPWN: JOURNALISTS HACKED WITH SUSPECTED NSO GROUP iMESSAGE ‘ZERO-CLICK’ EXPLOIT (2020); *SRFOE Report of May 2019*, *supra* note 6763, ¶ 9.
- 75 Working Grp. on Arbitrary Det., *Opinion No. 33/2020 Concerning Loujain Alhathloul (United Arab Emirates and Saudi Arabia)*, ¶ 7, U.N. Doc. A/HRC/WGAD/2020/33 (June 25, 2020) [hereinafter *WGAD Opinion No. 33/2020 Concerning Loujain Alhathloul*].
- 76 *Id.*
- 77 Schectman & Bing, *supra* note 5756; ADHRB Staff, *supra* note 57.
- 78 *WGAD Opinion No. 33/2020 Concerning Loujain Alhathloul*, *supra* note 75, ¶ 7.
- 79 *Id.*
- 80 *Id.*
- 81 *Id.* ¶ 30.
- 82 *Sisters of Freed Saudi Activist al-Hathloul Demand ‘Real Justice’*, *Sisters of Freed Saudi Activist al-Hathloul Demand ‘Real Justice’*, AL JAZEERA (Feb. 12, 2021); *WGAD Opinion No. 33/2020 Concerning Loujain Alhathloul*, *supra* note 7571, ¶ 7.
- 83 *WGAD Opinion No. 33/2020 Concerning Loujain Alhathloul*, *supra* note 7571, ¶ 60.
- 84 Convention on the Elimination of All Forms of Discrimination against Women art. 3, opened for signature Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter *CEDAW*].
- 85 See, e.g., *Comm. on the Elimination of Discrimination against Women Concluding Observations of Nov. 2015*, *supra* note 64, ¶ 19 (expressing concern about the harassment experienced by WHRDs in the UAE).
- 86 David Kaye (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, David Kaye, ¶ 20, U.N. Doc. A/HRC/29/32 (May 22, 2015) (“[i]ndividuals regularly hold opinions digitally, saving their views and their search and browse histories, for instance, on hard drives, in the cloud, and in e-mail archives”).
- 87 *Joint Statement by Human Rights and Civil Liberties Groups*, HUM. RTS. WATCH (June 19, 2018). At the time, both Almutawakel and al-Faqih were extremely active on Facebook, posting frequently about the war

- and humanitarian crisis in Yemen and other related issues. Today, they remain active on Facebook, and both also post frequently on Twitter, as does the organization they lead, Mwatana, which joined Twitter in June 2013. See Almutawakel's Facebook and Twitter pages; al-Faqih's Facebook and Twitter; and Mwatana's Twitter.
- 88 *Radhya Al-Mutawakel*, FRONT LINE DEFS. (2018); *Case History: Abdulrasheed al-Faqih*, FRONT LINE DEFS. (2018).
- 89 *Joint Statement by Human Rights and Civil Liberties Groups*, *supra* note 87.
- 90 MWATANA FOR HUM. RTS., *Arbitrary Procedures at Checkpoints at the Entrances of Southern Cities*, in WITHERING LIFE: HUMAN RIGHTS SITUATION IN YEMEN *Arbitrary Procedures at Checkpoints at the Entrances of Southern Cities*, in WITHERING LIFE: HUMAN RIGHTS SITUATION IN YEMEN, 2018, at 110, 111 (2019). Al-Faqih was also going to seek medical treatment and prepare for a workshop co-sponsored by the European Union. *Saudi-Led Coalition Must Immediately and Unconditionally Release al-Mutawakel and al-Faqih*, MWATANA FOR HUM. RTS. (June 18, 2018). Al-Faqih had previously been detained at a checkpoint on 14 June 2018 and by Houthi forces at Sana'a Airport in 2016. *Case History: Abdulrasheed al-Faqih*, *supra* note 8884.
- 91 *Joint Statement by Human Rights and Civil Liberties Groups*, *supra* note 8783.
- 92 *Id.*
- 93 In March 2015, at the request of Yemeni President Hadi, a coalition led by the UAE and Saudi Arabia, supported by the United States and United Kingdom, initiated military action in Yemen. Grp. of Eminent Int'l & Reg'l Experts, *Situation of Human Rights in Yemen, Including Violations and Abuses Since 2014: Report of the Group of Eminent International and Regional Experts as Submitted to the United Nations High Commissioner for Human Rights*, ¶ 17-19, U.N. Doc. A/HRC/42/17 (Aug. 9, 2019). The coalition intervened to fight against the Houthis and other armed forces that had captured Sana'a, Yemen's capital, in September 2014. *Id.*
- 94 *Id.* ¶ 94. The Group of Experts noted that, "[w]ith the coalition's intervention in 2015, its members became parties to the conflict as co-belligerents on the side of the Yemeni armed forces." *Id.* ¶¶ 1, 9.
- 95 The Group of Experts also notes that the government and UAE-backed forces "prevented journalists and human rights organizations from operating freely in Aden and along the west coast," and "the coalition continued to deny them access to United Nations flights." *Id.* ¶¶ 70-71.
- 96 At the time of the publication of the Group of Experts' report, there were pending "[i]nvestigations into some allegations of restrictions on freedom of movement imposed by parties to the conflict." *Id.* ¶¶ 71-72.
- 97 CEDAW, *supra* note 80, at art. 3.
- 98 HRC General Comment No. 37, *supra* note 37, ¶ 37 ("Activities conducted outside the immediate scope of the gathering but that are integral to making the exercise meaningful are also covered [by the protection of ICCPR art. 21 and related rights] . . . The obligations of State parties thus extend to actions such as participants' travelling to the event.").
- 99 *Nov. 2017 Compilation on the UAE*, *supra* note 25, ¶ 31. The SR on HRDs has also criticized laws that "criminalize the publication of articles or photos that could harm national security," as being impermissibly vague. *SRHRD Report of Aug. 2012*, *supra* note 18, ¶ 24. Additionally, according to the SR on FOE, laws prohibiting the criticism of foreign officials are "manifestly inconsistent with freedom of expression, and unjustifiable under article 19(3)" of the ICCPR. *SRFOE Report of Sept. 2016*, *supra* note 2323, ¶ 33.
- 100 *UAE: Jordanian Convicted for Criticizing Jordan on Facebook*, HUM. RTS. WATCH (Feb. 11, 2021).
- 101 *Id.*
- 102 *UAE Jails Jordanian for 10 Years for Criticising Jordan's Gov't*, AL JAZEERA (Feb. 14, 2021); *UAE: Jordanian Convicted for Criticizing Jordan on Facebook*, *supra* note 100.
- 103 *SRFOE Report of May 2016*, *supra* note 1616, ¶ 7 (any "restrictive measures" imposed on speech must be the "least intrusive instrument" possible to protect the legitimate aim in question, if one exists); *May 2017 Communication to the UAE*, *supra* note 15, at 2. During the UAE's most recent UPR, the OHCHR also expressed consternation at "the sentencing of prominent academic Nasser bin-Ghath to 10 years in prison for charges that included speech-related offences." *Nov. 2017 Compilation on the UAE*, *supra* note 2525, ¶ 33.
- 104 *UAE Jails Jordanian for 10 Years for Criticising Jordan's Gov't*, *supra* note 10298.
- 105 *UAE: Jordanian Convicted for Criticizing Jordan on Facebook*, *supra* note 10096.
- 106 *United Arab Emirates: Writer Dhabia Khamis Al-*

- Maslamani Banned from Traveling, GCHR (Oct. 1, 2020). Al-Maslamanu was previously imprisoned in 1987 over a magazine article she wrote, and she subsequently lived abroad for thirty years before returning to the UAE. *Id.*
- 107 *Id.*
- 108 *Id.*
- 109 *Id.*
- 110 CEDAW, *supra* note 80, at art. 3.
- 111 Working Grp. on Arbitrary Det., *Report of the Working Group on Arbitrary Detention: United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court*, ¶ 11, U.N. Doc. A/HRC/30/37 (July 6, 2015) [hereinafter *WGAD Report of July 2015*]; Hum. Rts. Comm., *General Comment No. 35: Article 9 (Liberty and Security of Person)*, ¶¶ 17, 22-23, 53, U.N. Doc. CCPR/C/GC/35 (Dec. 16, 2014).
- 112 *WGAD Report of July 2015, supra* note 111, ¶ 10; UDHR, *supra* note 7, at art. 19.
- 113 *WGAD Report of July 2015, supra* note 111, ¶ 11.
- 114 Working Grp. on Arbitrary Det., *Report of the Working Group on Arbitrary Detention*, ¶ 46, U.N. Doc. A/HRC/36/37 (July 19, 2017); UDHR, *supra* note 7, at art. 7.
- 115 Working Grp. on Arbitrary Det., *Report of the Working Group on Arbitrary Detention*, ¶¶ 38, 63, U.N. Doc. A/HRC/22/44 (Dec. 24, 2012) (stating that deprivation of liberty may be arbitrary if it is premised on an arbitrary piece of legislation).
- 116 *WGAD Opinion No. 33/2020 Concerning Loujain Alhathloul, supra* note 7571, ¶ 55; *Joint Statement by Human Rights and Civil Liberties Groups, supra* note 8783.
- 117 *WGAD Opinion No. 33/2020 Concerning Loujain Alhathloul, supra* note 7571, ¶ 56.
- 118 *Id.* ¶ 57.
- 119 Working Grp. on Arbitrary Det., *Report of the Working Group on Arbitrary Detention*, ¶ 60, U.N. Doc. A/HRC/39/45 (July 2, 2018) [hereinafter *WGAD Report of July 2018*].
- 120 UDHR, *supra* note 7, at art. 6; ICCPR, *supra* note 16, at art. 6.
- 121 UDHR, *supra* note 7, at art. 6; ICCPR, *supra* note 16, at art. 16.
- 122 Theo van Boven (Special Rapporteur on Torture), *Report of the Special Rapporteur on the Question of Torture Submitted in Accordance with Commission Resolution 2002/38*, ¶ 26(g), U.N. Doc. E/CN.4/2003/68 (Dec. 17, 2002) [hereinafter *SRT Report of Dec. 2002*].
- 123 Manfred Nowak (Special Rapporteur on Torture), *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak*, ¶ 156, U.N. Doc. A/HRD/13/39/Add.5 (Feb. 5, 2010) (international law and standards prohibit “all secret and incommunicado detention”); see *Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, G.A. Res. 72/163, U.N. Doc. A/RES/72/163, ¶ 16 (Dec. 19, 2017).
- 124 *WGAD Report of July 2018, supra* note 119, ¶ 60.
- 125 *SRT Report of Dec. 2002, supra* note 122, ¶ 26(g). See also Mar. 2017 Communication to the UAE, *supra* note 5151, at 3 (“[I]ncommunicado detention in a secret detention place jeopardizes the presumption of innocence, may facilitate the perpetration of torture or other forms of cruel, inhumane and degrading treatment or punishment, and can amount in itself to ill-treatment.”).
- 126 *UAE: Jordanian Convicted for Criticizing Jordan on Facebook, supra* note 10096.
- 127 *Id.*
- 128 1 JEAN-MARIE HENCKAERTS & LOUISE DOSWALD-BECK, INT’L COMM. OF THE RED CROSS, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW Rule 98 (2005) (enforced disappearance).
- 129 International Convention for the Protection of All Persons from Enforced Disappearance, *opened for signature* Dec. 20, 2006, 2716 U.N.T.S. 3.
- 130 Article 2 of the Convention on Enforced Disappearances defines an enforced disappearance as the “arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.” *Id.* at art. 2.
- 131 *WGAD Opinion No. 33/2020 Concerning Loujain Alhathloul, supra* note 75, ¶ 55-59.
- 132 Gabriela Knaul (Special Rapporteur on the Independence of Judges and Lawyers), *Report of*

the Special Rapporteur on the Independence of Judges and Lawyers, Gabriela Knaul: Addendum—Mission to the United Arab Emirates, ¶ 50, U.N. Doc. A/HRC/29/26/Add.2 (May 5, 2015) [hereinafter *SRIJL Report of May 2015*].

- 133 *Id.*
- 134 Hum. Rts. Comm., *General Comment No. 32: Article 14: Right to Equality Before Courts and Tribunals and to Fair Trial*, ¶ 6, U.N. Doc. CCPR/C/GC/32 (Aug. 23, 2007) [hereinafter *HRC General Comment No. 32*].
- 135 WGAD *Report of July 2015*, *supra* note 111107, at annex, princ. 1; *HRC General Comment No. 32*, *supra* note 134, ¶¶ 15, 19, 31-34, 38; ICCPR, *supra* note 16, at art. 14.
- 136 WGAD *Report of July 2015*, *supra* note 111107, at annex, princs. 7-9; *HRC General Comment No. 32*, *supra* note 134, ¶ 10.
- 137 *UAE: Jordanian Convicted for Criticizing Jordan on Facebook*, *supra* note 10096.
- 138 *SRIJL Report of May 2015*, *supra* note 132, ¶ 56.
- 139 UDHR, *supra* note 77, at art. 13.
- 140 Michel Forst (Special Rapporteur on the Situation of Human Rights Defenders), *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, ¶ 43, U.N. Doc. A/70/217 (July 30, 2015).
- 141 Fionnuala Ní Aoláin (Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism), *Impact of Measures to Address Terrorism and Violent Extremism on Civic Space and the Rights of Civil Society Actors and Human Rights Defenders: Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism*, ¶¶ 23-24, U.N. Doc. A/HRC/40/52 (Mar. 1, 2019).
- 142 Questions Relating to the Obligation to Prosecute or Extradite (*Belgium v. Senegal*), Judgment, 2012 I.C.J., ¶ 99 (July 20); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 2, *opened for signature* Dec. 10, 1984, 1465 U.N.T.S. 85 [hereinafter CAT]; Dire Tladi (Special Rapporteur), *Fourth Report on Peremptory Norms of General International Law (Jus Cogens)* by Dire Tladi, *Special Rapporteur*, ¶ 69, U.N. Doc. A/CN.4/727 (Jan. 31, 2019).
- 143 CAT, *supra* note 142, at art. 3(1). Article 3 stipulates that, “[f]or the purpose of determining whether there are such grounds, the competent authorities shall take

into account all relevant considerations including, where applicable, the existence in the State concerned of a pattern of gross, flagrant or mass violations of human rights.” *Id.* at art. 3(2). According to the Committee against Torture, “the Committee’s practice has been to determine that ‘substantial grounds’ exist whenever the risk of torture is ‘foreseeable, personal, present and real.’” Comm. against Torture, *General Comment No. 4 (2017) on the Implementation of Article 3 of the Convention in the Context of Article 22*, ¶ 11, U.N. Doc. CAT/C/GC/4 (Sept. 4, 2018).

- 144 WGAD *Opinion No. 33/2020 Concerning Loujain Alhathloul*, *supra* note 7571, ¶ 64.
- 145 *Nov. 2017 Compilation on the UAE*, *supra* note 25, ¶¶ 16, 18.

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ISBN# 978-1-938722-10-3



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