



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)

EXECUTIVE SUMMARY

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

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

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

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

International Legal Background

The targeted repression of HRDs by criminalising or restricting online expression of dissenting views implicate domestic and international institutions and standard setting. The United Nations has encouraged international cooperation and regional harmonisation of laws in combating cybercrime as a necessary crime control tool but has not prevented countries from including in domestic legislation restrictions on online content that are incompatible with international law and standards. The United Nations Economic and Social Commission for Western Asia (ESCWA) effectively endorsed a proposed model cybercrime legislation drafted for the region by the United Arab Emirates (UAE) and adopted by the League of Arab States in 2004.¹ Articles 20-22 of the model law criminalise online content that is “contrary to the public order and morals,” facilitates assistance of terrorist groups, as well as accesses or discloses confidential government information related to national security or the economy.² These criminalised

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

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

Methodology

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

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

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

Findings

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

Arbitrary Laws Restricting Freedom of Expression

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

expression that is affirmatively protected under international law.

What Type of Online Human Rights Activities Are Targeted?

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

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

Additional Human Rights Violations

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

Arbitrary arrests

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

Surveillance

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

Freedom of Association

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

Incommunicado Detention, Enforced Disappearances, and Torture

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

Specialised Legal Infrastructure

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

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

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

Transnational Collaboration Targeting HRDs

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

CONCLUSIONS AND RECOMMENDATIONS

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

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

General Recommendations

To Governments of Gulf States and Neighbouring Countries:

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

advocacy, and refrain from infringing on their right to freedom of movement.

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

To the UN Human Rights Council:

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

To All States:

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

Country Recommendations

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

Bahrain

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

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

Iran

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

- Eliminate laws and articles in Iran’s legal

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

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

We call on OHCHR to:

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

Iraq

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

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

Jordan

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

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

Kuwait

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

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

Oman

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

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

Qatar

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

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

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

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

Saudi Arabia

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

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

We call on OHCHR to:

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

Syria

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

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

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

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

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

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

United Arab Emirates

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

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

We call on OHCHR to:

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

NOTES

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

INTRODUCTION

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

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

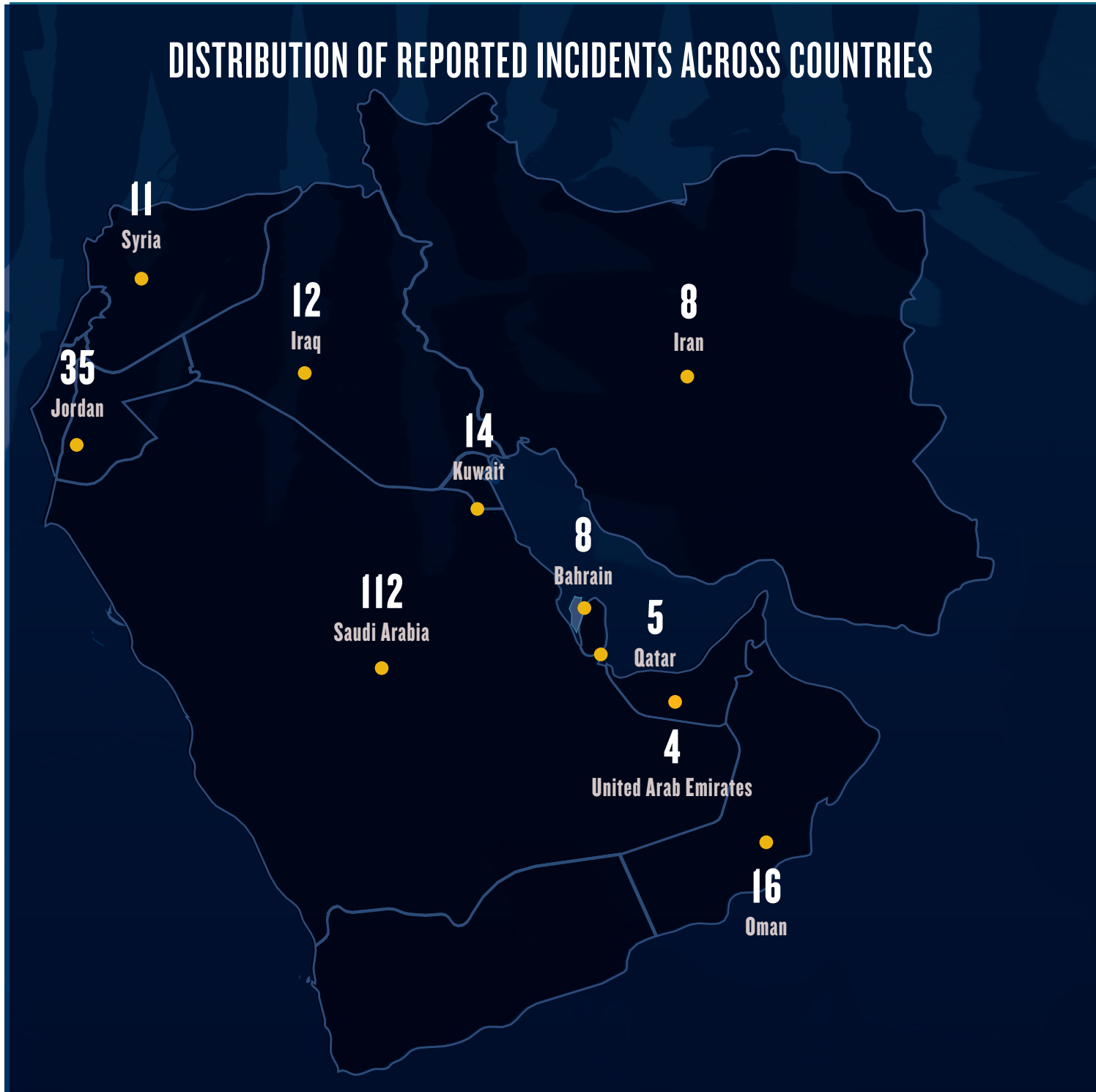
The States included for analysis are Bahrain, Iran, Iraq, Jordan, Kuwait, Oman, Qatar, Saudi Arabia, Syria, and the United Arab Emirates (UAE). Governments in these countries have enacted or recently have considered anti-cybercrime laws. They also are governed by monarchies, authoritarian governments,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

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

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

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

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



INTERNATIONAL LEGAL BACKGROUND TO CRIMINALIZATION OF ONLINE FREEDOM OF EXPRESSION

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

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

Regional Development of Model Cybercrime Legislation

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

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

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

In 2006, UAE adopted its cybercrime law, Federal Law No. 2.⁸ The following year, Saudi Arabia enacted its cybercrime law with criminal content restrictions similar to those in the UAE model law.⁹ Iran and Jordan adopted cybercrime laws in 2009 and 2010, respectively, each with similar restrictions.¹⁰ At the end of 2010, the League of Arab States finalised the Arab Convention on Combating Information Technology Offences (ACC), which has been signed by all 22 Arab State members. The Convention aims to "enhance and strengthen cooperation between the

GENEALOGY OF CYBERCRIME LAW



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

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

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

International Human Rights Regime for Online Freedom of Expression for HRDs

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

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

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

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

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

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

The Declaration sets out nine core rights of HRDs:

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

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

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

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

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

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

Freedom of Expression and Other Relevant International Human Rights

The right to freedom of expression

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

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

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

The right to freedom of peaceful assembly and of association

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

The right to privacy and freedom from unwarranted surveillance

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

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

Additional human rights violations

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

Abuses by non-State actors

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

METHODOLOGY

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

Anti-Cybercrime and Other Relevant National Laws

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

Reported Incidents of Online Freedom of Expression Violations

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

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

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

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

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

Limitations

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

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

FINDINGS

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

Targeted Expression

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

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

TARGETED ACTIVISM OR EXPRESSION

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

*Including criticism of foreign government

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

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

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

Attendant Violations to Online Freedom of Expression Violations

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

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

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

HUMAN RIGHTS VIOLATIONS

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

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

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

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

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

Repressive Domestic Legal Environment

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

PROBLEMATIC LEGAL PROVISIONS AND INSTITUTIONS

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

Every country included in this report has enacted an anti-cybercrime law, except for Iraq where a draft anti-cybercrime law was under consideration until May 2021.⁶⁷ This trend of enacting anti-cybercrime laws began as early as 2006, five years before the beginning of the Arab Spring, when UAE adopted its anti-cybercrime law. This report demonstrates how the anti-cybercrime laws in each of the countries have been used to arrest, charge, and prosecute HRDs. In Oman, authorities targeted HRDs in 2018 and charged them under article 19 of the anti-cybercrime law, which prohibits anyone from using information technology to “prejudice the public order or religious values.”⁶⁸ Iraq’s most recent attempt at enacting a cybercrime law reflects that governments in the region continue to direct increasing legislative attention to online activity. Alongside the Syrian government (which has cybercrime laws and a media regulation

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

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

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

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

Specialised Institutions Targeting HRDs' Online Expression

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

surveil, arrest, prosecute, and ultimately convict HRDs for their online advocacy. The increasing number of institutions specialised in investigating and prosecuting cybercrimes demonstrates how States have prioritised directing their law enforcement resources toward targeting online activity. Many of these units engaged in widely publicised mass enforcement campaigns, signaling to HRDs and the population in general that their online activity is monitored. For example, in Bahrain, the Cyber Safety Directorate publicly announced in 2020 that it was investigating social media accounts that were alleged to have shared "false news" regarding COVID-19.⁷⁷ Such units have also specialised in using surveillance technology to monitor and intimidate HRDs. For example, human rights organisations and journalists have documented how UAE's Development Research Exploitation and Analysis Department, which was created with the help of former US White House and National Security Agency officers, engaged in cyber espionage against Ahmed Mansoor, Loujain al-Hathloul, and other HRDs.⁷⁸

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

Transnational Collaboration Targeting HRDs

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

CONCLUSIONS AND RECOMMENDATIONS

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

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

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

To Governments of Gulf States and Neighbouring Countries:

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

expression protected under international human rights law, specifically:

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

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

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

To the UN Human Rights Council:

Instruct the UN Office of the High Commissioner

INTRODUCTION

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

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

To All States:

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

NOTES

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

INTRODUCTION

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

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

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

INTRODUCTION

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

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

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

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>