WHO WILL BE LEFT TO DEFEND HUMAN RIGHTS?

PERSECUTION OF ONLINE EXPRESSION IN THE GULF AND NEIGHBOURING COUNTRIES
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NOVEMBER 2021
THE GULF CENTRE FOR HUMAN RIGHTS

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

INTERNATIONAL HUMAN RIGHTS LAW CLINIC

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

To human rights defenders in the Gulf states and neighbouring countries who, in the face of enormous obstacles, continue to struggle for human rights, and for a more just and equitable world.

Design

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### IRAQ SCORECARD

<table>
<thead>
<tr>
<th>Targeted Activism or Expression</th>
<th>Human Rights Violations</th>
<th>Problematic Legal Provisions and Institutions</th>
</tr>
</thead>
<tbody>
<tr>
<td>✓ Expression re Offline Protests</td>
<td>✓ Arbitrary Detention</td>
<td>✓ Criminal Defamation</td>
</tr>
<tr>
<td>✓ Criticism of Government</td>
<td>✓ Incommunicado Detention</td>
<td>✓ Public Order</td>
</tr>
<tr>
<td>✓ Journalists</td>
<td>✓ Enforced Disappearance</td>
<td></td>
</tr>
<tr>
<td>✓ Women's Rights and WHRDs</td>
<td>✓ Torture</td>
<td></td>
</tr>
<tr>
<td></td>
<td>✓ Fair Trial</td>
<td></td>
</tr>
</tbody>
</table>

12

Number of incidents that fit the inclusion criteria of this study
Between 01 May 2018, and 31 October 2020, there were twelve reported incidents in Iraq and the Kurdistan Region of Iraq targeting human rights defenders (HRDs), including journalists, for their online expression that fit the inclusion criteria of this study. Iraq is a parliamentary democracy, with two deliberative bodies and a separate judicial branch. Most of the regulated expression occurred on the personal social media accounts of HRDs, Facebook being the primary surveilled website.

In addition to violations of freedom of expression, there is credible evidence that Iraq has committed torture as well as enforced disappearance. Reported incidents document that authorities target HRDs who use online platforms to support public protests as well as to share views critical of the government. Based on this research, the government has violated its obligation to respect online freedom of expression and additional associated rights of HRDs. These violations also constitute breaches of the duty of the State, pursuant to the United Nations (UN) Charter, “as the main duty-bearer” to ensure “defenders enjoy a safe and enabling environment” and that government institutions and processes “are aligned with their safety and the aim of their activities.”

Iraq is a party to several international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR). Moreover, as a UN member State, Iraq is bound by the UN Charter and has pledged to adhere to the principles reflected in the Universal Declaration of Human Rights (UDHR), including article 19, which establishes that “[e]veryone has the right to freedom of opinion and expression.”
LEGAL ENVIRONMENT FOR ONLINE EXPRESSION IN IRAQ

Political Background

During the period under review, authorities in Iraq as well as in the Kurdistan Region have forcefully repressed national protests. The Kurdistan Region is an autonomous region in northern Iraq governed by the Kurdistan Regional Authority. Several national protests erupted in the country, beginning in October 2019, and continued intermittently for months. In Iraq and the Kurdistan Region there are few independent media outlets, and journalists who reported on the protests have been vulnerable to arrest. The central focus of these protests was governmental corruption, poor economic conditions; and abuses of protestors by the armed forces fuelled further demonstrations. Security forces repeatedly have opened fire on protestors and journalists gathering in public spaces. According to the UN, authorities have detained, injured, or killed thousands during the protests. Several UN human rights experts, including the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (SR on FOE) have denounced the violence against protesters, and called for accountability for perpetrators of unlawful use of force.

In addition, authorities have responded to the COVID-19 pandemic in ways that have further restricted freedom of expression. To minimise the spread of infection, the government imposed strict lockdowns that brought much of the protest activity to a halt. Security forces and law enforcement in the country, but particularly in the Kurdistan Region of Iraq, have been accused by opposition leaders and protestors of using the COVID-19 lockdowns as a pretext for banning protests and unnecessarily restricting the ability of protestors to attend.

Internet Shutdowns and Social Media Blocking

Iraq has a history of internet restrictions and country-wide shutdowns, particularly to quell anti-government activity. The Iraqi government often relies on these tactics to restrict freedom of expression and limit communications. Following the onset of the recent protests, authorities in Iraq and the Kurdistan Region ordered the closure of eight television and four radio stations for several months for allegedly violating media licensing rules. At the same time, the Iraqi government began to block social media websites in all regions, a documented tactic of Iraqi authorities to limit free communication. This is alarming as the SR on FOE previously stated that any measures by governments to intentionally prevent or disrupt access to online information in this manner violate international freedom of expression.

Laws Related to Online Expression

During the study period, Iraqi authorities primarily used provisions of the Iraqi Penal Code, and the Communications and Media Commission’s Guidelines to punish online freedom of expression. In addition, Iraqi lawmakers have considered but not yet adopted a cybercrime law. Human rights groups criticised earlier proposed laws introduced in 2011, 2013, 2019, and 2020 for containing provisions that restricted online content or access to content in a manner that violated international law on their face or could be used to target HRDs.

2010 Penal Code

A set of key provisions of the Iraqi Penal Code that are worth noting include those that are used to target journalists reporting on government activities. Article 156 criminalises acts that “violate
the independence of the country,” or the “security of its territory” and which are punishable by life imprisonment. Article 210 prohibits broadcasts of “false information” that “endangers the public security,” and “disturbs the public peace” and violators are subject to detention and a fine. Under both article 19 of the ICCPR and the UDHR, criminal laws that restrict freedom of expression must be sufficiently precise so as to enable individuals to determine how to comply with the law and to limit the discretion conferred on authorities enforcing it. Vaguely and broadly worded provisions, like those here, have been found by UN Special Procedures mandate holders to violate this requirement, allowing authorities to exercise discretion arbitrarily to target protected speech, and encouraging individuals to engage in self-censorship.

Similarly, international experts, including the SR on FOE, have urged States to abolish general prohibitions on disseminating “false news” because of the vagueness and ambiguity of this term.

The Penal Code also includes criminal offenses of defamation (article 433) and insult (article 434). They become more serious offenses if the offending content is published. The UN Human Rights Committee has cautioned that laws on defamation should be “crafted with care” so that they do not restrict freedom of expression, and has recommended the decriminalisation of this offense. It has interpreted ICCPR article 19 to require that “the application of criminal law should only be countenanced in the most serious of cases, and imprisonment is never an appropriate penalty.” Moreover, the Committee has noted that “in circumstances of public debate concerning public figures in the political domain and public institutions, the value placed by the Covenant upon uninhibited expression is particularly high.” These Penal Code provisions violate international freedom of expression, which the UN Human Rights Council has stipulated protects four types of expression: “[d]iscussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups…”

2014 Communications and Media Commission – Media Broadcasting Rules

The Communications and Media Commission (CMC), also known as National Communications and Media Commission of Iraq, was established by the Coalition Provisional Authority in 2004. In 2014, the CMC, the primary body that oversees broadcast media regulations, issued country-wide guidelines. The government updated and expanded the guidelines in 2019, which are known as the Media Broadcasting Rules. The 2019 rules restrict content and govern the reporting processes of licensed media on a wide range of topics including the prevention of incitement of violence, maintenance of peace and security, upholding public standards of decency, prohibiting the dissemination of false news, and protecting the privacy of individuals in reporting on events. Some of these provisions contain overly broad language which authorities have enforced against media outlets that covered anti-government protests, in violation of the right to freedom of expression.

For example, section 2, article 1(a) of the Media Broadcasting Rules states that licensed media entities should “refrain from broadcasting any material that contains … incitement to violence, hatred, or disturbance of civil order… or threatens the democratic system, civil peace, and democratic electoral process.” Article 1(j) of the same section prohibits content “calling for or leading to … provoking conflict between parties or the Iraqi society … or materials that justify or encourage sectarian conflicts[,]” and the rules ban the broadcast of materials “promoting the opinions of the Baath Party.” The SR on FOE has noted with concern that licensing regimes that contain vaguely and broadly worded provisions like these, which do not comply with human rights standards, promote censorship and self-censorship. It is therefore unsurprising that the UN Human Rights Committee has held
that freedom of expression requires States to “avoid imposing onerous licensing conditions.”

The recent actions of the Iraqi government illustrate how authorities can use licensing requirements to stifle online journalism. In October 2019, the CMC ordered several local and regional television channels to shut down, reportedly in an attempt to quell coverage of the protests. The following month the CMC issued a statement explaining the shutdown was due to outlets “failing to comply with broadcasting rules and regulations” and warning several other channels to “correct their speech in a way that complied with regulations of media broadcasting.” And in April 2020, the CMC issued a three-month suspension of Reuters’ media license for publishing an article which the government alleged overstated the number of COVID-19 cases in the country. In each case, the CMC reportedly enforced the Broadcasting Rules against the media outlet to target protected expression.

2020 Draft Anti-Cybercrimes Law

On 23 November 2020, a draft Anti-Cybercrimes Law was introduced in the Iraqi Council of Representatives. Human Rights Watch reported in May 2021 that the Iraqi Parliament suspended consideration of the draft law until it could be further amended to protect freedom of expression. The November draft law substantially would have amended a cybercrimes law introduced in parliament in January 2019, which human rights groups also had harshly criticised. The most recent draft is reviewed to highlight some of the persistent problems with lawmakers’ efforts to criminalize protected online expression.

First, article 4 of the most recent draft law guaranteed freedom of expression only “within the limits established by the constitution and the laws in force.” This phrase is ambiguous and could be used to justify illegal application of Penal Code offenses of insult and defamation to HRDs. Second, article 6 introduced a new offense, punishable by up to ten years imprisonment, for accessing a website or a computer with the “intention of obtaining data that affects the national security or economy … .” The terms of “national security” and “economy” are vague and arbitrary, and thus violate the requirements of legality under international law which mandate laws to be sufficiently precise to enable individuals to comply with them and to limit the discretion conferred on authorities enforcing it. Human rights groups expressed concern that article 4 could be used against HRDs seeking to exercise their rights to online freedom of expression by exposing corruption or human rights violations. Third, article 22(3) of the draft law, “Crimes Related to Public Order and Morals,” penalised “violating the sanctity of private or family life” of an individual through use of a computer or information network to take photos or publish “news or audio or video recordings related to them even if they are real.” Amnesty International and other NGOs pointed out that the draft law uses vague terms like “sanctity of family life,” made no exception for material disseminated in the public interest, and protected public figures from legitimate criticism in violation of the right to freedom of expression.

As of the date of this writing, a revised draft law has not been introduced in parliament. However, ongoing scrutiny of similar proposals is warranted in light of the continued introduction of anti-cybercrime legislation that uses impermissibly vague terms to criminalise online content and access to information.

2008 Kurdistan Regional Government Law to Prevent the Misuse of Telecommunications Equipment

Authorities in the Kurdistan Region of Iraq have faced criticism in the last few years for the targeting, harassment, and intimidation of journalists in the region. Prosecutors are using Kurdish regional laws including the Law to Prevent the Misuse of Telecommunications Equipment to target journalists and other HRDs for online coverage of government protests and criticism of government policy. Article 2 of the law authorises imprisonment and fines for misusing cell phones and email (or more broadly the internet) to “threaten someone, use profanities, spread misinformation, disclose private conversations or share images counter to the public’s
values, or take any other action that might harm someone’s integrity or honor or motivate a crime or an immoral act.”

Restrictions on freedom of expression must be narrowly drawn to be the least restrictive to achieve a legitimate protective function, and the UN Human Rights Committee cautions that restrictions to protect morals or public order “must be understood in the light of universality of human rights and the principle of non-discrimination.”

The telecommunications equipment law fails adequately to define the restricted content and thus facilitates arbitrary State violations of the right of online freedom of expression.
LEGAL TRENDS EMERGING FROM INCIDENTS OF REPRESSION OF ONLINE EXPRESSION IN IRAQ AND THE KURDISTAN REGION

There is a clear pattern in the reported incidents of violations of online freedom of expression in Iraq and the Kurdistan Region. Authorities targeted HRDs, particularly journalists, for sharing personal views critical of the government’s handling of the pandemic, the ongoing protests, or alleging corruption within the government. In several of the incidents, the charging law was not always identified, but reported facts suggest authorities used provisions of the Iraqi Penal Code. There were also reports of torture and arbitrary arrests of HRDs, as well as a report of an enforced disappearance.

Violations of the Right to Online Freedom of Expression of Journalists

Journalists in Iraq and the Kurdistan Region operate in a dangerous political environment in the country. Since 1992, over 190 journalists have been killed in Iraq. In 2020 alone, the International Federation of Journalists reported over 100 cases of media rights violations in the Kurdistan Region, which included arbitrary arrests and physical attacks. International human rights monitors have criticised the government for creating a hostile environment for journalists to exercise freedom of expression.

Journalists in Iraq

There were several reported cases of targeting of journalists for their online reporting or other protected online expression. One involves Hasan Sabah Muhammad, a journalist from Basra, the country’s main port city in southeast Iraq. Muhammad worked for I NEWS, a private news outlet and later Dijlah TV. In July 2018, Muhammad published a report detailing corruption in the Border Port Commission, which alleged the head of the port had bribed a local judge with a gift. The day after the report was released, Basra police arrived at Muhammad’s house to arrest him, but he was not at home. That night, however, armed men opened fire on his house. Muhammad called the police to ask why he was wanted when he was informed that he was being charged under article 434 of the Iraqi Penal Code for a video he posted on his personal social media over a year prior about Basra airport taxis overcharging passengers. Later that month, the head of the Basra Operations Command, a law enforcement agency that reports to both the Iraqi prime minister and minister of defence, wrote a letter to Muhammad’s employer, Dijlah TV, prohibiting him from working as a journalist in Basra. Only in October of 2018 was Muhammad able to start working as a journalist after the commander was replaced.

Another example is that of Hussam al-Ka’abai, a journalist with NRT News in Najaf, a city just south of Baghdad. On 07 March 2019, several officers from the National Security Service, an intelligence agency that reports to the prime minister, arrested al-Ka’abai without a reason given. He was taken to the NSS local office before being transferred to a nearby police station where he was informed that he was being held due to a criminal complaint for violating “public integrity” under article 403 of the Iraqi Penal Code. The national head of the NSS reportedly initiated a complaint against him for a Facebook post he made in which he criticised a NSS officer. Al-Ka’abai stated that the NSS had sent all Najaf residents text messages to relay information about security issues but that authorities had misspellings in the text, to which he posted that the NSS should “get its spelling right.” Two days later, al-Ka’abai was released after his charges were dismissed by the judge.
The targeting of journalists is also a concern in the Kurdistan Region. Bahroz Jafar is a Kurdish writer and journalist in Sulaymaniyah, a city in the east of the Kurdistan Region of Iraq. Jafar works as a columnist for Peyser Press and is the director of the Sulaymaniyah-based Mediterranean Institute for Regional Studies (MIRS). He routinely posts articles and opinion pieces to his Facebook page.

On 22 September 2020, authorities arrested Jafar and charged him with defaming the Iraqi president, who is a Kurdish politician from Sulaymaniyah, in a column he posted. On 29 September 2020, officials released Jafar on bail.

Another incident in the Kurdistan Region is of Sherwan Sherwani, journalist and civil society activist. Sherwani provides political commentary on his personal Facebook account. On his account, Sherwani made a post criticizing the Kurdistan region’s prime minister, Masrour Barzani, and urged legislators to ask the prime minister about killings of journalists and human rights activists in the region. On 07 October 2020, 10 security officers raided Sherwani’s home in Erbil and confiscated his computer, books, and other electronic devices. Officers arrested Sherwani and took him to an undisclosed location, and refused to allow his family or his attorney to visit him. Sherwani’s wife stated that he was being held in a prison in Erbil run by the Asayish, and that authorities had charged Sherwani with two counts of “insulting the national security of the Kurdistan Region” and “receiving money from outside parties working against the Kurdistan Region.” Months later, Sherwani faced trial under different charges, specifically articles 47, 49, and 49 of the Iraqi Penal Code, which state that any person who violates the independence, unity, or security of the country can be punished with life imprisonment, as well as Penal Code article 156 as amended. On 16 February 2021, Sherwani received a sentenced of six years in prison.

Finally, on 16 January 2019, police arrested the journalist and director of NRT News’s Erbil Office Rebwar Kaki Abd al-Rahman as he arrived at this office. Officers did not inform him of the reason for his arrest, in violation of his international due process rights. They brought him to a nearby police station where a police officer first told him he was accused of threatening someone using his mobile phone. An hour later, a police officer told him he was instead wanted for a report NRT had broadcast in September 2018 on corruption allegations linked to two pharmaceutical companies owned by senior political figures in the Kurdistan Region. Kakai said that at court, the judge informed him he was being charged under article 2 of the Law to Prevent the Misuse of Telecommunications Equipment based on a complaint by the owner of one of the companies. He was acquitted of charges and released on 26 January 2019.

Violations of Online Freedom of Expression Against HRDs Organizing Protests

Authorities in Iraq and the Kurdistan Region have targeted HRDs organising online to support public protests. Recognising the links between the freedom of expression of HRDs, public dissent, and the promotion of rights more broadly, the UN General Assembly has condemned violent suppression by State and non-State actors of peaceful protestors and arrests of journalists and media activists “covering demonstrations and protests[.]”

In Iraq

Research identified several incidents during the reporting period involving HRDs organising protests online. One case concerns Samer Faraj, an HRD who posts online promoting political and civil rights and also participated in the protests. Due to his involvement in ‘Bent Al-Rafedain’, a women’s rights organization, Iraqi authorities reportedly have targeted Faraj in the past for this work and for his social media posts. On 27 October 2019, authorities raided Faraj’s house and confiscated several of his electronic devices. They arrested him and took him to a local police station in the city of Ramadi where he was accused of “inciting civil disobedience” for
posts made on his personal social media account. Officials did not permit him to see his family or lawyer. After spending over a month in detention, on 01 December 2019, officials released him. Published reports do not specify the law under which Faraj was charged.

Another incident arose on 06 April 2020, when a protest movement organiser from the province of Muthana, Haitham Sulaiman, posted on Facebook exhorting the Muthana governor to investigate allegations of corruption within the health department linked to the purchase of COVID-19 masks. In his post, Sulaiman called for a protest sit-in against the health department. The next day, Interior Ministry intelligence officials came to his home while he was not there and warned his family that he should stop writing about corruption on Facebook otherwise he would be disciplined. However, Sulaiman posted again on Facebook, this time describing the police visit and the threats made by the government agents. Four days later, on 10 April 2020, four men in civilian attire came to Sulaiman’s house, blindfolded and handcuffed him, and took him to the Muthana intelligence office where Sulaiman reports he was beaten after which he signed a forced confession stating that “the Iraqi protest movement had been bankrolled by the United States.” The next day, authorities brought him before an investigative judge who told him he was being charged under article 156 of the Iraqi Penal Code, which criminalises acts that violate national security. Officials released Abu Baker after seventeen more days after he promised in writing not to engage in any “anti-government political activity.” Almost a year later, on 16 May 2020, armed members of the Asayish arrested Abu Baker without a warrant. He was charged with “the misuse of electronic devices” for his role in organizing peaceful protests through social media platforms.

Repression of HRDs throughout Iraq for expressing support of social protests online violates their right to online freedom of expression. As the UN OHCHR found in its report: “Social media played a critical role as a site of online protest. In response to the limited safe space available for independent media to report on protests, they became the primary source of information on the demonstrations and a key platform for protesters, analysts and independent journalists to report on developments, including human rights violations and abuses.” Human rights defenders are recognised as a fulfilling a critical role in rights promotion and States have special duties to ensure their protection. Iraqi authorities have failed to their duties to do so with respect to HRDs, including journalists, disseminating online coverage of the protests.

**Additional Human Rights Violations**

The violation of the right to freedom of expression online also implicates other human rights. The most evident of these associated rights which Iraqi authorities have violated are related to freedom of association, arbitrary arrest, arbitrary detention, enforced disappearance, due process, and the prohibition against torture and ill-treatment. In addition, authorities committed freedom-of-expression violations in its response to the COVID-19 pandemic.
Violation of the right to freedom of association

Government crackdowns on HRDs for online freedom of expression related to the protests implicates violations of other fundamental freedoms including the right to freedom of association. The cases of HRDs in Iraq and the Kurdish Region all illustrate that the authorities sought to eliminate online support for the protests. Human rights bodies have emphasised that States have the obligation to respect and protect the rights to freedom of assembly and association both offline and online.\(^{120}\) The UN Human Rights Committee has underscored that the protection of activities associated with the right to peaceful assembly, including information dissemination, communication between participants, and broadcasting, is crucial to the exercise of that right.\(^ {121}\)

Arbitrary detention

The reported incidents reveal that authorities arbitrarily detained hundreds of protestors without due process.\(^ {122}\) Human rights monitors report that Iraqi authorities detained journalists and protestors for varying lengths of time only to release them hours or days later without charges.\(^ {123}\)

Authorities violated the liberty rights of HRDs through arbitrary detention. Arbitrary deprivation of liberty is prohibited under article 9 of the ICCPR, customary international law and is a \textit{jus cogens} norm.\(^ {124}\) A deprivation is arbitrary including when it is without a legal basis as well as when it results from the exercise of freedom of expression.\(^ {125}\) All the reported arrests of HRDs, including journalists, are arbitrary because they are based on impermissibly vague laws and because the online expression which was the gravamen of the charges is protected under ICCPR article 19. As the UN Working Group on Arbitrary Detention has reiterated, any measure depriving an individual of liberty must meet strict standards of lawfulness, necessity, and proportionality to avoid arbitrariness.\(^ {126}\) Deprivations may be arbitrary when they are based on discriminatory grounds against HRDs and activists, violating the rights to equality before the law and the right to equal protection under article 26 of the ICCPR.\(^ {127}\)

Incommunicado detention and enforced disappearances

There were several reported cases of incommunicado detention and enforced disappearance of HRDs. Incommunicado detention “places an individual outside the protection of the law”\(^ {128}\) in violation of article 6 of the ICCPR,\(^ {129}\) which protects the right to be recognised as a person before the law and receive judicial protection.\(^ {130}\) This is a serious violation often associated with grave harm. The Special Rapporteur on torture has observed that torture is “most frequently practiced during incommunicado detention,”\(^ {131}\) and it is outlawed by international law.\(^ {132}\) The UN Working Group on Arbitrary Detention considers incommunicado detention a form of arbitrary detention.\(^ {133}\) The Special Rapporteur on torture has stated that “[i]n all circumstances, a relative of the detainee should be informed of the arrest and place of detention within 18 hours.”\(^ {134}\) Iraq is a party to the International Convention for the Protection of All Persons from Enforced Disappearance, which sets out the obligations of States to prevent, investigate, and prosecute all enforced disappearances.\(^ {135}\) Enforced disappearance is an international crime and is prohibited by customary law\(^ {136}\) as well as treaty.\(^ {137}\) An enforced disappearance has three elements: (1) a deprivation of liberty; (2) by State officials or with their consent; followed by (3) the refusal to acknowledge the deprivation of liberty, or to disclose information on the fate or location of the disappeared.\(^ {138}\)

For example, Salman Khairallah “Al-Mansoori” Salman and Omar Al-Amri are two HRDs in Iraq who were also active and regular participants in the anti-corruption demonstrations which started in early October 2019.\(^ {139}\) On 11 December 2019, unknown individuals abducted Salman and Al-Amri in Baghdad when the two went to the Al-Khadhimiya district to buy tents for protesters in
Tahrir Square, the central hub of the protests. Their last contact was with a female colleague and, according to Salman’s relatives, the two men did not respond to their phones, which had been turned off. The families have not been able to learn about their fate, despite their efforts to enquire with local authorities about their whereabouts and well-being. It is not reported whether authorities initiated an investigation. Salman’s family has shared that Salman had received indirect threats a few weeks prior that he was being watched but he had dismissed it. Al-Amri’s family said they believed the two activists were arrested by the security forces and are being held at Baghdad’s al-Muthana airport detention facility for interrogation. On 17 December, both Al-Amri and Salman were released with no clear charges and did not disclose publicly further information about their abductors.

Another case is that of Ali Jassab Hattab Al-Heliji, an HRD and lawyer in the city of Amarah. He represented individuals arrested in connection to the protests taking place all over Iraq. On 08 October 2019, Al-Heliji received a call from a client, who asked to meet him in a main area of the Ammarahin al-Mayssan governate. After meeting with the client, armed men dragged him away from his car and drove him away in an unidentified truck. Prior to his disappearance, Al-Heliji had received death threats and warnings from unknown callers to stop speaking out on Facebook about the killing of people participating in the demonstrations. The whereabouts of Al-Heliji remain unknown.

Due process violations

Additionally, the reported cases evidence widespread violations of international due process rights of HRDs arrested in breach of international freedom of expression. Fundamental principles of fair trials are protected under international law at all times. These encompass a number of procedural safeguards including the right to be informed of rights, the right to initiate court proceedings without delay, and the right to legal assistance of counsel of their choice from the moment of apprehension. For example, Kurdish Regional officials did not inform journalist Rebwar Kaki Abd al-Rahman of the reason for his arrest, and Iraqi authorities denied Haitham Sulaiman access to his lawyer.

Torture

Finally, there is at least one reported incident of torture. The prohibition against torture is absolute, non-derogable, and a jus cogens or preemptory norm of international law (i.e., it applies universally and without exceptions). Iraqi authorities reportedly beat HRD Haitham Sulaiman and forced him to sign a statement that the United States was funding the protest movement.

Freedom of expression violations related to COVID-19

The government’s response to the COVID-19 pandemic has intersected with violations of online freedom of expression in at least two ways: the first is targeted repression for criticism of the government action related to the pandemic; the second is the government’s failure adequately to protect arrested protestors and HRDs from exposure to COVID-19 in detention.

Authorities in Iraq and the Kurdish Region reportedly have targeted HRDs for online criticism of the government’s response to the pandemic. For example, Kurdish Regional authorities arrested Kurdish HRD and journalist Hemin Mamand whose work focuses on corruption in the Kurdish government. According to his attorney, on 24 March 2020, police arrested Mamand at his home.
a day after he criticised the government’s handling of pandemic lockdowns on his personal Facebook account. He remained in detention for 13 days until authorities released him after he paid a fee. However, police rearrested Mamand the following day after he posted on Facebook that the police had arrested him without identifying themselves or presenting a warrant. Mamand remained under investigation in connection to a social media post where he criticised the economic measures taken by the Kurdish government in response to the pandemic as “violating the economic rights of the Kurdish people.” Officials charged him under article 2 of the Kurdistan Region’s Law to Prevent the Misuse of Telecommunications Equipment for “encouraging people to break lockdown” for protests as well as also being charged with defamation under article 433 of the Penal Code. Also, as described earlier, Iraqi authorities charged Haitham Sulaiman under the Iraqi Penal Code for spreading false news for his Facebook post alleging corruption within the health department linked to the purchase of COVID-19 masks.

In addition, the overcrowded conditions in detention during the pandemic reportedly led to outbreaks of COVID-19, implicating violations of the rights to life and health of detained HRDs.
IRAQ

CONCLUSION AND RECOMMENDATIONS

Iraq and the Kurdistan Region have enforced several laws which restrict online expression in violation of international law. Applicable provisions of the Penal Code and the 2019 Media Broadcasting Rules are vague and overly broad, violating international standards on freedom of expression. The Iraqi government has targeted, arrested, and detained HRDs and journalists for political opinions expressed online, effectively criminalising dissent in the country, especially during anti-corruption protests. Through the reported incidents, there is credible evidence that the Iraq and Kurdistan Regional authorities have subjected HRDs to arbitrary deprivations of liberty, including enforced disappearances, along with other international due process rights violations.

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

General Recommendations

To Governments of Gulf States and Neighbouring Countries:

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

To the UN Human Rights Council:

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

To All States:

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

Country Recommendations

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

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

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

• Ensure that any anti-cybercrime legislation adopted fully complies with international protections of online freedom of expression.
Researchers identified reported incidents of violations of online freedom of expression by conducting searches for cases in Iraq and the Kurdistan Region between May 2018 and October 2020, from the following international media outlets and human rights organizations that document human rights violations: Amnesty International, Al Jazeera, ARTICLE 19, British Broadcasting Corporation, Committee to Protect Journalists, Front Line Defenders, Gulf Centre for Human Rights, and Human Rights Watch. Researchers also searched for communications from special procedures mandate holders regarding incidents alleging violations of freedom of expression in Iraq in the UN database of Communications. Researchers also searched for articles published by the Iraq News Gazette, Iraqi News, Iraq Business News, and Iraq Sun and used the embedded search functions to retrieve news updates using the terms: arrest, freedom of expression, post, video, human rights defender, online expression, journalist, digital expression, and protests. After finding cases using the international and domestic sources, researchers conducted additional searches using the Google search engine of the victim’s name (with various English spellings) to find additional case information. See methodology section for more information.

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2 John E. Woods et al., Iraq: Government and Society, Britannica. This characterization of the political system of the country is offered for descriptive purposes; a normative evaluation of the political system as such is beyond the scope of this chapter.


6 U.N. Assistance Mission for Iraq (UNAMI), Off. of the U.N. High Comm’r for Hum. Rts., Human Rights Violations and Abuses in the Context of Demonstrations in Iraq October 2019 to April 2020, at 6, 14 (2020) [hereinafter UNAMI Report] (stating that at least 487 people were killed, including 34 children, and 7,715 injured during the protests).

7 The Iraq Protests Explained in 100 and 500 Words, BBC News (Dec. 2, 2019).


9 UNAMI Report, supra note 6, at 14, 38 (“UNAMI/OHCHR recorded credible reports of the death of 487 protesters and 7,715 incidents of injury to protestors at, or in the vicinity of, demonstration sites from 1 October 2019 to 30 April 2020.”).

10 UN Experts Urge Iraq to Ensure Those Behind Violence Against Protesters Are Prosecuted, U.N. Hum. Rts. Off. High Comm’r (Oct. 29, 2019) (noting that “over 220 civilians were reportedly killed, and thousands injured...”)

96
when Iraqi security forces used excessive force to disperse protesters, including the use of live ammunition, rubber bullets and armoured vehicles” and that “there had also been indiscriminate use of less lethal weapons such as tear gas, water cannons and stun grenades”.


12 Dana Taib Menmy, Anger at 'Politicismation' of Coronavirus Provokes Unrest in Iraq's Kurdish Region, Middle E. Eye (June 9, 2020).

13 Iraq Shuts Down Internet Again as Protests Intensify, Netblocks (Nov. 4, 2019).

14 Amid Massive Anti-Government Protests, a Near Total Internet Shutdown in Iraq, accessnow (Oct. 4, 2019).

15 Hakeem Dawd Qaradaghi, Iraq’s Kurdistan Region Is Not a Model for Free Speech, Al Jazeera (Sept. 25, 2020); Iraq Media Regulator Orders Closure of 12 Broadcast News Outlets, Comm. Protect Journalists (Nov. 25, 2019).


20 Penal Code, No. 111 of 1969, amended 2010, art. 156 [hereinafter Penal Code] (Iraq) (unofficial English translation) (“Any person who willfully commits an act with intent to violate the independence of the country or its unity or the security of its territory and that act, by its nature, leads to such violation is punishable by life imprisonment.”).

21 Id. at art. 210 (“Any person who willfully broadcasts false or biased information, statements or rumors or disseminates propaganda which, by its nature, endangers the public security, spreads panic among the population and disturbs the public peace is punishable by detention plus a fine not exceeding 300 dinars or by one of those penalties.”).


25 Penal Code, supra note 20, at art. 433 (“Defamation is the imputation to another in public of a particular matter which if true, would expose such person to punishment or cause him to be scorned by society. Any person who defames another is punishable by detention plus a fine or by one of those penalties. If such defamation is published
in a newspaper or publication or other press medium it is considered an aggravating circumstance.

26 Id. at art. 434 ("Insult is the imputation to another of something dishonorable or disrespectful or the hurting of his feelings even though it does not include an imputation to him of a particular matter.").

27 Id. at arts. 433-34.

28 HRC General Comment No. 34, supra note 22, ¶ 47. See SRFOE Report of May 2011, supra note 23, ¶ 36 ("defamation should be decriminalized").

29 HRC General Comment No. 34, supra note 22, ¶ 47. See SRFOE Report of May 2011, supra note 23, ¶ 36 ("defamation should be decriminalized").

30 HRC General Comment No. 34, supra note 22, ¶ 38.


32 Coalition Provisional Authority Order 65 of 2004, Iraqi Communications and Media Commission (unofficial English translation).


35 2019 CMC Rules, supra note 34, at sec. 2.

36 Iraqi Media Regulator Orders Closure of 12 Broadcast News Outlets, COMM. PROTECT JOURNALISTS (Nov. 25, 2019).

37 2019 CMC Rules, supra note 34, § 2, art. 1(a)

38 Id. § 2, arts. 1(j),1(l).


40 HRC General Comment No. 34, supra note 22, ¶ 39.

Law to Prevent the Misuse of Communication Devices in the Kurdistan Region of 2008 [hereinafter Law to Prevent the Misuse of Telecommunications Equipment] (Kurdish regional law) (unofficial English translation on file with author).


Law to Prevent the Misuse of Telecommunications Equipment, supra note 54, at art. 2; Hum. Rts. Watch, supra note 18, at 33.

See HRC General Comment No. 34, supra note 22, ¶¶ 22, 25, 34.

Id. ¶ 32.


Hum. Rts. Watch, supra note 18, at 40.

Id. at 25.

Id.

Id. at 40.

Id. at 32.


Iraqi Kurdistan: Campaign Continues of Arbitrary Arrests Carried out by Local Authorities, supra note 76.

Iraqi Kurdish Journalist Jailed for Defaming Iraq’s President, supra note 77.

Iraqi Kurdistan: Campaign Continues of Arbitrary Arrests Carried out by Local Authorities, supra note 76.

Iraqi Kurdish Police Arrest Sherwan Amin Sherwani, Comm. Protect Journalists (Oct. 8, 2020); Iraqi Kurdistan: Campaign Continues of Arbitrary Arrests Carried out by Local Authorities, supra note 76.

Iraqi Kurdistan: Campaign Continues of Arbitrary Arrests Carried out by Local Authorities, supra note 76.


Penal Code, supra note 20, at art. 156.

Kurdistan Region of Iraq: Flawed Trial of Journalists, Activists, supra note 86.

Id. The report identifies the names of two other journalists facing charges for freedom of expression. Their cases were not included in the incidents counted in this study because their cases were not reported on by one of our identified sources pursuant to our methodology. The other journalists were Ayaz Karam Brushki and Kohidar Mohammed Zebari. Along with Sherwani, the two were sentenced to six years in prison under articles 47, 48, and 49 of the Penal Code as well as an amended version of article 156 which criminalised infringements on governmental institutions. The convictions have since been appealed. Id.

Hum. Rts. Watch, supra note 18, at 33.


Id.

Id.


Id.

Id.


Hum. Rts. Watch, supra note 18, at 3.

Id. at 19-20.

Id.

Id. at 3.

Id. at 20; Penal Code, supra note 20, at art. 210.


Id. at 32.

Id.

Id.; Penal Code, supra note 20, at art. 156.

Hum. Rts. Watch, supra note 18, at 32.

Amnesty Int’l, supra note 111.

Id.


UNAMI Report, supra note 6, at 40.

Declaration on Human Rights Defenders, supra note 3, at art. 2(2).


UNAMI Report, supra note 6, at 24-26; ICCPR, supra
note 4, at art. 4 ("In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law.").


125 WGAD Report of July 2015, supra note 91, ¶ 10; UDHR, supra note 5, at art. 19; ICCPR, supra note 4, at art. 19.


129 ICCPR, supra note 4, at art. 6. The right to life is protected by article 6 of the ICCPR. Id. It provides that no one shall be arbitrarily deprived of his life and that the right shall be protected by law. Id. Article 6 imposes a duty on the State to protect life, which includes an obligation to protect life from all reasonably foreseeable threats. See id.

130 ICCPR, supra note 4, at art. 16. Additionally, incommunicado detention violates the right to be brought promptly before a judge protected by ICCPR article 9(3) and the right to challenge the lawfulness of detention protected by ICCPR article 9(4). Id. at arts. 9(3)-(4).


137 CED, supra note 135.

138 Id. at art. 2 (Article 2 of the Convention on Enforced Disappearances defines an enforced disappearance as the “arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.”).


142 Iraq: End ‘Campaign of Terror’ Targeting Protestors, supra note 140.

143 Id.

144 Kidnapping, Lynching and Deliberate Killings: Iraq’s Protestors Live in Fear They ‘Could Be Next,’ INDEPENDENT (Dec. 14, 2019).
Arbitrary Detention of Omar Al-Amri and Salman Khairallah, supra note 139.


Id.; see 8 Months Since Ali Jaseb Hattab Al-Heliji Has Forcibly Disappeared, LAWS. FOR LAWS. (June 8, 2020).

Amnesty Int’l, Urgent Action: Fate of Disappeared Lawyer Remains Unknown (Nov. 5, 2020).

8 Months Since Ali Jaseb Hattab Al-Heliji Has Forcibly Disappeared, supra note 147.

Amnesty Int’l, supra note 146.


Iraq: UN Experts Appalled by Killing of Disappeared Human Rights Defender’s Father, U.N. HUM. RTS. COUNCIL (Mar. 26, 2021). Jasib Al Heliji sought justice for his son’s disappearance, including “filing a court case naming the militia and individuals allegedly involved.” Id. He also reportedly stated in “a widely shared video on social media that he felt his own life was at risk.” Id.

Id.

Elina Steinerte (Vice-Chair of the Working Group on Arbitrary Detention) et al., Communication to Iraq, Ref. No. UA IRQ 6/2020 (Nov. 9, 2020).

HRC General Comment No. 32, supra note 91, ¶ 6.

WGAD Report of July 2015, supra note 91, at princs. 7-9; HRC General Comment No. 32, supra note 91, ¶ 10.

Hum. Rts. Watch, supra note 18, at 3.

Hum. Rts. Watch, supra note 18, at 35.

Id.

Id.


Hum. Rts. Watch, supra note 18, at 35.

Id.

Id.

Iraq: Arbitrary Detention of Human Rights Defender Hemin Mamand, supra note 162.

Hum. Rts. Watch, supra note 18, at 35.

Iraq’s New Government Should Lift Barriers to Free Speech, supra note 103.
