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Joint Submission to the United Nations Human Right Council on the Universal Periodic Review Fourth Cycle for Saudi Arabia

18 July 2023

A joint report by Access Now and
ALQST for Human Rights

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About Access Now

Access Now is an international organization that works to defend and extend the digital rights of users at risk around the world. Through representation around the world, Access Now provides thought leadership and policy recommendations to the public and private sectors to ensure the continued openness of the internet and the protection of fundamental rights. By combining direct technical support, comprehensive policy engagement, global advocacy, grassroots grantmaking, legal interventions and convenings such as RightsCon, we fight for human rights in the digital age. As an ECOSOC accredited organization, Access Now routinely engages with the United Nations in support of our mission to extend and defend human rights in the digital age.¹

About ALQST

ALQST for Human Rights is an independent NGO founded in 2014 with the purpose of defending and promoting human rights in Saudi Arabia. 'Al-qist' means 'justice' in Arabic, and a passion for justice lies at the heart of all our work. Through its extensive network of sources within the country, ALQST monitors and documents human rights violations on the ground and brings them to the attention of the international community through legal and public advocacy, media work, and campaigns on behalf of victims.²

¹ Access Now, <https://www.accessnow.org/>, 2023.

² ALQST, <https://alqst.org/en>, 2023.



1. The Universal Periodic Review (UPR) is an important United Nations (UN) mechanism aimed at addressing human rights issues across the globe. It is a rare mechanism through which citizens around the world get to work with governments to improve human rights and hold them accountable under international law. Access Now and ALQST welcome the opportunity to contribute to Saudi Arabia's Fourth review cycle.

This submission addresses the following themes:

- Cooperation with international human rights mechanisms
- Freedom of expression
- Freedom of association and peaceful assembly
- Data protection and the right to privacy
- Attacks on and harassment of bloggers, journalists and HRDs

Introduction

2. Access Now and ALQST highlight that the human rights situation in Saudi Arabia cannot be detached from the democratic deficit created by the steady concentration of powers in the hands of the King.
3. The political regime of Saudi Arabia is characterized by a near-total lack of separation of powers, due to the dominance of the King and the Sharia being the only source of national laws. According to **Article 1** of the Royal Decree concerning the Basic Law of Governance, promulgated on March 2, 1992, the Quran³ and Sunnah⁴ constitute the Constitution of Saudi Arabia.⁵

Article 5 of the Basic Law of Governance stipulates that "the system of governance in the Kingdom of Saudi Arabia shall be monarchical".

The King plays a central role in the Saudi political system as he holds extensive powers in the executive branch (appointing ministers and senior officials) as

³ The Islamic sacred book.

⁴ The traditions and practices of the Islamic Prophet Muhammad.

⁵ Available at: <https://www.saudiembassy.net/basic-law-governance>



well as in the legislative branch (appointing all the members of the Shura Council) and the judiciary (appointing and dismissing judges).⁶

4. The principle of the separation of powers is not observed in the Saudi political regime. The Shura Council, which is the equivalent of a parliament, has no power over the government under the Shura Council Law promulgated by Royal Decree No. A/91 on March 1, 1992.⁷ The Shura Council lacks popular legitimacy as all of its 150 members are appointed by the King, based on **Article 3** of the Law. The Council cannot exercise any sort of power against the government, which reinforces the domination of the King in the political regime.
5. **Article 26** of the Basic Law of Governance stipulates that “the State protects human rights in accordance with Sharia law”. We note that Sharia law is the source of the Saudi legal system. Hence, any potential contradiction between human rights values and an Islamic norm will be interpreted in favor of the latter.

Beside the near-total lack of separation of powers, Saudi Arabia’s human rights record is full of legal, judicial, physical and digital violations.

The situation with regard to freedom of expression, the right to peaceful assembly, and the right to privacy has deteriorated since the last UPR in 2018. Highly restrictive legislation with dire consequences has routinely been used to target journalists, activists, and political opponents. In effect, dissent of any kind is ruthlessly repressed in Saudi Arabia.

We therefore urge that the right to freedom of expression, the right to freedom of association, and the right to privacy are given prominence in the Fourth UPR cycle.

Cooperation with international human rights mechanisms

6. In the period under review, cooperation with international human rights mechanisms has not improved.

⁶ Article 5 of the Basic Law of Governance reserves the succession to the Saudi Throne for males.

⁷ Available (in Arabic) at:

[https://www.shura.gov.sa/wps/wcm/connect/shuraarabic/internet/laws+and+regulations/the+basic+law+of+gov
ernment/shura+council+law](https://www.shura.gov.sa/wps/wcm/connect/shuraarabic/internet/laws+and+regulations/the+basic+law+of+government/shura+council+law)



First of all, while Saudi Arabia accepted a recommendation to intensify cooperation with special procedure mandate holders,⁸ it merely “noted” the recommendation of specific actions such as setting a date for a visit by the Special Rapporteur on the situation of human rights defenders and cooperating fully with human rights mechanisms, including by issuing a standing invitation to special procedure mandate holders of the Human Rights Council.⁹

Despite outstanding and repeated visit requests from the Special Rapporteurs on extrajudicial, summary, or arbitrary executions; on the rights to freedom of peaceful assembly and of association; and on the situation of human rights defenders, none was facilitated to visit the country in the period under review.¹⁰

It is also worth mentioning that Saudi authorities did not cooperate with the Special Rapporteur on extrajudicial, summary or arbitrary executions who initiated an investigation into the unlawful death of Mr. Jamal Khashoggi. It was mentioned in her report that she had requested a country visit to Saudi Arabia but no response to the request had been received.¹¹

⁸ Rec 122.38, Intensify cooperation with special procedure mandate holders, Georgia. (Supported)

⁹ Rec 122.40, Set a date for a visit by the Special Rapporteur on the situation of human rights defenders, Greece. (Noted)

Rec 122.41, As previously recommended, consider strengthening cooperation with the special procedure mandate holders of the Human Rights Council by responding positively to pending visit requests, and consider the extension of a standing invitation to all special procedure mandate holders, Latvia. (Noted)

Rec 122.39, Cooperate fully with human rights mechanisms, including by issuing a standing invitation to special procedure mandate holders of the Human Rights Council, Germany. (Noted)

¹⁰ Special Rapporteur on extrajudicial, summary, or arbitrary executions: Last reminder of visit request was made on January 24, 2019.

Special Rapporteur on the rights to freedom of peaceful assembly and of association: Last reminder of visit request was made on June 1, 2021.

Special Rapporteur on the situation of human rights defenders: Last reminder of visit request was made on September 17, 2021.

More information available online at:

<https://spinternet.ohchr.org/Search.aspx?Lang=en>

¹¹ More details are available online:

<https://www.ohchr.org/en/special-procedures/sr-executions/inquiry-killing-mr-jamal-khashoggi#:~:text=The%20Special%20Rapporteur%20requested%20a,to%20the%20killing%20of%20Mr.>



7. Second, despite its commitment to ratify the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), Saudi Arabia has not yet ratified either of them.¹²

The Kingdom of Saudi Arabia did not accept recommendations to ratify the Second Optional Protocol to the ICCPR and abolish the death penalty, or at least announce a moratorium on use of the death penalty with a view to its eventual abolition.¹³

We are deeply concerned by the escalating application of the death penalty in Saudi Arabia, including in particular against individuals prosecuted for exercising their freedom of expression, as addressed in more detail in subsequent sections. There were **196** judicial executions carried out in 2022, of which **81** were carried out in a single day.¹⁴

Recommendations

- Accept all outstanding visit requests of special procedures, including in particular the Special Rapporteur on freedom of opinion and expression, and cooperate fully with special procedures to ensure the visits take place.
- Put an immediate moratorium on application of the death penalty and ratify the ICCPR and its Second Optional Protocol, aiming towards abolition of the death penalty.

¹² Rec 122.5.4, Ratify the International Covenant on Economic, Social and Cultural Rights, Portugal. (Supported)
Rec 122.3.10, Ratify the International Covenant on Civil and Political Rights, Mexico. (Supported)

¹³ Rec 122.103.5, Establish a moratorium on the death penalty, Iceland. (Noted)

Rec 122.114, Abolish the death penalty and adopt an immediate de facto moratorium, especially for individuals under 18 years of age, Portugal. (Noted)

¹⁴ Amnesty, Saudi Arabia: Imminent execution of seven young men would violate kingdom's promise to abolish death penalty for juveniles, June 15, 2023, available online:

<https://www.amnesty.org/en/latest/news/2023/06/saudi-arabia-imminent-execution-of-youths-would-violate-kingdoms-promise-to-abolish-death-penalty-for-juveniles/>

Reuters, Saudi Arabia executes 81 men in one day for terrorism, other offences, March 12, 2022, available online:

<https://www.reuters.com/world/middle-east/saudi-arabia-executes-81-men-terrorism-other-charges-spa-2022-03-12/>

Amnesty, Saudi Arabia: Execution of Jordanian man reveals 'callous disregard for human life', March 13, 2023, available online:

<https://www.amnesty.org/en/latest/news/2023/03/saudi-arabia-execution-of-jordanian-man-reveals-callous-disregard-for-human-life/>

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- Ratify the ICESCR.
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Freedom of expression

8. During the 2018 UPR, Saudi Arabia accepted numerous general recommendations to bring national legislation into line with international human rights standards regarding freedom of expression and freedom of the press.¹⁵

However, Saudi Arabia has not kept its commitments made during the previous cycle concerning freedom of expression. The national legal framework continues to be repressive and to be used to curb the right of individuals to express themselves freely. Saudi authorities continue to prosecute journalists, bloggers, HRDs and others for what they publish online and offline based on several draconian laws.

9. First of all, **Article 39** of the Basic Law of Governance states that “mass media and all other vehicles of expression shall employ civil and polite language,

¹⁵ Rec 122.174, Take the necessary measures to guarantee freedom of expression for human rights defenders and journalists, in particular by investigating threats and reprisals against them, Argentina. (Supported)

Rec 122.172, Take measures to guarantee the right to freedom of expression, ensure that journalists and writers can work freely and without fear of retribution, intimidation and harassment, and that full, credible, transparent and prompt investigations of all violations of the rights of journalists take place, Greece. (Supported)

Rec 122.162, Adopt all necessary measures to guarantee the free exercise of freedom of expression and press in the country, as well as to protect journalists from any act of intimidation or reprisal, Uruguay. (Supported)

Rec 122.161, Guarantee the rights to freedom of expression, peaceful assembly and association for everyone, guarantee the safety of journalists and review the judgments of those convicted for freely expressing their opinion, including human rights defenders, Switzerland. (Noted)

Rec 122.159, Take measures to guarantee the peaceful exercise of freedom of expression and the right to peaceful assembly and to protect human rights defenders so that they can exercise their work without any intimidation, Spain. (Noted)

Rec 122.158, Continue the steps aimed at eliminating the restrictions on freedom of expression, Romania. (Supported)

Rec 122.157, Establish and ensure full respect for the freedom of the press, thereby refraining from persecuting journalists and all those who voice peaceful criticism, in memory of the late Jamal Khashoggi, Netherlands. (Noted)

Rec 122.156, Further actions to promote freedom of expression, including for journalists, Japan. (Supported)

Rec 122.153, Bring its law into line with international standards under the International Covenant on Civil and Political Rights for the exercise of the rights to freedom of expression, peaceful assembly and association, Ireland. (Supported)

Rec 122.151, Bring national legislation into line with international human rights standards with regard to freedom of expression and freedom of the press, and protect journalists and human rights defenders from intimidation, threats and arbitrary arrest, Germany. (Supported)



contribute towards the education of the nation and strengthen unity. It is prohibited to commit acts leading to disorder and division, affecting the security of the state and its public relations, or undermining human dignity and rights. Details shall be specified in the Law.”

This article is at odds with international standards relating to freedom of expression. It contains vague terms such as “polite language” and obliges individuals and media outlets to exercise the right to freedom of expression to “contribute towards the education of the nation”.

10. The UN Human Rights Committee considers in its **General Comment No. 34** that restrictions on the right to freedom of expression “must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly” and “may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution”.¹⁶

The term “polite language” in **Article 39** of the Basic Law of Governance confers on Saudi authorities very broad discretion in restricting opinions and ideas which they do not favor or agree with.

11. Beside the Basic Law of Governance, several laws have been applied in order to prosecute individuals based on what they have published, whether online or offline.
12. Saudi Arabia received recommendations to reform its counter-terrorism and anti-cybercrime legislation, as well as the law on press and publications, to guarantee the right to freedom of speech and expression.¹⁷

The Law of Printed Materials and Publication

¹⁶ Human Rights Committee, General comment No. **34/2011**, available at: <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no34-article-19-freedoms-opinion-and>

¹⁷ Rec 122.88, Reform the laws on counter-terrorism, anti-cybercrime and associations, as well as the law on press and publications, to guarantee the right to freedom of speech and expression and freedom of peaceful association, to fully reflect commitments under international human rights law, Finland. (Noted)



13. The Law of Printed Materials and Publication issued by Royal Decree on October 28, 2003¹⁸ contains several provisions that are at odds with international freedom of expression standards.

It limits the scope of media outlets by stating in **Article 3** that “call to Islam, noble manners, leading to all that is good and proper and spreading of culture and knowledge shall be among the purposes of printed matters and publication”.

Article 9 sets out a list of obligations that must be respected by media outlets in order to obtain permission from the Ministry of Information. We can mention respect for Sharia Rules and the observation of “objective and constructive criticism that aims at public interest and which is based on facts and evidence”.¹⁹

Expressions such as “call to Islam” or “noble manners” or “objective and constructive criticism” are vague and, hence, allow public authorities excessive discretionary power in determining their meaning.

¹⁸ Available at:

<https://www.saudiembassy.net/law-printing-and-publication>

¹⁹ **Article 9** provides that

“When permission is given to a printed matter the following shall be taken into consideration:

- It shall not be conflicting with Sharia Rules.
- It shall not lead to breach of public security, public policy or serving foreign interests that conflict with the national interest.
- It shall not be exciting to fanatical instincts or stir up discord among citizens.
- It shall not prejudice the dignity and liberty of persons or lead to their blackmail or injure their reputation or commercial names.
- It shall not lead to approval and incitation of criminal conduct.
- It shall not injure the economic or health situation in the country.
- It shall not disclose the secrets of investigations or trials except with the permission of the competent authority.
- It shall observe objective and constructive criticism that aims at public interest and which is based on facts and evidence.”

14. Under Saudi legislation, the creation of media outlets is subject to prior permission, which goes against international standards.²⁰

The UN Human Rights Committee stressed in **General Comment No. 34** that “regulatory systems should take into account the differences between the print and broadcast sectors and the internet, while also noting the manner in which various media converge. It is incompatible with Article 19 to refuse to permit the publication of newspapers and other print media other than in the specific circumstances of the application of paragraph 3.”

15. Moreover, the Law of Printed Materials and Publication grants the Minister of Information wide powers to intervene both before and after publication by newspapers.

²⁰ **Article 5:** “Subject to the provisions of the Laws and Treaties, the person to whom the license is issued shall satisfy the following conditions :

- He shall be a Saudi national.
- He shall not be less than 25 years of age but the Minister may give exemption from this age for justifications he thinks proper.
- He shall be known to be of good conduct and reputation to carry out such activity.
- He shall have a suitable qualification in accordance with the provisions of the Implementing Regulations.

In case of Companies the above conditions shall apply to their representatives.

The Implementing Regulations shall provide for the necessary conditions that must be observed by the offices and reporters of foreign information media.”

Article 7: “The license or renewal fees of the head office or the branch shall be determined in accordance with the following:

(A) Two Thousand Saudi Riyals (SR 2,000) for each of the following activities:

- Printeries.
- Preprinting preparatory services.
- Publication.
- Distribution.
- Artistic works for broadcasting, television and cinema.
- Broadcasting and television studios.
- Information studies and consultations.
- Journalistic services.
- Publicity and advertisement.
- Public relations.
- Importation, sale or renting of films and video tapes.
- Production, sale or renting of computer programs.

(B) One Thousand Saudi Riyals (SR 1,000) for each of the following:

- Bookshops.
- Sound Recording and Discs.
- Drawing and Writing.
- Photography.
- Copying and Reprography.”



For example, prior control is made a legal requirement through the provisions of **Article 13**, by obliging each newspaper to provide the ministry with two copies for approval before offering it for circulation.²¹

The Ministry of Information is also authorized, based on **Article 36**, to withdraw any newspaper if it contains anything at odds with Sharia Law.²²

Such provisions constitute a legal threat to freedom of the press and contradict the three-part test enshrined in paragraph 3 of **Article 19** of the ICCPR.

16. The Saudi legal framework relating to freedom of expression contains other laws that have been extensively used to prosecute individuals for exercising their right to freedom of expression. Many bloggers, journalists, HRDs and political opponents of the regime have been subject to judicial prosecution under the Anti-Cybercrime and Counter-Terrorism laws.

The Anti-Cybercrime Law

17. The 2007 Anti-Cybercrime Law continues to be used by Saudi authorities to infringe freedom of expression online.²³ The most frequently used provisions are those found in paragraph 5 of **Article 3** and paragraph 1 of **Article 6**.

First, paragraph 5 of **Article 3** punishes any person who publishes defamatory content using various information technology devices with imprisonment for a

²¹ **Article 13** provides that: "Each author, publisher, printer or distributor who desires to print or distribute any printed matter shall provide the Ministry with two copies for approval before printing or offering it for circulation and the Ministry shall approve or reject it stating the reasons for that within thirty days and the person concerned may object to the rejection resolution before the Minister."

²² **Article 36** states that: "In case of necessity the Ministry may withdraw any issue of the issues of the journal without compensation if it contains anything conflicting with the rules of Sharia Law on the basis of a resolution issued by the committee provided for in Article Thirty Seven."

²³ Rec 122.160, Take urgent action towards media freedom in the country, including by reviewing the 2007 anti-cybercrime law, Sweden. (Supported)



period of up to one year and/or a fine of up to 130,000 USD.²⁴

This provision conflicts with international freedom of expression standards. The UN Human Rights Committee, in its **General Comment No. 34**, calls on states to consider decriminalizing defamation and emphasizes that imprisonment is never a proportionate penalty. The threat of imprisonment exerts a profoundly chilling effect on freedom of expression, and cannot be justified on the basis of paragraph 3 of **Article 19** of the ICCPR.

18. Second, paragraph 1 of **Article 6** punishes any person who produces, prepares or stores material impinging on public order, religious values, public morals, or privacy, through an information network or computer, with imprisonment for up to five years and/or a fine of up to 800,000 USD.²⁵

This paragraph criminalizes broad areas of speech that are protected under international human rights standards and have nothing to do with preventing cybercrimes. It is used to prosecute bloggers, political dissidents and other individuals for criticizing the Saudi government and other forms of protected speech.²⁶

Access Now and ALQST are concerned that the Saudi Anti-Cybercrime Law provides ample scope for exactly what international freedom of expression standards caution against, and thus constitutes a dangerous tool for deterring public debate about matters of public interest.

²⁴ **Article 3** provides that “Any person who commits any of the following cybercrimes shall be subject to imprisonment for a period not exceeding one year and a fine not exceeding 500,000 riyals, or either penalty:

1. Spying on, or interception or reception of data transmitted through an information network or a computer without legitimate authorization.
2. Unauthorized access with the intention of threatening or blackmailing any person to compel him to take or refrain from taking an action, be it lawful or unlawful.
3. Unauthorized access to a web site, or hacking a web site to change its design, destroy or modify it, or occupy its URL.
4. Invasion of privacy through the misuse of camera-equipped mobile phones and the like.
5. Defamation and infliction of damage upon others through the use of various information technology devices.”

²⁵ **Article 6** provides that “Any person who commits any of the following cybercrimes shall be subject to imprisonment for a period not exceeding five years and a fine not exceeding 3,000,000 riyals, or either penalty:

1. The production, preparation, transmission, or storage of material impinging on public order, religious values, public morals, or privacy, through an information network or computer.
2. The construction or publication of a web site on an information network or computer to promote or facilitate human trafficking.
3. The preparation, publication, or promotion of material for pornographic networks or gambling activities which violates public morals.
4. The construction or publication of a web site on an information network or computer to trade, distribute, demonstrate methods of use, or facilitate dealing in narcotic and psychotropic drugs.”

²⁶ See the section on Attacks on and harassment of bloggers, journalists, HRDs and political dissidents.



The Counter-Terrorism Law

19. During the 2018 UPR, Saudi Arabia accepted numerous recommendations to bring its counter-terrorism legislation into line with international human rights standards regarding freedom of expression, including by revising its excessively broad definition of terrorism and no longer making it applicable to non-violent expression.²⁷

Saudi Arabia's Law on Combating Crimes of Terrorism and its Financing was adopted in November 2017 and modified in 2020.²⁸ It has provided a legal cover for the Saudi authorities to abuse the country's justice system and silence peaceful voices.

20. The submitting organizations are gravely concerned by this counter-terrorism legislation, particularly because of its application to all forms of political criticism in the country.

The law contains vague and ill-defined expressions, such as the definition of terrorism in **Article 1**.²⁹

It also fails to distinguish between freedom of expression and acts of violence. Several provisions of the law are formulated in such a broad manner that they can easily be applied to capture expression lawful under international human rights law.

²⁷ Rec 122.90, Ensure that the country's counter-terrorism legislation complies with international human rights norms, including by revising the broad definition of terrorism and no longer making it applicable to non-violent expressions, Norway. (Supported)

Rec 122.91, Amend the legal definition of terrorism to ensure that it does not lead to the prosecution of women's rights defenders, non-violent human rights activists, political dissenters and other persons merely for exercising their human rights, Austria. (Supported)

²⁸ Available online at:

<https://www.aml.gov.sa/en-us/RulesAndRegulations/Combating%20Terrorism%20and%20Financing%20of%20Terrorism%20Law.pdf>

²⁹ It defines as a Terrorist Crime "Any act committed, individually or collectively, directly or indirectly, by a perpetrator, with the intention to disturb public order, destabilize national security or state stability, endanger national unity, suspend the Basic Law of Governance or some of its articles, undermine state reputation or status, cause damage to state facilities or natural resources, attempt to coerce any of its authorities into a particular action or inaction or threaten to carry out acts that would lead to any of the aforementioned objectives or instigate such acts; or any act intended to cause death or serious bodily injury to a civilian, or any other person, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act; or any act which constitutes an offense as set forth in any of the international conventions or protocols related to terrorism or its financing or listed in the Annex to the International Convention for the Suppression of the Financing of Terrorism that the Kingdom of Saudi Arabia has ratified."



Article 3 qualifies several types of protected speech as terrorist acts, for example speech that aims to change the government system in Saudi Arabia, or to suspend the Basic Law of Governance or any of its articles, or to undermine the interests of the Kingdom, its economy or national or societal security.

In a Joint Declaration on Freedom of Expression and Countering Violent Extremism issued in 2016, the Special Rapporteurs on freedom of expression warned against use of the concepts of “violent extremism” and “extremism” “as the basis for restricting freedom of expression unless they are defined clearly and appropriately narrowly”.³⁰

The UN Human Rights Committee has called on States to “ensure that counter-terrorism measures are compatible with paragraph 3 [of Article 19 of the ICCPR]. Such offenses as ‘encouragement of terrorism’ and ‘extremist activity’ as well as offenses of ‘praising’, ‘glorifying’, or ‘justifying’ terrorism, should be clearly defined to ensure that they do not lead to unnecessary or disproportionate interference with freedom of expression.”³¹

Recommendations

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- Adopt a new media law that respects the freedom of the press.
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- Abrogate content-based offenses from Articles 3 and 6 of the Anti-Cybercrime Law.
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- Revise the Counter-terrorism Law in order to bring it into line with international standards and refrain from using counter-terrorism legislation to prosecute individuals for exercising their right to freedom of expression.
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Freedom of association and peaceful assembly

³⁰ *Joint Declaration on Freedom of Expression and Countering Violent Extremism*, 2016. Available online at: [https://www.ohchr.org/en/statements/2016/05/joint-declaration-freedom-expression-and-countering-violent-extremism#:~:text=a\)%20Everyone%20has%20the%20right,politicians%20respond%20to%20these%20phenomena](https://www.ohchr.org/en/statements/2016/05/joint-declaration-freedom-expression-and-countering-violent-extremism#:~:text=a)%20Everyone%20has%20the%20right,politicians%20respond%20to%20these%20phenomena)

a.

³¹ Human Rights Committee, General Comment No. 34/2011, available at: <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no34-article-19-freedom-opinion-and>



21. As part of the 2018 UPR, the government gave a mixed response to recommendations related to freedom of association. Numerous recommendations were accepted, including those referring to bringing legislation into line with international standards and taking further measures to fully guarantee freedom of assembly.³²

Numerous other recommendations were merely noted, including those referencing the need to amend the Law on Associations and Foundations or to immediately end the prohibition and criminalization of protests and unconditionally release anyone imprisoned solely for exercising their rights to freedom of association and peaceful assembly.³³

22. Freedom of association is exercised based on the provisions of the Law on Associations and Foundations promulgated by Royal Decree on **December 1, 2015**.³⁴

This law is demonstrative of the hostile approach of the government towards civil society groups, and its efforts to suffocate civil society space in the country.

23. First, **Article 8**, paragraph 3 provides that: "The Ministry shall issue a decision on the application for establishing an association within 60 days from the date of fulfillment of the requirements set forth in this Law and the procedures specified in the Regulations."

³²Rec 122.148, Revise all legislation that restricts the right to freedom of association and peaceful assembly as well as freedom of expression, and ensure these laws are in line with international standards, Czechia. (Supported)
Rec 122.164, Take further measures to fully guarantee freedom of assembly, expression and belief, Portugal. (Supported)

³³ Rec 122.153, Bring its law into line with international standards under the International Covenant on Civil and Political Rights for the exercise of the rights to freedom of expression, peaceful assembly and association, Ireland. (Noted)

Rec 122.159, Take measures to guarantee the peaceful exercise of freedom of expression and the right to peaceful assembly and to protect human rights defenders so that they can exercise their work without any intimidation, Spain. (Noted)

Rec 122.161, Guarantee the rights to freedom of expression, peaceful assembly and association for everyone, guarantee the safety of journalists and review the judgments of those convicted for freely expressing their opinion, including human rights defenders, Switzerland. (Noted)

Rec 122.163, Immediately end the ban and criminalization of protests and unconditionally release anyone imprisoned solely for exercising their rights to freedom of association and peaceful assembly, including women human rights defenders, Iceland. (Noted)

Rec 122.165, Amend the Law on Associations and Foundations to bring it into full conformity with international law and standards, Belgium. (Noted)

³⁴ Available online at:

<https://laws.boe.gov.sa/Files/Download/?attId=e13a2278-2f32-42f4-9554-adbb011e31e6>



The prior authorization system is at odds with international standards relating to freedom of association. The Special Rapporteur on freedom of peaceful assembly and of association took the view in 2012 “that a ‘notification procedure’, rather than a ‘prior authorization procedure’ that requests the approval of the authorities to establish an association as a legal entity, complies better with international human rights law and should be implemented by States”.³⁵

24. Second, the ministry can deny the establishment of an association based on the vague terms of paragraph 2 of **Article 3**, which stipulates that: “An association may not be established if its charter contains provisions conflicting with the provisions of Sharia, public order, or public morality, or if it undermines national unity or conflicts with the provisions of the Law, Regulations, or any other laws and regulations.”

Such requirements are not compatible with the legitimate restrictions on freedom of association, which have to be necessary and proportionate, and respect the values of democratic societies. The Special Rapporteur on freedom of peaceful assembly and of association said that “democratic societies exist only where ‘pluralism, tolerance and broadmindedness’ are in place.”³⁶

Therefore, the prohibition on creating associations that do not believe in Sharia principles, for example, is contrary to democratic values.

25. Third, the law allows the ministry to interfere in the management of the association. **Article 19** states that: “The Minister may, pursuant to a reasoned decision, dismiss the association’s elected board of directors and appoint an interim board of directors.”

Article 23 authorizes the minister to suspend or dissolve an association or merge it with another association should it deviate from its objectives or commit serious violations of the Law of Association or violate the provisions of Sharia, public order, or public morality, or commit any act that undermines national unity.

³⁵ Special Rapporteur on freedom of peaceful assembly and of association, *Best practices that promote and protect the rights to freedom of peaceful assembly and of association*, A/HRC/20/27. Available online at: <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F20%2F27&Language=E&DeviceType=Desktop&LangRequested=False>

³⁶ Ibid.



Such interference constitutes a flagrant violation of the freedom of association. In this regard, the Special Rapporteur on freedom of peaceful assembly and of association said in his 2021 report *Best practices that promote and protect the rights to freedom of peaceful assembly and of association* that the suspension and involuntary dissolution of an association should only be possible when there is a clear and imminent danger resulting in a flagrant violation of national law, in compliance with international human rights law. However, the provisions of **Article 23** can lead to the dissolution of associations simply because their activities are deemed contrary to public morality or Sharia law.

The same Article lacks crucial safeguards such as requiring a judicial decision to dissolve an association. The Special Rapporteur valued as best practice “legislation that stipulates that such drastic measures be taken by independent and impartial courts”.³⁷

Recommendation

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- Adopt new legislation on association and ensure it is in line with international standards, particularly by implementing a system of notification for the establishment of associations that is simple, accessible and non-discriminatory.
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Data protection and the right to privacy

26. **Article 40** of the Basic Law of Governance stipulates: “The privacy of telegraphic and postal communications, and telephone and other means of communication, shall be inviolate. There shall be no confiscation, delay, surveillance or eavesdropping, except in cases provided by the Law.”

Despite this legal basis for the right to privacy, more safeguards are required to commit the government to the principles of legitimacy, necessity and proportionality regarding restriction of the right to privacy.

³⁷ Ibid.



At the regional level, **Article 21** of the Arab Charter on Human Rights provides that: “1. No one shall be subjected to arbitrary or unlawful interference with regard to his privacy, family, home or correspondence, nor to unlawful attacks on his honor or his reputation. 2. Everyone has the right to the protection of the law against such interference or attacks.”³⁸

27. The right to privacy is protected in the major international legal instruments. Communications surveillance interferes with the right to privacy, and should therefore only be carried out in strict compliance with international human rights law and under impartial, competent judicial oversight, as articulated by the Human Rights Council³⁹ and the International Principles on the Application of Human Rights to Communications Surveillance.⁴⁰

Surveillance of digital communications must be conducted on the basis of an accessible, clear and comprehensive legal framework consistent with the principles of non-arbitrariness, lawfulness, legality, necessity and proportionality.

In 2019 the Special Rapporteur on freedom of opinion and expression stressed the importance of respecting these principles, especially with regard to individuals who are involved in public affairs, because targeted surveillance creates a chilling effect and a tendency to self-censor, thus violating the right to freedom of expression and peaceful assembly.⁴¹

28. Access Now and ALQST have grave concerns over Saudi Arabia’s use of targeted surveillance attacks on HRDs, bloggers and political dissidents, and note that it has been named in various reports as a likely customer of

³⁸ Available online: <http://hrlibrary.umn.edu/instree/loas2005.html?msource=UNWDEC19001&tr=y&aid=3337655>

³⁹ Human Rights Council, A/HRC/RES/34/7, The right to privacy in the digital age, available online: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/34/7, April 7, 2017.

⁴⁰ Available online: <https://www.necessaryandproportionate.net>

⁴¹ “Targets of surveillance suffer interference with their rights to privacy and freedom of opinion and expression whether the effort to monitor is successful or not.” *Surveillance and Human Rights: Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression* (A/HRC/41/35), available online: <https://digitallibrary.un.org/record/3814512?ln=en>, May 28, 2019.

⁴² Citizen Lab has reported that several individuals were targeted in 2018 including Omar Abdulaziz, Ghanem al-Masarir, and Yahya Assiri, as well as a staff member at Amnesty International. See: Citizen Lab, *New York Times Journalist Ben Hubbard Hacked with Pegasus after Reporting on Previous Hacking Attempts*, available online at: <https://citizenlab.ca/2021/10/breaking-news-new-york-times-journalist-ben-hubbard-pegasus/>
See also: Citizen Lab, *NSO Group iMessage Zero-Click Exploit Captured in the Wild*, available online at: <https://citizenlab.ca/2021/09/forcedentry-nso-group-imessage-zero-click-exploit-captured-in-the-wild/>



Pegasus.⁴²

In a joint report, three organizations have noted the existence of extensive censorship. For example, websites deemed to host immoral or anti-Islamic content, or associated with religious minorities, are blocked in Saudi Arabia.⁴³

A former Twitter employee was found guilty in **December 2022** of spying for Saudi Arabia by accessing, monitoring and conveying confidential and sensitive information

on Twitter users who were critical of members of the Saudi royal family and the Saudi government. He has been sentenced to three and a half years in prison.⁴⁴

29. The use of digital surveillance tools violates the right to privacy and other fundamental rights. Its impact is particularly dangerous with regard to women and other vulnerable groups. Indeed, in a patriarchal society where women cannot claim their right to equality and live under a discriminatory social mindset, their situation can become even more precarious if they are subjected to denigration and defamation by the public authorities without the ability to exercise their right to freedom of expression or peaceful assembly in order to defend themselves.

This oppressive climate, coupled with the government's utilization of spyware to target political activists, HRDs, and journalists for their criticism of the Saudi government, has suffocated not only the public but also the private sphere.

Recommendations

⁴² Citizen Lab has reported that several individuals were targeted in 2018 including Omar Abdulaziz, Ghanem al-Masarir, and Yahya Assiri, as well as a staff member at Amnesty International. See: Citizen Lab, *New York Times Journalist Ben Hubbard Hacked with Pegasus after Reporting on Previous Hacking Attempts*, available online at: <https://citizenlab.ca/2021/10/breaking-news-new-york-times-journalist-ben-hubbard-pegasus/>

See also: Citizen Lab, *NSO Group iMessage Zero-Click Exploit Captured in the Wild*, available online at: <https://citizenlab.ca/2021/09/forcedentry-nso-group-imessage-zero-click-exploit-captured-in-the-wild/>

⁴³ OutRight Action International, The Citizen Lab, and Open Observatory of Network Interference, *No Access: LGBTIQ Website Censorship in Six Countries*, 2021, available online: <https://ooni.org/documents/2021-lgbtqi-website-censorship-report/2021-lgbtqi-website-censorship-report-v2.pdf>

⁴⁴ See:

<https://www.justice.gov/opa/pr/former-twitter-employee-found-guilty-acting-agent-foreign-government-and-unlawfully-sharing>



- Adopt regulations affirming and protecting the right to privacy by including the principles of non-arbitrariness, lawfulness, legality, necessity, proportionality and judicial oversight.
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- Cease all surveillance operations and persecution of individuals and respect the right to privacy.
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- Introduce strong and effective transparency and oversight mechanisms for all matters related to mass surveillance and the acquisition of surveillance technology.
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Attacks on and harassment of bloggers, journalists, HRDs and political dissidents

30. During the 2018 UPR, Saudi Arabia received several recommendations to protect bloggers, journalists, HRDs and political opponents of the regime.⁴⁵ However, it has continued to attack them by egregious means such as judicial harassment, physical threats and digital attacks.

Judicial harassment

31. Judicial harassment is the most commonly used tool to silence Saudi human rights defenders, bloggers and political activists. Charges range from spreading false news to disrupting public order, and from using the internet to “tear the social fabric” to praising a terrorist organization. Emblematic cases in

⁴⁵Rec 122.157, Establish and ensure full respect for the freedom of the press, thereby refraining from persecuting journalists and all those who voice peaceful criticism, in memory of the late Jamal Khashoggi, Netherlands. (Noted)

Rec 122.159, Take measures to guarantee the peaceful exercise of freedom of expression and the right to peaceful assembly and to protect human rights defenders so that they can exercise their work without any intimidation, Spain. (Noted)

Rec 122.161, Guarantee the rights to freedom of expression, peaceful assembly and association for everyone, guarantee the safety of journalists and review the judgments of those convicted for freely expressing their opinion, including human rights defenders, Switzerland. (Noted)

Rec 122.162, Adopt all necessary measures to guarantee the free exercise of freedom of expression and press in the country, as well as to protect journalists from any act of intimidation or reprisal, Uruguay. (Supported)

Rec 122.163, Immediately end the ban and criminalization of protests and unconditionally release anyone imprisoned solely for exercising their rights to freedom of association and peaceful assembly, including women human rights defenders, Iceland. (Noted)



the period under review include:⁴⁶

- **Salma Al-Shehab**, a 34-year-old mother of two, is a dental hygienist and PhD student at Leeds University in the United Kingdom, where she was residing before her detention. She was arrested on 15 January 2021 while on holiday in Saudi Arabia. On August 9, 2022, the Specialized Criminal Court of Appeal sentenced al-Shehab, after a grossly unfair trial, to 34 years in prison followed by a travel ban of the same length. On 25 January, the SCC re-sentenced al-Shehab to 27 years in jail and a travel ban of the same length. The charges against her included “supporting those who seek to disrupt the public order” and publishing tweets “that disrupt the public order”, in connection with posts on her account where she expressed support for prisoners of conscience such as women’s rights activist Loujain al-Hathloul. Her sentence also included the closure of her Twitter account and deactivation of her phone number.⁴⁷
- **Noura bint Saeed Al Qahtani** was sentenced on August 9, 2022 to 45 years in prison for social media posts. The Specialized Criminal Court convicted her of “using the internet to tear the social fabric” and “violating public order by using social media”.⁴⁸
- **Mahdia Marzouki**, a 51-year-old Tunisian nurse who had been residing in Saudi Arabia since 2008, was arrested in July 2020 in connection with her activity on social media. In September 2022, the Specialized Criminal Court sentenced her to 15 years in prison on a charge of praising a terrorist organization through her Twitter account. She was denied the right to legal counsel, and her country’s consulate did not intervene to appoint a lawyer for her.⁴⁹ She was released in April 2023.⁵⁰

⁴⁶ For more details regarding prisoners of conscience, see the ALQST website:

<https://www.alqst.org/en/prisonersofconscience>

⁴⁷ Joint statement, *Saudi authorities must release women’s rights activist Salma al-Shehab*, available online at:

<https://www.accessnow.org/press-release/free-salma-al-shehab-statement/>

⁴⁸ <https://www.bbc.com/news/world-middle-east-62736118>

⁴⁹ More details are available online at:

<https://www.esohr.org/en/%D8%A7%D9%84%D8%B3%D8%B9%D9%88%D8%AF%D9%8A%D8%A9-%D8%AA%D8%AD%D9%83%D9%85-%D8%B9%D9%84%D9%89-%D9%85%D9%85%D8%B1%D8%B6%D8%A9-%D8%AA%D9%88%D9%86%D8%B3%D9%8A%D8%A9-%D8%A8%D8%A7%D9%84%D8%B3%D8%AC%D9%86-15/>

⁵⁰ More details are available online at:

<https://news-tunisia.tunisienumerique.com/tunisian-jailed-doctor-mahdia-marzouki-released-by-saudi-authorities/>



- **10 Egyptian Nubians**, a minority ethnic group indigenous to southern Egypt and northern Sudan, were sentenced by the Specialized Criminal Court in October 2022 to prison terms of between 10 and 18 years for posting on social media and showing solidarity with an outlawed Islamist organization.⁵¹
- **2 Saudi Wikipedians**, Osama Khaled and Ziyad Sufyani, were arrested in 2020 and have been sentenced to prison for 32 years and 8 years respectively for their peaceful online activism in Saudi Arabia.⁵²

Digital surveillance

32. Surveillance of journalists, HRDs and political activists through the use of spyware technology constitutes a violation not only of the right to privacy but also of the rights to freedom of expression and opinion and of peaceful assembly and association. It undoubtedly has a chilling effect on vulnerable groups and leads to self-censorship.

Saudi Arabia has continued its policy of digital surveillance. Amnesty International's Security Lab established that Pegasus spyware was successfully installed on the phone of Khashoggi's fiancée **Hatice Cengiz** just four days after his murder.

Khashoggi's wife, **Hanan Elatr**, was also repeatedly targeted with the spyware between September 2017 and April 2018, as was his son **Abdullah**, along with other family members.⁵³

The cellphone of **Omar Abdulaziz**, a Saudi activist and permanent resident of Canada, was also targeted and infected with Pegasus.⁵⁴

Similarly, human rights defender and founder of ALQST **Yahya Assiri**'s phone was infected with Pegasus twice between 2018 and 2020, violating his privacy

⁵¹ More details are available online at:

<https://www.amnesty.org/en/latest/news/2022/10/saudi-arabia-quash-sentences-for-egyptian-nubians-who-organized-peaceful-remembrance-event/>

⁵² More details are available online at:

<https://www.accessnow.org/press-release/saudi-arabia-wikipedia/>

⁵³ More details are available online at:

<https://www.amnesty.org/en/latest/press-release/2021/07/the-pegasus-project/>

<https://www.accessnow.org/press-release/saudi-arabia-microsoft-should-suspend-data-center-plans/>

⁵⁴ More details are available online at:

<https://citizenlab.ca/2018/10/the-kingdom-came-to-canada-how-saudi-linked-digital-espionage-reached-canadian-soil/>



and endangering people with whom he had been communicating.⁵⁵

Recommendations

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- Immediately and unconditionally drop all charges being brought against human rights defenders, bloggers and other individuals, as their prosecution appears to be related solely to their exercising their freedom of expression.
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- Ensure that violations of freedom of expression and association are subjected to independent, speedy and effective investigations and prosecutions.
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- Ensure that the UN Standard Minimum Rules for the Treatment of Prisoners are upheld.
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- Cease all surveillance operations and persecution of individuals and respect the right to privacy.
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⁵⁵ More details are available online at:

<https://alqst.org/en/post/alqst-calls-on-eu-committee-for-action-to-help-victims-of-pegasus-cyberattacks>