

IMPLEMENTATION OF THE EU GUIDELINES ON HRDS IN SAUDI ARABIA



The severe crackdown on civil society in Saudi Arabia, especially since 2011 and more acutely since May 2018, has not been matched by a clear or resolute EU strategy to ensure the support and protection of HRDs. The policies of the EU and its member states have instead been characterized by restraint and a lack of creativity to overcome the obstacles associated with supporting HRDs in an already severely restricted environment. While some positive practices have been adopted in the past four years, these have often failed to improve the situation of individual HRDs due to a lack of ownership and follow up on the part of the EU and its member states.

Given Saudi Arabia's economic and geostrategic importance to Europe, maintaining a close partnership with the Kingdom is often given precedence over the EU's human rights concerns. This highlights a glaring

inconsistency in the EU's policy that risks seriously undermining the credibility of the EU's global human rights policy.

Although very limited, some examples have shown that when a coordinated approach is adopted and when the variety of tools at the EU's disposal are used to support individual cases, the EU and its member states are able to achieve impact.

1.1 BACKGROUND AND MAIN CHALLENGES FACED BY HRDS

In the 1990s, the Saudi Arabian authorities began taking slow, incremental steps towards reform, while civil society actors became progressively more vocal about addressing human rights abuses in the country.¹ This was illustrated by the Kingdom's decision to adopt a Basic Law of Governance in 1992 and the country's first Law on Criminal Procedure in 2001, and to ratify certain international human rights treaties, including the Convention on the Elimination of all Forms of Discrimination against Women in September 2000.²

These steps brought about an enhanced level of international monitoring which, together with the spread of the internet and social media in Saudi Arabia, gradually opened up spaces for civic engagement³ and empowered local actors, varying from unaffiliated clerics to HRDs.⁴ Today, Saudi Arabia has one of the highest levels of internet penetration in the Middle East, with more than 91% of the population considered active internet users and more than 25 million active social media accounts.⁵ These platforms have proven crucial in facilitating the dissemination of information, public discussion and debate.

Amid this modest opening of civil society space, a number of independent human rights organizations were formed that sought to monitor and document ongoing violations as well as to engage with the government to promote human rights reforms. Some of these actors sought to register their NGOs, but without success. In 2004, the authorities licensed the National Society for Human Rights, making it the first such organization to achieve legal status, though it relied heavily on government funding and operated within a restricted ambit. Meanwhile, independent human rights organizations such as the Saudi Civil and Political Rights Associations (ACPRA) – created in 2009 – had to operate without a licence or legal status. In 2005, Saudi Arabia founded a national Human Rights Commission and government representatives announced ambitious reform pledges following the 2009 UPR.⁶

However, this short-lived shift in policy was overturned in 2011, when in response to the Arab uprisings, the authorities began a ruthless crackdown on the rights to freedom of expression, association and peaceful assembly. Saudi Arabia reaffirmed its long-standing ban on all forms of peaceful gatherings and demonstrations. It also began to target the country's most prominent independent activists and reformists in a bid to silence all forms of criticism and human rights scrutiny.⁷

ACPRA was the first organization to be targeted and was singled out for the most severe treatment. ACPRA's founders included long-standing activists and public figures, whose distinctly Islamic concept of human rights presented a profound challenge to the legitimacy of the authorities' interpretations of human rights in Islam. In 2013, the authorities ordered the disbanding of ACPRA.⁸ The same year, they forcibly closed down all independent human rights organizations and ordered them to shut down their websites and any online presence.⁹

In November 2015, a new law on associations was passed which, while providing a legislative framework for the foundation, administration and supervision of CSOs, also restricted the permissible purposes for establishing an association and excluded human rights as one of these purposes. Different provisions in the law also granted wide discretionary powers to the Ministry of Social Affairs, which include the power to deny

¹ The International Center for Not-For-Profit Law, *Civic Freedom Monitor: Saudi Arabia*, updated 7 January 2019, <http://www.icnl.org/research/monitor/saudiarabia.html>.

² Full status of ratification of international treaties is available on the OHCHR website: <https://indicators.ohchr.org/>.

³ Chatham House, *Civil Society in Saudi Arabia: The Power and Challenges of Association*, March 2015, https://www.chathamhouse.org/sites/default/files/field/field_document/20150331SaudiCivil.pdf.

⁴ Raed Abdulaziz Alhargan, 'Saudi Arabia: Civil Rights and Local Actors', *Middle East Policy Council* Volume XIX, Spring, Number 1, ND, <https://www.mepec.org/saudi-arabia-civil-rights-and-local-actors>.

⁵ Global Media Insight, "Saudi Arabia Social Media Statistics 2018", 28 March 2018, <https://www.globalmediainsight.com/blog/saudi-arabia-social-media-statistics/>.

⁶ Amnesty International, *Saudi Arabia's ACPRA: How the Kingdom silences its human rights activists* (Index: MDE 23/025/2014), 10 October 2014, <https://www.amnesty.org/download/Documents/8000/mde230252014en.pdf>.

⁷ Amnesty International, *Saudi Arabia: Repression in the name of security* (Index: MDE 23/016/2011), 1 December 2011, <https://www.amnesty.org/download/Documents/32000/mde230162011en.pdf>.

⁸ Amnesty International, *Saudi Arabia's ACPRA: How the Kingdom silences its human rights activists*.

⁹ Amnesty International, *Saudi Arabia: Is this what is to be expected of a UN Human Rights Council member* (Index: MDE 23/1054/2015), 24 February 2015, <https://www.amnesty.org/en/documents/mde23/1054/2015/en/>.

licences to new organizations and to disband them if they are deemed to “harm national unity”.¹⁰ Three years after the introduction of the law, no activists have been able to register a human rights organization.

Since 2014, the authorities have expanded the scope of their repression by systematically resorting to the counter-terrorism law to prosecute human rights defenders and to retry others who had already been sentenced to, and in some cases had served, long prison terms under other laws. The 2017 counter-terrorism law, and the 2014 law it replaced, include an overly vague definition of “terrorism” criminalizing the peaceful exercise of the right to freedom of expression.¹¹

The authorities have also systematically resorted to the 2007 anti-cyber-crime law to punish HRDs, particularly article 6. This law states that the “production, preparation, transmission or storage of material impinging on public order, religious values, public morals and privacy, through the information network or computers” is a crime punishable by up to five years’ imprisonment and a fine. Courts have repeatedly invoked this article in judgements when convicting and sentencing government critics and human rights defenders for peacefully exercising their rights to freedom of expression and association.¹²

As a result, most Saudi HRDs have been threatened into silence, imprisoned or forced to flee the country. Many have been subjected to arbitrary travel bans and have endured intimidation and harassment by security forces,¹³ particularly by the Ministry of Interior’s General Directorate of Investigations, before being prosecuted and given harsh sentences.¹⁴

Others have been sentenced after grossly unfair trials by the Specialized Criminal Court (SCC), a special security and counter-terrorism court that operates with an overly broad jurisdiction and vaguely worded procedures.¹⁵ The SCC has frequently conducted trials wholly or mostly in secret sessions, with the families of the defendants, the media and other observers excluded from the court. HRDs and peaceful protesters have been tried and sentenced without access to lawyers, sometimes even with their lawyers barred from the court. The SCC has sentenced HRDs to prison for vague offences that criminalize the peaceful exercise of human rights, such as “destabilizing security and spreading chaos”, “inciting public opinion against the authorities”, “breaking allegiance to the ruler” and “setting up an unlicensed organization”.

This systematic repression of human rights has intensified since the appointment of Mohammed bin Salman as Crown Prince in June 2017. While previously the authorities had been reticent to detain WHRDs for prolonged periods,¹⁶ giving them a wider margin of manoeuvre, the arrests of several WHRDs in May 2018 signalled a shift in this policy. As documented by Amnesty International, on 13 March 2019, 11 women activists were brought to trial before the Criminal Court in Riyadh. Several WHRDs were charged for their human rights work and contact with international organizations, foreign media and other activists.¹⁷ Some were charged with promoting women’s rights and calling for the end of the male guardianship system. Between

¹⁰ The International Center for Not-for-profit Law, *Civic Freedom Monitor: Saudi Arabia*.

¹¹ Amnesty International, “Saudi Arabia: New terrorism law is latest tool to crush peaceful expression” (News, 3 February 2014), <https://www.amnesty.org/en/latest/news/2014/02/saudi-arabia-new-terrorism-law-one-more-tool-crush-peaceful-protest/>.

¹² See, for example, the cases of Abdulaziz al-Shubaily, Alaa Brinji and Issa al-Hamid: Amnesty International, *Saudi Arabian Human Rights Defender imprisoned: Abdulaziz al-Shubaily* (Index: MDE 23/7161/2017), 29 September 2017, <https://www.amnesty.org/download/Documents/MDE2371612017ENGLISH.pdf>; *Saudi Arabia: Five years in prison for Twitter posts: Alaa Brinji* (Index: MDE 23/3744/2016), 31 March 2016, <https://www.amnesty.org/download/Documents/MDE2337442016ENGLISH.pdf>; and *Saudi Arabia: Issa al-Hamid sentenced to 9 years in prison* (Index: MDE 23/4111/2016), 2 June 2016, <https://www.amnesty.org/download/Documents/MDE2341112016ENGLISH.pdf>.

¹³ Amnesty International, “Saudi Arabia: Two more women human rights activists arrested in unrelenting crackdown”, (News, 1 August 2018), <https://www.amnesty.org/en/latest/news/2018/08/saudi-arabia-two-more-women-human-rights-activists-arrested-in-unrelenting-crackdown/>.

¹⁴ See, for example, Amnesty International, *Saudi Arabia: Further information – medical care granted to Waleed Abu Al-Khar* (Index: MDE 23/4253/2016), 14 June 2016, <https://www.amnesty.org/download/Documents/MDE2342532016ENGLISH.pdf>; *Saudi Arabian activist detained after deportation: Mohammad al-Otaibi* (Index: MDE 23/6391/2017) <https://www.amnesty.org/download/Documents/MDE2363912017ENGLISH.pdf> and *Saudi Arabian Human Rights Defender imprisoned: Abdulaziz al-Shubaily*.

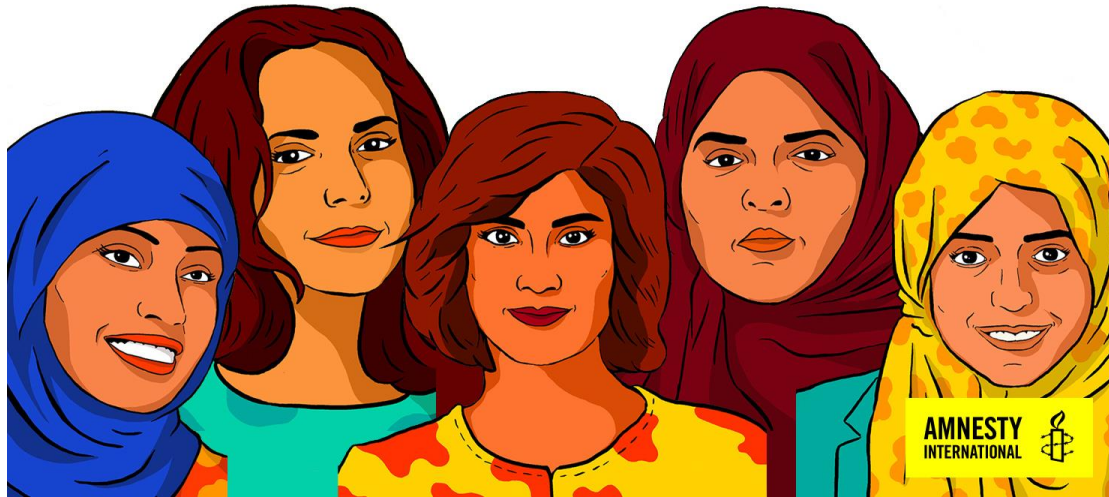
¹⁵ In September 2017, Abdulaziz al-Shubaily, a human rights defender and founding member of ACPRA, was detained and began serving his sentence of eight years’ imprisonment to be followed by an eight-year travel ban and a ban from writing on social media for “inciting public opinion against the rulers of this country and signing statements that were published online that call on people to demonstrate”. HRDs Essam Koshak and Issa al-Nukheifi were tried before the SCC on charges related to their online activism. See *Amnesty International Annual Report 2017/2018 on Saudi Arabia*, <https://www.amnesty.org/en/countries/middle-east-and-north-africa/saudi-arabia/report-saudi-arabia/>.

¹⁶ While some of the WHRDs detained since May 2018 had previously been arrested, they were never detained for more than three months. The longest period that Loujain al-Hathloul was detained prior to 2018 was 73 days in 2015, Amnesty International, “Saudi Arabia detains rights activist who defied women’s driving ban” (News, 5 June 2017), <https://www.amnesty.org/en/latest/news/2017/06/saudi-arabia-detains-rights-activist-who-defied-womens-driving-ban/>.

¹⁷ Amnesty International, *Saudi Arabia: Further information – women activists on trial* (Index: MDE 23/0057/2019), 18 March 2019, <https://www.amnesty.org/download/Documents/MDE2300572019ENGLISH.pdf>.

March and April 2019, eight women, including Aziza al-Yousef and Iman al-Nafjan, were temporarily released.¹⁸

As of April 2019, several of the targeted WHRDs remained in detention, including Loujain al-Hathloul, while other WHRDs arbitrarily arrested since July 2018 also remained in detention without charge or trial. These included prominent WHRDs Samar Badawi and Nassima al-Sada, who had been outspoken in campaigning against the driving ban for women and the male guardianship system.¹⁹ In April 2019, the authorities launched a new wave of arrests targeting at least 14 individuals, including journalists, writers, academics and family members of WHRDs.²⁰



 ↑ *Loujain al-Hathloul, Iman al-Nafjan, Aziza al-Youssef, Samar Badawi and Nassima al-Sada are women human rights defenders who have campaigned for women's rights to drive and against the guardianship system in Saudi Arabia. @Amnesty International*

In addition to travel and social media bans, HRDs in Saudi Arabia have faced public smear campaigns spearheaded by the Saudi Arabian authorities and government-aligned media. For instance, shortly after the arrest of WHRDs in May 2018, official statements in state-led media branded them as “traitors” seeking to undermine the country’s stability and social fabric through their contact with foreign entities.²¹ A related hashtag was released on Twitter describing them as “Agents of Embassies”.

The murder of Jamal Khashoggi in a Saudi consulate in Turkey in October 2018 sent shockwaves through the community of Saudi Arabian HRDs, eroding the notion that they could find a safe haven abroad.²² Months earlier, HRD Loujain al-Hathloul had been rendered to Saudi Arabia from the United Arab Emirates (UAE) and still remains in detention.²³

HRDs also report torture and other ill-treatment in detention. This was the case for at least 10 HRDs arrested in May 2018, including WHRD Loujain al-Hathloul.²⁴ In January 2019, Amnesty International reported the incommunicado detention of these women following their arrest and the alleged torture and ill-treatment, including sexual abuse, to which they were subjected. Moreover, courts in Saudi Arabia continue to sentence HRDs to corporal punishment, which contravenes the absolute prohibition of torture and other ill-treatment.

¹⁸ Amnesty International, “Saudi Arabia: Provisional release of three women activists a positive step, but bogus charges must be dropped” (News, 28 March 2019), <https://www.amnesty.org/en/latest/news/2019/03/saudi-arabia-provisional-release-of-three-women-activists-a-positive-step-but-bogus-charges-must-be-dropped/>.

¹⁹ Amnesty International, “Saudi Arabia’s ‘year of shame’: Crackdown on critics and rights’ activists continues” (News, 14 May 2019), <https://www.amnesty.org/en/latest/news/2019/05/saudi-arabias-year-of-shame-crackdown-on-critics-and-rights-activists-continues/>.

²⁰ Amnesty International, “Saudi Arabia: New wave of arrests and travel bans latest assault on freedom of expression” (News, 5 April 2019), <https://www.amnesty.org/en/latest/news/2019/04/saudi-arabia-new-wave-of-arrests-and-travel-bans-latest-assault-on-freedom-of-expression/>.

²¹ Amnesty International, “Saudi Arabia: Chilling smear campaign against women’s rights defenders” (News, 19 May 2018), <https://www.amnesty.org/en/latest/news/2018/05/saudi-arabia-chilling-smear-campaign-tries-to-discredit-loujain-al-hathloul-and-other-detained-womens-rights-defenders/>.

²² Amnesty International, “Saudi Arabia / Turkey: Alleged assassination of Jamal Khashoggi in Consulate would set abysmal new low” (News, 7 October 2018), <https://www.amnesty.org/en/latest/news/2018/10/disappearance-of-jamal-khashoggi-extremely-worrying-in-light-of-continuing-repression-in-saudi/>.

²³ *The New York Times*, “She Wanted to Drive, So Saudi Arabia’s Ruler Imprisoned and Tortured Her”, 26 January 2019, <https://www.nytimes.com/2019/01/26/opinion/sunday/loujain-al-hathloul-saudi.html>.

²⁴ Amnesty International, “Saudi Arabia: Access for independent monitors urgently needed amid more reports of torture of activists” (News, 25 January 2019), <https://www.amnesty.org/en/latest/news/2019/01/saudi-arabia-access-for-independent-monitors-urgently-needed-amid-more-reports-of-torture-of-activists/>.

Besides the case of blogger Raif Badawi, who was sentenced to 1,000 lashes in 2015, HRDs Mikhliif bin Daham al-Shammari and Omar al-Sa'id were sentenced to 200 and 300 lashes in 2014²⁵ and 2013²⁶ respectively.²⁷

As a further signal of the authorities' ruthless intolerance of dissent, since 2016 Saudi Arabian prosecutors have increasingly sought the death penalty for political dissidents,²⁸ protesters²⁹ and even peaceful dissent. Between August 2018 and February 2019, the Saudi public prosecutor demanded the death sentence for at least eight individuals prosecuted for their peaceful activism, including prominent religious cleric Salman al-Awda and Shi'a activist Israa al-Ghomgham but later, as a result of international scrutiny, he is reportedly no longer seeking the death penalty for Israa al-Ghomgham. She nonetheless continues to face a lengthy prison sentence while her four co-defendants still risk the death penalty for peacefully exercising their rights to freedom of expression, association and peaceful assembly.³⁰ Furthermore, in April 2019, the authorities carried out a mass execution of 37 men, the majority of whom were Shi'a Muslims convicted after sham trials that violated international fair trial standards. At least 15 men, including a juvenile offender, were sentenced to death in spite of allegations that their confessions were extracted under torture.³¹

The reported cross-border hacking of Saudi Arabian activists' mobile devices via surveillance technology sold to governments by companies such as the NSO Group³² was a further sign of the increased targeting of HRDs in the diaspora.³³ In August 2018, the device of an Amnesty International staff member was targeted with Pegasus, a sophisticated hacking tool that allows for an invasive form of surveillance.³⁴ The staff member received a WhatsApp message containing information about an alleged protest outside the Saudi embassy in Washington, D.C., followed by a link to a website that would have installed Pegasus.

This unprecedented level of repression has successfully silenced HRDs based in Saudi Arabia and created a climate of fear among the already small human rights community and the general public inside the country. As one Saudi HRD in exile told Amnesty International:

The issue is bigger than an issue of HRDs. Anyone in society is now facing repression, even those who have supported the government previously are now under attack.

1.2 ASSESSMENT OF ACTION BY THE EU AND EU MEMBER STATES

The EU's relationship with Saudi Arabia has until recently been predominantly framed at regional level through its political dialogue with members of the Cooperation Council for Arab States of the Gulf (the GCC, composed of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the UAE). The 1998 EU-GCC cooperation agreement aims, among other things, at strengthening stability in this strategically important region and facilitating the political and economic relations between the two groups of states.³⁵ The EU and GCC hold an annual ministerial meeting and in 2016, the ministers committed to expanding relations through increased people-to-people contacts and further cooperation, including in the field of human rights.³⁶

²⁵ Columbia University, *The case of Mikhliif Al-Shammari*, November 2014, <https://globalfreedomofexpression.columbia.edu/cases/the-case-of-mikhliif-al-shammari/>.

²⁶ Amnesty International, "Saudi Arabia: Prisoner of conscience latest to be convicted in 'counter-terror purge' of human rights NGO" (News, 19 October 2015), <https://www.amnesty.org/en/latest/news/2015/10/saudi-arabia-prisoner-of-conscience-latest-to-be-convicted-in-counter-terror-purge-of-human-rights-ngo/>.

²⁷ Amnesty International UK, "Ten ways that Saudi Arabia violates human rights", 12 January 2018, <https://www.amnesty.org.uk/saudi-arabia-human-rights-raif-badawi-king-salman>.

²⁸ Amnesty International, "Saudi Arabia: Mass death sentences in 'spy trial' a travesty of justice" (News, 6 December 2016), <https://www.amnesty.org/en/latest/news/2016/12/saudi-arabia-mass-death-sentences-in-spy-trial-a-travesty-of-justice/>.

²⁹ Amnesty International, "Fourteen men at imminent risk of beheading as Saudi Arabia continues bloody execution spree" (News, 24 July 2017), <https://www.amnesty.org/en/latest/news/2017/07/fourteen-men-at-imminent-risk-of-beheading-as-saudi-arabia-continues-bloody-execution-spreed/>.

³⁰ Amnesty International, "Saudi Arabia: Authorities must drop calls to execute peaceful protesters" (News, 1 February 2019), <https://www.amnesty.org/en/latest/news/2019/02/saudi-arabia-authorities-must-drop-calls-to-execute-peaceful-protesters/>.

³¹ Amnesty International, "Saudi Arabia: 37 put to death in shocking execution spree" (News, 23 April 2019), <https://www.amnesty.org/en/latest/news/2019/04/saudi-arabia-37-put-to-death-in-shocking-execution-spreed/>.

³² *Forbes*, "Saudi Dissidents Hit With Stealth iPhone Spyware Before Khashoggi's Murder", 21 November 2018, <https://www.forbes.com/sites/thomasbrewster/2018/11/21/exclusive-saudi-dissidents-hit-with-stealth-iphone-spyware-before-khashoggis-murder/#65857eec2e8b>.

³³ Amnesty International, "Israel: Amnesty International engages in legal action to stop NSO Group's web of surveillance" (News, 13 May 2019), <https://www.amnesty.org/en/latest/news/2019/05/israel-amnesty-legal-action-stop-nso-group-web-of-surveillance/>.

³⁴ Amnesty International, "Amnesty International staff targeted with malicious spyware" (News, 1 August 2018), <https://www.amnesty.org/en/latest/news/2018/08/staff-targeted-with-malicious-spyware/>.

³⁵ European Commission, *EU-GCC Cooperation Agreement*, 1988, http://trade.ec.europa.eu/doclib/docs/2008/september/tradoc_140300.pdf.

³⁶ *25th EU-GCC Joint Council and Ministerial Meeting, 2016, Co-Chairs' Statement*, 18 July 2016, <https://www.consilium.europa.eu/en/press/press-releases/2016/07/18/fac-gcc/>.

Despite the strong economic and trade relations that have long existed between several EU member states and Saudi Arabia, the EU currently lacks a bilateral treaty or agreement formalizing its relations with the Kingdom. Indeed, Saudi Arabia's relations with the EU have remained limited compared to those it has developed with individual EU member states such as France, Germany and the UK.

However, since the beginning of 2018, the Kingdom has pursued closer relations with the EU. In 2018, Saudi Arabia opened a mission in Brussels solely accredited to the EU, and its Ministry of Foreign Affairs in Riyadh also opened a new EU department dedicated to developing EU-Saudi Arabia relations.³⁷ As part of these efforts, Saudi Arabia's Foreign Minister, Adel al Jubeir, held several meetings with EU officials and the European Parliament during his visits to Brussels in January and February 2018.³⁸

While the EU and Saudi Arabia currently engage in political dialogue at different levels, the two parties have recently sought to institutionalize a more structured political dialogue in areas of common interest.³⁹ The EU delegation in Riyadh has previously proposed the institutionalization of a human rights dialogue with Saudi Arabia mirroring those it has established with Bahrain and the UAE.⁴⁰ To date, however, no human rights dialogue exists and the main avenue through which the EU delegation raises its human rights concerns is in its exchanges with Saudi Arabia's governmental Human Rights Commission. In 2017, the EU publicly affirmed having raised cases of minors on death row and HRDs during these dialogues.⁴¹

The EU's trade relationship with Saudi Arabia and the GCC is an important one. The EU is the leading trading partner of Saudi Arabia for goods while the Kingdom is the EU's 15th largest trading partner.⁴² Germany, France, Italy and the UK are among the top 10 exporters to Saudi Arabia⁴³ and, until 2008, the EU and GCC were engaged in negotiating a Free Trade Agreement.

In this trade relationship, European arms exports to Saudi Arabia are particularly significant. According to the EU's Twentieth Annual Report on arms exports, EU member states issued at least 588 licences for military equipment worth over €17.3 billion to Saudi Arabia in 2017.⁴⁴ The main European exporters of conventional arms to Saudi Arabia include the UK,⁴⁵ France,⁴⁶ Spain⁴⁷ and Italy.⁴⁸ Between 2013 and 2018, Saudi Arabia accounted for nearly half of the UK's and a third of Belgium's arms exports.⁴⁹

Against the backdrop of these economic, geostrategic and energy interests, as well as the EU's ongoing efforts to further institutionalize its relations with Saudi Arabia, human rights concerns appear to have taken a back seat. With only a few exceptions, the EU and its member states have been largely unresponsive to the situation of HRDs and the overall crackdown on dissent in the country.

Upholding a policy of silent diplomacy, the EU has generally refrained from publicly responding to the arrest, prosecution and sentencing of HRDs and has failed to effectively articulate its support and recognition for their work. The EU and its member states' aversion to public diplomacy, despite gross human rights violations against HRDs, has prevented them from using this tool to offer protection from arrest or torture and other ill-

³⁷ EEAS, "HR/VP Mogherini met the Saudi Foreign Minister, Adel Al Jubeir", 15 January 2018, https://eeas.europa.eu/delegations/saudi-arabia/38264/high-representativevice-president-federica-mogherini-met-saudi-foreign-minister-adel-al-jubeir_en.

³⁸ *The Parliament Magazine*, "Saudi foreign minister in EU Parliament to defend country's role in Yemen war", 22 February 2018, <https://www.theparliamentmagazine.eu/articles/news/saudi-foreign-minister-eu-parliament-defend-countrys-role-yemen-war>; EEAS, "High Representative/Vice-President Federica Mogherini met with the Saudi Foreign Minister, Adel Al Jubeir".

³⁹ *Buzzfeed News*, "The EU Dropped Plans To Release A Statement Backing Canada In Its Diplomatic Fight With Saudi Arabia", 13 August 2018, <https://www.buzzfeednews.com/article/albertonardelli/saudi-arabia-canada-eu>.

⁴⁰ *EU Annual Report on Human Rights and Democracy in the World 2017, Country Updates – Saudi Arabia*, https://eeas.europa.eu/sites/eeas/files/compiled_country_updates_annual_report_on_human_rights_and_democracy_2017_clean_0.pdf.

⁴¹ *EU Annual Report on Human Rights and Democracy in the World 2017, Country Updates – Saudi Arabia*.

⁴² *Saudi Gazette*, David McAllister, "EU-KSA relations and the regional context", 15 July 2018, <http://saudigazette.com.sa/article/538968/Opinion/OP-ED/EU-KSA-relations-and-the-regional-context>.

⁴³ *POLITICO*, "Europe's Saudi connections", 23 October 2018, <https://www.politico.eu/article/europe-saudi-arabia-connections-arms-sales-angela-merkel-jamal-khashoggi/>.

⁴⁴ EUR-Lex, *Twentieth Annual Report according to Article 8(2) of Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment*, 14 December 2018, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2018:453:FULL&from=EN>.

⁴⁵ Between 2015 and 2018, the UK supplied and serviced up to half of the Royal Saudi Air Force fleet of in-service combat aircraft and provided refuelling systems and air-to-surface missiles worth over US\$2.94 billion in total. See Stockholm International Peace Research Institute (SIPRI), *Importer/Exporter Trend-Indicator Value (TIV) Tables*, <http://armstrade.sipri.org/armstrade/page/values.php>.

⁴⁶ Between 2015 and 2018, France supplied Saudi Arabia with US\$549 million worth of arms including surface-to-air missiles, anti-tank missiles, armoured vehicles and artillery and radar systems. See SIPRI, *Importer/Exporter TIV Tables*.

⁴⁷ Between 2015 and 2017, Spain provided Saudi Arabia with € 2.071 million worth of arms, including transporter aircraft. See Amnesty International, "Cuatro años de la guerra en Yemen: Cinco ONGs instalan El Contador de la Vergüenza" (News, 25 March 2019), <https://www.es.amnesty.org/en-que-estamos/noticias/noticia/articulo/cinco-ong-piden-al-gobierno-y-a-los-partidos-politicos-que-se-comprometan-a-suspender-la-venta-de-a/>. In 2018, Spain also sent 400 precision guided munitions to Saudi Arabia. See *The Guardian*, "Spain makes U-turn on laser-guided bomb sales to Saudi Arabia", 13 September 2018, <https://www.theguardian.com/world/2018/sep/13/spain-saudi-arabia-proceed-bomb-deal-yemen-concerns>.

⁴⁸ Between 2015 and 2018, Italy provided Saudi Arabia with US\$226 million worth of arms, including air search radars. See SIPRI, *Importer/Exporter TIV Tables*.

⁴⁹ *POLITICO*, "Europe's Saudi connections".

treatment, or as a counter-narrative to the smear campaigns HRDs face in Saudi Arabia. Given the risks associated with the work of HRDs in Saudi Arabia, this perceived lack of support can be damaging to the EU's relationship with HRDs.

On the rare occasions since 2014 when the EU has diverged from its policy of silence, its statements have often been weak and represented a lowest common denominator outcome,⁵⁰ reflecting the divisions among EU member states.⁵¹ EU statements on HRDs in Saudi Arabia have been more explicit and somewhat more frequent at the UN HRC.⁵² While positive, this points to an inconsistency in the EU's positioning at the different levels of decision-making and suggests that human rights concerns are considered as separate from the EU's broader political considerations.

Other EU actions to support and protect HRDs, including trial observation, have been curtailed due to a lack of ownership and strategy on behalf of the EU and its member states. Rather than actively seeking innovative ways of overcoming obstacles, the EU and its member states appear to resign themselves to a limited set of actions which often reduce their potential for impact.

However, the EU's reaction to the killing of journalist Jamal Khashoggi in October 2018⁵³ may have marked a slight shift in the EU's policy towards the Kingdom. In her speech at the European Parliament, the HR/VP stressed the EU's commitment to supporting human rights activists and civil society, "regardless of geopolitical interests", while also calling for EU unity and a collective approach towards Saudi Arabia.⁵⁴ Since then, the EU and member states have taken some important steps with regard to the WHRDs detained since May 2018, including by seeking to monitor their trials and by publicly expressing concern at the UN HRC.

The temporary release of eight women, including Aziza al-Yousef and Iman al-Nafjan, between March and April 2019 illustrates that united EU action and international scrutiny of the situation of the WHRDs has had some impact. However, the wave of arrests and executions in April 2019⁵⁵ underlines that for scrutiny to be effective, it will have to be sustained and consistent, and address the crackdown on dissent on other fronts as well.

1.3 EU EFFORTS TO IMPLEMENT ITS HRD GUIDELINES

CLOSED-DOOR DIPLOMACY

EU efforts to raise concerns about HRDs behind closed doors are primarily ad hoc and there appears to be little evidence to support the claim that closed-door dialogue, on its own, constitutes a more constructive or effective approach. Indeed, no examples were found where this approach on its own positively influenced the situation of an individual HRD. On the contrary, it was only when private diplomacy was consistent and high-level, and used in conjunction with other tools, including public statements by both the EU and its member states, that rare positive developments were noted. This was, for example, true for Raif Badawi. His case was raised privately and publicly on numerous occasions including by the spokesperson of the HR/VP,⁵⁶ the Dutch Human Rights Ambassador and Minister of Foreign Affairs⁵⁷ and France's Prime Minister Manuel Valls and

⁵⁰ This leads to weak outcomes in terms of human rights, given the need for all member states to agree on a position.

⁵¹ See, for example: EEAS, "Statement by the Spokesperson on the sentencing of Human Rights defenders in Saudi Arabia Mohamed Al Otaibi and Abdullah Al Atawi", 27 January 2018, https://eeas.europa.eu/headquarters/headquarters-homepage/38830/statement-spokesperson-sentencing-human-rights-defenders-saudi-arabia_en.

⁵² Between January 2014 and April 2019, Amnesty International recorded a total of five official EU statements related to HRDs and/or civil society.

⁵³ European Council, "Report and concluding remarks by President Donald Tusk to the European Parliament on October European Council meetings", 24 October 2018, <https://www.consilium.europa.eu/en/press/press-releases/2018/10/24/report-by-president-donald-tusk-to-the-european-parliament-on-october-european-council-meetings/>; Council of the EU, "Declaration by the High Representative on behalf of the European Union on the recent developments on the case of Saudi journalist Jamal Khashoggi", 20 October 2018, <https://www.consilium.europa.eu/en/press/press-releases/2018/10/20/declaration-by-the-high-representative-on-behalf-of-the-european-union-on-the-recent-developments-on-the-case-of-saudi-journalist-jamal-khashoggi/>.

⁵⁴ EEAS, *Speech by HR/VP Federica Mogherini on the killing of the Saudi journalist Jamal Khashoggi*, 23 October 2018, https://eeas.europa.eu/delegations/saudi-arabia/52623/speech-hrvp-federica-mogherini-killing-saudi-journalist-jamal-khashoggi_en.

⁵⁵ Amnesty International, "Saudi Arabia: New wave of arrests and travel bans latest assault on freedom of expression" and "Saudi Arabia: 37 put to death in shocking execution spree".

⁵⁶ EEAS, "Statement by the Spokesperson on the verdict against activist Raif Badawi", 8 June 2015, https://eeas.europa.eu/headquarters/headquarters-homepage/3336/statement-spokesperson-verdict-against-activist-raif-badawi_en.

⁵⁷ Ministry of Foreign Affairs of the Netherlands, *Kamerbrief over de situatie in Saoedi-Arabië, Tweede Kamer [the Dutch parliament] 2015-2016*, 14 March 2016, 32 735, nr. 152, p. 25, <https://www.rijksoverheid.nl/documenten/kamerstukken/2016/03/14/kamerbrief-over-de-situatie-in-saoedi-arabië>.

former President François Hollande.⁵⁸ In addition, several EU member state governments were reported to have summoned Saudi Arabia's ambassadors in their capitals to intervene on behalf of the blogger.⁵⁹ While this outcry has not led to Raif Badawi's release, the fact that he is no longer subjected to the lashings prescribed in his sentence is in itself a tangible result.

In spite of this, all diplomats interviewed considered that silent or closed-door diplomacy is the most effective way of raising human rights concerns with the Saudi Arabian authorities.

In the absence of a formal human rights dialogue, the main avenue through which the EU raises its concerns about HRDs is the EU delegation's regular exchanges with Saudi Arabia's Human Rights Commission.⁶⁰ The power of this body is, however, restricted and it is difficult to assess the extent to which such meetings impact on individual cases or the overall situation of HRDs.

Beyond this, EU officials have affirmed that the EU delegation and EU missions in Riyadh hold formal and informal outreach to the Saudi Arabian authorities to discuss human rights. In 2015, for example, the case of human rights lawyer Waleed Abu al-Khair was raised by the EU delegation in coordination with EU member states.⁶¹ In 2016, during his visit to Saudi Arabia,⁶² the Dutch Human Rights Ambassador publicly confirmed having raised concerns about Raif Badawi, Ashraf Fayadh and members of the disbanded human rights organization ACPRA.⁶³ Beyond individual HRD cases, the EU has also affirmed that it consistently raises the broad scope and use of counter-terrorism legislation with the Saudi Arabian authorities.⁶⁴

In response to particularly worrying developments, the EU and its member states occasionally issue demarches. Despite being a formal and diplomatically significant mechanism, demarches remain primarily reactive in nature. Moreover, the delivery of oral demarches requires the consent of the Saudi Arabian authorities, and the Ministry of Foreign Affairs can often block and delay this approach. At times, this has meant that demarches come only months after the arrest of HRDs, as was the case of the EU demarche responding to the crackdown on WHRDs in May 2018.⁶⁵

Diplomats interviewed claimed that European officials raise human rights with their Saudi interlocutors at the highest political levels, alongside other discussions. This was notably the case of the HR/VP during the visit of Saudi Arabia's Minister of Foreign Affairs, Adel al-Jubeir, to Brussels in May 2016.⁶⁶ Similarly, former Dutch Foreign Minister Sigrid Kaag is said to have raised the worrying treatment of HRDs during her visit to Saudi Arabia in February 2018,⁶⁷ while Dutch Minister Bert Koenders affirmed having called for the release of Essam Koshak and other HRDs during his visit in February 2017.⁶⁸ The current Dutch Foreign Minister, Stef Blok, is also said to have raised concerns about the arrest of WHRDs on the margins of a G20 meeting in May 2018.⁶⁹

Despite the public statements that sometimes accompany these meetings, the way in which concerns about HRDs are raised in these exchanges is often unclear.⁷⁰ The fact that HRDs have previously reported not being consulted ahead of such meetings adds to the lack of transparency and raises questions about how tailored EU and member state interventions are.

⁵⁸ *Le Nouvel Obs*, "Arabie saoudite: qu'est devenu Ali Mohammed al-Nimr, condamné à la décapitation?", 13 October 2015, <https://www.nouvelobs.com/monde/20151013.OBS7529/arabie-saoudite-qu-est-devenu-ali-mohammed-al-nimr-condamne-a-la-decapitation.html>.

⁵⁹ See, for example: Ministry of Foreign Affairs of Finland, "Finland summoned the Interim Chargé d'Affaires of Saudi Arabia to the Ministry for Foreign Affairs", 20 January 2015, https://um.fi/press-releases/-/asset_publisher/ued5t2wDmr1C/content/suomi-kutsui-saudi-arabian-va-asiainhoitajan-kuultavaksi-ulkoministerioon.

⁶⁰ *EU Annual Report on Human Rights and Democracy in the World 2017, Country Updates – Saudi Arabia*.

⁶¹ Parliamentary Questions, Question reference: E-002213/2015, "Answer given by Vice-President Mogherini on behalf of the Commission", 10 May 2015, http://www.europarl.europa.eu/doceo/document/E-8-2015-002213-ASW_EN.html?redirect.

⁶² Tweede Kamer, 2015-2016, 32 735, nr. 152, p.25, <https://zoek.officielebekendmakingen.nl/kst-32735-152.pdf>.

⁶³ Amnesty International, *Saudi Arabia's ACPRA: How the Kingdom silences its human rights activists*.

⁶⁴ European Parliament, "Question for Written Answer, E-002172-15, Misuse of anti-terrorism laws in Saudi Arabia, answer by HR/VP Mogherini", 15 June 2015, http://www.europarl.europa.eu/doceo/document/E-8-2015-002172_EN.html.

⁶⁵ *France24*, "After Canada-Saudi row, West confronts risk of speaking up", 14 September 2018, <https://www.france24.com/en/20180914-after-canada-saudi-row-west-confronts-risk-speaking>; and *Buzzfeed*, "The EU Dropped Plans To Release A Statement Backing Canada In Its Diplomatic Fight With Saudi Arabia".

⁶⁶ EEAS, "Remarks by the HR/VP Federica Mogherini at the joint press conference with Mr Adel Al-Jubeir, Minister of Foreign Affairs of the Kingdom of Saudi Arabia", 31 May 2018, https://eeas.europa.eu/delegations/norway/5071/remarks-by-the-hrvp-federica-mogherini-at-the-joint-press-conference-with-mr-adel-al-jubeir-minister-of-foreign-affairs-of-the-kingdom-of-saudi-arabia_en.

⁶⁷ *Nieuws.nl*, "Kaag bezoekt Midden-Oosten", 18 February 2018, <https://nieuws.nl/algemeen/20180218/kaag-bezoekt-midden-oosten/>.

⁶⁸ Tweede Kamer, "Antwoord op vragen van het lid Sjoerdsma over de detentie en repressie van mensenrechtenverdedigers in Saoedi-Arabië", 16 June 2017, <https://www.tweedekamer.nl/kamerstukken/kamervragen/detail?id=2017Z07816&did=2017D17362>.

⁶⁹ Tweede Kamer, "Antwoord op vragen van het lid Karabulut over de arrestatie van tien activisten voor vrouwenrechten in Saoedi-Arabië", 13 June 2018, <https://www.tweedekamer.nl/kamerstukken/kamervragen/detail?id=2018Z09513&did=2018D31971>.

⁷⁰ EEAS, "Remarks by the HR/VP Federica Mogherini at the joint press conference with Mr Adel Al-Jubeir, Minister of Foreign Affairs of the Kingdom of Saudi Arabia".

The use of private diplomacy as the sole tool in raising individual cases with Saudi Arabia not only risks reducing the impact of EU actions to protect HRDs but also creates an impression among HRDs that the EU is complacent in response to their repression. As one Saudi Arabian HRD told Amnesty International:

Continued pressure that is direct, clear and public is very important. Despite little change, it is dangerous not to continue to pressure the authorities on the repression of HRDs, and the Saudi government may be more empowered in its repression.

PUBLIC ACTION

The EU's commitment to silent diplomacy has meant that public statements regarding the situation of HRDs and/or civil society in Saudi Arabia have been few and far between, particularly relative to the crackdown on HRDs in the country. Between January 2014 and April 2019, the EU issued eight such statements: five at the level of the UN HRC and three by the spokesperson of the HR/VP. Of the statements issued by the spokesperson, two related to Raif Badawi (2015)⁷¹ and one to the sentencing of Mohammed al-Otaibi and Abdullah al-Atawi (2018).⁷²

Compared to the other countries analysed in this report, the language adopted in EU statements on Saudi Arabia has been weak. Of the eight statements issued between January 2014 and April 2019:

- Four explicitly named an individual HRD facing prosecution and/or detention;
- Three addressed the use of torture and other cruel, inhuman or degrading treatment against HRDs, including two calling on the authorities to suspend further corporal punishment of Raif Badawi;
- One expressed concern about the use of counter-terrorism legislation against HRDs; and
- One underlined the importance of respecting the right to a fair trial.

EU statements have refrained from expressing concern about the charges, the proceedings or the harsh sentences issued against HRDs and, with only two exceptions, have avoided making any explicit calls on the authorities. Indeed, no official EU statement issued since 2014 has called on the authorities to release or drop the charges against an HRD facing prosecution or detention for their non-violent activism.

Despite being one of the EU's strongest public responses to an individual case in Saudi Arabia, the spokesperson of the HR/VP's statements relating to the public flogging of Raif Badawi focused on the nature of the punishment rather than on the fact that the sentence arose from his peaceful exercise of the right to freedom of expression. Strikingly, not one statement issued by the EU and its EU member states explicitly called for Raif Badawi's release. Similarly, although the EU statement on the sentencing of Mohammed al-Otaibi and Abdullah al-Atawi did recognize these individuals as HRDs, it remained vague and underlined the EU's unwillingness to address the lack of independence of Saudi Arabia's judiciary. In fact, by stating that the EU "fully respected the prerogatives" of Saudi Arabia's judiciary, the statement could be seen to lend credibility to the flawed proceedings to which these HRDs were subjected. It is also worth noting that the statement on Mohammed al-Otaibi and Abdullah al-Atawi only came after their sentence was issued, thus limiting the impact it could have had on their situation.

Beyond the three statements issued by the spokesperson of the HR/VP, no statements in support of HRDs were issued by the HR/VP herself or by the EU delegation in Riyadh between January 2014 and April 2019. Local statements are likely to be the most appropriate tool at the EU's disposal to respond to smear campaigns against HRDs and could have been issued to celebrate the work of HRDs and offer positive alternative narratives. Of the eight EU statements issued since 2014, two made at the UN HRC did underline the importance of the work of HRDs,⁷³ particularly to the Kingdom's reform process, including one statement that "paid tribute" to Raif Badawi.⁷⁴ It is striking, however, that none of the EU's statements related to HRDs or civil

⁷¹ EEAS, "Statement by the spokesperson on the verdict against activist Raif Badawi" and "Spokesperson statement on the carrying out of public lashing of Saudi activist Mr. Raef Badawi", 9 January 2015, https://eeas.europa.eu/headquarters/headquarters-homepage/2510/spokesperson-statement-carrying-out-public-lashing-saudi-activist-mr-raef-badawi_en.

⁷² EEAS, "Statement by the Spokesperson on the sentencing of Human Rights defenders in Saudi Arabia", 27 January 2018, https://eeas.europa.eu/headquarters/headquarters-homepage/38830/statement-spokesperson-sentencing-human-rights-defenders-saudi-arabia_my.

⁷³ EEAS, "HRC 39 – EU Statement: Item 2", 11 September 2018, https://eeas.europa.eu/delegations/saudi-arabia/50291/hrc-39-eu-statement-item-2-presentation-other-high-commissioner-sg-country-report-oral-update_en and "HRC 38 – EU Statement: Item 2", 19 June 2018, https://eeas.europa.eu/delegations/un-geneva/46823/hrc-38-eu-statement-item-2-presentation-other-high-commissioner-sg-country-report-oral-update_en.

⁷⁴ EEAS, "HRC 31- High-level Segment, EU Statement", 29 February 2016, http://eeas.europa.eu/archives/delegations/un_geneva/documents/eu_statments/human_right/20160229_hls.pdf.

society has been translated into Arabic. This, together with the lack of local statements, limits the reach and impact of such statements.

At the level of the EU delegation in Geneva, EU statements expressing concern about the situation of HRDs have been more explicit and somewhat more frequent than those issued in Brussels. Between January 2014 and April 2019, the EU issued two item 2 statements at the UN HRC in June⁷⁵ and September⁷⁶ 2018 regarding the arrests of WHRDs, and identified the situation of human rights activists in Saudi Arabia as a priority for its work at UN fora in the 2017 Foreign Affairs Council Conclusions.⁷⁷ In its September 2018 statement, the EU expressed concern about the arrest of HRDs and reiterated “the importance of the role of HRDs and civil society groups” in the process of reform the Kingdom is pursuing. The EU also issued two item 4 statements addressing the situation of HRDs in Saudi Arabia, including one in March 2016⁷⁸ that expressed concern about the severe punishments against HRDs in Saudi Arabia, and another in March 2019 that expressed concern about the detention, trials and allegations of torture of HRDs.⁷⁹

In its strongest show of support to Saudi Arabian HRDs to date, EU member states unanimously endorsed an item 2 statement led by Iceland in March 2019.⁸⁰

The statement named several individual HRDs, voicing concern that they were detained “for expressing their fundamental freedoms” as well as about the use of counter-terrorism legislation against them. Although not an EU statement as such, this is the only statement supported by all EU member states that explicitly calls for the release of HRDs in Saudi Arabia and represents an important show of unity on the issue.

EU member states also addressed the situation of HRDs in Saudi Arabia’s 2018 UPR.⁸¹ While positive, the stronger and more regular statements at the UN HRC point to an inconsistency in the EU and its member states’ positioning at the different levels of decision-making. Indeed, in the absence of similar statements at local and headquarters level, this might create a false dichotomy suggesting that human rights concerns are primarily addressed in Geneva while the EU’s broader political considerations are addressed separately in Brussels and Riyadh.

Statements by EU member states in support of HRDs have been equally rare, though the level of public efforts has varied between the different states. In 2014, for example, the German Ministry of Foreign Affairs issued a statement on behalf of the human rights lawyer Waleed Abu al-Khair,⁸² while in 2015 the Dutch,⁸³ Finnish⁸⁴ and British foreign affairs ministries⁸⁵ issued statements regarding the case of Raif Badawi. On one occasion, the Dutch Human Rights Ambassador also translated and shared the report of his visit to Saudi Arabia in 2014 with the Saudi Arabian authorities and Saudi Arabian HRDs.⁸⁶ In June 2017, the Dutch Ambassador to Saudi Arabia, responding to a tweet from Amnesty International Netherlands, stated that Loujain al-Hathloul’s arrest was “sad news” and that he hoped she would soon be free.⁸⁷

Yet, between 2017 and 2018, such public statements became increasingly rare. Diplomats say they often do not respond publicly, or name individual cases or publicize support to HRDs for fear of reprisals against the HRDs should they appear to be colluding with international actors. While consultation and consent are crucial

⁷⁵ EEAS, “HRC 38 – EU Item 2 statement on Saudi WHRDs/ women activists at HRC”, 19 June 2018, https://eeas.europa.eu/delegations/un-geneva/46823/hrc-38-eu-statement-item-2-presentation-other-high-commissioner-sg-country-report-oral-update_en.

⁷⁶ EEAS, “HRC 39 - EU Statement: Item 2 - Presentation of other High Commissioner / SG country report / oral update”, 11 September 2018, https://eeas.europa.eu/delegations/saudi-arabia/50291/hrc-39-eu-statement-item-2-presentation-other-high-commissioner-sg-country-report-oral-update_en.

⁷⁷ Council of the EU, *Council Conclusions on EU Priorities at UN Human Rights Fora in 2017*, 27 February 2017, <http://data.consilium.europa.eu/doc/document/ST-5689-2017-INIT/en/pdf>.

⁷⁸ EEAS, “15 March 2016, HRC 31 – EU Statement: Item 4”, http://eeas.europa.eu/archives/delegations/un-geneva/documents/eu_statments/human_right/20160315_hrc31_item4.pdf.

⁷⁹ EEAS, “HRC 40 – EU statement – Human Rights situation that require the Council’s attention”, 12 March 2019, https://eeas.europa.eu/delegations/un-geneva/59642/hrc-40-eu-statement-human-rights-situation-require-councils-attention_en.

⁸⁰ Permanent Representation of Iceland, “Statement under agenda item 2: Interactive dialogue with the High Commissioner 40th session of the UN Human Rights Council”, 7 March 2019, <https://www.stjornarradid.is/lisalib/getfile.aspx?itemid=a2a334ec-40cc-11e9-9436-005056bc530c>.

⁸¹ Including Belgium, France, Germany, Greece, Ireland, Italy, Spain and Sweden. See outcome of the review at UN HRC, *Universal Periodic Review – Saudi Arabia*, <https://www.ohchr.org/EN/HRBodies/UPR/Pages/SAindex.aspx>.

⁸² German Federal Foreign Office, “Human Rights Commissioner comments on conviction of Saudi Arabian human rights lawyer”, 15 July 2014, <https://www.auswaertiges-amt.de/en/newsroom/news/140715-mrhhb/263758>.

⁸³ *Parlement.com*, “Koenders keurt lijfstraf Saoedische blogger af”, 9 January 2015, https://www.parlement.com/id/vjgfmqfagnx6/nieuws/koenders_keurt_ljifstraf_saoedische.

⁸⁴ Ministry of Foreign Affairs of Finland, “Finland summoned the Interim Chargé d’Affaires of Saudi Arabia to the Ministry for Foreign Affairs”.

⁸⁵ *The Independent*, “Raif Badawi: Flogging case raised with Saudi ambassador”, 22 January 2015, <https://www.independent.co.uk/news/world/middle-east/raif-badawi-flogging-case-raised-with-saudi-ambassador-9996626.html>.

⁸⁶ Amnesty International Netherlands, “Kleine stappen vooruit, nog vaak stilzwijgen op cruciale momenten”, 14 November 2014, https://www.amnesty.nl/content/uploads/2015/11/saudi-arabie_-_kleine_stappen_vooruit_nog_vaak_stilzwijgen_0.pdf?x60148.

⁸⁷ @JoostReintjers, 6 June 2017, Twitter, <https://twitter.com/JoostReintjers/status/872094448519438336>.

before taking any action on behalf of an HRD, some HRDs have confirmed that public action can be helpful. Indeed, public action can add visibility to their cause and offer moral support from the international community, which in turn provides a degree of protection. While not always leading to their release, these efforts may result in important improvements, including in their prison conditions. It remains unclear what criteria the EU uses to issue a public response on HRDs, but this should primarily be determined based on consent and an assessment of its likely effectiveness from the perspective of the HRD.

One diplomat interviewed explained the lack of EU action by pointing to the disunity among member states and the unwillingness to risk upsetting relations with Saudi Arabia. For example, not one EU member state disseminated or replicated the 2018 EU statement on the sentencing of Mohammed al-Otaibi and Abdullah al-Atawi. Few member states are willing to take ownership for critical EU statements, while even fewer are willing to issue individual statements at national level. Indeed, the lack of local statements by the EU delegation in Riyadh and the rare statements issued from headquarters are likely related to discord among member states.

This testifies to a lack of political will on the part of both EU member states, which could issue individual statements or joint statements with a group of member states, and the EU itself, which could issue statements more strategically. Indeed, while the EU delegation in Riyadh may not be able to issue local statements, this does not prevent the spokesperson from issuing strong statements while ensuring that no individual member state has to take full responsibility. Unlike in other countries analysed in this report, the EU and member states rarely use their social media accounts to express support for HRDs in Saudi Arabia or to overcome the obstacles of disunity.

The most effective EU responses on Saudi Arabia have been those that were unified and complemented by EU member state statements. This was true in the case of the EU response to the killing of Jamal Khashoggi, which despite its strong language, did not lead to backlash against the EU or its member states.

TRIAL MONITORING

In 2013, the EU delegation was granted permission by the Saudi authorities to attend public hearings for the first time. Since then, it has sent observers to trials of certain HRDs, including trials at the SCC. This is coordinated with other European missions to ensure responsibility sharing between the EU delegation and the embassies.⁸⁸

Between October 2015 and October 2018, the EU attended the trials of at least six HRDs,⁸⁹ including several hearings of Essam Koshak, Abdulaziz al-Shubaily, Issa al-Nukheifi, Issa al-Hamid, Mohammed al-Otaibi and Abdullah al-Attawi. Prior to this, the EU observed the trials of Waleed Abu al-Khair, a human rights lawyer, and Fowzan al-Harbi of the human rights organization ACPRA. However, since the second half of 2018, the EU has publicly reported “challenges” in accessing trials,⁹⁰ with European diplomats denied entry to the trials of the WHRDs in March 2019.⁹¹

HRDs interviewed considered the presence of EU diplomats to be important and to provide them with a sense of moral support from the international community.

The EU does not appear to follow up on its trial monitoring efforts. Indeed, trial attendance is not followed by public denunciations of flawed proceedings, baseless charges or unfair verdicts against HRDs, despite ample documentation in this regard.⁹² Amnesty International found little evidence to show that the EU follows up on its attendance at hearings by addressing due process violations in its exchanges with the authorities.

While trial monitoring is important, the EU’s constrained approach in Saudi Arabia limits the impact of these actions and risks lending legitimacy to the flawed proceedings faced by HRDs in Saudi Arabian courts. Indeed,

⁸⁸ Council of the EU, *EU Annual Report on Human Rights and Democracy in the World in 2015 – Country and Regional Issues*, 20 September 2016, https://cdn1-eeas.fpfis.tech.ec.europa.eu/cdn/farfuture/PU5MC35N7CFIzeOj_xF-HKwPNW7CLGqaOdN-XBp_9D8/mtime:1476988093/sites/eeas/files/human_rights_and_democracy_in_the_world_in_2015_-_country_and_regional_issues.pdf.

⁸⁹ Amnesty International Netherlands, “Sprenken is Zilver, Zwijgen blijft Fout”, October 2018, https://www.amnesty.nl/content/uploads/2018/10/Nederlandse-inzet-voor-Saudische-MRVs-181018_DEF.pdf?x93624.

⁹⁰ EEAS, *2018 Human Rights and Democracy in the World (country reports)*, 13 May 2019, https://eeas.europa.eu/topics/human-rights-democracy/8437/eu-annual-reports-human-rights-and-democratisation_en.

⁹¹ Middle East Eye, “Saudi court resumes trial of ‘tortured’ women’s rights activists”, 27 March 2019, <https://www.middleeasteye.net/news/saudi-court-resumes-trial-tortured-womens-rights-activists>.

⁹² These have included the failure to guarantee the right of the defendant to be informed of reasons for arrest and detention, the right to legal counsel during proceedings and the right to cross-examine witnesses testifying against them.

at international fora, the Saudi Arabian authorities have used the presence of diplomatic missions at court hearings to argue that HRDs had a fair trial.⁹³

More worrying still, civil society experts interviewed cited instances where European officials referred to national rather than international standards as the benchmark against which to assess the judicial proceedings faced by HRDs in Saudi Arabia. This reasoning was reflected in the Dutch Minister of Foreign Affairs' response to a 2016 parliamentary question regarding the mass execution of 43 individuals, in which he argued that the defendants were sentenced in accordance with Saudi Arabia's national judicial standards.⁹⁴

European diplomats have previously cited the lack of public evidence and the use of closed proceedings as a reason for not expressing an opinion on the fairness of trials. This should not prevent the EU from assessing the proceedings they can attend, including the charges HRDs face and sentences issued against HRDs that stem solely from their human rights work. This is particularly important given that HRDs in Saudi Arabia have been sentenced for vague offences that criminalize the peaceful exercise of human rights, such as "destabilizing security and spreading chaos", "inciting public opinion against the authorities", "breaking allegiance to the ruler", and "setting up an unlicensed organization". Moreover, the absence of an independent judiciary and the fact that Saudi Arabian courts routinely fail to respect the right to due process, should provide sufficient grounds for the EU to voice its concerns. In addition, HRDs are frequently denied the right to access a lawyer. They are not informed of the reasons of their arrest or detention, and their allegations of torture and other ill-treatment are rarely if ever investigated.

In this context, it is crucial that the EU and its member states raise concerns about charges brought to criminalize the work of HRDs and about violations of the right to a fair trial. Given that HRDs do not receive fair trials, EU and member state positioning is crucial both as a follow up to their trial monitoring efforts, and also before the conclusion of the proceedings.

ENGAGEMENT WITH HRDS

EU diplomats and HRDs alike reported that, since the renewed crackdown on civil society in 2018, it has been difficult to maintain contact between international representatives and HRDs, their lawyers or family members. Indeed, any such contact is seen as potentially risky for the individuals concerned.

While the current climate for human rights work in Saudi Arabia means that communications have become particularly difficult, there is little evidence that the EU delegation's network of contacts with HRDs was extensive prior to this crackdown. Indeed, EU diplomats interviewed reported that they struggled with collecting accurate information on the situation in the country, including the names of arrested HRDs and the charges they faced.

In the absence of a structured dialogue with Saudi Arabia, Amnesty International found no evidence that the EU and its member state diplomats consulted HRDs ahead of their meetings with Saudi Arabian officials. Yet this would be crucial to ensuring a tailored approach and enhancing the effectiveness of EU actions. Civil society experts interviewed mentioned that the failure of the EU and its member states to support HRDs after their arrest seriously undermines their trust in the EU. Indeed, such incidents may be taken to indicate that communicating with the EU is not worth the risk due to the perception that HRDs would not receive support when their activities are criminalized.

RELOCATION AND VISA SUPPORT

Certain Saudi Arabian HRDs have received support from EU member state missions and governments in obtaining visas and relocating to safe locations outside of Saudi Arabia. While relocation is an important risk prevention mechanism, the case of HRD Mohammed al-Otaibi, who was deported from Qatar to Saudi Arabia after he had been granted a humanitarian visa by Norway (see above), demonstrates that this may not suffice in the Saudi Arabian context. Efforts to assist HRDs in obtaining visas may also need to be complemented by additional protective measures, such as accompanying individuals to the airport.

After Mohammed al-Otaibi was granted a humanitarian visa from Norway in 2017,⁹⁵ he was detained at the airport in Qatar and forcibly returned to Saudi Arabia, where he was sentenced to 14 years in prison for

⁹³ See, for example: "Response from the Saudi authorities to the appeal of UN Special Rapporteurs regarding the case of Mohammed al-Otaibi and Abdullah al-Attawi", 13 February 2017, p. 3, <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gld=33388>.

⁹⁴ Tweede Kamer, "Antwoord op vragen van de leden Van Bommel en Sjoerdsma over executies in Saudi-Arabië", 25 January 2016, <https://www.tweedekamer.nl/kamerstukken/kamervragen/detail?id=2016Z00016&did=2016D01075>.

⁹⁵ *AFP/The Local*, "Norway 'regrets' Saudi activist deportation from Qatar", 30 May 2017, <https://www.thelocal.no/20170530/qatar-prevents-saudi-activist-un-refugee-from-reaching-norway-reports>.

“forming an unlicensed organization”.⁹⁶ The EU and its member states failed to complement Norway’s visa support with further protective measures and refrained from providing him with any form of political support, despite repeated warnings by Amnesty International regarding his looming deportation. To Amnesty International’s knowledge, no embassy of an EU member state met Mohammed al-Otaibi in Qatar before his deportation, nor did the EU or any member state denounce his subsequent deportation and detention in Saudi Arabia.

1.4 CONCLUSIONS AND RECOMMENDATIONS

The EU and member states lack a clear and coherent strategy to support and protect HRDs in Saudi Arabia. While an institutionalized political dialogue with Saudi Arabia remains absent, the various other tools at the EU’s disposal are either not being used or not being employed effectively to support HRDs. Indeed, the EU’s policy is characterized by restraint and a lack of ownership by both the EU and its member states.

As the crackdown on HRDs deepens in Saudi Arabia, the EU will be challenged to overcome these internal impediments and develop a tailored approach that seeks to secure space for Saudi Arabian HRDs to conduct their work.

Moreover, the experience in Saudi Arabia also opens areas for further consideration:

- How can the population’s active internet and social media presence be used to promote shared human rights values and protection for those who defend them?
- How to effectively offer alternative narratives to public smear campaigns and the demonizing rhetoric surrounding HRDs in a restricted media landscape?
- How to effectively support and protect HRDs in exile and address cross-border surveillance and harassment of HRDs abroad, including in Europe?
- How should the EU respond to third country efforts to divide and punish EU member states for criticizing human rights violations and repression of HRDs?

⁹⁶ Front Line Defenders, “Mohammed al-Otaibi forcibly deported to Saudi Arabia”, 27 May 2017, <https://www.frontlinedefenders.org/en/case/mohammed-al-otaibi-forcibly-deported-saudi-arabia>.



TO IMPROVE IMPLEMENTATION OF THE EU GUIDELINES ON HRDS IN SAUDI ARABIA, THE EU AND ITS MEMBER STATES SHOULD:

- **Use the broad range of diplomatic tools at the EU's disposal, including public statements, and make regular assessments of their impact.** Silent diplomacy should not be the sole recourse. Experience shows that a combination of different tools applied at different levels of decision-making are often most effective at achieving impact. The EU and its member states should follow through on their actions, ensuring ownership and adequate follow up.
- **Ensure more systematic engagement with Saudi Arabian authorities on human rights.** Reported efforts to build on EU-Saudi political dialogue should include the establishment of a dedicated human rights dialogue. For such a dialogue to be effective, it should define clear objectives, specific benchmarks and human rights indicators to measure progress, as outlined in the EU Guidelines on human rights dialogues. The objectives of the dialogue should be guided by priorities identified in consultation with Saudi Arabian HRDs.
- **Seek to promote an enabling environment in dialogue with the Saudi Arabian authorities.** This includes by calling on the authorities to amend the Law on Associations to bring it into full conformity with international law and standards, to allow for the formation and operation of independent human rights organizations and to restrict the wide discretionary powers extended to the Ministry of Social Affairs to disband organizations deemed to be "harming national unity". The Anti-Cyber Crime Law should be significantly amended to ensure that criticism of government policy and practice, as well as other forms of protected speech, are not criminalized. The EU and its member states should also raise the misuse of the counter-terrorism law at the highest levels, including in meetings relating to security issues (for example, the Manama Dialogue), and call for the repeal or substantial reform of the law to ensure it does not criminalize freedom of expression, association or peaceful assembly.
- **Where possible, maintain close contact with HRDs and relevant stakeholders and develop safe methods of communication and consultation.** This is important for collecting up-to-date information and ensuring the provision of tailored support that does not increase risks for HRDs. In particular, HRDs and relevant stakeholders should be consulted ahead of EU meetings with Saudi Arabian officials and should be debriefed on the outcomes of these meetings to increase transparency. Safe methods of communication should be established by clearly indicating focal points that HRDs can contact, including in case of emergency.

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