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ASSESSMENT OF HUMAN RIGHTS RISKS IN SAUDI ARABIA FOR BUSINESSES AND INVESTORS

PURPOSE AND METHODOLOGY

This briefing is designed to provide businesses and investors involved in or considering involvement in Saudi Arabia with context on human rights issues that are most likely to intersect with their activities and offers recommendations on what this might mean for their business decisions.

Amnesty International collaborated with FairSquare, a London-based human rights research organisation, in conducting research towards developing this briefing. Findings of the research conducted by FairSquare in August 2020 were verified and complemented with Amnesty International's own documentation and ongoing monitoring of the human rights situation in Saudi Arabia. Amnesty International further conducted analysis of the responsibility of companies to respect human rights and developed its recommendations with regards to each of the six issues identified.

EXECUTIVE SUMMARY

The Saudi government's rhetoric about reforms, which increased after the appointment in June 2017 of Mohammed bin Salman bin Abdulaziz Al Saud as Crown Prince, centred around the so-called Vision 2030, a national plan to diversify the economy and end the country's dependence on income from oil. Since the announcement of "Vision 2030", there has been a relaxation of social restrictions and the loosening of the repressive guardianship system imposed on women. However, these much-touted reforms stand in stark contrast to the grim reality of the human rights situation. Alongside some positive reforms, particularly with regards to women's rights, the authorities have unleashed an intense crackdown on those promoting change, including economists, teachers, clerics, writers and activists – peaceful advocates of the very reforms the Crown Prince was promising or enacting. Strikingly, the authorities have targeted virtually all human rights defenders and other government critics through arbitrary arrests, torture and prosecutions before specialized or other courts.¹

Saudi Arabia has been seeking support from international investors and businesses to help deliver its flagship Vision 2030, with its expansive development plans capped by a set of "giga-projects" designed to spearhead the development of whole new economic sectors. The B20 Summit, which will be held between 26-27 October 2020 will be an important opportunity for the government to showcase their economic strategy for Vision 2030. All business enterprises – including those attending the B20 Summit - have a responsibility to respect human rights wherever they operate in the world. This responsibility is laid out in the UN Guiding Principles on Business and Human Rights (UN Guiding Principles).

This responsibility requires companies to avoid causing or contributing to human rights abuses through their own business activities and to address impacts with which they are involved, including by remediating any actual impacts. It also requires them to seek to prevent or mitigate adverse human rights impacts directly linked to their operations or services by their business relationships, even if they have not contributed to those impacts.

In this briefing, Amnesty International highlights six of the most salient human rights risks for companies to consider, given the possibility of one or more of them intersecting with their business operations, activities or investments. These risks are: 1. the abuse of migrant worker rights; 2. discrimination against women; 3. risks linked to surveillance, data gathering and "smart cities" 4. risk linked to land, housing and development projects; 5. risks to business partners; 6. war crimes in the conflict in Yemen.²

¹ Amnesty International, *Muzzling critical voices: Politicized trials before Saudi Arabia's Specialized Criminal Court* (Index: MDE 23/1633/2020).

² While six issues of particular significance were selected for this briefing, businesses' operations can potentially intersect with every human right and we are not suggesting that human rights due diligence in Saudi Arabia should be limited to these areas. UN Guiding Principles Reporting Framework has compiled an illustrative checklist of internationally recognized human rights and examples of how businesses might impact them: <https://www.ungpreporting.org/resources/how-businesses-impact-human-rights/>

To meet its corporate responsibility to respect human rights, a company must take proactive and ongoing steps to identify and respond to its potential or actual human rights impacts. This includes putting in place a due diligence process to identify, prevent, mitigate and account for how they address their human rights impacts. However, conducting such human rights due diligence in Saudi Arabia presents an acute challenge, given restrictions on freedom of expression and association. Virtually all Saudi Arabian human rights defenders are now in detention without charge, on trial or serving prison terms and all independent human rights organizations have been shut down and their members prosecuted. In this context, it may be very difficult for investors and businesses to develop an adequate and context-specific analysis of how their involvement in Saudi Arabia may impact human rights. This is likely to hamper their ability to assess human rights risks related to their activities, and therefore to put in place measures to mitigate them effectively. Where such risk assessment and effective mitigation are not possible, business enterprises should consider not undertaking the relevant activity.

THE RESPONSIBILITY OF COMPANIES TO RESPECT HUMAN RIGHTS

Companies have a responsibility to respect all human rights wherever they operate in the world. This responsibility is laid out in the UN Guiding Principles, an internationally endorsed standard of expected conduct.³

The responsibility of companies to respect human rights is independent of a State's own human rights responsibilities and exists over and above compliance with national laws and regulations protecting human rights.⁴

This responsibility requires companies to avoid causing or contributing to human rights abuses through their own business activities and to address impacts with which they are involved, including by remediating any actual impacts. It also requires them to seek to prevent or mitigate adverse human rights impacts directly linked to their operations or services by their business relationships, even if they have not contributed to those impacts.

A company's "*business activities*" include both actions and omissions, and its "*business relationships*" include "*relationships with business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services*".⁵

To meet its corporate responsibility to respect, a company must take proactive and ongoing steps to identify and respond to its potential or actual human rights impacts. This includes putting appropriate policies and processes into place within their operations such as:

- (a) A policy commitment to meet the responsibility to respect human rights;
- (b) A due diligence process to identify, prevent, mitigate and account for how they address their human rights impacts; and
- (c) Processes to enable the remediation of any adverse human rights impacts that they cause or contribute to.

They should also take steps to ensure these policies are embedded throughout their operations, and that they are applied regularly. The due diligence process, in particular, should involve assessing actual and potential human rights impacts and acting upon those findings.⁶

³ This responsibility was expressly recognised by the UN Human Rights Council on 16 June 2011, when it endorsed the UN Guiding Principles on Business and Human Rights (UN Guiding Principles), and on 25 May 2011 when the 42 governments that had then adhered to the Declaration on International Investment and Multinational Enterprises of the OECD unanimously endorsed a revised version of the OECD Guidelines for Multinational Enterprises. See Human Rights Council, Human Rights and Transnational Corporations and other Business Enterprises, Resolution 17/4, UN Doc A/HRC/RES/17/4, 6 July 2011, documents-dds.ny.un.org/doc/RESOLUTION/GEN/G11/144/71/PDF/G1114471.pdf?OpenElement; OECD Guidelines for Multinational Enterprises, 2011, OECD Publishing, www.oecd.org/corporate/mne/.

⁴ UN Guiding Principles, Principle 11 including Commentary.

⁵ UN Office of the High Commissioner for Human Rights, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (2011) UN Doc HR/PUB/11/04, Principles 11 and 13 including Commentary, www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

⁶ UN Guiding Principles, Principles 15, 16 and 17 including Commentary. As to contributing to violations, the UN Guiding Principles on Business & Human Rights provide a summary on how complicity can give rise to legal liability and may in itself amount to a crime in some countries or under international criminal law.

There could be cases in which a company identifies through due diligence that it may cause or contribute to a serious human rights abuse “if the business enterprise has leverage to prevent or mitigate the adverse impact, it should exercise it. And if it lacks leverage there may be ways for the enterprise to increase it.”⁷ In some cases, however, where the company lacks the leverage and cannot increase it, then the UN Guiding Principles recommend companies to consider ending the relationship, taking into consideration potential adverse human rights impacts. Similarly, the OECD Guidelines for Multinational Enterprises state that as a last resort, “disengagement” with the partnering company may be necessary, especially after failed attempts at mitigation, or where the company considers mitigation unfeasible, or even in cases where the severity of the adverse impact is untenable.⁸

LIABILITY OF CORPORATE ACTORS FOR INTERNATIONAL CRIMES

In addition to compliance with human rights law, companies also have a responsibility to respect international humanitarian law (the laws of war) and executives can be individually liable under international criminal law.⁹ Corporate actors need to be aware that serious violations of international humanitarian law, and certain serious human rights violations may constitute crimes under international law, including those codified in the Rome Statute of the International Criminal Court (ICC): genocide, crimes against humanity and war crimes.¹⁰

Corporate actors that are involved in human rights violations or crimes under international law may face criminal or civil liability. They can be held accountable for their direct acts or omissions and for involvement with others in crimes under international law, if they directly commit or otherwise aid, abet or assist in genocide, crimes against humanity and war crimes.¹¹ International criminal law jurisprudence indicates that the relevant standard for aiding and abetting is “knowingly providing practical assistance or encouragement that has a substantial effect on the commission of a crime.”¹² This can include financial assistance and the provision of goods, information and services, including banking and communications services.¹³

At the international level, individual officers of companies can be held criminally liable for the commission of crimes under international law by the ICC or other international tribunals.¹⁴ At the national level, corporate actors can be held accountable both through criminal trials, including through courts exercising of universal jurisdiction, and civil lawsuits. For example, where a company causes a human rights abuse this may amount to a criminal offence under domestic laws relevant to human rights-related issues or provide a basis for victims to pursue a legal claim.¹⁵ These proceedings can be directed against a company and/or individual corporate officers, depending on the jurisdiction.

KEY HUMAN RIGHTS RISKS FOR BUSINESSES IN SAUDI ARABIA

RISKS TO MIGRANT WORKERS RIGHTS

There are about 10 million migrant workers in Saudi Arabia, mostly men.¹⁶ The majority of the country’s one million women migrant workers are employed in domestic work. Foreign workers are regulated by a set of laws that together

⁷ UN Guiding Principles, 2011, Pillar II, The Corporate Responsibility to Respect Human Rights, Section B Operational Principles, Human Rights Due Diligence, Commentary paragraph 19.

⁸ OECD Guidelines 2011, Commentary on Chapter 2, paragraph 22.

⁹ UN Guiding Principles, 2011, Pillar II, The Corporate Responsibility to Respect Human Rights, Section B Operational Principles, Human Rights Due Diligence, Commentary para. 19.

¹⁰ The Rome Statute of the ICC codifies rules of customary international law, which, as such, apply to all states. See also UN Guiding Principles, Commentary to Principle 12.

¹¹ Article 25(3)(c) of the Rome Statute establishes criminal liability for someone who facilitates the commission of a crime by aiding, abetting or otherwise assisting in the commission or attempted commission of the crime.

¹² UN Guiding Principles, Commentary to Principle 17.

¹³ International Commission of Jurists Corporate Complicity & Legal Accountability: Report of the International Commission of Jurists Expert Legal Panel on Corporate Complicity in International Crimes, Volume 2: Criminal Law and International Crimes, 2008, p. 40-41.

¹⁴ Rome Statute of the International Criminal Court, articles 25 and 28, July 17, 1998, 2187 U.N.T.S. 90.

¹⁵ See, for example, cases litigated in France (Qosmos, Amesys, Lafarge, etc.) and the Netherlands (Dutch businessmen van Arnaat, LJN AX6406, The Hague District Court, 23 December 2005).

¹⁶ See: https://www.stats.gov.sa/sites/default/files/lm_2019_q4_1.xlsx; This estimate is pre-Covid. The pandemic has had profound effects for hundreds of thousands of workers in Saudi Arabia. One May 2020 study estimated that 1.5 million migrant workers could lose their jobs, which would mean a 4% decrease in the country’s population, <https://www.theguardian.com/global-development/2020/jun/09/poor-people-middle-east-migrant-workers-face-uncertain-post-coronavirus-pandemic-future>

comprise a restrictive **sponsorship system** (also known as *kafala*).¹⁷ These laws delegate control over migrant workers to businesses or sponsors, leaving workers unable to change jobs or leave the country without the permission of their employers. There are no trade unions in Saudi Arabia. Labour courts were only introduced in late 2018.

The outcome for migrant workers of this immigration and labour management system has been **widespread abuse**, reported over decades. Human rights organizations, including Amnesty International have documented cases amounting to forced labour and trafficking - with practices including: withholding of passports, wage theft, poor living and working conditions, failure to renew residency permits (leaving workers undocumented), restrictions on freedom of movement, and physical, emotional and sexual abuse.¹⁸ Women domestic workers, subject to a separate legal framework, face some of the harshest working conditions as well as facing isolation in the home, gender-based discrimination and violence. Workers who complain can face the threat of being reported to the authorities for “absconding” (known as *huroob*) from their employers, leaving them at risk of arrest and deportation. Serious concerns have been raised in reports about unexplained deaths of migrant workers in Saudi Arabia: 10,416 people from India alone reportedly died in Saudi Arabia between 2012 and 2018.¹⁹ There are well-founded concerns that many such deaths in Gulf countries may be caused by working in extreme heat.²⁰

Recommendation for businesses:

Businesses employing migrant workers, particularly in high-risk sectors such as **construction, hospitality and security**, must carry out human rights due diligence, taking account of the repressive sponsorship system, the near-universal payment by workers of illegal recruitment fees in their home countries. the lack of protective mechanisms such as trade unions, and the past failure of the state to protect workers during economic crises. 21 When addressing these risks, it will not suffice to ensure decent working conditions for direct employees only. Businesses must also ensure that their operating practices do not cause or contribute to human rights abuses within their value chain and must exercise leverage towards their business relationships to prevent the abuse of their subcontractors’ employees. Businesses must have effective policies and processes in place throughout their contracting chain, including mechanisms for redressing workers’ grievances, to prevent the abuse of their subcontractors’ employees.

DISCRIMINATION AGAINST WOMEN

Recent years have seen the easing of some of the most egregious restrictions as part of the country’s repressive male **guardianship system**, under which all women have a male relative whose approval is needed for key life decisions. Reforms announced in August 2019 allowed women the right to obtain a passport, and gave women equal rights to register marriages, divorces, births and deaths and to obtain family records.²² New protections against discrimination in the workplace were introduced, which among other measures establish the legal principle of equal pay between men and women. These measures followed changes which in 2018 allowed women to drive legally for the first time.

Nonetheless there remain a **wide range of restrictions** in law on women’s access to essential services, amenities and social institutions. Women will still require a guardian’s permission to be released from prison or to leave a shelter where they have sought protection from domestic violence. They are also still required to obtain their guardian’s approval to marry. Moreover, women still cannot open a bank account without their guardian’s consent, potentially restricting their ability to receive their salary if their guardian disproves of their employment, nor can they file lawsuits on their own in the

¹⁷ The ILO noted in its 2017 report that Saudi Arabia, along with Qatar, had the most restrictive kafala system in place in the region, with workers reliant on employers for all the critical stages of their migration journey and thus at enhanced risk of abuse, https://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms_552697.pdf

¹⁸ Amnesty International, *India: Exploited Dreams: Dispatches from Indian migrant workers in Saudi Arabia* (Index: ASA 20/025/2014).

¹⁹ Commonwealth Human Rights Initiative, “RTI reveal: More than 10 Indian workers dies every day in Gulf countries in the last six years”, <https://www.humanrightsinitiative.org/blog/rti-reveal-more-than-10-indian-workers-died-every-day-in-gulf-countries-in-the-last-six-years-117-deaths-for-every-us-117-remitted->

²⁰ Karger, “Heat Stress Impacts on Cardiac Mortality in Nepali Migrant Workers in Qatar”, September 2019, <https://www.karger.com/Article/Abstract/500853>; Migrant-Rights.org, “Summer outdoor work bans end across the GCC, but heat stress continues”, 2 October 2019, <https://www.migrant-rights.org/2019/10/summer-outdoor-work-ban-end-across-the-gcc-but-heat-stress-continues/>

²¹ France 24, “Protests, layoffs and debt: Is the Bin Laden construction company in turmoil?”, 2 May 2016, <https://www.france24.com/en/20160502-saudi-arabia-osama-bin-laden-protests-layoffs-debt-construction-company-turmoil/>; David Segall and Sarah Labowitz, “Making Workers Pay: Recruitment of the migrant labor force in the Gulf construction industry”, April 2017, <https://static1.squarespace.com/static/547df270e4b0ba184dfc490e/t/58ec1e9ed1758e3915cb4c5b/1491869348464/FINALFINAL-MakingWorkersPay-Report-Digital.pdf>

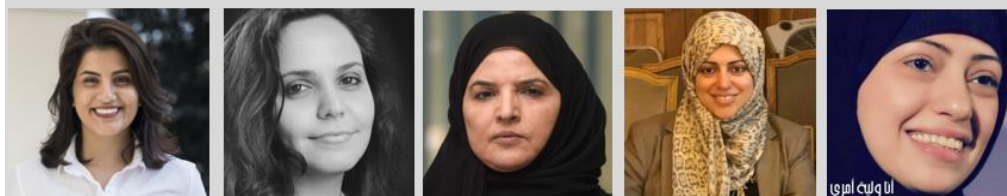
²² Amnesty International, *Saudi Arabia: Women’s rights reforms must be followed by release of detained activists* (Press Release, 2 August 2019), <https://www.amnesty.org/en/latest/news/2019/08/saudi-arabia-womens-rights-reforms-must-be-followed-by-release-of-detained-activists/>

event of a workplace dispute. Many women still face difficulties in obtaining driving licences as driving schools catering to women are few and expensive.²³ Women who have campaigned for an end to discrimination have meanwhile been arrested and tried for their peaceful human rights work; they have throughout their detention been subjected to incommunicado detention in solitary confinement for prolonged periods, ill-treatment and torture (see case study below).

Recommendation for businesses:

Businesses should put in place measures to ensure that women do not face barriers to working in their operations, taking account of the legal and customary context and incorporating these measures in their contracting arrangements with business partners.

CASE STUDY: PROSECUTION OF WOMEN'S RIGHTS ACTIVISTS



Left to right: Loujain al-hathloul, Iman al-Nafjan, Aziza al-Yousef, Samar Badawi and Nassima al-Sada. © Private

Several women's rights activists detained in May 2018, including Loujain al-Hathloul, Iman al-Nafjan and Aziza al-Yousef, were initially accused in state-aligned media of forming a "cell" and posing a threat to state security for their "contact with foreign entities with the aim of undermining the country's stability and social fabric," in violation of Royal Decree 44/A, a follow-up decree to the 2014 counter-terror law. These accusations were followed by a chilling smear campaign in national media and on social media discrediting the work of women's rights activists and branding them as "traitors" and "agents of embassies." For several months, the activists were expected to appear for trial before the Specialized Criminal Court (SCC), a court specialized in prosecuting terror-related crimes.

At least 10 human rights defenders, including several of the women activists, were reportedly tortured and otherwise ill-treated, including through being subjected to sexual harassment, during the first three months of their detention when they were held incommunicado and in solitary confinement. Several activists told the court that they had been repeatedly tortured with electric shocks and flogging, leaving some unable to walk or stand properly. According to testimony, one activist was hung from the ceiling and another was sexually harassed by interrogators wearing face masks. One of the activists reportedly attempted to take her own life repeatedly in prison. Prison authorities reportedly warned detained activists against disclosing any accounts of torture or prison procedures to family members.

On 11 March 2019, 10 months after their arbitrary arrest, 11 women activists, including Loujain al-Hathloul, Iman al-Nafjan and Aziza al-Yousef, were brought to trial before the Criminal Court in Riyadh rather than the SCC. The court session was closed, and diplomats and journalists were banned from attending. Several of the women were charged in relation to, among other things, promoting reforms and women's rights; demanding an end to the male guardianship system through participating on online and offline campaigning; and contacting international human rights organizations such as Amnesty International and Human Rights Watch, as well as the UN, human rights activists, foreign diplomats and international journalists.

Iman al-Nafjan and Aziza al-Yousef were among eight women provisionally released in March 2019. Loujain al-Hathloul and several other women activists remained in prison at the time of writing. Women human rights defenders Nassima al-Sada and Samar Badawi, who were arrested in July 2018, were also brought to trial before the Criminal Court in Riyadh in July 2019, after a year of arbitrary detention.

In total, 13 women's rights activists remained on trial at the time of writing; Amnesty International considers those still detained to be prisoners of conscience and calls for their immediate and unconditional release and for dropping the charges against all the women's rights activists.

RISKS LINKED TO SURVEILLANCE: FREEDOM OF EXPRESSION AND PRIVACY

Information technology can enable the free exchange of views and information which support human rights, including the rights to freedom of expression and peaceful assembly, as well as our ability to investigate human rights issues. However, this technology can also be used to restrict or potentially violate fundamental human rights, including the rights to privacy,

²³ Reuters, "Travel yes, marry no – What Saudi women still can't do", 2 August 2019, <https://www.reuters.com/article/us-saudi-women-travel-factbox/factbox-travel-yes-marry-no-what-saudi-women-still-cant-do-idUSKCN1US22X>

freedom of expression, association and assembly. This is highly relevant in the Gulf region, where governments “are well known for abusing surveillance tools to track dissidents.”²⁴

The Saudi Arabian authorities have adopted new technologies to **repress freedom of expression**, hacking into the online accounts of government critics and dissidents, intercepting communications between activists and human rights organizations, and targeting critics abroad with malicious software. In 2018, an Amnesty International staff member received a message which contained a link purporting to be about a protest outside the Saudi Arabian embassy in Washington. If clicked, the link would have secretly installed malware, allowing the sender to obtain near-total control of the phone.²⁵

In this context, the extensive plans to deploy so-called “**smart city**” technologies in Saudi Arabia give cause for serious concern, as they risk being used for indiscriminate mass surveillance. This risk is particularly acute in a context like Saudi Arabia with few legal or institutional protections for the rights to privacy, data protection and freedom of expression and opinion, and where the state has shown itself all too willing to use technology to repress rights. Several of the **mega-projects** under development present smart technologies as a key part of their offering. The NEOM smart city (see case study in page 9) is the most obvious high-risk project, with indications that the founders fully intend to use data gathered throughout the city for mass surveillance purposes. In Amnesty’s view, indiscriminate mass surveillance is never a proportionate interference with the rights to privacy, freedom of expression, freedom of association and of peaceful assembly.

Recommendation for businesses:

Businesses or investors operating in the information, communications and artificial intelligence technology sector should carry out due diligence to ensure their activities are not at risk of contributing to unlawful targeted surveillance or mass surveillance activities. Any businesses considering responding to tenders to develop so-called “smart city” infrastructure should consider carefully how to effectively mitigate the risk that their activities assist in the development of intrusive mass surveillance programmes, in a country known to use surveillance to severely repress rights. If a business identifies that it may cause or contribute to human rights abuses, and that it cannot prevent these abuses, it should not undertake the relevant activity.

RISKS LINKED TO LAND, HOUSING AND DEVELOPMENT PROJECTS: EVICTIONS

The various mega- and giga-projects being planned in Saudi Arabia involve the development of vast swathes of land. According to reports, the Red Sea Project will have a footprint the size of Belgium, while the futuristic smart city NEOM is likely to be 35 times the size of Singapore. There are human rights risks relating to the **expropriation** of lands required for these projects, given the history of illegitimate land acquisition ahead of projects,²⁶ and recent cases where development projects have led to arrests, violence and fatalities due to protests against the projects.

Most recently, the development of **NEOM** has seen violent confrontations over land acquisition and planned evictions. According to Bloomberg, many residents were supportive of the project until it became clear in early 2020 that they would be expected to take compensation and leave the area.²⁷ In April 2020, Abdul Rahim al-Huwaiti, the leader of the Huwaitat tribe which has been living on part of the land earmarked for Neom, was killed by security forces after months of tension. He had led resistance to the development and the removal of the Huwaitat from the area.

Recommendation for businesses:

²⁴ Citizen Lab, “Tracking NSO Group’s Pegasus Spyware to Operations in 45 Countries”, 18 September 2018, <https://citizenlab.ca/2018/09/hidden-and-peek-tracking-nso-groups-pegasus-spyware-to-operations-in-45-countries/>

²⁵ Amnesty International, *Amnesty International staff targeted with malicious spyware* (Press Release, 1 August 2018) <https://www.amnesty.org/en/latest/news/2018/08/staff-targeted-with-malicious-spyware/>

²⁶ Land grabs by the state or by senior princes for development projects has been a longstanding area of controversy among citizens. In the late 1990s a US Embassy cable detailed how “royal land scams increasingly have become a point of public contention”, detailing several large parcels of lands in Riyadh and Mecca which had been acquired illegitimately by senior royals, who “use their clout to confiscate land from commoners, especially if it is known to be the site for an upcoming project and can be quickly resold to the government for a profit”: See more here: https://wikileaks.org/plusd/cables/96RIYADH4784_a.html

²⁷ Bloomberg, “Hope turns to doubt, Then Gunfire, as Saudi Megacity Emerges”, 24 April 2020, <https://www.bloomberg.com/news/articles/2020-04-24/hope-turns-to-doubt-then-gunfire-as-new-saudi-megacity-emerges>

Businesses considering participating in development projects should, as a part of their due diligence request full details of how land has been or will be acquired, including whether evictions or removals were carried out and under what circumstances and put in mitigation plans to ensure that forced evictions do not take place in development projects they are participating in. If residents have been removed under circumstances that amount to forced evictions, businesses and investors should give serious consideration to whether they can be involved in and profit from a project only made possible by serious human rights violations.

CASE STUDY: NEOM

Internal documents leaked to the Wall Street Journal (WSJ) in 2019 detailed a range of outlandish and eye-catching ideas apparently under consideration for the flagship NEOM tech city project, including dinosaur robots, robot maids, robot cage fighting, and glow-in-the-dark sand²⁸. Little tangible details has been publicly shared about plans for NEOM, the futuristic tech city that forms the centre-piece of Vision 2030 plans. It promises to develop the “first cognitive cities built in 5G technology”, which “will support its cutting-edge urban environments, improving the lives of residents and businesses far beyond the capabilities of today’s smart cities”. It will be no less than an “aspirational society that heralds the future of human civilization.”²⁹

Beyond the fantastical dinosaur robots and the grand promises, there are very real reasons to be deeply concerned about the human rights implications of NEOM, which risks being the stuff of dystopian nightmares. The company says it will “utilize AI, robotics, and human-machine fusion to deliver greater predictive intelligence and enable faster decision making across all NEOM sectors.”³⁰ In documents leaked to the WSJ, the founding board declared that NEOM “should be an automated city where we can watch everything ... where a computer can notify crimes without having to report them or where all citizens can be tracked.” The WSJ reports that there is agreement for Israel to supply technology for the project, a matter of serious concern given the collaboration between Israeli technology companies and the Saudi state use to surveil and harass activists.

A project with NEOM’s level of ambition - which according to the WSJ extends to planning the creation of “a new way of life from birth to death reaching genetic mutations to increase human strength and IQ” - would require unprecedented, independent oversight to prevent there being severe risks to the human rights of residents of the city and beyond. In reality, there are very limited human rights protections and accountability mechanisms for residents of Saudi Arabia. The situation may be made worse in NEOM, which will, according to publicity materials, be a “semi-autonomous region with its own government and laws.” Situated on the border with Egypt and Jordan, it will apparently have a distinct legal framework, about which there is little information.

RISKS TO BUSINESS PARTNERS

During what was touted as an anti-corruption campaign in November 2017, Saudi Arabia arbitrarily detained hundreds of businesspeople until January 2019 in the **Ritz-Carlton** hotel in Riyadh. Nearly 400 people were “summoned,” according to the government.³¹ According to the New York Times, at least 17 detainees were hospitalized for physical abuse and “one later died in custody with a neck that appeared twisted, a badly swollen body and other signs of abuse, according to a person who saw the body.”³² Under international human rights law, no one can be detained without a legitimate reason and anyone accused of a crime has the right to a fair trial.

While the anti-corruption drive was declared over in 2019, the business community in Saudi Arabia nonetheless faces considerable risk of human rights abuse, just like other sectors of society. Businesses and investors should be fully aware of the risk to individuals with whom they partner and the harsh consequences partners could bear for business dealings questioned by the government.

Recommendation for businesses:

²⁸ The Wall Street Journal, “A Prince’s \$500 Billion Desert Dream: Flying Cars, Robot Dinosaurs and a Giant Artificial Moon”, 25 July 2019 <https://www.wsj.com/articles/a-princes-500-billion-desert-dream-flying-cars-robot-dinosaurs-and-a-giant-artificial-moon-11564097568>

²⁹ NEOM, Frequently Asked Questions: https://www.neom.com/en-us/static/pdf/en/NEOM_FAQ_EN.pdf

³⁰ NEOM, “Neom launches infrastructure work for the world’s leading cognitive cities in an agreement with STC”, 27 July 2020, <https://newsroom.neom.com/neom-launches-infrastructure-work-for-the-worlds-leading-cognitive-cities-in-an-agreement-with-stc>

³¹ Saudi Press Agency, “Statement by the Royal Court: Anti Corruption Committee Concludes Its Tasks”, 30 January 2019, <https://www.spa.gov.sa/viewstory.php?lang=en&newsid=1880379>

³² Ben Hubbard, David D. Kirkpatrick, Kate Kelly and Mark Mazzetti, New York Times, “Saudi Said to Use Coercion and Abuse to Seize Billions”, 11 March 2018, <https://www.nytimes.com/2018/03/11/world/middleeast/saudi-arabia-corruption-mohammed-bin-salman.html>

Businesses and investors should be fully aware of the risk they pose for others. Due diligence procedures should take account of whether business partners could potentially fall foul of the Royal Court for political or other reasons, and avoid any actions that could place potential partners at additional risk to their safety.

WAR CRIMES IN YEMEN

The coalition of Arab states, led by Saudi Arabia, became a party to the conflict in Yemen in March 2015, when it intervened in support of the internationally recognized government of Yemen.³³ Over the past five years all parties to the conflict committed serious violations of international human rights and humanitarian law, including unlawful attacks against civilians and civilian objects; as well as widespread torture and other ill-treatment, enforced disappearance, and extrajudicial executions. The Saudi Arabia-led coalition's air strikes, including apparent direct attacks on civilian objects, as well as indiscriminate and disproportionate attacks have had a devastating impact on the civilian population, destroying homes, schools, hospitals, markets, mosques, and killing and injuring thousands of civilians. Amnesty International has documented 42 coalition air strikes that appear to have violated international humanitarian law, many of which would constitute war crimes.³⁴ As a result of the prolonged conflict, according to the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), nearly 80 per cent of the Yemeni population remain in need of humanitarian aid and protection.³⁵

Recommendation for businesses:

Businesses and investors providing military equipment, servicing or advice to the Saudi armed forces - particularly companies in the aerospace sector providing hardware or technical assistance to the Royal Saudi Air Force - should urgently review their business relationships in light of the many credible allegations of war crimes related to air strikes in Yemen. Defence companies carrying out activities that contribute to serious violations of international humanitarian law, such as direct attacks on civilians must suspend all such activities as they expose themselves, or their individual directors and managers, to the risk of prosecution for complicity in war crimes.³⁶

CONCLUSION: THE CHALLENGE OF ASSESSING HUMAN RIGHTS RISK IN SAUDI ARABIA

The assessment of human rights risks and potential impacts is an essential component of adequate human rights due diligence. Once risks have been identified, businesses must seek to understand their nature, including who may be affected, and the likelihood and severity of the potential or actual impact. The UN Guiding Principles expect businesses to "seek to understand the concerns of potentially affected stakeholders by consulting them directly ... where such consultation is not possible, business enterprises should consider reasonable alternatives such as consulting credible, independent expert resources, including human rights defenders and others from civil society."³⁷ Without such a consultative process, it becomes difficult for businesses to put in place appropriate policies and processes to prevent adverse human rights impacts.

In Saudi Arabia, this presents an acute challenge. Virtually all Saudi Arabian human rights defenders are now in detention without charge, on trial or serving prison terms. Since 2014, the authorities have systematically used the SCC and other courts and the counter-terrorism law, as well as the cyber-crime law, to persecute human rights defenders for their peaceful human rights work, to silence any individuals expressing independent views online, and to retry others who were already sentenced to lengthy prison terms. Travel and social media bans have also been issued. The clampdown on dissent, publicly recognised by Saudi Arabia's international partners,³⁸ has widened to include critics in the media and

³³ For summary see UNHCHR, Situation of human rights in Yemen, including violations and abuses since September 2014 Comprehensive report of the Group of Eminent International and Regional Experts on Yemen, 14 September 2020, <https://www.ohchr.org/Documents/HRBodies/HRCouncil/GEE-Yemen/2020-09-09-report.pdf>

³⁴ Amnesty International, *Yemen war: No end in Sight* (Storypage, 24 March 2020) <https://www.amnesty.org/en/latest/news/2015/09/yemen-the-forgotten-war/>

³⁵ See: OCHA Yemen <https://www.unocha.org/yemen/about-ocha-yemen>

³⁶ Amnesty International, *Outsourcing responsibility: Human rights policies in the defence sector* (Index: ACT 30/0893/2019)

³⁷ UN Guiding Principles on Business and Human Rights, para 18 commentary:

https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf

³⁸ See the UK Foreign Office 2019 assessment: "*The clampdown on political space in Saudi Arabia continues. Freedom of expression and of the media remain highly restricted*". <https://www.gov.uk/government/publications/human-rights-priority-countries-autumn-2019-ministerial-statement/human-rights-priority-countries-ministerial-statement-january-to-june-2019#:~:text=The%2030%20human%20rights%20priority,%2C%20Maldives%2C%20Myanmar%2C%20Pakistan%2C;and%20Joint%20Statement%20under>

former officials, and has extended beyond its borders. Most notoriously, the killing of Jamal Khashoggi at the Saudi consulate in Istanbul - for which a UN human rights expert determined that there was “credible evidence, warranting further investigation of high-level Saudi officials’ individual liability, including the Crown Prince’s” - laid bare the lengths the Saudi establishment would go to silence critics and further increased the climate of fear in the country and amongst Saudi nationals in exile.³⁹

Businesses may still be able to consult experts based outside Saudi Arabia, or hire consultants and auditors within the country, to help conduct human rights due diligence. But these may not be able to provide a full or accurate assessment of all relevant risks.

In this context, it may be very difficult for investors and businesses to develop an adequate and context-specific analysis of how their involvement in Saudi Arabia may impact on human rights. This is likely to hamper their ability to assess human rights risks related to their activities, and therefore to put in place measures to mitigate them effectively. Given the significant human rights risks for business operating in Saudi Arabia, business enterprises must be able to publicly show how they have identified, prevented, mitigated and accounted for how they have addressed human rights impacts or else publicly acknowledge that they were not able to conduct human rights due diligence in line with the UN Guiding Principles. As the consequence, business enterprises should consider not undertaking the relevant activity.

general debate, item 2 at the 45th session on the United Nations Human Rights Council:

<https://fn.geneve.um.dk/en/news/newsdisplaypage/?newsID=F80A37C6-260F-46F9-B4A6-30D07198D2F8>

³⁹ UN Human Rights Council, Annex to the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions: Investigation into the unlawful death of Mr. Jamal Khashoggi, 19 June 2019, UN Doc. A/HRC/41/CRP.1.