

PETITION TO:

UNITED NATIONS WORKING GROUP ON ARBITRARY DETENTION

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**HUMAN RIGHTS COUNCIL
UNITED NATIONS GENERAL ASSEMBLY**

In the Matter of

Loujain Alhathloul
Citizen of the Kingdom of Saudi Arabia

v.

Government of the Kingdom of Saudi Arabia

and

Government of the United Arab Emirates

Petition for Relief Pursuant to Resolutions 1991/42, 1994/32, 1997/50, 2000/36, 2003/31, 6/4, 15/18, 24/7¹

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¹ Resolutions 1991/41, 1994/32, 1997/50, 2000/36, and 2003/31 were adopted by the UN Commission on Human Rights to extend the mandate of the Working Group on Arbitrary Detention. The Human Rights Council, which “assume[d]... all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights...” pursuant to UN General Assembly Resolution 60/251, GA Res. 60/251, March 15, 2006, at ¶ 6, later extended the mandate through Resolutions 6/4, 15/18, and 24/7.

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**QUESTIONNAIRE TO BE COMPLETE D BY PERSONS
ALLEGING ARBITRARY ARREST OR DETENTION**

I. IDENTITY

1. *Family Name:* Alhathloul
2. *First Name:* Loujain
3. *Sex:* Female
4. *Age at the Time of Detention:* 28
5. *Nationality:* Saudi Arabia
6. (a) *Identity Document (if any):* Unknown
(b) *Place of Issue:* N/A
(c) *On (date):* N/A
(d) *No.:* N/A
7. *Profession and/or activity (if believed to be relevant to the arrest/detention):* Ms. Alhathloul is a prominent activist and critic of the Saudi Government's male guardianship system and a critic of the now-repealed Saudi ban on women driving.
8. *Address of usual residence:* Unknown, Abu Dhabi, United Arab Emirates

II. ARREST

1. *Date of arrest:* Arrested by the Abu Dhabi Police on March 13, 2018, transferred to Saudi Arabia and released on March 15, 2018, then arrested by Saudi State Security officers on May 15, 2018.
2. *Place of arrest (as detailed as possible):* The March 13 arrest occurred on a highway in Abu Dhabi; the May 15 arrest occurred at Ms. Alhathloul's parents' home in Riyadh, Saudi Arabia.
3. *Did they show a warrant or other decision by a public authority?* Neither group showed a warrant.
4. *Authority who issued the warrant or decision:* N/A
5. *Relevant legislation applied (if known):* N/A

III. DETENTION

1. *Date of detention:* March 13, 2018, then May 15, 2018
2. *Duration of detention (if not known, probable duration):* From March 13, 2018 to March 15, 2018, then from May 15, 2018 until the date of submission.
3. *Forces holding the detainee under custody:* Currently, the Bureau of Investigations and Prosecution
4. *Places of Detention (indicate any transfer and present place of detention):* On March 13, 2018, Ms. Alhathloul was held by Abu Dhabi officers as they transported her to an airfield where she was placed on a Saudi plane. That day Saudi agents flew her to Riyadh and took her to Ha'er prison where she was held for two days. After she was released she was placed on a travel ban. On May 15, 2018, Ms. Alhathloul was taken to Dhaban Prison in Jeddah, where she was held until approximately May 21, 2018, at which point she was transferred to an unknown hotel. On July 4, 2018, she was transferred back to Dhaban Prison, where she remained until December 14, 2018, when she was transferred to Ha'er Prison in Riyadh. As of the time of submission, Ms. Alhathloul remains in Ha'er Prison.

5. *Authorities that ordered the detention:* Unknown
6. *Reasons for the detention imputed by the authorities:* The Emirati authorities did not provide a grounds for the detention, however the Saudi Government stated that Ms. Alhathloul is detained for coordinating with activists, non-governmental organizations (NGOs), and international organizations to promote change within Saudi Arabia.
7. *Relevant legislation applied (if known):* The Saudi Government only referenced one law in their indictment: Article 6 of the “Combatting Cybercrime” Royal Decree No. M/17, issued March 24, 2007.

IV. DESCRIBE THE CIRCUMSTANCES OF THE ARREST AND/OR THE DETENTION AND INDICATE PRECISE REASONS WHY YOU CONSIDER THE ARREST OR DETENTION TO BE ARBITRARY

A. Statement of Facts

Part 1 of the Statement of Facts provides background information on the current human rights context in Saudi Arabia in order to illustrate the Saudi Government’s pattern of violating the rights of activists. Part 2 of the Statement of Facts details the circumstances surrounding the arrest and continuing detention of Ms. Alhathloul perpetrated by the Saudi Government and the Emirati Government.

1. Human Rights Context in Saudi Arabia

Saudi Arabia’s well-documented practice of restricting fundamental freedoms is as notable for its pervasiveness as it is for its severity. The Country’s absolute monarchy limits almost all political freedoms and civil liberties.² To maintain control, the Government relies on extensive surveillance, criminalization of dissent, appeals to sectarianism, and repression of minorities.³ In its 2019 *Freedom in the World Report*, Freedom House found that Saudi Arabia was among the most politically repressive countries in the world, giving it an aggregate score of 7 out of a possible 100, where 100 signifies full freedom.⁴

Women in Saudi Arabia face extensive discrimination in both law and practice,⁵ and harsh penalties are reserved for those women who push for gender equality.⁶ In his most recent report to the UN Human Rights Council, the Special Rapporteur on the situation of human rights defenders expressed concern about the treatment of women human rights defenders in Saudi Arabia, specifically singling out the Saudi Government for targeting individuals campaigning for women’s rights issues, including lifting the driving ban on women and the end of the male guardianship system.⁷

2. The Situation of Loujain Alhathloul

a. Background Information

Loujain Alhathloul is a prominent Saudi activist and human rights defender. Her work has focused on promoting women’s rights in Saudi Arabia by advocating against the country’s ban on women driving

² Freedom House, *Freedom in the World 2019: Saudi Arabia*, <https://freedomhouse.org/report/freedom-world/2019/saudi-arabia>

³ Freedom House, *supra* note 2; Amnesty International, *Saudi Arabia 2018*, <https://www.amnesty.org/en/countries/middle-east-and-north-africa/saudi-arabia/report-saudi-arabia/>; Human Rights Watch, *World Report 2019: Saudi Arabia*, <https://www.hrw.org/world-report/2019/country-chapters/saudi-arabia>.

⁴ Freedom House, *supra* note 2.

⁵ Freedom House, *supra* note 2; Amnesty International, *supra* note 3; Human Rights Watch, *supra* note 3.

⁶ UN Committee on the Elimination of Discrimination Against Women, Concluding Observations on Saudi Arabia, UN Doc. CEDAW/C/SAU/CO/3-4, para. 55 (Mar. 14, 2018), <https://undocs.org/cedaw/c/sau/co/3-4> (raising concern over reports that women human rights defenders have “been subjected to harassment, violence and intimidation by law enforcement officials, as well as detention and ill-treatment, for their civic engagement”).

⁷ *Report of the Special Rapporteur on the situation of human rights defenders*, UN Doc. A/HRC/40/60, para. 44 (Jan. 10, 2019), <http://undocs.org/a/hrc/40/60>.

and the restrictive rules around the male guardianship system.⁸ She has advanced her cause by raising awareness online, sharing information, coordinating with international human rights monitors, and conducting a “driving campaign” whereby she and other advocates began to drive in the streets of Saudi Arabia in defiance of the driving ban.⁹

Ms. Alhathloul has never resorted to or encouraged violence, either in connection with her advocacy activities or otherwise.¹⁰ Her first of two prior arrest occurred in 2014, when she was detained for 73 days after driving her car over the Saudi border from the United Arab Emirates, where she was living at the time and where she was licensed to drive.¹¹ During that period of detention, Ms. Alhathloul was never charged.¹² Ms. Alhathloul was also detained on June 4, 2017, when she was arrested at King Fahd International Airport in Dammam, Saudi Arabia.¹³ The next day, she was transferred by security forces to a detention center in Riyadh for questioning.¹⁴ She was subsequently released on June 7, 2017, without being charged or informed of the legal grounds for her arrest.¹⁵ International human rights monitors believe that the arrest was related to her women’s rights advocacy.¹⁶

b. *Ms. Alhathloul’s Extraordinary Rendition from the UAE*

In March 2018, Ms. Alhathloul was living abroad while studying at the Sorbonne University campus in Abu Dhabi.¹⁷ On March 13, 2018, Abu Dhabi police stopped Ms. Alhathloul while she was driving on the highway. Without showing her a warrant or providing information on the grounds for her stop or arrest, the officers proceeded to arrest Ms. Alhathloul and transport her to a nearby airfield.¹⁸ Once at the airfield, Ms. Alhathloul was placed on a Saudi private jet staffed by Saudi individuals.¹⁹ The jet proceeded to transport Ms. Alhathloul to Riyadh, Saudi Arabia.²⁰ The Emirati Government did not provide any formal procedure for Ms. Alhathloul to defend her right to not be forcibly repatriated to Saudi Arabia.

After arriving in Riyadh, she was immediately transported to Ha’er prison, where she was detained for two days without charge.²¹ On March 15, 2018, Ms. Alhathloul was released from Ha’er prison.²² No formal charges were brought against Ms. Alhathloul, and the grounds for her rendition were not disclosed.²³ However, a travel ban was placed on Ms. Alhathloul, as well as her entire immediate family.²⁴ The travel ban prevented Ms. Alhathloul from returning to the UAE to continue her studies. Were Ms. Alhathloul not removed from the UAE and banned from leaving Saudi Arabia, the following events could not have occurred.

⁸ Ruth Michaelson, *What They Did to Me Was So Horrific’: Brutal Silencing of a Saudi Feminist*, The Guardian (May 24, 2019), <https://www.theguardian.com/global-development/2019/may/24/what-they-did-to-me-was-so-horrific-brutal-silencing-of-a-saudi-feminist-loujain-al-hathloul>.

⁹ *Id.*

¹⁰ Communication with confidential source A.B., on file with author.

¹¹ *Id.*

¹² Tracy McVeigh, *Fears for female Saudi activist as detention for driving a car is extended*, The Guardian (Dec. 13, 2014), <https://www.theguardian.com/world/2014/dec/14/fears-saudi-female-activist-detained-driving-ban-loujain-al-hathloul>.

¹³ Gulf Center for Human Rights, *Update: Saudi Arabia: Womens’ Rights Activist Loujain Al-Hathloul Has Been Released* (June 8, 2017), <https://www.gc4hr.org/news/view/1618>; Amnesty International, *Saudi Arabia Detains Rights Activist Who Defied Women’s Driving Ban* (June 5, 2017), <https://www.amnesty.org/en/latest/news/2017/06/saudi-arabia-detains-rights-activist-who-defied-womens-driving-ban/>.

¹⁴ Gulf Center for Human Rights, *supra* note 13.

¹⁵ *Id.*

¹⁶ *Id.*; Amnesty International, *supra* note 13.

¹⁷ Communication with confidential source A.B., on file with author.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Tamara Qiblawi and Sarah El Sirgany, *Saudi women’s rights activist Loujain al-Hathloul goes on trial in Riyadh*, CNN (Mar. 13, 2019), <https://www.cnn.com/2019/03/13/middleeast/hathloul-trial-saudi-intl/index.html>

²¹ Communication with confidential source A.B., on file with author.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

c. *Arrest and Incommunicado Detention*

On May 15, 2018 at approximately 7:00 PM, armed government officers from the Presidency of State Security raided Ms. Alhathloul's family home in Riyadh and arrested Ms. Alhathloul,²⁵ without showing an arrest warrant or providing a reason for the arrest.²⁶ At the time, there was no official recognition of Ms. Alhathloul's arrest or of her location of detention, and her family had no means of contacting her.²⁷

Over the course of the next three days, the Government arrested seven other prominent activists in what Human Rights Watch decried as a "crackdown on women's rights activists."²⁸ Moreover over the next two weeks, the UN Office of the High Commissioner for Human Rights announced that they were aware of at least 13 activists who were arrested in the ongoing crackdown.²⁹ Close observers of Saudi Arabia recognized Ms. Alhathloul's arrest and the wider crackdown as politically motivated.³⁰

On May 18, the Government, via a State Security spokesperson, first acknowledged that Ms. Alhathloul was arrested.³¹ The following day, a misinformation and propaganda campaign began defaming Ms. Alhathloul and the other activists. On May 19, a Saudi newspaper, Okaz, published photos of the detained activists, including Ms. Alhathloul, calling them "traitors" to the Saudi Government.³² That same day, a local daily paper, Al-Jazirah, ran a story about the arrests, with a photo of Ms. Alhathloul in the heading, describing them as citizens who have betrayed the State.³³ Human Rights Watch also reported that a notable pro-government Twitter account posted photos of the activists with the word "traitor" in red superimposed over their faces.³⁴

After her arrest, and unbeknownst to her family at the time, Ms. Alhathloul was taken to Dhaban Prison in Jeddah, where she was detained for the next several days.³⁵ Beginning at this point and continuing for over a month, Ms. Alhathloul was held *incommunicado*.³⁶ Prison authorities did not allow her to contact her family or any legal representation.³⁷

On approximately May 21, 2018, State Security officers removed Ms. Alhathloul from Dhaban and transferred her to an unknown hotel in Jeddah.³⁸ While held at the hotel, Ms. Alhathloul was interrogated and tortured on multiple occasions by State officials.³⁹ Officials subjected Ms. Alhathloul to electric shocks,

²⁵ *Id.*

²⁶ *Id.*

²⁷ New York Times, *My Sister Is in a Saudi Prison. Will Mike Pompeo Stay Silent?* (Jan. 13, 2019), <https://www.nytimes.com/2019/01/13/opinion/saudi-women-rights-activist-prison-pompeo.html>.

²⁸ Human Rights Watch, *Saudi Arabia: Growing Crackdown on Women's Rights Activists* (May 23, 2018), <https://www.hrw.org/news/2018/05/23/saudi-arabia-growing-crackdown-womens-rights-activists>.

²⁹ OHCHR, *Press briefing notes on Saudi Arabia and Afghanistan* (May 29, 2018), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23134&LangID=E>.

³⁰ Notably, Jamal Kashoggi, who would later fall victim to the Government's attempt to silence prominent critics, identified the arrest of Ms. Alhathloul as an attempt to repress political activist, stating that in light of her arrest, "Loujain should be celebrated now," and that "[her detention] is unneeded right after the huge effort that MBS [Mohammed bin Salman] made in the United States, presenting himself as a reformer." Loveday Morris, *The High Price of Feminism in the "New" Saudi Arabia*, The Washington Post (May 20, 2019), https://www.washingtonpost.com/world/middle_east/the-high-price-of-feminism-in-the-new-saudi-arabia/2018/05/20/99d6dfde-5c3f-11e8-b656-236c6214ef01_story.html.

³¹ Saudi Press Agency, @spagov, Twitter (May 18, 2018), <https://twitter.com/spagov/status/997585420648173570?s=21> (*in Arabic*).

³² Nora Abdulkarim, @Ana3rabeya, Twitter (May 20, 2018), <https://twitter.com/Ana3rabeya/status/998225776268009472> (*in Arabic*).

³³ Al-Jazirah, *Seven Arrested on Suspicion of Contact with Third Parties* (May 19, 2019), <http://www.al-jazirah.com/2018/20180519/ln27.htm> (*in Arabic*).

³⁴ Human Rights Watch, *supra* note 28.

³⁵ New York Times, *supra* note 27.

³⁶ Communication with confidential source A.B., on file with author.

³⁷ New York Times, *supra* note 27.

³⁸ *Id.*; Communication with confidential source A.B., on file with author.

³⁹ Ruth Michaelson, *supra* note 8.

flogging, waterboarding, and threats of rape and sexual assault.⁴⁰ Many of officials conducting the torture wore masks concealing their identity.⁴¹ However, on several occasions, Saud al-Qahtani,⁴² the former advisor to Crown Prince Mohammed bin Salman, sat in on interrogation sessions, unmasked, to oversee Ms. Alhathloul's torture.⁴³ During one of the sessions, Mr. al-Qahtani told Ms. Alhathloul "I'll kill you, cut you into pieces, throw you in the sewer system. But before that, I'll rape you."⁴⁴

On June 19, 2018, Ms. Alhathloul was finally allowed to call her parents,⁴⁵ after more than one month of *incommunicado* detention.⁴⁶ Ms. Alhathloul was not permitted to discuss any aspects of the case against her.⁴⁷ Ms. Alhathloul was allowed to make several similar brief phone calls during her time detained at the hotel.⁴⁸

On July 4, 2018, Ms. Alhathloul was transferred back to Dhaban Prison, where she was held in solitary confinement.⁴⁹ At this point, prison officials allowed Ms. Alhathloul's father and mother to visit her for one hour once per month.⁵⁰ The first visit with her family took place on July 25, 2018.⁵¹ Around mid-September, prison authorities moved Ms. Alhathloul from solitary confinement to be held alongside other activists arrested in the May 2018 crackdown.⁵²

On August 30, 2018, Ms. Alhathloul was brought before a judge for the first time.⁵³ At this hearing, an investigating magistrate affirmed Ms. Alhathloul's detention and an investigation against her.⁵⁴ She was subsequently returned to Dhaban Prison.

On December 3, 2018, Ms. Alhathloul received a visit from her parents during which she first disclosed that she was being tortured by Saudi officials.⁵⁵ Ms. Alhathloul was able to show that her thighs were blackened by bruises from the torture.⁵⁶

On December 5, 2018, Ms. Alhathloul made her first official complaint concerning the torture and her conditions in the jail.⁵⁷ She presented the complaint to prison authorities for transfer to the Bureau of Investigation and Prosecution.⁵⁸ However, prison authorities refused to deliver the complaint and failed to provide a clear answer for why the complaint was not processed.⁵⁹

On December 14, 2018, authorities transferred Ms. Alhathloul to Ha'er Prison in Riyadh, where she was held in solitary confinement for one day before being moved to housing with other activists arrested

⁴⁰ Amnesty International, *Saudi Arabia: Access for independent monitors urgently needed amid more reports of torture of activists* (Jan. 25, 2019), [amnesty.org/en/latest/news/2019/01/saudi-arabia-access-for-independent-monitors-urgently-needed-amid-more-reports-of-torture-of-activists/](https://www.amnesty.org/en/latest/news/2019/01/saudi-arabia-access-for-independent-monitors-urgently-needed-amid-more-reports-of-torture-of-activists/); Communication with confidential source A.B., on file with author.

⁴¹ Communication with confidential source A.B., on file with author.

⁴² Saud al-Qahtani was subsequently identified as a key figure in the targeted assassination of Saudi dissident Jamal Khashoggi. See Agnes Callamard, *Annex to the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions: Investigation into the unlawful death of Mr. Jamal Khashoggi*, UN Doc. A/HRC/41/CRP.1 (June 19, 2019), para. 98, 176, <https://www.ohchr.org/EN/Issues/Executions/Pages/Inquiry.aspx>.

⁴³ Ruth Michaelson, *supra* note 8.

⁴⁴ *Id.*

⁴⁵ Communication with confidential source A.B., on file with author.

⁴⁶ Ruth Michaelson, *supra* note 8.

⁴⁷ *Id.*

⁴⁸ New York Times, *supra* note 27.

⁴⁹ Communication with confidential source A.B., on file with author.

⁵⁰ New York Times, *supra* note 27.

⁵¹ Communication with confidential source A.B., on file with author.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ New York Times, *supra* note 27; Communication with confidential source A.B., on file with author.

⁵⁶ New York Times, *supra* note 27.

⁵⁷ Communication with confidential source A.B., on file with author.

⁵⁸ *Id.*

⁵⁹ *Id.*

in the May 2018 crackdown.⁶⁰ At this point, Ms. Alhathloul had still not been presented any formal indictment of the charges against her.

On January 8, 2019, Ms. Alhathloul's father submitted another complaint to the prosecutor's bureau concerning the torture and mistreatment of Ms. Alhathloul.⁶¹ The public prosecutor announced that they were investigating allegations.⁶² On approximately January 15, an official from the Bureau of Investigation and Prosecution met Ms. Alhathloul in prison to explain aspects of the judicial process.⁶³ During this conversation, the prosecutor did not ask about or discuss the allegations of torture.⁶⁴ On January 28, 2019, Ms. Alhathloul submitted a handwritten complaint detailing her torture to an official from the prosecutor's bureau.⁶⁵ Ms. Alhathloul's father submitted, on February 19 and March 4, 2019, two additional formal complaints to the Bureau of Investigation and Prosecution concerning the allegations of torture and mistreatment.⁶⁶ However, the Public Prosecution has never formally responded to the complaints, and there has been no finding or recognition of Ms. Alhathloul's abuse.⁶⁷

d. *Indictment and Pre-Trial Proceedings*

On March 10, 2019, Ms. Alhathloul's father⁶⁸ was notified that the first hearing in her case would be held on March 13, 2019, at 8:00AM before the Specialized Criminal Court, which has jurisdiction over terrorism cases.⁶⁹ At 11:30PM on March 12, State Security contacted Ms. Alhathloul's father notifying him that the case was transferred from the Specialized Criminal Court to a court of general jurisdiction.⁷⁰ On March 13, Ms. Alhathloul was first brought before a court and presented with an indictment outlining the charges against her.⁷¹ The indictment refers to 12 separate charges against her, the first four of which are reproduced in English below:⁷²

(1) Inciting and inviting to change the political system in the Kingdom, and abolish the constitution by cooperating with Khaled Alomair on telegram to initiate a campaign on Twitter to request for a new constitution and designing some brochures for the campaign.

(2) Participating in demanding for women's rights that have been guaranteed by Sharia law to Muslim women. The purpose was to help executing foreign agenda and gaining personal interests which override the rules implemented by the leadership, the constitution of the country and the privacy of the Saudi society and its custom.

(3) Striving to serve the agenda inside and outside the Kingdom. The coordinated agenda corresponds with the movement of the media, which are in line with the "alleged rights" by demanding to abolish the male guardianship. Additionally, she had been participating in attending conferences and panels that are related to Saudi women's rights. And using her

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Vivian Nereim, *Saudis to Probe Allegations that Women Activists Tortured*, Bloomberg (Jan. 13, 2019), <https://www.bloomberg.com/news/articles/2019-01-13/saudis-said-to-probe-allegations-that-women-activists-tortured>; Communication with confidential source A.B., on file with author.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Although he is not a lawyer, Ms. Alhathloul's father is serving as her domestic legal counsel. The decision to have Ms. Alhathloul's father represent was made because the family reasonably believed that hiring a lawyer would be seen as an adversarial stance that would not be looked upon kindly by the government officials and leading to a less favorable outcome in the proceedings against Ms. Alhathloul.

⁶⁹ Communication with confidential source A.B., on file with author.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² See Appendix A.

platforms on social media to publish videos that are supporting these campaigns and promoting them as well.

(4) Contacting: international organizations, rogues' groups, terrorist organizations that are anti-Saudi, foreign journalists . . .

The full indictment is reproduced in Appendix A. Other notable charges include “receiving financial support from an external organization to visit human rights organizations and to attend conferences and panels to speak about the status of Saudi women” (charge 5) and “participating in a documentary with British journalists to speak about her personal experience in prison” (charge 11).⁷³ For most of the charges, the indictment lacks mention of the laws of Saudi Arabia. Only one of the alleged crimes (charge 12) makes reference to a law or decree.⁷⁴

Following the presentation of the indictment, Ms. Alhathloul was provided two weeks to respond to the charges against her.⁷⁵ On March 27, 2019, she successfully moved to extend the deadline to respond to the charges.⁷⁶ On April 3, 2019, Ms. Alhathloul pled not guilty to the charges against her, and the trial judge set the next hearing date for April 17.⁷⁷

On April 17, 2019, Ms. Alhathloul and her family learned that the scheduled hearing had been cancelled. There was no prior notice of the cancellation or the reasons for cancellation. Moreover, the hearing has not been rescheduled.⁷⁸ At the time of this filing, Ms. Alhathloul’s trial has not progressed, and the Saudi Government has provided no explanation for the abrupt adjournment of the proceedings.⁷⁹

e. *Current Status*

Well over one year after her initial arrest, Ms. Alhathloul remains in detention, in Ha’er Prison in Riyadh.⁸⁰ Although she had been detained alongside other activists arrested in the May 2018 crackdown, she is now held in isolation, as the other activists detained have since been released.⁸¹ Since the last hearing, officers from the Saudi Security Service have visited both Ms. Alhathloul and her parents in an attempt to persuade Ms. Alhathloul to sign documents testifying that she had not been tortured by government officers.⁸² At one point, the officers offered to release Ms. Alhathloul on the condition that she sign documents and a record video testifying that she was not tortured.⁸³ She refused this deal.⁸⁴

At present, the trial against Ms. Alhathloul remains at a standstill since the abrupt cancellation of the April 17 pretrial hearing, and the court has yet to reschedule this hearing.⁸⁵

B. Legal Analysis

Both Saudi Arabia and the UAE have arbitrarily detained Ms. Alhathloul. Section IV.B.1 below details how Saudi Arabia’s arrest and continuing detention of Ms. Alhathloul is arbitrary under Categories

⁷³ See *Id.*, paras. 5, 11.

⁷⁴ See *Id.*, para. 12.

⁷⁵ Communication with confidential source A.B., on file with author.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² Sarah El Sirgany and Tamara Qiblawi, *Jailed Saudi activist rejects deal to deny torture for release, says family*, CNN (Aug. 14, 2019), <https://www.cnn.com/2019/08/14/middleeast/saudi-hathloul-torture-intl/index.html>; Communication with confidential source A.B., on file with author.

⁸³ Sarah El Sirgany and Tamara Qiblawi, *supra* note 82.

⁸⁴ *Id.*

⁸⁵ Communication with confidential source A.B., on file with author.

I, II, III, and V of the Working Group's Revised Methods of Work.⁸⁶ Additionally, Section IV.B.2 proceeds to detail how the UAE's arrest, detention, and eventual removal of Ms. Alhathloul amounts to an arbitrary deprivation of liberty under Categories I and III of the Working Group's Revised Methods of Work.

1. Saudi Arabia's Detention of Ms. Alhathloul Constitutes an Arbitrary Deprivation of Liberty under Categories I, II, III, and V

a. Arbitrary Deprivation of Liberty under Category I

A detention is arbitrary under Category I when there is no legal basis or justification for it.⁸⁷ The Working Group has found Category I detention where (i) an individual is held *incommunicado*;⁸⁸ (ii) the Government uses vague charges or laws to detain or prosecute an individual;⁸⁹ (iii) an individual is arrested without substantive evidence to justify the arrest;⁹⁰ and (iv) a State obtains custody over an individual via the practice of "extraordinary rendition."⁹¹ In the present case, the Saudi Government has engaged in all four of these forms of Category I detention.

i. *Saudi Arabia Held Ms. Alhathloul Incommunicado*

The Working Group has consistently held that detaining a person *incommunicado* is a form of arbitrary detention under Category I on the grounds that such detention violates the right to challenge the lawfulness of one's detention before a competent tribunal, as protected under articles 8, 10, and 11 of the Universal Declaration of Human Rights.⁹² *Incommunicado* detention occurs where an individual is "deprived of their liberty in secret for potentially indefinite periods, held outside the reach of the law, without the possibility of resorting to legal procedures, including *habeas corpus*."⁹³ In this context, the Working Group has affirmed that "secret and/or *incommunicado* detention constitutes the most heinous violation of the norm protecting the right to liberty of human being under customary international law."⁹⁴

In the present case, the Saudi Government held Ms. Alhathloul *incommunicado* for 35 days. When State Security officials arrested Ms. Alhathloul on March 15, 2018, they did not provide her family any

⁸⁶ Under international law, an arbitrary deprivation of liberty is defined as any "depriv[ation] of liberty exception on such grounds and in accordance with such procedures as are established by law." *International Covenant on Civil and Political Rights*, G.A. Res 2200A (XXI), 21 UN GAOR Supp. (No. 16), at 52, U.N. Doc. A/6316 (1966), 999 UNTS 171, entered into force on Mar. 23, 1976 (hereinafter "ICCPR"), at art. 9(1). An arbitrary deprivation of liberty is expressly prohibited under international law. *Id.*; See also *Universal Declaration of Human Rights*, G.A. Res. 217A (III), U.N. Doc. A/810 (hereinafter "UDHR"), at art. 9, (1948) ("No one shall be subjected to arbitrary arrest, detention or exile."); *Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment*, G.A. Res. 47/173, 43 UN GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (hereinafter "Body of Principles"), at principle 2 ("Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law . . .").

⁸⁷ A Category I deprivation of liberty occurs "[w]hen it is impossible for the government to invoke any legal basis under domestic law for detaining the individual . . ." Report of the Working Group on Arbitrary Detention, 16th session, A/HRC/16/47, Annex 8(b) (Jan. 19, 2011), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/102/76/PDF/G1110276.pdf?OpenElement>.

⁸⁸ *Wang Quanzhang et al. v. China*, UN Working Group on Arbitrary Detention, Opinion No. 62/2018, paras. 55-56 (Aug. 24, 2018), <https://undocs.org/a/hrc/wgad/2018/62>.

⁸⁹ *61 Individuals v. United Arab Emirates*, UN Working Group on Arbitrary Detention, Opinion No. 60/2013, para. 22 (Nov. 22, 2013), <http://hrlibrary.umn.edu/wgad/60-2013.html>; *Judicaël et al. v. Republic of Congo*, UN Working Group on Arbitrary Detention, Opinion No. 44/2014, paras. 26-37 (Feb. 4, 2015), <http://hrlibrary.umn.edu/wgad/44-2014.pdf>.

⁹⁰ *Gargari v. Mexico*, UN Working Group on Arbitrary Detention, Opinion No. 58/2016, para. 21 (Nov. 25, 2016), <https://www.unwgadatabase.org/un/Document.aspx?id=3283>.

⁹¹ *Zhiya Kassem Khammam al Hussain v. Saudi Arabia*, UN Working Group on Arbitrary Detention, Opinion No. 19/2007, para. 18 (Nov. 22, 2007), <https://www.unwgadatabase.org/un/Document.aspx?id=1952>.

⁹² *Wang Quanzhang et al. v. China*, Opinion No. 62/2018, para. 55.

⁹³ Special Rapporteur on the Promotion and Protection of Human Rights While Countering Terrorism, *Joint Study on Global Practices in Relation to Secret Detention in the Context of Countering Terrorism*, UN Doc. A/HRC/13/42, p. 2 (May 20, 2010), <https://undocs.org/A/HRC/13/42>. The Special Rapporteur's report has been recognized by the Working Group as identifying the extent of human rights violations associated with *incommunicado* detention. See UN Working Group on Arbitrary Detention, *Report of the Working Group*, UN Doc. A/HRC/22/44, fn. 27 (Dec. 24, 2012),

⁹⁴ *Id.* at para. 60.

information on where she would be held or how to contact her. Moreover, Ms. Alhathloul was not allowed to reach out to her family until June 19, 2018. During this 35-day period, Ms. Alhathloul had no access to judicial review of her detention, no access to her family, and no access to legal counsel. Accordingly, Ms. Alhathloul was held *incommunicado* and her detention is arbitrary under Category I.

ii. *Saudi Arabia Failed to Provide Any Legal Justification for Ms. Alhathloul's Arrest and Continuing Detention*

The Working Group has emphasized that there must be a clear legal basis for an individual's detention under the laws of the detaining State.⁹⁵ Article 11(2) of the UDHR guarantees individuals the right to know what the law is and what conduct violates the law.⁹⁶ In its General Comment No. 35, the Human Rights Committee has interpreted this principle to mean that “[a]ny substantive grounds for arrest or detention must be prescribed by law and should be defined with sufficient precision to avoid overly broad or arbitrary interpretation or application.”⁹⁷ Saudi Arabia's laws purport to guarantee similar protections. According to Article 36 of the Saudi Arabian Basic Law of Governance, “No one may be confined, arrested or imprisoned without reference to the Law.”⁹⁸ Additionally, Article 35 of the Saudi Arabian Law on Criminal Procedure provides that no person shall be arrested or detained except on the basis of an order from the competent authority.⁹⁹ That article also specifies that “any such person . . . shall also be advised of the reasons of his detention.”¹⁰⁰

However, in Ms. Alhathloul's case, the Government has failed to articulate the legal basis for her detention. When Ms. Alhathloul was arrested on May 15, 2018, officials failed to show any warrant, or other order issued by a lawful authority, that authorized her arrest. Moreover, the arresting officers also failed to provide verbal confirmation of any laws that Ms. Alhathloul might have allegedly violated that would justify her detention. Lastly, in the indictment that the Government brought against Ms. Alhathloul almost 10 months after her initial detention, 11 out of the 12 charges against her failed to make reference to any law that she might have violated. The failure to adequately justify Ms. Alhathloul's detention by reference to Saudi legislation constitutes Category I detention.

iii. *Saudi Arabia Arrested and Detained Ms. Alhathloul Without Any Evidence that She Committed a Crime*

Both at the time that Ms. Alhathloul was arrested and when the indictment against her was released, the Government possessed no evidence that she had engaged in any activity that was a crime at the time of her detention and that was also not protected under well-established principles of human rights law. Ms. Alhathloul's actions have been entirely peaceful. She has never engaged in past violent activities, and the Government does not allege that she, herself, has done specific violent acts or encouraged such acts.

Moreover, the activities described in the indictment of Ms. Alhathloul, with one exception, have not been connected to any law that Ms. Alhathloul has allegedly violated. In the case of the single charge

⁹⁵ See, e.g., *61 Individuals v. United Arab Emirates*, Opinion No. 60/2013, para. 22; *Judicaël et al. v. Republic of Congo*, UN Opinion No. 44/2014, paras. 26-37.

⁹⁶ UDHR, *supra* note 86, art. 11(2) (“No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.”).

⁹⁷ UN Human Rights Committee, General Comment No. 35: Article 9 (Liberty and Security of Persons), UN Doc. CCPR/C/GC/35, para. 22 (Dec. 16, 2014), available at <https://undocs.org/ccpr/c/gc/35> [hereinafter “General Comment No. 35”]; UN Human Rights Committee, *Concluding Observations on Mauritius*, UN Doc. CCPR/CO/83/MUS, para. 12 (Apr. 27, 2005), available at <https://undocs.org/CCPR/CO/83/MUS>; UN Human Rights Committee, *Concluding Observations on Russia*, UN Doc. CCPR/C/RUS/CO/6 (Nov. 24, 2009), para. 24, available at <https://undocs.org/CCPR/C/RUS/CO/6>.

⁹⁸ Kingdom of Saudi Arabia, *Basic Laws of Governance*, No. A/90, art. 36 (Mar. 1, 1992), <https://www.saudiembassy.net/basic-law-governance>.

⁹⁹ Kingdom of Saudi Arabia, *Law on Criminal Procedure*, No. M/39, art. 35 (Oct. 16, 2001), http://hrlibrary.umn.edu/research/saudiarabia/criminal_procedure.html.

¹⁰⁰ *Id.*

that is connected to a pre-existing law, Charge 12, the Government accuses Ms. Alhathloul of violating Article 6 of Royal Decree Number M/17, “Combatting Cybercrime,” for the following

- (a) *Using social media apps to connect with individuals who are enemies of the country.*
- (b) *Joining groups on WhatsApp and Telegram that discuss abolishing male guardianship and giving women full rights that make them equal to men. In addition to coordinating campaigns that demand a new constitution for the country by setting up meetings and interviews that serve the campaign and by providing reports and information.*
- (c) *Taking and publishing videos with false information to damage the reputation of the Kingdom.*
- (d) *Violating previous pledges that she signed.*

Each of the above enumerated activities, as applied to Ms. Alhathloul, constitute protected expression under the UDHR, and accordingly these activities do not qualify as evidence sufficient to justify Ms. Alhathloul’s culpability under Article 6 of Royal Decree Number M/17. Specifically, sub-paragraph (a), as the Government reveals in the indictment, refers to Ms. Alhathloul’s communications with known human rights defenders. Sub-paragraph (b) describes protected political expression. Sub-paragraph (c) also describes protected political expression, as a government does not fall within the recognized exceptions to the right to freedom of expression, and accordingly cannot be defamed.¹⁰¹ Lastly, sub-paragraph (d), taken along with the entire indictment, does not reference any particular activities constituting a breach. As a result, the Government has failed to present a sufficient factual basis for Ms. Alhathloul’s detention, and accordingly, the Government has engaged in Category I detention.

iv. *The Saudi Government Orchestrated an Extraordinary Rendition to Gain Custody Over Ms. Alhathloul*

The Working Group has consistently found that engaging in the practice of “renditions” (also called “extraordinary renditions”) amounts to a violation of Article 9 of the UDHR and constitutes Category I arbitrary detention.¹⁰² The Working Group has defined an extraordinary rendition as “the informal transfer of a person from the jurisdiction of one State to that of another on the basis of negotiations between administrative authorities of the two countries (often intelligence services), without procedural safeguards”¹⁰³ To determine whether a rendition has occurred, the Working Group will consider factors such as whether the transfer occurs outside of any legal procedure and whether the detainee receives any information about the proceedings initiated against him or her.¹⁰⁴ The Working Group has also found that both the sending State and the receiving State maintain responsibility for the violation of international law.¹⁰⁵

In the present case, the Saudi Arabia collaborated with the UAE to secure the rendition of Ms. Alhathloul (the UAE’s responsibility for the rendition is described in Section IV.B.2.a). The Saudi Government sought removal of Ms. Alhathloul without having begun any legal process in Saudi Arabia against her. Moreover, there is no indication that Saudi Arabia presented any relevant and necessary information—such as evidence of a warrant, an indictment, or evidence of an investigation—to Emirati

¹⁰¹ See, e.g., ICCPR, art. 19(3); Human Rights Committee, *General Comment No. 34*, UN Doc. CCPR/C/GC/34, para. 38 (Sep. 12, 2011), <https://undocs.org/CCPR/C/GC/34>.

¹⁰² *Zhiya Kassem Khammam al Hussain v. Saudi Arabia*, *supra* note 91, paras. 18, 21; *Ayman Ardenli and Muhammad Haydar Zammam v. Syria*, UN Working Group on Arbitrary Detention, Opinion No. 08/2007, paras. 22, 25, <https://www.unwgadatabase.org/un/Document.aspx?id=2335>; see also *Amine Mohammad Al-Bakr v. Afghanistan and the United States of America*, Opinion No. 11/2007 (May 11, 2007), <https://www.unwgadatabase.org/un/Document.aspx?id=2338>.

¹⁰³ *Report of the Working Group on Arbitrary Detention*, UN Doc. A/HRC/4/40, para. 50 (Jan. 9, 2007), <https://undocs.org/A/HRC/4/40>.

¹⁰⁴ *Zhiya Kassem Khammam al Hussain v. Saudi Arabia*, *supra* note 91, para. 18.

¹⁰⁵ See *Amine Mohammad Al-Bakr v. Afghanistan and the United States of America*, *supra* note 102, para. 15 (finding that Thailand violated international law for transferring the applicant, via extraordinary rendition, to the custody United States); *Zhiya Kassem Khammam al Hussain v. Saudi Arabia*, *supra* note 91, para. 18 (finding that Saudi Arabia violated international law for receiving the applicant via extraordinary rendition from Kuwait).

officials to justify the transfer. Even after Ms. Alhathloul arrived in Saudi Arabia, officials did not present a warrant for her arrest or an indictment for charges against her. Then, she was released two days later, still, with no evidence of a legal basis for her arrest. All of this suggests that the transfer occurred without adequate legal process on behalf of the Saudi Government. Given that there was no evidence of a lawful basis for an extradition request, the Saudi Government actively knew or should have known that Ms. Alhathloul was being transferred without having been provided sufficient judicial safeguards.

Moreover, the short time-frame and means of transfer suggests a high level of administrative coordination between the two governments. Ms. Alhathloul was deported via a private plane the very same day that she was arrested. Not only was the UAE prepared to quickly remove Ms. Alhathloul, the Saudi Government was promptly prepared to receive her within a matter of hours after her arrest. This coordination occurred without a formal and public legal process in the UAE and without explicit notice provided to Ms. Alhathloul. The quickness of the transfer, the absence of a formal legal process, and the lack of a warrant or indictment from either Saudi Arabia or the UAE demonstrates that the transfer constituted an extraordinary rendition, in violation of Ms. Alhathloul's rights under Article 9 of the UDHR.

Ms. Alhathloul's rendition was a precondition for the Saudi Government's subsequent detention and torture of her. Following her rendition, the Saudi Government placed a travel ban on Ms. Alhathloul, which prevented her from returning to the UAE and facilitated her arrest on May 15, 2018. Because the Saudi Government's current detention of Ms. Alhathloul directly stemmed from an extraordinary rendition, the detention falls within Category I.

a. Arbitrary Deprivation of Liberty under Category II

A detention is arbitrary under Category II of the Working Group's Revised Methods of Work when it results from the exercise of fundamental rights or freedoms protected under international law, including the rights to freedom of expression and association.¹⁰⁶ In the present case, the Government arrested and detained Ms. Alhathloul on the basis of her exercise of these rights.

i. *Saudi Arabia Targeted Ms. Alhathloul on the Basis of Her Exercise of Her Right to Freedom of Expression*

Protection for the right to freedom of expression is well established under international law. Article 19 of the UDHR provides that "[e]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."¹⁰⁷ The right to freedom of expression is vital to the work of human rights defenders. In its General Comment 34, the Human Rights Committee explicitly stated that the right to freedom of expression protects discussion of human rights.¹⁰⁸ Moreover, the Working Group has recognized the right of human rights defenders "to investigate, gather information regarding and report on human rights violations."¹⁰⁹ Furthermore, in Article 32(1), the Arab Charter on Human Rights (ACHR), ratified by Saudi Arabia in 2009, guarantees "the right to information and to freedom of opinion and

¹⁰⁶ A detention is arbitrary under Category II "when the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13-14 and 18-21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18-19, 21-22 and 25-27 of the International Covenant on Civil and Political Rights." *Methods of Work of the Working Group on Arbitrary Detention*, U.N. Doc. A/HRC/33/66, para. 8b [hereinafter "Revised Methods of Work"].

¹⁰⁷ UDHR, *supra* note 86, art. 19.

¹⁰⁸ UN Human Rights Committee, General Comment No. 34: Article 19 (Freedom of Expression), UN Doc. CCPR/C/GC/34, para. 11 (Sep. 12, 2011), available at <https://undocs.org/CCPR/C/GC/34> [hereinafter "General Comment No. 34"].

¹⁰⁹ *Hassan Ahmed Hassan Al-Diqqi v. United Arab Emirates*, UN Working Group on Arbitrary Detention, Opinion No. 8/2009, UN Doc. A/HRC/13/30/Add.1 (Sep. 1, 2019), para. 18, available at <https://undocs.org/A/HRC/13/30/Add.1>. Although the Working Group came to this conclusion by referencing the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, it noted that "in the Working Group's view" the rights and principles of the Declaration "are based on human rights standards enshrined in the Universal Declaration of Human Rights and in the Charter of the United Nations." *Id.*

expression, as well as the right to seek, receive and impart information and ideas through any medium, regardless of geographical boundaries.”¹¹⁰

In the present case, Ms. Alhathloul was arrested and detained on the basis of and in retaliation for her exercise of her right to freedom of expression. The first indication of the Government’s motivation for arresting Ms. Alhathloul comes from the fact that she was arrested in connection with a widespread crackdown on human rights defenders. Most of those arrested in the crackdown, including Ms. Alhathloul, had a history of advocating against Saudi Arabia’s discriminatory ban on issuing driving licenses to women. The Government proceeded to house the arrested advocates all together in prison, further indicating their connection.

The Government’s motivation for the arrest and detention of Ms. Alhathloul is most evident in the indictment against her. The indictment charges Ms. Alhathloul with “[p]articipating in demanding for women’s rights that have been guaranteed by Sharia law to Muslim women . . .”, “demanding to abolish male guardianship,” and “[p]articipating in a documentary with British journalists to speak about her personal experience in prison.” Moreover, the indictment presents the following “facts” in support of the charges: Ms. Alhathloul admitted “that she had coordinated with the detainee Eman Alnafjan to inform Amnesty International and Human Rights Watch about the recent decision from security agencies to place several human rights activists on travel ban,” and she admitted “that she had contacted around 15-20 foreign journalists to provide them with information about women’s issues in the Kingdom.” These activities, as well as many others identified in the indictment, constitute fundamental expressive activity that Ms. Alhathloul conducted in the service of her role as an activist and human rights defender. Accordingly, the Saudi Government’s attempt to detain and punish her on the basis of this activism constitutes a clear instance of suppression of her right to freedom of expression.

ii. *Saudi Arabia Targeted Ms. Alhathloul on the Basis of Her Exercise of Her Right to Freedom of Association*

The right to freedom of association is protected under Article 20(1) of the UDHR, which affirms that “[e]veryone has the right to freedom of peaceful assembly and association.”¹¹¹ Similarly, Article 24(6) of the ACHR guarantees every citizen the right to freedom of association.¹¹² Furthermore, the Human Rights Council has specifically called for states to fully respect and protect the rights of all individuals to associate freely, especially for persons espousing minority or dissenting views or beliefs and human rights defenders.¹¹³

In the present case, the Saudi Government has charged and is currently holding Ms. Alhathloul merely on the basis of her association and connections with journalists, human rights defenders, international human rights monitors, and the United Nations. For example, Charge 3 of the indictment, accuses her of “participating in attending conferences and panels that are related to Saudi women’s rights.” Charge 4 accuses her of merely “contacting” “international organizations,” “foreign journalists,” and “embassies of foreign governments.” Additionally, Charge 9 accuses Ms. Alhathloul of “[t]aking advantage of her previous detention and travel ban to include it in her resume, to apply for a job at the United Nations.” Restricting the activities referenced in the above charges constitutes a restriction of Ms. Alhathloul’s ability to associate with individuals and organizations around the world in furtherance of her advocacy mission to ensure equality for women in Saudi Arabia. Accordingly, detaining Ms. Alhathloul on the basis of these charges constitutes a restriction on her right to freedom of expression.

¹¹⁰ League of Arab States, *Arab Charter on Human Rights* (adopted May 22, 2004, entered into force Mar. 15, 2008), reprinted in 12 Int’l Hum. Rts. Rep. 893 (2005), available at <http://hrlibrary.umn.edu/instree/loas2005.html>.

¹¹¹ UDHR, *supra* note 86, art. 20(1).

¹¹² Arab Charter on Human Rights, *supra* note 110, art. 24(6) (“Every citizen has the right . . . (6) to freedom of association and peaceful assembly.”).

¹¹³ UN Human Rights Council, Res. 15/21, UN Doc A/HRC/RES/15/21, para 1, (6 Oct. 2010), available at <https://undocs.org/A/HRC/RES/15/21>.

iii. *None of the Recognized Exceptions Apply in This Case*

Although the rights to freedom of expression and association are not absolute, none of the exceptions to these rights apply to Saudi Arabia's repression of Ms. Alhathloul's rights. Under international law, the rights to freedom of expression and association may only be restricted in limited circumstances, and the Human Rights Committee has established a three-part "strict test of justification" in analyzing limitations on such fundamental rights.¹¹⁴ For a given limitation to be permissible, the limitation must (1) be provided for by law, (2) serve an enumerated purpose, and (3) be necessary to achieve that purpose.¹¹⁵ The enumerated purposes for which a Government may restrict these fundamental rights are to protect national security, public safety and public order, public health, and the fundamental rights and freedoms of others. The ACHR provides for a near identical test for permissible restrictions of the right to freedom of expression¹¹⁶ and association.¹¹⁷

The Human Rights Committee has emphasized that such restrictions must not "put in jeopardy the right itself."¹¹⁸ It is not sufficient for a government to merely invoke one of the enumerated exceptions, but must "specify the precise nature of the threat" posed by the protected activity,¹¹⁹ establish a "direct and immediate connection between the expression and the threat," and demonstrate why the limitation was necessary.¹²⁰ Furthermore, in the case of the right to freedom of expression, the Human Rights Committee has been clear that paragraph 3 never be used to justify "the muzzling of any advocacy of . . . human rights."¹²¹

The present case, as noted above, the Saudi Government has targeted, arrested, and detained Ms. Alhathloul on the basis of her advocacy activities. Accordingly, there is no interpretation of the Government's actions that would not "put in jeopardy the right itself." Furthermore, the Government's failure to reference relevant legislation in its indictment of Ms. Alhathloul results in her detention not meeting the "provided for by law" condition of the test. Additionally, given that Ms. Alhathloul has never engaged in, advocated, or encouraged violence, her detention is not necessary to serve any legitimate purpose. Accordingly, the Government may not avail itself of any of the permissible exceptions to the rights of freedom of expression and association.

c. Arbitration Deprivation of Liberty under Category III

According to Category III of the Working Group's Revised Methods of Work, a deprivation of liberty is arbitrary "[w]hen the total or partial non-observance of international norms relating to the right to a fair trial, spelled out in the UDHR and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character."¹²²

¹¹⁴ *Park v. Republic of Korea*, UN Human Rights Committee, Communication No. 628/1995, UN Doc. CCPR/C/64/D/628/1995, para. 10.3, (3 Nov. 1998).

¹¹⁵ *Shin v. Republic of Korea*, UN Human Rights Committee, Communication No. 926/2000, UN Doc. CCPR/C/80/D/926/2000, para 7.2 (16 March 2004).

¹¹⁶ Article 32(2), referring to the right to freedom of expression, provides that Such rights and freedoms shall be exercised in conformity with the fundamental values of society and shall be subject only to such limitations as are required to ensure respect for the rights or reputation of others or the protection of national security, public order and public health or morals." Arab Charter on Human Rights, *supra* note 110, art. 32(2).

¹¹⁷ Article 24(7), referring to the right to association, provides that "No restrictions may be placed on the exercise of these rights other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public health or morals or the protection of the rights and freedoms of others." Arab Charter on Human Rights, *supra* note 110, art. 24(7).

¹¹⁸ General Comment No. 34, *supra* note 108, para. 21.

¹¹⁹ *Sohn v. Republic of Korea*, UN Human Rights Committee, Communication No. 518/1992, UN Doc. CCPR/C/54/518/1992, para. 10.4 (July 19, 1992).

¹²⁰ General Comment No. 34, *supra* note 108, para. 35.

¹²¹ *Id.*, at para. 33.

¹²² Revised Methods of Work, *supra* note 106, Category III, para. c.

Due process is at the core of the right to a fair trial. The minimum international standards of due process are established in the UDHR, the Body of Principles for the Protection of All persons under Any Form of Detention or Imprisonment (the “Body of Principles”), and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the “Mandela Rules”).¹²³

i. *Saudi Arabia Violated Ms. Alhathloul’s Right Not to Be Subjected to Arbitrary Arrest*

Article 9 of the UDHR guarantees that “No one shall be subjected to arbitrary arrest, detention or exile.”¹²⁴ This right is reiterated Principles 2 and 36(2) of the Body of Principles.¹²⁵ The Human Rights Committee has interpreted this right to mean that “procedures for carrying out legally authorized deprivation of liberty should also be established by law and States parties should ensure compliance with their legally prescribed procedures.”¹²⁶ Under Article 14(1) of the ACHR, “No one shall be subjected to arbitrary arrest, search or detention without a legal warrant.”¹²⁷ Article 16(1) of the ACHR further requires authorities to promptly notify an individual of the charges against them.¹²⁸ Moreover, Principle 10 of the Body of Principles requires that arrestees be notified of the grounds for their arrest at the moment they are arrested.¹²⁹

In the present case, Ms. Alhathloul was not informed of the grounds for her arrest at the time she was seized and detained on May 15, 2018, which is a direct violation of the UDHR, ACHR, and the Body of Principles. In connection with the arresting officers’ failure to notify Ms. Alhathloul of the legal reasons for her arrest, the officers did not show Ms. Alhathloul a warrant, and there is no indication that such a warrant exists. Furthermore, even with the filing of an indictment against Ms. Alhathloul, there is little certainty about what laws she has allegedly violated, given the absence of reference to specific legal provisions within the indictment. Accordingly, the pretrial detention of Ms. Alhathloul is unfounded, and the denial of her release is a violation of Article 9 of the UDHR, articles 14(1) and 16(1) of the ACHR, and principles 2, 10, and 36(2) of the Body of Principles.

ii. *Saudi Arabia Violated Ms. Alhathloul’s Right to Be Promptly Brought Before a Judicial Authority*

The Human Rights Committee has found that protecting the right to life, liberty, and the security of person, as guaranteed under Article 3 of the UDHR, requires States to ensure prompt judicial review of anyone deprived of liberty by arrest or detention.¹³⁰ Similarly, Article 14(5) of the ACHR guarantees that “[a]nyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.”

In the present case, Ms. Alhathloul was held *incommunicado* for over a month after her initial arrest and was not provided access to a judicial authority to evaluate the legality of her arrest. Moreover, Ms. Alhathloul was not brought before any judge until August 30, 2018, when she was presented before an investigating judge who affirmed her detention. Given that this hearing occurred over three months after her initial arrest, the Government failed to respect Ms. Alhathloul’s right to prompt judicial review of her detention. Saudi Arabia’s violation of this right enabled other violations, such as torture, to occur while Ms. Alhathloul was held *incommunicado* during this time. As a result, Saudi Arabia violated Ms. Alhathloul’s rights under Article 3 of the UDHR and Article 14(5) of the ACHR.

¹²³ *Id.* at Category III, paras. 7(a)-(b).

¹²⁴ UDHR, *supra* note 86, art. 9.

¹²⁵ Body of Principles, *supra* note 86, prin. 2, 36(2).

¹²⁶ General Comment No. 35, *supra* note 97, para. 23.

¹²⁷ Arab Charter on Human Rights, *supra* note 110, art. 14(1).

¹²⁸ *Id.* at art. 16(1).

¹²⁹ Body of Principles, *supra* note 86, prin. 10.

¹³⁰ General Comment No. 35, *supra* note 97, paras. 2, 39.

iii. *Saudi Arabia Violated the Prohibition on Torture and Cruel, Inhuman, and Degrading Treatment*

The right to be free from torture is well established under international law. Article 5 of the UDHR affirms that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”¹³¹ Moreover, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”), to which Saudi Arabia is party, requires governments to take steps to prevent torture and punish perpetrators.¹³² This right is also protected under Principle 6 of the Body of Principles, rules 1 and 43 of the Mandela Rules, and Article 8 of the ACHR.¹³³ Any imposition of suffering that is not severe enough to qualify as torture still constitutes cruel, inhuman or degrading treatment,¹³⁴ which term “should be interpreted so as to extend to the widest possible protections against abuses, whether physical or mental”¹³⁵

International law’s particular concern with torture as an interrogatory tool is reflected in the definition of torture in CAT, which defines the term as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession”,¹³⁶ as well as in Principle 21(2) the Body of Principles which guarantees that “no detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgment.”¹³⁷

On multiple occasions, the Government tortured Ms. Alhathloul, both as reprisal for her advocacy activities and to coerce “confessions” from her. Between approximately May 21 and July 4, 2018, Ms. Alhathloul was repeatedly tortured during interrogation sessions at an undisclosed hotel in Jeddah. Ms. Alhathloul was subjected to electric shocks, flogging, waterboarding, and threats of rape and sexual assault. During interrogation sessions, State Security officials intentionally used these actions to inflict severe pain and suffering on Ms. Alhathloul, and accordingly these actions constitute a violation of the prohibition on torture.

Despite the Government’s obligation to investigate and prosecute instances of torture, the Saudi Government has taken active steps to cover up the torture of Ms. Alhathloul. Officers from State Security has attempted to pressure Ms. Alhathloul to sign documentation that she was never tortured while in custody. This is after both Ms. Alhathloul and her father had made multiple complaints to the office of the Public Prosecutor notifying them that torture had occurred. Moreover, the identity of one of Ms. Alhathloul’s torturers, Saud al-Qahtani, is known, and the Saudi Government has taken no concrete steps to investigate or hold him accountable for his crimes.

Due to government agents’ use of violence and threats of violence against Ms. Alhathloul during her detention, Saudi Arabia violated Article 5 of the UDHR, Articles 2, 5, 16 of the CAT, Principles 6 and 21(2) of the Body of Principles, Rules 1 and 43 of the Mandela Rules, and Article 8 of the ACHR.

iv. *Saudi Arabia Violated Ms. Alhathloul’s Right to Release Pending Trial*

Principles 38 and 39 of the Body of Principles affirm that, except in special cases, a criminal detainee is entitled to release pending trial.¹³⁸ The Human Rights Committee has clarified the standard,

¹³¹ UDHR, *supra* note 86, art. 9.

¹³² Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN Doc. A/RES/39/46, arts. 2, 5, 16 (Dec. 10, 1984) [hereinafter CAT].

¹³³ Body of Principles, *supra* note 86, prin. 6; Mandela Rules, *supra* note 86, rules 1, 43; Arab Charter on Human Rights, *supra* note 110, art. 8.

¹³⁴ M. Nowak, *UN Covenants on Civil and Political Rights: CCPR Commentary*, 445, 2nd ed., Kehl am Rhein: Engel, 163 (2005).

¹³⁵ Body of Principles, *supra* note 86, prin. 6(1)

¹³⁶ CAT, art 1(1).

¹³⁷ Body of Principles, *supra* note 86, prin. 21(2). Also, “it shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess...” *Id.*, principle 21(1).

¹³⁸ Body of Principles, *supra* note 86, prin. 38, 39.

stating that “[d]etention pending trial must be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime. . . .”¹³⁹ Moreover, in Article 14(5), the ACHR assures that “[p]re-trial detention shall in no case be the general rule.”¹⁴⁰

The Government lacks any justification for holding Ms. Alhathloul in pre-trial detention for, what has now been, 18 months. As noted above, Ms. Alhathloul has never engaged in violent activities; her advocacy has always of a peaceful nature; and she has not advocated for or encouraged violence. Accordingly, holding her in pre-trial detention is a violation of principles 38 and 39 of the Body of Principles and Article 14(5) of the ACHR.

v. *Saudi Arabia Violated Ms. Alhathloul’s Right to be Tried Without Undue Delay*

Article 10 of the UDHR provides that “[e]veryone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal”¹⁴¹ The Human Rights Committee has emphasized “[a]n important aspect of the fairness of a hearing is its expeditiousness.”¹⁴² Similarly, the ACHR, under Article 14(6), guarantees that “[a]nyone who is deprived of his liberty by arrest or detention shall be entitled to petition a competent court in order that it may decide *without delay* on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful (emphasis added).”¹⁴³ With respect to the right to a trial, the Human Rights Committee has found that undue delay must be avoided at all stages of a criminal proceeding, from the commencement to the end of the trial.¹⁴⁴

Ms. Alhathloul was held for 10 months before her trial began. The Government did not provide any justification for the excessive length of the investigatory period, and as noted above, the Government lacked a basis for the arrest and detention of Ms. Alhathloul. Accordingly, the excessive investigation period constituted undue delay of Ms. Alhathloul’s right to a trial.

More recently, the trial court, without prior notice or justification has stalled proceedings since April 17, 2019. By refusing to schedule hearings, the Government is effectively depriving Ms. Alhathloul’s right to review of her case by a competent tribunal without undue delay. Accordingly, the Government has violated Ms. Alhathloul’s rights under Article 10 of the UDHR and Article 14(6) of the ACHR.

d. Arbitration Deprivation of Liberty under Category V

According to Category V of the Working Group’s Revised Methods of Work, a deprivation of liberty is arbitrary “[w]hen the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on . . . political or other opinion”¹⁴⁵ Importantly, Category V detention only occurs when the underlying discrimination “aims towards or can result in ignoring the equality of human beings.”¹⁴⁶

As mentioned above, Ms. Alhathloul was targeted, arrested, and detained on the basis of her political opinions concerning the equality of men and women within Saudi Arabia. It was because Ms. Alhathloul shared this opinion, to great effect, that she was detained. Thus, arresting her, and other Saudi feminist activists, constitutes discrimination on the basis of a political opinion, namely the opinion that women should maintain comparable rights as men within Saudi Arabia. Moreover, by detaining individuals for their promotion of gender equality, the Saudi Government was directly engaging in discrimination that

¹³⁹ General Comment No. 35, *supra* note 97, para. 38.

¹⁴⁰ Arab Charter on Human Rights, *supra* note 110, art. 14(5).

¹⁴¹ UDHR, *supra* note 86, art. 10.

¹⁴² UN Human Rights Committee, General Comment No. 32: Article 14 (Fair Trial), UN Doc. CCPR/C/GC/32, para. 27 (Aug. 23, 2007), *available at* <https://undocs.org/CCPR/C/GC/32>.

¹⁴³ Arab Charter on Human Rights, *supra* note 110, art. 14(6).

¹⁴⁴ General Comment No. 32, *supra* note 142, para. 35.

¹⁴⁵ Revised Methods of Work, *supra* note 106, Category V, para. e.

¹⁴⁶ *Id.*

“aimed towards . . . ignoring the equality of human beings,” in this case, ignoring the equality of men and women. As a result, the Government’s detention of Ms. Alhathloul constituted an arbitrary deprivation of liberty under Category V.

2. **The UAE’s Detention of Ms. Alhathloul Constituted an Arbitrary Deprivation of Liberty under Categories I and III**

a. Arbitration Deprivation of Liberty under Category I

As detailed in Section IV.B.1.a above, the Working Group has found that extraordinary rendition amounts to a violation of Article 9 of the UDHR and a resulting deprivation of liberty constitutes Category I arbitrary detention.¹⁴⁷ Furthermore, the UAE has enacted legislative protections for individuals subject to extradition. Under Article 11(3) of Federal Law No. 39 of 2006, titled *On International Judicial Co-Operation In Criminal Matters*, any foreign State requesting surrender of an individual must provide, among other information, a copy of an arrest warrant issued by a competent judicial authority which indicates “the type of crime, the acts attributed to the requested person, date and time of its commitment”¹⁴⁸ Moreover, Article 17 states that any individual subject to extradition “shall be submitted to the competent Public Prosecution within forty eight hours from the date of his arrest, and the Public prosecution must inform him of the reason for arrest, the content of the request for surrender, the existing evidences, documents related to the request.”¹⁴⁹ Lastly, Article 19 requires that a “competent court” review extradition requests “in the presence of the Public Prosecution, the requested person, and his attorney.”¹⁵⁰

In the present case, the UAE neither followed international standards of due process nor its own laws regulating the surrender of persons to foreign States. Firstly, there is no indication that the UAE received any arrest warrant or indictment of charges from Saudi Arabia concerning Ms. Alhathloul (as there is no indication that any such documents exist). Secondly, Ms. Alhathloul was not presented before a Public Prosecutor in the UAE and informed of the grounds for her transfer to Saudi Arabia, as required under UAE law. Lastly, there was no hearing, trial, or judgment by a competent judicial authority in the UAE authorizing Ms. Alhathloul’s transfer to Saudi Arabia. As described in Section IV.B.1.a.ii above, the short time-frame and means of transfer suggests a high level of administrative coordination between the two governments. As a result, UAE authorities circumvented legal procedures and protections to transfer Ms. Alhathloul to Saudi Arabia. The UAE’s extraordinary rendition violated Article 9 of the UDHR and her arrest and detention by Emirati authorities amounted to a deprivation of liberty under Category I.

b. Arbitration Deprivation of Liberty under Category III

i. *The UAE Failed to Notify Ms. Alhathloul of the Charges Against Her or the Grounds for Her Detention*

As noted above, Article 9 of the UDHR, Principle 10 of the Body of Principles, and articles 14(1) and 16(1) of the ACHR, which the UAE ratified in 2008, require that arrested individuals be presented a warrant and informed of the grounds for their detention.¹⁵¹ Furthermore, the UAE’s Federal Law No. 39 of 2006 guarantees those subject to extradition the right to be notified of the charges against them in the requesting country.¹⁵² In the present case, the Abu Dhabi police officers arresting Ms. Alhathloul did not present her with a warrant or inform her of any charges against her in Saudi Arabia. Given that a private

¹⁴⁷ *Zhiya Kassem Khammam al Hussain v. Saudi Arabia*, *supra* note 102, para. 18; UN Working Group on Arbitrary Detention, *supra* note 103, para. 50.

¹⁴⁸ United Arab Emirates, Federal Law No. 39 of 2006, *On International and Judicial Co-Operation in Criminal Matters*, art. 11(3), (Oct. 31, 2006), available at https://elaws.moj.gov.ae/UAE-MOJ_LC-En/00_JUDICIARY/UAE-LC-En_2006-10-31_00039_Kait.html?val=EL1&Words=Federal%20Law%20No%2039#Anchor6.

¹⁴⁹ *Id.* at art. 17.

¹⁵⁰ *Id.* at art. 19.

¹⁵¹ UDHR, *supra* note 86, art. 9; Body of Principles, *supra* note 86, prin. 10; Arab Charter on Human Rights, *supra* note 110, arts. 14(1), 16(1); *see also* General Comment No. 35, *supra* note 97, para. 23.

¹⁵² United Arab Emirates, Federal Law No. 39 of 2006, *supra* note 148, art. 11(3).

plane was waiting for Ms. Alhathloul, the officers had foreknowledge of the arrest, and accordingly had the opportunity to seek a warrant. However, by forgoing to the opportunity to obtain a warrant, the UAE violated Article 9 of the UDHR, Principle 10 of the Body of Principles, and articles 14(1) and 16(1) of the ACHR, and accordingly her detention fell within Category III.

ii. *The UAE Violated Ms. Alhathloul's Right to Have Her Detention Reviewed by a Court*

Both Article 3 of the UDHR and Article 14(6) of the ACHR protect the right to have one's detention reviewed by an independent court.¹⁵³ However, the UAE denied Ms. Alhathloul access to a court to review the lawfulness of her detention. Additionally, the UAE's Federal Law No. 39 of 2006 guarantees those subject to extradition the right to have the legality of their removal reviewed by a competent court.¹⁵⁴ When Abu Dhabi police arrested Ms. Alhathloul and immediately transferred her to Saudi authorities at the airport, they denied her the ability to have her arrest, transfer, and rendition reviewed by a court. The quickness of the transfer circumvented any possible judicial review of the legality of the rendition, and it denied Ms. Alhathloul the opportunity to claim protections guaranteed under both international human rights law and Emirati law.

iii. *The UAE Violated Ms. Alhathloul's Right to an Attorney*

Article 16(3) of the ACHR guarantees each individual the right to be represented by a lawyer of his or her own choosing when facing criminal charges.¹⁵⁵ The UAE's Federal Law No. 39 of 2006 extends this right to individuals facing extradition.¹⁵⁶ However, in the present case, Ms. Alhathloul was not provided the opportunity to obtain counsel to defend her interests against extradition to Saudi Arabia. After her arrest by Abu Dhabi police, Ms. Alhathloul had no opportunity to contact legal representation, family, or friends. As a result, the UAE government violated Article 16(3) of the ACHR as well as their own legislation on removal. The UAE's detention of Ms. Alhathloul thus falls within Category III.

V. INDICATE INTERNAL STEPS, INCLUDING DOMESTIC REMEDIES TAKEN ESPECIALLY WITH THE LEGAL AND ADMINISTRATIVE AUTHORITIES, PARTICULARLY FOR THE PURPOSE OF ESTABLISHING THE DETENTION AND, AS APPROPRIATE, THEIR RESULTS OR THE REASONS WHY SUCH STEPS OR REMEDIES WERE INEFFECTIVE OR WHY THEY WERE NOT TAKEN

Since her detention, Ms. Alhathloul and her family have pursued two avenues to secure her release. First, Ms. Alhathloul has attempted to vindicate her rights through trial, as she is aware of her innocence. However, since April 17, 2019, the trial court has refused to schedule hearings, cutting off her access to any remedies that might be available through the court system. Second, Ms. Alhathloul has attempted to negotiate a plea deal with the Government in exchange for her release. However, as a condition for the deal, the Government has required that Ms. Alhathloul sign documentation testifying that she was not tortured in detention. Because she refuses to sign such documentation, an agreement for her release has not been possible.

¹⁵³ UDHR, *supra* note 86, art. 3; *see* General Comment No. 35, *supra* note 97, paras. 2, 39 (finding that the right to liberty and security of person requires judicial review of the legality of detention).

¹⁵⁴ United Arab Emirates, Federal Law No. 39 of 2006, *supra* note 148, art. 19.

¹⁵⁵ Arab Charter on Human Rights, *supra* note 110, art. 16(3).

¹⁵⁶ United Arab Emirates, Federal Law No. 39 of 2006, *supra* note 148, art. 17.

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