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## Human Rights Council Working Group on Arbitrary Detention

### Opinions adopted by the Working Group on Arbitrary Detention at its eighty-seventh session, 27 April–1 May 2020

#### Opinion No. 33/2020 concerning Loujain Alhathloul (United Arab Emirates and Saudi Arabia)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 42/22.
2. In accordance with its methods of work (A/HRC/36/38), on 8 November 2019 the Working Group transmitted to the Governments of the United Arab Emirates and Saudi Arabia a communication concerning Loujain Alhathloul. While the Government of the United Arab Emirates has not replied to the communication, the Government of Saudi Arabia replied to the communication on 6 December 2019. Neither State is a party to the International Covenant on Civil and Political Rights.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
  - (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);
  - (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);
  - (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights 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 (category III);
  - (d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);
  - (e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).



## Submissions

### *Communication from the source*

4. Loujain Alhathloul, aged 28, is a citizen of Saudi Arabia. She is a prominent activist and human rights defender. She has resided in Abu Dhabi, United Arab Emirates.

5. The source reports that Ms. Alhathloul's work has been focused on promoting women's rights in Saudi Arabia by advocating against the country's ban on women driving and against restrictive rules around the male guardianship system. She has advanced the 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. The source notes that international human rights monitors, including the United Nations, have found that women in Saudi Arabia face extensive discrimination in both law and in practice, and that the Government of Saudi Arabia has been willing to take harsh action to protect the status quo, administering harsh penalties against individuals who advocate for gender equality.

#### a. Arrest, detention and trial proceedings

6. The source submits that Ms. Alhathloul is a prominent Saudi activist and human rights defender, who has never engaged in or advocated violence. Nonetheless, prior to her detention, the authorities of Saudi Arabia had detained her twice in connection with her advocacy activities, once in 2014 for 73 days, and once in 2017 for 4 days. The authorities never announced any charges against her in either case.

7. The source reports that in March 2018, Ms. Alhathloul was living abroad while studying at the Sorbonne University campus in Abu Dhabi. On 13 March 2018, she was arrested by Abu Dhabi police while driving on the highway. Without showing a warrant or providing information about the grounds for the stop or arrest, officers detained Ms. Alhathloul and immediately transported her to a nearby airfield, where she was placed on a Saudi private jet, staffed by Saudis. The jet transported Ms. Alhathloul to Riyadh, where she was detained by Saudi officials in Ha'er Prison for two days without charge. On 15 March 2018, Ms. Alhathloul was released from prison, but a travel ban was placed on her which prevented her from leaving the country and returning to the United Arab Emirates.

8. According to the source, on 15 May 2018, armed government officers of the Presidency of State Security, of Saudi Arabia, raided Ms. Alhathloul's family home in Riyadh, where she was residing during the travel ban. The officers arrested Ms. Alhathloul and transported her to Dhahban Prison in Jeddah. The officers did not show a warrant or provide information about the grounds for her arrest. Moreover, the officers did not inform Ms. Alhathloul's family where she was being taken or how they could contact her. Over the course of the next few days, the authorities of Saudi Arabia arrested at least 13 activists, many of whom were women who had advocated against the Government's driving ban.

9. While at Dhahban, Ms. Alhathloul was held incommunicado. She was not permitted to contact her family or any legal representation. On approximately 21 May 2018, State security officers removed Ms. Alhathloul from Dhahban Prison and transferred her to an unknown hotel in Jeddah. While at the hotel, Ms. Alhathloul was interrogated and tortured by officials, who subjected her to electric shocks, flogging, waterboarding, and threats of rape and sexual assault. During one of the sessions, Ms. Alhathloul was threatened with being sexually assaulted and killed. At the time that the source's submission was made, the authorities of Saudi Arabia had not prosecuted the individuals concerned.

10. According to the source, on 19 June 2018 Ms. Alhathloul was allowed to contact her family for the first time since her detention on 15 May 2018. During this call, Ms. Alhathloul was not permitted to discuss any aspects of the case against her. On 4 July 2018, Ms. Alhathloul was transferred back to Dhahban Prison, where she was held in solitary confinement for over two months, after which she was held alongside other activists arrested in the May 2018 crackdown. On 30 August 2018, Ms. Alhathloul was brought before a judge for the first time. At the hearing, an investigating magistrate affirmed Ms. Alhathloul's detention and initiated an investigation against her. Subsequently, she was returned to Dhahban Prison, where she was held for several months. On 5 December 2018, Ms. Alhathloul made the first of five complaints alleging torture, to the Bureau of

Investigation and Prosecution. Two were submitted by Ms. Alhathloul and three by a family member. The prosecutor's bureau did not respond to any of the complaints.

11. The source reports that on 14 December 2018, Ms. Alhathloul was transferred to Ha'er Prison in Riyadh. On 13 March 2019, Ms. Alhathloul had her first hearing before a trial court, where she was presented with an indictment with the charges against her. This was the first time that Ms. Alhathloul was provided with formal notice of the charges against her. The indictment refers to 12 separate charges, only 1 of which makes reference to any law or decree. The charges included "inciting and inviting to change the political system in the Kingdom, and abolish the Constitution by cooperating with Khaled Alomair to initiate a campaign on Twitter to request a new Constitution, and designing some brochures for the campaign" (charge 1), "participating in demanding women's rights that have been guaranteed by sharia law to Muslim women" (charge 2), "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). On 3 April 2019, Ms. Alhathloul pleaded not guilty. Her next hearing, scheduled for 17 April 2019, was cancelled, without notice, and as at the date of the source's submission, it has not been rescheduled. As a result, Ms. Alhathloul's trial has been at a standstill for six months, as the court has refused to proceed with her case. Ms. Alhathloul remains in detention in Ha'er Prison in Riyadh. Although she had been detained alongside other activists arrested in the May 2018 crackdown, she is being held in isolation, as the other activists detained have since been released. Since the last hearing, officers from the Saudi security service have visited both Ms. Alhathloul and her family in an attempt to persuade Ms. Alhathloul to sign documents testifying that she was not tortured by government officers. At one point, the officers offered to release Ms. Alhathloul on condition that she signed documents and recorded a video testifying that she had not been tortured. She refused to do so.

b. Analysis of violations

12. The source submits that the detention of Ms. Alhathloul by the Government of Saudi Arabia constitutes an arbitrary deprivation of liberty under categories I, II, III and V. Moreover, the detention and removal of Ms. Alhathloul by the United Arab Emirates in order to facilitate her return to Saudi Arabia amounts to an arbitrary deprivation of liberty under categories I and III.

c. Detention of Ms. Alhathloul by the authorities of Saudi Arabia

i. Category I

13. The source submits that detention is arbitrary under category I when there is no legal basis or justification for it. The Working Group has found lack of a legal basis for the purposes of category I when an individual is held incommunicado, when the government uses vague charges to detain or prosecute an individual, when an individual is arrested without substantive evidence, and when a State obtains custody over an individual through the practice of "extraordinary rendition". In the present case, the authorities of Saudi Arabia have engaged in all four of these forms of category I detention.

14. The source submits that incommunicado detention is prohibited under articles 8, 10 and 11 of the Universal Declaration of Human Rights. Ms. Alhathloul was held, first in Dhahban Prison, then at an unknown hotel in Jeddah, for 35 days, without any opportunity to communicate with the outside world, her family, or legal representation. During this period, her family had no knowledge of her whereabouts, and had no means of contacting her, in violation of the prohibition on incommunicado detention.

15. The source recalls that both international law, under article 11 (2) of the Universal Declaration of Human Rights, and Saudi law, guarantee an individual's right to know what the law states. Moreover, when detained, individuals have a right to know the legal grounds for their detention. However, Ms. Alhathloul was not informed of any legal grounds for her detention when she was arrested on 15 May 2018. Moreover, when an indictment was finally served on her almost 10 months after her arrest, the indictment failed to reference any law in 11 out of the 12 charges against her. Additionally, the allegations supporting the indictment primarily concerned activities that Ms. Alhathloul conducted in furtherance of

her advocacy and that are protected under human rights law. Accordingly, the authorities of Saudi Arabia failed to provide a sufficient legal justification for her detention, and lacked sufficient evidence that she had committed any crime.

16. The source refers to the Working Group's earlier findings that engaging in the practice of "extraordinary rendition" amounts to a violation of article 9 of the Universal Declaration of Human Rights and constitutes category I arbitrary detention. In the present case, the authorities of Saudi Arabia coordinated with the United Arab Emirates to achieve the extraordinary rendition of Ms. Alhathloul from the United Arab Emirates to Saudi Arabia. There is no evidence that the authorities of Saudi Arabia provided the United Arab Emirates with any indictment or judgment against Ms. Alhathloul to justify her transfer. This indicates that the transfer occurred without adequate legal process. Moreover, Ms. Alhathloul was not provided an opportunity to challenge her removal in the United Arab Emirates, but was instead quickly transferred by private plane to Saudi Arabia. As the ongoing detention of Ms. Alhathloul by the authorities of Saudi Arabia directly stemmed from an extraordinary rendition, her detention is arbitrary under category I.

ii. Category II

17. The source submits that Ms. Alhathloul's detention is arbitrary under category II because it results from the exercise of fundamental rights or freedoms protected under international law, including the rights to freedom of expression and of association. These rights are protected under articles 19 and 20 (1) of the Universal Declaration of Human Rights, as well as articles 24 (6) and 32 (1) of the Arab Charter on Human Rights.

18. The source reports that the authorities of Saudi Arabia violated Ms. Alhathloul's rights to freedom of expression and association because they targeted and detained Ms. Alhathloul on the basis of her public advocacy activities, which included her association with other advocates, international human rights bodies and the United Nations. In addition to arresting Ms. Alhathloul in the context of a widespread crackdown on human rights activists, the Government of Saudi Arabia revealed its motivation for arresting Ms. Alhathloul in the indictment brought against her. The indictment charges Ms. Alhathloul with "participating in demanding women's rights that have been guaranteed by sharia law to Muslim women ...", "demanding the abolishment of male guardianship" and "participating 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 by security agencies to place several human rights activists on travel bans" and admitted "that she had contacted around 15 to 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 activities of expression and association that Ms. Alhathloul conducted in her role as an activist and human rights defender.

iii. Category III

19. The source submits that Ms. Alhathloul's detention is arbitrary under category III because the Government of Saudi Arabia denied her right, which is prescribed in international law, to due process.

20. The source submits that the authorities of Saudi Arabia violated article 9 of the Universal Declaration of Human Rights, principles 2 and 36 (2) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and articles 14 (1) and 16 (1) of the Arab Charter on Human Rights by refusing to notify Ms. Alhathloul of the legal grounds for her arrest when she was seized on 15 May 2018. Moreover, the officers did not show Ms. Alhathloul a warrant for her arrest, and there is no indication that such a warrant exists.

21. The source reports that the authorities of Saudi Arabia violated article 3 of the Universal Declaration of Human Rights and article 14 (5) of the Arab Charter on Human Rights by refusing to bring Ms. Alhathloul promptly before a judicial authority. Ms. Alhathloul was held incommunicado for 35 days and then not brought before a judge until 30 August 2018, more than three months after her initial arrest.

22. The source submits that the authorities of Saudi Arabia violated article 5 of the Universal Declaration of Human Rights, articles 2, 5 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, principles 6 and 21 (2) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, rules 1 and 43 of United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and article 8 of the Arab Charter on Human Rights by having government agents torture Ms. Alhathloul by means of electric shocks, flogging, waterboarding, and threats of rape and sexual assault. Moreover, the authorities subsequently failed to investigate, prosecute and punish the perpetrators of the torture, despite receiving multiple complaints.

23. According to the source, the authorities of Saudi Arabia also violated principles 38 and 39 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and article 14 (5) of the Arab Charter on Human Rights by failing to release Ms. Alhathloul pending her trial, despite the fact that she had never engaged in violence nor encouraged violence.

24. The source further reports that the authorities of Saudi Arabia violated article 10 of the Universal Declaration of Human Rights and article 14 (6) of the Arab Charter on Human Rights by denying Ms. Alhathloul the right to be tried without undue delay. Ms. Alhathloul's trial has not moved forward for several months, since the court, without prior notice, cancelled a hearing on 17 April 2019.

iv. Category V

25. The source alleges that Ms. Alhathloul's detention is arbitrary under category V because the authorities of Saudi Arabia deprived Ms. Alhathloul of her liberty on the basis of her political opinion, and the Government's political discrimination was aimed towards ignoring the equality of human beings. Ms. Alhathloul was arrested on the basis of her advocacy for the political opinion that the country should have greater gender equality. Moreover, by targeting individuals, such as Ms. Alhathloul, for promoting gender equality, the authorities were directly engaging in discrimination aimed towards ignoring "the equality of human beings", which in the present case is the equality of men and women.

d. Detention and extraordinary rendition of Ms. Alhathloul by the authorities of the United Arab Emirates

i. Category I

26. The source submits that the United Arab Emirates engaged in an extraordinary rendition of Ms. Alhathloul to Saudi Arabia. The United Arab Emirates neither followed international standards of due process nor its own laws regulating the surrender of persons to foreign States. The United Arab Emirates did not provide a warrant or information on the grounds for her arrest, it did not provide access to a court, and it did not allow Ms. Alhathloul to contact legal counsel, her family, or friends. Because the United Arab Emirates returned Ms. Alhathloul to Saudi Arabia, the Government of Saudi Arabia was able to detain her for two days and place a travel ban on her, preventing her from leaving Saudi Arabia until her arrest on 15 March 2018. Accordingly, the detention and rendition of Ms. Alhathloul by the United Arab Emirates violated article 9 of the Universal Declaration of Human Rights and amounted to a category I arbitrary deprivation of liberty.

ii. Category III

27. The source submits that the detention and rendition of Ms. Alhathloul by the authorities of the United Arab Emirates is arbitrary under category III because the authorities denied her right, which is prescribed in international law, to due process.

28. According to the source, the authorities of the United Arab Emirates violated article 9 of the Universal Declaration of Human Rights, principles 2 and 36 (2) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and articles 14 (1) and 16 (1) of the Arab Charter on Human Rights by refusing to notify Ms. Alhathloul of the legal grounds for her arrest when she was seized on 13 March 2018. Moreover, the officers did not show Ms. Alhathloul a warrant for her arrest, and there is no indication that such a warrant exists.

29. The source further reports that the authorities of the United Arab Emirates violated article 3 of the Universal Declaration of Human Rights and article 14 (6) of the Arab Charter on Human Rights by denying Ms. Alhathloul the right to have her removal from the United Arab Emirates reviewed by a court. The authorities of the United Arab Emirates arrested Ms. Alhathloul and transported her directly to an airport to have her removed. This absence of judicial review constituted a clear violation of the right to judicial review.

30. The source submits that the authorities of the United Arab Emirates also violated article 16 (3) of the Arab Charter on Human Rights, which guarantees individuals the right to legal representation when facing criminal charges. Ms. Alhathloul was not permitted to contact legal representation, family or friends before being removed from the United Arab Emirates.

#### *Responses from the Governments*

31. On 8 November 2019, the Working Group transmitted the allegations made by the source to the Governments of Saudi Arabia and the United Arab Emirates through its regular communications procedure. The Working Group requested the Governments to provide by 7 January 2020 detailed information about the situation of Ms. Alhathloul and any comments on the source's allegations. Moreover, the Working Group called upon the Governments to ensure Ms. Alhathloul's physical and mental integrity.

32. The Working Group regrets that it did not receive a response from the Government of the United Arab Emirates, and nor did the latter request an extension of the time limit for its reply, as is provided for in the Working Group's methods of work.

33. In its response of 6 December 2019, the Government of Saudi Arabia stated that Ms. Alhathloul had been detained for crimes punishable under the law, not for her peaceful defence of women's rights. The Government states that Ms. Alhathloul was arrested and detained in a General Directorate of Investigation (Al Mabahith) prison in Riyadh pursuant to a warrant issued against her by the relevant authorities in accordance with article 2 of the Penal Law for Crimes of Terrorism and its Financing. She stands accused of crimes under the said Penal Law, as well as under the Anti-Cybercrime Law, which stipulates in its article 6 (1) that "production, preparation, transmission or storage of material impinging on public order, religious values, public morals, and privacy, through the information network or computers" is punishable by up to five years in prison and a 3 million riyal fine. Her case is still under investigation and the proceedings against her are in line with the Government's obligations under international human rights law.

34. According to the Government, the Prosecutor General investigated her allegation of torture and sexual harassment but found no evidence to support her claim. Saudi laws ensure that no one is subjected to torture or ill-treatment in criminal procedures. In addition, article 5 (6) and (7) of the Human Rights Commission Regulation empowers the Commission to "visit prisons and detention centres at any time without permission from the competent authority, and bring reports on them before the President of the Council of Ministers" and to "receive and verify complaints related to human rights and take the legal measures pertaining to them". The National Human Rights Organization, a civil society organization, also conducts visits to prisons and detention facilities to receive complaints. The King's Council and the Crown Prince's Council, operating under article 43 of the Basic Law, are also open to all complaints.

35. The Government reiterates that it is committed to its human rights obligations under the treaties to which it is a party, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and adds that it considers these treaties to be a part of its domestic law.

36. With respect to the right to a fair trial, every suspect is informed of the reasons for his or her arrest at the time of arrest or detention. Ms. Alhathloul was presented before the court after the end of the investigation concerning her and the referral of her case to the court. Her request to appoint a lawyer has been accepted, and she has enjoyed the rights to access to legal counsel and communication with her family.

37. In the Government's version of events, Ms. Alhathloul has enjoyed her statutory right to visits, communication and regular medical treatment, and had visits on 25 July, 12 September, 10 October and 6 November 2018, made phone calls on 10 September, 16

September, 8 October, 15 October and 21 October 2018, and made a visit to a doctor on 23 September 2018 and to a clinic on 19 October 2018. She received a visit from a representative of the Human Rights Commission on 14 October 2018, during which she presented no complaints.

38. Concerning the accusation of solitary confinement, the Government submits that Ms. Alhathloul has been detained in a General Directorate of Investigation (Al Mabahith) prison in Riyadh in the general prison population and that she is not currently under solitary confinement. She has been able to exercise her rights to have visits and phone calls, even though the Penal Law for Crimes of Terrorism and its Financing allows the prosecutor to ban communication or visits for up to 90 days for the benefit of the investigation, and allows, if the investigation requires a longer period, a request to be submitted to the court for an extension.

39. The Government has objected to the allegation that Ms. Alhathloul was detained in retaliation for exercising her right to freedom of expression as a human rights defender. It claims that the limitations on the right to freedom of opinion contained in article 39 of the Basic Law (in which it is stated that “mass media and all other vehicles of expression shall employ civil and polite language, contribute towards the education of the nation and strengthen unity” and that “it is prohibited to commit acts leading to disorder and division, affecting the security of the State and its public relations, or undermining human dignity and rights”) are in line with the relevant international standards, such as article 29 (2) of the Universal Declaration of Human Rights (which states that “In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.”).

40. Lastly, the Government emphasizes that all citizens and residents enjoy their rights and freedoms without discrimination under Saudi law, that no person may be arrested, detained, investigated or imprisoned unless in accordance with the law, and that no detention or imprisonment may take place except in the places designated for that purpose and for a period determined by the relevant authorities.

*Further comments from the source*

41. In its reply, the source countered that the Government of Saudi Arabia had failed to provide any evidence to back its arguments, other than stressing compliance with domestic criminal laws and procedures. In fact, much of the Government’s response corroborated the claims made by the source in the latter’s initial submissions.

42. The source submits that the Government has failed to address, and has thus tacitly accepted, the allegation that the Government has engaged in Ms. Alhathloul’s extraordinary rendition, in collaboration with its counterpart in the United Arab Emirates, whereby she was involuntarily taken from Abu Dhabi without a formal request for her surrender or extradition, without any formal judicial process or sanction, and without an opportunity in a court of law to challenge the legality of her capture and transfer.

43. According to the source, the Government’s account did not contradict the source’s allegation that Ms. Alhathloul was held incommunicado for 35 days from 15 May to 19 June 2018 without being brought before a judge until 30 August 2018 and without having access to her family or legal counsel or to judicial review of her detention, as it is acknowledged that, since her arrest on 15 May 2018, the earliest visit and earliest phone call were on 25 July 2018 and 10 September 2018 respectively, while the Government is silent about when she was first brought before a judge. In addition, the Government admits the prosecutor’s power to in effect hold a suspect incommunicado for up to 90 days under the Penal Law for Crimes of Terrorism and its Financing, without clarifying whether this power has been exercised in Ms. Alhathloul’s case.

44. The source adds that the Government has failed to present any justification, such as risk of flight, destruction of evidence, or public security concerns, for Ms. Alhathloul’s pretrial detention with denial of release on bail. The Government has also failed to contest the violation of Ms. Alhathloul’s right to be tried without undue delay – having been held for 10 months before the beginning of her trial, and the Government has stalled the proceedings since 17 April 2019 when the last hearing took place. In the source’s view,

such denial of due process obliges the Working Group to find Ms. Alhathloul's detention arbitrary under category III.

45. Regarding the substantive legal basis for her detention, the source points to the vagueness of the only criminal provision specifically referred to by the Government on which Ms. Alhathloul has been charged and indicted, namely article 6 (1) of the Penal Law for Crimes of Terrorism and its Financing which outlaws "production, preparation, transmission or storage of material impinging on public order, religious values, public morals, and privacy, through the information network or computers". Such a vaguely worded provision is not in line with the clear legal basis required, as reflected in Working Group opinions No. 60/2013 (United Arab Emirates), para. 22; and No. 44/2014 (Congo), paras. 26–37. Nor has the Government produced any reports from investigations, or court documents, to establish a sufficient legal basis for Ms. Alhathloul's arrest, detention and indictment. The Working Group therefore should find her detention arbitrary under category I.

46. The source submits that the Government's denial of the characterization of Ms. Alhathloul's detention as retaliation for exercising her right to freedom of expression, presented on the grounds that Ms. Alhathloul was arrested for legitimate crimes under Saudi law and that the Government restricts freedom of expression only within the exceptions provided for in international law, is without merit. Ms. Alhathloul was charged by the prosecutor with participation in demanding women's rights guaranteed by sharia law to Muslim women. The requirement that activities of expression "employ civil and polite language, contribute towards the education of the nation and strengthen unity" and the prohibition of those "leading to disorder and division, affecting the security of the State and its public relations" under the Basic Law go far beyond the legitimate restrictions permitted under international law – namely, national security, public safety and public order, public health, and the fundamental rights and freedoms of others. The Government has also failed to explain how Ms. Alhathloul's actions fall within the grounds for restrictions under international law.

47. In a similar vein, the source adds that the charges against Ms. Alhathloul, in her indictment, stem specifically from her association with journalists, human rights defenders and international human rights monitors. The Government is silent about the allegation of violating her right to freedom of association. The source maintains that the deprivation of Ms. Alhathloul's liberty for her exercise of the rights to freedom of expression and of association renders her detention arbitrary under category II.

48. With respect to the allegation of torture and sexual harassment, the source notes that the Government has failed to mention the specific steps taken by the Prosecutor General to investigate the matter, or to provide any evidence that the Prosecutor General conducted any investigation or to suggest that such investigation was thorough.

49. Concerning the allegation of Ms. Alhathloul's solitary confinement, the Government merely states that she is "currently" not subject to such confinement, leaving open the possibility that she had been so confined in the past. As pointed out above, the Government has also admitted that the Penal Law for Crimes of Terrorism and its Financing empowers the authorities to hold an individual in solitary confinement for up to 90 days or, with judicial permission, for a longer period of time.

## **Discussion**

50. The present case involves two States, and the Working Group will discuss the issues relating to each State separately. In determining whether the deprivation of liberty of Ms. Alhathloul is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has presented a *prima facie* case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Governments if they wish to refute the allegations. Mere assertions by the Governments that lawful procedures have been followed are not sufficient to rebut the source's allegations (A/HRC/19/57, para. 68).



a. Allegations against the United Arab Emirates

51. In the absence of a response from the Government of the United Arab Emirates, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

i. Category I

52. With respect to Ms. Alhathloul's arrest and detention in and by the United Arab Emirates prior to her forced transfer to Saudi Arabia on 13 March 2018, the source submits, and the Government does not contest, that Ms. Alhathloul was not presented with an arrest warrant or informed of the reasons for her arrest by the Abu Dhabi police at the time of arrest on 13 March 2018.

53. In order for a deprivation of liberty in and by the United Arab Emirates to have a legal basis, it is not sufficient for there to be a law authorizing the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case through an arrest warrant, which was not implemented in the present case.<sup>1</sup>

54. International law includes the right to be presented with an arrest warrant to ensure the exercise of effective control by a competent, independent and impartial judicial authority, which is procedurally inherent in the right to liberty and security of person and the prohibition of arbitrary deprivation under articles 3 and 9 of the Universal Declaration of Human Rights as well as under principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.<sup>2</sup>

55. The Working Group finds that, in order to invoke a legal basis for deprivation of liberty, the authorities of the United Arab Emirates should have informed Ms. Alhathloul of the reasons for her arrest, at the time of arrest, and of the charges against her promptly.<sup>3</sup> Their failure to do so violates article 9 of the Universal Declaration of Human Rights, as well as principle 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and renders her arrest devoid of any legal basis.<sup>4</sup>

56. The Working Group further observes that Ms. Alhathloul was not afforded the right to take proceedings before a court by, or in, the United Arab Emirates so that the court may decide without delay on the lawfulness of her detention in accordance with articles 3, 8 and 9 of the Universal Declaration of Human Rights and principles 11, 32 and 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.<sup>5</sup> In addition, the Working Group notes that judicial oversight of deprivation of liberty is a fundamental safeguard of personal liberty and is essential in ensuring that detention has a legal basis.<sup>6</sup>

57. The Working Group finds that Ms. Alhathloul's forced transfer from the United Arab Emirates to Saudi Arabia, coordinated by both Governments, circumvented the regular extradition procedure and resulted in deprivation of her liberty without a legal basis, in violation of articles 3, 9 and 13 (1) and (2) of the Universal Declaration of Human Rights.

58. In the Working Group's view, Ms. Alhathloul's transfer resulted in her enforced disappearance, which entails a refusal to acknowledge the deprivation of liberty or

<sup>1</sup> See, for example, opinions No. 10/2018, paras. 45–46; No. 36/2018, para. 40; No. 46/2018, para. 48; No. 9/2019, para. 29; No. 32/2019, para. 29; No. 33/2019, para. 48; No. 44/2019, para. 52; No. 45/2019, para. 51; and No. 46/2019, para. 51.

<sup>2</sup> The Working Group has maintained that the practice of arresting persons without a warrant renders their detention arbitrary. See, for example, opinions No. 3/2018, para. 43; No. 10/2018, para. 46; No. 26/2018, para. 54; No. 30/2018, para. 39; No. 38/2018, para. 63; No. 47/2018, para. 56; No. 51/2018, para. 80; No. 63/2018, para. 27; No. 68/2018, para. 39; and No. 82/2018, para. 29. See also art. 14 (1) of the Arab Charter on Human Rights.

<sup>3</sup> See, for example, opinion No. 10/2015, para. 34. See also opinions No. 32/2019, para. 29; No. 33/2019, para. 48; No. 44/2019, para. 52; No. 45/2019, para. 51; and No. 46/2019, para. 51.

<sup>4</sup> See also art. 14 (1) and (3) of the Arab Charter on Human Rights.

<sup>5</sup> See also arts. 12, 14 (1), (5) and (6) and 23 of the Arab Charter on Human Rights, and A/HRC/30/37, paras. 2–3 and 47 (a).

<sup>6</sup> See opinions No. 35/2018, para. 27; No. 83/2018, para. 47; No. 32/2019, para. 30; No. 33/2019, para. 50; No. 44/2019, para. 54; No. 45/2019, para. 53; No. 59/2019, para. 51; and No. 65/2019, para. 64.

concealment of the fate or whereabouts of the disappeared person. The Working Group recalls that no jurisdiction should allow for individuals to be 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 (A/HRC/16/47, para. 54).

59. For these reasons, the Working Group considers that there was no legal basis for the arrest, detention and forced transfer of Ms. Alhathloul. The Working Group concludes that her deprivation of liberty lacks a legal basis and is thus arbitrary, falling under category I.

ii. Category II

60. The Working Group notes that Ms. Alhathloul has been an activist for women's human rights, leading the "driving campaign" with her fellow advocates, in defiance of the ban by Saudi Arabia on women driving. In the Working Group's view, the Government of the United Arab Emirates seized and transferred Ms. Alhathloul because of her exercise of her rights to freedom of expression, to freedom of association and to participation in public affairs, which prompted the Government of Saudi Arabia to request her forced transfer. The Government of the United Arab Emirates cannot escape responsibility for its part in facilitating the persecution of Ms. Alhathloul for her legitimate exercise of rights and freedoms.

61. The Working Group therefore concludes that Ms. Alhathloul's deprivation of liberty is arbitrary, falling within category II, as it violates articles 19, 20 (1) and 21 (1) of the Universal Declaration of Human Rights (see also paras. 80–83 below).

iii. Category III

62. The Working Group notes that Ms. Alhathloul was seized and transferred to Saudi Arabia by the authorities without the benefit of a fair and public hearing by an independent and impartial tribunal. Involuntary expulsion to a foreign State without a hearing by judicial authorities cannot be in conformity with the due process of the law.

63. As the Working Group has previously observed,<sup>7</sup> international law regarding extradition provides procedures that must be observed by countries in arresting, detaining and returning individuals to face criminal proceedings in another country in order to ensure that their right to a fair trial is protected. Those procedures have not been observed in the present case, and the Working Group considers that the arrest, detention and forced transfer of Ms. Alhathloul did not meet any minimum international standards of due process. Furthermore, it is disturbing that Ms. Alhathloul never had any access to legal counsel, as she was removed to Saudi Arabia in a matter of hours.

64. As the Working Group has stated, individuals should not be expelled to another country when there are substantial grounds for believing that their life or freedom would be at risk, or they would be in danger of being subjected to torture or ill-treatment (see A/HRC/4/40, paras. 44–45). In addition, the Working Group considers that the risk of arbitrary detention in the receiving State must also be among the elements taken into consideration before individuals are expelled. The Working Group notes that the Government of the United Arab Emirates did not avail itself of the option of resorting to the regular extradition procedure, or obtaining credible assurances from Saudi Arabia on due process and fair trial guarantees or on prevention of torture and enforced disappearance. The Working Group considers that Ms. Alhathloul's forced transfer to Saudi Arabia by the United Arab Emirates violated the principle of non-refoulement as well as other obligations of the United Arab Emirates under article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

65. Given the above, the Working Group concludes that the violations of the right to a fair trial and due process are of such gravity as to give Ms. Alhathloul's deprivation of liberty an arbitrary character, falling within category III.

<sup>7</sup> See opinions No. 11/2018, para. 53; No. 68/2018, para. 58; and No. 10/2019, para. 71.

## iv. Category V

66. The Working Group finds that the Government of the United Arab Emirates has, at the request of the Government of Saudi Arabia, arrested, detained and forcibly transferred Ms. Alhathloul on the basis of prohibited grounds of discrimination, and that the case falls within category V (see paras. 94–97 below).

## b. Concluding remarks

67. Thus, the Working Group considers that the Government of the United Arab Emirates is responsible for its own actions in the arrest, detention and forced transfer of Ms. Alhathloul, as well as the subsequent violations of her rights in Saudi Arabia (see paras. 70–98 below).

68. The Working Group notes that the present opinion is only one of several opinions in which the Working Group has found the Government of the United Arab Emirates in violation of its international human rights obligations.<sup>8</sup> The Working Group is concerned that this indicates a systemic problem with arbitrary detention in the United Arab Emirates, which amounts to a serious violation of international law. The Working Group recalls that under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity.<sup>9</sup>

## c. Allegations against Saudi Arabia

69. The Working Group thanks the source and the Government of Saudi Arabia for their submissions in relation to Ms. Alhathloul's deprivation of liberty.

## i. Category I

70. With respect to Ms. Alhathloul's deprivation of liberty in and by Saudi Arabia following her forced transfer from the United Arab Emirates on 13 March 2018, the source submits, and the Government failed to substantiate its claim to the contrary, that Ms. Alhathloul was not presented with an arrest warrant or informed of the reasons for her arrest, at the time of arrest on 13 March 2018 immediately after her forced transfer, and on 15 May 2018 at her family home in Riyadh by the General Directorate of Investigation (Al Mabahith).

71. As noted above, in order for a deprivation of liberty in and by Saudi Arabia to have a legal basis, it is not sufficient for there to be a law authorizing the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case through an arrest warrant, which was not implemented in the present case.<sup>10</sup>

72. The Working Group also finds that, in order to invoke a legal basis for deprivation of liberty, the Saudi authorities should have informed Ms. Alhathloul of the reasons for her arrest, at the time of arrest, and of the charges against her promptly.<sup>11</sup> Their failure to do so violates article 9 of the Universal Declaration of Human Rights, as well as principle 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and renders her arrest devoid of any legal basis.<sup>12</sup>

73. The source further maintains, and the Government of Saudi Arabia again does not dispute, that Ms. Alhathloul was subjected to incommunicado detention from 15 May to 19

<sup>8</sup> See opinions No. 34/2011, No. 64/2011, No. 61/2012, No. 27/2013, No. 42/2013, No. 60/2013, No. 12/2014, No. 51/2015, No. 56/2014, No. 17/2016, No. 21/2017, No. 28/2017, No. 47/2017, No. 58/2017, No. 76/2017, No. 30/2018, No. 28/2019 and No. 55/2019.

<sup>9</sup> See A/HRC/13/42, para. 30. See also, for example, opinions No. 68/2018, para. 60; No. 73/2018, para. 69; No. 82/2018, para. 53; No. 83/2018, para. 68; and No. 87/2018, para. 80.

<sup>10</sup> See, for example, opinions No. 93/2017, para. 44; No. 10/2018, paras. 45–46; No. 36/2018, para. 40; No. 46/2018, para. 48; No. 9/2019, para. 29; No. 32/2019, para. 29; No. 33/2019, para. 48; No. 44/2019, para. 52; No. 45/2019, para. 51; and No. 46/2019, para. 51.

<sup>11</sup> See, for example, opinion No. 10/2015, para. 34. See also opinions No. 32/2019, para. 29; No. 33/2019, para. 48; No. 44/2019, para. 52; No. 45/2019, para. 51; and No. 46/2019, para. 51.

<sup>12</sup> See also art. 14 (1) and (3) of the Arab Charter on Human Rights.

June 2018 and to enforced disappearance at an unknown hotel in Jeddah from 21 May to 4 July 2018. Enforced disappearance constitutes a particularly aggravated form of arbitrary detention, in violation of article 6 of the Universal Declaration of Human Rights.<sup>13</sup>

74. The Working Group and other experts stated in the joint study on global practices in relation to secret detention in the context of countering terrorism, that no jurisdiction should allow for individuals to be 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.<sup>14</sup> In accordance with Human Rights Council resolution 37/3, the Working Group stresses that no one is to be held in secret detention, and urges the Government of Saudi Arabia to close down promptly all secret detention facilities.<sup>15</sup>

75. The Working Group observes that thereupon Ms. Alhathloul was not brought promptly before a judge, within 48 hours of the arrest barring absolutely exceptional circumstances, as per the international standard set out in the Working Group's jurisprudence.<sup>16</sup> In fact, she was first brought before a judge on 30 August 2018, three and a half months after her arrest on 15 May 2018. It is of considerable concern to the Working Group that the Penal Law for Crimes of Terrorism and its Financing, of 2017, allows the public prosecution to hold a suspect in pretrial detention for up to 12 months, with unlimited extension upon court order (art. 19), and allows suspects to be held for up to 90 days in incommunicado detention (art. 20). The Working Group considers that the prosecuting authorities cannot be considered a judicial authority for the purpose of oversight of pretrial detention.

76. Furthermore, her pretrial detention – bearing in mind that pretrial detention should be the exception rather than the rule – lacked a legal basis, as it was not based on an individualized determination that it is was reasonable and necessary taking into account all the circumstances, for such purposes specified in law as to prevent flight, interference with evidence or the recurrence of crime, accompanied by consideration of alternatives, such as bail, electronic bracelets or other conditions, rendering detention unnecessary in the present case.<sup>17</sup> Her detention has lasted for since her arrest on 15 May 2018 and her trial is ongoing. Therefore, the Government of Saudi Arabia has violated article 9 of the Universal Declaration of Human Rights as well as principles 11, 37 and 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.<sup>18</sup>

77. The Working Group further observes that Ms. Alhathloul was not afforded the right to take proceedings before a court by, or in, Saudi Arabia so that the court may decide without delay on the lawfulness of her detention in accordance with articles 3, 8 and 9 of the Universal Declaration of Human Rights and principles 11, 32 and 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.<sup>19</sup> Judicial oversight of deprivation of liberty is a fundamental safeguard of personal liberty and is essential in ensuring that detention has a legal basis.<sup>20</sup>

78. The Working Group also recalls that it has previously found that vaguely and broadly worded provisions, such as article 6 (1) of the Anti-Cybercrime Law invoked in the

<sup>13</sup> See opinions No. 82/2018, para. 28; No. 18/2019, para. 33; No. 22/2019, para. 67; No. 26/2019, para. 88; No. 28/2019, para. 61; No. 29/2019, para. 54; No. 36/2019, para. 35; No. 41/2019, para. 32; No. 42/2019, para. 48; No. 51/2019, para. 58; and No. 56/2019, para. 79. See also art. 22 of the Arab Charter on Human Rights.

<sup>14</sup> See A/HRC/16/47, para. 54.

<sup>15</sup> See paras. 8, 9 and 16.

<sup>16</sup> See opinions No. 57/2016, paras. 110–111; No. 2/2018, para. 49; No. 83/2018, para. 47; No. 11/2019, para. 63; No. 20/2019, para. 66; No. 26/2019, para. 89; No. 30/2019, para. 30; No. 36/2019, para. 36; No. 42/2019, para. 49; No. 51/2019, para. 59; No. 56/2019, para. 80; No. 76/2019, para. 38; and No. 82/2019, para. 76.

<sup>17</sup> Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, para. 38. See also A/HRC/19/57, paras. 48–58.

<sup>18</sup> See also art. 14 (1) and (5) of the Arab Charter on Human Rights.

<sup>19</sup> See also arts. 12, 14 (1), (5) and (6) and 23 of the Arab Charter on Human Rights.

<sup>20</sup> See opinions No. 35/2018, para. 27; No. 83/2018, para. 47; No. 32/2019, para. 30; No. 33/2019, para. 50; No. 44/2019, para. 54; No. 45/2019, para. 53; No. 59/2019, para. 51; and No. 65/2019, para. 64.

present case, which cannot qualify as *lex certa*, violate the due process of law underpinned by the principle of legality in article 11 (2) of the Universal Declaration of Human Rights.<sup>21</sup>

79. For these reasons, the Working Group considers that Ms. Alhathloul's deprivation of liberty lacks a legal basis and is thus arbitrary, falling under category I.

ii. Category II

80. The source alleges, and the Government of Saudi Arabia does not refute, that Ms. Alhathloul has been promoting women's rights in Saudi Arabia by leading a public campaign against the ban on women driving and against the restrictive male guardianship system. She has never engaged in or incited violence, but the Saudi authorities have detained her twice, for 73 days in 2014 and for 4 days in 2017, without stating any charges against her. Following her arrest on 15 May 2018, the Government arrested at least 13 other activists, mostly those who had advocated against the ban on women driving. She has been held alongside her fellow activists at Dhahban Prison. The criminal charges on which she has been indicted and tried clearly concern her internationally renowned public campaign.

81. The Working Group finds that the arrest and detention of Ms. Alhathloul in these circumstances violated her rights to freedom of expression, of association and of participation in public affairs. Although freedom of opinion and expression is not without limitation, article 29 (2) of the Universal Declaration of Human Rights provides that the only legitimate limitations to the exercise of one's rights and freedoms must be for the purposes of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

82. Furthermore, given the Government's failure to produce any credible evidence, other than vague charges, to reasonably implicate Ms. Alhathloul in specific violent or criminal acts that pose threats to the rights and freedoms of others, morality, public order or the general welfare, the Working Group finds no legitimate aim or objective in a free and democratic society to justify her deprivation of liberty. Her detention was therefore neither necessary nor proportionate.

83. The Working Group therefore concludes that Ms. Alhathloul's deprivation of liberty is arbitrary, falling within category II, as it violates articles 19, 20 (1) and 21 (1) of the Universal Declaration of Human Rights.<sup>22</sup>

iii. Category III

84. Given its finding that Ms. Alhathloul's deprivation of liberty is arbitrary under category II, the Working Group wishes to emphasize that in such circumstances no trial should take place.

85. The Working Group notes that Ms. Alhathloul was deprived of access to legal counsel of her choice by Saudi Arabia during her period of incommunicado detention and enforced disappearance.

86. In the Working Group's view, the Government of Saudi Arabia failed to respect her right to legal assistance at all times, which is inherent in the right to liberty and security of person as well as the right to a fair and public hearing by a competent, independent and impartial tribunal established by law, in accordance with articles 3, 9, 10 and 11 (1) of the Universal Declaration of Human Rights. The Working Group considers that this violation substantially undermined and compromised her capacity to defend herself in any subsequent judicial proceedings.<sup>23</sup> The Working Group therefore finds a serious violation of articles 10 and 11 (1) of the Universal Declaration of Human Rights as well as principles 15, 17 and 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.<sup>24</sup>

<sup>21</sup> See opinion No. 71/2019, paras. 73–75.

<sup>22</sup> See also arts. 24 (1), (2), (5) and (6), 30 (1) and 32 (1) of the Arab Charter on Human Rights.

<sup>23</sup> A/HRC/30/37, paras. 12, 15, 67 and 71.

<sup>24</sup> See also arts. 12, 13 (1) and 16 (2) and (3) of the Arab Charter on Human Rights.

87. The Working Group further notes the denial of Ms. Alhathloul's due process right to be visited by and to correspond with her family and to be given adequate opportunity for contact with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations, in accordance with principles 15 and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and rules 43 (3) and 58 of the Nelson Mandela Rules.<sup>25</sup>

88. In the Working Group's view, Ms. Alhathloul's pretrial detention for almost two years in Saudi prison without an individualized judicial determination has undermined the presumption of innocence guaranteed under article 11 (1) of the Universal Declaration of Human Rights as well as under principle 36 (1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.<sup>26</sup>

89. Furthermore, there can be no justification for prolonged trial, during which time Ms. Alhathloul remains deprived of liberty, a manifest violation of the right to be tried without undue delay, guaranteed under articles 10 and 11 (1) of the Universal Declaration of Human Rights.<sup>27</sup>

90. The Working Group also expresses its grave concern at the *prima facie* allegation of torture during Ms. Alhathloul's pretrial detention, including two months of solitary confinement, electrocution, flogging, waterboarding, and sexual harassment and threats of rape, sexual assault and death during her interrogation at an unknown hotel in Jeddah. The Government has not specified when the regular medical treatment occurred.

91. With respect to Ms. Alhathloul's two-month solitary confinement, the Working Group recalls that the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has deemed that prolonged solitary confinement in excess of 15 days, whereby some of the harmful psychological effects of isolation can become irreversible (A/63/175, para. 56; and A/66/268, para. 61),<sup>28</sup> or incommunicado detention in a secret place, may amount to torture as described in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (A/56/156, para. 14). Furthermore, the Government of Saudi Arabia has failed to adequately respond to all five complaints concerning the allegations of torture submitted to it by Ms. Alhathloul and her family.

92. Accordingly, the Working Group finds that the source has presented credible allegations that the absolute prohibition of torture enshrined in article 5 of the Universal Declaration of Human Rights and articles 2 and 16 (1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has been violated in Ms. Alhathloul's case. The failure by Saudi Arabia to take remedial measures also violates articles 12, 13 and 14 (1) of the Convention against Torture<sup>29</sup> and principle 33 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

93. Given the above, the Working Group concludes that the violations of the right to a fair trial and due process are of such gravity as to give Ms. Alhathloul's deprivation of liberty an arbitrary character that falls within category III.

#### iv. Category V

94. The Working Group will now examine whether Ms. Alhathloul's deprivation of liberty constitutes discrimination under international law for the purposes of category V.

95. The Working Group notes that Ms. Alhathloul is a prominent activist for gender equality and a human rights defender, famous for her "driving campaign" that challenged the decades-old ban on women driving cars. She had already been detained twice for her advocacy, firstly in 2014 for 73 days and secondly in 2017 for 4 days, even though the

<sup>25</sup> See opinions No. 35/2018, para. 39; No. 44/2019, paras. 74–75; and No. 45/2019, para. 76.

<sup>26</sup> See also art. 16 of the Arab Charter on Human Rights.

<sup>27</sup> See also art. 13 (1) of the Arab Charter on Human Rights.

<sup>28</sup> Likewise, rule 44 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) refers to solitary confinement for a time period in excess of 15 consecutive days as being prolonged solitary confinement.

<sup>29</sup> See also art. 8 (2) of the Arab Charter on Human Rights.

authorities failed to bring any charges against her. Following her arrest on 15 May 2018, the Government arrested at least 13 other activists, mostly those who had advocated against the ban on women driving, and they have also been held at Dhahban Prison. The Working Group considers that Ms. Alhathloul has been targeted, along with her fellow activists, for their tireless campaign for women's rights and gender equality.

96. The Working Group cannot help but notice that Ms. Alhathloul's political views and convictions are clearly at the centre of the present case and that the authorities have displayed an attitude towards her that can only be characterized as discriminatory. Indeed, her human rights advocacy appears to be the sole reason for her forced transfer and detention.

97. For these reasons, the Working Group considers that Ms. Alhathloul's deprivation of liberty constitutes a violation of articles 2 and 7 of the Universal Declaration of Human Rights on the grounds of discrimination based on political views, gender and her status as a human rights defender. Her deprivation of liberty therefore falls under category V.<sup>30</sup>

d. Concluding remarks

98. The Working Group considers that the Government of Saudi Arabia is responsible for its action in the deprivation of liberty of Ms. Alhathloul in Saudi Arabia, as well as jointly responsible with the Government of the United Arab Emirates for the arrest, detention and forcible transfer of Ms. Alhathloul from the United Arab Emirates (see paras. 52–67 above).

99. In its 29-year history, the Working Group has found Saudi Arabia in violation of its international human rights obligations in at least 60 cases.<sup>31</sup> The Working Group is concerned that this indicates a systemic problem with arbitrary detention in Saudi Arabia, which amounts to a serious violation of international law. The Working Group recalls that under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity.<sup>32</sup>

### Disposition

100. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty by the Government of the United Arab Emirates of Loujain Alhathloul, being in contravention of articles 2, 3, 6, 7, 8, 9, 10, 11 (1), 13 (1) and (2), 19, 20 (1) and 21 (1) of the Universal Declaration of Human Rights, is arbitrary and falls within categories I, II, III and V.

The deprivation of liberty by the Government of Saudi Arabia of Loujain Alhathloul, being in contravention of articles 2, 3, 6, 7, 8, 9, 10, 11 (1) and (2), 13 (1) and (2), 19, 20 (1) and 21 (1) of the Universal Declaration of Human Rights, is arbitrary and falls within categories I, II, III and V.

101. The Working Group requests the Governments of the United Arab Emirates and Saudi Arabia to take the steps necessary to remedy the situation of Ms. Alhathloul without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights. The Working Group encourages both Governments to accede to the International Covenant on Civil and Political Rights.

102. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be for the Government of Saudi Arabia to release Ms. Alhathloul immediately and for both Governments to accord her an enforceable right to compensation and other reparations, in accordance with international law. In the current context of the global coronavirus disease (COVID-19) pandemic and the threat that it poses

<sup>30</sup> See also arts. 3 (2) and (3) and 11 of the Arab Charter on Human Rights.

<sup>31</sup> See, for example, opinions No. 14/2014, No. 32/2014, No. 13/2015, No. 38/2015, No. 52/2016, No. 61/2016, No. 10/2017, No. 63/2017, No. 93/2017, No. 10/2018, No. 68/2018, No. 22/2019, No. 26/2019, No. 56/2019 and No. 71/2019.

<sup>32</sup> A/HRC/13/42, para. 30. See also, for example, opinions No. 68/2018, para. 60; No. 73/2018, para. 69; No. 82/2018, para. 53; No. 83/2018, para. 68; and No. 87/2018, para. 80.

in places of detention, the Working Group calls upon the Government of Saudi Arabia to take urgent action to ensure the immediate release of Ms. Alhathloul.

103. The Working Group urges both Governments to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Ms. Alhathloul and to take appropriate measures against those responsible for the violation of her rights.

104. The Working Group requests the Government of Saudi Arabia to bring its laws, in particular article 6 (1) of the Anti-Cybercrime Law, into conformity with the recommendations made in the present opinion and with the commitments made by Saudi Arabia under international human rights law.

105. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to: (a) the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; (b) the Special Rapporteur on violence against women, its causes and consequences; (c) the Working Group on discrimination against women and girls; (d) the Special Rapporteur on the situation of human rights defenders; (e) the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; (f) the Special Rapporteur on the rights to freedom of peaceful assembly and of association; (g) the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and (h) the Working Group on Enforced or Involuntary Disappearances, for appropriate action.

106. The Working Group requests both Governments to disseminate the present opinion through all available means and as widely as possible.

#### **Follow-up procedure**

107. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Governments of the United Arab Emirates and Saudi Arabia to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

- (a) Whether Ms. Alhathloul has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Ms. Alhathloul;
- (c) Whether an investigation has been conducted into the violation of Ms. Alhathloul's rights and, if so, the outcome of the investigation;
- (d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of the United Arab Emirates and Saudi Arabia with their international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

108. The Governments are invited to inform the Working Group of any difficulties they may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example through a visit by the Working Group.

109. The Working Group requests the source and the Governments to provide the above-mentioned information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.



110. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.<sup>33</sup>

*[Adopted on 1 May 2020]*

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<sup>33</sup> Human Rights Council resolution 42/22, paras. 3 and 7.