

Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations

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17 December 2020

His Majesty, King Salman bin Abdulaziz Al Saud
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Your Majesty, Your Highnesses, and Your Excellencies,

Re: Arbitrary detention, torture and ill-treatment of human rights defender Ms. Loujain Al-Hathloul

I am writing on behalf of Lawyers' Rights Watch Canada (LRWC), a committee of lawyers and other human rights defenders who promote human rights and the rule of law internationally through advocacy, research and education. LRWC has Special Consultative status with the Economic and Social Council of the United Nations (UN).

LRWC is gravely concerned about the safety and well-being of Ms. Loujain Al-Hathloul, a human rights defender currently imprisoned in Saudi Arabia's Dhahban prison. LRWC is alarmed by reports that Ms. Al-Hathloul has been subjected to sexual harassment, torture and other ill-treatment during interrogation and detention. We are also seriously concerned that the charges against Ms. Al-Hathloul are illegitimate and non-compliant with the principle of legality and other applicable international law and standards. It is reported that the illegitimate charges include:

organizing for trespassing the country's religious and national foundations, suspicious communication with foreign entities recruiting people working in government positions, funding hostile groups abroad to undermine Saudi national security, stability, social peace and to destroy the social cohesion.¹

LRWC urges the Kingdom of Saudi Arabia (Saudi Arabia) to:

- immediately and unconditionally release Loujain Al-Hathloul and all other human rights defenders;
- withdraw all charges against Ms. Al-Hathloul and all other human rights defenders;
- ensure that investigations and remedies for human rights violations against her are in strict compliance with Saudi Arabia's obligations under the *Convention on Torture and other Cruel, Inhuman or Degrading Treatment of Prisoners* (UNCAT),² *Convention on Elimination of all Forms of Discrimination against Women* (CEDAW),³ and the *Universal Declaration of Human Rights* (UDHR).⁴
- Implement all recommendations accepted by Saudi Arabia in the Human Rights Council's Universal Period Review (UPR) in 2018.

Background

In March 2018, 28-year-old Loujain Al-Hathloul drove into Saudi Arabia from the United Arab Emirates (UAE) under a UAE driver's license. She was pulled over by Saudi Arabian authorities and transported by plane to Riyadh where she was detained for two months before being released. She was re-arrested in early May 2018, a month and a half prior to Saudi Arabia lifting the ban on female drivers which took place 24 June 2018.⁵ Currently Ms. Al-Hathloul is being held in Dhahban prison for campaigning against the driving ban for women and against the Saudi Arabia's male guardianship system.⁶ Ms. Al-Hathloul reportedly has been tortured with electric shocks and whippings, unjustly imprisoned, subjected to incommunicado detention and solitary

¹ As quoted by Gulf Center for Human Rights. Saudi Arabia: Update: Seven Saudi Women's Rights Defenders Branded as Traitors in a Dangerous New Wave of Arrests, May. 21, 2018. Retrieved from:

<https://www.gc4hr.org/news/view/1867>; Amnesty International (Saudi Arabia: Saudi Arabia Arrests Women's Rights Defenders: Loujain Al-Hathloul, Iman Al-Nafjan, Aziza Al Yousef, May 25, 2018, available at: <https://www.amnesty.org/download/Documents/MDE2384782018ENGLISH.pdf>.

² UN General Assembly, *Status of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment : resolution / adopted by the General Assembly*, 15 December 1989, A/RES/44/144, available at: <https://www.refworld.org/docid/3b00efef7c.html>.

³ UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, available at: <https://www.refworld.org/docid/3ae6b3970.html>.

⁴ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at: <https://www.refworld.org/docid/3ae6b3712c.html>.

⁵ "As Saudi women take the wheel, UN chief hopes end of driving ban creates more opportunities for kingdom's women and girls," UN News, 24 June 2018, available at: <https://news.un.org/en/story/2018/06/1012962>.

⁶ Amnesty International, Saudi Arabia: Women's rights campaigner Loujain al-Hathloul due in court 9 March 2020, available at: <https://www.amnesty.org/en/latest/news/2020/03/saudi-arabia-womens-rights-campaigner-loujain-alhathloul-due-in-court/>; J. Northan, Concerns Grow for Loujain Al-Hathloul, Jailed Saudi Women's Driving Activist. *NPR*, 14 February 2019, available at: <https://www.npr.org/2019/02/14/694272384/concern-grows-for-loujain-Al-hathloul-jailed-saudi-womens-driving-activist>.

confinement, and sexually abused.⁷

Since her arrest in May 2018 Loujain Al-Hathloul has been unlawfully detained. Arrested for driving in Saudi Arabia, she was imprisoned incommunicado until her first appearance on 13 March 2019 before the Riyadh Criminal Court. She had been held in solitary confinement for ten months days prior to the court appearance.⁸ On 26 October 2020 Al-Hathloul began a hunger strike to protest her detention conditions and the continued refusal of Saudi authorities to permit regular contact with her family. She ended her hunger strike after two weeks. In November 2020, the Riyadh Criminal Court ruled it had no jurisdiction over Al-Hathloul and transferred her case to the Specialized Criminal Court created to handle allegations of terrorism and is being used for prosecution of human rights defenders.⁹

The Specialized Criminal Court is considered not competent to provide a fair trial that complies with international laws and standards and in particular cannot ensure a determination by an “independent and impartial tribunal” as required by Article 10 of the UDHR. The UN Working Group on Arbitrary Detention (WGAD) and Committee against Torture (CAT) have determined that the Specialized Criminal Court is not sufficiently independent of the Minister of the Interior.¹⁰

LRWC notes a report that the Specialized Criminal Court has opened an investigation into Ms. Al-Hathloul’s allegations of torture.¹¹ Saudi Arabia is obligated to ensure an effective investigation and remedies in accordance with provisions of the UNCAT. In view of its lack of independence, an investigation by the Specialized Criminal Court would not fulfill Saudi Arabia’s obligations under the UNCAT.

International Human Rights Law

Saudi Arabia is obliged to comply with the UNCAT, to which Saudi Arabia acceded on 23 September 1997, and in particular to comply with the following provisions:

⁷ UN OHCHR, Saudi Arabia: UN experts urge freedom for Loujain Al-Hathloul after 500 days in prison, 27 September 2019, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25074&LangID=E>; Human Rights Watch, Saudi Arabia: Prominent Detainees Held Incommunicado, September 6, 2020, available at <https://www.hrw.org/news/2020/09/06/saudi-arabia-prominent-detainees-held-incommunicado>; Amnesty International. (February 14, 2019). The World has not Forgotten the Women Detained and Tortured in Saudi Arabia. Retrieved: <https://www.amnesty.org/en/latest/news/2019/02/the-world-has-not-forgotten-the-women-detained-and-tortured-in-saudi-arabia/>

⁸ Timeline of Arrest, <https://www.loujainalhathloul.org/arrest-torture-charges>;

⁹ *Ibid*

¹⁰ See WGAD, Opinion No. 10/2018 concerning Waleed Abulkhair (Saudi Arabia), 4 July 2018, A/HRC/WGAD/2018/10, at para. 73, available at: https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session81/A_HRC_WGAD_2018_10.pdf; and, CAT, Concluding observations on the second periodic report of Saudi Arabia, 3 November 2016, CAT/C/SAU/CO/2 and Corr.1, paras. 17-18, available at: <https://www.refworld.org/docid/57a993904.html>.

¹¹ Aya Batrawi, Leading Saudi women’s activist referred to terrorism court, Washington Post, 25 November 2020, available at: https://www.washingtonpost.com/world/middle_east/leading-saudi-womens-activist-referred-to-terrorism-court/2020/11/25/43b0ae72-2f60-11eb-9dd6-2d0179981719_story.html

Article 2:

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.
2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

Article 4:

1. Each State Party shall ensure that all acts of torture are offences under its criminal law...
2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

Article 10

Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

The CEDAW was ratified by Saudi Arabia on 7 September 2000 and provides as follows:

Article 5:

Parties shall take all appropriate measures: (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

Article 13

...eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women...

and

(c) The right to participate in recreational activities, sports and all aspects of cultural life.

The UDHR imposes on all UN member States, the duty to ensure the effective recognition, observance and protection of the following universal rights:

Article 5 states that:

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Arbitrary arrest and prolonged detention without charge are violations of the right to liberty and security of the person set out in Article 9 of the UDHR.

Article 10 states:

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal in the determination of [her] rights and obligations and of any criminal charges against [her].

Article 19 states:

Everyone has the right to freedom of opinion and expression... to seek, receive and impart information and ideas through any media.”

Saudi Arabia’s membership in the Muslim World League and the Organization of Islamic Cooperation also provide Saudi Arabia responsibilities to adopt such measures as are necessary to guarantee the life, physical safety, and psychological integrity of Loujain Al-Hathloul along with all other prisoners.

We also draw your attention to the UN Declaration on Human Rights Defenders (Declaration), adopted by consensus of the UN General Assembly in 1999, which recognizes the legitimacy and importance of the activities of human rights defenders, including their right to participate in peaceful activities to promote human rights.¹² The Declaration states:

Article 1.

Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.

Article 12.2

The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.

Ms. Al-Hathloul’s is a human rights defender within the meaning of the Declaration, as she has been peacefully advocating for equal rights for women as guaranteed by the CEDAW.

Universal Periodic Review (UPR) Recommendations

During the UPRs of Saudi Arabia, UN member states have recommended changes necessary to bring Saudi Arabia’s laws, policies and practices into compliance with its international law

¹² UN General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: resolution / adopted by the General Assembly*, 8 March 1999, A/RES/53/144, available at: <http://www.refworld.org/docid/3b00f54c14.html>.

obligations. During the November 2018 UPR,¹³ Saudi Arabia supported the following recommendations relevant to the situation of Ms. Al-Hathloul, namely to:

- S - 122.66 Ensure women's equality with men before the law in the enjoyment of all human rights, including the rights of freedom of movement, education, employment, marriage and redress for violations (Belgium);
- S - 122.91 Amend the legal definition of terrorism to ensure that it does not lead to the prosecution of women's rights defenders, non-violent human rights activists, political dissenters and other persons merely for exercising their human rights (Austria);
- S - 122.116 Adopt further steps to prevent torture, cruel and degrading treatment in prisons and detention centers (Belarus);
- S - 122.138 Take steps to guarantee the exercise of the rights to freedom of expression and opinion without fear of reprisal, giving due consideration to women and girls (Brazil);
- S - 122.142 Eliminate all legal and practical obstacles to the freedom of expression and conscience of human rights defenders, thereby reconsidering the charges against prisoners who were convicted for their commitment to promoting and protecting women's rights (Netherlands);
- S - 122.201 Adopt further measures to ensure gender equality and expand the rights and opportunities for women (Belarus).

Finally, we note the 10 December 2020 press release of several independent UN Experts who stated:

We are extremely alarmed to hear that Ms Al-Hathloul, who has been in detention for more than two years on spurious charges, is now being tried by a Specialized Terrorism Court for exercising her fundamental rights to freedom of expression, peaceful assembly and association.¹⁴

The UN Experts urged your Government to

end Ms. Al-Hathloul's detention, as well as the detention of all the other women human rights defenders, and to conduct an impartial and independent investigation into the allegations of torture while in prison. Defending human rights can never be considered a threat to national security.¹⁵

¹³ UN Human Rights Council, Report of the Working Group on the Universal Periodic Review : Saudi Arabia, 9 November 2018, A/HRC/40/4, available at: https://www.upr-info.org/sites/default/files/document/saudi_arabia/session_31_november_2018/2rps_saudi_arabia_31upr.pdf.

¹⁴ OHCHR, Saudi Arabia: UN experts alarmed by Loujain Al-Hathloul trial, call for immediate release, 10 December, 2020, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26593&LangID=E>.

¹⁵ *Ibid.*

Recommendations

LRWC urges Saudi Arabia to immediately ensure compliance with its international human rights obligation and calls on Saudi Arabia to:

- immediately and unconditionally release Loujain Al-Hathloul and all other human rights defenders;
- withdraw all charges against Ms. Al-Hathloul and all other human rights defenders;
- ensure that investigations and remedies for human rights violations against her are in strict compliance with Saudi Arabia's obligations under the UNCAT, CEDAW, and the UDHR;
- Implement all recommendations supported by Saudi Arabia in the Human Rights Council's UPR in 2018.

We look forward to your urgent response.

Yours sincerely,

[signed]

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[signed]

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