**Submission to General Comment No.5 ‘Migrants’ Human Right to Liberty and their Protection from Arbitrary Detention’, 1 April 2019**

**Introduction**

The European Saudi Organisation for Human Rights (ESOHR) is an NGO based in Berlin, established by a group of activists committed to strengthening human rights in the Kingdom of Saudi Arabia (herewith ‘Saudi Arabia’). ESOHR documents, monitors and reports on human rights abuses in KSA, supports victims of violations, and trains and supports human rights and civil society.

Reprieve is an international legal action charity which assists some of the world’s most vulnerable people: those facing execution and those victimized by states’ abusive counter-terror policies – rendition, torture, extrajudicial imprisonment and extrajudicial killing. We have worked extensively on death penalty cases in the Kingdom of Saudi Arabia, assisting both foreign nationals and citizens facing the death penalty from arrest to post-conviction in both the criminal and counterterrorism courts.

The ESOHR and Reprieve are concerned that migrant workers who face the death penalty for drug offences are arbitrarily detained for lack of effective investigation into concerns that they may be victims of human trafficking and were thus compelled to commit a criminal offence. Where human trafficking has not been investigated, the arrest is arbitrary as Saudi Arabia is failing in its obligation to investigate, as well as other concerns, such as failure to assert consular rights. There is a nexus between human trafficking and the use of the death penalty for drug offences in Saudi Arabia, which results in arbitrary deprivation of life.

Since January 2014, ESOHR and Reprieve are aware that Saudi Arabia has executed 270 people for drug offences, accounting for 36% of all executions in the Kingdom. Foreign nationals represent the majority of persons executed for drug offences (72%).[[1]](#footnote-1)Whilst these concerns are specific to Saudi Arabia, they also reflect broader issues relating to migrants and the criminal justice system. In particular, they highlight the importance of the Vienna Convention on Consular Relations and the Palermo Protocol[[2]](#footnote-2) in guaranteeing the rights to liberty and freedom from arbitrary detention to migrant workers and their families.

**in saudi arabia, the detention of migrants with a view to carrying out their execution for drug offences is arbitrary**

It is first submitted that conditions of the arrest and detention of migrants with a view to carrying out their execution for drug offences is arbitrary and merits the attention of the committee.

First, despite the strong prohibition against applying the death penalty to drug offences which do not involve intentional killing in international law[[3]](#footnote-3), Saudi Arabia makes it an offence punishable by death to traffic or smuggle narcotics, receive such substances from a smuggler, manufacture drugs with the intent to trade, and recidivism of smuggling or manufacturing offences.[[4]](#footnote-4)

Second, it is submitted that the trials which lead to the detention of migrants for drug offences pending execution in Saudi Arabia are partially or totally non-observant of the international norms relating to a fair trial, and therefore arbitrary.[[5]](#footnote-5) Common violations that migrant workers face in a criminal trial include: lack of free legal representation during the pre-trial and trial phases of the proceedings, failure to inform an accused of the charges, failure to inform an accused of his/her rights during interrogation, use of torture, cruel or other degrading treatment in custody through forced confessions and forced detention, inability to understand legal proceedings which are conducted in Arabic, lack of access to translator during trial, lack of access to judicial documents in a language understood by the accused, lack of information about the appeals and pardon process, and bias of police, prosecutors and judges.[[6]](#footnote-6)

Moreover, Reprieve and ESOHR have reports that Saudi authorities have failed to apprise foreign nationals of their right to consular access or facilitate consular communication for detained foreign nationals facing the death penalty for drug offences. Saudi Arabia acceded to the Vienna Convention on Consular Relations, and as such, is obligated under Article 36 to inform all foreign nationals ‘without delay’ of their right to consular assistance.[[7]](#footnote-7) Neglecting these obligations renders the detention of foreign nationals arbitrary because of the violations of due process rights and relevant international human rights instruments ratified by Saudi Arabia.[[8]](#footnote-8) It is widely accepted that the right to consular assistance amounts to a due process right for foreign nationals facing the death penalty.[[9]](#footnote-9)

Third, ESOHR and Reprieve have also found that migrant workers and foreign nationals continue to be disproportionately targeted in Saudi Arabia’s application of the death penalty. The discriminatory nature of the detention of migrants with a view to carrying out their detention risks renders their detention arbitrary under international law.[[10]](#footnote-10) Foreign nationals represent the majority of persons executed for drug offences (72%) in Saudi Arabia since 2014.[[11]](#footnote-11) In particular, Pakistan nationals are executed at a higher rate than other foreign nationals and Saudi nationals, representing 36% of all persons executed in the Kingdom for drug offences, even though Pakistan nationals are estimated at only 6% of the population in Saudi Arabia.[[12]](#footnote-12) Article 2(1) of the International Covenant on Civil and Political Rights as well as Article 2 of the Arab Charter on Human Rights prohibit any discrimination of any kind, based on race, colour, sex, language, religion, political opinion, national or social origin, property, birth or other status.

**Failure to implement the ‘non-punishment’ principle under international law on Human Trafficking in SAUDI ARABIA**

It is submitted that victims of human trafficking are being sentenced to death for drug smuggling in Saudi Arabia, in contravention of the Palermo Protocol to which it has acceded. In some cases, these nationals appear to have been forced into smuggling drugs in their intestines. In at least 10 cases identified by Reprieve and ESOHR in 2017, Pakistani nationals were executed for smuggling narcotics or psychotropic substances that were ingested.

Saudi Arabia has acceded to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime [hereinafter, the Palermo Protocol], and as such, has obligations accruing under the same. One of the purposes of the instrument is to “protect and assist the victims of such trafficking, with full respect for their human rights”. The UN Working Group on Trafficking in Persons have held that this includes the non-punishment principle. In short, the non-punishment principle provides that victims of human trafficking should not be punished for offences that they were compelled to carry out.*[[13]](#footnote-13)*

Saudi Arabian law – namely the anti-trafficking law contained in the Trafficking in Persons (Offences) Act - fails to incorporate the non-punishment principle. According to the principle, victims of human trafficking should not be punished in any form – including prosecution, detention or imprisonment - for offences that they were compelled to carry out, i.e. for crimes related to their trafficking.[[14]](#footnote-14) Further, although Saudi Arabia has established a Standing Committee on Trafficking in Persons, the committee fails to adequately identify and investigate claims of human trafficking. As such, the detention of victims of human trafficking in Saudi Arabia is likely arbitrary.

**Conclusion**

We hope that this Committee on Migrant Workers can integrate the content of this submission into the drafting of their general comment. Reprieve will be willing to extend its support and offer any clarifications in the process of drafting the General Comment.

We, therefore, ask that the following to be incorporated into the draft general comment:

1. States that retain the death penalty, and where migrants are predominant, must ensure they are upholding VCCR rights, and providing prompt consular assistance to migrants;
2. States must be live to the nexus between drug offences and the death penalty – receiving states must apply the non-punishment principle and equally investigate any concern of human trafficking where someone is compelled to commit an offence; and
3. All states should abolish the application of the death penalty for drug offences.
1. Confidential monitoring and casework conducted by Reprieve, last updated 26 March 2019. Saudi Arabia does not publish information on executions. [↑](#footnote-ref-1)
2. Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2000. (Herewith the ‘Palermo Protocol’) [↑](#footnote-ref-2)
3. Drug offences which do not include intentional killing do not meet the threshold of ‘most serious crimes’ set out in the UN International Covenant on Civil and Political Rights (ICCPR), Article 6 (2). See Arab Charter on Human Rights, Article 10; Human Rights Committee, General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life, 30 October 2018, UN. Doc(CCPR/C/GC/36), https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1\_Global/CCPR\_C\_GC\_36\_8785\_E.pdf. Para. 39; UN Office of Drugs and Crime (2010) Drug control, crime prevention and criminal justice: a human rights perspective. Note by the Executive Director (Commission on Narcotic Drugs, Fifty-third session, Vienna, 8–12 March) E/CN.7/2010/CRP.6\*–E/CN.15/2010/CRP.1 [↑](#footnote-ref-3)
4. The Control of Narcotic and Psychotropic Substances (2005), Art. 37. [↑](#footnote-ref-4)
5. See Category III Arbitrary detention as defined by the Working Group on Arbitrary Detention, *Revised Fact* [*Sheet*](https://www.ohchr.org/Documents/Issues/Detention/FactSheet26.pdf) *no. 26,* 8 February 2019. [↑](#footnote-ref-5)
6. Confidential monitoring and casework conducted by Reprieve. [↑](#footnote-ref-6)
7. Saudi Arabia acceded to the Vienna Convention on Consular Relations (henceforth ‘VCCR’) on 26 June 1988, see UN Treaty Collection, Chapter 3, Privileges and Immunities, Diplomatic and Consular Relations, Etc, VCCR, Vienna, 24 April 1963, available at: <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=III-6&chapter=3&clang=_en>. [↑](#footnote-ref-7)
8. See UN Commission of Human Rights, Question of Arbitrary Detention, Resolution 1997/50, 15 April 1997. [↑](#footnote-ref-8)
9. See *LaGrand Case* (Germany v United States of America) (judgement) [2001] ICJ Reps 2001, available at: <https://www.icj-cij.org/files/case-related/104/104-20010627-JUD-01-00-EN.pdf>. [↑](#footnote-ref-9)
10. See Category V Arbitrary detention as defined by the Working Group on Arbitrary Detention, *Revised Fact* [*Sheet*](https://www.ohchr.org/Documents/Issues/Detention/FactSheet26.pdf) *no. 26,* 8 February 2019. [↑](#footnote-ref-10)
11. Confidential monitoring and casework conducted by Reprieve. [↑](#footnote-ref-11)
12. Based on population figures from the World Bank: http://data.worldbank.org/country/saudi-arabia and Pakistani government figures, available at: [www.ophrd.gov.pk/default.aspx](http://www.ophrd.gov.pk/default.aspx). [↑](#footnote-ref-12)
13. U.N. Working Group on Trafficking in Persons, Report on the Meeting of the Working Group on Trafficking in Persons Held in Vienna on 14 and 15 April 2009, 21 April 2009, CTOC/COP/WG.4/2009/2, para 12, <http://www.unodc.org/documents/treaties/organized_crime/Final_report_English_TIP.pdf>. [↑](#footnote-ref-13)
14. See The Miami Declaration of Principles on Human Trafficking, 1 Intercultural Human Rights L. Rev. 11 (2006) (10 February 2005), para. 28, available here: <http://hrlibrary.umn.edu/instree/miami-declaration2006.html>. [↑](#footnote-ref-14)