***Reprieve’s submission to the United Nations Special Rapporteur on Trafficking in Persons, especially Women and Children for the thematic report on the implementation of the non-punishment principle in the context of trafficking in persons***.

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1. **SUMMARY**
2. This submission focuses on the limitations and application of the principle of non-punishment in trafficking of persons in Pakistan and the Kingdom of Saudi Arabia with a particular focus on the trafficking of persons in the drugs trade. Reprieve works extensively in both jurisdictions alongside local partner organisations who are familiar with the political and legal landscape.
3. Even though both states recognise the non-punishment principle, they have yet to adopt effective policies, training, and legal infrastructure to implement the non-punishment clause in their respective human trafficking laws. Both KSA and Pakistan need to move from superficial recognition of the non-punishment principle to meaningful implementation and compliance. As both states impose the death penalty for the trade and possession of drugs, it increases the urgent need for application of the non-punishment principle, to prevent victims of human trafficking from being sentenced to death or even executed.
4. **KINGDOM OF SAUDI ARABIA (KSA)**
5. ***KSA appears to commit to the non-punishment principle under international law and Islamic law***
6. The Kingdom of Saudi Arabia (KSA) has not expressly rejected the non-punishment principle. KSA ratified the ‘Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime’ (hereafter ‘the Palermo Protocol’) on 20 July 2007.
7. KSA reportedly participated[[1]](#footnote-1) in the drafting of the League of Arab States Model Arab Law on Human Trafficking (2009)which recognizes the non-punishment principle. Articles 27 and 28 of the model law state that a victim will not be held criminally or civilly liable for crimes which resulted from their status as a victim and the victim shall be exempt from penalties imposed for violations of immigration, nationality and residency laws, where such misconduct is directly related to their status as a victim.[[2]](#footnote-2)
8. KSA has also endorsed the interpretation of the non-punishment principle in the context of Islamic Law. In 2009, the UNODC and the Naif Arab University in Riyadh jointly published a paper titled “Combating trafficking in persons in accordance with the principles of Islamic law.”[[3]](#footnote-3) This was an academic paper meant to promote discussion of human trafficking and Islamic Law. The paper endorses the non-punishment principle*[[4]](#footnote-4)* as the Quran[[5]](#footnote-5) explicitly recognizes it.
9. ***KSA fails to Incorporate the Non-Punishment Principle into Domestic Law***
10. Contrary to its international actions, KSA’s domestic law and policy on human trafficking does not implement the non-punishment principle. KSA passed the Suppression of the Trafficking in Persons Act (Decree M/40) (the “STPA”) in 2009.[[6]](#footnote-6) The STPA defines the crimes of trafficking in line with the Palermo Protocol, although it omits the means element of the crime. As in international law, Article 5 provides that the “[c]onsent of victims shall be deemed irrelevant in any of the crimes provided for in this law.”The law does not mention the principle of non-punishment for victims of human trafficking.
11. ***Infrastructure to combat human trafficking does not adequately consider non-punishment principle***
12. While KSA has taken several steps to build infrastructure to tackle human trafficking, the mechanisms and policies established have failed to adequately consider the non-punishment principle.
13. To coordinate national efforts to stop trafficking, the Council of Ministers issued Resolution No. 244 in 2009 (20/7/1430H) approving the formation of the Anti-Trafficking in Persons Committee within the Human Rights Commission.[[7]](#footnote-7) This committee designed the 2017-2020 National Plan for Combating Trafficking in Persons in order to coordinate KSA’s anti-trafficking efforts.[[8]](#footnote-8) The plan specifically refers to the non-punishment principle, designating the National Committee to Combat Human Trafficking (within the Saudi Human Rights Commission (SHRC)) as the relevant body for preparing guidelines for victims about ‘the non-punishment of trafficking victims’.[[9]](#footnote-9) According to the plan, this action should have been completed in 2017, yet even as of the end of 2020, the guidelines do not appear to have been issued, nor is there evidence that the non-punishment principle was implemented in KSA during this time.[[10]](#footnote-10)
14. In January 2020, KSA signed an MOU with the International Organization for Migration, to enable a series of trainings for frontline workers on recognizing victims of trafficking.[[11]](#footnote-11)
15. In March 2020, the Anti-Trafficking in Persons Committee (a sub-committee of the SHRC) launched the national referral mechanism (NRM) through which referrals of suspected victims of trafficking can be made.[[12]](#footnote-12) In 2020, officials reportedly identified and referred to government-run shelters 1,457 female trafficking victims, a significant increase from the 113 and 121 trafficking victims it reported for 2018 and 2019. [[13]](#footnote-13) That said, the guidelines issued with the launch of the NRM do not mention the non-punishment principle.[[14]](#footnote-14)
16. On 7 August 2020, the SHRC signed a MoU with the UNODC in relation to cooperation on combatting human trafficking. The scope of the MoU is wide and non-exhaustive. Of note, the MoU covers ‘establishing mechanisms to protect victims’.[[15]](#footnote-15) However, as of yet, no guidelines exist, although they have been referred to in press releases.[[16]](#footnote-16)
17. ***Impact on victims of human trafficking***
18. In its 2020 Trafficking in Persons Report (“TIP Report”), the US State Department upgraded KSA from its tier III watch list to tier II, whilst holding that “[t]he government continued to fine, jail, and/or deport migrant workers […] many of whom may have been unidentified trafficking victims.”[[17]](#footnote-17)
19. Reprieve is concerned that the failure to implement the non-punishment principle is leading to the imposition and implementation of the death penalty on migrant workers for drug smuggling. While KSA does not publish information about its death row population, Reprieve monitoring suggests that 217 of the 297 executions for drug offences carried out since January 2015 were of foreign nationals. With these figures extrapolated, we can estimate that there are hundreds of foreign nationals on death row for drug offences. Reprieve is aware of at least three.
20. Reprieve is further concerned that a moratorium announced on the death penalty for drug offences will not in fact protect unidentified trafficking victims from executions. The Saudi Human Rights Commission (SHRC) announced a moratorium on executions for drug offences on 18 January 2021.[[18]](#footnote-18) Monitoring by Reprieve indicates that it has been over one year since the government carried out a drug-related execution. However, the SHRC’s announcement is the only public mention of such a moratorium, either in English or Arabic, and the moratorium does not exist in any official format. As the moratorium has not been officially announced and appears to have only been in place for a year, it does not meet the internationally accepted definition of a moratorium.
21. **PAKISTAN**
22. ***Commitments under International Law***
23. Pakistan ratified the United Nations Convention against Transnational Organized Crime on 13 January 2010. However, it is not a signatory to the Palermo Protocol.
24. ***Pakistan incorporated in a limited way, the Non-Punishment Principle into domestic law***
25. In 2018, Pakistan passed into legislation the Prevention of Trafficking in Persons Act (‘PTPA’) which explicitly includes the non-punishment principle, but only in a limited way. The PTPA was first introduced as the Prevention of Trafficking Persons Ordinance 2018.[[19]](#footnote-19) Before the expiry of the ordinance, it was introduced, debated, and passed by Senate into legislation.[[20]](#footnote-20) During the debate, it was considered as an urgent matter and a key piece of legislation to pass to uphold Pakistan’s international obligations.[[21]](#footnote-21)
26. Much of the PTPA that is already in place conforms with international standards. The UNODC has recognised this and substantially advocated for its enactment.[[22]](#footnote-22) The Preamble[[23]](#footnote-23) to the PTPA, its definition of the offence of trafficking[[24]](#footnote-24), and its definition of victim,[[25]](#footnote-25) all comply with the Palermo Protocol.
27. However, the non-punishment principle is incorporated in a way that falls short of international standards as follows:

*6. Victims of trafficking in persons* – *A victim shall not be criminally liable for an offence under this Act but may become witness in the case.*

1. As articulated by the OHCHR, the non-punishment principle sets out that “trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked person.”[[26]](#footnote-26)
2. According to the PTPA, a court cannot convict a victim of human trafficking for the offence of trafficking in persons[[27]](#footnote-27) or aiding, abetting and acting as an accomplice[[28]](#footnote-28) in this offence. While the PTPA recognises victims of human trafficking and eliminates criminal culpability for offences thereunder, it does not absolve victims of human trafficking from criminal liability for offences prescribed under other laws, such as the Control of Narcotics Substances Act 1997 (CNSA). Thus, an individual who was trafficked to transport drugs, could technically still be prosecuted and convicted under the CNSA, for offences carrying the death penalty.
3. ***Pakistan fails to implement the non-punishment principle as set out in PTPA***
4. In the concluding observations on CEDAW, the Committee appreciated the adoption of the PTPA however recommended that Pakistan ensure effective enforcement of the PTPA including through systematic training for judges, prosecutors, border police, immigration authorities and other law enforcement officials. [[29]](#footnote-29) However, civil society actors working on anti-trafficking initiatives have told Reprieve that there is little to no awareness of the PTPA amongst law enforcement or the judiciary, and that the government has failed to take any steps towards its implementation.
5. The government is bound to make rules[[30]](#footnote-30) for the enforcement and administration of the PTPA, but this has still not been completed by either the federal or provincial governments.
6. The law enforcement agency, the Federal Investigation Agency (FIA), established an Anti-Human Trafficking Unit, which was assigned the task of enforcing the provisions of the PTPA. However, the only function stated by the FIA for victims is to prevent and protect victims though apprehension of traffickers and smugglers.[[31]](#footnote-31)
7. There has been no reported judgements on the interpretation of the PTPA, again suggesting the PTPA is not being followed.
8. ***Impact on Victims of Human Trafficking***
9. In the US State Department’s 2020 TIP Report, Pakistan was placed on its Tier II watch list.[[32]](#footnote-32) The report noted that the Pakistani government lacked adequate resources for victim care and only referred four percent of all victims identified to care. On drug trafficking, the report found that “organized criminal groups force children into drug trafficking in Sindh and Balochistan” and “traffickers have forced Afghan, Iranian, and Pakistani children into drug trafficking in border areas and Karachi.”
10. A review of the demographics of those arrested for drug trafficking offences, presents a number of factors associated with those vulnerable to human trafficking.[[33]](#footnote-33) Research by our local partner, the Foundation for Fundamental Rights (FFR), found that those convicted under the CNSA reported a median income around PKR 10,000 a month (USD $95.42) which was below the federal government’s minimum wage for unskilled workers (PKR 14,000/USD $133.59 per month). Most prisoners were not educated past the age of 9 years old and 41% of prisoners surveyed were entirely illiterate. The most common occupation among prisoners interviewed was manual labour paid by the day. The average value of the narcotics seized from each prisoner was roughly 1,600 times the prisoners’ median income. [[34]](#footnote-34)
11. Reprieve submits that many of those accused and convicted under the CNSA should ideally have been intercepted by the FIA, and investigated as possible victims of human trafficking. In several cases Reprieve has worked on directly of foreign nationals arrested under the CNSA, despite obvious signs of human trafficking, law enforcement officers have not pursued this line of investigation, and individuals remain at serious risk of receiving the death penalty for offences committed as a result of having been trafficked.
12. **CONCLUSION**
13. This submission highlights that even though Pakistan and KSA have recognised the non-punishment principle to varying degrees, it is evident that this has not translated to effective implementation and compliance with international standards. Victims of human trafficking, as exemplified in the context of the drug trade, continue to be at risk of being sentenced to death and executed for offences they committed as a direct result of their trafficked status.

*Reprieve is a charitable organization registered in the United Kingdom (No. 1114900), and in special consultative status with the United Nations Economic and Social Council (ECOSOC). Reprieve provides free legal and investigative support to those who have been subjected to state-sponsored human rights abuses. Our clients belong to some of the most vulnerable populations in the world, as it is in their cases that human rights are most swiftly jettisoned, and the rule of law is cast aside. In particular, we protect the rights of those facing the death penalty and deliver justice to victims of arbitrary detention, torture, and extrajudicial execution.*

1. See: <http://www.lasportal.org/ar/Pages/default.aspx> [↑](#footnote-ref-1)
2. Adopted by the Council of Arab Ministers of Justice in its 21st session in Resolution No. 601-D 21, dated 29/11/2005 (28/10/1426H), and the Council of Arab Ministers of the Interior in its 23rd session in Resolution No. 472-D23-2006, amended by the Council of Arab Ministers of Justice in Resolution No. 920- 28D, dated 26/11/2012 (12/1/1434). Accessed at: <https://carjj.org/node/240> [↑](#footnote-ref-2)
3. Naif Arab University for Security Sciences and UNODC, ‘Combatting Trafficking in Persons in Accordance with the Principles of Islamic Law’ (2009) available at <https://www.unodc.org/documents/human-trafficking/UNODC_Trafficking_and_Islamic_Law.pdf>. Notably, the launch event for the paper was hosted by KSA. It was released in conjunction with a graduation ceremony of the Naif Arab University for Social Sciences. Available at <https://www.unodc.org/unodc/en/human-trafficking/2009/combating-tip-in-accordance-with-the-principles-of-islamic-law.html> [↑](#footnote-ref-3)
4. Relevant excerpt of the paper:

   *[T]he law must excuse victims of trafficking in persons from criminal liability for the acts committed as a result of being trafficked, including illegal entry, falsification of travel documents, or prostitution which is criminalized in the country, if such acts are a result of the act of trafficking itself or if they are compelled to commit these acts.* [↑](#footnote-ref-4)
5. *The Qur’anic legislation is the first law to recognize the principle of non-punishment of the victim of a crime, especially as linked to trafficking for the purpose of sexual exploitation. In accordance with the Quran 24:33, “But force not your maids to prostitution when they desire chastity.... But if anyone compels them, yet, after such compulsion, is Allah, Oft-Forgiving, Most Merciful (to them).”* [↑](#footnote-ref-5)
6. Anti - Trafficking in Persons Law, Royal Decree No. (M/40) Dated: 21/7/1430 h - 14/7/2009, available at: <https://hrc.gov.sa/en-us/TraffickingInPersons/PublishingImages/Pages/Anti-traffickingcrimessystem/Anti-Trafficking%20in%20Persons%20Law.pdf> [↑](#footnote-ref-6)
7. Resolution no. 244, dated 20/7/1430H, Available at: <https://hrc.gov.sa/en-us/TraffickingInPersons/Pages/Anti-traffickingcrimessystem.aspx>. [↑](#footnote-ref-7)
8. Saudi Human Rights Commission, ‘National Plan for Combating Trafficking in Persons, 2017-2020’ accessed at: <https://hrc.gov.sa/ar-sa/TraffickingInPersons/SiteAssets/Pages/nationalplanenglish/%D8%A7%D9%84%D8%AE%D8%B7%D8%A9%20%D8%A7%D9%84%D9%88%D8%B7%D9%86%D9%8A%D8%A9%20%D8%A7%D9%86%D8%AC%D9%84%D9%8A%D8%B2%D9%8A-converted.pdf>. [↑](#footnote-ref-8)
9. *Ibid,* p 14. [↑](#footnote-ref-9)
10. As tweeted by The National Committee to Combat Human Trafficking on 10 Dec 2020: <https://twitter.com/NccTsa/status/1336893397391597568/photo/1>. [↑](#footnote-ref-10)
11. IOM, "IOM Supports Training of Saudi Frontline Workers in Combatting Trafficking in Persons" (16 June 2020), accessed here:<https://reliefweb.int/report/saudi-arabia/iom-supports-training-saudi-frontline-workers-combatting-trafficking-persons>. [↑](#footnote-ref-11)
12. National Referral Mechanism on Crimes of Trafficking in Person in the Kingdom of Saudi Arabia, National Committee to Combat Human Trafficking, available at: <https://ncct.gov.sa/research>. [↑](#footnote-ref-12)
13. US State Department, ‘2020 Trafficking in Persons Report: Saudi Arabia’ (1 December 2020) accessed at: <https://www.state.gov/reports/2020-trafficking-in-persons-report/saudi-arabia/#report-toc__section-5>. [↑](#footnote-ref-13)
14. National Referral Mechanism on Crimes of Trafficking in Person in the Kingdom of Saudi Arabia, National Committee to Combat Human Trafficking, available at: <https://ncct.gov.sa/research>. [↑](#footnote-ref-14)
15. See: <https://www.uqn.gov.sa/articles/1596739306285823000/> Article 1(c). [↑](#footnote-ref-15)
16. See: <https://ncct.gov.sa/research> and <https://twitter.com/NccTsa/status/1354003079964856320/photo/1> [↑](#footnote-ref-16)
17. US State Department ‘2020 Trafficking in Persons Report: Saudi Arabia’ (1 December 2020) accessed at: <https://www.state.gov/reports/2020-trafficking-in-persons-report/saudi-arabia/#report-toc__section-5> [↑](#footnote-ref-17)
18. Saudi Human Rights Commission, ‘Saudi Arabia Drastically Decreases Application of the Death Penalty in 2020’(18 January 2021), available at: https://twitter.com/HRCSaudi\_EN/status/1351087958565281793. [↑](#footnote-ref-18)
19. The Prevention of Trafficking Persons Ordinance 2018, The Gazette of Pakistan, available at: <http://www.senate.gov.pk/1web/ordinance/ordVIIIof2018.pdf> [↑](#footnote-ref-19)
20. The Prevention of Trafficking Persons Act 2018, The Gazette of Pakistan, available at: <http://www.senate.gov.pk/uploads/documents/1533270017_228.pdf> [↑](#footnote-ref-20)
21. The Senate Of Pakistan Debates: Official Report, 277th Session, Volume VI, No. 12 (Nos. 01-12), SP.VI(12)/2018, Senate Secretariat, 15 May 2018, Available at: <http://www.senate.gov.pk/uploads/documents/debates/1562237590_204.pdf> [↑](#footnote-ref-21)
22. UNODC, ‘Trafficking in Persons and Smuggling of Migrants laws 2018’ available at: <https://www.unodc.org/pakistan/en/trafficking-in-persons-and-smuggling-of-migrants-laws-2018.html> UNODC drafted laws on trafficking in person and smuggling of migrants, United Nations Office on Drugs and Crime, available at: <https://www.unodc.org/pakistan/en/unodc-drafted-laws-on-trafficking-in-person-and-smuggling-of-migrants.html> [↑](#footnote-ref-22)
23. The Preamble of the PTPA provides that it has been enacted as “it is necessary to provide for effective measures to prevent and combat the trafficking in persons especially women and children; to promote and facilitate national and international cooperation in this regard; to protect the trafficking victims; and to provide for matters concerned therewith or ancillary thereto.” [↑](#footnote-ref-23)
24. An offence of trafficking in persons under Section 2(g), of the PTPA is committed where a person “*recruits, harbours, transports, provides or obtains another person, or attempts to do so, for compelled labour or commercial sex acts through the use of force, fraud or coercion,*” where coercion means “*use or threat of use of force, or other forms of nonviolent us of force, including (i) threat of harm to or physical restraint of any person; (ii) any scheme, plan or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint of any person; (iii) threat due to vulnerable position of a person; or (iv) psychological pressure*.” [↑](#footnote-ref-24)
25. The PTPA defines ‘*victim*’ in Section 2(g) as “*a person against whom an offence under this Act is committed regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted.* [↑](#footnote-ref-25)
26. OHCHR, ‘Recommended Principles on Human Rights and Human Trafficking’, section 7. [↑](#footnote-ref-26)
27. PTPA, s 3. [↑](#footnote-ref-27)
28. PTPA, s 4. [↑](#footnote-ref-28)
29. Committee on the Elimination of Discrimination against Women, ‘Concluding observations on the fifth periodic report of Pakistan’ (10 March 2020) CEDAW/C/PAK/CO/5, paras 33-34. [↑](#footnote-ref-29)
30. PTPA, s 15. [↑](#footnote-ref-30)
31. Federal Investigation Agency, available at: <http://www.fia.gov.pk/en/ahtc.php> [↑](#footnote-ref-31)
32. US State Department, ‘2020 Trafficking in Persons Report: Pakistan’ (1 December 2020) available at: <https://www.state.gov/reports/2020-trafficking-in-persons-report/pakistan/> [↑](#footnote-ref-32)
33. For a review of factors see the resolution adopted by the Human Rights Council on 16 July 2020, A/HRC/RES/44/4. Available at: <https://undocs.org/en/A/HRC/RES/44/4> [↑](#footnote-ref-33)
34. Foundation for Fundamental Rights ‘Optimising Pakistan’s Drug Law; Making The Control Of Narcotic Substances Act Stronger, Fairer And More Effective’ (January 2018). [↑](#footnote-ref-34)