



Ref: 413/ 1295

The Permanent Mission of the Kingdom of Saudi Arabia to the United Nations Office and other International Organizations at Geneva presents its compliments to the Office of the Special Procedures Branch (OHCHR), and has the honor to refer to the letter from Special Rapporteur on trafficking in persons, especially women and children dated 14 December 2020, regarding the principle of non-punishment of trafficked persons.

The Permanent Mission of the Kingdom of Saudi Arabia has the honor to attach herewith the contribution of the Kingdom of Saudi Arabia to the OHCHR report.

The Permanent Mission of the Kingdom of Saudi Arabia to the United Nations Office and other International Organizations at Geneva avails itself of this opportunity to renew to the Office of the Special Procedures Branch (OHCHR), the assurances of its highest consideration.



Geneva, February 17, 2021

Office of the Special Procedures Branch (OHCHR)  
Email: Registry@ohchr.org



## **Information on the Application of "the Principle of Non-punishment of Trafficked Persons"**

1. This memorandum contains information on the application of the principle of non-punishment of trafficked persons. It was issued in response to a request by the UN Special Rapporteur on Trafficking in Persons, Especially Women and Children, for the purposes of preparing a report that the Special Rapporteur will submit to the Human Rights Council's 47<sup>th</sup> session in June 2021. Saudi Arabia's views and contributions vis-à-vis topics raised in the Special Rapporteur's letter have been added.
2. As the Kingdom submits this memorandum, it wishes to reiterate its commitment to combating all forms of trafficking in persons (TIP) crimes and protecting, supporting, and assisting TIP victims. To that end, Saudi Arabia put in place a number of measures, most notably, strengthening the legal and institutional framework to combat TIP crimes. This includes promulgating the 2009 Anti-Trafficking in Persons Law and forming the Human Rights Commission's (HRC) Anti-Trafficking in Persons Committee comprised of relevant government agencies to do work designed to implement the Anti-Trafficking in Persons Law. Saudi Arabia also launched the National Referral Mechanism (NRM) in August 2020 to document TIP cases from the point of tracking a violation to the issuance of a judgement by a court of jurisdiction. NRM also serves to provide guidance to relevant government and NGO workers on the procedures to be followed at every stage under the Anti-Trafficking in Persons Law. This memorandum provides a detailed description of these procedures within relevant context.

### **First: Gender Dimensions of Implementing the principle of "Non-Punishment of Trafficked Persons"**

3. The 2009 Anti-Trafficking in Persons Law contains numerous principles and provisions that, combined, serve to protect TIP victims and offer them medical, psychological, and rehabilitative assistance in addition to shelter. Article (15) of the law lists a number of procedures that must be followed when dealing with a TIP victim during the investigation and trial. Most notably, this includes advising the victim of their rights in the language they understand; giving the victim a chance to clarify their status as a TIP victim, assessing the victim's physical, psychological, and social situation; providing security, if necessary, alongside other legal provisions that offer victims protection and ensure justice. Article (5) of the law also states that the victim's





consent to any of the crimes stipulated in the law shall be inconsequential. As such, punishment exacted for TIP crimes shall not include the victims. Gender dimensions shall not have negative ramifications on the victims' victims. Gender shall have no bearing on the victims' abilities to access their legal rights nor on penalties levied against them, but rather, on the penalties exacted against the perpetrators as TIP crimes against women mandate stronger penalties per article (4) of the 2009 Anti-Trafficking in Persons Law. Gender is also a consideration in offering victims protection and assistance.

### **Second: Examples of Withdrawal of Citizenship as Punishment for TIP Victims**

4. As stated in paragraph (3), TIP victims are not penalized and their citizenship is not withdrawn. Their status as victims in TIP crimes committed against them does not erode. The 2009 Anti-Trafficking in Persons Law guarantees them various forms of protection and assistance. The various stages of the TIP NRM include identifying victims and referring them, as needed, according to best international practices. This process is conducted with follow-up from the HRC and the Anti-Trafficking in Persons Committee who track measures taken in every case. Stage 4 of the NRM includes offering protection and assistance by the pertinent agencies to the victim during the investigation and trial. Stage 5 includes facilitating voluntary repatriation of the potential victim through coordination with relevant parties, including the victim's embassy, or coordinating the placement of the victim in a third country. Stage 6 gives the victim the chance to reintegrate into society and offers him/her various types of assistance such as health services, education assistance, vocational training, and adequate housing.

### **Third: Arresting or Detaining TIP Victims as a Form of Punishment**

5. Arresting or detaining TIP victims as a form of punishment is a violation of the 2009 Anti-Trafficking in Persons Law which guarantees victims the right to various forms of protection and assistance. Agencies responsible for combating TIP crimes screens for potential TIP indicators such as withholding wages or passports. Legal measures are taken accordingly in the case of the victim and the accused. Training is offered to a large number of specialists in agencies charged with implementing the mechanism designed to uncover TIP victims. This includes designing effective programs that



prevent the detention of victims; creating teams to screen detainee papers at deportation centers, and doubling pre-emptive screening at deportation center via teams comprised of the Ministry of Interior, the Ministry of Human Resources and Social Development, and HRC. This helps ensure there are no potential TIP victims. The teams submit their reports to the Anti-Trafficking in Persons Committee. The HRC also pays monthly visits to shelters around the country to screen for potential victims, ensure sufficient care is provided to the victims, coordinate with the relevant authorities, and submit a monthly report to the Anti-Trafficking in Persons Committee.

#### **Fourth: Forced Repatriation of TIP Victims as a Form of Punishment**

6. TIP victims are not forcibly deported. On the contrary, they are given the assistance afforded to them under article (15) of the Anti-Trafficking in Persons Law. Article (15) stipulates that if the victim is an expatriate and there is a need for them to remain in the Kingdom or work while the investigation or trial are conducted, the Public Prosecutor or court of jurisdiction may evaluate the situation. Paragraph (5) of the Public Prosecutor's circular no. 63677, issued on 8/6/2020, stresses to law enforcement the requirement to refrain from deporting foreigners without prior approval from the PPO if there are indicators these expatriates may be involved in TIP cases currently under investigation by the PPO. The protection and assistance stage of the NRM ensures victims receive assistance during the investigation and trial until the potential victim makes the voluntary decision to repatriate. The NRM also serves to ensure this person does not fall victim to trafficking again.

#### **Fifth: Legal and Practical Restrictions or Challenges to the Application of the Principle of the Non-Punishment of TIP Victims**

7. There was no detection of restrictions or challenges to the application of the principle of the non-punishment of TIP victims in TIP crimes. On the contrary, we detect cases in which the criminally liable TIP victim has willfully committed a criminal act punishable by law. This presents a challenge to the application of certain stages of the TIP NRM indicated herein. HRC is consequently working with the pertinent government agencies to study and address these challenges in a manner that ensures all types of protection and assistance to TIP victims.



**Sixth: Discriminatory Provisions in the Law or the Policy of Non-Punishment of TIP Victims, or Discrimination in Implementation or Practical Applications**

8. There is no discrimination at the law, policy, or practice levels vis-à-vis the application of the principle of the non-punishment of TIP victims. The principle is applied, irrespective of gender, nationality, race, color, lineage, national origin, sect, or other grounds for discrimination. TIP victims enjoy all forms of necessary protection and assistance as indicated above.

**Seventh: Information on the Laws and Policies of Applying the Principle of Non-Punishment of TIP Victims, Especially Best Practices to Include Legislations, Policies, or Approved Guidance that Effectively Prevented Penalizing TIP Victims under Criminal, Civil, or Administrative Laws, including Immigration Law, to the Extent Involvement is the Direct Result of Their Situation as TIP Victims.**

9. Combined, Saudi laws come together to enable the application of the principle of the non-punishment of TIP victims. This includes the 2009 Anti-Trafficking in Persons Law and measures taken to combat such crimes. Following is an overview of these laws and measures:
- **2009 Anti-Trafficking in Persons Law:** Article (15) of the law contains measures that must be taken in the case of TIP victims during investigation or trial. Most notably: informing the victim of their rights in a language they understand and giving them the opportunity to explain their legal, physical, psychological and social situation as well as their situation as a TIP victims; providing security protection, if necessary, among other legal provisions that, combined, serve to guarantee victims protection and justice. Article (5) of the law also stipulates that the victim's consent to any of the crimes stipulated in the law shall be considered inconsequential.
  - **2013 Law of Criminal Procedure:** Article (3) of the law prohibits imposing punitive measures against anyone unless they are convicted of a crime punishable by law. Article (16) states that the victim, his/her representative, or heirs may initiate criminal action with respect to all cases involving a private right, and shall have the right to follow-up any such case before the competent court. Article (63) gives the investigator, if (s)he concludes that there are no grounds to proceed with the case, the right to recommend that the case file be suspended. An order to this effect may be issued by the head of the relevant department. Article (124) states that if the investigator is of the opinion,



following completion of the investigation, that there is insufficient evidence to proceed with the case, (s)he shall recommend to the director of the relevant department to stay the case and the detained accused be released- unless (s)he is detained for another reason. An order by the director of the relevant department in support thereof shall be effective - except in major crimes where the order shall not be effective unless confirmed by the Public Prosecutor or his designee.

- **Trafficking in Persons Victims National Referral Mechanism:** The Saudi Trafficking in Persons Victims National Referral Mechanism (TIP NRM) was ratified in August 2020. The NRM is comprised of the following 6 stages:

- Identifying the TIP victim (the mechanism contains special indicators designed to detect TIP victims)
- Rescuing and sheltering (referral and documentation) TIP victims
- Investigation and prosecution (official and legal specification)
- Protection and assistance
- Voluntary repatriation of potential victims
- Re-integration

(15) Government and non-government agencies partake in the NRM in various executive, organizational, and follow-up roles. They are:

- The General Secretariat of the Anti-Trafficking in Persons Committee and its work teams
- Ministry of Human Resources and Social Development.
- Regional shelters.
- Ministry of Interior.
- Public Prosecutor's Office.
- Ministry of Justice.
- Ministry of Health.
- Ministry of Foreign Affairs.
- General Organization of Technical and Vocational Training.
- Saudi Bar Association.
- Ministry of Education.
- The Saudi Red Crescent.
- Ministry of Information
- The (victim's) embassy.
- The Human Rights Commission.



The HRC and other pertinent agencies coordinate with numerous international organizations under the NRM. This includes the International Organization of Migration, the UN High Commissioner for Refugees, and the UN Office on Drugs and Crime.

**Eighth: Specific Examples of Application Models in the Following Cases:**

***Whether the principle is applied through specific provisions in the local law that provide for the non-punishment of trafficked persons***

10. The principle of the non-punishment of TIP victims is applied through the legal provisions of the 2009 Anti-Trafficking in Persons Law as well as other laws that come together to prevent the punishment of TIP victims as explained herein, specifically in paragraph (9).

***The standard used to identify the link between committing an illegal act and the victim's subjugation the trafficker's influence (whether the relationship is causal or forced self-defense. If the latter, what defines "forced"?)***

11. The relationship between committing an illegal act and the subjugation of the victim to the influence of the perpetrator (the trafficker) constitutes part of the circumstances surrounding each case unto itself. This is uncovered during the process of evidence gathering, investigation, and trial. In all these cases, it is safe to say that the standard is a legal one and rests entirely on whether or not the victim was exposed to a position of vulnerability. This includes threatening or using violence or other forms of coercion.

***Whether the principle is applied to all illegal acts or certain acts only***

***At which point in the investigation or prosecution may the principle be applied and who has the mandate to do so? Whether or not it is necessary to officially disclose the identity of the victim.***

12. The principle of the non-punishment of trafficked persons is applied in all types of cases as previously indicated.

***Whether the principle is applied through specific provisions in the local law that ensure the non-punishment of trafficked persons***



13. The principle of the non-punishment of trafficked persons is applied during the evidence gathering phase (upon discovering the crime) by protecting the victim and offering all necessary assistance, as stipulated in the 2009 Anti-Trafficking in Persons Law. Application continues into the investigation and trial phases and governs the steps taken during these phases as well. This includes informing the defendant (victim) of their legal rights in a language they understand; allowing the victim an opportunity to explain their legal, physical, psychological, and social situation, as well as their situation as a victim of trafficking. In addition, procedures covered in article (15) of the law are also applied (see paragraphs 3 and 9).
14. The principle is also applied during the investigation through the suspension of case files. Article (63) of the 2013 Law of Criminal Procedure gives the investigator, if (s)he concludes that there are no grounds to proceed with the case, the right to recommend that the file of the case be suspended. An order to this effect may be issued by the head of the relevant department. Article (124) of the law states that if the investigator is of the opinion, following completion of the investigation, that there is insufficient evidence to proceed with the case, (s)he shall recommend to the director of the relevant department to stay the case and the detained accused be released- unless (s)he is detained for another reason. An order by the director of the relevant department in support thereof shall be effective - except in major crimes where the order shall not be effective unless confirmed by the Public Prosecutor or their designee. During the trial, this principle is applied through the issuance of innocent verdicts. As such, the agencies involved in applying the principle are: The Public Prosecutor's Office and the court's jurisdiction.