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**Submission on Draft General comment No. 5 (2020) on migrants’ rights to liberty and freedom from arbitrary detention**

October 2020

1. **Introduction**

Migrant-Rights.org urges the Committee to take notice of the specific forms of ‘temporary’ labour migration that exist in several of the world’s corridors and which 1) influence the motivation of states to detain migrants and 2) compound the impact of detention on migration. In particular, Migrant-Righs.org would like to note the specific phenomenon of immigration detention in the Gulf Cooperation Council Countries (GCC), which is heavily determined by the Kafala system, a rigid employer-tied visa system under which the legal residency of a worker is dependent on their sponsor. In most cases, sponsors alone have the power to renew workers’ documentation and can force them into irregularity due to negligence, retribution, or other malicious intent. Sponsors also have the power to report a worker as ‘absconding’ from work, which is a criminal offence that immediately renders them irregular. Again, sponsors often use this. Migrant workers often have no opportunity to contest these charges and are vulnerable to detention and deportation when caught by authorities. [[1]](#footnote-1)

Though at least 49% of the region’s population are migrants, the realities of the GCC migration experience are often not captured in international discourse.[[2]](#footnote-2) In fact, the GCC countries routinely consider themselves exempt from legislation on migration because of the nature of labour immigration in the region.[[3]](#footnote-3)

Therefore, it is pivotal that the specific forms of detention and other human rights violations of migrants that exist in the region are included in the General Comment and in other documents produced by the treaty body.

1. **Comments supported by Migrant-Rights.org**

Migrant-Rights.org supports the recommendations and interpretations made in the Draft General Comment. In particular, Migrant-Rights.org applauds the following initiatives:

1. **Paragraph 42** - The acknowledgement of the harm done to the human rights of migrants through the encouragement of local populations to inform authorities about the migration status of migrant workers and members of their families or the obligation imposed on service providers and other relevant individuals. Such practices are common in the Gulf and have accelerated amid the Covid-19 crisis.[[4]](#footnote-4) The impact on migrants includes deterrence from reporting labour complaints and endurance of forced labour conditions, as well as avoidance of seeking health services.

1. **Paragraph 49 and 52**  - The acknowledgement that it is not permissible for children to be deprived of their liberty in detention centres with their parents, under the pretext of preserving family unity in detention. Given the tendency for women with an irregular status, including those who have been specifically criminalised for giving birth out of wedlock, the principle of non-detention of immigrant children is especially important to emphasize to the Gulf states. Similarly, the principle of non-detention of vulnerable migrants is important to recognise in light of the routine detention of pregnant migrant women. [[5]](#footnote-5)
2. **Paragraph 52 -** The assertion of the principle of non-detention of vulnerable migrants is also important to emphasize in light of the routine detention of victims of forced labour and trafficking. In the Gulf region, the practice of absconding charges and poor labour complaints systems means that many victims of wage theft and other forms of labour abuse are vulnerable to becoming irregular and therefore detained, if they attempt to leave their place of work.

Additionally, the principle of non-detention of asylum seekers is important to highlight, especially in countries that have not ratified the 1951 Convention on Refugees, which include all of the Gulf states.

1. **Paragraph 64 -** The recognition that migrants should be released in situations were migrants with irregular status cannot be deported due to obstacles such as lack of means of transport or consular cooperation to avoid indefinite detention. Such practices are extremely common in the Gulf region, where lack of identity documents (often due to employers’ confiscation of them) and funds to pay for deportation tickets commonly result in indefinite detention of migrants with irregular status.

Detention practices could become more dire in circumstances such as the pandemic.[[6]](#footnote-6) In some cases, such as with the detention of Ethiopian migrants in the Kingdom of Saudi Arabia, the closure of borders due to the Covid-19 crisis has further exacerbated this deprivation of liberty. [[7]](#footnote-7)

1. **Paragraph 65-73 -** The emphasis on the importance of access to justice for migrants and the recognition of the multitude of barriers migrants encounter in the judicial system to challenge charges against them. Not only do migrant workers in the Gulf states often lack the opportunity to contest their detention and deportation, but the procedures are also almost always completed without efforts to ensure migrants understand what is happening to them (e.g. translation and legal aid services)
2. **Reccomendations**

Migrant-Rights.Org proposes that these recommendations be incorporated into the General Comment:

**Recommendation 1** - Paragraph 6 - Migrant-Rights.org applauds the recognition of detention’s deleterious impact on mental health and personal integrity. We would suggest also acknowledging that an additional factor leading to these issues is the lack of access to communication. In the Gulf Cooperation Council states, migrants often only have access to their embassy personnel who visit intermittently to check in on their cases. Not all migrant-sending countries have a consular presence in all of the GCC states, and migrants from those countries are without even this limited representation. Otherwise, they are cut off from family back home, who also bear mental anguish.

**Recommendation 2** - Paragraph 19 - Migrant-Rights.org applauds the recognition of the aggravating factor of Covid-19, and encourages the committee to explicitly acknowledge the egregious violation of liberty and well-being in countries wherein migrants have been singled out for detention as part of efforts to “contain” the virus. Such incidents occurred in the Kingdom of Saudi Arabia and Kuwait, where mass detention of workers in awful conditions continues. Such detention fulfils every definition of arbitrariness as stipulated in the general comment.

**Recommendation 3 -**  Paragraph 18 - Migrant-Rights.org urges the committee to specifically express concern in regards to practices and policies which push workers into an irregular status and disproportionately criminalises them for actions which are often outside of their control.[[8]](#footnote-8) Relatedly, as per paragraph 19, this detention does occur in punitive settings. Migrant-Rights.org calls for an explicit expression of concern over this extremely common trend in the region. Detention is almost always the first measure for workers who do not report to work, and who are considered irregular in status. We also urge the committee to recognise that the effect of this practice is to promote forced labour as workers are deterred from leaving undesirable or abusive workplaces.

**Recommendation 4 - Paragraph 24 -** The recognition that detention based solely on immigration status may only amount to torture; particularly in light of the fact that migrants detained in the Gulf states can languish for years until their deportation ticket is paid for and that any outstanding claims a worker may have over his employer are often denied.

**Recommendation 5 - Paragraph 100 - 104** - Migrant-Rights.org encourages the committee to recommend States to assign an impartial and independent body to monitor detention centres with no restrictions. Such a body should include members of civil society and persons with experience in the human rights of migrant workers and their families and not only state-sponsored human rights protection agencies. The Gulf Cooperation Council states lack adequate and fair monitoring and accountability mechanisms and an impartial and independent body that could monitor detention centres with other stakeholders is non-existent.

**Recommendation 6 - Paragraph 14 and 102 -** In this regard, Migrant-Rights.Org encourages the committee to explicitly recommend states to ratify and implement the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

1. **Conclusion**

Migrant-Rights.org thanks the Committee for the opportunity to participate in the development of the General Comment No. 5 (2020) on migrants’ rights to liberty and freedom from arbitrary detention. We hope that the General Comment will address the on-ground realities currently faced by migrants in all regions, including the GCC.

**About Migrant-Rights.org**

Founded in 2007, Migrant-Rights.org is a GCC-based advocacy organization that aims to

advance the rights of migrant workers. Through our online platform, on-ground projects, and

grassroots initiatives, we work to document migrant narratives, ignite local discussion, and

encourage change in attitudes and practices towards migrant workers.

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1. (2020, September 30). Huroob, Runaway, Absconding: Trapping migrants in extreme .... Retrieved October 29, 2020, from <https://www.migrant-rights.org/2020/09/huroob-runaway-absconding-trapping-migrants-in-extreme-abuse/> [↑](#footnote-ref-1)
2. (n.d.). GCC: Total population and percentage of nationals and .... Retrieved October 29, 2020, from <https://gulfmigration.org/gcc-total-population-percentage-nationals-foreign-nationals-gcc-countries-national-statistics-2010-2016-numbers/> [↑](#footnote-ref-2)
3. See for example,

   (2018) Fourth periodic report submitted by Bahrain under article 18 of the Convention, page 37. [↑](#footnote-ref-3)
4. "Forced evictions: Kuwait's dehumanising campaign targets ...." 19 Sep. 2019, <https://www.migrant-rights.org/2019/09/forced-evictions-kuwaits-dehumanising-campaign-targets-male-migrants/>. Accessed 29 Oct. 2020. [↑](#footnote-ref-4)
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6. (2020, October 6). “Hell On Earth”: Indian Migrants Detained In Saudi ... - The Lede. Retrieved October 29, 2020, from <https://www.thelede.in/governance/2020/10/06/hell-on-earth-indian-migrants-detained-in-saudi-deportation-centre-speak-to-the-lede> [↑](#footnote-ref-6)
7. (2020, October 2). Ethiopian migrants describe "hell" of detention | Amnesty .... Retrieved October 29, 2020, from <https://www.amnesty.org/en/latest/news/2020/10/ethiopian-migrants-hellish-detention-in-saudi-arabia/> [↑](#footnote-ref-7)
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