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# Healthcare for prisoners in penitentiary establishments during COVID-19: a comparative study between national legislation and international covenants

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**Abstract:** This study examined the prisoner's right to healthcare in penal facilities during health crises in three Arabic countries, namely the UAE, Jordan, and Bahrain. The study is rare in that it also deals with prisoner healthcare during a pandemic. The study considers the key international rules and standards governing prisoner healthcare and its development over the past 60 years, regarding the obligations of states and the rights of the prisoner and the constitutions of the study countries, their national legislations, and the measures taken to confront COVID-19, to identify the extent of their adequacy and effectiveness and compatibility with key international standards. Despite numerous measures being taken to protect the health of prisoners and the enactment of international and national legislations, at the time of writing, the pandemic is still uncontrolled; therefore, the study finds that exceptional measures continue to be required.

**Keywords:** prisoner healthcare; infallibility of the body; health release; equality; fair treatment.

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## **1 Introduction**

The right to health is a basic human right, and states are obligated to provide the highest standards of healthcare for all residents of their territories, including prisoners in penal institutions. It is not permissible under any circumstances to prevent prisoners from exercising their rights, discriminate against them, or denigrate their bodies or human dignity. For this reason, since 1950, the United Nations has adopted international norms and standards guaranteeing the basic rights of prisoners, including health and other rights.

Human rights instruments in general, and those international conventions binding states, such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant of Economic and Social Rights (ICESR), are the main reference for the rules for persons whose freedom has been deprived. Most countries, including those in the Arab world, have sought to join international conventions guaranteeing the health of citizens and prisoners, and have enacted the agreed international standards in national legislation. States have a positive obligation to guarantee the right to health for all individuals in their territories, which means an obligation to take all necessary measures to prevent, treat, and reduce diseases and infectious epidemics. There is no doubt that the coronavirus COVID-19, classified by the World Health Organization in March 2020, as an international pandemic, has had a serious impact on public health through its rapid and difficult to control global spread.

Certainly, the pandemic's impact has been harsher on the health of prisoners in penal facilities, as the environment is both closed and overcrowded. In this study, the issue of healthcare is considered for prisoners and remand prisoners in three Arabic countries: the UAE, and the respective Kingdoms of Jordan and Bahrain. The study is based on analysing and comparing these states' national legislations, constitutions and procedures for addressing the pandemic, and on clarifying the extent of compliance with international rules and standards. These countries were carefully selected as they are among the first Arab countries to enact strict legislation and measures to address the pandemic and preserve the health of prisoners during COVID-19, and therefore the in-depth analysis of these countries was necessary to be leading footsteps to be followed by other neighbouring countries. This is despite the variation in the form of governance of these countries and the disparity of the political systems within them, as the UAE is a federal state, Jordan is a kingdom with a parliamentary system, and Bahrain is a kingdom with a system akin to a presidential one.

This study is distinguished by the rarity of how often the most important international rules and standards have been researched concerning the issue of healthcare for prisoners during a pandemic such as COVID-19, as well as for its consideration of the development of such healthcare over 60 years. The study also focuses on the constitutional obligations of the aforementioned Arabic countries, and their compatibility with international rules related to equity and the infallibility of the prisoner's body. In so doing, the study clarifies the health rights of prisoners and detainees in penal facilities and the measures taken to tackle the pandemic, alongside the adequacy and effectiveness of the latter. Finally, supportive recommendations are made with the aim of achieving optimal protection for the health of prisoners in these countries.

## **2 International legal standards on prison health conditions**

Before focusing on the international and national obligations of states regarding the health of prisoners, there is a need to clarify how the international legislative norms of health protection came into existence. The Universal Declaration of Human Rights (UDHR) makes reference to health protection in Article 25, which, among other rights, refers to health issues in the phrase ‘the right to a standard of living adequate for the health and well-being’. The language adopted by the UDHR in this regard has been characterised as ‘very broad and vague’ (Toebes, 1999). However, as a milestone document in the history of human rights, and given the historical significance and influence of the UDHR, even the inclusion of such unspecific language is important in the historical development of the right to health (Lines, 2008).

Within the United Nations, the first treaty to guarantee the right to health was the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which 171 countries have acceded. Article 12(1) states that all persons have the right to “the highest attainable standard of physical and mental health” (Office of the High Commissioner, UN Human Rights, 1966a). To realise the above mentioned right, the ICESCR urges member states to take steps to improve all aspects of environmental and industrial hygiene; prevent and treat epidemic, endemic, occupational and other diseases; and, assure all medical service and medical attention in case of sickness, as per Article 12(2) (Office of the High Commissioner, UN Human Rights, 1966a). The other key international covenant considered here, the ICCPR, does not directly address the right to health nor the physical status of imprisoned persons. Nevertheless, the UN Human Rights Committee (HRC), the independent expert body which monitors state compliance with the obligations under the ICCPR, has stated that, despite the fact there is no specific right to health provision within the covenant, questions of health in detention may be raised under the concepts of the right to life, mentioned in Article (6) (Office of the High Commissioner, UN Human Rights, 1966a) or the right to humane treatment.<sup>1</sup>

In 1955, the United Nations General Assembly’s Standard Minimum Rules for the Treatment of Prisoners (SMRs) was passed. The SMRs are not legally binding but does offer guidance regarding the treatment of someone held in custody, and is a high-quality tool for the management of penal institutions. Its guidance on prisoners covers, inter alia: food, bedding, clothing, personal hygiene, medical services, religious freedom, and the retention of property. When the SMRs were first implemented, they had limited legal status and were not intended to be the basis for a model prison system. Their language sounds somewhat apologetic and has been described as the ‘softest version of soft’ (van Zyl Smit, 2019). However, over time, the legal status of the SMRs improved over time. Binding treaties increasingly included provisions on the treatment of prisoners, and prohibited torture and inhuman treatment. The 1966 ICCPR required that anyone deprived of liberty should be treated with dignity and respect. When applying the ICCPR to prison conditions, the HRC regularly referred to the SMRs, and indeed in 1971 the UN General Assembly passed a resolution reinforcing the SMRs and strengthening their status (Office of the High Commissioner, UN Human Rights, 1966b).

In the first 60 years since being passed, the SMRs have been slightly amended to include additional tools. These are: the 1985 UN Standard Rules for the Administration of Juvenile Justice (UN General Assembly, 1985), the 1988 UN Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment (UN General

Assembly, 1988), and the 2010 UN Rules for the Treatment of Women Prisoners and Non-Custodial Sanctions for Women Offenders (known as the Bangkok Rules) (UN General Assembly, 2010), which are collectively referred to as the SMRs. Adopted by the UN, all these instruments reinforce and support the process of strengthening the SMRs. On 17 December 2015, the UN General Assembly revised and updated the SMRs to general international approval, and they are now commonly referred to as the Nelson Mandela Rules (NMR). The NMR were adopted to raise awareness of the fact that prisoners are an integral part of society (United Nation Office of Drugs and Crimes, 2015). Rule 24(1) of the NMR provides that prisoners should enjoy healthcare services just as anyone else in a state, free of charge if the care is necessary, and without discrimination on the grounds of their legal status. Rule 24(2) of the NMR states that the rehabilitation/ imprisonment institute shall cooperate with the relevant specialised public health administration regarding continued treatment of, for example, HIV, tuberculosis, and other infectious diseases.

In sum, the right to health of prisoners, whether tackled directly or not, is supported by the UN, which systematically provides considerable safeguards for the health of persons in detention. This imposes on states the duty to take the necessary measures to prevent, treat and limit infectious diseases and epidemics.

### **3 Constitutional and international rules for providing healthcare to prisoners**

Based on international obligations and national constitutions, states have positive obligations to preserve the health of prisoners and detainees, by enforcing justice and equality. This will now be discussed.

#### *3.1 Equality and fair treatment*

Since prisons are closed institutions that deprive convicted people of their freedom, it is difficult for prisoners to obtain equal rights comparable to non-convicted individuals who are not imprisoned. This does not mean prisoners do not have equal rights among themselves. All prisoners and detainees must be treated equally without discrimination on the grounds of race, colour, sex, language, religion, or any other basis. Equality under the law is stated in many international rules and national constitutions. It is stated in Articles 1 and 7 of the UDHR (UN General Assembly, 1948), and in Article 26 of the ICCPR (Office of the High Commissioner, UN Human Rights, 1966b). In the same context, the SMRs for the Treatment of Prisoners in Rule 6(1) and Rule 1(2) of the NMRs affirm that laws must be applied impartially without discrimination for any reason.

At the national level, the UAE Constitution of 1971 stipulates in Article 14 that “equality, social justice, providing security, tranquility and equal opportunities for all citizens are among the pillars of society.” Article 25 stipulates that “all individuals are equal before the law, and there is no discrimination between citizens of the Union on the grounds of origin, nationality, religious belief or social status.” The UAE Constitution affirms the right to healthcare in Article 19, as it stipulates the obligation to provide healthcare and the means of prevention and treatment for all infectious diseases to all citizens. The constitution also provides for the right to establish governmental and private

treatment institutions as well as hospitals and dispensaries in order that they may provide appropriate treatment. In the Jordanian Constitution, Article 6(1) stipulates that citizens are equal without discrimination. The Article affirms that “Jordanians are equal before the law in terms of rights and duties, even if they differ in race, language, or religion.” Here, the constitution emphasises non-discrimination between Jordanians and equality in the rights that the state offers, including the right to healthcare. The Bahraini Constitution affirms in Article 18 that people are equal in human dignity and before the law, without discrimination on the basis of sex, origin, language, belief, or religion. Article 8 stipulates that “every citizen has the right to healthcare, and the state cares for public health, and guarantees the means of prevention and treatment by establishing various types of hospitals and health institutions.”

It can be concluded, after reviewing various constitutions and international provisions, that all are fully focused on justice and equality and the provision of healthcare to all residents of a state, whether free or not.

### *3.2 Infallibility of the body of the convicted or arrested person*

At the international level, the protection of the human body is the right of every individual, whether free, imprisoned, or arrested. This basic principle prohibits all forms of harm to the body, unless there is a therapeutic necessity to which the individual consents (Ahmed, 2005; Azza, 2002). International human rights instruments are clear on personal safety. Article 5 of the UDHR stipulates that no one may be subjected to cruel, inhuman, or degrading treatment or punishment. Article 7 of the ICCPR follows the UDHR by criminalising the same acts.

At the national level, the constitutional legislator in the UAE shows great understanding of the infallibility of the body, particularly the body of an accused person. Article 28 of the UAE Constitution affirms this right and prohibits both physical and mental harm to the accused. The human body is inviolable, and assaulting, distorting, or mutilating it is a crime punishable in law. This is in line with the Jordanian Constitution, in which Article 8(2) stipulates that,

[...] whoever is arrested, detained, imprisoned or whose freedom is restricted, [...] must be treated in manner that preserves human dignity, and [they] may not be not tortured, in any way, or be physically or mentally harmed, and [they] may not be detained in places other than those permitted by law.

Accordingly, the prisoner has the right to healthcare provided by the state, and the principle is that detention is only permissible in places specified by law and which preserve human dignity. Undoubtedly, healthcare is provided in such places. Likewise, the Bahraini Constitution, in Article 20(D), clearly specifies the protection of the accused’s body by stating that “it is forbidden to harm the accused physically or mentally.”

These international instruments and national constitutions protect the inviolability of the human body in general, and the accused in particular, by providing that everyone has the right to life and to the protection and improvement of their physical and spiritual existence. It is not permissible to touch a prisoner’s body, except in the case of a medical necessity for which consent has been given, and in the cases stipulated in law. It should be noted that the Bahraini Constitution of 2002 and the Jordanian Constitution of 1952 (and its amendments in 2016) provide for the protection of human dignity. However,

while the Bahraini Constitution explicitly stipulates this right, the Jordanian Constitution stipulates the term ‘in a manner that preserves human dignity’. We recommend that the UAE Constitution of 1971 is amended to follow these constitutions and explicitly provide for the protection of human dignity.

#### **4 Protecting the health of prisoners and detainees in penal facilities**

International and national laws stipulate many rights that must be protected to preserve the health of prisoners and detainees in penal facilities, and these rights are discussed in this section.

##### *4.1 A prisoner’s right to the preservation of health*

A prisoner’s right to healthcare is indispensable and entitles them to have a doctor in the penal facility to treat any illness and protect them from communicable or contagious diseases. Rule 22(1) of the SMRs for the Treatment of Prisoners related to medical services stipulate the facility’s commitment to provide one or more doctors with a knowledge of psychiatry, and to provide services in coordination with local and national public health systems. Also, the equipment, tools, and pharmaceutical products needed to treat sick prisoners must be provided, and prisoners must be transferred to specialised prisons or hospitals if special attention is required (United Nations, 1955). Rule 27 of the NMRs follows the SMRs in ensuring medical care for prisoners, and requires that medical attention be immediate in urgent cases, such that a prison service should have its own hospital facilities; it is a basic rule that these must be adequately staffed and equipped for treatment services (United Nation Office of Drugs and Crimes, 2015). These rules state that clinical decisions must be taken by the competent medical staff without any interference or negligence from non-medical prison personnel (United Nation Office of Drugs and Crimes, 2015).

In order to guarantee prisoners’ access to healthcare, the UAE, Jordan, and Bahrain passed laws that are in line with international protections. The federal legislator in the UAE requires, by the Federal Law No. 43 of 1992, Articles (29) and (30), the presence of at least one doctor in every penal facility. There must also be a resident doctor who examines every prisoner upon entering the facility, to ensure not only their health condition but also that they are free from contagious or communicable diseases and have mental integrity. The doctor is also entrusted to ensure the safety of food, drink, and other hygiene matters for prisoners (UAE Government, 1992). In this regard, a report by the National Committee for Human Rights in the Emirates indicated that educational and health orientation lectures by specialised doctors are being given online to inmates during the COVID-19 pandemic to ensure the best health protection.<sup>2</sup> In the same regard, Article 10 of Bahrain’s Prisons Law of 1964 stipulates that a police doctor must examine a prisoner as soon as possible if they become ill, and, if it is decided that hospital treatment is required, they must be taken under guard without delay. The article also stipulates that a police doctor must conduct health checks on prisons and prisoners twice a month. The law also requires prison guards to maintain a first aid locker in every prison and coordinate with the police doctor on a permanent basis.<sup>3</sup>

However, healthcare measures for prisoners in Bahrain have been criticised, as a report published on the Human Rights Watch website indicated that scabies and insects

are widespread in its prisons, that the level of hygiene is low, and that prisoners have been deprived of adequate medical care (Majzoub, 2020). Furthermore, according to the Bahrain Institute for Rights and Democracy (BIRD), more than a hundred inmates in a detention centre in Bahrain went on a hunger strike to protest the poor medical care and unsanitary conditions that led to an outbreak of scabies (The New Arab, 2020).

In Jordan, the Correction and Rehabilitation Centres Law of 2004 stipulates in article 22 that the Ministry of Health shall provide free healthcare and treatment to inmates by establishing a medical centre equipped for the main medical specialties in health and dental care (Jordanian Government, 2004). While Articles 24 and 25 concerns with the condition of these centres, which is monitored by the competent health directorate; each centre's doctor must conduct a medical examination of the inmate and submit a report on their health condition. If required, they must be transferred to a public hospital (or private one at their own expense when they cannot be treated in government hospitals). The prisoner is returned to the centre after treatment (Jordanian Government, 2004). Article 27 mentions that the law also provides the possibility of transferring the inmate to another place by order of the Minister of Health if it is found that there is an infectious or transmissible disease in the centre (Jordanian Government, 2004). It is recommended to use the term 'inmate' in the law instead of 'the prisoner' as the former has less impact on the prisoner and their family. As for the ability to transfer the sick inmate to a private hospital at their own expense, this reflects flexibility and a considerable concern for the inmate's health and their health rights.

Countries are committed to providing vaccinations to individuals in order to preserve public health. The question arises as to whether to distribute COVID-19 vaccinations to law-abiding citizens, or to prisoners? The World Health Organization (2017) emphasised the principle of equality and non-discrimination, including the obligation to distribute the vaccine to all people within the country, regardless of their status and place of residence.

In the UAE, Dubai Police announced on 21 January 2021 that the General Administration of Punitive and Correctional Institutions gave the vaccine to male and female inmates who wished to be vaccinated (Khaleej Times Newspaper, 2021). Also, Article 28 of the Jordanian Health Law stipulates that the necessary vaccinations must be given and booster shots be provided whenever necessary (The Kingdom of Jordan, 2008).

In Bahrain, the Ministry of Interior confirmed on 17 February 2021 that the prison administration vaccinated all consenting inmates, in accordance with the text of Article 43/c of the Bahraini Public Health Law (Government of Bahrain, 2018). Though Amnesty International (2021a) praised the Bahraini authorities' provision of access to vaccinations for prisoners, it stated that the preventive measures to combat the epidemic in Jaw prison were completely inadequate.

Another report published on the Amnesty International website confirmed that "it is extremely important for governments in the Middle East and North Africa region to ensure that the healthcare they have available – including vaccines – are provided without unfair discrimination" (Amnesty International, 2021b).

It is noteworthy that the COVID-19 vaccination was optional, but we believe that the state should use the means of administrative control to impose mandatory vaccination to prevent the epidemic from spreading in prisons. This belief may contradict the principle of freedom of choice enshrined in international law, but public health must be given priority in light of the exceptional circumstances the world is experiencing.



As a final point, international and national organisations have stressed the need for government authorities to ensure that every prisoner has access to adequate medical care and reduce the prison population to allow for social distancing. This was confirmed by the World Health Organization-Europe (2002).

#### *4.2 The right to hygiene and physical activity*

Both the Rule 10 of SMRs, and Rule 12 of NMRs, for the Treatment of Prisoners stipulate that all necessary sanitary requirements must be met in all rooms intended for the use of prisoners (United Nation Office of Drugs and Crimes, 2015). While Rules 14–17 of NMRs require securing all necessary means to maintain prisoners' health, such as adequate lighting, toilets, and bathing facilities (United Nation Office of Drugs and Crimes, 2015). Rule 65 of SMRs stresses the importance of sport to enhance the prisoner's health and physical capabilities (United Nations, 1955). Rules 14–17 of NMRs also stipulate the right of prisoners to exercise in the open air for an hour a day when weather conditions permit, and when the prisoner is not originally working outdoors (United Nation Office of Drugs and Crimes, 2015).

Article 30 of the UAE Federal Law of 1992 regarding the regulation of penal institutions also stipulates another right which stems from the prisoners' right to healthcare. This is the commitment of the penal facility administration to provide a prisoner with means for achieving personal hygiene, such as water and any other necessary materials. The prisoners must also be provided with sports facilities, whether outdoor grounds or sporting equipment, as well as with the opportunity to be exposed, even partly, to sunlight and fresh air. All of the aforementioned measures effectively contribute to the enhancement of the prisoner's health (UAE Government, 1992). A report by the National HRC in the UAE confirmed the commitment of the Ministry of the Interior to protect inmates in penal institutions, such as sterilising prisons and their facilities, and providing thermal detection devices and safe quarantine facilities.<sup>4</sup> As for the Bahraini Prisons Law of 1964, this grants more time to prisoners who are not employed in work, or who are exempt from work, by allowing them to have a reasonable period of time each day for sports of not less than one hour before noon and one hour after.<sup>5</sup> In Jordan, although no legal text has been enacted regarding the right of prisoners to practise sports, prisoners are able to do so; this issue remains within the provisions of preserving the public health of prisoners.

These countries encouraged proper personal hygiene and sports to improve prisoners' health during COVID-19. However, this was not without criticism, as Amnesty International stated face masks or hand sanitizer were not distributed to the detainees in Jaw prison, and that personal hygiene items were not distributed for free, but had to be purchased from the prison canteen (Amnesty International, 2021a).

#### *4.3 The health rights of detainees and pre-trial detainees*

A pre-trial detainee is a suspect whose freedom was deprived according to the law, for a period that begins with the interrogation phase and continues through to a guilty verdict as per Article 7 in the Accused Rights (Government of Dubai Public Prosecution, 2011). International human rights law and criminal procedural regulations have paid special attention to the treatment of a detainee, considering that preventive detention is an exceptional measure taken in the interests of an investigation, based on the rule of

innocent until proven guilty as per Article 11(1) of UDHR, Article 14(2) of ICCPR and Article 111(2) of NMR's (Office of the High Commissioner, UN Human Rights, 1966b; UN General Assembly, 1985, 1948). It is not permissible to treat the accused as a criminal, given that they are the weakest party during the investigation and trial. If this principle is violated, justice is lost and the trial has no meaning. If the authorities were to treat the accused as a criminal, the trial procedures would merely be a legal cover for an inevitable conviction. Rule 91 of SMRs and Rule 118 of NMRs stipulate the right of the accused to be visited and treated by their own doctor or dentist if the request is reasonably justified and payment is at the prisoner's expense (United Nation Office of Drugs and Crimes, 2015; United Nations, 1955). Articles 39–48 of the SMRs cover the rules governing the treatment of those arrested or imprisoned before sentencing.<sup>6</sup> Art. 10(1) of the ICCPR gives the require treating to the remand prisoner in such a manner as to guarantee human dignity (Office of the High Commissioner, UN Human Rights, 1966b).

It is essential in the current COVID-19 pandemic to re-examine the files of pre-trial detainees and, if there are no strong reasons for the continuation of imprisonment, to consider their release. Those who are examined and found to carry diseases, especially the corona virus, must be placed in isolation or home isolation. In doing so, the spread of the pandemic and infection rate can be hindered, reducing the burden on places of detention, facilitating preventive measures, and reducing the burden on courts, prosecutors, and lawyers by avoiding the presence of the pre-trial detainee. Moreover, separating pre-trial detainees from convicted prisoners is a procedure stipulated in many national legislations, and there is no doubt that the release of the pre-trial detainee will preserve the health and life of both the individual and their family during the COVID-19 pandemic.<sup>7</sup>

In disaster management logic, the continuity of services and the permanence of the public facility's functioning is maintained by modifying the means and mechanisms of service performance during exceptional circumstances. This has been implemented in many countries, and can indeed be applied in the case of a remand prisoner. Among the practical applications of this concept, in the UAE, investigations and trials are now conducted remotely, as in the case in the Judicial Department of the Emirates of Abu Dhabi, the Dubai Courts, the Ras Al Khaimah Courts, and the Federal Courts; the UAE issued Law No. 5 of 2007 regarding the use of remote communication technology in criminal procedures and Federal Law No. 10 of 2017, which amends some provisions of the Civil Procedure Law by adding a sixth chapter on the use of remote communication technology in civil procedures.

As for Jordan, remote investigations were implemented according to Article 158(2) of the Code of Criminal Procedure and Amendment No. 9 of 1961. This stipulates that the public prosecutor or the court may use modern technologies in the investigation and trial procedure without prejudice to the right of debate, including the remote trial of an inmate from a rehabilitation centre. This results from the recommendations of the Royal Commission for the Development of the judiciary. In 2019–2020, about 7,140 remote trials were conducted following their introduction. The remote trial project continued during the comprehensive lockdown period in Jordan due to the COVID-19 pandemic, with 573 remote trials being held between 17 March and 26 May 2020, enabling many cases to be conducted whilst maintaining both physical distancing and the form or content of justice (Al-Ghad Newspaper, 2020).

In Bahrain, the Minister of Justice, Islamic Affairs and Endowments decided to approve the application of remote investigation and trial procedures for all parties to a criminal case through Law No. 7 of 2020, thus amending certain provisions of the Criminal Procedure Law. The remote trials supported precautionary measures taken in the Kingdom to limit the spread of the coronavirus, and guaranteed the principles of a fair trial (National Institution for Human Rights, 2020).

This modern application of measures is in line with international general principles aimed at reducing the number of pre-trial detainees, whether by finding alternatives or by narrowly applying the use of remand detention and reducing its duration as much as possible. Article 3(9) of the ICCPR stipulates that the detention of persons awaiting trial shall not be the general rule, and they may be released upon providing guarantees to ensure their attendance at the trial at any other stage of the judicial process.

## **5 Measures to limit the spread of COVID-19 among prisoners and detainees**

The measures taken in the UAE, Jordan, and Bahrain to fight against the spread of disease, especially COVID-19, are varied and addressed next.

### *5.1 The right to health release*

Health release is a means of protecting an imprisoned person's life when the means of preserving their life within the prison are unavailable. Diseases justifying health release must threaten the life of the convicted person, or cause disability, and be difficult to treat inside the prison hospital. The conditions for health release may apply to some prisoners but, if their health condition improves over time, and the prison administration sees no reason for their continued release, they may be re-incarcerated. Article 32 of the UAE law affirms the right of a prisoner to be released by a decision of the public prosecutor whenever they suffer from a life-threatening or entirely incapacitating disease (UAE Government, 1992). This right is intended not only for the benefit of the affected prisoner but for other prisoners also, as the latter also have the right to be released if there is among them a diseased prisoner who threatens their life and safety. The time spent outside the facility by the released prisoner is deducted from their sentence, and the prisoner may be returned to the penal facility in the event that the medical condition that led to their release has passed (UAE Government, 1992). According to a report by the National HRC in the UAE, during Ramadan 2020, the state released 3,534 inmates in penal institutions due to the outbreak of COVID-19.<sup>8</sup>

Jordan has taken a number of important precautionary measures to limit the spread of COVID-19 in prisons, as in Decision No. 70 of the Jordanian Judicial Council taken on 24 March 2020, which includes the release of all persons arrested for misdemeanours conditional on a travel ban, pursuant to the provisions of Article 114 *bis*<sup>9</sup>, of the Code of Criminal Procedures (Human Rights Watch, 2020). On the other hand, the upper mentioned decision has included postponing the imprisonment of every convicted person regarding a civil debt not in excess of 100,000 Jordanian dinars, and releasing them and preventing their travel. The decision also stipulates postponing the implementation of criminal provisions on every person sentenced to imprisonment for less than three months, in favour of release and a travel ban. In the light of the decision, other decisions

were issued by enforcement departments in the courts to postpone imprisonment, such as that of Al-Mazar Al-Janoubi Court in Case No. 587/2020 of 17 January 2020. This was done to prevent the spread of COVID-19 among detainees at gatherings, and thus to maintain their health and safety. As for the exemption from the application of the imprisonment penalty, Decision No. 262/2020 of 14 July 2020, was issued by the Chief Executive of Ain Al-Basha Court, who rejected a detention request by the prevailing party's attorney on the grounds of the pandemic. In the same context, the Bahraini Ministry of the Interior announced the release of 1,486 detainees on 17 March 2020, for humanitarian reasons during the COVID-19 pandemic. About 900 of these were granted a royal pardon, and 585 were sentenced to non-prisoner sentences under Bahrain's Law No. (18) of 2017 on alternative sentences, as Article 11 of it stipulates that when passing a sentence of imprisonment for a period exceeding one year and not more than five years, and when it appears to the judge that the personal or health conditions of the accused are inappropriate to carry out this punishment, he may replace it with a sentence of house arrest in a place specified, alone or in combination with any other alternative penalty provided by this law. The Bahrain Centre for Human Rights estimates that 300 political prisoners, excluding certain prominent names, have been released (Majzoub, 2020).

The measures taken by these three countries reflect their serious desires to follow international requirements and recommendations to prevent, treat and control epidemic diseases and safeguard the right to health, as a fundamental international human right based on Articles 12(2/c) and 12(1) of the ICESCR (Office of the High Commissioner, UN Human Rights, 1966a). Among the shortcomings of the aforementioned national texts, it can be noted that they do not clearly define what is meant by a life-threatening disease, leaving the term opaque enough such that some prisoners may benefit by escaping their prison sentence. In addition, the use of the term 'for humanitarian reasons' does not specify whether the basis for release is actual infection with the virus or for the purpose of preventing infection.

## *5.2 Home quarantine and isolation of patients with an infectious disease*

First, we must clarify the concepts of isolation and quarantine. The former is a separation procedure for individuals with an easily transmitted infectious disease, and the person is usually kept inside a healthcare facility in their own room; healthcare workers take precautions, such as wearing protective clothing, when interacting with the sufferer. Article 1 defines the quarantine as a procedure for those who have had contact with infected or potentially infected persons (UAE Government, 2014). These people must stay at home or in a suitable health facility to prevent further spread of the disease, and to monitor the effects of the disease on their health. The Ministry of Health is the authority responsible for specifying quarantine or isolation, whether inside a hospital or a home, and citizens must abide by the decision.

For those convicted and accused who are infected with COVID-19, or are in close contact with an infected person, isolation and home quarantine measures can be taken under special conditions. In such a case, judicial electronic monitoring can be employed, by placing the monitoring device on the accused's wrist so that they remain within a certain area as set by a judge. Electronic monitoring has been used for suspended sentences and probation, to prevent the convicted from frequenting certain places determined by the judge (Obeid, 2009). Electronic bracelets are a modern and advanced

application of home quarantine, to achieve the goal of the quarantine process by preventing the spread of the virus. The home of the accused or convicted person is a potential place of isolation (Al-Tamimi, 2020).

In the UAE, a decision issued by the Ministry of Health obliges those isolated and internally quarantined to wear an electronic bracelet (Salem, 2000). This decision implements Article 10 of Federal Law No. 14 of 2014 regarding combating communicable diseases, which stipulates that the Ministry and the health authority, upon report of an infected or potentially infected person, must undertake a number of immediate measures to prevent the spread of the disease, including isolation if necessary (UAE Government, 2014). The Federal Public Prosecution has warned that the violation of an order to wear electronic tracking for reasons isolation or quarantine, or causing loss or destruction to the device or disrupting the network or communication, carries a fine of 10,000 dirhams. The violator also bears the cost of the device in the event of loss or damage (The UAE Public Prosecution, 2021). In Bahrain, an application has been launched which activates home quarantine and isolation and is supported by a non-removable electronic bracelet. This enables the health team to monitor all suspected COVID-19 cases and subject them to home quarantine for a period of 14 days; this is in addition to the possibility of monitoring those in contact with them, through the use of the GPS. The application alerts the competent team when the quarantined person is more than 15 metres from their mobile device or the specified location, and is thus in non-compliance with the order to remain quarantined (IGA, 2020).<sup>10</sup> Bahraini Law No. 18 of 2017 regarding penalties and alternative measures specifies in Article 18 that a member of the Public Prosecution office or a judge can compel an accused to submit to electronic surveillance instead of being held in custody (The Kingdom of Bahrain, 2017).

In conformity with existing legislation, the Bahraini Ministry of Interior announced on Twitter on 27 March 2021, that the Jau Central Prison administration had taken health measures in the case of a prisoner infected with COVID-19. The person was subjected to health isolation for 14 days, and close contacts were identified, examined and isolated (Bahrain Ministry of Interiors, 2021).

In Jordan, Public Health Law No. 47 of 2008 includes an explanation of the concept of isolation and the measures to be taken. Article 17 clarifies this procedure as separating people with infection, contacts, or those carrying contamination from others, or separating luggage, containers, means of transfer, goods or postal parcels to prevent the spread of infection (The Kingdom of Jordan, 2008). In addition to these health and safety measures, the Jordanian Government issued Defence Order 16, “obligating persons on whom self-quarantine or home isolation is imposed, in case they are applied, to adhere to the measures and procedures imposed by the official authorities to the same to wear the electronic bracelet and download the application.” The order also stipulates that it is permissible to publish the names of the convicted persons using the means chosen by the court (Jordanian Government, 2020).

The aforementioned measures taken in these countries have proven effective in preserving public health, and they enforce the constitutional texts and international agreements to which the countries are committed. There is no doubt that the use of isolation and home quarantine measures for accused or convicted persons contributes to preserving the health of the prisoner patient, other inmates, and guards. These measures ensure the application of the principle of equality and non-discrimination contained in the aforementioned constitutions and international conventions.

## 6 Conclusions and recommendations

With the unavoidable spread of COVID-19, governments in the Arabic world have had to ensure that the pandemic will not become a human rights crisis due to inmates' inability to obtain adequate medical care. Indeed, the UAE, Jordan, Bahrain have committed themselves to international covenants and instruments as well as national constitutions and legislation, to ensure adequate healthcare for prisoners during their stay in penal facilities. However, despite all necessary measures being taken to protect the health of prisoners, and the enactment of international and national legislations, the pandemic continues to grow, requiring the enforcement of exceptional measures to the maximum extent. In light of this, we recommend:

- Replacing the term prisoner with the word inmate, as it is compatible with modern methods of punitive treatment.
- Enacting texts to postpone the imposition of any penalty on the sick prisoner and to resort more frequently to alternatives to imprisonment due to the outbreak of the COVID-19 pandemic.
- Stipulating, on national level, that all prisoners must conduct regular monthly checks to ensure that they are safe and free from any infectious diseases, in accordance with the texts of international covenants.
- Activating state monitoring of the measures taken in penal institutions to ensure the care of prisoners in times of crises and health pandemics;
- Establishing a body at the level of Arabic countries to exchange information and the results of implementing national measures in combatting COVID-19.
- Implementing government measures to ensure that prisoners have access to affordable medical care and treatment options, in line with international standards.

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## Notes

- 1 Art. 10(1) of the ICCPR states: "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." However, Art. 8(3b) of the Covenant clearly mentions hard labour during imprisonment, which indirectly has an impact on a prisoner's health.
- 2 National Human Rights Committee, UAE, September 2020, p.27.
- 3 Art. 10 of the Bahraini Prisons Law, October 1964.



- 4 National Human Rights Committee, UAE, September 2020, *supra* note 2.
- 5 Art. 10 of the Bahraini Prisons Law, October 1964, *supra* note 3.
- 6 No detailed system has been developed for the treatment of detainees, and only the basic elements of this system have been stipulated, leaving the details for subsequent agreements or special rules.
- 7 Art. 27(1) of the Bahraini Prisons Law, October 1964, *supra* note 3.
- 8 National Human Rights Committee, UAE, September 2020, *supra* note 2.
- 9 Article 114 *bis* of the Code of Criminal Procedure stipulates that detention in – all sorts of – misdemeanours may be replaced by one of the following measures: travel ban, electronic monitoring, house arrest, submission of a judicial guarantee and a ban on going to specific places.
- 10 “The launch of an application that activates quarantine and home isolation supported by an electronic bracelet.”