Releasing Prisoners of Conscience; to Restore Justice to Curb Covid-19
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**Methodology**

This paper is based on the Interim Guidance by WHO and OHCHR on COVID-19 and persons deprived of liberty. Besides AFTE’s data on 62 defendants in remand pending investigations in freedom of expression-related lawsuits. Also, the paper reviewed some other countries’ experiences regarding the prisoners’ situation under Covid-19 risks.

**Introduction**

Thousands of prisoners and pretrial detainees in Egyptian prisons are at risk of Covid-19 infection, which has rapidly increased in Egypt during the last few weeks. Moreover, the Ministry of Interior has announced one infection case of an employee in Turah prison, who died by the end of last May. However, the Egyptian authorities still have neither clarified any of the preventive measures in prisons nor provided any basic information on suspected infections and the actions taken to deal with such cases. Also, the Egyptian authorities have implicit reservations about releasing some prisoners to reduce the risk of infection in jails. Whether prisoners with health conditions or those deprived of their liberty because of expressing opinions against the current political regime.

Concerns about the healthcare situation in the Egyptian prisons have increased after Shady Habash, the video editor, died in Turah prison last May 2. He suffered a severe health problem that needed urgent medical care that was not provided in prison, and his condition deteriorated to death. It is worth mentioning that Habash was unlawfully detained, at the time of his death, as he had exceeded the maximum period of pretrial detention, two years, on March 5, 2020. And instead of following the necessary procedures and fully disclosing the prevention and control protocols of the Covid-19 virus inside prisons, the Ministry of Interior proclaimed conducting PCR swabs for some well-known imprisoned activists, without providing any comprehensive, sufficient information. For instance, If there are beds provided for infected prisoners, places designated for isolating suspected cases, and if the PCR swabs were conducted for a limited number of some activists or all prisoners.

Therefore, through this paper, AFTE urges the Egyptian authorities to release prisoners of conscience who have faced unsubstantiated accusations. And who suffered extensive, arbitrary
use of pretrial detention as a punitive measure because of expressing opinions against some of the Egyptian authorities' practices. Also, AFTE reaffirms the necessity to disclose comprehensive, sufficient information on the prevention procedures of the Covid-19 virus in prisons. Additionally, the paper at hand presents some measures taken by other countries to decrease the jails population by releasing prisoners. In particular, priority inmates such as; the elderly, children, the chronically ill, and prisoners of conscience.

First: Why Prisoners of Conscience

Releasing specific categories of the prisoners is a primary measure regarding reducing the risk of Coronavirus spread inside prisons. Some may think that such a rule applies only to the elderly and chronically ill prisoners. But this is not true; there are many persons deprived of their liberty without posing a threat to society or committing serious criminal crimes. Those people should not be imprisoned in the first place as their sole crime, according to the authorities' view, is expressing opposing opinions against the government's policies.

Among those prisoners; journalists, creators, academics, social media users, political activists, and Ultras members. AFTE has prepared a list including 62 of its clients' who are in remand, pending investigations in Freedom of Expression-related lawsuits. To provide the Egyptian authorities specific names with detailed information on their prosecution circumstances, to release them. These 62 cases have common specifications as follows;

- **Laying vague accusations**: the Supreme State Security Prosecution doesn't articulate the law provisions on which to base charges in Freedom of Expression-related lawsuits. And the charges usually are joining a terrorist group or aiding in achieving its purposes, and misusing the Social Media Networks.

- **Relying on the security apparatus’s investigations**: these charges usually are only based on the National Security investigations without any direct or circumstantial evidence. This situation makes the prosecution process a routine devoid of all Justice meanings, including the right to a defense.

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- **Ordering remand**: the Supreme State Security Prosecution keeps ordering the pretrial detention in Freedom of Expression-related lawsuits. It keeps extending until the detention period exceeds the two-years, in several cases, which is the maximum limit of the pretrial detention according to the law.

Hence, the Egyptian authorities have adopted the pretrial detention as a punitive measure against hundreds of activists and journalists because of their opposing opinions. Such practice has to be ended by their immediate release, particularly under the risk of Covid-19. Knowing that they haven't enjoyed fair trial proceedings. And not to mention that, they are not posing any threat to society. Additionally, releasing them would reduce the overcrowding in prisons, allowing more proper, effective preventive health measures.

On March 19, 2020, the Public Prosecution released 15 of activists and political parties members, Prof. Hasan Nafaa and the activist Shady Al-Ghazaly were among them. Similar release orders of pretrial detainees were expected to follow this decision; however, the Public Prosecution hasn't proceeded any other decisions until the date of this paper. On the other hand, two pardon decisions were issued on Sinai Liberation Day, last April, and Eid Al-Fitr, last May. They released 4011 and 3157 prisoners, respectively. Although such decisions undoubtedly reduce the overcrowding in prisons, they don't indicate a new policy of releasing the prisoners because amnesties for prisoners, who have spent most of the prison term, are customary on such occasions.

It is worth mentioning that WHO and OHCHR have called on releasing the prisoners under the pandemic risks. Responsively, many countries have started releasing prisoners to curb the virus spread, which will be addressed in the following section.

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WHO, in collaboration with OHCHR, prepared Interim Guidance, approved by IASC on the procedures to be followed to curb Covid-19 spread. The guidance addresses actions that all states shall execute under the International Standards regarding the persons deprived of their liberty. These procedures guarantee a similar quality of health care services for prisoners as delivered to society, regardless of their citizenship, nationality, or migration status.

The Interim Guidance was published in March 2020, coinciding with the Covid-19 outbreak and declaring it as a global pandemic. This guidance affirms that maintaining public health in detention centers is in the inmates’ interest, as well as the facility staff and the community. As the states have the obligation, according to International Human Rights law, to ensure the health care for people in places of detention. This guidance was particularly prepared to focus on persons deprived of their liberty, who face higher vulnerabilities. Considering the virus spread can expand rapidly due to the typical high concentration of prisoners in confined spaces, and the restricted access to hygiene and health care in some contexts.

WHO and OHCHR also emphasize on the need to initiate discussions and offer technical advice among the competent authorities. Discussions should include the state of emergency measures that impact the situation of detention centers. And also, considering the possible opportunities for release and/or non-custodial alternatives to detention, such as conditional discharge, monetary fines, community service, probation, and referral to attendance centers.

On a complementary side, regarding individuals whose continued detention or restrictions on freedom of movement remain necessary and proportionate, the competent authorities should announce the preparedness measures that could be implemented to manage the risks. The authorities should also allow National Human Rights Institutions and civil society organizations to access detention centers to gather information, conduct health assessments, and monitor the places of detention status.

All detainees should have access to medical care without discrimination. Moreover, particular attention should be given to specific health needs of elderly and persons with underlying health conditions or heightened vulnerability, children in detention, and those in custody with their

mother, pregnant women, and persons with disabilities, as those who are the most at risk of infection. Also, enhancing the conditions of detention places and reducing overcrowding should be highly prioritized as such conditions severely impact the prisoners’ right to life and the right to health. This enhancement could be fulfilled by releasing those who are arbitrarily detained, children, persons with underlying health conditions, persons with low-risk profiles, and who have committed minor and petty offenses, persons with an imminent release.

The guidance also affirms that the procedural guarantees protecting the liberty of a person may never be subject to derogation measures, including the right to take proceedings before a court to promptly, deciding on the lawfulness of detention. So the guidance urges the authorities to maintain the detainees’ ability to meet with legal counsel, and prison or detention authorities should ensure that lawyers can confidentially speak with their client. Also, to provide substitution of in-person family visits with other methods, such as videoconferences, electronic communication, and increased telephone communication (payphones or mobile phones).

Regarding the prisoners’ families, the guidance highlights their needs and rights to avoid placing an extra burden upon them, especially women and children, who are both protected and impacted by necessary prevention measures. WHO and OHCHR directed the competent authorities that the information on mitigating measures provided to persons deprived of their liberty as well as their families should be in languages and formats that are understandable and accessible to all, clear, and accurate. The guidance also mentioned that the rights of detention centers’ staff must be respected. Specific training should be provided to all staff to increase knowledge, skills, and behaviors related to necessary healthcare and hygiene provisions. Also, prison or detention center staff should be provided with soap, hand sanitizer, and personnel protective equipment.

These measures have an indispensable necessity for reducing the overcrowding in prisons. And several states have realized that, including some Middle Eastern countries as shown in the next section.
Third: Other Countries Actions Against Covid-19 Threat to Prisoners

After WHO has declared COVID-19 a global pandemic, the OHCHR\(^6\) called upon the world's heads of State and Government to take urgent measures regarding releasing the possible number of prisoners to curb the virus spread, particularly, the prisoners of consciousness and those who are detained, pending politically-related lawsuits. Many countries around the world implemented measures to reduce overcrowding detention places by releasing those who don't pose any threats to society, the elderly, children, and the chronically ill. However, the Egyptian authorities have released a minimal number of opinion prisoners\(^7\). Moreover, the security apparatus has continued its oppressive practices. Several activists, journalists, and creators have been arrested, and the State Security Prosecution has kept them in remand on charges of spreading false news on Coronavirus crisis or else, and joining a terrorist group. And the detention is kept renewed, without the defendants’ or their lawyers’ presence, in violation of the proper, legal rules. Such charges have become the usual accusations against anyone who expresses his opinion in Egypt in the last few years. Although the General Attorney, Hamada Al-Sawy, issued a directive to promptly review the cases of pretrial detention to check if the detention is legally valid\(^8\). The Public Prosecution hasn't ordered any releases until the date of this paper.

On April 1, 2020, the Algerian President, Abdelmadjid Tebboune, issued Presidential Pardons for 5037 prisoners\(^9\). The pardon decisions came as a part of the Algerian authorities' efforts in curbing the Covid-19 virus. The Presidential Decree articulated that this pardon applies to persons who sentenced to 12 months or less, likewise who sentenced/remainder of 18 months or less, according to Algeria Press Service. The Pardon Decree also stated that the imprisonment term would be reduced by 18 months for prisoners sentenced to more than 18 months to 20 years, and if they are over 60 years old, by the decree’s date, it would be reduced by 24 months. The decree also excluded the convicts of treason or terrorism, and who are sentenced by militarian courts. It is worth mentioning that the pardon also eliminated the 44 detainees, who have been recently arrested during the Algerian protests last year, as they are pending trial procedures, according to the National Committee for Liberating the Detainees.

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Tunisia was the fastest Arab country regarding its interaction with the crisis; On March 31, 2020, The Tunisian President, Kais Saied, issued a presidential Pardon for 1420 detainees\(^\text{10}\) to reduce overcrowding rates in prisons. The decree also stated that President Saied gave orders to sanitize the prisons’ facilities and promote the efforts of its health care units. Besides that, the police forces stopped 1119 persons who broke the night lockdown order, which started on March 17, 2020. Also, they arrested another 242 who broke the complete lockdown order issued on March 22, 2020, according to the spokesman of the Ministry of Interior, Khaled Al-Haiony.

Oman has also implemented the same measure. On April 8, 2020, the Sultan, Haitham bin Tariq, pardoned 599 convicted prisoners in different lawsuits, 336 of them were expatriate inmates. According to the Minister of Interior, this decree was issued within the Sultanate’s plan to curb the virus spread.\(^\text{11}\)

Meanwhile, the President of Lebanon, Michel Aoun, is about to pardon approximately 300 prisoners\(^\text{12}\). The pardon is waiting for the Cassation Public Prosecution Department’s review, then its referral to the Minister of Justice, Mary Negm, to hand it over to the President for the final approval, ratification, and issuance. The pardon is expected to include releasing three prisoner categories, without cast discrimination, the elderly, the chronically ill, and those who served their sentence but still detained because they couldn’t pay the release fees. And also the convicts who have less than four months of the prison term. Also, the decree excludes the convicts of terrorism, drug-trafficking, and who are sentenced to death.

On the other hand, regarding the countries with a poor, dramatic situation of human rights, such as Iran and Turkey. In which its citizens suffer from grave violations against their freedoms and rights, and its prisons are immensely overcrowding by thousands of detainees.

Reuters quoted\(^\text{13}\) the spokesman of the Iranian Judiciary, Gholam Ismaily, that on March 17, 2020, around 85000 prisoners, including political detainees, were temporarily freed, in response to the Coronavirus epidemic. Iran is one of the countries that witnessed the Coronavirus spread at this time. However, the decision was a temporary pardon and conditioned by bailing. And it neither articulated the return date of the released detainees to prisons nor the bails amount. According

\(^{13}\) Reuters, Iran temporarily frees 85,000 from jail including political prisoners, Published on March 17, 2020. Access Date: May 13, 2020. https://reut.rs/2UE5UI2
to Ismaily’s statement\textsuperscript{14}, all the released persons were allowed out of jail after testing negative for Covid-19 and posting bail. The temporary release decision included convicts who were sentenced to less than five years imprisonment. Still, the political detainees who are sentenced to more than five years will not be let out, particularly those who are AKA: Security Prisoners. Also, the decision excluded prisoners who pose threats to the citizens, such as convicts of kidnapping, armed robbery, and Acid attack\textsuperscript{15}. On March 10, 2020, Javaid Rehman\textsuperscript{16}, the UN Special Rapporteur on the situation of Human Rights in Iran, said that he requested the temporary release of the political detainees from the Iranian prisons and detention places, Which are overcrowded and infectious, to curb the Coronavirus.

As for the more complicated situation in Turkey, despite the fact that it is the state with the most significant number of released prisoners among all other countries, 90000 detainees\textsuperscript{17}. The recent amnesty bill excluded the convicts of terrorism cases who have detained aftermath the cope attempt against President Erdoğan in 2016. According to an opposed parliamentarian and some Kurdish activists’ statements to DW\textsuperscript{18}, the estimated number of those convicts is about 50000 prisoners of government employees, judiciary officials, military members, journalists, and politicians. It is worth noting that the amnesty bill\textsuperscript{19} was proposed by the Justice and Development Party and the Nationalist Movement Party. And it was approved by the Parliament with a majority of 279 out of 330 votes. Implementing such a measure has reduced Turkey’s jails population by the third\textsuperscript{20}. According to the amnesty bill, about 45,000 prisoners will be temporarily released, and a similar number will be permanently freed. On April 13, 2020, the Minister of Justice, Abdulhamit Gül, stated\textsuperscript{21} that 3 out of 17 infected prisoners passed away, while 13 of them are currently in good condition after being hospitalized. Still, the other one with previous illnesses has been transferred to intensive care.

\textsuperscript{14} BBC, Coronavirus: Iran temporarily frees 54,000 prisoners to combat spread, Published on March 3, 2020. Access Date: May 13, 2020. https://bbc.in/2XYrafX


\textsuperscript{19} Ibid.


\textsuperscript{21} Ibid.
Conclusion and Recommendations

Through this paper, AFTE urges the competent authorities to release the Freedom of Expression prisoners in response to the risk of Covid-19 spread inside the Egyptian prisons. Hence, AFTE recommends the following:

• The Public Prosecution shall release all of the individuals who are in remand pending investigations by the Supreme State Security Prosecution in freedom of expression-related cases, including Journalists, creators, academics, Social Media users, and Ultras members. And among them, the 62 defendants of AFTE clients.

• The Prison Service affiliated to the Ministry of Interior should proclaim its Preventive Health Standards to curb the spread of infection in prisons. It should also provide the prisoners/detainees with constant access to telephones/Internet-mails to reach out to their families and attorneys.

• NCHR has to inspect a sample of Egyptian prisons to check and monitor the prisons’ administration compliance with the Preventive Health Standards and the reduction of overcrowding that curb infections spread. It should also inform the public about the findings.