

**NIHR's Opinion on some Articles mentioned  
in the Draft Law on Issuing the Law of  
Reform and Rehabilitation Institutions  
currently heard before Shura Council**

**(Articles Nos. 47, 56, 57 & 60)**

## **Draft law on Issuing Reform and Rehabilitation Institutions Law attached to Royal Decree No. (92) of 2007**

### **Based upon recommendations of the Shura Council's Committee on Foreign Affairs, Defense & National Security**

Article (47) as recommended by the Committee:

**"Legally registered human rights societies may be granted permission to visit the Correction and Rehabilitation Centers to review the conditions and inmates at the center after consulting the Ministry of Human Rights in accordance with the legal controls and procedures stipulated in the laws, regulations and instructions". (End of Stipulation)**

#### **NIHR's opinions:**

As a matter of principle, the NIHR hereby finds that allowing entities concerned with human rights to visit the Correction or Rehabilitation Centers is deemed as kind of control on the authorities that execute the judicial judgments in a way that guarantees the effective protection of the rights of the inmates. In addition, this is deemed as monitoring and recording of the breaches to the rights of the inmates with a view to making recommendation for corrective procedures or preventive or educational.. Eventually, this enhances the responsibility of the State for protecting the rights.

Moreover, the these human rights groups have an oversight role by attending to the Correction as these are places where human rights violations are likely to be committed, including against prisoners. This will make the entities that execute judicial judgments more cautious in their conduct and acts toward the prisoners and will prevent such breaches as the authorities realize that their actions are monitored.

Thereupon, the NIHR hereby believes that the process of visiting the Correction and Rehabilitation Centers should be entrusted to it considering that the issue of human rights protection is among the primary issues for which the NIHR has been established. The fourth article of the Paris Principles with reference to the competences of the national institutions stipulates that a national institution is responsible for: "*Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations*". This is translated by the Royal Decree No. 64 of 2009, amended by Royal Decree No. 28 of 2012 on the

establishment of NIHR, which stipulates in Article One that the NIHR is: "**An independent Institution is established named the "National Institution for Human Rights" responsible for promoting, developing and protecting human rights, consolidating its values, disseminating a culture awareness and contributing to securing its practice....."**".

It isn't possible in any way to consider that the Correction and Rehabilitation Centers aren't part of the country where cases of human rights violations may be committed. In addition, the NIHR can't guarantee that no violation is committed in such centers without its intervention. This is embodied in the meaning of the protection referred thereto in Article One of the establishment decree. The visiting procedure is deemed as one of mechanisms of such protection.

If the purpose is to monitor the status of human rights, such monitoring requires the presence among the individuals within the Correction facilities so that the authority responsible for the Correction and Rehabilitation Centers realize that the process isn't only limited to presenting reports on cases of human rights violations but also following up the procedures to be taken for remedying such cases of violations.

In addition, the process requires that the entity entrusted with performing the visit with a view to reviewing the conditions of the center and inmates thereof to have a degree of neutrality and independence, which may be impossible to be fulfilled in human rights associations which follow specific instructions or under pressure from their members from the public, with an impact on their neutrality and independence.

However, this does not apply to the NIHR because it is committed, in accordance to the law to neutrality and independence as stipulated in the decree on its establishment that:

**" ..... the institution shall practice its tasks fully impartially and independently"**.

Therefore, it is important that the National Institution for Human Rights undertake this and that the organizations concerned with human rights present any queries related to the convicted and inmates to the NIHR in line with the constructive cooperation stipulated in article 3/e:

**" cooperation with international organizations, regional and national entities and the relevant institutions in other States concerned with enhancing and protecting the human rights in a way to assist in achieving**

**the objectives of the Institution and developing the relation to these entities and organizations".**

Therefore, National Institution for Human Rights is responsible for verifying the occurrence of such breaches and should visit the Correction and Rehabilitation Centers. In addition, the NIHR delegation may include a member of such associations concerned with human rights.

Thereupon, it is recommended that the stipulation be amended to read as follows:

(The National Institution for Human Rights is entitled to visit the Correction and Rehabilitation Centers and Custodial Detention Centers to review the conditions thereof and the status of inmates thereof and the authority concerned should facilitate such visit).

**Note:**

*Custodial Detention Centers* is mentioned in the above stipulation because the draft law includes such facilities and the phrase "*person in custody*" is mentioned in the definition of the institution in the Draft Law in article "1", which stipulates that (it is the authority that shall undertake the management of the Correction and Rehabilitation Centers and Detention in Custody Centers". In addition, it is mentioned in definition of the center that it is "the place allocated for lodging the inmates and persons in custody". In addition, this phrase is mentioned in some articles of the draft law.

**Article (55) as recommended by the committee:**

**"A Disciplinary Committee shall be formed in each center by a Ministerial resolution to be under chairmanship of the Head of the Center and membership of the officer in-charge of the inmates and a legal specialist. The executive regulation shall determine the work procedures of the Committee". (End of Stipulation)**

The View of The institution is that in order to achieve the required oversight, it is also necessary to document all penalties imposed on the inmates in a record to be kept in their own file. This is very important in the process of monitoring the work of the rehabilitation centers and the extent of their commitment legally toward the inmates, the penalties to be imposed against them and the extent of conformity thereof with the law.

The NIHR hereby finds it is necessary to create a stipulation in the draft law includes this procedure as follows:

**"All penalties imposed on the inmate shall be recorded in a form to be kept in his file and shall be recorded in the register of the penalties".**

**Article (56) as recommended by the committee:**

"the disciplinary penalties imposed on the inmate shall be as follows:

1. Verbal warning
  2. Warning in the presence of the guards and inmates
  3. Written warning
  4. Deprivation of all or part of the privileges granted to him
  5. Deprivation of the entertainment programs and sport activities
  6. Deprivation of hiking in the open air for a period of not more than seven days.
  7. Deprivation of the financial remuneration determined for him for a period of not more than fifteen days
  8. Classification to the more severe degree according to the controls and rules to be determined by the executive regulation
  9. Deprivation of telephone calls not more than twice according to the controls and rules to be determined by the executive regulation
  10. Deprivation of visitation not more than twice according to the controls and rules to be determined by the executive regulation
  11. Deprivation of reducing parole for conditional early release under after passage of three-quarters of the sentence period.
  12. Solitary confinement for a period of not more than ten days
- The management of the center may apply the suitable penalty for the violations committed by the detainee in custody in accordance with the controls and rules determined by the executive by-laws. (End of Stipulation)

### **NIHR Opinion:**

Penalties:

- (1. Verbal warning
2. Warning in presence of the guards and inmates
3. Written warning
7. Deprivation of financial remuneration determined for him for a period of not more than fifteen days)

These penalties don't contradict with article No. (7) of the International Covenant for Civil and Political Rights, which stipulates:

"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."

**In addition, article No. (10/1) of the same covenant stipulates:**

"All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."

**Article No. (1) of Convention against Torture shall stipulate the following:**

"For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental occurring to a person ....."

**Article No. (16) of the same Convention stipulates that:**

"Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which does not amount to torture as defined in article I".

These penalties are just simple penalties, provided that they shall be taken without prejudice to the inherent dignity of the inmate as a human being; otherwise, this shall be deemed as violation to the aforementioned articles.

**Regarding the penalty No.:**

4. Deprivation of all or part of the privileges granted to him.

Such privileges should be listed and the extent of need of the inmate for the same to conclude whether the deprivation is deemed as violating the rights of the inmate or not or they are deemed as a privilege the inmate will not be harmed in should he be deprived of.

**Both penalties:**

5. Deprivation of entertainment programs and sport activities.

6. Deprivation of hiking in the open air for a period of not more than seven days.

The Institution finds that the purpose of imposing the penalty that restricts freedom is correction and rehabilitation for a return to society. In addition, there should be controls on imposing these two penalties by reducing the period to become a maximum of three days during which the inmate should be under direct supervision of a medical committee.

The imposition of such penalty should not involve harming the inmate or prejudicing the objective of the penalty, as the rule No. 21/1 of Standard Minimum Rules for the Treatment of Prisoners<sup>1</sup> states..

***"Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits. Young prisoners, and others of suitable age and physique, shall receive physical and recreational training during the period of exercise. To this end space, installations and equipment should be provided"***.

Penalty (8): Classification to the more severe degree according to the controls and rules to be determined by the executive regulation.

The NIHR finds that the classification of the inmate to the more severe degree need a determination of the standards and conditions, according to which the classification is made. In addition, the procedures to be taken against him should be determined to show to which extent such procedure not breaches the fundamental human rights of the inmate.

Therefore, the classification standards should be determined clearly and firmly and the penalties resulting from such classification should be proportional to the violation in way that doesn't represent any cruel treatment or degrading punishment as stipulated in Article (1) of the Convention against Torture.

Penalty 9. Deprivation of telephone calls for not more than twice according to the controls and rules to be determined by the executive regulation.

Penalty 10. Deprivation of visitation for not more than twice according to the controls and rules to be determined by the executive regulation.

The process of the communication with the outside world whether via telephone or visits made by the inmate is considered as social matter and they are included in the UN Standard Minimum Rules for the Treatment of Prisoners because this is very important for the physiological health of the detainees; especially the long-term detainees. When an individual is deprived of sufficient level of social

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<sup>1</sup> *Standard Minimum Rules for the Treatment of Prisoners approved by the first United Nations Conference on the Prevention of Crime and the Treatment of Offenders, held in Geneva in 1955 and approved by the Economic and Social Council in July 1957, and in May 1977. See the attachment.*

contacts, he will be unable within short period to maintain a suitable degree of the vigilance and attention to the surrounding environment.

It is worth mentioning that such communications and visits shall be in frequent intervals because if the intervals long between such contacts and visits will exasperate the inmate's suffering.

Thereupon, the NIHR hereby finds that there is no harm in the imposition of this penalty provided it takes into account that the arbitrariness in resorting to such penalty is deemed as kind of the inhuman treatment. In addition, the intervals between each communication and visit shall be approximate to ensure that the penalty will not affect the inmate to the extent that his rights are breached because the imposition of the penalty as result of violation may not be deemed as a punishment.

Penalty No. 11. Deprivation of reducing parole for conditional early release under after passage of three-quarters of the sentence period.

Conditional release is deemed as a reward for good conduct and compliance with the regulations and statutes inside the correction institution during the period of punishment that restricts freedom. This is stated in article No. (349) of the Procedures Law, which stipulates:

**"The persons convicted with punishment that restricts the freedom may be released conditionally if he has completed three-quarters of his prison term and has shown good behavior during his imprisonment leading to the trust in his ability to correct himself ..."**

Thereupon, the NIHR finds that this penalty doesn't violate any of the rights guaranteed for the inmate, unless it has been utilized arbitrarily and as long as it is governed by controls and procedures.

Penalty 12. Solitary confinement for a period of not more than ten days.

The NIHR hereby fears that solitary confinement as a disciplinary penalty may involve a human rights violation referred to in article No. (7) of the International Covenant on Civil and Political Rights, which stipulates:

**"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."**



In addition, article No. (10/1) of the same covenant stipulates:

**"All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."**

Article No. (1) of Convention against Torture shall stipulate the following:

**" For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental occurring to a person ....."** and Article No. (16) of the same Convention stipulates that:

**" Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which does not amount to torture as defined in article I".**

This is because such possible breach occurs in conditions where clear monitoring is difficult to conduct as well as the severe negative health effects resulting from resorting to solitary confinement, which may amount to level of the acts mentioned in the above articles.

Thereupon and as a matter of principle, the NIHR hereby recommends resorting to alternative disciplinary procedures and exclusion of solitary confinement as a disciplinary penalty. Accordingly, the Institution hereby adopts the recommendations of the UN Human Rights Council Special Rapporteur on torture and other forms of cruel, inhuman or degrading treatment or punishment in this regard.<sup>2</sup>

In the event that the draft law including the implementation of the solitary confinement is approved, the NIHR hereby makes the following comments in this regard:

- Solitary confinement as a penalty should be resorted to only after all means to maintain discipline in the correctional institution have been exhausted, otherwise this shall be deemed as arbitrariness in imposing solitary confinement as penalty.
- No other penalty shall be imposed in addition to solitary confinement.
- The inmate's (physical and moral) ability to bear solitary confinement should be examined by to a specialist medical committee from outside the

<sup>2</sup> Report of Special Rapporteur on torture and other kinds of cruel, inhuman or unprofessional treatment or punishment presented to UN General Assembly No. (A/66/268), See the Attachment.



correctional institution. It is preferred that this committee shall be impartial.

- Solitary confinement as a disciplinary penalty shall be excluded for inmates – men or women – who are less than 18 years or who suffer from ill-health or psychological symptoms.
- Reducing the maximum period of solitary confinement from the period determined in the draft law; namely ten days in agreement with article 53, first, paragraph "d" of the Arab Unified Model of the Organization of Prisons Act, which stipulates, "solitary confinement shall be for a period of not more than seven days".<sup>3</sup>
- Developing a system, which allows the abolition of solitary confinement as a penalty upon satisfying specific conditions for good conduct... etc.
- It is necessary the place allocated for solitary confinement provides necessary physical and physiological convenience so that it has no negative effect on the inmate. In addition, the inherent human dignity as human person should be maintained; otherwise, this shall be deemed as torture and other forms of the cruel, inhuman and degrading treatment.
- Enabling the inmate to challenge the resolution applying the penalty as mentioned in the above shown guarantees and he should be informed of the violations warranting the penalty, justifications and the period of imprisonment and he should be enabled to have access to his lawyer.
- Referring the inmate while in solitary confinement to a medical committee to determine his health condition.
- Providing the public prosecution with a report on each case subjected to solitary confinement as disciplinary penalty to ensure judicial control.

The NIHR finds that these notes are deemed as guarantees through which it hopes will prevent the acts amounting to some form of breach to the rights guaranteed for the inmates.

Reference can be made to the Report of the Human Rights Council Special Rapporteur on Torture and other Forms of Cruel, Inhuman or Degrading Treatment or Punishment presented in accordance with the UN General Assembly Resolution 65/205 which deals with the subject of solitary confinement in detail (copy is attached hereto).

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<sup>3</sup> Arab Unified Model of the Organization of Prisons Act approved by the Council of Arab Ministers of Justice in the 16<sup>th</sup> Round thereof (Resolution No. 365 – D 16-6/11/2000), (attached hereto).

Second paragraph of article 56 as recommended by the committee:

**"The management of the Center may apply the penalty suitable for the violations committed by the detainee in custody according to the controls and rules to be determined by the executive regulation. (End of Stipulation)**

NIHR's Opinions:

Custodial detention is a pre-trial precautionary procedure, whereby the accused is held in specific place by order of the competent judicial authority and for a legally determined period. During this period, the competent authorities attempt to verify whether the accusation is proved or not.

The stage prior to the trial is deemed as one of the most critical stages due to the possibility of impact of any measure taken against the detainee on the guarantee of his right to fair trial. Thereupon, disciplinary penalties shall be utilized without prejudice to the principle of the detainee's presumption of innocence before the trial in accordance with article No. 14/2, which stipulates:

**Everyone who has been charged shall be presumed innocent until proved guilty according to law."**

The presumption of the innocence should be given priority and a starting point for all standards in field for pre-trial detention.

The person, who aren't convicted of a crime, are accused of committing such crime and they shall have the right to be dealt with justly in way agrees with their capacity as not convicted according to article No. (10/2-a) of the International Covenant on Civil and Political Rights, which stipulates: "**Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons**".

Thereupon, the NIHR hereby finds that no restrictions may be imposed except to extend that ensures their appearance before the court, restricts the intervention in all evidences and prevents the commission of new crimes.

If the management of the center finds that penalties or restriction should be imposed for maintaining order and security in the center, the imposition of these

penalties should in no way violate the guarantees stipulated in Article No. (20) of the Constitution that:

- "a. There shall be no crime and no punishment except under a law, and punishment only for acts committed subsequent to the effective date of the law providing for the same.**
- b. Punishment is personal.**
- c. An accused person is innocent until proved guilty in a legal trial in which he is assured of the necessary guarantees to exercise the right of defence at all stages of the investigation and trial in accordance with the law.**
- d. It is forbidden to harm an accused person physically or mentally.**
- e. Every person accused of an offense must have lawyer to defend him with his consent.**
- f. The right to litigate is guaranteed under the law".**

In this regard, we hereby find that the penalties involving deprivation of entertainment programs and sport activities, hiking in the open air, visits or telephone calls should be excluded. In addition, solitary confinement should be excluded except when it is absolutely necessary and the public prosecution should be informed thereof.

Moreover, it is important to add the following stipulation:

Imposing these penalties may not prevent releasing the detainee at the legally determined time.

Article No. (57) as recommended by the committee:

**"The disciplinary committee shall be competent with imposing the disciplinary penalties stipulated in article 56 of this law. The head of the center or his representative may apply the disciplinary penalties stipulated in the items No. 1, 2, 3, 4, 5 and 6 of article No. (56) of this law". (End of the Stipulation).**

### **NIHR's Opinions:**

The role of a Specislit disciplinary committee competent with examining the violations committed by the inmate during the detention period shall be deemed as real guarantee for the inmate by performing the necessary investigation and the subsequent hearing of the pleas of the inmate. In addition, such committee

shall know the conditions and circumstances of the violation reaching to determination of the suitable penalty.

Entrusting such task to other than the committee concerned will raise the suspicion of violation to such guarantees or leads to arbitrariness in imposing the penalty.

Thereupon, the NIHR hereby finds that the penalties that may be imposed by the head of the center against the inmate shall be limited to the alerting, warning in presence of the guards and inmates and written warning considering the same as simple penalties. It is provided that such penalties may not be imposed in way prejudices his rights or inherent dignity subject to the control of the disciplinary committee.

**Article (60) as recommended by the committee:**

**"Iron handcuffs may not be used for the inmates held in custodial inside detention centers, except in the following cases:**

- 1. In the event of rebellion, disorder, insurrection, severe transgression or riots.**
- 2. If the inmate attempted to escape or planned to escape or if there is fear of such escaping for reasonable reasons.**
- 3. In the event of an attempt to by an inmate damage oneself, others or properties of the others.**
- 4. Any other necessary cases leading to a breach to security and safety inside the center. (End of Stipulation).**

**NIHR's Opinions:**

Using iron handcuffs for inmates is deemed as a form of freedom restriction inside detention places and is considered as a penalty additional to the original penalty. This penalty is also deemed a form of inhuman treatment because it has an impact on the inmate's physical and the physiological safety causing by harm to the inmate's inherent dignity.

Thereupon, article No. (10/1) of the same covenant stipulates:

**" All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."**

Article No. (1) of Convention against Torture shall stipulate the following:

**" For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental occurring to a person ....."**

Article No. (16) of the same Convention stipulates that:

**" Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which does not amount to torture as defined in article I".**

In this regard, principle No. (33) of Standard Minimum Rules for the Treatment of Prisoners - mentioned above – stipulates that:

**" 33. Instruments of restraint, such as handcuffs, chains, irons and strait-jackets, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints. Other instruments of restraint shall not be used except in the following circumstances:**

**( a ) As a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority;**

**( b ) On medical grounds by direction of the medical officer;**

**( c ) By order of the director, if other methods of control fail, in order to prevent a prisoner from injuring himself or others or from damaging property; in such instances the director shall at once consult the medical officer and report to the higher administrative authority.**

The article expressly stipulates that it iron handcuffs may not be used except in the case determined for limitation to maintain the order and security within the center, when it may be necessary to resort to imposing such form of penalty.

It should be stressed, however; that security reasons shall not be deemed as justified excuse for cruel or violent treatment of the inmate such as placing iron handcuffs for inmates while inside the center. It is correct that the tasks of the management of the center include holding these inmates and preventing them from escaping and maintaining order; but, this shall be made in accordance with procedures that don't prejudice the dignity of the inmate directly. This is just a precautionary procedure and not a disciplinary penalty.

We find that the fourth case that stipulates "Any other necessary case leading to a breach to the security and safety inside the center" expands the cases of resorting to iron handcuffs and this may amount to a case of suspected arbitrariness in

resorting to such kind of procedure. Thereupon, we find that the stipulation should not be absolute and such cases should be restricted.

Thereupon, the NIHR hereby finds that upon imposing such kind of procedures, it should be governed by the following:

- This procedure may not be taken unless all possible means for dealing with the reasons leading to the imposition thereof have been exhausted.
- A Specific period should be determined and the proposal of the Government which refers to a period of one week may be taken as guidance in this regard.
- Such procedure should be used in a way that doesn't prejudice the physical and physiological safety of the inmate, for instance chaining the hands from the back or chaining the hands with the legs together.
- Iron handcuffs should be removed whenever the justifications and reasons for the procedure are no longer existent.
- Inmates should be referred periodically to a medical committee at the center to ensure that no complications have occurred as result of using iron handcuffs, in compliance with principle no. (33) of Standard Minimum Rules for the Treatment of Prisoners - mentioned above.

**Note:**

It is worth mentioning that the resolution issued by Council of Representatives regarding the use of iron chains stipulates that the management of the center may order chaining the inmate as a precautionary measure temporarily in case of his resistance and the issue should be referred to the head of the center and disciplinary committee.

The NIHR hereby is of the view that the disciplinary committee is not mandated to examining the procedure of using iron chain for the inmate because it isn't included in the disciplinary penalties stipulated in detail in article No. (56), but it is a precautionary measure.

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