



Human Rights VIOLATIONS Against HIV-POSITIVE MIGRANTS in the ARAB WORLD



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Introduction:

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Approximately 40 million people worldwide are living with HIV today. Most infected people (95%) live in low and middle-income countries, and they are in urgent need of treatment to survive. The emergence of the HIV epidemic in the 1980s led to widespread stigmatisation and criminalisation of the disease itself and those infected. Consequently, many countries started imposing discriminatory restrictions on the entry, stay, and residence of HIV-positive people primarily based on prejudice, fear, and ignorance. Despite the vast knowledge about HIV acquired since the 80s, many of these restrictions are still in place. As recently as 2019, 48 countries and territories imposed some measure of HIV-related limitations and mandatory HIV testing, thereby basing the treatment of individuals on their HIV status alone. For people living with HIV, such treatment can be a daily reminder that the discrimination they face is entrenched in harmful policies and legislation.

1. UNAIDS/IOM International Organization for Migration, 'UNAIDS/IOM Statement on HIV/AIDS-Related Travel Restrictions' (June 2004) <UNAIDS/IOM statement on HIV/AIDS-related travel restrictions>.
2. UNAIDS, 'Denying Entry, Stay and Residence due to HIV Status' (June 2009) <https://www.un2aids.org/sites/default/files/media_asset/jc1738_entry_denied_en_0.pdf>.
3. UNAIDS, 'Travel Restrictions' <<https://www.unaids.org/en/keywords/travel-restrictions>> accessed 5th May 2021.

Infected groups are usually sex workers, people who inject drugs, migrant populations, and gay men.⁴ Migrant populations constitute a particularly vulnerable group in the risk, spread and prevention of HIV.⁵ Unsafe migration circumstances, coercion in the work environment, sexual exploitation, a general lack of legal representation, and limited to no access to health services are all factors that significantly increase one's exposure to infectious diseases.⁶ In the Arab Gulf States, most of the total labour force consists of migrant workers due to recent conflicts occurring in Syria, Sudan, Yemen, and Libya, resulting in widespread displacement and influx.⁷ Once migrants arrive at their destination in the Middle East, adequate systems to ensure HIV treatment are rarely provided, and discrimination is commonplace.

In their 2019 report “Still Not Welcome: HIV-related Travel Restrictions”, UNAIDS outlines the stories of HIV-infected migrants living in the Middle East.⁸ One of those is the story of Mehdi Beji (pseudonym). Mehdi migrated to the Middle East to seek out employment opportunities. When he found a job, he had to undergo several blood tests prior to the approval of his contract. When he started working, he was once again asked to get his blood tested. A month later, Mehdi was contacted for an appointment to get a credit card. Upon arrival at the bank, Mehdi was arrested. At the police station, he was informed that he had tested HIV-positive and that he would be deported on the basis of his test result.

The story of Mehdi is not an isolated incident. The deportation of HIV-infected migrants still occurs in over two dozen countries across the globe.⁹ Countries like Jordan, Saudi Arabia and the United Arab Emirates (UAE) are known to deport migrants based on their HIV status.

This report aims to shed light on restrictions on entry, stay, and residence of HIV-positive migrants in the Middle East, specifically in Jordan, Saudi Arabia, and the UAE. Moreover, it seeks to stress the harmful consequences of such policies that constitute gross human rights violations and obstruct creating an appropriate global response to HIV. A particular emphasis will be placed on the legal implications under international human rights law.

4. Ibid.

5. Human Rights Watch, 'Returned to Risk: Deportation of HIV-positive migrants' (September 2009) <<https://www.hrw.org/sites/default/files/reports/health0909webwcover.pdf>>.

6. UNDP, 'HIV Vulnerabilities faced by women migrants: from Asia to Arab States' (October 2008).

7. Gokengina, D. et al. (2016) 'HIV/AIDS: trends in the Middle East and North Africa Region', *International Journal of Infectious Diseases*, 44, p.66-73.

8. Ibid.

9. 'The Criminalization of Migration: Context and Consequences', Idil Atak & James C. Simeon (2018).

1.1 Background on HIV/AIDS

HIV (human immunodeficiency virus) is a virus that attacks the body's immune system. When left untreated, HIV can lead to AIDS (acquired immunodeficiency syndrome). There is no effective cure for HIV; once a person has contracted the disease, they will have it for life.¹⁰ However, with the proper treatment, HIV can be controlled, and infected persons can enjoy a long lifespan.

If a person contracts HIV and the virus is left untreated, it typically progresses through three stages: 1) acute HIV infection, 2) chronic HIV infection, 3) acquired immunodeficiency syndrome (AIDS).¹¹ A person is diagnosed with AIDS when the body's immune system has become so severely damaged that it is at constant risk of opportunistic infections.¹² This typically occurs when a person receives no HIV treatment.

HIV is transmitted through direct contact with the bodily fluids of a person with HIV who has a detectable viral load.¹³ These fluids are blood, semen and pre-seminal fluid, rectal fluids, vaginal fluids, and breast milk.¹⁴ Just coming in contact with these fluids via the skin will not immediately cause HIV infection. For transmission to occur, these fluids must pass through the bloodstream of an HIV-negative person, through the mucous membrane (found in the rectum, vagina, mouth, or the tip of the penis), through open cuts or sores, or via direct injection.¹⁵ As such, HIV is most commonly transmitted by having vaginal or anal sex with an infected person or through sharing injection equipment (needles) most typically associated with drug use.¹⁶

10. HIV.gov, 'Overview about HIV & AIDS' <<https://www.hiv.gov/hiv-basics/overview/about-hiv-and-aids/what-are-hiv-and-aids>> accessed 4th May 2021.

11. Centers for Disease Control and Prevention, 'About HIV' <[https://www.cdc.gov/hiv/basics/whatisshiv.html#:~:text=HIV%20\(human%20immunodeficiency%20virus\)%20is,healthy%20and%20prevent%20HIV%20transmission](https://www.cdc.gov/hiv/basics/whatisshiv.html#:~:text=HIV%20(human%20immunodeficiency%20virus)%20is,healthy%20and%20prevent%20HIV%20transmission)> accessed 4th May 2021.

12. Ibid.

13. HIV.gov, 'How do you get or transmit HIV?' <<https://www.hiv.gov/hiv-basics/overview/about-hiv-and-aids/how-is-hiv-transmitted>> accessed 5th May 2021.

14. Ibid.

15. Ibid.

16. Ibid.

1.2 HIV/AIDS in the Middle East

With 97,000 HIV-infected people reported in 2020, the Middle East has the lowest HIV prevalence globally.¹⁷ Yet, this region is of particular concern due to the significant gaps in treatment strategies to help and end the AIDS epidemic.¹⁸ Another increasing concern in the Middle East is the production of opiate drugs which has led to an increase in people vulnerable to HIV infections, such as those injecting drugs (a common way to spread HIV) and prisoners.¹⁹ According to AVERT, an established NGO committed to providing reliable, accurate, and accessible information on HIV, less than 50% of the people living with HIV in that region are aware of their infection, and only a third of those infected are on adequate treatment.²⁰ Moreover, the primary route of infection in the Middle East seems to be via sexual transmission.²¹

However, it must be noted that multiple challenges limit data reliability on the spread of HIV in the Middle East. First, groups that are more vulnerable to contract HIV are subject to intense discrimination, which obstructs data collection processes. For example, same-sex conduct remains illegal in ten Middle Eastern countries and is even punishable by death in six. As such, cultural, religious, and legal norms disapproving homosexuality may elicit the nondisclosure of same-sex conduct.²² Similarly, gathering data on unsafe drug use is nearly impossible due to the criminalisation of drug practice. Not only do high levels of stigma and discrimination obstruct data collection processes on the spread of HIV, but they are also a major contributing factor to the creation of a hidden population that is extremely hard to reach.²³ The strong moral views on HIV in many Muslim countries manifest in such deeply rooted stigma against people living with HIV and those at high risk of infection that it has become a major obstacle to HIV prevention and treatment. Consequently, many of those infected do not receive the treatment they urgently need to prevent their illness's progression, resulting in further isolation.

17. UNAIDS 'AIDSinfo' (2020) <<http://aidsinfo.unaids.org/>> accessed 4th May 2021.

18. Ibid.

19. AVERT, 'HIV in the Middle East & North Africa (MENA) (2019) <<https://www.avert.org/professionals/hiv-around-world/middle-east-north-africa-mena>> accessed 4th May 2021.

20. Ibid.

21. Gokengin, Doroudi, Tohme, Collins, Madani. "HIV/Aids: Trends in the Middle East and North Africa Region." (2016). International Journal of Infectious Diseases.

22. Ibid.

23. Ibid.

1.2.1 Discrimination of HIV-positive migrants

As mentioned earlier, HIV-related discrimination is widespread in the Middle East region and manifests itself in entry and residence requirements. Consequently, people with HIV are exposed to discrimination and are prevented from taking part in daily life. Stigmatisation is expected given that sexually transmitted diseases are publicly sensitive issues in the Middle East. Discriminatory HIV-related travel restrictions are especially dramatic for migrants who travel through the region searching for employment and residency permits. According to UNIAIDS and IOM, there are two main rationales behind HIV-related travel restrictions: One is a public health interest while the other revolves around avoiding excessive demands on health care and social services.

In Jordan, individuals with HIV are not permitted to enter, according to the Global Database on HIV-specific travel and residence restrictions. Moreover, when seeking employment or applying for residency, HIV testing is mandatory, and health facilities are obliged to report positive results to government authorities.²⁵ Finally, foreigners with HIV are expelled, while Jordanian citizens testing positive are usually supplied with the required medication via the National AIDS Programme.²⁶

Similarly, in Saudi Arabia, a negative HIV test result is required for residence and work permits. If the results are positive for HIV, applicants may not work in the Kingdom. According to HRW, migrant workers must also undergo bi-annual medical check-ups, including an HIV test.²⁷

Regarding entry regulations in the UAE, HIV-positive individuals are not allowed to enter or stay in most cases. However, short-term tourist stays are possible but with some risk. Furthermore, entry regulations in UAE dictate that individuals are not allowed to import necessary medication. Anyone who applies for work and residence permits needs to undergo an HIV test and is denied if the results are positive.²⁸

25. Human Rights Watch, 'Foreigners living with HIV in Jordan face an impossible choice' (26 October 2020) <<https://www.hrw.org/news/2020/10/26/foreigners-living-hiv-jordan-face-impossible-choice>> accessed 5th May 2021.

26. The Global Database on HIV related travel restrictions, 'Jordan - Regulations on entry, stay and residence for PLHIV' (March 2018) <<http://www.hivtravel.org/Default.aspx?PageId=143&Mode=list&FullSearch=Jordan>> accessed 5th May 2021.

27. Ibid 14.

28. The Global Database on HIV related travel restrictions, 'UAE - Regulations on entry, stay and residence for PLHIV' (March 2018) <<http://www.hivtravel.org/Default.aspx?PageId=143&Mode=list&FullSearch=Jordan>> accessed 5th May 2021.

1.2.2 Deportation and detention of HIV-positive migrants

It has been widely reported that migrants found to be HIV-positive in Jordan, Saudi Arabia, and the UAE are typically deported or detained without considering the health consequences of these actions. In Saudi Arabia and the UAE, HIV infection may lead to deportation, and individual cases of deportation of people diagnosed with HIV have been reported. Worse yet, in Jordan, HIV-positive persons are deported without exception. Under the Jordanian criminal justice system, detainees pending deportation are denied adequate care and treatment in prison. HRW reported on HIV-positive migrants in Jordanian prisons being exposed to particularly harsh conditions such as solitary confinement. As a result, Jordan is officially listed by UNAIDS as one of 26 countries that deport foreigners once they are discovered to be HIV-positive.

1.2.3 Lack of appropriate care

As mentioned earlier, migrants are a particularly vulnerable group when it comes to HIV. According to HRW, there are no adequate systems that ensure appropriate HIV treatment for migrants who will be deported. In Jordan, for instance, over 1 million refugees arrived from neighbouring countries due to instability in the past 6-7 years. As a result, considerable pressure was placed on the country's financial and human resources, leading to a decline in the national AIDS program and other health-related programs.³²

Generally, access to HIV testing and counselling remains extremely limited throughout the Middle East, even though these services are an integral component of HIV prevention programs globally.³³ This is primarily due to the fact that the people who could potentially benefit from these services most often belong to criminalised groups in society and, consequently, face widespread discrimination.³⁴

29. The Global Database on HIV related travel restrictions, 'Saudi Arabia - Regulations on entry, stay and residence for PLHIV' (March 2018) <<http://www.hivtravel.org/Default.aspx?PageId=143&Mode=list&FullSearch=Jordan>> accessed 5th May 2021.

30. Human Rights Watch, 'Foreigners living with HIV in Jordan face an impossible choice' (26 October 2020) <<https://www.hrw.org/news/2020/10/26/foreigners-living-hiv-jordan-face-impossible-choice>> accessed 5th May 2021.

31. Dr. Assad Rahhal, 'Evaluation of HIV/AIDS Activities in Jordan' (July 2018) IOM Amman.

32. AVERT, 'HIV in the Middle East & North Africa (MENA) (2019) <<https://www.avert.org/professionals/hiv-around-world/middle-east-north-africa-mena>> accessed 5th May 2021.

33. Ibid.

1.3 Importance of civil society in creating an appropriate HIV response in the Middle East

While some countries in the Middle East are starting to strengthen their response to HIV by implementing and developing national programmes, others are still very slow in their response given the denial, stigma, and marginalisation of the target population. According to AVERT, to create an appropriate HIV response in the Middle East, it is crucial to develop and implement culturally suitable programs addressing HIV-related discrimination.³⁵ The World Health Organization has found that addressing the health needs of migrants can “improve their health status, avoids stigma and long-term health and social costs, protects global public health, facilitates integration and contributes to social and economic development.”³⁶

Ostensibly, civil society organisations addressing HIV prevention have come to the forefront in the Middle East over the past decade.³⁷ Specifically, in the last few years, multiple regional platforms and networks have been established in the region, such as—but not limited to—the Regional/Arab Network Against AIDS and the Middle East and North Africa Harm Reduction Association.³⁸ The establishment of networks like these can help normalise HIV prevention in the Middle East and positively influence future policy decisions.³⁹ As such, the involvement of civil society in mainstreaming HIV/AIDS prevention could be a catalyst in the HIV response of Middle Eastern countries.

35. Ibid.

36. World Health Organization, “Health of Migrants—The Way Forward: Report of a Global Consultation”, (2010), p. 5.

37. Gokengin, Doroudi, Tohme, Collins, Madani. “HIV/Aids: Trends in the Middle East and North Africa Region.” (2016). International Journal of Infectious Diseases.

38. Ibid.

39. Ibid.

1. Legal analysis on human rights violations against HIV-positive migrants under international human rights law

A fundamental principle of international law is that States can control activities within their territories.⁴⁰ Hence, States have the discretion to exercise their sovereignty by excluding, admitting, expelling, and placing conditions on the entry and stay of non-nationals. Since there is no explicit right to enter a State, it is technically allowed to implement entry restrictions.⁴¹ However, international law dictates limitations when it comes to a State's actions regarding their nationals and other individuals who find themselves under the jurisdiction of the State.⁴² Such legal limitations are, for instance, that certain rights may not be denied or limited through the application of entry restrictions. This is particularly relevant when it comes to the deportation of migrants based on their HIV status. The violation of human rights through HIV-related restrictions in Jordan, Saudi Arabia, and the UAE is legally analysed in the following sections.

2.1 Principle of non-refoulement

The principle of non-refoulement is a core human rights protection under international human rights law. It protects individuals from being forced to return to their country of origin or to a territory where their life or freedom might be threatened. The principle of non-refoulement has been implemented in numerous international legal instruments⁴³ and is considered a 'generally recognised principle of international law'.⁴⁴ It applies to all persons without any exception, which means that migrants are equally protected through this principle.⁴⁵ Some courts have interpreted the prohibition of refoulement by applying it to serious forms of sexual and gender-based violence.⁴⁶ Convention against Torture (CAT) Art. 3(1) CAT enshrining the principle of non-refoulement reads as follows: "No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture."⁴⁷

40. Art. 1 ICCPR; Art. 1 ICESCR; G.A. Res. 1541, UN.

41. UNAIDS/IOM, 'Statement on HIV/Aids-related travel restrictions' (June 2004).

42. Ibid.

43. Art. 33 Geneva Convention; Article 7 ICCPR; Article 3 CAT; Article 3 ECHR.

44. UNHCR 'Note on Non-Refoulement' (1977) EC/SCP/2.

45. Ibid.

46. CAT, *Njamba and Balikosa v Sweden*, No. 322/2007.

47. Art. 3(1) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

As stated by the United Nations Human Rights Office of the High Commissioner (UNHCR), international law puts States under the legal obligation to respect the principle of non-refoulement and to guarantee that practical and human rights-based mechanisms are in place. Thus, rather than granting a right of entry per se, States are obliged to act in accordance with this principle as a guarantee incorporated in the obligation to respect, protect and fulfil human rights.⁴⁸ More specifically, this would mean that mechanisms should be set up to grant temporary, long-term or permanent status to migrants who cannot return.⁴⁹

International Covenant on Civil and Political Rights (ICCPR) The principle of non-refoulement is also enshrined in Art. 7 ICCPR. The Human Rights Committee has clarified that the ICCPR and this specific provision applies to all migrants regardless of their status. Therefore, it is “not limited to citizens of State Parties but must also be available to all individuals [...] who may find themselves in the territory or subject to the jurisdiction of the State Party.”⁵⁰

In the present context, Jordan, Saudi Arabia and UAE are all parties to the CAT.⁵¹ Thus, all three States must act under the principle of non-refoulement and ensure that HIV-positive migrants are treated in a manner consistent with Art. 3 of the Convention. In other words, they are prohibited from deporting HIV-positive migrants to places where they do not receive adequate access to medical treatment and support or where they fear prosecution or degrading treatment on the basis of their HIV status.⁵² Instead, the individual's medical condition and the stage of the HIV infection should be taken into account, as well as the support available in the country of origin.⁵³ At the present moment, the current deportation practices of HIV-positive migrants in the States mentioned above are contrary to Art. 3 CAT.

48. OHCHR, 'The principle of non-refoulement under international human rights law' <<https://www.ohchr.org/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf>> accessed 10th May 2021.

49. Ibid 47; CAT, *Seid Mortesa Aemei v Switzerland* (1997), Comm. No. 34/1995.

50. CCPR, General Comment No. 31, *The Nature of the General Legal Obligation Imposed on State Parties to the Covenant*, 26 May 2004, U.N. Doc CCPR/C/21/Rev.1/Add. 13, at 10; See also CCPR General Comment No. 15: *The position of aliens under the Covenant*, 11 April 1986, at 1.

51. ONHCR, 'Status of ratification interactive dashboard' <<https://indicators.ohchr.org>> accessed 12th May 2021.

52. UNHCR, 'Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol'.

53. Test commonly used by the European Court of Human Rights (ECtHR) considers whether deportation would create 'extraordinary hardship to the deportee and his or her family'. Human Rights Watch, 'Returned to Risk: Deportation of HIV-positive migrants' (September 2009) <<https://www.hrw.org/sites/default/files/reports/health0909webwcover.pdf>>.

2.2. Principle of equality and non-discrimination

Entry and residence regulations in Jordan, Saudi Arabia and UAE currently do not permit individuals with HIV to enter or stay in the country. Migrants entering those States are subject to coercive measures such as mandatory testing; in case of an HIV infection, visa cancellation; and even deportation. The rationale behind such regulations seems to be that border controls and discriminatory measures can control the "foreign" HIV problem.⁵⁴ It is based on the fear that HIV-positive migrants would act irresponsibly- and actively spread the infection.⁵⁵ However, the principle of equality and non-discrimination prohibits States from implementing measures or policies that are discriminatory. Moreover, it places a burden on behalf of States to establish a compelling reason that would support any distinction in treatment made, which in turn must be necessary, proportional, and contribute to a legitimate aim.⁵⁶ This principle is contained in multiple international treaties, and it is a recognised principle of customary international law.

International Covenant on Civil and Political Rights (ICCPR)

The main provision enshrining the principle of equality and non-discrimination is Art. 26 ICCPR. It dictates the prohibition of discriminating against a person in the enjoyment and exercise of their human rights based on the following properties: race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth, or other status.⁵⁷

With regards to the bindingness of the principle of equality and non-discrimination, it should be noted that while Saudi Arabia and the UAE are not parties to the ICCPR, Jordan has signed and ratified the Covenant.⁵⁸ As such, Jordan needs to ensure that HIV-positive migrants are not discriminated against in their ability to seek entry or remain in the country. However, Jordan's differentiation based on HIV status is inherently discriminatory and objectionable. At the same time, the assumption that HIV-infected migrants would conduct themselves irresponsibly is erroneous and contributes to an already existing HIV stigmatisation and discrimination. Given its current regulations through which migrants receive differential treatment on the basis of their HIV status alone, Jordan's entry and residence regulation is not in accordance with the principle of equality and non-discrimination under Art. 26 ICCPR.

54. UNAIDS, 'Travel Restrictions' <<https://www.unaids.org/en/keywords/travel-restrictions>> accessed 5th May 2021.

55. Ibid.

56. UN Human Rights Committee (HRC), CCPR General Comment No. 18: Non-discrimination, 10 November 1989.

57. Art. 26 ICCPR.

58. Signature: 1972, Ratification/Accession: 1975.

Universal Declaration of Human Rights (UDHR)

As the title suggests, the UDHR is a universal document that pertains to all people across the globe. Though the declaration itself is not a legally binding document, its contents serve as a foundation for promoting and protecting a global human rights standard. Moreover, it has become binding under customary international law.

Art. 2 of the UDHR stipulates the principle of non-discrimination as a human rights standard, while Art. 7 of the UDHR dictates equality before the law. Furthermore, Art. 25(1) UDHR protects the right of everyone to a standard of living adequate for the health and well-being of himself and of his family, including medical care and necessary social services in the event of sickness.

At present, in Jordan, Saudi Arabia, and the UAE, the appropriate living standards are not provided to HIV-positive migrants, let alone treatment for their illness. This discriminatory treatment is not in accordance with the standards prescribed under Art 25(1) UDHR. In addition, since HIV-positive migrants receive different treatment on the basis of their health status, the abovementioned States also act contrary to the standards put forward in Arts. 7 and 26 UDHR. As already mentioned, despite the UDHR not being legally binding in itself, it is regarded as a clear benchmark for the universal human rights standard that should be strictly upheld by all States globally

2.4 The right to health

In order to comply with international human rights law, States must also realise the right to health of their nationals as well as to migrants located in their territory. The right to health can be categorised as a welfare right and means, in practice, providing health services and medical assistance. Consequently, this right imposes various duties on States. In its General Comment No. 14, the UN Committee recognised the right to health as a fundamental human right. It underlined four elements, which have to be fulfilled by the States to satisfy the right to health: availability, accessibility, acceptability, and quality of medicines. In the present context, the requirement of accessibility is particularly relevant as it requires that essential treatment becomes accessible to everyone, including migrants. In economic terms and cultural terms, this factor is crucial. It requires that nobody is discriminated against on sex, religion, race, and nothing of that sort when accessing treatment.

59. International Organization for Migration, *International Migration, Health and Human Rights* (Geneva, 2013), p. 50.

International Covenant on Economic, Social and Cultural Rights (ICESCR)

The right to (the highest attainable standard of) health is laid down in the ICESCR and can, therefore, be accepted as a human right. Art. 12(1) ICESCR guarantees “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”. Subsection two of this provision requires State Parties to undertake all necessary steps in order “to achieve the full realisation of this right”. These steps can be interpreted as elements that positively contribute to one's health.⁶⁰ Furthermore, Art. 12(2)(d) ICESCR protects the right to “the creation of conditions which would assure to all medical services and medical attention in the event of sickness.”

Similarly to the ICCPR, while Saudi Arabia and the UAE are not parties to the ICESCR, Jordan has signed and ratified the Covenant.⁶¹ As such, Jordan needs to ensure that HIV-positive migrants have access to adequate health care. Protecting migrant's health does not mean infringing upon the State sovereign right to determine migration policies but promotes the rule of law.⁶² In the present moment, HIV-positive migrants are denied any form of access to treatment. While being detained and awaiting deportation, they face inadequate access to health services which exacerbates their health conditions. It follows a violation of their right to health under Art. 12 ICESCR.

2.4 Freedom of movement

Jordan, Saudi Arabia, and the UAE impose an HIV-negative test as a requirement for entry and stay and give authorities the power to deport HIV-positive migrants. This also poses the question as to HIV-positive migrants' freedom of movement.

Art. 12(1) ICCPR dictates that 'everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.' Even though international law generally allows States to impose restrictions on who may enter and stay, those restrictions still need to comply with the State's international obligations, including respecting an individual's freedom of movement. Moreover, restrictions on the right to freedom of movement may only be undertaken if they are 'necessary to protect national security, public order, public health or morals or

60. Office of the United Nations High Commissioner for Human Rights, 'The Right to Health: Fact Sheet 12' [2008].

61. Signature: 1972, Ratification/Accession: 1975.

62. Laura Thompson, 'Protection of Migrant's Rights and State Sovereignty' UN Chronicle <<https://www.un.org/en/chronicle/article/protection-migrants-rights-and-state-sovereignty>> accessed May 13th 2021.

the right and freedoms of others' (Art. 12(3) ICCPR). The Human Rights Committee further elaborated on this limitation, stating that such restrictions should only serve permissible purposes and must be necessary and proportionate and the least intrusive means of achieving the desired result.⁶³ In addition, Art. 5(i) of the International Convention on the Elimination of all Forms of Racial Discrimination guarantees equality before the law when it comes to the enjoyment of the right to freedom of movement and residence within a State.⁶⁴

Given that only Jordan is a party to the ICCPR, it is bound by Art. 12 of the Covenant. However, all three States ratified the International Convention on the Elimination of all Forms of Racial Discrimination⁶⁵ and are therefore obliged to respect Art. 5 thereof. In Jordan, Saudi Arabia and UAE, restrictions on entry and residence of HIV-positive migrants are commonly based on the 'public health' rationale. However, experts in that field have made it clear that HIV does not pose a threat to public health in any way as the virus cannot be transmitted by simply the presence of an HIV-positive person or casual contact.⁶⁶ Hence, there is no valid public health rationale for restricting the freedom of movement on the grounds of HIV status.⁶⁷ Consequently, the public health rationale does not serve as a justification to limit Art. 12(1) ICCPR by applying Art. 12(3) ICCPR. Any limitation of this right only prevents migrants from migrating for work reasons, doing business abroad or studying abroad. As a result, violating the right to freedom of movement essentially also denies equal participation in cross-border mobility and migration.⁶⁸

63. OHCHR, CCPR/C/21/Rev.1/Add.9, General Comment No. 27. (General Comments)(Contained in document CCPR/C/21/Rev.1/Add.9)

64. Art. 5(i) International Convention on the Elimination of All Forms of Racial Discrimination.

65. Saudi Arabia: Ratification/Accession: 1997; Jordan: Ratification/Accession: 1974; UAE: Ratification/Accession: 1974.

66. UNAIDS, 'Denying Entry, Stay and Residence due to HIV Status' (June 2009) <https://www.unaids.org/sites/default/files/media_asset/jc1738_entry_denied_en_0.pdf>; WHO, 'Report of the Consultation on International Travel and HIV Infection'(1987) WHO/SPA/ GLO/87.1.

67. UNAIDS, 'International Guidelines on HIV/AIDS and Human Rights' para 105 (1998) HR/PUB/98/1, p.50.

68. UNAIDS, 'Denying Entry, Stay and Residence due to HIV Status' (June 2009) <https://www.unaids.org/sites/default/files/media_asset/jc1738_entry_denied_en_0.pdf>.

Conclusion

This report concludes that the restrictions on entry and stay, including the deportation of HIV-positive migrants in Jordan, Saudi Arabia and UAE, violate the international human rights of non-refoulement, equality and non-discrimination, right to health, and freedom of movement. It was pointed out that the States above systematically fail to meet those human rights standards in their treatment of HIV-positive migrants.

A comprehensive analysis was provided on the far-reaching consequences of detaining and deporting HIV-positive migrants: Firstly, it contributes to further stigmatisation of migrant workers as carriers of diseases. Seeing as those afflicted by diseases like HIV/AIDS already face widespread discrimination in many Middle Eastern societies, discriminatory practices of such kind only exacerbate the situation. Secondly, people deported on the basis of their HIV status rarely have access to the treatment they require. As a consequence, they risk developing AIDS, which dramatically increases the likelihood of their disease becoming fatal. Finally, from a health care perspective, the inherently discriminatory practice of deporting HIV-positive migrants obstructs the creation of an appropriate national response to the disease. Above all, restrictions on entry or stay based on HIV status as those currently in place in Jordan, the UAE, and Saudi Arabia undermine the universal standard of human rights.

In particular, the legal analysis presented demonstrates that the discriminatory policy practice of deporting HIV-positive migrants in Jordan, the UAE and Saudi Arabia results in violations of the principle of non-refoulement, equality and non-discrimination, the right to health, and the right to freedom of movement.

With regards to possible recommendations, this report stresses that Jordan, Saudi Arabia, and UAE should make their entry regulations consistent with their international legal obligations. It should be worked upon harmonising regional standards of care to respect fundamental human rights. More specifically, Jordan, Saudi Arabia, and UAE should revise their discriminatory policies and start developing strategies facilitating access to HIV/AIDS prevention programmes for migrants. In the long-term, this would protect public health and decrease health and social costs. Finally, adequate HIV treatment must be provided, especially to those migrants awaiting deportation. Particular attention should be paid to the reasons for removal and the country to which migrants are deported to avoid international responsibility.

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