



Commentary

Incarceration or mandatory treatment: Drug use and the law in the Middle East and North Africa

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ABSTRACT

In the Middle East and North Africa (MENA), drug policies are embedded in the prohibition paradigm. Laws and legislation criminalize all types of activities related to illicit drugs. This article gives a detailed assessment of the provisions of Arab national laws to control the use of illicit drugs across the areas of punishment of drug users, penalties for drug dependence, legislation on use and dependence treatment, and the right of the convicted people who use drugs to confidentiality. It reviews the national legislations on drug control of 16 Arab countries as amended in January 2011.

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Introduction

Since the passage of the Single Convention on Narcotic Drugs in 1961, complemented by the Convention on Psychotropic Substances in 1971, the international community has remained committed to eliminating the non-medical use of illicit drugs. The 22 Arab countries members of the League of Arab States (LAS),¹ all parties to the conventions mentioned above, committed to eliminating drugs and to include the international drug control measures in their national legislations.

Representing the largest part of the Middle East and North Africa (MENA),² Arab countries members of the LAS have taken regional legislative commitments to eliminating drug use by establishing the Permanent Anti-Narcotics Bureau of the LAS in 1950 (United Nations Office on Drugs and Crime, 1980), and by ratifying the Arab Convention against illicit trafficking in narcotic drugs and psychotropic substances (League of Arab States, 1994).

These countries also schedule substances in their national laws following the “Unified Table” or the Unified Arab Table for Narcotic Drugs and Psychotropic Substances, derived from United Nations conventions.

These international and regional agreements constantly emphasized the need to embed their provisions in national laws, in order to eliminate the use of illicit drugs. MENA has a long history of drug use (Baasher, 1981) and has played a major role in introducing prohibition both nationally and internationally. As far back as 1879, Egypt introduced the first legislation prohibiting the use of cannabis (United Nations Office on Drugs and Crime, 2008). MENA is a production region for many substances, including cannabis, grown in Morocco (Afsahi, 2015) and Lebanon; small quantities of opiates produced in the Sinai; amphetamine-type stimulants (ATS) produced in countries from Egypt to Lebanon and khat cultivated from Yemen to Somalia (United Nations Office on Drugs and Crime, 2013). But mostly, MENA is an area of consumption and transit. The region is at the geographic heart of trafficking routes: opiates transiting from the Golden Crescent to Europe, cannabis travelling from Morocco to the Gulf countries, cocaine from Latin America to Europe, methamphetamines from West Africa to Europe, and ATS from Eastern Europe to South Asia. In North Africa, the two most commonly used narcotics are cannabis and ATS, with rates of prevalence of use of 4.3% (2.2–6.6%) and 0.6% (0.2–0.9%) respectively (United Nations Office on Drugs and Crime, 2014b). The prevalence of drug injection in the Near and Middle East, of 0.08% (0.03–0.13), and the prevalence of HIV among people who inject drugs are both lower than the prevalence rates in the rest of the world (United Nations Office on Drugs and

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¹ The 22 member states of the League of Arab States are: Algeria, Bahrain, Comoros, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Somalia, Sudan, Tunisia, United Arab Emirates (UAE) and Yemen.

² Since the definition of MENA and its countries changes within international organizations groupings, this article analyses the national legislations of the Member States of UNODC’s Regional Office in MENA (ROMENA): Algeria, Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Sudan, South Sudan, Syria, Tunisia, UAE and Yemen (Map 1).

Crime, 2015). Nevertheless, the use and seizures of ATS have doubled in few years according to available data (United Nations Office on Drugs and Crime, 2011).

This article provides a detailed assessment of the provisions of Arab national laws to control the use of illicit drugs across the areas of punishment of drug users, penalties for drug dependence, legislation on use and dependence treatment (even if they are undifferentiated in the law), and the right of the convicted people who use drugs to confidentiality. In MENA the conviction and punishment of drug users is the main tool used to combat illicit drug use. The article reviews the methodology used to collect and analyse the data of drug control laws in 16 MENA countries as of January 2011 (Table 1). We then describe the legislative provisions related to drug use and dependence, be it imprisonment or compulsory treatment convictions. The article focuses on drug use, dependence, possession and the rights and obligations of people who use drugs; and does not address legal provisions regarding drug trafficking or transnational organized crime. It aims at providing policymakers, researchers and civil society representatives with the tools to understand and fill the gaps in the legal provisions related to drug use in the MENA region. After the Arab Springs starting 2011, the legislations reviewed have not been amended; the Tunisian government submitted an amendment of its narcotics law to Parliament in July 2015 (Government of Tunisia, 2015).

Methodology

A systematic review of the national legislations on drug control of 16 Arab countries as amended in January 2011 has been undertaken between June and August 2015: Algeria, Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, Oman, Qatar, Saudi Arabia, Sudan, Tunisia, UAE, and Yemen. We refer to these countries, covered by the United Nations Office on Drugs and Crime MENA regional Office (ROMENA), as the MENA region. Peer-reviewed and grey literature as well as policy documents and news reports were used to gather information describing opiates, cocaine, cannabis and ATS use prevalence, drug-related arrested population and sociopolitical and legal context for people who use drugs in Arab countries. One of the authors had the copies of the

16 national legislations and the regional convention in Arabic. The authors read the national laws on drug control and classified their provisions into single categories on how drug possession and use are punished, how drug treatment is ordered, and how confidentiality is included in drug-related cases.

Limitations

While every effort was made to identify all valid sources of information on the legal and political context for people who use drugs in Arab countries, data availability varied widely by country. Little data was available on the number of incarcerated convicts for drug offenses, with some available data on drug trafficking offenses but virtually none on drug use offenses and mostly a combination of both in the available data as the offenses are treated similarly. No data existed for the application of compulsory treatment in the 16 countries. Three ROMENA countries' national laws could not be accessed: South Sudan, Syria and the Palestinian territories.

Punitive legislation against drug use in MENA

Possession of illicit drugs for personal use in all the Arab countries is punishable by a prison term, often along with a monetary fine. Preemptive precautionary convictions to punish activities which are considered to encourage drug consumption are also common.

In some Arab countries the law focuses less on consumption per se and more on possession for the purpose of consumption. For example, in Egypt, the punishment for anyone who possesses, procures or purchases a drug or cultivates plants from which such substances can be extracted, "for personal consumption or use in cases unauthorized by law" (Arab Republic of Egypt, 1989) includes imprisonment of between three to 15 years and a fine of between ten and fifty thousand Egyptian Pounds (1300–6400 USD). This law does not include punishing people who use drugs if they are in possession of any quantity of drugs. However, the Egyptian penal code views the consumption of alcohol or drugs as an important aggravating factor when punishing manslaughter or unintended injury if the act occurred under the influence of such substances (Arab Republic of Egypt, 1937).

Table 1
Introduction of drug control laws in the Arab countries.

Year of adoption	Law name	Year of amendment	Country
2004	Law No. 04-18 of 25 December 2004 on Prevention and Repression of Illicit Use and Trafficking of Narcotics and Psychotropic Substances	–	Algeria
1973	Decretal Law No. 4 of 1973 on Controlling the Use and Circulation of Narcotic Substances and Preparations	–	Bahrain
1960	Act No. 122 of 1989 amending law No. 182 of 1960, control of trade of narcotics and regulation of substances	1989	Egypt
1965	Narcotics Act No. 68 of 1965 amended by the Narcotics Control Act No. 38 of 2002	2002	Iraq
1988	Law No. 11 of 1988, Law on Narcotic Drugs and Psychotropic Substances	–	Jordan
1983	Law No. 12 of 2007 amending Law No. 74 of 1983 on drug control and regulation of the use and trafficking	2007	Kuwait
1998	Law No. 673 of 1998 on Narcotics, Psychotropic Substances and Precursors as Amended by Law No. 77 of 1999	1999	Lebanon
1990	Law No. 7 of 1990 on Drugs and Psychotropic Substances	–	Libya
1974	Dahir No. 1-73-282 of 21 May 1974 on the suppression of drug use and drug prevention.	–	Morocco
2000	Law No. 28 of 2000 on the Control of Narcotic Drugs and Psychotropic Substances	–	Oman
1987	Law No. 9 of 1987 on Control and Regulation of Control and Regulation of Narcotic Drugs and Dangerous Psychotropic Substances	2006	Qatar
2005	Law No. 152 of 1426, Anti Narcotic Drugs and Psychotropic Substances	–	Saudi Arabia
1994	Narcotic Drugs and Psychotropic Substances Act 1994	–	Sudan
1992	Law No. 92-52 of 18 May 1992 on Narcotic drugs	–	Tunisia
1995	Federal Law No. 14 of 1995, Anti-Narcotic Drugs and Psychotropic Substances	–	UAE
1992	Unlawful Narcotics and Psychotropic Substances Trafficking and Use Act No. 2 of 1992	–	Yemen

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