

# RIGHTS OF PEOPLE WHO USE DRUGS

**A MENAHRA REPORT**





# INTRODUCTION

Drug use is one of the phenomena prevalent in various degrees all over the world and the numbers of people who use drugs (PWUD) have increased in the last years. States have therefore begun to build community immunity to reduce the violations that PWD face. Special treatment has been granted to this group to ensure the development of their behavior through rehabilitation and social integration, as an alternative for persecution and sanction. The use of justice to deter people who use drugs is a complex and costly process for the judiciary. It also leads to prison overcrowding, in addition to increasing the social challenges and the social stigma against PWUD.

Legal systems in various countries have converged to different degrees by creating alternatives for punishment by granting judges and public prosecutors the discretionary powers to use these alternatives before or during judicial prosecution and enforce “treatment and care as alternatives for punishment and conviction”; as advocated by all legal experts. This report will highlight the rights of PWUD and the legal systems that concern them in Jordan, Tunisia, Lebanon, Morocco and Egypt while showing the violations that these people encounter in society, and which will be discussed at a later stage. In addition, the existing social issues facing PWUD in our Arab societies will be clarified by conducting interviews with legal experts and activists from the five countries mentioned on the rights of PWUD, and identifying legal procedures and their consequences in all five countries in order to recognize to what extent treatment and care are considered as alternatives for sanctions.

This report would not have been possible without the contribution and cooperation of partners in the field. We extend our thanks to Mr. Mohammad El Nasser and the team of AlNasir Legal Services for cooperating with MENAHRA and effortlessly conducting this report.

## REPORT METHODOLOGY:

This report clarifies the most important problems and challenges faced by PWUD and the legal framework governing them as well as the reality of the situation to demonstrate how far measures are taken to protect PWUD and introduce alternatives to punishment, since health is one of the Human Rights that must be respected. Practical reality in implementation was studied by hiring legal experts in drugs and human rights issues from the five countries by conducting personal interviews with them in addition to observation. The present report is the result of a review of the laws in force and it displays legal texts and expresses the views of experts and not necessarily the opinion of MENAHRA or the consultant.

## EXPERTS INTERVIEWED ARE:

- Attorney Issa Al-Marazeeq - Director of Training Department in the National Center for Human Rights - Jordan.
- Abdallah Al-Hanatleh - Director of Forearms of Change Center to Enable Community - Jordan.
- Nada Riyahi - Director of the International Development Law Organization (IDLO) in Tunisia - Tunisia.
- Sandy Mtayrek - Legal activist - Expert in drug policies - Lebanon.
- Michelle Wazen - Director of the Drug Policy department in Skoun - Lebanon.
- Dr. attorney Youssef Awad - Egypt.
- Fawziyah Bouzeytoun - Director of l'Association Hasnouna de Soutien aux Usagers de Drogues - Morocco.

We will display the results we received from the five countries (Jordan, Tunisia, Lebanon, Egypt, Morocco) as follows:

## 1. CRIMINALIZATION OF DRUG USE IN LAW

The Jordanian legislator organized the rules related to narcotic drugs in a special law. The law on drugs and psychotropic substances No. (23 of 2016), which is currently applicable, is the reference to apply on such similar cases. By exploring the legal texts in question, we reached a set of alternatives and rights granted to these categories whereas article 9 was dedicated to the provisions on the use and possession of drugs for purposes of abuse where it stipulated the following:

a. “ Anyone who uses, smuggles, imports, produces, manufactures, possesses, acquires, purchases, or cultivates any of the narcotic and psychotropic substances, or cosmetics or plants that produce narcotic substances for the purpose of their use shall be liable to a term of imprisonment of no less than one year and no more than three years and a fine of no less than one thousand Dinars and no more than three thousand Dinars without considering the act as criminal precedent or security record against its first-time perpetrator”.

It should be noted from the text that the Jordanian legislator provided the first-time drug user the opportunity to reverse this behavior by not considering it a criminal precedent as an opportunity to amend the behavior. This constitutes one of the procedures intended to reform society. The legislator also restricted the powers of the Public Prosecutor’s Office to institute legal proceedings of public right in such behaviors in case the person came forth prior to being arrested, on their own or was brought forth by one of their relatives, to the specialized centers affiliated with any official authority, to the Anti-Narcotics Department or to any security center requesting treatment, hence they shall be secretly referred to treatment without trial.

## 2. PROCEDURES UPON ARRESTING PWUD

With reference to the provisions of article IX, paragraph C., the Jordanian legislator has granted the court discretionary powers and authority, as it deems appropriate, for the status of the perpetrator (person who use drugs for purpose of abuse) to take alternative measures to replace the sanction decided in the judgment, which orders to be placed in one of the specialized treatment centers for a period decided by an accredited committee, or to be treated in clinics specialized in treating PWUD according to programs set by specialized doctors, provided that complete confidentiality of the people’s identity or facts related to them are respected in all cases under penalty of legal accountability.

Drug use in Jordan is criminalized according to the Jordanian Law on Narcotic Drugs and Psychotropic Substances. Therefore, in case a person is caught using drugs, they shall be arrested, the stipulated procedures are taken against them and are prosecuted as per the provisions of the Criminal Procedure Code, knowing that the court has discretionary powers to refer the person who uses drugs to treatment



in specialized centers. But in reality, and practically, most cases are detained in correction and rehabilitation centers to serve the sanction period decided. In this case, the sentenced person will not receive the treatment necessary for them, with the possibility of using drugs, since the correction and rehabilitation centers can constitute a fostering environment to use drugs, or they could become criminals since they are not separated from the other inmates and will therefore be under the influence of people who might be dangerous<sup>(1)</sup>.

### 3. RIGHTS AND VIOLATIONS

The guarantees of fair trial lie in the right to confront opponents and equality between them. These principles are established in the various legal systems. The rights and trial procedures that apply on PWUD also apply on all detainees and the procedures stipulated in the criminal procedure code are applied to them. The texts of the law on correction and rehabilitation centers No. IX of 2004 guarantee the rights of PWUD, which can be shown as follows:

- The use of force and violence against inmates is inadmissible except when necessary <sup>(2)</sup>.
- Guarantees to receive a fair trial.
- Inadmissibility of employing inmates unless the judicial judgment stipulates the it and unless it is intended for rehabilitation<sup>(3)</sup>.
- Inadmissibility of searching the houses without the permit of the public prosecutor or their deputy<sup>(4)</sup>.
- Classifying inmates according to age categories, type of crime and degree of seriousness and isolating each group<sup>(5)</sup>.
- Providing health and social care for inmates<sup>(6)</sup>.
- The right to contact the outside world, facilitate communication with parents and friends, to receive visitors, to appoint an attorney, and call and meet with them whenever their interest so requires<sup>(7)</sup>.
- Encouraging inmates to improve their behavior<sup>(8)</sup>.
- Inadmissibility of imposing sanctions without conducting the necessary investigations to confront the inmate and hear their statement and defense<sup>(9)</sup>.
- Respecting complete confidentiality in all information subject to legal accountability<sup>(10)</sup>.

The rights referred to above are the rights of every Jordanian citizen that is arrested and/or captured. They are rights guaranteed by the law. However, upon application and when the arrested person is a PWUD, there is a societal challenge against them and many times, these rights are violated in reality. Also, when PWUD are captured, sometimes illegal procedures are followed, in addition to legal violations in order to pressure them and force them to give certain information or admit the accusations attributed to them. The inspection mechanisms followed to arrest people do not respect human rights sometimes<sup>(11)</sup>.

Through the above guarantees and rights of people who use drugs in accordance with the legal practice that is against the law, these groups are subject to many legal violations and, in some cases, power abuse sometimes and they can be compiled in the following:

- Failure to resort to the option of treatment as an alternative to sanction and retention of imprisonment in correction and rehabilitation centers.
- Failure to separate the inmates who are arrested for using drugs from other people with serious crimes.
- Infringing the privacy and private life of PWUD for the purposes of obtaining additional information under pretense of reducing the judgment or improving treatment.
- These groups are subjected to “insult, battery and swearing”.
- Forcing to take a sample.
- Allocating 2 days per week to decide on the bail requests submitted by the arrested people, their agents or relatives.
- Post-sentence stage: they have few opportunities to get work opportunities.

Sanctions are imposed on people against whom a definitive judgment is pronounced to refer them to correction and rehabilitation centers after being arrested, in addition to the inclusion of fines to be collected by the competent implementation departments. It is also possible, during trial procedures, to take provisional measures such as banning from travel for 90 days starting after the judgment period is completed, while maintaining the security restriction against them and sometimes house arrest. All of this reduces their right to movement, restricts their freedom and reduces work opportunities due to not obtaining a non-sentence.

The method used in treatment is weaning and giving them pain killers. There is no specific national strategy and unified systemized methods of treatment. Treatment centers also do not provide rehabilitation programs to help them get back to normal life and engage in society after spending the treatment period; and the basis of the treatment stage should be confidential. This requires systematic cooperation between the State services and civil society organizations to increase awareness and gain community support, reduce community culture against PWUD and use treatment as an alternative for punishment so that people can have a new opportunity to engage in society<sup>(12)</sup>.



Establishing the National Anti-Narcotics Committee in 2016 was one of the most important positive steps stipulated by the law to draw the general policies to fight the prevalence of narcotic substances by suggesting amendments to the law on drugs and psychotropic substances and preparing the necessary systems to implement it. Establishing this committee was a very essential step to help spread legal and social awareness to the category of PWUD and protect them.

On the other hand, and despite the efforts of the State and civil society authorities, there is still no comprehensive treatment of this group until now. One of the existing gaps is that the State Security Court is the one competent to look into and decide on drug cases and it is a special court with its special law and privacy of dealing. This is one of the legal challenges in Jordan regarding drug cases<sup>(13)</sup>.

Pharmacies in Jordan played a major role in the prevalence of drugs, its misuse, addiction and prescription over the counter. They are being dealt with by reporting any suspected cases in this regard. There are medical centers in Amman that offer detoxication and drug abuse treatment services, one of which is affiliated with the Ministry of Health and the other with the General Security Directorate<sup>(14)</sup>.

(1) Personal interview on criminalizing drugs and the followed legal procedures, attorney Issa Al-Marazeeq, Director of Training Department in the National Center for Human Rights, Amman, Thursday 27-5-2021 at 6:00 PM.

(2) Law on reform and rehabilitation centers No. 9 of 2004, published in the official gazette, article 6.

(3) Law on reform and rehabilitation centers, article 8.

(4) Criminal procedure code, articles 36, 81

(5) Law on reform and rehabilitation centers, article 11.

(6) Law on reform and rehabilitation centers, articles 22 and 30.

(7) Law on reform and rehabilitation centers, article 13

(8) Law on reform and rehabilitation centers, article 34.

(9) Law on reform and rehabilitation centers, article 39.

(10) Law on drugs and psychotropic substances, article 9/e.

(11) Personal interview on the rights of drug users and the violations they encounter, Professor Abdallah Al-Hanatleh, Director of Forearms Center, Amman on Tuesday 25-5-2021 at 5:00 PM.

(12) Personal interview on the rights of drug users and the violations they encounter, Professor Abdallah Al-Hanatleh, previous reference

(13) Personal interview, Issa Al-Marazeeq, previous reference

(14) MENAHRA, evaluating the situation, responding to drug use and reducing its risks in the MENA region, report, Jordan, 2021, p. 68

# TUNISIA

## 1. CRIMINALIZATION OF DRUG USE IN LAW

The Drug Law in Tunisia imposes special provisions on PWUD according to law No. 52 of 1992 where chapter 4 imposed a sanction that stipulated:

“Anyone who consumes or holds for the purpose of personal consumption a plant or a narcotic substance in cases other than ones allowed by the law shall be punished by a prison sentence of one to five years and by a fine between one and three thousand Dinars and attempt is subject to punishment”.

The law restricted the powers of the judge to use their discretion to reduce the punishment, thus did not allow them to do so even if the circumstances and conditions thereof apply, since these crimes are exempt from reduction, as mentioned in chapter 4 of the provisions of chapter 53 of the penal journal No. 30 of 2017.

On the other hand, the Tunisian law deals with the health care of PWUD where chapter 18 allowed each person who uses drugs, prior to being discovered and referred to trial and for one time only, whether by themselves or through their peers, a parent, descendent or doctor, and before being prosecuted, to apply to follow a medical treatment to the concerned committee according to the provisions of the law, provided it is attached to a medical certificate. Chapter 20 also confirmed the restriction of instituting legal proceedings of public right against the person who uses drugs in case they request treatment.

Drug use in Tunisia is criminalized according to the public law in the Tunisian penal code journal. In the event where the person reports themselves automatically, they shall not be punished and shall be referred to treatment. However, Tunisia has a big challenge in this regard, which is the insufficient availability places for treatment. After the Tunisian revolution in 2011, all treatment centers were closed and there is currently one treatment center that has only 20 beds <sup>(15)</sup> .





## **2. PROCEDURES UPON ARRESTING PWUD**

Tunisian law allows the court to replace the penalty of imprisonment with the treatment of the sentenced person. Chapter 19 stipulates that the court may subject the sentenced person to treatment for a period to be determined by the competent physician. It also enables the sentenced person to pledge to take the necessary treatment under medical supervision in a public hospital, subject to strict confidentiality under penalty of legal accountability. In case they refuse treatment, the court shall force the convict to undergo treatment under the supervision of the Drug Addiction Committee; in the event where they leave the hospital or abstain from going without a decision from the competent committees, they shall bear the legal consequences and can be penally prosecuted for the crime attributed to them. In case PWUD are arrested, they shall be sent to the police station and kept there for 24 hours, renewable for one-time only, provided they appear before the investigation judge and the last stage would be to refer them to court until a prison sentence has been pronounced.

Carrying out and coercing a urine test is one of the most controversial matters in Tunisia, especially the absence of the right to refuse taking this test, where the court considers the person's refusal as proof that they committed the crime attributed to them. After many attempts and claims to amend this right, it was decided in 2016 by the Court of Cassation that the refusal to take the test is not a conviction proof but an earned and optional right for the person who is free to refuse or accept the same. In the event of refusal, the court shall look for other proofs to reach the truth and its relativity to its perpetrator (drug use). Upon referring people to prison, they are not offered treatment; on the contrary, they are mixed with other inmates, which leads to further exposure to drug use<sup>(16)</sup>.

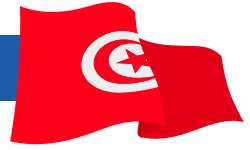
### 3. RIGHTS AND VIOLATIONS

Governments should tackle the damages caused by drugs and confront them decisively provided this action does not contradict the rights guaranteed by the law to the detainees, which should not be violated. The Constitution addresses a range of rights that can be granted to PWUD as mentioned in the Tunisian detention law No. 5 of 2016 and in law No. 52 on the prisons system in case they are arrested, some of which we depict as follows:

- The right to receive a fair trial and the right defense against opponents<sup>(17)</sup>.
- The right to choose and appoint an attorney to appear with them and not answer questions except in the presence of their attorney.
- Respecting the confidentiality of people who apply for treatment.
- The right to refuse taking the medical test (urine test)<sup>(18)</sup>.
- The right to a phone call with their parents and relatives and receive their visits<sup>(19)</sup>.
- Health, psychological, educational and social care<sup>(20)</sup>.
- Searching houses lie within the jurisdiction of the examining magistrate as per certain controls and they may authorize the delegation of judicial police officers

These rights are guaranteed by law and must be complied with and clarified to the person upon their arrest. However, if the arrested person uses drugs, these rights are not applied where prison detainees are subject to violations of the Tunisian Data Protection Act No. 25 of 2018, which are shown through actual reality of such types of crimes and can be limited to the following:

- “Verbal, physical and psychological assaults”.
- Abuse.
- “Threat of causing harm”.
- Violation of privacy through the person’s phone in order to find information.
- Searching their homes arbitrarily without a judicial warrant.



Application in Tunisia is still far from the law due to the lack of cultural and community awareness among police members and judges, where “stigma and discrimination” against PWUD in Tunisia limit their access to care and prevent them from obtaining their right to treatment. Despite the close percentage of drug use among men and women, women face “social stigma” more and this limits their chance to receive treatment and rehabilitation<sup>(21)</sup>.

The average age is 19 years for illicit drug use to begin, and the lack of studies on drug use in Tunisia makes it difficult to estimate the true extent of addiction, as well as the small number of detoxification facilities, which suffer from inadequate procedures to reduce the risk of drug use due to lack of funding<sup>(22)</sup>.

(15) Personal interview on criminalizing drugs and methods of dealing with users when arrested, Nada Riyahi, Director of the International Development Law Organization (IDLO) in Tunisia - Tuesday 25-5-2021 at 4:00 PM.

(16) Same previous reference.

(17) Tunisian constitution, rights section, chapter 27.

(18) Tunisian detention law No. 5 of 2016, chapter 13.

(19) Law No. 52 on the prison system, chapter 17.

(20) Law No. 52 on the prison system, chapter 1.

(21) Personal interview, Nada Riyahi, previous reference

(22) MENAHRA, evaluating the situation, responding to drug use and reducing its risks in the MENA region, report, Tunisia, 2021, p. 107- 108

# LEBANON

## 1. CRIMINALIZATION OF DRUG USE IN LAW

The Lebanese legislator was not far from criminalizing drugs for they stipulated texts on drug crimes, the last of which being law No. 673 on drugs and psychotropic substances, amended by law No. 318 in 2001. The latter dedicated a chapter to discuss crimes committed for the purpose of personal use or consumption where article 127 stipulated the following:

“Anyone who carries out the abovementioned acts for the purpose of personal use or consumption shall be punished by imprisonment between three months and three years and a fine between two million and five million Lebanese Lira. The same sanction will be inflicted on whoever their drug addiction is proven, and failed to comply with the treatment procedures stipulated in the law”.

Article 151 of the same law authorized the court to take precautionary measures in case of prosecuting and convicting the person who uses drugs by forcing them, in addition to the sanction, to undergo treatment, which is constituted of three treatment phases as stipulated in article 182. The “detoxication treatment” phase starts in specialized and approved center. Patients therein shall be under the guardianship of the general security forces. Then the convict will move to the “psychiatric treatment” phase that is held in approved and specialized sociopsychological clinics. The last phase will be complementary and subsequent to treatment aiming to help the person who uses drugs to return to normal life and rehabilitate them to integrate into society.

Article 183 allowed each person who uses drugs, prior to being prosecuted, to come forth to the Addiction Committee and request undergoing treatment measures provided their prosecution is terminated until treatment ends and they obtain a certificate proving their total recovery. In this regard, the law also authorizes the parents or a spouse to ask the Committee to admit the person who uses drugs to receive the necessary treatment.

## 2. PROCEDURES UPON ARRESTING PWUD

The arrest, investigation and litigation process of PWUD goes through consecutive stages since the moment of arrest until a definitive conviction of drug use is pronounced as per specific procedures in the law, which are as follows:

**1- Arresting PWUD:** Sometimes PWUD are arrested by police officers based on confirmed information with the security forces and/or based on suspicion due to the behaviors of the person or due to their external looks. After which, they are referred to investigation.

**2- Investigation:** Investigation lasts two to four days with an obligation to end it on the fourth day upon a request from the public prosecution. Therefore, investigation



is often contradictory to many rights for the purposes of rushing to close the file and it is referred to the competent court.

**3- Trial:** The person is sentenced to spend the sanction period in prison, which causes prison overcrowding.

By referring to the provisions of articles (193, 194, 195), we find that they authorized the public prosecution to give the detainee the choice of being prosecuted or being referred to treatment with the Addiction Committee. In the event where they agree, prosecution will be stopped until the treatment is finished. If the treatment is finished, all pursuits of the convict shall cease. However, if they stop the treatment, their trial will resume from where it stopped.

The right to treatment starts from the moment of arrest. But the real percentage of applying this right does not exceed 3 to 4 percent of the total detainees. There are many state officials, especially judges, who do not know that the law grants PWUD treatment and sometimes, there are individuals who refuse to refer people to treatment due to discrimination as they do not consider that this category has the right to receive treatment<sup>(23)</sup>.

Article 183 of the drugs law provides for procedures for stopping the prosecution of the PWUD in case they request treatment where the text stipulates:

“Prior to being prosecuted, every PWUD may come forth willingly before the Addiction Committee stipulated in article 199 of this law and request being subjected to the measures of physical and psychological treatment from addiction, as well as sign a pledge of the same where they shall have the right in this case to conceal their identity, except for the people bound by the confidentiality of the profession, and to stop their prosecution if they continued treatment and remained therein until they obtain a certificate proving their complete recovery from addiction and physical accustoming and their riddance of the psychological dependence on addiction”.

The law also gave the public prosecution the power to authorize the referral of the file to the Addiction Committee to carry out the necessary actions. But the practical effect of these powers is not applied. The Addiction Committee is the authority responsible for the treatment of people and decides the period of the person's treatment and admits them to a specialized treatment centers until the end of the treatment period. The Committee then sends a detailed report of the person's condition after confirming their treatment is finished and communicates with the judge responsible for the person's file; the file would then be closed. In this case, the person is given an opportunity to start a new life because they did not go to jail and no charge was registered against them; Therefore, they receive a specialized treatment to qualify them to return to society<sup>(24)</sup>.

### 3. RIGHTS AND VIOLATIONS

The Lebanese law followed a stringent policy in fighting drugs and forced all officials to take all necessary measures to fight drugs within the boundaries of the law and without trespassing on the rights of PWUD in order to guarantee their recovery. These rights are shown in the texts in the criminal procedure code and the Lebanese drugs law, which are the following:

- The right to receive a fair trial <sup>(25)</sup>
- Inadmissibility of house search without judicial warrant.
- The right to appoint an attorney.
- The right to be treated with dignity and respect.
- The right to remain silent.
- The right to call their parents<sup>(26)</sup>.
- Keeping the person's information confidential.
- The Lebanese Ministry of Health issued on August 23, 2019 the memorandum No. 76 to hospitals requesting them to abstain from informing the security forces of the overdose cases and the necessity to respect the rights of PWUD in receiving healthcare while respecting their privacy. On August 30, 2019, the circular No. 19279 was issued by the Ministry of Interior and Municipalities, addressed to the MOH and subsequent to the previously mentioned circular as a response, and it confirmed the content thereof and the necessity to apply the text of article 183 of the drugs, psychotropic substances and precursors law, which content states not to report addiction and overdose cases in order to preserve the rights of the patient to healthcare and treatment.

It is shown from the above that the law protects PWUD where section II of the Lebanese drugs law highlights the right to treatment. But what happens in reality is contrary to that, because security authorities only focus on closing the file and reaching other people (PWUD, dealers and merchants). To reach such information, many rights are violated. Some of these violations can show the following:

- Forcing people to take the urine test, thus violating the law of patients' rights and informed consent No. 574.
- Extracting evidence from the people by hacking their phones, which is a violation of the Lebanese surveillance law No. 140<sup>(27)</sup>.
- Extracting confession from the people by beating them.
- Failure to separate PWUD from other prisoners and detaining them in bad circumstances.



Real change and fighting violations start from the State institutions through legal and cultural awareness to promote the application of the principle of treatment instead of punishment, whereas the “discrimination and marginalization” of this category burdens the judicial and community system, as well as PWUD. It is worth mentioning that it is necessary to activate the role of the Committee to guarantee the right access to treatment and reduce the use of drugs and repetition of the behavior<sup>(28)</sup>.

According to statistics of the previous years, 390 people have had overdoses, while 1712 cases were registered for OST and 5952 people suffering from drug-related issues were admitted in 10 treatment centers, which resulted in a decrease in the number of PWUD and increase in the percentage of those treated. This is attributed to the expansion of OST usage in the Lebanese society and the increase in awareness of the necessity to resort to treatment as an alternative for punishment. A group of services that handles detoxication and rehabilitation were provided through shelters, specialized centers, clinics and public and private hospitals, while improving psychological and social support for these categories<sup>(29)</sup>.

(23) Personal interview on criminalizing drugs, legal activist, Sandy Mtayrek, expert in drug policies, Lebanon, Tuesday 25-5-2021 at 10:30 AM.

(24) Personal interview on the procedures followed against PWUD, Michelle Wazen, Director of Policies Division in Skoun, Lebanon, Thursday 27-5-2021 at 5:00 PM.

(25) Criminal procedure code, article 108

(26) Criminal procedure code No. 328 of 2001, article 47

(27) Personal interview, Sandy Mtayrek, previous reference

(28) Personal interview, Michelle Wazen, previous reference

(29) MENAHRA, evaluating the situation and responding to drug use and reducing its risks in the MENA region, report, Lebanon, 2021, p. 74 and 78

# EGYPT

## 1. CRIMINALIZATION OF DRUG USE IN LAW

The law No. 182 of 1960, amended in 1989, which is a law that fights drugs and organizes their use and trade, imposes a sanction on anyone who possesses, acquires, purchases, produces, extracts, separates or manufactures a narcotic drug, or cultivates, possesses or possesses a prohibited plant, for the purpose of personal abuse or use in cases other than those authorized by the law. The legislator made a distinction between dealing, bringing, cultivating and abusing and, in some cases, increased the sanction to reach the death penalty. Regarding abuse, article 37 stipulated that “anyone who possesses, carries out, buys, produces, extracts, separates or manufactures a drug essence, or plants one of the weeds mentioned in schedule (5) or possessed or bought the same for the purpose of personal abuse or use in cases other than those authorized by the law shall be punished with temporary hard labor and a fine between ten thousand and fifty thousand Egyptian Pounds<sup>(30)</sup>.”

Paragraph 1 of the same article also authorizes the court to order the execution of sentences imposed in special prisons established for convicts in places where they are assigned to penal institutions. The court may also, upon pronouncing the judgment, order to admit the proven PWUD into a specialized sanitarium, as an alternative to executing the sanction, and to treat them “medically, psychologically and socially”, provided the period of the convict at the sanitarium is no less than six months and no more than three years or the length of the pronounced sanction, whichever is less.

Legal proceedings may be instituted by a request submitted by the spouse, a parent or a descendant requesting the treatment of the PWUD in one of the sanitariums, provided the Committee decides on the request after hearing the concerned person. In the event where they agree on receiving treatment, the Committee shall compel them to attend the treatment center, a fact stipulated in article 37 bis 4 of the anti-drug law No. 182.

Article 37 bis 2 prohibited the filing of the public right lawsuit on whoever approaches the Committee, willingly, requesting to be treated under the supervision of the sanitariums stipulated in the law, provided they remain under treatment in the sanitariums or in the treatment centers for the purposes of receiving medical treatment until the Committee decides otherwise.





## 2. PROCEDURES UPON ARRESTING PWUD

Referring to the applied procedures in prosecuting PWUD, it was shown that the Egyptian law considers drug use as a felony, and one of the most serious cases. In the event where PWUD are arrested, the judicial police officers shall make a record of the arrest and cease the quantity of drugs to specify the type of substance and to determine if the person uses drugs for the purpose of abuse or not. After confirming the information and providing the required documents and papers, investigation with the accused shall be held and the law compels the person to appoint an attorney in order for the trial to be legal and based on that, sanction shall be pronounced.

However, if the detainee is a first-time perpetrator of this crime, they shall be acquitted and admitted into the treatment centers to spend their treatment period without registering any security entry in their criminal record. However, if the act is repeated, legal procedures against them shall be taken and they shall be referred to competent court and arrested as per the provisions decided in the law<sup>(31)</sup>.



### 3. RIGHTS AND VIOLATIONS

The legal system in Egypt compelled taking all measures possible to prevent illegal use as well as reintegrate and rehabilitate PWUD according to a fair structure. Therefore, all detainees and convicts are subject to rights imposed according to a text in the constitution and the criminal procedure code No. 95 of 2003, the drug law No. 182 and the prison organization law where the detainee is given the rights listed below. It is worth mentioning here that the presence of the attorney constitutes a guarantee for the PWUD as well as a protection for them and their rights to avoid any violations. The detainee can report any violations to their attorney so that the latter takes the necessary actions. Below are the rights that can be granted to PWUD:

- The right to appoint an attorney from the prosecution or the court at the State's expense without the person bearing any material fees - as one of the guarantees of the defense rights - (article 124).
- The right to meet the attorney in private (article 39 of the prison organization law)
- The right to open and transparent procedures (articles 268-294).
- The right to a fair and just trial where their right to self-defense is guaranteed (article 96 of the constitution)
- The right to confidentiality of information of the person who uses drugs and disclosure of information is punishable (article 37 bis 4 of the drugs law).
- The right to health, social and cultural care (chapters 6 and 7 of the prison organization law No. 396).
- The right to communicate, make phone calls and receive visits under the control and supervision of the Prison Administration (article 38 of the prison organization law).
- Inadmissibility of house search without warrant in cases other than those specified by the law.

The Drug Control Fund provides all services to people who wish to receive treatment, in addition to health, psychological, social and sports services during the treatment period. After completing the treatment period, material support (loans) is provided to start their own projects and to encourage them to quit drugs. It is worth mentioning that the Drug Control Fund announced that the average of addiction reached nearly 10% of the population and that these percentages are very high compared to the remaining countries<sup>(32)</sup>.



Drug crimes were bound to a legal system that protects PWUD and focuses on treatment as an alternative to sanction. However, reality refers to a set of legal violations that can be summarized as follows:

- Forcing the person to take the medical test upon suspicion to know their medical history since PWUD are among the most vulnerable categories to communicable diseases, including HIV or HBV.
- Being sentenced to prison without being referred to the necessary medical treatment.
- Failure to separate inmates according to the type of crimes committed, which leads to inmates mixing, which might lead to increasing the chance of keep using drugs inside the prison.

There is no information in Egypt about the percentage of prevalence of PWUD or their numbers. But according to a report issued by the Egyptian MOH in 2014, there are 93,314 men who inject drugs aged between 18 and 59 years old. According to UNAIDS, no change has occurred in drug use reduction since 2019 while confirming the necessity to put a strategy to identify PWUD as the most vulnerable category to HIV and their treatment through detoxication as the most common drug treatment in Egypt with the availability of residential places necessary to provide total treatment and rehabilitation<sup>(33)</sup>.

(30) Anti-drug law No. 182 of 1960, amended by law No. 122 of 1989, article 37/2

(31) Personal interview on dealing with PWUD, attorney Dr. Youssef Awad, Egypt, Thursday 27-5-2021 at 12 PM.

(32) Same previous reference.

(33) MENAHRA, evaluating the situation and responding to drug use and reducing its risks in the MENA region, report, Egypt, 2021, p. 60 -61

# MOROCCO

## 1. CRIMINALIZATION OF DRUG USE IN LAW

The increased risk of drug use was the point of interest of the legal systems where they worked to tighten the punishment on the perpetrators of drug related crimes. Therefore, the Moroccan legislator protected themselves from this phenomenon as a precaution for its risk and destructive impact on the community so they issued laws and regulations that govern the works of cultivating, dealing and abusing drugs and inflict the preventive sanction upon their users:

“Anyone who illegally used a substance or weed considered a narcotic drugs shall be punished with imprisonment from two months to one year and a fine between 500 and 5000 Dirhams or one of two sanctions only”. Just like the remaining laws, the Moroccan law stipulated that no criminal prosecution will be valid in case the crime perpetrator (PWUD) agreed, after taking the medical test, to resort to the concerned authorities, whether treatment institutions or special sanitarium to receive treatment during the necessary period for their recovery, provided this is done upon the order of the King's deputy. The legislator considered the principle of treatment instead of punishment, which eventually aims to treating the PWUD and integrating them into society after rehabilitation<sup>(34)</sup>, provided the addendum accessory penalty is represented by expulsion from government jobs or prevention from practicing political rights according to the (criminal code set, chapter 42), provided the court has discretionary powers therein and as required.

What is meant here is the personal use and consumption through all methods such as injection, inhaling, smoking or swallowing. The Moroccan legislator identified the crime through chapter 110 of the criminal code as “every act or abstention contrary to the criminal code and punishable thereupon”. It is worth mentioning that the Moroccan legislator was not satisfied with only the three pillars of crime, material pillar, moral pillar and legal pillar, they also added the drug pillar as a special pillar for drug crimes..

## 2. PROCEDURES UPON ARRESTING PWUD

Due to the nature of drug crimes and their risk on society, the legislator in Morocco set special procedural rules that distinguish it from the remaining crimes in a balanced manner between punishment and treatment. Prosecuting PWUD will be made through a preparatory investigation stage, respecting the rules of human rights and privacy of the human being and not trespassing on their private life, and the prosecution stage after filing the lawsuit. Police officers may place the person under custody for 48 hours from the time of arrest, and may be extended once for 24 hours<sup>(35)</sup>, after informing the concerned person of the justifications of their arrest and their rights.



It must be noted that, after the approval of the PWUD to undergo treatment, they shall be tested every 15 days by an expert doctor appointed by the King's deputy. This doctor shall alone be qualified to issue the statement of recovery. Criminal prosecution shall be carried out if the person commits the offence of using or promoting drugs during the three years following their recovery. If an investigation is open, the investigation judge may, after consulting with the King's deputy, order to carry out treatment for the concerned as per the decided conditions. Executing the prescription ordered about said treatment shall continue, when necessary, after concluding the investigation procedures. If the person ordered to take the treatment evaded executing this procedure, sanctions decided in chapter (320 of the criminal law) shall apply thereon, in addition to the requisites of (chapter 80 of the criminal law) in the event where the case is referred to the jury.

We conclude from the law that:

- The legislator does not distinguish between the illness of addiction and “mental illness” considering that drugs are narcotics and psychotropic substances.
- A 15-day period is not enough considering that addiction is a chronic illness.
- The Moroccan legislator links between the act of addiction and other crimes. The addiction act is a status where the person is a perpetrator of another crime and it is not about the act of addiction alone.

Treating PWUD has developed greatly in Morocco where 16 health centers were established to treat addiction by an initiative from Mohammed V Foundation for Solidarity and in partnership with the Ministry of Interior, Ministry of Health and civil society associations. Therefore, a big number is now receiving treatment inside these centers. However, the texts of law still did not yet accommodate the developments of the addiction development, which requires a review and amendment to these laws. In addition to the development in health policy procedures in Morocco in the field of treating PWUD, action plans and subject-related evidence were developed. There is also coordination between these centers; however, such coordination is weak between the Ministries of Justice and Health in the field of drug treatment, which requires reviewing the criminal policy regarding drug use.

### 3. RIGHTS AND VIOLATIONS

On the other hand, the Moroccan legislator acknowledges that drug use is a disease that requires treatment through admission to specialized centers and as per the sanction specified by the court and decided in chapter 8 or through referral to treatment. It is very rare that treatment as an alternative to sanction is activated whereas such right is guaranteed to the public prosecution only. Thanks to the partnership between the General Delegation of the Penitentiaries and Reinsertion Administration and the Ministry of Health, in some cases, prisoners who use heroin are subjected to treatment inside prisons through OST (such as methadone).

According to the provisions of the State constitution, the public institutions and the territorial collectivities, available means should be provided to facilitate the reasons of benefiting equally from the rights guaranteed under the constitution<sup>(36)</sup> such as: the right to treatment and healthcare. Morocco has enacted a group of rights and agreed on and authenticated international agreements on human rights, which do not contradict with the provisions of the laws, including:

- The right to health.
- The right to receive a fair trial .
- The right to equality before the law.
- The right to equality of rights and non-discrimination.
- The right not to be tortured, or be subject to cruel or inhumane beating.
- The right to obtain information .
- Protecting the confidentiality of personal data and the right to privacy (chapter 446 of the Moroccan criminal law).
- The right of every accused to appoint an attorney to defend them. In case they cannot, the court shall appoint one.
- Inadmissibility of house search without written warrant in cases other than those specified by the law.

However, according to the real application, these guarantees are often violated since the police and the judges practice assault and abuse of power towards PWUD. The judge is the only person capable of giving the final decision and if they are not well aware, it is quite possible not to refer the person to receive treatment. Therefore, we mention some violations that PWUD suffer from during judicial prosecution:

- Failure to resort to treatment as an alternative to prison sentence.
- Failure to appoint an attorney.
- Dealing with PWUD with violence like criminals.
- Forcing to take the urine test without asking for consent.
- Depriving PWUD from phones, thus, if a violation occurs, the person will not know and the matter will only be known to the authorities.
- Using the facts submitted by the policemen without considering any other evidence.
- Not separating PWUD from the remaining prisoners and according to the type of crimes.



Awareness campaigns had the biggest impact in achieving awareness among authority individuals regarding PWUD and in changing the method of treating them, respecting their human rights, dealing with them as patients and guiding them towards a specialized hospital suitable for treatment and giving them a soothing dose of medicines, which is the Opioid Substitution Treatment such as methadone, provided the center available for this treatment is contacted. In addition, the treatment appropriate for PWUD is provided inside the prison (these efforts were achieved recently through civil society organizations (CSOs)). It is important to note that there is a restoration of reputation document (good conduct) - currently there are several institutions such as “Mohammed VI Foundation for Prisoners Reinsertion” that offer help to guarantee the reinsertion of people into society so that they are able to find work after rehabilitation and restore their reputation<sup>(39)</sup>.

Statistics in Morocco indicated an increase in the percentage of smokers, as well as cannabis, psychotropic substances and cocaine users, and non-medical use of sedatives among the youth, as a result of friends and parents' influence, in addition to easily obtaining drugs, with an average of 4% to 5% of the total number of drug users, i.e., nearly 800 thousand users among youth, 30500 of whom use drugs by injection with an average age of 33.2 years old. The Global Fund is the biggest donor to support programs aiming at reducing drug use in Morocco, where it developed a strategic action plan to fight and confront drugs. Morocco has achieved satisfying results in reducing drug harm by setting comprehensive principles for drug treatment and rehabilitation and by establishing many residential centers and clinics specialized in treating drugs and developing the physical, career and social situation of the patient<sup>(40)</sup>.

(34) Moroccan Dahir (King's decree) as law No. 1.73.282 dated (May 21, 1974) regarding “suppressing” addiction on poisonous drugs and protecting addicts of such substances, chapter 8

(35) Criminal procedure law No. 23.5, December 2005, article 80

(36) Personal interview on procedures to deal with drug users, Fawziyah Bouzeytoun, Director of l'Association Hasnouna de Soutien aux Usagers de Drogues, Morocco, Thursday 27-5-2021 at 4:00 PM

(37) Moroccan Kingdom constitution of 2011, chapter 120

(38) Moroccan Kingdom constitution of 2011, section 2 of the rights and freedoms, chapters 20-27

(39) Personal interview, Fawziyah Bouzeytoun, previous reference.

(40) MENAHRA, evaluating the situation and responding to drug use and reducing its risks in the MENA region, report, Morocco, 2021, p. 83-86.

## ANNEX SHOWING THE RIGHTS GUARANTEED BY THE LEGISLATIONS OF EVERY COUNTRY APART

### Rights

### Legal deed



**Jordan**

The use of force and violence against inmates is inadmissible except when necessary.	Law on reform and rehabilitation centers No. 9 of 2004, published in the official gazette, article 6.
Guarantees to receive a fair trial.	Criminal procedure code
Inadmissibility of employing inmates unless the judicial judgment stipulates the same except if it is intended for rehabilitation	Law on reform and rehabilitation centers, article 8.
Inadmissibility of searching females except by female police members	Law on reform and rehabilitation centers, article 10.
Inadmissibility of house search without the public prosecutor or their representative in cases other than those stipulated in the law	Criminal procedure code, article 81 ,36
Classifying inmates according to age categories, type of crime and degree of seriousness and isolating each group .	Law on reform correction and rehabilitation centers, article 11.
Providing health and social care for inmates	Law on reform correction and rehabilitation centers, articles 22 and 30.
Their right to contact the outside world, facilitate communication with parents and friends and receive visitors, appoint an attorney and call and meet with them whenever their interest requires so	Law on reform correction and rehabilitation centers, article 13
Encouraging inmates to improve their behavior	Law on reform correction and rehabilitation centers, article 34.
Inadmissibility of imposing behavioral sanctions without conducting the necessary investigations to confront the inmate and hear their sayings statement and defense	Law on reform correction and rehabilitation centers, article 39.
Respecting complete confidentiality in all information under penalty of legal accountability	Law on drugs and psychotropic substances, article 9/e.



## Rights

## Legal deed



**Tunisia**

The right to receive a fair trial and the right to defended against opponents.	Tunisian constitution, chapter 27
The right to choose and appoint an attorney to appear with them and not answer questions except in the presence of their attorney.	Tunisian detention law, chapter 13
Respecting the confidentiality of people who apply forenroll in treatment	Law No. 52 on drugs of 1992, chapter 19
The right to refuse taking the medical test (urine test).	Tunisian detention law, chapter 13
The right to a phone call with their parents and relatives and receiving their visit	Law No. 52 on prison regulation, chapter 17
The right to health, psychological, educational and social care	Law No. 52 on prison regulation, chapter 1
Inadmissibility of house search without permission from the examining magistrate according to specific constraints	Penal code journal, chapters 94 and 95



**Lebanon**

The right to appoint an attorney	Criminal procedure code, article 47
The right to receive a fair trial	Criminal procedure code, article 108
Inadmissibility of house search without judicial warrant	Criminal procedure code, article 47
Their right to be treated with dignity & respect	Criminal procedure code, article 47
Preserving the confidentiality of with the person's information	Drugs law, article 199
Their right to remain silent	Criminal procedure code, article 47
Their right to call their parents	Criminal procedure code, article 47
The Lebanese Ministry of Health issued on August 2019 ,23 the memorandum No. 76 to hospitals requesting them to abstain from informing the security forces of the overdose cases and the necessity to respect the rights of PWUD in receiving healthcare while respecting their privacy. On August 2019 ,30, the circular No. 19279 was issued by the Ministry of Interior and Municipalities, addressed to the MOH and subsequent to the previously mentioned circular as a response, and it confirmed the content thereof and the necessity to apply the text of article 183 of the drugs, psychotropic substances and precursors law, which content states not to report addiction and overdose cases in order to preserve the rights of the patient to healthcare and treatment.	Memorandum No. 76

## Rights

## Legal deed



**Egypt**

The attorney shall be appointed from the prosecution or the court at the State's expense without the person bearing any material fees - as one of the defense rights guarantees -	Criminal procedure code No. 95 of 2003, article 124
Meeting the attorney privately	Prison organization law 2003, article 39
The right to open and transparent procedures	Criminal procedure code, articles 294-268
The right to a fair and just trial where self-defense right is guaranteed	Constitution of the Republic of Egypt of 2014, article 96
All information related to the drug users shall be confidential and divulgence thereof shall be punished	Drugs law, article 37 bis 4
Inadmissibility of house search without warrant in cases other than those specified by the law	Constitution of the Republic of Egypt of 2014, article 60
Health, social and cultural care	Prison organization law No. 396, chapters 6 and 7
The right to communicate, make phone calls and receive visits under the control and supervision of the Department of Prison	Prison organization law, article 38



**Morocco**

The right to health	Chapter 31 of the Moroccan constitution, chapter 31
The right to receive a fair trial	Moroccan constitution, chapter 120
The right to equality before the law	Moroccan constitution, chapter 6
Equality of rights and non-discrimination	Moroccan constitution, chapter 19
The right not to be tortured, or being subject to cruel or inhumane beating	Moroccan constitution, chapter 22
The right to obtain the information	Moroccan constitution, chapter 27
Protecting the confidentiality of personal data and the right to privacy	Moroccan criminal law, chapter 446
Inadmissibility of house search without written warrant in cases other than those specified by the law	Criminal procedure law of 2005, chapter 62
The right of every accused to appoint an attorney to defend them. In case they cannot, the court shall appoint one	Criminal procedure law No. 23.5 of December 2005, chapter 134

According to the above and regardless of the formalities of the litigation procedures, the guaranteed and common rights under all legal systems for the countries subject of the research (Jordan - Tunisia - Lebanon - Egypt - Morocco) are summarized without distinction as follows:

- **Fair trial guarantees**
- **Maintaining confidentiality of information of PWUD**
- **The right to appoint an attorney**
- **The right to communicate with parents and receive visits**
- **The right for respect and not being subject to torture and insult**
- **The right to receive health, social and psychological care**
- **Inadmissibility of house search without warrant in cases other than those specified by the law**

## **CONCLUSION**

PWUD are people who have rights and such rights may not be violated in any way. However, in reality, we find practices that violate the rights of PWUD without any justification or legal ground.

In conclusion, this report discussed the rights of PWUD in a number of Arab countries that criminalize these behaviors under laws issued for this purpose and through the legal systems for each one thereof. It also discussed how applicable the texts of these systems are in reality as it showed many legal violations were committed against PWUD during criminal prosecution, without considering the fact that the person who uses drugs needs treatment and special care and not punishment.



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