

Submission from European Saudi Organization for you human rights to the mandate of the Working Group on Arbitrary Detention study on arbitrary detention relating to drug policies:

1. It is difficult, if not impossible, to completely assess the number and sentences of detainees in the Kingdom of Saudi Arabia. However, Saudi law maintains the death penalty for many drug-related crimes, which it prescribes the discretionary sentence of *ta'zir* under "Law of Combating Narcotics and psychotropic Substances".

According to Article 37: Any of the following acts shall be punished with death:

1. *Smuggling narcotic drugs or psychotropic substances.*
2. *Receive narcotic drugs or psychotropic substances from an escape route.*
3. *Bringing, importing, exporting, making, producing, converting, extracting, cultivating or receiving narcotic substances or psychotropic substances with the intention of promoting in other than the conditions authorized in this system.*
4. *Participate in agreement to commit any of the acts stipulated in the previous paragraphs.*
5. *Promoting narcotic drugs or psychotropic substances for the second time by selling, gifting, distributing, handing over, or transfer, provided a previous verdict is proven to convict him for promoting the first time.*
6. *Promotion for the first time, provided that he had previously been convicted of one of the acts stipulated in paragraphs 2,3,1,1 of this article.*

According to official statistics, from 2017 until the end of 2019, Saudi Arabia executed 202 people on drug charges, 154 of which were foreign migrant workers. Women detainees are still threatened with death while facing drug charges. During the year 2019, Saudi Arabia executed a Nigerian female for drug-related crimes.

Should the judiciary decide to not impose the death sentence, judges have the discretion to issue a prison sentence of up to 25 years in prison and a penalty that may also include corporal punishment.

Article 37 Third: He shall be punished with imprisonment for a period of no less than twenty-five years and flogging of no more than fifty lashes in each payment, and a fine of no less than one hundred and fifty thousand riyals.

2. Saudi Arabia continues to punish individuals accused of drug abuse crimes.

Article 41:

Whoever commits any of the criminal acts stipulated in Articles (thirty-seventh) and (thirty-eighth) of this system, with the intent to engage in or personal use in cases other than the authorized conditions, is punished with imprisonment for a period of no less than six months and not exceeding two years.

3. ESOHR has documented two drug-related cases in which there was a lack of justice in the trials (although understands, but has not been able to document, that justice is

wanting in many, if not all, drug-related investigations). The defendants were subjected to human rights violations from the moment of arrest, into the trial, and until and even past the verdict, including enforced disappearance, torture, and denial of access to a lawyer.

Jordanian citizen Hussein Abu Al-Khair confirmed to the judge that he was tortured. The judge refused to investigate. He submitted a complaint to the Saudi Human Rights Commission, but did not receive an answer. His family also filed a complaint with the UN Special Rapporteurs to request a retrial.

Egyptian citizen Muammar al-Qaddafi Mohammed Nagy al-Qanawy testified before the judge that he had been coerced into signing a confession, but the judge did not investigate. In addition, al-Qaddafi told the official Saudi Human Rights Commission that he did not know what happened and that he was forced to confess, but they considered that merely signing the confessions is an admission of the crime. He was executed in January 2020.

Allegations of violations have not been investigated by formal judicial bodies or formal human rights bodies which claim to be responsible for ensuring the fairness of the trials.

4. ESOHR research indicates that political detainees are being held with drug offenders.

In cases documented by ESOHR, detainees were denied access to a lawyer. The al-Qaddafi family also indicated that they tried to appoint a lawyer for him, but they were unable to do so because of the high cost.

Saudi law according to Article 60:

To a court - and for substantial reasons, or if it appears to it from the convict's morals, past, age, personal circumstances, circumstances in which the crime was committed, or other reason that leads to the belief that the accused will not return to violating the provisions of this system - waiving the minimum prison sentence Provided for in Articles (thirty-seven), (thirty-eighth), (thirty-ninth), (forty) and (forty-first) of this system. The court may also suspend the sentence of the prison sentence imposed in accordance with Article 48 of this system for the same reasons.

However, tracking of ESOHR indicates that the Saudi judiciary in most cases carries the maximum punishment.

5. ESOHR has documented Saudi Arabia's use of torture and other cruel treatment of detainees in general in Saudi Arabia, including those arrested on drug charges. In the case of Hussein Abu al-Khair and Muammar al-Qaddafi, they were beaten upon arrest. They were also tortured during the investigation with the aim of extracting confessions. Hussein Abu Al-Khair was subjected to torture by the Narcotics Control Administration in Haql Governorate, where he was suspended from his feet with his head down, and was beaten on the stomach, head, feet, hands, and face. In addition to physical torture, Abu al-Khair was subjected to psychological torture and the degrading of his dignity. Under torture, Abu al-Khair admitted the charges against him, and he later explained in his defense to the judges that the charges against him were not true, so he was transferred to Tabuk prison, where he was held for months

without being brought to trial. Abu Al-Khair confirmed to the judge that he was tortured, but this has not been investigated.

6. The Saudi Ministry of Health operates hospitals under the name Dar Al Amal, which follows the Supervisory Guide to Psychological Services and Addiction Treatment - Ministry of Health. According to this guide, an addict should not remain in the hospital for more than six months, unless there is a need for that. Forces from the Ministry of Interior supervise specialized hospitals that are considered dangerous to themselves or others, under strict supervision.
7. In light of the lack of transparency in the dealings of the Saudi government, and the absence of civil society institutions, ESOHR and other NGOs cannot document the reality of dealing within the institutions concerned with treating addicts, and the way the Saudi government deals with them, and the extent to which this is in line with international standards.
8. Criminal courts are the ones that follow drug cases in Saudi Arabia, and there is no legal distinction between drug cases and other charges in terms of dealing with the accused or the charges.
9. The cases ESOHR documented confirmed the failure of Saudi employees at the border and inside the investigation centers to follow international laws, in terms of the use of force with the accused and not giving them their basic rights after arrest.
10. ESOHR's documentation shows that 76% of the individuals who have been executed in the last three years for drug-related offences are migrant workers, who in many cases are denied access to embassies or an interpreter. ESOHR has also documented the use of torture to extract confessions against them, despite fears that they were a tool for drug traffickers or fears that they are victims of human trafficking.

Nationalities executed in Saudi Arabia during these three years on drug charges include Pakistani, Yemeni, Egyptian, Syrian, Nigerian, Chadian, Afghan, Jordanian, Turkish, Lebanese, Palestinian, Jordanian.
11. Saudi law does not make specific mention of pregnant women, nor does it specify any special treatment for them, for drug-related offences.

As for the child, when asked by the Committee on the Rights of the Child in January 2006, members of the Saudi delegation said that children "who have drug problems" can be detained, "not as punishment, but rather for their rehabilitation." The practice of holding children in need of protection in closed centers with criminal detainees is a very flagrant violation of the principle that children deprived of their liberty must be

classified and separated according to their needs and protected from harmful influences.

The juvenile system or the anti-drug system does not indicate the ways in which the Saudi government deals with children who are addicted or accused of drug cases, which raises concerns about how to deal with these issues.

References

Guide to Psychological Services and Addiction Treatment - Ministry of Health

<https://www.moh.gov.sa/Ministry/Rules/Documents/a19.pdf>

Law of Combating Narcotics and psychotropic Substances”.

<https://laws.boe.gov.sa/BoeLaws/Laws/LawDetails/221b3286-a3c6-4ea4-97c7-a9a700f18273/2>

Saudi Arabia kills Egyptian citizen on minor charge after unfair trial, disregards family’s request to return the body

<https://www.esohr.org/en/?p=2706>

Four years after the UN confirmed heinous violations in his case: Saudi Arabia is close to beheading Jordanian prisoner, Hussein Abu al-Khair

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