

KUWAIT

**Submission to The Working Group for the Universal Periodic Review – Third cycle
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Reporting Organisations

1. Harm Reduction International (HRI) is a leading non-governmental organisation dedicated to reducing the negative health, social and legal impacts of drug use and drug policy. It promotes the rights of people who use drugs and their communities through research and advocacy to help achieve a world where drug policies and laws contribute to healthier, safer societies. The organisation is an NGO in Special Consultative Status with the Economic and Social Council of the United Nations.
2. The International Association of Lawyers (UIA) is a global and multi-cultural organisation for the legal profession. Established in 1927, it consists of members spread across 110 countries. It promotes professional development, learning and the Rule of Law while facilitating professional development, training as well as friendship, collegiality and networking among its members.

Introduction

3. HRI and UIA welcome the opportunity to report to the Working Group for the Universal Periodic Review on drug laws and policies in Kuwait and their impact on the enjoyment of human rights. In particular, this report will examine the right to health of people who use drugs, the death penalty for drug offences, the use of coerced confessions and due process violations for drug offences.

The right to health of people who use drugs

4. An estimated 3,510 people inject drugs in Kuwait.¹ Prevalence of HIV (0.77%) and HCV (12.28%) among this population are higher than those observed among the general population.² Injecting drug use is the main route of transmission for hepatitis C in Kuwait,³ with prison population and those in closed settings particularly at risk. Local media recently reported that 115 people died of drug overdoses in 2018,⁴ while research published in 2015 revealed that drug overdose was the third highest cause of accidental deaths in the country between 2003 and 2009.⁵
5. UN human rights and drug control bodies agree that people who use drugs retain their human rights, including their right to the highest attainable standard of health. Having ratified the International Covenant on Economic, Social, and Cultural Rights, Kuwait has binding legal obligations to respect, protect and take steps to fulfil the right to health of people who use drugs.

Harm reduction as a fundamental component of the right to health

6. The right to health as applied to drug policy includes access, on a voluntary basis, to harm reduction services, goods, facilities and information.⁶ Harm reduction services and interventions are life-saving, evidence-based, and cost effective. On this basis, the World Health Organization (WHO) recommends harm reduction as an essential part of a comprehensive package of interventions to prevent HIV.⁷ WHO also identifies harm reduction as one of the five core interventions necessary to achieve hepatitis C elimination by 2030.⁸

Essential harm reduction interventions include needle and syringe programmes (NSPs), opioid substitution therapy (OST) and opioid overdose prevention and management.⁹

7. There is currently no explicit supportive reference to harm reduction in any national policy in Kuwait. There is one known harm reduction service in the country, an one OST programme which commenced in 2015, and which provides buprenorphine. There are no needle and syringe programmes, no drug consumption rooms, no overdose prevention programmes and no provision of OST or NSP in prisons and other detention settings.¹⁰

Informed consent as a fundamental component of the right to health

8. The enjoyment of the right to health includes both freedoms and entitlements, including the “right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation”.¹¹ Moreover, article 7 of the International Covenant on Civil and Political Rights provides that “no one shall be subjected without his free consent to medical or scientific experimentation”. In other words, and as explained in the International Guidelines on Human Rights and Drug Policy, states should “ensure that voluntary, informed consent is a precondition for any medical treatment or preventive or diagnostic intervention, and that drug use or dependence alone are not grounds to deprive someone of the right to withhold consent.”¹²
9. In the national report submitted for its last UPR cycle in 2015, Kuwait outlined the “twin-track approach” to address the “problem of narcotic drugs” in the country.¹³ It was stated that alongside the punitive measures taken to deter traffickers, including increasing penalties for trafficking of psychotropic substances, it was also adopting educational and remedial measures. Among these measures was a designated hotline “for the receipt of addiction-related complaints and reports from families and employers.”¹⁴ Under this measure, “the Office of Public Prosecutions is notified so that the addict can be referred for treatment without being questioned by the police or judicial authorities and without any entry being made into their criminal record.”¹⁵ HRI is deeply concerned by the notification of prosecutorial officials whose duties conflict with a health-oriented approach to drugs, and about the seeming lack of voluntary, informed consent and privacy inherent in this scheme.
10. A recent media report quotes the Director General of the Anti-Drug General Department of Kuwait as saying that “[p]olice officers are following a new strategy, according to which all drug addicts are transferred to the ‘addiction centre’, and later to counselling centres so that they avoid relapsing.”¹⁶ Again, this statement suggests that these transfers are not based on voluntary, informed consent, in violation of the right to health.

The death penalty for drug offences

11. The death penalty for drug-related offences constitutes a violation of international law. Not only does it severely undermine human dignity, it is also a clear violation of the right to life. The UN Human Rights Committee has made clear that drug-related offences do not meet the threshold of “most serious crimes” under Article 6.2 of the International Covenant on Civil and Political Rights that defines the legal limits within which capital punishment may be allowed.¹⁷

12. Nevertheless, Kuwait is one of only 35 countries that currently retain the death penalty for drug offences in its domestic law.¹⁸ While no executions for drug offences have been reported in the past ten years, at least 19 individuals have been convicted for drug offences since 2010. A lack of transparency makes it impossible to determine whether or not these individuals are currently on death row, but according to Amnesty International, two individuals were sentenced to death for drugs in 2018.¹⁹
13. Several UN bodies have voiced concerns about Kuwait's use of the death penalty for drug offences. In their Concluding Observations in 2016, for example, both the Human Rights Committee and the Committee Against Torture expressed concern about the fact that Kuwait maintains the death penalty for offences that do not meet the threshold of the "most serious crimes" within the meaning of the International Covenant on Civil and Political Rights, including offences relating to drug-related crimes.²⁰
14. During its last UPR cycle in 2015, Kuwait rejected all 27 recommendations to abolish the death penalty or establish a moratorium on executions with a view to abolishing the death penalty.²¹ This was justified on the basis of Islamic Sharia law being the principal source of legislation in the country.²² The death penalty, however, is not compulsory under Sharia law and abolition would not be incompatible with Islam.²³ In relation to drug-related offences in particular, Sharia law is actually silent. Research by Penal Reform International demonstrates that laws relating to drug offences have been developed mostly on the basis of independent legal reasoning and juristic discretion.²⁴ Since the death penalty for drug-related offences has no grounding in the Quran, its use cannot be justified by Sharia law.²⁵

Coerced confessions

15. There have been worrying reports regarding the use of coerced confessions in Kuwait, particularly against people detained for drug-related offences. In 2016, the Committee Against Torture expressed concern about the police's consistent use of both physical and psychological torture to extract confessions, as well as ill-treatment in police stations and investigation centres, including the Drug Enforcement Administration.²⁶ According to a 2018 report on the human rights situation in Kuwait by the US Department of State, six foreign nationals held at the detention centre managed by the General Department of Drug Control reported cases of ill treatment during interrogation.²⁷ The detainees described "being bound by the hands and feet and suspended by a rope while an interrogator beat their legs and feet with a wooden stick to coerce confessions or encourage them to give up information".²⁸
16. The use of coerced confessions as evidence in judicial proceedings violates the prohibition of torture as well as the right to a fair trial, as specified in article 15 of the Convention Against Torture and article 14 of the International Covenant on Civil and Political Rights. Nevertheless, the Human Rights Committee has expressed concern that coerced confessions have been accepted as evidence in courts, even after signs of torture have been confirmed, while refusing requests from victims for independent medical examinations.²⁹ Concerns have also been raised about the absence of a specific programme to adequately compensate the victims of torture and ill-treatment.³⁰

Due process violations

17. In its 2018 World Report, Human Rights Watch revealed that due process violations were documented in Kuwait's criminal justice system making it difficult for defendants to get a fair trial, including in capital cases.³¹ Other reports confirm that people held on drug charges often fall victim to these violations. For example, the US Department of State reported that there were detainees, especially those held for drug crimes, who were held for periods of one to two weeks, who were not made aware of the specific charges against them, and were not allowed to make phone calls or contact lawyers and family members.³² The report goes on to explain that defendants in drug cases were usually held incommunicado for several days while their cases were under investigation.³³

Conclusions and recommendations

18. In light of the above findings, Harm Reduction International and the International Association of Lawyers call upon Member States to recommend that the government of Kuwait:

- a) Adopt a national strategy, adequately funded, aimed at providing essential harm reduction services throughout Kuwait, including in prisons and other places of detention, and involve local civil society in the development of this strategy;
- b) Clarify whether the measures taken to refer and transfer people who use drugs to drug treatment centres are carried out on a voluntary basis and with informed consent. If not, urgently review these measures to ensure that they are consistent with the International Guidelines on Human Rights and Drug Policy;
- c) Give due consideration to abolishing the death penalty and acceding to the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty. If the death penalty is maintained, take all measures necessary, including legislative action, to ensure that it is handed down only for the most serious crimes;
- d) Provide systematic, accurate and disaggregated data on the use of capital punishment in the country, including sentencing for drug-related crimes;
- e) Take steps to ensure that all detainees, including those held on drug-related charges, are protected from torture or other ill-treatment, including coerced confessions;
- f) By the next UPR cycle, develop a specific programme to implement the rights of victims of torture and ill-treatment to receive adequate compensation;
- g) Take measures to ensure fair trials, particularly in any proceeding that could entail the application of the death penalty, including by upholding the absolute prohibition on using coerced confessions as evidence in courts;
- h) Ensure that individuals convicted on the basis of coerced confessions that resulted from torture and ill-treatment are afforded a new and fair trial and adequate redress;

- i) Ensure that all legal proceedings comply with the guarantees of due process and procedural fairness, particularly in capital cases;
- j) Consider reviewing and repealing punitive laws criminalising, or otherwise prohibiting, drug use or the possession of drugs for personal use.

¹ Stone, K., and Shirley-Beavan, S. *The Global State of Harm Reduction 2018*. London: Harm Reduction International. 2018. <https://www.hri.global/files/2019/02/05/global-state-harm-reduction-2018.pdf>

² Altawalrah, H., Essa, S., Ezzikouri, S., Al-Nakib, W., "Hepatitis B virus, hepatitis C virus and human immunodeficiency virus infections among people who inject drugs in Kuwait: A cross-sectional study." *Scientific Reports*. 18 April 2019. <https://www.nature.com/articles/s41598-019-42810-w.pdf>

³ Stone, K., and Shirley-Beavan, S. *The Global State of Harm Reduction 2018*. London: Harm Reduction International. 2018. <https://www.hri.global/files/2019/02/05/global-state-harm-reduction-2018.pdf>

⁴ Kuwait Times. *Drug overdoses behind 115 deaths last year*. 6 March 2019. <https://news.kuwaittimes.net/website/drug-overdoses-behind-115-deaths-last-year/>

⁵ Al-Kandary, N., and Al-Waheeb, S., "Patterns of accidental deaths in Kuwait: a retrospective descriptive study from 2003-2009." *BMC Public Health*, 2015; 15: 302. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4392780/>

⁶ International Centre on Human Rights and Drug Policy, UNAIDS, WHO and UNDP, *International Guidelines on Human Rights and Drug Policy*, 2019, p. 8, <https://www.undp.org/content/undp/en/home/librarypage/hiv-aids/international-guidelines-on-human-rights-and-drug-policy.html>. See also: Hunt, P., 'Human rights, health, and harm reduction: States' amnesia and parallel universes', 11 May 2008, page 8, <https://www.hri.global/files/2010/06/16/HumanRightsHealthAndHarmReduction.pdf>.

Key human rights mechanisms have reiterated this principle, such as: Special Rapporteur on the right of everyone to the highest attainable standard of mental and physical health, Dainius Pūras, 'Open Letter in the context of the preparations for the UN General Assembly Special Session on the Drug Problem (UNGASS), which will take place in New York in April 2016' (7 December 2015).

⁷ WHO, Consolidated Guidelines on HIV prevention, diagnosis, treatment and care for key populations, 2016 update, <https://apps.who.int/iris/bitstream/handle/10665/246200/9789241511124-eng.pdf?sequence=1>

⁸ WHO, Consolidated Strategic Information Guidelines for Viral Hepatitis, Planning and Tracking Progress Towards Elimination, 2019. <https://apps.who.int/iris/bitstream/handle/10665/310912/9789241515191-eng.pdf?ua=1>

⁹ The "harm reduction comprehensive package" recommended in WHO guidelines includes: NSP; OST; anti-retroviral treatment; HIV, tuberculosis & hepatitis testing, counselling and treatment; condoms for people who inject drugs; targeted information; and vaccination against hepatitis B.

<https://apps.who.int/iris/bitstream/handle/10665/246200/9789241511124-eng.pdf?sequence=1>

¹⁰ Stone, K., and Shirley-Beavan, S., *The Global State of Harm Reduction 2018*. London: Harm Reduction International. 2018. <https://www.hri.global/files/2019/02/05/global-state-harm-reduction-2018.pdf>

¹¹ Committee on Economic, Social and Cultural Rights, General Comment 14: The right to the highest attainable standard of physical and mental health, 2000.

¹² International Centre on Human Rights and Drug Policy, UNAIDS, WHO and UNDP, *International Guidelines on Human Rights and Drug Policy*, 2019, p. 8, <https://www.undp.org/content/undp/en/home/librarypage/hiv-aids/international-guidelines-on-human-rights-and-drug-policy.html>.

¹³ Human Rights Committee, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21. UN Doc. A/HRC/WG.6/21/KWT/1. 3 November 2014, para 54.

¹⁴ *Ibid.*, para 55.

¹⁵ *Ibid.*

¹⁶ Kuwait Times. *Up to 20,000 drug addicts in Kuwait*. 19 March 2018. <https://news.kuwaittimes.net/website/up-to-20000-drug-addicts-in-kuwait/>

¹⁷ See, for example: UN Human Rights Committee, Concluding Observations: Thailand. UN Doc. CCPR/CO/84/THA, para 14. 8 July 2005; UN Human Rights Committee, Concluding Observations: Sudan. UN Doc. CCPR/C/SDN/CO/3, para. 19. 29 August 2007.

¹⁸ Girelli, G., *The Death Penalty for Drug Offences: Global Overview 2018*. London, Harm Reduction International, February 2019. https://www.hri.global/files/2019/02/22/HRI_DeathPenaltyReport_2019.pdf

¹⁹ Amnesty International, *Death Sentences and Executions 2018*. London: Amnesty International, 10 April 2019. <https://www.amnesty.org/download/Documents/ACT5098702019ENGLISH.PDF>

²⁰ Human Rights Committee, Concluding observations on the third periodic report of Kuwait, UN Doc. CCPR/C/KWT/CO/3, 11 August 2016, para 22(b); Committee Against Torture. Concluding observations on the third periodic report of Kuwait, UN Doc. CAT/C/KWT/CO/3, 5 September 2016, para. 26.

²¹ Report of the Working Group on the Universal Periodic Review: Kuwait. UN Doc. A/HRC/29/17. 13 April 2015. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/076/70/PDF/G1507670.pdf?OpenElement>

²² *Ibid.*, paras 157-121.

²³ Penal Reform International, *Sharia law and the death penalty. Would abolition of the death penalty be unfaithful to the message of Islam?* 2015. <https://cdn.penalreform.org/wp-content/uploads/2015/07/Sharia-law-and-the-death-penalty.pdf>

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ Committee Against Torture, Concluding observations on the third periodic report of Kuwait, UN Doc. CAT/C/KWT/CO/3, 5 September 2016.

²⁷ US Department of State, *2018 Country Reports on Human Rights Practices: Kuwait*.

<https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/kuwait/>

²⁸ *Ibid.*

²⁹ Committee Against Torture, Concluding observations on the third periodic report of Kuwait, UN Doc. CAT/C/KWT/CO/3, 5 September 2016.

³⁰ *Ibid.*, para 44.

³¹ Human Rights Watch. World Report 2018. Kuwait: Events of 2017. <https://www.hrw.org/world-report/2018/country-chapters/kuwait>

³² US Department of State, *2018 Country Reports on Human Rights Practices: Kuwait*.

<https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/kuwait/>

³³ *Ibid.*