

PSYCHIATRY AND ARAB LAWS

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ABSTRACT:

I reviewed the literature regarding available legislation applicable to mental health in 13 Arab countries. Academic literature in English had very little information. I relied heavily on the World Health Organization's publications. The websites of the Ministries of Health in the Arab world were searched for legislation texts in Arabic with variable success.

DISCLAIMER: In this article the term "Arab"-as in "Arab laws," "Arab countries" "Arab world", "Arab citizens," etcetera-is not intended to refer to ethnicity. It is used for the sake of narrative ease to refer to the laws, citizens, countries, etc. of the 22 member states of the Arab League; arranged alphabetically, they are: Algeria, Bahrain, Comoros, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Somalia , Sudan, Syria, Tunisia, United Arab Emirates (UAE), and Yemen. The term by no means was intended to disregard or disrespect the very significant ethnic groups that form an important part of the so-called "Arab world" such as Afars, Africans, Armenians, Assyrians, Balochs, Berbers (Amazighs, Chawis, Chenwa, Kabyles, Rifains, Saharan Berbers, Shleuhs, and Touareq), Chaldeans, Chechens, Copts, Kurds, Maronites, Persian, Somali, Turkmen, and others.

Table 1: Arab countries' 2007 population estimates. Countries were arranged according to population.

Arab Country	Population in Millions
Egypt	75.50
Sudan	38.56
Algeria	33.86
Morocco	31.22
Iraq	28.99
Saudi Arabia	24.74
Yemen	22.39
Syria	19.93
Tunis	10.33
Somalia	8.70
Libya	6.16
Jordan	5.92
United Arab Emirates (UAE)	4.38
Lebanon	4.10
Palestine (W. Bank and Gaza)	4.02
Mauritania	3.12
Kuwait	2.85
Oman	2.60
Qatar	0.84
Comoros	0.84
Djibouti	0.83
Bahrain	0.75
Total	330.63 million

Source: UN Population Division, 2006 revision¹.

Mental Health Law is important to ensure that individuals with mental illness or substance abuse or dependence are not subjected to human rights' abuses. The World Health Organization's Ten Basic Principles that Mental Health Laws should take into consideration.

1. Promotion of mental health (mental wellbeing) and prevention of mental disorders.
2. Access to quality basic mental health care that is affordable and respects the dignity of the person.
3. Mental health assessment according to internationally accepted principles.
4. Provision of the least restrictive type of mental health care/treatment.
5. Encouraging self-determination and informed consent.
6. Right to be assisted in the exercise of self-determination: even when a patient is unable to make decisions, he or she shall benefit from assistance of a knowledgeable third party of the patient's choice.
7. Availability of review procedure.
8. Automatic periodic review mechanism.
9. Qualified decision maker: third parties assisting with decisions shall be competent, knowledgeable, independent and impartial.
10. Respect for the rule of law⁽²⁾.

I attempted in this article to review some the available literature on the Arab legislation in Mental Health or related to mental illness, such as the issue of insanity in some Arab Penal Codes.

EGYPT:

The Egyptian system of law is based on a combination of Civil Law traditions and Islamic legal concepts. Islamic law is applicable primarily to Muslims in matters of family, personal status, and inheritance. Although non-Muslims are subject to Shari'a laws with respect to inheritance matters, they have been allowed to maintain separate legislation in all other matters. The lowest level courts are the Summary Tribunals (*Mahakim Guz'iyā*) and Summary Tribunals of First Instance (*Mahakim Kulliyā*), both of which are subdivided into civil and criminal courts. The Summary Tribunals are empowered to settle minor offenses and misdemeanors, civil and commercial cases of lesser value, minor personal status matters, and labor issues. The Tribunals of First Instance sit in three-judge panels to hear appeals from the Summary Tribunals, and, in the first instance, civil and commercial cases exceeding 250 Egyptian Pounds and all significant personal status matters⁽³⁾.

The last piece of mental health legislation was enacted in 1944, which focused on (A) access to mental health care including access to the least restrictive care; (B) competency, capacity, and guardianship issues for people with mental illness; (C) voluntary and involuntary treatment; (D) law enforcement and other judicial system issues for people with mental illness; (E) mechanisms to oversee involuntary admission and treatment practices; and (F) mechanisms to implement the provisions of mental health legislation⁽⁴⁾.

The Supreme Council for the Control of Drug Addiction and Abuse, chaired by the Prime Minister, is a leader in this direction. Legislation for drug control has been promulgated, such as the law on drugs passed by the People's Assembly (1989), the President's Decree establishing the National Fund for the Control of Drug Addiction and Abuse, the joint decisions of the ministers of justice, social affairs and health establishing sanatoria and departments for the treatment of drug abuse and addiction.

SUDAN:

Sudan has a Federal Ministry of Health in addition to 25 State Ministries of Health, one in each State. The Federal Ministry of Health is responsible for the development of national health policies, strategic plans, monitoring and evaluation of health systems activities. The State Ministries of Health are mainly responsible for policy implementation, detailed health programming and project formulation.

The most recent legislation is the State Law 'Gezira Mental Health Law' of 1998. The mental health legislation forms a chapter of the Public Health Act of 1973, which was revised in 1985. The Mental Health Act has been drafted and has gone to the parliament for approval. The latest legislation was enacted in 1998⁽⁵⁾.

ALGERIA:

Code of the Family (2003)

Art. 81 - Any person that is *completely or partly incompetent* due to his young age or *mental defect* is legally represented by a legal guardian or one designated by will, conforming to the dispositions of the current law.

Code of the Family (2005)

Art. 42 - The person who lacks the sense to discern due to his young age or *feebleness of spirit or mental defect* does not have the capacity to exercise his civil rights. Any child who has not attained the age of thirteen lacks the sense to discern.

Art. 43 - The person who has attained the age to discern, without having reached adulthood, as well as the person who has reached adulthood and suffers from mental defect, have limited capacity conforming to the prescriptions of the law⁽⁶⁾.

MOROCCO:

The principal law is the *Dahir* of 1959 which addresses the prevention of mental illnesses and protection of the patients. This is the latest mental health legislation. Though it is old, its articles are well formulated and were examined by WHO experts in 1998. Further reviews will be done in the future. The main aim of the legislation is to guarantee that the prime mission of mental institutions is treating the patients while protecting their rights and their property during their period of illness. This law also achieved the following: created the Central Service for Mental Health and Degenerative Diseases and the Mental Health Committee, organized mental institutions and other psychiatric services, specified different manners of patient admission and discharge, and outlined the modalities of protection of patients and their personal property. In addition, the 1974 "Circulaire" (Ministerial recommendations document), introduced regionalization and "deinstitutionalization". This was the start of a strategic policy to reduce number of beds in psychiatric hospitals, to create smaller units with fewer beds (20-40 beds) and to integrate mental health into general hospitals⁽⁷⁾.

IRAQ

A draft of mental health legislation was introduced in 2005, to the parliament, it was approved by the Cabinet, and the code of practice is on its way. This mental health act focuses on access to mental health care including access to the least restrictive care; rights of mental health service consumers, family members, and other care givers; competency, capacity, and guardianship issues for people with mental illness; voluntary and involuntary treatment; law enforcement and other judicial system issues for people with mental illness; mechanisms to oversee involuntary admission and treatment practices; mechanisms to implement the provisions of mental health legislation.

The mental health legislation was achieved with collaboration of ministry of justice and was reviewed by most psychiatrists in the country. A new legislation for drug control is still under review in the office of prime minister⁽⁸⁾.

Chapter 4, Section 1 of Iraq's 1969 penal Code entitled "Criminal liability and exemptions from it" reads "Loss of reason and volition: Paragraph 60 - Any person who, at the time of the commission of the offence, is suffering from a *loss of reason*

or volition due to insanity or infirmity of mind or because he [or she] is in a state of intoxication or under the influence of drugs resulting from the consumption of intoxicating or narcotic substances given to him against his [or her] will or without his [or her] knowledge or due to any other reason which leads one to believe that he has lost his [or her] reason or volition is not criminally liable. However, if he [or she] is not suffering from any *infirmity of mind* nor is under the influence of intoxicating, narcotic or other substances but only from a defect of reason or volition at the time of the commission of the offence, then it is considered a mitigating circumstance⁽⁹⁾.

If the offender is suffering from **a loss of reason or volition** induced by intoxicating or narcotic substances acquired knowingly and of his [or her] own free will, he [or she] is punishable for the offence that is committed if there is a specific intent and if that offence would have been committed without the use of intoxicating or narcotic substances. If the alcohol or drugs are acquired knowingly with a view to committing that offence, then it is considered an aggravating circumstance (same reference above).

SAUDI ARABIA

A *mental health act*, already prepared, is awaiting formal approval from the legislator. It has been formulated after consideration of similar legislation in many countries and recommendations from the United Nations and the World Health Organization. This document contains the basic regulations for admission and discharge in mental hospitals, beside the main human rights of the psychiatric patient. The Directorate has developed and is using a manual of processes and regulations for all mental health institutions in the country until the mental health act is approved.

YEMEN:

There is no mental health act or legislation per se. Uncodified Islamic law is the de facto guide. However, the Yemeni Ministry of Public Health and Population made some strides in the legislation in the Public Health Arena. The Ministry is embracing the information age and has on its website the Arabic text of laws 1996-No. 32 relating to supplementing table salt with iodide, 1999-No. 60 relating to the private health establishments, law 2000-No. 28 relating to the establishment of the National Medical Council, law 2002-No. 26 relating to the practice of medical and pharmaceutical professions, and law 2005-No. 26 relating to combating smoking and its adverse health effects.

The Ministry also published the Arabic text of Presidential Decrees 1999-No 231 relating to the re-structuring of the Higher Committee [Hie'ah] on Pharmaceuticals and Medical Supplies, decree 2003-No. 20 relating to the re-organization of the Yemeni Higher Council for Medical Specialties, decree 2003-No. 13 relating to the Executive Chart relating to Law #32 for 1996 [see above], decree No. 324 for 2003 relating to the Organization of Higher Institutes for Health Sciences, decree 76 for 2004 relating to the Organizational Chart of the Ministry of Public Health and Population, decree 85 for 2005 regarding the establishment of the National Center for Blood Transfusion and Research, and decree 246 for 2005 regarding the establishment of the National Center for Public Health Laboratories. In addition, the Arabic Text of eight other decisions by the Prime Minister/ Head of the Ministerial Council were published⁽¹⁰⁾.

SYRIA:

The rules governing mental health and psychiatric treatment in the Syrian Arab Republic are derived from the health legislation issued in 1981 by the Ministry of Health⁽¹¹⁾. According to a 2006 published document by the WHO's Eastern Mediterranean Regional Office (EMRO) the Ministry of Health, in collaboration with WHO, has collected all effective rules, regulations and related decrees and the review of legislation is ongoing. Several rules, by-laws and regulations are being updated. WHO will provide support to the Ministry of Health in the area of health regulations and laws by A) Assisting the government in strengthening health management by providing

guidelines and norms as well as sharing the experiences of other countries in this area, B) Continuing to provide experts in different fields of health management, administration and financing and C) Technically support an administrative reform program to improve the performance of the health system. There is a need to update legislation and regulations to meet the new challenges of private provision of health care, health insurance and other new issues⁽¹²⁾.

Some of the challenges identified by the Cooperation Strategy for WHO and the Syrian Arab Republic 2003–2007 included: complicated administrative procedures; inadequate managerial skills at all levels; wastage; inefficient and ineffective health management systems; unclear policies in many areas such as privatization, decentralization, institutionalization, and legislation; poor skills in leadership, computer use, planning, monitoring and evaluation; lack of teamwork; unclear roles, duties and responsibilities of each unit, division and staff; need for clarification of regulations, command lines, internal relationships; need for simplification of the organizational structure of the Ministry of Health; and unclear or unimplemented functions of each health facility (11).

TUNISIA:

Tunisia promulgated a law regulating mental health care in 1992. Involuntary admission and treatment of persons in mental health facilities are to take place if the following conditions are fulfilled: a) the person suffers from mental disorders necessitating immediate care, b) the person is unable to give informed consent, and c) the person poses a risk to his or her own safety or that of other people. Decisions are made and reviewed by a judicial authority and are based on the recommendations of two doctors, at least one of whom is a psychiatrist. Involuntary admission is limited to three months initially.

Persons who are admitted involuntarily have the right to appeal against such decisions.

The same law contains sections guaranteeing persons with mental disorders the right to exercise all their civil, economic and cultural rights unless they are placed in the care of a guardian. A review board chaired by a judge and including psychiatrists and representatives of local authorities is entrusted with the task of periodically reviewing the cases of all persons who are admitted involuntarily to mental health facilities. The board is also expected to conduct regular inspections of all mental health facilities. A broad range of other laws helps to promote mental health and prevent mental disorders.

Psychiatry has recently been added to the list of medical priorities, giving financial incentives to encourage specialists to settle in the country. Mental health care is guaranteed to prisoners.

Law 92-83 of 3rd August 1992, relative to mental health and to the conditions of hospitalization for mental disorders requires that the hospitalization be done with respect for individual liberties and under conditions guaranteeing human dignity. A person affected by mental disorders cannot be hospitalized without his [or her] consent except where it is impossible to obtain an informed consent or if the state of mental health of the person concerned requires urgent care or threatens his [or her] security or the security of others. The restriction of his freedom is strictly limited to the measures required by his [or her] state of health and his [or her] treatment. The person concerned should

be informed, in any case, immediately on his [or her] admission or, as soon as his [or her] state permits it, of his [or her] legal situation and of all his [or her] rights. He [or she] can communicate with the public health medical inspectors or with the legal authorities, send out or receive personal mail, contact the members of his [or her] family or contact the regional mental health committee responsible for examining the situation of hospitalized persons while maintaining respect for individual freedoms and human dignity⁽¹³⁾.

JORDAN:

The Mental Health Law is part of the Public Health Act No. 54 (2002). Chapter 4 article 15 permits the designation of a section (unit or ward) in a general hospital for the treatment of persons with mental illness or addiction provided that there is at least one psychiatrist on staff to direct the unit.

Article 16 stipulates that patients may be admitted voluntarily or involuntarily. The following guidelines were formulated for involuntary admissions:

1. If the condition of the person with mental illness or addiction requires a treatment that can only be administered in a hospital setting.
2. If the person with mental illness or addiction is causing destruction to property.
3. If a court issues an order for involuntary treatment based on a psychiatric opinion.
4. [... missing in the published Law at the Ministry of health] I suspect that it should read If the person poses a serious risk of harm to self or others.

If the person meets one of the three criteria, the following must take place to complete the requirements for admission: a) A petition addressed to the Director of the Hospital, b) A report/certificate by a psychiatrist acknowledging the need for hospitalization, and c) The agreement of the Director of the Hospital or designee.

Article 17 gives the Minister of Health the discretion to refer the person who was involuntarily committed to a committee of specialists in the field to ensure that the person in fact meets the criteria for involuntary admission (and if not, for the person to be discharged or not admitted) except for point # 4 in article 16 (Risk of serious harm to self or another).

Article 18: If the patient recovers or improves to the degree allowing for discharge, the attending psychiatrist must seek the approval of the Hospital Director for discharge, or the court if the court issued the order for involuntary admission. The attending psychiatrist must inform the family of the plan to discharge⁽¹⁴⁾.

OMAN

Oman's mental health policy was last revised in 1992 and includes the following components: 1) developing community mental health services, 2) developing a mental health component in primary health care, 3) human resources, 4) involvement of users and families, 5) advocacy and promotion, 6) human rights protection of users, 7) equity of access to mental health services across different groups, 8) financing, 9) quality improvement and 10) monitoring system. The last revision of the mental health plan was in 2005. This plan contains the following components: reforming the mental hospital to provide more comprehensive care; developing a mental health component in primary care; human resources;

human rights protection of users, mental health advocacy and promotion; equity of access to mental health services across different groups; financing; quality improvement and monitoring system. In addition, a budget, timeframe, and specific goals are identified. The Omani Ministry of Health (MOH) is drafting comprehensive mental health legislation and the final draft of public health legislation has been submitted for approval. The latter law will provide for and cover certain basic and minimum standards related to mental health issues⁽¹⁵⁾.

UNITED ARAB EMIRATES (UAE)

The Constitution, first written in 1971 and reaffirmed several times since then, declares Shari'a to be a principle source for law in the United Arab Emirates. Additional influences on the UAE legal system are the Common Law and Egyptian legal traditions. Custom and tradition are also considered in judicial decision-making.

The major codifications of the law are the Civil Code, contained in Law No. 5 of 1985; Federal Penal Code, contained in Law No. 3 of 1987; the Law of Evidence in Civil and Commercial Matters, contained in Law No. 10 of 1992; the Code of Civil Procedure, contained in Law No. 11 of 1992; and the Code of Criminal Procedure, contained in Law No. 35 of 1992. The official language of the courts is Arabic.

Despite the significant progress in the area of health, mental health is lagging behind in terms of policies, facilities and staff. As yet there is no mental health policy at national level, although efforts have been initiated. A newly commissioned national committee is expected to develop proposals for a national mental health program. A previous committee, established in 1991, made proposals for the universal provision of mental health and substance misuse services through primary healthcare, but this has not been satisfactorily implemented. Federal Law 28, enacted in 1981, contains sections on the definition of 'mental disorders', 'next of kin' and 'specialist'. There is also a section on the role of authorities and police in relation to psychosis and the detention of involuntary patients. The question of criminal responsibility is addressed by *Shari'a* Islamic law and courts rely on psychiatric reports for addressing the issue of insanity. Attempted suicide is considered a crime⁽¹⁶⁾.

BAHRAIN

Bahraini labor law defined a disabled person as "a person whose capacity to perform and secure a suitable job has been actually reduced as result of any bodily or *mental incapacity*." ⁽¹⁷⁾.

FUTURE DIRECTIONS:

This review raised more questions than answers. However, it is apparent that this particular field Psychiatry and the Law, or Forensic Psychiatry, is a prime area for publication for the Arab psychiatrist, psychologist, lawyer, academician or anyone interested in the interaction of Law and Psychiatry/Mental Health. This is a truly multidisciplinary subject involving so many different areas including an examination of the legislative process in Arab countries and the set up of the judicial system and the administration of justice.

Arab Laws are little known outside the confines of the Arab world. The age of the internet opened a new door for Ministries of Health in the Arab countries to make more transparent some of the legislation applicable to the practice of different health-related fields including mental health.

More probing in this direction is an ethical obligation for Arab psychiatrists and physicians. MEDLINE and PsycINFO could

use more articles in English examining the fields of Psychiatry and Law/ Forensic Psychiatry and Psychology.

The area of Correctional Psychiatry is also an un-chartered territory regarding the psychiatric services available in prisons of the Arab world.

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