

Drug laws in West Africa: A review and summary

By Jamie Bridge¹ & Maria-Goretti Loglo²

Introduction

Drug policies across the member states of the Economic Community of West African States (ECOWAS) vary markedly. Existing drug laws and approaches are rooted in the prohibitionist interpretations of the international drug conventions, and have gone unquestioned for decades until recently. Yet as the international debate continues to progress – albeit slowly – towards more proportionate, evidence-based and humane policy responses, there is increasing interest among the region’s governments in revisiting and reviewing existing drug laws.

In 2014, the West Africa Commission on Drugs (WACD)³ launched their flagship report entitled *Not Just in Transit: Drugs, the State and Society in West Africa*.⁴ The report highlighted how West Africa has become a hub for the global drugs trade, alongside increased local production and consumption of drugs – with serious threats posed to governance, stability, economic growth and public health in the region. In the report, the WACD made a series of recommendations for the reform of drug policies – explicitly warning that “West Africa must not become a new frontline in the failed war on drugs”. The WACD report received a great deal of media and public attention across West Africa, with Commissioners embarking on a series of high-level country visits to discuss their findings.

To further inform and advance the debate around drug policies, the WACD and the

International Drug Policy Consortium (IDPC)⁵ have conducted a desk review of existing drug legislations from the 15 ECOWAS member states (Benin, Burkina Faso, Cabo Verde, Côte D’Ivoire, The Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo), as well as Mauritania and Morocco (two countries seeking to join ECOWAS in the near future⁶). A summary analysis of these drug laws is provided below, focusing on four key areas: penalties for drug possession or use, and alternatives to incarceration; penalties for drug supply, trafficking, production and other offences; harm reduction, public health and human rights; and international commitments and engagement.

Key national legislation

For each of the 17 countries, we were able to identify, locate and analyse primary drugs legislation (see Box 1). The dates when these laws came into effect range from 1974 (Morocco) to 2014 (Liberia), with the majority drafted and adopted around the time of the global adoption of the 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, and the subsequent push from the USA and the United Nations Office on Drugs and Crime (UNODC) to promote punitive drug policies around the world. In Nigeria, for example, the national law “is almost a word-by-word template of the 1988 UN Convention... covering almost every conceivable proscriptive aspect of drug trafficking and kindred offenses”.⁷

Box 1 Primary Drug Legislation

Benin: Act No. 97-025 on the control of drugs and precursors, 1997

Burkina Faso: Law No. 017/99/AN, 1999

Cabo Verde: Law 78/IV/93 (1993) and Law 92/92 (1992)

Côte D'Ivoire: Law No. 88-686, 1988

The Gambia: Drug Control Act, 2003

Ghana: Narcotic Drugs (Control, Enforcement And Sanctions) Law, 1990 (PNDC Law 236)

Guinea: Decree D/2011/016/PRG/SSG, 2011

Guinea Bissau: Decree-Law 2-b/1993

Liberia: Controlled Drugs and Substances Act / Drugs Enforcement Agency Act, 2014

Mali: Law No. 01-078, 2001

Mauritania: Law No. 93-37, 1993

Morocco: Law 1-73-282, 1974

Niger: Ordinance No. 99-42, 1999

Nigeria: National Drug Law Enforcement Agency (NDLEA) Act, CapN30, 2004

Senegal: Law 97-18, 1997

Sierra Leone: National Drug Control Act, 2008

Togo: Law 98-008, 1998

In most countries, we were also able to identify other laws that relate to drug control, reflecting the multi-faceted nature of drug policy. These additional laws include those on, inter alia, money laundering, organised crime, food and drug standards, medicines and pharmaceuticals, prisons and legal processes, and legal assistance.

In some West African countries, efforts have been made or are currently being made to revise and refine the drug laws. In The Gambia, a 2014 revision to the Drug Control Act reduced prison terms for drug possession. In Burkina Faso, the 1999 law has subsequently been revised in favour of a more proportionate, public health approach. In Mali,

Decree No. 2013-012 “was adopted as a means to manage some of the coordination and coherence challenges related to anti-narcotics efforts”.⁸ In Senegal, Act 2007-31 amended certain articles of the drug law.

In Ghana, a revision of the 1990 law is currently working its way through the legislative processes with support and input from civil society. The proposed drug law provides a more balanced and proportionate response. In contrast, in Nigeria, new amendments to the national drug law in 2017 sought to tighten the law and remove judicial discretion in sentencing – but this proposal remains on hold at the time of writing.

Key institutions

In all of the 17 countries except Côte D'Ivoire, we were also able to identify the key institution(s) responsible for implementing the drug control laws – and in many cases, this agency has been specifically created by the national drug law itself. In The Gambia, Guinea-Bissau, Liberia, Nigeria and Sierra Leone, this is the national drug law enforcement agency (commonly abbreviated to NDLEA). Elsewhere, the agency is given varying names: the Central Office for Repression of Illicit Trafficking of Drugs and Precursors (OCERTID) in Benin; the Coordinating Commission to Combat Drugs (CCCD) in Cabo Verde; the Narcotics Control Board (NA-COB) in Ghana; the National Office for the Fight Against Drugs and Psychotropic Substances in Mauritania; the Central Anti-Narcotics Office (OCAD) in Guinea; the Central Drugs Office (OCS) in Mali; the Central Unit to Fight Drugs (UCLAD) in Morocco, the Coordinating Commission for the Anti-Drug Fight in Niger (CCLAD); the Central Office for the Suppression of Illicit Drug Trafficking (OCRTIS) in Senegal; and the Central Office for the Suppression of Illicit Drug Trafficking and Money Laundering in Togo. The names of these agencies alone provide a useful indication of the direction and tone of drug policy in the region – with no references to health or human rights but a clear focus on enforcement and control.

In Benin, Burkina Faso, Guinea, Mali and Senegal, there are also designated inter-ministerial committees to oversee and support implementation, including representatives from several ministries (and, in the case of Burkina Faso, also including

civil society). Some countries also have explicit mechanisms for parliamentary oversight of drug control – such as public accounts and public enterprise committees in The Gambia, the Parliamentary Select Committee for Defence and Interior (PCDI) in Ghana, parliamentary committees on security and health in Liberia, and various Senate House Committees in Nigeria. In Mali, a dedicated special committee in the legislature is charged with providing oversight.⁹

A range of other entities are also actively engaged in the implementation of drug control. These include, inter alia, the Medicine Control Agency in The Gambia, the National Agency for Food and Drug Administration and Control (NAFDAC) and the National Agency for the Control of AIDS (NACA) in Nigeria, and national financial crime bureaus in Benin and Guinea.

Penalties for drug possession or use, and alternatives to incarceration

The majority of West African countries make a distinction between penalties for drug possession for personal use and/or drug use, and those for drug trafficking, supply or production. Box 2 demonstrates the wide variety of penalties currently applied across the region – every country treats these offences as a criminal offence, with up to 25 years’ imprisonment in Nigeria.

On the surface, the penalties prescribed by the respective legislations appear to leave little room for judicial discretion based on the circumstances of each individual case: most national laws appear to dictate minimum and/or maximum sentences for these offences.

However, some alternatives to incarceration do appear to exist in several West African countries. Such alternative measures are permitted under the international drug control conventions, and are increasingly being promoted as a step towards more humane drug policies.¹⁰ Whether or not these mechanisms are being effectively utilised and adopted on the ground is a different question, which this report is not able to answer.

In Burkina Faso, Cabo Verde and Senegal, underage and/or first-time offenders may be

Box 2 Penalties for drug possession or use

Benin	Penalty undefined
Burkina Faso	2-5 years prison, and/or a fine
Cabo Verde	Up to 3 months prison, and/or a fine
Côte D'Ivoire	1-5 years prison, plus a fine
The Gambia	Penalty undefined
Ghana	At least 5 years prison for drug use At least 10 years prison for possession
Guinea	Penalty undefined
Guinea Bissau	Up to 1 year prison
Liberia	Up to 1-year prison for drug use Up to 10 years prison for possession
Mali	Six months - 3 years prison, plus a fine
Mauritania	Up to 2 years prison, plus a fine
Morocco	2 months - 1 year prison, plus a fine for drug use 2-5 years prison, plus a fine for drug possession
Niger	Up to 1 year prison, plus a fine
Nigeria	15-25 years prison
Senegal	2 months-1 year prison
Sierra Leone	At least 5 years prison
Togo	5-20 years prison, plus a fine

exempted from punishment if they make a “solemn declaration” not to recommence drug use. In Senegal, for example, the law prescribes a prison term of between two months and two years – yet in practice, first time offenders are usually given a jail term of less than one month or given a warning never to repeat the offence again. In The Gambia and Sierra Leone, fines may

be implemented by judges as an alternative to incarceration in some cases, while in Guinea-Bissau, judges can pardon first time offenders from penalties. In Mauritania, penalties will not be applied when a person has been “successfully subjected to a cure”.

In Cabo Verde and Togo, a defendant may seek treatment in exchange for their prison sentence (in the former, allowing the judge to replace incarceration with a fine). In Nigeria, the courts can require an offender to undergo measures such as treatment, education, aftercare, rehabilitation or social reintegration – but this is only considered as an alternative to incarceration for minors (and as an addition to imprisonment for all other individuals, as is the case in Sierra Leone). In Senegal, the court may substitute or complement a prison sentence with drug treatment, while in Côte D’Ivoire, Mali and Morocco, defendants may be required to undergo medical detoxification instead of imprisonment (in Morocco, individuals then must be examined by a doctor every 15 days to define if they are drug-free). In Liberia, Niger and Senegal, the courts can decide to request an individual to undergo treatment, education, after-care or rehabilitation for some offences. However, in Senegal and Niger, failure to adhere to this treatment will result in up to 5 years’ imprisonment and a fine. No formal alternatives to incarceration currently seem to exist for drug possession or use offences in Benin, Ghana or Guinea. In The Gambia, the government is working on a new strategic plan to integrate treatment and rehabilitation programmes into the drug law.

Penalties for drug supply, trafficking, production and other offences

The penalties prescribed for drug supply offences are typically greater than for possession offences – with the notable exceptions of Liberia and Togo (see Box 3). However, the sheer scale of the disparity between countries is equally as large. The death penalty remains an option for second drug trafficking offences in Mauritania – one of only three countries in the region that retain the death penalty as part of their criminal justice system (alongside The Gambia and Nigeria).¹¹ In Nigeria, the death penalty for drug-related offences was replaced by life imprisonment in 1986.

Box 3 Penalties for drug supply, trafficking, production

Benin	5-10 years prison, plus a fine
Burkina Faso	10-20 years prison, and/or a fine
Cabo Verde	2-10 years prison
Côte D’Ivoire	10-20 years prison, plus a fine
The Gambia	Up to 15 years prison, plus a fine
Ghana	At least 5 years prison for supply, and 10 years prison for production
Guinea	Penalty undefined
Guinea Bissau	1-12 years prison
Liberia	Up to 10 years prison
Mali	15-30 years prison, plus a fine – and the death penalty for repeat offences
Mauritania	15-30 years prison, plus a fine – and the death penalty for repeat offences
Morocco	5-10 years prison, plus a fine
Niger	10-20 years prison, plus a fine
Nigeria	Life imprisonment
Senegal	5-10 years prison, plus a fine
Sierra Leone	Life imprisonment
Togo	5-20 years prison, plus a fine

In Cabo Verde and Guinea, additional provisions exist to enhance the sentence if a person was supplying to children or is an official (such as a police officer, physician, pharmacist, prison officer, teacher, etc). Guinea also allows for enhanced sentences if vehicles or shipments designated for humanitarian work were used in the crime.

In addition to drug supply, trafficking and production, drug legislation in West Africa also includes provisions for a wide range of other

related offences. These include, for instance: facilitating or encouraging drug use by other people (punishable by up to 20 years in prison in Burkina Faso); the possession of equipment or materials used for drug production; concealing information or property (punishable by up to 10 years prison in Cabo Verde); being under the influence of drugs while driving a vehicle; obstructing an arrest; money laundering; the abuse of medical prescriptions (punishable by up to 10 years prison in Liberia); and impersonating an officer of the drug law enforcement agency (punishable by up to 10 years prison in Nigeria).

Harm reduction, public health and human rights

As described above, several national drug laws include some provision, or allow judicial discretion, for drug treatment to be provided as an alternative or additional measure to incarceration. However, none provide for the implementation of harm reduction services. This is perhaps unsurprising, given that the harm reduction approach to drugs in West Africa is in a nascent state: as of 2017, only in Morocco and Senegal does the state support the implementation of harm reduction services – although non-state programmes are starting in a number of other countries.¹² Yet this is something that needs to be urgently addressed across the region, in light of the emerging evidence of high-risk drug use and related HIV and other health epidemics.¹³ The new bill being proposed and approved in Ghana, for example, includes a specific reference to harm reduction for the first time in the region.

Explicit references and protections of core human rights are similarly absent in most cases – although this may be because it was not regarded as necessary to mention human rights, as human rights commitments already take precedence over drug laws. In The Gambia and Mali, the rights of accused persons are protected by the law, while in Cabo Verde, the law seeks to protect human rights, especially for people who use drugs. In Senegal, the law includes sanctions against officials who abuse the human rights of people. However, the implementation of human rights protections remains a challenge in terms of implementation across the region.¹⁴

International commitments and engagement

All seventeen countries are signatories to the three international drug conventions: the Single Convention on Narcotic Drugs (1961, as amended by the 1972 Protocol), the Convention on Psychotropic Substances (1971), and the Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988). These three treaties underpin the international drug control system and seek to ensure that controlled substances are available for medical and scientific purposes, while preventing them from being diverted into illicit channels. No West African countries registered any reservations when signing these conventions.

However, the level of active engagement in international drug policy discussions is much lower than in some other regions. The international discussions usually take place at the United Nations in Vienna, Austria – through the Commission on Narcotic Drugs (CND).¹⁵ The CND comprises 53 member states with voting rights, who are elected for 4 year terms – while in practice all UN member states can participate in deliberations. 11 seats are reserved for African states, and Benin, Mauritania, Nigeria and Togo are currently members of the CND.¹⁶ However, only 5 West African countries have permanent diplomatic representation in Vienna: Burkina Faso, Côte D'Ivoire, Morocco, Niger and Nigeria.¹⁷ The other countries cover this mandate from their missions in Geneva or Berlin (if at all), which in practice makes it very difficult to stay engaged in the debates and developments in Vienna. For example, at the last full session of the CND in March 2017 only government officials from Benin, Burkina Faso, Côte D'Ivoire, Ghana, Morocco, Nigeria and Togo were present.¹⁸ Only Ghana, Morocco and Nigeria made formal interventions at the meeting.¹⁹

Conclusion

This desk review of drug legislation across 17 West African countries demonstrates the huge variance that currently exists, but also the dominant focus on punishment, law enforcement and over-criminalisation which permeates drug policies across the region. It is intended to inform debates, and support the ongoing work by ECOWAS

and others in West Africa. The current ECOWAS Action Plan to Address Illicit Drug Trafficking, Organized Crimes, and Drug Abuse in West Africa (2016-2020) includes a related activity for the organisation to “Review all existing national and regional drug laws and related legislations and institutional structures to identify areas of convergence, differences, gaps/short-comings and challenges to their operationalization”.

West Africa is at a critical juncture in terms of drug policy, and the work of WACD among others has served to place this issue high on the political and public agenda. A number of West African countries are considering, or are in the process of, revisiting their drug laws – cognisant of developments in the international drug policy debates, including at the 2016 UN General Assembly Special Session (UNGASS) on drugs, and how existing approaches are becoming increasingly dated. The awareness of the failures and harms of repressive drug policies is increasing in the region, as is an acknowledgement of the enormous costs of the current approaches and the need for more humane, balanced and cost-effective responses.

To support ongoing work and deliberations on this issue, a comprehensive model drug law is needed for West African countries – one which takes into account the UNGASS outcomes and commitments, the existing evidence of effectiveness, the need for greater harmonisation of drug laws in the region, and the current gaps in the legislature. Such a model drug law could translate the recommendations from the 2014 WACD report *Not Just in Transit: Drugs, the State and Society in West Africa*,²⁰ into the format of a practical and suitable policy framework to support governments and advocates.

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Endnotes

1. Chief Operating Officer, International Drug Policy Consortium
2. Consultant for Africa, International Drug Policy Consortium
3. Chaired by former Nigerian President Olusegun Obasanjo, the West Africa Commission on Drugs is an independent and diverse group of West Africans from the worlds of politics, civil society, health, security and the judiciary: <http://www.wacommissionondrugs.org/>
4. West Africa Commission on Drugs (2014), *Not just in transit: Drugs, the state and society in West Africa*, <http://www.wacommissionondrugs.org/report/>
5. The International Drug Policy Consortium (IDPC) is a global network of more than 170 civil society organisations that focus on issues related to drug production, trafficking and use: <http://idpc.net/>
6. See, for example: Sahel Standard (2017), *After Morocco, Mauritania wants to join ECOWAS*, <http://sahelstandard.com/index.php/2017/05/11/after-morocco-mauritania-wants-to-join-ecowas/>
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19. International Drug Policy Consortium (2017), *CND Blog: CND Sessions*, <http://cndblog.org/theme/cnd-sessions/>
20. West Africa Commission on Drugs (2014), *Not just in transit: Drugs, the state and society in West Africa*, <http://www.wacommissionondrugs.org/report/>
21. The West Africa Drug Policy Network (WADPN) is a coalition of NGOs that support drug policy reform, comprised of national chapters across the region: <https://wadpn.blogspot.co.uk/>

About this briefing paper

IDPC and WACD offer a summary and analysis of the drug laws in 17 West African countries, focusing on penalties for possession/use and alternatives to incarceration, penalties for illicit drug supply, harm reduction and public health, and international drug control obligations.

International Drug Policy Consortium

Fifth Floor, 124-128 City Road
London EC1V 2NJ, UK

Tel: +44 (0)20 7324 2975

Email: contact@idpc.net

Website: www.idpc.net

About IDPC

The International Drug Policy Consortium is a global network of non-government organisations that aims to promote objective and open debate on the effectiveness, direction and content of drug policies at national and international level, and supports evidence-based policies that are effective in reducing drug-related harm. It produces briefing papers, disseminates the reports of its member organisations, and offers expert advice to policy makers and officials around the world.

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