



ECOWAS COMMISSION
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2023 WEST AFRICA ORGANISED CRIME RESILIENCE FRAMEWORK – DEEP DIVE

New approaches to regulating drugs in West Africa: Exploring the impact of Ghana's drug policy reform

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Summary

Against the backdrop of increasing recognition of the failures of prohibitionist approaches to drug policy, Ghana's legislative framework on drugs was radically reformed in 2020, introducing legislative alternatives to incarceration for drug possession for use. While the changes represent a beginning in the process of moving away from past failures and toward a future with a more evidence-based, human rights- and public health-centred approach to drugs, Ghana's new legislation requires further review in order to align with emerging best practice.

Recommendations

- Decriminalise drug use, in alignment with the West Africa Commission on Drugs' Model Drug Law for West Africa.
- Define appropriate quantity thresholds to differentiate possession for use and possession for supply.
- Move away from mandated, court-referred rehabilitation orders.
- Education and sensitisation of the provisions of the new law must be scaled up.
- States should adopt an explicit and clearly defined public health approach to drugs, including psychosocial interventions.
- A clear architecture for the implementation of harm reduction approaches in line with WHO guidelines should be introduced.
- Remove mandatory minimum sentences for trafficking offences, while maintaining maximum ceilings.
- Implement alternatives to punishment for low-level actors beyond people who use drugs in the drug trade.
- Contributions from civil society organisations and other non-state actors should be welcomed.
- Systematic data collection must be integrated into drug policies.



OCWAR-T

Organised Crime: West African Response to Trafficking

Acronyms and abbreviations

CEPIAD	Centre de Prise en Charge Intégrée des Addictions de Dakar
CSO	Civil society organisation
ECOWAS	Economic Community of West African States
NACOC	Narcotics Control Commission
OCRF	Organised Crime Resilience Framework
OCWAR-T	Organized Crime: West African Response to Trafficking
PCC	Primeiro Comando da Capital
PWUD	People who use drugs
SDGs	Sustainable Development Goals
UNGASS 2016	UN General Assembly Special Session on the World Drug Problem
WACD	West Africa Commission on Drugs
WENDU	West African Epidemiology Network on Drug Use
WHO	World Health Organization

Glossary

Decriminalisation: The de jure removal of criminal penalties for drug use. In some legal systems, criminal penalties are replaced by civil sanctions; in others, no penalties are applied.

Depenalisation: A reduction in the use of existing criminal sanctions. This is a de facto intervention because it does not require changes to legislation.

Diversions: De facto initiatives or de jure legislation that direct people away from criminal sanctions and towards educative, therapeutic or social services.

Harm reduction: Policies, programmes and practices that aim primarily to reduce the adverse health, social and economic consequences of the use of licit and illicit drugs. It is based on a strong commitment to public health and human rights. Harm reduction helps to protect people from preventable diseases and death from overdose and to connect marginalised people with social and health services.

Illicit drug activity: The non-medical and non-scientific use, possession, production, transport of and trade in one or more substances scheduled under the three international drug control conventions (the 1961 Single Convention on Narcotic Drugs; the 1971 Convention on Psychotropic Substances; the 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances).

Legalisation: Previously illegal acts are permitted under law and no criminal sanctions apply. The legal substance is often regulated by a government authority.

Prohibition: The criminalisation, in law and in practice, of illicit drug activities, including their classification as serious offences, with punishments varying from terms of incarceration to, in some states, corporal and/or capital punishment.

Public health approach: An approach to reduce the harms of drug use and drug policies on individuals' health and well-being. It relies on evidence-based health, social, treatment and harm reduction interventions, based on a holistic, non-judgemental and human-centred foundation. Its programmes adhere to the UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), the UN International Standards on Drug Use Prevention, the UN International Standards for the Treatment of Drug Use Disorders and the UN Comprehensive Package of harm reduction interventions.

These definitions are based on a range of sources, including academic and grey literature.¹ For further reading, see Jason Eligh's 'The evolution of illicit drug markets and drug policy in Africa'.²

Introduction

A number of countries in the Economic Community of West African States (ECOWAS) region are either considering or effecting reforms in their approach to drug policy. Concerns about the harms of drug markets in the region are escalating, along with a growing recognition of the limitations and, in some cases, counterproductive nature of existing approaches. This is a crucial moment to analyse the drug law reform implemented by Ghana which introduced an alternative to incarceration and a renewed focus on drug use as a public health, rather than criminal, issue. The analysis here is designed not only to support Ghana in its journey towards evidence-based drug policy, but also to empower other ECOWAS states and beyond to navigate some of the potential pitfalls associated with the complex area of drug policy reform.

West Africa has long been recognised as a major transit hub for illicit drugs, in particular cocaine, with international actors warning of the threat of drug trafficking networks for decades.³ However, current dynamics present a step change from the past. The region is currently facing a sharp escalation in cocaine trafficked from Latin America towards European consumption markets, with volumes likely at record levels.⁴ There is also a flood of increasingly varied synthetic substances.

It is thus unsurprising that the Organized Crime Resilience Framework (OCRF) identified drugs markets as one of the most prominent challenges facing West Africa.⁵ The OCRF is a wide-ranging analytical framework which, based on existing qualitative and quantitative data and supplementary in-depth qualitative research, assesses the main organised crime and other security-related threats in West Africa, as well as resilience measures and mechanisms.

The OCRF findings are supported by data from the Global Initiative Against Transnational Organized Crime (GI-TOC) Global Organized Crime Index 2023, which shows steep sustained growth in cocaine and synthetic drug markets across West Africa between 2019 and 2023.⁶ Within Ghana – the focus of this report – each of these criminal markets has a significant influence on society. Between 2021 and 2023, the cocaine market overtook the human smuggling market as the most pervasive across the region. Accounts of drug markets emphasised the region's role as a transit hub, giving less attention to their impacts within the region in terms of health, through growing domestic consumption, and governance, through their contribution to the entrenched corruption that reaches into high levels of state infrastructure.⁷ As these impacts have gained focus, particularly since the seminal 2014 report of the West Africa Commission on Drugs (WACD), 'Not just in transit', the drug policies of ECOWAS states have come under increased scrutiny.

Africa has historically been a bastion of prohibitionist drug policy, but this consensus fractured in recent years – as it has elsewhere, particularly in the wake of the 2016 UN General Assembly Special Session (UNGASS 2016) on the global drug problem.⁸ Countries as varied as Mexico, the Czech Republic and Portugal are trialling

approaches beyond prohibition, with varying degrees of commitment and success. However, while calls to adopt a ‘public health approach’ have gained traction in West Africa and more broadly, there is significant divergence in what this implies and how it is implemented.⁹

Among a few regional reformers, Ghana – effectively the spiritual home of the WACD¹⁰ – presents an important opportunity to explore the rhetoric, practice and impact of drug policy reform in West Africa. In 2020, after a long process of legislative review and parliamentary procedure, the country introduced an alternative to incarceration for drug possession in the Narcotics Control Commission Act (Act 1019).¹¹ The wide-ranging Act introduced significant drug policy reforms. The most significant change was its objective to reduce harms to people who use drugs (PWUD) and move them out of the criminal justice system. Secondly, its provisions strengthened the criminal justice system’s capacity to target high-level players in the illicit drug economy through a ‘follow the money’ approach. Thirdly, it gave an expanded mandate and greater powers to the Narcotics Control Commission (NACOC).¹² Fourthly, it provided for the regulation of cannabis cultivation for medicinal and industrial purposes, although this was delayed by legal challenges and only came into force in 2023.

This report focuses on the first of these themes: the provisions in Act 1019 relating to PWUD and, more specifically, Section 37, which introduces alternatives to custodial sentences for possession for use, and the more vaguely delineated ‘public health approach’, specifically as regards harm reduction. In doing so, we recognise that drug policy is extremely complex and that determining causality in relation to drug reform is notoriously difficult, given the multitude of potential confounding factors.¹³ Further, Ghana’s reform legislation has been in force for less than four years. This is a very limited period, considering the time it typically takes to translate drug policy reform into changes in implementation (where this happens at all). The research was conducted to draw lessons from the Ghanaian experience that can support other ECOWAS countries, and states more broadly, that are considering drug policy reform.

Methodology

This deep dive is one of three case studies that form part of the OCRF, a tool developed by the GI-TOC as part of the Organized Crime: West African Response to Trafficking (OCWAR-T) project. The OCRF examines the major organised crime and other relevant security threats facing the West African region, as well as countries’ resilience to these risks and their vulnerabilities as identified by the Organized Crime Index and the Country Risk and Vulnerability Assessments published by the ECOWAS Early Warning Directorate. The OCRF, and each of the associated deep dives, focuses on priority illicit economy threats facing West Africa, scrutinising available response frameworks outside criminal justice approaches.

Fieldwork was carried out in Accra and Tema in May 2023, with focus group discussions a key component of the research methodology. A multistakeholder focus group discussion was held with 18 stakeholders, including officials from state institutions, such as NACOC, the national police, the prison service and the health ministry; civil society organisations; medical professionals; legal practitioners; and rehabilitation centres. Given the technical nature of the study’s focus and the objective of drawing practical lessons from the implementation of Act 1019 thus far, a second focus group discussion was held with Circuit Court judges. Finally, as with any study related to drug markets, the views of PWUD are pivotal. Four focus group discussions with PWUD were held in Accra and Tema. To ensure a gender-sensitive approach, the PWUD focus group discussions were gender-segregated, recognising the limitations of mixed-gender discussions involving vulnerable people.

In addition to the six focus group discussions, 18 bilateral interviews were conducted, either in person or by telephone, with a range of key stakeholders including academics, customs officials, politicians, rehabilitation centre counsellors, civil society organisations, legal practitioners, and drug policy reform experts within Ghana and internationally. Finally, field data collection was complemented by an extensive review of the literature on drug policy and related topics, including existing GI-TOC research.

As mentioned, the OCFR is a flagship research output of the OCWAR-T project. The OCWAR-T project is coordinated by the German Agency for International Cooperation (Deutsche Gesellschaft für Internationale Zusammenarbeit, GIZ) in close cooperation with ECOWAS, and financed by the European Union and the German Federal Foreign Office. The GI-TOC is an implementing partner under Component 4 of the OCWAR-T project alongside the Institute for Security Studies.

Changing winds: drug policy across West Africa

Global shifts

For the best part of half a century, the international community has waged a relatively coherent set of global policies often framed as a ‘war on drugs’, adopting a prohibitionist approach rooted in the belief that strict law enforcement and repression were the solutions to curb drug abuse and trafficking. It was partly enabled by the international drug control system, established by the United Nations and governed by three major drug control treaties: the 1961 Single Convention on Narcotic Drugs, the 1971 Convention on Psychotropic Substances and the 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

However, by the 2000s, growing numbers of member states and civil society groups argued that it was increasingly evident that these approaches were failing to achieve their intended goals and were instead producing significant societal harms. Disquiet grew and global consensus fragmented and shifted to the extent that some academic commentators argued that the period around UNGASS 2016 marked the effective beginning of a ‘post-war-on-drugs’ era.¹⁴

In a 2016 report on drug policy reform, the Global Commission on Drug Policy outlined a number of ostensible failures of the prohibitionist approach to drugs employed throughout much of the world.¹⁵ These included failing to achieve the purported goals of a ‘drug-free world’; undermining the right to privacy; undermining the rule of law (through unenforceable criminalisation of widely practised behaviours); human rights abuses committed in pursuit of the international drug control regime; public health consequences of the criminalisation of PWUD; prison overcrowding; and the harms of a receiving a criminal record, among others.¹⁶

As Keane et al. note,

we know that the reasons for drug use are complex, and that there is no clear link between the harshness of a country’s policy on possession of drugs for personal use and levels of drug use. Prevalence figures for drug use are not significantly affected by whether or not simple possession is criminalised – there is no consistent ‘deterrent effect’. However, we do know that criminalising people is damaging.¹⁷



View of UN General Assembly session on drugs as speakers from various nations address the body

This reflects the growing international recognition that using the criminal justice system to address drug use and drug demand has been unsuccessful.¹⁸

In 2015, a UN Development Programme report argued that repressive approaches to drug policy were inconsistent with – or actively undermined – at least seven of the 17 Sustainable Development Goals (SDGs), including those pertaining to poverty, inequality and health.¹⁹ It further stated, ‘Illicit drug markets and efforts to address them cut across almost every one of the SDGs and the commitment to leave no one behind.’²⁰ The SDGs therefore provided an opportunity for the alignment of drug policy with the principles of sustainable development.²¹

Several countries had decriminalised drugs much earlier – the Czech Republic in 1990, Portugal in 2001 and Mexico in 2009 – and decriminalisation was recognised within the UN system before UNGASS 2016. However, the Special Session was an important milestone in the evolution of global drug policy. While some considered its final outcome as a ‘wasted opportunity’,²² it arguably ‘represent[ed] a step towards pluralism’²³ and away from previous iterations of drug policy uniformity.

In the years since, more countries have moved away from a blanket criminalisation approach. Prominent among these reforms is the growing regulation of cannabis for non-medical and non-scientific use. Several states from the Americas to Africa and Asia have introduced various models to decriminalise possession for personal use. These include South Africa, Thailand and Australia (although not at the federal level in Australia). It has been legalised in Canada and several US states.²⁴

The 1988 Convention establishes the grounds for such reforms:

*The Parties may provide, either as an alternative to conviction or punishment, or in addition to conviction or punishment of an offence established in accordance with paragraph 2 of this article, measures for the treatment, education, aftercare, rehabilitation or social reintegration of the offender.*²⁵

However, its application has become more common only since the turn of the century. While interpretation of their impacts can easily fall prey to subjective analysis,²⁶ the grim predictions that reforms would lead to escalating drug use have repeatedly been proven incorrect.²⁷ Some jurisdictions that introduced alternatives to incarceration (alongside other measures) have seen reductions in problematic drug use and the burden of drug offences on criminal justice systems.²⁸

Drug policies in Africa

Although the term ‘war on drugs’ is often associated with former US president Richard Nixon, the African continent was in some ways the ‘birthplace of modern drug control’ outside of Asia, when a French military official implemented a ban on hashish in Egypt in 1800.²⁹ While the legal frameworks of regional prohibitionist drug policies may have been, at least in part, a product of colonial history, African states have actively promoted and sustained their approach both domestically and in international settings and almost all countries in Africa are signatories to the three international drug control conventions.

Speaking more centrally to the focus of this report, drug use remains de jure and de facto criminalised across most of the continent, albeit with a growing number of exceptions.³⁰ According to the Global Drug Policy Index, African states are among the countries with the most prohibition-centred approaches globally,³¹ with many featuring ‘punitive, highly violent drug law enforcement combined with minimal availability of basic medical interventions to reduce the harms caused by drug use’.³² Nigeria is but one example in West Africa where the state has demonstrated commitment to a coercive and repressive drug policy, although there are signs of progress, at least on the provision of harm reduction services, as touched upon briefly below.³³ Across the continent, cannabis remains largely criminalised, although penalties vary.³⁴

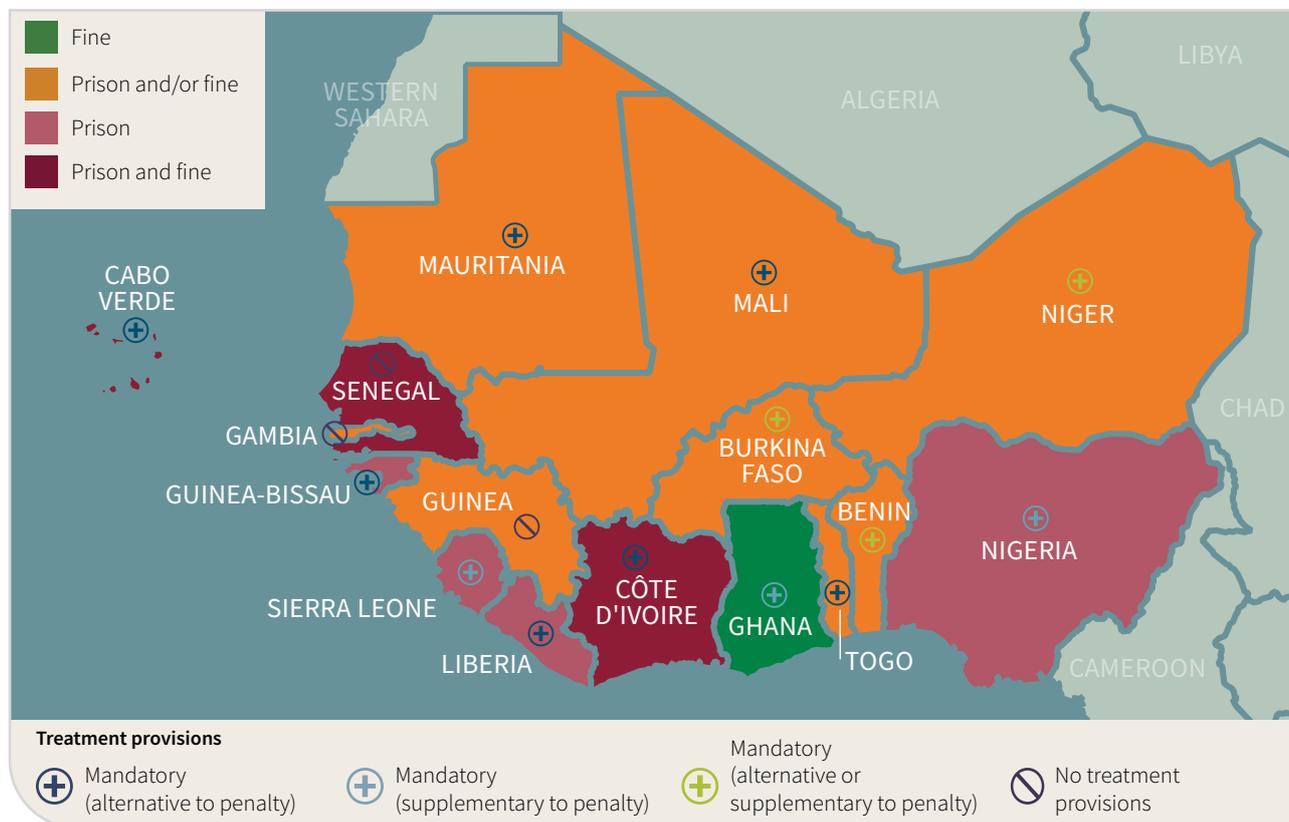
A local vendor packages wrapped cannabis for sale in the Ibafo area of Ogun State, Nigeria, November 2019



Since the 1990s, the expansion of drug trafficking and consumer markets across many African states has largely been met with ‘securitised, and increasingly militarised, responses’.³⁵ In turn, this has led to wide-ranging unintended consequences, including increases in HIV infections and other diseases related to the injection of drugs; heightened stigma against drug use (contributing to growing overdose rates); and the social and economic disenfranchisement of mainly young people whose criminal drug convictions left them unemployed.³⁶ As Jason Eligh puts it:

*far from controlling the trade, the continental policy approach over the past half-century of ‘drug control through prohibition’ has instead given rise to myriad economic opportunities and spaces that have proven susceptible to the promotion of transnational organised trade across the continent’s illicit drug markets and their related geographies.*³⁷

Chart 1: Penalties for drug possession and/or use, and treatment provisions in West Africa



Source: Authors

Nevertheless, Africa’s drug policy consensus has weakened and shown signs of fragmenting over the past decade. In 2014, the WACD’s flagship report called for West African governments to treat drug use as a public health issue and to ‘pursue [the] decriminalisation of drug use and low-level non-violent drug offences’.³⁸ In 2018, it followed up with guidance for enacting such recommendations in the Model Drug Law for West Africa: A Tool for Policymakers.³⁹

Despite the continuing de jure criminalisation of drug use across most of the region, some countries are increasingly embracing elements of a public health approach to drug policy, including consideration of alternatives to custodial sentences for possession of drugs for personal use (see Chart 1).⁴⁰ Ghana is one such country. In West Africa, it is the only one where a prison sentence for drug possession for use is not the first recourse but only applies in the event of failure to pay the ordered fine.⁴¹

Ghana’s journey to reform

Ghana’s previous legislation – the Narcotic Drugs (Control, Enforcement and Sanctions) Law, 1990 (PNDCL 236) – was designed in an era of increased criminal activity, including in connection to drug markets. Aligned with global prohibitionist approaches, it mandated imprisonment terms of no less than five years for the use of drugs and no less than ten years for anyone who ‘has in his possession or under his control any narcotic drug’.⁴²

The failure of this approach is acknowledged by a wide range of stakeholders in Ghana spanning the criminal justice system, health professionals, civil society and PWUD. The law disproportionately targeted the most vulnerable people and contributed to the chronic overcrowding of the country’s prisons.⁴³ In 2021 – just after the enactment of the new drug legislation – more than 11 000 people were serving prison terms for drug-related offences, with a further 8 600 on remand, and prisons were operating at 145% capacity.⁴⁴ An individual from the prison administration system told the focus group,

The sanctions weren’t proportionate to the purpose of the law. It is always the poor who were arrested, while the rich were let off the hook due to claims of lack of evidence. Prisons are filled with poor people – is it really just poor people that commit crimes?⁴⁵

Such disproportionate sentencing and prison overcrowding have resulted from drug policies across many African states (and others globally).⁴⁶ At the same time, the previous approach appeared to have limited impact on either drug trafficking or consumption, both of which have escalated significantly since the law’s enactment, in line with regional trends. Currently, drugs markets are among the most pervasive criminal markets in Ghana.⁴⁷

The most pervasive illicit drug market in Ghana is the synthetic drug trade, followed by cocaine and then heroin



A joint security agencies operation has led to the destruction of farmland cultivated with marijuana at Dodi-Asuboe in the Kadjebi District of the Oti Region, Ghana

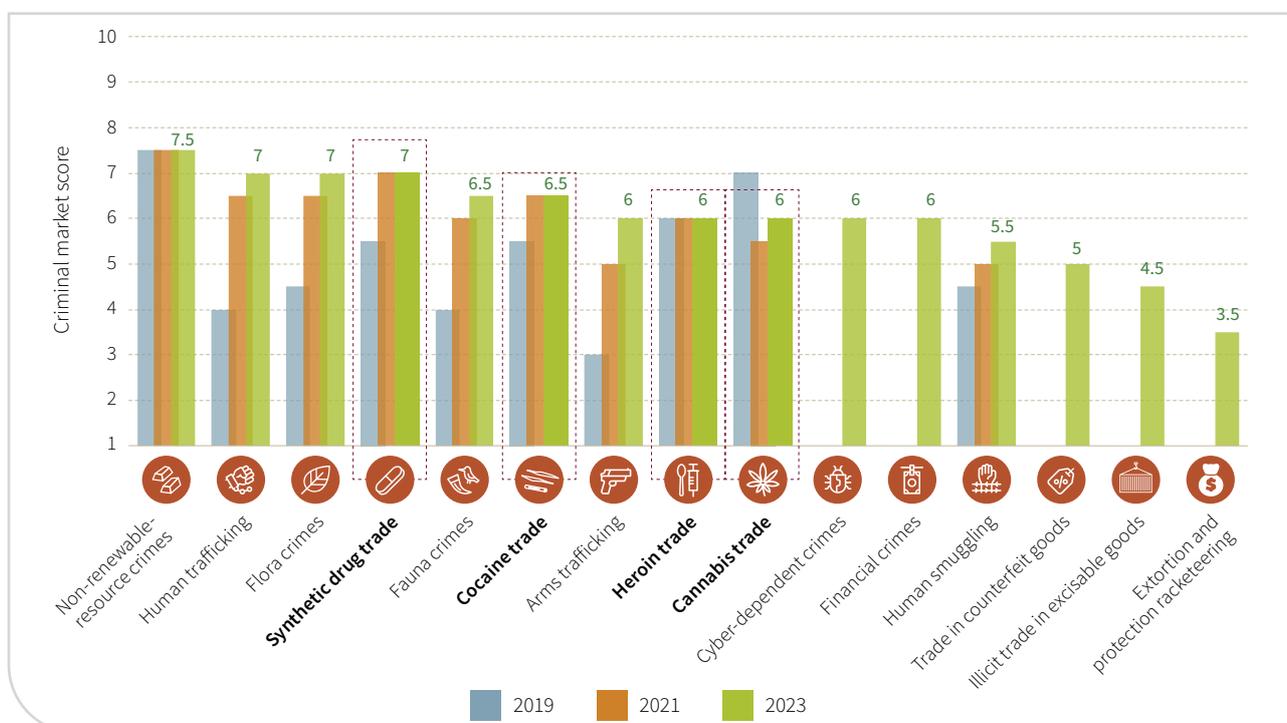
and cannabis. All have a significant influence in the country (see Chart 2). The cocaine trade is the highest-scoring criminal market across West Africa, according to the Global Organized Crime Index, and Ghana plays a key role in the illicit cocaine economy. While some countries in the region, including Benin, the Gambia and Côte d'Ivoire, have seen an increased number of cocaine seizures, particularly since 2019, seizures in Ghana dropped significantly in 2014 and have remained low ever since.

Although seizure data is recognised as an unreliable indicator of trafficking volumes, some high-level law enforcement officials believe that the reduced number of seizures reflects a reduction in cocaine flows through Ghana's primary official entry point, the Port of Tema, due to enhanced security and interdiction capacity. Others, in the criminal justice system and beyond, disagree. Instead, they suggest, high-level protection of cocaine trafficking in Ghana, which has been long documented, allows the trade to continue without disruption. Growing intimidation of journalists has also led to increased self-censorship and sparse coverage of the politically sensitive cocaine trade. The Global Organized Crime Index – which tracks a mild increase in the pervasiveness of the market – supports these findings.

The growing domestic consumption market has received far less attention than the escalation in the trafficking of drugs, particularly cocaine.⁴⁸ Yet it is mostly people who use drugs who suffered the negative impacts of Ghana's previous drug policy. Harms to PWUD and the failure to impede drug supply have been the prominent impacts of prohibitionist drug policies across the world.⁴⁹

Recognising the ineffectiveness of existing legislation in response to Ghana's growing drug markets, the Narcotics Control Commission Bill 2014 was introduced to parliament, with provisions for increased penalties for drug-related crimes, including personal use.⁵⁰ However, it was not enacted. The next proposed reform of drug law – the Narcotics Control Commission Bill, 2017 – became the basis for today's legislative framework and marked a significant departure.⁵¹

Chart 2: Drug markets in Ghana, 2019, 2021, 2023



Note: The 2023 Global Organized Crime Index assesses (among other indicators) the prevalence of 16 criminal markets in 193 countries. Five of these were added for 2023 and so have no data from previous iterations. The Index assesses the monetary and non-monetary impact of criminal markets (considering factors such as the geographic concentration, number of people affected or involved, presence of violence and scarcity of the illicitly traded commodity), scored on a 1–10 scale from lowest to highest.

Source: Global Organized Crime Index 2023

Chart 3: Timeline of drug policy reform in Ghana and internationally



Source: Authors

The drafting and eventual enactment of a version of the 2017 Bill was a lengthy process, with important roles played by international and national civil society and international organisations as well as influential individuals including former UN Secretary-General and convener of the WACD Kofi Annan and the former Executive Secretary of the Narcotics Control Board, Yaw Akrasi-Sarpong.⁵²

International organisations and civil society saw an opportunity to push for change in Ghana's drug policy, and played an important role in doing so, but support for change was also bubbling up in Ghanaian society. As drug consumption became more visible and more people witnessed the harms associated with existing prohibitionist measures, a wide range of stakeholders spoke out about the growing marginalisation and social exclusion of PWUD. PWUD and people involved in churches, law enforcement, the judiciary and others, while not necessarily backing the same solution, agreed unanimously that the current approach was not working, and that change was needed.⁵³

The initial Narcotics Control Commission Bill 2014, however, would simply have aggravated the health and social harms felt by PWUD. Rather than moving away from law enforcement initiatives, it set out increased

penalties for all drug offences, including possession. It did introduce a fines system, but in addition to – rather than instead of – incarceration, which did not apply to the offence of use.⁵⁴ Lengthy parliamentary procedures and the 2016 elections, which changed the party in power, delayed the Bill's enactment, causing many to doubt whether it would happen at all.

In 2017, law enforcement actors, prosecutors and magistrates alike expressed frustration at seeing people with substance use disorders cycling through the criminal justice system with no access to support and being pushed further and further to the margins of society.⁵⁵ A new bill was introduced that year, but progress remained slow. The push for reform culminated in the Narcotics Control Commission Act, 2020 (Act 1019), enacted on 20 March 2020.

Box 1: Views on the liberalisation of cannabis cultivation

In recent years, several African countries introduced provisions for the liberalisation of medical or industrial cannabis cultivation.⁵⁴ In 2017, Lesotho became the first to legalise cultivation and sale.⁵⁵ Others followed suit, including Zimbabwe, Rwanda and Morocco. In September 2018, South Africa's Constitutional Court confirmed that the prohibition of cannabis use, possession or cultivation by an adult in a private space was unconstitutional.⁵⁶

Ghana's Narcotics Control Commission Act, 2020 provides for cannabis to be cultivated for industrial or medicinal purposes, while cultivation for use remains prohibited. Section 43 stipulates that 'the Minister, on the recommendation of the Commission, may grant a licence for the cultivation of cannabis which has not more than 0.3% THC content on a dry weight basis for industrial purposes for obtaining fibre or seed or for medicinal purposes'.⁵⁷ However, this provision has only recently come into force. In July 2022, it was struck down by the Supreme Court on the grounds that its adoption had been unconstitutional.⁵⁸ In July 2023, parliament passed the revised Narcotics Control Commission (Amendment) Bill, once more authorising the granting of licences.⁵⁹

It is too early to assess the impacts of these provisions, as they have not yet been implemented, but it is worthwhile to explore the attitudes toward cannabis regulation in Ghana in the context of African states that have introduced similar reforms. There was broad approval of the principle of legalisation in Ghana, including among law enforcement agencies. One NACOC official argued that it would reduce criminality: 'Once you make something prohibited, that's when people go underground and end up committing more crime just to cover up the first crime.'⁶⁰ Another high-level NACOC official claimed that Section 43 would reduce the black market because it would 'divert from the illegal to the legal' while allowing the government to regulate the quality, quantities, strength and so on.⁶¹

However, the evidence from other contexts is far from conclusive. Morocco, for example, is another country where cultivation is legal for medical purposes but remains illegal for recreational use. In villages where cultivation is rife, few farmers have applied for the licences and the effects of the legalisation are not particularly visible. In the view of one drug expert,

*the illicit market will remain very strong and only a handful of growers will enter the legal market. I don't see how it could be otherwise, except to allow the recreational use of cannabis, which would enable the project to be truly inclusive.*⁶²

The reform in South Africa has similarly been plagued with legal uncertainty, and the impact on the black market is unclear. Nevertheless, after decades of consistent increase, drug-related arrests plummeted between 2018 and 2020, highlighting one important apparent benefit of the

decriminalisation of cannabis use and cultivation (although determining which of these is the primary driver of the reduction in arrests is not straightforward).⁶³

Aside from the possible impacts on the black market in Ghana, many argued that the economic opportunities offered by the cannabis industry are justification enough for liberalisation. Ghana is a major cultivator and exporter of cannabis, with the Volta region being one central cultivation hub. As one prosecutor noted, ‘Against the backdrop of the Sustainable Development Goals, we cannot just sit here and ignore the fact that cannabis cultivation is a major source of livelihoods, as well as being a major potential source of revenue for the state’.⁶⁴ A lawyer and academic agreed:

*Yes, regulation will help bring [the cannabis cultivation market] out in the open. And you know that crime thrives in the dark. Once you are able to regulate it, then it puts it out in the light, it puts it out in the open, and you can even tax it. And you can use it for what you want to use it for.*⁶⁵

In practice, however, a licensing system often makes legal cultivation inaccessible for small-scale cannabis growers. In Lesotho, for example, the extremely high cost of a licence (which increased from almost EUR 10 000 in 2018 to EUR 32 000 in 2022) means that only large companies can access the market; small-scale cannabis farmers must still sell illegally.⁶⁶ Similar dynamics are at play in other African countries, such as Rwanda and Zimbabwe, where the financial burden of licences and other regulations is often prohibitively high.⁶⁷

Furthermore, licensing processes are vulnerable to corruption.⁶⁸ Reflecting the concerns of many stakeholders, one official believed the system could work well, but ‘only if the government can promise they will be able to regulate it well, ensure adequate training, and so on’, and if it’s not ‘left at the whim of government stooges’.⁶⁹ As of 2022, the Zimbabwean government had issued 57 licences,⁷⁰ but only 15 appear to have been activated, ‘raising fears some of the permit holders are holding the permits for speculative purposes’.⁷¹ Ensuring a high degree of transparency in licensing processes and making licences non-transferrable between individuals are two steps that can help mitigate such risks.⁷²

One step away from prohibition: Ghana’s legislative reform

Narcotics Control Commission Act, 2020 (Act 1019)

Act 1019 encompasses a wide range of reforms, including the establishment of the Narcotics Control Commission (with greater powers than its predecessor, the Narcotics Control Board); provisions for follow-the-money approaches to target high-level criminals and for plea bargains in trafficking cases; and the liberalisation of cannabis cultivation.

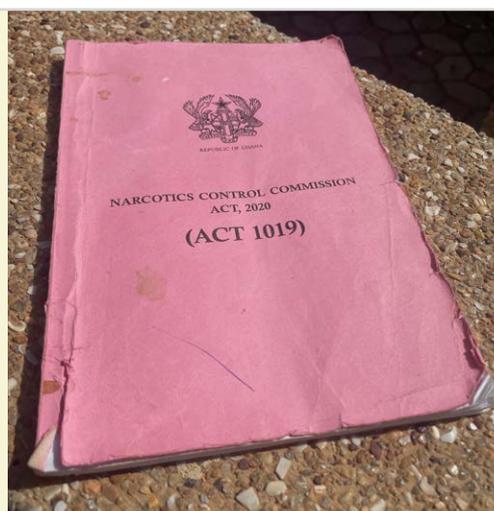
However, as noted in the introduction, this report explores the Act’s purported adoption of a public health approach, including the (limited) references to harm reduction and the introduction of a non-custodial alternative for possession of any drug for use.

Act 1019 has been lauded by political figures and civil society alike for espousing a public health approach.⁷⁵ As Minister of the Interior Ambrose Dery stressed, ‘One of the primary goals of Ghana’s new drug law is to treat drug use and addiction as a public health issue, thus converting prison terms for personal drug possession into non-custodial alternatives, including financial penalties.’⁷⁶ However, global precedent demonstrates that this rhetoric is often not matched in practice. As Joanne Csete remarked, ‘Plainly, there is a chasm into which policies fall on the way from the rhetoric to the reality.’⁷⁷ It is therefore worth examining the key provisions of the legislative framework in detail, and considering how they have affected dynamics on the ground.

Legislative analysis

Among NACOC's objectives, as stipulated by the Act, are to 'ensure public health and safety' and 'collaborate with the relevant bodies to develop measures for the treatment and rehabilitation of persons suffering from substance use disorders'.⁷⁸ Notably, in line with a renewed focus on follow-the-money approaches to drug trafficking, NACOC is also to 'facilitate the confiscation of proceeds from narcotic-related offences'.

*Narcotics
Control
Commission Act,
2020 (Act 1019)*



The functions of the Commission include:

- to 'adopt measures to reduce the demand for and harm caused by the use of narcotic drugs and plants through education, treatment and rehabilitation of persons with substance use disorders';
- to 'ensure that substance use disorders is *[sic]* treated as a public health issue'; and
- to 'provide, in consultation with the relevant bodies, alternative means of livelihood for persons who cultivate narcotic plants'.⁷⁹

However, the Act does not detail the means by which such functions are to be achieved. Neither does it define a 'public health approach'. Not only are clear definitions a prerequisite for effective implementation, but vagueness about what is meant by a 'public health approach' leaves space for the implementation of abusive policies under the umbrella of reform.⁸⁰ Similarly, 'rehabilitation' is not defined in Act 1019, carrying the same risks.

By the same token, although the Act is being used as a framework for introducing harm reduction measures in Ghana, there is only one reference to harm reduction within the law itself, dictating that the Board of NACOC establish a committee for 'drug demand and harm reduction'.⁸¹ In doing so, the Act introduces the possibility of harm reduction services, while effectively pushing practical decision-making on health matters to NACOC. This deviates from recommendations in the WACD's Model Drug Law that drug legislation should explicitly state that harm reduction services do not 'constitute incitement or inducement' to drug use (and in doing so removing potential legal barriers to such interventions),⁸² and to explicitly provide for harm reduction services.⁸³

The introduction of non-custodial sentences for drug possession is promoted by the UN system overall and many of its constituent parts, although there has been wide variation in how nation states have translated this policy into law.⁸⁴ In Act 1019, alternatives to incarceration for the unlawful possession or control of narcotic drugs are contained in two intersecting provisions, as examined below.

Section 37, 'Unlawful possession or control of narcotic drugs', states that:

1. *A person who, without lawful authority, proof of which lies on that person, has possession or control of a narcotic drug for use or for trafficking commits an offence.*
2. *A person who commits an offence in subsection (1) –*
3. *for use is liable on summary conviction to a fine imposed in accordance with the penalty specified in the Second Schedule and an additional term of imprisonment specified in that Schedule if the fine is not paid;⁸⁵ or*
- d. *for trafficking is liable on summary conviction to the fine and imprisonment specified in the Second Schedule and an additional term of imprisonment specified in that Schedule if the fine is not paid.*

The fine for possession for use is 2 400–6 000 Ghanaian cedis (GHS), approximately EUR 195–485.⁸⁶ The law stipulates that if this fine is not paid, a prison sentence of not more than 15 months will be handed down in default.⁸⁷

Section 45, ‘Offence of purchase of narcotic drugs or plants’, states that:

2. *A person who, without lawful authority, purchases a narcotic drug or plant for personal use, commits an offence.*
3. *A person who commits an offence under [...] subsection (2) is liable on summary conviction to a fine or a term of imprisonment as specified in the Second Schedule.*
4. *The person shall serve the additional term of imprisonment specified in the fifth column of the Second Schedule if the fine is not paid.*
5. *Without prejudice to subsections (3) and (4), a Court that convicts a person for an offence committed under subsection (2) may make an order directing the person to seek treatment and rehabilitation at a facility approved by the Commission in consultation with the Minister for Health.*

The fine under Section 45(3) is GHS 24 000–120 000 (EUR 1 900–9 600), considerably higher than the fine for possession for use. The prison sentence, if mandated by the judge instead of the fine, or should the person not pay the fine, is 4 to 10 years.

While the removal of incarceration as the primary penalty for drug use is certainly welcome, these legislative provisions deviate from best practice in several ways. Four prominent deviations are outlined below.

1. **The provision of a fine as a penalty for use, with default incurring imprisonment.** Comparing the fines for possession for use to the average monthly salary of around GHS 3 700 demonstrates that the penalty is extremely punitive,⁸⁸ and even more difficult for people with less means. As noted by a NACOC official, *the users liable to pay fines for use aren’t usually in a position to pay. If you are able to sit in a car or in your house to smoke, you won’t get caught. It’s the poorer people who have no choice but to smoke in the slums, in the streets and so on who get caught.*⁸⁹

The fine system thus continues to place disproportionate harm on the most vulnerable, with amounts that are largely beyond the reach of the most marginalised PWUD, technically resulting in imprisonment by default.⁹⁰

Notably, the provisions deviate from the WACD’s Model Drug Law for West Africa, which stipulates that, ‘notwithstanding any other provision of law, the unauthorised possession, purchase, and transportation, of controlled drugs for personal use do not amount to an offence in law’.⁹¹ While civil society in Ghana advocated strongly to remove the fine provisions or at least decrease the amount, they were ultimately unsuccessful. Some parliamentarians argued that a degree of punitive action was necessary to maintain deterrence, while others proposed that the funds generated by fines could be used to resource treatment facilities.

Other jurisdictions, including Armenia and Thailand, have similarly introduced fines as possible alternatives to incarceration. In Australia’s Northern Territory, police may issue a fine of up to AUD 200 (EUR 120) to anyone found with up to 50 grams of cannabis; if the fine is not paid, the person will officially be in debt to the state but no criminal conviction or record will result.⁹² In Switzerland, although the consumption of illicit drugs remains a punishable offence, an adult caught in possession of 10 grams or less of cannabis receives an administrative fine of CHF 100 (EUR 100) instead of prosecution.⁹³

2. **The lack of clarity in distinguishing possession for use and possession for supply.** The Act defines ‘possession for use’ as ‘the possession or control of a quantity of narcotic drugs or plants which does exceed the quantity which can reasonably be used by an individual in a day’.⁹⁴ In practice, this leaves law enforcement officers conducting arrests without substantive guidelines to determine the nature of the offence.

*Rehabilitation centre
in North Legon, Accra*



Where quantity thresholds are not provided, the fate of PWUD significantly rests on police discretion. While discretion may allow some leniency – and perhaps lead to a reduction in penalties and the resulting burden on the criminal justice system – it can also produce considerable inequities.⁹⁵ Members of the judiciary, drawing on their experience of adjudicating cases since Act 1019 was enacted, commented that police reportedly lean towards charging offenders with possession for supply, sometimes as a punishment when arrested individuals refuse to pay the solicited bribe.⁹⁶

The failure to clearly distinguish between the two offences by threshold weightings therefore poses other obstacles to effective implementation. Global precedent shows that setting appropriate quantity thresholds is crucial to effectively decrease the risks of PWUD being incarcerated. Experience in Mexico, Poland, Russia and Brazil, for example, shows that thresholds that are too low can result in more incarceration than before, through a phenomenon known as ‘net-widening’.⁹⁷ Some commentators believe this is a significant risk with Act 1019.⁹⁸ Additional risks associated with too-low thresholds include incentivising PWUD to purchase in quantities below the threshold, thereby increasing their interactions with informal and criminal markets, and increases in drug potency to keep volumes low.⁹⁹

Notably – while not affecting only PWUD – the retention of mandatory minimum penalties for trafficking increases potential harms to those convicted of trafficking offences. One of the harms derives from the fact that given the mandatory minimum penalties for trafficking, individuals who send even small quantities – but enough to be considered not for personal use – are served long sentences. One judge reported being forced to issue the mandatory minimum penalty for trafficking – 10 years under Act 1019 – to a young woman charged with unlawful possession for trafficking. The defendant had reportedly sent a small dose of an unspecified drug hidden in a package of waakye (a traditional Ghanaian dish of cooked rice and beans) to her boyfriend in prison.¹⁰⁰ In instances such as this, therefore, the legislation and sentencing guidelines do not appear to be consistent with an approach to drugs that seeks to minimise harm.

- 3. The introduction of court orders for facility-based treatment.** There are many examples of alternatives to incarceration for drug offences. In Armenia, courts can mandate ‘public work’ (community service).¹⁰¹ Costa Rican courts have options for house arrest or probation.¹⁰² But the use of mandatory treatment is among the most common alternatives. Ghana is not alone in introducing treatment referral provisions. In West Africa, 13 of the 15 ECOWAS member states (as well as Mauritania) provide for mandatory treatment as either an alternative or an additional sentence to incarceration and/or fines (see Chart 1). This is despite evidence from around the world that mandatory treatment has poor outcomes and has resulted in increased harms for PWUD.¹⁰³ Mandatory treatment is also arguably in breach of ethical standards for medical professionals.¹⁰⁴

In Vietnam, a system of compulsory treatment for PWUD was introduced in 1993.¹⁰⁵ In 2009, changes to the Penal Code decriminalised drug use, introducing administrative sanctions and/or compulsory treatment. In 2021, the National Assembly issued a new law that maintained abstinence as the ‘sole legitimate therapeutic goal’ and included provisions for increased drug use detection measures such as biological testing and drug dependence screening.¹⁰⁶

Although the country’s drug laws have undergone several stages of reform, the use of court-ordered centre-based treatment continues today. At the centres, non-medically supervised drug detoxification is enforced and detainees must undertake vocational training and manual labour for two to four years (in practice, this may be extended far longer).¹⁰⁷ Although compulsory treatment is technically an alternative to incarceration, it is notoriously abusive and tantamount to imprisonment in many ways.

In the United States, a system of drug courts – more than 3 100 across all 50 states – provides a quasi-judicial approach to health referrals.¹⁰⁸ However, these often lack clear pathways for appeals and treatment can be mandated for people who don’t need it, effectively enabling the courts to impose custodial sentences in health facilities.¹⁰⁹ Research suggests that, despite being widely adopted, drug courts have shown limited effectiveness and are inherently problematic in many ways. This is also the case in other countries, such as the United Kingdom and Ireland.¹¹⁰

Similarly in Ghana, Act 1019 does not make clear provisions for appeals or for the length of time a rehabilitation order can be mandated. The language of the Act – that a judge may ‘direct’ someone to seek treatment – indicates that it would be mandatory.

4. **Judges are ill-qualified to determine whether treatment is appropriate for individual PWUD.** While clinic-based treatment may be suitable for problematic drug use, it certainly is not for the far more common non-problematic drug use. Suitably qualified professionals must be involved in such determinations.

For example, courts in Portugal refer drug offenders to Commissions for the Dissuasion of Drug Addiction staffed by legal, medical and social work professionals. There, they are assessed as to whether they can be considered ‘problematic’ users. Where the assessment is negative, their case is suspended and no further action is taken.¹¹¹ Where the assessment is positive – typically 10–15% of cases, ranging from moderate to high-risk – non-mandatory brief interventions, such as counselling, may be proposed or non-mandatory referrals given for specialised treatment services.¹¹²

In Ghana, according to data from the West African Epidemiology Network on Drug Use, cannabis is the main substance of abuse among patients at rehabilitation centres, accounting for over 40% of cases.¹¹³ Only a limited number of cannabis smokers are so-called problematic users.¹¹⁴ As such, it is not clear that rehabilitation is a suitable, let alone required, course of action for individuals found to be in possession of cannabis for personal use. Alternative diversion schemes for treatment can be introduced. In the United Kingdom, for example, arresting officers may defer a court summons and instead divert individuals caught in possession of drugs to a drugs education programme.¹¹⁵

Mandatory treatment referrals are of particular concern where there is no regulatory framework to ensure the standard of rehabilitation and treatment facilities and implement evidence-based approaches.¹¹⁶ A focus on rehabilitation also risks ignoring potentially beneficial non-medical psychosocial interventions that could reduce the harms to PWUD, such as addressing issues of poverty, homelessness, unemployment and lack of family and/or social support, as recommended by the World Health Organization (WHO).¹¹⁷

Members of the Ghanaian judiciary reported little use of these treatment referral orders. This is partly because the process for doing so remains unclear, including who pays for treatment and which facilities have been approved.¹¹⁸ This is supported by 2022 data that shows only 5% (19 of 381) of referrals to rehabilitation centres and public hospitals come from the courts.¹¹⁹

Analysing impacts

Moving PWUD out of the criminal justice system

Among the stated goals of Act 1019 was to decrease the incarceration of PWUD and their interactions with the criminal justice system more broadly. This constitutes a key indicator for analysing impact. We consider data regarding arrests, imprisonment, judicial processes and qualitative indications of law enforcement interaction with PWUD.

Box 2: Can introducing alternatives to incarceration impact the criminal market dynamics of drugs?

The introduction of alternatives to incarceration for drug use is typically analysed through the lens of reducing harms to PWUD, not in terms of shaping drug trafficking and criminal market dynamics. However, this does not mean that there are not potential impacts on the latter.

First, a key goal of such policy reform is to shrink drug-related incarceration. Across the globe – from Latin America to Europe and Africa – prisons have proven fertile grounds for recruitment into organised crime and the establishment and expansion of criminal organisations.¹¹⁸ Illustratively, the Primeiro Comando da Capital (PCC), now Brazil's most powerful criminal organisation, was born in the country's overcrowded prisons. Widespread incarceration for low-level drug offences was a key driver of this overcrowding, with a significant proportion of inmates convicted on drug-related charges. Growing numbers of individuals, mostly men, were funnelled into prisons under PCC influence.

PCC membership has grown substantially since its founding in 1993, but in particular since 2015 as the group expanded into new territories, both home and abroad.¹¹⁹ With an estimated 40 000 members, the PCC is now one of the largest players in international cocaine trafficking, and likely the main exporter behind the cocaine flowing through West Africa to Europe.¹²⁰ Moving PWUD out of prisons could reduce their vulnerability to recruitment into criminal organisations. Providing alternatives to incarceration to other low-level drug-related offences like supply and couriering would further maximise the benefits of the approach.

Secondly, and more indirectly, diverting resources away from the mass incarceration of PWUD could enable more effective targeting towards, for example, drug-related health interventions. It could also free up time and resources for law enforcement agencies to focus on higher-level players in drugs markets – a diversion that Act 1019 appears to encourage through provisions to strengthen follow-the-money approaches to trafficking offences. The WACD's Model Drug Law explicitly recommends the removal of criminal penalties for low-level offences to 'allow law enforcement to focus on the most serious drug offences and in particular organised crime and high-level corruption'.¹²¹

While other reforms to de-penalise drug use have purportedly shared such aims, their efficacy has been analysed by means of drug seizures and retail price data. It is very difficult to determine the causal pathways in practice.¹²²

In the focus group, members of the judiciary said that Act 1019 had an immediate impact on the total number of PWUD facing jail terms, with prosecutors withdrawing many drug use cases pending under the previous legislation.¹²⁵ They also reported seeing fewer PWUD in their courts in the three years since the Act's enactment than previously.¹²⁶ However, given the lack of centralised court data in Ghana, it is not clear whether official data on prosecutions (which is not collated and thus unavailable for analysis) would support the anecdotal evidence. Official data from the prison service shows no discernible decrease in the total number of people newly



Punitive drug policies contribute to significant prison overcrowding

imprisoned each year for drug-related offences since 2018, aside from a slight decrease in 2020, which reflects a broader pattern of reduced incarceration during the COVID-19 pandemic.¹²⁷ Similarly, disaggregated data on incarceration in the years since the introduction of Act 1019 has not been made available.

A lack of official data on drug-related arrests inhibits a clear picture of the dynamics at play in Ghana.¹²⁸ However, higher arrest numbers are seen to reflect law enforcement success and, while there are no official arrest quotas, that is likely to incentivise more drug-related arrests.¹²⁹ In many countries, assessing the performance of police – and particularly specialised drug units – by the number of drug-related arrests ‘tends to encourage arrests of small-scale users who are the easiest to find – and are precisely the population that should be directed away from the criminal law system and toward health and social support.’¹³⁰ The WACD argues that drug laws should discourage police from targeting drug treatment facilities, needle exchanges or other services for people who use drugs for the purpose of achieving arrest quotas.¹³¹

Interactions with law enforcement

A central harm associated with the criminalisation of PWUD is the nature of their interactions with law enforcement. While establishing causality is complex, it is worth considering whether these have changed since the enactment of Act 1019.

Police in Ghana and across the continent have long made extensive use of ‘swoops’ (or ‘sweeps’): unannounced raids on areas known to be hotbeds of drug use and supply, commonly known as ‘ghettos’. Previous research has shown that swoops not only feature a considerable degree of police bribery, but they are also of little deterrence to PWUD in terms of continued drug use.¹³²

Some PWUD reported that swoops continue, but they have decreased recently. Some point to 2022 as the time of this shift – although COVID-19 in 2020 and 2021 poses yet another obstacle to assessing the causality of changing police behaviour – and others say it is more recent. One PWUD noted, ‘For about two months now [April–May 2023], I’ve noticed that the issue of police [swoops] has gone down, but we have some police people who have even taken us as friends.’¹³³ A woman who uses drugs said, ‘They don’t come for the junkies, they come for the pushers.’ She attributed the shift to rent-seeking behaviour rather than legal reform: ‘What are they going to do with us? We don’t have money for them.’¹³⁴

A number of women who use drugs reported an overall softening of police attitudes and a decrease in abuse. However, this was certainly not uniform. One man who uses drugs reported that police harassment was higher now than it was two or three years ago: ‘The police now are more interested in extortion than prosecuting. There is more extortion now than three years ago.’¹³⁵

In 2022, a primary school headteacher was arraigned at Ho Circuit Court in the Volta Region for allegedly cultivating marijuana on his farm. The teacher, who admitted cultivating the narcotic plant on a very small scale for health purposes and not for commercial purpose, failed to meet bail conditions and was subsequently led into police custody



Ongoing extortive practices were widely reported, although with disagreement as to whether these were accelerating or decelerating. PWUD said they are often forced to pay bribes ranging from 100 to 500 cedis (EUR 8–40), while sellers were made to pay as much as GHS 5 000–6 000 (around EUR 400–500).¹³⁶ PWUD also reported police selling confiscated drugs back to sellers.¹³⁷

Overall, it was not possible to determine a consistent trend in interactions between PWUD and law enforcement. Ongoing engagement with law enforcement around the human rights of PWUD and measures to tackle corruption and extortive practices will be key to shaping such a trend in the future.

A similar lack of tangible results in the wake of drug reform seeking to decrease the entanglement of PWUD in the criminal justice system has been reported by many countries whose drug law reform was meant to decrease the entanglement of PWUD in the criminal justice system.¹³⁸ Portugal, for example, saw a reduction in the number of problematic drug users and the burden of drug offenders on the criminal justice system following the decriminalisation of drugs in 2001.¹³⁹ But even where benefits have been tracked, establishing causality is complex.

As Caitlin Hughes and Alex Stevens argue in a 2010 paper,

*the problem is that it is impossible to state that any of these changes were the direct result of the decriminalisation policy [...] It also remains unclear whether the observed impacts were influenced more by the policy or its implementation.*¹⁴⁰

Moreover, the decriminalisation policy was not implemented in isolation but came with a comprehensive strategy of investment in social support and treatment facilities and services.¹⁴¹

Stigma and access to treatment

A decrease in the stigma suffered by PWUD and enhancing their access to treatment and rehabilitation were among the objectives of the public health approach espoused by Act 1019.

Practitioners in Ghana, from rehabilitation counsellors to law enforcement and criminal justice professionals, were largely of the view that the level of stigma surrounding drug use and PWUD has reduced in recent years.¹⁴² They posited that, with drug use considered less taboo, public health research and interventions are far easier to conduct. Moreover, they reported that law enforcement and other agencies are now willing

to engage with civil society organisations (CSOs) working on drug-related issues: for example, joint trainings between health centres and local police have been conducted.¹⁴³

Discussions with PWUD themselves indicated that little has changed in people’s attitudes towards them. According to one woman who uses drugs: ‘in [the community’s] eyes, once a junkie, always a junkie.’¹⁴⁴ Similarly, one man who uses drugs said,

*if you are a user, you become the laughingstock of your community, even your family; you lose your dignity in front of everyone. People in local communities still don’t always see it as a health issue. Every user is branded a thief or criminal. They still see drug use as a crime.*¹⁴⁵

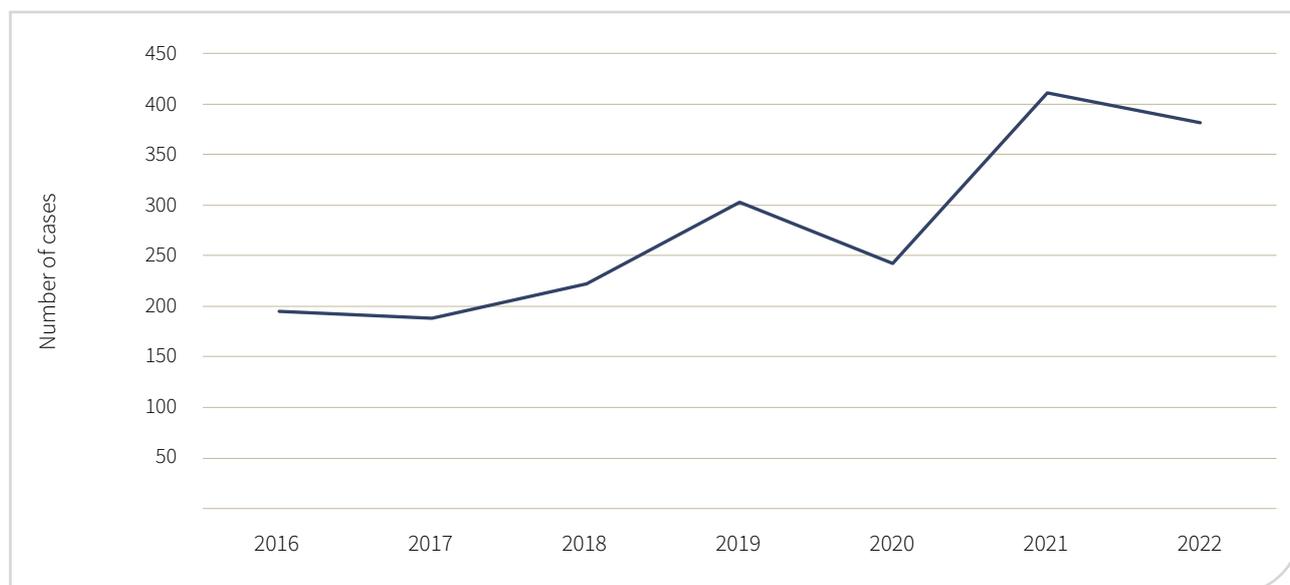
Levels of stigma are extremely difficult to quantify but, given the centrality of PWUD in the matter, their testimony must carry the greatest weight.

The degree of stigma surrounding drug use and PWUD is important in part because it can be a significant barrier to seeking treatment.¹⁴⁶ Rehabilitation centres in Accra qualitatively reported an increase in the number of individuals seeking treatment since 2020, supported by official data on admissions (see Chart 4).¹⁴⁷ Ghana’s National Drug Control Master Plan (2022–2030) attributes this increase to ‘a rise’ in ‘accessibility and availability of services’ while recognising that ‘the numbers could be better’.¹⁴⁸ Officials from NACOC were of the same view, reporting that the recognition of drug addiction as a health issue has reduced stigma and allowed more PWUD to come forward to seek help.¹⁴⁹

However, the use of admissions or enhanced availability of facilities as statistical indicators of reduced stigma is fraught with difficulties. First, as noted earlier, treatment is inappropriate for many PWUD. Secondly, where statistics do not reflect whether admissions are voluntary, spikes in admissions could relate to forced admissions, whether court-mandated or due to coercion from family or others. Forced treatments are broadly recognised as ineffective and themselves a breach of PWUD rights, particularly in places like Ghana where the quality of treatment facilities is variable. Data on referrals can provide some insight but not conclusive evidence regarding coercion. Interestingly, there has been a notable increase in the proportion of referrals made by health professionals, from only 4% in 2021 to 18% in 2022.¹⁵⁰

Even where PWUD do fall into the category of ‘problematic drug use’ and wish to seek treatment, their prospects in Ghana are limited both in terms of access, such as treatment availability and the associated costs, and quality.

Chart 4: Number of cases of substance use treatment in Ghana, 2016–2022



Source: West African Epidemiology Network on Drug Use (WENDU) 2020-2022 draft report

Turning first to access: according to official NACOC data, there has been an increase in treatment facilities in recent years, and there are now 30 rehabilitation centres across Ghana. Fifteen are located in the Greater Accra Region, nine in Ashanti and the remaining six scattered around the rest of the country.¹⁵¹ While services are limited nationwide, PWUD away from large urban centres in the south are particularly poorly served. And while the number of facilities providing treatment has grown in recent years, the challenge around quality remains.¹⁵²

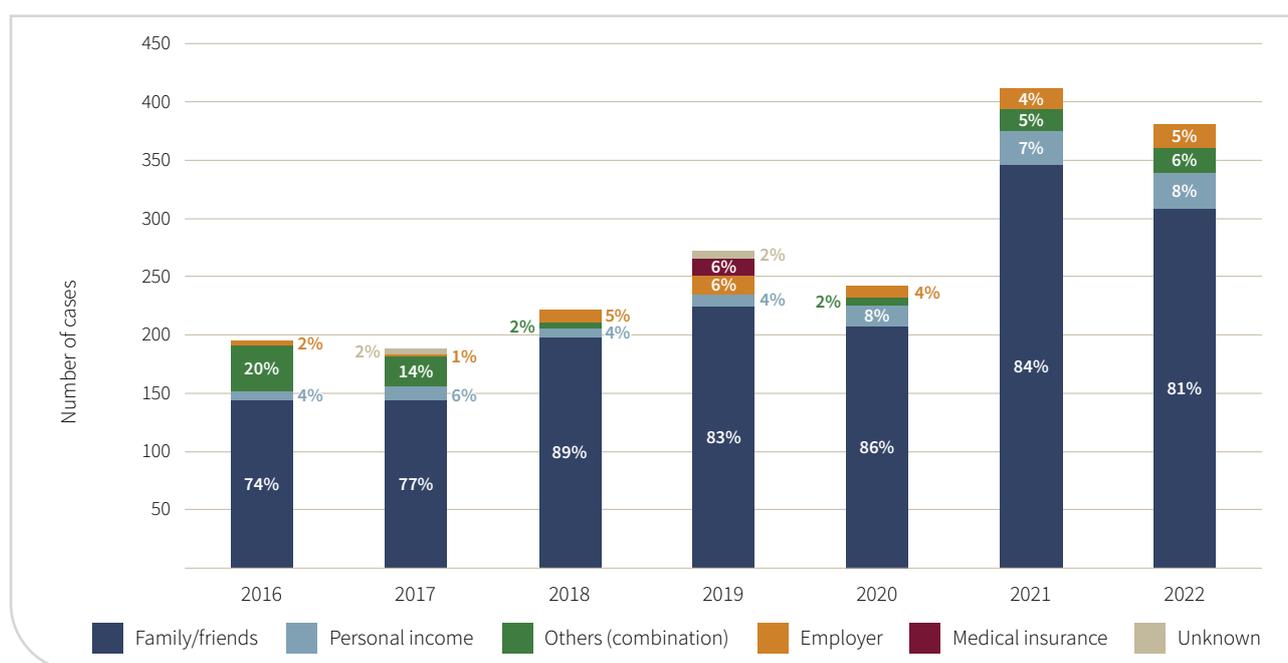
Furthermore, there is a significant gender gap when it comes to accessing treatment, with most rehabilitation centres in the country accepting only men. This gender inequity as regards access to treatment is compounded by the greater stigma revolving around women with substance abuse disorders compared to men. One counsellor at a rehabilitation centre in Accra explained,

*It's because of our cultural background, you know, and the stigma: the two go together. That is not to say that a male drug addict is more accepted than a female addict. But you see, we look down more on women who have an addiction.*¹⁵³

Many PWUD cited cost as a significant barrier to accessing treatment.¹⁵⁴ Private residential rehabilitation centres charge as much as GHS 3 000 per month (EUR 250), while a non-residential public rehabilitation facility costs on average GHS 1 500 per month (EUR 125).¹⁵⁵ Act 1019 makes some steps towards addressing this by enabling NACOC, in liaison with the facility in question, to waive the cost of treatment in public facilities.¹⁵⁶ Section 22 of the Act also establishes a Substance Use Disorder Rehabilitation Fund for PWUD treatment and rehabilitation, financed through parliamentary allocations, 'funds raised from the general public', donations and assets confiscated in drug trafficking prosecutions.¹⁵⁷ Whether this happens in practice is unclear.¹⁵⁸ As Chart 5 shows, the largest sources of treatment funding are family and/or friends and, to a much lesser extent, personal income.

Finally, the quality of treatment available for drug use disorders in Ghana, in both state- and privately-run rehabilitation centres, is poor. Psychiatric hospitals and faith-based facilities alike are overcrowded, underfunded and lack qualified personnel. Treatment often involves a significant degree of coercion and relies on counsellors and practitioners with limited medical training.¹⁵⁹ Treatment often follows the '12-step

Chart 5: Source of funding for treatment, 2016–2022



Source: West African Epidemiology Network on Drug Use (WENDU) 2020-2022 draft report



Police regularly make unannounced raids in areas known to be hotbeds of drug use and supply, commonly known as 'ghettos'

approach', which is explicitly religious, and detoxification – although not the medically assisted version in some cases, and thus highly ineffective.¹⁶⁰ Churches and traditional doctors are often the primary points of contact for PWUD seeking treatment, with many at public facilities having previously undergone a form of religious treatment.¹⁶¹

The Act mandates NACOC both to establish a national rehabilitation centre and 'to set and strictly enforce standard operating procedures for private persons/institutions running drug rehabilitation and treatment facilities/programmes'.¹⁶² This is a positive step towards a regulated and effective ecosystem of treatment, but it remains unimplemented to date.

While the aspirations of the health-based approach to drug consumption are welcome, the ambition has thus far not been matched with the requisite funding and other resources, including treatment options in line with international best practice, to provide the architecture for effective implementation.

Tellingly, a 2021 Global Fund assessment found that the PWUD population was an exception to the overall positive direction of programmes to reduce HIV-related human rights barriers in Ghana. PWUD had 'largely been absent' from such programming, despite being identified as one of the most at-risk populations by Ghana's National HIV and AIDS Strategic Plan, 2016–2020.¹⁶³ This is one clear indication that PWUD are poorly served by public health services in the country.

PWUD are similarly absent from Ghana's Human Rights Strategic Plan, which came into force before Act 1019 – a missed opportunity. The same Global Fund assessment found more broadly that, despite the enactment of Act 1019, 'policy on health services for people who use drugs seems not to have progressed', commenting that 'there was a hope that [the Act] would help to make concrete the long-standing political rhetoric in the country on treating drug use as a health rather than a criminal law problem.' The assessment concludes bleakly: 'That hope has not been realized.' The Assessment was carried out very soon after Act 1019 came into force, giving little time for the changes forecast in the rhetoric surrounding it. In 2023, it is clear that further steps are required towards implementing – and continuing to garner support for – comprehensive public health measures for PWUD.

Harm reduction

While Act 1019 provides no direction for harm reduction strategies, it appears to have opened a space for such programming to be implemented. Ghana's National Drug Control Master Plan (2022–2030), which is currently

being developed, sets out priority action areas, including implementing a drug substitution programme and a needle and syringe programme.¹⁶⁴ While such state interventions are not yet in place, the Ghana-West Africa Program to Combat AIDS and STI, a non-profit CSO, is in the inception phase of introducing both.¹⁶⁵

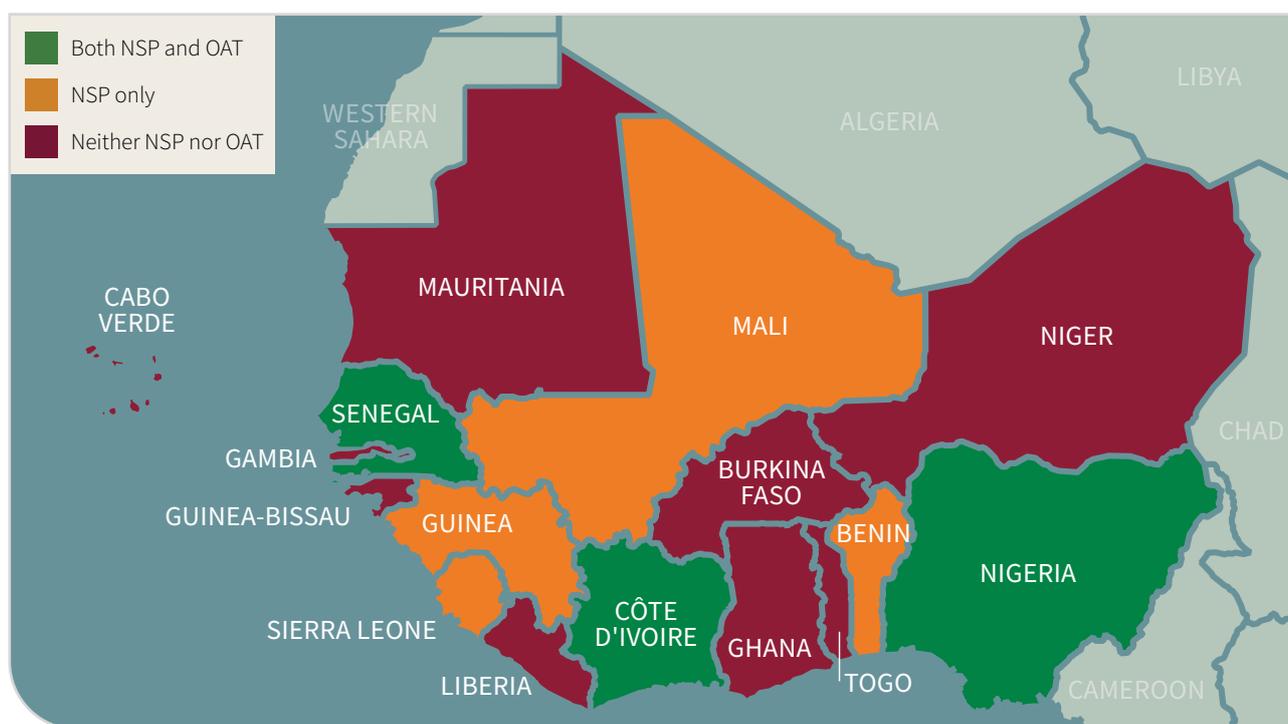
To enhance their impact, interventions should be tailored to the local context. For example, data from Ghana indicates that injecting drug use is relatively limited, so harm reduction programmes could consider providing other relevant supplies – for example, crack pipes and naloxone – for individuals to use in a safe space.¹⁶⁶

Notably, envisaged financing for the Master Plan is predominantly international, and it is not clear what budgetary provision the state has made or will make to implement its objectives. There are also different assessments of how much detail legislation should provide and what degree of discretion should be left to the implementing professionals. However, a clearer legislative footing, one that explicitly legalises such approaches, and grounds their intentions and objectives of implementing harm reduction measures, would mitigate the risks of varying interpretations or backsliding against harm reduction implementation in the future.

Other countries in West Africa have already begun to implement harm reduction measures (Chart 6). One of the first centres in the region was Senegal’s Centre de Prise en Charge Intégrée des Addictions de Dakar/ Integrated Addictions Management Center of Dakar (CEPIAD). CEPIAD provides psychosocial support and healthcare in addition to opioid substitution therapy and clean needle exchange. While drug use remains a criminal offence, CEPIAD has the support (including financial) of the national government.¹⁶⁷ Similarly, harm reduction is explicitly mentioned in Côte d’Ivoire’s national policy documents and the country currently has a needle and syringe programme and an opioid agonist therapy programme (using methadone) in operation.¹⁶⁸

Nigeria – which retains punitive legislation – demonstrates the disjunction between de jure and de facto legalisation of harm reduction approaches. Nigeria embarked on its first pilot needle and syringe programme (which has been assessed as ‘feasible, partially effective, and of good quality’) between July and December 2020.¹⁶⁹ More recently, the National Drug Control Master Plan 2021–2025 is the first iteration of the country’s drug

Chart 6: Availability of harm reduction services in West Africa, 2023



Note: NSP: needle and syringe programme, OAT: opioid agonist therapy

Source: Harm Reduction International, Global state of harm reduction: 2023 Update to key data

strategy which explicitly mentions harm reduction. One of its objectives is to ‘implement a full package of harm reduction services’, including, among others, a ‘needle and syringe programme’, ‘medically assisted therapy and other evidence-based drug dependence treatment’ and a ‘drug overdose management programme’.¹⁷⁰

Key takeaways and recommendations

Act 1019 steps away from the blanket criminalisation of drug use in Ghana, an approach widely recognised to perpetuate harm, amplify pressure on the criminal justice system and make no material impact on drug markets. The reform presents a welcome shift in the legislative terrain on criminalising drug use prevalent across the ECOWAS region.

Beyond the design flaws outlined above, material change to date has been constrained by scarce resourcing and the short period of implementation. In order to move towards a drug policy that is more evidence-based and centred on the human rights of PWUD, amendments to the legislative framework are required. Further, implementation is pivotal to move beyond the cosmetic level at which many drug law reforms stall.

Outlined below are some key recommendations for the design and implementation of drug policies that move away from imprisoning PWUD and towards a public health approach, intended to support Ghana and other ECOWAS member states.

Alternatives to custodial sentences for personal drug use

Legislative design

- **Align the approach to drug use with that set out in the WACD’s Model Drug Law**, specifically that the ‘unauthorised possession, purchase, and transportation, of controlled drugs for personal use’ should not be an offence in law.¹⁷¹ It is key to remove the structure of monetary fines instead of custodial sentences, with the latter imposed in cases of default: this compounds harms done to the least well-off.
- **Clarify the distinction between possession for personal use and possession for supply by reference to quantified thresholds.** Defined thresholds may help to guard against corrupt practices by law enforcement officers who have reportedly extorted individuals arrested in possession of controlled substances, threatening them with a harsher charge should they fail to pay bribes. The threshold must be sufficiently high to avoid net-widening, resulting in higher levels of incarceration. Thresholds should be set cumulatively – i.e. for the total amount of drugs, not per drug type – recognising the prevalence of poly-drug use. Defined thresholds can either be introduced in the legislation itself or in sentencing guidelines.
- **Move away from mandated, court-referred rehabilitation orders.** The risks associated with court-mandated rehabilitation have been consistently demonstrated around the world. Not only does non-voluntary treatment often fail with substance use disorders, but it is also unsuitable for individuals charged with possession for use who are not problematic drug users. The risks are particularly high where the quality of treatment is largely unregulated, as in the case of Ghana.

Implementation

- **Education and awareness of the provisions of Act 1019 must be scaled up.** The general population and, crucially, PWUD and those involved in the criminal justice system, should fully understand the rights of PWUD, the provisions of the law, and the role of each criminal justice actor under the new legislation. Lessons can be learned from successful engagements with law enforcement personnel to decrease the stigma and abuse suffered by vulnerable populations, including sex workers.¹⁷²

Adopting a public health approach

Legislative design

- **Amendments to Act 1019 are required to ensure that its touted ‘public health approach’ is effective.** To provide ‘scientifically sound treatment and humane social support to those who need them’,¹⁷³ the legislation should define the concept of a ‘public health approach’, drawing on existing literature and legal frameworks around the world.¹⁷⁴ Without this, interventions within its framework will likely continue to infringe upon the human rights of PWUD. The legislation should explicitly extend its provisions for treatment to incarcerated populations. Central elements would include avoiding mandatory treatment; recognition that ‘treatment’ is not appropriate for the vast majority of PWUD; and broadening investment and support from a range of socio-economic perspectives.

Implementation

- **NACOC should prioritise the implementation of the Act’s provisions for the establishment of standard operating procedures (SOPs) for treatment and rehabilitation services in line with international best practice.** At a minimum, this alignment should take note of the UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), the UN International Standards on Drug Use Prevention, the UN International Standards for the Treatment of Drug Use Disorders and the UN Comprehensive Package of Harm Reduction Interventions. The wholesale improvement of the quality of available treatment for problematic drug use is essential to implementing a public health approach in Ghana.
- **The government must substantially increase funding for treatment services for PWUD, in line with those SOPs.** The aim should be to provide free access to qualified professional treatment for PWUD who need, and want, it. A substantial increase in the number of facilities is needed, including women-only centres, and these must be spread out across the country rather than concentrated in and around Accra and other urban centres. In this regard, the provisions outlined in the National Drug Control Master Plan (2022–2030) – including building the capacity of addiction professionals – are welcome.
- **Ghana’s Human Rights Strategic Plan should create a framework to advocate for regulations for enhanced access to treatment and harm reduction services for PWUD,** and parallel awareness-raising about the importance of treating drug use as a public health issue.¹⁷⁵

Harm reduction

Legislative design

- **A clear structure for the implementation of harm reduction approaches, in line with WHO guidelines, would allow such programming to avoid the risk of future legal challenges.** A degree of discretion for health professionals regarding specific treatment options may be desirable, but the legislation requires greater clarity.

Implementation

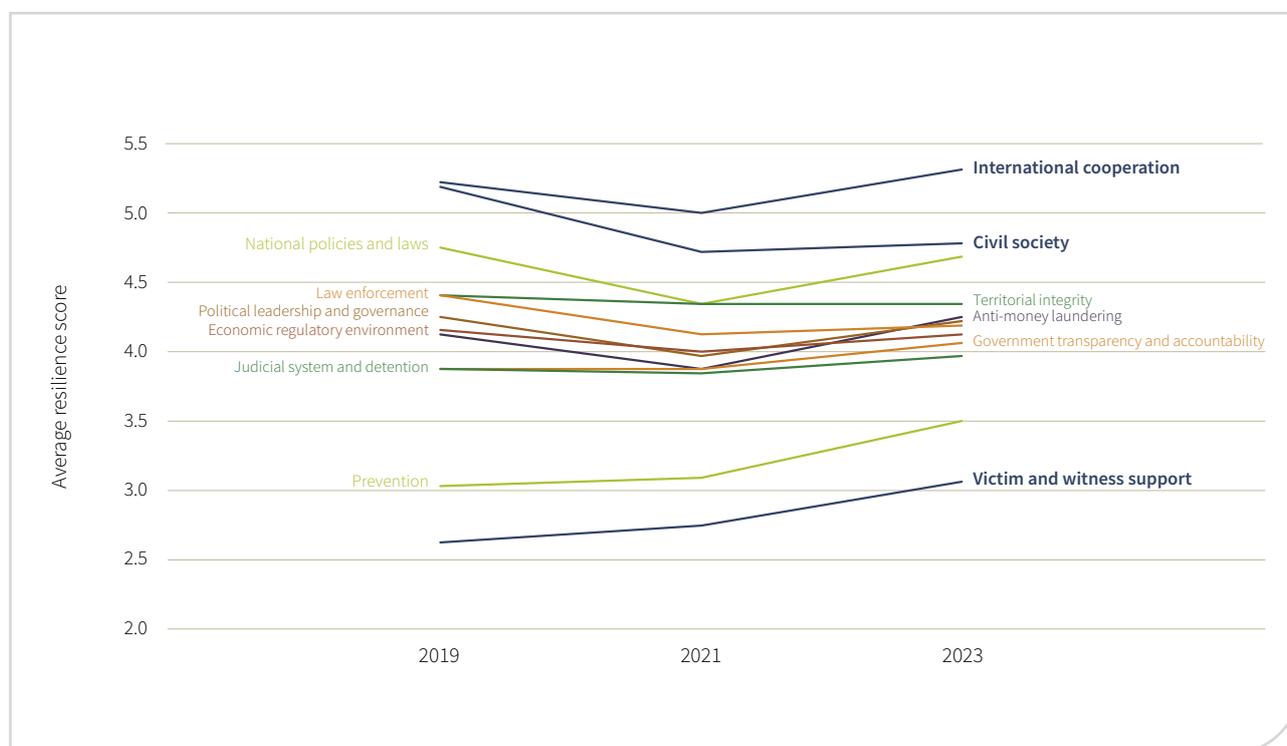
- **Harm reduction services should be tailored to the characteristics of the drug market.** This may include providing access to equipment beyond needle exchange services.
- **Appropriate resources are a prerequisite for sustainable implementation of harm reduction measures.** With increasingly scarce international and national resources within the ECOWAS region, this is likely to prove a significant obstacle. In several African states, including Kenya, waning financing has already caused harm reduction programming to be substantially diminished or withdrawn.

Broader recommendations

Other states, within the ECOWAS region and beyond, can draw lessons from Ghana’s experience with drug law reform thus far:

- **Rethink current prohibitionist, criminal justice responses to drug use and move towards a public health policy approach.** The overall objective of any drug policy should be the reduction of harm to PWUD, communities and governance more broadly. Regional collaboration is key to ensuring the transfer of knowledge and best practices, encouraging drug policy coherence across West Africa, and maximising the value of lessons learned in specific states.
- **Position individuals most impacted by drug policy – namely PWUD – at the centre of drug reform processes.**¹⁷⁶ Failing to do so increases the risk that new policies and frameworks will not take into account the characteristics of targeted drug markets or will introduce provisions which prove to be inequitable or inappropriate in practice.
- **Remove mandatory minimum sentences for trafficking offences, while maintaining maximum ceilings.** Judges are required to apply such mandatory minimums in cases where vulnerable individuals operate as low- and middle-level couriers, leading to disproportionate harms. When defining trafficking offences, states should consider requiring evidence of an individual’s intent to deal (*mens rea*), rather than resting solely on quantitative thresholds.
- **Implement alternatives to punishment for many low-level actors in the drug trade,** including those who engage in social supply, drug couriers and cultivators of illicit crops. Many of these people engage in the trade non-violently and do so to alleviate severe socio-economic marginalisation. Punishing them is unjust and only serves to heighten their vulnerability.¹⁷⁷

Chart 7: Resilience scores in West Africa



Note: Victim and witness support, which includes rehabilitation facilities, treatment programmes and other forms of harm reduction services, has consistently ranked as the weakest of the 12 resilience indicators in West Africa. Conversely, civil society is assessed to be among the region’s strengths, together with international cooperation. However, shrinking civic freedoms and a lack of financial support to civil society organisations have left civil society’s ability to provide effective responses to the harms of substance use and other organised crime-related activities worse off than in 2019.

Source: Global Organized Crime Index 2023

- **Contributions from CSOs and other non-state actors should be welcomed.** In Ghana, civil society actors were key drivers of the change in attitudes towards drugs that underpinned policy reform. Their success was due in no small part to the space they were granted to operate freely in the country. Other governments in West Africa should welcome the contributions from CSOs and other non-state actors, provide them with the necessary freedoms and opportunities and reverse the trend of increased repression tracked across recent years.
- **For its part, civil society should continue to advocate for a public health approach,** including the decriminalisation of drug use, to build widespread support among not only local populations, but crucially also those with key roles in the implementation of any policy reform, such as politicians, law enforcement and members of the judiciary. Experience in other African contexts suggests that, without broad-based consensus among the political elite on the direction of drug policy, reform will be slow and fragmented.¹⁷⁸
- **ECOWAS member states should invest in specialised capacity-building for people working with PWUD, including healthcare and other service providers and law enforcement actors.** This could include training in investigation techniques, the use of technology and establishing specialised units for drug-related cases.
- **Member states should work towards improving social support and public health, for which significant investment is crucial.** International evidence shows that harms associated with drugs markets are best mitigated by social support and public health services that are integrated, coherent and embedded.¹⁷⁹
- **Systematic data collection must be integrated into drug policies.** The scarcity of data pertaining to illicit drug markets hampers an accurate assessment of drug market environments and thus represents a persistent limitation in drug policy design. In addition to fostering evidence-based policy making, comprehensive data collection is also a necessary condition for effective policy assessments. As such, government departments and state authorities, including national police, specialised drug law enforcement agencies, the judiciary, prison services and rehabilitation centres, should implement, and where already in place strengthen, standardized data collection systems. Where appropriate, data should be gender-disaggregated and systems should be designed to capture supplementary characteristics, such as employment status and other socio-economic conditions. Ongoing cross-border cooperation and analysis provides crucial insights: WENDU, which plays a key role in enhancing available data on drug consumption, marking a significant step forward from a regional perspective, is a prime example. Nevertheless, data-sharing mechanisms between government entities and between member states, should be further strengthened. Finally, transparency should be at the core of governments' approaches to data sharing and publication – while maintaining the core principle of confidentiality – to allow for public scrutiny of drug policies and to enable evidence-based policy assessments.

Notes

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GI-TOC	14
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FRANCIS KOKOROKO/Reuters	18
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This publication is co-funded by



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This publication was produced with the financial support of the European Union and the German Federal Foreign Office. Its contents are the sole responsibility of the authors and do not necessarily reflect the views of the European Union or the German Federal Foreign Office.

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Acknowledgements

The authors would like to thank everyone who took part in bilateral interviews and focus group discussions, particularly the esteemed members of the judiciary and officials from the Narcotics Control Commission; Feikoab Parimah and Audrey Ferdinand for their support in the data collection; the West Africa Civil Society Institute for their logistical and administrative support; John Collins and Jason Eligh for reviewing this report; and Joanne Csete, Tony Duffin and Alex Stevens for lending their time and expertise during the consultation stage. Finally, the authors would like to extend a heartfelt thank you to the people who use drugs in Accra for sharing their stories.



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