

GDPO Situation Analysis

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Ghana Strives for a More Humane Drug Policy¹

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Subject

Recently, the government of Ghana proposed the Narcotics Control Commission Bill of 2017 (NCC) to replace the current Narcotic Drugs (Control, Enforcement, and Sanctions) Law of 1990 (PNDCL 236) that criminalizes all drug-related activities including drug use, possession, trade, and production. NCC aims to decriminalise drug consumption in Ghana. The initiative is a recognition of the grave impact on public health of the country's current drug legislation, which imposes punitive sanctions on those engaged in the consumption, production, and trafficking. However, the ramifications of legal change could be felt beyond the country as Ghana could become a norm entrepreneur in the region for harm reduction policies.³

Analysis

Global Trends

Historically, national drug policies have taken a punitive approach to suppress the trade in 'narcotic' substances in line with the UN-based international drug control conventions, which have arguably contributed to a range of failed policies including Plan Colombia and mandatory sentencing in the United States. After decades of harsh drugs policies, the United Nations Office on Drugs and Crime (UNODC) found in 2015 that about a quarter of billion people from the age of 15-64 consumed illicit drugs.⁴ The result of these measures are high levels of drug use and the harms that are associated with them has resulted in a shift in some parts of

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³ Maria-Goretti Ane and Jamie Bridge, 'Drug Laws in West Africa: A Review and Summary' (International Drug Policy Consortium and West Africa Commission on Drugs, 23 November 2017), <http://idpc.net/publications/2017/11/drug-laws-in-west-africa-a-review-and-summary>.

⁴ United Nations Office on Drugs and Crime, 'World Drug Report 2017: Booklet 2 - Global Overview of Drug Demand and Supply: Latest Trends and Cross-Cutting Issues' (United Nations Office on Drugs and Crime, 2017), <https://www.unodc.org/wdr2017/index.html>.

the world towards legalisation and decriminalisation models. For example, in 2001, Portugal decriminalised drug possession for personal use.⁵ In 2017, Uruguay became the first country to legalise cannabis for recreational purposes.⁶ Furthermore, 29 states within the United States have legalised the recreational and medicinal use of cannabis.⁷ Ghana's reconsideration of drug laws is in line with this trend through the decriminalisation of Ghana's Narcotic Control Commission Bill of 2017.⁸

Regional trends

Regionally, there have been indications of changing attitudes to drug policy, linked to better understanding of the counter-productive effects of criminalisation. For instance, in its 2014 report, the West Africa Commission on Drugs (WACD), called for the decriminalisation of possession for personal use.⁹ The report provided evidence showing that criminalisation of drug use worsens health and social problems, puts undue pressure on the criminal justice system and fosters corruption.

The call for reform was timely as the drug policy threatened good governance, peace and stability, economic growth and public health in West Africa, a region that is still emerging from decades of violent conflict and economic instability. In 2014, the devastating effects of punitive drug laws across West Africa triggered an urgent need for reforms grounded on human rights and public health. Most of the law in the region treat drug possession or use as a criminal offence with up to 25 years imprisonment in Nigeria, 20 years in Togo, 5 years at least in Ghana.¹⁰

West Africa has seen an increase in drug trafficking, production and consumption, which can be seen as counter-evidence to the existing punitive measures.¹¹ The harm created by the increasing drug consumption in the region is worrying, but even more disturbing are the consequences of the application of a repressive approach to dealing with the problem.

Ghana

The failures of the previous Narcotic Drugs (Control, Enforcement, and Sanctions) Law – 1990 (PNDCL 236) are evident. For example:

- The law lacks proportionality in the sentencing of drug offenses. For instance, possession and production both have a minimum sentence of 10 years while drug use and supply can result in at least 5 years term in prison.¹²
- The PNDCL 236 has not succeeded in reducing either consumption or trafficking. Statistics from the Ghanaian Narcotics Control Board suggest that there are over 11,000 people in prison for drug-related offences, including 8,600 remand prisoners for drug use offences awaiting trial.¹³ Ghana's prisons are

⁵ Nicholas Kristof, 'How to Win a War on Drugs', *The New York Times*, 22 September 2017, sec. Opinion, <https://www.nytimes.com/2017/09/22/opinion/sunday/portugal-drug-decriminalization.html>.

⁶ Uki Goñi, 'Uruguay, the First Country Where You Can Smoke Marijuana Wherever You Like', *the Guardian*, 27 May 2017, <http://www.theguardian.com/society/2017/may/27/marijuana-legalisation-uruguay-seen-half-measure-users>.

⁷ ProCon.org, '29 Legal Medical Marijuana States and DC - Medical Marijuana', 30 November 2017, <https://medicalmarijuana.procon.org/view.resource.php?resourceID=000881>.

⁸ Mark Shaw and Lucia Bird, 'Ghana's Bold Step Away from the "War on Drugs"', ISS Africa, 13 October 2017, <https://issafrica.org/iss-today/ghanas-bold-step-away-from-the-war-on-drugs>.

⁹ The West Africa Commission on Drugs, 'Not Just in Transit: Drugs, the State and Society in West Africa' (The West Africa Commission on Drugs, June 2014), <http://www.wacommissionondrugs.org/report/>.

¹⁰ Ane and Bridge, 'Drug Laws in West Africa'.

¹¹ United Nations Office on Drugs and Crime, 'World Drug Report 2017: Booklet 2 - Global Overview of Drug Demand and Supply: Latest Trends and Cross-Cutting Issues'.

¹² Ane and Bridge, 'Drug Laws in West Africa'.

¹³ NACOB 'Monthly report', (the Narcotics Control Board, June 2015)

disgracefully overcrowded about up to 45.5 percent above its capacity,¹⁴ and prisoners face years of confinement in cramped and dirty quarters with insufficient food, hygiene, clothing and other amenities.¹⁵ It is reported that out of the 43 prisons in the country, only three were purposely built; the majority of them are old forts and castles that have been converted into prisons.¹⁶ These prisons have no toilet facilities, beds, and also health facilities and doctors, as a result, the prisoners have to sleep on the floor whilst others sleep on other inmates.¹⁷ Due to the infrastructural deficit and lack of health facilities inmates die needlessly from preventable communicable diseases.¹⁸

- Despite the negative impact of this approach, Ghana has tightened its punitive approach, including through the Criminal Offences (Amended) Act of 2012 (Act 849). This classified drug trafficking as a narcotic crime that can result between 15 years and life imprisonment as a maximum penalty.¹⁹ It does not distinguish type, category or quantity of drugs.²⁰

This legal framework exacerbates the health risk to individuals who consume drugs. For example, only 1 out of 18 drug users access to treatment facilities in Ghana with inadequate funding for treatment instead the funding allocation concentrate on security and policing.²¹ Ghana's HIV and AIDS Strategic Plan (2016 -2020) found that persons who inject drugs (PWID) are a key population group with high risk of HIV transmission.²² A study in 2014 found that 3543 out of 100,000 PWID was with highest HIV incidence, however, recent data are unknown.²³

The Narcotics Control Commission Bill of 2017

In 2014, the Ghanaian Government proposed a new Narcotics Control Commission Bill to replace the law that had been on the books for 26 years. The Bill (NCC Bill 2017) gathered momentum and valuable input from civil society and government at different stages of its development. The Bill calls for the decriminalization of drug use, alternatives to incarceration, proportionality of sentences, a harm reduction strategy and encourages the review and reclassification of some substances such as cannabis.²⁴ According to the Ghana AIDS commission the harm reduction strategy will need to include needle and syringe programme as a pilot among injecting drug users, provide room for persons who need the services to walk into a facility freely without fear of arrest to seek treatment or help, testing, counselling and treatment of HIV/AIDS/ Hepatitis C among people who use and inject drugs.²⁵ This shows a commitment to a more balanced and comprehensive drug policy – one with a

¹⁴ Ghana Web, 'Ghana's Prisons Overcrowded by 45.5%', 25 June 2015, <http://www.ghanaweb.com/GhanaHomePage/NewsArchive/Ghana-s-prisons-overcrowded-by-45-5-450549>.

¹⁵ Ghana Web.

¹⁶ Ghana Web, 'Ghana's Prisons Overcrowded by 45.5%', *Ghana Web*, 25 June 2016, <http://www.ghanaweb.com/GhanaHomePage/NewsArchive/Ghana-s-prisons-overcrowded-by-45-5-450549>.

¹⁷ MyJoyOnline TV, *Locked And Forgotten Documentary on Joy News*, 2015, <https://www.youtube.com/watch?v=5jv1yHotvb4>.

¹⁸ MyJoyOnline TV.

¹⁹ The West Africa Commission on Drugs, 'West Africa Commission on Drugs, "Harmonizing Drug Legislation in West Africa: A Call for Minimum Standards,"' (Kofi Annan Foundation, January 2013), www.wacommissionondrugs.org.

²⁰ The West Africa Commission on Drugs.

²¹ Maria-Goretti Ane Loglo, 'Ghana: The Journey to Decriminalization: Why It Is Important for Ghana', *International Drug Policy Consortium (London)*, 25 June 2016, <http://allafrica.com/stories/201606250050.html>.

²² Ghana AIDS Commission Under the Office of President, 'National HIV and AIDS Strategic Plan 2016 - 2020' (Ghana AIDS Commission Under the Office of President, 2016).

²³ Ghana AIDS Commission Under the Office of President.

²⁴ Avinash Tharoor, 'Ghana On the Verge of Decriminalising All Illegal Drug Use', *TalkingDrugs*, 11 November 2016, <https://www.talkingdrugs.org/ghana-on-the-verge-of-decriminalising-all-illegal-drug-use>.

²⁵ Ghana Web, 'Injection Drug Use in Ghana', 23 October 2017, <http://www.ghanaweb.com/GhanaHomePage/health/Injection-drug-use-in-Ghana-593360>.

greater focus on public health and human rights. Simple possession or drug use offenses will be subject to fines or drug treatment referrals if needed.

The inclusion of alternative development is also an important advance for Ghana as it has the potential to help small-scale farmers who have long been criminalised for growing cannabis²⁶ as the only source of cash income.²⁷ The bill addresses the fact that Ghana's cannabis-growing areas are characterised by poor conditions for the sustainable agricultural production of other types of crops, a lack of infrastructure, and poor accessibility.²⁸

In July of 2017, after the new government took office, amendments have been incorporated by the drafting unit of the Attorney General. The amendment includes;

- Reduction of the fine for people who use drugs based on the amount they carry;
- Allow civil society representation in the harm reduction committee;
- Categorise cannabis under a different category such as giving a warning to first and second time offenders, to recommend to seek help for 3rd time offenders.

Conclusion: Implications of the Law

The bill is currently before cabinet for approval. If passed, Ghana's progress may catalyse other changes within the region or even across the continent, encouraging many countries to review their drug laws and seek recommendations on how those might be improved. If it becomes law, this bill will be a ground-breaking for the West Africa region and the entire continent of Africa. Ghana will be the first African country to consider alternatives to incarceration and to legally endorse harm reduction services and take into account human rights approach.

Moreover, passing the NCC bill will mean that, Ghana can legally implement harm reduction programmes or provide services for people who need it. It will also mean that, people will no longer have to serve a jail term for their drug use but there will be alternatives other than jail to address the situation. The bill will now be placing health, wellbeing and the human rights of people who use drugs as paramount, it will help to reduce the stigma and discrimination by the society.

²⁶ Tv Africa Gh, *Marijuana Farmer Arrested*, 2013, <https://www.youtube.com/watch?v=E5AbtIlaQpg>.

²⁷ Dorcas Abedu-Kennedy, 'HOT AUDIO: Chief Arrested for Cultivating "Wee"', *AdomOnline.Com* (blog), 5 January 2018, <http://www.adomonline.com/ghana-news/hot-audio-chief-arrested-cultivating-wee/>.

²⁸ Abedu-Kennedy.

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