

How to use the West Africa Model Drug Law: 'Explainer' 2: Guide for civil society advocacy

Introduction

In 2018, the West African Commission on Drugs (WACD) published a ground-breaking 'Model Drug Law for West Africa: A tool for policymakers'¹ to assist policy makers in (re)formulating national drug laws in line with the UN drug control conventions and human rights obligations. The Model Drug Law was a follow-up to the Commission's 2014 publication 'Not Just in Transit: Drugs, the State and Society in West Africa'.² By design, the Model Drug Law is a technical document – but it can be one of many highly useful tools for civil society to help advance drug policy reform, harm reduction, as well as HIV and related programmes based on public health and human rights, including and especially for people who use drugs. This 'explainer' is one of two advocacy documents related to the West Africa Model Drug Law – the other explaining and breaking down the main contents of the Model Drug Law itself.³

This short document serves as a practical guide for civil society on possible ways to use the Model Drug Law in advancing drug policy reform in West Africa and beyond. Despite its focus on the drug law and its legislative provisions, the Model Drug Law can be used by a wide variety of civil society organisations, including networks of people who use drugs, working on drug policy, harm reduction and related issues.

Box 1 How the Model Drug Law complements other advocacy tools and resources

The Model Drug Law follows on from the key recommendations from the UN General Assembly Special Session (UNGASS) on drugs in 2016 and its Outcome Document.⁴ In addition, the Model Drug Law complements other key documents, including:

- The African Union Plan of Action on Drug Control and Crime Prevention 2019-2023⁵
- The ECOWAS Drug Action Plan to Address Illicit Drug Trafficking, Organized Crime and Drug Abuse in West Africa (2016-2020)⁶
- The African Civil Society Common Position on Drugs 2019⁷
- The United Nations system common position supporting the implementation of the international drug control policy through effective inter-agency collaboration⁸
- The Political Declaration on HIV and AIDS: Ending Inequalities and Getting on Track to End AIDS by 2030 and the Global AIDS Strategy 2021-2026⁹
- The International Guidelines on Human Rights and Drug Policy¹⁰
- Arbitrary detention relating to drug policies: Study of the Working Group on Arbitrary Detention.¹¹

1. Using the Model Drug Law to advance drug law reform

A drug law serves as a primary legal instrument guiding drug policies in a particular country or jurisdiction. In many West African countries, drug laws or legislations were adopted following the 1988 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. Most of these drug laws contain heavy penalties for drug use or possession, ranging from two months to one year of imprisonment in Senegal, to 15 to 25 years of imprisonment in Nigeria.¹²

Some countries have legislative provisions on alternative sanctions, while some have taken steps to improve proportionality in sentencing. However, in nearly all West African countries, criminalisation of drug consumption and possession remains the norm, and the application of alternative sanctions is limited by punitive legislation.¹³

In other words, punitive drug laws continue to undermine the human rights of people who use drugs and other affected communities – including people with little or no access to controlled medicines.¹⁴ Amending drug laws is therefore a key step in achieving drug policies in line with human rights obligations.

Civil society advocacy around drug law reform, harm reduction, human rights, and public health ought to be strategic. This means selecting advocacy priorities based on short- and long-term needs, challenges, and opportunities – all of which may differ from one context to another. The Model Drug Law can support these processes in three ways.

1 Reviewing existing national drug legislation to see how it differs from the Model Drug Law

In many contexts where punitive drug laws worsen drug-related problems and fuel HIV, viral hepatitis and tuberculosis epidemics, it is necessary for civil society not only to acknowledge, but also to gain an understanding of how exactly these drug laws produce more harm than good. The Model Drug Law can assist this process of review and analysis, during which civil society advocates can note specific differences between the exist-

ing drug law and the (more progressive and balanced) Model Drug Law.

For example, civil society advocates in Liberia (where drug law amendments are being considered at the time of writing) are making use of the Model Drug Law, from which specific legislative proposals have been drawn by civil society advocates and progressive policy makers. In this process, the Model Drug Law has helped advocates identify key areas of much needed reform,¹⁵ such as prevailing jail terms for people who use drugs, which are now being contested and proposed to be replaced with alternative sanctions such as fines and/or warnings. The Model Drug Law has also inspired the inclusion of harm reduction-related provisions in the draft bill currently debated in Parliament.¹⁶

2 Using the Model Drug Law as a ‘template’ for a new drug law

The Model Drug Law contains all the core components of a drug law – general provisions, penal provisions, authorised activities, and schedules and annexes – including detailed model provisions for each component. The entire document has been purposefully designed to serve as a full ‘template’ for civil society and/or policy makers working on a new health- and human rights-oriented drug law that also takes into consideration states’ obligations under the UN drug control conventions and the UN human rights treaty framework.

3 Using specific provisions of the Model Drug Law

Using the Model Drug Law in its entirety may not be possible in some contexts. However, civil society advocates can still use specific provisions in the Model Drug Law to enrich their own legislative proposals. This can be an incremental process – improving existing legislation gradually over time, if a more robust review and reform is not palatable at the current time. For example, depending on the national contexts and opportunities, civil society may focus on Model Drug Law provisions that specifically relate to harm reduction and HIV and hepatitis prevention measures. In other contexts, it may be more realistic for civil society to focus on provisions around the decriminalisation of drug use and personal possession of drugs, or on provisions around human rights obligations in the criminal legal system.

Box 2 Putting the Model Drug Law into practice in Ghana and Sierra Leone

Former UN Secretary-General Kofi Annan famously stated, ‘I believe that drugs have destroyed many lives, but the wrong government policies have destroyed many more’. He convened the West African Commission on Drugs (WACD) in 2012, in his home country of Ghana. In Ghana, civil society used the WACD’s Model Drug Law throughout their engagement with stakeholders and legislators, both to push for more humane legislative proposals and to make compelling arguments for harm reduction and the decriminalisation of drug use and possession for personal use. During the general debate in Parliament in 2019 and 2020, some legislators even carried physical copies of the Model Drug Law to the floor to help strengthen their policy proposals.

In March 2020, Ghana’s new drug law was passed by Parliament. Key achievements include the adoption of alternative sanctions

for drug possession for personal use (replacing 5-10 years of prison term with an administrative fine), legislative provisions facilitating harm reduction, and a basic regulatory framework for cannabis production for medical and industrial purposes.¹⁷

Another country where the Model Drug Law has helped pave the way for more humane policies is Sierra Leone. Though the country’s law reform process (initiated in 2019) has been significantly disrupted by the COVID-19 pandemic,¹⁸ civil society advocates – with the support of the West Africa Drug Policy Network (WADPN) – have actively used the Model Drug Law during engagements with policy makers and media platforms. In fact, courts in Sierra Leone began to issue fines for people who use drugs instead of putting them in jail, which is a direct cue from the Model Drug Law.¹⁹



(Left) Dialogue between civil society and the Parliamentary Select Committee of Interior and Defence on the draft bill in Ghana; (Right) Civil society advocates engage in informal conversations with Members of Parliament

2. Using the Model Drug Law to advance access to medicines and harm reduction

In supporting their advocacy to advance access to controlled medicines and harm reduction, civil society advocates can use the Model Drug Law to (re-)assert the dual purpose of the UN drug conventions which shape national drug laws: to ensure the availability and accessibility of controlled substances for medical and scientific purposes,

while restricting other forms of drug use (such as recreational use).²⁰ However, the latter should not overshadow the former, and the Model Drug Law explains this clearly in its commentary.

The Model Drug Law does not contain detailed provisions about access to controlled medicines, nor on the implementation of harm reduction and drug treatment services – as these should be within the mandate of health legislation and policies, and not a country’s drug law. Nevertheless,

Box 3 Key advocacy moments and opportunities

As detailed in IDPC's key publication *'2020 vision': Advocating for drug policy reform in Africa*,²¹ there are various moments and opportunities for civil society organisations to advance their drug policy advocacy at the national, regional and international levels. Civil society organisations can use these spaces to present and/or promote the Model Drug Law, for example by distributing printed copies, using the Model Drug Law as a 'handbook' for drug law review processes, or to facilitate exchanges of information. These spaces include, among others:

- The UN Commission on Narcotic Drugs (annual sessions and thematic intersessional meetings, where civil society representatives can apply for speaking slots and/or participate in plenary sessions, as well as attend and/or co-organise side events)²²
- UN human rights mechanisms, through which civil society can submit inputs and use recommendations and actions taken at the UN level as leverage in their advocacy at the national level:
 - UN Human Rights Council sessions (triannual sessions and Universal Periodic Review sessions where NGOs can participate as observers, as well as various opportunities for civil society inputs to Working Groups and Special Rapporteurs)²³
 - UN human rights treaty bodies, which periodically monitor²⁴ the compliance of all states with the nine international human rights treaties (regular sessions and procedures – during which civil society can submit inputs)²⁵
- The biennial AU Specialised Technical Committee (STC) on Health, Population, and

Drug Control (opportunities to engage with national ministers and policy makers working on drug policy and related issues)

- The biennial International Conference on AIDS and Sexually Transmitted Diseases in Africa (ICASA) (opportunities to engage with regional and international policy makers and civil society across Africa).

At the national and local level, civil society organisations can engage with public officials and institutions (from ministerial to judicial departments). The optimal and diverse use of media and communications channels can support this process, especially when tailored to specific contexts. In so doing, civil society organisations can collaborate, either periodically based on certain events or moments of engagement, or regularly as civil society networks or coalitions. Illustratively, as one organisation may focus on writing letters containing legislative proposals to lawmakers, another may concentrate on engaging with journalists to promote harm reduction programmes as prescribed by the Model Drug Law, while others may focus on amplifying messages of reform on social media and/or by launching popular campaigns, such as Support. Don't Punish and its Global Day of Action.²⁶

Crucially, in order to support these efforts, civil society organisations can explore funding and technical assistance opportunities provided by donors which explicitly support harm reduction provision and advocacy, as well as decriminalisation and other forms of drug policy reform. For example, in Africa these include The Global Fund,²⁷ the U.S. President's Emergency Plan for AIDS Relief (PEPFAR),²⁸ the Open Society Foundations and UNAIDS.

the Model Drug Law sets important minimum standards for the provision and protection of harm reduction and treatment services, as well as for reducing barriers to access to controlled medicines. In short, civil society conducting advocacy towards policy makers on these issues can use the Model Drug Law as a reliable reference for the following arguments and/or reforms:

- Protection of harm reduction and drug treatment premises from police searches

- Ending the criminalisation of harm reduction and treatment providers and people accessing or engaged in such services
- Protection of patients' access to controlled medicines prescribed by medical professionals, including opioid agonist therapy
- Provision of harm reduction materials and services by the state
- Removal of unnecessary sanctions around the use and distribution of controlled medicines

- Emphasis of human rights obligations taking precedence over other international obligations, including drug control
- Formation of a commission on improving access to controlled medicines under the Ministry of Health.

3. Using the Model Drug Law to advance human rights in the criminal legal system

The Model Drug Law contains useful sentencing guidelines and criteria (referred to as Schedule II), which can be used by civil society working in legal aid, strategic litigation, and other activities to advocate for the rights of people caught in the criminal legal system, especially poor and vulnerable people involved in low-level drug offences. These can include, for example:

- Human rights protection for people arrested and/or in detention, including access to legal aid, guided by the Luanda Guidelines²⁹
- Protection of people and society from abusive law enforcement practices
- Advocacy for judicial discretion for drug-related cases, in particular shorter sentences and alternatives to incarceration
- Decarceration efforts – including civil society engagement with prison and law enforcement agencies, as part of a strategic response to new risks and opportunities triggered by the COVID-19 pandemic, as for example was conducted by advocates in Nigeria.³⁰

In various punitive contexts where the process of drug law reform is slow or cumbersome, civil society advocates can also use the Model Drug Law's sentencing guidelines and criteria as a template for various policy documents complementing the current drug law, which can be potentially issued as authoritative documents and/or regulations from key institutions such as the Supreme Court, the Constitutional Court, specific and/or a coalition of governmental ministries, and law enforcement institutions. Though not necessarily driven by the Model Drug Law, the Constitutional Court of South Africa's ruling that decriminalises the private consumption and possession of cannabis for personal use³¹ can be seen as a good example. Another relevant example is the 'National

Minimum Standards for Drug Dependence Treatment in Nigeria', produced by the Nigerian Federal Ministry of Health.³² A similar approach can be adopted for the Model Drug Law's indicative thresholds for personal use, which in some countries are not (yet) included in the drug law but determined by the aforementioned institutions.

4. Using the Model Drug Law to strengthen communities and beyond

In addition to supporting drug law reform processes, health-oriented programmes and criminal legal reform, the Model Drug Law can be used to aid the efforts of civil society organisations (including networks of people who use drugs) to mobilise and galvanise alliances and collaboration at the national and regional level, especially by strengthening grassroots communities and their meaningful involvement in advocacy and policy reform.³³ In this context, the Model Drug Law – and our summary 'explainer'³⁴ – can be used in the following ways:

- To complement capacity building and training, including to promote legal awareness and rights literacy
- To provide minimum standards for drug law reform advocacy and goals across organisations and communities of diverse backgrounds (including people who use drugs, people living with HIV, TB, and hepatitis, as well as other often marginalised populations)
- To facilitate regional exchange in West Africa and beyond
- To facilitate media engagement with a focus on human rights and meaningful community engagement in advocacy and policymaking.

5. Key contacts to support civil society advocacy

- International Drug Policy Consortium (IDPC): <https://idpc.net>, contact@idpc.net
- West Africa Drug Policy Network (WADPN): <https://www.wadpn.org>, info@wadpn.org
- UNAIDS: RSTWCAcommunications@unids.org and www.unaids.org

Endnotes

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About this Briefing Paper

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About IDPC

The International Drug Policy Consortium (IDPC) is a global network of NGOs that come together to promote drug policies that advance social justice and human rights. IDPC's mission is to amplify and strengthen a diverse global movement to repair the harms caused by punitive drug policies, and to promote just responses.

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