



Institute for Security Studies

# POLICY BRIEF

## RECOMMENDATIONS

Engaged international actors should:

- Capitalise on the recent DEA indictments of two Guinea-Bissau drug kingpins to highlight that impunity for drug trafficking and organised crime has ended in West Africa.
- Seize the opportunity to hold regional governments to account in addressing the issue and mobilise political will to insulate the upcoming political process from criminal actors and proceeds.
- Advocate that the continued attention to criminal spoilers be mainstreamed through the work of UNIOGBIS and ECOWAS, and support their efforts in this regard.
- Provide comprehensive support to the criminal justice system and a broad-based rule of law and legal empowerment framework as the basis on which sustainable peace and development can be predicated.
- Consider setting up an internationally sponsored mechanism to provide integrity to regionally or nationally led criminal justice proceedings against crimes committed in Guinea-Bissau such as drug trafficking, violations of human rights, etc.

## The end of impunity?

### After the kingpins, what next for Guinea-Bissau?

Tuesday Reitano and Mark Shaw

## SUMMARY

In April 2013 a successful sting operation and an indictment by the US Drug Enforcement Administration (DEA) targeted two of Guinea-Bissau's most notorious cocaine kingpins: the former chief of the Guinea-Bissau navy, Rear Admiral José Américo Bubo Na Tchuto, and the head of Guinea-Bissau's armed forces, General António Indjai. This is a victory for the law enforcement response to organised crime. In the decade since the United Nations Office on Drugs and Crime (UNODC) first warned that Guinea-Bissau had become a 'narco-state', the country has been caught in an accelerating cycle of political fragility that is driven in part by the desire to control lucrative cocaine connections. Impunity has become part of the fabric of Guinea-Bissau as trafficking is an essential survival strategy for many, which has disintegrated any basis for a society predicated on the rule of law. The DEA intervention is significant because it has ended impunity in a dramatic way, but the risk is that without the proper follow-up Guinea-Bissau will become a flashpoint for further instability and conflict, when the country should instead be preparing for democratic elections. To avoid this, a sustained and comprehensive strategy should be put in place to strengthen the criminal justice system in the country and to build citizens' confidence that the state has the capacity to deliver justice and uphold the rule of law.

## END OF IMPUNITY

In April 2013 Na Tchuto, former head of the Guinea-Bissau navy, was arrested at sea by the DEA and charged with drug trafficking and the purchase of surface-to-air missiles and AK47 assault rifles with grenade launchers for the Revolutionary Armed Forces of Colombia (FARC) insurgency. Allegedly he agreed to receive cocaine off the coast of Guinea-Bissau and to store it prior to its onward shipment to the US and Europe. The DEA further alleges that he negotiated for a portion of the cocaine to be used to pay off Guinea-Bissau government officials, including the president, to provide safe passage for it through the country. His reported fee was \$1 million for every 1 000 kg cocaine received in Guinea-Bissau. A few days later an indictment was issued for Indjai, head of Guinea-Bissau's armed forces, on similar charges. Apparently there was also a failed attempt to seize him, but he was more wary than his navy colleague, so at the time of writing he remains free in the country's capital.

For the past decade Guinea-Bissau has been caught in a vicious cycle of political instability, corruption and crime, driven in part by the desire to control cocaine trafficking, which, at an estimated market value of \$4,3 billion a year, is by far the most lucrative income source in the impoverished country.

Figure 1 demonstrates the accelerating cycle of violence and political instability that followed the introduction of cocaine into Guinea-Bissau in the 1990s. Since the turn of the millennium the country has been caught in an unceasing cycle of assassinations, coups and counter-coups, which is, at least in part, an indication of the effect that drug trafficking has had on the fragile post-independence political context. Since the April 2012 coup, reportedly engineered by Indjai and with control over drug trafficking being one motivating feature,<sup>1</sup> there have been two further coup attempts, and no Guinea-Bissauan president has completed a full term in office: three presidents have been overthrown and one has been assassinated.

No serious investigations have been conducted into the frequent political assassinations, for which protection of cocaine connections is often a root cause. In the last three years there have been nearly ten unsolved political assassinations. A recent press conference by the Guinea-Bissau League of Human Rights emphasised the paucity of the justice system, the lack of access to justice and the impact that this has had in eroding the foundation of credibility and confidence of citizens in the criminal justice system.

High-level, politically connected drug lords and their foreign associates have operated with complete impunity in Guinea-Bissau. No major drug seizures have been reported since 2008, despite the fact that the country continues to be a major staging point along the cocaine route. The 674 kg of cocaine seized in 2006 disappeared in mysterious circumstances from the safe deposit box in the Ministry of Finance where it had been stored. The two Colombians arrested for being in possession of the cargo of cocaine were released without explanation.<sup>3</sup> The only drug cases that have gone to trial in recent years have been those of low-level mules from Nigeria, Guinea Conakry and Bissau. Since the coup in April 2012 high-ranking military officials, including the recently indicted Indjai and the same characters that masterminded the April coup, have been vetting all political and judicial appointments, thereby ensuring a stranglehold over due process.

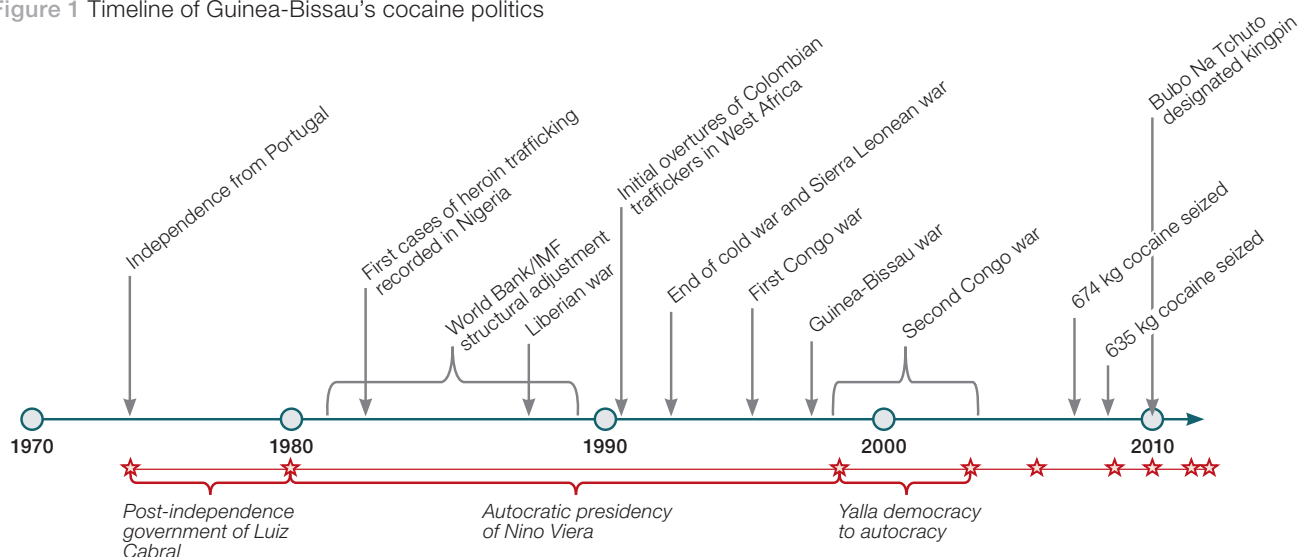
## A STATE OF INSECURITY

The institutionalised impunity granted to criminals and the overall weakness of the criminal justice system prevents Guinea-Bissau from consolidating peace and ensures that the constitutional order can never be fully effective. The recent US intervention is a clear warning to traffickers in both Guinea-Bissau and the West African region as a whole that the age of impunity may have ended. But the findings from our recent fieldwork in the country indicate that the impact on peace and stability may not be as positive as hoped. Our discussions with communities and interest groups across the country immediately following Na Tchuto's arrest found that, surprisingly, the fall-out from the indictment may be more negative than positive.

The more educated and engaged Bissau-centred debate was the most positive about the DEA action, and a majority of people here are glad to see this notorious figure brought to justice. However, they broadly expressed regret that the trial is being held beyond Guinea-Bissau's borders. For due process to work effectively as a deterrent to others associated with organised crime it would have been preferable if Na Tchuto could have been detained, investigated, convicted and then imprisoned on national soil. Guinea-Bissau has not had a truly functioning criminal justice system since independence, and international actors swooping in and accusing senior figures, including the president, of criminal action only further highlight the weakness of the state and disenfranchise the people.

Beyond the capital the reaction has been more one of outrage and indignation than support. Despite chronic poverty and a series of weak, self-serving governments, the people of Guinea-Bissau are proud and nationalistic. They fought a long and brutal fight for their independence and Guinea-Bissau was the last country in Africa to be decolonised in 1974. Therefore, many people remain wary of the motives behind external assistance, and the national military, which was converted from the former revolutionary army that routed the Portuguese, retains a great deal of loyalty and support from the population. The tone of the

Figure 1 Timeline of Guinea-Bissau's cocaine politics



Note: Changes in governments, coups or attempted coups are indicated by ☆.

focus group discussions, which is paralleled by local radio broadcasts on the subject, speaks of how 'Uncle Bubo' was betrayed. Of particular concern is the outraged response of the military. In discussions overheard among soldiers they asked questions like 'How could foreigners arrest a freedom fighter?', and our reports from the field show that the military feels betrayed and threatened by the move.

What the impact of losing this notorious kingpin will be remains to be seen. For the moment reports on the ground show that drug activity has ceased abruptly, but it is impossible to say for how long. A lesson learned from Latin America is that the key driver of violence has not been cocaine as such, but change: change in the negotiated power relations between and within groups, and with the state.<sup>4</sup> It is clear that if Na Tchuto and Indjai are successfully unseated by this DEA operation it will destabilise a longstanding balance of power.

Control of trafficking in Guinea-Bissau has long followed control of territory, which in turn follows ethnic and clan lines, creating a quasi-warlord system around a few key individuals. Air force chief of staff Brigadier-General Ibraima Papa Camará is said to control his homeland region of Cacine; the Oio region in the country's heartland falls under Indjai; and Na Tchuto is said to control Catio, a coastal region in the south of the country. More importantly, Na Tchuto is a Balanta, the most represented ethnicity in the military. Both Na Tchuto and Camará are on the DEA kingpin list and Camará and Indjai have been subject to the travel ban imposed by UN Security Council Resolution 2048 of 2012, which was imposed after the April 2012 coup.

It is claimed that these warlords/drug lords have managed to maintain good relations with one another and reportedly cooperate over cocaine trafficking. Until now Guinea-Bissau has been relatively free from clan-, community- or gang-based violence (save, of course, for the political assassinations) and on the whole the communities that were interviewed did not see drug trafficking as contributing to insecurity. After the public threat to two of Guinea-Bissau's most notorious kingpins, however, a shift in the balance of power may result in turf battles, groups splintering and a fight for control that will result in increased violence.

The current transitional administration lacks legitimacy in the eyes of both the citizens of Guinea-Bissau and the international community. This caretaker administration was supposed to ensure democratic elections by no later than May 2013, but there has been little sign that it is keen to fulfil this pledge. Despite pressure from the Economic Community of West African States (ECOWAS) and the extension of the UN Integrated Peacebuilding Office in Guinea-Bissau (UNIOGBIS), a date for the election is yet to be set. In the wake of the DEA action the citizens of Guinea-Bissau fear a military retaliation or another coup. To allow this to happen at the brink of the transition, and because of this much-needed law enforcement intervention, would be a crying shame.

## **BUILDING LEGITIMACY AND THE RULE OF LAW**

In the short term, high-level indictments serve as a very public warning that impunity is over, and this has value. But at the same time our fieldwork shows that it has

highlighted a vacuum in the justice system and has mobilised some resistance from the community and the military. In order to prevent the DEA's action from becoming the trigger for a return to instability and cocaine politics, a proactive strategy is needed to follow the indictment with efforts to build confidence and capacity in the national criminal justice system in Guinea-Bissau in a way that demonstrates the capacity of the state to demonstrate integrity and deliver justice to its people.

The most recent UN Security Council Resolution extending the UNIOGBIS mandate (S/Res/2013) adopted on 22 May 2013 makes direct reference to the importance of addressing the issue of impunity:

Underlining that any lasting solution to instability in Guinea-Bissau should include concrete actions to fight impunity and ensure that those responsible for politically motivated assassinations and other serious crimes such as drug trafficking-related activities and breaches of constitutional order are brought to justice, including through transitional justice mechanisms.

Responses from those engaged in Bissau, plus lessons learned from other countries addressing similar challenges, could offer some insights and entry points into how this could be achieved. In a recent interview a Guinea-Bissauan public prosecutor<sup>5</sup> who has continued to attempt to try drug trafficking offences despite attempts on his life noted that:

strong protection and justice can't reach them [kingpins], not because of the lack of technical skills of the judicial workers but because of the block created by the defence and security forces, which many times stopped the judicial operators from getting those top men.

While the prosecutor welcomed justice finally being served, he regretted that the criminal justice system in Guinea-Bissau was so publicly shown to have neither the capacity nor the integrity to achieve such a high-level indictment on its own:

This kind of intervention will not change anything long term. For this to have a real impact in society, foreigners must work side by side with Guineans to advocate and induce understanding that these actions have disciplinary and criminal consequences.

A phased engagement by both international and regional actors is required to close the space opened by the US indictments and to build positive momentum. The criminal justice response to piracy in the Horn of Africa may suggest some lessons in this regard: firstly, unilateral international action must be limited to the short term control of highly criminalised state and non-state actors, creating space for regional and national capacity to be developed. Secondly, piracy cases in East Africa were tried by a regional country in the absence of effective justice systems in a neighbour. Granted, piracy is a crime of universal jurisdiction, but it

would be possible for a regional agreement among ECOWAS countries to be negotiated in terms of which member states in the region could try drug trafficking suspects at all levels in an extra-territorial court. The majority of ECOWAS countries approved this concept in December 2011.

Following successful democratic elections, and with the public commitment of a new and legitimate national government to fight criminality using national institutions, but with international oversight to ensure the integrity of the process, there are a number of examples Guinea-Bissau could adapt. The International Commission against Impunity in Guatemala (CICIG) may be one such model. This independent international body was established with a joint mandate from the government and the UN, and is embedded in the national public prosecutor's office to serve as a watchdog against impunity and support the investigation of complex cases, including those dealing with corruption, human rights violations, armed criminal groups and illicit security forces.<sup>6</sup> Any such approach will need to be customised to the circumstances of Guinea-Bissau and owned by its leadership. There is an undoubted link between building political commitment and showing that immunity may not be forever, so this move is important. Leaders who are not connected to the drug trade should not fear such an institution.

Finally, these efforts to address trafficking must be paralleled by intensive efforts and investment to strengthen the capacity of the justice system in Guinea-Bissau comprehensively, and not only for serious crimes and trafficking. To truly establish a rule of law framework in the country, access to justice must be provided for all citizens. The Guinea-Bissau League for Human Rights noted that of the 26 courts set up to settle small claims disputes, only 11 were functioning and these faced serious infrastructure and human resource constraints. The primary reasons for the remaining courts being closed were a lack of rent payments, and a lack of judges and prosecutors.<sup>7</sup>

International support and funding is required and beneficial, but ultimately for long term stability to be achieved, the state must be perceived as delivering justice services to its people.

Efforts to reform the criminal justice system in Guinea-Bissau have taken place previously, but the bold strike by the DEA highlights the fact that impunity has ended quite dramatically and at a time when Guinea-Bissau is teetering on the fulcrum of its democratic transition. These indictments may provide the catalyst and momentum required to hold the next government to account for addressing drug trafficking, offer an opportunity to insulate the political process from criminal actors and proceeds, and mobilise political will and sustained international engagement to support a broad-based rule of law and legal empowerment intervention that may be the key to sustaining peace and development.

## NOTES

1. See the Guinea Bissau Case Study included in Walter Kemp, Mark Shaw, and Arthur Boutellis, *The Elephant in the Room: How Can Peace Operations Deal with Organized Crime*, New York: International Peace Institute, June 2013.
2. Guinea-Bissau League for Human Rights, press release, 23 April 2012. Copy available from author.
3. While it is reported that this case has been reopened since the DEA operation, allegedly due to new evidence, the investigation phase remains clouded in secrecy.
4. UN Office on Drugs and Crime, *Transnational organised crime in Central America and the Caribbean: a threat assessment*, Vienna: UNODC, 2012.
5. Interview with a STATT associate, Bissau, 16 April 2013.
6. See <http://cicig.org/index.php?page=mandate>.
7. Guinea-Bissau League for Human Rights, 2012.

## ABOUT THE AUTHORS

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**This publication was made possible with funding from the government of The Netherlands and Norway, as well as the National Endowment for Democracy. The ISS is also grateful for the support of the following core partners: the governments of Norway, Sweden, Australia and Denmark.**

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