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LAWS AND REGULATIONS

PROMULGATED TO GIVE EFFECT TO THE PROVISIONS OF THE INTERNATIONAL TREATIES ON NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

*In accordance with the relevant articles of the international treaties on narcotic drugs and psychotropic substances,
the Secretary-General has the honour to communicate the following legislative text / texts*

REPUBLIC OF GUINEA

Communicated by the Government of the Republic of Guinea

NOTE BY THE SECRETARIAT

- (a) Some editing of texts may be done by the Secretariat in the interest of clarity. In this connection, words in square brackets [] have been added or changed by the Secretariat.
- (b) Only passages directly relevant to the control of narcotic drugs or psychotropic substances have been reproduced in this document. Non-relevant parts of laws and regulations have been deleted by the Secretariat; such deletions are indicated by [...].

CRIMINAL CODE

(Extracts)

V.06-59289 (E)



CRIMINAL CODE OF THE REPUBLIC OF GUINEA
(Extracts)

[...]

CHAPTER II

DRUG-RELATED OFFENCES

SECTION I

General provisions

Article 377

For the purposes of the present chapter:

- (1) The term “drug” means any plant, substance or preparation whose consumption or use is capable of altering the state of consciousness;
- (2) The expression “drug dependence” means the psychological and sometimes physical state resulting from interaction between a living organism and a medicinal product, characterized by alterations in behaviour and other reactions, which in all cases involve a compulsion to take the product continuously or periodically in order to regain physical strength and to avoid the ill effects of withdrawal;
- (3) The term “manufacture” means:
 - (a) Any process by which such drugs are obtained;
 - (b) The refining of such drugs or substances;
 - (c) The processing of such drugs or substances;
 - (d) The production of a preparation, otherwise than against a prescription submitted to a pharmacy, from all or part of such substances (cannabis, coca leaves, opium and poppy straw);
- (4) The term “preparation” means any of such drugs or substances, whether alone or in combination, in the form of a dose, solution or mixture, in any physical state whatsoever, containing one or more of those drugs or substances;
- (5) The term “substance” means chemicals and their compounds as appearing naturally or produced in industry and containing any additive necessary for their marketing;
- (6) The expressions “drug abuse” and “illicit drug use” mean the use of prohibited drugs and the use of controlled drugs without a medical prescription for non-therapeutic purposes;
- (7) The expression “manufactured drug” means:
 - (a) Any derivative of coca, of medical cannabis or of opium and concentrate of poppy straw;
 - (b) Any other narcotic, as a substance or preparation, which the Government, in consideration of available information concerning its nature or on the basis of a decision adopted pursuant to any international convention, may

declare, by public notice in the Official Gazette, to be a manufactured drug;

(8) The expression “detoxification treatment” means treatment designed to eliminate physical dependence on a drug.

Article 378

The cultivation, preparation, possession, purchase, sale, transport, import, export, transit and use of drugs and poisonous or psychotropic substances shall be prohibited throughout the territory of the Republic of Guinea.

The schedules referred to in paragraph 1 shall form the subject of an order issued jointly by the Ministers of Justice, Public Health and Security.

SECTION 2

Illicit drug production and trafficking

1 – Illicit production and manufacture

Article 379

The illicit cultivation, production, extraction, preparation or processing of drugs shall be punished by rigorous imprisonment from 10 to 20 years and/or a fine from 5,000,000 to 100,000,000 Guinean francs.

2 – International traffic

Article 380

Anyone who imports, exports or effects the international transport of drugs illicitly shall be liable to the penalties provided for in the preceding article.

3 – Trafficking

Article 381

The offering, offering for sale, distribution, brokerage or other dealing in, sale, delivery on any terms whatsoever, dispatch, consignment, transport, purchase, possession or use of drugs illicitly shall be punished by rigorous imprisonment from 10 to 20 years and/or a fine from 5,000,000 to 100,000,000 Guinean francs.

4 – Facilitation of use

Article 382

The following persons shall be punished by imprisonment from 5 to 10 years and/or a fine from 500,000 to 5,000,000 Guinean francs:

(1) Anyone who facilitates for another the illicit use of high-risk drugs, whether in return for payment or free of charge, by procuring premises for that purpose or by any other means. The foregoing shall include owners, managers, directors and operators, in any capacity whatsoever, of hotels, furnished dwellings, boarding houses, bars, restaurants, clubs, meeting places, dance halls, places of entertainment, or any premises open to and used by the public, who tolerate the use of high-risk drugs in such establishments or their annexes or on such premises,

fraudulent intent being presumed in the event of a second positive inspection by a police authority;

(2) Anyone who knowingly issues accommodation medical prescriptions for high-risk drugs;

(3) Anyone who, aware of the fictitious or accommodating nature of a medical prescription, supplies high-risk drugs against presentation of such prescription;

(4) Anyone who obtains or attempts to obtain high-risk drugs by means of fictitious or accommodation prescriptions;

(5) Anyone who adds high-risk drugs to food or beverages without the consumers' knowledge;

(6) Anyone responsible for the safe keeping of drugs seized for purposes of incineration or any form of destruction who removes or diverts or allows the removal or diversion, deliberately or through negligence, of all or part of the substance entrusted to them.

5 – Offering or supplying for personal consumption

Article 383

Anyone who offers or supplies high-risk drugs to another person for his personal consumption shall be punished by imprisonment from 1 year to 5 years and/or a fine from 100,000 to 500,000 Guinean francs.

The maximum penalty provided for in the preceding paragraph shall be doubled in the cases enumerated in article 403.

Article 384

The following persons shall be punished by rigorous imprisonment from 5 to 10 years and/or a fine from 200,000 to 10,000,000 Guinean francs:

(1) Anyone who facilitates the use of such narcotic drugs or psychotropic substances by minors;

(2) Anyone who, under the conditions specified in paragraph 5 of article 40, supplies such narcotic drugs or psychotropic substances to minors;

(3) Anyone who incites minors to commit offences referred to in and punished under the final paragraph of article 386.

Article 385

Anyone who illegally possesses for his own use or makes use of any drugs, substances, compositions or plants classified as narcotic or psychotropic substances shall be punished by imprisonment from 6 months to 2 years and/or a fine from 100,000 to 500,000 Guinean francs.

Article 386

In all cases referred to in the preceding articles, an attempt shall be subject to the same punishment as the offence itself.

Article 387

Knowingly aiding or abetting, facilitating by the provision of means or counselling the commission of any offence referred to in the present chapter shall be punished by the penalties laid down for the offence.

Article 388

A person against whom there is corroborative evidence of involvement in any offence provided for in articles 382 and 383 shall be presumed to have committed the offence if it is established that his lifestyle is clearly above his means.

Article 389

The penalties laid down may be imposed even where the various acts that constitute the elements of the offence have been committed in different countries.

Article 390

In addition to mandatory confiscation of the drugs seized, the trial courts may:

- (1) Order the confiscation of the convicted offender's movable and immovable property if such property was used to commit the offence;
- (2) Order the destruction of the drugs seized;
- (3) Deprive the convicted offender of the exercise of the rights provided for in article 37 of the present Code;
- (4) Order a residence ban for a minimum of 5 years and a maximum of 10 years.

Article 391

The public prosecutor may require persons who have illicitly used such narcotic drugs or psychotropic substances to undergo detoxification treatment, or to place themselves under medical supervision, under conditions to be established by an order issued jointly by the Ministers of Health and Justice.

No public prosecution shall be brought against persons who agree to the medical treatment prescribed for them and who follow such treatment until its completion.

Where it is established that persons charged should undergo medical treatment, such persons may be required, by warrant of the investigating judge or juvenile magistrate, to undergo detoxification treatment together with any medical supervision or rehabilitation measures appropriate to their condition.

The trial court may also require such persons to undergo detoxification treatment, including by reaffirming the warrant referred to in the preceding paragraph or extending its effects.

In the last two cases, the measure shall be declared immediately enforceable.

6 – Driving while under the influence of a drug

Article 392

Anyone illegally using a drug listed in schedule 1, 2 or 3 who drives or operates a motorized land vehicle, vessel or aircraft while under the influence of that drug, even in the absence of external signs, shall be punished by imprisonment from 6 months to 2 years and/or a fine from 200,000 to 2,000,000 Guinean francs.

Refusal to undergo screening tests or examinations shall be punished by the penalties laid down in the preceding paragraph.

Where the provisions punishing homicide or unintentional injury are applicable, the penalties laid down for those offences shall be doubled.

In the cases provided for in the first three paragraphs, the court may, as an alternative or in addition to the penalty, order the person concerned to undergo detoxification treatment and/or a care programme appropriate to his condition and require him to follow an awareness and training programme.

The screening tests and examinations to which drivers or operators may be subjected and the conditions in which such operations may be carried out shall be determined by decision of the competent authority.

SECTION 3

Offences treated as illicit drug production and trafficking

1 – Manufacture and distribution of analogues

Article 393

For the purposes of the present chapter, an analogue shall be regarded as any substance that is not controlled under national legislation but whose chemical structure is substantially similar to that of a controlled drug whose psychoactive effects it reproduces.

Article 394

Any production, manufacture or trafficking of or international traffic in analogues shall be punished by rigorous imprisonment from 10 to 20 years and/or a fine from 5,000,000 to 100,000,000 Guinean francs.

2 – Precursors, materials and equipment

Article 395

Precursor shall mean any substance frequently used in the manufacture of drugs and classified as such under national legislation.

Article 396

Anyone who manufactures, transports or distributes equipment or materials knowing that they are to be used in or for the illicit cultivation, production, manufacture or trafficking of drugs or analogues shall be punished by rigorous imprisonment from 10 to 20 years and/or a fine from 5,000,000 to 100,000,000 Guinean francs.

SECTION 4

Organization, financing and income from offences

1 – Organization, management and financing

Article 397

Anyone who organizes, manages or finances an operation constituting any of the offences provided for in articles 382 and 399 of the present Code shall be punished by rigorous imprisonment from 10 to 20 years and/or a fine from 10,000,000 to 100,000,000 Guinean francs.

2 – Laundering of drug money

Article 398

The following persons shall be punished by rigorous imprisonment from 10 to 20 years and/or [...]:

- (1) Anyone who knows, suspects or should have known that property or proceeds were directly or indirectly derived from one of the offences provided for in articles 382, 383, 384, 397 and 399 and who converts or transfers such property or proceeds for the purpose of concealing the illicit origin thereof or of assisting any person who is involved in the commission of any such offence to evade the legal consequences of his actions;
- (2) Anyone who knows, suspects or should have known that property or proceeds were directly or indirectly derived from one of the aforesaid offences and who conceals or disguises the true nature, source, location, disposition, movement, rights with respect to, or ownership of such property or proceeds;
- (3) Anyone who knows, suspects or should have known that property or proceeds were derived from one of the aforementioned offences or from an act of participation in any such offence and who acquires, possesses or uses such property or proceeds.

SECTION 5

Facilitation of offences and illicit use

1 – Facilitation of offences by inaction of a drug control agent

Article 399

Anyone required by his duties to combat offences provided for in chapter II of title II of the present Code whose gross negligence or serious failure to carry out his professional obligations facilitates the commission of any offence provided for in articles 382, 383, 384 and 397 shall be punished by imprisonment from 3 to 10 years and/or a fine from 100,000 to 500,000 Guinean francs.

2 – Addition of drugs

Article 400

Anyone who knowingly adds drugs to food or beverages without the consumers' knowledge shall be punished by imprisonment from 6 months to 5 years and/or a fine from 50,000 to 100,000 Guinean francs.

If the drug is actually consumed, the penalty may be increased to twice that laid down in the preceding paragraph.

3 – Facilitation or incitement via computerized data networks

Article 401

Any person, enterprise or company providing data network services shall be prohibited from offering via such networks any information whose purpose or effect is to permit, facilitate or promote the illicit production, manufacture, trafficking or use of drugs or to incite others to do so.

Anyone who knowingly permits access to computerized data networks or who makes available on such networks any information which permits or facilitates the commission of any offence provided for in articles 382 and 402 or the illicit use of drugs or analogues or incites others to do so shall be punished by imprisonment from 5 to 10 years and/or a fine from 500,000 to 5,000,000 Guinean francs.

4 – Supplying minors with toxic chemical inhalants

Article 402

Anyone who knowingly supplies a minor with any toxic chemical inhalant appearing on the list established by the competent authority shall be punished by imprisonment from 1 year to 5 years and/or a fine from 50,000 to 250,000 Guinean francs.

SECTION 6

Grounds for increased penalties

Article 403

The maximum penalties shall be imposed:

- (1) If the perpetrator belongs to an organized criminal group or syndicate;
- (2) If the perpetrator has been involved in other illegal activities facilitated by the offence;
- (3) If the perpetrator has used violence or firearms;
- (4) If the perpetrator holds a public office and the crime or offence was committed in the discharge of that office;
- (5) If the offence was committed by a health professional or by a person responsible for combating drug abuse or trafficking;
- (6) If the drug was supplied or offered to a minor or a person undergoing detoxification treatment or a pregnant woman or if its use by any such person was facilitated;
- (7) If a minor or a person with mental disabilities was involved in the offence;
- (8) If the drug supplied caused the death or seriously impaired the health of one or more persons;
- (9) If the offence was committed at, or in the immediate vicinity of, a military or penal institution, an educational or teaching establishment, a hospital or care

institution or a social service facility, or in other places to which school children and students resort for educational, sports or social activities;

(10) If the perpetrator added to the drug any substances which increased its dangers;

(11) If the perpetrator is a repeat offender, foreign convictions being taken into account for the purpose of establishing recidivism;

(12) If a shipment, consignment, container or vehicle intended for a humanitarian mission was used for the illicit transport of drugs, analogues or precursors;

(13) If the drug was supplied illegally in the course of substitution therapy approved by the competent authority;

(14) If in order to commit the offence the perpetrator made use of a person without that person's knowledge.

SECTION 7

Mitigation of or exemption from penalties

1 – Mitigation of penalties

[...]

SECTION 8

Ancillary or additional penalties and measures

1 – Mandatory confiscation

Article 406

In all cases provided for in articles 382, 399 and 400, the courts shall order the confiscation of seized plants and substances that have not been destroyed or transferred to an authorized organization with a view to their licit use.

Article 407

In all cases provided for in articles 382, 384, 386, 399 and 400, the courts shall order the confiscation of installations, materials, equipment and other movable property used or intended to be used for the commission of the offence, irrespective of the person to whom they belong, unless the owners establish their good faith.

Article 408

In all cases provided for in articles 382, 399 and 400, the courts shall order the confiscation of proceeds derived from the offence, movable or immovable property into which such proceeds have been transformed or converted and, up to the value of those proceeds, any property acquired from legitimate sources with which the proceeds have been intermingled, as well as income or other benefits derived from those proceeds, from property into which they have been transformed or converted or from property with which they have been intermingled.

2 – Discretionary penalties

Article 409

The courts may order:

- (1) In the cases provided for in articles 382, 399 and 400:
 - (a) A ban on entering the territory, imposed on any foreign national permanently or for a period of 10 to 20 years;
 - (b) A residence ban for a period of 5 to 10 years;
 - (c) Deprivation of the rights referred to in article 37 of the present Code;
 - (d) A ban on driving or operating motorized land vehicles, vessels or aircraft and withdrawal of licences for a period of 3 months to 1 year;
 - (e) The confiscation of all or part of the convicted offender's property of whatsoever nature, whether movable or immovable;
- (2) In the cases provided for in article 386: the confiscation of utensils, materials and furniture with which the premises are furnished.
- (3) In the cases provided for in articles 382, 386, 387, 388 and 392 (1): the closure, for a period of 3 months to 1 year, of any hotels, furnished dwellings, boarding houses, bars, restaurants, clubs, meeting places, dance halls or places of entertainment, or their annexes, where such offences have been committed by or in collusion with the operator.

The withdrawal of the licence to operate a bar or restaurant may be ordered for the same period.

Article 410

Without prejudice to any provisions laying down harsher penalties, anyone who contravenes any ban listed in the preceding article or an order for the closure of an establishment, as provided for in subparagraph (3) of that article, shall be punished by imprisonment from 6 months to 3 years and/or a fine from 100,000 to 500,000 Guinean francs.

SECTION 9

Criminal liability of legal persons

Article 411

Legal persons, other than the State, on whose behalf or for whose benefit any offence provided for in articles 382, 399 and 409 of the present Code has been committed by one of their agents or representatives in law or in fact shall be punished by a fine of a maximum amount equal to five times the fines specified in those articles, without prejudice to the conviction of the individuals who perpetrated the offence or were accessories to it.

Article 412

Legal persons may additionally be made the subject of one or more of the following measures:

- (1) Liquidation, if the legal person was established for the purpose of facilitating the commission of any of the aforementioned offences;
- (2) Prohibition, imposed permanently or for a period of 3 months to 1 year, from directly or indirectly carrying on certain professional or commercial activities;
- (3) Closure, either permanently or for a period of 3 months to 1 year, of the companies, subsidiaries, branches or establishments which were used to commit the offence;
- (4) Publicizing of the decision in the press or by radio or television.

Article 413

Any contravention of the bans provided for in subparagraphs (2) and (3) shall be punished by a fine from 100,000 to 10,000,000 Guinean francs and/or the liquidation of the legal person.

However, the penalty of liquidation shall not be applicable to public-law corporations, political parties or professional associations.

[...]