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Grim outlook for Guinea-Bissau elections

The fall and rise of Seidi Bá

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CONTENTS

| | |
|--|----|
| Introduction..... | 2 |
| Background to the acquittal: Journey through the courts..... | 4 |
| The Supreme Court acquittal | 7 |
| Reactions to the acquittal: a 'whitewash' | 9 |
| Eying up elections?..... | 11 |
| Looking ahead: insights into political wrangling..... | 14 |
| Conclusion and recommendations..... | 17 |
| Notes | 19 |

INTRODUCTION

The surprise conviction in 2020 of businessman Braima Seidi Bá, arguably Guinea-Bissau's most prominent cocaine trafficking kingpin according to law enforcement investigations,¹ was heralded by the international community as a turning point in the West African state's response to the cocaine economy, which had become in some respects all too synonymous with the country for several years.

Bá was found guilty of coordinating the import of 1 800 kilograms of cocaine in September 2020, resulting in the biggest seizure on record in Guinea-Bissau.² The country operates as an important transit point on international cocaine trafficking routes that connect Latin American supply countries with European consumer markets.

Bá's conviction received much international coverage, and was identified by a number of international players as a volte-face in the country's criminal justice response to cocaine trafficking.³ Such hopes have subsequently proved misplaced.

The equally surprising acquittal of Bá by Guinea-Bissau's Supreme Court in June 2022 has thus far been met by deafening silence among the international community, and national officials. Elements of Bissau-Guinean judiciary and civil society, however, have expressed great disappointment and frustration at the acquittal, which is perceived by many to be emblematic of the finishing touches to the process of political 'capture' of the judiciary – a trend highlighted by civil society to have accelerated since early 2020.

The acquittal comes amid significant political instability in Bissau, little more than a month after President Embaló dissolved the National Assembly, the country's legislative branch. The timing of the acquittal is key to understanding the drivers behind it: the judgment was handed down mere months ahead of legislative elections, called as soon as the National Assembly was dissolved, and currently scheduled for December 2022.

Guinea-Bissau's lucrative illicit economies – most prominently illicit logging and the cocaine trade – have for a long time financed the hefty costs of political elections. From the timing of Bá's acquittal, it could be inferred that this precedent looks unlikely to be broken in the run-up to the 2022 elections.



Braima Seidi Bá, photographed in the early 2000s.

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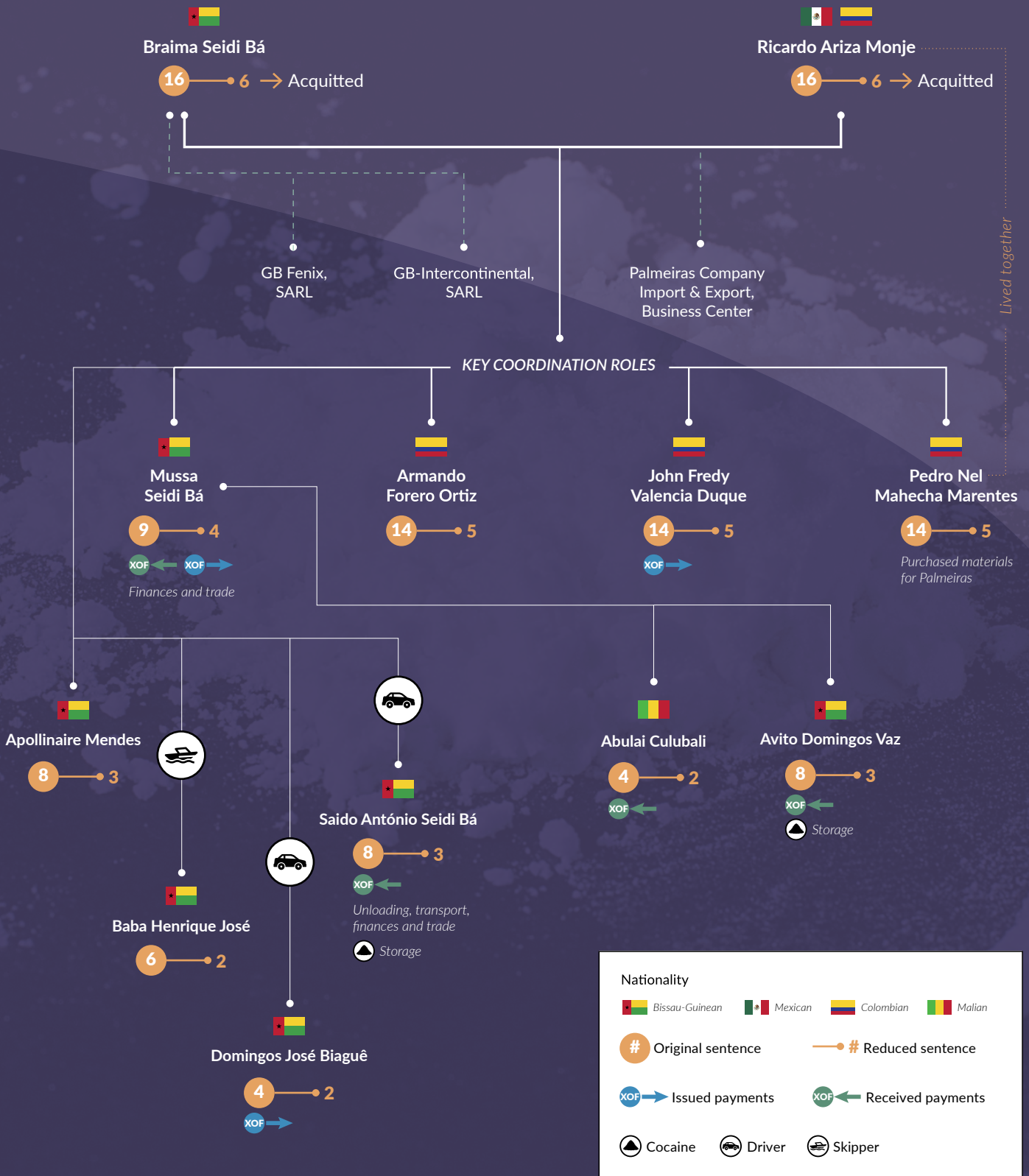


BACKGROUND TO THE ACQUITTAL: JOURNEY THROUGH THE COURTS

In 2019, two bumper seizures of cocaine in Guinea-Bissau – 789 kilograms in March and 1 800 kilograms in September (the latter being the largest in the country's history) – put paid to theories that trafficking through Guinea-Bissau had diminished.⁴

These seizures also underscored the critical role played by one suspected criminal entrepreneur: Braima Seidi Bá, alleged to be one of the country's longest-standing cocaine traffickers. Bá and his network had been monitored by Guinea-Bissau's Judicial Police since 2012. Believed to be behind the March 2019 operation, in March 2020 Bá was convicted by Bissauan courts of coordinating a drug import deal that was busted in the September 2019 cocaine seizure.⁵ The seizures and ensuing investigation were coordinated with significant support from international institutions, including the UN, INTERPOL, and European and American law enforcement agencies, in what was called Operation Navarra.

THE SEIDI BÁ CASE: REPORTED COCAINE-TRAFFICKING NETWORK STRUCTURE



NOTE: All defendants were initially convicted on charges of criminal association and drug trafficking; nine were also convicted on money-laundering offences. On appeal, the convictions for criminal association and money laundering were overturned and all sentences reduced. Sentences were rounded to the nearest year. All non-Bissauan defendants were also penalized with expulsion from Guinea-Bissau for 10 years, later reduced to five. This network structure is deduced from the original judgment. In July 2022, the Supreme Court Criminal Bench acquitted Bá and Monje of all charges. Appeal to the Supreme Court plenary was refused.

Some local reports suggest that the March and September 2019 seizures were carried out only because Bá had not paid the higher echelons of the military for protection.⁶ Although Bá fled the country after the September 2019 seizure, he briefly reappeared in Bissau in March 2020, following the change in administration; he was reportedly accompanied by men in uniform identified as part of General António Indjai's faction of the military. During his brief March 2020 stay in Bissau, as a man wanted by the Judicial Police, and the subject of an international arrest warrant, Bá was reportedly living at the home of Danielson Francisco Gomes, Director General of Petroguin, the state petroleum company.⁷ Days after the severe March 2020 sentence handed down by the Regional Court of Cacheu, which sentenced Bá to 16 years, he disappeared from Bissau once more.

The judgment convicted Bá, Ricardo Monje (Bá's fellow ringleader, a dual Colombian and Mexican national), together with 10 other network members, three of them Colombian nationals on drug trafficking charges, among others. The judgment pointed to a sophisticated network, overseen by Bá and Monje,⁸ which used satellite telephones and radios, three shell companies to launder funds (two incorporated by Bá alone, the other incorporated by Bá and Monje), and effected numerous international financial transfers.⁹

The March judgment outlined the planning undertaken by the ringleaders since December 2018, including scouting out disembarkation points, and provided a detailed account of the cocaine shipment that was intercepted by Operation Navarra. The cocaine was trans-shipped from an unflagged vessel at high seas on 30 August and transported by speedboat under the cover of darkness to two unloading points on the shore on 31 August. The consignment was then unloaded and split. One of the loads was transported by car to Bissau (by Bá) and the other to Caió and Binhante, towns 100 kilometres and 70 kilometres from Bissau, respectively.¹⁰

While the March judgment was unusual in both the detail provided regarding operations, and the severity of the sentences, the October 2020 Court of Appeal judgment marked a return to the norm. The appeal court drastically diluted the sentences – reducing Bá's from 12 to six years – in what was labelled a 'cloaked acquittal' by former Minister of Justice Ruth Monteiro.¹¹

Many commentators believe that the reduction was driven by bribes paid to the judges who handed down the majority judgment. One prominent civil society member and observer of Guinea-Bissau's drug economy criticized the sentence reduction, noting how the actions of the judiciary who, 'because of some crumbs they've received' had decided to 'lower the penalties', undid the significant efforts of the judicial police.¹² (Judge Amadu Sauane issued a dissenting judgment, seen as a courageous stand against the majority.)¹³

The fact that the court reduced the sentences handed down, rather than overturn the drug-trafficking convictions, most likely projected a facade of justice being done. Simultaneously it ordered the return of most assets to the drug traffickers, leaving the ringleaders unaffected.

Throughout these developments, Bá and his fellow ringleader Monje remained at large.¹⁴ Bá went to Gambia, where he is reported to remain, residing in Senegambia.¹⁵ He is reported to travel regularly to Bissau.¹⁶

An appeal against the findings of the Court of Appeal was submitted to the Criminal Chamber of the Supreme Court by the Public Prosecutor's Office, then led by Fernando Gomes. While in office, Gomes was criticized for being complicit in the growing politicization of the criminal justice system. For example, Gomes's tenure was characterized as a 'performance in a political agenda, properly orchestrated by the power holders', in a letter written by the Collective of Lawyers of Aristides Gomes, former prime minister.¹⁷ Reports on the ground at the time pointed to political pressure driving the appeal.¹⁸

THE SUPREME COURT ACQUITTAL

On 23 June 2022, with only a few whispered rumours as fanfare, the Criminal Chamber of the Supreme Court of Justice issued a judgment acquitting Bá and Monje of all remaining charges against them.¹⁹ The court left the sentences of the rest of the network unchanged.

The appeal submitted challenged the existing conviction on six grounds, namely that:

- Bá and Monje had been absent through the proceedings and therefore unable to exercise their right of defence; and
- that the Court of Appeal had:
 - exceeded its lawful mandate by considering points of fact, when it should only analyze points of law;
 - wrongly applied the definitions of the crimes of ‘criminal association’ and ‘money laundering’ in its dismissal of these charges (divided into three separate grounds); and
 - acted in breach of the principle of the presumption of innocence.²⁰

The criminal bench issued a majority decision (handed down by two of the three judges) acquitting Bá and Monje of the charge of drug trafficking, and of all other charges against them. Of particular interest given the facts of the case is the Supreme Court’s reasoning on three points.

Firstly, in considering whether the crime of criminal association was committed, the acquitting duo agreed with the Court of Appeal’s decision to dismiss this charge, at length emphasizing that ‘there was no boss, and consequently no command’ – in reference to the drug trafficking activities for which they had been convicted. The Supreme Court argued that because Bá and Monje ‘drove vehicles, and transported lunches’ they could not have been ringleaders because ‘they should have limited themselves to the functions of the leadership, giving orders’. This applies a restrictive definition of leadership, and flies in the face of the initial judgment by the Court of Cacheu, which detailed the strategic planning undertaken by Bá and Monje since December 2018, including identifying drug disembarkation points, and incorporating companies used for money laundering.

Secondly, in considering the principle of the presumption of innocence, the bench found that it was

wrong to convict the defendants Braima Seidi Bá and Ricardo Ariza Monje of the crime of drug trafficking because it is clear ... that both have been traders for a long time and it is difficult to understand why it is not accepted that the valuables contained in the bank accounts are products of the defendants’ commercial activities and have nothing to do with drug trafficking.²¹



Guinea-Bissau's Court of Appeal, in Bissau.

Again, this conclusion seems odd given the extensive detail contained in the decision by the Regional Court of Bissau regarding the different companies set up by the defendants, how these were used for laundering funds from cocaine trafficking and paying salaries of the network (who remain convicted of drug trafficking charges), the roles played by different members of the network in the cocaine import, and the extensive evidence provided by the Judicial Police investigation of the involvement of the ringleaders in the September 2019 cocaine import.

Thirdly, the appeal submitted that because Bá and Monje had been absent during previous proceedings, they had therefore not exercised their constitutional right of defence. The Supreme Court judgment agreed with this ground, noting that the inability of the defendants to 'exercise this fundamental right ... tipped the balance in their favour ...'.²² However – as highlighted by Ruth Monteiro, former Minister of Justice, in her analysis of the appeal – Bá and Monje were not questioned because they had fled Guinea-Bissau, absconding justice. Monteiro argues that, according to Bissau-Guinean law, due process was followed and an edict issued,²³ and that although the judges could have demanded a retrial if the defendants' absence from proceedings was deemed to significantly impact the case,²⁴ Bissau-Guinean law provides no basis for acquittal in such contexts.

Three judges constituted the criminal bench hearing the appeal. Judge Lima António André and Judge Arafam Mané issued the majority judgment that acquitted Bá, while Judge Osiris Ferreira issued a dissenting judgment. This dissenting judgment is remarkable in its brevity, merely stating that Judge Ferreira agrees with Judge Aimadu Sauane's dissenting judgment issued in the Court of Appeal, which found the defendants to continue being guilty of criminal association, and recommended far higher sentences (14 years and three months for Bá) than those handed down by the Appellate Court (six years for Bá).

Stakeholders differed on their commentary of the dissenting judgment – some attributing its brevity to the currently dangerous environment in Guinea-Bissau for critical voices, others criticizing it for failing to fully explore 'loose ends' in the 'very weak' majority judgment.²⁵

On 5 July, the Public Prosecutors Office submitted to the Supreme Court plenary a further appeal to the Criminal Court's decision. The grounds for appeal included alleged breaches on points of law, together with procedural breaches – namely the unconstitutional composition of the Criminal Court, which adjudicated on the case, as explored further below.²⁶

However, the Supreme Court plenary rejected the appeal, concluding that grounds for an appeal had been exhausted. Judge Lima António André, one of the judges that issued the acquittal majority decision, signed the plenary refusal of appeal.²⁷



REACTIONS TO THE ACQUITTAL: A ‘WHITEWASH’

Reactions by Bissau-Guinean legal experts to the judgment by the criminal bench, and the further dismissal of the appeal by the Supreme Court plenary, have been damning.

Monteiro challenges each of the elements of the acquittal issued by the criminal bench of the Supreme Court, concluding that ‘the acquittal of the defendants Braima Seidi Bá and Ricardo Ariza Monje flagrantly violates the rules of criminal law and criminal procedure in force in Guinea-Bissau’. She said that such blatant breaches of law indicate that the intention of the decision was to ‘protect drug trafficking interests’ in Guinea-Bissau. Monteiro similarly points to the ‘astonishing’ breach of procedure leading to Judge Lima António André sitting on the bench of the first acquittal, and then signing the dismissal of the appeal to the plenary. Monteiro also refutes the legal basis of the refusal to hear the appeal in plenary.²⁸

In an interview, one judge noted that the acquittal was ‘expected’ and in line with the established trajectory of the Bissau-Guinean judicial system.²⁹ However, Rui Landim, civil society leader, noted that despite earlier indications that a ‘whitewash’ was already in process given the Court of Appeal’s dilution of sentencing, the ‘absurdity of acquittal’ took him by surprise.³⁰

A number of magistrates and legal experts who were interviewed commented on the unlawful constitution of the three-man bench chosen to hear the appeal, and all pointed to a degree of corruption at some point in the process.³¹ One judge attributed the make-up of the bench to influence of the criminal network. Other commentators suggested that ‘pressure, most likely from some sector of the political power’ is the only explicable driver of the constitution of the bench.³² Monteiro concludes that because the composition of the bench issuing the ruling was itself unlawful, the acquittal is rendered null and void.³³

There has been no official government statement published in reaction to the case. The GI-TOC contacted the Minister for Justice for comment on the case, but received no reply.³⁴ A number of journalists reported that they too had approached a number of different government officials for comment, and received no reply (although we cannot verify whether these submissions by third parties were made through the correct procedures).³⁵ Similarly, as at the time of writing, the acquittal had triggered no official statement by any international institution – leading some observers to voice criticism of what they deemed to be the passivity of the international community, and to question

whether international organizations should continue to support certain Bissau-Guinean institutions that would seem to be corroded by corruption, if these accounts are accurate.³⁶

Civil society has been slightly more vocal. The Espaço de Concertação, a platform of civil society in Guinea-Bissau, on 2 July issued an official statement describing the acquittal as ‘completely out of touch with the reality of the facts underlying the case’ and noted that the decision is a clear marker of the concerning instrumentalization of the Supreme Court by ‘various vested interests’, and labelled the court as ‘a hostage of organized crime in Guinea-Bissau’.³⁷

For many commentators, the acquittal judgment, and the apparent irregularities in the composition of the sitting trio, is the last straw in a trend that has seen the growing politicization of the Supreme Court, and of the country’s criminal justice infrastructure more broadly.³⁸

Operation Red – in which the Judicial Police seized 5 kilogrammes of cocaine following a kidnapping tip-off (all suspects were eventually acquitted) – was referred to as an ‘antechamber’ for this acquittal, a foretaste of the direction Guinea-Bissau’s criminal justice system was taking.³⁹ Some magistrates indicated that the judiciary is ‘being assaulted by the political power’, breaching the rightful independence of the three branches of state.⁴⁰

As of 8 September, the Judicial Police maintained photographs of Bá and Monje on their wanted list on its website. Although the force were not willing to give statements in reaction to the Supreme Court ruling, those close to senior elements of the Judicial Police reported that the ruling was received with significant disappointment, leaving elements of the force disillusioned. The retention of Bá and Monje on the wanted list could be perceived as a tacit resistance to the Supreme Court’s decision.

A number of legal experts and civil society activists in Bissau have expressed astonishment at how clearly the acquittal process breached procedural requirements, proceeding with a degree of brazenness that shows little regard for the appearance of compliance with the rule of law.



Photograph of Ricardo Monje on the Judicial Police’s wanted list. This could be perceived as resistance to the acquittal decision.

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EYING UP ELECTIONS?

The acquittal was issued on 23 June by the Supreme Court, reportedly in a hurry. This came just over a month after President Embaló dissolved the National Assembly on 16 May, once again putting Guinea-Bissau on the bumpy path to legislative elections in December 2022. Given the intricately connected nature of illicit economies and politics in Guinea-Bissau, political wranglings are a crucial backdrop to assessing the trajectory of illicit markets – such as this controversial acquittal of two men previously convicted of cocaine imports. Elections are therefore a particularly important political marker in tracking illicit economy dynamics in Bissau.

This is partly because winning elections confers power (including power over illicit economies), but also because, as in most countries, elections are an expensive business in Guinea-Bissau. Since 2005, elections have, according to a prominent civil society activist in Bissau, typically cost over €30 million – this in a country where the minimum wage is just €80 a month.⁴¹ Illicit markets – most prominently illegal logging and cocaine trafficking – have been an important source of financing to bankroll campaigning costs. Analysis of the last three elections underscores how closely electioneering is interwoven with illicit economies in the country.

Illicit logging has been fingered as a key source of financing for the 2014 elections and those originally scheduled for 2018 (later postponed to 2019). During the 2014 elections, the cocaine market appeared curtailed in the wake of the 2013 US DEA sting operation, which spooked traffickers and displaced significant volumes of smuggled drugs to neighbouring states. This is likely to have driven greater reliance on revenue from illicit logging.

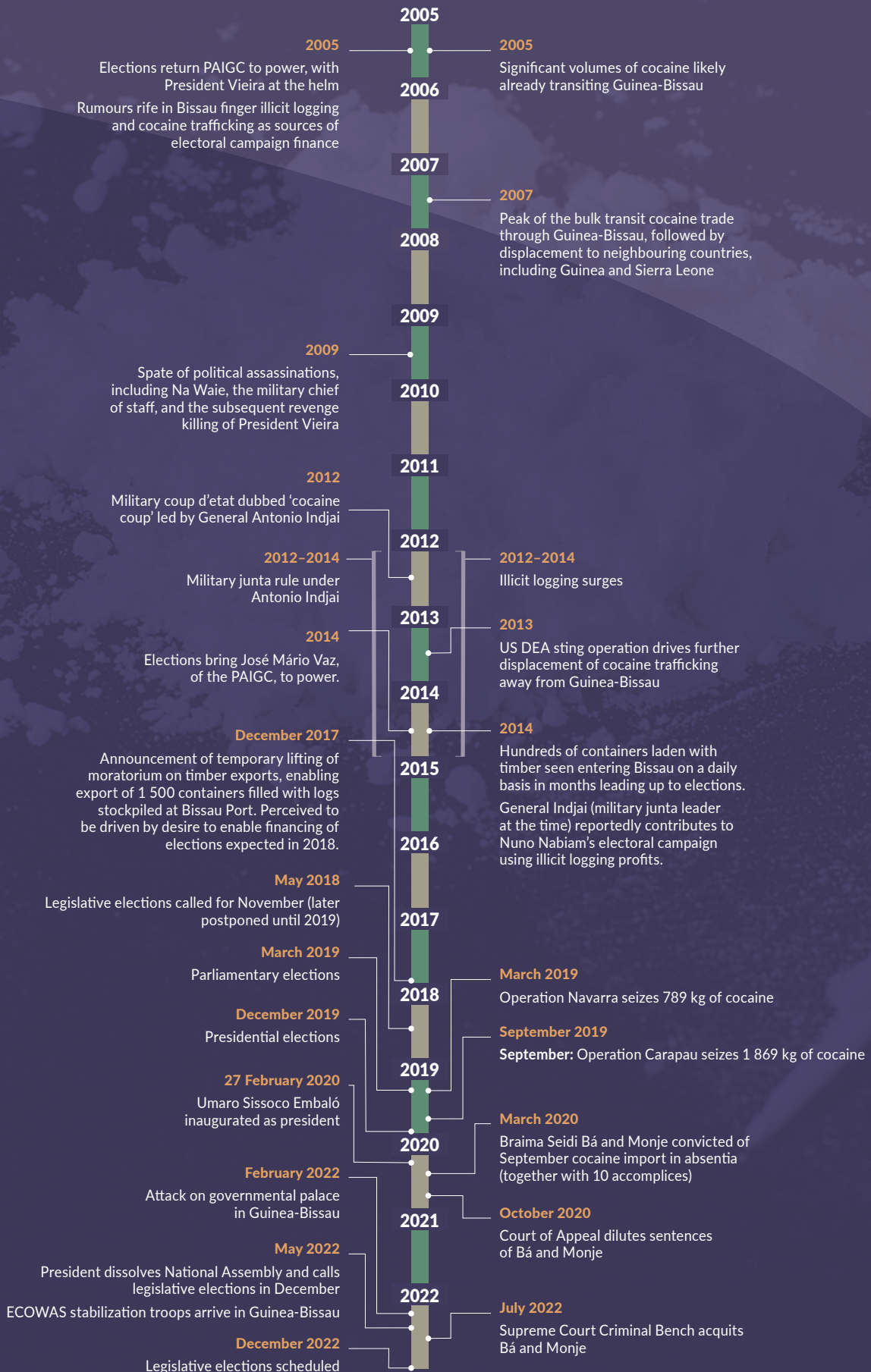
In the months leading up to the 2014 elections, hundreds of containers laden with timber reportedly entered Bissau from the interior on a daily basis.⁴² Illicit logging profits were reportedly used by General Indjai, who had been at the helm of the military junta in power leading up to the elections, in support of the ultimately unsuccessful campaign of Nuno Nabiam (the current prime minister).⁴³ Given that Indjai oversaw a period of intense military involvement in the surging illicit logging trade between 2012 and 2014, this is not surprising.⁴⁴

Turning to the legislative elections announced in March 2018 for November of that year (and later postponed), in December 2017 the government announced the partial lifting of the logging moratorium in place at the time that prohibited exports of timber. This enabled the export of 1 500 containers of logs that had been stockpiled at Bissau's port since 2015, when the moratorium was imposed, although the moratorium was observed more generally.⁴⁵ Interviews suggested that the moratorium had been partially lifted by the ruling party as a means to raise campaign funds and support for the scheduled elections.⁴⁶

TIMELINE OF ELECTIONS AND KEY EVENTS IN ILLICIT ECONOMIES IN GUINEA-BISSAU

ELECTIONS AND KEY POLITICAL EVENTS

KEY EVENTS IN ILLICIT ECONOMIES





A polling station in Bissau during the 2019 presidential elections. Illicit markets have been an important source of financing to cover campaigning costs. © John Wessels/AFP via Getty Images

In 2019 the logging moratorium remained in place, and profits from the illicit logging market were consequently relatively low. The timing of the 789 kilogramme March 2019 cocaine import, on the eve of parliamentary elections, suggests political elites were forced to once more turn to the cocaine trade, and the consignment is widely perceived to have been intended to fund campaigning.⁴⁷ Similarly, the record-breaking import of 1 800 kilogrammes on 1 September happened just months before the presidential elections on 24 November, and campaigning by candidates was already well under way. Many commentators point to the likely significant financing of the 2019 elections by money made from illicit economies. One judge said the 2019 election was a 'milestone' in the trajectory of Guinea-Bissau, a point where organized crime took over electoral processes.⁴⁸

It is not possible to determine exactly how much money used to finance politics is derived from illicit markets, civil society leaders who monitor elections say, because it is mixed with other sources of funding.⁴⁹ 'The most important thing to recognize about drug money,' a commentator and civil society leader said, 'is that it supports bad or dishonest actors in the system. In that sense alone, it is destabilizing for democracy.'⁵⁰

One member of the judiciary, asked for his thoughts on what Bissau-Guineans can expect in the run-up to the December 2022 elections, concluded grimly: 'There is a great risk of continued political financing by organized crime, as has happened in the past.' Another member of the judiciary went even further, concluding: '[The timing of the acquittal of Bá and Monje] is a confirmation that Guinea-Bissau is a narco-state, drug traffickers have funded elections and are being compensated. What you can expect from elections is the continued funding of corrupt politicians by organized crime.'⁵¹

Handed down one month after legislative elections were called and five months prior to their scheduled date, the timing of the acquittal underscores the likely financial drivers for appeasing the acquitted ringleaders. Landim noted that 'everything is in place to adulterate the elections, to eradicate the rule of law. Today we are not facing the risk of interference by organised crime in the electoral process, today we are facing evidence of state capture by organized crime.'⁵²

Although it is key to continue monitoring dynamics in Guinea-Bissau in the run-up to elections, the glossy veneer of protection is likely to keep submerged clear indications of trafficking.



LOOKING AHEAD: INSIGHTS INTO POLITICAL WRANGLING

There have been no significant cocaine seizures in Bissau since the September 2019 seizure. However, one should not infer that this in itself indicates that there is no cocaine trafficking through the country.

In his analysis of seizures in West Africa, Mark Shaw hypothesizes that 'periods of political fracture, conflict or political transition may be aligned with greater volumes of cocaine seizures in West Africa'. This is based on the understanding that in some countries in the region, including Guinea-Bissau, cocaine trafficking 'depends upon political protection, which (for a price) allows the trafficking machine to run smoothly: violence is kept in check and product keeps moving without hindrance'.⁵³

Regarding the case of Guinea-Bissau, Shaw highlights two particular trends. Firstly, seizures tend to cluster in periods where the political system is damaged, creating space for law enforcement action – most prominently by the Judicial Police, the most capable and honest element of Bissau-Guinean law enforcement. Secondly, seizures tend to occur as indications of power struggles in the near future. In line with this hypothesis, the spate of seizures between 2006 and 2008 could be understood as an early-warning sign of the pending chronic political volatility, characterized by political assassinations and a military coup, which consumed Guinea-Bissau until 2014.

Considering the first trend in the context of the 2019 bumper seizures: the Judicial Police certainly operated with a higher degree of independence than previously during this period. 2019 was a period of political transition, which created cracks in the established system of political protection. These cracks were then quickly papered over once the new administration took power – although deep fissures remain. Currently the lack of bulk seizures points to a degree of stability in the protection afforded to the cocaine trade by powerful figures.⁵⁴

Turning to the second trend, Shaw asked in 2021, referring to the 2019 seizures: 'Does the more recent cluster of seizures in Guinea-Bissau signal a new longer-term cycle of instability and more authoritarian rule, as did the previous set in 2006–2008?'⁵⁵ The military occupation of state buildings in March 2020, the reported attempted coup in February 2022, redeployment of ECOWAS stabilization troops in May 2022, dissolution of parliament in May 2022, ongoing centralization of powers in the office of the president, and the ever-accelerating repression of dissenting voices (both within civil society and government) would all indicate that the answer is yes.

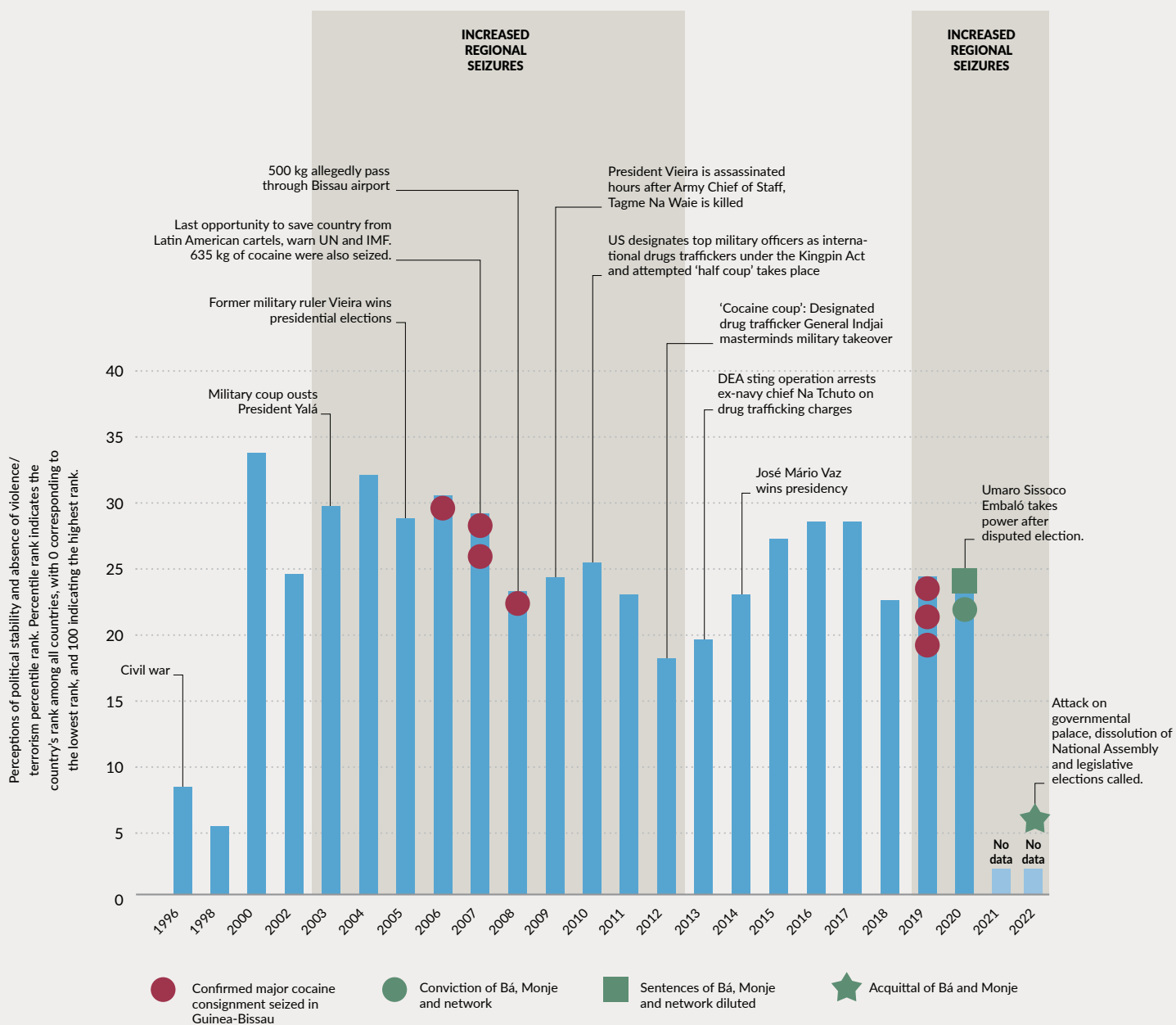


FIGURE 1 Cocaine seizures, coups and political events in Guinea-Bissau, 1996–2022.

Given the close connections between the previously convicted ringleaders and cocaine trafficking in Guinea-Bissau, the acquittal of Bá and Monje should be analyzed in terms of how this legal judgment fits into the broader political context of Guinea-Bissau. In other words, what can these acquittals tell observers about the structures protecting the cocaine economy and the country's political trajectory?

Taking the first trend highlighted by Shaw, which centres around the independence of elements of the criminal justice system, the original conviction of the ringleaders most likely occurred while the new system of political protection had not fully crystallized, enabling some degree of independence within the lower elements of the judicial system.⁵⁶ Tracking the passage of the case – a seminal one in Guinea-Bissau's history of responding to cocaine trafficking – up the judicial system, offers an insight

into how the protection structure then resolidified over time. The acquittal of the ringleaders can therefore be understood as the apex of this process.

Applying the second trend, what can the acquittal tell us about Guinea-Bissau's political volatility moving forwards? The acquittal of such renowned figures in Bissau's illicit economy shows a degree of disregard for international opinion, including among multilateral institutions that had been vocal in praising the original judgment. Arguably, the appeal submitted to the Supreme Court plenary was a nod in this direction, albeit a rather token gesture. Some interpretations could suggest that this is one sign of Guinea-Bissau's political manoeuvring within an international landscape where certain big players place less emphasis on the rule of law as a condition of financial support. This can be perceived to have weakened the influence of multilateral institutions and key Western allies.

A number of civil society commentators perceived the acquittal as an additional indicator of growing volatility. One commentator noted: 'We are sitting on a powder keg that could explode at any moment. The level of insecurity is very high [...], with the persecution of political opponents, kidnapping, beatings, torture, drug trafficking, physical and gratuitous violence. At present, an atmosphere of fear is being experienced. Everybody is afraid, every Bissau-Guinean citizen has doubts about tomorrow.' More specifically turning to the pending elections, the same commentator noted 'We are running the risk of having the most fraudulent elections in history since 1994.'⁵⁷



CONCLUSION AND RECOMMENDATIONS

The overturning of the most important drug trafficking convictions in Guinea-Bissau's history affords insight into the trajectory of the country's cocaine economy, which appears to be flourishing under near-total protection. It also serves as a grim prediction of the 2022 elections, and the grey financing sources likely to shape electoral campaigning and votes.

The decision deals a severe blow to elements of the criminal justice system, which have worked tirelessly to respond to Guinea-Bissau's illicit economies and mitigate the corroding effects of corruption. Key elements of the Judicial Police and the lower courts are left undermined by decisions made by higher echelons of the judiciary.

The recommendations set out below are targeted at the international community at a time where robust and critical engagement in Guinea-Bissau is urgently required.

Enhance enforcement of existing international sanctions against listed individuals in Guinea-Bissau.

The brazenness of the Bá and Monje's acquittal shows disregard for international opinion, and indicates the high degree of protection afforded to the cocaine economy, executed through the higher courts. A number of magistrates pointed to the executive as the source of pressure driving for the acquittal.

Sanctions are an existing tool applied to demonstrate ongoing oversight by the international community.⁵⁸ However, enforcement to date has been weak – heightening it would therefore demonstrate continuing engagement regarding challenges to the independent rule of law in Guinea-Bissau.

Incorporate analysis of corruption and erosion of rule of law in donor financing decisions.

International players should consider curtailing support to institutions that have undermined the rule of law in Guinea-Bissau, making future support contingent on steps taken to enhance transparency and accountability.

Provide targeted monitoring support to the higher courts.

Echoing previous recommendations made in the context of the Bá and Monje case, support for Bissau-Guinean higher courts, particularly in the context of significant drug trials, needs to be targeted and strengthened. A system enabling lusophone international and regional judges (including, for example,

from Brazil and Cape Verde) to attend cases heard by Guinea Bissau's higher courts, namely the Supreme Court and Court of Appeal, could enhance support to the sitting judiciary, strengthening technical judicial decision-making, and mitigating the risks of corruption. This system was first proposed by, and continues to benefit from the support of, former justice minister Ruth Monteiro.

Drive for national reform on political party and campaign funding.

Echoing previous GI-TOC recommendations regarding dynamics in Guinea-Bissau, it is key to step up monitoring in the run-up to elections and drive for greater transparency. The high cost of elections and lack of accountability and transparency regarding political party and campaign finances are drivers for politicians to seek rents from illicit markets. These drivers erode the rule of law and damage democracy.

International partners should ensure that transparency on campaign financing remains a prominent item on the political agenda as the country moves into a pre-election phase. Efforts to enforce transparency in electoral financing should be critically analyzed, and transparency drives clearly being weaponized against opponents – as is currently occurring – should be viewed with caution.⁵⁹

Consequently, while confronting the issue of campaign financing is extremely difficult in Guinea-Bissau, breaking reliance on illicit sources of revenue (whether external or internal) to consolidate political power must be a priority. In the long term, this should manifest in reduced campaign financing costs and party-political financing, including through bolstering enforcement of financial reporting by political parties, and enforcing information disclosure laws.

An essential partner in any legal and institutional reforms is an engaged and informed civil society ready and able to investigate and report on campaign financing. However, the space for the independent, advocacy voice of civil society is shrinking, and activists face significant risks if they speak out. The international community should play a role in supporting Bissau-Guinean civil society, and condemn actions taken to intimidate them.

Support civil society, including the media, to take a stance against corruption.

The statement issued by the Espaço de Concertação is a strong reprimand of corruption in the country's criminal justice system. International commentary on the decision has been limited, but has drawn from the platform's statements, multiplying its audience and reach. This type of engagement between Bissau-Guinean civil society institutions and international media and commentators should be strengthened and replicated. The current phase of Guinea-Bissau's cocaine economy is characterized by growing opacity, and repression of dissenting voices. Civil society monitoring is more crucial than ever – and international support equally urgent.

NOTES

- 1 Judicial Police investigations detailed in Bá's conviction by the Regional Court of Bissau, República da Guiné-Bissau, Tribunal Regional de Cacheu, *Acórdão No. 13/2020*.
- 2 For more detailed analysis of the conviction of Bá's network, and subsequent appeal, see: GI-TOC, *The Seidi Bá cocaine trial: A smokescreen for impunity?*, January 2021, https://globalinitiative.net/wp-content/uploads/2021/01/Guinea_Bissau_RB1.pdf.
- 3 For example, see INTERPOL, *Guinea-Bissau: Triple prison conviction marks new era of anti-drug action with INTERPOL*, 27 December 2019, <https://www.interpol.int/en/News-and-Events/News/2019/Guinea-Bissau-triple-prison-conviction-marks-new-era-of-anti-drug-action-with-INTERPOL>; UNODC, *Guinea-Bissau: Drug smugglers receive record 16-year jail sentences as justice system strengthened by UNODC*, 10 April 2020, <https://www.unodc.org/westandcentralafrica/en/2020-04-02-jugement-navara-guinee-bissau.html>.
- 4 This notion had been based on the declining trajectory of seizures recorded in the country between 2013 and 2018.
- 5 Interview, individual close to trafficking networks in Guinea-Bissau, Bissau, July 2019. See República da Guiné-Bissau, Tribunal Regional de Cacheu, *Acórdão No. 13/2020*.
- 6 Interview, Judicial Police inspector, Bissau, February 2021.
- 7 Gomes's appointment as Director General of National Petroleum Research and Exploration Company (EP-Petroguin) triggered a repudiation by the PRS party, given Gomes's reportedly long-standing links to drug trafficking. See *Guiné-Bissau: os traficantes voltaram, mesmo com mandado internacional*, 9 April 2020, *Público*, <https://www.publico.pt/2020/04/09/mundo/noticia/guinebissau-trafficantes-voltaram-mandado-internacional-1911778>.
- 8 Interviews in Bissau, January 2021.
- 9 GB-Intercontinental SARL and GB Fenix SARL (incorporated by Seidi Bá), and Palmeiras Company Import & Export Business Center, incorporated by both Seidi Bá and Monje. For more detail, see GI-TOC, *The Seidi Bá cocaine trial: A smokescreen for impunity?*, January 2021, https://globalinitiative.net/wp-content/uploads/2021/01/Guinea_Bissau_RB1.pdf.
- 10 This operational detail is provided in the judgment. See República da Guiné-Bissau, Tribunal Regional de Cacheu, *Acórdão No. 13/2020*.
- 11 Interview with Ruth Monteiro, former Minister of Justice of Guinea Bissau, December 2020.
- 12 Interview, Abílio Có, president, Drugs Observatory Bissau, December 2020.
- 13 GI-TOC, *The Seidi Bá cocaine trial: A smokescreen for impunity?*, January 2021, <https://globalinitiative.net/analysis/guinea-bissau-obs-rb1/>.
- 14 See República da Guiné-Bissau, Tribunal Regional de Cacheu, *Acórdão No. 13/2020*.
- 15 Interviews with multiple sources in Guinea-Bissau, December 2020 to January 2021.
- 16 Interviews, law enforcement and civil society stakeholders, Bissau, January to May 2022.
- 17 Aristedes Gomes was prosecuted by the Public Prosecutor's Office during Fernando Gomes's leadership of the Public Prosecutor's Office, in what was widely perceived as a politicized

endeavour. Letter received by GI-TOC from Aristides Gomes on 20 January 2021 authored by The Collective of Lawyers of Dr Aristides Gomes, titled: Denouncement of the blatant misdeeds of the Attorney General of the Republic, Bissau, 13 January 2021.

- 18 Interviews with multiple sources in Guinea-Bissau, December 2020.
- 19 Criminal Court, Supreme Court of Justice, Guinea-Bissau, Agreement NQ 4/2022, Proc. NQ 11/2020.
- 20 The criminal bench allowed some points of appeal – notably regarding the impact of the defendants' conviction in absentia, and the breach of the presumption of innocence – and dismissed others, including that regarding the mandate of the Court of Appeal.
- 21 Criminal Court, Supreme Court of Justice, Guinea-Bissau, Agreement NQ 4/2022, Proc. NQ 11/2020.
- 22 Ibid.
- 23 They were therefore notified by edict, as required by Article 235, paragraphs 1-3 of the Criminal Procedure Code of Guinea-Bissau.
- 24 Article 235, no. 5 Criminal Procedure Code of Guinea-Bissau.
- 25 Interviews, magistrates, civil society activists, Bissau, July 2022.
- 26 Appeal submitted by Public Prosecutor's Office, 5 July, signed by BÁCARI BIAI.
- 27 Camara Criminal, *Processo No. 11/2020*, 11 July 2022. Signed by Judge Lima Antonio André.
- 28 Monteiro references in her analysis article 27, al. i) of the Organic Law of the Judicial Courts (Law 3/2002, as amended by Law 6/2011), noting that the submission to appeal should have been accepted by the plenary, and there were no grounds for refusing to hear the appeal. Monteiro is not alone in her criticisms of the legal analysis applied. One judge who was not involved in the Supreme Court acquittal noted that the Supreme Court's mandate is limited to analyzing points of law. The judge noted that not only did the Supreme Court breach its mandate in the acquittal by considering points of fact, but that it did so 'badly'. Interview with Judge A, Bissau, July 2022.
- 29 Interview with Judge B, Bissau, July 2022.
- 30 Interview with Rui Landim, Bissau-Guinean civil society activist, July 2022, Bissau.
- 31 Interviews with three Bissau-Guinean judges, Bissau, July 2022. Interpretation of Ruth Monteiro, former Minister of Justice, shared in written analysis in June 2022.
- 32 The only member of the three-judge bench whose role is uncontested is that of Judge Ferreira, who issued the dissenting judgment. Taking each of the other two appointments in turn: Judge André is vice president of the Supreme Court. And, although this appointment was made after the case was assigned to André, legal experts interviewed were unanimous in their views that there was thus no reason for André to sit on the criminal bench. One judge concluded that 'hidden hands' were at work in driving for the involvement of the vice president. Further, Judge Mané is part of the civil chamber of the Supreme Court, and therefore reportedly not lawfully able to take part in decisions by the criminal chamber. Interviews with three judges, July 2022, Bissau.
- 33 Interpretation of Ruth Monteiro, former Minister of Justice, shared in written analysis in June 2022.
- 34 Letter delivered to the office of the Minister for Justice, July 2022.
- 35 Interviews with journalists, July 2022, Bissau.
- 36 Written comments by close observer of dynamics in Bissau, July 2022.
- 37 Espaço de Concertação, Press release, 2 July 2022. Similarly, Landim commented that the acquittal judgment confirmed that the 'judicial institution itself collaborates with drug trafficking and other transnational crimes'.
- 38 Although there is a long precedence for political influence over criminal justice infrastructure in Guinea-Bissau, it has accelerated since the current administration came to power in early 2020. This has been highlighted as a trend of concern by civil society commentators and members of the criminal justice infrastructure in Guinea-Bissau. For greater discussion of the politicization of the criminal justice infrastructure, see: Lucia Bird, Cocaine politics in West Africa: Guinea Bissau's protection networks, GI-TOC, July 2022, <https://globalinitiative.net/analysis/cocaine-politics-west-africa-guinea-bissau/>.
- 39 Interview with Rui Landim, civil society activist, July 2022, Bissau.
- 40 Interviews with magistrates, July 2022, Bissau.
- 41 Interview, December 2020, Bissau.

- 42 Profits from illicit logging also fed into the 2005 elections. Africa Confidential, Guinea-Bissau: The civilians may be back, 15 April 2014, <https://www.africa-confidential.com/index.aspx?pageid=21&articleid=5580>.
- 43 General Indjai reportedly used proceeds from timber sales to sponsor the presidential ambitions of Nuno Gomes Nabiam, during the 2014 presidential elections. Interviews with Bissau business managers, December 2017.
- 44 For further detail of Guinea-Bissau's illicit logging economy, and Indjai's involvement, see: Lucia Bird and A. Gomes, Deep rooted interests: Licensing illicit logging in Guinea-Bissau, GI-TOC, May 2021, <https://globalinitiative.net/analysis/illicit-logging-guinea-bissau/>.
- 45 Guinea Bissau to export stocks of seized, rare timber, Reuters, 23 January 2018, <https://af.reuters.com/article/topNews/idAFKBN1FC21U-OZATP>.
- 46 Interviews, Bissau business managers, December 2017. The export revenues were estimated to be around US\$12.6 million. See Guinea Bissau to export stocks of seized, rare timber, Reuters, 23 January 2018, <https://af.reuters.com/article/topNews/idAFKBN1FC21U-OZATP>.
- 47 Mark Shaw and A. Gomes, Breaking the vicious cycle: Cocaine politics in Guinea-Bissau, GI-TOC, May 2020, https://globalinitiative.net/wp-content/uploads/2020/05/Guinea-Bissau_Policy-Brief_Final2.pdf.
- 48 Interview with Judge A, July 2022, Bissau.
- 49 This is the conclusion of several interviewees. None had any doubt that drug money had found its way into the political system.
- 50 Interview, Bissau, July 2019.
- 51 Interview with Judge A, July 2022, Bissau.
- 52 Interview, civil society activist, July 2022, Bissau.
- 53 Mark Shaw, West Africa's warning flares? Rethinking the significance of cocaine seizures, 8 November 2021, ENACT, <https://enactafrica.org/research/policy-briefs/west-africas-warning-flares-rethinking-the-significance-of-cocaine-seizures>.
- 54 The current dynamics of the cocaine trade are explored further in Lucia Bird, Cocaine politics in West Africa, Guinea-Bissau's protection networks, GI-TOC, July 2022, <https://globalinitiative.net/analysis/cocaine-politics-west-africa-guinea-bissau/>.
- 55 Ibid.
- 56 Alternative theories posit that the entire criminal justice process was staged, and designed to court international favour, with the conclusion set from the very beginning.
- 57 Interview, civil society observer of illicit economies and politics, July 2022, Bissau.
- 58 For details of the UN Guinea-Bissau sanctions regime, see: <https://www.un.org/securitycouncil/sanctions/2048>.
- 59 A recent drive by the Public Ministry to enforce compliance with legislation requiring all political parties contesting elections to submit the origins of funding for their electoral campaigns within 30 days of the date of the election appears, prima facie, to be a move in the right direction. However, observers in Bissau note that this enforcement drive is likely to be weaponized as a way of identifying, and dissuading, opposition sources of funding. Any figures provided are likely to be inaccurate.



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