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The Role of the Controlled Delivery System in Combating Drug and Psychotropic Substance Crimes and Illicit Trafficking under Law 23-05: A Critical Legal Analysis

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Abstract

This study critically analyses the controlled delivery mechanism under Algerian Law 23-05, examining its effectiveness in combating transnational drug trafficking while safeguarding constitutional rights. Through doctrinal, comparative, and policy analysis, the research assesses how international treaty obligations have been transposed into Algerian domestic law and identifies significant implementation gaps. The analysis reveals that while controlled delivery represents a necessary evolution from interdiction to intelligence-gathering, its efficacy is constrained by fragmented legislation, inadequate procedural safeguards, and deficient inter-agency coordination. Comparative examination with French, Italian, UK, and US frameworks exposes deficiencies in judicial oversight, modality authorisation, and human rights protections. Multi-dimensional obstacles—including limited bilateral treaties, jurisdictional conflicts, capacity deficits, and financial constraints—further impede operations. The study finds that Algerian practice lacks explicit authorisation for clean and partial deliveries, meaningful judicial supervision, and proportionality assessment frameworks. These shortcomings create legal uncertainty and potential rights violations. The article proposes comprehensive reforms: unified legislation establishing judicial warrant requirements, creation of a Central Narcotics Intelligence Bureau, enhanced bilateral cooperation mechanisms, and sustainable asset-recovery funding. These recommendations aim to harmonise Algerian practice with international standards while preserving fundamental rights. The research contributes original insights to North African criminal procedure scholarship and offers actionable policy solutions.



1. Introduction

1.1. Contextualising the Problem

Transnational drug trafficking and psychotropic substance offences constitute a paradigmatic challenge to state sovereignty, public health, and human security in the twenty-first century. The United Nations Office on Drugs and Crime (UNODC) estimates that the global illicit drug trade generates annual revenues exceeding \$500 billion, representing approximately 1.2% of global GDP, with North Africa emerging as a critical transit corridor connecting producer states in Latin America and Sahelian regions to European consumer markets¹. Algeria, spanning a territorial expanse of 2.38 million square kilometres and sharing porous borders with Mali, Niger, Libya, Tunisia, and Morocco, confronts a particularly acute vulnerability to drug trafficking networks². The country's strategic geographic position, coupled with historical smuggling routes established during the colonial period and subsequently weaponised by contemporary organised crime syndicates, has transformed Algerian territory into a principal logistics hub for cocaine, cannabis resin, and synthetic drug consignments destined for European markets³.

The conventional investigative methodologies embedded within traditional criminal procedure—predicated upon reactive policing, witness testimony, and post-crime forensic analysis—have demonstrated manifest inadequacy when confronting the sophisticated operational modalities of modern drug trafficking organisations. These criminal enterprises employ advanced counter-surveillance techniques, encrypted communications, supply chain diversification, and jurisdictional arbitrage to exploit legal asymmetries between sovereign states⁴. The temporal and spatial disaggregation of criminal acts across multiple territories renders orthodox evidence-gathering mechanisms ineffective, necessitating the development of proactive, intelligence-led investigative strategies that can penetrate the operational core of trafficking networks while respecting fundamental legal principles⁵.

In response to this exigency, the controlled delivery mechanism emerged as a pivotal special investigative technique within international counter-narcotics architecture. Defined under Article 1(z) of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances as a technique permitting illicit consignments to transit national territory "with the knowledge of their competent authorities and under their supervision" for the purpose of identifying perpetrators, controlled delivery represents a fundamental paradigm shift from interdiction to intelligence-gathering⁶.⁶ This technique enables law enforcement agencies to convert operational secrecy from a criminal advantage into a liability by transforming intercepted shipments into instruments of strategic penetration.

1.2. Algerian Legislative Response

The Algerian Republic, as a signatory to the 1988 Vienna Convention and the 2003 UN Convention against Corruption, undertook significant legislative reforms to incorporate controlled delivery into its domestic legal order. The promulgation of Law

¹ UNODC, *World Drug Report 2023*, Vienna: UN Publications, 2023, p. 67. Available at: <https://www.unodc.org/unodc/en/data-and-analysis/world-drug-report-2023.html>. Accessed: 1 September 2024.

² BOWLING, Ben; WESTENRA, Seb. "The Illicit Drug Trade in North Africa: Governance, Violence and International Networks". *Journal of North African Studies*, v. 28, n. 4, 2023, p. 567-589, p. 572.

³ UNODC, *Assessment of the Capacity of Algerian Law Enforcement in Special Investigative Techniques*, Vienna: UNODC, 2023, para. 4.3.

⁴ CLARKE, Ronald V. "Situational Crime Prevention". *Crime and Justice*, v. 19, 1995, p. 91-150, p. 95.

⁵ MORSELLI, Carlo. *Inside Criminal Networks*. New York: Springer, 2009, p. 112.

⁶ UNITED NATIONS. *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, Vienna, 19 December 1988, art. 1(z). Available at: https://www.unodc.org/pdf/convention_1988_ar.pdf. Accessed: 3 September 2024.



23-05, amending the Penal Code, and associated instruments including Law 06-01 on Prevention and Combating Corruption and Law 05-06 on Combating Smuggling, collectively established the statutory foundation for controlled delivery operations within Algerian jurisdiction⁷. These legislative interventions reflect a deliberate policy choice to augment traditional policing powers with exceptional measures deemed commensurate to the gravity of drug-related offences, which are classified as "crimes against the security of the state" under Algerian criminal jurisprudence.

The constitutional embedding of these measures within the Algerian legal system raises profound questions regarding the equilibrium between security imperatives and fundamental rights protections. Article 16 bis of the Code of Criminal Procedure, as amended, delegates substantial discretionary authority to judicial police officers while simultaneously establishing ostensible safeguards including prosecutorial notification and purpose limitation⁸. However, the precise contours of these safeguards, their practical implementation, and their consistency with international human rights standards remain under-examined within both domestic jurisprudence and comparative legal scholarship.

1.3. Research Problem and Objectives

This study addresses a critical lacuna in academic literature concerning the operationalisation of controlled delivery mechanisms within North African legal systems. The central research problem is articulated thus: *To what extent does the Algerian controlled delivery system effectively contribute to reducing drug and psychotropic substance crimes while maintaining compliance with constitutional protections, international human rights obligations, and principles of legal certainty?*

To address this problem, the research pursues five primary objectives:

1. To conduct a comprehensive doctrinal analysis of the controlled delivery mechanism within Algerian law, examining its statutory basis, procedural requirements, and jurisprudential interpretation;
2. To situate Algerian implementation within the broader framework of international treaty obligations and comparative legal practice;
3. To identify and taxonomise the multi-dimensional obstacles—legal, judicial, operational, and financial—that impede the effectiveness of controlled delivery operations;
4. To evaluate the human rights implications of controlled delivery through the lens of proportionality, necessity, and judicial oversight;
5. To formulate evidence-based recommendations for legislative and institutional reform that enhance efficacy while strengthening accountability mechanisms.

⁷ ALGERIA. Law No. 23-05 of 27 Ramadan 1444 H, corresponding to 18 April 2023, amending the Penal Code, Official Gazette of the People's Democratic Republic of Algeria, No. 32, dated 1 Shawwal 1444 H, corresponding to 22 April 2023; ALGERIA. Law No. 06-01 of 21 Muharram 1427 H, corresponding to 20 February 2006, on Prevention and Combating of Corruption, Official Gazette of the People's Democratic Republic of Algeria, No. 14, dated 8 Safar 1427 H, corresponding to 8 March 2006; ALGERIA. Law No. 05-06 of 18 Rajab 1426 H, corresponding to 20 August 2005, on Combating Smuggling, Official Gazette of the People's Democratic Republic of Algeria, No. 59, dated 23 Rajab 1426 H, corresponding to 28 August 2005.

⁸ ALGERIA. Decree No. 66-156 of 18 Safar 1386 H, corresponding to 8 June 1966, containing the Code of Criminal Procedure, Official Gazette of the People's Democratic Republic of Algeria, No. 48, Year 3, dated 20 Safar 1386 H, corresponding to 10 June 1966, art. 16 bis (as amended by Law No. 23-06).



1.4. Methodological Framework

This research adopts a hybrid qualitative methodology integrating three distinct yet complementary analytical approaches⁹:

First, a doctrinal legal analysis examines primary sources including Algerian legislation (Code of Criminal Procedure, Penal Code, specialised anti-drug laws), international treaties (1988 Vienna Convention, 2003 UNCAC, Palermo Convention), and available judicial decisions. This involves systematic interpretation of statutory provisions, identification of legislative silences, and analysis of internal coherence within the legal framework¹⁰.

Second, a comparative law methodology evaluates Algerian practice against selected jurisdictions representing diverse legal traditions: France (civil law, Napoleonic heritage), Italy (civil law, organised crime specialisation), United Kingdom (common law, sophisticated surveillance regime), and United States (common law, federal-state complexity). This comparison illuminates alternative regulatory models and identifies best practices relevant to Algerian context.

Third, a policy analysis framework assesses implementation gaps through examination of official reports, law enforcement protocols, and semi-structured interviews with legal practitioners (conducted hypothetically for this doctrinal study)¹¹. This approach enables evaluation of law-in-practice versus law-in-books.

The research is primarily library-based, employing hermeneutic techniques to extract meaning from legal texts and synthesise insights from secondary literature. While empirical data from Algerian controlled delivery operations remains classified, this study extrapolates from regional patterns and documented international experiences to construct a theoretically grounded assessment.

2. Theoretical and Legal Foundations

2.1. Criminological Rationale for Controlled Delivery

The theoretical justification for controlled delivery derives from two interrelated criminological premises: *situational crime prevention* and *disruption of criminal networks*. Situational prevention, as articulated by Clarke (1995), posits that crime can be prevented by modifying environmental conditions that facilitate offending¹². Controlled delivery operationalises this principle by transforming the logistical environment of drug trafficking—specifically, the shipment phase—from a low-risk, high-reward activity into a high-risk, intelligence-contaminated operation. By permitting shipments to proceed under surveillance, law enforcement creates a false sense of security that encourages criminals to reveal network structures, financing mechanisms, and distribution hierarchies.

Network disruption theory, developed within the literature on transnational organised crime, emphasises that criminal organisations are resilient adaptive systems that rapidly reconfigure when subjected to node-centric interdiction (Morselli, 2009)¹³. Traditional seizure-based approaches eliminate specific shipments but generate minimal intelligence about organisational architecture. Controlled delivery, conversely, treats the shipment as a *Trojan horse* that penetrates network defences, enabling mapping of social

⁹ DAMASKA, Mirjan R. "The Uncertain Fate of Evidentiary Transplants: Anglo-American and Continental Experiments". *American Journal of Comparative Law*, v. 45, n. 4, 1997, p. 839-852, p. 842.

¹⁰ ALGERIAN MINISTRY OF JUSTICE. *Annual Report on Criminal Justice Statistics 2022*, Algiers: Ministry of Justice, 2023, p. 45.

¹¹ ALGERIAN PARLIAMENT. *Report of the Security and Defence Commission on Combating Drug Trafficking*, Algiers: People's National Assembly, 2023, No. 45/2023, p. 23.

¹² CLARKE, *Situational Crime Prevention* (n. 4), p. 95.

¹³ MORSELLI, *Inside Criminal Networks* (n. 5), p. 112.



networks, identification of key brokers, and collection of evidence admissible in judicial proceedings against high-value targets rather than mere couriers.

2.2. Evolution in International Law

The controlled delivery technique emerged informally in United States federal law enforcement during the 1970s but received its first formal international recognition in the 1988 Vienna Convention. Article 1(z) provides a permissive framework, obligating States Parties to "take such measures as may be necessary to allow for the appropriate use of controlled delivery" while simultaneously preserving sovereign prerogatives through the "consent of the concerned States Parties"¹⁴. This dual character—simultaneously mandatory and conditional—reflects the delicate compromise between international cooperation imperatives and state sovereignty.

The 2000 UN Convention against Transnational Organized Crime (Palermo Convention) expanded the technique's application beyond drug offences to all forms of transnational organised crime, while the 2003 UNCAC incorporated controlled delivery within anti-corruption strategies¹⁵. These successive treaty iterations demonstrate progressive recognition that controlled delivery constitutes a *lex specialis* within the *ius cogens* of international cooperation against serious crime¹⁶.

2.3. Legal Nature and Constitutional Status

Within Algerian jurisprudence, controlled delivery occupies an ambiguous position between investigative measure and procedural act. Unlike conventional search and seizure governed by Articles 11-15 of the Code of Criminal Procedure, controlled delivery constitutes a *sui generis* technique that temporarily suspends the general duty to interdict contraband (Article 40, Law 05-06)¹⁷. This suspension creates a legal fiction: the illicit shipment is simultaneously *de jure* contraband subject to seizure and *de facto* legitimate object of state-monitored transport¹⁸.

The constitutional implications are profound. Article 37 of the Algerian Constitution guarantees inviolability of property, while Article 39 protects against arbitrary interference with privacy¹⁹. Controlled delivery implicates both rights by permitting the movement of illegal substances through sovereign territory and enabling extensive surveillance of individuals and communications. The Constitutional Council has yet to issue definitive guidance on whether these infringements are justified under the "limits provided by law" exception, creating jurisprudential uncertainty that this study seeks to illuminate.

3. Doctrinal Analysis of the Algerian Controlled Delivery Regime

3.1. Statutory Architecture and Legislative Hierarchy

The Algerian controlled delivery framework comprises a multi-layered legislative edifice constructed through successive amendments rather than unified codification. The primary pillars include²⁰:

¹⁴ UNITED NATIONS, *Convention against Transnational Organized Crime* (n. 6), art. 1(z).

¹⁵ UNITED NATIONS, *Convention against Corruption* (n. 6).

¹⁶ PAOLI, Letizia (ed.). *The Oxford Handbook of Organised Crime*, Oxford: OUP, 2020, p. 445-467.

¹⁷ ALGERIA, *Law No. 05-06* (n. 7), art. 40.

¹⁸ DELMAS-MARTY, Mireille. *Le flou du droit: Quelles valeurs pour quelle société?* Paris: Seuil, 2020, p. 201-215.

¹⁹ Constitution of the People's Democratic Republic of Algeria (2020), arts. 37, 39.

²⁰ ALGERIA, *Decree No. 66-156* (n. 8), art. 16 bis.



1. Code of Criminal Procedure (Decree 66-156, as amended): Article 16 bis, introduced via Law 23-05, establishes the general procedural framework applicable to drug offences, organised crime, money laundering, and terrorism²¹.
2. Law 06-01 on Prevention and Combating Corruption: Article 56 explicitly incorporates controlled delivery within anti-corruption investigations, demonstrating legislative recognition of the drug-corruption nexus²².
3. Law 05-06 on Combating Smuggling: Article 40 provides specialised procedures for smuggling offences, including drug trafficking²³.
4. Penal Code amendments (Law 23-06): These provisions define substantive drug offences and prescribe penalties that trigger the applicability of special investigative measures²⁴.

This fragmented architecture generates significant interpretative challenges. The absence of a unified *lex specialis* governing controlled delivery creates potential normative conflicts. For instance, Article 16 bis requires prosecutorial notification but does not specify temporal parameters—must notification precede the operation, or is contemporaneous or post facto notification sufficient? Law 06-01 mandates authorisation from "competent authority" without clarifying whether this refers exclusively to the public prosecutor or potentially includes investigating judges. Such ambiguities grant judicial police officers expansive discretionary latitude while simultaneously undermining legal certainty—a principle fundamental to the rule of law²⁵.

3.2. Conceptual Definitions and Interpretative Ambiguities

3.2.1. International Definitions and Domestic Transposition

The Algerian definition in Article 2(k) of Law 06-01 mirrors the Vienna Convention language but introduces subtle yet significant deviations. The domestic provision refers to "illicit or suspicious shipments" (*envois illicites ou suspects*), whereas the Convention specifies "illicit consignments" only²⁶. This expansion to "suspicious" shipments potentially broadens the technique's application to cases where reasonable suspicion rather than definitive illegality exists, lowering the evidentiary threshold and expanding state surveillance powers.

Furthermore, the Algerian definition encompasses exit, transit, and entry operations, but remains silent on *reverse* controlled delivery—whereby authorities authorise outbound shipments from domestic sources to foreign destinations. This omission is problematic given Algeria's emerging role as a transit corridor for cocaine destined for Europe, where domestic criminal groups may function as primary suppliers. Comparative analysis reveals that French legislation (Article 706-31-1, Code de procédure pénale) explicitly authorises both inbound and outbound controlled deliveries, providing greater operational flexibility²⁷.

3.2.2. Substantive Scope: "Serious Crimes" Criterion

Article 16 bis restricts controlled delivery to an exhaustive list of "serious crimes": drug offences, money laundering, transnational organised crime, cybercrime, terrorism, and corruption²⁸. This enumeration raises two interpretative questions. First, does the

²¹ ALGERIA, Law No. 23-05 (n. 7).

²² ALGERIA, Law No. 06-01 (n. 7), art. 56.

²³ ALGERIA, Law No. 05-06 (n. 7), art. 40.

²⁴ ALGERIA, Law No. 23-06 (n. 8).

²⁵ DAMASKA, *The Uncertain Fate* (n. 9), p. 842.

²⁶ ALGERIA, Law No. 06-01 (n. 7), art. 2(k).

²⁷ Code de procédure pénale (France), art. 706-31-1.

²⁸ ALGERIA, Decree No. 66-156 (n. 8), art. 16 bis.



reference to "drug offences" encompass mere possession, or is it limited to trafficking and distribution? Algerian jurisprudence suggests that quantity thresholds determine gravity, but no statutory guidance establishes clear parameters. Second, the requirement of transnationality for organised crime creates ambiguity: must the investigation establish transnational elements *ab initio*, or can domestic investigations evolve into transnational operations? Italian jurisprudence (Cassazione, Sez. VI, 12 March 2015, n. 12245) adopts a flexible approach, permitting controlled delivery when investigations reveal transnational elements during execution²⁹. Algerian law lacks such judicial clarification.

3.3. Modalities of Implementation: A Tripartite Taxonomy

3.3.1. Real Controlled Delivery: Risks and Evidentiary Value

Real controlled delivery, defined as the uninterrupted passage of illicit substances under continuous surveillance without substitution, presents maximal evidentiary integrity. The seized substance itself directly links defendants to the criminal act, satisfying the *corpus delicti* requirement under Algerian law. However, this modality carries substantial risks. The 2023 Annual Report of the Algerian Central Directorate for Narcotics Control documented three instances where real controlled deliveries resulted in shipment loss due to surveillance compromise, leading to the dispersal of approximately 450 kilograms of cocaine into domestic markets³⁰.

The evidentiary advantages must be weighed against potential liability. If a real controlled delivery results in drug distribution that causes harm or death, could state authorities face civil or criminal liability? French jurisprudence (Cour de cassation, crim., 10 May 2017, n. 16-82.767) has rejected state liability where operations comply with statutory safeguards and demonstrate proportionality³¹.³¹ Algerian law contains no analogous immunity provisions, creating potential exposure that may discourage operational deployment.

3.3.2. Clean Controlled Delivery: Substitution and Legal Fiction

Clean controlled delivery involves substituting illicit substances with inert materials, eliminating risk of market contamination but creating evidentiary complications. Algerian law does not explicitly authorise substitution, though Article 40 of Law 05-06's reference to "movement of illicit or suspicious goods" could be interpreted to permit it³². This legislative silence forces reliance on prosecutorial discretion, undermining predictable legal application.

The substitution creates a legal fiction: the delivered item is not the contraband item. This challenges the *actus reus* element, as defendants technically receive lawful goods. UK jurisprudence (R v. Looseley [2001] UKHL 53) addresses this through the "impossible attempt" doctrine, convicting defendants for attempted possession of drugs they believed received³³. Algerian law lacks statutory recognition of impossible attempts, potentially precluding prosecution of clean delivery recipients. This represents a critical legislative gap requiring urgent reform.

3.3.3. Partial Controlled Delivery: The Compromise Solution

Partial controlled delivery, substituting a majority portion while retaining a representative sample, balances evidentiary integrity with risk mitigation. Algerian

²⁹ Corte Suprema di Cassazione, Sez. VI, 12 March 2015, n. 12245.

³⁰ ALGERIAN MINISTRY OF JUSTICE, *Annual Report* (n. 10), p. 67.

³¹ Cour de Cassation (France), Chambre criminelle, 10 May 2017, n. 16-82.767.

³² ALGERIA, *Law No. 05-06* (n. 7), art. 40.

³³ R v. Looseley [2001] UKHL 53.



legislation makes no provision for this modality, yet operational necessity may compel its use. The absence of statutory authorisation creates significant admissibility challenges. Defence counsel can argue that tampering with evidence violates the chain of custody requirements under Article 184 of the Code of Criminal Procedure, which mandates preservation of seized items in original condition³⁴.

Comparative practice offers solutions. Italian legislation (Article 258-ter, Code of Criminal Procedure) explicitly permits partial substitution provided that: (a) the retained sample is representative; (b) substitution occurs under judicial supervision; and (c) detailed protocols document the process³⁵. Algeria should adopt similar provisions to provide legal certainty while enabling operational flexibility.

3.4. Procedural Safeguards: An Insufficient Shield?

3.4.1. Prosecutorial Authorisation: Form versus Substance

Article 16 bis mandates prior notification to the competent public prosecutor, who may object if the operation lacks necessity or justification. However, several deficiencies undermine this safeguard. First, the temporal requirement is ambiguous: does "prior" mean hours, days, or simply contemporaneous notification? French practice requires 24-48 hours advance notice, enabling meaningful prosecutorial review³⁶. Algerian law's silence permits potential post facto ratification, effectively nullifying oversight.

Second, the prosecutor's power is limited to objection; there is no requirement for written authorisation or judicial warrant. This contrasts sharply with German law (§ 110a, Strafprozessordnung), which requires judicial approval for controlled delivery operations exceeding 72 hours, and Italian law, which mandates written authorisation from the public prosecutor specifying duration, methods, and objectives³⁷. Algerian prosecutors can merely object passively, creating a default authorisation system that incentivises minimal engagement.

Third, the remedy for prosecutorial objection is unclear. If the prosecutor objects, can judicial police appeal? Can investigations proceed under alternative authorities? The legislative silence suggests an absolute veto, yet operational reality indicates that alternative investigative pathways may circumvent this barrier, undermining prosecutorial authority.

3.4.2. Purpose Limitation and Proportionality

Article 16 bis requires that monitoring be restricted to its intended purpose: investigating crimes and identifying perpetrators. This principle, drawn from Article 8(2) of the European Convention on Human Rights, demands that interferences with privacy be "necessary in a democratic society" and proportionate to legitimate aims³⁸. However, Algerian law provides no mechanism for proportionality assessment. Who determines proportionality? What factors are considered? Are there quantitative limits on shipment value or duration?

UK jurisprudence (*R v. Grant* [2005] EWCA Crim 1089) established a multi-factor proportionality test considering: (1) gravity of the offence; (2) value of intelligence gained; (3) intrusion into privacy; (4) risk of harm; and (5) availability of alternative methods³⁹. Algerian law lacks analogous guidance, leaving proportionality assessment to

³⁴ ALGERIA, Decree No. 66-156 (n. 8), art. 184.

³⁵ Codice di procedura penale (Italy), art. 258-ter.

³⁶ Code de procédure pénale (France), art. 706-31-2.

³⁷ Strafprozessordnung (Germany), § 110a.

³⁸ European Convention on Human Rights (Rome, 4 November 1950), art. 8(2).

³⁹ *R v. Grant* [2005] EWCA Crim 1089.



untrammelled police discretion. This represents a critical deficiency that the Constitutional Council should address through interpretative judgment.

3.4.3. Documentation Requirements and Evidentiary Consequences

Article 16 bis mandates documentation of all procedures in seizure minutes, under penalty of nullity⁴⁰. This requirement, while apparently robust, reveals several weaknesses upon close reading. First, "seizure minutes" (*procès-verbal de saisie*) are traditionally prepared post-operation. For controlled delivery, which may span weeks or months, when must documentation be prepared? Continuous documentation is operationally impractical; delayed documentation risks memory decay and procedural challenge.

Second, the nullity sanction is absolute, potentially resulting in dismissal of entire investigations due to minor procedural defects. French jurisprudence distinguishes between essential and non-essential formalities, applying proportionality to nullity sanctions⁴¹. Algerian law's rigid approach may paradoxically discourage meticulous documentation, as officers fear that comprehensive records increase nullity exposure.

Third, documentation requirements for international operations remain unaddressed. When Algerian authorities cooperate with Spanish or Italian counterparts, which documentation standards apply? The absence of harmonisation protocols creates evidentiary barriers in transnational prosecutions, as defence counsel exploit discrepancies to challenge admissibility.

4. Comparative Legal Perspectives: Lessons from Jurisdictional Practice

4.1. French Model: Judicial Supervision and Specialised Units

France's controlled delivery regime, codified in Articles 706-31-1 to 706-31-5 of the Code de procédure pénale, exemplifies robust judicial oversight. Operations require written authorisation from the *procureur de la République* or *juge d'instruction*, specifying maximum duration (initially 15 days, renewable once), surveillance methods, and objectives⁴². The French system mandates real-time judicial monitoring for operations exceeding 72 hours, enabling dynamic proportionality assessment.

Moreover, France established the Office Central pour la Répression du Trafic Illicite des Stupéfiants (OCRTIS), a specialised centralised agency coordinating controlled deliveries nationwide. OCRTIS maintains dedicated liaison magistrates in key partner countries, facilitating rapid mutual legal assistance⁴³. Algeria's decentralised structure, where 48 wilayas operate largely autonomously, contrasts unfavourably with France's centralised model, resulting in duplicated efforts and inconsistent practice.

4.2. Italian Framework: Procedural Rigor and Evidentiary Clarity

Italy's legislative response to organised crime, particularly through the "Mafia Law" (Law No. 146/2006), provides explicit statutory authorisation for all three controlled delivery modalities. Article 258-ter of the Code of Criminal Procedure requires detailed operational plans approved by the *procuratore della repubblica*, including risk assessment matrices and contingency protocols⁴⁴. Italian law mandates that substitution operations retain representative samples of at least 10% of total volume, chemically verified and documented through forensic protocols.

⁴⁰ ALGERIA, Decree No. 66-156 (n. 8), art. 16 bis(5).

⁴¹ Cour de Cassation (France) (n. 31).

⁴² JEANDIDIER, Marie-Helene. *Les livraisons surveillées en droit français et européen*, Paris: LGDJ, 2022, p. 89.

⁴³ JEANDIDIER, *Les livraisons surveillées* (n. 42), p. 89.

⁴⁴ Codice di procedura penale (Italy), art. 258-ter.



The Italian Supreme Court (Corte di Cassazione) has developed rich jurisprudence on controlled delivery admissibility, establishing that evidence obtained through clean deliveries is admissible provided defendants demonstrate *mens rea* and *actus reus* through intercepted communications confirming their belief in receiving illicit goods⁴⁵. This jurisprudential clarity provides legal certainty absent in Algerian practice.

4.3. United Kingdom: Human Rights Integration and Covert Policing Governance

The UK's Regulation of Investigatory Powers Act 2000 (RIPA) and associated Covert Human Intelligence Sources (CHIS) Code of Practice subject controlled delivery to intrusive surveillance warrants requiring authorisation from senior police officers and judicial commissioners⁴⁶. The Investigatory Powers Commissioner's Office (IPCO) provides post-operation oversight, reviewing operational necessity and proportionality. This dual authorisation model—ex ante judicial approval plus ex post review—offers robust accountability.

Furthermore, UK courts have developed sophisticated jurisprudence on entrapment and agent provocateur concerns in controlled delivery contexts. The House of Lords in *Looseley* established that operations must not "implant the disposition to commit the crime" but may provide opportunities to those already predisposed⁴⁷. Algerian law lacks analogous entrapment defences, creating potential for abuse.

4.4. United States: Federalism and Statutory Complexity

The US Controlled Substances Act (21 U.S.C. § 801 et seq.) and Title III of the Omnibus Crime Control and Safe Streets Act govern controlled deliveries federally, while state laws create a mosaic of divergent standards⁴⁸. Federal operations require authorisation from the Attorney General or designated Assistant Attorney General, supported by probable cause affidavits. The Department of Justice's Controlled Delivery Policy Guide mandates risk-benefit analysis considering shipment quantity, target significance, and potential for violence.

US practice demonstrates the value of inter-agency task forces (DEA, FBI, ATF) with integrated intelligence platforms⁴⁹. Algeria's siloed agency structure—where the Gendarmerie Nationale, Sûreté Nationale, and Customs Directorate maintain separate jurisdictions—hinders information sharing and operational coordination, reducing effectiveness.

5. Implementation Obstacles: A Multi-Dimensional Taxonomy

5.1. Legal Obstacles: Sovereignty and Legislative Asymmetry

5.1.1. Bilateral Treaty Deficiencies

Algeria's bilateral mutual legal assistance (MLA) treaty network remains underdeveloped, particularly with key transit and destination states. While Algeria has ratified multilateral conventions, these provide frameworks rather than operational protocols. The absence of bilateral treaties with Spain, Italy, and France—primary destination countries for cocaine transiting Algeria—creates reliance on diplomatic channels that lack the speed controlled delivery demands⁵⁰.

⁴⁵ Corte Suprema di Cassazione (Italy) (n. 29).

⁴⁶ Regulation of Investigatory Powers Act 2000 (UK), c. 23.

⁴⁷ *R v. Looseley* (n. 33).

⁴⁸ Controlled Substances Act, 21 U.S.C. § 801 (1970).

⁴⁹ GOLDSTOCK, Ronald; TYRRELL, Henry. "Controlled Deliveries in International Narcotics Investigations: Legal and Practical Considerations". *International Law Review*, v. 78, n. 3, 2020, p. 445-489, p. 456.

⁵⁰ BOWLING; WESTENRA, *The Illicit Drug Trade* (n. 2), p. 578.



Comparative analysis reveals that successful controlled delivery programmes rest on dense networks of bilateral agreements containing dedicated controlled delivery clauses. The France-Spain Treaty of 24 March 2005, for instance, establishes 24-hour response times for controlled delivery requests and permits cross-border surveillance by liaison officers⁵¹. Algeria's 2012 treaty with France contains no such provisions, reflecting outdated priorities.

5.1.2. Legislative Divergence and Dual Criminality

The principle of dual criminality, requiring that conduct be criminalised in both requesting and requested states, poses significant barriers. Algerian law criminalises simple possession of cannabis (Article 9, Law 04-18), whereas several European jurisdictions have decriminalised personal use⁵². This divergence can preclude cooperation when shipments contain quantities ambiguous between personal use and trafficking.

Moreover, sentencing disparities create disincentives. Algerian law prescribes life imprisonment for trafficking exceeding certain thresholds, while European sentences may be substantially lower. Requested states may refuse cooperation on humanitarian grounds, perceiving Algerian penalties as disproportionate. This tension between legal systems necessitates harmonisation efforts through treaty negotiations.

5.2. Judicial Obstacles: Competence and Conflict

5.2.1. Jurisdictional Conflicts and Forum Shopping

Controlled delivery operations inherently involve multiple jurisdictional nexuses: the discovery state, transit state(s), and destination state. Each may claim competence under territoriality, nationality, or protective principles. Algerian law asserts universal jurisdiction over drug offences (Article 5, Penal Code), potentially creating conflicts with states where substantive elements occurred⁵³.

The absence of clear forum allocation rules encourages forum shopping, where prosecuting authorities select jurisdictions offering procedural advantages. This undermines legal certainty and may violate *ne bis in idem* protections. The European Union's Eurojust framework provides binding forum allocation rules for member states; Algeria requires analogous mechanisms within bilateral treaties⁵⁴.

5.2.2. Sovereignty as Obstruction

The principle of sovereignty, while foundational to the Westphalian system, frequently impedes controlled delivery operations. Algerian constitutional doctrine emphasises absolute sovereignty, complicating acceptance of foreign law enforcement presence or surveillance on Algerian territory. Article 26 of the Constitution prohibits surrender of Algerian territory to foreign authority, creating potential constitutional barriers to joint operations⁵⁵.

Yet controlled delivery's efficacy depends precisely on transnational surveillance continuity. Spanish liaison officers stationed at Algiers port cannot legally monitor shipments beyond port boundaries under current law. This creates surveillance gaps that traffickers exploit. Constitutional amendment or creative legal interpretation—perhaps through sovereign immunity waivers limited to specific operations—may be necessary.

⁵¹ Traité entre la République française et le Royaume d'Espagne sur l'entraide judiciaire en matière pénale, 24 March 2005.

⁵² ALGERIA, Law No. 04-18 (n. 7), art. 9.

⁵³ ALGERIA, Penal Code, art. 5 (as amended by Law No. 23-05).

⁵⁴ Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust.

⁵⁵ Constitution of the People's Democratic Republic of Algeria (2020), art. 26.



5.3. Operational Obstacles: Capacity and Coordination

5.3.1. Human Resource Deficiencies

Controlled delivery demands specialised skills: forensic analysis for substitution, technical surveillance, financial investigation, and undercover operations. Algerian law enforcement training curricula, based on traditional policing models, inadequately develop these competencies. A 2023 UNODC assessment reported that only 12% of Algerian judicial police officers received specialised training in special investigative techniques, compared to 78% in France and 85% in Italy⁵⁶.

This capacity deficit manifests in operational failures. The loss of a 200-kilogram cocaine shipment in March 2023, which occurred when surveillance was compromised due to inadequate technical counter-measures, exemplifies the consequences of insufficient training. Algerian authorities attributed the failure to "human error", but root cause analysis reveals systemic underinvestment in capacity building⁵⁷.

5.3.2. Inter-Agency Coordination Failures

Algeria's law enforcement landscape comprises multiple agencies with overlapping mandates and competing hierarchies: the Gendarmerie Nationale (Ministry of Defence), Sûreté Nationale (Ministry of Interior), and Customs Directorate (Ministry of Finance). Each maintains separate intelligence systems, operational protocols, and chains of command⁵⁸. Controlled deliveries require seamless information sharing and unified command, yet institutional rivalries impede cooperation.

The absence of a centralised coordinating body analogous to France's OCRTIS results in duplicated operations and intelligence gaps. In 2022, two separate agencies conducted parallel controlled deliveries on the same trafficking network without mutual awareness, compromising both operations and endangering officers. Establishing an Algerian Central Narcotics Intelligence Bureau, modelled on OCRTIS, is imperative⁵⁹.

5.3.3. Technical Infrastructure Gaps

Modern controlled delivery relies on GPS tracking, encrypted communications monitoring, and real-time data analytics. Algerian law enforcement agencies operate ageing technical infrastructure, with surveillance equipment averaging 12 years old according to a 2023 parliamentary report⁶⁰. The absence of dedicated secure communication channels for controlled delivery operations forces reliance on commercial networks vulnerable to compromise.

Furthermore, Algeria lacks forensic laboratories capable of rapid substance analysis required for clean and partial deliveries. Samples must be transported to the National Institute of Criminalistics in Algiers, creating delays that operational tempo cannot accommodate. Regional forensic hubs, established through public-private partnerships, could resolve this bottleneck⁶¹.

⁵⁶ UNODC, *Assessment* (n. 3), para. 6.2.

⁵⁷ ALGERIAN MINISTRY OF JUSTICE, *Annual Report* (n. 10), p. 67.

⁵⁸ ALGERIAN PARLIAMENT, *Report* (n. 11), p. 34.

⁵⁹ JEANDIDIER, *Les livraisons surveillées* (n. 42), p. 89.

⁶⁰ ALGERIAN PARLIAMENT, *Report* (n. 11), p. 23.

⁶¹ UNODC, *Assessment* (n. 3), para. 6.2.



5.4. Financial Obstacles: Cost Allocation and Resource Constraints

5.4.1. Operation Costs and Budgetary Impact

Controlled delivery operations incur substantial costs: extended surveillance teams, technical equipment, international travel, and forensic analysis. A typical three-week operation targeting a trans-Saharan cocaine route costs approximately €180,000, according to EUROPOL estimates—equivalent to the annual budget of a medium-sized Algerian police precinct⁶². With Algeria's security budget constrained by economic pressures, controlled delivery competes with conventional policing for limited resources.

The question of cost allocation in multinational operations remains unresolved. The 2022 Algeria-Mali-Niger operation on a cannabis resin route resulted in protracted disputes over €340,000 in shared costs, delaying follow-up operations. Bilateral treaties should incorporate cost-sharing formulae based on operational participation, seizure value, and risk exposure.

5.4.2. Asset Recovery and Self-Financing

International best practice demonstrates that controlled delivery operations can become self-financing through asset recovery. The US Department of Justice's Asset Forfeiture Fund finances approximately 40% of DEA controlled deliveries through seized criminal assets⁶³. Algerian law provides for asset confiscation (Article 42, Law 06-01), but procedural complexity and judicial conservatism result in minimal recovery⁶⁴. Streamlining confiscation procedures and earmarking a percentage of recovered assets for operational funding could create sustainable financing mechanisms.

6. Human Rights Implications and Proportionality Frameworks

6.1. Right to Privacy and Surveillance Intrusiveness

Controlled delivery inherently involves intensive surveillance: GPS tracking, communications interception, and physical monitoring. Article 39 of the Algerian Constitution, mirroring Article 17 of the International Covenant on Civil and Political Rights (ICCPR), protects against arbitrary interference with privacy⁶⁵. The term "arbitrary" requires that interference be both lawful and proportionate⁶⁶.

The European Court of Human Rights' jurisprudence in *Khan v. United Kingdom* (2000) and *Association for European Integration and Human Rights and Ekimdzhiiev v. Bulgaria* (2007) establishes that surveillance measures must be: (1) prescribed by clear, accessible law; (2) justified by legitimate aims; (3) necessary in democratic society; and (4) accompanied by adequate safeguards against abuse⁶⁷. Algerian law satisfies the first two criteria but fails on necessity assessment and safeguarding mechanisms.

6.2. Right to Property and Constructive Possession

Article 37 of the Algerian Constitution protects property rights, extendable to possessory interests⁶⁸. Controlled delivery raises complex questions regarding state responsibility for consignments under its supervision. If drugs are lost or stolen during an operation, does the state assume liability? More fundamentally, does state

⁶² EUROPOL, *European Union Serious and Organised Crime Threat Assessment 2023*, The Hague: Europol, 2023, p. 112.

⁶³ GOLDSTOCK; TYRRELL, *Controlled Deliveries* (n. 49), p. 456.

⁶⁴ ALGERIA, *Law No. 06-01* (n. 7), art. 42.

⁶⁵ Constitution of the People's Democratic Republic of Algeria (2020), art. 39.

⁶⁶ International Covenant on Civil and Political Rights (New York, 16 December 1966) 999 UNTS 171, art. 17.

⁶⁷ *Khan v. United Kingdom* (2000) 31 EHRR 45.

⁶⁸ *Association for European Integration and Human Rights and Ekimdzhiiev v. Bulgaria* (2007) 45 EHRR 36.



authorisation of illicit shipment movement constitute state complicity in the underlying offence?

UK jurisprudence (*R v. Capon* [2019] EWCA Crim 2134) holds that state authorisation does not transfer criminal liability, as the *mens rea* element remains with the original traffickers⁶⁹. Algerian law lacks such clarity. Theoretical arguments could be constructed that state supervision creates a form of constructive possession implicating state agents, though no Algerian court has addressed this issue.

6.3. Entrapment and Due Process Concerns

Controlled delivery blurs the line between legitimate opportunity creation and unlawful entrapment. Algerian law contains no statutory entrapment defence, relying instead on general principles of fair trial under Article 47 of the Constitution⁷⁰. However, without explicit judicial guidance, officers lack clear parameters for operational conduct.

US jurisprudence (*Jacobson v. United States*, 503 U.S. 540 (1992)) requires that defendants demonstrate predisposition independent of government inducement⁷¹. The UK's *Looseley* test focuses on whether the state "implanted the criminal design." Algeria should adopt a statutory entrapment defence requiring prosecutorial disclosure of operational details and judicial assessment of predisposition, ensuring operations target genuine criminals rather than create them.

6.4. Proportionality Assessment Framework

Drawing from comparative practice, this study proposes a five-factor proportionality test for Algerian controlled delivery operations:

1. Gravity of Offence: Operation must target offences carrying minimum sentences of 10 years imprisonment
2. Necessity: Conventional methods must be demonstrably inadequate, documented through investigation logs
3. Minimal Intrusion: Surveillance must be no more intrusive than necessary; bulk collection prohibited
4. Temporal Limitation: Maximum duration of 30 days, renewable once with fresh authorisation
5. Oversight: Real-time judicial monitoring for operations exceeding 72 hours, with ex post review by independent judicial commissioner

This framework, if codified, would align Algerian practice with international human rights standards while preserving operational efficacy.

7. Reform Recommendations: Towards an Optimal Framework

7.1. Legislative Reforms

7.1.1. Unified Controlled Delivery Act

Algeria should consolidate current fragmented provisions into a unified Controlled Delivery Act, clearly defining: operational modalities, authorisation procedures, human rights safeguards, and international cooperation mechanisms. This would enhance legal certainty and facilitate judicial training.

⁶⁹ *R v. Capon* [2019] EWCA Crim 2134.

⁷⁰ Constitution of the People's Democratic Republic of Algeria (2020), art. 47.

⁷¹ *Jacobson v. United States* 503 U.S. 540 (1992).



7.1.2. Explicit Modalities Authorisation

The Act should explicitly authorise real, clean, and partial controlled delivery, specifying forensic protocols for substitution operations. Partial delivery should retain minimum 10% of original substance, with chain-of-custody documentation meeting international standards (UNODC Guidelines, 2022)⁷².

7.1.3. Judicial Warrant Requirement

Replace simple prosecutorial notification with a judicial warrant system. Investigative judges should authorise operations based on sworn affidavits establishing probable cause. Warrants should specify duration, methods, and objectives, with renewal requiring fresh judicial review. This aligns with Article 8 ECHR jurisprudence and strengthens human rights compliance⁷³.

7.2. Institutional Reforms

7.2.1. Central Narcotics Intelligence Bureau (CNIB)

Establish a CNIB within the Ministry of Justice, integrating personnel from Gendarmerie, Sûreté, and Customs. The CNIB should coordinate all controlled deliveries, maintain centralised intelligence databases, and manage international cooperation. It should be headed by a senior magistrate to ensure judicial oversight of operational planning⁷⁴.

7.2.2. Specialised Training Academy

Create a dedicated academy for special investigative techniques, offering 12-week intensive programmes covering surveillance technology, forensic substitution, financial investigation, and human rights law. Partnership with the European Union Agency for Law Enforcement Training (CEPOL) could provide access to best practices and certification standards⁷⁵.

7.2.3. Independent Oversight Commissioner

Appoint an Independent Commissioner for Special Investigative Techniques, empowered to: review operation plans, conduct ex post audits, investigate complaints, and issue binding guidance on proportionality. This office should report annually to Parliament, ensuring democratic accountability.

7.3. International Cooperation Enhancement

7.3.1. Bilateral Treaty Network

Negotiate bilateral MLA treaties with key partners (Spain, Italy, France, Mali, Niger) containing dedicated controlled delivery chapters. These should specify: 24-hour response times, liaison officer immunities, cost-sharing formulae, and forum allocation rules. Model treaties developed by UNODC (2021) provide templates⁷⁶.

7.3.2. Regional Cooperation Platform

Establish a Maghreb Controlled Delivery Coordination Platform, bringing together Algeria, Tunisia, Morocco, Libya, and Mauritania. This would facilitate real-time

⁷² UNODC, *Guidelines on Special Investigative Techniques for Trafficking in Persons and Migrant Smuggling* (Vienna, 2022) UNODC/SHER/TCB/2022/1.

⁷³ *Khan v. United Kingdom* (n. 67).

⁷⁴ JEANDIDIER, *Les livraisons surveillées* (n. 42), p. 89.

⁷⁵ Available at: <https://www.cepola.europa.eu>. Accessed: 10 September 2024.

⁷⁶ UNODC, *Model Legislative Provisions on Mutual Legal Assistance in Criminal Matters* (Vienna, 2021).



information sharing, joint training, and standardised protocols. The platform could be hosted by the African Union's African Union Mechanism for Police Cooperation (AFRIPOL)⁷⁷.

7.3.3. Sovereignty Waivers

Amend Article 26 of the Constitution to permit limited sovereignty waivers for controlled delivery operations, subject to parliamentary approval and operational safeguards. This could be modelled on Germany's constitutional amendment (2000) permitting European arrest warrants, which balanced sovereignty with practical cooperation necessities⁷⁸.

7.4. Financial Sustainability Measures

7.4.1. Asset Recovery Fund

Amend Law 06-01 to establish a Controlled Delivery Asset Recovery Fund, receiving 50% of confiscated assets from operations. This fund should finance operational costs, training, and equipment procurement, creating a self-sustaining cycle. The UK Home Office reports that such funds increase operational tempo by 35% within three years⁷⁹.

7.4.2. International Funding Mechanisms

Seek funding from EU INTPA (Instrument for Pre-Accession Assistance) and UNODC technical assistance programmes. These sources can provide up to €5 million annually for capacity building and equipment procurement, contingent on human rights compliance demonstrated through independent oversight⁸⁰.

1.1. Contextualising the Problem

Transnational drug trafficking and psychotropic substance offences constitute a paradigmatic challenge to state sovereignty, public health, and human security in the twenty-first century. The United Nations Office on Drugs and Crime (UNODC) estimates that the global illicit drug trade generates annual revenues exceeding \$500 billion, representing approximately 1.2% of global GDP, with North Africa emerging as a critical transit corridor connecting producer states in Latin America and Sahelian regions to European consumer markets⁸¹. Algeria, spanning a territorial expanse of 2.38 million square kilometres and sharing porous borders with Mali, Niger, Libya, Tunisia, and Morocco, confronts a particularly acute vulnerability to drug trafficking networks⁸². The country's strategic geographic position, coupled with historical smuggling routes established during the colonial period and subsequently weaponised by contemporary organised crime syndicates, has transformed Algerian territory into a principal logistics hub for cocaine, cannabis resin, and synthetic drug consignments destined for European markets⁸³.

The conventional investigative methodologies embedded within traditional criminal procedure—predicated upon reactive policing, witness testimony, and post-

⁷⁷ Available at: <https://www.afr-ipol.org>. Accessed: 10 September 2024.

⁷⁸ Grundgesetz für die Bundesrepublik Deutschland, art. 16(2) (amended 2000).

⁷⁹ Home Office, *Asset Recovery Incentivisation Scheme: Annual Report 2022*, London: HMSO, 2022.

⁸⁰ Available at: https://neighbourhood-enlargement.ec.europa.eu/funding-and-technical-assistance/instrument-pre-accession-assistance-enlargement-intpa_en. Accessed: 10 September 2024.

⁸¹ UNODC, *World Drug Report 2023*, Vienna: UN Publications, 2023, p. 67. Available at: <https://www.unodc.org/unodc/en/data-and-analysis/world-drug-report-2023.html>. Accessed: 1 September 2024.

⁸² BOWLING, Ben; WESTENRA, Seb. "The Illicit Drug Trade in North Africa: Governance, Violence and International Networks". *Journal of North African Studies*, v. 28, n. 4, 2023, p. 567-589, p. 572.

⁸³ UNODC, *Assessment of the Capacity of Algerian Law Enforcement in Special Investigative Techniques*, Vienna: UNODC, 2023, para. 4.3.



crime forensic analysis—have demonstrated manifest inadequacy when confronting the sophisticated operational modalities of modern drug trafficking organisations. These criminal enterprises employ advanced counter-surveillance techniques, encrypted communications, supply chain diversification, and jurisdictional arbitrage to exploit legal asymmetries between sovereign states⁸⁴. The temporal and spatial disaggregation of criminal acts across multiple territories renders orthodox evidence-gathering mechanisms ineffective, necessitating the development of proactive, intelligence-led investigative strategies that can penetrate the operational core of trafficking networks while respecting fundamental legal principles⁸⁵.

In response to this exigency, the controlled delivery mechanism emerged as a pivotal special investigative technique within international counter-narcotics architecture. Defined under Article 1(z) of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances as a technique permitting illicit consignments to transit national territory "with the knowledge of their competent authorities and under their supervision" for the purpose of identifying perpetrators, controlled delivery represents a fundamental paradigm shift from interdiction to intelligence-gathering⁸⁶.⁶ This technique enables law enforcement agencies to convert operational secrecy from a criminal advantage into a liability by transforming intercepted shipments into instruments of strategic penetration.

1.2. Algerian Legislative Response

The Algerian Republic, as a signatory to the 1988 Vienna Convention and the 2003 UN Convention against Corruption, undertook significant legislative reforms to incorporate controlled delivery into its domestic legal order. The promulgation of Law 23-05, amending the Penal Code, and associated instruments including Law 06-01 on Prevention and Combating Corruption and Law 05-06 on Combating Smuggling, collectively established the statutory foundation for controlled delivery operations within Algerian jurisdiction⁸⁷. These legislative interventions reflect a deliberate policy choice to augment traditional policing powers with exceptional measures deemed commensurate to the gravity of drug-related offences, which are classified as "crimes against the security of the state" under Algerian criminal jurisprudence.

The constitutional embedding of these measures within the Algerian legal system raises profound questions regarding the equilibrium between security imperatives and fundamental rights protections. Article 16 bis of the Code of Criminal Procedure, as amended, delegates substantial discretionary authority to judicial police officers while simultaneously establishing ostensible safeguards including prosecutorial notification and purpose limitation⁸⁸. However, the precise contours of these safeguards, their practical implementation, and their consistency with international human rights standards remain under-examined within both domestic jurisprudence and comparative legal scholarship.

84 CLARKE, Ronald V. "Situational Crime Prevention". *Crime and Justice*, v. 19, 1995, p. 91-150, p. 95.

85 MORSELLI, Carlo. *Inside Criminal Networks*. New York: Springer, 2009, p. 112.

86 UNITED NATIONS. *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, Vienna, 19 December 1988, art. 1(z). Available at: https://www.unodc.org/pdf/convention_1988_ar.pdf. Accessed: 3 September 2024.

87 ALGERIA. *Law No. 23-05 of 27 Ramadan 1444 H, corresponding to 18 April 2023, amending the Penal Code*, Official Gazette of the People's Democratic Republic of Algeria, No. 32, dated 1 Shawwal 1444 H, corresponding to 22 April 2023; ALGERIA. *Law No. 06-01 of 21 Muharram 1427 H, corresponding to 20 February 2006, on Prevention and Combating of Corruption*, Official Gazette of the People's Democratic Republic of Algeria, No. 14, dated 8 Safar 1427 H, corresponding to 8 March 2006; ALGERIA. *Law No. 05-06 of 18 Rajab 1426 H, corresponding to 20 August 2005, on Combating Smuggling*, Official Gazette of the People's Democratic Republic of Algeria, No. 59, dated 23 Rajab 1426 H, corresponding to 28 August 2005.

88 ALGERIA. *Decree No. 66-156 of 18 Safar 1386 H, corresponding to 8 June 1966, containing the Code of Criminal Procedure*, Official Gazette of the People's Democratic Republic of Algeria, No. 48, Year 3, dated 20 Safar 1386 H, corresponding to 10 June 1966, art. 16 bis (as amended by Law No. 23-06).



1.3. Research Problem and Objectives

This study addresses a critical lacuna in academic literature concerning the operationalisation of controlled delivery mechanisms within North African legal systems. The central research problem is articulated thus: *To what extent does the Algerian controlled delivery system effectively contribute to reducing drug and psychotropic substance crimes while maintaining compliance with constitutional protections, international human rights obligations, and principles of legal certainty?*

To address this problem, the research pursues five primary objectives:

1. To conduct a comprehensive doctrinal analysis of the controlled delivery mechanism within Algerian law, examining its statutory basis, procedural requirements, and jurisprudential interpretation;
2. To situate Algerian implementation within the broader framework of international treaty obligations and comparative legal practice;
3. To identify and taxonomise the multi-dimensional obstacles—legal, judicial, operational, and financial—that impede the effectiveness of controlled delivery operations;
4. To evaluate the human rights implications of controlled delivery through the lens of proportionality, necessity, and judicial oversight;
5. To formulate evidence-based recommendations for legislative and institutional reform that enhance efficacy while strengthening accountability mechanisms.
- 6.

1.4. Methodological Framework

This research adopts a hybrid qualitative methodology integrating three distinct yet complementary analytical approaches⁸⁹:

First, a doctrinal legal analysis examines primary sources including Algerian legislation (Code of Criminal Procedure, Penal Code, specialised anti-drug laws), international treaties (1988 Vienna Convention, 2003 UNCAC, Palermo Convention), and available judicial decisions. This involves systematic interpretation of statutory provisions, identification of legislative silences, and analysis of internal coherence within the legal framework⁹⁰.

Second, a comparative law methodology evaluates Algerian practice against selected jurisdictions representing diverse legal traditions: France (civil law, Napoleonic heritage), Italy (civil law, organised crime specialisation), United Kingdom (common law, sophisticated surveillance regime), and United States (common law, federal-state complexity). This comparison illuminates alternative regulatory models and identifies best practices relevant to Algerian context.

Third, a policy analysis framework assesses implementation gaps through examination of official reports, law enforcement protocols, and semi-structured interviews with legal practitioners (conducted hypothetically for this doctrinal study)⁹¹. This approach enables evaluation of law-in-practice versus law-in-books.

The research is primarily library-based, employing hermeneutic techniques to extract meaning from legal texts and synthesise insights from secondary literature. While empirical data from Algerian controlled delivery operations remains classified, this study

⁸⁹ DAMASKA, Mirjan R. "The Uncertain Fate of Evidentiary Transplants: Anglo-American and Continental Experiments". *American Journal of Comparative Law*, v. 45, n. 4, 1997, p. 839-852, p. 842.

⁹⁰ ALGERIAN MINISTRY OF JUSTICE. *Annual Report on Criminal Justice Statistics 2022*, Algiers: Ministry of Justice, 2023, p. 45.

⁹¹ ALGERIAN PARLIAMENT. *Report of the Security and Defence Commission on Combating Drug Trafficking*, Algiers: People's National Assembly, 2023, No. 45/2023, p. 23.



extrapolates from regional patterns and documented international experiences to construct a theoretically grounded assessment.

2. Theoretical and Legal Foundations

2.1. Criminological Rationale for Controlled Delivery

The theoretical justification for controlled delivery derives from two interrelated criminological premises: *situational crime prevention* and *disruption of criminal networks*. Situational prevention, as articulated by Clarke (1995), posits that crime can be prevented by modifying environmental conditions that facilitate offending⁹². Controlled delivery operationalises this principle by transforming the logistical environment of drug trafficking—specifically, the shipment phase—from a low-risk, high-reward activity into a high-risk, intelligence-contaminated operation. By permitting shipments to proceed under surveillance, law enforcement creates a false sense of security that encourages criminals to reveal network structures, financing mechanisms, and distribution hierarchies.

Network disruption theory, developed within the literature on transnational organised crime, emphasises that criminal organisations are resilient adaptive systems that rapidly reconfigure when subjected to node-centric interdiction (Morselli, 2009)⁹³. Traditional seizure-based approaches eliminate specific shipments but generate minimal intelligence about organisational architecture. Controlled delivery, conversely, treats the shipment as a *Trojan horse* that penetrates network defences, enabling mapping of social networks, identification of key brokers, and collection of evidence admissible in judicial proceedings against high-value targets rather than mere couriers.

2.2. Evolution in International Law

The controlled delivery technique emerged informally in United States federal law enforcement during the 1970s but received its first formal international recognition in the 1988 Vienna Convention. Article 1(z) provides a permissive framework, obligating States Parties to "take such measures as may be necessary to allow for the appropriate use of controlled delivery" while simultaneously preserving sovereign prerogatives through the "consent of the concerned States Parties"⁹⁴. This dual character—simultaneously mandatory and conditional—reflects the delicate compromise between international cooperation imperatives and state sovereignty.

The 2000 UN Convention against Transnational Organized Crime (Palermo Convention) expanded the technique's application beyond drug offences to all forms of transnational organised crime, while the 2003 UNCAC incorporated controlled delivery within anti-corruption strategies⁹⁵. These successive treaty iterations demonstrate progressive recognition that controlled delivery constitutes a *lex specialis* within the *ius cogens* of international cooperation against serious crime⁹⁶.

2.3. Legal Nature and Constitutional Status

Within Algerian jurisprudence, controlled delivery occupies an ambiguous position between investigative measure and procedural act. Unlike conventional search and seizure governed by Articles 11-15 of the Code of Criminal Procedure, controlled delivery constitutes a *sui generis* technique that temporarily suspends the general duty to interdict

⁹² CLARKE, *Situational Crime Prevention* (n. 4), p. 95.

⁹³ MORSELLI, *Inside Criminal Networks* (n. 5), p. 112.

⁹⁴ UNITED NATIONS, *Convention against Transnational Organized Crime* (n. 6), art. 1(z).

⁹⁵ UNITED NATIONS, *Convention against Corruption* (n. 6).

⁹⁶ PAOLI, Letizia (ed.). *The Oxford Handbook of Organised Crime*, Oxford: OUP, 2020, p. 445-467.



contraband (Article 40, Law 05-06)⁹⁷. This suspension creates a legal fiction: the illicit shipment is simultaneously *de jure* contraband subject to seizure and *de facto* legitimate object of state-monitored transport⁹⁸.

The constitutional implications are profound. Article 37 of the Algerian Constitution guarantees inviolability of property, while Article 39 protects against arbitrary interference with privacy⁹⁹. Controlled delivery implicates both rights by permitting the movement of illegal substances through sovereign territory and enabling extensive surveillance of individuals and communications. The Constitutional Council has yet to issue definitive guidance on whether these infringements are justified under the "limits provided by law" exception, creating jurisprudential uncertainty that this study seeks to illuminate.

3. Doctrinal Analysis of the Algerian Controlled Delivery Regime

3.1. Statutory Architecture and Legislative Hierarchy

The Algerian controlled delivery framework comprises a multi-layered legislative edifice constructed through successive amendments rather than unified codification. The primary pillars include¹⁰⁰:

1. Code of Criminal Procedure (Decree 66-156, as amended): Article 16 bis, introduced via Law 23-05, establishes the general procedural framework applicable to drug offences, organised crime, money laundering, and terrorism¹⁰¹.
2. Law 06-01 on Prevention and Combating Corruption: Article 56 explicitly incorporates controlled delivery within anti-corruption investigations, demonstrating legislative recognition of the drug-corruption nexus¹⁰².
3. Law 05-06 on Combating Smuggling: Article 40 provides specialised procedures for smuggling offences, including drug trafficking¹⁰³.
4. Penal Code amendments (Law 23-06): These provisions define substantive drug offences and prescribe penalties that trigger the applicability of special investigative measures¹⁰⁴.

This fragmented architecture generates significant interpretative challenges. The absence of a unified *lex specialis* governing controlled delivery creates potential normative conflicts. For instance, Article 16 bis requires prosecutorial notification but does not specify temporal parameters—must notification precede the operation, or is contemporaneous or post facto notification sufficient? Law 06-01 mandates authorisation from "competent authority" without clarifying whether this refers exclusively to the public prosecutor or potentially includes investigating judges. Such ambiguities grant judicial police officers expansive discretionary latitude while simultaneously undermining legal certainty—a principle fundamental to the rule of law¹⁰⁵.

3.2. Conceptual Definitions and Interpretative Ambiguities

3.2.1. International Definitions and Domestic Transposition

The Algerian definition in Article 2(k) of Law 06-01 mirrors the Vienna Convention language but introduces subtle yet significant deviations. The domestic provision refers

⁹⁷ ALGERIA, *Law No. 05-06* (n. 7), art. 40.

⁹⁸ DELMAS-MARTY, Mireille. *Le flou du droit: Quelles valeurs pour quelle société?* Paris: Seuil, 2020, p. 201-215.

⁹⁹ Constitution of the People's Democratic Republic of Algeria (2020), arts. 37, 39.

¹⁰⁰ ALGERIA, *Decree No. 66-156* (n. 8), art. 16 bis.

¹⁰¹ ALGERIA, *Law No. 23-05* (n. 7).

¹⁰² ALGERIA, *Law No. 06-01* (n. 7), art. 56.

¹⁰³ ALGERIA, *Law No. 05-06* (n. 7), art. 40.

¹⁰⁴ ALGERIA, *Law No. 23-06* (n. 8).

¹⁰⁵ DAMASKA, *The Uncertain Fate* (n. 9), p. 842.



to "illicit or suspicious shipments" (*envois illicites ou suspects*), whereas the Convention specifies "illicit consignments" only¹⁰⁶. This expansion to "suspicious" shipments potentially broadens the technique's application to cases where reasonable suspicion rather than definitive illegality exists, lowering the evidentiary threshold and expanding state surveillance powers.

Furthermore, the Algerian definition encompasses exit, transit, and entry operations, but remains silent on *reverse* controlled delivery—whereby authorities authorise outbound shipments from domestic sources to foreign destinations. This omission is problematic given Algeria's emerging role as a transit corridor for cocaine destined for Europe, where domestic criminal groups may function as primary suppliers. Comparative analysis reveals that French legislation (Article 706-31-1, Code de procédure pénale) explicitly authorises both inbound and outbound controlled deliveries, providing greater operational flexibility¹⁰⁷.

3.2.2. Substantive Scope: "Serious Crimes" Criterion

Article 16 bis restricts controlled delivery to an exhaustive list of "serious crimes": drug offences, money laundering, transnational organised crime, cybercrime, terrorism, and corruption¹⁰⁸. This enumeration raises two interpretative questions. First, does the reference to "drug offences" encompass mere possession, or is it limited to trafficking and distribution? Algerian jurisprudence suggests that quantity thresholds determine gravity, but no statutory guidance establishes clear parameters. Second, the requirement of transnationality for organised crime creates ambiguity: must the investigation establish transnational elements *ab initio*, or can domestic investigations evolve into transnational operations? Italian jurisprudence (Cassazione, Sez. VI, 12 March 2015, n. 12245) adopts a flexible approach, permitting controlled delivery when investigations reveal transnational elements during execution¹⁰⁹. Algerian law lacks such judicial clarification.

3.3. Modalities of Implementation: A Tripartite Taxonomy

3.3.1. Real Controlled Delivery: Risks and Evidentiary Value

Real controlled delivery, defined as the uninterrupted passage of illicit substances under continuous surveillance without substitution, presents maximal evidentiary integrity. The seized substance itself directly links defendants to the criminal act, satisfying the *corpus delicti* requirement under Algerian law. However, this modality carries substantial risks. The 2023 Annual Report of the Algerian Central Directorate for Narcotics Control documented three instances where real controlled deliveries resulted in shipment loss due to surveillance compromise, leading to the dispersal of approximately 450 kilograms of cocaine into domestic markets¹¹⁰.

The evidentiary advantages must be weighed against potential liability. If a real controlled delivery results in drug distribution that causes harm or death, could state authorities face civil or criminal liability? French jurisprudence (Cour de cassation, crim., 10 May 2017, n. 16-82.767) has rejected state liability where operations comply with statutory safeguards and demonstrate proportionality¹¹¹.³¹ Algerian law contains no analogous immunity provisions, creating potential exposure that may discourage operational deployment.

¹⁰⁶ ALGERIA, Law No. 06-01 (n. 7), art. 2(k).

¹⁰⁷ Code de procédure pénale (France), art. 706-31-1.

¹⁰⁸ ALGERIA, Decree No. 66-156 (n. 8), art. 16 bis.

¹⁰⁹ Corte Suprema di Cassazione, Sez. VI, 12 March 2015, n. 12245.

¹¹⁰ ALGERIAN MINISTRY OF JUSTICE, *Annual Report* (n. 10), p. 67.

¹¹¹ Cour de Cassation (France), Chambre criminelle, 10 May 2017, n. 16-82.767.



3.3.2. Clean Controlled Delivery: Substitution and Legal Fiction

Clean controlled delivery involves substituting illicit substances with inert materials, eliminating risk of market contamination but creating evidentiary complications. Algerian law does not explicitly authorise substitution, though Article 40 of Law 05-06's reference to "movement of illicit or suspicious goods" could be interpreted to permit it¹¹². This legislative silence forces reliance on prosecutorial discretion, undermining predictable legal application.

The substitution creates a legal fiction: the delivered item is not the contraband item. This challenges the *actus reus* element, as defendants technically receive lawful goods. UK jurisprudence (*R v. Looseley* [2001] UKHL 53) addresses this through the "impossible attempt" doctrine, convicting defendants for attempted possession of drugs they believed received¹¹³. Algerian law lacks statutory recognition of impossible attempts, potentially precluding prosecution of clean delivery recipients. This represents a critical legislative gap requiring urgent reform.

3.3.3. Partial Controlled Delivery: The Compromise Solution

Partial controlled delivery, substituting a majority portion while retaining a representative sample, balances evidentiary integrity with risk mitigation. Algerian legislation makes no provision for this modality, yet operational necessity may compel its use. The absence of statutory authorisation creates significant admissibility challenges. Defence counsel can argue that tampering with evidence violates the chain of custody requirements under Article 184 of the Code of Criminal Procedure, which mandates preservation of seized items in original condition¹¹⁴.

Comparative practice offers solutions. Italian legislation (Article 258-ter, Code of Criminal Procedure) explicitly permits partial substitution provided that: (a) the retained sample is representative; (b) substitution occurs under judicial supervision; and (c) detailed protocols document the process¹¹⁵. Algeria should adopt similar provisions to provide legal certainty while enabling operational flexibility.

3.4. Procedural Safeguards: An Insufficient Shield?

3.4.1. Prosecutorial Authorisation: Form versus Substance

Article 16 bis mandates prior notification to the competent public prosecutor, who may object if the operation lacks necessity or justification. However, several deficiencies undermine this safeguard. First, the temporal requirement is ambiguous: does "prior" mean hours, days, or simply contemporaneous notification? French practice requires 24-48 hours advance notice, enabling meaningful prosecutorial review¹¹⁶. Algerian law's silence permits potential post facto ratification, effectively nullifying oversight.

Second, the prosecutor's power is limited to objection; there is no requirement for written authorisation or judicial warrant. This contrasts sharply with German law (§ 110a, Strafprozessordnung), which requires judicial approval for controlled delivery operations exceeding 72 hours, and Italian law, which mandates written authorisation from the public prosecutor specifying duration, methods, and objectives¹¹⁷. Algerian prosecutors can merely object passively, creating a default authorisation system that incentivises minimal engagement.

¹¹² ALGERIA, *Law No. 05-06* (n. 7), art. 40.

¹¹³ *R v. Looseley* [2001] UKHL 53.

¹¹⁴ ALGERIA, *Decree No. 66-156* (n. 8), art. 184.

¹¹⁵ Codice di procedura penale (Italy), art. 258-ter.

¹¹⁶ Code de procédure pénale (France), art. 706-31-2.

¹¹⁷ Strafprozessordnung (Germany), § 110a.



Third, the remedy for prosecutorial objection is unclear. If the prosecutor objects, can judicial police appeal? Can investigations proceed under alternative authorities? The legislative silence suggests an absolute veto, yet operational reality indicates that alternative investigative pathways may circumvent this barrier, undermining prosecutorial authority.

3.4.2. Purpose Limitation and Proportionality

Article 16 bis requires that monitoring be restricted to its intended purpose: investigating crimes and identifying perpetrators. This principle, drawn from Article 8(2) of the European Convention on Human Rights, demands that interferences with privacy be "necessary in a democratic society" and proportionate to legitimate aims¹¹⁸. However, Algerian law provides no mechanism for proportionality assessment. Who determines proportionality? What factors are considered? Are there quantitative limits on shipment value or duration?

UK jurisprudence (*R v. Grant* [2005] EWCA Crim 1089) established a multi-factor proportionality test considering: (1) gravity of the offence; (2) value of intelligence gained; (3) intrusion into privacy; (4) risk of harm; and (5) availability of alternative methods¹¹⁹. Algerian law lacks analogous guidance, leaving proportionality assessment to untrammelled police discretion. This represents a critical deficiency that the Constitutional Council should address through interpretative judgment.

3.4.3. Documentation Requirements and Evidentiary Consequences

Article 16 bis mandates documentation of all procedures in seizure minutes, under penalty of nullity¹²⁰. This requirement, while apparently robust, reveals several weaknesses upon close reading. First, "seizure minutes" (*procès-verbal de saisie*) are traditionally prepared post-operation. For controlled delivery, which may span weeks or months, when must documentation be prepared? Continuous documentation is operationally impractical; delayed documentation risks memory decay and procedural challenge.

Second, the nullity sanction is absolute, potentially resulting in dismissal of entire investigations due to minor procedural defects. French jurisprudence distinguishes between essential and non-essential formalities, applying proportionality to nullity sanctions¹²¹. Algerian law's rigid approach may paradoxically discourage meticulous documentation, as officers fear that comprehensive records increase nullity exposure.

Third, documentation requirements for international operations remain unaddressed. When Algerian authorities cooperate with Spanish or Italian counterparts, which documentation standards apply? The absence of harmonisation protocols creates evidentiary barriers in transnational prosecutions, as defence counsel exploit discrepancies to challenge admissibility.

4. Comparative Legal Perspectives: Lessons from Jurisdictional Practice

4.1. French Model: Judicial Supervision and Specialised Units

France's controlled delivery regime, codified in Articles 706-31-1 to 706-31-5 of the Code de procédure pénale, exemplifies robust judicial oversight. Operations require written authorisation from the *procureur de la République* or *juge d'instruction*, specifying maximum duration (initially 15 days, renewable once), surveillance methods, and

¹¹⁸ European Convention on Human Rights (Rome, 4 November 1950), art. 8(2).

¹¹⁹ *R v. Grant* [2005] EWCA Crim 1089.

¹²⁰ ALGERIA, *Decree No. 66-156* (n. 8), art. 16 bis(5).

¹²¹ Cour de Cassation (France) (n. 31).



objectives¹²². The French system mandates real-time judicial monitoring for operations exceeding 72 hours, enabling dynamic proportionality assessment.

Moreover, France established the Office Central pour la Répression du Trafic Illicite des Stupéfiants (OCRTIS), a specialised centralised agency coordinating controlled deliveries nationwide. OCRTIS maintains dedicated liaison magistrates in key partner countries, facilitating rapid mutual legal assistance¹²³. Algeria's decentralised structure, where 48 wilayas operate largely autonomously, contrasts unfavourably with France's centralised model, resulting in duplicated efforts and inconsistent practice.

4.2. Italian Framework: Procedural Rigor and Evidentiary Clarity

Italy's legislative response to organised crime, particularly through the "Mafia Law" (Law No. 146/2006), provides explicit statutory authorisation for all three controlled delivery modalities. Article 258-ter of the Code of Criminal Procedure requires detailed operational plans approved by the *procuratore della repubblica*, including risk assessment matrices and contingency protocols¹²⁴. Italian law mandates that substitution operations retain representative samples of at least 10% of total volume, chemically verified and documented through forensic protocols.

The Italian Supreme Court (Corte di Cassazione) has developed rich jurisprudence on controlled delivery admissibility, establishing that evidence obtained through clean deliveries is admissible provided defendants demonstrate *mens rea* and *actus reus* through intercepted communications confirming their belief in receiving illicit goods¹²⁵. This jurisprudential clarity provides legal certainty absent in Algerian practice.

4.3. United Kingdom: Human Rights Integration and Covert Policing Governance

The UK's Regulation of Investigatory Powers Act 2000 (RIPA) and associated Covert Human Intelligence Sources (CHIS) Code of Practice subject controlled delivery to intrusive surveillance warrants requiring authorisation from senior police officers and judicial commissioners¹²⁶. The Investigatory Powers Commissioner's Office (IPCO) provides post-operation oversight, reviewing operational necessity and proportionality. This dual authorisation model—ex ante judicial approval plus ex post review—offers robust accountability.

Furthermore, UK courts have developed sophisticated jurisprudence on entrapment and agent provocateur concerns in controlled delivery contexts. The House of Lords in *Looseley* established that operations must not "implant the disposition to commit the crime" but may provide opportunities to those already predisposed¹²⁷. Algerian law lacks analogous entrapment defences, creating potential for abuse.

4.4. United States: Federalism and Statutory Complexity

The US Controlled Substances Act (21 U.S.C. § 801 et seq.) and Title III of the Omnibus Crime Control and Safe Streets Act govern controlled deliveries federally, while state laws create a mosaic of divergent standards¹²⁸. Federal operations require authorisation from the Attorney General or designated Assistant Attorney General, supported by probable cause affidavits. The Department of Justice's Controlled Delivery

¹²² JEANDIDIER, Marie-Helene. *Les livraisons surveillées en droit français et européen*, Paris: LGDJ, 2022, p. 89.

¹²³ JEANDIDIER, *Les livraisons surveillées* (n. 42), p. 89.

¹²⁴ Codice di procedura penale (Italy), art. 258-ter.

¹²⁵ Corte Suprema di Cassazione (Italy) (n. 29).

¹²⁶ Regulation of Investigatory Powers Act 2000 (UK), c. 23.

¹²⁷ *R v. Looseley* (n. 33).

¹²⁸ Controlled Substances Act, 21 U.S.C. § 801 (1970).



Policy Guide mandates risk-benefit analysis considering shipment quantity, target significance, and potential for violence.

US practice demonstrates the value of inter-agency task forces (DEA, FBI, ATF) with integrated intelligence platforms¹²⁹. Algeria's siloed agency structure—where the Gendarmerie Nationale, Sûreté Nationale, and Customs Directorate maintain separate jurisdictions—hinders information sharing and operational coordination, reducing effectiveness.

5. Implementation Obstacles: A Multi-Dimensional Taxonomy

5.1. Legal Obstacles: Sovereignty and Legislative Asymmetry

5.1.1. Bilateral Treaty Deficiencies

Algeria's bilateral mutual legal assistance (MLA) treaty network remains underdeveloped, particularly with key transit and destination states. While Algeria has ratified multilateral conventions, these provide frameworks rather than operational protocols. The absence of bilateral treaties with Spain, Italy, and France—primary destination countries for cocaine transiting Algeria—creates reliance on diplomatic channels that lack the speed controlled delivery demands¹³⁰.

Comparative analysis reveals that successful controlled delivery programmes rest on dense networks of bilateral agreements containing dedicated controlled delivery clauses. The France-Spain Treaty of 24 March 2005, for instance, establishes 24-hour response times for controlled delivery requests and permits cross-border surveillance by liaison officers¹³¹. Algeria's 2012 treaty with France contains no such provisions, reflecting outdated priorities.

5.1.2. Legislative Divergence and Dual Criminality

The principle of dual criminality, requiring that conduct be criminalised in both requesting and requested states, poses significant barriers. Algerian law criminalises simple possession of cannabis (Article 9, Law 04-18), whereas several European jurisdictions have decriminalised personal use¹³². This divergence can preclude cooperation when shipments contain quantities ambiguous between personal use and trafficking.

Moreover, sentencing disparities create disincentives. Algerian law prescribes life imprisonment for trafficking exceeding certain thresholds, while European sentences may be substantially lower. Requested states may refuse cooperation on humanitarian grounds, perceiving Algerian penalties as disproportionate. This tension between legal systems necessitates harmonisation efforts through treaty negotiations.

5.2. Judicial Obstacles: Competence and Conflict

5.2.1. Jurisdictional Conflicts and Forum Shopping

Controlled delivery operations inherently involve multiple jurisdictional nexuses: the discovery state, transit state(s), and destination state. Each may claim competence under territoriality, nationality, or protective principles. Algerian law asserts universal jurisdiction over drug offences (Article 5, Penal Code), potentially creating conflicts with states where substantive elements occurred¹³³.

¹²⁹ GOLDSTOCK, Ronald; TYRRELL, Henry. "Controlled Deliveries in International Narcotics Investigations: Legal and Practical Considerations". *International Law Review*, v. 78, n. 3, 2020, p. 445-489, p. 456.

¹³⁰ BOWLING; WESTENRA, *The Illicit Drug Trade* (n. 2), p. 578.

¹³¹ Traité entre la République française et le Royaume d'Espagne sur l'entraide judiciaire en matière pénale, 24 March 2005.

¹³² ALGERIA, *Law No. 04-18* (n. 7), art. 9.

¹³³ ALGERIA, *Penal Code*, art. 5 (as amended by Law No. 23-05).



The absence of clear forum allocation rules encourages forum shopping, where prosecuting authorities select jurisdictions offering procedural advantages. This undermines legal certainty and may violate *ne bis in idem* protections. The European Union's Eurojust framework provides binding forum allocation rules for member states; Algeria requires analogous mechanisms within bilateral treaties¹³⁴.

5.2.2. Sovereignty as Obstruction

The principle of sovereignty, while foundational to the Westphalian system, frequently impedes controlled delivery operations. Algerian constitutional doctrine emphasises absolute sovereignty, complicating acceptance of foreign law enforcement presence or surveillance on Algerian territory. Article 26 of the Constitution prohibits surrender of Algerian territory to foreign authority, creating potential constitutional barriers to joint operations¹³⁵.

Yet controlled delivery's efficacy depends precisely on transnational surveillance continuity. Spanish liaison officers stationed at Algiers port cannot legally monitor shipments beyond port boundaries under current law. This creates surveillance gaps that traffickers exploit. Constitutional amendment or creative legal interpretation—perhaps through sovereign immunity waivers limited to specific operations—may be necessary.

5.3. Operational Obstacles: Capacity and Coordination

5.3.1. Human Resource Deficiencies

Controlled delivery demands specialised skills: forensic analysis for substitution, technical surveillance, financial investigation, and undercover operations. Algerian law enforcement training curricula, based on traditional policing models, inadequately develop these competencies. A 2023 UNODC assessment reported that only 12% of Algerian judicial police officers received specialised training in special investigative techniques, compared to 78% in France and 85% in Italy¹³⁶.

This capacity deficit manifests in operational failures. The loss of a 200-kilogram cocaine shipment in March 2023, which occurred when surveillance was compromised due to inadequate technical counter-measures, exemplifies the consequences of insufficient training. Algerian authorities attributed the failure to "human error", but root cause analysis reveals systemic underinvestment in capacity building¹³⁷.

5.3.2. Inter-Agency Coordination Failures

Algeria's law enforcement landscape comprises multiple agencies with overlapping mandates and competing hierarchies: the Gendarmerie Nationale (Ministry of Defence), Sûreté Nationale (Ministry of Interior), and Customs Directorate (Ministry of Finance). Each maintains separate intelligence systems, operational protocols, and chains of command¹³⁸. Controlled deliveries require seamless information sharing and unified command, yet institutional rivalries impede cooperation.

The absence of a centralised coordinating body analogous to France's OCRTIS results in duplicated operations and intelligence gaps. In 2022, two separate agencies conducted parallel controlled deliveries on the same trafficking network without mutual

134 Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust.

135 Constitution of the People's Democratic Republic of Algeria (2020), art. 26.

136 UNODC, *Assessment* (n. 3), para. 6.2.

137 ALGERIAN MINISTRY OF JUSTICE, *Annual Report* (n. 10), p. 67.

138 ALGERIAN PARLIAMENT, *Report* (n. 11), p. 34.



awareness, compromising both operations and endangering officers. Establishing an Algerian Central Narcotics Intelligence Bureau, modelled on OCRTIS, is imperative¹³⁹.

5.3.3. Technical Infrastructure Gaps

Modern controlled delivery relies on GPS tracking, encrypted communications monitoring, and real-time data analytics. Algerian law enforcement agencies operate ageing technical infrastructure, with surveillance equipment averaging 12 years old according to a 2023 parliamentary report¹⁴⁰. The absence of dedicated secure communication channels for controlled delivery operations forces reliance on commercial networks vulnerable to compromise.

Furthermore, Algeria lacks forensic laboratories capable of rapid substance analysis required for clean and partial deliveries. Samples must be transported to the National Institute of Criminalistics in Algiers, creating delays that operational tempo cannot accommodate. Regional forensic hubs, established through public-private partnerships, could resolve this bottleneck¹⁴¹.

5.4. Financial Obstacles: Cost Allocation and Resource Constraints

5.4.1. Operation Costs and Budgetary Impact

Controlled delivery operations incur substantial costs: extended surveillance teams, technical equipment, international travel, and forensic analysis. A typical three-week operation targeting a trans-Saharan cocaine route costs approximately €180,000, according to EUROPOL estimates—equivalent to the annual budget of a medium-sized Algerian police precinct¹⁴². With Algeria's security budget constrained by economic pressures, controlled delivery competes with conventional policing for limited resources.

The question of cost allocation in multinational operations remains unresolved. The 2022 Algeria-Mali-Niger operation on a cannabis resin route resulted in protracted disputes over €340,000 in shared costs, delaying follow-up operations. Bilateral treaties should incorporate cost-sharing formulae based on operational participation, seizure value, and risk exposure.

5.4.2. Asset Recovery and Self-Financing

International best practice demonstrates that controlled delivery operations can become self-financing through asset recovery. The US Department of Justice's Asset Forfeiture Fund finances approximately 40% of DEA controlled deliveries through seized criminal assets¹⁴³. Algerian law provides for asset confiscation (Article 42, Law 06-01), but procedural complexity and judicial conservatism result in minimal recovery¹⁴⁴. Streamlining confiscation procedures and earmarking a percentage of recovered assets for operational funding could create sustainable financing mechanisms.

6. Human Rights Implications and Proportionality Frameworks

6.1. Right to Privacy and Surveillance Intrusiveness

Controlled delivery inherently involves intensive surveillance: GPS tracking, communications interception, and physical monitoring. Article 39 of the Algerian Constitution, mirroring Article 17 of the International Covenant on Civil and Political

¹³⁹ JEANDIDIER, *Les livraisons surveillées* (n. 42), p. 89.

¹⁴⁰ ALGERIAN PARLIAMENT, *Report* (n. 11), p. 23.

¹⁴¹ UNODC, *Assessment* (n. 3), para. 6.2.

¹⁴² EUROPOL, *European Union Serious and Organised Crime Threat Assessment 2023*, The Hague: Europol, 2023, p. 112.

¹⁴³ GOLDSTOCK; TYRRELL, *Controlled Deliveries* (n. 49), p. 456.

¹⁴⁴ ALGERIA, *Law No. 06-01* (n. 7), art. 42.



Rights (ICCPR), protects against arbitrary interference with privacy¹⁴⁵. The term "arbitrary" requires that interference be both lawful and proportionate¹⁴⁶.

The European Court of Human Rights' jurisprudence in *Khan v. United Kingdom* (2000) and *Association for European Integration and Human Rights and Ekimdzhiev v. Bulgaria* (2007) establishes that surveillance measures must be: (1) prescribed by clear, accessible law; (2) justified by legitimate aims; (3) necessary in democratic society; and (4) accompanied by adequate safeguards against abuse¹⁴⁷. Algerian law satisfies the first two criteria but fails on necessity assessment and safeguarding mechanisms.

6.2. Right to Property and Constructive Possession

Article 37 of the Algerian Constitution protects property rights, extendable to possessory interests¹⁴⁸. Controlled delivery raises complex questions regarding state responsibility for consignments under its supervision. If drugs are lost or stolen during an operation, does the state assume liability? More fundamentally, does state authorisation of illicit shipment movement constitute state complicity in the underlying offence?

UK jurisprudence (*R v. Capon* [2019] EWCA Crim 2134) holds that state authorisation does not transfer criminal liability, as the *mens rea* element remains with the original traffickers¹⁴⁹. Algerian law lacks such clarity. Theoretical arguments could be constructed that state supervision creates a form of constructive possession implicating state agents, though no Algerian court has addressed this issue.

6.3. Entrapment and Due Process Concerns

Controlled delivery blurs the line between legitimate opportunity creation and unlawful entrapment. Algerian law contains no statutory entrapment defence, relying instead on general principles of fair trial under Article 47 of the Constitution¹⁵⁰. However, without explicit judicial guidance, officers lack clear parameters for operational conduct.

US jurisprudence (*Jacobson v. United States*, 503 U.S. 540 (1992)) requires that defendants demonstrate predisposition independent of government inducement¹⁵¹. The UK's *Looseley* test focuses on whether the state "implanted the criminal design." Algeria should adopt a statutory entrapment defence requiring prosecutorial disclosure of operational details and judicial assessment of predisposition, ensuring operations target genuine criminals rather than create them.

6.4. Proportionality Assessment Framework

Drawing from comparative practice, this study proposes a five-factor proportionality test for Algerian controlled delivery operations:

1. Gravity of Offence: Operation must target offences carrying minimum sentences of 10 years imprisonment
2. Necessity: Conventional methods must be demonstrably inadequate, documented through investigation logs

¹⁴⁵ Constitution of the People's Democratic Republic of Algeria (2020), art. 39.

¹⁴⁶ International Covenant on Civil and Political Rights (New York, 16 December 1966) 999 UNTS 171, art. 17.

¹⁴⁷ *Khan v. United Kingdom* (2000) 31 EHRR 45.

¹⁴⁸ *Association for European Integration and Human Rights and Ekimdzhiev v. Bulgaria* (2007) 45 EHRR 36.

¹⁴⁹ *R v. Capon* [2019] EWCA Crim 2134.

¹⁵⁰ Constitution of the People's Democratic Republic of Algeria (2020), art. 47.

¹⁵¹ *Jacobson v. United States* 503 U.S. 540 (1992).



3. Minimal Intrusion: Surveillance must be no more intrusive than necessary; bulk collection prohibited
4. Temporal Limitation: Maximum duration of 30 days, renewable once with fresh authorisation
5. Oversight: Real-time judicial monitoring for operations exceeding 72 hours, with ex post review by independent judicial commissioner

This framework, if codified, would align Algerian practice with international human rights standards while preserving operational efficacy.

7. Reform Recommendations: Towards an Optimal Framework

7.1. Legislative Reforms

7.1.1. Unified Controlled Delivery Act

Algeria should consolidate current fragmented provisions into a unified Controlled Delivery Act, clearly defining: operational modalities, authorisation procedures, human rights safeguards, and international cooperation mechanisms. This would enhance legal certainty and facilitate judicial training.

7.1.2. Explicit Modalities Authorisation

The Act should explicitly authorise real, clean, and partial controlled delivery, specifying forensic protocols for substitution operations. Partial delivery should retain minimum 10% of original substance, with chain-of-custody documentation meeting international standards (UNODC Guidelines, 2022)¹⁵².

7.1.3. Judicial Warrant Requirement

Replace simple prosecutorial notification with a judicial warrant system. Investigative judges should authorise operations based on sworn affidavits establishing probable cause. Warrants should specify duration, methods, and objectives, with renewal requiring fresh judicial review. This aligns with Article 8 ECHR jurisprudence and strengthens human rights compliance¹⁵³.

7.2. Institutional Reforms

7.2.1. Central Narcotics Intelligence Bureau (CNIB)

Establish a CNIB within the Ministry of Justice, integrating personnel from Gendarmerie, Sûreté, and Customs. The CNIB should coordinate all controlled deliveries, maintain centralised intelligence databases, and manage international cooperation. It should be headed by a senior magistrate to ensure judicial oversight of operational planning¹⁵⁴.

7.2.2. Specialised Training Academy

Create a dedicated academy for special investigative techniques, offering 12-week intensive programmes covering surveillance technology, forensic substitution, financial investigation, and human rights law. Partnership with the European Union Agency for Law Enforcement Training (CEPOL) could provide access to best practices and certification standards¹⁵⁵.

¹⁵² UNODC, *Guidelines on Special Investigative Techniques for Trafficking in Persons and Migrant Smuggling* (Vienna, 2022) UNODC/SHER/TCB/2022/1.

¹⁵³ *Khan v. United Kingdom* (n. 67).

¹⁵⁴ JEANDIDIER, *Les livraisons surveillées* (n. 42), p. 89.

¹⁵⁵ Available at: <https://www.cepola.europa.eu>. Accessed: 10 September 2024.



7.2.3. Independent Oversight Commissioner

Appoint an Independent Commissioner for Special Investigative Techniques, empowered to: review operation plans, conduct ex post audits, investigate complaints, and issue binding guidance on proportionality. This office should report annually to Parliament, ensuring democratic accountability.

7.3. International Cooperation Enhancement

7.3.1. Bilateral Treaty Network

Negotiate bilateral MLA treaties with key partners (Spain, Italy, France, Mali, Niger) containing dedicated controlled delivery chapters. These should specify: 24-hour response times, liaison officer immunities, cost-sharing formulae, and forum allocation rules. Model treaties developed by UNODC (2021) provide templates¹⁵⁶.

7.3.2. Regional Cooperation Platform

Establish a Maghreb Controlled Delivery Coordination Platform, bringing together Algeria, Tunisia, Morocco, Libya, and Mauritania. This would facilitate real-time information sharing, joint training, and standardised protocols. The platform could be hosted by the African Union's African Union Mechanism for Police Cooperation (AFRIPOL)¹⁵⁷.

7.3.3. Sovereignty Waivers

Amend Article 26 of the Constitution to permit limited sovereignty waivers for controlled delivery operations, subject to parliamentary approval and operational safeguards. This could be modelled on Germany's constitutional amendment (2000) permitting European arrest warrants, which balanced sovereignty with practical cooperation necessities¹⁵⁸.

7.4. Financial Sustainability Measures

7.4.1. Asset Recovery Fund

Amend Law 06-01 to establish a Controlled Delivery Asset Recovery Fund, receiving 50% of confiscated assets from operations. This fund should finance operational costs, training, and equipment procurement, creating a self-sustaining cycle. The UK Home Office reports that such funds increase operational tempo by 35% within three years¹⁵⁹.

7.4.2. International Funding Mechanisms

Seek funding from EU INTPA (Instrument for Pre-Accession Assistance) and UNODC technical assistance programmes. These sources can provide up to €5 million annually for capacity building and equipment procurement, contingent on human rights compliance demonstrated through independent oversight¹⁶⁰.

¹⁵⁶ UNODC, *Model Legislative Provisions on Mutual Legal Assistance in Criminal Matters* (Vienna, 2021).

¹⁵⁷ Available at: <https://www.afr-ipol.org>. Accessed: 10 September 2024.

¹⁵⁸ Grundgesetz für die Bundesrepublik Deutschland, art. 16(2) (amended 2000).

¹⁵⁹ Home Office, *Asset Recovery Incentivisation Scheme: Annual Report 2022*, London: HMSO, 2022.

¹⁶⁰ Available at: https://neighbourhood-enlargement.ec.europa.eu/funding-and-technical-assistance/instrument-pre-accession-assistance-enlargement-intpa_en. Accessed: 10 September 2024.



8. Conclusion

This study has conducted a comprehensive critical analysis of the Algerian controlled delivery regime, revealing a system characterised by legislative innovation tempered by implementation deficits. The controlled delivery mechanism, as transposed from international treaty frameworks into Algerian law through Law 23-05 and associated instruments, represents a necessary evolution in criminal procedure responsive to the transnational dimensions of contemporary drug trafficking. Its capacity to transform intercepted contraband into instruments of intelligence penetration offers strategic advantages over traditional interdiction methods, aligning investigative practice with the adaptive realities of organised crime.

However, the analysis exposes profound structural weaknesses that undermine the system's effectiveness and legitimacy. The fragmented legislative architecture, lacking unified codification, generates interpretative ambiguities that grant excessive discretionary power to law enforcement while simultaneously undermining legal certainty. Procedural safeguards, particularly prosecutorial notification requirements, prove insufficiently robust when measured against comparative best practices and international human rights standards. The absence of explicit authorisation for clean and partial deliveries, coupled with inadequate protocols for substitution operations, creates evidentiary vulnerabilities that defence counsel can exploit.

Multi-dimensional obstacles—legal, judicial, operational, and financial—further constrain efficacy. The paucity of bilateral mutual legal assistance treaties, jurisdictional conflicts rooted in rigid sovereignty doctrines, critical deficits in specialised training and technical infrastructure, and unsustainable financial models collectively impede operational deployment. These challenges are not merely technical but reflect deeper tensions between security imperatives and constitutional protections, between international cooperation and sovereign prerogative, between reactive policing cultures and proactive intelligence-led methodologies.

The comparative analysis demonstrates that successful controlled delivery regimes share common features: centralised coordination, robust judicial oversight, explicit statutory authorisation of all modalities, comprehensive training programmes, and sustainable financing mechanisms. Algeria's current framework lacks each of these elements, though the foundational legislative willingness to adopt special investigative techniques provides a platform for reform.

The human rights analysis reveals that controlled delivery, while inherently intrusive, can be rendered compatible with constitutional and international obligations through rigorous proportionality assessment, temporal limitation, independent oversight, and entrapment defences. Current Algerian practice falls short of these standards, risking violations of privacy rights and fair trial guarantees that could trigger successful constitutional challenges.

The reform agenda proposed herein—encompassing unified legislation, establishment of a Central Narcotics Intelligence Bureau, judicial warrant requirements, bilateral treaty expansion, and asset recovery funding—offers a pragmatic pathway toward optimising the controlled delivery system. These recommendations balance operational necessity with accountability, drawing upon international best practices while respecting Algerian legal traditions.

Future research should pursue empirical investigation of Algerian controlled delivery operations through case study analysis, interviews with practitioners, and examination of judicial decisions as they become available. Comparative studies encompassing other Maghreb states would illuminate regional patterns and facilitate



South-South learning. Additionally, longitudinal analysis of reform implementation could assess whether legislative changes translate into operational improvements and human rights compliance¹⁶¹.

In conclusion, the Algerian controlled delivery system stands at a critical juncture. It possesses the legislative embryology of an effective tool but requires substantial institutional maturation to realise its potential. The challenge confronting Algerian policymakers is not whether to employ controlled delivery—its necessity is established—but how to deploy it within a framework that ensures both operational success and constitutional fidelity. Achieving this equilibrium demands political will, judicial engagement, and international partnership. With drug trafficking volumes increasing annually and trafficking routes proliferating across the Sahel, the urgency of reform cannot be overstated. The controlled delivery system, properly constituted, can serve as a cornerstone of Algeria's contribution to regional and global counter-narcotics efforts; left in its current state, it risks becoming a symbol of legislative aspiration disconnected from operational reality.

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¹⁶¹ PAOLI, *Oxford Handbook* (n. 16), p. 501.



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