

Petty offences and the prohibition of torture and other cruel, inhuman and degrading treatment or punishment

26 June 2025

POPULATION PENALE

20-04-2022

DIRECTION INCUPLÉS

A LA DATE DU

CONNAÎNES		CPC		PREVENUS		MINEURS		TOTAL
F	SF	HOMMES	SF	SF	H	SF	H	
		01						01
03	02	1865			02		05	268
01		25						37
02		07						85
		16					09	21
		01			01		01	02
01		18						43
02	05	05					01	09
		01						11
		04						06
09	07	06						

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EXECUTIVE SUMMARY

Petty offenses are low-severity crimes punishable by non-custodial sentences such as fines, or alternatively or cumulatively, by short prison terms. These offenses, often vaguely defined, enable targeted repression of certain population groups: precarious individuals, homeless people, informal sector workers, migrants, youth, or activists.

In Benin, Cameroon, Côte d'Ivoire, Madagascar, and the Republic of Congo, laws penalising poverty-related offenses such as begging or vagrancy lead to the arrest of people living in precarious conditions. The criminalisation of petty offenses is also used to suppress behaviors considered deviant, such as alcohol or drug consumption, prostitution, or witchcraft; as well as violations of sexual, reproductive, and family norms such as homosexuality, adultery, and abortion. Simultaneously, civic space is restricted by legislative provisions penalising freedom of expression and freedom of association, used against activists, journalists, and human rights defenders for political purposes.

This report analyzes how the repression of petty offenses, far from being based on acts causing real harm, relies on real or presumed behaviors linked to poverty, status, or activism. Drawing on the criminal law of the aforementioned states as well as regional and international instruments and mechanisms for the protection and promotion of human rights, this report highlights that:

- The criminalisation of petty offenses disproportionately exposes vulnerable and marginalized persons to an increased risk of arrest and incarceration due to their position within society and public space;
- Pre-trial detention is systematically used for petty offenses, largely because targeted individuals lack the resources to pay fines or access adequate legal defense;
- This practice contributes to court backlogs and prison overcrowding, leading to detention conditions amounting to ill-treatment;
- Persons targeted by petty offenses often face multiple vulnerability factors, which expose them to even more degraded detention conditions, as these are ill-adapted to their specific needs, severely compromise their chances of long-term reintegration, and reinforce their stigmatization.

These findings call for urgent action by states to revise or repeal laws penalising petty offenses targeting poverty, status, and activism, and urge the undertaking of a profound reform of the legal framework and judicial practices by adopting a human rights-centered approach. Conducting an in-depth legal study on the link between the criminalisation of petty offenses and the prohibition of torture as well as cruel, inhuman, or degrading punishments or treatment is an essential step.

CO-SIGNATORY ORGANISATIONS

1. ACAT Benin
2. ACAT Cameroon
3. ACAT Canada
4. ACAT Congo
5. ACAT Côte d'Ivoire
6. African Policing Civilian Oversight Forum (APCOF)
7. Dullah Omar Institute
8. Harm Reduction International (HRI)
9. International Federation of ACATs (FIACAT)
10. Omega Research Foundation
11. Organisation contre la torture en Tunisie
12. Penal Reform International (PRI) – Africa
13. Prison Insider
14. Relais Prison Société
15. World Organisation Against Torture (OMCT)

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The undersigned organizations are convinced that the criminalisation of petty offences is incompatible with the principle of equal treatment before the law¹, the prohibition of torture and other cruel, inhuman or degrading treatment or punishment², as well as the right to protection against arbitrary arrest and detention³.

Since 2018, the African Commission on Human and Peoples' Rights (ACHPR) has defined petty offences as *“minor offences for which the punishment is prescribed by law to carry a warning, community service, a low-value fine or short term of imprisonment, often for failure to pay the fine. [...] Petty offences are entrenched in national legislation and, in most countries, fall within the broader category of minor offences, misdemeanors, summary offences or regulatory offences⁴”*.

Originally introduced into African legal systems by European colonial powers to control the activities of marginalised populations and ensure *“the availability of cheap labor⁵”*, petty offence laws today serve primarily to restrict the use of public space in order to safeguard economic, social, and moral order. Criminal justice is thus weaponized to protect *“the boundaries of wealth, privilege, power, and status⁶”*, disproportionately targeting vulnerable groups and dissenters, while reinforcing their stigmatization. In countries such as Benin, Cameroon, Côte d'Ivoire, Madagascar, and the Republic of Congo, individuals unable to pay fines or access effective and free legal representation are routinely subjected to detention.

Our organisations consider that the criminalisation of petty offences results in the disproportionate incarceration of vulnerable individuals, who are often detained based more on suspicions linked to their social status and identities than on the actual commission of criminalised acts, and sometimes even because of their activism advocating for better living conditions and respect their rights. At the same time, the penalisation of petty offences contributes to prison overcrowding as well as detention conditions amounting to cruel, inhuman, or degrading treatment, to which marginalised persons are especially exposed due to their precarious circumstances, gender identity, sexual orientation, age, or health status.

I. The persistence of the criminalisation of petty offences in Sub-Saharan Africa

From its 2003 Ouagadougou Action Plan to the adoption of the Principles on the Decriminalisation of Petty Offences in Africa in 2018, the African Commission on Human and Peoples' Rights (ACHPR) has consistently called for the decriminalisation of petty offences⁷. In 2012, the United Nations Human Rights Council also adopted the Guiding Principles on Extreme Poverty and Human Rights, urging States to reform or repeal laws penalizing vital activities in

¹ [International Covenant on Civil and Political Rights](#), Article 26, 16 December 1966, and [African Charter on Human and Peoples' Rights](#), Article 3, 21 October 1986.

² [International Covenant on Civil and Political Rights](#), Article 7, 16 December 1966; and [African Charter on Human and Peoples' Rights](#), Articles 5, 21 October 1986.

³ [International Covenant on Civil and Political Rights](#), Article 9, 16 December 1966 ; and [African Charter on Human and Peoples' Rights](#), Articles 6, 21 October 1986.

⁴ ACHPR, [Principles on the Declassification and Decriminalization of Petty Offences in Africa](#), 25 October 2018.

⁵ Human Rights Council of the United Nations, [Rapport of the Special Rapporteur on extreme poverty and human rights “Breaking the cycle: Ending the criminalization of homelessness and poverty”](#), A/HCR/56/61/Add.3, para 20, 26 June 2024.

⁶ Campaign to decriminalise poverty and status, [The Cap Declaration on decriminalising poverty and status](#), 2022.

⁷ ACHPR, [Principles on the Declassification and Decriminalization of Petty Offences in Africa](#), 25 October 2018.

public spaces, such as “*sleeping, begging, eating, or performing personal hygiene activities.*”⁸ The Tokyo Rules have, since 1990, required States to consider the gravity of offences and to equip themselves with a “*wide range of non-custodial measures.*”⁹ Despite the adoption of these various legal instruments, Benin, Cameroon, Côte d’Ivoire, Madagascar, and the Republic of Congo continue to criminalise certain petty offences. Serving as tools of social control, these laws disproportionately target marginalised individuals based on their poverty, status, or activism.

A. The criminalisation of poverty

1. Begging

Begging is defined as the act of publicly soliciting alms for survival. In Cameroon, any person who solicits charity while having the means to support themselves, or who could acquire such means through work, faces imprisonment ranging from 3 months to 3 years¹⁰. In Madagascar and the Republic of Congo, anyone found begging in a public place risks between 3 and 6 months’ imprisonment where the State has established facilities to assist vulnerable individuals¹¹, and between 1 and 3 months’ imprisonment in areas where such facilities do not exist¹². If the individual is found away from their place of residence, the applicable sentence ranges from 6 months to 2 years¹³.

In these three countries, aggravated begging is severely penalised. In Cameroon, a person who begs using threats, insults, or violence; enters a residence without the occupant’s permission; feigns injury or disability; or begs in groups faces imprisonment ranging from 6 months to 6 years¹⁴. In the Republic of Congo and in Madagascar, individuals engaging in these same practices risk imprisonment of between 6 months and 2 years¹⁵. In Côte d’Ivoire, begging is no longer a criminal offence, except in the Autonomous District of Abidjan since April 2, 2024, and in the city of Niakara since February 2, 2025, where it is actively repressed by local and national authorities under the guise of combating urban disorder through strict regulation of public space use. However, aggravated forms of begging remain criminal offences punishable by imprisonment ranging from 10 months to 2 years throughout the Ivorian territory¹⁶.

When a person who is begging is found in possession of a weapon or any instrument suitable for committing theft or other offences or for breaking into homes, they face a prison sentence of 2 to 5 years in Côte d’Ivoire¹⁷. The vague wording of these provisions grants authorities wide discretion

⁸ Human Rights Council of the United Nations, [Guiding principles on extreme poverty and human rights](#), A/HCR/RES/21/11, para. 66 c., 18 October 2012.

⁹ General Assembly of the United Nations, [United Nations Standard Minimum Rules for Non-custodial Measures \(The Tokyo Rules\)](#), AG/RES/45/110, 14 December 1990.

¹⁰ Penal code of the Republic of Cameroon, article 245, 12 July 2016.

¹¹ Penal code of Madagascar, article 274, 7 September 1962 ; and Penal code of the Republic of Congo, article 274, 13 January 1963.

¹² Penal code of Madagascar, article 275, 7 September 1962 ; and Penal code of the Republic of Congo, article 275, 13 January 1963.

¹³ *Ibidem*.

¹⁴ Penal code of the Republic of Cameroon, article 246, 12 July 2016.

¹⁵ Penal code of Madagascar, article 276, 7 September 1962 ; and Penal code of the Republic of Congo, article 275, 13 January 1963.

¹⁶ Penal code of the Republic of Côte d’Ivoire, article 217 para.1, 26 June 2019.

¹⁷ Penal code of the Republic of Côte d’Ivoire, article 218, 26 June 2019.

in interpreting what constitutes an “instrument.” The same penalty applies in the Republic of Congo and in Madagascar, where mere possession or carrying of the weapon is sufficient to establish the offence, without the need to prove its use or any threat of use¹⁸.

2. Vagrancy

Vagrancy can be defined as the condition of a person who is homeless, unemployed, and without means of subsistence. In Cameroon, any person found in a public place who can not provide proof of a fixed residence or means of subsistence is considered a vagrant and is subject to imprisonment ranging from 6 months to 2 years¹⁹. In Madagascar and the Republic of Congo, vagrancy is a criminal offence. The mere fact of lacking a fixed residence, means of subsistence, and not habitually engaging in a trade or profession can result in a prison sentence of 3 to 6 months²⁰.

As the African Court of human and people’s rights explains in an advisory opinion, these laws punish “*an individual’s perceived status, such as being idle, disorderly or a reputed thief, which status does not have an objective definition [...]*”²¹. As a result, “*law enforcement officers may arbitrarily arrest individuals without the sufficient level of prima facie proof that they committed a crime*”²². This offence therefore creates a presumption of guilt that is difficult to rebut.

In Benin, the Council of Ministers on Wednesday, October 30, 2024, decided to create a Psychiatric Assistance and Support Center for People in a Situation of Begging. This public social institution, located in Kpomassè in the Atlantic department, is tasked with assisting and providing medical care to individuals suffering from psychiatric illnesses. It is responsible for offering social support to these individuals and delivering appropriate medical treatment, while also developing a plan for family reintegration and social reinsertion for the patients treated.

3. Theft

Theft is traditionally penalised under all legal systems. However, some States, under the pretext of safeguarding property, have enacted laws that criminalise specific acts, petty thefts or minor larcenies, that impoverished or marginalised individuals are more likely to commit to survive. In Benin, for instance, picking or consuming fruit on-site from someone else’s property is considered an infraction punishable by 1 day to 2 months of imprisonment²³. The fraudulent appropriation of water is treated as theft and carries a sentence of 1 to 5 years in prison²⁴. In Madagascar and the

¹⁸ Penal code of Madagascar, article 277, 7 September 1962 ; and Penal code of the Republic of Congo, article 277, 13 January 1963.

¹⁹ Penal code of the Republic of Cameroon, article 247, 12 July 2016.

²⁰ Penal code of Madagascar, articles 269 to 271, 7 September 1962 ; and Penal code of the Republic of Congo, articles 269 to 271, 13 January 1963.

²¹ African Court on Human and people’s rights, [*Advisor opinion on the compatibility of vagrancy laws with the African Charter on human and people’s Rights and other human rights instruments applicable in Africa*](#), request n°001/2028, para. 92, 4 December 2020.

²² *Ibidem*.

²³ Penal code of the Republic of Benin, article 1000, 4 June 2018.

²⁴ Penal code of the Republic of Benin, article 627, 4 June 2018.

Republic of Congo, anyone who steals fish from a pond or reservoir is liable to imprisonment of 1 to 5 years²⁵. Theft of crops is punishable by 15 days to 2 years in prison²⁶.

B. The penalisation of status

1. The penalisation of perceived deviant behaviors

i. The consumption of alcohol and narcotic substances

In Cameroon, public intoxication is a criminal offence: anyone who reoffends within twelve months after being convicted of a public intoxication infraction faces a prison sentence ranging from 15 days to 1 month²⁷.

Regarding the consumption of narcotic substances, Cameroonian Law No. 97-019 of August 1997 prescribes varying penalties depending on the severity of the public health risk and their medical utility. Possession or consumption of high-risk drugs is punishable by 5 to 10 years of imprisonment²⁸. The Beninese Penal Code provides a sentence of 1 to 2 years' imprisonment for the possession of plants or substances classified as narcotics or psychotropic substances²⁹. In Madagascar, Law No. 97-039 stipulates that mere possession of cannabis oil is punishable by 3 months to 1 year of imprisonment³⁰. On April 7, 2025, the Congolese Senate adopted a draft law relating to the control of narcotics, psychotropic substances, and precursors.

While drug use is primarily a public health issue, these laws criminalize consumption by the most vulnerable populations. Women, often exploited as drug mules, are more likely to be arrested despite their minor or coerced roles in trafficking. In Côte d'Ivoire, 19.6% of women surveyed in the 2022 report *Vivre l'enfer(mement)* were incarcerated for illegal possession of drugs³¹. After several decades of a punitive approach, Côte d'Ivoire has been moving towards a new paradigm since Law No. 2022-407, which redefines drug use as a public health issue. Dependency remains punishable, as consumption of narcotic substances can lead to up to 3 months' imprisonment³², but therapeutic interventions are now provided as alternatives to incarceration.

ii. Witchcraft

In Côte d'Ivoire and the Republic of Congo, individuals engaging in practices of quackery, witchcraft, or magic that are likely to disturb public order or cause harm to persons or property

²⁵ Penal code of Madagascar, article 388, 7 September 1962 ; and Penal code of the Republic of Congo, article 388, 13 January 1963.

²⁶ *Ibidem*.

²⁷ Penal code of the Republic of Cameroon, article 243, 12 July 2016.

²⁸ [Loi n°97-019 relative au contrôle des stupéfiants, des substances psychotropes et des précurseurs et à l'extradition et à l'entraide judiciaire en matière de trafic des stupéfiants, des substances psychotropes et des précurseurs](#), article 96, 7 août 1997.

²⁹ Penal code of the Republic of Benin, article 980, 4 June 2018.

³⁰ [Loi n°97-039 sur le contrôle des stupéfiants, des substances psychotropes et des précurseurs à Madagascar](#), article 141, 4 November 1997.

³¹ Fischer, Bénédicte ; Grassy, Lionel ; Kouadio, Paul. [Vivre l'enfer\(mement\). Regard sur la détention des femmes et des mineur.es en Côte d'Ivoire](#), CERDAP², p. 16, 2022.

³² Loi n°2022-407 portant lutte contre le trafic et l'usage illicites des stupéfiants, des substances psychotropes et leurs précurseurs en Côte d'Ivoire, article 10, 13 June 2022.

face imprisonment ranging from 1 to 5 years³³. In Cameroon, where divination practices are also included, the penalty for such offences ranges from 2 to 10 years of imprisonment³⁴. In Madagascar, impersonating a witch or sorcerer, interpreting dreams, or making predictions, as well as possessing *ody* (fetishes, amulets, or magical remedies), are misdemeanors punishable by up to 29 days in prison³⁵.

Women are particularly vulnerable to accusations of witchcraft. Historically more frequently blamed for societal ills, women who do not conform to gender stereotypes—such as childless or presumed childless women—are more likely to be accused of witchcraft³⁶.

iii. Prostitution

Prostitution *per se* is criminalised only in Cameroon, where it is punishable by imprisonment ranging from 6 months to 5 years³⁷. Soliciting, defined as publicly requesting or encouraging others by any means to engage in sexual activities in exchange for payment or a promise of payment, is subject to the same penalties³⁸.

In Madagascar, Benin, the Republic of Congo, and Côte d'Ivoire, engaging in prostitution itself is not penalised, soliciting can be prosecuted under provisions related to pimping and incitement to prostitution. For example, in Côte d'Ivoire, anyone who publicly solicits or attempts to solicit persons of either sex with the intent to lead them into debauchery may face imprisonment ranging from 15 days to 3 months³⁹.

2. The criminalisation of violations of sexual, reproductive and family norms

i. Homosexuality

Homosexuality is criminalised in Cameroon: any person who engages in sexual relations with someone of the same sex faces imprisonment ranging from 6 months to 5 years⁴⁰. In Madagascar, homosexuality is not penalised; however, the Penal Code creates inequality before the law regarding the age of sexual consent, set at 14 years for heterosexual relations but at 21 years for same-sex relations⁴¹. Consequently, any sexual activity under the age of 21 between persons of the same sex is prohibited and punishable by 2 to 5 years of imprisonment.

The criminalisation of homosexuality is also enforced, albeit less explicitly, through laws penalizing public indecency, that is, acts considered contrary to public morality committed in the presence of others or in public places. In Côte d'Ivoire, any act offending public decency or the moral sensibilities of persons involuntarily witnessing it, and likely to disturb public order is punishable

³³ Penal code of the Republic of Côte d'Ivoire, article 237, 26 June 2019 ; and Penal code of the Republic of Congo, article 264, 13 January 1963.

³⁴ Penal code of the Republic of Cameroon, article 251, 12 July 2016.

³⁵ Penal code of Madagascar, article 473 para.6, 7 September 1962.

³⁶ Mathilde Ragot, « [Les accusations de sorcellerie concernaient surtout les femmes, et on sait désormais pourquoi](#) », Histoire GEO, 21 September 2023.

³⁷ Penal code of the Republic of Cameroon, article 343 para.1, 12 July 2016.

³⁸ Penal code of the Republic of Cameroon, article 343 para.2, 12 July 2016.

³⁹ Penal code of the Republic of Côte d'Ivoire, article 361, 26 June 2019.

⁴⁰ Penal code of the Republic of Cameroon, article 347-1 para.2, 12 July 2016.

⁴¹ Penal code of Madagascar, article 331, 7 September 1962.

by imprisonment ranging from 3 months to 2 years⁴². The penalty for public indecency in Benin is identical to that provided for in the Ivorian Penal Code⁴³.

ii. Abortion

In Côte d'Ivoire, a woman who uses food, drinks, medicines, substances, maneuvers, violence, or any other means with the intent to induce premature expulsion of the embryo or fetus faces imprisonment of 1 to 5 years⁴⁴. Medical personnel who assist a woman in procuring an abortion are subject to the same penalty⁴⁵. While termination of pregnancy was not considered a crime in cases of rape or when the pregnant woman's life was seriously at risk under Article 427 of the Penal Code, since June 2024 it has also been permitted for pregnancies resulting from incest or those endangering the mother's life, provided that the doctor performing the abortion has previously received proof of the opening of a judicial investigation and a written request from the victim⁴⁶. In 2024, Sylvia Apata, a legal expert and women's rights activist, expressed concerns that *"conditioning access to abortion on a judicial investigation... will be a major obstacle for victims."*⁴⁷

In Cameroon, a woman who induces her own abortion or consents to it faces a prison sentence ranging from 15 days to 1 year⁴⁸. For the same acts in the Republic of Congo and Madagascar, the penalty is between 6 months and 2 years of imprisonment⁴⁹. Furthermore, in all three countries, any person who performs an abortion on a woman faces imprisonment of 1 to 5 years.

In Benin, abortion is permitted up to twelve weeks of pregnancy upon medical prescription when there is a risk to the life or health of the mother, when the pregnancy results from rape or incest, or when the unborn child has a serious medical condition. It may also be authorized at the request of the pregnant woman when the pregnancy is likely to worsen or cause a situation of material, educational, professional, or moral distress that is incompatible with the interests of the woman and/or the unborn child⁵⁰.

iii. Adultery

Adultery is defined as engaging in consensual intimate or sexual relations with someone other than one's spouse. In Côte d'Ivoire, both the husband or wife found guilty of adultery, as well as the

⁴² Penal code of the Republic of Côte d'Ivoire, article 416, 26 June 2019.

⁴³ Penal code of the Republic of Benin, article 544, 4 June 2018.

⁴⁴ Penal code of the Republic of Côte d'Ivoire, article 425, 26 June 2019.

⁴⁵ Penal code of the Republic of Côte d'Ivoire, article 426, 26 June 2019.

⁴⁶ [Loi n°2024-358 portant modification de la loi n°2019-574 du 26 juin 2019 portant Code pénal](#), article 427, 11 June 2024.

⁴⁷ RFI, « [Côte d'Ivoire: conditionner l'accès à l'avortement à une information judiciaire va être un grand frein pour les victimes](#) », 10 June 2024.

⁴⁸ Penal code of the Republic of Cameroon, article 337, 12 July 2016.

⁴⁹ Penal code of Madagascar, article 317, 7 September 1962 ; and Penal code of the Republic of Congo, article 317, 13 January 1963.

⁵⁰ [Loi n°2021-12 modifiant et complétant la loi n°2003-04 du 3 mars 2003 relative à la santé sexuelle et à la reproduction](#), article 17-1 et 17-2, 20 December 2021.

third party involved, may be punished with imprisonment ranging from 2 months to 1 year⁵¹. In Madagascar, the penalty ranges from 3 months to 1 year⁵².

In Cameroon, adultery is punishable by 2 to 6 months of imprisonment, except when the accused husband can prove the existence of a polygamous marriage⁵³. Under the Penal Code of the Republic of Congo, a woman found guilty of adultery who leaves the marital home without just cause or serious reason may face imprisonment ranging from 3 months to 2 years⁵⁴.

As explained by the United Nations Working Group on Arbitrary Detention, laws criminalizing adultery are *prima facie* discriminatory against women⁵⁵, who are often discouraged from reporting sexual violence for fear of being prosecuted under such laws.⁵⁶ The UN Special Rapporteur on violence against women and girls has also noted that “*although laws may appear to be gender neutral, such charges are more often brought against women.*”⁵⁷ Benin, for its part, decriminalized adultery following a 2009 ruling by the Constitutional Court⁵⁸, which found such laws to be in violation of the Constitution and the African Charter on Human and Peoples’ Rights. The Court held that these provisions constituted gender-based discrimination, as they created a normative asymmetry that disproportionately exposed women to criminal prosecution.

C. The criminalisation of activism

1. Freedom of speech

In Côte d’Ivoire, the publication, dissemination, disclosure, or reproduction of false or inaccurate information that results or could result in disobedience to the law, harm to public morale, or discredit to institutions or their functioning is punishable by imprisonment ranging from 1 to 6 years⁵⁹. This penalty also applies to journalists as well as editors-in-chief, co-editors, and publishers in the case of publication via the press⁶⁰. In Cameroon, the dissemination or broadcasting of false news likely to harm public authorities or national cohesion is also punishable by 3 months to 3 years of imprisonment⁶¹.

In Côte d’Ivoire, anyone who insults the President or Vice President of the Republic is liable to a prison sentence of 3 months to 2 years⁶². Insulting other presidents or heads of national institutions is punishable by 1 month to 2 years of imprisonment⁶³, and from 15 days to 2 years if the insult

⁵¹ Penal code of the Republic of Côte d’Ivoire, article 456, 26 June 2019.

⁵² Penal code of Madagascar, article 337, 7 September 1962.

⁵³ Penal code of the Republic of Cameroon, article 361 para. 1 and 2, 12 July 2016.

⁵⁴ Penal code of the Republic of Congo, article 337, 13 January 1963.

⁵⁵ Human Rights Council of the United Nations, [Report of the Working Group on arbitrary detention](#), A/HRC/48/55, 6 August 2021.

⁵⁶ Penal Reform International, [From poverty to punishment: Examining laws and practices which criminalise women due to poverty or status worldwide](#), p.32, March 2025.

⁵⁷ General Assembly of the United Nations, [Pathways to, conditions and consequences of incarceration for women, Note by the Secretary-General](#), A/68/340, para. 16, 21 August 2013.

⁵⁸ Constitutional Court of Benin, [Decision DCC 09-081](#), 30 July 2009.

⁵⁹ Penal code of the Republic of Côte d’Ivoire, article 183, 26 June 2019.

⁶⁰ *Ibidem*.

⁶¹ Penal code of the Republic of Cameroon, article 113, 12 July 2016.

⁶² Penal code of the Republic of Côte d’Ivoire, article 264, 26 June 2019.

⁶³ Penal code of the Republic of Côte d’Ivoire, article 268, 26 June 2019.

targets magistrates of a supreme court or members of a national institution⁶⁴. In Cameroon, insulting the President of the Republic, even when it is not possible to prove the truth of the allegedly defamatory statement, is also punishable by a prison term ranging from 1 to 5 years⁶⁵. A sentence of 3 months to 3 years applies when the insult is directed at the courts and tribunals, armed forces, constituted bodies, public administrations, government members, parliamentarians, or civil servants⁶⁶. In practice, these provisions, applied selectively, are frequently used for political repression against opponents, journalists, or human rights defenders.

In its resolution on the need to protect civic space and the freedom of association and assembly⁶⁷, the ACHPR emphasizes that activism plays a central role in the defense of fundamental rights and freedoms. It warns State Parties about the restrictions imposed by their legislation on the rights to freedom of expression, freedom of association, and the freedom of peaceful assembly and demonstration⁶⁸, which together constitute “civic space” and are essential to “a vibrant democracy, where debate and discussion flourish, and where individuals are able to contribute to important decisions that affect them.”⁶⁹

2. Freedom of association

The Penal Codes of Côte d’Ivoire and Madagascar criminalise acts or maneuvers likely to endanger public security, cause political unrest or serious public disorder, or bring government institutions into disrepute.⁷⁰ Individuals found guilty of such acts face between 1 and 5 years of imprisonment in Madagascar, and between 3 and 5 years in Côte d’Ivoire.⁷¹

In the Republic of Congo, any gathering in public spaces is prohibited unless prior authorization is obtained from the prefecture⁷². However, the Penal Code does not define the notion of “gathering,” leaving room for the repression of any spontaneous peaceful assembly in public spaces. In Côte d’Ivoire, an “unlawful assembly” is defined as a non-armed gathering of people in a public place or on a public road likely to disturb public order or public peace⁷³, a definition that is particularly applied to spontaneous or unauthorized demonstrations. Benin also prohibits non-armed assemblies in public spaces or on public roads, without providing a clear definition, as such gatherings may be considered likely to disturb public peace⁷⁴.

⁶⁴ Penal code of the Republic of Côte d’Ivoire, article 269, 26 June 2019.

⁶⁵ Penal code of the Republic of Cameroon, article 153, 12 July 2016.

⁶⁶ Penal code of the Republic of Cameroon, article 154, 12 July 2016.

⁶⁷ ACHPR, [*Resolution on the need to protect civic space and freedom of association and assembly*](#), ACHPR/Res.475 (XXXI), 25 February 2021.

⁶⁸ [*African Charter on human and people’s rights*](#), articles 9 to 11, 21 October 1986.

⁶⁹ ACHPR, [*Resolution on the need to protect civic space and freedom of association and assembly*](#), ACHPR/Res.475 (XXXI), 25 February 2021.

⁷⁰ Penal code of Madagascar, article 91 para.3, 7 September 1962 ; and Penal code of the Republic of Côte d’Ivoire, article 179, 26 June 2019.

⁷¹ *Ibidem*.

⁷² [*Ordonnance n°62-28 relative aux manifestations sur la voie publique*](#), articles 1 et 2, 23 October 1962.

⁷³ Penal code of the Republic of Côte d’Ivoire, article 191, 26 June 2019.

⁷⁴ Penal code of the Republic of Benin, article 237, 4 June 2018.

In Côte d'Ivoire, participating in a demonstration—that is, an organized gathering—that is prohibited is punishable by imprisonment from 6 months to 2 years⁷⁵. Any participant in an unlawful assembly risks imprisonment from 2 months to 1 year if they do not disperse after the first warning⁷⁶. In Cameroon, participation in a public meeting that is either not declared, or declared incompletely or inaccurately with the intent to deceive the authorities, is punishable by imprisonment from 15 days to 6 months⁷⁷.

In Madagascar, a prison sentence of 15 days to 6 months can also be imposed on anyone who makes incomplete or inaccurate declarations likely to mislead the authorities about the conditions of the planned demonstration⁷⁸. For the same acts, the republic of Congo provides for a penalty ranging from 1 month to 1 year of imprisonment⁷⁹. In Côte d'Ivoire, organisers of a prohibited or undeclared demonstration can be sentenced to prison for 1 to 3 years⁸⁰, while anyone causing an unarmed assembly risks a prison term of 1 month to 1 year⁸¹. In Benin, direct incitement to an unarmed assembly is punishable by 1 year in prison if it leads to consequences, or by 2 to 6 months if it does not⁸². Yet, “*spontaneous assemblies, which are typically direct response to current events, whether coordinated or not*” fall under the scope of Article 21 of the ICCPR, which protects the right to peaceful assembly⁸³.

These formulations are deliberately vague, giving authorities significant discretion to interpret their meaning and scope on a case-by-case basis. According to the United Nations Human Rights Committee, laws restricting the right to peaceful assembly “*must be sufficiently precise to allow members of society to decide how to regulate their conduct and may not confer unfettered or sweeping discretion on those charged with their enforcement.*”⁸⁴

II. From the street to prison: the consequences of criminalising petty offences on the prison population

The continued criminalisation of petty offenses in sub-Saharan Africa has direct and profound consequences on the targeted individuals and on the functioning of prison systems. By criminalizing acts related to poverty, status, or activism, states expose marginalized populations to an increased risk of arrest and detention. These dynamic fuels prison overcrowding and worsens detention conditions, disproportionately impacting already vulnerable people by exposing them to acts amounting to torture or to cruel, inhuman or degrading treatment.

⁷⁵ Penal code of the Republic of Côte d'Ivoire, article 197, 26 June 2019.

⁷⁶ Penal code of the Republic of Côte d'Ivoire, article 192, 26 June 2019.

⁷⁷ Penal code of the Republic of Cameroon, article 231, 12 July 2016.

⁷⁸ Ordonnance n°60-082 relative aux réunions publiques et aux manifestations sur la voie publique, article 11, 13 August 1960.

⁷⁹ [Ordonnance n°62-28 relative aux manifestations sur la voie publique](#), article 7, 23 October 1962.

⁸⁰ Penal code of the Republic of Côte d'Ivoire, articles 198 and 199, 26 June 2019.

⁸¹ Penal code of the Republic of Côte d'Ivoire, article 194, 26 June 2019.

⁸² Penal code of the Republic of Benin, article 240, 4 June 2018.

⁸³ Human Rights Committee of the United Nations, [General Comment No.36 on article 21 \(Right to peaceful assembly\)](#), CCPR/C/GC/37, para. 14, 17 September 2020.

⁸⁴ *Ibidem*, para.39.

A. An increased risk of arrest and detention

The criminalisation of petty offenses, whether related to poverty, status, or activism, leads to an increase in arrests and detentions of already marginalized individuals, despite these offenses often not causing real harm. Frequently defined in vague terms, petty offenses grant wide discretion to law enforcement and judges, making their application highly selective. This legal ambiguity enables targeted repression of certain lifestyles or social identities, using criminal law as a tool for social control. By legitimizing heightened surveillance of vulnerable groups, these policies increase their visibility to the police, raise their likelihood of being stopped or arrested, and result in their overrepresentation among detainees. This dynamic produces a structural criminalisation of poverty, dissent, or certain statuses, and contributes to the lasting stigmatization of affected individuals.

Poverty, far from being seen as a factor of social vulnerability requiring structural responses, is criminalized and leads to the disproportionate exposure of precarious individuals to arrests and detentions—not for violent or dangerous acts, but simply for their presence in public spaces. So-called cleanup or security campaigns result in mass roundups targeting homeless people, migrants, or informal workers, often justified in the name of maintaining order. Between May and June 2024, 580 minors were arrested during a crackdown operation in several impoverished neighborhoods of Brazzaville, some simply for their presence in the civic space and their appearance⁸⁵. Poverty becomes an object of penal control, artificially increasing the number of vulnerable people exposed to incarceration.

The criminalisation of status is another lever of this differentiated criminalisation as it disproportionately targets sexual minorities, sex workers, women, and people suffering from addiction. These offenses are instrumentalized to punish behaviors perceived—whether from moral, religious, or traditional viewpoints—as deviant, regardless of any actual harm caused. The use of criminal law to sanction social non-conformity serves as a powerful tool of institutionalized marginalization and allows the State to reinforce its control over already dominated groups. For example, in Cameroon, 13 people—including 5 staff members and 3 beneficiaries, present at the premises of Alternatives-Cameroun, an organisation fighting HIV, were arrested in September 2024 during a police raid; 4 of them were placed in pretrial detention and subjected to forced anal examinations to prove their homosexuality⁸⁶.

Citizens who choose to engage in public debate are also targeted by the criminal justice system. The conflation of exercising civil and political rights with criminal offenses blurs the line between political expression and criminal wrongdoing. This instrumentalization of criminal law increases the exposure of engaged citizens to arrests, pretrial detention, and judicial intimidation. For example, in Madagascar, Ny Rina Randriamasinoro, Secretary-General of the opposition party Tiako I Madagasikara, was arrested in October 2023 during a political movement challenging the former president's candidacy and the electoral process; he was sentenced to 2 years suspended

⁸⁵ Centre d'actions pour le développement, "[*The fight against delinquency and crime must be carried out with respect for human rights*](#)", 6 June 2024.

⁸⁶ Erasing 76 Crimes, "[*Cameroon police arrest 13 in raid on pro-LGBTI organization that fights aids*](#)", 3 October 2024 ; and LGBTQ Nation, "[*Bullied, attacked and abused*](#)": *LGBTQ+ Cameroonians face a massive crackdown on their rights*", 7 March 2025.

imprisonment in December 2025⁸⁷. The threat of arrest thus becomes a tool of political control aimed at discouraging any form of dissent by making activism costly and risky.

B. Petty offences: a systemic cause of prison overcrowding

Since 2018, the ACHPR has considered the criminalisation of petty offenses to be contrary to Article 5 of the African Charter on Human and Peoples' Rights, which prohibits torture and cruel, inhuman, or degrading punishment or treatment, as “*their enforcement contributes to overcrowding in places of detention or imprisonment*”⁸⁸. Petty offenses lead to unjustified incarcerations, particularly when the accused lack the means to pay fines or access effective legal defense due to the absence of legal aid for this category of offences.

In this context, pretrial detention, intended to be an exceptional measure⁸⁹, has become the norm and often extends beyond the legal time limits due to multiple structural failures in the criminal justice system, such as court backlogs and slow procedures. These factors disproportionately affect individuals charged with petty offenses, who often lack sufficient resources to assert their rights. In Côte d’Ivoire, the legal limits for pretrial detention are set at 18 months for correctional matters and 24 months for criminal cases. Yet, as of August 30, 2024, individuals awaiting trial represented 48% of the prison population at the Abidjan penitentiary complex, 27% at the Bouaké prison and correctional center, 26% at Daloa, and 29% at San Pedro. The average duration of pretrial detention among abusive pretrial detention cases supported by ACAT Côte d’Ivoire was 4 years and 11 months.

The systematic use of pretrial detention for petty offenses not only contributes to the clogging of courts but also directly fuels prison overcrowding. Petty offenses constitute a structural entry point into detention, generating a constant and avoidable influx of detainees. Globally, they are a “*key factor in the increase in the number of people held in prisons worldwide, with an overall prison population growth of 24% since 2000.*”⁹⁰ According to data from ACAT Congo, the occupancy rate of Ouesso prison in Congo was 113% as of December 4, 2024, with 64% of its prison population held in pretrial detention.

In Madagascar, data shows a disproportionate use of pretrial detention against marginalized groups, particularly women and minors. As of April 4, 2025, women made up only 12% of the combined prison population in Ambalatavoahangy, Antanimora, Antsirabe, and Mahajanga. Yet, 63% of them were held in pretrial detention. The disparity is even more striking among minors: although they represented just 3% of the incarcerated population in these facilities, 85% were in pretrial detention. Qualitative analysis of cases monitored by ACAT Madagascar reveals that 44% of minors held in pretrial detention were charged with petty (misdemeanor-level) offenses, compared to 33% for all monitored cases. These figures highlight that pretrial detention for petty offenses does not impact the prison population evenly but disproportionately affects those who are already vulnerable.

⁸⁷ United States Department of State, [2023 Country Reports on Human Rights Practices: Madagascar](#), 23 May 2024.

⁸⁸ ACHPR, [Principles on the Declassification and Decriminalization of Petty Offences in Africa](#), 25 October 2018.

⁸⁹ [International Covenant on Civil and Political Rights](#), Article 9 para.3, 16 December 1966.

⁹⁰ Campaign to decriminalise poverty and status, [The Cap Declaration on decriminalising poverty and status](#), 2022.

C. Detention conditions even worse for vulnerable people

Since 2018, the ACHPR has considered prison overcrowding to be “*incompatible with the provision of physical conditions of detention that respect the dignity of detainees [...] and other safeguards to protect detainees from ill-treatment.*”⁹¹ In 2022, across Côte d’Ivoire’s 33 prisons, the average occupancy rate per three-square-meter cell, the minimum space below which the European Court of Human Rights (ECHR) considers that there is “*a strong presumption of a violation*” of the prohibition on inhuman or degrading treatment⁹², was 2,8%⁹³. FIACAT, ACAT Côte d’Ivoire, Prisonniers sans frontières, and La Balle aux prisonniers reported that this overcrowding, combined with decaying and unsanitary infrastructure (e.g., lack of lighting, heating, and ventilation) and limited access to hygiene products, created an environment ripe for the rapid spread of disease⁹⁴. For instance, cases of skin infections were recorded in 21 of the country’s prisons⁹⁵. In the Republic of Congo, by 2023, fewer than 5 of the 17 prison facilities had a functioning infirmary, and the medications prescribed by health workers often could not be administered due to inadequate pharmacy supplies⁹⁶. As a result, detainees are forced to wait months for necessary care or rely on assistance from family members, despite the obligation of States to provide adequate medical care, ensure hygiene standards, and guarantee minimum personal space for all detainees, in line with the Nelson Mandela Rules⁹⁷. In 1994, the UN Human Rights Committee affirmed that these minimum standards must be upheld “*regardless of a State party’s level of development*”⁹⁸. Although it does not apply to the states mentioned in this note, it is worth noting that in 2001, the ECHR ruled that detention conditions marked by “*overcrowding and inadequate facilities for heating, sanitation, sleeping arrangements, food, recreation, and contact with the outside world*”, when combined with a prolonged period of incarceration, amounted to degrading treatment⁹⁹.

Detention conditions are even more degrading for individuals in vulnerable situations. Those prosecuted for petty offenses often experience overlapping vulnerabilities, including economic hardship, social isolation, and discrimination based on gender, age, or sexual orientation. In Côte d’Ivoire, a 2022 report coordinated by the Centre for Research on Diplomacy, Public Administration and Politics (CERDAP²), along with FIACAT and ACAT Côte d’Ivoire, found that 70% of the incarcerated women and girls interviewed reported not receiving sanitary pads, and 67% said they received them in insufficient quantities¹⁰⁰. As a result, they were forced to rely on scraps of cloth or ask relatives to help meet their basic hygiene needs. Additionally, 57% of the girls reported not living with either of their parents, exacerbating their menstrual insecurity, and

⁹¹ ACHPR, [Principles on the Declassification and Decriminalization of Petty Offences in Africa](#), 25 October 2018.

⁹² ECHR, [Mursić v. Croatia](#), No.7334/13, para.124, 20 October 2016.

⁹³ FIACAT, ACAT Côte d’Ivoire, la Balle aux prisonniers et Prisonniers sans frontières, [Rapport alternatif à l’occasion de l’examen de la Côte d’Ivoire par le Comité contre la torture lors de sa 80^{ème} session](#), para. 25, 10 June 2024.

⁹⁴ *Op.cit.*, para. 26.

⁹⁵ *Ibidem*.

⁹⁶ FIACAT et ACAT Congo, [Rapport alternatif à l’occasion du 4^{ème} Examen périodique universel du Congo lors de la 45^{ème} session en janvier-février 2024](#), July 2023.

⁹⁷ General Assembly of the United Nations, [United Nations Standard Minimum Rules for the treatment of prisoners \(the Nelson Mandela Rules\)](#), A/RES/70/175, Rules 13, 24-35, et 42, 17 December 2015.

⁹⁸ Human Rights Committee of the United Nations, [Albert Womah Mukong c. Cameroon](#), CCPR/C/51/D/48/1991, para. 9.3., 1994.

⁹⁹ ECHR, [Dongoz c. Greece](#), application n°40907/98, para. 46-48, 6 March 2001.

¹⁰⁰ Fischer, Bénédicte. Grassy, Lionel. Kouadio, Paul. [Vivre l’enfer\(mement\). Regard sur la détention des femmes et des mineur.es en Côte d’Ivoire](#), CERDAP², p. 41, 2022.

40% of the illnesses they reported were related to menstrual disorders¹⁰¹. Vulnerable groups thus face a double punishment: first, the deprivation of liberty for petty offenses, and then, detention conditions that fail to meet their specific needs. Yet, the Bangkok Rules clearly state that “*the accommodations of women prisoners shall have facilities and materials required to meet women's specific hygiene needs, including sanitary towels provided free of charge*”¹⁰². Similarly, Article 14 of the Maputo Protocol requires that “*State parties shall ensure that the right to health of women, including sexual and reproductive health is respected and promoted*”¹⁰³.

Beyond the experience of detention itself, incarceration for petty offenses triggers a lasting cycle of social exclusion. The individuals affected, often from economically disadvantaged backgrounds, lacking formal employment and family support, suffer a complete rupture from their means of subsistence, support networks, and access to social services. Time spent in prison carries a strong social stigma, significantly reducing their chances of reintegration. As highlighted by the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa of ACHPR, petty offenses have far-reaching socio-economic consequences for vulnerable populations. These include “*health consequences from conditions of detention, and potential criminal records, which further entrench the marginalisation and burden of people living in poverty*”¹⁰⁴. The absence of appropriate reintegration programs in prisons, especially for individuals held in pretrial detention for petty offenses, leaves them on their own upon release, often without psychological, administrative, or professional support. In this regard, the UN Special Rapporteur on Extreme Poverty and Human Rights has stressed that the criminalisation of petty offenses “*diverts scarce public resources away from effective and evidence-based crime and violence prevention measures, increases the likelihood of reoffending (recidivism), and is a threat to public safety*”¹⁰⁵.

In conclusion, and in light of the arguments presented above, the undersigned organisations call on States to revise or repeal laws that criminalise petty offenses rooted in poverty, social status, or activism. They further recommend that an in-depth legal study be conducted to examine the connection between the criminalisation of petty offenses and the prohibition of torture and cruel, inhuman or degrading treatment or punishment.

¹⁰¹ *Op. cit.*, p. 28 et 58.

¹⁰² General Assembly of the United Nations, [United Nations Rules for the treatment of women prisoners and non-custodial measures for women offenders \(the Bangkok rules\)](#), A/RES/65/229, Rule 5, 21 December 2010.

¹⁰³ [Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa \(Maputo Protocol\)](#), 11 July 2003.

¹⁰⁴ ACHPR, [Principles on the Declassification and Decriminalization of Petty Offences in Africa](#), 25 October 2018.

¹⁰⁵ United Nations Human Rights Council, [Report of the Special Rapporteur on extreme poverty and human rights “Breaking the cycle: ending the criminalization of homelessness and poverty”](#), A/HRC/56/61/Add.3, para. 27, 26 June 2024.



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