

PENAL POLICY AND JUSTICE IN AFRICAN COUNTRIES: HISTORY AND MODERNITY

© 2025 L.M. Sadovskaya

SADOVSKAYA Lyubov Mikhailovna, PhD (History), Senior Research Fellow, Center for Sociological and Political Research, Institute for African Studies, Russian Academy of Sciences, Moscow, Russian Federation. ORCID: 0000-0002-3765-9736. E-mail: lubowsadowskaya@yandex.ru

Abstract. This article examines the social and political history of African prisons and the evolution of penal policy in African countries from the pre-colonial era (the slave trade of the 15th and 16th centuries) to the present. It analyzes the historical impact of colonization on the justice system and contemporary criminal investigation practices. Emphasis is placed on the traditional form of prison, which generally follows the principles of customary law but is limited to the civil and commercial spheres. Prison is viewed not only as a legal institution but also as an instrument of power, reflecting socioeconomic relations within the state, as well as the colonial and neocolonial legacy. The influence of Western development institutions on criminal and penal policy is demonstrated. Particular attention is paid to the interference of the International Criminal Court (ICC) in the justice systems of African states. In practice, the punitive model used by the ICC against African leaders has proven ineffective in resolving many problems, primarily related to political conflicts. The deterioration of relations between the African Union (AU) and the ICC accelerated the process of establishing an African Criminal Court with the goal of gaining autonomy and primacy over justice processes in Africa. The study shows that penal policies in African countries have been associated with the punishment and isolation of both criminal and political opponents, including through international jurisdiction. This, of course, represents a certain limitation of state sovereignty. It is no coincidence that for many states on the continent, the struggle for genuine sovereignty, including in the area of jurisdiction, is becoming a priority.

Keywords: Africa, justice, prison, penal policy, International Criminal Court, Malabo Protocol, African Criminal Court

Conflict of interest: The author declares that there is no conflict of interest.

DOI: 10.31132/2412-5717-2025-73-4-99-112

For citation: Sadovskaya L.M. (2025). Penal Policy and Justice in African Countries: History and Modernity. *Journal of the Institute for African Studies*. Vol. 11. № 4. Pp. 99–112. <https://doi.org/10.31132/2412-5717-2025-73-4-99-112>

INTRODUCTION

Prison is a fundamental element of the penal system throughout the world, one of the mechanisms of state domination. When studying the history of prisons in Africa, some researchers adopt a “diffusionist” perspective on the global development of

imprisonment. They posit that it is a Western “invention” that originated in Europe and the United States before spreading worldwide, including to Africa. This group of scholars [Bernault 1999; Deyon 1975; Rothman 1971] argues that imprisonment in Africa emerged alongside its colonization.

In Angola, for example, it is believed that the isolation in prisons first emerged in the late 15th century, alongside the establishment of Portuguese colonies. This typically affected Portuguese who were exiled, as well as black slaves who were held in custody. Initially, prisoners were housed in military fortresses. Later, “civilian” prisons began to emerge in cities, usually on the premises of a municipal palace or inside warehouses, where both white and black prisoners were held together [Bernault 1999: 84].

During the colonial era, prisons were modeled on prisoner-of-war camps and were purely repressive institutions that served the racial regime [Zinoman 2001: 16].

Another group of scholars who have studied the history of prisons in Africa find it problematic to view prisons as a Western “invention,” since much of this history remains unknown, especially in pre-colonial societies [Claustre 2007; Deslaurier 2019; Gibson 2011; Lusset 2017; Muchnik 2019].

JUSTICE IN AFRICA IN THE PRE-COLONIAL ERA

To gain a more complete understanding of the modern prison, it is important to explore the non-European roots of imprisonment in Africa, particularly its role in the penal or military practices of pre-colonial and colonial societies.

According to ancient chronicles and travelers’ accounts, empires and kingdoms in sub-Saharan Africa are known to have used separate rooms, as well as special pits or cages, to isolate political rivals. This practice was characteristic of many African societies with centralized power. In Ethiopia, for example, from the late 13th to the late 18th century, special prisons were created to imprison the sons, brothers, or nephews of emperors, thus preventing attempts to overthrow them and ensuring dynastic stability. The most famous of these, Geshen and Wani, were located on the tops of inaccessible mountains. Prisoners could spend their entire lives there, except when called to the throne. The same occurred in the kingdoms of Buganda and Dahomey [Deslaurier 2019]. This practice of exiling and imprisoning recalcitrant rulers continued during the colonial conquests at the turn of the 20th century.

As colonial empires expanded, the locations of imprisonment of potential claimants to the throne became increasingly remote. For example, Samori Touré, the founder of the Wassoulou Empire, ended his life on the island of N’Djole (Gabon) after being captured by the French army in 1898. Benhazine, the King of Dahomey, was initially exiled to Martinique in 1894 and then transported to Algeria, where he died. Several rebellious kings and sultans, along with their entourages, were deported by the British to the Seychelles. In Congo, a decree of “expulsion” was issued in 1889, authorizing the Belgian authorities to expel several leaders from their region, including the King of Rwanda in 1933 [Deslaurier 2019: 41].

It is worth noting that pre-colonial Africa had its own justice mechanisms for the rest of society, which varied significantly from those that existed in Europe. It is evident from research in the field of legal anthropology that, when resolving conflict, traditional African civilizations demonstrated a preference for restorative justice, based on compensation rather than retribution. Pretrial detention ended with the reconciliation of the parties rather than the punishment of the perpetrator, as local justice systems focused

primarily on the victim, not the perpetrator. This approach can be explained by animistic sanctity and the need of restoring harmony within the community [John-Nambo 2002: 327].

Punishment was imposed on the offender's tribe, except in cases where their kin had distanced themselves from them and expelled them from their clan. Corporal punishments that did not involve imprisonment included the amputation of a hand or what was termed the poison ordeal. Capital punishment was regarded as an extreme measure and reserved for criminals who posed a threat to the local communities, primarily repeat offenders and witches [Martineau 2016].

Despite the absence of "written law" in the pre-colonial period, when all knowledge was passed down orally from generation to generation, one cannot help but note the existence of oral codes such as the Manden Charter. It was a set of norms created in the Mali Empire and adopted in 1236 in Kurukan Fuga (Mali) [Zavyalova 2022]. The Charter is a reconstruction from epic sources, to which several Griots¹ from Guinea and Senegal contributed [Tatarovskaya 2024: 145]. It includes not only the rights of men and women but also those of animals and nature, thereby expanding the scope of law.

Over a long period of time, these oral codes were influenced by legal norms from other regions. This was primarily due to the influence of Islamic law, which had been spreading in North and West Africa since the 7th century. Many of its norms, as interpreted by the Maliki madhhab², coincided with the principles of customary law. However, the most significant influence on African justice came from the law of European states, which was introduced in the colonies beginning from the 19th century. Nevertheless, it did not entirely replace the traditional law that had been in force previously. As a result, a "dual legal system" emerged, which over time transformed into an even more complex 'hybrid system,' in which traditional legal norms remained (with very limited impact on the regulation of social relations) [Mupendana, Sapogov 2022, Entin 1966].

CUSTODY AND PUNISHMENT IN THE COLONIAL PERIOD

During the colonial period in Africa, local institutions associated with the legal order remained partially intact³. These institutions functioned provided that they did not conflict with the principles of justice of the metropolis, which introduced its own penal regulations in the colonies. For example, the decree of November 10, 1903, issued by the French Minister of Colonies, on the reorganization of the judicial service in the colonies

¹ A Griot is a professional keeper of historical knowledge and cultural traditions within the social caste system of West African countries [Tatarovskaya 2024].

² The Maliki school of thought is one of the four canonical schools of thought in Sunni Islam. It was founded by Imam Malik ibn Anas (717–801).

³ In Rwanda, for example, the traditional *Gacaca* courts, which derive their name from the Swahili word for "on the grass" in Swahili due to the fact that trials were held outdoors rather than indoors, have been preserved for centuries. In 2001, the Rwandan government proposed transferring cases involving accusations of murder, rape, and robbery during the Tutsi genocide (April–July 1994) to these traditional courts. This was due to the overburdened capacity of both the International Criminal Court for Rwanda and the Rwandan Criminal Court. From 2005 to 2012, a total of 12,103 traditional courts tried approximately two million people, one million of whom were found guilty. In 2012, the *Gacaca* courts ceased to exist due to serious criticism of judicial incompetence, a lack of impartiality in hearings, and corruption. For more information, see: Kuhn S. Justice à l'échelle locale: les tribunaux gacaca face au génocide des Tutsi rwandais (La). *EHNE*. 2022. <https://francegenocidetutsi.org/JusticeEchelleLocaleGacacaEhne2022.pdf> (accessed: 27.10.2025)

under the Governor-General of French West Africa (FWA), replaced corporal punishment with imprisonment and limited the jurisdictional powers of local chiefs by appointing their own administrators at the head of “native” courts⁴.

In the late 19th and early 20th centuries, African prisons were not just places for the victims of colonial rule but also symbols of racial inequality. European settlers and conquerors regarded Africans as subhuman beings, as savages, who were incapable of being “civilized.” This attitude was manifest in prisons as well, where white prisoners received better clothing, food, accommodation, and vocational training than black prisoners. Unlike European prisons, which gradually abandoned torture in the late 19th century, colonial prisons increasingly adopted this practice, using it as a means of suppressing the will of African peoples and enforcing racist dogmas [Sarkin 2008: 25].

This was made possible by the adoption by the French government in 1881 in Algeria of the Code of Indigenous Peoples (*Code de l'indigénat*). By 1887, its jurisdiction had already been extended to cover the entire French West Africa⁵. The document provided for a special administrative and criminal regime for the indigenous peoples living in this territory. It contained a list of 27 offenses by natives, punishable by various penalties, including fines, forced labor, requisition of property, and imprisonment. Furthermore, the governor had the right to intern any person suspected of threatening the security of the colonial state for a period of 10 years.

The Code of Indigenous Peoples, which remained in force until 1946, was an important legal instrument of colonial rule, symbolizing the differences between the indigenous population and the French colonizers.

As the colonial system consolidated, penalties for all forms of “native” resistance (political, fiscal, religious, ideological) became increasingly stringent, while the category of individuals subject to political imprisonment expanded. During the struggle for independence, when Africans challenged the colonial system, the colonial administration imposed even greater restrictions on their political activity.

A significant number of political leaders and trade unionists, such as Habib Bourguiba in Tunisia, Jomo Kenyatta in Kenya, Patrice Lumumba in the Belgian Congo, Robert Mugabe in Southern Rhodesia, Nelson Mandela in South Africa, and others, were imprisoned.

These targeted detentions were accompanied by mass arrests, particularly when the liberation struggle took on armed forms. In Algeria, Cameroon, Southern Rhodesia, and Kenya, thousands of combatants were detained and held in special camps established under emergency legislation [Deslaurier 2019].

THE POLICY OF CRIMINAL OPPRESSIVENESS IN POST-COLONIAL AFRICA

Colonial pressure on the opposition through penal coercion, combined with pre-colonial practices of social and physical extermination of competitors, persisted into the post-colonial period [Abramova 2023]. In the 1960s and 1970s, with the establishment of single-party regimes and the personalization of power in several African countries, political opponents were brutally persecuted. Accusations relating to alleged coup

⁴ Décret du 10 novembre 1903 portant réorganisation du service de la justice dans les colonies relevant du Gouvernement général de l'Afrique Occidentale, Po III 8° 997, 1903. *Légifrance*. <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000000299774> (accessed: 26.10.2025)

⁵ Code de l'indigénat. *Université Laval Québec*. https://www.axl.cefan.ulaval.ca/afrique/indigenat_code.htm (accessed: 26.10.2025)

attempts, undermining the internal or external state security, colluding with foreign powers, participating in armed groups, inciting rebellion or disrespecting the head of state were widely used.

Such prisoners were often tortured and executed in prison. During the reign of Malian President Moussa Traoré (1968–1991), who came to power after a military coup in November 1968, political prisoners were exiled to Taoudeni, a village located in one of the most inhospitable places in the Sahara Desert, 750 km north of the city of Timbuktu. Salt has long been mined there. Accused of plotting against the Traoré regime, prisoners there died from the unbearable conditions while working in the salt mines.

Among the prisoners buried there was Yoro Diakité (1932–1973), a Malian statesman and military leader (1968–1971), who was one of the main leaders of the 1968 coup that overthrew President Modiba Keita (1960–1968) [Vitukhina, Onuchko 2005: 74]. When M. Traoré came to power, Yoro Diakité became prime minister (1968–1969). After two years in this post, he was demoted on charges of conspiracy and sent to hard labor in Taoudeni. The death of Y. Diakité, who was subjected to brutal torture and abuse there for two years until his death in 1973, was described in the memoirs of the Malian writer Samba Gainé Sandara, “Ten Years in the Deadly Penal Servitude of Taoudeni” [Sangaré 2001].

It is also worth mentioning the Camp Boiro under Sékou Touré (1958–1984) in Guinea [Paravy 2008], the underground cells (“Swimming Pools”) under Hissène Habré (1982–1990) in Chad, the Moroccan penal colony of Tazmamart under Hassan II (1961–1999), or the “special” camp of Ruhengeri in Rwanda under J. Habyarimana (1973–1994). Many prominent individuals who criticized the dictatorial regimes of their countries were imprisoned in these places. In Guinea, for example, people were punished for “insulting the revolution,” while in Cameroon, endless administrative arrests were used to punish “subversive” actions. In 2019, Maurice Kamto, who had been Paul Biya’s opponent in the 2018 presidential elections, was arrested on these charges, as well as more than a hundred of his relatives.

It should be emphasized that the social and physical elimination of political opponents through imprisonment most often occurs during periods of institutional or electoral crises, civil wars, counterinsurgency, or terrorism [Le Marcis, Morelle 2022]. In such circumstances, prisoners are considered “political” because the reasons for their arrest—and their release—are politically motivated. Therefore, it is not surprising that the opposition typically demands the release of such individuals immediately after a regime change or electoral victory. This is implemented in the form of a pardon or amnesty.

Under Macky Sall, more than a thousand prisoners in Senegal were held in extremely harsh conditions. They were the victims of a series of arrests that began in 2021, following the detention of the main opposition leader, Ousmane Sonko⁶. Some of them spent more than two years in prison for criticizing Sall’s regime on social media, for participating in demonstrations against the government, and for membership in the main opposition party, the African Patriots of Senegal for Work, Ethics, and Fraternity (*Patriotes africains du Sénégal pour le travail, l'éthique et la fraternité*, PASTEF, the ruling party since 2024). Those arrested were all charged with disturbing public order,

⁶ Ousmane Sonko, the current Prime Minister of Senegal and the key figure in the two-year standoff with the government of M. Sall and the justice system, was imprisoned from July 2023 to March 2024. Having been declared a candidate for the 2024 presidential elections, he was disqualified by the Constitutional Council due to his criminal record. His supporters called on Senegalese to vote for his ally, Diomaye Faye, who, like Ousmane Sonko, was granted amnesty by M. Sall several days before the elections, before his sentencing.

actions threatening state security, and participating in unauthorized activities aimed at opposing M. Sall's re-election to a third term.

Following a wave of releases in the wake of the victory of opposition candidate Diomaye Bassirou Faye in the presidential elections of May 24, 2024, the state began paying financial assistance of €760 per person to former prisoners, many of whom were injured in clashes with police, beginning in January 2025. The families of each deceased person (of whom there were several dozen) were to receive €15,000. The total payment is expected to amount to €7.6 million⁷. The new government believes that former political prisoners and PASTEF supporters who have risen to its defense should receive the necessary financial support for their reintegration into normal life.

The new president of Senegal is leading the country's judicial reforms. The drafting of legislation on the Constitutional Court and constitutional revision is nearing completion. Key reforms include establishing an office of a "judge for liberties and detention" (juge des libertés et de la détention)⁸, and amending the criminal and criminal procedure codes, including those affecting criminal prosecution procedures. According to the head of state, these reforms will improve transparency and the effectiveness of the judiciary⁹.

TOWARDS A GLOBAL HISTORY OF IMPRISONMENT

Some legal scholars and historians argue that modern criminal justice systems are based on those of the colonial era [Mègret 2014, Martineau 2016]. In this regard, it is worth noting the activities of such an organization as the International Criminal Court (ICC), which officially began its work on July 1, 2002¹⁰, and until recently, dealt with crimes committed primarily in African countries. Because of its obvious focus on Africa, critics of the ICC accuse it of having a neocolonial agenda under the guise of combating impunity and protecting human rights¹¹. Some even call it a "globalist institution."¹² As of April 2024, of the 54 individuals indicted by the Court, 47 were citizens of African states¹³.

⁷ Cluzel C. Au Sénégal, les victimes de la repression sous Macky Sall en quête de justice et de vérité. *Le Point*. 20.03.2025. https://www.lepoint.fr/afrique/au-senegal-les-victimes-de-la-repression-sous-macky-sall-en-quete-de-justice-et-de-la-verite-20-03-2025-2585242_3826.php (accessed: 24.10.2025)

⁸ Judges for liberties and detention (juges des libertés et de la détention, JLD) are responsible for overseeing the restrictions over individuals' freedoms under the French penal procedure. The office was first created in France in 2000.

⁹ Gucye M. Sénégal : Bassirou Diomaye Faye promet une réforme de la justice. *LEBRIEF.MA/Afrique*. 17.01.2025. <https://www.lebrief.ma/afrique/senegal-bassirou-diomaye-faye-promet-une-reforme-de-la-justice-100053574> (accessed: 24.10.2025)

¹⁰ The International Criminal Court was established by the Rome Statute in 1998. As of 2024, 137 states had signed the treaty, but only 124 had ratified it. It entered into force on July 1, 2002. Although Russia and the United States signed the ICC Statute, they have not ratified it. In 2002, the United States, and in 2016, Russia withdrew their signatures from the treaty. Of the 33 African countries that have signed and ratified the ICC Statute, not all did so voluntarily. Some were pressured into signing in order to preserve loans from the IMF and other donors, such as the Soros Foundation [Mezyaev 2018: 23].

¹¹ Forson V. Cour pénale internationale: l'hémorragie africaine continue. *Le Point*. 26.10.2016. https://lepoint.fr/afrique-cour-penale-internationale-l-hemorragie-africaine-continue-26-10-2016-2078766_3826.php (accessed: 29.03.2025)

¹² Djerrad A. La Cour pénale internationale "est conçue pour l'Afrique et non pour l'Occident". *International Reporters*. 27.05.2024. <https://www.ir-press.ru/fr/2024/05/27/la-cour-penale-internationale-est-concue-pour-lafrique-et-non-pour-loccident> (accessed: 23.10.2025)

¹³ ICC: When and why was the International Criminal Court established? *RBC Radio*. 24.12.2024. (In Russ.). <https://www.rbc.ru/base/20/12/2024/676502209a79479214d0e00d> (accessed: 31.10.2025)

The first person to be prosecuted by the ICC prosecutor was Thomas Lubanga, a Congolese warlord who led the Union of Congolese Patriots, an ethnic *Hema* militia that actively participated in the war in the Ituri region of north-eastern DRC. The trial began in January 2009 and lasted until 2012¹⁴. The former warlord was sentenced to 14 years' imprisonment for recruiting children under the age of 15 and using them in combat¹⁵.

The ICC's March 2009 arrest warrant for the former President of Sudan (1993–2019), on charges of crimes against humanity, caused a major stir among African leaders. However, the Sudanese leader rejected the Court's decision, stating that it was "not even worth the ink it was written in."¹⁶ Many African states have expressed strong disapproval of the ICC's actions against Omar al-Bashir and have voiced their disagreement with its decision. Moreover, after the arrest warrant was issued, these states hosted the Sudanese president during his travels across the continent and even outside of the continent, including to Russia, Jordan and China¹⁷.

In an interview with the Sudan Tribune, the Rwandan President Paul Kagame stated that Africans would not comply with the ICC's recommendations to arrest Omar al-Bashir and transfer him to The Hague¹⁸. He accused the organization of "Afrocentrism."¹⁹ In 2013, Rwanda, along with Kenya and Uganda, organized protests against the ICC's prosecution of Kenyan politician and statesman Uhuru Kenyatta (2013–2022), who won the Kenyan presidential election after being indicted by the court.

That same year, the African Union (AU) made an appeal to the UN Security Council, urging the ICC to postpone cases against current African leaders and, most importantly, against U. Kenyatta, whom the Court had accused of crimes against humanity during the 2007–2008 political crisis. In December 2014, the charges against him were dropped due to a lack of evidence [Sadovskaya 2016: 21].

According to Guy Rossatanga-Rignault, a professor of public law in Libreville, Gabon, "these cases demonstrate the ease with which Western powers interfere in the justice system, calling into question the capacity of African states to determine themselves and decide their own destiny in the post-colonial era" [Rossatanga-Rignault 2013: 184].

One example is France's intervention in Côte d'Ivoire during the 2010–2011 electoral crisis. It culminated in the arrest of former President Laurent Gbagbo (2000–2011) by French special forces following his refusal to recognize the election results. On November 30, 2011, he was secretly transferred from an Ivorian prison in the north of the country to The Hague and handed over to the ICC. In 2013, his close associate, Charles Blé Goudé, who had previously headed the Young Patriots organization in Côte d'Ivoire, was detained in Ghana and handed over to the Ivorian authorities. In 2014, he was sent to

¹⁴ Lubanga was arrested in Kinshasa in March 2005 and transferred to the ICC in March 2006. He was then taken to The Hague, where he remained in pre-trial detention pending the Court's final decision. For more information, see: Background. International Justice Monitor. Thomas Lubango Dyilo. *International Justice Monitor*. <https://ijmonitor.org/thomas-lubanga-background/> (accessed: 25.10.2025)

¹⁵ Forson V. Cour pénale internationale: l'hémorragie africaine continue. *Le Point*. 26.10.2016. https://lepoint.fr/afrique-cour-penale-internationale-l-hemorragie-africaine-continue-26-10-2016-2078766_3826.php (accessed: 29.03.2025)

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Faivre A. La réconciliation est-elle possible entre l'Afrique et la Cour pénale internationale? *Le Point*. 21.01.2019. https://www.lepoint.fr/afrique/la-reconciliation-est-elle-possible-entre-l-afrique-et-la-cour-penale-internationale-21-01-2019-2287553_3826_php (accessed: 04.03.2025)

The Hague to undergo judicial proceedings. His deportation process resembled a colonial operation. In 2019, the ICC issued a decision to pardon Gbagbo and Blé Goudé due to a lack of sufficient evidence of their guilt in crimes against humanity, but they were not granted amnesty by President A. Ouattara²⁰.

Other African leaders indicted by the ICC include Muammar Gaddafi, the former leader of the People's Libyan Arab Jamahiriya (1969–2011), his son, Saif al-Islam, Abdullah al-Senussi, the former head of Libya's intelligence service, and Jean-Pierre Bemba, the former Vice President of the DRC (2003–2006).

The ICC's actions against African presidents, former presidents, and other high-ranking officials have caused most African leaders to lose faith in this international organization, viewing it as a political instrument of Western domination [Gbadi, Akafomo 2018]. It is worth noting that the ICC is conceptually built exclusively on the Western model of repressive (punitive) justice, while the traditional African court is guided by the principles of restorative (reconciliatory) justice.

Beginning in 2013, the African Union began to issue resolutions calling on states on the continent not to cooperate with the ICC and ultimately to withdraw collectively from the 1998 Rome Statute of the ICC, citing the court's selective prosecution of Africans [Vilmer 2014:7]. According to a prominent Russian scholar in African Studies, A.B. Mezyaev, "For twenty years, the entire activity of the International Criminal Court has been focused exclusively on Africa: it is here that the global elite is developing a new global law <...> The International Criminal Court has become the first major institution of a new global project—global law. The goal of this project is to eliminate international law created by states and replace it with judicial decisions."²¹

In December 2017, the Republic of Burundi became the first African country to pass a law to withdraw from the Rome Statute of the ICC. However, not all states supported the idea. States such as Botswana, Côte d'Ivoire, Nigeria, Malawi, Senegal, Zambia, and Sierra Leone stated that they would not withdraw [Mezyaev 2018: 25]. At the AU summit in January 2017, Liberia, Tunisia, and Tanzania expressed concerns about leaving the ICC, while West African countries generally formed a bloc of states supporting the organization, unwilling to lose loans from the IMF or other donors.

Therefore, at this stage, the efforts of individual countries (South Africa, Uganda, Kenya, Rwanda, and several others) to withdraw from the ICC have proven unsuccessful. While the AU has decided not to cooperate with the ICC, African states continue to refer cases to The Hague²², as noted by Drissa Traoré, Vice President of the International Federation for Human Rights. This has happened after elections in Mali in 2012, the Central African Republic in 2014, and Gabon in 2016. This has enabled the ICC to initiate legal proceedings against individuals transferred to it by these states.

Nevertheless, there has long been a latent political confrontation over criminal jurisdiction between African countries and the International Criminal Court. The ICC's relationship with African countries underscores the legitimacy crisis of Western-centric

²⁰ For this reason, two months before the presidential elections in October 2025, the Constitutional Court of Côte d'Ivoire rejected L. Gbagbo's candidacy.

²¹ Mezyaev A. The International Criminal Court Twenty Years Later. *Strategic Culture Foundation*. 16.07.2018. (In Russ.). <https://www.fondsk.ru/news/2018/07/16/mezhdunarodnyj-ugolovnyj-sud-dvadcat-let-spustja.html> (accessed: 22.10.2025)

²² Faivre A. La réconciliation est-elle possible entre l'Afrique et la Cour pénale internationale? *Le Point*. 21.01.2019. https://www.lepoint.fr/afrique/la-reconciliation-est-elle-possible-entre-l-afrique-et-la-cour-penale-internationale-21-01-2019-2287553_3826_php (accessed: 04.03.2025)

institutions, which are increasingly finding it difficult to claim global status [Degterev 2024: 42].

It is evident that this organization is financially dependent on the West. Its budget, which exceeds \$150 million annually, is constantly supported by sponsors such as the Soros Foundation. Therefore, it is evident that the ICC is obligated to justify its work and prove its loyalty to the West by declining to initiate legal proceedings against individuals from NATO member states²³.

TOWARDS THE ESTABLISHMENT OF AN AFRICAN CRIMINAL COURT

Since 2013, the preconditions for establishing a future African Court on Human Rights with criminal jurisdiction have emerged. This was entirely justified, as crimes against procedural and substantive criminal law are already being extensively dealt with by the African Court on Human and Peoples' Rights, the principal judicial body of the African Union²⁴. It is evident that this constitutes a compelling argument in favor of establishing an African Court on Human and Peoples' Rights, whose jurisdiction would also extend to international crimes falling under international criminal law [Frédéric, Dzessa 2022].

The deterioration of relations between the AU and the ICC accelerated the process of establishing an African Criminal Court. On July 27, 2014, at the AU Heads of State Summit held in Malabo, Equatorial Guinea, a document amending the Protocol on the Statute of the African Court on Human and Peoples' Rights (AfCHPR), commonly known as the Malabo Protocol²⁵, was adopted. This decision was precipitated by the necessity to expand the ACHR's jurisdiction to include the Criminal Chamber for International Crimes.

In addition to the four core crimes (genocide, crimes against humanity, war crimes, and aggression) set out in the Rome Statute of the International Criminal Court, the Protocol includes 10 additional crimes (Article 28A), including unconstitutional change of power, piracy, terrorism, and corruption. The Protocol also introduces corporate criminal liability (Article 46C), alongside the individual criminal responsibility (Article 46B) in international criminal law²⁶. However, it also includes a provision that no charges shall be commenced or continued before the Court against any serving AU Head of State or Government, or anybody acting or entitled to act in such capacity, or other senior state officials based on their functions, during their tenure of office (Article 46A bis²⁷).

The Malabo Protocol is ambitious, largely due to the support of the Pan African Lawyers Union (PALU), which unites national bar associations and individual lawyers

²³ Djerrad A. La Cour pénale internationale "est conçue pour l'Afrique et non pour l'Occident". *International Reporters*. 27.05.2024. <https://www.ir-press.ru/fr/2024/05/27/la-cour-penale-internationale-est-concue-pour-lafrique-et-non-pour-loccident/> (accessed: 23.10.2025)

²⁴ The African Court on Human and Peoples' Rights is a continental jurisdiction established by African states to ensure the protection of human and peoples' rights in Africa. It began operating in Addis Ababa in November 2006 before moving to Arusha, Tanzania, in 2007. The Court's jurisdiction extends to violations of the African Charter on Human and Peoples' Rights, adopted in Addis Ababa in 1990, and the Protocol on the Rights of Women, signed in Maputo in 2003.

²⁵ Seeking Justice or Shielding Suspects? An analysis of the Protocol on the African Court. *KPTJ*. 2016. <https://kptj.africog.org/wp-content/uploads/2016/11/Malabo-Report.pdf> (accessed: 10.11.2025)

²⁶ Ibid.

²⁷ Ibid.

from over 50 African countries²⁸. Its adoption signaled Africa's commitment to autonomy and sovereignty in justice-related matters. However, it is important to note that despite its adoption over a decade ago, the Protocol has yet to enter into force [Barigayomwe, Prevost 2022]. This is due to the stipulations outlined in Article 11, which state that the agreement enters into force 30 days after the deposit of instruments of ratification by 15 AfCHPR member states²⁹. According to the latest available data, 15 states (Angola, Benin, Chad, Comoros, Equatorial Guinea, Ghana, Guinea-Bissau, Guinea, Kenya, Mozambique, Mauritania, Sierra Leone, São Tomé and Príncipe, Togo, and Uganda) have already signed the Protocol, and Angola has ratified it.

CONFLICT OF INTEREST IN THE CONTEXT OF GLOBALIZED PUNITIVE PROCESSES

One example of colonial criminal justice in Africa is the secret prison established by France in Gao, Mali, known as “Château.” The Gao camp, the main French military base in Mali, was formally under the joint control of French forces implementing Operation Barkhane, the UN peacekeeping force (MINUSMA), and the Malian armed forces (FAMA)³⁰.

In February 2021, Pierre Alonso, a French journalist, was the first to publicize the existence of a secret prison and the details of the Malian jihadist suspects held there³¹. Another French journalist, Rémi Carayol, conducted a more detailed investigation into the Gao prison and published the book “*Le mirage sahélien - La France en guerre en Afrique. Serval, Barkhane et après?*” in 2023. One chapter of the book is dedicated to this prison, which held an unknown number of jihadist suspects.

This secret detention facility was located within the grounds of the airport in Gao, one of the major cities in northern Mali. The French army was based in the eastern part, while Malian troops occupied the western half. The prison itself was located in the center of a labyrinth of tents and prefabricated buildings. The French had transformed the airport into an impenetrable fortress. It is noteworthy that this facility was not officially listed in any directory or publication. According to the French journalist Mickaël Pauron, author of the book “*Les ambassades de la Françafrique: L'héritage colonial de la diplomatie française*” [Pauron 2022], this secrecy can be explained by the fact that not only the French military contingent participating in Operation Barkhane but also radical Islamist groups and even Tuareg tribes (through whom the French military identified jihadists during interrogations) were all involved in the illegal uranium business in Mali [Ouffene, Biard 2025]. It was the French military bases in Africa that served as the strongholds of this illegal network.

Those arrested by the French soldiers were held in harsh conditions for days or even weeks. French intelligence officers interrogated them day and night. The prisoners were

²⁸ Pan African Lawyers Union (PALU). *Expert dictionary*. (In Russ.). <https://sl.ceur.ru/dictionary/pan-african-lawyers-union-palu-pan-afrikanskij-soyuz-yuristov/> (accessed: 22.10.2025)

²⁹ Seeking Justice or Shielding Suspects? An analysis of the Protocol on the African Court. *KPTJ*. 2016. <https://kptj.africog.org/wp-content/uploads/2016/11/Malabo-Report.pdf> (accessed: 10.11.2025)

³⁰ On January 11, 2013, French forces intervened militarily in Mali under the pretext of halting the advance of Islamic terrorist groups into the center of the country. In August 2014, Operation Serval was renamed Operation Barkhane and expanded to four other Sahel countries—Mauritania, Burkina Faso, Niger, and Chad—an area of particular interest to France.

³¹ Pauron M. La prison secrète du Barkhane. *Afrique XXI. Libération*. 21.02.2021. <https://afriquexxi.info/La-prison-secrete-de-Barkhane> (accessed: 22.10.2025)

kept in complete isolation, in cells with no windows, light, table, chair, shower, or toilet. There was only a mattress on the floor. Access to the prisoners was restricted to a select few soldiers; telephone communications were systematically jammed. After interrogation, the prisoners could be handed over to Malian security forces or simply released without any notice.

According to the Status of Forces Agreement (SOFA), France has committed to ensuring the safety and security of prisoners at the secret prison, in line with international humanitarian law. In turn, the Malian government has also assumed responsibility for the safety and security of individuals transferred to it by France³².

Although this agreement obligated France to continue monitoring the fate of prisoners handed over to the Malians, this condition was not observed, and prisoners often simply disappeared. Civil activists referred to this as a “black hole.” They raised questions about the use of torture in this center, which was outside Malian control. As for the French military command of Operation Barkhane, it did not respond to their inquiries.

Following the deterioration of relations between Mali and France in 2021 and, in particular, Paris’s harsh criticism of the Malian authorities for refusing to hold presidential elections in 2022, Mali terminated its defense agreement with France. In turn, Mali’s transitional government accused France of supporting terrorists. The command of the Gao operational platform has now been transferred to the Malian armed forces, currently operating jointly with Russian security forces.

Following the departure of the French military from Mali, horrific crimes committed against the local population gradually came to light. Gao prison embodied the former colonial power’s new methods of control and punishment, as well as its desire to maintain neocolonial policies by inciting conflict and transferring power to leaders under its control.

CONCLUSION

As with other parts of the colonized world, Africa long served as a laboratory for European prison technologies, where colonial administrators experimented with new forms of social and physical control and punishment, free from the ethical and legal constraints that might have been encountered in Europe. The European legal system categorized Africans not as subjects or citizens but as something less significant than humans.

The colonial and neocolonial legacy inevitably leaves its mark on African prisons, which, as elsewhere in the world, reflect the country’s internal socioeconomic relations and political climate. It is worth noting that there have been recent shifts in the African prison policy. These shifts are primarily aimed at implementing international standards in the penitentiary sphere, such as improving conditions, reducing the prison population, and using alternative forms of punishment, both custodial and non-custodial (house arrest, bail, suspended sentences or postponement of execution of punishment, community service, etc.).

It’s worth noting that global geopolitical transformation has inevitably impacted the penitentiary policies of African states, which continue to struggle for genuine sovereignty in criminal jurisdiction. This involves expanding the authority of the African Court on Human and Peoples’ Rights to cover international crimes committed on the African

³² Ibid.

continent. Unfortunately, the absence of consensus among African countries on this issue has impeded the establishment of an African Criminal Court. This requires willpower, mental decolonization, and time.

REFERENCES

- Abramova I.O. (Ed.). (2023). *Africa: Colonizers' Unpaid Debt*. Moscow: Institute for African Studies.
- Barigayomwe R., Prevost G. (2022). The Malabo Protocol: A Panacea for Crimes Prevention in Africa? *East African Journal of Law and Ethics*. Vol. 5. №. 1. Pp. 25–34. <https://doi.org/10.37284/eajle.5.1.825>
- Bernault F. (Ed.). (1999). *Enfermement, prison et châtements en Afrique. Du 19th siècle à nos jours*. Paris: Karthala. <https://doi.org/10.3917/kart.bern.1999.01>
- Carayol R. (2023). *Le mirage sahélien. La France en guerre en Afrique: Serval, Barkhane et après?* Paris: La Découverte.
- Claustre J. (2007). *Dans les geôles du roi. L'emprisonnement pour dette à Paris à la fin du Moyen Âge*. Paris: Publications de la Sorbonne.
- Degterev D.A. (2024). Re-Sovereignising Africa in the context of the New World Order Formation. *Journal of the Institute for African Studies*. № 4. Pp. 29–48. <https://doi.org/10.31132/2412-5717-2024-69-4-29-48>
- Deslaurier C. (2019). Penser la prison politique en Afrique. *Politique Africaine*. № 3 (155). Pp. 25–54. <https://doi.org/10.3917/polaf.155.0025>
- Deyon P. (1975). *Le temps des prisons: essai sur l'histoire de la délinquance et des origines du système pénitencier*. Villeneuve-d'Ascq: Université de Lille.
- Entin L.M. (1966). *National Statehood of the Peoples of West Africa*. Moscow: Nauka. (In Russ.)
- Frédéric S., Dzessa M. (2022). Le droit pénal dans le système africain de protection des droits humains. *ADILAAKU. Droit, politique et société en Afrique*. Vol. 2. № 1. Pp. 161–180. <https://doi.org/10.46711/adilaaku.2022.2.1.7>
- Gbadi E.A., Akafomo S. (2018). *Cour pénale internationale et Union africaine dans la lutte contre l'impunité. Expérience sur le Soudan et le Kenya*. Paris: L'Harmattan.
- Gibson M. (2011). Global Perspectives of the Birth of the Prison. *The American Historical Review*. Vol. 116. № 4. Pp. 1040–1063. <https://doi.org/10.1086/ahr.116.4.1040>
- John-Nambo J. (2002). Quelques héritages de la Justice coloniale en Afrique noire. *Droit et société*. № 2(51–52). Pp. 325–344. <https://doi.org/10.3917/drs.051.0325>
- Le Marcis F., Morelle M. (Eds.). (2022). *L'Afrique en prison*. Lyon: ENS Édition.
- Lusset E. (2017). *Crime, châtement et grâce dans les monastères au Moyen Âge (XII–XV siècle)*. Turnhout: Brepols.
- Martineau A.-C. (2016). La justice pénale internationale, l'Afrique et le refoulé colonial. *Champ pénale*. Vol. XIII. <https://doi.org/10.4000/champpenal.9300>
- Mègret F. (2014). Cour pénale internationale et néocolonialisme: au-delà des évidences. *Études internationales*. Vol. 45. № 1. Pp. 27–50. <https://doi.org/10.7202/1025115ar>
- Mezyaev A.B. (2018). Africa and International Criminal Court: Strategies of Withdrawal. *Asia and Africa Today*. № 5. Pp. 22–27. (In Russ.)
- Muchnik N. (2019). *Les prisons de la foi. L'enfermement des minorités (XVI–XVIII siècles)*. Paris: Presses Universitaires de France.
- Mupendana P.K., Sapogov V.M. (2022). Post-Colonial Law and State Trends and Challenges in Africa. *Bulletin of Moscow Region State University. Series: Jurisprudence*. № 2. Pp. 15–24. (In Russ.). <https://doi.org/10.18384/2310-6794-2022-2-15-24>
- Ouffene E.A., Biard J. (2025). *Iyad Ag Aghaly. Un traître au cœur du Sahel*. Paris: L'Harmattan.
- Paravy F. (2008). Récits du camp Boiro: du témoignage à l'écriture de l'Histoire. *Études littéraires africaines*. № 26. Pp. 34–41. <https://doi.org/10.7202/1035121ar>
- Pauron M. (2022). *Les Ambassades de la Françafrique: l'héritage colonial de la diplomatie française*. Paris: Éditions Lux.
- Rossatanga-Rignault G. (2013). La Cour pénale internationale et l'Afrique 10 ans après: des pêchés et quelques voies de salut. *Cours nouveau. Revue africaine de stratégie et de perspectives*. № 9–10. Pp. 181–200.

- Rothman D.J. (1971). *The Discovery of the Asylum: Social Order and Disorder in the New Republic*. Boston: Little, Brown and Company.
- Sadovskaya L.M. (2016). Côte d'Ivoire: Metamorphoses of Political Power. *Asia and Africa Today*. № 9. Pp. 19–26. (In Russ.)
- Sangaré S.G. (2001). *Dix ans aux bagnes-mouroir de Taoudenit*. Bamako: Librairie Traoré.
- Sarkin J. (2008). Prisons in Africa: An Evaluation from a Human Rights Perspective. *SUR – Revista Internacional de Direitos Humanos*. Vol. 5. № 9. Pp. 22–49.
- Tatarovskaya I.G. (2024). Adaptation of the Griot Caste in the Post-Colonial Society of West Africa. *Journal of the Institute for African Studies*. № 3. Pp. 142–154. <https://doi.org/10.31132/2412-5717-2024-68-3-142-154>
- Vilmer J.-B.J. (2014). Introduction: Union africaine versus Cour pénale internationale: répondre aux objections et sortir de la Crise. *Études internationales*. Vol. 45. № 1. Pp. 5–26. <https://doi.org/10.7202/1025114ar>
- Vitukhina G.O., Onuchko V.G. (2005). *The Republic of Mali. Handbook*. Moscow: Vostochnaya Literatura. (In Russ.)
- Zavyalova O.Yu. (2022). The Neo-traditionalism of the Manden Charter. *Vestnik of Saint Petersburg University. Asian and African Studies*. Vol. 14. № 2. Pp. 193–210. (In Russ.). <https://doi.org/10.21638/spbu13.2022.203>
- Zinoman P. (2001). *The Colonial Bastille: A History of Imprisonment in Vietnam, 1862–1940*. Berkeley: University of California Press.

Научная статья

ПЕНИТЕНЦИАРНАЯ ПОЛИТИКА И ПРАВОСУДИЕ В СТРАНАХ АФРИКИ: ИСТОРИЯ И СОВРЕМЕННОСТЬ

© 2025 Л.М. Садовская

САДОВСКАЯ Любовь Михайловна, кандидат исторических наук, старший научный сотрудник, Центр социологических и политологических исследований, Институт Африки РАН, Москва, Российская Федерация. ORCID: 0000-0002-3765-9736; E-mail: lubowsadowskaya@yandex.ru

Аннотация. В данной статье исследуется социальная и политическая история африканских тюрем, эволюция пенитенциарной политики африканских стран, начиная с доколониальной эпохи (захвата рабов в XV–XVI вв.) до настоящего времени. Анализируется историческое влияние колонизации на систему правосудия и современную практику уголовного расследования. Делается акцент на ее традиционной форме, которая в целом следует принципам обычного права, но ограничивается гражданской и коммерческой сферами. Тюрьма рассматривается не только как юридический институт, но и как инструмент власти, являющийся отражением социально-экономических отношений внутри государства, а также колониального и неоколониального наследия. Показано влияние западных институтов развития на уголовную и пенитенциарную политику. Особое внимание уделяется вмешательству Международного уголовного суда (МУС) в систему правосудия африканских государств. На практике карательная модель, используемая МУС в отношении африканских лидеров, оказалась несостоятельной для урегулирования многих проблем, связанных с политическими конфликтами. Ухудшение отношений между Африканским союзом (АС) и МУС ускорило процесс создания Африканского уголовного суда с целью получения автономии и главенства над процессами правосудия в Африке. Проведенное исследование показывает, что пенитенциарная политика в странах Африки была сопряжена с наказанием и изоляцией как уголовных, так и политических оппонентов, в том числе и с помощью международной юрисдикции. А это, безусловно, является ограничением государственного суверенитета. Неслучайно для многих государств

континента борьба за подлинный суверенитет, в том числе и в области права, выходит на передний план.

Ключевые слова: Африка, правосудие, тюрьма, пенитенциарная политика, Международный уголовный суд, Протокол Малабо, Африканский уголовный суд

Конфликт интересов: автор заявляет об отсутствии конфликта интересов.

DOI: 10.31132/2412-5717-2025-73-4-99-112

Для цитирования: Садовская Л.М. Пенитенциарная политика и правосудие в странах Африки: история и современность. *Ученые записки Института Африки РАН*. 2025. Т. 11. № 4. С. 99–112. <https://doi.org/10.31132/2412-5717-2025-73-4-99-112>