



DECRIMINALISING &  
DECLASSIFYING  
**PETTY**  
OFFENCES  
IN GHANA

A RESEARCH REPORT



OSIWA



Commonwealth Human Rights Initiative

## Commonwealth Human Rights Initiative

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## Foreword

The criminal justice system of the post-modern State is the fulcrum around which the protective function of the government is performed. To this end, both the substantive and procedural aspects of criminal law have been harnessed and continually modified to safeguard the life, liberty and property of the citizenry in a global village beset with new and complex human security challenges. The process of defining conduct as criminal thrusts the justice system into seeking a balance between societal abhorrence of crimes and the protection of individual liberties.

One area in which this balance has sought to be struck is the vexed question of petty offences. The evolution of post-colonial criminal justice systems in Africa, and particularly in Ghana, has identified certain acts such as loitering, vagrancy, nuisances, among others as petty offences and have been punished as such throughout the history of these systems. In most of the colonising nations – from where these offences were inherited – there has been a conceptual shift in punitive criminal justice to a more human rights-based reformatory criminal justice paradigm which decriminalises or declassifies petty offences. This is borne out of research, practice and experience which has demonstrated the disproportionate effect of petty offences on the poor and vulnerable. In addition, a number of violations of due process rights have been associated with the way petty offences are handled by some law enforcement officers.

To stimulate the discourse on the decriminalisation and declassification of petty offences, the Africa Regional Office of the Commonwealth Human Rights Initiative (CHRI) undertook this seminal and pioneering research on the phenomenon in Ghana. This report synthesises months of desktop and field research to illuminate the situation of petty offences and their treatment in Ghana's criminal justice system. Being the first of its kind, it is hoped that the report will agitate the minds of key justice sector institutions and Parliament to begin the process of reviewing and amending the Criminal Offences Act, 1960 (Act 29) and other laws bordering on crime, culminating in a criminal justice system that does not compromise on its core function of protection but also stems the tide of abuse and exploitation through the law.

### **Sam Okudzeto**

Chairman, Executive Committee  
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## Executive Summary

Petty offences have existed as part of the criminal law of England and were incorporated in the laws of Ghana following its colonisation. Modern trends in governance, human rights and the rule of law have triggered reforms in the criminal law of a number of countries. Law reform towards decriminalisation of petty offences has also been influenced by the disproportionate impact of the enforcement of such laws on the poor, disadvantaged and marginalised sections of the society. While the ills of the criminal justice system are well-documented in various studies and reports, there is no specific research conducted on the treatment of petty offences in Ghana's criminal justice discourse.

The influence of the British Common Law tradition on Ghana's criminal justice system had laid heavily in ensuring a rather comprehensive codification of offences in the Criminal Offences Act, 1960 (Act 29) and other laws providing for offences. While there have been efforts in the United Kingdom to decriminalise certain acts, which appear to be minor infractions of a criminal nature, Ghana has not followed suit in identifying petty offences and decriminalising or declassifying them where necessary.

It is against this background that CHRI with support from Open Society Initiative for West Africa (OSIWA) embarked on this research project to provide preliminary evidence in this uncharted area of the criminal justice system in Ghana to contribute to the ongoing efforts at reforms in the system. This would enhance and encourage the use of a more informed and holistic approach to reforming the system, rather than a skewed approach focusing largely on trial and post-trial processes and outcomes.

This study shows that there is no clear definition of what constitutes a 'petty offence' in Ghana although the results show that there are indeed offences that fall into this category. While the convention delineation of offences into misdemeanours, felonies and serious offences exists in Ghana, misdemeanours (which constitute the least serious category) are not always petty offences. Indeed, there are efforts to make some of them even more serious offences, for example, corruption. The legislative trend also appears to be towards increasing the gravity of offences, rather than to lessening. Thus, the conclusion may be reached that Ghana's legal system is yet to fully engage with the concept and practice of decriminalisation and/or declassification of petty offences.

The results from the data gathered point to a need for decriminalisation or declassification of certain offences. Key informants identify offences, such as petty stealing, fighting, etc as worthy of decriminalisation for reasons among which are the placing of undue pressure on the criminal justice system, such offences affecting the poor and vulnerable and providing the opportunity for law enforcement agencies to violate the basic rights of suspects. Persons who are arrested for petty offences do not always enjoy full legal protection afforded by the respect for due process rights in these circumstances. The study therefore makes the following recommendations:



1. Nuisance offences should be decriminalised to make them tortious liability or be made statutory offences such that they are handled by the local government institutions.
2. Alternative sanctions to imprisonment such as probation, rehabilitation, and fines should be used.
3. Where decriminalisation is not possible, it is recommended that the offence in question is declassified and operable within the scope of Bye-laws passed by Metropolitan, Municipal and District Assemblies (MMDAs).
4. Government should implementation a range of non-custodial sentencing measures as punishments for minor offences and restrict traditional custodial sentences to punishing more serious crimes.
5. Law enforcement agencies should be trained on international protocols like the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the African Charter on Human and Peoples' Rights, the African Charter on the Rights and Welfare of the Child and other soft law sources including the Fair Trial Principles in Africa.

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## List of Abbreviations

<b>Abbreviation</b>	<b>Description</b>
MMDA	Metropolitan, Municipal and District Assembly
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ACHPR	African Charter on Human and Peoples' Rights
PRWA	Protocol on the Rights of Women in Africa
ACRWC	African Charter on the Rights and Welfare of the Child
UDHR	Universal Declaration of Human Rights

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## Chapter 1

## Introduction

It is trite learning that criminal law performs a vital function of social control in most or all societies. The forte of the criminal law in performing this function lies in the definition of conduct that is deemed criminal, prescription of penal consequences and the authority of the State to mete out the prescribed punishment, often through the judiciary.<sup>1</sup> Which conduct is defined as a crime is primarily informed by the moral code of the society and/or the demands of social expediency, and the efficient functioning or ordering of the society.<sup>2</sup> The element of penal consequences requires the imposition of some unpleasant result on the offender by the person or authority vested with the power to inflict such punishment. The authority to adjudicate acts as criminal and mete out punishment is often the preserve of the judiciary in the modern state or to a lesser extent, public bodies, law enforcement agencies and other institutions mandated by law to enforce the criminal or quasi-criminal legislation of the State.

As a tool for social control, crimes serve as a barometer for society's level of abhorrence for a particular conduct. In this regard, crimes are also classified into serious or felonious on the one hand and minor crimes or misdemeanours on the other, the distinction being principally informed by the gravity of punishment attached to the offence and in some cases the mode of trial.<sup>3</sup>

Petty offences have existed as part of the criminal law of England and were incorporated in the laws of Ghana following its colonisation. As a result of the imbibition, Ghana adopted the Common Law legal tradition and its legal system.<sup>4</sup> The common law of Ghana has therefore come to include the English common law received by virtue of the Supreme Court Ordinance of 1876, the doctrines of equity and customary law.<sup>5</sup> Petty offences such as those criminalising acts bordering on morality and public decency (prostitution, obscenity, public indecency, habitual drunkenness, loitering, and unruly conduct), thus found their way into the Criminal Offences Act of Ghana. It is also important to note that the introduction of the English court system eroded the criminal jurisdiction of the traditional courts. Certain offences which were held to be serious at custom, such as playing a drum to insult or annoy one's neighbour or behaving irreverently at a funeral or at the burial of a corpse, were incorporated into the Criminal Offences Act (then

1. <sup>1</sup>Proprietary Articles Trade Association v Attorney-General for Canada [1931] AC 310 per Lord Atkin. See also Re: Clifford and O'Sullivan (1921) 2 AC 570 at 580 (HL) per Viscount Cave. See further, P.K. Twumasi, *Criminal Law in Ghana* (1983) p 6.
2. <sup>2</sup>Crimes usually defined from a moral perspective are considered acts *mala in se* (wrong in themselves) and crimes defined for the sake of social expediency are acts *mala prohibita* (wrong by virtue of the law). On this, see HJAN Mensa-Bonsu, *The General Part of Criminal Law Vol 1* (2001) p 28.
3. <sup>3</sup>See P.K. Twumasi (fn 1 above) chpt. 4; D Ormerod, *Smith and Hogan's Criminal Law* 13<sup>th</sup> Ed (2011) p 32 – 34.
4. <sup>4</sup>E.K. Quansah, *The Ghana Legal System* (2011)
5. <sup>5</sup>1992 Constitution, art 11; E. K. Quansah (2011) p 148. See further, G.K. Acquah, 'Customary Offences and the Courts' [1991-92] Vol. XVIII *Review of Ghana Law* p 36 – 67.

the Criminal Code) and made petty offences.<sup>6</sup>The pettiness of an offence is more determined by the severity of the sanction for breach than the designation seeing that corruption remains a misdemeanour and yet now attracts a punishment of up to 25 years. Corruption, in the circumstance will not be a petty offence even though it is described as a misdemeanour. These will include conduct outlawed by bye-laws of the various MMDAs.

With the advancement in modern societies, the sophistication of human life and development of the law in terms of governance, human rights and the rule of law have triggered reforms in the criminal law of a number of countries, notably the United Kingdom, Mozambique, France. State obligations arising from international and regional human rights standards, constitutional bills of rights and statutes have had an impact on the criminalisation of conduct and the penalties attached thereto. Thus, conduct that amounts to petty or minor offences have been decriminalised. This process has also been matched with variations in the prosecution of such offences which de-emphasise the involvement of the traditional criminal justice system. Punishment for such offences, which previously entailed prison terms and fines have also been reviewed to alternative sentences such as community service.

Law reform towards decriminalisation of petty offences has also been influenced by the disproportionate impact of the enforcement of such laws on the poor, disadvantaged and marginalised sections of the society.<sup>7</sup>Thus laws criminalising vagrancy, loitering, prostitution, and like offences are often applied to the indigent, women, children, persons with disability, other vulnerable persons and persons discriminated against on grounds of race, nationality, sexual orientation and other status. Accordingly, international and regional human rights instruments such as the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), African Charter on Human and Peoples' Rights (ACHPR), the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (PRWA) and the African Charter on the Rights and Welfare of the Child (ACRWC) are making a significant impact in turning the criminal justice system away from unduly targeting such persons for punishment due to their status.

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6. <sup>6</sup> See sections 290, 291 and 296(m) for these offences. These are considered petty offences because they are misdemeanours and in the case of behaving irreverently at a funeral, punishable by a fine.  
7. <sup>7</sup>L. Muntingh& K. Petersen, Punished for Being Poor – Evidence and Arguments for the Decriminalisation and Declassification of Petty Offences (2015) p 4 – 8.

## 1.1 Background to the Study

Ghana's criminal justice system has not been spared the melange of challenges that beset other jurisdictions that share the country's political, social, economic and cultural profile. These challenges occur in pre-trial and post-trial processes and in the general administration of the criminal justice system.<sup>8</sup> Strict adherence to constitutional and statutory prescriptions on due process rights of arrested, restricted and detained persons is not always the case. The Constitution requires that a person who is arrested, restricted or detained should be informed in a language in which he or she understands of the reasons for his or her arrest, restriction and detention, of the right to a lawyer of his or her choice and of the right to be brought before a court of competent jurisdiction within 48 hours if not released before.<sup>9</sup> The Criminal Offences Procedure Act, 1960 (Act 30) also sets out in detail pre-trial, trial and post-trial processes to be followed in criminal justice administration in Ghana. These constitutional and statutory rules are also supported by a body of case-law developed by the Superior Courts.

Notwithstanding these safeguards, persons who come in conflict with the law and who are processed through the criminal justice system are sometimes left with bitter experiences. Persons are arrested and detained for very minor infractions which do not require pre-trial incarceration. There are instances where bail is either denied or onerous conditions set in cases (without any discernible reason than that the person is poor) in which one would expect the suspect to be granted self-recognizance bail. Trials may drag on end and sentences for petty offences in some cases, are viewed as harsh. The general perception therefore is that, the criminal justice system is overly skewed towards custodial sentences or incarceration is the preferred form of punishment for even the most minor of crimes. Alternatives to non-custodial punishment such as fines, payment of compensation and liability to police supervision are provided for in section 294 of the Criminal Procedure Act, 1960 (Act 30) but are hardly used. The perception that the criminal justice system is pro-incarceration has therefore been echoed even at the highest echelons of the judiciary.<sup>10</sup>

The over-reliance on custodial punishment has resulted in overcrowding and pressure on the nation's prisons and other detention facilities such as police cells. To address the issue of overcrowding and other systemic problems in the criminal justice system, some initiatives were commenced to reform the system. Notable among these measures is the Justice for All programme started in 2007 and expanded in 2011 to decongest prisons by holding court sessions in these correctional facilities to deal expeditiously with

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8. <sup>8</sup>See the 2012 Baseline Survey on the Justice Sector carried out the Ministry of Justice and Attorney-General's Department with support from the UNDP.

9. <sup>9</sup>Art 14(2) and (3) of the 1992 Constitution.

10. <sup>10</sup>Ghana News Agency, "Reform Criminal Justice System - Justice Dotse" [Online]. Available at <http://www.ghananewsagency.org/social/reform-criminal-justice-system-justice-dotse>. Last accessed on 10 September 2017.

cases in which persons on remand were either entitled to bail or simply needed a speedy trial, conviction and punishment. Other interventions include the roundtable organised by the Ministry of Interior in 2014 on non-custodial sentencing with a view to developing a legal framework to afford judges more alternatives to custodial punishment.

The nascent reforms in the criminal justice system have mostly been focused on post-trial correctional measures with little or no emphasis on pre-trial detention, where most persons – particularly the indigent – face ‘punishment’ for the least degree of infringement of the criminal law. While the ills of the criminal justice system are well-documented in various studies and reports, there is no specific research conducted on the treatment of petty offences in Ghana’s criminal justice discourse. There are gnawing gaps in the knowledge base on what constitutes petty offences, what informs the criminalisation of minor infractions as offences, the impact of petty offences and the punishment thereof (both in the letter of the law and in practice) and what arguments can be advanced for their decriminalisation.

It is against this background that CHRI with support from Open Society Initiative for West Africa (OSIWA) embarked on this research project to provide preliminary evidence in this uncharted area of the criminal justice system in Ghana to contribute to the ongoing efforts at reforms in the system. This would enhance and encourage the use of a more informed and holistic approach to reforming the system, rather than a skewed approach focusing largely on trial and post-trial processes and outcomes.

## 1.2 Rationale

This study is principally grounded on CHRI’s work for over a decade on access to justice. Over this period, CHRI has systematically documented pre-trial justice delivery at police stations, where it has observed that police cells are routinely choked with suspects awaiting trial or formal charge with persistent violation of their fundamental rights. These shortcomings of the system are also exacerbated by the lack of an effective monitoring mechanism, inadequate resources, poor management of existing resources and a piecemeal approach to legal and structural reform of the criminal justice system. This research is informed by the fact that there is virtually no empirical data on the subject of petty offences to inform any law reform process in this regard. The CHRI hopes that the research will contribute to ongoing reforms endeavours and initiate steps to rid our statute books of petty offences.

## 1.3 Context

### 1.3.1 Normative Foundations

Looking at the propensity for the deprivation of individual liberty as a result of interaction with the criminal justice system, any discussion of the impact of criminal proceedings must be done within a human rights context. The Universal Declaration of Human Rights (UDHR), the core normative text of human rights at the global level, guarantees the right to life, liberty and security of person,<sup>11</sup> prohibits arbitrary arrest and detention<sup>12</sup> and guarantees due process rights of being innocent until proven guilty and being afforded the opportunity to prepare for one's defence. These fundamental rights and others, have been expanded in other key global and regional human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Rights (ACHPR or African Charter).

The African Charter is the principal human rights instrument of the African Union (AU) and has been ratified by all AU Member States. The Charter provides for the right to due process in article 7, which among others includes the right of appeal, the presumption of innocence, right to defence, trial within a reasonable time and non-retrospectivity of criminal law. The African Commission on Human and Peoples' Rights (ACmHPR or African Commission), in its jurisprudence on the African Charter has stated that unjustifiably long periods of incarceration (at the pre-trial and trial stages) violate the presumption of innocence in article 7 of the Charter.<sup>13</sup> Thus, recognising the challenges inherent in criminal justice administration and the tendency for deprivation of liberty in violation of the Charter, the Commission – pursuant to its mandate in article 45(1)(b) of the African Charter – developed and adopted the 'Principles and Guidelines on the Right to Fair Trial and Legal Assistance in Africa' (Fair Trial Principles). The Fair Trial Principles are a comprehensive set of guidelines on due process rights, covering both substantive and procedural aspects of criminal and related proceedings.

Although the Fair Trial Principles do not specifically mention petty offences, some of its provisions have a direct bearing on the conduct of cases involving minor offences and treatment of persons suspected of such crimes. On the right to liberty and security, article M(1)(e) provides unless there is sufficient evidence

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11. <sup>11</sup>Art 3 of the UDHR

12. <sup>12</sup> Art 9 of the UDHR

13. <sup>13</sup>Communication 301/05 Haregewoin Gebre-Selassie & IHRDA (on behalf of former Dergue officials) v Ethiopia para 209. The Commission stated among others in paragraph 209 of its decision that:

14. "The pre-trial detention of the Victims and their long continuous detention even after they were charged essentially meant substituting pre-trial detention for their punishment. The African Commission agree that their long preventive custody thus lost its purpose as an instrument to serve the interests of sound administrative justice ... [T]he deprivation of a person's liberty for a disproportionate time is the same as serving a sentence in advance for the judgment. The African Commission agrees with the Complainant that the Victims were criminally punished by presuming their guilt even before they were heard, in violation of the principle of innocence established in Article 7(1)(b) of the African Charter, Article XX of the Universal Declaration and rule XXX of the principles [sic] and Guidelines on fair trial."

of a cause to detain a person prior to trial (such as being a flight risk or interfering with witnesses), states have a duty to ensure that persons are not detained prior to trial. The Fair Trial Principles also make a case for the use of alternative dispute resolution methods, where necessary, providing a less expensive, less cumbersome and more reconciliatory and rehabilitative approaches to resolving criminal cases.<sup>14</sup> It is important to note that states are required to 'review their practices, regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions'. This prescription provides guidance on ensuring that minor offences do not carry custodial sentences.

Another important piece of soft law on the decriminalisation and declassification of petty offences in Africa is the Ouagadougou Declaration and Plan of Action on Accelerating Prisons and Penal Reforms in Africa.<sup>15</sup> The Ouagadougou Declaration and Plan of Action was adopted by the African Commission at its 34<sup>th</sup> Ordinary Session held in Banjul from 6<sup>th</sup> to 20<sup>th</sup> November 2013. The Guidelines encapsulate the recommendations of the 2<sup>nd</sup> Pan-African Conference on Prison and Penal Reform in Africa, held in Ouagadougou, Burkina Faso (hence the name of the Guidelines) in September 2002. The Guidelines advocate for among others, the reduction in prison population in African countries, making African prisons more self-sufficient, promoting offender reintegration into society, applying rule of law to prison administration, encouraging best practice, promoting an African Charter on Prisoner's Rights and developing a UN Charter on the Basic Rights of Prisoners. As part of the strategies in the Plan of Action for reducing prison populations is the recommendation to decriminalise some offences 'such as being a rogue and vagabond, loitering, prostitution, failure to pay debts and disobedience to parents.'<sup>16</sup>

The Ouagadougou Guidelines and Plan of Action are also complemented by the Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa, known as the Luanda Guidelines.<sup>17</sup> The Luanda Guidelines were adopted by the African Commission during its 55<sup>th</sup> Ordinary Session in Luanda, Angola held from 28<sup>th</sup> April to 12<sup>th</sup> May 2014. The Guidelines were developed and adopted by the Commission, following its concern for the spate of 'arbitrary, excessive and at times abuse recourse to police custody and pre-trial detention' in most AU Member States, characterised by their weak criminal justice systems.<sup>18</sup> The Commission further recognised the myriad of individual rights of persons in police custody and more pertinently, that 'pre-trial detention disproportionately impacts the vulnerable and marginalised who are unlikely to have the means to afford legal representation and assistance or comply with conditions of police bail or bond',<sup>19</sup> and who may be detained in other non-police institute on

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15. <sup>14</sup> See arts P(d), (g), (h) and (i) of the Fair Trial Principles.

16. <sup>15</sup>The Declaration and Plan of Action is available at <http://www.achpr.org/instruments/ouagadougou-planofaction/>. (Last accessed on 7<sup>th</sup> April 2018).

17. <sup>16</sup>See para 1 of the Plan of Action.

18. <sup>17</sup> The Luanda Guidelines are available at [http://www.achpr.org/files/special-mechanisms/prisons-and-conditions-of-detention/guidelines\\_arrest\\_police\\_custody\\_detention.pdf](http://www.achpr.org/files/special-mechanisms/prisons-and-conditions-of-detention/guidelines_arrest_police_custody_detention.pdf) (Last accessed on 7<sup>th</sup> April 2018).

19. <sup>18</sup>See the Preamble of the Luanda Guidelines.

20. <sup>19</sup>Preamble of the Luanda Guidelines (supra).

such as psychiatric hospitals. Consequently, the Guidelines were developed to strengthen national criminal justice systems in Africa and to ensure their compliance with international human rights norms by the police and other law enforcement agencies. The Guidelines then cover arrest, police custody, pre-trial detention, crime-related registers, procedures for serious violations of human rights in police custody and pre-trial detention, conditions of detention in police custody and pre-trial detention, vulnerable groups, accountability and remedies, and implementation. Although the Luanda Guidelines do not specifically mention decriminalisation or declassification of offences, its general tenor and some provisions, relating to arrest and detention have a bearing on the treatment of offences which could be considered petty or minor. Thus, for example, article 10(c) of Part 3 of the Guidelines on pre-trial detention provides that, 'persons charged with a criminal offence that does not carry a custodial penalty should not be subject to a pre-trial detention order.' Article 12(b)(iii) of the same Part then goes further to provide that:

**"If the individual is suspected of a criminal offence, assess whether in the circumstances of the case of the individual, the detention pending trial is necessary and proportionate. In such assessment, among other things, responsibilities as primary caretakers should be taken into account."**

These continental human rights standards, it is argued, find expression and application in Ghana by virtue of article 33(5) of the 1992 Constitution.<sup>20</sup> It is within the context of this regional and national normative framework that this study investigates petty offences in Ghana and makes a case for their decriminalisation or declassification where necessary.

### **1.3.2 Petty Offences in Ghanaian Criminal Law**

Prior to the introduction of the common law and the English court system into the then Gold Coast (which became Ghana at independence), the kings and chiefs were both makers of and adjudicators over the law. The law was an interwoven motif of the physical, spiritual, social, economic, religious, cultural and moral foundation of the society. An infringement of the law therefore brought into sharp focus one or an interplay of more than one of these elements in the law. From this perspective, some customary offences were treated as more serious than others both in substance and in procedure. Acts such as murder, suicide, witchcraft, invocation of a curse on a chief, incest, adultery and other types of sexual offences were considered serious because they infringed some sacrosanct customs and taboos.<sup>21</sup> These offences were

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21. <sup>20</sup>The article provides as follows:

22. "The rights, duties, declarations and guarantees relating to the fundamental human rights and freedoms specifically mentioned in this Chapter shall not be regarded as excluding others not specifically mentioned *which are considered to be inherent in a democracy and intended to secure the freedom and dignity of man.*" (emphasis mine).

23. <sup>21</sup>G.K. Acquah, (fn5 above).

tried by the head chief and his council of elders, while infractions which did not offend such customs and taboos, were 'settled more or less privately and unofficially by and among the parties themselves.'<sup>22</sup> Some minor offences were also tried by lesser chiefs who exercised jurisdiction in minor courts. Punishments depended on the severity of the offence and ranged from public ridicule, mutilation, flogging, imprisonment, fine, sale into slavery and beheading.<sup>23</sup>

As a result of the Bond of 1844, (by which the chiefs recognised the authority of British rule) they lost the jurisdiction to deal with serious customary offences, leaving them to deal with cases involving custom and lesser offences. Paragraph 3 of the Bond of 1844 is very instructive in that it set the tone for the modelling of Ghana's modern criminal justice system on the British system. The paragraph states:

**"Murders, robberies, and other crimes and offences, will be tried and inquired of before the Queen's judicial officers and the chiefs of the districts, moulding the customs of the country to the general principles of British law."**

Thus, the Criminal Offences Act, 1960 (Act 29) provides for a number of petty offences which can be classified as petty offenses but instead are classified as misdemeanours. These are punishable by a fine or by a term of imprisonment of up to 3 years. These minor offences are mostly found in Chapters 7, 8 and 9 of Act 29. Offences in Chapter 7 are classified as offences against public morals and mostly criminalise prostitution, operation of a brothel, gross indecency and obscenity. Chapter 8 deals with public nuisances which cover a wide range of acts from hindering the burial of a dead body through playing a drum under certain prohibited circumstances to throwing rubbish in the street. Chapter 9 covers offences related to the use and treatment of animals.

Offences found in chapters 7, 8 and 9 of Act 29 need to be decriminalised for several reasons. First, these offenses tend to disproportionately affect the poor. Research by CHRI on the socio-economic impact of pre-trial detention in Ghana shows that about 39% of pre-trial detainees were held for non-violent or economic crimes.<sup>24</sup>The research also shows evidence that persons who are often in the lower income quintiles are arrested and detained for these crimes and are subjected to torture, bribery and ill-treatment in a bid to extract a confession or to gain their freedom. These constitute violations of the right to due process, the case is made strongly that petty offences be decriminalised and infractions thereto, be addressed in a more flexible and less intimidating manner.

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24. <sup>22</sup>G.K. Acquah (fn5 above).

25. <sup>23</sup>G.K. Acquah (fn5 above).

26. <sup>24</sup>CHRI, The Socioeconomic Impact of Pretrial Detention in Ghana (2013) p 33.

Second, prosecution of most of these offences is rare in Ghana's criminal justice system. Section 295 of Act 29, for example, makes it an offence to beat a drum 'with intent to challenge or provoke any other person to commit a breach of the peace, or with intent to insult or annoy any other person.' The sophistication in modern-day Ghana and the advancement in the media and communication technology make this provision rather moot and outmoded. It therefore serves no purpose to have this provision and others similar to it remain on the statute books.

Indeed, the Supreme Court of Ghana has had occasion to pronounce on a criminal infraction, which on the surface may seem trivial, but nonetheless be applied in a manner that could restrict the constitutional right to freedom of movement. In *Adjei-Ampofo v Attorney-General & President of the National House of Chiefs*,<sup>25</sup> the plaintiff, a lawyer and former Paramount Chief and Member of the National House of Chiefs, filed a writ in the Supreme Court invoking the original jurisdiction of the Court to seek a number of reliefs against the Attorney-General and the President of the National House of Chiefs, among others, a declaration that section 63(d) of the Chieftaincy Act, 2008 (Act 759) encroached on the liberty and freedom of movement of citizens contrary to articles 14 and 21 of the Constitution. It must be noted that section 63 of Act 759 deals with certain offences connected with chiefs. The impugned sub-section (d) was to the effect that a person who 'deliberately refuses to honour a call from a chief to attend to an issue' commits an offence and is liable on summary conviction to a fine of not more than 200 penalty units or a term of imprisonment of not more than three months or both. Where the offence is continuing, a further fine of 25 penalty units per day will be imposed for each day the offence continues. The plaintiff therefore argued that the sub-section compelled a citizen to obey a chief's summons, whether he or she liked it or not. This consequently placed an undue restriction on and interference with a person's liberty and freedom of movement. The issue for the Court then was whether section 63(d) created an offence which interfered with the right to liberty and freedom of movement. In deciding that the section was unconstitutional, the Court was of the view that clearly, section 63(d) created an offence which:

**"imposed a restriction on the freedom of movement of residents in Ghana as conferred by article 21(1)(g) of the 1992 Constitution... The plain language meaning of the text would appear to make it very wide in scope."<sup>26</sup>**

It may therefore be inferred from this decision, a certain recognition from the highest Court of the land that there are instances in which certain criminal infractions should not be wide in scope and/or attract serious sanction.

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27. <sup>25</sup>[2011] 2 SGLR 1104.

28. <sup>26</sup> Per Date-Bah JSC at p 1125.

To address some of these and other challenges related to the arrest and prosecution of petty offences, CHRI carried out research on the state of petty offences in Ghana, with a view to advocating for their decriminalisation. The research is informed by the fact that there is virtually no empirical data on the subject to inform any law reform process in this regard. CHRI hopes that the research will also guide the Statute Law Reform Commission and Parliament in the endeavour to rid our statute books of such offences.

## 1.4 Statement of the Problem

As earlier noted, petty offences in Ghana just like in most other African countries trace their origin from the English law. Some of these offences, codified in Act 29 of 1960 are designed to preserve public order and morality and are mostly punishable as misdemeanours, meaning that the convicted person may be sentenced to a term of imprisonment of up to three years. Although there have been amendments to Act 29, these have not focused on offences that could be considered petty. The amendments, as later discussed in this study, have rather been geared towards increasing punishments or the severity of offences. Apart from the Criminal Offences Act, there are other laws which criminalise public conduct such as the Local Government Act (LGA) and the Metropolitan, Municipal and District Assembly (MMDA) By-Laws etc. These Laws/Bye-laws take their bearing from Act 29 and also provide for criminal sanctions upon conviction. Despite the existence of a national Constitution with elaborate provisions on the Bill of Rights, the criminal laws in Ghana continue to harbour provisions whose prevalence and enforcement appear to be in tension with the text and the fundamental values of the 1992 Constitution. While some efforts at reform of Act 29 have been made resulting for example in the repeal of the criminal libel in the year 2002, some petty offences are still criminalised under the Act as well as in other laws. Under Act 29, offences such as: publication that insult or ridicule the national flag, being drunk or disorderly in a place licensed for the sale of intoxicating liquors, penalty for harbouring thieves, etc. are few examples of offences that are punishable with either fines or terms of imprisonment or both.

The criminalisation generally and award of custodial sentences for petty offences are not only intrusive in their violation of conferred rights but may also be a disproportionate response to the specific mischief they seek to remedy. More so, the whole psychological pressure associated with arrest and detention of a person in anticipation of a trial and conviction has a huge impact on the relationship between the police and the community particularly in a society where confidence in the police is fast deteriorating due to the constant maltreatment of alleged suspects. The enforcement of these offences has continued to subject citizens, many of whom are unaware of these criminal laws and their rights as protected by law, to various human rights abuses including prolonged pre-trial detentions; assault and mistreatment during arrest and detention; unfair sentencing practices; irregular fines; unfair bail terms to mention but a few.

## 1.5 Objective of the Study

The study is part of a broader project aimed at criminal justice reform in Ghana to ensure that the system provides better protection and administration of justice particularly for the indigent and vulnerable. Given the dearth of information on petty offences in Ghana, the present study aims to provide a preliminary evidential base that analyses the impact of criminalising petty offences in Ghana and the benefits to be obtained from decriminalisation and/or declassification of certain offences. This will contribute significantly to making Ghana's criminal justice system more rights-based and more 'human rights-friendly', in addition to ensuring that Ghana complies with its own constitutional prescriptions on due process rights and other African and international treaties it has ratified.

## 1.6 Research Questions

In pursuit of the research objective stated above, the study seeks to answer the following questions, namely:

- Which offences can be considered to be petty offences in Ghana?
- How do petty offences impact criminal justice administration in Ghana?
- Which petty offences can be decriminalised and/or declassified in Ghana?

## 1.7 Limitations of the Study

The study is meant to be a preliminary exposition on the situation of petty offences in Ghana and would provide a baseline for future research on the issue. The study is also limited by the availability of research and data on petty offences in Ghana. Given the limited time-frame and resources available, the research is not intended to be a comprehensive study on petty offences in Ghana. Some of the key stakeholders selected for the interview were not willing to be interviewed or provide information as requested. Some other respondents who were interviewed appeared not to be abreast with the issues.

## 1.8 Definition of Key Terms

**Petty Offences:** the study adopts the definition by the African Commission on Human and Peoples' Rights 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.'

**Decriminalisation:** refers to the process of removing an act or series of acts defined as a criminal offence and its associated punishment from the law. This would often involve a legislative process to amend the existing criminal statute or provision containing the offence.

**Declassification:** refers to the process of changing the severity of an offence (mostly from a more serious to a less serious one) with the result that the offence is no longer one for which a person can be arrested and is only punishable through a non-custodial sentence or other administrative fine or sanction.

## Chapter 2

# Literature Review of Petty Offences in Ghana

### 2.1 Introduction

The concept of petty crimes in Ghana has not been the subject of much writing, research and other academic discourse in Ghana. In Ghanaian legal studies, the impact of sentencing and in particular, incarceration of offenders has generated both academic and non-academic debate.<sup>27</sup> In the context of petty offences, literature remains scanty. This chapter therefore discusses the literature under these three areas, namely: definition and/or classification of offences, the prosecution of offences and related procedural issues, and punishment, sentencing and post-conviction effects on the accused person and the society.

### 2.2 Definition and Classification of Petty Offences

Ghana's substantive criminal law is primarily codified in the Criminal Offences Act, 1960 (Act 29). Substantive criminal law – prior to colonialism – was determined by customary law, with punishment dependent on the severity of the offence.<sup>28</sup> Yeboa notes that the transfer of Danish forts to the British marked the watershed for British Administration in Ghana.<sup>29</sup> With the advent of formal British rule, there was a gradual move to diminish the traditional justice system in favour of institutionalising the British legal system. The signing of the Bond of 1844 was instrumental as it imposed the operation of British law in the Gold Coast. Frimpong<sup>30</sup> quotes the object of the Bond as follows:

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29. <sup>27</sup>See D.K. Afreh, 'The Prisons and Sentencing Policies' *Review of Ghana Law* (1996-2000) Vol XX p 141; G.K. Acquah, (fn5 above) E. Nyavor 'The Mechanics of Sentencing' *Review of Ghana Law* (1989-1990) Vol XVII p 139; D.S. Danyagre, 'The Role of Parole in the Administration of Criminal Law' *Review of Ghana Law* (1989-1990) Vol XVII p 148; V. Akoto-Bamfo, 'Types of Sentences' *Review of Ghana Law* (1989-1990) Vol XVII p 156; A.N. Dokurugu, 'Objectives of Punishment' *Review of Ghana Law* (1989-1990) Vol XVII p 161; K. A. Senah, 'Types of Punishment' *Review of Ghana Law* (1989-1990) Vol XVII p 1 173; 'Modes of Arrest and Treatment of Complainants and Suspects Under Our Law' *Review of Ghana Law* (1989-1990) Vol XVII p 173; H.J.A.N. Mensa-Bonsu, 'Non-Custodial Offences – The Need for Reform at the Pre-Trial Stages' *Review of Ghana Law* (1989-1990) Vol XVII p 180;
30. <sup>28</sup>G. K. Acquah (fn5 above) p 41.
31. <sup>29</sup>K.Y. Yeboa 'The History of the Ghana Legal System: The Evolution of a Unified National System of Courts' *Review of Ghana Law* Vol XVIII p1 at p4.
32. <sup>30</sup>K. Frimpong, 'Some Dark Spots in the Post-Independence Administration of Criminal Justice in Ghana' in H.J.A.N. Mensa-Bonsu et al (eds) *Ghana Law Since Independence – History, Development and Prospects* (2007) p 217.

[I]t declared that the administration of criminal justice was for the purpose of “moulding the customs of the country to the general principles of British law.”

Consequently, the legislation of substantive criminal law was therefore informed by British law. The earliest legislative record of the substantive criminal law of Ghana is the Criminal Code Ordinance of 1982.<sup>31</sup> Writing on the evolution of political crimes in Ghana, Mensa-Bonsu observes that the criminal law was used as weapon by the colonial administration to deal with its opponents and thus was continued through to post-independence Ghana to muzzle political rivals.<sup>32</sup> She further writes that the Criminal Code was amended as and when ‘an existing crime seemed to be on the upsurge.’ The amendments have thus been more in the direction of re-defining existing crimes, increasing punishments, and introducing new processes for trial.<sup>33</sup> From the Code of 1892 through the Criminal Code Ordinance of 1934 to 1960, there had been about 50 amendments, thus justifying the enactment of a new Code.<sup>34</sup> The present Criminal Code was adopted by the Parliament of Ghana in 1961 and received Presidential Assent on 12<sup>th</sup> July 1964. Since its adoption, Act 29 has undergone a number of amendments ending in 2003 with the Criminal Code (Amendment) Act, 2003 (Act 646), which amended section 149 of Act 29, dealing with robbery.

It can be observed from the various amendments to the Code that they have been in the direction of increasing punishment or re-categorising offences as more serious. Mensa-Bonsu again observes that the development of Act 29 came with revisions in criminal procedure.<sup>35</sup> She notes that in 1956, Ordinance No. 33 re-defined ‘misdemeanours’ to be offences punishable by a term of imprisonment not exceeding two years, from the previous one year as was found in Cap 7 of 1939. A felony, as was provided in the Criminal Code of 1892 was punishable by a minimum term of imprisonment of three years. A reason for this re-classification, the learned author notes, was due to increased social unrest and agitation leading to public unrest in the post-independence era.<sup>36</sup> Unfortunately, the trend has continued throughout the amendments to both the substantive and procedural criminal law, all aimed at providing stiffer punishments or occasioning greater deprivation of individual liberty. A seminal example is found in section 96(7)(a) of Act 30 [as amended by section 7 of the Criminal Procedure Code (Amendment) Act 2002 (Act 633)] which mandates a court to refuse to grant bail in cases of treason, subversion, murder, robbery, hijacking, piracy,

33. <sup>31</sup>See the ‘Memorandum to the Criminal Code (Repeal of Criminal Libel and Seditious Laws) (Amendment) Act, 2001 para 2.

34. <sup>32</sup> H.J.A.N. Mensa-Bonsu, “Political Crimes” in the Political History of Ghana: 1948 – 1993’ in H.J.A.N. Mensa-Bonsu et al (eds) *Ghana Law Since Independence – History, Development and Prospects* (2007) p 240.

35. <sup>33</sup>Mensa-Bonsu (as above).

36. <sup>34</sup>Mensa-Bonsu (fn18) p 255.

37. <sup>35</sup>Mensa-Bonsu (fn18) p 257.

38. <sup>36</sup>Mensa-Bonsu (as above).

rape, defilement or escape from lawful custody. The mandatory refusal of bail in these crimes has however now been held by the Supreme Court to be unconstitutional and not in accord with the human rights ethos of the country as expressed in the 1992 Constitution.<sup>37</sup>

The description of offences as petty has therefore been found in academic writings as well as commentaries by various personalities in the legal profession, judiciary and social and political thought. Writing on reform in non-custodial sentencing, Mensa-Bonsu opined as follows:

The problem of detention at the pre-trial stage is a serious one that demands attention. This is so because the less serious crimes which are most frequently dealt with, often do not end up with custodial sentences. Thus, there is imposed upon the administration of criminal justice, a responsibility to ensure that the deprivation of an individual's liberty is restricted to the minimum. The reason for this being the fact that whatever deprivation an individual suffers at the pre-trial stage cannot be compensated for, if the trial should end in the imposition of a non-custodial penalty, or worse, an acquittal... The offences that are dealt with here are those classified by the police as being the petty offences most frequently handled by them. These include: assault (without grievous bodily harm), traffic offences, riot and unlawful assembly, gaming, prostitution, and other offences. (The latter are usually offences such as breach of the peace, nuisance, loitering and offences under section 296 of the Criminal Code, 1960 (Act 29)).<sup>38</sup>

In this quotation, the luminary of Ghanaian criminal law well-prefaces the classification of petty offences with the attendant irreversible and negative consequences of pre-trial incarceration. This highlights the correlation between the offence, the procedure to be adopted in dealing with it and the consequence. The conclusion may thus be reached that less-serious offences should attract less cumbersome procedures and result in the least intrusion into the personal liberty of an individual yet holding him accountable.

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39. <sup>37</sup> In the case of *Martin Kpebu v Attorney-General* (SC, 5 May 2016).

40. <sup>38</sup> Mensa-Bonsu (fn14) p 180.

Writing on the correlation between crime, punishment and its impact, Afreh<sup>39</sup> observes that the seriousness of an offence should inform the nature and extent of punishment. Drawing on the Criminal Justice Act, 1991 of England, he states that:

... offence seriousness is the crucial threshold that must be crossed before a term of imprisonment can be imposed.... Our courts in practice consider the circumstances of an offence before imposing a sentence. But in the absence of statutory criteria, some courts pass terms of imprisonment when a fine or something else will do. Recently it was reported that a heavily pregnant woman was sent to prison for insulting behaviour. She delivered within a few hours of arrival in prison. A statutory criterion for offence seriousness will make such sentences impossible.

Kuenyehia also adds to the discourse on the nature of petty crimes and those who commit them. Writing on the 'Problem of Recidivism in the Ghanaian Penal System'<sup>40</sup> she observes that recidivists are prone to petty thefts involving items which should not result in long periods of incarceration. She writes:

Research elsewhere has shown that "contrary to the popular stereotype of a persistent offender, few of these prisoners were prone to violence and hardly any were efficiently organised professional criminals. The majority of them were shiftless work-shy characters for whom petty stealing represented the line of least resistance. Most of the habitual offenders in prison will seem to fit into the above description. Most of them spend their lives in and out of prison committing petty thefts like stealing foodstuffs or fowls, goats and the like. The Daily Graphic of Friday 23 June, 1978 carried a front-page story of a 26-year-old unemployed man described by the police as a habitual fowl thief who had been sentenced to 10 years imprisonment with hard labour for stealing yet another fowl. He had three previous convictions. A 40-year-old driver, with two previous convictions was sentenced to 18 months' imprisonment with hard labour by a magistrate court for fraudulently extorting an amount of ₵320 from a baker under the pretext of supplying her with flour.

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41. <sup>39</sup>D.K. Afreh, (fn14) p 153.

42. <sup>40</sup>A. Kuenyehia, (1978 – 81) *University of Ghana Law Journal*/Vol XV p 84.

From the literature cited above, it can be concluded that the Ghanaian criminal justice system is more attuned to proscribing conduct as criminal and for establishing law and order in the society through a textual increase in the body of crimes or by laying emphasis on a punitive regime that should aim to deter even the slightest wisp of criminal conduct. As noted earlier by Afreh, the example of the 1991 Criminal Justice Act of England, which provides statutory criteria for determining the punishment for minor offences, would be very beneficial in guiding the courts and law enforcement agencies in dealing with such offences. However, such textual direction is not available in the substantive and procedural criminal law of Ghana.

## 2.3 Prosecution of and Procedural Issues related to Petty Offences

The classification of offences as 'petty' is greatly informed by the rules governing the prosecution of offenders and other procedural considerations, covering pre-trial, trial and post-trial stages. Section 2 of the Criminal Procedure Act, 1960 (Act 30), sets out the mode of trial for offences. In general terms, the section provides for summary trials for less serious offences (including misdemeanours), trial on indictment for more serious ones (including first-degree felonies being serious offences such as murder and subversion), and a 'hybrid/alternative' system, which allows for use of either mode of trial. The Criminal Offences Act, 1960 (Act 29) however does not always make the choice of mode of trial commensurate to the gravity of the offence. Twumasi observes as follows:

Indictability of an offence does not necessarily depend on the gravity of the offence. One offence may involve a huge sum of money but it may be tried summarily while another offence involving a comparatively small amount of money may be tried on indictment. For example, in *Amadu Fulani v The Republic*, the offence involved the theft of a staggering sum of ₵3,462 by means of unlawful entry and the appellant was tried summarily, but in *Republic v Luguterah* the appellant was tried on indictment on charges of conspiracy to steal and stealing involving the sum of ₵420 and ₵440 respectively.<sup>41</sup>

It may be observed from Act 29 on the one hand that whereas offences such as rape, defilement and robbery can be classified as serious, they are punishable on summary conviction. On the other hand, offences such as insulting the national flag are punishable as a misdemeanour but punishable by a term

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43. <sup>41</sup>Twumasi (fn1 above) p 60.

of imprisonment and thus open to either a summary trial or trial on indictment in terms of section 2 of Act 29. In the context of the constitutional freedom of speech and expression, the criminalisation of ‘insulting the national flag’ remains a vexed question oscillating between human rights and the political authority. Appendix 1 provides a tabular representation of various offences within the category of misdemeanours which could either be removed from the statute or re-classified to remove them from the category of offences punishable by incarceration.

Making similar commentary on the above-quoted position of the law in Ghana as described by Twumasi, Amidu argues therefore that the procedural requirement for counsel for the accused person in the case of a trial on indictment and no such requirement for misdemeanours has no place in Ghanaian law.<sup>42</sup> He consequently argues that the Constitution which guarantees rights not specifically mentioned but inherent in a democracy should inform the right to counsel, even in the case of petty offences.<sup>43</sup> Referring to two decisions of the United States Supreme Court,<sup>44</sup>Amidu concludes that the speedy nature of summary trial or other similar trial process for misdemeanours and petty offences – which have the tendency to dispense with the right to counsel – should not undermine well-established human rights in our Constitution.

The above discussion also leads one to the conclusion that as far as prosecutorial processes and procedural safeguards are concerned, there is still no clear direction offered by both the substantive and procedural criminal law of Ghana in defining what a petty offence is. While certain conduct considered criminal – as can be seen from the table in appendix 1 – are either not in accord with contemporary societal dynamics in Ghana, do not harm the larger society in any significant way or are less grave, and could be classified as petty or removed entirely from the statute, their punishment as misdemeanours opens the door for imprisonment and/or procedural impediments to the freedom and well-being of the offender.

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44. <sup>42</sup>M.A.B.K. Amidu, ‘Right to State Appointed Counsel in Criminal Justice Administration Under the Constitution, 1992’ (1993 – 95) *Review of Ghana Law* Vol XIX p159 at p178.

45. <sup>43</sup>Amidu (as above).

46. <sup>44</sup>*Argersinger v Hamlin* 407 U.S. 25, 92 SCt 2006; 32 L Ed 2d 530 and *Scott v William*

## Chapter 3

## Methodology

### 3.1 Introduction

The research adopted a mixed method approach to data collection. This included collection of both primary and secondary data through field work and desktop research. The research tools employed were an interview guide and a desk review of the relevant legislation providing for petty offences in Ghana. The choice of these tools was informed by the fact that the study was primarily qualitative, given the specialised nature of the subject being studied, i.e. criminal law and therefore required collection of data from a small sample of respondents.

### 3.2 Research Tools

#### 3.2.1 Interview Guides

The research team developed an interview guide to elicit the necessary information to address the research questions and to meet the objectives of the study. In this regard, the interview guide was targeted to obtain expert information on the nature of petty offences, the implementation of the significant legislation relating to petty offences, the impact of prosecution of petty offences on the offender and society and recommendations for decriminalisation and declassification of petty offences.

#### 3.2.2 Desktop Research

The research team conducted desktop research to obtain secondary data in the form of relevant legislation and policy documents, research reports, academic writings, and other publications providing information on criminal offences in Ghana and the extent to which one could consider the offences to be petty offences. The research also looked at other country practices with decriminalisation and declassification of petty offences.

### 3.3 Sampling

Given the qualitative nature of the study, sampling for the study was purposive, targeting the Police, legal profession, academics, the Law Reform Commission, Attorney-General's Department, Judiciary and civil society actors. These respondents were selected on the basis of their experiential knowledge of the criminal justice system as well as professional and expert knowledge and views. Persons suspected of

having committed criminal offences were also sampled from some Police Stations in which CHRI provides paralegal services under its Justice Centres Project. The number of respondents reached was 90, with the breakdown provided in the table below.

**Table 1: List of Respondents Interviewed**

S/N	Stakeholder	Designation/Rank of person interviewed	Number	Totals
1.	Civil Society Organisations	Executive Directors	2	<b>2</b>
2.	The Commission on Human and Administrative Justice (CHRAJ)	Commissioner	1	<b>2</b>
		Director	1	
3.	Legal Practitioners	Senior Lawyers (10-14 years post-call experience)	2	<b>2</b>
4.	Law Reform Commission	Senior Legal Officer	1	<b>2</b>
		Legal Officer	1	
5.	Legal Aid Scheme	Executive Director	1	<b>1</b>
6.	Ghana School of Law	Director	1	<b>1</b>
7.	Ghana Police Service	Senior Police Officers	16	<b>32</b>
		Junior Police Officers	12	
		Police Prosecutors	4	
8.	Judges	Justice of the Supreme Court	1	<b>5</b>
		Justice of the High Court	1	
		District Magistrate	3	
9.	Prison Officers		10	<b>10</b>
10.	State Attorneys		3	<b>3</b>
11.	Suspects		30	<b>30</b>
	Total Number of Person Interviewed		90	90

## Chapter 4

# A Review of Criminal Legislation in Ghana

### 4.1 Introduction

The criminal law of Ghana is primarily codified. As previously noted in the literature review, the Criminal Offences Act, 1960 (Act 29) is the principal body of substantive criminal law in Ghana and forms the basis on which other legislation with criminal provisions have been founded. In comparison to jurisdictions such as the United Kingdom, which has its criminal law enacted in different statutes, Ghana's is consolidated into one Act of Parliament. This chapter provides a review of Act 29 in terms of its scope, amendments and a comparative analysis with other key legislation including the Constitution and international human rights instruments ratified by Ghana. It must however be added at the outset that there are numerous other statutes in Ghana which contain criminal provisions, specific to the themes or issues addressed by those statutes. An attempt to review all such legislation will be beyond the scope and focus of this research. Accordingly, this review is limited to Act 29, which as earlier stated, forms the foundation and provides direction for the criminalization of conduct in other legislation in Ghana. Where necessary, due reference is made to the relevant legislation in the review of Act 29.

### 4.2 The Criminal Offences Act, 1960 (Act 29)

The Criminal Offences Act, 1960 (Act 29) covers a wide range of conduct considered to be an affront to the Ghanaian society. The conduct defined therein as criminal is informed by a combination of British colonial influence, traditional values, customs and norms as well as the governance ethos of the post-independence Ghanaian state.

As previously noted by Yeboa<sup>45</sup> and Frimpong,<sup>46</sup> the foundations of substantive Ghanaian criminal law were heavily influenced by the advent and imposition of British colonial rule. A significant result of this imposition was the consignment of customary law and its criminal aspects to the background. By the enactment of Act 29 in 1960, customary crimes had been taken completely from the ambit of code of criminal law. Section 8 of Act 29 – which is titled 'Exclusion of Common Law' provides:

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47. <sup>45</sup>Yeboa (fn16) above.

48. <sup>46</sup>Frimpong (fn17) above.

No person shall be liable to punishment by the common law for any act.

The common law of Ghana, by operation of the 1992 Constitution, includes the rules of common law, the doctrines of equity and the rules of customary law, including those determined by the Superior Courts of Judicature.<sup>47</sup> Consequently, the Act largely reflects the received law from England, covering some of the underlying concepts of criminal law as well as specific offences.

### 4.3 The Concept of Petty Offences

The 9<sup>th</sup> Edition of the Black's Law Dictionary defines a petty offense as a minor or insignificant crime. The classification of offences in Ghana does not include the class considered petty. The closest grouping available is misdemeanour. It is however misleading to equate misdemeanours to petty offences considering the ambit of offences captured as misdemeanours such as corruption. Although corruption per the current laws is classified as a misdemeanour<sup>48</sup>, a lot of arguments have been made for it to be raised to the level of a felony.<sup>49</sup> One of such arguments by the Finance Minister Ken Ofori Atta is that "corruption holds back economic growth, increases the cost of doing business, reduces revenue to the state, leads to capital flight, and inflates the cost of running government. It also results in a loss of legitimacy and respect for legally constituted authority."<sup>50</sup>

Offences are considered minor based on a variety of reasons. Usually, offences that attract the least punishments are considered petty such as the offence of throwing rubbish in the street which attracts a fine in Section 296 of Act 29.

The Crown Prosecution Service of England<sup>51</sup> describes these minor offences as offences which by their nature are minor or are not by their nature minor but based on the facts of the case may be considered as minor. If an offence is considered minor by its nature then the elements of that crime can be considered just above the *de minimis* threshold to warrant punishment but not grave enough to incur the higher forms of punishment from society.

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49. <sup>47</sup>See art 11 of the 1992 Constitution.

50. <sup>48</sup>Section 239 of Act 29

51. <sup>49</sup>Justice Emile Short: Make Corruption felony offence. <http://www.ghanaiantimes.com.gh/justice-short-make-corruption-felony-offence/> Last accessed on 28<sup>th</sup> August 2017 at 8:00pm

52. <sup>50</sup> Corruption is already a felony offence- Lardy Anyenini suggests; <http://www.myjoyonline.com/news/2017/March-3rd/corruption-is-already-a-felony-offence-lardy-anyenini-suggests.php> Last accessed on 28<sup>th</sup> August 2017 at 8:16pm

53. <sup>51</sup><http://www.cps.gov.uk/>

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**No person shall be liable to punishment by the common law for any act.**

The common law of Ghana, by operation of the 1992 Constitution, includes the rules of common law, the doctrines of equity and the rules of customary law, including those determined by the Superior Courts of Judicature.<sup>54</sup> Consequently, the Act largely reflects the received law from England, covering some of the underlying concepts of criminal law as well as specific offences. The following table provides a snapshot of the structure and divisions of the Act.

**Table 2: Summary of Offences under the Criminal Offences Act**

PART	CHAPTER	DESCRIPTION	SECTIONS
One – General Provisions	One	Preliminary Matters	1 – 10
	Two	General Explanations	11-17
	Three	Attempts to Commit Criminal Offences	18-19
	Four	Abetment and Conspiracy	20-25
	Five	General Exemptions	26-29

54. <sup>52</sup>Yeboa (fn16) above.

55. <sup>53</sup>Frimpong (fn17) above.

56. <sup>54</sup>See art 11 of the 1992 Constitution.



Two – Offences Against the Person	One	Justifiable Use of Force and Harm	30-45
	Two	Murder and Similar Offences	46-68
	Three	Criminal Harm to the Person	69-83
	Four	Assault and Similar Offences	84-88A
	Five	Kidnaping, Abduction and Similar Offences	89-96
	Six	Sexual Offences	97-111
	Seven	Libel (Repealed)	112-119
Three - offences Against Rights of Property	One	Offences Involving Dishonesty	120-157
	Two	Forgery	158-171
	Three	Unlawful Damage	172-179
	Four	Special Offences	179A-179D
Four - offences Against Public Order, Health and Morality	One	Offences against the safety of the State	180-192
	Two	Piracy	193-195
	Three	Offences against the peace	196-209
	Four	Offences concerning the administration of justice	210-2235
	Five	Offences relating to public officers and to public elections	236-261
	Six	Bigamy and similar offences	262-272
	Seven	Offences against public morals	273-284
	Eight	Public nuisance	285-298
	Nine	Offences relating to animals	299-319
	Ten	Miscellaneous offences	311-317A
Five - Consequential			318-319

The Act is quite comprehensive and addresses a wide array of offences. In spite of the breadth, a significant portion of the Act is never engaged. Data on crime in Ghana often shows that prosecutions are mostly carried out for assault, stealing, causing harm, criminal damage to property, unlawful entry, rape, defilement, indecent assault, murder and

manslaughter. The greater category of offences considered as nuisances or minor offences, particularly in Part IV of the Act are hardly prosecuted.

The Criminal Offences Act has a handful of offences that are arguably petty by reason of either of the factors discussed above or a combination of them. Attempted suicide is classified as a misdemeanour in Section 57(2). This offence has received a lot of attention in the legal and medical fields<sup>55</sup> as an offence which has no place in our statute books. This is an offence that requires a relook at in terms of criminalisation. Admittedly, taking a life no matter whose life it is cannot on any scale be considered petty, the facts of the offence or the circumstances of the offence however make it necessary to take it out of our statute books and find pragmatic ways of deterring people from committing the act. At best, all the provision does is to tell the next person who considers suicide to succeed.

The provision in Section 232 of the Act makes it a crime to prevent the execution of a person sentenced to death. The existence of the death penalty itself in our statute books makes it somewhat ridiculous to argue for the removal of Section 232. The foundation of the offence can be argued to be almost impossible to commit considering the current position of the law both locally and internationally. It has been more than two decades since the death penalty was enforced and from all indications, there is little to no chance of it being used again. International laws such as the ICCPR and its Second Optional Protocol that Ghana has signed onto all suggest the abolition of the death penalty.

The provisions in Part IV of the Act on nuisances generally are debateable as to their position in the law as crimes. There are provisions on certain acts such as drumming and throwing rubbish in the street which are criminalised. These laws by themselves can be considered to be a bit harsh. The call has therefore come from various quarters in the justice system to review the criminal laws to meet the current needs of society.

## 4.5 The Road Traffic Act, 2004 (Act 683)

The Road Traffic Act, 2004 (Act 683) is another statute with criminal provisions often used by the law enforcement agencies. The Act is the foremost and most comprehensive legislation on road traffic management in Ghana. The seven-part Act covers matters concerned with road safety, restrictions on road use in the interest of road safety, registration and licensing of motor vehicles and trailers, licensing of drivers of motor vehicles, testing of vehicles and issue of road use certificates, licensing of drivers of commercial vehicles, miscellaneous matters, offences and general provisions.

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57. <sup>55</sup>Ghanaweb [Online] Decriminalise attempted suicide, Available at <https://www.ghanaweb.com/GhanaHomePage/NewsArchive/Decriminalise-attempted-suicide-Osei-518254> (Last accessed on 29th August 2017).

## 4.6 Domestic Violence Act, 2007 (Act 732)

This Act specifically covers violence that affects specific individuals in the home. It however builds mainly on the offences provided for in the Criminal Offences Act, Act 29. The Domestic Violence Act however by the provisions in section 24 attempts to tone down the criminalisation of some of the offences in the Act. By this provision, any trial in domestic violence which is not aggravated or does not require a sentence of more than two years can be taken through the ADR process thus encouraging a solution outside the criminal trial.

The offences provided for specifically under the Domestic Violence Act therefore may be argued not to be petty to the extent that it is a reflection of the general laws on assault as contained in Act 29 and allows for other means of solution aside the criminal process thereby reducing the criminal effect of them.

**Table 3: List of Offences under the Domestic Violence Act classifiable as 'Petty Offences'**

LEGISLATION	THE DOMESTIC VIOLENCE ACT, 2007 (ACT 732)			
Section	Offence	Description	Punishment Category	Sentence
3	Prohibition of domestic violence	A person in a domestic relationship who engages in domestic violence	Misdemeanour	A fine not more than five hundred penalty units or to a term of imprisonment of not more than two years or to both
22	Contravention of a protection order	A person who contravenes a protection order	misdemeanour	a fine of not less than five penalty units and not more than five hundred penalty units or to a term of imprisonment of not less than one month and not more than two years or to both.

## 4.7 The National Pensions Act, 2008 (Act 766)

The four-part Act governs contributions towards a pension scheme in the country. It establishes the authorities to oversee the activities and provides the powers of these personnel. The Act however provides sanctions for specific offences that can be committed under this law. The focus of the provisions as expected are on the transparent administration of the scheme. To this end, there are offences on misappropriation and fraud and any other acts that may seek to undermine the efficient and transparent administration of the scheme.

These offences are either punishable by a fine or imprisonment. The punishment provided for misappropriation of the pension funds in Section 195 of the Act is a minimum of ten years imprisonment. The nature of this offence as it relates to the management of public funds and the punishment imposed by the law are clear indication as to the seriousness the Ghanaian society attaches to the work of the fund managers.

The offences relating to fraud in Section 196 of the Act however attracts a punishment not exceeding two years and/ or a fine. Although this punishment is sufficient for the offence to be classified as a misdemeanour, the same argument made against the classification of corruption as a misdemeanour still applies.

The tenor of the Act with respect to criminal provisions can be argued to be commensurate with the duty expected of the authority.

**Table 4: List of Offences under the National Pensions Act classifiable as 'Petty Offences'**

LEGISLATION	NATIONAL PENSIONS ACT, 2008 (Act 766)			
Section	Offence	Description	Punishment Category	Sentence
199	Penalty for refusing to give information	An employer, trustee, pension fund manager, custodian or a person or body corporate who refuses to produce any book, accounts, document or voucher, refuses to	Misdemeanour	a fine of not more than two hundred and fifty penalty units or a term of imprisonment not exceeding six months or to both.

		give information or explanation, with intent to defraud		
<b>200</b>	General penalty	A person who contravenes a provision of this Act for which a penalty is not provided		a fine of not more than one thousand penalty units or a term of imprisonment of not less than one year or to both.

## 4.8 The Children's Act, 1998 (Act 560)

The Children's Act is the principal legislation on children in Ghana. It provides among others for the substantive rights of children, child protection, alternative care and the institutional arrangements for ensuring the rights and welfare of the child in Ghana. The Act also provides for some crimes related to the treatment of children and breach of the rules governing facilities for children. The general tenor of the offences provided for in the Act – especially from the punishment regime – puts them in the category of minor offences. The table below presents the offences and their respective sanctions to illustrate the argument that these offences could be considered as minor.

**Table 5: List of Offences under the Children's Act classifiable as 'Petty Offences'**

LEGISLATION		CHILDREN'S ACT, 1998 (Act 560)		
Section	Offence	Description	Punishment Category	Sentence
<b>59</b>		Unlawfully removing a child from lawful custody; failing to give a child the necessaries of life; bringing an action for a maintenance order while an application for maintenance is pending in	Misdemeanour	a fine not exceeding one hundred penalty units or a term of imprisonment not exceeding six months or to both the fine and imprisonment



		matrimonial proceedings.		
<b>83</b>	Offences related to adoption	Giving a payment or reward in respect of an adoption order without the approval of the Court; or receiving payment or reward in respect of an arrangement that may or may not lead to an adoption order	Misdemeanour	A fine not exceeding two hundred and fifty penalty units or to a term of imprisonment not exceeding one year or to both the fine and the imprisonment.
<b>94</b>	Offences	contravening a provision of sections 87 to 96	Misdemeanour	a fine not exceeding five hundred penalty units or a term of imprisonment not exceeding two years or to both the fine and the imprisonment.
114	Offences	Operating or continuing to operate a home without a license issues; obstructing or hindering a person conducting an inspection	Misdemeanour	a fine not exceeding two hundred and fifty penalty units or to a term of imprisonment not exceeding one year or to both the fine and the imprisonment
120	Offences	Operating or continuing to operate a day-care without a permit; or obstructing or hindering an officer conducting an inspection	Misdemeanour	a fine not exceeding two hundred and fifty penalty units or to a term of imprisonment not exceeding one year or to both the fine and the imprisonment

## Chapter 5

# Findings from Interviews with Stakeholders in the Justice Sector and Crime Suspects

### 5.1 Stakeholders<sup>56</sup> views on Petty Offences:

To find out respondents' views on offences generally, they were asked if there were offences they would consider as petty, what those offences are and why they felt those offences are petty. All the interviewees answered in the affirmative and listed the following as offences they consider as petty offences:

#### **Offences against public morals**

- Prostitution
- Obscenity
- Persons trading in prostitution

#### **Offences against the rights of property**

- Petty Stealing
- Unlawful entry
- Trespass
- Being in the premises for unlawful purpose

#### **Sexual Offences**

- Sexual intercourse with female idiot

#### **Offences against the peace**

- Breach of peace
- Unlawful Assembly
- Possession of Firearms without authorisation

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58. <sup>56</sup>These stakeholders included key informants and experts drawn from the legal profession, judiciary, justice sector and law enforcement agencies as identified in table 1 above.

### **Drug-related offences**

- Found with a roll of marijuana
- Cannabis

### **Non-fatal offences against the person**

- Exposing child to danger
- Negligently causing harm

### **Fatal offences against the person**

- Attempted Suicide
- Concealment of body of child at birth

### **Bigamy and similar offences**

- Bigamy
- Fictitious Marriage
- Impersonation in Marriage
- Unlawfully performing marriage ceremony

### **Offences against the security of the State**

- Publication of false news likely to cause fear and alarm
- Insult on the national flag
- False reports injuring the reputation of the state

### **Offences relating to public office**

- Withholding public money by public officer

### **General Nuisances**

- Laws against vagrancy
- General nuisance to public order
- Loitering
- Altercation that turns to a fight

### **Offences relating to animals**

- Stray animals

On why they felt those offences are petty offences, respondents gave varied reasons. For some the reasons are grounded in human right issues. In their view the arrest and prosecution of the offences indicated appears to criminalise acts which are mainly committed by a particular section of the society that rather need support. For others these laws have outlived their usefulness and the fact that the

commission of these crimes may never even end up in court make their existence in the statute books unnecessary. Other responses include the following:

*“they don’t affect the larger society...”*

*“they are considered as misdemeanours in the criminal code...”*

*“because these suspects do not cause serious harm to victims among others and they put a lot of pressure on Ghana’s criminal justice system...”*

Secondly, to the respondents, there are crimes which may be considered graver than the ones mentioned above. These arguably graver crimes are attended to or engage the attention of the police to the neglect of the other offences that can be considered petty.

## 5.2 Decriminalisation and Declassification of Petty Offences

Respondents had different opinions on which crimes were to be decriminalised and why. It is therefore necessary to discuss the views of each group as expressed in the interview. A number of respondents were of the opinion that the offences in the Criminal Offences Act below should be decriminalised.

- Unlawful Assembly - section 201
- Persons trading in prostitution- Section 274
- Insulting the national flag -Section 184
- False reports injuring the reputation of the state - section 185
- Being in the premises for unlawful purpose - section 157
- Trespass – Section 156
- Habitual Drunkenness – section 290
- Offences Against Public Morals – section 274
- Laws against vagrancy,
- Stray animals – section 299 to 310
- Loitering – section 296(v)
- General nuisance to public order – section 298
- Altercation than turns to a fight – sections 38 and 298

Key reasons they gave were that these offences violate the rights of ordinary people because the police is authorised to arrest upon suspicion. The laws can open the floodgates for human rights abuse as too

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much discretion is given to the police which is often abused. These laws are therefore a nuisance to the poor and marginalised people and again, according to them our criminal law is behind time. In addition, they argued that the need to decriminalise these crimes is necessitated by the negative impact the criminalisation has on the individual, the police service and society. The impact on the individuals is diverse and includes the creation of some form of insecurity on the part of those who are affected because they genuinely may not have the intention to commit those offences. Again, according to some criminalising such offences accentuate the misery that these kinds of people find themselves in and affect the economic well-being of these vulnerable people.

In the view of others, Police stations are riddled with a lot of challenges such as congestion in the cells. In addition to adding to the numbers problem at the cells, the criminalisation of these offences provides an avenue for corruption and the police take advantage of these vulnerable people. It sets up the police not as a friend but as a force that is not working in the interest of the community. It gives the impression that the police is not a protector of the poor. The impact on the society according to them is that the criminalisation and possible prosecution may lead to other crimes.

***".. people have returned from prison far worse than they left. The prosecution of these offences only adds to the pressures on the system whiles worsening the plight of the poor and vulnerable in society"***

For others the under listed offence should be decriminalised because criminalising some of these offences have the tendency to give Ghana's criminal justice a bad reputation. In their view criminalising offences such as ***"personal use of narcotics, suicide, motor traffic offences, assault, breach of peace, prostitution, obscenity,"*** does not help in building cohesion in society. In addition, this overloads the judicial system, unnecessarily overburdening judges. However the argument for decriminalisation was not a straightforward one. In the view of these respondents, mainly the lawyers, a more pragmatic approach is to consider alternatives to the current sentencing regime as we continue to refresh our thinking on decriminalisation. Other respondents were of the view that petty stealing i.e. stealing of small foodstuffs – few tubers of yam, plantain, and banana; acts tending to cause breach of the peace i.e. quarrelling in a public place should be decriminalized to save cost that will be incurred in their prosecution and to promote societal cohesion.

***"...that the petty stealing for instance is punished as a felony without recourse to what the person stole. These offenders are already in need of support but are however severely punished for the act of stealing".***

On assault, interviewees argued that assault without grievous bodily harm should not attract the punishment it attracts. ***“There is not much lost in an assault to warrant the state investigating and prosecuting”.***

In the view of a small minority the only offence worth decriminalising is attempted suicide. According to these people it is not the criminalization that has caused the congestion or stress on the criminal justice system. It is purely an infrastructural issue that needs to be tackled from that angle.

Another group of respondents however recommended declassification instead of decriminalisation for some other offences because ***‘our society is not prepared for decriminalisations because of fear’***. Some of the offences suggested for declassification are ***“weed smoking, defilement of a child without pregnancy and loitering”.***

***“Weed smoking should be decriminalised or declassified i.e. it should be taken away from Narcotics which is a 1st degree felony to a misdemeanour. It is a health-related matter and not a criminal matter and therefore anyone found culpable should be taken to rehab’.”***

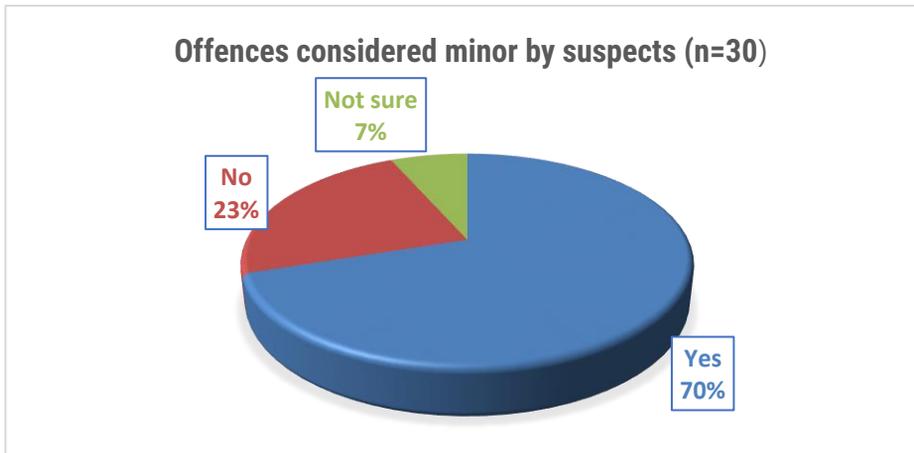
On the defilement, the respondents argued that it should be declassified to rather require the perpetrator to take care of the victim with his earnings or salary.

### **5.3 Suspects views on Petty Offences:**

A number of 30 crime suspects drawn from Police Stations in Accra where CHRI provides paralegal services to indigent persons in custody, were interviewed for this study. The offences they were alleged to have committed included defilement, stealing, robbery, assault, being on premises for an unlawful purpose, murder, fraud, rape, offensive conduct, threat of death, conspiracy to steal, use of narcotics, unlawful entry and causing damage and attempted robbery. These offences were alleged to have been committed between 15<sup>th</sup> April 2015 and 8<sup>th</sup> June 2017.

In response to the question on whether they consider the offences they were charged with were minor, a majority (70%) of the respondents responded in the affirmative as shown in figure 1 below.

Figure 1: Offences for which suspects were arrested and which they consider minor



The reasons they advanced for considering the offences as minor included the following:

- *Shouldn't be brought to the police station*
- *Didn't know it could lead to my arrest*
- *Arrested for buying a stolen phone*
- *Doing late market (sic) shopping*
- *Settling a dispute between parties*
- *Wanted to settle it at home*
- *Was innocent*
- *Didn't mean to kill him. It was a threat*
- *Promised to refund the money to the complainant*
- *Did not take part in the actual robbery*
- *Stole to feed themselves because the employer had not paid them*
- *It does not affect anyone*
- *It can easily be settled out of court*
- *The amount of money involved is very small*
- *It was only a misunderstanding among friends*
- *Only broke a lock*

Apart from the specific offences for which they were charged, the suspects' views were sought on other offences which they considered minor. From the results shown in figure 2 below, most of the respondents are of the view that petty stealing and other misdemeanours such as verbal assault and fighting should also be decriminalised. The suspects were also asked about the category of persons who they considered

to be mostly arrested for petty offences. The results shown in figure 3 shows that generally persons on the lower ranks of society's ladder tend to be at risk of being arrested for such offences.

Figure 2: Category of persons who are arrested for petty offences

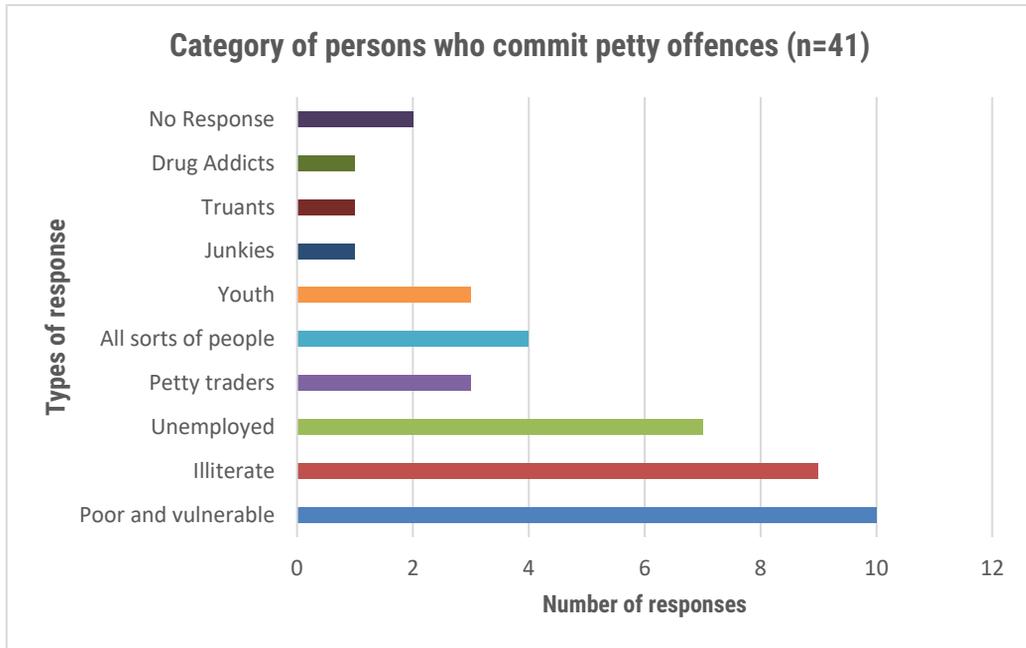
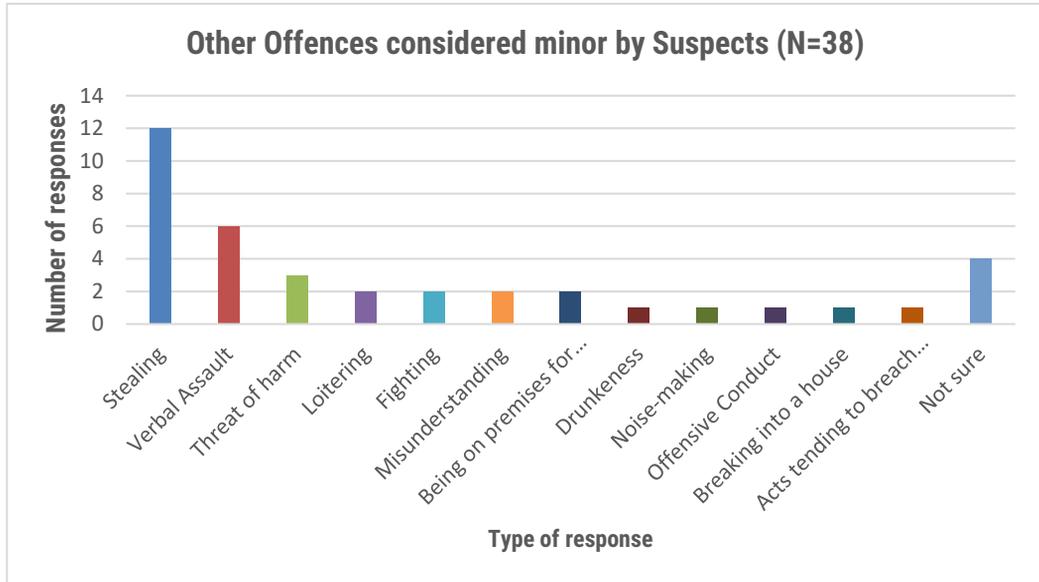




Figure 3: Other offences considered minor by Suspects



The study further investigated the manner in which persons arrested for petty offences were treated. The questions posed focused on due process rights as guaranteed by the 1992 Constitution and other regional and international treaties ratified by Ghana. Thus, respondents were asked about the time and mode of their arrest, time of detention, appearances before court, treatment by the police and access to legal services. The results from the study are presented below in the following figures.

Figure 4: Time of arrest of Suspects

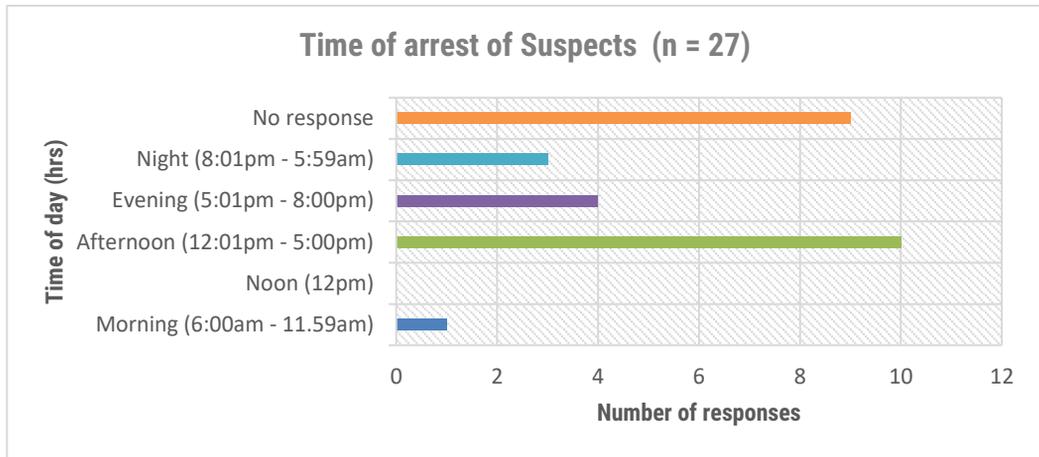


Figure 5: Mode and circumstances of arrest

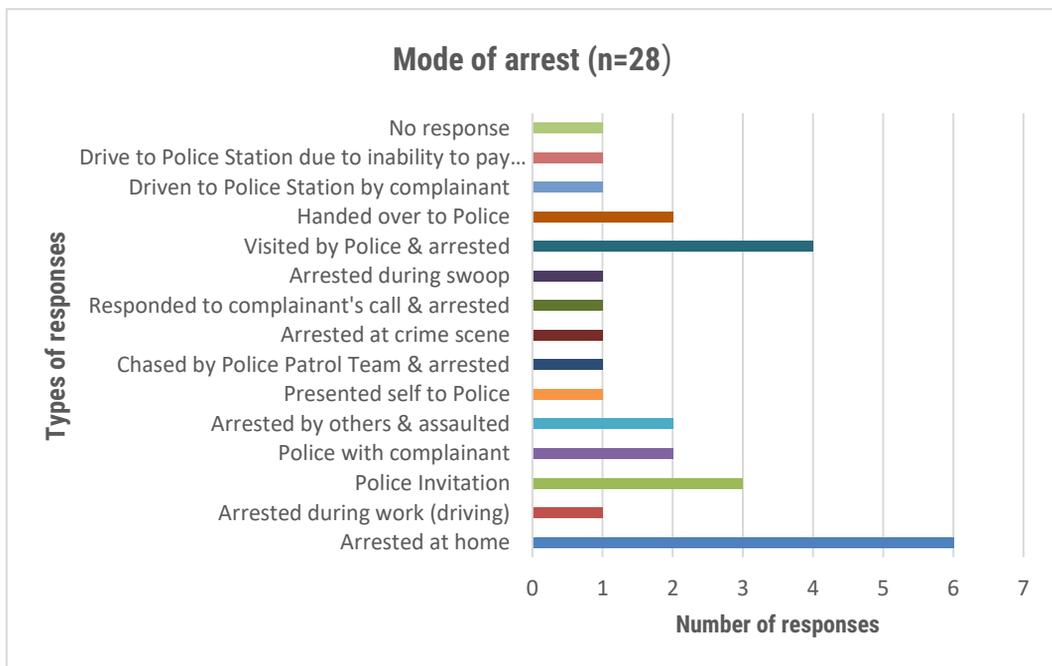


Figure 6: Time of arrest of Suspects



Figure 7: Number of court appearances by Suspects

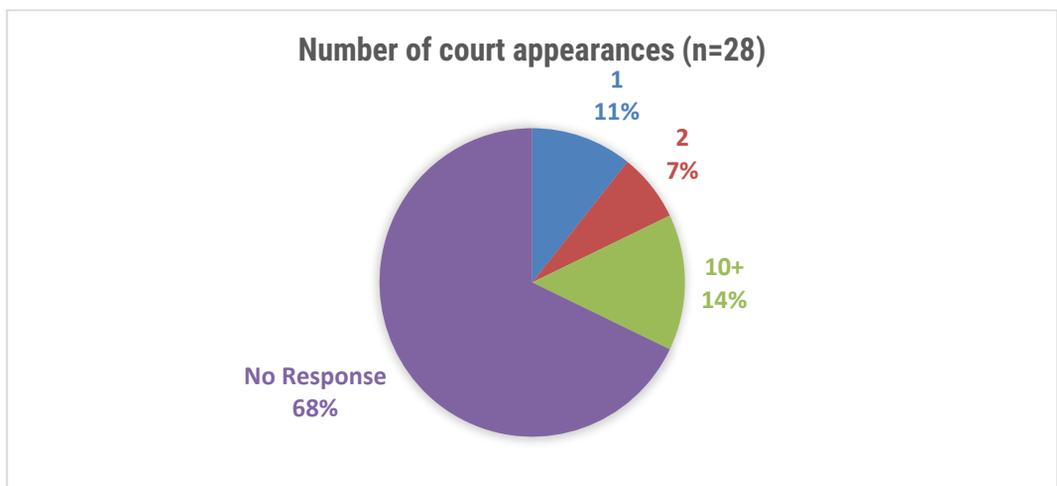


Figure 8: Treatment of Suspects by Police

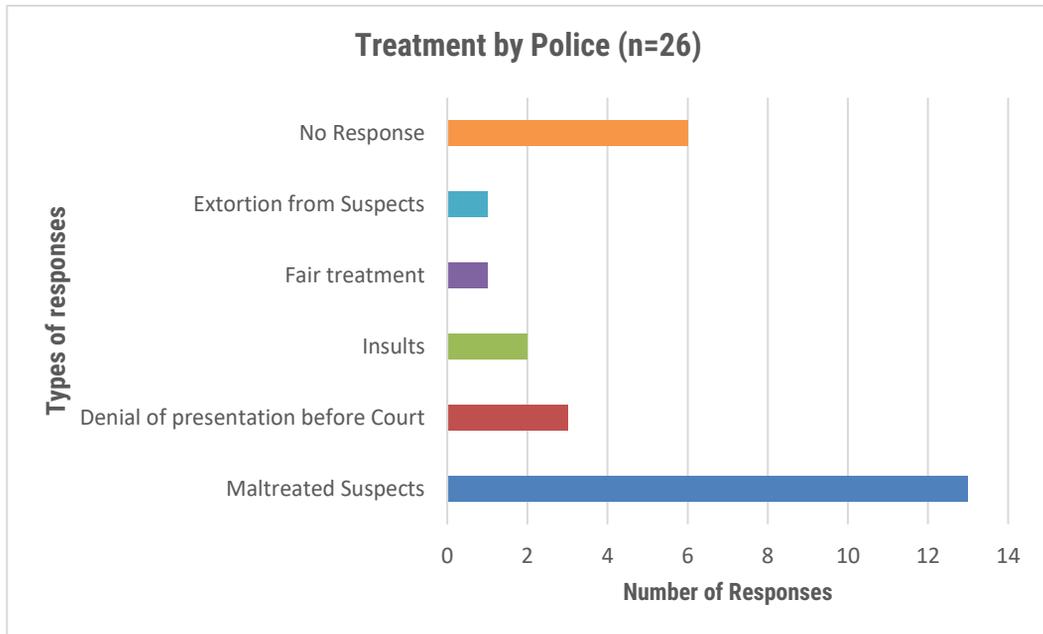


Figure 9: Access to a lawyer and legal assistance by Suspects

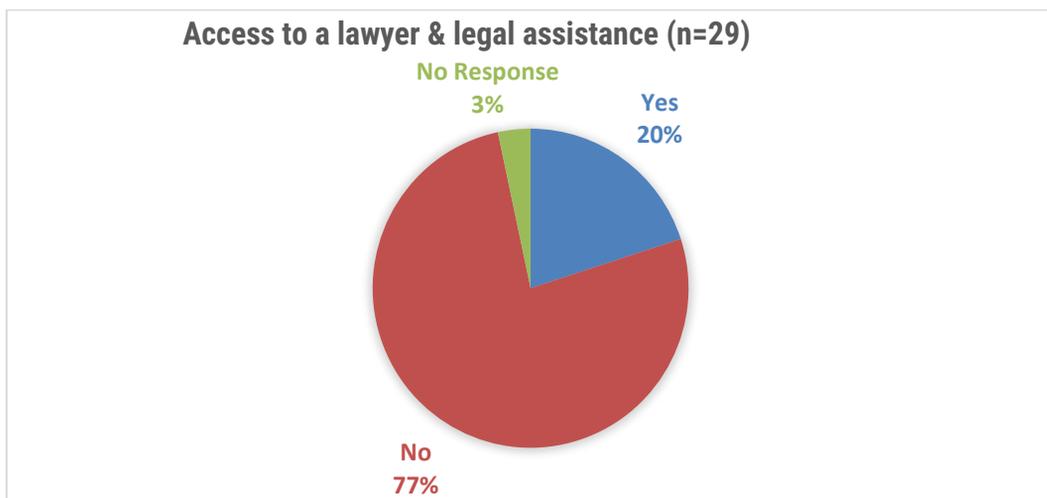
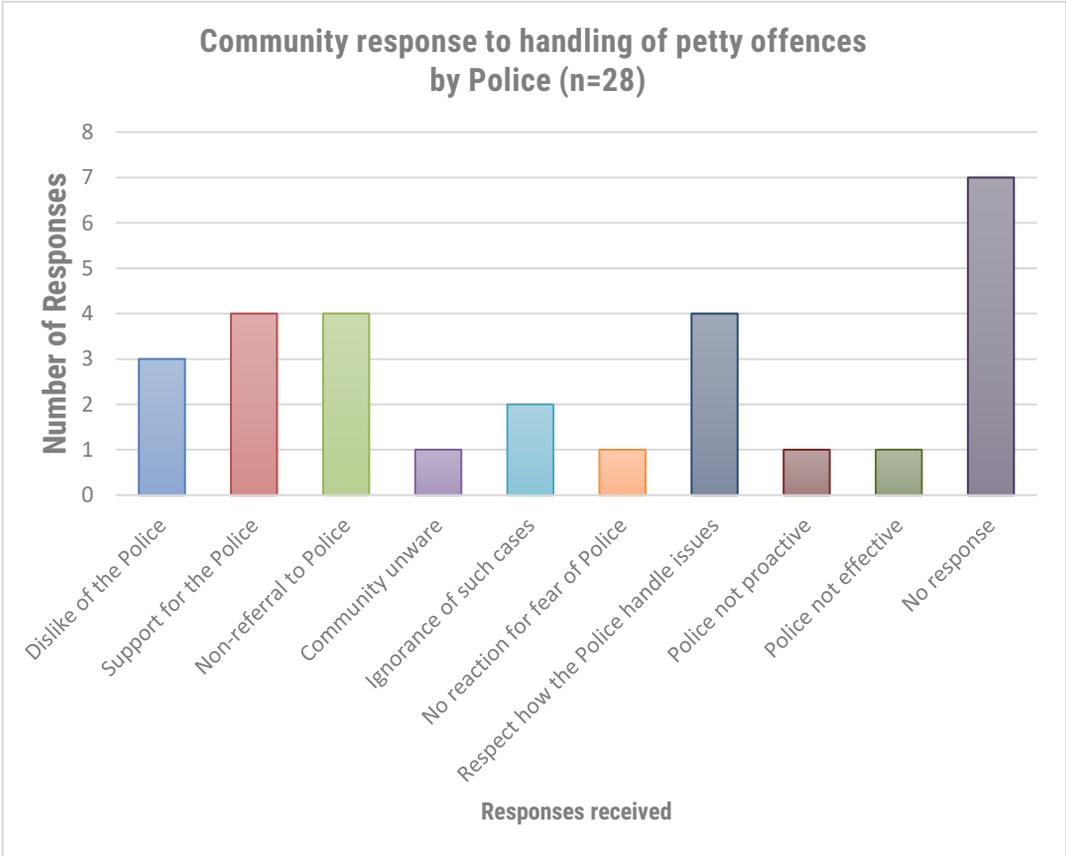




Figure 10: Community response to handling of petty offences by Police



The results presented above on the key aspects of the right to due process in the criminal justice system show that petty offences are negatively viewed and perceived as being used to target persons who are at the lower levels of the social ladder and who generally do not have access to legal services.

Figure 11: Offences recommended for decriminalisation by Suspects

The views of suspects were also sought with respect to which offences they would consider for decriminalisation or declassification, the impact of petty crime on the criminal justice system and their recommendations for dealing with petty offences. The results are also presented in the figures below.

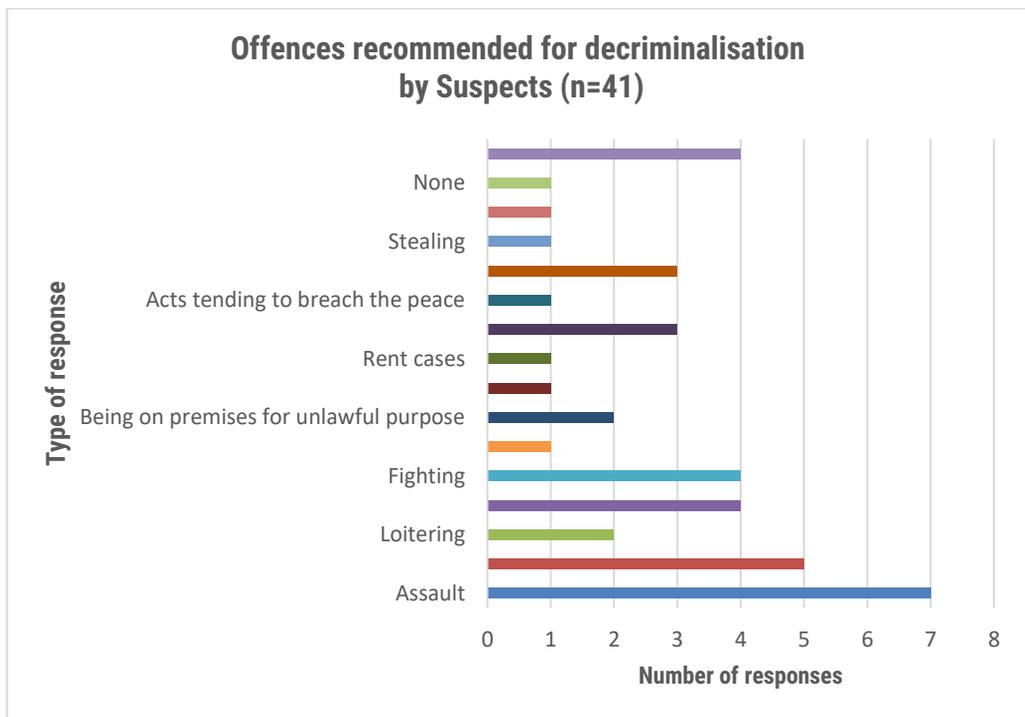


Figure 12: Offences recommended for declassification by Suspects

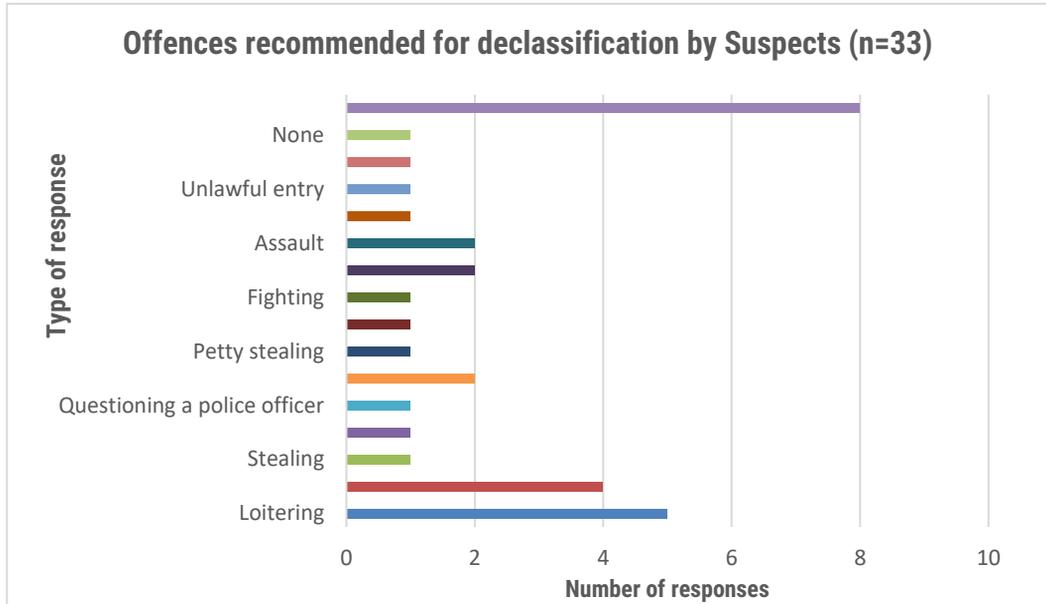


Figure 13: Impact of Petty Offence on Criminal Justice Administration

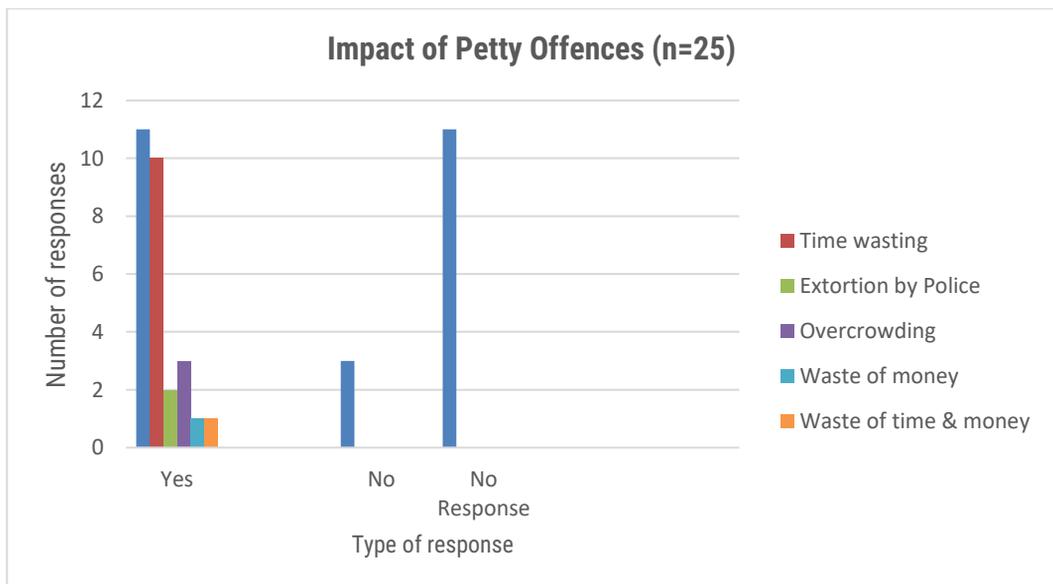


Figure 14: Petty Offences leading to congestion in detention facilities

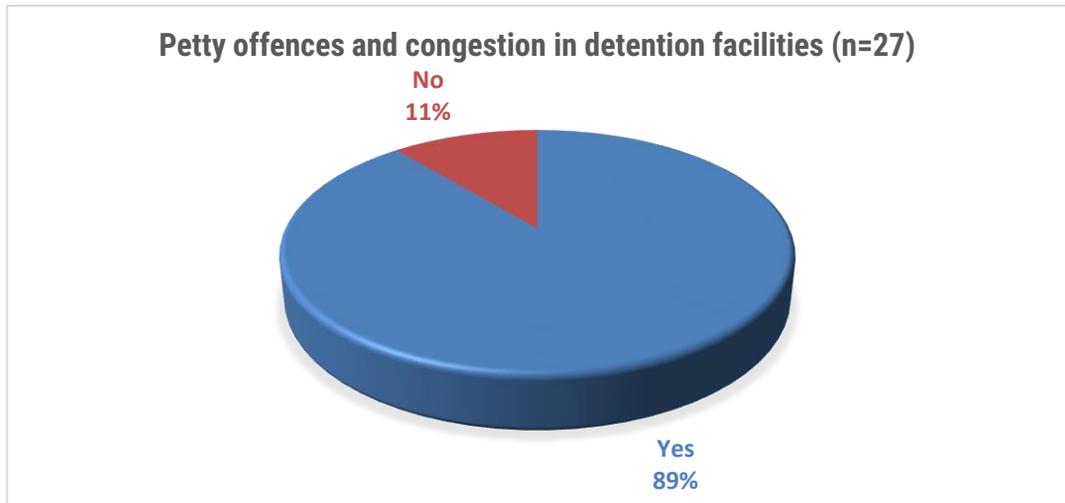
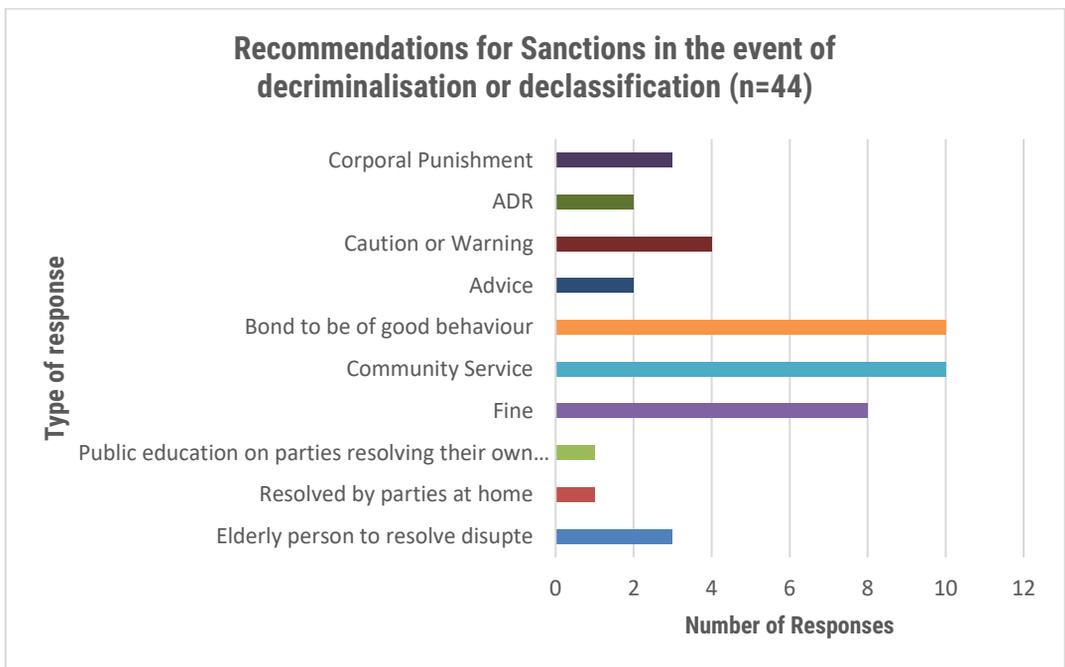


Figure 15: Recommendations by Suspects for sanctions in the event of decriminalisation





## 5.4 Discussion

The influence of the British Common Law system on Ghana's criminal justice system had laid heavily in ensuring a rather comprehensive codification of offences in the Criminal Offences Act, 1960 (Act 30) and other laws providing for offences. While there have been efforts in the United Kingdom to decriminalise certain acts, which appear to be minor infractions of a criminal nature, Ghana has not followed suit in identifying petty offences and decriminalising or declassifying them where necessary. This study has also shown that there is no clear definition of what constitutes a 'petty offence' in Ghana although the results show that there are indeed offences that fall into this category. While the convention delineation of offences into misdemeanours, felonies and serious offences exists in Ghana, misdemeanours (which constitute the least serious category) are not always petty offences. Indeed, there are efforts to make some of them even more serious offences, for example, corruption. The legislative trend also appears to be towards increasing the gravity of offences, rather than to lessening. Thus, the conclusion may be reached that Ghana's legal system is yet to fully engage with the concept and practice of decriminalisation and/or declassification of petty offences.

A review of some of the key legislation in Ghana including the Criminal Offences Act, the Motor Traffic Act and the Children's Act indicate that there are offences which can be decriminalised or declassified. It is also evident that there has not been a consistent pattern in the classification of offences and it will be useful for the opportunity to be taken now from this research to undertake the necessary law reform to achieve this consistency.

The results from the data gathered point to a need for decriminalisation or declassification of certain offences. Key informants identify offences, such as petty stealing, fighting, etc as worthy of decriminalisation for reasons among which are the placing of undue pressure on the criminal justice system, such offences affecting the poor and vulnerable and providing the opportunity for law enforcement agencies to violate the basic rights of suspects. These concerns are also complemented with information obtained from suspects (Figures 2, 3, 10, 13 and 14). Persons who are arrested for petty offences do not always enjoy full legal protection afforded by the respect for due process rights in these circumstances (Figures 4, 6, 7, 8 and 9). It may be observed from figure 6 for example, that most suspects reported being arrested in the afternoon and evening. The conclusion that could be drawn from this finding is that such persons will most likely spend a night in custody as there will be no court sitting at that time which could grant them bail. There are reported instances of maltreatment (figure 8), lack of access to legal services (figure 9) and overcrowding in detention facilities, among others (figures 13 and 14). The data (figures 11 and 12) also confirms that indeed, minor cases such as assault (often between individuals) should be considered for decriminalisation. Accordingly, the responses given to questions about alternative means of resolving such cases in the event of decriminalisation show a strong



preference for non-adversarial methods as evident from figure 15. Consequently, a strong case can be made that there is a need for the greater advocacy, law reform, criminal justice policy intervention and effective implementation of measures to decriminalise or declassify petty offences in Ghana.

## Chapter 6

# Conclusion and Recommendations

### 6.1 Conclusion

In a nut shell what is petty is determined by a number of factors but usually oscillating between the gravity of punishment and the type of offence. Certain offences have been considered as not worth the time of the police but nonetheless address a social canker whereas other minor infractions of offences considered serious and by virtue of the nature of the offence itself the punishment tends to be harsh. Sometimes petty acts are punished harshly whiles we ignore serious offences or some serious crimes attract minimal punishment as in the case of corruption. There is therefore the need to take a relook at our criminal laws and decriminalise where necessary and declassify if it so requires.

### 6.2 Recommendations

- Nuisance offences should be decriminalised to make them tortious liability or be made statutory offences such that they are handled by the local government institutions.
- Alternative sanctions to imprisonment such as probation, rehabilitation, and fines should be used.

It is observed that when an offence is decriminalised, it becomes a civil wrong, it is no longer a crime under the relevant statute. Where decriminalisation is not possible, it is recommended that the offence in question is declassified and operable within the scope of Bye-laws passed by Metropolitan, Municipal and District Assemblies (MMDAs). The approach will facilitate the treatment of those offences as minor and allow for more flexibility in determining the sanction for committing the said offence. Sanctions such as fines, community service (sweeping the streets and working in a state farm), warning, bond to be of good behaviour should be implemented.

- Government should implementation a range of non-custodial sentencing measures as punishments for minor offences and restrict traditional custodial sentences to punishing more serious crimes.
- Law enforcement agencies should be trained on international protocols like the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the African Charter on Human and Peoples' Rights, the African Charter on the Rights and Welfare of the Child and other soft law sources including the Fair Trial Principles in Africa; and soft laws such as the Tokyo Principles, the Ouagadougou Plan of Action and the AU Principles on the Declassification and Decriminalisation of Petty Offences in Africa.

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## Annex

Table 6: List of Offences under the Criminal Offences Act, 1960 (Act 29) classifiable as Petty Offences

<b>COMMONWEALTH HUMAN RIGHTS INITIATIVE (CHRI)</b>				
<b>RESEARCH ON THE DECRIMINALISATION AND DECLASSIFICATION OF PETTY OFFENCES</b>				
<b>OFFENCES CLASSIFIABLE AS 'PETTY' IN GHANA'S CRIMINAL JUSTICE SYSTEM</b>				
<b>LEGISLATION</b>				
<b>Criminal Offences Act, 1960 (Act 29)</b>				
<b>Section</b>	<b>Offence</b>	<b>Description</b>	<b>Punishment Category</b>	<b>Sentence</b>
<b>22</b>	Duty to prevent a felony	Knowing that a person designs to commit or is committing a criminal offence and fails to use reasonable means to prevent the commission or completion	Misdemeanour	
<b>25</b>	Harbouring a criminal	Knowingly aiding, concealing or harbouring a person who has committed or has been convicted of a criminal offence to enable the person avoid lawful arrest or execution of the sentence	Misdemeanour	
<b>57</b>	Attempted suicide	Attempting to kill oneself	Misdemeanour	
<b>62(1)</b>	Concealment of body of child	Concealing the body of a child - whether born dead or alive, intending to conceal the fact of its birth, existence, death or the manner or cause of death	Misdemeanour	
<b>72</b>	Negligently causing harm	Negligently and unlawfully causing harm to any person	Misdemeanour	



<b>73</b>	Dangerous thing, negligently causing harm or danger	Endangering the life of any other person while in control of a steam-engine, machine, ship, boat or other dangerous thing, undertaking medical or surgical treatment, or engaged in dispensing, supplying, selling or administering a medicine, poisonous or dangerous matter	Misdemeanour	
<b>74</b>	Threat of harm	Threatening any other person with unlawful harm, with intent to put that person in fear of unlawful harm	Misdemeanour	
<b>91</b>	Abduction of child under 18	Unlawful possession or detention of a child with intent for the child to be carnally or unnaturally carnally known	Misdemeanour	
<b>96</b>	Abandonment of infant	Leaving a child in a hospital or at the house of another person where one is bound to keep charge of the child by virtue of an agreement or employment or one in unlawful possession of a child	Misdemeanour	
<b>103</b>	Indecent Assault	Forcibly making a sexual bodily contact with another person or sexually violating the body of another person short of carnal or unnatural carnal knowledge	Misdemeanour	Imprisonment of not less than 6 months
<b>104(b) and (c)</b>	Unnatural Carnal Knowledge	(b) Consensual unnatural carnal knowledge with a person of not less than 16 years (c) Unnatural carnal knowledge with an animal	Misdemeanour	



<b>107</b>	Procuration	Procuring a person under 21 years of age to have carnal or unnatural carnal knowledge, become a prostitute or become an inmate of a brothel	Misdemeanour	
<b>108</b>	Seduction or Prostitution of a child under 16 years of age	A person having custody, care or charge of a child under 16 years of age, causing or encouraging the seduction, carnal or unnatural knowledge, or prostitution of the child	Misdemeanour	
<b>109</b>	Compulsion of marriage	Causing a person to marry against his or her will by duress	Misdemeanour	
<b>137</b>	Charlatanic advertisements in newspapers	Publication (by the editor, publisher, proprietor and printer of a journal or a newspaper) in a journal or newspaper of an advertisement or notice relating to fortune-telling, palmistry, astrology or the use of any subtle craft, means or device which is sought to deceive or impose on a member or the public or is likely to so deceive or impose	Criminal Offence	Fine not exceeding 25 penalty units (GHS300.00)
<b>139</b>	Improper removal of or dealing with stamps	Unlawful removal of a stamp affixed or impressed on a postal matter or telegraph	Criminal Offence	Fine not exceeding 5 penalty units (GHS 60.00)
<b>141</b>	Fraud in sale or mortgage of land	Fraudulently concealing an important document relating to title to land in a bid to induce a person to become a purchaser or mortgagor of the land	Misdemeanour	



<b>142</b>	Fraud as to boundaries or documents	Removing, altering, concealing, injuring or falsifying any boundary mark or thing, receipt, bill or laden or other similar document with intent to defraud	Misdemeanour	
<b>143</b>	Fraud as to thing pledged	Obtaining any pledged or pawned property to another person secretly, by duress or deceit with intent to defraud	Misdemeanour	
<b>144</b>	Fraud in removing goods to evade legal process	Removing, concealing or disposing off a thing in one's possession with intent to evade any execution, warrant or other lawful process known to the person	Misdemeanour	
<b>145</b>	Fraud by agents	An agent dishonestly accepting, obtaining or agreeing or attempting to accept or obtain any gift or consideration to do anything contrary to the affairs or business of his principal, as well as any person giving or agreeing to give any gift or consideration or any person giving or agreeing to give any gift or consideration to the agent with intent to deceive the principal	Misdemeanour	
<b>154</b>	Instruments intended or adapted for unlawful purpose	Being found at a market, wharf, jetty or landing place, in or about any vessel, veranda, outhouse, building, premises, passage, gateway, yard, garden or enclosed piece of land for an unlawful purpose	Misdemeanour	



<b>157</b>	Trespass	Entering upon, remaining upon, conducting oneself unlawfully after lawfully entering and remaining on premises or after being lawfully requested to depart, enters or remains upon any land in the possession of another person	Criminal Offence	Fine not exceeding 25 penalty units (GHS 300.00) and forced removal at the discretion of the Court
<b>159</b>	Forgery of other documents	Forging any document whatsoever with intent to defraud or injure anyone or with intent to evade any legal requirements or with intent to commit or facilitate the commission of a criminal offence	Misdemeanour	
<b>160</b>	Forging any hallmark on gold, silver or bullion	Forging or counterfeiting any hallmark or make, under the authority of any statutory entity with intent to defraud	Misdemeanour	
<b>161</b>	Forging trademark	Forging or counterfeiting any trademark or other mark for purposes of sale or passing off as well as possessing instruments for such forgery and counterfeiting	Misdemeanour	
<b>162</b>	Forgery of and other offences related to stamps	Forging or possessing instruments for forging, unlawfully tearing or removing, unlawfully mutilating, fraudulently affixing, fraudulently erasing, fraudulently possessing any torn or mutilated stamps	Criminal Offence	Fine
<b>165</b>	Being in possession of means of forging	Being in possession of any instrument or thing specially contrived for purposes of forging	Misdemeanour	

<b>172(1)(a)</b>	Causing unlawful damage	Unlawfully and intentionally causing damage to any property by any means whatsoever not exceeding one million cedis or of no pecuniary value	Misdemeanour	
<b>177(2)</b>	Construction or repairs endangering train, vessel or aircraft	Knowingly or negligently supplying any life-saving apparatus or equipment of inferior quality for use on board a train, vessel or aircraft which is likely to endanger life	Misdemeanour	
<b>179</b>	Interference with signal	Unlawfully interfering with or obstructing the working of any lighthouse, beacon, bouy, signal or other apparatus or thing of whatever kind so ever, which is used for the safety of navigation at sea, on a river or any water or in the air or on any train	Misdemeanour	
<b>183(5)(c)</b>	Power to Prohibit Importation or Publication of Newspaper, Sedition, etc.	Being found in possession of any newspaper, book, or document or any part thereof or extract therefrom which has been declared by the President by order to be prohibited to be imported, does not prove to the satisfaction of the Court that it came into his possession without his knowledge or privity	Misdemeanour	
<b>183(6)</b>	Power to Prohibit Importation or Publication of Newspaper, Sedition, etc.	Obtaining, receiving, or otherwise acquiring or possessing any newspaper, book, or document or any part thereof or extract therefrom which contains any seditious words or writing and upon knowledge of the content,	Misdemeanour	



		does not deliver the document to the nearest police station or other authorised officer.		
<b>183B</b>	Offence and Penalty for Unqualified Persons Sitting or Voting in Parliament.	Sitting other than in the public galleries or in Parliament knowing or having reasonable grounds for knowing that he is not entitled to do so	Criminal Offence	Fine or imprisonment not exceeding 30 days or both
<b>184</b>	Insulting the National Flag and Emblem	Doing any act or utters any words or publishes any writing with intent to insult or bring into contempt or ridicule the official national flag or emblem of Ghana or any representation or pictorial reproduction	Misdemeanour	
<b>186(2)</b>	Aiding or Permitting Escape of a Prisoner of War	Negligently and unlawfully aiding or permitting the escape of a prisoner of war	Misdemeanour	
<b>187</b>	Abetment of Mutiny or Desertion, or Assault by Sailor or Soldier or Airman.	A person, not being subject to military law, abets the desertion of any person subject to such law, or the commission by any such person of any assault upon a superior officer being in the execution of his office	Misdemeanour	
<b>188</b>	Abetment of Insubordination by Sailor	A person, not being subject to military law, abets any act of insubordination by any person subject to such law	Misdemeanour	
<b>189</b>	Unlawful Training	Three or more persons meet or are together for the purposes of military training or exercise, without the permission of the President or of some officer or person authorised by law to give such permission	Misdemeanour (each is individually liable)	



<b>190</b>	Evasion of Naval, Military, or Air Service	A person who causes harm to himself or procures any other person to cause harm to him, for the purpose of evading any liability to perform service or duty, with the armed forces	Misdemeanour	
<b>191(1)</b>		Taking, or administering, or attempting, or offering to administer to any other person, any unlawful oath	Misdemeanour	
<b>198</b>	Riot	Partaking in a riot	Misdemeanour	
<b>200</b>	Provocation of Riot	Doing an act with intent to provoke a riot	Misdemeanour	
<b>202</b>	Unlawful Assembly	Partaking in an unlawful assembly	Misdemeanour	
<b>202A</b>	Forcible Entry	A person with violence makes an entry into any building or land, whether or not he is entitled to the possession thereof	Misdemeanour	
<b>204</b>	Disturbance of Lawful Assembly	A person who unlawfully and with violence obstructs the assembly of any persons for any lawful purpose, or disturbs any such assembly, or with violence disperses or attempts to disperse any such assembly	Misdemeanour	
<b>205</b>	Assault, etc., on Public Officer	A person who assaults, obstructs, molests, or resists, or aids or incites any other person to assault, obstruct, molest, or resist any public or peace officer, or any person employed by a public or peace officer, acting or proceeding to act in the execution of any public office or duty or in the execution of any warrant or legal process; or uses any threatening, abusive, or	Misdemeanour	



		insulting language, or sends any threatening or insulting message, or letter, to any peace officer in respect of his duties		
<b>206(1)</b>	Carrying Offensive Weapon	Any person who, without lawful authority the proof whereof shall lie on him, has with him in any public place any offensive weapon	Misdemeanour	
<b>206(2)</b>		Any person who, while present at any public meeting or at any public assembly of people or on the occasion of any public procession, has with him any offensive weapon or missile, without lawful authority, the proof whereof shall lie on him	Misdemeanour	
<b>207</b>	Offensive Conduct Conducive to Breaches of Peace	Any person who in any public place or at any public meeting uses threatening, abusive or insulting words or behaviour with intent to provoke a breach of the peace or whereby a breach of the peace is likely to be occasioned	Misdemeanour	
<b>208</b>	Publication of false news with intent to cause fear and alarm to public	Any person who publishes or reproduces any statement, rumour or report which is likely to cause fear and alarm to the public or to disturb the public peace knowing or having reason to believe that the statement, rumour or report is false	Misdemeanour	
<b>209(1)</b>	Discharging Guns, etc., in Town	A person who in any town without lawful and necessary occasion, discharges a firearm or a person being the occupier or any house,	Criminal Offence	Fine not exceeding 25 penalty units (GHS 300.00)



		building or yard knowingly permits the discharge of a firearm		
<b>209(2)</b>		A person who in any town without lawful and necessary occasion throws or sets fire to any firework in any public place or in any house, building, or yard	Criminal Offence	Fine not exceeding 5 penalty units (GHS 60.00)
<b>215</b>	Deceit of Court by Personation etc	A person with intent to defeat, obstruct, or pervert the course of justice, or to defraud or injure any person endeavours of justice, or to defraud or injure any person endeavours to deceive any court, or any judicial officer by personation, or by any false instrument, document, seal, or signature	Misdemeanour	
<b>216</b>	Deceit by Paper Resembling Court Process	A person who knowingly delivers or causes to be delivered to any other person any paper of such character as to be calculated, by reason of the resemblance of that paper to a summons or other process of any court or tribunal	Misdemeanour	
<b>217</b>	Causing Witness to Disobey Summons	A person who in any manner wilfully causes any person to disobey any summons, process, or order lawfully issued or made for his attendance as a witness in any judicial proceeding, or for the production by him of any written or other evidence in any judicial proceeding	Misdemeanour	



<p><b>218</b></p>	<p>Causing Person to Refrain from Giving Evidence on Criminal Trial</p>	<p>A person who with intent to defeat, obstruct, or pervert the course of justice at the trial of any person for any crime, in any manner causes any person to refrain from giving evidence at such trial</p>	<p>Misdemeanour</p>	
<p><b>219</b></p>	<p>Disobedience to Summons as Witness</p>	<p>A person who without reasonable excuse makes default in obeying any summons, process, or order lawfully issued or made for his attendance as a witness in any judicial proceeding or for the production by him of any written or other evidence in any judicial proceeding</p>	<p>Misdemeanour</p>	
<p><b>220</b></p>	<p>Hindrance of Inquest</p>	<p>A person who with intent to prevent, obstruct, or delay the taking of any inquest upon the body or touching the death of any person, or to defeat the ends of justice, buries, or in any manner conceals or disposes of such body</p>	<p>Misdemeanour</p>	
<p><b>221</b></p>	<p>Neglect to Hold Inquest, etc</p>	<p>A person who being under a duty as a police officer, coroner, gaoler, peace officer, or in any other capacity, to give any notice or take any measures in order to procure the holding of an inquest upon the body or touching the death of any person, wilfully and without reasonable excuse fails to perform his duty</p>	<p>Misdemeanour</p>	



<b>222</b>	Violence Against Judges, etc, in Legal Proceeding	A person who uses any violence with intent to deter any person from acting in any manner as a judge, arbitrator, umpire, assessor, juror, witness, counsel, agent, prosecutor, or party in any legal proceeding or enquiry, or from acting in execution of his duty in any judicial or official capacity, or from having recourse to any Court or public officer, or on account of his having so acted or had recourse	Misdemeanour	
<b>223</b>	Disturbance of Court	A person who with force, threats, or tumult, hinders, interrupts or disturbs the proceedings of any Court, or wilfully and unlawfully, with force, threats, or tumult, hinders any person from entering or quitting any Court, or removes him therefrom, or detains him therein	Misdemeanour	
<b>224</b>	Insulting Court	A person who in the presence of any Court is guilty of contempt of Court by any insulting, opprobrious, or menacing acts or words	Misdemeanour	
<b>225</b>	Exciting Prejudice as to Proceeding Pending in Court	A person who pending any proceedings in any Court, publishes in writing or otherwise anything concerning such proceedings or any party thereto, with intent to excite any popular prejudice for or against any party to the proceedings	Misdemeanour	



<p><b>226</b></p>	<p>Resisting Arrest and Rescue</p>	<p>A person who endeavours to resist or prevent the execution of the law by resisting arrest, rescuing another person from lawful custody, escaping or permitting oneself to be rescued from lawful custody or rescuing goods or things in the lawful custody of a police officer or peace officer who has custody pursuant to a warrant or other lawful process</p>	<p>Misdemeanour</p>	
<p><b>233</b></p>	<p>Advertising a Reward for the Return of Stolen Property, etc.</p>	<p>A person who publicly offers a reward for the return of a property which has been stolen, and the offer makes use of any stolen words purporting that no questions will be asked, or that the person producing such property will not be seized; or publicly offers to return to any person who may have bought or advanced money by way of loan upon any stolen or lost property the money so paid or advanced or any other sum of money or reward for the return of such property; or prints or publishes such offer</p>	<p>Criminal Offence</p>	<p>Fine not exceeding 25 penalty units (GHS 300.00)</p>



DECriminalISING & DECLASSIFYING

# PETTY OFFENCES IN GHANA



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