

# Pre-Trial Detention and Prison Overcrowding in Madagascar: A Comparative Glimpse with Indonesia

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**Abstract.** *This article examines how pre-trial detention, judicial delay and the limited use of non-custodial measures contribute to structural prison overcrowding in Madagascar and Indonesia. It asks three questions: (1) What do recent prison statistics show about the scale and main drivers of overcrowding in both countries? (2) How do their constitutional and legislative frameworks regulate pre-trial detention, “reasonable time” of trial and alternatives to custody? and (3) To what extent does the combined reading of law and data comply with constitutional and international standards on liberty and humane treatment? Methodologically, the study adopts a normative–juridical and comparative design, combining doctrinal analysis of constitutions, codes of criminal procedure, prison and juvenile justice laws with secondary quantitative data from the World Prison Brief on prison population, occupancy and pre-trial detention from the early 2000s to 2025. The findings show that Madagascar’s system operates at almost three times its official capacity, with pre-trial detainees representing around half of all prisoners, while Indonesia, although less overcrowded in relative terms, still functions at nearly double capacity and holds a substantial remand population. In both jurisdictions, legal frameworks formally present pre-trial detention as exceptional and recognise a wide catalogue of non-custodial measures, yet these safeguards are only partially effective in practice, especially for women and children. The article concludes that the central problem is the gap between law “on the books” and law “in action” and argues for targeted reforms to reduce unnecessary remand, strengthen judicial oversight and mainstream non-custodial sanctions in line with ICCPR standards and Sustainable Development Goal 16.*

**Keywords:** *pre-trial detention, prison overcrowding, Madagascar, Indonesia, comparative study*

## 1. Introduction

Prison overcrowding and excessive use of pre-trial detention have become persistent features of criminal justice systems worldwide. Comparative data from the World Prison Brief and UNODC show that in many regions the number of people held in custody has grown faster than the general population, with global prison populations increasing by more than 20% since the early 2000s while official capacity has not kept pace. In a significant number of countries, facilities operate at well above 100% of their designed capacity, and in some low- and middle-income states occupancy levels exceed 150–200%, creating structural risks of inhuman or degrading treatment. International bodies have repeatedly linked this overcrowding to the routine use of pre-trial detention, particularly for minor offences, slow criminal procedures, and limited recourse to non-custodial measures. At the normative level, these trends sit uneasily with the International Covenant on Civil and Political Rights (ICCPR) and the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), which require that detention before trial be exceptional, time-limited and consistent with human dignity.

Madagascar and Indonesia illustrate this global tension between formal legal guarantees and the everyday reality of penal practice. According to the World Prison Brief, Madagascar's prison system, designed for around 11,000 places, held more than 30,000 prisoners in 2023, corresponding to an occupancy rate of about 277%, while roughly 47% of detainees were in pre-trial or remand status. Indonesia, although equipped with a far larger and more geographically distributed correctional estate, recorded an occupancy rate close to 187% in 2025, with more than a fifth of prisoners awaiting trial. Both countries have adopted constitutions and criminal procedure codes that, on paper, characterise pre-trial detention as an exceptional measure and provide various alternatives such as bail, judicial control, parole, diversion and community-based sanctions. Yet the statistical evidence of chronic overcrowding, long judicial delays and high proportions of remand prisoners suggests a significant implementation gap. Against this background, a focused comparison of Madagascar and Indonesia is analytically useful: the two systems differ in size, legal tradition and socio-economic context, but they confront similar challenges in translating constitutional and international commitments on liberty and humane treatment into effective constraints on the use of imprisonment.

The phenomenon of overcrowding in prisons has profound implications for health and human rights. Overcrowded facilities often exacerbate psychological distress among inmates, leading to increased rates of anxiety, depression, and other mental health issues due to inadequate resources and poor living conditions. The overcrowding problem is not merely a quantitative issue; it severely limits access to health services, which are critical for maintaining the well-being of the incarcerated population. Overcrowding has also been linked to human rights violations, including inadequate access to legal representation and violation of basic hygiene and living standards (Garland et al., 2014) ; . Studies have demonstrated that prisoners in overcrowded environments are at higher risk of recidivism, suggesting that the environment contributes to cycles of criminality and social unrest (Polcin et al., 2018). Looking closely at pre-trial detention and judicial delays, a significant body of evidence indicates that such conditions lead to adverse social outcomes. Pre-trial detention often causes undue hardship, perpetuating cycles of poverty and instability for the detained individuals and their families (Walker & Herting, 2020, p. 1881). Judicial delays can exacerbate criminal justice costs and amplify the social stigma attached to incarceration, affecting employment opportunities and family stability (Phelps, 2016 p.1). This suggests the need for reform strategies that prioritize rapid adjudication processes, thereby minimizing the time individuals spend in detention pre-trial (Walker & Herting, 2020). Moreover, non-custodial measures have emerged as crucial elements in penal reform. Research consistently suggests that strategies such as probation and restorative justice not only reduce recidivism rates but also promote community integration of offenders (Corda, 2018, p.70). Non-custodial approaches have been shown to save on incarceration costs while simultaneously addressing the needs of vulnerable groups, including juvenile offenders and drug-related offenses (Corda, 2018). Additionally, innovative reforms in community supervision, exemplified by motivational interviewing and case management strategies, have provided promising results in supporting individuals on probation or parole (Polcin et al., 2018). Focusing on Indonesia, recent studies highlight significant issues related to overcrowding in the context of drug enforcement, with substantial numbers of individuals imprisoned for drug offenses—a situation largely driven by stringent anti-narcotics policies (Polcin et al., 2018). The Indonesian penal system faces criticism for

its high incarceration rates and poor conditions that are often exacerbated by judicial delays (Polcin et al., 2018). Furthermore, the integration of diversion programs for youth, particularly in juvenile justice, remains limited and inconsistent, leading to calls for more cohesive and effective reform strategies. In Madagascar, the literature on overcrowding and justice reform is limited, primarily encompassing NGO and IO reports that describe dire detention conditions. These reports emphasize the acute lack of resources for legal representation and health services within the penal system (Ahalt et al., 2018, p.764). While some academic pieces have examined the implications of detention conditions, there is a notable absence of in-depth studies on policy impacts, especially in areas like diversion and juvenile justice—a stark contrast to the more robust research landscape in Indonesia. Despite the disparate contexts of Madagascar and Indonesia, a significant gap persists in the literature concerning systematic comparisons that link statistical data from the World Prison Brief (WPB) with a detailed doctrinal analysis of pre-trial rules, the effectiveness of non-custodial measures, and the treatment of vulnerable groups in both countries. Addressing this gap is critical for informing future criminal justice policies and ensuring that the rights and needs of the vulnerable populations in both nations are adequately met.

Despite substantial attention to prison reform at the international level, there is still limited knowledge about how specific combinations of legal rules and institutional practices produce or fail to prevent overcrowding in particular national contexts. In the case of Madagascar, academic work on criminal justice remains sparse and fragmented, with most information coming from reports by NGOs and international organisations. For Indonesia, a growing literature addresses prison health, drug-related incarceration and juvenile justice, but rarely places these issues within a systematic comparative framework. As a result, we still lack a clear account of how the detailed provisions of the Codes of Criminal Procedure, penal codes and special statutes on non-custodial measures interact with actual patterns of pre-trial detention, judicial delay and the treatment of vulnerable groups. This paper asks three questions:

- (1) What do recent prison statistics tell us about the scale and main structural drivers of overcrowding in Madagascar and Indonesia?
- (2) How do their laws on criminal procedure and sentencing regulate pre-trial detention, the length of proceedings, and alternatives to prison?
- (3) When we compare these laws with the prison data, what do we learn about the main implementation gaps and the reforms needed to comply with constitutional and international standards on liberty and humane treatment?

The objective of the study is threefold. First, it seeks to describe and compare key quantitative indicators of prison population, occupancy and pre-trial detention in both countries, using harmonised data. Second, it aims to analyse doctrinally the relevant constitutional and legislative provisions governing arrest, remand, judicial review, vulnerable prisoners and alternatives to custody, situating them within the broader framework of the ICCPR, the CRC, CEDAW and regional human rights instruments. Third, it intends to formulate reform-oriented conclusions by identifying where the main implementation gaps lie and which legal and institutional adjustments would be most promising for reducing overcrowding and bringing practice closer to international standards, in line with Sustainable Development Goal 16 on peace, justice and strong institutions. To that end, the paper focuses on Madagascar and Indonesia as contrasting but comparable cases, relies on secondary statistical and legal sources, and does not undertake fieldwork. Following this introduction, Section 3 explains the methodology;

Section 4 presents and discusses the empirical and normative findings in five subsections (overcrowding, pre-trial detention, vulnerable groups, non-custodial measures, and comparative synthesis with reform priorities); and the final section draws together the main arguments and implications for future research and policy.

## **2. Method**

### **2.1 Research design**

This study adopts a normative–juridical and comparative empirical-legal design. On the one hand, it conducts doctrinal analysis of the constitutional and legislative frameworks that govern arrest, pre-trial detention, trial within a reasonable time, and non-custodial measures in Madagascar and Indonesia. On the other hand, it uses secondary quantitative data on prison populations and pre-trial detention to describe patterns of overcrowding and to assess whether these legal frameworks are effective in practice. The comparative dimension is structured as a most-different systems comparison: two jurisdictions with very different sizes, legal traditions and levels of institutional capacity, but facing a common problem of chronic prison overcrowding. This allows the article to identify both country-specific drivers of overcrowding and cross-cutting structural issues such as over-reliance on remand and limited use of alternatives to custody.

### **2.2 Data sources**

The empirical component relies exclusively on publicly available secondary data; no interviews, surveys or fieldwork were conducted. The main statistical source is the World Prison Brief (WPB) compiled by the Institute for Crime & Justice Policy Research (ICPR), which provides harmonised country data on: total prison population; prison population rate (per 100,000 of the national population); official prison capacity and occupancy level (percentage of capacity used); proportion and rate of pre-trial/remand prisoners; proportion of women and juveniles in prison.

For each country, the study extracted the latest available figures (Madagascar 2023; Indonesia 2025) and, where provided by WPB, time-series data on prison population and the share of pre-trial detainees since the late 1990s/early 2000s. These data were used to build the descriptive tables and line graphs presented in Section 4.

The normative analysis is based on official legal texts, namely: for Madagascar: the Constitution; the Code de procédure pénale (as amended, including the 2016 reform of pre-trial detention); the Code pénal; and the 2016 statute on juvenile justice and child protection; for Indonesia: the 1945 Constitution (UUD 1945); the Criminal Procedure Code (Kitab Undang-Undang Hukum Acara Pidana, KUHAP); Law No. 12 of 1995 on Corrections; Law No. 11 of 2012 on the Juvenile Criminal Justice System; and the new Criminal Code, Law No. 1 of 2023. These domestic norms are read in conjunction with the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the African Charter on Human and Peoples' Rights (for Madagascar), and soft-law instruments such as the Nelson Mandela Rules, Bangkok Rules and Beijing Rules.

In addition, the paper draws selectively on peer-reviewed scholarship and NGO or international-organisation reports to contextualise the statistical findings (e.g. health impacts of overcrowding, practice of diversion and parole, implementation of juvenile justice reforms). These sources are cited in the relevant subsections of the Results and

Discussion.

### **2.3 Analytical strategy**

The analysis proceeds in three steps:

**Descriptive statistical comparison.** WPB data are organised into comparative tables and simple line charts showing: evolution of total prison population and prison-population rate; current occupancy levels in relation to official capacity; long-term trends in the share and rate of pre-trial/remand prisoners; proportions of women and juveniles in prison. The aim is not to perform sophisticated econometric analysis, but to provide a transparent, replicable descriptive picture of overcrowding and its main drivers in each country.

**Doctrinal and normative analysis.** The relevant provisions of the Codes of Criminal Procedure, penal codes, constitutions and special statutes are examined under five headings: grounds for remand, time limits, bail and provisional release, judicial review, and reasonable-time guarantees. For each country, the study reconstructs the internal logic of these safeguards and then compares them with the requirements of ICCPR Articles 9, 10 and 14, CRC Article 37 and related standards.

**Integrated comparative assessment.** Finally, the statistical patterns and legal frameworks are read together to identify structural mismatches between “law on the books” and “law in action”. This integrated reading underpins the comparative diagnosis in Section 4.5 and the formulation of reform priorities for each jurisdiction, with explicit reference to Sustainable Development Goal 16 on peace, justice and strong institutions.

Several limitations should be acknowledged. First, the paper relies on a single statistical source (WPB), which itself aggregates information from national prison administrations and international organisations; while widely used, these figures may contain reporting delays or measurement inconsistencies. Second, the study is based on desk-based analysis only: it does not include interviews with judges, prison officials or detainees, nor direct observation of court or prison practices. As a result, conclusions about implementation gaps remain inferred from available data and secondary literature rather than demonstrated through fieldwork. Third, the legal analysis focuses on formal rules and does not cover all by-laws, circulars or internal guidelines that may also influence practice. Despite these constraints, the combination of harmonised comparative statistics and detailed doctrinal analysis provides a coherent and methodologically transparent basis for assessing how pre-trial detention, judicial delay and the limited use of non-custodial measures contribute to structural overcrowding in Madagascar and Indonesia.

## **3. Results and Discussions**

### **3.1 Prison Population and Overcrowding in Madagascar and Indonesia**

The issue of prison population and overcrowding presents significant challenges in both Madagascar and Indonesia, with varying implications for public health and correctional systems. Overcrowding in prisons is a pervasive problem, leading to deteriorating health conditions among inmates, increased conflict, and challenges in managing correctional facilities effectively. The overcapacity creates dire conditions exacerbated by insufficient healthcare resources, high rates of communicable diseases

such as HIV and tuberculosis, and increased violence among inmates (Rizki et al., 2024, p.336).

The relationship between overcrowding and health issues in prisons is multifaceted. Research indicates that overcrowded prisons fail to provide adequate healthcare services, exacerbating conditions like HIV, which is prevalent among incarcerated populations (Culbert et al., 2015, p.04), . The overcapacity also results in budgetary waste due to increased expenditures on food, water, and sanitation necessary to address the deteriorating health conditions within overcrowded facilities (Rizki et al., 2024, p.336). This creates a self-perpetuating cycle where the lack of resources leads to increased health risks, contributing to a growing prison population that cannot be effectively managed.

In Indonesia, legal frameworks aimed at reforming correctional systems have not been effectively implemented, leading to continued issues with overcrowding. There are initiatives aimed at drug-related incarcerations, wherein a significant proportion of prisoners are people who inject drugs (PWIDs), which compounds the problem of substance abuse in prisons (Blogg et al., 2014, p.06). Moreover, studies reveal that the injection of drugs in prison settings is common, with many inmates reporting sharing needles, a practice that significantly heightens the risk of HIV transmission and other infectious diseases (Culbert et al., 2015).

In contrast, Madagascar also faces significant prison overcrowding; however, detailed studies specifically addressing this context are less prevalent. Global trends suggest that increased incarceration rates often come with similar health-related challenges, including the spread of infectious diseases and poor mental health outcomes among inmates (Wirya et al., 2020, p.08). The underlying socio-economic conditions and legal frameworks governing incarceration in Madagascar contribute to these issues, although specific studies are needed to analyze the situation thoroughly.

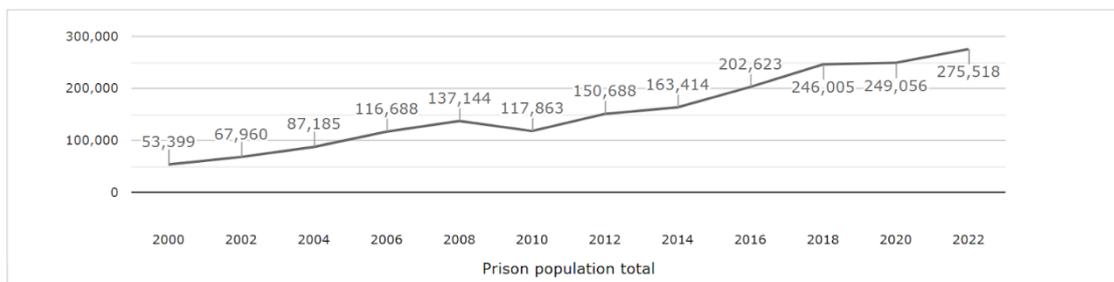
**Table 1.** Prison population, official capacity and occupancy in 2023/2025 (Madagascar & Indonesia)

Country	Year	Prison Population	Official Capacity	Occupancy (%)
Madagascar	2023	30,530	11,000	<b>277.5%</b>
Indonesia	2025	277,935	148,686	<b>186.9%</b>

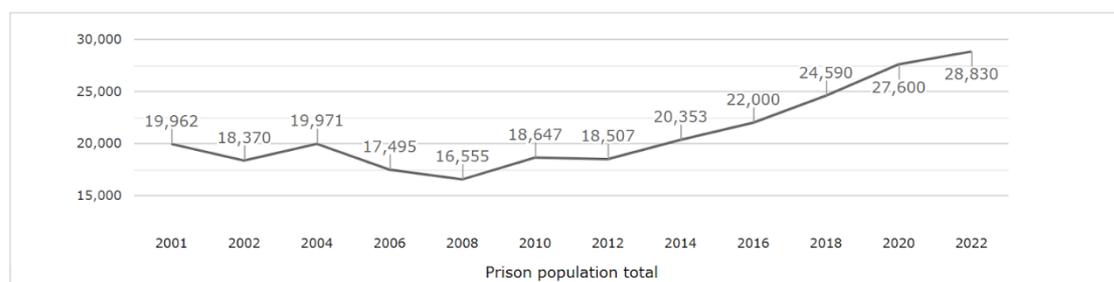
*Source: world prison brief, extracted on 08 december 2025*

Table 1 summarises the most recent data available for both countries. In October 2023, Madagascar held 30,530 prisoners in facilities officially designed for only 11,000 places, resulting in an occupancy level of 277.5%. In other words, Madagascar operates at nearly three times its official capacity.

Indonesia, in October 2025, held 277,935 prisoners for an official capacity of 148,686, corresponding to an occupancy level of 186.9%. Although the Indonesian system is less overcrowded than Madagascar's, it still operates at almost double its capacity.



**Figure 1. Prison population in Indonesia, 2000–2022**  
*source: world prison brief, extracted on 08 December 2025*



**Figure 2. Prison population in Madagascar, 2001–2022**  
*source: world prison brief, extracted on 08 december 2025*

Figure 1 and Figure 2 show that both prison systems have experienced long-term growth in prisoner numbers. In Indonesia, the prison population increased from 53,399 detainees in 2000 to 275,518 in 2022, more than a five-fold rise over two decades. By contrast, Madagascar’s prison population grew from around 19,962 prisoners in 2001 to 28,830 in 2022, an increase of roughly 45 percent over the same period.

The Indonesian curve is steeper and higher in absolute terms, reflecting the country’s much larger population and the expansion of its correctional system. Madagascar’s prison population decreased slightly in the mid-2000s (reaching about 16,555 in 2008) before entering a sustained upward trend from 2010 onwards.

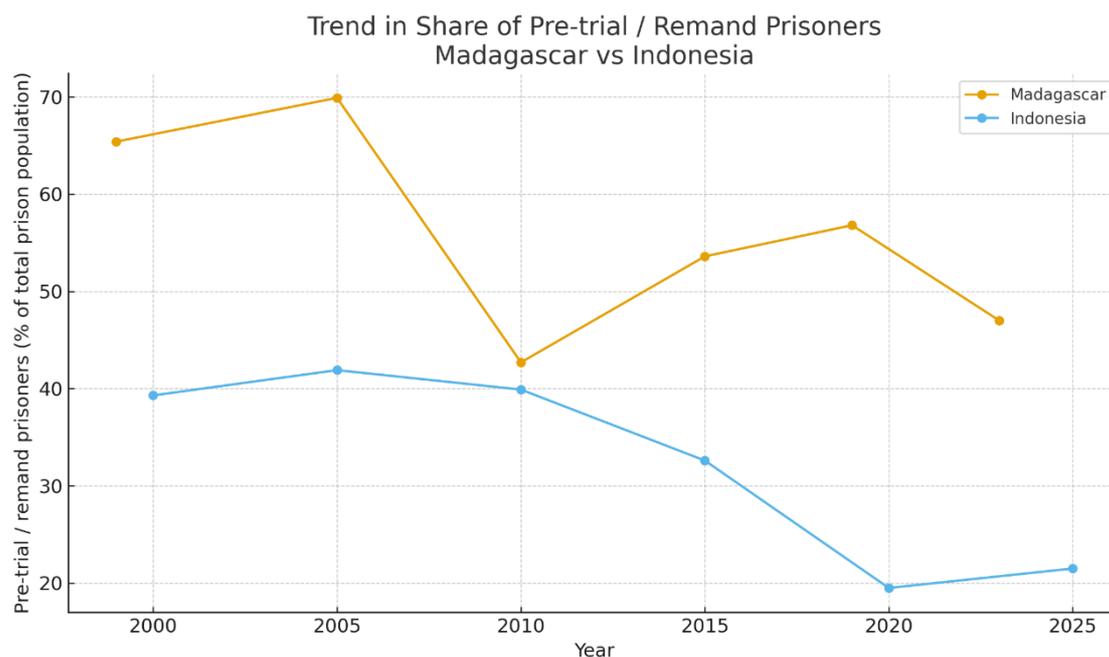
The comparison reveals a paradox: Indonesia manages a prison population almost ten times larger than Madagascar’s, yet the relative overcrowding crisis is more severe in Madagascar. This suggests that Madagascar’s problem is not only the number of prisoners but also the chronic under-investment in prison infrastructure and the absence of effective non-custodial alternatives. In Indonesia, overcrowding remains serious but is partly mitigated by a larger and more geographically distributed correctional estate.

From a normative perspective, these levels of overcrowding are difficult to reconcile with the constitutional guarantees of human dignity and humane treatment in both countries, as well as with international standards. The International Covenant on Civil and Political Rights requires that all persons deprived of their liberty be treated with humanity and with respect for their inherent dignity (ICCPR, art. 10), while the Nelson Mandela Rules specify minimum standards regarding accommodation, ventilation, sanitation and access to healthcare. Persistent occupancy rates of 186.9% in Indonesia and 277.5% in Madagascar strongly suggest a structural and not merely episodic violation of these requirements. In the Malagasy case, where the system

functions at nearly three times its official capacity, it becomes particularly difficult to argue that the State is taking “all possible measures” to prevent inhuman or degrading conditions of detention.

### 3.2 Pre-Trial Detention, Judicial Delay and the Right to Liberty

This subsection examines the evolution of pre-trial detention in Madagascar and Indonesia. Figure 3 presents the share of pre-trial / remand prisoners over time, while Table 2 summarises the most recent values



**Figure 3. Trend in the share of pre-trial / remand prisoners in total prison population, Madagascar and Indonesia (1999–2025)**

*Source: World Prison Brief, accessed 8 December 2025.*

As Figure X shows, Madagascar has maintained a persistently high reliance on pre-trial detention over the past two decades. In 1999 and 2005, pre-trial and remand prisoners represented roughly two thirds of the total prison population (65.4% and 69.9%), before dropping sharply to 42.7% in 2010. This decrease, however, did not mark a structural change: the share of remand prisoners climbed again to 53.6% in 2015 and 56.8% in 2019, and remains close to half of all prisoners in 2023 (47.0%). In other words, despite some fluctuations, Madagascar’s curve never falls below about 40%, indicating that pre-trial detention is not an exceptional measure but a central mode of deprivation of liberty in the Malagasy criminal justice system.

Indonesia’s trajectory is markedly different. The proportion of pre-trial prisoners starts at around 39–42% in 2000–2005 and remains close to that level in 2010 (39.9%), but then shows a progressive decline: by 2015 pre-trial detainees account for 32.6% of the prison population, and by 2020 the share drops to 19.5%, before stabilising at around one fifth (21.5%) in 2025. Thus, while Indonesia still holds a significant number of people on remand in absolute terms, the relative weight of pre-trial detention in its prison population is now less than half that of Madagascar. The crossing of these two

curves suggests that overcrowding in Madagascar is strongly driven by remand practices, whereas in Indonesia it is increasingly linked to sentenced prisoners and penal policy, rather than to pre-trial custody alone.

**Table 2.** Latest available share of pre-trial / remand prisoners

Country	Year	Pre-trial detainees (% of total prison population)	Pre-trial rate per 100,000 population
Madagascar	2023	47.0%	48
Indonesia	2025	21.5%	21

*Source: World Prison Brief, accessed 8 December 2025.*

Table 2 confirms that, in the most recent year, Madagascar still holds almost half of its prison population on remand (47%), more than double the Indonesian proportion (21.5%).

Constitutionally, both Madagascar and Indonesia proclaim strong guarantees of personal liberty and humane treatment, but the empirical levels of pre-trial detention put these guarantees under serious strain. Article 9 of the Constitution of Madagascar protects the right to liberty and security of the person and prohibits arbitrary arrest or detention, while also guaranteeing a right to judicial recourse and reparation in cases of unlawful deprivation of liberty. Constitutional provisions on presumption of innocence further emphasise that detention before judgment must remain an exception and be strictly framed by law. Indonesia's 1945 Constitution (UUD 1945) similarly guarantees protection of the person, legal certainty and due process through Articles 28D and 28G, and lists freedom from torture and other non-derogable rights in Article 28I. Both States have ratified the International Covenant on Civil and Political Rights (ICCPR), which requires that pre-trial detention be exceptional, non-arbitrary and subject to trial "within a reasonable time or release" (Articles 9 and 14), and Madagascar is also bound by Article 6 of the African Charter on Human and Peoples' Rights, which prohibits arbitrary arrest and guarantees the right to be tried within a reasonable time or released.

In Madagascar, these constitutional guarantees are operationalised in the Code of Criminal Procedure (CPP). Article 333 (as amended) characterises *détention préventive* as an exceptional measure, permitted only when necessary to secure the accused's appearance, prevent pressure on witnesses or victims, avoid destruction of evidence, or avert further offences, and expressly excludes offences punishable only by a fine or non-custodial sanctions. Article 334 and the new Article 334 bis introduce statutory ceilings on the duration of pre-trial detention: in correctional matters an initial period of six months, extendable for limited additional periods, and in criminal matters an initial eight-month period, with strictly regulated six-month extensions, all within an overall maximum fixed by law. Article 334 ter further constrains the *chambre d'accusation*, requiring it to rule on cases within a set period and limiting the duration of committal orders (*ordonnance de prise de corps*). In principle, these provisions are designed to translate the ICCPR "reasonable time" requirement into concrete temporal limits and to prevent detainees from remaining on remand for years without trial.

The Malagasy CPP also provides mechanisms intended to reduce unnecessary pre-trial detention. Article 351 allows any person in preventive detention to request

provisional release (*liberté provisoire*) at any time, subject to judicial assessment of risks to the proceedings and public order. When read together with Article 333, this creates a normative presumption in favour of liberty: detention should be justified by specific reasons and revisited periodically, with provisional release treated as the rule once those reasons no longer exist. In practice, however, the very high proportion of pre-trial detainees and chronic case backlogs in Malagasy prisons suggest that these safeguards are under-used or applied in a formalistic way, leading to structural rather than exceptional reliance on remand. This gap between “law on the books” and “law in action” is central to assessing whether Madagascar complies with Article 9 ICCPR and Article 6 of the African Charter in terms of non-arbitrary detention and reasonable time to trial.

Indonesia’s Criminal Procedure Code (KUHAP, Law No. 8 of 1981) also embeds a liberty-protective logic, at least at the normative level. Article 21(1) KUHAP allows detention only where there is sufficient evidence of a criminal offence and concrete reasons to fear that the suspect will abscond, destroy or tamper with evidence, or repeat the offence. KUHAP then breaks down maximum detention periods by procedural stage: at the investigation stage, Article 24 sets a 20-day limit, with a possible 40-day extension by the public prosecutor; during prosecution, Article 25 allows 20 days with a 30-day extension by the chair of the district court; and during first-instance trial, Article 26 permits 30 days, extendable by 60 days, with similar 30+60 and 50+60 day structures for appeal and cassation under Articles 27 and 28. These detailed ceilings are intended to give concrete content to the “reasonable time” requirement and prevent indefinite pre-trial detention purely through administrative prolongation.

As in Madagascar, KUHAP provides non-custodial tools that should counterbalance the breadth of detention powers. Article 31 KUHAP regulates *penangguhan penahanan* (suspension of detention), allowing investigators, prosecutors or judges to grant release on conditions and with a financial or personal surety, while imposing obligations such as regularly reporting to authorities, not leaving a certain area, or refraining from contacting specific persons. In principle, this mechanism is meant to ensure the accused’s presence at trial without resorting to continued deprivation of liberty. However, empirical observations and doctrinal studies suggest that Indonesian law-enforcement actors are often reluctant to use suspension of detention in practice, especially in serious cases or politically sensitive files, so that detention remains the default choice rather than the exception.

Judicial review of detention is also more explicit in KUHAP than in Malagasy law. Articles 77–83 KUHAP establish *praperadilan* proceedings before the district court, allowing suspects to challenge the legality of arrest and detention, the termination of an investigation or prosecution, and to seek compensation and rehabilitation for unlawful deprivation of liberty. Courts are required to examine these applications promptly and decide within a short statutory time frame, reinforcing the idea that detention must be subject to continuous judicial control. The Constitutional Court has further expanded *praperadilan* to include review of the validity of suspect designation, strengthening safeguards against arbitrary use of pre-trial detention. Yet the persistence of long remand periods and high pre-trial populations shows that these remedies are still under-utilised or inaccessible for many detainees, so that the practice of detention in both countries falls short of the “reasonable time” and non-arbitrariness standards required by their constitutions and by Article 9 ICCPR.

### 3.3 Vulnerable Groups in Prison: Women and Children

The dynamics of overcrowding and pre-trial detention affect all prisoners, but their impact is particularly acute for women and children, whose needs are explicitly recognised in international human rights law. Looking at these groups in Madagascar and Indonesia allows us to move from a purely quantitative diagnosis of prison population growth to a more substantive assessment of how each system treats those who should benefit from heightened protection.

Data from the World Prison Brief indicate that women represent a small but significant share of the prison population in both countries. In Madagascar, women accounted for 5.5% of all prisoners as of June 2020. In Indonesia, the proportion of female prisoners stood at 5.0% as of 31 October 2025. These figures are close to the global average share of women and girls in prison (around 6–7%), but they must be read against the background of severe overcrowding and limited access to gender-sensitive services.

For children and young people, the contrast between the two systems is more pronounced. According to World Prison Brief, juveniles under 18 made up 3.1% of the prison population in Madagascar (June 2020), whereas juveniles in Indonesia represented 0.7% of all prisoners as of 31 October 2023. In absolute terms these proportions may appear modest, but in an already overcrowded and under-resourced environment they translate into a significant number of children and adolescents living in conditions that are inherently ill-suited to their age and developmental needs. Moreover, available NGO and regional reports suggest that in both countries some juveniles continue to be held in adult facilities, despite formal separation rules.

Taken together, these data show that women and children are numerically “minority” groups inside prison, but their situation is structurally shaped by the same drivers identified in sections 4.1 and 4.2: high reliance on remand, slow procedures, and chronic overcrowding. The statistical picture therefore calls for a specific rights-based analysis rather than being treated as a marginal footnote.

International standards treat the deprivation of liberty of women and children as an exceptional measure subject to strict substantive and procedural safeguards. Both Madagascar and Indonesia are parties to the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which require that detention of children be used only as a “*measure of last resort and for the shortest appropriate period of time*” (CRC art. 37(b)), and that women deprived of liberty be protected from discrimination and gender-based violence, with attention to pregnancy, childcare and family ties (CEDAW arts. 2, 5 and 12). At the soft-law level, the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), and the Beijing Rules on juvenile justice set out detailed guidance on non-custodial measures, separation from adults, education, health care and contact with family.

Domestically, both legal systems formally recognise special protections for children in conflict with the law. In Madagascar, child protection and juvenile justice norms (including the 1962 Ordinance on child protection and subsequent child-rights legislation) establish specialised juvenile courts, emphasise educational rather than punitive measures, and require that minors be separated from adults in detention. Indonesia’s Law No. 11 of 2012 on the Juvenile Criminal Justice System goes further by embedding diversion and restorative justice as guiding principles, with the express

objective of avoiding deprivation of liberty wherever possible and ensuring that detention of children is a last resort. On paper, therefore, both countries have moved beyond a purely punitive model and endorse international standards that discourage custodial treatment of children.

For women, Indonesian law (notably Law No. 12 of 1995 on Corrections and its implementing regulations) and Malagasy law on prisons and the execution of sentences contain general guarantees of humane treatment and non-discrimination, while scholarly analyses point out that specific protections for pregnant, postpartum and breastfeeding prisoners remain incomplete in both systems. The Bangkok Rules require gender-sensitive health care, sanitary products, privacy, and arrangements for children living with their mothers in prison—conditions that are difficult to ensure in settings operating at almost double or triple capacity.

When these normative frameworks are read against the World Prison Brief figures, a significant implementation gap emerges. In Madagascar, where around 3.1% of prisoners are minors and 5.5% are women, high rates of pre-trial detention and long judicial delays mean that children and women can remain in overcrowded facilities for extended periods, often without effective access to diversion, education, or adequate health care. In Indonesia, a lower proportion of juveniles (0.7%) and similar share of women (5.0%) do not automatically translate into compliance: reports of children detained in adult facilities and the rapid growth of the female prison population suggest that structural overcrowding and sentencing practices continue to undermine the protective logic of the juvenile justice law and the Bangkok Rules.

Normatively, the presence of women and children in such conditions raises heightened concerns under the CRC, CEDAW, the Bangkok and Beijing Rules, and the Mandela Rules. The combination of overcrowding, high remand levels and slow procedures makes it practically impossible to guarantee child-appropriate regimes, privacy, access to reproductive and maternal health services, and meaningful educational or rehabilitative programmes. Even if their numerical share appears limited, women and children in both Madagascar and Indonesia experience a disproportionate rights impact from systemic failures in prison law and policy, transforming what should be exceptional detention into a routine, structurally harmful practice.

### **3.4 Non-Custodial Measures: Law on the Books and Use in Practice**

In Indonesia, the bail and early-release framework is relatively well developed in legislation. The Criminal Procedure Code (KUHAP) permits suspension of detention (*penangguhan penahanan*) with conditions and guarantees, allowing accused persons to await trial outside prison. Law No. 12 of 1995 on Corrections provides mechanisms such as remission, assimilation, parole and leave before release, and recent doctrinal work shows how parole is meant to function as a conditional route out of prison while still protecting public safety (Agustin et al., 2024, p. 660). In the field of juvenile justice, Law No. 11 of 2012 places diversion and restorative justice at the heart of responses to many child offences, and studies on penal mediation and diversion emphasise that these instruments are intended to minimise court involvement and prioritise rehabilitation (Cahyaningtyas, 2018, p. 267; Sidiq et al., 2024, p. 60). The new Criminal Code (Law No. 1 of 2023) goes further by explicitly introducing community service and criminal supervision as principal alternatives to imprisonment. In normative terms, Indonesia therefore possesses a relatively sophisticated catalogue of non-custodial measures, even if empirical research and prison occupancy data indicate that

imprisonment and pre-trial detention still play a major role and that fully realising the potential of these alternatives will require significant institutional resources (Manitra et al., 2023).

In Madagascar, the Code of Criminal Procedure, as revised in 2016, allows judicial control (*contrôle judiciaire*) and provisional release with bail (*mise en liberté provisoire avec caution*) as alternatives to pre-trial detention, and the Penal Code permits suspended sentences (*sursis*) for certain convicted persons. A specific 2016 statute on juvenile justice provides a catalogue of non-custodial measures for children, such as supervised liberty and community-based educational measures, and comparative work on child protection in Indonesia and Madagascar confirms that these measures are recognised in law (Manitra et al., 2023). Nonetheless, reports by international and local observers consistently describe very high levels of pre-trial detention and severe overcrowding in major facilities. These findings suggest that, for a large number of cases, courts still rely on remand and short custodial terms, whether because of a cautious judicial culture, limited capacity to supervise alternatives, or the difficulty for many defendants to meet financial conditions attached to release. This creates a visible tension with the ICCPR requirement that pre-trial detention “shall not be the general rule.”

In both systems, then, the problem is not the absence of alternatives in legislation, but the limited impact these measures have so far had on overall reliance on custody. The mismatch between the breadth of non-custodial options “on the books” and the persistence of overcrowded prisons suggests that, in practice, deprivation of liberty still functions as a dominant response, despite international standards that promote minimum intervention and the use of non-custodial sanctions wherever possible.

### 3.5 Comparative Synthesis and Reform Priorities

This subsection brings together the doctrinal analysis of both systems and the statistical findings on pre-trial detention. To make the comparison clearer, the following two tables summarise the main procedural safeguards on remand in Madagascar and Indonesia, focusing on grounds for detention, time limits, bail or suspension, judicial review, and the guarantee of “reasonable time”. These tables provide the basis for the comparative diagnosis and reform proposals that follow.

**Table 3.** Procedural safeguards on pre-trial detention in Madagascar (Code de procédure pénale).

Legal Safeguard	Madagascar Provision	Procedural Guarantee
Grounds for remand	Art. 333 CPP	Detention exceptional; justified by necessity (appearance, evidence, prevention).
Time limits	Arts. 334 ter – 334 quater – 334 quinto	30 months max (criminal cases); 6 months adjournment limit; 3 months max further extension.
Bail / Provisional release	Arts. 341–348 CPP	Request anytime; ruling within 3 days; conditional bail allowed.

Legal Safeguard	Madagascar Provision	Procedural Guarantee
Judicial review	Art. 335 CPP	Right to petition against irregular detention; review by Chambre d'Accusation.
Reasonable time	Implied across Arts. 334–335 CPP + ICCPR Art. 9(3)	Mandates release if delay exceeds legal ceilings.

For comparison, Table 4 sets out the corresponding safeguards in Indonesian law under KUHAP.

**Table 4.** Procedural safeguards on pre-trial detention in Indonesia (KUHAP).

Safeguard	KUHAP Article	Procedural Guarantee
Grounds for remand	Art. 21	Sufficient evidence + risk of absconding, tampering, or reoffending; only for serious crimes.
Time limits	Arts. 24–28	60 + 50 + 90 + 90 + 110 days max across stages; automatic release if exceeded.
Bail / Suspension (penangguhan)	Art. 31	Conditional release with reporting, area limits, or monetary/personal guarantee.
Judicial review (praperadilan)	Arts. 77–79	District Court review of legality of arrest/detention; right to immediate release if unlawful.
Reasonable time	Implied via fixed maximums + ICCPR Art. 9(3)	Prevents indefinite pre-trial custody; detention beyond legal limits invalid.

Taken together, the Malagasy and Indonesian frameworks reveal two different ways in which pre-trial detention can generate structural overcrowding. In Madagascar, the Code de procédure pénale allows detention on broadly defined grounds of “necessity” for the investigation and public order, with relatively flexible renewal of remand and only weakly institutionalised judicial review. Time limits are fragmented and, in practice, judges retain wide discretion to prolong pre-trial custody, while mechanisms of *liberté provisoire* and judicial control remain under-used. This normative configuration is consistent with the WPB figures showing that around 47% of the Malagasy prison population are pre-trial detainees, so that overcrowding is largely driven by the routine use of remand as the default procedural posture.

By contrast, Indonesia’s KUHAP is more detailed and rights-oriented on paper.

Articles 21 and 24–28 strictly condition detention on serious offences, set cumulative numerical ceilings at each procedural stage, and provide for *penangguhan penahanan* (suspension of detention) and *praperadilan* (pre-trial review) as safeguards. Yet the WPB data still show that about 21.5% of prisoners remain in pre-trial status, and overall occupancy is close to double capacity. This suggests that Indonesia’s problem is less the absence of legal safeguards than their limited practical effect: detention orders are often renewed mechanically, bail and suspension are granted restrictively, and pre-trial review remains under-utilised. Normatively, the comparison therefore supports two distinct diagnoses: in Madagascar, over-broad and weakly constrained remand powers structurally conflict with the constitutional and international guarantee of liberty, whereas in Indonesia, a relatively protective legal framework is undermined by enforcement deficits and judicial culture, allowing mass incarceration to persist despite the formal commitment to “reasonable time” and exceptional detention.

From a normative perspective, both systems sit in a zone of structural tension with their constitutional and treaty obligations. Madagascar and Indonesia have both formally committed themselves to the protection of liberty and humane treatment through their constitutions and through instruments such as the ICCPR, the Convention against Torture and the UN Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules). Yet the statistical picture drawn from the World Prison Brief – very high occupancy rates, a large share of pre-trial detainees and persistent delays – indicates that deprivation of liberty is still used in a manner that goes beyond what is strictly necessary and proportionate. In other words, the guarantees written in the Codes of Criminal Procedure and in the constitutions are not yet capable of preventing overcrowding from becoming a systemic, long-term phenomenon.

In Madagascar, the priority is to reverse the logic of pre-trial detention as a default option. A first step would be to consolidate and clarify the scattered time-limit provisions in the Code de procédure pénale, making it easier for judges, lawyers and detainees to know exactly when continued remand becomes unlawful. Coupled with this, the use of *liberté provisoire* and *contrôle judiciaire* could be encouraged through clearer statutory criteria, internal guidelines for prosecutors and judges, and systematic collection of data on their use. A second axis of reform concerns judicial review and oversight. The Chambre d’accusation and higher courts could be required to carry out periodic, automatic reviews of all long-running remand cases, rather than waiting for individual petitions. External oversight – for instance by the national human rights institution or an independent prison inspectorate – could help identify prisons where pre-trial detention is driving extreme overcrowding and trigger targeted remedial action. Third, the juvenile justice framework that already prioritises non-custodial, educational measures for children could be used as a laboratory for broader reform. Scaling up community-based programmes run with civil-society partners, and extending similar logics to low-level adult offences, would gradually reduce inflows into already saturated facilities.

In Indonesia, the key challenge is implementation rather than legal design. KUHAP and the new Criminal Code already offer a relatively rich menu of alternatives – suspension of detention, diversion for children, parole, community service and supervision. The central reform need is therefore to ensure that these instruments are used systematically and transparently. First, detention decisions could be subjected to stricter reasoning requirements: judges and prosecutors should have to demonstrate, in writing, why less intrusive measures (bail, reporting duties, travel bans) are inadequate

in a given case. Regular training and circulars from the Supreme Court and Attorney-General could reinforce the message that pre-trial detention is exceptional. Second, fully realising the potential of the new non-custodial sanctions will require investment in institutions: probation services capable of supervising community service and supervision orders, risk-assessment tools to guide decisions on release, and local-level partnerships for restorative-justice programmes. Without this implementation infrastructure, the new alternatives risk remaining largely symbolic. Third, given the importance of drug-related offences in Indonesia's prison population, sentencing and drug-policy reform – for example, expanding treatment-oriented responses and reducing reliance on short custodial terms for low-level drug offences – would directly affect inflows and help stabilise prison numbers.

Despite their differences, Madagascar and Indonesia share a common structural issue: the distance between law “on the books” and law “in action”. Both have adopted safeguards and alternatives that, if fully implemented, could bring their prison systems closer to international standards; yet both continue to operate prisons that are chronically overcrowded and heavily populated by people awaiting trial. Addressing this gap is central to the realisation of Sustainable Development Goal 16, which calls for effective, accountable institutions and equal access to justice for all. Reducing unnecessary pre-trial detention, strengthening judicial oversight, and mainstreaming non-custodial measures are not merely technical reforms; they are concrete indicators of whether criminal justice systems protect human dignity and the right to liberty in practice. A comparative reading of Madagascar and Indonesia thus shows that progress towards SDG 16 depends less on adopting new norms than on transforming institutional practices, incentives and resources so that existing safeguards genuinely constrain the use of imprisonment.

#### **4. Conclusions**

This article addressed three main questions about pre-trial detention, prison overcrowding and non-custodial measures in Madagascar and Indonesia. First, regarding the scale and drivers of overcrowding, the prison statistics show that both systems are chronically over capacity, but in different ways. Madagascar operates at around 277.5% of official capacity, with almost half of prisoners (47%) held on remand. Indonesia's prison estate is larger yet still runs at roughly 186.9% of capacity, with about 21.5% of prisoners awaiting trial. Overcrowding in Madagascar is therefore closely linked to the high and persistent use of pre-trial detention, whereas in Indonesia it reflects a combination of pre-trial custody and a large stock of sentenced prisoners, particularly in drug and other mass-incarceration offences. Second, in relation to how the legal frameworks regulate pre-trial detention, reasonable time and alternatives, the comparative doctrinal analysis shows that neither country lacks safeguards on paper. Madagascar's Code de procédure pénale formally defines pre-trial detention as exceptional, introduces time limits and provides for provisional release and judicial control. Indonesia's KUHAP and related legislation set detailed grounds and maximum periods for detention, allow suspension of detention with conditions, and organise judicial review through *praperadilan*, while both systems recognise parole, diversion and other non-custodial options, especially for children. In normative terms, both legal orders reflect the core requirements of the ICCPR and other human-rights instruments. Third, when these legal rules are read together with the empirical data, a clear implementation gap emerges. In Madagascar, broadly framed grounds for remand,

fragmented time-limit provisions and limited practical use of *liberté provisoire* and *contrôle judiciaire* help to explain why remand has become a routine rather than exceptional measure and why overcrowding is so acute. In Indonesia, the statistics suggest that a relatively sophisticated catalogue of safeguards and alternatives has not yet translated into a marked reduction in prison numbers, as detention is still widely used and community-based sanctions remain unevenly applied. In both countries, the current practice of deprivation of liberty sits in a zone of tension with constitutional guarantees of liberty and humane treatment and with treaty obligations under the ICCPR, CRC, CEDAW and the Mandela and Bangkok Rules.

On this basis, the paper identifies differentiated but complementary reform priorities. For Madagascar, key steps include: clarifying and consolidating time limits on remand; strengthening routine judicial review of long pre-trial cases; and expanding the effective use of non-custodial measures, building on juvenile-justice innovations. For Indonesia, priorities lie in tightening the justification required for detention decisions, investing in probation and community-supervision infrastructure so that new alternatives under the 2023 Criminal Code can operate at scale, and revisiting sentencing and drug policies that drive large inflows into prison. For both jurisdictions, reducing unnecessary pre-trial detention and mainstreaming non-custodial sanctions are essential to bringing everyday practice closer to the principle that detention is a last resort.

The study is limited by its reliance on secondary statistics and desk-based legal analysis; future research combining fieldwork, case-file analysis and interviews with judges, prosecutors, defence lawyers and prisoners would allow a more fine-grained understanding of decision-making around remand and sentencing. Nonetheless, the findings support a broader conclusion: progress towards Sustainable Development Goal 16 will depend less on adopting new legal texts than on transforming institutional practices and incentives so that existing safeguards genuinely constrain the routine use of imprisonment in countries such as Madagascar and Indonesia.

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