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CENTRE DE RECHERCHE ET D'ÉCHANGE
SUR LA SÉCURITÉ ET LA JUSTICE

PETTY OFFENSES, MAJOR CONSEQUENCES

Decoding the criminalization of poverty in Haiti

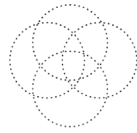


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Research report
January 2024

Partners





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INTRODUCTION

Across the world, an increasing body of research highlights the disproportionate impact of certain laws and regulations criminalizing minor offenses on the most disadvantaged and marginalized segments of society.¹ For instance, in Nigeria, 68% of incarcerated individuals are in custody for minor offenses in facilities specifically dedicated to such infractions. In Sierra Leone, due to procedural biases, convictions for minor offenses disproportionately affect women arrested for vagrancy or non-payment of debts.² In Uganda, the Human Rights Awareness and Promotion Forum (HRAPF) released a report in 2016, concluding that between 2011 and 2015, 958 individuals were arrested for idleness and public disorder. Closer to home, in the Caribbean, particularly in Jamaica, Barbados, Trinidad and Tobago, as well as Suriname, the criminalization of poverty and status had severe repercussions on its victims and their families. For example, in Barbados, in 2013, 20% of young people in conflict with the law were committed for the vagrancy offence of wandering and twice as many girls than boys were committed for this offence. Additionally, in that same year in Jamaica 9% of young people in conflict with the law were committed for the similar offence of being uncontrollable.³

1 For an overview of these studies, see the Campaign to Decriminalize Poverty and Status online resource library: <https://decrimpovertystatus.org/fr/bibliotheque-de-ressources/>

2 See Edwards, Louise (2021). « Afrique : la pauvreté n'est pas un crime », *Tribune, Prison Insider*, 15 juin 2021 : [En ligne] : <https://www.prison-insider.com/articles/afrique-la-pauvrete-n-est-pas-un-crime>

3 See Baily, C. (2016), *Crime and Violence in Barbados: IDB Series on Crime and Violence in the Caribbean*, Technical report, January 2016; Harriott, A. and Jones, M. (2016) *Crime and Violence in Jamaica, IDB Series on Crime and Violence in the Caribbean*, Institutions for Development and Country Department Caribbean Group, technical note n° IDB-TN-1060

In Haiti, similar questions arise: What is the weight of minor offenses in the Haitian penal and prison system? Who are the individuals targeted and punished for such offenses? What is the root cause of this problem? What continues to perpetuate such injustice today?

DEFINITION OF CRIMINALIZATION OF POVERTY AND MINOR OFFENSES

The term “criminalization of poverty” refers to the use of legal instruments and the criminal justice system to punish certain practices or behaviors associated with poverty, which are considered minor offenses. It alludes to the fact that a range of laws and regulatory provisions criminalize certain behaviors and even vital activities for individuals in poverty, especially in urban areas. For instance, laws penalizing vagrancy, loitering, begging, prostitution, and similar offenses are often enforced against impoverished individuals, vulnerable women, unemployed or underprivileged youth, and other marginalized people due to their race, nationality, social origin, sexual orientation, or other social status. They sometimes go as far as criminalizing the mere presence of certain groups in certain public spaces, such as vagrants, beggars, homeless individuals, drug addicts, street vendors, etc.

In Haiti, there is no clear definition of what constitutes a “minor offense.” Although the Haitian penal code divides offenses into three categories - infractions⁴, misdemeanors, and felonies - with misdemeanors and infractions classified as less serious offenses, they are not always regarded and treated by the population as minor offenses. As a means of social control, the categorization of offenses reflects the degree of disapproval of specific behaviors expressed by society or at least by dominant groups. Thus, the definition of what is qualified as a minor or major offense depends not only on the societal moral standard but also on internal interests and external influences through what several authors refer to as “legal mimicry⁵”.

In the context of this study, the term “minor offense” refers to an offense punishable under Haitian law with a maximum sentence of 2 years of imprisonment. This can be either an infraction or a minor misdemeanor. Beyond 2 years, it would be classified as a major misdemeanor or a felony.

Although the literature on the criminalization of poverty focuses on minor offenses, the phenomenon is not limited to them; the criminal spectrum targeting poor and vulnerable individuals also encompasses major misdemeanors and felonies.

⁴ Infractions are petty offenses that are typically punishable by fines, but not jail time.

⁵ This concept refers to the appropriation of rules of law or other legal instruments of one State by another. In the Haitian case, it relates to the partial and sometimes clumsy reproduction of European legal texts (French, Belgian, Italian) on Haitian soil, under foreign influence. It comes from a logic of legal importation, by mimicry or circulation of foreign models, or even following an external prescription or injunction. See Collot, I. Gélin (2007). “Le code civil haïtien et son histoire”, *Bulletin de la société d'Histoire de la Guadeloupe*, 146-147: 167-185. [En ligne]: <https://www.erudit.org/fr/revues/bshg/2007-n146-147-bshg03145/1040657ar/>; Pierre-Louis, Josué (2013). *La modernisation du droit haïtien, un défi pour l'avenir*. Thèse de doctorat en droit public, École doctorale Sciences juridiques et politiques (Aix-en-Provence).

LEGAL FRAMEWORK

The criminalization of poverty primarily involves Haitian criminal law, notably the Penal Code (CP) and the Code of Criminal Procedure (CIC).⁶ However, since it entails the deprivation of individual freedom and certain social rights, it also invokes the Haitian Constitution, as well as international and regional human rights instruments such as the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Universal Declaration of Human Rights (UDHR), which is a fundamental text in human rights and guarantees the human right to life, freedom, and security. All these legal instruments to which Haiti is a party prohibit arbitrary arrest and detention and promote the respect of procedural rights, including the presumption of innocence and the right to a full and fair defense. These essential rights are also reinforced and developed in other international Conventions and treaties ratified by the Haitian State, the common law of human rights, and resolutions of the United Nations Human Rights Council, including

the Guiding Principles on Extreme Poverty and Human Rights.

THEORETICAL FRAMEWORK

While criminalization of poverty *a priori* implies a dual use of the law (juridicization)⁷ and the judicial system (judicialization)⁸ against individuals in poverty and certain marginalized groups, it belongs to a richer theoretical corpus.

It primarily reflects the teachings of Richard Quinney⁹, who argued that crime is not a natural and objective reality but rather a social construct that reflects the prevailing social arrangements. As Loïc Wacquant¹⁰ also emphasizes, the police, courts, and prisons are not just technical devices for maintaining legal order; they also serve as political agents in the production of criminal reality.¹¹ This perspective echoes the thoughts of Émile Durkheim, who considered crime a normal phenomenon closely tied to the normal evolution of morality and law.¹²

Despite the significance of these classical perspectives, it is mainly research from the

⁶ The criminalization of poverty is not solely the result of formal law. Customary law also plays a significant role when it is enforced against vulnerable populations: during lynching of elderly poor women living alone and accused of being werewolves, summary executions of voodoo practitioners accused of being witches or zombifiers, mistreatment of individuals caught after larceny or theft, or public humiliation and popular vengeance in cases related to morals (adultery, prostitution, homosexuality)

⁷ Derived from the legal term, this term refers to the phenomenon of the expansion of law and legal solutions into a broader range of social and economic areas.

⁸ This term, on the other hand, refers to an increased reliance on the judicial institution to resolve conflicts. See Pélisse, Jérôme (2009). «Judicialisation ou juridicisation ? Usages et réappropriations du droit dans les conflits du travail» [Judicialization or Legalization? Uses and Reappropriation of Law in Labor Conflicts], *Politix*, vol. 86, no. 2, pp. 73-96. <https://doi.org/10.3917/pox.086.0073>.

⁹ Quinney, Richard (1970). *The Social Reality of Crime*. Boston: Little, Brown and Company.

¹⁰ Loïc Wacquant (2020). 2010a. « La fabrique de l'état néolibéral. "Workfare", "prisonfare" et insécurité sociale ». *Civilisations*, 59 (1): 151-174.

¹¹ This term, on the other hand, refers to an increased reliance on the judicial institution to resolve conflicts. (Pélisse, Jérôme. «Judicialisation ou juridicisation ? Usages et réappropriations du droit dans les conflits du travail» [Judicialization or Legalization? Uses and Reappropriation of Law in Labor Conflicts], *Politix*, vol. 86, no. 2, 2009, pp. 73-96. <https://doi.org/10.3917/pox.086.0073>).

¹² See Émile Durkheim (1960 [1894]). *Les règles de la méthode sociologique*, Paris, P.U.F., 14^e édition, pp. 65-72

critical criminology perspective that have influenced our thinking in the context of this study. The works of Loïc Wacquant¹³, Laurent Bonelli¹⁴, and Philippe Mary¹⁵, particularly regarding the penalization of the social, suggest that the criminalization of poverty is part of the punitive turn of the neoliberal state. As a policy of penal expansion, it is seen as the neoliberal response to the rise of social insecurity worldwide.¹⁶

Michel Foucault's works guide us toward the concept of penalization resulting from criminalization as an instrument of power. This feature aims to govern poor individuals and discipline vulnerable youth of remote or foreign origin, academic underachievement, marginalization, or a history of delinquency.

Grace-Edward Galabuzi associates the criminalization of poverty with the long history of racism, and more recently, to the racialization of immigration and urban poverty. This perspective highlights how socioeconomic discrimination and deprivation imposed on racialized groups contribute to victimization, violence, and ultimately the criminalization of these groups, using cultural stereotypes, police practices (including the containment of

high-crime neighborhoods, the deployment of targeted policing policies, and increased arrests), and incarceration.

According to Mario Berti and Jeff Sommers¹⁷, the criminalization of poverty is a struggle for space. These authors underscore how the regulation of public space, with the imposition of various prohibitions, aims to restrict the use of that space by homeless and marginalized individuals. This regulation aligns with the goal of increasing the use of public space for private purposes.

Finally, according to Todd Gordon's analysis¹⁸, the criminalization of poverty reveals a prioritization of capitalist market relations and profit accumulation over informal trade and subsistence economies. He argues that maintaining order through tactics such as anti-vagrancy laws, zero-tolerance policies, and the criminalization of any form of public activity alternative to low-paying wage labor, such as begging and scavenging, reflects the objectives of neoliberal capitalism. Moreover, by "cleansing" public spaces of beggars, homeless individuals, drug addicts, and street vendors, these tactics are part of the same movement aimed at making invisible the elements that could harm business

13 Wacquant, Loïc (2009). *Punishing the poor: The neoliberal government of social insecurity*. Duke university Press.

14 Bonelli, Laurent (2008). *La France a peur. Une histoire sociale de l'«insécurité»*, La Découverte, coll. « cahiers libres ».

15 Wacquant, L., Bonelli, L., Chantraine, G. et al. (2010). *Les prisons de la misère, 10 ans après*, Paris, [en ligne] : <https://www.dailymotion.com/video/xdphde> ; Hauser, Oliver P., et al. "Invisible inequality leads to punishing the poor and rewarding the rich." *Behavioural Public Policy* 5.3 (2021): 333-353; or also Lorca, Rocio (2022). "Punishing the Poor and the Limits of Legality." *Law, Culture and the Humanities* 18.2: 424-443 ; Mary, Philippe (2003). *Insécurité et pénalisation du social*, Bruxelles, Quartier Libre.

16 The term "social insecurity" refers to various risks such as illness, accidents, and unemployment, which, without social protection or insurance, can lead to social decline. See Castel, Robert (2003). *L'insécurité sociale. Qu'est-ce qu'être protégé?* [Social Insecurity: What Does It Mean to Be Protected?], Paris, Seuil, and La République des Idées.

17 Berti, Mario and Jeff Sommers (2010). The streets belong to people that pay for them: The spatial regulation of street poverty in Vancouver, British Columbia. In Diane Crocker and Val Marie Johnson. *Poverty, Regulation and Social Justice: Readings on the Criminalization of Poverty*, ed. Halifax, NS: Fernwood

18 Gordon, Todd (2010). Understanding the role of law-and order-policies in Canadian cities. In Diane Crocker and Val Marie Johnson (ed.), *Poverty, Regulation and Social Justice: Readings on the Criminalization of Poverty*, Halifax, NS: Fernwood

centers, tourism, recreational commercial activities, etc.

GENEALOGY OF THE CRIMINALIZATION OF MINOR OFFENSES IN HAITI

While criminalization of poverty is central to neoliberal economies and policies¹⁹, it is by no means a recent phenomenon nor happens spontaneously. The findings of our research on the genealogy of the Haitian prison system confirm that since its origins during the French colonial period (1630-1803), the penal system in place in Haiti has targeted the most disadvantaged and precarious populations, because they are perceived as dangerous. In its civil aspect (as opposed to the military one), related to matters of common rights, the colonizer institutionalized social and racial segregation and established variable penalty regimes, applied differentially depending on whether one was free or enslaved, white or of color, white owners or other white. For people of color and slaves, the entire colony had become a place of deprivation or restriction of freedom, with constant suspicion of sedition, escape, desertion, and vagrancy; with a presumption of guilt placed on all who were not white; with discretionary power granted to military officers (constabulary, navy), judicial officers, jailers, and their auxiliaries over these second-class subjects of the King. This system sought not only to neutralize what was perceived as a threat to the viability and prosperity of the slaveholding colonial

system but also to provide a workforce for the productive system and prevent any drain of the colony's vital forces by targeting deserters, maroons, vagrants, vagabonds, and the working classes. As for people of color and free blacks, they were imprisoned for various reasons, including carrying unauthorized weapons, identity usurpation (in this case, a white-sounding nickname), reckless horse racing in towns and villages, insolence towards a white person, or displaying their wealth.²⁰ As for the enslaved individuals, they were imprisoned for all kinds of reasons: alcohol consumption, washing clothes at the top of a water source, carrying embers in the streets, selling goods without written authorization from the master, theft, escape, involvement in brawls, assaults, carrying unauthorized weapons, and even for practicing spells and magic.

Haiti's independence did not mark a significant shift from the penal system inherited from the colonial era. In the 19th century, successive political regimes retained the repressive and disciplinary aspects of the penal system and the colonial prison apparatus of Saint-Domingue. The policies of President Alexandre Pétion and his successors regarding vagrancy and idleness remained in the continuity of these colonial practices. These governments equated the poor and vagrants with wrongdoers and potential criminals. For example, the law of April 20, 1807, on the policing of habitations stipulated that cultivators who engaged in "*laziness, negligence, and vagrancy*" would be severely punished, based on the premise that "*experience proves that in-*

19 Crocker, Diane et Val Marie Johnson (Ed.) (2010). *Poverty, Regulation and Social Justice. Readings on the Criminalization of Poverty*. Halifax and Winnipeg : Fernwood Publishing.

20 Please see Article 5 of the Regulations for Administrators regarding Free People of Color, dated June 24 and July 16, 1773, in Saint-Méry, Loix et constitutions, Tome 5: 449-450.

dustrious cultivators derive much less fruit from their efforts when their fellow workers in the same workshop engage in laziness, negligence, and vagrancy.” The essence of these articles will be incorporated into Boyer’s Rural Code and later into the Penal Code of 1835 *et seq.*

Haiti’s leaders at the time retained most of the civil and criminal norms and institutions of the colonial period, deemed necessary for the state’s security, internal order, and economic prosperity. Phenomena such as rural exodus, emigration, vagrancy, and idleness were considered threats to the survival of the young nation. Numerous laws and regulations were enacted to prohibit these behaviors deemed dangerous and unproductive.

It is not enough to merely recognize that the roots of the criminalization of poverty trace back to colonial regimes. It is also essential to determine to what extent and in what ways the legacies of the colonial model continue to influence contemporary penal practices.²¹

OBJECTIVE

To date, there has been no specific research on the criminal treatment of minor offenses in Haiti. Our understanding of the issue and its implications remains limited. Therefore, as part of the Global Campaign Against the Criminalization of Poverty, Status, and Activism, and with funding from the University of West Indies (UWI), we have partnered with the Bureau des Droits Humains en Haïti (BDHH) to undertake a research-action project on this matter.

The initial objective was to outline the current situation of Haitian detainees and analyze the prevalence of minor offenses within the criminal and prison system, using existing administrative data as well as empirical research. Ultimately, this study has generated new knowledge and evidence regarding the criminalization of poverty and status in Haiti. Besides, it also situates these findings within a broader global context and the perspective of dialogue and public actions at various levels (local, regional, and international).

METHODOLOGY

This research explores its subject at the intersection of poverty, criminalization, and the judicial system. It employs a mixed-method strategy that triangulated data from a literature review, a quantitative survey, and a qualitative investigation. In collaboration with our local partner (BDHH), we conducted a review of the literature and existing data on the criminalization of poverty and status in Haiti. This review helped identify a list of minor offenses punishable under the Haitian Penal Code.

Subsequently, a local study was carried out in the Western and Grand South departments of the country to gather data directly from court registries within prisons and prosecutors’ offices near the courts of first instance, covering the period from June 2015 to July 2023. In total, 7 out of the 18 first instance court jurisdictions were covered, and 3,648 cases were examined, including 1,556 listed in prison registries (71% men and 28% women) and 2,070 in prosecutors’ offices (69% men and 7% women) (Table 1).

²¹ This question was explored in a special issue of the journal “*Déviance et Société*,” titled “Should Southern Prisons Be Abolished or Reformed?”

Table 1.- Distribution of cases examined in public prosecutor and prison registries, by district

	Prison	Prosecution	Total
Aquin	11	679	690
Cayes	423	1	424
Côteaux	1	445	446
Jérémie	675	60	735
Petit-Goâve	225	357	582
Port-au-Prince	213	18	231
Léogane	N/A	1	1
Miragoane	N/A	501	501
Unspecified	8	8	16
TOTAL	1556	2070	3626

Finally, qualitative data were collected through a focus group discussion with the legal team of a national organization providing legal assistance to vulnerable individuals within the jurisdictions of Port-au-Prince and Les Cayes. A workshop was also organized with key judicial actors in the jurisdiction of Jérémie, including justices of the peace from several municipalities in that jurisdiction, prosecutors, the dean, judges, lawyers, and officials from the penitentiary administration, who discussed the issue of the criminalization of poverty. Additionally, seven semi-structured individual interviews were conducted with actors within the judicial system or those directly affected by its functioning.

In addition to these primary data, we added a historical database covering the last 13 years of the country's largest de-

tention center, the National Penitentiary. This database includes information on more than 25,650 detainees.

The execution of this study was marked by some difficulties, including access issues to data, challenges related to the country's security situation that hindered travel, problems accessing registries, a national strike by court clerks that lasted for several months, and the poor quality of data collected by registries (collection method, archiving method).

Despite these limitations, careful analysis of collected data helped us to thoroughly document the criminalization of minor offenses in Haiti.



PART 1

PORTRAIT OF PEOPLE ACCUSED OF MINOR OFFENSES

Sociodemographic data are essential for any reflection on the prison environment, as the prison is primarily defined by its population. What do we know about the Haitian prison population, especially those incarcerated for minor offenses? A description, followed by an examination of the demographic and socioeconomic characteristics of this specific population and their detention conditions, will pave the way for a broader discussion on the criminalization of poverty in Haiti and its repercussions.

HOW MANY ARE THEY?

As of February 6, 2023, the Haitian prison population stood at 11,211 individuals, including 9,324 detainees awaiting trial and 1,930 convicted inmates. The majority of this population is male, with men accounting for 94% of detainees, while women make up only 3%, and male minors account for 2%. Among convicted individuals, men constitute 97% of the population, with women at 2% and boys at 1%. Girls are notably underrepresented, both among detainees awaiting trial and among convicted inmates (Table 2).

TABLE 2.- Daily movement of the prison population of Haiti, by detention center, As of February 6, 2023

DETENTION CENTERS	PREVIOUS POPULATION	TOTAL DEFENDANTS	TOTAL CONVICTED	CURRENT POPULATION	CONVICTED %
Arcahaie	5	0	0	0	0
Croix des bouquets	1059	771	296	1067	27.74
Cermicol	99	93	6	99	6.06
Cabaret	82	60	22	82	26.83
Carrefour	183	118	63	181	34.81
Petion Ville	0	0	0	0	0
Petit Goave	241	213	28	241	11.62
Port-au-Prince	3649	3309	344	3653	9.42
Cap Haitien	871	685	193	878	21.98
Fort-Liberté II	280	1	294	295	99.66
Fort-Liberté	308	254	17	271	6.27
Gde Riv.Nord	73	70	6	76	7.89
Port-de-Paix	326	275	39	314	12.42
Gonaives	517	469	15	484	3.1
Hinche	505	339	166	505	32.87
Mirebalais	415	305	107	412	25.97
Saint-Marc	593	462	138	600	23.09
Anse-à-Veau	236	183	46	229	20.09
Aquin	0	43	0	0	0
Cayes	755	694	73	767	9.52
Coteaux	0	0	0	0	0
Jacmel	614	555	63	618	10.19
Jérémie	433	425	14	439	3.19
Miragoane	0	0	0	0	0
Région du sud	2038	1900	196	2053	9,55
TOTAL	11244	9324	1930	11211	

Between 2007 and 2023, despite a high number of escapes, the number of detainees in Haiti more than doubled, going from 5,500 to over 11,000 individuals. In February 2023, the incarceration rate stands at 95 per 100,000 inhabitants, a relatively low figure compared to neighboring countries. In 2021, Jamaica had an incarceration rate of 137 detainees per 100,000 inhabitants, while Trinidad and Tobago reached a rate of 276 per 100,000. In 2022, this rate rose to 629 per 100,000 inhabitants in the United States.¹

Despite the low incarceration rate, Haitian penitentiary facilities are overcrowded. According to a BINUH opinion piece in 2022: *“The occupancy rate in the country’s four main prisons is 401%, which is four times their maximum capacity. As a result, detainees have only 0.24 square meters to survive, barely more than the surface area of a chair.”*² (BINUH, 2023). As of June 30, 2023, the occupancy rate had decreased to 332%.

However, what is the proportion of minor offenses, including misdemeanors, in this landscape of criminal action? To answer this question, let’s explore the results of our survey conducted in the registry offices of prosecutors and prisons in 7 of the country’s 18 Courts of First Instance (TPI).

WHY ARE THEY INCARCERATED?

According to the data collected from the registry offices of prosecutors and prisons, minor offenses, including misdemeanors,

constitute 25% of the cases processed by the Haitian justice system, both at the prosecutor’s offices and in penitentiary facilities. In prison records, minor offenses and misdemeanors account for one-quarter of the recorded cases, while crimes make up 35%, and offenses punishable by more than two years of imprisonment represent 31%. Similarly, in the registry offices of prosecutors, minor offenses and misdemeanors make up approximately 25% of the documented cases. However, major offenses and crimes represent 3% and 36% of the cases, respectively (Graph 1).

Regarding the gender-specific analysis, prison records show an underrepresentation of women (10%) compared to men (16%) for minor offenses. However, in the prosecutor’s offices, the percentage of women involved is similar to that of men for most offenses. However, for felonies, the percentage is 19% for women compared to 43% for men, and for major misdemeanors, the figures are 38% for women and 28% for men (Graph 2.1 and Graph 2.2).

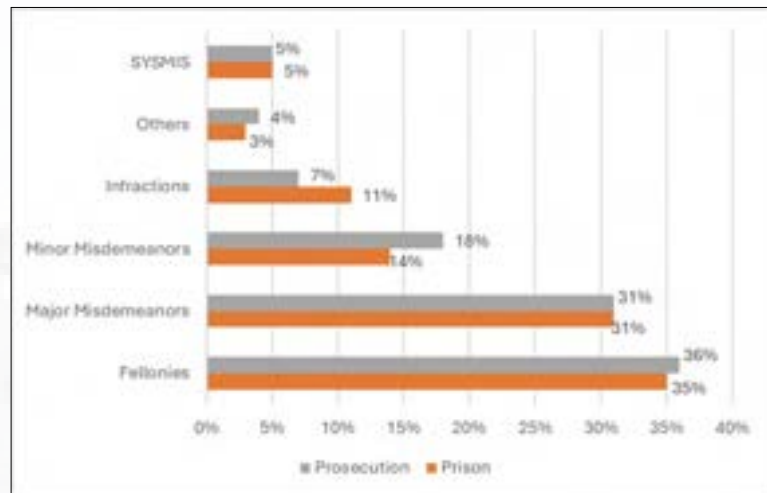
The data we collected in the field were supplemented by a recent case study of the National Penitentiary, which accommodates on average one-third of the national prison population. Between 2010 and 2023, more than 25,650 male individuals were incarcerated there, of which an overwhelming majority (82%) were detainees, and 18% were convicted inmates. Approximately 30% of these detainees, totaling 7,789 individuals, were imprisoned for minor offenses. Nearly two-thirds of these detainees (64%) were detainees, and the

¹ See Villiers, Claire (2022). “Les États-Unis, champions de l’incarcération”, *Statista*, [En ligne] : <https://fr.statista.com/infographie/28304/nombre-de-detenus-par-pays/>

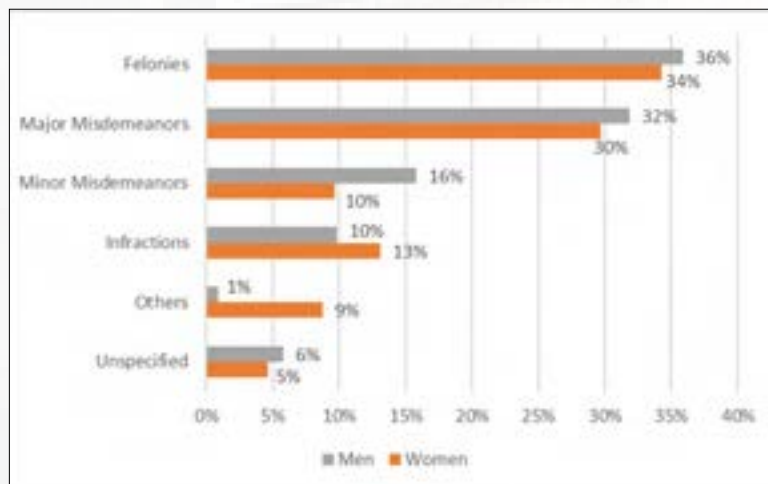
² United Nations Integrated Office in Haiti (BINUH) (2022). *Tribune : la surpopulation carcérale et ses conséquences, ainsi que la détention préventive prolongée au centre de nos préoccupations*, 10 Aout 2022. [Online]: <https://binuh.unmissions.org/fr/tribune-la-surpopulation-carc%C3%A9rale-et-ses-cons%C3%A9quences-ainsi-que-la-d%C3%A9tention-pr%C3%A9ventive-prolong%C3%A9>



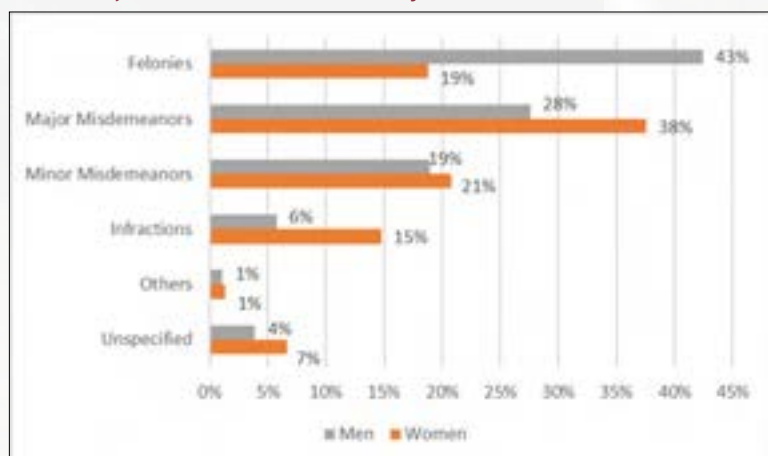
Graph 1.- Types of offenses according to public prosecutor and prison registries in 8 jurisdictions of the country, 2023



Graph 2.1_ Types of offenses according to Prison Registries in 8 jurisdictions of the country, 2023 (n=1556)



Graph 2.2_ Types of offenses according to public prosecutor registries in 8 jurisdictions of the country



remaining third (36%) were convicted inmates. They were primarily incarcerated by prosecutor's offices (68%) and justices of the peace (28%).

The most common offenses among detainees for minor offenses primarily include theft (64%), assault (25%), larceny (6%), breach of trust (2%), and loitering (2%) (Table 3).

As shown in the following graph (Graph 3), the proportion of minor offenses at the National Penitentiary has been steadily decreasing since 2012.

WHO ARE THEY?

All our studies reveal that the Haitian prison system attracts a specific demographic profile. According to the data from

the examined registers, individuals prosecuted or incarcerated for minor offenses are generally young, often single or in de facto unions, whose daily lives revolve around precarious jobs or small trades: 22% work as day laborers, 19% in agriculture, fishing, or livestock farming, 8% in trade and communication services, 7% in construction, and 5% as public transport drivers (taxis and motorcycles). However, this profile of individuals charged with minor offenses remains incomplete due to gaps in information from the registers of the various jurisdictions covered by our investigation.

The data from another survey we conducted in 2016 at the National Penitentiary, the largest correctional facility in the country, provides a more comprehensive portrait of the incarcerated population:



Results of a quantitative survey conducted at the National Penitentiary (2016)

This study focused on all inmates at the National Penitentiary, including both pre-trial detainees and convicts who had already received a criminal sentence. As of April 29, 2016, the target population consisted of 4,556 detainees. The study was conducted on a random, stratified, and representative sample of 894 inmates.

Our investigation revealed that detention for minor offenses does not affect all Haitian legal subjects in the same way, regardless of their age, gender, origin, or social class. Indeed, within the criminal justice system, processes of selection and differentiation of offenses and their perpetrators operate, directing penalties toward disadvantaged social groups.

Among the key highlights of the study, we would like to highlight the following:

- **Age:** Over 80% of detainees were between 20 and 40 years old. Men aged 25 to 29 were the most likely to be incarcerated.
- **Education:** 17% of detainees had no formal education (compared to 19% in the general population). More than two-thirds had not completed the 9th year of basic education. The average age of dropping out of school was 18 years.
- **Socioeconomic status:** 70% of detainees reported having an occupation. 15% were self-taught, 18% received vocational training, and 15% learned their trade on the job, often as apprentices to a family member.
- **Occupational activity:** 64.3% of detainees were employed at the time of their arrest, engaging in various occupations such as commerce, masonry, driving, automotive mechanics, agriculture, motorcycle taxi driving, etc.
- **Income:** 50% of detainees earned at most 5,000 HTG per month, often being the primary providers for their families (note that income distribution is highly heterogeneous).
- **Leaving the family home:** Nearly a quarter of detainees left their parental home while they were still minors.

Source : Edouard, R. et A. Dandoy (2016). *Enquête auprès de la population carcérale de la Prison civile de Port-au-Prince (Haïti), Rapport de recherche*, Port-au-Prince, Direction de l'Administration pénitentiaire.

While the study presented above provides a detailed snapshot of the prison population in 2016, it lacks current data. It is likely that the profile of detainees has evolved over the past seven years. This is why we enriched our analysis with a case study of the National Penitentiary, based on penitentiary data covering a thirteen-year period from 2010 to 2023.

Penitentiary data corroborate our previous studies, revealing that Haitian criminal justice system tend to target a specific segment of the population characterized by numerous social disadvantages. Specifically, the criminalization of minor offenses primarily targets young individuals: over half of the individuals incarcerated for these offenses over the past 13 years were between 30 and 39 years old. Additionally, it predominantly affects singles and those in common-law unions, as well as individuals without employment or gainful employment. But what do we know about the repercussions of the criminalization of poverty and status?

AT WHAT COST?

The criminalization of poverty comes at a significant cost to Haitian society, particularly to the less privileged.

HUMAN COST

The criminalization of poverty first has a human cost. Our data confirm the concerns of human rights organizations regarding the harmful effects of prison overcrowding, due in part to the criminalization of poverty, on detainees. Instead of promoting

their social reintegration, incarceration keeps detainees in a state of great physical, psychological, and social precariousness.

Various reports on the prison situation in Haiti document the inhumane and degrading conditions faced by detainees. They are crammed into unsanitary quarters. Clean drinking water is scarce, and hygiene conditions and sanitary facilities are almost nonexistent. In most penitentiary facilities, detainees do not have access to healthcare or appropriate medication, exposing them to serious risks in case of a medical emergency and making them dependent on the assistance of their families. According to the United Nations Integrated Office in Haiti (BINUH): “Detainees barely receive one meal a day, and those who can must rely on the solidarity of their loved ones for sustenance.” As the state does not allocate the necessary budget to purchase food for all incarcerated individuals, detainees suffer from severe malnutrition and anemia.

Just at the National Penitentiary, over 629 people died between 2010 and 2023. According to Prison Insider³, some died from starvation, while others contracted infectious diseases that spread, such as tuberculosis, cholera, or scabies. This does not account for cases of violence and abuse that are part of the daily life of Haitian detainees. Inmates at the National Penitentiary report being victims of daily assaults, both from other inmates and prison guards. In 2016, one in three detainees (33%) reported experiencing physical assault from a prison guard at least once. A sense of insecurity is also prevalent, with 58% of detainees stating that they do not

³ See the 2017 country profile from Prison Insider: <https://www.prison-insider.com/fichepays/prisonshaiti?s=l-inte->

feel safe in their cells.

The criminalization of poverty thus diverts a significant number of young people from their educational, professional, and personal paths. It deprives society of their productive years, which are consumed by the prison experience. It exacerbates social insecurity, affecting almost every aspect of their lives. In some cases, it pushes them toward a criminal career, exposing them to the influence of repeat offenders they encounter in the country's prisons.

ECONOMIC COST

The criminalization of poverty also has an economic cost. According to BINUH, the minimum daily budget per detainee is estimated at 106 gourdes in Haiti, which is less than one US dollar, a significantly insufficient amount for dignified subsistence. In reality, between November 2021 and May 2022, only four gourdes per day per detainee were spent. During the fiscal year 2015-2016, the Haitian government allocated 840,841,199 gourdes to the Directorate of Penitentiary Administration (DAP), which is equivalent to nearly 9% of the Ministry of Justice and Public Security's budget (MJSP) and 0.7% of the national budget (122.67 billion gourdes). This amount represents a double burden on society because not only does it not ensure dignified living conditions for detainees, but it could have been invested elsewhere in other government missions, such as education, health, housing, social and economic development, etc.

Prison financially drains the already vulnerable families of detainees. Since the

state's support is insufficient, their families are forced to spend substantial amounts to meet their basic needs in prison. A woman in her fifties told the newspaper *Le Nouvelliste*: "I have my son inside the (National Penitentiary). I bring him food twice a day. It costs us between three hundred (300) and five hundred (500) gourdes per day. And every week, I give him five hundred (500) gourdes as pocket money."

The criminalization of poverty thus not only removes the contribution of the detained individual to the domestic economy but also substantial amounts spent on paying for a lawyer's fees, maintaining the person in prison, paying for transportation costs during visits, etc. This cost is primarily borne by mothers, spouses, siblings, and a few close relatives.

SOCIAL COST

Lastly, the criminalization of poverty has an enormous social cost. It congests the judicial system and the prison environment. It disconnects individuals placed in detention and stigmatizes them upon their release. At the National Penitentiary, the majority of detainees have lost their familial ties (parental deprivation, loss of child custody, inability to provide for their children's needs) and elective participation (divorce, rupture, declining friendships, social rejection, discrimination, isolation): only 43% of them have maintained contact with their families, mainly through visits in the prison environment (84%) and telephone calls (12%). And only one-third of them (32%) received a visit from a relative in the three months preceding the survey.

The criminalization of poverty extends its negative repercussions to their families, causing “secondary imprisonment” with impacts such as household impoverishment, children dropping out of school, children engaging in delinquency, prostitution of women and girls, begging, illnesses, etc. It also affects their social circle through the shame felt by relatives, moral sanctions, and the stigmas accompanying police interventions, as well as the consequences of prolonged absence on the household’s regular rhythm, etc.⁴



⁴ See Edouard, R. et A. Dandoy (2016), *Ibid.*

PART 2

DETERMINANTS OF THE CRIMINALIZATION OF POVERTY IN HAITI

The first observation of the report confirms the widely held notion that crime is primarily associated with disadvantaged individuals. However, one must exercise caution in interpreting this observation because the publication of statistics linking the prison population to certain segments of the population can wrongly reinforce their stigmatization and exclusion, as pointed out by Didier Fassin.¹ The overrepresentation of poor individuals in Haitian prisons raises another fundamental question: Why is this population more present in the penal environment, even for minor offenses?

The analysis of qualitative data we have collected suggests that the criminalization of poverty is, in fact, the result of plural processes of differentiation and selection that occur at every stage of the penal chain. We will present six of the most determining of these processes. The first of these processes relates to the legal framework.

¹ See Fassin, Didier (2015). *L'ombre du monde. Une anthropologie de la condition carcérale*, Paris: Seuil, coll. « La couleur des idées ».

LEGAL BASIS FOR THE CRIMINALIZATION OF POVERTY: THE CASE OF VAGRANCY AND BEGGING

The criminalization of poverty primarily begins at the legislative level. When laws are designed in such a way as to classify acts of daily survival as criminal offenses, they contribute to perpetuating and legitimizing the exclusion and marginalization of the most vulnerable individuals in society.

In Haiti, the Penal Code contains several provisions that specifically target these disadvantaged social groups. The criminalization of begging and vagrancy is a good example. Surviving from colonial times and Haitian agrarian corporatism, certain provisions of the Penal Code target individuals based on their socioeconomic status and justify criminal prosecutions against them, as well as imprisonment sentences. Articles 227-1 and following of the code make vagrancy a crime and prescribe imprisonment sentences (from one month to two years) for individuals clearly described as needing socioeconomic assistance rather than criminal prosecution.²

Art. 227-1.- (L. 27 oct. 1864.) - Vagrancy is a criminal offense. - Criminal Procedure Code 155.- Penal Code 1, 229 et eq.

Art. 227-2.- (L. 27 oct. 1864.) - Vagrants or vagabonds are those who have neither certain domicile nor means of subsistence, and who do not usually exercise a trade or profession.

- civil Code 270, 272 et eq., 278 et eq.- Inst. crim. 97.

Art. 227-3.- Vagrants or vagabonds who have been legally declared such will be punished with imprisonment of one to six months. In the event of a repeat offense, they will be punished with imprisonment of six months to two years. If the culprits are minors, they will be sent to a rehabilitation institution until they reach the age of majority (As amended by decree of September 30, 1983) (translation by the author).

Furthermore, as provided in Article 227-6, the Penal Code criminalizes certain survival practices that disadvantaged individuals resort to, including begging.

Art. 227-6.- (L. 27 oct. 1864.) - Any able-bodied person found begging will be punished with imprisonment of six days to six months and returned, after the expiration of their sentence, to the residence designated to them by the public prosecutor. - Penal C. 26 et eq., 234, 235 et eq. (translation by the authors).

Criminalizing begging, as per the current Penal Code, raises two major issues. The first concerns the effectiveness of cracking down on begging, which is clearly ineffective. Sociologist Ely Thélot even pointed out that “Beggars are everywhere today. They are in front of public institutions. In front of court offices. In front of police sta-

² It is important to note that the offense of vagrancy is not provided for in the new Penal Code, which entry into force has been postponed twice for social acceptability concerns.

tions. They violate the law in broad daylight, openly, right in front of those responsible for maintaining order.” (translation by the authors).³

The second issue concerns the discrepancy between the current Penal Code and the current state of international human rights law regarding begging. In recent years, several human rights protection bodies have expressed their opposition, in the name of human rights, to the repression of begging.⁴ In 2011, in her report to the United Nations General Assembly, the Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona, criticized laws and regulations that repress behaviors deemed “undesirable” in public spaces, such as begging and vagrancy.⁵ She argues that “these laws and regulations have a disproportionate impact on people living in poverty.” In this regard, she contends that “the prohibition of begging and vagrancy constitutes a serious violation of the principles of equality and non-discrimination. Such a measure grants police officers broad discretionary powers in enforcing the laws and makes people living in poverty more vulnerable to harassment and violence. It only serves to perpetuate discriminatory social attitudes

towards the poorest and most vulnerable.”⁶

In September 2012, the United Nations Human Rights Council adopted by resolution the United Nations Guiding Principles on Extreme Poverty and Human Rights, recommending to States “to repeal or reform laws that criminalize subsistence activities in public places, such as sleeping, begging, eating, or activities necessary for personal hygiene.”⁷

In 2017, the Inter-American Commission on Human Rights also emphasized, in its report titled “Poverty and Human Rights in the Americas,” that restricting behaviors and practices considered “undesirable” or contrary to public order, such as begging, sleeping, or wandering in the streets, most often exacerbates the situation of exclusion and discrimination faced by people in poverty.⁸ In 2017, the African Commission on Human and Peoples’ Rights adopted the “Principles on the Decriminalization of Petty Offenses in Africa.”⁹ Later, on December 4, 2020, the African Court on Human and Peoples’ Rights (ACHPR) issued an Advisory Opinion on “The Compatibility of Vagrancy Laws with the African Charter on Human and Peoples’ Rights and other Human Rights Instruments Applicable in Africa.” It concluded that the criminaliza-

3 Thélot, Fils-Lien Ely (2019). “La mendicité en Haïti : une affaire d’État?“, *Le Nouvelliste*, 29 août 2019.

4 Lavrysen, Lauren (2021). « L’autonomie personnelle, la dignité humaine et le droit de mendier », *Revue Droits fondamentaux et pauvreté*, 76: 2. [En ligne]: <https://droitpauvrete.be/autonomie-personnelle-revue-2-2021/>

5 ONU (2011). *Rapport de l’experte indépendante sur la question des droits de l’homme et de l’extrême pauvreté*, Magdalena Sepúlveda Carmona, 17 mars 2011, A/HRC/17/34.

6 Cited by the European Court of Human Rights (2021). *Affaire Lacatus c. Suisse*, Requête n° 14065/15, §§32-49. [En ligne]: <https://hudoc.echr.coe.int>

7 The United Nations Guiding Principles on Extreme Poverty and Human Rights were established by the Human Rights Council in its Resolution 21/11, adopted during its 21st session in September 2012. See UN. (2012). *Version finale du projet de principes directeurs sur l’extrême pauvreté et les droits de l’homme, présentée par la Rapporteuse spéciale sur les droits de l’homme et l’extrême pauvreté, Magdalena Sepúlveda Carmona*, [En ligne] <https://www.ohchr.org/fr/special-procedures/sr-poverty/guiding-principles-extreme-poverty-and-human-rights>

8 Inter-American Commission on Human Rights (2017). *Report on Poverty and Human rights in the Americas, 2017*, OEA/Ser.L/V/II.164 Doc. 147, para 177-178. [En ligne]: <https://www.oas.org/en/iachr/reports/pdfs/poverty-humanrights2017.pdf>

9 See <https://apcof.org/wp-content/uploads/apcof-simplified-dpo-a2-poster-fre-04.pdf>

tion of begging and vagrancy not only violates human rights principles but also fundamental rights and freedoms guaranteed by these instruments.¹⁰

Advisory Opinion of the African Commission on Human and Peoples' Rights, 12/4/2020

The African Court on Human and Peoples' Rights, in its Advisory Opinion of December 4, 2020, declared vagrancy laws incompatible with several African human rights charters. It identified that these laws penalize individuals based on their socio-economic status, constituting a criminalization of poverty.

The Court emphasized that these laws violate fundamental rights such as non-discrimination, dignity, freedom, fair trial, and free movement. It criticized the justification for arrests and detentions based on these laws, arguing that they do not serve the purpose of preventing crimes or preventing people from ending up on the streets. The terms used in the legislation, such as "idle" and "vagrant," are deemed dehumanizing and discriminatory.

Provisions criminalizing begging could be challenged for similar reasons. Begging is often practiced by in-

dividuals in great precariousness, and its criminalization would amount to criminalizing a socio-economic status rather than a punishable act. Therefore, the Court encourages a review of legislation regarding vagrancy and begging to align them with the principles of fundamental human rights and reduce discrimination against vulnerable populations.¹¹

More recently, in January 2021, in the case of *Lacatus v. Switzerland*, the European Court of Human Rights issued a historic judgment by recognizing, for the first time, the right to beg. Commenting on this judgment, jurist Laurens Lavrysen highlighted that "[except for aggressive and intrusive forms of begging, the judgment significantly limits the possibilities of prohibiting begging]."¹² Thus, begging is now considered a fundamental right, in accordance with the jurisprudence of the European Court of Human Rights. The Court relies on the concepts of "private life" and "human dignity" to conclude that "the right of persons lacking adequate means of subsistence to seek assistance from others is protected by Article 8 of the European Convention on Human Rights."¹³

In summary, by criminalizing begging and vagrancy, the current Penal Code in Haiti is out of step with the international evolution of human rights regarding these survival practices of impoverished individuals.¹⁴ By turning acts resulting from poverty and

¹⁰ See <https://decrimpovertystatus.org/fr/?resources=advisory-opinion-from-the-african-court-on-the-compatibility-of-vagrancy-laws-in-africa>

¹¹ Achour, Sana Ben (2021), "La répression pénale de la mendicité", *Dissonances*, [Online]: <https://www.leaders.com.tn/article/31324-sana-ben-achour-la-repression-penale-de-la-pauvrete-vagabondage-et-mendicite>

¹² Lavrysen, Lauren (2021). *Idem*.

¹³ *Ibid*.

¹⁴ It is important to highlight the evolving perspective on this matter in Haiti. Indeed, begging itself is neither prohibited nor

social exclusion into criminal offenses, the law has created a vicious cycle that traps people in poverty or already marginalized, in a cycle of criminalization, incarceration, stigmatization, and decapitalization.

DISCRIMINATORY POLICE AND JUDICIAL PRACTICES

In line with the current legislation, certain police and judicial practices contribute to the overrepresentation of disadvantaged social groups in the criminal justice system and within Haitian prisons. These discriminatory practices occur at two crucial stages: during police stops and arrests (a), and when determining the charges brought against the individuals apprehended (b).

POLICE SELECTION

Public action in Haiti has almost always been marked by a discriminatory process, which has been evident since 2006 through the intensification of the military and police presence in disadvantaged neighborhoods in the metropolitan area of Port-au-Prince. This increased presence results in proactive operations such as raids, hunts, and searches, particularly in areas considered “lawless zones.” These tactics, including “rounding up” where numerous individuals are arrested simultaneously during an incident, exceed constitutional and legal guarantees of individual freedom. These practices reinforce the criminalization of poor communities,

reflecting a public policy that stigmatizes the poor through police means, as explained by this magistrate we interviewed for this research:

“In my practice as a magistrate, I have often encountered situations where the police bring a group of individuals to court. The reason for their arrest is rounding up. These are usually young people the police find in the street. If these young people do not have identification, the police arrest them for offenses that occurred nearby. However, when the police could not identify the perpetrator, they apprehend everyone present at the scene. In many cases, most of them have nothing to do with the alleged offenses.” (translation by the authors).

Rounding up typically results in the apprehension of individuals with modest socio-economic conditions. According to judicial columnist Jean-Robert Fleury, those affected are often street vendors, local product sellers, shoe shiners, as well as curious onlookers. The police arrest everyone they find at the scene, and if they cannot prove their innocence to the prosecutor, they are sent to the national penitentiary.

Rounding up is not random. Generally, this process of police selection is based on prejudices and social profiling. It does not rely on tangible evidence of criminal activity but rather on stereotypes that make characteristics of a certain segment of the population grounds for sus-

punished in the new Penal Code awaiting enforcement. Instead, it is the activities related to the exploitation of begging that are subject to penalties. Therefore, with this potential amendment, it is conceivable that begging may no longer be directly penalized in the future, shifting the criminal focus more towards individuals who organize or profit from this practice.

picion of wrongdoing. Thus, being young, residing in a popular neighborhood or a shantytown in the metropolis, having the appearance of a young delinquent (skin color, hairstyle, clothing style, language, body mass), sometimes suffice to establish a presumption of guilt followed by

imprisonment. According to the collected data, those most frequently affected are individuals with dreadlocks, tattoos, and piercings, residing in shantytowns marked by a history of violence. As illustrated by this magistrate we interviewed for this research, rounding up generates a discri-

Case Study

“During an incident in Pétion-Ville where a person was killed, the police arrested approximately 75 individuals. At the time, a legal assistant from the Port-au-Prince bar association was tasked with representing several of these individuals. He observed that among those who were arrested, individuals with a neat appearance (well-groomed hair, shirts tucked into their pants) were quickly released, while those with dreadlocks, tattoos, or other distinctive markers were detained. None of them had been seen with the weapon involved in the murder, and all claimed their innocence. The government commissioner handling the case chose to release those who did not fit the appearance of “bandits,” according to his perception. The legal assistant highlighted the irony of the situation: a woman involved in marijuana trafficking was released due to her “respectable” appearance, while others with an unfavorable appearance were incarcerated without direct evidence of their involvement in the crime”.

minatory dynamic that begins with police intervention and continues at every stage of the criminal procedure:

The study further reveals that police officers treat citizens differently based on their socio-economic status. A human rights lawyer and activist states we interviewed stated the following:

“Police officers do not treat all citizens the same way, whether it’s in how they conduct searches or interrogations. Some are arrested and subjected to violent treatment, while others are arrested without mistreatment. This is done based on their assessment

of the social standing of the individuals involved.” (translation by the authors).

According to the collected data, it is rare to find individuals from higher social classes among those arrested during “arrimage” or any other police control process. Generally, it appears that due to fear of potential repercussions, police officers exercise great caution when it comes to apprehending or sanctioning individuals of high social status in society. Another respondent lawyer reports:

“Unlike in some other countries, police officers in Haiti are afraid of

the authority and potential influence that important individuals could exert on their future within the police force. Therefore, they tread carefully.” (translation by the author).

This caution among police officers tends to disappear when it comes to sanctioning or arresting disadvantaged or seemingly disadvantaged individuals. Some police officers appear to be more inclined to arrest these individuals, and there is a trend within the police force to treat them with violence, unlike individuals from higher social classes. Even within prisons, differential treatment continues, as described by one respondent lawyer:

“As a lawyer, you can make a difference. There are people you visit in prison for whom they almost want to open the prison doors to facilitate your task. There are others for whom they will tell you that there are no authorized visits.” (Translation by the authors).

SUBORDINATE QUALIFICATION

The qualification of facts is another area where discriminatory practices continue to contribute to the criminalization of poverty. Several mechanisms and even tricks are used in this regard, including the invention of qualifications not provided for by the Penal Code and the use of criminal qualifications of the Code for acts that do not constitute offenses.

In law, the term “qualification” refers to

a decisive process through which magistrates attribute a “meaning” to facts that constitute an offense. This exercise has the effect of establishing the legal consequences of these facts. Michelle Cumyn describes this process, which is based on the correspondence between the facts and the applicable legal standards, as a central theoretical exercise in judicial decision-making.

Specialized literature establishes a clear distinction between primary qualification, established by the legislator to define and classify reality through legal categories, and subordinate qualification, which concerns the application of existing categories by judicial authorities.

Judicial practice in Haiti reveals that subordinate qualification is often subject to discretionary and discriminatory interpretations, especially when it comes to mass arrests in disadvantaged neighborhoods. Operations such as “roundups,” where several people are arrested simultaneously without a clear legal basis, are glaring examples of this dynamic. These arrests often result in charges of gang association, often without concrete evidence.

Sometimes, even for minor offenses, such as shoplifting, the offense of “gang association” is used to qualify the facts. This excessive requalification transforms a simple theft, which should normally be considered a minor offense, into a major crime. This practice highlights a significant imbalance in the application of the law, where minor acts are treated with disproportionate severity.¹⁵ As we have seen earlier, this trend towards excessive criminalization of relatively harmless behaviors can nevertheless have major consequences in

¹⁵ This disproportion also exists in criminal law, which imposes heavy penalties for offenses that only certain modest indivi-

the lives of those involved.

Law enforcement authorities are also known to use qualifications that are not listed in the Penal Code. For example, they sometimes use qualifications such as “gangsterism” or “complicity in gangsterism” to justify arbitrary arrests. Testimonies gathered during the investigation show that practices of qualification not provided for by the law are quite common. One lawyer recounts:

“There was a person who was arrested, and I was representing her while she was in prison. When I asked her why she was in prison, she said she hadn’t done anything. She had braided hair and an earring, that’s all. When the police stopped her and asked where she was coming from, she said she was from the Cité. So, she was arrested for complicity in gangsterism, even though she was alone.”
(translation by the author).

This case illustrates how personal characteristics and social stereotypes can lead to serious and unfounded accusations. Such practices highlight a harmful and unjustified “presumption of guilt” that unfairly targets the same social categories. Simply living in a so-called lawless area made this person an accomplice of the armed gangs in the area.

The analysis of data also shows that some government commissioners and justices of

the peace use their discretionary power to qualify acts that do not constitute offenses as offenses, as in the case of unpaid debts unjustly classified as embezzlement.

Finally, it is common to observe in certain electoral districts in Haiti the influence of the political sphere on judicial decisions. This practice is not limited to elected officials such as deputies or senators but also includes other authorities who, although not elected, wield significant influence over judges and prosecutors. These individuals, using their economic or political power, regularly intervene in the judicial process, even going so far as to have people arrested to serve their personal interests. One lawyer testifies:

“A notable case illustrating this practice occurred three years ago. I had to defend a farmer who was imprisoned following the intervention of a deputy with the investigating judge in Croix-des-Bouquets. This farmer, who was cultivating carrots on land also covered by the deputy’s wife, was accused of fraudulently attempting to take over his land. Since carrot farming is a lucrative activity in that region, it was clear that the deputy aimed to seize the man’s land. Fortunately, the farmer found adequate legal support, allowing me to assist him effectively in this situation where political influence had skewed the judicial process.”
(translation by the authors).

duals are likely to commit. This is the case with domestic thefts, which are punishable by imprisonment under Article 329-1 of the Penal Code: « Will be punished by imprisonment: domestic thefts, that is to say thefts committed by a servant or a hired serviceman, even when he has committed the theft against people whom he did not serve, but who was either in the house of the person he served or in the one where he accompanied him, or by a worker, apprentice, or employee in the house, workshop or store of his boss or employer or by an individual usually working in the house or on the home where he stole » (translation by the authors).

A reform of the practices regarding the qualification of offenses appears necessary to ensure the fair and accurate application of the law.

A DYSFUNCTIONAL JUDICIAL SYSTEM

People who languish in detention centers did not end up there by chance. It is the result of a malfunctioning penal system that unfortunately prioritizes imprisonment over freedom. Beyond police practices, judicial decisions also contribute to the criminalization of poverty and the perpetuation of inequalities. Several sources indicate that justices of the peace contribute to the congestion of the prison system by issuing detention warrants without reservation. Others emphasize the crucial role of the government commissioner in the decision to prosecute. Some even question the competence of certain magistrates in handling judicial procedures, especially in the management of minor offenses. Often, these cases are transferred without adequate evaluation, leading to an overload of investigative offices and unjustified incarcerations, as seen in inappropriate cases of association of wrongdoers. The practice of issuing arrest warrants for offenses committed several months earlier also reflects a lack of understanding or a misinterpretation of the law. Furthermore, the lack of rigorous follow-up with incarcerated individuals, especially those without legal representation, exacerbates the injustices of the Haitian penal system.

JUSTICES OF THE PEACE

Justices of the peace, traditionally seen as local authority figures and mediators, disproportionately contribute to prison overcrowding by illegally issuing detention warrants, especially against individuals living in poverty and unable to afford legal representation. Statistics from court registries indicate that the jurisdictions of the justices of the peace are responsible for 28% of incarcerations for minor offenses.

However, Haitian law is clear: it stipulates that, except in cases of flagrant offense¹⁶, police officers and magistrates cannot make arrests unless they have a warrant written in both Creole and French by an authorized authority, such as an examining magistrate or a warrant judge. Therefore, any arrest and detention conducted outside of these parameters are considered null and void. The President of the Federation of the Bars of Haiti adds, “Today, we have a real cancer on our hands, prolonged pretrial detention, because we arrest people too often and we arrest them very poorly, and we do not respect the judicial guarantees provided for in the international conventions that Haiti has ratified.”

It is evident that the procedures followed by some justices of the peace lead to arbitrary and potentially illegal decisions. It is imperative to bring the practices of justices of the peace, especially in the issuance of detention warrants, in line with the law. This will help minimize unjustified pretrial detentions of the most disad-

¹⁶ Will also be considered caught in the act: the case where the accused is pursued by public outcry and the case where the accused is found in possession of objects, weapons, instruments, or papers that suggest that he is the perpetrator or accomplice, provided that it is within a short time of the offense (Article 31 of the Code of Criminal Procedure). Haitian jurisprudence, through a judgment of the Haitian Court of Cassation, has set this reasonable period at a maximum of 24 hours.

vantaged social groups and combat prison overcrowding.¹⁷ However, a caveat is necessary. There is sometimes a gap between what the law prescribes and the objective conditions of its implementation. Due to the state's poverty, especially in remote rural areas, justices of the peace often find themselves facing force majeure cases that require them to deviate from the law to maintain public order or save lives. One justice of the peace testifies, "It is true that there are justices of the peace who act excessively and abuse their power, perhaps to satisfy a few friends. They imprison people. But you have to see that it is the entire system that is problematic. Because when it comes time to judge people, the question arises of when you receive them. When you have to take them to the prosecutor's office, you are told that the prosecutor has already left. When you call the police to keep them in custody, they tell you that there is only one car, and it has already gone to another destination." Justices of the peace in rural areas work under such precarious conditions that it is not always easy to adhere to the letter of the criminal law.

PUBLIC PROSECUTORS

At the heart of the criminal justice system, government commissioners play a central role in deciding the appropriateness of prosecutions. In principle, magistrates must conduct an initial review of the po-

lice's first assessment of the facts, potentially leading to requalification or even disqualification for dismissal. However, data at the Prosecutor's Office level indicate that sometimes, some government commissioners endorse the qualifications made by the police following an "arrimage" or any other arbitrary arrest without taking the time to assess the facts. A senior judge testifies, "There are some commissioners who, when it comes to cases that arrive at the Prosecutor's Office with an offense classified as a misdemeanor or a crime, do not take the time to analyze the case. They automatically decide to prepare their indictment to send to the examining magistrate or the citation to go to the criminal court."

In this regard, it appears that some government commissioners not only validate unjust and abusive qualifications made by police officers but also use their discretion and decision-making authority in the qualification of facts to prosecute or detain certain categories of individuals, misinterpreting the law, and even for acts that do not constitute an offense. Data analysis highlights two cases of offense qualification that support this conclusion: "abuse of trust" and "rebellion." In some cases of unpaid debts, which do not constitute an offense, certain government commissioners and justices of the peace proceed to arrest the debtor and send them to detention for "abuse of trust," which is a misdemeanor under Articles 338 to 341 of the Penal Code.

¹⁷ A caveat is necessary here. The group interview conducted with judicial authorities in Jérémie clearly revealed a disconnect between what the law prescribes and the actual conditions of its application. Due to the destitution of the state, especially in remote rural areas, justices of the peace often find themselves facing cases of force majeure that compel them to deviate from the law to maintain public order or save lives. One justice of the peace testifies: "It is true that there are justices of the peace who act excessively and abuse their power, perhaps to satisfy a few friends. They imprison people. But one must see that the entire system is problematic. Because when it comes to judging people, it depends on the time you receive them. When you have to take them to the prosecutor's office, you are told that the prosecutor has already left. When you call the police to keep them in custody, you are told that there is only one car, and it has already left for another destination." (translation by the authors).

Similarly, the data collected reveals that in cases where a citizen refuses to respond to an invitation from a government commissioner or a justice of the peace, they often proceed to arrest the individual and send them to detention for “rebellion.” However, the situation described has nothing to do with rebellion, as defined by the Penal Code in Article 170, which defines it as “any attack, resistance with violence and assault against ministerial officers, or the public force, officials responsible for tax and contribution collection, their executors, customs officials, sequestrators, officers or agents of the police or the judiciary acting in the execution of laws, orders, ordinances of public authority, judicial warrants, or judgments.” And the president of the Bar Federation concluded:

“Even though a magistrate invites a citizen 10 times and the latter does not show himself, the law does not authorize the issuance of a warrant against him and even less his incarceration. On the other hand, the law allows public action to be mobilized to force this person to respond to the invitation. [...] Putting public action in motion does not mean arrest and detention at all costs” (translation by the authors).

CLIENTELISM AND CORRUPTION WITHIN THE POLICE AND JUDICIAL APPARATUS

This section of the report highlights a judicial and penal system where corruption and clientelism perpetuate glaring inequalities and the criminalization of poverty.

The ability to bypass the law through financial resources or political influence embodies a two-tiered justice system, where the poor are disproportionately targeted and punished, while the wealthy and influential enjoy relative impunity. The ability to pay for the services of a lawyer or to corrupt a judicial actor plays a crucial role in the outcome of criminal cases. Those with financial means can easily influence the system in their favor, exacerbating inequalities and corrupting the course of justice.

One of our respondents criticizes the lack of effective judicial inspections and appropriate sanctions for judicial actors who commit illegal acts or violate fundamental human rights. This lack of accountability creates an environment conducive to impunity, abuse, and negligence. A bar association representative participating in the investigation confides:

“Now, regarding corruption, the more means you have in Haiti, the easier it is to avoid detention. So, the fewer means you have, the easier it is to be detained.” (translation by the authors).

This dynamic creates a glaring disparity between the rich and the poor in the criminal justice system. Impoverished individuals without financial resources or political connections are more likely to end up in prison. On the other hand, those with financial means or the necessary influence can easily escape detention, even if they are prosecuted for similar or more serious offenses.

During a focus group discussion, a participant in the judicial system explained: “In Haiti, it is common to hear that when

it comes to a thief, it's a small-time thief, but when it's Mr. X, people do everything they can. They can consult a psychologist, a psychiatrist, to find an explanation to sensitize the judge and push him to make a decision he shouldn't make. However, people without resources and without influence, if they don't find someone in a non-governmental organization to advocate for them, or a compassionate judge, or a diligent prosecutor, you see them languishing in prison."

A justice of the peace added:

"When people are sent to prison, there must be someone to follow their case because judges may not remember if they have already sent someone to prison. Today there are 2 or 3, tomorrow there will be 2 or 3 more, resulting in a backlog of cases to deal with. There are many cases that investigating cabinets have to manage. Sometimes, people who have more means can afford to hire a lawyer to represent them. (...)." (translation by the authors).

According to the bar association representative representing the bar associations at the CSPJ, judicial actors in Haiti, including judges, court deans, and government commissioners, enjoy a kind of impunity in their actions. They can issue arrest warrants and keep individuals in detention for extended periods without appropriate legal proceedings, without fearing consequences for their dishonest or illegal acts. This situation creates an environment of legal insecurity where the fundamental rights of detainees are often neglected because there is no effective mechanism to hold these actors accountable for their actions.

INVISIBILITY OF THE ISSUE

The invisibilization of the issue of the criminalization of poverty through processes of normalization and trivialization is another significant determinant. Paradoxically, statistical data contribute to this in two ways. First, by highlighting the overrepresentation of the most vulnerable people within the criminal justice system and in the country's prison facilities, often used to justify increasingly repressive criminal policies. Secondly, the poor quality of available data obscures the individuals who are victims of the criminalization of poverty. The state does not allocate the necessary resources to understand the problem, its causes, and consequences. The data collection methods, often kept in poorly maintained and preserved records, archived in neglected spaces, increase the risk of losing the judicial memory of the country due to weather conditions, fires, vandalism, theft, or any other climatic or human hazard. Furthermore, the information found in these records is often incomplete and unreliable due to material errors, complicating the difficulties of processing and analysis.

Paradoxically, the examination of the registers of the prosecution offices and prisons reveals an invaluable potential for transforming prosecutorial action, both in terms of monitoring and evaluating the practices of judicial actors and in the fight against corruption.

DENIAL OF JUDICIAL GUARANTEES

Despite the importance of all other factors, the primary source of the criminalization of poverty lies in the denial of judicial safe-

guards, particularly the lack of access to legal representation. The absence of legal representation directly impacts individuals' ability to navigate the judicial system and assert their rights. Without a lawyer, detainees often struggle to understand the charges against them, actively participate in their defense, or challenge the procedures and evidence presented. This situation leads to unfair trials and potentially wrongful convictions.

Young people from vulnerable neighborhoods in Haiti, once ensnared in the criminal justice system, face enormous challenges in obtaining justice. Their precarious social and economic situation, combined with their lack of understanding of how the judicial system works, places them in a particularly disadvantaged position. This issue is exacerbated by the lack of access to adequate legal representation, which is a fundamental right in any legal proceeding. The figures from the National Penitentiary are telling: only 3% of detainees claim to have a lawyer representing them, while 81% say they have never had a lawyer visit.¹⁸ These data highlight a serious deficiency in the provision of legal assistance, depriving a vast majority of detainees of their right to proper defense.

The fundamental principle of equality before the law is seriously compromised in Haiti due to the judiciary's inability to provide adequate legal representation for all, especially the most vulnerable. The right to be heard by an independent and impartial tribunal within a reasonable time is a fundamental right that should be gua-

ranteed to all citizens, without exception or exclusion.

It is also relevant to note that, in this situation, economically disadvantaged individuals often find themselves trapped, as even access to a lawyer can be hindered by significant financial constraints. For example, one complainant mentioned that she had to pay a considerable sum for a lawyer's consultation and for processing detainees' cases, raising concerns about effective access to justice for economically vulnerable individuals.

This observation highlights the need for judicial authorities and prosecutors to carefully review cases before deciding to send individuals to prison. Detention should not be used inappropriately for minor offenses or for individuals who do not have the necessary resources to defend themselves properly.

¹⁸ The issue here is not to determine whether the detainees are telling the truth, but to highlight that access to a lawyer in Haitian prisons is still the exception rather than the rule.

CONCLUSION

This study provides evidence, if proof were needed, that the criminalization of poverty does indeed exist in Haiti and that far from being a marginal phenomenon, it is a widespread problem. When it is based solely on minor offenses, it affects at least one in four prisoners (more than 25% of the prison population). It is fueled by a series of sociopolitical factors including a punitive legislative framework, an avatar of French colonial laws, discriminatory practices at the level of the police, prosecutors and courts, corruption and dysfunction of the judicial system, and the veil of silence and amnesia which envelops, at all levels, the functioning of the Haitian penal system.

This report recalled that crime is not a natural fact, but a social construction reflecting not only the evolution of law and morals, but also that of power relations. He revealed that crime is constructed in such a way as to promote a particular image of criminals, an image according to which the greatest danger for society is committed by poor or marginalized people.

These considerations make any eradication project against the criminalization of poverty and status complex and difficult. In our quest to address the critical issue of the criminalization of poverty, we have identified several key areas that demand our attention and collective action. These areas highlight the multifaceted nature of the problem and underscore the importance of a comprehensive approach to combatting this deeply ingrained issue.

Importance of Judicial Guarantees

All the testimonies gathered are unanimous on the fact that, even if it is far from resolving the heart of the issue, one of the fundamental pillars in the fight against the criminalization of poverty is ensuring the protection of judicial guarantees. Not only has the presumption of innocence of the detainees been tarnished, but other judicial safeguards have also not been ensured.

The article 14 of the *International Covenant on Civil and Political Rights*, ratified by the Haitian Parliament on February

6, 1991, provides certain minimum guarantees for all individuals subjected to any form of detention or imprisonment. These include *“the right to be tried without undue delay, the right to a fair and public trial by a competent, independent, and impartial tribunal established by law, and the right to be present at the trial and to defend oneself or to have the assistance of counsel of one’s choice; if one does not have a lawyer, to be informed of the right to have one appointed, and whenever the interests of justice so require, to have one provided without payment”*¹.

Similarly, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states that *“a detainee shall be entitled to have the assistance of a counsel”* (Ibid). The Body of Principles also recommends *“providing legal aid to detainees awaiting trial”* (Ibid). *The first of the Basic Principles on the Role of Lawyers adopted in 1990 during the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders stipulates that “everyone is entitled to call upon the assistance of a lawyer of their choice to protect and assert their rights and to defend them in all stages of criminal proceedings”* (Ibid.). These principles prescribe to public authorities and the judiciary to *“ensure that all persons, in particular those who are disadvantaged or marginalized, have access to a lawyer”* (UN 1990).

Despite what all these legal instruments stipulate, most detainees do not have legal

representation, and it is not by choice. Moreover, while access to a lawyer is undoubtedly an advantage, it does not guarantee quality legal representation. Factors related to the quality of legal representation, such as the competence and experience of court-appointed or retained lawyers, adherence to ethical rules of the legal profession, biases and corruption in the system, and the provision of defense resources roughly equivalent to the prosecution’s to investigate, prepare, and present cases... failed in criminal justice. In short, the right of detainees to a fair and equitable trial is hardly guaranteed.

BEYOND THE LAW

Nevertheless, this research has clearly demonstrated the limitations and sometimes even the pitfalls of a purely legal approach. This latter starts from the premise that detainees are legal subjects who have violated the law. However, the analysis of the criminal trajectory of Haitian detainees has revealed that the issue of their detention is not necessarily a legal one.

This is because, outside of any judicial procedure, most of them are considered and treated as culprits who need to be neutralized for the risk they represent in the present and the threat they embody for the future. Using a substitution transfer², the social group to which this social category belongs - the mass of inhabitants of low-income neighborhoods - has become the embodiment of *“what offends the*

1 United Nations Human Rights (1990). Basic Principles on the Role of Lawyers. Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba. [En ligne]: <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-role-lawyers>

2 See Combessie, Philippe (2003). *Les fonctions sociales de l’enfermement carcéral : constats, hypothèses, projets de recherche*, mémoire pour l’habilitation à diriger des recherches, Université Paris 8.

defined states of collective consciousness,” the scapegoat that needs to be sacrificed for collective selfishness. To borrow the words of Paul Fauconnet cited by Combessie : “there is neither innocent nor guilty in the profound sense that consciousness gives to these words, but only individuals who are expedient to punish³”.

Certainly, heavy accusations weigh against several detainees. However, the vast majority still enjoys the presumption of innocence. Nevertheless, our data highlight inequalities and discriminations against the poorest and most vulnerable, which lead to the belief that in their cases, even the most fundamental judicial guarantees have been seriously violated.

In other words, the criminalization of poverty is not confined solely to legal and judicial matters. It takes on various forms, affecting individuals long before they come into contact with the criminal justice system. This phenomenon is deeply rooted in societal attitudes, discrimination, and the stigmatization of marginalized communities. To truly combat the criminalization of poverty, we must also challenge and transform these underlying societal norms and biases.

DIAGNOSTIC ERROR

While decriminalizing minor offenses is a crucial step towards ending the criminalization of poverty, it alone cannot address the root causes of this pervasive issue. We must recognize that the problem goes

beyond the mere existence of certain laws and extends into the broader socioeconomic context. Poverty is not a crime, and our efforts must extend to tackle the systemic inequalities, social injustices, stereotypes, and economic disparities that perpetuate this vicious cycle.

As we have seen, the manual and discretionary procedures that oversee the calamitous functioning of the criminal justice system in Haiti open the door to the development of a market for influence and special services, ultimately rendering the judicial process dependent on the generosity of the parties towards judicial personnel. Some of our respondents have not hesitated to speak of corruption.

These covert practices necessitate a (re) assessment of the parallel operating rules of the judicial system, diverting justice from its function as a public service. In recent years, these rules have taken on dimensions that reveal a justice system plagued by corruption, to the detriment of materially and socially disadvantaged people. Due to these underground practices, “*Access to justice remains a rare and precious commodity. Only a tiny fraction of citizens can afford legal counsel or to pay the bribes that, given the system’s distortions, are necessary to ensure speedy trials*”⁴ (p. 7). This occurs openly without effective intervention by disciplinary and supervisory authorities.

Many justice actors acknowledge this issue. According to the International Crisis Group⁵, corruption stems, among other

³ Combessie, Philippe (2003). *Ibid.*, p. 87.

⁴ International Crisis Group (2011). “Keeping Haiti Safe: Justice Reform” *Crisis Group Latin America/Caribbean Briefing*, N°27, 27 October 2011. [En ligne]: <https://icg-prod.s3.amazonaws.com/b27-keeping-haiti-safe-justice-reform.pdf>

⁵ International Crisis Group (2011), *Ibid.*

factors, from the lack of job security, supervision, and adequate training for judges, prosecutors, and other court employees. It thus develops within a structural framework that encourages judicial actors to invent rules that promote various corrupt practices, which have significant consequences on the normal functioning of the public service of justice.

To ensure the perpetuation of this parallel system and undermine any possibility of reform, the independence of the judiciary has been under attack over the past four decades. Judges have never been exposed to so many threats and pressures of all kinds. The most concerning come from the underworld, the political and economic elites. Some judges have even had to go into hiding. Any discerning observer has noticed the great importance that the political power places on the process of appointing, assigning, and certifying magistrates to key decision-making positions in the various branches and jurisdictions of the judicial system. These power games

primarily serve to perpetuate the reign of impunity for the privileged and the criminalization of poverty.

In short, access to legal representation, a fair trial, and due process are not privileges but inherent rights that must be safeguarded for all, regardless of their socioeconomic status. It is imperative that we work tirelessly to create a justice system that upholds these principles and provides equitable treatment to every individual, especially those from marginalized and vulnerable communities. To achieve this, depending on the evolution of societies, it shall be a matter of correcting legal provisions and practices that discriminate against certain social statuses associated with poverty, either by removing from criminal jurisdiction an act or omission hitherto considered as an offense (decriminalization), either by reducing the seriousness of the offense or its sanction (depenalization). There is no one size fits all solution!



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