Criminalisation of Poverty:

Exploring the Nexus Between Poverty and the Criminal Justice System in the Global South

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Acknowledgements

Executive Summary

This report is a product of the Research Team's engagement with International Bridges to Justice (IBJ) to achieve a deeper understanding of the functioning of legal justice systems in the complicated terrain of economic, social and geo-political circumstances of the Global South. In particular, this research focuses on individuals who are ill-equipped to cope with the systemic biases, prejudices and gaps in the world of crime, punishment and justice. The report follows an analysis of the factors plaguing vulnerable populations through different stages of incarceration, identifying significant challenges and trends. The focus is on amplifying the correlation between poverty and incarceration to understand the cyclical processes that victimise participants in the justice systems in a way that crime rates soar while quality of life continues to deteriorate for certain sections of society. Given the abundance of perspectives from which this problem can be approached, the Research Team in consensus with IBJ, developed a toolkit that can be employed to localise patterns that emerge from this research and create comprehensive databases of information as a starting point to mobilising resources to tackle this relevant hurdles.

Setting the scene

The Research Team found that the mutually pernicious relationship between poverty and incarceration is a global phenomenon and is substantiated by prison statistics and trends across countries situated in the Global South, but also around the globe. An interconnected labyrinth of colonial legacies and societal structures, discriminatory policies and malfunctioning legal apparatus are not only responsible for disproportionately putting vulnerable populations in prisons but also for keeping them there.

Building the Framework

The Research Team studied incarceration trends closely using frameworks of postcolonialism and intersectionality to establish that the very characteristic of poverty, more often than not, was what was being criminalised. Corresponding to the different stages of incarceration, arrest, during detention and post release the Research Team found evidence in existing academic and statistical studies that showed an undeniable correlation between the criminal justice systems' propensity to target certain populations and their identities as shaped by socio-economic factors, including but not limited to financial well being, race, gender, age, sexuality, and

ethnicity. Not just activities harmful to the moral fibre of society but life sustaining activities have been categorised as criminal offences as a means to control and persecute marginalised populations. Archaic and corrupt institutions would then play their part in denying exoneration of captured individuals by denying them access to justice or the tools for reintegration into society.

Toolkit for investigation

The Research Team focused on three countries where IBJ is operational to provide an overview of the conditions of access to justice to corroborate as well as correlate to the findings and frameworks established in the previous sections. In Rwanda, Burundi and the Democratic Republic of Congo (DRC), certain groups of the population are evidently caught in a vicious cycle of poverty, criminalisation and incarceration where their identities played a huge role in shaping their interactions with legal justice systems. Using the technical, theoretical and analytical methods and modalities of investigation employed during this process, the Research Team lays out comprehensive instructions for localised and contextual investigations into the phenomenon of 'criminalisation of poverty'.

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Introduction

International Bridges to Justice (IBJ) is a global leader in systems change for access to justice, with more than 20 years of experience in the sector. IBJ has a network of legal defenders that help individuals trapped in broken judicial systems locally, improves public justice nationally, and leads an advocacy movement for legal rights globally. IBJ's mission is to provide access to justice for those vulnerable groups who are unable to afford a lawyer, and break the cycle of injustice. IBJ has a strong in-country presence in Global South countries as it has twelve regional offices in Burundi, Cambodia, China, DRC, Indonesia, India, Myanmar, Rwanda, Sri Lanka, Syria, Turkey, Zimbabwe as well as a regional hub in Singapore.

IBJ's global legal defenders see first-hand the effects of poverty on those caught up in justice systems: prior to an arrest, during detention and post-release. Their work has identified a correlation between the Global Inequality Index and the World Prison Population List. In this sense, poverty is a key factor in fueling incidences of crime, while incarceration is also a catalyst for the impoverishment of already vulnerable communities. Moreover, this link between criminal justice and poverty remains under-studied in most developing countries in the Global South. Therefore, there is a need for research and investigation into these linkages, and formulation of guidelines which can be employed to study the interrelationship between criminal justice and poverty in Global South countries.

This research project is being undertaken by the Research Team in collaboration with IBJ to explore and highlight the nexus between poverty and the criminal justice system (Project). Particularly, the Project will address the criminalisation of poverty, the socioeconomic impacts of incarceration, and the poverty trap triggered by these factors. Through an intersectional approach, the research will have a special focus on vulnerable and marginalised communities such as women, children, aged populations, racial and ethnic minorities. This report consists of the background of the study, statement of objective, research questions, sources, methodology as well as theoretical frameworks. A comprehensive literature review is carried out as part of the project to produce an interactive database that can be utilised by IBJ to enhance its understanding and positionality specifically with respect to the correlation between poverty and incarceration.. The ultimate goal of the project is to use its findings to create an interactive and transferable toolkit. The toolkit will consist of a comprehensive series of steps that will provide IBJ's country teams the means to contextualise and implement the toolkit in their respective country sites.

Background of the Research

People living in poverty are potentially at higher risk to find themselves in conflict with the law, especially as they perform life-sustaining activities such as moving, sleeping, eating and exchanging food, trading, touting, hawking, and engaging in hygiene-related activities in public places. Such activities are generally criminalised in most countries and, in some cases, constitute penal offences such as loitering, vagrancy, trespassing, public nuisance and disorderly conduct (Penal Reform International, 2021). Upon arrest, vulnerable individuals are often unable to afford bail or to engage the services of a criminal defence lawyer, and are subjected to the harsher side of inadequately equipped criminal justice systems (United Nations Office on Drugs and Crimes, 2011). Consequently, the people experiencing poverty face a heightened risk of over-incarceration, arbitrary detention, torture and other forms of abuse in police cells and prisons.

Considering a human rights-based approach, poverty cannot only be based on income levels. Through this lens, poverty is a multidimensional phenomenon that considers components of social, political and economic inequality. Therefore, poverty is understood as "a human condition characterised by the sustained or chronic deprivation of resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights" (quoted in Donald and Sepúlveda, 2014). From this human right-based approach to poverty, access to justice plays a fundamental role as it allows people living in poverty to claim and improve their enjoyment of basic rights.

Moreover, people living in poverty have faced for centuries numerous barriers to access justice, denying them the chance to challenge crimes, and abuses of human rights violations committed against them (Donald and Sepúlveda, 2014: 7). This situation not only perpetuates but exacerbates their situation of poverty and social exclusion, in a vicious circle of impunity, powerlessness and injustice (Donald and Sepúlveda, 2014). Furthermore, as laws and regulations are vaguely worded, their interpretation and application is left to the discretion of law enforcement officials and increases the vulnerability of people living in poverty to harassment and violence. The criminalisation of life-sustaining activities or behaviours, normalises the laws and regulations that further marginalised the poorest segments of the population. This also increases their exposure to abuse and violence by both private individuals and law enforcement officials, leaving the victims unable to make complaints about these

abuses for fear of exposing themselves to more mistreatment and jeopardising their livelihoods further (Donald and Sepúlveda, 2014).

Global Prison Trends and Statistics

According to Penal Reform International (2022), "the global prison population is at an all-time high", reaching 11.5 million in 2021, representing a 24 per cent increase since 2000. Furthermore, this trend is observed in all the regions of the world – with the exception of Europe which has had a 27% decrease – as the prison population has increased by 82% in Oceania, 43% in Asia, 200% in South America, 77% in Central America and 38% in Africa. As for specific countries' prison populations, the United States (US) remains the country with the highest rate with 629 per 100,000 people, followed by Rwanda with 580, Turkmenistan with 576, El Salvador with 564 and Cuba with 510. Moreover, in Turkey, the prison population has increased by 130% over the past 10 years, while in Russia a decline of 56% has been perceived. Furthermore, around 121 countries are operating their prison systems above capacity and 13 countries (seven in Africa and three in Asia) operate above 250 per cent occupancy levels (Penal Reform International, 2022). This leads to overcrowding and exacerbation of the overall poor detention conditions, especially access to healthcare, proper hygiene and appropriate nutrition, but also an increase in violence and a decrease in rehabilitation possibilities.

In 2021, Penal Reform International identified five main drivers of imprisonment: 1) punitive drug policies (over 2.2 million people in prison for drug offences); 2) discrimination (mainly targeting poor and marginalized communities); 3) extreme sentences (life sentences are on the rise); 4) COVID-19 (increase crime rates, new types of crime related to the pandemic, court backlog); 5) underuse of imprisonment alternatives. In addition, during the COVID-19 pandemic, the new sanctions over the violation of quarantines disproportionately targeted the life-sustaining activities of financially disadvantaged people who had to leave their homes for food, water and for work out of economic necessity and were incapable of paying fines (UNODC, 2021). These ad-hoc extensions of criminal law also affected other vulnerable groups, including LGBTQ+ and indigenous people (UNODC, 2021).

Furthermore, punitive drug laws have imposed disproportionate criminal sanctions, leading to the imprisonment of over 2.2 million people worldwide for drug-related offences. Strict and punitive drug policies tend to put personal use of drugs and large-scale traffickers in the same

legal category, causing a disproportionately negative impact on the people incurring the first-mentioned type of possession. Different United Nations institutions have made a global call to decriminalise drug use and possession for personal use in an attempt to reduce the overuse of detention for this kind of offence (Penal Reform International, 2022). Moreover, in cases of children involved in the illicit drug market out of economic hardship and necessity, the International Narcotics Control Board demanded governments look for alternatives to imprisonment for non-violent offences including education, rehabilitation, treatment and aftercare (INCB, 2020). According to available data, around 261,200 children are in detention globally, accounting for 29 children per 100,000. The highest rate of child detention is seen in North America (137 per 100,000), followed by Latin America and the Caribbean (77 per 100,000) where around 50,300 children are detained, representing the highest number worldwide (Penal Reform International, 2022).

In around 42 countries in Africa, "vague, arbitrary, colonial-era petty offences" such as loitering and vagrancy keep criminalising poverty (Penal Reform International, 2022). The criminalisation of specific actions, behaviours, beliefs and other socioeconomic factors continues to have a disproportionate impact on vulnerable groups and minorities such as women, children and ethnic groups. In several countries, the penalty for vagrancy can go from six months to two years, while the offences related to begging have a penalty ranging from one month to seven years. Moreover, around the globe, sex work keeps being highly criminalized and imprisoned, affecting disproportionally women and LGBTQ+ groups. Nevertheless, even where sex work is not prohibited sex workers still face a high risk of detention, institutional violence, and arbitrary and illegal arrest and detention, particularly this is seen in Latin American countries such as Costa Rica, Nicaragua, Panama and Paraguay. The unnecessary overuse of imprisonment for petty and minor offences continues to be one of the main drivers of national prison populations and overcrowding. For example, prisons in Sri Lanka operate at a capacity of 190% and the latest data show that, in 2020, 74% of all convicted persons were imprisoned due to their inability or impossibility to pay fines (Penal Reform International, 2022).

When it comes to the composition of prison populations, men account for 93% of the global population, being the most represented group. Over the past 20 years, the number of women in prison has increased by 33%, having a higher growth rate than the male population, which rose by 25% (UNODC, 2021). Similarly, high-income countries have seen a steady increase in older people in prison, which can be traced to life imprisonment and long sentences. Moreover,

LGBTQ+ people continue to be overrepresented at every stage of the criminal justice system but particularly in prison, they represent a disproportionately large demographic. So far, 67 UN member states still have laws which criminalise same-sex conduct (consensual), and six out of these have the death penalty as punishment. Nevertheless, even where being LGBTQ+ is not criminal conduct, these group tends to be targeted by law enforcement on discriminatory sexual orientation grounds and face an increased risk of violence and human rights abuses once arrested and in prison (Penal Reform International, 2022). Furthermore, ethnic minorities and indigenous people are excessively imprisoned in many countries, constituting up to 50% of the prison population. This evidence shows the systemic racism embedded within criminal justice systems, which also leads to further human rights abuses and harsher treatment in prison compared to white prisoners. Unfortunately, there is an extreme scarcity of data available regarding marginalised and vulnerable groups such as LGBTQ+, ethnic minorities and young adults making it almost impossible to have precise percentages and numbers of their relations with the justice system (Penal Reform International, 2022).

Research Objective and Questions

The Project will aid overall IBJ's efforts within justice systems by i) developing a database based on a systematic review of existing literature and ii) generating guidelines that will be employed to explore and understand the nexus between poverty and criminal justice within specific localised contexts. Drawing on a systematic review of literature, and an overview of the criminal justice landscape in select countries, the Project will examine the cycle of poverty triggered by the incarceration of the already vulnerable, its causes and consequences. The objective combined with the following research questions is referred to as the "Focus Area":

● What characterises the relationship between poverty and criminal justice in the Global South?
● What quantitative or qualitative data can we use to assess the significance of poverty as a contributory factor to systemic inequalities in the penal justice system?
● Is it possible to measure the impact of incarceration on the poor and other vulnerable groups, such as women and children? If so, how can this be done?

As the literature available demonstrated it to be a global phenomenon and not limited just to the 'Global South', the Research Team in consultation with IBJ excluded any geographical limitations to the research in the first stage of research. This approach enabled the creation of a database of literature that elaborates on poverty as a contributing factor to systemic

inequalities in the penal justice systems worldwide and describes the consequences of incarceration on vulnerable groups.

Methodology

To achieve the main purpose of the project, the research will be carried out in three main phases: 1) literature review; 2) country specific data collection; and 3) creation of Toolkit.

Phase One: Literature review

This phase focused on the literature review of existing reports, academic papers, books, policies and documentaries related to the Focus Area. In this phase, the Research Team created a database of the existing literature as one of the primary deliverables of the Project. This list is meant to be accessible for IBJ's platform, collaborators and partners, as well as the general public. This concluded with an Inception Report that collects the findings.

In the initial stages, IBJ and the Research Team deliberated on a second phase which would focus on a predetermined country to carry out specific research on the Focus Area. This is discussed in further detail in the next section.

Phase Two: Country-specific secondary data collection

Initially, Rwanda was selected as the case study mainly because it is located in Global South, due to its relevance to IBJ's work and field team offices, and the lack of language barriers. Phase two of the Project was intended to focus on the collection of primary data by identifying existing research tools in this field, substantiating findings through measurable quantitative and qualitative data about Rwanda's political, economic and social contexts, the justice system, prison data and demographics and developing guidelines to assess the impact of incarceration of poverty in Rwanda. However, in attempting to conduct interviews and gather qualitative data from IBJ's Rwanda team, the Research Team encountered several practical hurdles. After several attempts to curtail the scope of data and attempts by the Research Team to interact with the IBJ's on-field team, internal changes and the country team's unavailability made it difficult to proceed. It became clear that to appropriately involve country teams in this crucial process, in-person interaction with researchers is necessary. It was a learning experience for all stakeholders and the nuances of the process further influenced the modalities employed by the Research Team in the creation of the Toolkit.

As a result, the focus of this phase shifted to conducting a desk review of three African countries where IBJ operated. Based on a desk review of existing literature, data was collected about Rwanda, Burundi and DRC in order to corroborate and contextualise findings made in the first phase of research.

Phase Three: Creation of Toolkit

This phase involved synthesis and analysis of the findings from Phases One and Two in order to formulate the deliverables. In this phase, the Research Team lays out comprehensive steps for localised and contextual investigations into the phenomenon of the 'criminalisation of poverty using the technical, theoretical and analytical modalities of investigation employed during this process. The findings of the first and second phases of research were used as anchors for the scope of inquiry and direction of the investigation. The Research Team also created a base set of questions corresponding to relevant lines of inquiry to facilitate ease of transference and implementation by IBJ's country teams all over the world. The steps include guidelines to enhance or limit the scope of research which could then be used to modify the tools offered as per relevant contexts.

At the end of this phase, all the expected deliverables will be handed in their final version and a visual presentation of results will be carried out to IBJ members and collaborators, in a mode and time convenient to the Research Team and IBJ.

Theoretical framework for analysis

To understand how the criminalisation of poverty has been institutionalised and perpetuated in the Global South justice systems, the Research team based the analysis of the findings in two main theoretical frameworks:

- Postcolonialism

The postcolonial approach focuses on the impact of colonialism on social, political, and economic relations, and representations of the Global South. It addresses how identities were constructed from the colonial context, while also trying to build an understanding of postcolonial subjectivities. Postcolonialism examines the ties between knowledge and power, epistemic violence, and the ethics and politics involved in the postcolonial imaginary (Tan, 2017).

The prefix "post" has been rigorously debated. However, it has never implied that colonialism has ended; indeed, much of postcolonial theory is concerned with the lingering forms of colonial authority after the formal end of the "Empire". Postcolonial studies aim to showcase colonial representations, the role of capital, and gendered and racialized relations of domination, hierarchy, and power in world politics (Nair, 2017).

Moreover, Postcolonialism particularly emphasises on how racial binaries, meaning how races are constructed as different, opposite or other, continue even after the end of formal colonial rule. It highlights how racialised othering frames not just history, but contemporary debates such as national security, justice systems, nationalism, culture, immigration, international aid and the struggle for indigenous rights (Nair, 2017). A postcolonial perspective on criminal law allows a more intellectually robust understanding of human rights and crime, while also providing an opportunity to question the historical foundations of criminology as part of an imperialist project (Cunneen, 2011). Through a postcolonial approach, criminalisation is a key part of the building of the nation through processes of exclusion. Therefore, notions of crime control, crime wave, crime zone, crime as a social problem, and the need for law and order, are perceived as signs of a moral malaise that threatens the constitutional integrity of the state (Cunneen, 2011). The criminal justice system has a determining role in creating and profiling social groups as threats and in reproducing a society built on racialized boundaries. Hence, "the process of criminalization itself now constitutes a significant racializing discourse" (quoted in Cunneen, 2011: 257). As our research seeks a broad understanding of the Global South perspective on the criminalisation of poverty, as well as to examine justice and prison systems in the region, postcolonial theories become fundamental to understanding how the colonial past affects the country's present reality.

- Intersectional approach

According to Crenshaw, intersectionality is "a lens for seeing the way in which various forms of inequality often operate together and exacerbate each other" (Steinmetz, 2021). Crenshaw argues that the experience of oppression is not one nor fixed but rather it derives from the relationships between interlocking systems of power. For Crenshaw, the intersectional experience is greater than the sum of racism and sexism, hence any analysis that does not take intersectionality into account would not be able to sufficiently address the way women of colour are subordinated (Balfour & Comack, 2014).

Furthermore, Choo and Ferree (2010: 131) highlight three dimensions that integrate the meaning of intersectionality: 1) the importance of including the perspectives of multiply marginalised people, especially women of colour; 2) a shift from the addition of multiple independent strands of inequality to multiplication and transformation of their main effects into interactions; 3) a focus on seeing multiple institutions as overlapping in their co-determination of inequalities. In this sense, intersectionality can be understood as a tool to describe the way people's social identities overlap, emphasising how experiences of oppression such as gender, ethnic-racial features, class, and sexuality should be understood as simultaneous and intertwined, rather than as separate variables (Steinmetz, 2020; Choo & Ferree, 2010). Particularly, for feminist criminologists intersectionality became an approach to connect women's involvement with crime to a situation of poverty. This new approach mainly distanced the discourse from individual pathologies and, instead, centred it around the intersection of structural inequalities that constrain and contour women's and other vulnerable and marginalised groups' lives (Balfour & Comack, 2014). An intersectional perspective was employed to understand the ramifications of multiple socio-ethnic-economic features in populations' interaction with a criminal justice system rooted in colonial legacies and modern-day inequalities.

Is being poor a crime?: A Worldwide Phenomenon

The Research Team found literature on a wide range of topics in relation to the incarceration of poverty including, but not limited to, the treatment of certain marginalised groups, the effects of incarceration as well prison statistics and trends from around the world. A stage-wise approach was adopted to make the literature review more useful in understanding the connection between poverty and incarceration and relevant findings are included below.

Causalities and historical contexts leading to poverty

While the literature shows how the actions of individuals in dire economic conditions are criminalised, the overarching causal factor appears to be inequality within the society as criminal law and justice systems are shown to reproduce social and economic inequalities through codified discriminations and privileges within policies and the judicial machinery (Ferragoli, 2008). These inequalities could be traced to colonial legacies of discriminations or byproducts of a largely capitalist world that sought to maintain the status quo of the poor and marginalised (De la Fuente, 2015). Though a substantial amount of evidence as well as existing

regulatory systems indicate that what is sought to be criminalised is based around individual characteristics and conditions associated with poverty, such as joblessness, family structure, peer networks, psychological strain, or exposure to intensely violent environments, the potential of crime can be traced to interaction of these individuals with a larger setting of victims, offenders and guardians, within diverse contexts and settings (Sharkey et al., 2016).

Criminalisation of life sustaining activities

There are instances of crimes motivated by conditions of poverty and inequality, as seen in cases of drug use and trafficking, gang violence that lead to incarceration. However, as evidenced by data on the social composition of the poor, that constitute the majority in prison systems, it was a certain type of perpetrator or "criminal" that was the focal point as opposed to a certain type of activity or crime that led to frequent incarceration (Ferragoli, 2008). An example of this can be seen in a study of the causes and consequences of women's imprisonment in Sierra Leone. They were predominantly economically disadvantaged, and they stood apart from the system persecuting them in terms of the official language used, gender as well as gender norms deemed permissible rather than due to the crimes committed by them (Cyrus Vance Centre for International Justice, 2020).

The Research Team encountered such identifying factors that made financially challenged individuals more prone to being victims of a discriminatory judicial system (Penal Reform International, 2021). Discussions on such findings with IBJ also revealed their on-ground experiences of layered social and economic factors that led to worse treatment under the laws and penal systems of the land. Hence, it was concluded that intersectionality would be a crucial lens of research to highlight patterns of correlation between certain categories of people and the inadequate justifications and disproportionate frequencies of their incarceration. Despite the slow and arduous movement of criminal systems, it could be seen that when it came to these types of perpetrators, action was often swift and extreme (Ferragoli, 2008). Frequently, the circumstances of their criminalization were associated with necessities of their existence and nature rather than motivated and premeditated 'crimes'. To take a few examples - loitering laws have been used to criminalise poor women in Sierra Leone who break traditional gender norms to secure financial gain through sex work on the streets or at night (Cyrus Vance Centre for International Justice, 2020); hawkers who form the essential core of a thriving 'informal economy' are relegated to the status of criminals in an urban economy, shunned to the margins and deprived of life-sustaining work (Kimani et al., 2021).

Functioning of the criminal justice system and society in the pre-trial / arrest stage

Though there was some data indicative of lower rates of serious crimes overall, the rates of criminalization and incarceration appear to have risen consistently over the past few decades (Duque and McKnight, 2019). Literature indicated that discrimination and inequality within the larger civil society was duplicated in how treatment under the law played out for several sections of economically challenged populations. Rising inequality and marginalisation on the basis of race, gender, age – both for children and the aged, and physical ableness were seen to be features of increased detention, greater punitive sanctions and sentencing disparities both due to discriminatory profiling, status within the society and the inability of these sectors to afford basic legal assistance, aptly phrased as "pricing out" the poor (United Nations Office on Drugs and Crimes, 2011). Similarly, arbitrary and extensive pre - trial detention are seen to disproportionately target the poor and marginalised because of unequal distribution of limited legal resources and privileges (Sarkin, 2017). Prison demographics were influenced by these factors and resulted in a concentration of people who were caught up in a cycle of disadvantage from which it was difficult to escape (Duque and McKnight, 2019).

Functioning of the criminal justice system and society in post detention coming to an end

As a direct result of the prison concentrations described above, temporary or extended loss of livelihoods can be seen to be a cause of unmitigable damage in the lives of the poor. The result is these categories of people being caught in a self-perpetuating cycle of lack of stable means of livelihood leading to incarceration for trying to secure these means, even as the possibility to do so diminishes significantly with a criminal record (Centre for Community Change, 2022). As highlighted earlier, additional factors of increased vulnerability make reintegration and rehabilitation even more of a challenge. To take a distinctive example, data indicates that individuals incarcerated either in their youth or old age also find it much more difficult to lead healthy, productive lives upon release (Maschi et al. 2011). As imprisonment rates rise globally (Penal Reform International 2021), the possible effects of parental imprisonment on children, as well as prisoners' well-being, health, and behaviour, have become urgent social concerns. Furthermore, female imprisonment causes severe economic backlashes on states, as detainment and contact with the criminal justice systems increase family insecurity, interrupted education

and unemployment rates, financial weakness, and the use and trafficking of substances, to name a few (Gakwaya, 2020).

It is interesting to note how states choose to respond to poverty induced petty crimes through heavy penalisation, with little interest in addressing the root cause of economic inequality and poverty through social protection or intervention programs such as substance abuse treatments that produce more social safety benefits (Mauer, 2017). On the basis of the above analysis, it can be seen that it is not poverty induced crimes such as loitering or petty theft that lead to the incarceration of the poor, rather it is their very existence that has been systemically criminalised in the eyes of the law. The situation is exacerbated by the intersection of additional dimensions of human identity such as gender, race, ethnicity, physical and mental divergence, employability and age. Based on these findings, the Research Team has currently identified up to thirteen categories[1] within the four major themes firstly, to cast an intersectional net over existing literature to capture the co-existence of some of these factors in the background of prison statistics and secondly, to further break down the process of criminalisation of poverty down to specific triggers. These category filters have been chosen i) based on the frequency of their occurrence in relevant literature; ii) with the purpose of comparing and contrasting trends with the data from the study of select countries where IBJ operates; and, iii) as a first step to creating guidelines for IBJ's research in other localised contexts.

Use of Literature Review, Analysis and Frameworks: Creation of the Toolkit

Sample country study

The Research Team looked at significant challenges and hurdles faced by vulnerable groups seeking access to justice in three of the African countries where IBJ works. This was done to apply the aforementioned frameworks and build the foundations of inquiry for the Toolkit. The goal is to corroborate as well as correlate to the findings and frameworks established in the previous section. The selection of these offices was informed by discussions with IBJ of the unique challenges faced in these country contexts, which were apropos for the application of the findings and frameworks discussed earlier. In the following section, findings are reflective

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[1] The identified categories are as follows: racial/ethnic profiling, gender impact, childhood impact, criminalisation of life sustaining activities, physic-social impact, reintegration, prison system, prison demographics, access to legal resources, historical contexts, global south context, link to poverty and age related impact.

of the significance of using conceptual structures with postcolonial and intersectional lenses to inquire into the pervasive phenomenon of 'incarceration of poverty'.

- Burundi

Burundi comprises a society marred by years of civil war and a functional justice system with a strong restorative approach was required to emancipate its population (Moriceau, 2016). Around 73% of the population lives in poverty and ranked 185th/189 countries in the 2019 Human Development Index (Bertelsmann Stiftung, 2022). In this context, one of the main challenges in Burundi was that an overwhelming section of the population was forced to interact with the criminal justice system with limited, or absent, right to legal counselling (Moriceau, 2016). Axiomatically, this resulted in disproportionate pre-trial detentions marred by procedural irregularities where detainees were denied their right to a fair trial and were subjected to discrimination and human rights abuses due to overcrowded prisons and insufficient resources (Moriceau, 2016). Moreover, a large section of pre-trial detainees were children who had been abandoned, orphaned and left to fend for themselves on the streets in the aftermath of the war and, unable to do so, ended up trapped in a criminal justice system that lacks basic protection for juveniles (HRW, 2007). This painted a dismal picture, especially in light of the large number of children who had been recruited as child soldiers or found themselves constantly in conflict with the law in the absence of holistic rehabilitation or reintegration programs (Ramadhan, 2019). Also, the political rivalries have led to undue influences on a nascent judiciary and further negatively impacting access to justice for the people of Burundi (Moriceau, 2016).

- Rwanda

From 1897 to 1918, Rwanda was part of German East Africa and after World War I, it became a Belgian trusteeship under a League of Nations mandate along with neighbouring Burundi (Rwandan Genocide, 2009). It is apropos to current day circumstances of ethnic segregation and treatment under the justice system to note that during Rwanda's colonial period, the minority tribes or Tutsis were favoured over the Hutus and created a volatile propellant for the Hutu revolutions and subsequently the genocide of 1994 (Clark, 2010). These events necessitated the establishment of international tribunals and community 'gacaca' courts in a bid to restore justice (Clark, 2010). Community justice was a novel bid to repair the social fabric but within the gacaca courts, there was an overwhelming focus on establishing truth and

securing retribution which also contradicted its purpose and enhanced social anxieties and tensions, generating further vulnerabilities (Rutayisire & Richters, 2014). The upheaval of the country's populations where thousands still await trial for their crimes and these ad-hoc structures significantly shape today's populations' interactions with the legal justice systems and additional measures required to protect vulnerable populations and introduce principles of restorative and rehabilitative justice (Clark, 2010). Rwanda is one of the 42 African countries that criminalise petty offences (HRW, 2020). For example, the new National Rehabilitation Service introduced the concept of "deviant behaviours", which include prostitution, drug use, begging, vagrancy, informal street vending, or any other behaviour that is harmful to the public (Mudge, 2020).

- Democratic Republic of Congo

Furthermore, DRC also experiences a disturbing history of conflict and its most vulnerable populations have been recruited into violent armed groups (Kiyala, 2015). Stigma still surrounds the 'fearsome' child soldiers of days gone past and in absence of proper rehabilitative measures, these children are often forced to live just beyond the boundaries of a moral and legal society where hit-or-miss arrests pave the way forward (Kiyala, 2015). The most affected children and youth are those caught in the rip tide of a world of crime where they do not belong and a criminal justice system that profiles and imprisons them without investigation, and scarily often without crime (Kiyala, 2015). This issue of juvenile detention is further exacerbated by overcrowded prisons where psychological conditions, physical hygiene and health as well as sexual safety are heavily compromised as younger detainees are forced to share space with adult occupants in understaffed and unmonitored prisons (Van Hout & Mhlanga-Gunda, 2019). The devastating effect of decades of conflicts and lack of security on marginalised sections of population is further underscored by the criminalisation of sex work where female sex workers who are subjected to violence at the hands of their employers, customers as well as the police have no option but to return to the 'scene of crime' for their livelihood (Platt et al., 2018). It is important here to also consider the impact of colonial legacies of policies surrounding the criminalisation of certain acts and the imperial patriarchal notions that dictate their propagation (Platt et al., 2018).

- Correlation of Findings

The above focus areas tie into the general findings of the literature review carried out in the

earlier phase of research. One way this becomes visible is how they are innately bound to the identities and inequalities born of the historical and colonial machineries and perpetuated through institutionalised prejudice and societal structures. Divisive social and political roles played by different sections of society segregated by race, ethnicity, gender, sexual orientation and age continue to be aggravated by conditions of poverty and destitution, where their being and existence seems to be ample proof of crime. These exclusion and persecutions can take many nuanced forms including for example, disadvantages faced by juvenile prisoners in Congolese prisons who often do not know French and are robbed of the minimal means of support and justice that they could otherwise access (Van Hout & Mhlanga-Gunda, 2019). Inadequate political and administrative structures that failed to equip legal systems with the necessary conduits either by way of robust and modern mechanisms or trained and sensitised personnel bled into the dam of victimisation and oppression of the vulnerable. The state of affairs in Burundi highlights the importance of placing an investigation into key levers of a country's justice system and appropriate legal aid within its historical and geo - political context, not least to identify the impact on its most vulnerable populations. It is also a simple and effective demonstration of the obvious importance of man-power to start the process of providing adequate access to legal justice. However, these countries also warn against uni-dimensional approaches to solving rising incarceration rates within marginalised populations. For instance, it has been shown that stress on restorative and rehabilitative justice in Burundi was linked to a simplistic and fallacious assumption that such measures would automatically help mitigate fundamental problems plaguing overcrowded and underfunded prisons (Van Hout & Mhlanga-Gunda, 2019). This lends further credibility to the findings that root cause analysis coupled with appropriate psychological, social, economic and political measures are indispensable to preventing or dealing with these issues. In the next section of the report, the Research Team uses the technical learnings as well as thematic findings from above data collection and analysis to lay out a detailed procedure for replication of the process by IBJ's country teams in different geo-political contexts.

Guidelines and toolkit

In this section, using the technical, theoretical and analytical methods of investigation employed during this process, the Research Team lays out comprehensive guidelines for localised and contextual investigations into the phenomenon of 'criminalisation of poverty'. A toolkit has also been created for ease of implementation.

- Step 1. Preparation and Planning

1.a Define Scope

Defining the scope of research is the first step, and it ought to be neither too broad making it infeasible or overcomplicated or too narrow so there is not enough information to successfully obtain desired results. Particularly, criminalisation of poverty has a multiplicity of pillars, perspectives, and intersections to delimit your research with and it is advisable to use two or more of the criteria while defining the scope :

- Temporality: A specific period of time to which the research will be circumscribed. E.g. Evolution of prison demographics from 2010-2020
- Geographical: Selection of a geographical area (regional, national, local levels) that the research will focus on. E.g Imprisonment trends in post-genocide Rwanda.
- Population: A specific demographic group(s) based on age, race, gender, nationality, ethnic group, social class, occupation. E.g. Trends of indigenous women imprisonment in Latin America from 2000-2020.
- Gap Filling: Specifying the topic or challenge to be addressed based on the need to fill a knowledge, data, or policy gap. E.g. Evidencing the criminalisation of Indigenous communities in postcolonial settings (evolution of rates and trends).
- Practicality: Determining the time, resources, available information, previous knowledge of the subject, among others factors, that are needed to carry out the study satisfactorily. E.g. Statistical study of the impact of criminalisation of drug use on young populations in the United States.

The scope has to be defined with certain novelty and flexibility according to the magnitude, purpose and target audience of the knowledge, data or information aimed to be generated. Is it to be used for resource mobilisation or for engagement of local actors and stakeholders, what is the ideal length of the text, does the scope need to be adjusted following background research and review of literature, should the results help highlight systemic challenges to create policy, promote advocacy or just to raise awareness?

In our research we identified the relationship between incarceration and poverty in the Global South as the focus area and limited the scope of evidence collection to 3 countries in the region with IBJ's country teams as the target audience for the final deliverable of a research toolkit.

Insight tips:

- Prepare to circumvent potential gaps relating to a scarcity of data regarding vulnerable and marginalised populations in criminalisation, detention and imprisonment.
- Bear in mind the possible ethical implications and risks that might be related to your research, especially with sensitive topics such as the criminalisation of poverty.

1.b Find Background Information

Next, it is important that you do some background research on your selected topic to better understand its current status, context, identify who is talking/writing about it and fine tune the definition of your scope based on the information and data gaps that your research aims to contribute to. In this step, there may be back and forth with your topic and scope delimitation. Particularly, when addressing criminalisation of poverty in the Global South, it is fundamental to revise the historical context and structures that permeate the political, social, cultural and economic systems.

Using the background information from our research, we narrowed down on 13 categories, within the broader topic of criminalisation of poverty, that remain understudied and under researched, which served as the basis to determine the intended knowledge contribution with the research: racial/ethnic profiling, gender impact, childhood impact, criminalisation of life sustaining activities, physic-social impact, reintegration, prison system, prison demographics, access to legal resources, historical contexts, Global South context, link to poverty and age related impact.

Insight tips:

- Go from general to specific, from global to local to help you better understand where your topic stands, its historical context and evolution, its currency and to reach greater specificity about your desired research outcomes.
- Keep in mind that you will not be able to cover every single aspect of your background research, so try to focus on your selected topic/problematic/scope.
- Make sure to save all the sources you find and read. We recommend creating a database (either in Excel, GoogleSheets or a program of your choice).

1.c Set objectives and construct research questions

This step defines the core of your research and establishes clearly what you intend to achieve with the research and who your target audience is; Do you want to contribute to the solution of a problem, generate information for policy making, change the behaviour of certain actors by raising awareness of a specific problem, create a methodology for decentralised research and investigation?

For our research, we set a general objective: "Drawing on a systematic review of literature, and an overview of the criminal justice landscape in the selected countries (Burundi, Rwanda and DRC), the Project will generate a tool to examine the cycle of poverty triggered by the incarceration of the already vulnerable, its causes and consequences".

Hence, here we want to understand how the criminalisation of poverty is a life-impact problem that endangers people's lives and livelihoods before detention, during detention and imprisonment, and after release.

1.c.1 Research questions

Setting research questions will help guide you to the answers that you seek through the research. These questions must be specific, open-ended and precise using probing questions (such as why? what? how?). They must be intended to dig deeper within the identified scope of the topic and they must be in line with the objectives. It is common to have a general question, complemented by specific questions, which will help to cover various aspects of the topic/problem to be addressed.

Our research questions were built as follow:

- What characterises the relationship between poverty and criminal justice in the Global South?
- What quantitative or qualitative data can we use to assess the significance of poverty as a contributory factor to systemic inequalities in the penal justice system?
- Is it possible to measure the impact of incarceration on the poor and other vulnerable groups, such as women and children? If so, how can this be done?

These questions were intended to identify gaps in information regarding the relationship between poverty and criminal justice systems. We particularly identified important gaps related to information on vulnerable and marginalised communities regarding detentions, access to justice, imprisonment rates, vulnerabilities during incarceration and, specifically, on the impact incarceration had on them once "reintegrated into society".

Insight tips:

- For this section, to identify what you want to know from the research you can write down what you know and what you do not know about your selected topic by using short concise sentences.
- Use your general objective and specific objectives to write down multiple questions using similar phrasing and from that select the 2 or 3 more feasible and inline with your desired outcomes.

- Step 2. Collection of Data

2.a Methodology

The methodology consists of an explanation of how the research will take place. It is a detailed description of how data will be collected, which techniques will be used, how data will be interpreted and how conclusions about the data will be provided. When selecting your methodology, you can choose between qualitative, quantitative, and mixed methods. In oversimplified terms, these are distinguished by whether you will focus on words, numbers, or both. Particularly, for researching the nexus between poverty and criminal justice systems, it

might be beneficial to use mixed methods, as statistical data, experiences and behaviours will be interconnected to reach a conclusion on this link.

2.b Literature review (secondary sources)

The literature review can be seen as a puzzle: all the individual pieces (arguments) must be put together in order to bring out the whole picture of the state of knowledge of the selected research topic. Therefore, a literature review does not consist of multiple summaries of different academic articles, papers or news articles, but instead it brings together the different perspectives, understanding and arguments on the same topic to identify patterns and themes.

For example, during our literature review, we divided our information into four subtopics: 1) Causalities and historical contexts leading to poverty, 2) Criminalisation of life-sustaining activities, 3) Functioning of the criminal justice system and society in the pre-trial / arrest stage, 4) Functioning of the criminal justice system and society in post detention coming to an end. This facilitated our understanding of the thematics and guided our research questionnaire for primary data collection, which will be addressed in the next section.

As the literature review requires the revision of multiple sources, one method that can be helpful to organise your literature review is the synthesis matrix. This database can be as simple or detailed as you want, the point is to be able to keep track of all the sources you consult and the main arguments being discussed. We created the following **Literature Review Matrix** that can be used as a reference.

2.b.1 Theoretical frameworks

A theoretical framework consists of the concepts and the existing theory(/ies) that will be used for your research. For the creation of your theoretical framework, you must review pertinent literature for theories and analytical models that are relevant to your research problem/scope. Your selection of a theoretical framework should depend on its appropriateness, ease of application, and explanatory power.

Regardless of your theoretical framework, we highly recommend always considering an intersectional approach to your research. Here you will find a list of **intersectionality readings by the University of Alberta** that can help and guide you on the use of this approach.

> Insight tips:
>
> - When organising your Literature Review make sure to go from the most general to the most specific; advance from the most abstract to the most concrete, and move from the most conceptual to the most empirical aspects.
> - Even though the Literature Review is not a set of article summaries, it can be useful to have a short overview of each of the sources revised.

2.c Primary Sources

Your research must contain original data collected by your research team itself and is fundamental to answering your research questions and fulfilling the objectives set. This could be either through interviews, focus groups, observation, ethnographic work, or statistical analysis.

> The topic of criminalisation of poverty involves a myriad of actors (government, judiciary, non-governmental organisations, academic bodies, prison personnel, detainees, counsellor, families, defendants, etc.). Thus, it is recommended to conduct semi-structured interviews that allow you to dig deep and fill the found information gaps. For creation of the toolkit, each section was selected based on gaps identified and desired research outcomes. The questionnaire is nested in a way that allows us to get a whole picture of the problem, while also asking very specific questions that are intended to be our knowledge contribution.
>
> Insight tips:
>
> - For the interviews, it is important to create open ended questions that cannot be answered with a simple yes or no.
> - Always keep in mind that you are speaking to people, so it is important to also approach their socio-emotional motivations and experiences beyond the professional.

- Creation of interview questionnaire

Point of inquiry: Access to Justice

Intended Gap to fill: During our background research and literature review, we identified that a large percentage of the imprisoned population is just there due to their incapability of paying fines or accessing legal defence and also due to delays in court's procedures. Hence we think it is important to understand the main roots of this issue in each localised context and it would be an oversimplification to assume that the lack of access is directly and wholly linked to a lack of availability. Therefore, it is important to build queries to identify how the criminal law procedure works, what options detainees have to access legal defence, who is supporting them and how and look for areas of opportunity or improvement.

A starting point of these questions can be to leverage the interviewees own experience and interaction as an actor within a particular machinery in the legal justice system. Thereafter, insights can be drawn from the interviewees perspectives of relevant demographics and institutions at both ends of the spectrum that are predominantly involved in the different stages of incarceration. It is also important to situate findings within a current state of affairs in terms of functional aspects of existing machinery, proposals for policy changes, advocacy and reform campaigns or ad hoc processes that influence these processes. An initial goal based prioritisation can also be done based on everyday experiences of relevant actors.

Point of inquiry: Crime & Incarceration

Intended Gap to fill: For this particular section, we identified multiple interconnected gaps. One of the most important ones is the scarcity of data on prison demographics, especially those that specify the composition by gender, ethnicity/race, age religion, and sexual orientation. These are prisms that may either be overlooked because of lack of a zoomed out perspective or because of familiarity and biases embedded in the political, social and historical nuances of the very system in which they exist. Moreover, we also observed a lack of information regarding the most common crimes amongst vulnerable and marginalised communities.

To fill in these gaps, it is important to identify specific life-sustaining activities and the laws that criminalise or stigmatise them thus disproportionately affecting vulnerable groups. It can be nuanced further by attempting to establish potential correlation between certain 'crimes' and sections of marginalised population to reveal systemic biases or inadvertent profiling. There

also needs to be an examination of the proportionality, or otherwise, of use of detention and other police actions that are dedicated to petty offences. It will be useful to understand particular contextual challenges within the justice system. Again, the interviewees lived experiences can be leveraged along with raw quantitative data to paint a full picture.

Point of inquiry: Prison System

Intended Gap to fill: Unfortunately, worldwide there is very little information available when it comes to the way prison systems operate, the conditions in which prisoners live and the interactions within this system (among prisoner, officials-prisoner relations). Having this information available is fundamental for the restructuring of prison systems, to make them more effective and real rehabilitation centres, meaning this information is fundamental for advocacy and policy making.

It is important to move away from reductive narrations and tap into real time observations of prison conditions. Again, questions can be repeatedly posed for different sections of the population identified from previous points of inquiry. Taking such an approach while conducting semi structured interviews also helps disarm interviewees into sharing details that might otherwise be misconstrued to be insignificant or redundant.

Point of inquiry: Context Specific:

Intended Gap to fill: During our research, as an example we observed that, for the particular case of Rwanda, there are multiple sources available related to post-genocide political, social and economic reconstruction. Nevertheless, there is not much on criminal justice systems, prison rates and the impact the genocide had on this particular topic.

Hence, it is important to scrutinise the localised or historical context within the geo-political scope of research to appropriately frame the criminalisation of poverty and the disproportionate impacts on vulnerable groups. Using Rwanda as an example, a sample set of questions linked capturing these ideas has been added in the toolkit.

Point of inquiry: Rehabilitation/Assimilation into Society

Intended Gap to fill: Around the globe, there is a big data gap when it comes to the impacts of post-incarceration circumstances. We have identified that several prison systems around the world are rather punitive than rehabilitating, hence complicating the person's reintegration into

society. Particularly, the information lacking regarding young people's post-imprisonment opportunities, prisoner mothers and their children and the overall family-level impact.

Thus, it is crucial to gather data with respect to the larger socio-cultural impact of incarceration to put appropriate policies and programs in place, particularly for those vulnerable groups who are already at a disadvantage.

Point of inquiry: Recommendations

Intended Gap to fill: As many challenges within criminal justice systems remain understudied and invisibilized, it is important to hear from people working on the ground what is their perception of areas of opportunity and improvement to apply a holistic approach to criminal justice systems to really contribute to the building of more just and equitable societies. Particularly, to end the poverty trap triggered by justice systems and contribute to the real reintegration of marginalised groups into society.

Insight tips

- **A sample set of questions linked to each point of inquiry has been added in the <u>toolkit</u>.** Depending on the scope of your research, you will create the needed questions to obtain your desired objectives. However, this can be taken as a good starting point given their variety and intentions
- Before starting the interviews, the research team must consider the ethical implications and risks you might encounter. It is important to have a cultural sensitization about the context and background of the people you will be interviewing.
- Bear in mind that not all the people you reach out to for an interview will respond, therefore try to have a varied list of the different people you would like to interview. A multistakeholder approach always allows you to draw the broader picture of your scope.
- If you intend to interview people who have been in conflict with the law or vulnerable communities overall, make sure that you are capacitated enough to avoid revictimization or certain emotional and psychological triggers that might affect the person's well-being.

- Step 3. Analysis of the Data Collected

3.a Filtering and classifying information

For this section, you will mainly need the data collected as a primary source through interviews, focus groups, observation, ethnographic work, or statistical analysis. Regardless of the preferred method, it is important that you keep notes, transcriptions, audio files and any other document resulting from your primary data collection. It would be useful to also develop a matrix that allows you to organise the data by topics and subtopics, and by directly relating them to research questions. Having all the data stored in one place can facilitate access for the research team and will allow you to have a clear visualisation of all your findings.

3.b Selection of useful data

Once your data is clearly classified and filtered, you can start considering which collected data allows you to answer your research questions and it is directly linked to your objectives. Also,

you can identify if there is data that allows you to provide insight beyond the one considered (if it is relevant to the scope of your research) and which data fills relevant gaps in the area of study. Some examples of analysis of findings are included in the toolkit.

Insight tips:

- As you start writing, the structure of your content might be slightly modified. Be open-minded about this as the end purpose is to effectively communicate your findings.
- Google Workspace offers easy-to-use and free tools that will help you organise your research and share files among the Team research, facilitating access to everyone involved.
- If your data allows it, create graphs, infographics or tables to facilitate the communication of your main findings through visual representations.
- Use specific quotations and statements o evidence the discriminatory nature of justice systems or other challenging situations.

Conclusion

The criminalisation of poverty is a phenomenon that can be seen worldwide, both in the Global North and the Global South. Similar patterns of criminalisation are observed in both regions, usually racial and ethic minorities are the most affected by this, closely followed by gender, sexual orientation and age. By applying an intersectional lens to the criminalisation of poverty, it was observed that there are different levels of vulnerability for different sections of people in conflict with the law. Beyond gender, age, ethnicity and race, archaic regulations and inherited policies that target life sustaining activities can exacerbate the struggles of people experiencing poverty vulnerability when they interact with justice systems. It can be seen that propagation of exclusionary practices and policy of othering can result in further discrimination and oppression. Such flawed systems can be used to target persons' sexual orientation or even their socio-economic and religious positionality during a global pandemic as a discriminating factor leading to detainment and excessive use of force. Also, in postcolonial settings, it can be observed that power hierarchies and structures still have a significant impact on criminal law and systems. Hence, if a postcolonial lens is applied, the racialisation of criminality comes from the codification of the differences between conquerors and conquered based on the idea of race, that places the one in a situation of inferiority with respect to the other (Quijano, 200). The findings of criminalisation of life sustaining activities, including vagrancy and sex work, can also be traced back to colonial times and, therefore, considered as a colonial legacy.

One of the main challenges observed was the scarcity of data and information needed to measure the real impact of poverty within criminal justice systems within and beyond the aforementioned dimensions. On the one hand, governments do not have up-to-date information regarding their prison demographics, pre-trial trends, etcetera and, on the other, there is no segregated data available to effectively evaluate the gender, race, ethnicity, religious beliefs, age, and sexual orientation of the detained people. Thus, we believe that a systematic and contextualised collection of data can go a long way to fill in crucial gaps in knowledge in this regard.

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