

Shadow Report Submitted to the 78th Session of the Committee on Economic, Social, and Cultural Rights in Relation to the State Party Report Prepared By Germany

September 2025

Statement of Interest

This shadow report is prepared by Jean Galbraith and Akila Shanmugham. Jean Galbraith is a Professor of Law at the University of Pennsylvania Carey Law School. A scholar of public international law, her recent work studies the relationships between poverty and human rights. Akila Shanmugham is a recent graduate of the University of Pennsylvania Carey Law School, and a former research assistant to Professor Galbraith.

This submission concerns Germany's implementation of the right to non-discrimination provided by the Covenant. While Germany has a robust focus on social welfare programming, we call for more attention to an oft-overlooked issue: "**poverty penalties**" in the criminal justice system.

Introduction

1. States frequently impose fines and other financial sanctions on individuals through their criminal justice systems. Unless these sanctions are carefully scaled to defendants' financial circumstances, they over-penalize people living in poverty both directly and by triggering additional sanctions. These "**poverty penalties**" can have devastating impacts on low-income people.
2. Poverty penalties raise serious human rights concerns and can constitute property-based discrimination under Article 2(2) of the International Covenant on Economic, Social and Cultural Rights.¹ The effects of poverty penalties can fall especially heavily on vulnerable groups, raising further concerns under Article 2(2).²
3. This submission will first outline Article 2(2)'s non-discrimination obligation. Then, we will discuss the prevailing problem of poverty penalties in criminal justice systems around the world— from inadequately scaled fines to the use of imprisonment as a penalty for unpaid fines—as well as existing research on this topic in Germany. Finally, we will suggest questions for Germany's List of Issues to catalyze conversation around this important topic.

¹ See International Covenant on Economic, Social and Cultural Rights art. 2(2), *adopted* Dec. 16, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976) [hereinafter International Covenant].

² See Jean Galbraith, Latifa AlMarri, Lisha Bhati, Rheem Brooks, Zachary Green, Margo Hu & Noor Irshaidat, *Poverty Penalties as Human Rights Problems*, 117 AM. J. INT'L L. 397, 409-11, 432 (2023).

4. In recent years, many human rights bodies have begun to pay attention to poverty penalties,³ and we hope that this Committee will do the same.

The Legal Obligation of Non-Discrimination

5. The International Covenant on Economic, Social and Cultural Right's non-discrimination provision specifically protects against both property and social origin based discrimination.⁴ Moreover, Article 3 of the German Constitution corroborates this commitment.⁵
6. Germany has “made considerable strides in reducing poverty,” in part through its “robust educational and vocational training systems” and “strong social safety nets.”⁶ The current state party report embodies this commitment to poverty reduction. Specifically, it addresses improved measures for two specific groups—older women, as examined through the lens of the gender pension gap—and children, through the basic child allowance system.⁷
7. Because of Germany's status as a leader in poverty reduction, it is easy to narrowly define poverty in Germany as only involving those “living the most precarious existence.”⁸ Indeed, poverty is often described as the “lack [of] economic opportunities,” and in relation to the German social insurance system.⁹ **However, poverty must be combatted from a multi-dimensional lens.** Beyond social welfare programming, Germany must focus on poverty through its interrelation and impact on the criminal justice system.
8. The last two state party reports from Germany fail to provide granular data on the reasons for incarceration, including imprisonment for failure to pay financial penalties or fines. The 2018

³ The UN Human Rights Council recommended the review of disproportionate fines and incarceration in its 2012 Guiding Principles on Extreme Poverty and Human Rights. See Galbraith et al., *supra* note 2, at 425. Additionally, multiple special rapporteurs have highlighted excessive fines and fees in the United States, Australia, Cambodia, and Russia. See *id.* at 425-26.

⁴ See International Covenant, *supra* note 1 (“The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”).

⁵ For example, Article 3 of the German Constitution states that “[a]ll persons should be equal before the law,” and that “[n]o person shall be favoured or disfavoured because of . . . origin” See Grundgesetz [GG] [Basic Law], translation at https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html.

⁶ See Khalida T. Sultanova, *Global Efforts to Reduce Poverty: Examples from Foreign Countries*, 3 J. MGMT. & ECON. 10, 11 (2023) (“[Germany] offer[s] . . . unemployment insurance, housing assistance, and child benefits, which help protect individuals from falling into poverty.”).

⁷ *Seventh Periodic Report Submitted by Germany Under Articles 16 and 17 of the Covenant, Due in 2023*, UNITED NATIONS ECON. & SOC. COUNCIL (June 12, 2024) [hereinafter *2024 Report*], https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2FDEU%2F7&Lang=en.

⁸ *Poverty and Homelessness in Germany After the COVID-19 Pandemic*, EUROPE NOW (July 12, 2023), <https://www.europenowjournal.org/2023/07/07/poverty-and-homelessness-in-germany-after-the-covid-19-pandemic/>.

⁹ See *id.*

state party report only discusses imprisonment in the context of working conditions for prisoners.¹⁰ Both reports also fail to discuss fines and financial penalties levied against individuals altogether.¹¹

More Information is Required to Understand the Scope of Poverty Penalties in Germany

9. Poverty penalties are a pervasive problem in criminal justice systems. In “Poverty Penalties as Human Rights Problems,” published in the *American Journal of International Law* in July 2023, Professor Galbraith and a team of researchers detailed the use of harmful poverty penalties in criminal justice systems around the world and their implications for human rights.¹²
10. There are many different forms of poverty penalties. First, countries often use fines and costs without adequate attention to individual financial circumstances. This includes mandatory minimum fines and fixed fines. They can also pile on more fines, costs, and fees due to the inability to pay, through surcharges imposed when one misses a fine deadline or unrealistic installment payment plans. Legal sanctions can be imposed for defaulting on fine payments, including driver’s license suspensions. Most egregiously, individuals are often incarcerated for their failure to pay fines.
11. These fining practices can hurt society’s most vulnerable, including those already vulnerable because of their race, gender, disability or other protected statuses. Thus, poverty penalties discriminate against low-income people, often lead to imprisonment, and can result in other disproportionately harsh punishments. These are serious concerns that the international human rights community must address.
12. In Germany, the criminal justice system employs day fines, which are intended to promote fairness and equality by considering an offender’s income when setting a fine.¹³ Germany relies heavily on these penalties, with “84% of its criminal sentences” involving day fines.¹⁴
13. However, Germany is not exempt from poverty penalties. A report by Harvard Law School’s Criminal Justice Policy Program found that day fines often do not reflect individual financial

¹⁰ *Sixth Periodic Reports of States Parties Due in 2016*, UNITED NATIONS ECON. & SOC. COUNCIL (Feb. 21, 2017), [hereinafter *2017 Report*], https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2FDEU%2F6&Lang=en.

¹¹ See *2024 Report*, *supra* note 7; *2017 Report*, *supra* note 10.

¹² See generally Galbraith et al., *supra* note 2.

¹³ MITALI NAGRECHA, HARV. L. SCH., CRIM. JUST. POL’Y PROGRAM, THE LIMITS OF FAIRER FINES: LESSONS FROM GERMANY 15 (2020), <https://finesandfeesjusticecenter.org/articles/the-limits-of-fairer-fines-lessons-from-germany/> (“Day fines are a sentencing structure in which the fine for an offense is set according to both the person’s financial circumstances and the nature of the offense.”).

¹⁴ See *id.* at 3.

realities because German law does not require judges to deduct reasonable living expenses when calculating a fine.¹⁵ The resulting “harsh daily rate,” coupled with significant judicial discretion, “generates fines that are too high” for individuals to pay.¹⁶ For instance, 7,600 people “in Germany ultimately went to prison for failure to pay a fine imposed for fare evasion” in 2018.¹⁷ Incarceration is not limited to fare evasion. As the report highlights:

Under German law, for each unit of unpaid fines, a person must serve one day in prison. . . . Jailing people for nonpayment is common in Germany: on any given day, approximately 10% of people in prison in Germany are there for failure to pay.¹⁸

14. More information is needed to understand the extent to which poverty penalties are a concern in Germany and what steps, if any, Germany is taking to address them.

Suggested Questions for Germany’s LOI

15. We call on stakeholders to examine fining practices in their jurisdictions and evaluate whether these too can act as poverty penalties in practice. With more data, international human rights and criminal justice communities can combat the scourge of poverty penalties. Thus, we ask the Committee to raise the following questions in drafting its LOI for Germany.

- a. Has Germany taken notice of the connection between overly punitive fines and poverty as part of its CESCR obligations? If not, how do you propose to include this issue?
- b. What is the current quantitative and qualitative data available to Germany on how court fines, costs, and surcharges affect criminal defendants, including those who are incarcerated?
- c. What steps will Germany take to improve its standard for determining the ability to pay when setting fines? While judicial discretion is a key component of the day fine system, German law currently does not require deductions for basic living expenses when calculating fines.
- d. What is the most recent data available on those incarcerated or imprisoned due to the inability to pay a fine?

¹⁵ *Id.* at 7.

¹⁶ *Id.* at 8.

¹⁷ *Id.* at 6.

¹⁸ *Id.* at 69; *see also* Galbraith et al., *supra* note 2, at 412-13 (discussing how unlike other jurisdictions, Germany does not allow individuals to convert their prison sentences into community service).

16. We appreciate the Committee's attention to this issue. If there are further questions regarding the information presented, please contact Jean Galbraith at +1 (215) 746-7824 or at jgalbraith@law.upenn.edu.