

Submission to the 144th Session of the United Nations Human Rights Committee Prior to the Adoption of the List of Issues for Ghana

June 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 Ghana's implementation of Article 9 and Article 26 of the International Covenant on Civil and Political Rights. While Ghana has made significant strides in reducing poverty over the past few decades, we call for more attention to "**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 26 of the International Covenant on Civil and Political Rights.¹ The effects of poverty penalties can fall especially heavily on racial minorities and other vulnerable groups, raising further concerns under Article 26.² Poverty penalties also raise grave concerns regarding Article 9's prohibition against arbitrary detention in countries where imprisonment is imposed on fine defaulters who lack the means to pay.³
3. This submission will outline the Covenant's obligations in concert with Ghana's existing focus on poverty reduction. 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

¹ See International Covenant on Civil and Political Rights art. 26, *adopted* Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976).

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).

³ See International Covenant, *supra* note 1, at art. 9; Galbraith et al., *supra* note 2, at 429-30.

imprisonment as a penalty for unpaid fines—as well as the relevance of this issue to Ghana’s criminal justice system. Finally, we will suggest questions for Ghana’s List of Issues to catalyze conversation around this important topic.

The Legal Obligation Against Discrimination and Arbitrary Detention

4. The International Covenant on Civil and Political Rights specifically protects against both property and social origin based discrimination as well as arbitrary detention.⁴ Ghana’s Constitution corroborates this commitment.⁵
5. The United Nations has noted that Ghana’s strong economic growth over the previous twenty years has “cut the country’s poverty rate in half, from 52.6% to 21.4%,” a tremendous decrease.⁶ Indeed, the 2016 state party report focuses on poverty reduction as a major issue. It states that “although Ghana’s population living below the poverty line has declined, poverty still remains an important challenge.”⁷ In meeting this challenge, the Ghanaian government has invested in a diverse variety of initiatives, from “cash grants and health insurance to poor households” to “increased social housing.”⁸
6. However, poverty reduction planning in Ghana is often framed in the context of economic opportunity, such as “improving the business climate” or “preventing further macroeconomic deterioration.”⁹ **But poverty must be combatted from a multi-dimensional lens.** Beyond economic programming, Ghana must focus on poverty through its interrelation and impact on the criminal justice system.¹⁰

⁴ See *supra* notes 1-3 and accompanying text. For example, Article 26 of the Covenant specifically states that “the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” See International Covenant, *supra* note 1.

⁵ Article 17 of Ghana’s Constitution states that a person “shall not be discriminated against on grounds of gender, race, colour, ethnic origin, religion, creed or *social or economic status*.” See Constitution of the Fourth Republic of Ghana Dec. 16, 1996, art. 17, <https://constitutionnet.org/sites/default/files/Ghana%20Constitution.pdf> (emphasis added). Moreover, the Constitution provides protections against arbitrary detention in Article 14, which concerns the preservation of personal liberty. *Id.* art. 14; *Ghana 2022 Human Rights Report*, U.S. DEP’T OF STATE, https://www.state.gov/wp-content/uploads/2023/03/415610_GHANA-2022-HUMAN-RIGHTS-REPORT.pdf (last visited Feb. 26, 2025).

⁶ See *Poverty Reduction in Ghana: Progress and Challenges*, UNITED NATIONS DEP’T OF ECON. & SOC. AFFS., <https://www.worldbank.org/en/country/ghana/publication/poverty-reduction-ghana-progress-challenges> (last visited Feb. 26, 2025) (“A more diversified economy and better educated skilled labor has driven growth.”).

⁷ *Initial Reports of State Parties Due in 2001: Ghana*, UNITED NATIONS INT’L COVENANT ON CIV. & POL. RTS (Jan. 30, 2015) [hereinafter *2016 Report*], https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2F1%2F1&Lang=en.

⁸ *Focus Actions to Reduce Poverty*, DAILY GRAPHIC (Mar. 12, 2020), https://copenhagenconsensus.com/sites/default/files/documents/art_bl_2020-03-12_ghana_poverty.pdf.

⁹ See *Poverty Reduction*, *supra* note 6.

¹⁰ The current incarceration rate in Ghana as of 2020 is 41 individuals per 100,000 of the national population. Moreover, the prison system’s occupancy is at a staggering 136.1%. See *Ghana*, WORLD PRISON BRIEF,

7. While Ghana's state party report did provide statistics of offenses and sentences related to incarceration, it did not provide data on imprisonment for failure to pay financial penalties or fines. It also failed to discuss fines and financial penalties levied against individuals altogether.¹¹

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

8. 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
9. 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.
10. 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.
11. Ghana is not exempt from the scourge of poverty penalties. The Ghanaian criminal code provides judges with the discretion to impose a fine upon offenders.¹³ For instance, defendants in cases relating to non-fatal suicide behavior have received combined penalties of both fines and imprisonment.¹⁴ While the Ghanaian fine system does utilize penalty units

<https://www.prisonstudies.org/country/ghana> (last visited Feb. 26, 2025); see also *Ghana 2023 Human Rights Report*, U.S. STATE DEP'T, https://www.state.gov/wp-content/uploads/2024/02/528267_GHANA-2023-HUMAN-RIGHTS-REPORT.pdf (last visited Feb. 26, 2025) ("Prison conditions were generally harsh due to overcrowding, inadequate sanitary conditions, lack of medical care, and substandard and inadequate food.").

¹¹ See 2016 Report, *supra* note 7.

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

¹³ GHANA CRIM. PROC. CODE, 1960 (Act 30), § 297(3) (Ghana); see also D. K. Afreh, *The Prisons and Sentencing Policies*, 20 REV. GHANA L. 141, 154 (1996–2000) (observing that "[m]any people go to prison or suffer additional prison terms because they cannot pay fines imposed on them by the court"); see also Galbraith, *supra* note 2, at 413.

¹⁴ Mensah Adinkrah, *Crim. Prosecution of Suicide Attempt Survivors in Ghana*, 57 INT'L J. OFFENDER THERAPY & COMPAR. CRIMINOLOGY 1477, 1486 (2013); see also Galbraith, *supra* note 2, at 404.

that consider currency fluctuations, such units still amount to a poverty penalty as they remain constant for defendants across all class levels.¹⁵ Moreover, the inability to pay a fine for a petty offence can result in imprisonment—indeed, the Ghanaian NGO Crime Check Foundation launched a project to pay such fines for individuals slated to serve “between three to twelve months for defaulting.”¹⁶

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

Suggested Questions for Ghana’s LOI

13. 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 Ghana.

- a. Has Ghana’s latest development plan taken notice of the connection between overly punitive fines and poverty within its objectives? If not, how do you propose to include this issue?
- b. What is the current quantitative and qualitative data available to Ghana on how court fines, costs, and surcharges affect criminal defendants, including those who are incarcerated?
- c. Do judges in Ghana consider individual circumstances when assigning fines?
- d. What percent of those incarcerated are imprisoned due to inability to pay a fine?

14. 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.

¹⁵ E. Owusu-Dapaa, *Injecting Commercial Sense into Penal Enactment: A Critique of the Fines (Penalty Units) Act, 2000 (Act 572)*, 3 KNUST L.J. 94, 95 (2006); Nenyio Kwasitsu, *Sentencing Persons Convicted of Minor Offenses in Ghana: Reducing Judicial Over-Reliance on Imprisonment* 82 (Apr. 2019) (L.L.M. thesis, Dalhousie University) (on file with Schulich School of Law, Dalhousie University Digital Commons); *see also* Galbraith, *supra* note 2, at 405.

¹⁶ Jean Galbraith & Rheem Brooks, *The Over-Penalisation of Poverty Through Fines and Fees*, PENAL REFORM INT’L (Oct. 16, 2023), <https://www.penalreform.org/blog/the-over-penalisation-of-poverty-through-fines-and/#:~:text=In%20Ghana%2C%20the%20NGO%20Crime,months%20in%20prison%20for%20defaulting>.