

**Mass Release Now! New York State's Obligation to Deliver
Reparations for Criminalized Survivors**

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Summary

Governor Hochul must intervene immediately and grant release to all incarcerated survivors of gender-based violence. Upon their release, New York State must live up to its international human rights obligations and guarantee survivors social and economic security, and must deliver reparations without delay.

New York State (NYS) has repeatedly failed criminalized survivors of gender-based violence (GBV). Under international human rights law, NYS has an obligation to prevent gender-based violence, and to address it whenever it occurs. NYS is required to guarantee economic security, access to health care, and dignified housing to survivors, because these are material conditions necessary to disrupt racialized poverty and necessary for survivors' safety. But NYS consistently fails to fulfill its obligations to realize these rights. Instead, NYS invests ever more resources to fortify carceral responses to GBV—responses that have historically been especially harmful to Black and other survivors of color. When NYS fails to fulfill survivors' rights to housing, to an adequate standard of living, and to health, it exposes them to the risk of harm and violates their rights to be free from GBV. These chronic state failures have had especially devastating consequences for one subset of survivors: those who have been criminalized.

For this report, Survived & Punished NY (S&P NY) and the International Human Rights Clinic at Cornell Law School surveyed and interviewed members of S&P NY who are incarcerated in NYS and identify as survivors of GBV. We asked them: what kind of support could have helped prevent the circumstances that led to your incarceration? We learned how they each struggled to escape GBV because they simply did not receive even the most basic resources or support to create safety for themselves. Without this infrastructure, they resorted to conduct that has been criminalized. When NYS criminalizes survivors for conduct that occurred under circumstances the state could have prevented, it perpetuates gender-based discrimination and gender-based violence. The state has subjected criminalized survivors to further pain and suffering by incarcerating them, compounding the trauma they endured in their lives before arrest.

NYS owes a duty to repair. It must make things better. We call on Governor Hochul and New York State to grant survivors commutations, pardons, and immediate release. They have been denied safety in the past and are denied safety today when they continue to be incarcerated. For this reason, we call on NYS to grant commutations *en masse* to incarcerated survivors of GBV.

Survivors are also entitled to reparations for past harms and to prevent future harm. We call on NYS to give survivors the reparations they are owed.

I. Introduction

Since the 1980s, New York State agencies have been engaged in efforts to address gender-based violence.¹ Yet GBV persists across the state. Despite the abundance of evidence confirming that economic precarity increases the risk of GBV,² there is pervasive neglect of low-income survivors' heightened material needs. Survivors in Black, Latinx, Indigenous and other communities of color tend to face even greater material needs, following centuries of U.S. policies that furthered the displacement, exploitation and economic disinvestment of these populations.³ And despite the wealth of evidence that confirms that most people incarcerated in women's prisons have endured GBV and are disproportionately Black and Latinx,⁴ there is no concerted public effort to help defend survivors from the mutually reinforcing threats of (1) structural racism and poverty; (2) domestic and sexual violence; (3) criminalization and other forms of state violence. As a result of this neglect, thousands of survivors find themselves in impossible situations, forced into often desperate acts to save their own lives, and then targeted with punishment for these acts.

Survivors who are incarcerated offer a unique perspective on the shortcomings of current attempts to address gender-based violence in the state. In particular, survivors who are incarcerated for actions they committed while suffering from GBV shed light on NYS's complicity in perpetuating the cycle of violence. For this report, we interviewed survivors who are incarcerated to tell us what could have helped to prevent the acts of survival that triggered their criminalization. The survivors each spoke about critical absences in their lives: an absence of stable and affordable housing; an absence of resources; an absence of counseling. The absence of support aggravated their experience of GBV. And when they found themselves implicated in causing harm, whether because they fought back against abuse or struggled under grueling conditions to create safety, NYS' sole response was criminalization. NYS has ignored survivors' histories of abuse, and ignored how state action and inaction contributed to their desperate circumstances.

Nationally and locally, most efforts to address GBV have erred by strengthening law enforcement. In NYS, the Office for the Prevention of Domestic Violence applauds the implementation of a mandatory arrest law for domestic violence. But instead of helping survivors, these laws—a product of the 1990s tough-on-crime shift and demands from state-aligned survivor

advocacy groups⁵—have widened the net of surveillance and have led to the criminalization of survivors, particularly for those who are low income or people of color.⁶ For many survivors, criminalization, whether in the form of policing, prosecution, or incarceration, perpetuates and escalates the cycle of abuse. Incarceration mimics the same tactics of control and domination survivors endured in their abusive relationships. By action and inaction, state agencies become complicit in GBV by punishing survivors after having repeatedly failed them.

Survivors' experiences also demonstrate how NYS falls short of its human rights obligations. International human rights law spells out governments' obligations to survivors.⁷ States have clearly-established legal obligations to prevent GBV, which is a form of gender-based discrimination. States must first prevent GBV; second, once a government actor is on notice that someone has experienced GBV, governments must take steps to protect the person from harm; and third, governments must offer reparations when they have failed to adequately protect survivors, prevent GBV, or discharge their obligations.⁸ International human rights law also entitles survivors to housing, health, and an adequate standard of living. Although NYS and the federal government have taken steps to address survivors' needs for housing, social insurance and healthcare, far too many remain people under-protected. NYS has not met its minimum core obligation to guarantee social and economic security. And New York State's police officers, prosecutors, and social workers have ignored and aggravated the experience of GBV.

The stories of the survivors we interviewed are consistent with wider trends. Anywhere from half to 90 percent of women who are incarcerated experienced physical or sexual abuse before their incarceration.⁹ And furthermore, “[m]ost studies of incarcerated women have observed high rates of victimization that link violence in women’s lives to their entry into the criminal justice system as defendants.”¹⁰ Poverty, exclusion, and inadequate systems of support create the conditions for insecurity that expose individuals to interpersonal violence and set in motion their contact with the criminal punishment system.

EXPLAINER BOX

This report builds on organizing by criminalized survivors and their allies in the last 50 years who have illuminated vision for safety without GBV or state violence. These efforts emerged to challenge mainstream anti-domestic violence efforts undertaken by government agencies that have relied on carceral agencies to deter GBV, often while ignoring the objections of Black, Latinx,

Indigenous and queer survivors and feminists that warned against closely aligning with the carceral state.¹¹ We briefly recount a few segments of that history: When Joan Little, a Black woman, was prosecuted for capital homicide in North Carolina in the 1970s, her case created the opportunity for Civil Rights and Black Power organizers (including Rosa Parks), prisoners' rights advocates, feminists and anti-death penalty advocates to converge and collaborate. Joan was put on trial for defending herself and killing the prison guard who tried to rape her. Her case provided an organic way to link the struggles against sexual and state violence.¹² Her experience made clear how the state, too, could be complicit in GBV.

Similarly, in the 2000s, INCITE! Women of Color Against Violence and Critical Resistance outlined principles to simultaneously resist interpersonal and state violence. They declared that “[b]attered women prisoners represent an intersection of state and interpersonal violence and as such provide an opportunity for both movements to build coalitions and joint struggles.”¹³ In 2021, we use a similar methodology. We ground our analysis in the experiences of incarcerated survivors in order to illuminate new strategies for collective liberation. In this intervention, we rely on international rights law. As we elaborate below, international human rights law grants rights that are critical to creating the conditions for real safety for survivors. In particular, it gives survivors the legal basis to make demands for economic justice. By adopting this framework, we hope to bring in new constituents and allies who are concerned about inequality. We aim to show how government policies are responsible for the precarity that undermines the lives of criminalized survivors. The international human rights framework also offers the chance to build transnational solidarities with groups pushing for abolition outside the U.S.

II. Definitions

a. What does it mean to be a survivor?

For our purposes, survivors are individuals who have endured gender-based violence. Survived & Punished specifically organizes with survivors who live at the intersection of GBV and criminalization.¹⁴ The term survivor is preferable to the terms “victim” or “battered woman” because it underscores the person’s agency and acknowledges that survivors are not just women. The following are excerpts from the survivors we interviewed who each describe in their own words what being a survivor means.

“It means that somebody survived through so much pain and anguish ... and they are still alive and went through it with so much power and strength.”

- Anonymous

“I was when I was just 20. At the time, I had a child’s mind. I survived. I pulled through. A lot of people don’t make it. I wanted to commit suicide at one point. I survived. I want to be successful. I want to be someone. I felt like I had no hope and then somewhere down the line I now feel like I have a second chance.”

- Anonymous

“Being a survivor, I have removed myself from the situation I was in during my childhood. My mother did not remove us from the situation with my father, I had to remove myself... I stepped into the world at 16 without having really any idea. I was very naïve and inexperienced. I am now able to emotionally express myself and talk about things. You can leave a situation but it is different to mentally and emotionally get over things. I saw myself repeating the same behaviors and ending up in the same place. Now I can say that I know what to do and know that I can handle things to not be in that situation again.”

- Evelyn Sanchez

“I lived it, I experienced it, and now I can talk about it to try to help the younger generation.”

- Chrystal Whaley

“Being a survivor means that although I have been through a lot, I am still alive to tell the story, to learn from my mistakes, and to hope for a better future.”

- Kalila Taylor

“It means that as many times as he tried to kill me, I survived it. As many times my brother tried to kill me, as a child, I survived it. It means that no matter what the DA says about me, what they put on paper, I am not that person anymore. The abuse doesn’t define me. The reasons why people felt they needed to abuse me, why I accepted it, they don’t exist anymore. I am still capable of being an amazing mother, sister, friend, and daughter. I am also a survivor of COVID. I know people who lost their lives and I know people who made it through their addictions. And I have and I will. I will survive. Anything coming my way, I will survive. Anything God sends my way, I will survive. I will not accept abuse anymore. I won’t be a party to any abuse of myself anymore.”

- Ethel Edwards

b. What is gender-based violence?

Under international law, gender-based violence (GBV) covers: (1) any violence perpetrated against a person or groups of people on account of their gender identity or sexuality; (2) violence that is disproportionately inflicted against such groups; (3) acts of sexual violence. It includes acts that “inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty,”¹⁵ and “harm inflicted in public or in private.”¹⁶ Both private and state actors can inflict gender-based violence. GBV also includes economic abuse. Although GBV was once defined exclusively as violence perpetrated against women, conceptions of GBV have evolved to be more inclusive. Gender-based violence is not just domestic violence, and can occur outside of the household, covering any violence that is “driven by a desire to punish those seen as defying gender norms.”¹⁷ Thus, GBV includes suffering inflicted on the LGBTQI community. It also includes circumstances in which an individual is coerced into trading sex.

State actors can be complicit in GBV by their inaction and action. State actors commit GBV, for example, when individual members of law enforcement commit sexual assault against a person in their custody. And the very system of criminalization itself can enact GBV. In particular, when the state criminalizes people who have survived GBV, it participates in and perpetuates what is often a lifelong cycle of violence. As Monica Cosby has illustrated, there are direct parallels between the power and control exerted in the context of intimate partner violence and in the context of state violence.¹⁸ In both contexts the person is subjected to emotional abuse. In an intimate relationship, one person makes another person feel unworthy. In the context of state violence, it may be the prosecutor who ignores the person’s capacity for redemption— or it may be the prison guard who humiliates them.

The work of Beth Richie,¹⁹ Andrea Ritchie²⁰ and Mariame Kaba²¹ have shown us that not only does the state often perpetuate gender based violence, but it also disproportionately targets Black survivors. Since settler-colonists brought the first enslaved Africans to the United States, racist and gendered narratives of “personhood,” “victim” and “innocence” have excluded Black people. When encountering police, prosecutors, judges or prison guards, Black survivors face an additional hurdle to compare to the archetype of a feminized white “perfect victim.” When trying to create and maintain safety, Black survivors often must protect themselves from state officials armed with centuries old views of Black people as inherently culpable.

c. What is the state? What is criminalization?

As used in this report, the word “state” refers to national or sub-national units that exercise governmental powers over a territory—and are obligated to respect people’s rights in exercising those powers. The state can take actions that affect the lives of people subject to its power, but in so doing, it must respect their rights. Sometimes the state may justify its actions (for example, having prisons and incarcerating people in them) by saying that the actions are necessary to respect other rights (for example, rights of people harmed by something the state labels a crime). But even if the state takes an action justified based on one person’s rights, it must not violate another person’s rights.

In other words, states “bear duties”—in fact, human rights attorneys sometimes refer to states as “duty-bearers”—to respect and fulfill people’s rights. It is useful to think of the state as a duty-bearer to keep in mind that the state is relevant to this story insofar as it owes things to people subject to its power, and what it owes is in part defined by what rights those people have. This applies at all levels of government, from the city to the state to the national, and everything in-between. This report uses the neutral term, “the state” to refer to all scales of government; which level is meant by a particular use should be clear from the context.

The state is also the entity with the power to criminalize people. We use the term “criminalization” to encompass everything from passing laws labeling certain conduct as “criminal” through arresting and incarcerating someone on the grounds that they have violated such laws.

d. What is international human rights law? Why does it matter?

International human rights law sets out duties that states (countries or jurisdictions) around the world are bound to respect.²² The United States has signed treaties and covenants (i.e. agreements amongst states) that outline the human rights it agrees to protect, and these documents both create and define certain key rights. In this report, we focus on the right to equality, and specifically the right to be free from gender-based discrimination; the right to housing; health; and, an adequate standard of living. These rights are enshrined in a few core treaties: the Convention on the Elimination of Discrimination Against Women; the International Covenant on Economic, Social and Cultural Rights; the American Convention on Human Rights; and, the American

Declaration on the Rights and Duties of Man. There is overlap across these treatises—for example, they each recognize the right to be free from discrimination.

Some treatises are open to all states in the world to sign. Some are only open to states if they are in a particular region, such as the American Declaration and the American Convention. There are also judicial or semi-judicial bodies that interpret the provisions of these agreements. Sometimes those bodies are called Committees, Commissions, or Courts. We briefly name the treaties or the bodies that clarify legal standards. We do not discuss which provisions are binding (i.e., required to be followed) or merely persuasive (i.e., useful guidelines that the state is not bound to follow) because that is technical and not strategically important: We hold New York State to the highest standards of the law.

According to the United Nations, the United States must not only “respect, protect, and fulfill” the human rights of its residents, but also must refrain from taking actions that curtail them.²³ It must take “positive action” to fulfill its obligations, including implementation of domestic law that “facilitate[s] the enjoyment” of human rights and passage of legislation consistent with its human rights obligations.²⁴ New York State, as a part of the United States, is bound by the same human rights law and treaties as the federal government.

We use international human rights law because it imposes a more robust set of obligations than U.S. constitutional law—to create conditions for flourishing that parallel the demands for safety identified by survivors. Under international human rights law, no matter the form of GBV, the state bears ultimate responsibility when it fails to prevent, protect and offer repair when such harm occurs. International human rights law both understands GBV as a form of gender discrimination and it recognizes that poverty shapes the experience of GBV in multiple, reinforcing ways.²⁵ Furthermore, international human rights law demands that states heed the barriers that gender-discrimination imposes on “health, education, reducing poverty in all its forms, and sustainable growth.”²⁶ By contrast, the United States Supreme Court has refused to recognize economic rights as constitutional, like the right to welfare and the right to education. Furthermore, it has allowed and encouraged modest economic protections to erode, particularly since the 1970s.²⁷

Not only does international human rights law impose more strict obligations to prevent precarity and vulnerability than domestic constitutional law does, it also requires states to offer a remedy when they do not live up to their legal obligations. International law states that “victims

of human rights violations have a right to obtain comprehensive remedies that are ‘adequate, effective, prompt and appropriate’ for the acts perpetrated and proportional to the harm suffered.”²⁸ The remedy must be comprehensive and must include guarantees of restitution, compensation, rehabilitation, satisfaction, and non-repetition.”²⁹ Domestic constitutional law does not require states to offer such robust and responsive remedies. In this report we focus on the reparations necessary to address NYS’ failure to protect survivors from gender-based violence. Survivors may also be entitled to other forms of reparations, for example, if they are descendants of individuals who were enslaved or Native Americans dispossessed from their lands.³⁰

While the international human rights law provides a shared framework to evaluate New York State’s response to the needs of survivors, it is the floor, not the ceiling, of our aspirations. The international human rights framework is not committed to the abolition of the Prison Industrial Complex.³¹ For example, it encourages states to prosecute individuals for GBV and tolerates their incarceration of individuals. Yet, the same body of law enshrines the right to human dignity, the right to rehabilitation, and the right to life, and prohibits cruel, inhuman, and degrading punishments. For our purposes, international human rights law will serve as one non-exclusive ground on which to assess survivors’ needs and NYS’ policies. When survivors articulate demands that exceed the rights and duties international human rights law provides, we include and uplift these to gesture toward how the law ought to develop.

e. What is clemency?

*Excerpted and adapted from Clemency & Parole: A Guide by Survived & Punished NY:*³²

Clemency is the act by an executive member of the government of extending mercy to a person convicted of a crime. In the United States, clemency is granted by a governor for state crimes, and by the presidential pardon to people convicted of violating federal law. Granting of clemency requests can take one of three forms: a reprieve, a commutation of sentence, or a pardon.

While still incarcerated, an individual can apply for clemency in the form of a sentence commutation, and simultaneously can apply for parole at the time which was specified when they were sentenced. These kinds of relief are not mutually exclusive. Once a person has been released from incarceration, they can apply for a pardon. Pardons clear the previously incarcerated person’s

record and set the conviction aside. Pardons are for those who have completed their sentences, but would like to have their convictions removed entirely from the record.

A commutation is a reduction of the sentence an incarcerated person is currently serving. The reduction is granted by the governor. The reduction may allow the person to be released immediately, may set a new date for their release, or may make them eligible to apply for parole.

III. Methodology

We sent surveys to 126 members of Survived & Punished NY who are incarcerated, most of whom are in New York State.³³ The survey questions were open ended (see Appendix A). We received 19 responses from individuals incarcerated in New York State.³⁴ We conducted in-depth interviews with 9 of the 19 who sent responses to our survey. We report our findings based on communications with these 19 individuals.³⁵ In both the surveys and interviews, we posed questions that revolved around four themes:

- What does it mean to be a survivor?
- How did your experience as a survivor lead to the circumstances that triggered your incarceration?
- What, if any, kind of help did you seek to address the violence you endured?
- What kind of government services, support, help, or protections could have helped to prevent the circumstances that led to your incarceration?

These responses are necessarily partial accounts of interviewees' experiences because of time constraints imposed by the New York State Department of Corrections and Community Supervision, and by the academic semester. The experiences we report here cannot necessarily be generalized to all survivors who are incarcerated. We hope this document inspires other groups, researchers, and advocates to try to better understand and meet the needs of survivors who face the risk of criminalization. When we analyzed NYS' compliance with human rights obligations, we relied on both primary data we collected and secondary sources for corroboration to establish trends across the population.

Who we interviewed

The 9 individuals we interviewed all identified as female and were all incarcerated in women's correctional facilities in New York State. Five of the individuals identified as African American

or Black. One individual identified as biracial, with an African American parent and a white parent. Two identified as Hispanic. One identified as Native American and white. The ages of the individuals at the time of their arrest ranged from 17 to 43-years-old. Three of the nine individuals reported that they had been previously incarcerated before their current conviction. Four of the individuals had not completed high school before being incarcerated. Only one of the nine individuals reported that her abuse was raised during her prosecution as grounds for mitigation.

The individuals were prosecuted in the following counties: Suffolk (2); Nassau (1); Sullivan (1); Erie (1); Kings (2); New York (1) and; Queens (1). Prior to incarceration, the individuals had been living in a number of counties across New York State: Suffolk (1), New York (1); Nassau (1); Sullivan (1); Erie (1); Kings (3) and; Queens (1). Three individuals were convicted and sentenced at trial, while six were convicted and sentenced by plea bargaining. Their sentences ranged from seven years to 40 years to life; four of the individuals are serving indeterminate sentences, while five of the individuals have determinate sentences.

Broadly speaking, the survivors we interviewed experienced a range of forms of gender-based violence. Many of the survivors experienced domestic violence from an intimate partner. At least one also was forced into the sex trade. Survivors also experienced abuse from siblings and adults charged with their care when they were children. The harms experienced included physical, sexual, psychological, emotional, and economic abuse. All but one of the survivors we interviewed explained that they were criminalized for conduct that was tied to their experience of GBV. One survivor identified the state as the perpetrator of gender-based violence, through incarceration.

IV. What Do Survivors Say?

a. What kinds of support would have made a difference in your life?

We report responses from both interviews and surveys below. In parentheses, we note the number of people who endorsed this need, for a maximum of 19. Survivors indicated the following supports would have made a difference in their lives before their incarceration:³⁶

- Access to health care
 - Access to mental health care (14);
 - Access to medical care (7);
 - ⊖ Access to treatment and support to address substance dependence (6);
- Access to shelter and/or housing:

- 6 survivors we interviewed, and 11 other survivors we surveyed, each explained that access to housing would have helped prevent their current incarceration
- Permanent housing (11);³⁷
- Relocation programs (4);
- Better shelter access (6);
- Financial stability
 - Access to a living wage (8);
 - Money (11);
- Community support, such as a support group or a hotline (11);
- Assistance with childcare (12)
- Access to information about government services (5);
- Access to education, including vocational training (6);
- Access to affordable and convenient means of transportation (7);
- Access to food and clothing (3);
- Learning about their right to be free from gender-based violence (3);
- Legal assistance to navigate immigration system (1);
- Help obtaining and securing identification documentation (2).

b. What do survivors say about the shortcomings in existing supports?

- **Current assistance does not guarantee economic security.** Survivors identified that neither government assistance nor employment could guarantee their economic security.

Although Evelyn Sanchez worked multiple minimum-wage jobs, her total earnings were not enough for her to pay all her bills. She worked a job more than 12 hours a day, with no more than a half hour break. In between shifts, she cleaned houses in the area. Despite her grueling hours, she still could not afford to live on her own, and remained with her boyfriend who abused her. Another survivor shared that with the welfare assistance her family received, she only had enough money to buy clothes. To pay her cell phone bill, she had to drop out of high school to work a minimum wage job.

Kalila Taylor explained that after she had her son, she couldn't work if she wanted to collect cash assistance from welfare. But even the assistance couldn't cover all of her bills. She

reflects now that she would have benefited from something as simple as support to pay her utility bills. She lived with her son's father, and he abused her. It was her first time living away from her parents. She wanted to leave her boyfriend, but she couldn't afford a place of her own—she could never pool enough funds, whether from odd jobs or public assistance. Looking back she recognizes that if she had had more money, she could have had a better place to live, and been less dependent on other people. Kalila explains: “I was never as angry as I was until I was with this guy...living with him made me an emotional wreck.”

- **Accessing services and resources made difficult because of their onerous requirements.** Interviewees spoke about the rigid requirements and taxing administrative barriers to access assistance. Some experienced being denied their full benefits when they did not comply with programmatic requirements, or not having any access at all.

One survivor told us how she was not able to continue her education because she had to work instead to keep her cash assistance.³⁸ Another survivor, Kasseopeia Morris, whose story is included later in this report, recounted the daily travail of traversing New York City to attend the back-to-work program that welfare³⁹ required her to attend, along with her college classes in computer science. Welfare's requirements were tough, and there was little pay off. The benefits she received were paltry. Initially the welfare wouldn't give recipients unlimited Metrocards, but only gave them roundtrip rides to and from the welfare office. When she missed any appointment with the welfare office, she was sanctioned and her benefits were reduced. Eventually, the welfare requirements created so much stress in her life that she abandoned her dreams to go to college.

The various forms of rental or housing assistance provided by government agencies or not-for-profits imposed a range of restrictions on survivors that interfered with their autonomy and ability to organize their lives according to their own plans. Ethel Edwards was told she could not access rental assistance because she was paroled to someone else's Section 8 housing and could not use the address for her application. At a different point in her life, Ethel also attended a residential program to address substance dependency and housing insecurity. The same program penalized her for missing appointments when she had to travel to drop and pick up her son at daycare. Although the program held itself out as one designed for mothers, it did not provide childcare, nor did the program accommodate mothers' needs for childcare. Ethel tried to take her

son to her mother's house during the day, but the travel time threatened her standing in the program because she had to miss meetings to drop off and pick up her son.

- **Survivors reported being isolated, neglected, and ignored.** Nine survivors indicated feeling isolated in their abuse prior to their incarceration. Fourteen survivors expressed a desire for attention from people aware of the harm they experienced. Many survivors also reported not knowing where to turn for help.

Ivié De Molina said that when she was being abused, she was not in the right mindset to confront the abuse without help. She struggled to process it on her own. She had experienced sexual violence from a family member during her childhood, but had buried the memory for over 20 years. When she finally mustered the courage to approach her sister to talk about the violence, she was rebuffed. Ivié relied on substances to cope with these otherwise repressed memories. From the outside, however, “no one would ever have known” about the violence she endured.

Survivors also reported experiencing indifference or, worse, hostility, from the very institutions purporting to offer help. Survivors shared that housing and shelter programs were indifferent to their personal needs, goals, and safety. One survivor who faced abuse in both her childhood and adulthood shared how school officials saw bruises on her body but did nothing. As she explained, “There was no help. There was no turning for help. I turned inside.” Another survivor explained that she did not confide in anyone about her mother's abuse, because she knew the news would get to her mother and she would experience retaliation.

Kalila met her boyfriend at school, and eventually became pregnant with her son. Although the relationship wasn't good for her, no one at school approached her. Looking back, she says it would have made a difference. Another survivor explained, “I think that everyone minds their business and that's not helpful. My mother used to beat me with an extension cord. It was evident when I went to school the next day. No one in school ever questioned it. They checked us for lice though. School could have been a good place of intervention. When I get out of here, I'm going to secondary school to tell children that if someone is hurting you, it's not OK. Kids need to know that. I didn't know that. Nobody told me.” One survivor, a non-citizen, explained that she was too afraid to turn to help. “I shied away from resources, concerned that voicing my needs could have placed me in jeopardy for deportation.”

Eleven survivors revealed they received counterproductive responses from law enforcement. Police officers refused to enforce orders of protection or ignored the harm. Survivors also disclosed that they chose not to report because they feared the consequences or because of prior bad experiences. One survivor shared an incident in which the police refused to help her because they didn't observe any physical injuries. Three survivors we interviewed identified that family court and child protective services played a negative role in their lives. One survivor was separated from her mother; at least two survivors were removed from their home because of allegations of delinquency.

Many survivors disclosed that their criminal defense attorneys ignored or refused to engage with their trauma histories, whether in the context of plea negotiations, at trial, or at sentencing. Lawyers either never conducted social history investigations or explicitly discouraged survivors from presenting their abuse as mitigation or as a defense. Three survivors specifically highlighted indifference from courts and court officials towards their experiences of GBV.

V. Survivors' Stories

a. Kasseopeia Morris

Kasseopeia Morris tried everything. Shelters, substance dependency programs, welfare, university, but none could protect her from insecurity. "I needed someone to talk to me, to help me when I was invisible." Kasseopeia explains she's been "a victim to all five forms of violence," but resolutely clarifies that "the wrongs and harms don't define me." She endured sexual violence, starting in her childhood, and was incarcerated once before as a young adult. Now in her thirties, she is incarcerated again for a crime that occurred when she was forced to live in the streets. She tried desperately to avoid street homelessness. Kasseopeia chased whatever benefits and supports she could demand from public agencies. Despite her persistence and her earned savviness, safety was and continues to be out of her reach. Her incarceration compounds the repeated government failures and the chronic PTSD that have followed her through her life.

In Monticello, NY, Kassie knew to keep a low profile. Her parents instilled in her a fear of being noticed. After all, she and her mother stuck out as some of the few Black folks in the area. Her family had left the Dyckman neighborhood in Manhattan for Sullivan County, in search of a better school district. But her family worried that if they made themselves too visible, their plans would be thwarted. Kassie's parents were disabled and lived in Section 8 housing. She never felt

like she belonged in Monticello. No matter how abusive things were at home, Kassie's mother would cover for her daughter at school. And while Kasseopeia excelled academically, by her early teens she was struggling to recover from life-threatening sexual assaults. To this day, she still can't talk about an assault and kidnapping that occurred when she was a teen. She did not receive any treatment after that ordeal. Instead, she absorbed the lesson that it was best to keep the bad things to herself.

At the age of 18, Kassie went to prison for six years. By the time she came out, she was an orphan. But she was determined to create a better life for herself. Yet she had little room to maneuver. She was under close supervision by parole. She sought shelter at a three-quarter house, enrolled in a drug program, and attended TCI College of Technology. So far, so good.

But Kassie soon discovered that these various programs were not designed to help her. At both the substance dependency program and the three-quarter house, the staff's primary concern was ensuring they get paid. Kassie did not have to pay out of pocket for either; the programs sought reimbursement from federal and state funds. But she could tell they were not invested in her recovery or reentry. Instead of focusing on her health and housing needs, and those of other attendees, the program staff seemed distracted by their bottom line.⁴⁰ Under these fiscal constraints and administrative hurdles, these places felt like a revolving door. No one seemed invested in delivering meaningful care.

Before Kasseopeia was released from prison the first time, her sister had identified a good therapist who would take Medicaid. That was her luckiest break. Kasseopeia is diagnosed with anxiety, depression, and post-traumatic stress disorder. However, Medicaid would only cover some of the treatment she needed. While she liked her therapist, she was not able to see them as often as she needed to. She wanted to see her therapist every other week, but Medicaid would only pay for one session a month.

For her substance dependency, Kasseopeia went through eight programs before finding one that actually worked for and with her. She saw that programs would generally slot her into whatever therapeutic groups were open, whether or not they actually met her articulated needs and counseling goals. When she finally found a program that was willing to design a treatment plan that responded to her needs, she understood that they were doing so at their own expense. This program let her see a counselor six times a month, even though her insurance only paid for her to see the counselor four times a month. Insurance would also only pay for one therapeutic group a

day, but the program allowed Kasseopeia to attend more. “Their concern was that I got better,” Kasseopeia said. This was the exception and not the norm with the other programs she attended.

While in three-quarter housing, welfare covered her rent for as long as she attended the back-to-work program, and an intensive substance dependency treatment program. With perfect attendance at the back-to-work program, she received \$120 cash assistance and \$115 rental assistance twice a month. That money didn’t come easily, however. On a daily basis, she attended school, treatment, and the back-to-work program, which were located in different boroughs in New York City. Kasseopeia was pulled in too many directions. She spent hours simply traveling, leaving her only a few hours at the end of the day to complete her homework. Because her livelihood—her ability to eat and sleep—was tied to the money she got from welfare, she had to prioritize their demands above all else. But she learned that their requirements often conflicted with her own aspirations. She was enrolled at TCI and hoped to complete a degree in computer science. And although welfare recipients can apply for waivers so that their school attendance can count towards their efforts to secure full time employment, not everyone can access the waivers. When she asked the Department of Human Resources to accommodate her schedule as a full-time student and reduce her hours at the back-to-work program, they refused. The irony of the forced priorities felt acute the day she had to attend a computer training program as part of the back-to-work program. The computers at the welfare office were old and running obsolete software. Meanwhile, at TCI, she was learning how to use up-to-date equipment. She felt like she was wasting her time, just for a check.

Ultimately, Kasseopeia was forced to pick between surviving in the immediate term, and school. Surviving won out and she dropped out of TCI. “At welfare, it’s either you stay stuck in a loop or you just break free.” Because she had been in school, she did not have the time to find a job to meet welfare’s requirements. As a result, and as they are authorized to do, the back-to-work program sanctioned her and cut her rental assistance from \$115 every two weeks to \$80 every two weeks. The reduced amount was not enough to pay the three-quarter house, and the three-quarter house kicked her out. Kassie reluctantly entered the shelter system. She would spend the next seven years in and out of shelters. Eventually, she slept in the streets.

Initially at the shelter, she had a bunk in a crowded room and a locker without a lock for her belongings. Deprived of privacy or a sense of security, Kassie was stressed out. And people were in pain around her. Kasseopeia pulled a needle out of someone’s arm and called the

paramedics because the individual was dying. The shelter security fought the paramedics who were trying to come help the person. Eventually, Kasseopeia got married to her boyfriend and they entered a couples' shelter that was known to be safer. When her relationship dissolved, Kassie entered a shelter for individuals who experience substance dependency and symptoms of mental illness. But the shelter would not let Kassie attend a job training program because it kept her out past the shelter's early curfew. As she described it, the shelter system "wouldn't let me better myself. It was about surviving, not living, in that situation." She ultimately ended up street homeless. And, without a permanent address, she stopped receiving cash assistance from welfare.

On the streets, her main interaction with government agencies was with police. They would push her from block to block in their daily sweeps. The primary preoccupation of the police was getting her off "their streets." She felt invisible to the welfare offices who assured there would be outreach on the streets. For the most part, as Kassie describes it, "the government failed me in every possible way, and I am living proof. These programs are not set up for you to succeed. They put programs in place to tell the taxpayers they are helping to rehabilitate you but these aren't places of rehabilitation. They are stagnation."

b. Ethel Edwards

Ethel learned at an early age "to cope with pain and abuse by learning to stay high." Drinking that cold beer she discovered in the fridge when she was eight somehow made her brothers' beatings tolerable. Eventually, she turned to crack cocaine, emulating her siblings. In a recent hearing held to assess Ethel's application for relief under the DVSJA, one of her elder brothers admitted to have beaten her approximately 500 times over the years. Her other brother estimates hitting Ethel as a child once or twice a week, using a belt or a switch. As long as the abuse continued, so did Ethel's self-medication. Her teachers noticed the effects, without knowing their cause. Her school classified her as "emotionally disturbed" and placed her in a residential program with the Division of Youth Development and Partnerships for Success. She did well in her studies, but every weekend she returned home to the abuse that awaited her. Ethel never talked about it and no one ever asked her about it. Instead, when she finally left her childhood home, she entered into a decades-long relationship with a man who also abused her. He once strangled her until she passed out. Another time, he threw her out of a car, causing her to miscarry. She remembers recounting the abuse to another person for the first time, but she never told anyone in

a position of authority: “I never mentioned the abuse because I knew that I had to parole to my abuser and they never would have let me out if they knew that.”

The state criminalized her repeatedly while she used drugs to survive. What she needed the most was not the arrests and the jail time, but housing. “I never really had a place of my own,” Ethel said. And, although parole held itself out as a stabilizing presence she discovered otherwise: “There is not really anyone or anywhere to turn to when you get out of prison and there are lots of programs that you are required to do, or that are there, but they are rarely helpful.”

Outside of parole or the Division of Youth Development, Ethel had little awareness of what the government could do for her. Looking back to her childhood, she wishes she could have had someone to call when she was in trouble. She sees that being educated about abuse and violence in school would have helped her recognize the signs that she was being abused earlier on in her life. Therapy or support was not easily attainable for her, but “these would have helped me come out of the situation and see it.”

Despite Ethel’s well documented and egregious abuse, she was recently denied sentencing relief under the DVJSA, reflecting how existing laws fail criminalized survivors.⁴¹

VI. NYS Violates Survivors’ Right to Be Free From Gender-Based Violence and Premature Death

New York State has failed survivors of GBV. New York has not committed the resources to fulfill its human rights obligations and deliver survivors’ social and economic rights. Instead, New York has poured resources into strengthening law enforcement responses to harm. The poverty, precarity, and criminalization that survivors experience is the product of deliberate political choices about where to allocate resources and how to respond to harm.

Under international human rights law, states have an obligation to eradicate violence against women, girls, and members of the LGBTQI community.⁴² Violence is not a private act that is outside of the sphere of the state’s responsibility. States can be “responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.”⁴³ States must enact policies that prevent GBV, and once aware of GBV, they must provide survivors with “available, effective and sufficient remedies and rehabilitation.”⁴⁴

The U.N. explains that “[w]omen’s poverty and lack of empowerment, as well as their marginalization resulting from their exclusion from social policies and from the benefits of

sustainable development, can place them at increased risk of violence.”⁴⁵ The Inter-American Court on Human Rights⁴⁶ has recognized that “critical to the safety of girl children is their access to adequate standard of living for themselves and their family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”⁴⁷ The Inter-American Commission on Human Rights⁴⁸ has noted that poverty plays a pernicious role in amplifying the impact of gender-based violence and discrimination.⁴⁹ “[T]here is evidence that women’s socioeconomic status correlates with their exposure to domestic violence... women who own or partly own their homes have been found to experience lower levels of physical abuse compared to those who do not.”⁵⁰ The LGBTI community is particularly vulnerable because they are more likely to become subjected to a cycle of exclusion and poverty which in turn exposes them to the risk of violence.⁵¹

For this report, we set out a *prima facie* case—that is, we show that New York State does not guarantee social and economic security for survivors.⁵² Under international human rights law, each state has to prove that it has made “every effort ... to use all resources that are at its disposition,” to guarantee social and economic rights.⁵³ A “State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, *prima facie*, failing to discharge its obligations” under the International Covenant on Economic Social and Cultural Rights.⁵⁴ The International Covenant on Economic Social and Cultural Rights is one of the most important human rights treaties, and it outlines states’ duties to deliver freedom from want.⁵⁵

New York State is one of the richest states in the richest country in the world.⁵⁶ NYS is hard-pressed to claim that it does not have adequate resources to meet its human rights obligations. In 2018, the United States was the most unequal country amongst OECD countries, home to over 25% of the world's billionaires.⁵⁷ In 2020, approximately 118 U.S. billionaires lived in New York State, and between March 2019 and May 2020 they saw their net worth increase by \$44.9 billion, or 8.6%.⁵⁸ New York State would obviously be financially able to guarantee economic security for all its residents, if there was political will to do so.

Fulfilling survivors’ social and economic rights is not simply required by law, it is also sound policy because it is responsive to survivors’ experiences. The Center for Disease Control recognizes that guarantying economic security “holds great potential for improving a wide range

of health outcomes for neighborhoods, communities and states and also has the potential to prevent IPV [intimate partner violence].”⁵⁹

In the following sections, we show the gaps between the NYS’s ought to do and what it actually does to realize survivors’ core rights. We make two arguments: (1) NYS violates survivors’ rights to be free from GBV when it does not meet their material needs for safety and fails to fulfill their rights to housing, health, and an adequate standard of living; (2) NYS perpetuates GBV when it criminalizes actions taken by survivors in the context of surviving GBV and in the absence of meaningful state support.

a. NYS violates survivors’ right to health

“What I needed is somewhere to process what was happening to me. The therapist never made me feel safe. It was a conveyor belt. I was worried that what I said would get back to my mother, my sisters, my mother’s man. Everyone beat me.”

- Anonymous survivor

“If I had one person to talk to then I would have been fine.”

- Anonymous survivor

“I needed to know I could rely on someone and trust someone. Having groups where I could be vulnerable around others and where I could try to build myself up and women could build confidence in one another...this would have been helpful.”

- Anonymous survivor

Every survivor we interviewed identified accessing quality healthcare, including mental healthcare and treatment for substance dependency, as something that could have helped to prevent their incarceration.⁶⁰ Three survivors indicated they wished they had seen someone for their mental health prior to their incarceration. One other survivor said she attended court-mandated counseling as a child when she was placed in a group home, but she felt she was too old for the treatment offered to her. Three other survivors accessed counseling through substance dependence treatment programs, but their access was short-lived. New York State does not live up to its obligation to

guarantee healthcare for all its residents. Survivors, especially, often have heightened and long-term health needs since they can bear the ill effects of GBV for years after it occurs.⁶¹

Here's a quick snapshot of the state of health access:

- A survey of New York State suggests that 45% of residents could not afford the health care they needed, so they resorted to skipping procedures, prescriptions, or delaying treatment altogether.⁶² Out of those who received treatment they needed, 35% had to go to extremes to do so, like exhausting their savings or forgoing other necessities.⁶³
- 5.3% of New Yorkers are not insured at all.⁶⁴
- In New York, among adults who experienced serious psychological distress in 2015, 27.1% indicated an unmet need for mental health treatment, and 42.6% did not receive mental health treatment because they could not afford it, even if they had public or private insurance.⁶⁵
- In 2016, NYS identified a shortage of 197 mental health professionals.⁶⁶
- Structural racism profoundly shapes the state's failures to guarantee health and wellness for people of color.
 - Access to mental health care varies across racial and ethnic lines. Nationally, Black and Spanish-speaking Hispanic patients with insurance were less likely to visit a mental health provider in the past year, compared to non-Hispanic whites, even after controlling for the presence of a psychiatric condition. Among people with depression, 69% of Asian Americans, 64% of Latinos, and 59% of Black folks did not access treatment within the past year, as compared to 40% of whites.⁶⁷
 - Black and Latinx people are more likely to receive poor quality mental health care. For example, racial and ethnic minorities who experience symptoms of depression are less likely to be diagnosed as such. Among those diagnosed with depression, Black and Latinx people are less likely to be prescribed antidepressant medications, newer medications, or receive appropriate care.⁶⁸
- Because of the high costs of seeking mental health treatment, many mothers, and particularly women of color, consider their children's needs first and use emergency services to obtain healthcare for their children rather than tending to their own mental health needs.⁶⁹

- According to the Children’s Defense Fund, “In New York City, neighborhoods with the highest rates of chronic elementary school absenteeism are communities where both child and adult residents continue to face overwhelming health disparities.”⁷⁰ For example, “uncontrolled asthma can lead to increased school absences and worsened academic performance resulting from frequent trips to the emergency room during severe asthma attacks. Although most children’s asthma hospitalizations are preventable with proper maintenance and treatment, many New York City neighborhoods still experience disproportionately high child asthma hospitalization rates. In New York City, children with asthma were more likely than their peers to receive mostly Cs, Ds and Fs.”⁷¹

This snapshot suggests that NYS and the federal government have not fulfilled their obligation to fulfill residents’ right to health under international human rights law. Not only is quality health care out of reach, but also health outcomes are stratified by socio-economic class, ability, race, and gender. Under international human rights law, the right to health requires states to affirmatively create the conditions for people to reach “the highest attainable standard of physical and mental health.”⁷²

There are four dimensions to assessing whether a state has fulfilled the right to health: non-discrimination, physical accessibility of services, information accessibility, and affordability.⁷³ The last component is critical: “States have a special obligation to provide those who do not have sufficient means with the necessary health insurance and health care facilities, and to prevent any discrimination on internationally prohibited grounds in the provision of health care and health services... Inappropriate health resource allocation can lead to discrimination that may not be overt.”⁷⁴ For survivors of GBV specifically, states are required to ensure “access to...gratis or low-cost, high-quality...medical, psychosocial and counselling services.”⁷⁵ States must not only provide health services but must also address underlying social determinants of health.⁷⁶ In other words, states must prevent gender-based violence because it puts survivors’ health in jeopardy.⁷⁷

The Convention on the Rights of Persons with Disabilities (CRPD) elaborates on states’ obligations to guarantee equality for persons with disabilities, which includes, amongst other things, affording access to quality care.⁷⁸ States must “take measures to the maximum of [their] available resources” to address the barriers that stand in the way of persons with disabilities enjoying full equality.⁷⁹ The Convention on the Rights of Persons with Disabilities adopts a social

model of disability, which heeds the various barriers that hinder the full and effective participation of “those who have long-term physical, mental, intellectual or sensory impairments.”⁸⁰ States in turn must work to eliminate those barriers. At the minimum, “all persons have the right to the best available mental health care.”⁸¹ The Convention also particularly recognizes that women and girls with disabilities are subject to multiple forms discrimination.⁸²

For survivors specifically in NYS, one reason their needs for counseling are unmet is because neither New York State nor the US federal government have committed the resources to make quality healthcare accessible and affordable. Since the 1980s, New York State has directed funding to emergency shelters, “to the exclusion of other services, such as primary prevention, legal services, children’s services, broad-based support services, coordinated community response efforts, immigration services, safety planning, and systems advocacy.”⁸³ As a result, survivors’ health has suffered.

This preliminary snapshot suggests that NYS has not satisfied its obligation to guarantee the right to health, and in turn survivors who have been failed are entitled to a remedy for those violations. For the survivors we interviewed, the absence of support exacerbated their experience of GBV. And yet, New York State’s response to their distress has been criminalization.

b. NYS violates survivors’ right to housing

“Just before I was arrested, I moved into an apartment with my son’s father. Social services would pay some of my rent but I was having problems paying my electricity and light bills. I had a baby at the time, and so I needed to get out of my parents’ house. But living with my son’s father made me an emotional wreck. I was not used to dealing with his evil streak... If I had more money, I would have had a better place to live with my son.”

- Kalila Taylor

“If I had a chance to actually go to housing for teenage girls and leave the abusive environment with my grandfather, I would have been a lot better, I would have been more open and known right from wrong.”

- Anonymous survivor

“My housing situation was really, really bad. I was living with my abuser, his mother, and two of his siblings. We left the environment and couch hopped for a while but this wasn’t better and wasn’t affordable. We ended up back with his mother. I wish I had my own space. Having my own space with no one able to dictate how I moved or lived would have been helpful.”

- Anonymous survivor

“I didn’t have any children so I couldn’t go anywhere safe. There wasn’t anything available. Anything I heard about shelters was for women with children. I was in a series of abusive relationships because I needed money. I couldn’t afford to pay rent on a cashier or waitress job.”

- Anonymous survivor

Another overwhelming need survivors identified was safe and affordable housing. According to Joanne Pavao, writing in *Preventive Medicine*, “There is a strong association...between housing instability (including not having a home of one’s own) and domestic violence.”⁸⁴ In NYC, domestic violence is one of the main reasons families with children enter shelters. On a single day in 2019, service providers recorded 587 requests for housing from survivors in New York State which they could not meet.⁸⁵

According to the U.N. Office of the High Commissioner for Human Rights, “If women’s right to adequate housing is not sufficiently protected, women become more vulnerable to violence. Domestic violence has been found to be a leading cause of women’s (and often their children’s) homelessness, and many women try to avoid homelessness by staying in abusive relationships. Women who are property owners or landowners experience less domestic violence, which points to the importance of guaranteeing women’s security of tenure. Assumptions that a woman has to ‘leave’ an abusive home instead of removing the abusive husband and the lack of support for removing the abusive partner by local authorities, community and/or family laws and regulations, greatly undermine women’s right to adequate housing as well as their right to live a life free of violence.”⁸⁶ Not only does housing serve as critical infrastructure that guarantees survivors’ safety,⁸⁷ it is also a fundamental human right. The law recognizes how housing is intricately linked to a person’s ability to be free from GBV.⁸⁸ A person must have access to housing that is secure, affordable, and habitable.⁸⁹ Just as with the right to health, states must allocate the maximum available resources to realize this right.⁹⁰ While New York State has prioritized emergency shelter,

it has not invested in safe and affordable long-term housing, falling short of its obligations under international human rights law.

Emergency Shelters

Since 1987, New York State has funded emergency shelters for survivors of gender-based violence.⁹¹ A survivor, however, is only permitted to stay in a shelter for a maximum of 180 days, after applying for extensions of the 90-day limit.⁹² Legislators have recognized that 180 days is not enough time to find safe, permanent housing.⁹³ On top of that, survivors may not actually have access to the full 180 days. One provider in Suffolk County only provides crisis housing for three to four weeks for survivors.⁹⁴ In NYS, 11,890 adults and 13,226 children were denied shelter in domestic violence shelters in 2019.⁹⁵ The average length of stay in shelters for survivors in New York State is 28 days.⁹⁶ The shelter system is designed for moments of crisis, an immediate fix to imminent danger. The strict 180-day limit, and the reality that most survivors rarely stay that long, means survivors are at a high risk for re-abuse.⁹⁷ These shelters also receive significantly less funding than detention facilities. According to the New York State Coalition Against Domestic Violence, the state spends \$2000 to detain children in what it calls secure residential facilities, but if that same child needs to spend the night in a DV shelter or group home, the NYS only allocates \$128.46, or \$646.47, respectively.⁹⁸

Long-Term Housing

After the 180 days in shelter elapses, NYS offers no assurance of affordable, stable, and safe permanent housing. While individuals can theoretically access housing through public housing, Section 8 vouchers, affordable housing schemes, and rental assistance programs,⁹⁹ these are woefully inadequate to meet current needs, as we will see below. Individuals with criminal convictions are also barred from certain housing programs.¹⁰⁰ Pinning down the details of each of these housing assistance programs is “enormously complex.”¹⁰¹ We don’t attempt to elucidate all the programs, because each is “governed by their own impenetrable statutory language and byzantine administrative regulations.”¹⁰² Instead, we identify their core features and shortcomings.

Although New York City has the largest stock of public housing in the country, housing 400,000 people,¹⁰³ the city and state are locked into an artificial shortage that prevents millions from accessing affordable housing.¹⁰⁴ Existing interventions that have been devised to address the

affordability crisis are primarily structured as public-private partnerships. But these are inherently incapable of meeting the needs of most, and in particular the needs of those earning the least.¹⁰⁵

Here's a snapshot of housing in New York State:

- In 2019, NYS came up short 609,225 affordable rental homes for extremely low-income renters.¹⁰⁶
- On a single night in 2018, 91,900 people experienced homelessness in New York State.¹⁰⁷
- Structural racism, in the forms of government redlining and planned shrinkage policies, has deeply shaped the state's failures to guarantee housing for New Yorkers of color.¹⁰⁸
 - Black and Latinx New Yorkers face higher rates of homelessness: “Eighty-six percent of homeless single adults and 93 percent of heads-of-household in family shelters identify as Black or Hispanic – significantly higher than the 53 percent of New York City's population overall who identify as Black or Hispanic.”¹⁰⁹
 - Discrimination on the basis of race and disability is rampant in housing markets, nationally.¹¹⁰
- Housing is considered affordable if it costs less than 30% of an individual's income.¹¹¹ Yet, in December of 2019, over 2 million people in New York State paid more than half their income for rent.¹¹² Statistically, more than one in four New Yorkers paid over half of their income in rent.¹¹³ Seventeen percent of those have a disability.¹¹⁴
- In 2019, 30% of New York State renters fell behind on rent, 20% had utilities shut off, 19% had to move in with other people, and 15% were threatened with an eviction. Seventy percent of low-income renters had less than \$1000 in savings for an emergency, like an unexpected loss of income or a hospitalization.¹¹⁵
- In New York City, the affordability crisis has deepened over the last two decades. As rents have gone up, incomes have not kept up.¹¹⁶ From 2001 to 2017, median rent increased by 26%, but the median household income for the same period of time only increased by 2%.¹¹⁷
- Most rent-burdened households cannot access federal rental assistance because there has not been enough funding allocated to meet new demands.¹¹⁸

Although state law affords survivors additional protections in housing markets and better access to rental apartments, current efforts still fall short. In New York City, CityFHEPS provides

a rent supplement “for families with children who receive Cash Assistance and have been evicted or are facing eviction, who lost their housing due to a domestic violence situation, or who have lost their housing because of health or safety issues.” But because of high city rents and the dearth of affordable units for low income and middle-class families,¹¹⁹ the subsidies do not mean that survivors can actually get permanent housing.¹²⁰ The maximum rent that CityFHEPS will allow for a family of three is \$1,580 per month.¹²¹ Only 10.1% of the city’s inventory falls within that range.¹²² The median monthly rent in Manhattan was \$2,750, and \$2,395 and \$2,000 in Brooklyn and Queens, respectively.¹²³

Although survivors are entitled to priority on the long waitlist for New York City’s public housing, they may still have to wait almost a decade.¹²⁴ Further, they have to show proof that (1) they are a victim of an enumerated crime, and (2) they are staying at a shelter.¹²⁵ This proof can come in the form of a letter from a service provider or, as is more common, an order of protection, police report or criminal court complaint. But survivors have reported enduring bureaucratic hurdles to establish their history of abuse.¹²⁶

State law prohibits landlords from discriminating against survivors.¹²⁷ Survivors can also apply to terminate their lease early because of abuse.¹²⁸ They can request that their address remain confidential.¹²⁹ If a survivor is subjected to eviction proceedings, she may have a legal defense based on her history, but that is not a guarantee that she will retain her housing.¹³⁰ But these protections require or assume the survivor knows or learns about these options and is in a position to apply for an apartment and have the money to afford it in the first place. Such provisions do not address how GBV curtails a person’s life chances and undermines their economic position.

Furthermore, despite legal protections, survivors still face discrimination.¹³¹ A 2005 study conducted in New York City found that “28% of housing providers...flatly refused to rent to a domestic violence victim.”¹³² This same study showed that 20% of landlords demonstrated prejudice and “stereotypical concerns” regarding a survivor’s mental stability and propensity for violence.¹³³ Landlords also universally conduct background checks, including credit inquiries, which can disadvantage survivors who have endured financial abuse.¹³⁴ Survivors with past contacts with law enforcement will also fare poorly.¹³⁵

Accessing any of these protections enumerated above also requires documentation, whether in the form of an order of protection or medical records.¹³⁶ Each requires or potentially triggers an interaction with a police officer, prosecutor, or judge that may pose another set of risks

or be intimidating. Those interactions can be a disincentive for survivors. The two non-citizen survivors surveyed told us they were reluctant to seek help precisely because they feared that if they did, they exposed themselves to the risk of deportation. Even getting a letter from a service provider to establish a history of GBV can be out of reach for survivors who are unfamiliar or uncomfortable navigating the social services sector.

Some survivors may need to relocate to ensure their safety. One survivor explained that only housing far away from the person causing her harm could have assured her safety. But there is no guarantee that county-level providers in NYS can guarantee housing locally, much less in another county. As discussed above, on a given day in 2019, service providers recorded 587 requests for housing from survivors in New York State which they could not meet.¹³⁷

Reflecting on the housing situation in the United States, U.N. Special Rapporteur on adequate housing in 2010, Raquel Rolnik, commented that she had “deep concern about the millions of people...who face serious challenges in accessing affordable and accessible housing, issues long faced by the poorest people and today affecting a greater proportion of society.”¹³⁸ The Committee on Economic, Social and Cultural Rights, the body that interprets the International Covenant on Economic, Social and Cultural Rights, has recognized that right to adequate housing is intertwined with realization of human dignity.¹³⁹ The right to housing is inextricably linked to other fundamental rights such as freedom from discrimination, freedom of expression, freedom of association, freedom of residence, and the prohibition of arbitrary or unlawful interference with one's privacy, family, home, and correspondence.¹⁴⁰ It is directly connected to the ability of individuals to thrive in their communities. Accordingly, when we assess housing programs and the state's compliance with its human rights obligations, we consider the far-reaching impact of the right to housing. The right to housing does not simply require that the state provide a place to sleep. Rather, it implies the right to live somewhere in security, dignity, and peace.¹⁴¹

Housing is not adequate or affordable “if its cost threatens or compromises the occupants' enjoyment of other human rights.”¹⁴² Housing is not habitable “if it does not guarantee physical safety.”¹⁴³ Just as with the right to health, states must allocate the maximum available resources to measures that realize and continuously expand the right to housing, in a deliberate, concrete, and targeted manner.¹⁴⁴ It must do so without discrimination.¹⁴⁵ Private businesses must also be regulated as part of these measures in order to ensure that both individuals and financial institutions do not undermine access and affordability.¹⁴⁶ Although the right to housing does not require the

state to build homes for everyone, it requires measures to prevent homelessness and ensure adequate housing. The law requires that NYS focus on those who are most vulnerable, like women, LGBTQI persons, and survivors.¹⁴⁷

As the U.N. Office of the High Commissioner for Human Rights explains, “[w]ithout control over housing, land or property, women enjoy little personal or economic autonomy and are more vulnerable to abuse within the family, community and society at large. When women’s access to housing, land or property depends on a third person—their husbands, brothers, fathers or other male relatives—they become vulnerable to homelessness, poverty and destitution if this relationship comes to an end.”¹⁴⁸ The U.N. Special Rapporteur also affirmed the right, specifically, of women to participate in all aspects of housing-related policymaking, and, when addressing situations of household violence, urges states to provide women immediate access to emergency shelters.¹⁴⁹ Not only should states deliver access to emergency shelters, but they should also enact legislation that allows women to stay in their own homes where appropriate.¹⁵⁰ The CEDAW Committee has stressed the vulnerability of women in rural settings and demanded that governments at every level guarantee adequate living conditions in those places.

International human rights treaties also recognize the importance of enforcing the right to housing for persons with disabilities. Persons with disabilities must enjoy their rights to live and participate in their communities and ensure their choices of where to live and whom to live with are respected.¹⁵¹ According to the Convention on the Rights of the Child, every child has the right to “a standard of living adequate for the child's physical, mental, spiritual, moral and social development ... States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in the case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.”¹⁵²

Housing schemes must honor these principles, and must be provided at a “reasonable cost,” meaning that “the percentage of housing-related costs is, in general, commensurate with income levels.”¹⁵³ International law asks states to establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs, and to protect against unreasonable rent levels or rent increases.¹⁵⁴ The Committee on Economic, Social and Cultural Rights is particularly sensitive to how “living in poverty or being homeless may result in pervasive discrimination, stigmatization and negative stereotyping which

can lead to the refusal of, or unequal access to, the same quality of education and health care as others, as well as the denial of or unequal access to public places."¹⁵⁵ Therefore, making housing accessible and affordable is one of the steps government at various levels must take in order to eliminate discrimination on the basis of economic or social status.

The number of people who are homeless or who forgo other necessities in order to afford housing in NYS makes clear the state has not lived up to its human rights obligations. The survivors we interviewed and survivors across NYS are particularly vulnerable when the state violates its human rights commitment: often they have to choose between homelessness and re-abuse.

c. NYS violates survivors' right to an adequate standard of living

"I was in a series of abusive relationships because I needed money. I couldn't afford to pay rent as a cashier or waitress. Paul¹⁵⁶ moved me in with him...Absolutely, financial security could have helped prevent the situation. I never dated anyone my age. Paul was 30 years older. The youngest guy I dated was 8 years older than me."

- Laila¹⁵⁷

The survivors we interviewed disclosed that money could have helped transform their lives. While survivors can apply for cash assistance from government agencies distributing welfare, those benefits can be hard to access in a bureaucratic maze protecting itself from welfare "fraud" and the mythical "Welfare Queen."¹⁵⁸ The cash assistance comes with rigid and taxing requirements, and does not guarantee economic security. In response, anti-violence advocates have demanded that government agencies and social services providers trust survivors and grant them access to cash more easily, without strings attached and complex eligibility assessments.¹⁵⁹ Four of the survivors we interviewed relied on cash assistance. Three of the survivors also relied on food stamps. One survivor shared that she could not access rental assistance from welfare because of the restrictions set by parole on her living arrangements. Another told us that she did not receive public benefits because she did not know how to apply for them.

The International Covenant on Economic, Social and Cultural Rights requires that federal and local governments guarantee everyone an adequate standard of living. Governments are duty-bound to continuously improve living conditions. While employment obviously shapes the standard of living and the right to work is a fundamental right under the Covenant, in this section

we focus on the state's obligation to provide social insurance to buffer against precarity.¹⁶⁰ Federal and NYS programs offer such insurance, but these do not alleviate poverty, despite their obligations to do so.

Their method of distribution is also discriminatory. Low-income survivors have to work hard to receive meager government assistance, and are subject to humiliating supervision that is rooted in a mistrust for poor women of color. The persistence of poverty, and its attendant violation of rights, undermine survivors' chances to access safety. NYS violates the human rights of survivors when it fails to prevent their poverty and when the assistance offered varies across racial groups. In this section we document the shortcomings and harms produced by the current social insurance scheme, focusing on cash assistance and subsidies for food purchases, and corroborate the experiences of the survivors we interviewed with secondary sources.

Public Assistance (PA) and Supplemental Nutrition Assistance Program (SNAP), formerly known as Food Stamps, are the cornerstones of the U.S. social safety net.¹⁶¹ SNAP benefits can be used like cash to buy certain kinds of food.¹⁶² In New York State, PA provides a cash benefit twice a month that can be used on food, utilities and housing expenses. To be eligible, an individual can only earn up to 200% of the federal poverty level, or \$43,400 for a family of three.¹⁶³ PA in New York State is funded by two different streams: A federal block grant through Temporary Assistance for Needy Families (TANF) funds Family Assistance (FA). State dollars fund the Safety Net Assistance (SNA), which assists individuals and families who are not covered by TANF, but for no more than 2 years.¹⁶⁴

These programs are lifelines. But their importance also reflects a deeper economic malaise that defines the fortune of their recipients. Government benefits operate as a subsidy to private businesses who offer no economic security for their employees and are not legally required to do so.¹⁶⁵ As a result, New Yorkers have seen the real value of their wages stagnate, their benefits depreciate, and their chances for mobility significantly curtailed since the 1970s.¹⁶⁶ The assistance that survivors can ultimately claim from the government in the face of this insecurity, however, is paltry, time-limited, and exacting.

The public benefits are so insufficient that they keep people in poverty.¹⁶⁷ If a person received the combined total of every cash assistance program in New York State, they would be living at 43% below the federal poverty level.¹⁶⁸ "A family of four without any additional income often receives only \$951 monthly in PA for all their non-food expenses (including rent) and \$642

at most in SNAP benefits. The average SNAP benefit in New York State equals \$1.52 per person, per meal.”¹⁶⁹ Survivors in NYC may be eligible for rent subsidies as discussed above, but there is no statewide program as far as we could tell. Today, the federal grant TANF covers less than 46.7% of rental costs in the state, and does not cover the rent for a modest two-bedroom apartment.¹⁷⁰

Getting cash or SNAP benefits in the first instance requires persistence and specialized expertise to navigate the intricate layers of red tape.¹⁷¹ Applicants, particularly applicants in poor neighborhoods, and who are Black or Latinx, can expect to face hostility and even insults from government employees handling their applications for PA and SNAP.¹⁷² “Caseworkers, who have great discretion in connecting recipients with available services, often discriminate, whether intentionally or not, in the services they offer” based on gender, race, disability and immigration status.¹⁷³ People are forced in formal and informal ways to earn welfare. Those with constraints on their time, or who find the bureaucracy intimidating, find themselves shortchanged. Applicants are regularly denied benefits, or receive fewer benefits than they are entitled to receive.¹⁷⁴

In order to obtain access to public benefits, applicants need to provide several forms of photo ID, a social security card, a birth certificate and proof of address.¹⁷⁵ Survivors of domestic violence may be able to circumvent some of these requirements by establishing that they have faced domestic violence. They can also get a Domestic Violence Liaison (DVL) to help navigate the byzantine requirements.¹⁷⁶ In one study, 75% of service providers said “that a majority of the victims with whom they work need assistance from an advocate or other service provider in trying to obtain benefits.”¹⁷⁷

The 1996 federal reforms eliminated welfare as an entitlement. Instead, cash assistance has since become temporary and conditioned on recipients fulfilling certain conditions. In order to receive benefits, adults have to commit a certain amount of hours to finding work, or to training programs, or in rare cases, to education.¹⁷⁸ The training programs are colloquially called the back-to-work program or the Work Program. Childcare does not count as work because it is unwaged. These work requirements have had the effect of pushing adult recipients, largely women, “into low-wage work at a time when the value of the minimum wage was declining sharply.”¹⁷⁹ As a result of the 1996 reforms to welfare, the work requirements for cash assistance recipients fueled an astronomical rise in poverty—“there was a 748 (!) percent increase in the number of children of single-mother families experiencing annual \$2-a-day poverty between 1995 and 2012.”¹⁸⁰ The

U.N. Special Rapporteur on Extreme Poverty criticized the U.S. for the devastating effect of these changes.¹⁸¹

The welfare-to-work system has kept women of color in extremely low paying jobs.¹⁸² The law allows recipients to apply for waivers and receive cash assistance but organize their time to suit their own needs—by attending school, for example, instead of working or instead of attending the back-to-work training program—but many do not enjoy this flexibility. Studies in the 2000s documented that far fewer women of color than white women on TANF received the waivers and subsidies that would help them transition to work, such as assistance with child care, transportation assistance, and assistance acquiring a college degree.¹⁸³ As a result, more people of color than white recipients perform “workfare,” that is, they are working for a welfare check rather than earning wages at an actual job.¹⁸⁴ Not only that, but many educational programs do not count as fulfilling work requirements, limiting a person’s ability to access higher paying jobs.¹⁸⁵ Immigration status is also a significant barrier to accessing public benefits. Although anyone is eligible to apply, and some non-citizens can receive benefits, “fear of deportation, detention or other negative consequences” often prevent people from applying for assistance.¹⁸⁶ Language barriers further contribute to an inability to access these benefits.¹⁸⁷ On top of all this, women experience high levels of sexual harassment in the workplace, with “one out of six women welfare recipients [having] experienced sexual harassment in her work activity.”¹⁸⁸

Survivors are often hesitant to disclose domestic violence.¹⁸⁹ To receive an exemption from work requirements on account of domestic violence, the survivor needs to provide an order of protection, police reports, or hospital records (all of which may prove difficult to survivors with limited resources to pay for transportation or who carry historical trauma related to medical or carceral institutions).¹⁹⁰ But not all survivors can or want to obtain this documentation.¹⁹¹ Furthermore, the government reimburses itself for TANF payments issued to survivors with children by filing child support claims against the other parent, who may be the person who caused harm. Survivors can obtain a waiver of this requirement, but it is not always easy to do. If a survivor does not comply with this child support requirement, their household grant is reduced by 25%.¹⁹²

Once a person receives benefits, they have to attend regular appointments with the government office disbursing the funds and they have to show they are in compliance with the work requirements. If a recipient shows up late, or misses a single appointment, or is perceived as uncooperative at the training program, they incur sanctions—they get less money in cash or rental

assistance.¹⁹³ These sanctions are meted out in a discriminatory manner: “Black and Native American recipients are much more likely to have been sanctioned than members of other racial groups.”¹⁹⁴ The cumulative impact of the strict eligibility requirements, red tape, and discrimination, is that public assistance does not reach the majority of families in poverty. In New York State, for every 100 families with children living in poverty, only 42.7% received PA.¹⁹⁵ Over time, TANF has provided basic cash assistance to fewer and fewer families, even when need has increased.

Under the International Covenant on Economic, Social and Cultural Rights, states have an obligation to undertake targeted and deliberate measures to eradicate poverty and to guarantee human rights for persons and groups living in poverty.¹⁹⁶ In turn, human rights law proscribes concrete anti-poverty measures such as redistribution and access to social insurance.¹⁹⁷ Those measures, however, must respect international law’s prohibition against discrimination on the basis of gender, race, disability, and national origin. Affirmative measures may be required to address longstanding patterns of economic subjugation.¹⁹⁸

For social insurance to be considered adequate it must be accessible for everyone and must cover social risks and contingencies.¹⁹⁹ Although human rights law permits states to set conditions on the social insurance it distributes, those must be “reasonable, proportionate and transparent.”²⁰⁰ As discussed above, the work in the U.S. requirements have drawn condemnation from U.N. experts.²⁰¹ Furthermore, the number of people who are homeless, in poverty, and denied healthcare shows that the current system in NYS does not pass muster. The depreciation of the benefits, and the shrinking coverage also establish violations of the Covenant’s requirement that states progressively realize everyone’s right to social insurance.²⁰²

As the U.N. Special Rapporteur on Extreme Poverty, Philip Alston, reported: “the United States is alone among developed countries in insisting that, while human rights are of fundamental importance, they do not include rights that guard against dying of hunger, dying from a lack of access to affordable health care or growing up in a context of total deprivation.”²⁰³ In the U.S. the prevalence of extreme poverty is “a political choice made by those in power.”²⁰⁴ Poverty is not caused by resource scarcity but by a denial of basic rights.²⁰⁵ Not only is poverty rooted in a denial of rights, but it produces more rights violations, including gender-based violence.²⁰⁶

International human rights law recognizes that exposure to GBV is the foreseeable consequence of racialized poverty and exclusion. When NYS fails to fulfill its obligations to

deliver economic security, it puts everyone at risk, and heightens particular groups' exposure to GBV. Under these circumstances, NYS has not only violated survivors' rights to be free from GBV, but has participated in making it more likely.²⁰⁷

d. NYS has intensified law enforcement and perpetuated gender-based violence

Growing up, one survivor, Laila,²⁰⁸ learned never to turn outside for help. On one rare occasion she dared to call the police on her mother who was whipping her, repeatedly, with an extension cord. But when the police arrived and learned about the situation, they dismissed Laila. The officer told her it was her fault: "you should have listened to your mother." By her early teens, Laila began running away from home. Her mother retaliated and filed a petition with the court to nominate her as a Person In Need of Supervision (PINS). Laila couldn't understand what she had done wrong: to her, it seemed like she was doing exactly what others in her home and around her were doing: seeing her friends, dressing up, and smoking marijuana. She was placed in the first of many facilities at Family Court's direction, far away from her childhood home.

On her way to the first facility, she remembers the person who was driving her there made an unexpected stop. He pulled the van on the side of the road. He forced her to have sex with him. Later, at one of the group homes, when Laila slept in, she remembers being woken up by a supervisor grabbing her and yanking her out of bed. She felt like she was falling, and jerked her body as a reflexive response. Her foot hit the end of the bed hard, and her toe was split down the middle. She was eventually expelled from that facility, and several others. Each time, she knew she could not afford to open up to them and explain what was going on in her mind and at her home. In the back of her mind, she knew if she revealed what happened, it would get back to her mother. Every time she left one facility, she would be returned home, only to eventually run away and then be apprehended and detained again in another facility. She said, "It was like, lather, rinse, repeat."

In her adult relationships, Laila experienced more indifference and abuse from state actors. When her boyfriend pushed her to the ground in an altercation in the middle of the street in the Bronx, a police car happened to have driven by. But to her surprise, it didn't stop. Eventually when a second police car passed by, the officers intervened, but barely. They walked her boyfriend around the block, as she made her way to the hospital. She learned that her boyfriend had dislocated her shoulder. Several years later, the night of her arrest, she recounted another terrifying interaction

with police: as her arresting officer was directing her to the seat in his patrol car, he felt her up. She was shocked.

Another survivor, Tina,²⁰⁹ spoke about the persistent loneliness after she was separated from her mother at the age of 12. As she recalls, a court had decided that her mother was not fit to care for Tina and her siblings. Her retired grandfather took custody instead, but whatever financial assistance he received from the government was not enough for all the young people under his charge. The public school system had shuffled Tina from school to school. She was caught selling weed and then was flagged as a problem student. She didn't see a place for herself in school, after being repeatedly told her behavior was a problem. No one took an interest in the turmoil she felt being cut off from her mother, and the financial insecurity she faced on a daily basis. Tina eventually dropped out of school to get a job to pay for her clothes, cell phone bill, and other needs. She found gigs at Forever21, Macy's, and elsewhere. Without a diploma, better jobs were out of reach. Her mother's absence continues to haunt her, and she is eager to reconnect with her. She wonders how things might have been different if the courts hadn't taken her mother out of her life.

As we have shown, NYS has not complied with its obligations to realize survivors' rights to health, housing, and an adequate standard of living and in so doing has not acted with diligence to prevent GBV. Instead, as we showed in this section, NYS has prioritized criminalization in its approach to GBV. One consequence of NYS's carceral approach is that when defendants are survivors, their life histories are erased. NYS's carceral approach has perpetuated GBV. This happens in two ways: first, survivors are punished for acts that emerge out of their histories of GBV, which the state failed to adequately prevent; second, criminalization replicates a similar pattern of coercive control at play in abusive relationships.

* * *

The shift away from full provision of economic security, and towards criminalization, links to longstanding trends in benefits programs. Historically, shifts in these programs reflected a racist backlash that disproportionately harmed Black families. While the 20th midcentury New Deal widened the social safety net for some, compromises between the federal government and Jim Crow states resulted in the exclusion of occupations common to low-income Black parents, such as domestic worker and agricultural workers. Following the Civil Rights wins and organizing efforts of the 1960s, eligibility for welfare assistance evolved to include a significant increase of

Black recipients. Yet as more Black families received public assistance, it became increasingly focused on surveillance, behavior modification and work requirements.²¹⁰ The racism that previously resulted in excluding Black families from most public assistance altogether re-emerged in a new form, as programs were used to surveil, control, and ultimately criminalize Black families. This antagonism towards Black people—Black women and mothers in particular—receiving public assistance was epitomized in the racist “Welfare Queen” or deviant single mother tropes politicians and media peddled to the public.²¹¹ The 1996 reforms discussed above furthered the shift towards criminalization rather than benefits provision, with the introduction of drug tests used to trigger interconnected processes of criminalization and child protective services’ family separation.²¹²

NYS has prioritized criminalization to address harm, including GBV. In the process, it has undermined safety. In law, policy and culture, we see criminalization as NYS’s dominant approach to combat GBV. In 1994, NYS passed the mandatory arrest law for domestic violence, which the mainstream anti-violence movement applauds as its crowning achievement (and some high-profile figures in the movement currently argue is not enforced rigorously enough).²¹³ Since 1994, with limited exceptions, police have been required to make an arrest “when they have reasonable cause to believe that a person has committed specific crimes against members of their family or household.”²¹⁴ Mandatory arrest laws substitute a survivor’s judgment with the judgment of state actors. As Leigh Goodmark puts it, “the criminal justice system seems to believe that in overriding a woman’s expressed wishes, it is saving her life.”²¹⁵ Mandatory arrest laws, however, may mean that survivors actually under-report domestic violence incidents out of fear of having their partner arrested.²¹⁶ Research also suggests that these laws have had the effect of precipitating intimate partner homicide, and have increased the risk for unemployed Black people in particular.²¹⁷ For survivors who fight back against abuse, they face the acute risk of arrest, prosecution, and incarceration. Predictably, these laws have led to more women being arrested.²¹⁸ In other words, mandatory arrest laws have increased the number of criminalized survivors.

The criminal punishment system dominates the state’s response to domestic violence in other ways as well. In NYS, social workers are mandatory reporters, that is, if they suspect a child has been abused or mistreated, they must report to law enforcement; if they do not report, they risk losing their license. The implementation of mandatory reporting has had the effect of discouraging

survivors from seeking help.²¹⁹ The collusion happens in informal ways as well: Safe Horizon, one of the largest nonprofit service providers in the country, similarly collaborates closely with the police.²²⁰ The organization encourages survivors to file police reports when they ask for services.²²¹ One provider we interviewed stated their organization does not provide services for survivors who have criminal charges or ongoing criminal court proceedings.²²² The State Office for the Prevention of Domestic Violence trains police departments to be more sensitive to the realities of GBV.²²³ As it explains, “swift and meaningful action by the criminal justice system is a critical component in New York State’s response to domestic violence.”²²⁴

Furthermore, some resources are only available if the survivor makes a complaint with law enforcement or seeks an order of protection. As we detailed earlier, there are specific survivor housing benefits and waivers in the application process for cash assistance that require reporting to law enforcement.²²⁵ In addition, NYS created the Victim’s Compensation Fund which provides cash to individuals who are victims of a crime.²²⁶ A survivor, however, may only access this fund if the violence they endured culminated in a criminal charge. A survivor must also be an “innocent victim” of a crime--if they fight back and are also arrested, they cannot claim compensation for any damages.²²⁷ Thus it is law enforcement who controls survivors’ eligibility because it is they who control who is arrested and charged.

A quick review of NYS’s budget reflects these priorities: In 2019, NYS spent \$1.038 billion on public assistance, which includes funding for TANF and other cash benefits.²²⁸ That same year, NYS spent well more than twice that amount (\$2.725 billion) on corrections, jails, parole, and prisons.²²⁹ This trend holds at a local level. NYC’s Department of Corrections received \$1.36 billion for 2020,²³⁰ while the City Police Department received \$5.6 billion.²³¹ By contrast, NYC Health and Hospitals received only \$1 billion for the same year.²³²

NYS’s own data suggests this allocation of resources may be misguided because it does not deter GBV. In the NYS annual review of 25 fatalities related to domestic violence, 23 had prior contact with law enforcement, while far fewer had contact with mental health providers or domestic violence programs.²³³ In other words, nearly every GBV-related death *follows* contact with law enforcement, the primary type of intervention offered by the state. This data clearly demonstrate that carceral interventions fail survivors (especially Black, queer, trans survivors who are subject to higher rates of police violence²³⁴). Robust engagement with social services, however, does prevent GBV-related deaths. And yet, while affordable housing and healthcare were absent

in the lives of the survivors we interviewed, carceral institutions were omnipresent. Each of the survivors we interviewed came into contact with police, prosecutors, or family court, as they endured various forms of gender-based violence. These interactions did not ensure safety, even if they were viewed as victims by the system. Their interactions with carceral institutions, including their present incarceration replicated and perpetuated the cycle of violence. The state's failure to prevent domestic violence homicide has clear racial justice implications: a snapshot of New York City's domestic violence homicides reveal that Black people are disproportionately murdered. According to NYC Mayor's Office, Black people make up 21% of NYC population but almost half (45%) % of the DV homicides. Just like the violence of the prison industrial complex is not race neutral, the state's failure to support survivor safety does not fall on all communities equally.²³⁵

The harms of the carceral approach to gender-based violence are innumerable and well documented. Black, Indigenous, and other survivors of color who interface with the criminal punishment system are less likely to be believed when they report abuse.²³⁶ Judges, police officers, and other actors within the legal system often make decisions informed by explicit and implicit racist, classist, and ableist biases.²³⁷ Survivors who are Black, or whose abusers are Black, may be particularly hesitant to engage with the criminal punishment system due to the history of policing and criminalization communities of color have faced in this country.²³⁸ Throughout survivors' interaction with the criminal punishment system, it is well documented that judges, prosecutors, defense attorneys ,and other state actors frequently disregard their requests and needs.²³⁹ Survivors' "voices [are] excluded, their input legally not required...and their preferences frequently disregarded."²⁴⁰ Further, the criminal punishment system offers no real opportunity to heal and "many victims describe their experience of the justice system as fundamentally re-traumatizing."²⁴¹

Survivors interviewed for this report articulated a desire for space to heal. They spoke about wanting counseling and therapy. Not only is it unlikely that survivors receive such services, but survivors who are then criminalized experience additional and compounding layers of trauma.

The criminalization of survivors replicates GBV. One dangerous byproduct (of many) of this carceral turn is that the experiences of survivors who are criminalized are systematically ignored.²⁴² That erasure and punishment inherent in criminalization is tantamount to GBV. The

survivors we interviewed suffered two forms of erasure: first, when they were enduring violence at an interpersonal level they experienced being isolated from outside help; second, when they were being prosecuted, police officers, prosecutors, defense attorneys, and judges took little interest in their histories of surviving GBV. Survivors who fight back or who have engaged in harmful acts cannot be neatly categorized as “innocent” victims, deserving of protection. Policing and prosecution operate by assigning blame to individuals who cause harm, irrespective of the circumstances that compelled them to do so. The process of criminalization inevitably erases survivors’ histories of institutional neglect and trauma. They become defendants, who can be more easily disposed of and punished.

The Domestic Violence Survivors Justice Act (DVSJA), a law recently passed by the NYS legislature to address the criminalization of survivors, does not go far enough to ensure survivor dignity. The DVSJA gives survivors with convictions or who face prosecution the chance to seek reductions in their sentences if they can establish, amongst other things, a substantial nexus between the domestic violence and the crime. It introduces flexibility in the sentencing of domestic violence victims, allowing judges to order reduced sentences and community-based programs instead of incarceration.²⁴³ The Act acknowledges the link between survivorship and incarceration, explaining that “[t]he vast majority of incarcerated women have experienced physical or sexual violence in their lifetime,” and that often, “women wind up in prison . . . because they’re protecting themselves from an abuser.”²⁴⁴

But the DVSJA only covers survivors who were experiencing GBV at the time of the crime. It excludes survivors whose abuse occurred years earlier. Furthermore, survivors need to prove there is a substantial nexus between the experience of GBV and the crime. That proof must come in the form of documentation from institutions such as hospitals, social service agencies, or courts—the very institutions that have failed survivors along the way. Who is ultimately granted reductions in their sentence is up to the whim of individual judges.²⁴⁵ The standard for relief and outcomes has not been consistent. Finally, the Act leaves relief for survivors at the discretion of judges on a case-by-case, restricting prospects of large-scale remediation.²⁴⁶ Despite providing limited relief to survivors, the Act legitimizes the criminal punishment system by failing to free all criminalized survivors, allowing continued incarceration for those who fail to meet its narrow standards for relief.²⁴⁷ It does not offer a remedy to survivors who were failed by NYS agencies that offered inadequate support or did not diligently seek to prevent GBV in the first instance.

International law recognizes that private and state actors can perpetrate gender-based violence, which is defined as any act “that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”²⁴⁸ It is undeniable that survivors who are incarcerated endure physical and psychological pain while they remain in prison. The harm they endure is also gender-inflected: the state has incarcerated them for conduct that emerged from their histories of surviving GBV. The very harm the state uses as grounds for punishing survivors cannot be disentangled from the survivor’s own experience of victimization. Not only did NYS not live up to its obligations to prevent GBV, its most forceful intervention in survivors’ lives was to incarcerate them.

Criminalizing survivors perpetuates GBV in another significant way. For many, the criminal punishment system plays the role of the next abuser. As Monica Cosby has argued, there are direct parallels between the power and control exerted in the context of intimate partner violence and the power and control exerted in the context of state violence.²⁴⁹ In both, the person is subjected to emotional abuse. In the intimate relationship, it is the partner who makes the other person feel unworthy. In the context of state violence, it is the prosecutor who ignores the person’s capacity for redemption or the prison guard who humiliates them. The image below created by Monica Cosby succinctly summarizes the parallels.²⁵⁰

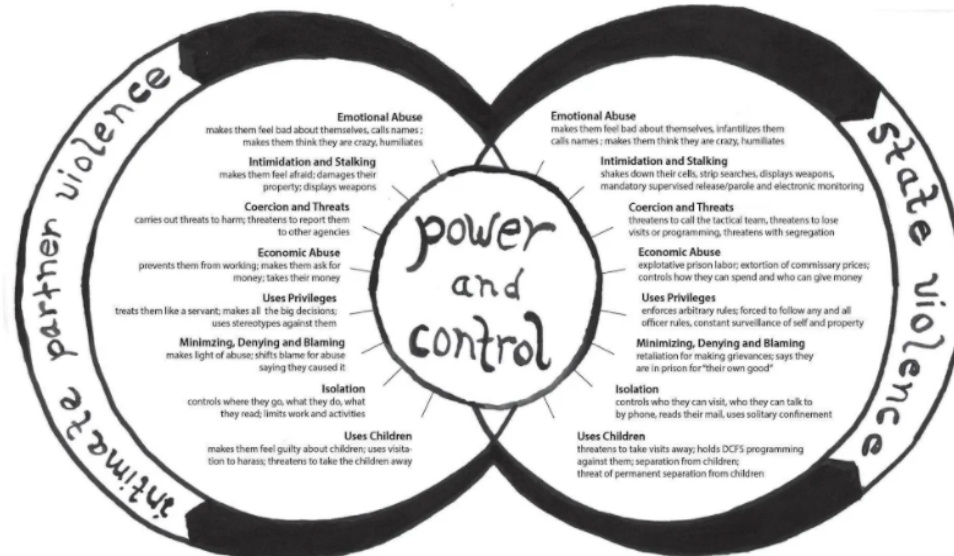


IMAGE DESCRIPTION: A venn diagram with an “intimate partner violence circle” that overlaps with a “state violence” circle.

Inside the intimate partner violence circle the text reads: Emotional Abuse: makes them feel bad about themselves, calls names, makes them think they are crazy, humiliates. Intimidation and Stalking: makes them feel afraid; damages their property; displays weapons. Coercion and Threats: carries out threats to harm; threatens to report them to other agencies. Economic Abuse: prevents them from working; makes them ask for money, takes their money. Uses Privileges: treats them like a servant; makes all the big decisions; uses stereotypes against them. Minimizing, Denying, and Blaming: makes light of abuse, shifts blame for abuse saying they caused it. Isolation: controls where they go, what they do, what they read; limits work and activities. Uses Children: makes them feel guilty about children; uses visitation to harass; threatens to take the children away.

Inside the state violence circle the text reads: Emotional Abuse: makes them feel bad about themselves, infantilizes them, calls names; makes them think they are crazy, humiliates. Intimidation and Stalking: shakes down their cells, strip searches, displays weapons, mandatory supervised release/parole and electronic monitoring. Coercion and Threats: threatens to call the tactical team, threatens to lose visits or programming, threatens with segregation. Economic Abuse: exploitative prison labor; extortion of commissary prices; controls how they can spend and who can give money . Uses Privileges: enforces arbitrary rules; forced to follow any and all officer rules, constant surveillance of self and property. Minimizing, Denying, and Blaming: retaliation for making grievances; says they are in prison for “their own good”. Isolation: controls who they can visit, who they can talk to by phone, reads their email, uses solitary confinement. Uses Children: threatens to take visits away; hold DCFS programming against them; separation from children; threat of permanent separation from children.

At the center of the venn diagram where the two circles overlap it reads “power and control.”

For survivors who have endured intimate partner violence and are subsequently criminalized, the similarities between the two systems are eerily painful. Prisons dehumanize, shame, and terrorize survivors.²⁵¹ “[I]f there’s anybody out here who’s never been in prison that can understand what it feels like [...] it’s someone who’s been stuck in an abusive & violent relationship.”²⁵² When survivors are then criminalized, the harm is amplified, and they are trapped in a cycle of violence.²⁵³ Another person we interviewed shared that she identified as a survivor primarily as a result of her incarceration: “I survived prison. Not everyone makes it.”

Child welfare agencies can also perpetrate GBV. As Dorothy Roberts has documented, child welfare agencies play a damaging role in supervising and punishing poor families and Black families in particular.²⁵⁴ Child separation by state agencies can amount to torture.²⁵⁵ For Tina, whose story we excerpt above, her mother’s removal was a defining act of violence she endured as a child. It had long-lasting effects on her mental health. And like many others, it also set the stage for her present incarceration.²⁵⁶

Human rights organs have recognized how prison conditions in the United States violate international human rights law, by inflicting cruel, inhumane, and degrading treatment, and even torture.²⁵⁷ The United States employs practices shunned by most of the world.²⁵⁸ The Bangkok Rules also reflect the acknowledgment that prison conditions can contribute to gender-based violence.²⁵⁹ This international acknowledgment of the inhumane and violent conditions of U.S. prisons is an important step in holding the United States accountable. Human rights organs and international organizations, however, continue to favor punishment and incarceration as a mechanism for addressing harm.²⁶⁰ For example, the UN’s Handbook for Legislation on Violence Against Women cautions against mandatory arrest policies yet argues for “pro-arrest and pro-prosecution” policies.²⁶¹

Furthermore, the United States’ and New York State’s imposition of long-term and even lifelong sentences is incompatible with human rights protections, including the right to human dignity, the prohibition of cruel, inhuman, and degrading punishments, the right to rehabilitation, and the right to life.²⁶² In the United States, one in fifteen women in prison, or about 7,000 women, face a life or “virtual life” sentence.²⁶³ In New York, approximately 198 women face sentences of 15 years or more, 199 face maximum life sentences, and 11 face life without parole (“LWOP”) for homicide.²⁶⁴ The “uncertainty of release” that accompanies those who face life imprisonment or long sentences inflicts a particularly painful type of harm.²⁶⁵ Socially isolated,

many who face these sentences describe them as virtual death sentences.²⁶⁶ Social death can compound the experience of isolation survivors endure because of their histories of abuse.²⁶⁷ Not only are women more likely to face longer sentences than men for killing their intimate partner,²⁶⁸ they are more likely to suffer mental health consequences from incarceration; one study reported six times as many women engaging in attempted suicide or self-harm as compared to men serving life sentences.²⁶⁹

LWOP sentences in particular deprive women of their right to hope and human dignity. Article 10(1) of the International Covenant on Civil and Political Rights demands humane treatment and “respect of the inherent dignity” of all persons deprived of their liberty; and article 10(3) explains that “reformation and social rehabilitation” should be the purpose of incarceration, highlighting the need for each person to have an opportunity to re-enter society, regardless of the severity of the offense.²⁷⁰ Those serving LWOP or other sentences that amount to death by incarceration are not even offered the pretense of a chance to heal and to re-enter society. As such, these sentences not only fail to address underlying contexts of survivor victimization by violence, they also violate the survivors’ dignity for the rest of their lives.

By subjecting survivors to further psychological suffering through prison and depriving them of an ability to heal, NYS compounds their harm through criminalization. New York is obligated to remedy the harm these survivors face, and instead it perpetually violates its human rights obligations. When the state punishes people who have survived GBV, it participates in and perpetuates what is often a lifelong cycle of violence.

IV. #FreeThemAll!

We have catalogued a series of human rights violations that culminated in survivors’ incarceration. Under human rights law, survivors are entitled to remedy for these violations. While there are a number of urgently needed reparations, the most pressing need is release from prison. In the immediate term, Governor Hochul must grant mass clemency (i.e., both commutations and pardons) to incarcerated survivors, including but not limited to the individuals named and discussed in this report. Their stories lift up systemic patterns: namely, how criminalization targets certain women, and women of color specifically, who have experienced racialized poverty and gender-based violence. Immediate commutations for all incarcerated survivors can guarantee their immediate release. After decades of enduring GBV from state and non-state actors, their healing

can only occur outside prison. Upon their release, we demand that NYS guarantee survivors' security by investing in their social and economic rights as human rights law requires them to do. Because past criminalization is also used by the state to exclude people from resources needed to secure their social and economic rights—and is also used to further criminalize them, such as through deportations of immigrant survivors—Governor Hochul must also pardon survivors to remove continuing harmful effects that flow from the conviction on their record.

Human rights organs have repeatedly reminded states that poverty and its far-reaching repercussions expose individuals to gender-based violence and intensify its harm. Gender-based violence in the absence of legal and material protections is both predictable and in violation of international law. Survivors' testimonies reveal how robust support, both material and psychological, would have helped shield them from the worst impact of interpersonal, state, and structural violence. It is state failure that set in motion their path to criminalization. We urge Governor Hochul to take notice and take action.

For the survivors we interviewed, the most immediately meaningful remedy is clemency for these chronic violations of their fundamental rights. Nothing less than immediate release will suffice. Historically, clemency has served as a corrective mechanism: it guarantees justice where “traditional safeguards” fail to render just results.²⁷¹ It is the prerequisite for any meaningful remedial process, and is required to remedy the incarceration of those whose criminalization is the product of the government's failure to ensure their personal safety, security, and dignity under international human rights law.

International law requires that victims of human rights violations receive comprehensive remedies that are adequate, effective, prompt and appropriate for the acts perpetrated and proportional to the harm suffered. The remedy must be comprehensive and must include guarantees of restitution, compensation, rehabilitation, satisfaction and non-repetition.²⁷² Further, reparation for “acts of violence against women must take account of the beneficiaries' specific needs and perspectives.”²⁷³ Appropriate remedies must not only provide restitution for a victim, but also rectify the situation.²⁷⁴ To make things right, the remedy should “bear in mind the context of structural discrimination in which the facts” of a case occur.²⁷⁵ Integral reparation means that the state must re-establish the person to their previous situation and eliminate the effects produced by their rights violations.²⁷⁶ The IACHR requires that states consider a two-fold approach to remedying their harms from a gendered perspective: first, “reparation is the

opportunity to give the victim security and justice, so that she regains her trust in the system and in society. . . .” and second, “[f]rom the victim’s standpoint, reparations represent the efforts that the State and society are making to remedy the harm she has suffered. There will also be a subjective element to the value and significance that a victim attaches to the measures of reparation, and it is the State’s duty to respect and appreciate that subjectivity in order to ensure reparations. This is why the victim’s participation is so important—her involvement forces the State to learn about her needs and her expectations of reparations.”²⁷⁷

Commutation (a sentence reduction) not only serves these elements of promptness, appropriateness, and effectiveness by immediately effectuating the release of a human rights victim from compounded harm through incarceration, but also takes into account that victim’s specific needs. Deprived of economic, mental, and bodily security throughout their lives, the immediate need of criminalized survivors is the opportunity to be free and safe. This is only possible through immediate release from prison. To return these survivors to their previous situation, New York State must begin with their release as a starting point.

Yet even after release, the harms that flow from the conviction will continue without a full and unconditional pardon, which serves to eliminate all legal consequences flowing from the conviction. While New York State cannot remove past harm caused to these survivors of gender-based violence, they can eliminate present harm and provide support to allow them to begin their recovery. International law further calls on states to take “specific temporary special measures to eliminate such multiple forms of discrimination against women and its compounded negative impact on them.”²⁷⁸ Upon their release, NYS is required to fully realize their right to economic security. Our report echoes what has been said for decades: our social safety net and economy has failed to deliver security and prosperity for most. Taking survivor’s needs seriously means simultaneously dismantling criminalization and investing in public institutions to generate the conditions for flourishing.

Immediate release is necessary but not sufficient to repair the harm NYS’s policies caused to criminalized survivors. The survivors featured in this report faced structural barriers to safety created by state policies. They could not access the cash, housing, or health care that could guarantee their own survival. They engaged in criminalized activity in a context of otherwise being abandoned or affirmatively harmed by state actors. So far, NYS has ignored the role it played. To correct for this, NYS must guarantee freedom, housing, income and health for survivors.

In light of New York State's failure to abide by its human rights obligations, we call on the governor to immediately grant mass clemency to criminalized survivors. The government must take responsibility for its failure to safeguard the human rights of its residents, particularly when these failures have led to the circumstances of its residents' incarceration. In ex-Governor Cuomo's own words, clemency may be the right tool to bolster "a more fair and a more empathetic New York."²⁷⁹ While ex-Governor Cuomo's inaction on clemency proved that his words were hollow, and while he made abundantly clear that survivors and their rights were far from a priority for him, Governor Hochul has the opportunity to begin remedying New York's abysmal legacy of failing survivors by taking immediate steps to Free Them All.

These demands for NY criminalized survivors' clemencies are just a step toward the broader vision that we will continue to organize for: freedom for all incarcerated people experiencing the gendered and racialized violence of criminalization, and access to the life-affirming structures and community supports needed to sustain nurturing relationships and transformative tools to prevent harm, and to address harm when it does occur.

Authors

Survived & Punished (S&P) New York is the New York affiliate of S&P. S&P is an abolitionist coalition of defense campaigns and grassroots groups committed to eradicating the prison industrial complex, specifically the criminalization of survivors of domestic and sexual violence and the culture of violence that contributes to it. The all-volunteer organization includes community organizers, survivor advocates, legal experts, and policy advocates, including currently and formerly incarcerated survivors.

The International Human Rights Clinic at Cornell Law School is a group of law professors and law students who are dedicated to advancing social justice through collaboration with partners in the U.S. and abroad. The clinic engages students in critical reflection about human rights work and progressive legal practice. Former Clinical Teaching Fellow Zohra Ahmed and Professor Sandra Babcock led the team of students who worked on this report. The students on the team were Gabriela Markolovic, Rosalind Major, Sophie Miller, Veronica Cinibulk and Victoria Pan.

The International Human Rights Clinic and S&P NY worked together on this report. The surveys and analysis were developed collaboratively. Throughout the document, the “we” used refers to the Clinic and S&P NY.

Endnotes

¹ Under international human rights law, GBV is “violence which is directed against a woman because she is a woman or that affects women disproportionately.” Committee on the Elimination of Discrimination Against Women, *General Recommendation No.35 on Gender-Based Violence Against Women*, U.N. Doc. CEDAW/C/GC/35, § 1 (2017) [hereinafter CEDAW, GR 35]. GBV includes domestic violence, defined as physical, sexual, psychological, and economic harm inflicted on a woman by a person in her home, such as her spouse. *Id.* Domestic violence can occur in the community or in the home. *Id.* at § 14.

² See BETH RICHIE, *ARRESTED JUSTICE: BLACK WOMEN, VIOLENCE, AND AMERICA’S PRISON NATION* (2012); ANDREA RITCHIE, *INVISIBLE NO MORE: POLICE VIOLENCE AGAINST BLACK WOMEN AND WOMEN OF COLOR* (2017).

³ Fabian Pfeffer & Alexandra Killewald, *Intergenerational wealth mobility and racial inequality*, *SOCIUS* 5 (2019); Rakesh Koshar and Richard Fry, *Wealth inequality has widened along racial, ethnic lines since end of Great Recession*, Pew Research Center (2014).

⁴ According to the ACLU, nearly 60% of people in women’s prison nationwide, and as many as 94% of some women’s prison populations, have a history of physical or sexual abuse before being incarcerated. *Prison Rape Elimination Act of 2003 (PREA)*, AM. CIV. LIBERTIES UNION (ACLU), <https://www.aclu.org/other/prison-rape-elimination-act-2003-prea?redirect=prisoners-rights-womens-rights/prison-rape-elimination-act-2003-prea>; Melissa E. Dichter & Sue Osthoff, *Women’s Experiences of Abuse as a Risk Factor for Incarceration: A Research Update*, NAT’L ONLINE RESOURCE CTR. ON VIOLENCE AGAINST WOMEN (2015), <https://vawnet.org/material/womens-experiences-abuse-risk-factor-incarceration-research-update>; BETH E. RICHIE, *COMPELLED TO CRIME: THE GENDER ENTRAPMENT OF BATTERED, BLACK WOMEN* (1996).

⁵ BETH RICHIE, *ARRESTED JUSTICE: BLACK WOMEN, VIOLENCE, AND AMERICA’S PRISON NATION* (2012).

⁶ Radya Iyengar, *Does the Certainty of Arrest Reduce Domestic Violence? Evidence from Mandatory and Recommended Arrest Laws*, 93 J. PUB. ECON. 85 (2009), doi:10.1016/j.jpubeco.2008.09.006; Lawrence William Sherman & Heather M. Harris, *Increased Death Rates of Domestic Violence Victims From Arresting Vs. Warning Suspects in the Milwaukee Domestic Violence Experiment (MilDVE)*, 11 J. EXP. CRIMINOL. 1–20 (2015), <https://doi.org/10.1007/s11292-014-9203-x>; Elizabeth Bernstein, *Carceral Politics as Gender Justice? The “Traffic in Women” and Neoliberal Circuits of Crime, Sex, and Rights*, 41 THEORY & SOC’Y 233–59 (2012); Mimi E. Kim, *From Carceral Feminism to Transformative Justice: Women-of-Color Feminism and Alternatives to Incarceration*, 27 J. ETHNIC & CULTURAL DIVERSITY SOC. WORK 219–33 (2018). Victoria Law, *Against Carceral Feminism*, JACOBIN MAG. (2014), <https://www.jacobinmag.com/2014/10/against-carceral-feminism/>.

⁷ For this report, we did not limit ourselves only to the treaties and conventions the United States has ratified. Furthermore, we place obligations on NYS and federal government, although only the latter is a signatory. For examples of human rights reports where state-level actors are the target of accountability, see WE CHARGE GENOCIDE, UN REPORT (2014), <http://report.wechargegenocide.org/>; NORTHEASTERN LAW: DOMESTIC VIOLENCE INSTITUTE & NORTHEASTERN LAW: PROGRAM ON HUMAN RIGHTS AND THE GLOBAL ECONOMY, *THE STATE OF HOUSING FOR DOMESTIC VIOLENCE VICTIMS IN BOSTON DURING THE COVID-19 PANDEMIC: AN ASSESSMENT OF BOSTON AS A HUMAN RIGHTS CITY* (2020), <https://lawprofessors.typepad.com/files/boston-human-rights-and-dv-report-final-1.pdf>; Claudia M. Flores, *New IHRC Report: In Largest US Cities, Police Use-of-Force Policies Fail to Meet Human Rights Standards*, U. CHICAGO: LAW SCHOOL, <https://www.law.uchicago.edu/news/new-ihrc-report-largest-us-cities-police-use-force-policies-fail-meet-human-rights-standards> (last visited June 30, 2021).

⁸ To uphold a person’s right to be free from GBV, states have the duty to first prevent and then address all violations of women’s rights. This is known as the due diligence principle, which governs states’ obligations with regard to human rights violations perpetrated by non-state actors. States’ due diligence obligation to prevent and respond to acts of violence against women are also specifically norms of customary international law. U.N. ECOSOC, *Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences*, U.N. Doc. E/CN.4/2006/61, §§ 29, 30 (2006). The due diligence principle requires states to respect, protect, and fulfil women’s human rights. The state *respects* women’s rights by not engaging in rights violations, *protects* women’s rights by taking reasonable steps to prevent domestic violence, and *fulfils* its obligations by responding adequately when violations against women occur. This means that states should not merely abstain from violating rights but must also adopt positive measures to protect human rights based on the specific needs of those affected. U.N. ECOSOC, *Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences*, U.N. Doc. E/CN.4/2006/61, §§ 19–29 (2006).

⁹ Mary E. Gilfus, *Women's Experiences of Abuse as a Risk Factor for Incarceration 2*, VAWA.NET (Dec. 2002), https://vawnet.org/sites/default/files/assets/files/2017-08/AR_Incarceration.pdf.

¹⁰ *Id.* at 1.

¹¹ Project NIA, Open Letter to the Anti-Rape Movement (2020), available at <https://issuu.com/projectnia/docs/letter-to-the-antirape-movement>.

¹² Joan Little: *Survived and Punished*, BARNARD CTR. FOR RESEARCH ON WOMEN, <https://bcw.barnard.edu/videos/joan-little-survived-and-punished/> (last visited June 30, 2021) (“After a five week trial, the jury, made up of both Black and white people, deliberated for less than 90 minutes before acquitting Little. It was the first time a woman was acquitted of murder on the grounds of self-defense against sexual violence.”); COLOR OF VIOLENCE: THE INCITE! ANTHOLOGY (INCITE: Women of Color Against Violence ed., 2006); Emily Thuma, *Lessons in Self-Defense: Gender Violence, Racial Criminalization, and Anticarceral Feminism*, 43 WOMEN'S STUD. Q. 52–71 (2015); DANIELLE MCGUIRE, AT THE DARK END OF THE STREET: BLACK WOMEN, RAPE, AND RESISTANCE—A NEW HISTORY OF THE CIVIL RIGHTS MOVEMENT FROM ROSA PARKS TO THE RISE OF BLACK POWER (2010).

¹³ INCITE!-Critical Resistance Statement: *Statement on Gender Violence and the Prison Industrial Complex*, INCITE! (2001), <https://incite-national.org/incite-critical-resistance-statement/> (last visited June 30, 2021).

¹⁴ *S&P Analysis & Vision*, SURVIVED & PUNISHED, <https://survivedandpunished.org/analysis/> (last visited June 30, 2021). Survived and Punished NY understands prisons and the prison industrial complex more broadly as primary purveyors of racialized gendered violence. Rape and others forms of sexual and gendered violence are endemic to those institutions, not outlying occurrences. Angela Davis, *How Gender Structures the Prison*, in ARE PRISONS OBSOLETE? 60–83 (2003). Yet, for the purposes of this report, we will focus on survivors who were incarcerated and criminalized as a result of the abuse they endured.

¹⁵ CEDAW, *GR 35*, *supra* note 1, at § 1, 14.

¹⁶ *Gender-Based Violence*, UNHCR: UN REFUGEE AGENCY, <https://www.unhcr.org/en-us/gender-based-violence.html> (last visited June 30, 2021).

¹⁷ U.N. HIGH COMM'R H.R., BORN FREE AND EQUAL: SEXUAL ORIENTATION AND GENDER IDENTITY IN INTERNATIONAL HUMAN RIGHTS LAW (2012), <https://www.ohchr.org/documents/publications/bornfreeandequalowres.pdf>.

¹⁸ SURVIVED & PUNISHED, 2020 ANNUAL REVIEW 12 (2020), <https://survivedandpunished.org/wp-content/uploads/2021/01/SP-2020-Annual-Review.pdf> [hereinafter SURVIVED & PUNISHED, 2020 ANNUAL REVIEW]; @Love & Protect, *Prison Is Abuse: Understanding Prisons, Abuse of Power, and Control*, YOUTUBE (June 30, 2020), <https://www.youtube.com/watch?v=nSF9VhxMorQ> [hereinafter @Love & Protect, *Prison Is Abuse*]; SURVIVED & PUNISHED N.Y., PRESERVING PUNISHMENT POWER: A GRASSROOTS ABOLITIONIST ASSESSMENT OF NEW YORK REFORMS (2019), <https://www.survivedandpunishedny.org/wp-content/uploads/2020/04/SP-Preserving-Punishment-Power-report.pdf> [hereinafter SURVIVED & PUNISHED N.Y., PRESERVING PUNISHMENT POWER].

¹⁹ BETH RICHIE, ARRESTED JUSTICE: BLACK WOMEN, VIOLENCE, AND AMERICA'S PRISON NATION (2012).

²⁰ ANDREA RITCHIE, INVISIBLE NO MORE: POLICE VIOLENCE AGAINST BLACK WOMEN AND WOMEN OF COLOR (2017).

²¹ Mariame Kaba, No Selves to Defend: The Legacy of Criminalizing Self-Defense and Survival, available at <https://noselves2defend.wordpress.com/>.

²² *International Human Rights Law*, U.N. OFF. HIGH COMM'R H.R., <https://www.ohchr.org/en/professionalinterest/pages/internationallaw.aspx> (last visited June 30, 2021).

²³ *Id.*

²⁴ *Id.*

²⁵ Inter-Am. Comm'n H.R. (IACHR), Report on Poverty and Human Rights in the Americas, ¶ 219, OEA/Ser.L/V/II.164, Doc. 147 (2017).

²⁶ *Id.* at 221.

²⁷ Martha McCluskey, *Constitutional Economic Justice: Structural Power for “We the People,”* 35 YALE L. & POL. REV. 271 (2016); Julie A. Nice, *No Scrutiny Whatsoever: Deconstitutionalization of Poverty Law, Dual Rules of Law, and Dialogic Default*, 35 FORDHAM URB. L.J. 629 (2008).

²⁸ G.A. Res. 60/147, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Dec. 16, 2005), <https://www.ohchr.org/en/professionalinterest/pages/remedyandreparation.aspx>.

²⁹ Inter-Am. Comm'n H.R. (IACHR), Access to Justice for Women Victims of Sexual Violence in Mesoamerica, ¶¶ 16, 134, OEA/Ser.L/V/II., Doc. 63 (Dec. 9, 2011), <https://www.oas.org/en/iachr/women/docs/pdf/women%20mesoamerica%20eng.pdf> [hereinafter IACHR, Access to Justice].

³⁰ Reparations are a form of redress for past wrongdoing, which seek to eliminate the ongoing effects of that past wrongdoing. See *Reparations Now Toolkit*, MOVEMENT FOR BLACK LIVES, <https://m4bl.org/wp-content/uploads/2020/05/Reparations-Now-Toolkit-FINAL.pdf> (last visited June 30, 2021).

³¹ Critical Resistance defines abolition of the Prison Industrial Complex (PIC) as “a political vision with the goal of eliminating imprisonment, policing, and surveillance and creating lasting alternatives to punishment and imprisonment. From where we are now, sometimes we can’t really imagine what abolition is going to look like. Abolition isn’t just about getting rid of buildings full of cages. It’s also about undoing the society we live in because the PIC both feeds on and maintains oppression and inequalities through punishment, violence, and controls millions of people. Because the PIC is not an isolated system, abolition is a broad strategy. An abolitionist vision means that we must build models today that can represent how we want to live in the future. It means developing practical strategies for taking small steps that move us toward making our dreams real and that lead us all to believe that things really could be different. It means living this vision in our daily lives.” *What Is the PIC? What Is Abolition?*, CRITICAL RESISTANCE, <http://criticalresistance.org/about/not-so-common-language/> (last visited June 30, 2021).

³² *Clemency & Parole: A Guide by Survived & Punished NY*, SURVIVED & PUNISHED, https://survivedandpunished.org/wp-content/uploads/2019/07/SP_ClemencyParoleGuide_Digital.pdf (last visited June 30, 2021).

³³ The Clinic submitted the surveys and research protocol to the Cornell University’s Institutional Review Board for Human Participant Research (IRB). The research did not require IRB compliance.

³⁴ We received five responses from individuals who are incarcerated outside of New York State or were not living in New York State prior to their incarceration.

³⁵ Interview responses here are based on notes taken by Cornell’s team members. The names appearing throughout the report are only shared with specific consent of the individual interviewed. The survey is included as an appendix to this report and the responses are discussed in the results section. We only interviewed individuals who were not represented by counsel or whose attorneys gave us consent to speak with them. Our interviews were limited to one hour. We interviewed two individuals twice. We then identified patterns in our findings, particularly common unmet needs also supported by the body of literature documenting the needs of survivors.

³⁶ One additional need was identified but not reported in this list because the respondents were not living in New York State prior to their incarceration or had life experiences outside of the scope of this project. One of these individuals mentioned that help with pet care would have allowed them to extract themselves from their abusive environment.

³⁷ This was related to but distinct from needing a better or safer living environment, which was another articulated need seen in our responses.

³⁸ Name changed to preserve anonymity.

³⁹ We use the terms welfare, cash assistance, and social insurance interchangeably in this report.

⁴⁰ Service providers throughout New York State echo exactly what Kassie observed: they spend an inordinate amount of time trying to navigate the bureaucracy to ensure they get reimbursed. The state-wide coalition against domestic violence is actively lobbying NYS to change how services are funded, to avoid precisely what Kassie experienced. *New York’s Method for Funding Critical Domestic Violence Services Is Antiquated, Unable to Support Increased Demand for Services during COVID-19: Major Reforms Are Needed to Ensure Domestic Violence Survivors Get the Services They Need, When They Need Them*, N.Y. ST. COAL. AGAINST DOMESTIC VIOLENCE (NYSCADV) (Jan. 2021), https://www.nyscadv.org/file_download/inline/131f1f27-c895-4897-88fa-5694ef628fa9 [hereinafter NYSCADV, *New York’s Antiquated Method*].

⁴¹ *People v. Ethel Mae Edwards*, Ind. No. 749N-14 & 1095N-14, Decision After Hearing Pursuant to CPL 440.47(2)(c) (Sup. Ct. Nassau Co. Sept. 2, 2021) (on file with author).

⁴² Unit on Econ. Soc. & Cultural Rts., Rep. on Poverty and Human Rights in the Americas, Inter-Am. Comm'n H.R., OEA/Ser.L/V/II.164 Doc. 147, ¶ 87 (Sept. 7, 2017), <https://www.oas.org/en/iachr/reports/pdfs/Poverty-HumanRights2017.pdf>.

⁴³ Comm. on the Elimination of Discrimination against Women (CEDAW), *General Recommendations*, U.N. OFF. HIGH COMM'R H.R. (Jan. 2014), <https://www.ohchr.org/en/hrbodies/cedaw/pages/recommendations.aspx>.

⁴⁴ A.T. v. Hungary, Comm. 2/2003, U.N. Doc. A/60/38, at 27, 9.6 (2005).

⁴⁵ G.A. Res. 61/143, Intensification of Efforts to Eliminate All Forms of Violence against Women (Dec. 19, 2006), https://www.un.org/womenwatch/daw/vaw/A_RES_61_143.pdf.

⁴⁶ “The Inter-American Court is one of three regional human rights tribunals, together with the European Court of Human Rights and the African Court of Human and Peoples’ Rights. It is an autonomous legal institution whose objective is to interpret and apply the American Convention. The Inter-American Court exercises a contentious function, in which it resolves contentious cases and supervises judgments; an advisory function; and a function wherein it can order provisional measures.” The United States has not ratified the American Convention. *What Is the I/A Court H.R.?*, INTER-AM. CT. H.R., https://www.corteidh.or.cr/que_es_la_corte.cfm?lang=en (last visited June 30, 2021).

⁴⁷ Villagrán Morales et al. v. Guatemala, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 63 (Nov. 19, 1999). *See also* U.N. Comm. on Econ., Soc. & Cultural Rights (CESCR), General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights (Art. 2, Para. 2 of the International Covenant on Economic, Social and Cultural Rights), ¶ 8, U.N. Doc. E/C.12/GC/20 (2009) (eliminating discrimination in practice requires “paying sufficient attention to groups of individuals which suffer historical or persistent prejudice instead of merely comparing the formal treatment of individuals in similar situations . . . For example, ensuring that all individuals have equal access to adequate housing, water and sanitation will help to overcome discrimination against women and girl children and persons living in informal settlements and rural areas.”) [hereinafter CESCR, General Comment No. 20].

⁴⁸ The Inter-American Commission on Human Rights is an organ of the Organization of American States (“OAS”). They undertake functions with a quasi-judicial dimension. They “receive denunciations of individuals or organizations relating to human rights violations, examine these petitions, and adjudicate cases.” There are seven independent members who serve in a personal capacity and hear petitions that raise human rights violations under the American Declaration, a treatise which the United States has signed and ratified. The Commission was created in 1959 and its headquarters are in Washington, D.C. INTER-AM. CT. H.R., *supra* note 44.

⁴⁹ Inter-Am. Comm'n H.R., Rep. on Poverty and Human Rights in the Americas, OEA/Ser.L/V/II.164, doc. 147 ¶ 184 (2017).

⁵⁰ U.N. Secretary-General, Extreme Poverty and Human Rights, ¶ 13, U.N. Doc. A/72/502 (Oct. 4, 2017), <https://undocs.org/A/72/502>.

⁵¹ *Id.* at ¶ 187. Jaime M. Grant et al., *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, NAT'L CTR. TRANSGENDER EQUALITY & NAT'L GAY & LESBIAN TASK FORCE (2011). Joss T. Greene, *Categorical Exclusions: How Racialized Gender Regulation Reproduces Reentry Hardship*, 66 SOC. PROBS. 139–63 (2019). Sandy E. James et al., *Report of the 2015 U.S. Transgender Survey*, NAT'L CTR. TRANSGENDER EQUALITY (2016).

⁵² Of course, survivors’ needs are not entirely separate from those of the general population. The poverty and exclusion they feel is not separate from what other low-income New Yorkers who are Black, Native American or Latinx—both are rooted in state policies that reproduce social relations under racial capitalism.

⁵³ *Id.*

⁵⁴ U.N. Comm. on Econ., Soc. & Cultural Rts., General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1 of the Covenant), ¶ 10, U.N. Doc. E/1991/23 (1990).

⁵⁵ The United States has signed but not ratified the Covenant, which means that although it not bound by the provisions, it must “refrain from acts which would defeat the object and purpose of [the] treaty...until it shall have made its intention clear not to become a party.”

⁵⁶ *How Rich is Each State?*, CHAMBER COM. (2020), <https://www.chamberofcommerce.org/how-rich-is-each-us-state/>.

⁵⁷ *Id.* at 4.

⁵⁸ Rob Galbraith, Gin Armstrong & Kevin Connor, *The Great Pandemic Wealth Divide: Billionaires Thrive in New York State as Working People Suffer*, PUB. ACCOUNTABILITY INITIATIVE (June 2, 2020), <https://public-accountability.org/report/the-great-pandemic-wealth-divide-billionaires-thrive-in-new-york-state-as-working-people-suffer/#:~:text=Since%202019%2C%20the%20number%20of,Lawrence%20Golub%2C%20and%20Wesley%20Edens.>

⁵⁹ CTRS. DISEASE CONTROL & PREVENTION (CDC), PREVENTING INTIMATE PARTNER VIOLENCE ACROSS THE LIFESPAN: A TECHNICAL PACKAGE OF PROGRAMS, POLICIES, AND PRACTICES 33 (2017), <https://www.cdc.gov/violenceprevention/pdf/ipv-technicalpackages.pdf>.

⁶⁰ In another study, 26.2% of women who participated in a prison study stated they wished they had access to counseling and mental health care prior to incarceration. See Adam J. Pritchard, Carol E. Jordan & Letonia Jones, *Qualitative Comparison of Battered Women's Perceptions of Service Needs and Barriers across Correctional and Shelter Contexts*, 41 CRIM. JUST. & BEHAV. 844 (2014).

⁶¹ Heather Douglas, *Domestic and Family Violence, Mental Health and Well-Being, and Legal Engagement*, 25 PSYCHIATRY PSYCHOL. L. 3 (2017).

⁶² *New Yorkers Struggle to Afford High Healthcare Costs; Support a Range of Government Solutions Across Party Lines*, ALTARIUM HEALTHCARE VALUE HUB (2019), <https://www.healthcarevaluehub.org/advocate-resources/publications/new-yorkers-struggle-afford-high-healthcare-costs-support-range-government-solutions-across-party-lines>.

⁶³ *Id.*

⁶⁴ *Health Insurance Coverage of the Total Population*, KAISER FAM. FOUND. (2019), <https://www.kff.org/other/state-indicator/total-population/?currentTimeframe=0&selectedRows=%7B%22states%22:%7B%22new-york%22:%7B%7D%7D%7D&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D> (last visited June 30, 2021).

⁶⁵ *Id.* at 11. 71.1% of those who could not afford it were uninsured, 42.4% were insured under Medicare, and 39.9% had private insurance policies.

⁶⁶ *Id.* at 29.

⁶⁷ N.Y. ST. OFF. OF MENTAL HEALTH, UNMET NEEDS ASSESSMENT REPORT: STATEWIDE ASSESSMENT OF TREATMENT GAPS FOR RACIAL/ETHNIC GROUPS IN NEED OF MENTAL HEALTH SERVICES 7–8 (2011), https://nyculturalcompetence.org/wp-content/uploads/2014/04/unmet_needs.pdf.

⁶⁸ *Id.* at 8.

⁶⁹ *Id.*

⁷⁰ *School Health Issue Brief: Addressing Unmet Healthcare Needs of New York City Youth*, CHILDREN'S DEF. FUND, https://www.cdfny.org/wp-content/uploads/sites/3/2019/02/Policy-Brief_Sep-2016-NY-1-final.pdf (last visited June 30, 2021).

⁷¹ *Id.*

⁷² Comm. on Econ. Soc. & Cultural Rts., General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), ¶ 12(b), U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000), <https://www.refworld.org/pdfid/4538838d0.pdf> [hereinafter CESCR, General Comment No. 14].

⁷³ *Id.*

⁷⁴ *Id.* at ¶ 19.

⁷⁵ Comm. on the Elimination of Discrimination against Women, Convention on the Elimination of All Forms of Discrimination against Women: General Recommendation No. 35 on Gender-Based Violence against Women, ¶ 31, U.N. Doc. CEDAW/C/GC/35 (July 26, 2017), <https://www.undocs.org/CEDAW/C/GC/35>.

⁷⁶ *Id.* at ¶ 11.

⁷⁷ U.N. Off. of the High Comm'r for H.R. (OHCHR), Fact Sheet No. 31: The Right to Health 17 (June 2008), <https://www.ohchr.org/documents/publications/factsheet31.pdf>.

⁷⁸ The United States has signed but not ratified the CRPD. See https://www.americanbar.org/advocacy/governmental_legislative_work/priorities_policy/promoting_international_rule_law/conventionontherightsofpersonswithdisabilities/.

⁷⁹ International Convention on the Rights of Persons with Disabilities, at Art. 4(2).

⁸⁰ *Id.* at Art. 1.

⁸¹ G.A. Res. 46/119, Principle 1 (Dec. 17, 1991).

⁸² International Convention on the Rights of Persons with Disabilities, at Art. 6.

⁸³ NYSCADV, *New York's Antiquated Method*, *supra* note 39, at 10. Amongst other things, the New York State Coalition Against Domestic Violence has called on New York State to allocate more funding to address survivors' needs, including their need for counseling. New York State relies on TANF grants to fund services for survivors, who come into contact with shelters. But TANF grants have lost 40% of their value since 1997. In 2018, New York State received its annual federal TANF grant in the amount of \$2.7 billion. NYS merely matched funds with \$2.7 billion, but it only spent less than 1% of the total TANF grant and matching funds "on programs related to health, mental health, substance abuse, disability services, housing counseling, family support, and DV. This was nearly \$15 million less than what NYS spent on these services in 2017."

⁸⁴ Joanne Pavao, *Intimate Partner Violence and Housing Instability*, 32 AM. J. PREVENTIVE MEDICINE 143 (2007), https://www.researchgate.net/publication/6569159_Intimate_Partner_Violence_and_Housing_Instability#pf4.

⁸⁵ 13th Annual Domestic Violence Counts Census – New York Report, Nat'l Network End Domestic Violence (June 2018), <https://nnev.org/resources-library/13th-annual-census-new-york-report/> [hereinafter 2018 N.Y. Domestic Violence Census].

⁸⁶ U.N. OFF. OF THE HIGH COMM'R FOR H.R. (OHCHR), WOMEN'S RIGHTS ARE HUMAN RIGHTS 66 (2015) [hereinafter OHCHR, WOMEN'S RIGHTS ARE HUMAN RIGHTS].

⁸⁷ *Id.* Housing is critical for providing safety for survivors for domestic violence; "survivors who can't maintain their housing are highly vulnerable to re-abuse."

⁸⁸ See *A.T. v. Hungary* (Committee on the Elimination of Discrimination against Women, Communication No. 2/2003, *views adopted* Jan. 26, 2005) ("[T]he Committee is concerned about the prevalence of violence against women and girls, including domestic violence. It is particularly concerned that no specific legislation has been enacted to combat domestic violence and sexual harassment and that no protection or exclusion orders or shelters exist for the immediate protection of women victims of domestic violence. Bearing this in mind, the Committee concludes that the obligations of the State party that are set out in article 2 (a), (b) and (e) of the Convention extend to the prevention of, and protection from violence against women and, in the instant case, remain unfulfilled and constitute a violation of the author's human rights and fundamental freedoms, particularly her right to security of person.").

⁸⁹ CESCR, General Comment No. 14, *supra* note 70, at ¶ 8.

⁹⁰ Human Rights Council Guidelines for the Implementation of the Right to Adequate Housing, U.N. Doc. A/HRC/43/43, Guideline No. 2, at 18 (Dec. 26, 2019).

⁹¹ The New York State Domestic Violence Prevention Act, passed in 1987, requires the state to provide emergency shelters and services for survivors of domestic violence.

⁹² N.Y. LAW §459-B (Consol. 1987). A 45-day extension is permitted when necessary, and a person can only request this extension up to two times. This brings the total length of stay permitted by New York State to 180 days.

⁹³ B. A06126 (N.Y. 2021).

⁹⁴ *Emergency Shelter*, WILLOW DOMESTIC VIOLENCE CTR., <https://willowcenterny.org/our-services/emergency-shelter/> (last visited June 30, 2021).

⁹⁵ OFF. FOR CHILD. & FAM. SERV., THE DOMESTIC VIOLENCE PREVENTION ACT: 2019 REPORT TO THE GOVERNOR AND LEGISLATURE (2019), <https://ocfs.ny.gov/main/reports/DVPA/2019-DV-Annual-Report.pdf>.

⁹⁶ OFF. FOR CHILD. & FAM. SERV., *supra* note 93.

⁹⁷ See Pritchard, Jordan & Jones, *supra* note 58, at 844.

⁹⁸ NYSCADV, *New York's Antiquated Method*, *supra* note 39, at 4.

⁹⁹ *Affordable Housing Search and Assistance Programs*, HOMES & COMMUNITY RENEWAL, <https://hcr.ny.gov/find-affordable-housing> (last visited June 30, 2021). In 2019, the State passed legislation to enhance rent stabilization for New Yorkers. HOMES & COMMUNITY RENEWAL, EMERGENCY TENANT PROTECTION ACT OF 1974: CHAPTER 576 LAWS OF 1974 AS LAST AMENDED (2019), <https://hcr.ny.gov/system/files/documents/2020/11/fact-sheet-08-09-2019.pdf>. In 2019, the New York State legislature under Governor Cuomo signed into effect the Housing Stability and Tenant Protection Act of 2019 ("HSTPA"), which expands rent stabilization. Rent stabilization generally covers

buildings built after 1947 and before 1974, and apartments removed from rent control. Rent stabilized tenants are entitled to receive required services, to have their leases renewed, and to be protected from eviction except on grounds allowed by law. HSTPA allows any locality in New York State to enact rent stabilization if the vacancy rate for the housing accommodations or a class of housing accommodations within such municipality is less than five percent, qualifying them to make a "declaration of emergency" under the original guidelines of ETPA. Rent increases under rent stabilization are overseen by local Rent Guidelines Boards overseen by the DCHR – one in NYC, Nassau, Westchester, and Rockland counties. These rates are set per year, and rent can only be increased 1) with the written consent of the tenant if the owner makes improvements to an apartment or increases services, 2) with DCHR approval if there are building-wide major improvements, 3) in cases of hardship with DCHR approval. Tenants whose rights have been unlawfully violated may make complaints to the DCHR, which has an obligation to investigate the owner. *See* Sess. L. 6458 (N.Y. 2019–2020).

¹⁰⁰ *See* Harold Baer, Jr., *Collateral Consequences of Conviction: A Reminder of Some Possible Civil Penalties*, N.Y. ST. BAR ASS'N 12 (2011), <https://nysba.org/app/uploads/2020/02/BaerCollateralConsequences-WEB.pdf>.

¹⁰¹ JOSEPH MARGULIES, THANKS FOR EVERYTHING (NOW GET OUT): CAN WE RESTORE NEIGHBORHOODS WITHOUT DESTROYING THEM (forthcoming 2021).

¹⁰² *Id.*

¹⁰³ DATA FOR PROGRESS, REPORT: A GREEN NEW DEAL FOR NEW YORK CITY HOUSING AUTHORITY (NYCHA) COMMUNITIES, <https://www.dataforprogress.org/green-new-deal-public-housing-nycha> (last updated Nov. 15, 2019).

¹⁰⁴ As Joseph Margulies distills it: “[i]n a neoliberal age, the United States will provide affordable homes only so long—and only if—someone in the private sector can profit by it. If there is no private profit, there is no low-cost housing. With very rare exceptions, private profit is the oxygen of U.S. housing policy.” Margulies, *supra* note 99.

¹⁰⁵ Margulies, *supra* note 99.

¹⁰⁶ *New York State Data Overview*, NAT’L LOW INCOME HOUSING COALITION, <https://nlihc.org/housing-needs-by-state/new-york>

¹⁰⁷ *New York Federal Rental Assistance Fact Sheet*, CTR. ON BUDGET & POLICY PRIORITIES (CBPP) (Apr. 3, 2019), <https://apps.cbpp.org/4-3-19hou/PDF/4-3-19hou-factsheet-ny.pdf>.

¹⁰⁸ Sean Illing, *The sordid history of housing discrimination in America: Keeanga-Yamahtta Taylor on how the real estate industry undermined black homeownership*. VOX (May 5, 2020); Deborah Wallace and Rodrick Wallace, *Benign Neglect and Planned Shrinkage*, VERSO (Mar. 25, 2017), <https://www.versobooks.com/blogs/3145-benign-neglect-and-planned-shrinkage>.

¹⁰⁹ *Id.* at 1.

¹¹⁰ INT’L HUM. RTS. COMM. OF THE N.Y.C. BAR ASS’N, ADVANCING THE RIGHT TO HOUSING IN THE UNITED STATES: USING INTERNATIONAL LAW AS A FOUNDATION 17 (2016), <https://www2.nycbar.org/pdf/report/uploads/20072632-AdvancingtheRighttoHousingIHR2122016final.pdf> [hereinafter NYC BAR ASS’N REPORT]. In 2006, the National Fair Housing Alliance estimated that there are 3.7 million fair housing violations based on race annually, though it also estimated that most go unreported. Out of the 9,354 housing complaints based on discrimination HUD and the National Fair Housing Alliance received in 2011, almost half were based on disability, an additional 35% based on race, and 11% on the basis of gender.

¹¹¹ OFF. OF THE N.Y. ST. COMPTROLLER, HOUSING AFFORDABILITY IN NEW YORK STATE (2019), <https://www.osc.state.ny.us/files/reports/special-topics/pdf/housing-affordability-2019.pdf>.

¹¹² *New York Federal Rental Assistance Fact Sheet*, CTR. ON BUDGET & POLICY PRIORITIES (CBPP) (Dec. 19, 2019), <https://www.cbpp.org/sites/default/files/atoms/files/12-10-19hou-factsheet-ny.pdf> [hereinafter CBPP].

¹¹³ N.Y. ST. COMPTROLLER, *supra* note 109.

¹¹⁴ *TANF Benefits Still Too Low to Help Families, Especially Black Families, Avoid Increased Hardship*, CTR. ON BUDGET & POL’Y PRIORITIES, <https://www.cbpp.org/research/family-income-support/tanf-benefits-still-too-low-to-help-families-especially-black> (last updated Oct. 8, 2020) [hereinafter *TANF Benefits Still Too Low*].

¹¹⁵ Oksana Mironova & Thomas J. Waters, *A Sudden Shock to an Overburdened System: NYC Housing and COVID 19*, CMTY. SERV. SOC’Y (April 6, 2020), <https://www.cssny.org/news/entry/nyc-housing-covid-19>.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ CBPP, *supra* note 110.

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- ¹¹⁹ *Our Current Affordable Housing Crisis*, N.Y.C. HOUSING, <https://www1.nyc.gov/site/housing/problem/problem.page> (last visited June 30, 2021).
- ¹²⁰ Stephen Levin & Nicole Branca, *We Must Take Steps Now to Help Domestic Violence Survivors*, GOTHAM GAZETTE (Dec. 9, 2020), <https://www.gothamgazette.com/opinion/9979-steps-now-help-nyc-domestic-violence-survivors-shelter-covid> (“One of the reasons for this is that the primary rental subsidies availability to domestic violence survivors and other homeless families are at a rate significantly below market value and nearly \$500 per month below what federal Section 8 pays, putting survivors at a significant disadvantage securing an apartment for their family.”); N.Y.C. HOUSING, *supra* note 117.
- ¹²¹ *CityFHEPS Frequently Asked Questions for Clients in the Community*, N.Y.C. DEP’T SOC. SERV. (Sept. 18, 2019), <https://www1.nyc.gov/assets/hra/downloads/pdf/cityfheps-documents/dss-7r-e.pdf>.
- ¹²² Nancy Wu, *The Historic Decline in Rents Hasn’t Helped NYC’s Essential Workers*, STREETEASY READS (Feb. 17, 2021), <https://streeteasy.com/blog/essential-workers-struggle-to-find-affordable-housing/>.
- ¹²³ Stefanos Chen, *Median Rents in N.Y.C. Have Dropped, But That’s Not Helping Essential Workers.*, N.Y. TIMES (Feb. 17, 2021), <https://www.nytimes.com/2021/02/17/world/median-rents-in-nyc-have-dropped-but-thats-not-helping-essential-workers.html>.
- ¹²⁴ Rosa Goldensohn, *Domestic Violence Victims Wait Up to a Decade for Emergency NYCHA Housing*, DNAINFO (Mar. 5, 2014), <https://www.dnainfo.com/new-york/20140305/morris-heights/domestic-violence-victims-wait-up-decade-for-emergency-nycha-housing/>.
- ¹²⁵ Greg B. Smith, *Domestic Abuse Victims Have Rough Time Seeking Public Housing on NYCHA’s Waiting List*, N.Y. DAILY NEWS (Oct. 14, 2014), <https://www.nydailynews.com/new-york/domestic-abuse-victims-tough-time-seeking-public-housing-nycha-article-1.1974644>; *Victims of Domestic Violence Priority for Public Housing Applicants*, N.Y.C. HOUSING AUTHORITY, <https://www1.nyc.gov/assets/nycha/downloads/pdf/victimdv.pdf>.
- ¹²⁶ Smith, *supra* note 123.
- ¹²⁷ Under N.Y. Real Prop. Act § 227-D, it is unlawful for a landlord or their equivalent to use a person’s real or perceived status as a victim of domestic violence to:
- A) refuse to sell, rent, lease, approve the sale, rental or lease or otherwise deny or withhold housing accommodations; to
 - B) discriminate in the terms, conditions, or privileges of the sale, rental or lease; or to
 - C) represent that such housing accommodation or an interest therein is not available when in fact it is available.
- ¹²⁸ N.Y. Real Prop. Law § 227-c; N.Y. Crim. Proc. §§ 530.12, 530.13; N.Y. Dom. Rel. § 240; N.Y. Family Ct. Act §§ 446, 656, 842, & 1056. *See* NAT’L HOUSING L. PROJECT, HOUSING RIGHTS OF DOMESTIC VIOLENCE SURVIVORS: A STATE AND LOCAL COMPENDIUM 292 (2017), <https://www.nhlp.org/wp-content/uploads/2018/07/2017-DV-State-and-Local-Housing-Laws-Compendium.pdf>.
- ¹²⁹ N.Y. Pub. Serv. Law § 91; N.Y. Gen. Bus. Law § 399-yy
- ¹³⁰ N.Y. Real Prop. Act § 744.
- ¹³¹ Pritchard, Jordan & Jones, *supra* note 58.
- ¹³² Women’s Rights Project, *Domestic Violence and Homelessness*, AM. CIV. LIBERTIES UNION, <https://www.aclu.org/sites/default/files/pdfs/dvhomelessness032106.pdf> (last visited June 30, 2021).
- ¹³³ Kristen M. Ross, *Eviction, Discrimination and Domestic Violence: Unfair Housing Practices Against Domestic Violence Survivor*, 18 HASTINGS WOMEN’S L.J. 249, 250 (2007).
- ¹³⁴ NAT’L ALLIANCE FOR SAFE HOUSING, THE INTERSECTION OF DOMESTIC & SEXUAL VIOLENCE AND HOMELESSNESS, https://www.nationalallianceforsafehousing.org/wp-content/uploads/2018/06/NOFA_DV-and-Homelessness-101-Presentation_June-6_2017.pdf (last accessed June 30, 2021).
- ¹³⁵ Pritchard, Jordan & Jones, *supra* note 58.
- ¹³⁶ *Housing Laws, Legal Information: New York*, WOMENSLAW.ORG, <https://www.womenslaw.org/laws/ny/housing-laws/breaking-lease>.
- ¹³⁷ *2018 N.Y. Domestic Violence Census*, *supra* note 84.
- ¹³⁸ NYC BAR ASS’N REPORT, *supra* note 108, at 17.
- ¹³⁹ U.N. Comm. on Economic, Social and Cultural Rights, General Comment No. 4: The Right to Adequate Housing (Art 11(1). to the Covenant), U.N. Doc. E/1992/23, ¶ 9 (Dec. 13, 1991) [hereinafter CESCR, General Comment No. 4].

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at ¶ 7.

¹⁴² U.N. Off. of the High Comm’r for Hum. Rts. (OHCHR), Fact Sheet No. 21: The Right to Adequate Housing (Rev. 1), at 3 (2014), https://www.ohchr.org/documents/publications/fs21_rev_1_housing_en.pdf [hereinafter OHCHR, The Right to Adequate Housing].

¹⁴³ *Id.*

¹⁴⁴ Hum. Rts. Council, Guidelines for the Implementation of the Right to Adequate Housing, U.N. Doc. A/HRC/43/43, Guideline No. 2, at 18 (Dec. 26, 2019).

¹⁴⁵ International Convention on the Elimination on all Forms of Racial Discrimination, art. 5(e)(iii), Sep. 28, 1966, 660 U.N.T.S. 6494.

¹⁴⁶ *See* Hum. Rts. Council, Guidelines for the Implementation of the Right to Adequate Housing, U.N. Doc. A/HRC/43/43, Guideline No. 12 (Dec. 26, 2019).

¹⁴⁷ OHCHR, *supra* note 140, at 6.

¹⁴⁸ *Id.* at 17.

¹⁴⁹ Hum. Rts. Council, Guidelines for the Implementation of the Right to Adequate Housing, U.N. Doc. A/HRC/43/43, Guideline No. 9 at 53(c)–(d) (Dec. 26, 2019).

¹⁵⁰ *Id.* at 53(d). The Guidelines also include having the perpetrator removed instead of the survivor, regardless of whether or not the individual needing help has title, formal ownership, or tenancy rights. S&P NY raises concern about this policy because it could entail more police, surveillance, and criminalization. Alternatively, community systems could intervene and support everyone involved.

¹⁵¹ *Article 19 – Living Independent and Being Included in the Community*, U.N. DEP’T ECON. & SOC. AFF, <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-19-living-independently-and-being-included-in-the-community.html/> (last visited June 30, 2021).

¹⁵² Convention on the Rights of the Child, Art. 27, Feb. 16, 1995, 1577 U.N.T.S. 27531.

¹⁵³ CESCR, General Comment No. 4, *supra* note 137.

¹⁵⁴ *Id.*

¹⁵⁵ CESCR, General Comment No. 20, *supra* note 39.

¹⁵⁶ Name changed to preserve anonymity.

¹⁵⁷ Name changed to preserve anonymity.

¹⁵⁸ Dorothy Roberts, *The Welfare Debate: Who Pays for Procreation*, in *KILLING THE BLACK BODY* (2012).

¹⁵⁹ FREEFROM, TRUST SURVIVORS: BUILDING AN EFFECTIVE AND INCLUSIVE CASH ASSISTANCE PROGRAM (March 2021), <https://static1.squarespace.com/static/56a24df4d8af10a5072bed7c/t/603d35cc7f891c50b5cbfafd/1614624338086/Trust+Survivors+Report>.

¹⁶⁰ OHCHR, WOMEN’S RIGHTS ARE HUMAN RIGHTS, *supra* note 83, at 72. “The right to social security, including social insurance, is also provided for in the International Covenant on Economic, Social and Cultural Rights (art. 9). According to the Committee’s General Comment No. 19 (2007) on the right to social security, social security is of central importance in guaranteeing human dignity for all persons, when they are faced with circumstances that deprive them of their capacity to fully realize their Covenant rights. The right to social security encompasses the right to access and maintain benefits without discrimination in order to secure protection, inter alia, from lack of work-related income caused by sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member, unaffordable health care or insufficient family support, particularly for children and adult dependents.”

¹⁶¹ We do not discuss the Earned Income Tax Credit.

¹⁶² *Apply for SNAP*, N.Y. ST., <https://www.ny.gov/services/apply-snap> (last visited June 30, 2021). SNAP may not be used on products like soap, toilet paper, household supplies, or hot food.

¹⁶³ Letter from Jeffrey Gaskell, Deputy Commissioner, Employment and Income Supports Programs, to Subscribers (June 1, 2020), <https://otda.ny.gov/policy/gis/2020/20DC010.pdf>.

¹⁶⁴ SNA provides benefits to households without dependent children or those who reach their five-year federal time limit for receipt of benefits under TANF, but continue to need assistance. *Temporary Assistance*, N.Y. ST.: OFF. TEMP. DISABILITY ASSISTANCE, <https://otda.ny.gov/programs/temporary-assistance/> (last visited June 30, 2021).

¹⁶⁵ U.S. Gov't Accountability Off., Rep. to the Ranking Member, Committee on the Budget, U.S. Senate, *Federal Social Safety Net Programs: Millions of Full-Time Workers Rely on Federal Health Care and Food Assistance Programs* (Oct. 2020), <https://www.gao.gov/assets/gao-21-45.pdf> finds that millions of American adults who earn low wages rely on federal programs to meet basic needs, such as Medicaid for health care and the Supplemental Nutrition Assistance Program for food. Companies including Walmart and McDonald's employed the most workers whose income is subsidized by taxpayers; Katherine A. Moos, *Neoliberal Redistributive Policy: The US Net Social Wage in the 21st Century*, 51 REV. RADICAL POL. ECON. 581–605 (2019); Sylvia Allegretto et al., *Fast Food, Poverty Wages The Public Cost of Low-Wage Jobs in the Fast-Food Industry*, UC BERKELEY LABOR CTR. (Oct. 15, 2013), https://laborcenter.berkeley.edu/pdf/2013/fast_food_poverty_wages.pdf.

¹⁶⁶ Marcus Lu, *Is the American Dream Over? Here's What the Data Says*, WORLD ECON. F. (Sept. 2, 2020), <https://www.weforum.org/agenda/2020/09/social-mobility-upwards-decline-usa-us-america-economics/>.

¹⁶⁷ *TANF Benefits Still Too Low*, *supra* note 112.

¹⁶⁸ *Id.*

¹⁶⁹ Kiana Davis et al., *The Bureaucracy of Benefits: Struggling to Access Public Assistance and SNAP in New York City*, URB. JUST. CTR. SAFETY NET PROJECT 19 (January 2019), <https://snp.urbanjustice.org/wp-content/uploads/sites/12/2019/09/Bureaucracy-of-Benefits.pdf>.

¹⁷⁰ *TANF Benefits Still Too Low*, *supra* note 112.

¹⁷¹ The process of calculating how much an applicant can expect to receive, known as budgeting, is extremely complicated. There are multiple eligibility requirements a person has to meet. These include the Standard of Need Test, the Net Income Test, and Gross Income Test. These are complicated tests often requiring the assistance of an advocate or someone specially trained in applying for public benefits.

¹⁷² *A New Paradigm for Welfare Reform: The Need for Civil Rights Enforcement*, U.S. COMM'N C.R. (Aug. 2002), <https://www.usccr.gov/pubs/prwora/welfare.htm>. Kiana Davis et al., *supra* note 159, at 19.

¹⁷³ U.S. COMM'N C.R., *supra* note 162.

¹⁷⁴ Kiana Davis et al., *supra* note 159, at 19.

¹⁷⁵ *Apply for SNAP*, *supra* note 152.

¹⁷⁶ *Social Services Information for Domestic Violence Victims*, OFF. PREVENTION DOMESTIC VIOLENCE, <https://opdv.ny.gov/help/socservices-help/section2.html> (last visited June 30, 2021).

¹⁷⁷ *Id.*

¹⁷⁸ CTR. URB. PEDAGOGY, YOUR GUIDE TO WELFARE IN NYC (2014), <https://snp.urbanjustice.org/wp-content/uploads/sites/12/2019/10/snp-your-guide-nyc-welfare.pdf> [hereinafter GUIDE TO WELFARE IN NYC]; *Public Assistance Work Requirement*, NYC311 <https://portal.311.nyc.gov/article/?kanumber=KA-02941> (last visited June 30, 2021).

¹⁷⁹ LAURA BRIGGS, HOW ALL POLITICS BECAME REPRODUCTIVE POLITICS 49 (2018).

¹⁸⁰ Human Rights Council, *Rep. of the Special Rapporteur on Extreme Poverty and Human Rights on His Mission to the United States*, ¶ 32, U.N. Doc. A/HRC/38/33/Add.1 (May 4, 2018), <https://undocs.org/A/HRC/38/33/Add.1> [hereinafter HRC, *Rep. of the Special Rapporteur*]; *TANF Benefits Still Too Low*, *supra* note 112.

¹⁸¹ HRC, *Rep. of the Special Rapporteur*, *supra* note 178.

¹⁸² CTR. FOR THE STUDY OF SOC. POL'Y, THE RACIST ROOTS OF WORK REQUIREMENTS (2020), <https://cssp.org/wp-content/uploads/2020/02/Racist-Roots-of-Work-Requirements-CSSP-1.pdf>.

¹⁸³ U.S. COMM'N C.R., *supra* note 162.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ NAT'L RESOURCE CTR. ON DOMESTIC VIOLENCE & CTR. ON POVERTY & INEQ., ECON. SEC. & OPPORTUNITY INITIATIVE, THE DIFFERENCE BETWEEN SURVIVING AND NOT SURVIVING: PUBLIC BENEFITS PROGRAMS AND DOMESTIC AND SEXUAL VIOLENCE VICTIMS' ECONOMIC SECURITY (2018), https://vawnet.org/sites/default/files/assets/files/2018-01/TheDifferenceBetweenSurvivingandNotSurviving_Jan2018.pdf [hereinafter THE DIFFERENCE BETWEEN SURVIVING AND NOT SURVIVING].

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

189 *Id.*

190 *Id.*

191 THE DIFFERENCE BETWEEN SURVIVING AND NOT SURVIVING, *supra* note 174.

192 *Public Assistance and Child Support*, LEGAL ASSISTANCE WESTERN N.Y., <https://www.lawny.org/node/36/public-assistance-and-child-support> (last visited June 30, 2021).

193 GUIDE TO WELFARE IN NYC, *supra* note 168, at 4.

194 U.S. COMM’N C.R., *supra* note 162.

195 Kiana Davis et al., *supra* note 159, at 15.

196 Report on Poverty and Human Rights in the Americas, Inter-Am. Comm’n H.R., OEA/Ser.L/V/II.164, doc. 147 ¶ 34 (2017).

197 *Id.* See also G.A. Res. 2200A (XXI), International Covenant on Economic, Social and Cultural Rights, Art. 9 (Dec. 16, 1966) (“The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.”). We can find support for anti-poverty measures in the right to development, which demands that states ensure “equality of opportunity for all equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income.”

198 U.N. Comm. on Econ., Soc. & Cultural Rts. (CESCR), General Comment No. 19: The Right to Social Security (Art. 9 of the Covenant), ¶¶ 24, 35, E/C.12/GC/19 (Feb. 4, 2008), <https://www.refworld.org/docid/47b17b5b39c.html>.

199 *Id.* at ¶ 9.

200 *Id.* at ¶¶ 24, 35.

201 HRC, *Rep. of the Special Rapporteur*, *supra* note 178; *TANF Benefits Still Too Low*, *supra* note 112.

202 CESCR, *The Right to Social Security*, *supra* note 196, at ¶ 65.

203 Philip Alston (Special Rapporteur on Extreme Poverty), *Report of the Special Rapporteur on Extreme Poverty and Human Rights on His Mission to the United States of America* 12, U.N. Doc. A/HRC/38/33 Add.1 (May 4, 2018) [hereinafter Alston, *Extreme Poverty in America Report*].

204 *Id.* at 17.

205 *Id.* at ¶ 75.

206 *Id.* at ¶ 96.

207 Jessica Lenahan (Gonzalez et al. v. United States, Case 12.626, Inter-Am. Comm’n H.R., Report No. 80/11, OEA (2011), <https://www.oas.org/en/iachr/decisions/2011/USPU12626EN.doc>:

Lenahan: In the same vein, the international and regional systems have pronounced on the strong link between discrimination, violence and due diligence, emphasizing that a State’s failure to act with due diligence to protect women from violence constitutes a form of discrimination, and denies women their right to equality before the law.

119. Furthermore, the Commission notes that both the universal system of human rights and the inter-American system of human rights – referring to the International Covenant on Civil and Political Rights, the American Convention, and other international instruments - have underscored that the duty of the State to implement human rights obligations in practice can extend to the prevention and response to the acts of private actors. See, e.g. Human Rights Committee, General Comment No. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add. 13, May 26, 2004; I/A Court H.R., Velásquez Rodríguez Case, Judgment of July 29, 1988, Series C No. 4.

120. The obligations established in Article II extend to the prevention and eradication of violence against women, as a crucial component of the State’s duty to eliminate both direct and indirect forms of discrimination

126. The evolving law and practice related to the application of the due diligence standard in cases of violence against women highlights in particular four principles. First, international bodies have consistently established that a State may incur international responsibility for failing to act with due diligence to prevent, investigate, sanction and offer reparations for acts of violence against women; a duty which may apply to actions committed by private actors in certain circumstances. Second, they underscore the link between discrimination, violence against women and due diligence, highlighting that the States’ duty to address violence against women also involves measures to prevent and respond to the discrimination that perpetuates this problem. States must adopt the required measures to modify the social and cultural patterns of conduct of men and women and to eliminate prejudices, customary practices and other practices based

on the idea of the inferiority or superiority of either of the sexes, and on stereotyped roles for men and women.

127. Third, they emphasize the link between the duty to act with due diligence and the obligation of States to guarantee access to adequate and effective judicial remedies for victims and their family members when they suffer acts of violence. Fourth, the international and regional systems have identified certain groups of women as being at particular risk for acts of violence due to having been subjected to discrimination based on more than one factor, among these girl-children, and women pertaining to ethnic, racial, and minority groups; a factor which must be considered by States in the adoption of measures to prevent all forms of violence.

Opuz v. Turkey, Eur. Ct. H.R. (App. No. 33401/02) at ¶¶ 132, 134 (2009). The European Court has considered the obligation to protect as one of reasonable means, and not results, holding the State responsible when it failed to take reasonable measures that had a real prospect of altering the outcome or mitigating the harm.

²⁰⁸ Name changed to preserve anonymity.

²⁰⁹ Name changed to preserve anonymity.

²¹⁰ Dorothy Roberts, *The Welfare Debate: Who Pays for Procreation*, in *KILLING THE BLACK BODY* (2012).

²¹¹ Rachel Black, Aleta Sprague, and New America Weekly, *The 'Welfare Queen' Is a Lie*, *The Atlantic* (Sept. 28, 2016), <https://www.theatlantic.com/business/archive/2016/09/welfare-queen-myth/501470/>.

²¹² DOROTHY ROBERTS, *SHATTERED BONDS: THE COLOR OF CHILD WELFARE* (2002).

²¹³ See also Senate Passes Domestic Violence Legislation, N.Y. ST. SENATE (June 12, 2012), <https://www.nysenate.gov/newsroom/press-releases/senate-passes-domestic-violence-legislation>; Sonia Ossorio and Gloria Steinem, *The DA Candidate Women Should Support*, *NY Daily News* (June 9, 2021), <https://www.nydailynews.com/opinion/ny-oped-the-da-candidate-women-should-support-20210609-xifjlldrbfsgsno5jo76nxfwb3u-story.html>.

²¹⁴ *What is "Mandatory Arrest" for Domestic Violence*, OFF. PREVENTION DOMESTIC VIOLENCE, <https://opdv.ny.gov/help/fss/part22.html> (last visited June 30, 2021).

²¹⁵ Leigh Goodmark, *Mandatory Domestic Violence Prosecution May Traumatize Victims*, *BALTIMORE SUN* (2015), <https://www.baltimoresun.com/opinion/op-ed/bs-ed-dv-judge-20151017-story.html>.

²¹⁶ *Mandatory Arrest Laws May Hurt Domestic Violence Victims*, U. AKRON: U. COMMS. & MARKETING (Mar. 26, 2015), <https://www.uakron.edu/im/news/mandatory-arrest-laws-may-hurt-domestic-violence-victims>.

²¹⁷ *Id.*; Jennifer Toth, *New Study of Domestic Violence Finds Mandatory Arrests Backfire*, *LA Times* (Dec. 18, 1991), <https://www.latimes.com/archives/la-xpm-1991-12-18-mn-561-story.html>.

²¹⁸ Alesha Durfee & Leigh Goodmark, *Domestic Violence Mandatory Arrest Policies and Arrests for Same-Sex and Opposite Sex Intimate Partner Violence after Legalization of Same-Sex Marriage in the United States*, 33 *CRIM. JUST. STUD.* 231 (2020)

²¹⁹ Carrie Lippy et al., *The Impact of Mandatory Reporting Laws on Survivors of Intimate Partner Violence: Intersectionality, Help-Seeking and the Need for Change*, 35 *J. FAM. VIOLENCE* 255–267 (2020), <https://doi.org/10.1007/s10896-019-00103-w>. There is no mandatory reporting for adult domestic violence.

Information for Professionals, N.Y. ST. OFF. PREVENTION DOMESTIC VIOLENCE, <https://opdv.ny.gov/professionals/health/laws.html> (last visited June 30, 2021). There is mandatory reporting for child abuse and maltreatment. Social workers are included in the list of people who are mandatory reporters. *Summary Guide for Mandated Reporters in New York State*, N.Y. ST. OFF. CHILD. & FAM. SERV., <https://ocfs.ny.gov/publications/Pub1159/OCFS-Pub1159.pdf> (last visited June 30, 2021).

²²⁰ *Crime Victim Assistance Program*, SAFE HORIZON, <https://www.safehorizon.org/our-services/information-and-options/crime-victim-assistance-program/> (last visited June 30, 2021).

²²¹ See *id.* Safe Horizon partners with the New York Police Department, a collaboration supported by the NYC Mayor's office. *Id.* This partnership is geared towards bettering the police's response to domestic violence. *Id.* Victim advocates trained by Safe Horizon are placed in every police precinct in New York City. *Id.* These advocates conduct home visits along with police officers. *Id.* Safe Horizon further encourages survivors to engage with the criminal legal system through the Domestic Violence Law Project. See *Domestic Violence Law Project*, SAFE HORIZON, <https://www.safehorizon.org/our-services/legal-and-court-help/domestic-violence-law-project/> (last visited June 30, 2021). Through the Domestic Violence Law Project, Safe Horizon assists survivors in child custody claims, divorce proceedings, and seeking orders of protection. *Id.* These resources require the survivor to engage with the criminal legal system.

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- 222 It is unclear whether this violates state law.
- 223 *New York State's Response to Domestic Violence: Systems and Services Making a Difference*, OFF. PREVENTION DOMESTIC VIOLENCE, https://opdv.ny.gov/whatisdv/about_dv/nyresponse/index.html (last visited June 30, 2021).
- 224 *Id.*
- 225 See *supra* notes 122–29 and accompanying text.
- 226 *Victim Compensation*, OFF. VICTIM SERVICES, <https://ovs.ny.gov/victim-compensation> (last visited June 30, 2021).
- 227 *Id.*
- 228 COMMON JUST. & VERA INST. OF JUST., *ACCOUNTING FOR VIOLENCE: HOW TO INCREASE SAFETY AND BREAK OUR FAILED RELIANCE ON MASS INCARCERATION* (2017), <https://d3n8a8pro7vhm.cloudfront.net/commonjustice/pages/445/attachments/original/1608142349/accounting-for-violence.pdf?1608142349>.
- 229 *Distribution of State Expenditures in Millions*, KAISER FAM. FOUND., <https://www.kff.org/other/state-indicator/distribution-of-state-spending/?dataView=0¤tTimeframe=0&selectedDistributions=public-assistance--medicaid--corrections&selectedRows=%7B%22states%22:%7B%22new-york%22:%7B%7D%7D%7D&sortModel=%7B%22colId%22:%22Corrections%22,%22sort%22:%22desc%22%7D> (last visited June 30, 2021).
- 230 Council of the City of N.Y., *Report to the Committee on Finance and the Committee on Criminal Justice on the Fiscal 2020 Executive Plan, the Ten-Year Capital Strategy for Fiscal 2020-2029, and Fiscal 2020 Executive Capital Commitment Plan: Department of Correction*, N.Y.C. COUNCIL (May 9, 2019), <https://council.nyc.gov/budget/wp-content/uploads/sites/54/2019/05/DOC.pdf>.
- 231 Council of the City of N.Y., *Report to the Committee on Finance and the Committee on Public Safety on the Fiscal 2020 Executive Plan, the Ten-Year Capital Strategy for Fiscal 2020-2029, and Fiscal 2020 Executive Capital Commitment Plan: New York Police Department*, N.Y.C. COUNCIL (May 15, 2019), <https://council.nyc.gov/budget/wp-content/uploads/sites/54/2019/05/NYPD.pdf>.
- 232 Council of the City of N.Y., *Report to the Committee on Finance and the Committee on Hospitals the Fiscal 2020 Executive Plan, the Ten-Year Strategy for Fiscal 2020-2029, and Fiscal 2020 Executive Capital Commitment Plan: New York City Health and Hospitals*, N.Y.C. COUNCIL (May 9, 2019), <https://council.nyc.gov/budget/wp-content/uploads/sites/54/2019/05/HH.pdf>.
- 233 OPDV presentation to Cornell International Human Rights Clinic, March 2021.
- 234 ANDREA RITCHIE, *INVISIBLE NO MORE: POLICE VIOLENCE AGAINST BLACK WOMEN AND WOMEN OF COLOR* (2017).
- 235 Mayor's Office Project to End Domestic and Gender-Based Violence, *The Intersection of Domestic Violence, Race/Ethnicity and Sex* (2021), <https://www1.nyc.gov/assets/ocdv/downloads/pdf/ENDGBV-Intersection-DV-Race-ethnicity-Sex.pdf>.
- 236 *Research Confirms that Black Girls Feel the Sting of Adulthood Bias Identified in Early Georgetown Law Study*, GEO. L. (May 15, 2019), <https://www.law.georgetown.edu/news/research-confirms-that-black-girls-feel-the-sting-of-adulthood-bias-identified-in-earlier-georgetown-law-study/>.
- 237 See, e.g., Michael German, *Hidden in Plain Sight: Racism, White Supremacy, and Far-Right Militancy in Law Enforcement*, Brennan Center (2020); Asha Amin, *Implicit Bias in the Courtroom and the Need for Reform*, 30 Geo. J. Legal Ethics 575 (2017); Julia Angwin, Jeff Larson, Surya Mattu and Lauren Kirchner, *Machine Bias: There's software used across the country to predict future criminals. And it's biased against blacks*, ProPublica (May 23, 2016); Debra Lyn Bassett, *Deconstruct and Superstruct: Examining Bias Across the Legal System*, 46 U.C. Davis L. Rev. 1563 (2013); Bryan A. Stevenson and Ruth Friedman, *Deliberate Indifference: Judicial Tolerance of Racial Bias in Criminal Justice*, 51 Wash. & Lee L. Rev. 509 (1994).
- 238 LEIGH GOODMARK, *DECRIMINALIZING DOMESTIC VIOLENCE: A BALANCED POLICY APPROACH TO INTIMATE PARTNER VIOLENCE* (2018).
- 239 *Id.*
- 240 COMMON JUSTICE & VERA INST. OF JUST., *supra* note 226, at 11.
- 241 *Id.*
- 242 The New York State Legislature has begun to notice this byproduct and has begun thinking through how to address parts of the byproduct effects in sentencing and resentencing. For example, addressing the ways in which

sentencing procedures often ignore understanding the ways in which domestic violence can contribute to a criminal offense, the Legislature passed the DVSJA in 2019. In the press release following the passage of the DVSJA, Senator Persaud and Assemblyman Aubry, the Bill’s sponsors in the Senate and Assembly, and Governor Cuomo directly referenced the ways in which domestic violence is ignored in the penal law governing sentencing in the state. *See* Press Release, Andrew M. Cuomo, Governor, New York, *Governor Cuomo Signs Domestic Violence Survivors Justice Act* (May 14, 2019), <https://www.governor.ny.gov/news/governor-cuomo-signs-domestic-violence-survivors-justice-act>.

²⁴³ Roxanne J. Persaud, *Domestic Violence Survivor's Justice Act, Longtime Bill Sponsored by Senator Persaud, Passes Senate*, N.Y. ST. SENATE (Mar. 12, 2019).

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ *Preserving Punishment: A Grassroots Abolitionist Assessment of New York Reforms* 11, SURVIVED & PUNISHED, <https://www.survivedandpunishedny.org/wp-content/uploads/2020/04/SP-Preserving-Punishment-Power-report.pdf> (last visited June 30, 2021).

²⁴⁷ *Id.* at 12.

²⁴⁸ G.A. Res. 61/143, ¶ 3 (Dec. 19, 2006), https://www.un.org/womenwatch/daw/vaw/A_RES_61_143.pdf.

²⁴⁹ SURVIVED & PUNISHED, 2020 ANNUAL REVIEW, *supra* note 18; @Love & Protect, *Prison Is Abuse*, *supra* note 15; SURVIVED & PUNISHED N.Y., PRESERVING PUNISHMENT POWER, *supra* note 18.

²⁵⁰ SURVIVED & PUNISHED, 2020 ANNUAL REVIEW, *supra* note 18, at 12.

²⁵¹ Goodmark, *supra* note 213.

²⁵² @Love & Protect, *Prison Is Abuse*, *supra* note 18.

²⁵³ GOODMARK, *supra* note 236.

²⁵⁴ DOROTHY ROBERTS, SHATTERED BONDS: THE COLOR OF CHILD WELFARE 14 (2002) (“Efforts to develop a system rooted in a social vision of child welfare were squelched by the 1970s. In an attempt to secure bipartisan support for government spending on poor children, liberals such as Senator Walter Mondale abandoned their focus on poverty’s harms to children . . . Instead, Congress launched a campaign against the national problem of child abuse with the passage of the Child Abuse Prevention and Treatment Act in 1974. The government promoted, and the public came to accept, a medical model of child abuse—‘a distinguishable pathological agent attacking the individual or family that could be treated in a prescribed manner and would disappear.’”). *Id.* at 18 (“When children are seized from helpless parents by more powerful government agents, it creates a sense of vulnerability and betrayal in children, who rely on their parents to keep them safe. It is doubly traumatic to then be dropped unexpectedly into the care of a strange adult. This is true even in the best of foster homes, never mind what befalls children in the hands of uncaring or abusive foster parents. The emotional damage increases with the length of time children spend separated from their families and with the number of moves they are required to make.”). *Id.* at 53 (“Given the evidence that Black families do not have a higher incidence of child maltreatment, the sheer enormity of the racial difference in child welfare involvement is strong evidence of racial bias.”).

²⁵⁵ Hajar Habbach, Kathryn Hampton & Ranit Mishori, “*You Will Never See Your Child Again*”: *The Persistent Psychological Effects of Family Separation*, PHYSICIANS HUM. RTS. (Feb. 25, 2020), <https://phr.org/our-work/resources/you-will-never-see-your-child-again-the-persistent-psychological-effects-of-family-separation/>.

²⁵⁶ Faith Summersett Williams et al., *Can the Development of Protective Factors Help Disrupt the Foster Care-to-Prison Pipeline? An Examination of the Association between Justice System Involvement and the Development of Youth Protective Factors*, 15 J. PUB. CHILD WELFARE 223, 223 (2021) (“Studies estimate that as high as 30% of youth in the child welfare system are also involved in the juvenile justice system”).

²⁵⁷ Nils Melzer, *United States: Prolonged solitary confinement amounts to psychological torture, says UN expert*, United Nations (Feb. 28, 2020), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25633>; G.A. Res. 70/175, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) ¶ 43 (Dec. 17, 2015); Juan E. Méndez (Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment), Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, ¶ 65, U.N. Doc. A/66/268 (Aug. 5, 2011).

²⁵⁸ Leigh Goodmark, *Reimagining VAWA: Why Criminalization Is a Failed Policy and What a Non-Carceral VAWA Could Look Like*, 27 VIOLENCE AGAINST WOMEN 84, 84–101 (2021).

²⁵⁹ For example, Rule 31 requires “[c]lear policies and regulations on the conduct of prison staff aimed at providing maximum protection for women prisoners from any gender-based physical or verbal violence, abuse and sexual harassment shall be developed and implemented.” U.N. OFF. DRUGS & CRIME, THE BANGKOK RULES: UNITED NATIONS RULES FOR THE TREATMENT OF WOMEN PRISONERS AND NON-CUSTODIAL MEASURES FOR WOMEN OFFENDERS WITH THEIR COMMENTARY (2015),

https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf.

²⁶⁰ See, e.g., Isobel Renzulli, *Prison Abolition: International Human Rights Law Perspectives*, INT’L J. HUM. RTS. (2021); *Human Rights and Gender*, U.N. & RULE L., <https://www.un.org/ruleoflaw/thematic-areas/human-rights-and-gender/> (last visited June 30, 2021); *Gender Based Violence and Human Rights*, COUNCIL EUR., <https://www.coe.int/en/web/gender-matters/gender-based-violence-and-human-rights> (last visited June 30, 2021); *The Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence*, COUNCIL EUR., <https://www.coe.int/en/web/gender-matters/council-of-europe-convention-on-preventing-and-combating-violence-against-women-and-domestic-violence> (last visited May 7, 2021); U.N. HIGH COMM’R H.R., HUMAN RIGHTS AND PRISONS: MANUAL ON HUMAN RIGHTS TRAINING FOR PRISON OFFICIALS (2005).

²⁶¹ U.N. WOMEN, HANDBOOK FOR LEGISLATION ON VIOLENCE AGAINST WOMEN 37–38 (2010).

²⁶² See generally Gauthier de Beco, *Life Sentences and Human Dignity*, 9 INT’L J. H.R. 411 (2005). Article 10 of the ICCPR provides not only that “[a]ll persons deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human person”, but also that the “essential aim” of the penitentiary system “shall be [the individual’s] reformation and social rehabilitation.” International Convention on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171. The United Nations General Assembly also set forth general tenets protecting the prisoners’ “inherent dignity and value as human beings” and fostering treatment measures that (i) “ensure for the prisoner a gradual return to life in society”; (ii) “emphasize not [the prisoners’] exclusion from the community, but their continuing part in it”; and (iii) adequately provide for the “individualization of treatment.” G.A. Res. 70/175, §§ 8 & 27 (Dec. 17, 2015); see also

Vinter and Others v. United Kingdom, App. Nos. 66069/09, 130/10 & 3896/10, Judgment (Grand Chamber), §§ 119–122 (July 9, 2013).

²⁶³ THE SENTENCING PROJECT, WOMEN AND GIRLS SERVING LIFE SENTENCES (Jul. 3, 2019),

<https://www.sentencingproject.org/publications/women-girls-serving-life-sentences/>. New York has the eighth highest rate of life sentences compared to other states. See Victoria Law, *Will Albany Give Older NY Prisoners a Chance at Freedom?*, GOTHAMIST (Jan. 15, 2020), <https://gothamist.com/news/will-albany-give-older-ny-prisoners-chance-freedom>.

²⁶⁴ NYS CORRECTIONS & COMMUNITY SUPERVISION, PROFILE OF UNDER CUSTODY POPULATION AS OF JANUARY 1, 2019, at 19 (Jan. 1, 2019), https://doccs.ny.gov/system/files/documents/2021/03/under-custody-report-2019_0.pdf.

²⁶⁵ University of Nottingham, *Life Imprisonment: A Policy Briefing* 7, PENAL REFORM INT’L (2018), https://cdn.penalreform.org/wp-content/uploads/2018/04/PRI_Life-Imprisonment-Briefing.pdf.

²⁶⁶ *Id.*

²⁶⁷ *Id.*

²⁶⁸ “The average prison sentence for men who kill their intimate partners is 2 to 6 years. Women who kill their partners are sentenced, on average, to 15 years.” MICHIGAN WOMEN’S JUST. & CLEMENCY PROJECT, CLEMENCY MANUAL: CHAPTER I DOMESTIC VIOLENCE, THE BATTERED WOMAN SYNDROME, AND WOMEN WHO FIGHT BACK, http://umich.edu/~clemency/clemency_mnl/ch1.html (citing Nat’l Clearinghouse for the Defense of Battered Women, <http://www.cybergrl.com/planet/dv/stat/statbkill.html>).

²⁶⁹ University of Nottingham, *supra* note 263, at 7.

²⁷⁰ *Id.* at 8.

²⁷¹ Allison M. Madden, *Clemency for Battered Women Who Kill Their Abusers: Finding a Just Forum*, 4 HASTINGS WOMEN’S L.J. 1, 58 (1993), <https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1023&context=hwlj>.

²⁷² IACHR, Access to Justice, *supra* note 22, at ¶¶ 16, 134.

²⁷³ *Id.*

²⁷⁴ *Id.* at ¶ 106.

²⁷⁵ *Id.* (citing González et al. (“Cotton Field”) v. Mexico, Preliminary Objection, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶ 450 (Nov. 16, 2009)).

²⁷⁶ *Id.*

²⁷⁷ IACHR, Access to Justice, *supra* note 28, at ¶ 107.

²⁷⁸ Comm. on the Elimination of Discrimination against Women, General Recommendation No. 25, on Article 4, Paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on Temporary Special Measures, ¶ 12 (2004), [https://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20\(English\).pdf](https://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20(English).pdf). While the United States has not ratified CEDAW, it must “refrain from acts which would defeat the object and purpose of a treaty” as a signatory to the Convention.

²⁷⁹ *Governor Cuomo Grants Clemency to 21 Individuals*, N.Y. ST. (Dec. 24, 2020), <https://www.governor.ny.gov/news/governor-cuomo-grants-clemency-21-individuals>.