

INTEGRATING HUMAN RIGHTS IN DOMESTIC CLINICAL PRACTICE

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Given that the human rights framework contains a rich and evolving body of norms and standards, integrating human rights law into clinical teaching provides new avenues to approach problem-solving. A human rights framework offers additional sources to ground moral and legal claims, as well as new strategies and advocacy targets. These alternatives work to foster creativity and lawyering skills, particularly in areas where domestic law is limited or constraining. Moreover, U.S. advocates have much to learn from global human rights struggles and advocacy efforts and can benefit from engaging in human rights discourse and practice. This article introduces readers to human rights norms and strategies as potential teaching and advocacy tools, providing practical case studies and exploring both opportunities and challenges.

INTRODUCTION

In recent years, advocates in the United States (U.S.) have turned to courts to vindicate rights in the face of increasing partisanship and legislative gridlock. The Trump administration's rejection of established rights in a wide range of areas, from voting rights to asylum to reproductive rights, prompted a wave of legal challenges as advocates turned to the courts.¹ Many law school clinics participated in these legal challenges, and many continue to do so to address restrictions on rights under the Biden administration.²

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¹ David Cray, "See You in Court": *ACLU Files Nearly 400 Cases Versus Trump*, ASSOC. PRESS (Aug. 6, 2020), <https://apnews.com/article/ap-top-news-religion-lawsuits-immigration-elections-81f61e7d5c381b707bd21efc9a704e93>.

² See, e.g., Emmy M. Cho, *Harvard Law School Clinic Sues Trump Administration Over Proposed Asylum Rule Changes*, THE CRIMSON (Jan. 2, 2021); Conor Skelding,

Litigation is indispensable, both as a substantive intervention to address rights violations and as a pedagogical vehicle to teach clinical students practical lawyering skills. At the same time, litigation on behalf of particular clients or in response to urgent policy changes may offer limited opportunities to examine and address the larger structural conditions that give rise to widespread rights violations.³ The legal systems in which students operate can themselves limit the range of arguments that are considered viable, constraining students from thinking as expansively as possible about the rights that are violated in a given situation and what meaningful justice might entail. As U.S. courts have increasingly upheld procedural barriers to judicial access and rolled back substantive rights, they have further limited the possibilities for domestic litigation to realize rights and achieve justice.⁴

Despite the limitations of domestic litigation, U.S. advocates, legal practitioners, and clinicians often view international human rights advocacy with considerable skepticism.⁵ They may see human rights law, language, and strategies as unhelpful, aspirational, or simply not worth their limited time and capacity. They may not know or think much about international human rights at all, seeing it to be a niche field that is the domain of human rights advocates and teachers. They generally refrain from raising human rights arguments in litigation because

NYU Law Clinic to Advise International Students After Trump Order, POLITICO (Feb. 2, 2017), <https://www.politico.com/states/new-york/city-hall/story/2017/02/nyu-law-clinic-expands-brief-to-students-after-trump-order-10916>.

³ See Muneer I. Ahmad & Michael J. Wishnie, *Call Air Traffic Control! Confronting Crisis as Lawyers and Teachers*, in *CRISIS LAWYERING* 311, 317 (Ray Brescia & Eric K. Stern eds., 2021) (“One challenge of crisis lawyering, then, is to determine how to both work within and push against institutional constraints when exigent circumstances require, so as to seize the potential for student learning amidst an emergency.”); Deborah N. Archer, *Political Lawyering for the 21st Century*, 96 *DENV. L. REV.* 399, 428-434 (2019) (describing how and why clinicians might productively embrace political lawyering in clinical practice); Sameer M. Ashar, *Law Clinics and Collective Mobilization*, 14 *CLINICAL L. REV.* 355 (2008) (critiquing dominant models of clinical practice and identifying and imagining more transformative alternatives focused on collective mobilization).

⁴ Caroline Bettinger-López, Davida Finger, Meetal Jain, JoNel Newman, Sarah Paoletti, & Deborah M. Weissman, *Redefining Human Rights Lawyering through the Lens of Critical Theory: Lessons for Pedagogy and Practice*, 18 *GEO. J. POVERTY L. & POL’Y* 337, 345-46 (2011) (noting that “U.S. courts are systematically closing the door on civil rights litigants, both through procedural rulings making it more difficult for plaintiffs to access the courts, as well as through a substantive narrowing of the scope of constitutional rights”); Zachary Clopton, *Judges Will Not Save Us: Pushing for Truly Democratic Solutions Will*, *CHICAGO TRIBUNE* (Aug. 24, 2022) (observing in the wake of the Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization* revoking the constitutional right to abortion that “the idea that courts can be leaders of progressive change . . . is not true today, and it will not be true any time soon.”).

⁵ David Cole, *The Idea of Humanity: Human Rights and Immigrants’ Rights*, 37 *COLUM. HUMAN RIGHTS L. REV.* 627, 632 (2006) (referring to “the skeptical reception such [human rights] claims have long been given in the United States”).

of an assumption that courts will not view such arguments favorably. More broadly, human rights are traditionally seen as only relevant in countries abroad that lack the “good fortune” of the U.S. legal system. This is despite the pivotal role played by the U.S. in the founding of the international human rights system, as well as its continued active involvement in its development.⁶

U.S. advocates, however, have much to learn from global human rights struggles and can benefit from engaging in human rights discourse and practice. Given that the human rights framework contains a rich and evolving body of norms and standards, incorporating human rights law and strategies into clinical teaching can provide students and lawyers with new avenues to approach individual and structural problems and potentially advance successful advocacy. A human rights framework can offer additional sources of law to ground moral and legal claims, as well as new strategies to pursue and new advocacy targets to engage. These alternatives can foster creativity and lawyering skills and – perhaps particularly in areas where domestic law is limited or constrained – enable students to meaningfully grapple with difficult issues.

This paper introduces a pedagogical framework that employs human rights norms and strategies as potential teaching and advocacy tools. Section I provides a brief overview of the human rights system and its historical development. Section II presents three case studies of innovative projects applying human rights in the domestic context, drawing on the work of human rights clinics at Cornell Law School,⁷ Duke University School of Law, University of Miami School of Law, and Yale Law School with local advocates. These case studies focus on challenging the criminalization of homelessness, advancing the right to be free from domestic violence, and addressing the role of guns in domestic violence. Strategies employed include advocating through the United Nations (U.N.) and regional human rights systems, documenting and publicizing human rights violations, enacting local human rights resolutions and bills of rights to implement international standards in domestic law, filing amicus briefs providing an international human rights perspective, and building human rights literacy and legal empowerment at the community level. Section III then draws lessons from the case studies and provides overarching reflections on how clinical faculty can integrate human rights in their teaching and advocacy, examining both opportunities and challenges. It explores how using the language of human rights to frame demands and engaging effectively with

⁶ COLUMBIA L. SCH. HUM. RTS. INST., BRINGING HUMAN RIGHTS HOME: HOW STATE AND LOCAL GOVERNMENTS CAN USE HUMAN RIGHTS TO ADVANCE LOCAL POLICY 2 (Dec. 2012).

⁷ While the Gender Justice Clinic at Cornell Law School is not a human rights clinic, it regularly uses human rights law and strategies in its advocacy.

human rights mechanisms works to broaden students' perspectives and strengthen their lawyering skills.

I. INTERNATIONAL HUMAN RIGHTS: AN OVERVIEW

To ground the case studies and analysis, this section provides a brief overview of the origins and key normative instruments within the international human rights system. Next, this section outlines particular challenges with human rights implementation in the U.S. context, as well as opportunities and resources available to practitioners to facilitate human rights engagement.

The birth of the U.N. in 1945 following World War II marked the start of the international human rights system. The U.N. Charter recognized the link between peace and stability and respect for human rights, highlighting human rights as an international concern. Article 55 set out an aim of the U.N. as promoting “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction.”⁸ In Article 56, member states pledged “to take joint and separate action” to promote human rights.⁹

The Universal Declaration of Human Rights (UDHR), the foundational document of international human rights, followed in 1948,¹⁰ with Eleanor Roosevelt chairing the Human Rights Commission that drafted it. For the first time, the UDHR defined and enumerated key rights. After the horrors of World War II and the Holocaust, it set out what was then a revolutionary idea that it is possible to override state sovereignty and give other states a legal interest in a state's treatment of its own citizens.¹¹ While the UDHR is a declaration and not a binding treaty, it has important normative status, and some parts of it are customary law.¹²

Decades later, the rights outlined in the UDHR became protected in legally binding treaties with the International Covenant on Civil and

⁸ U.N. Charter art. 55; *see also id.* at Preamble (setting out an aim of the U.N. “to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small”).

⁹ *Id.* art. 56.

¹⁰ Universal Declaration of Human Rights, art. 7, G.A. Res. 217 (III) A, U.N. Doc. A/810 (Dec. 10, 1948) [hereinafter UDHR].

¹¹ United Nations, *History of the Declaration*, <https://www.un.org/en/about-us/udhr/history-of-the-declaration>; Office of High Commissioner of Human Rights (OHCHR), *International Human Rights Law*, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx>; MARY ANN GLENDON, *A WORLD MADE NEW: ELEANOR ROOSEVELT AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS* (2001).

¹² Hurst Hannum, *The Status of the Universal Declaration of Human Rights in National and International Law*, 25 GA. J. INT'L & COMP. L. 287, 289 (1996). Customary law refers to international law that is not codified, but rather based in “a general and consistent practice” followed by states out of “a sense of legal obligation.” *STATEMENT OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES*, § 102 (Am. L. Inst. 2017).

Political Rights (ICCPR)¹³ and the International Covenant on Social, Economic and Cultural Rights (ICESCR) in 1976.¹⁴ The UDHR, ICCPR, and ICESCR together constitute the International Bill of Human Rights.¹⁵ Other treaties focus on particular areas of human rights law, including torture, racial discrimination, women's rights, children's rights, migrants' rights, enforced disappearance, and the rights of persons with disabilities.¹⁶

Challenges have long existed for implementing human rights in the U.S. legal system. While human rights standards play a part in U.S. foreign policy,¹⁷ the U.S. has been very reluctant to apply them domestically.¹⁸ Louis Henkin famously referred to the U.S. as a “flying buttress,” supporting human rights from the outside and unwilling to subject itself to scrutiny.¹⁹ Despite its role in developing the international human rights system,²⁰ from the outset, the U.S. sought to prevent international scrutiny of domestic practices rooted in racism.²¹ Thus, the NAACP (National Association for the Advancement of Colored People), which pushed for the creation of the U.N. Human Rights Commission and appealed to the international human rights system early on, encountered severe pressure to limit its advocacy to domestic claims in U.S. courts.²² As Caroline Bettinger-López and colleagues write, “[C]oncerned with how the U.S. campaign for racial equality would play on the world stage, Eleanor Roosevelt herself urged the leaders of the movement to keep their struggle internal to the United States, marking the beginning of the practiced conception that human rights was something that happened outside of the United States, and civil rights is what happened inside the United States.”²³

¹³ International Covenant on Civil and Political Rights, *adopted* Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) [hereinafter ICCPR].

¹⁴ International Covenant on Economic, Social, and Cultural Rights, *adopted* Dec. 16, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976) [hereinafter ICESCR].

¹⁵ *Fact Sheet No. 2 (Rev. 1): The International Bill of Human Rights*, <http://www.ohchr.org/Documents/Publications/FactSheet2Rev.1en.pdf>.

¹⁶ OHCHR, *The Core International Human Rights Instruments and their Monitoring Bodies*, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>.

¹⁷ *E.g.*, Anthony J. Blinken, Secretary of State, *Remarks to the 46th Session of the Human Rights Council* (Feb. 22, 2021), <https://www.state.gov/remarks-to-the-46th-session-of-the-human-rights-council/> (“The United States is placing democracy and human rights at the center of our foreign policy, because they are essential for peace and stability.”).

¹⁸ According to Tara Melish, the U.S. “has appeared to flinch and even recoil, when it comes to direct domestic application of human rights norms.” Tara J. Melish, *From Paradox to Subsidiarity: The United States and Human Rights Treaty Bodies*, 34 *YALE J. INT’L L.* 389, 391 (2009).

¹⁹ LOUIS HENKIN, *THE AGE OF RIGHTS* 76 (1990).

²⁰ COLUMBIA L. SCH. HUM. RTS. INST., *supra* note 6, at 2.

²¹ CAROL ANDERSON, *EYES OFF THE PRIZE: THE UNITED NATIONS AND THE AFRICAN AMERICAN STRUGGLE FOR HUMAN RIGHTS 1944-54* (2003).

²² Cynthia Soohoo & Suzanne Stolz, *Bringing Theories of Human Rights Change Home*, 77 *FORDHAM L. REV.* 459, 465 (2008).

²³ Bettinger-López, et al., *supra* note 4, at 343.

Nonetheless, the U.S. has taken some critical steps towards domestic implementation of human rights standards. It has ratified some of the core U.N. human rights treaties, including the ICCPR, the Genocide Convention, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention against Torture (CAT), and two Optional Protocols to the Convention on the Rights of the Child (CRC).²⁴ It has further signed the ICESCR, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), CRC, and Convention on the Rights of Persons with Disabilities (CRPD).²⁵ While signing is only a first step signaling intention to ratify a treaty, and a country need not take steps to comply with the treaty's provisions, it must refrain from acts that would defeat "its object and purpose."²⁶

Pointedly, when ratifying human rights treaties, the U.S. has issued a declaration that they are not self-executing,²⁷ meaning that they cannot by themselves serve as a cause of action in courts.²⁸ However, treaties to which the U.S. is a state party are legally binding²⁹ and can be used in

²⁴ OHCHR, *Ratification Status for the United States of America*, http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=187&Lang=EN.

²⁵ *Id.*

²⁶ Vienna Convention on the Law of Treaties, art. 18(a), Apr. 24, 1970, 1155 U.N.T.S. 331 [hereinafter Vienna Convention]. See also RESTATEMENT (FOURTH) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 304 cmt. d (AM. L. INST. 2017) (requiring the government to "avoid actions which could render impossible the entry into force and implementation [of a treaty], or defeat its basic purpose and value"). The criminalization of homelessness discussed in the case study below arguably violates the "object and purpose" of the ICESCR, which enshrines a right to housing. See University of Miami School of Law Human Rights Clinic et al., *Housing and Homelessness in Miami-Dade County, Florida*, Submission to the United Nations Universal Periodic Review of the United States of America, ¶ 12 (Oct. 2019), <https://miami.app.box.com/s/g0vzmxzmtmkrd1kxrfcf9nclty59tv1q> [hereinafter "Miami Human Rights Clinic, *Housing and Homelessness in Miami-Dade County*"].

²⁷ Catherine Powell, *Dialogic Federalism, Constitutional Possibilities for Incorporation of Human Rights Law in the United States*, 150 U. PA. L. REV. 245, 258-259 (2001). *E.g.*, U.S. Reservations, Declarations, and Understandings, ICCPR, 138 Cong. Rec. S4781-84 (1992).

²⁸ In reporting to the Human Rights Committee monitoring compliance with the ICCPR, the U.S. government explained that this declaration "did not limit the international obligations of the United States under the Covenant. Rather, it means that, as a matter of domestic law, the Covenant does not, by itself, create private rights directly enforceable in U.S. courts." United States of America Initial Report to the Human Rights Committee, ¶ 8, CCPR/C/81/Add.4 (Aug. 24, 1994), http://www.bayefsky.com/reports/usa_ccpr_c_81_add.4_1994.php.

²⁹ U.S. CONST. art. VI ("[A]ll Treaties made . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."). See also Vienna Convention on the Law of Treaties, art. 27, May 23, 1969, 1155 U.N.T.S. 331 ("A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty."). The United States signed the Vienna Convention on April 24, 1970, but has not yet ratified it. Vienna Convention, *supra* note 26, at art. 27 ("A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty."), U.S. DEP'T OF STATE, <http://www.state.gov/sll/treaty/faqs/70139.htm>. Nevertheless, it considers many of its provisions "to constitute customary international law on the law of treaties," indicating its intention to abide by them. *Id.*

court as an aid in interpretation³⁰ or in advocacy with other branches of government, which some advocates have done quite effectively. Courts in the U.S. reference the UDHR, although a non-binding declaration, as persuasive authority more frequently than those in any other country.³¹ Human rights treaties also require states parties to undergo regular review of their compliance, as discussed in more detail below, giving advocates an opportunity to highlight shortcomings and press for new commitments.³²

Despite limitations on human rights espoused by the U.S. and enforcement challenges, there are important opportunities to integrate human rights in advocacy, enriching both teaching and practice. As an initial matter, the human rights framework provides a robust set of norms, which encompass both civil and political rights enshrined in the U.S. Constitution, such as the rights to due process, freedom of expression and religion, and political participation,³³ as well as additional economic, social, and cultural rights, such as rights to housing, health, and education.³⁴ Additionally, unlike the generally negative conception of rights in the U.S.³⁵ focused on freedom from government interference,³⁶ the international human rights framework recognizes three levels of state obligations: (1) *respect*, or the obligation not to violate a right itself; (2) *protect*, or the obligation to ensure other parties do not violate a right; and (3) *fulfill*, or the obligation to create the conditions necessary for exercising a right.³⁷ Thus, realizing rights requires a proactive approach and preventive action that extends beyond addressing violations. Significantly, ensuring the foundational

³⁰ *E.g.*, *Roper v. Simmons*, 543 U.S. 551, 576 (2005); *Sterling v. Cupp*, 625 P.2d 123, 131 n.21 (Or. 1981); *Graham v. Florida*, 560 U.S. 48, 81-82 (2010).

³¹ *Hannum*, *supra* note 12, at 304; *e.g.*, *Hilao v. Estate of Marcos*, 103 F.3d 789, 794 (9th Cir. 1996); *Perkovic v. I.N.S.*, 33 F.3d 615, 622 (6th Cir. 1994); *Wong v. Ilchert*, 998 F.2d 661, 663 (9th Cir. 1993); *Cerrillo-Perez v. I.N.S.*, 809 F.2d 1419, 1423 (9th Cir. 1987); *Filartiga v. Pena-Irala*, 630 F.2d 876, 882 (2d Cir. 1980).

³² *E.g.*, ICCPR, art. 40.

³³ UDHR, arts. 9-11, 18-21.

³⁴ *Id.* arts. 25-26.

³⁵ Seth F. Kreimer, *Allocational Sanctions: The Problem of Negative Rights in a Positive State*, 132 U. PA. L. REV. 1293 (1984), https://scholarship.law.upenn.edu/penn_law_review/vol132/iss6/7/.

³⁶ Tamar Ezer, *A Positive Right to Protection for Children*, 7 YALE HUM. RTS. & DEV. L.J. 1, 4 (2004), <https://digitalcommons.law.yale.edu/yhrdlj/vol7/iss1/1/> (“Negative, or non-interference rights, prevent the state from violating individual autonomy, while positive, or integrative rights, impose a duty on the state to provide certain goods and services... This differentiation also reflects two conceptions of liberty: negative liberty, or liberty from, and positive liberty, or liberty to.”).

³⁷ U.N. Hum. Rts. Council, *Role of Local Government in the Promotion and Protection of Human Rights – Final Report of the Human Rights Council Advisory Committee*, ¶ 27, U.N. Doc. A/HRC/30/49 (Aug. 7, 2015); Columbia Law School Human Rights Institute, *Gender Equity Through Human Rights: Local Efforts to Advance the Status of Women and Girls in the United States* 4 (Jan. 2017).

and cross-cutting right to equality requires addressing disparate impact, not just intentional discrimination.³⁸

Indeed, an important dimension of human rights engagement in the U.S. is the incorporation of human rights norms at a local level. This entails close to a dozen self-declared human rights cities that articulate a commitment to international human rights standards in some form, including Boston, MA; Carrboro and Chapel Hill, NC; Dallas, TX; Edina, MN; Eugene, OR; Jackson, MS; Mountain View and Richmond, CA; Pittsburgh, PA; Seattle, WA; and Washington, DC. Additionally, Dallas County, Texas designated itself a human rights county in 2017, and Pottage, Michigan affirmed its human rights commitment to residents in 2019.³⁹ The U.S. further has a vibrant Cities for CEDAW movement, focused on addressing discrimination against women. There are currently nine U.S. cities or counties with binding CEDAW ordinances,⁴⁰ used as a basis for gender assessments of city policies, programs, and budgets.⁴¹ Furthermore, over 30 cities have passed resolutions in support of CEDAW,⁴² which, while not legally binding, signal endorsement of women's human rights and may be useful in advocacy.

Additionally, the international human rights system provides a set of practical tools to exert political pressure and facilitate coalition-building and mobilization, as discussed in the case studies below. While the U.S. has taken only meager steps to apply human rights norms domestically,⁴³ it

³⁸ HUMAN RIGHTS COMMITTEE, General Comment No. 18: Non-Discrimination, ¶ 6, U.N. Doc. HRI/GEN1/Rev. 1 (1994); Risa E. Kaufman, *Book Review, Human Rights in the United States: Reclaiming the History and Ensuring the Future*, 40 COLUM. HUM. RTS. L. REV. 149, 156 (2008) (noting that international instruments, unlike the U.S. Constitution, “define discrimination broadly, so as to include any act with discriminatory effects or impact, and require the government to provide a remedy, including measures to rectify past discrimination”). Scholars, such as Olatunde Johnson, point to constraints in the current U.S. framework, which include “[s]trains on the private attorney-general regime and the limited efficacy of ex post enforcement regimes in addressing structural exclusion.” Olatunde C.A. Johnson, *The Local Turn: Innovation and Diffusion in Civil Rights Law*, 79 LAW & CONTEMP. PROBS. 115, 141 (2016).

³⁹ Tamar Ezer, *Localizing Human Rights in Cities*, 31 S. CAL. REV. L. & SOC. JUST. 68, 72-73 (2022).

⁴⁰ *Cities for CEDAW: Status of Local Activities*, Women's Intercultural Network, <http://citiesforcedaw.org/wp-content/uploads/2020/03/Landscape-Cities-for-CEDAW-Branded-for-Website-June-27-2019.pdf> [<https://perma.cc/7GCP-LVAP>].

⁴¹ Judith Resnik, *Law's Migration: American Exceptionalism, Silent Dialogues, and Federalism's Multiple Ports of Entry*, 115 YALE L.J. 1564, 1655 (2006); Anu Menon, San Francisco Department on the Status of Women, *Human Rights in Action: San Francisco's Local Implementation of The United Nations' Women's Treaty (CEDAW)* 3 (2010).

⁴² *Cities for CEDAW: Status of Local Activities*, *supra* note 40.

⁴³ Melish, *supra* note 18, at 391 (noting that the U.S. “has appeared to flinch and even recoil, when it comes to direct domestic application of human rights norms”); Kaufman, *supra* note 38, 150-151 (highlighting the U.S.'s “deep ambivalence toward upholding the norms that it helped to establish”). The U.S. is the only country not to have ratified the CRC and the only developed country not to have ratified CEDAW. See *Ratification Status for*

usually actively participates in human rights assessments in the international sphere, although this was not the case under the Trump administration.⁴⁴ For its periodic reports, the U.S. generally prepares detailed submissions to the relevant international bodies and attends dialogues with these bodies with robust participation by high-level, interagency delegations.⁴⁵ In this way, the U.S. seeks to set an example of constructive engagement for other countries as part of its foreign policy.⁴⁶ Consequently, engagement with the international human rights system presents domestic advocacy opportunities.

Resources are available to practitioners to facilitate human rights engagement with the U.N. system, including both written materials and networks. Good, user-friendly resources on the international human rights system have been developed by the U.N. Office of the High Commissioner for Human Rights (OHCHR)⁴⁷ and non-governmental organizations, such as the International Justice Resource Center.⁴⁸ Additionally, the Bringing Human Rights Home Lawyers Network provides materials to build the capacity of lawyers and advocates to use human rights standards and strategies, hosts periodic meetings to exchange ideas, and organizes an annual continuing legal education session on a timely human rights topic.⁴⁹

United States of America, U.N. Treaty Body Database, http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=187&Lang=EN.

⁴⁴ Ed Pilkington, *US Halts Cooperation with UN on Potential Human Rights Violations*, THE GUARDIAN (Jan. 4, 2019), <https://www.theguardian.com/law/2019/jan/04/trump-administration-un-human-rights-violations> (“The silent treatment being meted out to key players in the UN’s system for advancing human rights marks a stark break with US practice going back decades. Though some areas of American public life have consistently been ruled out of bounds to UN investigators . . . Washington has in general welcomed monitors into the US as part of a wider commitment to upholding international norms.”); Julian Borger, *US Quits UN Human Rights Council - A “Cesspool of Political Bias”*, THE GUARDIAN (June 19, 2018), <https://www.theguardian.com/world/2018/jun/19/us-quits-un-human-rights-council-cesspool-political-bias>. However, under the Biden Administration, the U.S. subsequently decided to rejoin the Human Rights Council. John Hudson, *US Rejoins UN Human Rights Council Reversing Trump-Era Policy*, WASH. POST (Feb. 8, 2021), https://www.washingtonpost.com/national-security/us-rejoins-un-human-rights-council-reversing-trump-era-policy/2021/02/08/91694b3e-6a1a-11eb-9ed1-73d434b5147f_story.html.

⁴⁵ Melish, *supra* note 18, at 419.

⁴⁶ *Id.* at 419, 461.

⁴⁷ OHCHR, *What Are Human Rights*, <https://www.ohchr.org/EN/pages/home.aspx>.

⁴⁸ International Justice Resource Center, *United Nations*, <http://www.ijrcenter.org/universal-tribunals-treaty-bodies-and-rapporteurs/>. Please also see THOMAS BUERGENTHAL ET AL., INTERNATIONAL HUMAN RIGHTS IN A NUTSHELL (5th ed. 2017) for a good introduction to the international human rights system.

⁴⁹ Columbia Law School, *The Bringing Human Rights Home Lawyers’ Network*, <https://web.law.columbia.edu/human-rights-institute/bhrh-lawyers-network>. The U.S. Human Rights Network is another network that promoted a human rights movement in the U.S. by facilitating the sharing of information and creating access at international human rights bodies for grassroots groups and communities affected by human rights violations. In October 2021, however, the Network’s Board of Directors indefinitely paused the network’s operations. U.S. Human Rights Network, <https://www.ushrnetwork.org/>.

In parallel with the international human rights system at the U.N., there are also regional human rights systems in Africa, the Americas, and Europe. This includes the Inter-American human rights system in which the U.S. participates, discussed in the case study below on recognizing freedom from domestic violence as a human right. The International Justice Resource Center and the website of the Organization of American States (OAS) offer resources on engaging with the Inter-American system.⁵⁰

All these avenues provide new opportunities for students to address human rights violations in the U.S. This is perhaps particularly valuable when opportunities under state and federal law seem to be contracting, or where more expansive frameworks are helpful in diagnosing and addressing violations. In the following Section, we consider three areas where human rights frameworks have proven fruitful for domestic advocacy, specifically examining clinic projects on the criminalization of homelessness, domestic violence, and gun violence as instructive case studies.

II. CASE STUDIES OF HUMAN RIGHTS IN DOMESTIC ADVOCACY

This section presents three case studies of the application of human rights in the U.S. context, drawing on the work of four human rights clinics. The case studies focus on the criminalization of homelessness, recognizing a right to freedom from domestic violence, and addressing the role of guns in domestic violence—topics where international norms and pressure can help advance domestic work. Strategies used include taking advantage of international fora presented by human rights mechanisms for advocacy, compiling human rights documentation to develop a record and publicize violations, integrating human rights norms in domestic policymaking and litigation, and building human rights literacy and legal empowerment at a community level. These various strategies are intersecting and complementary, connecting advocacy in international and regional spaces with domestic work and legal advocacy with community engagement.

A. *Challenging the Criminalization of Homelessness*

Across the U.S., people experiencing homelessness are exposed to a range of laws and ordinances criminalizing their behavior. These restrictions often prohibit loitering or panhandling, as well as resting,

⁵⁰ International Justice Resource Center, *Regional Human Rights Systems*, <http://www.ijrcenter.org/regional/>; Organization of American States, *Our Structure*, http://www.oas.org/en/about/our_structure.asp. See also Caroline Bettinger-López, *The Inter-American Human Rights System: A Primer*, 42 CLEARINGHOUSE REV.: J. POVERTY L. & POL'Y 581 (2009).

sleeping, urinating, and other behaviors that many people experiencing homelessness must necessarily do in public. Violating these prohibitions opens people to police harassment, arrest, and penalties, which in turn makes it more difficult to secure stable housing and employment.⁵¹

The criminalization of homelessness has prompted notable domestic litigation, including cases successfully challenging the criminalization of necessary behaviors in public as a violation of the Eighth Amendment's prohibition on cruel and unusual punishment.⁵² While domestic law provides some opportunities to challenge violations against people experiencing homelessness, no states and cities recognize an enforceable right to housing,⁵³ the right to an adequate standard of living, and other international human rights that all people, including people experiencing homelessness, enjoy. The human rights framework offers a more expansive way to think about the full range of rights at stake in the criminalization of homelessness, and to develop creative interventions that are responsive to the lived experiences of people experiencing homelessness.

The Lowenstein International Human Rights Clinic at Yale Law School ("Lowenstein Clinic") and the Human Rights Clinic at the University of Miami School of Law ("Miami Human Rights Clinic") have worked with advocates on multiple projects affirming the human rights of people experiencing homelessness in the U.S. Strategies used include U.N. advocacy, documentation of violations, integrating human rights standards in litigation and policymaking, and building human rights literacy and legal empowerment to address homelessness. These various projects illustrate some of the possibilities of using human rights language and strategies to center conversations about human dignity and the lived experiences of marginalized populations.

⁵¹ NAT'L L. CTR. ON HOMELESSNESS & POVERTY, HOUSING NOT HANDCUFFS: ENDING THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES (2018), <https://homelesslaw.org/wp-content/uploads/2018/10/Housing-Not-Handcuffs.pdf>; Nicole Weissman & Marina Duane, *Five Problems with Criminal Background Checks*, URBAN INST. (Mar. 13, 2007), <https://www.urban.org/urban-wire/five-problems-criminal-background-checks>; *Special Rapporteur on Extreme Poverty and Human Rights on His Mission to the United States of America*, ¶ 45, U.N. Doc. A/HRC/38/33/Add.1 (2018).

⁵² *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019).

⁵³ Madison, San Diego, and Washington, DC, have passed non-binding right to housing resolutions. City of Madison Resolution 11-00984, <https://madison.legistar.com/LegislationDetail.aspx?ID=1075403&GUID=F3511F44-503F-46EC-8ED5-45BF4297F345&FullText=1>; Phillip Molnar, *San Diego Declares "Housing as a Human Right," But Does It Mean Anything Legally?*, SAN DIEGO UNION TRIB. (Jan. 24, 2023), <https://www.sandiegouniontribune.com/business/story/2023-01-24/san-diego-declares-housing-as-a-human-right>; Meetal Jain, *Bringing Human Rights Home: The DC Right to Housing Campaign*, 17 HUM. RTS. BRIEF 10 (2010), <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1127&context=hrbrief>. Puerto Rico also recognizes a right to an adequate standard of living that includes a right to housing. P.R. Const. art. II §20.

1. *Engaging with International Human Rights Mechanisms*

As an initial matter, international human rights advocacy opens additional fora for making claims and the opportunity for exerting international pressure, strengthening domestic advocacy. Engaging with international human rights mechanisms, as discussed in Section III below, further facilitates coalition-building and dialogue with government officials. Both the Lowenstein Clinic and the Miami Human Rights Clinic have engaged with U.N. mechanisms to draw attention to the criminalization of homelessness in the U.S. in collaboration with the National Homelessness Law Center (NHLC). The Lowenstein Clinic and NHLC analyzed how approaches to homelessness in the U.S. violate rights enshrined in the ICCPR⁵⁴ and submitted key findings to the U.N. Human Rights Committee, which periodically assesses how states might improve compliance with their obligations under the ICCPR.⁵⁵ Submitting these “shadow reports” when states are under review is one way that civil society actors, including law school clinics, can encourage a treaty body to inquire into human rights conditions in a country and publicize violations to an international audience.⁵⁶ In concluding its review, the Committee urged the U.S. to end the criminalization of homelessness and develop rights-respecting solutions for people experiencing homelessness, providing support for advocates in the U.S. and elsewhere challenging criminalization.⁵⁷

The Miami Human Rights Clinic has likewise collaborated with NHLC on U.N. advocacy. Students engaged in research, conducted interviews, and coordinated with advocates to develop a report on racial

⁵⁴ Students in the Clinic produced a report detailing how the criminalization of homelessness can amount to cruel, inhuman, and degrading treatment; interferes with the freedom of assembly; undermines the right to liberty and security of the person and puts people at risk of arbitrary arrest and detention; and threatens the right to privacy. The report also noted that constraints on people experiencing homelessness put their right to family, right to vote, and freedom from discrimination at risk. NAT'L L. CTR. ON HOMELESSNESS & POVERTY (currently NAT'L HOMELESSNESS L. CTR.) & ALLARD K. LOWENSTEIN INT'L HUMAN RIGHTS CLINIC, YALE LAW SCHOOL, *CRUEL, INHUMAN, AND DEGRADING: HOMELESSNESS IN THE UNITED STATES UNDER THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS* (2013), https://nlchp.org/wp-content/uploads/2018/10/Cruel_Inhuman_and_Degrading-1.pdf. For the 2023 U.S. review by the Human Rights Committee, NHLC and the Miami Human Rights Clinic collaborated on a shadow report on *The Criminalization of Homelessness and Mental Health in the United States*, available at <https://miami.app.box.com/s/ts2gz8qy14gqh674619avty2jdu4z3w7>.

⁵⁵ OHCHR, Human Rights Committee, <https://www.ohchr.org/EN/HRBodies/CCPR/Pages/CCPRIndex.aspx>.

⁵⁶ See, e.g., Joel R. Pruce, *The Ferguson Uprising, Shadow Reporting, and Human Rights Experimentalism*, 45 HUM. RTS. Q. 88 (2023).

⁵⁷ Hum. Rts. Comm., *Concluding Observations on the Fourth Periodic Report of the United States of America*, United States of America, ¶ 19, U.N. Doc. CCPR/C/USA/CO/4 (2014). See also Hum. Rts. Comm., *Concluding Observations on the Fifth Periodic Report of the United States of America*, ¶ 41, U.N. Doc. CCPR/C/USA/CO/5 (2023).

injustice in housing and homelessness.⁵⁸ They then submitted this report to the U.N. Committee on the Elimination of Racial Discrimination, which assesses state compliance with ICERD.⁵⁹ In addition to the written submission, students traveled to Geneva and engaged in on-the-ground advocacy with the Committee for strong recommendations to the U.S. government. Students made oral statements during a public meeting between civil society and the Committee, bringing key issues to the Committee's attention. They further developed a succinct factsheet with key points and recommendations,⁶⁰ translated it into French and Spanish,⁶¹ and engaged in individual discussions with Committee members and the U.S. delegation.⁶² Students thus had the opportunity to develop critical lawyering skills in relationship-building, research, interviewing, legal analysis, writing, collaboration, and oral advocacy. These efforts paid off, and in concluding its review, the Committee called upon the U.S. government to "abolish laws and policies that criminalize homelessness," "redirect funding from criminal justice responses to adequate housing and shelter programs, in particular for persons belonging to racial and ethnic minorities most affected by homelessness,"⁶³ and "affirmatively further[] fair housing and protection against discriminatory effects."⁶⁴

Additionally, the Miami Human Rights Clinic collaborated with NHLC on a submission on housing and homelessness as part of the Universal Periodic Review (UPR) of the U.S. by the U.N. Human Rights Council.⁶⁵ The U.N. Human Rights Council is an

⁵⁸ University of Miami School of Law, Human Rights Clinic et al., *Racial Injustice in Housing and Homelessness in the United States*, Shadow Report to the U.N. Committee on the Elimination of Racial Discrimination (2022), <https://miami.app.box.com/s/x2obqbt-gy84o5qkfipyxcts03nzd4g0l>. See also an advocacy factsheet developed from the longer submission at University of Miami School of Law, Human Rights Clinic et al., *Racial Injustice in Housing and Homelessness in the United States*, <https://miami.app.box.com/s/xfgsbuq6nnn03rcn5tg1lyhgfinuk1id>.

⁵⁹ OHCHR, Committee on the Elimination of Racial Discrimination, <https://www.ohchr.org/en/treaty-bodies/cerd>.

⁶⁰ Human Rights Clinic et al., *Racial Injustice in Housing and Homelessness in the United States*, <https://miami.app.box.com/s/xfgsbuq6nnn03rcn5tg1lyhgfinuk1id>.

⁶¹ The French and Spanish versions of the factsheet are available at <https://miami.app.box.com/s/b2q9lqmetnvdadm06sxh2p0fbmlyli52f> and <https://miami.app.box.com/s/1v6hr6bbx-z5vu5w2al8rk7ffji70glx>.

⁶² Please see a description of the students' advocacy at *Human Right Clinic Advocates for the Right to Food, Health, and Housing at the U.N.*, University of Miami School of Law (Sept. 21, 2022), <https://news.miami.edu/law/stories/2022/09/human-rights-clinic-advocates-for-rights-to-food.html>.

⁶³ Comm. on the Elimination of Racial Discrimination, Concluding Observations on the Combined Tenth to Twelfth Reports of the United States of America, ¶ 40, U.N. Doc. CERD/C/USA/CO/10-12 (Sept. 21, 2022).

⁶⁴ *Id.* ¶ 38.

⁶⁵ UNIVERSITY OF MIAMI SCHOOL OF LAW HUMAN RIGHTS CLINIC ET AL., HOUSING AND HOMELESSNESS IN MIAMI-DADE COUNTY, FLORIDA (Oct. 2019), <https://miami.app.box.com/s/g0vzmzmtmkrd1kxrfcf9nclty59tv1q>; NAT'L L. CTR. ON HOMELESSNESS & POVERTY

intergovernmental body of 47 states, which reviews the human rights records of all U.N. member states approximately every four years. The review provides a forum for states to peer review each other's records and provide recommendations for improvement.⁶⁶ Malta recommended that the U.S. refrain from using "policing as a response to societal problems largely related to poverty" and instead focus on solutions "that do not involve criminalization."⁶⁷ Similarly, Cuba recommended that the U.S. "[e]nd the criminalization of poverty."⁶⁸ For both of these recommendations, the U.S. affirmed that it "supports investing in direct solutions to alleviate the personal and social problems surrounding the issues of poverty."⁶⁹ Additionally, Ethiopia called for "reducing homelessness faced by vulnerable groups across the country,"⁷⁰ and Azerbaijan urged "strategies for addressing the housing and sanitary problems of marginalized communities."⁷¹ The U.S. likewise indicated its support for these recommendations.⁷²

Because enforcement of recommendations by U.N. bodies is a persistent challenge, it is important to connect those recommendations

(currently NAT'L HOMELESSNESS L. CTR.) ET AL., *HOUSING AND HOMELESSNESS in the United States of America*, Submission to the United Nations Universal Periodic Review of the United States of America (Oct. 2019), <http://nlchp.org/wp-content/uploads/2019/10/Housing-Homelessness-US-UPR-2019.pdf>. See also an advocacy factsheet developed from the longer submission at University of Miami School of Law, Human Rights Clinic et al., *Housing and Homelessness in Miami-Dade County, Florida*, <https://miami.app.box.com/s/bmh4tbrex1h4j1o5xpkezqjhe1yfn6l>.

⁶⁶ U.N. Hum. Rts. Council, *Universal Periodic Review*, <https://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx>.

⁶⁷ U.N. Hum. Rts. Council, *Report of the Working Group on the Universal Periodic Review*, United States of America, 26.255 U.N. Doc. A/HRC/46/15 (Dec. 15, 2020).

⁶⁸ *Id.* at 26.284.

⁶⁹ U.N. Hum. Rts. Council, *Report of the Working Group on the Universal Periodic Review*, United States of America, ¶ 12, U.N. Doc. A/HRC/46/15/Add.1 (2021). In the 2015 review, Egypt recommended that the U.S. "[a]mend laws that criminalize homelessness and which are not in conformity with international human rights instruments." HRC Recommendations to U.S.A. (Egypt) U.N. Doc. A/HRC/30/12/Add.1 – 176.310; *Police Violence Against Homeless, Poor Persons, Housing & Homelessness Addressed at Global Review of U.S. Human Rights Record*, HOMELESSNESS LAW (May 14, 2015), <http://homelessnesslaw.org/2015/05/police-violence-against-homeless-poor-persons-housing-homelessness-addressed-at-global-review-of-u-s-human-rights-record/>. While the U.S. did not concede that current laws violate international standards, it declared that it is "committed to helping communities pursue alternatives to criminalizing homelessness." U.N. Hum. Rts. Council, *Report of the Working Group on the Universal Periodic Review*, United States of America, *Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, ¶ 12, U.N. Doc. A/HRC/30/12/Add.1 (Sept. 14, 2015), https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Documents/A_HRC_30_12_Add_1_ENG.DOCX.

⁷⁰ U.N. Hum. Rts. Council, *Report of the Working Group on the Universal Periodic Review*, United States of America, 26.286, U.N. Doc. A/HRC/46/15 (Dec. 15, 2020).

⁷¹ *Id.* at 26.287.

⁷² U.N. Hum. Rts. Council, *Report of the Working Group on the Universal Periodic Review*, United States of America, ¶ 12, U.N. Doc. A/HRC/46/15/Add.1 (2021).

to domestic advocacy.⁷³ NHLC has developed a sophisticated strategy for engaging with the international human rights system, which focuses on both the development of human rights norms and their implementation, and the Clinics' participation was part of this larger strategy. NHLC first advocated with the U.N. Special Rapporteurs, or U.N.-appointed subject matter experts, which tend to be the most flexible and creative human rights entities at the U.N., to lay the groundwork for addressing the criminalization of homelessness as a human rights issue. Next, NHLC, in conjunction with the Lowenstein Clinic and the Miami Human Rights Clinic, engaged with the more legalistic treaty bodies, such as the Human Rights Committee, charged with monitoring compliance with particular U.N. treaties, to further develop these standards. Finally, NHLC, collaborating with the Miami Human Rights Clinic, turned to the Human Rights Council, a more political entity, to affirm these standards. In parallel, advocates used these various processes to trigger meetings with federal officials to advance human rights implementation domestically.⁷⁴ Thus, at the same time that advocates focused on developing international human rights norms, they also used international processes to obtain meetings with government officials to implement them.

NHLC's strategy has borne fruit, leading the Federal Strategic Plan to End Homelessness, endorsed by nineteen agencies, to recognize that "[c]riminally punishing people for living in public when they have no alternative violates human rights norms, wastes precious resources, and ultimately does not work."⁷⁵ It further resulted in a Statement of Interest Brief by the Department of Justice (DOJ) in the seminal case of *Martin v. Boise*, recognizing that criminalizing sleeping outside for those with no alternative violates the Eighth Amendment prohibition on cruel and unusual punishment, the domestic analogue of the international right to freedom from cruel, inhuman, and degrading treatment.⁷⁶

⁷³ See NAT'L CTR. ON HOMELESSNESS & POVERTY, HUMAN RIGHTS TO HUMAN REALITY: A 10 STEP GUIDE TO STRATEGIC HUMAN RIGHTS ADVOCACY (2014), https://homelesslaw.org/wp-content/uploads/2018/10/Human_Rights_to_Human_Reality-1.pdf.

⁷⁴ University of Miami School of Law, Human Rights Clinic et al., *Strategy Meeting: Realizing the Rights to Food, Health and Housing in the U.S.* 4 (Nov. 2020), <https://miami.app.box.com/s/xv0eid3835pnllhmt1oapcwtnrdv2dy17>. See also Eric Tars, Tamar Ezer, Melanie Ng, David Stuzin & Conor Arevalo, *Challenging Domestic Injustice through International Human Rights Advocacy: Addressing Homelessness in the United States*, 42 CARDOZO L. REV. 913, 936-963 (2021) (providing a detailed discussion of Law Center's strategy for engagement with the international human rights system).

⁷⁵ U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, OPENING DOORS: FEDERAL STRATEGIC PLAN TO PREVENT AND END HOMELESSNESS 53 (2015).

⁷⁶ Statement of Interest of the United States, *Bell v. City of Boise*, 993 F. Supp. 2d 1237 (D. Idaho 2014) (No. 1:09-cv-00540-REB) ("It should be uncontroversial that punishing conduct that is a universal and unavoidable consequence of being human violates the Eighth Amendment."); *Justice Department Files Brief to Address the Criminalization of Homelessness*, U.S. DEPT. JUST. OFF. PUB. AFF. (Aug. 6, 2015), <http://www.justice.gov/opa/pr/>

Even prior to the Ninth Circuit's holding in *Martin v. Boise*,⁷⁷ national news coverage of the DOJ brief led some cities to preemptively repeal ordinances criminalizing homelessness or modify their enforcement,⁷⁸ as well as courts to adopt the DOJ's position.⁷⁹ Additionally, following international human rights advocacy, the Department of Housing and Urban Development (HUD) now provides funding incentives for communities taking steps to end the criminalization of homelessness.⁸⁰

2. Documenting Human Rights Violations

Human rights documentation, often referred to as “naming and shaming,” is a classic human rights approach, premised on the belief that producing clear evidence of rights violations will persuade or put pressure on responsible parties to address and resolve them.⁸¹ The process of documentation offers pedagogically valuable opportunities to students, who are tasked with listening to partners and those affected by injustice, gathering persuasive evidence of the problems that individuals and communities are facing, and articulating how violations run afoul of state obligations under international law. It not only draws on interviewing and witness testimony, but typically also involves desk research, investigative work, and analysis of structural issues and shortcomings in state practice that put certain populations or communities at particular risk of harm. In addition to engaging in U.N. advocacy, both Clinics have documented and publicized human rights violations domestically.

justice-department-files-brief-address-criminalization-homelessness. While the brief did not directly cite international human rights law, the DOJ later affirmed that its position in the case was an “acknowledgement of the human rights of people experiencing homelessness.” Letter from Lisa Foster, Dir., Off. for Access to Just., U.S. Dept. of Just., to Seattle City Council Members 3 (Oct. 13, 2016), <https://assets.documentcloud.org/documents/3141894/DOJ-ATJ-Letter-to-Seattle-City-Council-10-13-2016.pdf>.

⁷⁷ *Martin v. City of Boise*, 902 F.3d 1031, 1049 (9th Cir. 2018); *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019), *cert. denied* 2019 U.S. LEXIS 7571 (Dec. 16, 2019).

⁷⁸ *E.g.*, *Homelessness Toolkit*, CITY OF PORTLAND, OR., <https://www.portlandoregon.gov/toolkit/article/562206> [<https://perma.cc/3QTW-N9JS>] (stating “Why won’t the police arrest people experiencing homelessness? Being homeless is not against the law. The Department of Justice has recently made it clear that not allowing people to sleep on the street may be illegal.”).

⁷⁹ *E.g.*, *Smith v. City of Corvallis*, No. 6:14-cv-01382-MC, 2016 WL 3193190, at *1–2 (D. Or. June 6, 2016); *Cobine v. City of Eureka*, No. C 16-02239 JSW, 2016 WL 1730084 (N.D. Cal. May 2, 2016); *City of North Bend v. Bradshaw*, No. Y123426A (Issaquah Mun. Ct. Jan. 13, 2016).

⁸⁰ NAT’L L. CTR. ON HOMELESSNESS & POVERTY, SCORING POINTS: HOW ENDING THE CRIMINALIZATION OF HOMELESSNESS CAN INCREASE HUD FUNDING TO YOUR COMMUNITY 1, 6 (2018), <https://nlchp.org/wp-content/uploads/2018/10/NOFAtoolkit2018.pdf>.

⁸¹ *See* Emilie M. Hafner-Burton, *Sticks and Stones: Naming and Shaming the Human Rights Enforcement Problem*, 64 INT’L ORG. 689 (2008). Documentation need not be used in this way, though, and can also be used to establish the existence of a problem or provide an evidentiary basis for coordination and advocacy.

Yale's Lowenstein Clinic produced two research reports illustrating the human cost of criminalization. The first report, *Welcome Home: The Rise of Tent Cities in the United States*, was produced in partnership with NHLHC as part of a broader effort to document the harmful consequences of criminalization and identify a range of policy responses. It drew on firsthand interviews with residents and former residents of tent cities to examine the factors that give rise to homeless encampments in the U.S. and made recommendations for governments to address abuses and help people obtain stable housing.⁸² The second, "*Forced Into Breaking the Law*": *The Criminalization of Homelessness in Connecticut*, was undertaken in partnership with local organizers working on housing and homelessness. It examined punitive laws and policies in Connecticut that trap people in a cycle of homelessness and punishment that is difficult to escape, and called on state lawmakers, municipal governments, police departments, and other entities to end practices that contribute to this cycle.⁸³ In both reports, documentation helped define the nature of the violations that people experienced and identify the most rights-respecting options available to policymakers. By examining the lived experiences of people experiencing homelessness, for example, the reports explained why rigid housing options that police people's behaviors and relationships might be unattractive or unacceptable to those in need of shelter, and underscored the importance of providing options that respect people's dignity, privacy, and autonomy.

The Miami Human Rights Clinic has collaborated with NHLHC on a Right to Housing Report Card, documenting and grading the U.S. response to housing and homelessness along the seven dimensions of the human right to housing.⁸⁴ The Report Card thus uses international human rights as an accountability framework and to push for housing policies that enable people to live in a safe, stable place with dignity. In working on the Report Card, students coordinated with advocates, conducted research and interviews, and engaged in analysis connecting human rights standards with domestic laws and policies, developing critical lawyering skills.

⁸² NAT'L L. CTR. ON HOMELESSNESS & POVERTY & ALLARD K. LOWENSTEIN INT'L HUMAN RIGHTS CLINIC, YALE LAW SCHOOL, *WELCOME HOME: THE RISE OF TENT CITIES IN THE UNITED STATES* (2014), https://law.yale.edu/sites/default/files/documents/pdf/WelcomeHome_TentCities_final_report.pdf.

⁸³ ALLARD K. LOWENSTEIN INT'L HUMAN RIGHTS CLINIC, YALE LAW SCHOOL, "*FORCED INTO BREAKING THE LAW*": *THE CRIMINALIZATION OF HOMELESSNESS IN CONNECTICUT* (2016), https://law.yale.edu/sites/default/files/documents/pdf/news/criminalization_of_homelessness_report_for_web_full_report.pdf.

⁸⁴ University of Miami School of Law, Human Rights Clinic, *Human Right to Housing Report Card 2023: Grading the United States Response to Housing and Homelessness* (Oct. 2023), <https://homelesslaw.org/wp-content/uploads/2023/09/ReportCard2023.pdf>.

3. *Integrating Human Rights Standards in Policymaking and Litigation*

Human rights documentation develops a record of violations and provides critical support for change, including the integration of human rights norms in policymaking and litigation. The Miami Human Rights Clinic has brought human rights standards to domestic advocacy and litigation to address the criminalization of homelessness. In June 2020, the Clinic submitted a comment providing a human rights analysis of the problems with an ordinance in Miami that criminalizes food sharing, or the feeding of people experiencing homelessness in large groups in public places without a permit and at non-designated feeding locations, with only five inconvenient locations designated.⁸⁵ While the City Commission sought “to balance the rights of those well-intentioned individuals and groups who distribute food to the homeless with the property rights of residents and businesses in the City,”⁸⁶ the human rights analysis centered the rights of people experiencing homelessness who rely on that food to stay alive. It highlighted how criminalizing food sharing impedes the fundamental rights to life and to an adequate standard of living and tied the Commission’s desire to control the activities of people experiencing homelessness to an underlying violation of the right to housing.⁸⁷ The Clinic is currently providing support to a coalition of advocates working to challenge this ordinance.

Additionally, in June 2021, in collaboration with NHLC and Leilani Farha, the former U.N. Special Rapporteur on the right to adequate housing and Global Director of The Shift,⁸⁸ the Miami Human Rights Clinic filed an amicus brief in the Ninth Circuit, highlighting human rights violations in the impositions of fines and fees for life-sustaining activities.⁸⁹ In the case, the plaintiffs, who were all people experiencing street homelessness, collectively received 615 tickets for either sleeping or camping in public, despite Grants Pass not having any homeless

⁸⁵ University of Miami School of Law, Human Rights Clinic, Comment on Ordinance 7440, amending Chapter 25 of the Code of the City of Miami to create regulations for the use of city of Miami streets and public spaces for large group feedings, <https://miami.app.box.com/s/8njkvqz14rf7ht3g1b5nev7cx5mddglh>.

⁸⁶ Proposed Ord. No. 7440.

⁸⁷ University of Miami School of Law, Human Rights Clinic, Comment on Ordinance 7440, amending Chapter 25 of the Code of the City of Miami to create regulations for the use of city of Miami streets and public spaces for large group feedings, <https://miami.app.box.com/s/8njkvqz14rf7ht3g1b5nev7cx5mddglh>.

⁸⁸ See The Shift, *The Global Movement to Secure the Human Right to Housing*, <https://www.make-the-shift.org/>.

⁸⁹ Brief for Univ. of Miami Sch. of Law, Human Rights Clinic, Nat’l Homelessness Law Center & The Shift as Amici Curiae, *Blake v. City of Grants Pass*, 50 F.4th 787 (9th Cir. 2022) (Nos. 20-35752 & 20-35881).

shelters or emergency beds.⁹⁰ The brief specifically focused on violations of the right to be free from cruel, inhuman, and degrading treatment and argued that a human rights analysis should inform interpretation of the Eighth Amendment's prohibition of cruel and unusual punishment, which hinges on "evolving standards of decency."⁹¹ The brief concludes by noting that the U.S.'s failure to recognize the right to adequate housing is at the root of punishment for homelessness and that it is within the Court's authority to order measures enabling access to housing, addressing the underlying cause of a violation that has persisted for years.⁹²

The Lowenstein Clinic has similarly sought to bring international human rights standards to bear on domestic policymaking in New Haven, Connecticut. Nationally, one way that advocates have affirmed the rights of people experiencing homelessness is the passage of state and municipal Homeless Bills of Rights.⁹³ The Clinic worked with the city's Homeless Advisory Commission (HAC), advocates, and community members to draft and refine a Homeless Bill of Rights as a city ordinance.⁹⁴ The final version approved by HAC and submitted to the city contained provisions affirming the rights to enjoy public space, to meet basic needs, to vote, to own personal property and have privacy, to safety, to rest, to social exchange, and to emergency housing.⁹⁵ It also contained nondiscrimination provisions, prohibiting discrimination in employment, housing, and medical care on the basis of housing status.⁹⁶ Although it has not passed at the time of writing, it set a baseline for advocacy with the city around the rights of people experiencing homelessness. Through these different projects, the students gained

⁹⁰ *Blake v. Grants Pass*, No. 1:18-cv-01823-CL, at 10-11 (D. Or. July 22, 2020).

⁹¹ Debra Blake Amicus Brief, *supra* note 89, at 1-10; *see also* *Roper v. Simmons*, 543 U.S. 551, 551 (2005) (citing *Trop v. Dulles*, 356 U.S. 86, 100-01 (1958)).

⁹² Debra Blake Amicus Brief, *supra* note 89, at 10-17. For additional information on this brief, please see Miami Law Staff Report, *Human Rights Law Clinic Advocates for the Decriminalization of Homelessness Before the Ninth Circuit* (June 10, 2021), <https://www.law.miami.edu/news/2021/june/human-rights-law-clinic-advocates-decriminalization-homelessness-ninth-circuit>; Tamar Ezer & Lily Fontenot, *Housing, Not Fines to Address Homelessness*, HUMAN RIGHTS AT HOME BLOG (June 8, 2021), https://lawprofessors.typepad.com/human_rights/2021/06/housing-not-fines-to-address-homelessness.html?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A+HumanRightsAtHome+%28Human+Rights+at+Home+Blog%29#.

⁹³ These bills of rights have been enacted in Connecticut, Illinois, and Rhode Island, in addition to various municipalities. *See* Nat'l Coalition for the Homeless, *Homeless Bill of Rights*, <http://nationalhomeless.org/campaigns/bill-of-right> (last visited July 17, 2021).

⁹⁴ Thomas Breen, *Homeless Bill of Rights Sparks Debate*, NEW HAVEN INDEP. (Feb. 6, 2019), https://www.newhavenindependent.org/index.php/archives/entry/homeless_hearing.

⁹⁵ Bill of Rights for New Haven Residents Experiencing Homelessness, sec. 3, on file with author.

⁹⁶ *Id.*

facility with advocacy in various fora, including navigating city politics and contributing to litigation.

4. *Building Human Rights Literacy and Legal Empowerment*

A fourth important human rights strategy is the building of human rights literacy and legal empowerment, translating human rights law for and with communities.⁹⁷ As discussed in Section III below, human rights advocacy emphasizes engagement with communities, complementing engagement with the law and legal bodies. This does not only involve the mutual sharing of knowledge about issues that people are facing and human rights obligations under regional and international law, but also encouraging and facilitating the use of legal tools to seek justice.⁹⁸ The Miami Human Rights Clinic has worked to build human rights literacy on homelessness and strategize with national and local partners on advocacy tools. Following up on the UPR submission, the Clinic partnered with NHLC and local Miami advocates on a series of factsheets on the human right to adequate housing⁹⁹ and on the intersection of homelessness with race¹⁰⁰ and gender, including the experiences of women¹⁰¹ and lesbian, gay, bisexual, transgender, and queer (LGBTQ) communities,¹⁰² and the impact of COVID-19.¹⁰³ The Clinic further developed a series of factsheets focused on various components of the international human

⁹⁷ E.g., Kathleen Kelly Janus & Dee Smythe, *Navigating Culture in the Field: Cultural Competency Training Lessons from the International Human Rights Clinic*, 56 NYS L. REV. 445, 476 (2012) (referring to convenings with community leaders and the drafting of factsheets as “us[ing] legal knowledge to empower minor revolutions”).

⁹⁸ The concept of “legal empowerment” has been defined as “[t]he transfer of power from the usual gatekeepers of the law—lawyers, judges, police, and state officials—to ordinary people who make the law meaningful on a local level and enhance the agency of disadvantaged populations.” EMMA DAY & RYAN QUINN, OPEN SOC’Y FOUND., BRINGING JUSTICE TO HEALTH: THE IMPACT OF LEGAL EMPOWERMENT PROJECTS ON PUBLIC HEALTH 1 (2013). For examples of legal empowerment projects, see *id.*; Tamar Ezer, *Medical-Legal Partnerships with Communities: Legal Empowerment to Transform Care*, 17 YALE J. HEALTH POL’Y, LAW & ETHICS 309 (2017).

⁹⁹ University of Miami School of Law Human Rights Clinic et al., *What Is the Right to Housing*, <https://miami.app.box.com/s/7i1w7myiz27qc1yuiwobrscaopl1rbq2>.

¹⁰⁰ University of Miami School of Law Human Rights Clinic et al., *A Racial Justice Response to Homelessness*, <https://miami.app.box.com/s/p3b5g6xoaw05lbcxnfou6fx557c5krw>.

¹⁰¹ University of Miami School of Law Human Rights Clinic et al., *Women’s Homelessness in the United States*, <https://miami.app.box.com/s/h7csvo69hy8rbhd94j31v019f1j5l3pg>.

¹⁰² University of Miami School of Law Human Rights Clinic et al., *Homelessness in the LGBTQ Community in the United States*, <https://miami.app.box.com/s/6ajyu7b7mt7g59ckoe0onho02jzokf8l>.

¹⁰³ University of Miami School of Law Human Rights Clinic et al., *Addressing the Impact of COVID-19 on People Experiencing Homelessness*, <https://miami.app.box.com/s/neb02gohomjczdmya3ivvuxl7dj4edf>.

right to housing, including equality,¹⁰⁴ affordability,¹⁰⁵ tenant rights,¹⁰⁶ and informal settlements,¹⁰⁷ providing guidance and highlighting good practices from countries around the world. Additionally, the Clinic published an op-ed in the *Miami Herald* with human rights framing on the need for homes to protect people experiencing homelessness from COVID-19.¹⁰⁸ Most recently, the Clinic has partnered with artists, including those with lived experience with homelessness, to illustrate the seven dimensions of the human right to housing in powerful and concrete ways connected to community experiences.¹⁰⁹ Through these efforts, students learn to break down the law to its essential components, connect the law to real experiences, and engage effectively with a variety of audiences.

The Miami Human Rights Clinic has further collaborated with Matters at Play design lab at DePaul University, NHLC, and the Fines & Fees Justice Center to develop a series of virtual, interactive simulations highlighting how fines and fees in the U.S. justice system perpetuate poverty.¹¹⁰ The simulations require participants to role play with the goal of generating empathy around the impossible binds in which current laws and policies place people experiencing homelessness and poverty. They are further embedded in a website introducing participants to the relevant human rights standards.¹¹¹ Clinic students have piloted these simulations and led a session on the criminalization of poverty with local high school students in Miami to an enthusiastic response. According to the Director of Legal Studies at the high school, the session “challenged our group to think deeper about problems and implications that were entirely new concepts for them” and was “a highlight” of a seminar on social and

¹⁰⁴ University of Miami School of Law Human Rights Clinic et al., *Non-discrimination and Equality: At the Core of the Right to Housing*, <https://miami.app.box.com/s/j1kkp7lpp99uoigdy5i3rix3vvlwtwv>.

¹⁰⁵ University of Miami School of Law Human Rights Clinic et al., “*At a Reasonable Cost*”: *The Human Right to Affordable Housing*, <https://miami.app.box.com/s/ywd7r5kdiiizpgk5boy89if5tq8szvs96>.

¹⁰⁶ University of Miami School of Law Human Rights Clinic et al., *The Human Right to Housing: Protecting Tenants from Forced Eviction*, <https://miami.app.box.com/s/90hsh18p0b9hxxd2ayv1zzwuifrlgjk>.

¹⁰⁷ University of Miami School of Law Human Rights Clinic et al., *Informal Settlements and the Human Right to Adequate Housing*, <https://miami.app.box.com/s/3s2fv53ss7wz7py3xgyp5xqx8xwb8w1m>.

¹⁰⁸ Tamar Ezer & David Stuzin, *Homes for the Homeless is One of the Best Way to Protect them from COVID-19*, MIAAMI HERALD (May 26, 2020), https://www.miamiherald.com/opinion/op-ed/article242995686.html?fbclid=IwAR3jKZJFc_Tnfq_ZraPemHY2znBqKCdnZMkjV_uf7gVDbey3Yiecyrh7C5I.

¹⁰⁹ Please see the Miami Human Rights Clinic’s Art and the Right to Housing Project at <https://www.law.miami.edu/academics/programs/human-rights/initiatives/arts-rights/housing/>.

¹¹⁰ National Homelessness Law Center et al., *Poor Not Guilty (P.N.G.) Challenge* (2022), <https://poornotguilty.org/challenge.html>.

¹¹¹ *Id.*

racial justice, drawing in students who had not previously participated.¹¹² Building on this session, the Clinic subsequently developed a Street Law lesson plan¹¹³ centered around the challenges that others could use to teach high school students about the criminalization of poverty.¹¹⁴

B. *Recognizing Freedom from Domestic Violence as a Human Right*

Domestic violence, the leading cause of homelessness for women,¹¹⁵ is another area ripe for human rights advocacy. Domestic violence is pervasive across the U.S. About 41% of women and 26.3% of men have experienced sexual or physical violence and/or stalking by an intimate partner in their lifetimes.¹¹⁶ More than half of the transgender individuals who responded to the 2015 U.S. Transgender Survey reported experiencing some form of intimate partner violence.¹¹⁷ Domestic violence can have devastating consequences for the health, well-being, and financial security of survivors and their families.¹¹⁸ In 2021, more than one third of female homicide victims were killed by a former or current intimate partner.¹¹⁹

Domestic violence is an underreported offense,¹²⁰ and responses of the criminal legal system, as well as other measures to prevent and respond to such violence, have historically been deeply inadequate.

¹¹² Email from Leah Storie, Cushman High School Director of Legal Studies, to Tamar Ezer, Acting Director, Human Rights Clinic and Faculty Director, Human Rights Program, University of Miami School of Law (Apr. 28, 2021) (on file with authors).

¹¹³ For more about Street Law programs and their underlying philosophy, please see <https://streetlaw.org/>.

¹¹⁴ Please see the lesson plan at <https://miami.app.box.com/s/p42utppo0z0grfqyg5q-qsyet0l6uza8re> and a PowerPoint teachers can adapt at <https://miami.app.box.com/s/rr54afwg9z7krt67fydib5fug2qs3zh>.

¹¹⁵ University of Miami School of Law Human Rights Clinic et al., *Women's Homelessness in the United States*, <https://miami.app.box.com/s/h7csvo69hy8rbhd94j31v0l9f1j5l3pg>; *New Federal Policy Proposals Will Hurt Survivors of Domestic Violence*, NAT'L ALLIANCE TO END HOMELESSNESS (Oct. 23, 2019), <https://endhomelessness.org/new-federal-policy-proposals-will-hurt-survivors-of-domestic-violence/> (noting that 57% of all women experiencing homelessness report domestic violence as the immediate cause of their homelessness).

¹¹⁶ NAT'L CTR. FOR INJURY PREVENTION AND CONTROL, DIVISION OF VIOLENCE PREVENTION, CTRS. FOR DISEASE CONTROL AND PREVENTION, NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2016/2017 REPORT ON INTIMATE PARTNER VIOLENCE 4 (Oct. 2022), https://www.cdc.gov/violenceprevention/pdf/nisvs/NISVSReportonIPV_2022.pdf

¹¹⁷ NATIONAL CTR. FOR TRANSGENDER EQUALITY, THE REPORT OF THE 2015 U.S. TRANSGENDER SURVEY 68 (2016) (surveying 27,715 transgender adults), <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>.

¹¹⁸ See Ctrs. For Disease Control and Prevention, Violence Prevention, *Fast Facts: Preventing Intimate Partner Violence 2* (2021), <https://www.cdc.gov/violenceprevention/intimatepartnerviolence/fastfact.html>.

¹¹⁹ Erica L. Smith, U.S. Dept. of Justice, Bureau of Justice Statistics, *Just the Stats: Female Murder Victims and Victim-Offender Relationship, 2021* (Dec. 2022), <https://bjs.ojp.gov/female-murder-victims-and-victim-offender-relationship-2021>.

¹²⁰ 2018 National Crime Victims' Rights Week Resource Guide: Crime and Victimization Fact Sheets, https://ovc.ojp.gov/sites/g/files/xyckuh226/files/ncvrw2018/info_flyers/fact_sheets/2018NCVRW_IPV_508_QC.pdf.

So too are domestic legal frameworks; for example, the U.S. Supreme Court's decision in *Castle Rock v. Gonzales* found that a victim of domestic violence who has a restraining order against her abuser has no constitutional due process right to have the police enforce that order.¹²¹ A human rights framework, on the other hand, highlights the responsibility of government actors to provide a more robust and protective response to domestic violence, including a focus on prevention, protection, and support for survivors.

The Gender Justice Clinic at Cornell Law School has worked with local advocates on several initiatives that seek to affirm and implement the human right to be free from domestic violence. This has included domestic advocacy for the local implementation of a landmark decision by the Inter-American Commission on Human Rights against the U.S. Additionally, like the human rights clinics at Yale and the University of Miami, Cornell's Gender Justice Clinic engaged in documenting violations, integrating human rights standards in policymaking, and building human rights literacy and legal empowerment, in this case around the issue of domestic violence. This work enabled the Clinic and its partners to explore new models of addressing domestic violence that engaged diverse stakeholders, emphasized prevention, and provided robust support for survivors and their families. The human rights framework also helped situate this local work within broader national and transnational movements to end gender-based violence, affording valuable opportunities for multi-directional learning and collaboration.

1. Implementing the Decision of a Regional Human Rights Mechanism

The Gender Justice Clinic's local initiatives to realize the right to be free from domestic violence began in 2014 as a collaboration between the newly founded Clinic¹²² and the Advocacy Center of Tompkins County, an agency that provides services to survivors of domestic violence. This partnership began with a focus on local advocacy to help implement the decision of an international human rights mechanism, the IACHR. By inviting the local community to engage with a human rights body at the implementation stage, the Clinic and its partners fostered dialogue about the regional human rights decision and a sense of purpose among local actors who came to view themselves as being part of an international and national project as well. As discussed in Section III below, this advocacy also helped expand understandings of the problem

¹²¹ *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 768 (2005).

¹²² The Clinic was founded as the Global Gender Justice Clinic but changed its name to the Gender Justice Clinic in 2017.

of domestic violence and of the remedies needed to address it, and it facilitated coalition-building among local and national advocates.

The IACHR had issued its landmark decision on the issue of domestic violence a few years earlier in the case of *Lenahan v. United States*.¹²³ The decision was the result of tireless and creative advocacy by colleague Caroline Bettinger-López of the Miami Human Rights Clinic, generations of clinic students from Miami and Columbia Law Schools, and the late Lenora Lapidus and other lawyers at the ACLU's Women's Rights Project, on behalf of their courageous client Jessica Lenahan.

The facts of the case are chilling. In 1999, Ms. Lenahan's estranged husband, Simon Gonzales, had abducted their three daughters, Rebecca, Katheryn, and Leslie, in violation of a domestic violence restraining order. Ms. Lenahan, then Jessica Gonzales, repeatedly contacted the Castle Rock, Colorado police department, seeking their help, but the police told her that there was nothing they could do. In the early hours of the next morning, Simon Gonzales drove to the police station and started shooting. The police fired back, killing Mr. Gonzales. In the cab of his truck, they found the bodies of the three girls, who had been shot and killed.¹²⁴

Jessica Lenahan sued the Castle Rock police. Her case eventually reached the Supreme Court, which found that she had no constitutional due process right to the enforcement of her restraining order.¹²⁵ Refusing to concede defeat, Ms. Lenahan took her case to the Inter-American Commission on Human Rights. In its landmark decision, the Commission held that the U.S. had violated the rights of Jessica Lenahan and her daughters under the American Declaration of Human Rights when it failed to act with due diligence to protect them from domestic violence or to afford Ms. Lenahan and her family meaningful redress.¹²⁶ The Commission called for an investigation into the failures related to the enforcement of the restraining order, reparations for Ms. Lenahan, and systemic remedies including legislative reform that would mandate the enforcement of restraining orders, policies for domestic violence education, and protocols relating to the investigation of missing children in the context of restraining order situations.¹²⁷

¹²³ *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Merits, Inter-Am. Comm'n. H.R., Report No. 80/11, OEA/Ser.L/V/II, doc. 69, ¶¶ 201, 215 (July 21, 2011).

¹²⁴ *Id.* ¶¶ 18-22.

¹²⁵ *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 768 (2005).

¹²⁶ *Jessica Lenahan (Gonzales) et al. United States*, Case 12.626, Merits, Inter-Am. Comm'n H.R., Report No. 80/11, OEA/Ser.L/V/II, doc. 69, ¶¶ 5, 199 (2011) (finding that the United States failed to act with due diligence to protect Jessica and her daughters from domestic violence, which violated their rights to nondiscrimination and equal protection before the law, the children's right to life, in conjunction with their right to special protection as girl children, and Jessica and her family's right to judicial protection).

¹²⁷ *Id.* ¶¶ 201, 215.

The decisions of international human rights bodies are not enforceable in the way that domestic court decisions, backed by executive police power, are enforceable. Moreover, the Inter-American Commission's remedies are framed as recommendations rather than orders. Implementation thus required sustained efforts by Jessica Lenahan's legal team and other advocates across the country.¹²⁸ The Gender Justice Clinic's initiative sought to bring this decision home to the local actors, who are on the front lines of preventing and responding to domestic violence, and to help prevent the recurrence of situations like the one that Ms. Lenahan and her family endured.¹²⁹

As the first step in this project, clinic students and their partners drafted and advocated for the adoption of local government resolutions recognizing that freedom from domestic violence is a fundamental human right.¹³⁰ Students conducted extensive outreach and presented to the local government bodies a petition and photos from an online campaign that documented broad community support.¹³¹ They developed a white paper that presented Ms. Lenahan's story and the decision of the IACHR, explained why freedom from domestic violence is a human right, and discussed the symbolic and practical value of the proposed resolution.¹³²

As a result of this advocacy, six local governments in rural Tompkins County, New York – from the Tompkins County Legislature to the Board of Trustees of the small Village of Cayuga Heights to the Tompkins County Council of Governments, an association of all of the local governments in the county – adopted versions of the proposed resolution,¹³³ while the executive branch of the City of Ithaca adopted a

¹²⁸ See generally Caroline Bettinger-López, *Introduction: Jessica Lenahan (Gonzales) v. United States of America: Implementation, Litigation, and Mobilization Strategies*, 21(2) *Am. U. J. GENDER, SOC. POL'Y & L.* 207 (2012); Lenora M. Lapidus, *Jessica Lenahan Lived Through a Domestic Violence Nightmare and Emerged as a Heroic Advocate for Police Reform*, *ACLU BLOG* (June 9, 2017), <https://www.aclu.org/blog/womens-rights/violence-against-women/jessica-lenahan-lived-through-domestic-violence-nightmare>.

¹²⁹ See Advocacy Center of Tompkins County, Avon Global Center for Women and Justice at Cornell Law School, and Cornell Law School Global Gender Justice Clinic, *Recognizing Freedom from Domestic Violence as a Human Right: Background Note 6* (Oct. 2014), <https://www.lawschool.cornell.edu/wp-content/uploads/2020/11/Memo-Domestic-Violence-fr-Avon-Ctr-Advocacy-Ctr-Oct-2014-Cornell-White-Paper.pdf>.

¹³⁰ See, e.g., Advocacy Center of Tompkins County, Avon Global Center for Women and Justice at Cornell Law School, and Cornell Law School Global Gender Justice Clinic, *Draft Resolution of the Tompkins County Legislature Declaring Freedom from Domestic Violence as a Human Right* (n.d.) (on file with authors).

¹³¹ See Tompkins County Legislature, Regular Meeting Minutes, Nov. 18, 2014 (approved 12-2-14), <http://tompkinscountyny.iqm2.com/Citizens/FileOpen.aspx?Type=12&ID=2068&Inline=True>; Tompkins County Council of Governments, Regular Meeting Minutes, Jan. 22, 2015, <http://tompkinscountyny.iqm2.com/Citizens/FileOpen.aspx?Type=12&ID=2095&Inline=True>.

¹³² Advocacy Center of Tompkins County et al., *supra* note 129.

¹³³ Tompkins County Legislature, *Declaring Freedom from Domestic Violence as a Human Right*, RES2014-214, Nov. 18, 2014; Ithaca Town Board, *Declaring Freedom from Domestic Violence as a Human Right*, TB Res 2014-197, Dec. 8, 2014; Lansing Town Board, *Declaring*

related proclamation.¹³⁴ The Clinic's human rights arguments resonated with legislators across the political spectrum, including those from more rural and conservative areas. Several localities that the Clinic did not approach directly heard about the resolutions under consideration in nearby communities and were inspired to adopt their own versions.¹³⁵

Although there were variations across the seven resolutions and proclamations, most addressed the local prevalence and impact of domestic violence, cited applicable international human rights law, and explained the need for the resolution.¹³⁶ Several discussed the Inter-American Commission's decision in *Lenahan*¹³⁷ and its call for the U.S. "to enact law and policy reforms at all levels to protect survivors of domestic violence and their children."¹³⁸ Significantly, the resolutions acknowledged state responsibility for addressing domestic violence and undertook to improve local domestic violence prevention and response.¹³⁹ In adopting these resolutions, Tompkins County and its

Freedom from Domestic Violence as a Human Right, Res 14-158, Dec. 17, 2014; Village of Cayuga Heights Board of Trustees, Declaring Freedom from Domestic Violence as a Human Right, Res 7552, Jan. 12, 2015; Tompkins County Council of Governments, Declaring Freedom from Domestic Violence as Human Rights, Res 002-2015, Jan. 22, 2015; City of Ithaca Common Council, Declaration of Freedom from Domestic Violence as a Human Right, Resolution, Mar. 6, 2015. These resolutions are available at Columbia Law School's Human Rights Institute, University of Miami School of Law's Human Rights Clinic, and Cornell Law School's Gender Justice Clinic, *Freedom from Domestic Violence as a Fundamental Human Right Resolutions, Presidential Proclamations, and Statements of Principle*, CORNELL LAW SCHOOL (last updated Feb. 2018), <https://www.lawschool.cornell.edu/academics/experiential-learning/clinical-program/gender-justice-clinic/freedom-from-domestic-violence-as-a-fundamental-human-right-resolutions-presidential-proclamations-and-other-statements-of-principle>.

¹³⁴ Svante T Myrick, Mayor of the City of Ithaca, City of Ithaca Proclamation, Apr. 24, 2015, <https://www.lawschool.cornell.edu/wp-content/uploads/2020/11/24b-Ithaca-City-Executive.pdf>.

¹³⁵ See Lansing Town Board, Declaring Freedom from Domestic Violence as a Human Right, Res 14-158, Dec. 17, 2014; Village of Cayuga Heights Board of Trustees, Declaring Freedom from Domestic Violence as a Human Right, Res 7552, Jan. 12, 2015.

¹³⁶ Tompkins County Legislature, Declaring Freedom from Domestic Violence as a Human Right, RES2014-214, Nov. 18, 2014; Ithaca Town Board, Declaring Freedom from Domestic Violence as a Human Right, TB Res 2014-197, Dec. 8, 2014; Lansing Town Board, Declaring Freedom from Domestic Violence as a Human Right, Res 14-158, Dec. 17, 2014; Tompkins County Council of Governments, Declaring Freedom from Domestic Violence as Human Rights, Res 002-2015, Jan. 22, 2015; City of Ithaca Common Council, Declaration of Freedom from Domestic Violence as a Human Right, Resolution, Mar. 6, 2015.

¹³⁷ Tompkins County Legislature, Declaring Freedom from Domestic Violence as a Human Right, RES2014-214, Nov. 18, 2014; Tompkins County Council of Governments, Declaring Freedom from Domestic Violence as Human Rights, Res 002-2015, Jan. 22, 2015; City of Ithaca Common Council, Declaration of Freedom from Domestic Violence as a Human Right, Resolution, Mar. 6, 2015.

¹³⁸ Tompkins County Council of Governments, Declaring Freedom from Domestic Violence as Human Rights, Res 002-2015, Jan. 22, 2015; City of Ithaca Common Council, Declaration of Freedom from Domestic Violence as a Human Right, Resolution, Mar. 6, 2015.

¹³⁹ See Tompkins County Legislature, Declaring Freedom from Domestic Violence as a Human Right, RES2014-214, Nov. 18, 2014; Ithaca Town Board, Declaring Freedom from Domestic Violence as a Human Right, TB Res 2014-197, Dec. 8, 2014; Lansing Town Board, Declaring Freedom from Domestic Violence as a Human Right, Res 14-158, Dec. 17, 2014;

localities joined a growing national momentum; today, more than thirty-five local governments have adopted similar resolutions.¹⁴⁰ Through this work, Clinic students had the opportunity to hone their research and writing skills, gain important policy advocacy experience, and think deeply about the possibilities afforded by local engagement in the implementation of an international human rights decision.

2. *Documenting Human Rights Violations*

Documenting human rights violations is a strategy that human rights advocates frequently use to uncover the nature and scope of the problem and identify actions needed to remedy the violations. Following the adoption of the domestic violence-human rights resolutions, Clinic students and their partners, which expanded to include the Tompkins County Office of Human Rights, a government agency, and the Tompkins County Human Rights Commission, an independent body appointed by the County legislature, carried out several initiatives aimed at implementing the right recognized in the local resolutions. The first initiative involved collecting perspectives from community members about the gaps and challenges that exist in realizing the right to be free from domestic violence and the changes needed to address those gaps and challenges. It also engaged local actors in dialogue about the meaning of the human right that their community had recognized.

The Clinic and its partners approached their advocacy by assuming good intentions on the part of community stakeholders and seeking out opportunities for collaboration between government and civil society organizations. In this local context, the classic human rights methodology of “naming and shaming”¹⁴¹ evolved into something rather different. Instead of a potentially adversarial investigation, it became a “gathering voices” campaign that entailed conducting story circles, interviews, and other conversations with diverse stakeholders including, among others, government officials, criminal legal system actors, human resource staff members, advocates for racial or gender justice, immigrants’ rights attorneys and organizers, religious leaders, community organization staff members, educators, students, and survivors.

Community members shared their views on what it would mean to realize the human right to be free from domestic violence, and what

Village of Cayuga Heights Board of Trustees, Declaring Freedom from Domestic Violence as a Human Right, Res 7552, Jan. 12, 2015; Tompkins County Council of Governments, Declaring Freedom from Domestic Violence as Human Rights, Res 002-2015, Jan. 22, 2015; City of Ithaca Common Council, Declaration of Freedom from Domestic Violence as a Human Right, Mar. 6, 2015. See Columbia Law School’s Human Rights Institute et al., *supra* note 133.

¹⁴⁰ See Columbia Law School’s Human Rights Institute et al., *supra* note 133.

¹⁴¹ See *supra* note 81 and accompanying text.

gaps and challenges exist locally to implementation of that right. As one service provider put it, the idea that freedom from domestic violence is a fundamental human right is “profound and sort of like a basic truth, yet we know that it is not true on some levels, that people are not free from domestic violence. So then the question is, how do we as a community make it true?”¹⁴² In addressing this question, multiple stakeholders, from a former prosecutor to survivors, noted that the criminal legal system, while important, could be burdensome, ineffective, intimidating and retraumatizing for survivors. Heather Campbell, then the Director of the Tompkins County Advocacy Center, explained, “We as a society and culture expect survivors to go through so much in order to get a tiny piece of justice. And even when survivors jump through all of the hoops, the system can still fail.”¹⁴³ The criminal legal system could be particularly unhelpful for survivors whose communities regularly experienced discrimination and violence from that system. One community member explained, “I think as women of color, we are afraid of calling the police for anything. That is definitely not one of the first places we would go. . . . Women of color don’t trust many systems that have been designed to hurt them. So having places that are more accessible and cultural, and for us [would be] more helpful.”¹⁴⁴

Community members also highlighted how domestic violence affected survivors’ access to other human rights. For example, several survivors shared how domestic violence impeded their ability to work, where stress related to the abuse made it difficult to function effectively at work or where an abuser would not let them leave the home, called their office to intimidate their employer, or worked for the same employer.¹⁴⁵ Other community members talked about how survivors struggled with multiple barriers to accessing safe housing, including abusers’ knowledge of the location of the community’s only safe house, high-barrier tenant screening processes that revealed past visits from law enforcement or credit ruined by abusers, and landlords’ refusal to rent to recipients of government housing assistance.¹⁴⁶

¹⁴² Interview with Richard Bennett, Director, Rescue Mission - Ithaca (Apr. 12, 2016) (on file with authors).

¹⁴³ Heather Campbell, Panelist Remarks, Home Truth: A Film Screening and Discussion on Domestic Violence and Human Rights from Cornell Law School’s Berger International Speaker Series, Dorothea S. Clarke Program in Feminist Jurisprudence, and Gender Justice Clinic, the Advocacy Center of Tompkins County, Cornell Women’s Law Coalition, and the Finger Lakes Women’s Bar Association, Ithaca, NY, March 14, 2018 (on file with authors).

¹⁴⁴ Story Circle with Tompkins County Survivors of Domestic Violence (April 19, 2016) (on file with authors).

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*; Story Circle with Tompkins County Survivors of Domestic Violence, May 25, 2017; Interview with Kim Fezza and Richard Cowan, Staff at the Ithaca Neighborhood Housing

Considered together, the feedback from this “gathering voices” campaign suggested that a human rights approach required a more holistic response to gender-based violence. Such a response would engage diverse community members, particularly survivors; explore new ways to hold perpetrators accountable; and emphasize prevention and support for survivors and their families. From these conversations, ideas emerged for strengthening the local community’s ability to prevent domestic violence and respond effectively when it occurs. These included, for example, an initiative to provide training and guidance to employers in addressing the effects of domestic violence at the workplace and advocacy in opposition to a local village nuisance law that could lead to the eviction of survivors who call the police for help. For their part, the Clinic students involved in the campaign gained new perspectives on what meaningful implementation of the human right to be free from domestic violence requires and an appreciation of the importance of listening to and working with affected communities in identifying problems and crafting meaningful solutions.

3. *Integrating Human Rights Standards in Policymaking*

The Clinic sought to use the human rights standards recognized in Tompkins County’s local government resolutions to influence local policy. In recognizing that freedom from domestic violence is a human right affecting the realization of other human rights, the local resolutions implicitly affirmed the relevance of both treaties binding on the U.S. that protect this right, as well as nonbinding international agreements, principles and declarations that have interpreted its content.¹⁴⁷ In line with these international instruments, the resolutions expressly recognized that freedom from domestic violence is a human right affecting the realization of many other rights and that governments have an obligation to prevent and respond to such violence.¹⁴⁸ Through their “whereas” clauses, the

Services (Apr. 18, 2016) (on file with authors); Interview with Vicki McDonald, Director of Housing Operations, Ithaca Housing Authority (Apr. 18, 2016) (on file with authors).

¹⁴⁷ See, e.g., ICCPR, *supra* note 13, at arts. 2, 3, 6, 9, 14, 26; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, arts. 1, 2, adopted Dec. 10, 1984, 1465 U.N.T.S. 85 (entered into force June 16, 1987); Org. of American States [OAS] Charter, Preamble, arts. 3, 46, 49; Declaration on the Elimination of Violence Against Women, arts. 1, 2, 3, 4, G.A. Res. 48/104, U.N. Doc. A/RES/48/104 (Dec. 20, 1993); American Declaration on the Rights and Duties of Man, arts. 1, 2, 5, 7, 18, O.A.S. Res. XXX, Int’l Conf. of Am. States, 9th Conf. (May 2, 1948); Committee Against Torture, General Comment No. 2 on the implementation of article 2 by States parties, ¶ 18, U.N. Doc. CAT/C/GC/2 (Jan. 24, 2008); Human Rights Comm., General Comment No. 35 on Article 9, Liberty and security of person, ¶ 9, U.N. Doc. CCPR/C/GC/35 (2014); Human Rights Comm., General Comment No. 36 on article 6: right to life ¶¶ 23, 26, U.N. Doc. CCPR/C/GC/36 (2019).

¹⁴⁸ See Tompkins County Legislature, Declaring Freedom from Domestic Violence as a Human Right, RES2014-214, Nov. 18, 2014; Ithaca Town Board, Declaring Freedom from

resolutions also suggested that government responsibility extended to assisting survivors of domestic violence in addressing the effects of that violence including “physical injuries, long-term psychological damage, financial and career instability, and trouble finding safe housing,” as well as the “deeply negative impact on children who are exposed to it.”¹⁴⁹

Several of the domestic violence-human rights resolutions also explicitly charged government departments and offices with incorporating the declaration’s principles into their policies and practices and with ensuring that those policies and practices are informed by domestic violence survivors’ voices and needs.¹⁵⁰ A City of Ithaca report, prepared by the Tompkins County Office of Human Rights, that analyzed impediments to fair housing choice subsequently cited the resolutions and encouraged the City to consider amending its local anti-discrimination law to include protections based on “domestic violence victim status.”¹⁵¹ Two years later, the City amended its local law to prohibit discrimination or harassment in housing, employment, education or public accommodations based on an individual’s status as a victim of domestic violence.¹⁵²

The Tompkins County Office of Human Rights also asked the Clinic and other partners to use the domestic violence-human rights resolution and the principles it affirmed to oppose a local village nuisance law that had the effect of penalizing survivors who call the police for

Domestic Violence as a Human Right, TB Res 2014-197, Dec. 8, 2014; Lansing Town Board, Declaring Freedom from Domestic Violence as a Human Right, Res 14-158, Dec. 17, 2014; Village of Cayuga Heights Board of Trustees, Declaring Freedom from Domestic Violence as a Human Right, Res 7552, Jan. 12, 2015; Tompkins County Council of Governments, Declaring Freedom from Domestic Violence as Human Rights, Res 002-2015, Jan. 22, 2015; City of Ithaca Common Council, Declaration of Freedom from Domestic Violence as a Human Right, Mar. 6, 2015. See Columbia Law School’s Human Rights Institute et al., *supra* note 133.

¹⁴⁹ *Id.* In addition, the resolutions recognized that the obligation was not limited to addressing forms of violence covered by criminal law but instead extended to addressing all forms of domestic violence including “physical, sexual, psychological, or economic abuse, intimidation, isolation, and coercive control by intimate partners or family members.” *Id.*

¹⁵⁰ See Tompkins County Legislature, Declaring Freedom from Domestic Violence as a Human Right, RES2014-214, Nov. 18, 2014; Ithaca Town Board, Declaring Freedom from Domestic Violence as a Human Right, TB Res 2014-197, Dec. 8, 2014; Lansing Town Board, Declaring Freedom from Domestic Violence as a Human Right, Res 14-158, Dec. 17, 2014; Village of Cayuga Heights Board of Trustees, Declaring Freedom from Domestic Violence as a Human Right, Res 7552, Jan. 12, 2015; Tompkins County Council of Governments, Declaring Freedom from Domestic Violence as Human Rights, Res 002-2015, Jan. 22, 2015; City of Ithaca Common Council, Declaration of Freedom from Domestic Violence as a Human Right, Mar. 6, 2015. See Columbia Law School’s Human Rights Institute, et al., *supra* note 133.

¹⁵¹ City of Ithaca, *Analysis of Impediments to Fair Housing Choice*, 66, 103 (May 2015), available at <https://www.cityofithaca.org/DocumentCenter/View/2992/Analysis-of-Impediments-to-Fair-Housing-Choice-2015?bidId=>.

¹⁵² City of Ithaca Municipal Code, § 215, as amended 1 January 2017 by Ord. No. 2017-02, <https://ecode360.com/8390435>.

help.¹⁵³ Clinic students drafted a letter to village leaders from the Clinic and its government and NGO partners that called for repeal of the discriminatory law. While this action did not independently move the village to amend its law – which ultimately was declared unconstitutional by the New York Supreme Court’s Appellate Division¹⁵⁴ – it helped to educate village leaders about the ways in which this local legislation was inconsistent with the human rights commitments they had undertaken when joining the Tompkins County Council of Governments’ domestic violence-human rights resolution.¹⁵⁵

In addition, the Clinic drew upon the human rights standards codified in the local government resolutions to advocate for policies addressing the effects of domestic violence in the workplace and helping employers to better support employees who are experiencing violence at home.¹⁵⁶ A suggestion from a government official led the Clinic and its partners to develop a model domestic violence and the workplace policy and toolkit,¹⁵⁷ which they launched at an event for local employers. These resources were informed by human rights principles, domestic laws, national and local good practices, and policies and guidance published by others, including New York’s Office for the Prevention of Domestic Violence.¹⁵⁸

The City of Ithaca and Town of Ithaca adopted their own versions of the policy or toolkit, as a step towards implementing their obligations under the domestic violence-human rights resolutions.¹⁵⁹ Private employers embraced this initiative too.¹⁶⁰ Cornell University’s Human Resources led a review of the University’s support systems and policies, adopted a domestic violence at the workplace guide for managers and Human Resource (HR) professionals that expanded upon the Clinic’s

¹⁵³ See Letter from Freedom from Domestic Violence Workgroup to Christopher J. Neville, Mayor of the Village of Groton (Apr. 10, 2017) (on file with authors).

¹⁵⁴ Board of Trustees v. Pirro, 152 A.D.3d 148 (NY App. Div. 3d Dept. 2017).

¹⁵⁵ Letter from Freedom from Domestic Violence Workgroup to Christopher J. Neville, Mayor of the Village of Groton (Apr. 10, 2017) (on file with authors).

¹⁵⁶ See Avon Global Center for Women and Justice at Cornell Law School, *Advocacy Center of Tompkins County and Cornell Law School Global Gender Justice Clinic, Short- and Long-Term Strategies for Implementation of Freedom from Domestic Violence Resolution in Tompkins County 2* (April 20, 2015) (on file with authors).

¹⁵⁷ Domestic Violence and the Workplace Model Policy and Toolkit, available at <https://www.lawschool.cornell.edu/academics/experiential-learning/clinical-program/gender-justice-clinic/domestic-violence-and-the-workplace-model-policy-and-toolkit>.

¹⁵⁸ For an updated version of New York State’s model policy, see N.Y. State Office for the Prevention of Domestic Violence, *State of New York Model Gender-Based Violence and the Workplace Model Policy* (2022 update), <https://opdv.ny.gov/system/files/documents/2022/10/opdv-gender-based-violence-and-the-workplace-model-policy.pdf>.

¹⁵⁹ See, e.g., City of Ithaca, Domestic Violence and the Workplace Policy (on file with authors); Email from Kristi Taylor, Education Director, Advocacy Center of Tompkins County to Elizabeth Brundige, January 24, 2018 (on file with authors).

¹⁶⁰ Email from Kristi Taylor, Education Director, Advocacy Center of Tompkins County to Elizabeth Brundige, January 24, 2018 (on file with authors).

model toolkit, provided related training for hundreds of staff members, and engaged in a long-term program of campus-wide education and fundraising to support the emergency funds that are available for employees seeking help.¹⁶¹ Through these initiatives, Clinic students developed skills in policy research and advocacy, gained experience in navigating government-community partnerships, and learned how context-sensitive implementation of human rights standards can serve as a valuable catalyst and guide for reform.

4. *Building Human Rights Literacy and Legal Empowerment*

Building human rights literacy and legal empowerment is a common strategy in human rights advocacy and can be done through a variety of methods. In the Gender Justice Clinic's domestic violence project, initiatives have focused on developing human rights literacy around the issue of domestic violence, including through film screenings, talks and panels, tabling events, media advocacy, and workshops for local high school students on dating and domestic violence.

For many participants in these initiatives, the development of human rights literacy led to a shift in perspectives and sparked new ideas. For example, by adopting a human rights lens, local high school students came to identify long-accepted problems as impediments to realizing rights that could and should be addressed.¹⁶² At one school, a conversation about human rights led the students to share how living in a rural location made it impossible for students who experienced dating violence to access community resources due to a lack of access to transportation. Many students were afraid to seek help from parents who expected them not to date in high school or from a teacher who would be required to make a report. Some students of color felt further isolated and unsure of where to turn for help because of the lack of diversity among faculty and students at their school. The workshop participants decided to undertake their own project on implementing the right to be free from dating violence that would address some of the barriers to support and assistance that they had identified.¹⁶³

¹⁶¹ See Cornell University, *Domestic Violence at the Workplace, Guide for Managers and Human Resource Professionals*, https://hr.cornell.edu/sites/default/files/domestic_violence_at_the_workplace_guide_v3.pdf; U.S. Dept. of Defense Counter-Insider Threat Program, *Cornell University Takes a Stand Against Domestic Violence*, THE INSIDER: THE THREAT LAB NEWSLETTER 2(4) (2021); Nancy Doolittle, *HR's Artibee, Joseph Receive Community Awards*, CORNELL CHRON. (Apr. 24, 2018), <https://news.cornell.edu/stories/2018/04/hrs-artibee-joseph-receive-community-awards>; Nancy Doolittle, *Gathering Highlights Resources for Domestic Violence Survivors*, CORNELL CHRON. (Nov. 2, 2017), <https://news.cornell.edu/stories/2017/11/gathering-highlights-resources-domestic-violence-survivors>.

¹⁶² Interview with five Trumansburg High School students (Mar. 23, 2017) (on file with authors); Cornell Gender Justice Clinic, Summary of Key Points from Workshop with Lansing High School Students (Mar. 21, 2017) (on file with authors).

¹⁶³ Cornell Gender Justice Clinic, *supra* note 162.

Human rights literacy and legal empowerment can also be fostered through collaboration and movement building. The Gender Justice Clinic and its partners also worked to educate community members about the connections between their local domestic violence-human rights initiatives and the Inter-American Commission's decision in the *Lenahan* case, as well as broader national and transnational human rights movements to advance the human right to be free from domestic violence. With the Miami Human Rights Clinic and Columbia Law School's Human Rights Institute, the Clinic helped develop a webpage that tracks the adoption of local domestic violence-human rights resolutions and makes them available as public resources.¹⁶⁴ It additionally contributed to an advocates' roundtable and other collaborations.¹⁶⁵ IACHR petitioner Jessica Lenahan and two of her lawyers came to Tompkins County to speak at community film screenings of *Home Truth*, a documentary about Ms. Lenahan's pursuit of justice,¹⁶⁶ and Ms. Lenahan later returned to Cornell as a visiting fellow.¹⁶⁷ At the same time, the Clinic collaborated with a partner organization in Zambia on the Tompkins County gathering voices campaign as well as a related project in Lusaka, Zambia.¹⁶⁸

These initiatives expanded knowledge in multiple directions. Community members gained new insights from their engagement with human rights standards and collaboration with local, national, and transnational partners. At the same time, Clinic students learned that the meaningful realization of human rights draws strength from movement-building and collaboration and from context-specific approaches that center the participation of affected individuals and communities.

C. Addressing the Role of Guns in Domestic Violence

Addressing firearm use in relation to domestic violence is critical; in the U.S., on average, intimate partners shoot and kill seventy women every month and almost one million women report surviving after being

¹⁶⁴ Columbia Law School's Human Rights Institute, et al., *supra* note 133.

¹⁶⁵ See Cornell Law School Global Gender Justice Clinic and Columbia Law School Human Rights Institute, *Freedom from Domestic Violence: Lessons Learned in Passing and Implementing Local Resolutions* (n.d.) (discussing takeaways and recommendations from May 2015 convening) (on file with authors).

¹⁶⁶ See *Home Truth: A Film Screening and Discussion on Domestic Violence and Human Rights* (2018), ITHACA.COM, https://www.ithaca.com/calendar/films/home-truth-a-film-screening-and-discussion-on-domestic-violence-and-human-rights/event_631699be-d177-11e8-b6f3-308d99b24d4f.html; Shelby Garland, *Law School Hosts Colloquium on Domestic Violence and Human Rights*, Cornell Law School Spotlight (Apr. 10, 2018) (on file with authors).

¹⁶⁷ Garland, *supra* note 166.

¹⁶⁸ See Tinenenji Banda & Elizabeth Brundige, *When Criminal Law is Not Enough: Towards a Holistic Approach to Gender-Based Violence Prevention and Response in Zambia and Beyond*, in HANDBOOK ON AFRICAN LAW (Muna Ndulo ed., 2021).

“shot or shot at” by intimate partners¹⁶⁹ With respect to the use of firearms in intimate partner homicides, “female intimate partners are more likely to be murdered with a firearm than all other means combined”¹⁷⁰ and “females living with a gun in the home” are almost “three times more likely to be murdered than females with no gun in the home.”¹⁷¹ In 2020, “[f]irearms were the weapon most commonly used by males to murder females,”¹⁷² and of those “females killed with a firearm, sixty-three percent were murdered by male intimates.”¹⁷³ In comparison with other similarly situated countries, “[w]omen in the US are 28 times more likely to be killed with a gun than women in other high-income countries.”¹⁷⁴

Advocacy addressing firearm use in domestic violence situations has tended to focus on calls for legislative and policy change directed at domestic policymakers¹⁷⁵ at the federal,¹⁷⁶ state,¹⁷⁷ and local levels,¹⁷⁸ as well as domestic litigation,¹⁷⁹ endorsements of “candidates [who] are championing lifesaving gun safety laws,”¹⁸⁰ local and community engagement,¹⁸¹ and grassroots and survivor based activism.¹⁸² Such efforts

¹⁶⁹ *Domestic Violence*, EVERYTOWN FOR GUN SAFETY, <https://everytownresearch.org/guns-domestic-violence>.

¹⁷⁰ VIOLENCE POLICY CENTER, *WHEN MEN MURDER WOMEN: AN ANALYSIS OF 2020 HOMICIDE DATA 1 (2022)*, <https://www.vpc.org/studies/wmmw2022.pdf>.

¹⁷¹ *Id.*

¹⁷² *Id.* at 7.

¹⁷³ *Id.*

¹⁷⁴ *Domestic Violence*, EVERYTOWN FOR GUN SAFETY, <https://everytownresearch.org/guns-domestic-violence>.

¹⁷⁵ *See, e.g.*, Everytown for Gun Safety, *Work*, <https://www.everytown.org/work>; *see also* Sandy Hook Promise, *Why Advocacy*, <https://actionfund.sandyhookpromise.org> (“Legislation can save lives and prevent gun violence, and we need your help to get these bills passed into law.”).

¹⁷⁶ *See, e.g.*, Center for American Progress, *Gun Violence Prevention Priorities for a New Congress and a New Administration* (Jan. 26, 2021), <https://www.americanprogress.org/article/gun-violence-prevention-priorities-new-congress-new-administration/> (Listing “top priorities for legislative, executive, and budgetary action to begin to implement a comprehensive federal strategy to reduce all forms of gun violence.”). *See also* CSGV, *Federal Actions*, https://www.csgv.org/federal_actions; Everytown for Gun Safety, *Work*, <https://www.everytown.org/work>.

¹⁷⁷ *See, e.g.*, CSGV, *State Actions*, https://www.csgv.org/state_actions; Everytown for Gun Safety, *Work*, <https://www.everytown.org/work>.

¹⁷⁸ *See, e.g.*, Everytown for Gun Safety, *Work*, <https://www.everytown.org/work>.

¹⁷⁹ *See, e.g., id.*

¹⁸⁰ Giffords, *Gun Safety Champions*, <https://giffords.org/elections/endorsements>; *see also* Everytown for Gun Safety, *Work*, <https://www.everytown.org/work/>.

¹⁸¹ *See, e.g.*, Violence Policy Center, *5 Things You Can Do Now to Stop Gun Violence*, <https://vpc.org/5-things-you-can-do-now-to-help-stop-gun-violence> (“Here are five things you can do right now to help stop gun violence. . . Join a local gun violence prevention organization . . . Write a letter to the editor in your local paper in support of gun violence prevention . . . Host your very own evening of information and action to educate your friends and community about gun violence while helping support the Violence Policy Center.”).

¹⁸² Everytown for Gun Safety, *Work*, <https://www.everytown.org/work> (“We are a movement of moms, dads, students, survivors, educators, gun owners, and concerned citizens working together to fight for public safety measures that can protect people from gun violence.” “Everytown Support Fund provides support to a diverse community of survivors that are

have often framed gun violence, particularly in relation to domestic violence, as public health¹⁸³ and/or Second Amendment issues.¹⁸⁴

The Duke International Human Rights Clinic (Duke IHRC) has promoted a human-rights-based approach to the issue of firearm possession and use—particularly in situations of domestic violence—in the U.S. From engagement with inter-governmental human rights bodies, including the U.N. Human Rights Committee, to the integration of human rights standards and norms in U.S. based advocacy, to building and cultivating human rights literacy and legal empowerment among various stakeholders, this work has relied on fact-finding, legal analysis, reporting, and coalition-building to demonstrate the human rights implications of gun use in domestic violence contexts in the U.S. and to advocate for a human rights-based approach to address these violations.

1. *Engaging with International Human Rights Mechanisms*

The IHRC engaged with the U.N. treaty monitoring body system, including through its March 2019 submission on “The United States’ Human Rights Obligations on Guns and Domestic Violence” to the

putting a human face on the gun violence crisis by sharing their stories.”). *See also* Change the Ref, *About*, <https://changetheref.org/about>.

¹⁸³ Giffords, *Domestic Violence*, <https://giffords.org/issues/domestic-violence> (“Domestic violence is a preventable public health crisis that impacts people of all backgrounds.”); Everytown for Gun Safety, *Guns and Violence against Women*, <https://everytownresearch.org/report/guns-and-violence-against-women-americas-uniquely-lethal-intimate-partner-violence-problem> (“Intimate partner violence (IPV) is a serious public health problem that affects millions of American women, with far-reaching impacts not only for individual victims, but also for their families, their communities, and our economy.”); Center for American Progress, *supra* note 176 (“After four years of a presidential administration that was hostile toward efforts to address gun violence, the start of a new Congress and a new presidential administration presents an opportunity for serious action to address the many gaps and weaknesses in our nation’s approach to this public health crisis.”); GVPedia, *Denver Accord A Comprehensive Plan to Reduce Gun Violence, The Four Principles* (May 7, 2019), <https://denveraccord.org/the-four-principles-of-the-denver-accord> (“Gun violence in America is a pervasive public health crisis that demands substantial policy solutions and well-funded programs that effectively reduce gun violence.”); JOHNS HOPKINS CENTER FOR GUN VIOLENCE PREVENTION AND POLICY, <https://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-center-for-gun-violence-prevention-and-policy> (“Our goal is to bring public health expertise and perspectives to the complex policy issues related to gun violence prevention.”).

¹⁸⁴ *Second Amendment*, EVERYTOWN FOR GUN SAFETY, <https://everytownlaw.org/our-work/second-amendment> (“Everytown Law regularly files amicus briefs defending state and federal gun safety laws against Second Amendment challenges. Our briefs focus on the historical, social science, and doctrinal reasons that common sense gun laws do not violate the Second Amendment.”); *The Second Amendment*, GIFFORDS, <https://giffords.org/lawcenter/gun-laws-second-amendment>, *Supreme Court and the Second Amendment*, CSGV, <https://www.csqv.org/issues-archive/supreme-court-and-the-second-amendment>, *What are So-Called Second Amendment Sanctuaries*, BRADY, <https://www.bradyunited.org/act/second-amendment-sanctuaries>.

U.N. Human Rights Committee.¹⁸⁵ This submission provided the Human Rights Committee with an analysis of “the issue of guns and domestic abuse in the United States using a human rights-based approach.”¹⁸⁶

A core element of this strategy was to use the human rights framework to identify the full range of rights violations experienced by victims of gun violence in domestic violence situations, including the rights to non-discrimination (“[t]he use of guns in intimate partner violence disproportionately affects women”),¹⁸⁷ life,¹⁸⁸ physical and mental health (“[g]uns are . . . often used in non-fatal intimate partner violence against women, with significant adverse effects”),¹⁸⁹ and work (“[g]uns are

¹⁸⁵ Duke Law International Human Rights Clinic, Submission to the U.N. Human Rights Committee 125th session, Mar. 4-29, 2019 in relation to the U.S. List of Issues Prior to Reporting (LoIPR), *The United States’ Human Rights Obligations on Guns and Domestic Violence* (2019), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCCPR%2FICF%2FUSA%2F34117&Lang=en. (The submission contains sections on: “Prevalence and Types of Gun-Related Domestic Violence Incidents,” “U.S. Laws on Guns and Domestic Violence,” “International Human Rights Obligations on Guns and Domestic Violence,” and “Suggested Questions for the U.S. LoIPR.” The suggested questions address the following rights contained in the ICCPR: non-discrimination and equal rights of men and women; violence against women; right to life; and right to liberty and security of person, and treatment of persons deprived of their liberty and fair trial.). U.N. Office of the High Commissioner, *Reporting Procedure*, <https://www.ohchr.org/en/treaty-bodies/ccpr/reporting-procedure> (The “list of issues prior to reporting” is one of “three principal documents . . . exchanged between States parties and the [Human Rights] Committee before the interactive dialogue takes place” between the two.).

¹⁸⁶ Duke Law International Human Rights Clinic, *supra* note 185, at “Introduction” (The submission did so by “[lay]ing out the prevalence and types of gun-related incidents in domestic violence situations/instances in the United States, highlighting that the use of guns in intimate partner fatal and non-fatal violence disproportionately affects women and that domestic gun violence is intersectional,” “analyz[ing] relevant U.S. laws on guns and domestic abuse, highlighting five key loopholes that particularly implicate the U.S. government’s obligations under international human rights law,” “analyzing the international human rights framework governing the issue of guns and domestic violence, highlighting the due diligence obligations of the United States that derive from treaties ratified by the U.S. government,” and providing a “suggested list of questions for inclusion in the List of Issues Prior to Reporting to the United States.”).

¹⁸⁷ *Id.* at 1, citing to *Domestic Shooting Homicides*, ASSOC. PRESS (2016), <http://data.ap.org/projects/2016/domestic-gun-homicides> (“Between 2006 and 2014, “[a]n average of 760 Americans were killed with guns annually by their spouses, ex-spouses or dating partners,” of which “[c]urrent wives and girlfriends comprised nearly 75 percent of all victims in fatal domestic shootings. Overall, women were the victims in more than four out of every five of these types of incidents.”).

¹⁸⁸ *Guns and Domestic Violence*, EVERYTOWN FOR GUN SAFETY, <https://everytownresearch.org/guns-domestic-violence> (“Every month, an average of 57 women are shot and killed by an intimate partner.”). See also VIOLENCE POLICY CENTER, WHEN MEN MURDER WOMEN, *supra* note 170, at 5 (In 2019, of “homicides in which the weapon could be identified, 58 percent of female victims . . . were killed with a gun. Of the females killed with a firearm, 59 percent were murdered by male intimates. The number of females shot and killed by their husband or intimate acquaintance . . . was more than three and a half times higher than the total number murdered by male strangers using all weapons combined . . . in single victim/single offender incidents . . .”).

¹⁸⁹ Duke Law International Human Rights Clinic, *supra* note 185, at 2, citing to NATIONAL PARTNERSHIP FOR WOMEN & FAMILIES, GUN VIOLENCE: A THREAT TO WOMEN AND FAMILIES 1

prevalent in workplace homicides among U.S. women perpetrated by intimate partners”).¹⁹⁰ Based on this demonstration of impact, the clinic’s submission argues that the U.S. government is failing to fulfill its obligations under international human rights law,¹⁹¹ including with respect to economic, social, and cultural rights, an argument that would have less traction in the absence of an international human rights framing given the insufficient recognition and protection given to economic, social, and cultural rights under U.S. domestic law.¹⁹² As the submission explains:¹⁹³

States’ obligations under international human rights law on the use of guns by domestic abusers implicate a number of human rights guarantees, including particularly the right to non-discrimination and equality on the basis of sex and gender,¹⁹⁴ as well as other intersecting prohibited grounds of discrimination, such as race;¹⁹⁵ the

(2018), <http://www.nationalpartnership.org/our-work/resources/health-care/gun-violence-a-threat-to-women-and-families.pdf> (The “trauma associated with gun violence takes a lasting physical and emotional toll on victims and their families.”). See also *Guns and Domestic Violence, EVERYTOWN FOR GUN SAFETY*, *supra* note 188 (“[N]early 1 million women alive today have reported being shot or shot at by intimate partners.”).

¹⁹⁰ Duke Law International Human Rights Clinic, *supra* note 185, at 2, citing to Hope M. Tiesman, Kelly K. Gurka, & Srinivas Konda et al., *Workplace Homicides Among U.S. Women: The Role of Intimate Partner Violence*, 22(4) ANN. EPIDEMIOL. 277-84 (2012) (In workplace homicides among U.S. women between 2003 and 2008, nearly 80 percent of the “personal relations” homicides (which constitute 33% of the workplace homicides among U.S. women) were perpetrated by an intimate partner and while firearms were used in 67% of workplace homicides overall, a “significantly larger percentage” of “personal relations” homicides (i.e. 80%) were caused by firearms).

¹⁹¹ Duke Law International Human Rights Clinic, *supra* note 185, at 5-6.

¹⁹² Larry Cox, *A Movement for Human Rights in the United States: Reasons for Hope*, 40 COLUM. HUM. RTS. L. REV. 135, 140 (2008) (“The advancement of human rights domestically also allows us to break out of the current limits of a U.S. legal framework that denies the existence of economic and social rights-rights as essential to the full development of a human personality as any of the rights in the U.S. Constitution.”).

¹⁹³ Duke Law International Human Rights Clinic, *supra* note 185, at 5-6.

¹⁹⁴ *Id.* at 5. See, e.g., ICCPR, *supra* note 13, at arts. 2(1), 3, 26; ICESCR, *supra* note 14, at arts. 2(2), 3; Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), arts. 1-4, *adopted* Dec. 18, 1979, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981); International Convention on the Elimination of All Forms of Racial Discrimination (CERD), art. 1(1), *adopted* Dec. 21, 1965, 660 U.N.T.S. 195 (entered into force Jan. 4, 1969) (see also Committee on the Elimination of Racial Discrimination, *General Recommendation No. 25 on gender-related dimensions of racial discrimination*, U.N. Doc. A/55/18 (2000)); Convention on the Rights of the Child (CRC), art. 2, *adopted* Nov. 20, 1989, 15 U.N.T.S. 3 (entered into force Sept. 2, 1990).

¹⁹⁵ *Id.*, citing to Human Rights Comm., General Comment No. 28, *Article 3 (The Equality of Rights Between Men and Women)*, U.N. Doc. CCPR/C/21/Rev.1/Add.10, ¶ 30 (2000); CERD Comm., *General Rec. No. 32, The meaning and scope of special measures in the International Convention on the Elimination of All Forms [of] Racial Discrimination*, ¶ 7, U.N. Doc. CERD/C/GC/32, (2009); Comm. on the Elimination of Discrimination against Women (CEDAW), *General Rec. No. 25: Temporary Special Measures*, ¶ 12 (2004).

rights to life and security;¹⁹⁶ the rights of the child;¹⁹⁷ and a series of economic, social, and cultural rights, including the rights to physical and mental health (for individuals shot or threatened, as well as those affected by secondary victimization),¹⁹⁸ and work.¹⁹⁹

A second integral element of this strategy of engagement was to utilize underlying principles of international human rights law, including intersectional discrimination. The submission contains information regarding the intersectional nature of domestic violence, including that “[c]omprehensive data analyzing rates of domestic gun homicides and other gun-incidents among racial minorities, sexual minorities, and immigrant communities is lacking.”²⁰⁰ With respect to race, available data shows that [i]n 2020, Black females were murdered by males at a rate nearly three times as high as white females: 2.96 per 100,000 versus 1.07 per 100,000. In 2020, Black females accounted for fourteen percent of the female population in the United States, while 31 percent of the females killed by males in single victim/single offender incidents where the race of the victim was known were Black.²⁰¹ And while “[d]omestic violence also occurs within the LGBTI community,”²⁰² the submission notes that limited data regarding LGBTI persons “prevents a clear

¹⁹⁶ *Id.*, citing to Human Rights Comm., Concluding Observations: United States of America, U.N. Doc. CCPR/C/79/Add.50 ¶ 17 (1995).

¹⁹⁷ *Id.*, citing to See Human Rights Comm., *General Comment No. 17: Article 24 (Rights of the child)* ¶ ¶ 3,4 (1999). See also Comm. on the Rights of the Child, *General Comment No. 13, The right of the child to freedom from all forms of violence*, U.N. Doc. CRC/C/GC/13 (2011) (*CRC General Comment No. 13*); Comm. on the Rights of the Child, *General Comment 14, The right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*, U.N. Doc. CRC/C/GC/14 (2013).

¹⁹⁸ *Id.* at 6 (citing to Comm. on the Rights of the Child, *General Comment No. 15, The right of the child to the enjoyment of the highest attainable standard of health (art. 24)*, U.N. Doc. CRC/C/GC/15 (2013); Comm. on Economic, Social and Cultural Rights, *General Comment No. 14, The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights)* U.N. Doc. E/C.12/2000/4 (2000)). For a more detailed overview of the health and human rights of gun violence survivors, see Cate Buchanan, *The Health and Human Rights of Gun Violence Survivors: Charting a Research and Policy Agenda*, 13(2) HEALTH AND HUMAN RIGHTS 50 (2011).

¹⁹⁹ *Id.* (citing to *Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Rashida Manjoo, Addendum Mission to the United States of America*, ¶¶ 19-20, U.N. Doc. A/HRC/17/26/Add.5 and Corr.1 (June 6, 2011). See generally Comm. on Economic, Social and Cultural Rights, *General Comment No. 23 on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights)* E/C.12/GC/23 (2016)).

²⁰⁰ *Id.* at 2.

²⁰¹ VIOLENCE POLICY CENTER, *WHEN MEN MURDER WOMEN*, *supra* note 170, at 7 (2022), <https://www.vpc.org/studies/wmmw2022.pdf>. In addition, “[o]f Black victims who knew their offenders, 56 percent (259 out of 464) were wives, common-law wives, ex-wives, or girlfriends of the offenders.” *Id.* at 8.

²⁰² AMNESTY INTERNATIONAL, *IN THE LINE OF FIRE 90* (2018), https://www.amnestyusa.org/wp-content/uploads/2018/09/Gun-Report-Full_16.pdf.

understanding of the ways in which various laws on guns and domestic violence impact persons in LGBTI relationships.”²⁰³ With respect to state obligations in this regard, the submission explains as follows²⁰⁴:

A State’s due diligence obligation . . . requires States to address the intersectional nature of gun violence in domestic violence. The U.N. Human Rights Committee has recently emphasized that “[l]egal protections for the right to life must apply equally to all individuals and provide them with effective guarantees against all forms of discrimination, including multiple and intersectional forms of discrimination.”²⁰⁵ In relation to the United States, the U.N. Special Rapporteur on violence against women, its causes, and consequences, has specifically called on the government to “[r]eview and more effectively address the disproportionate impact that violence has on poor, minority, and immigrant women.”²⁰⁶

The Human Rights Committee has demonstrated a continued commitment to addressing gun violence, including in the domestic violence context, as evidenced by the inclusion of a question directly addressing many of the topics raised in the IHRC submission in its “list of issues prior to submission” of the U.S. periodic report.²⁰⁷ This question built on the Human Rights Committee’s previous engagement with the issue, both in the form of Concluding Observations to the

²⁰³ Duke Law International Human Rights Clinic, *supra* note 185, at 3.

²⁰⁴ *Id.* at 7.

²⁰⁵ *Id.*, citing to HRC General Comment No. 36, at ¶ 61.

²⁰⁶ *Id.* at 7-8.

²⁰⁷ See Human Rights Committee, “List of issues prior to submission of the fifth periodic report of the United States of America,” ¶ 14, U.N. Doc. CCPR/C/USA/QPR/5 (Apr. 18, 2019) (“With respect to the Committee’s previous concluding observations (para. 10) and the follow-up information received from the State party, please provide information on the number of victims of gun violence, including in the context of domestic violence. Please describe the efforts made by the State party to restrict access to firearms for those most at risk of abusing them, and the steps taken to counter patterns of abuse.”). Following this, the United States, in its periodic report, responded by expressing the view that this question “appear[s] to request information regarding the U.S. legal framework with respect to the private actions of non-state actors” and “to primarily relate to the conduct of persons or groups acting in a private rather than an official capacity” and that the view of the United States is that “Article 2 of the Covenant contains no language stating that its obligations extend to private, non-governmental acts, and no such obligations can be inferred from Article 2” and that “neither the text nor the negotiating history of the Covenant support any obligation on the part of States Parties to take ‘reasonable positive measures’ and to exercise ‘due diligence’ to respond to foreseeable threats by private persons and entities.” Fifth periodic report submitted by the United States of America under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2020, U.N. Doc. CCPR/C/USA/5 para 4 (Jan. 19, 2021). The Human Rights Committee’s Concluding Observations following the Fifth Reporting Cycle in 2019 are not yet available. OHCHR U.N. Treaty Body Database, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx?CountryCode=USA&Lang=EN.

U.S.²⁰⁸ and its General Comment on the right to life.²⁰⁹ Thus, the Human Rights Committee remains a valuable target, including for U.S.-based advocates who, through their active engagement with the Human Rights Committee as well as other mechanisms,²¹⁰ can work to further magnify their impact. Such engagement “has the potential to play a significant role in influencing U.S. policy to end violence against women”²¹¹ and, by extension, violence against women related to gun violence, given the inextricable link between the two.²¹² As this interplay continues between advocates’ engagement and “observations, recommendations, and reports on U.S. abuses and violations of international law . . . with regard to the problem of domestic violence and police lack of accountability” from international bodies, “it will become more and more difficult for the United States to continue to keep its head in the sand and disavow any governmental responsibility for protecting women from intimate violence.”²¹³ This is particularly impactful in a context in which “United

²⁰⁸ Duke Law International Human Rights Clinic, *supra* note 185, at 13 (The IHRC submission includes the Human Rights Committee’s most recent Concluding Observations to the United States—Human Rights Comm., *Concluding observations on the fourth periodic report of the United States of America*, CCPR/C/USA/CO/4 ¶ 10 (2014) —which serve as a basis for its list of “Suggested Questions for the U.S. LoIPR” Submission.).

²⁰⁹ The Human Rights Committee’s General Comment on the right to life is also referenced throughout the submission. Human Rights Comm., General Comment No. 36, *General Comment No. 36, on article 6 of the International Covenant on Civil and Political Rights, on the right to life*, CCPR/C/GC/36 (2019). The General Comment contains relevant language with respect to domestic violence victims (*id.* at ¶ 23); intersectional discrimination (*id.* at ¶ 61); firearms (*id.* at ¶ 20); and gun violence (*id.* at ¶ 26). This paragraph directly cites to the Human Rights Committee’s Concluding observations on the fourth periodic report of the United States of America. *Id.* at note 91.

²¹⁰ Lenora M. Lapidus, *The Role of International Bodies in Influencing U.S. Policy to End Violence Against Women*, 77 *FORDHAM L. REV.* 529, 554 (2008) (encouraging advocates to “use the international human rights mechanisms and the resulting observations and recommendations to push the United States to alter its policies” and suggesting various avenues through which to do so including to “publicize those proceedings, observations, and recommendations to make the public aware of the mechanisms and their operation as well as the substantive abuses that are at issue in the proceedings before these bodies,” to “cite as persuasive (though not controlling) authority the concluding observations in other legal proceedings—both in domestic courts and before international bodies,” and “use the recommendations as support for policy changes at the state and federal legislative and executive levels”).

²¹¹ *Id.*

²¹² *Domestic Shooting Homicides*, ASSOC. PRESS (2016), <http://data.ap.org/projects/2016/domestic-gun-homicides> (Based on data collected between 2006 and 2014, “[c]urrent wives and girlfriends comprised nearly 75 percent of all victims in fatal domestic shootings. Overall, women were the victims in more than four out of every five of these types of incidents.”)

²¹³ Lapidus, *supra* note 210, at 553. (noting that while international human rights mechanisms cannot “force a country to do anything . . . reports on a country’s compliance-or lack thereof with human rights norms shine a spotlight on human rights abuses and can shame a country into altering its practices”). *Id.* at 538.

Nations' human rights bodies are engaging in an increasingly robust discussion about the human rights risks of firearm violence."²¹⁴

2. *Integrating Human Rights Standards in Domestic Advocacy*

The IHRC's work also involved integrating human rights standards and framing into advocacy around gun violence. For example, the Clinic contributed to Amnesty International's report "Fragmented and Unequal: A Justice System that Fails Survivors of Intimate Partner Violence in Louisiana, USA"²¹⁵ by researching federal and state laws regarding firearms (including laws on firearm purchase, possession and transfer, licensing requirements, sanctions and enforcement of firearms restrictions, background check requirements, and data collection restrictions), domestic violence (for example, the role of domestic violence courts and state-level domestic violence benchbooks directed at judges), and the intersection between the two.²¹⁶ This work cultivated crucial legal research, writing, and analytical skills, including the substantive and strategic dexterity to seamlessly navigate both U.S. federal and state legislation and case law,²¹⁷ as well as international human rights law.²¹⁸ The work enabled development of this proficiency in strategically significant ways including by expanding existing advocacy efforts, which, as noted in the introduction to this case study, have typically focused on domestic advocacy targets and concentrated on advocacy grounded in public health and/or the Second Amendment.

3. *Building Human Rights Literacy and Legal Empowerment*

Finally, the IHRC held or participated in a number of events domestically that sought to support grassroots actors, including by furthering their understanding of how a human rights framing might contribute to their advocacy efforts. For example, the IHRC's contribution to the "Gun

²¹⁴ Barbara A. Frey, *Due Diligence to Prevent Foreseeable Harm: The International Human Rights Agenda on Civilian Gun Violence*, 60 WASH. U. J. L. & POL'Y 91, 109 (2019).

²¹⁵ AMNESTY INTERNATIONAL, FRAGMENTED AND UNEQUAL A JUSTICE SYSTEM THAT FAILS SURVIVORS OF INTIMATE PARTNER VIOLENCE IN LOUISIANA, USA (2019), <https://www.amnesty.org/en/documents/amr51/1160/2019/en/>

²¹⁶ *Id.* at 48 n.223, 232 (citing to the IHRC's research on state-level "legal provisions that require training for judges and other court officials involved in cases of intimate partner violence" as well as state benchbooks that "include provisions to guide how judges should assess a defendant's access to or possession of firearms as a lethality factor throughout the protection order process.").

²¹⁷ *See id.*

²¹⁸ Students researched a range of issues which included close examination of, among other sources, those produced by the U.N. and other intergovernmental bodies (including treaties, treaty monitoring bodies, and Special Procedures), regional human rights bodies, and NGOs.

Violence Prevention Conference 2019: Twenty Years from Columbine to Parkland”²¹⁹ convening about utilizing an international human rights framing as an additional advocacy tool to address gun violence was met with strong interest. It resulted in follow-up that sought to break down the silos between addressing the issue solely through advocacy targeted at domestic policymakers and through U.S.-based mechanisms to also advocate for change through international human rights venues.²²⁰ Pedagogically, student participation in this conference, as well as other engagements including participation in expert discussions,²²¹ provided the opportunity to develop critical advocacy and lawyering skills including oral advocacy and engaged and deep listening.²²² Given the conference’s centering of gun violence survivors and families speaking to both the personal impact of gun violence and their activism and movement building, lessons from “a movement-centered model” of lawyering were especially relevant, including that “training in self-reflection and prudence” must include “cultivating skills . . . such as close listening, consultation, collaboration, mindfulness, fair-mindedness, and sensitivity to context and nuance,” all of which “are part of the ethical apparatus that movement lawyers should bring to bear on their work.”²²³

IHRC further sought to develop human rights literacy in its efforts to increase an understanding of gun violence as a human rights issue

²¹⁹ GVPedia, Survivors Empowered, and Newtown Action Alliance, *Gun Violence Prevention Conference 2019: Twenty Years from Columbine to Parkland*, <https://www.survivorslead.com/events/2019/3/23/20-years-from-columbine-to-parkland> (Apr. 2019). The goal of the conference was to “connect [] gun violence prevention advocates to academic researchers.”

²²⁰ The domestic violence advocacy context provides a useful model for the ways in which advocates might integrate a human rights framing into their work, including by working in collaboration with human rights advocates. See Caroline Bettinger-López, *Human Rights at Home: Domestic Violence as a Human Rights Violation*, 40 COLUM. HUM. RTS. L. REV. 19, 76-77 (2008) (explaining that the U.S. and United Nations based advocacy and engagement with the Inter-American Commission on Human Rights in the case of Jessica Lenahan (formerly Gonzales) contributed to the following: “Domestic violence and human rights advocates who have previously occupied separate spheres are increasingly interacting and engaging in constructive and meaningful dialogue, both in the United States and abroad”).

²²¹ Washington University’s Institute for Public Health, WashU Law Public Interest Law and Policy Speakers Series and the *Journal of Law and Policy*, American Branch of the International Law Association (International Human Rights Committee), *Interdisciplinary and Human Rights Approaches to the Gun Violence Crisis in the United States*, (Nov 2, 2018) https://law.wustl.edu/wp-content/uploads/2019/05/The-U.S.-Gun-Violence-Crisis_-Conference_Public-Agenda.pdf.

²²² James H. Fierberg, *A CIVILITY-BASED MODEL FOR NEW LAWYERS* 28 (2021) (“Active listening, as its name suggests, is a conscious undertaking to actually and fully comprehend what is being said; that is, to grasp the message that the speaker is trying to convey, to make the speaker aware that you are, in fact, attempting to understand what is being said and focus on the message in a manner that will allow for a productive and appropriate exchange of information.”).

²²³ Susan Carle & Scott L. Cummings, *A Reflection on the Ethics of Movement Lawyering*, 31 GEO. J. LEGAL ETHICS 447, 464 (2018).

within academic institutions, including by organizing an event at Duke University School of Law, entitled “Guns and Domestic Violence: U.S. and International Human Rights Law Perspectives,”²²⁴ which helped establish a foundation for relationship-building with local advocates at the city-level.

III. OPPORTUNITIES AND CHALLENGES IN USING HUMAN RIGHTS FRAMEWORKS IN CLINICAL PROJECTS

The above case studies highlight some of the possibilities of integrating human rights into domestic clinical practice. Human rights norms and strategies can serve as useful advocacy and teaching tools. Specifically, clinics can create opportunities by widening the range of rights and sources of law that students might consider, advancing new understandings of state responsibility, providing new venues for advocacy, expanding the universe of potential remedies, focusing attention on human dignity, and broadening advocates’ and students’ perspectives. Clinicians should also be mindful of potential challenges of using human rights frameworks to orient domestic advocacy, including limitations on the application and enforceability of human rights, skepticism among partners or advocacy targets towards an unfamiliar framework, inconsistencies between domestic and international law, the non-legal work often required to address complex structural problems, and co-optation of human rights frameworks for regressive ends.

A. Opportunities

1. Widening the Range of Rights

The human rights framework offers advocates and students an opportunity to think broadly about the nature of violations people are experiencing and the rights at stake, which are understood to be interdependent and interrelated in human rights law even when they may be separated or dealt with in a piecemeal fashion domestically. In fact, U.S. civil rights leaders, like Martin Luther King Jr. Malcolm X, and Walter White, the former executive secretary of the NAACP, called for

²²⁴ Duke University School of Law, *Guns and Domestic Violence: U.S. and International Human Rights Law Perspectives*, Oct. 14, 2019, <https://web.law.duke.edu/news/guns-and-domestic-violence-us-and-international-human-rights-law-perspectives>. Panel speakers were Sherry Honeycutt Everett, North Carolina Coalition Against Domestic Violence, Aya Fujimura-Fanselow, Clinical Professor of Law (Teaching) and Supervising Attorney, Duke University School of Law, and Verna Williams, Dean and Nippert Professor of Law, University of Cincinnati College of Law. The panel was introduced by Jake Charles, Executive Director, Center for Firearms Law, Duke University School of Law and moderated by Darrell A.H. Miller, Faculty Co-Director, Center for Firearms Law and Melvin G. Shimm Professor of Law, Duke University School of Law.

broadening the civil rights movement to a struggle for human rights.²²⁵ As Carol Anderson explains, human rights could “address not only the political and legal inequality that African Americans endured, but also the education, health care, housing, and employment needs that haunted the black community.”²²⁶ In 1951, Paul Robeson and William Patterson submitted a petition documenting widespread racist brutality and lynching and arguing that the U.S. government was guilty of genocide against Black Americans under international law.²²⁷ While Cold War politics and pervasive racism stymied initial attempts to hold the U.S. government accountable for white supremacy and racist violence at the U.N., the adoption of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in 1965 offered a new tool for advocates to look beyond civil rights guarantees at the domestic level and seek accountability for racial discrimination as a violation of international law.

Work on addressing the criminalization of homelessness through the lens of civil and political rights, more familiar to a U.S. audience, has provided an opening for a more robust understanding of rights that includes the right to housing and social and economic rights. While the amicus brief addressing fines for life-sustaining activities by the Miami Human Rights Clinic and partners focuses on the right to be free from cruel, inhuman, and degrading treatment, it concludes by linking punishment for homelessness to the U.S.’s failure to recognize the right to

²²⁵ ANDERSON, *supra* note 21, at 276; Barbara M. Oomen, *Introduction: The Promise and Challenges of Human Rights Cities*, in *GLOBAL URBAN JUSTICE: THE RISE OF HUMAN RIGHTS CITIES* 1, 239 (Barbara M. Oomen et al. eds., 2016) (quoting Martin Luther King Jr.: “We have moved from the era of civil rights to an era of human rights”); Dorothy Q. Thomas, *Against American Supremacy: Rebuilding Human Rights Culture in the United States*, in *BRINGING HUMAN RIGHTS HOME: A HISTORY OF HUMAN RIGHTS IN THE UNITED STATES* 5 (Cynthia Soohoo et al. eds., 2009) (quoting Malcolm X: “How is a black man going to get ‘civil rights’ before he first wins his human rights?”); Carol Anderson, *A “Hollow Mockery”: African Americans, White Supremacy, and the Development of Human Rights in the United States*, in *BRINGING HUMAN RIGHTS HOME: A HISTORY OF HUMAN RIGHTS IN THE UNITED STATES* 75 (Cynthia Soohoo et al. eds., 2009) (quoting Walter White, the NAACP’s executive secretary in 1950: “Democracy doesn’t mean much to man with an empty belly.”).

²²⁶ ANDERSON, *supra* note 21, at 2. In 1947, shortly after the UN was created, W.E.B. DuBois authored an appeal on behalf of the National Association for the Advancement of Colored People (NAACP), documenting racial discrimination and other rights violations faced by Black individuals and communities in the United States. W.E.B. DuBois, NAT’L ASS’N. FOR THE ADVANCEMENT OF COLORED PEOPLE (NAACP), *AN APPEAL TO THE WORLD: A STATEMENT ON THE DENIAL OF HUMAN RIGHTS TO MINORITIES IN THE CASE OF CITIZENS OF NEGRO DESCENT IN THE UNITED STATES OF AMERICA AND AN APPEAL TO THE UNITED NATIONS FOR REDRESS* (1947). The United States strongly objected to considering the petition, and while the Soviet Union pressed for it to be considered, the United Nations Commission on Human Rights ultimately rejected it. MARY L. DUDZIAK, *COLD WAR CIVIL RIGHTS: RACE AND THE IMAGE OF AMERICAN DEMOCRACY* 45 (2000).

²²⁷ PAUL ROBESON & WILLIAM PATTERSON, *CIVIL RIGHTS CONGRESS, WE CHARGE GENOCIDE: THE CRIME OF GOVERNMENT AGAINST THE NEGRO PEOPLE* (1951).

adequate housing.²²⁸ Advocates have further stressed the principle of “progressive realization” as a way to balance ultimate goals with current reality, recognizing that governments should commit to guaranteeing social and economic rights over time to the maximum of their available resources.²²⁹ Nationally, advocacy to address the criminalization of homelessness has helped shift political discourse towards greater recognition of a right to housing.²³⁰ President Biden ran on a platform endorsing a right to housing,²³¹ and the U.S. Interagency Council on Homelessness (USICH) strategic plan opens with a letter noting that “USICH believes that housing should be treated as a human right.”²³² Additionally, movements at the federal level and in California, Connecticut, and Vermont seek to establish a right to housing.²³³

The Cornell Gender Justice Clinic’s work to realize the right to be free from domestic violence has expanded community members’ understanding of the issues and rights at stake when domestic violence occurs. In advocating for the adoption of domestic violence-human rights resolutions, the Clinic drew upon their work the previous year in contributing research to a report by the U.N. Special Rapporteur on violence against women and girls, its causes and consequences (U.N. Special Rapporteur on violence against women) that analyzed how gender-based violence impedes the realization of all human rights.²³⁴ While arguments around the United States’ binding civil and political rights obligations under the ICCPR were most persuasive to some local legislators in Tompkins County, NY, most of the domestic violence-human rights resolutions emphasized the impacts of domestic violence on survivors’ health, financial stability, and access to safe housing²³⁵ – all traditionally understood as economic and social

²²⁸ Debra Blake Amicus Brief, *supra* note 89, at 10-17.

²²⁹ See, e.g., ICESCR, *supra* note 14, at arts. 2(1).

²³⁰ Tars et al., *supra* note 74, at 975-80.

²³¹ *The Biden Plan for Investing in Our Communities Through Housing*, JOEBIDEN.COM, <https://joebiden.com/housing>.

²³² USICH, All In: The Federal Strategic Plan to Prevent and End Homelessness, Message from the Executive Director (Dec. 2021), <https://www.usich.gov/fsp/message-from-executive-director>.

²³³ See e.g., Fundamental human right to housing, ACA-10, Reg. Sess. (Cal. 2023); Jeremy B. White, *California Will Consider ‘Right to Housing’ Legislation This Year*, POLITICO (Jan. 6, 2020, 8:48 PM), <https://www.politico.com/states/california/story/2020/01/06/california-will-consider-right-to-shelter-legislation-this-year-9420607>; An Act Establishing a Right to Housing, Raised Bill No. 168, Conn. Gen. Assemb., LCO No. 1614 (2022).

²³⁴ See Report to the U.N. General Assembly of the Special Rapporteur on Violence Against Women, Its Causes, and Consequences, Violence Against Women as a Barrier to the Effective Realization of All Human Rights, n. 1, U.N. Doc. A/69/238, (Sept. 1, 2014), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/523/34/PDF/N1452334.pdf?OpenElement>.

²³⁵ Tompkins County Legislature, Declaring Freedom from Domestic Violence as a Human Right, RES2014-214, Nov. 18, 2014; Ithaca Town Board, Declaring Freedom from

rights issues. Resolutions also acknowledged that “the United Nations has recognized that freedom from domestic violence is a human right affecting the realization of many other rights and freedoms.”²³⁶ This holistic human rights framing enabled community members to think more broadly about domestic violence interventions, to include, for example, a focus on support from employers, counseling support for survivors and their children, childcare assistance, and expanded access to and protection against discrimination in housing. Similarly, as noted above, the Duke IHRC submission to the Human Rights Committee demonstrates the full range of rights violations—both civil and political rights as well as economic, social, and cultural rights—experienced by victims of gun violence in domestic violence situations.²³⁷

The human rights framework not only illuminates a wider range of violations, but also sheds light on the ways different groups might bear the brunt of these violations differently. A human rights approach provides a robust understanding of equality that requires addressing disparate impacts and intersecting forms of discrimination. Human rights embrace the intersectionality framework, originally defined in the landmark work of Kimberlé Crenshaw to call attention to multiple forms of discrimination experienced in unique and specific ways by Black women and girls.²³⁸ Intersectionality recognizes identity as inseparable from a person’s life experiences and the accumulation of vulnerabilities from several levels of societal marginalization.²³⁹ As the CEDAW Committee has recognized, intersectional discrimination both “increases the risk of violence and heightens the adverse consequences of violence when it occurs.”²⁴⁰ As noted above, the U.N. Special Rapporteur on violence against women has specifically called on the U.S. government to

Domestic Violence as a Human Right, TB Res 2014-197, Dec. 8, 2014; Lansing Town Board, Declaring Freedom from Domestic Violence as a Human Right, Res 14-158, Dec. 17, 2014; Tompkins County Council of Governments, Declaring Freedom from Domestic Violence as Human Rights, Res 002-2015, Jan. 22, 2015; City of Ithaca Common Council, Declaration of Freedom from Domestic Violence as a Human Right, Mar. 6, 2015.

²³⁶ Tompkins County Council of Governments, Declaring Freedom from Domestic Violence as Human Rights, Res 002-2015, Jan. 22, 2015; City of Ithaca Common Council, Declaration of Freedom from Domestic Violence as a Human Right, Mar. 6, 2015.

²³⁷ See Section II(C)(1) *supra*.

²³⁸ Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STANFORD L. REV. 1241, 1242, 1252-53 (1991) (explaining intersectionality in the context of violence against women as “an experience...often shaped by other dimensions of their identities, such as race and class. Moreover, ignoring difference within groups contributes to tensions among groups, another problem that bears on efforts to politicize violence against women.”).

²³⁹ *Id.*

²⁴⁰ Comm. on the Elimination of Discrimination against Women, *Report of the inquiry concerning Canada of the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*, ¶ 200, U.N. Doc. CEDAW/C/OP.8/CAN/1 (Mar. 30, 2015).

“[r]eview and more effectively address the disproportionate impact that violence has on poor, minority, and immigrant women.”²⁴¹ The U.N. Human Rights Committee has likewise emphasized, “Legal protections for the right to life must apply equally to all individuals and provide them with effective guarantees against all forms of discrimination, including multiple and intersectional forms of discrimination.”²⁴²

In accordance with this framing, the various Clinic initiatives emphasize intersectionality. Intersectional discrimination is a critical factor in homelessness, leading the Miami Human Rights Clinic to delve into intersections of homelessness with race and gender.²⁴³ Cornell’s Gender Justice Clinic’s work implementing local domestic violence-human rights resolutions was guided by the experiences of survivors, including the particular experiences of survivors of color and others who experience multiple and intersecting forms of discrimination. This approach helped illuminate an insight shared by many community members that domestic violence responses should look beyond criminal legal system responses, which can afford critical protection and support but do not meet the needs of all survivors.²⁴⁴ As explained above, the Duke IHRC submission underscores the intersectional nature of domestic violence, citing statistics on the impact of gun violence with regards to race.²⁴⁵

In addition, an intersectional lens requires the collection of disaggregated data to enable improvements and accountability. The Duke IHRC thus noted in its submission to the Human Rights Committee that such “[c]omprehensive data analyzing rates of domestic gun homicides and other gun-incidents among racial minorities, sexual minorities, and immigrant communities is lacking,”²⁴⁶ for example highlighting that limited data regarding LGBTQ persons “prevents a clear understanding of the ways in which various laws on guns and domestic

²⁴¹ Duke Law International Human Rights Clinic, *supra* note 185, at 7-8, citing to *Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Rashida Manjoo, Addendum Mission to the United States of America*, ¶115(A)(b), U.N. Doc. A/HRC/17/26/Add.5 and Corr.1 (June 6, 2011).

²⁴² Duke Law International Human Rights Clinic, *supra* note 185, at 7, citing to Human Rights Comm., General Comment No.36, *General Comment No.36, on article 6 of the International Covenant on Civil and Political Rights, on the right to life*, ¶ 61 CCPR/C/GC/36 (2018).

²⁴³ University of Miami School of Law Human Rights Clinic et al., A Racial Justice Response to Homelessness, <https://miami.app.box.com/s/p3b5g6xoaw05lbcxnfou6fx-557c5krw>; University of Miami, Human Rights Clinic et al., *Women’s Homelessness in the United States*, <https://miami.app.box.com/s/h7csvo69hy8rbhd94j31v0l9f1j5l3pg>; University of Miami, Human Rights Clinic et al., *Homelessness in the LGBTQ Community in the United States*, <https://miami.app.box.com/s/6ajyu7b7mt7g59ckoe0onho02jzokf8l>.

²⁴⁴ See, e.g., Campbell, *supra* note 143.

²⁴⁵ See Section C(1), Addressing the Role of Guns in Domestic Violence, Engaging with International Human Rights Mechanisms.

²⁴⁶ Duke Law International Human Rights Clinic, *supra* note 185, at 2.

violence impact persons in LGBTI relationships.”²⁴⁷ On this basis, the Clinic’s submission emphasizes that “[a] State’s due diligence obligation . . . requires States to address the intersectional nature of gun violence in domestic violence.”²⁴⁸ The Miami Human Rights Clinic factsheet on “Homelessness in the LGBTQ Community in the United States” likewise calls for the collection of disaggregated data by sexual orientation and gender identity to understand and address LGBTQ struggles in accessing adequate housing.²⁴⁹

2. *Expanding State Responsibility*

In addition to a wider range of rights, using the human rights framework offers new understandings of state responsibility. These include the state’s responsibility to protect people from violence by private actors, to address structural issues, and to be proactive in addressing potential violations. First, human rights frameworks emphasize state responsibility to protect against violations by private actors. As the Cornell Gender Justice Clinic and its partners emphasized in their policy advocacy, a human rights lens provides a critical reframing of domestic violence as not just a private tragedy, but a violation of fundamental rights that governments at all levels have an obligation to address.²⁵⁰ Both international and regional human rights bodies have recognized state responsibility to respond to domestic violence with “due diligence” whether the perpetrator is a state or non-state actor, and whether an act is committed in an official or private capacity.²⁵¹ This concept of due diligence is relevant in the context of guns and domestic violence which involves the use of guns by private actors,²⁵² as highlighted in the Duke IHRC submission to the Human Rights Committee.²⁵³ Arguing for the full scope of

²⁴⁷ *Id.* at 3.

²⁴⁸ *Id.* at 7.

²⁴⁹ University of Miami School of Law Human Rights Clinic et al., *Homelessness in the LGBTQ Community in the United States*, <https://miami.app.box.com/s/6ajyu7b7mt7g59ckoe0onho02jzokf8l>.

²⁵⁰ See Advocacy Center of Tompkins County et al., *supra* note 129, at 4; Tompkins County Council of Governments, Regular Meeting Minutes, Jan. 22, 2015, <http://tompkinscountyny.iqm2.com/Citizens/FileOpen.aspx?Type=12&ID=2095&Inline=True>.

²⁵¹ *E.g.*, M.W. v. Denmark, Communication No. 46/2012, ¶ 5.4, U.N. Doc. CEDAW/C/63/D/46/2012 (Mar. 12, 2016); *Opuz v. Turkey*, App. No. 33401/02, ¶ 176 (June 9, 2009), <http://hudoc.echr.coe.int/eng?i=001-92945>; Jessica Lenahan (Gonzales) et al. v. United States, Case 12.626, Inter-Am. Comm’n H.R., Report No. 80/11, ¶ 199 (July 21, 2011).

²⁵² Leila Nadya Sadat & Madaline M. George, *Gun Violence and Human Rights*, 60 WASH. U.J.L. & POL’Y 1, 48 (2019) (While the vast majority of shootings in the United States “are carried out by private actors, the U.S. government may be held responsible for human rights violations resulting from their actions”).

²⁵³ Duke Law International Human Rights Clinic, *supra* note 185, at 6, citing to Special Rapporteur on violence against women, its causes and consequences, *Integration of the Human Rights of Women and the Gender Perspective: Violence against Women: The Due*

a state's obligation on the basis of the due diligence principle as required by international human rights law is an opportunity that would otherwise be unavailable under domestic law.²⁵⁴

Second, a human rights approach reframes structural issues, including homelessness, from a private tragedy to a violation the state is responsible for addressing, linking social factors and structural causes to the rights and dignity of human beings. For example, the U.N. Special Rapporteur on the right to adequate housing has noted that the very existence of homelessness is “a profound assault on dignity, social inclusion and the right to life. It is a prima facie violation of the right to... freedom from cruel, degrading and inhuman treatment.”²⁵⁵ Moreover “a State party to [ICESCR] in which any significant number of individuals are deprived of basic shelter and housing is, prima facie, failing to discharge its obligations under the Covenant.”²⁵⁶

Third, the human rights framework provides a proactive orientation and focus on prevention. As the ACLU Women's Rights Project, Miami Human Rights Clinic, and Columbia Law School Human Rights Institute explain:

International human rights law provides a framework to evaluate existing problems and identify solutions aimed at preventing gender-based violence. Human rights principles focus on governmental responsibility to proactively take steps to prevent acts of gender-based violence committed by both private and governmental actors. This includes addressing the underlying conditions that

Diligence Standard as a Tool for the Elimination of Violence against Women, ¶ 27, U.N. Doc. E/CN.4/2006/61 (Jan. 20, 2006) (noting that the U.S. government must “exercise due diligence to prevent gun violence in domestic situations, to investigate and prosecute perpetrators, to assist and protect victims, and to ensure remedies”).

²⁵⁴ Lapidus, *supra* note 210, at 549 (noting that one “of the most significant differences between . . . international human rights law, and the U.S. Constitution” is “that the state party must act with due diligence to protect individuals from harm caused by third parties, not simply ensure that no harm is committed by the government itself”). See also Caroline Bettinger-López, *Jessica Gonzales v. United States: An Emerging Model for Domestic Violence & Human Rights Advocacy in the United States*, 21 HARV. HUM. RTS. J. 183, 188 (2008) (contrasting the “different approach” between the United States legal system and the human rights framework, including that “[b]ecause the government has an affirmative obligation under international law to exercise due diligence and protect individuals known to be at risk, human rights can be a powerful mechanism for highlighting the state's role in perpetuating violence against women when it fails to respond appropriately to victims.”).

²⁵⁵ U.N. Hum. Rts. Council, Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in This Context, *Guidelines for the Implementation of the Right to Adequate Housing*, ¶ 30, U.N. Doc. A/HRC/43/43 (Dec. 26, 2019).

²⁵⁶ U.N. Hum. Rts. Council, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context*, ¶ 48, U.N. Doc. A/HRC/31/54 (2015) (citing CESCR, General Comment No. 3 (1990), ¶ 10).

perpetuate violations of rights (such as discrimination, social biases and a lack of adequate institutional responses).²⁵⁷

Using this human rights framework, Cornell's Gender Justice Clinic thus helped develop initiatives that emphasized prevention through public education, outreach that invited stakeholders to identify community-based solutions to underlying problems, and a focus on strengthening institutional responses.

3. *Providing Additional Venues for Advocacy*

The case studies further illustrate how engaging with international and regional human rights mechanisms can strengthen domestic advocacy by providing new venues for students and partners to make their claims. U.N. or regional human rights advocacy can provide opportunities for dialogue with governments, trigger meetings with officials, and exert political pressure for change. As discussed above, housing advocates used the various international review processes to obtain meetings with government officials to advance advocacy and push for the implementation of human rights standards domestically. These meetings influenced the Federal Strategic Plan to End Homelessness, as well as led to HUD funding incentives to stop the criminalization of homelessness and a supportive DOJ brief in the seminal *Martin v. Boise* case.²⁵⁸ Moreover, advocates can use engagement in international fora to elicit government commitments. Thus, in the 2015 UPR, the U.S. declared that it is "committed to helping communities pursue alternatives to criminalizing homelessness,"²⁵⁹ and in the 2021 UPR, the U.S. affirmed that it "supports investing in direct solutions to alleviate the personal and social problems surrounding the issues of poverty."²⁶⁰

The key to this approach is connecting advocacy at the international level to a strategy in the domestic sphere. NHLC developed a particularly savvy approach to U.N. advocacy, focused on both developing human rights norms and working to implement them domestically. Additionally, critical groundwork for international advocacy comes from

²⁵⁷ UNIVERSITY OF MIAMI SCHOOL OF LAW HUMAN RIGHTS CLINIC, COLUMBIA LAW SCHOOL HUMAN RIGHTS INSTITUTE & ACLU WOMEN'S RIGHTS PROJECT, DOMESTIC VIOLENCE & SEXUAL ASSAULT IN THE UNITED STATES: A HUMAN RIGHTS BASED APPROACH & PRACTICE GUIDE 1 (Aug. 2014), https://hri.law.columbia.edu/sites/default/files/publications/dv_sa_hr_guide_reduce.pdf.

²⁵⁸ See Section II(C)(1) *supra*.

²⁵⁹ U.N. Hum. Rts. Council, Report of the Working Group on the Universal Periodic Review, United States of America, *Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, ¶ 12, U.N. Doc. A/HRC/30/12/Add.1 (Sept. 14, 2015), https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Documents/A_HRC_30_12_Add_1_ENG.DOCX.

²⁶⁰ U.N. Hum. Rts. Council, *Report of the Working Group on the Universal Periodic Review*, United States of America, ¶ 12, U.N. Doc. A/HRC/46/15/Add.1 (2021).

community work, including human rights trainings, partnership-building, and joint convenings. Sally Engle Merry describes a process of “vernacularization,” where global human rights language and norms are adapted to local institutions and meanings.²⁶¹ This was a central tenet behind the Duke IHRC’s hosting of and participation in convenings in the U.S. which sought, among other goals, to support local and grass-roots advocates, including through contributing to an increased understanding of engagement with international human rights mechanisms.

Participation in international processes can further facilitate coalition-building among local advocates. Participation in the review of the U.S. by the U.N. Committee on the Elimination of Racial Discrimination provides an example of this. Advocates from across the U.S. engaging in the review on different issues formed a listserv and WhatsApp chat, which continue to be active months later with people sharing upcoming events, news, contacts, and resources. A sub-group is further collaborating on engagement with the new U.N. Permanent Forum of People of African Descent. Likewise, the Cornell Gender Justice Clinic joined a growing movement of advocates around the U.S. committed to helping implement the Inter-American Commission’s decision in *Lenahan v. United States*. The Clinic gained new opportunities for collaboration with local, national, and even transnational partners that would not have been possible without the unifying goal of “bringing home” a landmark regional human rights decision.²⁶² These opportunities enabled local governments and community members to see themselves as participants in a broader movement and learn from others in their efforts to grapple with similar problems using human rights tools. This, in turn, affirmed and galvanized local efforts to strengthen domestic violence prevention and response.

One factor contributing to coalition-building is that, as noted above, the human rights framework provides an inclusive and universal language that can serve to bring advocates together. As Caroline Bettinger-López points out in the context of domestic violence, “the language of human rights appeals to a broader constituency and . . . has the ability to cut across the thematic . . . and identity-based . . . silos that have traditionally separated different advocacy groups doing social justice work” and “[o]ne of the strengths of the human rights framework is its

²⁶¹ Sally Engle Merry, *Transnational Human Rights and Local Activism: Mapping the Middle*, 108 *AMERICAN ANTHROPOLOGIST* 38, 39 (2006).

²⁶² At one of the two film screenings that the Clinic and its partners hosted with Jessica Lenahan and her lawyers, attorney Caroline Bettinger-López encouraged the local audience by noting, “It is incumbent upon communities to take ownership and think about how to implement these decisions [of human rights bodies like the Inter-American Commission] on a local level. And this community, more than any other community in the U.S., has shown that this is possible.” Garland, *supra* note 166.

ability to place different stakeholders together under one umbrella.”²⁶³ This takes place not just in the context of international human rights advocacy, but also in local human rights work. For instance, the human rights framework embodied in local domestic human rights resolutions has helped foster collaboration among diverse local stakeholders.

Additionally, as Bettinger-López and colleagues highlight, international advocacy serves to “amplify[] within an international context human rights concerns that may be seen as isolated domestic or local concerns.”²⁶⁴ Elevating domestic violence, too often dismissed as a private, family matter, to an international concern is particularly powerful. Bringing an international dimension is further “compelling in our increasingly-globalized world, in which specific violations or transgressions are so often not solely attributable (if they ever were) to one particular state actor, but rather may be attributable to one or more state and non-state actors, including international financial or political institutions.”²⁶⁵ In the context of homelessness, the U.N. Special Rapporteur on the right to adequate housing has highlighted “the financialization of housing,” in which housing is treated as a commodity and a means for wealth accumulation, as displacing communities and undermining the right to housing globally.²⁶⁶ This is a concept the Miami Human Rights Clinic and partners have incorporated in our advocacy, calling for public hearings in neighborhoods with new developments and environmental and community impact assessments and mitigation plans for displacing vulnerable populations.²⁶⁷

4. *Expanding the Universe of Potential Remedies*

Moreover, the human rights framework offers broad remedies that are systemic and survivor-centered to address violations. For example, a human rights approach to addressing domestic violence illuminates the need for solutions that center victims/survivors and recognize the complexity and systemic nature of the problem and its impact on many

²⁶³ Bettinger-López, *supra* note 220, at 71.

²⁶⁴ Bettinger-López, et al., *supra* note 4, at 388.

²⁶⁵ *Id.*

²⁶⁶ U.N. Hum. Rts. Council, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and the right to non-discrimination in this context*, ¶ 6, U.N. Doc. A/HRC/34/51 (2017). The Special Rapporteur points out that residents are increasingly displaced in favor of new luxury buildings that turn quick profits, but because the units are so unaffordable, they are left empty at no consequence to the developers because to them “housing is as valuable whether it is vacant or occupied, lived in or devoid of life.” *Id.* at ¶ 30, 31.

²⁶⁷ *E.g.*, University of Miami School of Law Human Rights Clinic et al., *RACIAL INJUSTICE IN HOUSING AND HOMELESSNESS IN THE UNITED STATES* (2022), <https://miami.app.box.com/s/x2obqtgy84o5qkfiyxct303nzd4g0l>.

other human rights.²⁶⁸ As domestic violence is a deeply complex problem that violates many human rights, solutions must similarly be holistic, multifaceted, and sensitive to the experiences of survivors. This requires improving upon but not privileging criminal legal system responses, which often afford critical protection, but can also be traumatizing and abusive, particularly for marginalized communities. This may call for exploration of alternate approaches to victim safety and perpetrator accountability, such as by considering whether community-based restorative approaches might offer a valuable tool for some survivors in some circumstances,²⁶⁹ and by ensuring robust support for survivors and their families, including in such diverse areas as employment, housing, social services, education, childcare, and mental and physical health. Efforts in Tompkins County, NY to implement local domestic violence-human rights resolutions resulted in to a student-led human rights program on dating violence in schools and the creation of impactful initiatives to address domestic violence at the workplace. Michelle Arbitte, Director of Cornell University's Workforce Well-Being, reported that the implementation of this initiative at Cornell helped reduce stigma and create a workplace environment that is safe and supportive, with employees coming forward at higher rates to ask for help in areas ranging from safety planning to mental health, to financial support or childcare.²⁷⁰

Similarly, an international human rights framing in the context of firearms in domestic violence widens the scope of government accountability, as well as corresponding remedies responsive to rights violations.²⁷¹ By

²⁶⁸ See, e.g., Committee on the Elimination of All Forms of Discrimination Against Women, General Recommendation 35, ¶¶ 28 ff, U.N. Doc. CEDAW/C/GC/35 (July 26, 2017) (setting out multifaceted measures that States parties should take “in the areas of prevention, protection, prosecution, punishment, and redress, data collection and monitoring, and international cooperation” and emphasizing that all of these measures “should be implemented with a victim/survivor-centered approach, acknowledging women as subjects of rights and promoting their agency and autonomy”); U.N. Hum. Rts. Council, Report of the U.N. Special Rapporteur on violence against women, its causes and consequences Rashida Manjoo, ¶ 65, U.N. Doc. A/HRC/26/28 (May 28, 2014) (“Transformative remedies require that the problem of violence against women is acknowledged as systemic and not individual; and that this requires specific measures to address it as a gender-specific human rights violation.”).

²⁶⁹ See, e.g., LEAH GOODMARK, *DECRIMINALIZING DOMESTIC VIOLENCE: A BALANCED POLICE APPROACH TO INTIMATE PARTNER VIOLENCE* 87-99, 136-41 (2018).

²⁷⁰ U.S. Dept. of Defense Counter-Insider Threat Program, *Cornell University Takes a Stand Against Domestic Violence*, THE INSIDER: THE THREAT LAB NEWSLETTER 2(4) (2021).

²⁷¹ See Bettinger-López, *supra* note 220, at 21 (“By framing domestic violence as a human rights violation, the case [*Jessica Gonzales v. United States* brought before the Inter-American Commission] challenges advocates and policymakers to re-think our country’s current approach to domestic violence” including with respect to “whether fundamental rights—to life, security, family, due process, equality, truth, and freedom from torture and cruel, inhuman, and degrading treatment—are being respected and fulfilled.”). See also *supra* note 252, 89 (2019) (“Human rights remedies are not the only response to America’s gun violence problem, of course, but they are an important part of the solution.”).

contrast, reliance on U.S. law alone narrows the possibility of this fuller articulation.²⁷² These framings are possible because the U.S. government is required, under legally binding international human rights obligations, “to address gun violence against women in domestic violence contexts.”²⁷³

5. *Attention to Human Dignity*

At the core of the human rights approach is a focus on human dignity. As Larry Cox explains, an international human rights framing “open[s] up possibilities that working within a strict constitutional or civil rights framework does not” including “because it takes us immediately to the most unassailable and universal basis for rights claims—human dignity and freedom.”²⁷⁴

Such a framing prioritizes the dignity and empowerment of domestic violence survivors.²⁷⁵ The Inter-American Commission’s decision in *Lenahan v. United States* resonated with legislators and other community members in Tompkins County, NY because its focus on the United States’ systematic failure to protect Ms. Lenahan and her children spoke to their fundamental rights to live in safety and dignity as human beings and stood in sharp contrast to the much narrower constitutional framing of the U.S. Supreme Court.²⁷⁶ The human rights framing also captures the impact of firearms in domestic violence contexts in ways that are intrinsically valuable because they align with and reflect lived experiences. With regards to homelessness, as the Special Rapporteur on the right to adequate housing noted, the very existence of homelessness itself is “a profound assault on dignity, social inclusion and the right to life.”²⁷⁷ Much of the advocacy around homelessness therefore focuses on the fundamental right to live in dignity and security. In the evolution of their campaign for a Homeless Bill of Rights, the Lowenstein Clinic and community partners sought to concretely translate this guarantee

²⁷² Cox, *supra* note 192, at 140.

²⁷³ Duke Law International Human Rights Clinic, *supra* note 185, at 7.

²⁷⁴ Cox, *supra* note 192, at 140.

²⁷⁵ University of Miami School of Law Human Rights Clinic et al., *Domestic Violence & Sexual Assault in the United States: A Human Rights Based Approach & Practice Guide 1* (Aug. 2014).

²⁷⁶ The Tompkins County Legislature’s domestic violence-human rights resolution included a paragraph that the legislators added to the draft resolution that the Gender Justice Clinic and its partners had proposed, which emphasized the differences between the Inter-American Commission’s decision in *Lenahan* and that of the Supreme Court in *Castle Rock*. Tompkins County Legislature, *Declaring Freedom from Domestic Violence as a Human Right*, RES2014-214, Nov. 18, 2014.

²⁷⁷ U.N. Hum. Rts. Council, Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in This Context, *Guidelines for the Implementation of the Right to Adequate Housing*, ¶ 30, U.N. Doc. A/HRC/43/43 (Dec. 26, 2019).

into access to clean, safe, and convenient restroom facilities that enable people to meet their basic needs with dignity, above and beyond any domestic legal obligation for the city to provide those facilities.

6. *Broadening Advocates' and Students' Perspectives and Furthering Pedagogical Goals*

Adopting a human rights perspective further enables global connection and provides opportunities for broader alliances and learning. Human rights lawyering connects local struggles with universal norms and transnational movements, integrating advocates into global dialogues. Advocates can thus situate deeply local work in a broader context. This opens the door for cross-learning from the experiences of advocates around the world, and advocates can draw on international norms and best practices. As Bettinger-López and colleagues explain, “the shared language of human rights allows advocates to converse with each other and expand possibilities.”²⁷⁸

In all the Clinic projects, transnational connections were important sources of learning and inspiration for local advocates. For instance, in the context of gun violence, “an emerging global consensus and common practice regarding the minimum regulations needed to prevent civilian firearms-related violence”²⁷⁹ served as a useful tool for domestic advocates. Moreover, advocates addressing homelessness and housing issues in the U.S. benefited from the international human rights analysis of the right to adequate housing, including identification of its various components and steps governments can take to realize it.²⁸⁰ Advocates have asked the Miami Human Rights Clinic to delve into different country practices for operationalizing the right to housing so that they can draw on these experiences in their local work.²⁸¹ At the same time, advocates have helped contribute to the development of universal human rights norms through international level advocacy, as well as local work to give rights meaning.²⁸² For instance, the U.N. Committee on the Elimination

²⁷⁸ Bettinger-López, et al., *supra* note 4, at 388. See also Omar Madhloom & Irene Antonopoulos, *Clinical Legal Education and Human Rights Values: A Universal Pro Forma for Law Clinics*, 9 *ASIAN J. LEGAL EDU.* 23, 27 (2022) (2021) (“Influenced by human rights values, derived from the UDHR, a universal pro forma can facilitate the creation of a global law clinic community. Students are able, through this pro forma, to communicate effectively through a shared ‘language’ and objectives, and thereby overcome obstacles such as pluralism and different legal systems.”).

²⁷⁹ Frey, *supra* note 214, at 110.

²⁸⁰ See University of Miami School of Law Human Rights Clinic et al., *What Is the Right to Housing*, <https://miami.app.box.com/s/7i1w7myiz27qc1yuiwobrscapl1rbq2>.

²⁸¹ Please see comparative factsheets discussed above on equality, affordability, tenant rights, and informal settlements.

²⁸² Peggy Levitt and Sally Merry posit that through vernacularization, local movements not only adapt global human rights norms, but can, in turn, “transform the global

of Racial Discrimination cited the DOJ brief in the *Martin v. Boise* case in its review of Norway.²⁸³ The local work by Cornell's Gender Justice Clinic sparked a collaboration on a related project in Lusaka, Zambia with learning in both directions. In particular, Clinic students found their local human rights-domestic violence work informed by the focus in Zambian law on preventing violence, protecting and assisting victims, and engaging diverse government and civil society stakeholders in domestic violence response.²⁸⁴

Moreover, engaging in human rights advocacy provides a valuable teaching tool in preparing students to be thoughtful and effective lawyers, broadening the students' perspectives with regards to both norms and practice.²⁸⁵ Exposure to human rights concepts and strategies challenges students to recognize gaps in domestic law, policy, and practice and opens their vision to different possibilities. Clinics have strong pedagogical goals and often more time and flexibility than other domestic legal organizations do, and clinical teachers can guide students in exploring these gaps and possibilities. Engagement around the proposed Homeless Bill of Rights in New Haven gave students in the Lowenstein Clinic a different appreciation of the range of advocacy targets whose decisions affected the rights of people experiencing homelessness. While students engaged with the city and local police, they also considered how local merchants, university security forces, community groups, and others effectively excluded people experiencing homelessness from public spaces, as well as how government offices concerned with budgeting and building design restricted what options were possible for providing new facilities. Taking the rights and dignity of people experiencing homelessness as a starting point led to creative, reflective discussions of what kinds of interventions might be helpful.

Students in Cornell's Gender Justice Clinic were surprised and moved by the differences between the decisions of the U.S. Supreme Court and Inter-American Commission in Jessica Lenahan's case. Although most students had joined the Clinic with little previous experience with international human rights, they quickly became eloquent advocates for the value of using human rights frameworks to guide local policy and practice. Their engagement with local stakeholders around

understanding and practice of human rights. As social movements seize these ideas and wrestle with them, they make them something new." Peggy Levitt & Sally Merry, *Vernacularization on the Ground: Local Uses of Global Women's Rights in Peru, China, India and the United States*, 9 GLOBAL NETWORKS: A J. OF INT'L AFF. 441, 460 (2009).

²⁸³ Eric Tars & Liz Osborn, *Leading by Example on Human Rights of People Experiencing Homelessness*, USICH NEWS (Oct. 13, 2015).

²⁸⁴ See Banda & Brundige, *supra* note 168.

²⁸⁵ See Janus & Smythe, *supra* note 97, at 478 (noting that human rights advocacy can "help students understand the breadth of opportunities to make an impact using legal advocacy and research tools").

the implementation of these frameworks led to further valuable insights – related, for example, to the importance of adopting holistic and multifaceted approaches to domestic violence prevention and response and ensuring that such approaches are responsive to the multiple and intersectional forms of discrimination and marginalization many survivors experience. This work challenged them to recognize gaps in domestic law, policy, and practice, and to consider how international frameworks, as well as insights gained through transnational collaboration, might help to address these gaps and to identify new possibilities. Overall, the project expanded students’ perspectives, helping prepare them to be thoughtful and effective lawyers in a deeply interconnected world.

In addition, human rights approaches can give students the opportunity to practice important lawyering skills, including collaboration and teamwork, organization and management, research, legal analysis and writing, interviewing, deep listening, oral advocacy, and relationship-building with community partners, both locally and cross-nationally. They learn to bridge community lawyering with global insights, which is particularly valuable in today’s deeply interconnected world. For example, in contributing to Amnesty International’s report “Fragmented and Unequal: A Justice System that Fails Survivors of Intimate Partner Violence in Louisiana, USA,” Duke IHRC students developed important legal writing and analytical skills, as well as legal research skills with respect to both U.S. federal and state legislation and case law, as well as international human rights law. The Duke IHRC’s participation in, among others, the “Gun Violence Prevention Conference 2019: Twenty Years from Columbine to Parkland” and the “Interdisciplinary and Human Rights Approaches to the Gun Violence Crisis in the United States” expert discussion created opportunities to develop a range of vital advocacy and lawyering skills, including oral advocacy and deep listening. Three Cornell Gender Justice Clinic students who helped advocate for recognition of the right to be free from domestic violence wrote that “[i]t was important for us to work on local human rights issues since there are still many human rights violations in the United States, though they often are not discussed in human rights terms.”²⁸⁶ They explained that their local human rights advocacy work caused them to be “pushed out of our comfort zone” by participating in creative engagement with the media, strengthened their public speaking and advocacy skills through their work with legislative and community stakeholders, and enabled them to improve their writing and teamwork

²⁸⁶ Josh Baldwin, Joanne Joseph, & Carolyn Matos, *A Student Perspective on Human Rights Advocacy*, BRINGING HUMAN RIGHTS HOME BLOG, Dec. 5, 2014, https://lawprofessors.typepad.com/human_rights/2014/12/a-student-perspective-on-human-rights-advocacy.html.

skills – overall an experience they described as “one of the most rewarding experiences of our law school careers.”²⁸⁷

Moreover, human rights advocacy provides the opportunity for students to balance engagement with the law with engagement with communities. Kathleen Kelly Janus and Dee Smythe recount how the Stanford Law School International Human Rights Clinic has helped expand students’ conception of lawyering beyond “the paradigm of the ‘Perry Mason’ image that many students may imagine as the quintessential lawyer.”²⁸⁸ The importance of translating law for communities particularly struck one of their students, who characterized convenings with community leaders and the drafting of factsheets as “us[ing] legal knowledge to empower minor revolutions.”²⁸⁹ The various case studies in this article include a deliberate focus on building human rights literacy and legal empowerment at the community level. A student who worked on homelessness advocacy as part of the Miami Human Rights Clinic described the Clinic as an opportunity for “a lot of different types of writing, a lot of different types of advocacy,” from an op-ed to a law review article to social media and an online interactive role play to legal submissions and engagement with different levels of government, from the local to the national to the international.²⁹⁰ He remarked on how the various projects encouraged students “to be as creative as you can think,” leading to “a huge impact on my life and thinking.”²⁹¹

B. Challenges

Using human rights frameworks in clinical work also comes with challenges for supervisors and students. Some of the main challenges include limitations on the domestic applicability and enforcement of international human rights law, skepticism among partners and advocacy targets about the utility of human rights, inconsistencies between international and domestic law, veering into non-legal policy interventions where a clinic does not necessarily have expertise, and co-optation of rights frameworks. These challenges may counsel in favor of eschewing a human rights approach in particular situations, but as a general matter, they need not deter clinicians and practitioners from incorporating human rights strategies into their teaching and practice. As suggested below, many of these challenges can be considered and addressed in project design and over the course of advocacy. Moreover, helping

²⁸⁷ *Id.*

²⁸⁸ Janus & Smythe, *supra* note 97, at 478.

²⁸⁹ *Id.* at 476.

²⁹⁰ Miami Law, *David Stuzin’s Experience with the Human Rights Clinic*, YouTube (Apr. 21, 2021), <https://www.youtube.com/watch?v=aJx9H5SepRY&t=1s>.

²⁹¹ *Id.*

students identify and grapple with these challenges can itself further important pedagogical goals.

1. *Limitations on the Applicability and Enforcement of Human Rights*

The use of human rights frameworks in clinical work may be impeded by the limitations on the application and enforcement of international human rights law in the U.S. These limitations relate in part to the nature of human rights law and institutions, which are not supported at the international level by a police force or other enforceability tools available to governments at the domestic level. Many international and regional human rights mechanisms have been hampered by funding shortages, which limit their ability to conduct investigations or follow up on recommendations.²⁹² In the U.S, the limitations also relate to the effects of American exceptionalism, which include the non-ratification of important human rights treaties, the scarcity of domestic laws incorporating human rights obligations, and barriers to litigating human rights claims in domestic courts discussed above. These challenges constrain clinicians' choices about advocacy strategies and may lead partners, communities, governments, or other relevant actors to resist human rights-based claims.

For example, a member of the Tompkins County Legislature opposed the reference in the draft resolution to CEDAW, given that the U.S. has signed but not ratified this human rights treaty. The legislature ultimately removed the CEDAW reference from its resolution, relying instead on treaties that the U.S. has ratified, like the ICCPR and CAT, as well as the Inter-American Commission's *Lenahan* decision.²⁹³ The lengthy debate around this issue led the Clinic and its partners to remove the CEDAW reference from the draft resolution that they presented to other local governments as well. Grappling with these concerns was both difficult and valuable for the student team; they recalled that "one of the most rewarding experiences this semester was working with a local legislator to improve the language of our draft in response to questions that she and her colleagues had raised."²⁹⁴

²⁹² See, e.g., Press Release, OHCHR, Human Rights Experts Warn of Damaging Impact on Special Procedures from UN Funding Crisis (Sept. 28, 2020), <https://www.ohchr.org/en/press-releases/2020/09/human-rights-experts-warn-damaging-impact-special-procedures-un-funding>; Press Release, Inter-American Commission on Human Rights, Severe Financial Crisis of the IACHR Leads to Suspension of Hearings and Imminent Layoff of Nearly Half its Staff (May 23, 2016), https://www.oas.org/en/iachr/media_center/preleases/2016/069.asp.

²⁹³ The partners subsequently revised the draft resolutions they submitted to other local governments to more generally note that the United Nations had recognized that freedom from domestic violence was a fundamental human right.

²⁹⁴ Baldwin et al., *supra* note 286.

Additionally, courts and government actors may hesitate to include explicit references to international human rights in litigation. While human rights advocacy led to the DOJ Statement of Interest Brief in the seminal case of *Martin v. Boise*, the brief focused on the Eighth Amendment and did not directly cite human rights law.²⁹⁵ However, the DOJ later affirmed that its position in the case was an “acknowledgement of the human rights of people experiencing homelessness.”²⁹⁶ Similarly, the Ninth Circuit Court of Appeals in *Johnson v. City of Grants Pass*²⁹⁷ issued a positive decision, holding that “the City of Grants Pass cannot, consistent with the Eighth Amendment, enforce its anti-camping ordinances against homeless persons for the mere act of sleeping outside with rudimentary protection from the elements, or for sleeping in their car at night, when there is no other place in the City for them to go,” but did not reference international human rights.²⁹⁸

If advocates do not raise human rights arguments, however, then courts and government actors will never have an opportunity to consider them. Adjudicators will only gain comfort with international law arguments over time as they are regularly and thoughtfully raised in litigation. Already, some courts have considered and used international law as persuasive authority when interpreting domestic law.²⁹⁹ During the Cornell Gender Justice Clinic’s gathering voices campaign, several county judges suggested that courts could consider the local domestic violence-human rights resolutions as an overarching principle

²⁹⁵ Statement of Interest of the United States, *Bell v. City of Boise*, 993 F. Supp. 2d 1237 (D. Idaho 2014) (No. 1:09-cv-00540-REB) (“It should be uncontroversial that punishing conduct that is a universal and unavoidable consequence of being human violates the Eighth Amendment.”); *Justice Department Files Brief to Address the Criminalization of Homelessness*, U.S. DEPT. JUST. OFF. PUB. AFF. (Aug. 6, 2015), <http://www.justice.gov/opa/pr/justice-department-files-brief-address-criminalization-homelessness>.

²⁹⁶ Letter from Lisa Foster, Dir., Off. for Access to Just., U.S. Dept. of Just., to Seattle City Council Members 3 (Oct. 13, 2016), <https://assets.documentcloud.org/documents/3141894/DOJ-ATJ-Letter-to-Seattle-City-Council-10-13-2016.pdf>.

²⁹⁷ Formerly *Blake v. City of Grants Pass*.

²⁹⁸ *Johnson v. City of Grants Pass*, 50 F.4th 787, 813 (9th Cir. Sept. 28, 2022).

²⁹⁹ In their study of state courts drawing on international human rights law, the Opportunity Agenda and Program on Human Rights and the Global Economy of Northeastern University School of Law conclude, “[T]he range of cases in which international law arguments are offered seems to have increased, now encompassing environmental claims, tort cases, and guardianship matters. Many of these arguments have been cursorily dismissed, with a few courts and individual judges staking out their opposition to the application of international human rights law. However, some state courts have considered and affirmatively used international law as persuasive authority for the interpretation of state constitutions, statutes, and common law. Further, individual judges regularly draw on human rights norms in concurring or dissenting opinions.” Martha F. Davis, Diego Iniguez-Lopez & Juhu Thukral, *Human Rights in State Courts 2014* (Northeastern Univ. Sch. of Law Research Paper No. 177-2014, Feb. 2014), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2394019.

when interpreting and applying binding domestic law.³⁰⁰ We hope that continuing to raise these arguments will help educate courts and government entities and lead to further decisions and policies in line with human rights. Clinics can play an important role in this historical process, as they teach students about how to advocate for systemic change.

2. *Skepticism about Human Rights*

Another significant challenge in using human rights frameworks, often related to the first, is that partners and advocacy targets may not share the clinic's conviction that human rights are relevant or effective tools for social change. Partners may lack familiarity with the human rights framework or harbor skepticism about the utility or enforceability of human rights. This skepticism is often understandable and can be productive in encouraging students to think critically about whether and how human rights arguments will be useful in working with partners to achieve shared goals. For advocacy targets, human rights may seem too aspirational, raise concerns about external scrutiny, or evoke skepticism about the nature of the legal obligations that human rights commitments might entail.

Lawmakers may have reservations about embracing a human rights framework. In initial efforts to enact a Homeless Bill of Rights in New Haven, for example, sweeping language about social and economic rights was gradually limited in the political process. An unqualified right to housing, which drew concern about feasibility and cost to the city, became a right to emergency housing that would commit the City of New Haven to work with community partners and area governments to guarantee emergency shelter. The right to dignity in meeting basic needs evolved to include a requirement to "clean, safe, highly accessible public locations and facilities" for performing basic bodily needs and committed the city to create such facilities where they are lacking.³⁰¹ While these changes helped secure passage of the Homeless Bill of Rights before the HAC, lingering concerns about legal liability have left the ordinance in limbo and prevented passage before the city's Board of Alders.

In addition, advocacy targets sometimes perceive human rights arguments as an effort to impose external norms upon a government or community. The Gender Justice Clinic's partners, for example, cautioned that human rights arguments might be seen as impositions and

³⁰⁰ Garland, *supra* note 166. Hon. Joseph Cassidy, County Court Judge, and Maura Kennedy-Smith, Law Clerk to Hon. Joseph Cassidy, Tompkins County Court and Integrated Domestic Violence Court, Oct. 4, 2016, on file with authors; Interview with Hon. John Rowley, County Court Judge, Tompkins County Court and Integrated Domestic Violence Court, July 6, 2016, on file with authors.

³⁰¹ Bill of Rights for New Haven Residents Experiencing Homelessness, sec. 3, on file with authors.

fail to resonate in some spaces, among some parts of law enforcement for example. This consideration was also noted in a more recent presentation by Chair Peyi Soyinka-Airewele on behalf of the Tompkins County Human Rights Commission, one of the Clinic's former community partners. Quoting Makau Mutua, she explained that while "we need global solutions to shared problems," including among other goals, to protect domestic violence victims, "these norms and structures must be grown at home and must utilize the cultural tools familiar to the people at the grassroots. . . . What the human rights movement must not do is to close all doors, turn away other cultures, and impose itself in its current form and structure on the world."³⁰²

Drawing lessons from domestic clinics that engage in community or movement lawyering, human rights-focused clinics and advocates can navigate these concerns by being mindful of power dynamics and deliberate about not imposing their leadership or goals, and by striving to collaborate with, learn from, and build the power of directly impacted communities.³⁰³ This approach requires humility and an openness to reevaluating or even abandoning a human rights strategy or objective in favor of other legal or non-legal approaches that affected community members may identify as more valuable, effective, or prudent. For example, the Gender Justice Clinic built into its initiative multiple opportunities to listen to and learn from the priorities, strategies, and understandings of human rights identified by community stakeholders. This led to a decision to set aside the Clinic's initial goal of using local human rights resolutions to advocate for improvements to law enforcement responses to gender-based violence. Instead, the Clinic's students and instructors sought out opportunities to support other community members in realizing their visions for implementing the right to be free from domestic violence, leading to projects that focused on dating violence and workplace responses to domestic violence. Clinic partner and then-Tompkins County Advocacy Center Executive Director Heather Campbell described this implementation work as "one of the most

³⁰² Peyi Soyinka-Airewele, Protecting Human Rights, Equity, and Dignity in Tompkins County and the Global Community, Presentation to the Community Foundation of Tompkins County (April 2022), slide 13 (quoting MAKAU MUTUA, HUMAN RIGHTS: A POLITICAL AND CULTURAL CRITIQUE 5 (2013)), available at https://www.cftompkins.org/wp-content/uploads/2022/04/Lets-Talk_Human-Rights_-Community-Foundation-Presentation.pdf.

³⁰³ See William Quigley, *Ten Ways of Looking at Movement Lawyering*, 5 HOW. HUM. & C.L.R. REV. 23, 33-35 (2020) (advocating for an approach to movement lawyering that involves learning from and working in solidarity with organizations and directly impacted people "to challenge and dismantle unjust situations and structures, and to shift power to the people of the movement so they can continue to bring about social change"); Bettinger-López, et al., *supra* note 4, at 385-87 (advocating for a model of collaborative human rights lawyering in which lawyers are "cautious not to usurp or diminish community power in any community process").

collaborative campus-community projects” she had worked on to date, and one that spawned many deeply valuable projects.³⁰⁴

3. *Inconsistencies Between International and Domestic Law*

A third challenge arises when international law is out of step with domestic law or norms. The Gender Justice Clinic found that international human rights law’s emphasis on expanded state responsibility was valuable in many ways but also carried the potential to place too much focus on interventions by state actors. Governments are the primary duty-bearers under international law, and the international principle of due diligence highlights the responsibility of states to prevent domestic violence, prosecute and punish perpetrators, and afford protection and redress to victims and survivors. However, as Julie Goldshied and Debra Liebowitz have pointed out, “[a] reflexive focus on State response can encourage an undue emphasis on criminal justice responses, with adverse consequences such as arrests of survivors and other unwanted interventions” that can have particularly harmful impacts on racial, ethnic, religious, or sexual minorities and other members of marginalized communities.³⁰⁵ This focus also “risks situating the State as the entity charged with program delivery when other entities would be more effective.”³⁰⁶

Clinic students discovered echoes of these critiques in Tompkins County community members’ insistence that domestic violence responses must be holistic, community centered, and inclusive of strategies found outside the arena of state action and specifically criminal legal system responses. As noted earlier, Clinic students also learned from their cross-national collaboration about Zambia’s legal approach to gender-based violence,³⁰⁷ which extends to all Zambians the responsibility of advising and assisting victims of such violence.³⁰⁸ In their advocacy, Clinic students and their partners came to emphasize that domestic violence affects everyone and to suggest that a human rights framework requires a societal response, with governments supporting and working in collaboration with their community partners.³⁰⁹ This

³⁰⁴ Garland, *supra* note 166.

³⁰⁵ Julie Goldshied & Debra Liebowitz, *Due Diligence and Gender Violence: Parsing its Power and its Perils*, 48 CORNELL INT’L L. J. 301, 301 (2015).

³⁰⁶ *Id.*

³⁰⁷ See Section III(A)(6).

³⁰⁸ Anti-Gender-Based Violence Act 2011 (Zambia), § 5.

³⁰⁹ See Alex Gutierrez & Carolina Morales, *The Right to Be Free from Domestic Violence*, Barely Legal Column, CORNELL DAILY SUN (Feb. 4, 2016); Bill Chaisson, *Domestic Violence Resolution Presented at City Administration*, ITHACA TIMES (Jan. 28, 2015); Jeff Stein, *With 100s of Domestic Violence Cases a Year, Tompkins Gov. Takes a Step Forward*, ITHACA VOICE (Jan. 13, 2015), <https://ithacavoices.com/2015/01/100s-domestic-violence-cases-year-tompkins-gov-takes-step-forward>; Svante T Myrick, Mayor of the City of Ithaca, City of Ithaca Proclamation, Apr. 24, 2015, <https://www.lawschool.cornell.edu/wp-content/uploads/2020/11/24b-Ithaca-City-Executive.pdf>.

approach involved an interpretation of the human rights framework that was not the only one possible. Importantly, it was an understanding that came out of Clinic's local community and transnational partnerships, pointing to the important role that local and transnational human rights engagement can play in further developing international norms.

4. *Tackling Non-Legal Policy Interventions*

While the human rights framework offers opportunities to recognize and work to address the structural factors that give rise to human rights violations, addressing these conditions may also require interventions that are less legal and unfamiliar to students and supervising clinicians. In the campaign for a Homeless Bill of Rights in New Haven, for example, advocates identified the absence of accessible public restroom facilities as a threat to health and dignity and a contributing factor to criminalization, and city officials expressed interest in addressing this problem. As part of their work, students looked to other models of public restrooms being adopted in similarly sized cities, met with architects and local stakeholders, and compiled cost estimates and different models for a public bathroom in downtown New Haven. While this piece of the project attracted community interest even as the bill of rights itself stalled, it also drew on a different skill set that was not primarily legal. This may be exciting for some clinicians and students eager to tackle problems that arise, but may also be frustrating where clinicians and students lack relevant expertise or worry that these creative interventions come at the expense of developing more traditional legal skills.

Similarly, in its efforts to help implement the local resolutions recognizing freedom from domestic violence as a human right, the Gender Justice Clinic and its partners responded to an identified need to help employers address domestic violence at the workplace. In support of this initiative, students reviewed policies from around the country, held a roundtable for public and private employers in the community, worked with partners to turn the policy into a user-friendly toolkit, consulted widely with human resource professionals and other stakeholders within institutions, participated in awareness raising events for employees, and helped raise funds for an employee emergency care fund. As in the New Haven example, this initiative was challenging and rewarding for many of the students involved, but it also for the most part was not particularly legal in nature. As noted above,³¹⁰ the initiative also required the Clinic to step back and support others with deeper expertise (here local human resource leaders and experienced educators at our partner NGO) in reimagining and carrying forward the human rights initiative. This led to a lessening of the initiative's

³¹⁰ See Section III(B)(2) *supra*.

explicit focus on human rights and on law-related strategies. At the same time, it fostered a sense of humility among our students and taught them to see their own work and knowledge as a significant but small part of a much broader effort through which the process of bringing human rights home became more meaningful, sustainable, and community-owned.

5. *Co-option of Rights Framing and Language*

As familiarity with human rights framings and language grows, adversaries may co-opt the language of human rights in ways that create new obstacles to rights realization. In the context of the right to housing, a dangerous attempt to co-opt human rights framing is Mayor Steinberg of Sacramento's introduction of a bill that redefines the right to housing. The bill defines "adequate" housing to include an offer of an encampment and a "requirement to take what is offered" under penalty of criminalization.³¹¹ Another example relates to advocacy for the recognition and establishment of new rights directly in opposition to efforts to address firearm possession and use. This has taken the form of the argument that "[t]he right to possess arms is a fundamental *human* right"³¹² and that "[a]n international human right to keep and bear arms should take form in a treaty."³¹³ This argument is also built on the premise that "[t]he Second Amendment serves to secure this fundamental human right" and thus "[i]t is time for international human rights law to secure this fundamental right."³¹⁴ Relatedly, while not going so far as arguing for "the existence of a universal international human right to possess and carry firearms in all circumstances," an argument is made "that the evidence of an international human right to self-defense is clear" and that this "undoubtedly must imply some right . . . to the possession of some type of defensive arms."³¹⁵ This argument is then extended as follows: "[I]t would be a violation of human rights law for a government to . . . forbid the possession of reasonably necessary defensive arms."³¹⁶ Similarly, arguments are made about competing rights, which can then extend into broader criticisms of international law.³¹⁷ While these

³¹¹ Benjamin Oreskes, *A Plan to Give Homeless People a Right to Housing Roils Sacramento*, LA TIMES (Nov. 19, 2021), <https://www.latimes.com/homeless-housing/story/2021-11-19/sacramentos-mayor-wants-a-right-to-housing-some-in-his-city-are-skeptical>.

³¹² Christopher J. Schmidt, *An International Human Right to Keep and Bear Arms*, 15 WM. & MARY BILL RTS. J. 983, 1020 (2007).

³¹³ *Id.* at 1016.

³¹⁴ *Id.* at 1020.

³¹⁵ David B. Kopel, Paul Gallant & Joanne D. Eisen, *The Human Right of Self-Defense*, 22 BYU J. PUB. L. 43, 178 (2007).

³¹⁶ *Id.*

³¹⁷ Following its criticism of a report by the Human Rights Council, Sub-Commission on the Promotion and Protection of Human Rights on "Prevention of Human Rights Violations Committed with Small Arms and Light Weapons," the authors argue that "[o]ne of the

arguments have not achieved broad consensus, human rights framings are being used in ways that contain fundamental misunderstandings of human rights law. This attempt to co-opt human rights is concerning, and as human rights arguments gain traction, we may see increased use of this strategy in other contexts.³¹⁸

CONCLUSION

Clinical teaching and advocacy can benefit from the incorporation of human rights norms and strategies, particularly in areas where domestic law is inadequate. A human rights framework provides a more robust understanding of rights, benefiting from global struggles and developments. It further expands notions of state responsibility and potential remedies and provides new avenues for advocacy. Clinicians should be mindful of potential challenges, including limits on the application and enforceability of international human rights law, skepticism by partners and advocacy targets, non-legal work required to address complex structural problems, and the potential for co-optation, but they need not be deterred by these challenges from incorporating human rights into their advocacy toolkits. Clinics are well-placed to integrate human rights into their practice given the heightened flexibility they often have in building their dockets and the pedagogical considerations that inform their work. Through their engagement with human rights law and strategies, students learn to bridge community lawyering with global insights, as they practice key lawyering skills including collaboration, organization and management, research, legal analysis and writing, interviewing, deep listening, oral advocacy, and relationship-building with community partners. In particular, human rights advocacy can broaden students' perspective and encourage them to use their legal knowledge and skills creatively to imagine and help develop a more just world.

reasons that international law is viewed with intense suspicion in some circles is the tendency of some activists to twist international law so that it evades people's right to self-government and self-determination, imposing an elitist, far left social policy agenda on a population against its will." *Id.* at 170.

³¹⁸ In relation to the now-disbanded Commission on Unalienable Rights, established by Secretary of State Michael R. Pompeo, the Duke Law International Human Rights Clinic authored a submission co-signed by more than thirty individuals "linked to law school human rights clinics in the United States." The submission "identifies ten core concerning propositions relied upon by the Commission" and "focuses on addressing the most concerning misconceptions about human rights law in how the Commission understands and/or seeks to resolve questions about existing challenges with human rights and institutions." See, e.g., Duke Law International Human Rights Clinic, *Submission to the Commission on Unalienable Rights* 1 (May 2020), https://web.law.duke.edu/sites/default/files/centers/cicl/cur_submission_final.pdf.