Anti-Carceral Human Rights Advocacy

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ANTI-CARCERAL HUMAN RIGHTS ADVOCACY

BY CHI ADANNA MGBAKO, NATE JOHNSON, VIVIENNE BANG BROWN, MEGAN CHEAH, AND KIMYA ZAHEDI

Abstract. The theory of carceral abolition entered the main stream during the 2020 global protests for Black lives. Abolition calls for divestment from carceral institutions like police and prisons in favor of the expansion of social and economic programs that ensure public safety and nurture community well-being. Although there is little scholarship explicitly linking abolition to international human rights, there are scholars and advocates who implicitly echo abolitionist theories by critiquing the international human rights regime’s overreliance on criminal law. These critics argue that relying on carceral institutions to address impunity for human rights abuses and promote gender justice does little to combat the underlying causes of human rights violations, unlike interventions that promote economic, social, and political equality. Other human rights advocates also implicitly align with abolitionist theories in calling for the decriminalization of certain behaviors such as HIV/AIDS transmission, sex work, and drug use; as their criminalization leads to human rights abuses against marginalized communities.

This article presents a comparative analysis of carceral abolition, critiques of the carceral emphasis in human rights, and decriminalization human rights advocacy and examines their ideological alignments to provide a theoretical foundation for the practice of what we term “anti-carceral human rights advocacy.” We define anti-carceral human rights advocacy as the de-emphasis on carceral responses to human rights violations in favor of social and economic interventions that prevent abuse, heal survivors, and transform perpetrators. From this comparative analysis, we offer the following guiding principles for the practice of anti-carceral human rights advocacy: (1) document abuses of carceral systems; (2) do not advocate for solutions to human rights abuses that strengthen carceral systems; (3) elevate economic, social, and cultural rights, non-discrimination, and accountability mechanisms that are not based in retribution but rather in healing and transformation; (4) work closely with global anti-carceral advocates and communities directly impacted by carceral systems; and (5) practice and/or exercise solidarity with decriminalization human rights advocacy. We provide examples of what these guiding principles could look like in practice by analyzing the evolving anti-carceral human rights work of the author-affiliated Walter Leitner International Human Rights Clinic. Our hope is that this article provides theoretical and practical guidance for human rights advocates who question the ability of carceral systems to prevent and address human rights abuses, and who seek an advocacy framework that can deliver a more expansive vision of justice than carcerality allows.

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INTRODUCTION

The police murder of George Floyd in 2020 sparked the largest racial justice protests in U.S. history, which soon spread throughout the world. One result of these protests was that carceral abolition theory was brought into the mainstream. Abolitionists call for divestment from harmful carceral institutions including police, prisons, jails, detention centers, and surveillance programs and investment in life-affirming social and economic interventions that uplift communities and ensure public safety. There is little scholarship explicitly connecting abolition to international human rights. There are, however, scholars who critique the carceral turn in human rights work, as well as human rights advocates who highlight the harms of the carceral state by fighting for decriminalization across a range of issues.

This article places carceral abolition, critiques of carceral responses to human rights abuses, and decriminalization human rights advocacy in direct conversation with one another and uses this comparative analysis to develop guiding principles for what we term “anti-carceral human rights advocacy.” We define anti-carceral human rights advocacy as the de-emphasis on carceral solutions as the primary response to human rights violations in favor of social and economic interventions that prevent human rights abuses, heal survivors, and transform perpetrators.

Part I outlines the normative underpinnings of abolitionist movements in the U.S. and abroad and explores how the international human rights regime both diverges from and aligns with carceral abolition. Part I.A examines abolitionist theory and organizing in the U.S. The foundational scholarship and writing of abolitionists such as Angela Davis, Ruth Wilson Gilmore, and Mariame Kaba argues that carceral responses to harm target marginalized communities and perpetuate social, economic, and political deprivation. Abolitionists seek to reduce public exposure to carceral

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5. See infra Parts II–III. We define the “carceral state” as the web of carceral institutions, such as police, prisons, jails, detention centers, and surveillance programs, as well as the policies, laws, and practices that affect peoples’ lives before and after their contact with criminal punishment systems. For more on defining characteristics of the carceral state, see Marie Gottschalk, Bring It On: The Future of Penal Reform, the Carceral State, and American Politics, 12 OHIO ST. J. CRIM. L. 559, 559–60 (2015).

6. See infra Part I.
institutions; they favor strengthening public safety through community-based social and economic interventions that tackle the structural causes of harm. Part LB considers these arguments’ salience beyond U.S. borders to explore how international movements for abolition are in conversation with U.S.-based abolition. Specifically, Part LB highlights abolitionist movements in Brazil, Canada, South Africa, and the U.K.

Part LC completes Part I with an exploration of the relationship between carceral abolition and international human rights. The section begins by summarizing Isobel Renzulli’s arguments regarding the tensions and alignments between abolition and the international human rights regime’s posture towards prison. Renzulli argues that there is tension because the human rights regime recognizes imprisonment as a valid response to human rights abuses. She also contends, however, that the human rights regime’s criticisms of prison conditions promote calls for reforms that reduce reliance on carceral responses aligned with abolition. Part LC then expands upon Renzulli’s arguments by exploring the international human rights regime’s approach to policing, which is also in tension with abolition in that it views police, like prison, as necessary and legitimate. The human rights regime partly aligns with abolition in its approach to policing, however, when it criticizes policing’s oppressive roots and its impact on marginalized communities.

Part II examines anti-carceral criticism of the human rights movement and places these critiques in conversation with the abolitionist theory discussed in Part I. Part II.A highlights scholarly critiques of the human rights movement’s use of international and domestic criminal institutions to further its anti-impunity agenda. Like abolitionists, these scholars argue that targeting impunity with criminal law fails to address the social problems that lead to atrocities and cannot adequately reflect more nuanced visions of justice. Part II.B highlights critiques of carceral feminism within human rights advocacy focused on gender justice. In a case study, Part II.B considers criticisms of carceral feminism in response to human trafficking and pairs these with abolitionist theory and organizing. These critiques similarly argue that carceral interventions in the name of feminism ignore structural causes of gendered harm and often result in abuses of marginalized communities such as sex workers, women of color, and trans women.

There is also a push for decriminalization across a range of issues already existing within certain parts of the human rights movement. The work of decriminalization human rights advocates interrogates the relationship between criminal law and human rights. Part III uses case studies in the

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7 See infra Part I.
8 See infra Part LC.
9 See infra Part LC.
10 See infra Part LC.
11 See infra Part LC.
12 See infra Part LC.
13 See infra Part II.A.
14 See infra Part II.B.
15 See infra Part II.B.
17 See id. at 87–88.
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areas of HIV/AIDS, sex work, and drug use to highlight some of this work, which has implicitly made arguments in line with abolition. 18 Decriminalization human rights advocates in these areas have argued that criminalization harms communities that are already vulnerable and that this criminalization must give way to social and economic rights protections. 19 These advocates have been met with some success by influencing the stance on criminalization held by international human rights bodies. 20

Part IV uses the comparative analysis in Parts I–III to develop guiding principles for the practice of anti-carceral human rights advocacy. Although we do not argue that anti-carceral human rights advocacy must be explicitly abolitionist, the guiding principles are influenced by abolitionist theory and its intersection with critiques of the carceral turn in human rights and decriminalization human rights advocacy. Our goal is to present anti-carceral human rights advocacy as an expansive practice with which many human rights advocates could associate, not just advocates who identify as abolitionists. We center abolitionist theory in this comparative analysis because of its primary position as the most intellectually-developed criticism of carceral systems. 21 Despite this influence, the guiding principles explicitly envision anti-carceral human rights advocacy, not abolitionist human rights advocacy. The distinction is intentional. Anti-carceral human rights advocacy should constitute a broad tent that encompasses the overlapping principles found in abolition, criticism of the carceral turn in human rights, and decriminalization human rights advocacy.

The guiding principles are not meant to assert that all human rights practitioners must embrace anti-carceral human rights advocacy, especially given the interest of some human rights abuse victims and survivors in pursuing carceral punishment of perpetrators. We also acknowledge that many human rights advocates may have criticisms of carceral systems but still believe the criminal punishment system should remain a central part of accountability for human rights abuses. 22 We believe in justice and accountability for harms, but we do not believe carceral systems are the only or best pathways to achieve these aims. Thus, these guidelines are designed for human rights advocates who want to prioritize prevention, healing, and transformation in their work and do not see the evidence supporting the carceral state's ability to achieve those outcomes.

According to the guiding principles developed in this article, anti-carceral human rights advocates should: (1) highlight the abuses of carceral systems; (2) not advocate for solutions to human rights abuses that strengthen carceral systems; (3) target structural causes of human rights abuses by elevating economic, social, and cultural rights, non-discrimination, and accountability mechanisms not based in retribution but rather in healing and transformation; (4) work closely with

18 See infra Part III. For a discussion of decriminalization human rights advocacy in the areas of gender, sexuality, and reproductive rights, see, e.g., BEYOND VIRTUE AND VICE: RETHINKING HUMAN RIGHTS AND CRIMINAL LAW (Alice M. Miller & Mindy Jane Roseman eds., 2019); Ahmed, supra note 16.

19 See infra Part III.

20 See infra Part III.


22 See, e.g., Whitney Brown, Reflections of a Human Rights Activist, in BEYOND VIRTUE AND VICE: RETHINKING HUMAN RIGHTS AND CRIMINAL LAW, supra note 18, at 87 ("For most human rights advocates, it is untenable to ignore the failures within the criminal justice system, and it is equally untenable to give up on the criminal justice system. While rampant abuses and overincarceration in the United States have spawned an abolitionist movement, human rights principles demand justice and accountability for actual harms.").
communities directly affected by the carceral state’s abuses and global anti-carceral advocates to better identify and address the structural conditions leading to human rights abuses; and (5) practice and/or stand in solidarity with decriminalization human rights advocacy across issues. We provide examples of what anti-carceral human rights advocacy that is animated by these guiding principles might look like in practice by applying the principles to human rights projects conducted by the author-affiliated Walter Leitner International Human Rights Clinic (“Leitner Clinic’’), whose human rights work has evolved over the years in favor of anti-carceral advocacy.

PART I: CARCERAL ABOLITION AND HUMAN RIGHTS

A. Abolitionist Theory and Practice in the United States

The purpose of this section is to lay out the primary tenets of abolition and the organizing efforts made towards its achievement. This section will first briefly address abolition’s foundational principles. Then, it will highlight the three primary reasons abolitionists offer for rendering carceral systems obsolete: (1) policing, prosecution, and prison systems are founded in historical and social contexts informed and tainted by white supremacy and other forms of structural oppression; (2) carceral systems do not address the social and economic deprivations that are the primary reasons for societal harm; and (3) carceral systems in the form of policing, prosecution, prison, and other institutions of carceral logic exacerbate the very societal harms they are purportedly meant to address. This section will end by outlining how abolitionists primarily seek to render carceral institutions obsolete: by rejecting reforms that strengthen carceral institutions, advocating for moratoriums on new prison construction and reduction of prison populations, and promoting transformative ways of uplifting communities to address and prevent violence.


24 See DAVIS, supra note 3, at 22–39 (discussing the racist foundations of punitive accountability mechanisms in the U.S.); DAVIS, supra note 3, at 60–83 (discussing the gendered aspects of prison due to its roots in patriarchal societies).

25 See, e.g., RUTH WILSON GILMORE, GOLDEN GULAG: PRISONS, SURPLUS, CRISIS, AND OPPRESSION TO GLOBALIZING CALIFORNIA 125–26 (2007) (discussing the rise of the “prison fix” for social problems created by deindustrialization, increased state capacity, surplus capital, and idle land in California); Amna Akbar, An Abolitionist Horizon for Policing Reform, 108 CAL. L. REV. 1781, 1821 (2020) (discussing how policing has become the default response to social problems because of divestment from social services); Dorothy Roberts, Foreword: Abolition Constitutionalism, 133 Harv. L. Rev. 1, 14–17 (2019) (suggesting that the merging of social services with policing in the second half of the twentieth century created the prison industrial complex).

26 See GILMORE, supra note 25, at 14–17 (showing examples of jurisdictions in which more policing has led to lower quality of life). See also Roberts, supra note 25, at 37–38 (discussing the collateral consequences of imprisonment beyond the initial sentence).

As articulated by the theorists and organizers who founded the abolitionist movement in the U.S., namely Angela Davis and Ruth Wilson Gilmore, abolition is a wide-reaching, long-term vision of a transformed society in which police, prisons, and other institutions that weaponize carceral logic, such as migrant detention facilities, are made obsolete. Abolitionists argue that obsolescence should be the result of not only divestment from carceral institutions, but also investment in a constellation of social interventions that develop communities’ collective care, mutual aid, education, health, and employment outcomes. More specifically, alternatives to carceral interventions may include “demilitarization of schools, revitalization of education at all levels, a health system that provides free physical and mental care to all, and a justice system based on reparation and reconciliation rather than retribution and vengeance.” To quote Gilmore, abolition is not merely the “absence of cops and prisons; it’s the presence of everything we need to secure that absence.”

Abolitionists argue that one of the reasons carceral systems in the U.S. should be abolished is because they are rooted in systemic racism, capitalist exploitation, and other forms of structural oppression. Mariane Kaba traces police forces to slave patrols; Davis connects criminal laws to Black Codes; and both associate carceral institutions with the protection and accumulation of white private capital. Gilmore links the prison-industrial complex (“PIC”) to the criminalization of political movements for economic and social freedom dating back to the 1950s and 1960s, including the anti-war and civil rights movements. Because of these historical, social, and economic contexts,
contemporary carceral institutions and the general public in the U.S. have associated so-called criminal behavior with race, socioeconomic status, and gender identity, which has resulted in the disproportionate targeting and representation of individuals from communities of color and poor and queer communities in carceral systems.\(^\text{36}\)

The disproportionate representation of these communities in prison and the growth of the PIC are not merely due to these historical contexts. They are also the product of neoliberal state management, anti-“soft on crime” rhetoric by politicians, and media representations of crime.\(^\text{37}\) The neoliberal contraction of the social safety net in favor of privatized social services has increased reliance on carceral responses to social problems such as unemployment, houselessness, drug use, and mental health crises.\(^\text{38}\) In this vein, Gilmore argues that incapacitation as a central theory animating prison expansion serves merely to relocate harm without addressing its underlying social causes.\(^\text{39}\)

Abolitionists such as Gilmore, Kaba, and Dorothy Roberts have highlighted how reliance on carceral responses to social problems exacerbates them.\(^\text{40}\) According to Gilmore, the conditions in U.S. prisons subject incarcerated populations to human rights abuses in the form of state-sanctioned violence and dehumanization.\(^\text{41}\) Rather than stymying violence through incapacitation, incarceration moves violence from one locale—the community—to another—the prison.\(^\text{42}\) Not only does this

Africa to Southeast Asia revolted against their colonizers. Id. In the U.S., protests were led by groups such as the Black Panthers, which fought against colonialism, racism, and capitalism. Id. In reaction to these protests, which sought radical reforms of systems of power, those wielding that power resorted to one of the only forms of “containment” of such revolutionary movements available to them after the end of Jim Crow, that is, criminal law. Id. at 5–8. This resulted in expanding the penal code to target particular communities, such as poor communities, communities of color, and activist communities, and building more prisons to house individuals from these increasingly criminalized communities. Id. The reliance on criminal law as a response to social upheaval and disruption during these decades has since become the norm, resulting in the PIC and its naturalization within the American psyche. Id.

\(^{36}\) GILMORE, supra note 25, at 110–13. For a discussion of how the same discriminatory assumptions and practices aimed at communities of color and poor communities have also targeted queer and trans people of color at disproportionate rates, see Morgan Bassichis et al., Building an Abolitionist Trans and Queer Movement with Everything We’ve Got, in CAPTIVE GENDERS: TRANS EMBODIMENT AND THE PRISON INDUSTRIAL COMPLEX 21–22 (2011), https://perma.cc/7KXY-GJVL.


\(^{38}\) See, e.g., Akbar, supra note 25, at 1821; GILMORE, supra note 25, at 113 (pointing to the association between regions of economic restructuring, high unemployment, and increased criminal surveillance).

\(^{39}\) GILMORE, supra note 25, at 14.


\(^{41}\) See Kushner, supra note 3. Gilmore is not alone in asserting that prison conditions in the U.S. rise to human rights abuses. The United Nations Special Rapporteur on Torture has found that some practices of solitary confinement in U.S. prisons constitute torture and violate the U.N. Convention against Torture and Other Cruel, Inhuman and Degrading Punishment. McLeod, supra note 40, at 1179. Davis also argues that the gendered dynamics of punishment and prisons have resulted in continued practices of mass state-sanctioned sexual assault of incarcerated women by prison guards. DAVIS, supra note 3, at 63–65.

\(^{42}\) See GILMORE, supra note 25, at 14 (describing prison as a geographical solution to social problems by removing
violence and disruption. According to Roberts, the social death within the administration of incarceration; i.e., communities incarceration also dilutes the political and economic power of the communities from communities through incarceration thins the already limited financial, emotional, and political resources of those communities by locking individuals out of education, employment, housing, and civic engagement. This further destabilizes targeted communities and feeds a cycle of violence and disruption. According to Roberts, the social death of individuals wrought by incarceration also dilutes the political and economic power of the communities most affected by mass incarceration; i.e., communities of color, poor communities, and queer communities.

Due to the failure of the criminal legal system to address the social and economic problems that give rise to violence and the further harm it causes individuals and overcriminalized communities, abolitionists reject reforms that strengthen carceral institutions, or what Critical Resistance calls "reformist reforms."47 While the primary goal of these reform efforts is purportedly to reduce harm within the administration of the criminal legal system, abolitionists argue that many reform efforts not only fail to end carceral violence against targeted communities but also embolden carceral institutions like the police.48 This is not to say that abolitionists reject all reform efforts outright;49 some reforms, particularly those that reduce contact between carceral systems and the public, may align with abolition's long-term goal of carceral obsolescence.50 Advocating for moratoriums on prison construction and "decarceration," which refers to efforts aimed at reducing prison populations, are also essential aspects of abolitionist organizing.51

Abolitionists’ vision of justice is not limited to contact-reducing reforms and prison reduction efforts; it envisions transformative social systems that prevent violence.52 This is not an overnight process, but a “long-term political vision.”53 Organizations have already developed anti-carceral programs aimed at preventing and addressing violence, including: police-free school

people from deindustrialized locales and putting them elsewhere).

43 See GILMORE, supra note 25, at 14–17; Kaba & Hayes, supra note 40 (describing the “cycle of carceral violence”); Roberts, supra note 25, at 37–38; Roberts supra note 40, at 1281–97.

44 See Roberts supra note 25 at 1282–97.

45 GILMORE, supra note 25, at 15–17.

46 See, e.g., Roberts, supra note 40, at 1281–97 (discussing the community-wide costs of mass incarceration); Roberts, supra note 25, at 37 (discussing “felon disenfranchisement” as “significantly dilutes black political power”); id. at 26 (discussing the individual costs of criminalization of communities, particularly for young men of color at risk of death at the hands of police and Black women, women of color, and queer women who are at risk of sexual violence by police).

47 CRITICAL RESISTANCE, REFORMIST REFORMS VS. ABOLITIONIST STEPS TO END IMPRISONMENT (2021), https://perma.cc/3J6E-NG9V; see also Kushner, supra note 3; Smith Futrell, supra note 27, at 171–73.

48 See Smith Futrell, supra note 27, at 171–73. Some such reforms may include increasing police budgets, implementing “community policing,” and providing more technological tools to police. Kaba, supra note 27.

49 See Smith Futrell, supra note 27, at 172.

50 See A World “Without” Walls: The CR Abolition Organizing Toolkit, CRITICAL RESISTANCE 32-33 (2004), https://perma.cc/DZ63-KYLT. These reform efforts may include reparations schemes, personal liability insurance for police officers, ensuring data transparency, or establishing elected independent civilian police accountability boards. Kaba, supra note 27.

51 See Smith Futrell, supra note 27, at 174.

52 See Roberts, supra note 25, at 43. See also Smith Futrell, supra note 27, at 174; DAVIS, supra note 3, at 105-13.

53 See Smith Futrell, supra note 27, at 167 (citing Roberts supra note 25 at 6).
movements to decrease students’ contact with the criminal legal system and slow the school-to-prison pipeline;[54] trained mental health crisis intervention teams to assume the role typically occupied by police officers who are not trained in managing such crises;[55] harm-reduction, drug treatment, and drug decriminalization to defuse the war on drugs;[56] reparations as a means of providing structural redress for police violence;[57] non-carceral responses to gender-based violence that seek to heal victims and transform perpetrators;[58] decriminalization of sex work to decrease sex workers’ exposure to police abuse;[59] and grassroots bailout funds seeking to lessen reliance on the cash-bail system and end pre-trial detention. Ultimately, these programs and the abolitionist movement seek to uplift human life as a means of reducing incidents of crime and punishment.61

This vision and these efforts are not exclusive to the U.S., as abolition has become increasingly internationalized.62 The following section will discuss abolitionist movements abroad and global abolitionist arguments that align with those in the U.S.

B. The Global Abolitionist Movement

This section explores the overlapping arguments and advocacy of abolitionist scholars and advocates from the U.S., Brazil, Canada, South Africa, and the U.K. There is no single history of

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54 See DEFUND REPORT, supra note 1, at 26-28 (listing the Black Organizing Project, which redirects funds from police to lunches, afterschool programs, and mediation staff in Oakland; various youth groups that advocate for reduction of police presence and increasing restorative justice in Minneapolis; #CounselorsNotCops, which seeks investment in trained counselors in North Carolina; and Rockaway Youth Task Force which pursues restorative justice systems in New York).

55 Id. at 50 (identifying the non-profit CAHOOTS as the leading model that has 911 dispatchers divert calls regarding drug use-related crises, public intoxication, psychotic episodes, houselessness, or suicide attempts to its trained staff).

56 Id. at 33 (identifying Critical Resistance as implementing many harm reduction methods.)

57 Id. at 36-37 (explaining that in May 2015, the Chicago City Council passed a reparations ordinance for incidences of police torture, which included a formal apology, mandatory education on the torture in public schools, counseling services for survivors, tuition for survivors to Chicago’s City Colleges, job placements for incarcerated survivors, and financial compensation for survivors).

58 See id. at 38-40. In particular, groups like Critical Resistance, INCITE!, and Survived & Punished advocate for transformative justice as better protecting victims and addressing the societal harm at the root of inter-personal violence. Id. at 38-39. Transformative justice is so named because of its goal of “transform[ing] the conditions and social forces that lead to” a specific harm. Id. In order to do so, transformative justice approaches seek to return the ability to address harms to those most affected by them, for example through peace circles or victim-offender mediation. Id. Mariame Kaba’s organization, Survived & Punished, seeks to end the incarceration of victims of sexual violence for use of self-defense, failure to remove children from abuse, or coerced abetting. Id. at 38. Survived & Punished also seeks to change the narrative of perpetrators of sexual violence as monsters to ensure accountability and the transformation of beliefs or conditions that may have led the perpetrator to commit that violence. Id. at 39-40.

59 Id. at 41-42 (listing organizations such as Decrim NY, which works to decriminalize and destigmatize the sex trade, and the Sex Workers Advocates Coalition, which “promotes the rights, liberties, health, and safety of sex workers”).

60 Id. at 44 (noting that such funds include the Minnesota Freedom Fund and the National Bail Network).


62 Indeed, Gilmore and Davis have argued that the abolitionist movement is inherently an international one, as it requires criticism of the global effects of imperialism, capitalism, racism, patriarchy, and slavery. See, e.g., Haymarket Books, supra note 31; ANGELA Y. DAVIS ET AL., ABOLITION. FEMINISM. NOW. 22–25 (2022).

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abolitionist thinking; Angela Davis has spoken of “multiple histories of prison abolition,” and has highlighted the work of the Norwegian sociologist Thomas Mathiesen, who published his “germal text” on prison abolition in 1974.63 Mathiesen advocated for a radical anti-prison movement that went beyond mere reform.64 Davis and Gilmore have since expanded upon these arguments to inspire scholars and advocates abroad, arguing that the abolitionist movement must extend beyond U.S. borders to address the global scale of organized state violence, policing, and punishment.65 Prominent abolitionist voices from Brazil,66 Canada,67 South Africa,68 the U.K.,69 and beyond70 often expressly reference leading U.S. abolitionists.

An abolitionist movement exists in Brazil, the third-largest incarcerator in the world.71 Like the U.S., Brazil has a history of exploitation and enslavement of Indigenous and African people.72 This has led Brazilian abolitionist activists such as Andreia Beatriz Dos Santos to make similar arguments to those of U.S. abolitionists regarding the carceral state’s foundations in white supremacy.73 Linking the

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64 Davis and Rodriguez, supra note 63, at 215.

65 See Haymarket Books, supra note 31, at 33.00.


68 See, e.g., COPS ARE FLOPS, RE-IMAGINING JUSTICE IN SA BEYOND POLICING V2 (2020), https://drive.google.com/file/d/1lrNc_g-saIPFABqJfFkQvrVKUpljv6Es/view [https://perma.cc/R5F6-229B].


71 The Brazilian prison system houses 755,000 inmates. Beyond Reform: Imagining the End of Police and Prisons in Brazil and the United States, RIO ON WATCH (Aug. 12, 2020), https://rioonwatch.org/?p=60374 [https://perma.cc/Y5P7-U434]. One Brazilian organization advocating for abolition beyond mere reconstitution of criminal justice is Rede 02 de Outubro. See Rede 02 de Outubro: Pelo Fim das Prisões, Who We Are, https://rede2deoutubro.milharetal.org/qui-somos/ [https://perma.cc/RQ48-YGCN] (grounding Brazil’s police and punishment system in capitalist, racial, and neoliberal exploitation and seeking the end of prison in all forms). For a list of more organizations advocating against such high incarceration figures, see NAT’L ASSN FED. PUB. DEPS. ET AL., NATIONAL AGENDA FOR DECARCERATION (2014), https://perma.cc/C8BQ-M8TS.


73 Andreia Beatriz Silva Dos Santos, et al., React or Be Killed: The History of Policing and the Struggle against Anti-Black Violence in Salvador, Brazil, 2020 RADICAL HIST. REV. 157, 158-159 (2020). For U.S. abolitionists’ arguments about the racist roots of the PIC, see supra Part I.A.
Brazilian military police’s emergence in the 19th century and its suppression of liberation movements led by enslaved people, she argues that this foundation in white supremacy has caused the continued disproportionate targeting and criminalization of Afro-Brazilian communities by Brazilian state security forces. This is the same argument made by Davis in the U.S. regarding the “imputation of crime to color.” Given the historical foundations of policing in Brazil and its continued harms to Black and Indigenous communities, Brazilian activists demand abolition, decarceration, and demilitarization. These demands include divesting from the construction of prisons, demilitarizing the police, centering community accountability and transformative justice, and ensuring equal access to medical care, quality schools, and public sanitation. U.S. abolitionists call for carceral alternatives that mirror those called for in Brazil.

As a North American neighbor with a history of settler-colonialism and slavery, Canada’s abolitionist movement closely aligns with the U.S. movement. Just as Gilmore emphasizes the “group-differentiated vulnerability to premature death” wrought by mass incarceration, Canadian abolitionist Robyn Maynard describes Canada’s history of racial capitalism, surveillance, and punishment as causing “racially uneven proximities to death.” Maynard argues this racial imbalance is due to Canadian policing’s foundations in colonial-era slave patrols, Indigenous land dispossession, and suppression of Indigenous rebellions. Black and Indigenous Canadians are disproportionately targeted by the carceral state. These arguments mirror Kaba’s and Davis’ connections between contemporary policing, slave patrols, and the oppression of social movements in the U.S., as well as the continued effects such historical foundations have on targeted communities. Because of these effects, like U.S.-based abolitionist organizers, Canadian abolitionists seek not just divestment from carceral institutions but also positive interventions such as investment in educational support, non-carceral mental health interventions, harm reduction programs, and the decriminalization of violence.


DAVIS, supra note 3, at 30 (citing THE LIFE AND WRITINGS OF FREDERICK DOUGLASS. VOL. 4: RECONSTRUCTION AND AFTER 379 (Philip S. Foner, ed., 1955)).

Bryond Maynard, Police Abolition/Black Revolt, 41 TOPIA: CANADIAN J. CULTURAL STUDS. 70, 71–72 (2020). Abolitionist organizations from Canada range from a national Defund the Police Movement to more localized movements such as the Saskatchewan Manitoba Alberta Abolition Coalition, the Prison Justice Network in British Columbia, the Toronto Prisoner Rights Project, and the Anti-Carceral Group in Quebec. For a list of more organizations advocating against police and prisons across Canada, see No Prisons, Groups, noprisons.ca/groups [https://perma.cc/CFG6-7E9U].

Gilmore emphasizes the historical foundations of policing in Brazil and its continued harms to Afro-Brazilian communities by Brazilian state security forces. According to Gilmore, prison expansion is the same argument made by Davis in the U.S. regarding the “imputation of crime to color.” 75 Given the historical foundations of policing in Brazil and its continued harms to Black and Indigenous communities, Brazilian activists demand abolition, decarceration, and demilitarization. These demands include divesting from the construction of prisons, demilitarizing the police, centering community accountability and transformative justice, and ensuring equal access to medical care, quality schools, and public sanitation. U.S. abolitionists call for carceral alternatives that mirror those called for in Brazil.

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houselessness, drug use, and sex work.\textsuperscript{85}

Abolitionist arguments and activism also appear in South Africa.\textsuperscript{86} South African scholar Kelly Gillespie argues that South Africa’s carceral institutions have their roots in apartheid’s racial subjugation for white capital accumulation.\textsuperscript{87} Since the end of apartheid in 1994, the prison population in South Africa has grown by 60%, with disproportionate representation of individuals from Black townships that were most directly affected by apartheid violence.\textsuperscript{88} According to Gillespie, the criminalization of Black communities locks incarcerated individuals out of non-criminalized employment markets.\textsuperscript{89} Gillespie argues that not only do carceral interventions further destabilize Black communities in South Africa, but they also prevent the implementation of effective interventions to address poverty and violence.\textsuperscript{90} Echoing abolitionist organizing efforts throughout the U.S., South African abolitionists promote alternative interventions such as restorative justice and equal access to healthcare, education, and jobs.\textsuperscript{91}

The U.K. is home to one of the first international abolitionist movements, dating back to the 1970s.\textsuperscript{92} Much like in the U.S. and Canada, it has been argued that the U.K.’s modern policing culture has its roots in the use of paramilitary policing methods to protect colonial interests in the 19\textsuperscript{th} and early 20\textsuperscript{th} centuries.\textsuperscript{93} In the 1970s, the U.K.-based activist group Radical Alternatives to Prison (RAP) formed in response to the imprisonment of anti-nuclear war and proliferation protestors engaged in public disobedience.\textsuperscript{94} These foundations mirror those in the U.S., where Gilmore argues the modern PIC emerged as a counter-revolutionary response to movements against war and for radical social change.\textsuperscript{95} As in the U.S., U.K. abolitionists reject carceral system-strengthening
reforms. They argue that the U.K. criminal legal system serves only to reinforce social inequality and promote white, colonial, and class supremacy. Like Kaba, Akbar, Davis, and Gilmore, RAP and other U.K. advocates argue for community-based alternatives to incarceration and reforms aimed at minimizing contact between the public and prisons.

Canada, Brazil, South Africa, and the U.K. provide just a few examples of countries outside of the U.S. where abolitionist movements exist and thrive. The arguments and proposed alternatives of abolitionist movements in different countries are in conversation with each other, extending the abolitionist movement beyond borders. This internationalization is an essential aspect of the abolitionist cause.

C. Abolition and International Human Rights Law

Despite the global nature of abolitionist thought and activism, there has been little scholarship on abolition in the realm of international human rights. This section examines Isobel Renzulli’s recent scholarship, which provides an explicit analysis of the tensions and alignments between the international human rights regime and carceral abolition as it applies to prisons. This section will highlight and expand upon relevant portions of Renzulli’s analysis, and it will explore how international human rights bodies have addressed policing and to what extent their actions align with abolitionist arguments. This section also highlights certain contradictions within the international human rights regime, which has historically legitimized states’ reliance on both prisons and policing as responses to human rights abuses but also criticized both institutions in ways that resemble abolitionist arguments—including emphasizing their racist roots and targeted harms to vulnerable communities.

Renzulli argues that the international human rights regime is in tension with prison abolition because it has historically accepted and legitimized the use of prisons as a form of punishment for human rights violations, rather than centering reparation or reconciliation. Renzulli questions whether the international human rights regime’s reliance on punitive accountability mechanisms can be aligned with abolitionist demands for equal and greater access to community-based accountability, healthcare, employment, or education mechanisms that would render carceral interventions

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96 See Abolition is Not New, supra note 92.
97 See Ryan & Ward, supra note 94, at 110 ("[RAP] suggested that prisons, and the criminal justice system, were instrumental in securing and sustaining an unequal society, reflecting the interests of the economically powerful."); Abolition is Not New, supra note 92 ("Prisons are linked to our unequal and unjust society.").
98 See, e.g., Ryan & Ward, supra note 94, at 108-10; Abolition is Not New, supra note 92. In addition to RAP, abolitionist organizations in the U.K. include No More Prison, Communities of Resistance, Reclaim Justice Network, and Community Action on Prison Expansion. See also supra Part I.A (laying out in detail some of these alternatives and reforms).
100 See generally Renzulli, supra note 4.
101 See id. at 12-14.
Despite this tension, Renzulli argues that the international human rights regime aligns with abolition in other ways. The international human rights regime’s historic scrutiny of prisoners’ treatment suggests its willingness to challenge the global reliance on prison. For example, this scrutiny has come from the Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment, which has reported that incarcerated people often come from the most marginalized communities in society. Tribunals and treaty-monitoring bodies—including the European Court of Human Rights, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and the Committee against Torture—have also found prison conditions, particularly overcrowding, to constitute inhuman and degrading treatment. In light of these criticisms, these same human rights experts and bodies have called on states to reject strict carceral policies and provide for shorter sentences, early release, or replacements to imprisonment altogether. Such alternatives have become especially prominent in the international human rights regime’s consideration of the rights of mentally ill prisoners, as seen in the European Prison Rules and the United Nations Standard Minimum Rules for the Treatment of Prisoners (“Nelson Mandela Rules”). These reform efforts, as opposed to “reformist reforms,” may be acceptable to abolitionists because they limit public exposure to and reliance on carceral institutions in response to human rights violations, rather than lead to prison expansion.

As with Renzulli’s arguments about the prison context, the international human rights regime’s approach to policing reveals both tensions and alignments with abolitionist theory. The tension lies in the fact that the international human rights regime has accepted the role of police in society as legitimate and necessary. Much of the approach taken towards policing by U.N.-based

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102 See id. at 11–12, 15.
103 See id. at 8–14 (documenting how the international human rights regime works to protect the rights of prisoners and detained individuals). In order to align abolitionist theory and practice with international human rights advocacy, Renzulli also calls for the elevation of the non-discrimination principle together with economic, social, and cultural rights, “which do not of themselves deliver social justice but are considered instrumental for the promotion of social progress and better standards of living, and for the enjoyment by everyone of the freedom from fear and want.” Id. at 13.
104 See id. at 3 (citing Manfred Nowak (Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment), Study on the Phenomenon of torture, cruel, inhuman or degrading treatment or punishment in the world, including an assessment of conditions of detention, ¶¶ 230–31, U.N. Doc. A/HRC/13/39/Add.5 (Feb. 5, 2010)).
105 See id. at 8 (citing the European Court of Human Rights’ discussion of overcrowding in ‘Tortrugianu and Others v. Italy’, Application Nos. 43518/09, 46882/09, 55400/09, 57875/09, 61535/09, 35315/10 and 37818/10, ¶¶ 65, 94 (Jan. 8, 2013) and reports by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the U.N. Committee against Torture that found overcrowding to constitute inhuman or degrading treatment and concluded that recent solutions to overcrowding, such as building new prisons, were unsatisfactory).
106 Id. at 9.
107 Id. at 10 (stating that both the European Prison Rules and Mandela Rules suggest that people suffering from mental illnesses should be held in specialized facilities, not imprisoned).
108 See id. at 5, 9–10.
109 See JIM MURDOCH & RALPH ROCHE, THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND POLICING 111 (2013) (stating the objectives of police in a democracy are “to maintain public tranquility and law and order in society; to protect and respect the individual’s fundamental rights and freedoms; to prevent and combat crime; to detect crime; and to provide assistance and service functions to the public.”). See Also African Comm’n on Human and Peoples’ Rights, Resolution on the Prohibition of Excessive Use of Force by Law Enforcement Officers in African States, ACHPR/Res. 474 (EXT.OS/
human rights bodies and the European Commission has been to call for reforms meant to address racist policing and police brutality, such as internal investigation units, trainings, body cameras, community policing, and the recruitment of police officers from overpoliced communities. Such recommendations fall squarely within the types of “reformist reforms” rejected by abolitionists as merely strengthening and legitimizing carceral institutions. Indeed, some recommendations aimed at policing serve the express purpose of increasing public confidence in police, which implicitly ensures the continued existence and acceptance of policing and carceral structures.

However, the international human rights regime’s approach to policing aligns with abolitionist theory in some ways. Various international human rights bodies have criticized policing’s racist foundations, targeting of marginalized communities, and excessive violence. Specifically, U.N. Special Rapporteurs have acknowledged disproportionate police violence against communities of color, religious minorities, and poor communities. International human rights mechanisms such as the Inter-American Commission on Human Rights (IACHR) and the U.N. Human Rights Council have also called attention to targeted police violence against vulnerable populations. The emphasis

XXXI) (Feb. 25, 2021) (“Recognizing the central role of Law Enforcement Officers in the maintenance and enforcement of law and order, the promotion of citizens’ safety, and the respect for human rights.”).


111 Kahn, supra note 27; supra Part I.A.


on policing's disproportionate effects on marginalized groups—including sex workers, queer communities, migrants, ethnic minorities, women, and Indigenous communities—has also appeared in the concluding observations of country reports by treaty monitoring bodies such as the Human Rights Committee, the Committee against Torture, the Committee on the Elimination of Discrimination against Women, and the Committee on the Elimination of Racial Discrimination. 113

In analyzing the structural nature of policing, these international human rights bodies have recognized the historical legacy of enslavement. 114 This recognition of policing's racial bias is a central tenet of

abolitionism, which argues that the racist and capitalist exploitation foundations of policing have caused the targeting of vulnerable groups.\textsuperscript{117} As seen in its engagement with prisons, the international human rights regime’s criticisms of policing may open the door to more abolitionist reforms. For instance, the U.N. General Assembly recently established the Permanent Forum on People of African Descent, with a mandate to ensure equal access to and exercise of economic, social, and political rights for people of African descent—efforts that would fall in line with the calls of abolitionist organizations.\textsuperscript{118} Still, these international bodies more often than not make the very recommendations challenged by abolitionists such as Kaba, including more police training, more technology, increased internal oversight, and wider-reaching recruitment measures.\textsuperscript{119} As noted by Kaba, these types of recommendations do little to limit interaction between the public and police and in many instances actually strengthen the role of the police in everyday life.\textsuperscript{120}

PART II: ANTI-CARCERAL CRITIQUES OF THE HUMAN RIGHTS MOVEMENT IN CONVERSATION WITH ABOLITION

A. Criticism of the Anti-Impunity Carceral Shift in International Human Rights

This section examines scholarship that critiques the carceral approach to impunity for human rights abuses. Karen Engle and other scholars discussed in this section have traced the carceral shift in human rights work throughout the twentieth century.\textsuperscript{121} Emphasizing international human rights advocates’ use of domestic and international criminal institutions in order to promote their anti-impunity agenda, the scholars who critique the carceral anti-impunity turn in human rights make arguments that are in direct conversation with abolitionists. While not explicitly abolitionists themselves, these scholars challenge criminal law’s entrenchment of systems of power, the ability of criminal punishment to address social problems that give rise to human rights abuses, and the use of criminal punishment at the expense of wider-reaching mechanisms of justice.

Early instances of the institutionalization of criminal law as a means of combating impunity for human rights abuses appeared at the ends of World War I, World War II, and the Cold War.\textsuperscript{122} The increasing emphasis placed on states’ obligations to bring criminal prosecutions of individuals for human rights abuses evidences this institutionalization.\textsuperscript{123} Mahmood Mamdani credits the Nuremberg
Trials with establishing the two notions at the core of this carceral shift: “responsibility for mass violence must be ascribed to individual agents” and that “criminal justice is the only politically and morally viable response to mass violence.” According to Vasuki Nesiah, the failure of the Nuremberg Trials to address well-documented human rights violations on the part of the Allies during World War II entrenched the dynamics of power between victor and vanquished, legitimizing the post-war conduct of the victors. Mamdani and Nesiah argue that the international human rights regime’s reliance on criminal responses to human rights abuses was flawed from the start.

Engle argues that stakeholders within the international human rights regime have largely accepted these developments as positive ones, and that to critique the use of carceral institutions to fight impunity is to be viewed as anti-human rights. Highly publicized individual criminal trials as responses to mass atrocities decontextualize human rights violations from the “inequality, poverty, dispossession, and economic violence” that are often their cause. Engle notes that the failure to identify the structural causes of mass violence obscures the state’s responsibility for creating the conditions that give rise to that violence. Abolitionists similarly argue that criminal punishment for violence distracts from the underlying social conditions that catalyze violence. Specifically, Gilmore rejects the use of carceral interventions as a cure-all for social ills by highlighting how incarceration exacerbates social problems by thinning community resources.

The distraction from structural causes of violence that Gilmore discusses is Engle’s exact concern.

This distraction from the structural conditions that give rise to human rights violations may also result from non-criminal institutions that maintain a carceral logic. For example, Zinaida Miller has made critiques of transitional justice mechanisms such as truth commissions that do not involve criminal law. In particular, Miller critiques the South African Truth and Reconciliation Commission to require that states initiate criminal investigations against individual perpetrators.” After these early cases in the IACHR, the U.N. also emphasized states’ responsibilities to pursue individual criminal prosecutions and punishment for human rights abuses in the fight against impunity. The 1993 Vienna Declaration and Program of Action called on states to “abolish legislation leading to impunity for those responsible for grave violations of human rights ... and prosecute such violations.” Id. (citing World Conference on Human Rights, Vienna Declaration and Program of Action, ¶ 62, U.N. Doc. A/CONF.157/23 (July 12, 1993)). The 1997 Joint Report similarly declared that states have a duty to “investigate violations, to prosecute the perpetrators, and, if their guilt is established, to punish them.” See Engle, supra note 121, at 1084 (citing Joint Report).


125 See Nesiah, supra note 121, at 105–08. Because the Nuremberg Trials said nothing of the well-documented atrocities committed by the Allied forces during World War II, the Allies not only granted themselves the very impunity they claimed to fight with criminal law at Nuremberg, but also established themselves as the only legitimate actors capable of providing justice for such atrocities moving forward. Id. at 107. Nesiah argues this world order was built into post-war institutions, including the U.N. and its organs, such as the Security Council, IMF, and World Bank. Id. at 108.

126 Mamdani, supra note 124, at 351–53; Nesiah, supra note 121, at 97–98.

127 See Engle, supra note 115, at 1117–19.

128 Id. at 107. Nesiah argues this world order was built into post-war institutions, including the U.N. and its organs, such as the Security Council, IMF, and World Bank. Id. at 108.


(TRC) as situating responsibility for the abuses of the apartheid government with individuals who committed human rights violations.133 Miller argues that by framing apartheid as a series of individual harms, the TRC failed to adequately address apartheid’s systemic racism.134 This argument mirrors abolitionist arguments that non-criminal institutions, such as migrant detention facilities, can still maintain a carceral logic that disproportionately harms marginalized communities.135

Engle and other scholars also argue that anti-impunity criminal responses to human rights violations distract from wider-reaching mechanisms of justice and reform that center restoration and repair.136 Mamdani argues that individual criminal accountability freezes the identities of perpetrator and victim, serving to “demonize the agency of the perpetrator – and diminish the agency of the victim.”137 Without denying that punishment may be the goal of certain victims of human rights abuses, Samuel Moyn argues that to limit justice to criminal accountability is to ignore other non-punitive goals individuals may seek to achieve through justice mechanisms.138 Critics of the carceral anti-impunity turn in human rights have argued for alternatives to criminal responses that include: “peoples’ tribunals” that emphasize collective responsibility and justice beyond the law;139 conceptions of relationship restoration, conflict resolution, reparations and redistribution;140 comprehensive institutional frameworks for “public health programs, alternative employment opportunities, civil regulation, or infrastructure development;”141 care teams establishing community workshops for conflict resolution, de-escalation, and accountability;142 and reparations for survivors of human rights abuses, whether economic, health-related, educational, or in the form of job services.143 Indeed, like Gilmore’s argument that “abolition is about presence, not absence” and the

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133 Id. at 13:30–15:42.
134 Id.
135 See Davis, supra note 27 (pointing to the criminalization of the border and detention of Latinx and immigrant communities to emphasize the increasingly complex racial capitalism of the U.S. and violent targeting of ever-more marginalized communities).
136 See, e.g., Engle, supra note 121, at 1119, 1126; Mamdani, supra note 124, at 352–54; Samuel Moyn, Anti-Impunity as Deflection of Argument, in ANTI-IMPUNITY AND THE HUMAN RIGHTS AGENDA 85–88 (Karen Engle et al. eds., 2016).
137 Mamdani, supra note 124, at 352–53.
138 See Moyn, supra note 136, at 83, 85–87.
140 Sarah Nouwen & Wouter Werner, Monopolizing Global Justice: International Criminal Law as Challenge to Human Diversity, CAMBRIDGE LEGAL STUDIES RSP. PAPER SERIES 10–17 (Nov. 2014). See also Miller et al., supra note 89, at 126 (highlighting the restorative justice alternatives to Western norms of incarceration found in Indigenous communities of the Americas, Africa, and Asia).
142 See generally Miller et al., supra note 18.
143 See, e.g., An Approach to Reparations, HUM. RTS. WATCH (July 19, 2001), https://www.hrw.org/news/2001/07/19/approach-reparations# [https://perma.cc/XU7M-JUMW] (discussing the need to elevate economic and social rights, such as housing, education, health care, and job training, in any reparations scheme to avoid the continued marginalization of victims); Jo M. Pasquale, Victim Reparations in the Inter-American Human Rights System: A Critical Assessment of Current Practice and Procedure, 18 MICH. INT’L L. 1, 29 (1996) (discussing the Inter-American Court’s progressive reading of the right to remedy and reparation as including pecuniary damages and non-pecuniary damages in the form of economic resource allocation to
building of “life-affirming institutions” to render police and prisons obsolete. 144 Moyn has argued that the “alternative to anti-impunity . . . is not doing nothing; it is doing something else.” 145

These are the same arguments and suggestions made by abolitionists, who place a vision of alternative justice that addresses the structural conditions of harm at the core of their theory. 146 Kaba criticizes the ability of the criminal legal system to bring satisfaction or healing to grieving families and hurting communities, particularly given its historical and social contexts. 147 Rather than rely on criminal responses, Kaba advocates for a reparations framework that seeks to acknowledge, repair, restore, and guarantee non-repetition of harms. 148 Further, abolitionist organizations seek to change the narrative of abusers as monsters, believing this will help effectuate both the transformation of individuals who have caused harm and the healing of those harmed. 149

Both abolitionist theory and critiques of the anti-impunity carceral turn in human rights acknowledge criminal law’s entrenchment of historically developed power dynamics, critique penal responses to social problems, and elevate transformative methods of justice. Ultimately, it is likely that any critique of carceral responses to social problems will have similarities to abolitionist theory and practice.

B. Criticism of Carceral Feminism in International Human Rights Advocacy

There are scholars and advocates who are not explicitly abolitionist that have criticized the carceral agenda of human rights advocacy’s specific focus on gender justice. Elizabeth Bernstein defines “carceral feminism” as certain feminist activists’ commitment to “a law and order agenda” and “drift from the welfare state to the carceral state as the enforcement apparatus for feminist goals.” 150 This section uses the carceral approach to human trafficking as a case study of carceral feminism and places criticisms of that approach in conversation with abolition rooted in Black feminist thought. The critiques of carceral feminism in this subsection are in direct conversation withabolitionist theory because they argue that carceral responses do not address the structural causes of human rights abuses, cause further harm to the marginalized populations facing enforcement of such responses, and distract from measures that may actually prevent gendered harm.

145 Moyn, supra note 136, at 69.
146 See generally Akbar, supra note 25. See also McLeod, supra note 40, at 1218.
148 Id.
149 For examples of some of these organizations see Bassichis et al., supra note 36, at 29–32.
Like Gilmore does in the context of abolition, critiques of carceral feminism in human rights advocacy argue that carceral responses cause harm and do not address the structural conditions that cause the very vulnerability that is structurally abused. 151 Aziza Ahmed argues that the “carceral approach to sex-trafficking undermines a broader set of structural reforms that are more effective than carceral measures in addressing the material needs of trafficked people as well as in lessening the likelihood of being trafficked.” 152 As noted by Juno Mac and Molly Smith, closing borders and regular migration routes pushes migrants into the hands of traffickers, and these repressive enforcement mechanisms do little to address the causes of migration such as poverty, climate change, and military displacement. 153 Bernstein highlights how carceral feminist responses to trafficking “have been far more successful at criminalizing marginalized populations, enforcing border control, and measuring other countries’ compliance with human rights standards based on the curtailment of prostitution than they have been at issuing any concrete benefits to victims.” 154

In addition to arguing that carceral responses to trafficking distract from structural causes, Bernstein, Ahmed, and Meena Seshu claim that carceral feminism also further harms migrants, trafficking survivors, and sex workers. 155 Raids, border checks, and administrative detentions remove trafficking survivors and sex workers from their communities, while also subjecting them to state surveillance. 156 This cycle of harm resulting from carceral interventions mirrors that of criminalized communities in the U.S. 157 Regarding criminalized communities in the U.S., Gilmore and Roberts argue that mass incarceration increases destabilization in these communities, and results in social and civic death. 158

Like abolitionists, critics of carceral feminism argue that instead of providing for gender justice, carceral feminism further harms marginalized women. 159 Citing abolitionist feminist Beth Richie, Bernstein argues that the feminist turn to criminal punishment has increased violence faced by poor and queer Black women. 160 Ahmed and Seshu have made similar arguments regarding “raid and

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154 Bernstein, supra note 151, at 56–57.


157 See GILMORE, supra note 25, at 16–17 (noting that research shows that increased state intervention in everyday issues harms neighbor relationships, causes isolation, and prevents former incarcerated individuals from education, employment, housing, and other resources); Roberts, supra note 40, at 1281–97.

158 See id.


160 Id. at 42.
rescue” campaigns of Indian brothels by U.S.-based anti-trafficking NGOs. Instead of preventing trafficking as these efforts claim to do, “raid and rescue” campaigns cause great harm to women in the Global South due to the violence of the “rescue” act itself, subsequent police violence against sex workers, jail-like conditions of “rehabilitation,” and disruption of sex workers’ everyday lives caused by removal for an extended period of time. Kaba’s abolitionist organization, Survived & Punished, has argued that carceral responses to sexual violence benefit only those who are seen as “good victims.” As in the context of sex workers in the Global South, Survived & Punished argues that survivors not deemed “good victims” are those criminalized for being “Black, undocumented, poor, transgender, queer, disabled, women or girls of color, in the sex industry, or having a past ‘criminal record.’”

In criticizing the centrality of criminal law as a feminist response to human trafficking, Janie Chuang has proposed, and Ahmed has promoted, labor-based alternatives that target structural vulnerabilities to trafficking. Specifically, Chuang’s proposals would “regulate labor supply chains, target fraudulent foreign-labor recruitment, and prevent forced labor by government contractors and subcontractors.” In addition to these workers’ rights interventions, Chuang has also championed the use of the non-discrimination principle in international human rights instruments to effectuate the safeguarding of economic, social, and cultural rights for marginalized communities. She argues that this would mitigate gender-, race-, class-, and nationality-discriminatory norms and policies that often correlate to greater instances of trafficking or sexual violence.

Critics of carceral feminism in human rights advocacy argue that carceral responses do not address the root causes of such harms and can even perpetuate harm. Rather than criminalization, these critics seek preventative mechanisms of addressing harms, mirroring the arguments and organizing efforts of abolitionists.
PART III: DECRIMINALIZATION HUMAN RIGHTS ADVOCACY IN CONVERSATION WITH ABOLITION

Part II outlined critiques of the carceral shift in international human rights and placed them in conversation with abolitionist theory. Part III discusses examples of human rights work that has been critical of the carceral state by advocating for decriminalization. Case studies of decriminalization examined here include advocacy championing the human rights of people living with HIV/AIDS, sex workers, and people who use drugs.

Communities targeted by the carceral arm of the state face interlocking forms of marginalization. Because individuals with intersecting marginalized identities face compounded discrimination, particularly at the hands of the criminal legal system, single-issue advocacy fails to account for the myriad ways harm occurs within these criminalized communities. In response to this intersection of harm, decriminalization movements have arisen across issues, including but not limited to HIV/AIDS transmission, sex work, and drug use. Decriminalization human rights advocates organizing for these communities echo abolitionists in that they argue that criminal law does not address and prevent the harms faced by people living with HIV/AIDS, sex workers, or people who use drugs; these advocates argue that criminal law targets marginalized communities and results in human rights abuses, and therefore, it should give way to structural solutions to protect the human rights of vulnerable communities.

A. Advocacy to Decriminalize Behaviors Associated with HIV/AIDS

Decriminalization advocates challenge the effectiveness of carceral approaches to stemming the spread of HIV/AIDS and argue that such approaches further marginalize at-risk communities. In response to the HIV epidemic, the U.S. criminalized behavior associated with at-risk communities, which were identified as groups of people that use drugs, queer communities, and sex workers. Advocates and organizations have since argued that the criminalization of behaviors associated with at-risk communities causes further harm by increasing the stigmatization and marginalization of these communities, resulting in harassment and discrimination. The carceral response to the HIV/AIDS epidemic is part of a bigger system of interconnected oppressions.

169 See Wangia Magwango in Conversation with Alice M. Miller Interview, in MILLER ET AL., supra note 18, at 176–77 (discussing how criminal law is part of a bigger system of interconnected oppressions).

170 See id. (noting the harms of advocating for single-issue human rights such as “gay rights” as separate from other related rights that are interconnected and whose oppression comes from the same source).

171 Ahmed also attributes the formation of the decriminalization movement in part to women’s reproductive rights advocates arguing for the decriminalization of abortion to increase safe procedures and lower maternal death rates and other harms that are caused by underground abortions. Ahmed, supra note 16.


173 Id.

174 See, e.g., HIV Criminalization Discourages HIV Testing, Disclosure and Treatment for Transgender and Third Sex Individuals, TRANSGENDER L. CTR. (July 2, 2013), https://transgenderlawcenter.org/archives/8538 [https://perma.cc/2CZG-RMFR] (hereinafter HIV Criminalization Discourages HIV Testing) (“People living with HIV (PLHIV) who identify as transgender or third sex are more likely than any other group to feel that it is reasonable to avoid HIV testing . . . , disclosure of one’s HIV positive status to sex partners . . . or accessing HIV treatment . . . because of fear of HIV criminalization and distrust of the U.S. criminal justice system”); HUM. RTS. WATCH, SUBMISSION BY HUMAN RIGHTS WATCH TO THE COMMITTEE ON ECONOMIC,
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epidemic—including the criminalization of HIV transmission, same sex sexual conduct, sex work, and drug use—had the effect of reducing access to health services for these at-risk communities.175 These negative effects also prevent individuals in at-risk communities from testing for the virus, participating in treatment programs, and disclosing their status to partners.176 Abolitionists note the public health ramifications of carceral institutions and the heightened risk of contracting HIV in prison.177

Because criminal law fails to prevent the spread of HIV and its perpetuation of harm to at-risk populations, decriminalization human rights advocates have increasingly called for measures that implicitly align with those advocated for by abolitionists. Groups including the Global Commission on HIV and the Law and Amnesty International have advocated for the elimination of laws that criminalize HIV transmission, exposure, and non-disclosure; consensual adult sexual activity including same-sex consensual sex; and sex work.178 Like abolitionists, decriminalization human rights advocates also champion the development of comprehensive social programs.179 Decriminalization human rights advocates focusing on HIV/AIDS have highlighted the importance of interventions such as sexual education, harm reduction, reproductive health, and HIV programs; community

 SOCIAL AND CULTURAL RIGHTS ON SENEGAL 8 (2019) [hereinafter SENEGAL SUBMISSION] (“The government's criminalization and harassment of men who have sex with men (MSM) and men perceived to be gay or bisexual is undermining its effectiveness in addressing the HIV epidemic.”); HUM. RTS. WATCH, SUBMISSION BY HUMAN RIGHTS WATCH TO THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS ON KAZAKHSTAN 5–6 (2019) [hereinafter KAZAKHSTAN SUBMISSION] (“MSM remain one of the hardest to reach groups with the minimal level of coverage by preventive activities” because of the “[n]egative and sometimes hostile attitude of the society, including medical personnel and the law enforcement agencies towards MSM, as well as self stigmatization of this group”) (internal quotations omitted); National HIV/AIDS Strategy, the White House Office of National AIDS Policy (ONAP) (2010), CTR. HIV L. & POLY (July 2010), https://www.hivlawnepolicy.org/resources/national-hiv/aids-strategy-white-house-office-national-aids-policy-onap-2010 [https://perma.cc/EZ52-7ZT7](discussing the Obama Administration’s creation of the National HIV/AIDS Strategy in response to the work of HIV advocates and its recognition that criminal prosecution results in stigma).

175 Ahmed, supra note 16. See also Ahmed, supra note 172, at 110–12.

176 See WHITE HOUSE, NATIONAL HIV/AIDS STRATEGY FOR THE UNITED STATES 36–37 (July 2010) (“In many instances, the continued existence and enforcement of [criminal] laws run counter to scientific evidence about routes of HIV transmission and may undermine the public health goals of promoting HIV screening and treatment”) (citing RICHARD ELLIOTT, UNAIDS, CRIMINAL LAW, PUBLIC HEALTH AND HIV TRANSMISSION: A POLICY OPTIONS PAPER (June 2002)); WHITE HOUSE, NATIONAL HIV/AIDS STRATEGY 2022–2025 at 52 (2001) (highlighting that state criminal “laws have not increased disclosure and may discourage HIV testing, increase stigma against people with HIV, and exacerbate disparities”).

177 See DAVIS ET AL., supra note 62, at 126 (“[P]eople were always already dying too early in prisons. Medical neglect, overcrowding, bad food, cramped cells, limited access to condoms, and communal eating lead to preventable and infectious diseases, including hepatitis, HIV, and diabetes”) (internal citations omitted).


179 See HIV/Criminalization Discourages HIV Testing, supra note 174 (calling for “access to legal education and legal services . . . and safe and confidential locations for accessing health care . . .”); SENEGAL SUBMISSION, supra note 174, art. 12 (recommending that the government ensure organizations that provide HIV treatment and prevention to at-risk communities are able to conduct their work); KAZAKHSTAN SUBMISSION, supra note 174, art. 12 (recommending the government “[e]nlist the Ministry of Health to engage effectively with men who have sex with men (MSM) and transgender populations on HIV education, prevention, counseling, testing, and treatment activities . . .”).
outreach workers, who can increase condom use when unencumbered by the police; and legal aid.\footnote{GLOB. COMM’N ON HIV AND THE LAW, supra note 178, at 8–9.} These arguments mirror the abolitionist calls for a constellation of life-affirming services that develop systems of community care.\footnote{DAVIS ET AL., supra note 62, at 65–76.}

B. Advocacy to Decriminalize Sex Work

Abolitionists have noted the harms of criminalized sex work and the role of the state in perpetuating this abuse, and decriminalization human rights advocates fighting for sex workers’ rights have made arguments that mirror those of abolitionists.\footnote{See DAVIS ET AL., supra note 62, at 169 (“We must be reminded right now of how . . . criminalized sex work . . . is ruining lives.”); id. at 70 (“Peop[e involved in sex work are subject to state repression.”).} For example, decriminalization human rights advocates have pointed to the harms faced by sex workers due to police abuse.\footnote{See AMNESTY INT’L, POLICY ON STATE OBLIGATIONS TO RESPECT, PROTECT ANDfulFIL THE HUMAN RIGHTS OF SEX WORKERS 10 (May 26, 2016), https://perma.cc/KJ3M-N3UT; Why Sex Work Should Be Decriminalized, HUM. RTS. WATCH (Aug. 7, 2019), https://www.hrw.org/news/2019/08/07/why-sex-work-should-be-decriminalized [https://perma.cc/ZG7C-2D23].} Amnesty International and Human Rights Watch have both argued that criminalization of sex work disempowers sex workers, limits their access to justice, stigmatizes their livelihoods, and increases the discrimination and social inequality they face.\footnote{AMNESTY INT’L, supra note 183, at 1–2; Why Sex Work Should Be Decriminalized, supra note 183.} According to Amnesty International, these harms are often exacerbated for sex workers with intersecting identities based on race, immigration status, sexual orientation, or gender identity.\footnote{AMNESTY INT’L, supra note 183, at 1, 5.} These arguments align directly with those of abolitionists who often emphasize the intersections of discrimination faced by increasingly marginalized communities, particularly low-income, Black, Indigenous, and queer communities.\footnote{See DAVIS ET AL., supra note 62 at 4; see also INCITE!, THE CRITICAL RESISTANCE – INCITE! STATEMENT ON GENDER VIOLENCE AND THE PRISON-INDUSTRIAL COMPLEX (2008), https://perma.cc/Z8WZ-HTEC.} As a result of the human rights advocacy work conducted by sex workers’ rights organizations throughout the world, the harms of criminalizing sex work—including police abuse, forced medical testing, forced detention, and barriers to healthcare access—have been acknowledged and condemned by international human rights institutions such as treaty monitoring bodies, the Human Rights Council, regional human rights tribunals, and other global bodies such as UNAIDS and WHO.\footnote{Chi Adanna Mgbako, The Mainstreaming of Sex Workers’ Rights as Human Rights, 43 HARV. J.L. & GENDER 110–17 (2020) (citing, e.g., Comm. on the Elimination of Discrimination against Women, Concluding observations on the fourth periodic report of Kyrgyzstan, at 6, U.N. Doc. CEDAW/C/KGZ/CO/4 (Mar. 11, 2015); Comm. on the Elimination of Discrimination against Women, Concluding observations on the combined seventh and eighth periodic reports of Nigeria, at 9, U.N. Doc. CEDAW/C/NGA/CO/7-8 (Feb. 1, 2017); Hum. Rts. Comm., Concluding observations on the initial reports of Ghana, at 13, U.N. Doc. CCPR/C/GHA/CO/1 (Aug. 9, 2016); Comm. against Torture, Concluding Observations on the fourth and fifth periodic reports of Austria, at 8, U.N. Doc. CAT/C/AUT/CO/4-5 (May 20, 2010); Juan E. Méndez, Rep. of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, at 18, U.N. Doc. A/HRC/22/53 (Feb. 1, 2013); Rashida Mango, Report of the Special Rapporteur on violence against women, its causes and consequences, Addendum, Mission to India, ¶ 20, U.N. Doc. A/HRC/26/38/Add. 1 (Apr. 1, 2014); IACHR Holds First Hearing on the Rights of Sex Workers in the Americas, ORG. OF AM. STATES (Mar. 23, 2017), https://www.oas.org/en/iachr/media_center/preleases/2017/036.asp [https://perma.cc/7YFP-MD5T]; Anand
and advocacy groups have called for positive action that ensures sex workers can exercise their rights to health, favorable working conditions, and freedom from violence and discrimination.\(^\text{188}\)

### C. Advocacy to Decriminalize Drug Use

In the context of decriminalizing drug use, human rights advocates have also increasingly taken up arguments that align with abolitionism. Davis has called the war on drugs a “war on poor communities, [B]lack and Latino communities.”\(^\text{189}\) International human rights NGOs such as Amnesty International and Human Rights Watch have criticized the global war on drugs,\(^\text{190}\) highlighting how the criminalization of drug use targets marginalized and poor communities, results in police violence, and creates obstacles to accessing health services.\(^\text{191}\) These international human rights NGOs argue that the criminalization of drug use not only fails to stem drug manufacturing and creates financial incentives for these activities, but it does so at the expense of marginalized communities.\(^\text{192}\) Instead of further criminalization, Human Rights Watch and Amnesty International advocate for non-penal measures such as providing voluntary harm reduction treatment and support, decriminalizing the personal use and possession of drugs, non-criminal regulation of the production and distribution of certain categories of drugs, and eliminating prosecutorial enforcement of drug laws.\(^\text{193}\) These community- and regulatory-based alternatives to criminalization mirror abolitionist propositions that seek alternatives to the carceral state.\(^\text{194}\) International human rights institutions have also criticized the criminalization of drug use. These institutions include treaty-monitoring bodies including the Committee on Economic, Social, and Cultural Rights; the Human Rights Committee;

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\(^{188}\) AMNESTY INT’L, supra note 183, at 2 (calling on states to ensure provision of and access to economic, social, and cultural rights including rights pertaining to education, employment, social security, health); Why Sex Work Should Be Decriminalized, supra note 183 (calling on states to ensure access to education, financial support, job training and placement, social services and to combat discrimination based on gender, sexual orientation, gender identity, race, ethnicity, or immigration status); Mgbako, supra note 187, at 110–17.

\(^{189}\) Angela Davis, Prison Abolition, the War on Drugs, and Why Social Movements Shouldn’t Wait for Obama, DEMOCRACY NOW! (Mar. 6, 2014), https://www.democracynow.org/2014/3/6/angela_davis_on_prison_abolition_the [https://perma.cc /46JN-6PBF].


\(^{191}\) See McFarland Sánchez-Moreno, supra note 190; AMNESTY INT’L, supra note 178; HUM. RTS. WATCH & AM. CIVIL LIBERTIES, supra note 190.

\(^{192}\) See, e.g., McFarland Sánchez-Moreno, supra note 190.

\(^{193}\) See McFarland Sánchez-Moreno, supra note 190; AMNESTY INT’L, supra note 178, at 3–4; HUM. RTS. WATCH & AM. CIVIL LIBERTIES, supra note 190, at 187–94.

\(^{194}\) See generally Kaba, supra note 27; Akbar, supra note 25, at 1825–31; Roberts, supra note 25, at 43–48; Davis, supra note 27; Kushner, supra note 3.
and the Committee against Torture, as well as Special Rapporteurs and the Human Rights Council.¹⁹⁵

Advocacy groups have sought policies that reduce the harms of drug use and protect people's health by addressing both the underlying social and economic causes of drug addiction and the social, economic, and political exclusion that results from drug convictions.¹⁹⁶ Amnesty International has brought attention to how economic and social inequalities fuel drug addiction because of poverty, discrimination, limited access to education, lack of housing, unemployment, and poor health.¹⁹⁷ Human Rights Watch has highlighted how people formerly incarcerated for drug use are excluded from social and economic public benefits as well as political life.¹⁹⁸ These arguments against criminalization and for alternative means of addressing the harms associated with drug use mirror the arguments of abolitionists both against carceral institutions and for community-based alternatives.¹⁹⁹ Abolitionists have argued for the increased provision and protection of economic, social, and cultural rights, such as housing, employment, and education.²⁰⁰

Decriminalization human rights advocates have called for the elimination of criminal punishment for behaviors associated with HIV/AIDS, sex work, and drug use, and in doing so have

¹⁹⁵ See, e.g., Comm. On Econ., Social, and Cultural Rts., Concluding observations on the third periodic report of Benin, ¶¶ 41–42, U.N. Doc. E/C.12/BEN/CO/3 (Mar. 27, 2020) (noting with concern that the use, possession, and purchase for personal use of drugs is punishable with imprisonment and recommending that the "State party adopt a human rights-based approach to tackling drug abuse" through decriminalization and ensuring the availability of harm reduction programs); Comm. On Econ., Social, and Cultural Rts., Concluding observations on the second periodic report of Kazakhstan, ¶ 47, U.N. Doc. E/C.12/KAZ/CO/2 (Mar. 29, 2019) (recommending the State party strengthen its efforts to prevent drug abuse through decriminalization, education and awareness programs, harm-reduction programs, and the provision of health care, psychological support services, and rehabilitation); Comm. On Econ., Social, and Cultural Rts., Concluding observations on the fifth periodic report of Uruguay, ¶¶ 55–56, U.N. Doc. E/C.12/URY/CO/5 (July 20, 2017) (advising alternatives to language used in drug laws to avoid criminalizing drug use so as to reduce marginalization and adverse effects on the right to health of people who use drugs); Hum. Rts. Comm., Concluding observations on the fifth periodic report of Mauritius, ¶ 29, U.N. Doc. CCPR/C/MUS/CO/5 (Dec. 11, 2017) (expressing concern about the high number of excessive pretrial detentions for drug-related cases); Comm. Against Torture, Concluding observations on the initial report of the Seychelles, ¶ 23(b), U.N. Doc. CAT/C/SYC/CO/1 (Sept. 28, 2018) (recommending the State party take additional steps to lessen prison overcrowding, including alternatives to imprisonment, in response to amendments to its drug law); Anand Grover (Special Rapporteur on the right of everyone to the enjoyment of the highest standard of physical and mental health), Submission to the Commission against Torture regarding drug control laws, at 3 (Oct. 19, 2012), https://perma.cc/9EJ6-E7PQ ("Less restrictive approaches to drug control, including decriminalization or depenalization, should be considered to effectively prevent risky behaviour by people who use drugs and to reduce the harmful effects associated with drug use. The right to health requires States to adopt the least restrictive approach where alternative limitations on the enjoyment of the right to health are effective. Decriminalization would reduce the harmful effects associated with criminal penalties, such as imprisonment and stigmatization, and at the same time allow drug users access to treatment and medicines."). See generally U.N. High Comm's Hum. Rts., Study on the impact of the world drug problem on the enjoyment of human rights, U.N. Doc. A/HRC/30/65 (Sept. 4, 2015) (calling for decriminalization of personal use and possession of drugs, harm reduction and public health programs, reform of laws to address the disparate impact of drug laws on marginalized communities).

¹⁹⁶ See AMNESTY INT’L, supra note 178, at 3; HUM. RTS. WATCH & AM. CIVIL LIBERTIES, supra note 190, at 144–64.

¹⁹⁷ AMNESTY INT’L, supra note 178, at 3.

¹⁹⁸ HUM. RTS. WATCH & AM. CIVIL LIBERTIES, supra note 190, at 144–64.

¹⁹⁹ See Kaba, supra note 27; Akbar, supra note 25, at 1825–31; Roberts, supra note 25, at 43–48; Davis, supra note 27; Kushner, supra note 3.

²⁰⁰ See, e.g., DAVIS ET AL., supra note 62, at 65–76 (advocating for a "care not cops" strategy); Davis, supra note 27; Kushner, supra note 3; Roberts, supra note 25, at 43–48.
highlighted criminal law’s harm to these communities. They advocate for community-based and regulatory mechanisms of harm reduction as well as equal access to economic, social, and cultural rights. By making these arguments, decriminalization human rights advocates implicitly echo abolitionist arguments.

PART IV: GUIDING PRINCIPLES FOR ANTI-CARCERAL HUMAN RIGHTS ADVOCACY

Part IV uses the comparative analysis of abolitionist theory, critiques of the carceral turn in human rights, and decriminalization human rights advocacy from Parts I–III to develop guiding principles for the practice of anti-carceral human rights advocacy. As noted in the Introduction, this article defines anti-carceral human rights advocacy as the de-emphasis on carceral solutions as the primary response to human rights violations in favor of social and economic interventions that prevent human rights abuses, heal survivors, and transform perpetrators. In order to explore what these guiding principles might look like in practice, this Part applies the guiding principles to the evolving anti-carceral work of the author-affiliated Walter Leitner International Human Rights Clinic (“Leitner Clinic”).

A. Anti-Carceral Human Rights Advocates Should Document the Abuses of Carceral Systems

As discussed in Parts I–III, abolitionists, critics of the carceral turn in human rights, and decriminalization human rights advocates all highlight the harms caused by carceral systems. Abolitionists argue that carceral systems are enmeshed in institutions of oppression that target marginalized communities and deprive individuals of access to social, economic, and political resources. Critics of the carceral shift in human rights highlight how reliance on criminal law to further a human rights agenda fails to account for less overt forms of violence such as inequality, poverty, and dispossession. Decriminalization human rights advocates actively criticize the state violence faced by criminalized communities, including people living with HIV/AIDS, sex workers, and people who use drugs, as well as the obstacles these communities face accessing health, education, and employment due to criminalization.

Anti-carceral human rights advocates should document the abuses of carceral systems and can do so by engaging with human rights mechanisms and publishing human rights reports. As highlighted in Part I.C, certain international human rights institutions have already begun to call attention to the harms marginalized communities face at the hands of prisons and police. Engaging with these mechanisms may prove most productive in effectuating this principle. The Leitner Clinic has put this guiding principle into practice by engaging with some of these mechanisms to document the harms of carceral systems. For example, in a joint submission for the Universal Periodic Review of Uganda, the Leitner Clinic partnered with a Ugandan sex workers’ rights NGO to document how the criminalization of sex work in Uganda fuels police violence against sex workers and amounts to

201 See infra Parts I–III.
202 See infra Parts I.A–I.B.
203 See infra Part II.
204 See infra Part III.
205 See infra Part I.C.
vulnerable girls are more likely to interact with the juvenile detention system, where they may be subject to physical, sexual, and psychological abuse by police and prison officials during arrest, remand, trial proceedings, and post-sentencing detention. In a policy report focusing on the New York Police Department’s (NYPD) broken windows policing, the Leitner Clinic criticized the NYPD’s harassment of Black and Latinx communities, immigrant communities, sex workers, queer youth of color, street vendors, and individuals experiencing houselessness. In another report, the Leitner Clinic documented police abuse against political protestors during the Occupy Wall Street movement, including excessive use of force, raids of peaceful encampments, and excessive surveillance. The Leitner Clinic has also extended its criticisms of carceral systems beyond police and prison abuse, taking aim at the carceral logic of the U.S. deportation system in a report on removal proceedings against Cambodian-Americans who committed low-level or non-violent crimes. This report highlighted the harms of the U.S.’s policy of removal, including the disruption of family units and the irreparable harm done to individuals suffering from mental or physical health complications. As noted earlier, scholars and critics have argued that systems beyond prison and

206 Hum. Rts. Council, Summary prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15(c) of the annex of Human Rights Council resolution 5/1 and paragraph 5 of the Human Rights Council resolution 16/21, Uganda, ¶ 77, U.N. Doc. A/HRC/WG.6/26/UGA/3 (Aug. 23, 2016) ("JS4 [the joint submission composed by the Walter Leitner International Human Rights Clinic and partner organizations] noted that Uganda criminalizes and stigmatizes sex work, leading to grave human rights violations against sex workers, such as the police’s violence that amounts to torture. Thus, JS4 urged investigating police practices and violence against sex workers, instituting training on the legal and human rights of sex workers, and implementing mechanisms to redress violations.").


214 Id.
policing can still harbor a carceral logic. 215

B. Anti-Carceral Human Rights Advocates Should Not Engage in Advocacy that Strengthens Carceral Systems

What does a guiding principle that stipulates that anti-carceral human rights advocates should not strengthen carceral systems mean for anti-carceral human rights advocates’ engagement with domestic and international criminal law? Should anti-carceral human rights advocates further their advocacy agenda by disengaging with domestic and international criminal institutions? As discussed in Part I.C, the international human rights regime allows for punishment as an end in itself, and thus domestic and international mechanisms for criminal law do not run afoul of the dictates of the human rights regime by their very existence. 216 Therefore, human rights advocates who choose to engage with domestic or international criminal law also do not run afoul of the human rights regime. Abolitionists such as Gilmore, however, have challenged both the efficacy of criminal law to address harm and criminal law’s historical justifications—incapacitation, deterrence, retribution, and rehabilitation. 217 We believe the skepticism of criminal law expressed by Gilmore should animate anti-carceral human rights advocates’ posture towards domestic and international criminal justice as the primary avenues for addressing human rights abuses. This does not mean there is no room for strategic litigation in response to human rights abuses, since civil litigation to advance human rights causes falls squarely within the essential toolkit of anti-carceral human rights advocacy.

Neither abolitionists nor critics of the carceral shift in human rights advocate for solutions that legitimize or strengthen carceral systems. 218 As discussed in Part I, abolitionists criticize “reformist reforms” that strengthen carceral systems and increase contact between the public and police, prosecutors, and prisons. 219 Reformist reforms may include, for example, increased training, technology, or funding to police departments, all interventions that have not been proven to reduce police violence. 220 As discussed in Part II, critics of the carceral turn in human rights have argued against the uncritical acceptance of engaging with the international criminal law apparatus as a means to furthering a human rights agenda. 221 By analyzing international criminal law in response to human rights abuses through a critical lens, these scholars reveal not only the failure of criminal law to prevent and address human rights abuses, but also the systemic problems of international criminal mechanisms, including selective justice. 222 These criticisms call for engagement with mechanisms outside of ad hoc criminal tribunals or the ICC without necessarily calling for their complete dismantling. In this spirit, anti-carceral human rights advocates should only advocate for reforms that limit public exposure to carceral systems, and they should avoid advocating for reforms that strengthen carceral systems.

215 See supra Parts I–II.

216 For a discussion on how the international human rights regime is in tension with abolition because of its fundamental acceptance of the necessity of police and prisons, see supra Part I.C.

217 See supra Parts I.A and II.A. See also Gilmore, supra note 25, at 13–17.

218 See supra Parts I–II.

219 See supra Part I.

220 See supra Part I.

221 See supra Part II.A. See also Engle, supra note 121, at 1118–19; Moyn, supra note 126, at 68.

222 See supra Part II.A. See also, Engle, supra note 121, at 1119–27.
The Leitner Clinic’s work regarding this guiding principle suggests a necessary evolution in its advocacy. In the Leitner Clinic’s early years before it established its anti-carceral ethos, it engaged in some advocacy that could be classified as the type of “reformist reforms” that strengthen carceral systems without lessening their harms. For example, in 2009, the Leitner Clinic conducted an anti-torture human rights training for police officers in Malawi. What the Leitner Clinic now understands is that reforms like police trainings have not proven effective in lessening police violence and instead have resulted in more resources for and institutional strengthening of law enforcement. The Malawi anti-torture police training is an example of the type of work that would not align with this guiding principle, and thus is not advocacy that the Leitner Clinic would engage in today.

As its anti-carceral commitments have strengthened over the years, however, the Leitner Clinic has chosen advocacy work that resonates with this guiding principle. For example, in partnering with Kuwaiti advocates to draft a 2021 bill to address sexual violence in Kuwait, the Leitner Clinic actively limited their work to non-carceral aspects of the legislative drafting, which center the provision of services on victims and survivors rather than on the punishment of perpetrators. The same is true for 2020 consultancies the Leitner Clinic undertook to draft a domestic violence handbook for Kuwait government ministries and create civil litigation strategies for cases of enforced disappearances. For both projects, the Leitner Clinic agreed to work only on non-carceral aspects of domestic violence prevention and non-carceral remedies for cases of enforced disappearance such as reparations and physical and mental healthcare for survivors and their families.

Anti-carceral human rights advocates should also avoid falling into the trap of rightly documenting abuses of carceral systems (as laid out in the previous guiding principle) only to suggest reforms that may inadvertently strengthen the very carceral systems they are criticizing. As noted in Part I.C, some human rights mechanisms that should be commended for highlighting police and prison abuse have also often called for the types of reformist reforms that only strengthen carceral systems. In 2016, the Leitner Clinic’s aforementioned submission to the Committee against Torture regarding the abuse of sex workers in Namibia partly fell into this trap. Although the Leitner Clinic engaged in pathbreaking advocacy by successfully convincing the Committee against Torture that police abuse of sex workers constitutes torture, the Clinic also partly mis-stepped by calling for greater prosecutions and punishment as a response to this abuse. These are not recommendations the Leitner Clinic would make now that it has more fully embraced an anti-carceral stance. Instead, the Clinic would center the other non-carceral recommendations that appeared in its submission,


225 Id.

226 See supra Part I.C.
including calls for the decriminalization of sex work and medical care, social services, and compensation for sex work survivors of police torture.227

Additionally, the Clinic would ensure that any of its advocacy involving reforms of carceral systems benefit incarcerated people and other targets of the carceral state. The Clinic did exactly that in a project presenting procedural reform recommendations for the treatment of individuals on death row to the Japanese Ministry of Justice.228 These recommendations included banning solitary confinement; providing access to medical files, treatment, assessments, and monitoring; establishing mandatory appeal processes for capital cases and informing prisoners of all procedural requirements; ensuring family and attorney visitation rights, with confidentiality assured for attorney-client conversations; and granting correspondence and phone privileges to people on death row.229 Such reforms not only take into account the harms of carceral institutions, but also seek to benefit those forced to live within those institutions. These reforms fall squarely within those allowed by abolition.230

C. Anti-Carceral Human Rights Advocates Should Target Structural Causes of Human Rights Abuses by Elevating Economic, Social, and Cultural Rights, Anti-Discrimination, and Accountability Mechanisms that Focus on Healing and Transformation Rather than Retribution and Punishment

Abolition is not merely a negative project of divestment from carceral systems, but a positive one that requires building a future with alternatives to the carceral state that prevent and address the structural causes of violence.231 Like abolitionists, critics of the carceral turn in human rights and decriminalization human rights advocates argue that societal harms are informed by the broader social, economic, and political contexts in which they take place.232 They acknowledge that oppressive forces such as poverty, disadvantage, discrimination, and marginalization are central to human rights abuses.233 Emphasizing the non-discrimination principle and economic, social, and cultural rights addresses the economic deprivation, social marginalization, and discriminatory norms that often cause human rights abuses, rather than decontextualizing them from these conditions by focusing primarily on individual perpetrators.234 Regarding the human rights regime, Renzulli accurately notes that historically “the normative and advocacy commitment to social and economic rights has been rather late, or modest compared to civil and political rights,” but highlights how this is gradually changing.235 Anti-carceral human rights advocates should reject the marginalization of.

227 Torture of Sex Workers in Namibia, infra note 207, at 10 ("Namibia should decriminalize sex work by eliminating criminal penalties for activities surrounding sex work between consenting adults, such as solicitation, condom possession, and brothel-keeping."). See also Enforced Disappearances in Africa, infra note 220, at 3 (on file with author) (providing recommendations for remedies for enforced disappearances in Africa).
229 Id.
230 See infra Part I.C.
231 See infra Part I.A.
232 See infra Parts II–III.
233 See infra Parts I–III.
234 See infra Parts I–III.
235 Renzulli, infra note 4 at 15.
economic and social rights and champion transformative social and economic programs that target the structural conditions that feed the perceived need for carceral interventions.236

Alongside these programs, anti-carceral human rights advocates should advocate for accountability mechanisms that focus less on retributive punishment and more on harm reduction, social and economic change, survivor healing, and perpetrator transformation.237 As seen in the work of abolitionists, critics of the carceral turn in human rights, and decriminalization human rights advocates, these measures may take the form of mediations, people's tribunals, and reparations schemes.238 These not only better address human rights abuses but also establish forward-looking changes to social dynamics in which harm and abuse occur with a goal of relationship restoration.239

The Leitner Clinic’s work has been especially aligned with this guiding principle in recent years. In its report on the Defund the Police movement after the murder of George Floyd in 2020, the Leitner Clinic highlighted calls to invest in anti-carceral community-based interventions, elevate social and economic opportunity, and develop alternative accountability mechanisms.240 In this report, the Leitner Clinic highlighted specific non-carceral interventions that included violence interrupter programs,241 police-free school alternatives,242 mental health crisis intervention teams,243 treatment and harm reduction alternatives to criminalizing drug use,244 reparations for police abuse,245 non-carceral responses to gender-based violence,246 decriminalization human rights and economic and social rights and champion transformative social and economic programs that target the structural conditions that feed the perceived need for carceral interventions.236

236 See infra Parts I–III.
237 For a discussion on the empathy required to ensure such healing and transformation, see MILLER ET AL., supra note 18, at 12–13.
238 See infra Parts I–III.
239 See infra Parts IA, IB, and II.
240 DEFUND REPORT, supra note 1.
241 Id. at 23–25 (highlighting specific programs in Chicago and New York, which train outreach workers in conflict prevention and de-escalation and help individuals obtain social services like job training and drug treatment).
242 Id. at 26–29 (highlighting programs across the country, from Oakland to Minneapolis to North Carolina and beyond, which seek to remove police from schools to end the school-to-prison pipeline).
243 Id. at 30–32 (highlighting nationwide organizations that replace police as first responders to mental health related crises who are prepared to use deadly force with alternative emergency responders trained to deal with people in mental distress).
244 Id. at 33–35 (highlighting programs that provide emergency drug treatment, clean syringes for injection-drug users, and educational programs geared towards destigmatizing drug use instead of reliance on carceral intervention).
245 Id. at 36–37 (highlighting in particular the reparations scheme for Chicago police abuse that emphasized financial compensation, healthcare, counseling, job training, and education for survivors; state admissions of wrongdoing; and public education highlighting police violence).
246 Id. at 38–40 (highlighting the work of Critical Resistance, Survived & Punished, and INCITE! challenging carceral feminism and elevating transformative justice, victim-offender mediation, and empathy for “batterers”).
247 Id. at 41–43 (highlighting Decrim NY’s and Decrim Now’s work to decriminalize sex work, destigmatize the sex trade, and promote sex workers’ access to rights, liberties, health, and safety).
248 Id. at 44 (“[Bail funds] seek to directly remedy the collateral consequences of incarceration and pre-trial detention, in a system where low-income communities are often preyed upon by predatory bondsmen”)

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infections, and education and employment opportunities. The bill also called for society-wide educational and training initiatives targeting discriminatory norms by increasing awareness of sexual violence and the social and cultural beliefs that contribute to it. Regarding accountability, the bill centered restorative justice mechanisms, such as victim-offender mediation and therapy programs with cognitive-behavioral treatment for perpetrators.

Likewise, in its aforementioned domestic violence guide, the Leitner Clinic advocated for interventions like the provision of housing to survivors through shelters and apartments, economic empowerment through direct financial assistance and financial planning guidance, perpetrator intervention and prevention through rehabilitative therapy, and the provision of trauma-informed healthcare for survivors. In its aforementioned report on Kenyan girls’ experiences in juvenile detention facilities, the Leitner Clinic recommended that the government embrace alternatives to detention such as mediation, counseling, and community service, and that girls have access to quality education, equal opportunities for employment and skills training, and safe houses upon reintegration. According to the report, such efforts not only avoid punitive accountability, but also combat both the socioeconomic disadvantage that leads to engagement between girls and the criminal legal system and the discrimination they may face upon their release.

D. Anti-Carceral Human Rights Advocates Should Work Closely with Communities Directly Impacted by Carceral Systems and Anti-Carceral Advocates Across Borders

To successfully advocate for social and economic interventions that prevent human rights abuses and accountability measures beyond carceral responses, anti-carceral human rights advocates should partner with communities directly impacted by carceral systems and anti-carceral advocates across borders. Communities targeted by carceral systems can often explicitly identify both the structural conditions that have led to human rights violations and the best way to distribute resources to address them. The benefits of engaging in global anti-carceral human rights advocacy mirrors the urgency underlying the internationalized nature of the abolition movement. Gilmore and Davis have argued that the abolitionist movement needs to foster solidarity across borders, and the movement has indeed grown internationally. According to abolitionists, white supremacy, patriarchy and other systems of oppression that are buttressed by carcerality are themselves global systems that extend across borders. Therefore, to effectively challenge these systems in all their forms through anti-carceral human rights advocacy, the anti-carceral human rights advocate should embrace international solidarity.

250 Id. at art. 13–16.
251 See id. at art. 10, 12.
252 Multi-Sectoral Approach to Combat Domestic Violence, supra note 224, at 13–16, 18–20, 22, 55.
253 KENYA’S JUINILE DETENTION REPORT, supra note 210, at 7–9.
254 Id.
255 For a more explicit discussion of how advocacy removed from the experiences and realities of those affected on the ground can distort the causes and effects of human rights abuses, see supra Part II.
256 See supra Part II.B.
257 Haymarket Books, supra note 31, at 1:09:01.
The Leitner Clinic has followed this guiding principle by rooting much of its practice in partnership with communities directly impacted by carceral harms and global anti-carceral advocates. For instance, when documenting the harms of the carceral state in sex workers’ lives, the Leitner Clinic has consistently partnered with sex worker-led advocacy groups in Botswana, India, Kenya, Mauritius, Namibia, Nigeria, South Africa, and Zimbabwe. The Leitner Clinic also partnered with a Washington D.C.-based anti-carceral NGO that works directly with people formerly incarcerated for drug use to draft a human rights report calling for the full decriminalization of all drugs for personal use in Washington D.C. This report was based in part on the first-hand stories of those who have been victimized by the war on drugs. In drafting its aforementioned report on girls’ juvenile detention facilities in Kenya, the Leitner Clinic documented the first-hand stories of detained girls and partnered with a Kenyan anti-carceral NGO to develop the solutions advocated for in the report. Additionally, in its aforementioned submissions to the Working Group on Arbitrary Detention, the Leitner Clinic spent time in Malawian prisons, documenting the first-hand experiences of people in adult and juvenile detention facilities.

E. Anti-Carceral Human Rights Advocates Should Practice or Exercise Solidarity with Decriminalization Human Rights Advocacy

Not only should anti-carceral human rights advocates build alliances across borders, they should also build alliances across issues. As discussed in Part III, there is already a part of the human rights movement that has embraced decriminalization human rights advocacy across issues. Anti-carceral human rights advocates should actively practice decriminalization human rights advocacy or stand in solidarity with those who do. This advocacy would entail, at the very least, taking a positive stand for the decriminalization of HIV/AIDS transmission, sex work, drug use, queer and trans identity, and abortion, and, at most, actively engaging in advocacy to secure decriminalization wins. Anti-carceral human rights advocates should also be in favor of non-carceral interventions associated with decriminalization, such as increased voluntary counseling, testing, and treatment for people living with or vulnerable to HIV/AIDS, labor and employment frameworks that realize sex workers’ human rights, policies advocating for harm reduction programs for people who use drugs, an end to the global drug war, and access to safe abortions—to name a few.

Solidarity of issues across time, place, and identity has proven an essential aspect of effectively combating oppressive power structures. Efforts to stem abuses through criminal law fall

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259 Id.

260 KENYA’S JUVENILE DETENTION REPORT, supra note 210.


262 See supra Part III.

263 See supra Parts I and III. See also Haymarket Books, supra note 31; Wangi Mavongo in Conversation with Alise M. Miller, supra note 169, at 176-77 (recognizing that “a patriarchal, heteronormative, society creates oppression, discrimination, and marginalization for us all: sex workers, intersex people, lesbians, gay men, trans people, and so forth.”).
disproportionately on those who are marginalized by patriarchy, white supremacy, and capitalism.\textsuperscript{264} The overlapping reach and effects of these systems disproportionately target and harm marginalized groups, such as communities of color, immigrants, queer communities, poor communities, people living with HIV/AIDS, sex workers, and people who use drugs.\textsuperscript{265} Therefore, anti-carceral human rights advocates should engage in advocacy and solidarity that transcends single issue decriminalization.

In keeping with the spirit of this guiding principle, the Leitner Clinic has continuously engaged in decriminalization human rights advocacy across issues. For example, the Leitner Clinic drafted a decriminalization advocacy guidebook for Lebanese activists, which developed legal reform strategies for the decriminalization of abortion, queer and trans identity, and sex work, documenting both the successes and challenges faced by global advocates for these rights.\textsuperscript{266} The Leitner Clinic has also frequently called for the decriminalization of sex work, including developing a continent-wide workshop that trained sex workers from seven African countries on how to use human rights mechanisms to advance their rights-based national decriminalization campaigns.\textsuperscript{267} Recognizing the intersection of harms for those with overlapping, criminalized identities, the Leitner Clinic also provided the international legal arguments for a public interest lawsuit brought on behalf of sex workers living with HIV/AIDS in Malawi.\textsuperscript{268} As noted previously, the Leitner Clinic drafted a public health and human rights-based policy report calling for the decriminalization of all drugs for personal use in Washington, D.C. as well as harm reduction programs, physical and mental healthcare, and overdose prevention training.\textsuperscript{269}

Derived from the arguments critical of carceral institutions and the carceral turn in human rights, as well as from the life-affirming alternatives made by abolitionists and decriminalization human rights advocates examined in this article, these expansive guiding principles should shape the work of the advocate-reader compelled to anti-carceral human rights advocacy.

V. CONCLUSION

This article outlined global theories of carceral abolition, placed these theories in conversation with critiques of the carceral turn in human rights and decriminalization human rights advocacy, and, based on this comparative analysis, presented guiding principles for the practice of “anti-carceral human rights advocacy.” Anti-carceral human rights advocates should embody the guiding principles in this article by highlighting the harms of carceral systems and avoiding the pursuit of reforms that strengthen these systems at the expense of developing broader reaching alternatives

\textsuperscript{264} See infra Parts I–III.
\textsuperscript{265} See infra Parts I–III.
\textsuperscript{266} LEITNER CTR. FOR INT’L & JUST., GLOBAL ADVOCACY STRATEGIES FOR THE DECRIMINALIZATION OF ABORTION, SEX WORK, AND SEXUAL ORIENTATION AND GENDER (July 2022) (on file with author).
\textsuperscript{268} This lawsuit successfully challenged the constitutionality of forced HIV testing of sex workers. For more on this case, see Malawi Sex Workers Win Forced HIV Test Case, S. AFRICA LITIG. CTR. (May 21, 2015), https://www.southernafricalitigationcentre.org/2015/05/21/salc-in-the-news-malawi-sex-workers-win-forced-hiv-test-case/ [https://perma.cc/1W976-TW2G].
\textsuperscript{269} DRUG DECRIMINALIZATION REPORT, supra note 258.
that expand our definition of justice. Anti-carceral human rights advocates should adhere to the guiding principles to ensure the exercise of economic and social rights for all without discrimination, to promote the healing of survivors and the transformation of perpetrators, to engage actively with directly-impacted communities, and to pursue or support decriminalization across issues. As the Leitner Clinic developed its human rights advocacy practice as expressly anti-carceral over the years, it could have benefitted from these very guiding principles. Indeed, the evolution of the Leitner Clinic's work towards anti-carceral human rights advocacy was the seed of this article, from which the guiding principles on such advocacy have grown. It is our hope that those who similarly refuse to place a premium on punishment because of the ruin left in its wake use these principles as guideposts along the path to a world free from the clutches of carceral logic.