

NOTE

DEFENDERS APLENTY:

ACCESS TO JUSTICE FOR WOMEN HUMAN RIGHTS DEFENDERS

*Morganne Barrett\**

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*Mia Manuelita Mascariñas-Green, a Filipino environmental lawyer, was shot and killed, with her three children and a nanny bearing witness. Police believe her murder was in retaliation for her client’s suit against a resort in a land rights dispute.<sup>1</sup> Digna Ochoa was a prominent human rights lawyer in Mexico who, as a part of a Truth Commission, investigated human rights violations committed during Guerrero’s “Dirty War.”<sup>2</sup> At the age of 37, she was shot dead in a Mexico City office, followed by leaked investigation documents indicating the State already planned to conclude she had committed*

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1. *Mia Manuelita Mascarinas-Green*, BUS. & HUMAN RTS. RESOURCE CENTRE (Feb. 15, 2017), <https://www.business-humanrights.org/en/15022017-mia-manuelita-mascarinas-green> [<https://perma.cc/BA4U-BRBL>]; *Mia Manuelita Mascariñas-Green*, ASS’N FOR WOMEN’S RTS. IN DEV., <https://www.awid.org/whrd/mia-manuelita-mascarinas-green> [<https://perma.cc/W635-RZBC>] (last visited Apr. 17, 2019).

2. *On the Front Line: Mexico: Digna Ochoa*, AMNESTY INT’L (Aug. 2003), <https://www.amnesty.org/download/Documents/100000/amr010072003en.pdf> [<https://perma.cc/B7XW-5ZW9>].

suicide.<sup>3</sup> *Samira al-Nuaimy, a human rights defender in Iraq known for promoting women's rights, was kidnapped, tortured for five days, and publicly shot to death by a firing squad at the orders of Islamic State militants.*<sup>4</sup> *These women are among the many human rights lawyers who are targeted and killed as a result of their work defending fundamental freedoms.*<sup>5</sup>

### I. INTRODUCTION

Human rights lawyers are part of a larger group of persons, known as human rights defenders, “who, individually or in association with others . . . act to promote, protect or strive for the protection and realization of human rights and fundamental freedoms, at the local, national, regional[,] and international levels.”<sup>6</sup> They might, among other things, investigate and report on human rights violations, represent victims in court, lobby State authorities to implement international human rights standards, or provide human rights training to judges and security officials.<sup>7</sup> In general, human rights lawyers face intimidation and suppression because of the cases they take on.<sup>8</sup> They may be under surveillance, harassed, arbitrarily detained and

3. *Id.*

4. Loveday Morris, *Islamic State Executes Female Human Rights Lawyer by Firing Squad after Facebook Post*, WASH. POST (Sept. 25, 2014), [https://www.washingtonpost.com/world/middle\\_east/islamic-state-executes-female-human-rights-lawyer-by-firing-squad-after-facebook-post/2014/09/25/c44b0a38-44f6-11e4-9a15-137aa0153527\\_story.html?utm\\_term=.d4e3e4b07056](https://www.washingtonpost.com/world/middle_east/islamic-state-executes-female-human-rights-lawyer-by-firing-squad-after-facebook-post/2014/09/25/c44b0a38-44f6-11e4-9a15-137aa0153527_story.html?utm_term=.d4e3e4b07056) [https://perma.cc/3A7H-TLRJ]; Nick Cumming Bruce, *Women's Rights Activist Executed by ISIS in Iraq*, N.Y. TIMES (Sept. 25, 2014), <https://www.nytimes.com/2014/09/26/world/middleeast/womens-rights-activist-executed-by-islamic-state-in-iraq.html> [https://perma.cc/9YDH-TW7H]; Loulla-Mae Eleftheriou-Smith, *Isis Publicly Executes Leading Lawyer and Human Rights Activist in Iraq*, INDEP. (Sept. 25, 2014), <https://www.independent.co.uk/news/world/middle-east/isis-publicly-execute-leading-lawyer-and-human-rights-activist-in-iraq-9756197.html> [https://perma.cc/QBS2-HL22].

5. *Human Rights Lawyers*, PEACE BRIGADES INT'L, <https://peacebrigades.org.uk/country-groups/pbi-uk/people-we-protect/lawyers> [https://perma.cc/C7RB-LDMZ] (last visited Apr. 7, 2019).

6. Int'l Serv. for Hum. Rts., *Model Law for the Recognition and Protection of Human Rights Defenders*, INT'L SERV. FOR HUM. RTS. 2 (Jan. 2017), [https://www.ishr.ch/sites/default/files/documents/model\\_law\\_english\\_january2017\\_screensversion.pdf](https://www.ishr.ch/sites/default/files/documents/model_law_english_january2017_screensversion.pdf) [https://perma.cc/5BUK-WZJ3]; U.N. Office of the High Commissioner for Human Rights [hereinafter OHCHR], *Who is a Defender?*, OHCHR, <https://www.ohchr.org/en/issues/srhrdefenders/pages/defender.aspx> [https://perma.cc/P3RF-CA8B] (last visited Apr. 7, 2019).

7. OHCHR, *supra* note 6.

8. See PEACE BRIGADES INT'L, *supra* note 5.

prosecuted, disappeared, and killed with impunity. Many others live in exile because of the risks they face.<sup>9</sup>

Within the larger group of human rights defenders are women human rights defenders. These are individuals who identify as women who defend everyone's human rights,<sup>10</sup> as well as persons of any gender who defend women's rights.<sup>11</sup> While individuals may have professional careers as women human rights defenders, this Note intends to encompass a broad inclusion of all persons who perform acts, in their professional or personal capacity, that would be characteristic of a woman human rights defender. Women's rights commonly involve reproductive rights, sexual and domestic violence, and employment discrimination, but intersect with all areas of the law, including immigration, child custody, criminal justice, housing, health care, and international law.<sup>12</sup>

Because of their gender and the long-held gender stereotypes dictating women's societal roles and expectations, women human rights defenders face unique risks, including gender-based violence.<sup>13</sup> Both State and non-State actors perpetrate this aggression, which

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9. *Id.*; Commonwealth Human Rights Initiative, *Civil Society and National Human Rights Institutions*, 13 INT'L J. NOT-FOR-PROFIT L. 5, 25 (2011) (stating that defenders "regularly function in hostile environments that stigmatize their work - threats to life and liberty through arbitrary arrests and detention, harassment, and violence").

10. OHCHR, *supra* note 6; *Women Human Rights Defenders*, ASS'N FOR WOMEN'S RTS. IN DEV., <https://www.awid.org/special-focus-sections/women-human-rights-defenders> [<https://perma.cc/9ZUE-UX7Z>] (last visited Apr. 7, 2019).

11. *Who are Women Human Rights Defenders?*, GLOBAL FUND FOR WOMEN, [https://www.globalfundforwomen.org/what-are-women-human-rights-defenders/#.XIQ\\_HZM-fyU](https://www.globalfundforwomen.org/what-are-women-human-rights-defenders/#.XIQ_HZM-fyU) [<https://perma.cc/2ADN-YUNR>] (last visited Apr. 7, 2019).

12. Diane Rosenfeld, *Women's Rights Guide*, HARVARD LAW SCHOOL (July 2007), <https://hls.harvard.edu/content/uploads/2008/07/guide-women.pdf> [<https://perma.cc/2Y5N-HN57>].

13. G.A. Res. 68/181, Preamble ¶ 15 (Jan. 30, 2014) (underlining the need to modify the social and cultural patterns and eliminate prejudices based on the idea of stereotyped roles for men and women and to address harmful gender stereotypes that underlie and perpetuate violence against women, including women human rights defenders); Human Rights Council [hereinafter HRC] Res. 16/44, U.N. Doc. A/HRC/16/44 ¶ 23 (Dec. 20, 2010) (stating that women defenders are more at risk of violence than their male counterparts, often because women defenders are perceived as challenging accepted socio-cultural norms.). *See also* Inter-American Commission on Human Rights [hereinafter IACHR], *Towards Effective Integral Protection Policies for Human Rights Defenders* ¶ 42, ORG. OF AM. STATES (Dec. 29, 2017), <http://www.oas.org/en/iachr/reports/pdfs/Defensores-eng-2017.pdf> [<https://perma.cc/UQ3D-42LM>].

includes rape, verbal and online harassment, defamatory attacks, and smear campaigns.<sup>14</sup> Threats are also made against their children.<sup>15</sup>

Those working for women's rights experience social and political prejudice, exclusion, and repudiation, especially when they challenge cultural norms regarding gender, femininity, and sexuality.<sup>16</sup> In many parts of the world, women are expected to not challenge the status quo, so when women human rights defenders stand up to patriarchy and misogyny, they also risk intrafamilial violence and discrimination.<sup>17</sup> In volatile political climates, there are inevitably violations of human rights, and women defenders are often among the first to come under attack in such circumstances.<sup>18</sup> As a result of their work, women human rights defenders experience a heavy psychosocial burden that can manifest itself through post-traumatic stress disorder, guilt, economic hardship, and social isolation.<sup>19</sup> This burden is exacerbated when the defenders themselves identify as women.<sup>20</sup>

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14. See generally Comm. on the Elimination of Discrimination Against Women, *General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19*, OHCHR (July 2017), [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1\\_Global/CEDAW\\_C\\_G C\\_35\\_8267\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_G C_35_8267_E.pdf) [<https://perma.cc/5YQL-L2GG>] [hereinafter General recommendation No. 35]. See also Melissa Bellitto, *Gender Mainstreaming in the United States: A New Vision of Equality*, 22 UCLA WOMEN'S L.J. 125, 128 (2015) (stipulating that gender-based violence is gender discrimination because it reflects and perpetuates inequality); G.A. Res. 68/181, Preamble ¶ 12 (Jan. 30, 2014) (listing online harassment, cyberstalking, invasions of privacy, censorship, and hacking of electronic accounts and devices, in order to discredit and incite abuse against defenders); HRC Res. 16/44, *supra* note 13 ¶ 23 (describing that women human rights defenders are perceived as challenging traditional familial roles, which can result in hostility or lack of support from the general population and from authorities."); ASS'N FOR WOMEN'S RTS. IN DEV., *supra* note 10.

15. See ASS'N FOR WOMEN'S RTS. IN DEV., *supra* note 10.

16. G.A. Res. 63/288, (Aug. 14, 2008).

17. See PEACE BRIGADES INT'L, *supra* note 5; HRC Res. 37/51/Add.2, ¶ 56 (Feb. 12, 2018). See also HRC Res. 16/44, *supra* note 13 at ¶ 23 (stating that if a women human rights defender is sexually abused because of her work, her family and community may perceive her as having brought shame on them. Even without the occurrence of sexual abuse, women human rights defenders are often stigmatized and ostracized by their community who see them as a threat to religion, honor, or culture).

18. See HRC Res. 40/60, ¶ 7 (Jan. 10, 2019). See also G.A. Res. 68/181, Preamble ¶ 10 (Jan. 30, 2014) (stating that impunity for abuses against women human rights defenders continues because of "lack of reporting, documentation, investigation and access to justice," social barriers with regard to gender-based violence, and a poor or non-existent recognition of women human rights defenders' valuable role); HRC Res. 16/44, *supra* note 13, ¶ 24 (stating that sexual abuse and rape are prevalent in conflict settings, where impunity is rampant).

19. HRC Res. 37/51/Add.2, *supra* note 17, ¶ 56.

20. *Id.*

This Note will explore the situation of women human rights defenders in Mexico and the United States of America (“the United States”). There has been increased pushback against and demonization of women human rights defenders in both States, and in many other parts of the world.<sup>21</sup> In Mexico, former President Felipe Calderón initiated a war on drugs in 2006. This sparked a war on women and has since received much criticism from civilians and the international community.<sup>22</sup> In December 2017, Mexico’s Internal Security Law authorized the Mexican military to conduct domestic law enforcement and criminal investigations. This was in violation of Mexico’s Constitution and exacerbated the unfortunate situation for women human rights defenders until Mexico’s Supreme Court overturned the law a year later.<sup>23</sup> Nonetheless, Mexico continued to turn a blind eye to these human rights violations and others.<sup>24</sup> Because of State complicity in the defamation and criminalization of human rights defenders, they experience serious security threats in Mexico.<sup>25</sup> There has also been a

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21. *Americas: Summit Leaders Must Prioritize Solving Grave Human Rights Challenges*, AMNESTY INT’L (Apr. 12, 2018), <https://www.amnesty.org/en/latest/news/2018/04/las-americas-solucionar-los-graves-problemas-de-derechos-humanos-debe-ser-prioritario-para-los-dirigentes-que-asisten-a-la-cumbre/> [<https://perma.cc/5SV2-3G2X>]. The United States withdrew from the United Nations Human Rights Council in June 2018 after sustained criticism against the body. The decision was met with harsh criticism from human rights advocates and foreign leaders alike. *US withdraws from UN Human Rights Council*, AL JAZEERA (June 20, 2018), <https://www.aljazeera.com/news/2018/06/withdraws-human-rights-council-180619173311272.html> [<https://perma.cc/CP8P-8WXN>].

22. *From Survivors to Defenders: Women Confronting Violence in Mexico, Honduras & Guatemala*, NOBEL WOMEN’S INITIATIVE 3 (June 2012), [https://nobelwomensinitiative.org/wp-content/uploads/2012/06/Report\\_AmericasDelgation-20121.pdf?ref=218](https://nobelwomensinitiative.org/wp-content/uploads/2012/06/Report_AmericasDelgation-20121.pdf?ref=218) [<https://perma.cc/2DNW-YXEA>]; *Mexico: Murders of Women Rise Sharply as Drug War Intensifies*, THE GUARDIAN (Dec. 14, 2017), <https://www.theguardian.com/world/2017/dec/14/mexico-murders-women-rise-sharply-drug-war-intensifies> [<https://perma.cc/JB24-L5QD>].

23. *Inter-American Commission On Human Rights Holds Important Hearing On Implications Of Mexico’s New Internal Security Law*, WASHINGTON OFFICE ON LATIN AMERICA [hereinafter WOLA] (Mar. 20, 2018), <https://www.wola.org/2018/03/iahcr-holds-hearing-mexicos-internal-security-law/> [<https://perma.cc/KC2L-GLUR>]; *International Observatory on Mexico: the Decision of Mexico’s Supreme Court on the Internal Security Law Will set a Fundamental Precedent on Militarization in the Country and in the Region*, WOLA (Nov. 2018), <https://www.wola.org/2018/11/mexico-supreme-court-overturns-controversial-security-law/> [<https://perma.cc/T9RH-ZX3K>] (explaining that the law submits civilians to military authority, lacks effective control and accountability mechanisms, and infringes upon the right to justice for victims and society’s right to truth).

24. See WOLA, *supra* note 23.

25. Olga Guzmán Vergara, *Mexico and Its Foreign Policy Of Denial*, 26 INT’L J. HUMAN RIGHTS 83, 84-85 & 88, <https://sur.conectas.org/wp-content/uploads/2017/12/sur-26-ingles-olga-guzman-vergara.pdf> [<https://perma.cc/3K9W-YJFE>]; Michael Forst, *World Report on the*

shocking uptick in violence against women, which is further exacerbated by the increasing influence of organized criminal groups.<sup>26</sup> The Mexican State has proven incapable of protecting women human rights defenders, and more generally, in protecting civilians.<sup>27</sup>

Directly north in the United States, there is a parallel story to be told. The 2016 presidential election was fueled by misogynistic and discriminatory rhetoric, raising doubts about the nation's commitment to human rights.<sup>28</sup> The presidency of Donald J. Trump has confirmed those fears. As a result, those that once looked to the United States for solidarity in the face of violence have been, and continue to be, neglected in what has become a national and international regression of human rights.<sup>29</sup> Toxic rhetoric against women and human rights defenders in the United States gives the "green light" on oppression by other world leaders.<sup>30</sup> The United States currently hosts a political climate that ignores a long-standing world order and denies fundamental rights that are essential to a functioning democracy. This, combined with consistent sexism that is propped up by America's history of restricting women's equal rights, makes the work of those

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*Situation of Human Rights Defenders* (Dec. 2018), at 178-79, <https://www.business-humanrights.org/sites/default/files/documents/UNSR%20HRDs-%20World%20report%202018.pdf> [<https://perma.cc/VX4Y-XQT3>] (mentioning that violations against defenders in Mexico have been carried out by State officials).

26. NOBEL WOMEN'S INITIATIVE, *supra* note 22, at 4; *Open Letter to Heads of State Participating in the VIII Summit of the Americas*, AMNESTY INT'L, <https://www.amnesty.org/download/Documents/AMR0181892018ENGLISH.PDF>, at 10 [<https://perma.cc/LX6K-R9QX>].

27. Amnesty Int'l, *supra* note 26, at 1.

28. 'Politics of demonization' breeding division and fear, AMNESTY INT'L (Feb. 22, 2017), <https://www.amnesty.org/en/latest/news/2017/02/amnesty-international-annual-report-201617/> [<https://perma.cc/3JMV-F4VT>].

29. Margaret Huang, *Can Human Rights Survive the Trump Era?*, DAILY BEAST (Nov. 24, 2017), <https://www.thedailybeast.com/can-human-rights-survive-the-trump-era> [<https://perma.cc/JF27-UNCW>]; David Child, *World Leaders Abandoning Human Rights: Amnesty*, AL JAZEERA (Feb. 22, 2018), <https://www.aljazeera.com/news/2018/02/world-leaders-abandoning-human-rights-amnesty-180221174518140.html> [<https://perma.cc/CVM7-RVS4>] (quoting an Amnesty International fellow who asserts that "Trump has rejected core principles of human rights").

30. *Human Rights Panel Worries about Trump Policies; Lauds Activism of Lawyers in Response*, AM. BAR ASS'N [hereinafter ABA] (Aug. 7, 2018), [https://www.americanbar.org/news/abanews/aba-news-archives/2018/08/human\\_rights\\_panel/](https://www.americanbar.org/news/abanews/aba-news-archives/2018/08/human_rights_panel/) [<https://perma.cc/ZHB4-M2AV>]; Mehdi Hasan, *Donald Trump's Words are a Green Light to Dictators and Torturers Around the World*, THE INTERCEPT (May 22, 2018), <https://theintercept.com/2018/05/22/trump-torture-bahrain/> [<https://perma.cc/EYM2-L7PD>].

defending women's human rights in the United States more difficult and dangerous.<sup>31</sup>

This Note will demonstrate that violations against those who defend civil and human rights occur in all types of countries. Attacks on women human rights defenders know no borders, and political tactics and manufactured crises drown out the problems faced by women human rights defenders.<sup>32</sup> These restrictions demonstrate that impunity for human rights violations has broader implications and affects groups beyond women human rights defenders themselves. For example, migrants' difficulties with law enforcement during migration between the United States and Mexico increases the risk that those in transit will experience restrictions on their individual liberties.<sup>33</sup> This emphasizes the need to protect those defending human rights. As two States that consistently engage with one another politically and

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31. ABA, *supra* note 30; *Donald Trump on Reproductive Freedom*, NARAL PRO-CHOICE AMERICA, <https://www.prochoiceamerica.org/laws-policy/federal-government/donald-trump-abortion/> [<https://perma.cc/86KJ-3AX4>] (last visited May 15, 2019). In 1777, all states passed laws that took away women's right to vote. In 1873, the Supreme Court of the United States held that a married woman cannot practice law. *Bradwell v. Illinois*, 83 U.S. 130, 139 (1872). In 1961, the Supreme Court upheld a state rule that restricted women's participation in public processes because women were regarded as the center of home and family life. *Hoyt v. Florida*, 368 U.S. 57, 62 (1961). In 2008, former President George W. Bush weakened women's access to contraceptives by pushing through a conscience rule on the night before former President Barack Obama was inaugurated. *Timeline of Legal History of Women in the United States*, NAT'L WOMEN'S HIST. ALLIANCE, <https://nationalwomenshistoryalliance.org/resources/womens-rights-movement/detailed-timeline/> [<https://perma.cc/S5GW-5FN5>] (last visited May 15, 2019); Peggy Simpson, *Obama Comes Through, Reversing Bush Era Reprights Restrictions*, WOMEN'S MEDIA CTR. (Mar. 11, 2009), <http://www.womensmediacenter.com/news-features/obama-comes-through-reversing-bush-era-repro-rights-restrictions> [<https://perma.cc/HT36-FJDN>]. For more on difficulties faced by human rights defenders in the United States, see Part IV.

32. See e.g., *European Leaders are Manufacturing a "Migration Crisis" for Political Gain*, AMNESTY INT'L (Jan. 18, 2019), <https://www.amnesty.org/en/latest/news/2019/01/european-leaders-are-manufacturing-a-migration-crisis-for-political-gain/> [<https://perma.cc/6ZRA-Y9PD>].

33. *Second Report on the Situation of Human Rights Defenders in the Americas*, IACHR ¶ 340-48 (Dec. 31, 2011), <https://www.oas.org/en/iachr/defenders/docs/pdf/defenders2011.pdf> [<https://perma.cc/FD2G-CGYS>]; *Annex to Press Release 82/11. Preliminary observations of the Rapporteurship on the Rights of Migrant Workers of the IACHR to Mexico*, IACHR (Aug. 2, 2011), [https://www.oas.org/en/iachr/media\\_center/PReleases/2011/082.asp](https://www.oas.org/en/iachr/media_center/PReleases/2011/082.asp) [<https://perma.cc/U8UG-KZRX>]. See *UN Working Group on Enforced or Involuntary Disappearances Concludes Visit to Mexico*, OHCHR (Mar. 31, 2011), <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10907&LangID=E> [<https://perma.cc/CTZ6-VR7B>]; *Informe Especial Sobre Secuestro de Migrantes en México*, CNDH (Feb. 22, 2011), <https://www.cndh.org.mx/sites/all/doc/Gacetitas/247.pdf> [<https://perma.cc/6ACB-VZMP>].

economically, the United States' and Mexico's protection of women human rights defenders in such bilateral and multilateral relations is essential to the rights of civilians, women, human rights defenders, and the world at large.<sup>34</sup>

Part II will provide background on international law protecting women human rights defenders. Part III will paint a picture of the challenges faced by women who defend human rights in Mexico and then will examine some of the legal structures in Mexico that increase defenders' access to justice, analyzing their effectiveness. Part IV will explain the challenges faced by those defending women's rights in the United States and provide examples of some avenues toward equal justice. Part V will make recommendations on how to increase access to justice in each State. Part VI will make general recommendations to aid women human rights defenders around the globe and Part VII will conclude.

## II. INTERNATIONAL LAW PROTECTING WOMEN HUMAN RIGHTS DEFENDERS

Enforcement of, and compliance with, international law is a challenge, despite the use of sanctions, naming and shaming, and recommendations made by United Nations ("UN") Committees.<sup>35</sup> Nonetheless, international law holds significant legal value.<sup>36</sup> Whether a State incorporates international agreements depends on its domestic law and the degree to which international agreements receive domestic recognition. States place significant weight on such agreements, both morally and politically.<sup>37</sup> International law produces valuable effects

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34. *Second Report on the Situation of Human Rights Defenders in the Americas*, IACHR, *supra* note 33, ¶ 485 (stating that "[t]he acts of violence and other attacks perpetrated against human rights defenders not only affect the guarantees of every human being, but can undermine the fundamental role that human rights defenders play in society and leave all those for whom they fight defenseless").

35. *See generally* Anu Bradford & Omri Ben-Shahar, *Efficient Enforcement of International Law*, 12 CHI. J. INT'L L. 375 (2012); H.L.A. HART, *THE CONCEPT OF LAW* 217-18 (1961).

36. *See generally* HART, *supra* note 35.

37. *See* Stefan Kadelbach, *International Law and the Incorporation of Treaties into Domestic Law*, 42 GERMAN Y.B. INT'L L. 66, 83 (1999); *see also* STEPHEN P. MULLIGAN, CONG. RESEARCH SERV., RL32528, INTERNATIONAL LAW AND AGREEMENTS: THEIR EFFECT UPON U.S. LAW (2018), <https://fas.org/sgp/crs/misc/RL32528.pdf> [<https://perma.cc/V9VX-WAHX>] (describing that international agreements' status in the United States depends on several factors, including whether they are self-executing treaties, and that treaties and executive agreements are generally understood by American courts to not be self-executing, requiring

beyond traditional notions of compliance. It shapes the way policymakers conceptualize their stakeholders and address international conflicts, encourages democratization and rule of law, and influences private decision-making.<sup>38</sup> International human rights conventions, declarations, and recommendations also encourage States' fair treatment of human rights defenders.<sup>39</sup>

One of these instruments is the International Convention on Civil and Political Rights ("ICCPR"), adopted by the UN General Assembly in 1966.<sup>40</sup> States that have signed and ratified the ICCPR must ensure that anyone whose rights are violated has an effective remedy, determined by a competent judicial, administrative, or legislative authorities, and that such remedy is enforced.<sup>41</sup> Under the ICCPR, each person under the State's jurisdiction has the right to liberty, security, freedom from arbitrary arrest or detention, equality before the judiciary, and a fair and public hearing before an independent tribunal to determine criminal charges against the individual.<sup>42</sup> Each person also has the right to freedom of thought and conscience, expression, peaceful assembly, association, participation in public affairs, and equality before the law.<sup>43</sup> Implementation of the ICCPR by State parties is independently monitored through the UN Human Rights Committee ("HRC") and State reporting. The HRC provides each State party with an explanation of its observations and concerns and gives

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legislation to implement these agreements); *Treaties*, IRELAND DEP'T OF FOREIGN AFFAIRS AND TRADE, <https://www.dfa.ie/our-role-policies/international-priorities/international-law/treaties/> [<https://perma.cc/W267-BSTQ>] (describing three ways by which Ireland will consent to be bound by international agreements) (last visited Apr. 3, 2019).

38. Robert Howse & Ruti Teitel, *Beyond Compliance: Rethinking Why International Law Really Matters*, 1 *GLOBAL POL'Y* 127, 130-31 (2010).

39. *Human Rights Defenders – Some of the Bravest People in the World*, AMNESTY INT'L, <https://www.amnesty.org.uk/human-rights-defenders-what-are-hrds> [<https://perma.cc/9J7Y-LVKM>] (noting that several states have recently adopted laws and protection programs to protect defenders) (last visited Apr. 3, 2019).

40. International Covenant on Civil and Political Rights, Mar. 23, 1976, 999 U.N.T.S. 171 [hereinafter ICCPR].

41. *Id.*, art. 2(3). For a listing of all the States that have signed and ratified the ICCPR, see *International Covenant on Civil and Political Rights, United Nations Treaty Collection*, UNITED NATIONS, [https://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&clang=en&mtdsg\\_no=IV-4&src=IND](https://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&clang=en&mtdsg_no=IV-4&src=IND) [<https://perma.cc/L6YQ-9PGM>] (last visited Sept. 28, 2019).

42. ICCPR, *supra* note 40 arts. 9, 14.

43. *Id.* arts. 18-19, 21-23, 26.

recommendations for greater compliance with the State party's obligations.<sup>44</sup>

Thirteen years after the ICCPR was adopted, a groundbreaking new set of principles was created when the UN adopted The Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW"), commonly known as the women's international bill of rights.<sup>45</sup> CEDAW is a piece of binding international law. It guarantees basic human rights for women, supports the adoption of special measures for gender equality, and obligates States to ensure women and girls have equal access to participation in political life, education, employment, health, and equality before the law.<sup>46</sup> At the time of writing, CEDAW has been ratified by 189 of the 193 UN Member States.<sup>47</sup> It also stipulates that discrimination against women includes any direct or indirect treatment that results in women and girls' unequal enjoyment of human rights compared to men and boys.<sup>48</sup> CEDAW requires parties to promote and realize women's rights, eliminate discrimination against women through its legal structure and practices, and regularly report to the CEDAW Committee on their compliance.<sup>49</sup> The CEDAW Committee, consisting of twenty-three

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44. *Human Rights Committee*, OHCHR, <https://www.ohchr.org/en/hrbodies/ccpr/pages/ccprindex.aspx> [<https://perma.cc/N9CQ-MLQ7>] (last visited Nov. 14, 2019).

45. Convention on the Elimination of All Forms of Discrimination against Women, opened for signature Mar. 1, 1980, 1249 U.N.T.S. 13 [hereinafter CEDAW]; *The Human Rights of Women*, UNITED NATIONS POPULATION FUND, <https://www.unfpa.org/resources/human-rights-women> [<https://perma.cc/BZP3-43MR>] (last visited Nov. 14, 2019).

46. See generally CEDAW, *supra* note 45. International law is binding in the sense that States, equal in their sovereignty, consent to a set of norms to govern themselves and their subjects. These norms are made and enforced by an agreed upon set of legislative and adjudicatory procedures, such as UN Security Council, the International Court of Justice and various international and regional human rights treaty enforcement bodies. Dinah L. Shelton, *Soft Law*, in HANDBOOK OF INTERNATIONAL LAW (David Armstrong et al. eds., 2008), [https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=2048&context=faculty\\_publications](https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=2048&context=faculty_publications) [<https://perma.cc/2ER2-RUNF>].

47. *Convention on the Elimination of all Forms of Discrimination Against Women*, UNITED NATIONS TREATY COLLECTION, [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=_en) [<https://perma.cc/9B4K-38WP>] (last visited Sept. 28, 2019).

48. *Convention on the Elimination of All Forms of Discrimination against Women*, CITIES FOR CEDAW (Mar. 15, 2018), [http://citiesforcedaw.org/wp-content/uploads/2018/03/CEDAW\\_2-Pager\\_15-March-2018.pdf](http://citiesforcedaw.org/wp-content/uploads/2018/03/CEDAW_2-Pager_15-March-2018.pdf) [<https://perma.cc/X4EQ-A6U5>].

49. *Id.*; for a listing of all the States that have signed and ratified CEDAW, see UNITED NATIONS TREATY COLLECTION, *supra* note 47.

independent experts from around the world, monitors the implementation of CEDAW.<sup>50</sup>

In 2017, the CEDAW Committee released General Recommendation No. 35.<sup>51</sup> This document describes crimes against women human rights defenders as gender-based violence that is affected and exacerbated by cultural, ideological and political factors.<sup>52</sup> It also confirms that women experience varying and intersecting forms of discrimination, including on account of their status as human rights defenders.<sup>53</sup>

Near the time of CEDAW's adoption, the UN also adopted the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms ("the UN Declaration"). This document declares, among other things, that "everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels."<sup>54</sup> The UN Declaration is not legally binding, but it does restate rights enshrined in other international human rights instruments that are binding.<sup>55</sup> The UN Declaration was adopted by consensus, representing

50. *Committee On The Elimination Of Discrimination Against Women*, OHCHR, <https://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx> [https://perma.cc/VJW5-K7A8].

51. *See generally* General recommendation No. 35, *supra* note 14.; *Launch of CEDAW General Recommendation No. 35 on Gender-based Violence Against Women, Updating General Recommendation No. 19*, OHCHR, <https://www.ohchr.org/EN/HRBodies/CEDAW/Pages/GR35.aspx> [https://perma.cc/R4NT-2EMQ] (last visited Nov. 14, 2019).

52. *See* General Recommendation No. 35, *supra* note 14; OHCHR, *supra* note 51.

53. General recommendation No. 35, *supra* note 14, ¶ 12.

54. *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, OHCHR, <https://www.ohchr.org/en/professionalinterest/pages/rightandresponsibility.aspx> [https://perma.cc/PC3F-BUAA] (last visited Nov. 14, 2019).

55. Margaret Sekaggya, *UN Special Rapporteur on the Situation of Human Rights Defenders: Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, n. 1, OHCHR (July 2011), <https://www.ohchr.org/Documents/Issues/Defenders/CommentarytoDeclarationondefendersjuly2011.pdf> [https://perma.cc/5VCE-W557]. Non-binding instruments of international law, sometimes known as soft law, are generally understood by States to be sets of political commitments that may one day become law, but presently do not have legal repercussions and only carry with them political consequences. Shelton, *supra* note 46, at 1.

States' strong recognition of its legal value and commitment to its implementation.<sup>56</sup> These principles of international law are intended to guide the creation of domestic legislation, including in Mexico and the United States, that will secure women human rights defenders' access to justice in the face of attacks against them.<sup>57</sup>

A more regional focus will show that any State party to the American Convention on Human Rights ("the American Convention") has a duty to protect an individual or group from a known real and immediate risk when there are reasonable possibilities of avoiding that risk. Where a State does not respond to such a risk, the State has effectively violated the personal integrity of those affected.<sup>58</sup> As such, every State party must "investigate every situation involving a violation of the rights protected by the [American] Convention." If the violation goes unpunished and the victim's rights are not restored, the State has failed to meet its obligations.<sup>59</sup>

The following two Parts will describe violations against women human rights defenders and their access to justice in Mexico and the United States specifically.

### III. WOMEN HUMAN RIGHTS DEFENDERS IN MEXICO

In Mexico, women human rights defenders provide legal support to victims of human rights violations, including those who have been detained and forcibly disappeared for resisting State-sponsored tourism

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56. Sekaggya, *supra* note 55.

57. See *The Foundation of International Human Rights Law*, UNITED NATIONS, <https://www.un.org/en/sections/universal-declaration/foundation-international-human-rights-law/index.html> [<https://perma.cc/99VS-6B4T>] (last visited Sept. 28, 2019).

58. Mexico is a State party to the American Convention. The United States is not. *General Information on the Pact of San Jose, Costa Rica*, ORG. OF AM. STATES, [https://www.oas.org/dil/treaties\\_b-32\\_american\\_convention\\_on\\_human\\_rights\\_sign.htm](https://www.oas.org/dil/treaties_b-32_american_convention_on_human_rights_sign.htm) [<https://perma.cc/7LLD-UYYG>] (last visited May 15, 2019); *Pueblo Bello Massacre v. Colombia*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 147, ¶ 123 (Jan. 31, 2006). For application to the Inter-American Court, see "Cotton Field" (cases 12.496, 12.497 and 12.498) *v. Mexico*, Inter-Am. Ct. H.R., ¶ 159 (Nov. 4, 2007); *Gutiérrez-Soler v. Colombia*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 132, ¶¶ 56-57 (Sept. 12, 2005). See also *Tibi v. Ecuador*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 114, ¶ 147 (Sept. 7, 2004).

59. *Maria Da Penha Fernandes (Brazil)*, Report on Merits, Inter-Am. Ct. H.R. No. 54/01, ¶ 42 (Apr. 16, 2001), citing: *Velásquez Rodríguez*, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 176 (July 29, 1988); *Godínez Cruz*, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 5, ¶ 175 (Jan. 20, 1989).

development.<sup>60</sup> They also assist migrants whose human rights have been violated.<sup>61</sup> In addition, women human rights defenders support other human rights defenders who are attacked because of their work in the region, monitor legislation, and foster capacity-building to promote women's recognition of their own rights.<sup>62</sup>

Despite such mobilization, women human rights defenders in Mexico have faced increasing violence at the hands of both State and non-state actors since as early as 1995, much to the concern of the international community.<sup>63</sup> Since 2006, Mexico's National Human Rights Commission received 380 complaints of attacks against human rights defenders over the course of ten years.<sup>64</sup> Between 2010 and 2015, it received twenty-five murder complaints,<sup>65</sup> but between 2010 and 2017, 110 human rights defenders were actually killed in Mexico.<sup>66</sup> In 2018 alone, the death count was forty-eight. Between 2013 and 2016, there was an average of one attack per day against women defenders.<sup>67</sup> As of October 2019, at least twenty-three have been killed this year.<sup>68</sup>

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60. *Integral Protection for Women Human Rights Defenders in Mexico*, PEACE BRIGADES INT'L 4-5 (Nov. 2015), [https://peacebrigades.org.uk/sites/peacebrigades.org.uk/files/Women\\_Human\\_Rights\\_Defenders\\_report\\_2015\\_-\\_English\\_.pdf](https://peacebrigades.org.uk/sites/peacebrigades.org.uk/files/Women_Human_Rights_Defenders_report_2015_-_English_.pdf) [<https://perma.cc/4UK5-BDVE>]. Enforced disappearance occurs when an individual or group is "arrested, detained or abducted against their will" by government officials, organized groups, or private actors on behalf of, or with direct or indirect support, consent or acquiescence of the Government. This is "followed by a refusal to disclose" the person's fate or whereabouts, placing them outside the protection of the law. *Declaration on the Protection of all Persons from Enforced Disappearance*, OHCHR (Dec. 18, 1992), <https://www.ohchr.org/EN/ProfessionalInterest/Pages/EnforcedDisappearance.aspx> [<https://perma.cc/7EPY-8A3L>].

61. *Id.*

62. See PEACE BRIGADES INT'L, *supra* note 60.

63. *The Right to Freedom of Expression*, IACHR ¶ 662, <http://www.cidh.oas.org/countryrep/Mexico98en/Chapter-10.htm#III> [<https://perma.cc/S3V8-442K>]; Comm. on Convention on the Elimination of All Forms of Discrimination Against Women, *Concluding Observations on the Ninth Periodic Report of Mexico*, ¶ 27, CEDAW/C/MEX/CO/9 (July 25, 2018); *Second Report on the Situation of Human Rights Defenders in the Americas*, IACHR, *supra* note 33, ¶ 36.

64. *Mexico's Mechanism to Protect Human Rights Defenders and Journalists*, WOLA 4 (May 2016), <https://www.wola.org/wp-content/uploads/2016/05/Mexicos-Mechanism-to-Protect-Human-Rights-Defenders-and-Journalists.pdf> [<https://perma.cc/A29W-LJZM>]. Mexico's National Human Rights Commission is known as La Comisión Nacional de los Derechos Humanos. *Id.*

65. *Id.*

66. *Summary of Stakeholders' submissions on Mexico*, UN General Assembly Human Rights Committee A/HRC/WG.6/31/MEX/3, ¶ 54.

67. HRC Res. 37/51/Add.2, *supra* note 17, ¶ 53.

68. Alejandro Encinas Rodríguez, Secretary of Human Rights, Migration and Population, Mexican Federal Office for Internal Affairs (SEGOB), *President Andrés Manuel López*

Women human rights defenders in Mexico also face gender-based threats and violence, defamation campaigns against themselves and their families, and online smear campaigns portraying them as immoral.<sup>69</sup> Anonymous groups have spread false rumors about them through social media, inciting violence against women including “corrective rape.”<sup>70</sup> Mexico’s women human rights defenders remain at the frontlines of the fight for human rights, despite Mexico being “the most violent country for women human rights defenders.”<sup>71</sup>

Mexico’s government has actively perpetrated and is largely complicit in the violence faced by women human rights defenders. For example, State agents discriminate against women human rights defenders when they request protections. This is demonstrated by the fact that those who receive assistance from NGOs in making requests for protection receive more serious treatment than those who are not

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*Obrador’s Morning Press Conference*, AMLO (Oct. 14, 2019), <https://lopezobrador.org.mx/2019/10/14/version-estenografica-de-la-conferencia-de-prensa-matutina-del-presidente-andres-manuel-lopez-obrador-175/> [<https://perma.cc/QS6Z-873M>]. See Rebecca Ward, *Death of an Activist: Unsolved Murder Exposes Fraught Outlook in Mexico*, REUTERS (Sept. 9, 2019), <https://www.reuters.com/article/us-mexico-violence-activists/death-of-an-activist-unsolved-murder-exposes-fraught-outlook-in-mexico-idUSKCN1VU15I> [<https://perma.cc/YW73-U6GV>]; Emilio Godoy, *Attacks on Human Rights Defenders: A Daily Occurrence in Latin America*, INTER PRESS SERVICE (Feb. 20, 2019), <https://reliefweb.int/report/brazil/attacks-human-rights-defenders-daily-occurrence-latin-america> [<https://perma.cc/5N6H-NDTC>].

69. *Id.*, ¶¶ 20, 45; Comm. on ICCPR, *Sixth Periodic Report Submitted by Mexico under Article 40 of the Covenant Pursuant to the Optional Reporting Procedure, due in 2015*, ¶ 215, CCPR/C/MEX/6 (June 11, 2018) (noting that “human rights defenders were exposed to risks related to femicide”).

70. *Id.*, ¶¶ 43, 54, 58; Comm. on Enforced Disappearances, *Concluding Observations on the Report Submitted by Mexico*, ¶ 30, CED/C/MEX/CO/1 (Mar. 5, 2015); see *Precautionary Measures Granted by the IACHR in 2008*, IACHR ¶ 29, <http://www.cidh.oas.org/medidas/2008.eng.htm> [<https://perma.cc/X6ZM-FAE9>] (last visited Nov. 14, 2019) (PM 147/08 Luz Estela Castro Rodríguez et al demonstrating attacks “on the lives and personal safety of women who have participated in movements to demand respect for the rights of other women who have been victims of gender violence”); *Violence Against Women In Ciudad Juárez: Overview Of The Problem*, IACHR ¶ 65, <http://www.cidh.oas.org/annualrep/2002eng/chap.vi.juarez.2.htm#D> [<https://perma.cc/3M63-3EBL>].

71. HRC Res. 37/51/Add.2, *supra* note 17, ¶¶ 52-53, 56; *Turning the Tide on Impunity: Protection and Access to Justice for Journalists and Human Rights Defenders in Mexico*, WOLA & PEACE BRIGADES INT’L (Mar. 2019), at 3 [https://www.wola.org/wp-content/uploads/2019/03/2019-WOLA-PBI\\_ENG-SUMMARY.pdf](https://www.wola.org/wp-content/uploads/2019/03/2019-WOLA-PBI_ENG-SUMMARY.pdf) [<https://perma.cc/KVT3-8JLL>]; PEACE BRIGADES INT’L, *supra* note 60.

similarly assisted.<sup>72</sup> In 2017, some defenders endured smear campaigns perpetrated by public authorities.<sup>73</sup> In addition, the State has employed spyware produced in Israel, known as “Pegasus,” to monitor human rights defenders’ mobile phones.<sup>74</sup> When State actors, non-state actors, and those acting under the color of law perpetrate violations against women human rights defenders, the Mexican State is required under international law to take action against such attacks.<sup>75</sup> Sadly, protections for women human rights defenders in Mexico are inadequate and ineffective.

#### A. *Mexico’s Law for the Protection of Human Rights Defenders and Journalists*

The Law for the Protection of Human Rights Defenders and Journalists (“the Mexican Law”), was unanimously passed by both

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72. HRC Res. 37/51/Add.2, *supra* note 17 at ¶ 58; WOLA, *supra* note 64, at 3 (describing that NGO accompaniment correlated with more serious treatment than those without accompaniment).

73. *Expertos de la ONU Piden a México Contrarrestar la Campaña de Desprestigio y Respalda a los Defensores de Derechos Humanos* [UN experts ask Mexico to counteract the smear campaign and support human rights defenders], OHCHR (Apr. 6, 2016), <https://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=19784&LangID=S> [<https://perma.cc/36JU-Z9TG>] (describing that several human rights defenders have recently been accused of fraud, stigmatized for defending alleged criminals, and of promoting impunity); see *International NGOs Call on Mexico to End Stigmatisation of Human Rights Defenders and Mechanisms*, INT’L SERV. FOR HUM. RTS. (Mar. 22, 2016), <https://www.ishr.ch/news/international-ngos-call-mexico-end-stigmatisation-human-rights-defenders-and-mechanisms> [<https://perma.cc/B9X7-7QU4>] (describing that human rights defenders were accused of corruption on public radio, that the UN Special Rapporteur on Torture was accused of supporting them, and that a national newspaper published articles that called out a prominent Mexican human rights NGO defending delinquents).

74. IACHR, *Special Report on the Situation of Freedom of Expression in Mexico*, ORG. OF AM. STATES ¶ 89(a) (June 2018), [https://www.oas.org/en/iachr/expression/docs/2018\\_06\\_18\\_CIDH-UN\\_FINAL\\_MX\\_report\\_ENG.pdf](https://www.oas.org/en/iachr/expression/docs/2018_06_18_CIDH-UN_FINAL_MX_report_ENG.pdf) [<https://perma.cc/4U9P-S8HF>] (calling on Mexican authorities to investigate the purchase and use of malware for monitoring human rights defenders); *Mexico: Events of 2017*, HUMAN RIGHTS WATCH (2018), <https://www.hrw.org/world-report/2018/country-chapters/mexico> [<https://perma.cc/WDS8-KRF2>] (describing that in July 2017, human rights defenders “had been targets of a spyware campaign conducted with sophisticated software bought by the Mexican government”). Pegasus spyware can track keystrokes, control the phone’s camera and microphone, and access contact lists. The malware can also be used to read text messages and mail, listen to calls, capture screenshots, log pressed keys, and export browser history. John Snow, *Pegasus: The Ultimate Spyware for iOS and Android*, KASPERSKY (Apr. 11, 2017), <https://www.kaspersky.com/blog/pegasus-spyware/14604/> [<https://perma.cc/TQ8X-2KAS>].

75. See Naomi Roht-Arriaza, *State Responsibility to Investigate and Prosecute Grave Human Rights Violations in International Law*, 78 CAL. L. REV. 449, 467-74 (1990).

houses of the Mexican legislature and signed into law in June 2012 by then-President Felipe Calderón.<sup>76</sup> The Mexican Law provided for the creation of an enforcement mechanism (“the Mechanism”), which was established in November 2012. Former-President Enrique Peña Nieto had taken office only one month earlier.<sup>77</sup>

The Mexican Law defines human rights defenders to mirror the UN Declaration and commands state-federal government coordination for its implementation.<sup>78</sup> The Mexican Federal Office for Internal Affairs (“SEGOB”) is made responsible for implementing protective measures when municipal or state agencies are incapable of doing so.<sup>79</sup> Any public official who does not implement ordered protection measures will be sanctioned.<sup>80</sup>

The Mechanism is divided into its Governing Board, Advisory Council, and National Executive Coordination Unit.<sup>81</sup> The Governing Board is the main decision-making body for the protection of human rights defenders. It is comprised of representatives from civil society, SEGOB, the National Security Commission, the Ministry of Foreign Affairs, the federal Attorney General’s Office, the National Human Rights Commission, and four representatives from the Mechanism’s advisory council.<sup>82</sup> The Advisory Council plays a consultative role and consists of human rights defenders, journalists, and civil society representatives working on a volunteer basis.<sup>83</sup> The National Executive Coordination works with the states, federal agencies, and autonomous

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76. Viviana Giacaman, *Protecting Journalists and Human Rights Defenders in Mexico*, FREEDOM HOUSE (Nov. 30, 2012), <https://freedomhouse.org/article/protecting-journalists-and-human-rights-defenders-mexico> [https://perma.cc/5VM3-BC7U].

77. WOLA, *supra* note 64, at 6.

78. *UN Declaration on Human Rights Defenders*, OHCHR, <https://www.ohchr.org/en/issues/srhrdefenders/pages/declaration.aspx> [https://perma.cc/7842-CZEZ] (last visited Nov. 14, 2019); PEACE BRIGADES INT’L MEXICO PROJECT, *The implementation of the Law for the Protection of Human Rights Defenders and Journalists*, PEACE BRIGADES INT’L MEXICO PROJECT 3-4, [https://pbi-mexico.org/fileadmin/user\\_files/projects/mexico/files/Mechanism/1403BriefingMechanismPB1.pdf](https://pbi-mexico.org/fileadmin/user_files/projects/mexico/files/Mechanism/1403BriefingMechanismPB1.pdf) [https://perma.cc/JKS6-CLHP] (last visited Apr. 3, 2019).

79. PEACE BRIGADES INT’L MEXICO PROJECT, *supra* note 78, at 4.

80. *Id.*

81. Int’l Serv. for Hum. Rts., *supra* note 6, at 33.

82. WOLA, *supra* note 64. The National Security Commission is known as La Comisión Nacional de Seguridad. The Ministry of Foreign Affairs is known as La Secretaría de Relaciones Exteriores. The federal Attorney General’s Office is known as La Procuraduría General de la República. The National Human Rights Commission is known as La Comisión Nacional de Derechos Humanos. PEACE BRIGADES INT’L MEXICO PROJECT, *supra* note 78.

83. Int’l Serv. for Hum. Rts., *supra* note 6, at 33; WOLA, *supra* note 64, at 16. *See* PEACE BRIGADES INT’L MEXICO PROJECT, *supra* note 78.

bodies to receive cases, provide rapid reaction and risk assessment, and support prevention and monitoring.<sup>84</sup>

The Mexican Law and the Mechanism are notable in two ways. First, civil society engagement was foundational in the drafting of the Mexican Law and in all decision-making processes for the Mechanism.<sup>85</sup> This formative group of experts and activists intended to draft a law that addressed realistic situations and the final product reflected their own needs and experiences.<sup>86</sup> Second, the Mexican Law and the Mechanism impose a duty on the Mexican State to prevent attacks against human rights defenders, outlining specific actions to decrease risks and mandating that high-ranking government authorities raise awareness and explicitly legitimize the work of human rights defenders.<sup>87</sup>

### 1. Implementation Challenges for the Mexican Law

Despite the foundational structures that were initially encouraging, the Mexican Law has experienced challenges in its implementation. This includes a lack of political will at all levels of the Mexican government for its implementation and continued development.<sup>88</sup> As of October 2016, 617 people received protection under the Mexican Law, but such protection has been delayed and is sometimes insufficient.<sup>89</sup> Of those receiving protection measures since August 2017, six of them have been murdered.<sup>90</sup> Beneficiaries of the Mechanism have been treated differently depending on whether or not

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84. Int'l Serv. for Hum. Rts., *supra* note 6, at 33.

85. Daniel Joloy, *Mexico's National Protection Mechanism for Human Rights Defenders: Challenges and Good Practices*, 5 J. HUM. RTS. PRAC. 489, 496-97 (2013).

86. *Id.*

87. *Id.*

88. Comm. on Econ., Soc. & Cultural Rts., *Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Mexico*, ¶ 7, E/C.12/MEX/CO/5-6, (Apr. 17, 2018) (noting that failure to protect human rights defenders is partially due to poor coordination among federal, state, and local, authorities); *New Report Shows Mexican Law is Failing to Protect Activists and Journalists*, INT'L SERV. FOR HUM. RTS. (Aug. 16, 2015), [https://www.ishr.ch/news/new-report-shows-mexican-law-failing-protect-activists-and-journalists#\\_ftnref1](https://www.ishr.ch/news/new-report-shows-mexican-law-failing-protect-activists-and-journalists#_ftnref1) [<https://perma.cc/HH2T-KL9K>] (naming “[l]ack of political support for the law” as one reason for the Mexican Law’s failed implementation); *see also* Freedom House, *supra* note 76 (describing lack of political will at the state level, with at least seven states still uncommitted to their obligations under the Mexican Law).

89. Human Rights Watch, *supra* note 74.

90. WOLA, *supra* note 64; Peace Brigades Int'l, *supra* note 78, at 5.

they are accompanied by a civil society organization.<sup>91</sup> Several unaccompanied cases were not pursued by the Mechanism, leaving many human rights defenders at risk.<sup>92</sup> Civil society's continued involvement has been hampered and there is little transparency in the board member selection process.<sup>93</sup> The Mechanism is also sorely understaffed and under-resourced.<sup>94</sup> In addition, beneficiaries who have been displaced by the threats or attacks against them have had difficulty returning to work. This is because the Mechanism carries out risk assessments in defenders' place of relocation rather than in the area from where they were displaced.<sup>95</sup> These issues show a disconnect between the protection needs of human rights defenders and the protections actually provided by the Mechanism.<sup>96</sup>

## 2. Positive Outcomes and Room for Improvement

Since its creation in April 2016, the Mechanism has accepted requests for protection from 300 defenders and 219 journalists.<sup>97</sup>

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91. WOLA, *supra* note 64, at 3 (describing that accompaniment correlated with more serious treatment than those without accompaniment); *see* Int'l Serv. for Hum. Rts., *supra* note 6 (naming lack of proper investigations for abuses against human rights defenders as one reason for the Mexican Law's failed implementation). Accompaniment by a human rights NGO includes providing physical accompaniment to a human rights defender in dangerous working zones, holding meeting at defenders' workplaces, observing trials to monitor due process practices, and strategically increasing visibility of issues addressed by the NGO. *Accompaniment*, PEACE BRIGADES INT'L, <https://pbi-mexico.org/what-we-do/accompaniment> [<https://perma.cc/6J2R-REBQ>] (last visited May 15, 2019).

92. WOLA, *supra* note 64, at 9.

93. Freedom House, *supra* note 76 (describing concerns over lack of transparency in selection of the board members).

94. WOLA, *supra* note 64, at 2 (describing staff as overworked resulting in a high turnover rate, demonstrated by the fact that in 2016, 37 people worked in the Mechanism and were required to manage 316 cases, while also assessing new cases, reevaluating previous cases and "monitoring implementation of protection measures, and proposing preventative actions"); Int'l Serv. for Hum. Rts., *supra* note 88 (describing that failed implementation partially results from lack of financial and human resources); *Mexico: Enhance Implementation of Human Rights Defender Protection Law*, INT'L SERV. FOR HUM. RTS. (Jan. 5, 2015), <http://www.ishr.ch/news/mexico-enhance-implementation-human-rights-defender-protection-law> [<https://perma.cc/5EMZ-CHFK>] (describing civil society's concern on the quality of risk analyses, which partially stems from inadequate resourcing, poor staff training programs, and the prevalence of temporary employment contracts).

95. WOLA, *supra* note 64, at 3.

96. *Id.* (stating that in some instances where the aggressor was a police body, the same police body was assigned to protect the beneficiary and expressing concern that risk assessments are overly subjective and describing that even if a beneficiary is attacked after receiving protection from the Mechanism, their case is not entitled to immediate reevaluation).

97. *Id.* at 2.

Thanks to Freedom House, a human rights NGO, technical experts helped clear the case backlog that dominated the Mechanism's work through May 2016.<sup>98</sup> The Mechanism has also demonstrated greater transparency in recent years during which SEGOB has periodically reported to civil society about the Mechanism's work.<sup>99</sup>

Nonetheless, the Mexican Law and the Mechanism are inadequate protections and much remains to protect women human rights defenders. Since the Presidential and Congressional elections in July 2018, Mexico's political transition opens the door to increased protections. Mexico recently elected Andrés Manuel López Obrador ("López Obrador") as their new President and López Obrador's party won a majority of seats in both houses of the Mexican Congress.<sup>100</sup> López Obrador campaigned on promises to eradicate corruption and an openness to investigations by international organizations of corruption and human rights abuses.<sup>101</sup> Soon after Mexico's elections, State officials met with representatives from the European Union.<sup>102</sup> Meeting participants condemned violence against human rights defenders and agreed upon the need for proper resourcing for mechanisms to protect human rights defenders.<sup>103</sup> In his 2012 presidential campaign, López Obrador emphasized the need for protection of human rights and an even application of the law. He also recognized the Mexican government's contribution to the erosion of human rights in the

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98. *Id.* at 6.

99. *Id.* (describing that communication between SEGOB and civil society organizations is more open).

100. See Mary Beth Sheridan & Kevin Sieff, *AMLO Inaugurated as Mexico's President, Vowing to Transform the Country*, WASH. POST (Dec. 1, 2018), [https://www.washingtonpost.com/world/amlo-will-be-inaugurated-as-mexicos-president-vowing-to-transform-the-country/2018/11/30/d3014f4c-f267-11e8-99c2-cfca6fcf610c\\_story.html?utm\\_term=.5763e5331dcd](https://www.washingtonpost.com/world/amlo-will-be-inaugurated-as-mexicos-president-vowing-to-transform-the-country/2018/11/30/d3014f4c-f267-11e8-99c2-cfca6fcf610c_story.html?utm_term=.5763e5331dcd) [<https://perma.cc/WSM2-T835>]; Azam Ahmed & Paulina Villegas, *López Obrador, an Atypical Leftist, Wins Mexico Presidency in Landslide*, N.Y. TIMES (July 1, 2018), <https://www.nytimes.com/2018/07/01/world/americas/mexico-election-andres-manuel-lopez-obrador.html> [<https://perma.cc/46TA-FAEU>]; Christopher Wilson & Rachel Schmidtke, *Rhetoric Meets Reality at the U.S.-Mexico Border: Immigration and NAFTA in a New Era of Bilateral Relations*, WILSON CTR, MEXICO INSTITUTE (Aug. 3, 2018), <https://www.wilsoncenter.org/article/rhetoric-meets-reality-the-us-mexico-border-immigration-and-nafta-new-era-bilateral> [<https://perma.cc/B92R-SSDV>].

101. Reuters, *Obrador Open to International Help to Fight Drug Violence*, NBC NEWS (May 9, 2018), <https://www.nbcnews.com/news/latino/mexican-presidential-candidate-1-pez-obrador-open-international-help-fight-n872626> [<https://perma.cc/ZSK7-6R52>].

102. European Union Press Release 181026\_24, *Mexico and the European Union Reaffirm their Commitment to Human Rights* (Oct. 26, 2018).

103. *Id.*

State.<sup>104</sup> Even though López Obrador was not elected as president in 2012 and his political history is not without controversy, the recent political transition may be the perfect chance to increase protections for women human rights defenders.<sup>105</sup> Unfortunately, López Obrador has not yet lived up to his promises and protections remain insufficient.<sup>106</sup>

#### IV. THE UNITED STATES OF AMERICA AND THOSE DEFENDING WOMEN'S RIGHTS

Much like women human rights defenders in Mexico, defenders of women's rights in the United States have shaped the rights of women in American society today. Over the past century, lawyering for women's rights has made large strides towards ending pregnancy discrimination, extended women the right to public participation, and brought equal treatment in insurance matters.<sup>107</sup> Women's rights bring

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104. Tim Wilson, *Mexico Presidential Candidates Play it Safe with Security Plans*, INSIGHT CRIME (Feb. 8, 2012), <https://web.archive.org/web/20120210222857/http://www.insightcrime.org/insight-latest-news/item/2189-mexico-presidential-candidates-play-it-safe-with-security-plans> [https://perma.cc/CA34-J4QX].

105. In 2004, Lopez Obrador, then-Mayor of Mexico City, was accused by political opponents of failing to promptly assemble a police force to stop the lynching of three undercover agents of Mexico's Federal Preventive Police by 300 local residents in San Juan Ixtayopan, some 40 miles south of downtown Mexico City. *Weekly News Update On the Americas Issue #774*, NICARAGUA SOLIDARITY NETWORK OF GREATER N.Y. (Nov. 28, 2004), [https://web.archive.org/web/20080504143643/http://www.tulane.edu/~libweb/RESTRICTED/WEEKLY/2004\\_11228.txt](https://web.archive.org/web/20080504143643/http://www.tulane.edu/~libweb/RESTRICTED/WEEKLY/2004_11228.txt) [https://perma.cc/P5KX-P3XS].

106. See e.g., Ward, *supra* note 68; Daina Solomon, *U.N. Urges Better Protection of Journalists, Activists as Mexico Murders Climb*, REUTERS (Aug. 26, 2019), <https://www.reuters.com/article/us-mexico-violence/u-n-urges-better-protection-of-journalists-activists-as-mexico-murders-climb-idUSKCN1VG2AA> [https://perma.cc/C3Q4-RSRH] (explaining that there is doubt about Mexico's commitment to the protection of human rights defenders); *Mexico's deadly violence rises with killing of Estado de México reporter*, COMM. TO PROTECT JOURNALISTS (Aug. 27, 2019), <https://cpj.org/2019/08/mexico-deadly-violence-journalist-estadodemexico.php> [https://perma.cc/KTB2-PZK6].

107. See generally *UAW v. Johnson Controls*, 499 U.S. 187, 211 (1991) (holding that Title VII prohibits employers from keeping women out of jobs that might expose their fetuses to hazardous substances). See also *Ferguson v. City of Charleston*, 532 U.S. 67, 69 (2001) (holding that a public hospital's policy of testing all pregnant patients' urine for cocaine and reporting positive results to the police violated the Fourth Amendment); *Turner v. Dep't of Emp. Security*, 423 U.S. 44, 46 (1975) (striking down a law making pregnant women ineligible for unemployment benefits); *Cleveland Board of Educ. v. LaFleur*, 414 U.S. 632, 651 (1974) (finding unconstitutional a rule requiring women to take unpaid maternity leaves after the first trimester because they were presumed to no longer be able to work); *Taylor v. Louisiana*, 419 U.S. 522, 538 (1975) (invalidating a state law allowing women to serve as jurors only when they volunteer to do so, and requires states to equally call men and women for jury service). See also U.S. CONST. AMEND. XIX (extending to women the right to vote); *Manhart v. Los Angeles*

into focus the intersections of a larger movement for social justice.<sup>108</sup> Despite impressive gains, the battle for women's rights in the United States is far from over. Women human rights defenders in the United States, including lawyers that defend women's rights, experience discrimination, attacks, and silencing, despite rhetoric expressing unconditional support for women's equality.<sup>109</sup>

As a law student at an ivy-league school in the mid-1950's, Justice Ruth Bader Ginsburg was asked by the Dean why she and the other nine women in her school were occupying seats that otherwise would have been filled by men.<sup>110</sup> After graduating at the top of her class, Justice Ginsburg was recommended to clerk on the Supreme Court of the United States, but the Justice to whom she was recommended explained that he was not ready to hire a woman. He requested that a man work for him instead.<sup>111</sup> Justice Ginsburg would later go on to co-found the Women's Rights Project at the American Civil Liberties Union, draft groundbreaking legal briefs, and eventually sit as a Supreme Court Justice herself.<sup>112</sup> Today, there are three sitting women Supreme Court Justices, including Justice Ginsburg, which is more than at any other time in the history of the United States.<sup>113</sup>

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Dep't of Water & Power, 435 U.S. 702, 723 (1978) (holding that a retirement plan that required women to contribute more than men to obtain the same benefit violated Title VII).

108. Rosenfeld, *supra* note 12, at 4.

109. *Investor Statement of Concern on the Increasing Harassment and Attacks on Human Rights Defenders*, INVESTOR ALLIANCE FOR HUM. RTS. 2 (Apr. 23, 2018) [http://iccr.org/sites/default/files/resources\\_attachments/investor\\_alliance\\_for\\_human\\_rights\\_hr\\_ds\\_sign-on\\_final04.23.18.pdf](http://iccr.org/sites/default/files/resources_attachments/investor_alliance_for_human_rights_hr_ds_sign-on_final04.23.18.pdf) [<https://perma.cc/K48V-MJFY>] (stating that "human rights defenders face attacks globally, including in the United States"). See *Human Rights Defenders*, AMNESTY INT'L, <https://www.amnestyusa.org/campaigns/human-rights-defenders/> [<https://perma.cc/U4PW-VZBW>] (last visited May 15, 2019). See also *UN Working Group on the issue of discrimination against women in law and in practice finalizes country mission to the United States*, OHCHR (Dec. 11, 2015), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16872&LangID=E> [<https://perma.cc/GAD4-JQ2E>] ("While the current administration has consistently expressed its unconditional support for the cause of women's equality, we regret to observe a gap between rhetoric and reality").

110. *Tribute: The Legacy of Ruth Bader Ginsburg and WRP Staff*, AMER. CIV. LIBERTIES UNION (ACLU), <https://www.aclu.org/other/tribute-legacy-ruth-bader-ginsburg-and-wrp-staff> [<https://perma.cc/3ZNH-62LG>] (last visited May 15, 2019).

111. *Id.*

112. *Id.*; see *Reed v. Reed*, 404 U.S. 71, 76 (1971) (resulting in the United States Supreme Court's invalidation of a state statute giving automatic preference to men to be administrator of a deceased person's estate, giving women the benefit of the Constitution's guarantee of equal protection).

113. *UN Working Group on the Issue of Discrimination Against Women in Law and in Practice Finalizes Country Mission to the United States*, OHCHR n.2 (Dec. 11, 2015)

A. *Women's Rights Affected by the Challenges Faced by Women Human Rights Defenders in the United States*

1. Sexual and Reproductive Rights

The sexism and discrimination Justice Ginsburg experienced throughout her lifetime are not particularly unique, and such sexism and discrimination manifest themselves in varying ways for women and defenders across the nation.<sup>114</sup> Defenders of reproductive rights face extreme threats in the United States, where physicians have been subjected to aggression, threats, and even murder.<sup>115</sup> For example, in 1993, an Alabama abortion provider was shot and killed by an anti-abortion protester and, in 2015, three people were shot and killed in a Colorado Planned Parenthood clinic.<sup>116</sup> Similarly, human rights defenders in the United States and abroad report that those defending

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<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16872&LangID=E> [<https://perma.cc/3QA2-V27J>]; see Jessica Campisi & Brandon Griggs, *Of the 113 Supreme Court Justices in US History, All but 6 Have Been White Men*, CNN (Sept. 5, 2018), <https://www.cnn.com/2018/07/09/politics/supreme-court-justice-minorities-trnd/index.html> [<https://perma.cc/VA65-XXJ9>]. There have been only four women Supreme Court Justices in the entire history of the United States. *Id.*

114. See generally *The Global Gender Gap Report 2018*, WORLD ECONOMIC FORUM (2018), [http://www3.weforum.org/docs/WEF\\_GGGR\\_2018.pdf](http://www3.weforum.org/docs/WEF_GGGR_2018.pdf) [<https://perma.cc/KDX8-WGMB>].

115. *NAF Violence and Disruption Statistics: Incidents of Violence & Disruption Against Abortion Providers in the U.S. & Canada*, NAT'L ABORTION FEDERATION, [http://prochoice.org/pubs\\_research/publications/downloads/about\\_abortion/violence\\_stats.pdf](http://prochoice.org/pubs_research/publications/downloads/about_abortion/violence_stats.pdf) [<https://perma.cc/982S-BJKU>]. See *Shattering the Myth: "US Women Lag Behind" – UN Experts on Discrimination Against Women*, OHCHR (Dec. 11, 2015), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16874&LangID=E> [<https://perma.cc/2R3X-FD98>] (arguing that violent attacks on reproductive health clinic staff and patients restrict women's access to reproductive health services). While this Note's focus is on women human rights defenders that are lawyers, medical professionals are also considered human rights defenders. *Recognizing Abortion Providers as Human Rights Defenders*, CTR. FOR REPRODUCTIVE RIGHTS (June 21, 2011), <https://legacy.reproductiverights.org/project/recognizing-abortion-providers-as-human-rights-defenders> [<https://perma.cc/YBR3-ZQ63>]. See also U.N. CAOR, 73rd Sess., 57th 58th 59th plen. mtg., U.N. Doc. GA/12109 (Dec. 18, 2018).

116. Larry Rohter, *Doctor Is Slain During Protest Over Abortions*, N.Y. Times (Mar. 11, 1993), <https://www.nytimes.com/1993/03/11/us/doctor-is-slain-during-protest-over-abortion.html> [<https://perma.cc/SN2B-WTYU>]; Lauren Gambino & Josiah Hesse, *Three Dead after Gunman Storms Planned Parenthood Clinic in Colorado*, THE GUARDIAN (Nov. 27, 2015), <https://www.theguardian.com/us-news/2015/nov/27/colorado-springs-shooting-planned-parenthood> [<https://perma.cc/5C6X-TKNF>].

sexual and reproductive rights in the legal sphere receive similar threats and have also been murdered.<sup>117</sup>

## 2. Criminal Justice

Defenders of women's rights experience discrimination in the criminal justice sector as well. In criminal detention centers, those defending female indigents experience a greater obstacle in meeting their professional obligation to perform diligent legal research. Law libraries in male prisons, which are also sorely under-resourced, have more up-to-date books and computers and are staffed by law clerks that are better trained than those in female prisons.<sup>118</sup> Defenders of female indigents, and female indigents' lawyers in particular, are thus presented with an additional roadblock to diligently providing legal services. Moreover, females in detention are harmfully prevented from accessing legal aid and resources.<sup>119</sup>

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117. See generally Cynthia Soohoo, *Who Is a Human Rights Defender? An Essay On Sexual And Reproductive Rights Defenders*, 65 U. MIAMI L. REV. 981 (Apr. 1, 2011); see Lana Baydas, *Human Rights Defenders at Risk: Twenty Years After*, CTR. FOR STRATEGIC AND INT'L STUDIES (Nov. 8, 2018), <https://www.csis.org/analysis/human-rights-defenders-risk-twenty-years-after> [<https://perma.cc/N9CN-2SSK>] (describing that women human rights defenders and those working on sexual and reproductive rights and on the rights of LGBTIQ persons are more at risk of gender-based violence, stigmatization, and criminalization); see also *IACHR Launches Report on Comprehensive Protection Policies for Human Rights Defenders*, ORG. FOR AM. STATES (Feb. 28, 2018), [http://www.oas.org/en/iachr/media\\_center/PReleases/2018/039.asp](http://www.oas.org/en/iachr/media_center/PReleases/2018/039.asp) [<https://perma.cc/VA5G-USXE>] (expressing concern over increased violent attacks against certain groups of defenders that are at special risk of violence and harassment, including those defending sexual and reproductive rights).

118. MODEL RULES OF PROF'L CONDUCT r. 1.3 (Am. Bar Ass'n 2013), [https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/rule\\_1\\_3\\_diligence/](https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_3_diligence/) [<https://perma.cc/MK3P-LYWC>]. See generally Ting Ting Cheng, *Notes from The Field: Challenges of Indigent Criminal Defense*, 12 N.Y. CITY L. REV. 203 (2008).

119. Cheng, *supra* note 118 (stating that resources are insufficient to defend everyone in their criminal cases). See generally, OHCHR, *supra* note 14 at ¶ 40 (describing the lack of publicly-funded legal counsel for women litigants inhibits women's equal access to justice); Tina Peng, *I'm a Public Defender. It's Impossible for me to do a Good Job Representing my Clients*, WASH. POST (Sept. 3, 2015), [https://www.ashingtonpost.com/opinions/our-public-defender-system-isnt-just-broken—its-unconstitutional/2015/09/03/aadf2b6c-519b-11e5-9812-92d5948a40f8\\_story.html?utm\\_term=.0f6c75fbab7b](https://www.ashingtonpost.com/opinions/our-public-defender-system-isnt-just-broken—its-unconstitutional/2015/09/03/aadf2b6c-519b-11e5-9812-92d5948a40f8_story.html?utm_term=.0f6c75fbab7b) [<https://perma.cc/5CWA-NYGR>].

### 3. International Human Rights

The Trump Administration has not failed to bruise women's rights defenders either.<sup>120</sup> In 2018, senior political appointees at the State Department ordered the removal of the reproductive rights subsection from annual, congressionally-mandated Country Reports on Human Rights Practices, and there are no plans to reintroduce it.<sup>121</sup> Human rights defenders use these reports to hold governments accountable; Congress uses them to inform foreign policy decisions; immigration judges use them to make decisions about refugees' claims; and civil society organizations use them to aid in their own reporting and advocacy.<sup>122</sup> Without such reports, women human rights defenders' advocacy is severely hampered and judges are left to adjudicate on the basis of less evidence than what was previously available.

### 4. Immigrants' Rights

Relatedly, immigrants' rights defenders are under attack.<sup>123</sup> Around the United States, executive enforcement agencies have targeted immigrants' defenders, especially those who are immigrants

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120. *Trump Administration Pledges to Support Anti-Woman Policies, Rolls Out Series of Efforts to Promote Health Care Discrimination*, CTR. FOR REPRODUCTIVE RIGHTS, (Jan. 18, 2019), <https://reproductiverights.org/press-room/trump-administration-pledges-to-support-anti-woman-policies-rolls-out-series-of-efforts-t> [<https://perma.cc/38XF-B93R>].

121. *The Center for Reproductive Rights Sues U.S. Department of State over Continued Decision to Delete Reproductive Rights from Human Rights Reports*, CTR. FOR REPRODUCTIVE RIGHTS (Dec. 5, 2018), <https://reproductiverights.org/press-room/center-reproductive-rights-sues-us-department-state-over-continued-decision-delete-0> [<https://perma.cc/Y372-NLY4>]; Stephanie Schmid, *The Trump Administration Is Erasing Reproductive Rights at Home and Abroad*, FOREIGN POLICY (Oct. 23, 2018), <https://foreignpolicy.com/2018/10/23/trump-administration-erasing-reproductive-rights/> [<https://perma.cc/QWM7-AJ4D>].

122. As an advocate for asylum-seekers, I have used these reports myself to substantiate the personal narratives of those I assisted in their petitions for immigration relief. *See also* Schmid, *supra* note 121.

123. *Attorney General Jeff Sessions Delivers Remarks to the Executive Office for Immigration Review*, U.S. DEP'T OF JUSTICE (Oct. 12, 2017), <https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-executive-office-immigration-review> [<https://perma.cc/XF6S-V4WV>] (declaring that “[w]e also have dirty immigration lawyers who are encouraging their otherwise unlawfully present clients to make false claims of asylum providing them with the magic words needed to trigger the credible fear process”); Stephen Manning & Michelle Mendez, *Trump, Sessions Attack Immigration Lawyers in Latest Affront to Rule of Law*, THE HILL (Oct. 18, 2017), <https://thehill.com/opinion/immigration/355958-trump-sessions-latest-affront-to-rule-of-law-attack-immigration-lawyers> [<https://perma.cc/H2AQ-YA6P>].

themselves. They report experiences of retaliation, intimidation, and surveillance.<sup>124</sup>

Maru Mora-Villalpando, knows this all too well. She is a defender of immigrants' rights and a native of Mexico City, but has been in the United States since 1961.<sup>125</sup> Mora-Villalpando is facing deportation proceedings after leading Latino advocacy programs and protests against the United States Immigration and Customs Enforcement Agency ("ICE") in Tacoma, Washington.<sup>126</sup> She has no criminal history and has only come under ICE's radar since President Trump took office.<sup>127</sup> Ravi Ragbir, the Executive Director of New York City's New Sanctuary Coalition, is a native of Trinidad and was arrested during a routine immigration check-in. He was then transferred to and detained in rural Florida in an attempt to alienate him and silence his advocacy.<sup>128</sup> Enrique Balcazar and Zully Palacios, leaders of Migrant

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124. *Gabriela Ocampo Ucha Documents Conditions and Human Rights Violations in Immigration Detention Centers*, UNIV. OF WASH. CTR. FOR HUM. RTS. (Jan. 17, 2019), <https://jsis.washington.edu/humanrights/2019/01/17/gabriela-ocampo-ucha-documents-conditions-and-human-rights-violations-in-immigration-detention-centers/> [https://perma.cc/Z4H9-5BDM]; see *IACHR Expresses Concern over Situation of Immigrant Defenders in the United States*, ORG. FOR AM. STATES (Feb. 16, 2018), [http://www.oas.org/en/iachr/media\\_center/PReleases/2018/029.asp](http://www.oas.org/en/iachr/media_center/PReleases/2018/029.asp) [https://perma.cc/6UUN-2NHA]; Jack Herrera, *Is ICE Targeting Activists?*, PACIFIC STANDARD (Apr. 17, 2019), <https://psmag.com/social-justice/is-ice-targeting-activists> [https://perma.cc/S7HP-HCGA]; *US Urged to Protect Rights Defenders as Activist Maru Mora Villalpando Faces Deportation Case*, OHCHR (Feb. 14, 2018), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22657&LangID=E> [https://perma.cc/K7AY-XX9D].

125. Heidi Groover, *Immigration Activist Facing Deportation Allowed to Stay—for Now*, THE STRANGER (June 26, 2018), <https://www.thestranger.com/slog/2018/06/26/28261074/immigration-activist-facing-deportation-allowed-to-stay-for-now> [https://perma.cc/4CTM-DEH2]; Gene Johnson, *Washington Immigrant Targeted for Deportation Came to ICE's Attention after Protests and Newspaper Interview, Document Shows*, SEATTLE TIMES (Feb. 26, 2018), <https://www.seattletimes.com/seattle-news/immigrant-targeted-for-deportation-came-to-ices-attention-after-protests-and-newspaper-interview-document-shows/> [https://perma.cc/DC6E-88HV].

126. *Id.*

127. Julianne Hing, *ICE Is Going After People Who Were Once Off-Limits*, THE NATION (Jan. 19, 2018), <https://www.thenation.com/article/ice-is-going-after-people-who-were-once-off-limits/> [https://perma.cc/N9H4-CJZS].

128. Michelle Chen, *Trump's Crackdown on Immigrant Activists Is an Attack on Free Speech*, THE NATION (Oct. 30, 2018), <https://www.thenation.com/article/ravi-ragbir-deportation-free-speech/> [https://perma.cc/J9E5-WJSP]. The Second Circuit held that Ragbir plausibly stated a First Amendment retaliation claim and remanded the case back to the district court, halting his deportation in the meantime. *Ragbir v. Homan*, 923 F.3d 53 (2d Cir. 2019). *Legal Update on First Amendment Case*, JUSTICE FOR RAVI RAGBAR (Nov. 2, 2018),

Justice, an organization that advocates for migrant farmworkers, were arrested by undercover ICE agents during a traffic stop in Vermont.<sup>129</sup>

Arresting individuals merely for their involvement in human rights organizations and their immigrant status chills the work of immigrant advocates. It restricts their free speech while simultaneously preventing immigrants, who are often women or survivors of violence, from enjoying equal access to justice.<sup>130</sup> Finally, ICE has demonstrated a nationwide pattern of providing misleading information to human rights defenders and has systematically failed to respond to requests under the Freedom of Information Act, keeping valuable public information from human rights defenders and immigrant communities.<sup>131</sup>

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<https://istandwithravi.org/2018/11/02/legal-update-on-first-amendment-case/> [<https://perma.cc/Y8C9-YUKW>]; *Ragbir v. Homan - Retaliatory Deportations of Immigrant Rights Activists*, KNIGHT FIRST AMENDMENT INST. AT COLUM. UNIV., <https://knightcolumbia.org/content/ragbir-v-homan-retaliatory-deportations-immigrant-rights-activists> [<https://perma.cc/QW4U-MTAN>] (last visited May 15, 2019).

129. Kate Jickling, *ICE Arrests Two More Immigration Advocates in Burlington*, VERMONT INDEPENDENT VOICE (Mar. 17, 2017), <https://www.sevendaysvt.com/OffMessage/archives/2017/03/17/ice-arrests-two-more-immigration-advocates-in-burlington> [<https://perma.cc/LCV9-2BCY>]; see *Migrant Justice v. Nielsen*, CTR. FOR CONST. RTS., <https://ccrjustice.org/home/what-we-do/our-cases/migrant-justice-v-nielsen> [<https://perma.cc/MU7N-RFLP>] (challenging the arrest of Balcazar and Palacios as motivated by an attempt to suppress their First Amendment rights); Complaint in the Matter of *Migrant Justice v. Nielsen* ¶ 2, available at <https://ccrjustice.org/sites/default/files/attach/2018/11/1%20Complaint%202018.11.14.pdf> [<https://perma.cc/C2SZ-BHEG>].

130. Katie Egan, *Federal Crackdown on Immigration Activists Threatens to Chill Free Speech*, ACLU (Jan. 30, 2018), <https://www.aclu.org/blog/free-speech/rights-protesters/federal-crackdown-immigration-activists-threatens-chill-free> [<https://perma.cc/3JKL-WR5V>]; *ICE in New York State Courts Survey*, IMMIGRANT DEFENSE PROJECT, <https://www.immigrantdefenseproject.org/ice-courts-survey/> [<https://perma.cc/4JYB-BSZT>] (relaying a recent statistic that sixty-seven percent of those working with violence survivors have had clients decide to not seek help from courts due to fear of ICE).

131. *Student Reflection from Hearing on Human Rights Defenders of Migrants in the U.S.*, UNIV. OF WASH. CTR. FOR HUM. RTS. (Dec. 18, 2018), <https://jsis.washington.edu/humanrights/2018/12/18/student-reflection-iachr/> [<https://perma.cc/7F9P-TPMG>]; see *Secret Police: Access to Information about Immigration Enforcement in the United States*, UNIV. OF WASH. CTR. FOR HUM. RTS. (Dec. 5, 2018), <https://jsis.washington.edu/humanrights/2018/12/05/secret-police/> [<https://perma.cc/M8XU-WZ2P>]; *The Freedom of Information Act*, U.S. DEP'T OF STATE, <https://foia.state.gov/learn/foia.aspx> [<https://perma.cc/8YAC-LCCD>].

*B. Access to Justice for Defenders of Women's Rights in the United States*

The United States Department of State actively recognizes the value of human rights defenders outside of the United States through policy statements, posting a human rights officer at each of its offices abroad, engaging in international collaboration to change laws that restrict human rights defenders, and highlighting human rights defenders' achievements.<sup>132</sup> The State Department also features the work of human rights defenders through its annual International Women of Courage Award, recognizing women around the world who bravely advocate for human rights and women's empowerment.<sup>133</sup> The International Women of Courage Awards increase human rights defenders' visibility, credibility, and may offer financial awards and travel for the purpose of advocacy and temporary protection.<sup>134</sup> Despite the positive recognition abroad, the struggle for human rights remains tough for women human rights defenders within the United States.

1. Title IX and Administrative Policy

As discussed more formally above, Justice Ginsburg experienced discrimination on the basis of her sex from the early stages of her legal career, but she persisted.<sup>135</sup> Today, sex discrimination in law schools and in the practice of law is not permitted.<sup>136</sup> Title IX of the Education

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132. In a 2017 policy statement, the State Department declared its solidarity with human rights defenders abroad, explained human rights defenders' activities, and outlined strategies to support them. *US Support for Human Rights Defenders*, U.S. DEP'T OF STATE, <https://www.state.gov/u-s-support-for-human-rights-defenders/> [https://perma.cc/K8GT-NKfV]. See *Human Rights Commitments and Pledges of the United States of America*, U.S. MISSION TO INT'L ORG. IN GENEVA ¶ 4, <https://geneva.usmission.gov/2016/02/24/human-rights-commitments-and-pledges-of-the-united-states-of-america/> [https://perma.cc/9XFE-6X2M] (declaring that the United States pledges to support the vital role of human rights defenders in promoting and protecting human rights).

133. *Resources for Human Rights Defenders*, HUMAN RIGHTS FIRST 9 (2013), <http://www.humanrightsfirst.org/sites/default/files/HRF-Defenders-Resources.pdf> [https://perma.cc/6YKX-QVLT].

134. *Id.*

135. *Supra* Section IV.

136. *Hishon v. King & Spalding*, 467 U.S. 69, 78-79 (1984) (finding that that Title VII protected law firm associates who were denied partnership status on the basis of their sex). See *Craig v. Boren*, 429 U.S. 190, 209-10 (1976) (holding that if the government regulates in a sex-discriminatory way, it must demonstrate that the sex-based criteria is substantially related to the achievement of an important governmental objective, applying intermediate scrutiny). Note also that the United States Equal Employment Opportunity Commission has found that

Amendments Act of 1972 (“Title IX”) provides that “no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance.”<sup>137</sup> In order for schools to meet this standard, they must allow women and men to proportionately participate in opportunities offered by the school. They must also expand their programs to accommodate the interests and abilities of women.<sup>138</sup> The Office of Civil Rights of the United States Department of Education enforces this regulation by evaluating, investigating, and resolving complaints of alleged discrimination and by providing guidance to schools to assist in their compliance.<sup>139</sup> However, because the Department of Education is an administrative body, it is more likely to be influenced by the Executive Branch’s political interests.<sup>140</sup> This is problematic because the regulation of on-campus sex discrimination depends upon the incumbent presidential administration’s political agenda. Thus, the

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discrimination on the basis of sexual orientation is sex discrimination. *Baldwin v. Dep’t of Transportation*, EEOC Appeal No. 0120133080 (July 15, 2015).

137. *Nondiscrimination On The Basis Of Sex In Education Programs Or Activities Receiving Federal Financial Assistance*, U.S. DEP’T OF EDUC., <https://www2.ed.gov/policy/rights/reg/ocr/edlite-34cfr106.html> [https://perma.cc/59AL-AD2E] (last visited Nov. 15, 2019); Title IX of the Education Amendments Act of 1972, 20 U.S.C.A. §§ 1681-88. (2013).

138. *Gender Discrimination in Education*, FINDLAW, [HTTPS://CIVILRIGHTS.FINDLAW.COM/DISCRIMINATION/GENDER-DISCRIMINATION-IN-EDUCATION.HTML](https://civilrights.findlaw.com/discrimination/gender-discrimination-in-education.html) [https://perma.cc/C7GV-DEL3] (last visited May 15, 2019).

139. *How the Office for Civil Rights Handles Complaints*, U.S. DEP’T OF EDUC., <https://www2.ed.gov/about/offices/list/ocr/complaints-how.html> [https://perma.cc/L6YX-ZRPP] (last visited May 15, 2019); *Title IX and Sex Discrimination*, U.S. DEP’T OF EDUC., [https://www2.ed.gov/about/offices/list/ocr/docs/tix\\_dis.html](https://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html) [https://perma.cc/7J68-47ZV] (last visited May 15, 2019); Guidance is sent through “Dear Colleague” letters to allow federal funding recipients to meet their obligations and to educate rights-holders. See e.g., *Letter from the Assistant Secretary*, U.S. DEP’T OF EDUC. (Sept. 22, 2017), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-title-ix-201709.pdf> [https://perma.cc/CH8W-QFJR]; *Letter from the Assistant Secretary*, U.S. DEP’T OF EDUC. (Apr. 4, 2011), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf> [https://perma.cc/247N-ANC3].

140. Bijal Shah, *Agency Power in Immigration*, YALE J. ON REG. (Feb. 12, 2016), <http://yalejreg.com/nc/agency-power-in-immigration-by-bijal-shah/> [https://perma.cc/F5LV-VV2Z] (explaining that in the immigration context, mechanisms of administrative law allow the Department to prioritize certain interests in exchange for rule of law, including procedural transparency and due process).

system unpredictably upholds and withdraws women's right to a non-discriminatory educational environment.<sup>141</sup>

## 2. New York City Human Rights Commission

Women human rights defenders in the City of New York have access to the New York City Human Rights Commission ("the Commission"), which enforces Title XIII of the Administrative Code of the City of New York ("the NYCHRL"). It also provides public education on human rights and supports fair treatment in the community.<sup>142</sup> The Commission has the power to prohibit discrimination in areas of employment, housing, and public accommodation. It may take action against prejudice, intolerance, bigotry, discrimination, and bias-related violence or harassment.<sup>143</sup> The Commission has jurisdiction over any complaint made within one year of the unlawful discriminatory practice so long as the complainant has not initiated a complaint in another court, administrative agency, or with the New York Division of Human Rights.<sup>144</sup>

While the Commission and the NYCHRL do not fill all of the gaps in protection produced by administrative regulation and policy-making, it does allow women human rights defenders to seek justice if they experience discrimination in their place of employment.<sup>145</sup> The Commission and the NYCHRL might also be used if women human rights defenders experience discrimination, violence, or harassment at the hands of law enforcement when such violations disproportionately affect a particular group.<sup>146</sup> The Commission is among several other

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141. For example, in 2011, the United States Department of Education issued guidance establishing a preponderance of the evidence standard for those alleging on-campus sexual violence under Title IX. In 2017, the same Department issued guidance explaining that the 2011 guidance would be rescinded because it was counterproductive and fundamentally unfair to the accused. See *Letter from the Assistant Secretary*, U.S. DEP'T OF EDUC. (Sept. 22, 2017), *supra* note 139; *Letter from the Assistant Secretary*, U.S. DEP'T OF EDUC. (Apr. 4, 2011), *supra* note 139.

142. *Inside the NYC Commission on Human Rights*, NYC HUM. RTS., <https://www1.nyc.gov/site/cchr/about/inside-cchr.page> [<https://perma.cc/W6ZA-3879>] (last visited May 15, 2019).

143. N.Y.C. Admin. Code § 8-101; The NYC Human Rights Law, NYC HUM. RTS., (last visited May 15, 2019).

144. N.Y.C. Admin. Code § 8-109(e)-(f).

145. *In the Workplace*, NYC HUM. RTS., <https://www1.nyc.gov/site/cchr/law/in-the-workplace.page> [<https://perma.cc/QK6A-Q5CN>] (last visited May 15, 2019).

146. *Bias-Based Harassment by Law Enforcement*, NYC HUM. RTS., <https://www1.nyc.gov/site/cchr/law/bias-based-harassment.page> [<https://perma.cc/V32E-F7SU>] (last visited May 15, 2019).

local bodies, such as the Portland Human Rights Commission and the Los Angeles County Human Relations Commission, that operate to protect locals' human rights.<sup>147</sup>

### 3. Local Support for CEDAW

With regard to international law, local governments within the United States are taking the lead to recognize the rights accorded in CEDAW. The United States is one of four nations that has failed to do ratify CEDAW, remaining in the company of Sudan and Iran.<sup>148</sup> However, local government has demonstrated a commitment to ensuring that those who defend women's rights in the United States are more easily able to do so. In December 2017, California's Santa Clara County adopted a CEDAW ordinance. Before then, at least twenty-four other cities and counties, including San Francisco, Honolulu, and Miami, had adopted CEDAW resolutions, proclamations, or ordinances.<sup>149</sup> The Santa Clara Ordinance affirmed the rights accorded

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147. *Human Rights Commission*, CITY OF PORTLAND OFF. OF EQUITY & HUM. RTS., <https://www.portlandoregon.gov/oehr/62221> [<https://perma.cc/5X9S-CDXX>] (last visited May 15, 2019); *Los Angeles County Human Relations Commission*, L.A. HUM. REL., <http://www.lahumanrelations.org/> [<https://perma.cc/JAN3-B5QY>] (last visited May 15, 2019); *State and Local Human Rights Agencies: Recommendations for Advancing Opportunity and Equality Through an International Human Rights Framework*, COLUM. L. SCH. HUM. RTS. INST., [https://www.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/45408\\_HRI-Text%20%5Bonline%5D%20-%202nd%20printing%20%28updated%2010.1.09%29.pdf](https://www.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/45408_HRI-Text%20%5Bonline%5D%20-%202nd%20printing%20%28updated%2010.1.09%29.pdf) [<https://perma.cc/R6MJ-8H2E>] (last visited May 15, 2019). For more examples of these types of bodies, see *Human Rights Commission*, EUGENE, OR., <https://www.eugene-or.gov/526/Human-Rights-Commission> [<https://perma.cc/CN7H-4UWY>] (last visited May 15, 2019); *Commission on Human Relations*, CITY OF CHI., <https://www.chicago.gov/city/en/depts/cchr.html> [<https://perma.cc/KG6H-VS9P>] (last visited May 15, 2019); *San Francisco Commission on the Status of Women*, CITY & COUNTRY OF S.F., <https://sfgov.org/dosw/san-francisco-commission-status-women> [<https://perma.cc/9BBP-WU8C>] (last visited May 15, 2019); *Human Rights Commission*, WASH. STATE, <https://www.hum.wa.gov/> [<https://perma.cc/4XTC-YGZ4>] (last visited May 15, 2019).

148. Kate Kelly & JoAnn Kamuf Ward, *Women's Rights on the Move: Coming to a City Near You!*, HUM. RTS. AT HOME BLOG (May 2, 2018), [https://lawprofessors.typepad.com/human\\_rights/2018/05/womens-rights-on-the-move-coming-to-a-city-near-you.html](https://lawprofessors.typepad.com/human_rights/2018/05/womens-rights-on-the-move-coming-to-a-city-near-you.html) [<https://perma.cc/425Y-6G7P>]; United Nations Treaty Collection, *supra* note 47.

149. At least six ordinances have been adopted across the country, in San Francisco, CA (1998), Los Angeles, CA (2003), Berkeley, CA (2012), Honolulu, HI (2015), Miami-Dade County, FL (2015), and Pittsburgh, PA (2016). Francisco ("Fran") Rivera Juaristi, *CEDAW Rising!*, HUM. RTS. AT HOME BLOG (Jan 18, 2018), [https://lawprofessors.typepad.com/human\\_rights/2018/01/cedaw-rises.html](https://lawprofessors.typepad.com/human_rights/2018/01/cedaw-rises.html) [<https://perma.cc/HM8T-ZZTU>].

in CEDAW and created a CEDAW Task Force. The Task Force will review the County's use of a gender-oriented approach throughout its operations, including in the areas of gender-based violence and criminal justice.<sup>150</sup> Nevertheless, the United States has ample room to grow at the federal, state, and local levels in its protection of its own women human rights defenders and to move closer towards gender equality.<sup>151</sup>

#### V. RECOMMENDATIONS TO PROTECT WOMEN HUMAN RIGHTS DEFENDERS

Mexico and the United States are equally required to take measures to adequately protect the rights of women human rights defenders and must act accordingly, but they are not alone. Women human rights defenders are under attack in every corner of the globe.<sup>152</sup> "The primary responsibility for promoting and protecting human rights and fundamental freedoms rests with the State," at both the federal, state, and local levels.<sup>153</sup> The benefits of domestic legislation to protect the rights of women human rights defenders extends beyond the defenders. Protections will enhance the longevity and legitimacy of society at large.<sup>154</sup> As such, this Note provides recommendations specific to Mexico and the United States that would increase access to justice for women human rights defenders if implemented. These are followed by general recommendations that all States can follow, adapting them to their domestic contexts in line with international human rights standards.

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150. Santa Clara, Cal., ORDINANCE NO. NS-300-919 (2017), [https://library.municode.com/ca/santa\\_clara\\_county/ordinances/code\\_of\\_ordinances?nodeId=867712](https://library.municode.com/ca/santa_clara_county/ordinances/code_of_ordinances?nodeId=867712) [<https://perma.cc/Y74Q-GEXJ>] (last visited Nov. 15, 2019).

151. *Gender Equality Under the Law*, AM. BAR ASS'N (Nov. 1, 2014), [https://www.americanbar.org/groups/gpsolo/publications/gp\\_solo/2014/november\\_december/gender\\_equality\\_under\\_law/](https://www.americanbar.org/groups/gpsolo/publications/gp_solo/2014/november_december/gender_equality_under_law/) [<https://perma.cc/FQ9L-SA3K>].

152. *See supra* Part I.

153. G.A. Res. 68/181 (Jan. 30, 2014); *Rep. of the Special Rapporteur on the Situation of Human Rights Defenders on his Mission to Mexico*, UNHRC ¶ 115(j); A/HRC/37/51/Add.2 (Feb. 12, 2018) (explaining the need for States to develop public policies to prevent violations against women human rights defenders); *see id.*, ¶ 83 (recommending that States destigmatize and legitimize women human rights defenders).

154. U.N. General Assembly, *infra* note 169 (describing the improved status of women is essential for respect for everyone's human rights, the growth of a society, and the achievement of an accountable and representative government).

A. *What Should Mexico Do?*

Mexico must ensure that anyone whose rights under the ICCPR are violated has an effective remedy, regardless of whether the perpetrator is a State or non-State actor.<sup>155</sup> Mexico has also ratified CEDAW, and thus is obligated to end all forms of discrimination against women in the State.<sup>156</sup> International bodies have called on Mexico to address the situation of human rights defenders, including the Inter-American Commission of Human Rights.<sup>157</sup> Mexico must combat impunity in order to ensure protection for women human rights defenders.<sup>158</sup> “Impunity fosters chronic recidivism of human rights violations,” rendering victims and their relatives defenseless.<sup>159</sup> To combat impunity, the process by which the Mechanism operates must be improved. There should be “prompt, impartial, independent, and effective investigations” when there are attacks against women human rights defenders, even if the perpetrator is a state actor.<sup>160</sup> Mexico must also strengthen the Mechanism through the provision of adequate financial and human resources to the Mechanism and other prosecutorial offices and government services.<sup>161</sup> Moreover, the

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155. *Status on the International Covenant on Civil and Political Rights*, U.N. TREATY COLLECTION, [https://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&clang=\\_en&mtdsg\\_no=IV-4&src=IND](https://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&clang=_en&mtdsg_no=IV-4&src=IND) [<https://perma.cc/BJL5-KUXX>] (last visited May 15, 2019); International Covenant on Civil and Political Rights art. 2(3), *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171, 6 I.L.M. 368 (1967).

156. United Nations Treaty Collection, *supra* note 47; CEDAW, *supra* note 45, art. 2.

157. See CED/C/MEX/CO/1, *supra* note 70, ¶ 30; Comm. on Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [hereinfter Comm. on CAT], *Concluding observations on the combined fifth and sixth periodic reports of Mexico as adopted by the Committee at its forty-ninth session*, ¶ 14, CAT/C/MEX/CO/5-6 (Dec. 11, 2012); Comm. on ICCPR, *Consideration of reports submitted by States Parties under article 40 of the Covenant*, ¶ 20, CCPR/C/MEX/CO/5 (May 17, 2010).

158. CED/C/MEX/CO/1, *supra* note 70, ¶ 30; *The Right to Freedom of Expression*, IACHR, *supra* note 63, ¶ 671.

159. Loayza Tamayo, Reparations (Art. 63.1 American Convention on Human Rights), Inter-Am. Ct. H.R. (ser. C) No. 42, ¶ 170 (Nov. 27, 1998) citing *The “Panel Blanca” Case* (Paniagua Morales et al.), Judgment, Inter-Am. Ct. H.R. (ser. C) No. 37, ¶ 173 (Mar. 8, 1998).

160. Comm. on CAT, *supra* note 157, ¶ 14. Those being criminally charged for such violations should receive fair and public trials to determine their culpability. *Mexico: Open Letter to President López Obrador 100 Days After the Beginning of His Government*, AMNESTY INT’L (Mar. 12, 2019), <https://www.amnesty.org/download/Documents/AMR4199962019ENGLISH.pdf> [<https://perma.cc/J5WP-MSXJ>].

161. Funding decisions should take into consideration the current caseload and cases expected for the upcoming fiscal year. WOLA & PEACE BRIGADES INT’L, *supra* note 71, at 7.

Mexican judiciary should wield its adjudicatory influence to protect the individual freedoms of women human rights defenders while remaining impartial and independent.<sup>162</sup>

In developing and implementing laws and policies to better protect women human rights defenders, Mexican authorities must integrate a gender perspective to address the specific needs of women human rights defenders.<sup>163</sup> The CEDAW Committee recently called on Mexico to universally implement the Mechanism in “a gender-sensitive manner” to prevent, investigate, and prosecute attacks against women human rights defenders, punish the perpetrators thereof, and combat impunity.<sup>164</sup> The Mechanism to protect human rights defenders should maintain increased consultation with women human rights defenders to address the root causes of attacks against them. Specifically, women human rights defenders should have a say in the selection of members of the Mechanism’s governing bodies and provide insight on how to improve risk analysis procedures to adequately address their needs.<sup>165</sup> Failure to investigate and punish crimes and to provide tailored protection measures leaves many women human rights defenders at risk, and is in violation of the ICCPR, CEDAW, and the American Convention.<sup>166</sup> To encourage accountability, there should also be data

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162. *Application to the Inter-American Court of Human Rights, Case of Ines Fernandez Ortega (Case 12.580) against the United Mexican States* ¶ 183 (Inter-Am. Comm’n H.R. May 7, 2009), [http://www.cidh.oas.org/demandas/12.580\\_Ines\\_Fernandez\\_Ortega\\_Mexico\\_7mayo09\\_ENGLISH.pdf](http://www.cidh.oas.org/demandas/12.580_Ines_Fernandez_Ortega_Mexico_7mayo09_ENGLISH.pdf) [<https://perma.cc/X5CK-JMG2>] (emphasizing that “the judiciary is the first line of national defense” for women’s rights and outlining the challenges women face in requesting that the judiciary vindicate their rights); *Radilla-Pacheco v. Mexico, Preliminary Objections, Merits, Reparations, and Costs*, Inter-Am. Ct. H.R. (ser. C) No. 209, ¶ 273 (Nov. 23, 2009) (emphasizing that judges, in hearing a case regarding human rights violations, must be competent, independent, and impartial).

163. AMNESTY INT’L, *supra* note 160.

164. *Mexico / Rights defenders: “The best way to protect them is fighting impunity” – UN expert*, OHCHR (Jan. 25, 2017), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21117&LangID=E> [<https://perma.cc/492Q-44UP>]; *see also* Comm. on Econ., Soc. & Cultural Rts., *supra* note 88, ¶ 8.

165. WOLA & Peace Brigades Int’l, *supra* note 71. Women’s participation in the selection of members has been demonstrated in an analogous Consultation Plan developed by the state of Chihuahua. *Id.* *See Second Report on the Situation of Human Rights Defenders in the Americas*, IACHR, *supra* note 33, ¶ 439 (stating that “one of the principles that must be followed when implementing [protection] measures is that they be planned and applied with the participation of the beneficiaries and their respective representatives”).

166. Between 2012 and June 2018, of the investigations analyzed in a recent WOLA study, only three percent of investigations opened by the state prosecutor’s offices made it to the courts. Less than 12 percent of the 1,077 cases investigated by the federal-level Special Prosecutor’s for

sharing among the Mechanism, state and federal prosecutor's offices, victims' advocates, and other human rights commissions. This would allow government bodies to identify trends in attacks against human rights defenders and to track case statuses. These data should be made public, with due respect for victims' confidentiality.<sup>167</sup>

Finally, Mexico must preserve public space for criticism against it and respect the right of those under Mexican jurisdiction to speak freely.<sup>168</sup> Authorities, including President López Obrador himself, must immediately discontinue statements against those taking a critical stance on government activities.<sup>169</sup> Instead, the Mexican State should increase its tolerance of criticism and respond appropriately and in line with its international and domestic human rights commitments. Mexico should also raise public awareness of the essential work done by human rights defenders.<sup>170</sup> These steps, as well as those recommended in Section V.C, will better protect the rights of women human rights defenders and their access to justice in Mexico.

### B. *What Should the United States Do?*

#### 1. Implementation of the ICCPR

The United States, having ratified the ICCPR in 1992, must ensure that anyone whose rights under the ICCPR are violated has an effective remedy.<sup>171</sup> The ICCPR should be incorporated into legislation at the federal, state, and local levels to ensure that those seeking vindication under the ICCPR may easily do so.<sup>172</sup> Moreover, the United States must take measures to protect individuals from violations of the ICCPR

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Freedom of Expression were taken to court, and only five of these cases resulted in convictions. WOLA & Peace Brigades Int'l, *supra* note 71, 5.

167. See generally WOLA & Peace Brigades Int'l, *supra* note 71; Public and interagency databases should not include personally identifying information. *Databases, Confidentiality, and Third Parties*, TECHNOLOGY SAFETY, <https://www.techsafety.org/databases-confidentiality-and-third-parties> [https://perma.cc/E84G-3FQK] (last visited May 15, 2019).

168. Godoy, *supra* note 68; ICCPR *supra* note 40, art. 19; Comm. on ICCPR, *supra* note 157, ¶ 20.

169. This is especially urgent in light of López Obrador's plans to build a railway through five Mexican states, which already faces opposition from the prospectively-affected communities. Godoy, *supra* note 68.

170. Comm. on Econ., Soc. & Cultural Rts., *supra* note 88 at ¶ 8(e); CED/C/MEX/CO/1, *supra* note 70, ¶ 30(d).

171. ICCPR, *supra* note 40, art. 2(3).

172. *Id.*, art. 2 (stating that parties to the ICCPR undertake to provide a remedy to those whose rights have been violated).

perpetrated by non-state actors. Failure to do so is in violation of the ICCPR.<sup>173</sup>

## 2. CEDAW Ratification

In addition to fully implementing the ICCPR and protecting the rights provided therein, the United States should ratify CEDAW and incorporate it into binding domestic law.<sup>174</sup> If the United States wants to recognize prominent figures in women's empowerment and hold itself out as a leader in human rights, it must match that rhetoric with practice and affirm women's right to live free from discrimination, including women human rights defenders within the United States.<sup>175</sup>

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173. Roht-Arriaza, *supra* note 75. One should note that the United States has made several reservations in its ratification of the ICCPR. These reservations describe which parts of the ICCPR that the United States considers itself not bound to. For a complete listing of the United States' reservations to the ICCPR, see, UNITED NATIONS, *supra* note 41.

174. Deborah Bessner, *Will the United States Continue to Say "You're Fired" To CEDAW?: Lessons Learned from Germany and Chile's Implementation of CEDAW and the Potential for United States Ratification*, 40 *FORDHAM INT'L L.J.* 1225, 1279 (2017). While there has been enormous support for the ratification of CEDAW, there is also a large group of policy-makers and constituents that spit at international law. The rhetoric of this group has increased over the last fifteen years, including through the US Supreme Court ruling that some human rights treaties are not self-executing. See generally Medellín v. Texas, 552 U.S. 491 (2008); CEDAW Resources, AM. BAR ASS'N, [https://www.americanbar.org/advocacy/governmental\\_legislative\\_work/priorities\\_policy/promoting\\_international\\_rule\\_law/humanrightslobbyday/CEDAW/](https://www.americanbar.org/advocacy/governmental_legislative_work/priorities_policy/promoting_international_rule_law/humanrightslobbyday/CEDAW/) [<https://perma.cc/W6ZJ-M5TX>] (last visited May 15, 2019); *Support for Women's Human Rights: Ratification of the Convention on the Elimination of all Forms of Discrimination Against Women*, U.S. DEPT OF STATE (Mar. 10, 1998), [https://1997-2001.state.gov/global/women/fs\\_980310\\_women\\_hr.html](https://1997-2001.state.gov/global/women/fs_980310_women_hr.html) [<https://perma.cc/8LM9-PTSF>]. But see, Thomas W. Jacobson, *10 Reasons Why the U.S. Should Not Ratify CEDAW*, FOCUS ON THE FAMILY, [http://www.idppcenter.com/cedaw-10\\_reasons\\_to\\_oppose.pdf](http://www.idppcenter.com/cedaw-10_reasons_to_oppose.pdf) [<https://perma.cc/V52S-LNG4>] (last visited May 15, 2019); Grace Melton, *CEDAW: How U.N. Interference Threatens the Rights of American Women*, THE HERITAGE FOUNDATION (Jan 9, 2009), <https://www.heritage.org/marriage-and-family/report/cedaw-how-un-interference-threatens-the-rights-american-women> [<https://perma.cc/AZ7X-KSW8>]; Ann M. Piccard, *U.S. Ratification of CEDAW: From Bad to Worse*, 28 *LAW & INEQ.* 119 (2010).

175. The United States also significantly funds the Mechanism to Protect Journalists and Human Rights Defenders in Mexico, contributing over US \$7 million in 2017. WOLA & Peace Brigades Int'l, *supra* note 71, at 6; *Mexico: Human Rights*, USAID, [https://www.usaid.gov/sites/default/files/documents/1862/DO3FactSheet\\_March2018.pdf](https://www.usaid.gov/sites/default/files/documents/1862/DO3FactSheet_March2018.pdf) [<https://perma.cc/CX27-3DNQ>] (last visited May 15, 2019); *Promoting Human Rights is Essential to an 'America First' Vision*, US. WHITE HOUSE (Sept. 2017), <https://www.whitehouse.gov/articles/promoting-human-rights-essential-america-first-vision-2/> [<https://perma.cc/EJZ3-C4FP>]; *American Leadership in the World*, OBAMA WHITE HOUSE ARCHIVES, <https://obamawhitehouse.archives.gov/the-record/foreign-policy> [<https://perma.cc/42RY-BQMU>] (last visited on May 15, 2019); *United States Key Role in Support of Human Rights*, U.S. EMBASSY IN THE CZECH REPUBLIC,

Ratification would send a message to other nations with whom the United States interacts, and would show that the United States takes seriously women's human rights and its own obligations to women. It would also create a more legitimate impact on the rights of women in other nations.<sup>176</sup> Once ratified, CEDAW should be implemented at both the federal, state, and local levels.<sup>177</sup>

### 3. Destigmatize Sexual and Reproductive Rights

To decrease the risks faced by those defending reproductive rights, the United States should destigmatize abortion and reproductive health.<sup>178</sup> The international community has condemned attacks against those defending sexual and reproductive rights and the Supreme Court

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<https://cz.usembassy.gov/our-relationship/policy-history/usa-and-human-rights/> [<https://perma.cc/89UM-K74P>] (last visited May 15, 2019); Harold Koh, *Why America Should Ratify the Women's Rights Treaty (CEDAW)*, 34 CASE W. RES. J. INT'L L. 263, 266 (2002); *The United States Should Ratify CEDAW*, WOMEN'S UN REPORT NETWORK, <https://wunrn.com/2013/05/usa-why-the-united-states-should-ratify-cedaw/> [<https://perma.cc/45EE-JTDH>] (last visited May 15, 2019).

176. Koh, *supra* note 175, at 267; *US: Ratify Women's Rights Treaty*, HUMAN RIGHTS WATCH (July 15, 2010), <https://www.hrw.org/news/2010/07/15/us-ratify-womens-rights-treaty> [<https://perma.cc/N24U-Y278>].

177. Sally Goldfarb, *The Supreme Court, the Violence Against Women Act, and the Use and Abuse of Federalism*, 71 FORDHAM L. REV. 57, 90 (2002) (describing that federal statutes establish a universal minimum level of legal protection followed by or in conjunction with state statutes). Federal and local implementation should be done with the understanding that the intricacies of federalism do not negate the universality of women's rights in the United States. *Id.* See IACHR, *supra* note 74, ¶ 75 (recommending the State to adopt necessary legal reforms for federal and state coordination to effectively protect human rights defenders). Federalism in the United States may make local implementation of ratification by the national Congress difficult, and as such, CEDAW should be incorporated into domestic law at both federal and local levels of government. *Concluding observations of the Committee on the Elimination of Discrimination against Women*, OHCHR ¶ 11 (Nov. 2008), <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhs0VqDbaslinb8oXgzpEhivi%2BckIAEA2xed4nKovdMpvO4pMAFcHnHXbMJdAzkJjEzzWFixxcKDwKYkmJUItNIKNIFAsaHPdUE9mthhZABK> [<https://perma.cc/MY3A-82J6>] (“While the Committee is cognizant of the complex federal and constitutional structures in the State party, it underlines. . . that the federal government is responsible for ensuring the implementation of the Convention and providing leadership to the provincial and territorial governments in that context”).

178. *Care For All: A 3-Part Plan to Protect and Expand Access to Abortion in the United States*, PLANNED PARENTHOOD 3-4 [https://www.plannedparenthoodaction.org/uploads/filer\\_public/8c/86/8c866f34-f67f-4c9e-9afd-a38ccbef65cb/care\\_for\\_all\\_one-pager.pdf](https://www.plannedparenthoodaction.org/uploads/filer_public/8c/86/8c866f34-f67f-4c9e-9afd-a38ccbef65cb/care_for_all_one-pager.pdf) [<https://perma.cc/6CV9-E76E>] (last visited May 15, 2019); Leila Hessini, *Destigmatizing and Decriminalizing Abortion: That's Our Collective Work*, REWIRE (Sept. 28, 2016), <https://rewire.news/article/2016/09/28/destigmatizing-decriminalizing-abortion/> [<https://perma.cc/B8AV-W6A9>].

has declared that there is a constitutional right to abortion. Despite this, federal and state law and policy-makers have continuously attempted to restrict access to abortion services.<sup>179</sup> Destigmatizing reproductive rights requires a cultural shift with strong political and social support. Such an accomplishment would provide increased protections to women and those defending them.

#### 4. Limit Administrative Policy-Making and Increase Congressional Oversight

The United States should also limit the extent to which administrative agencies regulate in the areas of civil rights, especially for immigrants. Administrative Law courts do not adequately ensure due process for the parties. Administrative Law Judges (“ALJs”) are not wholly independent and the deference given to administrative factual determinations makes it insufficient to later appeal to a judicial court established under Article III of the United States Constitution.<sup>180</sup> Administrative policy-making is in place to do what general legislative bodies cannot – develop specialized rules – however, this efficiency comes at the cost of decreased separation of powers and results in discriminatory application of regulations. This is seen in the

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179. *Women Human Rights Defenders*, OHCHR, [https://www.ohchr.org/Documents/Issues/Women/WRGS/SexualHealth/INFO\\_WHRD\\_WEB.pdf](https://www.ohchr.org/Documents/Issues/Women/WRGS/SexualHealth/INFO_WHRD_WEB.pdf) [<https://perma.cc/Z46V-AZZU>] (last visited May 15, 2019); *Roe v. Wade*, 410 U.S. 113 (1973) (holding that a Texas law criminalizing those who assist a woman to obtain an abortion was in violation of the woman’s right to due process); *Doe v. Bolton*, 410 U.S. 179 (1973) (overturning a Georgia law that restricted access to abortion); *Planned Parenthood v. Casey*, 505 U.S. 833 (1992) (declaring a Pennsylvania law invalid because it created an undue burden for a married woman to seek an abortion, violating the Fourteenth Amendment); *Targeted Regulation of Abortion Providers*, GUTTMACHER INST. (May 1, 2019), <https://www.guttmacher.org/state-policy/explore/targeted-regulation-abortion-providers> [<https://perma.cc/P66K-32ZJ>] (describing that as many as 24 of the 50 states have imposed restrictions on abortion providers beyond what is needed for the safety of their patients); see *An Overview of Abortion Laws*, GUTTMACHER INST. (May 1, 2019), <https://www.guttmacher.org/state-policy/explore/overview-abortion-laws> [<https://perma.cc/N9HS-Q4M2>].

180. *Lucia v. SEC*, 138 U.S. 2044 (2018) (holding that ALJs exercise “significant” authority, “comparable to that of a federal district court judge conducting a bench trial,” and thus are “Officers of the United States” who, under Article II, Section 2, Clause 2 of the Constitution, must be appointed by the President, “Courts of Law,” or “Heads of Departments” rather than SEC staff); Shah, *supra* note 140 (explaining that in the immigration context, mechanisms of administrative law allow the Department to prioritize certain interests . . . “at the expense of rule of law values such as procedural transparency and due process.”); Ronald Cass, *Vive la Deference?: Rethinking the Balance Between Administrative and Judicial Discretion*, 83 GEO. WASH. L. REV. 1294, 1294 (2015) (“Chevron deference has reduced the effectiveness of judicial review as a limitation on administrative power”).

government's targeting and defamation of immigrants' rights defenders and in regulations addressing sexual harassment on university campuses.<sup>181</sup>

The United States should put measures into place to limit the extent to which administrative agencies make and enforce policies that affect the fundamental freedoms of private individuals, including human rights defenders and their clients.<sup>182</sup> Moreover, Article III judges should make factual determinations and then, if necessary, administrative agencies may adjudicate based on these factual findings.<sup>183</sup> There should also be increased and representative Congressional oversight with emphasis on the complete delegation doctrine – which limits delegation of power by Congress to other governmental branches, especially the executive – to protect due process rights and to preserve founding Constitutional principles that prevent governmental overreach.<sup>184</sup>

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181. See *Administrative Law*, SAYLOR ACADEMY, [https://saylordotorg.github.io/text\\_introduction-to-the-law-of-property-estate-planning-and-insurance/s08-administrative-law.html](https://saylordotorg.github.io/text_introduction-to-the-law-of-property-estate-planning-and-insurance/s08-administrative-law.html) [https://perma.cc/SLGN-JBAF] (last visited Oct. 23, 2019) (describing the role of administrative agencies as specialized bodies); Rodolphe J.A. de Seife, *Administrative Law Reform: A Focus on the Administrative Law Judge*, 13 VAL. U. L. REV. 229, 230, 232-37 (1979); *Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935) (holding that Congress may only transfer some of its legislative powers to administrative agencies if such delegation is not overly broad); *The Separation of Powers – Why Is It Necessary?*, REPUBLIC OF AUSTRIA PARLIAMENT, <https://www.parlament.gv.at/ENGL/PERK/PARL/POL/ParluGewaltenteilung/index.shtml> [https://perma.cc/W5ZK-SSRS] (last visited May 15, 2019) (describing that “unlimited power in the hands of one person or group in most cases means that others are suppressed or their powers curtailed”).

182. Justice Thomas has interpreted reference by Article I, Section I of the US Constitution to “legislative Powers” as “encompassing a non-delegable power to issue generally applicable rules for private conduct that must conform to some. . . criteria of constitutionality.” Robert R. Gasaway & Ashley C. Parrish, *Administrative Law In Flux: An Opportunity For Constitutional Reassessment*, 24 GEO. MASON L. REV. 361, 384-87 (2017); *Whitman v. Am. Trucking Ass’n*, 531 U.S. 457, 472 (2001) (Thomas, J., concurring) (expressing doubt “that the intelligible principle doctrine serves to prevent all cessions of legislative power” and expressing curiosity as to whether US “delegation jurisprudence has strayed too far from our Founders’ understanding of separation of powers.”). Michael B. Rappaport, *Classical Liberal Administrative Law in a Progressive World*, in CLASSICAL LIBERALISM HANDBOOK (forthcoming) 7 (U. of San Diego Sch. of L. Legal Studies Paper No. 17-310) (2017), <https://ssrn.com/abstract=3078924> [https://perma.cc/G3KK-NPKY] (suggesting a procedure requiring Congressional approval before major regulations can be implemented).

183. Thomas W. Merrill, *Article III, Agency Adjudication, and the Origins of the Appellate Review Model of Administrative Law*, 111 COLUM. L. REV. 939, 1000 (2011).

184. Martin S. Flaherty, *The Most Dangerous Branch*, 105 YALE L.J. 1725, 1730 (1996) (“the emergence of the administrative state renders congressional regulation of the executive branch more crucial than ever before”). The complete delegation doctrine is the principle

### 5. Increase Women's Representation in the Legislature

Finally, federal and local legislatures across the United States should reserve seats for women legislators. In 2019, 28.9 percent of state legislators were women. While this representation has grown since it measured at 4.5 percent in 1971, women should occupy a more equal, and therefore larger, proportion of state and federal legislative seats.<sup>185</sup> One way to increase women's representation is through political parties' voluntary adoption of quotas that would reserve a certain portion of legislative seats for women. This is an accepted practice under international law.<sup>186</sup> Such quotas should remain flexible so as to avoid rigid gender identities. Importantly, they should be used temporarily only insofar as they are needed to correct past gender discrimination in legislatures and to equalize women's representation in such bodies.<sup>187</sup>

The interests of women and women human rights defenders should be better represented and their actions increasingly validated. This would satisfy the UN Declaration's requirement that governments raise awareness about the role of defenders.<sup>188</sup> Additionally, this would encourage more women to run for office and increase women's longer-term political participation, bringing a greater sensitivity to the protection needs for those defending women's rights in the United States.<sup>189</sup> These steps, as well as those recommended in Section V.C,

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limiting Congress's ability to transfer its legislative power to another governmental branch, especially the executive branch. For more information on the complete delegation doctrine and the role for each government branch, see Abner S. Greene, *Checks and Balances in an Era of Presidential Lawmaking*, 61 U. CHI. L. REV. 123, 124-28, 153-54 (1994); Janelle Sharpe, *Judging Congressional Oversight*, 65 ADMIN. L. REV. 183, 235-236 (2013); Brian D. Feinstein, *Congress in the Administrative State* (Coase-Sandor Working Paper Series in Law and Econ., Paper No. 621, 2017).

185. *Women in State Legislatures 2019*, RUTGERS CTR. FOR WOMEN & AM. POLITICS, <https://www.cawp.rutgers.edu/women-state-legislature-2019> [https://perma.cc/3P77-3XDS] (last visited May 15, 2019).

186. See CEDAW, *supra* note 45, art. 4 (allowing for temporary special measures to be implemented until gender equality is achieved); *General recommendation No. 25: Article 4, paragraph 1, of the Convention*, OHCHR, [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1\\_Global/INT\\_CEDAW\\_GEC\\_3733\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_3733_E.pdf) [https://perma.cc/F7YG-JSU2].

187. Jane Mansbridge, *Quota Problems: Combating the Dangers of Essentialism*, 1(4) POL. & GENDER 622, 635 (2005).

188. Comm. on Enforced Disappearances, *supra* note 70 at ¶ 48.

189. Rikhil Bhavnani, *Do Electoral Quotas Work after They Are Withdrawn? Evidence from a Natural Experiment in India*, HARVARD KENNEDY SCHOOL: WOMEN & PUBLIC POLICY PROGRAM (2009), <http://gap.hks.harvard.edu/do-electoral-quotas-work-after-they-are>

will better protect the rights of women human rights defenders and their access to justice in the United States.

### C. General Recommendations

#### 1. Respect and Support the Rights of All, Including Women Human Rights Defenders

To demonstrate their respect for women human rights defenders, States should end all attempts to arbitrarily restrict fundamental rights, including their right to free speech and peaceful protest, and should not interfere with the work of human rights defenders.<sup>190</sup> In supporting the activity and free speech of human rights defenders, States should express their support for the valuable work performed by human rights defenders through explicit statements, the deconstruction of gender stereotypes, and the incorporation of the UN Declaration into domestic law and policies.<sup>191</sup> States should also immediately eliminate

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withdrawn-evidence-natural-experiment-india [<https://perma.cc/M8CP-N5J3>] (describing that when one-third of legislative seats in Mumbai were reserved for women, women were more likely to be elected while the special measures were in place and after their removal and that women were encouraged to run for office). The judiciary is also an active participant in adequate protection of women human rights defenders, and the State can enable judges to increase protections by placing more women on the bench. Judges may promote the rights of women human rights defenders by demonstrating a willingness recognize women human rights defenders' arguments that invoke international human rights norms to build precedents validating these issues. NATIONAL ASSOCIATION OF WOMEN JUDGES, <https://www.nawj.org/> [<https://perma.cc/GR52-76CJ>] (last visited Nov. 15 2019); *Southeast Asia Regional Judicial Colloquium On Gender Equality Jurisprudence and the Role of the Judiciary in Promoting Women's Access to Justice*, UN WOMEN 15 (Sept. 2013), <http://asiapacific.unwomen.org/~media/field%20office%20eseasia/docs/publications/2014/7/sea%20judicial%20colloquium%20final%20pdf.ashx> [<https://perma.cc/N3PV-2DFK>].

190. Org. of Am. States, *supra* note 74, at 14-15; *Freedom of expression*, HUM. RTS. HOUSE FOUNDATION, <https://humanrightshouse.org/we-stand-for/freedom-of-expression/> [<https://perma.cc/9GAE-TQFV>] (last visited Nov. 15, 2019); *Protecting human rights defenders: Everyone's business*, INT'L SERV. FOR HUM. RTS (July 2015), [http://www.ishr.ch/sites/default/files/article/files/ishr\\_submission\\_to\\_uk\\_on\\_review\\_of\\_its\\_bh\\_r\\_nap\\_final.pdf](http://www.ishr.ch/sites/default/files/article/files/ishr_submission_to_uk_on_review_of_its_bh_r_nap_final.pdf) [<https://perma.cc/YHT8-ZEB6>] (describing corporations' obligation to not interfere with the activities of human rights defenders).

191. *See, e.g., CHRC Statement on Role of Human Rights Defenders*, CAN. HUM. RTS. COMM'N, <https://www.chrc-ccdp.gc.ca/eng/content/chrc-statement-role-human-rights-defenders> [<https://perma.cc/SV72-R4HU>] (last visited May 15, 2019) (outlining explicit support from the Canadian Human Rights Commission); Press Release, Secretary-General, States Must Treat Human Rights Defenders 'as Partners, Not as a Threat', Secretary-General Tells General Assembly, U.N. Press Release SG/SM/19415-GA/12112-HR/5422 (Dec. 18, 2018) (stating that it is imperative to consider and treat human rights defenders as partners, not as a threat.); WOLA, *supra* note 64, at 13 (recommending that States publicly recognize human rights defenders' role,

legislation used to limit the work of human rights defenders.<sup>192</sup> Relatedly, States should encourage the media and other communication channels to eliminate harmful and stereotypical portrayals of women, especially human rights defenders, through the dissemination of guidelines on how to appropriately report on violence against women. States should also strengthen the capacity of protection mechanisms and judicial systems to address complaints against the media's demeaning portrayal of women and survivors of violence.<sup>193</sup> In their undertaking of the protection of women human rights defenders, States should use a gender-sensitive approach to adequately address their unique vulnerabilities.<sup>194</sup> In order to become better aware of these specific risks, States should work closely with women human rights defenders, engaging them in the development and implementation of measures to increase their protection and access to justice.<sup>195</sup>

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the situations they face due to their work, and States' responsibility to protect them and that the State ensure that the protection for human rights defenders, accounting for the beneficiary's gender). For women human rights defenders specifically, the State should take active measures to eliminate societal sex stereotypes and unequal power relations between the sexes. CEDAW, *supra* note 45, art. 5(a). See González et al. ("Cotton Field") v. Mexico, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶ 401 (Nov. 16, 2009) (stating that "creation and use of stereotypes becomes one of the causes and consequences of gender-based violence against women"); G.A. Res. 68/181, *supra* note 153 (recommending that States take measures to eliminate prejudices and customs based on sex stereotypes and describing that States should promote women human rights defenders' work, and eliminate their criminalization and stigmatization or other impediments to their work); Joloy, *supra* note 85 (describing that prevention of violations is essential for at-risk human rights defenders); *Developing a model national law to protect human rights defenders*, INT'L SERV. FOR HUM. RTS. (May 15, 2019), <https://www.ishr.ch/news/developing-model-national-law-protect-human-rights-defenders> [<https://perma.cc/E4W6-GJK7>] (describing that the UN HRC has called on States to amend laws which target human rights defenders, restrict NGO access to foreign sources of funding, or which limit freedom of speech, assembly or association, and to enact specific policies to protect human rights defenders from reprisals).

192. G.A. Res. 68/181, *supra* note 153 (describing the urgency of addressing legislation that unduly limits human rights defenders in their work).

193. Comm. on the Elimination of Discrimination against Women, *supra* note 14, ¶ 37.

194. Ctr. for Reproductive Rights, *supra* note 115 (declaring that States must take special care to effectively address the particular vulnerabilities of women's rights defenders); UNHRC, *supra* note 153, at ¶ 115(o) (calling for gender considerations in all policies and for women's participation in decision- and policy-making for the protection of human right defenders.); IACHR, *supra* note 70, ¶ 29 (highlighting that the CEDAW Committee, in its concluding observations to Mexico recommended increased gender considerations for the Mechanism in Mexico). See Karen Bennett et al., *Critical perspectives on the security and protection of human rights defenders*, 19 INT'L J. HUM. RTS. 883, 889 (2015) (describing that protection mechanisms are often criticized for failing to take a gender-sensitive approach).

195. *Columbia Law School Human Rights Institute Symposium Explores Strategies for State and Local Implementation of Human Rights in the United States*, COLUM. L. SCH. HUM. RTS. INST. (June 27, 2017), <https://www.law.columbia.edu/human-rights->

## 2. The Model Law for the Recognition and Protection of Human Rights Defenders.

To assist in the domestic incorporation of the UN Declaration, the International Service for Human Rights drafted the Model Law for the Recognition and Protection of Human Rights Defenders (“the Model Law”). Its purpose is to provide technical guidance to States developing laws, give defenders a tool to advocate for stronger legal recognition, and to encourage assessments of the effectiveness of existing laws and policies.<sup>196</sup> The Model Law covers rights for defenders, obligations of states, and mechanisms to implement both, using the UN Declaration as a floor but sometimes going beyond the international standards.<sup>197</sup> The rights provided include,

- The right to promote and to strive for the protection and realization of human rights at the local, national, regional and international levels,<sup>198</sup>
- The right to develop and advocate for new human rights ideas and to challenge traditional cultural practices,<sup>199</sup>

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institute/initiatives/about/press-releases/human-rights-institute-symposium-explores-strategies-state-and-local-implementation-human-rights-united-states [https://perma.cc/V7S6-26KM] (expressing the importance of working in close partnership with impacted communities); *Supporting Human Rights Defenders: A Guide to Conducting Assessment Missions*, FREEDOM HOUSE, <https://freedomhouse.org/report/special-reports/supporting-human-rights-defenders-guide-conducting-assessment-missions> [https://perma.cc/6V8U-XWS6] (last visited May 15, 2019) (explaining that programs for human rights defenders should address the actual needs and desires of the defenders themselves, taking into account each country’s nuances); Note by the Secretary-General on Human rights defenders, G.A. Res. A/63/288 (Aug. 14, 2008) (calling for systematic participation of defenders in decision-making and law and policy-making, including through institutionalized consultation processes); Int’l Serv. for Hum. Rts., *supra* note 6 at ii (stating that any law to protect human rights defenders must be developed and implemented in close consultation with defenders).

196. ISHR is a non-governmental human rights organization located in Geneva and New York and with grassroots partners around the world. They support human rights defenders, strengthen human rights systems, and participate in coalitions for change. *About Us*, INT’L SERV. FOR HUM. RTS., <https://www.ishr.ch/about-us> [https://perma.cc/4M8F-6WUF] (last visited May 15, 2019); *International Service for Human Rights*, WOMEN HUM. RTS. DEFENDERS INT’L COALITION, <http://www.defendingwomen-defendingrights.org/about/members/international-service-for-human-rights/> [https://perma.cc/LTR4-5GHN] (last visited May 15, 2019).

197. Int’l Serv. for Hum. Rts., *supra* note 6, at ii.

198. OHCHR, *supra* note 78, art. 1; *Annex to Press Release 82/11. Preliminary observations of the Rapporteurship on the Rights of Migrant Workers of the IACHR to Mexico* IACHR, *supra* note 33, at 4.

199. Int’l Serv. for Hum. Rts., *supra* note 6, at § 17; OHCHR, *supra* note 78, arts. 5, 7, 8, 12, 18(1); *Report of the Working Group on the Universal Periodic Review: Ghana*, UNHRC (Dec. 13, 2012), <https://undocs.org/A/HRC/22/6> [https://perma.cc/A7TJ-75A8] (analyzing

- The right to participate in public affairs on a non-discriminatory basis,<sup>200</sup>
- The right to assist, represent or act on behalf of another person relating to fundamental rights and freedoms, at all levels, including through the provision of legal assistance,<sup>201</sup>
- The right to make complaints about public policies and actions of public authorities with regard to violations of human rights through competent domestic judicial, administrative or legislative authorities,<sup>202</sup> and
- The right to observe public hearings at trials to assess their compliance with national law and human rights.<sup>203</sup>

Under the Model Law, human rights defenders are only subject to limitations prescribed by law, in accordance with international law, for the purpose of securing respect for human rights.<sup>204</sup> They are also protected from defamation, stigmatization, and harassment related to their work.<sup>205</sup>

The Model Law obligates States to take all necessary measures to allow human rights defenders to perform their work in an enabling environment and to publicly promote the role of human rights defenders as those doing legitimate and important work.<sup>206</sup> If there is reasonable ground to believe the rights of a human rights defender have been violated, the State must ensure a prompt and independent investigation, account for whether the motive included their status as a human rights defender, and track violations against human rights

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resolutions from the UN HRC to address conflicts between the right to peaceful assembly and national security policies that restrict such activity).

200. OHCHR, *supra* note 78, art. 8.

201. Int'l Serv. for Hum. Rts., *supra* note 6, at § 12; OHCHR, *supra* note 78, art. 9.

202. *Id.*

203. *Id.*

204. Int'l Serv. for Hum. Rts., *supra* note 6, § 19. This section of the Model Law has been amended from Article 17 of the UN Declaration, which allows limitations to be placed on human rights defenders for the purpose of "meeting the just requirements of morality." This language has been amended for the Model Law because it could be used to arbitrarily limit women human rights defenders. *Id.* at 18; OHCHR, *supra* note 78, art. 17.

205. Int'l Serv. for Hum. Rts., *supra* note 6.

206. *Id.*, at § 23 (reflecting previous calls by the UN Special Rapporteur on the Situation of Human Rights Defenders). *See also* OHCHR, *supra* note 78, art. 2(2). Amnesty International has called on Mexico's President to explicitly support human rights defenders' work. Amnesty Int'l, *supra* note 160, at 2.

defenders to detect systemic violations.<sup>207</sup> If the State will not or cannot perform the investigation, it must request assistance from an international organization.<sup>208</sup>

Finally, the Model Law creates a mechanism to protect the rights of human rights defenders and enforce States' obligations. The mechanism should carry out risk assessments and propose and implement protection measures, giving particular attention to women human rights defenders.<sup>209</sup> All persons working with the mechanism should be vetted and receive specialized training in human rights, including the situation of women human rights defenders.<sup>210</sup> The State must also adequately finance the mechanism so it may properly carry out its functions.<sup>211</sup> In tandem with the development of protective laws and an accompanying mechanism, the State must publish sex-disaggregated data on attacks against human rights defenders. It must also openly provide information about all human rights and fundamental freedoms to promote a societal understanding of how such rights are given effect domestically.<sup>212</sup>

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207. Int'l Serv. for Hum. Rts., *supra* note 6, § 28; *see also*, IACHR, *supra* note 33, ¶ 534.

208. Int'l Serv. for Hum. Rts., *supra* note 6, 28 (reflecting Art. 9(5) of the UN Declaration).

209. Risk assessments should be analyzed with the application of a gender lens. *See* G.A. Res. A/63/288, *supra* note 195, ¶ 9. *See also* Int'l Serv. for Hum. Rts., *supra* note 88 (recommending that States ensure there is a specialized team, trained in the sensitivities of their beneficiaries, to carry out gender-responsive risk analyses and protection measures); Int'l Serv. for Hum. Rts., *supra* note 6, at § 34(3)(d), 34(3)(i); Margaret Sekaggya, *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, UNHRC, ¶ 81, U.N. Doc. A/HRC/25/55 (Dec. 23, 2013) (NHRIs shall monitor legal frameworks that regulate the work of human rights defenders, and inform the State about the impact of such legislation); HRC Res. 13/13, U.N. Doc. A/HRC/RES/13/13, ¶ 5 (Apr. 15, 2010).

210. Int'l Serv. for Hum. Rts., *supra* note 6, at 37; UNHRC, *supra* note 209, ¶ 88; *see* WOLA, *supra* note 64, at 13 (recommending the State to better educate staff on the nature of women human rights defenders' work, the risks they face, and how to sensitively respond to these risks); UN WOMEN, *supra* note 189, at 32 (stipulating that staff should be trained on sexual crimes so they may address them in a gender-sensitive manner in order to avoid complainants' re-victimization "and to ensure that subjective values do not affect this process"); Joloy, *supra* note 85 (recommending that the State build staff capacity in human rights law so they can provide comprehensive protection).

211. UNHRC, *supra* note 153, ¶ 115(l) (recommending that the State guarantee financial and human resources to allow a mechanism to properly function).

212. IACHR, *supra* note 74, ¶ 68 (recommending the State to collect and publish detailed statistics of attacks against human rights defenders, and to include information on prosecution of these crimes); Margaret Sekaggya, *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, ¶ 29, U.N. Doc. A/68/262 (Aug. 5, 2013) (noting that Article 6 of the UN Declaration establishes that everyone has the right to seek and obtain information about human rights, including how those rights are in effect through domestic legislative, judicial or administrative systems; and that Article 14 of the UN Declaration obligates States to take

*VI. CONCLUSION*

Women who defend the rights of all and individuals who defend the rights of women are under threat in both Mexico and the United States, where legal protections are currently insufficient and ineffective. Women human rights defenders are experiencing increasingly intense attacks, in large part due to the States' non-provision of adequate protections and poor access to justice in each State, as well as State complicity. Mexico and the United States must uphold their obligations under international law to provide effective remedies for those who experience violations of their internationally recognized human rights. This includes actualizing the rights provided under international treaties, legislating for the protection of human rights defenders with a gender-specific lens, combatting impunity, raising public awareness of the value and important role of human rights defenders, protecting freedom of speech, and elevating women as equal members of society. No State is immune to attacks against women human rights defenders. The grave situation for today's brave defenders demonstrates the great need and legal obligation to protect them in most corners of the globe.

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measures to promote everyone's understanding of their human rights, including through the widespread availability of laws and regulations).