NOTE

DEFENDERS APLENTY:

ACCESS TO JUSTICE FOR WOMEN HUMAN RIGHTS DEFENDERS

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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.1 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.”2 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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Suicide. 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. These women are among the many human rights lawyers who are targeted and killed as a result of their work defending fundamental freedoms.

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.” 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. In general, human rights lawyers face intimidation and suppression because of the cases they take on. They may be under surveillance, harassed, arbitrarily detained and
prosecuted, disappeared, and killed with impunity. Many others live in exile because of the risks they face.\(^9\)

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,\(^10\) as well as persons of any gender who defend women’s rights.\(^11\) 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.\(^12\)

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.\(^13\)

Both State and non-State actors perpetrate this aggression, which
includes rape, verbal and online harassment, defamatory attacks, and smear campaigns.\textsuperscript{14} Threats are also made against their children.\textsuperscript{15}

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.\textsuperscript{16} 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.\textsuperscript{17} 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.\textsuperscript{18} 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.\textsuperscript{19} This burden is exacerbated when the defenders themselves identify as women.\textsuperscript{20}

\textsuperscript{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/SharedDocuments/1_Global/CEDAW_C_GC_35_8267_E.pdf [https://perma.cc/5YQL-L2GG] [hereinafter General recommendation No. 35]. See also Melissa Bellitto, \textit{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 at ¶ 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.

\textsuperscript{15} See ASS’N FOR WOMEN’S RTS. IN DEV., supra note 10.


\textsuperscript{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).

\textsuperscript{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).

\textsuperscript{19} HRC Res. 37/51/Add.2, supra note 17, ¶ 56.

\textsuperscript{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.\(^{21}\) 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.\(^{22}\) 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.\(^{23}\) Nonetheless, Mexico continued to turn a blind eye to these human rights violations and others.\(^{24}\) Because of State complicity in the defamation and criminalization of human rights defenders, they experience serious security threats in Mexico.\(^{25}\) There has also been a


\(^{24}\) See WOLA, supra note 23.

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

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.28 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.29 Toxic rhetoric against women and human rights defenders in the United States gives the "green light" on oppression by other world leaders.30 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


27. Amnesty Int’l, supra note 26, at 1.


defending women’s human rights in the United States more difficult and dangerous.\textsuperscript{31}

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.\textsuperscript{32} 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.\textsuperscript{33} This emphasizes the need to protect those defending human rights. As two States that consistently engage with one another politically and


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.  

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. Nonetheless, international law holds significant legal value. 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. International law produces valuable effects

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”).


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/ers/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.\textsuperscript{38} International human rights conventions, declarations, and recommendations also encourage States’ fair treatment of human rights defenders.\textsuperscript{39}

One of these instruments is the International Convention on Civil and Political Rights (‘‘ICCPR’’), adopted by the UN General Assembly in 1966.\textsuperscript{40} 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.\textsuperscript{41} 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.\textsuperscript{42} 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.\textsuperscript{43} 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 and explanation of its observations and concerns and gives
recommendations for greater compliance with the State party’s obligations.44

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.45 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.46 At the time of writing, CEDAW has been ratified by 189 of the 193 UN Member States.47 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.48 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.49 The CEDAW Committee, consisting of twenty-three


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://perma.cc/2ER2-RUNF].


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.\textsuperscript{50}

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

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.”\textsuperscript{54} The UN Declaration is not legally binding, but it does restate rights enshrined in other international human rights instruments that are binding.\textsuperscript{55} The UN Declaration was adopted by consensus, representing


\textsuperscript{52} See General Recommendation No. 35, supra note 14; OHCHR, supra note 51.

\textsuperscript{53} General recommendation No. 35, supra note 14, ¶ 12.


\textsuperscript{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, 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. 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.

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. 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.

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

56. Sekagya, supra note 55.
They also assist migrants whose human rights have been violated. 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.

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. Since 2006, Mexico’s National Human Rights Commission received 380 complaints of attacks against human rights defenders over the course of ten years. Between 2010 and 2015, it received twenty-five murder complaints, but between 2010 and 2017, 110 human rights defenders were actually killed in Mexico. 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. As of October 2019, at least twenty-three have been killed this year.

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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://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.


65. Id.


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. Anonymous groups have spread false rumors about them through social media, inciting violence against women including “corrective rape.” 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.”

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 that those who are not.

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”).


similarly assisted. In 2017, some defenders endured smear campaigns perpetrated by public authorities. In addition, the State has employed spyware produced in Israel, known as “Pegasus,” to monitor human rights defenders’ mobile phones. 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. 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 Respaldar 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/D9X7-7QU4] (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).


houses of the Mexican legislature and signed into law in June 2012 by then-President Felipe Calderón. 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.

The Mexican Law defines human rights defenders to mirror the UN Declaration and commands state-federal government coordination for its implementation. 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. Any public official who does not implement ordered protection measures will be sanctioned.

The Mechanism is divided into its Governing Board, Advisory Council, and National Executive Coordination Unit. 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. The Advisory Council plays a consultative role and consists of human rights defenders, journalists, and civil society representatives working on a volunteer basis. The National Executive Coordination works with the states, federal agencies, and autonomous

77. WOLA, supra note 64, at 6.
79. PEACE BRIGADES INT’L MEXICO PROJECT, supra note 78, at 4.
80. Id.
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 los Derechos Humanos. PEACE BRIGADES INT’L MEXICO PROJECT, supra note 78.
bodies to receive cases, provide rapid reaction and risk assessment, and support prevention and monitoring.  

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. 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. 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.

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. As of October 2016, 617 people received protection under the Mexican Law, but such protection has been delayed and is sometimes insufficient. Of those receiving protection measures since August 2017, six of them have been murdered. 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.
86. Id.
87. Id.
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. 91 Several unaccompanied cases were not pursued by the Mechanism, leaving many human rights defenders at risk. 92 Civil society’s continued involvement has been hampered and there is little transparency in the board member selection process. 93 The Mechanism is also sorely understaffed and under-resourced. 94 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. 95 These issues show a disconnect between the protection needs of human rights defenders and the protections actually provided by the Mechanism. 96

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. 97

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 2016.98 The Mechanism has also demonstrated greater transparency in recent years during which SEGOB has periodically reported to civil society about the Mechanism’s work.99 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.100 López Obrador campaigned on promises to eradicate corruption and an openness to investigations by international organizations of corruption and human rights abuses.101 Soon after Mexico’s elections, State officials met with representatives from the European Union.102 Meeting participants condemned violence against human rights defenders and agreed upon the need for proper resourcing for mechanisms to protect human rights defenders.103 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

98. Id. at 6.
99. Id. (describing that communication between SEGOB and civil society organizations is more open).
103. Id.
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. Unfortunately, López Obrador has not yet lived up to his promises and protections remain insufficient.

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.


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://perma.cc/P5KX-P3XS].


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.\textsuperscript{108} 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.\textsuperscript{109}

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.\textsuperscript{110} 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.\textsuperscript{111} 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.\textsuperscript{112} 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.\textsuperscript{113}

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).


111. \textit{Id}.

112. \textit{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).

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.114 Defenders of reproductive rights face extreme threats in the United States, where physicians have been subjected to aggression, threats, and even murder.115 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.116 Similarly, human rights defenders in the United States and abroad report that those defending reproductive rights face threats and violence.


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

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.118 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.119


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.washingtonpost.com/opinions/our-public-defender-system-isnt-just-broken—it’s-unconstitutional/2015/09/03/aad2b6c-519b-11e5-9812-92d5948a40f8_story.html?utm_term=.0f6c75fba7b [https://perma.cc/5CWA-NYGR].
3. International Human Rights

The Trump Administration has not failed to bruise women’s rights defenders either. 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. 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. 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. Around the United States, executive enforcement agencies have targeted immigrants’ defenders, especially those who are immigrants


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.

themselves. They report experiences of retaliation, intimidation, and surveillance.\(^{124}\)

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.\(^{125}\) 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.\(^{126}\) She has no criminal history and has only come under ICE’s radar since President Trump took office.\(^{127}\) 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.\(^{128}\) Enrique Balcazar and Zully Palacios, leaders of Migrant

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126. Id.


Justice, an organization that advocates for migrant farmworkers, were arrested by undercover ICE agents during a traffic stop in Vermont.\(^{129}\)

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.\(^{130}\) 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.\(^{131}\)
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.132 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.133 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.134 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.135 Today, sex discrimination in law schools and in the practice of law is not permitted.136 Title IX of the Education...
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." 137 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. 138 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. 139 However, because the Department of Education is an administrative body, it is more likely to be influenced by the Executive Branch’s political interests. 140 This is problematic because the regulation of on-campus sex discrimination depends upon the incumbent presidential administration’s political agenda. Thus, the discrimination on the basis of sexual orientation is sex discrimination. Baldwin v. Dep’t of Transportation, EEOC Appeal No. 0120133080 (July 15, 2015).


system unpredictably upholds and withdraws women’s right to a non-discriminatory educational environment.\textsuperscript{141}

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.\textsuperscript{142} 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.\textsuperscript{143} 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.\textsuperscript{144}

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.\textsuperscript{145} 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.\textsuperscript{146} The Commission is among several other

\textsuperscript{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), \textit{supra} note 139; Letter from the Assistant Secretary, U.S. DEP’T OF EDUC. (Apr. 4, 2011), \textit{supra} note 139.


\textsuperscript{144} N.Y.C. Admin. Code § 8-109(e)-(f).


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

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.148 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.149 The Santa Clara Ordinance affirmed the rights accorded

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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. 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.

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. “The primary responsibility for promoting and protecting human rights and fundamental freedoms rests with the State,” at both the federal, state, and local levels. 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. 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.

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. Mexico has also ratified CEDAW, and thus is obligated to end all forms of discrimination against women in the State. International bodies have called on Mexico to address the situation of human rights defenders, including the Inter-American Commission of Human Rights. Mexico must combat impunity in order to ensure protection for women human rights defenders. “Impunity fosters chronic recidivism of human rights violations,” rendering victims and their relatives defenseless. 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. 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. Moreover, the


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 [hereinafter 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.


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.\footnote{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 [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).}

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.\footnote{AMNESTY INT’L, supra note 160.} 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.\footnote{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.} 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.\footnote{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”).}

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.\footnote{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 that 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.167

Finally, Mexico must preserve public space for criticism against it and respect the right of those under Mexican jurisdiction to speak freely.168 Authorities, including President López Obrador himself, must immediately discontinue statements against those taking a critical stance on government activities.169 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.170 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.171 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.172 Moreover, the United States must take measures to protect individuals from violations of the ICCPR.
perpetrated by non-state actors. Failure to doing so is in violation of the ICCPR.  

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. 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.

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 policymakers 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,  

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. Once ratified, CEDAW should be implemented at both the federal, state, and local levels.

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. The international community has condemned attacks against those defending sexual and reproductive rights and the Supreme Court.
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.\textsuperscript{179} 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.\textsuperscript{180} 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

\begin{itemize}
\item \textsuperscript{179} Women Human Rights Defenders, OHCHR, 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 women 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].
\item \textsuperscript{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 GTO, WASH L. REV. 1294, 1294 (2015) (“Chevron deference has reduced the effectiveness of judicial review as a limitation on administrative power”).
\end{itemize}
government’s targeting and defamation of immigrants’ rights defenders and in regulations addressing sexual harassment on university campuses.181

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.182 Moreover, Article III judges should make factual determinations and then, if necessary, administrative agencies may adjudicate based on these factual findings.183 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.184


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.185 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.186 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.187

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.188 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.189 These steps, as well as those recommended in Section V.C, 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); Jamelle 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).


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://perma.cc/F7YG-JSU2].


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. 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. States should also immediately eliminate

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.nawq.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%20esasia/docs/publications/2014/7/s ea%20judicial%20colloquium%20final%20pdf.ashx [https://perma.cc/N3PV-2DFK].


legislation used to limit the work of human rights defenders. \footnote{192} Relatively, 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. \footnote{193} In their undertaking of the protection of women human rights defenders, States should use a gender-sensitive approach to adequately address their unique vulnerabilities. \footnote{194} 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. \footnote{195}

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. 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.

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,
- The right to develop and advocate for new human rights ideas and to challenge traditional cultural practices,


197. 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).

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.

The right to participate in public affairs on a non-discriminatory basis,200

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;201

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,202 and

The right to observe public hearings at trials to assess their compliance with national law and human rights.203

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.204 They are also protected from defamation, stigmatization, and harassment related to their work.205

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.206 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 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. at18; OHCHR, supra note 78, art. 17.
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. If the State will not or cannot perform the investigation, it must request assistance from an international organization.

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. All persons working with the mechanism should be vetted and receive specialized training in human rights, including the situation of women human rights defenders. The State must also adequately finance the mechanism so it may properly carry out its functions. 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.

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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).
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 obliges 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.