

THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN IN THE UNITED STATES: WHETHER, WHEN, AND WHAT IF?

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INTRODUCTION

Thirty-three years ago President Jimmy Carter signed the U.N. Convention on the Elimination of All Forms of Discrimination

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against Women (CEDAW or the Convention).¹ As of December 2013, the United States is the only signatory State that has not ratified or acceded to the Convention and is one of only eight member States of the United Nations that have not ratified.²

This state of affairs remains deeply embarrassing, even destructive, for the United States and for American human rights advocates. It denies American women the opportunity to invoke a universal standard of nondiscrimination to address our stalled progress towards equality. It undermines the legitimacy of progressive American positions on women's human rights in international fora. And it eliminates the possibility of engaging American expertise in the venue in which women's human rights are defined and monitored: the U.N. Committee on the Elimination of Discrimination against Women.

CEDAW ratification has fallen victim to this century's politics of division, which has led to legislative gridlock and ill serves the American electorate. Rather than seeing it as reflecting the best of what the United States has to offer the rest of the world, right-wing advocacy organizations and super-partisan politicians hyperbolically claim that CEDAW ratification will result in ceding legislative authority to an international body—a claim that flies in the face of international law and misrepresents the intent of those who support it.

I. A BIT OF HISTORY

President Carter sent CEDAW to the Senate for ratification days after he was defeated in 1980. President Ronald Reagan had

1. See Convention on the Elimination of All Forms of Discrimination against Women, *opened for signature* Mar. 1, 1980, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981) [hereinafter CEDAW]; *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&lang=en (last visited Mar. 10, 2014) [hereinafter *Participants, Declarations, and Reservations*]. The Convention was adopted on December 18, 1979 and opened for signature on March 1, 1980. CEDAW, *supra*. Fifty States parties, including the United States, signed it at the opening ceremony of the Second World Conference on Women in Copenhagen on July 17, 1980. *Participants, Declarations, and Reservations, supra*; World Conference of the U.N. Decade for Women, Copenhagen, Den., July 14-30, 1980, *Equality, Development and Peace*, U.N. Doc. A/CONF.94/35 (Sept. 19, 1980).

2. The other nonratifying States are Iran, Niue, Palau, Somalia, Sudan, South Sudan, and Tonga. See *Participants, Declarations, and Reservations, supra* note 1.

little love for the treaty and did not act on it.³ President George H.W. Bush supported ratification of the International Convention on Civil and Political Rights (ICCPR) but did not promote attention to CEDAW. Senate Foreign Relations Committee hearings were held in 1988 and 1990, but the treaty was not sent to the floor.⁴

With the election of President Bill Clinton in 1992, CEDAW advocates raised their hopes, particularly after Secretary of State Warren Christopher announced at the 1993 World Conference on Human Rights that the United States would take up ratification of the Convention on the Elimination of All Forms of Racial Discrimination (CERD) and CEDAW.⁵ However, despite being sent to the floor on a 13-5 vote of the Senate Committee on Foreign Relations in October 1994, the treaty failed to come up for a full Senate vote because the Republicans, sensing victory in the upcoming elections, placed a hold on all pending legislation.⁶

Having a Democrat in the White House doesn't mean much if the Senate balks, and the deterioration of compromise and consensus since 1994 has been well documented. The 1994 mid-term elections resulted in the loss of the required supermajority. Moderate Republicans who were willing to vote for ratification have all but disappeared. With the election of George W. Bush in 2000, another eight years were lost. The decision of then-Senator Joseph Biden to hold a hearing in 2002, resulting in a 12-7 vote in favor of sending it to the floor,⁷ was a welcome reminder that CEDAW remained meaningful in some corners of Washington, although the treaty was not sent to the Senate floor.⁸ And with the election of President Barack Obama, proponents regained momentum. The Senate

3. SRINI SITARAMAN, *STATE PARTICIPATION IN INTERNATIONAL TREATY REGIMES 195-96* (2009).

4. LUISA BLANCHFIELD, *THE U.N. CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW): ISSUES IN THE U.S. RATIFICATION DEBATE*, CONGRESSIONAL RESEARCH SERVICE 1 (2011), available at <http://fpc.state.gov/documents/organization/161569.pdf>.

5. Warren Christopher, U.S. Sec'y of State, Remarks at the World Conference on Human Rights in Vienna, Austria: Democracy and Human Rights: Where America Stands (June 14, 1993). The Author was present at this speech.

6. S. EXEC. DOC. NO. 103-38, at 3 (1994); SITARAMAN, *supra* note 3, at 196.

7. S. EXEC. DOC. NO. 107-9, at 4 (2002).

8. President George W. Bush stated that he was "generally in favor of" ratification, but held the treaty back for "further analysis," largely because of right-wing opposition. SITARAMAN, *supra* note 3, at 196.

Committee on the Judiciary held another hearing in 2010,⁹ but as of 2014, the supermajority remains unreachable. Indeed, the failure in 2012 to ratify the International Convention on the Rights of Persons with Disabilities, which was drafted largely on the framework of the Americans with Disabilities Act, demonstrates how far we have to go.¹⁰

Sooner or later, however, the pendulum swings back. We must be prepared for that moment, politically and substantively.

II. APPLYING THE CONVENTION SUBSTANTIVELY

A. Direct Reference to the Convention in United States Courts

The most significant legal issue as to Convention implementation is its status as a source of law. If and when we do ratify, we will undoubtedly do so with a declaration indicating that the treaty will not be self-executing, thereby nullifying the Supremacy Clause,¹¹ as we have with respect to all of our human rights treaty ratifications. The legal status of such declarations is somewhat ambiguous,¹² but as a practical matter, the United States is

9. *Women's Rights Are Human Rights: U.S. Ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW): Hearing Before the Subcomm. on Human Rights and the Law of the S. Comm. on the Judiciary*, 111th Cong. (2010).

10. Barbara Crossette, *Once Again, Senate Republicans Reject International Human Rights*, NATION (Dec. 12, 2012), <http://www.thenation.com/article/171724/once-again-senate-republicans-reject-international-human-rights#>.

11. U.S. CONST. art. VI, cl. 2 (“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”).

12. Vienna Convention on the Law of Treaties art. 19, May 23, 1969, 1155 U.N.T.S. 331 (entered into force Jan. 27, 1980), provides that States parties may enter reservations at the time of ratification. It does not mention declarations. A number of States parties to human rights treaties have entered statements designated “declaration” or “understanding” at the time of ratification. While a distinction presumably exists, the substance of some declarations and understandings may be indistinguishable from that of a reservation. Because such statements are not anticipated in the Vienna Convention, their formal legal impact on obligations is uncertain, as is the possibility of withdrawal, and the effect of the distinction has not been tested. However, according to the U.N. Office of Legal Affairs, “any such statement purporting to exclude or modify the legal effect of a treaty provision with regard to the declarant is, in fact, a reservation (see article 2 (1) (d) of the Vienna

clearly on record that the provisions of human rights treaties will not be treated as “the supreme Law of the Land” on an equal basis with the Constitution.

This state of affairs is somewhat circular as common law systems generally are dualist—treaties do not take on the force of law upon ratification as they do in most civil law countries. The Supremacy Clause is actually unusual for a common law state. It has been taken to mean in many cases that a treaty is enforceable without further legislation and that in determining whether a law or policy is constitutionally permitted, the courts should look to the provisions of relevant treaties to assist in determining the meaning and applicability of constitutional language. Through the first half of the twentieth century this premise was largely unquestioned, and the Supreme Court alluded to our international treaty obligations in a number of cases.¹³

However, since the middle of the twentieth century, with the establishment of the international human rights treaty regime, the United States’ approach to invoking treaties has shifted.¹⁴ This shift has occurred largely because human rights treaties, unlike other treaties, articulate obligations of a state to the individuals and entities within its jurisdiction. Their provisions refer to policies over which states always had sole and unquestioned control, from citizens’ freedom to associate in public, to fair trials, to equality in that historically most private place: the family. The human rights treaty system provides an international forum for questioning the state’s behavior *within its borders*. In this sense, the human rights regime is revolutionary, and to many governments, very annoying.

Convention 1969).” TREATY SECTION, OFFICE OF LEGAL AFFAIRS, UNITED NATIONS, TREATY HANDBOOK § 3.5.1 (reprt. 2006).

13. There is a vast array of literature on the application of international law in United States courts. Useful overviews are: David Sloss, *The Domestication of International Human Rights: Non-Self-Executing Declarations and Human Rights Treaties*, 24 YALE J. INT’L L. 129 (1999); Oona A. Hathaway, Sabria McElroy & Sara Aronchick Solow, *International Law at Home: Enforcing Treaties in U.S. Courts*, 37 YALE J. INT’L L. 51, 63-76 (2012); and M. Shah Alam, *Enforcement of International Human Rights by Domestic Courts in the United States*, 10 ANN. SURV. INT’L & COMP. L. 27 (2004).

14. Hathaway, McElroy & Solow, *supra* note 13, at 68-69.

B. The Peremptory Declaration Does Not Mean the Treaty Cannot or Will Not Be Invoked in Our Courts

In many common law jurisdictions, the strict rule of non-incorporation has gradually eroded in the last two decades.¹⁵ I offer a bit of global background on the issue.

From 1988 through 1998, the Commonwealth Secretariat and Interights, a London-based human rights nongovernmental organization (NGO), held eight judicial colloquia on the use of international human rights norms in common law systems. Attendees of these colloquia included American judges (notably, Ruth Bader Ginsburg participated in the 1988 colloquium). The first colloquium, held in India, issued the Bangalore Principles, outlining the importance of international human rights principles in all legal systems, noting the growing body of jurisprudence on application of human rights norms, and noting that in common law systems “there is a growing tendency for national courts to have regard to these international norms for the purpose of deciding cases where the domestic law—whether constitutional, statute or common law—is uncertain or incomplete.”¹⁶

One of the subsequent colloquia (Victoria Falls, Zimbabwe, 1994), specifically addressed CEDAW and women’s human rights, stating

that it is essential to promote a culture of respect for internationally and regionally stated human rights norms and particularly those affecting women. Such norms should be applied in the domestic courts of all nations and given full effect. They ought not to be considered as alien to domestic law in national courts.¹⁷

The statement issued by the final colloquium, held once again in Bangalore in 1998, indicated that the position of many common law courts had evolved to an increased acceptance of international

15. See generally Melissa A. Waters, “Foreign Authority” Through a Narrow Lens: Interpretive Incorporation of Treaties (Univ. Ga. Int’l Law Colloquium Series, 2007), available at <http://www.law.uga.edu/intl/waters.pdf>. See also Michael Kirby, *International Law—The Impact on National Constitutions*, 21 AM. U. INT’L L. REV. 327 (2006).

16. Concluding Statement of the Judicial Colloquium on the Domestic Application of International Human Rights Norms in Bangalore, India ¶ 4 (Feb. 26, 1988), reprinted in 6 COMMONWEALTH SECRETARIAT, DEVELOPING HUMAN RIGHTS JURISPRUDENCE 199, 199 (1995).

17. Commonwealth of Nations, The Victoria Falls Declaration of Principles for the Promotion of the Human Rights of Women ¶ 8 (1994).

law as a guide to evaluation and application of domestic laws.¹⁸ While judges in domestic systems may disagree as to the extent to which international law, and treaties specifically, may be used in their deliberations, the general trend is well documented.

Certainly the concept of using international law as an instrument of interpretation has been endorsed by some United States Supreme Court justices. The evolution of this practice will, of course, depend on the membership of the Court—meaning, it will depend on the next presidential election.

Clearly, this potential use of CEDAW will have to be promoted by the bar. I see here a whole new opportunity for continuing legal education providers.

C. The Most Critical Legal Issue: Our Scale of Scrutiny in Discrimination Cases

1. *The International Standard*

The obligation to eliminate all forms of discrimination against women, as stated in the Convention and as normatively developed by the Committee, is absolute, as in fact is the nondiscrimination standard included in other human rights treaties.¹⁹ The ICCPR and the International Convention on Economic, Social and Cultural Rights (ICESCSR), both adopted by the General Assembly in 1966 and in force since 1976, include very specific language requiring equal enjoyment of the rights in the respective treaties as well as separate, general nondiscrimination provisions.²⁰ Both covenant monitoring

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It is the vital duty of an independent, impartial and well-qualified judiciary, assisted by an independent, well-trained legal profession, to interpret and apply national constitutions and ordinary legislation in harmony with international human rights codes and customary international law, and to develop the common law in the light of the values and principles enshrined in international human rights law.

Lord Lester of Herne Hill, QC, *The Challenge of Bangalore: Making Human Rights a Practical Reality*, COMMONWEALTH L. BULL., Spring 1999, at 47, 57-58; see also Waters, *supra* note 15.

19. Convention on the Rights of the Child art. 2, ¶ 1, Nov. 20, 1989, 1577 U.N.T.S. 3; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families art. 1, ¶ 1, Dec. 18, 1990, 2220 U.N.T.S. 3; Convention on the Rights of Persons with Disabilities art. 3, Dec. 13, 2006, 2515 U.N.T.S. 3; Convention on the Rights of Persons with Disabilities, *supra*, at 75.

20. International Covenant on Civil and Political Rights art. 2, ¶ 1, Dec. 19, 1966, 999 U.N.T.S. 171; International Covenant on Civil and Political Rights, *supra*,

bodies have adopted general comments elaborating upon the subject.²¹ The monitoring bodies for the other treaties adopted prior to 1989 have also adopted jurisprudence to address sex discrimination.²²

I must mention that every one of these actions to clarify the application of the treaties as to sex discrimination was undertaken by one or two female members of the respective treaty bodies. Most of the men supported the outcome, but the women took the lead and did the work.

The norm of nondiscrimination on the basis of sex is clear and immediately applicable. That is, States parties are not allowed to “get around to” dealing with sex discrimination under any of the human rights treaties.²³ Therefore, if we ratified, we would have to deal somehow with our lack of a strong constitutional nondiscrimination standard.

2. *The U.S. Constitutional Standard*

Every law student learns about the sliding scale of scrutiny applied to determine whether discrimination is prohibited under our Constitution. The scrutiny level applicable to sex discrimination cases is not the strongest, which, given the history of sex

at 174; International Covenant on Economic, Social and Cultural Rights art. 2, ¶ 2, Dec. 16, 1966, 993 U.N.T.S. 3; International Covenant on Economic, Social and Cultural Rights, *supra*, at 5.

21. Rep. of the Human Rights Comm., 67th Sess., 68th Sess., 69th Sess., Oct. 18-Nov. 5, 1999, Mar. 13-31, 2000, July 10-28, 2000, U.N. Doc. A/55/40 (Vol. I), Annex VI; GAOR, 55th Sess., Supp. No. 40 (2000); Rep. of the Comm. on Econ., Soc. & Cultural Rights, 34th Sess., 35th Sess., Apr. 25-May 13, 2005, Nov. 7-25, 2005, U.N. Doc. E/C.12/2005/5, Annex VIII; E/2006/22, Supp. No. 2 (2006); Comm. on Econ., Soc. & Cultural Rights, 42d Sess., 43d Sess., May 4-22, 2009, Nov. 2-20, 2009, U.N. Doc. E/C.12/2009/3, Annex VI; E/2010/22, Supp. No. 2 (2010).

22. Rep. of the Comm. on the Elimination of Racial Discrimination, 56th Sess., Mar. 6-24, 2000, U.N. Doc. A/55/18, Annex V; GAOR, 55th Sess., Supp. No. 18 (2000). The Committee Against Torture (CAT) has regularly cited violence against women as a compliance issue since 2001. *See, e.g.*, Rep. of the Comm. Against Torture, 49th Sess., 50th Sess., Oct. 29-Nov. 30, 2012, May 6-31, 2013, U.N. Doc. A/68/44; GAOR, 68th Sess., Supp. No. 44 (2013); Rep. of the Comm. Against Torture, 47th Sess., 48th Sess., Oct. 31-Nov. 25, 2011, May 7-June 1, 2012, U.N. Doc. No. A/67/44; GAOR, 67th Sess., Supp. No. 44 (2012); Rep. of the Comm. Against Torture, 25th Sess., 26th Sess., Nov. 13-24, 2000, Apr. 30-May 18, 2001, U.N. Doc. A/56/44; GAOR, 56th Sess., Supp. No. 44 (2001).

23. WOUTER VANDENHOLE, NON-DISCRIMINATION AND EQUALITY IN THE VIEW OF THE UN HUMAN RIGHTS TREATY BODIES 83-86 (2005).

discrimination in the United States and on the planet, is rather shameful. In the mid-1990s, after ratification failed in the Clinton administration, there was a spate of articles (well, a few) about this failure and what CEDAW would mean to us if ratified. One of the most comprehensive articles, written by Ann Elizabeth Mayer, pointed out in the clearest possible language that our constitutional standard for determining whether a particular form or act of sex discrimination has occurred is seriously flawed according to the norm embodied in CEDAW.²⁴ Our “intermediate scrutiny” standard for applying the Fourteenth Amendment in sex discrimination cases does not come anywhere near the international standard. The article was written in 1995. As to sex discrimination, nothing really has changed.

D. The Most Critical Practical Issue: Substantive Equality

Through more than thirty years of monitoring States parties’ Convention implementation, the CEDAW Committee has established the norm of *substantive equality* for measuring States’ compliance. Substantive equality refers to equality in fact—the result of eliminating discrimination in practice. States parties have a fundamental obligation not only to adopt laws and policies designed to eliminate discrimination—formal equality—but also to implement those laws to eliminate discriminatory outcomes.

Challenges to discrimination, and the promotion of substantive equality, can be quite difficult in even the most economically developed state, as the challenge involves identifying cultural norms and gender stereotypes that inform state policy and everyday practice. The Convention requires States parties to identify discriminatory practices and outcomes, investigate the causes of discrimination, and adopt new laws and policies that will change the outcomes. Achieving substantive equality requires investing in research to define the issues, training government employees to carry out their responsibilities without engaging in stereotyping or discriminatory behavior, establishing clear standards and incentives for the private sector to do the same, and monitoring the implementation of laws designed to address discrimination.

24. Ann Elizabeth Mayer, *Reflections on the Proposed United States Reservations to CEDAW: Should the Constitution Be an Obstacle to Human Rights?*, 23 HASTINGS CONST. L.Q. 727 (1996).

While many state and federal laws address employment discrimination, equality in education, violence against women, and equality (sometimes) in the family, we live with a piecemeal system that requires constant fighting for incremental change and lacks comprehensive oversight—or even monitoring. I will not detail the battle over reproductive rights in this country; it has become a separate, grief-inducing subject. I will say, however, that the reproductive rights community has the most effective women’s human rights monitoring system in the country, and I only wish that we could do as well regarding other issues, inside and outside government.

I don’t endorse what is referred to in international circles as “women’s machinery,” ministries or special offices that are supposed to deal with status-of-women issues, as a solution to all that ails government approaches to sex discrimination. In too many places they are basically window dressing—under-resourced and lacking professionalism and power. I do, however, lament that we have no properly resourced, permanent commission or agency that at the least can be an information resource for policymakers and a liaison, if not a watchdog, for civil society. We don’t need CEDAW to make that happen, but it would help.

III. PROCESS

A. The Uses of the Reporting Procedure

Like all the human rights treaties, the Convention includes a reporting requirement: States parties must provide a baseline report on the state of women’s human rights within one year of ratification, and they must report every four years thereafter on progress in Convention implementation.²⁵ As a practical matter, many States parties lag in their reporting, while, even with many reports missing, the Committee has a backlog of reports to review.²⁶

Despite its flaws, the reporting system provides considerable opportunity for civil society (NGOs) to engage with government and with the Committee. According to the Committee, civil society

25. CEDAW, *supra* note 1, at 22. The periodicity varies, according to the terms of the respective treaties, from two to five years.

26. The timing and system resource issues related to reporting and reviews are admittedly a problem, one which has been under review since 2004 by the Office of the High Commissioner for Human Rights, the States parties, and more recently, the General Assembly. This process is a subject for a different discussion.

should be consulted in the States' preparation of the reports, and the reports should include information on issues that civil society identifies as critical. This does not always happen, and the Committee specifically asks the States parties about civil society involvement in report preparation.

When a State party report is scheduled for review, the Committee welcomes information from NGOs and national human rights institutions, as well as U.N. agencies, to supplement—and sometimes to contradict—the information provided by the government. Since 1992, the Committee has accepted written NGO “shadow reports,” and the experts frequently frame questions to the government based on information provided in these reports. In addition, the Committee allocates time for brief NGO presentations, with interpretation, during its on-the-record meetings and schedules informal midday briefings with NGOs during the session in which their State is to be reviewed.

The process of preparing NGO reports is itself a significant opportunity for organizing advocacy. The Committee prefers to receive relatively few consolidated reports prepared by coalitions, rather than many reports prepared by individual NGOs. To meet this expectation, NGOs must organize among themselves, prioritize issues, and collaborate in writing and editing. This exercise can bring out the best and the worst in any community; ultimately—ideally—it can result in new alliances and new knowledge.

Working alliances and knowledge capacity are critical to successful Convention monitoring, which should be a continuing effort rather than a hyper-focused activity prompted by a scheduled review. The Convention should be understood as a fundamental framework for promoting equality with reporting seen as a benchmarking activity rather than as an end in itself.

B. Domestic Advocacy: Bringing CEDAW Home

While ratification would not have an immediate formal impact on American law, it would change the substantive and procedural “opportunity structure” for policymaking and provide a clear, universal human rights framework for working on the issues.²⁷ Given the current stagnation in addressing equality issues, a fresh approach

27. Lisa Baldez, *Why Hasn't the US Ratified the UN Women's Rights Convention?* 24 (Am. Political Sci. Ass'n, 2011), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1900265.

is long overdue. Presenting legislation and policy initiatives to provide for substantive equality as developed in the CEDAW framework could reenergize the discussion.²⁸

Specifically at the local level, in the absence of federal CEDAW ratification, U.S. advocates have succeeded in bringing the Convention to the attention of state and municipal authorities. Indeed, this level of implementation is required where the Convention has been ratified at the national level.²⁹ The Committee has begun to request States parties to report on implementation in states, provinces, and municipalities; to the extent that state and local governments have acknowledged its significance, the United States is a bit ahead of the game. A number of state legislatures and cities have adopted resolutions in support of CEDAW ratification.³⁰

28. See Sally Engle Merry et al., *Law from Below: Women's Human Rights and Social Movements in New York City*, 44 *LAW & SOC'Y REV.* 101, 101-28 (2010); see also N.Y.C. HUM. RTS. INITIATIVE, <http://nychri.org> (last visited Mar. 10, 2014); HUMAN RIGHTS INST., COLUMBIA LAW SCH., BRINGING HUMAN RIGHTS HOME: HOW STATE AND LOCAL GOVERNMENTS CAN USE HUMAN RIGHTS TO ADVANCE LOCAL POLICY (2012), available at <http://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/Bringing%20Human%20Rights%20Home.pdf>.

29. See, e.g., Comm. on the Elimination of Discrimination against Women, Concluding Comments of the Committee on the Elimination of Discrimination against Women: Tajikistan, 37th Sess., Jan. 15-Feb. 2, 2007, ¶ 41, U.N. Doc. CEDAW/C/TJK/CO/3 (Feb. 2, 2007) (recommending “involve[ment of] local authorities in the preparation of the future periodic reports under article 18 of [CEDAW] and in the follow-up”); Comm. on the Elimination of Discrimination against Women, Concluding Observations of the Committee on the Elimination of Discrimination against Women: Belgium, 42d Sess., Oct. 20-Nov. 7, 2008, ¶¶ 10, 14, U.N. Doc. CEDAW/C/BEL/CO/67 (Nov. 8, 2008) (recommending the effective coordination of the efforts of numerous federal and local structures to implement CEDAW); Comm. on the Elimination of Discrimination against Women, Concluding Observations on the Combined Seventh and Eighth Periodic Reports of Hungary Adopted by the Committee at Its Fifty Fourth Session, 54th Sess., Feb. 11-Mar. 1, 2013, ¶ 42, U.N. Doc. CEDAW/C/HUN/CO/7-8 (Mar. 1, 2013) (recommending dissemination of the Committee’s recommendations at all levels of government “to enable their implementation”); Rep. of the Comm. on the Elimination of Discrimination against Women, 32d Sess., 33d Sess., Jan. 10-28, 2005, July 5-22, 2005, ¶ 321, U.N. Doc. A/60/38; GAOR, 60th Sess., Supp. No. 38 (2005) (recommending promotion of “uniformity of norms and results in the implementation of [CEDAW] throughout the country through effective coordination and the establishment of mechanisms to ensure the full implementation of [CEDAW] by all regional and local authorities and institutions”).

30. *CEDAW Advances Women's Human Rights*, CENTER FOR REPROD. RTS. (Jan. 1, 2004), <http://reproductiverights.org/en/document/cedaw-advances-womens-human-rights>; THE GEN. FED'N OF WOMEN'S CLUBS, STATES, COUNTIES AND CITIES

The first city to adopt the Convention in substance was San Francisco, which also established a CEDAW Task Force to design and test implementation strategies.³¹ The Task Force requested two city departments, Public Works and Juvenile Probation, to analyze their operations, to determine whether they were discriminatory as a practical matter, and to determine how they could change operations to eliminate the discrimination. As a result, the Public Works Department redesigned street lighting to increase safety, which was particularly relevant to women's lives, and the Juvenile Detention Department looked closely at how it was serving girls.³²

After its five-year mandate ended, the role of the Task Force was subsumed into the city's Department on the Status of Women. The Department has continued to update gender analyses of certain departments, although documentation is available only through 2011.³³ In 2013, when U.S. implementation of the ICCPR³⁴ was due to be reviewed by the Human Rights Committee, the Department submitted a report on employment discrimination issues in the United States.³⁵

Los Angeles and Berkeley have adopted similar ordinances, but they have not undertaken implementation at this point.³⁶ In New York City, a coalition of NGOs launched the New York Human Rights Initiative in 2002, focusing on adoption of an ordinance that

THAT HAVE PASSED RESOLUTIONS ABOUT CEDAW (2005), *available at* http://nychri.org/documents/CEDAWRes_000.pdf.

31. S.F., CAL., ADMINISTRATIVE CODE § 12K.1 (2014), *available at* <http://www.sfgov3.org/index.aspx?page=130>.

32. For a complete description of the San Francisco's experience through 2009, see ANU MENON, S.F. DEP'T ON THE STATUS OF WOMEN, HUMAN RIGHTS IN ACTION: SAN FRANCISCO'S LOCAL IMPLEMENTATION OF THE UNITED NATIONS' WOMEN'S TREATY (CEDAW) (2010), *available at* <http://www.sfgov3.org/Modules/ShowDocument.aspx?documentid=314>.

33. *Gender Analysis Reports*, CITY & COUNTY S.F. DEP'T ON STATUS WOMEN, <http://www.sfgov3.org/index.aspx?page=108> (last visited Mar. 10, 2014).

34. The United States ratified the International Covenant on Civil and Political Rights in 1992. *International Covenant on Civil and Political Rights*, UNITED NATIONS TREATY COLLECTION, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en (last visited Mar. 10, 2014).

35. S.F. DEP'T ON THE STATUS OF WOMEN, REPORT ON SEX-BASED DISCRIMINATION IN THE AMERICAN WORKPLACE UNDER THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (2013), *available at* <http://www.genderprinciples.org/images/uploaded/files/2013%20ICCPR%20Full%20Report%20FINAL.pdf>.

36. *See, e.g.*, BERKELEY, CAL., MUNICIPAL CODE ch. 13.20 (2014).

combined the principles of CEDAW and of CERD, which the United States has ratified.³⁷

CONCLUSION

So here we are, in 2014, one of eight countries that has not ratified CEDAW; and we are pretty unhappy about that. Still, I do expect ratification in my lifetime, and the new generations of lawyers and law students can help make that happen.

Regardless of any limitations that may attach to our ratification, its presence in our framework for policymaking and advocacy will make a difference. CEDAW offers a comprehensive, universal standard of equality between women and men in every aspect of life. Implementation may be imperfect and messy, as is life in general. *But, this treaty offers the gold standard for achieving equality, and we deserve to have it.*

37. The legislation stalled, but the group continued advocacy and training for some years. For a detailed description of the project, see Merry et al., *supra* note 28, at 109-18.

