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ESTABLISHING THE RIGHTS OF WOMEN GLOBALLY: HAS THE UNITED NATIONS CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN MADE A DIFFERENCE?

Rebecca L. Hillock[†]

I. INTRODUCTION

“Our problem is autocracy. One man ruling the entire people. . . . [W]e are born into fear and are brought up to fear authority. The political and religious authorities collaborate and terrorize us, that is why we do not create.”¹

- Egyptian women’s rights activist, Nawal Al-Sa’dawi

For centuries, women across the globe have suffered unspeakable human rights violations at the hands of government officials, religious leaders, and individual citizens.² Women have endured much more than simply an unequal footing with men in society.³ In some instances, women have been beaten, raped, sexually mutilated, prostituted, and murdered by family members among

† J.D., University of Tulsa College of Law, Tulsa, Oklahoma, May 2006; B.B.A., Business Administration, Northeastern State University, Tahlequah, Oklahoma, May 2003. The author wishes to dedicate this comment to three women who have been an inspiration in writing on women’s rights: to my mother, Bobbie Osborne, who has overcome many obstacles in her life in order to create a better life for her children; to Kim Blasingame, who has been my best friend and source of support and strength since we were thirteen years old; and Andrea Medley, without whom I would not have written this comment and who has always had faith in me and my writing abilities. The author also wishes to thank the editors and staff of the ILJ for this opportunity and for their support during the writing of this comment. Lastly, the author wishes to dedicate this comment to my children, Daniel, Courtney, and Dylan Hillock, who are and will always be my inspiration for creating a better world in which their possibilities for a happy and successful life are endless.

1. *Egyptian Women’s Rights Activist Nawal Al-Sa’dawi: The Political and Religious Authorities Collaborate and Terrorize Us*, THE MIDDLE E. RES. INST., June 29, 2004, at <http://www.memritv.org/Transcript.asp?PI=139> (last visited Mar. 1, 2005) [hereinafter *Religious Authorities*].

2. Julie A. Minor, *An Analysis of Structural Weaknesses in the Convention on the Elimination of All Forms of Discrimination Against Women*, 24 GA. J. INT’L & COMP. L. 137, 151 (1994).

3. *Id.* at 151.

other atrocities, while their government officials, if not responsible themselves, did nothing to prevent the act nor brought those responsible to justice.⁴

It would seem in this modern age, where human dignity is so highly valued, that this sort of abuse would be a thing of the past, yet the abuse of women continues today on a daily basis all over the world.⁵ Some examples of the abuse still occurring include the story of an Egyptian woman who Egyptian authorities freed in July of 1999.⁶ The twenty-three year old woman was locked in a dark, tiny room by her father for over three months with little food or water.⁷ She was being punished for divorcing her eighty-year-old husband and had only survived because her stepbrother smuggled water and bread to her through a small hole every five days.⁸ Another example occurred in August 2004 when a Muslim cleric member preached a sermon, which was broadcast on Qatar TV, defending the Islamic law, which advocates wife beating and claiming that "some wives, due to their nature, must be beaten."⁹ And recently in Turkey, the governing party considered a proposal to criminalize adultery. This could potentially bring even more damage to women in a country where the honor killings of promiscuous women are still a very real occurrence.¹⁰

Equality and human dignity are the two basic fundamental rights at the core of the human rights movement.¹¹ The United Nations Universal Declaration of Human Rights declares that "[a]ll human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."¹²

The United Nations (U.N.) sought to extend this spirit of brotherhood to women through the adoption of the Convention on the Elimination of All Forms of Discrimination against Women (the Convention) in 1979.¹³ Although equality for women has always been a fundamental principle of the U.N., sex discrimination remains prevalent; therefore, the U.N. Assembly thought it best to

4. *Id.* at 151-52.

5. *Id.* at 151.

6. *World: Africa: Egyptian Woman Locked up by Father*, B.B.C. NEWS, July 15, 1999, available at <http://news.bbc.co.uk/1/hi/world/africa/395440.stm> (last visited Mar. 30, 2005).

7. *Id.*

8. *Id.*

9. *Muslim Cleric: Some Wives Need to be Beaten*, WORLD NET DAILY, Sept. 3, 2004, at http://www.worldnetdaily.com/news/article.asp?ARTICLE_ID=40276 (last visited Mar. 1, 2005).

10. Susan Sachs, *Adultery a Crime? The Turks Think Again and Say No*, N.Y. TIMES, Sept. 15, 2004, at A3.

11. *See Universal Declaration of Human Rights*, G.A. Res. 217A (III), U.N. GAOR, 3d Sess., Supp. No. 13, U.N. Doc. A/810 (1948) [hereinafter *UDHR*].

12. *Id.* art. 1.

13. *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 *Convention*].

afford women protections in addition to those declared in the International Bill of Human Rights.¹⁴ The Convention outlines very specific measures in the areas of politics, culture, society, civility, and the economy, to which State parties are to adhere to and report back to the Assembly. A commission, established by the Convention, follows up on these reports.¹⁵

It has been twenty-five years since the adoption of the Convention, and since that time there have been ninety-eight signatures and 179 ratifications, accessions, and successions, which means that over ninety percent of the Members of the U.N. are parties to this Convention (excluding the United States, which has signed, but not ratified the Convention).¹⁶ Despite the seemingly overwhelming global support of the Convention, women today still suffer gross violations of their human rights within the very countries that have ratified this treaty.¹⁷

This comment will take a comparative look at Egypt, which ratified the Convention, and the United States, which has not, in order to show that the Convention has not made the impact originally hoped for when first put into force. This comment concludes that the reason for the Convention's failure to help women in their fight for human rights is that the Convention is a band-aid approach to a much bigger illness – that of a non-democratic form of government in which women are not truly free – and that equal human rights for women may only flourish within a democratic society. Part II of this comment will examine the scope of the Convention in detail regarding procedural requirements expected of State parties. Part III compares Egypt and the United States, two countries that both initially signed the Convention, and will analyze why the United States has seen much success in the women's rights movement while Egypt has not. Part IV addresses the reasoning behind the United States' choice in not ratifying the Convention. Part V concludes with an analysis of new ways in which the United States can continue to advance women's rights issues globally while preserving the right to self-governance.

14. *Fact Sheet No. 22, Discrimination against Women: The Convention and the Committee*, Office of the High Commissioner for Human Rights, June 23, 1993, U.N. Doc. A/CONF. 157.24 (Part I), Chap. III [hereinafter *Fact Sheet*].

15. *20th anniversary of Women's Convention: Time to take women's human rights seriously*, AMNESTY INTL'L., Dec. 17, 1999, at <http://web.amnesty.org/library/index/engior510061999> (last visited Mar. 1, 2005).

16. *States Parties*, United Nations Division for the Advancement of Women, Mar. 26, 2004, at <http://www.un.org/womenwatch/daw/cedaw/states.htm> (last visited Mar. 1, 2005) [hereinafter *State Parties*].

17. *See generally Concluding Observations*, United Nations Office of the High Commissioner for Human Rights, Committee on the Elimination of Discrimination against Women, U.N. Doc. A/48/38-A/57/38 (describing the many forms of discrimination still encountered by women within various State parties to the Convention) [hereinafter *Concluding Observations*].

II. SCOPE OF THE CONVENTION

A. *History of the Convention*

The International Bill of Rights, although certainly applicable to women, did not guarantee women the freedom to enjoy these rights based on their humanity alone.¹⁸ To further implement the rights due to women, the U. N. established the Commission on the Status of Women (CSW) as a subcommittee of the Commission on Human Rights in 1949 (it was later promoted to a full commission due to pressure from women's activists groups).¹⁹ The purpose of CSW was to provide recommendations on any urgent problems relating to the discrimination of women in any form, and to submit proposals detailing how the recommendations should be implemented.²⁰ Over the course of ten years, between 1949 and 1959, CSW implemented the following conventions in areas, which they felt were especially vulnerable to discrimination against women:

- The Convention on the Political Rights of Women (adopted Dec. 20, 1952),
- The Convention on the Nationality of Married Women (adopted Jan. 29, 1957),
- The Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (adopted Nov. 7, 1962), and
- The Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (adopted Nov. 1, 1965).²¹

Although the steps taken by CSW in adopting these conventions were significant in addressing the rights of women globally, the General Assembly sought a more comprehensive declaration of the rights of women in a single instrument.²² This led to the adoption of Resolution 1921, which formally "requested the Economic and Social Council to invite the CSW to prepare a draft declaration."²³ CSW began drafting the document in 1965 and finished with the Declaration on the Elimination of Discrimination against Women being adopted on November 7, 1967 by the General Assembly.²⁴

In the years that followed the adoption of the Declaration, the CSW debated on whether to push for a binding treaty to which States must commit themselves

18. *CEDAW Convention: A Short History of the Convention*, United Nations Division for the Advancement of Women, U.N. Doc. A/CONF.177/7 [hereinafter *History*].

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. See *History*, *supra* note 18.

in implementing the statements given in the Declaration.²⁵ It submitted this idea to the Secretary-General, who in turn submitted it to the Member States for their comment.²⁶ The survey resulted in the decision in 1974 to draft a single, comprehensive treaty eliminating all forms of discrimination against women on a global scale.²⁷ CSW prepared the text, which culminated in the adoption of the Convention on the Elimination of All Forms of Discrimination against Women in 1979 with a vote of 130 to zero.²⁸ At a special ceremony at the Copenhagen Conference on July 17, 1980, sixty-four states signed the Convention,²⁹ including the United States and Egypt.³⁰

B. Definition of Discrimination Against Women

Article 1 of the Convention gives a comprehensive description of what the term "discrimination against women" entails.³¹ It states:

the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.³²

This definition can be read to encompass any differential treatment on the basis of gender that: 1) disadvantages women, 2) prevents the recognition of women's rights in the domestic and public domain, or 3) prevents the exercise of women's rights and fundamental freedoms.³³

The first threshold element is the differentiation of treatment based on sex; however, not all differentiation in treatment is de facto discriminatory under the Convention.³⁴ If the action does not fit into the criteria set above, it is not considered discriminatory and is therefore not covered under the Convention.³⁵

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. *See States Parties, supra* note 16.

31. *Convention, supra* note 13, art. 1.

32. *Id.*

33. *Fact Sheet, supra* note 14, art. 1.

34. *Id.*

35. *Id.*

C. Measures to be Taken by State Parties to the Convention

Article 2 gives an overall view of the general requirements States must meet in implementing the Convention.³⁶ States must reform domestic legislation and amend their constitutions to ensure equality for the women in their country, including the repeal of any discriminatory laws and regulations.³⁷ The ratifying parties are also required to establish a tribunal system for women to file complaints, should their rights be violated in any way listed in Article 1.³⁸ Article 2 also requires that States give protection in the private sector by taking "all appropriate measures to eliminate discrimination against women by any person, organization or enterprise."³⁹ Articles 5 through 16 proceed to list in detail the various provisions which are to be followed in avoiding discrimination by the adopting States.⁴⁰ These include social and cultural patterns, exploitation of women, political and public life at the national and international level, nationality laws, education, employment and labor, access to health facilities, finance and social security, matters relating to rural women, legal and civil matters, and family law.⁴¹

D. Implementation of the Provisions

Article 17 establishes the Committee on the Elimination of Discrimination against Women (The Committee) that manages the implementation of the Convention provisions.⁴² Members of this committee are nominated and elected by the State parties to four-year terms and consist "of twenty-three experts of high moral standing and competence in the field covered by the Convention."⁴³ Interestingly, since the Committee's inception, every committee has been entirely composed of women, with one exception.⁴⁴

The major function of the Committee in its position as overseer is to review the reports which must be submitted by the State parties every four years.⁴⁵ These reports consist of the legislative, judicial, and administrative measures the State has taken during that time period in implementing the provisions mandated in the previous Articles of the Convention.⁴⁶ Once the Committee reviews the reports, they make recommendations and suggestions, which they must report to

36. *Id.* art. 2.

37. *Id.*

38. *Id.*

39. Convention, *supra* note 13, art. 2.

40. *Fact Sheet*, *supra* note 14, arts. 5-16.

41. Convention, *supra* note 13, arts. 5-16.

42. *Fact Sheet*, *supra* note 14, art. 17.

43. Convention, *supra* note 13, art. 17.

44. *Fact Sheet*, *supra* note 14, pt. II.

45. *Id.*

46. Convention, *supra* note 13, art. 18.

the General Assembly through the Economic and Social Council.⁴⁷ The Secretary-General then submits these reports to the Committee on the Status of Women to keep them abreast of the situations within each of the ratifying States.⁴⁸

The process of submitting the country reports would seem rather simple, but the reality of the reporting process is one fraught with difficulty.⁴⁹ A record number of incomplete and overdue reports have occurred, with one of the worst periods being in October of 1993, in which seventy-two State parties had failed to submit their reports on time.⁵⁰ This number amounted to over two-thirds of the entire State parties at that time.⁵¹

Some of the problems involved in implementing these reports are a result of the daunting task of collecting information, combined with a lack of competent personnel and resources within the department assigned to collect this information.⁵² In light of this, the Committee has issued two sets of guidelines to help the State parties in their reporting processes.⁵³ These guidelines recommend dividing the reports into two separate parts in order to make the process less complex.⁵⁴ The first section would entail the country's general measures taken to implement the program within their political and social structure, and the second section would give a detailed description of any steps taken to comply with the provisions listed in the Convention.⁵⁵

III. A COMPARATIVE LOOK AT TWO STATE PARTIES

A. *A History of Two Parties*

As previously stated, since the adoption of the Convention, there have been 179 ratifications of the Women's Convention.⁵⁶ The impact of the ratification of the Convention within each of those countries would be beyond the scope of this comment; therefore, two countries will be looked at comparatively in light of their ratification/non-ratification standing. Egypt, the first country analyzed, was chosen because of several factors. First, it is one of the few Middle Eastern

47. *Id.* art. 21.

48. *Id.* art. 17.

49. *Fact Sheet*, *supra* note 14, pt. II.

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. *Fact Sheet*, *supra* note 14, pt. II.

56. *States Parties*, *supra* note 16.

countries that ratified the Women's Convention.⁵⁷ Egypt is a society that incorporates a State religion (Islam) within their governmental structure, which is a major element in the admission of Egypt's reservations to the Convention and the failure of the Convention to help women within their country.⁵⁸ Second, even though Egypt has this State religion that serves to define the role of women in their daily lives,⁵⁹ Egypt did serve as an example for a reassessment of women's rights through the eyes of Islamic law for a period of time, during which the country signed and ratified the Women's Convention.⁶⁰ This paper will analyze why the movement to reassess women's rights within Egypt failed when it was obviously on its way to making major improvements within their country.

The United States was chosen for the comparison because, even though the United States has never ratified this Convention, it has made great strides in the fight against women's human rights abuses.⁶¹ Women in the United States today enjoy the freedom to choose their own destiny and to decide how best to live their lives,⁶² contrary to many countries within the international system, including most of those listed as ratifying countries to this Convention.⁶³ The United States' success, despite non-ratification, is based upon the democratic society in which women have the right and choice to demand equal treatment.⁶⁴ The grounds given by the United States for not ratifying the Convention will be discussed in detail in Part IV below.

57. Anna Jenefsky, *Permissibility of Egypt's Reservations to the Convention on the Elimination of All Forms of Discrimination Against Women*, 15 MD. J. INT'L L. & TRADE 199, 200 (1991).

58. *Id.* at 200-01.

59. See Bharathi Anandhi Venkatraman, *Islamic States and the United Nations Convention on the Elimination of all Forms of Discrimination Against Women: Are the Shari'a and the Convention Compatible?*, 44 AM. U. L. REV. 1949 (1995).

60. Jenefsky, *supra* note 57, at 200.

61. See *Bush Celebrates Anniversary of U.S. Women's Right to Vote*, U.S. DEP'T OF STATE, Aug. 26, 2004, at <http://usinfo.state.gov/mena/Archive/2004/Aug/26-324125.html> (last visited Mar. 1, 2005) [hereinafter *Bush Celebrates*].

62. See *Convention on the Elimination of All Forms of Discrimination Against Women, Adopted by the U.N. General Assembly on December 18, 1979, and Signed on Behalf of the United States of America on July 17, 1980: Hearing Before the Comm. On Foreign Relations United States Senate*, 107th Cong., 2d Sess. (2002) (statement of Chairman), available at http://frwebgate.access.gpo.gov/cgi-bin/useftp.cgi?IPaddress=162.140.64.21&filename=80461.wais&directory=/diskc/wais/data/107_senate_hearings (last visited Mar. 1, 2005) [hereinafter *2002 Senate Hearings*].

63. See *Concluding Observations*, *supra* note 17.

64. See Wendy Wright, *The Breathtaking Arrogance of CEDAW Committee*, CONCERNED WOMEN OF AMERICA, Sept. 23, 2002, available at <http://www.cwfa.org/articledisplay.asp?id=2071&department=CWA&categoryid=nation> (last visited Mar. 23, 2005).

1. Egypt

The events leading to the ratification of the Convention by Egypt in 1980 gave rise to the proposition that Egypt was beginning to realize the importance of addressing women's human rights; however, women's rights were subsequently downplayed.⁶⁵ The downturn of events in the equal treatment of women can directly be traced to the establishment of Islam as the State religion in 1980, a political act in direct conflict with any truly democratic society.⁶⁶ Egypt's most recent country report gives a brief history of some of the progress Egypt made in the years preceding the Convention.⁶⁷ The report begins with a look at the history of various government policies Egypt implemented to ensure the equal treatment of women.⁶⁸ These include such acts as allowing access to education through the compulsory education requirement for boys and girls in 1932,⁶⁹ and granting women the right to vote as well as eligibility to run for Parliament in 1956.⁷⁰ The report then goes into the ratification of the Convention in 1981 and subsequent Egyptian laws, which are relevant to the provisions of the Convention.⁷¹ When Egypt signed the Convention in 1980, and later ratified it in September of 1981, it gave hope to thousands of Egyptian women that their day of freedom had finally come; however, this hope was short-lived.⁷² Preceding ratification, Egypt expressed several reservations to the Convention.⁷³

a. Egypt's Reservations to the Conventions

Article 28, paragraph 2 of the Convention states that "[a] reservation incompatible with the object and purpose of the present Convention shall not be permitted."⁷⁴ In light of this rule, Egypt submitted several reservations to Article 2, which include: dealing with the adoption of a policy to end

65. See generally *Consideration of Reports Submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination Against Women*, U.N. Division for the Advancement of Women, U.N. CEDAW, U.N. Doc. CEDAW C/EGY/3 (1996) [hereinafter *Reports*].

66. *Egypt Situational Analysis Woman kind Worldwide 2001*, EGYPTIAN CENTER FOR WOMEN'S RIGHTS, available at <http://www.ecwregypt.org/English/Word%20files/Egypt%20Situational%20Analysis.doc> (last visited Feb. 23, 2005) [hereinafter *Situational Analysis*].

67. See *Reports*, *supra* note 65.

68. *Id.* at 7.

69. See EGYPT CONST. art. 19 (1923).

70. See EGYPT CONST. (1956).

71. *Id.* art. 10.

72. *States Parties*, *supra* note 16.

73. United Nations Division for the Advancement of Women, *Declarations, Reservations and Objections to CEDAW*, Mar. 26, 2004, 1423 U.N.T.S. 412 [hereinafter *Declarations*].

74. *Convention*, *supra* note 13, art. 28.

discrimination; Article 9, focusing with equality in nationality rights; and Article 16, dealing with equality in marriage and family relations.⁷⁵ It is interesting to note that these reservations seem to directly conflict with the object and purpose of the Convention, which is expressly forbidden under Article 28 above.⁷⁶ The effect of Article 28 on a State reservation is essentially trivial, however, due to the fact that there is technically no authoritative means for assessing the reservation's compatibility with the Convention.⁷⁷

Like many multilateral treaties, the Convention does not clearly state its object and purpose.⁷⁸ However, the Committee has made it clear that it is very concerned with any reservations made to either Articles 2 or 16, as those provisions go to the core of the Convention.⁷⁹ The Committee indicated that any State that becomes a party to the Convention chooses to ratify it based on the concepts and provisions laid out in Article 2, which form the basis for ending discrimination in any country.⁸⁰ In general, the Committee requires the ratifying party "[t]o embody the principle of the equality of men and women . . ." and "[t]o take all appropriate measures to eliminate discrimination against women"⁸¹

The Committee has also expressed their displeasure with those countries submitting a reservation to Article 16 (equality in marriage and family relations), stating that "[n]either traditional, religious or cultural practice nor incompatible domestic laws and policies can justify violations of the Convention."⁸² Egypt stated that their country would be willing to comply with Article 16 as long as it does not interfere with Islamic *Sharia* law.⁸³ *Sharia* law can be defined as follows:

The *Qur'an* is the principal source of Islamic law, the *Sharia*. It contains the rules by which the Muslim world is governed (or should govern itself) and forms the basis for relations between man and God, between individuals, whether Muslim or non-Muslim, as well as between man and things which are part of creation. The *Sharia* contains the rules by which a Muslim society is

75. *Revisions to CEDAW*, United Nations Division for the Advancement of Women, Mar. 26, 2004, at <http://www.un.org/womenwatch/daw/cedaw/reservations.htm> (last visited Mar. 5, 2005) [hereinafter *Revisions*].

76. Convention, *supra* note 13, art. 28.

77. Jenefsky, *supra* note 57, at 210.

78. See generally Convention, *supra* note 13.

79. *Revisions*, *supra* note 75.

80. *Id.*

81. Convention, *supra* note 13, art. 2(a), (e).

82. *Revisions*, *supra* note 75.

83. Sue Robertson, *CEDAW: Holding Governments Accountable for Making Women's Rights Human Rights*, EGYPTIAN CENTER FOR WOMEN'S RTS., at <http://www.ecwregypt.org/cedaw.htm#reservations> (last visited Mar. 5, 2005).

organized and governed, and it provides the means to resolve conflicts among individuals and between the individual and the state.⁸⁴

In short, the law of *Sharia* may be said to be divided into two parts – that of public life and private life.⁸⁵ Private law can include such areas as the role of women within marriage and the family, areas which the Convention sees as ripe for the perpetration of stereotypical roles of women and human rights abuses.⁸⁶ Some examples of the conflict between the Convention and *Sharia* law include provisions within the *Sharia* that restrict a woman's right to divorce her husband based on a judge's ruling, when the husband is exempt from such ruling,⁸⁷ as well as the *Sharia's* limitations imposed on women who try to participate in public life.⁸⁸

One of the major battles in the implementation of the Convention's provisions in Egypt deals with this distinction in that the Women's Convention is formulated to impact both private conduct and public law; however, most Islamic nations see the two areas as being very distinct from one another.⁸⁹ An Islamic State that follows a strict interpretation of the *Sharia* does not allow the law to be secularly reformed.⁹⁰ This concept makes it very easy for a nation, such as Egypt, to agree to the treaty provisions publicly, yet still practice discrimination in their private conduct.⁹¹ Islam was proclaimed as the official state religion of Egypt according to its 1971 Constitution,⁹² and Egypt has made it clear that they will not adopt any policies that conflict with its teachings.⁹³ International law does protect expressions of religious faith; however, these expressions are viewed by the Committee as needing to be restricted to protect the fundamental rights of others.⁹⁴ The Committee takes the stance that the defense of "religious expression" may never be used as a defense in trampling the freedoms of others, nor may domestic policies be used to avoid compliance with a treaty that has been ratified by the home State.⁹⁵ Regardless of the State party's domestic or religious policies, the Committee remains firm on their belief

84. *Islamic Law—the Sharia*, THE MIDDLE E. INST: GEORGE CAMP KEISER LIBR., available at <http://www2.ari.net/gckl/islam/law.htm> (last visited Mar. 5, 2005).

85. Venkatraman, *supra* note 59, at 1971.

86. *Id.* at 1951.

87. *Id.* at 1960-61.

88. *Id.* at 1973.

89. *Id.* at 1971.

90. *Id.* at 1976.

91. Venkatraman, *supra* note 59, at 1971-72.

92. *Situational Analysis*, *supra* note 66, at 2.

93. Robertson, *supra* note 83.

94. Venkatraman, *supra* note 59, at 1962-63.

95. *Id.* at 1963.

that any reservations made to Article 16 are incompatible with the Convention and should be either modified or withdrawn.⁹⁶

b. Egypt's Country Reports

In reviewing Egypt's country reports, which it is required to submit every four years to the Committee,⁹⁷ one does not immediately see Egypt's resistance in implementing the provisions of the Conventions. The most recent report available for Egypt is the Combined Third and Fifth Periodic Report, which was examined by the Committee at the 24th session in 2001.⁹⁸ The report actually begins with a statement that Egypt respects the cultural and historical characteristics and values within a society, but that these values should not conflict with the values protected by the Conventions within the international community.⁹⁹ Egypt mentioned the reservations it made to the Convention in the introduction, but gave no detail as to what those reservations entail.¹⁰⁰ The report simply states:

This unshakeable policy represents Egypt's national view and its strategy with regard to human rights and freedoms at the domestic, regional and international levels. This view has been expressed in the Egyptian reservations to some provisions of the instruments in question, which have the purpose of ensuring their implementation while at the same time preserving the national particularities of Egyptian society along with those of its historical and cultural customs, characteristics and creeds that do not conflict with or infringe upon the instruments but are decidedly within the scope of the protection they provide to rights and freedoms.¹⁰¹

Egypt's "enlightened movement" of progress, which encourages women "to take their proper place in society," hints at the discrimination present and the status of women as second-class citizens.¹⁰² This statement, when coupled with Egypt's interpretation of Sharia law, in which women are limited in their participation within public life, connotes that the proper place for women is that of the home alone.¹⁰³

As stated above, the report begins with a look at the history of various laws that Egypt has implemented to ensure the equal treatment of women.¹⁰⁴ These

96. *Revisions, supra* note 75.

97. *Fact Sheet, supra* note 14, pt. II.

98. *Reports, supra* note 65.

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.* pt. I.

103. *See generally* Venkatraman, *supra* note 59.

104. *Reports, supra* note 65, at 7.

laws include such areas as the political rights of women, labor and employment law, education, civil capacity, litigation, social insurance, nationality, healthcare, the Egyptian criminal code, prostitution, commercial transactions, and the capacity for marriage and family responsibilities.¹⁰⁵ These laws, which are given as an example of compliance, are actually very discriminatory in nature. For example, the law on nationality of children born to Egyptian women discussed *infra* Part III (B)(1)(c),¹⁰⁶ and the criminal laws concerning abortion. It is interesting to note that in the discussion of the Egyptian criminal code, abortion is considered a crime punishable by either a prison sentence or hard labor, depending on whether it is a first or second offense.¹⁰⁷ The statement that a woman will be held accountable for the abortion "if she is a willing party or places herself in the hands of another" is most interesting.¹⁰⁸ The exact meaning of this statement is not given in the text, thereby giving the assumption that it is subject to interpretation.¹⁰⁹ The law states that, if the abortion is performed by either a midwife or a doctor, the penalty is raised to a life sentence, thereby giving the inference that it is better to endanger the woman's life than to seek adequate medical attention in her choice to have an abortion.¹¹⁰

Next, the report discusses the relevant authorities responsible for implementation of the provisions, beginning with the Supreme Constitutional Court.¹¹¹ The next section deals with the promotional efforts of Egypt in protecting the civil rights of women.¹¹² In regard to governmental action, Egypt claims to have advocated a number of policies that have helped raise awareness of the issues outlined in the Convention.¹¹³ These include such policies as enforcing laws relating to education, introducing the study of human rights at all levels of education, focusing on eradicating illiteracy among women, promoting women's rights awareness through the use of television and radio, encouraging NGOs in their efforts to recruit volunteers, encouraging international cooperation with the policies mentioned, creating mechanisms for monitoring and ensuring coordination between the States, and establishing research centers to implement these provisions and policies.¹¹⁴ The report then lists several entities which help to implement the rights of women:

- The National Committee for Women, which was organized in 1978,

105. *Id.* at 10-16.

106. *Id.* at 12.

107. *Id.* at 14.

108. *Id.* at 14-15.

109. *Id.* at 15.

110. *Reports, supra* note 65, arts. 260-63.

111. *Id.* at 17.

112. *Id.* at 19.

113. *Id.* at 20.

114. *Id.* at 20-21.

- The National Council for the Mother and Child, organized in 1988,
- The Ministry of Population and Family Affairs, and
- The National Population Council.¹¹⁵

c. The Reality of the Situation in Egypt

Despite the progress that Egypt has claimed in its country reports, and the existence of the above entities, the outlook for women in Egypt is still very bleak.¹¹⁶ There are still many laws in force that discriminate against women, treating them essentially as dependants of their husbands.¹¹⁷ Some examples include legislation such as the Family Code Law,¹¹⁸ which governs the rules concerning divorce, and can take anywhere from five to ten years if the wife initiates the proceedings.¹¹⁹ This Code is in tune with Islamic law, which states that a man can divorce his wife by simply uttering the word, whereas his wife must go through the court system.¹²⁰ A law known as "El-Kholgh"¹²¹ was passed under the Personal Status Law,¹²² which was initially supposed to help women by allowing them to initiate divorce without proving any grounds for doing so.¹²³ However, there are drawbacks to this, including relinquishing all financial rights¹²⁴ and losing custody of her children when the boy reaches age ten and the girl age fifteen, under Article 20 of the Personal Status Code.¹²⁵

Another example of the disproportionate treatment of women in Egypt, despite the ratification of the Convention concerns the Nationality Law.¹²⁶ This law deals with the citizenship of children born to Egyptian women, and implies that this citizenship is based on the nationality of the father.¹²⁷ If an Egyptian child is born and raised in Egypt to an Egyptian mother and non-Egyptian father, the child is not granted nationality.¹²⁸ These children are denied most benefits

115. *Id.* at 21.

116. *Women's Rights and Human Rights in the Egyptian Context*, EGYPTIAN CENTER FOR WOMEN'S RTS., at <http://www.ecwregypt.org/background.htm> (last visited Mar. 6, 2005) [hereinafter *Women's Rights*].

117. *Id.*

118. Family and Marriage Law (1979) (Egypt).

119. *Women's Rights*, *supra* note 116.

120. *Situational Analysis*, *supra* note 66.

121. Personal Status Law, No. 100 (1985) (amended Jan. 27, 2000) (Egypt).

122. Personal Status Law, No. 1 (1929) (Egypt).

123. *Women's Rights*, *supra* note 116.

124. *Id.*

125. *Situational Analysis*, *supra* note 66; *see also* Personal Status Code, art. 20 (1929) (Egypt).

126. *See* Nationality Law, No. 26 (1975) (Egypt).

127. The definition of what constitutes Egyptian nationality is defined in the Nationality Law No. 26, Article 2 which states "one who is born of an Egyptian father, or one who is born of an Egyptian mother and whose father is unknown." *Id.*; *see also Situational Analysis*, *supra* note 66.

128. *Women's Rights*, *supra* note 116.

relating to such areas as employment and education, and are essentially treated as foreigners.¹²⁹ This status does not apply to the children of Egyptian fathers and non-Egyptian mothers, however, even if they are born in another country.¹³⁰ If their father is Egyptian, they are Egyptian, regardless of where they are born or where they live.¹³¹

One of the most blatantly discriminatory laws lies in Ministerial Decree No. 864 of 1974, which states that a woman may only obtain a passport at the written consent of her husband.¹³² If her husband is not available to give his consent, a male relative on the side of the husband may give it in his place.¹³³ Therefore, the male members of the husband's family determine where and when the wife shall travel.¹³⁴

In criminal law, the most abhorrent statute concerning the abusive treatment of women deals with murdering a spouse who has been unfaithful.¹³⁵ Under Egyptian criminal law, a husband who kills his wife for being unfaithful will get a maximum of three years in prison, while a woman who kills her husband for the same act can get a life sentence.¹³⁶

d. Problems with Enforcement of the Convention

The sampling of laws discussed above are from a country who has signed and ratified the Women's Convention of 1979, thereby pledging to uphold its provisions and to guarantee equal treatment to its female citizens.¹³⁷ One might wonder how such a country can still be so openly discriminatory to women in both public and private life. There are actually several reasons.

One of the main arguments, given by advocates of the Convention for why women are still being treated unequally in Egypt, is based on one of the inherent weaknesses of the Convention. They believe that the Convention does not have the power to help women per se.¹³⁸ This is first expressed in the Convention's treatment of the reservations made by Egypt and other countries, specifically those that are made to Articles 2 and 16, as previously discussed.¹³⁹ Although these reservations seem to directly conflict with the object and purpose of the

129. *Id.*

130. *Id.*

131. *Id.*

132. Ministerial Decree No. 864 (1974) (Egypt).

133. *Id.*

134. *Id.*

135. *Situational Analysis, supra* note 66.

136. *Id.*

137. *See Convention, supra* note 13.

138. *Minor, supra* note 2, at 152.

139. *See infra* Part III (B)(1)(a).

treaty, they have not been rejected by the Convention.¹⁴⁰ This essentially means that these countries may, in theory, commit to the idea of gender equality while admitting that they have no intention of practicing gender equality.¹⁴¹ Several States have objected to some of the reservations; however, these objections do not have any legal effect on the reserving States except to exclude that portion of the treaty between themselves and the objecting party.¹⁴²

Another reason given by advocates for the lack of equal treatment is that the country reports monitored by the Committee are basically a procedural unit used as a benchmark to measure the countries' progress since the last report; thus, they are essentially of no immediate help to women.¹⁴³ The Committee, although established as a monitoring and enforcement mechanism of the Convention, possesses very little power to actually enforce any of the provisions.¹⁴⁴ It may offer recommendations based on the analysis of the country reports,¹⁴⁵ but it has no actual quasi-judicial power to declare one of the State parties in breach of any portion of the treaty.¹⁴⁶ The Convention serves only as a mechanism for bringing awareness of women's rights issues because of the lack of legal redress available to women whose countries have violated the Convention's provisions.¹⁴⁷

Another major hindrance to the implementation of the Convention within Egypt is the presence of fundamentalist groups that lobby against proposed measures dealing with women's rights.¹⁴⁸ For example, the Minister of Health banned Female Genital Mutilation (FGM) as a health hazard.¹⁴⁹ FGM is the practice of cutting the female genitalia, usually the clitoris, labia majoria, and the labia minoria,¹⁵⁰ as a Muslim religious observance of "female circumcision."¹⁵¹ Although not a part of the Quran doctrine, many Islamic leaders have issued fatwas¹⁵² in support of this practice.¹⁵³ A fundamentalist Islamic group

140. Minor, *supra* note 2, at 145.

141. *Id.*

142. *Id.*

143. *Id.* at 148.

144. *See generally* Minor, *supra* note 2.

145. *General Recommendations adopted by the Committee on the Elimination of Discrimination against Women*, United Nations Division for the Advancement of Women, U.N. CEDAW, 5th-13th Sess., 1249 U.N.T.S. 21 (entered into force Jan. 2005).

146. Minor, *supra* note 2, at 150.

147. *Id.* at 153.

148. *Women's Rights*, *supra* note 116.

149. *Id.*

150. *Situational Analysis*, *supra* note 66.

151. *Id.* at 7.

152. The word "fatwa" is an Islamic term meaning "verdict." *Dictionary of Islamic Terms*, ISLAMIC WEB, at <http://www.islamicweb.com/begin/dictionary.htm> (last visited Mar. 6, 2005).

challenged the Minister's decision and succeeded in obtaining a judicial ruling overturning the ban on this objectionable practice.¹⁵⁴ This was accomplished despite the fact that the highest religious authority in Egypt, the Sheikh of Al-Azhar, publicly declared his support of the ban on FGM.¹⁵⁵ Fundamentalist groups will continue to force their views upon Egypt through the use of lawsuits in order to hinder any attempts at refining any laws concerning women and their legal status.¹⁵⁶

This overturning of the religious practice of FGM leads to another, and presumably, the most important reason for the failure of the Convention within Egypt. As noted above, the reservations made to the Convention by Egypt were, in effect, a statement by Egypt that they would adhere to the provisions of the Convention as long the provisions did not conflict with Sharia law.¹⁵⁷ It seems clear that if the provisions are going to be implemented within Egypt, it is inherent that they be compatible with Sharia. Compatibility requires that the provisions of the Sharia be utilized to fill the gaps between religious practice and the protection of women's rights.¹⁵⁸ By simply attacking the law itself, a defense mechanism is provoked in the Islamic people to preserve their way of life, which in turn forms a barrier between the people and human rights activists.¹⁵⁹ This is perceived by many men as a loss of their own rights and power, which in turn breeds fear and deep psychological biases against those pushing for reform.¹⁶⁰ Although the power they are mourning is discriminatory, abusive, and goes against the foundation of human rights norms, the cultural and religious aspects of the country must be kept in mind in order to change these psychological biases.¹⁶¹

Establishing and encouraging a democratic society absent of State religion would be ideal; however, a more realistic approach for the situation in Egypt, at this point, would be to encourage an innovative interpretation of the Sharia in order to be compatible with the provisions of the Convention (since Egypt is already a party to this Convention). This creative interpretation process was utilized in 1979 in the issuance of Law No. 44 by Anwar Sadat.¹⁶² This law used the Maliki and Hanbali teachings of Islam, and provided women with the option to divorce their husband in the event of polygamy if they were harmed by the

153. *Situational Analysis*, *supra* note 66.

154. *Women's Rights*, *supra* note 116.

155. *Situational Analysis*, *supra* note 66.

156. *Women's Rights*, *supra* note 116.

157. Robertson, *supra* note 83.

158. Venkatraman, *supra* note 59, at 1963.

159. *Id.* at 1973.

160. *Id.*

161. See Venkatraman, *supra* note 59.

162. *Id.* at 1987-88.

practice in any way.¹⁶³ Although a minimal victory in the eyes of women's rights activists, it did provide a new peaceful avenue for reform, and brought the secular and religious law together in the fight against discrimination, if only for a moment.¹⁶⁴

2. United States: A Quick Background

When the Convention came into existence twenty-five years ago, it was hailed as "the definitive international legal instrument requiring respect for and observance of the human rights of women."¹⁶⁵ The Convention was unanimously adopted by the General Assembly and entered into force faster than any prior human rights convention.¹⁶⁶ President Carter was one of the United Nations members who initially signed the Convention in 1980, and he then submitted it to the U.S. Senate for ratification.¹⁶⁷ The treaty still sits in the Senate where it has been virtually ignored for the past twenty-five years.¹⁶⁸ The United States is the only industrialized country that has signed but not ratified the Convention.¹⁶⁹ This section will examine the reasons for the progress of the women's rights movement within the United States, despite their failure to ratify the Convention.

The United States has enjoyed a long history of success in the fight against gender discrimination, though not without its struggles.¹⁷⁰ American women came together at the first women's convention in Seneca Falls in 1848 to draft a statement proclaiming that they were due the rights given men.¹⁷¹ From that very first meeting up to the proclamation of Women's Equality Day by President Bush on August 26, 2004, women have made history in their successful struggle for equality in American society.¹⁷² Today, women are leaders in every area of U.S. society and account for nearly half of all privately owned businesses and firms.¹⁷³

163. *Id.* at 1988.

164. Law No. 44 was later struck down on a procedural point, which caused widespread discontent among women's groups. A new law, Law No. 100, was passed as a result, which is the main family law legislation today. *Id.* at 1989. The new law took away the right of the wife to determine the seriousness of injury caused by the polygamy of her husband and gave it to the judge to determine. *Id.* at 1989 n.336.

165. Minor, *supra* note 2, at 137.

166. *History*, *supra* note 18.

167. Minor, *supra* note 2, at 137.

168. *Id.*

169. *Id.*

170. *Bush Celebrates*, *supra* note 61.

171. *Id.*

172. *Id.*

173. *Id.*

It would almost seem an oxymoron that the only industrialized country that has not ratified the Women's Convention could enjoy such success in its fight for women's rights, yet this is the reality of the situation within the United States.¹⁷⁴ The basis for the success of the women's rights movement in America comes down to the very structure upon which the movement took place – the democratic nature of the U.S. political system.¹⁷⁵ Democracy fosters individual freedom to protest when rights are violated, and women throughout history have exercised this right in the United States.¹⁷⁶ During the second half of the 1900s, American women transformed the United States by utilizing their legislatures and local courts to change public law to better the welfare of women across this country.¹⁷⁷ This would not have been possible if these women did not have the right to petition their legislatures and courts in the first place.¹⁷⁸ The protection of democratic avenues of change and national sovereignty form the foundation for the reasoning behind the non-ratification of the Women's Convention.¹⁷⁹

IV. A LOOK AT WHY THE UNITED STATES SIGNED, BUT HAS NOT RATIFIED THE CONVENTION

On its face, the Convention appears to establish the equality of women globally and form legal norms for the eradication of sex discrimination.¹⁸⁰ On further review, the Convention, when analyzed in light of the interpretation given to it by its Committee reports, directly infringes on sovereign elements of freedom the United States hold dear.¹⁸¹ These elements include, but are not limited to, established human rights, the fundamental role of the family, the freedom of religion, and the sovereignty of the U.S. governmental structures, which serve to protect these institutions.¹⁸²

174. *See id.*

175. *See* William N. Eskridge, Jr., *United States: Lawrence v. Texas and the Imperative of Comparative Constitutionalism*, 2 INT'L J. CONST. L. 555 (2004).

176. *See id.* at 559.

177. *Id.*

178. *See id.*

179. Patrick F. Fagan, *How U.N. Conventions on Women's and Children's Rights Undermine Family, Religion, and Sovereignty*, THE HERITAGE FOUND., Feb. 5, 2001, available at <http://www.heritage.org/Research/InternationalOrganizations/BG1407.cfm> (last visited Mar. 6, 2005).

180. *See* Convention, *supra* note 13.

181. Fagan, *supra* note 179.

182. *Id.*

A. *Established Human Rights*

The Convention is touted as the all-encompassing “international bill of rights for women,”¹⁸³ yet in reality, it undermines the very principles of human rights initially set forth in the Universal Declaration of Human Rights in 1948.¹⁸⁴ The rights specifically affected include those relating to the right of privacy, religion, and the promotion of the family as the fundamental unit of society.¹⁸⁵ The United Nations Charter sets forth the standard for situations in which intervention in domestic matters of a State by the U.N. is expressly forbidden.¹⁸⁶ It clearly states that “[n]othing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter”¹⁸⁷ This standard of sovereignty of State government is further reinforced through the 1960 General Assembly Resolution which states that “all peoples have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory. . . .”¹⁸⁸ It is against these principles that the Convention is directly contradictory, and forms the basis for refusal of the United States ratification.¹⁸⁹

The United States has found the Convention to be written in broad language, which in essence leaves the treaty open to interpretation by the Committee responsible for its implementation.¹⁹⁰ The ratification of this treaty is dangerous due to the broad interpretation powers given to the Committee.¹⁹¹ The United States has expressed its concern with various Committee recommendations and the impact that those recommendations may have under our Constitutional obligations regarding treaties if the United States were to ratify the Convention.¹⁹²

183. Harold Hongju Koh, *Why America Should Ratify the Women's Rights Treaty (CEDAW)*, 34 CASE W. RES. J. INT'L L. 263, 266 (2002).

184. See *UDHR*, *supra* note 11.

185. *Id.*

186. U.N. CHARTER art. 2, para. 7.

187. *Id.*

188. *Declaration on the Granting of Independence to Colonial Countries and Peoples*, Office of the United Nations High Commissioner for Human Rights, G.A. Res. 1514 (XV), U.N. GAOR, 15th Sess., Supp. No. 16, at 66-67, U.N. Doc. A/RES/1514(XV) (1960).

189. See Ravi Mahalingam, *Women's Rights and the "War on Terror": Why the United States Should View the Ratification of CEDAW as an Important Step in the Conflict with Militant Islamic Fundamentalism*, 34 CAL. W. INT'L L.J. 171, (2004).

190. See *2002 Senate Hearings*, *supra* note 62.

191. Mahalingam, *supra* note 189, at 194.

192. *Id.*

Article VI Section 2 of the United States Constitution states that "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. . . ."¹⁹³ Based on this clause, if the United States ratifies the Convention, it would become the supreme law of the land, which must be adhered to by the federal government as well as the individual states.¹⁹⁴ Even if the Convention was ratified with a reservation claiming the treaty to be non-self-executing, the District of Columbia Court of Appeals has held that a reservation may not serve to make a treaty non-self-executing, when the treaty provisions appear to be self-executing.¹⁹⁵ Based on this, as well as the case *INS v. Chadha*,¹⁹⁶ a court might hold that a treaty provision be enforced directly through the court system, and that any reservation/statement disputing the obligation within the treatment might be held to be unconstitutional under Articles III and VI of the Constitution.¹⁹⁷ Even if the treaty is held to be non-self-executing, many groups are already encouraging the speedy implementation of enforcement legislation in order that lawsuits might be brought for any violations of the Convention.¹⁹⁸ One of these groups is the American Bar Association.¹⁹⁹ The ABA clearly expects this Convention to be enforceable within the United States if ratified²⁰⁰ and is, in fact, already looking at the use of the Convention in litigation.²⁰¹

If the Committee is responsible for interpreting the treaty, it is understood that judges, in interpreting the law for specific cases, will look to the Committee's recommendations in their analysis.²⁰² In order to show what a direct conflict with our nation's principles scenario entails, it is necessary to look at some of the specific recommendations given by the Committee in their reports. These issues will be analyzed in detail below.

193. U.S. CONST. art VI, § 2.

194. Mahalingam, *supra* note 189, at 194.

195. *Power Auth. of N.Y. v. Fed. Power Comm'n*, 247 F.2d 538 (D.C. Cir. 1957).

196. *INS v. Chadha*, 462 U.S. 919 (1983) (holding that the legislative veto was unconstitutional even though it had been used in over 200 various statutes over the course of 40 years); *see also* Malvina Halberstam, *United States Ratification of the Convention on the Elimination of all Forms of Discrimination Against Women*, 31 GEO. WASH. J. INT'L L. & ECON. 49, 69 (1997).

197. Halberstam, 31 GEO. WASH. J. INT'L L. & ECON. 49 at 69.

198. *Id.* at 72.

199. *Id.*

200. *Id.*

201. Wright, *supra* note 64.

202. Mahalingam, *supra* note 189, at 194.

B. The Fundamental Role of the Family

It is a well-researched fact that the basic, fundamental unit, which holds any society together, is that of the family.²⁰³ Studies in social science have shown that the best atmosphere for raising children is that of the married, two-parent family that is active in church worship and religious activities.²⁰⁴ The U.N. affirmed this position on the family in its Universal Declaration of Human Rights, where throughout many of its clauses, it reiterates the important of family structure within society.²⁰⁵ Some examples found within the Universal Declaration of Human Rights include: Article 12: “[n]o one shall be subjected to arbitrary interference with his privacy, family, home or correspondence Everyone has the right to the protection of the law against such interference or attacks”;²⁰⁶ Article 16(3): “[t]he family is the natural and fundamental group unit of society and is entitled to protection by society and the State”;²⁰⁷ Article 25(2): “[m]otherhood and childhood are entitled to special care and assistance”;²⁰⁸ and Article 26(3): “[p]arents have a prior right to choose the kind of education that shall be given to their children.”²⁰⁹ The U.N. repeatedly stresses the importance of family and the importance of the role of society and the State in protecting it.²¹⁰ These principles are reiterated in the two documents below, which were created to compliment the Universal Declaration on Human Rights.²¹¹

The first of these documents is the International Covenant on Economic, Social, and Cultural Rights (ICESCR), which states, “[t]he widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children.”²¹² The International Covenant on Civil and Political Rights (ICCPR), the second document to implement the Universal Declaration of Human Rights, also emphasizes the U.N.’s commitment to the protection of the family structure.²¹³ Article 23(1) of the ICCPR states “[t]he family is the natural and fundamental

203. Fagan, *supra* note 179.

204. *Id.*

205. See *UDHR*, *supra* note 11.

206. *Id.* art. 12.

207. *Id.* art. 16.

208. *Id.* art. 25(2).

209. *Id.* art. 26.

210. See *UDHR*, *supra* note 11.

211. Fagan, *supra* note 179.

212. International Covenant on Economic, Social and Cultural Rights, Jan. 3, 1976, 993 U.N.T.S. 3 (1966) (entered into force Jan. 3, 1976) [hereinafter Economic Rights].

213. Fagan, *supra* note 179.

group unit of society and is entitled to protection by society and the State."²¹⁴ These references show the repetition in the convictions of the United Nations' responsibilities towards family. Yet, when it comes to the issue of women's rights, the U.N. High Commissioner on Human Rights has repeatedly undermined its very principles in allowing the Committee for CEDAW to advance a radical feminist agenda in their recommendations to several countries around the world.²¹⁵ The platform of the radical feminist movement is analyzed below.

1. The Radical Feminist Agenda

As stated above, the feminist movement in the United States flourished underneath the democratic form of government established within our society.²¹⁶ In order to show the impact of the feminist agenda upon the Committee reports implementing the provisions of the Convention, the feminist agenda must be divided between two generally recognized groups – liberal feminists and radical feminists.²¹⁷ Liberal feminists may be thought of as those adopting the policy of liberal internationalism, which essentially states the theory which forms the basis for this thesis. This theory takes the position that individuals hold an inherent right to a democratic form of government, and that this right entitles them to equal treatment under the law.²¹⁸ Liberal feminists agree with radical feminists that women are treated unfairly, but rely on the democratic government to improve their situation.²¹⁹ They believe that their rights have been violated within various societies and institutions globally, and that political reform is needed in order to facilitate their right to make autonomous choices and be considered equal in the fullest sense within the democratic society.²²⁰

Radical feminists, on the other hand, believe that this liberal, democratic form of society serves as the basis for gender oppression because liberal States are structured according to gender hierarchy, and this hierarchy contaminates the process of legal reasoning.²²¹ Under this feminist theory, no woman is truly "free" because her choices are actually predetermined within the hierarchal form of society under which liberal democracies thrive.²²² Radical feminists believe

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

215. Fagan, *supra* note 179.

216. Eskridge, *supra* note 175, at 559.

217. See Fernando R. Teson, *Feminism and International Law: A Reply*, 33 VA. J. INT'L L. 647 (1993).

218. *Id.* at 649.

219. *Id.*

220. *Id.*

221. *Id.*

222. *Id.*

that, under this social hierarchy, women are exploited by men in the most unsuspecting ways.²²³

2. The Feminist Attack on the Family via the Committee

The first major premise that the Committee has used in its attack on the family is what they call the stereotypical view of the role of women as mothers and in the home.²²⁴ Reports and recommendations put out by the Committees continually degrade the status of motherhood and protest any laws which protect the status of maternity in any way.²²⁵ In its report on observations concerning the country of Armenia, the Committee noted that it has observed cultural stereotypes that “overemphasized the traditional role of women as mothers . . .,”²²⁶ and that it “strongly urged” the Armenian government to combat this stereotype of women “in the noble role of mother.”²²⁷ This same report also included a statement that is directly contradictory to the International Covenant on Economic, Social, and Cultural Rights (ICESCR).²²⁸ Paragraph 58 of the Committee Report urged the government to take a look at the labor laws that protect the status of maternity issues, which they felt impeded women’s employment opportunities.²²⁹ This negative view of the protection of working mothers is not only contradictory to the spirit of the Convention itself,²³⁰ it is directly in conflict with Article 10, Paragraph 2 of the ICESCR.²³¹ ICESCR Paragraph 2 states, “[s]pecial protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.”²³² The discouragement of labor laws protecting women’s maternity issues is but one of many examples of the Committee’s blatant disregard for the role of motherhood, specifically for those women who choose to stay home with their children as opposed to full-time employment.²³³

Other comments include a statement to the country of Belarus that the Committee was concerned that the celebration of Mother’s Day was another

223. Teson, *supra* note 217, at 649.

224. See 2002 Senate Hearings, *supra* note 62.

225. *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Armenia*, Office of the High Commissioner for Human Rights, CEDAW Committee, 17th Sess., U.N. Doc. A/52/38/Rev. 1, pt. II, paras. 35-68 (1997).

226. *Id.* ¶ 53.

227. *Id.* ¶ 65.

228. *Id.* ¶ 58.

229. *Id.* ¶ 58.

230. See Convention, *supra* note 13.

231. Economic Rights, *supra* note 212, art. 10, ¶ 2.

232. *Id.*

233. Fagan, *supra* note 179.

personification of the sex-role stereotype of women,²³⁴ and that the government should take steps to make sure that their legislation, as well as their Constitution, do not show favoritism or overly protect the role of women as mothers.²³⁵ The Committee noted concern in their report to the Czech Republic for “over-protective measures for pregnancy and motherhood . . .” and that this “cultural glorification of women’s family roles could exacerbate the negative impact of economic rationalization policies on women”;²³⁶ referring to women who choose to stay at home with their children as opposed to placing them in state run daycare. The Committee has made it clear through their reports that they have an immense disdain for motherhood, that this role is unrewarding and damaging to the welfare of women, and that they are seeking to redefine the roles of women according to their own feminist definition of what a woman’s role in society entails.²³⁷ The United States fails to see where this constitutes any freedom of choice for American women, as shown through its proposed reservations stressing individual freedom.²³⁸

C. Freedom of Religion

The principles of freedom to worship and practice religion, as well as the separation of church and state, are fundamental to the United States, as documented in its Constitution.²³⁹ The founding fathers realized that cultural norms are often obtained from positive religious practice and help form the basis for personal behavior.²⁴⁰ They also realized the fundamental importance of keeping the legislature and religion separate while keeping the freedom to worship.²⁴¹ The U.N., in its interpretation of the Convention, does not show any regard for this respect between church and state.²⁴² The U.N. affirmatively declared that the positive values inherent in many religions are in direct conflict with the Convention. This is due to the fact that many of the behaviors the U.N. endorses within the Convention and through its interpretation via the Committee reports, have historically been prohibited by most religions, such as the practice

234. *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Belarus*, Office of the High Commissioner for Human Rights, CEDAW Committee, 22d Sess., para. 361, U.N. Doc. A/55/38, paras. 334-78 (2000).

235. *Id.* ¶¶ 359-60.

236. *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Czech Republic*, Office of the High Commissioner for Human Rights, CEDAW Committee, 18th Sess., para. 361, U.N. Doc. A/53/38, paras. 167-207 (1998).

237. Fagan, *supra* note 179.

238. Halberstam, *supra* note 196, at app. II.

239. U.S. CONST. amend. I.

240. Fagan, *supra* note 179.

241. *Id.*

242. *Id.*

of abortion.²⁴³ Radhika Coomaraswamy, who serves as the U.N. Special Rapporteur on Violence Against Women, expressly stated the underlying agenda of the women's movement via the Committee. "[T]he reality in many societies is that women's rights are under challenge from alternative cultural expressions. . . . One can only hope that the common values of human dignity and freedom will triumph over parochial forces attempting to confine women to the home."²⁴⁴

The Committee directly attacked the religious culture of many countries, as shown through the Observation Reports.²⁴⁵ In Croatia, the Committee attacked church-affiliated organizations because they feel that their principles "adversely influence" the Croatian government, which, in turn, hampers the Convention's complete implementation.²⁴⁶ The Committee also expressed this view in their recommendations to Indonesia, in which they stated that religious values can never be used to override any aspect of women's rights.²⁴⁷ When China was in the midst of a fight to hold onto the religious freedom they held in Hong Kong after the takeover, the Committee chided them for making reservations to the Convention based on the religious freedom principle.²⁴⁸ The most blatant example of the intrusion of the Committee into a country's religious freedom is its recommendation to Libya, where it expressly stated that they should reinterpret and change their religious rules to conform to the Convention.²⁴⁹

The Committee's aversion to religious principles is also noted in its policy regarding abortion rights and the convictions of those who disagree with the Convention.²⁵⁰ Many religions oppose abortion, regardless of their particular theology, and the Committee has made it clear that a woman's right to have an abortion is superior to any person or State parties' religious belief, regardless of whether the majority of that State agrees.²⁵¹ The Committee has vocalized this

243. *Id.*

244. RADHIKA COOMARASWAMY, *REINVENTING INTERNATIONAL LAW: WOMEN'S RIGHTS AS HUMAN RIGHTS IN THE INTERNATIONAL COMMUNITY* 27-28 (1997).

245. *Id.*

246. *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Croatia*, Office of the High Commissioner for Human Rights, CEDAW Committee, 18th Sess. para. 108, U.N. Doc. A/53/38, paras. 80-119 (1998) [hereinafter *Croatia*].

247. *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Indonesia*, Office of the High Commissioner for Human Rights, CEDAW Committee, 18th Sess., para. 282, U.N. Doc. A/53/38, paras. 262-311 (1998).

248. *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: China*, Office of the High Commissioner for Human Rights, CEDAW Committee, 20th Sess., para. 314, U.N. Doc. A/54/38, paras. 251-336 (1999).

249. *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Libyan Arab Jamahiriya*, Office of the High Commissioner for Human Rights, CEDAW Committee, 13th Sess., para. 130, U.N. Doc. A/49/38, paras. 126-85 (1995).

250. Fagan, *supra* note 179.

251. *Id.*

view in reports to various countries, particularly countries in which Catholicism is the dominant religion.²⁵² In Ireland, where the people have already rejected two constitutional amendments to allow abortion, the Committee urged them to reject the influence of their religion and implement laws which would allow abortions for women of all ages.²⁵³ Paragraph 180 specifically states: “[t]he Committee notes that although Ireland is a secular State, the influence of the Church is strongly felt not only in attitudes and stereotypes but also in official State policy. In particular, women’s right to health, including reproductive health, is compromised by this influence.”²⁵⁴

The Committee not only applies the infringement of a fundamental human right principle to the inability to get an abortion, it also applies this to the doctor’s right of refusal to perform an abortion,²⁵⁵ which is a direct attack on various freedom-of-conscience provisions of some States.²⁵⁶ The Committee expressed grave concern over the “conscientious objection among doctors and hospital personnel” in their refusal to perform abortions and “strongly recommended” that the Italian government implement access to safe abortions within the public hospital system (i.e., force the doctors within those hospitals to perform the abortions, regardless of their beliefs).²⁵⁷ In Croatia, the Committee expressly stated that any refusal to perform an abortion on the conscientious objection doctrine was a direct infringement of the reproductive rights of women.²⁵⁸

The Committee has sought to enforce the right to abortion in all ratifying countries, despite the fact that those nations have voted not to include this within the treaty during the last two CEDAW Beijing Conferences.²⁵⁹ The Committee members still insist on pushing the religion/abortion issue, despite the fact that with the last vote it was legitimately removed from the U.N.’s agenda.²⁶⁰ The Committee has made it very clear through its various statements and recommendations to the ratifying countries, that where religious, traditional, or sacred norms clash with their radical feminist interpretation of the Convention,

252. *Id.*

253. *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Ireland*, Office of the High Commissioner for Human Rights, CEDAW Committee, 21st Sess., U.N. Doc. A/54/38, paras. 161-201 (1999).

254. *Id.* ¶ 180.

255. Wright, *supra* note 64.

256. Fagan, *supra* note 179.

257. *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Italy*, Office of the High Commission, CEDAW Committee, 17th Sess., paras. 353-60, U.N. Doc. A/54/38, paras. 161-201 (1997).

258. *Croatia*, *supra* note 246, ¶ 109.

259. *See generally* Fagan, *supra* note 179.

260. *Id.*

those norms will be targeted for reinterpretation and deletion by the countries who implement them.²⁶¹

D. The Sovereignty of Governmental Structures

The final foundational element in the rejection of the Convention within the United States is based on the principle of the sovereign authority of the United States government to make, implement, and monitor laws.²⁶² This national sovereignty, as in all democratic nations, comes from the will of the people and not from individual rulers.²⁶³ Woodrow Wilson stated in his Washington, D.C. speech on May 27, 1916 that “[e]very people has a right to choose the sovereignty under which they shall live.”²⁶⁴ This right to self-governance is upheld within both the International Covenant on Economic, Social, and Cultural Rights and the International Covenant on Civil and Political Rights, which both state in their opening articles that “[a]ll peoples have the right of self-determination.”²⁶⁵

The United States has criticized the Convention’s Committee interpretations as being arbitrary and indifferent with respect to issues of State sovereignty.²⁶⁶ President Bush submitted these concerns in his administration’s decision to renounce its endorsement of the Convention until it could further research the results of its implementation.²⁶⁷ The underlying sentiment of the Committee concerning the autonomy of ratifying States to the Convention is apparent through its insistence on countries implementing the Convention within their legislation, as well as the Committee’s encouragement of lawsuits based on their interpretive observation reports.²⁶⁸ As previously stated, it is this interpretive power that poses the greatest threat to a nation’s sovereignty.²⁶⁹ The U.N. continuously supports the right of States to set their own domestic policy agenda. However, opponents of this Convention feel that if this treaty is ratified and implemented, it will be the radical feminists that are setting the domestic policy agenda concerning women.²⁷⁰

261. *Id.*

262. Mahalingam, *supra* note 189, at 193.

263. *See generally* Fagan, *supra* note 179.

264. Woodrow Wilson, *The Visionary President*, ALL THINGS WILLIAM.COM, May 27, 1916, at <http://www.allthingswilliam.com/presidents/wilson.html> (last visited Mar. 8, 2005).

265. Economic Rights, *supra* note 212, art. 1; *see also* Civil Rights, *supra* note 214, art. 1.

266. Mahalingam, *supra* note 189, at 193.

267. *Id.* at 194.

268. Wright, *supra* note 64.

269. *See generally* Fagan, *supra* note 179.

270. *See id.*

E. Steps America Can Take to Protect and Encourage its Sovereignty

Several countries have taken steps to ensure their State sovereignty in light of the Committee Reports being generated.²⁷¹ Australia, who ratified the Convention in July 1983, recently informed the Committee that it would no longer cooperate with the reporting systems within the U.N.²⁷² This was done because of an environmental NGO that was able to sue the government within the basis of a treaty, which the government said was clearly on the scope of the nationality sovereignty.²⁷³ The United States can follow the example of Australia in urging U.N. Members to refuse to cooperate with U.N. reporting systems when those systems directly conflict with the right to self-governance protected within the U.N. Charter.²⁷⁴

Singapore has also sought to present domestic policies that truly advance women's rights issue in promoting equal treatment.²⁷⁵ When the Committee recommended that Singapore enact gender quotas within their political framework, Singapore responded by stating that their policies on gender equality were based on the principle of meritocracy.²⁷⁶ Singapore believes that the way to truly treat women as equal is to present equal opportunities, thereby "treating women as part of the mainstream and not as a special interest group . . ."²⁷⁷ The U.S. should voice their support for such countries in their pursuance of women's rights in mainstream society and let the U.N. know that it will help to protect the interests of such countries.²⁷⁸

V. CONCLUSION

A. Women's Rights Can be Advanced Only in a Truly Democratic Society

Although on its face the Convention appears to encompass all human rights issues facing women globally,²⁷⁹ it fails to address the main consideration of any human rights treaty – that of true oppression.²⁸⁰ The definition of oppression may be identified as a situation in which a person or entity keeps another from exercising choices.²⁸¹ This lack of choices is apparent in the recommendations

271. *Id.*

272. *Id.*

273. *Id.*

274. *Id.*

275. Wright, *supra* note 64.

276. *Id.*

277. *Id.*

278. See generally Fagan, *supra* note 179.

279. See Convention, *supra* note 13.

280. Teson, *supra* note 217, at 666-67.

281. *Id.* at 667.

given to each of the State parties in implementing the provisions of the Convention.²⁸² The Committee has made its radical feministic view of womanhood clear, and gives the effect of its choices from women through its suggestion of legislation against women in the role of mother that include: early daycare procedures and ages for children; imposition of abortion rights on countries that disagree; and gender quotas for various government offices.²⁸³ These recommendations come from twenty-three "experts" which hail from countries with some of the worst human rights violations in history against women.²⁸⁴ The United States censured nineteen of them for various women's human rights abuses²⁸⁵ The example of Egypt, as a ratifying country, shows that the answer to advancing women's human rights does not lie in ratifying and implementing more laws.²⁸⁶ This constitutes an attempt to force a State government and the private individuals within that government to accept a particular party's interpretation of what is right and wrong.²⁸⁷ The answer to the women's human rights dilemma lies in more freedom for States, so that a woman may have the freedom to choose for herself what path in life she may take.²⁸⁸ The nations that flourish in the quest for human rights are those with a free and open society, like the United States, in which the collective voice of the people make the biggest difference.²⁸⁹

In the words of Nawal Al-Sa'dawi, "[o]ur problem is autocracy. One man ruling the entire people."²⁹⁰ When a country loses focus of the true problem of oppression under a dictatorship or other form of oppressive government, that country cannot take the steps needed to correct the inherent human rights violations that follow such a tyrannical government.²⁹¹ Trying to implement a human rights treaty within a tyrannical country is next to impossible in that, by definition, tyranny includes the violation of human rights.²⁹² Common sense dictates that a tyrannical leader will not be much concerned with addressing human rights violations at the hands of his or her own form of government.²⁹³

282. See generally *Concluding Observations*, *supra* note 17.

283. *Id.*

284. See generally George F. Will, *Another Pose of Rectitude; U.N. Gender Police are Peeved Because Belarus has a Mother's Award and Too Many Slovenian Children are Cared for by Family Members*, NEWSWEEK, Sept. 2, 2002, at 70.

285. *Id.*

286. See generally *Reports*, *supra* note 65.

287. *Id.*

288. See Teson, *supra* note 217.

289. *Id.*

290. *Religious Authorities*, *supra* note 1.

291. See Teson, *supra* note 217.

292. *Id.* at 651.

293. *Id.*

The only legitimate remedy in this situation is to get rid of the tyranny and replace it with a liberal, democratic form of government in which human rights are honored and shown respect.²⁹⁴ Egypt was resisted in its attempts for reform back in the 1970s and 1980s because its government endorses a State religion that restricts the role of women in society and public life, and utilizes that religious law within its legislature, thereby making the implementation of women's rights essentially impossible.²⁹⁵

The United States has been criticized throughout the past twenty years for its refusal to ratify the Women's Convention, yet this actually confirms the established development of our democratic political culture.²⁹⁶ Although the treaty has been through the ratification process several times, it has never passed.²⁹⁷ This clearly demonstrates the will of the American people and is the democratic process in action

Many scholars and institutions tout the fact that the world looks to the United States as a global human rights leader, yet in the same breath put great weight on the fact that the mere ratification of the treaty by the United States would send a signal to the rest of the world that the U.S. is serious about the issue of women's human rights.²⁹⁸ This appears to be a contradictory statement because the world looks to the United States as a leader in this area due to its record of success in addressing these rights domestically.²⁹⁹ These same scholars have themselves stated that U.S. law is already consistent with the principles of gender equality inherent in the Convention as well as with many of the specific provisions within the Convention.³⁰⁰ This emphasis on treaty ratification brings to light a troubling trend within the international community, which is the emphasis of treaties at the expense of encouraging the norms represented by those treaties within the countries accused of the violations.³⁰¹ Ratifying, while an important step in the treaty process, may sometimes be used to merely pay lip service to an issue, as seen in the analysis of Egypt.³⁰² The old adage "actions speak louder than words" is relevant in light of the success of the

294. *Id.*

295. *Reports, supra* note 65.

296. Will, *supra* note 284.

297. *See 2002 Senate Hearings, supra* note 62.

298. *See Convention on the Elimination of All Forms of Discrimination Against Women, Adopted by the U.N. General Assembly on December 18, 1979, and Signed on Behalf of the United States of America on July 17, 1980: Hearing Before the Comm. On Foreign Relations United States Senate, 107th Cong., 2d Sess. (2002) (statement of Harold Hongju Koh, Professor, Yale Law School).*

299. *See generally* Eskridge, *supra* note 175.

300. *See* Halberstam, *supra* note 196, at 57.

301. Will, *supra* note 284.

302. *See Reports, supra* note 65.

United States as opposed to Egypt and other ratifying countries under the Convention.

Radical feminists will state that the progress made within the U.S. is not enough; they claim a state that recognizes honor killings of women is the same as one that simply has a gender imbalance within a field of employment.³⁰³ There is no degree of success in their view. This outlook downplays any progress made and actually trivializes notions of tyranny within government.³⁰⁴ The feminist insistence of the inherent oppression of women by any State, whether democratic or dictatorship, serves to blur the lines between freedom and tyranny, and keep women in a perpetual state of bondage regardless of what form of government they live under or freedoms they possess within that government.³⁰⁵

This perpetual state of bondage has no place within a true democratic society in which individuals possess the free will to make their own rational decisions and choices.³⁰⁶ This requirement, to respect the choices of individuals, comes down to a moral claim, as opposed to a metaphysical claim in which there really are no real choices.³⁰⁷ This claim requires us to acknowledge and respect that people in general are rational and autonomous, and that freedom of will is a necessary prerequisite of any country in their fight for human rights and individual and political morality.³⁰⁸ Simply stated, treating individuals as possessing free will to make rational choices is the right thing to do, which in turn requires the rejection of any radical human rights theory.³⁰⁹ Such treatment of individuals can only happen under the auspices of a democratic society.³¹⁰

The answer to the question of advancing the human rights issue globally may be summarized by President George H. W. Bush, whose own son would go on as President of the United States to directly face the horrors of human rights abuses under the guise of terrorism.³¹¹ Former President Bush summed up the importance of laying the foundation of a democratic society in the quest for individual freedom in his inaugural address on January 20, 1989.³¹² He stated, "[w]e know what works: Freedom works. We know what's right: Freedom is right. We know how to secure a more just and prosperous life for man on Earth:

303. Teson, *supra* note 217, at 668.

304. *Id.*

305. *Id.*

306. *Id.* at 676.

307. *Id.*

308. *Id.*

309. Teson, *supra* note 217, at 676.

310. See Eskridge, *supra* note 175.

311. See George Bush, Inaugural Address (Jan. 20, 1998), available at <http://www.bartleby.com/124/pres63.html> (last visited Mar. 8, 2005).

312. *Id.*

through free markets, free speech, free elections, and the exercise of free will unhampered by the state.”³¹³ It is this free society wherein the answer lies to women’s human rights issues and abuses occurring around the world today.

313. *Id.*

