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"Time Is A-Wasting": Making the Case for CEDAW Ratification by the United States

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"Time Is A-Wasting": Making the Case for CEDAW Ratification by the United States*

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Since President Carter signed the Convention for the Elimination of All Forms of Discrimination Against Women (the "CEDAW" or the "Convention") on July 17, 1980, the United States has failed to ratify the Convention time and again. As one of only a handful of countries that has not ratified the CEDAW, the United

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* This Article is dedicated to former U.S. Secretary of State Hillary Rodham Clinton, whose leadership in gender equality has impacted women globally and transformed national agendas on equality.

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*** Ambassador Melanne Verveer was appointed by President Obama as the first U.S. Ambassador on Global Women's Issues. She is the founding Executive Director of the Georgetown Institute for Women, Peace, and Security. She is also the co-founder of Seneca Women. She is a recipient of several honorary degrees and awards, including the Secretary of State's Award for Distinguished Public Service. In her White House memoirs, Hillary Rodham Clinton characterizes Ambassador Verveer as "[a] true policy wonk who loves the complexities and nuances of issues . . . [and] a key player on the president's team, advocating for policies affecting women, human rights, legal services."

States is in the same company as Sudan, Somalia, Iran, Tonga, and Palau. When CEDAW ratification stalled yet again in 2002, then-Senator Joseph Biden lamented that "[t]ime is a-wasting."

Writing in 2002, Harold Koh, former Assistant Secretary of State for Democracy, Human Rights, and Labor, bemoaned America's abdication of its moral leadership: "From my direct experience as America's chief human rights official, I can testify that our continuing failure to ratify CEDAW has reduced our global standing . . . hindered our ability to lead in the international human rights community . . . [and] challenge[d] our claim of moral leadership in international human rights . . . ." Today, ratifying the CEDAW would undoubtedly be an important foreign policy tool and would communicate to the global community that the United States considers dismantling all forms of discrimination to be an inalienable and universal obligation. However, we argue that the value of ratifying the CEDAW is not limited to its foreign policy implications: A t a time of a mass public reckoning on equality, ratifying the Convention would also be a central vehicle for change for women in America, including minority women, to claim their rights in courts, in workplaces, and in the family.

Our study is a tour de force *of the CEDAW's impetus for progressive legal changes around the world and an exegesis of its intersections along the axes of security and minority status. The language of the Convention allows each State Party to use "all appropriate measures" to implement legislation to eliminate discrimination and take "all appropriate measures, including legislation" to promote de jure and de facto equality between men and women. Although a causal link cannot always be proven, the very language of the laws of surveyed countries reflects the CEDAW Committee's Concluding Observations and General Recommendations.*

Despite challenges to the CEDAW's implementation and the imperfect commitments of the 189 ratifying states, the Convention stands as the central vehicle for

the incorporation of women's rights norms into national laws and practice. The Biden Administration should waste no more time in ratifying the CEDAW and joining the international community as it seeks to bring women and girls to the center of our current global recovery. As we write these words, the Taliban has taken control of Afghanistan. The United States must signal its renewed commitment to multilateralism and women's equality by joining the global bill of rights for women.

INTRODUCTION

Nearly two decades ago, U.S. Secretary of State Madeleine Albright called the ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (the "CEDAW" or the "Convention") "long past time,"[1] with then-Senator Joseph Biden noting that "[t]ime is a-wasting."[2] In this Article, we argue that the timing is now auspicious for a historic reckoning with our past, including the ratification of this important anti-discrimination treaty.

In recent history, the twin forces of the #MeToo Movement and the Black Lives Matter ("BLM") Movement have made it clear that the United States must ratify the CEDAW and reclaim its role as a global leader in women's human rights. For four decades, Congress failed to rally enough votes to ratify the CEDAW; but today, from grassroots movements to the White House, the political push for ratification is finally building momentum. Grasping this opportunity would announce to the world that the United States is ready to reenter the international community as a role-model and leader, poised to undo the mistakes of prior disengagement.[3]

The CEDAW operates by binding ratifying countries to a set of shared principles and affirmative measures—a sort of international bill of rights for women. It focuses on non-discrimination, women in the public sphere, women's social and economic rights, and the

1. Rangita de Silva de Alwis & Amanda M. Martin, *"Long Past Time": CEDAW Ratification in the United States*, 3 J.L. & PUB. AFFS. 15, 15 (2018).

2. *Treaty Doc. 96-53; 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 S. Comm. on Foreign Relations*, 107th Cong. 3 (2002) (statement of Sen. Joseph R. Biden, Jr., Chairman, S. Comm. on Foreign Rels.) [hereinafter *2002 Hearing*].

3. *See* LOUIS HENKIN, HOW NATIONS BEHAVE: LAW AND FOREIGN POLICY 183 (1968) ("In the cathedral of human rights, the United States is more like a flying buttress than a pillar—choosing to stand outside the international structure supporting the international human rights system, but without being willing to subject its own conduct to the scrutiny of that system.").

position of women in the family unit. President Jimmy Carter signed the CEDAW on July 17, 1980 and submitted it to the Senate for consideration shortly thereafter.[4] The United States played a central role in the negotiation process leading up to the drafting of the Convention.[5] Despite the fact that the U.S. Senate Foreign Relations Committee recommended ratification in 1994, the Senate adjourned that year without ratifying the treaty.[6] Later, in 2002, the Senate Foreign Relations Committee held consultations on ratifying the CEDAW.[7] During consultations, then-Senator Biden lamented that "[t]ime is a-wasting," remarking on the substantial delays in the U.S. ratification process.[8] More recently, the Obama Administration pushed for ratification, calling the Convention an "important priority."[9] Despite this sense of urgency, the Obama Administration was not able to get the treaty ratified by the Senate due to a lack of bipartisan support.[10]

Today, the United States is one of only a handful of countries that has yet to ratify the CEDAW, rendering it "strange bedfellows" with Sudan, Somalia, Iran, Tonga, and Palau.[11]

President Biden has made it clear that he seeks to bring the United States over to the right side of history on the CEDAW. During his most recent presidential campaign, Biden called the CEDAW the most important international vehicle for advancing gender equality and argued that it is "simply embarrassing that the United States has not

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4. S.REP. NO. 107-9, at 2 (2002).

5. *See id* .

6. *See* CONG. RSCH. SERV., RL40750, THE U.N. CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW): ISSUES IN THE U.S. RATIFICATION DEBATE 1 (2015)

7. *See 2002 Hearing*, *supra* note 2.

8. *See 2002 Hearing*, *supra* note 2, and accompanying text.

9. *See* Jessica Sanchez, *Ratifying CEDAW: Is the United States Falling Behind on Women's Rights?*, 17 PUB. INT. L. REP. 64, 64 (2011) (noting that then-President Obama had referred to the ratification of the CEDAW as an "important priority" for the administration). *See also* Ann M. Piccard, *U.S. Ratification of CEDAW: From Bad to Worse*, 28 MINN. J. L. & INEQ. 119, 120–21 (2010).

10. The Obama Administration's commitment to signing the 2006 U.N. Convention on the Rights of Persons with Disabilities (the "CPRD")—a treaty requiring proactive measures to ensure social, economic, and cultural rights and intersectional rights of women with disabilities—made ratification of the CEDAW seem like a possibility. *Compare* CONG. RSCH. SERV., *supra* note 6, at 7 (laying out the arguments by lawmakers opposing ratification of the CEDAW, including some criticisms about the supposed economic costs), *with* Sanchez, *supra* note 9, at 64 (detailing the Obama Administration's support for ratification of the CEDAW).

11. WILLIAM SHAKESPEARE, THE TEMPEST act 2, sc. 2, ("Misery acquaints a man with strange bedfellows.").

ratified the [C]onvention."[12] As president, Biden promised to "push the Senate to ratify this important treaty, so that we can better advance the rights of women and girls here at home and around the world."[13]

President Biden's National Strategy for the COVID-19 Response and Pandemic Preparedness (2021) further illustrates the Administration's commitment to joining the United Nations ("U.N.") Secretary General's efforts to place women and girls at the center of global recovery.[14] Specifically, the National Strategy posits that the United States will "enhance humanitarian relief and support for the capacity of the most vulnerable communities to prevent, detect, respond to, mitigate, and recover from impacts of COVID-19, such as . . . gender-based violence."[15] The fact that the Administration views this objective as a way to signal U.S. leadership evinces that women are central to its multilateralism.[16]

There are multiple benefits to ratification. As then-Senator Biden observed in 2002, "the U.S. Constitution and existing Federal laws will satisfy the obligations of the treaty."[17] Many scholars, most notably Harold Koh, have pointed out the clear foreign policy gains presented by ratification, as the United States can help intensify global efforts to improve the status of women's human rights.[18] In this Article, we develop three more reasons as to why now—during the Biden Administration—presents an opportune chance for the United States to finally ratify the CEDAW.

In Part I, we assess how ratification of the CEDAW aligns with a historic public reckoning on equality and addresses a legacy of systemic racism and sexism in the United States. We survey the CEDAW's most recent questions to States Parties, drawing upon examples from Brazil, Canada, and Sweden to explore the ways in which

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12. *Fact Sheet: International Women's Day*, BIDEN HARRIS (2020), https://joebiden.com/fact-sheet-international-womens-day [https://perma.cc/ZSE4-3ZGU].

13. *Id.*

14. *See* NATIONAL STRATEGY FOR THE COVID-19 RESPONSE AND PANDEMIC PREPAREDNESS 107 (2021) [hereinafter NATIONAL STRATEGY], https://www.whitehouse.gov/wp-content/uploads/2021/01/National-Strategy-for-the-COVID-19-Response-and-Pandemic-Preparedness.pdf [https://perma.cc/7KE2-LAN5].

15. *Id.* at 111.

16. *See id.* at 114:

> The Administration will promote stronger global governance of global health and epidemic preparedness, act on the UN Secretary General's call to put women and girls at the center of global recovery efforts, and signal U.S. leadership and interest in coordinating in the international response and on multilateral vaccine and supply chain initiatives.

17. *2002 Hearing*, *supra* note 2, at 3.

18. *See* Harold Hongju Koh, *Why America Should Ratify the Women's Rights Treaty (CEDAW)*, 34 CASE W. RSRV. J. INT'L L. 263, 264 (2002).

the CEDAW upholds an agenda of inalienable intersectionality that seeks to advance the status of women at the margins. This focus on minority women could herald a renewed engagement with civil rights groups and social movements on the interplay between race and gender.

In Part II, we explore how the United States' strong bipartisan commitment to the Women, Peace, and Security ("WPS") agenda and how its global security goals can be advanced by ratifying the CEDAW. From the United Kingdom to Afghanistan, the CEDAW has played a role in strengthening commitments to the WPS agenda. The United States has emerged as a global leader in WPS, both by spearheading U.N. Security Council Resolutions to condemn sexual violence against women and girls in armed conflict,[19] and by codifying its commitment to pursuing the WPS agenda in domestic law.[20]

Additionally, in Part II we examine how the CEDAW complements the U.N. Security Council Resolutions on Women, Peace, and Security. The United States must be swayed by both the human rights arguments of the CEDAW in addressing all forms of violence against women, as well as the national security argument put forth by Secretary Rice—that "sexual violence profoundly affects not only the health and safety of women, but the economic and social stability of their nations."[21] Addressing violence against women within an intersectional framework of gender equality, we conclude, is both a national security priority and an inalienable human rights obligation.

In Part III, we argue that the CEDAW matters—that it is a vital part of the human rights agenda and has had a tremendous impact on legislation and policy advancing the legal status of women around the world. Some recent scholars have questioned the role of human rights treaties in combating gender-based discrimination, claiming that the causal factors in reform cannot be easily tied to the Convention.[22] We resist this argument. By tracing the CEDAW's vernacularization, we contend that the CEDAW's impact on the landscape of women's

19. Security Council Resolution ("SCR") 1820, introduced by U.S. Secretary of State Condoleezza Rice, confirmed that the U.N. Security Council was authorized to address the issue of sexual violence against women in armed conflict. *See* S.C. Res. 1820, ¶¶ 15–16 (June 19, 2008). Secretary Clinton later introduced SCR 1888, which reaffirmed the importance of taking effective steps to prevent and respond to such acts of sexual violence to preserve international peace. *See* S.C. Res. 1888, ¶¶ 1–3 (Sept. 30, 2009).

20. *See* Women, Peace, and Security Act of 2017 § 4, 22 U.S.C. § 2152(j) (2017).

21. *Thematic Debate on Women, Peace, and Security, United Nations Security Council New York City*, U.S. DEP'T OF STATE (June 19, 2008) https://2001-2009.state.gov/secretary/rm/2008/06/106089.htm [https://perma.cc/DE6M-PAKH].

22. *See* Oona A. Hathaway, *Do Human Rights Treaties Make a Difference?*, 111 YALE L. J. 1935, 1935–36 (2002).

human rights cannot be underestimated. We find that the implementation of the CEDAW takes different shape-shifting forms, from *de jure* translation into laws, to shaping a new lexicon in countries that are in the midst of political transition. Ratifying the Convention will fulfill both domestic and foreign policy goals at a time when we are committed to reclaiming American values and preventing the rolling-back of prior gains.

In our Conclusion, we maintain that the ratification of the CEDAW is the natural evolution of the Biden Administration's commitment to the reauthorization of the Violence Against Women Act (the "VAWA").

Ultimately, the arc of American engagement, both in foreign and domestic policy, must bend toward ratifying the CEDAW. After decades of lawmakers failing to muster the political will for ratification, the demand for change has now reached a fever pitch. President Biden can use this opportunity to cement his legacy as a fierce advocate of not only the human rights of American women, but also those of all women around the world.

I. INTERSECTIONS IN THE CEDAW: ADDRESSING THE PUBLIC RECKONING ON STRUCTURAL RACISM AND SEXISM

A. This Moment in Time

This Section demonstrates that ratifying the CEDAW will bolster the Biden Administration's response to two important human rights issues that have recently dominated American public attention: (1) racially-motivated violence against Black people and (2) sexual harassment and sexual abuse. Interest in these issues has been spearheaded by the Black Lives Matter ("BLM") and #MeToo movements, both decentralized efforts to spread awareness and foster policy reform. Responding to demands for change in these two live areas of human rights should be one of the central goals of the recently inaugurated Biden Administration, and the CEDAW can be a capstone of this response.[23]

While the BLM and #MeToo movements require little introduction, it is worth reviewing their history to contextualize and emphasize the stakes at hand with these issues. The BLM movement was started in 2013 by three Black female organizers—Alicia Garza, Patrisse Cullors, and Opal Tometi—after George Zimmerman was

23. PURNA SEN ET AL., TOWARDS AN END TO SEXUAL HARASSMENT: THE URGENCY AND NATURE OF CHANGE IN THE ERA OF #METOO 2 (2018), https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2018/Towards-an-end-to-sexual-harassment-en.pdf [https://perma.cc/2FR5-FL2W].

acquitted in the fatal shooting of Black teen Trayvon Martin.[24] The movement began to attract national attention after protests and demonstrations following the deaths of numerous Black men and women, often in relation to police involvement.[25] In 2020, following the killing of George Floyd by the Minneapolis Police, fifteen million to twenty-six million people participated in BLM protests across the country, making it potentially the largest movement in American history.[26]

The #MeToo movement, started in 2006 by Tarana Burke, grew rapidly in 2017 after the publicizing of Harvey Weinstein's sexual abuse cases, and it has since become an international campaign for survivors of sexual harassment and abuse to share stories and advocate for reform.[27] In America, the movement has received significant media attention and encouraged societal discourse, leaving a clear cultural shift in its wake. Americans are now engaged in a public conversation about gender equality, especially in the workplace, and inaction on this issue is no longer tolerated, as it was in the past.[28] Both the BLM and #MeToo movements have made tremendous strides in building awareness and shaping reform, and they reflect an increasing concern for improving the status of those underrepresented in American society.

However, the COVID-19 pandemic has initiated a backslide of much of the progress towards racial and gender equality made over not just the past few years, but even the past few decades. The socioeconomic consequences of the pandemic have disproportionately affected vulnerable groups, exposing the intertwined nature of structural racism and sexism. According to McKinsey's recent Women in the Workplace Study (2020), "women—especially women of color—are more likely to have been laid off or furloughed during the COVID-19 crisis, stalling their careers and jeopardizing their financial security."[29] We

24. *Black Lives Matter Movement*, HOW. U. SCH. L. (2020), https://library.law.howard.edu/civilrightshistory/BLM [https://perma.cc/3GAC-AREW].

25. *Id.*

26. Larry Buchana et al., *Black Lives Matter May Be the Largest Movement in U.S. History*, N.Y. TIMES (July 3, 2020), https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html [https://perma.cc/4M3Y-49NM].

27. *History and Inception*, ME TOO (2021), https://metoomvmt.org/get-to-know-us/history-inception/ [https://perma.cc/PG2E-L94P].

28. *See* Deborah L. Rhode, *#MeToo: Why Now? What Next?*, 69 DUKE L.J. 377, 382–85 (2019); *see also* Catharine A. MacKinnon, *Where #MeToo Came From, and Where It's Going*, THE ATLANTIC (Mar. 24, 2019), https://www.theatlantic.com/ideas/archive/2019/03/catharine-mackinnon-what-metoo-has-changed/585313 [https://perma.cc/SZ73-85QN].

29. Sarah Coury et al., *Women in the Workplace 2020*, MCKINSEY & CO. (Sept. 30, 2020) [hereinafter *Women in the Workplace 2020*], https://www.mckinsey.com/featured-insights/diversity-and-inclusion/women-in-the-workplace [https://perma.cc/E9B5-TKPV].

are consequently seeing a dramatic increase in the feminization of poverty[30] in the United States. Evidently:

> The pandemic has intensified challenges that women already faced . . . Black women already faced more challenges to advancement than most other employees . . . they're also coping with the disproportionate impact of COVID-19 on the Black community . . . [a]s a result of these dynamics, more than one in four women are contemplating what many would have considered unthinkable just six months ago: downshifting their careers or leaving the workforce completely. This is an emergency for corporate America.[31]

For the one in five mothers who do not live with a spouse or partner, the challenges are even greater: the study finds that, "[u]nsurprisingly, single mothers are much more likely than other parents to do all the housework and childcare in their household, and they are also more likely to say that financial insecurity is one of their top concerns during the pandemic."[32] Furthermore, when women leave the workforce, the women who remain also lose mentors and allies.[33] For Black women in particular, this cycle reinforces barriers to advancement. On average, Black women are paid 37% less than white men and 20% less than white women.[34] The pandemic has revealed afresh the gendered nature of race and class inequality.

Fortunately, some American lawmakers are seizing this moment of reckoning to begin reforming the structures and institutions that failed Black women and other vulnerable groups during the pandemic. "The pandemic has shown us in the starkest terms how wide the gaps are in health outcomes between Black and White America and between men and women," said Representative Alma Adams in mid-

30. "Feminization of poverty," first coined by U.S. sociologist Diana Pearce, is a term used to discuss the widening poverty gap between women and men. *See generally* Diana Pearce, *The Feminization of Poverty: Women, Work and Welfare*, 11 URB. & SOC. CHANGE REV. 28 (1978); *see also The Feminization of Poverty*, U.N. WOMEN (2000), https://www.un.org/womenwatch/daw/followup/session/presskit/fs1.htm [https://perma.cc/M9V3-XCRP].

31. *See Women in the Workplace 2020*, *supra* note 29.

32. *Id.*

33. *Id*.

34. *See* INST. FOR WOMEN'S POL'Y RSCH., SAME GAP, DIFFERENT YEAR: THE GENDER WAGE GAP: 2019 EARNINGS DIFFERENCES BY GENDER, RACE, AND ETHNICITY 3 tbl.1 (2020), https://iwpr.org/wp-content/uploads/2020/09/Gender-Wage-Gap-Fact-Sheet-2.pdf [https://perma.cc/SS6P-QJBJ].

2020.[35] "COVID-19 has revealed what the Black community and communities of color have known for a long time, health outcomes are further compounded by systemic and structural racism," said Rep. Adams, highlighting that Black women experience a double impact of these harmful systemic issues.[36]

In March 2020, Rep. Adams, alongside Rep. Lauren Underwood and then-Senator, now Vice President, Kamala Harris introduced the Black Maternal Health Momnibus Act of 2020.[37] This Act aimed to address the stark maternal health inequalities faced by Black mothers in the United States through increased federal funding for health initiatives directed towards Black women and mothers.[38] In addition, these women legislators advocated for improved services during the COVID-19 pandemic for survivors of domestic violence: as Rep. Adams noted, "We are finding that from the offset of the COVID-19 pandemic that there has been an increase in gender-based violence around the world."[39] The Biden Administration's National Strategy has likewise acknowledged that the pandemic "exposed and exacerbated severe and pervasive health inequities among communities defined by race, ethnicity, geography, disability, sexual orientation, gender identity, and other factors."[40] The National Strategy summarizes: "The pandemic is reversing hard-fought gains in global health, including routine immunizations, maternal and child health, and the fight against tuberculosis, malaria, and HIV/AIDS, and is increasing the risk of gender-based violence."[41] In the Biden COVID-19 Relief Plan, there is special recognition of "African-American and Latina Women, who have borne the brunt of the pandemic, [and] are overrepresented among long term care workers."[42]

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35. Amanda King, *Women, Race, and COVID-19: A Conversation with Representative Alma Adams*, NEW SEC. BEAT (July 15, 2020) [hereinafter *Women, Race, and COVID-19*], https://www.newsecuritybeat.org/2020/07/women-race-covid-19-conversation-representative-alma-adams [https://perma.cc/SLY7-5QEH].

36. *Id.*

37. *See Black Maternal Health Momnibus Act of 2020 Introduced*, CAL. PRETERM BIRTH INITIATIVE (Mar. 30, 2020), https://pretermbirthca.ucsf.edu/news/black-maternal-health-momnibus-act-2020-introduced [https://perma.cc/8XN2-JX5X]; Black Maternal Health Momnibus Act of 2020, H.R. 6142, 116th Cong. (2020) [hereinafter Momnibus Bill].

38. *See generally* Momnibus Bill, *supra* note 37.

39. *Women, Race, and COVID-19*, *supra* note 35. *See also infra* Conclusion.

40. NATIONAL STRATEGY, *supra* note 14, at 19.

41. *Id.* at 107.

42. *President Biden Announces American Rescue Plan*, WHITE HOUSE (Jan. 20, 2021), https://www.whitehouse.gov/briefing-room/legislation/2021/01/20/president-biden-announces-american-rescue-plan [https://perma.cc/AWV2-2GZF]; *see also The Power of*

Thus far, two general phenomena should be clear: (1) we are at a moment of public reckoning on race and gender; and (2) we are in the midst of a public health crisis that is being felt worst at the intersection of race and gender.

B. The CEDAW and the Current Crisis in American Human Rights

Ratifying the CEDAW has conventionally been regarded an important tool of foreign policy, but we believe that this perspective is an artificially narrow conception of the Convention's utility. Instead, we argue that the CEDAW can play an important role in the American domestic sphere—not only in responding immediately to (and in the aftermath of) the BLM and #MeToo Movements, but also in addressing the effects of intersectional discrimination throughout American society and countering the devastating rollback of human rights gains caused by the COVID-19 pandemic.

The role of the CEDAW in promoting gender equality should be unmistakable. The CEDAW is a keystone human rights document that is at the heart of the international gender equality agenda. Speaking to the Senate Foreign Relations Committee in 2002, Harold Koh claimed that the CEDAW "lays a foundation for realizing equality between women and men . . . by ensuring women's . . . equal rights in education, employment, health care, marriage and family relations, and other areas of economic and social life."[43] While the United States already has significant domestic legislation focused on gender equality,[44] ratifying the Convention would, in this crucial moment, send a clear signal that the current Biden Administration is interested in firmly distinguishing their human rights legacy from that of the previous five administrations. In the area of gender equality, ratifying the CEDAW perfectly aligns with the Biden Administration's policy goals and demonstrates a willingness to set an example for the rest of the world.

In fact, the role of the Convention in addressing intersectional discrimination is critical to gender justice.[45] Most recently, in July

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America's Example: The Biden Plan for Leading the Democratic World to Meet the Challenges of the 21st Century, BIDEN HARRIS, https://joebiden.com/americanleadership [https://perma.cc/3YGG-K8BV] (illustrating how the Biden Administration's policy goals also demonstrate a willingness to "meet the challenges of the 21st Century . . .").

43. *2002 Hearing*, *supra* note 2, at 36 (statement of Prof. Harold Hongju Koh).

44. *See, e.g.*, Violence Against Women Act of 1994, 34 U.S.C. § 12291 (1994).

45. *See* Comm. on the Elimination of Discrimination against Women, General Recommendation No. 28, ¶ 18, U.N. Doc. CEDAW/C/GC/28 (2010) ("States parties have an obligation to take steps to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women. Certain groups of women . . . are particularly

2020, the CEDAW Committee adopted a statement on racial equality titled, "Global Anti-Racism Protest Must Herald a New Era in Human Rights Social, and Gender Justice."[46] In the statement, the CEDAW Committee acknowledged that "[r]acial violence is predicated on the intersectionality of 'race,' class and gender."[47] And, although "the majority of killings have been of African American men, African American women, for example, Yvonne Smallwood, Aiyana Jones, Sandra Bland, Breonna Taylor and others, have also been victims of police killing and brutality."[48] The Committee went on to support the protests against racism around the world, affirming that the "CEDAW stands in solidarity with the millions of women around the world, especially young women, who join the protests demanding justice after the tragic death of George Floyd and insisting that their voices to call for an end of racism and a new era of human rights be heard."[49] Connecting the BLM movement to historic women's rights efforts, such as the Mothers of the Plaza de Mayo in Argentina,[50] the Committee noted that: "At the most vulnerable moment, Mr. Floyd called for his mother, as have other victims before him, reminding us of the great loss, pain and economic dislocation that women experience in losing their children, spouses and partners, siblings and other family members in this unrelenting cycle of racist violence."[51]

The CEDAW Committee's recent statement on the 2020 BLM protests is a poignant example of how bringing an intersectionality paradigm to the forefront of the human rights agenda can enrich demands for equality. Even so, the Committee's focus on intersectionality and its commitment to addressing intersectional discrimination is not merely ad hoc. Article 2 of the CEDAW provides a firm textual basis for the commitment, requiring States Parties to eliminate discrimination in all its forms.[52] This requirement inherently includes

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vulnerable to discrimination through civil and penal laws, regulations and customary law and practices.").

46. Comm. on the Elimination of Discrimination Against Women, Global Anti-Racism Protests Must Herald a New Era in Human Rights, Social and Gender Justice (July 9, 2020), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT/CEDAW/STA/9232&Lang=en [https://perma.cc/A3NH-YBP4].

47. *Id.*

48. *Id.*

49. *Id.*

50. *See* Nora Amalia Femenía & Carlos Ariel Gil, *Argentina's Mothers of Plaza de Mayo: The Mourning Process from Junta to Democracy*, 13 FEMINIST STUD. 9, 9–10 (1987). *See also* discussion *infra* Section III.D.3.

51. Comm. on the Elimination of Discrimination Against Women, *supra* note 46.

52. Convention on the Elimination of All Forms of Discrimination Against Women art. 2, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW].

intersectional discrimination and multiple forms of discrimination that result in disadvantaged treatment.[53]

This commitment to intersectionality has been solidified and reaffirmed in the CEDAW Committee's General Recommendations (Nos. 28, 35 and 36), in its Concluding Observations, and in its Optional Protocol Mechanisms.[54] General Recommendation No. 28 concludes that intersectionality is a basic concept for understanding the scope of the general obligations of States Parties contained in Article 2: "The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race ethnicity, religion or belief, health, status, age, class, caste, sexual orientation and gender identity."[55] It thereby recognizes that categories of discrimination cannot be reduced to watertight compartments.[56] Furthermore, the CEDAW Committee expands on intersectional rights in its General Recommendation No. 18, which highlights the issues faced by women with disabilities "who suffer from a double discrimination linked to their special living conditions";[57] No. 24 on health, which provides a paragraph that emphasizes the need to pay special attention to health rights of women who belong to marginalized or disadvantaged groups;[58] and No. 25 on special temporary positive measures, which addresses concerns of women with "multiple forms of discrimination based on additional grounds such as race, ethnic or religious identity, disability, age, class, caste or other factors."[59]

Ultimately, equality forms the legal basis for tackling intersectional discrimination in the CEDAW. The text of the Convention, the

53. The Convention on the Elimination of Racial Discrimination (the "CERD") Committee also has two General Recommendations that touch on intersectional discrimination. *See* Comm. on the Elimination of Racial Discrimination, General Recommendation 25, at 152, U.N. Doc. A/55/18 (Oct. 17, 2000) (identifying gender-related aspects of racial discrimination); *see also* Comm. on the Elimination of Racial Discrimination, General Recommendation 30, ¶¶ 13–17, U.N. Doc. CERD/C/64/Misc.11/rev.3 (Mar. 12, 2004) (highlighting the relationship between race and citizenship).

54. General Recommendation No. 28, *supra* note 45, ¶ 18; Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 35, ¶ 12 U.N. Doc. CEDAW/C/GC/35 (2017); Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 36, ¶ 18, U.N. Doc. CEDAW/C/GC/36 (2017).

55. General Recommendation No. 28, *supra* note 45, ¶ 18.

56. *Id.*

57. Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 18, U.N. Doc. A/46/38 (1991).

58. Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 24, ¶ 6, U.N. Doc. CEDAW/C/GC/24 (1999).

59. Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 25, ¶ 12, U.N. Doc. CEDAW/C/GC/25 (2004).

General Recommendations, and the CEDAW Committee's jurisprudence in Concluding Observations have developed an impressive framework to address intersectional discrimination.[60] By positioning gender, race, ability, and sexual identity as intersecting and multiple forms of discrimination, this framework has had a transformative impact on both international and national law and policymaking.[61]

Between 2016 and 2020, 107 countries reported to the CEDAW Committee.[62] Tellingly, intersectionality was mentioned in 100% of these reports.[63] As such, it is clear that intersectionality is one of the central concepts in the CEDAW's approach to gender equality. This kind of thinking about the intersections of gender, race, class, health, and age can help directly address some of the most pressing challenges in America's current civil rights debate.

C. The Intersectional Values of the CEDAW

The role for the CEDAW in grappling with the intersectional issues of gender equality is amply demonstrated through the interaction of the CEDAW Committee and various States Parties in the Concluding Observations to State Party Reports.[64] By examining a broad range of Concluding Observations, we can acquire a better grasp of how the CEDAW can both enhance domestic policy and act as a source of international oversight in certain issue areas.

We can begin to understand these dynamics by analyzing the CEDAW's modality of constructive dialogue with States.[65] For example, in addressing Canada's State Party Report, the CEDAW Committee focused on the fact that Aboriginal women continued to be disproportionately living in impoverished conditions, "as reflected by high poverty rates, poor health, inadequate housing, [and] lack of access to

60. Shreya Atrey, *Lifting as We Climb: Recognizing Intersectional Gender Violence in Law*, 5 OÑATI SOCIO-LEGAL SERIES 1512, 1524 (2015).

61. *See* discussion *infra* Part III.

62. *Data on CEDAW Committee Concluding Observations, 2016–2020*, PENN L. WOMEN L. & LEADERSHIP PROJECT (2021) [hereinafter *Data on CEDAW*], http://www.law.upenn.edu/international/womenlawleadership/research.php [https://perma.cc/QX3E-4JD2] (collected and analyzed by Rangita de Silva de Alwis in January 2021).

63. *Id.*

64. Article 18 of the CEDAW calls upon States Parties to submit to the Committee (via the Secretary General) a report at regular intervals (a year after ratification and thereafter at four-year intervals) setting out measures taken to implement the provisions of the CEDAW through legislative, judicial, administrative, and other measures. *See* CEDAW, *supra* note 52, art. 18.

65. *Data on CEDAW*, *supra* note 62. *See also* discussion *infra* Appendix.

safe water."[66] These women also have disproportionately high unemployment rates and lower pay.[67] The United States can benefit from this same gender lens in its own efforts to address the systemic inequalities experienced by Native Americans. While the Biden Administration's American Rescue Plan begins to provide tangible relief to tribal governments,[68] the gendered perspective that the CEDAW provides would offer a more complete form of relief.

In response to Brazil's State Party Report, the CEDAW Committee similarly recognized the disproportionate impact of the gender pay gap on Afro-Brazilian women.[69] The CEDAW Concluding Observations addressing the gender pay gap of Afro-Brazilian women in Brazil could be instructive to the United States' own efforts to close the gender pay gap, as evidenced in initiatives like the proposed Paycheck Fairness Act, which calls for studies on gender and intersectional disparities in wages.[70]

In Mexico's Concluding Observations, the CEDAW Committee likewise addressed multiple forms of discrimination against indigenous rural women and made recommendations based on intersectional strategies to pay special attention to this group of women.[71] The United States could similarly make note of these policy recommendations.

States Parties themselves can also offer the United States some additional suggestions. In the most recent CEDAW Reports in 2020, Sweden drafted an important section on intersectionality. This section

66. Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Combined Eighth and Ninth Periodic Reports of Canada, ¶ 27, U.N. Doc. CEDAW/C/CAN/CO/8-9 (2016); Meghan Campbell, *CEDAW and Women's Intersecting Identities: A Pioneering New Approach to Intersectional Discrimination*, 11(2) REVISTA DIREITO GV, SÃO PAULO 479, 480–81 (2015).

67. *See* Campbell, *supra* note 66.

68. The Biden Administration's American Rescue Plan acknowledges the systemic inequalities experienced by Native Americans and provides tangible relief to tribal governments. *See The American Rescue Plan and Native Communities*, AM. RESCUE PLAN (Mar. 11, 2021), https://www.speaker.gov/sites/speaker.house.gov/files/20210311_ARPFactSheet_NativeAmericanCommunities.pdf [https://perma.cc/8BUC-XWM9].

69. The CEDAW Committee observes that "the wage gap between men and women fluctuates between 17% and 40% depending on the race, ethnicity and education of women" and expressed concern that "stereotypes related to gender and race contribute of Afro-descendent and indigenous women into lower quality jobs." *See* Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Seventh Periodic Report of Brazil, ¶ 26, U.N. Doc. CEDAW/C/BRA/CO/7 (2012).

70. *See* Paycheck Fairness Act, S. 270, 116th Cong. § 6 (2020).

71. *See* Comm. on the Elimination of Discrimination Against Women, Concluding Observations of the Committee on the Elimination of Discrimination Against Women, ¶¶ 23, 35, U.N. Doc. CEDAW/C/MEX/CO/7-8 (2012).

was included in response to a request by the CEDAW Committee in 2019 and states that "[w]omen's exposure to various forms of racism is acknowledged within the framework of the Government's national plan to combat racism, similar forms of hostility and hate crimes."[72] On March 30, 2021, President Biden announced additional action on anti-Asian violence and bias.[73] Although these measures provide for comprehensive efforts to combat violence and harassment against the Asian community, as well as an equity task force, such initiatives could be further strengthened through an understanding of comparative gender policies in countries like Sweden.

The CEDAW Committee's Recommendations would also be instructive to U.S. policy. The Committee's recent Recommendation to Australia emphasized the importance of recognizing diverse groups of women, including Aboriginal and Torres Strait Islander women, LGBTI women, women with disabilities, women from cultural minorities and refugee women.[74] The Committee recommended multi-pronged measures, such as funding for reproductive rights, and

72. Gov. Offs. of Swed., Tenth Periodic Report by the Government of Sweden on the Measures in Accordance with the Convention on the Elimination of All Forms of Discrimination against Women, at 49, A2019/00509/JÄM (2020); *see also* Comm. on the Elimination of All Forms of Discrimination Against Women, List of Issues and Questions Prior to the Submission of the Tenth Periodic Report of Sweden, ¶ 20, U.N. Doc. CEDAW/C/SWE/QPR/10 (2019) [hereinafter Tenth Periodic Report of Sweden]:

> Please provide updated information and data on the human rights situation of women facing intersectional discrimination, including refugee, asylum-seeking and migrant women, Roma and Sami women, Afro-Swedish women and women of African descent, and women belonging to ethno-religious minority groups, including Muslim women, and specify the measures taken to ensure that they have effective access to education, health, housing, employment and participation in political and public life, including through the use of temporary special measures. Noting that foreign-born and refugee women face specific and persistent difficulties in integrating into the labour market, as illustrated by their higher unemployment rate compared with that of women born in the State party, please provide information on the measures taken to improve their integration into the labour market, such as the "introduction jobs" initiative under the 2018 national reform programme, including through skills assessments, qualifications recognition, education and training opportunities and public awareness-raising campaigns.

73. *See Fact Sheet: President Biden Announces Additional Actions to Respond to Anti-Asian Violence, Xenophobia and Bias*, WHITE HOUSE OFF. PRESS SEC'Y (Mar. 30, 2021), https://www.whitehouse.gov/briefing-room/statements-releases/2021/03/30/fact-sheet-president-biden-announces-additional-actions-to-respond-to-anti-asian-violence-xenophobia-and-bias [https://perma.cc/3SQG-ZKTV] (detailing the Biden Administration's efforts to address COVID-19-related Anti-Asian hate crimes).

74. *See* Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Eighth Periodic Report of Australia, ¶ 24, U.N. Doc. CEDAW/C/AUS/CO/8 (2018); *see also* Rod Glover, *Growth Without Direction: How Australia Measures Up Against UN Targets*, THE CONVERSATION (Sept. 5, 2018, 4:05 PM), https://theconversation.com/growth-without-direction-how-australia-measures-up-against-un-targets-102631 [https://perma.cc/Z3UM-S8S8].

intersectional rights, including the rights of women refugees.[75] Embodying a similar approach, one of the first Executive Orders passed by the Biden Administration was one on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Identity.[76] These important anti-discrimination policies are critical for transnational idea-sharing initiatives. As a party to the CEDAW, the United States could enhance the transmission of new ideas and progressive action to the rest of the world and be seen as exemplars in the field of equity and justice.

D. Intersectionality, the CEDAW, and the United States[77]

Our data analysis of the State Party Reports to the CEDAW Committee from 2016 to 2020 reveals a significant focus by the CEDAW Committee on two issues that are central to the Biden Administration and to the United States' national security and foreign policy in general: (1) violence against women and (2) an intersectional focus on gender.[78]

By providing information to the CEDAW Committee, States Parties have been able to guide their own policymaking to improve women's rights domestically and adequately address the intersectional needs of women residing there. Our data analysis[79] reveals that States Parties between 2016 and 2020 provided some information on gender-based violence to the Committee 100% of the time, which is in line with the Committee's continued focus on that area.[80] Most of the time, in just under 95% of instances, States also provided information on at least one other area of interest.[81] Half of the reporting States provided information to the Committee on gender-based violence, WPS, and

75. *See* Concluding Observations on the Eighth Periodic Report of Australia, *supra* note 74.

76. *See Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation*, WHITE HOUSE (Jan. 20, 2021), https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-preventing-and-combating-discrimination-on-basis-of-gender-identity-or-sexual-orientation [https://perma.cc/EKP6-2JNA].

77. All data in this Section was collected by Rangita de Silva de Alwis through Penn Law. *See Data on CEDAW*, *supra* note 62.

78. See *Data on CEDAW*, *supra* note 62, and see also *infra* Appendix for a breakdown detailing the frequency that the CEDAW Committee requested—and how often States Parties provided—information about WPS, intersectionality, and gender-based violence between 2016 and 2020.

79. *See infra* Appendix, tbls.1 & 2.

80. *See infra* Appendix, tbl.2.

81. *Id.*

intersectionality.[82] Just over 43% of States provided information on solely gender-based violence and intersectionality.[83]

In 2016, the CEDAW Committee referenced WPS 75% of the time in their Concluding Observations.[84] The percentage of times that the CEDAW mentioned minority rights in their Concluding Observations rose from 64% to 75% between 2016 and 2018.[85] Although there was a drop in the frequency of reference in 2019 and 2020, this shift may be due to the fact that in every Concluding Observation across all five years (2016–2020), the Committee mentioned intersectionality and gender-based violence 100% of the time.[86]

Ratification of the CEDAW, and subsequent Concluding Observation Reports from the CEDAW Committee, have both contributed to the development of gender legal policy on a broad scale (*e.g.*, the inclusion of intersectionality in the gender discrimination discussion) and contributed to domestic implementation of anti-discrimination laws around the world.[87] From this brief survey of recent CEDAW Committee Recommendations, we can see that ratification has the potential of helping to improve the domestic human rights situation in the United States.[88] The United States can join the legion of other U.N. Member States that actively use the CEDAW to guide their own policymaking on eliminating gender-based discrimination. What the recent public reckoning on racial and gender justice has revealed in profoundly important ways is that the United States has much more to do to address the interrelated axes of racial and gender inequality.[89]

While we believe that ratifying the CEDAW can provide ample support to addressing the domestic human rights situation in the United States, some reformers might want more than a symbolic act of ratification.[90] Although we have long been engaged in a national conversation on race and gender, the dual forces of the pandemic and the renewed racial justice movement have forced us to face up to our failure to act. In January, at the signing of the Executive Order on Racial

82. *Id.*

83. *Id.*

84. A drop in the frequency of the CEDAW Committee's references to WPS in 2020 may be attributable to the Committee's focus on emergencies related to COVID-19 during that time period.

85. *See infra* Appendix, tbl.1.

86. *Id.*

87. *See* discussion on domestic implementation of the CEDAW *infra* Part III.

88. *See Data on CEDAW*, *supra* note 62.

89. *See* Linda S. Greene, Lolita Buckner Inniss & Bridget J. Crawford, *Talking About Black Lives Matter and #MeToo*, 34 WIS. J.L. GENDER & SOC'Y 109, 136–38 (2019).

90. For a response to challenges of ratification, see generally Hathaway, *supra* note 22.

Equality, President Biden referenced the significance of a new generation of young Americans forcing a national confrontation with systemic injustice.[91] The CEDAW Ratification lends itself to this current national impulse on a public reckoning on gender and race.

Criticisms of the human rights agenda frequently fail to acknowledge the difficult and lengthy process of implementation—which often starts at the initial stage of engagement with the relevant human rights convention body. The moment of ratification is not a "silver bullet" designed to immediately resolve the issue which inspired the instrument.[92] Nonetheless, it is worth considering some of the advantages to ratification that can be translated directly into organizing efforts, policy implementation, and reform efforts at the domestic level.[93]

One interesting benefit is that ratifying the CEDAW gives an opportunity for American civil rights organizations focused on domestic human rights issues to bring their advocacy to the international stage. Once the Convention is ratified, American civil rights groups could present their findings to the CEDAW Committee and use the body as another vehicle of accountability to examine government action on the human rights situation in the United States.

Ratification of the CEDAW also gives the opportunity for American reformers and lawmakers to develop a more nuanced understanding of intersectionality by working with and learning from a

91. *Remarks by President Biden at Signing of an Executive Order on Racial Equality*, WHITE HOUSE BRIEFING ROOM (Jan. 26, 2021), https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/01/26/remarks-by-president-biden-at-signing-of-an-executive-order-on-racial-equity [https://perma.cc/5ENM-UASY].

92. *See* Ryan Goodman & Derek Jinks, *Measuring the Effects of Human Rights Treaties* 14 EUR. J. INT. L. 171, 173–74 (2003) (responding to Hathaway, *supra* note 22).

93. Some examples of this connection between grassroots organizing, the CEDAW, and domestic policy change include Zainah Anwar & Jana S. Rumminger, *Justice and Equality in Muslim Family Laws: Challenges, Possibilities, and Strategies for Reform*, 64 WASH. & LEE L. REV. 1529, 1545–48 (2007) (outlining key discriminatory provisions within Malaysia's Islamic Family Law (Federal Territories) Act of 1984 and the efforts being made by Muslim women in Malaysia to advocate for comprehensive reform of Malaysian Muslim family laws); Madhavi Sunder, *Piercing the Veil*, 112 YALE L.J. 1399, 1443–57 (2003) (discussing women living under Muslim laws and the unexamined archives of women's human rights education manuals, to demonstrate how women activists in the Muslim world are catalyzing change on the ground). *See also* Conor Friedersdorf, *Will Black Lives Matter Be a Movement That Persuades?*, ATLANTIC (Sept. 24, 2015), https://www.theatlantic.com/politics/archive/2015/09/will-black-lives-matter-be-a-movement-that-persuades/407017/ [https://perma.cc/9D5H-Q8AH] ("But awareness-raising often goes nowhere . . . they've provided a plausible way to convert awareness and mobilization into real-world solutions that will help save lives.").

global community of experts.[94] The reality is that many of the intersectional issues facing marginalized groups in the United States are not uniquely American challenges. Instead, the tensions of intersectional discrimination are typically transnational, and the process of developing solutions can benefit from cross-border cooperation and experimentation. The CEDAW Committee provides a platform for this kind of policy development and cross-pollination.

Finally, the CEDAW can be an important tool for agenda-setting domestically. The truly universal recommendations of the CEDAW can serve as guidelines for lawmakers considering which legislative projects might cut across political divides. The fact that these norms have been endorsed by an international body gives some credence and legitimacy to the fundamental status of such policies.

We acknowledge that the United States has attempted to make a commitment to intersectionality independently of the CEDAW. In the Biden Administration's National Strategy, the administration committed to "[r]educing racial and ethnic disparities in COVID-19 global response and disproportionate impacts on marginalized and indigenous communities, women and girls, and other groups."[95]

This commitment to intersectionality can similarly be seen in the United States' response to the 2021 Atlanta spa shootings, where eight people, including six Asian women, were killed in a shooting spree.[96] The tragedy was a tipping point in shaping a new policy agenda to address the underlying power relations which lead to hate crimes and gender-based violence: "The Anti-Asian Hate Crimes Law: Combatting Racism, Xenophobia, and Intolerance Against Asian American and Pacific Islanders in the United States."[97] In advocating for the passage of this bill, the bipartisan effort advanced an image of hate crime based in an intersectional understanding of sexual violence,

94. This collaboration was very important for the late U.S. Supreme Court Justice Ruth Bader Ginsburg. *See* Ruth Bader Ginsburg, Assoc. Just., U.S. Sup. Ct., "A Decent Respect to the Opinions of [Human]kind": The Value of a Comparative Perspective in Constitutional Adjudication, Remarks at the International Academy of Comparative Law at American University, at 3 (July 30, 2010).

95. NATIONAL STRATEGY, *supra* note 14, at 114.

96. *8 Dead in Atlanta Spa Shootings, With Fears of Anti-Asian Bias*, N.Y. TIMES (Mar. 26, 2021), https://www.nytimes.com/live/2021/03/17/us/shooting-atlanta-acworth [https://perma.cc/X875-Y6YL].

97. *See* Barbara Sprunt, *Here's What the New Hate Crimes Law Aims To Do As Attacks on Asian Americans Rise*, N.P.R. (May 20, 2021, 4:32 PM), https://www.npr.org/2021/05/20/998599775/biden-to-sign-the-covid-19-hate-crimes-bill-as-anti-asian-american-attacks-rise [https://perma.cc/UV5U-52V5]; Rangita de Silva de Alwis, *After Atlanta: Building a Future Free of Racism and Gender-based Violence*, GIWPS (Mar. 19, 2021), https://giwps.georgetown.edu/after-atlanta-building-a-future-free-of-racism-and-gender-based-violence [https://perma.cc/Q5JN-CR8X].

racism, and populism.[98] President Biden cogently summarized the contemporary commitment to intersectionality in his recent comments on renewing the Violence Against Women Act (the "VAWA")[99]: "This should not be a Democratic or Republican issue—it's a matter of justice and compassion."[100] Instead of seeing violence against women as a mere collection of discrete incidents, President Biden acknowledges the intersectional nature of violence as a larger phenomenon of power dynamics.[101]

The U.S. Page Act of 1875—which banned the entry of Asian laborers, prominently "lewd and immoral" Chinese women into the United States—exemplifies how power structures can codify racial discrimination and entrench colonial history.[102] Not only did the Act discriminate against Asian women immigrants on its face, it also contributed to the persistent fetishization and subordination of Asian women in the United States by legitimizing racist stereotypes. This concept of violence as an abuse of power, as manifested in racism, sexism, and colonialism, is underscored in the CEDAW.[103] The Convention offers a powerful framework through which to articulate the ongoing violence of the U.S. Page Act for Asian women, and to understand that for the Biden Administration, combatting structural

98. *See* de Silva de Alwis, *supra* note 97.

99. *See* discussion *infra* Conclusion.

100. *Statement by President Biden on the Introduction of the Violence Against Women Reauthorization Act of 2021*, WHITE HOUSE BRIEFING ROOM (Mar. 8, 2021), https://www.whitehouse.gov/briefing-room/statements-releases/2021/03/08/statement-by-president-biden-on-the-introduction-of-the-violence-against-women-reauthorization-act-of-2021/ [https://perma.cc/K77L-43QB].

101. President Biden's sensitivity to power dynamics finds an international correlative in the Convention and related materials. The CEDAW and the U.N. Declaration on the Elimination of Discrimination Against Women both underscore unequal power dynamics as a root cause of the subordination of women. *See* CEDAW, *supra* note 52, art. 5 (calling upon States Parties to eliminate "practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women"). *See also* G.A. Res. 48/104, pmbl., Declaration on the Elimination of Violence Against Women (Dec. 20, 1993), https://www.ohchr.org/en/professionalinterest/pages/violenceagainstwomen.aspx [https://perma.cc/67P9-BN25] ("Recognizing that violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women . . . .").

102. Mari Uyehara, *The Roots of the Atlanta Shooting Go Back to the First Law Restricting Immigration*, NATION (Mar. 22, 2021), https://www.thenation.com/article/society/atlanta-shooting-history [https://perma.cc/5HZM-VW3M**]**.

103. *See* CEDAW, *supra* note 52, pmbl. ("Emphasizing that the eradication of apartheid, all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women . . . .").

violence will require eradicating underlying racial discrimination and legacies of colonialism.

However, this same national approach to intersectionality must be mainstreamed into foreign policy and development cooperation to accelerate global recovery plans.[104] Ratification of the CEDAW and integration of its tenants into domestic legislation would provide a moment of opportunity to build a better architecture to restore the rights of women at the margins, including ethnic minorities, indigenous women, refugee populations, displaced populations, and LGBTQ+ women.

In conclusion, the role that the CEDAW can play in the American domestic human rights sphere has been overlooked. Not only is the CEDAW an essential foreign policy tool, but at a time of a public reckoning of the BLM and #MeToo Movements, the Convention also represents an important vehicle to address institutional and structural sexism through an intersectional lens. As Harold Koh argued in 2002, "a country's ratification of the CEDAW is one of the surest indicators of the strength of its commitment to internalize the universal norm of gender equality into its domestic laws."[105] The United States must make good on its commitment by ratifying the CEDAW.

II. WOMEN, PEACE, AND SECURITY AND THE CEDAW

The relationship between the CEDAW and the Women, Peace, and Security agenda has also not received sufficient attention. The United States prides itself as a global leader on WPS issues and is a forerunner of the idea not only that the WPS agenda is an effective conflict prevention tool, but also that peace is inextricably linked with gender equality. In a report on the Obama Administration's commitments to the WPS agenda, leaders such as Leon Panetta, Former U.S. Secretary of Defense, and Hillary Clinton, Former U.S. Secretary of State, argued unambiguously: "In short, the U.S. Government has made it a foreign policy and national security priority to put women at the heart of our peace and security efforts."[106] They argued that U.S. national security depends on involving women in conflict resolution and peacebuilding.[107] In turn, this active engagement and leadership

104. For a discussion on the concept of "development cooperation," see J. Brian Atwood, *American Leadership in Development Cooperation*, BROOKINGS INST. (July 31, 2018), https://www.brookings.edu/research/american-leadership-in-development-cooperation [https://perma.cc/JYK4-XJ8S].

105. *2002 Hearing*, *supra* note 2, at 36 (statement of Prof. Harold Hongju Koh).

106. Hillary Rodham Clinton & Leon Panetta, *Foreword* to WOMEN ON THE FRONTLINES OF PEACE AND SECURITY, at viii (Jeffrey D. Smotherman ed., 2014).

107. *See id.* at vii–ix.

of women in these negotiations improves the prospects for sustainable peace.

While serving as U.N. ambassador, Samantha Power often quoted[108] the evidence-based research collected by the 2015 U.N. Global Study on WPS, which demonstrated that women's participation in peacemaking was not only a moral, but also a security, imperative.[109] The U.N. Global Study's articulation of the "simple, yet revolutionary idea . . . that peace is only sustainable if women are fully included" was first anchored in the 1995 Fourth World Conference's Beijing Platform of Action.[110] This concept was formalized by the historic U.N. Security Council Resolution ("SCR") 1325, adopted on October 31, 2000.[111] Phumzile Mlambo-Ngcuka, Head of U.N. Women, referred to SCR 1325 as the "crowning achievement" of the global women's movement.[112] For the first time, a Security Council Resolution laid out the role of women and the value of gender perspective in preventing and resolving conflicts, as well as in sustaining peace.[113]

Moreover, Michelle Bachelet, the first Head of U.N. Women and now the High Commissioner for Human Rights, made the clear correlation between gender equality and national and global security, concluding that gender equality is an indicator of security.[114]

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108. *See, e.g.*, Press Release, Security Council, Security Council Unanimously Adopts Resolution 2242 (2015) to Improve Implementation of Landmark Text on Women, Peace, Security Agenda, U.N. Press Release SC/12076 (Oct. 13, 2015), https://www.un.org/press/en/2015/sc12076.doc.htm [https://perma.cc/KL3K-D3HN] (noting Power's citation of data on the inclusion of women in the peacemaking process).

109. *See* RADHIKA COOMARASWAMY, PREVENTING CONFLICT, TRANSFORMING JUSTICE, SECURING THE PEACE: A GLOBAL STUDY ON THE IMPLEMENTATION OF UNITED NATIONS SECURITY COUNCIL RESOLUTION 1325, at 41–42 (2015) ("[P]eace processes that included women as witnesses, signatories, mediators, and/or negotiators demonstrated a 20 per cent increase in the probability of a peace agreement lasting at least two years. This increases over time, with a 35 per cent increase in the probability of a peace agreement lasting 15 years."). *See also generally* Laurel Stone, *Women Transforming Conflict: A Quantitative Analysis of Female Peacemaking* (Seton Hall U. Working Paper), https://papers.ssrn.com/sol3/papers.cfm?abstract_
id=2485242 [https://perma.cc/7ZS3-VUJK] (demonstrating quantitatively how women's participation in the peacemaking process can impact the longevity of peace agreements).

110. U.N. WOMEN, BEIJING DECLARATION AND PLATFORM FOR ACTION 32–176 (1995), https://www.unwomen.org/en/digital-library/publications/2015/01/beijing-declaration [https://perma.cc/KQ53-QYQY].

111. S.C. Res. 1325, pmbl. (Oct. 31, 2000).

112. Phumzile Mlambo-Ngcuka, *Foreword* to COOMARASWAMY, *supra* note 109, at 5.

113. *See id.*

114. Bachelet argued that when more women are in the labor force, prospects for better peace improve. *See* Michelle Bachelet, *Women as Agents of Peace and Stability: Measuring the Results*, *in* WOMEN ON THE FRONTLINES OF PEACE AND SECURITY, *supra* note 106, at 105.

In practice, American allies like NATO see the WPS agenda as a vital pillar of national security. As Clare Hutchinson, the NATO Secretary General's Special Representative for WPS, has articulated, NATO's "vision of security must be anchored to the inclusion of women, the adoption of a gender perspective in all activities, and in upholding the highest standards of behavior."[115]

This Section provides an overview of America's leadership regarding the WPS agenda, delineates the intertwined impact of the movements for WPS and human rights, and evaluates the CEDAW's varied influence on WPS strategies to advance women's rights. We argue that the ratification of the CEDAW is central to U.S. leadership in implementing the Resolutions adopted by the U.N. Security Council as well as securing national and global security.

A. Bipartisan Support of WPS in the United States

Within the United States, WPS is an issue that has strong bipartisan support, as demonstrated by over a decade of concerted legislative efforts by both Democrats and Republicans.[116] However, despite the closely connected goals of WPS and the CEDAW, the United States has yet to leverage the legitimacy of the WPS agenda to bolster support for the Convention. In contrast, the CEDAW and CEDAW Committee directly tap into the WPS agenda and have been instrumental components in catalyzing international interest in and directing action on this vital agenda.[117] Thus, the Biden Administration should correct this oversight and attempt to translate bipartisan support of WPS into support for ratifying the CEDAW.

In 2017, the United States became the first country in the world to pass comprehensive national legislation to enshrine the WPS agenda

115. Clare Hutchinson, NATO Sec'y Gen.'s Special Representative for Women, Peace, and Sec., NATO Statement at the United Nations Security Council Open Debate on Women, Peace, and Security (Oct. 29, 2020), https://www.nato.int/cps/us/natohq/opinions_179287.htm?selectedLocale=en [https://perma.cc/KV9Q-KPXR]; *Fact Sheet: The United States National Action Plan on Women, Peace, and Security*, WHITE HOUSE OFF. PRESS SEC'Y (Dec. 19, 2011), https://obamawhitehouse.archives.gov/the-press-office/2011/12/19/fact-sheet-united-states-national-action-plan-women-peace-and-security [https://perma.cc/G8ZG-AVW8] (describing the first ever executive order on women, peace, and security national action plan in 2011).

116. *See* Marilou McPhedran, *Complements of CEDAW: U.S. Foreign Policy Coherence on Women's Human Rights and Human Security*, 2014 MICH. ST. L. REV. 281, 282–84 (2014) (arguing for U.S. ratification of the CEDAW in order to strengthen existing U.S. anti-discrimination legislation and concluding that CEDAW ratification is a critical step to fully implementing the already well-accepted WPS agenda).

117. *See supra* note 114 and accompanying text.

with the Women, Peace, and Security Act of 2017.[118] This Act codified the U.S. commitment to advancing women's meaningful participation in conflict resolution and peacebuilding, as well as safeguarding the safety of women and girls.[119] With the Act, the United States solidified its reputation as a leader in WPS issues, which had developed over the past decade. This Section reviews this history of American involvement in WPS, illustrating how WPS cuts across political lines as a well-accepted agenda.[120]

One of the most emblematic moments of American leadership involving WPS occurred during the Bush Administration. In June 2008, U.S. Secretary of State Condoleezza Rice was chairing the U.N. Security Council Presidency, on behalf of the United States, when she introduced what later became Security Council Resolution 1820.[121]

In proposing this Resolution, Secretary Rice also answered whether the question of sexual violence against women in conflict was one which the U.N. Security Council was authorized to address: "I am proud that, today, we respond to that lingering question with a resounding 'yes.'"[122] Secretary Rice added that the Security Council acknowledged sexual violence as a security concern, stating: "We affirm that sexual violence profoundly affects not only the health and safety of

118. Women, Peace, and Security Act of 2017, 22 U.S.C. § 2151 (2017); *see* Amb. Linda Thomas-Greenfield, U.S. Rep. to the U.N., Remarks at a U.N. Security Council Open Debate on Women, Peace, and Security (Oct. 21, 2021), https://usun.usmission.gov/remarks-by-ambassador-linda-thomas-greenfield%E2%80%AFat-a-un-security-council-open-debate-on-women-peace-and-security/ [https://perma.cc/LJ3H-XG6W] ("The United States passed the Women, Peace, and Security Act in 2017, making us the first country in the world with a comprehensive domestic law promoting this key agenda.").

119. In 2017, the United States drafted the first ever Bill on Women, Peace, and Security. This bill expresses the sense that:

> (1) the United States should be a global leader in promoting the participation of women in conflict prevention, management, and resolution and post-conflict relief and recovery efforts; (2) the political participation and leadership of women in fragile environments, particularly during democratic transitions, is critical to sustaining democratic institutions; and (3) the participation of women in conflict prevention and conflict resolution helps promote more inclusive and democratic societies and is critical to country and regional stability. The President, within one year after enactment of this bill and again four years later, shall submit to the appropriate congressional committees and make public a Women, Peace, and Security Strategy, which shall: be aligned with other nations' plans to improve the participation of women in peace and security processes, conflict prevention, peace building, and decision-making institutions; and include goals and evaluation plans to ensure strategy effectiveness.

Women, Peace, and Security Act of 2017, *supra* note 118, at §§ 3, 5.

120. *See* McPhedran, *supra* note 116, at 282–84.

121. S.C. Res. 1820 (June 19, 2008); T. Vishnu Jayaraman, *Rape as a War Crime*, U.N. CHRON., https://www.un.org/en/chronicle/article/rape-war-crime [https://perma.cc/7W47-EZ2W].

122. Jayaraman, *supra* note 121.

women, but the economic and social stability of their nations."[123] This perspective shows the clear connection between the CEDAW and Security Council Resolutions that received strong bipartisan support. In fact, Rice's sponsorship of Security Council Resolution 1820 was the first time the Security Council recognized, in a Resolution, that sexual violence can be a weapon of war.

American commitment to WPS issues continued during the Obama Administration. SCR 1888, introduced by Secretary of State Hillary Clinton, reaffirmed Secretary Rice's premise and acknowledged that the CEDAW is inextricably connected to women's security.[124] The Resolution added new accountability measures and articulated that peacekeeping missions have a specific mandate to protect women and children from sexual violence during armed conflict.[125]

SCR 1888 further called upon the U.N. Secretary-General to "appoint a Special Representative to provide coherent and strategic leadership . . . in order to address, at both headquarters and country level, sexual violence in armed conflict."[126] Soon thereafter, President Obama released a strong statement in general support of SCR 1888:

> Today, the United States joins with the international community in sending a simple and unequivocal message: violence against women and children will not be tolerated and must be stopped. The United States places a high priority on this issue of fundamental human rights and global security. I am pleased that the Security Council, chaired by Secretary of State Hillary Clinton, unanimously approved a US-sponsored resolution that will increase the protection of women and children in conflict. In particular, the resolution focuses on one of the most abhorrent features of modern war: the use of rape as a weapon, and other forms of sexual violence against women and children.[127]

As support for the WPS agenda continued to build, the Department of State published its Implementation Plan of the National Action

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123. *Id.*

124. S.C. Res. 1888, pmbl. (Sept. 30, 2009) ("*Reaffirming* its commitment to the continuing and full implementation of resolution[] . . . 1820 (2008).").)") (emphasis in original).

125. *See id.*

126. *Id.* ¶ 4.

127. *Statement on the United Nations Security Council Resolution on the Protection of Women and Children in Conflict*, ADMIN. OF BARACK OBAMA (Sept. 30, 2009), https://www.govinfo.gov/content/pkg/DCPD-200900761/html/DCPD-200900761.htm [https://perma.cc/UV6L-QVDG].

Plan on Women, Peace, and Security in August 2012.[128] John Kerry, Secretary of State at the time, made a powerful argument in favor of the WPS agenda in 2014 on International Women's Day: "Women are vital to our shared goals of prosperity, stability and peace. That's as true when it comes to ending our battles as it is jumpstarting our economies. The fact is that women bear the greatest burden in war. But their voices are too rarely heard in negotiating peace."[129] He continued to highlight how "[c]ountries that value and empower women to participate fully in decision-making are more stable, prosperous, and secure. The opposite is also true. When women are excluded from negotiations, the peace that follows is more tenuous. Trust is eroded, and human rights and accountability are often ignored."[130] Secretary Kerry also remarked that "[e]vidence from around the world has shown that deadly conflicts are more likely to be prevented, and peace best forged and protected, when women are included as equal partners."[131] In fact, evidence has shown that peace is more likely to last if women are involved in the process.[132]

Years of bipartisan support for the WPS agenda culminated in Congress passing the Women, Peace, and Security Act of 2017 during the Trump Administration.[133] The Act directly called upon the United States to be a global leader in WPS and requires the President to develop a Women, Peace, and Security Strategy.[134] The Act does not mandate a unilateral Strategy on WPS, but instead requires one that is aligned with the plans of other relevant state actors.[135] This historic legislation set in stone the United States' commitment to WPS at a high level of international cooperation and integration.

B. WPS and the CEDAW: Linkages Between the U.S. WPS Policy

128. DEP'T OF STATE, UNITED STATES NATIONAL ACTION PLAN ON WOMEN, PEACE, AND SECURITY (2012) (providing directives on how the State Department, as well as U.S. embassies and consulates, can advance the U.S. National Action Plan on Women, Peace, and Security, and thereby signaling the United States' commitment to the advancement of gender equality and national security globally).

129. John Kerry, *Op Ed from Secretary of State Kerry on International Women's Day 2014*, U.S. EMBASSY IN THE KYRGYZ REPUBLIC (Mar. 7, 2014), https://kg.usembassy.gov/op-ed-secretary-state-kerry-international-womens-day-2014 [https://perma.cc/37LL-7WS9].

130. *Id.*

131. *Id.*

132. *See generally* U.N. WOMEN, *supra* note 110 (discussing the effect of women's participation in mediation and conflict resolution around the globe).

133. 22 U.S.C. § 2151.

134. *Id.* §§ 3, 5.

135. *Id.* § 5(a)(1).

and the CEDAW

Although it makes sense to ratify the CEDAW in the context of recent U.S. domestic policy on intersectionality,[136] the platform of American global leadership on women's equality also supports ratifying the Convention.[137] The CEDAW has been strengthened by U.N. Security Council Resolutions supported by Republican and Democratic administrations—including SCR 1888 in 2009 and SCR 1889 in 2010.[138]

The CEDAW, along with SCR 1325 and its progeny, has informed the shift in U.S. policy toward addressing women's humans rights, illustrating how the WPS agenda links the interests of the international community and the policy interests of the United States. SCR 1325, adopted in 2000, and the subsequent nine Resolutions provide a legitimizing framework for women's participation in peace and security.[139] Through an analysis of the most recent CEDAW Committee Session in June 2021, we can show the importance of the CEDAW as a finishing touch to the WPS agenda, and how the Convention is an essential component in the decades-long effort to integrate women and their perspectives in peace and security.

First, the CEDAW directly engages in WPS issues through the CEDAW Committee's General Recommendation 30 on women's engagement in conflict prevention, in addition to conflict and post-conflict situations. Recommendation 30 not only complements the WPS

136. *See generally* NATIONAL STRATEGY, *supra* note 14 (outlining the intersectional approach that the Biden Administration is planning on taking in both their approach to the COVID-19 pandemic and U.S. foreign policy).

137. Security Council Resolution 1820 by the U.N. Security Council defined sexual violence as a threat to international peace and security and was introduced by Secretary Rice. *See supra* notes 19 & 121 and accompanying text.

138. *See* McPhedran, *supra* note 116, at 282–84.

139. The landmark S.C. Res. 1325 spawned a series of U.N. Security Council Resolutions, each dedicated to addressing an emerging concern on WPS. These Resolutions include: (1) S.C. Res. 1820 (2008), addressing conflict-related sexual violence as a tactic of war; (2) S.C. Res. 1888 (2009), establishing leadership to address conflict-related sexual violence; (3) S.C. Res. 1889 (2009), calling for the development of global indicators to track the implementation of SCR 1325; (4) S.C. Res. 1960 (2010), addressing sexual violence in armed conflict; (5) S.C. Res. 2106 (2013), providing further directions on addressing sexual violence; (6) S.C. Res. 2122 (2013), recommending equal and full participation of women in decision-making; (7) S.C. Res. 2242 (2015), marking the 15th Anniversary of SCR 1325 and underscoring role of women in countering violent extremism and in the prevention of violent extremism; (8) S.C. Res. 2467 (2019), addressing the root causes of sexual violence and systemic gender inequality and discrimination; and (9) S.C. Res. 2493 (2019), calling upon U.N. Member States to rededicate efforts to implement the entire corpus of WPS Resolutions. For a longer discussion of the impact of these resolutions, see COOMARASWAMY, *supra* note 109, at 323–43.

agenda, but also clarifies the ways in which the WPS Resolutions are a key element of a State's obligations under the CEDAW.[140]

These linkages between the Convention and the WPS agenda undergird many of the recent sessions of the CEDAW Committee. For instance, in the 55th Session of the CEDAW in 2013, the Committee reviewed the State Party Reports of the United Kingdom and focused on the U.K.'s implementation of SCR 1325 and the WPS agenda.[141] The Committee criticized the lack of participation of women in the post-conflict process in Northern Ireland and the domestic application of SCR 1325 more broadly.[142] The Committee highlighted the incompatibility of the U.K.'s foreign policy, which emphasizes the implementation of SCR 1325, and its national policy concerning Northern Ireland.[143] The Committee played a nuanced role in recognizing the differences between a State Party's stated foreign policy goals and its national policies in implementing SCR 1325.[144]

As this example illustrates, it is now *de rigueur* for the CEDAW Committee to focus on WPS issues in the Concluding Observations of States Parties Reports to the CEDAW. In the most recent set of Concluding Observations during the 75th Session of the CEDAW, over half of the Committee's Recommendations referenced the WPS agenda.[145] The Concluding Observations for Afghanistan,[146]

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140. *Guidebook on CEDAW General Recommendation No. 30 and the UN Security Council Resolutions on Women, Peace and* Security, UN WOMEN, https://www.unwomen.org/en/digital-library/publications/2015/8/guidebook-cedawgeneralrecommendation30-womenpeacesecurity [https://perma.cc/T6WQ-8LNM]. The general recommendation makes clear that the Convention applies in all forms of conflict and post-conflict settings and addresses crucial issues facing women in these settings, including violence and challenges in access to justice, education, employment and health. It gives guidance on State parties' obligation of due diligence in respect of crimes against women by non-State actors. The general recommendation affirms the CEDAW's linkages with the Security Council's women, peace and security agenda. *See id.*

141. Comm. on the Elimination of Discrimination Against Women, Provisional Agenda, ¶ 4, U.N. Doc. CEDAW/C/55/1 (2013).

142. Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Seventh Periodic Report of the United Kingdom of Great Britain and Northern Ireland, ¶ 42, U.N. Doc. CEDAW/C/GBR/CO/7 (July 30, 2013).

143. *See id.*

144. *See id.*

145. *See* Comm. on the Elimination of All Forms of Discrimination Against Women, 75th Sess. (Feb. 10–28, 2020); *Data on CEDAW*, *supra* note 62.

146. Comm. on the Elimination of All Forms of Discrimination Against Women, Concluding Observations on the Third Periodic Report of Afghanistan, ¶¶ 31–32, U.N. Doc. CEDAW/C/AFG/CO/3 (Mar. 10, 2020):

the Congo,[147] and Zimbabwe[148] had sections dedicated specifically to WPS, providing substantial suggestions for improvement in state action in this issue area. For instance, the CEDAW Committee observed in detail that "Afghan women are systematically excluded from formal peace negotiations, such as the 2018 Kabul Process and the negotiations that followed the conference held in Geneva in 2018."[149]

C. Harnessing the WPS Agenda to Achieve CEDAW Ratification in

> The Committee is concerned, however, about the lack of gender-responsive budgeting, funding and cooperation for the implementation of the national action plan on Security Council resolution 1325 (2000) and about the fact that Afghan women are systematically excluded from formal peace negotiations, such as the 2018 Kabul Process and the negotiations that followed the conference held in Geneva in 2018. It also notes with concern that, of the 30 staff members of the newly established Ministry of State for Peace Affairs, only 2 are women.
>
> The Committee recommends that the State party work with representatives of women's civil society organizations from the different provinces . . .(e) To ensure that at least 30 per cent of staff members of the Ministry of State for Peace Affairs are women; (f) To ensure that women, including those belonging to ethnic and religious minorities, can participate meaningfully in peace, transitional justice and reconciliation processes, such as formal and informal peace talks, and in the implementation of the national action plan and monitoring progress in that regard.

147. The CEDAW Committee asked that the States Parties ratify without delay and ensure the effective implementation of the Arms Trade Treaty in order to respond to the impact of international arms transfers on civilians and in particular on women. The committee also recommended that women's organizations be involved in the development and implementation of disarmament and arms control programs to ensure accurate information gathering and the implementation of gender-sensitive disarmament programs tailored to the local context. *See* Comm. on the Elimination of All Forms of Discrimination Against Women, Concluding Observations on the Eighth Periodic Report of the Democratic Republic of the Congo, ¶¶ 10–13, U.N. Doc. CEDAW/C/COD/CO/8 (Aug. 6, 2019).

148. *See* Comm. on the Elimination of All Forms of Discrimination Against Women, Concluding Observations on the Sixth Periodic Report of Zimbabwe, ¶¶ 17–18, U.N. Doc. CEDAW/C/ZWE/CO/6 (Mar. 10, 2020):

> The Committee notes with concern that the National Peace and Reconciliation Commission is not fully operational and that its mandate will not be extended. It is also concerned about the barriers to the active and meaningful participation by women and girls at all stages of the peace and reconciliation processes in the State party, and notes with concern that their priorities and experiences are not given due attention . . . .

The Committee also called for

> . . . adequate human, technical, and financial resources to implement the mandate and to (b) Ensure the full involvement of women at all stages of peace and reconciliation processes, including in decision-making, in line with Security Council resolution 1325 (2000) on women and peace and security, and take into consideration the full spectrum of the women, peace and security agenda of the Council, as reflected in its resolutions.

149. *See* General Recommendation No. 30, *supra* note 140. *See also* discussion *infra* Conclusion.

the United States

As we have illustrated, the United States is committed to being a global leader in WPS, and the CEDAW is an integral tool in the implementation and advancement of the WPS agenda. However, if the United States wants to maintain and improve its status as a global leader in WPS, then it must ratify the CEDAW, potentially through emphasizing the WPS aspects of the CEDAW and thus making the Convention more attractive to prior skeptics of ratification.

It is indisputable that the CEDAW resonates with the aim and purpose of the Women, Peace, and Security Act of 2017. As we have explored, the CEDAW Committee helps to guide States Parties in the implementation of the WPS agenda, particularly in aligning policy implementations with the international consensus. Coordinating U.S. policy on WPS in association with the rest of the world is one of the requirements of the 2017 Act, making ratification of the CEDAW a crucial tool in the implementation of this legislation and in ensuring that the 2017 Act remains aligned with future CEDAW guidance.

In addition, as we have identified, WPS is a strongly bipartisan issue, with support from the Bush, Obama, and Trump Administrations. In the public discourse surrounding the ratification of the CEDAW, little has been done to connect the Convention to WPS. Yet, as we have argued, the CEDAW could be a primary instrument for the advancement of the WPS agenda. The Biden Administration should use this connection to argue for the ratification of the CEDAW, harnessing the popularity of WPS to catalyze support.

III. THE VERNACULARIZATION OF THE CEDAW: TOWARD A NOTION OF TRANSFORMATIVE POWER

Thus far in this Article, we have developed two novel reasons why the current political moment provides a significant impetus for the ratification of the CEDAW. These two arguments are meant to augment the conventional line of thought that the CEDAW can be an unparalleled tool of change around the world. This background leads us to our final argument that ratification will boost the United States' international standing and soft power diplomacy.

This Part maps the ways in which countries have taken steps to domesticate the CEDAW through legal reform, through the court system, and by adopting new lexicons to facilitate conversations about gender equality in different contexts. By implementing the CEDAW using a plurality of approaches, States Parties enrich the interpretation of the Convention and create opportunities for its principles to take root in different settings. As we see in the case law around the world, the CEDAW first provides a corrective mechanism for mitigating

historical inequality. Second, it offers a locus for transnational networking. Third, the Convention opens up political space for women, not only by providing a forum through which women can hold their governments accountable, but also by promoting dialogue on how to bridge the relativism/universalism divide[150] through attention to the complexity of different contexts.[151]

Consequently, we argue that this corrective function of the CEDAW, its potential for transnational idea-sharing, and its adaptability to different contexts can be three important pillars for the Biden Administration's attempt to address a national and global crisis. This moment presents an opportunity to redress the historic wrongs suffered by marginalized communities through attention to both context and comparative lenses.[152]

Some scholars have recently questioned the impact of human rights treaties, claiming that the CEDAW has not been a significant factor in the development of gender-based legal protections. We attempt to challenge this argument through an analysis of policies, laws, and constitutions from a variety of States Parties, demonstrating how the CEDAW has been successfully vernacularized and is ripe for a similar transformation in the United States. In this Part, we also highlight some of the extant debates on the impact of treaty ratification.

In essence, we assert that the CEDAW matters internationally, even forty years after it was adopted by the international community. The U.S. ratification of the CEDAW can further the Biden Administration's goal of eliminating gender-based discrimination and would have a dramatic effect on public perception of the CEDAW around the world. Although our overall argument holds that the ratification of the CEDAW is a good domestic strategy, we also concur with Harold Koh's well-established foreign policy plea in *Why America Should Ratify the Women's Rights Treaty*: "America simply cannot be a world leader in guaranteeing progress for women's rights unless it is also a

150. The reform of the Moroccan Moudawana Law (the Moroccan Family Code) of 2004 is an effort to bridge this divide. Despite existing challenges in the law, it provides a modernist interpretation of Islamic texts in granting certain rights to women in the family. *See* The Moroccan Family Code (*Moudawana*) (Feb. 5, 2004).

151. *See* Radhika Coomaraswamy, *Women and Children: The Cutting Edge of International Law*, COLOMBO TELEGRAPH (Apr. 11, 2014), https://www.colombotelegraph.com/index.php/women-and-children-the-cutting-edge-of-international-law [https://perma.cc/33EP-MCMK] ("The era of norm creation must now lead to an era of empiricism to see the impact of these laws and standard on actual women.").

152. *See id.* (demonstrating the importance of context in domesticating international human rights norms).

part of the global treaty."[153] His thesis is now bolstered by recent concepts of feminist foreign policy, which we trace briefly.

A. The CEDAW Matters Nationally

In 2002, after serving as Assistant Secretary of State for Democracy, Human Rights, and Labor, Harold Koh penned one of the canonical arguments for American ratification of the CEDAW:

> At the State Department, where I supervised the production of the annual country reports on human rights conditions worldwide, I found that a country's ratification of the CEDAW is one of the surest indicators of its commitment to internalize the universal norms of gender equality into its domestic norms . . . At the same time, from my direct experience as America's chief human rights official, I can testify that our continuing failure to ratify CEDAW has reduced our global standing, damaged our diplomatic relations and hindered our ability to lead in the international human rights community . . . Our non-ratification has led our allies and adversaries alike to challenge our claim of moral leadership in international human rights . . . the aberrant practice of non-ratification will only further our diplomatic isolation and inevitably harm our other foreign policy interests. Treaty ratification . . . has demonstrated its value as an important policy tool to promote equal rights in many of the foreign countries that have ratified the CEDAW . . . [It] has empowered countries to change constitutions, pass new laws and influence court decisions.[154]

Despite Koh's statement, several academics have challenged the impact of ratifying human rights treaties. In *Do Human Rights Treaties Make a Difference?*, Oona Hathaway contends that it is not possible to trace the causality between treaty ratification and state practice.[155] In addition, some scholars have held that there is an insufficient correlation between ratification and progress in human rights practice at the domestic level.[156] Eric Posner and others have likewise

153. *See* Koh, *supra* note 18, at 264.

154. *2002 Hearing*, *supra* note 2, at 36 (statement of Prof. Harold Hongju Koh).

155. *See* Hathaway, *supra* note 22, at 1939.

156. *See* ERIC POSNER, THE TWILIGHT OF HUMAN RIGHTS LAW 79–122 (2014) (discussing the connection between States signing human rights instruments and the number of international human rights violations); Eric Posner, *What's the Best Use for Human Rights Watch's*

claimed that the ratification of human rights treaties has not directly mitigated human rights violations.[157] These skeptics cite several countries that are ranked low in the global human rights indices (including Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates) despite ratification of core human rights treaties, the corpus of which includes the CEDAW.[158]

In response to these challenges, we will endeavor to demonstrate that the CEDAW continues to be one of the standard-setting policy tools to advance gender equality. As Melanne Verveer, one of the authors, testified before Congress in 2010: "[I]t is true many countries do not live up to that treaty, but we know how effectively that lever is for rights advocates to seize and to use effectively to bring about the kind of consistent application of the principles of the treaty to their own lives."[159]

Recognizing that same utility, we will examine how the CEDAW was used as a "lever" to pass constitutions, draft new laws, act as persuasive authority in court cases, and provide a new vocabulary for stakeholders. We adopt the term "vernacularization" to define these methods of domestic translation of the CEDAW and CEDAW Committee Recommendations. While it is impossible to determine the exact mixture of causal factors that guided these legislative and judicial decisions, we believe that the evidence developed in this Section provides a strong case that the CEDAW played an invaluable role. By exploring the successful vernacularization of the CEDAW, our investigations prove that the ratification of the CEDAW does in fact make a difference in national legislation, domestic court decisions, and stakeholder discussions.

Budget?, ERIC POSNER BLOG (Oct. 1, 2015), http://ericposner.com/whats-the-best-use-for-human-rights-watchs-budget [https://perma.cc/XDH8-T6V5]. At the same time, in 2015, David L. Richards and Jillienne Haguland argued through their data analysis that there was a correlation between the ratification of the CEDAW and the adoption of domestic violence legal protections. *See* David L. Richards & Jillienne Haguland, *How Laws Around the World Do and Do Not Protect Women from Violence*, WASH. POST (Nov. 2, 2015), https://www.washingtonpost.com/news/monkey-cage/wp/2015/02/11/how-laws-around-the-world-do-and-do-not-protect-women-from-violence [https://perma.cc/F5RD-UM3G].

157. *See* Posner (2015), *supra* note 156.

158. *See* Rachel George, *The Impact of International Human Rights Law Ratification on Local Discourses on Rights*, 21 HUM. RTS. REV. 43, 44–45 (2020).

159. *Women's Rights are Human Rights: U.S. Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women: Hearing Before the Subcomm. on Hum. Rts. & the L. of the S. Comm. on the Judiciary*, 111th Cong. 56–57 (2010) (statement of Melanne Verveer, Ambassador-at-Large, Off. of Glob. Women's Issues, U.S. Dep't of State).

B. Vernacularization of the CEDAW

The late legal anthropologist Sally Engle-Merry studied the process of "vernacularization," which refers to the process of domesticating international laws.[160] Engle-Merry and her co-author Peggy Levitt developed this concept based on the idea of adapting human rights norms in different communities and recognizing how ideas can travel and be adopted in the image of local populations.[161]

Though she observed preexisting gender dynamics, Engle-Merry was the first to give a name to the vernacularization of women's rights. Referring to a U.S. social movement's reliance on a civil rights-based approach, Engle-Merry, Levitt, and others went on to argue that: "Human rights approaches are more open to an intersectional analysis that combines gender discrimination with discrimination based on race, class, language, religion, national origin, and other factors in ways not possible through existing U.S. legal remedies."[162] As Engle-Merry acknowledged in the U.S. context:

> A human rights approach offers U.S. social movements several advantages over a civil rights approach . . . In the field of gender discrimination, human rights approaches focus on gathering and reporting systemic data and exposing areas of discriminatory practice rather than litigating cases of discrimination. Human rights strategies are based on monitoring and preventing future violations rather than litigation on the basis of past violations. Human rights approaches are more open to an intersectional analysis that combines gender discrimination with discrimination based on race, class, language, religion, national origin, and other factors in ways not possible through existing U.S. legal remedies.[163]

Engle-Merry's work on the study of how human rights are translated in the domestic sphere has shed new light on the way in which international human rights are adapted and adopted on the ground. However, the process of vernacularization does not come

160. *See* Sally Engle-Merry & Peggy Levitt, *The Vernacularization of Women's Human Rights*, *in* HUMAN RIGHTS FUTURES 213, 213–14 (Stephen Hopgood ed., 2017).

161. *See id.* at 216–17.

162. Sally Engle-Merry et al., *Law From Below: Women's Human Rights and Social Movements in New York City*, 44 LAW & SOC. REV. 101, 104 (2010).

163. *Id. See also* Ryan Goodman & Derek Jinks, *How to Influence States, Socialization and International Human Rights Law*, 54 DUKE L.J. 621, 625–27 (2004); Kal Raustiala & Anne Marie Slaughter, *International Law, International Relations and Compliance*, *in* HANDBOOK OF INTERNATIONAL RELATIONS 547, 547–49 (Beth Simmons ed., 2002).

without its problems. The struggle to localize women's human rights can be a cycle of state cooptation, where the State may dilute the efficacy of its norm creation.

To be most effective, domestic implementation requires an adoption and adaptation process. Angela Banks has described international women's rights adaptation as a dynamic process by which international legal obligations are better fitted into local norms so as to survive and multiply in their environment.[164] Harold Koh, in *Why do Nations Obey International Law?*, argues for internalizing international norms.[165] Legal, political, and social internalization happens when the norms are adopted into policy.[166] This internalization requires connecting the CEDAW to local contexts and political structures, constituting what Engle-Merry called the "[t]ranslation of human rights."[167]

Apart from the localization of human rights norms, the ratification of human rights instruments has a positive effect on state behavior because it subjects States to peer pressure. This pressure can induce States to conform to international norms, promoting the diffusion of human rights norms through national institutions.[168] In *Human Rights Transformation in Practice*, Engle-Merry and Tine Destrooper presented different approaches on how human rights travel and are transformed.[169]

Within the context of the CEDAW, the global-to-local flow of norms inherent in most global norm diffusion takes place because of the CEDAW Committee. Most importantly, the Committee legitimizes the felt needs of local communities and provides a hook on which to hang long-needed reforms. The Committee also provides a legitimizing framework for internal and external dialogue, as it plays a central role in interpreting and enforcing the CEDAW. The CEDAW Committee has three main functions: (1) reviewing State Party Reports; (2) commenting upon State Party Reports; and (3) developing General Recommendations.[170] The Committee assists with the

164. Angela M. Banks, *CEDAW, Compliance, and Custom: Human Rights Enforcement in Sub-Saharan Africa*, 32 FORDHAM INT'L L.J. 781, 782 (2008).

165. Harold Hongju Koh, *Why Do Nations Obey International Law?*, 106 YALE L.J. 2599, 2599–657 (1997).

166. *Id.*

167. SALLY ENGLE MERRY, HUMAN RIGHTS AND GENDER VIOLENCE: TRANSLATING INTERNATIONAL LAW INTO LOCAL JUSTICE 220 (2006).

168. Goodman & Jinks, *supra* note 163, at 671–73.

169. *See generally* HUMAN RIGHTS TRANSFORMATION IN PRACTICE (Tine Destrooper & Sally Engle-Merry eds., 2018).

170. *See* CEDAW, *supra* note 52.

translation process through these structural, legal, and programmatic recommendations.[171] Transnational advocacy networks, internal debate, transnational interaction, and cross-cultural dialogue all offer further assistance in translating these norms into local contexts.

The domestic translation of the CEDAW varies situationally and illustrates the ways in which ideas and norms are transplanted in different cultural contexts in the image of a local idiom. While Margaret Keck and Kathryn Sikkink argue that the existence of transnational advocacy networks ("TANs") can amplify the translation of women's rights, [172] what we see is that women's rights in turn amplify and accelerate the movements of advocacy networks and in fact provide the *raison d'être* of these developments. As Beth Simmons argues, the ratification of an international human rights treaty is much more than the symbolic act of ratification; it also provides legitimacy and authority to a lived experience on the ground: "A ratified treaty recommits the government to be *pre*receptive to rights demands. Ratification is not just a costly signal of intent; it is a process of domestic legitimation that some scholars have shown raises the domestic salience of an international rule."[173]

As case narratives from around the world elaborate, the CEDAW is a powerful peg on which local and national women's rights groups can hang arguments challenging gender injustice and inequality. The CEDAW is more than a tool of mobilizing and galvanizing; it inherently provides a blueprint for law reform and judicial decision-making.[174] The CEDAW also allows for transnational idea sharing, as internal discourse extant within any community is cross-fertilized with

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171. Article 17 of CEDAW establishes the Committee on the Elimination of Discrimination Against Women, stating:

> For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of Discrimination against Women (hereinafter referred to as the Committee) consisting, at the time of entry into force of the Convention, of eighteen and, after ratification of or accession to the Convention by the thirty-fifth State Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems.

CEDAW, *supra* note 52, art. 17.

172. *See* MARGARET E. KECK & KATHRYN SIKKINK, ACTIVISTS BEYOND BORDERS: ADVOCACY NETWORKS IN INTERNATIONAL POLITICS 165 (1998).

173. BETH SIMMONS, MOBILIZING FOR HUMAN RIGHTS INTERNATIONAL LAW IN DOMESTIC POLITICS 144 (2009).

174. *See* Rangita de Silva de Alwis, *Opportunities and Challenges for Gender-Based Legal Reform in China*, 5 E. ASIA L. REV. 197, 199 (2010).

international norms. This cross-pollination in fact engenders the very reform of the legal system championed by Article 2 of the CEDAW.[175]

C. De Jure *Discrimination and the CEDAW*

Law reform is often the first step in this transformation, as it enables women's groups and social movements to engage with the government and other stakeholders and to further a broader social change and development agenda. This engagement is necessary, in part, because *de jure* discriminatory laws are still universally pervasive. The situation is exacerbated by the co-existence of plural or multiple systems of laws (*i.e.*, international law, domestic law, religious law, etc.). In each setting, the cultural construction of gender determines the role of women and girls within the family, while the construction and definition of gender is deeply embedded in the local culture. Personal status laws that govern family dynamics pose the greatest challenge in the application of the universal concepts of human rights.[176] Family law inequalities are often translated into inequalities in nationality law, penal law (*e.g.*, responses to domestic violence), and employment law (*e.g.*, a husband's consent to employment, finances, etc.). Under Personal Law systems, subtle but insidious discrimination against women takes place in the name of religion, and women are often sacrificed at the altar of the family.[177] Relatedly, States hesitate to pass legislation regulating civil marriage because States view such regulation as an encroachment on the power of religious institutions.

In their efforts to combat this *de jure* discrimination, many countries model their law reform after the CEDAW both in form and in spirit. In the next Section, we evaluate the role of the CEDAW on reformist projects in countries that emerged from conflict, as well as countries where political reform movements brought the CEDAW to the forefront. In the following Sections, we examine selected case studies of law reform, constitutional reform, and judicial application of the CEDAW in examples of domestic application of the treaty.

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175. *See* CEDAW, *supra* note 52, art. 2. Article 2 of CEDAW states:

> (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle; (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women.

176. *See generally* Anwar & Rumminger, *supra* note 93 (elaborating on the discrimination that occurs against Muslim women within the family through personal status laws).

177. For a discussion of personal law systems, see Farrah Ahmed, *Remedying Personal Law Systems*, 30 INT'L J. L. POL. FAM. 248 (2016).

D. Reform of the Legal System: Case Studies

1. South Africa

Justice Albie Sachs of the Constitutional Court of South Africa said, "Patriarchy is one of the profoundly non-racial institutions in South Africa."[178] Indeed, gender inequality and gender-based violence represent one of the lingering legacies of post-apartheid South Africa.[179]

Although the CEDAW Committee has often pointed out the gaps between *de jure* and *de facto* equality in different legal systems, the South African Domestic Violence Act of 1998 attempts to directly bring South Africa's gender-based protections in-line with the Recommendations of the CEDAW.[180] The Act promotes a broad definition of "domestic violence" in a direct parallel to the CEDAW's General Recommendation 19, defining "domestic violence" as:

> Physical abuse; sexual abuse; emotional, verbal and psychological abuse; economic abuse; intimidation; harassment; stalking; damage to property; entry into the complainant's residence without consent, where the parties do not share the same residence; or any other controlling or abusive behavior towards a complainant, where such conduct harms, or may cause imminent harm to, the safety, health or wellbeing of the complainant.[181]

Recently, in 2019, the CEDAW Committee took further action with respect to South Africa. Responding to allegations of violence against women, including marriage abduction, made by civil society organizations, the Committee conducted an inquiry and made thirty-

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178. Albie Sachs, *Judges and Gender: The Constitutional Rights of Women in a Post-Apartheid South Africa*, 7 AGENDA: EMPOWERING WOMEN FOR GEN. EQUAL. 1, 1–11 (1990).

179. *See* Penelope Andrews, *Violence Against Women in South Africa: The Role of Culture and the Limitations of the Law*, 8 TEMP. POL. & CIV. RTS. L. REV. 425, 430–33 (1999) (discussing the connection between post-apartheid South Africa and remaining gender inequality in the country).

180. The Preamble of the Act references both the commitments of the South African Constitution and the CEDAW:

> And having regard to the Constitution of South Africa, and in particular, the right to equality and to freedom and security of the person; and the international commitments and obligations of the State towards ending violence against women and children, including obligations under the United Nations Conventions on the Elimination of all Forms of Discrimination Against Women and the Rights of the Child.

Domestic Violence Act 116 of 1998 pmbl. (S. Afr.).

181. *Id.*

four Recommendations to the government calling for action, demonstrating the continuing importance of the CEDAW's reporting requirements on South African domestic affairs.[182]

2. Bangladesh

Shifting to the CEDAW's *de jure* influence in Asia, the Bangladeshi laws on Domestic Violence (Prevention and Protection) Act of 2010 states in the Preamble that it is an Act created as part of Bangladesh's signature to the CEDAW.[183] The Preamble further indicates that this Act is an "expedient and necessary as a signatory state of the United Nations Convention on the Elimination of All Forms of Discrimination against Women, 1979."[184]

Although Bangladesh ratified the CEDAW in 1984, it made reservations on Articles 2, 13(a), 16.1(c), and 16.1(f).[185] Bangladesh's general stance regarding the CEDAW follows this pattern of selective adherence, in that the country has many laws in place meant to follow the CEDAW guidelines and to protect women from discrimination, but the enforcement and implementation of these measures remain weak.[186] Nevertheless, the CEDAW is important for Bangladesh because of the way in which it fosters state accountability and covers both the public and private spheres.

Articles 2 and 16 of the CEDAW provide the firmest footing to realize this accountability. Article 2 calls on ratifying States to "condemn discrimination against women in all its forms" and focus on eliminating discrimination against women "by all appropriate means and without delay."[187] Furthermore, Article 2(a) calls upon States Parties "[t]o embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate

182. *South Africa has 'Obligation' to Better Address Domestic Violence: UN Women's Rights Experts*, U.N. NEWS (May 17, 2021), https://news.un.org/en/story/2021/05/1092122 [https://perma.cc/DQP4-HKYM].

183. Domestic Violence (Prevention and Protection) Act pmbl., (Act No. 58/2010) (Bangl.).

184. *Id.*

185. Comm. on the Elimination of All Forms of Discrimination Against Women, Declarations, Reservations, Objections and Notifications of Withdrawal of Reservations Relating to the Convention on the Elimination of All Forms of Discrimination Against Women, at 48 annex 1, U.N. Doc. CEDAW/SP/2006/2 (Apr. 10, 2006).

186. Maliha Kahn, *CEDAW at a Dead End in Bangladesh?*, The Daily Star (Mar. 8, 2019, 12:00 AM), https://www.thedailystar.net/star-weekend/news/cedaw-dead-end-bangladesh-1711840 [https://perma.cc/6USY-DTGB].

187. CEDAW, *supra* note 52, art. 2.

means, the practical realization of this principle."[188] Given the primacy of gender equality, it could be argued that Article 2 is an inalienable and non-derogable article of the Convention. In addition, Article 16 calls for equal rights for women in family and marriage.[189] Taken together, both Articles 2 and 16 are considered to be core provisions of the Convention. In fact, the CEDAW Committee, in a statement on the reservations, stated:

> Removal or modification of reservations, particularly to articles 2 and 16, would indicate a State party's determination to remove all barriers to women's full equality and its commitment to ensuring that women are able to participate fully in all aspects of public and private life without fear of discrimination or recrimination.[190]

While several Muslim-majority countries have placed a reservation on Article 2, Maliha Khan, writing in the *Bangladesh Daily Star*, notes that twenty-nine other Muslim-majority countries have ratified the CEDAW without any reservations.[191] Moreover, recent women's rights activism has been key to persuade MENA region governments to lift reservations to the Convention.[192] Despite formal reservations, at the spurring of women's rights groups, countries such as Bangladesh have domesticated the values of the CEDAW, using the Convention as a peg upon which to pin their legislative efforts.

3. Chile, Brazil, Argentina, South Africa, and Sierra Leone

Across the world, countries have worked to internalize the CEDAW in their domestic legislation. Although it is difficult to trace direct causation, the CEDAW's influence on lawmaking has been felt in Latin America, too. To examine the Latin American context more

188. *Id.* art. 2(a).

189. *See id.* art. 16.

190. *Reservations to CEDAW*, U.N. WOMEN, https://www.un.org/womenwatch/daw/cedaw/reservations.htm#:~:text=Removal%20or%20modification%20of%20reservations,without%20fear%20of%20discrimination%20or [https://perma.cc/KQ83-H7ET].

191. Maliha Khan, *CEDAW at a Dead End in Bangladesh?*, DAILY STAR (Mar. 8, 2019, 12:00 AM), https://www.thedailystar.net/star-weekend/news/cedaw-dead-end-bangladesh-1711840 [https://perma.cc/WV48-L9AL].

192. In 2014, coinciding with the mobilization of women's groups in the aftermath of the Arab Revolution, Tunisia notified the U.N. Secretary General of its intent to lift the Tunisian reservations to the CEDAW. UNIVERSAL RTS. GRP., A GUIDE FOR WOMEN'S RIGHTS GROUPS 10 (Mar. 2019), https://www.universal-rights.org/wp-content/uploads/2019/03/Tunisia-report.pdf [https://perma.cc/86A6-FZ3V]. Similar women's rights activism led to Morocco's removal of reservations in 2011. *Id.* at 11.

specifically, we now survey three gender-based violence laws enacted in Chile, Brazil, and Argentina. These examples illustrate the ways in which the CEDAW can provide a framework by which national legislatures can construct their own specific gender-based violence laws.

Chile's Law on Intrafamily Violence, passed in 2005, calls on the government to comply with the CEDAW in Article 1. Specifically, it requires the government to "[a]dopt the necessary measures to comply with the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, the Convention on the Rights of the Child and other international instruments signed by the State of Chile."[193] More recently, the CEDAW Committee has perhaps played a more direct role in encouraging further domestic implementation of the Convention. In 2018, the CEDAW Committee's Concluding Observations on Chile's Seventh Periodic Report articulated concerns surrounding the prevalence of femicide in the country. Almost as if in response, in 2020, Chile's "Gabriela Law" memorialized a femicide: A young woman was killed by an ex-boyfriend in 2018.[194] The law established higher penalties for femicide and raised the penalty from fifteen years' imprisonment to life behind bars.[195] It also expanded the scope of the law to include attackers other than spouses or partners, while also eliminating a crime of passion as an exonerating offense.[196] In consultations with the U.N. Special Rapporteur on Violence Against Women on the issue of femicide, the CEDAW Committee made its position clear that General Recommendation No. 19 reflects the Committee's position that violence against women is gender-based discrimination.[197]

Another example of internalization of the CEDAW is Brazil's "Maria de Penha Law," one of the most important laws in Latin America.[198] In May 1983, Maria da Penha Fernandes of Brazil was shot by her husband, leaving her a paraplegic for life.[199] Two weeks after her

193. Law No. 20066 art. 1, Establece Ley De Violencia Intrafamiliar, Octubre 7, 2005, DIARIO OFICIAL [D.O.] (Chile).

194. Law. No. 21212, Modifica El Codigo Penal, El Codigo Procesal Penal Y La Ley No. 18.216 En Materia De Tipificacion Del Femicidio, Marzo 4, 2020, DIARIO OFICIAL [D.O.] (Chile).

195. *See id.*

196. *See id.*

197. For a longer discussion of General Recommendation No. 19 and other relevant sections, see *infra* note 212.

198. Decreto No. 11.340, de 7 de Agosto de 2006, Diário Oficial da União [D.O.U.] de 8.8.2006 (Braz.).

199. Pablo Uchoa, *Maria da Penha: The Woman Who Changed Brazil's Domestic Violence Laws*, BBC NEWS (Sept. 22, 2016), https://www.bbc.com/news/magazine-37429051 [https://perma.cc/V5X2-EJDE].

return from the hospital, Maria's husband tried to electrocute her.[200] The case went up on appeal to the Inter-American Commission of Human Rights, which delivered a decision that inspired the Brazilian Government in 2006 to enact a law in honor of Maria de Penha: the "Maria da Penha Law on Domestic and Family Violence."[201] Article 1 of the Law states that "this Law creates mechanisms to restrain and prevent domestic and family violence against women, in compliance with . . . [*inter alia*] the Convention on Elimination of All Forms of Discrimination against Women . . . and other international treaties ratified by the Federative Republic of Brazil."[202] By explicitly referencing the CEDAW, the Maria de Penha Law establishes the Convention as the undergirding source of textual authority and is an example of the normative domestication of the CEDAW in Latin America.

Similarly, the Law on the Comprehensive Protection of Women (2009) completely internalized the CEDAW and other important human rights conventions in Argentina.[203] This law guarantees to women all the rights recognized by the CEDAW, as well as several other international instruments.[204] Supplementing the law, in 2018, the Argentinian National Congress passed "Micaela's Law," which requires all federal employees to receive training on gender and gender-based violence.[205] According to the Argentina National Institute of Women (Instituto Nacional de la Mujer, also known as INAM)—the government body that implements the law—over 2,537 officials and service providers received this training during the first quarter of 2019 alone.[206] Like the Maria de Penha Law, these new Argentinian legislative efforts reflect a growing movement of *de jure* implementations of the principles of the CEDAW in domestic law.

The CEDAW was also used to draft a national South African Gender Policy. In September 2020, President Ramaphosa introduced new bills to address bail issues for perpetrators of femicide and gender-

200. *Maria da Penha Law: A Name that Changed Society*, U.N. WOMEN (Aug. 30, 2011), https://www.unwomen.org/en/news/stories/2011/8/maria-da-penha-law-a-name-that-changed-society [https://perma.cc/RX65-H6GM].

201. *Maria da Penha*, CTR. FOR JUST. & INT'L L., https://cejil.org/en/case/maria-da-penha-4/ [https://perma.cc/H9DW-HLZG].

202. Lei No. 11.340, de 7 de Agosto de 2006, Diário Oficial da União [D.O.U.] de 8.8.2006 (Braz.).

203. Law No. 26485, Apr. 1, 2009, B.O. 31632 (Arg.).

204. *Id.* art. 3.

205. Law No. 27499, Jan. 10, 2019, B.O. 34031 (Arg.).

206. U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY, H.R. AND LAB., 2019 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: ARGENTINA 14 (2019), https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/argentina [https://perma.cc/V59G-4GVL].

based violence, as well as expanded the definition of domestic violence to cover violence in customary relationships.[207]

The CEDAW Committee Recommendations have also played a discursive role in helping to adopt new laws in countries that lacked national legislation on gender equality and needed to reform their extant laws. For example, Sierra Leone, in accordance with the 2007 Concluding Observations of the CEDAW Committee, adopted landmark gender laws: the Registration of Customary Marriage and Divorce Act;[208] the Devolution of Estates Act;[209] and the Domestic Violence Act.[210] These laws respectively raised the age of marriage for both [spouses] to 18, established equal rights in inheritance and defined domestic violence to include marital rape. CEDAW's General Recommendation 19 also informed Ghana's 2007 Domestic Violence Law.[211]

Such legal reforms have spawned a dialectic relationship with the CEDAW. In other words, local initiatives have inspired global reform to the Convention itself. In response to these country-specific developments, the CEDAW Committee has reformed its normative framework to keep pace with updates on the ground. For example, in 2017 the Committee developed General Recommendation No. 35, updating its jurisprudence on General Recommendation No. 19 to recognize gender-based violence "in a range of settings from private to public, including technology mediated settings" and to expand the categories of intersectional identities.[212] Among other goals, General

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207. *See* Hassan Isilow, *S. Africa Announces Gender Based Violence Law*, ANADOLU AGENCY (July 9, 2020), https://www.aa.com.tr/en/africa/safrica-announces-gender-based-violence-law/1965718 [https://perma.cc/SQ28-KLWT].

208. Registration of Customary Marriage and Divorce Act, 2009 (Act No. 1/2009) (Sierra Leone).

209. Devolution of Estates Act, 2007 (Act No. 21/2007) (Sierra Leone).

210. Domestic Violence Act, 2007 (Act No. 20/2007) (Sierra Leone).

211. Domestic Violence Act, 2007 (Act No. 732/2007) (Ghana).

212. *See* Gen. Recommendation No. 35, *supra* note 54 (updating General Recommendation No. 19 in so far as the CEDAW Committee's position on gender-based violence). General Recommendation No. 19 requested that States Parties pass legislative and other measures to combat harassment in the workplace, as well as violence and sexual abuse within the family:

> In light of these comments, the Committee on the Elimination of Discrimination against Women recommends that: (a) States parties should take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act; (b) States parties should ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity. Appropriate protective and support services should be provided for victims. Gender-sensitive training of judicial and law enforcement officers and other public officials is essential for the effective implementation of the Convention; (c) States parties should encourage the compilation of statistics and research on the

extent, causes and effects of violence, and on the effectiveness of measures to prevent and deal with violence; (d) Effective measures should be taken to ensure that the media respect and promote respect for women; (e) States parties in their reports should identify the nature and extent of attitudes, customs and practices that perpetuate violence against women and the kinds of violence that result. They should report on the measures that they have undertaken to overcome violence and the effect of those measures; (f) Effective measures should be taken to overcome these attitudes and practices. States should introduce education and public information programmes to help eliminate prejudices that hinder women's equality (recommendation No. 3, 1987); (g) Specific preventive and punitive measures are necessary to overcome trafficking and sexual exploitation; (h) States parties in their reports should describe the extent of all these problems and the measures, including penal provisions, preventive and rehabilitation measures that have been taken to protect women engaged in prostitution or subject to trafficking and other forms of sexual exploitation. The effectiveness of these measures should also be described; (i) Effective complaints procedures and remedies, including compensation, should be provided; (j) States parties should include in their reports information on sexual harassment, and on measures to protect women from sexual harassment and other forms of violence of coercion in the workplace; (k) States parties should establish or support services for victims of family violence, rape, sexual assault and other forms of gender-based violence, including refuges, specially trained health workers, rehabilitation and counselling; (l) States parties should take measures to overcome such practices and should take account of the Committee's recommendation on female circumcision (recommendation No. 14) in reporting on health issues; (m) States parties should ensure that measures are taken to prevent coercion in regard to fertility and reproduction, and to ensure that women are not forced to seek unsafe medical procedures such as illegal abortion because of lack of appropriate services in regard to fertility control; (n) States parties in their reports should state the extent of these problems and should indicate the measures that have been taken and their effect; (o) States parties should ensure that services for victims of violence are accessible to rural women and that where necessary special services are provided to isolated communities; (p) Measures to protect them from violence should include training and employment opportunities and the monitoring of the employment conditions of domestic workers; (q) States parties should report on the risks to rural women, the extent and nature of violence and abuse to which they are subject, their need for and access to support and other services and the effectiveness of measures to overcome violence; (r) Measures that are necessary to overcome family violence should include: [(i)] Criminal penalties where necessary and civil remedies in cases of domestic violence; [(ii)] Legislation to remove the defence of honour in regard to the assault or murder of a female family member; [(iii)] Services to ensure the safety and security of victims of family violence, including refuges, counselling and rehabilitation programmes; [(iv)] Rehabilitation programmes for perpetrators of domestic violence; [(v)] Support services for families where incest or sexual abuse has occurred; [(s)] States parties should report on the extent of domestic violence and sexual abuse, and on the preventive, punitive and remedial measures that have been taken; [(t)] States parties should take all legal and other measures that are necessary to provide effective protection of women against gender-based violence, including, inter alia: [(i)] Effective legal measures, including penal sanctions, civil remedies and compensatory provisions to protect women against all kinds of violence, including inter alia violence and abuse in the family, sexual assault and sexual harassment in the workplace; [(ii)] Preventive measures, including public information and education programmes to change attitudes concerning the roles and status of men and women; [(iii)] Protective measures, including refuges, counselling, rehabilitation and support services for women who are the victims of violence or who are at risk of violence; (u) States parties should report on all forms of gender-based violence, and such reports should include all available data on the incidence of each form of violence and on the effects of such violence on the women who are victims; (v) The reports of States parties should include

Recommendation No. 35 institutes accountability mechanisms for States Parties and their agents for failing to act with due diligence to prevent violence at the hands of private parties and companies.[213] What this exchange demonstrates is that the CEDAW is a dynamic and living document, sensitive to domestic legal reforms and ever-expanding to respond to changing norms and social mores.

E. Constitutional Reform and the CEDAW

In addition to *de jure* domestication, the CEDAW Committee has regularly stressed that States Parties must ensure constitutional and legislative compliance with the CEDAW:

> [T]hrough constitutional amendments or by other appropriate legislative means, the principle of equality between women and men and of non-discrimination is enshrined in domestic law with an overriding and enforceable status . . . States Parties have an obligation to take steps to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.[214]

Fareeda Banda has referred to a "raft of constitutional reforms" among the CEDAW's States Parties seeking compliance with CEDAW Article 2(a), which requires States to ensure that their Constitutions are harmonized with the Convention.[215] The CEDAW's Article 3 further requires States Parties to take "all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men."[216] These CEDAW provisions offer women's rights groups an anchor for their call for legal reform. For instance, in

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> information on the legal, preventive and protective measures that have been taken to overcome violence against women, and on the effectiveness of such measures.

Comm. on the Elimination of Racial Discrimination, Gen. Recommendation 19, ¶ 24, U.N. Doc. A/47/38 (Feb. 1, 1992).

213. *See* Gen. Recommendation No. 35, *supra* note 54.

214. OECD, WOMEN'S ECONOMIC EMPOWERMENT IN SELECTED MENA COUNTRIES: THE IMPACT OF LEGAL FRAMEWORKS IN ALGERIA, EGYPT, JORDAN, MOROCCO AND TUNISIA 48 (2017).

215. *See* Fareeda Banda, *The Impact of the Convention on the Elimination of All Forms of Discrimination Against Women in Select African States*, 33 INT'L J.L., POL'Y & FAM. 252, 257–60 (2019). *See also* CEDAW, *supra* note 52, art. 2(a).

216. CEDAW, *supra* note 52, art. 3.

Kenya,[217] Egypt,[218] and Tunisia[219]—where constitutions were reformed in the last decade—women successfully used the CEDAW in the reformist efforts.[220] One of the authors advised Tunisian women's rights groups in drafting the gender provisions of the Tunisian Constitution in 2014 and observed firsthand how international norms, especially the CEDAW, informed the drafting process.[221]

However, we acknowledge that several States Parties have introduced reservations regarding Article 2. Articles 2(f) and 2(g) respectively call upon States Parties to both enact new gender equality laws and repeal existing unequal laws: "(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women; [and] (g) To repeal all national penal provisions which constitute discrimination against women."[222] As such, it is clear that, in some of the cases presented, the domestication of the CEDAW is incomplete. Our claim is simply that the CEDAW still remains key to addressing *de jure* discrimination in both legal systems and constitutions, which is the first step to the domestication of fundamental women's human rights.

The gap between the normative premise of the CEDAW and its application is most prevalent in family laws, which still retain discriminatory provisions.[223] Globally, 81% of countries legally prohibit gender-based discrimination or provide for equality before the law through more substantive provisions in their constitutions.[224]

Most countries in Sub-Saharan Africa and the MENA region guarantee some form of gender equality in their national constitutions.[225] In fact, the CEDAW has been ratified by fifty-one of fifty-

217. CONSTITUTION art. 27 (2010) (Kenya).

218. CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT art. 11, 18 Jan. 2014.

219. DUSTŪR AL-JAMHŪRIYA AL-TŪNISIYA [CONSTITUTION] art. 46, 27 Jan. 2014 (Tunis.).

220. Rangita de Silva de Alwis et al., *Women and the Making of the Tunisian Constitution*, 35 BERKELEY J. INT'L L. 90, 101 (2017).

221. *See id.* at 90–95.

222. CEDAW, *supra* note 52, arts. 2(f)–(g).

223. *See, e.g.*, U.N. Entity for Gender Equal. & Empowerment of Women, *A Practictioner's Toolkit on Women's Access to Justice Programming: Module 2: Marriage, Family and Property Rights* at 16 (2018), https://www.ohchr.org/Documents/Publications/PractitionerToolkit/WA2J_Module2.pdf [https://perma.cc/SR5P-7YWV].

224. Adele Cassola et al., *Where Do Women Stand? New Evidence on the Presence and Absence of Gender Equality in the World's Constitutions*, 10 POL. & GENDER 200, 212–15 (2014).

225. *See id.*

three African countries.[226] It is essential that these countries implement CEDAW protections within their constitutions because the CEDAW requires States Parties to "embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle."[227]

For example, the Ugandan 1995 Constitution was enriched by the CEDAW. In that case, the Convention served as a starting point for rewriting Uganda's Constitution, and women's NGOs referred to the CEDAW as an organizing tool and as a means of establishing minimum standards.[228] Remarking on the final outcome, Aili Mari Tripp writes that "[w]omen for example, were very pleased with the extensive constitutional recognition of women's rights."[229] In fact, years later, this same coalition of women went on to challenge the lifting of presidential term limits.[230]

Partially as a result of the Maputo Protocol,[231] as well as the CEDAW and other human rights mechanisms, most post-colonial African constitutions now prohibit discrimination on the basis of gender, as well as other categories of intersectional discrimination.[232] A snapshot of constitutional reform on the African Continent illustrates the impact of the CEDAW.[233] Empirical studies of democratization following the Arab Spring have likewise demonstrated that countries which advanced women's rights prior to, as well as throughout the course of, the Arab Spring were both more likely to transition

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226. *See* CEDAW, *supra* note 52.

227. *Id.* art. 2(a).

228. *See* Johanna E. Bond, *CEDAW in Sub-Saharan Africa: Lessons in Implementation*, 2014 MICH. ST. L. REV. 241, 255 (2014).

229. Aili Mari Tripp, *The Politics of Constitution Making in Uganda*, *in* FRAMING THE STATE IN TIMES OF TRANSITION 172 (Laurel E. Miller & Louis Aucoin eds., 2010).

230. *See id.* at 173.

231. The Maputo Protocol is the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (2003).

232. Rangita de Silva de Alwis et. al, *Women and the Making of the Tunisian Constitution*, 35 BERKELEY J. INT'L L. 90, 107 (2017).

233. Aili Mari Tripp argues that CEDAW helps to create international pressure for change in domestic provisions in Africa: "The Sudanese case is a good one in which to tease out the role of women's movements in pushing for quotas because it is not a signatory of CEDAW and so it would appear that it is not as concerned about international pressures as other countries might be." AILI MARI TRIPP, WHY DO AUTHORITARIAN REGIMES ADOPT QUOTAS: LESSONS FROM AFRICAN CASES 15, https://web.law.columbia.edu/sites/default/files/microsites/gender-sexuality/Tripp%20Why%20Do%20Authoritarian%20Regimes%20Adopt%20.pdf [https://perma.cc/BAK2-3QHQ].

successfully to democracy and to establish more gender-equal democracies.[234] From Africa to Asia, especially in countries transitioning into democracies, the founding principles of the CEDAW have played a key role in informing the supreme laws of the land.

F. Judicial Application of the CEDAW

Domestic courts have also often relied on the CEDAW to challenge discriminatory laws over a period of four decades. In this Section, we evaluate some landmark cases on feminist jurisprudence where the CEDAW was a lightning rod for reform—primarily within African nations.

In the early 1990s, the well-known case of *Attorney General v. Unity Dow* challenged sex-based discrimination in Botswana's citizenship law.[235] Before the high court of Botswana, Unity Dow challenged Sections 4 and 5 of the Citizenship Act, which treated the children of mothers married to foreign men differently than children of fathers married to foreign women.[236] On appeal, the appellate court stated that Section 24 of the Botswana Interpretation Act affirmed that "as an aid to the construction of the enactment[,] a court may have regard to . . . any relevant international treaty, agreement or convention."[237] In other words, the Botswana Court of Appeal affirmed that the CEDAW can be used as an interpretative tool in judicial decision-making. The court also held that under the CEDAW and the Botswanan Constitution, the Citizenship Act discriminated on the basis of sex.[238]

In *Ephraim v. Pastory*, which involved a discriminatory inheritance law in Tanzania, Justice Mwalusanya, writing for the High Court of Tanzania, stated:

> The principles enunciated in the above-named documents are a standard below which any civilized nation will be ashamed to fall. It is clear from what I have discussed that the customary law under discussion flies

234. Rangita de Silva de Alwis has worked closely with the Tunisian women's right advocates on the 2014 Tunisian Constitution and its Article 46 on equal opportunity between women and men. *See supra* note 221 and accompanying text. *See also* Antonius Verheijen, *Is the Status of Women in Tunisian Society Endangered?*, ARAB VOICES (Dec. 23, 2020), https://blogs.worldbank.org/arabvoices/status-women-tunisian-society-endangered [https://perma.cc/XT72-ZMF2].

235. Att'y Gen. of the Rep. of Bots. v. Dow (1992) B.L.R 119 (Bots.).

236. *Id.* at 1.

237. *Id*. at 14.

238. *Id.*

> in the face of our Bill of Rights as well as the international conventions to which we are signatories.[239]

While the *Unity Dow* case adopted the CEDAW as an interpretive tool, the *Pastory* judgment framed the Convention as an international standard-setting instrument. Further, the CEDAW has been used as persuasive authority, as seen in the South African case *Bhe v. Khayelitsha Magistrate*, which struck down the customary law of male primogeniture in the country.[240] In that case, the Constitutional Court of South Africa concluded:

> These developments must also be seen against discrimination namely, the Convention on the Elimination of All forms of Discrimination against Women (CEDAW). In particular, CEDAW requires South Africa to ensure amongst other things, the practical realization of the principle of equality between men and women and to take all appropriate measures to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against women.[241]

More recently, the Zimbabwean case of *Mudzuru and Tsopodzi v. Ministers of Justice and Women's Affairs* applied the CEDAW to challenge child marriage.[242] The case was brought by two female litigants challenging Section 22(1) of the Zimbabwean Marriage Act, which allowed girls to marry at sixteen years of age with parental or guardian consent, and boys at age eighteen.[243] The Constitutional Court of Zimbabwe found that this section violated Section 78(1) of the Zimbabwean Constitution which provides that: "Every person who has attained the age of eighteen years has the right to found a family."[244] In the judgment, the Court noted:

> [T]he CEDAW Committee in General Recommendation 21 para. 38 was to the effect that provisions such as those of Section 22(1) of the Marriage Act, which provided for different ages for marriage for girls and boys, assumed incorrectly that girls have a different rate of intellectual development from boys or that their

239. Ephraim v. Pastory (2001) AHRLR 236 (TzHC 1990) (Tanz.).

240. Bhe v. Khayelitsha Magistrate 2004 (1) BCLR (CC) (S. Afr.).

241. *Id.* ¶ 209.

242. Mudzuru v. Minister of Just., Legal & Parliamentary Affs., CCZ 2015-12 (Zim.).

243. *Id.* at 1–4.

244. *Id*. at 2, 55. *See also* THE CONSTITUTION OF ZIMBABWE, May 9, 2013, § 78(1).

> stage of physical and intellectual development at marriage was immaterial.[245]

The Zimbabwean court's intersectional reading of the CEDAW General Recommendation 21 with Article 1 of the Convention on the Rights of the Child (the "CRC") and the Article 21(2) of the African Charter on the Rights and Welfare of the Child (the "ACRWC") challenged the pith and substance of the Zimbabwean Marriage Act, which allowed underage marriage in violation of Zimbabwe's human rights treaty obligations.[246]

Many courts around the world have also relied on the CEDAW as an interpretive tool to clarify or expand on the understanding of a theory of gender equality or gender-based violence.[247] Other jurisdictions have used the CEDAW and other interrelated human rights treaties as persuasive authority in challenging customary forms of gender-based violence, such as child marriage. In the case of *State v. Banda*, Judge Charewa of the High Court of Zimbabwe averred: "It is my view therefore that judicial officers should not look with favor on these much older men who 'marry or intend to marry these children' . . . which our constitution and international instruments which Zimbabwe have ratified frown on."[248]

As was seen in the case of *Visakha v. Rajasthan*, international human rights agreements have been critical in the effort to achieve gender equality, particularly where countries lack domestic laws to safeguard women's rights.[249] The petition in *Visakha* was filed by women's groups on behalf of Bhanwari Devi, a social worker in Rajasthan who was gang raped by villagers while advocating against child marriage.[250] In this case, the Indian Supreme Court, noting the lack of domestic gender equality norms, instead relied on India's ratification of the CEDAW as a basis through which to interpret gender non-discrimination provisions.[251] This decision thereafter gave rise to a set of enforceable civil law guidelines for employers aimed at protecting

245. Mudzuru v. Minister of Just., Legal & Parliamentary Affs., *supra* note 242, at 37.

246. *Id*. at 38.

247. *See*, *e.g*., Dow, *supra* note 235; Visakha v. State of Rajasthan, AIR 1997 SC 3011 (1997) (India); Apparel Export Promotion Council v. A.K. Chopra, AIR 1999 SC 625 (1999) (India); *Aldridge v Booth* (1988) 80 ALR 1 (Austl.); Muojekwu v. Ejikeme [2000] 5 NWLR 402 (Nigeria); R. v. Ewanchuck [1999] 1 S.C.R. 330 (Can.).

248. State v. Banda [2016] ZWHHC 47, at 6 (Zim.).

249. *Vishaka v. State of Rajasthan*, LSE CTR. FOR WOMEN PEACE & SEC., https://blogs.lse.ac.uk/vaw/landmark-cases/vishaka-v-state-of-rajasthan [https://perma.cc/WZZ3-HKCX].

250. *See id.*

251. *See id.*

women from harassment.[252] As the *Visakha* decision therefore illustrates, a country's ratification of the CEDAW can be instrumental when national laws fail to address issues surrounding gender equality.

Recently, in the African Commission case *Egyptian Initiative for Personal Rights and Interights v. Egypt*—involving a case of four Egyptian women who had been arrested and abused while protesting in the streets of Cairo—the Commission looked to the CEDAW and to the African Women's Protocol for a definition of equality.[253] The Commission also relied on CEDAW General Recommendation No. 19 for a definition of gender-based violence.[254] These cases suggest the ways in which the CEDAW has been used as a litmus test or barometer to measure the judicial application of the treaty.

G. The CEDAW as a New Vocabulary

In countries that have been particularly change-resistant to the reform of the legal status of women, ratifying the CEDAW has played an important role in providing a new vocabulary for a more modernist and egalitarian understanding of gender relations.

As discussed above, for over two decades, Peggy Levitt and the late Sally Engle Merry discussed the localization of human rights norms, especially women's rights.[255] Using the case study of violence against women, Levitt and Engle Merry argue how local actors both appropriate universal human rights and shape the universalizing of local problems: "[While] [l]ocal actors appropriate global discourses, it is also clear that local actors shape the global system, raising issues, generating public support, and constituting the social movements that convert problems into human rights issues, such as occurred with violence against women."[256] This bilateral transformation is evident in

252. *See id.*

253. Egyptian Initiative for Personal Rights and Interights v. Arab Republic of Egypt, Communication 323/2006, African Commission on Human and Peoples' Rights [Afr. Comm'n H.P.R.], ¶ 88 (Dec. 12–16, 2011).

254. *Id*. *See also supra* note 212 and accompanying text.

255. *See generally* Peggy Levitt & Sally Engle Merry, *Vernacularization on the Ground: Local Uses of Global Women's Rights in Peru, China, India and the United States*, *in* HUMAN RIGHTS FUTURES (Stephen Hopgood et al. eds., 2016) (maintaining that global ideas about women's rights go through a translation into local idiom); ENGLE MERRY, *supra* note 167 (arguing that human rights law must be reframed in the local vernacular in order it to resonate with community change processes).

256. Levitt & Engle Merry, *supra* note 255, at 213.

cases of acid crimes[257] and in very particularized instances of what is termed "honor crimes."[258]

While the idea of vernacularization became a lightning rod for academics and U.N. policymakers, in the mid-2000s, Engle Merry reframed the sense of vernacularization to describe the tools used by transnational activists as interlocutors in holding stakeholders accountable to the implementation of human rights.[259]

Indeed, the CEDAW was often the organizing schema for the vernacularization process. The *Al-Anba* case in Kuwait is an important case in point.[260] By considering ways in which the CEDAW shaped the discourse in the Kuwaiti newspaper *Al-Anba*, Rachel George examines how ratification has another effect apart from providing an anchor for law reform, human rights reporting, and movement building: it changes the way in which the media reports on women's rights and shapes a new vocabulary for legal change.[261]

George argues that the CEDAW has been an important accountability mechanism to measure Kuwait's gradual progress on gender equality measures.[262] In her view, the ratification of the CEDAW is a correlation, even if not a causation, of the steps taken in women's franchise, eligibility for political office, and in the 2005 as well as the 2009 reforms to the country's passport law.[263] Even when there remains ambiguity as to the exact role which the CEDAW has played in these changes, George maintains that the Convention helped to inform the way in which the mass media spoke about gender issues and thereby shaped a new public dialogue on gender in Kuwait.[264] The question remains as to how consequential the CEDAW was in effectuating these changes, even as the Convention foreshadowed reform by playing a central role in influencing the public conversation on gender in Kuwait.[265]

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257. *See, e.g.*, Hooma Shah, *Brutality by Acid*, 26 WISC. INT'L L.J. 1172, 1172–75 (2009).

258. Mazna Hussain, *Take My Riches, Give Me Justice: A Contextual Analysis of Pakistan's Honor Crimes Legislation*, 29 HARV. J.L. & GENDER 223, 223–25 (2006).

259. *See generally* ENGLE MERRY, *supra* note 167.

260. Rachel George, *The Impact of International Human Rights Law Ratification on Local Discourses on Rights: The Case of CEDAW in Al-Anba Reporting in Kuwait*, 21 HUM. RTS. REV. 43, 45–46 (2020).

261. *Id.*

262. *Id.* at 51–52.

263. *Id.* at 52.

264. *Id.* at 45–46.

265. *See* Bond, *supra* note 228, at 242–43 (surveying the ratification debate in the United States and examining the implementation of the treaty in Sub-Saharan Africa to understand

Evidently, changes in public conversations can lead to accelerated public advocacy. On September 20, 2020, building on many years of public advocacy, Kuwait promulgated a new Law on Protection from Domestic Violence.[266] The law allows for emergency restraining orders and provides legal assistance and shelters for women, but it has not yet been implemented.[267] Despite drawbacks in the law, such as the failure to protect unmarried partners, this development is heralded as an important new step in the domestic implementation of the CEDAW in Kuwait.[268]

Finally, what this change in the vernacular of the public conversation shows is that, outside of jurisprudence, the CEDAW also has an impact in social network building. As Keck and Sikkink argue, the process of human rights diffusion crucially depends on the establishment and the sustainability of networks among domestic and transnational actors who manage to link up with international regimes.[269] Networked actors lead the process of internalizing, domestic implentation, and socialization.[270]

Ultimately, the CEDAW and other global processes emanating from the Convention lend legitimacy and credence to the claims made by women's groups and can help provide the legal framework for urgent needs on the ground.[271] Moreover, the CEDAW offers advocacy groups an opportunity to hold States accountable to the norms enshrined in these treaties, even when these instruments are not fully internalized. The very fact of reporting under the CEDAW tends to have a salutary impact on the women's rights situation in any given country. The reporting process elevates the conversation on women's human rights on the national agenda, bringing public attention and debate through the media and allowing women's rights concerns to be heard at the highest level of government.[272] From affecting *de jure* discrimination, influencing constitutional reform and judicial decision-

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the CEDAW's transformative potential and challenges to implementation). *See also generally* Banks, *supra* note 164 (analyzing treaty body compliance in sub-Saharan Africa).

266. Law No. 16 of 2020, September 13, 2020 (Kuwait).

267. Rothna Begum, *Domestic Violence Law Signals Hope for Kuwait's Women*, HUM. RTS. WATCH (Sept. 29, 2020, 4:00 AM), https://www.hrw.org/news/2020/09/29/domestic-violence-law-signals-hope-kuwaits-women [https://perma.cc/9KMC-56XG].

268. *Id.*

269. Margaret Keck & Kathryn Sikkink, *Transnational Advocacy Networks in International and Regional Politics*, 51 INT'L SOC. SCI. J. 89, 100 (1999).

270. *Id.*

271. *See* de Silva de Alwis & Martin, *supra* note 1, at 48.

272. *See* George, *supra* note 260, at 58.

making, to providing the foundation for a novel human rights lexicon, we have attempted to demonstrate that the CEDAW indeed matters.

H. Ratification of the CEDAW: From Soft Power, to Smart Power, to Transformative Power

Having assessed the continuing relevance of the CEDAW across the globe, we now turn to the potential role of the CEDAW in U.S. foreign policy. At her confirmation hearing in 2009, U.S. Secretary of State Hilary Clinton introduced an agenda to advance U.S. values around the world. At the heart of her plan was the idea of "smart power": "We must use what has been called 'smart power,' the full range of tools at our disposal—diplomatic, economic, military, political, legal, and cultural—picking the right tool, or combination of tools, for each situation."[273] Clinton emphasized that smart power recognized that "international law and international institutions are tools that help us to promote and advance our interests and values, not traps that limit American power."[274]

The CEDAW has been transformative in our current encounter with a changing global order, and its ratification would be central to our arsenal of smart power tools. The post-COVID project of building back better, as well as civil rights movements demanding racial and gender justice, have spawned a global public reckoning. This Section will examine the genesis of "soft power" and its evolution as a concept of "smart power," in addition to presenting why we envision the CEDAW Ratification as a "transformative power," given its potential impact at this moment in time.

Joseph Nye, the former Dean of the Harvard Kennedy School, first coined the term "soft power" in the late 1980s to describe a nation's ability to attract or persuade other nations, as opposed to direct influence through military or economic means.[275] Although the United States remains a global force in "soft power" and influence in the 2020 Global Soft Power Index, the country placed 44th in terms of

273. *Transcript of Clinton's Confirmation Hearing*, NPR (Jan. 13, 2009, 12:36 PM), https://www.npr.org/templates/story/story.php?storyId=99290981[https://perma.cc/4NBS-DWY4].

274. *Id.*

275. JOSEPH S. NYE, BOUND TO LEAD: THE CHANGING NATURE OF AMERICAN POWER 26 (1990). Nye defined this term as the ability "to get others to do what they otherwise would not." Nye also served as Assistant Secretary of Defense for International Security Affairs, the Chair of the National Intelligence Council, and the Deputy Under-Secretary of State for Security Assistance, Science, and Technology. *Joseph Nye*, HARV. KENNEDY SCH., https://www.hks.harvard.edu/faculty/joseph-nye [https://perma.cc/75L6-W3UH].

its relations with other countries.[276] The United States has to once again draw upon its soft power—its noncoercive power—to reclaim its leadership position in the world. This process can begin with ratifying the CEDAW.

We insist that the Biden Administration must deploy a set of tools on transformative power. Rachel George's argument that "ratification has shaped the language used in national press reporting on women's rights to increasingly reference the convention and frame rights violations in the language of 'discrimination'" provides a shift in perspective on how we can measure the impact of the CEDAW or other human rights treaty ratifications domestically.[277] Even outside the formal arena of legislative policy reform, these human rights treaties can help inform the national conversation.[278]

This "transformative power" must be distinguished from both soft and smart power. It should seek to reimagine the world in restructuring power imbalances along both racial and gender-based lines. It must help address structural and systemic inequality. Transformative power is also the ability of the United States to attract other countries to its ideals of equality while learning from others. In this transformative agenda, we identify a need to adopt a transformative feminist foreign policy in alignment with the CEDAW. Many of our allies have adopted similar agendas with success, and it is high time that we do the same.

For example, in 2014, under the leadership of then-Foreign-Minister Margot Wallström, and congruent with its obligations under the CEDAW, Sweden pioneered a distinctly feminist foreign policy.[279]

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276. BRAND FINANCE, THE GLOBAL SOFT POWER INDEX 2020, at 30 (2020), https://brandirectory.com/globalsoftpower/ [https://perma.cc/3JRF-84ND]. Although the reasons attributed to the decline are the U.S.'s COVID-19 response and the post-election civil strife, ratification of a critical human rights treaty which impacts more than half the global population could only boost the country's moral and political authority in the world.

277. George, *supra* note 260, at 55.

278. *See id.* at 59.

279. Tenth Periodic Report of Sweden, *supra* note 72, at 6, provides:

> Within the policy areas of the Ministry for Foreign Affairs', the responsibility for gender mainstreaming is manifested via the Government's feminist foreign policy. The feminist foreign policy has the aim of contributing towards global gender equality and all women's and girls' full enjoyment of human rights. A gender equality perspective is to be systematically incorporated into Sweden's entire foreign policy.
>
> . . .
>
> Targeted support for gender equality is carried out within all areas of Sweden's feminist foreign policy. This includes support to strengthen legislation for women's and girls' rights around the world, to promote women's economic empowerment, to combat men's violence against women, to strengthen women's

Others soon followed Sweden's example, including Canada.[280] Lyric Thompson and Rachel Clemens reported that France also launched a gender-based foreign policy at the Commission on the Status of Women in 2018, declaring that "France is back and so is feminism" and pledging half of its foreign assistance be devoted to achieving gender equality by 2022.[281] Staying true to its goals, France, led by President Macron, hosted the U.N. Women's Generation Equality Forum in July 2021.[282]

Within the United States, the new Administration prepares to face increasingly complicated geopolitical challenges compounded by growing nationalism and populism, an economy attenuated by COVID-19, and the recent assault on our democracy on January 6, 2021. The Biden Administration has a lot of work to do to represent the United States as an exemplar in upholding the values of the rule of law. Fortunately, the potential for the CEDAW to inspire necessary change directly relates to some of the United States' current policy objectives.

The Biden Administration's National Strategy is a prime example of this parity. The National Strategy recognizes that gender is only one axis of difference that often intersects with race, ethnicity, ability, and indigenous identity.[283] It acknowledges that the pandemic

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> role in peace processes and to increase women's political participation and access to sexual and reproductive health and rights (SRHR).
>
> . . .
>
> A feminist trade policy was launched in 2019 with the aim of contributing towards international trade bringing positive effects for women as producers, entrepreneurs, employees and consumers, in the same way as for men.
>
> In April 2018, the Government arranged the Stockholm Forum on Gender Equality, bringing together more than 700 participants from over a hundred different countries to exchange methods and strengthen cooperation across borders and sectors. The aim was to create a global mobilisation platform for gender equality.

280. Canada's Feminist International Assistance Policy directives committed 95% of Canada's foreign assistance to gender equality, including for girl's education and women's reproductive health and political rights. *See* Lyric Thompson, *From Sweden to Mexico, Foreign Policy Goes Feminist. Is the US Next?*, MS. MAG. (May 5, 2020), https://msmagazine.com/2020/05/05/from-sweden-to-mexico-foreign-policy-goes-feminist-is-the-u-s-next/ [https://perma.cc/2466-TYSA].

281. On International Women's Day in March 2019, France declared that feminist foreign policy would be integral to its G7 presidency in 2019. *See* Lyric Thompson & Rachel Clement, *Is the Future of Foreign Policy Feminist?* XX SETON HALL J. DIPL. & INT'L RELS. 76, 84 (2019).

282. *Press Release: Heads of State, Leaders and Activists Take Bold Action to Accelerate Gender Equality and Address the Consequences of COVID-19 for Women and Girls*, U.N. WOMEN (June 30, 2021), https://www.unwomen.org/en/news/stories/2021/6/press-release-generation-equality-forum-leads-bold-action-to-accelerate-gender-equality [https://perma.cc/E7AJ-PKZN].

283. *See* NATIONAL STRATEGY, *supra* note 14, at 183.

"exposed and exacerbated severe and pervasive health inequities among communities defined by race, ethnicity, geography, disability, sexual orientation, gender identity, and other factors."[284] By the Strategy's very terms, intersectional identity includes not only race, but also geography, disability, and sexual orientation.[285]

The National Strategy moreover commits the United States to "[r]educing racial and ethnic disparities in COVID-19 global response and disproportionate impacts on marginalized and indigenous communities, women and girls, and other groups."[286] It also vows to "take steps to enhance humanitarian relief and support for the capacity of the most vulnerable communities to prevent, detect, respond to, mitigate, and recover from impacts of COVID-19, such as food insecurity and gender-based violence."[287]

This same national approach to intersectionality must be mainstreamed into foreign policy and development cooperation to accelerate global recovery plans. The National Strategy provides a moment of opportunity to develop a stronger ecosystem to empower underrepresented women. To be successful, the National Strategy—which is built on multilateral development cooperation and a global recovery plan that makes gender central—must ensure a sensitivity to context and to lived gender-related needs. If the reset does not see women on the ground leading decisions that will engage them fully in a global recovery economy, then we risk heading toward a global emergency.

Another example of the connection between the CEDAW and the United States' current policy objectives is exhibited by the Biden Administration's COVID-19 Relief Plan. This Plan recognizes that COVID-19 has exacerbated domestic violence and sexual assault, thereby creating a "shadow pandemic."[288] President Biden has called for at least $800 million in supplemental funding for key programs that protect survivors.[289]

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284. *Id.* at 19.

285. *See id.* at 107.

286. *Id.* at 114.

287. *Id.* at 20.

288. *President Biden Announces American Rescue Plan*, WHITE HOUSE BRIEFING ROOM (Jan. 20, 2021), https://www.whitehouse.gov/briefing-room/legislation/2021/01/20/president-biden-announces-american-rescue-plan [https://perma.cc/GUS6-U3JC]; *see also The Shadow Pandemic: Violence Against Women During COVID-19*, U.N. WOMEN (2020), https://www.unwomen.org/en/news/in-focus/in-focus-gender-equality-in-covid-19-response/violence-against-women-during-covid-19 [https://perma.cc/EAV3-VVVD] (describing this term as denoting the rise in domestic violence and sexual assault lingering in the shadows of the COVID-19 pandemic).

289. *President Biden Announces American Rescue Plan*, *supra* note 288.

Finally, on March 8, 2021, President Biden established the White House Gender Policy Council by Executive Order.[290] The Order acknowledges that "[a]dvancing gender equity and equality is a matter of human rights, justice, and fairness."[291] The policies and programs to be coordinated are intended to "combat systemic biases and discrimination and . . . advance gender equality globally through diplomacy, development, trade, and defense."[292]

Each of these recent policy objectives by the Biden Administration makes clear that ratifying the CEDAW would only serve to concretize the pre-existing policy interests of the United States. The Convention promises to be a powerful anchor point for transnational coalition building, intercultural dialogue, and intersectional policy reform, and its ratification is essential if the Biden Administration is to successfully employ "transformative power" as a tool to weather the current geopolitical crises.

CONCLUSION: POSTSCRIPT, AFGHANISTAN, "I FEAR FOR MY AFGHAN SISTERS"

> "Time present and time past
> are both perhaps present in time future,
> and time future contained in time past."
> —T.S. Eliot, "Four Quartets"[293]

A week after the U.S. Presidential Elections, President-Elect Joe Biden tweeted: "When I'm speaking to foreign leaders, I'm telling them: America is going to be back. We're going to be back in the game."[294] For the reasons discussed in this Article, the Biden Administration must make ratifying the CEDAW a leading part of America's "back in the game" foreign policy agenda. Further, we contend in this concluding Section that ratifying the CEDAW would be a natural outgrowth of President Biden's commitment to the Violence Against Women Act (the "VAWA") of 1994.

Indeed, ratifying the CEDAW is the next step for the agenda established by President Biden in his landmark effort to first pass and now reauthorize the VAWA. Ratification would cement President

290. *See* Exec. Order No. 14,020, 86 Fed. Reg. 13,797 (Mar. 8, 2021).

291. *Id.*

292. *Id.*

293. T.S. ELIOT, FOUR QUARTETS (1941).

294. Joe Biden (@JoeBiden), TWITTER (Nov. 10, 2020, 6:30 PM), https://twitter.com/JoeBiden/status/1326306141056364544 [https://perma.cc/G7K5-9BVR].

Biden's legacy as an unyielding advocate for the elimination of discrimination against women and equality for all domestically.

The VAWA, introduced by then-Senator Biden, was first signed into law in 1994 "to address domestic violence, sexual assault and stalking through legislation."[295] The U.S. Department of Justice's Bureau of Justice Statistics reports that since the promulgation of the VAWA, intimate partner violence declined by 64% from 1994 to 2000.[296]

The VAWA has been updated and reauthorized several times with bipartisan backing—first in 2000, then in 2005 and 2015, and now again reauthorized by the House of Representatives in 2021. Most recently, the day after the Atlanta spa shootings on March 16, 2021,[297] the House voted to renew the landmark Act.[298] The latest reauthorization of the VAWA includes explicit protections for lesbian, gay, bisexual, and transgender survivors of domestic violence for the first time, as well as prohibits anyone convicted of stalking from purchasing a firearm.[299] It also provides authority to tribal courts to prosecute non-indigenous people for offenses such as violence against indigenous women and sex trafficking of indigenous women. [300] The most recent changes to the Act include more intersectional protections that are sensitive to the rise in gender-based violence during the pandemic.[301]

The CEDAW is the natural extension of this crucial domestic project, bringing the goals of the VAWA to the international stage. The VAWA's values are similar to General Recommendation 19 of the CEDAW, which was promulgated by the CEDAW Committee in 1992.[302] Others share our sentiment that the CEDAW advances similar goals. Among them is Samuel Bagenstos, who, testifying before

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295. *See The Violence Against Women Act – An Ongoing Fixture in the Nation's Response to Domestic Violence, Dating Violence, Sexual Assault, and Stalking*, DEP'T OF JUST. (Feb. 19, 2020), https://www.justice.gov/archives/ovw/blog/violence-against-women-act-ongoing-fixture-nation-s-response-domestic-violence-dating [https://perma.cc/VZ9U-CVAL].

296. SHANNAN M. CATALANO, INTIMATE PARTNER VIOLENCE, 1993–2010, at 1, BUREAU OF JUST. STAT. (NOV. 27, 2012), https://bjs.ojp.gov/content/pub/pdf/ipv9310.pdf [https://perma.cc/ATL8-U2ZP].

297. *See supra* note 96 and accompanying text.

298. Violence Against Women Reauthorization Act of 2021, H.R. 1620, 117th Cong. (2021).

299. *Id.* §§ 206, 208, 802.

300. *Id.* §§ 901–03.

301. Among other changes, the Act authorizes $40 million to culturally specific groups. *See id.* § 108 (stating "there are authorized to be appropriated to carry out this section $40,000,000 for each of fiscal years 2022 through 2026").

302. For specific quoted language from General Recommendation No. 19, see *supra* note 212.

Congress in support of CEDAW Ratification in 2010 in his capacity as then-Assistant U.S. Attorney General, stated: "One of the key goals of the Women's Treaty [the CEDAW] is to end violence against women. Congress and the Administration and this Committee have shared that goal."[303]

Most importantly, violence against women in the United States is part of a global pattern of the subordination of women. As Harold Koh argued in *Why America Should Ratify the Women's Rights Treaty*:

> In recent years, the United States [C]ongress and a number of states have enacted versions of the Violence against Women Act as a mark of a national commitment to end violence and discrimination against women. This commitment should not stop at the water's edge . . . America simply cannot be a world leader in guaranteeing progress for women's right unless it is also a part to the global women's treaty [the CEDAW].[304]

In the past two years, the COVID-19 pandemic has made the need for a global effort to end violence against women even more dire. As we noted in Section I, the COVID-19 pandemic is exacerbating existing inequalities and eroding many of the human rights gains of the past decades. In fact, one of the dramatic effects of the pandemic has been an international increase in domestic violence.

In the United States, there has been a sharp increase in incidents of domestic violence during the pandemic due to lockdown orders and the inability to access resources. While the National Commission on COVID-19 and Criminal Justice reported an eight percent rise in reports of domestic violence, the National Domestic Violence Hotline reported a nine percent increase in calls during the U.S. lockdowns from March to May 2020.[305] The New York City Police Department too reported an increase in reports of gender-based violence.[306]

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303. *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 Hum. Rts. & the L. of the S. Comm. on the Judiciary*, 111th Cong. 2010, at 6–7 (statement of Samuel R. Bagenstos, Principal Deputy Assistant Att'y Gen., Civ. Rts. Div., U.S. Dep't of Just.).

304. Koh, *supra* note 18, at 264–66.

305. *A Snapshot of Domestic Violence During COVID-19*, NAT'L DOMESTIC VIOLENCE HOTLINE (June 5, 2020), https://www.thehotline.org/resources/a-snapshot-of-domestic-violence-during-covid-19/ [https://perma.cc/FQ6H-YQ4R].

306. Michelle Bocanegra, *Domestic Violence Groups, Survivors Say New York's Pandemic Exacerbated Abuse*, POLITICO (June 21, 2020, 2:07 PM),

The United Nations also observed that the lockdowns led to an increase in violence against women, especially domestic violence across the globe.[307] The multilateral body even coined a term, the "Shadow Pandemic," to describe the rise of violence against women and girls in the shadow of the COVID-19 outbreak.[308]

The U.N. reports that ambassadors from 124 U.N. Member States and Observers have responded to the Secretary-General's call to action to combat this "Shadow Pandemic."[309] To examine a few critical reformist efforts, recently, in December 2020, Lebanon revised its domestic violence law to guarantee custody rights to women facing violence.[310] Following suit, Egypt strengthened its anti-female genital mutilation ("FGM") law by introducing steeper penalties for those engaged in FGM, including sanctions against the medical profession.[311] More recently, in July 2021, the Egyptian Parliament discussed tougher punishments for sexual harassment.[312] Lebanon also criminalized sexual harassment, including online harassment.[313] Furthermore, Iran is in the process of introducing its first ever bill on domestic violence in Parliament.[314]

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https://www.politico.com/states/new-york/albany/story/2020/06/21/domestic-violence-groups-survivors-say-new-yorks-pandemic-exacerbated-abuse-1293894 [https://perma.cc/CDE6-3V2T].

307. The White House, *supra* note 288.

308. María-Noel Vaeza, *Addressing the Impact of the COVID-19 Pandemic on Violence Against Women and Girls*, U.N. CHRON.: CORONAVIRUS (COVID-19) (Nov. 27, 2020) https://www.un.org/en/addressing-impact-covid-19-pandemic-violence-against-women-and-girls [https://perma.cc/2K8H-US29].

309. *See Put Women and Girls at Centre of COVID-19 Recovery: UN Secretary-General*, U.N. NEWS (Apr. 9, 2020), https://news.un.org/en/story/2020/04/1061452 [https://perma.cc/XE9T-PGNJ].

310. *See* Timour Azhari, *Lebanon Passes Landmark Sexual Harassment Law*, AL-JAZEERA (Dec. 21, 2020) https://www.aljazeera.com/news/2020/12/21/lebanons-parliament-approves-landmark-sexual-harassment-law [https://perma.cc/CCQ2-VSFA].

311. *See* Menna A. Farouk, *Egypt's Cabinet Toughens Law Banning Female Genital Mutilation*, REUTERS (Jan. 21, 2021), https://www.reuters.com/article/egypt-women-law/egypts-cabinet-toughens-law-banning-female-genital-mutilation-idUSL8N2JW26Z [https://perma.cc/A3QL-7DCP].

312. *See Egypt Discusses Draft Law for Tougher Sexual Harassment Punishment*, EGYPT TODAY (July 11, 2021, 12:20 PM), https://www.egypttoday.com/Article/1/105907/Egypt-discusses-draft-law-for-tougher-sexual-harassment-punishment [https://perma.cc/W5QR-NNT8].

313. *See* Azhari, *supra* note 310.

314. *See Iran: Adopt Draft Law to Protect Women*, HUM. RTS. WATCH (Dec. 4, 2020, 12:00 AM), https://www.hrw.org/news/2020/12/04/iran-adopt-draft-law-protect-women [https://perma.cc/8WA7-6F3H].

As the Biden Administration and Congress celebrate the reauthorization of the VAWA, they must now look to the horizon—to the ratification of the CEDAW. Ratifying the Convention will give the Biden Administration significantly more legitimacy in its effort to end violence against women and would demonstrate the solidarity needed to achieve this noble goal. As President Biden himself stated, the renewal of the VAWA "should not be a Democratic or Republican issue—it's about standing up against the abuse of power and preventing violence."[315]

The effort in which we are engaged can be likened to the positive efforts by women's rights advocates several decades ago, who sought to move their governments to ratify the CEDAW in different corners of the world. This effort has been described as follows: "Trying to get your government to ratify [the] CEDAW is a political process that makes you see the ramification of this quite extensive and encompassing document."[316]

As we write these final lines, we are witnesses to the tragic fall of the Afghanistan government and its takeover by the Taliban.[317] We watch with fear the plight of our friends and all women and girls whose lives are at grave risk and their future imperiled. Malala, the most famous victim of Taliban's brutal attacks on women writes: "Like many women, I fear for my Afghan sisters."[318]

On October 30th, in the waning hours of the withdrawal of the international troops, the CEDAW Committee (together with the U.N. Committee on the Rights of the Child) issued a statement calling upon the Taliban to actualize their promises to protect Afghan women and girls and to abide by the human rights principles enshrined in the

315. Susan Davis, *House Renews Violence Against Women Act, but Senate Hurdles Remain*, NPR (Mar. 17, 2021, 5:14 PM), https://www.npr.org/2021/03/17/977842441/house-renews-violence-against-women-act-but-senate-hurdles-remain [https://perma.cc/PR3X-A2T8].

316. Elisabeth Friedman, *Women's Human Rights: The Emergence of a Movement*, *in* WOMEN'S RIGHTS, HUMAN RIGHTS: INTERNATIONAL FEMINIST PERSPECTIVES 23 (Julia Peters & Andrea Wolpers eds., 1995) (quoting Roberta Clarke, Coordinator, Women and the L. Project, Caribbean Assoc. for Feminist Rsch. and Action, Remarks at Association for Women in Development Conference (Oct. 22, 1993)). .

317. Emma Graham-Harrison & Luke Harding, *The Fall of Kabul: A 20-Year Mission Collapses in a Single Day*, Guardian (Aug. 15, 2021, 4:23 PM), https://www.theguardian.com/world/2021/aug/15/the-fall-of-kabul-a-20-year-mission-collapses-in-a-single-day [https://perma.cc/3MCT-PSK8].

318. *See* Malala Yousafzai, *Malala: I Survived the Taliban. I Fear for My Afghan Sisters*, N.Y. TIMES (Aug. 18, 2021), https://www.nytimes.com/2021/08/17/opinion/malala-afghanistan-taliban-women.html [https://perma.cc/SZB5-YQRW].

CEDAW and the Convention on the Rights of the Child.[319] Both Committees condemned the targeted attacks on women and girls who had contributed to the advancement of Afghanistan. Furthermore, the CEDAW Committee held the Taliban and all other authorities accountable to the human rights protections enshrined in the CEDAW and drew attention to the observations made in the CEDAW Committee's Concluding Observations to Afghanistan's third periodic report in March 2020 and adopted by the Committee at its seventy-fifth session (10–28 February 2020).[320] In view of the unfolding events in Afghanistan, the prophetic nature of those recommendations in 2020 now has greater moral urgency. We highlight two recommendations, women's security and girls' education; two areas that unite both Republican and Democratic lawmakers. The Committee underscored CEDAW's General Recommendation No. 35 on conflict-related violence in an effort to recommit Afghanistan to its national action plan on Security Council Resolution 1325 on the primacy of women's participation in peace and conflict resolution.[321] The CEDAW Committee went further in invoking the importance of full inclusion in asking that "women, including those belonging to ethnic and religious minorities, participate in peace, transitional justice and reconciliation processes . . . ."[322] The Committee also "expressed its deep concern that schoolgirls and schools for girls continue to be targeted in the course of armed conflict"[323] and highlighted the "Safe Schools Declaration," an intergovernmental commitment endorsed by Afghanistan to safeguard students, teachers, school and universities from the impact of armed conflict.[324] As the clock wound down on the withdrawal of the military, the fact that the U.N. human rights treaty bodies drew attention to CEDAW's Concluding Observations underscores the moral

319. *See* U.N. Comm. on the Elimination of Discrimination against Women (CEDAW) & U.N. Comm. on the Rights of the Child (CRC), *Afghanistan: UN Committees Urge Taliban to Honour their Promises to Protect Women and Girls*, U.N. HUM. RTS.*:* OFF. OF THE HIGH COMM'R FOR HUM. RTS. (Aug. 30, 2021) https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27414&LangID=E [https://perma.cc/MGA5-8FCK].

320. *See* Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Third Periodic Report of Afghanistan, U.N. Doc. CEDAW/C/AFG/CO/3 (March 10, 2020). The Committee considered the third periodic report of Afghanistan (CEDAW/C/AFG/3) at its 1759th and 1760th meetings (see CEDAW/C/SR.1759 and CEDAW/C/SR.1760), held on 18 February 2020.

321. *Id.* ¶ 31–32.

322. *Id.* ¶ 32.

323. Comm. on the Elimination of All Forms of Discrimination Against Women, *supra* note 146, at 11.

324. *Id.* at 2. For more on the Safe School Declaration, see *The Safe Schools Declaration*, GLOB. COAL. TO PROTECT EDUC. FROM ATTACK, https://ssd.protectingeducation.org [https://perma.cc/Q9MB-RPNN] (last visited Nov. 16, 2021).

authority of the CEDAW to draw attention to the rights of women and girls at the hour of their gravest threat.

When co-author Melanne Verveer, as U.S. Ambassador on Global Women's Issues, met with the Afghan Minister of Justice to advocate for the implementation of Afghanistan's Elimination of Violence Against Women Law, she argued that Afghanistan had an obligation to comply with the CEDAW. The Minister looked at her with great consternation and said: "I have told those people in the foreign ministry to stop ratifying these treaties." His response demonstrated a recognition that treaties such as the CEDAW do in fact bring obligations with which ratifying nations are expected to adhere in their domestic policies.[325]

Our friend, the Honorable Naheed Farid, Chair of the Afghanistan Parliament's Standing Commission for Human Rights, Civil Society and Women's Affairs, wrote to us a few days before the fall of Kabul, emphasizing that women would continue the fight for democracy and the rule of law. The CEDAW is part of the rule of law in Afghanistan. While the world stands united in its concern for the future of Afghanistan's women and watching our efforts on their behalf, U.S. lawmakers can signal their support to Afghan women and underscore the importance of gender equality to domestic and global security by ratifying the Convention.

The United States must now ratify the CEDAW to reverse the history of gender and intersectional inequality and to secure a more sustainable future. In T.S. Eliot's words, "What might have been and what has been / Point to one end, which is always present."[326] The fate of our collective future and the injustices of our shared past point to this very moment. The time is now for CEDAW Ratification.

325. *See* Melanne Verveer & Rangita de Silva de Alwis, *Why Ratifying the Convention on the Elimination of Discrimination Against Women (CEDAW) is Good for America's Domestic Policy*, GIWPS (Feb. 18, 2021), https://giwps.georgetown.edu/why-ratifying-the-convention-on-the-elimination-of-discrimination-against-women-cedaw-is-good-for-americas-domestic-policy [https://perma.cc/LQC5-V48L].

326. ELIOT, *supra* note 293.

APPENDIX

Table 1: CEDAW Committee Asked for Information, 2016–2020[327]

	Frequency	Percent	Cumulative Percent
Asked About Gender-Based Violence and Intersectionality	61	56.5	56.5
Asked About WPS, Violence, and Intersectionality	47	43.5	100.0
Total	108	100.0	

Table 2: Information Provided by States Parties to the CEDAW Committee, 2016–2020[328]

	Frequency	Percent	Cumulative Percent
State Party Provided Information About Gender-Based Violence, WPS, and Intersectionality	54	50.0	50.0
State Party Provided Information About Gender-Based Violence and Intersectionality	47	43.5	93.5
State Party Provided Information About Gender-Based Violence and WPS	1	0.9	94.4
State Party Provided Information Only About Gender-Based Violence	6	5.6	100.0
Total	108	100.0	

327. *Data on CEDAW*, *supra* note 62.

328. *Id.*