

UNIVERSITY of PENNSYLVANIA
JOURNAL of LAW & PUBLIC AFFAIRS

Vol. 3

May 2018

No. 1

**“LONG PAST TIME”:
CEDAW RATIFICATION IN THE UNITED STATES**

Rangita de Silva de Alwis^{*} and *Amanda M. Martin*^{**}

“[W]e will persist in our effort to persuade key members of the Senate—and they know who they are—that it is long past time for America to become party to the Convention on the Elimination of All Forms of Discrimination Against Women.”

– Madeleine Albright^{***}

INTRODUCTION	16
I. A HISTORY OF THE CEDAW IN THE UNITED STATES	19
II. THE TRUMP ADMINISTRATION ON THE ADVANCEMENT OF WOMEN AND GENDER EQUALITY	21
A. <i>Equal Pay for Equal Work</i>	21
B. <i>Childcare</i>	22
C. <i>Parental Leave and Work/Family Reconciliation</i>	24

^{*} Rangita de Silva de Alwis is the Associate Dean of International Affairs at the University of Pennsylvania Law School and Global Advisor to the UN Sustainable Development Fund. Previously, she was the inaugural director of the Women in Public Service Project founded by Secretary of State Hillary Clinton.

^{**} J.D., 2017, University of Pennsylvania Law School. Amanda Martin is an Associate at Milbank, Tweed, Hadley and McCloy, where she completed a pro bono fellowship at Her Justice, a non-profit that provides free legal services to women living in poverty in New York City.

^{***} This article is dedicated to Madeleine Albright and Hillary Clinton, who have done more than any other female leaders to advance women’s human rights in the United States and around the world.

III. HOW THE CEDAW RELATES TO THE TRUMP ADMINISTRATION’S GOALS	25
A. <i>Equal Pay for Equal Work</i>	25
B. <i>Affordable Childcare</i>	26
C. <i>Paid Parental Leave and Work/Family Reconciliation</i>	27
IV. THE UNITED STATES’ LEADERSHIP ROLE IN THE WORLD.....	28
A. <i>Manner of Implementation</i>	29
V. LEADING BY EXAMPLE: HOW THE CEDAW CAN BE USED TO FULFILL THE TRUMP ADMINISTRATION’S GOALS	31
A. <i>Reporting</i>	31
1. <i>Equal Pay for Equal Work Reporting</i>	32
2. <i>Affordable Childcare Reporting</i>	33
3. <i>Paid Leave and Work/Family Reconciliation Reporting</i>	35
B. <i>Legislation</i>	37
1. <i>Equal Pay for Equal Work Legislation</i>	37
2. <i>Affordable Childcare Legislation</i>	39
3. <i>Paid Leave and Work /Family Reconciliation Legislation</i>	40
VI. LESSONS TO BE LEARNED FROM CANADA	41
VII. AN URGENT CALL FOR REFORM.....	42
A. <i>The Role of the CEDAW in Building Gender-Equal Families</i>	47
CONCLUSION.....	51

INTRODUCTION

The goal of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) is to call upon States Parties to eliminate all forms of discrimination against women on the basis of sex. The CEDAW, considered the most comprehensive international agreements on the basic human rights of women, addresses women’s rights within political, civil, cultural, economic, and social life, and defines what constitutes discrimination against women, as well as ways to end such discrimination.¹ The CEDAW defines discrimination against women as:

[A]ny distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective

¹ Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981) [hereinafter CEDAW].

of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.²

The CEDAW provides a blueprint through a series of Articles that provide a standard-setting roadmap for states to eliminate discrimination against women and girls.

This international bill of rights for women is the landmark standard-setting international instrument to hold governments accountable for gender-based discrimination.³ The CEDAW is the first convention to comprehensively address women’s rights in the political, social, cultural, economic, and private spheres.⁴ Since its adoption in 1979, 189 countries have ratified the CEDAW, many of which have far less robust systems in place to ensure gender equality than the United States.⁵ However, the United States is conspicuously absent from the 186 States Parties to the CEDAW. The United States is one of only seven countries not to ratify the CEDAW. The six other countries that have not ratified the CEDAW are Iran, Sudan, South Sudan, Somalia, Palau, and Tonga.⁶ States Parties to the CEDAW are charged with implementing “appropriate measures” toward ending discrimination.⁷ From Australia to Zimbabwe, States Parties have put into place measures to comply with the women’s rights guarantees enshrined in the CEDAW. Although the treaty provisions are consistent with the United States Constitution and laws, the United States’ failure to ratify the CEDAW puts it outside international standards for its anti-discrimination efforts; nor is the U.S. in compliance with the same universal obligations as the 186 international States Parties to the convention. In countries

² *Id.* at art. 1.

³ *See id.* at arts. 1 & 2 (declaring international bill of rights is the landmark standard to hold governments accountable for gender-based discrimination).

⁴ *See* Harold Hongju Koh, *Why America Should Ratify the Women’s Rights Treaty (CEDAW)*, 34 CASE W. RES. J. INT’L L. 263, 265 (2002) (explaining that the first convention to comprehensively address women’s rights in the political, social, cultural, economic, and private spheres is the CEDAW).

⁵ *See Ratification, Accessions Successions Status of Convention on the Elimination of All Forms of Discrimination against Women*, UNITED NATION TREATY COLLECTION, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=IV-8&chapter=4&lang=en [hereinafter *Ratification, Accessions Successions Status*] (providing that 189 countries, many of which have far less robust systems in place to ensure gender equality than the United States, have ratified the CEDAW since its adoption in 1979).

⁶ *See id.* (stating that the United States is one of seven countries, including Iran, Sudan, South Sudan, Somalia, Palau, and Tonga, to not ratify the CEDAW).

⁷ CEDAW, *supra* note 1, at art. 3 (explaining that parties of the CEDAW needs to implement “appropriate measures” toward ending discrimination).

around the world, the CEDAW has been used to change legal norms on violence, citizenship, property, inheritance, and more. Although there is nothing in the treaty that is incompatible with U.S. law and its foreign policy objectives,⁸ the treaty would help to strengthen U.S. laws on enhancing gender equality.

Several scholars and foreign policy leaders have made a case for ratification of the CEDAW based on strengthening the platform of American global leadership on women's equality, and we agree that non-ratification weakens the United States on an international level and solidifies an isolationist stand. In this paper, we argue that ratifying the CEDAW could play a profound role in the United States in combating the subtle and pervasive forms of discrimination faced by women, such as wage disparity and the lack of safe, affordable childcare for working mothers.

It is crucial for the United States to ratify the CEDAW. Ratification would undoubtedly bolster American leadership and moral authority around the world. The Trump administration's ratification of the CEDAW without reservations is necessary in order to achieve the administration's stated goals of equal pay for equal work, accessible childcare, family leave, and work/family reconciliation.

Part I of this paper provides a brief overview of the CEDAW's unfinished history in the United States. Part II goes on to lay out the Trump administration's goals in regard to the advancement of women in the areas of equal pay for equal work, affordable childcare, and paid parental leave and work/family reconciliation. Using the CEDAW as the touchstone, part II also identifies gaps in the newly proposed plans. Part III examines how ratification of the CEDAW can help advance the Trump administration's goals. Part IV examines the United States' contradictory message to women internationally as a manifestation of American exceptionalism. Part V explores case studies that are compatible with the CEDAW in accomplishing the goals of equal pay for equal work, affordable childcare, paid parental leave, and work/family reconciliation through CEDAW reporting and subsequent legislation. Part VI highlights policies in Canada as an important model, given its geopolitical proximity to the United States. The two North American countries represent a study in contrasts. Canada has historically shown fidelity to the CEDAW while the United States has not. Finally, Part VII makes the case as to why the United States must now, more than ever before, ratify the CEDAW.

⁸ See Koh, *supra* note 4, at 270 (noting that the treaty is not incompatible with U.S. law and its foreign policy objectives).

I. A HISTORY OF THE CEDAW IN THE UNITED STATES

The United States, as part of the Working Group of the Whole on the Drafting of the CEDAW during the 34th session of the United Nations General Assembly, was active in contributing to the CEDAW’s creation.⁹ Although the United States submitted several suggestions and edits to the CEDAW, it never went so far as to ratify the document.¹⁰

In 1980, President Carter signed the CEDAW, at which point it was presented to the Senate Foreign Relations Committee (SFRC). Both the Reagan and H.W. Bush administrations opposed the CEDAW, and in 1988, 1990, 1994, and 2002, the SFRC held hearings on the CEDAW, yet failed to ratify the treaty.¹¹ Under the Clinton administration, ratification of the CEDAW seemed imminent: sixty-eight senators signed a letter to then President Clinton in 1993 urging him to take necessary steps to pass the legislation. However, attempts at ratification remained unsuccessful.

There has been consensus across the political divide that women’s rights are national security issues. Secretary of State Condoleezza Rice chaired the Security Council presidency on behalf of the United States in June 2008, which is when she introduced what became Security Council Resolution (SCR) 1820.¹² Secretary Rice advanced the notion that sexual violence against women in conflict was indeed an issue that the Security Council was authorized to address. “I am proud that, today, we respond to that lingering question with a resounding ‘yes!’”¹³ Secretary Rice added that the world body was acknowledging that sexual violence was in fact a security concern. She stated, “we affirm that sexual violence profoundly affects not only the health and safety of women, but the economic and social stability of their nations”¹⁴ 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 tactic of war.¹⁵

⁹ See United Nations, *Report of the Working Group of the Whole on the Drafting of the Convention on the Elimination of Discrimination Against Women*, U.N. Doc. A/34/60 (Mar. 2, 1979) (demonstrating that the United States was active in contributing to the CEDAW’s creation).

¹⁰ The combination of America’s leadership and resistance in the realm of human rights illustrates American exceptionalism, including the practice of negotiating treaties but refusing to ratify them.

¹¹ See generally Madeleine Giansanti Çag, *Women’s Interest Network*, 44 INT’L LAW. 415 (2010) (explaining that although President Carter signed the CEDAW, both the Reagan and H.W. Bush administrations opposed the CEDAW, and that in 1988, 1990, 1994, and 2002, the SFRC held hearings on the CEDAW but failed to ratify the treaty).

¹² Condoleezza Rice, Secretary of State, Speech on Sexual Violence as an Instrument of Welfare (June 19, 2008) in U.S. DEP’T ST. ARCHIVE.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

A few years later, Secretary Clinton reaffirmed Secretary Rice's premise and acknowledged, through SCR 1888, introduced in 2009, that the CEDAW is specifically linked to women's security.¹⁶ Security Council Resolution 1888, introduced by Secretary Clinton, added more accountability measures and articulated that peacekeeping missions have a specific mandate to protect women and children from sexual violence during armed conflict.¹⁷ The resolution further called upon the Secretary-General to: "appoint a special representative to coordinate a range of mechanisms to fight the crime."¹⁸ 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.¹⁹

Under the Obama administration, America's willingness to sign the U.N. Convention on the Rights of Persons with Disabilities (CPRD), a treaty requiring proactive measures to ensure social, economic, and cultural rights, made ratification of the CEDAW seem like a possibility. In May 2009, the Obama administration prioritized the CEDAW for ratification.²⁰ Less than a year later, then Secretary of State Clinton told the United Nations Commission

¹⁶ S. C. Res. 1888, U.N. Doc. S/RES/1888 (Sept. 30, 2009).

¹⁷ *Id.*

¹⁸ *Id.* at 4.

¹⁹ President Barack Obama, *Statement by the President Regarding the Protection of Women and Children in Conflict*, THE WHITE HOUSE: OFFICE OF THE PRESS SECRETARY (Sept. 30, 2009), <https://obamawhitehouse.archives.gov/realitycheck/the-press-office/statement-president-un-security-council-resolution-1888>.

²⁰ *See US: Ratify Women's Rights Treaty*, HUMAN RIGHTS WATCH, (Jul. 15, 2010), <https://www.hrw.org/news/2010/07/15/us-ratify-womens-rights-treaty> (stating that under the Obama administration, America's willingness to sign the U.N. Convention on the Rights of Persons with Disabilities made ratification of the CEDAW seem like a possibility and in May 2009, the Obama administration prioritized the CEDAW for ratification).

on the Status of Women that the administration would “continue to work for the ratification of CEDAW.”²¹ In response to its Universal Periodic Review in 2005 and in 2010, the United States committed to ratify the treaty.²² Revitalized interest in the CEDAW during the Obama administration not only sparked renewed opposition from conservatives, but from liberals as well.²³ Despite the Obama administration’s demonstrated expression of interest to ratify the treaty, it failed to achieve this goal.

II. THE TRUMP ADMINISTRATION ON THE ADVANCEMENT OF WOMEN AND GENDER EQUALITY

A. *Equal Pay for Equal Work*

In 2009, President Obama signed his first piece of legislation, the Lilly Ledbetter Fair Pay Act, into law.²⁴ The Act, which restored the rights of women and other workers who are discriminated against to challenge unfair pay in court, was a bold step toward achieving equal pay. President Obama’s earliest legislative action set the tone for women’s rights by putting equal pay at the forefront of the nation’s agenda. A year after passing the Lilly Ledbetter Act, President Obama created the National Equal Pay Task Force, and in 2013, signed a Presidential Memorandum directing the Office of Personnel Management to develop a government-wide strategy to address the gender pay gap in the federal workforce.²⁵ Although the Obama administration acted to close the gender pay gap and put a spotlight on these issues, such inequalities persist and must continue to be addressed.

²¹ *Id.*

²² See *UN Working Group on the Issue of Discrimination Against Women in Law and Practice Finalizes Country Mission to the United States*, U.N. OFFICE OF THE HIGH COMM’R ON HUMAN RIGHTS, (Dec. 11, 2015), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16872&LangID> (explaining that the United States committed to ratify the treaty in response to its Universal Periodic Review in 2005 and in 2010).

²³ See Julia Schast, *Battle of the Sexes: Why the United States Has Not Yet Ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*, 3 INTERDISC. J. UNDERGRADUATE RES. 10, 11 (2014) (demonstrating that the Obama administration sparked opposition from both conservatives and liberals upon revitalizing interest in the CEDAW).

²⁴ Lilly Ledbetter Fair Pay Act of 2009, 42 U.S.C. § 2000e-5(e)(3) (2009).

²⁵ See *Fact Sheet: New Steps to Advance Equal Pay on the Seventh Anniversary of the Lilly Ledbetter Fair Pay Act*, WHITE HOUSE OFFICE OF THE PRESS SECRETARY (Jan. 29, 2016), <https://obamawhitehouse.archives.gov/the-press-office/2016/01/29/fact-sheet-new-steps-advance-equal-pay-seventh-anniversary-lilly> (explaining that President Obama signed both the Lilly Ledbetter Fair Pay Act and a Presidential Memorandum in addition to creating the National Equal Pay Task Force).

At the Republican National Convention in July 2016, Ivanka Trump pledged that she, alongside her father, then Republican Presidential nominee Donald Trump, would fight for equal pay for equal work.²⁶ The First Daughter took her support a step further on Equal Pay Day, a holiday launched by the National Committee on Pay Equity which took place on April 4, 2017. In honor of the holiday, Ms. Trump tweeted “#EqualPayDay is a reminder that women deserve equal pay for equal work. We must work to close the gender pay gap!”²⁷

In the past, however, President Trump has remarked that women will earn the same wages as men if they “do as good a job,”²⁸ but has also displayed skepticism towards public policy addressing wage discrepancies.²⁹ Within the first three weeks of his presidency, President Trump signed twenty-five executive orders, none of which addressed equal pay for equal work.³⁰

B. Childcare

The current administration has in its chief advocate, Ivanka Trump, an important voice for accessible childcare.³¹ Ms. Trump has been instrumental in influencing childcare policies since the presidential campaign, and this has remained one of her signature causes.³² Sometime in February 2017, Ms. Trump

²⁶ See Claire Zillman, *New Bills on Equal Pay, Paid Leave Will Test GOP’s Willingness to Follow Trump’s Lead*, FORTUNE (Feb. 9, 2017), <http://fortune.com/2017/02/09/trump-paid-leave-equal-pay/> (explaining that during the Republican National Convention, Ivanka Trump pledged that her and her father, then Republican presidential nominee Donald Trump, would fight for equal pay for equal work).

²⁷ Ivanka Trump (@IvankaTrump), TWITTER (Apr. 4, 2017, 7:31 AM), <https://twitter.com/IvankaTrump/status/849222875869577217> (illustrating that in honor of the holiday, Equal Pay Day, Ms. Trump tweeted “#EqualPayDay is a reminder that women deserve equal pay for equal work. We must work to close the gender pay gap!”).

²⁸ Charlotte Alter, *Here’s What Donald Trump Thinks About Women’s Issues*, TIME (Aug. 5, 2016), <http://time.com/4441052/donald-trump-women-issues/>.

²⁹ See *id.* (describing that President Trump has displayed skepticism as to whether public policy addressing wage discrepancies is realistic).

³⁰ Rebecca Harrington, *Trump Has Already Signed 64 Executive Actions – Here’s What Each One Does*, BUSINESS INSIDER (Apr. 12, 2017), <http://www.businessinsider.com/trump-executive-orders-memorandum-proclamations-presidential-action-guide-2017-1>.

³¹ See Jennifer Steinhauer, *Even Child Care Divides Parties. Ivanka Trump Tries Building a Bridge*, N.Y. TIMES (Mar. 11, 2017), <https://www.nytimes.com/2017/03/11/us/politics/ivanka-trump-womenpolicy.html?hp&action=click&pptype=Homepage&clickSource=story-heading&module=first-column-region®ion=top-news&WT.nav=top-news> (stating that Ivanka Trump is the chief advocate of the current administration).

³² See Ylan Mui, *Ivanka Trump Has Found a Cause to Champion – and Democrats Love It*, CNBC (Mar. 6, 2017), <http://www.cnbc.com/2017/03/06/ivanka-trump-childcare-and-paid-family-leave-democrats-like-it.html> (explaining that childcare policies have been one of Ivanka Trump’s primary causes).

met privately with female Republican lawmakers to discuss how to advance legislation on childcare and family leave.³³ Since assuming the presidency, President Trump has addressed support for this campaign promise.

During his joint address to Congress on February 28, President Trump declared: “My administration wants to work with members of both parties to make childcare accessible and affordable”³⁴ The United States, which spends less than half of one percent of its federal budget on childcare, stands in stark contrast to other developed nations, which spend anywhere from two to seven percent of its federal budget on childcare.³⁵ Investment in early childhood education and care would provide the United States with more credibility amongst its global competitors and prepare children for the future.³⁶

There are still obstacles to achieving affordable childcare within the Trump administration. Although the issue has the potential to unite Republicans and Democrats, who have historically been more willing than Republicans to champion childcare legislation, there is disagreement over how the new plan should be designed. President Trump’s new tax bill doubled the child tax credit from \$1,000 to \$2,000 per child under age 17. Taxpayers whose child tax credits exceed their federal income tax liability are able to receive up to \$1,400 as a refund.³⁷ Tax deductions, however, will be of little significance to working class and impoverished families, as they often earn too little in income to owe federal income taxes.³⁸ The maximum refund a low-income family can receive, though most working families would receive less, is \$1,400.³⁹ A refund of this size would hardly make a dent in the average child-care bill.⁴⁰

³³ Steinhauer, *supra* note 31.

³⁴ *Remarks by President Trump in Joint Address to Congress*, WHITE HOUSE OFFICE OF THE PRESS SECRETARY (Feb. 28, 2017), <https://www.whitehouse.gov/the-press-office/2017/02/28/remarks-president-trump-joint-address-congress>.

³⁵ *See generally* KATIE HAMM & CARMEL MARTIN, A NEW VISION FOR CHILD CARE IN THE UNITED STATES: A PROPOSED NEW TAX CREDIT TO EXPAND HIGH-QUALITY CHILD CARE (2015).

³⁶ *See id.* (illustrating that the if the United States invested in early childhood education, it would have more credibility among its global competitors and benefits for the future of its children).

³⁷ Lydia DePillis, *Changes to the child tax credit: What it means for families*, CNN MONEY (Dec. 16, 2017), <http://money.cnn.com/2017/12/16/news/economy/child-tax-credit/index.html>.

³⁸ Heather Long, *The final GOP tax bill is complete. Here is what is in it*, WASH. POST (Dec. 15, 2017), https://www.washingtonpost.com/news/wonk/wp/2017/12/15/the-final-gop-tax-bill-is-complete-heres-what-is-in-it/?utm_term=.d141d158acec.

³⁹ *GOP Bill’s Child Tax Credit Leaves 10 Million Children in Working Families with a CTC Increase of Just \$75 or Less*, CTR ON BUDGET & POLICY PRIORITIES (Dec. 15, 2017), <https://www.cbpp.org/research/federal-tax/interactive-gop-bills-child-tax-credit-leaves-10-million-children-in-working>; Lydia DePillis, *Changes to the Child Tax Credit: What It Means for Families*, CNN (Dec. 16, 2017), <http://money.cnn.com/2017/12/16/news/economy/child-tax-credit/index.html>.

⁴⁰ The average cost of full-time, center-based care for a four-year-old can range from \$3,997 in Mississippi to \$12,781 per year in Massachusetts. *Parents and the High Cost of Child*

Democrats must also be involved in the drafting process. Ms. Trump's meeting with female Republican lawmakers will likely not address considerations of Democrat lawmakers, such as lack of benefits for the working poor. More importantly, action must be taken. President Trump's remarks to Congress signaled the potential for meaningful change. However, of the twenty-five executive orders that the Trump administration passed in its first month, none address affordable childcare.⁴¹ As recently as mid-June of 2017, Ivanka Trump posted on her Instagram account that she met with Senator Rubio and other members of Congress "to discuss safe, high-quality childcare which is currently unaffordable for many American working families."⁴²

C. Parental Leave and Work/Family Reconciliation

The United States is the only industrialized nation without mandated parental leave.⁴³ Currently, the best avenue for leave is under the 1993 Family and Medical Leave Act (FMLA), which requires employers to provide full-time employees with up to twelve weeks off of work for childbirth or family medical issues.⁴⁴ However, leave under the FMLA is unpaid.⁴⁵ Also at issue is the length and type of paid leave available for new parents.⁴⁶

Ms. Trump has adopted family leave as a signature issue. In July 2017, Ms. Trump wrote an opinion for the Washington Post in response to an article about the Trump administration's approach to paid family leave.⁴⁷ In her

Care, CHILDREN AWARE OF AMERICA, 1, 36 (2016), <https://usa.childcareaware.org/wp-content/uploads/2016/05/Parents-and-the-High-Cost-of-Child-Care-2015-FINAL.pdf>.

⁴¹ See Harrington, *supra* note 30 (explaining that Democrats must be involved in the drafting process because Ms. Trump's meeting with female republican lawmakers will likely not address considerations of democrat lawmakers and although President Trump's remarks to Congress signaled the potential for meaningful change, none of his 25 executive orders in the first month address affordable childcare).

⁴² Ivanka Trump (@ivankatrump), Instagram (Jun. 20, 2017), <https://www.instagram.com/p/BV1Y14A10FR/?hl=en&taken-by=ivankatrump>.

⁴³ See GRETCHEN LIVINGSTON, AMONG 41 NATIONS, U.S. IS THE OUTLIER WHEN IT COMES TO PAID PARENTAL LEAVE (2016) (explaining that the United States is the only industrialized nation without mandated parental leave).

⁴⁴ See Fact Sheet #28: The Family and Medical Leave Act, U.S. DEPT. LABOR, <https://www.dol.gov/whd/fmla/> (describing that the best way for people to achieve parental leave is under the 1993 Family and Medical Leave Act, which requires employers to provide full-time employees with up to twelve weeks off of work for childbirth or family medical issues).

⁴⁵ *Id.*

⁴⁶ See *id.* (demonstrating that leave under the FMLA, leave is unpaid and the length and type of paid leave available for new parents remains at issue).

⁴⁷ *The Ivanka Entitlement*, THE WALL STREET JOURNAL (May 25, 2017), <https://www.wsj.com/articles/the-ivanka-entitlement-1495754494>; *Ivanka Trump Replies on Paid Family Leave*, THE

response, Ms. Trump said “we are working with lawmakers on both sides of the aisle to design a paid-leave policy that provides a targeted benefit to help the people who need it the most and are least likely to receive it from their employer, without discouraging larger companies from developing more generous policies.”⁴⁸ However, she did not elaborate on the plan.⁴⁹

In December 2017, President Trump signed the GOP-backed tax bill into law. The bill includes a provision that offers a tax credit to businesses that voluntarily offer employees paid leave, which in no way guarantees paid family leave to employees.⁵⁰ Apart from the tax credit, Ms. Trump has been meeting with lawmakers, such as Senators Marco Rubio (R-Fla.) and Larry Alexander (R-Tenn.) on the issue of paid family leave. Senator Rubio is still in the early stages of drafting a plan which would require employees to draw from their social security benefits in order to take paid family leave. Employees who use their social security benefits in order to, for example, leave to care for a new child or an ill family member, would then have to forgo the social security benefits they already used. Senator Rubio acknowledged that getting unpaid time off, as the law currently stands, is “not a sustainable thing.” However, it is clear from these early discussions of paid family leave that he will not follow the lead of states parties to the CEDAW that offer employees paid leave without future repercussions.⁵¹

III. HOW THE CEDAW RELATES TO THE TRUMP ADMINISTRATION’S GOALS

A. *Equal Pay for Equal Work*

CEDAW Article 11 deals directly with employment discrimination.⁵² While employment discrimination at large contributes to the wage gap, Article 11(1)(d) explicitly references equal wages for men and women, stating:

WALL STREET JOURNAL (July 4, 2017), <https://www.wsj.com/articles/paid-family-leave-is-a-good-national-policy-1499184292>.

⁴⁸ *Id.*

⁴⁹ *The Ivanka Entitlement*, *supra* note 47; *Ivanka Trump Replies on Paid Family Leave*, *supra* note 47.

⁵⁰ Donald J. Trump, *President Donald J. Trump Proclaims March 2018 as Women’s History Month*, THE WHITE HOUSE (Feb. 28, 2018), <https://www.whitehouse.gov/presidential-act ions/president-donald-j-trump-proclaims-march-2018-womens-history-month/>.

⁵¹ Seung Min Kim, *Ivanka, Rubio find a new project: Paid family leave*, POLITICO (Feb. 4, 2018), <https://www.politico.com/story/2018/02/04/rubio-ivanka-trump-family-leave-385050>.

⁵² CEDAW, *supra* note 1, art. 11 (“Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment . . .”).

(1) States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular: . . . (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work⁵³

The CEDAW Committee has since considered equal pay for equal work a priority theme for consideration by the Commission on the Status of Women.⁵⁴ The Division for the Advancement of Women worked in tandem with the International Labor Organization (ILO), Employment and Development Department, to prepare a study of equal pay.⁵⁵ The study suggested policies to reduce the wage gap, including equal opportunity policies.⁵⁶ The CEDAW's General Recommendation No. 13 of 1989 calls for States Parties to ensure the application of the principle of equal remuneration for work of equal value.⁵⁷

B. Affordable Childcare

Alongside the call for equal pay for equal work in Article 11, childcare is referenced in Article 11(2)(c). The CEDAW cites “the establishment and development of a network of child-care facilities” as necessary to eliminate discrimination against women and encourage their continued presence in the workforce.⁵⁸ International comparisons have supported the CEDAW's argument that affordable childcare would mean more women in the workplace.⁵⁹ These comparisons suggest that quality childcare in the United States would allow roughly 5.5 million more women to work.⁶⁰

⁵³ *Id.* at art. 11(1)(d).

⁵⁴ *Implications of the Priority Themes of the Thirty-Eighth Session of the Commission on the Status of Women*, UN COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN (CEDAW) (Dec. 3, 1994), <http://www.un.org/documents/ga/cedaw/13/cedawc1994-5.htm>.

⁵⁵ *Id.*

⁵⁶ *See id.* (“[I]t is suggested that equal employment opportunity policies can seek to reduce occupational segregation by prohibiting discrimination in the various phases of employment.”).

⁵⁷ *CEDAW General Recommendation No. 13: Equal Remuneration for Work of Equal Value*, UN COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN (CEDAW) (1989), <http://www.refworld.org/docid/52d925754.html>.

⁵⁸ CEDAW, *supra* note 1, at art. 11(2)(c) (stressing the need to provide social services to parents).

⁵⁹ *See* Editorial, *Affordable Child Care: The Secret to a Better Economy*, N.Y. TIMES (Aug. 19, 2016), <https://www.nytimes.com/2016/08/20/opinion/affordable-child-care-the-secret-to-a-better-economy.html> (explaining that making it easier for more women to work will boost the economy).

⁶⁰ *See id.* (specifying the projected number of women that would be able to enter the workforce upon being given appropriate child care options).

C. Paid Parental Leave and Work/Family Reconciliation

The CEDAW addresses the issue of shared parenting throughout the text of the document. CEDAW Article 5(b) highlights the importance of shared parenting roles, which correlate directly to paid family leave for both parents, as well as to work/family reconciliation goals.⁶¹ States Parties to the CEDAW must “ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.”⁶²

Article 11(2)(c) also deals with work/family reconciliation, encouraging States Parties to implement “the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life.”⁶³ This provision is tied inextricably with the above goal of childcare, as the article goes on to cite a proposed network of “child-care facilities” to promote work-life balance.⁶⁴ Paid parental leave is encouraged in Articles 11(1)(e) and 11(2)(b).⁶⁵ Although the text of the CEDAW uses the language “maternity leave,” it is clear that shared parenting is a main goal set out in the treaty, and, thus, should be interpreted as such.⁶⁶

⁶¹ CEDAW, *supra* note 1, at art. 5(b).

⁶² *Id.*

⁶³ *Id.* at art. 11(2)(c).

⁶⁴ *See id.* (explaining the importance of the provision, as it would provide for child care and strike a good work-life balance).

⁶⁵ *Id.* at art. 11.

⁶⁶ *See id.* at art. 11(2)(c) (encouraging States Parties to implement “necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life” in order to prevent discrimination against women). In its opening remarks, the CEDAW states that it was drafted:

[b]earing in mind the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole,

Aware that a change in the traditional role of men as well as the role of women in society and in the family is deemed to achieve full equality between men and women

Id. at Preamble.

The CEDAW Committee brought attention to the importance of paid leave again in 2013 via a General Comment on State obligations regarding the impact of the business sector on children's rights.⁶⁷ The comment identifies the need for governments to "create employment conditions within business enterprises which assist working parents and caregivers in fulfilling their responsibilities to children in their care such as: the introduction of family-friendly workplace policies, including parental leave; [and to] support and facilitate breastfeeding."⁶⁸

In the period between 2013-2015, several countries have introduced special provisions to privilege parental leave.⁶⁹ For example, according to the World Bank Group's report on Women, Business and the Law 2016, Croatia has increased the length of paid parental leave from 90 to 120 days per person; Latvia has raised the percentage of wages paid by the government during family leave from 68 percent to 80 percent; and the UK introduced 259 days of paid parental leave and 91 days of unpaid parental leave.

IV. THE UNITED STATES' LEADERSHIP ROLE IN THE WORLD

Harold Koh, in his influential "Why America Should Ratify the Women's Rights Treaty," has argued: "America simply cannot be a world leader in guaranteeing progress for women's human rights, whether in Afghanistan, in the United States, or around the world, unless it is also a party to the global women's treaty."⁷⁰ He goes on to state that "continuing failure to ratify [the] CEDAW has reduced our global standing, damaged our diplomatic relations, and hindered our ability to lead in the international human rights community."⁷¹ By not ratifying the CEDAW, the United States is sending a message that this international bill of rights for women, as well as women's equality worldwide, are not priorities. How, then, can the United States encourage States Parties to the CEDAW to live up to their commitments under the treaty? Non-ratification has called into question the United States' global standing and ability to lead in the international arena. Regaining this standing is

⁶⁷ *Women, Business and the Law*, WORLD BANK GROUP (2016), available at <http://pubdocs.worldbank.org/en/810421519921949813/Women-Business-and-the-Law-2016.pdf>.

⁶⁸ CEDAW General Comment No. 16: State Obligations Regarding the Impact of the Business Sector on Children's Rights, UN COMMITTEE ON THE RIGHTS OF THE CHILD (Apr. 17, 2013), http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f16&Lang=en (emphasizing the importance of improving employment conditions for working parents and caregivers).

⁶⁹ *Women, Business and the Law*, *supra* note 66.

⁷⁰ Koh, *supra* note 4, at 264.

⁷¹ *Id.* at 269.

crucial, given the potential impact of the CEDAW, which would not only spark legislation, but would also send a “powerful and unequivocal message” to the international community that women, globally, deserve increased protection.⁷²

Advocacy for CEDAW ratification from within the U.S. government reflects concerns of the country’s international standing. John Kerry, in his 2013 confirmation hearing statements, stated that gender equality is “critical to our shared goals of prosperity, stability, and peace, and why investing in women and girls worldwide is critical to advancing U.S. foreign policy.”⁷³ Dr. Sima Samar, Chair of the Afghan Independent Human Rights Commission and former Deputy Prime Minister of Afghanistan, echoed Kerry’s concerns, stating “[a]dvancing women’s human rights is fundamental to America’s national security interests and a cornerstone of our foreign policy.”⁷⁴ Dr. Samar further contended that “[c]ountries are more peaceful and prosperous when women have full and equal rights and opportunity.”⁷⁵ For women to have full and equal rights and opportunity, and, according to Dr. Samar, for there to be resulting international peacefulness and prosperity, the United States must lead by example.⁷⁶

A. Manner of Implementation

The CEDAW is an important tool which the United States could use to move toward abolishing gender inequality. In order to do so, the United States must fully embrace the transformative potential of the CEDAW, and thus must ratify the convention with no reservations, understandings, or declarations (RUDs).

The CEDAW cannot accomplish its goals of gender equality if it is pared down by RUDs.⁷⁷ The CEDAW Committee, in two General Recommendations

⁷² *Women’s Rights are Human Rights: U.S. Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW): Hearing Before the Subcomm. on Human Rights and the Law of the Comm. on the Judiciary*, 111th Cong. 6 (2010) (explaining the significance of the message that U.S. ratification would send across the world).

⁷³ John Kerry, *Why Women Are Central to U.S. Foreign Policy*, U.S. DEP’T OF STATE (March 8, 2013), <http://www.state.gov/secretary/remarks/2013/03/207940.htm>.

⁷⁴ Marilou McPhedran, *Complements of CEDAW: U.S. Foreign Policy Coherence on Women’s Human Rights and Human Security*, MICH. ST. L. REV. 281, 300 (2014) (citing CITIZENS FOR GLOBAL SOLUTIONS, *THE CEDAW TREATY: ENDING DISCRIMINATION AGAINST WOMEN* (2011), <http://globalsolutions.org/files/public/docu/ments/CEDAW-Fact-Sheet-2011.pdf>) (internal quotations omitted).

⁷⁵ *Id.* (internal citation omitted) (internal quotations omitted).

⁷⁶ *Id.* (“Advancing women’s human rights is fundamental to America’s national security interests and a cornerstone of our foreign policy.”).

⁷⁷ See UNITED NATIONS TREATY COLLECTION, GLOSSARY OF TERMS RELATING TO TREATY ACTIONS, https://treaties.un.org/Pages/Overview.aspx?path=overview/glossary/page1_en.xml (defining that a reservation is “a declaration made by a state by which it purports to exclude or alter the legal effect of certain provisions of that treaty in their application to that state”); defining

and its statement on reservations, has urged States Parties to reconsider their “self-imposed” limitations to full compliance.⁷⁸ However, the United States, in its consideration of the CEDAW in 1994, suggested four reservations, five understandings, and two declarations in direct opposition to the new administration’s goals discussed in this paper. The RUDs put forth by the United States are an attempt to ratify the treaty while not compromising its position on gender equality or expanding the protections currently afforded by the U.S. Constitution and legislation. Current protections afforded to women in the United States are insufficient to accomplish the goals of equal pay for equal work, accessible childcare, and paid parental leave and work/family reconciliation.

On the topic of equal pay for equal work, the third reservation states “[the United States] does not accept any obligation under the Convention to enact legislation establishing the doctrine of comparable worth as that term is understood in U.S. practice.”⁷⁹ Further, the fourth reservation, “[the United States] does not accept any obligation under Article 11(2)(b) to introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances,”⁸⁰ conflicts with all three goals identified in this paper.

Reservations, understandings, and declarations accompanying ratification illustrate “American exemptionalism.”⁸¹ American exemptionalism, a form of exceptionalism, occurs when a country contributes to the drafting of a treaty

that an understanding is “an 18 international instrument of a less formal kind,” which “sets out operational arrangements under a framework international agreement” and “is also used for the regulation of technical or detailed matters”; clarifying that while the term declaration has many meanings for the United Nations, in this instance a declaration, and more specifically an interpretive declaration, is “an instrument that in annexed to a treaty with the goal of interpreting or explaining the provisions of the latter”). The four reservations deal with the issues of private conduct, combat assignments, comparable worth, and paid maternity leave. *Id.* The three understandings deal with issues of federal-state implementation, freedom of speech, expression, and association, free health care services, abortion, and the CEDAW Committee. *Id.* The three declarations state that provisions of the Convention are not self-executing, and the United States does not consider itself bound by CEDAW Article 29(1) mandating dispute over interpretation or application of the treaty not settled by treaty be submitted to arbitration by request, and sent to the International Criminal Court of Justice in the event that arbitration is unsuccessful. *Id.*

⁷⁸ *Reservations to CEDAW*, U.N. WOMEN, <http://www.un.org/womenwatch/daw/cedaw/reservations.htm> (hereinafter *Reservations to CEDAW*); U.N. GAOR, 18th & 19th Sess., Soc. A/53/38/Rev. 1 (May 14, 1998), <http://www.un.org/womenwatch/daw/cedaw/reports/18report.pdf>.

⁷⁹ *Reservations to CEDAW*, *supra* note 77.

⁸⁰ *Id.*

⁸¹ Michael Ignatieff, *Introduction: American Exceptionalism and Human Rights*, AMERICAN EXCEPTIONALISM AND HUMAN RIGHTS 1, 4 (Michael Ignatieff ed., Princeton Univ. Press 2005) (“America supports multilateral agreements and regimes, but only if they permit exemptions for American citizens or U.S. practices.”).

but does not ratify it or agrees to ratification only with exceptions for American citizens or practices.⁸² These exceptions are embodied in RUDs made to treaties.⁸³ The severity of American exemptionalism depends upon the gaps between CEDAW provisions and U.S. law.⁸⁴ When it comes to equal pay for equal work, childcare, and paid parental leave and work/family reconciliation, the gaps between U.S. law and guarantees by the CEDAW are significant, and thus, RUDs are a bulwark to gender equality.

V. LEADING BY EXAMPLE: HOW THE CEDAW CAN BE USED TO FULFILL THE TRUMP ADMINISTRATION’S GOALS

A. Reporting

Reporting requirements under the CEDAW provide a benchmark to measure States Parties’ progress.⁸⁵ The CEDAW Committee then offers constructive feedback to States Parties to the treaty.⁸⁶ Around the world, the CEDAW Committee’s recommendations have helped to improve and accelerate antidiscrimination and gender equality, as well as eradicate discriminatory norms.⁸⁷ The CEDAW reporting requirements act like a litmus

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ CEDAW, *supra* note 1, at art. 18. Article 18 of the CEDAW provides the following:

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect:
 - (a) Within one year after the entry into force for the State concerned;
 - (b) Thereafter at least every four years and further whenever the Committee so requests.
2. Reports may indicate factors and difficulties affecting the degree of fulfillment of obligations under the present Convention.

⁸⁶ *Convention on the Elimination of all Forms of Discrimination of Women*, THE UNITED NATIONS, <http://www.un.org/womenwatch/daw/cedaw/reservations.htm>.

⁸⁷ Rangita de Silva de Alwis, *Women’s Voice and Agency: The Role of Legal Institutions and Women’s Movements*, THE WORLD BANK (2014), <http://www.worldbank.org/content/dam/Worldbank/document/Gender/de%20Silva%20de%20Alwis%202014.%20Women%27s%20voice%20and%20agency.%20The%20role%20of%20legal%20institutions%20and%20women%27s%20movements.pdf>.

test to measure progress and holds governments accountable to fulfill the obligations set forth in the convention.⁸⁸ Without reporting obligations, gaps in lawmaking would remain undiscovered, and countries would not be held accountable for violations to the treaty.⁸⁹ The United States too would benefit from the CEDAW Committee's recommendations, as well as its enhanced support for the goals set out by the Trump administration discussed herein.

The reporting mechanism is an incremental process. Reports to the CEDAW committee which expose flaws in legislation do not render the measures futile. Instead, the reports highlight certain unimplemented measures. The normative change is clear through legislation; however, practices must change as well. Reports on discriminatory practices hold States Parties accountable and encourage change based on the standards set in the CEDAW.

1. Equal Pay for Equal Work Reporting

The wage gap is a worldwide occurrence, as it exists in every country. Though some countries have wider gaps than others, there is no country in which the gap does not exist.⁹⁰ There is also no country in which women earn more than men.⁹¹ The CEDAW Committee uses its reporting powers to encourage States Parties to make progress in equal pay for equal work.⁹²

The CEDAW Committee, in its concluding observations in consideration of Iceland's fifth and sixth periodic reports, acknowledged the progress Iceland made in advancing equal pay for equal work, but expressed concern about general acceptance of the wage gap as a reality.⁹³ The Committee called on Iceland "to take proactive and sustained measures to eliminate stereotypical

⁸⁸ Rangita de Silva de Alwis, *Opportunities and Challenges for Gender-Based Legal Reform in China*, 5 E. ASIAN L. REV. 197 (2010).

⁸⁹ See *Statement of the Committee on the Elimination of Discrimination against Women on the Post-2015 Development Agenda and the Elimination of Discrimination Against Women*, CEDAW 57th session 10-28 (Feb. 2014) (providing that the Committee's efforts have thus already helped to provide a strong framework for bridging the accountability mechanism gap of the MDGs and also for bringing to the fore relevant data from countries on women and development).

⁹⁰ See *Gender Wage Gap*, ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (2014), www.oecd.org/gender/data/genderwagegap.htm (explaining the occurrence of the gender wage gap worldwide).

⁹¹ Akin Oyedele, *There's No Country Where Women Make More Than Men*, BUSINESS INSIDER (Mar. 23, 2016), <http://www.businessinsider.com/countries-with-the-biggest-gender-pay-gap-2016-3>.

⁹² *Introduction*, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMM'R, <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Introduction.aspx>.

⁹³ *Concluding Observations of the Comm. on the Elimination of Discrimination Against Women: Iceland*, UN COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN (July 18, 2008), <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-ICE-CO-6.pdf>.

attitudes about the roles and responsibilities of women and men, including through awareness-raising and educational campaigns directed at both women and men and at the media” in order to comply with the treaty.⁹⁴

In response to the Committee’s suggestions, Iceland acted to de-normalize the wage gap and promote the CEDAW’s tenet of equal pay for equal work.⁹⁵ All universities in Iceland adopted gender equality plans to eradicate gender stereotypes.⁹⁶ As a result, Iceland reported, in its responses to the Committee’s issues and questions, that “[I]n all the universities there is a very high level of awareness of the need to achieve equality in gender ratios among students and staff and to abolish gender-based wage differentials.”⁹⁷ The program established in Iceland directly addressed the Committee’s concern reflected in its concluding observations.⁹⁸ As of 2015, Iceland ranks first on the World Economic Forum’s global gender gap index.⁹⁹

Most recently, Iceland introduced legislation that would be the first bill worldwide to require private companies and government agencies to prove, through audits, that their employee compensation is fair.¹⁰⁰ Unfair compensation and failure to comply with reporting requirements will result in fines for employers.¹⁰¹ Although Iceland already had laws in place to promote equal pay, the government will use this legislation as an opportunity to forcefully require cooperation from employers.¹⁰²

2. Affordable Childcare Reporting

While child poverty and labor market participation are affected by many factors, high quality, affordable early years and after-school services are

⁹⁴ *Id.* at 3.

⁹⁵ *Responses to the List of Issues and Questions with Regard to the Consideration of the Fifth and Sixth Periodic Reports: Iceland*, UN CEDAW (Mar. 18, 2008), https://digitallibrary.un.org/record/626456/files/CEDAW_C_ICE_Q_6_Add.1-EN.pdf.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ Magnea Marinósdóttir & Rósa Erlingsdóttir, *This is Why Iceland Ranks First for Gender Equality*, WORLD ECONOMIC FORUM (Nov. 1, 2017), <https://www.weforum.org/agenda/2017/11/why-iceland-ranks-first-gender-equality/>.

¹⁰⁰ Agence France-Press, *Iceland to Enshrine Equal Pay for Women and Men in Law*, THE GUARDIAN (Apr. 4, 2017), <https://www.theguardian.com/world/2017/apr/05/iceland-equal-pay-women-men-law>.

¹⁰¹ *Id.*

¹⁰² Liz Alderman, *Equal Pay for Men and Women? Iceland Wants Employers to Prove It*, N.Y. TIMES (Mar. 28, 2017), https://www.nytimes.com/2017/03/28/business/economy/iceland-women-equal-pay.html?_r=0.

essential both to the reduction of child poverty and to the labor market participation of parents.

Affordable childcare is a main concern enumerated in the CEDAW and this concern is reflected in its reports to States Parties.¹⁰³ A salient example are the CEDAW Committee's concluding observations to Canada during its forty-second session.¹⁰⁴ The Committee used its concluding observations to Canada to encourage the establishment of affordable childcare.¹⁰⁵ These suggestions were in response to Canada's Sixth and Seventh reports detailing measures it had taken to comply with the CEDAW.¹⁰⁶

In its combined eighth and ninth session reports, Canada detailed its continued measures to provide affordable childcare.¹⁰⁷ These measures included the development of Early Childhood Education and Care policies and programs, allocation of funds in support of childcare, tax incentives for businesses to create childcare facilities for employees, childcare facilities at settlement service provider sites, and more.¹⁰⁸

In 2016, the CEDAW Committee responded to Canada's eighth and ninth session reports by recommending increased availability of affordable childcare yet again.¹⁰⁹ Canada responded to these measures in early 2017 when allocating its federal budget.¹¹⁰ We posit that the Committee's recurring call for improvements exemplify the treaty's power and potential to advance women's rights.¹¹¹

¹⁰³ CEDAW, *supra* note 1, at art. 11(2).

¹⁰⁴ *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Canada*, UN COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN (CEDAW) (Nov. 7, 2008), <http://www.refworld.org/docid/494ba8ce0.html>.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Eighth and Ninth periodic reports of States parties due in 2014: Canada*, THE UNITED NATIONS (Apr. 2015), http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fCAN%2f8-9&Lang=en.

¹⁰⁸ *Concluding Observations on the Combined Eighth and Ninth Periodic Reports of Canada*, UN COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN (CEDAW) (Nov. 18, 2008), <http://www.refworld.org/docid/583868044.html>.

¹⁰⁹ *Committee on the Elimination of Discrimination against Women Considers the Reports of Canada*, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMM'R (Oct. 25, 2016), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20759&LangID=E>.

¹¹⁰ *Concluding Observations on the Combined Eighth and Ninth Periodic Reports of Canada*, *supra* note 107; *Presentation of Canada's combined 8th and 9th Periodic Reports to the United Nations Committee Responsible for the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*, Gov't of Canada (Oct. 25, 2016), <https://www.canada.ca/en/canadian-heritage/services/canada-united-nations-system/canada-presentation-reports-convention-discrimination-women.html>.

¹¹¹ See de Silva de Alwis, *supra* note 87; HILARY CHARLESWORTH, HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES 58-84 (Rebecca J. Cook ed. 1994).

Recently, the Canadian federal government’s 2017 budget pledged \$7 billion over ten years on top of an existing \$500 million set aside in the 2016 budget for early learning and childcare.¹¹² Moreover, the Canada Child Benefit revamped in the 2016 budget aims to deliver lump sum payments to lower income families.¹¹³ This money could well be used for childcare.

In 2013, the CEDAW Committee, in its Concluding Observations to the UK, urged the UK Government to provide more and improved childcare facilities, affordable childcare, and ensure that welfare reforms do not have a negative impact on the cost of childcare for low income families, or the burden of care for women.¹¹⁴ The UK Government’s March 2014 budget to some extent attempts to fulfill the Committee’s recommendations. The Tax-Free Childcare costs cap was increased to £10,000 per year for each child. This means that eligible parents can benefit from greater support, up to £2000 per child each year.¹¹⁵ This scheme was rolled out through 2017 to all eligible families with children under 12 years or disabled children under 17 years.¹¹⁶ All children ages three and four are eligible for 570 hours of free childcare per year, with an approved childcare provider, which is often taken as 15 hours a week for 38 weeks of the year. Working parents may also apply for double the amount of childcare.¹¹⁷

3. Paid Leave and Work/Family Reconciliation Reporting

Partial ratification can erode the impact of the CEDAW. Singapore ratified the CEDAW in 1995 and in doing so, made a reservation against Article 11(1), which, as noted above, is an essential principle for paid parental

¹¹² INTERNATIONAL PERSPECTIVES ON EARLY CHILDHOOD EDUCATION AND CARE: EARLY EDUCATION IN THE 21ST CENTURY, VOL. 1 (Susanne Garvis, Sivanes Phillipson, & Heidi Harju-Luukkainen, eds., 2018).

¹¹³ *Canada Child Benefit—Overview*, GOV’T OF CANADA (2018), <https://www.canada.ca/en/revenue-agency/services/child-family-benefits/canada-child-benefit-overview.html>.

¹¹⁴ *Concluding Observations of the Comm. on the Elimination of Discrimination Against Women: Understanding What Governments Need to do to Advance Women’s Rights in Great Britain*, EQUALITY AND HUMAN RIGHTS COMM’N 43 (2014), <https://nawo.org.uk/wp-content/uploads/2015/09/CEDAW-concluding-observations-EHRC-and-NAWO.pdf>.

¹¹⁵ *Tax-Free Childcare Launches Today For Children Under Four*, GOV’T OF THE UNITED KINGDOM (Apr. 21, 2017), <https://www.gov.uk/government/news/tax-free-childcare-launches-today-for-children-under-four>.

¹¹⁶ *Help Paying For Childcare*, GOV’T OF THE UNITED KINGDOM, <https://www.gov.uk/help-with-childcare-costs/free-childcare-and-education-for-2-to-4-year-olds>.

¹¹⁷ *See id.* (providing that parent(s) must be in work, or on leave from work, and make at least the National Minimum Wage or Living Wage for 16 hours of work per week, but not more than £100,000 in taxable income, in order to qualify for the increased childcare).

leave.¹¹⁸ The CEDAW Committee's concluding observations in response to Singapore's fourth periodic report urged the State Party to withdraw its reservation to Article 11(1).¹¹⁹ The report and concluding observation process was successful, since Singapore, in its fifth periodic report, withdrew said reservation.¹²⁰

The CEDAW Committee expressed concern over the scope of parental leave in Singapore. The state party extended paid parental leave only to citizen births.¹²¹ In response, Singapore extended this right to all mothers.¹²² While non-citizen births do not qualify parents for as much leave as citizen births, the initiative signals progress in an area where the United States has remained stagnant.¹²³ In 2015, Singapore increased its paid paternity leave from one to two weeks to encourage shared parenting.¹²⁴ Work/family reconciliation concerns were addressed in the government's 2013 Work-Life Grant for employers, which supports the implementation of work-life strategies that would enable employees to manage work and family commitments.¹²⁵

¹¹⁸ *Declarations, Reservations and Objections to CEDAW*, THE UNITED NATIONS ENTITY FOR GENDER EQUALITY AND THE EMPOWERMENT OF WOMEN, <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm> (providing that Singapore interprets article 11, paragraph 1 in the light of the provisions of article 4, paragraph 2 as not precluding prohibitions, restrictions or conditions on the employment of women in certain areas, or on work done by them where this is considered necessary or desirable to protect the health and safety of women or the human fetus, including such prohibitions, restrictions or conditions imposed in consequence of other international obligations of Singapore and considers that legislation in respect of article 11 is unnecessary for the minority of women who do not fall within the ambit of Singapore's employment legislation).

¹¹⁹ *Concluding Observations on the Combined Fourth Periodic Report of Singapore*, UN COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN (CEDAW) (Jan. 5, 2012), <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-SGP-CO-4.pdf>.

¹²⁰ *Id.*

¹²¹ *See id.* ("The Committee expresses its concern that the paid maternity leave of 16 weeks applies only to citizen births, and that single unwed mothers do not get the same benefits as married women.").

¹²² *International Obligations: Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*, MINISTRY OF SOCIAL AND FAMILY DEVELOPMENT, <https://www.msf.gov.sg/policies/Women-Celebrating-Women/International-Obligations/Pages/default.aspx>.

¹²³ *Maternity Leave Eligibility and Entitlement*, MINISTRY OF MANPOWER: GOVERNMENT OF SINGAPORE, <http://www.mom.gov.sg/employment-practices/leave/maternity-leave/eligibility-and-entitlement>.

¹²⁴ *Consideration of Reports Submitted by States Parties under Article 18 of the Convention: Singapore*, UN COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN (CEDAW) (Nov. 6, 2015), <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-SGP-CO-4.pdf>.

¹²⁵ *Id.* at 29.

B. Legislation

The domestic integration of CEDAW through enabling legislation helps to translate the CEDAW into binding domestic legislation. Where the CEDAW is not specifically mentioned in the text of a law, its authority can be inferred when a law calls for affirmative action or temporary special measures, as such are the core values of the CEDAW. Article 2 of the CEDAW highlights the importance of legislation in carrying out the treaty’s goals.¹²⁶ Article 2(a), (b), and (f) explicitly call for legislation to “embody the principle of the equality of men and women,” prohibit “all discrimination against women,” and “to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women,” respectively.¹²⁷ Legislation is referenced explicitly again in Article 11, which as mentioned above, is directly related to the three goals set out in this paper. Article 11 calls for all legislation passed relating to matters covered within the Article to be “reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.”¹²⁸ Legislation is mentioned several other times throughout the text of the CEDAW, amplifying its importance as a mechanism for establishing gender equality.¹²⁹

1. Equal Pay for Equal Work Legislation

The significance of equal pay for equal work has been recognized by law since even before the CEDAW was adopted, but the CEDAW has helped to strengthen this equal guarantee. Sweden, which ratified the CEDAW in 1980, passed the Act on Equality between Women and Men (1991).¹³⁰ This act employs measurements, such as requiring employees to prepare a yearly plan of action for equal pay and state the necessary measures to close the wage gap, in order to achieve equal pay for equal work.¹³¹ The required plan must also create a timeline for when the measures will be implemented, followed by a report evaluating the measures that were taken.¹³² Although the wage gap has not entirely closed in Sweden, there is evidence that where reports are carried

¹²⁶ CEDAW, *supra* note 1, at art. 2.

¹²⁷ *Id.* at art. 2(a), (b), (f).

¹²⁸ *Id.* at art. 11(3)

¹²⁹ *Id.* at arts. 2(f), 3, 6, art. 3, art. 6, art 11(3), art. 16(1)(f), 16(2), 23(a).

¹³⁰ *Ratification, Accessions Successions Status, supra* note 5.

¹³¹ The Equal Opportunities Act, Svensk författningsmsamling [SFS] 1991:433 (Swed.).

¹³² *Id.* at sec. 11.

out, the gap decreases.¹³³ In 2011, Sweden established a Delegation for Gender Equality in Working Life to investigate the different working lives of men and women, and to reduce the pay gap.¹³⁴ In the UK, Section 78 of the Equality Act 2010 requires all companies with more than 250 employees to report their progress on recruitment and employment of women, and on equal pay.¹³⁵

Iceland, a country that is lauded for its progress on equal pay for equal work, received recommendations from the CEDAW Committee criticizing its pay practices.¹³⁶ In response to the CEDAW's concern about equal pay for equal work, Iceland passed its Gender Equality Act in 2008 and made material changes to the Act in 2014.¹³⁷ The material changes made in 2014 were tailored specifically to establish an Equal Pay Standard.¹³⁸ Additionally, a gender equality checklist accompanies all bills, to highlight whether and how the bill affects gender equality.¹³⁹ Other measures include a 7-step action plan to fight gender inequality and mandatory analyses of women's and men's wages.¹⁴⁰ In

¹³³ *Living Up to CEDAW—What Does Sweden Need to Do?* THE SWEDISH WOMEN'S LOBBY 27 (2015), http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/SWE/INT_CEDAW_NGO_SWE_22781_E.pdf.

¹³⁴ Ida Drange & Cathrine Egeland, *Part-Time Work in the Nordic Region II: A Research Review on Important Reasons*, 133-43.

¹³⁵ Equality Act 2010, c. 15 (Eng.).

¹³⁶ *Gender Equality in Iceland*, CENTRE FOR GENDER EQUALITY ICELAND (Jan. 2012), <https://www.stjornarradid.is/media/velferdarraduneyti-media/media/rit-og-skyrslur2012/Gender-Equality-in-Iceland.pdf>; Sarah Gray, *It's Now Illegal to Pay Men More than Women in Iceland*, FORTUNE (Jan. 2, 2018), <http://fortune.com/2018/01/02/illegal-to-pay-men-more-than-women-iceland/>.

¹³⁷ *Gender Equality in Iceland*, *supra* note 135.

¹³⁸ *Consideration of Reports Submitted by States Parties Under Article 18 of the Convention: Iceland*, UN COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN (CEDAW) 4 (Aug. 22, 2014), <http://www.refworld.org/docid/56a883734.html>.

¹³⁹ *Id.*

¹⁴⁰ *Consideration of Reports Submitted by States Parties Under Article 18 of the Convention: Iceland*, UN COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN (CEDAW) 8, (Aug. 22, 2014), <http://www.refworld.org/docid/56a883734.html>. Preparation of a 7-step action plan to fight the gender pay gap, including:

- a. The appointment of an executive committee on gender wage equality;
- b. The establishment of an equality standard and systematic education on its implementation;
- c. Technical enhancement of the salary administration system of the State in order to enable significant and regular appraisals of the salaries of men and women in ministries and government institutions;

March 2017, Iceland became the first country to introduce legislation requiring employers to prove they are paying male and female employees equally to more successfully narrow the wage gap.¹⁴¹ In January 2018, Iceland became the first country to make it illegal for companies to pay women less than men. All companies with at least 25 employees must get equal pay certification from the government, or else punishable by fine.¹⁴²

2. Affordable Childcare Legislation

In Australia, the government supports women’s participation in the workplace by establishing more affordable childcare.¹⁴³ In 2015, the Australian Government announced a \$4.4 billion Jobs for Families Child Care package.¹⁴⁴ The aim is to make childcare—a key barrier to women’s workforce participation—more affordable, accessible, and flexible.¹⁴⁵ Investment in this sector has the twin purpose of directly benefiting the child but also enabling parents to stay in or re-enter the labor market.¹⁴⁶ Affordable childcare is one of the most effective tools in bolstering “returnship” of parents to the work force.¹⁴⁷

-
- d. Analysis of the success of job evaluations of municipalities for the purpose of reducing the gender pay gap;
 - e. Initiation of co-operation with the social partners’ organisations on the implementation of the Roadmap of wage equality;
 - f. The publishing of a pamphlet to guide the interpretation of the provisions of the Act on Equal Status and Equal Rights of Women and Men, on equal pay for equal work;
 - g. Issuing a checklist for the directors of institutions on criteria regarding the revision of wages so that wage equality objectives can be achieved.

¹⁴¹ Alderman, *supra* note 101.

¹⁴² Ivana Kottasova, *Iceland Makes It Illegal to Pay Women Less Than Men*, CNN MONEY (Jan. 3, 2018), <http://money.cnn.com/2018/01/03/news/iceland-gender-pay-gap-illegal/index.html>.

¹⁴³ *Consideration of Reports Submitted by States Parties under Article 18 of the Convention: Australia*, UN CEDAW 2, http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/AUS/CEDAW_C_AUS_8_5910_E.pdf.

¹⁴⁴ *Budget 2015-2016: Families Package*, Commonwealth of Australia, <http://www.budget.gov.au/2015-16/content/glossy/families/download/Budget-2015-Families-Package.pdf>.

¹⁴⁵ *See id.* at 4 (“The 2015 Budget delivers on the Government’s commitment to support families by making child care simpler, more affordable, accessible and flexible.”).

¹⁴⁶ *See id.* (“The Government is delivering policies that encourage people who are not working to enter, or re-enter the workforce, and support people to stay in work, where they choose to do so.”).

¹⁴⁷ *See The Child Care Transition: A League Table of Early Childhood Education and Care in Economically Advanced Countries*, UNICEF: INNOCENTI REPORT CARD 9 (“For many

The Scandinavian model combines family-friendly work policies such as parental and paternity leave with publicly subsidized early years facilities.¹⁴⁸ In the Nordic countries there is a smooth transition from the end of paid leave to the beginning of an entitlement to subsidized childcare.¹⁴⁹ Strong work-life balance policies as articulated in the CEDAW make it easier for families to balance work and care responsibilities and return or remain in the workforce.¹⁵⁰ Article 5 of the CEDAW calls for the recognition of the “common responsibility of men and women in the upbringing and development of their children.”¹⁵¹ These policies are interconnected and are anchored in a shared commitment to both women’s and children’s rights and a recognition of the pivotal importance of quality in childcare and education.¹⁵²

3. Paid Leave and Work /Family Reconciliation Legislation

Germany has passed legislation promoting both paid maternal and paternal leave.¹⁵³ The federal government in Germany holds itself out as attaching great importance to the issue of shared parenting and paid parental leave.¹⁵⁴ To this end, the government, in 2006, enacted the Parental Allowance and Parental Leave Act.¹⁵⁵ Besides parental allowance, each parent is entitled to take parental leave which allows both parents the right to interrupt their career until the child’s third birthday to raise their child and then to return to the same job.¹⁵⁶ To accommodate parents, the rules on parental leave have been made more flexible.¹⁵⁷ Parents can now claim parental leave for up to two years between the child’s third and eighth year, all without the consent of their employer.¹⁵⁸

millions of parents, child care can help reconcile the competing demands and pleasures of income-earning and family life.”)

¹⁴⁸Christa Clapp, *The Smart Economics of Norway’s Parental Leave and Why the U.S. Should Consider It*, WASH. POST. (Jan. 11, 2016), https://www.washingtonpost.com/news/parenting/wp/2016/01/11/the-smart-economics-of-norways-parental-leave/?utm_term=.bb89d31bcf64.

¹⁴⁹See *The Child Care Transition*, *supra*, note 146, at 4.

¹⁵⁰See CEDAW, *supra* note 1, at art. 5.

¹⁵¹*Id.*

¹⁵²*Id.* at art. 10.

¹⁵³*Consideration of Reports Submitted by States Parties under Article 18 of the Convention: Germany*, UN CEDAW (Oct. 21, 2015), <http://www.refworld.org/type,STATEPARTIESREP,,,56e7c0f54,0.html>.

¹⁵⁴*Parental Allowance and Parental Leave*, FEDERAL OFFICE FOR MIGRATION AND REFUGEES, <http://www.bamf.de/EN/Willkommen/KinderFamilie/Elterngeld/elterngeld-node.html>.

¹⁵⁵*Consideration of Reports Submitted by States Parties under Article 18 of the Convention: Germany*, *supra* note 152.

¹⁵⁶*Id.*

¹⁵⁷*Id.*

¹⁵⁸*Id.*

VI. LESSONS TO BE LEARNED FROM CANADA

Despite its shared borders and commitment to human rights, the United States and Canada differ when it comes to certain women’s rights. As noted above, Canada has responded positively to the CEDAW Committee’s recommendations on affordable childcare. Beyond childcare, Canada has taken positive steps toward equal pay legislation.¹⁵⁹ The Pay Equity Act, passed in 1987 by the Ontario government, is considered by many as the world’s most progressive equal pay for equal work legislation.¹⁶⁰ The distinction between this act and most other acts requiring equal pay for equal work, is that rather than being complaint-based, employers must actively implement pay equity strategies regardless of whether there is a complaint.¹⁶¹ Private sector employers with 10 or more employees, and all public sector employers, are tasked with valuing and comparing jobs usually done by women to those usually done by men.¹⁶² Employers must do so in an “objective and consistent way using factors of skill, effort, responsibility and working conditions.”¹⁶³ The gender wage gap still exists in Canada, but the Pay Equity Act demonstrates commitment to equal pay for equal work. While the gap has not closed entirely, the act has benefitted many female workers.¹⁶⁴

Parents in Canada benefit from the country’s parental leave laws. Female employees are guaranteed fifteen weeks of maternity leave, which they can take advantage of as early as twelve weeks before their due date and can

¹⁵⁹ Parbudyal Singh & Ping Peng, *Canada’s Bold Experiment with Pay Equity*, 25 GENDER MANAGEMENT: AN INTERNATIONAL JOURNAL 570 (2010).

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Pay Equity Commission*, ADVANCING WOMEN’S ECONOMIC EQUALITY (2017), http://www.payequity.gov.on.ca/en/AboutUs/Pages/the_act.aspx.

¹⁶⁴ Singh & Peng, *supra* note 158, at 12. The Pay Equity Coalition of Ontario, an independent advocacy group, cited the following examples of the inequities which were identified after the introduction of the Pay Equity Act and the pay equity adjustments which were won: Secondary school secretaries received an annual increase of \$7,680 based on their comparison with a male job class of audio-visual technicians; female health technicians were compared to male transportation workers, leading to an increase of \$2.79 an hour; female-dominated mental health workers were compared to the male personnel officer’s job, resulting in a pay equity raise of \$2.20 per hour; female-dominated police dispatchers were compared to the radio technical supervisors and received an increase of \$7,179.00 annually; a female job class of law clerk was compared to the male job class of investigator, resulting in a \$4.28 per hour adjustment; at a baked-goods manufacturer, the female job class of personnel manager was compared to the male job class of service manager, resulting in an adjustment of \$4.65 per hour. *Id.*

end as late as seventeen weeks after the actual date of birth.¹⁶⁵ Parental leave makes natural parents and adoptive parents eligible to take up to 37 weeks of leave, and allows mothers to combine both maternity and parental leave, granting new mothers up to 52 weeks of leave.¹⁶⁶ If an employee's salary is reduced more than 40% during maternal or parental leave, he or she may be eligible for Employment Insurance (EI) benefits.¹⁶⁷ As of December 2017, the maximum yearly insurable earnings amount is \$51,700.¹⁶⁸ Parents who enjoy this extended period of leave cannot be penalized, and upon return, must be paid at least as much as he or she was earning before the leave, or more if the wages for the job went up while the employee was on leave, or would have gone up if he or she hadn't been on leave.¹⁶⁹

VII. AN URGENT CALL FOR REFORM

Support for the CEDAW was planted in the seeds of American history long before it was drafted in 1979. Eleanor Roosevelt was, beyond serving as First Lady from 1933-1945, a delegate to the UN General Assembly, the first Chairperson of the UN Human Rights commission, and instrumental in drafting the Universal Declaration of Human Rights (UDHR).¹⁷⁰ Eleanor Roosevelt's role in drafting and ratifying the UDHR, more than three decades prior to the CEDAW, lays a foundation of support for the treaty.¹⁷¹ The UDHR, although it states that everyone is entitled to the rights stated therein without

¹⁶⁵ See *Employment Insurance Maternity and Parental Benefits*, GOVERNMENT OF CANADA, <https://www.canada.ca/en/employment-social-development/programs/ei/ei-list/reports/maternity-parental.html?wbdisable=true#h2.4-h3.10>.

¹⁶⁶ *Leave Under Federal Labor Standards*, GOVERNMENT OF CANADA, <https://www.canada.ca/en/employment-social-development/programs/employment-standards/federal-standards/leave.html>.

¹⁶⁷ *Eligibility for Canada's EI Maternity and Parental Benefits*, GOVERNMENT OF CANADA, <https://www.canada.ca/en/services/benefits/ei/ei-maternity-parental/eligibility.html> (stating that new parents seeking EI benefits while on maternity or parental leave may be eligible if: (1) they are employed in insurable employment; (2) they meet the specific criteria for receiving the benefits; (3) their normal weekly earnings are reduced by 40 percent; and (4) they have accumulated at least 600 hours of insurable employment during the qualifying period or, if they are a self-employed fisher, has earned enough money during the qualifying period).

¹⁶⁸ *Employment Insurance Maternity and Parental Benefits*, *supra* note 164.

¹⁶⁹ *Pregnancy and Parental Leave*, ONTARIO MINISTRY OF LABOUR, <https://www.labour.gov.on.ca/english/es/pubs/guide/pregnancy.php>.

¹⁷⁰ *Drafting of the Universal Declaration of Human Rights*, DAG HAMMARSKJÖLD LIBRARY, <http://research.un.org/en/undhr/draftingcommittee>.

¹⁷¹ The Universal Declaration of Human Rights proclaims the entitlement of everyone to equality before the law and to the enjoyment of human rights and fundamental freedoms without distinction of any kind and proceeds to include sex among the grounds of such impermissible distinction.

regard to sex, fell short of fully protecting women’s rights.¹⁷² The CEDAW, with its explicit guarantee of women’s rights, fulfills the promise of the UDHR. See Article 2 of the UDHR.¹⁷³ The CEDAW was met with opposition in the United States when it was first presented for ratification, regardless of President Carter’s willingness to sign the treaty.¹⁷⁴

A recent uptick in hostile stereotypes toward women, as well as legislative measures restricting women’s reproductive rights, highlight the United States’ obligation, now more than ever, to ratify the CEDAW.¹⁷⁵ Women currently account for slightly over 45 percent of the U.S. work force and are instrumental in economic growth.¹⁷⁶ However, women are not afforded equal economic opportunity or workplace accommodations for parental leave and work/family reconciliation.¹⁷⁷ Female-owned businesses face difficulty obtaining low cost capital from resources such as the Small Business Administration (SBA).¹⁷⁸ In response, the SBA created the Women-Owned Small Businesses (WOSB) Federal Contracting Program in 2011, wherein five percent of its prime contracting dollars must be awarded to WOSBs.¹⁷⁹ However, the five percent goal has not yet been reached in practice.¹⁸⁰ Additionally, the wage gap has

¹⁷² See Koh, *supra* note 4, at 265 (stating that prior to CEDAW, no convention entirely addressed women’s social, political, economic, and cultural rights).

¹⁷³ See UNIVERSAL DECLARATION OF HUMAN RIGHTS, art. 2.

¹⁷⁴ For an extended discussion on U.S. opposition to the CEDAW, see Koh, *supra* note 4, at 272-75

¹⁷⁵ See Laurie McGinley & Amy Goldstein, *Trump Reverses Abortion-Related U.S. Policy, Bans Funding to International Health Groups*, WASH. POST (Jan. 23, 2017), https://www.washingtonpost.com/news/to-your-health/wp/2017/01/23/trump-reverses-abortion-related-policy-to-ban-funding-to-international-health-groups/?utm_term=.115de71a729b (explaining that Trump reinstated a rule that would restrict funding to foreign nonprofits if they provide abortions); *Donald Trump’s Long Record of Degrading Women*, N.Y. TIMES (Oct. 8, 2016), <https://www.nytimes.com/2016/10/09/us/politics/trump-women-history.html> (describing President Trump’s history of insulting, vulgar comments about women over the course of his life that were highlighted during his campaign).

¹⁷⁶ *Labor force, female (% of total labor force)*, THE WORLD BANK, <https://data.worldbank.org/indicator/SL.TLF.TOTL.FE.ZS?locations=US> (indicating that in 2017, women accounted for 45.8% of the total labor force).

¹⁷⁷ Elissa Strauss, *Paid Parental Leave Elusive 25 Years After Family and Medical Leave Act*, CNN (Feb. 5, 2018) <https://www.cnn.com/2018/02/05/health/paid-leave-parenting-strauss/index.html>.

¹⁷⁸ Women-Owned Small Business Federal Contracting Program, U.S. SMALL BUSINESS ADMINISTRATION (Aug. 15, 2016), <https://www.sba.gov/contracting/government-contracting-programs/women-owned-small-businesses>; *Set-Asides for Small Businesses: Legal Requirements and Issues*, EVERYCRSREPORT.COM. (Jan. 28, 2016), <https://www.everycrsreport.com/reports/R42981.html>.

¹⁷⁹ *Set-Asides for Small Businesses*, *supra* note 177.

¹⁸⁰ *Id.*

barely improved, increasing only one percentage point from 2014 (79 percent) to 2015 (80 percent).¹⁸¹ Narrowing of the gap has slowed down since 2001, compared to the rate at which it was narrowing from 1960 to 2001.¹⁸² At this rate, the wage gap is not predicted to close until the year 2119.¹⁸³ Women of color and mothers experience an even wider wage gap compared to men in the workforce.¹⁸⁴ In 2015, census data indicated that poverty rates for women increased over the past decade.¹⁸⁵ Not only were women thirty-five percent more likely than men to live in poverty, but more than 16.9 million women were living in poverty.¹⁸⁶

Up to now, the Trump administration's record on pay equity and child care policies have been uneven. The Trump administration recently suspended a policy proposed by President Obama that would have made it easier for women and people of color to identify whether they were being paid less than their white male counterparts at work.¹⁸⁷ Under the scheme, private employers with over 100 workers would have been required to disclose pay data to the Equal Employment Opportunity Commission in addition to the information on gender, race, and ethnicity they already provided to the agency.¹⁸⁸ Although Ivanka Trump has argued that "pay transparency is important," she disagreed that the policy would have its intended results.¹⁸⁹

Article 11 of the CEDAW requires governments to take all appropriate measures to ensure equal employment opportunity, training and promotion for women and "... the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work"¹⁹⁰ The CEDAW Committee, following its review of New Zealand's report to the CEDAW, provided some constructive recommendations:

¹⁸¹Kevin Miller, *The Simple Truth About the Gender Pay Gap*, AAUW, <http://www.aauw.org/research/the-simple-truth-about-the-gender-pay-gap/>.

¹⁸²*Id.*

¹⁸³*Id.*

¹⁸⁴*Id.*

¹⁸⁵Jasmine Tucker & Caitlin Lowell, *Income Security and Education National Snapshot: Poverty Among Women & Families, 2015*, NATIONAL WOMEN'S LAW CENTER (Sept. 2016), <http://nwlc.org/resources/national-snapshot-poverty-among-women-families-2015/>.

¹⁸⁶*Id.*

¹⁸⁷Libby Casey, *Ivanka Trump's Disappearing Act on Equal Pay*, THE WASH. POST (Sept. 1, 2017), https://www.washingtonpost.com/news/the-fix/wp/2017/09/01/ivanka-trumps-disappearing-act-on-equal-pay/?utm_term=.218a394b7744.

¹⁸⁸*Id.*

¹⁸⁹*Id.*

¹⁹⁰CEDAW, *supra* note 1, at art. 11.

The Committee expresses serious concern at the continuing wage differential between women and men, which was not expected to narrow under current trends... and at the impact of the repeal of the Pay Equity Act for women's equal pay rights. The Committee recommends that further efforts, including through legislation and innovative policies, be made to reduce the gender wage differential... The Government should also consider developing an “equal pay for work of comparable value” strategy, and reinstate respective legislation.¹⁹¹

The CEDAW clearly states that sufficient, affordable child care is an important component of the achievement of women’s full equality.¹⁹² The CEDAW Committee’s Recommendations in 2008, to the Canadian government will be instructive. Section 40 from the CEDAW Committee’s 2008 report states the following:

The Committee urges the State party to step up its efforts to provide a sufficient number of affordable childcare spaces and affordable and adequate housing options, including in aboriginal communities, with priority being given to low-income women, who are particularly disadvantaged in those areas. The Committee also recommends that the State party carry out a cost-benefit analysis to assess the impact of current living standards, housing and childcare situations on the economic empowerment of women and present the findings in its next report to the Committee. Such an analysis should have a special focus on low-income women, taking into account the amount of social assistance they receive from the State compared with the actual cost of living, including housing and childcare.¹⁹³

It will be a huge challenge for the treaty to come before the full Senate for a vote under the current administration. In the past, the treaty has been condemned by Republican leaders as advancing a “radical” abortion and antifamily agenda.¹⁹⁴ Although the U.S. State Department regards the CEDAW

¹⁹¹ *Consideration of Reports Submitted by States Parties Under Article 18 of the Convention: New Zealand*, UN COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN (CEDAW) (1998), <http://www.refworld.org/publisher,CEDAW,,NZL,3ae6ae040,0.html>.

¹⁹² CEDAW, *supra* note 1, at Introduction, art. 11.

¹⁹³ *Id.* at arts. 8-9.

¹⁹⁴ 146 CONG. REC. S3925-02 (Mar. 8, 2000) (Statement of Jesse Helms).

as neutral on abortion, it is likely that a republican Senate would disagree.¹⁹⁵ The unfounded belief that the CEDAW, which makes no mention of abortion, is an anti-family convention, will keep the treaty from being ratified during a time that the CEDAW can play an important role. The CEDAW Committee has openly expressed concern that women in certain countries might be using abortion as a form of family planning, and encouraged increased family planning education to educate women on alternatives to abortion.¹⁹⁶

Articles 12 and 16 of the CEDAW, which are misconstrued as promoting abortion, are necessary to accomplish the goals set out by the administration covered within this paper. Article 12(1) states “States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.”¹⁹⁷ The elimination of discrimination against women in the field of health care services is necessary for pregnant women to avoid complications. If by chance, pregnancy-related illness or injury prevented women from returning to the workforce, it might further the stereotype that post-natal women are unfit for work. This is made even clearer in the second half of Article 12, which requires States Parties “ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.”¹⁹⁸ Article 12(2) speaks directly to the Trump administration’s goal of accessible childcare in requiring “free services where necessary.”¹⁹⁹

¹⁹⁵ See Luisa Blanchfield, *The U.N. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW): Issues in the U.S. Ratification Debate*, CONG. RESEARCH SERV., Nov. 12, 2010, at 14 (asserting that although CEDAW does not explicitly address abortion, parts of its text—Article 12(1) and 16(1)(e)—can be interpreted in a way which undermines abortion rights).

¹⁹⁶ See generally UNITED NATIONS, REPORT ON THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN 58 (1998), <http://www.un.org/womenwatch/daw/cedaw/reports/18report.pdf> (The CEDAW Committee, at its combined 18th and 19th session reports, expressed “deep concern at the high rate of abortions among Slovak women,” surmising that may be being used as a form of family planning. The CEDAW Committee went on to fervently recommend “an increase in family planning education and accessibility to affordable and safe contraception in order to reduce the number of abortions carried out.”).

¹⁹⁷ Blanchfield, *supra* note 194, at 14.

¹⁹⁸ CEDAW, *supra* note 1, at art. 12(2).

¹⁹⁹ See *id.* (“Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.”).

A. *The Role of the CEDAW in Building Gender-Equal Families*

Now more than ever, women need to be empowered both in their family and community, and the anti-family rhetoric surrounding the CEDAW needs to be examined critically. Empowered women are a conduit for strong families.²⁰⁰ Where women are afforded equal rights, they are able to make the best choices for themselves, their families, and their communities.²⁰¹ Consequences of increased rights for women have longevity and range. Within a year of voting rights being granted to women in the United States, voting patterns began to include a larger interest in local public health spending by about 35 percent.²⁰² Greater public health spending led not only to improved local public health campaigns for issues such as hygiene, but to a decline in infectious childhood diseases, as well as in childhood mortality by approximately 8 to 15 percent.²⁰³

Principles of the CEDAW, such as Article 10, prioritize women’s access to education, and such goals can only be accomplished in conjunction with the other articles enumerated in the treaty.²⁰⁴ The full realization of the guarantees under Article 10 is often compromised in certain communities where women do not have the opportunity to attend school.²⁰⁵ In some countries, such as Haiti, even when women are given the opportunity to go to school, they are discouraged due to fear of violence in travel to school or once in school from their male classmates.²⁰⁶ Solutions to such inequities often draw on principles from the CEDAW.²⁰⁷ Reducing distance to school, targeting males to engage in discussion about cultural norms, ensuring gender-sensitive teachings, creating safe environments for and reducing violence against females, and ending early childhood marriage, are all proposed solutions to women’s lack of education.²⁰⁸

²⁰⁰ For an in-depth discussion on the importance of empowered women to families, societies, and the economy, see Rangita de Silva de Alwis, *Why Women’s Leadership is the Cause of Our Time*, 18 UCLA J. INT’L L. & FOR. AFF. 87 (2013).

²⁰¹ *Women, Business and the Law*, *supra* note 66, at 4.

²⁰² *Id.* at 5.

²⁰³ *Id.*

²⁰⁴ See *Girl’s Education: Overview*, WORLD BANK, <http://www.worldbank.org/en/topic/girlseducation/overview> (explaining that successfully educating girls stems beyond simply getting girls into schools, and requires that girls also feel safe and learn the economic and cultural skills they need to survive).

²⁰⁵ *Background Paper on Attacks Against Girls Seeking to Access Education*, UNITED NATIONS: HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, http://www.ohchr.org/Documents/HRBodies/CEDAW/Report_attacks_on_girls_Feb2015.pdf.

²⁰⁶ See *Girl’s Education: Overview*, *supra* note 203.

²⁰⁷ *Id.*

²⁰⁸ *Education Under Attack*, UNITED NATIONS EDUCATION, SCIENTIFIC AND CULTURAL ORGANIZATION (2007), <http://unesdoc.unesco.org/images/0018/001863/186303e.pdf>.

Eliminating barriers to education is crucial to achieving a gender-equal family wherein both parents can draw upon their knowledge in raising a family. There is a direct correlation between levels of education between mother and child.²⁰⁹ Educated women are better positioned than less educated women to provide suitable health care and education for their children.²¹⁰ In India, for example, greater access to income and education for women led to improved educational outcomes of children.²¹¹ The CEDAW's primacy of gender equality is consistent with the principles and goals of the Trump administration's goals of equal pay for equal work, affordable childcare, paid family leave and work/family reconciliation.²¹²

A well-established body of research explores the impact of the CEDAW on lawmaking and how the ratification of the CEDAW alters state party behavior.²¹³ Harold Koh also states of his tenure at the State Department when he oversaw the development of an annual report on human rights conditions around the world.²¹⁴ During his tenure, Koh found that, "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."²¹⁵

Beth Simmons explored the impact at the national level of a number of different human rights treaties including the CEDAW.²¹⁶ Simmons argues that CEDAW ratification has had an influence on domestic policies by furthering women's organizations, and this is so in transitional countries.²¹⁷ She argues that membership in women's international NGOs grew in the first and second years after CEDAW ratification.²¹⁸ The reporting requirements invite these groups to critique government policies.²¹⁹ She argues that the CEDAW has the most impact on countries reputed for their well-developed rule of law institutions.²²⁰

²⁰⁹ *World Development Report 2012: Gender Equality and Development*, THE WORLD BANK, <https://siteresources.worldbank.org/INTWDR2012/Resources/7778105-1299699968583/7786210-1315936222006/Complete-Report.pdf>.

²¹⁰ See *Girl's Education: Overview*, *supra* note 203.

²¹¹ See *World Development Report 2012*, *supra* note 209 ("In India, a woman's higher earned income increases her children's years of schooling").

²¹² See CEDAW, *supra* note 1, at arts. 2, 5, 11 and 16 (upholding these values of gender equality).

²¹³ See Koh, *supra* note 4, at 269.

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ BETH SIMMONS, *MOBILIZING FOR HUMAN RIGHTS: INTERNATIONAL LAW IN DOMESTIC POLITICS* (2009).

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ *Id.*

Even in the anti-discrimination policies in employment (article 11 of the CEDAW) Simmons argues that the CEDAW has an impact on the paid employment in the public sector in which women might reasonably expect to access the courts—the high rule of law states—to enforce their rights.²²¹ CEDAW ratification has an important effect on policies and outcomes that the treaty is designed to influence.²²² The impact is contingent on the role played by national women’s groups and other advocates within and outside the government and the reporting process of the CEDAW which helps to bolster pressure on governments to introduce laws on gender equality in employment.²²³

Beth Simmons harnesses the power of quantitative analysis and case studies to pierce the skepticism that “international law has done very little to improve the rights of people around the world.”²²⁴ Instead, Simmons argues that the ratification of international human rights treaties alters state behavior and correlates with respect for human rights.²²⁵ Simmons outlines a theoretical causal mechanism to explain why human rights treaties alter state behavior, and then provides empirical evidence to support her theory.²²⁶ Simmons argues that even though international organizations are not able to enforce treaty regimes, a state’s ratification of a human rights treaty provides a powerful tool for internal political discourse and organizing.²²⁷ After ratification, domestic actors are able to call upon the treaty body to provide external pressure in order for the government to be accountable to the rights framework.²²⁸ This external pressure combined with domestic social movements provide a powerful confluence to help shape state action. Harold Koh argues that treaty ratification in democratic states will empower domestic groups whom he defines as “norm entrepreneurs” to put pressure on political leaders to fulfill international legal guarantees and thus show that the CEDAW ratification can alter state party behavior.²²⁹ Oona Hathaway observes that although formally binding treaties may be ignored with impunity in countries

²²¹ *Id.*

²²² Rangita de Silva de Alwis & Jeni Klugman, *Freedom from Violence and the Law: A Global Perspective in Light of Chinese Domestic Violence Law*, 37 UNIV. OF PENN. J. OF INT’L L. REV. 1, 51 (2015).

²²³ See generally Simmons, *supra* note 215.

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ Oona A. Hathaway, *Do Human Rights Treaties Make a Difference?*, 111 YALE L. J. 1935, 2022 (2002).

which lack a strong civil society, she claims that: “[w]here powerful actors can hold the government to account, international legal commitments are more meaningful.”²³⁰ Given a strong civil society in the US, treaties like the CEDAW will make a meaningful difference.

Oona Hathaway’s findings indicate that ratification of human rights treaties may have a positive impact on states’ human rights records: treaties tend to be complied with once ratified.²³¹ Professor Martha Davis and Roslyn Powell argue for a right to childcare, claim that human rights treaties could be the foundation for the proposition that working parents are entitled to quality, affordable childcare.²³² Davis and Powell make a cogent argument that domestic courts should recognize the norms embodied in conventions such as the Convention on the Rights of the Child in order to provide a right to childcare in the United States, which in this area, compares unfavorably with other developed countries.

Davis and Powell argue that “. . . regardless of whether or not the United States ultimately ratifies the [Convention on the Rights of the Child], the treaty’s key principles have achieved near-universal acceptance around the globe.”²³³ The same could be said of the CEDAW which has ratifications from 188 countries.²³⁴ Women’s rights groups could argue that based on the near universality of the CRC and CEDAW, the United States cannot afford to be a “flying buttress in the cathedral of human rights” and should be shaped by this international consensus on paid family leave.²³⁵ Doing so would recognize the interrelated-ness of women’s mean’s economic participation and children's well-being.

²³⁰ Steven Meii, *Do Human Rights Treaties Help Asylum-Seekers? Lessons from the United Kingdom*, VAND. J. TRANSNATIONAL. L. 123 (2015).

²³¹ See generally Hathaway, *supra* note 228.

²³² Martha F. Davis & Roslyn Powell, *The International Convention on the Rights of the Child: A Catalyst for Innovative Childcare Policies*, 25 HUMAN RIGHTS QUARTERLY 689, 690 (2003).

²³³ *Id.*

²³⁴ *CEDAW & Women’s Human Rights*, UN WOMEN: ASIA AND THE PACIFIC, <http://asia.pacific.unwomen.org/en/focus-areas/cedaw-human-rights>.

²³⁵ Louis Henkin, *Leader in Field of Human Rights Law, Dies at 92*, NY TIMES, <https://www.nytimes.com/2010/10/17/us/17henkin.html> (“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.”).

CONCLUSION

Under the Obama administration, women’s equality was regarded as critical to U.S. national security.²³⁶ Former Secretary of State Hillary Clinton also has acknowledged subjugation of women as a threat to the national security of the United States and to the world at large, as such discrimination goes hand in hand with the instability of nations.²³⁷ During a change in administrations and a reshuffling of key White House staff, it is crucial to keep the connection between women’s rights and national security in mind. President Trump has aggressive plans to defeat ISIS, and has summed his plan up as “peace through strength.”²³⁸ Additionally, the United States’ promotion of women’s rights could set an example for foreign nations to follow, resulting in less gender-based violence during times of conflict.

The CEDAW has played a significant role in shaping women’s rights, as demonstrated by its principles being upheld in court cases heard by States Parties.²³⁹ The ratification of the CEDAW could help women in the United States to advocate more effectively for equal pay for equal work, affordable childcare, and paid parental leave and work/family reconciliation.²⁴⁰ Although the Trump administration has indicated the relevance of these issues, no action has been taken to ratify the CEDAW as part of a more effective advocacy and implementation strategy for those avowed causes. The United States’ continued failure to ratify the CEDAW impoverished the administration’s stated goals. The CEDAW would help establish women as a force in the marketplace by ensuring appropriate compensation, providing adequate and affordable childcare, and evening out the roles of both parents through shared childrearing.²⁴¹

²³⁶ Obama’s National Security Strategy recognized that countries are more peaceful and prosperous when women are accorded full and equal rights an opportunity. When those rights and opportunities are denied, countries lag behind. *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 S. Judiciary Subcomm. on Human Rights and the L.*, 111th Cong. 8 (2010).

²³⁷ *Id.*

²³⁸ Matthew Rosenberg, *Fact-Checking Donald Trump’s National Security Speech*, N.Y. TIMES (Sept. 7, 2016), <https://www.nytimes.com/2016/09/08/us/politics/donald-trump-fact-check.html>

²³⁹ MARY JANE N. REAL, *CEDAW CASEBOOK: AN ANALYSIS OF CASE LAW IN SOUTHEAST ASIA* (2016).

²⁴⁰ *See de Silva de Alwis & Klugman, supra note 221, at 51.*

²⁴¹ *See Achieve Gender Equality and Empower All Girls*, SDG, <https://sustainabledevelopment.un.org/sdg5> (stating goal 5.4 is to “recognize and value of unpaid care and domestic work through the provision of public services, infrastructure and social protection policies and the promotion of shared responsibility within the household and the family as nationally appropriate”).