

Will The United States Continue To Say
“You’re Fired” To Cedaw?: Lessons Learned
From Germany And Chile’s Implementation
Of Cedaw And The Potential For United
States Ratification

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NOTE

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LEARNED FROM GERMANY AND CHILE’S
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POTENTIAL FOR UNITED STATES RATIFICATION

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“Now, I know we have still not shattered that highest and hardest glass ceiling, but some day, someone will, and hopefully sooner than we might think right now. And to all the little girls who are watching this, never doubt that you are valuable and powerful and deserving of every chance and opportunity in the world to pursue and achieve your own dreams.” – Hillary Clinton, 2016

INTRODUCTION

A man and a woman sit down at a restaurant for a meal. The woman asks for the check, but when the waiter comes to bring it, it is handed to the man. The woman puts down her credit card and the check is whisked away. When it is brought back to the table, the credit card receipt is again handed to the man to sign, despite the fact that the woman had clearly placed her card down to pay. This is just one example of subtle sexism that is so deeply embedded in US society it is hard to even notice anymore; and even more difficult to get rid of.

The Convention on the Elimination of Discrimination Against Women (“CEDAW”) attempts to combat this type of societal discrimination. CEDAW aims for true equality between men and women. The United States has yet to ratify CEDAW, and until it does so, everyday gender discrimination will persist in this country.

A country’s head of state has vast control over the path of a nation. However, despite the control and power that comes along with this role, a country is still connected to its citizens and its culture. The

personal beliefs of a head of state will not be the dominating guide for a country's future.¹ In examining this interplay, Germany and Chile are especially interesting countries to explore, as both countries have a female head of state, providing a unique purview into how CEDAW may be utilized.² As shown by the case studies, the vocal support for women's rights by Chilean President Michelle Bachelet compared to the relative silence of German Chancellor Angela Merkel on similar issues does not correspond to the societal positions of women in the country.³ In turn, a country's implementation of CEDAW corresponds to this cultural principle.⁴

If the United States chooses to ratify CEDAW, it is likely that it too will be predominately impacted by this cultural principle. When turning to Germany and Chile, the commonly cited concerns that plague the US ratification of CEDAW seem unsubstantiated.⁵ In addition, major pieces of legislation have passed in the United States in pursuit of equality between men and women.⁶ The cultural climate seems to point to a wide range of support for women's rights, despite the contentious political climate the country is experiencing in 2017.⁷ If the United States chooses to ratify CEDAW, it would have an extremely positive effect on the country and its attempt at achieving substantive equality between men and women.⁸

This Note discusses the potential implementation of CEDAW in the United States, using lessons learned from Germany and Chile to suggest a path forward. Part I of this Note provides the history of the United Nation's 1979 Convention on the Elimination of Discrimination Against Women. Part I then compares CEDAW's uniqueness to other UN human rights treaties. Part II focuses on Germany's implementation of CEDAW: specifically, Part II demonstrates how the post-war German political and social landscape continues to affect CEDAW's enforcement. Part III moves to Chile, and explores the implementation of CEDAW there. This Part also emphasizes how that country's political and social landscape affects its own application of CEDAW. Part IV examines various suggestions

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1. *See infra* Parts II, III, and V.
 2. *See infra* Parts II and III.
 3. *See infra* Parts II and III.
 4. *See infra* Part V.
 5. *See infra* Parts II, III, IV, and V.
 6. *See infra* Part V.
 7. *See infra* Section IV.A.
 8. *See infra* Part V.

why the United States has not ratified CEDAW. Part IV also summarizes domestic women's rights legislation and investigates whether this treaty can be passed in the future given the United States political and social climate. Lastly, Part V compares Germany and Chile's implementation of CEDAW, and whether the ideology of a head of state influences the effectiveness of CEDAW. Moreover, Part V argues that the United States should ratify CEDAW based on conclusions drawn from the Note's two case studies.

I. BACKGROUND OF THE CONVENTION ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

Part I of this Note will focus on how the Convention on the Elimination of All Forms of Discrimination Against Women came to be. Section I.A will provide the history of CEDAW. Section I.B will focus on the actual structure and composition of CEDAW. Section I.C will explain how CEDAW is a treaty that is unique from other UN treaties.

A. History of CEDAW

The formation of the Convention on the Elimination of Discrimination Against Women was no simple task, yet as the drafters of CEDAW illustrated, it was a highly necessary one.⁹ After the end of World War II, fifty countries officially created the United Nations in 1945 to protect universal peace and basic human dignities and principles.¹⁰ The United Nations Charter was the first international agreement to openly acknowledge and deal expressly

9. See Fleur van Leeuwen, *The United Nations and the Promotion and Protection of Women's Human Rights: A Work in Progress*, in *THE WOMEN'S CONVENTION TURNED 30: ACHIEVEMENTS, SETBACKS, AND PROSPECTS* 13, 22 (Ingrid Westendorp ed., 2012) (noting that CEDAW was the first time that women's rights were expressly placed within the realm of international human rights); see also *id.* at 21 (explaining that the General Assembly of the UN specifically requested the CSW to draft a treaty pertaining to women's rights as the treaties at the time were insufficiently dealing with women's human rights).

10. U.N. Charter art. 1, ¶ 2 (“[t]o develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples . . .”). In addition, the preamble of the UN Charter states, “We the peoples of the United Nations determined . . . to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small . . .”; see also United Nations, *History of the United Nations*, <http://www.un.org/en/sections/history/history-united-nations/>.

with sex discrimination.¹¹ Just one year after the founding of the United Nations, the Commission on the Status of Women (“CSW”) was created as a separate commission of the Economic and Social Council.¹² The CSW was described as having “appointed ‘representatives women who were militants in their countries.’”¹³ CSW helped ensure that women were explicitly granted the protections of major human rights treaties.¹⁴ For example, CSW played a role in the drafting of the Universal Declaration of Human Rights (“UDHR”).¹⁵ Specifically, CSW was instrumental in ensuring that women were taken into account in the UDHR’s language, pushing to utilize inclusive, gender-neutral terms such as “human beings,” “everyone,” and “all” instead of “man.”¹⁶ Article II of the UDHR states that all people are “entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”¹⁷ While a progressive first step on the international stage, the UDHR did not

11. See Christine Chinkin & Marsha A. Freeman, *Introduction, in UN CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN A COMMENTARY* 1, 4 (Marsha Freeman, Christine Chinkin & Beate Rudolf eds., Oxford University Press, 2012); see also Elizabeth F. Defeis, *The United Nations and Women – A Critique*, 17 WM. & MARY J. WOMEN & L. 395 (2011) (noting that the UN Charter is the “most significant and widely ratified” international agreement that references women’s rights).

12. See UN Women, *Commission on the Status of Women*, <http://www.unwomen.org/en/csw> (stating the Commission of Women is dedicated to promotion of gender equality and empowerment of women); see also Chinkin & Freeman, *supra* note 11, at 4.

13. Fionnuala Ni Aolain, *Gendering the Declaration*, 24 MD. J. INT’L L. 335, 337 n. 4 (2009) (quoting Johannes Morsink, *Women’s Rights in the Universal Declaration*, 13 HUM. RTS. Q. 229, 232 (1991) (quoting John P. Humphrey, *Memoirs of John P. Humphrey: The First Director of the United Nations Division of Human Rights*, 5 HUM. RTS. Q. 387, 405 (1983)).

14. See Chinkin, *supra* note 11, at 4; see also Felipe Gomez Isa, *The Optional Protocol for the Convention on the Elimination of All Forms of Discrimination Against Women: Strengthening the Protection Mechanisms of Women’s Human Rights*, 20 ARIZ. J. INT’L & COMP. L. 291, 295-96 (2003).

15. See Isa, *supra* note 14; see also Chinkin & Freeman, *supra* note 11, at 4 (stating the CSW was “instrumental” in drafting language for UDHR).

16. See Johannes Morsink, *Women’s Rights in the Universal Declaration*, 13 HUM. RTS. Q. 229, 233-36 (1991); see e.g., Fionnuala Ni Aolain, *Gendering the Declaration*, 24 MD. J. INT’L L. 335, 338 (2009) (noting the Chair of the Commission on the status of Women, Bodil Begtrup (a woman) worked to have the term “human beings” substituted for the word “men” in human rights treaties); see also Chinkin & Freeman, *supra* note 11, at 4.

17. See G.A. Res. 217 A (III), art. 2 (Dec. 10, 1948).

address the myriad concerns for the advancement of women in both the public and private spheres.¹⁸

To address women's rights specifically, the UN adopted the Declaration on the Elimination of Discrimination Against Women in 1967 ("DEDAW").¹⁹ DEDAW consisted of a Preamble and eleven articles that addressed discrimination, legal protection for equal rights, and many other topics relating to women's daily lives.²⁰ However, DEDAW lacked legal force and was more "aspirational" than official.²¹ The Convention on the Elimination of Discrimination Against Women ("CEDAW") adopted many of the principles from DEDAW; the main difference between CEDAW and DEDAW was CEDAW being a binding treaty.²² With women's rights remaining an important part of the international narrative, CEDAW was adopted on December 17, 1979.²³ CEDAW passed with a final vote of 130 votes in favor (including the United States), none against, and ten abstentions.²⁴

B. Composition of CEDAW

CEDAW consist of a Preamble and six parts.²⁵ Part I outlines general obligations of the states parties.²⁶ Parts II-IV focus on all aspects of women's daily lives, including (1) public, civil, and

18. *See id*; *see also* Defeis, *supra* note 11, at 397 (noting that the UN Charter and UDHR to refer to equal rights for both genders, a special commission was created to further this guarantee).

19. *See generally* G.A. Res. 2263 (XXII) (Nov. 7, 1967); *see also* Chinkin & Freeman, *supra* note 11, at 5.

20. *See generally* G.A. Res 2263 (XXII) (Nov. 7, 1967); *see also* Chinkin & Freeman, *supra* note 11, at 5.

21. *See* Chinkin & Freeman, *supra* note 11, at 6.

22. *See* Chinkin & Freeman, *supra* note 11, at 6-7; *see also* Jessica Riggan, *The Potential Impact of CEDAW Ratification on US Employment Discrimination Law: Lessons from Canada*, 42 COLUM. HUM. RTS. L. REV. 541, 547 (2011) (stating that DEDAW was a non-binding instrument which laid the groundwork for CEDAW).

23. Convention on the Elimination of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW]. The treaty was entered into force on September 3, 1981. *See also* Chinkin & Freeman, *supra* note 11, at 6 (laying out the path of women's equality to be legally guaranteed, most specifically with the world summit on women in Mexico City in 1975 and two world conferences on women in Copenhagen and Nairobi, in 1980 and 1985 respectively).

24. *See* Chinkin & Freeman, *supra* note 11, at 7; *see also* *Short History of CEDAW Convention*, UN WOMEN, <http://www.un.org/womenwatch/daw/cedaw/history.htm>.

25. *See generally* CEDAW, *supra* note 23.

26. *See* CEDAW, *supra* note 23, Part I.

political life; (2) to economic and social rights; and (3) women's legal status.²⁷ Part V deals with the Committee created to enforce the rights in the Convention; and Part VI lists the final provisions of the Convention.²⁸

Articles one through six focus on de jure and de facto equality between men and women.²⁹ Article 1 defines discrimination against women as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms . . . any . . . field.”³⁰ This definition is extremely broad and encompasses many different types of discrimination. Articles 7-16 cover the substantive aspects of the Convention that make it a legally binding document.³¹ Articles 17 -22 deal with the establishment of the Committee as an independent monitoring mechanism of the Convention.³²

In order to ensure CEDAW's goals are achieved, Article 17 created the Committee on the Elimination of Discrimination Against Women (the “Committee”).³³ The Committee is the oversight body of CEDAW. The Committee receives periodic state reports and provides recommendations to State Parties to continue their progress under

27. See CEDAW, *supra* note 23, Parts II-IV.

28. See CEDAW, *supra* note 23, Parts V-VI; see also Chinkin & Freeman, *supra* note 11, at 8.

29. De jure means formal equality and de facto means substantive equality. De jure equality refers to the sameness or identical approach to equality. De jure equality relies on the presumption that to achieve equality means to treat everyone the same. De facto equality refers to the difference approach, which means different treatment between groups may not be discriminatory and at certain times people may require different treatment but that does not mean they are not equal. De facto equality also notes that certain laws and policies affect groups differently by having a disparate impact or indirect discrimination on people. See Andrew Byrnes, *Article One, in THE UN CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN*, 51, 53-55 (Marsha Freeman, Christine Chinkin & Beate Rudolf eds., Oxford University Press, 2012); see also CEDAW, *supra* note 23, arts. 1-6.

30. See CEDAW, *supra* note 23, art. 1.

31. See CEDAW, *supra* note 23, art. 7-14; Chinkin & Freeman, *supra* note 11, at 11 (quoting United Nations, *The United Nations and the Advancement of Women 1945-1995* (United States Dept. of Public Information, 1st ed. (Aug. 1995))

32. See CEDAW, *supra* note 23, arts. 17-22; see also Chinkin & Freeman, *supra* note 11, at 12.

33. See CEDAW, *supra* note 23, art. 17.

CEDAW.³⁴ Articles 18 through 22 provide further details about the state reports and the Committee's role. The Committee ensures the objectives of CEDAW come to fruition. Under Article 18, State Parties have to submit a report to the Committee documenting the legislative, judicial, administrative or other measures they implement in furtherance of CEDAW's goals.³⁵ After ratifying CEDAW, a State Party must submit a report within one year and every four subsequent years, unless the Committee requests more reports.³⁶ These reports should "indicate factors and difficulties" that affect a State's ability to fulfil its obligations, as well as indicate any progress made in that country.³⁷ The Committee's purpose is to interpret the meaning of CEDAW and provide recommendations to State Parties to achieve the objectives of CEDAW.³⁸ The Committee issues Concluding Observations to State Parties.

The Concluding Observations of the Committee on the Elimination of Discrimination Against Women is a responsive document to a country's previously submitted report. In response to a State Party's report, the Committee writes their Concluding Observations.³⁹ The Concluding Observations continue the dialogue introduced by a State Party's report, where it states both positive aspects of a report and indicate where the Committee thinks a State Party could improve.⁴⁰ The Committee provides recommendations to a State Party that suggest ways to comply with CEDAW.⁴¹

Initially, CEDAW was criticized for its lack of legal power, meaning participating State Parties have no legal recourse to enforce

34. *See id.*; *see also* Ineke Boerefijn, *Article 17*, in *THE UN CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN*, 475, 476 (Marsha Freeman, Christine Chinkin & Beate Rudolf eds., Oxford University Press, 2012).

35. *See* CEDAW, *supra* note 23, art. 18.

36. *See id.* art. 18.

37. *See id.*

38. *See* Chinkin & Freeman, *supra* note 11, at 13-14 (stating the Committee has the task of interpreting and implementing CEDAW, while also monitoring State Parties); *see also* Elizabeth Evatt, *Finding A Voice for Women's Rights: The Early Days of CEDAW*, 34 *GEO. WASH. INT'L L.* 515, 518 (2002).

39. *See* Boerefijn, *supra* note 34, at 501; *see also* *Committee on the Elimination of Discrimination Against Women, Introduction*, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Introduction.aspx> [hereinafter CEDAW Introduction] (stating that the Committee considers a State Party's report and provides recommendations and addresses concerns to the State Party in the form of the concluding observations).

40. *See* Boerefijn, *supra* note 34, at 502; *see also* CEDAW Introduction, *supra* note 39.

41. *See* Boeregijn, *supra* note 34, at 502; *see also* CEDAW Introduction, *supra* note 39.

the treaty's articles, nor does the Committee have the legal capability to force a State Party to implement the treaty.⁴² In response, CEDAW introduced the Optional Protocol of 1999, which gave CEDAW legal powers to State Parties that signed the Optional Protocol.⁴³ The Optional Protocol provides the Committee with two powers: (1) allowing an individual or group the ability to file complaints with the Committee, and (2) the ability to engage in "inquiry procedures" which empowers the Committee to open an inquiry into countries it believes has engaged in grave or systemic violations of women's rights.⁴⁴ There is an "opt-out clause" a State Party may invoke to opt out of the inquiry procedures provision of the Optional Protocol, but which opens the door for the Committee to investigate potential abuses.⁴⁵ In addition, the Committee passes General Recommendations periodically about prudent issues on which State Parties should focus their efforts.⁴⁶

42. See Chinkin & Freeman, *supra* note 11, at 13-14 (noting the Committee's main authority is to interpret the treaty and provide recommendations to State Parties to implement the objectives of the treaty); *see id.* at 609 (stating the commentators on the Committee noted that in comparison with other UN bodies, the tools available to the Committee were weak); *see also* CEDAW, *supra* note 23 (turning to the language of the treaty, it requires States to enact "appropriate measures," which are left to the State Party's discretion); *see* Riggan, *supra* note 22, at 549 (stating CEDAW is enforced by the "same informal mechanisms" as other treaties – "political will and international pressure.").

43. See Sarah R. Hamilton, *The Status of Women in Chile: Violations of Human Rights and Recourse Under International Law*, 25 *WOMEN'S RTS. L. REP.* 111, 120-21 (2004) (stating that the 1999 Optional Protocol recognized CEDAW's authority over cases that arose from "grave or systemic violations" of women's rights and also gave the Committee the power to accept petitions from individuals and State Parties); *see also* Ann Picard, *US Ratification of CEDAW: From Bad to Worse?*, 28 *L. & INEQ.* 119, 131 (2010) (noting the Optional Protocol was significant because it gave individuals and groups the power to lodge violation complaints with the Committee, rather than only allowing State Parties that power).

44. See Optional Protocol to the Convention on the Elimination of all Forms of Discrimination Against Women, G.A. Res. 4, U.N. GAOR, 54th Sess., Supp. No. 49, U.N. Doc. A/RES/54/4 (1999) [hereinafter *Optional Protocol*]. *See also* Isa, *supra* note 14, at 316; *see* Riggan, *supra* note 22, at 548-49 (2011).

45. See Optional Protocol, *supra* note 44, art. 10; *see also* Chinkin & Freeman, *supra* note 11, at 668 (stating Article 10 of the Optional Protocol allows State Parties to declare they do not recognize the power of the Committee as laid out in Article 8 and 9 of the Optional Protocol).

46. There are currently thirty-four General Recommendations that deal with a variety of issues, such as violence against women, clarifications about Articles in the Convention, and marriage. *See Committee on the Elimination of Discrimination Against Women, General recommendations*, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Recommendations.aspx> [hereinafter *General Recommendations*].

C. How CEDAW is Unique From Other UN Treaties

CEDAW is unlike any other treaty promulgated by the United Nations, and it is often referred to as the Women's Bill of Rights.⁴⁷ Firstly, unlike other human rights treaties, CEDAW is not a gender-neutral document: it exists solely to assist women worldwide.⁴⁸ Moreover, the treaty's wide scope and broad definition of discrimination set its inclusive tone.⁴⁹ The scope of the definition of discrimination in CEDAW shows it is not sufficient for a State Party to eliminate economic, social, and cultural discrimination against women, but it must also take affirmative steps to achieve equality between the sexes.⁵⁰ It does this by addressing the systemic exclusion of women around the world, encouraging participating states parties to work to modify social structures that relegate women to a secondary position in society.⁵¹

Unlike other UN treaties, CEDAW ambitiously seeks to address the discrimination against women by attempting to enact a transformative equality to upend major social structures.⁵² Furthermore, Article 5 calls on State Parties to "modify the social and

47. See *A Fact Sheet on CEDAW: Treaty for the Rights of Women*, AMNESTY INTERNATIONAL (Aug. 25, 2005), https://www.amnestyusa.org/sites/default/files/pdfs/cedaw_fact_sheet.pdf [hereinafter Amnesty International Fact Sheet]; see also Harold Hongju Koh, *Why America Should Ratify the Women's Rights Treaty (CEDAW)*, 34 CASE W. RES. J. INT'L L. 263, 266 (2002) (stating CEDAW has been described as an "international bill of rights for women.").

48. See Chinkin & Freeman, *supra* note 11, at 9; see also Rikki Holtmaat, *The CEDAW: A Holistic Approach to Women's Equality and Freedom*, in WOMEN'S HUMAN RIGHTS: CEDAW IN INTERNATIONAL, REGIONAL, AND NATIONAL LAW 95, 100 (Anne Hellum and Henriette Sinding Aasen eds., University Cambridge Press, 2013).

49. See Chinkin & Freeman, *supra* note 11, at 11 (quoting The United Nations and the Advancement of Women 1945-1995 (United States Dept. of Public Information, 1st ed. (Aug. 1995)); see also *CEDAW Advances Women's Human Rights*, CENTER FOR REPRODUCTIVE RIGHTS (Jan. 1, 2004), <https://www.reproductiverights.org/document/cedaw-advances-womens-human-rights> (noting the wide ranging scope of CEDAW).

50. See Byrnes, *supra* note 29, at 53; see Chinkin & Freeman, *supra* note 11, at 53 (stating CEDAW requires State Parties to take "positive steps" to deal with exclusion of women).

51. See Byrnes, *supra* note 29, at 53; see also Chinkin & Freeman, *supra* note 11, at 52 (explaining how society has made preferences to male interests over female interests seem natural or normal); see also Chinkin & Freeman, *supra* note 11, at 146-150 (discussing gender stereotypes and how women are viewed in patriarchal society).

52. See Byrnes, *supra* note 29, at 55 (defining transformative equality as full equality likely to be achieved only through the changing of social structures of hierarchy based on sex); see also Chinkin & Freeman, *supra* note 11, at 53 (requiring a systemic change to fix existing social structures that keep the interests of privileged groups above others).

cultural patterns of conduct of men and women” that enhances the notion that either sex is inferior or superior to the other.⁵³ CEDAW encourages fundamental changes to society to promote freedom for women and allow women to decide what it “means to be a woman (or a man).”⁵⁴ CEDAW thus challenges gender stereotypes and aims to force the hand of a State Party to acknowledge the discrimination that women experience on a daily basis. Overall, CEDAW imposes an obligation on State Parties to directly confront the structured gender roles of men and women.⁵⁵

CEDAW’s encouragement of Temporary Special Measures (“TSMs”) makes its goals more achievable. Article 4(1) introduces the TSMs meant to accelerate de facto equality between men and women.⁵⁶ CEDAW’s General Recommendation 25 provides comment on Article 4(1).⁵⁷ Within General Recommendation 25, CEDAW defines “measures” to encompass a variety of legislative, executive, administrative, and regulatory possibilities to fulfil Article 4(1), such as preferential treatment, targeted recruitment, quota systems, and outreach or support programs.⁵⁸ TSMs are not appropriate in every situation but are useful to ensure equal opportunities in political, social and economic life.⁵⁹ CEDAW acknowledges that the

53. See CEDAW, *supra* note 23, art. 5; see also Rikki Holtmaat, *The CEDAW: A Holistic Approach to Women’s Equality and Freedom*, in WOMEN’S HUMAN RIGHTS: CEDAW IN INTERNATIONAL, REGIONAL, AND NATIONAL LAW 95, 96 (Anne Hellum & Henriette Sinding Aasen eds., Univ. Cambridge Press, 2013); see also Byrnes, *supra* note 29, at 55.

54. See Holtmaat, *supra* note 48, at 96-97; see also Ingrid Westendrop, *Using Culture to Achieve Equality*, in THE WOMEN’S CONVENTION TURNED 30: ACHIEVEMENTS, SETBACKS, AND PROSPECTS, 111, 112 (Ingrid Westendrop ed., Intersentia Pub. Ltd., 2012) (noting that culture may “form a barrier” to realize women’s rights).

55. See Holtmaat, *supra* note 48, at 97; see also Chinkin & Freeman, *supra* note 11, at 154-55.

56. See CEDAW, *supra* note 23, art. 4(1); see also CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN, S. Rep. No.107-09, at 4 (2d Sess. 2002), https://www.foreign.senate.gov/imo/media/doc/executive_report_107-09.pdf (noting that Article 4(1) is meant to accelerate de facto equality between men and women).

57. See generally General Recommendations, *supra* note 46, No. 25.

58. See General Recommendations, *supra* note 46, No. 25, ¶ 22; see also Alda Facio and Martha I. Morgan, *Equity or Equality for Women? Understanding CEDAW’s Equality Principles*, 60 ALA. L. REV. 1133, 1154 (2009) (explaining that “measures” vary depending on context).

59. See Frances Raday, *Article Four*, in THE UN CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN 123, 125 (Marsha Freeman, Christine Chinkin & Beate Rudolf eds., Oxford Univ. Press, 2012); see also Mona Lena Krook, *Gender and Elections: Temporary Special Measures Beyond Quotas*, Conflict Prevention and Peace Forum, CPPF Working Papers on Women in Politics: No. 4, 2 (explaining temporary special

continuance of the status quo will not achieve true equality and provides a solution to move the process forward.

In addition, CEDAW encourages State Parties to draft legislation for their own country. On issues that are still considered controversial in the United States, like abortion, CEDAW allows a state-by-state approach to determine how to address such issues.⁶⁰ Nearly all articles in CEDAW have some type of language that permit the State Party to develop its own approaches to the vast problems facing women.⁶¹ It does this while simultaneously holding these states answerable and maintaining a watchful eye.⁶²

II. GERMANY'S IMPLEMENTATION OF CEDAW

Part II of this Note addresses how Germany implements CEDAW through numerous pieces of legislation to help eliminate discrimination against women. In particular, Section II.A explores German Chancellor Angela Merkel's position on women's rights and how it fits in the broader context of contemporary German political and social culture. In addition, Section II.B lays out German legislation that complies with CEDAW and CEDAW's subsequent recommendations for Germany. Section III.C additionally provides a case study demonstrating how Germany's social and political/cultural environment has more of a substantive effect on Germany's implementation of CEDAW than the views of its head of state, Chancellor Merkel.

Germany has implemented CEDAW to varying degrees of success. Under Chancellor Angela Merkel, a conservative leader heads the country's government.⁶³ Chancellor Merkel's personal beliefs or commitment to women's rights does not guide the path of

measures refers to "positive action, preferential treatment or quota systems" in order to advance women's integration into economic, political, and employment spheres).

60. See generally CEDAW, *supra* note 23; see also Koh, *supra* note 47, at 272 (stating that CEDAW has no provision that mandates abortion or forces a country to promote a right to abortion); see also *supra* Part IV.B.3.

61. See CEDAW, *supra* note 23 (examples of some of this language are terms like states will take "appropriate measures"); see Janet Benshoof, *U.S. Ratification of CEDAW: An Opportunity to Radically Reframe the Right to Equality Accorded Women Under the US Constitution*, 35 N.Y.U. REV. L. & SOC. CHANGE 103, 123 (2011) (explaining CEDAW requires states to take measures to address systemic discrimination and real discriminatory laws and noting the Committee made the scope of state duties broad).

62. See CEDAW, *supra* note 23, art. 18.

63. See *infra* Section II.A.

Germany's commitment to women's rights and CEDAW, but rather the culture of Germany taken as a whole showcases the importance of achieving equality between men and women.⁶⁴

A. Chancellor Angela Merkel and Women's Rights in Germany

Angela Merkel was elected Chancellor of Germany in 2005.⁶⁵ Upon election, Merkel had been the leader of the Christian Democratic Union ("CDU"), the leading conservative movement in Germany since 2000.⁶⁶ While the center-right CDU holds conservative social values, such as the denial of full equality for LGBTQ individuals, the CDU simultaneously believes in European integration and NATO, as well as a social market economy, combining both free market policies with welfare state social legislation.⁶⁷ However, Chancellor Merkel is not known for her vocal commitment to women's rights. In 2013, she went on record and declared that she did not consider herself a feminist.⁶⁸

64. See *infra* Part II.

65. Mick Kreyer, et al., *Angela Merkel to Run for 4th term as Chancellor, politician says*, CNN (Nov. 16, 2016) <http://www.cnn.com/2016/11/15/europe/germany-merkel-fourth-term/> (Merkel was elected in 2005); see also Karl Vick, *Chancellor of the Free World*, TIME, <http://time.com/time-person-of-the-year-2015-angela-merkel/>.

66. See generally Vick, *supra* note 65; Rick Noack, *How Angela Merkel, a conservative, became the leader of the free world*, WASHINGTON POST (Nov. 16, 2016) https://www.washingtonpost.com/news/worldviews/wp/2016/11/21/how-angela-merkel-a-conservative-became-the-leader-of-the-liberal-free-world/?utm_term=.3990964cc696 (noting Merkel was elected head of the conservative Christian Democratic Party in 2000).

67. See Carla Bleiker, *CDU Reconsiders Stance on Gay Marriage*, DW (Apr. 3, 2013), <http://www.dw.com/en/cdu-reconsiders-stance-on-gay-marriage/a-16642949> (explaining the divide within the party about gay rights and the CDU's appearance as the people's party in its conservative and traditional values); see also Expatica, *The Main Political Parties in Germany*, http://www.expatica.com/de/about/The-main-political-parties-in-Germany_107953.html (stating the Christian Democratic Union is Germany's main conservative party); see also David P. Conradt, *Christian Democratic Union (CDU)*, ENCYCLOPAEDIA BRITANNICA (Dec. 16, 2015), <https://www.britannica.com/topic/Christian-Democratic-Union-political-party-Germany> (explaining the make-up of the CDU as Germany's center-right party); see also Vick, *supra* note 65 (Christian Democrats are center-right, Catholic, culturally conservative party).

68. See Melissa Eddy, *Merkel Concedes on Quotas for Women*, N.Y. TIMES (Apr. 18, 2013), <http://www.nytimes.com/2013/04/19/business/global/merkel-concedes-on-quotas-for-women.html> (noting that Merkel has never "overtly campaigned" for equality); see also Ulrike Helweth, *Merkel's Failure on Gender Equality*, THE GUARDIAN (Sept. 22, 2009), <https://www.theguardian.com/commentisfree/2009/sep/22/angela-merkel-gender-equality> (claiming that women friendly policies being touted in Germany were started by former governments and did not occur through Merkel's initiative.); see also Peter Mueller & Merlind Theile, *Merkel's Passive Gender Equality Policy Could Backfire*, SPEIGEL ONLINE (Nov. 21,

Although Merkel eschews the feminist label, some of her more recent actions indicate that she does indeed support women's advancement in the workplace. For example, when addressing the 2015 G7 Summit—the informal bloc of industrialized democracies that meet to discuss global issues—Merkel specifically addressed the need to provide women with possibilities to enter the labor market as a way of establishing their independence.⁶⁹ In addition, women fill nearly one third of Chancellor Merkel's cabinet.⁷⁰ Regardless of her cautious feminist actions, Merkel did not present herself to Germany as a Chancellor with an explicitly feminist agenda.⁷¹

Historically, Germany has taken steps to show its commitment to equality between sexes. A 1994 amendment to the German Constitution indicated Germany's commitment to equality between men and women.⁷² Legislators added a new clause to the German Constitution, declaring that, “men and women shall have equal rights . . . [the] state shall promote the actual implementation of equal rights for women and men and take steps to eliminate disadvantages that

2012), <http://www.spiegel.de/international/germany/passive-gender-equality-policy-could-backfire-for-angela-merkel-a-868343.html> (addressing Merkel's approval of a controversial childcare bill pushed back the older, male politicians in her center-right coalition, her resistance to implement a gender quota proposed by the European Commission, and her failure to further female retirees cause and the defiance of women in her party from Merkel's failure to engage these women's rights struggles); see also Sophy Ridge, *Angela Merkel Is Finally Having Her Feminist Moment*, TELEGRAPH (June 4, 2015), <http://www.telegraph.co.uk/women/womens-politics/11651033/Angela-Merkel-Germanys-Chancellor-is-finally-having-a-feminist-moment.html> (quoting Angela Merkel, “a feminist, no.... Real feminists would be offended if I described myself as one”).

69. See Zachary Laub & James McBride, *The Group of Seven (G7)*, THE COUNCIL ON FOREIGN RELATIONS (June 2, 2015) <http://www.cfr.org/international-organizations-and-alliances/group-seven-g7/p32957> (explaining what the G7 Summit is); Angela Merkel, *Why the G7 Summit Must Go Beyond Crisis Diplomacy*, THE GLOBE AND MAIL (June 2, 2015), <http://www.theglobeandmail.com/opinion/why-the-g7-summit-must-go-beyond-crisis-diplomacy/article24751260/>.

70. See Eddy, *supra* note 68 (noting that Merkel has never “overtly campaigned” for equality); Patrick Donahue, *German Chancellor Merkel's Third-Term Cabinet: List of Ministers*, BLOOMBERG (Dec. 15, 2013) <https://www.bloomberg.com/news/articles/2013-12-15/merkel-s-third-term-cabinet-social-democratic-party-ministers> (listing that five out of fifteen cabinet members are women).

71. See *Merkel and the Female Question*, DW (Sept. 1, 2005), <http://www.dw.com/en/merkel-and-the-female-question/a-1697967> (explaining during her first run for Chancellor, feminists were unconvinced that Merkel would put women's issues at the center of her reforms); see also *supra* note 68 and accompanying text.

72. See *Act to Amend the Basic Law*, INTERNATIONAL LABOUR ORGANIZATION, http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=39145.

now exist.”⁷³ This sought to rectify past policies that encouraged women to remain in the domestic sphere.⁷⁴ Because women’s rights were historically viewed through this maternal framework, Germany permitted unequal pay between genders and separation of men and women in the family.⁷⁵ As Germany ceased to understand women’s rights solely as a maternal issue, the country began to implement affirmative action programs to further equality between men and women, as well as have particular political parties introduction of quotas for female representation in their party.⁷⁶ For example, the CDU requires at least one third of its electoral lists and party officials to be women.⁷⁷

In addition, religion is not a driving force in Germany the way it is in other countries.⁷⁸ The German Constitution states explicitly “there shall be no state church.”⁷⁹ Religion is a political player in Germany, but it does not influence politics in the same way as it had

73. Gesetz zur Änderung des Grundgesetzes [Law Amending Basic Law], Oct. 27, 1994, BGBl. III at 2 (Ger.), translation at http://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#p0024 [hereinafter German Constitution].

74. See generally, Stephan Zivec, *Neo-Liberal vs. Socialist Fertility Policies: The German Case*, THE CENTER FOR EUROPEAN STUDIES – IDC HERZILIYA (Mar. 3, 2013), http://www.academia.edu/4221381/German_Pronatalist_Policies (outlining the shift of fertility policies in Germany); see also Aili Mari Tripp, *Creating Collective Capabilities: Women, Agency and the Politics of Representation*, 19 COLUM. J. GENDER & L. 219, 236 (2010) (explaining that up until the 1970s women’s roles in society were framed as mothers, which in turn seem to permit there to be inequality between men and women).

75. See Tripp, *supra* note 74, at 236; see also Elizabeth Sepper, *Confronting the “Sacred and Unchangeable”: The Obligation to Modify Cultural Patterns Under the women’s Discrimination Treaty*, 30 U. PA. J. INT’L. L. 585, 622-23 (2008) (noting that women were expected to be in charge of the family, which negatively affected women’s rights).

76. See Tripp, *supra* note 74, at 235-36 (2010) (stating that Germany, like the rest of Europe saw men as the primary breadwinners and motherhood as a service to the state and gave women a different set of rights); see also Sepper, *supra* note 75, at 623 (encouraging Germany by the Committee to implement policies and programs that accelerate change to stereotypical attitudes).

77. See *Global Database of Quotas for women: Germany*, QUOTA PROJECT, <http://www.quotaproject.org/country/germany#sources>; see also Dr. Elisabeth Botsch, *The Policy on Gender Equality in Germany*, EUROPEAN PARLIAMENT, 13 (Apr. 2015), [http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/510025/IPOL_IDA\(2015\)510025_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/510025/IPOL_IDA(2015)510025_EN.pdf) (stating many political parties in Germany have adopted gender quotas to increase the participation of women).

78. See Erasmus, *German Politicians are Both More and Less Religious than British Ones*, THE ECONOMIST (Jan. 7, 2016), <http://www.economist.com/blogs/erasmus/2016/01/germany-britain-and-religion> (stating churches still express opinions about social issues like abortion, but these statements are not as influential as they once were).

79. German Constitution, *supra* note 73, art. 137.

in the past.⁸⁰ The lack of religious dogma as a foundation in German politics dispels of many issues other countries deal with, like restricted abortion access or keeping women subservient to men.⁸¹ CEDAW is implemented differently when there is no religious opposition to major articles in the treaty.⁸²

Germany, as a country, is committed to women's rights both domestically and internationally.⁸³ The legislation passed shows Germany is making a good-faith effort to improve the lives of half of the population.⁸⁴ As shown below, Germany and CEDAW have similar objectives in pursuing equality for women.

B. Germany's Legislation in Compliance With CEDAW

Germany ratified CEDAW on July 10, 1985.⁸⁵ It also signed the Optional Protocol to CEDAW on December 10, 1999 and ratified it on January 15, 2002.⁸⁶ Germany accepted the inquiry procedures under the Optional Protocol to CEDAW on January 15, 2002.⁸⁷

Pursuant to Article 18 of CEDAW, Germany submits reports on what actions it has taken to further women's rights. These reports

80. See Erasmus, *supra* note 78 (stating churches still express opinions about social issues but are less influential).

81. See *infra* Section III.B.

82. See *infra* Section II.B and Section II.C, *cf.* Section III.B and Section III.C (Germany and Chile implement CEDAW differently, which partially can be explained by the influence of religion on a country); see also Rolanda Oostland, *The Principle of Equality, in THE WOMEN'S CONVENTION TURNED 30: ACHIEVEMENTS, SETBACKS, AND PROSPECTS*, 89 (noting that religion and culture can seriously impair women's equal rights).

83. See *Germany's Commitment to Women's Rights*, FEDERAL FOREIGN OFFICE (last updated June 3, 2014) http://www.auswaertiges-amt.de/EN/Aussenpolitik/Menschenrechte/Frauenrechte/MR-Frauen_node.html (showcasing the many different equal rights projects Germany is involved in, as well as United Nations treaties Germany is a party to); see generally UN Committee on the Elimination of Discrimination Against Women, *Consideration of reports submitted by States parties under article 18 of the Convention: Combined Seventh and Eighth Periodic Reports of States Parties due in 2014: Germany*, CEDAW/C/DEU/7-8 (Oct. 21, 2015) [hereinafter 2015 Germany Report].

84. See *infra* Section II.B.

85. United Nations Human Rights site provides information on the ratification of international Human Rights treaties, reporting cycles and documents related to reporting cycles found at the following link: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=DEU&Lang=EN.

86. *Reporting Status for Germany*, TREATY BODY COUNTRIES, http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=DEU&Lang=EN.

87. See *id.* The inquiry procedures of CEDAW gives the Committee power to open an inquiry into a country that the Committee believes has engaged in systemic violations of women's rights; see also Isa, *supra* note 14, at 316.

provide insight into legislation Germany is passing to comply with CEDAW and its goals.⁸⁸ In its Seventh and Eighth Periodic Reports Germany indicated a number of major pieces of legislation it passed to protect women and further their standing in German society.⁸⁹ Each report builds on the work done by the previous one.⁹⁰

In 2009, the Committee commended Germany on its effort to promote CEDAW.⁹¹ For example, Germany passed the General Equal Treatment Act (“AGG”) in 2006, which is aimed at the prevention and elimination of many forms of discrimination, and provides new definitions for discrimination, harassment and sexual harassment.⁹² This is similar to Article 2 of CEDAW. The AGG deals with many types of discrimination, like the unequal pay gap between men and women.⁹³ The AGG also created the Federal Anti-Discrimination Agency (“FADA”).⁹⁴ The FADA helps all individuals enforce their rights to non-discrimination, and can provide legal advice and request information on alleged discrimination cases in both the private and public sectors.⁹⁵

In its 2009 Concluding Observations, the Committee also recommended ways to improve the AGG. The AGG is a useful piece of legislation to eliminate discrimination in the workplace with a wide

88. See CEDAW, *supra* note 23, art. 18 (stating that a State Party provides a report on its legislative, judicial, administrative and other measures that pursue the goals of CEDAW.)

89. See UN Committee on the Elimination of Discrimination Against Women, *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Germany*, CEDAW/C/DEU/CO/6 (Feb. 10, 2009) [hereinafter 2009 Concluding Observations].

90. At the time of this writing, Germany has submitted its Seventh and Eighth Periodic Reports on October 21, 2015, but the concluding observations of the Committee have not yet been published. For the purposes of this Note, I will look at the 2009 Concluding Observations of Germany’s Sixth Report to see the recommendations made by the Committee and use the 2015 Seventh and Eight Periodic Report to see how Germany subsequently implemented changes to their laws and culture. See 2009 Concluding Observations, *supra* note 89 (drawing references to past reports and recommendations of the Committee and how Germany has built upon those suggestions).

91. See 2009 Concluding Observations, *supra* note 89, at 1.

92. See 2009 Concluding Observations, *supra* note 89, at 2; see also Allgemeine Gleichbehandlungsgesetz [AGG][Act Implementing European Directives Putting into Effect the Principle of Equal Treatment], Aug. 14, 2006, at 2-3 (Ger.) [hereinafter AGG] (defining discrimination in the AGG in both direct and indirect discrimination terms).

93. See 2015 Germany Report, *supra* note 83, at 21 (reporting that wage discrimination is prohibited under the AGG and business with more than 500 employees must include statements on their actions for women and equal pay in their annual reports).

94. See AGG, *supra* note 92, Part 6, § 25.

95. See 2009 Concluding Observations, *supra* note 89, at 4; see also AGG, *supra* note 92, Part 6, § 27.

scope that goes beyond labor law. However, the AGG does not address domestic, or private, discrimination.⁹⁶ In addition, the Committee encouraged Germany to amend the AGG in order to reverse the burden of proof necessary in these cases in order to “ease the enforcement of women’s rights to equality.”⁹⁷ The current burden of proof requires one party to show facts where discrimination can be presumed.⁹⁸ After these facts have been shown, the burden shifts to the other party to prove there has been no discrimination.⁹⁹

In addition, the Committee addressed its disappointment in the scope of the legal powers of FADA. FADA is unable to file anti-discrimination suits and does not have the authority to pursue inquiries into potential discrimination or sanction public or private actors if pertinent information to an accusation of discrimination is withheld.¹⁰⁰ The Committee recommended to Germany that it further enhance the power of the FADA and provide it with the necessary resources to operate effectively. The Committee specifically requested Germany consider giving the agency investigative and sanction powers.¹⁰¹ The Committee also questioned the FADA’s head appointment procedure.¹⁰² In this instance, the Committee is delving into the details of German policy and action, but in no way does Germany actually have to follow this advice.

Germany addressed the Committee’s concerns regarding the AGG.¹⁰³ Germany provided its reasoning for only applying the AGG to the workplace, and not beyond.¹⁰⁴ Germany stated that the AGG serves to implement four European Equal Treatment Directives into German law, which purposefully excluded privacy and domestic life, and therefore unnecessary to amend the AGG.¹⁰⁵ In the Committee’s

96. See 2009 Concluding Observations, *supra* note 89, ¶ 18, at 5.

97. See 2009 Concluding Observations, *supra* note 89, ¶ 18, at 5.

98. See AGG, *supra* note 92, Part 4, § 22.

99. See AGG, *supra* note 92, Part 4, § 22.

100. See 2009 Concluding Observations, *supra* note 89, ¶ 19, at 5.

101. See 2009 Concluding Observations, *supra* note 89, ¶ 19, at 5.

102. See 2009 Concluding Observations, *supra* note 89, ¶ 20, at 5.

103. See 2015 Germany Report, *supra* note 83, at 2-3 (addressing the Committee’s concerns laid out in its Concluding Observations).

104. See 2015 Germany Report, *supra* note 83, at 2-3.

105. See *id*; see also Federal Anti-Discrimination Agency, *The Directives on Equal Treatment of the European Union*, at 1, http://www.antidiskriminierungsstelle.de/EN/TheAct/EU-Directive/eu-directive_node.html (listing out the four EU directives Germany follows in particular: the Council Directive 2000/43/EC, which implements the principle of equal treatment between people regardless of race or ethnicity; Council Directive 2000/78/EC, which establishes a general framework for equal treatment in employment; Directive 2002/73/EC of

list of issues related to the Seventh and Eighth Periodic Reports, the Committee again asks Germany to provide information on what measures are being taken to achieve substantive gender equality in connection with the areas covered by CEDAW.¹⁰⁶ However, contrary to the desire of the Committee, Germany made no mention of amending the law to comply with Committee requests.¹⁰⁷

Germany also failed to address the Committee's concerns pertaining to work done by the FADA. What Germany did address was the Committee's concerns about the FADA, notably the FADA's lack of investigative and sanction powers as well as adequate resources allocated to achieving its mandate to promote equality.¹⁰⁸ However, Germany failed to provide what, if any, changes the country was going to make to comply with the Committee's recommendations.¹⁰⁹ Instead, Germany reiterated the FADA's statutory power to provide information, resources, and research conducted in relation to gender discrimination.¹¹⁰ Indeed, the 2015 Report rebuffed the Committee's resource question by stating that the agency has "sufficient human and financial resources" and stating that Germany stated they would not change the way the head of the Agency is selected.¹¹¹

The Committee addressed the status of family life for women and men in Germany. One of the most important components of CEDAW is its desire to push against the traditional familial roles and

the European Parliament and Council amending a prior directive that dealt with the equal treatment of men and women related access to employment, vocational training and promotion and working conditions; and Council Directive 2004/113/EC which implements the principle of equal treatment between men and women in relation to access to and supply of goods and services); *see also* European Parliament, *The Policy on Gender Equality in Germany* (Apr. 2015) at 8 (noting the AGG implements the four European directives).

106. *See* UN Committee on the Elimination of Discrimination Against Women, *List of Issues in Relation to the Combined Seventh and Eighth Periodic Reports of Germany*, CEDAW/C/DEU/Q/7-8 (July 29, 2016).

107. *See generally*, 2015 Germany Report, *supra* note 83 (in the section discussing the AGG, Germany does not state how it would amend the Act pursuant to the recommendations of the Committee).

108. *See* 2009 Concluding Observations, *supra* note 89, at 4; *see also* 2015 Germany Report, *supra* note 83, at 3-4.

109. *See* 2015 Germany Report, *supra* note 83, at 8-12. In fact, in the Committee's subsequent list of issues in relation to the combined Seventh and Eighth Periodic Reports of Germany, it again requested the AGG's protection of women in the private and domestic spheres.

110. *See* 2015 Germany Report, *supra* note 83, at 8-11.

111. *See id.* at 12.

promote a more equal work-life balance between men and women.¹¹² The Committee commended Germany's passage of the Child Care Expansion Act in 2005, which asks the Länder (the German states) and communal governments to make childcare more available as compared to the rest of Western Europe.¹¹³ The Committee drew attention to lack of adequate state-run childcare facilities.¹¹⁴ The Committee urged the German government to improve these facilities.¹¹⁵ By providing better child care facilities, women would be better able to re-enter the workforce.¹¹⁶ In its 2015 Germany Report, Germany provided additional funding towards expanding childcare facilities.¹¹⁷

Another way Germany has complied with CEDAW's goal of upending traditional familial roles is showcased in its Federal Act on Parental Allowance and Parental Leave in 2006 that enabled fathers and mothers to take a maximum of fourteen months of time-off from work, divided how they choose.¹¹⁸ Even though Germany provides fathers with paternal leave, men, often due to cultural pressure, routinely fail to take the leave from work, with less than ten percent at the time doing so.¹¹⁹ So, while it is positive that Germany offers the parental leave, it is necessary to provide fathers with incentives to actually take the leave.¹²⁰

The status of women's labor and employment issues are also a major issue addressed by the Committee. The Committee remained concerned that women were not fully integrated into the labor market, often holding part time, fixed term, and low paying jobs.¹²¹ In fact,

112. See CEDAW, *supra* note 23, at pmb., art. 5 (“States Parties shall take all appropriate measures... [t]o 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[.]”); see also CEDAW, *supra* note 23, at art. 11 (“State Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment . . . in particular . . . [t]o encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life”).

113. See 2009 Concluding Observations, *supra* note 89, at 7.

114. See *id.* at 29.

115. See *id.* at 30.

116. See *id.* at 30.

117. See 2015 Germany Report, *supra* note 83, at 44.

118. See *id.* at 38.

119. See 2009 Concluding Observations, *supra* note 89, at 27, 37.

120. See *id.* at 30.

121. See *id.* at 37.

very few women were promoted to high-level positions.¹²² These issues directly connect with the need of the State Party to balance family obligations between men and women.¹²³ Germany seems reluctant to adopt temporary special measures that are meant to “accelerat[e] achievement of substantive gender equality.”¹²⁴ For example, the Committee recommended implementing timetables and quotas to achieve its goals.¹²⁵ In its refusal to adopt CEDAW’S special temporary measures, Germany draws a comparison of Article 4 of CEDAW to its Basic law that states “[t]he state shall promote the actual implementation of equal rights for women and men and take steps to eliminate disadvantages that now exist.”¹²⁶ Germany also directly points to the fact that State Parties are granted discretion by the Convention to implement methods they choose to promote gender equality.¹²⁷ Again, it is clear the CEDAW cannot compel any State Party to abide by its recommendations.

The Committee’s recommendations to better integrate women into the workforce to achieve de facto gender equality were duly recognized by Germany.¹²⁸ Germany pointed to various pieces of legislation passed that focus on gender equality in the workforce.¹²⁹ For example, Germany amended its law on employment promotion under the Third Book of the Social Code (“SGBIII”).¹³⁰ Specifically, the Act on the Reorientation of Labor Market Policy establishes gender equality as a principle applied to employment promotion within the legal sphere of the SGBIII.¹³¹ Germany also acknowledged the need to engage both men and women in labor and passed numerous pieces of legislation dealing with this concern.¹³² Showing its commitment to representing both genders in leadership positions, Germany passed the Act on the Equal Participation of Women and

122. *See id.*

123. *See id.* at 38.

124. *Id.* at 26.

125. *Id.*

126. *See* German Constitution, *supra* note 73, art. 3; *see also* 2015 Germany Report, *supra* note 83, at 20-21.

127. *See* 2015 Germany Report, *supra* note 83, at 21.

128. *See id.* at 71-72.

129. *See id.* at 73.

130. *See id.*

131. *See id.*

132. *See supra* notes 112-117 and accompanying text (indicating some of the legislation passed by Germany relating to family life).

Men in Leadership Positions in the Private and Public Sector.¹³³ Germany's commitment to representing both genders in leadership positions in the public and private sphere can be an effective tool to achieve the type of de facto equality with which CEDAW is concerned.¹³⁴

Although Germany did not employ every recommendation provided by the Committee, there are many positive aspects of this type of dialogue. The Committee provides a diagnosis on a country's progression towards gender equality. Ultimately, Germany passed several important pieces of legislation regarding women's rights, but the Committee expounded on the way that Germany could improve and work toward its goals.¹³⁵

Chancellor Merkel's personal position on women's rights certainly plays a role in the type of legislation passed in Germany, and subsequently how that legislation complies with CEDAW.¹³⁶ However, the overall culture climate of Germany plays a significant role in the position of women in society.¹³⁷ As will be demonstrated in the next Part of this Note, Chile has the inverse situation of Germany. The Chilean President, Michelle Bachelet is extremely vocal in her support of women's rights, but Chile's culture leads to a more traditional position for women in society.¹³⁸

133. This law was adopted by the German Bundestag on March 6, 2015 and entered into force on May 1, 2015. *See* 2015 Germany Report, *supra* note 83, at 81.

134. *See* Wendy Zeldin, *Germany: Gender Quotas for Large Companies and for Federal Bodies*, THE LAW LIBRARY OF CONGRESS: GLOBAL LEGAL MONITOR (March 17, 2015), <http://www.loc.gov/law/foreign-news/article/germany-gender-quotas-for-large-companies-and-for-federal-bodies/> (explaining the new legislation requires more than 100 companies to set aside at least thirty percent of new board seats for women in 2016 and as of 2018 the proportion of women must be fifty percent); *id.* (stating a recent survey noted women are "grossly under-represented in business life" in Germany); *see also* Carolina Copley, *German Parliament Approves Legal Quotas for Women on Company Boards*, REUTERS (March 6, 2015), <http://www.reuters.com/article/us-germany-women-quotas-idUSKBN0M214S20150306> (noting Manuela Schwesig, the Family Affairs Minister, called the legislation a "historic step" for equal rights).

135. *See, e.g.*, AGG, *supra* note 92, Federal Act on Parental Allowance and Parental Leave, and the Child Day Care Expansion Act; *see also* 2009 Concluding Observations, *supra* note 89.

136. *See supra* Section II.A.

137. *See supra* Section II.A; *see also* Javier Couso, *Trying Democracy in the Shadow of An Authoritarian Legality: Chile's Transition to Democracy and Pinochet's Constitution of 1980*, 29 WIS. INT'L L.J. 393 (2011).

138. *See infra* Section III.A and Section III.B; Couso, *supra* note 137; *see also* Michelle Bachelet, *Women's Rights as Human Rights*, UNITED NATIONS: ACHIEVING GENDER

III. CHILE'S IMPLEMENTATION OF CEDAW

Section III.A of this Part will look at President Michelle Bachelet's public stance on women's rights and Chile's relationship to women's rights as they fit into the wider context of Chilean political and social cultures. Section III.B describes how Chile implements CEDAW in the context of its culture. Taken together, these two Sections demonstrate that the personal beliefs of a leader do not translate into action of the country, but rather a country's cultural climate influences the extent to which a treaty like CEDAW will be implemented.

A. President Bachelet and Women's Rights in Chile

In 2006, Michelle Bachelet was elected the first female President of Chile and served her first term until 2010.¹³⁹ She was later re-elected to the presidency in 2013.¹⁴⁰ During her time out of office, President Bachelet became the first Director of the United Nations Entity for Gender Equality and the Empowerment of Women ("UN Women"), which advocates for women and girls' rights internationally.¹⁴¹ Indeed, President Bachelet has a long record of support for gender equality. She has gone on record urging the international community to ensure equal conditions for women and men.¹⁴² She also placed a number of women in positions of power as the heads of government and public agencies.¹⁴³ In addition, President

EQUALITY, WOMEN'S EMPOWERMENT AND STRENGTHENING DEVELOPMENT COOPERATION, 16 (2010).

139. See Biography of Michelle Bachelet, <http://michellebachelet.cl/pdf/biography.pdf>; Oliver Balch, *The Bachelet Factor: The Cultural Legacy of Chile's First Female President*, THE GUARDIAN (Dec. 13, 2009), <https://www.theguardian.com/world/2009/dec/13/michelle-bachelet-chile-president-legacy>.

140. See Biography of Michelle Bachelet, *supra* note 139; see also Ex-President Michelle Bachelet Wins Chile Poll Run-off, BBC (Dec. 16, 2013) <http://www.bbc.com/news/world-latin-america-25387340>

141. See Biography of Michelle Bachelet, *supra* note 139; see also Bachelet, *supra* note 138.

142. See Bachelet, *supra* note 138, at 16 (stating the international community should follow the principles defined in Beijing and reiterate that women's rights are human rights); see also Elisabeth Braw, *UN Women Head Michelle Bachelet: 'Gender Equality is Good Business'*, THE WORLD POST, http://www.huffingtonpost.com/elisabeth-braw/michelle-bachelet-gender-equality_b_1605541.html (interviewing Michelle Bachelet, where in response to whether the UN should promote women's rights President Bachelet noted that UN women was formed with a unanimous vote in favor of its creation by the UN.)

143. See Bachelet, *supra* note 138, at 17; see also Day Robins, *Message to President Bachelet: Chilean Women are Still Left Behind*, COUNCIL ON HEMISPHERIC AFFAIRS (June 17,

Bachelet focused her first term as President on establishing salary equality between men and women, broadening birth control regulations, and legalizing emergency contraception, as well as reforming the pension system, which excluded women previously.¹⁴⁴ Unlike Chancellor Merkel, President Bachelet also publicly supported gender quotas.¹⁴⁵ President Bachelet is a vocal supporter of women's rights.¹⁴⁶

While President Bachelet may be a vocal advocate for pursuing the elimination of discrimination against women, Chile as a whole has not been as progressive. Many problems in Chile today stem from the anti-democratic structures that were put in place during Chile's period under a military dictatorship.¹⁴⁷ Chile was under the rule of a military dictatorship from 1973 until 1990.¹⁴⁸ When the dictatorship fell in 1990, Chile made several steps to modernize, and was largely successful in doing so.¹⁴⁹ In fact, the Chilean Constitution was ratified

2015), <http://www.coha.org/message-to-president-bachelet-chilean-women-are-still-left-behind/> (noting improvements have been made for female representation, where women hold eight out of twenty three cabinet posts, and occupy powerful positions such as ministry of Justice).

144. See Bachelet, *supra* note 138, at 18 (stating the international community should follow the principles defined in Beijing and reiterate that women's rights are human rights); see also Braw, *supra* note 142 (noting the importance of gender equality for economic reasons).

145. See Bachelet, *supra* note 138, at 19; Braw, *supra* note 142 (praising the countries that have adopted gender quotas for company board members).

146. See generally Braw, *supra* note 142; Bachelet, *supra* note 138, at 16 (stating the international community should follow the principles defined in Beijing and reiterate that women's rights are human rights).

147. See Couso, *supra* note 137, at 396-97 (explaining that the Chilean Constitution was designed by a military regime intent on protecting its conservative revolution, which was cemented in a "deep distrust for democracy"); *id.* at 399 (further explaining despite attempts to get rid of openly anti-democratic elements it is not a democratic constitution); see also Marcela Ríos Tobar, *Chilean Feminism and Social Democracy from the Democratic Transition to Bachelet*, NACLA, <https://nacla.org/article/chilean-feminism-and-social-democracy-democratic-transition-bachelet>; Emily Achtenberg, *Politics in Chile: Confronting the Enduring Legacy of Dictatorship*, THE INDEPENDENT (Feb. 25, 2014), <https://independent.org/2014/02/25/politics-chile-confronting-enduring-legacy-dictatorship-0> (claiming most of Chile's problem stem from anti-democratic structures established by the dictatorship of Augusto Pinochet and left untouched by subsequent democratic governments).

148. See Britannica Encyclopaedia, *The military dictatorship, from 1973*, <https://www.britannica.com/place/Chile/The-military-dictatorship-from-1973>; see also *Timeline of Augusto Pinochet's Dictatorship*, THE TELEGRAPH (June 1, 2011), <http://www.telegraph.co.uk/news/worldnews/southamerica/chile/8549199/Timeline-of-Augusto-Pinochets-dictatorship.html> (outlining the rise and fall of the Pinochet regime).

149. See Hamilton, *supra* note 43, at 111 (noting Chile is viewed as a model for political stability in its return to democracy); see generally Michelle Goodwin & Allison M. Whelan,

during the military dictatorship, although it has been amended many times since its passage, creating a seemingly patched up document.¹⁵⁰ In 2015, President Bachelet launched the process to amend Chile's constitution in order to promote democracy.¹⁵¹ If President Bachelet is successful in overhauling the current Chilean constitution with one that better represents democratic ideals, Chile will most likely be able to further its modernization efforts and commitment to gender equality.

One of the biggest remaining hurdles to women's equality in Chile is the Catholic Church.¹⁵² The Catholic Church's influence has stalled the liberalization of women's rights in many ways, especially in relation to women and familial relationships.¹⁵³ For example, Chile's on-the-record abortion laws prohibit abortion for any reason, including in cases of rape, incest, or to save a woman's life.¹⁵⁴

The Challenge of Equity in the Legal Profession: An International and Comparative Perspective: Reproduction and the Rule of Law in Latin America, 83 FORDHAM L. REV. 2577 (2015).

150. See Alisa Solomon, *Purging the Legacy of Dictatorship From Chile's Constitution*, THE NATION (Jan. 21, 2014), <https://www.thenation.com/article/purging-legacy-dictatorship-chiles-constitution/> (stating the Chilean Constitution has been "patched up" with more than 200 amendments.); see also Andrea Kohen, *What is Behind Bachelet's Push to Reform the Chilean Constitution?*, PANAM POST (Apr. 22, 2016), <https://panampost.com/editor/2016/04/22/chilean-constitution-why-bachelet/> (stating the Administration's position that it wants to get rid of the Constitution that was created by the military dictator and introduce reforms to the model that has created inequality and social justice).

151. See *Chile New Constitution: Bachelet Launches Process*, BBC (Oct. 14, 2015), <http://www.bbc.com/news/world-latin-america-34527165> (stating the Chilean constitution has its origins in dictatorship and needs to be updated to promote democracy); Nicolás Ríos, *Chile's President Bachelet's New Constitution Plans Face Obstacles*, VICE (Oct 16, 2015), <https://news.vice.com/article/chiles-president-bachelets-new-constitution-plans-face-obstacles> (explaining the approach Bachelet intends to take in developing a new constitution, first by informing Chileans about the process and a time for public participation, then allowing the legislature to choose between four options on who would decide the constitution's content).

152. See Hamilton, *supra* note 43, at 112; see also Larry Rohter, *Santiago Journal: Yes, Catholics Count. Stand Up*, EVERYBODY, N.Y. TIMES (Apr. 22, 2002), <http://www.nytimes.com/2002/04/22/world/santiago-journal-yes-catholics-count-stand-up-everybody.html> (pointing out that Chile at the "behest of the church" recoiled from social legislation that is routine in other places in Latin America).

153. See Hamilton, *supra* note 43, at 112. See generally Lidia B. Casas, *Women and Reproduction: From Control to Autonomy? The Case of Chile*, 12 AM. U. J. OF GENDER SOC. POL'Y & L. 427 (2004) (noting leaders' hesitations in Chile to resist the will of the Catholic Church).

154. See Chilean Const. Art. 19(1), "[t]he law protects the life of those about to be born"; see also Goodwin & Whelan, *supra* note 149, at 2584; Hamilton, *supra* note 43, at 114 (stating in 1989, abortion became illegal in all forms, including in cases of rape, incest, and medical necessity). However, President Bachelet introduced legislation to decriminalize abortion in the instances of "life endangerment, sexual violence, and fatal fetal impairments."

Conversely, Chile has some forms of protection for birth control access and reproductive health.¹⁵⁵ Unable to sway the Chilean government into liberalizing abortion laws, Chilean women and reproductive rights activists have instead focused their efforts on enacting progressive family planning laws, to varying degrees of success.¹⁵⁶ Women have a right to decide their own method of family planning, access to emergency contraception, and the opportunity to receive information free from bias on family planning methods like birth control.¹⁵⁷

In addition, women in senior government positions often feel the effects of sexism. In a 2012 interview with National Public Radio, a leading public news syndicate in the United States, Laura Albornoz, the Minister of Women's Affairs under President Bachelet, expressed the pressure women in Chile felt to take care of the home while also trying to succeed in Chile's unequal society.¹⁵⁸ Women on opposite ends of the wage spectrum have felt the unequal pay gap, with men sometimes making ten times more than their female counterparts.¹⁵⁹ In addition, laws that are meant to help women overcome inequalities in work may actually work to their disadvantage, as business owners

The draft bill has been advanced by Chile's House and is still waiting on Senate approval. *See* Press Release, Ctr. for Reprod. Rights, Chile's Camara de Diputados Approves Abortion Bill (Mar. 17, 2016), <https://www.reproductiverights.org/press-room/chiles-camara-de-diputados-approves-abortion-bill>.

155. *See* Goodwin & Whelan, *supra* note 149, at 2582; *see also* UN Committee on the Elimination of Discrimination Against Women, *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Chile*, CEDAW/C/CHL/CO/5-6 (Oct. 24, 2012) at 34 [hereinafter 2012 Concluding Observations] (noting the enactment of legislation on sexual and reproductive health).

156. *See generally* 2012 Concluding Observations, *supra* note 155 (acknowledging the most success has come by passing reproductive health laws); Goodwin & Whelan, *supra* note 149, at 2586 (stating that Chile's strict abortion laws have lead women and reproductive rights advocates to refocus their efforts on reproductive health and family planning legislation).

157. *See* Goodwin & Whelan, *supra* note 149, 2588; *see also* *Chile: Reproductive Rights at Risk*, CENTER FOR REPRODUCTIVE RIGHTS (May 2015) (explaining Act No. 20.418 on "Information, Guidance and Assistance on Fertility Regulations" allows the use, sale, and distribution of emergency contraception).

158. Interview by National Public Radio with Laura Albornoz, Chile's former Minister of Women's Affairs, Andrea Betancourt, ComunidadMujer, Ruth Olate, Head of the National Maids Union, and Professor Gonzalo Rojas in Santiago, Chile (Oct. 27, 2012).

159. *See id.* Albornoz discusses how a male friend from college makes ten times the amount she does, even though her position in government she put her in a better position to bargain. Ruth Olate, the head of the National Maids Union expresses the inequality in low-paid informal jobs as well.

limit the number of women they hire.¹⁶⁰ The national conversation often returns to just how can a woman have a career and raise a family in Chile.

While many social forces have limited Bachelet's ability to deliver true gender equality, the Church remains Chile's biggest hurdle in shaping policy and has ultimately influenced Chile's commitment to CEDAW. Additionally, Chile still has not yet ratified the Optional Protocol.¹⁶¹ Chile has signed the Optional Protocol but their legislative body of government failed to ratify it, which is mostly the result of pressure from the Catholic Church.¹⁶² Therefore, CEDAW's practical influence has been limited by its inability to conduct inquiries into accusations of systemic abuse against women as well as from lack of utilization of the Optional Protocol's communications procedures. With the Catholic Church's denouncement of treaties like CEDAW as invasive and potentially trampling Chilean rights, it remains difficult for Chile to fully embrace the goals of CEDAW.¹⁶³

B. Chile's Legislation in Compliance with CEDAW

Chile signed CEDAW on July 17, 1980 and ratified it on December 7, 1989.¹⁶⁴ In addition, the country signed the Optional

160. *See id.* Gonzalo Rojas, a conservative legal historian and professor, describes how businesses will calculate for their businesses how many women in "fertile age" they have working for them.

161. *See* United Nations, *Status of Ratification Interactive Dashboard*, <http://indicators.ohchr.org> (click on Chile in Countries toolbar).

162. *See* Hamilton, *supra* note 43, at 121; *see also* Casas, *supra* note 153, at 428 (explaining the Catholic Church urged Senators in Chile to reject the Optional Protocol); Center for Family and Human Rights Staff, *Chilean Senate Fears for Sovereignty if UN Document is Ratified* (January 25, 2002) (stating the Cardinal of Santiago called the Optional Protocol a form of "cultural colonialism").

163. *See* Hamilton, *supra* note 43, at 122 (stating the Church remains "generally unwilling" to reform laws to change women's status and resists the authority and recommendations of international bodies); *see also* Beatriz Sotomayor, *Brief Historic Overview of the movement for the Defence of Contraception in Chile (2008 to 2009)*, WOMEN'S GLOBAL NETWORK FOR REPRODUCTIVE RIGHTS BLOG (Feb. 15, 2012), <http://archive.wgnrr.org/blog/11/brief-historic-overview-movement-defence-contraception-chile-2008-2009> (explaining from 2001-2009 the religious opposition in Chile tried to ban most methods of contraception).

164. United Nations Human Rights site provides information on the ratification of international Human Rights treaties, reporting cycles and documents related to reporting cycles found. *Reporting Status for Chile*, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER,

Protocol on December 10, 1999, but, as stated above, has yet to ratify it.¹⁶⁵ Chile's ratification of CEDAW makes it bound by Article 18 of the Convention.¹⁶⁶ Chile's most recent report was the Combined Fifth and Sixth periodic reports of States parties in March 2011.¹⁶⁷ In 2006, the Committee made a number of suggestions to Chile on how it can improve and better implement CEDAW.¹⁶⁸

One concern with which the Committee raised issue is the position of women in the labor market. The 2006 Concluding Observations noted that there remains a significant wage gap between men and women.¹⁶⁹ For example, when the 2006 Concluding Observations were published, women in management positions earned on average fifty percent less than men.¹⁷⁰ Furthermore, women had a higher unemployment rate, even though women in the labor force were better educated than men.¹⁷¹ In addition, at the time of the 2006 Concluding Observations, only 39.7 percent of lower income women workers had actual employment contracts, which disadvantaged their social security benefits.¹⁷²

The Committee's concerns with women's positions in the labor market were addressed in various parts of the Fifth and Sixth Periodic Report. Chile provided that in 2009, the Ministry of Labor initiated a bill—which subsequently passed—that put forth the principle of equal

http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=CHL&Lang=EN.

165. *See supra* notes 161-163 and accompanying text outlining why Chile has yet to ratify the Optional Protocol.

166. *See* CEDAW, *supra* note 23, art. 18 (stating that a State Party is obligated to submit periodic reports with the progression through legislative, judicial, administrative, or other measures the country has made to give effect to the provisions of CEDAW.)

167. *See generally* UN Committee on the Elimination of Discrimination Against Women, *Consideration of Reps. Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination Against Women: Combined Fifth and Sixth Periodic Reports of States Parties: Chile*, CEDAW/C/CHI/5-6 (Mar. 17, 2011) [hereinafter 2011 Chile Report].

168. *See generally* UN Committee on the Elimination of Discrimination Against Women, *Concluding Comments of the Committee on the Elimination of Discrimination Against Women: Chile*, CEDAW/CHL/C/CO/4 (Aug. 25, 2006) [hereinafter 2006 Concluding Comments].

169. *See* 2006 Concluding Comments, *supra* note 168, ¶ 11, at 3; *see also* OECD, *Employment Outlook 2016*, OECD Publishing (July 2016) (noting that women in Chile are expected to earn 18.3% less than men).

170. *See* 2006 Concluding Comments, *supra* note 168, ¶ 11, at 3.

171. *Id.*

172. *Id.*

pay for women and men.¹⁷³ Unlike the Committee, which found the wage gap to be about a fifty percent difference in wages between men and women in similar managerial positions, Chile's Ministry of Labor identified a gap of twenty-eight percent for men and women doing the same work.¹⁷⁴ Chile did not provide a source for this information. In 2006, Chile made an amendment to the Labour Code with Act No. 20.123, which prohibits discrimination between male and female workers, whether they are permanent or subcontracted employees.¹⁷⁵ In 2009, Chile passed Act 20.348 which contains many facets that will help eliminate the discrimination against women in terms of equal pay, such as establishing a legal basis for parties to lodge a complaint in violation of the principles of equal pay, incentivizing employers to not make arbitrary differences in employees, and establishing that companies with over 200 employees must incorporate job descriptions and responsibilities in their regulations to provide objective parameters for comparing employees.¹⁷⁶

Chile implemented a number of government programs to better integrate women into the labor market and improve their employment conditions.¹⁷⁷ The National Women's Service ("SERNAM") established the Equal Model Programme, which is meant to specifically address work culture to ensure that men and women are treated equally and all are able to achieve fulfilment both at work and in the home.¹⁷⁸ SERNAM also launched the Good Labour Practices with Gender Equity Programme in order to further encourage women to participate in the work place.¹⁷⁹ The Good Labour Practices with

173. See 2011 Chile Report, *supra* note 167, ¶ 20, at 9 (passing Act No. 20.348).

174. See 2011 Chile Report, *supra* note 167, ¶ 18(j), at 9 (indicating that there is a gap of 28% between wages for men and women who are doing the same work). In response to the wage gap identified by the Ministry of Labor, Chile put forth a bill for equal pay for women and men, which has since passed into law. *See id.*

175. See 2011 Chile Report, *supra* note 167, ¶ 11, at 6 (discussing Act No. 20.123 prohibiting discrimination between male and female workers).

176. See 2011 Chile Report, *supra* note 167, ¶ 94, at 29 (noting that the incentive created is employers can apply for a 10% reduction in fines in violations of Act No. 20.348); *see also* 2011 Chile Report, *supra* note 167, ¶ 94, at 29.

177. See 2011 Chile Report, *supra* note 167, ¶ 91, at 28.

178. The National Women's Service is a public organization that is a part of the Ministry of Planning and cooperation under the president of Chile. SERNAM exists to address issues of gender equality in everyday life. *See* 2011 Chile Report, *supra* note 167, ¶ 12, at 6-7, 28; *see generally* COHA's *Women's Studies Series: SERNAM and the Underrepresentation of Women in Chile*, COHA (May 8, 2008), <http://www.coha.org/chile-coha's-women's-studies-series-sernam-and-the-underrepresentation-of-women-in-chile/> (laying out the role of SERNAM).

179. See 2011 Chile Report, *supra* note 167, ¶ 17, at 7-8.

Gender Equity Programme developed the Code of Good Labour Practices and Non-Discrimination, whose main goal is to “ensure genuine gender equity in the civil service” by trying to eliminate barriers to equality between men and women.¹⁸⁰

SERNAM helped to bring gender equality to the forefront of Chile’s issues to tackle. For example, SERNAM established the Gender Agenda for 2006-2010, a policy instrument that sets out priorities and commitments of Chile to eliminate discrimination of women and promote equality between men and women.¹⁸¹ The Gender Agenda made clear the goals of SERNAM and the commitments that are expected from various other Government departments.¹⁸² The Ministerial Council for Equality Opportunity helps to implement the different programs established by the Chilean government.¹⁸³ The Committee in its 2012 Concluding Observations commended the Committee for its work in improving its institutional framework to eliminate discrimination against women and promote gender equality as showcased by the Gender Agenda and continuous work of SERNAM.¹⁸⁴ The Committee recommended to Chile to enhance coordination between SERNAM and the National Congress in order to develop more successful public programs.¹⁸⁵

The other main focus of the Committee’s recommendations dealt with reproductive health.¹⁸⁶ The Committee turned its attention to abortion and unwanted pregnancies in adolescents, contraception, as well as trafficking and prostitution.¹⁸⁷ It also drew attention to the lack of data to address major issues in order to sufficiently comply with CEDAW.¹⁸⁸ In its Combined Fifth and Sixth Report, Chile

180. See 2011 Chile Report, *supra* note 167, ¶ 93, at 29.

181. See 2011 Chile Report, *supra* note 167, at 7 n.21; see also Gabby De Cicco, *Chilean President Michelle Bachelet’s New Mandate has a Gender Agenda*, AWID WOMEN’S RIGHTS (Aug. 1, 2014), <https://www.awid.org/news-and-analysis/chilean-president-michelle-bachelets-new-mandate-has-gender-agenda> (laying out the challenges with the Gender Agenda).

182. See 2011 Chile Report, *supra* note 167, ¶ 17, at 7 (explaining that SERNAM, in conjunction with the Ministerial Council for Equality Opportunity, focuses solely on achieving equality for men and women).

183. See 2011 Chile Report, *supra* note 167, ¶ 16, at 7.

184. See 2012 Concluding Observations, *supra* note 155, at ¶ 5, at 2.

185. See 2012 Concluding Observations, *supra* note 155, ¶¶ 12-13, at 3.

186. See 2012 Concluding Observations, *supra* note 155, ¶¶ 29(b), 34, at 7-8.

187. See 2012 Concluding Observations, *supra* note 155, ¶¶ 34, 35(d)-(e), at 8-9.

188. See 2012 Concluding Observations, *supra* note 155, ¶ 2, at 1.

answered many of CEDAW's concerns, though not always in the most thorough manner.¹⁸⁹

On the one hand, Chile has one of the most draconian abortion laws, under which abortions are not permitted in any circumstances.¹⁹⁰ On the other hand, Chile passed a number of laws in relation to contraception and access to good health care for women, such as counselling and services regarding birth control, sex education, and free access to emergency contraceptives.¹⁹¹ State accredited schools must include sex education programs "in accordance with their principles and values."¹⁹² Chile is clear that an individual has a right to choose what type of birth control method he or she wants to use in accordance with his or her beliefs.¹⁹³ CEDAW has requested that Chile review its abortion laws to decriminalize abortion and provide adequate access to family planning services and contraceptives, seemingly expressing Chile's laws have room for improvement.¹⁹⁴

Chile has passed some legislation in order to promote joint responsibility in family life between men and women. Chile extended the application of Childcare Act No. 20.399 to include fathers who have custody of children below the age of two to have childcare paid for or provided for free by their employer.¹⁹⁵ Chile also passed Act No. 20.047, which extended post-natal paternity leave to five days.¹⁹⁶

189. See generally, 2011 Chile Report, *supra* note 167.

190. Chile is one of six countries that does not allow abortions under any circumstances. According to Pew Research, ninety-six percent of 196 countries based on 2013 UN data allow women to terminate their pregnancies at least to save their lives. See Angelina E. Theodorou & Aleksandra Sandstorm, *How Abortion is Regulated Around the World*, PEW RES. CTR. (Oct. 6, 2015), <http://www.pewresearch.org/fact-tank/2015/10/06/how-abortion-is-regulated-around-the-world/>. See also Andree Gorman, *The 9 Countries With The Most Draconian Abortion Laws in the World*, BUS. INSIDER (Dec. 15, 2016), <http://www.businessinsider.com/countries-strictest-abortion-laws-2016-12> (listing Chile as one of the countries with the most draconian abortion laws); *supra* note **Error! Bookmark not defined.** and accompanying text (discussing the influence of the Catholic Church on women's rights in health and family matters).

191. See 2011 Chile Report, *supra* note 167, ¶ 121, at 34 (noting that Chile passed Act No. 20.418, which deals with standards on information and services regarding birth control); see *supra* notes 154-156.

192. See 2011 Chile Report, *supra* note 167, ¶ 122, at 34.

193. See 2011 Chile Report, *supra* note 167, ¶ 121, at 34.

194. See 2012 Concluding Observations, *supra* note 155, ¶ 35(d), at 9.

195. See 2011 Chile Report, *supra* note 167, ¶ 55(b), at 18; see also 2015 Human Development Report, UNITED NATIONS DEVELOPMENT PROGRAMME, 123, http://hdr.undp.org/sites/default/files/2015_human_development_report_0.pdf (last visited June 10, 2017) (stating that in Chile paternity leave is compulsory).

196. See 2011 Chile Report, *supra* note 167, ¶ 54(c), at 18.

The CEDAW Committee had recommendations to better establish the balance between men and women in familial life.¹⁹⁷ The Committee did not provide specific examples that Chile could implement, but reiterated that Chile needs to increase its efforts in an attempt to balance family and employment for both men and women.¹⁹⁸ The Committee commended the passage of Act No. 20.545, but still acknowledged the ever-present encouragement of traditional roles for women as mothers and wives.¹⁹⁹

In its 2011 report, Chile does not address the possibilities of implementing special temporary measures to improve the status of women in society, similar to Germany.²⁰⁰ The implementation of temporary special measures is a direct recommendation by the Committee. Chile's failure to address the possibility of imposing temporary measures indicates that a country is able to decide, not only whether or not to implement a recommendation of the Committee, but whether or not to even respond to it. Every country has its own initiative.

Chile's culture greatly affects the scope of its laws for women's rights and in turn its compliance with CEDAW.²⁰¹ The same is true of Germany.²⁰² The United States, through its refusal to ratify CEDAW, shows the influence both political leaders and culture have on a country.

IV. THE UNITED STATES FAILURE TO RATIFY CEDAW

Part IV of this Note addresses the relationship between the United States and CEDAW. Section IV.A focuses on the United States' history with CEDAW and its various attempts to ratify CEDAW. Section IV.A also presents the reasons why the United States has failed to ratify CEDAW. Section IV.B lays out three pertinent arguments that the United States has used to lobby against ratification of CEDAW. Section IV.B.1 presents the domestic legislation in the United States that mirrors many of CEDAW's goals. Section IV.B.2 explains the various criticisms of CEDAW and why ratification of CEDAW might infringe on United States sovereignty.

197. See 2012 Concluding Observations, *supra* note 155, ¶ 17(a), at 4.

198. See 2012 Concluding Observations, *supra* note 155, ¶ 17(a), at 4.

199. See 2012 Concluding Observations, *supra* note 155, ¶ 16, at 4.

200. See *supra* note 124 and accompanying text.

201. See *supra* Part III.

202. See *supra* Part II.

Section IV.B.3 further addresses opponents' argument that CEDAW will expand access to abortion beyond the legal limits settled in case law.

A. History of the United States and CEDAW

While CEDAW's signatories come from a myriad of religions, cultures, and societies, the United States remains the only major industrialized country that has not ratified CEDAW.²⁰³ To put this into perspective, the United States is currently in the same company as countries with questionable track records on gender equality, including Sudan, South Sudan, Somalia, Iran, Tonga, and Palau.²⁰⁴ In fact, the Obama administration doggedly attempted to push for its ratification over the past several years, with President Obama calling it an "important priority."²⁰⁵

Beyond the Obama administration, the United States has shown interest in ratifying CEDAW on several other occasions.²⁰⁶ President Carter signed CEDAW on July 17, 1980 and submitted it to the Senate shortly thereafter.²⁰⁷ The Senate has held hearings on the ratification of CEDAW numerous times, but to no avail.²⁰⁸ Ratification again garnered attention during the Clinton

203. See Amnesty International Fact Sheet, *supra* note 47. See also Koh, *supra* note 47, at 265 (stating the United States is "the only established industrialized democracy in the world that has not yet ratified the CEDAW treaty.").

204. See Feminist Majority Foundation, *Ratifying CEDAW* (Mar. 2014), http://www.feminist.org/news/pdfs/CEDAW_2014FMF.pdf; Lisa Baldez, *U.S. Drops the Ball on Women's rights*, CNN (Mar. 8, 2013), <http://www.cnn.com/2013/03/08/opinion/baldez-womens-equality-treaty/>.

205. See LUISA BLANCHFIELD, CONG RESEARCH SERV., R40750, THE U.N. CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW): ISSUES IN THE U.S. RATIFICATION DEBATE 4 (2011). For example, Hillary Clinton, in her time as Secretary of State pushed for the ratification of CEDAW. See Media Note, *Joint Declaration on Advancing Women's Political Participation*, DEP'T OF STATE (September 19, 2011), <https://2009-2017.state.gov/r/pa/prs/ps/2011/09/172735.htm>, (noting that the Obama Administration has pushed for the ratification of CEDAW); Hillary Rodham Clinton, Secretary of State, Remarks at the UN Commission on the Status of Women (Mar. 12, 2010). See also Jessica Sanchez, *Ratifying CEDAW: Is the United States Falling Behind on Women's Rights?*, 17 PUB. INT. L. REP. 64, 64 (2011) (stating President Obama called CEDAW an "important priority").

206. See Sanchez, *supra* note 205, at 65 (noting the at the U.N. Forth World Conference on Women in Beijing, China, United States had committed to ratifying CEDAW); see *infra* notes 207-210.

207. See Baldez, *supra* note 204; see also Blanchfield, *supra* note 205, at 1.

208. See Blanchfield, *supra* note 205, at 1; Feminist Majority Foundation, *supra* note 204 (noting the ratification of CEDAW has surfaced in 1980, 1990, 1993, 2002, and 2014).

administration, after the H.W. Bush and Reagan administrations failed to support ratification.²⁰⁹ George W. Bush's administration supported ratification, but also had many issues with the treaty.²¹⁰ The Obama administration made it clear they would like to move forward with ratification, but failed to do so by the end of his term.²¹¹ As it stands now, CEDAW has been pending in the Senate Foreign Relations Committee for over twenty-five years.²¹² This perennial vacillation begs the question: why has the United States failed to ratify CEDAW?

B. United States Oppositions to Ratify CEDAW

While the gender equality goals of CEDAW are important, the United States' status as a liberal constitutional democracy—where every citizen is technically equal under the law—has led to much debate in the United States about its ratification. There are three main arguments that CEDAW opponents use to prevent ratification. First, opponents argue that the United States has already implemented laws to eliminate discrimination, so it is unnecessary to adopt a treaty that guides the United States to already do what it has been doing.²¹³ Second, opponents claim CEDAW will infringe on the United States' sovereignty.²¹⁴ Third, its critics argue that CEDAW forces states to implement widespread legislation in favor of abortion, thereby forcing countries to legalize abortion, and to implement CEDAW's whole articles on family planning.²¹⁵

209. See Blanchfield, *supra* note 205, at 5; see also Feminist Majority Foundation, *supra* note 204.

210. See Blanchfield, *supra* note 205, at 6.

211. See Benschhoff, *supra* note 61, at 121 (noting the Obama Administration "pledged" support of ratification.)

212. See Blanchfield, *supra* note 205, at 7; see also Feminist Majority Foundation, *supra* note 204.

213. See *infra* Section IV.B.1. See also *Women's Rights are Human Rights: U.S. Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW): Hearing Before the Subcomm. On Human Rights and the Law of the S. Comm. on the Judiciary*, 111th Cong. 16 (2010) (statement of Steven Groves, Bernard and Barbara Lomas Fellow, Margaret Thatcher Center for Freedom, the Heritage Foundation) (stating the US "already has effective avenues of enforcement in place to combat discrimination based on sex).

214. See Amnesty International Fact Sheet, *supra* note 47; see also Koh, *supra* note 47, at 273.

215. See Amnesty International Fact Sheet, *supra* note 47; see also Koh, *supra* note 47, at 272.

1. United States Domestic Legislation

The United States has passed legislation that mirrors many provisions in CEDAW that work to eliminate discrimination against women while also promoting equality between men and women. Some federal laws that address gender discrimination include: (1) the Equal Pay Act of 1963, (2) the Lilly Ledbetter Fair Pay Act of 2009, (3) the Violence Against Women Act of 1994, and (4) the Pregnancy Discrimination Act of 1978.²¹⁶ Additionally, the Equal Protection Clause in the Fourteenth Amendment, which ensures every US citizen is guaranteed equal protection of the laws, is also applicable to protecting women.²¹⁷ Despite the fact that these laws exist, the United States has had varying degrees of success in achieving gender equality, both through these laws and the failure to ratify the Equal Rights Amendment.

The Equal Protection Clause of the Fourteenth Amendment of the Constitution is meant to prevent any state from denying any person the equal protection of the law.²¹⁸ This clause has been useful in the fight for equality.²¹⁹ However, there is nothing in the Constitution or in any amendment that specifically prohibits discrimination against women. In addition, the Equal Protection Clause applies to state action, not private actors.²²⁰ In fact, Justice Scalia has publicly stated that the Constitution does not prohibit discrimination based on sex, and using an originalist lens, noted that

216. *See generally* Equal Pay Act, 29 U.S.C. § 206 (1963); Lilly Ledbetter Fair Pay Act, Pub. L. 111-2, 123 Stat. 5 (2009); Violence Against Women Act, 42 U.S.C. § 13981 (1994); Pregnancy Discrimination Act, 42 U.S.C. § 2000e(k) (1978).

217. *See* U.S. CONST. amend XIV, § 1 (providing that “no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States . . . nor shall any state . . . deny to any person within its jurisdiction the equal protection of the laws.”); *see generally* LENORA LAPIDUS, EMIL J. MARTIN, & NAMITA LUTHRA, *THE RIGHTS OF WOMEN* (4th ed., Apr. 1, 2009) (stating the Equal Protection Clause requires states to treat citizens equally).

218. *See* U.S. CONST. amend XIV, § 1 (providing that “no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States . . . nor shall any state . . . deny to any person within its jurisdiction the equal protection of the laws.”); *see generally* Lapidus, Martin & Luthra, *supra* note 217 (stating the Equal Protection Clause requires states to treat citizens equally).

219. *See e.g.*, *Griswold v. Connecticut*, 381 U.S. 479 (1965) (establishing a constitutionally protected right to privacy, which has been used in major cases like *Roe v. Wade*); *Reed v. Reed*, 404 U.S. 71 (1971) (holding that a state statute that discriminated based on sex violated the Equal Protection Clause).

220. *See* Lapidus, Martin & Luthra, *supra* note 217, at 2. *See also* U.S. CONST. amend XIV, § 1 (providing that “no state shall . . .”).

sex was not the reason for the passage of the Fourteenth Amendment.²²¹

One major attempt to rectify this clear injustice was the Equal Rights Amendment, (the “ERA”) which ultimately failed to pass.²²² The ERA was drafted to prevent discrimination based on a person’s sex.²²³ Versions of an equal rights amendment were drafted as early as 1923.²²⁴ The ERA was introduced to Congress in every session until a version passed though in 1972.²²⁵ The states failed to ratify the ERA after it passed through Congress, leaving women constitutionally vulnerable to acts of discrimination.²²⁶

The Equal Protection Clause can be viewed as similar to Article 2(a) of CEDAW, which asserts that State Parties should “embody the principle of the equality of men and women in their national

221. See Interview by Professor Calvin Massey with Justice Scalia, Supreme Court Justice, Supreme Court of the United States, Cal. (Jan. 2011); see also Amanda Terkel, *Scalia: Women Don’t Have Constitutional Protection Against Discrimination*, HUFFINGTON POST (May 25, 2011), http://www.huffingtonpost.com/2011/01/03/scalia-women-discrimination-constitution_n_803813.html (quoting the interview of Justice Scalia in the legal magazine *California Lawyer*).

222. See THOMAS H. NEALE, CONG. RESEARCH SERV., R42979, THE PROPOSED EQUAL RIGHTS AMENDMENT: CONTEMPORARY RATIFICATION ISSUES 2 (2013) (explaining the Equal Rights Amendment was approved by Congress, proposed for ratification to the states in 1972, and after seven years, the ratification deadline passed and the proposed Amendment was dead).

223. The current version of the Equal Rights Amendment states: “Section 1. Equality of rights under the law shall not be denied or abridged by the United States or any State on account of sex. Section 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article. Section 3. This amendment shall take effect two years after the date of ratification.” H.R.J. Res. 208, 92d Cong. (1972) (proposed).

224. See Roberta W. Francis, *The History Behind the Equal Rights Amendment*, THE EQUAL RIGHTS AMENDMENT, <http://www.equalrightsamendment.org/history.htm> (last visited Apr. 30, 2017) (stating the belief that there should be an Equal Rights Amendment to the Constitution began in 1923 with the introduction of the Lucretia Mott Amendment that stated men and women should have equal rights in the United States); see also *Martha Griffiths and the Equal Rights Amendment*, THE CENTER FOR LEGISLATIVE ARCHIVES, <https://www.archives.gov/legislative/features/griffiths> (last visited Apr. 30, 2017) (stating the ERA was first drafted in 1923 by Alice Paul, the suffragette).

225. See Francis, *supra* note 224 (stating the ERA passed through the U.S. Senate and House of Representatives on March 22, 1972); The Center for Legislative Archives, *supra* note 224.

226. See Francis, *supra* note 224 (noting the states’ failure to ratify the ERA by Congress’ seven-year deadline); The Center for Legislative Archives, *supra* note 224, (explaining that by the time the seven-year deadline, even with its extension to 1982, came, the ERA lacked the required number of state ratifications – the ERA had thirty-five state ratification, which is three states short of what is needed for ratification of a constitutional amendment).

constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle.”²²⁷ Both statements promote the idea of equality before the law for men and women. This is a major reason that CEDAW should be ratified. It can provide protection against discrimination in a way that is not guaranteed by the United States Constitution.

On September 13, 1994, President Clinton signed the Violence Against Women Act (“VAWA”).²²⁸ VAWA improved the criminal justice system’s response to violence against women in several ways, including by requiring a victim’s protection order to be recognized in all jurisdictions, as well as increasing the prosecution, conviction and sentencing of offenders.²²⁹ VAWA also called for better access to support services for victims and their families by establishing hotlines and creating community responses to prevent and respond to violence against women.²³⁰ The passage of VAWA led to an increase in reporting of domestic and sexual violence and prompted states to pass legislation to better serve and protect women who are victims of domestic violence.²³¹

Notably, President Clinton’s VAWA is similar to General Recommendation 19 of CEDAW, which was put forth by the Committee in 1992.²³² General Recommendation 19 deals specifically with gender-based violence. General Recommendation 19 clarifies the definition of gender-based violence and its presence in other articles of CEDAW even when not expressly in the provision.²³³ Although

227. See CEDAW, *supra* note 23, art. 2(a).

228. See Violence Against Women Act, 42 U.S.C. §§ 13701-14040 (1994); see also *Violence Against Women Act*, NATIONAL NETWORK TO END DOMESTIC VIOLENCE <http://nnedv.org/policy/issues/vawa.html> (last visited Apr. 30, 2017) (stating that VAWA was initially passed in 1994).

229. See 42 U.S.C. § 40901(A)(iii) (1994); U.S. DEP’T. OF JUST., O.M.B. No. 1122-0020, *Enhanced Training and Services to End Abuse in Later Life* (2017); see also *Factsheet: The Violence Against Women Act*, WHITE HOUSE, https://www.whitehouse.gov/sites/default/files/docs/vawa_factsheet.pdf [hereinafter White House Factsheet].

230. See White House Factsheet, *supra* note 229; see also 42 U.S.C. § 40901(A).

231. See White House Factsheet, *supra* note 229; see also *The 2013 Violence Against Women Act*, HIGHER GROUND: THE NJCW’S DOMESTIC VIOLENCE CAMPAIGN <http://www.ncjw.org/media/VAWA%202013%20factsheet%20on%20letterhead.pdf> (last accessed Apr. 30, 2017) (explaining that VAWA helps to protect survivors and families, making a more effective criminal justice response).

232. See General Recommendations, *supra* note 46, No. 19 (1992).

233. *Id.* (defining gender-based violence as violence “directed against a woman because she is a woman or that affects women disproportionately.” This definition includes physical,

VAWA is a useful first step for women, General Recommendation 19 encompasses much more under its definition of gender-based violence.²³⁴ CEDAW also holds States Parties potentially responsible for private acts that may result in a human rights violation if the State fails to act with “due diligence” to prevent the violation and may require the State to provide compensation.²³⁵ As shown, the broad definition of gender-based violence used by CEDAW is able to encompass many more of the nuances of everyday discrimination than VAWA can.

Two US laws that are similar to Article 11 of CEDAW are the 1963 Equal Pay Act and the 2009 Lilly Ledbetter Fair Pay Act (“LLFPA”). Congress passed the Equal Pay Act of 1963 as an amendment to the Fair Labor Standards Act, which was originally passed in 1938.²³⁶ The Equal Pay Act requires men and women to be paid equally for equal work.²³⁷ To determine pay, the Equal Pay Act evaluates an individual’s skills, effort, responsibility, and working conditions. It cannot take a person’s sex into consideration when making these determinations.²³⁸ Article 11 of CEDAW deals with employment and is meant to guarantee men and women the “same employment opportunities” and the “right to work.”²³⁹

mental or sexual harm and any threats of acts like this. The General Recommendation also provides examples of human rights violations from gender-based violence like the right not to be subject to torture, liberty and security of persons, and the right to equality in the family. General Recommendations, *supra* note 46, No. 19, at cl. (b), (d), &(f). For example, in Article 12 of CEDAW, which requires State Parties to ensure equal access to health care, it is possible to read violence against women into Article 12, because violence puts women’s health at risk.

234. *See* General Recommendations, *supra* note 46, No. 19.

235. *Id.* ¶ 9.

236. Fair Labor Standards Act, 29 U.S.C. § 201 (1938).

237. *See Facts About Equal Pay and Compensation Discrimination*, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, <https://www.eeoc.gov/eeoc/publications/fs-epa.cfm> [hereinafter EEOC Facts About Equal Pay] (stating the jobs do not have to be identical but need to be “substantially equal” in what the person actually does, not based off of job titles); *see also* JFK Speech at signing of Equal Pay Act of 1963, June 10, 1963 (stating the Equal Pay Act prohibits arbitrary wage discrimination against women and brings attention to the “unconscionable” action of paying women less than men for the same job); Presidential Remarks on Signing the Equal Pay Act of 1963, JFK LIBRARY (June 10, 1965), <https://www.jfklibrary.org/Asset-Viewer/Archives/JFKPOF-045-001.aspx> (last visited Apr. 30, 2017).

238. *See* EEOC Facts About Equal Pay, *supra* note 237 (stating the jobs do not have to be identical but need to be “substantially equal” in what the person actually does, not based off of job titles); *see generally* Equal Pay Act, 29 U.S.C. § 206 (1963).

239. *See* CEDAW, *supra* note 23, art. 11 §§ (a)-(b).

In the United States, an employee is able to file for pay discrimination under Title VII of the Civil Rights Act.²⁴⁰ People are able to file claims under both Title VII and the Equal Pay Act, but both pieces of legislation serve different purposes.²⁴¹ While the Equal Pay Act enables an individual to address his or her own wage complaint, it does not truly address the problem of pay inequality. The Equal Pay Act does not provide legislators with solutions as to how to require employers to pay equal wages to both men and women. Affirmative defenses such as seniority leave women trapped with unequal pay, often due to external forces that leave men in a position to be promoted while women—many of whom leave the workforce while starting families—are not.²⁴²

Furthermore, Congress has attempted to amend the Equal Pay Act with the Fair Pay Act and the Paycheck Fairness Act introduced in 2011.²⁴³ The Paycheck Fairness Act has yet to be passed.²⁴⁴ However, Congress was successful in passing the Lilly Ledbetter Fair Pay Act in 2009.²⁴⁵ The LLFPA made it easier for women to file suits related to pay discrimination, by resetting the statute of limitations

240. See Title VII of the Civil Rights Act, 42 U.S.C. § 2000e (1964) (prohibiting discrimination in employment based on sex as well as other protected classes).

241. See generally EEOC Facts About Equal Pay, *supra* note 237 (explaining the Equal Pay Act only prohibits wage discrimination based on sex, Title VII deals with employment discrimination in many categories including sex); see also *Know Your Rights: Title VII of the Civil Rights Act of 1964*, AAUW, <http://www.aauw.org/what-we-do/legal-resources/know-your-rights-at-work/title-vii/> (last visited Apr. 30, 2017) (stating the purpose of Title VII to prohibit employers from discriminating against employees on the basis of sex, race, color, national origin or religion.)

242. See Eduardo Porter, *Motherhood Still a Cause of Pay Inequality*, N.Y. TIMES (June 12, 2012), <http://www.nytimes.com/2012/06/13/business/economy/motherhood-still-a-cause-of-pay-inequality.html> (explaining that burdens such as inflexible work schedules, lack of paid family leave, and overall constraints of motherhood perpetuate the wage gap).

243. See Keiko Lynn Yoshino, *Reevaluating the Equal Pay Act for the Modern Professional Woman*, 47 VAL. U. L. REV. 585, 599-600 (2013) (explaining that the Fair Pay Act wants to change the term “substantially equal standard” to equivalent jobs, which would allow jobs that are dissimilar but require similar skills, effort, responsibility and working conditions to be utilized, and the Paycheck Fairness Act which would require a heightened standard of the “any factor other than sex” affirmative defense to require a “bona-fide factor other than sex, such as education, training, or experience.”) (quoting the actual language of the Fair Pay Act and the Paycheck Fairness Act); see also *Equal Pay for Equal Work: Pass the Paycheck Fairness Act*, AMERICAN CIVIL LIBERTIES UNION, <https://www.aclu.org/equal-pay-equal-work-pass-paycheck-fairness-act> (last visited Apr. 30, 2017)[hereinafter ACLU].

244. See Yoshino, *supra* note 243, at 599 n.77; ACLU, *supra* note 242.

245. See Lilly Ledbetter Fair Pay Act, Pub. L. 111-2, 123 Stat. 5, 111th Cong. (2009).

period under such claims.²⁴⁶ Resembling LLFPA, Article 11(d) of CEDAW calls for the “right to equal remuneration, including benefits, and to equal treatment in respect of equal value[.]”²⁴⁷ In addition, LLFPA is similar to CEDAW’s General Recommendation No. 13, which deals with equal remuneration for work of equal value.²⁴⁸ The Committee understood that many countries have already passed legislation that guarantees equal pay but felt compelled to provide suggestions on how to best implement it.²⁴⁹ In General Recommendation No. 13, the Committee calls on State Parties to implement job evaluation systems that apply gender-neutral criteria to measure non-comparable jobs to compare their value and to encourage parties to utilize collective agreements.²⁵⁰

Another US law passed to move toward gender equality is the Pregnancy Discrimination Act of 1978 (“PDA”), which prohibits sex discrimination on the basis of pregnancy.²⁵¹ The PDA bars an employer from refusing to hire a woman because she is pregnant, as long as she is able to perform her job requirements.²⁵² Under the law, an employee must be permitted to work as long as she is capable of doing so.²⁵³ The employer must treat a pregnant employee the same as the employer would treat someone with a disability, meaning the same job protection granted to a person with a disability is granted to

246. See Press Release, White House, Press Secretary, Fact Sheet: New steps to Advance Equal Pay on the Seventh Anniversary of the Lilly Ledbetter Fair Pay Act (Jan. 29, 2016), <https://www.whitehouse.gov/the-press-office/2016/01/29/fact-sheet-new-steps-advance-equal-pay-seventh-anniversary-lilly> (last visited June 10, 2017); see also *The Lilly Ledbetter Act Five years Later – A Law That Works*, NATIONAL WOMEN’S LAW CENTER, BLOG (Jan. 29, 2014), <http://nwlc.org/resources/lilly-ledbetter-act-five-years-later-law-works> (noting that the LLFPA rests the period of time when a worker can file a claim of pay discrimination).

247. See CEDAW, *supra* note 23, art. 11(d).

248. See General Recommendations, *supra* note 46, No. 13 (1989).

249. See *id.*

250. See *id.*

251. See generally Pregnancy Discrimination Act of 1978, Pub. L. No. 95-555, 92 Stat. 2076 (1978).

252. See *Pregnancy Discrimination*, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, <https://www.eeoc.gov/eeoc/publications/fs-preg.cfm> (last visited Apr. 30, 2017) [hereinafter EEOC Pregnancy Discrimination]; see also *Know Your Rights: The Pregnancy Discrimination Act (PDA)*, AAUW, <http://www.aauw.org/what-we-do/legal-resources/know-your-rights-at-work/pregnancy-discrimination-act> (last visited Apr. 30, 2017) [hereinafter AAUW Know Your Rights].

253. See EEOC Pregnancy Discrimination, *supra* note 252; see also AAUW Know Your Rights, *supra* note 252.

a pregnant employee.²⁵⁴ Like the PDA, Article 11(2)(a) of CEDAW directs a State Party “[t]o prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status[.]”²⁵⁵ As exhibited above both the United States and CEDAW aim to prevent employers from discriminating against pregnant women, furthering women’s total integration into the workforce and society at large.

Opponents of CEDAW believe that, because the United States already has several laws that deal with the same issues addressed in CEDAW, it is unnecessary to ratify CEDAW.²⁵⁶ However, that position defeats the express purpose of CEDAW. CEDAW posits that a country should continue to move forward towards full gender equality and the elimination of sex discrimination²⁵⁷. CEDAW could potentially be an outside check on the United States, ensuring that the US society remains committed to its democratic ideals of equality for all of its citizens. Federal and state laws are a step in the right direction, but widespread discrimination against women is still deeply embedded in all spheres of life in the United States. Simply put, the laws do not sufficiently address major issues of sex discrimination. Men and women are far from equal in the United States.²⁵⁸

254. See EEOC Pregnancy Discrimination, *supra* note 252; see also AAUW Know Your Rights, *supra* note 252.

255. See CEDAW, *supra* note 23, art. 11(2)(a).

256. See, e.g., *Statement of Steve Groves: Women’s Rights are Human Rights: U.S. Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women: Hearing Before the Subcomm. on Human Rights and the Law of the Sen. Committee on the Judiciary*, 111th Cong. 2010 (testifying that the United States already has effective ways to combat sex discrimination and has a wide range of state and federal laws to protect and advance women’s rights); see also *Why the U.S. Has Not – And Should Not – Ratify CEDAW*, CONCERNED WOMEN FOR AMERICA, BLOG, <https://concernedwomen.org/why-the-u-s-has-not-and-should-not-ratify-cedaw> (last visited Apr. 30, 2017) (stating the US already provides legal protection to women).

257. See *supra* Section I.C (detailing the ways CEDAW is a unique UN treaty).

258. See e.g., *America is Falling Behind Other Countries in Gender Equality. The Next President Must Fix That*, WORLD ECONOMIC FORUM, BLOG (Oct. 27, 2016), <https://www.weforum.org/agenda/2016/10/global-gender-gap-2016-usa-saadia-zahidi> (stating that the United States used to rank third globally in economic gender equality, but it now ranks twenty-sixth in the world, and further noting that women hold only one in five seats of Congress and only one in four cabinet positions); see also Nina Bahadur, *7 Things To Know If You Think Women Are Equal To Men*, THE HUFFINGTON POST, (Sept. 10, 2015), http://www.huffingtonpost.com/entry/7-facts-that-show-women-still-arent-equal_us_55db334be4b08cd3359c8e5a (listing seven facts that illustrate the inequality between men and women in America).

2. United States Sovereignty

One of the biggest misconceptions about CEDAW is that it will somehow wipe out all national and state sovereignty. While the Constitution is clear that treaties are the supreme law of the land, CEDAW accounts for the differences of each State Party.²⁵⁹ The language of the treaty allows each State Party to use “all appropriate measures” to implement legislation to eliminate discrimination and “all appropriate measures, including legislation” to promote real equality between men and women.²⁶⁰ Here, CEDAW grants each State Party the ability to use its own laws and discretion to best achieve CEDAW’s purpose. In addition, human rights treaties in the United States are non-self executing, meaning that legislation will have to be implemented before CEDAW can be put into action.²⁶¹

Throughout the 1990s, President Clinton attempted to push the Senate to ratify CEDAW with proposed Reservations, Understandings, and Declarations (“RUDs”) to CEDAW.²⁶² The RUDs were intended to placate opposition to CEDAW ratification. The RUDs addressed various potentially problematic articles in CEDAW.²⁶³ For example, one RUD declared that United States law was supreme over CEDAW and plainly stated that the United States would not enact legislation contrary to the Constitution and laws of the United States.²⁶⁴ Another RUD pertained to Article 11 of CEDAW, which deals with economic equality and maternity leave.²⁶⁵ Yet another proposed RUD stated that the United States would not be subject to the International Court of Justice and that it would fulfill

259. See U.S. CONST. art. VI, cl. 2.

260. CEDAW, *supra* note 23, arts. II & III.

261. See Ann M. Piccard, *U.S. Ratification of CEDAW: From Bad to Worse?*, 28 L. & INEQ. 119, 143 n.143 (2010); see also Benschopf, *supra* note 61, at 125 (stating the US considers treaties to be non-self executing)

262. Piccard, *supra* note 261, at 120; see also Blanchfield, *supra* note 205, at 4-5.

263. See Piccard, *supra* note 261, at 136 (stating the RUDs as a means to narrow CEDAW were designed to make CEDAW “less objectionable” in the US and the RUDs addressed several areas of concern); see also Riggin, *supra* note 22, at 556 (noting that RUDs will lead to compromise to win over Republican senators).

264. See Piccard, *supra* note 261, at 136; see also Blanchfield, *supra* note 205, at 4.

265. See Piccard, *supra* note 261, at 137 (stating the RUD said equal pay for equal work is already protected by us law, “the United States does not accept any obligation under this Convention to enact legislation establishing the doctrine of comparable worth as that term is understood in US practice,” and stating the US would not accept any obligations to give paid maternity leave, pursuant to Article 11(2)(b) or comparable benefits without loss of employment, seniority or social allowances); see also Blanchfield, *supra* note 205, at 4-5.

CEDAW obligations to the extent that it can within its own jurisdiction.²⁶⁶ In addition, the United States already had laws protecting freedom of speech, expression, and association, so it would not need to take further action under CEDAW Articles 5, 7, 8, and 13.²⁶⁷ The RUDs would have essentially exempted the United States from having to fully commit to CEDAW. However, many supporters of CEDAW ultimately accepted the RUDs with the understanding that it may be the only way to get it to pass through the Senate.²⁶⁸

The treaty is broad enough to enable CEDAW and national and state laws to work together in a cohesive manner, without the use of RUDs.²⁶⁹ The attachment of RUDs to CEDAW is certainly not ideal, but the idea that RUDs completely “gut” CEDAW is an over exaggeration.²⁷⁰ CEDAW does not impose any specific laws that need to pass in order to be in compliance.²⁷¹ Rather, CEDAW continuously uses the term “appropriate measures,” allowing participating State Parties to work within their own legal contexts.²⁷² If ratified, CEDAW and national and state laws would be able to successfully work together to achieve gender equality and the elimination of discrimination against women.

3. United States Abortion Laws

Opponents of CEDAW often try to frame the treaty as a radical document that forces a State Party to grant abortions. Despite this characterization, the US State Department has explicitly stated that

266. See Piccard, *supra* note 261, at 137; see also CEDAW, *supra* note 23, art. 29(a)(1) (stating that disputes between two or more State Parties about the interpretation or application of CEDAW that is not settled by negotiation or arbitration, may be referred to the International Court of Justice).

267. See Blanchfield, *supra* note 205, at 6 (noting the US had three understandings, one of which was that the US will not accept CEDAW obligations that restrict freedom of speech); see also Piccard, *supra* note 261, at 137.

268. See *supra* Section II.A (stating Democrats were supporting a “gutted” version of CEDAW); see also Riffin, *supra* note 22, at 556 (noting the necessary compromise with Republican senators).

269. See Koh, *supra* note 47, at 273 (stating the broad compatibility of the treaty with US domestic laws is that there are very few occasions when this would arguably even be an issue); see also Blanchfield, *supra* note 205, at 6 (stating the Bush administration was concerned about the vagueness and broadness of the language).

270. See Koh, *supra* note 47, at 273

271. See generally CEDAW, *supra* note 23.

272. See *Id.*

CEDAW is “abortion neutral.”²⁷³ However, not everyone was satisfied with this statement, as it could have broader international ramifications, allowing other countries an excuse to keep abortion illegal.²⁷⁴ Ultimately, pushing an abortion neutral stance probably would be the most effective way to get CEDAW ratified in the United States.

Opponents to CEDAW have suggested that the language in Article 12 and Article 16(1)(e) refer to abortion without explicit use of the word abortion.²⁷⁵ However, by again turning to CEDAW’s specific use of “all appropriate measures,” these issues are actually left to the discretion of a State Party. The Committee has in its concluding observations appealed to a State Party to ease abortion restrictions.²⁷⁶ However, concluding observations are merely advisory. This comes with the understanding that harsh abortion laws do not reduce the amount of abortions performed, but in fact just reduce the safety and access to abortions women nevertheless continue to seek. Ultimately, the State Party has the discretion to follow the recommendation of the Committee or not, so there is no possible way for CEDAW to force the United States to implement abortion laws it does not want to implement.

Notwithstanding certain US legislators’ ceaseless attacks on abortion, the right to choose to have an abortion in the United States is protected by the seminal case, *Roe v. Wade*, decided in 1973.²⁷⁷ *Roe* held that the constitutional right to privacy, established in *Griswold v. Connecticut*, includes a woman’s right to an abortion.²⁷⁸ The holding in *Roe* was subsequently reaffirmed nineteen years later in *Planned Parenthood v. Casey*.²⁷⁹ However, states still have the power to pass anti-abortion legislation, not in small part due to the muddying of the

273. See Amnesty International Fact Sheet, *supra* note 47; see also Piccard, *supra* note 261, at 138 n.113.

274. See Blanchfield, *supra* note 205, at 16.

275. See *id.* at 15-16 (stating opponents believe Art. 12(1), which states that State Parties shall take all appropriate measures to allow women “access to health care services, including those related to family planning” and art. 16(1)(e) that allows women to “decide freely and responsibly on the number and spacing of their children.”).

276. See *e.g.*, *supra* notes 151-154 and accompanying text.

277. See *Roe v. Wade*, 410 U.S. 112 (1973).

278. See *id.*

279. See *Planned Parenthood v. Casey*, 505 U.S. 833 (1992) (Casey changed a portion of *Roe*’s holding, abolishing the first-trimester rule to an “undue burden” standard.)

standard of trimesters in *Roe* to an undue burden standard in *Casey*.²⁸⁰ States do this in a number of ways, including, but not limited to, TRAP laws, restriction of insurance coverage for abortion, and mandatory waiting periods.²⁸¹ However, there have been recent judicial victories for abortion rights in the United States. Most recently, *Whole Woman's Health v. Hellerstedt* reaffirmed a woman's constitutional right to a legal abortion when the Supreme Court overturned the TRAP laws passed by the Texas legislature.²⁸² The Supreme Court struck down two provisions in House Bill 2 passed by the Texas Legislature.²⁸³ The two TRAP provisions were an admitting-privileges requirement that stated the physician performing the abortion must have "active admitting privileges at a hospital . . . not further than 30 miles" from the abortion facility and the surgical-center requirement which requires the facility to meet the "minimum standards . . . for ambulatory surgical centers" under Texas law.²⁸⁴ The Supreme Court held that both of these provisions place undue burdens on women seeking abortions, the standards established in *Casey*.²⁸⁵

CEDAW will not eliminate the holdings of *Roe* and *Casey*, nor will it dispose of laws that a state may have passed pertaining to abortion. CEDAW could, however, become an extra protection women can utilize to challenge unconstitutional abortion laws that

280. See Alex Markels, *Supreme Court's Evolving Rulings on Abortion*, NPR (Nov. 30, 2005), <http://www.npr.org/templates/story/story.php?storyId=5029934> (noting *Casey* significantly weakened *Roe* by permitting a lower standard for state involvement); see also *Roe v. Wade – Then and Now*, CENTER FOR REPRODUCTIVE RIGHTS (July 1, 2007), <https://www.reproductiverights.org/document/roe-v-wade-then-and-now> (stating that *Casey* abandoned the strict scrutiny standard applied in *Roe*).

281. See *Federal and State Bans and Restrictions on Abortion*, PLANNED PARENTHOOD <https://www.plannedparenthoodaction.org/issues/abortion/federal-and-state-bans-and-restrictions-abortion> (last visited Apr. 30, 2017); see also *TRAP Laws: Decreasing Access, Driving Providers Away*, NARAL PRO-CHOICE AMERICA, <https://www.prochoiceamerica.org/issue/trap-laws/> (last visited June 10, 2017) (explaining TRAP Laws as an attempt to impose regulations to make it more difficult for women to access abortions in a number of ways under the guise of safety for a woman, including limiting care only to physicians, requiring abortion providers to have hospital admitting privileges and requiring facilities that perform abortion to have transfer agreements with local hospital, despite the fact that abortions are a very safe procedure).

282. See *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292 (2016).

283. See *id.*

284. See *id.* at 2300.

285. See *id.* (finding that each provision places a "substantial obstacle" for women and constitutes an "undue burden on abortion access" in violation of the Federal Constitution under the Fourteenth Amendment.)

may pass in more conservative states. CEDAW does not permit blanket access to abortion, but it will protect a woman's right to abortion in a way that has been challenged in recent years in the United States.

*V. UNITED STATES AND POTENTIAL RATIFICATION OF CEDAW
BASED ON IMPLEMENTATION IN GERMANY AND CHILE*

In this Part, Section V.A compares how Germany and Chile implement CEDAW under their respective heads of state. Section V.B explores what the United States can learn from the different ways in which Germany and Chile implement CEDAW. Section V.C explains why the United States should ultimately ratify CEDAW in its current political climate.

*A. Comparative Analysis of Germany and Chile's Implementation of
CEDAW*

Both Germany and Chile implement CEDAW to the extent each country desires. There have been numerous times in both Germany and Chile's reports where each country states they will not follow some of the recommendations of the Committee. Their refusal to implement certain changes recommended by CEDAW seem to stem from the countries' respective cultures and their willingness (or unwillingness) to try and change it.

Germany and Chile provide a unique exploration of the capabilities of CEDAW. On the one hand, Germany's head of state is a conservative leader who has not been particularly vocal about women's rights, but is the head of a progressive social and economic country.²⁸⁶ On the other hand, Chile's President is extremely vocal about her support for women's rights, but in a country that is highly religious and culturally conservative.²⁸⁷ Judging by these case studies, it appears that a country's social and political cultures, rather than its head of state, have a larger effect on how broadly they implement CEDAW.

A comparison of pertinent laws passed by both Germany and Chile provides insight into these countries and their attitudes toward gender equality and non-discrimination. In Germany, lawmakers

286. *See supra* Section II.A.

287. *See supra* Section III.A.

attempted to rectify stereotypes of women as homemakers by building progressive ideals directly into their legislation. For example, Germany successfully subverted the notion that a proper German woman was primarily a stay at home mother (as opposed to a breadwinner) by passing laws that encouraged men to be present in their children's lives, thereby transferring childcare responsibility to both genders.²⁸⁸ Pursuant to this goal, Germany's Federal Act on Parental Allowance and Parental Leave also allows men to take off time from work when they have children.²⁸⁹ By contrast, certain childcare laws addressed in Chile's Fifth and Sixth Consolidated Report apply to fathers only if the mother is out of the picture and the father is the primary caretaker.²⁹⁰ After the submission of the Fifth and Sixth Consolidated Reports, Chile passed a law that allows for a leave transfer option from the mother to the father, with the understanding that the law chiefly applies to the mother.²⁹¹ While Germany and Chile both provide families the opportunity to designate which parent will take off time from work, Chile only has a five-day paternal compulsory leave, whereas Germany allows fathers to take off more time.²⁹²

Both countries have passed key pieces of legislation that work to eliminate discrimination against women in the workplace: Germany has the AGG and Chile has Act No. 20.123 and Act No. 20.348.²⁹³ In Germany, the AGG approaches the elimination of discrimination against women in the workplace in a number of ways, dealing with issues such as sexual harassment and equal pay, while also

288. See *supra* Section II.B.

289. See 2015 Germany Report, *supra* note 83, at 8.

290. See e.g., 2011 Chile Report *supra* note 167, at 18 (noting Childcare Act No. 20.339 extends to fathers when they have custody of children under the age of 2).

291. See *Maternity and Paternity at Work: Law and Practice Across the World*, INTERNATIONAL LABOUR ORGANIZATION, 1, 8 (2014), http://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_242617.pdf (stating that Chile shifted parental leave from 18 weeks to 30 weeks, with a leave transfer option to the father); see also Human Rights Committee, *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: International Covenant on Civil and Political Rights: Sixth Periodic Report of States Parties: Chile*, CCPR/C/CHL/6, 5 (Sept. 12, 2012) (stating "The Act [Act No. 20545] also covers various circumstances, including the serious illness of a child less than 1 year old, the transfer of part of the leave to the father . . .") (emphasis added).

292. See United Nations Development Programme, *Human Development Report 2015: Work for Human Development, Ch. 4: Imbalances in Paid and Unpaid Work* 107, 123 (noting Chile, Italy, and Portugal all have compulsory paternal leave).

293. See *supra* notes 92-94 and accompanying text (laying out the AGG); see also *supra* notes 175-176 (laying out Act No. 123 and Act No. 346).

establishing the Federal Anti-Discrimination Agency.²⁹⁴ In Chile, Act No. 20.123 and Act No. 348 handle equality between men and women, permanent or subcontracted workers, and equal pay.²⁹⁵ The scope of AGG encompasses more elements of discrimination in one place than the two separate laws passed by Chile. In particular, Act No. 20.123 and Act No. 20.348 do not address sexual harassment.²⁹⁶ Instead, sexual harassment comes up in a separate law, Act No. 20.005.²⁹⁷ Essentially, the AGG is a more comprehensive piece of legislation, rather than piecemeal legislation.²⁹⁸ However, both countries do make an attempt to deal with this gender non-discrimination and, as such, the Committee commends them on doing so.²⁹⁹ By drawing attention to discrimination in women's every day lives in the workplace, both Germany and Chile are actively achieving the goals of CEDAW.

Despite some successes, there have also been some failures by Chile and Germany in terms of enacting special temporary measures to achieve gender equality. Though there has not been explicit legislation in favor of a quota system for women, Chancellor Merkel and President Bachelet have each put women in positions of power in their administrations.³⁰⁰ However, these small examples do not reflect the realities of German and Chilean women in the workforce who may not reach high positions of power in the first place.³⁰¹ By actively choosing not to implement Article 4 of CEDAW, which calls for special temporary measures, Germany and Chile are using their discretion on how many of the Committee's recommendations to incorporate.³⁰²

CEDAW is a unique treaty precisely because of its attempt to change a country's dominant culture in order to eliminate pervasive

294. *See supra* note 97.

295. *See supra* notes 189-90.

296. *See* 2011 Chile Report, *supra* note 167, at 6, 8, *cf.* AGG; *supra* note 92 (dealing with all of these issues in one piece of legislation).

297. *See* 2011 Chile Report, *supra* note 167, at 28.

298. *See supra* notes 90-107 (outlining the dialogue between the Committee and Germany in reference to the AGG).

299. *See supra* Section II.B and Section III.B (acknowledging that the Committee commends either country when Germany or Chile is working towards eliminating gender discrimination and promoting equality).

300. *See supra* Section II.A and Section III.A.

301. *See supra* Section II.A and Section III.A (dealing with women in the labor market).

302. *See supra* Section II.B and Section III.B (explaining that both Germany and Chile failed to take the advice of the Committee and adopt TSMs.)

gender stereotypes.³⁰³ In practice, Germany and Chile utilize CEDAW's guidelines to pass laws that work to modernize the position of women in society.³⁰⁴ Despite the different religious and cultural ideologies of the German and Chilean heads of state and distinct political cultures, both Chile and Germany successfully utilize CEDAW as a guide on their progression of women's rights.³⁰⁵ This in turn helps to ensure that they continue to work towards eliminating discrimination against women and achieving gender equality.

B. United States Concerns Misplaced as shown by Germany and Chile Case Studies

Germany and Chile demonstrate the benefits of ratifying and implementing CEDAW. While both countries implement CEDAW in different ways and to varying extents, there are many positive aspects of being bound by the treaty. Germany and Chile show that no matter what a country's political situation or a leader's personal ideology, there are major benefits to CEDAW.³⁰⁶ It is no excuse for the United States, whether led by conservative or liberal political administration, to fail to ratify CEDAW.

The three major concerns the American opponents of CEDAW have used to obstruct ratification are proven to be fruitless when one confronts case studies such as Germany and Chile.³⁰⁷ Opponents' concern over losing United States sovereignty is largely misplaced. Germany and Chile each continue to pass their own laws, without pressure from the CEDAW.³⁰⁸ CEDAW can only provide recommendations to State Parties, and cannot force a certain law to go through either country's government.³⁰⁹ Thus, neither country's sovereignty is actually infringed upon. Opponents, however, note that the United States Constitution states, "all Treaties made, or which shall be made, under the Authority of the United States, shall be the

303. *See supra* Section I.C (explaining what makes CEDAW a unique treaty from other human rights treaties.)

304. *See supra* Part II and Part III (showing how Germany and Chile both draft legislation that furthers the goals that are outlined in CEDAW).

305. *See supra* Part II and Part III.

306. *Id.*

307. *See supra* Section V.A.

308. *See supra* Section II.B and Section III.B (outlining both German and Chilean legislation).

309. *See* CEDAW, *supra* note 23 (stating a State Party needs to take "all appropriate measures").

supreme Law of the Land.”³¹⁰ However, even if CEDAW became the law of the land as an international treaty, it lacks the legal power to dictate what legislation will pass in the United States government. Ratification of CEDAW will not upend how the United States passes laws, but would instead be a check to ensure the United States is moving toward eliminating discrimination against women in their daily lives.

Additionally, despite challengers’ objections, abortion does not become a guaranteed right under CEDAW. Germany and Chile each provide different levels of access to abortion.³¹¹ In Germany, abortion is legal during the first trimester upon the condition that a woman goes through mandatory counseling and the requirement of a three-day waiting period.³¹² For most of Chilean history, abortion was prohibited under any circumstances.³¹³ However, President Bachelet introduced a bill that would permit abortions in cases of life endangerment, sexual violence, and fatal fetal impairments.³¹⁴ These represent very different approaches to abortion. CEDAW does not require a State Party to enact one-size-fits-all abortion laws. Rather, the Committee recommends ways for a State Party to pass laws that allow women to make their own reproductive health choices, although it cannot force a State Party to allow broad access to abortion.³¹⁵ Thus, the United States would be able to control how abortion is provided. CEDAW would not effectuate the overturning of *Roe v. Wade* or force the United States to provide abortion in any situation. Similar to Chile and Germany, the United States would work within the parameters of what the country desires.

310. U.S. CONST. art VI, sec. 2.

311. *See supra* Section II.B and Section III.B.

312. *See* Susanne Dieper, *Legal Framework of Abortions in Germany*, AMERICAN INSTITUTE FOR CONTEMPORARY GERMAN STUDIES AT JOHN HOPKINS UNIVERSITY (Feb. 23, 2012), <http://www.aicgs.org/issue/the-legal-framework-of-abortions-in-germany> (stating that the German Penal Code makes abortion unlawful, but an abortion will not be prosecuted when the pregnant woman has undergone consultation three days before the abortion, the abortion is done by a medical doctor, and the abortion takes place within the first trimester); *see also* Emily Matchar, *In Liberal Europe, Abortion Laws Come With Their Own Restrictions*, THE ATLANTIC (Aug. 5, 2013), <https://www.theatlantic.com/international/archive/2013/08/in-liberal-europe-abortion-laws-come-with-their-own-restrictions/278350> (noting that Germany has a three day waiting period for an abortion).

313. *See supra* notes 191-194 and accompanying text.

314. *See supra* note 154 and accompanying text (outlining the current progress of the bill introduced by President Bachelet).

315. *See e.g.*, 2012 Concluding Observations, *supra* note 155.

Furthermore, CEDAW's opponents demonstrate a fundamental misunderstanding of what CEDAW is when they claim that the United States already has domestic laws that deal with gender equality and the elimination of discrimination against women. Germany and Chile each have their own laws that were drafted by each country, not CEDAW. For example, both countries have passed their own laws to deal with parental leave, discrimination in the workplace, abortion, equal pay, sexual harassment and more.³¹⁶ The fact that Germany and Chile have domestic legislation that fulfills CEDAW's goals does not, in turn, mean CEDAW is useless, because CEDAW does not exist to draft legislation. Rather, CEDAW exists to ensure that a country is doing its part to eliminate discrimination against women in the private and public spheres and promote gender equality in a country's own context. The articles of CEDAW provide a third party, internationally sanctioned model for nation-states to achieve gender equality.³¹⁷ It mainly reinforces what needs to change in a society so that women can achieve true equality.³¹⁸ The fact that a country has already passed domestic legislation that attempts to achieve these goals does not mean that CEDAW is not useful.³¹⁹

C. Current United States Political Climate Ripe for the Ratification of CEDAW

Currently, the United States is deeply divided along partisan lines. The 2016 election was one of the most contentious in recent memory. The ultimate election of Donald Trump as President has left many uncertain about the future of women's rights. With the defeat of Hillary Clinton, the questions remain: does America need a female head of state to ratify CEDAW? Or, does culture and popular attitudes towards women's rights play a bigger role in passing progressive legislation?

Organizations such as Planned Parenthood, which provide healthcare services to millions of women, are under constant threat of defunding, including from President Trump.³²⁰ President Trump has

316. *See supra* Section II.B and Section III.B.

317. *See generally* CEDAW, *supra* note 23; *see supra* Part I.

318. *See supra* Section I.A.

319. *See supra* Section II.B and Section III.B.

320. *See* Sandhya Somashekhar & Katie Zezima, *Planned Parenthood Fears It May Be First Casualty of Rekindled Abortion War*, WASHINGTON POST (Dec. 12, 2016), <https://www.washingtonpost.com/national/planned-parenthood-fears-it-may-be-first-casualty->

also called for the overturning of *Roe v. Wade*, the landmark Supreme Court case that found the constitutional right to privacy extended to a woman's right to decide her own medical decisions.³²¹ Contrary to Chancellor Merkel, President Trump has been vocal about women's rights, but not in a way that will promote equality. For example, in a 2004 interview, President Trump called pregnancy an "inconvenience" for employers.³²² President Trump's stance on many issues facing women such as equal pay, childcare, and paid family leave remain elusive at best.³²³

Despite this, Germany and Chile have demonstrated that a country's social and political culture likely has a larger influence on the laws and political climate than does the head of state.³²⁴ The current social and political culture in the United States is highly divided.³²⁵ It is difficult to get a clear understanding of what the American social and political climate is because of this deep divide, as Democrats and Republicans often disagree and view fundamental

of-rekindled-abortion-war/2016/12/12/4e253f84-bd7d-11e6-ac85-094a21c44abc_story.html?hpId=hp_hp-more-top-stories_plannedparenthood-0830pm%253Ahomepage%252Fstory&utm_term=.0048b75d31c1; Hannah Levintova, *Congress Just got a Lot Closer to Defunding Planned Parenthood*, MOTHER JONES (Feb. 16, 2017), <http://www.motherjones.com/politics/2017/02/house-just-voted-allow-states-pull-contraception-funding-planned-parenthood>.

321. See Dan Mangan, *Trump: I'll Appoint Supreme Court Justices to Overturn Roe v. Wade Abortion Case*, CNBC (Oct. 19, 2016), <http://www.cnbc.com/2016/10/19/trump-ill-appoint-supreme-court-justices-to-overturn-roe-v-wade-abortion-case.html>; see also Ariane de Vogue, *Trump: Same-sex Marriage is 'Settled' but Roe v. Wade Can be Changed*, CNN (Nov. 15, 2016), <http://www.cnn.com/2016/11/14/politics/trump-gay-marriage-abortion-supreme-court>.

322. See Ali Vitali, *Trump in 2004: Pregnancy is an 'Inconvenience' to Employers*, NBC NEWS (May 26, 2016), <http://www.nbcnews.com/politics/2016-election/trump-2004-pregnancy-inconvenience-employers-n580366>; see also Alex Byers, *Yes, Trump Did Call Pregnancy an "Inconvenience" for Employers*, POLITICO (Sept. 26, 2016), <http://www.politico.com/blogs/2016-presidential-debate-fact-check/2016/09/yes-trump-did-call-pregnancy-an-inconvenience-for-employers-228743>.

323. See Charlotte Alter, *Here's What Donald Trump Thinks About Women's Issues*, TIME (Aug. 5, 2016), <http://time.com/4441052/donald-trump-women-issues> (listing all of the major issues and Trump's positions, or lack thereof, on them); see also Miriam Valverde, *Hillary Clinton says Donald Trump Doesn't Believe in Equal Pay*, POLITIFACT (Nov. 2, 2016), <http://www.politifact.com/truth-o-meter/statements/2016/nov/02/hillary-clinton/hillary-clinton-says-donald-trump-doesnt-believe-e> (noting Trump did not have a stated position on his campaign website).

324. See generally *supra* Part II and Part III.

325. A Gallup Poll conducted November 9-13, 2016 reported 77% of Americans perceive the nation as divided, with 49% believing Donald Trump will do more to divide the U.S. See Jeffery M. Jones, *Record-High 77% of Americans Perceive Nation as Divided*, GALLUP (Nov. 21, 2016), <http://www.gallup.com/poll/197828/record-high-americans-perceive-nation-divided.aspx>.

issues very differently.³²⁶ For example, in the weeks leading up to the 2016 election, surveys were taken to explore what Donald Trump voters and Hillary Clinton voters found important. One such survey led to the following findings: 79% of Trump voters said illegal immigration was a very big problem, whereas 20% of Hillary Clinton voters said the same.³²⁷ 74% of Trump supporters viewed terrorism as a problem, compared to just 42% of Clinton supporters.³²⁸ For Clinton supporters, 66% said climate change was a problem, compared to 14% of Trump voters. In addition, 53% of Clinton voters view racism as a major issue, with only 21% of Trump voters saying the same.³²⁹ 37% of Clinton voters viewed sexism as a problem and 7% of Trump voters thought sexism was a problem. This poll demonstrates the inherent differences between people's views in the United States. Under this division, it is difficult to envision the path forward for the fight for women's equality. With the current administration, as well as with a Republican-controlled Congress, the immediate future does not look bright. However, Hillary Clinton won the popular vote by receiving about 2.8 million more votes than the President Donald Trump and the youth vote went overwhelmingly in favor of Hillary Clinton, 55% to 37%.³³⁰ This may indicate the future our country is

326. See *infra* notes 326-29.

327. See *A Divided and Pessimistic Electorate*, PEW RESEARCH (Nov. 10, 2016), <http://www.people-press.org/2016/11/10/a-divided-and-pessimistic-electorate/>; see also Laila Kearney, *Trump's Heartland Voters Shrug Off Global Uproar Over Immigration Ban*, REUTERS (Jan. 30, 2017), <http://www.reuters.com/article/us-usa-trump-immigration-supporters-idUSKBN15E0BH> (explaining how Trump voters support the immigration ban proposed by President Trump).

328. See *A Divided and Pessimistic Electorate*, PEW RESEARCH (Nov. 10, 2016), <http://www.people-press.org/2016/11/10/a-divided-and-pessimistic-electorate/>; see also Scott Clement, *Terrorism-focused voters are flocking to Trump – but there's more to the story*, WASHINGTON POST (Sept. 26, 2016), https://www.washingtonpost.com/news/the-fix/wp/2016/09/26/terrorism-focused-voters-are-flocking-to-trump-but-theres-more-to-the-story/?utm_term=.66009524d925 (explaining that terrorism-focused voters elected Trump by a 20-point margin).

329. See *A Divided and Pessimistic Electorate*, PEW RESEARCH (Nov. 10, 2016), <http://www.people-press.org/2016/11/10/a-divided-and-pessimistic-electorate/>; see also Eric Bradner, *Could climate change help Clinton win millennials?* CNN (Sept. 28, 2016), <http://www.cnn.com/2016/09/28/politics/hillary-clinton-donald-trump-climate-change-millennial-voters> (noting the Clinton campaign's focus on trying to get voters who cared about climate change).

330. See Circle Staff, *Young Voters in the 2016 General Election, Center for Information and Research on Civic Learning & Engagement*, CIVICYOUTH.ORG, http://civicyouth.org/wp-content/uploads/2016/11/CIRCLE-Full-Exit-Poll-Analysis_Final.pdf (stating that Hillary Clinton won the youth vote 55% to 37%, and that although Donald Trump won a majority of whites, evangelicals and young people in rural areas, Hillary Clinton carried unmarried young

heading towards. Younger voters voted for the liberal candidate. If this trend continues, the country may become overall more liberal, as the youth vote becomes the majority of the electorate.

CONCLUSION

The implementation of CEDAW may quell some fears that American women have in the age of Trump. For example, overturning *Roe v. Wade* would have massive consequences on a woman's ability to make her own healthcare decisions; women's experiences would then largely vary from state-to-state.³³¹ This possibility seems plausible, because the President appointed and the Senate confirmed Neil Gorsuch to the Supreme Court, which will shift the Supreme Court to a conservative majority.³³² There are also concerns at the state level. For example, Ohio governor John Kasich recently signed a bill that bans abortion at twenty weeks of pregnancy.³³³ If the United States was bound in some way to an international standard of protecting women's rights and the elimination of sex discrimination, perhaps there would be more confidence in the future of our country.

women and youth of color); see also Emily Richmond, Mikhail Zinshteyn, & Natalie Gross, *Dissecting the Youth Vote*, THE ATLANTIC (Nov. 11, 2016), <http://www.theatlantic.com/education/archive/2016/11/dissecting-the-youth-vote/507416>.

331. Lisa Ryan, *More than 37 million women could lose access to abortion if Roe v. Wade is overturned*, NY MAG (Jan. 23 2017), <http://nymag.com/thecut/2017/01/heres-what-will-happen-if-roe-v-wade-is-ever-overturned.html> (laying out what could happen state-by-state if *Roe v. Wade* were overturned); see also Pete Williams, *Abortion could be outlawed in 33 states if Roe v. Wade overturned: Report*, NBC NEWS (Jan. 23, 2017), <http://www.nbcnews.com/news/us-news/report-abortion-could-be-outlawed-33-states-if-roe-v-n710816> (explaining that abortion may be outlawed in thirty-three states if *Roe v. Wade* is overturned).

332. President Trump nominated Judge Neil Gorsuch to fill the seat left by Justice Scalia. See Matt Ford, *Trump nominates Neil Gorsuch for the Supreme Court*, THE ATLANTIC (Jan. 31, 2017), <https://www.theatlantic.com/politics/archive/2017/01/gorsuch-trump-supreme-court/515232>; see also Matt Flegenheimer et al., *Gorsuch Completes His 20-Hour Test. So How Did He Do?*, N.Y. TIMES (Mar. 23, 2017), https://www.nytimes.com/2017/03/23/us/politics/neil-gorsuch-supreme-court-hearing.html?_r=0; see also Adam Liptak & Matt Flegenheimer, *Neil Gorsuch Confirmed by Senate as Supreme Court Justice*, N.Y. TIMES (Apr. 7, 2017), https://www.nytimes.com/2017/04/07/us/politics/neil-gorsuch-supreme-court.html?_r=0 (the Senate confirmed Neil Gorsuch to the Supreme Court by a vote of 54-45.)

333. See Emanuella Grinberg, *Ohio Governor Bans Abortions after 20 weeks while Vetoing 'Heartbeat' Bill*, CNN (Dec. 14, 2016), <http://www.cnn.com/2016/12/13/politics/ohio-abortion-bill-veto/index.html>; see also Emily Crocket, *John Kasich Signed a Ban on Abortion in Ohio After 20 Weeks, With Almost No Exceptions*, VOX (Dec. 13, 2016), <http://www.vox.com/identities/2016/12/13/13902238/ohio-abortion-ban-heartbeat-20-week-john-kasich>.

The case studies of Germany and Chile show that a head of state does not affect the path of a country, but rather the country's cultural attitude does.³³⁴ Even though the President is a conservative populist, he will ultimately need the support of the country to achieve his agenda. If there is a large enough majority that does not support the more inflammatory parts of his agenda, it will perhaps stop him from pursuing it.³³⁵ If elected officials remain committed to their constituency, and believing that most of the American population is not bigoted, America may yet be able to ratify CEDAW and guide America towards gender equality.

As a show of good faith to both the national and international world, the United States should ratify CEDAW. This would make a global statement in support of women's rights in order to demonstrate its serious commitment to the elimination of discrimination against women and equality between genders.³³⁶ The United States could make important gains in equality if it were bound by CEDAW. As Harold Koh said, "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."³³⁷ The United States has yet to make such a commitment, but there is no better time than the present.

334. See *supra* Part II and Part III.

335. See e.g., Kelsey Snell, Sean Sullivan & Mike Debonis, *White House Tries to Salvage GOP Healthcare Proposal as Criticism Mounts*, WASHINGTON POST (Mar. 14, 2017), https://www.washingtonpost.com/powerpost/conservative-lawmakers-continue-to-push-back-on-obamacare-plan/2017/03/14/f7331e70-08aa-11e7-93dc-00f9bdd74ed1_story.html?utm_term=.73cc54b90577; see also Thomas Kaplan and Robert Pear, *House Passes Measure to Repeal and Replace the Affordable Care Act*, N.Y. TIMES (May 4, 2017), <https://www.nytimes.com/2017/05/04/us/politics/health-care-bill-vote.html> (stating that the House has voted to repeal the Affordable Care Act).

336. In fact, there have been incidences where other countries have questioned why the United States had not ratified CEDAW, see *Women's Rights are Human Rights: U.S. Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women: Hearing Before the Subcomm. on Human Rights and the Law before the Sen. Comm. on the Judiciary*, 111th Cong. (2010) (testimony of Melanne Verveer, noting for example, one time Verveer was in the Congo and a questioned was posed as to why the US had not yet ratified CEDAW).

337. Koh, *supra* note 47, at 269.

