
When Global Becomes Municipal: US Cities Localizing Unratified International Human Rights Law

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Abstract

International human rights law is most efficacious when it is both incorporated into domestic law and translated into local contexts. Yet, cities as independent implementers of unratified international law have received limited scholarly attention. This article examines such renege municipal localization of international law through an analysis of San Francisco and Los Angeles's binding ordinances implementing the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) – a treaty to which the United States is not a party. The analysis demonstrates that municipal ordinances in US charter cities are robust legal mechanisms that can help actualize human rights in large urban populations, despite national inaction. Nonetheless, municipal localization of unratified international law – in both the content of the ordinances and their implementation over time – is driven predominantly by local context and city politics rather than conformity to the international treaty on which the ordinances are based. While this importantly demonstrates that unratified international law can be made relevant to cities, the insularity of local ordinances can also result in limited accountability for non-implementation and the ordinances evolving apart from international treaty developments.

1 Introduction

Without espousing the end-of-the-state-based international order, cities are the future. According to the United Nations, approximately 68 per cent of the world's population

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will live in urban areas by 2050.¹ By 2025, 600 cities will be responsible for more than 60 per cent of all global economic growth.² Cities are, and will further become, economic engines whose governments most directly touch the lives of the vast majority of the world's population.

As such, cities have become increasingly consequential and innovative players in global governance. C40, a worldwide coalition of cities, has jointly and voluntarily committed to meeting the Paris Climate Agreement targets, regardless of national efforts.³ In response to rising xenophobia and more restrictive immigration and refugee policies across Europe and the United States, cities have declared themselves sanctuaries, established municipal identification programmes and created inclusive campaigns such as #LondonIsOpen.⁴ Nevertheless, due to legal sovereignty, which grants supreme authority in conducting domestic affairs to states, cities are largely absent from public international law. Public international law – or the formal structure of international obligations, relationships and recognition – is predicated on state consent. Neither non-state nor sub-national actors can independently sign, ratify or accede to international treaties.⁵ Sub-national governments – including federated states, provinces and cities – generally fall within the domestic affairs of states and do not constitute full international legal entities or alternative sites of international legal innovation.⁶

The anachronistic nature of public international law, in light of the growing global prominence of cities, raises timely and consequential questions about the malleability and utility of international law to cities.⁷ Oomen and Baumgärtel have termed this

¹ United Nations Department of Economic and Social Affairs, '2018 Revision of World Urbanization Prospects' (16 May 2018), available at <https://bit.ly/37A9Wsl>.

² Dobbs et al., 'Urban World: Mapping the Economic Power of Cities', McKinsey & Co. (June 2012), available at <https://mck.co/390ZhNC>.

³ M. Acuto, *Global Cities, Governance and Diplomacy: The Urban Link* (2013); C40 Cities, 'Deadline 2020', available at www.c40.org/other/deadline-2020 (last visited 8 December 2020).

⁴ Vaughn and Griffith, 'Maps: Sanctuary Cities, Counties, and States', Center for Immigration Studies (26 October 2006), available at <https://bit.ly/2lph4zO>; 'Municipal ID Cards Help Undocumented Residents, Boost Local Economies', PolicyLink, available at www.policylink.org/blog/municipal-id-cards (last visited 8 December 2020); O'Sullivan, 'London Assures the World It's Still Open – And Diverse', Bloomberg CityLab (30 December 2016), available at <https://bit.ly/3otuDgX>.

⁵ According to the Vienna Convention on the Law of Treaties, 23 May 1969, 1155 UNTS 331, Art. 2(a) (hereinafter 'VCLT'), a treaty 'means an international agreement concluded *between States* in written form and governed by international law . . .' (emphasis added).

In the US context, the Supreme Court's decision in *Missouri v. Holland*, 252 U.S. 416 (1920) delegates all treaty power to the federal government to the exclusion of state governments.

⁶ Blank, 'The City and the World', 44 *Columbia Journal of Transnational Law* (2007) 875, at 892–894.

⁷ The claims made regarding international law solely refer to public international law, not private international law, which does allow for legal roles for municipalities. See Aust, 'Shining Cities on the Hill? The Global City, Climate Change, and International Law', 26 *European Journal of International Law (EJIL)* (2015) 255; Blank, *supra* note 6; Blank, 'Localism in the New Global Legal Order Symposium: Comparative Visions of Global Public Order (Part 2)', 47 *Harvard International Law Journal* (2006) 263; Frug and Barron, 'International Local Government Law', 38 *Urban Lawyer* (2006) 1; Nijman, 'The Future of the City and the International Law of the Future', in S. Muller et al. (eds), *The Law of the Future and the Future of Law* (2011) 213; Oomen and Baumgärtel, 'Frontier Cities: The Rise of Local Authorities as an Opportunity for International Human Rights Law', 29 *EJIL* (2018) 607.

research agenda as the ‘new frontier’ of international law.⁸ This article contributes to this agenda by examining what *US municipal localization* of unratified international human rights law means in form, implementation and impact. It studies an illustrative case, one which speaks to the potential for US cities to enact international law apart from, and in opposition to, their national government: municipal laws adopted by US cities to implement the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).⁹ As the United States has signed, but not ratified, CEDAW, the local CEDAW ordinances formally operate apart from the US national government or the international CEDAW system. The local CEDAW ordinances, though not recognized internationally, mandate implementation at the city level, and thus constitute binding ‘hard law’ mechanisms, most likely to effectuate change.

This question of whether, and how, cities can actualize international human rights law apart from the state is perennially important, as state sovereignty is still invoked, and in many situations respected, as a shield against international legal scrutiny for human rights abuses. States can opt out of legally binding obligations by not ratifying human rights conventions or by doing so with sufficient reservations, declarations and understandings for them to have limited or no domestic effect.¹⁰ Once obligated, states can withhold cooperation, or in extreme situations, formally withdraw from international treaties, such as has occurred with Burundi and The Philippines with regard to the Rome Statute.¹¹ In addition, for all but the most egregious crimes, military intervention to halt human rights abuses is illegal, and can only occur as a last resort with the approval of the UN Security Council.¹² This means that human rights treaty obligations and enforcement vary widely across states, largely because of national political factors such as democratic character, domestic legal systems and foreign policy alliances.¹³ Such critiques of the efficacy of international human rights law have led to claims about the impending demise of the human rights regime.¹⁴

In this context, cities appear a promising development. Borrowing Martha Davis’s language, cities can instigate ‘renegade action’, or what is viewed as such, which can

⁸ Oomen and Baumgärtel, *supra* note 7.

⁹ Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, 1249 UNTS 13 (hereinafter ‘CEDAW’).

¹⁰ Kaye, ‘Stealth Multilateralism’, *Foreign Affairs* (13 September 2013), available at <https://fam.ag/3qyKTiD>; Roth, ‘The Charade of US Ratification of International Human Rights Treaties’, 1 *Chicago Journal of International Law* (2000) 347.

¹¹ Rome Statute of the International Criminal Court, UN Doc. 32/A/CONF 183/9, 17 July 1998, 37 ILM 999 (hereinafter ‘Rome Statute’).

¹² United Nations Office on Genocide Prevention and the Responsibility to Protect, ‘Responsibility to Protect’, available at <https://bit.ly/39MJkHJ> (last visited 8 December 2020).

¹³ Hehir, ‘The Permanence of Inconsistency: Libya, the Security Council, and the Responsibility to Protect’, 38 *International Security* (2013) 137; Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics* (2009).

¹⁴ S. Hopgood, *The Endtimes of Human Rights* (2013); E. Posner, *The Twilight of Human Rights Law* (2014); Vinjamuri, ‘Human Rights Backlash’, in S. Hopgood, J. Snyder and L. Vinjamuri (eds), *Human Rights Futures* (2017) 114.

circumvent national prerogatives or inaction.¹⁵ Cities, which are significant service providers to their populations, have distinct political constituencies and motivations from national governments, and therefore may be better equipped to overcome intractable political hurdles to human rights adoption or implementation.¹⁶ In the United States, this oppositional stance of cities vis-à-vis the national government on human rights issues is particularly salient. The United States is a party to only three of the nine core human rights instruments, and for those treaties that it has ratified, it disallows invocation of the treaties in domestic courts.¹⁷

In order to systematically analyse this specific case of municipal localization, or the ways in which unratified international law translates and operates at the US city level, the article focuses on four key aspects of the ordinances: their legal mechanism, scope of rights issues and measures, implementation over time (for the years 1998 to 2019) and accountability. The data that undergirds the analysis consists of municipal documents, stakeholder interviews, US caselaw and non-governmental organization (NGO) reports and websites.¹⁸ Although CEDAW ordinances have been adopted in nine US municipalities, this article focuses exclusively on two – those of San Francisco and Los Angeles – because these are the longest standing ordinances, and therefore their implementation can be better assessed.¹⁹

The analysis demonstrates that US municipal localization of unratified international human rights law is not only ‘renegade action’ but action with the potential to advance rights locally. Municipal ordinances are authoritative legal tools, and ‘charter cities’, with substantial power devolved from their state constitutions, can use them to regulate a host of human rights-related issues and services. The CEDAW ordinances mandated San Francisco and Los Angeles to conduct gender analyses of public services, employment and budgets; they have also spurred, and justified, new gender policies and initiatives beyond those explicitly specified in the ordinances, such as gender equity on city decision-making committees and work–life balance programmes for private companies.

¹⁵ Martha Davis, ‘Thinking Globally, Acting Locally: States, Municipalities, and International Human Rights’, in C. Soohoo, C. Albisa and Martha Davis (eds), *Bringing Human Rights Home*, vol. 2 (2007), 127, at 135.

¹⁶ Blank argues that localities can be more efficient and democratic due to their smaller scale. Smaller units are better able to overcome collective action problems. Democratic participation is also easier and cheaper, and often touches on issues that trigger mobilization. See Blank, *supra* note 7.

¹⁷ Roth, *supra* note 10. In addition to the three treaties, the United States is also a party to the first two, of three, optional protocols to the Convention on the Rights of the Child, 20 November 1989, 1577 UNTS 3 (hereinafter ‘CRC’), but is not a party to the CRC.

¹⁸ The author conducted the following interviews: two in-person interviews with staff members of the Mayor’s Office of the City of Los Angeles, one in-person interview with a staff member of San Francisco’s Department on the Status of Women and two telephone interviews with leaders of Cities for CEDAW. Some interviews were used as background information; others are identified by name and/or position, as requested by the interviewee.

¹⁹ As of July 2020, nine US municipalities have adopted CEDAW ordinances (San Francisco, Los Angeles, Berkeley, Cincinnati, Honolulu, Miami-Dade County, Pittsburgh, San Jose and Santa Clara) and dozens more are considering adoption. See ‘Cities for CEDAW: Status of Local Activities’ (last updated 27 June 2019), available at <https://bit.ly/39ObaDz>.

Nevertheless, while referencing international human rights law, US municipal localization of unratified treaties is predominantly driven by local inputs, contexts and politics. Unbound by, and decoupled from, CEDAW, city ordinances can selectively mention CEDAW or use it as a general guiding ethos rather than a prescription. Similarly, local actors generally do not follow, and incorporate into city work, emerging developments of CEDAW. Instead, the implementation of the CEDAW ordinances evolves based on changing municipal contexts, including bureaucratic buy-in, budgets and administration change. Cities have also largely, and intentionally, exempted themselves from accountability for non-implementation – making removal of the right to private action a political precondition for adoption of the ordinances, and only selectively utilizing executive authority to ensure follow-through.

2 Relevant Literature

Within the disciplines of sociology, geography and increasingly international relations, there is a growing focus on the city, and in particular ‘the global city’.²⁰ While economically vibrant and powerful city-states trace back to ancient times, global cities are unique and are born of the recent processes of economic globalization, specifically the technological advancements and neoliberal values that allowed for the growth of decentralized multi-national corporations.²¹ Global cities are thus sites of juxtaposition: they represent vibrant economic and cultural hubs while simultaneously being drivers and locations of inequality and displacement.²²

For international relations, the rise of global cities raises foundational questions about the structure and power distribution of the global system, traditionally seen as consisting of states.²³ Cities, without replacing the state, have amplified their political, economic and cultural influence beyond national borders, and therefore constitute consequential actors, and loci, of global governance.²⁴ This can be seen in the growing integration of cities, and city-based initiatives, into intergovernmental forums. Municipal initiatives have proliferated across UN programmes, including the UN Human Settlement Programme (UN HABITAT), UN Development Programme’s World Alliance of Cities Against Poverty, UNICEF’s Mayors Defenders of Children

²⁰ S. Sassen, *The Global City: New York, London, Tokyo* (2013).

²¹ *Ibid.*

²² Mike Davis, *Planet of Slums* (2007); D. Massey, *World City* (2013); S. Sassen, *Sociology of Globalization* (2007).

²³ Acuto, *supra* note 3; Aust, *supra* note 7; B. Barber, *If Mayors Ruled the World: Dysfunctional Nations, Rising Cities* (2013); Curtis, ‘Global Cities and the Transformation of the International System’, 37 *Review of International Studies* (2011) 1923.

²⁴ C. Alger, *The UN System and Cities in Global Governance* (2013); S. Curtis (ed.), *The Power of Cities in International Relations* (2014); Fry, ‘State and Local Governments in the International Arena’, 509 *Annals of the American Academy of Political and Social Science* (1990) 118; M. Glennon and R. Sloane, *Foreign Affairs Federalism: The Myth of National Exclusivity* (2016); Kahler, ‘Global Governance: Three Futures’, 20 *International Studies Review* (2018) 239; K. Ljungkvist, *The Global City 2.0* (2016).

Initiative and the UN Capital Development Fund's (UNCDF) Local Development Finance.²⁵ While cities have a long history of engagement on foreign issues, local responses to climate change have highlighted the role of cities in addressing transnational issues outside existing international organizations.²⁶ Most notably, the C40 Cities Climate Leadership Group, a network of 40 global cities, has successfully implemented climate change policies without state support through a combination of joint commitments, shared expertise and private partnerships.²⁷

This turn towards cities has largely not translated to international legal scholarship.²⁸ Although international law is increasingly contemplating the legal rights and duties of non-states actors – and in particular NGOs and businesses – sub-national government is generally invisible and relegated to an internal domestic matter.²⁹ This oversight is puzzling as international legal scholarship notes the importance of domestic 'internalization' in explaining why nations obey international law.³⁰ The literature on transnational legal processes – or the transnational construction and flow of legal norms – specifically articulates multiple pathways of internalization: domestic actors directly adopting international law, domestic norms being picked up and diffused as international law or norms and horizontal adoption of principles from one state to another.³¹ The related scholarship makes brief mention of municipal internalization, or localization, of international law, but the main phenomenon of study is the interplay between the national and international.³²

Even within international human rights, cities do not play prominent roles in norm adoption, monitoring or implementation. NGOs, rather than local governments, are typically seen as the main agents of localization through framing grievances into broader rights-based claims and translating international principles using culturally appropriate language and symbols.³³ Cities are also constrained in rights-monitoring

²⁵ Alger, *supra* note 24, at 151.

²⁶ Alger, *supra* note 24; Bilder, 'The Role of States and Cities in Foreign Relations', 83 *The American Journal of International Law* (1989) 821; H. Hobbs, *City Hall Goes Abroad: The Foreign Policy of Local Politics* (1994); Glennon and Sloane, *supra* note 24; Nijman, 'Renaissance of the City as Global Actor: The Role of Foreign Policy and International Law Practices in the Construction of Cities as Global Actors' (T.M.C. Asser Institute for International & European Law Paper No. 2016-02, 2016), available at <https://papers.ssrn.com/abstract=2737805>.

²⁷ Bouteligier, 'A Networked Urban World', in Curtis, *supra* note 24, 57, at 57.

²⁸ Aust, *supra* note 7; Oomen and Baumgärtel, *supra* note 7.

²⁹ Frug, 'The City as a Legal Concept', in L. Rodwin and R. Hollister (eds), *Cities of the Mind* (1984) 233.

³⁰ Koh, 'The 1998 Frankel Lecture: Bringing International Law Home', 35 *Houston Law Review* (1998) 1.

³¹ Koh, 'Why Transnational Law Matters Internationalizing the First Year Law School Curriculum', 24 *Penn State International Law Review* (2006–2005) 745; Shaffer, 'Transnational Legal Process and State Change', 37 *Law and Social Inquiry* (2012) 229.

³² T. Halliday and G. Shaffer, *Transnational Legal Orders* (2015); Koh, *supra* note 30; Resnik, 'Comparative (in) Equalities: CEDAW, the Jurisdiction of Gender, and the Heterogeneity of Transnational Law Production', 10 *International Journal of Constitutional Law* (2012) 531; Shaffer, *supra* note 31.

³³ P. Ayoub, *When States Come Out* (2016); C. Bob, *The International Struggle for New Human Rights* (2008); Boesenecker and Vinjamuri, 'Lost in Translation? Civil Society, Faith-Based Organizations and the Negotiation of International Norms', 5 *International Journal of Transitional Justice* (2011) 345; M. Keck and K. Sikkink, *Activists Beyond Borders* (1998); S. Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (2009).

and cannot independently share information or report to the human rights treaty-monitoring bodies. Any information provided by cities is subsumed within the larger country report, and the decision to incorporate such information is at the discretion of the national government. Cities, as sub-national government entities, cannot file autonomous 'shadow reports', as NGOs do, which provide additional, and often condemnatory, information on state behaviour.³⁴

Nevertheless, cities across the world are drafting and adopting human rights resolutions, frameworks and charters.³⁵ In 2016, with the consultation and advocacy of cities, the United Nations Conference on Housing and Sustainable Urban Development (Habitat III) drafted a New Urban Agenda, which both affirms the 'right to a city' and envisions cities as locations and agents of equality and rights.³⁶ Cities can also sign the Global Charter for the Right to the City, the Gwangju Guiding Principles for a Human Rights City, the Global Charter-Agenda for Human Rights in the City and the European Charter for the Safeguarding of Human Rights in the City – all rooted in implementing the Universal Declaration of Human Rights at the local level.³⁷ US cities have also adopted resolutions to create policies in accordance with the Convention on the Rights of the Child,³⁸ declare freedom from violence a human right and establish volunteer human rights commissions.³⁹ While these measures are rooted in human rights principles, and sometimes laws, they are nonetheless voluntary and non-binding in nature.

Only a handful of scholarly works examine the binding CEDAW ordinances. Several studies focus on the spread and salience of the CEDAW ordinances across US cities.⁴⁰

³⁴ Gaer, 'Implementing International Human Rights Norms: UN Human Rights Treaty Bodies and NGOs', 2 *Journal of Human Rights* (2003) 339; Hafner-Burton, 'Sticks and Stones: Naming and Shaming the Human Rights Enforcement Problem', 62 *International Organization* (2008) 689; Merry, *supra* note 33; T. Risse, S. Ropp and K. Sikkink, *The Power of Human Rights* (1999).

³⁵ See B. Oomen, Martha Davis and M. Grigolo (eds), *Global Urban Justice: The Rise of Human Rights Cities* (2016). These frameworks trace back to Henri Lefebvre's 1968 idea of *le droit à la ville*, or the right to the city, and the 1992 UN Vienna Conference, which emphasized the domestication of international human rights. See Cardenas, 'Human Rights in Comparative Politics', in M. Goodhart (ed.), *Human Rights: Politics and Practice* (2009) 76; H. Lefebvre, *Le droit à la ville* (1968).

³⁶ United Nations Conference on Housing and Sustainable Urban Development (Habitat III), *New Urban Agenda* (2017), available at <https://bit.ly/3goGY35>.

³⁷ United Cities and Local Governments (UCLG) Committee on Social, Inclusion, Participatory Democracy and Human Rights, 'Global Charter-Agenda for Human Rights in the City', available at <https://bit.ly/2VNgAXg> (last visited 8 December 2020); United Nations Human Rights Council, 'Role of Local Governments in the Promotion and Protection of Human Rights: Final Report of the Human Rights Council Advisory Committee', UN Doc. A/HRC/30/49, 7 August 2015, at 13.

³⁸ CRC, *supra* note 17.

³⁹ Columbia Law School, Human Rights Institute, 'Bringing Human Rights Home: How State and Local Governments Can Use Human Rights to Advance Local Policy' (December 2012), available at <https://bit.ly/33T568W>; Martha Davis, 'Cities, Human Rights and Accountability', in Oomen *et al.*, *supra* note 35, at 23.

⁴⁰ Lozner, 'Diffusion of Local Regulatory Innovations: The San Francisco CEDAW Ordinance and the New York City Human Rights Initiative', 104 *Columbia Law Review* (2004) 768; Och, 'The Local Diffusion of International Human Rights Norms: Understanding the Cities for CEDAW Campaign', 3 *International Feminist Journal of Politics* (2018) 425.

The majority of the scholarship utilizes the CEDAW ordinances as a case to interrogate and ‘rescale’ notions of federalism, international law and governance to include local action.⁴¹ Although the main thrust of this literature is documenting and theorizing about the ‘heterogeneity within international law’, a few of these studies touch on characteristics of municipal localization.⁴² Most notably, Resnik finds that the CEDAW ordinances mirror CEDAW’s technical form, but not its obligatory nature, which makes the exercise more about ‘gender mainstreaming’ rather than rights enforcement.⁴³ Additional studies demonstrate that the CEDAW ordinances do not heavily reference CEDAW, and therefore their relationship to CEDAW is more of spirit than substance.⁴⁴ This article builds upon these insights to analyse broader aspects of the ordinances over a longer period of implementation. San Francisco’s CEDAW ordinance is well documented, but Los Angeles’s is unstudied, and importantly tells a story of implementation divergent from San Francisco.

3 US Municipal Localization of CEDAW

CEDAW is often referred to as the ‘international bill of rights for women’.⁴⁵ A women-specific rights agenda emerged in response to the pervasiveness of gender discrimination despite the UN Charter and the Universal Declaration of Human Rights prohibiting discrimination based on sex. In 1967, the UN General Assembly adopted a non-binding Declaration on the Elimination of Discrimination against Women (DEDAW).⁴⁶ CEDAW, the binding international treaty, followed in 1979, and came into force two years later with 20 state ratifications.

US President Jimmy Carter signed CEDAW in 1980, but due to concerns over its efficacy and claims that it undermined family life and implicitly endorsed abortion, the US Senate never gave its advice and consent.⁴⁷ In 1982, the Equal Rights Amendment, which would constitutionally guarantee equal rights for men and women, fell short

⁴¹ Martha Davis, *supra* note 15; Knop, ‘International Law and the Disaggregated Democratic State: Two Case Studies on Women’s Human Rights and the United States’ (June 2012), available at <https://bit.ly/3oweS8S>; Och, *supra* note 40; Resnik, *supra* note 32; Resnik, ‘Foreign as Domestic Affairs: Rethinking Horizontal Federalism and Foreign Affairs Preemption in Light of Translocal Internationalism Articles and Essays’, 57 *Emory Law Journal* (2007–2008) 31; Wexler, ‘Take the Long Way Home: Sub-Federal Integration of Unratified and Non-Self-Executing Treaty Law’, 28 *Michigan Journal of International Law* (2006) 1.

⁴² Resnik, *supra* note 32, at 532.

⁴³ Knop, *supra* note 41, at 21; Resnik, *supra* note 32, at 537; Resnik, *supra* note 41, at 59.

⁴⁴ Davis, *supra* note 15, at 136; Knop, *supra* note 41, at 22.

⁴⁵ M. Freeman, B. Rudolf and C. Chinkin, *The UN Convention on the Elimination of All Forms of Discrimination Against Women: A Commentary* (2012), at 2.

⁴⁶ United Nations General Assembly, ‘Declaration on the Elimination of Discrimination against Women’, UN Doc. A/RES/2263 (XXII), 7 November 1967 (hereinafter ‘DEDAW’).

⁴⁷ L. Baldez, *Defying Convention: US Resistance to the UN Treaty on Women’s Rights* (2014) at 154; Congressional Research Service, ‘The U.N. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW): Issues in the U.S. Ratification Debate’, Report R40750 (23 July 2015), available at www.everycrsreport.com/reports/R40750.html.

of the necessary ratifications by three states. In 1995, two San Francisco-based activists – Krishanti Dharmaraj and Wennie Kusuma – attended the UN Fourth World Conference on Women in Beijing and were inspired to bring back the preventive human rights framework to the United States. Upon returning, Dharmaraj and Kusuma founded the Women’s Institute for Leadership Development for Human Rights (WILD), the architect of the CEDAW ordinance. After 18 months of developing relationships with local and national NGOs, and a public hearing where a Board Member of Amnesty International and the President of the San Francisco Board of Supervisors, a strong voice for business interests and an unlikely advocate, spoke on behalf of the ordinance, San Francisco became the first city to adopt a CEDAW ordinance. WILD then developed materials and conducted trainings on how to replicate San Francisco’s CEDAW ordinance in other cities.⁴⁸ Five years later, Los Angeles passed a CEDAW ordinance closely modelled on that of San Francisco. From this early work of WILD, the Cities for CEDAW campaign formed, which has contributed to the adoption of CEDAW ordinances in seven additional US municipalities.⁴⁹

The CEDAW ordinances were originally conceived as a stopgap to US ratification of CEDAW. The thought was that implementing CEDAW at the city level would not only actualize gender equality but would also raise awareness and support for federal ratification of CEDAW.⁵⁰ Over time, this has changed. Ratification is not the end goal of Cities for CEDAW, although it would welcome it.⁵¹ Cities for CEDAW seeks to create a city-level alternative that actualizes women’s rights across the United States regardless of federal ratification.⁵²

Through analysing how San Francisco and Los Angeles have localized CEDAW – in terms of legal mechanism, issues and measures, implementation and accountability – the following sections shed light on what such a city-level alternative looks like, how it operates over time and its real and potential impact on gender equality, locally (see Table 1).

⁴⁸ Business and Human Rights Resources Centre, ‘Close To Home: Case Studies of Human Rights Work in the United States’, Ford Foundation Report (1 January 2004), at 72–77, available at <https://bit.ly/3IZPGWZ>.

⁴⁹ The Cities for CEDAW campaign was formed by the Women’s Intercultural Network (WIN), the NGO Committee on the Status of Women, the San Francisco Department on the Status of Women and the Leadership Conference on Civil and Human Rights at the 2013 annual meeting of the UN Committee on the Status of Women. See ‘What is the Cities for CEDAW Campaign?’, Women’s Intercultural Network, available at <http://citiesforcedaw.org/background/> (last visited 8 December 2020); Och, *supra* note 40, at 426.

⁵⁰ Vesely, ‘U.N. Women’s Treaty Molds San Francisco Government’, *Women’s ENews* (25 July 2002), available at <https://bit.ly/37FqeRb>; Y. Chlala et al., *Making Rights Real: A Workbook on Local Implementation of Human Rights* (2006), at 4, available at <https://bit.ly/2VTNw05>.

⁵¹ Interview with Emily Murase, Ph.D., Director, San Francisco Department on the Status of Women (2 April 2018) (hereinafter ‘Interview with Murase’).

⁵² Interview with Soon-Young Yoon, Chair of the Board, Women’s Environment and Development Organization (WEDO), UN representative, International Alliance of Women International Impact Committee member, Women Mayors’ Network (WoMN) (25 July 2019).

Table 1: US municipal localization of CEDAW

	CEDAW	San Francisco	Los Angeles
Legal mechanism	International treaty	Municipal ordinance	
Scope			
<i>Issues</i>	Trafficking (Violence Against Women from General Recommendation No. 19); Government; International representation; Nationality; Education; Employment; Health care; Economic and social life; Rural women; Private contracts; Family	Violence Against Women; Economic development; Health care; Economic and social life	Violence Against Women; Economic development; Health care; Education; Government; Economic and social life
<i>Measures</i>	Constitutional/legal changes; Public/private actors; Gender mainstreaming; Special measures; Cultural/social practices	Municipal/private (voluntary) actors; Gender budgeting; Cultural/social practices	Municipal actors; Special measures (quotas); Cultural/social practices
Implementation			
<i>Procedures</i>	Regularized reporting and monitoring	Single-time reporting and analysis of city departments; City budget analyses	Single-time (later changed to yearly) reporting and analysis of city departments
<i>Mechanisms of change</i>	General recommendations	Amended ordinances; Department on the Status of Women initiatives	Mayoral initiatives
Accountability	Naming and shaming; NGO shadow reporting; Optional protocol	None	Mayoral power

A Legal Mechanism: The Municipal–International Divide

The CEDAW ordinances are ‘hard law’ that oblige local government action. Yet, because the United States is not a party to CEDAW, these powerful local laws are decoupled from the international treaty, and its monitoring body, on which they are based. In order to overcome this disconnect, cities have to independently follow and incorporate developments in CEDAW and seek out informal, yet substantive, engagement with the CEDAW treaty monitoring body.

Ordinances, or municipal laws, are the most authoritative legal tool afforded to cities. Ordinances are binding and mandate implementation. Both San Francisco’s and Los Angeles’s CEDAW ordinances became such through the majority approval

of the respective city councils or county board of supervisors and the city mayor.⁵³ The power of municipal law-making rests in the US federal system, whereby the Tenth Amendment to the Constitution affords certain powers to the federal government and grants the remaining powers to states. States then devolve some power to cities. In the state of California – the location of the two examined CEDAW ordinances – municipalities are deemed ‘charter cities’, whereby they are granted broad powers to structure and manage their own affairs.⁵⁴ According to the California Constitution, a city can ‘make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws’.⁵⁵ In essence, this grants cities the power to act in whatever capacity they see fit, even potentially in opposition to the national government, up until the state or federal government pre-empts city action. The history of state and federal pre-emption is infrequent and the parameters under which pre-emption is likely to occur are legally unsettled.⁵⁶ Yet, pre-emption of the CEDAW ordinances seems unlikely for several reasons. First, the measures implemented by the ordinances are within the areas of traditional state competence.⁵⁷ Second, federal pre-emption could contravene the US government’s legal obligation under customary international law in signing CEDAW not to defeat the treaty’s ‘object and purpose’.⁵⁸ This means that California charter cities, and those of states with similarly devolved municipal power, seemingly have broad and expansive prerogative to implement CEDAW, and potentially other human rights instruments, locally.

Yet, paradoxically, US cities utilizing city laws to implement *unratified* international treaties are disconnected from the foremost experts on the treaty they seek to

⁵³ San Francisco is unique in that it is both a city and county. It therefore does not have a city council but only a board of supervisors that does city governance and county administration. See San Francisco Ordinance Nos. 128–98 (1998) and 325-00 (2000); The City of Los Angeles Ordinance No. 175735 (2003).

⁵⁴ Cal. Const. Art. XI, § 5(a). See also Briffault, ‘Our Localism: Part I—The Structure of Local Government Law’, 90 *Columbia Law Review* (1990) 10. Charter cities are a form of ‘home rule’, an early 20th-century movement to devolve power to local governments. See Logan, ‘The Shadow Criminal Law of Municipal Governance’, 62 *Ohio State Law Journal* (2001) 1409; Su, ‘Have Cities Abandoned Home Rule? Symposium: Home Rule in an Era of Municipal Innovation’, 44 *Fordham Urban Law Journal* (2017) 181.

⁵⁵ California Constitution, Art. XI, § 7.

⁵⁶ Glennon and Sloane, *supra* note 24. The unsettled nature of sub-national pre-emption is embodied by *United States v. California*, a case on the constitutionality of federal pre-emption of California’s sanctuary law that wound its way through the US federal courts but was denied review by the US Supreme Court in June 2020.

⁵⁷ According to the Restatement of the Law, Supreme Court case *American Insurance Association v. Garamendi*, 539 U.S. 396 (2003) ‘suggests that States may act within the areas of their traditional competence even if the action has foreign-policy implications, as long as no conflict with federal law exists’. See *Restatement (Fourth) of the Foreign Relations Law* (2014), at 169 (hereinafter ‘*Restatement (Fourth)*’).

California state pre-emption is also unlikely as the state constitution devolves significant authority to ‘charter cities’ and municipal ordinances that conflict with general state laws are not inherently problematic. Pre-emption may only be considered if there is an actual conflict between the state and municipal laws, the state law qualifies as a matter of ‘statewide concern’ and is ‘narrowly tailored’ to limit incursion into legitimate municipal interests. See *Johnson v. Bradley*, 841 P.2d 990, 997–1000 (Cal. 1992).

⁵⁸ According to the Restatement of the Law, ‘... it appears that the United States, like many states, accepts that as a matter of customary international law that signature of a treaty generates an interim obligation not to defeat the treaty’s object and purpose’. *Restatement (Fourth)*, *supra* note 57, at 42.

implement. Because CEDAW is an international treaty to which only national governments can join, San Francisco and Los Angeles cannot formally participate in CEDAW monitoring processes. Furthermore, CEDAW is a ‘living’ document, with evolving interpretations, general recommendations and jurisprudence. Cities, removed from any formal relationship with CEDAW, might not be apprised of these developments, and the local ordinances, as written, do not inherently incorporate them.

Neither San Francisco’s nor Los Angeles’s ordinances reference CEDAW’s general recommendations or have been amended to incorporate general recommendations that were issued after the ordinances were adopted. In 2000, two years after passage of the first CEDAW ordinance, San Francisco amended its CEDAW ordinance to include a reference to racial discrimination and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).⁵⁹ Such a reference to CERD, another international human rights treaty, does suggest that city officials, at least in the early years of San Francisco’s CEDAW ordinance, did have an understanding of the international human rights system. Yet, the impetus for such an intersectional approach did not trickle down from CEDAW; instead, San Francisco preceded CEDAW. It was not until General Recommendation 28 in 2010 that the CEDAW monitoring committee explicitly stated that ‘intersectionality is a basic concept for understanding the scope of the general obligations of States parties’.⁶⁰ Moreover, this updated ordinance referencing CERD did not catalyse San Francisco to engage with international CERD monitoring, even though the United States is a party to CERD.⁶¹

Overcoming the intrinsic international–municipal disconnect requires activists and local government officials to develop informal connections to the CEDAW monitoring body, and to follow, and incorporate, relevant CEDAW developments into city work. Cities for CEDAW, the campaign behind the ordinances, has begun to do this work but it has been limited and largely centred on the leadership of Cities for CEDAW, rather than the women’s commissioners and gender equality officers doing day-to-day implementation of the ordinances.

In 2015 and 2018, Soon Young-Yoon, the UN representative of the International Alliance on Women and a prominent figure in the Cities for CEDAW campaign, along with several other NGO representatives, briefed the CEDAW experts on the status and successes of local CEDAW ordinances at optional events in Geneva. These briefings represented important points of contact between Cities for CEDAW and the CEDAW

⁵⁹ San Francisco Ordinance No. 325-00 (2000), § 12K.3; International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, 660 UNTS 195 (hereinafter ‘CERD’). San Francisco’s CEDAW ordinance is unique in its intersectional approach. Los Angeles has not amended its ordinance to incorporate CERD and does not do gender by race in all projects. However, Mayor Garcetti’s Executive Directive No. 11: Gender Equity in City Operations (26 August 2015), which implements the CEDAW ordinance, mentions ‘intersections of multiple forms of discrimination’ and charges the newly formed Gender Equality Coalition with identifying and targeting programmes for vulnerable women with other social signifiers.

⁶⁰ General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the CEDAW, UN Doc. CEDAW/C/GC/28, 16 December 2010, para. 18, at 4.

⁶¹ Interview with Murase, *supra* note 51.

experts; yet the meetings were not, and could not be, a substitute for the CEDAW experts evaluating US city ordinances in their professional capacity. The CEDAW experts, in their personal capacities, voiced support for the US ordinances and discussed ideas on how to expand the campaign beyond the United States.⁶² In a strategy meeting following her 2018 return from Geneva, Yoon informed the Cities for CEDAW leadership of the newest CEDAW general recommendation on climate change and noted that the Cities for CEDAW website was updated to include a single-page primer on CEDAW and its general recommendations. Nevertheless, the meeting did not discuss ways of incorporating this general recommendation into existing or new CEDAW ordinances, nor did it touch on ways to disseminate this information to local officials implementing the CEDAW ordinances.⁶³

Prior to 2016, San Francisco's Department on the Status of Women was actively involved in the Cities for CEDAW campaign and was likely apprised of CEDAW developments through high-level strategy meetings. However, in 2016, San Francisco pulled back from this role after some Commissioners on the Status of Women expressed scepticism about the value of this work for the women of San Francisco.⁶⁴ Conversely, none of the staff from Los Angeles's Gender Equity Coalition have prior experience or expertise related to CEDAW or have been involved with the Cities for CEDAW campaign.

B Scope: *The Ethos of CEDAW*

As US cities cannot join CEDAW, and are therefore not bound by the entirety of its provisions, cities can localize CEDAW as they see fit: using CEDAW as a broad model, and picking and choosing aspects that fit municipal needs, or alternatively referencing its spirit to justify gender-equality projects without reference to any of CEDAW's specific obligations.

Both San Francisco's and Los Angeles's CEDAW ordinances use the verbatim definition of 'discrimination against women' from Article 1 of CEDAW as well as the definition of 'violence against women' from CEDAW General Recommendation 19.⁶⁵ Just as CEDAW Articles 6 to 16 lay out substantive issues, the CEDAW ordinances also have special sections dedicated to issues. San Francisco's ordinance includes sections on violence against women, economic development and health care. Los Angeles's ordinance mimics all of the sections articulated in San Francisco's ordinance and includes an additional section on education. Education was added to the Los Angeles ordinance due to comments made at two public hearings on the proposed CEDAW ordinance that highlighted employment challenges for women stemming from lack

⁶² Cities for CEDAW Beijing +20, 'Report to the CEDAW Committee', (13 November 2015) (on file with author); Report Released: NGOs Brief the CEDAW Committee on "Cities for CEDAW", (12 December 2015) (on file with author).

⁶³ Cities for CEDAW Strategy Meeting, (16 March 2018) (unpublished, meeting notes provided to the author by Soon-Young Yoon).

⁶⁴ Interview with Murase, *supra* note 51.

⁶⁵ CEDAW General Recommendation No. 19: Violence against Women, UN Doc. A/47/38 at 1, Eleventh session, 1992, para. 6, at 1.

of education and training.⁶⁶ Together, these issues map on and draw direct language from CEDAW Article 6 on trafficking, Article 10 on education, Article 11 on employment, Article 12 on healthcare, Article 13 on economic and social life and General Recommendation 19 on violence against women – yet they do not include any direct reference to these CEDAW articles.

In practice, the projects and policies stemming from the CEDAW ordinances have gone beyond the aforementioned articles. In line with CEDAW Article 2, which mandates measures to eliminate discrimination against women by all persons and public and private organizations, both ordinances state the ‘need to work towards implementing the principles of CEDAW in the private sector’.⁶⁷ Even though the CEDAW ordinance does not place obligations on private companies that operate in the city, the San Francisco Department on the Status of Women launched the Gender Equality Principles Initiative to help Bay Area companies change policy in compensation, work–life balance, safety and management. The programme has attracted the involvement of major corporations including Deloitte, Google, IBM and Oracle.⁶⁸ Both San Francisco and Los Angeles have also expanded their CEDAW implementation to include gender analysis and auditing of city budgets, in line with CEDAW Article 3 that mandates gender mainstreaming. In Los Angeles, Mayor Garcetti spearheaded a campaign, in the spirit of CEDAW but without specific reference, to drastically increase women’s representation in city government. For the first time, there is gender parity on all 41 city boards and commissions, and half of the deputy mayors and 43 per cent of the city department heads are women.⁶⁹ This could constitute a special measure discussed in CEDAW Article 2 to increase women’s participation and representation in government – the topic of CEDAW Article 7.

Even with cities having wide latitude to selectively pull from, and reference, CEDAW, the municipal ordinances and their broad measures of implementation, reflect, or partially reflect, many of CEDAW’s core issues. Six out of the 11 substantive issues covered in CEDAW Articles 6–16 are at least partially reflected in the language and work of the combined CEDAW ordinances. Those not reflected are not applicable to cities, or the city government does not have authority to legislate upon them. These issues include appointment of female representatives to international organizations, nationality laws, issues pertaining to rural women, equality in private contracts and family law. Similarly, cities cannot make constitutional or federal legislation changes as required by CEDAW Article 2.

⁶⁶ The public hearings are described in City of Los Angeles’s CEDAW Ordinance No. 175735 (2003), para. 2.

⁶⁷ CEDAW art. 2(e), *supra* note 9; San Francisco Ordinance No. 128–98 (1998), § 12K.1(c); San Francisco Ordinance No. 325-00 (2000), § 12K.1(c); Los Angeles Ordinance No. 175735 (2003), para. 4.

⁶⁸ Interview with Murase, *supra* note 51.

⁶⁹ Office of Los Angeles Mayor Eric Garcetti, ‘Gender Equity’, available at www.lamayor.org/GenderEquity (last visited 8 December 2020).

C Implementation: City Politics and Local Priorities

CEDAW also serves as the general model for implementation procedures of the CEDAW ordinances. Like CEDAW, the ordinances authorize a monitoring body to analyse reports and provide voluntary recommendations. Yet, just as not all of the issues and measures encapsulated in CEDAW apply to, or are picked up by, US cities, the local implementation procedures bear semblance to CEDAW but operate distinctly at the city level. Most markedly, the CEDAW ordinances are self-contained within each city government: the government authorizes, funds and provides for the experts to evaluate itself. Because of this insularity, implementation is either facilitated or hindered by city politics. Furthermore, subsequent alterations and changes to the CEDAW ordinances have not been driven by international changes to CEDAW, which are then funnelled down and localized; instead, change had resulted from local challenges, largely bureaucratic and budgetary, and the creative and pragmatic responses of city officials.

Following CEDAW ratification or accession, countries are obligated to submit a report within one year, and every four years thereafter, on the measures they have adopted to fulfil the convention and any challenges that impeded them in doing so. The reports are then reviewed by the treaty monitoring committee of experts, which then engages in a 'constructive dialogue' with states, advising and assisting them in fulfilling their treaty obligations.⁷⁰ In 1986, after consultation with Legal Counsel of the UN, the expert committee interpreted Article 21 of CEDAW to allow the committee to make general recommendations. These general recommendations are interpretations of the Convention – some procedural and other substantive – meant to stretch the convention to new issue areas, such as violence against women, and to assist states in reporting and implementation.⁷¹ For those states that have become parties to the additional CEDAW protocol, there also exists a formalized process for individuals and groups to lodge complaints of state non-compliance with the CEDAW committee.

The CEDAW ordinances rest on a similar framework of monitoring; but as cities cannot formally interact with the CEDAW treaty monitoring body, the CEDAW ordinances provide for a municipal monitoring body. The 1998 San Francisco ordinance established an ad hoc CEDAW Task Force comprised of individuals from various city departments and commissions, including the Human Rights Commission, the mayor's office, the Department of Human Resources, the Board of Supervisors, the Labor Council and the Commission on the Status of Women, as well as several community members. The CEDAW Task Force was charged with developing gender analysis guidelines that would then be applied to each city department. The ordinance included a budget of USD100,000 for the first year to pay for additional staff at the Department on the Status of Women and for the creation of the gender analysis guidelines. Future costs were absorbed by the Department on the Status of Women – San Francisco is one of the few cities to have such a permanent department with a budget and staff. The analysis consisted of applying a gender lens to departmental employment practices,

⁷⁰ S. Zwingel, *Translating International Women's Rights: The CEDAW Convention in Context* (2016), at 80–88.

⁷¹ Freeman et al., *supra* note 45, at 21.

budget, service delivery and operations. The ordinance also charged the Commission on the Status of Women with training each city department on human rights with a gender perspective.⁷²

Implementation of the CEDAW ordinance almost immediately resulted in challenges born from city bureaucracy. The gender analyses of city departments and resultant action plans turned out to be painstakingly slow. The original plan was to analyse all 50 city departments, but it took 10 years to analyse 10 departments.⁷³ In the first year of implementation, the number of departments undertaking gender analysis decreased from four to two due to lack of disaggregated data and the huge learning curve in understanding how gender played out in departmental budgets, services and the workforce.⁷⁴ For example, the Department of Public Works had difficulty understanding that public works could be gendered until the CEDAW Task Force started discussing curb cuts on sidewalks for strollers and safety concerns regarding the placement of streetlights.⁷⁵

Due to the slow nature of the gender analyses, the CEDAW Task Force pivoted and began to focus on citywide initiatives, and San Francisco amended the ordinance to articulate such a focus.⁷⁶ This resulted in the 2001 Work–Life Policies and Practices Survey Report, conducted in conjunction with one of largest unions in the city, which made a case for better telecommuting and flexible schedule policies – many years before these became widely popularized.⁷⁷ In 2003, in response to the recession and spurred by the Commission, the San Francisco Board of Supervisors passed a resolution urging city departments to conduct CEDAW gender analysis of their budget cuts to ensure that the cuts would not predominantly affect women and underrepresented groups.⁷⁸ Following this work, the Commission recognized that three-quarters of women do not work in the public sector and that the Commission should segue into the private sector. This prompted the award-winning Gender Equality Principles Initiatives programme, which encourages and supports corporations to change policies regarding pay, women’s representation on boards and work–life balance.⁷⁹ The

⁷² San Francisco Ordinance No. 128–98 (1998).

⁷³ The departments were: Department of Public Works (1999), Juvenile Probation Department (1999), Arts Commission (2000), Rent Board (2000), Adult Probation Department (2001), Department on the Environment (2001), Department on the Status of Women (2006), Department of Children, Youth, and Their Families (2014), Department of Animal Care and Control (2014) and Fire Department (2014). See City and County of San Francisco Department on the Status of Women, Gender Analysis Reports, available at <https://sfgov.org/dosw/gender-analysis-reports> (last visited 8 December 2020).

⁷⁴ CEDAW Task Force Second Progress Report (18 May 1999), available at <https://bit.ly/3osbX19>.

⁷⁵ Interview with Murase, *supra* note 51. Similar remarks about difficulties in understanding gender analysis by the Department of Public Works are found in ‘A Report of the San Francisco Commission on the Status on Women & CEDAW Task Force’ (November 1999), available at <https://bit.ly/3goDkGG>.

⁷⁶ The amended San Francisco Ordinance No. 325-00 (2000) calls for the Commission and CEDAW Task Force to develop a Five-year Citywide Action Plan outlining how to integrate human rights principles into the City’s operations.

⁷⁷ Interview with Murase, *supra* note 51. See also The Women’s Institute for Leadership Development for Human Rights, ‘Respect, Protect, Fulfill: Raising the Bar on Women’s Rights in San Francisco’, 2008, at 9, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1870322.

⁷⁸ City and County of San Francisco Board of Supervisors Resolution 0249-03 (2003).

⁷⁹ Department on the Status of Women, ‘SF Gender Equality Principles Initiative’, available at <https://sfgov.org/dosw/sf-gender-equality-principles-initiative> (last visited 8 December 2020).

CEDAW ordinance has also increased the voice and representation of marginalized communities in city policies and service provision. The Commission organized a sex-worker committee, and from the concerns voiced, worked with the police department and district attorneys on a new policy that would prioritize the safety of sex workers through addressing the presenting crime instead of the criminalization of sex work.⁸⁰ The Department on the Status on Women has also initiated policy reforms and expanded services for survivors of domestic violence, which resulted in 44 months (May 2010 to January 2014) free of domestic violence homicides.⁸¹

The main implementing tool of the Los Angeles CEDAW ordinance was also gender analysis of city departments. The ordinance charged the development and implementation to the Commission on the Status of Women, a predominantly volunteer-based body that is staffed by the LA Housing + Community Investment Department.⁸² Additionally, the Los Angeles ordinance mandated the Legislative Analyst's Office to conduct gender analyses on proposed state, federal or municipal legislation.⁸³ While the gender analyses were slow in San Francisco, they were politically hamstrung in Los Angeles. In 2004, the year after the adoption of the CEDAW ordinance, due to budget constraints, over 60 per cent of the administrative support was cut from the Commission on the Status of Women.⁸⁴ The subsequent four years, the Commission requested a budget for staff to assist with CEDAW implementation but was repeatedly rebuffed.⁸⁵ Even so, the Commission established gender analysis guidelines, conducted pilot studies of two city departments, trained department managers, reported on the Status of Domestic Violence in Los Angeles and created a human trafficking programme with USD600,000 in funding from the city.⁸⁶ However, in response to the global recession in 2008, all CEDAW initiatives were defunded.

In 2015, Los Angeles Mayor Eric Garcetti, who as a councilmember was a proponent of the CEDAW ordinance, resurrected the ordinance. In a press conference in March 2015, the Mayor announced the enactment of a comprehensive five-part study in concert with the Los Angeles City Commission on the Status of Women and Mount Saint Mary's University on the challenges and opportunities facing women and girls

⁸⁰ Interview with Murase, *supra* note 51.

⁸¹ *Ibid.*

⁸² Commission on the Status of Women, Los Angeles Housing + Community Investment Department, available at <http://hcidladev.lacity.org/commission-status-women> (last visited 9 December 2020).

⁸³ Los Angeles Ordinance No. 175735 (2003), section G.

⁸⁴ Petrotta, Executive Director of the Commission on the Status of Women, 'Commission on the Status of Women, Budget FY 2004–2005', Los Angeles City Indexes File No. 04-2126, 22 April 2004; Petrotta, Executive Director of the Commission on the Status of Women, 'Budget Request to Fully Implement the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)', Los Angeles City Indexes File No. 07-0600, 1 May 2007, at 4.

⁸⁵ Fujitoka, City Administrative Officer, 'Follow-up to the Commission on the Status of Women's (CSW) Recommendations to the Budget and Finance Committee (Budget Memo 26)', Los Angeles City Indexes File No. 04-0600-S6, 27 May 2004; Sisson, City Administrative Officer, 'Report Back on the Convention on the Elimination of Discrimination Against Women (CEDAW)', Los Angeles City Indexes File No. 07-0600, 7 May 2007.

⁸⁶ Petrotta, File No. 07-0600, *supra* note 84.

in the City of Los Angeles.⁸⁷ Several months later, Mayor Garcetti enacted Executive Directive No. 11 mandating gender equity in city operations. The Directive mimics the gender analyses from the CEDAW ordinance, yet removes implementation from the Commission on the Status of Women and places it with a newly formed Gender Equity Coalition within the mayor's office.

This Gender Equity Coalition does not explicitly reference CEDAW, or any of its provisions, but views the Convention as an overarching 'governing principle' that motivates the practical work of applying a gender equity lens to leadership, staff, government and public services.⁸⁸ This has resulted in making departmental analyses mandatory and requiring each city department to designate a Gender Equity Liaison and file a Gender Equity Action Plan, which is evaluated in departmental annual reviews. Utilizing the power of the mayor's office has yielded robust results. Women have achieved parity on all city boards and commissions and women hold leadership roles throughout the city government. City programmes have been developed specifically for young girls to build civic knowledge and leadership skills, participate at higher rates in sports and prepare to become police officers and firefighters. The city has also built and expanded domestic abuse and sexual assault response teams in police units. To promote female-led economic development, the mayor has adopted strategies to increase the number of Women in Business (WBE) certifications and has expanded the value of city contracts to WBE businesses by 12-fold.⁸⁹

D Accountability: The Insular City

Although the international CEDAW monitoring body has limited accountability mechanisms for instances of state non-compliance, states' concern over their international reputation has been able to generate some external pressure to comply. The CEDAW ordinances have developed neither formal accountability mechanisms nor external monitors and stakeholders. Implementation is essentially at the political and budgetary will of city governments.

CEDAW is not predicated on coercion but on socialization. The public and international nature of the reporting mechanisms facilitates state socialization and compliance. States can be 'named and shamed' by state or non-governmental actors for non-compliance, and state human-rights practices can often carry beyond the expert committees and affect foreign direct investment and aid.⁹⁰ Additionally, since the 1990s, NGOs have filed 'shadow reports' alongside state reports to the CEDAW

⁸⁷ United Nations Association of Philadelphia, 'Los Angeles Moves Forward With New CEDAW Initiatives' (27 April 2015), available at <https://bit.ly/39QkZ44>.

⁸⁸ Interview with staff from Los Angeles's Gender Equity Coalition (21 September 2018).

⁸⁹ *Ibid.* See also Office of Los Angeles Mayor Eric Garcetti, *supra* note 69.

⁹⁰ Barry, Clay and Flynn, 'Avoiding the Spotlight: Human Rights Shaming and Foreign Direct Investment', 57 *International Studies Quarterly* (2013) 532; Esarey and DeMeritt, 'Political Context and the Consequences of Naming and Shaming for Human Rights Abuse', 43 *International Interactions* (2017) 589; Hafner-Burton, *supra* note 31; Hendrix and Wong, 'When Is the Pen Truly Mighty? Regime Type and the Efficacy of Naming and Shaming in Curbing Human Rights Abuses', 43 *British Journal of Political Science* (2013) 651.

monitoring body, which provide supplemental, and often critical, information that is omitted from state reports. This information, along with the oral accounts given by NGOs during the committee session, is often factored into the final expert committee reports and recommendations.⁹¹ This shadow reporting not only allows for information transmission but creates civil society stakeholders in the process, who are invested in the outcomes and willing to monitor non-compliance. The optional protocol further reinforces the monitoring role of NGOs by allowing for individuals and groups to file complaints with the committee, from which it can then negotiate resolutions with states as well as report on systematic violations.

The CEDAW ordinances – apart from the coercive power stemming from Los Angeles Mayor Garcetti’s executive initiative – have no formal accountability mechanisms. Both CEDAW ordinances explicitly disallow city liability for breaches of the ordinance that cause injury, which prohibits any litigation against the city for failing to fulfil the ordinance.⁹² This provision was the result of a political compromise necessary for San Francisco to adopt the ordinance.⁹³ Similar provisions have been replicated in all of the subsequent CEDAW ordinances.⁹⁴ Furthermore, informal accountability mechanisms have not sprung up to compensate for a lack of legal accountability. Neither other cities nor local civil society organizations have shamed municipal governments for lack of implementation.

4 Conclusion

For human rights issues that lack national action – which can often be rights most in need of attention – localization and implementation of unratified international human rights law by US cities is a promising strategy for many municipalities.⁹⁵ The CEDAW ordinances, though only loosely premised on the issues, measures and monitoring processes of CEDAW, spurred gender mainstreaming in city government and services and instigated voluntary private sector initiatives and affirmative measures in city appointments, where none existed before.

If the political will could be generated, future or amended CEDAW ordinances in ‘charter cities’ could be more expansive and mandate more robust measures. The ordinances, as

⁹¹ Freeman et al., *supra* note 45, at 505–507.

⁹² The San Francisco CEDAW ordinance does not allow for liability in monetary damages but could potentially open the possibility for injunctive or declaratory relief. The Los Angeles CEDAW ordinance ‘does not create any private cause of action’ and therefore disallows monetary, injunctive and declaratory relief.

⁹³ ‘There was a clause drafted into the language of the SF ordinance that an individual cannot sue the city (it was a compromise – not supported by the text of CEDAW, but it was a compromise advocates were willing to make at that time in order to get the ordinance passed)’. See Cities for CEDAW Strategy Meeting, *supra* note 63.

⁹⁴ ‘Several participants noted that their local governments were concerned about the potential for lawsuits that would result from the documentation of disparities’. See Cities for CEDAW Strategy Meeting, *supra* note 63.

⁹⁵ Davis posits that unratified treaties may reflect those rights that are most needed. See Davis, *supra* note 15, at 135.

written, do not extend to the private domain or demand special affirmative measures. San Francisco and Los Angeles have worked around these constraints by creating voluntary initiatives with local businesses and decreeing gender equity on decision-making bodies by mayoral action. However, this circuitous approach to expanding the scope of the ordinances is not legally necessary. Charter cities, such as San Francisco and Los Angeles, have broad legislative power to implement sweeping non-discrimination measures that place affirmative obligations on both public and private actors. San Francisco has laws that mandate minimum wage, paid parental leave and gender-neutral toilet facilities.⁹⁶ However, such robust municipal ordinances are not permissible in all US cities. Seven state constitutions do not empower ‘charter cities’, and even in those states that do, the past 10 years have seen states, including Tennessee, Arkansas and North Carolina, enact – and subsequently see them challenged in court – state bans on local anti-discrimination laws.⁹⁷

Although inspired by international law, municipal ordinances are written and operate within the structure of city governments, and therefore are shaped, bolstered and undermined by local contexts and city politics. The contents of the ordinances are less informed by fidelity to CEDAW than by hearing concerns of local women in public hearings or by the political precondition of disallowing legal suits against the city for non-action. The CEDAW ordinances refer to CEDAW, but mostly CEDAW of the 1990s, when the protagonists of the Cities for CEDAW campaign returned from the 1995 UN Conference on Women in Beijing. Since 1995, there have been 15 additional CEDAW General Recommendations on issues including older women, migrant women and climate change as well as substantial jurisprudence. The city entities implementing CEDAW have largely not responded to these international developments.⁹⁸ On the ground, this means that cities such as Los Angeles are simultaneously, yet separately, implementing CEDAW and the city’s Green New Deal as part of C40 despite CEDAW General Recommendation No. 37 acknowledging the negative effects of climate change on women’s rights.⁹⁹ Additionally, the CEDAW ordinances subsequently adopted in other cities do not explicitly articulate an intersectional approach to gender, as is recommended in CEDAW General Recommendation No. 28.¹⁰⁰ The Cities

⁹⁶ San Francisco Ordinances Nos. 216-00 (2000), 54-16 (2016), and 53-16 (2016).

⁹⁷ Stevenson, *Antieau on Local Government Law* (2nd ed. 2000), at 21–26.

⁹⁸ Of the 15 general recommendations, 12 are within the purview and authority of the examined cities. Those excluded pertain to: economic consequences of marriage; conflict; and rights of rural women. Of the 12 relevant general recommendations, eight are absent from the CEDAW ordinances or their associated programmes: reproductive health; special measures; migrant workers; older women; harmful practices regarding children; gender-related dimensions of refugee status, asylum, nationality and stateless women; women’s access to justice; and climate change. Four general recommendations, all of which directly correspond to issues articulated in the treaty or pre-1995 general recommendations, pertain to current issues encompassed by the CEDAW ordinances: Article 2; political participation; gender-based violence; and education.

⁹⁹ L.A.’s Green New Deal: Sustainability Plan 2019, available at <https://plan.lamayor.org/> (last visited 9 December 2020); General Recommendation No. 37 on Gender-related dimensions of disaster risk reduction in the context of climate change, UN Doc. CEDAW/C/GC/37, 7 February 2018, para. 2, at 3.

¹⁰⁰ General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the CEDAW, *supra* note 60, para. 18, at 4. For example, Cincinnati Ordinance No. 91–2017 (2017) makes no mention of intersecting identities in the body of the ordinance, only indirectly in a background reference to a 2015 CEDAW resolution.

for CEDAW campaign acknowledges this shortcoming in the ordinance system and is working to bridge the gap by encouraging UN standard-setting, a CEDAW general recommendation on cities, distilling information on its website and conducting virtual trainings.¹⁰¹ Future CEDAW ordinances could also consider adding a provision that incorporates subsequent CEDAW developments into the ordinance.¹⁰²

City politics is also central to implementation, or non-implementation, of the CEDAW ordinances. Implementation is stymied by bureaucratic roadblocks, such as generating buy-in and gathering necessary data, and restricted budgets; it is also facilitated by mayoral attention following an administration change and the city having a permanent Department on the Status of Women, with stable budgets and personnel. Wherever possible, future ordinances should be written to weather against the vagaries of city politics, by including long-term funding and staff positions and greater mechanisms of accountability.¹⁰³ One such option would be for a third party – either an academic institution or NGO – to periodically assess and publicly report on city implementation of the CEDAW ordinances. Another option would be for cities to remove the provision in the ordinances that disallows city liability. This would open up cities to lawsuits for breaching the terms of the ordinances, and thus incentivize cities to thoroughly implement and financially support the ordinances. Finally, city entities implementing the CEDAW ordinances could better inform and nurture relationships with community groups to spur those groups to monitor progress and demand increased resources and political will for durable and equitable implementation.

In sum, US municipal localization of unratified international human rights law can be a deft and impactful political work-around to national inaction or opposition; yet it is not a panacea devoid of politics, but entry into the local foray, one with different constituencies and limitations, fundamentally set apart from the international law it is implementing.

¹⁰¹ Interview with JoAnn Kamuf Ward, Director, Human Rights in the US Project, Lecturer-in-Law, Columbia Law School (12 July 2019); Interview with Soon-Young Yoon, Chair of the Board, Women's Environment and Development Organization (WEDO), UN representative, International Alliance of Women International Impact Committee member, Women Mayors' Network (WoMN) (25 July 2019). See also 'Submission of the Program on Human Rights and the Global Economy of Northeastern University School of Law and the Columbia Human Rights Institute to the Office of the High Commissioner for Human Rights Concerning Local Government and Human Rights Implementation', available at <https://bit.ly/2VQ5QqZ> (last visited 8 December 2020).

¹⁰² Hansel, 'Human Rights at Home Blog: Is It Time For Local Governments To Engage With CEDAW'S Substantive Guidance?', *Human Rights at Home* (8 January 2020), available at <https://bit.ly/2JILJbV>.

¹⁰³ Davis argues that governmental accountability is a 'persistent challenge' for sub-national and municipal implementation of human rights in the United States and suggests similar measures as articulated here. See Davis, *supra* note 39.