

STATE OF INDIANA) IN THE [REDACTED]
) SS: CAUSE NUMBER: [REDACTED]
COUNTY OF [REDACTED])

[REDACTED])
[REDACTED])
[REDACTED])
[REDACTED])
[REDACTED])
Petitioner,)
)
vs.)
)
[REDACTED])
Respondent.)

[PROPOSED] PETITIONER'S SPECIAL FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT/PROPOSED ORDER

Comes now Petitioner, [REDACTED] (herein "[REDACTED] "Mother", or "Petitioner"), by counsel, Bryan L. Ciyou and Darlene Seymour, and submits her [Proposed] Special Findings of Fact and Conclusions of Law and Judgment/Proposed Order, for the matter taken under advisement following the evidentiary hearings conducted over five (5) separate days, namely [REDACTED] as follows:

OVERVIEW

Matter Before the Court

The sole and narrow legal issue before this Court is whether it must enforce the Divorce Decree issued by the [REDACTED] on [REDACTED] (herein "[REDACTED] or whether this Court may disregard the [REDACTED] and exercise jurisdiction to determine custody and parenting time.

Pursuant to Indiana Code section 31-21-1-3, if [REDACTED] law is not in "substantial conformity"

with the UCCJA, *or* if the laws of █████ violate “fundamental principles of human rights”, this Court does not have to enforce the █████ and may proceed on Mother’s Verified Petition to Modify Custody.

Status of the Controlling Law and Legal Practice in █████

The laws and judicial system of █████ are founded upon a culture in which men are the head of the household; wives must obey their husbands; women are viewed as *de facto* property; and children belong to their fathers.

Further, █████ legal system is permeated by corruption which leads to judicial orders that are contrary to the relevant █████ law; bribes and payoffs of judges at all levels is accepted and expected if a party hopes to prevail.

Practices such as marital rape and female genital mutilation are common throughout rural and urban parts of the country and are not prohibited by law. Domestic violence is outlawed in the █████ criminal code but the law is, practically speaking, not enforced due to cultural norms and pressures.

Finally, mothers rarely obtain custody and it is accepted practice for fathers who obtain custody to hide their children from a mother or declare her dead. To have the police and judiciary help a mother obtain access to her child after divorce takes years and numerous payoffs to police and judges.

This is the legal context in which █████ courts decide child custody cases, including the █████ which Father is seeking to enforce. Although the law and courts purport to use a best interest standard, this analysis does not comport with the best interest analysis under the UCCJA. Rather than reviewing factors related to the child or children, the court is influenced by

the male-driven culture, the lack of women's rights, and the de facto presumption that fathers should be granted custody over mothers.

In this case, the [REDACTED] focuses on Father's testimony that Mother committed wrongs against him, not the Children, summarily dismissing Mother's testimony that Father was physically abusive, and ultimately, ignoring the fact that Mother was the primary caregiver for the Children, which is the heart of the best interest analysis under the UCCJA.

FINDINGS OF FACT

Factual and Procedural Background

1. The Court finds that the parties were married on [REDACTED] and were divorced on [REDACTED] in [REDACTED]
2. There were two children born of the marriage: [REDACTED] DOB: [REDACTED] and [REDACTED] DOB: [REDACTED] (herein the "Children").
3. Mother and the Children have lived in Indiana continuously since [REDACTED] wherein Mother filed an application for asylum for her and the Children on [REDACTED]
4. Mother has been the custodial parent and daily caregiver of the Children from their birth to the present time.
5. Father resides in the country of [REDACTED] but he is a [REDACTED] national.
6. Mother filed her Petition to Register Foreign Decree and for Modification of Custody on [REDACTED] in [REDACTED] County, Indiana and served Father in [REDACTED] on [REDACTED]
[REDACTED]

7. On [REDACTED] Father filed his Verified Request to Immediately Enforce Custody Order by Returning Wrongfully Retained Children and Response to Petitioner's Request for Modification of Physical and Legal Custody.
8. At all relevant times and throughout the final hearing in this matter, Mother was represented by Bryan L. Ciyou and Darlene Seymour, of Ciyou & Dixon, P.C.
9. At all relevant times and throughout the final hearing in this matter, Father was represented by [REDACTED], of [REDACTED], P.C.
10. This matter was originally set for a one (1) hour hearing on [REDACTED]
11. A partial hearing was held on [REDACTED] but was continued for additional evidence.
12. Ultimately, this Court heard evidence over five (5) days: [REDACTED] [REDACTED] [REDACTED] [REDACTED] and [REDACTED]
13. Mother requested Special Findings pursuant to Trial Rule 52(A).¹

The Parties, Living Arrangements, and Future Plans

14. The Court finds the following facts related to the parties, living arrangements and future plans.
15. Mother was born in [REDACTED] and lived there most of her life.
16. Father was born in [REDACTED] and moved to [REDACTED] in 1992.
17. Both Children were born in [REDACTED] hospitals.
18. During the marriage, the parties initially lived in [REDACTED] with the Children.
19. Mother lived in [REDACTED] for two (2) years with the Children from [REDACTED] while she obtained her [REDACTED].

¹ For clarification of these Findings, the Parties, by their respective counsel, stipulated that the relevant legal query for the court was the state of [REDACTED] domestic law as of [REDACTED]

20. Father stayed in [REDACTED] and visited Mother and the Children in [REDACTED]
21. Mother and the Children moved back to [REDACTED] in [REDACTED], with the agreement that the family was to move abroad.
22. Specifically, Mother and Father agreed to move the family to [REDACTED] so that Mother could obtain a better position as a physician.
23. Both Mother and Father filled out paperwork with the [REDACTED] Embassy in [REDACTED] stating their intention to immigrate to [REDACTED]
24. Father paid the immigration fee.
25. Father later refused to leave [REDACTED] which caused tension in the marriage and led to Father filing for divorce.
26. Mother filed a counterclaim for divorce based upon physical abuse by Father.
27. A final hearing was held in [REDACTED] on [REDACTED] regarding the parties' divorce and custody of the Children; and the Judge issued the [REDACTED] on [REDACTED]

[REDACTED] and Divorce Proceedings

28. The Court finds that [REDACTED] Court of First Instance of District 2 of [REDACTED] (the "[REDACTED] Court") presided over the divorce proceedings and issued the [REDACTED]
29. At the trial in [REDACTED] Father claimed that, after finishing her schooling, Mother "moved back to their marital house in [REDACTED] with an obsession for moving to [REDACTED] or, if that provided impossible, to [REDACTED] in fact, anywhere but [REDACTED] that [Mr. [REDACTED] then realized that his wife had been '*obsessed*' with living abroad since before they got married and that their marriage had become a simple means of turning her obsession into a reality." [emphasis added] (See Certified Translation of [REDACTED] Petitioner's

Exhibit F, pg. 2).

30. Father further claimed that Mother's "irreversible obsession created...a noxious, depressing and unhappy atmosphere." (See Petitioner's Exhibit F, pg. 2).
31. In agreement with Father's contentions, the ██████ Court went on to assign fault to Mother and make several dispositive findings that are critical to this Court's determination of whether ██████ law is in "substantial conformity" with the UCCJA. (See Petitioner's Exhibit F).
32. First, "in accordance to the article 34-2, the choice of the family residence is one of the husband prerogatives; and that the open or latent dispute regarding this choice and which results in particular in an opposition to the necessary choice taken by the husband especially regarding the professional level is a ground for divorce." (See Petitioner's Exhibit F, pg. 3).
33. The ██████ Court further found that "the fact that the wife project [sic] to immigrate and to undertake the necessary steps for this purpose despite the clear objection of her husband represent a dispute and even a questioning of the current marital home, all of which are contrary to the provisions of the here above mentioned article 34.2 and the obligation arising from the paragraph 3 of the same article, "the wife is obliged to live with the husband..."; this behavior established against the wife can be interpreted as an *abuse* in accordance to the provisions of the Marriage and Guardianship Code and do [sic] induces the impossibility to fulfill the marital obligations as provided in the provisions of the article 59 of the previously mentioned code." [emphasis added] (See Petitioner's Exhibit F, pg. 3).

34. As further grounds for divorce, Father cited Mother's "inability to fulfill [her] conjugal obligations."² (See Certified Translation of [REDACTED] Petitioner's Exhibit F, pg. 3).
35. Father failed to disclose his participation in the process of completing immigration paperwork to move to [REDACTED] as well as paying the fees for same, but instead blamed Mother for her "stubbornness...in persevering in the violation of marital obligations". (See Petitioner's Exhibit F, pg. 2).
36. Despite claims by Father that Mother was intent on taking the Children on some adventure and keeping them from him, he asked the [REDACTED] Court to grant her "extensive visitation rights". (See Petitioner's Exhibit F, pg. 5).
37. The [REDACTED] Court also found that "it is also undisputed, as it was admitted by the wife, that she has a habit of uttering insulting and offensive remarks towards her husband; that the remarks uttered by her show a lack of respect and consideration; that the severity of the insult is assessed by the judge, at his own discretion, taking into account the social environment, the education, the life style of the spouses as well as the sentimental and emotional content that is given to the marriage; in this case, the insulting remarks uttered by her constitutes a serious abuse." (See Petitioner's Exhibit F, pg. 3).
38. The offensive remarks that constituted a "serious abuse" in the eyes of the [REDACTED] court were "go look at yourself in the mirror; who would want you, etc." (See Petitioner's Exhibit F, pg. 2).
39. At the hearing in [REDACTED] Mother presented evidence as to a violent incident in the

² Mother's inability to submit to Father's sexual advances comes, in part, from the fact that she was studying in [REDACTED] to obtain an advanced degree to become employable as a physician abroad and further the Parties' goal to live abroad, all while caring for the Children.

Children's room in which she was thrown to the ground for wanting to sleep in the room with the Children. (See [REDACTED] Transcript, pgs. 73-75).

40. The [REDACTED] Court summarily rejected Mother's claims of abuse and merely found that, because Father denied the incident, Mother's statements were without proof and therefore "ill-founded" in the eyes of the court. As a result, the [REDACTED] Court rejected Mother's counterclaim for divorce. (See Petitioner's Exhibit F, pg. 4).
41. As to the custody of the minor Children, the [REDACTED] Court found that Mother's "plans on moving away without her husband, on an adventure to [REDACTED] or [REDACTED] is harmful to the psychological and emotional stability of children that need stable points of reference." (See Petitioner's Exhibit F, pg. 4).
42. However, unlike Indiana and U.S. custody orders, the [REDACTED] does not in any way address the young ages of the Children, who were [REDACTED] and [REDACTED] years old at the time, nor does it discuss who primarily cared for the children.
43. The [REDACTED] does not discuss the two years that the Children lived solely with Mother in [REDACTED] or the fact that the Children were both born in [REDACTED] hospitals.
44. The [REDACTED] does not discuss the relationship or interaction between Mother and the Children, or Father and the Children.
45. The [REDACTED] does not discuss the Children's adjustment to the home, school or community.
46. The [REDACTED] instead focuses on Mother's "obsession" to move away from [REDACTED] her verbal insults against Father, and her refusal to satisfy conjugal obligations.

47. The [REDACTED] Court found that "even questioning of the current marital home" was contrary to law and dispositive to custody, in that it was interpreted as an abuse under the Marriage and Guardianship Code in that Mother was disobeying Father.
48. The [REDACTED] Court further found it significant that Mother was hiding important life choices from Father which constituted an act in opposition with any notion of loyalty and also grounds for divorce.
49. The [REDACTED] Court outright rejected Mother's testimony of physical violence, but found that Mother's mere statements to Father constituted serious abuse.
50. In accordance with these findings, the [REDACTED] Court ultimately determined that only Father's petition for divorce was well-founded and thereupon granted custody of the Children to Father.
51. The [REDACTED] Court also summarized its legal rationale for this ultimate finding: Mother plans on moving away on an adventure to [REDACTED] or [REDACTED] and offers no promises of stability or safety for the children.
52. In support of this rationale, the [REDACTED] Court cited that the "unilateral" decision of Mother would result in instability for the children, notwithstanding that the Children had been cared and provided for by Mother while living in both [REDACTED] and [REDACTED] without issue.
53. Lastly, without any mention of Mother's earning power or care-giving for the Children, the [REDACTED] Court stated that Father had "sufficient and stable financial resources to provide for their education and care".
54. Thus, the [REDACTED] Court pronounced the divorce on the wrongs of Mother and granted custody to Father.

55. Consistent with the [REDACTED] Court's limited focus on the dispute between the parents, Mother testified to this Court that her divorce trial on [REDACTED] only lasted approximately one hour, and at no point during the proceedings did the [REDACTED] judge discuss the interests of the Children at all. (See [REDACTED] Transcript, pg. 83).
56. Mother testified that the Judge did not ask about whether she had transportation, a job, or who had been the primary caregiver for the Children from birth until the proceeding. (See [REDACTED] Transcript, pg. 83).
57. Mother confirmed that, at her divorce trial on [REDACTED] the [REDACTED] judge's only concern was Ms. [REDACTED] supposed "obsession" with moving to [REDACTED] (See [REDACTED] Transcript, pgs. 83-84).
58. In her testimony to this Court, [REDACTED] testified that the [REDACTED] Court's use of the word "obsession" was concerning and appeared to skew the Court's decision. (See [REDACTED] Transcript, pg. 81).
59. [REDACTED] testified that it is common for [REDACTED] to live abroad if they have the means to do so. As a physician, Mother would want to move outside of [REDACTED] to obtain a well-paid job. She would be able to provide a better life for the Children in [REDACTED] than [REDACTED] (See [REDACTED] Transcript, pgs. 81-82).
60. Dr. [REDACTED] testified that she believes the [REDACTED] Court was being critical of Mother's desire to move from [REDACTED] and in her opinion, was not using unbiased language in the Decree. (See [REDACTED] Transcript, pg. 83).

Expert Witnesses³

61. Dr. [REDACTED] [REDACTED] [REDACTED] who has conducted extensive research in [REDACTED] on women's rights, offered testimony in this matter. Dr. [REDACTED] has been traveling to [REDACTED] for the last twenty (20) years and has focused ninety-five percent (95%) of her professional research on [REDACTED] (See Ms. [REDACTED] C.V., Petitioner's Exhibit T; [REDACTED] Transcript, pg. 27).
62. Dr. [REDACTED] [REDACTED] who has written several books and articles about [REDACTED] history, offered testimony in this matter. (See Dr. [REDACTED] C.V., Petitioner's Exhibit S).
63. Dr. [REDACTED] [REDACTED] testified and submitted a report to this Court regarding her expertise in the cultural anthropology of [REDACTED] particularly the countries affected by the practice of Female Genital Mutilation. (See Dr. [REDACTED] C.V., Petitioner's Exhibit G and Dr. [REDACTED] Report, Petitioner's Exhibit I).
64. Ms. [REDACTED] [REDACTED] a practicing attorney in [REDACTED] also offered testimony in this matter. (See Ms. [REDACTED] C.V., Respondent's Exhibit 10).

Exhibits

65. The following exhibits were admitted at trial:

Petitioner's Admitted Exhibits:

- Exhibit B – 2003 Report to UNHR Committee – Violence against Women in [REDACTED]
- Exhibit D – 2005 Report from U.S. State Department on Women's Rights
- Exhibit E – 2014 [REDACTED]
- Exhibit F – Registered [REDACTED] (green)
- Exhibit F(2) – Corrected translated 2014 [REDACTED]

³ The only other witnesses were the Parties.

Exhibit G – Dr. █████ █████ C.V.
Exhibit H – UNICEF Report on █████
Exhibit I – Dr. █████ █████ Report on █████
Exhibit J – Translated █████ █████ Testimony
Exhibit L – Service Contract with █████
Exhibit S – Dr. █████ █████ C.V.
Exhibit T – Dr. █████ █████ C.V.
Exhibit U – Plaintiff’s Petition (green)
Exhibit V – Joint Stipulation as to Confidentiality (green)

Respondent’s Admitted Exhibits:

Exhibit 10 – █████ █████ C.V.
Exhibit 11 – █████ Code for Marriage and Guardianship
Exhibit 12 – English Translation of █████ Code

Mother's Testimony

66. The Court finds the following testimony from Ms. █████ to be credible.
67. Ms. █████ testified about cultural requirements for women prior to marriage. Specifically, in order to marry in her culture, she had to undergo a traditional marriage process, which consisted of being kept in her home for three days and fed a very spicy soup in order to induce weakness and diarrhea and make her less resistant to her husband’s sexual advances. (See █████ Transcript, pgs. 46-47).
68. Ms. █████ filed for divorce as a result of physical and emotional abuse suffered at the hands of Father.
69. Specifically, in one violent instance, Ms. █████ attempted to sleep in the Children’s room, but Mr. █████ came into the room and told her she could not and threw her against the floor many times, saying “I told you not to do that. You have to obey me. You have to do what I want you to do. You are a woman in this country, but I am a man and powerful and influential, so I will do to you everything that I want you to do. If you leave me, you’re not going to have your kids anymore.” (See █████ Transcript, pgs. 73-

75).

70. Ms. [REDACTED] testimony was compelling and revealed that there were other instances in which Ms. [REDACTED] actions were controlled by Mr. [REDACTED]. For example, she was unable to eat until Mr. [REDACTED] was home and sitting at the table. Further, she was required to sit close to him on the couch or else he would get very mad, even if she were tired and just wanted to lie down. Mr. [REDACTED] would also force her to get up and go take care of the house if he came home from work and found her lying down. In addition, Mr. [REDACTED] would get very angry with Ms. [REDACTED] if she did not tell him where she was at all times. (See [REDACTED] Transcript, pgs. 76-77).

71. Mr. [REDACTED] even had access to her cell phone and recorded some of her conversations without her permission. Some of these recordings he used as evidence in the [REDACTED] divorce proceedings. (See [REDACTED] Transcript, pg. 78).

72. Additionally, on numerous occasions, Father threatened to take the Children away from Ms. [REDACTED] and throw her in jail if she did not behave. It is important to note also Ms. [REDACTED] testimony that, at the time the Decree was entered in [REDACTED] in 2008, it was common for women in jail to be raped by the police officers or guards. (See [REDACTED] Transcript, pgs. 78, 81).

73. Ms. [REDACTED] also testified that the decision to move abroad was a joint decision made with Mr. [REDACTED] rather than an obsession on her part. (See [REDACTED] Transcript, pgs. 86-87).

74. The Court finds also finds compelling the fact that Ms. [REDACTED] had the opportunity prior to marrying Mr. [REDACTED] to move to [REDACTED] but chose to remain in [REDACTED] (See

█████ Transcript, pgs. 84-86).

75. The evidence does not support the contention that Ms. ██████ was obsessed with moving abroad.

Father's Testimony

76. The Court finds that Mr. ██████ ██████ the Father of the Children, testified that the instance of physical abuse Ms. ██████ testified about did not involve any violence. In fact, Mr. ██████ claimed there has never been an instance of violence between the two. (See ██████ Transcript, pg. 14).

77. Mr. ██████ testimony as to the physical abuse of Ms. ██████ was not credible because his other statements during trial are contradictory.

78. Mr. ██████ admitted that he dragged Ms. ██████ out of the room by the arms when she disobeyed him by choosing to sleep in the Children's room.

79. Mr. ██████ admitted that a wife is required by law in ██████ to obey her husband, and because Ms. ██████ chose to sleep in the Children's room against his command, he felt justified in physically forcing her out of the room as she was disobeying him as a wife. (See ██████ Transcript, pg. 14, 48; ██████ Transcript, pg. 68).

80. Mr. ██████ testified that he was required by Ms. ██████ family to pay ██████ (\$█████ USD) in order to purchase the right to marry Ms. ██████ (See ██████ Transcript, pg. 42).

81. ██████ custom requires that the prospective wife spend three (3) days in a room which she cannot leave and, in this room, she is given laxatives and weakened so she cannot resist in the eventual sexual encounter with her husband-to-be. (See ██████ Transcript,

pgs. 55-56).

82. After the marriage, the wife is again relegated to a room where she must spend another week in seclusion without the ability to leave. However, the husband may leave after a couple days. (See [REDACTED] Transcript, pg. 58).

83. Mr. [REDACTED] testified about his personal connections. He has known the President since [REDACTED] when he installed internet and created the email accounts for his board of directors. (See [REDACTED] Transcript, pgs. 35-36).

84. The President came to the Parties' wedding on behalf of Mr. [REDACTED] (See [REDACTED] Transcript, pgs. 39-40).

85. For the last fourteen (14) years and two (2) months, Mr. [REDACTED] has maintained the domain name for the former President of [REDACTED] including during his presidency. In such capacity, Mr. [REDACTED] is the personal contact for the domain name and has been paying for the domain directly with his Visa account. (See [REDACTED] Transcript, pgs. 84-85; also Petitioner's Exhibit L).

86. Mr. [REDACTED], the former President of [REDACTED] closest advisor, was also Mr. [REDACTED] closest friend from around [REDACTED] until the time of his death. Mr. [REDACTED] also provided an email account for Mr. [REDACTED] during that time. (See [REDACTED] Transcript, pgs. 85-91).

87. Mr. [REDACTED] current wife's aunt was the first lady of [REDACTED] for [REDACTED] from [REDACTED] (See [REDACTED] Transcript, pg. 34).

88. Rather than calling the [REDACTED] support line or one of his fifty-seven (57) employees, the former first lady to the President of [REDACTED] came to Mr. [REDACTED] directly with her computer and equipment problems and, as a favor to her, considering their [REDACTED]

█████ relationship, Mr. ██████ handled her questions personally. (See ██████ Transcript, pgs. 112-113).

89. Mr. ██████ admitted that, if he had wanted to speak to the former first lady to the President of ██████ about influencing the judge in his divorce case, nobody would have known because nobody knew he really knew her. (See ██████ Transcript, pgs. 114-115).

90. Mr. ██████ was also aware of Mr. ██████ divorce. (See ██████ Transcript, pg. 115).

91. Mr. ██████ was of the belief that none of his political and personal connections had any influence at all on his divorce case, which the Court does not find credible. (See ██████ Transcript, pg. 117).

92. Mr. ██████ admitted to signing and submitting documents to the ██████ Embassy in ██████ about his intentions to immigrate to ██████ (See ██████ Transcript, pgs. 73-74).

93. Mr. ██████ felt that misrepresenting to his wife that he intended to move to ██████ and then using that misrepresentation as a basis for gaining custody of the Children at his divorce trial was not unfair to Ms. ██████ (See ██████ Transcript, pg. 127).

94. The evidence clearly reflects Mr. ██████ control over Mother and the power to influence the custody determination, particularly in light of his status as an affluent ██████ and the legal favoritism afforded to men in all facets of ██████ culture.

Women's Rights and Family Customs in ██████

95. The Court finds that Dr. ██████ ██████ testimony was credible and accurately demonstrated the cultural pressures on the law.

96. Dr. ██████ testified that, at the time the Decree was entered in ██████ in ██████ there would have been a strong legal inference that a ██████ father would provide the best

environment for children given economic resources and power, as opposed to a [REDACTED] mother, particularly if the father wanted to stay in [REDACTED] and the mother did not. (See [REDACTED] Transcript, pgs. 26, 60-61).

97. Additionally, the Court finds credible Dr. [REDACTED] assertions that, at the time the Decree was entered in [REDACTED] in 2008:

- a. Cultural patriarchy played out in the orders of the court – whoever had the most power and influence would win the case, so women were oftentimes fearful to use the courts. (See [REDACTED] Transcript, pg. 42).
- b. It indeed would have made “a very big difference” for the outcome of the custody decision if the father was tied to the president. (See [REDACTED] Transcript, pg. 78).
- c. Women did not have equal rights to men and there was a general state of inequality between men and women. (See [REDACTED] Transcript, pg. 30).
- d. Men were the head of the household and women were subject to widespread women’s rights violations. (See [REDACTED] Transcript, pg. 31).
- e. Courts often functioned in terms of influence and women, oftentimes, did not have the same kind of financial, cultural, or social power to have as much weight in the courtroom as a man might. (See [REDACTED] Transcript, pg. 32).
- f. The laws did not actually work for people in the way we think of due process in the courtroom. (See [REDACTED] Transcript, pg. 42).
- g. The husband was the one who determined where the family would live. (See [REDACTED] Transcript, pg. 53).
- h. The fact that a mother had refused to accept her de facto social status and did not

want to live in [REDACTED] would have had an impact on the average case. (See [REDACTED] Transcript, pg. 63).

98. The Court finds Dr. [REDACTED] [REDACTED] testimony equally compelling. This testimony provided a legal snapshot of the lack of rights afforded to children and women. Dr. [REDACTED] testified that, at the time the Decree was entered in [REDACTED] in 2008:

- a. Children did not really have rights. (See [REDACTED] Transcript, pg. 105).
- b. Custody was usually given to fathers and very rarely given to mothers. (See [REDACTED] Transcript, pg. 120).
- c. It was very hard for the mothers to maintain any contact with the children if they lost custody because in many custody cases the children were told that the mother had gone away, did not want to see the children, or had died. (See [REDACTED] Transcript, pg. 122).
- d. The common practice for [REDACTED] and other such secular countries was that, in custody cases, judges were likely to allow social and religious expectations favoring men to influence their decisions rather than following the text of the law itself. (See [REDACTED] Transcript, pgs. 137-138).

99. Ms. [REDACTED] testimony supported the propositions of Dr. [REDACTED] and Dr. [REDACTED] and revealed that, at the time the Decree was entered in [REDACTED] in 2008, there was a cultural and social presumption in custody cases that giving the father custody of the children was in the children's best interest. (See [REDACTED] Transcript, pg. 52).

100. In addition, the Court finds credible Ms. [REDACTED] testimony that:

- a. The husband needed to pay a dowry to marry a woman and because of this

practice the husband treats the wife as property. (See [REDACTED] Transcript, pg. 34).

- b. The brother of the husband would “inherit” the wife if the husband died. (See [REDACTED] Transcript, pg. 41).
 - c. Women could be married as young as twelve (12) or thirteen (13) years of age, or whenever she “receive[d] her menstruation.” (See [REDACTED] Transcript, pg. 44).
 - d. The cultural and social position of [REDACTED] was that the husband decided where the family was to live and if the wife disagreed, she could be abused and divorced. (See [REDACTED] Transcript, pg. 53).
 - e. She had relatives that lost custody of their children because they sought divorce from their husbands, even though the mothers were the primary caregivers. (See [REDACTED] Transcript, pg. 56).
101. The Court finds that Mr. [REDACTED] testimony supports the lack of rights for women and children and the strength of cultural norms to influence a court’s ruling in [REDACTED] in [REDACTED] Specifically:
- a. To marry a young girl, it costs double the price of a woman. (See [REDACTED] Transcript, pg. 42).
 - b. The husband may recover the dowry in the event of a divorce. (See [REDACTED] Transcript, pg. 45).
 - c. The cost to pay a dowry for a girl or woman in [REDACTED] is very low, even for the average [REDACTED] (See [REDACTED] Transcript, pgs. 48-49).
 - d. It is not the girl or woman who decides whether the prospective husband is allowed to marry her, but the family of the girl or woman. (See [REDACTED] Transcript,

pg. 50).

102. Ms. ██████ admitted that women in ██████ are required to obey their husbands because they are the head of the household. She believes strongly in this law. (See ██████ Transcript, pg. 34).

103. Furthermore, Ms. ██████ agreed that, under ██████ law, a wife cannot refuse sex with her husband, and he can seek divorce on these grounds. However, Ms. ██████ believes a wife should be able to refuse sex with her husband. (See ██████ Transcript, pgs. 162-163).

104. The Court does not find the balance of Ms. ██████ testimony credible, as it defies logic and common sense:

- a. In her █ years practicing law in ██████ she has never met any woman that was afraid to seek divorce because she would lose custody of their children. [emphasis added] (See ██████ Transcript, pg. 161).
- b. She does not believe a husband's power and influence could make a difference before a judge in ██████ (See ██████ Transcript, pg. 163).
- c. The status of women's rights in ██████ is similar to those in the United States. (See ██████ Transcript, pg. 164).

105. Further as to Ms. ██████ credibility, she made public statements in an article from ██████ in which ██████ interviewed her, that directly contradict her testimony at trial. (See Petitioner's Exhibit E (original) and F (corrected translation)).

In the article, Ms. ██████ stated that:

- a. The situation for women was not good in ██████

- b. In regards to [REDACTED] women's rights are the most backward of all rights.
- c. There is a clear lack of will in respecting the rights of women in [REDACTED]
- d. She struggles daily to reverse the reality of the rights of her [REDACTED] sisters.
- e. Violence against women has been neglected in [REDACTED]

(See Petitioner's Exhibit F).

106. The U.S. Department of State's Report on the human rights situation in [REDACTED] from [REDACTED] further mirrors the testimony of Dr. [REDACTED] Dr. [REDACTED] and Mother and reveals that family law favored men, and women were particularly vulnerable in cases of divorce, child custody, and inheritance rights, as well as in the general protection of civil rights. (See Petitioner's Exhibit D, pg. 4).

107. The other documentary evidence is equally consistent and compelling: In 2003, after consideration of the World Organization Against Torture's (OMCT) Report⁴, the United Nations Human Rights Committee expressed a grave concern at the continued existence of legislation which discriminated against women in [REDACTED] in particular with regard to marriage and divorce. The Committee was also concerned by information that the practice of the levirate, whereby a widow is inherited by the deceased husband's brothers and cousins, persisted in [REDACTED] (See Petitioner's Exhibit B, pg. 291).

108. The United Nations Human Rights Committee was also concerned with the equality of rights between men and women, in particular in regard to polygamy, a

⁴ OMCT is a global organization focused on addressing discrimination and violence against women. It relies on information submitted to the United Nations Human Rights Committee. The Report on Violence Against Women in [REDACTED] focuses on the linkage between gender and violence against women in [REDACTED] with emphasis on domestic violence, the dowry system, and female genital mutilation.

practice which violates the dignity of women and constitutes unacceptable discrimination against women. (See Petitioner's Exhibit B, pg. 291).

109. OMCT's Report maintained that, although the Constitution of [REDACTED] proclaims to defend the rights of women, there are many laws in [REDACTED] that are facially discriminatory. In fact, many provisions in [REDACTED] law limit a woman's power over decisions affecting her own life. For example, the choice of a monogamous marriage belongs to the Husband. Also, the Husband has the power over her right to work and choice of residence. (See Petitioner's Exhibit B, pg. 275).

110. OMCT reports that women are viewed in roles of wives and mothers. [REDACTED] law requires that women obey their husbands and labels the Husband as head of household. Women who rebel against these images and participate in the public sphere are viewed negatively by society. (See Petitioner's Exhibit B, pg. 276). This is consistent with the facial bias of the [REDACTED] which took issue with Mother participating in the public sphere.

111. OMCT fears that the purchasing of brides through the payment of a dowry may relegate the woman's status to little more than a piece of property. (See Petitioner's Exhibit B, pg. 279). This is consistent with Mother's testimony.

Domestic Violence in [REDACTED]

112. The Court also finds credible Dr. [REDACTED] testimony as to domestic violence. Specifically that, at the time the Decree was entered in [REDACTED] in 2008, domestic violence was socially permissible and only became socially impermissible when it disturbed the neighbors. Though, even then, neither the neighbors nor the police would intervene. (See

█████ Transcript, pg. 106).

113. Dr. █████ testimony also revealed that, there was no legal remedy for victims of domestic abuse unless the injuries were so severe that the victim lost their life or was disfigured in some way. (See █████ Transcript, pg. 107).

114. Dr. █████ testimony as to domestic violence was similar to Dr. █████ and also credible. It revealed that, at the time the Decree was entered in █████ in 2008:

a. She would have been fearful for the ability of women and children to have their rights heard and protected in the courtroom through due process. (See █████ Transcript, pg. 32).

b. The physical abuse of women and children by a father or spouse would not be something that would receive attention in the courtroom. (See █████ Transcript, pg. 36).

c. The social reality was that, if there was domestic abuse, it was often blamed on a woman not following what she should have been doing in the household or a child not listening to a parent in the household. (See █████ Transcript, pgs. 36-37).

d. It would have been unlikely that the police or the courts would have actually provided protection for victims of domestic abuse. (See █████ Transcript, pg. 37).

e. Domestic abuse was commonly accepted and viewed as appropriate discipline. (See █████ Transcript, pgs. 45-46).

115. In addition, Ms. █████ testimony was credible as to the practical implications of domestic violence in that, at the time the Decree was entered in █████ in

2008:

- a. Physical abuse of children by means of slapping, hitting, or whipping them was legal and permissible and was even practiced in [REDACTED] schools. (See [REDACTED] Transcript, pg. 35).
 - b. Domestic violence against women was normal because women were viewed as inferior to men and must obey the husband. (See [REDACTED] Transcript, pgs. 32-33).
 - c. Reporting domestic violence was seen as a disrespectful act and a taboo subject to discuss. (See [REDACTED] Transcript, pg. 33).
 - d. Domestic rape was not considered a crime because the husband had a right to have sex with his wife. (See [REDACTED] Transcript, pg. 42).
116. Ms. [REDACTED] testified that, at the time the Decree was entered in [REDACTED] in 2008, there were laws in place that prohibited domestic violence and organizations existed to assist women and child who were victims of abuse. (See [REDACTED] Transcript, pgs. 142-143).
117. Ms. [REDACTED] also testified that violence against women is not neglected in [REDACTED] (See [REDACTED] Transcript, pg. 165). However, the statements made in her interview directly contradict this statement.
118. While there may be codified laws against domestic violence, the Court finds the acceptance of domestic violence is widespread in [REDACTED]
119. The Court finds the documentary exhibits admitted at trial also demonstrate the prevalence of domestic violence in [REDACTED]
- a. The U.S. Department of State's Report on the human rights situation in [REDACTED] from

██████████ reveals that domestic violence against women, including spousal abuse, was tolerated and common. Assault in marriage was a crime, but police were reluctant to enforce laws against or intervene in cases of domestic violence. Also, many women were reluctant to file complaints against their husbands because they were unable to support themselves financially. (See Petitioner's Exhibit D, pg. 4).

- b. The U.S. Department of State's Report on the human rights situation in ██████████ from ██████████ reveals that the law criminalizes rape, but spousal rape is not illegal. Reports of rape are rare, but most cases go unreported. The law is not effectively enforced due to the rarity of the crime being reported. (See Petitioner's Exhibit D, pg. 4).
- c. The United Nation Human Rights Committee is concerned about reports of domestic violence in ██████████ and the failure of the authorities to prosecute the perpetrators of these acts and to take care of the victims. (See Petitioner's Exhibit B, pg. 292).
- d. OMCT reports that domestic violence is not outlawed by the ██████████ Penal Code, nor was it addressed in the State Party Report contrary to the request of the Human Rights Committee. Reports indicate that domestic violence is an accepted part of daily life in ██████████ As such, women rarely report instances of domestic violence. Social pressures encourage the victim to withdraw any complaint before conviction of the perpetrator. (See Petitioner's Exhibit B, pgs. 277-278).

- e. OMCT reports that, under [REDACTED] law, Husbands cannot be prosecuted for raping their wives. (See Petitioner's Exhibit B, pg. 278).
- f. OMCT reports that women are vulnerable to violence in police detention. Men and women are kept together sometimes in the same cells, rendering them vulnerable to sexual assault. Women are also sometimes abused by the police officers. (See Petitioner's Exhibit B, pg. 282). This report is consistent with Mother's fear when Father threatened to send her to jail when she did not obey his command.

Female Genital Mutilation

120. The Court finds credible Dr. [REDACTED] testimony as to the practice of female genital mutilation ("[REDACTED] in [REDACTED] as well. It revealed that, at the time the Decree was entered in [REDACTED] in [REDACTED] the practice of female genital mutilation was widespread and there was no law preventing the practice. (See [REDACTED] Transcript, pg. 108).
121. Dr. [REDACTED] testimony was credible and similar to Dr. [REDACTED] and revealed that, at the time the Decree was entered in [REDACTED] in [REDACTED], female genital mutilation was practiced in multiple forms; all of which were legal. (See [REDACTED] Transcript, pg. 38).
122. Ms. [REDACTED] testimony was consistent with that of Dr. [REDACTED] and Dr. [REDACTED] and revealed that, at the time the Decree was entered in [REDACTED] in [REDACTED], the prevalence of female genital mutilation was around ninety (90) to ninety-four (94) percent of females and there was no law against such a practice. As a hospital physician, Ms. [REDACTED] observed children who experienced the trauma and side effects associated with [REDACTED] (See [REDACTED] Transcript, pgs. 29-32).

123. Mr. ██████ testified that he is aware of the practice of ██████ in ██████ and that the ██████ tribe, of which his wife belongs, engages in the practice. (See ██████ Transcript, pg. 37).

124. Dr. ██████ testified in detail about the practice of female genital mutilation in certain geographic regions of ██████. She has been a research consultant and academic consultant to UNICEF⁵ on their programs to end ██████. Her report as to ██████ in ██████ concluded that:

- a. ██████ has one of the highest rates of female genital mutilation in ██████. It ranks ██████ out of the ██████ countries reported, with a current overall prevalence of ██████ and shows the slowest decline in prevalence of all ██████ countries.
- b. The data on ██████ in ██████ shows a mere 1% decline in the practice over 30 years. Compared with other countries, this is the slowest decline of all.
- c. In her experience, government representatives or other professionals within each country will report greater decline because they are concerned about the image of their country. This is another reason the UNICEF data is so important and reliable.
- d. She monitors efforts to end the practice of ██████ and has no knowledge of any legislation to end the practice in ██████

(See Petitioner's Exhibit I).

125. The UNICEF Report on the practice of ██████ also reflected the following:

- a. Eighty-nine percent (89%) of women and girls in ██████ have undergone ██████

⁵ Data on the practice of ██████ was compiled into a report for UNICEF, which meets high standards of reliability, as it is developed and tested by expert organizations internationally.

- b. Twenty-four (24) of twenty-nine (29) countries where ██████ is practiced have enacted decrees or legislation related to ██████ – ██████ is not one of them.
- c. Prevalence of ██████ in rural versus urban areas is equal.
- d. Prevalence of ██████ is almost the same in wealthy households versus poorer households.
- e. Prevalence of ██████ is unaffected by level of education.
- f. Number of girls or women that undergo ██████ is about the same whether ██████ or other religions.

(See Petitioner's Exhibit H).

126. Ms. ██████ testified that female genital mutilation was against the law, and that there is a decline in the practice of female genital mutilation. The Court finds this testimony is not credible and inconsistent with all other testimony and exhibits admitted; the evidence clearly reflects that female genital mutilation statistics have remained the same over time and is widespread among both educated and uneducated women. However, Ms. ██████ acknowledged that the practice of female genital mutilation is a violation of human rights. (See ██████ Transcript pg. 155).

127. The Court finds that the testimony offered to this Court reveals that female genital mutilation is indeed widespread and documentary evidence admitted at trial supports this fact as well, namely:

- a. The U.S. Department of State's Report on the human rights situation in ██████ from ██████ reveals that female genital mutilation was common, especially in rural areas and, according to NGO's, approximately ninety-five (95) percent of

adult women had undergone female genital mutilation. There were no laws against this practice. (See Petitioner's Exhibit D, pg. 4).

- b. OMCT reports that [REDACTED] is extremely common in [REDACTED] with reports of up to 94% of women having experienced the procedure in both urban and rural areas of the country.

(See Petitioner's Exhibit B).

Corruption in [REDACTED]

128. The Court finds Dr. [REDACTED] testimony as to corruption in [REDACTED] to be credible and comprehensive. At the time the Decree was entered in [REDACTED] in 2008:

- a. [REDACTED] was subject to a corrupt judicial system in which the law itself as it was written and voted by the Assembly and signed by the President had very little effect in practice. (See [REDACTED] Transcript, pg. 115).
- b. The courts had no ability to enforce the order, particularly in cases of family law. (See [REDACTED] Transcript, pg. 117).
- c. The judges and opposing counsel were open for bidding, accepting of payoffs in negotiations, and were not necessarily bound to represent the parties by whom they were formally being paid. (See [REDACTED] Transcript, pgs. 118-119).
- d. He is married to a [REDACTED] woman who has a daughter from a prior marriage. The father is [REDACTED] and was awarded custody of the child. (See [REDACTED] Transcript, pg. 115).
- e. His wife has had great difficulty in enforcing visitation with her daughter. They tried going through lawyers and going through the court system, which failed.

(See ██████ Transcript, pg. 115).

- f. Eventually, he and his wife were forced to pay to see her daughter. They paid attorneys, judges and another legal official, as well as a relative of the father. (See ██████ Transcript, pg. 118).
 - g. He expects that his wife will have to go through this process to see her daughter again. (See ██████ Transcript, pg. 140).
129. In addition to Dr. ██████ personal experience with corruption in ██████ custody cases, he has followed the research in ██████ related to this issue and has discussed it with women's associations who are working to better the situation in ██████ (See ██████ Transcript, pgs. 119-120).
130. Dr. ██████ testimony as to corruption in ██████ at the time the Decree was entered in ██████ is equally credible and reveals that, there was a great deal of bribery that went on and one could without a doubt buy an outcome in a ██████ court. (See ██████ Transcript, pg. 43).
131. Ms. ██████ testimony as to corruption in ██████ is also credible and reflects that the legal system of ██████ in ██████ worked in such a way that one must have paid off the judge in order to secure a favorable ruling. (See ██████ Transcript, pg. 56).
132. Notably, Mr. ██████ also testified that bribes, payoffs, and corruption exist within the ██████ judiciary and such practices are widespread across the country. (See ██████ Transcript, pg. 92).
133. Even Ms. ██████ testified that corruption is a problem in ██████ and that she personally knows of police officers and judges who have taken bribes. (See ██████

Transcript, pgs. 157-158).

134. The Court finds the documentary evidence also supports widespread judicial corruption. Namely, the U.S. Department of State's Report on the human rights situation in [REDACTED] from [REDACTED] reveals that corruption hampered the government's development efforts to improve human rights protection. (See Petitioner's Exhibit D, pg. 4).

CONTROLLING LAW

Application of the Uniform Child Custody Jurisdiction Act (UCCJA) to an International Custody Order

135. The Court finds that the international application of the Uniform Child Custody Jurisdiction Act (herein "UCCJA") is governed by Ind. Code § 31-21-1-3, which reads as follows:
- (a) An Indiana court shall treat a foreign country as if the foreign country were a state of the United States for purposes of applying IC 31-21-3 through IC 31-21-5.
 - (b) Except as otherwise provided in subsection (c), a child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standard of this article must be recognized and enforced under IC 31-21-6.
 - (c) An Indiana court need not apply this article if the child custody law of a foreign country violates the fundamental principles of human rights.

Determining Physical and Legal Custody under the UCCJA

136. The Court finds that the standard the Court must consider in making a custody determination under the UCCJA is the best interest of the child(ren), which is governed by Indiana Code section 31-17-2-8, and states as follows:

The court shall determine custody and enter a custody order in accordance with the best interests of the child. In determining the best interests of the child, there is no

presumption favoring either parent. The court shall consider all relevant factors, including the following:

- (1) The age and sex of the child.
- (2) The wishes of the child's parent or parents.
- (3) The wishes of the child, with more consideration given to the child's wishes if the child is at least fourteen (14) years of age.
- (4) The interaction and interrelationship of the child with:
 - (A) the child's parent or parents;
 - (B) the child's sibling; and
 - (C) any other person who may significantly affect the child's best interests.
- (5) The child's adjustment to the child's:
 - (A) home;
 - (B) school; and
 - (C) community.
- (6) The mental and physical health of all individuals involved.
- (7) Evidence of a pattern of domestic or family violence by either parent.
- (8) Evidence that the child has been cared for by a de facto custodian, and if the evidence is sufficient, the court shall consider the factors described in section 8.5(b) of this chapter.

Marriage and Guardianship Code of [REDACTED]

137. That the Court finds that, in custody decisions, the Marital Court of [REDACTED] is governed, at least on paper, by the Marriage and Guardianship Code, admitted as a certified English translation as Respondent's Exhibit 12.

138. While many of the provisions of the Code do not directly speak to custody, the entire Code impacts decisions made by marital courts in [REDACTED] and is reflective of the how the country of [REDACTED] views women and children, as opposed to the laws of the United States. Facially, the [REDACTED] Code is not, and cannot be, read in substantial conformity with the UCCJA and the best interest standard.

139. Article 3 of the Code reads, in pertinent part, as follows:

“Where required by custom, dowry and gifts given to contract a marriage cannot in their entirety exceed in value twenty thousand francs for a young girl and ten thousand for a woman.”

140. That the Court finds that Article 4 of the Marriage and Guardianship Code reads, in pertinent part, as follows:

“A man under eighteen or a woman not having completed fifteen years cannot contract a marriage.”

141. That the Court finds that Article 8 of the Marriage and Guardianship Code reads as follows:

“A man with four legitimate wives cannot contract a new marriage.”

142. That the Court finds that Article 12 of the Marriage and Guardianship Code reads as follows:

“When there is a disagreement between divorced or separated parents, the administrative authority will rule taking into consideration the interests of the child.”

143. That the Court finds that Article 32 of the Marriage and Guardianship Code reads, in pertinent part, as follows:

“The husband *owes protection* to his wife, *the wife obedience* to her husband.”
[emphasis added]

144. That the Court finds that Article 34 of the Marriage and Guardianship Code reads as follows:

“The husband is the head of the household, In consequence:
1. The costs of the household fall principally on him;
2. The choice of the family residence is his;
3. The wife must live with him and he must receive her.”

145. That the Court finds that Article 38 of the Marriage and Guardianship Code reads, in pertinent part, as follows:

“A woman cannot engage in running a business without the permission of her husband.”

146. That the Court finds that Article 59 of the Marriage and Guardianship Code reads as follows:

“Either spouse can request a divorce in case of:

1. adultery by the spouse;
2. excesses, ruthlessness, and serious insults or abuse, making conjugal life impossible;
3. conviction of one of the spouses to ignominious or corporal punishment;
4. inveterate alcoholism;
5. impossibility of the spouse to satisfy conjugal obligations.”

147. That the Court finds that Article 80 of the Marriage and Guardianship Code reads as follows:

“A divorced woman may not remarry for three months after the divorce, even if there has been a trial separation preceding the divorce.

It will be found by generally accepted means that the woman is pregnant by her husband.”

148. That the Court finds that Article 86 of the Marriage and Guardianship Code reads as follows:

“The children will be in custody of the spouse who obtained the divorce unless the court, upon request of the family or the state, and given the information collected under article 65 above, orders for the best interests of the children, that all or some of them will be cared for by the other spouse or a third person.”

149. That the Court finds that Article 101 of the Marriage and Guardianship Code reads, in pertinent part, as follows:

“In the case of death of the husband, the wife may not contract a new marriage until four months and ten days have passed.

Sexual intercourse is forbidden during this period.”

Whether [REDACTED] Law Substantially Conforms to the Laws of the UCCJA

150. The Court must determine whether the [REDACTED] was made under factual

circumstances in substantial conformity with the UCCJA as required by IC 31-21-1-3(b).

151. The Court finds that Indiana has not yet encountered a foreign custody order that was issued by a country with laws similar to that of ██████

152. However, other states have been faced with similar inquiries. The Court finds these cases helpful in determining this matter of first impression.

153. In *Tataragasi v. Tataragasi*, 477 S.E.2d 239, 268 (N.C. Ct. App. 1996), the North Carolina Court of Appeals held that a Turkish court's exercise of jurisdiction was not in conformity with the UCCJA and thus, the trial court properly exercised jurisdiction in granting mother custody. The court noted that the UCCJA focuses not on what law a court should apply in resolving a custody dispute, but on which court is best able to make the decision. In this sense, the UCCJA is definitely child-centered rather than parent-centered. *Id.* at 245-246. Since the Turkish court did not consider the best interests of the child but instead talked about **Father's position and status in the community** and his place in society, the foreign proceedings did not comport with the UCCJA. *Id.* at 268. [emphasis added]

154. In *Abu-Dalbouh v. Abu-Dalbouh*, 547 N.W.2d 700, 705 (Minn.Ct.App. 1996), the Minnesota Court of Appeals found that a Jordanian proceeding was not entitled to deference because there was no evidence the Jordanian court considered the best interests of the child "thereby failing to conform to the UCCJA".

155. In *Ali v. Ali*, 652 A.2d 253, 259 (N.J.App.Div. 1994), a New Jersey trial court decision refusing to recognize a Gaza custody order was upheld on several grounds, including that it was "incompatible" with the best interest of the child standard. 652 A.2d

253, 259 (N.J.App.Div. 1994) [negative treatment on unrelated grounds]. The foreign law presumed that father is automatically entitled to custody when a boy is seven years of age and thus offended public policy. *Id.* The Appellate Court emphasized that "best interests" do not contain within it any idealized lifestyle, but rather consists of many factors including the likely future happiness of the child; stability; love; tolerance and bonding. *Id.* at 260. Thus, there should be no mechanical presumption in favor of mother or father, and neither parent should have a superior right to custody. *Id.* at 259.

156. In a Massachusetts case, the Appellate Court affirmed the trial court's refusal to enforce a Lebanese order where there was no indication that the Lebanese law governing custody disputes takes into consideration all the relevant factors bearing on the child's best interests as that standard is understood under the laws of Massachusetts. *El Chaar v. Chehab*, 941 N.E.2d 75, 79-80 (Mass.App.Ct. 2010). Such factors include consideration of which parent has been the primary caretaker of, and formed the strongest bonds with, the child; the need for stability and continuity in the child's life; the decision-making capabilities of each parent to address the child's needs; and the living arrangements and lifestyles of each parent and how such circumstances may affect the child. *Id.* at 80. Notably, the court recognized that, "**Even where the foreign law requires a custody determination to make reference to the best interests of the child, it does not necessarily follow that the substantive law applied by the foreign court is reasonably comparable to our own law.**" *Id.* [emphasis added]

157. This Court finds that, if the [REDACTED] Court did not employ an analysis of the best interest factors as set out in the UCCJA, then the Court does not have to enforce the [REDACTED]

Decree and may assume jurisdiction over custody.

Whether [REDACTED] Law Violates Fundamental Principles of Human Rights

158. Pursuant to Ind. Code section 21-31-1-3(c), this Court must also determine whether [REDACTED] law violates fundamental principles of human rights.
159. Although foreign sovereigns are bound by their own laws, they must operate under civilized jurisprudence in order to gain recognition under principles of comity.
160. Decrees rendered by foreign sovereigns under circumstances which offend state's public policy may be rejected, despite principles of comity. *Ruppen v. Ruppen*, 614 N.E.2d 577, 582 (Ind. Ct. App. 1993).
161. The Court finds that neither the statute nor comments to the UCCJA define "fundamental principles of human rights." The comments, however, allude to a similar provision in the Hague Convention, which has been defined as "utterly shocking the conscience" or "offending notions of due process". *In re the Matter of Yaman*, 167 N.H. 82 (N.H. 2014) (See also, *Toland v. Futagi*, 40 A.3d 1051 (Md.Ct.App. 2012)).
162. Again, due to the lack of Indiana law on this issue, this Court finds it helpful to consider other sources and the decisions of other states.
163. In *J.A. v. A.T.*, 2008 WL 5170191, *7-9 (N.J.App.Div. Dec. 11, 2008), the New Jersey court properly refused to defer to a Greek order where the custody analysis fell woefully short of considering best interest factors and therefore court could not determine if proceedings comported with fundamental human rights.
164. Comity provides recognition of foreign judgments but not if they were rendered in a [REDACTED] inconsistent with fundamental laws and procedures, or the public policy of the

United States. *See*, Brief of Amicus Curiae, *Abbott v. Abbott*, 2009 WL 3043971 *9-10 (2009) [citations omitted].

165. The need to consider the best interests of the children is a fundamental principle of human rights. Thus, the established law in the international community requires consideration of the best interest of the child in all cases involving children. *Id.* at *12-13.

166. This Court finds that, if the [REDACTED] was not based upon the best interest analysis, or [REDACTED] law offends notions of due process, then this Court does not have to enforce the [REDACTED] as it is a violation of fundamental human rights.

Legal Fees

167. Father filed a Petition for Fees on [REDACTED] alleging that Mother's "wrongful actions" forced him to litigate in a foreign country, and further arguing that this Court does not have jurisdiction to modify the [REDACTED]

168. Mother filed her Objection to Father's Petition for Fees on [REDACTED] based on Ind. Code section 31-21-1-3(b) and 31-21-1-3(c) which allows this Court to make a determination of whether it has jurisdiction to modify if the foreign country's law does not substantially comport with the UCCJA, or if the foreign country's laws violate fundamental human rights.

169. Father's counsel expressly acknowledged the application of the exceptions as set forth above during argument on [REDACTED] (See, [REDACTED] Transcript, pg. 9).

170. The Court finds that the evidence produced at trial produces a meritorious argument as to substantial conformity and fundamental human rights.

171. The Court further finds that Mother's position is meritorious under Indiana law and cannot therefore constitute wrongful conduct justifying a request for fees.

ULTIMATE FINDINGS

A. Procedural

1. The Court finds that it has personal and subject matter jurisdiction over these matters.
2. The Court finds that Mother's Petition to Register Foreign Divorce Decree was granted pursuant to agreement of the parties. (See ██████ Transcript pg. 17).
3. The Court finds that the UCCJA applies to the aforementioned foreign Decree.
4. The Court finds that Indiana Code section 31-21-1-3 is the code governing the application of the UCCJA to the foreign Decree.
5. The Court finds that ██████ is considered a "state" for purposes of registering a foreign custody order per Indiana Code section 31-21-1-3(a).
6. The Court finds that Indiana Code section 31-21-1-3 requires the recognition and enforcement of a child custody order determination made in a foreign country, except in two specific circumstances. (See IC 31-21-1-3(b) and IC 31-21-1-3(c)).
7. The Court finds that the first exception to enforcement is in such cases that the determination is not made under factual circumstances in substantial conformity with the jurisdictional standard of the UCCJA. (See IC 31-21-1-3(b)).
8. The Court finds that the second exception to enforcement is in such cases that the child custody law of a foreign country violates the fundamental principles of human rights. (See IC 31-21-1-3(c)).
9. The Court finds that foreign sovereigns must operate under civilized jurisprudence in

order to gain recognition under principles of comity.

10. The Court finds that decrees rendered by foreign sovereigns under circumstances which offend state's public policy may be rejected, despite principles of comity.
11. The Court finds that comity provides recognition of foreign judgments but not if they were rendered in a [REDACTED] inconsistent with fundamental laws and procedures, or the public policy of the United States.
12. The Court finds that other states have properly rejected foreign orders pursuant to the UCCJA when the law of the foreign country violates fundamental human rights.

B. Factual

13. The Court finds that the evidence establishes that Mother was the primary caregiver of the Children, and that she had solely cared for the Children in [REDACTED] for 2 years preceding the filing for divorce.
14. The Court finds that the evidence establishes that Father agreed to move to [REDACTED] with the family, that he had no intention of doing so, that he lied to Mother and the [REDACTED] Embassy, then later used this against Mother during the [REDACTED] divorce proceedings.
15. The Court finds that the [REDACTED] Court did not conduct an analysis of the best interest of the Children but instead used Mother's desire to live outside of [REDACTED] as well as Father's financial position, to determine custody.
16. The Court finds the [REDACTED] use of the word "obsession" in describing Mother's desire to move shows clear bias against Mother and in favor of Father.
17. The Court finds it very unlikely that Father's connections and status did not influence the [REDACTED] Court's decision.

18. The Court finds that the evidence regarding the cultural and legal practice in [REDACTED] of discrimination against women and mothers is supported by the testimony of Dr. [REDACTED] and Dr. [REDACTED] as well as Exhibits B, D, and H, that demonstrate a serious problem with inequality in [REDACTED]
19. The Court finds that the evidence regarding domestic violence against women and children in [REDACTED] is supported by the testimony of Dr. [REDACTED] and Dr. [REDACTED] as well as Exhibits B and D, which state that domestic violence is extremely common in [REDACTED] and goes unprosecuted.
20. The Court finds that the evidence related to the practice of [REDACTED] in [REDACTED] is supported by the testimony of Dr. [REDACTED] and Dr. [REDACTED] as well as Exhibits H and I which show that [REDACTED] is commonly practiced in [REDACTED] is not declining, and is not prohibited by law.
21. The Court finds that Ms. [REDACTED] testimony on the status of women's rights in [REDACTED] is not credible as her statements are directly contradicted by her prior statements made in the article from [REDACTED] in which [REDACTED] interviewed Ms. [REDACTED]
22. The Court finds that Ms. [REDACTED] testimony also differs greatly from and is contradicted by sources outside of [REDACTED] including the U.S. Department of State's report on human rights in [REDACTED] the U.N.'s OMCT Report, and the expert testimony of [REDACTED] [REDACTED] [REDACTED] as well as her own public statements.
23. The Court finds that Mr. [REDACTED] did not present any evidence that would suggest that the [REDACTED] substantially comports with the UCCJA or that [REDACTED] law does not violate fundamental human rights.

C. Legal – Substantial Conformity

24. The Court finds that, in this case, the Court must follow the express language of the Indiana Code which requires the [REDACTED] to be made under factual circumstances in substantial conformity with the jurisdictional standards of the UCCJA.
25. The Court finds that, as established in the cases discussed herein, “substantial conformity” has been interpreted to mean that the foreign order must follow a strict analysis of the best interests of the Children.
26. The Court finds that the Decree was not issued in substantial conformity with the best interest standard, which is the jurisdictional standard of the UCCJA.
27. The Court finds that Indiana has not established a test for determining whether a foreign custody order is in substantial conformity with the UCCJA.
28. The Court finds that the Massachusetts Court of Appeals provided an instructive standard for determining substantial conformity by setting forth three requirements to satisfy the substantial conformity test and hereby adopts the same.
29. The Court has considered whether the foreign court: (1) had jurisdiction over the parties and the subject matter; (2) applied procedural and substantive law reasonably comparable to our laws; and (3) based its order on a determination of the best interests of the child. *El Chaar v. Chehab*, 941 N.E.2d 75, 79-80 (Mass.App.Ct. 2010).
30. The Court finds that the first requirement is not at issue as the parties do not challenge the jurisdictional authority of the [REDACTED] court over the [REDACTED] proceedings.
31. The Court finds that, in determining whether the second requirement was met, the Court looks to whether, under the applicable law of [REDACTED] the court was required to consider the

best interests of the Children, as that standard is applied under the UCCJA.

32. The Court finds that the Marriage and Guardianship Code of [REDACTED] requires that “the children will be in custody of the spouse who obtained the divorce unless the court...orders for the best interest of the children, that all or some of them will be cared for by the other spouse or a third person.” (See Respondent’s Exhibit 12, Article 86).
33. The Court finds, however, that "even where the foreign law requires a custody determination to make reference to the best interests of the child, it does not necessarily follow that the substantive law applied by the foreign court is reasonably comparable to our own law.” *El Chaar v. Chehab*, 941 N.E.2d 75, 79-80 (Mass.App.Ct. 2010).
34. The Court finds [REDACTED] law is not comparable to Indiana or U.S. law.
35. The Court finds that there should be no mechanical presumption in favor of mother or father, and neither parent should have a superior right to custody. *Ali v. Ali*, 652 A.2d 259 (N.J.App.Div. 1994).
36. In addition, the Court finds that Indiana Code section [REDACTED] 8 explicitly states that “in determining the best interests of the child, there is no presumption favoring either parent.”
37. The Court finds a legal practice in [REDACTED] of favoring fathers tantamount to a mechanical presumption in favor of awarding custody to fathers.
38. The Court finds that, for purposes of applying the UCCJA, it must consider whether the court in which the foreign decree was entered considered the best interests of the child rather than those of the parent. *Tataragasi v. Tataragasi*, 477 S.E.2d 246, 268 (N.C. Ct. App. 1996).

39. The Court finds that the █████ Court focused on Father's allegations against Mother, unrelated to the Children, and not the best interest of the Children.

40. The Court finds that, in determining whether the third requirement was met, the █████ court must have actually based its order on the best interests of the Children.

41. The Court finds that the █████ Court did not actually base its order on the best interest of the Children.

D. Legal – Violation of Human Rights

42. The Court finds that it is not required to enforce the █████ if the law upon which it is based violates fundamental principles of human rights.

43. The Court finds that the evidence at trial demonstrates that █████ law and culture favors men and discriminates against women.

44. The Court finds that █████ law is carried out within a corrupt and biased legal system that normalizes practices such as domestic violence, marital rape and female genital mutilation.

45. The Court finds that █████ law is founded upon equal rights for women.

E. Legal Fees

46. The Court finds no evidence of wrongdoing that would justify an award of attorney's fees to Father.

CONCLUSIONS OF LAW

1. That the Court incorporates all findings made *supra* as if set forth in full.
2. Given that Indiana lacks a test for substantial conformity, this Court feels it appropriate to adopt the Massachusetts Court of Appeals' test for substantial conformity.

3. The Court concludes that the three requirements for substantial conformity set forth by the Massachusetts Court of Appeals are not met.
4. The Court concludes that the first requirement is not in issue as the parties do not challenge the jurisdictional authority of the [REDACTED] court over the [REDACTED] proceedings.
5. The Court concludes that the second requirement was not met because the [REDACTED] court did not apply procedural and substantive law comparable to that of Indiana and the U.S.
6. The Court concludes that the third requirement was not met because the [REDACTED] court did not analyze the factors which affect the best interests of the Children, nor was the custody determination actually based upon the best interests of the Children.
7. The Court concludes that the [REDACTED] was not issued in substantial conformity with the best interest standards of the UCCJA.
8. The Court concludes that [REDACTED] law and culture not only favors men, but discriminates against women as well.
9. The Court concludes that [REDACTED] law operates within a corrupt and biased legal system.
10. The Court concludes that [REDACTED] custom normalizes practices such as marital rape and female genital mutilation, which are not prohibited by law.
11. The Court concludes that the law upon which the [REDACTED] is based violates fundamental principles of human rights.
12. The Court concludes that enforcement of the [REDACTED] should be denied as it was both not issued in substantial conformity with the best interest standards of the UCCJA and the law upon which the Decree was based violates fundamental principles of human rights.

13. The Court concludes that, accordingly, the [REDACTED] should not be enforced and this Court should exercise jurisdiction and conduct a best interest analysis consistent with the public policy of the United States.

14. The Court denies Father's Petition for Fees.

JUDGMENT/PROPOSED ORDER

That all findings and conclusions of law are incorporated herein as if set forth in full.

THEREFORE, IT IS ORDERED ADJUDGED AND DECREED that the [REDACTED] is not enforceable and this Court assumes jurisdiction to enter a custody order.

SO ORDERED this ___ day of _____, [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

Distribution:

Bryan Ciyou/Darlene Seymour

[REDACTED] [REDACTED] [REDACTED] [REDACTED]