

CEDAW

The Treaty for the Rights of Women

The Convention on the Elimination of All Forms of Discrimination Against Women

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Rights That Benefit the Entire Community

Compiled and Edited by Leila Rassekh Milani, Sarah C. Albert
and Karina Purushotma

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The Working Group on Ratification of the U.N. Convention on
the Elimination of All Forms of Discrimination Against Women

The Working Group on Ratification of the U.N. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is a group of more than 190 national non-governmental organizations engaged in outreach and education to achieve ratification by the United States of the U.N. treaty that bans discrimination against women.

Co-Chair:

Sarah C. Albert

Public Policy Director
General Federation of Women's Clubs
1734 N Street, N.W.
Washington, D.C. 20036
Tel: (202) 347.3168
Fax: (202) 835.0246
salbert@gfwc.org

Co-Chair:

Leila R. Milani

Liaison for Women's Issues
National Spiritual Assembly
of the Bahá'ís of the United States
1320 19th Street, N.W., Suite 701
Washington, D.C. 20036
Tel: (202) 833.8990
Fax: (202) 833.8988
lmilani@usbnc.org

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In loving memory of

***Senator Paul Wellstone
& Sheila Wellstone***

***who were staunch promoters
of women's rights at home
and across the globe.***

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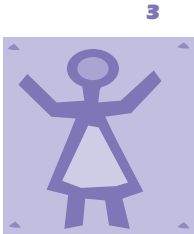


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Foreword: Harold Hongju Koh*

More than half a century after Eleanor Roosevelt pioneered the drafting of the Universal Declaration of Human Rights, her country still has not ratified the Convention on the Elimination of All Forms of Discrimination Against Women

(CEDAW or Treaty for the Rights of Women). Sadly, more than two decades after that treaty entered into force, most Americans—including most lawyers—cannot articulate why United States' ratification of that treaty is long overdue.

In his first State of the Union address after September 11, 2001 President George W. Bush announced that “America will always stand for the non-negotiable demands of human dignity: the rule of law, limits on the power of the

state, respect for women, private property; free speech, equal justice, and religious tolerance.”¹ Yet at this writing, his administration remains curiously diffident about whether to endorse the ratification of the treaty.² This book sets forth an array of arguments why there could be no more fitting way for the United States Senate to answer the President's demand than by moving to ratify the universal treaty for the rights of women now.

In recent years, the United States Congress and a number of states have enacted versions of the Violence Against Women Act as a mark of a national commitment to end violence and discrimination against women across this country. This commitment should not stop at the water's edge. Particularly after September 11, America simply cannot be a world leader in guaranteeing progress for women's human rights, whether in Afghanistan, in the United States, or around the world, unless it is also a party to the global women's treaty.

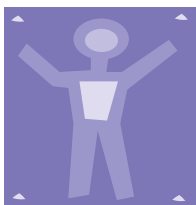
The violent human rights abuses we recently witnessed against women in Afghanistan, Bosnia, Haiti, Kosovo, and Rwanda painfully remind us of the need for all nations to join together to intensify efforts to protect women's rights as human rights.³ As Amartya Sen has reminded us, around the world, more than 100 million

* Gerard C. and Bernice Latrobe Smith Professor of International Law, Yale Law School; U.S. Assistant Secretary of State for Democracy, Human Rights and Labor (1998 – 2001).

¹ President George W. Bush, State of the Union Address, Jan. 29, 2002, available at www.whitehouse.gov (emphasis added).

² Karen DeYoung, “Senate Panel to Defy Bush, Vote on Women's Treaty,” *Washington Post* 18 July 2002: A21.

³ See, e.g., Richard Goldstone, Prosecuting Rape as a War Crime, — Case Western J. Int'l Law (2002); Patricia V. Sellers, —, — Case Western J. Int'l Law (200) (describing acts of sexual violence against women during the conflicts in Rwanda).



**All Forms
of Discrimination
Against
Women**
“Honor” Killings
Illiteracy
Exclusion
from Higher
Education
Employment
Discrimination
Trafficking

women are likely missing.⁴ In all parts of the world, women are subjected to stunning abuses resulting from deeply entrenched cultural and religious norms, and family and community practices that are often shielded from external scrutiny by claims of privacy or sovereignty. The ironically named “honor killings”—a practice better called “arbitrary killings”—whereby family members take it upon themselves

“The worldwide advancement of women’s issues is not only in keeping with the deeply held values of the American people; it is strongly in our national interest as well . . . Women’s issues affect not only women; they have profound implications for all humankind. Women’s issues are human rights issues . . . We, as a world community, cannot even begin to tackle the array of problems and challenges confronting us without the full and equal participation of women in all aspects of life.”

— Secretary of State,
Colin Powell

to kill their sisters or cousins if they suspect them of bringing shame upon the family.⁵ In almost every part of the globe, women are far less likely to be literate; they lag far behind men in access to higher education; and they enjoy many fewer job opportunities.⁶ Even in the 21st century, a modern form of slave trade persists under the label of “trafficking in persons,” especially women and children.⁷

At the State Department, where I supervised the production of the annual country reports on human rights conditions worldwide, I found that a country’s ratification of CEDAW is one of the surest indicators of the strength of its commitment to internalize the universal norm of gender equality into its domestic laws. Let me emphasize that in light of our ongoing national efforts to address gender equality through state and national legisla-

tion, executive action, and judicial decisions, the legal requirements imposed by ratifying this treaty would not be burdensome.

At the same time, from my direct experience as America’s chief human rights official, I can testify that our continuing failure to ratify CEDAW has reduced our global standing, damaged our diplomatic relations, and hindered our ability to lead in the international human rights community. Nations that are otherwise our allies, with strong rule-of-law traditions, histories, and political cultures, simply cannot understand why we have failed to take the obvious step of ratifying this convention. In particular, our European and Latin American allies regularly question and criticize our isolation from this treaty framework both in public diplomatic settings and private diplomatic meetings.



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Foreword

and the former Yugoslavia). In 1993, the General Assembly adopted a Declaration on the Elimination of Violence against Women, U.N. Doc. A/48/629, reprinted in 33 Int'l Leg. Mat. 1050 (1994) and for the past decade Radhika Coomaraswamy of Sri Lanka has served brilliantly in that post.

⁴ *New York Review of Books*, 20 Dec. 1990: 61.

⁵ See e.g., Remarks of Harold Hongju Koh, Assistant Secretary of State for Democracy, Human Rights and Labor, to the Tahirih Justice Center, May 25, 2000, available at http://www.state.gov/www/policy_remarks/2000/000525_koh_tahirih.html.

⁶ See Henry Steiner & Philip Alston, *International Human Rights in Context* 163-65 (2d ed. 2000).

⁷ See Koh Testimony on Trafficking, “Trafficking represents of the most comprehensive challenges to human rights in the world today, for it involves the very denial of the humanity of its victims.”



Our non-ratification has led our allies and adversaries alike to challenge our claim of moral leadership in international human rights, a devastating challenge in the post-September 11 environment. Even more troubling, I have found, our exclusion from this treaty has provided anti-American diplomatic ammunition to countries that have exhibited far worse records on human rights in general, and women's rights in particular. Persisting in the aberrant practice of non-ratification will only further our diplomatic isolation and inevitably harm our other United States foreign policy interests.

Most fundamentally, ratification of CEDAW would further our national interests. Secretary of State Colin Powell put it well when he said: "The worldwide advancement of women's issues is not only in keeping with the deeply held values of the American people; it is strongly in our national interest as well . . . Women's issues affect not only women; they have profound implications for all humankind. Women's issues are human rights issues . . . We, as a world community, cannot even begin to tackle the array of problems and challenges confronting us without the full and equal participation of women in all aspects of life."⁸

After careful study, I have found nothing in the substantive provisions of this treaty that even arguably jeopardizes our national interests. Those treaty provisions are entirely consistent with the letter and spirit of the United States Constitution and laws, both state and federal. The United States can and should accept virtually all of CEDAW's obligations and undertakings without qualification.

⁸Statement of Secretary of State Colin Powell before the House International Relations Committee (7 Mar. 2002), available at www.state.gov.

1 Introduction to CEDAW



Introduction to CEDAW

What Is CEDAW the Treaty for the Rights of Women?



CEDAW: Treaty for the Rights of Women

On December 18, 1979 the United Nations adopted the Convention on the Elimination of All Forms of Discrimination Against Women, also known as “The Treaty for the Rights of Women” or “CEDAW.” The call for a Women’s Convention emerged from the First World Conference on Women in Mexico City in 1975. Until the General Assembly adopted the Convention in 1979, no international document comprehensively addressed women’s rights within the political, cultural, economic, social, and family life. Often called an international “Bill of Rights” for women, CEDAW is the culmination of more than thirty years of work by the United Nations Commission on the Status of Women. The creation of this treaty was the first critical step in developing appropriate human rights language for women. This language addresses abuses (for example, physical, sexual, economic, and political) of women and promotes women’s full enjoyment of their rights and well-being. CEDAW has been used to incorporate women’s rights into national constitutions, update or eliminate discriminatory national laws, and influence court decisions in many countries.

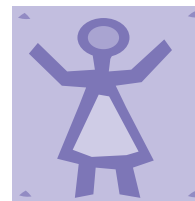
Because of CEDAW, millions of girls who were previously denied access are now receiving basic education; measures have been taken against sex slavery, domestic violence and trafficking of women; women’s health care services have improved, saving lives during pregnancy and childbirth; and millions of women have secured loans and obtained the right to own or inherit property.

As of March 2004, 175 countries have ratified CEDAW. The United States is among a small minority of counties that have not ratified the treaty, including Iran, Sudan, and Somalia.

How Does CEDAW Work?

The treaty calls for ratifying nations to overcome barriers of discrimination against women in the areas of legal rights, education, employment, health care, politics and finance. Like other human rights treaties, CEDAW sets benchmarks within traditional enforcement mechanisms that respect sovereignty and democracy.

The treaty defines “best practices” for ensuring basic human rights for women, but it does not itself impose any laws on governments. Domestic laws take precedence, and all countries self determine the legal status the treaty will have, in accordance with their own constitutional frameworks. The treaty has proven to be a valuable tool for governments wanting to improve their own laws by broadening the basic rights of women.



The treaty calls for governments to remove barriers to substantive equality. This requires countries to examine the actual conditions of life for women and girls and to report on structures and customs that discriminate against them and on actions taken to eliminate those barriers. Many of the 175 countries that have ratified the treaty have used it for guiding the passage and enforcement of national laws.

For example:

- ◆ **Uganda, South Africa, Brazil, Australia** and others have incorporated treaty provisions in their constitutions and domestic legal codes.
- ◆ **Ukraine, Nepal, Thailand** and the **Philippines** passed new laws to curb sexual trafficking.
- ◆ **India** developed national guidelines on workplace sexual assault after the Supreme Court, in ruling on a major rape case, found that CEDAW required such protections.
- ◆ **Nicaragua, Jordan, Egypt** and **Guinea** all saw significant increases in literacy rates after improving access to education for girls and women.
- ◆ **Colombia** made domestic violence a crime and required legal protection for its victims after ratification.

Much remains to be done, and U.S. ratification of CEDAW will play a key part in strengthening the promotion and protection of women's rights throughout the world:

- ◆ **Sex trafficking:** At least 4 million women and girls are sold into sexual slavery each year.
- ◆ **Pornography:** Degrades women, promotes a climate of sexual hostility, and encourages the notion that a woman's worth depends on her sexual appeal to men. 86% of convicted rapists in the U.S. confess to regular use of pornography.
- ◆ **Education:** Two-thirds of the world's 875 million illiterate adults are women.
- ◆ **Maternal mortality:** 510,000 women die each year from pregnancy-related complications and millions more suffer from serious injuries.
- ◆ **HIV/AIDS:** Women are four times more vulnerable than men and 1.3 million die each year.
- ◆ **Violence:** An estimated 25 to 30% of women around the world experience domestic violence.
- ◆ **War crimes:** Gender-based violence during war has traditionally been hidden, but is being increasingly exposed.
- ◆ **Discrimination:** Millions of women lack full legal and political rights.
- ◆ **Sexual harassment:** Of female graduate students polled by the American Psychological Association, 12.7% reported having been sexually harassed, 21% had avoided classes for fear of being sexually harassed, 11% had tried to report an incident of sexual harassment, and 3% had dropped a course because of sexual harassment.
- ◆ **Female genital mutilation:** 130 million women are victims.

The CEDAW Committee

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CEDAW: Treaty for the Rights of Women

The paramount determining factor in CEDAW's implementation is the political will of governments. This political will depends on the degree to which various constituencies, including religious groups, civic groups, legal groups, women's groups, and government agencies present their human rights action plans. CEDAW established a Committee on the Elimination of Discrimination Against Women (CEDAW Committee), to consider and review the progress made in implementing the Convention. This Committee of 23 independent experts, nominated and elected by States Party for four-year terms, reviews reports from individual governments and assesses the Convention's implementation at the national level. The analysis of government reports by the CEDAW Committee gives women's perspectives, understandings, and expectations a voice. The reports and assessments reflect the vast interests of women representing a kaleidoscope of cultures, religions, and ethnic and racial groups, and contribute to the establishment of universal standards of human rights.

States Parties to the Convention are required to submit a report to the Committee one year after ratification and then again every four years. These reports constitute the basis of consultative dialogue for the Committee. The Committee is also authorized to make general comments and recommendations on specific articles or themes related to the Convention.

The Optional Protocol to the Convention entered into force on December 22, 2000. It empowers individuals or groups to submit petitions directly to the Committee, once they have exhausted all available avenues of domestic redress. It also entitles the Committee to investigate grave or systematic violations of the Convention, but ratifying States may opt-out of this inquiry procedure. As of March 2004, 75 countries are signatories to the Optional Protocol, out of the 175 States Parties to CEDAW.

Dialogue and Consultation

CEDAW is not a newly drafted treaty. Rather, its 25 year existence provides a valuable measuring tool by which its purpose and intent can be assessed. The primary goal of the Convention is to eliminate discrimination against women and girls and to promote the rule of law and respect for human rights throughout the world. The language used signifies the incremental or progressive nature of the obligation of State Parties to comply. The Convention's language, such as "appropriate measures to introduce," shows the drafters' commitment to identify areas where women are still lagging behind and promotes consultative dialogue in developing appropriate remedies. Developments in the more than 170 countries that have ratified CEDAW offers actual, rather than speculative, proof of how the treaty has helped secure fundamental rights and freedoms of women throughout the world.

Treaty Summary

Article 1: Defines **discrimination** against women as any “distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of marital status, on the basis of equality between men and women, of human rights or fundamental freedoms in the political, economic, social, cultural, civil, or any other field.”

Article 2: Mandates that States Parties **condemn discrimination** in all its forms and to ensure a legal framework including all laws, policies and practices that provides protection against discrimination and embodies the principle of equality.

Article 3: Requires States Parties to take action in all fields—**civil, political, economic, social, and cultural**—to guarantee women’s human rights.

Article 4: Permits States Parties to take “**temporary special measures**” to accelerate equality.

Article 5: Declares the need to take appropriate measures to modify cultural patterns of conduct, as well as the need for family education to recognize the social function of **motherhood** and the common responsibility for **raising children**.

Article 6: Obligates States Parties to take measures to **suppress the trafficking of women** and the exploitation of prostitution of women.

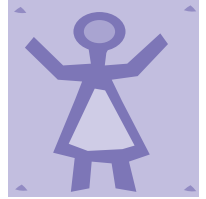
Article 7: Mandates States Parties **end discrimination against women in political and public life** and ensure women’s equal rights to vote, be eligible for election, participate in the formulation of policy, hold office, and participate in associations and non-governmental organizations.

Article 8: Requires measures allowing women to **represent their governments** internationally on an equal basis with men.

Article 9: Mandates that women have equal rights with men to acquire, change, or retain their **nationality** and that of their children.

Article 10: Obligates States Parties to end discrimination **in education**, including in professional and vocational training, access to curricula and other means of receiving an equal education as well as to **eliminate stereotyped concepts** of the roles of men and women.

Article 11: Mandates the end of discrimination in the field of employment, including the right to work, employment opportunities, equal remuneration, free



choice of profession and employment, **social security**, and protection of health, including maternal health, and also in regard to discrimination on the grounds of marriage or maternity.

Article 12: Requires steps to eliminate discrimination in **health care**, including access to services such as **family planning**.

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Article 13: Requires that women be ensured the same rights as men in all areas of social and economic life, such as **family benefits, mortgages, bank loans**, and participation in **recreational activities and sports**.

Article 14: Focuses on the particular problems faced by **rural women**, including the areas of women's participation in development planning, access to adequate health care, credit, education, and adequate living conditions.

Article 15: Obligates States Parties to take steps to ensure **equality before the law** and the same legal capacity to act in such areas as **contracts**, administration of **property**, and choice of **residence**.

Article 16: Requires steps to ensure **equality in marriage and family relations**, including equal rights with men to **freely choose marriage**, equal rights and responsibilities toward children, including the right to **freely determine the number and spacing of children** and the means to do so, and the same rights to **property**.

Article 17: Calls for the establishment of the **Committee** on the Elimination of Discrimination Against Women (CEDAW) to evaluate progress made in implementation of the Convention.

Article 18: Establishes a **schedule for reporting** on progress by ratifying countries.

Article 19: Allows the CEDAW Committee to adopt procedural rules and sets a two-year term for its officers.

Article 20: Sets **annual CEDAW meetings** to review States Parties' reports.

Article 21: Directs the CEDAW Committee to report annually to the General Assembly and to make **suggestions and general recommendations** based on the States Parties' reports.

Article 22: Allows for representation of **specialized agencies** of the U.N. and for CEDAW to invite reports from them.

Articles 23-30: Outlines elements for **operation and enforcement of the treaty**, permissible reservations, and how disputes between States Parties can be settled.

Countries that Have Ratified CEDAW

One hundred seventy five countries have consented to promote and protect the basic human rights of women by using CEDAW as of March 2004:

Afghanistan, Albania, Algeria, Andorra, Angola, Antigua & Barbuda, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Bhutan, Bolivia, Bosnia & Herzegovina, Botswana, Brazil, Bulgaria, Burkina Faso, Burundi;

Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Democratic People's Republic of Korea, Denmark, Djibouti, Dominica, Dominican Republic;

Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, Fiji, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, Iceland, India, Indonesia, Iraq, Ireland, Israel, Italy;

Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Lebanon, Lesotho, Liberia, Libyan A. Jamahiriya, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Maritius, Mauritania, Mexico, Mongolia, Morocco, Mozambique, Myanmar;

Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Republic of Macedonia, Republic of Moldova, Romania, Russian Federation, Rwanda;

Saint Kitts & Nevis, Saint Lucia, Saint Vincent & the Grenadines, Samoa, San Marino, Sao Tome & Principe, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Singapore, Slovakia, Slovenia, Solomon Islands, South Africa, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, Timor-Leste, Togo, Trinidad & Tobago, Tunisia, Turkey, Turkmenistan, Tuvalu;

Uganda, Ukraine, United Kingdom of Great Britain & Northern Ireland, United Republic of Tanzania, Uruguay, Uzbekistan, Vanuatu, Venezuela, Vietnam, Yemen, Yugoslavia, Zaire, Zambia, Zimbabwe.



Countries that Have not Ratified CEDAW

Seventeen countries or nation states have not yet ratified the Treaty for the Rights of Women, as of March 2004:

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CEDAW: Treaty for the Rights of Women

Europe & North America:

Monaco
United States of America (S)

West Asia (Middle East):

Iran
Oman
Qatar
United Arab Emirates

Asia Pacific/Central Asia:

Brunei Darussalam
Cook Islands*
Kiribati*
Marshall Islands
Micronesia (Federated States of)*
Nauru*
Palau
Tonga*

Africa:

Somalia
Sudan
Swaziland

Latin America/Caribbean:

All ratified

*Non-member state of the United Nations

(S) Signed, not ratified or acceded

CEDAW² in the United States



CEDAW in the United States

What Is the Status of CEDAW in the U.S.?

16



CEDAW: Treaty for the Rights of Women

Treaties have a lengthy ratification process in the United States. A President must first sign a treaty, before submitting it on for review by the Senate Foreign Relations Committee. Once the Committee considers the treaty, the full Senate can then deliberate and vote on it, where two-thirds (67) of the entire Senate must approve it. Finally, the sitting President must re-sign the treaty.

The U.S. was active in drafting CEDAW. President Jimmy Carter signed the treaty on July 17, 1980, and sent it to the Senate Foreign Relations Committee in November 1980 for a vote on ratification. A decade later, in the summer of 1990, the Committee held hearings on the treaty. In the spring of 1993, 68 senators signed a letter to President William J. Clinton asking him to take the necessary steps to ratify it.

In June 1993, Secretary of State Warren Christopher announced at the World Conference on Human Rights in Vienna that the Clinton Administration would pursue CEDAW and other human rights treaties. During the 103rd Congress the treaty was reported out of the Senate Foreign Relations Committee favorably by a vote of 13 to 5, with one abstention in September 1994. This vote occurred in the last days of the Congressional session. Several senators put a hold on it, thereby blocking the treaty ratification vote on the Senate floor.

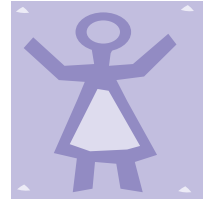
When the Senate convened in January 1995, the treaty reverted back to the Senate Foreign Relations Committee, where no further action was taken. Momentum for the treaty grew again in 2002 under the leadership of Senators Joseph R. Biden, Jr. (D-DE) and Barbara Boxer (D-CA). The treaty was voted favorably out of the Senate Foreign Relations Committee for a second time by a bipartisan vote of 12 to 7 on July 30, 2002. However, an overcrowded fall Senate schedule prevented the treaty from being considered by the full Senate.

In early 2002, the State Department notified the Senate Foreign Relations Committee that the Treaty for the Rights of Women was “generally desirable and should be ratified.” Nevertheless, the Bush Administration has not yet taken a formal position on the treaty; it awaits a Justice Department review about what additional reservations, understandings and declarations may be necessary. The new committee chairman, Senator Richard Lugar (R-IN), has indicated he is waiting for the Bush Administration to complete another review of the treaty.

A coalition of over 190 U.S. religious, civic, and community organizations remain committed to supporting ratification. They include AARP, American Nurses Association, National Education Association, National Coalition of Catholic Nuns, the American Bar Association, the United Methodist Church, YWCA, and Amnesty International.

Why Should the United States Ratify the CEDAW Treaty?

CEDAW provides a universal definition of discrimination against women that establishes a basis for every government's domestic and foreign policy to combat discrimination against women.



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CEDAW in the United States

Keeping Our Commitment

U.S. ratification would provide a powerful statement of our continuing commitment to ending discrimination against women worldwide. It would not require any changes in current U.S. law. As one of the few nations that have failed to ratify CEDAW, the U.S. compromises its credibility as a world leader for human rights. The U.S. made ratification by 2000 one of its public commitments at the U.N. Conference on Women in Beijing in September 1995. The U.S. must keep that commitment.

U.S. failure to ratify the treaty allows other countries to distract attention from their neglect of women and undermines the powerful principle that human rights for women are universal across all cultures and religions. Until the United States ratifies, our country cannot credibly demand that others live up to their obligations under this treaty. Our failure to ratify puts us in the company of Sudan, Iran and Somalia; every industrialized country has ratified the treaty.

Keeping Our Tradition

The U.S. has a bipartisan tradition of supporting international standards through human rights treaties. Presidents Reagan, Bush and Clinton ratified similar treaties on genocide, torture, race, and civil and political rights. This treaty, like other human rights treaties, outlines the most fundamental human rights.

The U.S. already has laws consistent with CEDAW. Under the terms of the treaty, the U.S. would submit reports to an advisory committee, which would provide an important opportunity to spotlight our best practices and assess where we can do better.

Linking Discrimination and Violence Against Women

The treaty is a tool that women around the world are using to fight the effects of discrimination: violence against women, poverty, lack of legal status, inability to inherit or own property, lack of access to credit, etc. Women need the U.S. to speak



loudly and clearly in support of the treaty so that it becomes a stronger instrument in support of their struggles to achieve full equality and the protection of their human rights. Without U.S. ratification, some other governments feel free to ignore the treaty's mandate and their obligations under it.

Violence against women seriously inhibits women's ability to enjoy inalienable rights and freedoms on a basis of equality with men. Violence against women itself emerges from the phenomenon of discrimination against women, which makes them a target of violence. To effectively combat violence against women, U.S. policy must address this linkage between discrimination and violence. By ratifying CEDAW, the U.S. will reinforce its commitment to eliminate sex discrimination and, therefore, move closer to effectively combating violence against women.

Gaining U.S. Membership on the CEDAW Committee

Ratification of CEDAW will entitle the U.S. to nominate a U.S. expert to be a member of the Committee on the Elimination of Discrimination Against Women, which monitors worldwide reports of progress on the status and treatment of women from countries that have ratified the Convention. In this capacity, the U.S. expert could bring the benefit of the U.S. experience in combating discrimination against women to this international forum.

Did You Know?

♦ **Eleanor Roosevelt**
helped draft the
Universal Declaration
of Human Rights

♦ **Jimmy Carter**
helped draft the
U.N. Women's Treaty

♦ **Ronald Reagan**
spearheaded the
ratification of the
Genocide Convention

♦ **George H. W. Bush**
led efforts to ratify
the Torture Convention
and the Protocol for
Civil and Political Rights

♦ **Bill Clinton,**
with unanimous backing
from a Republican-led Senate,
ratified the Convention
on the Elimination of All Forms
of Racial Discrimination

... the U.S.
has a long
tradition
of support for
international
human
rights law.

The Road to Ratification

1975: The First U.N. World Conference on Women in Mexico City calls for a Women's Convention to promote equal rights for women worldwide.

December 18, 1979: United Nations approves CEDAW.

July 17, 1980: President Jimmy Carter signs the treaty. The Reagan and George H. W. Bush administrations decline to seek ratification.

1990: The Senate Foreign Relations Committee holds a hearing on the Treaty.

1993: Sixty-eight senators write President Bill Clinton requesting treaty ratification.

1993: The United States commits to ratify CEDAW at the U.N. World Conference on Human Rights in Vienna, Austria.

1994: The Clinton administration recommends ratification with four reservations, three understandings, and two declarations on issues including private conduct, combat assignments, comparable worth, paid maternity leave, federal-state implementation, freedom of speech, and health care financing.

September 1994: The Senate Foreign Relations Committee votes 13 to 5 with one abstention to recommend treaty passage by the full Senate. Several senators put a "hold" on it for the duration of the 103rd Congress.

August 1995: At the U.N. Fourth World Conference on Women in Beijing, China, the United States commits to ratify CEDAW before 2000.

1999: Senator Barbara Boxer (D-CA) and nine other senators call for a new hearing and treaty ratification, but are rebuffed by Sen. Jesse Helms (R-NC), chairman of the Senate Foreign Relations Committee.

May 2000: The House International Relations Committee holds an informational hearing on the treaty: finding that 168 nations have ratified it, and 62 have ratified the Optional Protocol.

June 13, 2002: Senator Joseph Biden (D-DE), chairman of the Senate Foreign Relations Committee, holds a hearing on the Treaty for the Rights of Women (CEDAW).

July 30, 2002: The treaty was voted favorably out of the Senate Foreign Relations Committee by a 12 to 7 margin.

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CEDAW in the United States

Fall 2002: The Senate adjourns without time for voting on ratification. The treaty reverts back to the Senate Foreign Relations Committee under the leadership of chairman Richard Lugar (R-IN).

November 2003: The Bush administration sponsors a U.N. resolution on “Women and Political Participation” that was approved on November 6, 2003 at the General Assembly Session in New York city. The resolution recalls CEDAW.

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CEDAW: Treaty for the Rights of Women

3 Impact of CEDAW



Impact of CEDAW on Violence

Stopping Violence Against Women

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CEDAW: Treaty for the Rights of Women

“Throughout a woman’s life cycle, there exist various forms of gender-based violence that manifest themselves at different stages. Most of this violence is domestic, occurring within the home, perpetrated by those to whom the woman is closest. Even before birth, females in cultures where son preference is prevalent are targeted by the violent discriminatory practices of sex-selective abortion and female infanticide. Violence against the girl child manifests itself as enforced malnutrition, unequal access to medical care, as well as physical and emotional abuse. Incest, female genital mutilation, early childhood marriage and other harmful traditional practices, and the sale of children by their parents for prostitution or bonded labour are all forms of violence inflicted on girl children.”

— Statement of Radhika Coomaraswamy, U.N. Special Rapporteur on Violence against Women.⁹

Violence against women is a global epidemic that requires a global strategy for effective prevention. Violent acts committed against women take many forms, including rape, domestic violence, honor killings, acid burnings, female genital

Gender-Specific
'Challenges to Life
and Security'
Domestic Violence
Selective Fetal
Abortion
Infanticide
Restricted
Nutrition &
Healthcare
Amniocentesis
Rape
Sterilization
Compulsory
Child Bearing
Honor Crimes
Acid Throwing
Sex Trafficking
Pornography
Custodial Assault
Forced
Sterilization
Sexual
Harassment
Dowry Deaths
Female Genital
Mutilation
Immolation

⁹ Report of the special rapporteur on violence against women, its causes and consequences, United Nations, Economic and Social Council, Commission on Human Rights, New York, 1997 (unpublished document, number E/CN.4/1997/47).

mutilation, dowry deaths, sexual slavery, and other forms of abuse and exploitation. Statistics suggest that nearly every woman in the world has either been personally affected by gender-based violence or knows a woman who has been a victim.

CEDAW is the only international agreement that specifically addresses violence and discrimination against women. In the 175 countries that have ratified CEDAW, the treaty serves as an essential tool for combating violence and improving the lives of women and girls. In order to join the growing and unified voice of nations calling for an end to violence against women, the United States must ratify CEDAW immediately.

Violence against women is widespread and takes many forms. While it is impossible to provide a comprehensive picture of this global epidemic within these pages, we provide below a snapshot of some of the many types of violent acts that devastate our mothers, wives, sisters, and families worldwide.

The Current World Situation

- ◆ Nearly one in every three American women is physically assaulted by a partner during adulthood.¹⁰ Intimate partners who abuse women may inflict stab wounds, bruises, and internal injuries; cause muscular and skeletal injuries, or concussions; and rape or shoot their female partners.¹¹
- ◆ The rape of women has been used as a tool of terrorism and ethnic cleansing in conflicts in Bosnia, Rwanda, and other war-torn countries. Those women who flee persecution as refugees often tragically continue to face violence. The United Nations reports that women remain vulnerable to sexual violence during flight, in refugee camps, in countries of asylum and resettlement, and during and after repatriation to their home countries. Studies have found that refugee women and girls are often forced to engage in unwanted sexual activity in exchange for food and other basic needs.¹²
- ◆ Rape is widespread in the U.S. as well. In one recent study by the U.S. Department of Justice, 7.7% of U.S. women reported that an intimate partner had raped them in their lifetime.¹³
- ◆ Perpetuating a violent cultural tradition known as “honor killings,” male family members in several countries kill women and girls suspected of behavior regarded as shameful or dishonoring to the family. Under the legislative codes of certain nations, men who kill a woman in the name of preserving family honor are excused or given reduced sentences.¹⁴ Honor killings are reported in

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Impact of CEDAW

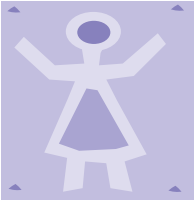
¹⁰American Psychological Association, *Violence and the Family Report of the American Psychological Association Presidential Task Force on Violence and the Family*, 10 (1996).

¹¹Greenfeld et al., *Violence by Intimates: Analysis of Data on Crimes by Current or Former Spouses, Boyfriends or Girl friends*, March 1998.

¹²United Nations, *The World's Women 2000: Trends and Statistics*, New York: 2000, 162.

¹³U.S. Department of Justice, *Extent, Nature and Consequences of Intimate Partner Violence*, National Institute of Justice, July 2000.

¹⁴The World's Women 2000: Trends and Statistics, 153-154.



Pakistan, Jordan, and Turkey, as well as in other countries in the Middle East, Asia, North Africa, and the Americas.¹⁵

- ◆ In “The World’s Women 2000: Trends and Statistics,” the United Nations reports an estimated 100 to 132 million girls and women worldwide have been subjected to female genital mutilation (FGM).¹⁶ Approximately 2 million girls are genitally mutilated in some form each year. FGM is known to be practiced in 28 African countries and in parts of Asia, and is also reported among immigrant communities in North America, Europe, Australia, and New Zealand.

How CEDAW Has Helped Combat Violence Against Women

- ◆ Since ratifying CEDAW in 1982, **Colombia** has created protections for women who are abused by their husbands or partners. The courts ruled in 1992 that the absence of legal recourse then not available to a female victim of domestic violence violated her human rights to life and personal security.¹⁷
- ◆ In **Uganda**, campaigns against domestic violence began receiving state funding after the country ratified CEDAW in 1985.¹⁸
- ◆ Courts in **Costa Rica** are now authorized to order abusive spouses to leave the home and to continue providing economic support to the partner they abused. Programs and training to combat sex crimes are being created, and women officials are now designated to handle rape investigations and prosecutions. These important changes have occurred since the country ratified CEDAW in 1986.¹⁹
- ◆ **Canada**, **Australia**, and **New Zealand** ratified CEDAW in the early 1980s and each recognize government-tolerated gender violence as a legitimate basis for asylum. These countries have forged a path toward justice for women fleeing gender-based persecution by opening their doors to victims of female genital mutilation, honor crimes, sex trafficking, domestic violence, and other human rights abuses perpetuated against women.
- ◆ In **India**, domestic violence has been recognized as a widespread problem.²⁰ After the country ratified CEDAW in 1993, the government established a National Commission for Women, which found that existing law did not

¹⁵ Amnesty International, “Pakistan: Violence Against Women in the Name of ‘Honor.’” September 1999, available at [http://web.amnesty.org/aidoc/aidoc_pdf.nsf/index/ASA330171999ENGLISH/\\$File/ASA3301799.pdf](http://web.amnesty.org/aidoc/aidoc_pdf.nsf/index/ASA330171999ENGLISH/$File/ASA3301799.pdf); Human Rights Watch, “Jordanian Parliament Supports Impunity for Honor Killings,” 27 Jan. 2000, available at <http://www.hrw.org/press/2000/01/jord0127.htm>; Human Rights Watch, “Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women and ‘Honor Crimes,’” 6 April 2001, available at <http://www.hrw.org/press/2000/01/jord0127.htm>.

¹⁶ *The World’s Women 2000: Trends and Statistics*, 159.

¹⁷ Landsberg-Lewis, Ilana, ed., “Bringing Equality Home,” United Nations Development Fund for Women (UNIFEM), New York: 1998.

¹⁸ Ibid.

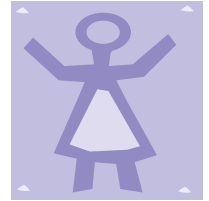
¹⁹ Ibid.

²⁰ International Center for Research on Women, “Domestic Violence in India: A Summary Report of a Multi-Site Household Survey,” May 2000 [funded by USAID].

protect women from domestic violence. In response, a new bill was passed in 2002 that adds civil remedies such as protection orders and monetary compensation to pre-existing criminal provisions on domestic violence.

- ◆ After **Saint Kitts** and **Nevis** ratified CEDAW in 1985, the Department of Gender Affairs began facilitating gender-based violence awareness courses in police training schools.²¹
- ◆ Following ratification of CEDAW in 1984, **Bangladesh** established an investigative cell in police departments to provide legal assistance to women involved in civil and criminal cases pertaining to gender-based violence.²²

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Impact of CEDAW

Conclusion

Gender-based violence is a widespread epidemic that requires a global strategy for effective prevention. UNIFEM Executive Director Noeleen Heyzer has noted that “[a]s long as women in diverse countries do not have access to property and employment and equal wages, to the seats of power and to education, the violence that is perpetuated in their lives is viewed as a private rather than a public issue.”²³ CEDAW is a multilateral, international violence prevention tool that has already proven influential and effective in many countries. The U.S. has valuable input to offer to global discourse and action surrounding the prevention and elimination of violence against women. Japan modeled its National Protection Order Statute after U.S. law, and other American legal strategies such as the Violence Against Women Act could also potentially serve as important models for violence prevention. Until the U.S. joins the majority of the world in ratifying CEDAW, however, we cannot effectively encourage other countries to emulate our laws to protect the lives and human dignity of women. By ratifying CEDAW, the U.S. will place itself in a stronger position to speak out as a leader in combating gender-based violence.

²¹St. Kitts and Nevis, CEDAW 27th Session, 2002: PR 4, available at <http://www.un.org/womenwatch/daw/cedaw/27sess.htm>.

²²Bangladesh Country Report, CEDAW 17th Session, 1997: 25-26.

²³Jim Wurst, “Long-Term Strategies Needed To End Gender Violence,” UNIFEM, U.N. Wire, 25 Nov. 2003.

Impact of CEDAW on Education

Promoting Access to Education for Women and Girls

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Education is essential for lifting people out of poverty, helping prevent and control disease, and strengthening families and communities. A well-educated population is the foundation for democratic government, enabling accountability and participation in civic life.

The Current World Situation

Girls Kept Out of School

Girls still lag far behind boys in terms of their access to education. In Afghanistan, two generations of girls have never stepped foot inside a classroom. Elsewhere, there is more routine discrimination—girls are pulled out of school at younger ages, placed in schools without adequate resources, or limited to certain areas of study. The result is that compared to men, women lack basic literacy skills. This trend is particularly troubling since women often become the primary or sole financial supporter for their families.

- ◆ 125 million children worldwide have never attended school; two-thirds are girls.²⁶
- ◆ 880 million adults worldwide are illiterate; two-thirds are women.²⁷
- ◆ Only three-quarters of girls enrolled in grade one ever reach grade five.²⁸
- ◆ School enrollment of girls lags far behind boys. In sub-Saharan Africa, less than half of girls are enrolled in school, compared with 60% of boys. In Southern Asia, only 65% of girls are enrolled, compared with 77% of boys.²⁹

“This great accession to the intellectual power of the species, and to the amount of intellect available for the good management of its affairs, would be obtained, partly, through the better and more complete intellectual education of women, which would then improve pari-passu with that of men . . . In this way, the widening of the sphere of action for women would operate for good, by raising their education to the level of that of men, and making the one participate in all improvements made in the other.” — John Stuart Mill, 1869²⁴

“Women’s lack of progress and proficiency has been due to her need of equal education and opportunity. Had she been allowed this equality, there is no doubt she would be the counterpart of man in ability and capacity.” — ‘Abdu’l-Bahá, 1912²⁵

²⁴John Stuart Mill, “The Subjection of Women,” M.I.T. Press: 1970 (1869).

²⁵‘Abdu’l-Bahá, *Promulgation of Universal Peace*, pages 134-135.

²⁶UNICEF

²⁷ILO

²⁸UNESCO

²⁹International Labour Organisation, *Trends and Statistics: The World’s Women 2000*, United Nations, 85.

- ◆ Girls enrolled in school are more likely than boys to also hold a job. Among school children worldwide, 42% of girls are engaged in part-time employment, compared to 33% of boys.³⁰

What Does CEDAW Say?

Article 10 of the Treaty's seeks to eliminate discrimination against girls and women in education. Specifically, ratifying nations agree to reduce dropout rates for girls and to offer equal educational opportunities to girls and boys.

How the Treaty for the Rights of Women Helps

CEDAW has been an important tool to promote and ensure access to education for girls and women. After ratification, many countries have taken new efforts to increase learning and literacy for girls. Examples include:

- ◆ **Colombia's** new emphasis on education increased primary school enrollment and literacy rates among girls.³¹
- ◆ **Jordan** implemented compulsory education and expanded literacy programs for girls. As a result, illiteracy rates have fallen 3.5% a year for 12 years running.³²
- ◆ **Burkina Faso** created satellite schools in rural areas, giving many girls access to an education for the first time. Half of this student population is girls.³³
- ◆ **Egypt** bolstered its efforts to educate girls and increase public awareness. Female illiteracy declined from 62% in 1986 to 51% in 1996. Female enrollment in elementary education rose from 91% in 1992 to 98% in 1998.³⁴

Conclusion

Much more still needs to be done, but until the U.S. ratifies CEDAW our country cannot credibly demand that others live up to their obligations under the treaty.

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Impact of CEDAW

³⁰Ibid, 90.

³¹Colombia, CEDAW 20th Session, 1999: FR 37.

³²Jordan, CEDAW 22nd Session, 2000: 10, available at <http://www.un.org/womenwatch/daw/cedaw/cedaw22/jor1.pdf>.

³³Burkina Faso, CEDAW 22nd Session, 2000: 4, available at <http://www.un.org/womenwatch/daw/cedaw/cedaw22/bfa.pdf>.

³⁴Egypt, CEDAW 24th Session, 2001: 3, available at <http://www.un.org/womenwatch/daw/cedaw/cedaw24/cedawcegy45.pdf>.

Impact of CEDAW on Trafficking

The Trafficking of Women

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CEDAW: Treaty for the Rights of Women

“The men confirmed that they had job openings for women like myself in American restaurants. They told me that they would take care of my immigration papers, and that I would be free to change jobs if I did not like working at the restaurants. [. . .] I decided to accept the offer. In 1997, I was brought into the United States through Brownsville, Texas [where a woman told me] I was actually going to be selling my body to men. I looked at [her] in utter horror, but she did not appear surprised. [. . .] She said it would not do anybody any good to complain. I was going to have to do the work anyway, since I had a smuggling debt to pay off. [. . .] Some of the other girls in the house also warned me that if I tried to escape, the men would find me and beat me up or abuse me.”³⁵

The woman quoted above is a victim of human trafficking,³⁶ a global industry responsible for exploiting between 700,000 to 2 million women and children each year.³⁷ These individuals are trafficked for the purposes of sexual exploitation, domestic slavery, forced sweatshop labor, and forced agricultural or construction work.³⁸ Between 45,000 and 50,000 women and children are trafficked into the United States annually.³⁹

CEDAW is the most important multilateral tool available to reinforce existing bipartisan U.S. legislation to combat sexual trafficking.⁴⁰ Article 6 of the treaty requires measures to suppress all forms of trafficking of women and to oppose the exploitation of prostitution. By ratifying CEDAW, the U.S. can strengthen its own efforts to urge countries across the globe to fight human trafficking.

³⁵“Inez” (from Veracruz, Mexico), as quoted in Lederer, Laura J. Human Rights Report on Trafficking of Women and Children. The Protection Project: January 2001, available at www.hrw.org/press/2001/07/traffick-0712.htm.

³⁶As defined in the 2000 U.N. Convention Against Transnational Organized Crime, “trafficking in persons” shall mean the recruitment, transportation, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation” (Trafficking Protocol, Article 3).

³⁷Richard, Amy O’Neill, “Scope and Magnitude,” International Trafficking in Women to the United States: A Contemporary Manifestation of Slavery and Organized Crime, April 2000, available at <http://usinfo.state.gov/topical/global/traffic/report/chapt02.htm>.

³⁸Human Rights Watch, “U.S. State Department Trafficking Report a ‘Mixed Bag,’” 12 July 2001.

³⁹Richard, Amy O’Neill, Introduction, International Trafficking in Women to the United States: A Contemporary Manifestation of Slavery and Organized Crime, April 2000, available at <http://usinfo.state.gov/topical/global/traffic/report/intro.htm>.

⁴⁰In 2000, Congress passed the “Victims of Trafficking and Violence Protection Act of 2000.”

The trafficking of women is a global phenomenon that affects nearly every country in the world. Here, we briefly highlight trafficking as it affects the U.S. and Eastern Europe:

Trafficking of Women to the United States

Trafficking has been reported in at least 20 different states, with most cases occurring in New York, California, and Florida.⁴¹

In a study of sex trafficking in the U.S., the Coalition Against Trafficking in Women (CATW) found that 73% of interviewees had been physically abused at least once by traffickers and/or pimps. Physical assault and rape are used to initiate women into the sex industry and to force compliance.⁴²

A 1999 CIA report described the Washington, D.C. area as an ‘emerging port of entry’ for traffickers en route to other locations in the U.S. Statistics gathered by the Break the Chain Campaign strongly suggest that the urban, suburban and rural areas of Maryland, Virginia, and Washington, D.C., as well as Delaware, Southern and Central New Jersey, Eastern Pennsylvania and Eastern West Virginia are increasingly becoming final destinations for trafficking victims.⁴³

Trafficking of Women to and from Central and Eastern Europe

The Protection Project reports that in the aftermath of the war in Bosnia and Herzegovina, young women are being smuggled almost daily from eastern European countries such as Ukraine, Moldova, Lithuania, and Bulgaria into Bosnia.⁴⁴

Women and children are trafficked from Romania into France, Belgium, Luxembourg, and other western European countries. A recent case involved teenage girls as young as 14 being sold and forced into prostitution.⁴⁵

Poland is one of the largest “sender” countries of trafficked women in central Europe. Polish women and girls are often lured by false offers of desirable jobs abroad, and are then coerced into prostitution at brothels across Europe.⁴⁶

Hungary is a “receiver” country for women trafficked from the Ukraine, Romania, and the newly independent states. The Ukrainian mafia is reported to control most of the trafficking industry in central Europe, including Hungary. Some Hungarian



⁴¹Ibid.

⁴²Alison Phinney, Pan-American Health Organization/World Health Organization, Trafficking of Women and Children for Sexual Exploitation in the Americas, Sept. 2001, 5.

⁴³Fax to the Tahirih Justice Center from the Break the Chain Campaign.

⁴⁴Human Rights Report on Trafficking of Women and Children, 57.

⁴⁵Ibid, 345.

⁴⁶Ibid, 337.

women accept summer jobs as German waitresses, become victims of trafficking and are forced into prostitution.⁴⁷

How CEDAW Has Helped Combat the Trafficking of Women

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CEDAW: Treaty for the Rights of Women

- ◆ **Nepal** ratified CEDAW in 1991 and has since undertaken several initiatives to protect victims of human trafficking. In 1993, the government of Nepal passed a bill to enforce stricter treatment of individuals accused of trafficking, and in 1995, the country became party to an international treaty to suppress trafficking and prostitution.⁴⁸ Since CEDAW was ratified, the Nepalese media and local NGOs have devoted significant time and resources to promoting awareness of the trafficking of girls and women from Nepal to India. In addition, the government's Ministry of Women and Social Welfare has created a national task force to guide the government's efforts in combating the trafficking of women and the sexual exploitation of children. CEDAW also influenced legislation creating the office of the Human Rights Ombudsman in Nepal in 1997.
- ◆ The **Ukraine**, which ratified CEDAW in 1990, is making serious and sustained efforts to comply with standards to eliminate trafficking. In 1998, Ukraine designated "trafficking in people" as a criminal offense, imposing for the first time sanctions against human trafficking. The current Ombudsman has been active in implementing Ukraine's obligations with regard to CEDAW, paying primary attention to eliminating the trafficking of women and children.
- ◆ The **Philippines** ratified CEDAW in 1981, and has since passed legislation that seeks to prevent prostitution and trafficking and promote the human rights of women. The Philippines participates actively in Asia's Coalition Against Trafficking in Women, which documents international trafficking cases. Since the country ratified CEDAW, a local alliance called Stop Trafficking of Philipinas formed to campaign against pornography and sex slavery and to advocate for further legal reform.
- ◆ Since ratifying CEDAW in 1985, the government of **Thailand** has passed three laws that address trafficking on a national level. By increasing compulsory schooling from six to nine years and offering vocational training to women and girls, the Thai government has taken concrete steps to develop alternatives to sex work and trafficking. The country established a National Commission on Women's Affairs which implements programs to eradicate violence against women and children and which has launched several public information campaigns to discourage human trafficking.

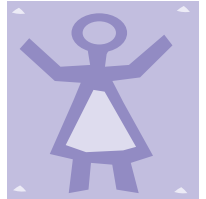
⁴⁷Ibid, 189.

⁴⁸The treaty is officially known as the Convention for Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others.

Conclusion

CEDAW has already proven a highly effective tool for inspiring and influencing governmental and local initiatives against human trafficking. By ratifying CEDAW, the U.S. can renew its commitment to combating this exploitative industry, and can better advocate for a global human rights agenda that protects women and children.

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Impact of CEDAW

Impact of CEDAW on HIV/AIDS

Preventing the Transmission of HIV/AIDS to Women and Girls

32



CEDAW: Treaty for the Rights of Women

"One in three. That stark figure sums up the crisis confronting women throughout the world. Among young girls in classrooms worldwide, one in three will suffer violence simply based on the fact that she is female. One in two. Fifty-one per cent of all people living with HIV/AIDS today, some 20 million afflicted, are women. On World AIDS Day, 1 December, it should be remembered that a decade ago, women seemed peripheral to this pandemic, now, they are at its epicenter. The juxtaposition of these startling ratios may seem arbitrary. Unfortunately, they are closely intertwined in a vicious cycle."⁴⁹

Women now represent the new face of the HIV/AIDS epidemic. Some two million women became infected with HIV in 2002.⁵¹ Poverty, low status, and unequal economic rights and educational opportunities fuel women's vulnerability to HIV infection.

Research done over the past decade has shown that the imbalance in power between women and men, an imbalance that favors men, underlies women's vulnerability to infection. Physical violence, the threat or fear of violence, and the fear of abandonment and destitution interact with other gender-based economic and social inequalities to significantly increase women's vulnerability to HIV infection.

Some important facts about women and HIV/AIDS:

Today 42 million people are estimated to be living with HIV/AIDS. Of these, 38.6 million are adults, 19.2 million are women, and 3.2 million are children under 15.

An estimated five million people acquired the human immunodeficiency virus (HIV) in 2002, including two million women and 800,000 children under 15.

During 2002, there were 3.1 million AIDS related deaths, including 1.2 million women and 610,000 children under 15.

HIV is increasingly affecting women. Approximately 50%, or 19.2 million, of the 38.6 million adults living with HIV or AIDS worldwide are women.⁵⁰

⁴⁹Statement by Noeleen Heyzer, Executive Director of UNIFEM, to commemorate World AIDS Day 2003; available at http://www.unifem.org/speeches.php?f_page_pid=77&f_pritem_pid=150.

⁵⁰*Joint United Nations Programme on HIV/AIDS, 2002*; available at <http://www.unaids.org/en/about+unaids/what+is+unaids.asp>.

⁵¹Gender and HIV, UNAIDS.



Violence prevents women from negotiating safer sex or leaving relationships that they perceive to be risky. Violence or the threat of violence also restricts women's access to HIV/AIDS prevention or treatment services. A study by the International Center for Research on Women found that the uptake of prevention of mother to child transmission (PMCT) services among women is low because women are afraid that the use of such services may expose them to violence at a time when they are most vulnerable.⁵² Women, particularly young women and mothers, are more vulnerable to stigma and violence resulting from HIV/AIDS infections.

Young women are far from exempt from the HIV/AIDS epidemic. Worldwide, 62% of youth living with HIV/AIDS are women.⁵³ Power imbalances play a particularly strong role in the high rates of HIV infection among young women, especially those in cross-generational relationships.⁵⁴ Women in these relationships are usually powerless in negotiating condom use and are more susceptible to violence. The threat of violence and coercion within these relationships further increases girls' vulnerability to HIV infection. Studies have found that men tend to control the condition of sexual intercourse, including condom and contraceptive use and the use of violence.⁵⁵

Despite perceptions, marriage does not protect against HIV transmission, particularly for women and girls. Studies show that a much higher percentage of young men than young women become sexually active early.⁵⁶ Research conducted in Kisumu, Kenya, revealed that as many as half of married women whose husbands were 10 or more years older were infected with HIV.⁵⁷

Violence against widows of men who have died of AIDS is also being increasingly documented. Stripping widows of their land and their possessions and evicting them from their homes are all forms of violence that have severe consequences for widows and make them less able to cope with being infected. Such violence puts them at risk of perpetuating the cycle of infection and disease because it makes them economically vulnerable and therefore more likely to sell sex for money.

What does CEDAW Say?

CEDAW's articles on education, health and the elimination of discriminatory cultural practices and stereotypes are effective tools that must be used in the fight against

⁵²International Center for Research on Women, *Community Involvement & The Prevention of Mother-to-Child Transmission of HIV/AIDS*, 2002.

⁵³*The State of the World Population 2003*, United Nations Population Fund; available at http://www.unfpa.org/swp/2003/pdf/english/swp2003_eng.pdf.

⁵⁴Cross-generational relationships or cross-generational sex is defined as relationships where an adult man has a sexual relationship with a female partner between the ages of 15-19 leaving the young woman powerless to negotiate safer sex. This practice is a large contributor to the spread of HIV and AIDS in sub-Saharan Africa.

⁵⁵Nancy Luke and Kathleen Kurz, *Cross-generational and Transactional Sexual Relationships in Sub-Saharan Africa*, International Center for Research on Women, 2002.

⁵⁶*The State of the World Population 2003*, United Nations Population Fund; available at http://www.unfpa.org/swp/2003/pdf/english/swp2003_eng.pdf.

⁵⁷UNICEF, UNAIDS, and WHO 2002.



HIV/AIDS. Without access to adequate information, prevention resources, and treatment women and girls continue to be at risk of HIV infection. Article 10 of CEDAW calls on governments to take all appropriate measures to eliminate discrimination against women in education. Article 12 of CEDAW calls on governments to take appropriate measures to eliminate discrimination against women in the

field of healthcare in order to ensure, on a basis of equality of men, access to health care services, including those related to family planning. Article 5 of CEDAW calls on governments to take all appropriate measures to modify social and cultural patterns of conduct with a view on eliminating customary and other practices based on the idea of the inferiority or superiority of either sex or on stereotyped roles.

Conclusion

In countries across the globe, women face severe health risks because of physical violence, the threat of violence, and lack of access to economic resources and political participation. CEDAW is the best tool for raising standards that will provide women and girls access to information, healthcare services and treatment for protection against HIV/AIDS and other infectious diseases. The health and well being of women are key to strengthening families and communities for generations to come.

Discrimination increases a woman's vulnerability to the HIV/AIDS epidemic because:

Without access to accurate information about the health risks posed by unprotected sex, she cannot protect herself or her family.

Under prevalent notions of inferiority, she cannot demand fidelity or even the use of condoms. Economic dependence on men reinforces this unequal status.

The lack of formal education deprives her of vital economic opportunities and security. With few viable alternatives, women are often forced into selling sex for money.

Impact of CEDAW on Terrorism & National Security

Terrorism and National Security

CEDAW promotes fundamental human rights for women and as such is a critical component of advancing national security at home and abroad.

“They made me invisible, shrouded and non-being . . . a shadow, no existence, made silent and unseeing, denied of freedom, confined to my cage.” — Zieba Shorish-Shamley⁵⁸

“The United States should pay particular attention to women when attempting to counteract terrorism and encourage more peaceful and democratic political systems in Afghanistan and throughout the world.” — Amy Caiazza, Institute for Foreign Policy Research⁵⁹

“The fight against terrorism is also a fight for the rights and dignity of women.” — First Lady Laura Bush⁶⁰



Impact of CEDAW

The Current World Situation

On November 17, 2001, in an historic radio address to the nation, First Lady Laura Bush took to the air waves and commenced what she referred to as a world-wide effort to focus on the brutality against women by the Al-Qaida terrorist network and the Taliban regime it supported in Afghanistan. By that time, most Americans had become aware of the brutality and oppression experienced by close to 60% of Afghanistan's population, women and girls. Americans and the world were alarmed. The First Lady further maintained that, “the brutal oppression of women is a central goal of the terrorists.”

The war waged against Afghan women commenced in 1996 when the Taliban claimed victory in Afghanistan. Although the events of September 11, 2001 heightened U.S. and global awareness of the oppression of women, we cannot afford such catastrophic events in order to recognize the link between violent acts of terrorism and the oppression of women. Over and over again it has been shown that women are like the canaries in the mineshafts—the physical, economic, and political violence experienced by them is a harbinger of other forms of violence committed by those in power. When at least half of a society lacks access to

⁵⁸“Look into My World,” published on the 50th anniversary of the United Nations Universal Declaration of Human Rights.

⁵⁹Amy Caiazza, “Why Gender Matters in Understanding September 11: Women, Militarism, and Violence,” Institute for Women's Policy Research Publication #1908, November 2001.

⁶⁰First Lady Laura Bush, Radio Address to the Nation from Crawford, Texas 17 Nov. 2001, available at <http://www.state.gov/g/drl/rls/rm/2001/6206pf.htm>.



education, decent health care, employment, and political decision-making, the foundations of economic and political stability are shaken.

President George W. Bush, in a commencement speech at West Point in June 2002, stated, “A thriving nation will respect the rights of women, because no society can prosper while denying opportunity to half its citizens.” At the same time, a U.S. and

U.N. guided process began in an effort to ensure women a place at the loya jirga, the emergency grand council of ministers who convened to establish a temporary Afghan administration. Women represented a mere 10% of those gathered, yet they expressed the need for a leader who would make human rights a priority. Returning home from the loya jirga, many women faced threats of violent backlash. During the occasion of the long awaited loya jirga, Dr. Sima Samar, former Afghanistan Minister of Women’s Affairs, wrote to Senator Barbara Boxer, “As one of the few women delegates to the [loya jirga], I am asking for the help of the United States in making sure that our new government guarantees full human rights for women. An urgent first step must be your ratification of the International CEDAW Treaty for the Rights of Women.”

As of this writing, United States government officials are in Afghanistan and Iraq, setting forth mechanisms of governance and developing the necessary structures for stable and democratic societies in which the entire civil society can participate and contribute to the establishment of stable and prosperous communities. In an op-ed piece in the Washington Post, Paula J. Dobriansky, Under Secretary of State for Global Affairs, wrote:

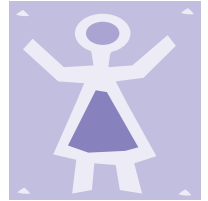
“We are working to advance the interest of Iraqi women in every area, from human rights to political and economic participation to health care and education. . . . We are supporting Iraqi efforts to prepare school materials that will help teach the country’s youth about tolerance and individual freedoms . . . we have begun a strong initiative, working closely with nongovernmental organizations, to identify and encourage significant numbers of women to participate in future meetings, in the rebuilding of Iraqi institutions and in the drafting of new laws.”⁶¹

The U.S.’s commitment to promoting and protecting women’s rights in Afghanistan and Iraq, while advancing fundamental human rights and rule of law, also puts in motion a process of systematically advancing national security interests at home and abroad.

⁶¹Paula Dobriansky, “Standing Up for Iraqi Women,” The Washington Post 2 July: A23.

Nonetheless, it is critical to highlight the steps the U.S. government has taken in promoting women's rights: preparing school materials, calling on nongovernmental organizations to identify Iraqi women to participate in meetings, and helping draft new laws that have the appearance of a western power using western standards to bring about change in a country. For the process to be transparent and for the substantive changes not to have the appearance of imperialism, the U.S. should use internationally agreed upon norms and tools that comprehensively address the fundamental rights of women. CEDAW, ratified by 175 countries, is the very instrument that can be used in the process of making sure that these new governments guarantee full human rights for women.

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Impact of CEDAW

What Does CEDAW Say?

Article 1: Defines discrimination against women as any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of marital status, on the basis of equality between men and women, of human rights or fundamental freedoms in the political, economic, social, cultural, civil, or any other field.

Article 2: Mandates States Parties to condemn discrimination in all its forms and to ensure a legal framework, including all laws, policies and practices that provide protection against discrimination and embody the principle of equality.

Conclusion

Opponents of CEDAW criticize its legitimacy by claiming that the women of the world do not want a western feminist agenda to dictate political changes in their lands. Yet, U.S. efforts to bring about changes for the women of Iraq and Afghanistan are based on the U.S. understanding of human rights rather than internationally agreed upon norms. Regardless of this debate, one fact is clear. The promotion and protection of women's rights will ensure safe and stable societies and advance national security at home and abroad.

Impact of CEDAW on Women & Peace

Women and Peace

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CEDAW: Treaty for the Rights of Women

On October 31, 2000, the United Nations Security Council unanimously passed a resolution entitled Women, Peace and Security, urging member States “to ensure increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict.”⁶²

Drawing upon the principles in CEDAW—namely that human rights and human dignity are the foundations for equality—the resolution proposed three main arguments in support of including women in decision-making: that “women and girls are particularly affected by the consequences of armed conflict;” that women play a critical role as activists, caretakers, providers, and survivors in times of conflict; and that women have made great contributions to the peace process as peace educators and bridge builders.⁶⁴

“The world in the past has been ruled by force, and man has dominated over woman by reason of his more forceful and aggressive qualities both of body and mind. But the balance is already shifting; force is losing its dominance, and mental alertness, intuition, and the spiritual qualities of love and service, in which woman is strong, are gaining ascendancy. Hence the new age will be an age less masculine and more permeated with the feminine ideals, or, to speak more exactly, will be an age in which the masculine and feminine elements of civilization will be more evenly balanced. Only as women are welcomed into full partnership in all fields of human endeavor will the moral and psychological climate be created in which international peace can emerge.” — ‘Abdu’l-Bahá⁶³

The Consequences of Armed Conflict

A series of events and conferences—such as the United Nations Decade for Women 1976-1985, the 1993 United Nations World Conference on Human Rights in Vienna, Austria, and the 1995 United Nations World Conference on Human Rights in Beijing—propelled a movement around women’s human rights and “focused particularly

⁶²United Nations Security Council Resolution, 4213th Meeting, U.N. Security Council, U.N. Doc. S/RES/1325 (2000) 2, available at http://www.un.org/events/res_1325e.pdf.

⁶³J. E. Esslemont, “Bahá’u’lláh and the New Era”, 1976 U.S. edition, 156.

⁶⁴Statement by Noeleen Heyzer, United Nations Security Council Open Debate on Women, Peace and Security, 26 July 2002: 4.

on violence against women as a prime example of the bias against women in human rights practice and theory.”⁶⁵

These developments in women’s human rights broke centuries of silence. Today women are speaking out against crimes they endured during war. The same stories women once tried to forget are now being told in international tribunals in their own voices and with their own demands for justice. For the first time in the history of warfare, gender-based crimes, including acts of rape, sexual violence, and forced prostitution, have been tried and prosecuted as war crimes and crimes against humanity. On February 22, 2001, the International Criminal Tribunal of Yugoslavia convicted three former Bosnian Serb commanders—Dragoljub Kunarac, Radomir Kovac, and Zoran Vukovic—of rape and torture. This case established rape as a crime against humanity under public international law.⁶⁶

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Impact of CEDAW

Women as Activists, Caretakers, and Survivors

Women in war-torn towns and villages continuously pick up the pieces, care for the young, the old, and the sick in their communities, and often, single-handedly, shoulder the burdens of their families. Experts studying war zones have realized that the nature of today’s wars demands a new and innovative approach. They have found that modern warfare is increasingly conducted within, rather than between, states and that civilians have become the prime targets. The entire fabric of society—homes, schools, health systems and religious institutions—is torn to pieces. Accordingly, women activists and leaders have proposed that the process of bringing about peace has to focus on the socioeconomic fabric of war-ridden countries and to rely on societal dynamics as a key guide to finding entry points into resolving disputes.

Helen Jackson, a British parliamentarian who has worked closely with women’s organizations in Northern Ireland, maintained that women at the peace table focus on housing, education and childcare as opposed to abstract and old historical issues or political debates.⁶⁷

Women and the Peace Process

Women have made great contributions to the peace process as peace educators and bridge builders, and are indispensable to any peace-making effort. NGOs’ experience with women from a large number of countries provided the following examples of how women reached across racial, religious, and ethnic divides working

⁶⁵Charlotte Bunch and Niamh Reilly, “The Global Campaign,” From Basic Needs to Basic Rights, ed. Margaret Schuler (Washington, DC: Women, Law and Development International) 529.

⁶⁶Associated Press, “U.N. War Crimes Court Convicts Bosnian Serbs in Rape Case,” 22 Feb. 2001.

⁶⁷Sanam Anderlini, Women at the Peace Table, (New York: UNIFEM, 1999) 32-33.

together and bridging the gaps to seek resolutions and common ground:

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CEDAW: Treaty for the Rights of Women

“In South Africa, women from all parts of society joined together to fight against apartheid. In Latin America, mothers, wives and sisters dared to question the military juntas about their “disappeared” relative. In Mali and Liberia, women rallied together to call for disarmament. In the Philippines, women run peace zones around villages protecting their children. In Bosnia women from across ethnic lines are working in parliament to rebuild their communities. In Burundi the women’s coalition is struggling to bring the voices of those most affected by war to the peace table. In Sudan, women from both sides have opened new avenues for peace talks. In the Middle East, Israeli and Palestinian women have been working for years at the grassroots not only building the trust needed for sustainable peace, but also warning of the dangers of excluding all sectors of society, including civil society, from the implementation of the peace process.”⁶⁸

Recognizing women’s manifest capacity to respond to the events around them and offer corresponding solutions, the U.N. Security Council resolved to increase women’s access to decision-making and, thereby, tap into a historically underutilized resource.

The Current World Situation

Despite marked progress over recent decades, we still have far to go in attaining the Security Council’s goal for equal access to decision-making.

Of the 155 world leaders who convened in September 2000 at the U.N. Millennium Summit, only 5 were women: Tarja Halonen, President of Finland; Vike-Freiberga, President of Latvia; Helen Clark, Prime Minister of New Zealand; Sheikh Hasina, Prime Minister of Bangladesh; and Maria Domenica Michelotti, a Co-Head of State of San Marino.

Did you know?

Only 1% of the world’s assets are in the name of women.

70% of people in abject poverty—living on less than \$1 per day—are women.

Women’s participation in managerial and administrative posts is around 33% in the developed world, 15% in Africa, and 13% in Asia and the Pacific.

There are only 5 women chief executives in the Fortune 500 corporations, the most valuable publicly owned companies in the United States.⁶⁹

⁶⁸NGO Statement, United Nations Security Council Open Debate on Women, Peace and Security, 26 July 2002: 2-3.

⁶⁹Statistics from “Institute for Democracy and Electoral Assistance,” available at <http://www.idea.int/gender/index.htm>; and “Women World Leaders” and <http://www.geocities.com/CapitolHill/Lobby/4642/>.

This attests to a global and long-standing imbalance in political participation, which in turn has broad implications in the struggle for peace. Denying women positions

“Do not put such unlimited power in the hands of the husbands . . . If particular care and attention is not paid to the ladies, we are determined to foment a rebellion and will not hold ourselves bound by any law in which we have had no voice, or representation.”
— Abigail Adams in a letter to her husband, President John Adams⁷⁰

of capacity prevents all of humanity from realizing the type of achievements that can only emerge from a consultative process within a context of equality and respect. If women and men are to work as partners in all fields of human endeavor, women must be welcomed into decision-making and public representation.

Women are also conspicuously excluded from peace-building efforts, this stands in ironic contrast to their historically synergistic association with the peace movement.



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Impact of CEDAW

On October 24, 2000, women from Sierra Leone, Guatemala, Somalia, Tanzania and international non-governmental organizations spoke to members of the Security Council about the suffering of women in war, the under-valued, under-utilized conflict prevention and peace-building work of women, and the leadership they show in rebuilding war-torn societies. The Security Council unanimously passed Resolution 1325, which calls for the active participation of women in decision and peace-making and gender mainstreaming in United Nations peacekeeping and reporting.

Years	Number of Women Presidents	Number of Women Prime Ministers
1950 – 1959	1	0
1960 – 1969	0	3
1970 – 1979	2	4
1980 – 1989	3	8
1990 – 1999	11	16 ⁷¹

What Does CEDAW Say?

Articles 7 and 8 of CEDAW call for the inclusion of women in political life, specifically with respect to voting, policy formulation, associations and non-governmental organization membership, holding office, and representing their countries internationally.

How the Treaty for the Rights of Women Helps

- ◆ In **Morocco**, 10% of parliamentary seats are now reserved for women.

⁷⁰See Alice Rossi, The Feminist Papers: From Adams to de Beauvoir 10-11 (1973); Sally Smith Booth, Women of '76, at 89 (1973).
⁷¹Data from Center for Asian Pacific Women in Politics, available at <http://www.capwip.org/participation/womenheadofstate.html>.



(Following the October 2002 elections, the number of female parliamentarians increased from two to an Arab-world record of 35.)

- ◆ In **India**, 33% of seats at the local government level are now reserved for women.
- ◆ In **France**, a 1999 constitutional amendment requires political parties to include 50% of women candidates on party lists submitted for election.
- ◆ The **Colombian** constitution reflects CEDAW's vision of equality through several of its provisions. It employs "temporary special measures," which seek to combat the legacy of discrimination. The state, for example, must "guarantee the adequate and effective participation of women in the decision-making levels of Public Administration."
- ◆ Non-governmental organization advocacy led to the 1995 renewal of the Ugandan constitution, which now contains guarantees for women's political participation. The Constitution reserves a minimum number of parliamentary seats for women, requires that each administrative district have at least one woman representative, and provides that at least one-third of the seats in local government (city, municipal, and rural district councils) must be filled by women.
- ◆ The **Brazilian** constitution, redrafted in 1988, revoked the traditional leadership ("chefia") of the family unit by the husband, and established that "the rights and duties relating to the conjugal unit are exercised equally by the man and the woman" (CEDAW Article 16).
- ◆ **South Africa's** transition out of apartheid witnessed the creation of a new constitution. CEDAW provided a useful structure for drafting specific rights, and much of its women's charter parallels the language in the Convention. Article 2 of the charter states that "women shall have equal legal status and capacity in civil law, including, amongst others, full contractual rights, the right to acquire and hold rights in property, the right to equal inheritance and the right to secure credit" (see similarities in CEDAW Articles 13 and 15). The constitution also provides for "temporary special measures" to accelerate equality and stipulates that such measures will not be considered discriminatory.

4 **CEDAW** *at Work*



Using CEDAW's Mechanisms

CEDAW has two major avenues for redress, and the Optional Protocol provides an additional mechanism for individuals or groups within a State:

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CEDAW: Treaty for the Rights of Women

Submitting Reports

- ◆ Article 18 of the Convention obliges States Parties to submit reports to the CEDAW Committee within one year of entry into force and every four years thereafter. The Committee consults with representatives of the state to explore arenas for future action.
- ◆ The International Court of Justice: Article 29 of the Convention stipulates that States can refer their disputes to arbitration by the International Court of Justice. States are not bound by this provision, and this avenue has never been used before.

The Optional Protocol

- ◆ Individuals or groups belonging to a State that has signed the Optional Protocol can file a communication directly with the Committee if their rights have been violated under the Convention. The complaint can only concern the action or inaction of a State or State officials acting out their public duties, and cannot concern private individuals or institutions.
- ◆ Communications should be sent to:
Division for the Advancement of Women
United Nations
2 U.N. Plaza, DC2-12th Floor
New York, NY 10017 U.S.A.
Fax: (212) 963.3463

Constitutional Reform

Brazil revised its constitution in 1988 to include extensive protections of the rights of women that reflect the provisions of CEDAW. It now incorporates gender equality, gender-based violence, State responsibility for the prevention of domestic violence, equality of rights within marriage, family planning, and equality in employment.

The Forum of **Rwandan** Women Parliamentarians began consultations in 2000 to assess the needs and concerns of women and to ensure that their rights will be reflected in the country's new constitution. The Forum has summarized their findings in a document delivered to the Legal and Constitutional Committee charged with drafting Rwanda's new constitution.

Post-apartheid **South Africa** adopted a new constitution, which contains a number of significant guarantees for women's equality.

- ◆ Pursuant to Article 4 of CEDAW ("temporary special measures"), the South African constitution contains a clause which states that "legislative and other measures" may be taken to "protect or advance" disadvantaged people.

CEDAW's Article 4 (the "temporary special measures" provision) has been reflected in:

- ◆ **Morocco's** 2002 quota of 30 reserved seats for women in Parliament.
- ◆ **Djibouti's** 2002 law requiring each political party to ensure that at least 10% of its candidates are women.
- ◆ **Niger's** 2001 adoption of a law requiring political parties to have at least 10% female candidates.
- ◆ **France's** 1999 amendment requiring political parties to ensure that 50% of their candidates are women and include financial penalties for non-compliance.

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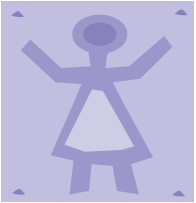
CEDAW at Work

Impacting Court Decisions

The State v. Godfrey Baloyi (1999, South Africa)

Drawing from the Universal Declaration of Human Rights, the Declaration on the Elimination of Violence against Women, and the Convention on the Elimination of All Forms of Discrimination against Women, the Constitutional Court of South Africa specifically addressed domestic violence as a form of discrimination and accordingly adopted a new constitutional provision. In so doing, the court noted that CEDAW ratification imposed positive obligations on States to pursue policies of eliminating discrimination against women by, amongst other things, adopting anti-discrimination legislation.

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CEDAW: Treaty for the Rights of Women

Dow v. Attorney-General of Botswana (1992, Botswana)

The Botswana Citizenship Act of 1984, in accordance with Tswana customary law, declared that the nationality of a child born on Botswanan soil would be determined exclusively by the father's nationality. Unity Dow, a Botswanan activist and lawyer married to an American man challenged this Citizenship Act in the Botswanan High Court in 1990. Two of her three children, having been born in Botswana after the passage of the Citizenship Act, required residence permits to stay in Botswana, could only leave on their father's passport, could not vote, and would be denied the standard subsidized university education. Dow argued this violated her (and her children's) constitutional rights to liberty, equal legal protection, and freedom from degrading treatment. She also argued that the Act was discriminatory, but the constitution did not prohibit discrimination on the basis of sex.

Nevertheless, the High Court decided that the constitution should be interpreted to prohibit discrimination on the basis of sex. Botswana had not yet ratified CEDAW, but the court did refer to the 1967 Declaration on the Elimination of Discrimination Against Women (CEDAW's predecessor). When Botswana was preparing to ratify CEDAW in 1995, it officially amended the Citizenship Act to give equal rights to men and women with respect to the citizenship of their children. *Unity Dow v. Attorney General* [1991] L.R.C. (Const.) 574; [1992] L.R.C. (Const.); in (1991) 13 *Human Rights Quarterly* 614-626.

Dhungana v. the Government of Nepal (1993, Nepal)

The Supreme Court of Nepal made reference to CEDAW when it ordered the Government to introduce a parliamentary bill addressing discriminatory inheritance laws. At the time, Nepalese law provided that sons were entitled to a share of their father's property at birth, but daughters were only able to obtain a share if still unmarried at the age of 35. The Supreme Court directed the Nepalese Government to draft new, non-discriminatory legislation. CEDAW has the status of national law in Nepal, so the case was argued as both a violation of the Convention and as a

violation of the constitution's guarantee of equality. *Dhungana v Nepal. Supreme Court of Nepal, Writ No. 3392 of 1993, 2 August 1995.*

Guatemala Constitutional Court Case No. 936-95 (1996, Guatemala)

The Constitutional Court of Guatemala upheld a claim that certain provisions in the Penal Code treated men and women differently and that these provisions contradicted the equality guaranteed to all by the Constitution. The Court further declared that this represented a failure by Guatemala to fulfill its obligations under CEDAW and other international instruments.

R v. Ewanchuk (1999, Canada)

The Supreme Court of Canada drew on CEDAW and the Committee's General Recommendation 19 in its 1999 decision regarding an allegation of sexual assault. The Court concluded that violence against women represents inequality, an offence against human dignity, and a violation of human rights.

Ephrohim v. Pastory (1990, Tanzania)

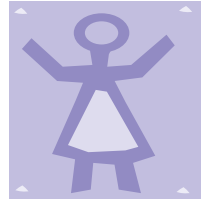
The Tanzanian High Court decided that its inheritance rules (codified in its Declaration of Customary Law) were unconstitutional and contravened the international conventions that Tanzania had ratified. The rights and restrictions around the sale of clan land are now the same for women and men in Tanzania. Relying on the fact that the Tanzanian Government had ratified CEDAW, as well as other international treaties and covenants, the court concluded that women were constitutionally protected from discrimination. The ruling affirmed that, "the principles enunciated in the above named documents are a standard below which any civilized nation will be ashamed to fall." *Ephrohim v. Pastory*. 87 I.L.R. 106; [1990] L.R.C. (Const.) 757.

Aldridge v. Booth (1988, Australia)

The Australian government, cognizant of its 1984 ratification of CEDAW, passed legislation on sexual harassment in employment for the first time in its history. The court agreed with the Government that CEDAW ratification broadened its scope for passing national laws regarding women's human rights. *Aldridge v. Booth* (1988) E.O.C. pp 92-222; 80 A.L.R. 1.

Longwe v. Intercontinental Hotels (1984, Zambia)

The Intercontinental Hotel had a policy of refusing women entry, unless they were accompanied by a male escort. A security guard stopped Longwe when she tried to retrieve her children from a party at the hotel. On another occasion, the same hotel refused Longwe admittance when she had arranged to meet a group of women's activists in the hotel's bar. Longwe made a claim at the Zambian High Court, arguing that the hotel's actions violated her right to freedom from discrimination under both Zambia's new constitution and under Articles 1, 2 and 3 of CEDAW.



The court ruled in her favor and upheld Zambia's duty to carry out the international standards it adopted by ratifying CEDAW without reservations. *Sara H. Longwe v. Intercontinental Hotels* 1992/HP/765.

Vishaka v. State of Rajasthan (1992, India)

A network of women's NGOs petitioned the Indian Supreme Court after a social worker was gang raped and then denied a case investigation by local officials. There were no laws in India at that time to prohibit sexual harassment in the workplace. Based on provisions of the Indian Constitution, those of CEDAW, as well as the CEDAW Committee's General Recommendation 19, the NGOs argued that the court should draft a law to compensate in the absence of Indian parliamentary action.

In August of 1997, the court turned to CEDAW to elaborate and give further meaning to Indian constitutional guarantees against sexual discrimination. The court found that by ratifying CEDAW and subsequently making official commitments at the 1995 Beijing World Conference on Women, India endorsed and upheld international standards of women's rights. A resultant set of guidelines and norms, binding private and public employers, included a definition of sexual harassment that closely paraphrased General Recommendation 19. *Vishaka v. State of Rajasthan* #195614, *Writ Petition (Criminal) Nos 666-70 of 1992*; reprinted by the *National Alliance of Women, Landmark Judgement Series-1*.

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5 **Dispelling the Myths about CEDAW**



Responding to Specific Arguments

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CEDAW: Treaty for the Rights of Women

For the past twenty-five years supporters of CEDAW have analyzed the treaty, reviewed the CEDAW Committee's reports, comments and monitored implementations. Opponents of CEDAW have argued against ratification and it is important that those working for ratification familiarize themselves with these arguments. Below is an overview of these points.

Sovereignty

Fiction: Ratification would give too much power to the international community, with treaty provisions superseding U.S. laws and violating U.S. sovereignty.

Fact: Despite language "mandating" various changes, the treaty grants no enforcement authority to the United Nations or any other body. It requires a periodic report and review process. Countries also can express reservations, understandings, and declarations (RUD) where domestic laws diverge from the treaty. U.S. federal and state laws generally comply with CEDAW, which is also compatible with the U.S. Constitution, except where noted in the RUD's (See Appendix 2 for the U.S. RUD's).

Fact: U.S. has declared CEDAW to be a "non-self-executing" treaty as it applies to the U.S. This means that legislation to implement any treaty provision would come before the House and Senate in the same way any other bill does. The United States would not be required to change any domestic laws; it is already in compliance with the treaty.

Fact: Ratification would give the United States far more leverage in the international community regarding women's rights issues than it has now.

Fear: The CEDAW Committee will demand or force changes in U.S. law.

Fact: The Committee's formal "conclusions" are only recommendations about how countries can move forward on women's equality. No changes in U.S. domestic law would be required for the United States to be in treaty compliance.

Discrimination

Fiction: The treaty is unnecessary in the United States because it defines “discrimination” too broadly and would lead to unwise laws and frivolous lawsuits.

Fact: The treaty is non-self executing and would not authorize any lawsuit not already allowed under the U.S. law.

Fact: The treaty would urge that the same “strict scrutiny” apply to U.S. claims of unintentional sex discrimination as now applies to claims of race discrimination. In fact, the treaty terms resemble those of the U.N. Convention to Eliminate All Forms of Racial Discrimination (CERD), which the United States ratified in 1994 with no resulting flurry of frivolous suits. There is no reason to expect them on this treaty either.



Traditional Family

Fiction: The treaty will destroy traditional families by redefining “family” and the roles of women and men.

Fact: The treaty does not seek to regulate family life. It only urges governments “to adopt education and public information programs [to] eliminate prejudices and current practices that hinder the full operation of the principle of the social equality of women.”

Fact: Article 5’s provisions are closely linked to the elimination of violence against women and public education programs are among the measures State Parties should take to end gender-based violence. The duties established in Article 5 are likely satisfied by public information, grants, and other educational programs designed to promote its objective. In the United States, public information programs regarding domestic violence are now commonplace.

Women in Armed Combat

Fiction: The treaty will require the United States and other countries to send women into armed ground combat.

Fact: The treaty does not require countries to send women into combat. There is no reference in the treaty to women in the military or women in combat. In addition, the 1997 CEDAW Committee report urging “full participation of women in the military” is not a requirement but an observation that women’s absence in military decision-making councils hampers diplomacy, negotiations, and peacekeeping and peace-making efforts and neglects to take note of the effect upon women and families of military decisions in times of conflict.



Family Interference

Fiction: The treaty will interfere in the proper role of parents in child-rearing.

Fact: The treaty does not interfere with parenthood. It calls for the “common responsibility of men and women in the upbringing and development of their children” and “to promote what is in the best interests of the child.” This is consistent with U.S. law.

Single-Sex Schools

Fiction: The treaty will threaten single-sex schools and require “gender-neutral” textbooks.

Fact: Single-sex schools are not prohibited. Educational equality language refers to the need for equal educational facilities, texts, and other materials for girls and boys, whether taught in single-sex or co-educational schools.

Prostitution

Fiction: The treaty will require legalization of prostitution.

Fact: The treaty does not legalize prostitution. The CEDAW Committee has recommended the decriminalization of prostitution in specific countries (such as China), in an effort to curb rampant prostitution and trafficking in women and children. Regulation would allow victimized women to come forward without fear of repercussions for treatment to prevent HIV/AIDS and other sexually transmitted infections, to obtain health care and education and to halt trafficking and sex slavery practices.

Fiction: The CEDAW Committee called for the legalization of prostitution in China.

Fact: It calls for decriminalization. Decriminalization is a step toward addressing this complex problem, and is a means of taking critical measures to alleviate it. The Committee’s recommendations overwhelmingly address their concern for the rise in prostitution, the trafficking of women, and the inadequacy of mechanisms for penalizing those primarily responsible for the trafficking of women. In 1991, China adopted a decision to punish criminals guilty of abducting, selling and kidnapping women and children and a decision to severely punish prostitution. However, the government has not done much to alleviate the persistent fear of prosecution reinforced in these women’s minds.

Same-sex Marriages

Fiction: The Treaty could lead to sanctioning same-sex marriages.

Fact: Article 1 of the Convention clearly states that it is aimed only at sex-based discrimination against women. The majority of countries that have ratified the treaty currently ban same-sex marriages.

Abortion

Fiction: CEDAW supports abortion through its promotion of access to “family planning.”

Fact: The U.S. State Department has concluded that CEDAW is “abortion neutral.” Abortion is a crime in several State Parties to CEDAW, such as Rwanda and Ireland. The U.S. has already drafted an “understanding” to CEDAW, clarifying that it does not include a right to abortion.

Fact: Dozens of countries such as Ireland, Burkina Faso and Rwanda with restrictive abortion policies have ratified CEDAW without reservations and continue to submit reports to the CEDAW Committee on their progress in improving women’s status.

Fiction: The Committee complained that the influence of the Church in Ireland is still strongly felt and that because of this, “with very limited exceptions, abortion remains illegal in Ireland.” Women do not have sufficient access to reproductive health services.

Fact: The Committee does raise the issue of abortion with Ireland. However, it does not mandate or command that the country legalize abortion. It recommends that, as a means of addressing the health-care needs of the women in that country, the government should improve family planning services and availability of contraception. If taken seriously and addressed properly, these recommendations could in fact significantly decrease the need for seeking abortions. The Committee’s comments do indicate that while abortion is illegal in Ireland, women are traveling outside the country to obtain them. Furthermore, the language offered by the Committee calls for the facilitation of a national dialogue on women’s reproductive rights. This dialogue could be instrumental in addressing volatile issues such as HIV/AIDS and safe and health means of preventing unwanted pregnancies.





It is important to note that the Committee calls on States Parties to ensure appropriate services in connection with pregnancy, confinement and the post-natal period. It seeks information about whether measures have reduced infant and maternal mortality and morbidity. The Committee requests that all States Parties reports should include in their reports how they supply free services where necessary to ensure safe pregnancies, childbirth and post-partum periods for women. Finally, the

Committee calls on the States Parties to ensure women's rights to safe motherhood and emergency obstetric services. The Committee maintains that the States parties should allocate to these services the maximum extent of available resources. (See General Recommendation NO. 24, 20th session, 1999)

The Committee has repeatedly expressed its concerns about the high rate of abortions in the Russian Federation, Belarus, Sri Lanka, Estonia and other countries. It has further clarified that "[As] far as the Convention was concerned, however, abortion was not a part of women's reproductive rights." To Belarus, the Committee has stated that, "[I]f women were compelled to use abortion as a method of contraception, there would be a backlash. Abortion as a method of contraception was against the tenets of the Convention."

Mother's Day & Motherhood

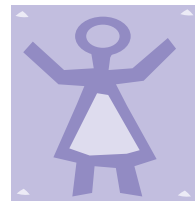
Fiction: Belarus must abandon Mother's Day.

Fact: It is not the celebration of Mother's Day that meets with criticism, it is the celebration of Mother's Day as the only response to the crisis women are facing that gives rise to the inquiry.

According to the Belarus' report, the face of poverty in Belarus is the face of women: "[o]f every 1,000 individuals living near or below the poverty line, a large majority are single mothers, single women of retirement age and women taking partly paid or unpaid leave to look after a child. Over 50% of women registered as unemployed have one or two dependent small children, and 1% have three or more children."

The latest statistics in Belarus indicate that half of marriages end in divorce, and the children in these families are brought up (82.9% in 1989) only by the mother. The increasing economic demands call for the most effective use of resources and the labor force.

In its own report, Belarus acknowledges the gap between declared principles and actual implementation of those principles. Belarus further elucidates increasing economic challenges faced by women in an ever changing society, and highlights the



absence of men in providing both domestic and economic support to their families. However, the government failed in promoting women's participation in other aspects of society and simultaneously emphasized the critical social and economic role of men as fathers, in the upbringing of their children.

Fiction: The Committee urged Armenia to “combat the traditional stereotype of women in the noble role of mother.”

Fact: The Government of Armenia, in its July 1997 report, maintained:

Women are free to choose any profession in the Republic of Armenia. However, in order to safeguard women's health and maternity, they are not allowed to work in positions requiring hard manual labour and on night shifts. Further employment of pregnant women and nursing women under such conditions is prohibited (arts. 184–187 of the Labour Code). However, it is traditional for women also to be responsible for the upbringing of children and housekeeping. The responsibility does not, however, stem from a concept of superiority or inferiority of either sex, but rather from history and traditions where women enjoy the noble role of mother and all the responsibilities that it entails.

The “noble role of mother” must play itself out against a backdrop of tangible economic and social predicaments that only further disables women who are defined only by their maternal qualifications. The lack of support in the home and the increase in the domestic workload significantly diminished the physical and moral strength necessary for professional growth. The Committee is not concerned with the noble role of mothers but with the practices that justify women's limited and often inadequate access to employment.

Lesbianism

Fiction: Kyrgyzstan must legalize lesbianism.

Fact: The Committee does not direct Kyrgyzstan to legalize lesbianism. The Committee seeks “clarification on why lesbianism was criminalized by the Criminal Code and is seen as a violent sexual act” punishable by imprisonment.

The Committee called on Kyrgyzstan to institute legislation to “suppress” the growth in trafficking and prostitution and to offer institutional support to the rising number of victims of “violent sexual acts” such as gang rapes.

The Koran

Fiction: The Committee directed Libya to reinterpret the Koran to fall within CEDAW's guidelines.

Fact: The Committee did not direct Libya to reinterpret the Koran. When Libya ratified the Convention, it expressed reservations about Article 2, which calls for an end to all legal forms of discrimination against women. Libya's representative reassured the Committee that under the Koran's teachings, women are equal partners with men. The Committee questioned Libya's reservation and called on Libya to clarify why the reservation, which prevents women from attaining full institutional equality, is still intact.

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Despite this reservation, members of the Committee noted “positive developments” in Libya towards achieving equality under the Convention. Examples included admission of women to the judiciary, restricting polygamy, and the setting the minimum age for marriage for women and men.

Gender Stereotypes

Fiction: The Committee accused Denmark of having stereotypical perceptions of gender roles [that] kept men from assuming an equal share of family responsibilities.

Fact: The Committee did express its concern with the stereotyped gender roles, because they were the primary policy arguments used to prevent women from advancing in the public sector. This is illustrated by the lack of women in high managerial positions as well as the serious affects of unemployment on women when compared to men in the same fields.

The Committee recognized the important responsibilities both men and women have in the upbringing of children, and in addition, called on Denmark to create special legislation on domestic violence, which is currently lacking from its Criminal Code.

Fiction: The Committee complained about Luxembourg's “stereotypical attitudes that tend to portray men as heads of households and breadwinners, and women primarily as mothers and homemakers.”

Fact: The Committee did not complain about these attitudes. Rather the Committee asked Luxembourg to elaborate on a statement made in their report that referred to “differences between the sexes in societal roles.”

Societal attitudes in Luxembourg promote a male dominated work place, with women traditionally remaining in the home. The Committees' recommendations did not seek to take women out of their homes. The Committee wants to ensure that women, independent of male support, have an equal ability to earn a livelihood. Furthermore, the Committee calls on Luxembourg to guarantee economic security and healthcare for older women who have traditionally remained at home.

Children in Daycares

Fiction: The Committee derided the fact that only 30% of children under age three in Slovenia were in daycare, claiming the other 70% would miss out on education and social opportunities offered in daycare.

Fact: The Committee's concern addresses the educational and social opportunities missed by children between ages three and six. The Committee's concern is that in Slovenia only slightly more than half of all children age 7 have any formal preparation when they begin their education and training. It is important to note that studies show that children in poor quality childcare have been found to have delayed language and reading skills, and display more aggression toward other children and adults.

In its report the Committee noted that majority of single-parent families are headed by women. These women are often required to enter the workforce to provide for their families. In their absence, the children are taken care of by another family member, a private individual, or a formal day-care institution. As the Committee noted in its report, the number of formal child-care establishments are not sufficient to provide families, more often female-headed families, with the option to secure formal education and training for their children. The few formal child-care institutions have dramatically driven up the costs making these services available only to financially secure families.

The concern expressed by the Committee is not women staying at home and taking care of their children. Instead, the Committee recommended that the government help create the necessary infrastructure for quality care and training of children whose families depend on some kind of care outside the home.



Sex Education in Schools

Fiction: In Romania, the Committee encouraged “the Government to include sex education systematically in schools” and to “place priority on the review and revision of teaching materials.”

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Fact: In its periodic report in 1999, Romania maintained the following:



Abortion remains the principal means of birth control, despite the availability of modern contraceptive methods. Similarly, the level of knowledge about reproductive health, which is still very low, including on the risks of abortion for the health of the woman, is not only part of the explanation for the disquieting situation as to maternal mortality and abortion in Romania, but also represents a priority area of action for the health and family planning institutions. An important part needs to be played also by school, the family and the media.

It is against this backdrop and relying on Romania’s understanding of the problem of abortion that the Committee encouraged it to increase the level of knowledge about reproductive health in its schools.

Detailed Analysis Regarding Abortion

Understanding the Treaty for the Rights of Women and the Abortion Issue

FACTS

The word “abortion” never appears in the treaty. The U.S. Department of State has determined that the treaty is “abortion-neutral.”

Dozens of countries where abortion is illegal or strictly regulated have ratified **CEDAW** without reservations and continue to submit reports to the **CEDAW** Committee on their progress in improving women’s status.

The **CEDAW** Committee’s references to abortion generally involve expressions of concern about its over-use, its misuse as a contraceptive method, or the effects of illegal abortions.

In every case, the **CEDAW** Committee’s goal is to encourage ratifying states to reduce their numbers of unwanted pregnancies and abortions through education and family planning.

The **CEDAW** Committee has repeatedly stated its position that “family planning” does not include abortion.

The **CEDAW** Committee does not have the authority to require action by Treaty parties. It issues non-binding, advisory recommendations.

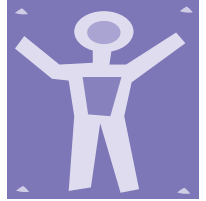
The Treaty for the Rights of Women, officially known as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), does not mention abortion anywhere in its provisions. The U.S. Department of State’s 1994 assessment of the treaty as “abortion neutral” was reflected in an understanding proposed by Senator Jesse Helms and adopted by the Senate Foreign Relations Committee that year. Many countries in which abortion is illegal—such as Ireland, Burkina Faso, Colombia, and Rwanda—have ratified the treaty without reservation.

The treaty (in Article 12) calls upon ratifying nations to take “steps to eliminate discrimination from the field of health care, including access to services such as family planning.” As press secretary to President George W. Bush, Ari Fleischer said (Jan. 22, 2001), “The President . . . knows that one of the best ways to prevent abortion is by providing quality voluntary family planning services.”

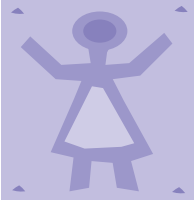
The Role of the CEDAW Committee

Ratifying countries are required to submit periodic reports to an advisory committee composed of experts from 23 nations. The Committee reviews and comments country reports, but its opinions are not binding. It must be emphasized that the Committee’s comments are specific to the circumstances in each individual country.

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Dispelling the Myths About CEDAW



In reviewing the Committee opinions over the last two decades, a range of statements is found on the subject of abortion. The CEDAW Committee has stated repeatedly its position that the term “family planning” does not include abortion; family planning includes information about and access to contraceptive supplies and services.

Committee comments regarding abortion have generally occurred in three contexts:

- ◆ **When a nation has a high rate of abortion**, the Committee has urged increased education and resources to reduce the number of abortions through voluntary family planning programs (e.g., Azerbaijan, Bulgaria, China, Cuba, Estonia, Greece, India, Kyrgyzstan, Lithuania, Nicaragua, Romania, Slovakia, Slovenia, Spain, Uruguay, Vietnam).
- ◆ **When a country is relying on abortion as a means of family planning**, the Committee has emphasized its position that “family planning” does not include abortion and that abortion should not be a method of contraception (e.g., Azerbaijan, Bulgaria, Burundi, Kazakhstan, Kyrgyzstan, Lithuania, Moldova, the Russian Federation, Romania, and Uzbekistan).
- ◆ **When a country reports that unsafe, illegal abortions have contributed to high maternal mortality rates**, the Committee has urged improvements in women’s health and access to family planning, and/or reconsideration of criminal statutes or legal restrictions (e.g., Andorra, Antigua and Barbuda, Argentina, Azerbaijan, Belarus, Belize, Bolivia, Burundi, Chile, Colombia, Croatia, Dominican Republic, Ireland, Jordan, Kazakhstan, Kyrgyzstan, Namibia, Nepal, Mauritius, Morocco, Mongolia, Panama, Peru, Portugal, Romania, Sri Lanka, St. Vincent and the Grenadines, Uzbekistan, and Zimbabwe).

A handful of Committee comments defy generalization. In Ireland, the Committee recommended a national dialogue on abortion in response to the large number of women who were traveling outside the country for abortion services. The research found two country reports noting that hospitals or doctors refused to provide abortions on religious grounds; in these circumstances, the Committee has recommended that women be referred to other providers.

For access to CEDAW Committee reports, go to:
<http://www.un.org/womenwatch/daw/cedaw>

Detailed Analysis Regarding Mother's Day

CEDAW Does Not Oppose Mother's Day

Hesitancy to ratify CEDAW stems from unfounded fears associated with the implementation of the treaty in the U.S. Often these fears are well-tailored sound bites rather than accurate facts. One of the most powerful myths disseminated about this treaty has been the fear that the CEDAW Committee opposes Mother's Day.

The Committee has reviewed reports from at least 35 countries that celebrate Mother's Day without ever raising the issue. It expressed "concern" about a single case in which a dictatorship with a media monopoly was conducting a government-funded campaign to persuade poor women to stay out of the workforce denying them a livelihood.

The CEDAW treaty specifically praises "the great contribution of women to the welfare of the family [and] the social significance of maternity. . . ." The CEDAW Committee, in 23 years of commenting on the periodic reports it receives from ratifying nations, has never once criticized the celebration of Mother's Day or motherhood.

Treaty opponents have grossly distorted a comment made by the CEDAW Committee in 1998 about the situation in Belarus regarding its policies restricting mothers from entering the workforce. This nation is a neo-Stalinist dictatorship with a collapsing economy and state-controlled media. The government was effectively running a campaign to discourage poor women from working to support their families. In Belarus, the majority of people living near or below the poverty level are women. Half of all marriages end in divorce and in 80% of these cases, children are raised by their mothers with no other financial support.

In its own report to the CEDAW Committee, Belarus acknowledged that women are sometimes discriminated against in the job market simply because they are mothers. Rather than working to remedy the situation, Belarus was actively making it worse. Legislation created further obstacles to women's participation in the labour market, particularly mothers. Rather than working to enforce legal rights for mothers who needed to work, the Committee felt that Belarus emphasized "the protection of

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Dispelling the Myths About CEDAW

Did You Know?
A member
of the General
Federation of
Women's Clubs
founded
Mother's Day
in America.

and the delivery of services to women mainly as mothers and members of families, thus perpetuating stereotypical attitudes concerning the roles and responsibilities of women.”

It was in this context—the Belarus government’s repeated use of programs and legislation to discourage mothers from working and its reinforcement of the standard of the non-working mother—that the Committee expressed concern. The

Committee viewed the reintroduction of such symbols as a Mother’s Day and a Mother’s Award . . . as encouraging women’s traditional roles. It did not criticize Mother’s Day celebrations or the “noble role of mother,” only efforts to resist real equality for women in the workplace.

Read the Belarus country report at:

<http://www.un.org/womenwatch/daw/cedaw/blr.pdf>

Read the CEDAW Committee recommendations at:

<http://www.un.org/womenwatch/daw/cedaw/a5538.pdf>

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6 Support for CEDAW



U.S. House of Representatives Resolution in Support for CEDAW

108th CONGRESS

1st Session

H. RES. 21

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Expressing the sense of the House of Representatives that the Senate should ratify the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

IN THE HOUSE OF REPRESENTATIVES

January 7, 2003

Ms. WOOLSEY (for herself, Ms. SLAUGHTER, Mrs. MALONEY, Mrs. CAPPS, Mr. SANDERS, Mr. NADLER, Ms. LEE, Ms. JACKSON-LEE of Texas, Mr. TOWNS, Mr. HINCHEY, Mr. FARR of California, Ms. SCHAKOWSKY, Mr. LANGEVIN, Mr. SERRANO, Mr. HASTINGS of Florida, Mr. MORAN of Virginia, Ms. KAPTUR, Mr. MEEHAN, Mr. FILNER, Mr. DEUTSCH, Ms. HARMAN, Mr. STARK, Mrs. JONES of Ohio, Mr. MARKEY, Mr. CUMMINGS, Ms. DELAURO, Mr. HOEFFEL, Mr. DAVIS of Florida, Mr. DELAHUNT, Ms. SOLIS, Mr. LAMPSON, Ms. BALDWIN, Mr. WU, Ms. KILPATRICK, Mr. CROWLEY, Mr. PALLONE, Ms. ROYBAL-ALLARD, Ms. CORRINE BROWN of Florida, Ms. MILLENDER-MCDONALD, Ms. NORTON, Mr. SMITH of Washington, Ms. WATERS, Mrs. JOHNSON of Connecticut, Ms. PELOSI, Ms. ESHOO, Ms. WATSON, Ms. VELAZQUEZ, Mr. PASCRELL, Ms. CARSON of Indiana, Mr. BACA, Mr. FROST, and Mrs. TAUSCHER) submitted the following resolution; which was referred to the Committee on International Relations

RESOLUTION

Expressing the sense of the House of Representatives that the Senate should ratify the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

Resolved, That it is the sense of the House of Representatives that—

- (1) the full realization of the rights of women is vital to the development and well-being of people of all nations; and
- (2) the Senate should, therefore, give its advice and consent to the ratification of the Convention on the Elimination of All Forms of Discrimination Against Women.

In Their Own Words: Voices of U.S. Government Officials

Voices of U.S. Government Officials in Support of Women's Rights

"We have a great opportunity during this time of war to lead the world toward the values that will bring lasting peace. . . . We have no intention of imposing our culture. But America will always stand firm for the non-negotiable demands of human dignity: the rule of law; limits on the power of the state; respect for women; private property; free speech; equal justice; and religious tolerance."

— George W. Bush, State of the Union (January 29, 2002)

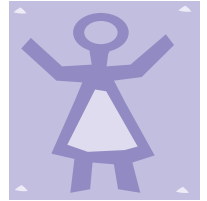
"The practice of systemic discrimination against women violates fundamental moral and legal norms. Every society should fully embrace and utilize the human capabilities of this often-repressed half of its population. . . . All people have the best chance to thrive in societies where fundamental freedoms, human rights, and property rights are ensured." — First Lady Laura Bush, Message for International Women's Day (March 10, 2003)

"The worldwide advancement of women's issues is not only in keeping with the deeply held values of the American people; it is strongly in our national interest as well. . . . Women's issues affect not only women; they have profound implications for all humankind. Women's issues are human rights issues. . . . We, as a world community, cannot even begin to tackle the array of problems and challenges confronting us without the full and equal participation of women in all aspects of life." — Secretary of State Collin L. Powell (March 7, 2002)

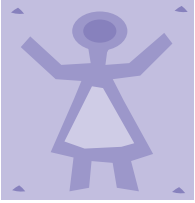
"Ensuring women's rights benefits not only individuals and their families, it also strengthens democracy, bolsters prosperity, enhances stability, encourages tolerance and builds a more peaceful and stable world. Respect for women is central to building a law-abiding, civil society, which in turn is an indispensable prerequisite for functioning democracies."

— Charlotte M. Ponticelli, Senior Coordinator for International Women's Issues, U.S. Department of State, at NGO Monthly Briefing (March 27, 2003)

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Support for CEDAW



“There is no better time to show our commitment towards women. . . . [Lack of ratification] is a disgrace and it’s time we moved forward.” — U.S. Senator Barbara Boxer

“CEDAW empowers women in other nations to be able to bring national attention and point to an international standard of human rights for the treatment of women. . . . Our silence on this issue is devastating.” — U.S. Senator Joseph Biden (July 18, 2002)

“CEDAW is about women being able to exercise the same human rights as men.” — U.S. Congressman Lynn Woolsey (June 13, 2002)

“Most women in developing societies do not have control over their everyday lives. They are denied an education. They cannot choose their husband. They cannot decide when or how many children they will bear. They cannot vote or inherit property.” — former U.S. Ambassador Juliette McLennan (June 13, 2002)

Organizations Supporting Ratification

The following **194** organizations endorse U.S. ratification of the Treaty for the Rights of Women, as of March 2004:

AARP

Action for Development

AFL-CIO

American Anthropological Association

American Association of University Women

American Bar Association

American College of Nurse-Midwives

American Civil Liberties Union (ACLU)

American Council for The United Nations University

American Federation of Teachers

American Friends Service Committee

American Humanist Association

American Jewish Committee

American Library Association

American Nurses Association

Association of Women Psychiatrists

American Veterans Committee

Americans for Democratic Action, Inc.

Amnesty International U.S.A.

Arab Women's Council

Association for Women Rights in Development

Association for Women in Psychology

Association of Reproductive Health Professionals (ARHP)

Atlanta Women's Foundation

Anti-Defamation League of B'nai B'rith

Ayuda

Black Women's Agenda

Black Women United for Action

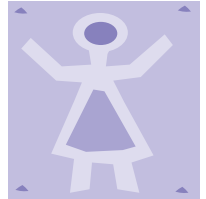
B'nai B'rith International

Bread for the World

Business And Professional Women/U.S.A.

BVM Network for Women's Issues

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Support for CEDAW



Campaign for UN Reform
 Catholics for a Free Choice
 Center for Advancement of Public Policy
 Center for International Environmental Law
 Center for Policy Alternatives
 Center for Reproductive Rights
 Center for Women Policy Studies
 Center for Women's Global Leadership
 Center of Concern
 Chicago Catholic Women
 Church of the Brethren, Washington Office
 Church Women United
 Coalition on Religion & Ecology
 Columbian Fathers' Justice & Peace Office
 Commission on the Advancement of Women/InterAction
 Committee for International Human Rights Inquiry
 Congregation of the Sisters of St. Agnes

 D.C. Statehood Solidarity Committee
 Dialogue on Diversity

 EarthRights International
 Eighth Day Center for Justice
 Episcopal Church
 Equality Now
 Evangelical Lutheran Church of America

 Family Violence Prevention Fund
 Federation of American Women's Clubs Overseas (FAWCO)
 Feminist Majority Foundation
 Francois Xavier Bagnoud Center for Health and Human Rights
 Friends of the U.N.
 Friends Committee on National Legislation

 GenderWatchers
 General Federation of Women's Clubs
 Global Commission to Fund the U.S.
 Global Plan Initiative
 Graduate Women in Science
 Gray Panthers
 Guatemala Human Rights Commission

Hadassah, The Women's Zionist Organization of America
Health & Development Policy Project
Human Rights Advocates
Human Rights for All – Organizations
Human Rights Watch/Women's Rights Division
The Humane Society
The Hunger Project

Institute of the Sisters of Mercy of the Americas
Institute Justice Team
International Center for Research on Women
International Federation of Women Lawyers (FIDA)
International Gay and Lesbian Human Rights Commission
International Human Rights Law Group
International Women's Health Coalition
International Women's Human Rights Law Clinic
International Women Judges Foundation

The J. Blaustein Institute for the Advancement of Human Rights
Jewish Council for Public Affairs
Jewish Women International

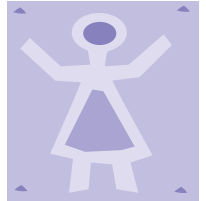
Lambda Legal Defense and Education Fund, Inc.
Lawyers Committee for Human Rights
Leadership Conference of Women Religious
Leadership Conference on Civil Rights (LCCR)
League of Women Voters of the United States
Louisville Women – Church

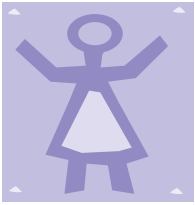
MADRE

Maryknoll Mission Association of the Faithful
Maryknoll Office of Global Concerns
Massachusetts Women – Church
McAuley Institute
Menonite Central Committee U.S.
Ms. Foundation for Women
Muslim Women's League

NA'AMAT U.S.A.

National Association of Commissions for Women
National Association of Nurse Practitioners in Women's Health (NPWH)
National Association of Social Workers
National Association of Women Lawyers





National Association with Women Judges
 National Audubon Society
 National Coalition Against Domestic Violence
 National Coalition of American Nuns
 National Coalition of 100 Black Women
 National Committee on the United Nations Convention on the Elimination
 of All Forms of Discrimination Against Women
 National Conference of Christians & Jews, Inc.
 National Conference of Puerto Rican Women, Inc.
 National Conference of State Legislators
 National Council for Research on Women
 National Council of Jewish Women
 National Council of Negro Women
 National Council of the Churches of Christ in the U.S.A.
 National Council of Women of the U.S.A.
 National Council of Women's Organizations
 National Education Association
 National Jewish Community Relations Advisory Council
 National Lawyers Guild
 National Network to End Domestic Violence
 National Organization for Women
 National Partnership for Women and Families
 National Spiritual Assembly of the Bahá'ís of the United States
 National Women's Conference Committee
 National Womens Studies Association
 Natural Resources Defense Council
 NOW Legal Defense & Education Fund
 NETWORK – A National Catholic Social Justice Lobby

 Open Society Policy Center
 OWL
 Oxfam America

 Pan Pacific & Southeast Asia Women's Association of the U.S.A., Inc.
 Planned Parenthood Federation of America
 Population Coalition
 The Population Institute
 Presbyterian Church (U.S.A.), Washington Office
 Psychologists for Social Responsibility

 Robert F. Kennedy Memorial Center for Human Rights



Safe Horizon, Inc.
 St. Joan's Alliance (both U.S. and International)
 San Francisco Bay Area Women's Ordination Conference
 Sierra Club
 Sigma Delta Epsilon
 Sisterhood is Global Institute
 Sisters of St. Joseph of Peace
 Sisters of the Humility of Mary
 Soka Gakkai International – U.S.A.
 Society for International Development/Women in Development
 Soroptimist International of the Americas

Tahirih Justice Center

U.N. Association
 Union of American Hebrew Congregations
 Unitarian Universalist Association, Washington Office
 Unitarian Universalist Service Committee
 United Church of Christ
 United Methodist Church
 United Nations Association of the United States of America
 United States Committee for UNICEF
 United States Committee for UNIFEM

Vital Voices

Washington Office on Africa
 Winrock International
 Woman's National Democratic Club
 Women & Philanthropy
 Women Empowering
 Women Legislators' Lobby/Women's Action for New Directions (WILL/WAND)
 Women of Indian Nations (WEWIN)
 Women of Reform Judaism
 Women for International Peace and Arbitration
 Women for Meaningful Summits
 Women Law and Development International
 Women's Commission for Refugee Women & Children
 Women's Edge
 Women's Environment and Development Organization
 Women's Institute for Freedom of the Press
 Women's Institute for Leadership Development

Women's International League for Peace and Freedom
The Women's Office, Sisters of Charity BVM
Women's Ordination Conference
Women's Research and Education Institute (WREI)
World Citizen Foundation
World Federalist Association

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World Wildlife Fund
World Organization Against Torture U.S.A.
Worldwatch Institute
YWCA of the U.S.A.
Zonta International

States, Counties and Cities That Have Passed Resolutions About CEDAW

As of March 2004

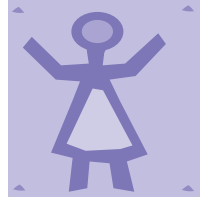
STATES

California (twice)
Connecticut (Senate)
Florida (House)
Hawaii
Illinois (House)
Iowa
Maine
Massachusetts
New Hampshire
New York
North Carolina
Rhode Island (General Assembly)
South Dakota (House)
Vermont
Wisconsin (Senate)
Territory of Guam

COUNTIES

Cook Co., IL
Cuyahoga Co., OH
Dade Co., FL
Dane Co., WI
Fayette/Lexington Co., KY
Jefferson County Fiscal Court, KY
Los Angeles Co., CA
Marin Co., CA
Milwaukee Co., WI
Monterey Co., CA
San Francisco Co., CA
San Mateo Co., CA
Santa Barbara Co., CA
Santa Clara Co., CA
Santa Cruz Co., CA
Sonoma Co., CA
Spokane Co., WA
Ventura Co., CA

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Support for CEDAW



CITIES

Auburn, CA

Avon Lake, OH

Bay Village, OH

Berea, OH

Brook Park, OH

Burlington, VT

Chicago, IL

Cleveland Heights, OH

East Cleveland, OH

Evanston, IL

Fairview Park, OH

Fond du Lac, WI

Highland Park, IL

Independence, OH

Iowa City, IA

Lakewood, OH

Los Angeles, CA

Louisville, KY

Madison, WI

Mayfield Heights, OH

Middleburg Heights, OH

Milwaukee, WI

Montpelier, VT

N. Olmsted, OH

New York City, NY

Olmsted Falls, OH

Parma Heights, OH

Philadelphia, PA

Pittsburgh, PA

Portland, ME

Redlands, CA

Rocky River, OH

Roseville, CA

San Bernadino, CA

San Diego, CA

San Francisco, CA

San Jose, CA

Santa Rosa, CA

Shaker Heights, OH

Spokane, WA

Strongsville, OH

University Heights, OH

West Hollywood, CA

Westlake, OH

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Appendices



Appendix 1: Treaty Text

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

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“... the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields.”

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Policy Measures (Article 2)

Guarantee of Basic Human Rights and Fundamental Freedom (Article 3)

Special Measures (Article 4)

Sex Role Stereotyping and Prejudice (Article 5)

Prostitution (Article 6)

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CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

The States Parties to the present Convention,

Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of man and women,

Noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

Noting that the States Parties to the International Covenants on Human Rights have the obligation to ensure the equal right of men and women to enjoy all economic, social, cultural, civil and political rights,

Considering the international conventions concluded under the auspices of the United Nations and the specialized agencies promoting equality of rights of men and women,

Noting also the resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women,



Concerned, however, that despite these various instruments extensive discrimination against women continues to exist,

Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity, Concerned that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs,

Convinced that the establishment of the new international economic order based on equity and justice will contribute significantly towards the promotion of equality between men and women,

Emphasizing that the eradication of apartheid, of all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women,

Affirming that the strengthening of international peace and security, relaxation of international tension, mutual co-operation among all States irrespective of their social and economic systems, general and complete disarmament, and in particular nuclear disarmament under strict and effective international control, the affirmation of the principles of justice, equality and mutual benefit in relations among countries and the realization of the right of peoples under alien and colonial domination and foreign occupation to self-determination and independence, as well as respect for national sovereignty and territorial integrity, will promote social progress and development and as a consequence will contribute to the attainment of full equality between men and women,

Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields,

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

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

Determined to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations,

Have agreed on the following:

PART I

Article 1. For the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 2. States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.





Article 3. States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 4. 1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

Article 5. States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

Article 6. States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

PART II

Article 7. States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;

(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;

(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

Article 8. States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

Article 9. 1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

PART III

Article 10. States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

- (a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;
- (b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;
- (c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;
- (d) The same opportunities to benefit from scholarships and other study grants;
- (e) The same opportunities for access to programmes of continuing education including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;





(f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;

(g) The same opportunities to participate actively in sports and physical education;

(h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

Article 11. 1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to work as an inalienable right of all human beings;

(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;

(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;

(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and

participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

Article 12. 1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

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

Article 13. States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to family benefits;
- (b) The right to bank loans, mortgages and other forms of financial credit;
- (c) The right to participate in recreational activities, sports and all aspects of cultural life.

Article 14. 1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of this Convention to women in rural areas.

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

- (a) To participate in the elaboration and implementation of development planning at all levels;
- (b) To have access to adequate health care facilities, including information, counselling and services in family planning;





- (c) To benefit directly from social security programmes;
- (d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter-alia, the benefit of all community and extension services, in order to increase their technical proficiency;
- (e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self-employment;
- (f) To participate in all community activities;
- (g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;
- (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

PART IV

Article 15. 1. States Parties shall accord to women equality with men before the law.

2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.

4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

Article 16. 1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

- (a) The same right to enter into marriage;
- (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
- (c) The same rights and responsibilities during marriage and at its dissolution;



(d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;

(e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;

(f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;

(g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;

(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

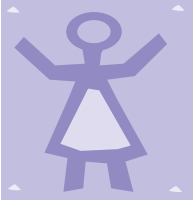
PART V

Article 17. 1. For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of Discrimination against Women (hereinafter referred to as the Committee) consisting, at the time of entry into force of the Convention, of eighteen and, after ratification of or accession to the Convention by the thirty-fifth State Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention.

The experts shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

3. The initial election shall be held six months after the date of the entry into force



of the present Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

5. The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee.

6. The election of the five additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of this article, following the thirty-fifth ratification or accession. The terms of two of the additional members elected on this occasion shall expire at the end of two years, the names of these two members having been chosen by lot by the Chairman of the Committee.

7. For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.

8. The members of the Committee shall, with the approval of the General Assembly, receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

9. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

Article 18. 1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect:

(a) Within one year after the entry into force for the State concerned; and

(b) Thereafter at least every four years and further whenever the Committee so requests.

2. Reports may indicate factors and difficulties affecting the degree of fulfillment of obligations under the present Convention.

Article 19. 1. The Committee shall adopt its own rules of procedure.

2. The Committee shall elect its officers for a term of two years.

Article 20. 1. The Committee shall normally meet for a period of not more than two weeks annually in order to consider the reports submitted in accordance with article 18 of the present Convention.

2. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee.

Article 21. 1. The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.

2. The Secretary-General shall transmit the reports of the Committee to the Commission on the Status of Women for its information.

Article 22. The specialized agencies shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities. The Committee may invite the specialized agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

PART VI

Article 23. Nothing in this Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained:

(a) In the legislation of a State Party; or

(b) In any other international convention, treaty or agreement in force for that State.

Article 24. States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.





- Article 25.** 1. The present Convention shall be open for signature by all States.
2. The Secretary-General of the United Nations is designated as the depositary of the present Convention.
3. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

4. The present Convention shall be open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

- Article 26.** 1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.
2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

- Article 27.** 1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

- Article 28.** 1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.
3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

- Article 29.** 1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 30. The present Convention, the Arabic, Chinese, English, French, Russian and Spanish texts of which are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, duly authorized, have signed the present Convention.



Appendix 2: Full Text of Senate Foreign Relations Committee Report

(Including the “Opposition Minority Report”)

[DOCID: f:er009.107]

From the Executive Reports Online via GPO Access

[wais.access.gpo.gov]

107th Congress: Exec. Report

SENATE: 2d Session, 107-9



CEDAW: Treaty for the Rights of Women

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

September 6, 2002.—Ordered to be printed

Mr. Biden, from the Committee on Foreign Relations, submitted the following report together with minority and additional views.

[To accompany Treaty Doc. 96-53]

The Committee on Foreign Relations to which was referred the Convention on the Elimination of All Forms of Discrimination Against Women, adopted by the United Nations General Assembly on December 18, 1979, and signed on behalf of the United States of America on July 17, 1980, having considered the same, reports favorably thereon and recommends that the Senate give its advice and consent to ratification thereof, subject to four reservations, five understandings, and two declarations as set forth in this report and the accompanying resolution of advice and consent to ratification.

I. PURPOSE

The purpose of the Convention is to achieve the elimination of discrimination against women. The Convention obligates States Parties to condemn discrimination against women, to take all appropriate measures to end discrimination in a range of areas, including the political and economic spheres.

II. BACKGROUND

The Convention on the Elimination of All Forms of Discrimination Against Women (hereafter “CEDAW,” “Women’s Convention,” or “Convention”) was adopted by the United Nations General Assembly on December 18, 1979, and entered into force on September 3, 1981. The Convention sets forth internationally accepted principles and measures to achieve equal rights for women throughout the world. As of August 1, 2002, 170 nations were party to the Convention.



Women's rights and the equality of men and women are addressed in general terms in various international instruments such as the Universal Declaration of Human Rights and the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights. A small number of treaties deal with certain specific rights and issues affecting women. None of these documents, however, are as comprehensive as the Convention.

During the Carter Administration, the United States played an active role in the negotiating process leading to the Convention and strongly supported the concept of a comprehensive and effective international instrument to achieve the elimination of discrimination against women. The United States signed the Convention on July 17, 1980. President Carter submitted the Convention to the Senate on November 12, 1980, for its advice and consent to ratification. It has been pending before the Senate since then.

Prior to the 107th Congress, the Committee held hearings on the Convention in 1988 and 1990.¹ It did not proceed to a Committee vote on the Convention in 1988 and 1990 because neither the Reagan Administration nor the first Bush Administration indicated that they supported ratification. The Clinton Administration endorsed ratification of the Convention.

In September 1994, the Committee held another hearing, and that same month ordered the Convention reported by a vote of 13-5.² The full Senate did not act on the Convention during the remaining days of the 103rd Congress. Under Senate Rule XXX, the Convention was returned to the Committee. No action was taken in the Committee during the 104th through 106th Congresses.

¹ S. Hrg. 100-1039 (1988); S. Hrg. 101-1119 (1990). ² See Exec. Rpt. 103-38 for a review of the Committee's consideration of the Convention in 1994. The hearing record is set forth in S. Hrg. 103-892 (1994).

BUSH ADMINISTRATION POSITION

The Bush Administration has indicated that it supports the Convention, but that it is currently undertaking a review of the Convention to ascertain whether additional reservations, understandings, and declarations may be required in addition to those proposed by the Committee. The Administration has had considerable time to consider its position. The chronology of action on the Convention in the past year—which demonstrates the time afforded the Administration by the Committee—deserves elaboration.

By letter dated June 29, 2001, Chairman Biden invited the Secretary of State to submit the Administration's priorities for treaties pending in the Senate during the 107th Congress (this letter reiterated an invitation first issued by then-Chairman Helms in March 2001). In the letter, the Chairman indicated that he expected to convene



hearings on the Convention in the coming year, and that the Department would be invited to testify. By letter dated February 7, 2002, the Department of State responded. The letter placed CEDAW in “category III”—those treaties which the Administration “believes are generally desirable and should be approved.” In other words, the Administration indicated its support for U.S. ratification of the Convention.

On that basis, Chairman Biden proceeded with plans for a hearing on the treaty. By letter dated March 7, he informed the Secretary of State that a hearing would be held after the Easter recess, and that a State Department representative would be invited to testify. In mid-April, a formal invitation was issued to the Under Secretary of State for Global Affairs to testify at a hearing scheduled for May 15. As the hearing date neared, the State Department indicated that it had not decided who would testify. The hearing was postponed, and a new invitation was issued to the Under Secretary for a hearing scheduled for June 12 (later rescheduled for June 13). At the end of May, the Department of State orally requested an additional delay, contending that the Justice Department had just commenced a review of the treaty. By letter dated June 4, 2002, the State Department formally requested a delay; the letter, however, reiterated the Administration’s support for ratification of the Convention.

Subsequent communications have been received from the Departments of State and Justice on the Convention, in response to letters from Chairman Biden inquiring about the scope and timing of the Administration’s review of the Convention.

Although these letters have been generally unresponsive—and have failed to reply to several direct questions posed—the letters have not renounced the Administration’s previous expressions of support for ratification of the Convention. The letters do indicate that the Administration is conducting a review of certain issues raised by the Convention and the CEDAW Committee (the advisory panel created by the Convention), and have urged that the Committee delay consideration of the Convention until this review is completed.

Because of the limited time remaining in the 107th Congress, and because the Administration refused to provide any information about when its review would be completed, the Chairman decided to proceed with a hearing in mid-June, and the Committee vote in July.

III. ENTRY INTO FORCE

Pursuant to Article 27, the Convention entered into force on September 3, 1981 after the twentieth nation ratified or acceded to it. If the United States ratifies the Convention, it will become a party on the thirtieth day after the date of the deposit of the instrument of ratification.



IV. COMMITTEE ACTION

On June 13, 2002, the Committee conducted a hearing on the Convention; the hearing was chaired by Senator Boxer. Testimony was received from five members of the House of Representatives (Representatives Jo Ann Davis, Carolyn Maloney, Juanita Millender-McDonald, Constance Morella, and Lynn Woolsey), and six witnesses from the private sector. The private sector witnesses included senior State Department officials from the last three presidential administrations who were involved with human rights or U.N. matters.

On July 30, 2002, the Committee considered the Convention, and ordered it favorably reported by a vote of 12-7, with the recommendation that the Senate give its advice and consent to the ratification of the Convention, subject to 4 reservations, 5 understandings, and 2 declarations set forth in the resolution of advice and consent to ratification.

Ayes: Senators Biden, Sarbanes, Dodd, Kerry, Feingold, Wellstone, Boxer, Torricelli, Nelson, Rockefeller, Smith, and Chafee.

Nays: Senators Helms, Lugar, Hagel, Frist, Allen, Brownback, and Enzi.

V. MAJOR PROVISIONS

The Convention contains the most specific obligations adopted to date by the international community in the area of gender discrimination. Current U.S. law is largely consistent with the provisions of the Convention because the U.S. Constitution and federal law provide strong guarantees of equal protection as well as effective protections against discriminatory conduct.

Through its broad definition of the term “discrimination against women” in Article 1, the Convention seeks to promote equal rights and freedoms for women, regardless of marital status, in all fields including political, economic, educational, social, cultural, and civil.

Article 2 sets forth the fundamental obligation of States Parties to pursue a policy of eliminating discrimination against women by embodying the principle of equality of men and women in their national constitutions or other appropriate legislation, adopting legislation and other measures prohibiting discrimination against women, establishing legal protections for women, ensuring that no public authorities or institutions discriminate against women, and taking steps to eliminate measures or practices that constitute discrimination against women. Article 3 requires States Parties to take “in all fields . . . all appropriate measures” including legislation to ensure the full development and enhancement of women. The Convention, in article 4, also permits “temporary special measures” to accelerate de facto equality between men and women.



Articles 5 through 16 outline specific steps that the parties must undertake in a variety of fields. These include providing equal rights for women in political and public life, equal access to education, non-discrimination in employment and pay, guarantees of job security in the event of marriage and maternity, and access to adequate health care facilities. The Convention underlines the equal responsibilities of men with women in the context of family life and stresses the social services needed—especially child care facilities—for combining family obligations with work responsibilities and participation in public life.

Articles 17 through 22 establish a framework under the treaty for reviewing the implementation by States Parties. Article 17 establishes the Committee on the Elimination of Discrimination Against Women, consisting of 23 experts of high moral standing and competence. These experts are selected from among nationals of States Parties, but serve in their personal capacity. The Committee generally meets once a year to receive and review reports from the Parties regarding implementation. Although the Committee can make recommendations, it has no competence under the Convention to consider complaints or petitions from individuals or governments, and no power to enforce its recommendations.

VI. COMMITTEE COMMENTS

The Convention is a landmark treaty, designed to advance the rights of women around the world. It builds on the principles of nondiscrimination found in earlier international documents, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Because of its comprehensive nature, the Convention has become an important instrument in the struggle for equal rights for women around the globe.

The treatment of women in Afghanistan under Taliban rule serves as a reminder that the struggle for women's rights is far from complete. Although women in the United States enjoy equal opportunity and equal protection of the law, these rights are not universally guaranteed elsewhere. The Convention provides an important means to advance these rights.

The Committee believes that U.S. ratification of CEDAW will serve several important purposes.

First, it will reaffirm the commitment of the United States before the eyes of the world to the principle of equality between men and women and to the promotion and protection of women's rights at home and abroad. The United States has long been a leader in advancing women's rights. But, as witnesses with recent experience in international diplomatic conferences testified before the Committee, women

from other countries are discouraged by the failure of the United States to join the Convention. This failure undercuts the effectiveness of our message in promoting women's rights.

Second, ratification will enhance the ability of the United States to press for women's rights globally. To be sure, as the world's leading nation, the United States already has a powerful voice, and can speak out for such rights whether or not it is a party to the Convention. But U.S. ratification will give our diplomats a tool—a means to press other governments to fulfill their obligations under the Convention. If we are a party, when U.S. diplomats raise women's rights and are confronted with rebuttals from foreign officials that the United States is seeking to advance “Western values” which have no applicability in their land, U.S. diplomats can reply with a strong rejoinder: your government adhered to the Convention freely, and it is required to keep its international commitments.

Third, ratification will further empower women in foreign nations who seek to use CEDAW to press for women's rights in their respective countries. With the United States adding its voice in promoting adherence to CEDAW obligations, women in many countries will be further encouraged to press vigorously for fulfillment of CEDAW obligations. This argument was made forcefully to the Committee in a letter, dated June 12, 2002, to Senator Boxer by the then-Afghan Minister for Women's Affairs, Dr. Sima Samar (Dr. Simar is now Chairman of the Human Rights Commission in Afghanistan). She stated as follows:

I understand that the U.S. Senate is now considering whether the United States should join 169 other countries in ratifying [the Convention]. I believe it will be important for me and other Afghan women if you do take this step. We will then be able to tell our countrymen that the United States, where women already have full legal rights, has just seen the need to ratify this treaty. This treaty will then truly be the international measure of the rights that any country should guarantee to its women. We will be able to refer to its terms and guidelines in public debates over what our laws should say. Your advisers to many of our leaders here will be able to cite its provisions in their recommendations. And perhaps we women will achieve full human rights for the first time in a generation.

During the last decade of the Cold War, the Helsinki Final Act—a document in which Soviet Bloc states committed to protect human rights—served to embolden advocates throughout Eastern and Central Europe, who used the document to press their Communist governments for protection of civil liberties.





So, too, CEDAW can serve as a tool which will allow women and women's rights advocates around the world to seek an end to discrimination against women.

Fourth, the advancement of women promotes stability and economic growth for societies as a whole. A recent U.N.-sponsored study of the Arab world (a study conducted by Arab scholars) concluded that an important reason for economic under-

development in the region was the lack of empowerment of women.

Commenting on the lack of equal opportunity in both the political and economic spheres, the report noted that "[s]ociety as a whole suffers when a huge proportion of its productive potential is stifled, resulting in lower family incomes and standards of living." (U.N. Development Program, Arab Human Development Report 2002, at 3 (2002)).

Secretary of State Powell stated the case well. Speaking on International Women's Day earlier this year, he said:

"Women's issues affect not only women; they have profound implications for all humankind. Women's issues are human rights issues. They are health and education issues. They are development issues. They are ingredients of good government and sound economic practice. They go to the heart of what makes for successful, stable societies and global growth. Women's issues affect the future of families, societies and economies, of countries and of continents. We, as a world community, can not even begin to tackle the array of problems and challenges confronting us without the full and equal participation of women in all aspects of life . . . It is not just popular opinion, but plain fact: countries that treat women with dignity, that afford women a choice in how they live their lives, that give them equal access to essential services, give them an equal opportunity to contribute to public life—these are the countries that are the most stable, valuable and capable of meeting the challenges of the new century." — Remarks of Secretary Powell at a reception to mark International Women's Day (Mar. 7, 2002)

Most fundamentally, the Convention's promise of providing equal rights to women addresses a question of basic fairness which women have been asking for centuries: why should rights be denied to half the population simply because of their gender? The Convention provides a response: women's rights are human rights, which should be accorded on a universal basis.

VII. SUMMARY OF PROVISIONS IN THE RESOLUTION OF ADVICE AND CONSENT

In transmitting the treaty to the Senate in 1980, the Carter Administration indicated that the treaty raised several issues with regard to whether U.S. domestic law conformed to the terms of the treaty, and noted that the United States had the option of changing U.S. law or submitting reservations to the treaty. The Administration recommended, among other things, a reservation relating to federalism, and a declaration that the substantive provisions of the treaty are not self-executing. The Carter Administration did not, however, make any specific recommendations as to appropriate language for implementing legislation or reservations. (Exec. R, 96th Cong., 2d Sess., Nov. 1980, at pp. VIII-IX).



In the 103rd Congress, the Clinton Administration undertook a thorough review of the Convention, and recommended that the Senate include nine conditions (four reservations, three understandings, and two declarations) in the resolution of advice and consent. The resolution approved by the Committee includes these provisions in the resolution. The resolution includes two other conditions: an understanding first proposed by Senator Helms in 1994 related to abortion, and an understanding proposed by Senator Biden this year related to the CEDAW Committee.

The provisions of the resolution are summarized below.

RESERVATIONS

1. Private Conduct. The Convention’s definition of discrimination in Article 1 covers activities of private organizations, associations and individuals as well as those of federal and state governments.

When read in conjunction with obligations under other articles of the Convention (Articles 2, 3 and 5), the effect of this definition is to reach into areas that are not regulated by the federal government. For example, Title VII of the Civil Rights Act of 1964 does not apply to private employers with fewer than 15 employees, religious institutions, or tax-exempt private clubs. Similarly, Title IX of the Education Act Amendments of 1972 does not apply to private institutions that receive no federal funds. This reservation therefore makes clear that the United States does not accept any obligation under the Convention to regulate private conduct except as mandated by the Constitution and U.S. law.

2. Combat Assignments. Article 2 obligates States Parties to pursue “by all appropriate means . . . a policy of eliminating discrimination against women.” Although women can serve in all non-combat positions in the U.S. armed forces, and attend all the military academies without restriction, the Defense Department and the military services have policies which preclude women from serving in



units and positions that have missions which require routine engagement in direct combat. This reservation clarifies that the United States does not accept an obligation under the Convention to put women in all combat positions.

3. Comparable Worth. Article 11(1)(d) of the Convention provides women with the right to “equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work.” This provision reflects a potentially broad definition of the concept of equal pay for women.

Pay equity is an established principle in U.S. law and practice. The Equal Pay Act of 1963 (29 U.S.C. 206(d)(1)) mandates equal pay for men and women performing jobs of equal skill, effort and responsibility under similar working conditions unless the pay differential is justified by one of four exceptions. The United States has not, however, adopted the concept of comparable worth. Although the Convention does not use the term “comparable worth,” the proposed reservation makes it clear that the United States does not accept an obligation under the Convention to adopt the doctrine of comparable worth.

4. Paid Maternity Leave. Article 11(2)(b) requires States Parties to take appropriate measures to “introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances.” Although current U.S. law and practice provide for maternity and parental leave benefits in many employment situations, and the Family and Medical Leave Act of 1993 provides certain employees unpaid leave in certain circumstances, including the birth or adoption of a child, federal law does not require employers to provide paid leave or leave with comparable social benefits in connection with pregnancy or childbirth. Similarly, although the Family and Medical Leave Act provides a qualified employee pre-existing benefits for the duration of the leave at the level and under the same conditions as provided prior to commencement of the leave and provides such employees the right to return to his or her job or to an equivalent job, no federal law requires employers to hold vacant the position of a woman who has taken maternity leave or to reinstate her without loss of seniority or allowances. This reservation therefore states that the United States does not accept an obligation under Article 11 to introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances.

UNDERSTANDINGS

1. Federal-State Implementation. Articles 2(d) and 24 taken together would require the federal government to ensure that state and local governments comply with the Convention. Many of the specific areas covered by the Convention (such as education) are within the purview of state and local governments, rather than the federal government. Although U.S. law does not proscribe the federal government

from committing its constituent units to the goal of non-discrimination, U.S. law does provide limitations on the federal role in some areas. To reflect this situation, this understanding makes clear that the United States will carry out its obligations under the Convention in a manner consistent with the federal nature of its form of government. This understanding is identical to one approved by the Senate in its resolution of advice and consent to ratification of the Convention on the Elimination of Racial Discrimination.



2. Freedom of Speech, Expression and Association. The Convention contains provisions requiring regulation of private conduct in a manner which is beyond the power of the government. For example, Article 5 obligates the parties to modify practices which are based on “the idea of the inferiority or the superiority of either of the sexes.” The First Amendment to the Constitution guarantees individuals the right to disseminate such “ideas.” Article 7 requires parties to take measures to ensure that women have the right, on equal terms with men, to participate in non-governmental organizations and associations concerned with the public and political life of the country. Such an obligation could extend beyond the scope of the government’s authority or implicates rights of association protected by the First Amendment.

Therefore, this understanding clarifies that the United States does not accept any obligation under the Convention to restrict freedom of speech, expression and association to the extent that they are protected by the Constitution and U.S. laws.

3. Free Health Care Services. Article 12, paragraph 1, obligates States Parties to take all appropriate measures to ensure equal access for women to health care services “including those related to family planning.” Article 12, paragraph 2, requires Parties to ensure to women “appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary.” Paragraph 1 mandates equality of access to family planning services, but does not require the affirmative provision of such services generally or of any specific services (such as contraceptive devices). Similarly, paragraph 2 does not require the provision of any particular services, but allows each State Party to decide which services are “appropriate” and whether and when it is “necessary” to make services freely available. This understanding reflects this reading of Article 12.

4. Abortion. As noted in the discussion of the third understanding, Article 12 contains certain obligations with regard to health care services and services in connection with pregnancy.

In 1994, the Committee approved an understanding, sponsored by Senator Helms, which states that “nothing in this Convention shall be construed to reflect or create any right to abortion and in no case should abortion be promoted as a method of family planning.” The Committee again recommends inclusion of this understanding,

as it reflects the plain meaning of the text of the treaty, which does contain the word abortion.

5. CEDAW Committee. Article 17 of the Convention creates the Committee on the Elimination of Discrimination Against Women (hereafter the “CEDAW Committee”), made up of 23 experts appointed by nations party to the Convention.

These experts act in their personal capacity to consider reports submitted by parties under Article 18 (Article 18 requires parties to submit reports periodically on measures they have taken to give effect to the Convention). The Committee is required to report annually to the U.N. General Assembly, and, under Article 21, may “make suggestions and general recommendations based on the examination of the reports and information received” from the parties.

As the State Department concedes, the CEDAW Committee has no authority to compel parties to follow its recommendations (Letter from Secretary Powell to Senator Biden, July 8, 2002 (“State Parties have always retained the discretion on whether to implement any recommendations made by the Committee.”)). The understanding reiterates that point.

DECLARATIONS

1. Non-Self-Executing. Existing U.S. law provides extensive protections against gender-based discrimination and remedies sufficient to satisfy most of the requirements of the Convention. In addition, federal, state and local laws provide a comprehensive basis for challenging discriminatory statutes, regulations and other governmental actions, as well as certain forms of discriminatory conduct by private actors, in court. In view of this, there is no need to establish additional legal causes of action in order to enforce the requirements of the Convention.

This declaration therefore states that the provisions of the Convention are not-self-executing.

The intent of such a declaration is two-fold: to indicate that the Convention will be implemented pursuant to Constitutional and statutory law, and to clarify that it will not create a new or independently enforceable private right of action in United States courts. The Senate has approved a similar declaration in giving advice and consent to other human rights treaties, such as the Convention Against Torture, the Covenant on Civil and Political Rights, and the Convention on the Elimination of Racial Discrimination.

2. Dispute Settlement. Article 29(1) provides that any dispute between States Parties concerning the interpretation or application of the Convention, which is not settled by negotiation, shall at the request of one of them be submitted to arbitration. If the parties to the dispute are unable to agree to the organization of such arbitration within six months, any such party may refer the dispute to the

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International Court of Justice. Article 29(2) provides that a State Party may declare at the time of ratification that it does not consider itself bound by the provisions of Article 29(1). This declaration states that the United States does not consider itself bound by Article 29(1) and that the specific consent of the United States to the jurisdiction of the Court is required on a case-by-case basis.

VIII. TEXT OF RESOLUTION OF ADVICE AND CONSENT TO RATIFICATION

Resolved (two-thirds of the Senators present concurring therein),

SECTION 1. ADVICE AND CONSENT TO RATIFICATION OF THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN, SUBJECT TO RESERVATIONS, UNDERSTANDINGS AND DECLARATIONS

The Senate advises and consents to the ratification of the Convention on the Elimination of All Forms of Discrimination Against Women, adopted by the United Nations General Assembly on December 18, 1979, and signed on behalf of the United States of America on July 17, 1980 (Treaty Doc. 96-53), subject to the reservations in section 2, the understandings in section 3, and the declarations in section 4.

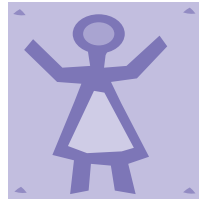
SECTION 2. RESERVATIONS

The advice and consent of the Senate is subject to the following reservations, which shall be included in the instrument of ratification:

(1) The Constitution and laws of the United States establish extensive protections against discrimination, reaching all forms of governmental activity as well as significant areas of non-governmental activity.

However, individual privacy and freedom from governmental interference in private conduct are also recognized as among the fundamental values of our free and democratic society. The United States understands that by its terms the Convention requires broad regulation of private conduct, in particular under Articles 2, 3 and 5. The United States does not accept any obligation under the Convention to enact legislation or to take any other action with respect to private conduct except as mandated by the Constitution and laws of the United States.

(2) Under current U.S. law and practice, women are permitted to volunteer for military service without restriction, and women in fact serve in all U.S. armed services, including in combat positions. However, the United States does not accept an obligation under the Convention to assign women to all military units and positions which may require engagement in direct combat.





(3) U.S. law provides strong protections against gender discrimination in the area of remuneration, including the right to equal pay for equal work in jobs that are substantially similar. However, the United States does not accept any obligation under this Convention to enact legislation establishing the doctrine of comparable worth as that term is understood in U.S. practice.

(4) Current U.S. law contains substantial provisions for maternity leave in many employment situations but does not require paid maternity leave. Therefore, the United States does not accept an obligation under Article 11(2)(b) to introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances.

SECTION 3. UNDERSTANDINGS

The advice and consent of the Senate is subject to the following understandings, which shall be included in the instrument of ratification:

(1) The United States understands that this Convention shall be implemented by the Federal Government to the extent that it exercises jurisdiction over the matters covered therein, and otherwise by the State and local governments. To the extent that State and local governments exercise jurisdiction over such matters, the Federal Government shall, as necessary, take appropriate measures to ensure the fulfillment of this Convention.

(2) The Constitution and laws of the United States contain extensive protections of individual freedom of speech, expression, and association. Accordingly, the United States does not accept any obligation under this Convention, in particular under Articles 5, 7, 8 and 13, to restrict those rights, through the adoption of legislation or any other measures, to the extent that they are protected by the Constitution and laws of the United States.

(3) The United States understands that Article 12 permits States Parties to determine which health care services are appropriate in connection with family planning, pregnancy, confinement and the post-natal period, as well as when the provision of free services is necessary, and does not mandate the provision of particular services on a cost-free basis.

(4) Nothing in this Convention shall be construed to reflect or create any right to abortion and in no case should abortion be promoted as a method of family planning.

(5) The United States understands that the Committee on the Elimination of Discrimination Against Women was established under Article 17 “for the purpose of considering the progress made in the implementation” of the Convention. The United States understands that the Committee on the Elimination of

Discrimination Against Women, as set forth in Article 21, reports annually to the General Assembly on its activities, and “may make suggestions and general recommendations based on the examination of reports and information received from the States Parties.” Accordingly, the United States understands that the Committee on the Elimination of Discrimination Against Women has no authority to compel actions by States Parties.

SECTION 4. DECLARATIONS

The advice and consent of the Senate is subject to the following declarations:

- (1) The United States declares that, for purposes of its domestic law, the provisions of the Convention are non-self-executing.
- (2) With reference to Article 29(2), the United States declares that it does not consider itself bound by the provisions of Article 29(1). The specific consent of the United States to the jurisdiction of the International Court of Justice concerning disputes over the interpretation or application of this Convention is required on a case-by-case basis.



IX. MINORITY VIEWS OF SENATORS HELMS, LUGAR, HAGEL, FRIST, ALLEN, BROWNBACK, AND ENZI

BACKGROUND

In 1994, Senators Helms, Kassebaum, Brown, Coverdell and Gregg filed Minority Views expressing their concern about the substance of the Convention on the Elimination of All Forms of Discrimination Against Women (“the Convention”) when it was reported by this Committee (see Exec. Rept. 103-38, p. 53).

In 2002, the Convention’s substance continues to generate concern for the minority, as set out below. The minority registers an additional concern over the majority’s haste in ordering the Convention to be reported before receiving Executive Branch views.

PROCEDURE

No hearings on the Convention were held between September 27, 1994 and June 13, 2002. On the latter date, the majority held a hearing on the Convention with private witnesses. The majority declined the Executive Branch’s request to postpone hearings on the Convention until an Executive Branch review of the Convention has been concluded. The majority also opted against inviting U.S. Department of State witnesses eventually proffered by the Executive Branch for the June 13, 2002, hearing.



On July 8, 2002, Secretary of State Colin Powell wrote to Senator Biden, Committee Chairman, and noted that the Convention raises a number of issues that must be addressed before the Senate provides its advice and consent. Secretary Powell wrote that it is necessary for the Executive Branch to determine what reservations, understandings and declarations may be required as part of the ratification process.

Secretary Powell also wrote that “a careful review is appropriate and necessary” and that the Departments of State and Justice were conducting a review “as expeditiously as possible.”

On July 15, 2002, Senator Helms wrote to the Chairman to request that Committee action on the Convention be deferred until the Senator’s return to Washington.

On July 19, 2002, Assistant to the President for National Security Affairs Condoleezza Rice wrote to The Honorable Joseph Pitts, a member of the U.S. House of Representatives, and set forth the importance of Executive Branch review of the Convention prior to Senate action.

On July 26, 2002, Assistant Attorney General for Legislative Affairs Daniel J. Bryant wrote to the Chairman, referencing Secretary Powell’s July 8 letter, to request that the Chairman await completion of the Administration’s review [of the Convention] “before commencing a committee vote on CEDAW.” In the alternative, Assistant Attorney General Bryant urged Committee members to vote against ordering the Convention reported until completion of the review.

The full texts of the Powell and Bryant letters are included as attachments to this section.

On July 30, 2002, the majority took up the Convention at the Committee’s Business Meeting and ordered it reported by a vote of 12-7. The State Department-Justice Department review of the Convention had not been completed at the time of the vote, and the minority understands that, as of the date of filing of this Report, the Executive Branch review had not been completed.

The minority’s strong preference was to defer Committee action on the Convention until after completion of the Executive Branch review and Senator Helms’ return. Instead, the majority ordered the Convention reported without hearing Executive Branch witnesses, and without an updated Executive Branch legal analysis reflecting domestic and international legal developments since 1994 which could affect the Convention’s application in the United States.

The Convention is the most ambitious multilateral convention on women ever undertaken by the international community. The minority feels that the current Administration’s legal analysis, together with the Administration’s views about whether a package of reservations, understandings and declarations can be crafted

that would permit United States adherence to the Convention, would have been—and remain—critical to a thorough understanding of the Convention’s potential impact on the American people and their institutions.

The minority recommends that the Senate defer action on the Convention until the Administration’s analysis and views are available.

SUBSTANCE

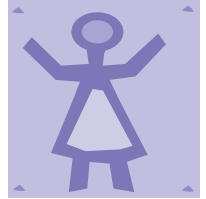
As the Carter Administration indicated in 1980 when it submitted the Convention to the Senate for advice and consent, important issues concerning division of Federal-State powers are presented by several of its provisions. The Convention has also generated vigorous debate about the implications of U.S. compliance with regard to important social issues such as abortion on demand (including restrictions on Federal funding), comparable worth salary laws, women in the military, same-sex marriage, health care, single-sex education and potential government intrusion into areas traditionally within the scope of family privacy. That debate perforce must continue, given that these issues have not, unfortunately, been laid to rest by Committee action on the Convention.

As stated above, in 1994 the minority of Committee members voting against reporting the Convention included Senators Helms, Kassebaum, Brown, Coverdell and Gregg. The 1994 minority felt that the Convention represented yet another set of unenforceable international standards that would further dilute—not strengthen—international human rights standards for women around the world. The 1994 minority also noted that many parties to the Convention had abysmal human rights records, especially for women. Some were even designated by the U.S. Department of State as state sponsors of terrorism.

APPENDIX II

The minority in 1994 noted that the United States has the strongest record on opportunities and rights for women in the world, and that ratification of the Convention, rather than improving that record, would raise divisive social issues such as those noted above. Moreover, the 1994 minority felt that the Convention’s definition of “discrimination against women” is so broad that it would apply to private organizations and areas of personal conduct not covered by U.S. law.

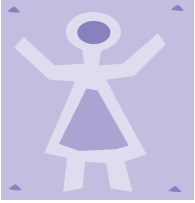
In 2002, the minority feels that the Convention raises a number of complex and important issues which should have been explored further in one or more hearings with the current Administration’s witnesses, and—assuming an Administration desire to go forward with the Convention following its review—which should be addressed in an appropriate resolution of ratification.



— Jesse Helms. Richard G. Lugar. Chuck Hagel. Bill Frist. George Allen. Sam Brownback. Michael B. Enzi.

LETTERS

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CEDAW: Treaty for the Rights of Women

The Secretary of State,

Washington, July 8, 2002.

Hon. Joseph R. Biden, Jr., Chairman,
Committee on Foreign Relations,
U.S. Senate.

Dear Mr. Chairman:

Thank you for your letters of June 17 to Attorney General Ashcroft and me regarding the Foreign Relations Committee's June 1 hearing concerning the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). This replies to both letters.

Addressing the issues confronting women—from suffrage to gender-based violence—is a priority of this Administration. We are committed to ensuring that promotion of the rights of women is fully integrated into American foreign policy. Our recent actions in Afghanistan underscore this commitment to promote the rights of girls and women who suffered under the draconian Taliban rule, including in education, employment, healthcare, and other areas. It is for these and other reasons that the Administration supports CEDAW's general goal of eradicating invidious discrimination against women across the globe.

The vagueness of the text of CEDAW and the record of the official U.N. body that reviews and comments on the implementation of the Convention, on the other hand, raise a number of issues that must be addressed before the United States Senate provides its advice and consent. We believe consideration of these issues is particularly necessary to determine what reservations, understandings and declarations may be required as part of the ratification process.

As you are aware, the Committee on the Elimination of Discrimination Against Women prepares reports and recommendations to State Parties. Portions of some of these reports and recommendations have addressed serious problems in useful and positive ways, such as women and girls who are victims of terrorism (Algeria) (Concluding Observations on the Committee on the Elimination of Discrimination Against Women: Algeria, 27/01/99, paragraphs 77-78.) and trafficking in women and girls (Burma) (Concluding Observations on the Committee on the Elimination of Discrimination Against Women: Myanmar, 28/01/2000, paragraphs 119-120). However, other reports and recommendations have raised troubling questions in their substance and analysis, such as the Committee's reports on Belarus (addressing

Mother's Day) (Concluding Observations on the Committee on the Elimination of Discrimination Against Women: Belarus, 31/0-1/2000, paragraph 361), China (legalized prostitution) (Concluding Observations on the Committee on the Elimination of Discrimination Against Women: China, 03/02/99, paragraphs 288-289.), and Croatia (abortion) (Concluding Observations on the Committee on the Elimination of Discrimination Against Women: Croatia, 14/05/98, paragraphs 109, 117).

State Parties have always retained the discretion on whether to implement any recommendations made by the Committee. The existence of this body of reports, however, has led us to review both the treaty and the Committee's comments to understand the basis, practical effect, and any possible implications of the reports. We are also examining those aspects of the treaty that address areas of law that have traditionally been left to the individual States. The complexity of this treaty raises additional important issues, and we are examining those as well.

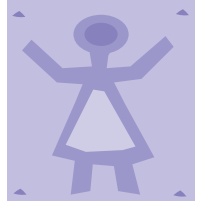
In mid-April, when the Administration learned that the Committee had set a hearing date for consideration of CEDAW, the Departments of State and Justice began a review of this Convention to assess the need for reservations, understandings, and declarations different from or in addition to those reported out by the Committee in Exec. Rept. 103-38 in October, 1994. Given the passage of time since the last Senate hearing and the breadth of the issues touched upon by the Convention, we believe that a careful review is appropriate and necessary. This review is proceeding as expeditiously as possible.

Although the Administration supports CEDAW's general goals, it believes that eighteen other treaties are either in urgent need of Senate approval or of a very high priority. In addition to the seventeen treaties listed in higher categories on the treaty priority list that are still pending, the Moscow Treaty on the reduction of strategic arms, which was transmitted to the Senate in June, is among our most pressing national security needs and foreign policy interests.

At the same time as the Administration is carrying out its review of CEDAW, we hope we can work with the Committee on these high priority treaties. Once our review of CEDAW is complete, we look forward to presenting our views to your Committee.

I would like to take this opportunity to thank you for recently guiding the two Protocols to the Rights of the Child Convention through the advice and consent process at the U.S. Senate. This is a good example of successful cooperation between your Committee and the Administration to advance treaties that are high priorities for our Nation's foreign policy.

Sincerely,
Colin L. Powell,
Secretary of State.



U.S. Department of Justice,
Office of Legislative Affairs,
Office of the Assistant Attorney General,
Washington, July 26, 2002.

Hon. Joseph R. Biden, Jr., Chairman,
Committee on Foreign Relations, U.S. Senate.

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CEDAW: Treaty for the Rights of Women

Dear Chairman Biden:

I write in response to your letters of June 17 and July 11, 2002 concerning the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), upon which the Foreign Relations Committee is considering voting in the near future. While the Department of State typically takes the lead in responding to correspondence from the Senate Committee of Foreign Relations, at your insistence I am responding directly on behalf of the Department of Justice.

As indicated in Secretary Powell's July 8 letter to you, the Administration is currently reviewing CEDAW to determine what reservations, understandings, and declarations (RUDs) may be required in addition to those reported out by the Committee in Exec. Rept. 103-38 in October 1994. While this review is not yet complete, the Administration is certain that the 1994 RUDs are insufficient to address the various concerns raised by CEDAW. For example, the 1994 RUDs do not address the controversial interpretations advanced by the official U.N. implementation committee after those RUDs were issued.

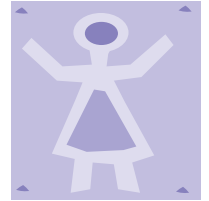
Among other things, that committee questioned the celebration of Mother's Day in a January 2000 report to Belarus:

The Committee is concerned by the continuing prevalence of sex-role stereotypes and by the reintroduction of such symbols as a Mother's Day and a Mother's Award, which it sees as encouraging women's traditional roles (Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Belarus, 31/01/2000, paragraph 361.)

And in a March 1999 report to China, it called for legalized prostitution:

The Committee is concerned that prostitution, which is often a result of poverty and economic deprivation, is illegal in China . . . The Committee recommends decriminalization of prostitution (Concluding Observations of the Committee on the Elimination of Discrimination Against Women: China, 03/02/99, paragraphs 288-289).

These are but two examples of the instances in which this committee has exploited CEDAW'S vague text to advance positions contrary to American law and sensibilities.



Nor does your recent draft resolution of ratification address these concerns. It does not, for example, address whether other interpretive bodies, whether foreign, international, or, indeed, domestic, could adopt similarly bizarre interpretations of CEDAW's vague text, or what deference, if any, these bodies would accord the official U.N. implementation committee. (As we have recently witnessed in the Pledge of Allegiance case, there are, regrettably, judges who will engage in aggressively counterintuitive interpretations of legal texts.) The implementation committee, moreover, has now begun "[t]he process of interpreting the substantive articles of the Convention" and to "formally . . . interpret the rights guaranteed in the Convention" (Fact Sheet No. 22, *Discrimination Against Women: The Convention And The Committee*, available at [www.unhcr.ch/html/menu6/2/fs22.html]).

Your draft resolution, however, does not address the effect of these formal interpretations on domestic and international law. These concerns remain, regardless of whether, in the words of your draft resolution, the implementation committee has the "authority to compel actions by State parties."

It is crucial, therefore, that we fully understand the implications of these rulings on parties that join CEDAW after they have been issued, as well as the consequences of any rulings that might issue after a state becomes party to the treaty. In addition, we must fully understand the numerous other issues raised by CEDAW, such as its implications on current U.S. constitutional and statutory law and areas of law traditionally regulated by the States. The complexity of this treaty raises many other important issues that are not addressed in your draft resolution, which we are examining as well.

This is not the first Administration, nor the first Senate, to recognize the magnitude of the issues raised by CEDAW. As you know, this treaty has been before the United States Senate for twenty-two years. During this time period, it has been before a Democratic Senate with a Democratic President (President Carter), a Republican Senate with a Republican President (President Reagan), a Democratic Senate with a Republican President (President Reagan), a Democratic Senate with another Republican President (President George H.W. Bush), a Democratic Senate with a Democratic President (President Clinton), and a Republican Senate with a Democratic President (President Clinton). In other words, regardless of which party controlled either the Senate or the Presidency, the Senate has declined to act on this treaty for twenty-two years. In this context, it would be imprudent to act with undue haste before we have had an opportunity to conduct a full and fair review of this treaty, particularly in light of the recent actions taken by the U.N. implementation committee (and the future actions that it has announced its intention to take).

As Secretary Powell explained in his July 8 letter to you, the Administration is in the process of conducting a review of CEDAW in order to determine the scope of the



additional RUDs that may be required to address these issues, and will share our views with you once our review is complete. The Administration is conducting this review thoroughly and expeditiously. Any vote at this time, however, would be premature, particularly in light of the more than thirty other treaties currently before the committee that are higher priorities for our national security and foreign policy. Accordingly, we respectfully request that you await completion of the

Administration's review before commencing a committee vote on CEDAW.

Should you decline to do so, we respectfully urge members of the committee to vote against sending CEDAW to the full Senate until our review is complete.

Thank you for your attention to this matter.

Sincerely,

Daniel J. Bryant,
Assistant Attorney General.

cc: The Honorable Jesse Helms, Ranking Minority Member,
The Honorable Richard Lugar.

X. ADDITIONAL VIEWS OF SENATORS HELMS, BROWNBACK, AND ENZI

This Foreign Relations Committee Report should not be relied on by any U.S. federal, state, or local authority, including courts, as Senate legislative history for the United Nations Convention on the Elimination of All Forms of Discrimination Against Women.

This Report is not reliable for the following reasons.

First, it does not reflect the views of the present Administration. The majority declined to honor requests from the Departments of State and Justice, and from Senator Helms, to defer action on the Convention until the Administration's views could be presented to the Committee.

Second, the draft resolution of ratification included in this Report is not supported by the Executive Branch. At the time of the Committee's action on this Report, the Executive Branch had informed the Committee that an indispensable review was underway of alternative measures necessary in any CEDAW resolution of ratification. Yet the majority declined to defer action on CEDAW until that review had been completed and the results made available to the Committee. As a result, the Committee has recommended ratification of a treaty without knowledge or identification of the protective measures necessary to avoid a potentially massive disruption of well-settled U.S. domestic law. Such an act is an unfortunate failure to fulfill Committee responsibilities to the Senate and the nation.

Third, this Report was approved without benefit of the testimony of a single Bush Administration witness. The majority declined to accept the Executive Branch witnesses offered for the June 13, 2002, hearing, and further declined to defer action on CEDAW to provide an opportunity for a Bush Administration witness to appear after that date. The Committee thus declined to consider the most relevant and expert testimony available on the subject.

Fourth, neither the draft resolution of ratification included in this Report nor the explanation of CEDAW's provisions reflects the state of relevant U.S. law on the date of the Committee's vote to report CEDAW. Eight years of U.S. federal and state jurisprudence were not taken into account in preparation of the draft resolution of ratification.

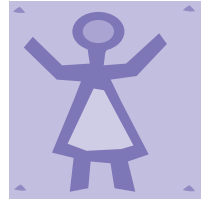
Precipitous action by the Senate, as recommended by the majority, will lead to unnecessary litigation in the United States of unknown proportions because the majority has no knowledge of the present vulnerability of U.S. domestic law to unintentional displacement. Even worse, the majority refused to wait for the Administration's legal review to be completed and presented, thus turning its back on the only mechanism available to predict the severity of CEDAW's disruptive impact and the protective measures necessary to avoid it.

When CEDAW was reported by the Committee in 1994, Senators Helms, Kassebaum, Brown, Coverdell, and Gregg filed Minority Views.

While recognizing the unfortunate prevalence of violence and human rights abuse against women around the world, and a shared desire to eliminate discrimination against women, the indicated Senators expressed concerns that CEDAW and treaties like it lead to dilution of moral suasion under girding existing covenants on fundamental human rights, which, to be effective, are necessarily restricted in scope. The Senators also registered concern over CEDAW as an example of a disturbing trend among executive branch officials and non-governmental organizations to devote resources, energy, and political will to the ratification of multilateral treaties rather than to promotion of the norms represented by those treaties in the countries where they are under attack.

In 2002, it is apparent that nothing has occurred since 1994 to justify changing the views described above. On the contrary much has occurred since 1994 to underscore the wisdom of those views.

Today, as in 1994, many Senators in the minority and several in the majority agree that nowhere are women better protected from discrimination than in the United States. CEDAW proponents often argue that U.S. ratification of CEDAW is essential to ensuring its protections outside our borders. This is a non sequitur, and an argument not borne out by experience with other multilateral agreements. Moreover, it





conflicts with the constitutional standard for Senate action, namely, whether the contemplated action is good for the American people.

Insofar as the level of our country's commitment to the protection of human rights abroad is concerned, we feel it is enough to note that as these lines were being drafted American forces were deployed in combat conditions in Afghanistan. It is through their personal heroism and sacrifice, not a multilateral treaty, that Afghan women have been relieved of the burden of an oppressive, anti-woman government whose equally lawless predecessor signed CEDAW in 1980.

CEDAW proponents who lump the United States with oppressive dictatorships which have not ratified this treaty rob themselves of credibility by ignoring the fact that in ratifying CEDAW our country would find itself in the company of regimes like North Korea. They and their ilk have embraced CEDAW as a fig leaf for many years.

CEDAW plainly represents a disturbing international trend exalting international law over constitutionally-based domestic law and local self-government. This trend gathered momentum during the Clinton Administration. It is illustrated by the Kyoto Protocol to the United Nations Framework Convention on Climate Change, the United Nations Convention on the Rights of the Child, and the Rome Statute Establishing a Permanent International Criminal Court. All of these instruments were opened for signature after the

Senate acted on CEDAW in 1994. The trend is in conflict with U.S. constitutional traditions of self-government. To undermine these traditions is to undermine the foundation of American federalism, which cost many years to establish and thousands of lives in a fratricidal civil war.

Ratification of CEDAW will help lawyers and other pro-abortion advocates reach the goal of enshrining unrestricted access to abortion in the United States. Recently a lawsuit entitled Center for Reproductive Law and Policy (CRLP) vs. Bush was filed in the United States District Court for the Southern District of New York (2001 U.S. Dist. LEXIS 10903). (N.B. In 2002, CRLP opposed the efforts of a Pennsylvania man to prevent abortion of the unborn child he fathered with a Pennsylvania woman.)

Although the New York case was dismissed, it illustrates pro-abortion strategy. Plaintiff CRLP stated in its complaint that "[i]n order to prepare for the eventuality that [Roe v. Wade] may be overruled by the United States Supreme Court and that, consequently, the United States Constitution no longer protects women's right to choose abortion, CRLP has worked and will continue to work to guarantee that the right to abortion be protected as an internationally recognized human right . . . [under] customary international law . . . Customary international law also preempts

inconsistent state statutes and policies (emphasis added). Thus, by working to establish the right of abortion as a human right in customary international law, CRLP fulfills its mission of protecting women's access to abortion [in the United States] from interference or prohibition by the States." (Complaint, paragraphs 76, 78).

Julia Ernst, a plaintiff in this case, has written about CEDAW: "Commentators are calling upon the United States judiciary to utilize international law as a guide to interpreting the U.S. Constitution (emphasis added), and domestic courts are increasingly taking international human rights law into account in their decisions. The United States should not deprive itself of the opportunity to participate in the formulation of these international legal principles. One of these opportunities entails participation in [CEDAW]." (emphasis added) (3 Mich. J. Gender & L.299, 317).

The CRLP case and views of one of its plaintiffs leave no doubt that despite assurances from CEDAW backers that the treaty is "neutral" on abortion, CEDAW proponents are not.

Abortion activists will work to use CEDAW to neutralize the democratic will of federal and state legislators. The treaty will also be used to erode other traditional prerogatives of the states by intruding in issues like marriage and child-rearing.

Ratification of CEDAW will invite meddling in all of these areas by the CEDAW-established compliance "Committee." The Committee, which is composed in part of gender activists sent by dictatorships which oppress women, has issued bizarre recommendations against Mother's Day in Belarus and in favor of legalization of prostitution in China. Using such recommendations, CEDAW backers will press federal and state judges to adopt completely unforeseen and unintended interpretations of the treaty in order to force changes in well-settled U.S. law and policy.

Finally, the minority opposes assumption by the United States of yet another financial burden on behalf of a growing United Nations bureaucracy.

The Senate should decline to proceed to consideration of CEDAW.

Jesse Helms. Sam Brownback. Michael B. Enzi.

XI. ADDITIONAL VIEWS OF SENATOR FRIST

I agree with my colleagues that there is no nation more committed to upholding the human dignity of women than the United States. And like my colleagues and the Administration, I am committed to furthering the rights of women both at home and abroad. But I cannot support ratification of this Treaty as reported by this Committee.





Many issues with respect to this Treaty remain unaddressed. Our Constitutional prerogative of Advice and Consent under Article II, section 2, is not only a right but a responsibility and I regret that we could not hear from the Administration on its concerns and recommendations before proceeding to its consideration in Committee.

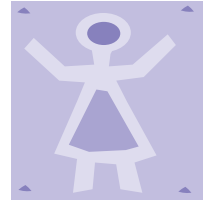
Like my colleagues, I am troubled by the vagueness of the text of this Treaty. Nor is there anything clear or predictive about the evolving opinions of the Committee on the Elimination Against Discrimination Against Women (the Convention Committee), the official U.N. body charged with this Convention's interpretation. I do not believe that it makes sense to dismiss lightly the weight of authority given to these interpretations.

As Senator Helms, my colleagues, and numerous legal scholars have pointed out, policy norms, interpreted by such official bodies, have increasingly entered the U.S. judicial system as customary international law. Some proponents of vaguely worded treaties have advanced the concept that modern interpretation of international law requires the incorporation of such interpretations into the U.S. legal system. Such a development would create an unwarranted loophole through which purported customary international law—such as pronouncements by official U.N. committees—would be held binding under U.S. domestic law with little or no scrutiny by our nation's lawmakers.

CEDAW supporters have claimed that the treaty, as interpreted by the CEDAW Committee, represents customary international law. While such a claim would be widely presumptive and premature, it cannot be ignored. As a general rule, customary international law is treated as having the same supremacy as federal statutes over conflicting state and municipal law in the U.S. legal system. Under the Supremacy Clause and the doctrine of preemption, if a conflict arises between state law or previously enacted federal statute and a treaty provision, the treaty will prevail.

I find troubling the notion that U.N. committees, unaccountable to the U.S. political system could be empowered to proscribe enforceable rules of law under the guise of customary international law that claim sovereignty over the laws of our elected officials. Such a proposition is antithetical to the U.S. Constitution and America's most cherished ideas of due process, separation of powers in government, and the guarantee that legislators will be held accountable through the elective process.

Furthermore, the text of the Convention itself purports to limit the Senate's constitutional right of Advice and Consent. Article 28, section 2 of the Convention states that "a reservation incompatible with the object and purpose of the present Convention shall not be permitted." (Emphasis added) The scope and parameters of this Article are not, to me, self-evident. I can only presume the interpretation of this



Article would be subject to the Convention Committee. In my opinion, this Article conflicts with the constitutional role of the Senate to provide Advice and Consent, which includes making reservations which this Body may deem necessary to make the Convention consistent with the laws of this nation. Indeed, for that matter, that power must encompass any reservation that falls within our constitutional authority to mandate.

I am not persuaded by the argument that we must ratify this Treaty because other nations have or have not ratified it. We must base our consent to this Treaty upon its merits or deficiencies. I would point out, however, that much of the world still lives in societies that do not honor basic democratic civil liberties. Many of the nations that have ratified this Convention continue to build records that catalogue some of the worst human rights violations ever committed against women.

It is my hope that the Senate will not proceed with consideration of this Treaty unless and until we have the benefit of the Administration's views and recommendations on how best to address these issues of fundamental importance.

Bill Frist.

XII. ADDITIONAL VIEWS OF SENATOR ALLEN

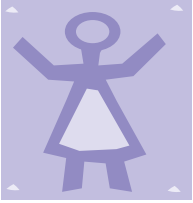
I am fully committed to ensuring that promotion of the rights of women is fully integrated into U.S. foreign and domestic policy and I support the general goal of eradicating discrimination against women in the U.S. and across the globe. However, I did not vote to send this treaty to the floor for full Senate consideration.

First, the President's senior cabinet members—the Secretary of State and the Attorney General—have requested more time to consider the Convention and to propose an appropriate ratification package containing reservations, understandings, and declarations. The Senate should honor that request.

The Constitutional role of the Senate in these matters is that of advice and consent, not initiation. The President has deferred his request for advice and consent until the Justice Department review is completed. The Senate should await that review before considering this Convention.

There need be no rush to ratification. There is no emergency. This Convention has been on the Committee calendar for 22 years.

Second, the vagueness of the text of the Convention, and the record of the official U.N. body that reviews and comments on the implementation of the Convention, raise a number of issues that must be addressed before the United States Senate provides its advice and consent.



I believe consideration of these issues is particularly necessary to determine what reservations, understandings and declarations may be required as part of the ratification process.

The Committee on the Elimination of Discrimination Against Women prepares reports and recommendations to State Parties. The existence of this body of reports should lead us to review both the Convention and the Committee's comments to understand the basis, practical effect, and any possible implications of the reports.

We should also examine those aspects of the Convention that address areas of law that, in the United States, have traditionally been left to the individual States.

For example, in a March 1999 report to China, the Committee called for legalized prostitution, saying: "The Committee is concerned that prostitution, which is often a result of poverty and economic deprivation, is illegal in China The Committee recommends decriminalization of prostitution."

If the Senate ratifies this Convention, the United States would subject itself to criticism and condemnation by this Committee, which is composed of representatives of countries that are signatories of the Convention.

- ◆ To provide a preview of what the United States may expect, I give you a brief list of member states and signatories of the Convention that, potentially, will sit in judgment on United States' practices and conditions concerning women:
- ◆ Afghanistan signed the Convention in 1980. Until the United States and allied forces recently liberated Afghanistan, its women were oppressed by a series of governments, denying them basic freedoms and education opportunities.
- ◆ The Peoples' Republic of China signed the Convention in 1980. It has an official policy of forced abortion and sterilizations for the women of the country who dare have more than one child.
- ◆ Cuba signed the Convention in 1980. In 1994 Castro murdered 41 women, girls and others who attempted to escape the tyrannical and repressive Castro regime aboard the tugboat 13 de Marzo.
- ◆ Saudi Arabia signed the Convention in 2000. Yet it treats its women as second-class citizens.
- ◆ These are not examples of enlightened thought. Indeed, our nation with its Constitutional foundation of freedom and opportunity for all her citizens—regardless of race, ethnicity, religion or gender—is the beacon of hope for the entire world. Our goal must be to lift the human rights of women, and indeed all our people to this standard, not lower the bar to that of repressive regimes.
- ◆ It is important that we fully understand the implications of the Committee, rulings on parties that join the Convention after they have been issued, as well as

the consequences of any ruling that might result after a nation becomes party to the Convention.

- ◆ In addition, we must fully understand the numerous other issues raised by the Convention, such as its implication on current U.S. constitutional and statutory law and areas of law traditionally the prerogatives of the people in the States.
- ◆ As indicated in a July 8, 2002 letter from Secretary Powell, a July 26, 2002 letter from the Assistant Attorney General, and a July 19, 2002 letter from Condoleezza Rice, the Assistant to the President for National Security Affairs, the Administration is conducting a thorough and expeditious review of this Convention. The vote to order CEDAW reported was premature, particularly in light of the more than thirty other treaties currently before the Foreign Relations Committee that are higher priorities for our national security and foreign policy.

George Allen.

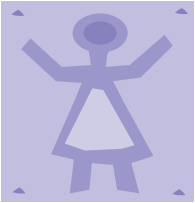


Appendix 3: Reservations, Understandings, and Declarations

1. Reservations

Private Conduct

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CEDAW: Treaty for the Rights of Women

“The Constitution and laws of the United States establish extensive protections against discrimination reaching all forms of governmental activity as well as significant areas of non-governmental activity. However individual privacy and freedom from governmental interference in private conduct are also recognized as among the fundamental values of our free and democratic society.

The United States understands that by its terms the Convention requires broad regulation of private conduct, in particular under Articles 2, 3, and 5. The United States does not accept any obligation under the Convention to enact legislation or to take any other action with respect to private conduct except as mandated by the Constitution of and law of the United States.”

Combat Assignments

“Under current U.S. law and practice women are permitted to volunteer for military service without restriction and women in fact serve in all U.S. armed services, including in combat positions. However the United States does not accept an obligation under the Convention to assign women to all military units and positions which may require engagement in direct combat.”

Comparable Worth

“U.S. law provides strong protections against gender discrimination in the area of remuneration, including the right to equal pay for equal work in jobs that are substantially similar. However, the United States does not accept any obligation under this Convention to enact legislation establishing the doctrine of comparable worth as that term is understood in U.S. practice.”

Paid Maternity Leave

“Current U.S. law contains substantial provisions for maternity leave in many employment situations but does not require paid maternity leave. Therefore the United States does not accept an obligation under Article 11(2)(b) to introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority, or social allowances.”

2. Understandings

Federal State Implementations

“The United States understands that this Convention shall be implemented by the Federal Government to the extent that it exercises jurisdiction over the matters

covered therein and otherwise by the state and local governments. To the extent that state and local governments exercise jurisdiction over such matters, the Federal Government shall as necessary take appropriate measures to ensure the fulfillment of this Convention.”

Freedom of Speech, Expression and Association

“The Constitution and laws of the United States contain extensive protections of individual freedom of speech, expression and association, Accordingly the United States does not accept any obligation under this Convention, in particular under Articles 5, 7,8 and 13, to restrict those rights, through the adoption of legislation or any other measures, to the extent that they are protected by the Constitution and laws of the United States.”

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Free Health Care Services

“The United States understands that Article 12 permits States Parties to determine which health care services are appropriate in connection with family planning, pregnancy, confinement and the post-natal period, as well as when the provision of free services is necessary and does not mandate the provision of particular services on a cost-free basis.”

3. Declarations

Non Self Executing

“The United States declares that, for purposes of its domestic law, the provisions of the Convention are non self executing.”

Dispute Settlement

“With reference to Article 29(2), the United States declares that it does not consider itself bound by the provisions of Article 29(1). The specific consent of the United States to the jurisdiction of the International Court of Justice concerning disputes over the interpretation or application of this Convention is required on a case-by-case basis.”

Appendix 4: Glossary of Terms

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CEDAW: Treaty for the Rights of Women

Civil and Political Rights: The rights to liberty and equality; including freedoms to worship, think and express oneself, vote, take part in political life, and have access to information. These are sometimes referred to as “first generation

rights,” because they have historically received more attention in the international human rights regime. They are also referred to as “negative rights,” because rather than involving the active attention of a State, they require that a State refrain from intervening.

Codification, Codify: The process of bringing customary international law into writing. The U.S. Congress would have to codify any of the terms of CEDAW via domestic legislation before it took effect.

Convention: Used synonymously with “treaty” and “covenant,” a convention is a binding agreement between states. When the U.N. General Assembly adopts a convention, it creates international norms and standards. Once adopted by the U.N. General Assembly, Member States can then promise to uphold a convention by ratifying it.

Convention on the Elimination of all Forms of Discrimination

Against Women: (adopted 1979; entered into force 1981) Often referred to as “the Women’s Convention,” CEDAW is the first legally binding international document prohibiting discrimination against women and obligating governments to take affirmative steps to advance the equality of women.

Committee: A term of parliamentary law, referring to a body of one or more persons appointed by a larger assembly or society. It is charged with investigating, considering, and/or taking action on specific matters, but only has those powers that have been conferred upon it by the constituent assembly. Article 17 of CEDAW created the Committee to monitor the implementation of the Convention.

Economic, Social, Cultural Rights: These rights concern the necessities of life including the right to preserve and develop one’s cultural identity, the right to social and economic security, and the right to food, shelter, and health care. These are sometimes referred to as “second generation rights,” because they have not traditionally received as much attention as civil and political rights. They are also referred to as “positive rights,” because they require the active intervention of a State. Deprivation of these rights often precludes women (and their children) from enjoying first generation rights, as they must focus on their own (and their children’s) welfare before worrying about claiming their civic rights.

Optional Protocol: Several human rights treaties have an Optional Protocol, whereby Member States can opt for additional provisions to a treaty. The Optional Protocol to CEDAW entered into force on December 22, 2000. It empowers individuals or groups to submit petitions directly to the Committee, once they have exhausted all available avenues of domestic redress. It also entitles the Committee to investigate grave or systematic violations of the Convention, but ratifying States may opt-out of this inquiry procedure. As of March 2004, 75 countries are signatories to the Optional Protocol, out of the 175 States party to CEDAW.

Ratification, Ratify: Once a Member State becomes a signatory to a treaty, its legislative body begins the process of ratification. This is a formal procedure by which a State becomes bound to a treaty. After acceptance, the country can begin incorporating its provisions into its domestic legislation.

Recommendation: A text, not binding upon the Member States, which provides only directives to be followed and measures to be taken. The CEDAW Committee makes recommendations in response to the country reports it receives and reviews.

Reservations: The exceptions that States make to a treaty, or the provisions they have not agreed to adhere to. These may relate to specific clauses of CEDAW, but may not undermine the fundamental meaning of the treaty.

Signing, Sign: The first step in ratification process; to sign a Declaration, Convention, or Covenant means to promise to abide by the principles in the document, and to honor its spirit, and to begin the process of ratification.

Treaty: A formal agreement between two or more States, signed by official representatives of each State, which defines their mutual duties and obligations. CEDAW is a treaty that represents a declared intention of the signatories to make or amend their internal laws to give effect to the treaty.



