

Obama: Ratify the Women's Convention Soon

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Nearly 30 years after President Jimmy Carter signed the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the United States remains the only democracy that refuses to ratify the most significant treaty guaranteeing gender equality. One hundred eighty-five countries, including over 90 percent of members of the United Nations, have ratified CEDAW.

U.S. opposition to ratification has been informed not simply by an objective analysis of how CEDAW's provisions might conflict with U.S. constitutional law. Rather, it reflects the ideological agenda and considerable clout of the religious right and the corporate establishment. Issues of gender equality raise some of the most profound divisions between liberals and conservatives. The right-wing agenda was born again in the Bush administration, which issued numerous directives limiting equality between the sexes. Bush targeted funding for family planning and packed the courts and his administration with anti-choice ideologues.

The parade of horrors trumpeted by ratification opponents includes predictions that it would force the United States to pass an Equal Rights Amendment (ERA). Opposition to the ERA in the 1980s was also grounded in religious fundamentalism. There are fears that ratification may lead to the legalization of same-sex marriage, the abolition of single-sex schools, and create a nation of androgynous children.

Much of the hysteria directed at ratification is based upon false assumptions. One opponent warned: "A messy divorce case shouldn't end up in the World Court ." This is a reference to the International Court of Justice, which does not even have jurisdiction over marital dissolution cases. An editorial in Hanover , Pennsylvania 's *The Evening Sun* predicted CEDAW backers will use the International Criminal Court as an enforcement tool. But, the International Criminal Court only has jurisdiction over war crimes, genocide and crimes against humanity.

Cecilia Royals of the National Institute of Womanhood said, "This treaty represents a battering ram against free and democratic societies, and particularly against women with traditional values." The *Weekly Standard* charged the treaty "mandates complete sex equality in the military, the overthrow of market wages and implementation of 'comparable-worth' pay scales, rigid gender quotas, abortion on demand, and federally mandated child care." Many opposed to ratification seek to protect the large corporations - the backbone of U.S. capitalism - from having to enact equality provisions that would imperil the bottom line.

Although President Carter signed CEDAW in 1980, the treaty has never been sent to the full U.S. Senate for its advice and consent to ratification. When the president signs a treaty, we are forbidden from taking action inconsistent with the object and purpose of the treaty. But

we don't become a party, with all the treaty obligations, until the president ratifies the treaty with the advice and consent of the Senate.

After Ronald Reagan became president and the Republicans gained control of the Senate, CEDAW languished in the Senate Foreign Relations Committee. Neither Reagan nor President George H.W. Bush sought ratification. Reagan made his contempt for CEDAW perfectly clear when he said that once adopted, the treaty would lead to "sex and sexual differences treated as casually and amorally as dogs and other beasts treat them."

In 1994, at the behest of the Clinton administration, the Senate Foreign Relations Committee held hearings and recommended full Senate approval of CEDAW. Yet Committee chairman Jesse Helms continued to hold CEDAW hostage by keeping it from a vote in the Senate. In response to a last-minute campaign against ratification fueled by radio talk shows, a "hold" was placed on the treaty, preventing the full Senate from voting on it.

Five years later, 10 female members of the House of Representatives, including Nancy Pelosi, delivered to a hearing of the Senate Foreign Relations Committee (the Committee) a letter supporting ratification, signed by 100 members of Congress. Jesse Helms scolded them with, "Now you please be a lady," before ordering uniformed officers to "[e]scort them out."

When the Committee recommended ratification in 1994, it attached proposed reservations, understandings, and declarations (RUDS) to its recommendation, which purported to qualify the terms of ratification. These qualifications, however, would effectively eviscerate the promise of equality enshrined in the treaty. For example, ratification opponents insist that the First Amendment, particularly freedom of religion, trumps a woman's right to privacy. CEDAW prohibits discrimination by private as well as public entities. States have defined issues of family planning, childcare, marriage, and domestic violence as "private."

CEDAW, in effect, mandates that states parties take affirmative action to ensure equality for women in the areas of employment, education, health care and family planning, economic, political, cultural, social, and legal relations. CEDAW specifies that temporary measures taken to achieve equality will not constitute discrimination. The U.S. reservation makes clear that notwithstanding the prescriptions of CEDAW to eliminate gender discrimination by any "person, organization or enterprise," ratification would not mean that the United States would have to ensure that private entities regulate private conduct.

Jesse Helms added an understanding to ratification stating that CEDAW does not create a right to abortion, and that abortion should not be used as a method of family planning. This understanding is unnecessary because CEDAW does not even mention abortion. Opposition to reproductive rights has been a hot button issue for the right-wing evangelicals.

Other reservations specify that the United States undertakes no obligation to enact statutes requiring comparable worth or paid maternity leave. Full-time, year-round, wage-earning American women now earn an average of 75 cents for every dollar earned by men in similar jobs. Women in the United States only enjoy the right to short, unpaid maternity leave, and they can be fired for being late due to pregnancy or maternity-related illness. Women in Canada, Europe and Cuba enjoy greater wage equality and paid maternity rights than women in the United States.

The recommended RUDs purport to ensure that ratification of CEDAW would not require that

the United States adopt greater protections than those afforded under the U.S. Constitution. Yet U.S. equal protection jurisprudence falls short of safeguards women would have under CEDAW. Classifications based on race require strict scrutiny and mandate that the government demonstrate a compelling government interest to support them. But classifications based on gender require only intermediate or skeptical scrutiny. Instead of a compelling government interest, there need only be a substantial relationship between the interest and the classification. The Secretary of State even indicated in a 1994 letter to the Senate Foreign Relations Committee that the United States would continue to follow the [lesser] intermediate scrutiny standard after ratification, notwithstanding the treaty's defining principle prohibiting gender discrimination.

Moreover, CEDAW 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 women's human rights and fundamental freedoms. Yet, U.S. constitutional jurisprudence requires that there be proof of both a discriminatory impact *and* a discriminatory purpose in order to establish an equal protection violation.

It has been U.S. policy to eschew limitations on speech that reinforce the inferiority of women. Indeed, significant inequality between the sexes persists in the United States in employment and education, and in the economic, political, cultural, and criminal system. Women in the United States do not enjoy guarantees of social welfare rights such as food, clothing, housing, health care and decent working conditions. The refusal to enshrine these rights in U.S. law is the reason our government has also failed to ratify the International Covenant on Economic Social and Cultural Rights (ICESCR). See *Obama Spells New Hope for Human Rights* (<http://marjoriecohn.com/2008/11/obama-spells-new-hope-for-human-rights.html>).

CEDAW, like the three human rights treaties the United States has ratified - the International Convention on the Elimination of All Forms of Racial Discrimination, the Torture Convention, and the International Covenant on Civil and Political Rights - contains a declaration that the treaty is non-self-executing, which means that it requires implementing legislation to make it effective. Scholars including Professor Louis Henkin maintain that the Senate's general practice of appending non-self-executing declarations to ratification violates the Supremacy Clause, which mandates that treaties shall be the supreme law of the land. The opposition to ratification stems not only from the belief that the United States should not ratify any treaty with provisions inconsistent with U.S. constitutional jurisprudence; it also demonstrates a refusal to require our government to change or enact laws that comport with the obligations we would undertake by ratifying a treaty.

Finally, there is a declaration that the United States will only submit on a case-by-case basis to the jurisdiction of the International Court of Justice to resolve disputes about the interpretation of CEDAW. According to the Vienna Convention on the Law of Treaties, RUDs which are incompatible with the object and purpose of a treaty are void. The RUDs proposed by the Senate committee are not only incompatible with the mandate of equality in CEDAW, they shun the primary object of the treaty: non-discrimination against women. Professor Cherif Bassiouni has said: "The Senate's practice of de facto rewriting treaties, through reservations, declarations, understandings, and provisos, leaves the international credibility of the United States shaken and its reliability as a treaty-negotiating partner with foreign countries in doubt."

Yet, in spite of the RUDs, CEDAW continues to languish in Committee. Early in 2002,

President George W. Bush called CEDAW “generally desirable” and said it “should be approved.” Yet once the right-wing pressure geared up, Bush backed down. Five months later and shortly before the Senate Foreign Relations Committee voted 12-7 to approve the treaty, Secretary of State Colin Powell reported that the treaty was “complex” and “vague.” Attorney General John Ashcroft, no champion of women’s rights, was charged with “reviewing” CEDAW. Bush never sent CEDAW to the Senate for advice and consent to ratification.

More than 120 organizations, including AARP, the League of Women Voters, Amnesty International, and the World Federalist Association, support ratification. The city of San Francisco voted in 1998 to adopt the treaty, and its provisions are in force there. City departments have incorporated the treaty into hiring practices as well as budgets for juvenile rehabilitation programs and public transportation.

President-elect Barack Obama has said he supports ratification of CEDAW as well as the Equal Rights Amendment. He has promised increased enforcement by his Office of Civil Rights to ensure effective protection from sex discrimination. President-elect Obama should not hesitate to send CEDAW to the Senate for advice and consent to ratification, without the proposed RUDs that would eviscerate its protections.

It took nearly 150 years for women to gain the right to vote in this country. There is no principled reason our government should resist full equality for women. The United States must climb on board and ratify the Convention on the Elimination of All Forms of Discrimination Against Women.

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