



**NOW LEGAL DEFENSE
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TESTIMONY OF NOW LEGAL DEFENSE AND EDUCATION FUND IN SUPPORT OF SENATE RATIFICATION OF THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

We thank you for holding a hearing on the Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”). As you are well aware, the struggle for human rights and equality for women has yet to result in full equality in this country and abroad, and the struggle continues today. United States ratification of this important international treaty will reiterate the commitment of the United States to the human rights and full equality of women. NOW Legal Defense and Education Fund strongly urges you to ratify CEDAW and to reject the Administration’s proposed Reservations, Understandings, and Declarations.

NOW Legal Defense and Education Fund is a leading national non-profit civil rights organization that performs a broad range of legal and educational services to define and defend women’s rights. NOW Legal Defense was founded as an independent organization in 1970 by leaders of the National Organization for Women. NOW Legal Defense’s goals include United States recognition of women’s human rights and equality.

I. Ratification of CEDAW Will Ensure that the United States Continues to Play a Leadership Role in Human Rights

CEDAW is the only international agreement to comprehensively address the human rights and equality of women. The United States was instrumental in drafting CEDAW, which was adopted by the United Nations General Assembly on December 18, 1979 and entered into force in 1981. President Jimmy Carter signed CEDAW on behalf of the United States on July 17, 1980, and sent it to the Senate Foreign Relations Committee in November 1980, over twenty years ago. Despite the overwhelming domestic support for CEDAW ratification, and despite the fact that the United States publicly stated its intention in 1995 at the Fourth World Conference on Women to ratify CEDAW by the year 2000, the Senate has not yet taken action to ratify CEDAW. Since its adoption, CEDAW has been ratified by 169 countries. The United States remains the only industrialized nation not to have ratified CEDAW and, in failing to ratify CEDAW, is in the company of Iran, Afghanistan, and Somalia.

The world looks to the United States for leadership in the global movement to promote freedom and human rights. That movement undoubtedly includes the struggle for the human rights and equality of women, as recent events in Afghanistan have made clear. First Lady Laura

Bush recently emphasized the importance of United States efforts to promote women's human rights and equality. In an address to the United Nations Commission on the Status of Women on International Women's Day, she said:

[W]e affirm our mission to protect human rights for women in Afghanistan and around the world. . . . Our dedication to respecting and protecting women's rights in all countries must continue if we are to achieve a peaceful, prosperous, and stable world. . . . Human dignity, private property, free speech, equal justice, education, and health care – these rights must be guaranteed throughout the world. Together, the United States, the United Nations and our allies will prove that the forces of terror can't stop the momentum of freedom.¹

President Bush also has stated that “the world must know” that the United States “will always be the world's leader in support of human rights.”² Yet, failure to ratify CEDAW undermines the United States' credibility and influence in the human rights arena. In order to ensure that the world continues to view United States as a leader in human rights, the Senate must ratify CEDAW.

In addition to sending a message that the United States supports women's human rights and equality, ratification of CEDAW will enable the United States to play a role in shaping international human rights norms relating to women's equality. For instance, only States Parties to CEDAW may elect members to and influence the agenda of the Committee on the Elimination of Discrimination against Women charged with encouraging implementation of CEDAW.³ Since the United States has not yet ratified CEDAW, it cannot yet participate in that process and in the discussions of how to protect women around the world.

II. Ratification of CEDAW Will Reaffirm the United States' Commitment to Women's Human Rights and Equality

Perhaps the most important reason to ratify CEDAW is to reaffirm the nation's commitment to women's equality and human rights in the United States. Although the United States has enacted a number of laws to protect women from many forms of discrimination and oppression – including the Nineteenth Amendment, Title VII of the Civil Rights Act of 1964, Title IX of the Education Reform Act of 1972, the Equal Pay Act, the Pregnancy Discrimination Act, the Family and Medical Leave Act, and the Violence Against Women Act – as set out below, discrimination against women persists in many sectors. Ratification of CEDAW will reassure the nation that the United States is still committed to working toward eradicating each of those forms of discrimination and achieving equality for women.

¹ Remarks by Laura Bush to the United Nations Commission on the Status of Women, Mar. 8, 2002, available at <http://www.whitehouse.gov/newsspeeches/speeches/120020308.html>; *see also* Radio Address by Laura Bush, Nov. 17, 2001, available at <http://www.whitehouse.gov/news/releases/2001/11/20011117.html> (“Fighting brutality against women and children is not the expression of a specific culture; it is the acceptance of our common humanity – a commitment shared by people of good will on every continent. . . . The fight against terrorism is also a fight for the rights and dignity of women.”).

² Remarks by President George W. Bush in Recognition of Cuba Independence Day, May 18, 2001, available at <http://www.whitehouse.gov/news/releases/2001/05/20010518-7.html>.

³ *See* CEDAW, art. 17.

A. Eradicating Violence Against Women

One form of discrimination against women that CEDAW addresses is violence against women. CEDAW calls for states to undertake efforts to eliminate all forms of discrimination against women, and Article 1 of the treaty defines “discrimination against women” as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.” As the Committee on the Elimination of Discrimination against Women has recognized, “[g]ender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention.”⁴

In the United States, forms of violence that disproportionately affect women, such as domestic violence, sexual assault, stalking and sexual harassment, are major contributing factors in women’s continued lower socio-economic status. As many as 60% of women receiving welfare have been victims of domestic violence as adults, and as many as 30% reported abuse within the last year. Female victims of domestic violence and sexual assault are more likely than men to be homeless and unemployed, and their physical and mental health are more likely to be threatened. CEDAW therefore encourages States to take measures to eliminate violence against women so that women can equally enjoy basic human rights and freedoms.

Ratifying CEDAW will reinforce the United States’ commitment to eliminating violence against women. The United States currently recognizes and punishes the perpetration of domestic violence, rape, sexual assault, stalking, female genital mutilation, sexual harassment and the trafficking in and prostitution of women and girls. Civil and criminal remedies are available to women who have become victims of these crimes, and funds and resources have been made available to aid in the investigation and prosecution of perpetrators as well as the physical, material and emotional rehabilitation of victims. In other words, CEDAW’s obligation that State Parties take appropriate measures to combat gender-based violence is consistent with United States law and policy.

Nevertheless, the fact remains that women in the United States are still disproportionately subjected to violence, both in their own homes and in the public sphere. Although the United States has made great strides in addressing gender-based violence and ensuring women’s safety, there is still much to be done. According to the Bureau of Justice Statistics, each year approximately 1.3 million women are victims of domestic violence.⁵ Another 1 million women are stalked annually in the United States,⁶ and one in every six women have been victims of attempted or completed rape.⁷ Overall, a woman in the United States is ten times more likely

⁴ See Committee on the Elimination of Discrimination against Women, Gen’l Rec. No. 19, at ¶ 7 (11th Sess. 1992).

⁵ United States Dept. of Justice, Office of Justice Programs, *Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women*, Research Report (Nov. 2000) at iv.

⁶ *Id.*

⁷ *Id.* at 13.

than a man to be raped,⁸ and she is more than twice as likely as a man to be injured during a rape or physical assault.⁹ These statistics point to the stark reality that despite our best efforts, women are still the victims of violence simply because they are women. Ratification of CEDAW will send a message that the United States will continue to fight against gender-based violence.

B. Promoting Economic Justice for Women

Ratification of CEDAW will also signal the United States' commitment to elevating women from poverty and achieving their economic equality. For instance, Article 11(1) of CEDAW requires States Parties to "take all appropriate measures to eliminate discrimination against women in the field of employment," including by ensuring "the right to the same employment opportunities," "the right to receive vocational training," and "the right to equal remuneration." While United States law prohibits employment and other economic discrimination against women, the fact remains that women in the United States are still denied the economic opportunities available to men and still make up the vast majority of this nation's poor. Women still make only \$0.74 for every dollar paid to a man for the same work.¹⁰ This is the case despite the fact that a majority of college graduates are women.¹¹ For women who have earned high school, but not college, degrees, the inequities in pay between men and women – with women making an average of \$9,000 less annually than men with comparable educations – contribute significantly to the number of women who live below the poverty level.¹² Thus, despite advancements in the law, the United States must continue to work to end economic discrimination against women.

Effective implementation of CEDAW's principles would improve the economic status of women in the United States. For instance, CEDAW's emphasis on increasing opportunities for women to receive education and job training in occupations that have traditionally been filled by men would help to move women from lower paying work sectors traditionally associated with women to higher paying skilled positions. Women comprise the majority of low-wage workers in this country, making up 59% of workers earning no more than \$7.91 an hour in 1998.¹³ By contrast, nontraditional jobs in those occupations in which women comprise 25% or less of total workers pay 20% to 30% more on average than traditionally female occupations. Nontraditional employment offers women high wages, good benefits and opportunities for advancement, and provides an avenue for many low-income women to move up and out of poverty. Thus job training and education will lead to greater employment opportunities – opportunities that are not predominantly made available, as they are currently, to individuals of one gender and not the other.

⁸ *Id.* at 43.

⁹ *Id.* at 49.

¹⁰ See State Action.org, *Solutions for the New Economy: Building Blocks for a Strong and Healthy Economy, Families and Communities*: www.cfpa.org/programs/women/challenge2000/report/prevdisc.cfm

¹¹ *Id.*

¹² U.S. Dep't. of Labor, Women's Bureau, "20 Facts on Women Workers" (Mar. 2000), available at http://www.dol.gov/dol/wb/public/wb_pubs/20fact00.htm.

¹³ Marlene Kim, *Women Paid Low Wages: Who They Are and Where They Work*, MONTHLY LABOR REV., Sept. 2000, at 26, available at <http://www.bls.gov/opub/mlr/2000/09/art3full.pdf>.

The United States has repeatedly demonstrated its commitment to equal opportunity for men and women in the workplace and in the nation's economy in general, but more needs to be done. Ratifying CEDAW will show the nation and the world that the United States stands behind its commitment and recognizes that raising the standard of living among women is an on-going challenge, one in which the United States plans to be a world leader.

C. Promoting Access to Support Services, Including Child Care

CEDAW also addresses the pressing need for working women to have access to reliable and affordable child care. Women make up a significant portion of the workforce in the United States, and they also remain the primary caregivers in their families. Three-quarters of all women with children between the ages of 6 and 17 work outside the home.¹⁴ Women with preschool age children have also entered the workforce in dramatic numbers; by 1996, 62% of working women had young children – a rate five times higher than in 1947.¹⁵ It is inevitable that work and family commitments will come into conflict; yet it is clearly within our nation's best interest that women be given the support and resources they need to be effective and productive in their essential roles as workers, professionals and mothers. Article 11(2)(c) of CEDAW suggests that in order to achieve this interest, states parties to the convention should “encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life.” Such “supporting social services” may include childcare. The health of our economy and the health of our families depend on the commitment to assist women to become the best workers and professionals and mothers that they can be. Ratification of CEDAW will demonstrate this commitment.

D. Promoting Women's Equality in Other Areas

CEDAW encourages States Parties to take measures to improve women's lives and ensure their equality in a number of other areas, including health care,¹⁶ education,¹⁷ and politics,¹⁸ among others. Again, the United States should ratify CEDAW to demonstrate its dedication to promoting women's equality and human rights in all areas.

III. There is Widespread Domestic Support for Ratification of CEDAW

There is widespread domestic support for ratification of CEDAW. Sixteen states and dozens of cities and counties have passed resolutions urging the United States to ratify CEDAW. Over 120 organizations have similarly called for ratification. In 1993, 68 United States Senators sent a letter to President Clinton in support of CEDAW.

¹⁴ Committee on Ways and Means, U.S. House of Representatives, *1998 Green Book Background Material and Data on Programs within the Jurisdiction of the Committee of Ways and Means*, 105th Congress, 2d Sess., at 660 (May 19, 1998).

¹⁵ Committee on Ways and Means, U.S. House of Representatives, *1998 Green Book Background Material and Data on Programs within the Jurisdiction of the Committee on Ways and Means*, 105th Congress, 2d Sess., at 660 (April 1997).

¹⁶ *see* CEDAW art. 12.

¹⁷ *see* CEDAW arts. 5, 10-11, 13-14.

¹⁸ *see* CEDAW arts. 7-9.

Enthusiasm for CEDAW is so strong that a number of cities and counties are undertaking innovative efforts to implement CEDAW locally. For instance, in April 1998, San Francisco enacted a local ordinance designed to implement the principles of CEDAW in the city. The San Francisco CEDAW ordinance commits the city to “work towards integrating gender equity and human rights principles into all of its operations, including policy, program and budgetary decision-making.”¹⁹ To do so, the ordinance sets specific programmatic goals in the areas of economic development, violence against women and girls, and health care. It also requires selected city departments, programs, and other entities to “undergo a gender analysis” and to “develop an Action Plan” containing “specific recommendations on how [each entity] will correct any identified deficiencies and integrated human rights principles and the local principles of CEDAW into its operations.”²⁰ The San Francisco CEDAW ordinance compliments local, state, and federal anti-discrimination laws by proactively promoting women’s human rights and taking measures to prevent discrimination before it occurs. It recognizes that women’s human rights are advanced not only by prohibitions on discrimination but also by taking women’s needs and concerns into account at all levels of decision-making. Similar efforts to implement CEDAW locally are also underway in New York City, Los Angeles, Seattle, Chicago, Boston, Palo Alto, Santa Cruz County, and Santa Clara.

Federal ratification of CEDAW will encourage these innovative local efforts to promote women’s equality and human rights, efforts which provide a roadmap for future positive initiatives both here and abroad.

IV. The United States Should Ratify CEDAW Without Qualification and Should Reject Most of the Administration’s Proposed Reservations, Declarations and Understandings

The substantive provisions of CEDAW are 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.

We are deeply troubled, however, by the reservations, understandings, and declarations (“RUDs”) proposed by the Administration. We believe that only one understanding, that relating to limitations on free speech, expression and association, is advisable. The remaining RUDs, eight in number, are all designed to support the Administration’s view that this treaty should not, in any way, change, or commit us to change, anything in United States law or practice, now or in the future. This approach is troubling as there are several areas where the United States is not in compliance and lags behind much of the industrial world in guaranteeing full equality to women. The Administration appears to have sought to identify such areas and then, by its RUDs, to preclude *any* obligation to work to improve the record of the United States in these areas. At a minimum, the Administration should commit publicly, and on the record, to seek improvement of its performance in each area, rather than seek to preclude all change through the use of RUDs.

We are very disappointed to observe that the qualifications proposed by the Administration reflect the same three principles as did the qualifications attached to the

¹⁹ San Fran. Admin. Code, § 12K.4(a) (amended Dec. 2000).

²⁰ *Id.* § 12K.4(b).

Convention on the Elimination of All Forms of Racial Discrimination (the “Race Convention”) and as did those attached by the previous Administration to the International Covenant on Civil and Political Rights (the “ICCPR”). Each of these principles is misguided.

The first principle – that the United States will undertake to do only what it is already doing – is incompatible with the object and purpose of the treaty. The purpose of treaties generally is to undertake new obligations or to make a commitment to the international community to adhere to existing obligations. The mere fact that a treaty establishes standards to which the United States does not currently adhere is not sufficient reason for a reservation. A specific reservation should be added if a particular treaty provision is found to be unacceptable. But there should not be a wholesale rejection of change. If the United States ratifies CEDAW subject to broad limitations that imply a lack of political commitment to observe international standards, its actions will rightly be decried by the international community. It will suggest that the United States views these international norms as being applicable only in other countries. In fact, there has been just such a reaction by other countries in regard to the RUDs the United States attached to the ICCPR – at least 10 countries have filed objections with the United Nations.

The second principle – declaring the articles of CEDAW not to be self-executing – is both constitutionally unnecessary and inconsistent with the spirit of Article 6 of the Constitution as the framers conceived it. There is no reason for insisting that neither the Executive nor the courts should give effect to a treaty until Congress adopts legislation. Adoption of this declaration would undermine one of the principal reasons why the Constitution made treaties the law of the land and gave the President and the Senate the power to make such treaties. While some articles of CEDAW may require Congress to pass appropriate implementing legislation, others do not. Determination of which provisions are, and which are not, self-executing should be made article by article after ratification and by each branch of government for purposes within its responsibility.

The third principle, reflected in the “states’ rights understanding,” is also unnecessary and undermines the full implications of the treaty. There are few matters covered by the Constitution that are subject exclusively to state jurisdiction. Under the Fourteenth Amendment and other Constitutional provisions, these matters are subject to the treaty and legislative powers of Congress and the jurisdiction of federal courts. If the intention is to clarify that the obligations of CEDAW may in some cases be implemented by the states, the Administration should simply say so; it requires no declaration upon ratification, and to make such a declaration only causes confusion.

Overall, the Administration’s qualifying language applies one set of rules to the United States and another set of rules to the rest of the world. No other nations, including our closest allies, have taken this view. We believe it is wrong, and undermines the basic purpose of the treaty. Other countries, including our allies, will continue to view ratification in this manner as hypocritical. They will see it as an attempt by the United States to obtain the benefit of being a party to the treaty without undertaking the obligations that accompany that status.

Furthermore, we are concerned that United States ratification subject to the principle of “no domestic application” may be imitated cynically by other states, which seek the diplomatic benefits of ratification but cling to the view that adherence to international human rights standards violates their sovereignty. The universal application of human rights is a matter of intense struggle in the world today. Many nations seek to excuse their denial of these rights under the guise of cultural relativity. The United States, which has long been a leader in calling for the universal application of human rights (rights which in many instances are modeled on those first recognized in the United States), cannot insist that other nations respect human rights as the universal inheritance of every person while refusing to grant those rights to its own citizens.

V. Conclusion

In sum, NOW Legal Defense strongly urges the United States to ratify CEDAW (1) to bolster the United States’ world leadership role in human rights, (2) to reaffirm the nation’s commitment to women’s human rights and equality, and (3) to recognize and encourage the widespread local support for CEDAW. NOW Legal Defense further urges the United States to reject most of the Administration’s proposed RUDs as unnecessary and inconsistent with the spirit of CEDAW.