

Legal Issues Regarding Ratification of CEDAW and CRC

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Overview of CRC

- Pres. Clinton signed on February 16, 1995 but it has not been ratified.
- The US has signed and ratified both the Optional Protocol on the Involvement of Children in Armed Conflict and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography under the CRC

Common Objections

- No death penalty for minors* (*Roper v. Simmons*)
- The CRC would become “Supreme Law” of the U.S.
- *Under the Supremacy Clause of the U.S. Constitution, no treaty can override the Constitution. In addition, the CRC is not a “self-executing treaty”- it cannot be automatically implemented without legislative action. As with any treaty, each U.S. state would be responsible for developing and executing its own legislation. *RUDs*

Common Objections

- The CRC undermines the primacy of the parent-child relationship (also a concern for CEDAW)
- *The CRC recognizes the family “as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children...”, and acknowledges “that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love, and understanding.” (Preamble to the CRC) See also Articles 3, 5, 7-10, 14, 18, 22, and 27.*

Common Objections

- Ratification would allow the U.N. to dictate how parents should raise their children
- *Under the Convention, parental responsibility is protected from government interference. Article 5 states that Governments “should respect the rights, responsibilities, and duties of parents” to raise their children. The CRC grants no authority to the UN to control or police U.S. policies for children. There is no language in the CRC that dictates the manner in which parents are to raise and instruct their children. Ratification of the Convention would not prevent parents from homeschooling their children.*

Common Objections

- The CRC views children as autonomous agents who are capable, in all areas, of making adult decisions and dealing with adult situations
- *The framers of the CRC understood that children's ability to exercise certain rights is dependent upon their age and maturity and influenced by their culture, environment, and life experiences. The Convention encourages parents to deal with rights issues with their children "...in a manner consistent with the evolving capacities of the child." (Articles 5 and 14) The CRC does not give children all of the same rights accorded to adults, such as the right to vote and unrestricted freedom to make independent decisions.*

Common Objections

- The CRC gives children the right to sue their parents
- *The CRC does not give children the “right” to sue their parents. Any legal action brought by children against their parents must be based on existing federal or state laws, not on provisions contained in the CRC. Currently, children in the U.S. (through a legally-appointed guardian) are allowed to bring legal action against their parents only for injuries sustained from physical abuse or gross neglect. Provisions in the CRC regarding a child’s right to legal assistance pertain only to children who have been accused of committing a crime and subsequently arrested, detained, or imprisoned for such violation of the law. (Articles 37 and 40)*

Common Objections

- Ratification will encourage children to have abortions
- *The CRC maintains no explicit position on family planning and abortion issues and does not define when childhood begins. Ratifying countries remain responsible for forming public policy on these issues through their own national legislative and judicial processes. Article 6 of the CRC provides for a child's right to privacy. Opponents contend that this right would allow children to have abortions without securing parental consent. However, this provision was included in the CRC to protect children from governmental abuses. Articles 5 and 14 reflect the Convention's respect for parental guidance and responsibility in raising their children and helping them to learn how to exercise their rights in an appropriate manner.*

Common Objections

- The CRC allows children to participate in any religion of their choosing
- *The Convention grants children the right to practice their religion free from government interference. (Article 14) The CRC supports the right of children to examine and ask questions about their beliefs but also specifically recognizes the rights and responsibilities of parents to guide their children in these matters. The Holy See and many countries with strong religious traditions have ratified the CRC.*

Common Objections

- Ratification will allow children to join gangs and racist organizations. Parents will not be able to oversee children's interactions with others
- *The CRC does not give children the right to join gangs, cults, or racist organizations but the right to peacefully assemble. (Article 15) The First Amendment of the U.S. Constitution already guarantees this right. The Convention does not usurp parents' authority to prevent their children from associating with persons of "dubious" character, such as pedophiles, gang members, etc.*

Common Objections

- The CRC gives children “unrestricted” rights to access any information they want, including pornography
- *There is no language in the Convention that gives children the right to “unlimited” freedom of information, including access to pornography and other obscene materials. Current U.S. laws protect children from exposure to inappropriate materials, such as the Children’s Internet Protection Act of 2000 and the Telecommunications Act of 1996.*

Overview of CEDAW

- Pres. Carter signed on July 17, 1980 (currently the only developed nation that has not ratified CEDAW)
- “...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 1

Common Objections

- Ratification of CEDAW would give too much power to the international community and supersede U.S. laws
- *Countries can express “RUDs” in cases where there are discrepancies between the international convention or treaty and domestic law. For the most part, U.S. law complies with the requirements of the Convention and the Convention is compatible with the principles of the U.S. Constitution. And, where any differences do exist, the Convention calls for appropriate measures to be taken to progressively promote the principle of nondiscrimination. CEDAW grants no enforcement authority to the United Nations.*

Common Objections

- Ratifying CEDAW would cause a dramatic increase in lawsuits by individuals seeking to enforce it
- *The Senate would not authorize any lawsuit not already authorized by U.S. law. Full implementation of CEDAW's standards over time could increase U.S. protections against discrimination, but this would require separate action by Congress and the Administration subject to U.S. checks and balances and consistent with all U.S. constitutional protections.*

Common Objections

- CEDAW's definition of "discrimination" is defined too broadly and would cause an increase in frivolous lawsuits
- *U.S. law already governs discrimination in private and public employment, prohibiting policies and practices that unintentionally burden women greater than men. Regardless, claims in the U.S. related to sex discrimination are not subjected to the same "strict scrutiny" standards applied to claims of race discrimination. Thus, full legislative implementation of CEDAW could help to rectify these discrepancies in U.S. law over time. Because there has been no flurry of frivolous lawsuits since U.S. ratification of the UN Convention to Eliminate All Forms of Racial Discrimination (CERD), there is no reason to expect them upon U.S. ratification of CEDAW either.*

Common Objections

- CEDAW will destroy the traditional family structure in the U.S. by redefining “family” and the respective roles of men and women
- *Both CEDAW and the U.S. Constitution recognize the restraints of any governing authority to interfere with an individual's most basic decisions regarding family. (Article 5 and 16) CEDAW states that “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 [the following rights] on a basis of equality of men and women.” How best to implement this obligation would be considered by the U.S. authorities consistent with the protections of the U.S. constitution.*

Common Objections

- CEDAW may discourage or eliminate single-sex schools and/or force local schools to “gender neutralize” school textbooks and programs
- *CEDAW does not require the prohibition of single-sex education, but, does encourage States Parties to support co-education as well as other types of education which may achieve the aim of educational equality. (Article 10) This language is particularly meant to address the needs of many countries which, unlike the U.S., have yet to develop educational programs which are accessible to both young girls and boys. In terms of its application to the U.S., CEDAW would encourage the development of equal educational material, whether taught in single-sex or mixed schools, but it does not prohibit single sex schools.*

Common Objections

- CEDAW supports abortion through its promotion of access to “family planning”
- *CEDAW does not address the matter of abortion and, according to the U.S. State Department is "abortion neutral." Many countries in which abortion is illegal--such as Ireland, Burkina Faso and Rwanda--have ratified CEDAW. (Article 10(b))*

Common Objections

- U.S. ratification of CEDAW would be used to sanction same-sex marriages
- *The Convention makes clear that it is aimed only at discrimination that is directed specifically against women. A same-sex marriage claim would include a charge that both men and women who want to marry individuals of their own sex are being discriminated against. There is no provision in the Convention that would compel the U.S. Congress to pass same-sex marriage laws in order to comply. (Article 16)*

Common Objections

- Ratification of CEDAW will force women to be sent into armed ground combat.
- *CEDAW does not require countries to send women into combat. There is no reference in the Convention to women in the military or women in combat. In addition, the 1997 Convention 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*

Resources

- <http://www.unhchr.ch/html/menu3/b/k2crc.htm>
- <http://childrightscampaign.org/crcindex.php>
- <http://un.org/womenwatch/daw/cedaw/>
- http://www.abanet.org/irr/fear_fact.html

Text of Treaties

- <http://www.unhchr.ch/html/menu3/b/k2crc.htm>
- <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>