



CEDAW RATIFICATION: OPPORTUNITIES FOR API WOMEN AND GIRLS

★ National Asian Pacific American Women's Forum ★ WWW.NAPAWF.ORG ★

∞ July 2010 ∞

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, or the Women's Treaty)¹ is known as the international bill of rights for women. It is considered a core human rights treaty and

establishes women's rights as basic human rights. CEDAW "is the only international instrument that comprehensively addresses women's rights within political, civil, cultural, economic, and social life."² The United States is one of only seven countries —

including Iran, Sudan, Somalia, Nauru, Palau and Tonga — that have yet to ratify CEDAW. CEDAW has never come before the full Senate for a vote, and U.S. ratification requires 2/3 approval by that chamber of Congress, or 67 votes.

CEDAW Basics

CEDAW contains several key provisions that advance women's rights as human rights. CEDAW explicitly states that discrimination against women "violates the principles of equality of rights and respect for human dignity."³ The treaty is seen to focus broadly on three major areas: women's civil rights, such as women's basic rights of political participation; reproductive rights, including the

"... 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..." CEDAW Preamble

right to plan the number and spacing of children; and the influence of culture and tradition

on restricting women's enjoyment of their fundamental rights.⁴

Why CEDAW for API Women and Girls?

U.S. ratification of CEDAW sends a powerful message that the United States takes women's rights on the home front seriously. Legal scholars note that ratification of the Women's Treaty would "force the United States government to more seriously address discrimination against women in this country."⁵ For instance, according to Amnesty International, ratifying CEDAW "would... help efforts to enhance U.S. laws with respect to violence against women, access to legal protections, and other human rights."⁶

There are myriad ways that U.S. ratification of the Women's Treaty can support arguments for the reversal of harmful policies, and the promotion of progressive ones, that can improve the lives of API women and girls.

Enabling legislation could be crafted to better address the needs of API women who have been trafficked here. CEDAW could be used to argue that a recent public school's decision to separate students by sex and use curriculum based on archaic gender stereotypes—an act that could exacerbate existing discrimination and stereotyping experienced by female API students—is not only

unconstitutional, it violates international human rights law,⁷ as CEDAW specifically requires equal access to the same curricula and forbids the use of stereotyped concepts of gender roles in education. An immigration judge could more forcefully write a decision refusing to deport or detain an immigrant woman who is a victim of domestic violence, drawing on principles from CEDAW relating to violence

against women as discrimination. A state legislator could more persuasively argue that mandating insurance coverage of basic contraceptive services and supplies is not only good public health policy, it helps to secure women's basic human rights. Before the harmful rule was reversed, a reproductive justice advocate could more aptly make the case that the policy requiring immigrant women, and not U.S.-born women, to obtain the HPV vaccine mandate violated a host of human rights treaties, including CEDAW.⁸ Thus, there are myriad ways that U.S. ratification of CEDAW can support arguments for the reversal of harmful policies, and the promotion of progressive ones, that can improve the lives of API

women and girls.

Ratification of CEDAW also sends a symbolic message to the international community that the United States is an international human rights leader on gender justice issues. Indeed, "[w]ithout the United States support, the treaty lacks full force and effect, and will not be taken seriously around the globe."⁹ As Harold Koh, Legal Adviser to the U.S. Department of State, argues, ratifying CEDAW would "send the world the message that we consider eradication of these various forms of discrimination to be solemn, universal obligations."¹⁰

The U.S.'s failure to ratify CEDAW also "serves as a

disincentive for governments to uphold CEDAW's mandate and their obligations under it to end discrimination against women."¹¹ And, "[b]y setting an international standard that countries have voluntarily agreed to, CEDAW serves as a powerful self-help tool for supporters of women's human rights to urge their governments to do better. . . . The U.S. ratification of the UN Convention to Eliminate All Forms of Racial Discrimination in 1994, for example, amplified the U.S. voice in the successful international drive to end racial apartheid in South Africa."¹² Thus, ratification would provide the U.S. with the human rights credibility crucial to advancing a global women's rights agenda.

¹ Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW].

² Amnesty International, A Factsheet on CEDAW: Treaty for the Rights of Women (2005), <http://www.amnestyusa.org/women/pdf/cedaw.pdf>.

³ CEDAW Preamble, *supra* note 1.

⁴ See generally Convention on the Elimination of All Forms of Discrimination Against Women, Content and Significance of the Convention, available at <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>.

⁵ Elizabeth M. Schneider, *Transnational Law as a Domestic Resource: Thoughts on the Case of Women's Rights*, 38 NEW ENG. L. REV. 689, 715 (2004).

⁶ Amnesty International factsheet, *supra* note 2.

⁷ See Brief for National Women's

Law Center et al. as *Amici Curiae* Supporting Appellant, Doe v. Vermillion Parish School Board, No. 10-30378 (5th Cir. June 10, 2010). The suit challenged a decision by a middle school in Louisiana to separate male and female students into single-sex classes for all core academic subjects. Instruction in the all-male and all-female courses was based in part on stereotypes about the interests of male and female students. *Id.*

⁸ See Elizabeth R. Sheyn, *An Accidental Violation: How Required Gardasil Vaccinations for Female Immigrants to the United States Contravenes International Law*, 88 NEB. L. REV. 524, 551-559 (2010) (arguing that because the immigrant vaccine requirement discriminates on the basis of gender and national origin, it violates provisions of many human rights treaties, including CEDAW).

⁹ Schneider, *supra* note 35, at 717. See also Brenton T. Culpepper, *Missed Opportunity: Congress' Attempted Response to the World's Demand for the Violence Against Women Act*, 43 VAND. J. TRANSNAT'L L. 733, 744 (2010) ("The United States does not possess the moral and political capital necessary to sustain a position as a human rights leader on gender equality without signing the CEDAW").

¹⁰ Harold Hongju Koh, *Why America Should Ratify the Women's Rights Treaty*, 34 CASE W. RES. J. INT'L L. 263, 267 (2002).

¹¹ Amnesty International factsheet, *supra* note 2.

¹² Nora O'Connell & Ritu Sharma, *Treaty for the Rights of Women Deserves Full U.S. Support*, 10 HUMAN RIGHTS BRIEF 22 (2003), available at <http://www.wcl.american.edu/hrbrief/10/2women.cfm>.