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## *CONGRESSIONAL TESTIMONY*

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Hearing before the  
United States Senate  
Committee on the Judiciary  
Subcommittee on Human Rights and the Law  
on

### **“Women’s Rights Are Human Rights: U.S. Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)”**

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Mr. Chairman and members of the Committee:

Thank you for inviting me to testify before you today regarding the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

Ratification of CEDAW would neither advance U.S. national interests within the international community nor enhance the rights of women in the United States. Domestically, CEDAW membership would not improve our existing comprehensive statutory framework or strengthen our enforcement system for the protection of women's rights.

Within the international sphere, the United States need not become party to the Convention to demonstrate to the rest of the world its commitment to women's rights at home or abroad. Becoming a member of CEDAW would produce, at best, an intangible and dubious public diplomacy benefit.

Moreover, it does not serve the interests of the United States to periodically submit its record on women's rights to scrutiny by a committee of gender experts that has established a record of promoting policies that do not comport with existing American norms and that encourages national governments to engage in social engineering on a massive scale.

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The United States should become party to a treaty only if membership would advance U.S. national interests. For a human rights treaty such as CEDAW, national interests may be characterized in both domestic and international terms. Only if U.S. membership in CEDAW would advance the cause of women's rights domestically and further U.S. national interests in the world should the United States consider ratification of the treaty.

Domestically, ratification of CEDAW is not needed to end gender discrimination nor advance women's rights. The United States already has effective avenues of enforcement in place to effectively combat discrimination based on sex. Specifically, in addition to the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, the United States has in place a wide range of state and federal laws to protect and advance women's rights concerning their employment, compensation, housing, education, and other areas. Federal laws include, but are not limited to:

- Title VII of the Civil Rights Act of 1964, which prohibits discrimination in employment on the basis of, *inter alia*, sex and has been interpreted to prohibit sexual harassment or the creation of a hostile working environment;
- The Pregnancy Discrimination Act, enacted in 1978, which prohibits discrimination on the basis of pregnancy and childbirth;
- The Equal Pay Act of 1963, which prohibits discrimination on the basis of sex in regard to the compensation paid to men and women for substantially equal work performed in the same establishment;

- The Fair Housing Act of 1968, which prohibits discrimination in the sale or rental of housing on the basis of, *inter alia*, sex;
- Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in federally funded education programs or activities;
- The Equal Credit Opportunity Act, enacted in 1974, which prohibits discrimination against credit applicants on the basis of, *inter alia*, sex;
- The Violence Against Women Act of 1994, which was intended to improve criminal justice and community responses to acts of domestic violence, dating violence, sexual assault, and stalking; and
- The Lilly Ledbetter Fair Pay Act of 2009, which revised the statute of limitations requirements in equal-pay lawsuits to assist women in recovering wages lost due to discrimination.

Taking this extensive legal framework into consideration, it is difficult to imagine how membership in CEDAW will further advance the protections provided to women in the United States. In fact, the protections provided by the U.S. Constitution and existing U.S. law exceed the provisions in the treaty. This legal framework serves as a foundation that can be modified or expanded as necessary through the democratic process.

Some of this federal legislation remains controversial and will continue to be debated in Congress and litigated in U.S. courts. Differences of opinion regarding these laws and the extent of constitutional protections based on gender are likely to persist for years to come. The resolution of these issues should be sought through domestic legislative and judicial avenues rather than through the judgment of gender experts sitting on the CEDAW Committee who may possess inadequate specific knowledge or understanding of U.S. laws and practices.

Robust debate regarding these issues continues in the United States despite the fact that it is not a party to CEDAW. For instance, the existence of pending federal legislation on the “pay equity” issue—such as the Paycheck Fairness Act—indicates an ongoing effort in Congress to resolve gender and compensation issues through the traditional democratic process.

Unlike the expansive provisions of CEDAW and the overly broad recommendations of the CEDAW Committee, these federal laws were crafted to address specific issues of gender discrimination in the United States, not to address the general policy opinions of the international community.

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Measuring whether U.S. membership in CEDAW would actually improve the image of the United States abroad may be impossible.

Those who say that ratification would allow the United States to claim the moral high ground within the international community—at least in regard to women’s rights—imply that the United States is deficient in protecting those rights, when in truth the United States has been a leader and standard bearer for empowering women. It already holds the moral high ground. Ratifying a

treaty merely to score points overseas is not a sound justification for a decision that could have unforeseen or negative domestic ramifications.

The United States amply demonstrated to the international community that it is committed to the protection of women's rights when, in 1992, it ratified the International Covenant on Civil and Political Rights (ICCPR). By ratifying the ICCPR, the United States made an international political commitment to guarantee the individual liberties, political rights, and physical integrity of its citizens "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Indeed, Article 3 of the ICCPR requires that the United States "undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant."

Moreover, the United States has demonstrated in the past and continues to demonstrate its commitment to women's rights not just in the U.S., but around the world as well, regardless of the fact that it is not a member of CEDAW. The presence at this very hearing of Ambassador Melanne Verwee, the first Ambassador-at-Large for Global Women's Issues, is only the latest indication that the U.S. is committed to the political, economic, and social empowerment of women around the globe. Secretary Clinton's establishment of the International Fund for Women further indicates that the U.S. government is continually formulating programs for the advancement of women's causes outside of the United States.

While everyone may not agree with the policy aims of these programs, these acts by the United States are far more relevant to women in need around the world than U.S. membership in an international convention.

In short, to assert that the United States lacks credibility on the issue of international women's rights due to its non-membership in CEDAW is simply specious.

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Beyond the dubious public diplomacy benefit that would allegedly be enjoyed by the United States upon ratification of CEDAW, it is difficult to determine how U.S. national interests would otherwise be advanced by participating in the central activity required by the treaty—reporting to the CEDAW Committee every four years regarding the U.S. record on women's rights. The CEDAW Committee has for 30 years established a consistent record of promoting gender-related policies that do not comport with existing American legal and cultural norms and has encouraged the national governments of CEDAW members to engage in social engineering on a massive scale.

For instance, Article 5 of CEDAW compels members of the treaty 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...stereotyped roles for men and women." The CEDAW Committee has cited this provision over the years to oblige member states to seek the modification of the roles of men and women as husbands, wives, caregivers, and breadwinners.

The Committee appears to be particularly contemptuous of the role of women as mothers and caregivers. For example, in 1999 it determined that “the persistence of the emphasis on the role of women as mothers and caregivers [in Ireland] tends to perpetuate sex role stereotypes and constitutes a serious impediment to the full implementation of the Convention.” In its report on Georgia, the Committee expressed concern over “the stereotyped roles of women...based on patterns of behaviour and attitudes that overemphasize the role of women as mothers.” In 2000, the Committee issued its now famous concluding observation to Belarus in which it referred to Mothers’ Day as a stereotypical symbol and chided Belarus for “encouraging women’s traditional roles.”

The CEDAW Committee has made other policy choices that are inconsistent with U.S. societal norms. Prostitution, in particular, has been treated by the Committee not as a crime that should be discouraged, but rather as a reality that should be tolerated and regulated. Indeed, the Committee appears to have little or no regard for the moral choices made by member states concerning whether they consider prostitution to be a criminal act that should be prohibited. For instance, in 2001, a representative from Guinea told the Committee that prostitution was “one of the social scourges” in Guinea and was illegal and “rejected and condemned by society.” Undaunted, the Committee ignored Guinea’s social and cultural norms and urged the government not to “penaliz[e] women who provide sexual services.” Similarly, in 1999, the Committee instructed Liechtenstein to “review...the law relating to prostitution to ensure that prostitutes are not penalized.” Also in 1999, the Committee told China that it was “concerned that prostitution...is illegal in China.” Rather than recommending that China take steps to reduce poverty and enhance economic freedom to alleviate the problem, the Committee “recommend[ed] decriminalization of prostitution.”

Many of the policy choices prescribed by the CEDAW Committee are at odds with other social, political, cultural, legal, and democratic norms in the United States. The Committee supports the concept of “comparable worth” to address allegations of gender discrimination in compensation. It advocates the use of quota systems to achieve de facto equality in various fields including education, politics, and employment—a policy that demands equal outcomes rather than equal opportunity. Finally, and controversially, the Committee regularly instructs member states to amend their laws to ease restrictions on abortion.

In short, it does not advance U.S. national interests to submit itself to scrutiny every four years by a committee of gender experts that has already demonstrated its divergence with U.S. policy choices, including on highly controversial issues regarding American social and cultural norms. In the eyes of the CEDAW Committee, the current laws and norms of the United States place it in direct and flagrant violation of CEDAW’s provisions, even though those provisions arguably seek to dictate women’s roles in a manner that may not be welcomed by all women or, in the case of prostitution, may be antithetical to their welfare.

The United States should not make international political commitments that it cannot keep due to its own legal, social, and cultural traditions, and joining CEDAW will unfairly place it in an untenable position.

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An objective analysis of CEDAW indicates that ratifying it would not advance U.S. national interests either at home or abroad.

U.S. ratification of CEDAW would produce, at best, an intangible and fleeting public diplomacy benefit in the international community. The United States need not become party to the convention to demonstrate its commitment to women's rights or to advance the cause of women in other nations. Any nation that questions U.S. dedication to protecting the rights of American women need only review the architecture of our laws and the network of state and federal agencies that enforce those laws.

Instead of seeking membership in CEDAW, the U.S. Congress and American civil society should continually review the implementation of existing laws barring gender discrimination in all spheres of domestic life. Those entities are far better positioned to conduct such a review than a committee of supposed gender experts from 23 foreign nations.

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