

Law and Children

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There can be no keener revelation of a society's soul than the way in which it treats its children. — Nelson Mandela

This column is a report from the Fourth World Congress on Family Law and Children's Rights that I attended in Cape Town, South Africa from March 20 to 23.

The Congress provided a global snapshot of the state of the world's children. Its theme was the past, present and future of the United Nations Convention on the Rights of the Child. One hundred and ninety-one nations have now ratified the convention, making it the most widely adopted human rights treaty in history.

Only the United States and Somalia have not ratified the convention.

Our failure to ratify constrains our ability to work with the world's child advocates.

The World Congress

The World Congress is a quadrennial interdisciplinary international meeting of lawyers, judges, academics, human rights advocates, health and caring professions who share a common concern for children. Judges, lawyers and academics from Australia's energetic family law community lead the organizing committee, with help from others from around the world.

This Fourth Congress covered a wide range of issues — child labor; child soldiers; child prostitution; children and HIV-AIDS; the rights of children in criminal proceedings; international abduction of children; the Hague Conventions; the European Convention on Human Rights and its impact on the family; children as witnesses; parenting and shared-parenting issues; and representation of children.

The problems facing children in the developing world described at the Congress can seem overwhelming.

The plight of Africa's children in particular was poignantly presented to the Congress by an outstanding performance by a choir composed of 11- to 13-year-old HIV-positive children singing songs of hope. Children in Africa are dying in appalling numbers from preventable diseases and from HIV-AIDS; some 300,000 are child soldiers, or otherwise victims of war. Over one million children are exploited every year in the multi-billion-dollar sex industry, and many millions live in poverty and hunger without the opportunity of even a basic education.

Much of what we learned at the Congress supports optimism for children, at least those in the developed world. Many countries have, for example, organized distinct systems of youth justice that focus on reintegration in society and avoid — wherever possible — criminalizing children and depriving them of liberty.

Progress has also been made in developing consensus about how children's issues should be treated between Countries. I moderated a Congress panel on international relocation issues following divorce, for example, which was blessed with judges from England, Australia and Canada. All agreed that the Hague Convention on International Child Abduction has created a rational process for forum selection in those disputes, at least among the countries that are signatories. The panel noted, however, that many Islamic countries are not signatories to the Hague Convention because of their difference in views about how custody of children should be determined with current treaty signatories.

The people I met were most memorable aspect of the World Congress.

There are many inspirational people unknown to the general public who try to meet the challenges of promoting the welfare of children, often with meager resources to command:

- a Catholic priest who starts an orphanage for children left without parents because of AIDS;
- the organizers of a mediation project which helps devise parenting plans for divorcing families consistent with both the needs of children and traditional African family values;

- educators who help poor women develop interview skills for jobs;
- academics who study child poverty and human rights.

Dedicated judges and child-advocate lawyers who understand the nuances of family law in a global environment were plentiful at the Congress. The Congress also provided an impressive example of corporate global child advocacy as Levi Strauss & Co. received an award for its code of conduct that tries to ensure that its suppliers do not use child labor, provide healthy working conditions and treat workers with dignity and respect.

Failure to Ratify

• ***The United States Failure to Ratify the Convention on the Rights of the Child.*** I attended the Congress as a private citizen. Nonetheless, as one of the few Americans at the World Congress, I found myself constantly apologizing for and explaining our country to child advocates from the rest of the world. This puzzled me, because the United States participates in numerous humanitarian efforts that seek to ameliorate the plight of the world's poor children. An American (Carol Bellamy) heads UNICEF. Our legal system for addressing child related issues is fundamentally based on concern for the child's best interests and abounds with innovation that others would surely want to hear about.

Our failure to ratify the Convention on the Rights of the Child, however, isolates us from the rest of the world. Indeed, viewed narrowly, it did not make much sense for an American to be at the Congress at all, as we are not part of the international child advocacy community's fundamental charter that was the Congress' overall theme. The first President George Bush pointedly did not sign the Convention at the World Summit for Children in 1990. Former President Bill Clinton signed the convention in 1995, but it has never been submitted to the Senate for ratification. We apparently have no present intention of considering ratification of the convention.

I am not an expert on international law. I will attempt a basic primer on the convention and the reasons that we haven't ratified it based on what I learned at the Congress.

Basic Children's Rights

The convention spells out the basic human rights that children everywhere should have:

- to survival;
- to develop to the fullest;
- to protection from harmful influences, abuse and exploitation; and
- to participate fully in family, cultural and social life.

It sets standards in health care, education and legal, civil and social services. Ratifying states must bring their national legislation into line with its provisions — except where the national standards are already higher. Ratification also makes states accountable through a process in which they report on the convention's implementation to the U.N. Committee on the Rights of the Child, an independent, elected committee whose members are experts in the field of human rights.

The reason generally given for why the United States has not ratified the convention is that, until recently, several of our states allowed execution of juveniles, a practice banned by the convention. Of course, with a glance at world opinion and with a citation to the convention, the U.S. Supreme Court recently declared the death penalty for juveniles unconstitutional as cruel and unusual punishment. That decision was issued just before the Congress convened. Congress participants applauded Justice Anthony Kennedy's opinion and were surprised by the vituperation heaped upon it by "conservatives."

People of good will from other countries do not expect us to be bound by what they say, but do think we might learn something valuable by considering their views. They reason that the United States wants the rest of the world to take our opinion into account on the human rights so why is it controversial to consider their opinions in formulating our internal law? It was hard for me at least to articulate a good answer to that question.

Our failure to ratify the convention is, of course, deeply related to the different views about engagement with the rest of the world and international institutions on which the 2004 presidential election was contested.

Conservative Christians, for example, fear that the convention will subvert their control over their children's upbringing. The convention, however, respects the rights and duties of parents to provide religious and moral guidance to their children. Religious groups around the world support it, an indication that it does not prevent parents from bringing their children up within a religious tradition.

The Home School Legal Defense Fund of the United States opposes the convention on the grounds that it will give children the right to disregard parental authority. The convention, however, simply encourages adults to listen to the opinions of children and involve them in decision-making; it does not give children final decision-making authority over anything. The convention explicitly states that young people not only have rights, but also the responsibility to respect the rights of others, especially of their parents. It places a responsibility on governments to protect and assist families in fulfilling their essential role as nurturers of children.

There are other issues of concern about the United States' ratification of the convention. Discussion at the Congress established that the convention suffers some of the same flaws as those of other international organizations and treaties. The process for scrutinizing country reports, for example, is bureaucratic and lengthy. These are problems, of administration, not principle, which the United States could address if it ratified the convention.

Traditionally, furthermore, the U.S. legal system recognizes civil and political rights (such as free speech and procedural due process), but not economic, social and cultural rights (such as the right to education, health care and an adequate standard of living). Many of the issues addressed by the convention such as education and the administration of juvenile justice are the responsibility of the states rather than the federal government. Other countries with federal systems have, however, ratified the convention, including Brazil, Germany, Canada and Mexico. The United States could also adopt a reservation or understanding to address this issue, though some international law experts believe that the United States would nonetheless remain responsible for what states do.

At the very least, ratifying the convention would require us to explain to the rest of the world how well our states meet the economic, social and cultural needs of our children in our national report. And we certainly have some explaining to do.

U.S. Infant Mortality Rank

In UNICEF's 2004 Report on the State of the World's Children, we ranked lower on maternal mortality than 32 other countries (140 of 172) including Ghana, Lithuania, Croatia, and Syria. We lagged behind 33 other nations (160 of 193) on infant mortality rank.

The Congress made it clear to me at least that by not participating in the convention, we isolate ourselves and keep very bad company. As we used to say in the 1960s, if we are not part of the solution, we are part of the problem and weaken our own moral authority. I tried to explain to Congress participants that the concerns about United States' participation in the convention reflect deep-seated fears of foreign interference and strong religious beliefs in our culture, and they are passionately held by vocal segments of the American public. Given that those who hold such views are in the political ascendancy at the moment, there seems to me to be little prospect that we will soon ratify the convention.

Conclusion

Despite our failure to ratify the convention, advocates for children from the rest of the world look to the United States for leadership, technical expertise and resources. They may be puzzled and disappointed by the attitudes of some in our country towards international cooperation and organizations but recognize that we are still a source of hope for a better life for their future generations.

The task before us is how to act to justify that faith by collaborating, not dominating, with people of good will from around the world. We can learn from them, and they can learn from us. We all have a lot to do.

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Endnote:

1. Roper v. Simmons, 73 U.S.L.W. 4153 (March 1, 2005).

