



United States Ratification of International Human Rights Treaties

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Overview

With a new administration and Congress, the United States has an important opportunity to reposition itself as a global leader on human rights. One means towards that goal is to sign and ratify core human rights treaties. Chief among these are international conventions relating to children, women, persons with disabilities, torture, enforced disappearance, and the use of anti-personnel landmines and cluster munitions.

The US has not ratified any international human rights treaties since December 2002, when it ratified two optional protocols to the Convention on the Rights of the Child. Since that time, important new treaties have been adopted and other long-standing treaties have gained new member states. Unfortunately, the US has too often remained outside these efforts. For example, the US is the only country other than Somalia that has not ratified the Convention on the Rights of the Child, the most widely and rapidly ratified human rights treaty in history. It is one of only seven countries—together with Iran, Nauru, Palau, Somalia, Sudan and Tonga— that has failed to ratify the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

These and other key treaties that the US has yet to ratify protect some of the world's most vulnerable populations. They would help, for instance, a woman seeking protection by the police from a threatening spouse; a mentally ill prisoner placed in solitary confinement; and a child who has been trafficked into prostitution. The treaties espouse non-discrimination, due process, and other core values that most Americans unquestionably support. They are also largely consistent with existing US law and practice.

The failure of the US to join with other nations in taking on international human rights legal obligations has undercut its international leadership on key issues, limiting its influence, its stature, and its credibility in promoting respect for human rights around the world.

This document provides an overview of the following treaties and their importance to the United States:

- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- Convention on the Rights of the Child (CRC)
- Convention for the Protection of all Persons from Enforced Disappearance
- Mine Ban Treaty
- Convention on Cluster Munitions
- Convention on the Rights of Persons with Disabilities (CRPD)

- Optional Protocol to the Convention against Torture

None of these treaties yet have been ratified, and only two – CEDAW and the CRC—have been signed by the US. CEDAW was submitted to the Senate for consideration in 1980. Human Rights Watch urges President Barack Obama to sign the remaining treaties, and the US Senate, led by the Senate Foreign Relations Committee, to ratify each of these important instruments.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Date adopted:	December 18, 1979
Date entered into force:	September 3, 1981
Current number of states parties:	186
Action by the US:	signed July 17, 1980

Background:

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is the world's primary legal document on women's equality. It reflects the consensus of the international community on the specific protections and actions states are obliged to take to ensure equality between men and women.

CEDAW's provisions cover all aspects of women's right to equality, including areas where women living the United States still face serious challenges, such as equal pay for equal work, domestic violence, access to health care, parental leave, and discrimination linked to parenting responsibilities (for example, lack of access to maternity leave, childcare, or possibilities for part-time work). Perhaps more importantly, CEDAW provides a clear definition of discrimination and equality, and spells out state obligations with regard to guaranteeing women's enjoyment of their human rights on an equal footing with men.

CEDAW has been ratified by 186 states, placing the United States in the company of Iran, Nauru, Palau, Somalia, Sudan and Tonga as the last states yet to ratify.

Key points:

- CEDAW contains important provisions to ensure women's ability to participate in the workplace on a basis of equality, including provisions on paid maternity leave, and measures to facilitate combining family obligations with work responsibilities.
- CEDAW requires decisive action to suppress trafficking in persons and the exploitation of women and girls through prostitution. With the US' recognized leadership on this issue abroad, through the reporting and actions pursuant to the

Trafficking Victim Protection Reauthorization Act, it will be important to demonstrate a similar commitment on this issue domestically.

- CEDAW protects a woman's equal right to life, health, and to decide on the number and spacing of her children. The full protection of these rights requires the removal of obstacles in access to abortion services, and will also require the state to provide services in some circumstances. The United States is already bound by international human rights commitments in this regard through its ratification of the International Covenant on Civil and Political Rights, and through its membership in the Organization of American States.
- Through ratification, the United States will commit to periodically review its record on these crucial areas by the CEDAW committee of independent experts, and to revise the laws, policies, and programs that may impede real equality for women in the United States. The experience of other countries has shown that the democratic dialogue ensuing from these procedural commitments is very beneficial, leading, for example, to the creation of national equality action plans, renewed and nuanced public debate on equality issues, and constructive engagement from all parts of society in achieving women's equality.
- CEDAW has been favorably voted out of the Foreign Relations Committee twice: once in 1994 and again in 2002. In 2002, the Committee report included a recommendation that ratification be accompanied by an explicit understanding that the Convention does not create a "right to abortion." It also included understandings that would essentially gut the Convention's provisions regarding parental leave and maternal health that should be reevaluated and removed.
- Some states, such as Saudi Arabia, have entered substantial reservations to their ratification of CEDAW, thus weakening the equality provisions. The United States should not carve out such exceptions to CEDAW, but should rather join states such as Canada, Denmark, and Norway, in ratifying without reservations.

CEDAW is currently with the Department of Justice for interagency review, and Secretary Hillary Rodham Clinton is expected to refer it to the Senate for consideration by the Senate Foreign Relations Committee shortly.

Convention on the Rights of the Child

Date adopted:	November 20, 1989
Date entered into force:	September 2, 1990
Current number of states parties:	193
Action by the US:	signed February 16, 1995

Background:

The Convention on the Rights of the Child (CRC) promotes and protects the well-being of all children, and was the first international treaty to integrate the full range of human rights—civil, political, economic, social and cultural—into a single document. It emphasizes four key themes: the right of children to survival; to develop to their fullest potential; to protection from abuse, neglect and exploitation; and to participate in family, cultural and social life.

Issues addressed by the CRC include education, health care, juvenile justice, and the rights of children with disabilities. During the negotiation of the CRC, the United States successfully proposed the inclusion of articles designed to prevent child abuse, and to protect freedom of religion, expression, and association.

Critics of the CRC have raised concerns that its provisions would undermine the rights of parents and allow the UN to dictate how parents should raise their children. However, the CRC repeatedly emphasizes the importance, role, and authority of parents in providing direction and guidance to their children.

November 20, 2009 will be the 20th anniversary of the adoption of the Convention.

Key points:

- The Convention on the Rights of the Child is the most widely and rapidly ratified human rights treaty in history. Only the United States and Somalia, which has no functioning national government, have failed to ratify the treaty.
- The conspicuous absence of the United States among the CRC's states parties undermines its international leadership role for children, and consistently raises questions in UN and other international forums regarding its commitment to children's rights. For example, for the past seven years, the US (joined by the

Marshall Islands in 2002 and 2004) has been in the embarrassing position of being the only UN member state to vote against the UN General Assembly's resolution on the rights of the child, primarily because of the resolution's references to the CRC.

- The CRC has now been in force in the majority of the world's countries for nearly two decades, and has led to a range of positive impacts, including law reform, improvements in the access to and quality of programs and services for children and their families (particularly in health and education), strengthened national institutions for children's rights, and more effective national coordination mechanisms for children's rights.
- A significant legal impediment in the past to US ratification of the CRC—the use of the death penalty against persons for crimes committed before the age of 18—no longer exists. In 2005, the US Supreme Court found the use of the death penalty against juvenile offenders unconstitutional (*Roper v. Simmons*).
- In 2002, the United States ratified two optional protocols to the Convention on the Rights of the Child—one on the involvement of children in armed conflict (child soldiers) and another on the sale of children, child prostitution and child pornography.

In early 2009, the State Department initiated an interagency review of the CRC, but it has not yet been submitted to the Senate for consideration.

Convention against Enforced Disappearance

Date adopted:	December 20, 2006
Date entered into force:	Not yet entered into force
Signatories:	81
Current number of states parties:	12
Action by the US:	none

Background:

Adopted by the UN General Assembly in 2006, the Convention for the Protection of all Persons from Enforced Disappearance (Convention against Enforced Disappearance) prohibits the abduction and secret detention of any person by the state. The Convention against Enforced Disappearance defines “enforced disappearance” as “the arrest, detention, abduction, or any form of deprivation of liberty by agents of the State . . . followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such person outside the protection of the law. “

The Convention against Enforced Disappearance also requires state parties to make enforced disappearance a criminal offense and to take steps to hold those responsible to account. It also requires state parties to provide victims of “disappearance” with a mechanism for obtaining reparation and compensation.

To date, 81 countries have signed the treaty, including Germany, France and 14 other NATO countries. Prior to the adoption of the convention, the Bush administration actively sought to undermine its protective provisions, including those on the disclosure of detainees and by weakening the protection mechanisms enshrined in the treaty.

Key points:

- During the drafting of the Convention against Enforced Disappearance, the Bush administration was then maintaining CIA secret prisons in which terrorist suspects were held without any acknowledgment of their detention—which would have been in violation of the convention.
- President Obama’s executive order abolishing long-term CIA detention and providing notification and timely access for the International Committee of the Red Cross to all

detainees held by the US in any armed conflict, places the US in compliance with the central component of the treaty. The United States can and should sign and ratify the convention, and begin the process to make enforced disappearance a specific criminal offense – a step that would be broadly welcomed by US allies.

- The Convention against Enforced Disappearance explicitly applies to prospective actions only, thereby mooting any concerns that ratifying the convention would result in the retroactive application of its provisions. None of the provisions on compensation and reparation, for example, would apply to those held in secret prisons under the Bush administration.
- The convention's most important function going forward will be to encourage states parties to institute effective laws and policies to prevent enforced disappearance, bring international mechanisms to bear on states parties that commit enforced disappearance, and strengthen the international consensus against the practice so as to be better able to pressure states that are not a party to the convention. Signing and ratifying the convention will not only solidify the administration's dramatic break from past US practices, but also provide the United States another tool to promote respect for human rights around the world.
- Upon signing the Convention against Enforced Disappearance, the US will be in a stronger position to raise concerns about "disappearances" elsewhere and encourage other states to join the convention. For instance, the widespread view that the US facilitated or supported hundreds of enforced disappearances carried out by the Musharraf government, often in cases related to the "war on terror," has contributed to the growing disillusionment with the US among moderate Pakistanis. Signature of the treaty by both the US and Pakistan would also go a long way toward regaining the trust of moderate Pakistanis and building a positive relationship with the Pakistani people and its government.

Mine Ban Treaty

Date adopted:	September 18, 1997
Date entered into force:	March 1, 1999
Current number of states parties:	156
Action by the US:	none

Background:

The 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (Mine Ban Treaty) entered into force on March 1, 1999, just 15 months after it was negotiated – the shortest time ever for a modern multinational treaty. The treaty comprehensively bans all antipersonnel landmines, requires destruction of stockpiled mines within four years, requires destruction of mines already in the ground within ten years, and urges extensive programs to assist the victims of landmines.

As of March 10, 2009, a total of 156 nations were party to the Mine Ban Treaty, and another two states have signed, but still not ratified. China, Russia, and the United States are among the 37 states that have not yet joined. But nearly all of those states are in de facto compliance with most of the treaty's provisions.

Since the Mine Ban Treaty came in to force, the use of antipersonnel mines has largely ceased; in recent years only Burma and a few rebel groups around the world have laid significant numbers of mines. Trade in these weapons has virtually stopped. Only about a dozen of the more than 50 countries that manufactured antipersonnel mines in the past still retain the capacity. Some 42 million antipersonnel mines have been destroyed from stockpiles. Large tracts of land have been cleared of these mines and returned to productive use. The number of civilians killed and wounded by mines each year has fallen dramatically.

The US participated in the “Ottawa Process” that created the Mine Ban Treaty, but requested a treaty exemption for mixed antitank and antipersonnel landmine systems. This was rejected by other countries as undermining the purpose of the treaty. Once the treaty was adopted, the Clinton administration did not sign and instead set 2006 as the objective for the US to join, provided alternatives could be identified and fielded. In February 2004, the Bush administration reversed course and announced that it did not ever intend to sign the treaty, stating that the military capabilities provided by landmines remained necessary for the United States military to protect its forces.

Key points:

- The United States has not used antipersonnel mines since 1991 (in the first Gulf War), has not exported them since 1992, has not produced them since 1997, and is the biggest donor to mine clearance programs around the world.
- The US still stockpiles more than 10.4 million antipersonnel mines for potential use in the future. However, in the decade since the Mine Ban Treaty took effect, the weapon has become so stigmatized that it is almost inconceivable that the United States would ever use it again.
- 2009 is a special year on landmines. Treaty members and the International Campaign to Ban Landmines, the 1997 Nobel Peace Laureate, celebrated the Mine Ban Treaty's 10th anniversary on March 1, 2009. Colombia will host the Mine Ban Treaty's Second Review Conference in Cartagena from November 30 to December 4, 2009. All governments are invited to participate in this milestone event, including non-signatories.

Convention on Cluster Munitions

Date adopted:	May 20, 2008
Date entered into force:	Not yet entered into force
Signatories:	98
Current number of states parties:	14
Action by the US:	none

Background:

The 2008 Convention on Cluster Munitions was drafted in 2007-2008 following the international outcry over civilian casualties from the use of cluster munitions primarily by Israel in Lebanon (2006), which followed the growing concern over the weapon's use in Iraq (2003), Afghanistan (2002), Kosovo and Serbia (1999) and earlier US use during the Vietnam War (1960s-70s).

Cluster munitions or cluster bombs are either air-dropped or ground-launched weapons that typically explode in the air and send dozens, even hundreds, of tiny bomblets over an area the size of a football field. Cluster munitions pose principal dangers to civilians. Because the weapon cannot distinguish between military targets and civilians, it invariably kills and wounds civilians when used in or near populated areas. They can also harm civilians decades after the conflict is over, as unexploded "duds" on the ground act like landmines, exploding when touched by unwitting civilians. Because of the nature of these duds, they are highly likely to cause death, making them even more dangerous than ordinary landmines. In fact, cluster bombs are estimated to have caused more civilian casualties in Iraq in 2003 and Kosovo in 1999 than any other weapons system.

The Convention on Cluster Munitions was negotiated in May 2008 and opened for signature in December 2008. It provides a robust framework for tackling cluster munitions. It prohibits the use, production, stockpiling and transfer of cluster munitions and requires clearance of affected areas within 10 years, destruction of stockpiled cluster munitions within eight years, and assistance to victims of the weapon. As of March 2009, a total of 96 states have signed the Convention including most members of NATO (including UK, France, Germany, Netherlands, Norway, Belgium, Canada), and other close US allies (Australia, Indonesia, Philippines, Japan). A total of 30 ratifications are required to trigger entry into force of the Convention.

The United States did not participate in the “Oslo Process” negotiations leading up to the treaty. The United States has been the world’s leading known user of cluster munitions and is known to have exported or transferred the weapon to at least 28 other countries, and maintains a stockpile of more than 700 million cluster submunitions.

US policy on cluster munitions was last articulated in a three-page policy directive issued by Secretary of Defense Robert Gates in July 2008. The directive described cluster munitions as “legitimate weapons with clear military utility.” According to the policy, the U.S. will continue to use all of its cluster munitions until 2018, and after that will only use munitions with a claimed failure rate of less than 1 percent.

Key Points:

- In practice, the United States has not used cluster munitions in Iraq since 2003 or in Afghanistan since 2002. US forces have been moving away from the use of cluster munitions, recognizing the extreme threats they pose to civilians, as well as to US soldiers as troops encounter unexploded duds. In after-action reports from Iraq in 2003, US forces called their own cluster munitions “relics” and “losers” and questioned the weapon’s utility.
- The threats to safety, and the political, operational, and financial liabilities created when the US uses cluster munitions outweigh the limited role the weapons fills in current operations. As cluster weapons become increasingly stigmatized internationally, the prospect of future US use becomes even more unlikely.
- In December 2008, a spokeswoman for the Obama transition team said that the incoming president would “carefully review the new [cluster munitions] treaty and work closely [with] our friends and allies to ensure that the United States is doing everything feasible to promote protection of civilians.”
- Legislation introduced into Congress in February 2009— the Cluster Munitions Civilian Protection Act —would prohibit all use of cluster munitions in areas where civilians are normally present and all use of unreliable cluster munition systems. In one month, the legislation attracted 24 cosponsors in the Senate, including both Democrats and Republicans.
- On March 11, 2009, President Obama signed into law an omnibus budget bill (HR 1105) that included an export ban on cluster munitions. According to the law, cluster

munitions can only be exported if they leave behind less than one percent of their submunitions as duds. The legislation also requires the receiving country to agree that cluster munitions “will not be used where civilians are known to be present.” Only a very tiny fraction of the cluster munitions in the US arsenal meet the one-percent standard. This export ban was first enacted in a similar budget bill in December 2007, but that law mandated it for only one year.

Convention on the Rights of Persons with Disabilities (CRPD)

Date adopted:	December 13, 2006
Date entered into force:	May 3, 2008
Signatories:	140
Current number of states parties:	61
Action by the US:	none

Background:

The Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol—both adopted by the UN General Assembly in 2006 and entered into force in 2008—aim to promote, protect and ensure full and equal enjoyment of all human rights for persons with disabilities.

CRPD embraces a broad definition of persons with disabilities, detailing these individuals' rights and establishing a code of implementation. The convention espouses the basic principles of individual dignity and autonomy, non-discrimination, full inclusion and participation in society, respect for difference, equality of opportunity, accessibility, equality between men and women, and respect for children with disabilities. CRPD represents a paradigm shift in approaching persons with disabilities as subjects capable of claiming their rights and making informed decisions rather than as objects of social protection.

CRPD garnered 82 signatories and one ratification on March 30, 2007 when it opened for signature, the largest number in history of signatories to a UN Convention on its opening day. The United States is one of a minority of countries to neither sign nor ratify CRPD, and is exceptional among its allies for having failed to do so: every other NATO member has either signed or ratified the convention.

The US provided fundamental technical assistance during the convention's negotiation and drafting process. However, the Bush administration indicated that it would not sign CRPD. Administration officials stated that because the Americans with Disabilities Act "is among the most comprehensive civil rights laws protecting the rights of people with disabilities in the world," signing and ratifying the CRPD was unnecessary. It took the position that

¹ Letter from Kim R. Holmes, Assistant Secretary of State for International Organization Affairs, United States Department of State, to Lex Frieden, Chairperson, National Council on Disability (June 3, 2004), available at http://www.usicd.org/StateDept_Letter_to_NCD.pdf

implementation of national legislation, rather than ratification of international treaties, was the most effective way of protecting the rights of persons with disabilities.

Key Points:

- Approximately 54 million Americans experience some form of disability, a number likely to increase as the US population ages and with medical advances saving and prolonging lives. Increased numbers of American with disability are also occurring as a result of continuing wars in Iraq and Afghanistan.
- The United States has historically been a global leader on the issue of disability rights, a position that has been lately threatened by the failure to sign and ratify CRPD. The Americans with Disabilities Act is a landmark civil rights law, enacted by Congress in 1990, that has served as a model for foreign countries in drafting their own disability laws. While the ADA has been significantly narrowed in effect by US Supreme Court decisions, the recent ADA Amendments Act of 2008 may have the potential to restore the ADA to its originally intended effect domestically.
- While the Americans with Disabilities Act remains critically important, signature and ratification of CRPD has the potential to reinstate the United States as a leader in extending rights and protections for individuals with disabilities around the world.
- The National Council on Disability has determined that—for the majority of CRPD’s articles—US law is either already at a level with the mandates of the convention or is capable of reaching that level through more rigorous implementation or additional action by Congress. It has found no legal impediment to US signature and ratification of CPRD, inasmuch as the legal standards articulated by CRPD are largely aligned with US disability law.²
- Ratification of CRPD will obligate the US to establish an independent national monitoring mechanism for implementation of the treaty; this oversight mechanism will help to ensure that the US government consistently complies with national and international disability rights standards.

² National Council on Disability, “Finding the Gaps: A Comparative Analysis of Disability Laws in the United States to the United Nations Convention on the Rights of Persons with Disabilities,” May 12, 2008, http://www.ncd.gov/newsroom/publications/2008/pdf/ncd_crpd_analysis.pdf (accessed March 25, 2009).

- While on the campaign trail, Barack Obama declared his intention to sign CRPD if elected president. As a senator, Obama on December 11, 2007 unveiled a plan to restore US global leadership in the field of disability rights, which included signing and urging swift Senate ratification of CRPD.

Optional Protocol to the Convention against Torture

Date adopted:	December 18, 2002
Date entered into force:	June 22, 2006
Current number of states parties:	48
Action by the US:	none

Background:

Adopted by the UN General Assembly in 2002, the Optional Protocol to the Convention against Torture (OPCAT) aims to prevent torture and other forms of ill-treatment by establishing a system of regular visits to places of detention carried out by independent national and international bodies. It is open to any state that is a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which the United States ratified in 1994.

OPCAT is based on the recognition that international treaties and national laws to ban torture and other ill-treatment are insufficient to end abuses. Places of detention are of necessity closed institutions and are not subject to the kind of media and public scrutiny that we rely on to ensure the proper functioning of other government entities. OPCAT defines places of detention broadly, to include prisons, jails, immigration detention facilities, juvenile detention facilities, and psychiatric institutions.

US allies that have signed or ratified OPCAT include the United Kingdom, Ireland, Germany, Austria, France, Spain, the Czech Republic, New Zealand, Brazil, and Mexico.

The Bush administration has objected to the protocol, stating in 2002 that inspections mandated by the protocol would be “overly intrusive” and that the US legal system already provides numerous opportunities for persons in detention to complain about abuse. It has also said that the protocol would infringe on the federal rights of individual US states, but this objection is not supported by US Supreme Court case law.

Key Points:

- OPCAT would impose no new substantive obligations on the United States. Rather, it establishes procedural mechanisms to improve compliance with obligations already

undertaken through the Convention against Torture and other treaties the US has ratified.

- The United States has the largest incarcerated population in the world, with 2.3 million persons behind bars on any given day. But unlike many other democracies, the United States has no independent agency that monitors prison conditions and enforces minimal standards of health and safety. A bipartisan commission on safety and abuse in US prisons recently concluded that “few states have monitoring systems that operate outside state and local departments of corrections, and the few systems that do exist are generally under-resourced and lacking in real power.”³
- OPCAT relies on visits to places of detention by complementary international and national bodies. The international body, the Subcommittee on Prevention of Torture, consists of 10 independent, multi-disciplinary experts. In addition, within one year of ratifying OPCAT, a country must have in place one or more “national preventive mechanisms” to carry out visits to places of detention. No particular type of national mechanism is specified, so each country has broad discretion in deciding how to carry out this function.
- Both the subcommittee and national bodies conduct unannounced visits to places of detention and can hold private interviews with detainees. Following their visits, these bodies make recommendations for improvements in the treatment and the conditions of detention of persons deprived of their liberty. The subcommittee’s recommendations are given to the government confidentially, unless the state party gives its consent for publication or fails to cooperate with the visiting experts.

³ Confronting Confinement: A report of the Commission on Safety and Abuse in America’s Prisons (2006), at 79.