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Treaty Ratification

Submitted by:

Columbia Law School's Human Rights Institute
American Civil Liberties Union of Georgia
Professor Jonathan Todres of Georgia State University College of Law
Just Detention International
Lawrence Moss
National Lawyers Guild
Beth Lyon of the Villanova Law School Farmworker Legal Aid Clinic
World Organization for Human Rights USA

Endorsed by:

Organizations: The Advocates for Human Rights; Allard K. Lowenstein International Human Rights Clinic, Yale Law School; Asian American Justice Center; Asociación Americana de Juristas (American Association of Jurists); Black Alliance for Just Immigration; Boalt Hall Committee for Human Rights; Campaign for US Ratification of the CRC; Castleton Park Tenants Association, Staten Island; Center for Constitutional Rights; Center for Justice & Accountability; Center for the Human Rights of Users and Survivors of Psychiatry; Center for Women's Global Leadership; Connect U.S. Fund; Disability Rights Education and Defense Fund; December 12th Movement International Secretariat; Fuerza Mundial/FM Global; Human Rights Advocates; The Human Rights Caucus, Northeastern University School of Law; Human Rights Education Associates; Human Rights Litigation and Advocacy Clinic, University of Minnesota Law School; Human Rights Project at the Urban Justice Center; International Association of Democratic Lawyers; International Center for Transitional Justice; International Indian Treaty Council; Lawyers' Committee For Civil Rights Under Law; Leonard Peltier Defense Offense Committee; Malcolm X Center for Self Determination; Maria Iñamagua Campaign for Justice; Mayday New Orleans; Meiklejohn Civil Liberties Institute; Mental Disability Rights International; Metro Atlanta Task Force for the Homeless; Minnesota Chapter of the National Lawyers Guild; Minnesota Tenants Union; National Economic and Social Rights Initiative; National Law Center on Homelessness and Poverty; National Network for Immigrant and Refugee Rights; People's Health Movement – USA; Poverty & Race Research Action Council; South Bay Communities Alliance; Three Treaties Task Force of the Social Justice Center of Marin; United States International Council on Disabilities; U.S. Positive Women's Network; WILD for Human Rights, Berkeley Law School; Women Organized to Respond To Life Threatening Disease (WORLD).

Individualsⁱ: **Sandra Babcock**, Center for International Human Rights, Northwestern University School of Law; **Arturo Carrillo**, Professor of Clinical Law, Director, International Human Rights Clinic, The George Washington University Law School; **Margaret B. Drew**, Director of Clinics and Experiential Learning; Director, Domestic Violence and Civil Protection Order Clinic, University of Cincinnati College of Law; **Deena Hurwitz**, Associate Professor of Law, Director, International Human Rights Law Clinic and Human Rights Program, University of Virginia School of Law; **Suzanne Jasper**, Director, First Peoples Human Rights Coalition; **Hope Lewis**, Professor of Law, Northeastern University School of Law; **Anjana Malhotra**, Practitioner in Residence, Seton Hall School of Law Center for Social Justice; **Sarah Paoletti**, Clinical Supervisor and Lecturer, Transnational Legal Clinic, University of Pennsylvania School of Law; **Amelia Parker**, Executive Director, Statewide Organizing for Community eMpowerment; **Penny M. Venetis**, Clinical Professor of Law, Clinical Scholar, Co-Director, Rutgers Constitutional Litigation Clinic, Rutgers School of Law; **Deborah M. Weissman**, Reef C. Ivey Distinguished Professor of Law, Director of Clinical Legal Programs, University of North Carolina-Chapel Hill School of Law

1. This report provides information under sections B, C, and D as stipulated in the General Guidelines for the Preparation of Information under the Universal Periodic Review.

2. The submitting stakeholders are Columbia Law School's Human Rights Institute, the American Civil Liberties Union of Georgia, Professor Jonathan Todres of Georgia State University College of Law, Just Detention International, Lawrence Moss, the National Lawyers Guild, Beth Lyon of the Villanova Law School Farmworker Legal Aid Clinic, and the World Organization for Human Rights USA.¹ We are dedicated to promoting U.S. ratification of, and full compliance with, international human rights treaties.

3. **EXECUTIVE SUMMARY:** In order to provide full respect for and protection of the rights within the Universal Declaration of Human Rights (UDHR) and comply with its human rights obligations, the United States must extend and enhance existing domestic law protections by:

- (1) taking immediate steps to ratify key international human rights treaties and interpret rights contained within ratified treaties in line with international human rights standards, including protections of economic, social and cultural rights;
- (2) removing any reservations, understandings and declarations (RUDs) that undermine compliance with, or violate the object and purpose of, treaties;
- (3) adopting implementing legislation and optional protocols to ensure treaties are enforceable and that domestic law is in full compliance with treaty obligations; and
- (4) establishing federal mechanisms to ensure comprehensive coordination and monitoring of treaty implementation and federal, state and local compliance with international human rights obligations.

A. The U.S. Should Take Immediate Steps to Ratify Major Human Rights Treaties.

4. The United States played a critical role in developing and drafting the UDHR, demonstrating an early commitment to promoting and protecting human rights. Yet since that time, the United States has had an inconsistent history of incorporating and applying international human rights standards domestically. Indeed, the U.S. has continuously refused to join with other states in taking on international human rights legal obligations through its failure to sign and/or ratify core international human rights treaties.ⁱⁱ Despite playing an influential role in the drafting and negotiation of many of these treaties, the United States has yet to take the steps necessary to demonstrate a commitment to the universality and interdependence of human rights.

5. Human rights treaties in the United States are generally given domestic effect through three steps: (1) the President signs the treaty; (2) the President offers the treaty for advice and consent; and (3) the Senate votes to ratify the treaty by a two-thirds majority. However, several human rights treaties that have been signed have remained in limbo between the first and second steps for years or even decades. Further, some critical human rights treaties have never even reached the first step.

¹ A full list of additional organizations endorsing this report is included as Appendix A.

6. When presenting its candidacy to the Human Rights Council, the current Administration noted its commitment “to live up to our ideals at home and to meet our international human rights obligations” and “to work[] with its legislative branch to consider the possible ratification of human rights treaties, including but not limited to the Convention on the Elimination of Discrimination Against Women.” The U.S. should translate this rhetoric into action by taking immediate concrete steps to sign and/or ratify international human rights treaties.

1. The U.S. Should Offer for Advice and Consent the Treaties it has Signed.

7. The U.S. has failed to move several treaties beyond the presidential signing phase of the ratification process, leaving one treaty in limbo for over 30 years. The U.S. has symbolically approved, (agreeing, at a minimum, not to violate the spirit and purpose of), but failed to ratify:

a. Convention on the Elimination of Discrimination Against Women (CEDAW).

8. Among the treaties the U.S. has failed to ratify, CEDAW has made it the farthest along the track toward ratification. The United States stands with six other countries that have failed to ratify CEDAW: Iran, Somalia, Sudan, Nauru, Palau and Tonga.ⁱⁱⁱ CEDAW contains important provisions for women’s equal access to, equal opportunities and equal participation in all spheres of life on the basis of substantive equality.

9. Signed 30 years ago and submitted for ratification in 1994, CEDAW has never gone to a full Senate vote. In the absence of ratification, independent action at the subnational level demonstrates support for the rights enshrined in this Convention. By the end of 2009 numerous subnational bodies, including cities and counties, had passed resolutions supporting CEDAW.^{iv}

b. The Convention on the Rights of the Child (CRC).

10. The CRC is the most widely ratified human rights treaty, leaving the United States virtually alone in its refusal to ratify. Currently, the United States and Somalia are the only states that have not ratified the CRC. In November 2009, Somalia announced its intention to ratify the Convention. The United States’ failure to ratify this convention is in stark contrast to its position during the drafting and negotiation process, where the U.S. submitted more new articles than any other government and proposed language or amendments for 38 of CRC’s 40 substantive provisions. Although President Clinton signed the CRC in 1995, no President has submitted it for a full Senate vote.

c. The Convention on the Rights of Persons with Disabilities (CRPD).

11. President Obama, in his first year as President, has already demonstrated his support for the United States’ ratification of the CRPD by signing the convention in July 2009.^v Further, the United States was instrumental in the development of the CRPD and has praised it as an “extraordinary treaty,” recognizing the importance of equality and “the inherent dignity and worth and independence of all persons with disabilities.”^{vi} Despite this praise, the U.S. has not ratified the Convention.

d. The International Covenant on Economic, Social, and Cultural Rights (ICESCR).

12. Of the three foundational human rights documents that constitute the International Bill of Human Rights, the ICESCR is the only one that the United States has not either ratified or adopted. Despite its leading role in developing the UDHR, the U.S. demanded that binding obligations with respect to the rights enumerated in the Declaration must be divided into two separate core treaties, effectively splitting economic, social and cultural rights from civil and political rights. The ICESCR has been ratified by over 160 countries from every region of the world. The U.S. signed the ICESCR over 30 years ago but has taken no further steps towards its ratification. Ratification would demonstrate a commitment to protecting fundamental rights, including the rights to education, housing, work, social security and the highest attainable standard of health as recognized under international law.

2. The U.S. Should Take Action on the Regional and International Agreements it Has Not Signed or Ratified.

13. The United States' failure to engage fully with the international community is further demonstrated by the number of important regional and international agreements that it has not yet committed to uphold in the international arena. The U.S. should take immediate steps to sign and/or ratify the following international and regional agreements:

- American Convention on Human Rights
- Convention on Cluster Munitions
- Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction
- International Convention for the Protection of all Persons from Enforced Disappearance
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
- International Labor Organization Fundamental Conventions^{vii}
- Protocol I and II to the Geneva Conventions
- Rome Statute of the International Criminal Court

Additionally, the U.S. should endorse the United Nations Declaration on the Rights of Indigenous Peoples.

B. The U.S. Should Ratify and Embrace Economic and Social Rights Treaties.

14. One of the most unique characteristics of U.S. law is its failure to commit to upholding internationally recognized economic and social rights. The United States has ratified treaties that protect civil and political rights, as well as treaties that prohibit discrimination in the realization of economic and social rights. However, except in the context of discrimination, the United States is the only industrialized country that has failed to ratify the major treaties that recognize and protect basic economic and social rights, including not only the ICESCR, but others that contain economic and social right provisions such as CEDAW and the CRC.

1. The U.S. Should Recognize Economic, Social and Cultural Rights.

15. The failure to ratify economic and social rights treaties (or to live up to its signing obligations^{viii}) is a reflection of a deeper failure to recognize and protect economic and social rights more generally. Indeed, the United States is famously reticent to recognize these rights both on the international stage as well as within the domestic sphere. For example, Ms. Goli Ameri, as a member of the United States Delegation at the United Nations Commission on Human Rights Annual Gathering in March and April of 2005 stated: “*The U.S. does not support the ‘right to adequate housing’ or ‘housing rights,’ because such a right does not exist.*”^{ix} Although U.S. representatives in the current Administration have emphasized that all rights must be protected and governments cannot “pick and choose,” and that rights as a general matter are interdependent, they have not made a direct and specific statement supporting economic and social rights. Given the fairly consistent history of the United States denying the legitimacy of these rights (for several decades now),^x it is imperative that the current Administration make such a direct statement of support and repudiate the U.S. anti-human rights position on these matters.

a. U.S. Domestic Law Should Protect Economic and Social Rights.

16. In the domestic sphere, there is a pervasive failure to recognize economic and social rights throughout U.S. law and policy. For example, the U.S. Supreme Court held in *Dandridge v. Williams* that the U.S. Constitution contains no affirmative state obligations to care for the poor.^{xi} The Court essentially stated that economic and social rights were not justiciable: “[T]he intractable economic, social, and even philosophical problems presented by public welfare assistance programs are not the business of this Court.”^{xii} Numerous other court decisions have echoed the notion that economic and social rights, unless they can be framed in terms of racial discrimination or a clear legislative mandate, have no place in U.S. state or federal courts.^{xiii}

b. The U.S. Should Adopt a Rights-Based Approach to Policy and Resource Allocation.

17. Change is needed to the existing legislative framework, which does not compensate for the lack of constitutional protection. While the United States provides a range of government programs for the poor, none of them are designed under a rights-based framework. Housing assistance programs are not calculated to house every needy family (despite existing resources to do so), and as a consequence families must suffer waiting lists of up to a decade to receive assistance. Both public health insurance programs and cash assistance programs explicitly exclude certain categories of potential recipients, despite their below-poverty level incomes. The resource constraints imposed on such programs for the most vulnerable cannot be explained by lack of resources overall. On the contrary, it is how resources are allocated within each sector that raises serious rights concerns.

18. Overall, resource allocation for economic and social needs within the United States is often regressive in nature and in contradiction to human rights principles. For example, the greatest investment in housing within U.S. law is the mortgage tax exemption. These tax give-backs to homeowners are provided in a way that is inversely correlated to need: the bigger the mortgage (and therefore the more expensive the home) the larger the subsidy. Even more troubling, this tax subsidy is twice as large as all subsidies afforded the poorest residents, those too poor to buy a home or pay rent on the private market. Similar misallocations can be found in

other major rights areas. Education is funded primarily through local property taxes, so the most privileged communities have the most funding overall (despite federal funding streams targeted towards the needy). The health care sector is organized to allow for great waste resulting from privatization. The administrative overhead and profit taken by the private health insurance industry could insure the around 50 million people in the United States without health insurance. A recent Harvard study concluded that each year over 45,000 people die unnecessarily due to the lack of health insurance.^{xiv} Even some of the better government programs, such as the food assistance program, fail to meet the actual need and food insecurity remains at around 10%.^{xv} Countless families rely on private charities that are overwhelmed in light of the current economic crisis.

c. The U.S. Should Implement a National Strategy to Ensure Implementation of Economic, Social and Cultural Rights.

19. Because there is no national legal framework that protects these rights, there are vast disparities in the level of rights protection from state to state within the United States. With regard to cultural rights, these remain equally undefined and unprotected within U.S. law and policy, which includes bans on the use of other languages in government venues in some localities. The above factors, paired with socio-economic indicators that are shocking given available resources,^{xvi} speak to the serious need for the current Administration to not only take steps towards ratification of the ICESCR, but to develop a national strategy to comply with the basic human rights standards contained within the UDHR, the ICESCR and other treaties that protect economic and social rights.

C. The U.S. Should Fully Implement the Human Rights Treaties it has Ratified.

20. Article VI of the U.S. Constitution incorporates ratified treaties as part of “the supreme Law of the Land,” but the U.S. often fails to comply with its obligations to (1) publicize these treaties; (2) submit reports in a timely fashion with comprehensive state and local data; (3) enact the implementing legislation needed to make the treaties enforceable; and (4) ratify the Optional Protocols that provide complaint and monitoring mechanisms.

1. The U.S. Should Withdraw Reservations, Understandings and Declarations That Undermine Compliance With Treaties, Enact Implementing Legislation for Signed and /or Ratified Treaties and Adopt Optional Protocols that Allow for Effective Implementation and Oversight.

21. For each human rights treaty the U.S. has ratified, it has entered a package of RUDs. Some of these clarify interpretations, as allowed under international law.^{xvii} However, several of the RUDs entered by the United States prevent legal enforcement of the treaties’ provisions.

22. The most sweeping of these RUDs is the United States’ understanding that human rights conventions are not “self-executing.” As a result, victims of treaty violations cannot directly invoke the treaties’ provisions in U.S. courts to seek legal remedies.^{xviii} “Non-self-executing” treaties can have direct legal effect only through independent implementing legislation understood to cover the terms of each treaty.^{xix} Congress has expressly adopted legislation in some cases, such as allowing limited prosecution for torture, war crimes, and genocide to

implement treaty provisions.^{xx} By contrast, in over fifteen years since ratifying the CERD, the U.S. has not adopted any implementing legislation for that treaty.^{xxi}

23. Human rights treaties rely on states parties to implement domestic laws that (1) prohibit violations of the treaty; (2) provide domestic legal remedies to victims of violations; and (3) punish violators, as a deterrent to future violations. Recognition of treaty provisions in domestic laws creates enforcement mechanisms within each nation's own judicial system and mitigates concerns regarding sovereignty. Although a range of domestic legislation codifies selective treaty provisions, none of the human rights treaties has been given full domestic legal effect. While many of the treaty rights (particularly civil and political rights) are in fact protected in domestic legislation, with rare exception, such legislation has not been enacted pursuant to treaty obligations. Rather relevant legislation has been enacted for a host of domestic reasons, which are important but fail to fully comply with human rights treaties and leave large gaps in the law. Indeed, there has been no systematic attempt to meet treaty obligations. Instead, the U.S. addresses these gaps with the vexing, and inaccurate, blanket statements that treaty provisions are coextensive with domestic law.^{xxii}

24. When international treaty monitoring bodies have criticized the U.S. for failing to adopt implementing legislation, the U.S. response typically points to laws implementing the U.S. constitutional provisions that prohibit certain types of rights violations.^{xxiii} This misunderstanding undermines the concept of domestic treaty enforcement. While U.S. constitutional guarantees provide important safeguards against rights violations, they do not protect against all forms of discrimination prohibited by the human rights treaties the U.S. has ratified. As a result, there are legal gaps between the U.S. Constitution – which is intended to provide minimum protections for individual rights – and the more expansive international treaty guarantees. So long as these gaps remain unaddressed, the U.S. falls short in its treaty obligations, and more importantly, fails to adequately provide victims of human rights violations access to the remedies they deserve.

25. Places where U.S. laws fall short of treaty obligations include (but are not limited to) the following examples, cited in recent Concluding Observations by UN human rights treaty monitoring committees:

- The CERD requires states parties to prohibit and eliminate racial discrimination in all its forms, including practices and legislation that may not be discriminatory in purpose, but which have a discriminatory impact nonetheless. However, U.S. Constitutional law typically requires plaintiffs to prove intent in order to seek protections from discrimination.^{xxiv}
- Federal laws and policies lack provisions to prevent “extraordinary” rendition to torture, a violation of both the ICCPR and the Convention against Torture (CAT), and to provide compensation to victims.^{xxv}
- Federal laws that should prevent prison rape fall short of the ICCPR's requirements.^{xxvi}
- Juvenile life sentences without parole are per se violations of the ICCPR.^{xxvii}
- The CAT requires criminal statutes and civil causes of action for all torture, and yet federal laws prohibiting torture limit jurisdiction to extraterritorial acts.^{xxviii}

26. The “non-self-executing” declaration that fosters these and other discrepancies is but one of the RUDs the Senate has attached when ratifying human rights treaties. The U.S. has also attached a “federalism clause” to the conventions, declaring that as a federal government, it will only implement the treaties to the extent that it “exercises jurisdiction” over the treaties’ provisions.^{xxix} In each report to the treaty monitoring bodies, the U.S. Government has used this understanding to limit its implementation responsibilities, and has failed to adequately address documented treaty violations at the state and local level. The treaty monitoring bodies have rejected this position, not only for the United States^{xxx} but for all federal governments, including Canada and Australia.^{xxxi} While under the existing federalism clause, it is appropriate for state and local entities to implement treaty provisions, ultimately the federal government remains responsible for treaty obligations. That responsibility includes providing the resources necessary to ensure effective implementation at all levels of government.

27. Not all RUDs present challenges to effective implementation; to the contrary, some are necessary under the U.S. Constitution.^{xxxii} RUDs often serve the important and legitimate purpose of clarifying how treaty articles will take effect in domestic law, however any RUDs that contradict a treaty’s object and purpose are not permitted.^{xxxiii} In order to determine whether RUDs entered by the United States fall into this category, or whether they continue to be needed, Congress and the Administration should periodically review RUDs to human rights treaties it has already ratified. In 1998, President Clinton’s Executive Order 13107 created the Inter-agency Working Group on Human Rights Treaties (IAWG) to coordinate oversight functions with respect to international treaties, including overseeing an annual review of U.S. RUDs to determine their continuing relevance. The IAWG was never fully operationalized and its functions were transferred to a Policy Coordination Committee on Democracy, Human Rights, and International Operations (PCC). If the IAWG, the PCC or any other entity has conducted such review, it should be publicized domestically or reported to the U.N. treaty monitoring bodies. Given that the treaty monitoring bodies have explicitly highlighted certain RUDs as problematic, this apparent failure to review RUDs is particularly concerning.^{xxxiv}

28. Finally, the U.S. should adopt the optional protocols that allow for better implementation and oversight of human rights treaties – especially the protocol of the Convention Against Torture (OPCAT) and the First Optional Protocol for the ICCPR. Sound government systems require transparency, accountability, and external monitoring, something which the U.S. sorely needs, especially with respect to detention.

29. The U.S. incarcerates more people than any other country in the world but is lagging dangerously behind in allowing for appropriate oversight of its prisons and jails. This gap has grown in recent years due to the increasing use of private detention facilities by corrections departments and the Department of Homeland Security. The historic lack of transparency of U.S. detention has been a major contributor to the human rights abuses that the optional protocols and their underlying treaties seek to eliminate. Ratification of the OPCAT will allow for effective preventative oversight of obligations under the CAT and create a mechanism by which treaty mandates generally can be addressed proactively. Ratification of the Optional Protocol to the ICCPR, which provides an individual complaint mechanism, will further improve domestic accountability. Adjudication of complaints is not only an avenue for individuals to

seek remedies for treaty violations, it is an opportunity to gain guidance on treaty provisions and the steps necessary to strengthen domestic compliance with human rights obligations.

30. In summary, the United States has stated that human rights treaties are not self-executing, and yet it has neither enacted implementing legislation granting courts jurisdiction to hear claims concerning treaty violations, nor adopted optional protocols that allow for effective implementation and oversight. As a result, no court or institution in the U.S. has jurisdiction to directly resolve individual or group complaints alleging violations of the treaty obligations. At the same time, the U.S. has absolved itself of responsibility for implementation not within its jurisdiction, even though the federal government has ultimate responsibility for ensuring U.S. compliance with treaty obligations. As a result of these two approaches to the human rights conventions, individuals who fall into the gaps between international human rights norms and existing U.S. laws have no recourse, even when the U.S. has ratified treaties that have the purpose and object of protecting those rights.

2. The U.S. Should Establish or Empower Federal Entities to Monitor and Report on Federal, State and Local Compliance With Domestic Enforcement of International Human Rights Treaties.

31. Independent and permanent institutions set up to implement human rights obligations in U.S. policy and monitor compliance with those obligations are essential mechanisms for protecting human rights and preventing violations. U.S. failure to create such institutions has caused a lack of oversight, particularly at the state and local levels, leading to a hodge-podge of enforcement efforts that operate at highly variable levels and under a diversity of standards. The treaty bodies have repeatedly observed that U.S. reports are inadequate and incomplete, due to their failure to include state and local data.^{xxxv} As discussed below, robust federal institutions should coordinate with existing state and local agencies charged with monitoring and enforcement of civil and human rights laws.

32. The ad-hoc PCC, which took over the role of treaty implementation oversight, has functioned only to prepare periodic reports and otherwise coordinate the U.S. government's formal presentation to international bodies. No entity is explicitly charged with coordinating or promoting local reporting mechanisms, informing various levels of government and the public about treaty obligations, or coordinating a systematic review of domestic legislation to ensure conformity with international mandates. As a result, judges, police, mayors and city council members, as well as state and federal legislators, have little awareness of their international human rights obligations.^{xxxvi}

33. The United States urgently needs a comprehensive national system that integrates human rights treaty obligations into federal legislation and policies, and fosters implementation at the state and local levels. In developing such a system, the U.S. should create and fund two distinct yet related permanent federal institutions that (1) monitor treaty compliance, review legislation and recommend appropriate policy modifications, as well as RUDs; (2) have the authority to coordinate and support state and local civil and human rights agencies to undertake implementation of treaty obligations at the subnational level, through funding, training and education and dedicated staff; and (3) have sufficient staff and resources to achieve their mandate. First, an executive branch implementation body should be put in place by

reinvigorating the IAWG to serve as a focal point to ensure coordination of all federal departments and agencies both to promote and respect human rights and to implement human rights obligations into U.S. domestic policy at the federal, state and local levels. Second, an independent, non-partisan monitoring body should be created by transforming the U.S. Commission on Civil Rights into a U.S. Commission on Civil and Human Rights, expanding its mandate to include human rights and monitoring of human rights implementation and enforcement efforts, as well as making structural reforms to improve the Commission's ability to function as a national human rights institution.

34. **CONCLUDING RECOMMENDATIONS:** As detailed above, the United States must:

- (1) take immediate steps to ratify key international human rights treaties and interpret rights contained within ratified treaties in line with international human rights standards, including protections of economic, social and cultural rights;
- (2) remove any RUDs that undermine compliance with, or violate the object and purpose of, treaties;
- (3) adopt implementing legislation and optional protocols to ensure treaties are enforceable and that domestic law is in full compliance with treaty obligations; and
- (4) establish federal mechanisms to ensure comprehensive coordination and monitoring of treaty implementation and federal, state and local compliance with international human rights obligations.

ⁱ *Organizations and titles listed for identification purposes only.*

ⁱⁱ For a list of human rights treaties ratified by the United States, as well as those signed but not ratified, *see* University of Minnesota Human Rights Library, Ratification of International Human Rights Treaties - USA, <http://www1.umn.edu/humanrts/research/ratification-USA.html> (last visited Feb. 3, 2010).

ⁱⁱⁱ Convention on the Elimination of All Forms of Discrimination Against Women: Status, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en (last visited Feb. 3, 2010).

^{iv} *See* Columbia Law School's Human Rights Institute and the International Association of Human Rights Agencies, State and Local Human Rights Agencies: Recommendations for Advancing Opportunity and Equality Through an International Human Rights Framework, 25 (2009).

^v Press Release, The White House, *Remarks by the President on Signing of UN Convention on the Rights of Persons with Disabilities Proclamation* (July 24, 2009)..

^{vi} *Id.*

^{vii} The U.S. has not yet ratified six of eight ILO conventions, which set out core labor standards: Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); Right to Organise and Collective Bargaining Convention, 1949 (No. 98); Forced Labour Convention, 1930 (No. 29); Minimum Age Convention, 1973 (No. 138); Equal Remuneration

Convention, 1951 (No. 100); Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

^{viii} The provision of Article 18 of the Vienna Convention on the Law of Treaties, which the United States government has recognized as binding customary international law, oblige a signing party to refrain from actions that would defeat the object and purpose of the treaty (Vienna Convention on the Law of Treaties, *opened for signature* May 23, 1969, 1155 U.N.T.S. 331).

^{ix} Press Release, United Nations, *Commission Adopts Six Resolutions and Two Decisions on Economic, Social and Cultural Rights* (Apr. 15, 2005).

^x See, e.g., Explanation of Position by Craig Kuehl, United States Advisor, on Resolution L.30, Rev. 1 - The Right to Food, in the Third Committee of the Sixty-fourth Session of the United Nations General Assembly (Nov. 19, 2009), *available at* <http://usun.state.gov/briefing/statements/2009/132187.htm>.

^{xi} *Dandridge v. Williams*, 397 U.S. 471, 486 (1970).

^{xii} *Id.* at 487.

^{xiii} See *Linday v Normet*, 405 U.S. 56, 74 (1972) (rejecting the right to adequate housing); and *Tilden v Hayward*, 1990 WL 131162 (Del. Ch.Ct. 1990) (concluding the Court did not have the authority to order the state to house a family rather than choose the more expensive option of removing a child into foster care based on the homelessness of the family).

^{xiv} Andrew P. Wilper *et. al.*, Health Insurance and Mortality in U.S. Adults, *Am. J. of Pub. Health* 99: 12, 4 (2009).

^{xv} U.S. Dep't of Agriculture, Food Security in the US (Nov. 16, 2009), <http://www.ers.usda.gov/briefing/Foodsecurity/> (last visited Feb. 3, 2010) [hereinafter USDA].

^{xvi} The U.S. Census Bureau has estimated that in 2008, 39.8 million Americans, or 13.2% of our population, lived in poverty, and a record 47 million Americans lacked health insurance. U.S. Census Bureau, *Income, Poverty and Health Insurance Coverage in the United States: 2008*, 13, 20 (Sep. 2009), An estimated 3.5 million Americans, 1.35 million of whom are children, are affected by homelessness each year, and millions more live in substandard housing conditions. National Coalition for the Homeless, *How Many People Experience Homelessness?* (Jul. 2009), http://www.nationalhomeless.org/factsheets/How_Many.html (last visited Feb. 3, 2010). Despite an obesity epidemic, the U.S. Department of Agriculture reports that 5.7 percent of American households suffered from hunger in 2008, while 49.1 million, or 14.6 percent of the population, faced food insecurity. USDA, *supra* note 14.

^{xvii} Vienna Convention on the Law of Treaties, *supra* note 8, art. 31-33.

^{xviii} *Foster v. Neilson*, 27 U.S. (2 Pet.) 253, 314 (1829). See generally, Restatement (Third) Foreign Relations Law of the United States § 111 (1987).

^{xix} U.S. courts may give a treaty indirect effect by interpreting independent statutory or common law causes of action for consistency with the treaty, applying the *Charming Betsy* doctrine. See *Murray v. The Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64 (1804). However, this possible

indirect application does not satisfy the specific requirements for causes of action called for in several human rights treaties.

^{xx} Torture Convention Implementation Act, 18 U.S.C. § 2340A (2009); Genocide Convention Implementation Act of 1987, 18 U.S.C. § 1091 (2009), and War Crimes Act of 1998, 18 U.S.C. § 2441 (2009).

^{xxi} Concluding Observations of the Committee on the Elimination of Racial Discrimination, United States of America, ¶ 11, U.N. Doc. CERD/C/59/Misc.17/Rev.3 (Aug. 14, 2001) (noting “the absence of specific legislation implementing the provisions of the Convention in domestic laws,” and recommending that the U.S. take the necessary steps “to ensure the consistent application of the provisions of the Convention at all levels of government”). The most recent Concluding Observations of the Committee on the Elimination of Racial Discrimination, U.N. Doc. CERD/C/USA/CO/6 (May 8, 2008) [hereinafter CERD Concluding Observations 2008], noted at least nine specific areas of existing U.S. law that fall short of the CERD’s protections and called on the U.S. government to address the shortcomings with implementing legislation.

^{xxii} See Memo from Harold Hongju Koh, Legal Adviser, U.S. Dept. of State to Executive Branch Agencies, 1 (Dec. 17, 2009), (stating that “United States obligations under the ICCPR, CERD and the CRC Optional Protocols are implemented under existing law . . . the U.S. State Department, coordinating with other relevant agencies, reviewed the treaties and relevant provisions of U.S. law and determined that existing laws . . . were sufficient to implement the treaty obligations, as understood or modified by [RUDS] made by the United States at the time of ratification in order to ensure congruence between treaty obligations and existing U.S. laws.” The memo further notes that “[w]ith regard to the CAT, Congress passed specific implementing legislation.”).

^{xxiii} See, e.g., United States Response to Specific Recommendations Identified by the Committee on the Elimination of Racial Discrimination (Jan. 13, 2009), (responding to a recommendation for implementing legislation by describing enforcement efforts under existing laws and holding existing laws out as evidence that the U.S. already has a “robust framework” for addressing racial discrimination).

^{xxiv} CERD Concluding Observations 2008, *supra* note 21, ¶ 10.

^{xxv} Concluding Observations of the Human Rights Committee, United States of America, ¶16, UN Doc. CCPR/C/USA/CO/3 (Sept. 15, 2006) [hereinafter HRC Concluding Observations 2006]. The U.S. has enacted implementing legislation for the CAT, The Torture Statute of 1996, which includes a narrow definition of torture that does not comply with the treaty and prosecution is limited to torture committed *outside* the United States, so does not apply to prisoners inside the country. Moreover, effective communication and accountability are lacking because the U.S. refuses to recognize the competence of the CAT Committee to recognize and consider communications from or on behalf of victims, in accordance with Article 22.

^{xxvi} *Id.*, ¶ 33.

^{xxvii} *Id.*, ¶ 34.

^{xxviii} Conclusions and Recommendations of the Committee against Torture, United States of America, ¶ 13, U.N. Doc. CAT/C/USA/CO/2 (Jul. 25, 2006).

^{xxix} The Senate entered this understanding despite wording expressly rejecting such positions. For instance, the ICCPR Article 50 states: “The provisions of the present Covenant shall extend to all parts of Federal States without any limitations or exceptions.” International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171.

^{xxx} See Human Rights Committee, General Comment No. 31 [80], Nature of the General Legal Obligation Imposed on States Parties to the Covenant, ¶ 4, U.N. Doc. CCPR/C/21/Rev/1/Add/13 (May 26, 2004) (noting that “article 2, paragraph 2 . . . operates so as to prevent States parties from invoking provisions of the constitutional law or other aspects of domestic law to justify a failure to perform or give effect to obligations under the treaty” and reminding federal states that “the Covenant’s provisions ‘shall extend to all parts of federal states without any limitations or exceptions’”).

^{xxxi} See, e.g., Concluding Observations of the Human Rights Committee, Australia, ¶ 8, UN Doc. CCPR/C/AUS/CO/5 (May 7, 2009).

^{xxxii} See Louis Henkin, U.S. Ratification Of Human Rights Conventions: The Ghost Of Senator Bricker, 89 Am. J. Int’l L. 341, 342-344 (1995) (observing that “... a reservation to avoid an obligation that the United States could not carry out because of constitutional limitations is appropriate, indeed necessary”). However, as Henkin documents, most “constitutional” reservations the U.S. has attached to human rights conventions have a broader sweep than necessary, effectively rejecting all international standards that would require changes to existing U.S. laws.

^{xxxiii} Vienna Convention on the Law of Treaties, *supra* note 8, art. 19(c). In addition, some conventions explicitly prohibit reservations incompatible with their object and purpose, e.g., Convention on the Elimination of All Forms of Racial Discrimination, *opened for signature* Mar. 7, 1966, 660 U.N.T.S. 195, art. 20(2).

^{xxxiv} See, e.g., CERD Concluding Observations 2008, *supra* note 21, ¶¶11, 18.

^{xxxv} See, e.g., HRC Concluding Observations 2006, *supra* note 25, ¶39 (requesting that the United States “include in its next periodic report information ... on the implementation of the Covenant as a whole, as well as about the practical implementation of the Covenant, the difficulties encountered in this regard, and the implementation of the Covenant at state level” and encouraging it “to provide more detailed information on the adoption of effective mechanisms to ensure that new and existing legislation, at federal and at state level, is in compliance with the Covenant, and about mechanisms adopted to ensure proper follow-up of the Committee’s concluding observations”).

^{xxxvi} For example, thanks to the strenuous efforts of the Meiklejohn Civil Liberties Institute and the local Peace and Justice Commission, the City of Berkeley, CA, has committed to reporting on compliance with the ICCPR, CERD and CAT. However, the City must depend on volunteers to conduct this reporting, due to the lack of federal, state or local resources appropriated for treaty monitoring. For more information about the Berkeley ordinance, see <http://www.mcli.org/>.