

INALIENABLE RIGHTS

Applying international
human rights standards to the
U.S. criminal justice system



**American Friends
Service Committee**

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**American Friends
Service Committee**

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CONTENTS

Introduction	1
Major issues in U.S. prisons	
Compensation/reparation	3
Death penalty	4
Prison conditions and the behavior of prison officials	6
Medical care	8
Treatment of people in prisons	12
Political prisoners	13
Torture/Isolation	14
Racism/Discrimination	18
Rape	22
Treatment of Female Prisoners	24
Treatment of Children in prisons	29
Annex I: Correlation of issues to international conventions, treaties, and declarations	36
Annex II: Where to find online versions of treaties, conventions, minimum standards, rules, declarations, and principles	38
Annex III: Treaty ratification by the United States	39



LOST

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INTRODUCTION

International treaties, conventions, and declarations provide basic guidelines for the treatment of prisoners. However, those guidelines are routinely ignored by the U.S. criminal justice system. Meanwhile, the United States continues to criticize other countries for violations of prisoners' human rights.

“Inalienable rights: Applying international human rights standards to the U.S. criminal justice system” is meant to help illuminate—and eliminate—this hypocritical double standard.

For decades, the American Friends Service Committee (AFSC) has spoken out against the torture and abuse of prisoners. AFSC criminal justice programs nationwide have received thousands of calls and letters from prisoners and their families that document egregious violations of international human rights standards, including the Convention Against Torture, ratified by the U.S. in 1994. The list of abuses is long and horrifying: Use of stun guns and restraint tables, rape, prison chain gangs, and refusal to provide adequate medical care, to name just a few.

And, since 1992, the AFSC Prison Watch Project in Newark, New Jersey, has monitored the use of extended sensory deprivation and devices of torture in prisons across the country. We continue to receive complaints of sexual assault of women in prison, detention of minor children in adult facilities, use of isolation on young people in youth detention, racism, brutality, and other violations of human rights.

It's clear that the concepts of human rights law need to find their way into the U.S. police, court, and prison justice systems. One way this can happen is if prisoners, their families and loved ones, and prisoner rights advocates weave the language of international standards and treaties into their arguments for humane prison conditions and treatment of prisoners.

To that end, this resource guide correlates the major issues and conditions in U.S. prisons to the most relevant international standards as stipulated in international human rights agreements. Annex I provides a clear, easy-to-follow chart that summarizes the relevant correlations. Annex II provides the status of ratification by the U.S. of the most relevant international human rights treaties and conventions, along with a definition of treaty terms. And Annex III compiles URLs to the complete official documents of the relevant human rights instruments.

This guide is born of the valiant attempts by prisoners to keep lawyers, advocates, loved ones, and family members alert to what is happening to the powerless. We hope it will become a valuable tool in all our work and future dealings with the U.S. criminal justice system.

*Nardos Assefa, Assistant to the Regional
Director for Special Projects*

*Bonnie Kerness, MSW
Coordinator, Prison Watch Project*

Second edition, August 2009
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COMPENSATION/REPARATION

One way to begin on the road to healing justice is to work for reparations and compensation for a wide range of injustices perpetuated, especially against people of color.

International Covenant on Civil and Political Rights (ICCPR)

ARTICLE 14

(6) When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such a conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

International Convention on the Elimination of All Forms of Racial Discrimination (CERD)

ARTICLE 6

States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

DEATH PENALTY

To take a life when a life has been lost is revenge, not justice.

Desmond Tutu

Having lost my father and grandmother to gun violence, I understand the deep hurt and anger felt by the loved ones of those who have been murdered. Yet I can't accept the judgment that their killers deserve to be executed. This merely perpetuates the tragic, unending cycle of violence that destroys our hope for a decent society.

Rev. Bernice King

Universal Declaration of Human Rights

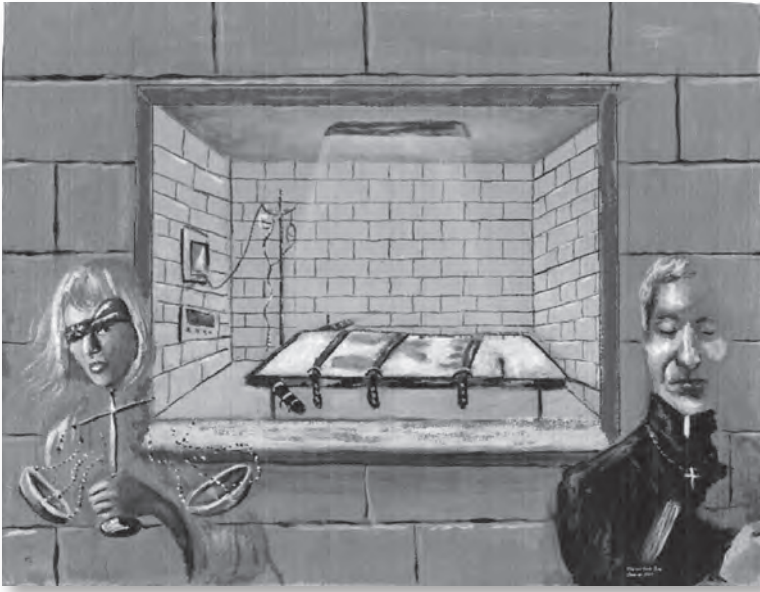
ARTICLE 3

Everyone has the right to life, liberty and security of person.

International Covenant on Civil and Political Rights (CCPR)

ARTICLE 6

- (1) Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
- (2) In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provision of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.
- (5) Sentence of death shall not be imposed for crimes committed by person below eighteen years of age...



Free Ray Gray

(6) Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Safeguards guaranteeing protection of the rights of those facing the death penalty

ARTICLE 9

Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering.

PRISON CONDITIONS AND THE BEHAVIOR OF PRISON OFFICIALS

From the United Nations Basic Principles for the Treatment of Prisoners, Adopted and proclaimed by General Assembly, resolution 45/111 of December 14, 1990:

PRINCIPLE 1: All prisoners shall be treated with the respect due to their inherent dignity and value as human beings.

PRINCIPLE 5: Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

ARTICLE 10

- (1) Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.
- (2) Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.

ARTICLE 11

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

ARTICLE 12

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

Standard Minimum Rules for the Treatment of Prisoners

RULE 27

Discipline and order shall be maintained with firmness, but with no more restriction than is necessary for safe custody and well-ordered community life.



Willie Singleton

MEDICAL CARE

In a system where 95 percent of people in prison return to our communities, the impact of cruelty and poor medical practices isn't just a matter of human decency. They involve, among other things, serious public health concerns with both immediate and long term implications. Public health issues concerning people coming out abound with mental and physical issues including Hepatitis C, Tuberculosis, HIV, mental illness and symptoms related to post traumatic stress disorder. Many leave prisons without any of the medication which formed the bedrock of their treatment, thereby risking diffusion of these diseases.

Bonnie Kerness (From speech, "Slavery to the Prison System – Human Rights Violation in America")

International Covenant on Economic, Social and Cultural Rights (CESCR)

ARTICLE 12

(1) The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

Basic Principles for the Treatment of Prisoners

PRINCIPLE 9

Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

PRINCIPLE 24

A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.

Standard Minimum Rules for the Treatment of Prisoners

RULE 10

All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.

RULE 12

The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.

RULE 13

Adequate bathing and shower installations shall be provided so that every prisoner may be enabled and required to have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate.

RULE 22

- (1) At every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry. The medical services should be organized in close relationship to the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality.
- (2) Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers.
- (3) The services of a qualified dental officer shall be available to every prisoner.

RULE 25

- 1) The medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed.

RULE 26

- (1) The medical officer shall regularly inspect and advise the director upon:
 - (a) The quantity, quality, preparation and service of food;
 - (b) The hygiene and cleanliness of the institution and the prisoners;
 - (c) The sanitation, heating, lighting and ventilation of the institution;
 - (d) The suitability and cleanliness of the prisoners' clothing and bedding;
 - (e) The observance of the rules concerning physical education and sports, in cases where there is no technical personnel in charge of these activities.

RULE 62

The medical services of the institution shall seek to detect and shall treat any physical or mental illnesses or defects which may hamper a prisoner's rehabilitation. All necessary medical, surgical and psychiatric services shall be provided to that end.

Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

PRINCIPLE 1

Health personnel, particularly physicians, charged with the medical care of prisoners and detainees have a duty to provide them with protection of their physical and mental health and treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained.

TESTIMONIES

I arrived here on 2/3/06 but immediately received a skin infection that took till about 8/10/06 to get rid of due to the medical neglect and incompetence here at ADC. I had golf ball size dripping Oozing sores and medical refused to see me for MONTHS at a time. They also gave me the wrong antibiotics, and on and on. It is beyond a long incredible story. The medical neglect of inmates here is criminal.

Arizona, Eyman (I)

It's a waste of time to even talk to the psychologist while in ad-seg because as long as I'm able to hold a rational conversation, I'm considered manageable. They only help ad seg prisoners when the prisoner is so far gone mentally that he is an actual threat to staff. Every few months [sees the psychologist], only to ask 'how ya doing? Okay, goodbye, don't got time today, gotta go.' Sometimes they actually say all that in one breath as they're walking by my cell. Other times the interviews only last long enough to say the one sentence. [Has been in long-term segregation since 1998.]

Michigan, Marquette Branch Prison

I am a diagnosed paranoid schizophrenic. I have also been deprived protective custody for years. As a result I have spent three years in solitary. Prison officials cut off my anti psychotic Seroquel. Three months later... I went deeply psychotic and I was placed in the IMU strip cell. Because I was insane I don't know how many days I was in there but the guards deliberately passed by my cell and would not feed me. I was naked. I had nothing. The bare concrete was contaminated with feces. The water was shut off and I had to drink out of the toilet.

Washington, Monroe Corrections Complex
(Washington State Reformatory)

TREATMENT OF PEOPLE IN PRISONS

The degree of civilization in a society can be judged by entering its prisons.

Dostoevsky

Basic Principles for the Treatment of Prisoners

PRINCIPLE 1

All prisoners shall be treated with the respect due to their inherent dignity and value as human beings.

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

PRINCIPLE 1

All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.

International Covenant on Civil and Political Rights (CCPR)

ARTICLE 10

- (1) All persons deprived of their liberty shall be treated with humanity and with respect for the dignity of the human person.
- (3) The penitentiary system shall comprise treatment of prisoners the essential of which shall be their reformation and social rehabilitation.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

ARTICLE 13

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

POLITICAL PRISONERS

While the U.S. denies that there are people being held for political reasons, there was no way at the time, to work with prisoners without hearing repeatedly of the existence of such people, including individuals who clearly fit the United Nations definitions of political prisoners and prisoners of war – and the particular treatment they endured once in prison. As early as 1978, Andrew Young, who was US Ambassador to the United Nations, was quoted in a newspaper interview that “there were hundreds, perhaps thousands of people I would describe as political prisoners” in U.S. prisons.

*[From a speech by Bonnie Kerness
Chicago, March 31, 2008]*

Universal Declaration of Human Rights

ARTICLE 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.



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TORTURE/ISOLATION

Article 1 of the UN Convention Against Torture (CAT) prohibits policies and practices that “constitute cruel, inhuman and degrading punishment.” The UN Human Rights Committee, the UN Special Rapporteur on Torture, the UN Special Rapporteur on Violence Against Women, and the UN Committee on Torture have all cited the United States prison conditions as violations with international standards, particularly the CAT, which states:

1. Each state party shall take effective legislative, administrative, judicial, or other measures to prevent acts of torture in any territory under its jurisdiction.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

[CAT, Article 2c]

International Covenant on Civil and Political Rights (CCPR)

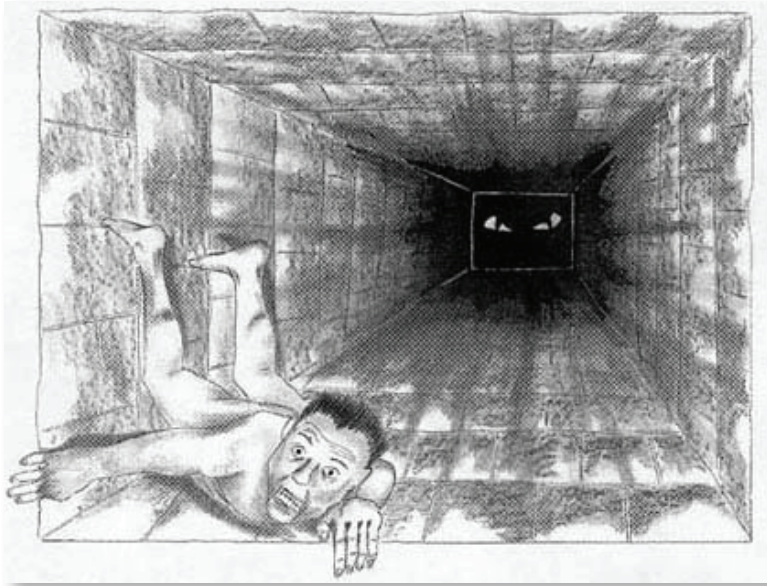
Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

Article 1

... the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent



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or acquiescence of a public official or other person acting in an official capacity.

ARTICLE 4

- (1) Each State Party shall ensure that all acts of torture are offenses under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.
- (2) Each State Party shall make these offenses punishable by appropriate penalties which take into account their grave nature.

Standard Minimum Rules for the Treatment of Prisoners

RULE 30

- (1) No prisoner shall be punished except in accordance with the terms of such law or regulation, and never twice for the same offence.
- (2) No prisoner shall be punished unless he has been informed of the offence alleged against him and given a proper opportunity of present-

ing his defence. The competent authority shall conduct a thorough examination of the case.

Rule 31

Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences.

Rule 32

- (1) Punishment by close confinement or reduction of diet shall never be inflicted unless the medical officer has examined the prisoner and certified in writing that he is fit to sustain it.
- (2) The same shall apply to any other punishment that may be prejudicial to the physical or mental health of a prisoner. In no case may such punishment be contrary to or depart from the principle stated in rule 31.
- (3) The medical officer shall visit daily prisoners undergoing such punishments and shall advise the director if he considers the termination or alteration of the punishment necessary on grounds of physical or mental health.

Rule 33

Instruments of restraint, such as handcuffs, chains, irons and strait-jacket, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints. Other instruments of restraint shall not be used except in the following circumstances:

- a) As a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority;
- b) On medical grounds by direction of the medical officer;
- c) By order of the director, if other methods of control fail, in order to prevent a prisoner from injuring himself or others or from damaging property; in such instances the director shall at once consult the medical officer and report to the higher administrative authority.

Basic Principles for the Treatment of Prisoners

Principle 7

Efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged.

TESTIMONIES

That is why I attempted suicide. I was done with watching the beatings, torture, and horror and done with the harassment 24-7 and the continuous torment and torture — fingers wrenched out of joint while applying handcuffs, clamped in the skin against the bone, the leg chains clamped on so tight that my feet turned purple, constant various threats by staff, being woke up all during the night for various reasons- to deliver mail at 2 am, deliver the paper at 3 am, wake me up to ask me if I am asleep at 4 am . I was done.

Maricopa – 4th Ave Jail [Arizona]

I am housed in a “secured housing” area, I only get out of my cell two hours per day (two man cell of five feet by twelve feet). I only get three hours per week of ... “outdoor recreation,” which is only a room about 40 feet by 25 feet ... all brick on three sides, top and bottom. One wall is mesh to see out and get the air outside. I haven’t seen or felt the sun in over a year and a half.

Santi N. – Los Angeles, California, 1/8/00

I have worked in LCI’s [Limon Correctional Institute] segregation building as [a] porter since August 1987 and have observed the following: Ten to twelve prisoners cuffed and shackled for 24 hours per day in ... strip cells. (These are ... segregation cells [in] which they turn the water off and cover the toilet with plastic and tape.) They keep the door open, video[tape] all that occurs and have a guard on duty to watch 24 hours a day. Many of the guards are female. They continue this until the prisoner has at least five bowel movements.

Jim B. – Limon, Colorado, 3/30/98

RACISM/DISCRIMINATION

From the UN Declaration on the Elimination of All Forms of Racial Discrimination:

Article 1: Discrimination between human beings on the ground of race, color or ethnic origin is an offense to human dignity and shall be condemned as denial of the principles of the Charter of the United Nations as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights....

Article 2: No State institution, group or individual shall make any discrimination whatsoever in matters of human rights and fundamental freedoms in the treatment of person, groups of persons or institutions on the ground of race, color or ethnic origin.

Universal Declaration of Human Rights

ARTICLE 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, 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.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

ARTICLE 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

International Covenant on Civil and Political Rights

ARTICLE 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

International Convention on the Elimination of all Forms of Racial Discrimination (CERD)

ARTICLE 2

States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:

- (a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation...

ARTICLE 5

States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law....

- (a) The right to equal treatment before the tribunals and all other organs administering justice;
- (b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution.

Basic Principles for the Treatment of Prisoners

PRINCIPLE 2

There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, prop

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

PRINCIPLE 5 (1)

These principles shall be applied to all persons within the territory of any given State, without distinction of any kind, such as race, colour, sex, language, religion or religious belief, political or other opinion, national, ethnic or social origin, property, birth or other status.

Standard Minimum Rules for the Treatment of Prisoners

- (1) Prisoners who are foreign nationals shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong.
 - (2) Prisoners who are nationals of States without diplomatic or consular representation in the country and refugees or stateless persons shall be allowed similar facilities to communicate with the diplomatic representative of the State which takes charge of their interests or any national or international authority whose task it is to protect such persons.
-

TESTIMONIES

It's unbelievable how much hatred these officers have for blacks ... displayed through the gross abuse of their absolute authority. Ninety five percent of the COs are white, most of them have never seen a black man and some top officers [are] associated with ... racist associations. Ninety five percent of the [prisoner] population is black or minority.

[During a period of four months] I've been through 39 abusive strip searches and 39 cell shake downs, my cell being left junked up and my personal and legal mail read. I've also been moved from cell to cell 17 times [in that same period], placed in filthy cells.

Juan E. – Wallens Ridge State Prison,
Big Stone Gap, Virginia, 1/16/00

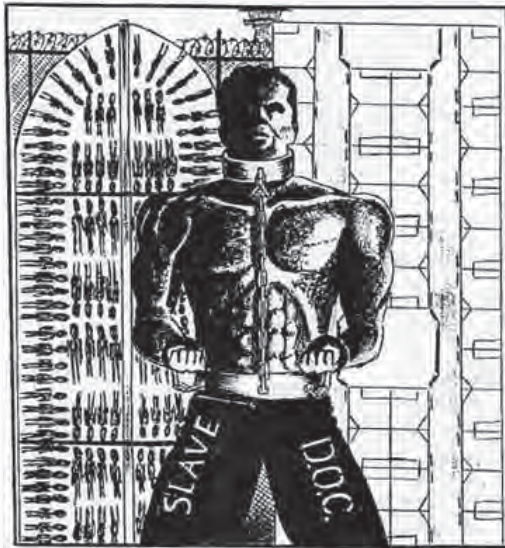
On 11/28/99 due to the yard extraction, a state of emergency was declared solely against the Mexican prisoners ... Due to the state of emergency [we] Mexican prisoners were denied access to the concrete exercise yard all the way until January 7, 2000 - forty days. Even new Mexicans arrived into [unit] were denied yard access. The treatment [we] Mexicans received ... was discriminatory and was meant to punish, demean and [to] show us who was boss.

Juan C. Pérez - High Desert State Prison,
Susanville, California, undated

[The prisoner and 18 other Mexican prisoners had been extracted from a yard using pepper spray.]

Two young black prisoners were transferred here and put into strip cells. [In strip cells the prisoner is in the nude and there is no bedding. There is only the concrete floor.] One was beaten and maced twice a day for several days. Guards came from other wings as if they were participating in an old fashioned lynching.

Rose S. – Starke, Florida, writing for Florida prisoners, 4/27/99



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RAPE

The horrors experienced by many young inmates, particularly those convicted of nonviolent offenses, border on the unimaginable. Prison rape not only threatens the lives of those who fall prey to their aggressors, but it is potentially devastating to the human spirit. Shame, depression, and a shattering loss of self-esteem accompany the perpetual terror the victim thereafter must endure.

Harry A. Blackmun, U.S. Supreme Court Justice,
Farmer v. Brennan

Declaration on the Elimination of Violence against Women

ARTICLE 2

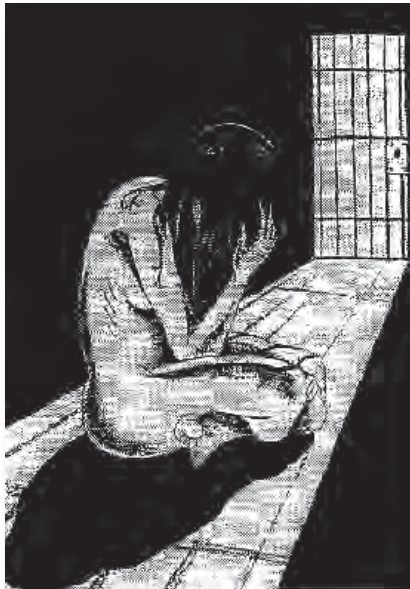
Violence against women shall be understood to encompass, but not be limited to, the following:

- (a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;
- (b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;
- (c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

TESTIMONIES

...for over two years I have been sexually abused by male prison guards and male civilian personnel at this institution....This abuse started in 1998 ... by touching, then oral sex, then intercourse. [A]t one time, one of the officers felt I was pregnant and quickly administered some pills he brought in to “bring it down,” as he stated to me. I remember becoming very [sick] from this. One of the officers was very brutal with me and one day actually slammed me against the wall while his hands held me tightly around the neck; [he stated] he [would] kill me if I ever said anything. Then the sergeant who had the most sexual acts with me threatened me a few times saying if I [or anyone else] dare[d] ruin his career that he [would] kill me. I strongly feared for my life and did as [I was] told each time I was called upon. ...[T]he word “no” does not exist in our vocabulary and when we dare say [it] we get punished.

Judy V. – Edna Mahon Correctional Facility
Clinton, New Jersey, 6/1/01



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TREATMENT OF FEMALE PRISONERS

Pregnant women shackled to the bed during childbirth. Long periods of isolation as punishment for minor infractions. No privacy in the bathroom; no right to dress without the risk of being observed by male guards. Being separated by thousands of miles from your children. Yet to me, the most insidious, damaging attack on women prisoners in the U.S. is the routine pat search by male guards, repeated several times daily. React with anger (as you might if a man molested you that way on the street) and you will be punished and sent to the hole. The very rules of the institutions constitute human rights violations.

Laura Whitehorn

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

ARTICLE 1

... the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, or human rights and fundamental freedoms in the political, economic, social, cultural, civic or any other field.

ARTICLE 2

- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation
- (g) To repeal all national penal provisions which constitute discrimination against women.

ARTICLE 5

States Parties shall take all appropriate measures:

- (a) 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 the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women ...

International Covenant on Civil and Political Rights (CCPR)

ARTICLE 3

The States Parties to the present Covenant 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.

Declaration on the Elimination of Violence against Women

ARTICLE 2

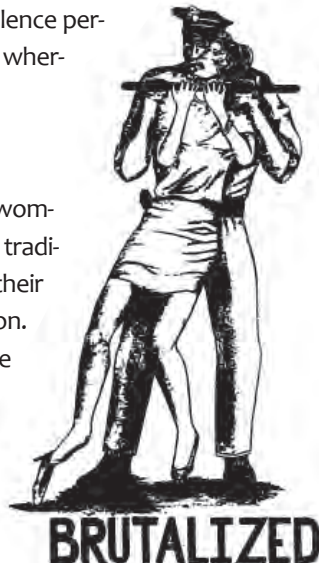
Violence against women shall be understood to encompass, but not be limited to, the following:

- (c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

ARTICLE 4

States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should:

- (c) Exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of



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violence against women, whether those acts are perpetrated by the State or by private persons

- (i) Take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitize them to the needs of women.

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

PRINCIPLE 5

- (2) Measures applied under the law and designed solely to protect the rights and special status of women, especially pregnant women and nursing mothers, children and juveniles, aged, sick or handicapped persons shall not be deemed to be discriminatory. The need for, and the application of, such measures shall always be subject to review by a judicial or other authority.

Standard Minimum Rules for the Treatment of Prisoners

RULE 8

Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women the whole of the premises allocated to women shall be entirely separate.

RULE 23

- (1) In women's institutions there shall be special accommodation for all necessary pre-natal and post-natal care and treatment. Arrangements shall be made wherever practicable for children to be born in a hospital outside the institution. If a child is born in prison, this fact shall not be mentioned in the birth certificate.
- (2) Where nursing infants are allowed to remain in the institution with their mothers, provision shall be made for a nursery staffed by qualified persons, where the infants shall be placed when they are not in the care of their mothers.

Rule 53

- (1) In an institution for both men and women, the part of the institution set aside for women shall be under the authority of a responsible woman officer who shall have the custody of the keys of all that part of the institution.
- (2) No male member of the staff shall enter the part of the institution set aside for women unless accompanied by a woman officer.
- (3) Women prisoners shall be attended and supervised only by women officers. This does not, however, preclude male members of the staff, particularly doctors and teachers, from carrying out their professional duties in institutions or parts of institutions set aside for women.

TESTIMONIES

Women write from Arizona, Texas, Missouri, New York:

The guard sprayed me with pepper spray because I wouldn't take my clothes off in front of five male guards. Then they carried me to a cell, laid me down on a steel bed and took my clothes off. They left me there in that cell with that pepper spray in my face and nothing to wash my face with. I didn't give them any reason to do that, I just didn't want to take my clothes off.

When I refused to move into a double cell, they came into my cell and dragged me out and threw me on my back. I was beaten about my face and head. One of the guards stuck his finger in my eye deliberately. I was rolled on my stomach and cuffed on my wrists with leg irons on my ankles ... I was made to walk a thousand feet with the leg irons. Then they put me in a device called a restraint chair. When they put you in this chair your hands are cuffed behind your back and tucked under your buttocks. They stripped me naked ...and kept me there over nine hours until I fouled myself on my hands which were tucked underneath me through a hole in the chair.

I am tired of being gynecologically examined every time I am searched.

That was not part of my sentence to ... perform oral sex with officers.



Judith Vazquez

TREATMENT OF CHILDREN IN PRISONS

Despite the decline of violent juvenile crime, 43 states have passed laws making it easier for children to be tried as adults. Campaigns to criminalize children have done away with the term “child” altogether. African descended, Latino, and Native young people in AFSC programs tell us that the police feel like an occupation army in their communities. They speak about school systems feeding young people of color into youth detention, and adult jails and prisons where they experience isolation, use of chemical and electronic restraints, racism, and sexual abuse. The treatment of imprisoned juveniles in the United States was cited by the UN Committee on Torture in 2000 as violating international law.

International Covenant on Civil and Political Rights (CCPR)

ARTICLE 6

- (5) Sentence of death shall not be imposed for crimes committed by person below eighteen years of age and shall not be carried out on pregnant women.

ARTICLE 10

- (3) The penitentiary system shall comprise treatment of prisoners the essential of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Convention on the Rights of the Child (CRC)

ARTICLE 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

ARTICLE 6

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

ARTICLE 37

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

ARTICLE 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights

and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:
 - (a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;
 - (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
 - (i) To be presumed innocent until proven guilty according to law;
 - (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assis-



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tance in the preparation and presentation of his or her defence;

- (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
 - (iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
 - (v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
 - (vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;
 - (vii) To have his or her privacy fully respected at all stages of the proceedings.
3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:
- (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
 - (b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.
4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care

shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

United Nations Standard Minimum Rules for the Administration of Juvenile Justice

RULE 13

Detention pending trial

Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time.

- (1) Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home.
- (2) Juveniles under detention pending trial shall be entitled to all rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations.
- (3) Juveniles under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.
- (4) While in custody, juveniles shall receive care, protection and all necessary individual assistance-social, educational, vocational, psychological, medical and physical-that they may require in view of their age, sex and personality.

RULE 19

Rule 19 aims at restricting institutionalization in two regards: in quantity (“last resort”) and in time (“minimum necessary period”). Rule 19 reflects one of the basic guiding principles of resolution 4 of the Sixth United Nations Congress: a juvenile offender should not be incarcerated unless there is no other appropriate response. The rule, therefore, makes the appeal that if a juvenile must be institutionalized, the loss of liberty should be restricted to the least possible degree, with special institutional arrangements for confinement and bearing in mind the differences in kinds of offenders, offences and institutions. In fact, priority should be given to

“open” over “closed” institutions. Furthermore, any facility should be of a correctional or educational rather than of a prison type.

RULE 21

- (1) Records of juvenile offenders shall be kept strictly confidential and closed to third parties. Access to such records shall be limited to persons directly concerned with the disposition of the case at hand or other duly authorized persons.

RULE 26

Objectives of institutional treatment

1. The objective of training and treatment of juveniles placed in institutions is to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society.
2. Juveniles in institutions shall receive care, protection and all necessary assistance-social, educational, vocational, psychological, medical and physical-that they may require because of their age, sex, and personality and in the interest of their wholesome development .
3. Juveniles in institutions shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.
4. Young female offenders placed in an institution deserve special attention as to their personal needs and problems. They shall by no means receive less care, protection, assistance, treatment and training than young male offenders. Their fair treatment shall be ensured.
5. In the interest and well-being of the institutionalized juvenile, the parents or guardians shall have a right of access.
6. Inter-ministerial and inter-departmental co-operation shall be fostered for the purpose of providing adequate academic or, as appropriate, vocational training to institutionalized juveniles, with a view to ensuring that they do not leave the institution at an educational disadvantage.

Rule 27

1. The Standard Minimum Rules for the Treatment of Prisoners and related recommendations shall be applicable as far as relevant to the treatment of juvenile offenders in institutions, including those in detention pending adjudication.
2. Efforts shall be made to implement the relevant principles laid down in the Standard Minimum Rules for the Treatment of Prisoners to the largest possible extent so as to meet the varying needs of juveniles specific to their age, sex and personality.

RULE 29

Efforts shall be made to provide semi-institutional arrangements, such as half-way houses, educational homes, day-time training centres and other such appropriate arrangements that may assist juveniles in their proper reintegration into society.

United Nations Rules for the Protection of Juveniles Deprived of their Liberty

RULE 11

For the purposes of the Rules, the following definitions should apply:

- (a) A juvenile is every person under the age of 18. The age limit below which it should not be permitted to deprive a child of his or her liberty should be determined by law;
- (b) The deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.

ANNEX I

Correlation of Issues to International Conventions, Treaties, and Declarations

International Covenant on Economic, Social and Cultural Rights (CESCR)

International Convention on Civil and Political Rights (CCPR)

International Convention on the Elimination of all forms of Racial Discrimination (CERD)

Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

Convention on the Rights of the Child (CRC)

In addition to this chart, each issue contains additional text drawn from the following UN Declarations, Standard Rules and Principles.

Basic Principles for the Treatment of Prisoners

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

Declaration on the Elimination of Violence Against Women

Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Principles of Medical Ethics Relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Standard Minimum Rules for the Treatment of Prisoners

Safeguards guaranteeing protection of the rights of those facing the death penalty

United Nations Rules for the Protection of Juveniles Deprived of their Liberty

United Nations Standard Minimum Rules for the Administration of Juvenile Justice

ISSUES	INTERNATIONAL CONVENTIONS, TREATIES AND DECLARATION						
	ICESCR	ICCPR	ICERD	CEDWA	CAT	CRC	UN DECLARATION OF HUMAN RIGHTS
COMPENSATION/REPARATIONS		Article 14 (6)	Article 6				
DEATH PENALTY		Article 6 (1), (2), (5)					Article 3
INSTITUTIONS/OFFICIALS					Articles 10 (8,2), 11, 12		
MEDICAL CARE	Article 12 (1)			Article 5 (2)			
POLITICAL PRISONERS							Article 19
PRISONERS		Articles 6 (1), 10 (1)	Article 5 (b)				
TORTURE, ISOLATION		Article 7			Articles 1, 4(1), (2)		Article 5
RACISM/DISCRIMINATION			Articles 2(a) (a)				
RAPE							
WOMEN				Articles 1, 2(d), (g), 5 (1)			
YOUTH		Article 10 (5)					Articles 1, 6, 37, 40

ANNEX II

Where to find online versions of treaties, conventions, minimum standards, rules, declarations, and principles

International Covenant on Economic, Social and Cultural Rights (CESCR)
tinyurl.com/kwhjbq

International Covenant on Civil and Political Rights (CCPR)
tinyurl.com/2d5lag

International Convention on the Elimination of all forms of Racial
Discrimination (CERD)
tinyurl.com/15hq5j

Convention on the Elimination of all forms of Discrimination Against
Women (CEDAW)
tinyurl.com/y48lxe

Convention against Torture and Other Cruel, Inhuman or Degrading
Treatment or Punishment (CAT)
tinyurl.com/dap9vc

Convention on the Rights of the Child (CRC)
tinyurl.com/nlesv8

Basic Principles for the Treatment of Prisoners
tinyurl.com/kr7dag

Body of Principles for the Protection of All Persons under Any Form
of Detention or Imprisonment
tinyurl.com/klntt9

Declaration on the Elimination of Violence Against Women
tinyurl.com/2rgw6n

Declaration on the Protection of All Persons from Being Subjected to
Torture and Other Cruel, Inhuman or Degrading Treatment or Punish-
ment
tinyurl.com/kqom8p

Principles of Medical Ethics relevant to the Role of Health Personnel,
particularly Physicians, in the Protection of Prisoners and Detainees
against Torture and Other Cruel, Inhuman or Degrading Treatment or
Punishment
tinyurl.com/kwqbw4

Standard Minimum Rules for the Treatment of Prisoners

tinyurl.com/nq8a2o

Safeguards guaranteeing protection of the rights of those facing the death penalty

tinyurl.com/mwdxk6

United Nations Rules for the Protection of Juveniles Deprived of their Liberty

tinyurl.com/lkptak

United Nations Standard Minimum Rules for the Administration of Juvenile Justice

tinyurl.com/lvv8mc

Universal Declaration of Human Rights

tinyurl.com/cgnkmq

ANNEX III

Treaty Ratification by the United States

TREATY	SIGNATURE	RATIFICATION
International Covenant on Economic, Social and Cultural Rights (CESCR)	October 5, 1977	
International Convention on Civil and Political Rights (CCPR)		June 8, 1992
Optional Protocol to the International Covenant on Civil and Political Rights (CCPR-OPT)		
Second Optional Protocol to the International Covenant on Civil and Political Rights, aimed at the abolition of the death penalty (CCPR-OPT ₂)		
UN Convention on the Elimination of all forms of Racial Discrimination (CERD)		October 21, 1994
UN Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)	July 17, 1980	
The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW-OP)		
UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)		October 21, 1994
UN Convention on the Rights of the Child (CRC)	February 16, 1995	
The Optional Protocol to the Convention on the Rights of the Child (CRC-OP-AC) on the involvement of children in armed conflict	July 5, 2000	
The Optional Protocol to the Convention on the Rights of the Child (CRP-OP-SC) on the sale of children, child prostitution and child pornography	July 5, 2000	
International Convention on the Protection of the Rights of All Migrant Workers and		

Definitions of treaty terms

Ratification: Defines the international act whereby a state indicates its consent to be bound to a treaty if the parties intended to show their consent by such an act. In the case of bilateral treaties, ratification is usually accomplished by exchanging the requisite instruments, while in the case of multilateral treaties the usual procedure is for the depositary to collect the ratifications of all states, keeping all parties informed of the situation. The institution of ratification grants states the necessary time-frame to seek the required approval for the treaty on the domestic level and to enact the necessary legislation to give domestic effect to that treaty.

Signature Subject to Ratification, Acceptance, or Approval: Where the signature is subject to ratification, acceptance, or approval, the signature does not establish the consent to be bound. However, it is a means of authentication and expresses the willingness of the signatory state to continue the treaty-making process. The signature qualifies the signatory state to proceed to ratification, acceptance or approval. It also creates an obligation to refrain, in good faith, from acts that would defeat the object and the purpose of the treaty.

Acceptance and Approval: The instruments of “acceptance” or “approval” of a treaty have the same legal effect as ratification and consequently express the consent of a state to be bound by a treaty. In the practice of certain states acceptance and approval have been used instead of ratification when, at a national level, constitutional law does not require the treaty to be ratified by the head of state.

Accession: The act whereby a state accepts the offer or the opportunity to become a party to a treaty already negotiated and signed by other states. It has the same legal effect as ratification. Accession usually occurs after the treaty has entered into force. The Secretary-General of the United Nations, in his/her function as depositary, has also accepted accessions to some conventions before their entry into force. The conditions under which accession may occur and the procedure involved depend on the provisions of the treaty. A treaty might provide for the accession of all other states or for a limited and defined number of states. In the absence of such a provision, accession can only occur where the negotiating states were agreed or subsequently agree on it in the case of the state in question.



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