



Taking the High Ground

5 Ways the United States Can Strengthen Global Human Rights After Trump

By Trevor Sutton and Carolyn Kenney | October 23, 2019

When it comes to President Donald Trump and human rights, it's hard to know where to begin. Like many aspects of the Trump presidency, his administration's approach to promoting and defending human rights abroad has at various points appeared driven by indifference, malice, incompetence, or some combination of the three.

Indeed, the administration's record on human rights to date provides cause for concern. Under President Trump, the United States has sought to undermine multiple international bodies focused on advancing and protecting human rights;¹ blindly supported the Saudi-led campaign in Yemen despite overwhelming evidence of war crimes and the killing of *Washington Post* columnist Jamal Khashoggi;² launched a broad assault on women's rights through such actions as the reinstatement and expansion of the Global Gag Rule and the removal of reproductive rights from human rights reporting;³ and engaged in a range of abhorrent practices toward asylum seekers in U.S. custody, including separating minors from their families and attempting to prevent domestic violence victims from obtaining asylum.⁴ In addition, the president has in his public statements expressed admiration for the leaders of authoritarian regimes and their repressive practices, while creating needless friction with long-standing democratic allies in Europe.⁵

All this points to a dispiriting backslide in U.S. global leadership on human rights, a leadership that—while inconsistent and often hypocritical—has been a powerful force for good over many decades.⁶ Such a retreat could not have come at a worse time. As the United States disengages from human rights, other states with authoritarian governments, such as China and Russia, have grown more aggressive in their long-standing campaigns to water down and reframe the global human rights agenda in a way that excuses their own violations and those of their autocratic partners.⁷

In July, Secretary of State Mike Pompeo announced the creation of a new body within the State Department whose purpose would be to give him “advice on human rights grounded in our nation's founding principles and the principles of the 1948 Universal Declaration of Human Rights.”⁸ The body, called the Commission on Unalienable Rights, has been greeted with skepticism by human rights advocates

and lawmakers, many of whom have rightly observed that the State Department already possesses a highly respected bureau focused on monitoring and responding to human rights conditions across the world. In introducing the commission, Pompeo drew a distinction between “inalienable” and “ad-hoc” rights and implied that many of the principles championed by the human rights community deserved subordinate status.⁹ That statement, along with the anti-LGBTQ views of a number of the commission’s members, have raised widespread alarm that the Trump administration is seeking to make an end run around the traditional understanding of human rights that has guided U.S. foreign policy for decades in order to reorient U.S. human rights policy toward a narrow “religious freedom” agenda.¹⁰

All of this begs the question: Can the United States be a credible and effective advocate for human rights after President Trump?

There are reasons for cautious optimism. In the past, global audiences have been willing to turn the page on ugly episodes in U.S. foreign policy with the inauguration of a new administration. Consider, for example, the willingness of U.S. partners and allies in places such as Europe, the Middle East, and Latin America to work with the Obama administration after a deterioration in relations during the George W. Bush years, most notably in the negotiation of a deal with Iran over its nuclear program or the reestablishment of diplomatic ties with Cuba.¹¹ In addition, the most high-profile U.S. foreign policy initiatives related to human rights, such as the annual Country Reports on Human Rights Practices and Trafficking in Persons Reports, remain highly respected in foreign capitals and among civil society.

Despite the Trump administration’s hostility to the project, it has not been able to abandon U.S. commitments to human rights entirely. Several decades of congressional legislation obligate the executive branch to engage in multiple forms of human rights reporting and advocacy, as well as constrain its action in a number of important areas, such as the training of foreign military units who have committed human rights violations.¹² These requirements have led the current administration, like those before it, to call attention to many grave human rights situations across the world, albeit with an emphasis on major U.S. adversaries or competitors such as Iran, Venezuela, and China.¹³ The administration has also used its authority under the Global Magnitsky Act to impose sanctions on a small number of human rights violators worldwide.¹⁴

All this being said, undoing the damage inflicted by President Trump and restoring credibility to U.S. human rights advocacy will not be easy and cannot be accomplished with a reversion to the previous status quo. Dissolving Secretary Pompeo’s commission and forcefully repudiating the policies of the Trump administration will be important first steps, but they will not be enough on their own. Through a blend of ideology and incompetence, Trump and his allies at home and abroad have weakened global adherence to human rights and sabotaged key institutions commit-

ted to advancing human rights in the international system. Fixing what Trump has broken will require a more forceful and expansive commitment to human rights than anything previous administrations have put forward.

To that end, this issue brief outlines some starting points that the next U.S. administration can adopt in order to buttress and elevate the role of human rights in the international system and again make the United States a respected voice on human rights issues. These include recommitting to existing and advocating for new human rights institutions, depoliticizing human rights advocacy, defending vulnerable populations, expanding the definition of human rights, and leading by example at home.

Recommit to fundamental institutions and advocate for new ones

Since coming into power, the Trump administration has attacked the legitimacy of many key international institutions that report on and seek accountability for human rights violations. Most prominently, under President Trump, the United States became the first nation to withdraw voluntarily from the United Nations Human Rights Council (UNHRC) in protest of the council's criticism of the Israeli government, calling it a "protector of human rights abusers and a cesspool of political bias."¹⁵ The United States is now one of only four governments—the others being Iran, North Korea, and Eritrea—that refuses to participate in the body's deliberations. U.S. withdrawal from the council is a largely self-defeating move, as U.S. absence allows for some of the leading rights-abusing countries to undermine the council even further from within.

Alongside the UNHRC withdrawal, the State Department appears to have taken the unprecedented step of declining to respond to inquiries from U.N. special rapporteurs about potential human rights violations inside the United States.¹⁶ While unlikely to affect U.S. domestic conditions due to the country's limited action in response to U.N. rapporteurs in the past—and that is unlikely to change under Trump—this sets a troubling precedent that will give other governments, in particular those with poor human rights records, cover for their own refusal to cooperate with international human rights bodies. Most provocatively, in his first speech as national security adviser—a post from which he has since been dismissed—John Bolton attacked the International Criminal Court (ICC), calling it "illegitimate."¹⁷ He also proposed prosecuting judges and employees of the court in the United States and imposing visa bans and financial freezes on them should the ICC pursue any actions against the United States or Israel.¹⁸ In April, the administration made good on this threat by revoking the visa of the ICC prosecutor, Fatou Bensouda, in retaliation for the ICC's inquiries into war crimes that U.S. military personnel and intelligence officers are alleged to have committed at detention sites in Afghanistan.¹⁹ The ICC has since rejected Bensouda's request for an investigation into the alleged crimes committed in Afghanistan, stating that such an investigation "would not serve the interests of justice."²⁰

The administration's rejection of international cooperation on human rights extends beyond the United Nations. Under President Trump, Washington has also significantly scaled down its participation in the Inter-American Commission on Human Rights (IACHR) and recently announced it would cut back on funding for the institution.²¹ The IACHR is the most successful and prominent regional institution devoted to advancing human rights and has traditionally enjoyed strong U.S. support; the body itself is based in Washington. But the Trump administration has broken with that precedent, because it does not want to have to engage with the commission's inquiries into U.S. treatment of vulnerable migrant populations and objects to the commission's support for reproductive rights.²²

No human rights institution is beyond reproach. The UNHRC, in particular, allows governments with well-documented histories of human rights abuses—including China, Congo, Egypt, the Philippines, Saudi Arabia, and Venezuela—to participate in its proceedings, and the ICC has fumbled key investigations and antagonized important stakeholders.²³ But it is irresponsible to claim that human rights bodies do more harm than good or that the most effective way of addressing their flaws is to boycott and sabotage them. These tactics only empower human rights opponents within these bodies and weaken the legitimacy of human rights norms generally. Such an approach also sends a clear message that the United States is interested in advancing human rights only to the extent that it does not involve criticism of its own practices or those of some of its allies, which significantly diminishes the credibility and efficacy of U.S. human rights advocacy writ large.

A future U.S. administration must not stop at recommitting to existing institutions. The United Nations is not the only international body concerned with human rights abuses, nor is it the most influential one in many contexts. Regional human rights regimes such as the Organization of American States have developed alongside global ones and can be more effective at entrenching a culture of human rights in their member countries. U.S. advocacy for these institutions, and its support for the establishment of new ones, has been tepid and inconsistent. The United States should adopt a more consistent and universal approach toward supporting the creation and strengthening of regional human rights systems by, for example, increasing financial and technical assistance to the African Union's human rights bodies or using diplomatic engagement to pressure the member states of the Association of Southeast Asian Nations to reform the organization's largely toothless human rights instruments.

Depoliticize advocacy and limit transactional relationships

No government can claim perfect consistency with regard to naming and shaming human rights abusers. But the Trump administration—and the president in particular—has been unprecedentedly transparent in seeking to use human rights as an instrument for other geopolitical aims—when he raises the issue at all. President

Trump and his senior advisers have ignored or downplayed human rights abuses and democratic backsliding in a wide range of U.S. partners, including Honduras; Guatemala; the Philippines; Burma; Bahrain; Turkey; and Saudi Arabia, the leader of which the president has defended over the findings of his own intelligence community.²⁴ This *carte blanche* has even extended to the brutal regime in North Korea, whose leader, Kim Jong Un, Trump has praised in glowing terms in pursuit of a grand bargain over the country's nuclear weapons program.²⁵ Meanwhile, the Trump administration has excoriated abuses in other countries that the United States has traditionally treated as security threats or adversaries, such as Iran and Venezuela. This instrumental approach to human rights is grounded in the belief, expressed by Brian Hook, former State Department policy planning director and current special representative for Iran and senior policy adviser to the secretary of state, that, "Allies should be treated differently—and better—than adversaries."²⁶

Double standards are nothing new in U.S. foreign policy, and there is no debating the dismal human rights records of Iran, Venezuela, and other states singled out by the Trump administration. Yet the highly selective interest the White House has taken in calling out human right abuses, alongside its deliberate linking of human rights to other national security concerns, plays into the hands of repressive regimes that seek to deflect criticism of their human rights records through whataboutism and appeals to noninterventionism. Furthermore, by focusing on adversaries—which tend to brush off criticism from U.S. officials—while giving security partners a pass, the Trump administration is failing to press human rights reforms where U.S. advocacy is most likely to have an effect.

The next administration should seek to bring more rigor and objectivity to U.S. human rights advocacy. This should entail a more transparent and consistent approach to applying human rights standards in diplomacy. Yet an even more meaningful step in preventing the subordination of human rights concerns to economic or security objectives would be for the executive branch to submit voluntarily to more precise and binding legal standards and greater congressional oversight in its international engagement. For example, the next administration should work with legislators to impose reasonable constraints on executive discretion in key areas of security cooperation. These could include congressional input on the approval of arms sales or on the provision of the Foreign Assistance Act barring aid to countries that have experienced a *coup d'état*.²⁷ Additionally, the next administration should seek congressional collaboration in clarifying, standardizing, and rendering more transparent the criteria and processes used to determine state rankings in the annual Trafficking in Persons Report, a State Department publication that assesses countries' efforts to prevent and combat human trafficking. It should also limit executive discretion in waiving of aid restrictions for countries that fail to meet minimum standards in their countertrafficking policies. While the prospect of a president ceding some authority over foreign affairs may seem unrealistic, it is hardly unprecedented: Over the past 50 years, Congress and the White House have repeatedly negotiated and agreed on

constraints on foreign assistance, military sales, and other foreign policy activities.²⁸ An administration with a robust commitment to human rights has little to fear from further refinements to this framework aimed at strengthening U.S. adherence to international norms.

Defend vulnerable populations

In staging a retreat from human rights, the Trump administration has shown particular hostility toward initiatives that would strengthen the position of vulnerable and marginalized groups such as women, workers, and migrants. Under Trump, the United States has revived and expanded the Global Gag Rule, which prohibits U.S. assistance to any foreign organization that provides abortion services or referrals or that advocates for abortion law reform.²⁹ This rule has imperiled funding for a broad range of health care providers, including those working to treat and prevent HIV/AIDS and improve maternal and infant mortality rates. In the same spirit, administration officials have stripped passages from the Human Rights Reports dealing with reproductive rights and access to contraception and abortion.³⁰

The administration has also opposed international efforts to enshrine basic rights for migrants and refugees, paralleling its cruel and punitive treatment of these populations inside the United States. In 2017, the United States pulled out of negotiations for the Global Compact for Migration, a nonbinding international agreement aimed at developing common approaches to addressing the root causes of migration and setting basic standards for treatment of migrant populations.³¹ In the same vein, late last year, Washington cast one of only two “no” votes—out of more than 180 countries—at the United Nations on the Global Compact on Refugees, a framework to improve the international response to refugee crises.³² More recently, President Trump has sought to cut off all foreign assistance to the violence-wracked countries in the Northern Triangle of Central America—El Salvador, Guatemala, and Honduras—on the mistaken or bad-faith grounds that this will reduce the flow of asylum seekers to the U.S. southern border.³³

The Trump administration has even sought to hamstring U.S. efforts to deter and punish forced labor and child labor and improve global workplace rights. For three years in a row, President Trump’s budget has gutted funding for the division of the Department of Labor dealing with international labor issues.³⁴ The Bureau of International Labor Affairs (ILAB) engages in valuable research and advocacy relating to worker exploitation, including publishing an annual report on the worst forms of child labor and enforcing labor provisions of free trade agreements to ensure a level playing field for American workers.³⁵ Past efforts at defunding resulted in an unusual joint effort by business and labor groups to protect ILAB funding—successfully, for the time being.³⁶

To even have a chance of halting the damage done by the Trump administration, let alone reversing it, the next administration must make it a priority to advocate for and adopt policies that aim to protect the most vulnerable populations—particularly women, migrants, and LGBTQ people. Most urgently, the next administration must make a sharp break with the current one by adopting a humane, rules-based approach to the domestic immigration system and pressing for a human rights-driven approach to migration governance at the international level.³⁷ In addition, the next administration should expand funding for foreign assistance and advocacy relating to prevention of labor exploitation and pursue more robust enforcement of existing countertrafficking authorities, such as Section 307 of the Tariff Act of 1930. Finally, the next administration must recommit to a robust women’s rights and LGBTQ rights agenda that emphasizes access to reproductive health and calls out foreign governments that have failed to meaningfully address gender-based discrimination and violence against women and LGBTQ people.

Expand the definition of human rights

U.S. human rights policy has traditionally focused on civil and political rights—such as freedom of speech, worship, and assembly—and protections against arbitrary deprivations of life, liberty, and property. But for much of the international community—including many key U.S. allies and partners—human rights also encompass social and economic rights such as the right to an adequate standard of living, the right to health care, and the right to just working conditions. In the immediate aftermath of World War II, the United States was a proponent of social and economic rights but quickly soured on them as anti-communism became the defining feature of U.S. foreign policy during the Cold War.³⁸ The skepticism toward social and economic rights has continued in the present day. Today, the United States is one of only a small number of countries—and the only high-income democracy—that has not ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR), although President Jimmy Carter signed the treaty in 1977.³⁹

There remains significant disagreement over the precise mechanism by which compliance with economic and social rights should be assessed and enforced. Nonetheless, there is an overwhelming international consensus that economic and social rights are human rights and that governments are required to satisfy them in proportion to their resources and capabilities. The Obama administration took significant steps in this direction, including by affirming that it was “committed to not defeating the object and purpose of” the ICESCR.⁴⁰ It also provided support for the development of the sustainable development goals (SDGs), an international development agenda whose objectives closely track many of the rights enshrined in the ICESCR, in addition to civil and political rights. The Trump administration, by contrast, has sought to characterize the SDGs as “non-binding documents that do not create rights or obligations under international law.”⁴¹ Not coincidentally, the

United States was recently assessed to be the industrialized country that had done the least to achieve the SDGs, behind Russia.⁴²

Going forward, there is little reason for an administration that cares about human rights to approach social and economic rights with reluctance or hostility. Social and economic rights are no substitute for political and civil rights, but they have become an important part of the global human rights conversation and constitute a serious and widely accepted framework for addressing some of the gravest threats facing humanity, such as economic inequality, climate change, and corruption. In addition, a growing body of research points to the connection between the failure to realize social and economic rights and the rise of right-wing populist and authoritarian movements that campaign on an explicitly xenophobic and anti-human rights agenda.⁴³ Viewed from this perspective, advancing social and economic rights can lessen the likelihood of a backslide in political and civil rights, especially in fragile democracies.

Although ratification of the ICESCR will hinge on congressional action, there is much a human rights-minded administration could do to further economic and social rights, such as making a good-faith effort to meet its goals under the SDGs and incorporating reporting of instances of institutional racism, systemic subjugation of women, extreme corruption, and government-sanctioned environmental degradation in the Human Rights Reports and in U.S. human rights diplomacy more generally. In addition, the United States could incorporate stronger environmental and labor rights and antitrust protections into trade agreements and advocate more robustly for labor interests in its economic diplomacy.

Lead by example

The United States will be poorly positioned to assert any leadership on human rights if it systemically violates the rights of its own citizens as well as those of other individuals in the United States or subject to U.S. laws. To that end, the next occupant of the Oval Office must forcefully repudiate the cruel and discriminatory policies and rhetoric of the current administration, above all its abusive treatment of asylum seekers and other migrants and its routine flirtation with white supremacist figures and causes. From his earliest days on the campaign trail, President Trump and his associates have trafficked openly in misogyny and xenophobia both rhetorically and through policies.⁴⁴ The administration has also sought to impugn the impartiality and competence of judges, the free press, civil servants, and other figures tasked with upholding the rule of law.⁴⁵ Restoring some measure of U.S. credibility on human rights will require the next administration to denounce the bigotry, cruelty, and corruption of the Trump era and, where possible, take steps to ensure that the worst abuses are never repeated.

Conclusion

The Trump administration's policies and rhetoric have profoundly compromised the United States' ability to effectively advocate for a global human rights agenda. That in turn has undermined the protection of human rights and human rights defenders worldwide. It has led to a less just and less peaceful world. The election of a new U.S. president alone will not restore America's credibility on the international stage. Rather than seeking to return to the pre-Trump status quo, the next administration should adopt a robust and expansive vision for human rights at home and abroad that sets an example for the world.

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