

# Washington University Law



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SUBMISSION TO  
**THE UNITED NATIONS HUMAN RIGHTS COMMITTEE**  
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THE UNITED STATES LIST OF ISSUES PRIOR TO REPORTING

**THE U.S. GUN VIOLENCE CRISIS AS A VIOLATION OF  
U.S. OBLIGATIONS UNDER THE ICCPR**

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## I. INTRODUCTION

The Whitney R. Harris World Law Institute at Washington University School of Law welcomes the opportunity to submit information to the Human Rights Committee (the “Committee” or “HRC”). The Harris Institute has been conducting research on gun violence in the United States and human rights law since fall 2017 in collaboration with Washington University’s Institute for Public Health.<sup>1</sup>

Our research reveals an incontrovertible fact: gun violence in the United States has reached crisis proportions. In 2017, the most recent year for which Center for Disease Control (“CDC”) data is available, more than 173,500 people were shot, 39,700 of which died – the highest annual rate in decades. Every day in 2017, on average, nearly 109 people died from guns and 366 suffered non-fatal firearm injuries. This is a complex problem that includes homicides, suicides, and mass shootings, which take place with alarming frequency in schools, places of worship, theaters, and at concerts. Youth, women, and individuals of color are disproportionately victimized by U.S. gun violence. Gun violence also causes psychological stress and mental harm, including post-traumatic stress disorder (PTSD) and depression, for both the direct victims of violence and the broader public, and the crisis has fostered a general climate of fear and uncertainty that interferes with the enjoyment of fundamental human rights.

On February 14, 2018 a nineteen-year-old killed seventeen people in his former high school in Parkland, Florida with a legally purchased AR-15 semi-automatic assault rifle. The Parkland shooting led to a public outcry and to renewed demands for legislative action. Yet government authorities have been generally unresponsive, despite broad public support for the adoption of reasonable legislative measures that could reduce gun violence.<sup>2</sup> At the state level, the Florida legislature refused to consider an assault weapons ban just days after the shooting. At the federal level, President Trump initially promised concrete action, including gun control measures, but

abandoned these commitments less than two weeks later, after meeting privately with the National Rifle Association (the “NRA”), a powerful lobbying organization. The President’s primary suggestion to halt school shootings was to increase armed guards at schools and to arm teachers, a controversial NRA-backed proposal. He affirmed his commitment to this idea at the NRA’s annual convention on May 4, 2018. His Secretary of Education, Betsy DeVos, recently proposed allowing schools to use federal education funds for firearms and firearm training.

Our research concludes that the failure of the U.S. government to exercise due diligence with respect to preventing and reducing gun-related violence through the adoption of reasonable and effective domestic measures has limited the ability of Americans to enjoy many fundamental freedoms and guarantees protected by international human rights law and may amount to violations of the ICCPR, including the right to life (article 6(1)), the right to be free from cruel, inhuman or degrading punishment (ill-treatment) (article 7), the right to security of person (article 9(1)), the rights to freedom of association and assembly (articles 21 and 22), the right to freedom of opinion and expression (article 19), and the right to be free from discrimination based on race (articles 26 and 2(1)) and sex (articles 3 and 2(1)). Further, it may be a violation of the special protection afforded to children (article 24).

## II. GUN VIOLENCE IN THE UNITED STATES

### A. An Overview of U.S. Gun Violence

**From 2008 to 2017, 342,500 people died from firearm-related injuries in the United States – over 34,000 gun deaths each year, or 102 a day.** Roughly 100,000 people suffered from non-fatal firearm injuries every year.<sup>3</sup> Given the negative psychological and mental health consequences for those exposed to gun violence and their communities, the true number of gun violence victims in the United States is considerably higher.

**While the percentage of the population owning guns has decreased, the number of civilian firearms in the United States has grown.** By some estimates, 2009 marked the first year that the number of civilian guns in the United States surpassed the total U.S. population.

**Mortality rates from firearm violence have increased since the 1950s,** while mortality rates from motor vehicle accidents have continuously declined. In the 1950s, there were relatively few government restrictions, regulations, or research studies regarding motor vehicle safety, resulting in high rates of death and injury. Following the adoption of federal safety measures, motor vehicle deaths the United States declined steady.

**In contrast, few regulations or research studies have focused on firearms,** which are exempted from safety regulations by the Consumer Product Safety Act, meaning gun manufacturers operate without federal oversight as to how guns are designed or made. The **Dickey Amendment**, adopted in 1996, led to a near complete ban on federally-funded research related to firearms and gun violence – decreasing annual CDC funding for gun violence research by 96%.<sup>4</sup> This has limited research on ways that gun possession could be made less dangerous. Guns are one of the only sources of death in the United States for which the fatality rate has not decreased in recent years and one of the only traumatic injuries for which fatality rates have *increased* over time.<sup>5</sup> The U.S. government is fully capable of and equipped to effectively manage the gun violence epidemic and prevent future loss of life if it has the will to do so.

**America's gun violence problem has impacted the country's youth in particular.**<sup>6</sup> 91% of firearm deaths among children aged 0-14 occur in the United States and firearm injuries are the *third* leading cause of death among children aged 1-17 – killing 3,128 and injuring 17,223 in 2016. 2014 reversed a seven-year trend of declining child and teen firearm death and in 2016, the rate of gun deaths for this group was 41% higher than it was in 1963. Moreover, firearm injuries are the *second* leading cause of death among youth aged 15-29 – killing 11,947 in 2016. While individuals this age only accounted for 2.2% of all deaths in the United States in 2016, they accounted for 31% of all gun deaths and 57% of all gun-related homicides. They are also victimized by guns at a 69% higher rate than the national average.

**The United States also has, by far, the highest number and rate of mass shootings in the world and mass shootings are becoming more frequent – with an average of one a day.** One study found that, as of August 15, 2018, there had been 1,982 mass shootings, killing at least 2,190 people and wounding another 8,093 since the 2012 Sandy Hook Elementary School shooting.<sup>7</sup>

**School shootings have become a common occurrence** and victimize a population that is often young, helpless, and captive, as most children are required to attend school by law, and shootings have repeatedly occurred in public schools that are operated by the state. More people have died or been injured in *mass* school shootings in the United States in the last 18 years than in the entire previous century. There is now an average of one school shooting per week where someone was hurt or killed (not including the shooter).<sup>8</sup>

**Suicide was the *tenth leading cause of death* in the United States in 2016.** More than half of suicide deaths happen by gunshots.<sup>9</sup> The availability of a firearm is a crucial factor in whether a suicide will be attempted *and* whether it will be fatal: 82.5% of attempted suicides with firearms result in death. The presence of a gun in the home increases an individual's risk of death by suicide<sup>10</sup> and suicide rates tend to increase in correlation to gun ownership rates.<sup>11</sup> More than half of all suicides among children aged 1-17 occurred with a gun and child firearm suicide rates *significantly increased* – 60% – between 2007 and 2014.

**Women in the United States are *sixteen times* more likely to be murdered by a gun than in other developed nations.**<sup>12</sup> The majority of these deaths result from domestic violence. Women are five times more likely to be killed if their abuser owns a firearm and the use of a gun during a domestic violence assault makes death twelve times more likely.<sup>13</sup> In 2015, 55% of intimate partner homicides were committed with a gun.<sup>14</sup> Moreover, homicides of younger children aged 0-12 often involve intimate partner violence or family conflict.

**Fatal police shootings are another key area of concern.** 996 people were shot and killed by the police in 2018, 987 in 2017 – about one third were 29 years old or younger and 34% of these young people are African Americans.<sup>15</sup> Most fatal police shootings are justified as a lawful use of force by the criminal justice system and charges are rarely brought against the officers involved.<sup>16</sup>

**Within the United States, gun ownership is the leading contributor among the factors associated with the risk of death from gun violence.** Gun ownership creates and increases the opportunity for and severity of harm against others or oneself. Studies have found that having a gun in the home *increases* the probability of homicide by three times, suicide between three and five times, and accidental death about four times.<sup>17</sup>

**While there is a popular belief that mental illness is the chief culprit of gun violence, the relationship is far from clear.** The United States does not have higher levels of mental illness than other countries. Even assuming mental health issues have a connection to U.S. gun violence,

on February 28, 2017 President Trump signed H.J. Res. 40 into law, which repealed the Implementation of the NICS Improvement Amendments Act of 2007, a law that would have required more stringent background checks for gun purchases by people with severe mental illness.

## **B. The Racially Discriminatory Impact of U.S. Gun Violence**

**African Americans are disproportionately affected by the U.S. gun violence epidemic and unduly bear the burden of firearm violence.** Although comprising only 14% of the U.S. population, African Americans represent 56.7% of gun homicide victims in the country. The gun-homicide rate is higher for African Americans than other races in all fifty states. In Wisconsin, an African American was *26 times more likely* to be killed by a gun than a white person in 2015. In U.S. cities, black Americans are an average of *eight times more likely* to be killed by firearms than their white counterparts.<sup>18</sup> Poor black people are also more likely to be violent crime victims, a disparity that has increased over the past decades.

According to CDC data, black males are about 14 times more likely than non-Hispanic white men to be killed with a firearm in the United States. Roughly half of all gun homicides in the country are of black men. Across the entire United States black men had 27 more homicides per 100,000 people per year than white men.<sup>19</sup>

**African American youth are also victimized at a higher rate.** In 2016, 1,335 black children and teenagers were killed by guns – nearly four times the number of white Americans the same age. The majority were homicides. Black children are *ten times* more likely than white children to die from gun homicide. Young black women are *six times* more likely than young white women to become gun homicide victims. Black students make up only 16.6% of the school population, yet experience school shootings at twice that rate.

**People of Black, Hispanic, and Native American backgrounds are disproportionately killed by police.**<sup>20</sup> Firearms make up over 90% of these deaths. So-called “Stand Your Ground” (SYG) laws also play a role in how the black population experiences gun violence in the United States. SYG laws provide that “a person has the right to expect absolute safety in a place they have a right to be, and may use deadly force to repel an unlawful intruder.” Until 2005, only two states had these laws; today, they are in force in 28 states.<sup>21</sup> A 2017 study showed that Florida’s SYG law was associated with a 32% increase in firearm homicide.

## **C. Mental and Psychological Harm Caused By Gun Violence and Mass Shootings**

**The U.S. gun violence epidemic has negative mental health consequences on the direct victims of gun violence,** their families, communities, and indirectly exposed populations. Survivors of serious gunshot injury have elevated risks for post-traumatic stress disorder (PTSD), depression, and anxiety, experiencing twice the rate of PTSD than those injured in motor vehicle accidents.<sup>22</sup>

**Even indirect exposure to violence, or learning that a friend or loved one has been exposed to violence, can have negative mental health consequences,** particularly for children.<sup>23</sup> Yet an estimated *3 million children* in the United States witness a shooting each year. Mass shootings have a demonstrated psychological effects on survivors and related communities.<sup>24</sup> PTSD and other serious mental health consequences of gun violence have significant ripple effects for the individual, their family, and community.

**School shootings are especially harmful** and have resulted in a generalized fear of school nationwide.<sup>25</sup> A recent Pew study found that 57% of America’s teenagers now fear a school shooting. The non-solutions that are typically advanced following school shootings do little to diminish these harmful effects and often exacerbate them. In schools across the country, more and more students are required to take part in mandatory active shooter drills, which inflict increased fear on an already vulnerable population. These drills are implemented with varied degrees of realism and students often do not know whether they are experiencing a drill or a real active shooter. Some schools have students barricade themselves in locked classrooms, silently huddled under desks while an administrator jiggles door handles to simulate the attacker trying to enter the classroom. Other schools take the simulation further, perhaps with surprise drills and/or the use of blanks to simulate the sound of gunfire. These drills remind children that someone might try to kill them anytime they are in school. Yet active shooter drills have not been proven to be effective in preventing harm during an actual shooting incident.

### III. U.S. FIREARM LAWS

#### A. U.S. Constitutional Law

**The Second Amendment of the Constitution states that a “well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”** Until 2008, the Second Amendment was not interpreted to grant an individual constitutional right to gun ownership. In 2008, the U.S. Supreme Court struck down provisions of the District of Columbia’s Firearms Control Regulation Acts of 1975 in *District of Columbia v. Heller*, holding that “the Second Amendment [of the Constitution] conferred an individual right to keep and bear arms.”

Justice Scalia, writing for the Court, noted that **this individual right “is not unlimited.”** Indeed, the *Heller* ruling only applies directly to *handguns* that are *in the home* and *for protection*. It does not address other types of firearms, guns in public, or firearms which are owned for other purposes. While *Heller* applied the Second Amendment only to the federal government, in a subsequent decision, *McDonald v. City of Chicago*, the Supreme Court incorporated the Second Amendment interpretation of *Heller* into the Fourteenth Amendment Due Process Clause, thereby making *Heller* effective against the states.

Because *Heller* left open questions, many cases have been filed challenging the constitutionality of state and local gun control laws. While most gun laws, including Maryland’s assault weapons ban and San Francisco’s safe-storage law, have been upheld by the federal courts, which have generally read *Heller* narrowly, it has led some courts to overturn others, including an Illinois law which banned carrying loaded handguns in public. A study of more than 1,150 Second Amendment challenges to gun control laws brought in state and federal courts in the decade after *Heller* found that the courts rejected the challenge over 90% of the time.<sup>26</sup>

#### B. Federal Legislation on Firearms

**In the United States, guns are regulated by both federal and state law.** The primary federal statutes regulating guns are the **National Firearms Act of 1934 (NFA)** and the **Gun Control Act of 1968**. These laws are enforced by the **Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)**.

The **National Firearms Act (NFA)**, enacted in 1934 as part of the Internal Revenue Code, was the first federal regulation related to the manufacture and transfer of firearms in the United States. It has been amended and revised by subsequent federal acts. It requires the registration of a narrow category of firearms. Generally, the NFA applies to machine guns, short-barreled shotguns and rifles, and silencers. Most handguns are exempted from NFA regulation.

The **Gun Control Act of 1968 (GCA)** regulates interstate and foreign commerce in firearms, including importation, “prohibited persons,” and licensing provisions. The GCA revised the NFA and repealed the Federal Firearms Act of 1938. It mandated the licensing of individuals and companies engaged “*in the business of*” selling firearms. However, individuals who *occasionally* sell guns – such as those that sell over the internet, at gun shows, or through classified advertisements – are outside the oversight of a regulatory body. An estimated 40% of gun sales in the United States occur through these ‘private’ sellers.

The categories of “prohibited persons” in the GCA were expanded by the **Brady Handgun Violence Prevention Act of 1993 (the Brady Act)**, which also mandates federal background checks on some gun purchasers and implemented the National Instant Criminal Background Check System (NICS). If the FBI is unable to complete a background check within three days, the dealer can automatically complete the firearm transfer. It also excludes background checks when buying guns through a private seller.

The **Firearms Owners’ Protection Act of 1986 (FOPA)** also amended the GCA, repealing several key provisions and liberalizing restrictions on sellers. FOPA *prevents* the federal government from maintaining a centralized database of gun dealer records and limits how many inspections the ATF can conduct of a firearm dealer’s premises without a warrant.

The **1994 Federal Assault Weapons Ban** banned the transfer and possession of certain models of AR-15 style assault rifles and high-capacity magazines capable of holding more than 10 rounds of ammunition. On September 13, 2004 Congress allowed the Assault Weapons Ban to expire according to its ‘sunset clause’ as a direct result of NRA-lobbying.

The **Domestic Violence Offender Gun Ban of 1996**, often called the **Lautenberg Amendment**, is the principal federal law regarding firearm possession and domestic violence. It prohibits individuals who have been convicted of a “misdemeanor crime of domestic violence” from buying or possessing a firearm or ammunition under certain, limited circumstances. It does not apply to dating partners who are not married, have not lived together, or who do not share a child, or to abusers who victimize family members other than an intimate partner or child, such as a parent or sibling. The law also bans gun ownership for anyone under a restraining (protection) order for domestic abuse *if* the individual falls within specified criteria, including a requirement that the defendant and petitioner are intimate partners.

Beginning in 2003, Congress has attached the **Tiahrt Amendments** to the annual U.S. Department of Justice appropriations bill. These Amendments prohibit the release of firearms trace data to cities and states, academic researchers, litigants, and other members of the public. They also prohibit gun trace data from being admissible as evidence in civil lawsuits against gun sellers or manufacturers, and prohibit the ATF from requiring firearms dealers to submit their inventories to law enforcement agencies. Finally, they require the FBI to destroy the records of all approved gun purchasers within 24 hours.

Likewise, Congress passed the **Protection of Lawful Commerce in Arms Act (PLCAA)** in 2005, which protects the gun industry from liability in most tort actions. The PLCAA prohibits a

“qualified civil liability action” from being brought in any state or federal court against a manufacturer or seller of firearms or ammunition if the action resulted from the criminal or unlawful misuse of their products, with certain exceptions.

### C. State and Municipal Legislation on Firearms

**Despite the roadblock created by *Heller*, some states have adopted effective gun control legislation.** Several states, including Colorado, Connecticut, Delaware, New York, and Oregon, have made background checks a universal requirement for gun purchases. Maryland requires handgun purchasers to be fingerprinted and complete a training class, eight states and the District of Columbia have assault weapons bans, and Vermont recently banned the possession or transfer of large-capacity ammunition magazines. In the past five years, California, Connecticut, and New York have adopted or strengthened laws requiring that firearms be stored with a locking device in place if the owner lives with someone who is ineligible to possess firearms.

The Parkland school shooting prompted some state legislatures and municipalities to tighten their gun control measures. As of December 2018, 67 gun safety bills had been signed into law in 26 states and Washington D.C. since Parkland.<sup>27</sup> This includes bans on bump stocks in eight states, extreme risk protection order legislation, also known as “red flag” bills, in eight states, and laws designed to keep guns out of the hands of domestic abusers in nine states.

**Yet some states have moved in the opposite direction, loosening or repealing their gun control laws.** Five states – Maine, Mississippi, Missouri, North Dakota, and West Virginia – have adopted new laws in the last *three* years allowing gun owners to carry loaded firearms in public without a permit or training. This brings the total number of states that allow the unrestricted, permit-less concealed carry of loaded firearms in public spaces to 12. Likewise, in 2013, Kansas revised its state laws to allow carrying of concealed guns in any public area of state and municipal buildings, including at public universities, a move similar to the bills signed by governors in Arkansas, Georgia, Idaho, and Texas that allowed concealed carry license holders to bring guns onto college campuses. Additionally, eight states have laws which either expressly allow the concealed carry of firearms into K-12 schools or have no law prohibiting it.<sup>28</sup>

### D. Gaps in the Legislative Scheme

**Firearm laws in the United States are insufficient to protect the U.S. population and some regulations actually increase the risk of gun violence and handicap law enforcement.** The ATF, which is tasked with enforcing federal guns laws, is restricted in its ability to effectively carry out its mandate, and significant loopholes exist in federal and state legislation that have enabled U.S. gun violence. There are significant gaps in the regulation and oversight of firearm sellers, including legislative loopholes that allow dangerous individuals to acquire firearms. These include gaps in the background check<sup>29</sup> and licensing requirements,<sup>30</sup> and prohibitions against abusers owning firearms. The U.S. government has also failed to enact or maintain gun control laws that are proven to save lives, such as red flag bills, safe storage laws, and the assault weapons ban. One study found that over the past three decades, 82% of the weapons used in mass shootings were legally purchased.<sup>31</sup>

**The inconsistency amongst state and local laws on gun ownership exposes people in the United States to increased chances of gun violence.**<sup>32</sup> The efforts that one state or city makes to reduce gun violence are easily circumvented if an individual can cross state lines to a location with fewer laws.<sup>33</sup> Permissive state gun laws are of particular concern as a new “Concealed

Carry Reciprocity Act” is currently pending in the United States Senate. This legislation, which passed the U.S. House of Representatives on December 6, 2017, requires concealed carry permits issued in one state to be honored by all states in the country.

#### IV. CAN GUN CONTROL LAWS BE SUCCESSFUL? A COMPARATIVE STUDY

The United States is an outlier in terms of gun-related deaths. Rates of gun deaths (both homicide and suicide) are substantially greater compared to other industrialized nations in the Organization for Economic Cooperation and Development (OECD). Based on data from 2014, the U.S. has nine times as many gun deaths as Germany or Australia per 100,000 persons. While constituting only 4.4% of the world’s population, 42% of civilian-owned guns in the world are found in the United States.

##### A. The Experience of Other Countries

International examples demonstrate that gun control laws work. For example, the **Australian government** adopted the National Firearms Agreement (NFA) in 1996 following the Port Arthur massacre. Following the implementation of NFA, the risk of gun death in Australia fell more than 50%, there has not been a single mass shooting, and it is estimated that the national stock of firearms in Australia was reduced by one-third.

Likewise, in 1997, following the 1996 Dunblane shooting, the **United Kingdom** adopted legislation banning all handguns. British law previously permitted private ownership of guns, and although handgun and rifle owners were legally required to hold a certificate issued by the local police, only 1% of applications were refused. Since the implementation of the new laws, no mass shootings involving handguns have occurred in the United Kingdom and gun violence has continuously decreased. The United Kingdom now has about 6.5 guns per 100 people, compared to the nearly 1:1 ratio in the United States. There were 26 fatalities from gun-related crimes in England and Wales in a 12-month period during 2015-16, compared to 11,004 firearm homicides in the United States in 2016.

**Japan** has one of the strictest gun control laws in the world and the rate of both gun violence and gun possession in Japan is close to zero.<sup>34</sup> While **Switzerland** and **Israel** are often cited by gun advocates as countries that have low rates of gun violence despite having permissive gun control laws, this is misleading. Both countries have stricter gun control laws and lower civilian gun ownership rates than the United States, and much lower rates of gun-related deaths and injuries.<sup>35</sup> The association between a country enacting stricter gun control laws and reducing violence can also be seen in **Brazil, Austria, New Zealand, and South Africa**.

##### B. Comparison between U.S. States

One of the most significant factors influencing the rate of gun violence within U.S. states is the strength of the state’s gun laws. **Research demonstrates that states with stricter gun control laws have lower rates of gun violence and death – both homicides and suicides.**<sup>36</sup> A 2016 study found that the 10 states with the weakest gun laws had rates of gun violence that were collectively 3.2 times higher than the 10 states with the strongest gun laws.<sup>37</sup> Similarly, studies have repeatedly found that gun *ownership* rates are positively correlated with homicide and suicide by firearm rates<sup>38</sup> and many states with the highest rates of firearm homicide and suicide also had among the highest gun *prevalence* rates.<sup>39</sup>

States requiring background checks experience less gun-violence.<sup>40</sup> Licensing requirements reduce gun violence and illegal trafficking in firearms<sup>41</sup> and the diversion of guns to criminals is less common where sellers are required to maintain careful inventory records and report sales.<sup>42</sup> Studies also show that domestic abuse homicides decrease when people subject to restraining orders are prevented from accessing firearms<sup>43</sup> and safe storage and child access prevention laws reduce adolescent gun death and injury.<sup>44</sup>

## V. GUN VIOLENCE IN THE UNITED STATES AND THE ICCPR

**The International Covenant on Civil and Political Rights (ICCPR) entered into force for the United States in 1992.** The U.S. Senate attached several reservations, understandings, and declarations (RUDs) to its ratification, including a non-self-executing clause.

Under **article 2.2 of the ICCPR** “each State Party to the present Covenant undertakes to take the necessary steps... to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.” States must protect

not just against violations . . . by its agents, *but also against acts committed by private persons or entities*. . . . There may be circumstances in which a failure to ensure Covenant rights . . . would give rise to violations by States Parties . . . as a result of States Parties’ permitting or *failing to take appropriate measures* or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.

Thus, although more than 98% of U.S. shootings are perpetrated by non-State actors, the U.S. government’s responsibility is nevertheless engaged.

During the its **first review of the United States in 1995**, the Committee stated in paragraph 17 that it “regrets the easy availability of firearms to the public and the fact that federal and state legislation is not stringent enough in that connection to secure the protection and enjoyment of the right to life and security of the individual guaranteed under the Covenant.”

More recently, the **Committee’s 2014 Concluding Observations to the United States** noted that it remained “concerned about the continuing high numbers of gun-related deaths and injuries and the disparate impact of gun violence on minorities, women and children, ... the proliferation of such laws which are used to circumvent the limits of legitimate self-defence, [and] the still high number of fatal shootings by certain police forces.” As such, in paragraph 10, the Committee called on the United States to

Continue its efforts to effectively curb gun violence, including through the continued pursuit of legislation requiring background checks for all private firearm transfers, in order to prevent possession of arms by persons recognized as prohibited individuals under federal law, and ensure strict enforcement of the Domestic Violence Offender Gun Ban of 1996 (the Lautenberg Amendment); and

Review the Stand Your Ground laws to remove far-reaching immunity and ensure strict adherence to the principles of necessity and proportionality when using deadly force in self-defence.

Step up its efforts to prevent the excessive use of force by law enforcement officers

...

This has not been done. Indeed, the U.S. government's failure to adopt reasonable gun control implicates multiple rights guaranteed by the Covenant including the right to life, the right to security of person, the right to be free from ill-treatment, the right to freedom from discrimination, the right to freedom of expression and opinion, and the right to freedom of assembly and association. Moreover, U.S. gun violence negatively impacts women's rights and the special protection due to children.

## A. The Right to Life

**ICCPR Article 6(1) guarantees the right to life.** The *jus cogens* right to life is non-derogable. A State violates this obligation when it does not take adequate measures to protect individual life. According to the Committee, the "deprivation of life involves an intentional or otherwise foreseeable and preventable life-terminating harm or injury, caused by an act or omission."<sup>45</sup> Yet more than 39,000 individuals in the United States died from firearms in the past year.

**General Comment No. 36 explains that States Parties have a duty to take "positive measures to protect the right to life"** and must adequately prevent, investigate, and punish the arbitrary deprivation of life. Paragraph 21 emphasizes that States have a "due diligence obligation to undertake reasonable positive measures" and to "protect individuals against reasonably foreseen threats of being murdered or killed by criminals and organized crime . . . groups . . . . States parties should also . . . reduce the proliferation of potentially lethal weapons to unauthorized individuals."<sup>46</sup> States parties must give effect to the right to life "through legislative and other measures."

The State's obligation "extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life." States should "take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity. These general conditions may include high levels of criminal and gun violence."<sup>47</sup>

There is frequently a **lack of accountability and punishment for individuals who use firearms to kill others under the auspices of SYG laws**, especially when the victim is Black, along with police killings. This violates the State's obligation "to investigate and, where appropriate, prosecute such incidents including allegations of excessive use of force with lethal consequences"<sup>48</sup> and the victim's right to an effective remedy.

**Nearly two-thirds of all gun deaths in the United States are suicides** and more than 80% of suicide attempts with a firearm are fatal. This Committee has found that "States should take adequate measures . . . to prevent suicides."<sup>49</sup> Laws mandating licensing, background checks and waiting periods, as well as safe-storage laws and red flag bills can reduce these deaths.

The Committee should also be concerned by **the high number of killings carried out by police officers**, especially against African Americans that could be reduced through bias and de-escalation trainings. The deprivation of life by State actors is of "the utmost gravity." The United States is under a duty to "take all necessary measures intended to prevent arbitrary deprivations of life by their law enforcement officials" including "procedures designed to ensure that law enforcement actions are adequately planned in a manner consistent with the need to minimize the risk they pose to human life."<sup>50</sup>

## B. The Right to Security of Person

The Committee has repeatedly found that a State violates the **right to security guaranteed by article 9.1** when it has not taken appropriate measures to combat legitimate threats to the security of a person under its jurisdiction. The right to security imposes a positive obligation on the State to prevent, investigate, and punish acts by State and non-State actors when they threaten the security of another.<sup>51</sup>

As recognized by the Committee in 1995, gun violence in the United States endangers the security of individuals living there. Women and children in domestic violence situations, for example, are left vulnerable to firearm attacks by loopholes in federal law that allow their abusers to acquire guns. Similarly, SYG laws and police killings threaten the security and liberty of minority populations daily, and rarely are these acts of firearm violence punished by the State. Daily gun violence threatens the security of all Americans, whether they are going to school, worshipping, attending a concert, shopping for groceries, eating at a restaurant, waiting for a bus or sitting in a car, or even while in their home.

## C. The Right to be Free from Torture and Ill-Treatment

**The threat of gun violence** that many Americans live with daily, as well as frequent mass and school shootings, **have fostered a culture of fear, caused severe emotional distress, and resulted in significant psychological trauma.** This may amount to ill-treatment in violation of ICCPR article 7. This right is non-derogable.

Mass shootings in schools, movie theaters, and places of worship, as well as at political rallies and concerts, cause severe physical and mental injury and emotional suffering of those directly involved and result in collective harm. These increasingly frequent occurrences, and indeed gun violence in the United States more generally, lead to the *substantial impairment of fundamental rights*, as they generate anxiety in individuals who are attempting to go about their regular routines, attend schools, and participate in the cultural life of society. “Acts that cause mental suffering” such as these, may violate the prohibition against ill-treatment contained in article 7.<sup>52</sup>

The United States has a duty “to afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by article 7, whether inflicted by people acting in their official capacity, outside their official capacity *or in a private capacity*.”<sup>53</sup> Harm does not have to be physical to qualify as torture or ill-treatment, particularly when mental pain is met with indifference by authorities.<sup>54</sup> The Committee against Torture has defined the victim of an act of torture or ill-treatment as “persons who have individually or collectively suffered harm, including physical or *mental injury, emotional suffering*, economic loss or *substantial impairment of their fundamental rights*, through acts *or omissions* that constitute violations of the Convention.”<sup>55</sup>

It is the duty of the U.S. government to take “legislative, administrative, judicial and other measures . . . to prevent and punish” acts that are prohibited under article 7.<sup>56</sup> This should include adopting legislation to reduce mass shootings, such as red flag bills and an assault weapons ban.

## D. The Right to Be Free from Racial Discrimination

**ICCPR article 26 guarantees equality and protection against discrimination.** Article 2(1) obligates each State party “to respect and ensure to all individuals . . . the rights recognized in the present Covenant, without distinction of any kind, such as race [or] colour . . .” Discrimination includes “any distinction, exclusion, restriction or preference which is based on any ground . . .

which has *the purpose or effect* of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.”<sup>57</sup>

**Yet racial minorities, and African Americans in particular, disproportionately suffer from U.S. gun violence and the proliferation of firearms due to lax gun laws.** This Committee has already found that U.S. gun violence has a “disparate impact” on minority groups and expressed concern “about the proliferation of such laws which are used to circumvent the limits of legitimate self-[defense] in violation of the State party’s duty to protect life.” It has thus recommended that the U.S. government “[r]eview the Stand Your Ground laws to remove far-reaching immunity.”<sup>58</sup>

The United States is obligated under the Covenant “to take affirmative action in order to diminish or eliminate *conditions which cause or help to perpetuate* discrimination prohibited by the Covenant.”<sup>59</sup>

## E. Freedom of Religion

**Article 18 of the ICCPR protects the non-derogable “right to freedom of thought, conscience and religion.”** This right is “far-reaching and profound,” must be “broadly construed,”<sup>60</sup> and includes “the right of all persons to worship or assemble in connection with a religion or belief.”<sup>61</sup>

The U.N. Human Rights Council has urged States “[t]o exert the utmost efforts, in accordance with their national legislation and in conformity with international human rights and humanitarian law, to ensure that religious places, sites, shrines and symbols *are fully respected and protected* and to take additional measures in cases where they are vulnerable to desecration or destruction.”<sup>62</sup>

**The proliferation of firearms and easy access to guns interferes with the right of people in the United States to worship freely because of the well-founded fear that they will become victims to firearm violence as a result of their religious choices.** Mass shootings have occurred at places of worship frequently, including Pittsburgh’s Tree of Life synagogue (2018), a historically black Charleston church (2015), a church in Sutherland Springs, TX (2017), and a Sikh temple in Wisconsin (2012).

## F. The Right to Freedom of Expression and Opinion

**Article 19 of the Covenant protects the right to hold opinions without interference and the freedom of expression.** The right to freedom of expression and opinion are vital at the individual level and necessary for a democratic society, as the Committee explained in General Comment No. 34.<sup>63</sup> These freedoms are a precondition for the exercise of other fundamental rights, including the right to freedom of assembly, religion, and association.<sup>64</sup> Freedom of expression and opinion are non-derogable rights.<sup>65</sup>

**Intimidation and threats of violence can restrict freedom of opinion and expression.** As General Comment No. 34 explains, article 19(1) is violated by “the harassment [or] intimidation ... of a person ... for reasons of the opinions they may hold” and “[a]ny form of effort to coerce the holding or not holding of any opinion is prohibited.”<sup>66</sup>

Gun violence in the United States violates the right to freedom of expression and opinion when individuals are coerced, whether implicitly or expressly, into not expressing their opinion due to the fear that they will be threatened or harmed with a gun as a result. In 2011, U.S. Representative Gabrielle Giffords and eighteen others were shot during a constituent meeting and in 2016, a

shooter attacked a baseball game of Republican lawmakers, firing more than 70 rounds and critically injuring a congressman. Individuals are also at risk for firearm violence for expressing non-political opinions, with examples ranging from being shot during arguments about sexual orientation or protests during professional sports.

A free press is “essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights.” The Committee has called a free and unhindered press “one of the cornerstones of a democratic society.”<sup>67</sup> Yet in June 2018, five people were shot dead in an attack on the Capital Gazette newsroom in Maryland. Easy access to firearms enable this kind of attack. **In 2018, the United States was added to Reporters Without Borders’ list of the *top five* deadliest countries for journalists to work.**<sup>68</sup>

The United States is required under the Covenant “to ensure that persons are protected from any acts by private persons or entities that would impair the enjoyment of the freedoms of opinion and expression.”<sup>69</sup> It is arguably failing to fulfil this obligation by implementing reasonable restrictions on firearms.

## G. The Right to Peaceful Assembly and Association

**The rights to peaceful assembly and association are protected by ICCPR articles 21 and 22.** Like freedom of expression and opinion, the right to assembly and association are “essential components of democracy” and are considered foundational rights that “serve as a vehicle for the exercise of many other civil, cultural, economic, political and social rights.” Assemblies are defined in international law as “an intentional and temporary gathering in a private or public space for a specific purpose,”<sup>70</sup> including rallies, demonstrations, and protests. The United States has a “positive obligation to facilitate the exercise of this right” and is responsible for protecting peaceful assemblies.<sup>71</sup> Gun violence at such assemblies discourages individuals from exercising these rights.

## H. Special Protection for Children

**Article 24 of the ICCPR requires special protection for children given their status as minors,** in addition to the recognition of all other rights contained within the Covenant. Yet, among all high-income countries, 91% of firearm deaths among children aged 0-14 occur in the United States. Children are required to attend schools where they fear being shot, and generally experience high rates of firearm death and injury, particularly in the context of domestic violence. **Firearm injuries are the *third leading cause of death among all U.S. children aged 1-17*** and firearms are one of the top seven causes of *all* unintentional childhood deaths for ages 1-14. Equally troubling is the number of children who have witnessed firearm violence – estimated at nearly 3 million a year – which has been linked to increased developmental problems and mental health issues. Non-white children are particularly at risk.

The Committee has directed States Parties that “every possible economic and social measure should be taken . . . to prevent them [children] from being subjected to acts of violence.”<sup>72</sup> Many of these violations could be prevented by common sense gun laws, including safe storage requirements and the elimination of loopholes that allow domestic abusers to possess guns. Indeed, during its last review of the United States, a member of the Human Rights Committee noted “the lack of a preventive approach to domestic violence, [and] regretted that a man who was under a restraining order had been able to legally access a firearm which he had then used to kill his children.”<sup>73</sup>

## I. Special Protection for Women

ICCPR article 2(1) prohibits discrimination based on sex and article 3 ensures the equal and full right of men and women to the enjoyment of all rights contained within the Covenant. The fulfillment of these rights “requires not only measures of protection but also affirmative action designed to ensure the positive enjoyment of rights. This cannot be done simply by enacting laws.”<sup>74</sup> States must take steps towards “the removal of obstacles to the equal enjoyment each of such rights . . . and the adjustment of domestic legislation so as to give effect to the undertakings set forth in the Covenant.”<sup>75</sup>

Women in the United States are *sixteen times* more likely to be murdered with a firearm than in other developed nations and one of the most common circumstances under which this happens is domestic violence. Abused women are five times more likely to be killed if their abuser owns a gun. International law recognizes domestic violence as a *public concern* that requires State action to prevent. Gaps in federal gun legislation, particularly the Lautenberg Amendment, have enabled this particular type of gun violence, which disproportionately harms women. This is inconsistent with the State’s duty “to take special measures of protection towards persons in situation of vulnerability whose lives have been placed at particular risk because of specific threats or pre-existing patterns of violence [including] . . . victims of domestic and gender-based violence.”<sup>76</sup> Gun violence in the United States violates women’s right to life and security and prevents their equal enjoyment of other human rights in violation of international law.

## VI. RECOMMENDATIONS FROM OTHER HUMAN RIGHTS BODIES

Former U.N. High Commissioner for Human Rights Prince Zeid Ra’ad al-Hussein released a report detailing the human rights concerns associated with the private purchasing, possession and use of guns, finding that “[f]irearms-related violence and insecurity [] pose direct risks to the rights to life, security and physical integrity, and also affect other civil, political, social, economic and cultural rights such as the rights to health, education, an adequate standard of living and social security and the right to participate in cultural life” and calling for States to protect their citizens from the right-depriving violence associated with the sale and use of guns.<sup>77</sup> The High Commissioner specifically highlighted the U.S. failure to regulate the sale and use of guns after a particularly horrific mass shooting at Pulse night club in Orlando, Florida, stating, “[i]t is hard to find a rational justification that explains the ease with which people can buy firearms, including assault rifles, in spite of prior criminal backgrounds, drug use, histories of domestic violence and mental illness, or direct contact with extremists – both domestic and foreign.” He asked: “How many more mass killings of school-children, of co-workers, of African-American churchgoers . . . will it take before the United States adopts robust gun regulation?”<sup>78</sup> Unfortunately, the answer always seems to be, at least one more.

The Inter-American Commission on Human Rights has encouraged the United States to redress gun violence<sup>79</sup> and emphasized the need for the U.S. government to adopt effective gun control measures, such as “effective background checks, and psychological testings, as well as other effective measures on license and registration requirements, such as restricting assault weapons – such as the AR-15-style rifle.” The Commission also highlighted the importance of heading “red flags” and urged “the State to undertake systematic studies of these phenomena in order to formulate effective policy to prevent future gun violence.” IACHR Commissioner Margarete May Macaulay, Rapporteur for the United States, has emphasized that mass shootings in the United States are preventable. She recently observed

[i]mmediate Congressional action on this issue to reform gun laws in the United States and prevent further slaughter is urgent. ... we call on the State to lift the ban on government financing of studies of the causes of gun violence, and to prioritize studies of the links between domestic and other interpersonal violence and gun violence in order to formulate evidence-based policy that will effectively protect the US population, including women, children, and families.<sup>80</sup>

The Commission held a hearing in February 2018 on the “Regulation of Gun Sales and Social Violence in the United States.” The Harris Institute was one of four organizations presenting testimony at this hearing. Our testimony requested the Commission to urge the United States to adopt international best practices with respect to the sale and regulation of firearms, hold a thematic hearing with survivors, families of victims, and representatives of impacted communities, and conduct a study on school shootings.<sup>81</sup>

The United States is also a party to the **International Covenant on the Elimination of Racial Discrimination**, which protects the equal enjoyment of numerous rights – including life, health, security, and freedom of religion – regardless of race. Daily gun violence may be depriving citizens of their rights under ICERD. The Committee on the Elimination of Racial Discrimination has previously urged the United States to take “take effective legislative and policy measures to fulfil its obligation to protect the right to life and to reduce gun violence,” including by adopting legislation requiring background checks for all private firearm transfers, prohibiting concealed handgun carry in public places, and reviewing the Stand Your Ground laws.<sup>82</sup>

The **Special Rapporteur on Violence against Women, its Causes and Consequences** has advised the United States to

Enhance gun control measures, by ensuring an adequate background check system to capture all relevant elements that determine an individual’s suitability for gun ownership. Background checks for licensed individuals should be revisited periodically to determine continued suitability. States should have clear gun removal policies when intervening in domestic violence cases, including the possibility of removal of guns after the first notification of domestic disputes. Gun dealers should be penalized for illegally selling guns and also for failure to report stolen guns which are subsequently used to commit crimes.<sup>83</sup>

More generally, the Special Rapporteur has also advised States to “duly take into account possession of or access to firearms by perpetrators” of violence.<sup>84</sup>

The **U.N. Human Rights Council** reiterated the aforementioned suggestions on curbing gun violence during its 2015 Universal Periodic Review of the United States.<sup>85</sup> Several additional recommendations were issued, including to “[t]ake necessary measures to reduce gun violence [...] which disproportionately affect members of racial and ethnic minorities,” “[a]dopt legislation expanding the verification of personal backgrounds for all acquisitions of firearms.”<sup>86</sup> The United States, under the Obama administration, replied that it “strongly support[ed] expanding the number of firearms transfers that are subject to background checks but with limited, common-sense exceptions (e.g., certain transfers between family members, temporary transfers for hunting/sporting).”<sup>87</sup> In response to the recommendation that it “[c]onsider the adoption of legislation to enhance the verification of the records for all fire arms transfers and the revision of the laws that stipulate self-defence without limitations,”<sup>88</sup> however, the United States said: “[w]e do not support the part of this recommendation asking us to revise laws that permit individuals to defend themselves when violently attacked.”<sup>89</sup>

Although the **Committee against Torture** has not made recommendations to the United States related to gun violence, it has expressed the view that “strict national firearm control measures are necessary.”<sup>90</sup> The **Committee on the Rights of the Child** has also addressed the proliferation of firearms and expressed particular concern about the high proportion of children carrying them. It “considered that it was imperative to take all necessary measures to ensure that children did not have access to small arms and/or light weapons and that those already in possession of weapons be disarmed.”<sup>91</sup>

The preamble of the **World Health Organization (WHO)** Constitution calls the right to health “one of the fundamental rights of every human being” and defines health as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.” This right is also protected by the American Declaration (article XI) and the International Covenant on Economic, Social and Cultural Rights (article 12). The **Committee on Economic, Social and Cultural Rights** has previously expressed concern at the large number of suicides committed with easily accessible firearms in a State Party and recommended that the State take measures to combat this problem, including “by restricting access to firearms kept at home in connection with service in the army.”<sup>92</sup> Likewise, the WHO has acknowledged that effective interventions are especially available in the area of gun-related violence and has deemed the easy availability of firearms to be a main risk factor for small arms violence and homicide. In a 2002 report it concluded that gun violence is largely preventable and suggested that “efforts to reduce the promotion and use of availability of firearms should be encouraged, with increased industry regulation to prevent criminals accessing weapons and to protect children from the ill-effects of firearms availability.”<sup>93</sup> Yet, in 2017 U.S. gun violence caused over 39,000 deaths and more than 130,000 non-fatal injuries, as well as widespread mental and psychological harm, amounting to a serious public health crisis.

This Committee can, and has, referred to the decisions of other human rights instruments and bodies to aid its interpretation and implementation of the Convention. The international instruments mentioned above support our conclusion that the gun violence crisis in the United States is depriving U.S. citizens of their human rights.

## VII. RECOMMENDATIONS

We request that the Committee urge the United States to adopt international best practices with respect to the sale and regulation of firearms, including, but not limited to:

- a. **Require comprehensive background checks for the purchase and ownership of all firearms and eliminate the private gun transaction loophole.** Implement stricter and universal background checks for the purchase of firearms, regardless of the seller;
- b. **Adopt legislation requiring a license for the possession and purchase of any type of firearm.** Licenses should be required for the purchaser regardless of if the seller is a licensed dealer or not. Licensing should require, at the minimum, a background check, including of mental health history, safety training, a practical test of firearm skill and safe handling, and a written knowledge test. Licenses should have limitations on the duration of validity and require a new background check and re-testing for renewal. License holders should also be required to obtain an additional permit for the purchase of handguns, which should be limited in duration and allow only one handgun per permit;
- c. **Adopt legislation requiring the licensure of all firearm sellers.** Firearm sellers should be required to keep careful records of all sales and inventory of firearms *and* ammunition

- and to submit these records to law enforcement and the ATF. Sellers should be required to report suspicious buying activity (i.e. over a certain quantity by an individual within a short time period) immediately to law enforcement. Law enforcement and/or ATF agents should be required and permitted to conduct regular compliance inspections of dealers and to maintain a centralized database of firearm and ammunition sales;
- d. **Adopt restrictions on the sale and possession of high-capacity and assault weapons** such as the AR-15 style rifle used in the Parkland school shooting, which greatly increase the fatality of shootings;
  - e. **Adopt legislation banning the sale and possession of bump stocks**, a gun accessory that modifies a semi-automatic firearm to make it easier to fire rounds quickly, and which was used by the gunman in the Las Vegas shooting, the deadliest mass shooting in U.S. history;
  - f. **Adopt legislation requiring the safe storage of firearms in homes with children and dangerous persons** to prevent individuals like the Santa Fe High School shooter from acquiring firearms and committing mass shootings;
  - g. **Require prompt reporting of stolen guns from private citizens** to help reduce illegal firearm tracking and keep guns out of the hands of criminals;
  - h. **Enact a federal “Red Flag Bill” allowing for extreme risk protection orders** to temporarily remove access to firearms from individuals at immediate risk to themselves or others;
  - i. **Prohibit domestic abusers from buying and possessing guns by closing the loopholes in the Lautenberg Amendment**, which allows abusers in dating (not married) relationships, convicted stalkers, and those with temporary restraining orders to buy and own firearms;
  - j. **Repeal the Dickey Amendment, effectively banning CDC funding for gun-related research**, and provide sufficient funding and resources for research on firearm safety and gun violence prevention;
  - k. **Repeal the Tiahrt Amendments** and remove the restrictions placed on ATF which limit its ability to effectively do its job;
  - l. **Reject the proposed “Concealed Carry Reciprocity Act”** and instead encourage states to follow the lead of those jurisdictions that have been successful at adopting stricter gun control laws;
  - m. **Support local violence prevention and intervention programs** that are proven to reduce gun violence; and
  - n. **Prohibit SYG Laws** that allow private citizens to deprive others of life and disproportionately harm African Americans;
  - o. **Require implicit bias and de-escalation trainings** for all law enforcement officers to reduce the discriminatory impact of police shootings on African Americans and other minority groups.

These measures would be constitutional under *Heller* and have been proven to be effective. Similar measures have been shown to reduce firearm deaths and injuries and nearly eliminate mass shootings in other countries. These recommendations are consistent with those made by many of

the leading organizations in this field, including the Brady Campaign to Prevent Gun Violence, Giffords Law Center to Prevent Gun Violence, Everytown for Gun Safety, and the Center for American Progress.

### **VIII. SUGGESTED QUESTIONS FOR THE STATE PARTY**

- 1) Why hasn't the U.S. government reinstated the assault weapons ban that expired in 2004, despite the fact that firearms covered under it have since been used in some of the worst mass and school shootings in U.S. history?
- 2) Why hasn't the U.S. government closed the private gun transaction loophole and adopted legislation requiring universal background checks for individuals seeking to own, possess, purchase, or otherwise acquire a firearm?
- 3) Why hasn't the U.S. government passed a federal safe-storage or gun lock statute, especially in households with minors?
- 4) Will the U.S. government adopt legislation requiring the licensing of all firearm sellers and require them to keep careful records of firearm inventory?
- 5) Will the U.S. government repeal the Tiahrt Amendments, remove restrictions on the ATF, and provide funding and support for the agency to conduct regular compliance inspections of dealers and to maintain a centralized database of firearm and ammunition sales?
- 6) Has the U.S. government considered adopting a red-flag bill allowing for extreme risk protection orders to temporarily remove access to firearms from individuals at immediate risk to themselves or others?
- 7) Has the U.S. government considered adopting legislation requiring the safe storage of firearms in households with children or at-risk individuals?
- 8) Will the U.S. government close loopholes in the Lautenberg Amendment to prohibit domestic abusers and stalkers from buying and possessing guns?
- 9) Will the U.S. government increase funding for research on gun violence prevention and repeal the Dickey Amendment?
- 10) Will the U.S. government reject the proposed "Concealed Carry Reciprocity Act" that would require concealed carry permits issued in one state to be honored by all states in the country?
- 11) What is the status of the U.S. government's review of Stand-Your-Ground laws and are there plans to prohibit these laws, the majority of which were adopted in the past 15 years and which disproportionately harm African Americans of life?

### **IX. CONCLUSION**

Since 2013, an average of one school shooting each week and one mass shooting each day takes place in the United States. Nearly 3 million children witness a firearm shooting each year. This gun violence crisis has serious mental health and developmental consequences.

In 1995, this Committee expressed concern at the ease with which individuals could access firearms. In 2014, the Committee found, in relation to the United States, that "the obligation to effectively protect also requires efforts to curb violence that include the continued pursuit of

legislation requiring background checks for all private firearm transfers” and that the United States should “ensure strict enforcement of the Domestic Violence Offender Gun Ban of 1996.”

Rather than taking affirmative action to prevent gun violence and providing additional resources for the effective enforcement of current laws, the U.S. government has decreased protection for its population by relaxing its laws and creating roadblocks for the agencies tasked with enforcing gun regulations. Given the frequency with which gun violence now occurs in the United States, the U.S. failure to adopt effective measures, including legislation, may violate its human rights obligations.

We urge the Committee to request the U.S. government to encourage states to follow the lead of those jurisdictions that have been successful at adopting stricter gun control laws. Similar gun control measures have proven effective in other countries, both in terms of stopping mass shootings and in reducing death and injury from gun violence, and studies have shown that the incidence of U.S. gun violence drops following the adoption of sensible gun regulations.

A finding by this Committee that the U.S. government has failed to act reasonably to address America’s gun violence crisis, in violation of its treaty obligations, could be particularly persuasive. Although the Committee’s decision may not be binding as a formal matter, it would command great respect and have the potential to influence domestic policy and legal interpretation.<sup>94</sup>

Respectfully submitted,

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- <sup>1</sup> See generally Harris Institute, [Initiative on Gun Violence and Human Rights](#). For a more comprehensive analysis, see Leila Nadya Sadat & Madaline George, *The U.S. Gun Violence Crisis: Human Rights Perspectives and Remedies*, Washington University in St. Louis Legal Studies Research Paper No. 19-01-11 (Jan. 2019), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3317143](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3317143).
- <sup>2</sup> See Colleen L. Barry et al., *After Newtown – Public Opinion on Gun Policy and Mental Illness*, 368 NEW ENG. J. MED. 1077 (2013); Kim Parker et al., [America’s Complex Relationship With Guns](#), PEW RESEARCH CTR. (June 22, 2017).
- <sup>3</sup> Center for Disease Control and Prevention, [WONDER, About Underlying Cause of Death \(1999-2017\)](#); Center for Disease Control and Prevention, [WISQARS, Nonfatal Injury Reports \(2000-2017\)](#).
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- <sup>8</sup> [School Shooting Database](#), WASH. POST (accessed May 27, 2018).
- <sup>9</sup> See Madeline Drexler, [Guns & Suicide: The Hidden Toll](#), HARV. SCH. PUB. HEALTH MAGAZINE (Spring 2013).
- <sup>10</sup> Douglas J. Wiebe, *Homicide and Suicide Risks Associated With Guns in the Home: A National Case-Control Study*, 41 ANNALS OF EMERGENCY MED. 771, 780 (2003); Matthew Miller et al., *Firearm Availability and Suicide, Homicide, and Unintentional Firearm Deaths Among Women*, 79 J. URBAN HEALTH 26 (2002); Michael Siegel & Emily F. Rothman, *Firearm Ownership and Suicide Rates Among US Men and Women, 1981–2013*, 106 AM. J. PUBLIC HEALTH 1316, 1317 (2016).
- <sup>11</sup> M. Miller & David Hemenway, *Guns and Suicide in the United States*, 359 N. ENGL. J. MED. 672 (2008); see also Justin Thomas Briggs & Alexander Tabarrok, *Firearms and Suicides in US States*, 37 INT’L REV. OF LAW & ECO. 180 (2014).
- <sup>12</sup> Erin Grinshteyn & David Hemenway, *Violent Death Rates: The US Compared with Other High-Income OECD Countries, 2010*, 129 AM. J. MED. 266 (2016).

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- <sup>15</sup> [Fatal Force](#), WASH. POST (last updated Jan. 3, 2019) [hereinafter ‘Washington Post Police Shootings Database’].
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- <sup>20</sup> See [The Counted](#), THE GUARDIAN.
- <sup>21</sup> [“Stand Your Ground” Laws](#), GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE.
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- <sup>27</sup> [Pressure Leads to Progress](#), GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE (updated Dec. 2018).
- <sup>28</sup> See [Concealed Carry](#), GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE; [Guns in School](#), GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE.
- <sup>29</sup> Garen J. Wintemute et al., [Private-Party Gun Sales, Regulation, and Public Safety](#), 363 NEW ENG. J. MED. 508, 509 (2010). Only eleven states and the District of Columbia mandate background checks for all sales and transfers of all classes of firearms. See [Universal Background Checks](#), GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE.
- <sup>30</sup> Only thirteen states and the District of Columbia have some form of licensing requirement – but half apply only to handguns. See generally [Licensing](#), GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE.
- <sup>31</sup> Elizabeth Chuck, [More than 80 Percent of Guns Used in Mass Shooting Obtained Legally](#), NBC NEWS (Dec. 5, 2015). When “high-capacity magazines – or assault weapons likely equipped with them” were used, 155% more people were shot and 47% more people were killed. [Analysis of Recent Mass Shootings](#), EVERYTOWN FOR GUN SAFETY (2015).
- <sup>32</sup> See generally Tessa Collins et al., [State Firearm Laws and Interstate Transfer of Guns in the USA](#), 95 J. URB. HEALTH 332 (2018),
- <sup>33</sup> For example, Chicago has tightened its gun laws in response to high rates of gun violence, but nearly 60% of guns recovered in the city that were used or suspected of being used in a crime can be traced to out-of-state gun dealers. Shelby Bremer, [Majority of Guns Used in Chicago Crimes Come From Outside Illinois: Report](#), NBC NEWS (Oct. 30, 2017).
- <sup>34</sup> David B. Kopel, *Japanese Gun Control*, 2 ASIA PAC. L. REV. 26, 26-27 (1993).
- <sup>35</sup> Janet E. Rosenbaum, *Gun Utopias? Firearm Access and Ownership in Israel and Switzerland*, 33 J. PUB. HEALTH POL’Y 46 (2012).
- <sup>36</sup> See Eric W. Fleegler et al., *Firearm Legislation and Firearm-Related Fatalities in the United States*, 173 JAMA INTERNAL MED. 732, 734 (2013). John J. Donohue et al., *Right-to-Carry Laws and Violent Crime: A Comprehensive Assessment Using Panel Data, the LASSO, and a State-Level Synthetic Controls Analysis*, NAT’L BUREAU OF ECON. RES.: WORKING PAPER SERIES, at 3 (revised Jan. 2018); Richard Florida, [The Geography of Gun Deaths](#), THE ATLANTIC (Jan. 13, 2011); Colin Loftin et al., *Effects of restrictive licensing of handguns on homicide and suicide in the District of Columbia*, 325 NEW ENG. J. MED. 1615 (1991).
- <sup>37</sup> Chelsea Parsons & Eugenio Weigend, [America Under Fire](#), CTR. FOR AMERICAN PROGRESS (2016).
- <sup>38</sup> See, e.g., M. Miller et al., *Rates of Household Firearm Ownership and Homicide Across US Regions and States (1988-1997)*, 92 AM. J. PUB. HEALTH 1988 (2002); M. Miller et al., *State-Level Homicide Victimization Rates in the US in Relation to Survey Measures of Household Firearm Ownership, 2001-2003*, 64 SOC. SCI. MED. 656 (2007); M. Miller et al., *Household Firearm Ownership and Rates of Suicide Across the 50 United*

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States, 62 J. TRAUMA 1029 (2007); Michael Siegel et al., *The Relationship between Gun Ownership and Firearm Homicide Rates in the United States, 1981-2011*, 103 AM. J. PUB. HEALTH 2098 (2013).

<sup>39</sup> See, e.g., [Gun Prevalence and Suicide Rank by State](#), HARV. SCH. PUB. HEALTH MAGAZINE (Spring 2008).

<sup>40</sup> See [State Background Check Requirements: Mass Shootings](#), EVERYTOWN FOR GUN SAFETY (Nov. 12, 2015); Michael D. Anestis et al., *Suicide Rates and State Laws Regulating Access and Exposure to Handguns*, 10 AM. J. PUB. HEALTH 105, e1, e3 (2015).

<sup>41</sup> Kara E. Rudolph, *Association between Connecticut's Permit-to-Purchase Handgun Law and Homicides*, 105 AM. J. PUB. HEALTH 49, 49, 51 (2015) (Connecticut's 1995 implementation of its permit-to-purchase law for handgun purchases was associated with a 40% decrease in the state's firearm homicide). See e.g., Mayors Against Illegal Guns, [Trace the Guns: The Link Between Gun Laws and Interstate Gun Trafficking](#) 17 (2010); Daniel W. Webster et al., *Relationship Between Licensing, Registration, and Other Gun Sales Laws and the Source State of Crime Guns*, 7 INJ. PREVENTION 184, 188-89 (2001).

<sup>42</sup> See Daniel W. Webster et al., *Effects of State-Level Firearm Seller Accountability Policies on Guns Trafficking*, 86 J. URB. HLTH 525 (2009).

<sup>43</sup> April M. Zeoli & Daniel W. Webster, *Effects of Domestic Violence Policies, Alcohol Taxes, and Police Staffing Levels on Intimate Partner Homicide in Large US Cities*, 16 INJ. PREV. 90 (2010); see also Elizabeth Richardson Vigdor & James A. Mercy, *Do Laws Restricting Access to Firearms by Domestic Violence Offenders Prevent Intimate Partner Homicide?*, 30 EVALUATION REV. 313, 332 (2006).

<sup>44</sup> David C. Grossman et al., *Gun Storage Practices and Risk of Youth Suicide and Unintentional Firearm Injuries*, 293 JAMA 707 (2005); Daniel W. Webster, *Association between Youth-Focused Firearm Laws and Youth Suicides*, 292 J. AM. MED. ASSN 594 (2004); Jeff DeSimone et al., *Child Access Prevention Laws and Nonfatal Gun Injuries*, 80 SOUTHERN ECON. J. 5(2013)

<sup>45</sup> HRC, General Comment No. 36, U.N. Doc. CCPR/C/GC/36, ¶¶ 3, 6 (2018).

<sup>46</sup> *Id.* ¶ 21.

<sup>47</sup> *Id.* ¶¶ 4, 7, 26.

<sup>48</sup> *Id.* ¶ 27. See also HRC, Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Paraguay, U.N. Doc. CCPR/C/79/Add.48 (Oct. 3, 1995) (criticizing Paraguay's lenient infanticide laws).

<sup>49</sup> *Id.* ¶ 9.

<sup>50</sup> *Id.* ¶ 19.

<sup>51</sup> See, e.g., Delgado Páez v. Colombia, Merits, U.N. Doc. CCPR/C/39/D/195/1985, ¶¶ 5.4-6 (1990); Rajapakse v. Sri Lanka, Merits, U.N. Doc. CCPR/C/87/D/1250/2004, ¶¶ 9.7-10 (July 14, 2006).

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<sup>52</sup> HRC, General Comment 20, ¶ 5 (1994).

<sup>53</sup> *Id.* ¶ 2.

<sup>54</sup> *Larez v. Bolivarian Republic of Venezuela*, Decisions of the Committee against Torture, Communication No. 456/2011, ¶ 6.10, U.N. Doc. CAT/C/54/D/456/2011 (June 26, 2015) (finding a violation when the enforced disappearance of a family member resulted in “anguish and distress” and authorities were “indifferent” and did not provide any information).

<sup>55</sup> CAT, General Comment No. 3, ¶ 3, U.N. Doc. CAT/C/GC/3 (Dec. 13, 2012).

<sup>56</sup> HRC, General Comment No. 20, ¶ 9.

<sup>57</sup> HRC, General Comment No. 18, ¶ 1, 7 (1994).

<sup>58</sup> HRC, Concluding Observations 2014, ¶ 10(b). The Committee on the Elimination of Racial Discrimination has expressed similar concerns. CERD, Concluding observations on the combined seventh to ninth periodic reports of the United States of America, U.N. Doc. CERD/C/USA/CO/7-9, ¶ 16 (Sept. 25, 2014).

<sup>59</sup> HRC, General Comment No. 18, ¶ 10.

<sup>60</sup> HRC, General Comment No. 22, ¶¶ 1, 2 (1994).

<sup>61</sup> U.N. Commission on Human Rights, Resolution 2005/40, ¶ 4(d) U.N. Doc. E/CN.4/RES/2005/40 (Apr. 19, 2005).

<sup>62</sup> Human Rights Council, Resolution 6/37, ¶ 9(e), U.N. Doc. A/HRC/RES/6/37 (Dec. 14, 2007).

<sup>63</sup> HRC, General Comment No. 34, U.N. Doc. CCPR/C/GC/34, ¶¶ 2-3 (2011).

<sup>64</sup> *Id.* ¶ 4 (“freedoms of opinion and expression form a basis for the full enjoyment of a wide range of other human rights.”). *See also* *Handyside v. United Kingdom*, 24 Eur. Ct. H.R. (ser. A) ¶ 49 (1976) (referring to the freedom of opinion and expression as ‘one of the essential foundations of a democratic society’).

<sup>65</sup> HRC, General Comment No. 34, ¶ 5.

<sup>66</sup> *Id.* ¶¶ 9, 10.

<sup>67</sup> HRC, General Comment No. 34, ¶ 13.

<sup>68</sup> Reporters Without Borders, [Worldwide Round-Up](#), at 10 (Dec. 2018).

<sup>69</sup> HRC, General Comment No. 34, ¶ 7.

<sup>70</sup> Human Rights Council, Report of the Special Rapporteur on the Rights to Freedom of Assembly and of Association, Maina Kiai, ¶ 12, U.N. Doc. A/HRC/20/27 (May 21, 2012).

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<sup>71</sup> *Id.* ¶¶ 27, 33.

<sup>72</sup> HRC, General Comment No. 17, ¶ 4 (1994).

<sup>73</sup> HRC, Consideration of reports submitted by States parties under article 40 of the Covenant (continued) – Fourth periodic report of the United States of America (continued), U.N. Doc. CCPR/C/SR.3045, ¶ 15 (June 11, 2014).

<sup>74</sup> HRC, General Comment No. 4, ¶ 2 (1981).

<sup>75</sup> HRC, General Comment No. 28, U.N. Doc. CCPR/C/21/Rev.1/Add.10, ¶ 3 (2000).

<sup>76</sup> HRC, General Comment No. 36, ¶ 23 (citations omitted).

<sup>77</sup> Rep. of the United Nations High Comm’r for Human Rights, Human Rights and the Regulation of Civilian Acquisition, Possession and Use of Firearms, U.N. Doc. A/HRC/32/21, ¶ 10, 52-53 (Apr. 15, 2016).

<sup>78</sup> [\*In Wake of Mass Shooting, UN Rights Chief Urges US to Consider Robust Gun Control\*](#), UN NEWS (June 14, 2016).

<sup>79</sup> Press Release No. 076/16, Organization of American States, [\*LACHR Condemns Mass Shooting at a Gay Bar in the United States\*](#) (June 14, 2016); [\*LACHR Condemns Mass Shooting in the United States\*](#), Press Release No. 154/17 (Oct. 6, 2017).

<sup>80</sup> Press Release No. 182/17, Organization of American States, [\*LACHR Condemns Mass Shooting in United States and Calls on the State to Adopt Measures to Prevent Future Tragedies\*](#) (Nov. 16, 2017).

<sup>81</sup> Written Statement of the Whitney R. Harris World Law Institute for the Hearing on “Regulation of Gun Sales and Social Violence in the United States,” Inter-American Commission on Human Rights, 167th Extraordinary Period of Sessions (Feb. 27, 2018), <http://law.wustl.edu/wp-content/uploads/2018/10/InterAmericanCommissionHearingFebruary272018FINAL.pdf>.

<sup>82</sup> CERD, Concluding Observations 2014, ¶ 16.

<sup>83</sup> Human Rights Council, Report of the Special Rapporteur on violence against Women, its causes and consequences, Ms. Rashida Manjoo, U.N. Doc. A/HRC/17/26/Add.5, ¶ 115.A(g) (June 6, 2011).

<sup>84</sup> Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, U.N. Doc. A/HRC/35/30, ¶ 103 (June 13, 2017).

<sup>85</sup> Human Rights Council, Working Group on the Universal Periodic Review, Compilation prepared by the OHCHR – United States of America, ¶ 21, U.N. Doc. A/HRC/WG.6/22/USA/2 (Mar. 2, 2015).

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<sup>86</sup> Human Rights Council, Report of the Working Group on the Universal Periodic Review, United States of America, at 27, U.N. Doc. A/HRC/30/12 (July 20, 2015) (Recommendation 232, from Iceland and Recommendation 230, Ecuador).

<sup>87</sup> Human Rights Council, Report of the Working Group on the Universal Periodic Review\* United States of America, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, ¶ 9, A/HRC/30/12/Add.1 (Sept. 14, 2015).

<sup>88</sup> Human Rights Council 2015 U.S. Report, at 28. (Recommendation 233, Peru).

<sup>89</sup> [Appendix to the Addendum to the Report of the Second Universal Periodic Review of the United States](#), at 12.

<sup>90</sup> Human Rights Council, Human rights and the regulation of civilian acquisition, possession and use of firearms, U.N. Doc. A/HRC/32/21, ¶ 31 (Apr. 15, 2016). *See also* CAT, Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Conclusions and recommendations of the Committee Against Torture – Guyana, U.N. Doc. CAT/C/GUY/CO/1, ¶ 7 (Dec. 7, 2006) (The Committee examined irregularities in the approval of firearm licenses elsewhere whereby licenses were allegedly granted indiscriminately which resulted in the transferred firearms being used to commit offences prohibited by the Convention against Torture. It recommended that Guyana “strengthen the administrative measures to control the indiscriminate issuance of firearms licences, ensuring that the process of application for firearms is streamlined and that the Firearm Regulations are applied uniformly and amended where necessary.”)

<sup>91</sup> *See* Committee on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 8 of The Optional Protocol to the Convention on The Rights of the Child on the Involvement of Children in Armed Conflicts – Concluding Observations: Bangladesh, U.N. Doc. CRC/C/OPAC/BGD/CO/1, ¶ 23-24 (Mar. 17, 2006).

<sup>92</sup> U.N. Committee on Economic, Social and Cultural Rights, Concluding observations of the Committee on Economic, Social and Cultural Rights – Switzerland, ¶ 19 (Nov. 2010).

<sup>93</sup> WHO, [World Report on Violence and Health](#) (2002), 11, 20.

<sup>94</sup> *See, e.g.*, United States v. Duarte-Acero, 208 F.3d 1282, 1287 (11th Cir. 2000) (citing the U.N. Human Rights Committee’s views as persuasive in interpreting an ambiguous treaty provision).