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HUMAN RIGHTS COMMITTEE COUNTRY REPORT

United States of America

Independent information for the 110th session

of the Human Rights Committee

**HUMAN RIGHTS LITIGATION AND INTERNATIONAL ADVOCACY CLINIC
AND HUMAN RIGHTS PROGRAM
UNIVERSITY OF MINNESOTA**

CRITICAL ISSUES

Right to Life (Article 6)

Due diligence to prevent killings and injuries with small arms by private actors

Excessive use of force with firearms by law enforcement and security forces

Transfer of small arms where they are likely to be used to violate the right to life

PROPOSED QUESTIONS FOR THE GOVERNMENT OF THE UNITED STATES

1. With regard to Item 9(a) on the List of Issues to be taken up in connection with the consideration of the fourth periodic report of the United States¹ on the number of victims of gun violence, what actions are being taken to address racial disparities in gun violence deaths?
2. With regard to List of Issues Items 9(a) and 20 (firearm use in domestic violence),² what actions is the United States taking to increase enforcement of the federal law prohibiting domestic violence offenders from possessing firearms and provide incentives to the states so that those convicted of domestic violence or subject to protective orders do not have access to firearms?

¹ U.N. Human Rights Comm., List of issues to be taken up in connection with the consideration of the fourth periodic report of the United States of America (CCPR/C/USA/4 and Corr.1), adopted by the Committee at its 107th session (11–28 March 2013), U.N. Doc. CCPR/C/USA/Q/4 (Apr. 29, 2013).

² *Id.*

3. With regard to List of Issues Item 9(a), the Committee should declare that Stand Your Ground (Shoot First) laws contradict international principles of necessity and proportionality and ask the U.S. delegation what steps it is taking to bring the United States into compliance with international law.
4. With regard to List of Issues Item 9(b), what measures is the United States taking to prevent and provide legal redress for unjustifiable use of force by law enforcement officers, including those along the U.S.–Mexican border?
5. With regard to List of Issues Item 9(a), please explain what measures are being taken to stop and prevent future illicit transfers of small arms and light weapons (“SALW”) across U.S. borders to Mexico.

I. INTRODUCTION

This report is confined to analyzing the U.S. Response to Questions from the United Nations Human Rights Committee Concerning the Fourth Periodic Report of the United States on the ICCPR, and in that context noting the number of positive and negative developments since the submission of the University of Minnesota Independent Information Country Report (“UMN Report”) in December 2012.

The Obama administration has been vocal on the need for legislative action to reduce gun violence, including the enactment of universal background checks and the reinstatement of the ban on assault weapons. The administration is to be commended for taking numerous Executive Actions to address gun violence including improving state and federal agency reporting to the background check system, publishing data on lost and stolen guns, directing research on the causes and prevention of gun violence, and preventing the re-importation of military-grade firearms to private citizens.³ However, more substantive action is needed to address the violations of the right to life, both in the United States and abroad resulting from surrounding small arms and light weapons.

³ *FACT SHEET: New Executive Actions to Reduce Gun Violence*, WHITE HOUSE: OFFICE OF THE PRESS SEC’Y (Aug. 29, 2013), <http://www.whitehouse.gov/the-press-office/2013/08/29/fact-sheet-new-executive-actions-reduce-gun-violence>; *FACT SHEET: Strengthening the Federal Background Check System to Keep Guns out of Potentially Dangerous Hands*, WHITE HOUSE-OFFICE OF THE PRESS SEC’Y (Jan. 3, 2014), <http://www.whitehouse.gov/the-press-office/2014/01/03/fact-sheet-strengthening-federal-background-check-system-keep-guns-out-p>.

II. THE U.S. RESPONSE

A. The Due Diligence Obligation to Prevent Small Arms and Light Weapons by Private Parties.

The due diligence standard to protect the right to life from violence by small arms and light weapons includes the responsibility “to take steps to prevent reasonably foreseeable abuses by private actors” (occurring within a state’s own territory).⁴

1. List of Issues 9(a): Number of Victims of Gun Violence

With respect to the number of victims of gun violence, the U.S. Response is insufficient. The United States provides statistics for the number of violent crimes committed with a firearm;⁵ however, the U.S. Response does not address the number of firearm-related deaths that occur outside of a criminal context. For example, the U.S. Response does not specify the number of suicides that occur each year with a firearm or the number of children that die each year as a result of firearm-related accidents.⁶ The number of deaths caused by firearms in the United States remains astonishingly high. In 2011, which is the most recent data reported by the National Center for Injury prevention and Control, an estimated 32,163 deaths were caused by firearm-related injuries,⁷ which included the deaths of 2,711 children and teens.⁸ Furthermore, the U.S. Response fails to address racial disparities in gun violence statistics.⁹ Despite comprising less than 14% of the U.S. population, African Americans account for 55% of firearm homicide victims.¹⁰

We urge the Committee to ask the U.S. delegation what measures it is taking to reduce the number of firearm-related deaths and in particular the disproportionate impact firearms have on the African American community.

⁴ Prevention of Human Rights Violations Committed with Small Arms and Light Weapons, endorsed by Sub-Comm. on the Promotion and Protection of Human Rights res. 2006/22, U.N. Doc A/HRC/Sub.1/58/L.11/Add.1 at 3 (24 Aug. 2006) [hereinafter SALW Principles].

⁵ U.S. GOV'T, UNITED STATES RESPONSE TO QUESTIONS FROM THE UNITED NATIONS HUMAN RIGHTS COMMITTEE CONCERNING THE FOURTH PERIODIC REPORT OF THE UNITED STATES ON THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR) ¶ 9 (2013) [hereinafter U.S. Response]; see also MICHAEL PLANTY & JENIFFER L. TRUMAN, U.S. DEP'T OF JUSTICE, FIREARM VIOLENCE, 1993-2011 (2013), available at <http://bjs.gov/content/pub/pdf/fv9311.pdf>.

⁶ UNIV. OF MINN., INDEPENDENT INFORMATION FOR THE 109TH SESSION OF THE HUMAN RIGHTS COMMITTEE (HRC) 5 (2012) [hereinafter UMN Report] (finding that in 2010, guns caused the deaths of 2,711 children and teens, and of those deaths, 749 (28%) were suicides and 172 (6%) were accidental deaths or the intent was unknown).

⁷ See Donna L. Hoyert and Jiaquan Xu, *Deaths: Preliminary Data for 2011, National Vital Statistics Reports*, 61 NAT'L VITAL STAT. REP. no. 6, 2012, at 19 available at http://www.cdc.gov/nchs/data/nvsr/nvsr61/nvsr61_06.pdf.

⁸ See UMN Report, *supra* note 6, at 5; see also *Web-based Injury Statistics Query and Reporting System Fatal Injury Reports, 1999–2010 for National, Regional, and States*, NAT'L CTR. FOR INJURY PREVENTION AND CONTROL [hereinafter *WISQARS Fatal Injury Reports*], www.cdc.gov/ncipc/wisqars/ (last visited Sept. 1, 2013).

⁹ UMN Report, *supra* note 6, at 6.

¹⁰ See *WISQARS Fatal Injury Reports*, *supra* note 8 (citing most recent available data from 2010).

2. List of Issues 9(a) and 20: Firearm Use in Domestic Violence

The U.S. Response to Issues 9(a) and 20 could be read to trivialize the significant risk that gun proliferation poses to victims of domestic violence and fails to address the action needed to mitigate this risk.

Fifty-seven percent of mass shootings in the United States have involved domestic violence.¹¹ The presence of a gun in domestic violence situations increases a woman's risk of homicide by 500%.¹² The numbers behind the statistics in the U.S. Response mean that during the five-year period from 2007 through 2011, it is estimated that 2,700 women (including "wives" and "girlfriends," but not including ex-girlfriends) were killed by an intimate partner with a firearm.¹³ Additionally, during this same period, over 195,000 reports of domestic violence incidences involved a firearm.¹⁴

Women continue to bear a disproportionate risk and are six times more likely to be killed by an intimate partner than male murder victims. Between 1980 and 2008, 41.5% of female murder victims were killed by an intimate partner, compared to 7.1% of male murder victims.¹⁵

The danger of leaving firearms in situations of domestic violence has long been known. A 2003 National Institute of Justice Journal special issue on intimate partner homicide recognized that an abuser's access to a gun should be rated as particularly serious in safety planning and "any protection order should include firearms search-and-seizure provisions."¹⁶

There is some evidence that federal, state, and local measures specifically taken to reduce domestic gun violence have contributed to a decline in domestic violence firearm homicides. A 2006 study reinforced that domestic violence offender gun bans were associated with an 8% percent decrease in domestic violence homicides.¹⁷ Unfortunately, these measures are not being broadly implemented and enforced nationwide. The U.S. Response fails to address the gap that exists

¹¹ Mayors Against Illegal Guns, *Gun Laws and Violence Against Women* (2013), *available at* http://libcloud.s3.amazonaws.com/9/e9/e/1726/Gun_Laws_and_Violence_Against_Women.pdf. "Mass murder" is defined as the killing of more than 4 people. *Id.*

¹² *Id.*

¹³ See *Uniform Crime Reports*, FBI, <http://www.fbi.gov/about-us/cjis/ucr/ucr-publications#Crime> (last visited Jan. 27, 2014) (comparing expanded homicide data under the category "Crime in the United States"). This estimation was calculated by multiplying the 2008 rate of firearm use in intimate partner homicides (51%) by the total female intimate partner homicides reported for 2007–2011 (5,315 "wives" and "girlfriends").

¹⁴ Planty, *supra*, note 5, at 6.

¹⁵ ALEXIA COOPER & ERICA L. SMITH, U.S. BUREAU OF JUSTICE STATISTICS, *HOMICIDE TRENDS IN THE UNITED STATES, 1980–2008* 10 (2011), *available at* <http://www.bjs.gov/content/pub/pdf/htus8008.pdf>.

¹⁶ Jacquelyn C. Campbell, et al., *Assessing Risk Factors for Intimate partner Homicide*, 250 J. NAT'L INST. JUSTICE 19 (2003), *available at* <https://www.ncjrs.gov/pdffiles1/jr000250.pdf>.

¹⁷ E.R. Vigdor & J.A. Mercy, *Do Laws Restricting Access to Firearms by Domestic Violence Offenders Prevent Intimate Partner Homicide?* 30 EVAL. REV. 313–46 (2006).

between current domestic violence policy and implementation as well as what additional measures are needed to protect women at high risk of victimization.

a. Current Regulations to Limit the Disproportionate Impact on Women

The U.S. federal government has enacted various legislative measures designed to deal with the disproportionate impact of firearms on women in domestic violence situations.¹⁸ The most significant is the Domestic Violence Offender Gun Ban of 1996, which is commonly referred to as the Lautenberg Amendment.¹⁹ Under this federal law, it is illegal for persons who (1) have been convicted of the misdemeanor crime of domestic violence or (2) are subject to a qualifying protection order, to possess, ship, receive, or transport a firearm or ammunition.²⁰

The Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) is charged with enforcing the federal ban on firearm possession of batterers.²¹ However, while the ATF has the authority to seize weapons, it leaves relinquishing weapons as a voluntary action for individuals under the control of the federal law, providing no motivation for individuals to do so except that retaining firearms “may” result in criminal penalties.²² Additionally, federal authorities rarely enforce the federal law. A New York Times analysis in 2012 found that the federal law that forbids most of these offenders from buying or owning firearms was invoked less than 50 times by federal prosecutors.²³

At the state level, some states have laws which meet or exceed the federal law’s standards.²⁴ However, many state laws do not require or even allow bans on firearm possession or purchase for

¹⁸ UMN Report, *supra* note 6, at 14.

¹⁹ 18 U.S.C. § 922(g)(9) (1996).

²⁰ *Id.* § 922(g)(8–9) (1996). A misdemeanor crime of domestic violence is defined as “as a misdemeanor under federal, state, or tribal law; and has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.” 18 U.S.C. 921 § 33(a)(i)-(ii) (2006).

²¹ Sharon L. Gold, *Why Are Victims of Domestic Violence Still Dying at the Hands of Their Abusers? Filling the Gap in State Domestic Violence Gun Laws*, 91 KY. L.J. 935, 949 (2003).

²² *Misdemeanor Crime of Domestic Violence*, BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES, <https://www.atf.gov/firearms/faq/misdemeanor-domestic-violence.html#individual-action> (last visited Jan. 31.2014) (stating that the ATF “recommends” an individual convicted of a domestic violence misdemeanor “transfer their firearms and ammunition to a third party who may lawfully receive and possess them” and warning that not doing to “is a violation of law and *may* subject the possessor to criminal penalties.” (emphasis added)).

²³ Michael Luo, *In Some States Gun Rights Trump Orders of Protection*, N.Y. TIMES, Mar. 17, 2013, http://www.nytimes.com/2013/03/18/us/facing-protective-orders-and-allowed-to-keep-guns.html?pagewanted=2&_r=1&ref=michaelluo Judge Richard A. Posner of the Seventh Circuit Court of Appeals has estimated that approximately 40,000 people violate section 922(g)(8) each year by possessing firearms while subject to a protection order. Prosecutions under section 922(g)(9) are only slightly higher. Since that statute took effect in 1996, 379 cases have been filed, representing only two to three percent of total federal gun law prosecutions.”).

²⁴ LEGAL CMTY. AGAINST VIOLENCE, *REGULATING GUNS IN AMERICA: AN EVALUATION AND COMPARATIVE ANALYSIS OF FEDERAL, STATE AND SELECTED LOCAL GUN LAWS 90–103* (2008) available at <http://smartgunlaws.org/wp->

individuals convicted of domestic violence misdemeanors or subject to protection orders.²⁵ While the federal ban on possession of firearms applies to all states, state authorities—who are often the relevant authority responding to domestic violence related issues—are not required to enforce the federal law.²⁶ This leaves the burden of preventing gun ownership by abusers solely on the federal authorities in such states. However, as discussed above, the federal authorities have not been very active in assuming this responsibility.

In addition to confiscation, universal background checks offer an opportunity for the federal government to improve enforcement of the federal law. If background checks were required for all firearm transfers, it would make it more difficult for domestic abusers to obtain guns.²⁷ Additionally, the effectiveness of background checks depends on the comprehensiveness of the data available through the National Instant Criminal Background Check System (“NICS”).²⁸ If state and local authorities do not report domestic abuse misdemeanor convictions or orders for protection, then it is less likely that information will be flagged if a batterer attempts to purchase a firearm. However, Congress has failed to pass federal legislation that requires background checks for private sales or addresses the issue of underreporting of state authorities to the NICS.

We urge the Committee to ask the United States to establish effective mechanisms for the enforcement of the federal law in order to ensure equal protection of all victims of domestic violence and to further pursue legislation which would require background checks for private gun sales and provide incentives for states to increase their submissions to the NICS database.

content/uploads/2008/01/RegGuns.entire.report.pdf. (This report remains the most definitive study of state laws). For example, eleven states have provisions banning the purchase or possession of firearms by domestic violence misdemeanants that go beyond the federal law. *Id.* at 93–94.

²⁵ *Id.* at 90–103.

²⁶ DARREN MITCHELL AND SUSAN B. CARBON, AM. JUDGES ASS’N, FIREARMS AND DOMESTIC VIOLENCE: A PRIMER FOR JUDGES (2002) available at <http://aja.ncsc.dni.us/courtrv/cr39-2/CR39-2MitchellCarbon.pdf>. Additionally, at least nine states have passed Firearm Freedom Acts exempting firearms which are made in and have remained in the state from federal firearm prohibitions. NAT’L COUNCIL OF JUV. AND FAM. CT. JUDGES, FAMILY VIOLENCE LEGISLATIVE UPDATE (2011) available at http://www.ncjfcj.org/sites/default/files/legislative_update_10.pdf. The Firearm Freedom Acts are premised on circumventing federal authority to regulate guns based on the assumption that guns are “shipped or transported in interstate or foreign commerce.” *See, e.g.,* United States v. Napier, 233 F. 3d 394, 399-402 (6th Cir. 2000); *also* FIREARMS FREEDOM ACT, <http://firearmsfreedomact.com/>.

²⁷ LEGAL CMTY. AGAINST VIOLENCE, *supra* note 24, at 89. Currently, federal law does not require background checks for sales by non-federally licensed sellers, for example the sale between family, friends, or acquaintances. 18 U.S.C. §922(t); *see also* UMN Report, *supra* note 6, 10–14.

²⁸ *See* UMN Report, *supra* note 6, at 12-13.

b. Office of Violence Against Women Grant Programs to Address Domestic Violence

The U.S. Response to Issue 20 notes that the Violence Against Women Act (“VAWA”) provides support for domestic violence law enforcement units, but the United States does not state whether this support includes training or other assistance for firearm search and seizure initiatives. The Office of Violence Against Women (“OVW”) funds a variety of programs to address domestic violence, including grants to encourage arrest policies and enforcement of protection orders. As a condition of VAWA grant eligibility, states must certify that their judicial and administrative policies and practices include notification to domestic violence offenders of state and federal gun prohibition laws.²⁹

Notification does not equate to enforcement, and it is not clear from the information available from OVW what coordinated efforts, if any, have been taken to ensure enforcement of these laws.³⁰ There is some evidence that at least one grantee has successfully used funds to address the issue within their jurisdiction. San Mateo County, California, reports that it received a grant in 2010 to develop the Domestic Violence Firearms Compliance and Legal Advocacy Program to enforce California’s gun laws requiring surrender or confiscation of firearms from persons subject to a court order prohibition.³¹ The department collected 324 firearms in 2012 and for the third year, reported no gun-related domestic violence homicides.³²

In 2013, the OVW made awards to twelve cities, totaling \$2.3 million, for preventing and reducing domestic violent homicides.³³ While the programs focus on developing a coordinated community response for high-risk women and high-risk offenders, it is not clear what, if any, efforts will be made to enforce federal and state gun prohibition laws or how this initiative will be extended throughout the nation.

²⁹ 42 U.S.C. § 3796gg-4(e) (2006).

³⁰ See SHANNON FRATTAROLI, THE JOHNS HOPKINS CTR. FOR GUN POLICY AND RESEARCH, REMOVING GUNS FROM DOMESTIC VIOLENCE OFFENDERS: AN ANALYSIS OF STATE LEVEL POLICIES TO PREVENT FUTURE ABUSE (2009), available at <http://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-center-for-gun-policy-and-research/publications/RemovingGunsfromIPVOffenders7Oct09.pdf>. This study provided an analysis of state policies and practices for removing guns from domestic violence offenders, finding only eighteen states had laws authorizing police to remove firearms when responding to a domestic violence incident.

³¹ *Sheriff’s Office Awarded Grant to Fund Domestic Violence Firearms Compliance and Legal Advocacy (FCLA) Program*, San Mateo County Sheriff’s Office (2011), <http://www.smcsheriff.com/news/press-releases/year/2011/sheriffs-office-awarded-grant-fund-domestic-violence-firearms-complian>.

³² Tracy Connor, *Subtracting Guns from the Domestic Violence Equation: Rare But Effective*, ROCK CENTER, May 3, 2013, http://rockcenter.nbcnews.com/_news/2013/05/03/18020730-subtracting-guns-from-the-domestic-violence-equation-rare-but-effective?lite.

³³ Bea Hanson, *Preventing and Reducing Domestic Violence Homicides*, DEPT OF JUSTICE OVW BLOG (Mar. 14, 2013), <http://blogs.justice.gov/ovw/archives/2326>.

We applaud the statements made by President Obama and Vice-President Biden acknowledging the serious issue of the use of guns in intimate partner violence;³⁴ however, we urge the United States to clarify what efforts the OVW has made to promote enforcement of the federal law and, in particular, support firearm search and seizure initiatives in cases of domestic violence.

3. List of Issues 9(a): Applicability of Stand Your Ground Laws and Whether They Provide Blanket Immunity to Persons Using Force as Defined and Permitted by Such Laws

In its response to Issue 9(a), the United States mischaracterizes stand your ground laws (also known as “shoot first” laws) as “self defensive gun use.”³⁵ Unlike the traditional doctrine of self-defense, however, stand your ground laws do not require aggressors to retreat if a confrontation escalates.³⁶ In fact, stand your ground laws *permit* an aggressor to use deadly force if he or she feels threatened.³⁷ The U.S. Response fails to make any distinction between these two doctrines.

Stand your ground laws are in violation of international standards. As discussed in the UMN Report, stand your ground laws violate the basic international human rights principles of necessity and proportionality.³⁸ These international legal principles authorize use of force only when no reasonable, non-violent alternative exists for self-protection.³⁹ The U.S. Response does not address these concerns.

As mentioned in the UMN Report, stand your ground laws gained public attention when George Zimmerman shot and killed seventeen-year-old Trayvon Martin. Since the submission of the UMN Report, Zimmerman was tried for Martin’s death. While Zimmerman did not rely on Florida’s stand your ground law as a defense at trial, language from the law was incorporated into the jury instructions.⁴⁰ Jury instructions for self-defense usually include language stating that the defendant had a duty to retreat before resorting to the use of deadly force. However, because of Florida’s stand

³⁴ See *Remarks by the President and Vice President at Signing of the Violence Against Women Act*, THE WHITE HOUSE (Mar. 07, 2013), available at <http://www.whitehouse.gov/the-press-office/2013/03/07/remarks-president-and-vice-president-signing-violence-against-women-act>.

³⁵ U.S. Response, *supra* note 5, ¶ 32.

³⁶ UMN Report, *supra* note 6, at 21–22.

³⁷ *Id.*

³⁸ *Id.* at 22.

³⁹ *Id.*

⁴⁰ See Bill Cotterell, ‘Stand Your Ground’ Repealer Is Filed, FLORIDA CURRENT, Aug. 19, 2013, <http://www.thefloridacurrent.com/article.cfm?id=34124437>; see also Jonathan Capehart, ‘Insane’ Support for ‘Stand Your Ground’ Laws, WASH. POST, Aug. 5, 2013, <http://www.washingtonpost.com/blogs/post-partisan/wp/2013/08/05/insane-support-for-stand-your-ground-laws/>; Marc Caputo, *Juror: We Talked Stand Your Ground Before Not-Guilty Zimmerman Verdict*, MIAMI HERALD, July 8, 2013, <http://www.miamiherald.com/2013/07/16/3502481/juror-we-talked-stand-your-ground.html>.

your ground law, the jury instructions for the Zimmerman trial stated that Zimmerman had no duty to retreat if he felt threatened.⁴¹ Ultimately, the jury found Zimmerman not guilty.

In the aftermath of the Zimmerman verdict, President Obama and Attorney General Holder publicly criticized stand your ground laws.⁴² As President Obama stated, stand your ground laws send a message to “our communities that someone who is armed potentially has the right to use . . . firearms even if there’s a way for them to exit from a situation.”⁴³ While President Obama and Attorney General Holder’s statements are commendable, over thirty states have some form of Florida’s stand your ground law⁴⁴ and attempts at repealing Florida’s law have been unsuccessful.⁴⁵ In fact, the Criminal Justice Committee of the Florida State Senate has recently approved a bill which would expand the application of Florida’s law.⁴⁶

B. State Obligation Not to Violate the Right to Life with Small Arms and Light Weapons

*A State’s first duty under the SALW Principles is negative; not to violate the right to life in its officials’ acts or omissions regarding the use of small arms and light weapons.*⁴⁷

1. List of Issues 9(b): Police Use of Force

In response to Issue 9(b) regarding the number of cases where the use of firearms by police resulted in the death of persons as well as the number of investigations and prosecutions in such cases, the United States simply notes that “[t]he 2011 statistics indicate that there were 393 justifiable homicides (the killing of a felon by a law enforcement officer) in the United States, down from 397 in 2010 and 414 in 2009.”⁴⁸ However, these numbers have been revised: the most recent statistics for 2011 now include 404 total justifiable homicides with 401 being firearm-related.⁴⁹ The year 2012

⁴¹ See Mark Memmott, *READ: Instructions for the Jury in Trial of George Zimmerman*, NPR, July 12, 2013, <http://www.npr.org/blogs/thetwo-way/2013/07/12/201410108/read-instructions-for-the-jury-in-trial-of-george-zimmerman> (“If George Zimmerman was not engaged in an unlawful activity and was attacked in any place where he had a right to be, he had no duty to retreat and had the right to stand his ground and meet force with force, including deadly force . . .”); see also Caputo, *supra* note 40.

⁴² *Transcript: Obama Speaks of Verdict Through the Prism of African-American Experience*, N.Y. TIMES, July 19, 2013, <http://www.nytimes.com/2013/07/20/us/politics/transcript-obama-speaks-of-verdict-through-the-prism-of-african-american-experience.html?pagewanted=all>; Max Ehrenfreund, *Eric Holder Discusses Trayvon Martin, George Zimmerman, ‘Stand Your Ground’*, WASH. POST, July 17, 2013, http://articles.washingtonpost.com/2013-07-17/national/40624325_1_george-zimmerman-trayvon-martin-zimmerman-s.

⁴³ *Transcript: Obama Speaks*, *supra* note 42.

⁴⁴ Ehrenfreund, *supra* note 42.

⁴⁵ Lizette Alvarez, *Florida Sit-In Against ‘Stand Your Ground’*, N.Y. TIMES, Aug. 11, 2013, <http://www.nytimes.com/2013/08/12/us/dream-defenders-arent-walking-out-on-their-florida-protest.html?pagewanted=all>.

⁴⁶ *SB 448: Threatened Use of Force*, FL. SEN., <http://flsenate.gov/Session/Bill/2014/0448> (last visited Feb. 2, 2014).

⁴⁷ SALW Principles, *supra* note 4, at art.1.

⁴⁸ U.S. Response, *supra* note 5, ¶ 33.

⁴⁹ *Crime in the United States 2012: Expanded Homicide Data Table 14*, FBI, <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2012/crime-in-the-u.s.-2012/offenses-known-to-law-enforcement/expanded->

saw a continued rise in justifiable homicides by law enforcement officers to 410, with 409 of those being firearm-related.⁵⁰

The U.S. Response was also incomplete due to the lack of any comment on the number of police-committed homicides found to be unjustified, the investigations that led to such determinations, and the number of prosecutions in those cases.

The total number of deaths at the hands of law enforcement officers were likely underreported due to inconsistent state participation in data collection. The Violent Crime Control and Law Enforcement Act of 1994 requires the U.S. Attorney General to gather data on police use of excessive force and publish annual reports based on that data.⁵¹ Although the Department of Justice has attempted to comply, the relevant provision did not mandate state compliance and was never funded, and the required annual summary has never been published.⁵²

Paragraph 59 of the U.S. Response states that between 2009 and 2012, 254 law enforcement officials were charged for misconduct or other actions in 177 criminal cases.⁵³ These cases involved the violation of individuals' constitutional rights to be free from the excessive use of force and police brutality or from discrimination by officers acting under the color of law pursuant to 18 U.S.C. § 242.⁵⁴ The CATO Institute, however, found that:

[I]n 2010 alone, the most recent year for which statistics were available, there were a reported 1,575 officers involved in excessive force reports, including 232 officers involved in firearm-related excessive force complaints, and 166 officers involved in taser-related cases throughout the United States. There were 127 fatalities associated with substantiated excessive force allegations in 2010. Of these excessive force fatalities, ninety-one were caused by firearms, and eleven by tasers.⁵⁵

Additional reports demonstrate a disproportionate impact of police shootings on minorities.⁵⁶ In Chicago, statistics for officer-involved shootings by the Independent Police Review Authority revealed that 50 of the 57 people shot by the police in 2012 were Black.⁵⁷ In Alaska, a

homicide/expanded_homicide_data_table_14_justifiable_homicide_by_weapon_law_enforcement_2008-2012.xls (last visited Feb. 10, 2014).

⁵⁰ *Id.*

⁵¹ Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. §14142(a), (c) (2006).

⁵² Michael R. Smith, *Toward a National Use-of-Force Data Collection System: One Small (and Focused) Step Is Better than a Giant Leap*, 7 CRIMINOLOGY & PUB. POL'Y 619, 621 n.1 (2008).

⁵³ U.S. Response, *supra* note 5, ¶¶ 57-59.

⁵⁴ *Id.*

⁵⁵ David Packman, *2010 National Police Misconduct Reporting Project*, CATO INSTITUTE (Apr. 5 2011, 12:55 AM), <http://www.policemisconduct.net/2010-npmsrp-police-misconduct-statistical-report/>.

⁵⁶ *Race & Ethnicity in America: Turning a Blind Eye to Injustice*, AM. CIVIL LIBERTIES UNION, 119–126 (2008).

⁵⁷ *Officer Involved Shooting 2012*, INDEP. POLICE REVIEW AUTH. (Jan. 16, 2013), http://peopleslawoffice.com/wp-content/uploads/2013/02/chicago-police-officer-involved-shootings_2012.pdf.

report by the University of Alaska Justice Center found that the typical shooting involved a white officer and “[c]ompared to the 2012 Anchorage population, citizens involved were disproportionately minority, male, and under 30 years old.”⁵⁸ Recent individual examples also continue to show that there is a need for additional training and enforcement of the SALW Principles on the proper use of force, as well as legal accountability when there is a misuse of force.

- February 7, 2013 (California): Eight police officers fired more than 100 rounds on two unarmed women, 71 year old Emma Hernandez, and 47 year old Margie Carranza, who were sitting in their truck getting ready to deliver newspapers.⁵⁹ An investigation conducted by the L.A. Police Commission concluded that the eight police officers, were all in violation of the Department’s use of force policy but none have yet been charged with a crime.⁶⁰
- July 27, 2013 (Florida): Roy Middleton, 60 years old and unarmed, was shot at by two officers fifteen times and hit twice while outside his own car in his own driveway.⁶¹ A grand jury recommended further training for the law enforcement officers. Failure to provide adequate training is a violation of article 5 and article 6 of the SALW Principles.⁶²
- September 14, 2013 (North Carolina): Police officers shot and killed Jonathon Ferrell, a 24 year old unarmed African American man who was seeking assistance following a serious car crash. One officer shot 12 times, and only after two grand juries was indicted for involuntary manslaughter.⁶³

A lack of transparency as to how excessive use of force allegations are investigated compromises public access to information regarding the process and significantly diminishes public oversight. The U.S. government’s own lack of complete and accurate statistics on the use of excessive and deadly force by police further undermines effective investigations.⁶⁴

⁵⁸ TROY C. PAYNE, OFFICER-INVOLVED SHOOTINGS IN ANCHORAGE 1993-2013, UAA JUSTICE CTR. (Dec. 11, 2013), available at http://justice.uaa.alaska.edu/research/2010/1402.apd_ois/1402.01.officer_involved_shootings.pdf.

⁵⁹ Ian Lovett, *California: Officers Faulted in Mistaken Shooting*, N. Y. TIMES (Feb. 4, 2014), <http://www.nytimes.com/2014/02/05/us/california-officers-faulted-in-mistaken-shooting.html>.

⁶⁰ Sasha Goldstein, *LAPD officers who shot innocent women during manhunt for vengeful ex-cop violated policy: report*, N. Y. DAILY NEWS (Feb. 4, 2014), <http://www.nydailynews.com/news/national/lapd-cops-shot-women-violated-policy-article-1.1602272#ixzz2sf2fmyLI>.

⁶¹ Rich Phillips, *Roy Middleton, Florida Man Mistakenly Shot by Deputies, Wonders Why*, CNN (Aug. 21, 2013), <http://www.cnn.com/2013/08/21/us/florida-shot-by-mistake/index.html>.

⁶² SALW Principles, *supra* note 4, at art. 5.

⁶³ Jessica King and Anne Claire Stapleton, *Charlotte Police Kill ex-FAMU Player Who May Have Been Running to Them for Help*, CNN (Sept. 16, 2013), <http://www.cnn.com/2013/09/15/justice/north-carolina-police-shooting/>.

⁶⁴ See UMN Report, *supra* note 6, at 24-26. The UMN Report outlines a number of issues affecting the reporting of crime statistics in the United States, which leads to the DOJ not having an accurate assessment of how frequent instances of police brutality actually are. Measures that are in place, such as the Violent Crime Control and Law Enforcement Act, which, among other things, required the U.S. Attorney General to gather data on police use of excessive force and

The above-mentioned cases exemplify the practice of excessive use of force for law enforcement agencies around the country in violation of numerous SALW Principles.⁶⁵ These cases demonstrate an arbitrary and abusive use of force; a lack of adequate training and enforcement of those techniques and their alternatives;⁶⁶ a lack of an independent, thorough, prompt, and impartial investigation;⁶⁷ and delayed, difficult prosecution, with low-level charges.

We urge the United States to properly enforce the reporting provisions of the Violent Crime Control and Law Enforcement Act and use adequate incentives to encourage states to comply with data gathering efforts. We urge the Committee to question the delegation on training provided on de-escalation of tensions, the proper use of force, and alternative measures to using force. Finally, we ask the Committee question the delegation on what measures are being taken to ensure thorough, prompt, independent and impartial investigations, and the effective prosecution in cases of misuse of firearms by law enforcement officials.

2. List of Issues 13(a): Deaths on the U.S.-Mexican Border

With regard to the issue of police brutality along the U.S.-Mexico border, the U.S. Response states that, since 2008, the DOJ/CRT has opened forty-eight matters involving allegations of civil rights abuses by Customs and Border Patrol (“CBP”) agents, with five of those matters leading to prosecution. According to a recent news report, “[a]t least 19 people have been shot and killed by Border Patrol agents since 2010 — six have been cross-border shootings — and many of the incidents involve rock-throwing.”⁶⁸ This violates the Use of Force Policy which limits the authorized officer to use deadly force only “when necessary, that is, when the officer/agent has a reasonable belief that the subject of such force poses an imminent danger of death or serious physical injury to

publish annual reports based on that data, have been either ineffective or unused. The Death in Custody Report Act, which created a national system for counting all arrest-related deaths, has provided for the collection of some data, although it is thought to be underreported due to inconsistent state compliance. Essentially, the DOJ does not have the information that it needs to effectively address the issue of police brutality.

⁶⁵ See SALW Principles, *supra* note 4.

⁶⁶ *Id.* at art. 5, 6. Article 5: “Governments and State agencies shall ensure that all law enforcement officials are selected by proper screening procedures, have appropriate moral, psychological and physical qualities for the effective exercise of their functions and receive continuous and thorough professional training on the acceptable conditions for the use of force in conformity with these principles. . . .” Article 6: “Governments and State agencies shall give special attention to the promotion and protection of human rights as a primary duty of all State agents. Governments shall design training programmes to emphasize alternatives to the use of force and small arms, including the peaceful settlement of disputes, the understanding of crowd behaviour, and the methods of persuasion, negotiation and mediation, with a view to limiting the use of force and small arms.”

⁶⁷ *Id.* at Article 9. “Governments and State agencies shall establish effective reporting and investigative procedures to ensure that all incidents involving the misuse of small arms by State agents, including law enforcement officials, are reviewed and acted upon by independent and competent authorities. There shall be a thorough, prompt and impartial investigation, and appropriate corrective measures taken, in all cases of death, torture, other ill-treatment or injury involving the use of small arms by State agents.”

⁶⁸ Perla Trevizo, *Mexican Government Objects Justice Department’s Decision on BP Shootings*, ARIZ. DAILY STAR (Aug. 16, 2013), http://azstarnet.com/news/local/border/mexican-government-objects-justice-department-s-decision-on-bp-shootings/article_965d3b2b-fada-5af9-a11a-f58bd85419d1.html.

the officer/agent or to another person.”⁶⁹ The UMN Report indicates that the American Civil Liberties Union, U.N. High Commissioner for Human Rights, the Inter-American Commission on Human Rights, and sixteen members of Congress have urged the United States to address the use of excessive, especially lethal, force by CBP agents.⁷⁰

Subsequently, the U.S. Department of Homeland Security’s Office of Inspector General hired a respected law enforcement think-tank, the Police Executive Research Forum, to review the Border Patrol’s practices.⁷¹ However, the final report was redacted: officials blacked out sections that recommended restraint by border patrol agents responding to rock throwers that do not pose an imminent threat of serious injury or death.⁷² Border Patrol Agents who use excessive force that results in serious physical injury or death fail to be held accountable.⁷³

We request that the Committee question the delegation on proper rules and training for Border Patrol Agents responding to non-lethal attacks. Additionally, we urge the Committee to question the delegation on what measures the administration is taking to respond to the concerns regarding lack of accountability for abuses committed.

C. List of Issues 9(a): Steps to Better Protect People against the Risks Associated with Proliferation of Firearms: State Extraterritorial Obligation Regarding Transfers of Small Arms and Light Weapons

*The human rights rule of transfer requires both prevention of illicit transfers and due diligence regarding the small arms end use in human rights violations. It considers “1) the seriousness of the violation that results from the transfer; 2) the degree of knowledge of the transferring state regarding likely violations; and 3) the capacity of the transferring state to prevent the violations.”*⁷⁴

The United States failed to provide a complete response to this question and should have provided information on their extraterritorial obligations with regard to transborder transfers of SALW. While President Obama’s administration took steps to address the issues including implementing new regulations for the ATF to curtail arms flow into Mexico; issuing an Executive

⁶⁹ *Use of Force Policy Handbook*, OFFICE OF TRAINING AND DEVELOPMENT: U.S. CBP (Oct. 2010), at 15, *available at* <https://www.documentcloud.org/documents/1002980-cbp-use-of-force-policy-handbook-hb-4500-01b.html>.

⁷⁰ UMN Report, *supra* note 6, at 28.

⁷¹ *Border Agency Watchdog Censors Recommendations to Curb Deadly Force*, THE CTR. FOR INVESTIGATIVE REPORTING (Jan. 29, 2014), <http://cironline.org/reports/border-agency-watchdog-censors-recommendations-curb-deadly-force-5761>.

⁷² *Id.* The report recommended that CBP “train agents to de-escalate these encounters by taking cover, moving out of range and/or using less lethal weapons. Agents should not place themselves in positions where they have no alternatives to using deadly force.”

⁷³ *ACLU Calls New CBP Commitments Limited, Issues Detailed Recommendations on Use of Force*, AM. CIVIL LIBERTIES UNION,(Sept. 25, 2013), <https://www.aclu.org/immigrants-rights/aclu-calls-new-cbp-commitments-limited-issues-detailed-recommendations-use-force>.

⁷⁴ Barbara Frey, *Obligations to Protect the Right to Life: Constructing a Rule of Transfer Regarding Small Arms and Light Weapons*, UNIVERSAL HUMAN RIGHTS AND EXTRATERRITORIAL OBLIGATIONS 51–53 (Mark Gibney & Sigrun Skodly eds., 2010); *see* SALW Principles, *supra* note 4, at 13-15..

Order to reform export control laws; and signing the U.N. Arms Trade Treaty, the effects of such actions have been undermined by additional action or inaction.

Since the Committee prepared its list of issues for the U.S. delegation, new studies have been released about the effect of U.S. firearms on gun violence in Mexico. After the U.S. federal Assault Weapons Ban expired in 2004, the trafficking of firearms and homicides in Mexico increased. Between 2010 and 2012, an estimated 253,000 firearms were trafficked annually compared to an estimated 88,000 firearms trafficked annually between 1997 and 1999 when the ban was in effect.⁷⁵ Another report focused on the two years following the expiration of the ban and discovered that 235 more deadly shootings occurred per year in Mexican municipalities within 100 miles of the Arizona, New Mexico, and Texas borders. However, in Mexican municipalities within 100 miles of California, where a state imposed ban assault weapons was still in effect, the number of gun-related homicides remained constant.⁷⁶

ATF data showed that “from fiscal year 2008 through fiscal year 2010, of the 5,799 large caliber rifles that were traced from Mexico to an identified first retail purchaser in the United States, 4,568 were traced to retailers in Arizona, California, New Mexico, and Texas.”⁷⁷ In order to curtail the flow of arms into Mexico from these four states, the ATF issued a reporting requirement in July 2011 to all federal firearms licensees (“FFL”) located in California, New Mexico, Arizona, and Texas for reports of multiple sales of semiautomatic or large caliber weapons.⁷⁸ Following a federal court case upholding the validity of the rule,⁷⁹ the United States should seek to expand this rule nationwide to limit circumvention by arms trafficking through other states.⁸⁰

We urge the Committee to question the U.S. delegation on their efforts to develop a comprehensive national plan that monitors and controls the transfer of SALW to Mexico that follows the ATF rule already enforced along the border-states of California, New Mexico, Arizona and Texas.

⁷⁵ Topher McDougal et al., *The Way of the Gun: Estimating Firearms Traffic Across the U.S.-Mexico Border*, IGARAPE INSTITUTE, 5 (Mar. 2013), available at <http://pt.igarape.org.br/the-way-of-the-gun-estimating-firearms-traffic-across-the-u-s-mexico-border/>.

⁷⁶ Arindrajit Dube et al., *Cross-Border Spillover: U.S. Gun Laws and Violence in Mexico*, 107 AM. POL. SCI. REV. 397, 408 (2013).

⁷⁷ 10 Ring Precision, Inc. v. Jones, 722 F.3d 711, 723 (5th Cir. 2013).

⁷⁸ *FACT SHEET: Multiple Sales Reporting*, BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES (Feb. 2013), <http://www.atf.gov/publications/factsheets/factsheet-multiple-sales-reporting.html>.

⁷⁹ See 722 F.3d 711, *supra* note 77.

⁸⁰ *ATF Director Jones – The First 100 Days*, MAYORS AGAINST ILLEGAL GUNS, https://s3.amazonaws.com/s3.mayorsagainstillegals.org/images/ATF_Actions_-_8.27_11a.pdf (last visited Feb. 10, 2014).

The United States continues to be the worldwide leader in SALW imports and exports.⁸¹ These issues have serious human rights consequences for persons in the United States as well as around the world. For these reasons, we request that the Committee urge the U.S. delegation to comply with the ICCPR in relation to gun policy and practice.

III. CONCLUSION

The prevalence of SALW continues to compromise the achievement of human rights in the United States and across its borders. We thank the Committee for its interest and hope that attention to SALW issues can assist in deterring future violations.

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⁸¹ *Trade Update: Authorized Small Arms Transfers (2013)*, SMALL ARMS SURVEY, <http://www.smallarmssurvey.org/fileadmin/docs/A-Yearbook/2013/en/Small-Arms-Survey-2013-Chapter-8-summary-EN.pdf> (last visited Feb. 10, 2014).