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**United States’ Compliance with the**

**International Covenant on Civil and Political Rights**

**Kent State Truth Tribunal**

**Suggested List of Issues to Country Report Task Force on the United States**

**125th Session of the Human Rights Committee,**

**Geneva 4 to 29 March 2019**

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14 January 2019

Kent State Truth Tribunal

Post Office Box 191

Mendocino, California 95460 USA

www.TruthTribunal.org

**I.** **Seeking Accountability and Redress in the May 4, 1970 Kent State Massacre** (Article 2 (Right to remedy); Article 6 (Right to life); Article 19 (Right to freedom of expression); Article 21 (Right to peaceful assembly))

**II. Organization**

The Kent State Truth Tribunal (KSTT), formed in 2010, is a non-governmental organization focused on accountability, healing and revealing truth in the 1970 Kent State massacre. Representing Allison Beth Krause, 19-year-old student protester slain at Kent State University on May 4, 1970: Laurel Krause, sister.

**III. Issue Summary**

On May 4, l970 members of the Ohio National Guard fired live ammunition into a crowd of unarmed anti-Vietnam war protesters at Kent State University in Kent, Ohio, killing four and wounding nine students. For over 40 years, the government claimed that the Guardsmen did not fire on command, were “under attack”, and fired their weapons in self-defense after hearing sniper fire in the crowd.

In 2010, expert forensic evidence emerged debunking these theories. The evidence consists of a tape recorded by a Kent State student during the shooting. 40 years after the massacre the first digital analysis, derived using state-of-the-art technology that was not available in prior investigations of the massacre, demonstrates there was a ‘command to fire' at the protesters. Moreover, the enhanced tape identified four pistol shots fired seconds before the Guardsmen’s command as coming from an F.B.I. informant’s gun, allegedly the first shots fired at Kent State. Although the U.S. Department of Justice (DOJ) received this new evidence, in 2012 the Department declined to re-open its investigation of the Kent State massacre. Watch forensic expert Stuart Allen examine the Kent State tape. <http://bit.ly/R4Ktio>.

The victims of the Kent State massacre and their families have been unable to obtain access to meaningful redress. In 1974, federal charges against eight members of the Ohio National Guard of willfully violating the rights of the dead and wounded students were dismissed because, according to the judge, the government had failed to prove its case. In 1979 a civil rights settlement <http://bit.ly/1qd9tTO> was reached with the issuance of a signed Statement of Regret and $15,000 for Allison B. Krause, one of the victims of the Kent State massacre. However, the settlement did not include an apology.

Moreover, the federal charges and settlement were centered on civil rights and constitutional violations - no criminal indictments for murder have been served and there has not been a federal grand jury opened. As investigations into the massacre have been conducted by government entities, there has yet to be a credible, impartial or independent investigation into the events of Kent State on May 4, 1970. Furthermore, the U.S. military has failed to address the use of live ammunition on college campuses, command responsibility, and whether appropriate force was used on protesters at Kent State.

Failure to ensure justice and accountability for the Kent State massacre has set a precedent that the U.S. may continue to use excessive force to harass, arrest, and even kill peaceful protesters. In 1970 just eleven days after Kent State, two student protesters were shot and killed by state police, 12 students injured, at a Vietnam War protest on the Jackson State campus. American authorities have stated ‘snipers’ prompted the firing of military weapons at student protesters, just as at Kent State University. Again, no credible investigation or accountability has been offered. Unfortunately suppression of peaceful assembly continues today.

During the 110th session of the United Nations Human Rights Committee which reviewed the United States 4th periodic report, a representative from the U.S. DOJ stated, ***“In May 1970, four students were killed, were murdered.”*** Despite this game-changing admission the U.S. government continues to refuse to provide meaningful redress to those harmed at Kent State. 50 years after May 4, 1970, American citizens are uneducated, insulated, and completely prevented from learning the truth about the massacre at Kent State.

Until American leadership allow and enable the entire truth to become part of the collective, recorded history of the Kent State massacre, and provide redress for victims, no lessons will be learned from Kent State. Those who protest in the United States will continue to be put at risk of death and subjected to excessive force by government, military and law enforcement, essentially deprived of their fundamental human rights. With the 50th anniversary on May 4, 2020, it is critical for Kent State lessons related to truth, accountability, and for the protection of peaceful protest in America to be learned.

**IV. Concluding Observations and ICCPR Legal Framework**

Although the U.S. has not addressed the Kent State massacre in its previous periodic reports to the Human Rights Committee, it has professed support for the right to remedy, compensation for victims of crimes, and the obligation to conduct independent, credible, and thorough investigations into violations of rights, especially the right to life. And while the 2014 concluding observations had not addressed lack of accountability for Kent State several Committee members have raised questions during the March 2014 review process including Committee chairperson Yuval Shany. We hope the Committee will consider including specific questions on the right to truth and accountability for past violations of the right to life in the context of exercising peaceful protest.

On the international stage the U.S. has called upon nations to uphold the rule oflaw and respect the right to peaceful assembly. This was particularly evident during the ‘Arab Spring,’ as the Obama Administration called for accountability when government officials suppressed speech and killed and injured protesters. What the Administration has preached abroad, however, is not always practiced at home. Most recently, the Trump administration has ‘championed’ the right to peaceful assembly, presenting and co-sponsoring a United Nations General Assembly resolution on the promotion and protection of human rights and fundamental freedoms, including the rights to peaceful assembly and freedom of association. Last December, the U.S. State Department said:

“Current events demonstrate that some states routinely violate the freedoms of peaceful assembly and of association with impunity, employing arbitrary arrest and detention – and even extrajudicial killings – to thwart peaceful demonstrations for systemic change. The United States put forward this resolution to call attention to the threats and attacks many individuals are facing around the world for peacefully assembling, covering protests as a journalist or media worker, or serving as mediators between the government and those protesting. While this resolution purposefully does not “name names,” it draws needed attention to the issue, citing and condemning specific patterns of abuse.” <http://bit.ly/2RKaSF7>

**V. Current U.S. Government Policy or Practice**

While the U.S. presents itself as global champion of the rights to free speech and freedom of peaceful assembly, a closer look at U.S. laws and practices reveal a different reality. In July 2016, the United Nations’ Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association carried out a mission to the United States. In his 2017 report to the UN Human Rights Council, he expressed concern “that it has become commonplace [in the U.S.] for police to respond to peaceful demonstrations with military-style tactics, full body armour, and an arsenal of weaponry suited more to a battlefield than a protest.” He concluded that “the widespread militarization of police needlessly escalates tensions and provokes equally aggressive reactions. Protesters are not war enemies and should never be treated as such.” <http://bit.ly/2TGOxph>

U.S. law enforcement has repeatedly used disproportionate force when managing demonstrations in the United States. The UN Special Rapporteur also noted that “numerous complaints that police used excessive force to arbitrarily arrest protestors for minor acts such as stepping off crowded sidewalks . . . [or] in dubious circumstances that suggested police abuse of power.” He expressed particular concern over the fact “that demonstrations by different communities are policed differently, with racial, ethnic, cultural and class-based biases.”

According to the International Center for Not-for-Profit Law, since November 2016, 34 states have considered 73 bills that would restrict the right to protest. Ten of these bills have been signed into law and many others are awaiting further consideration. <http://bit.ly/2Rmocjv> In addition, there has been one federal executive order and five state executive orders (covering three states) that restrict the right to protest. <http://bit.ly/2CeC0Cz> In his 2017 report on his mission to the United States, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association referenced the “the increasingly hostile legal environment for peaceful protesters in some states.”

In March 2017, he and the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, sent a letter to the United States Government expressing concern about bills in 16 states that if enacted “would highly curtail the rights to freedom of opinion and assembly in ways that are incompatible with US obligations under international human rights law.” <http://bit.ly/2TJl8Lb>

**VI. Recommended Questions**

1. Given the forensic evidence that emerged in 2010 related to the massacre at Kent State, for what reasons has U.S. Department of Justice chosen to refuse to conduct a new, independent, impartial inquiry into the killings?
2. What lessons have American leadership learned from the May 4th Kent State Massacre?
3. What steps will the U.S. government take to ensure that protesters are allowed to protest and assemble freely, without fear of intimidation, arrest, physical injury or – more seriously – murder?
4. Will the United States conduct an impartial, independent examination of the Kent State massacre?
5. What steps will the U.S. government take to ensure that the F.B.I. does not violate the fundamental rights of protesters, including the right to privacy, association and life?

**VII. Suggested Recommendations**

Conduct a full, independent and credible investigation into the May 4th shooting and killing of 13 American protesters at Kent State University. Such an investigation must consider the new evidence and ensure that victims and their families have the right to be heard and given an opportunity to present evidence and testimony.

The U.S. government must ensure that all incidents involving the killing, injuring or unlawful use of lethal force against protesters are promptly and impartially investigated, the perpetrators held accountable, and the victims and their families are provided with adequate information on the investigation and full redress. This should include a criminal investigation and prosecution of perpetrators in addition to other legal remedies for violations of civil and constitutional rights.