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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**

**107<sup>th</sup> Session of the Human Rights Committee, Geneva<sup>1</sup>  
11-28 March 2013**

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<sup>1</sup> Human Rights Committee, *Consideration of reports and country situations in the absence of a report*, <http://www2.ohchr.org/english/bodies/hrc/hrcs107.htm> (last visited Feb. 9, 2012).

## **Seeking an independent, impartial investigation into the May 4<sup>th</sup> 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))<sup>1</sup>

### **I. Reporting Organization**

The Kent State Truth Tribunal (KSTT) was founded in 2010 upon the emergence of new forensic evidence regarding the May 4, 1970 Kent State Massacre. KSTT is a non-profit organization focused on revealing truth and bringing justice to Kent State massacre victims and survivors.<sup>2</sup>

Representing Allison Beth Krause, 19-year-old student protester slain at Kent State University on May 4, 1970; Doris L. Krause, mother & Laurel Krause, sister.

### **II. Issue Summary**

On May 4, 1970 members of the Ohio National Guard fired between 61 and 67 shots into a crowd of unarmed anti-war protestors at Kent State University in Kent, Ohio, killing four and wounding nine students. For over 40 years, the government has claimed that the Guardsmen did not fire on command, and instead shot in self-defense after hearing sniper fire in the crowd.

In 2010, new forensic evidence emerged debunking this theory. The evidence consisted of a tape recorded by a Kent State student during the shooting. Though the original tape, known as the Kent State Strubbe tape, was destroyed by the Federal Bureau of Investigation (F.B.I.) in 1979, a bonafide copy of the tape was located in 2007 and was analyzed in 2010 by an internationally accredited forensic expert. The analysis, derived using state-of-the-art technology that was not available in prior investigations of the shooting, demonstrates that there was a 'command to fire' at the protestors. Moreover, the enhanced tape identified four pistol shots fired 70 seconds before the command as coming from an F.B.I. informant's pistol to create the 'sound of sniper fire.'<sup>2</sup> Although the U.S. Department of Justice (DOJ) received this new evidence, the Department declined to re-open its investigation of the Kent State shooting.<sup>3</sup>

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<sup>4</sup> were dismissed because, according to the judge, the government had failed to prove its case.<sup>5</sup> In 1979 a civil rights settlement 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 shooting. However, the settlement did not include an apology. Moreover, the federal charges and settlement were centered on civil rights and constitutional violations - there has yet to be a criminal indictment for murder. Additionally, as investigations of the shooting have thus far only been conducted by government entities, there has yet to be a credible, impartial, and independent investigation of the Kent State shooting. Moreover, the U.S. military has failed to address the use of live ammunition on college campuses and whether appropriate force was used on protestors at Kent State.

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<sup>2</sup> For more information, please visit [www.TruthTribunal.org](http://www.TruthTribunal.org).

Failure to ensure justice and accountability for the Kent State massacre has set a precedent that the U.S. can continue to harass, abuse, and even kill protestors. Just ten days after the Kent State massacre, two student protesters were murdered by state police as they protested the Vietnam War on the Jackson State University campus. American authorities have stated ‘snipers’ prompted the firing of military weapons at student protesters, just as at Kent State University. Unfortunately suppression of peaceful assembly continues today. Since the ‘Occupy’ movement began in 2011, protestors have been labeled as ‘domestic terrorists’ by the F.B.I. and have been arrested in massive numbers for peaceful protests and assemblies.<sup>6</sup> Until the U.S. conducts a credible, impartial and investigation into the Kent State shooting, and provides redress for victims and their families, protestors in the U.S. will continue to be at risk of being deprived of their fundamental rights without accountability.

### **III. U.S. Government Report and Prior Recommendations**

Although the U.S. has not addressed the Kent State shooting in its periodic reports to the Human Rights Committee, it has professed support for the right to remedy, compensation for victims of crimes,<sup>7</sup> and the obligation to conduct independent, credible, and thorough investigations into violations of rights, especially the right to life.

In 2010 and after two failed investigations, the United Kingdom finally organized a legitimate, impartial investigation into Bloody Sunday, a 1972 massacre that was strikingly similar to the May 4 Kent State shooting. The Bloody Sunday investigation overturned all prior examinations and admitted to wrongdoing by the State. At the time, the U.S. welcomed the publication of the resulting Bloody Sunday Inquiry report and expressed hope that “the completion of the independent inquiry’s work and publication of its report will contribute to Northern Ireland’s ongoing transformation from a turbulent past to a peaceful future.”<sup>8</sup>

On the international stage the U.S. has called upon nations to uphold the rule of law and respect the right to peaceful assembly.<sup>9</sup> This was particularly evident during the ‘Arab Spring,’ as the Obama Administration called for accountability when government officials suppressed speech and killed and injured protestors. What the Administration has preached abroad, however, is not always practiced at home.

### **IV. Other UN and Regional Bodies Recommendations**

In November 2012, the Organization for Security and Cooperation in Europe (OSCE) released a report conveying concern about the use of excessive force and undue restrictions on peaceful assembly in 11 countries, including the U.S.<sup>10</sup> The report mentioned specific abuses with regards to Occupy Wall Street and recommended U.S. authorities ensure the right to free assembly, take efforts to limit the use of force by law enforcement officials, and ensure that allegations of police misconduct are promptly and thoroughly investigated.<sup>11</sup> In a letter to Secretary of State Hillary Clinton in December 2011, the U.N. Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and U.N. Special Rapporteur on the rights to freedom of peaceful assembly and of association called on U.S. officials to “explain the behavior of police departments that violently disbanded some Occupy protests last fall” and reminded the U.S. government of its obligations under international law to

"take all necessary measures to guarantee that the rights and freedoms of all peaceful protesters be respected."<sup>12</sup>

## V. Recommended Questions

1. Given the new forensic evidence emerging in 2010 related to the murders 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 4<sup>th</sup> Kent State Massacre? Under what circumstances will deadly, lethal force and war-grade weapons be used against peaceful American protesters, including on university and college campuses?
3. What steps will the U.S. government take to ensure that protestors 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 protestors, including the right to life?

## VI. Suggested Recommendations

1. Conduct a full, independent and credible investigation into the May 4<sup>th</sup> 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.
2. 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.

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<sup>1</sup> In General Comment 31, the Human Rights Committee noted that States Parties must ensure individuals have accessible and effective remedies to vindicate their rights and that “Administrative mechanisms are particularly required to give effect to the general obligation to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies...A failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant.” Human Rights Comm., 80<sup>th</sup> Sess., General Comment No. 31, Nature of the General Legal Obligation on States Parties to the Covenant, ¶15, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004). The Committee further stated that “no official status justifies persons who may be accused of responsibility for such violations being held immune from legal responsibility. Other impediments to the establishment of legal responsibility should also be removed, such as the defence of obedience to superior orders or unreasonably short periods of statutory limitation in cases where such limitations are applicable.” *Id.*, ¶18. The Human Rights Committee specifically addressed killings perpetrated by security forces in General Comment 6,

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stating “States parties should take measures... to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities.” Human Rights Comm., 16<sup>th</sup> Sess., General Comment No. 6: The Right to Life (Art. 6), ¶ 3, U.N. Doc. HRI/GEN/1/Rev.1 (1994). General Comment No. 34 clarifies that the freedom of opinion must be protected even during a state of emergency. Human Rights Comm., 102<sup>nd</sup> Sess., General Comment No. 34: Article 19: Freedoms of Opinion and Expression, ¶ 5, U.N. Doc. CCPR/C/GC/34 (2011). Moreover, attacks on persons “because of the exercise of his or her freedom of opinion or expression, including...killing” violate the ICCPR and “should be vigorously investigated in a timely fashion, and the perpetrators prosecuted.” *Id.*, ¶ 23.

<sup>2</sup> See John Mangels, *News analysis of 40-year-old recording of Kent State shootings reveals that Ohio Guard was given an order to fire*, The Plain Dealer (Oct. 8, 2010, 8:00am) available at [http://blog.cleveland.com/metro/2010/05/new\\_analysis\\_of\\_40-year-old\\_re.html](http://blog.cleveland.com/metro/2010/05/new_analysis_of_40-year-old_re.html); John Mangels, *Kent State shootings: Does former informant hold the key to the May 4 mystery?*, The Plain Dealer (Dec. 19, 2010, 6:01am) available at [http://www.cleveland.com/science/index.ssf/2010/12/kent\\_state\\_shootings\\_does\\_form.html](http://www.cleveland.com/science/index.ssf/2010/12/kent_state_shootings_does_form.html).

<sup>3</sup> Letter, Assistant Attorney General Thomas E. Perez to Alan Canfora, April 2012 available at [http://www.cleveland.com/science/index.ssf/2012/04/justice\\_department\\_wont\\_re-ope.html](http://www.cleveland.com/science/index.ssf/2012/04/justice_department_wont_re-ope.html).

<sup>4</sup> Scott L. Bills, *Kent State/May 4: Echoes Through a Decade*, 36 (The Kent State University Press, 1982).

<sup>5</sup> *Id.*; *United States v. Shafer*, 384 F.Supp. 496 (N.D. Ohio, E.D., 1974).

<sup>6</sup> See The Global Justice Clinic (NYU School of Law) and the Walter Leitner International Human rights Clinic at the Leitner Center for International Law and Justice (Fordham Law School), *Suppressing Protest: Human Rights Violations in the U.S. Response to Occupy Wall Street* (July 25, 2012); Organization for Security and Cooperation in Europe [OSCE] Office for Democratic Institutions and Human Rights [ODIHR], *Report: Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States, May 2011-June 2011* (Nov. 2, 2012) available at <http://www.osce.org/odihr/97055>.

<sup>7</sup> Human Rights Comm., Fourth Periodic report: United States of America, ¶¶ 163-164, U.N. Doc. CCPR/C/USA/4 (May 22, 2012) available at <http://www.state.gov/j/drl/rls/179781.htm>.

<sup>8</sup> Press Statement, Phillip J. Crowley, Assistant Secretary, Bureau of Public Affairs, U.S. Department of State, *On the Publication of the Bloody Sunday Incident Report (June 15, 2010)* available at <http://www.state.gov/r/pa/prs/ps/2010/06/143155.htm>.

<sup>9</sup> See for example President Barack Obama, Remarks on Egypt (Jan. 28, 2011) available at <http://www.time.com/time/world/article/0,8599,2045085,00.html> (“The people of Egypt have rights that are universal. That includes the right to peaceful assembly and association, the right to free speech, and the ability to determine their own destiny. These are human rights. And the United States will stand up for them everywhere.”); Jay Solomon & Carol E. Lee, *Obama Seeks Arab Spring ‘Reform,’* Wall Street Journal (Sept. 25, 2012, 10:38am) available at <http://online.wsj.com/article/SB10000872396390444358804578017992043176534.html> (“True democracy-real freedom-is hard work. Those in power have to resist the temptation to crack down on dissidents.”); Helene Cooper, *Obama Tells U.N. New Democracies Need Free Speech*, New York Times (Sept. 25, 2012) available at [http://www.nytimes.com/2012/09/26/world/obamas-address-to-united-nations.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2012/09/26/world/obamas-address-to-united-nations.html?pagewanted=all&_r=0) (“[I]n a diverse society, efforts to restrict speech can become a tool to silence critics, or oppress minorities.”).

<sup>10</sup> Organization for Security and Cooperation in Europe [OSCE] Office for Democratic Institutions and Human Rights [ODIHR], *Report: Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States, May 2011-June 2011* (Nov. 2, 2012) available at <http://www.osce.org/odihr/97055>.

<sup>11</sup> *Id.*

<sup>12</sup> Letter from U.N. Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and U.N. Special Rapporteur on the rights to freedom of peaceful assembly and of association to Secretary of State Hillary Clinton, Dec. 21, 2011 available at [https://spdb.ohchr.org/hrdb/20th/UA\\_USA\\_21.12.2011\\_\(23.2011\).pdf](https://spdb.ohchr.org/hrdb/20th/UA_USA_21.12.2011_(23.2011).pdf).