

## Contents

<b>CHAPTER 6</b> .....	<a href="#">200</a>
<b>Human Rights</b> .....	<a href="#">200</a>
<b>A. GENERAL</b> .....	<a href="#">200</a>
1. Country Reports on Human Rights Practices.....	<a href="#">200</a>
2. Universal Periodic Review .....	<a href="#">200</a>
3. UN Third Committee .....	<a href="#">219</a>
a. <i>General Statement</i> .....	<a href="#">219</a>
b. <i>Other thematic statements at the UN Third Committee</i> .....	<a href="#">222</a>
4. Country-specific Concerns.....	<a href="#">223</a>
a. <i>Burma</i> .....	<a href="#">223</a>
b. <i>Crimea</i> .....	<a href="#">224</a>
c. <i>Iran</i> .....	<a href="#">225</a>
d. <i>North Korea</i> .....	<a href="#">225</a>
e. <i>Syria</i> .....	<a href="#">225</a>
f. <i>China’s coercive family planning policies in Xinjiang</i> .....	<a href="#">225</a>
5. Treaty Bodies .....	<a href="#">226</a>
<b>B. DISCRIMINATION</b> .....	<a href="#">234</a>
1. Race.....	<a href="#">234</a>
a. <i>CERD Committee assertion of jurisdiction over Palestinian communication against Israel</i> .....	<a href="#">234</a>
b. <i>Resolution on the “International Day for People of African Descent”</i> .....	<a href="#">235</a>
c. <i>Resolution on the Durban Declaration and Program of Action</i> .....	<a href="#">236</a>

2. Gender .....	<a href="#">237</a>
a. <i>Women, Peace, and Security</i> .....	<a href="#">237</a>
b. <i>Commission on Status of Women</i> .....	<a href="#">238</a>
c. <i>Geneva Consensus Declaration on Promoting Women’s Health and Strengthening the Family</i> .....	<a href="#">239</a>
3. Age .....	<a href="#">240</a>
<b>C. CHILDREN</b> .....	<a href="#">241</a>
Children in Armed Conflict .....	<a href="#">241</a>
<b>D. SELF-DETERMINATION</b> .....	<a href="#">244</a>
<b>E. ECONOMIC, SOCIAL, AND CULTURAL RIGHTS</b> .....	<a href="#">245</a>
1. Safe Drinking Water and Sanitation .....	<a href="#">245</a>
2. Food .....	<a href="#">246</a>
<b>F. LABOR</b> .....	<a href="#">247</a>
<b>G. TORTURE AND EXTRAJUDICIAL KILLING</b> .....	<a href="#">247</a>
<b>H. BUSINESS AND HUMAN RIGHTS</b> .....	<a href="#">249</a>
<b>I. INDIGENOUS ISSUES</b> .....	<a href="#">253</a>
<b>J. FREEDOM OF ASSOCIATION AND PEACEFUL ASSEMBLY</b> .....	<a href="#">254</a>
<b>K. FREEDOM OF EXPRESSION</b> .....	<a href="#">263</a>
1. Freedom Online Coalition .....	<a href="#">263</a>
2. Russian decree targeting RFE/RL and Voice of America .....	<a href="#">265</a>
3. Joint Statement on Internet Shutdowns in Belarus .....	<a href="#">265</a>
<b>L. FREEDOM OF RELIGION OR BELIEF</b> .....	<a href="#">266</a>
1. Religious Freedom or Belief Alliance .....	<a href="#">266</a>
2. Executive Order on International Religious Freedom .....	<a href="#">267</a>

3. U.S. Annual Report .....	<a href="#">269</a>
4. Designations under the International Religious Freedom Act .....	<a href="#">269</a>
<b>M. OTHER ISSUES</b> .....	<a href="#">270</a>
1. Privacy .....	<a href="#">270</a>
2. Purported Right to Development .....	<a href="#">271</a>
<b>Cross References</b> .....	<a href="#">273</a>

## CHAPTER 6

### Human Rights

#### A. GENERAL

##### 1. Country Reports on Human Rights Practices

On March 11, 2020, the Department of State released the 2019 Country Reports on Human Rights Practices. The Department submits the reports to Congress annually per §§ 116(d) and 502B(b) of the Foreign Assistance Act of 1961, as amended, and § 504 of the Trade Act of 1974, as amended. These reports are often cited as a source for accounts of human rights practices in other countries. While the Country Reports describe facts relevant to human rights concerns, the reports do not reach conclusions about human rights law or legal definitions. The Country Reports are available at <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/>.

Assistant Secretary for Democracy, Human Rights, and Labor Robert A. Destro provided a special briefing on the release of the 2019 Country Reports, available at <https://2017-2021.state.gov/assistant-secretary-for-democracy-human-rights-and-labor-robert-a-destro-on-the-release-of-the-2019-country-reports-on-human-rights-practices/>.

Secretary of State Michael R. Pompeo also delivered remarks on the release of the 2019 Reports, available at <https://2017-2021.state.gov/secretary-michael-r-pompeo-on-the-release-of-the-2019-country-reports-on-human-rights-practices/>.

##### 2. Universal Periodic Review

On November 9, 2020, the United States participated in the Human Rights Council's 36th session of the Universal Periodic Review ("UPR") Working Group. The United States presented its national report on human rights and responded to questions. See State Department November 9, 2020 media note, available at <https://2017-2021.state.gov/the-united-states-presents-its-universal-periodic-review-national-report/>.

Acting Legal Adviser Marik String delivered a statement at the November 9, 2020 U.S. UPR presentation. His remarks are excerpted below and available at <https://geneva.usmission.gov/2020/11/09/upr-of-the-united-states-statement-by-marik-string-acting-legal-adviser-us-department-of-state/>.

---

\* \* \* \*

The United States strongly supports this process, which, consistent with the purposes of the United Nations as set forth in the UN Charter, provides a clear example of how international cooperation can promote and encourage respect for human rights and fundamental freedoms for all.

The United States is proud of its human rights record, and we are committed to strengthening and deepening human rights protections within our country in the continuous pursuit of a more perfect union. We welcome your suggestions in this regard.

Let me first address the suggestions raised by a number of States about treaty ratification and reservations.

We are already, as a nation, party to many human rights treaties. We take our obligations under those treaties very seriously and are committed as a government, to their good faith implementation.

The importance of treaty obligations within our domestic system is enshrined in our founding documents. In particular, the U.S. Constitution provides that “Treaties made, or which shall be made under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby.”

It is because of the great weight that we place on complying with our treaty obligations that we engage in an exhaustive process of considering any potential U.S. ratifications, across multiple branches of government. The reasons for not ratifying a treaty can depend on the specific treaty at issue and the results of this process.

Of particular note is the role the United States Senate plays. In accordance with the U.S. Constitution, our Executive Branch decides whether to sign a treaty and then our Senate has the sole authority to provide its advice and consent to ratification through an affirmative vote by two-thirds of Senators.

In addition, that the United States has not ratified a particular human rights treaty should not be regarded as a proxy for the importance we attribute to the rights recognized therein. In many cases, our domestic protections are even stronger than such treaties require. For example, while we have not yet ratified the Convention on the Rights of Persons with Disabilities, few other countries have adopted stronger laws, policies, and programs designed to protect the rights of persons with disabilities.

While underscoring that the United States has a sovereign prerogative to decide which treaties to ratify, we welcome suggestions with respect to exploring whether and how to ratify additional treaties.

Let me next address the issues raised by a number of member states about our domestic implementation efforts. We are committed to effective implementation of our human rights obligations and welcome continued input on how to improve it.

Although we do not have a national human rights institution, we have multiple complementary protections and mechanisms to reinforce our ability to guarantee respect for human rights, including through actions taken by our domestic federal agencies, our independent judiciary at both federal and state levels, and through numerous state and local human rights institutions.

The federal government continuously engages with state, local, tribal, and territorial governments on our human rights obligations, and has sought their involvement in human rights treaty reports and presentations.

\* \* \* \*

Assistant Secretary Destro also delivered remarks at the U.S. UPR presentation on November 9, 2020. Assistant Secretary Destro’s remarks are excerpted below and available at <https://2017-2021.state.gov/remarks-at-the-united-states-third-universal-periodic-review/>. Other remarks delivered at the presentation on November 9, 2020 include: those of Alexander V. Maugeri, deputy assistant attorney general and chief of staff of the U.S. Department of Justice’s civil rights division, available at <https://geneva.usmission.gov/2020/11/09/us-upr-maugeri-2/>; those of Charles Allen, deputy general counsel for international affairs at the U.S. Department of Defense, available at <https://geneva.usmission.gov/2020/11/09/upr-usa-allen/>; those of Alison Kilmartin, deputy assistant secretary for policy at the U.S. Department of Labor, available at <https://geneva.usmission.gov/2020/11/09/upr-usa-kilmartin/>; those of Dorothy Fink, M.D., deputy assistant secretary for women’s health at the U.S. Department of Health and Human Services, available at <https://geneva.usmission.gov/2020/11/09/upr-usa-fink/>; those of Lynn Grosso, director of enforcement, in the Office of Fair Housing at the U.S. Department of Housing and Urban Development (“HUD”), available at <https://geneva.usmission.gov/2020/11/09/upr-usa-grosso/>; those of James McCament, deputy under secretary in the Office of Strategy, Policy and Plans at the U.S. Department of Homeland Security, available at <https://geneva.usmission.gov/2020/11/09/upr-usa-mccament/>; those of Attorney General of Utah Sean Reyes, available at <https://geneva.usmission.gov/2020/11/09/upr-usa-reyes/>; and those of Andrew Bremberg, permanent representative of the United States to the UN in Geneva, available at <https://geneva.usmission.gov/2020/11/09/upr-of-the-united-states-statement-by-ambassador-andrew-bremberg/>. Ambassador Bremberg also addressed the recommendations in response to the U.S. UPR on November 13, 2020. His November 13, 2020 remarks are available at <https://geneva.usmission.gov/2020/11/13/press-statement-by-ambassador-andrew-bremberg-on-the-universal-periodic-review-of-the-united-states/> and <https://geneva.usmission.gov/2020/11/13/statement-by-ambassador-andrew-bremberg-at-the-adoption-of-the-upr-report-on-the-united-states/>.

---

\* \* \* \*

Our report represents not just the work of the Department of State, but also the Departments of Interior, Justice, Homeland Security, Labor, Housing & Urban Development, Health & Human Services, Education, Defense, and others.

As you will see throughout our presentation, our system of government frequently prioritizes decision-making at state, tribal, territorial, and local levels. This distribution of authority reflects the insight of our Founders that public servants who are closest to the populations they serve, best represent their needs, concerns, and interests. This means that our state, local, tribal, and territorial laws vary, and reflect local needs and priorities. We welcome that variance as a natural and powerful aspect of our democracy.

We are proud to participate on behalf of the United States today. Our presence in this process demonstrates our nation's commitment to human rights. We appear not only to explain how our domestic policies and practices promote and protect the human rights of our own people, but also to advance the universal human rights that this body is intended to elevate.

Promoting human rights is a U.S. foreign policy priority that furthers our national interests of stability and democracy. The United States is committed to using its voice and its position on the world stage to draw attention to violations and abuses of human rights, no matter where or when they occur. We are committed to advancing human rights worldwide, as well as accountability for those who abuse those rights.

We are aware of challenges facing our country and the world at large. We act to meet these challenges armed with the values and principles contained in the founding documents that have shaped our nation, as well as our commitment to the principles outlined in the Universal Declaration of Human Rights.

In the United States, our identity is fundamentally linked to the foundational freedoms enshrined in the Bill of Rights in our Constitution, including especially freedom of religion or belief, freedom of speech, freedom of the press, freedom of association, and the freedom to petition the Government for a redress of grievances.

Americans are committed to the proposition that we are “endowed by our Creator” with certain unalienable rights. It follows from these principles that the legitimacy of any government rests on the consent of its people, freely given in open and fair elections. As a result, we do not hesitate to question our government's actions. We actively form civil society organizations to advocate for specific causes. We participate actively and freely in our government, and insist that our local, state, and federal governments answer to the people—and not the other way around.

Our commitment to transparency and a free press, and our insistence on impartial justice, allow the world to witness our struggles and openly engage in our efforts to find solutions. The United States has a long history of public debates, demonstrations, and activism that led to—and which will continue to foster—landmark improvements in human rights law and policy.

The aspiration to form the “more perfect union” referenced in the Preamble to our Constitution is real. The United States is firmly committed to finding meaningful remedies that address claims of injustice in our society. The demonstrations over the tragedy of George Floyd's death this year have shown the world that Americans understand that they have the inherent right to raise their voices, individually and collectively, to demand that their government address their grievances.

And by adhering to our democratic principles, Americans are pursuing accountability for Mr. Floyd's death through the criminal and civil justice systems, while also debating and discussing the claims of systemic injustice at the heart of our current discourse.

I would now briefly like to address two topics that arose during our review of

recommendations from and engagement with U.S. civil society, which we view as an essential part of this process.

Regarding the issue of privacy: The United States carefully addresses privacy concerns arising at the federal level in accordance with the U.S. Constitution and other federal laws, all of which are consistent with applicable international obligations. We recognize that all persons have legitimate privacy interests in the handling of their personal information.

We address privacy and digital freedom issues raised by the conduct of non-state actors, such as Google and Facebook, through the U.S. legal and regulatory systems, and via private litigation. Some states have enacted or are considering their own privacy laws as well.

With regard to freedom of religion or belief for all: In the United States, freedom of religion or belief is guaranteed by our Constitution's ban on religious test for public office and the First Amendment and a variety of other federal and state laws. Read together, all of these provisions demonstrate that the United States is, as a nation, fully committed to advancing this freedom. We also vigorously enforce federal hate-crimes laws to protect members of religious groups and houses of worship from private threats and violence. The federal government has protected, and continues to protect, the right of Americans to determine and practice their religion or belief.

I thank you again for the opportunity to participate in this important process. The United States is proud of its own human rights record and of the role our nation has played in defending and advancing human rights and fundamental freedoms around the world. We support the UPR process as an opportunity to reflect upon and listen to your suggestions on how we can improve our own human rights record.

We ask all member states to be equally open to both the process and to the suggestions we propose to them. We sincerely hope that the UPR process will encourage a strong reaffirmation of the commitments that governments have made to protect the human rights and freedoms that are our common birthright.

\* \* \* \*

The 2020 U.S. UPR national report, submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, responds to recommendations submitted during its 2015 UPR process. The U.S. UPR national report was drafted with input from departments and agencies across the U.S. Government, as well as civil society organizations. The 2020 national report of the United States is excerpted below (with footnotes and citations to recommendations by number omitted) and is available in full at <https://www.ohchr.org/EN/HRBodies/UPR/Pages/USindex.aspx>.

\* \* \* \*

## **A. Treaties, international mechanisms, and domestic implementation**

### **Treaties ratified**

7. Th[e] recommendations suggest that the United States should ratify several additional human rights treaties to which it is not yet a party. The power to bind the People of the United States to the obligations of a treaty is divided between the President, who has the sole power to negotiate



and sign treaties, and the United States Senate, which must give its advice and consent before U.S. ratification of them. U.S. ratification of a treaty proposed by the President requires the concurrence of two-thirds of the Senators present when the vote is taken.

8. The United States is a party to five (5) of the nine (9) human rights treaties described by the Office of the High Commissioner as “Core International Human Rights Instruments.” The United States has also ratified other important human rights instruments, including the Convention on the Prevention and Punishment of the Crime of Genocide; and the Protocol Relating to the Status of Refugees.

9. Among the treaties signed and submitted to the Senate by the President, but not ratified, are: the Convention on the Rights of Persons with Disabilities (submitted May 17, 2012; Convention No. 111 concerning Discrimination in Respect of Employment and Occupation, 1958 (International Labour Organisation) (submitted May 18, 1998); and the Convention on the Elimination of All Forms of Discrimination against Women (submitted November 12, 1980). The United States has signed the International Covenant on Economic, Social, and Cultural Rights and the Convention on the Rights of the Child, but the President has not transmitted them to the U.S. Senate for its advice and consent.

#### **Domestic implementation of treaty obligations**

10. The legal obligations of the United States under any treaty arise from its consent through ratification pursuant to the constitutionally-prescribed procedure and are limited by the terms of ratification. As the United States has previously stated, it is for each nation state to decide as an exercise of its sovereignty to assume treaty obligations which, once entered into, it has a legal obligation to fulfill. No state, organization, or tribunal, including the committees that monitor implementation of treaties, has any authority to impose, change, or expand through interpretation any treaty obligation to which the United States is a party.

11. The United States is a federal republic in which its international and domestic human rights obligations are implemented through a comprehensive system of laws, administrative regulations and enforcement actions. Judicial proceedings at all levels of government also provide invaluable interpretive guidance legal precedent.

12. Federal, state and local laws provide for enforcement of human rights obligations in a variety of settings (e.g., workplace, housing, public accommodation, education, and law enforcement) through formal and informal dispute resolution procedures. These laws also permit individuals and groups to file complaints with federal, state, tribal, and local human rights agencies and commissions. These administrative agencies use their investigatory and enforcement powers to enforce the rule of law. State and federal laws also provide access to the courts, where independent judiciaries at the state and federal levels are authorized to award monetary damages, equitable relief and attorneys’ fees. Statistics are readily available and widely reported.

13. On July 8, 2019, Secretary of State Michael R. Pompeo announced the formation of a Commission on Unalienable Rights. The Commission, composed of academics, philosophers, and activists, provides advice and recommendations on human rights to the Secretary of State, grounded in U.S. founding principles and the 1948 Universal Declaration of Human Rights. The Commission’s charge is not to discover new principles, but to furnish advice to the Secretary for the promotion of individual liberty, human equality, and democracy through U.S. foreign policy.

## **B. Civil rights and non-discrimination**

### **Racial profiling and excessive use of force by police, and establishing improved police-community relations**

14. [Several] recommendations assume[ ]—wrongly in our view—that the United States and federal, state and local governments engage in “systemic” racial discrimination, racial profiling, and that federal, state and local law enforcement officers are regularly engaged in excessive uses of force. We reject the notion that law enforcement in the United States is “systemically” racist. Every day in the United States, tens of thousands of police officers respect, protect, and uphold the rule of law and the civil rights of individuals and communities across the country, while carrying out the difficult and dangerous work of keeping our communities safe.

15. That is not to deny that more must be done to ensure fairness to all citizens, particularly members of the African American community, for whom it is understandable given our nation’s history and recent events that there is some ambivalence and often distrust of the police. In recognition of this fact, on June 16, 2020, President Trump signed an executive order on “Safe Policing for Safe Communities” to develop and incentivize critical policing reforms. The order directs the Attorney General to create a credentialing process on which police departments’ eligibility for federal grants will depend. Credentialing will depend on having policies and training regarding use-of-force and de-escalation techniques; performance management tools, such as early warning systems that help to identify officers who may require intervention; and best practices regarding community engagement. The order also directs the Attorney General to create an information sharing database to track information related to use of excessive force, including such information as the termination or decertification of law enforcement officers, criminal convictions of law enforcement officers, and instances in which an officer under investigation related to the use of force resigns or retires. Finally, the Attorney General is directed to consult with the Secretary of the Department of Health and Human Services (HHS) to develop strategies for law enforcement encounters with persons who suffer from mental health issues, including strategies to incorporate social workers or mental health professionals when responding to such situations.

16. Where there is misconduct by police officers or law enforcement agencies, state and federal laws provide effective remedies. For example, from FY 2016-FY 2019, DOJ charged 256 defendants with willfully violating constitutionally protected rights (or conspiring to do so) while acting “under color of law” and obtained convictions of 172 defendants for these charges. In FY 2019, alone, DOJ charged 83 defendants with color-of-law offenses, obtaining convictions (by trial or plea) of 46 defendants. As of January 2020, DOJ had opened 70 civil investigations since 1994 into police departments that might be engaging in a pattern or practice of conduct that deprives persons of their rights, such as use of excessive force, improper searches, or improper stopping of persons for questioning.

17. The United States is also dedicated to eliminating racial discrimination and the use of excessive force in policing. The Department of Justice has issued guidance stating unequivocally that racial profiling is wrong, and has prohibited racial profiling in federal law enforcement practices, in many cases imposing more restrictions on the consideration of race and ethnicity than the Constitution requires.<sup>15</sup> Many states have done the same. Furthermore, The Office of Civil Rights and Civil Liberties with the Department of Homeland Security (DHS) works to promote respect for civil rights and civil liberties in policy creation and implementation by advising Department leadership and personnel, and state and local partners.

18. At the federal level, the Constitution and federal government policy prohibit profiling and all levels of the U.S. Government have laws against and take active measures to prevent excessive use of force. There are more than 18,000 police departments in the United States whose officers' behavior is governed by the laws of the state, city, county, municipality, or tribal governments they serve. They are also subject to federal law.

19. The United States works to ensure that law enforcement officers are aware of and comply with applicable consular notification rules. The Department of State has published a *Manual on Consular Notification and Access* setting forth the rules for consular notification and provides a number that can be called for assistance.

**Ending discrimination, including discrimination based on race, sex, and religion; hate crimes**

20. State and federal laws prohibit all forms of racial discrimination. Discrimination on the basis of sex and religion is forbidden in most employment and education programs, and in all public accommodations and market transactions.

21. It is a crime to cause or to incite violence or injury to persons or property. Government may restrict speech intended to cause, and likely to result in, lawless action, and it can and does forbid "true threats." Speech-related conduct that constitutes harassment or intimidation is also illegal.

22. The United States federal government and most states have hate crime laws. State hate crime laws vary, but almost all hate crime laws prohibit violence motivated by race, color, religion, and national origin. Federal law, and some state laws, also prohibit violence motivated by gender, disability, sexual orientation, and gender identity. The federal government, like many states, has enacted substantive hate crime laws. Other jurisdictions choose to add a penalty enhancement to the sentence a defendant would otherwise receive, if it can be proved that the defendant was motivated by bias. Hate crimes generally cover violent acts like assault, stalking, murder, sexual assault, arson, robbery and other serious offenses. Hate crime laws also cover threats to commit violent conduct. DOJ aggressively prosecutes cases involving hate crimes, and its annual reports on hate crimes statistics provide law enforcement authorities with important information that assists in combatting such crimes.

23. The United States does not, however, criminalize speech, expressive conduct, or publication that others find extremely offensive or harmful. The rights to speak, publish, associate, and petition for a redress of grievances could not be protected if the government could punish individuals because of differences of opinion, or if government could prohibit speech on the basis of its content or the speaker's viewpoint. Our state and federal courts have consistently held that government bans on speech are inconsistent with robust protections for individual rights, including freedom of expression and religion for all.

24. U.S. constitutional and statutory law and practice provide strong and effective protections against discrimination based on race, sex, religion, national origin and disability by government agencies at all levels and by private actors. Federal, state, and tribal laws authorize individuals and governments to take active measures to counter violence and discrimination. Federal non-discrimination laws are enforced by DOJ and other federal agencies and by private parties. State antidiscrimination laws are enforced by state attorneys general, by other state and local agencies with law enforcement authorities, and by private parties.

25. Religious freedom is guaranteed by state and federal law, and protecting religious freedom is a high priority. As the President has explained, "Federal law protects the freedom of Americans and their organizations to exercise religion and participate fully in civic life without

undue interference by the Federal Government,” and “[t]he executive branch will honor and enforce those protections.” In September 2019, the President put religious freedom on center stage at the United Nations and hosted the Global Call to Protect Religious Freedom, calling on the international community, religious, and business leaders to work to protect religious freedom. Consistent with this policy, the federal executive branch has taken several recent actions to protect religious freedom. Pursuant to an Executive Order published on October 6, 2017, the Attorney General released a memorandum on religious-liberty protections in federal law that guides all federal executive departments and agencies as they seek to fulfill their duties in a manner that is consistent with religious-freedom protections. DOJ has also filed briefs and statements of interest in numerous cases to support religious-liberty claims—a practice that has expanded during the past three years. Its vigorous enforcement of federal hate-crimes laws—including its prosecution of defendants who have planned or carried out attacks on synagogues—has protected religious individuals and houses of worship from private threats and violence. Other executive agencies and departments have also taken action to protect religious freedom. ... In June 2020, the President signed an Executive Order on Advancing International Religious Freedom, to promote universal respect for this right. Further, the United States created the first ever International Religious Freedom Alliance promoting this most fundamental of all rights with over thirty nations to oppose religious persecution around the world.

### **C. Criminal justice, violence against women, and human trafficking**

#### **The death penalty, life sentences without parole, and juvenile life sentences without parole**

26. There is a robust debate in the United States about the morality of the death penalty and the fairness of the sentencing process. Currently, twenty-eight (28) states and the federal government authorize the death penalty; twenty-two (22) states and the District of Columbia do not authorize the death penalty; and the Governors of three (3) states that authorize the death penalty have placed a moratorium on executions.

27. The death penalty is legal under federal law for specified crimes involving, *inter alia*, murder; for various other violent crimes (such as terrorism, kidnapping, arson, or carjacking) that both result in death and were committed with the requisite mental state; for treason, which, under the Constitution, “consist[s] only in levying war against the [United States], or in adhering to their enemies, giving them aid and comfort;” and espionage in time of war or that results in the death of an agent of the United States or the compromise of major weapons or defensive systems. In the states, the death penalty is reserved for murder or, in some situations, causing death while committing other serious crimes such as kidnapping. In all cases, the court or jury must find the circumstances of the crime to be particularly heinous, and convictions are subject to multiple levels of appellate court review. After judicial review is complete, both federal and state laws provide for review by the executive branch (President or Governor) prior to the execution of any death sentence.

28. In July 2019, the Attorney General directed the Federal Bureau of Prisons (BOP) to schedule the executions of five federal death row inmates, each of whom was convicted of murdering children and each of whom had exhausted their appellate and post-conviction remedies. After last-minute legal proceedings were concluded, three were executed in July 2020: Daniel Lewis Lee, a white supremacist, who murdered a family of three, including an eight-year-old girl; Wesley Ira Purkey, who violently raped and murdered a 16-year-old girl, and then dismembered, burned, and dumped her body in a septic pond; and Dustin Lee Honken, who murdered five people—two men who planned to testify against him in a drug trafficking case,

and a single, working mother and her ten-year-old and six-year-old daughters. Lezmond Mitchell is scheduled for execution on August 26, 2020, after being sentenced to death for stabbing to death a 63-year-old grandmother and forcing her nine-year-old granddaughter to sit beside her lifeless body for a 30 to 40-mile drive before slitting the girl's throat, crushing her head with 20-pound rocks and severing and burying both victims' heads and hands. The execution of Keith Dwayne Nelson, who kidnapped a 10-year-old girl rollerblading in front of her home, and in a forest behind a church, raped and strangled her to death with a wire, is scheduled for execution on August 28, 2020.

29. The federal government and the twenty-eight (28) states that permit the death penalty also permit, subject to significant limitations (such as a unanimous jury verdict), the imposition of a life sentence without parole. Of the twenty-two (22) states that do not permit the death penalty, twenty-one (21) and the District of Columbia permit the imposition of life sentences without parole. Alaska does not permit either the death penalty or life imprisonment without parole.

30. Mandatory life sentences without parole for juveniles have been unconstitutional in the United States since the U.S. Supreme Court's 2012 decision in *Miller v. Alabama*.

31. Because the United States is a federal republic, decisions regarding abolition of the death penalty and life sentences without parole are reserved, in the case of federal crimes, for Congress, and in the case of all other crimes, to the state legislatures or to the People themselves. The state and federal courts maintain an active role in assuring that all necessary procedural protections are available to those convicted of capital crimes or sentenced to a life term without parole.

#### **Investigations, sentencing, and detention**

32. The United States seeks to ensure that all levels of the state and federal justice systems operate fairly and effectively for all. In December 2018, President Trump signed into law the First Step Act, ... [which] gives non-violent offenders the chance to reenter society as productive, law-abiding citizens. ...

33. The Civil Rights of Institutionalized Persons Act (CRIPA) gives DOJ tools to investigate and correct prison conditions and conditions in other public institutions where there is reason to believe that a pattern or practice of deprivation of constitutional rights of individuals may exist. For example, in April 2019, DOJ announced it had found reasonable cause to believe that conditions in Alabama's prisons for men violated the Eighth Amendment of the U.S. Constitution because they did not provide safe conditions and failed to protect prisoners from prisoner-on-prisoner violence and prisoner-on-prisoner sexual abuse. DOJ provided Alabama written notice of the supporting facts for these alleged conditions and the minimum remedial measures necessary to address them. In July 2020, DOJ made similar findings with regard to the use of excessive force in Alabama prisons.

#### **Gun violence**

34. The Second Amendment to the Constitution of the United States protects the individual right to keep and bear arms, subject to certain long-standing prohibitions such as those forbidding the possession of firearms by felons or restrictions on the carrying of particularly dangerous and unusual weapons. Federal, state, and local governments are all therefore limited in how they may regulate firearms. In addition, the right to keep and bear arms is embodied in forty-four (44) state constitutions, which may further limit official action on a state-by-state basis. At the same time that the United States supports the right of individuals to bear arms

lawfully, it is engaged in a variety of efforts to ensure that criminals, especially those who use firearms in the commission of their crimes, are pursued and appropriately punished.

35. Since 2001, DOJ has implemented Project Safe Neighborhoods (PSN), bringing together law enforcement and the communities they serve to reduce violent crime and make neighborhoods safer. DOJ reinvigorated PSN in 2017 as part of its renewed focus on targeting violent criminals, including those committing gun violence, directing all U.S. Attorneys' Offices to work in partnership with federal, state, local, and tribal law enforcement and the local community to develop effective, locally based strategies to reduce violent crime.

36. The Attorney General announced in November 2019 the launch of Project Guardian, a new initiative designed to reduce gun violence and enforce federal firearms laws across the country. Project Guardian's implementation is based on five principles: (1) coordinated prosecution, (2) enforcing the background check system, (3) improved information sharing, (4) coordinated response to mental health denials, and (5) crime gun intelligence coordination.

#### **Violence against women**

37. The United States seeks to safeguard and protect women and girls and strongly supports eliminating violence against them. The United States introduced its Strategy on Women, Peace, and Security (WPS Strategy) in June of 2019. The WPS Strategy responds to the Women, Peace, and Security Act of 2017, which President Trump signed into law on October 6, 2017. The Act is the first legislation of its kind globally, which makes the United States the first country in the world with a comprehensive law to prevent, mitigate, and resolve violence against women internationally. The United States remains a strong defender of women, men, and their children, and is a major funder of programs, both at home and abroad, to improve the health, life, dignity, and well-being of women, their children, and their families.

38. DOJ's Office on Violence Against Women (OVW) provides federal leadership in developing the national capacity to reduce violence against women and administer justice for and strengthen services to victims of domestic violence, dating violence, sexual assault, and stalking. In 1994, Congress passed the Violence Against Women Act (VAWA) in recognition of the severity of crimes associated with domestic violence, sexual assault, and stalking. Created in 1995, OVW administers financial and technical assistance to communities across the country that are developing programs, policies, and practices aimed at ending domestic violence, dating violence, sexual assault, and stalking. OVW administers both formula-based and discretionary grant programs, established under VAWA and subsequent legislation, that support efforts to provide services to victims and hold perpetrators accountable through promoting a coordinated community response. Funding is awarded to local, state, and tribal governments, courts, non-profit organizations, community-based organizations, secondary schools, institutions of higher education, and state and tribal coalitions. Grants are used to develop effective responses to violence against women through activities that include direct services, crisis intervention, transitional housing, legal assistance to victims, court improvement, and training for law enforcement and courts. Since its inception, OVW has awarded over \$8.1 billion in grants and cooperative agreements and has launched a multifaceted approach to implementing VAWA. By forging state, local, and tribal partnerships among police, prosecutors, judges, victim advocates, health care providers, faith leaders, and others, OVW grant programs help provide victims with the protection and services they need to pursue safe and healthy lives, while simultaneously enabling communities to hold offenders accountable for their violence.

39. OVW administers the Grants to Reduce Sexual Assault, Domestic Violence, Dating Violence and Stalking on Campus Program, which supports institutions of higher education in implementing comprehensive, coordinated responses to violent crimes on campuses. This federal grant program supports the development and strengthening of effective security and investigation strategies to combat domestic violence, dating violence, sexual assault, and stalking on campuses, development and strengthening of victim services in cases involving such crimes on campuses, which include partnerships with local criminal justice authorities and community-based victim services agencies, and the development and strengthening of prevention education and awareness programs.

40. In 2013, DHS established an agency-wide Council on Combating Violence against Women to coordinate DHS's efforts to stop crimes against women and ensure the effective administration of laws aimed at preventing violence against women. In 2016, the Department approved a grant of \$9.2 million from DOJ and the Department of Housing and Urban (HUD) for stable housing to victims of domestic violence living with HIV/AIDS, and the 2016 launch of a research and evaluation initiative to develop a peer support group model.

41. In 2016, HUD issued guidance on local nuisance ordinances that may lead to discrimination under the Fair Housing Act against survivors of domestic violence and other persons in need of emergency services. HUD also published final rules under VAWA 2013, enhancing housing protections for victims of domestic violence, dating violence, sexual assault, and stalking.

#### **Human trafficking**

42. The U. S. Government is actively engaged in activities to combat human trafficking in all its forms, including sex and labor trafficking through the President's Interagency Task Force to Monitor and Combat Trafficking in Persons. President Trump has signed nine pieces of anti-trafficking legislation into law, including the Trafficking Victims Protection Reauthorization Act of 2017, the Frederick Douglass Trafficking Victims Prevention and Protection Reauthorization Act of 2018, the Allow States and Victims to Fight Online Sex Trafficking Act of 2017 and the Stop Enabling Sex Traffickers Act of 2017.

43. The President honored the 20th Anniversary of the landmark Trafficking Victims Protection Act (TVPA) at a White House Summit on Human Trafficking on January 31, 2020. During the Summit, the President signed the Executive Order on Combating Human Trafficking and Online Child Exploitation in the United States Strengthening Federal Responsiveness to Human Trafficking.

44. In FY2019, DOJ brought 220 human trafficking prosecutions, charged 343 defendants, and secured federal convictions against 475 traffickers. In FY 2019, OJP's Bureau of Justice Assistance made awards of more than \$100 million for human trafficking programs, including programs that provide a comprehensive range of direct services for victims of human trafficking. In FY 2019, Office for Victims of Crime (OVC) programs served 8,375 victims and trained over 82,000 professionals to better identify and serve victims of trafficking. In FY 2019, OVC, in partnership with Bureau of Justice Assistance (BJA), funded a total of 15 Enhanced Collaborative Model Human Trafficking Task Forces. In FY 2019, DOJ continued investing in research to develop new knowledge and tools to combat human trafficking more effectively.

45. DHS Immigration and Customs Enforcement Homeland Security Investigations (ICE/HSI) identified and assisted 428 human trafficking victims and initiated 1,024 human trafficking criminal cases in FY 2019 and reported 2,197 criminal arrests, 1,113 criminal counts charged in indictments, and 691 criminal counts in federal, state, and local convictions. HHS

continued to fund an NGO to operate the national human trafficking hotline. In FY 2019, the hotline received 136,990 calls, texts, chats, online tips, and emails, identified 11, 852 potential human trafficking cases, and provided resources and referrals to 3,828 potential victims.

46. DOT and DHS/CBP lead the Blue Lightning Initiative (BLI), an element of DHS's Blue Campaign that trains airline personnel to identify potential traffickers and human trafficking victims, and to report their suspicions to federal law enforcement. To date, more than 100,000 personnel in the aviation industry have been trained through the BLI, and actionable tips continue to be reported to law enforcement.

47. In FY 2019, DHS/U.S. Citizenship and Immigration Services (USCIS) approved 500 applications for nonimmigrant status for victims of severe forms of trafficking in persons, and approved 491 applications for their eligible family members.

48. In FY 2018 and 2019, the DHS/Federal Law Enforcement Training Centers (FLETC) trained over 5,500 federal law enforcement officers through its basic training programs on indicators of human trafficking. FLETC has developed a one-day Introductory Human Trafficking Awareness Training Program for federal, state, local, and tribal law enforcement agencies, designed to instill awareness of indicators of human trafficking for the broader law enforcement community.

49. The Department of Interior's Bureau of Indian Affairs (BIA) provided victim services to 13 tribes for detection of and response to human trafficking in Indian Country. The Department of Labor (DOL) funded several projects to combat forced labor, including a \$2 million, four-year project to combat forced labor and human trafficking in the cocoa supply chain and other sectors in Ghana, and a new \$5 million four-year project to combat forced labor and human trafficking on fishing vessels in Indonesia and the Philippines. DOL also released the mobile and web application *Comply Chain: Business Tools for Labor Compliance in Global Supply Chains*, which provides companies and industry groups practical guidance on how to identify risks of forced labor in their supply chains and mitigate or mediate abuses. Companies that implement compliance systems are less likely to risk importing goods made by forced labor and run afoul of U.S. law.

50. The Department of State's Office to Monitor and Combat Trafficking in Persons (TIP) issued its most recent Trafficking in Persons Report in June 2020, where the United States comprehensively assesses what governments around the world are doing to combat this crime. The TIP Report is an invaluable tool the United States uses to arm ourselves with the latest information and guides our actions both domestically and abroad.

#### **Human rights education, training, and community engagement**

51. Respect for human rights is reflected in the Constitution, laws, regulations, and policies. Many schools feature human rights education, and some of them have centers focused on the study of human rights. Professional organizations and others have educational programs. Law enforcement and immigration screening personnel receive training on prohibitions against unlawful discrimination and racial and ethnic profiling. In 2019, DOJ/CRD and the U.S. Attorney's Office hosted a roundtable on sexual harassment in housing, while the DOJ Community Relations Service works with communities to address conflict related to discrimination and similar matters.



## **D. Economic, social and cultural rights and measures; indigenous issues; and the environment**

### **Indigenous issues and violence against indigenous women**

52. Members of indigenous communities who are born or naturalized in the United States are citizens of the United States and residents of the state in which they live. Those who are also members of tribes or villages recognized by federal or state law have additional rights defined by those laws, and by the laws of their respective communities.

53. The U.S. Government has primary responsibility for administering the social programs that provide a variety of education, health care, and social services.

54. Federal and state laws and policy call for consultation with tribes on many issues, and multiple consultations with tribal leaders are held each year on activities and policies affecting tribes or tribal lands.

55. The U.S. Government works aggressively to end violence disproportionately affecting American Indian and Alaska Native communities. On May 3, 2019, President Trump issued a proclamation establishing May 3 as Missing and Murdered American Indians and Alaska Natives Awareness Day and announcing that federal agencies are increasing their efforts to address violent crimes in Indian country. This work includes improving public safety, expanding funding and training opportunities for law enforcement in Indian country, and better equipping law enforcement with needed tools, such as access to databases.

56. On November 26, 2019 the President signed an executive order establishing the Task Force on Missing and Murdered American Indians and Alaska Natives. This order is the culmination of numerous discussions where federal officials heard directly from Indian Country. Attorney General Barr and Interior Secretary Bernhardt serve as co-chairs of the Task Force and members include the FBI Director, DOI Assistant Secretary – Indian Affairs, Director of DOJ’s Office on Violence Against Women, DOI Director of the Office of Justice Services, Chair of the Native American Issues Subcommittee of the Attorney General’s Advisory Committee, and Commissioner of the Administration for Native Americans (ANA) within the Department of Health and Human Services (HHS).

57. In all of this work, the federal government consults with tribes multiple times each year on actions and policies affecting tribes or tribal lands.

### **Homelessness**

58. The American economic system of free people and free markets has lifted millions of people out of poverty and been a model for other nations. Those who struggle with poverty and other mental, behavioral, and health problems that lead to homelessness have access to a wide variety of social programs sponsored by families, communities, businesses, nonprofit organizations, including faith-based organizations, and federal, state and local government. HUD, HHS, Department of Education (ED), the Department of Veterans Affairs (VA) and other members of the U.S. Interagency Council on Homelessness (USICH) have worked closely with state and local governments to alleviate the personal and social problems that lead to homelessness. In April of 2020, USICH and partner agencies launched a process to develop an updated comprehensive federal strategic plan to prevent and end homelessness using extensive stakeholder and direct provider input.

59. Through its 2019 Continuum of Care Program Competitions, HUD increased local flexibilities and enhanced provider ability to better help our vulnerable homeless populations. In order to increase self-sufficiency among homeless populations, HUD provided new flexibilities

for grantees to implement service participation requirements such as employment training, mental health care, substance abuse treatment after a person has been stably housed.

60. HUD estimates homelessness across the United States has declined by 11% since 2010. Homelessness among veterans is half of what was reported in 2010.

61. The Federal Interagency Council on Crime Prevention and Reentry, led by DOJ, has supported efforts to reduce recidivism and prepare individuals for successful reentry into society. USICH also released guidance to reentry service providers, corrections agencies, and state and local governments on removing barriers to housing and services for individuals with criminal records who are experiencing homelessness.

#### **Health care and education**

62. There is considerable debate in the United States about the best ways to make quality, affordable health care available to all. HHS' Title V Maternal and Child Health Services Block Grant Program seeks to improve maternal health outcomes, including rates of severe morbidity and maternal mortality.<sup>68</sup> National and state level performance measure data is publicly accessible on the Title V Information System website. In 2019, HHS awarded \$351 million to support families through the Maternal, Infant, and Early Childhood Home Visiting Program, which serves families living in almost one-third of U.S. counties.<sup>69</sup> States and territories can tailor the program to serve the specific needs of their communities, targeting services to communities with concentrations of risk, such as premature birth, low-birth-weight infants, and infant mortality. A multi-pronged evaluation of the program found home visiting services result in positive effects for families. Additionally, results suggest that home visiting may improve maternal health. HHS also supports Tribal Maternal, Infant, and Early Childhood Home Visiting Program development grants. Evaluations are in progress and a release date will be forthcoming.

63. The Preventing Maternal Deaths Act of 2018<sup>71</sup> authorizes, amends, and expands the Safe Motherhood Initiative within the HHS Centers for Disease Control and Prevention, including authorizing support for state and tribal Maternal Mortality Review Committees, and directs HHS to make grants available to states to better track and examine the problem of maternal deaths; to establish maternal mortality review committees; and to ensure that state health departments have plans to educate healthcare providers about the findings of the review committees. CDC is now funding 25 states to conduct Maternal Mortality Review in the United States.

64. The United States remains committed to equal opportunity in education and, working with states and communities, helping students succeed in school and careers. In 2015, Congress enacted the Every Student Succeeds Act (ESSA), which revised and reauthorized the Elementary and Secondary Education Act. Its support for states and communities includes investing in evidence-based and innovative local programs; providing intervention and support for schools and students that need the most help; and preserving protections for economically disadvantaged students, children with disabilities, English learners, and other vulnerable students. Consistent with the commitment to equal access, it is unlawful to deny elementary and secondary-level school children in the United States an education on the basis of actual or perceived immigration status.

65. Corporal punishment is governed by state law. In 2019, as a broader tool to help parents and educators create and maintain safe and positive learning environments in school, ED produced a guide on school climate resources for parents and educators. ED also has two centers that offer free assistance and resources related to school climate for states, school districts, schools, institutions of higher learning, and communities: (1) the National Center of Safe and

Supportive Learning Environments, and (2) the Technical Assistance Center on Positive Behavioral Interventions and Supports.

### **Women and health**

66. As the world's largest bilateral donor to global health programs, the U.S. Government is committed to supporting health programs around the world, including life-saving services and helping women and children thrive, particularly in countries where the need is greatest. The United States remains resolute in its commitment to preventing conflict-related sexual violence and providing resources and support for survivors to address the trauma and stigma they experience as a step toward healing those afflicted, as well as mending their communities. As the United States has noted on many occasions, there is no international human right to abortion, whether under that name or under other terms like "sexual and reproductive health." Rather, as President Trump has stated, "our Nation proudly and strongly reaffirms our commitment to protect the precious gift of life at every stage, from conception until natural death." The United States believes in the sovereign right of nations to make their own laws to protect the unborn, and rejects any interpretation of international human rights to require any State to provide access to abortion. ...

### **Gender equality in the workplace**

67. The United States promotes a non-discriminatory, inclusive, and integrated approach to work that ensures that all women and men are treated with human dignity. It is the policy of the United States to support and promote efforts that reinforce respect for the inherent dignity of both women and men, advance women's equality and promote and protect these rights.

68. Wage discrimination based on sex is illegal under the Equal Pay Act of 1963, 29 U.S.C. § 206(d) and Title VII of the Civil Rights Act of 1964, as amended.<sup>80</sup> The National Security Strategy of the United States clearly identifies women's equality and empowerment worldwide as integral to our national security and a priority for the United States. We believe that investing in women's economic empowerment has a cascading effect for women, men, families, and communities, and is a key component to our national security approach.

69. U.S. law allows, but does not require, private employers to offer paid maternity leave. The Family and Medical Leave Act entitles eligible employees to 12 workweeks of unpaid, job-protected leave in a year for the birth and care of newborn or adopted/foster children. On December 20, 2019, President Trump signed into law the Federal Employee Paid Leave Act, which provides up to 12 weeks of paid parental leave for over two million Federal civilian employees. The new law will apply to leave taken for births or adoption/foster placements that occur on or after October 1, 2020.

### **Protections for migrant workers**

70. Alien agricultural workers in the United States are protected by the Migrant and Seasonal Agricultural Worker Protection Act of 1983. This Act requires employers to disclose or make available upon request the terms of employment and to comply with those terms, to confirm that Farm Labor Contracts are registered with and licensed by DOL, to pay each worker when wages are due and provide workers with itemized statements of earnings and deductions, and to post worker protection laws at the worksite. The Act also requires that housing and transportation meet federal and/or state standards. Since 1966, the minimum wage and record-keeping provisions, but not the overtime pay provisions, of the Fair Labor Standards Act (FLSA) have also applied to most agricultural workers and employers.

**Protection of the environment**

71. The United States and each of the fifty states has strong policies governing the protection of the environment. Federal and state laws create both government and private enforcement mechanisms and significant remedies are available against those who violate them. The United States advances an approach that balances energy security, economic development, and environmental protection<sup>88</sup> and will remain a global leader in reducing traditional pollution, as well as greenhouse gases, while continuing to expand our economy.

**E. National security and other matters Migrants in detention**

72. The U.S. Government draws from a wide range of resources to process alien children safely. When alien children are placed in government custody, we ensure they are treated in a safe, dignified, and secure manner. Under the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), unaccompanied alien children generally are transferred from the custody of DHS to that of HHS.

73. Recent years have seen a humanitarian and security crisis caused by a dramatic increase in the number of aliens encountered along or near the U.S. border with Mexico, including unaccompanied children. The majority come from Guatemala, Honduras, and El Salvador, where poor economic conditions and high levels of generalized violence, while not grounds for asylum or protection under the Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment or U.S. laws implementing it, are important “push factors.” At the same time, certain U.S. laws, judicial rulings, and policies—including the TVPRA—contribute to “pull factors.”

74. As a result of the crisis, DHS has since 2012 referred an increasing number of unaccompanied alien children to HHS. Since FY 2012, this number has jumped dramatically, with 13,625 referrals in FY 2012, 24,668 in FY 2013, 57,496 in FY 2014, 33,726 in FY 2015, 59,170 in FY 2016, 40,810 in FY 2017, and 49,100 in FY 2018 and 52,000 in FY 2019.

75. To address this crisis, on July 1, 2019, the United States enacted the Emergency Supplemental Appropriations for Humanitarian Assistance and Security at the Southern Border Act, which provides an additional \$4.5 billion in emergency supplemental funding for humanitarian assistance and security at the U.S. southern border. In addition, the U.S. administration has sought legislative changes to address the pull factors and has sought to exercise existing legal authorities to reduce them.

**Guantanamo Bay**

76. Executive Order 13823 of January 18, 2018, Protecting America through Lawful Detention of Terrorists, requires detention operations at U.S. Naval Station Guantanamo Bay to continue to be conducted consistent with all applicable U.S. and international law. The United States has no plans to close the detention facilities at Guantanamo Bay.

77. Currently 40 individuals are detained in U.S. detention facilities at Guantanamo Bay. Since 2015, 68 individuals have been transferred from Guantanamo Bay to other countries, including Cabo Verde, Ghana, Italy, Kuwait, Mauritania, Montenegro, Oman, Senegal, Serbia, the Kingdom of Saudi Arabia, and the United Arab Emirates.

78. The detainees at Guantanamo are held and treated humanely and in accordance with applicable law. All U.S. military detention operations, including those at Guantanamo Bay, comply with all applicable international and domestic laws, and the United States takes very seriously its responsibility to provide for the safe and humane care of detainees at Guantanamo Bay.

### **Torture**

79. Federal and State laws prohibit torture or cruel, inhuman or degrading treatment or punishment and related misconduct. The Eighth Amendment to the U.S. Constitution prohibits cruel and unusual punishment for individuals convicted of crimes. What constitutes cruel and unusual punishment is a fact-specific determination that may include uncivilized and inhumane punishments, punishments that fail to comport with human dignity, and punishments that include physical suffering, including torture. The Fifth and Fourteenth Amendment Due Process Clauses prohibit, *inter alia*, governmental action that “shocks the conscience,” including acts of torture and cruel treatment, as well as punishing persons without first convicting them under appropriate standards. It also includes the intentional use of objectively unreasonable force against those detained while awaiting trial. The Fourteenth Amendment applies both of these Amendments to the conduct of state officials.

80. Coincident with the entry into force of the Convention Against Torture, the United States enacted the Torture Convention Implementation Act, 18 U.S.C. § 2340A, which helps implement U.S. obligations under Article 5 of the Convention Against Torture. As provided in the statute, whoever commits or attempts or conspires to commit torture outside the United States (as defined in the statute) can be subject to federal criminal prosecution if the alleged offender is a national of the United States or the alleged offender is present in the United States, irrespective of the nationality of the victim or alleged offender.

81. In the context of military commissions against alien unprivileged enemy belligerents, the Military Commissions Act (MCA) of 2009, codifies, *inter alia*, the offenses of torture and cruel or inhuman treatment as crimes triable by military commission. In addition, the MCA of 2009 prohibits the admission of any statement obtained by the use of torture or by cruel, inhuman, or degrading treatment, as defined by the Detainee Treatment Act of 2005, in a military commission proceeding, except against a person accused of torture or such treatment as evidence that the statement was made. This prohibition is also incorporated into Rule 304(a)(1) of the Military Commission Rules of Evidence.

82. Consistent with international obligations and domestic law, the United States has conducted and will continue to conduct thorough, independent investigations of credible allegations of torture, and to prosecute persons where appropriate.

### **Privacy**

83. The United States collects, maintains, uses, and disseminates information in accordance with the U.S. Constitution and U.S. laws, regulations, and policies, consistent with applicable international obligations. Presidential Policy Directive 28, which applies to signals intelligence activities, states that all persons should be treated with dignity and respect, regardless of nationality or place of residence, and that all persons have legitimate privacy interests in the handling of their personal information. The United States has multiple layers of oversight, ranging from individual privacy officers embedded in agency operations, to congressional committees, and offices of inspector general, to independent oversight agencies such as the Privacy and Civil Liberties Oversight Board (PCLOB). PCLOB is an independent agency within the Executive Branch established by the Implementing Recommendations of the 9/11 Commission Act of 2007 to ensure that the federal government’s efforts to prevent terrorism are balanced with the need to protect privacy and civil liberties.

84. Our foreign intelligence oversight system is robust and transparent, and includes executive, legislative, and judicial bodies. The foreign intelligence activities of the U.S. Government are conducted in accordance with applicable legal authorities.

85. In January 2017, the CIA Office of Privacy and Civil Liberties (OPCL) published revised E.O. 12333 Attorney General Guidelines designed to ensure that the CIA continues to handle information appropriately in the digital age. The review sought to ensure that the Guidelines appropriately incorporated the protection of privacy and civil liberties in the conduct of the CIA's authorized intelligence activities, with improvements that included protections for unevaluated information, restrictions on queries, exceptional handling requirements for electronic communications and other similarly sensitive information, and compliance and oversight. OPCL conducts reviews to ensure compliance with the Privacy Act and other requirements related to the protection of personal information from unauthorized use, access, or disclosure. Complaints may be filed for alleged violations of civil liberties in the administration of CIA programs and operations.

86. Privacy and digital freedom issues raised by the conduct of non-state actors, such as Google and Facebook, are addressed through the U.S. legal and regulatory systems, including by the DOJ, the Federal Trade Commission (FTC), state attorneys general, and private litigation. Some states have enacted or are considering state privacy laws, and the FTC provides annual updates on its privacy and data security work with regard to non-state actors.

#### **Sexual violence in the military**

87. The United States is committed to preventing sexual violence. The United States issues an annual report that provides updates on programs and efforts at the Department of Defense (DoD) to combat sexual violence in the military. DoD's programs focus on preventing sexual assault, promoting advocacy and assistance, and addressing sexual-assault-related retaliation.

88. DoD's FY 2018 Annual Report on Sexual Assault in the Military, issued in April 2019, estimates that 20,500 service members, experienced some kind of sexual assault in 2018. Over the past decade, reporting rates have quadrupled, allowing the Department to connect a greater share of victimized service members with restorative care and services.

89. In April 2019, DoD established the Sexual Assault Accountability and Investigation Task Force (SAAIT) to identify, evaluate, and recommend immediate and significant actions to improve further the accountability process and ensure due process for both victims and accusers. The Task Force published a, first-of-its-kind, comprehensive set of recommendations to help commanders, further enhance victim support, and ensure fair and just support for the accused.

90. To address this issue further, DoD issued a Prevention Plan of Action (PPOA) in April 2019, providing a coordinated approach to optimize the Department's prevention system with targeted efforts towards the youngest military members and others at increased risk for victimization. In addition, DoD is committed to training supervisors of junior enlisted personnel to ensure better promotion of respectful workplace conduct. The Secretary of Defense is committed to justice for victims of sexual assault and is doing everything within his authority to eliminate sexual harassment and assault in the military. The Secretary thus directed the Department to implement the recommendations of the SAAITF Report, develop new assessment tools, launch a new program to catch serial offenders, and execute the DoD Sexual Assault PPOA.

#### **Migration policies and treatment of migrant adults and children**

91. In accordance with its law, policy, and international obligations, the United States maintains the sovereign right to detain aliens who violate its laws, pose a danger to the community, or pose a flight risk in order to protect public safety and to ensure their compliance with its immigration procedures. Primary responsibility for the enforcement of immigration law

within DHS rests with ICE, Customs and Border Patrol (CBP), and USCIS. CBP enforces immigration laws at and between the ports of entry, ICE is responsible for interior enforcement and for detention and removal operations, and USCIS adjudicates applications and petitions for immigration and naturalization benefits. Under the TVPRA of 2008, unaccompanied alien children generally are transferred from the custody of DHS to that of HHS. As noted above, the United States is experiencing a crisis along its southern border due to increases in illegal immigration in 2019 and has considered numerous ways to address this situation. Aliens facing removal from the United States receive procedural protections.

92. The United States limits its collection of information in the visa application relevant to a visa adjudication. The questions asked in the visa application process are designed to solicit the information necessary to determine whether an applicant is eligible for the visa applied for under U.S. law. Information obtained from applicants in the visa application process is considered confidential under U.S. law, and with limited exceptions, is to be used only for the formulation, amendment, administration, or enforcement of the immigration, nationality, and other U.S. laws.

\* \* \* \*

### 3. UN Third Committee

#### a. *General Statement*

The 75th session of the UN Social, Humanitarian and Cultural Affairs Committee, or Third Committee, concluded on November 19, 2020 with 50 resolutions adopted, 31 by consensus. Due to the COVID-19 pandemic, negotiations and debate occurred virtually. On November 13, 2020, the U.S. Mission to the UN submitted for the record a general statement by Jason Mack, counselor for economic and social affairs, at the UN Third Committee. The statement appears below and is available at <https://usun.usmission.gov/general-statement-in-a-meeting-of-the-third-committee/>.

\* \* \* \*

I would like to start by thanking the Third Committee Bureau and our colleagues for the spirit of cooperation. We take this opportunity to make brief but important points of clarification on some of our key priorities for the Third Committee. We underscore that these and other UN General Assembly resolutions are non-binding documents that do not create rights or obligations under international law. The United States understands that General Assembly resolutions do not change the current state of conventional or customary international law. We do not read resolutions to imply that Member States must join or implement obligations under international instruments to which they are not a party, and any reaffirmation of such Conventions or treaties applies only to those States that are party to them. Moreover, U.S. co-sponsorship of, or our joining consensus on, resolutions does not imply endorsement of the views of special rapporteurs or other special procedures mandate-holders as to the contents or application of international law.

### **Points of Clarification**

**COVID-19:** The United States is leading the global response to COVID-19. The U.S. Government has allocated \$20.5 billion for the development of vaccines and therapeutics, preparedness efforts, and foreign assistance. Our global efforts build upon decades of U.S. investment in life-saving health and humanitarian assistance, and we continue to ensure that the substantial U.S. funding and scientific efforts remain a central and coordinated part of the worldwide effort against this deadly virus. We are achieving real results by helping nations around the world respond to COVID-19 and therein protecting the United States.

**Universal Health Coverage:** The United States aspires to help increase access to high-quality health care, both for improved health outcomes and for better preparedness as we see with the COVID-19 pandemic. However, as made clear in the 2019 UNGA Political Declaration on Universal Health Coverage (UHC), it is important that each country should develop its own approach to achieving UHC within its own context. Another critical aspect of successful UHC we wish to highlight is the necessary role of partnerships with the private sector; civil society organizations, including faith-based organizations; and other stakeholders. As we said at the time of the adoption of the Political Declaration, patient control and access to high-quality, people-centered care are key.

**Women's Equality and Empowerment:** Consistent with the Geneva Consensus Declaration, the United States is committed to promoting women's equality and to empowering women and girls. The United States is leading through our Women's Global Development and Prosperity Initiative, which seeks to enhance opportunities for women to participate meaningfully in the economy and advance both prosperity and national security, as well as through the Women, Peace, and Security (WPS) agenda. Accordingly, when the subject of a resolution text is "women," or in some cases "women and girls," our preference in this context is to use these terms, rather than "gender," for greater precision. The United States does not consider the outcome documents from the 63rd session of the Commission on the Status of Women to be the product of consensus.

**International Criminal Court (ICC):** The United States does not and cannot support references to the International Criminal Court and the Rome Statute that do not distinguish sufficiently between Parties and Non-Parties, or are otherwise inconsistent with U.S. positions on the ICC, particularly our continuing and longstanding principled objection to any assertion of ICC jurisdiction over nationals of States that are not parties to the Rome Statute, absent a referral from the UN Security Council or consent of such a State. Our position on the ICC in no way diminishes our commitment to supporting accountability for atrocities.

**Sexual and Reproductive Health:** Consistent with the Geneva Consensus Declaration, signed by countries representing every region of the world, we assert that there is no international right to abortion, and each nation has the sovereign right to legislate its own position on the protection of life at all stages, absent external pressure, especially from the UN.

The United States defends human dignity and supports access to high-quality health care for women and girls across the lifespan. We do not accept references to "sexual and reproductive health," "sexual and reproductive health and reproductive rights," or other language that suggests or explicitly states that access to legal abortion is necessarily included in the more general terms "health services" or "health care services" in particular contexts concerning women. The United States believes in legal protections for the unborn and rejects any interpretation of international human rights to require any State Party to provide safe, legal, and effective access to abortion. As President Trump has stated, "Americans will never tire of defending innocent life." Each



nation has the sovereign right to implement related programs and activities consistent with their laws and policies. There is no international “right to abortion,” nor is there any duty on the part of States to finance or facilitate abortion. Further, consistent with the 1994 International Conference on Population and Development Programme of Action and the 1995 Beijing Declaration and Platform for Action, and their reports, we do not recognize abortion as a method of family planning, nor do we support abortion in our global health assistance. We also do not recognize references to non-UN negotiated conferences, summits or their respective outcome documents. We believe that the General Assembly should only include references to conferences and summits clearly mandated through UN modalities resolutions — such as this year’s Beijing+25 — and other ones, such as the Nairobi summit, have no direct or indirect place in any UN resolutions.

**Refugees and Migrants:** The United States maintains the sovereign right to facilitate or restrict access to its territory, in accordance with its national laws and policies, subject to our existing international obligations. The United States does not endorse or affirm the Global Compact for Migration or the New York Declaration.

**2030 Agenda for Sustainable Development:** The United States recognizes the 2030 Agenda as a voluntary global framework for sustainable development that can help countries work toward global peace and prosperity. We applaud the call for shared responsibility, including national responsibility, in the 2030 Agenda and emphasize that all countries have a role to play in achieving its vision. The 2030 Agenda recognizes that each country must work toward implementation in accordance with its own national policies and priorities, and we will interpret calls that reaffirm the 2030 Agenda or call for the full implementation of its Sustainable Development Goals to be aspirational.

The United States also underscores that paragraph 18 of the 2030 Agenda calls for countries to implement the Agenda in a manner that is consistent with the rights and obligations of States under international law. We also highlight our mutual recognition in paragraph 58 that 2030 Agenda implementation must respect, and be without prejudice to, the independent mandates of other processes and institutions, including negotiations, and does not prejudge or serve as precedent for decisions and actions underway in other fora. For example, this Agenda does not represent a commitment to provide new market access for goods or services. This Agenda also does not interpret or alter any World Trade Organization agreement or decision, including the Agreement on Trade-Related Aspects of Intellectual Property.

Further, citizen-responsive governance, including the respect for human rights, sound economic policy and fiscal management, government transparency, and the rule of law are essential to the implementation of the 2030 Agenda.

Finally, the 2030 Agenda states that “no one” will be left behind. We believe any alteration from the 2030 language, such as “no country left behind,” erodes the people-centered focus of the Agenda and distracts from the many multi-faceted and multi-stakeholder efforts to advance sustainable development.

**Climate Change:** With respect to the Paris Agreement and climate change language, we note that U.S. withdrawal from the Agreement took effect on November 4, 2020. Therefore, references to the Paris Agreement and climate change are without prejudice to U.S. positions. We affirm our support for promoting economic growth and improving energy security while also protecting the environment. The United States does not support references to climate change in resolutions that are inconsistent with this approach and those that do not respect national circumstances and approaches.

**Trade:** The United States believes that each Member State has the sovereign right to determine how it conducts trade with other countries. Moreover, it is our view that the UN must respect the independent mandates of other processes and institutions, including trade negotiations, and must not involve itself in or comment on decisions and actions in other fora, including the World Trade Organization. The UN is not the appropriate venue for these discussions, and there should be no expectation or misconception that the United States would understand recommendations made by the UN General Assembly on these issues to be binding.

**The “Right to Development”:** The “right to development,” which is not recognized in any of the core UN human rights conventions, does not have an agreed international meaning.

**Economic, Social, and Cultural Rights:** The United States is not a Party to the International Covenant on Economic, Social, and Cultural Rights and the rights contained therein are not justiciable as such in U.S. Courts. We note that countries have a wide array of policies and actions that may be appropriate in promoting the progressive realization of economic, social, and cultural rights. We therefore believe that resolutions should not try to define the content of those rights, or related rights, including those derived from other instruments.

**International Covenant on Civil and Political Rights (ICCPR):** The ICCPR sets forth the conditions for permissible restrictions on certain human rights, including conformity with law and necessity in a democratic society for, inter alia, the protection of public health. The ICCPR likewise establishes the conditions under which derogation from some obligations under the Covenant may be permitted. The language in these resolutions in no way alters or adds to those provisions, nor does it inform the United States’ understanding of its obligations under the ICCPR.

**Education:** As educational matters in the United States are primarily determined at the state and local levels, when resolutions call on States to strengthen various aspects of education, including with respect to curriculum, we understand them consistent with our respective federal, state, and local authorities.

And finally, it is our intention that this statement applies to action on all agenda items in the Third Committee. We request that this statement be made part of the official record of the meeting. Thank you, Chairperson.

\* \* \* \*

**b. Other thematic statements at the UN Third Committee**

On November 17, 2020, the United States called for a vote and voted no on a resolution in the Third Committee sponsored by Cuba entitled, “Human Rights and Unilateral Coercive Measures” (regarding sanctions). See Chapter 16 for a discussion of human rights-related U.S. sanctions programs. The U.S. explanation of vote follows.

\_\_\_\_\_

\* \* \* \*

This resolution does not advance the promotion and protection of human rights. Simply put, it is not sanctions that are undermining human rights. Sanctions are not punitive; they are a tool to change behavior. U.S. sanctions are designed to promote accountability for human rights

violations and abuses, and those who point to sanctions as the problem advance a false narrative like the one in this resolution.

The text of this resolution inappropriately challenges the sovereign right of States to determine their economic relations and protect legitimate national interests, including taking actions in response to national security concerns. Relatedly, we will not allow those who endanger the national security of the United States and the international community to exploit the COVID-19 emergency to achieve sanctions relief. The resolution also attempts to undermine the international community's ability to respond to acts that are offensive to international norms. Economic sanctions are a legitimate way to achieve foreign policy, security, and other national and international objectives, and the United States is not alone in that view or in that practice.

Our sanctions programs are focused on constraining the ability of bad actors to take advantage of our financial system or threaten the United States, our allies and partners, or civilians, not on bona fide humanitarian-related trade, assistance, or activity. Rather, we often, and in many circumstances proactively, exclude this type of activity from our sanctions programs. The United States actively seeks to facilitate the provision of legitimate aid to Syria and Venezuela, while Assad and Maduro actively work to restrict it. Indeed, we have provided billions of dollars of humanitarian assistance to the Venezuelan and Syrian people.

\* \* \* \*

#### 4. Country-specific Concerns

The United States supported country-specific resolutions in the Third Committee addressing grave human rights concerns in Burma, Crimea, Iran, North Korea (DPRK), Syria, and the Peoples Republic of China (PRC). The United States also signed on to a Third Committee joint statement on the deteriorating human rights situation in Belarus.

##### a. *Burma*

The Burma resolution, which was drafted by Saudi Arabia on behalf of the Organization for Islamic Cooperation, passed with extensive support (131 countries voting “yes”). The resolution emphasizes the importance of international, independent, fair, and transparent investigations into gross human rights violations and recalls the Secretary General’s calls for a global ceasefire, end to all hostilities, and addressing grievances through political dialogue. The United State provided a general statement on Burma and cosponsored the resolution on Burma. The U.S. general statement follows.

\_\_\_\_\_

\* \* \* \*

Thank you, Madame Chair. As a decades-long partner of the people of Myanmar in their pursuit of democracy, peace, and prosperity, the United States is proud to co-sponsor this important resolution on the human rights situation in Myanmar.

The United States condemns continuing serious human rights violations and abuses across Myanmar, including in Rakhine, Chin, Kachin, and Shan States. Consistent with this

resolution, the United States calls on Myanmar authorities to deepen democratic reforms; ensure full participation in elections and civic life without discrimination; take steps to establish civilian control of the military; ensure accountability for those responsible for human rights violations and abuses, including for the ethnic cleansing of Rohingya Muslims from northern Rakhine State; protect and promote human rights and fundamental freedoms, including freedoms of expression on and off line, religion or belief, association, and peaceful assembly; allow unhindered access across Myanmar for UN, humanitarian, and human rights organizations, and media groups; implement the recommendations of the Annan Advisory Commission in Rakhine State, including those related to access to citizenship and freedom of movement; work to establish conditions that will allow all displaced persons to voluntarily return to their places of origin in safety and dignity; and address victims' calls for justice.

The United States welcomes the work of the Independent Investigative Mechanism for Myanmar and echoes the resolution's call for all countries to grant the IIMM access and provide it with every assistance in the execution of its mandate. We also hope to see Myanmar authorities cooperate with the Special Rapporteur on the situation of human rights in Myanmar, Mr. Tom Andrews.

The United States reaffirms the resolution's urgent call to ensure the full protection of human rights and fundamental freedoms of all persons in Myanmar, including Rohingya and persons belonging to other minority groups, in an equal and non-discriminatory manner. This is vital to achieving the Myanmar people's goal of a more peaceful, stable, and prosperous nation.

We strongly condemn the ongoing violence in Myanmar and urge all involved to demonstrate restraint and respect for the human rights of members of affected populations. While we do not take a position on whether ongoing violence there could be legally characterized as an armed conflict, we support all credible efforts to advance peace and national reconciliation.

In addition, we recognize that Myanmar's parliamentary elections on November 8 mark an important step in the country's democratic transition. While we are concerned by problems in the electoral process, such as disenfranchisement of members of ethnic minority groups, including through the cancellation of voting in several regions, we remain a dedicated partner of the people of Myanmar in their pursuit of democracy, peace, and national reconciliation.

The United States strongly supports the resolution's urgent call for justice and accountability. We note that international human rights law does not define what constitutes an "effective remedy" in a particular situation. We do not consider anything in this resolution to have bearing on matters of self-determination under international law. We also refer to our global general statement made on November 13, 2020.

In closing, we reiterate our longstanding support to the people of Myanmar and encourage all delegations to co-sponsor and vote in favor of this resolution. Thank you.

\* \* \* \*

**b. *Crimea***

Ukraine's Crimea resolution passed with 63 "yes" votes, including that of the United States.

**c. *Iran***

The resolution on human rights in Iran, facilitated by Canada, calls on Iran to end torture and systematic use of arbitrary arrests and detention, and passed with 79 “yes” votes, including that of the United States.

**d. *North Korea***

The Third Committee resolution on human rights in North Korea was adopted by consensus, as in previous years. In line with key U.S. objectives, the resolution calls for accountability for human rights violations and abuses and places responsibility for improving the human rights situation squarely on the DPRK government. The EU, UK, and U.S. delegates underscored a lack of improvement in the human rights situation in the DPRK.

**e. *Syria***

The resolution on Syria, drafted for the first time by the United States, received strong support in the Third Committee, with 99 countries voting “yes.” The new text of the annual Syria resolution draws attention to the closure of the Bab al Salam and al-Yaroubiya border crossings and urges the Security Council to re-authorize these as well as calls on the Commission of Inquiry to report to the Third Committee at the next session of the UN General Assembly for the first time.

**f. *China’s coercive family planning policies in Xinjiang***

On June 29, 2020, the State Department issued a press statement condemning the practices—including forced sterilization, forced abortion, and coercive family planning--by the Chinese government against Uyghurs and other minorities in Xinjiang. The statement is available at <https://2017-2021.state.gov/on-chinas-coercive-family-planning-and-forced-sterilization-program-in-xinjiang/> and follows:

The world received disturbing reports today that the Chinese Communist Party is using forced sterilization, forced abortion, and coercive family planning against Uyghurs and other minorities in Xinjiang, as part of a continuing campaign of repression. German researcher Adrian Zenz’s shocking revelations are sadly consistent with decades of CCP practices that demonstrate an utter disregard for the sanctity of human life and basic human dignity. We call on the Chinese Communist Party to immediately end these horrific practices and ask all nations to join the United States in demanding an end to these dehumanizing abuses.

## 5. Treaty Bodies

On June 2, 2020, Sofija Korac, adviser for the U.S. Mission to the United Nations delivered the U.S. statement at the first meeting on UN treaty body reform. Her remarks are excerpted below and available at <https://usun.usmission.gov/statement-by-the-United-States-of-America-for-the-first-meeting-on-treaty-body-reform-via-vtc/>.

---

\* \* \* \*

The United States has been integrally involved in conversations about treaty body reform since well before Resolution 68/268. The treaty body system plays a critical role in holding States accountable for their human rights obligations. We firmly support efforts to strengthen it and to enhance coordination among the bodies.

We welcome the progress the treaty bodies have made over the last year to improve working methods and enhance coordination. The present discussion is rightly focused on the value the General Assembly can add to reforms that fall, for the most part, to the treaty bodies themselves to make.

In this regard, the vision statement of the Chairs from last July, which largely reflected the Costa Rica elements paper that we and many other States supported, provides a roadmap for steps the treaty bodies can and should take, such as coordinated and predictable calendars, and focused and limited concluding observations and follow-up communications. The Human Rights Committee set the example through its decision last July to put these ideas into practice. This is the type of real action the Assembly should encourage other treaty bodies to replicate without further delay, something it could do through preambular language in a successor resolution.

We agree with other participants that there is a core set of additional elements the cofacilitators should look at in developing the operative portion of such a resolution. These include revisiting the formula for allocating meeting time, the universalization of “opt-out” simplified reporting, and facilitating access to modern case-management technology to help reduce the ever-growing backlog of individual communications.

Discussions should also explore how to improve the selection and election process of members to ensure they are both substantively qualified and demonstrably independent. We must also improve safeguards against intimidation and reprisals against individuals and groups cooperating with treaty bodies.

Finally, as many other colleagues have said, we welcome and encourage a transparent process that engages all stakeholders, in particular civil society organizations throughout the entire process. As my colleague from the EU said, we also welcome that this meeting has been webcast.

\* \* \* \*

At the Geneva Consultation on Treaty Body Review, held August 28, 2020 and September 2, 2020, the United States and Canada organized and delivered two joint statements, which follow.

\* \* \* \*

Distinguished co-facilitators, I have the pleasure of reading this cross-regional joint statement. This statement covers agenda items 1, 2, and 3. This is the first of two joint statements, and is joined by 21 countries including my country the United States. We will read the second statement at the beginning of agenda item 4. Many of the ideas shared today reinforce views set forth in the position paper coordinated by Costa Rica in June 2019 and now endorsed by approximately 50 countries.

To begin, before discussing the agenda items, we ask your indulgence to briefly highlight what we view as two key points that undergird many other aspects of this discussion:

- First, on the continued importance of Resolution 68/268: Resolution 68/268 was a remarkable achievement that has strengthened the treaty body system and made it more coherent over the past six years. The most important outcome of this review should be a reaffirmation of the continued relevance of the framework that resolution established for the efficiency and effectiveness of the treaty bodies.

- Second, on the General Assembly's competence in this area: As an additional introductory point, we recognize that the vast majority of the items on today's agenda fall within the purview of the treaty bodies themselves to implement through their internal procedures. The GA certainly has a role to play in evaluating the system and in encouraging positive reform, but we must remain mindful of the respective competences of the GA and the independent treaty bodies and not allow those lines to be blurred. Most of our comments today concern actions that fall to the treaty bodies themselves to take.

Moving to Agenda Item 1, simplified reporting procedures, we applaud the steps the treaty bodies have taken to offer simplified reporting procedures to States. This is consistent with Resolution 68/268 and the commitment of the treaty body Chairs, as expressed in their July 2019 position paper, to offer simplified reporting procedures to all States for periodic reports. Simplified reporting procedures reduce the burden on States and improve the efficiency of the treaty bodies' review process. By using simplified reporting, treaty bodies also help improve compliance with States' reporting obligations, which is a significant challenge to the current system. We are pleased, in particular, by the steps the Human Rights Committee has taken by making "opt-out" simplified reporting universal, even for initial reports. We would encourage the treaty body chairs to consider means of building on this progress, including, for instance, by making "opt-out" simplified reporting universal across the treaty bodies and ultimately phasing out the "opt-out" mechanism after one or two reporting cycles.

With regard to agenda item 2, harmonization and working methods, we encourage treaty bodies to continue harmonizing their working methods. Such harmonization would help eliminate duplication of work, while maximizing the number of issues that could be discussed. Treaty bodies should accordingly work to eliminate as much duplication as possible, while recognizing that there may be situations in which it is difficult to avoid some overlap given that human rights treaties occasionally cover similar ground.

Treaty bodies should also strive for greater coordination in their reviews of a particular State Party under their respective treaties. To this end, we recommend exploring the idea of designating members from each treaty body to be responsible for liaising with counterparts in other treaty bodies about the reporting of each State Party.

Finally, with regard to agenda item 3, an aligned methodology for constructive dialogue, treaty body members must have the ability to seek and receive information that allows them to better understand situations related to specific human rights issues in each country. This would facilitate the formulation of fact-based recommendations to effectively improve human rights situations on the ground. We reiterate the importance of treaty bodies providing States with concise and focused lists of issues prior to reporting, which greatly enhances the value of States' reports. Such a practice should remain universal across treaty bodies.

We encourage treaty bodies to also provide advanced notification of topics to be discussed in the oral dialogue. This practice would enable State Parties to include those officials most qualified to speak to the particular topics treaty body members wish to discuss as part of their delegations, further enhancing the quality and specificity of the dialogue.

Thank you, co-facilitators, for this opportunity. Delegations joining this statement may have supplementary comments as we move through the first half of this morning's agenda. The list of countries joining this statement follows.

Countries joining Statement 1: Netherlands, Israel, Australia, New Zealand, Belgium, United Kingdom, Croatia, Japan, Iceland, Czech Republic, Canada, United States, Estonia, Luxembourg, Republic of Korea, Norway, Sweden, Denmark, Finland, Liechtenstein, Albania

\* \* \* \*

### **Cross-Regional Joint Statement 2: Agenda Items 4, 5, and 6**

Thank you distinguished co-facilitators. I have the pleasure of reading this second joint statement on behalf of my country, the United States, and 21 additional countries. The full version and signatories to this statement addressing agenda items 4, 5 and 6 follow below.

Regarding agenda item 4, fixed calendar, we encourage treaty bodies to develop coordinated and predictable calendars, harmonizing their cycles with one another and that of the Universal Periodic Review. Coordinated calendars that attempt, as far as possible, to spread out reviews of a particular State across different treaty bodies would help States and civil society better prepare for and engage in the review process and result in more efficient and complete reports and oral dialogues.

With respect to agenda item 5, periodicity of the treaty bodies' sessions, while States' implementation of their obligations under the treaties needs to be evaluated reasonably frequently, we must also recognize the reality of the treaty bodies' heavy workload and backlogs. On balance, a 5- to 8-year review cycle appears realistic and reasonable for most treaty bodies, and consistent with what they have shown themselves to be capable of handling over the past few cycles. We would, however, strongly caution against a periodicity of longer than 8 years as too infrequent for the treaty bodies to be able to effectively conduct their work.

Finally, as concerns agenda item 6, concluding observations and recommendations, treaty bodies should follow through on the commitment in their July 2019 position paper to keep concluding observations and recommendations as short, concrete, and focused as possible, following an aligned methodology. Recommendations should be measurable, achievable, and strategically focused on a limited set of pressing human rights concerns in the State in question.

We further encourage the treaty bodies to follow through on the several other commitments made in their July 2019 position paper. We again welcome the decisive steps the Human Rights Committee has already taken in this direction, and urge further progress by the other committees in the short term.



To conclude, we would like to offer two final points:

- First, on the selection and independence of treaty body members: The effectiveness of the treaty bodies, and the quality of their work, is a direct reflection of the quality of their membership and their members' independence. It is imperative that States nominate candidates who are substantively qualified to serve on the treaty body in question, particularly those experienced in the field of human rights, and who are demonstrably independent of their government. Geographic diversity, gender balance, and nominating candidates belonging to marginalized groups—for example, persons with disabilities—is critical.
- Second, on participation by other stakeholders: Civil society, human rights defenders, and other stakeholders must continue to be included in this consultation as well as the treaty body reviews themselves. Civil society organizations and human rights defenders provide the treaty bodies with unvarnished information about the situation on the ground in the State under review, which allows the treaty bodies to have a much fuller picture of the human rights landscape. If a State disagrees with information provided by these stakeholders, it is always free to refute it, but civil society organizations must not be silenced—they are a critical part of how treaty bodies effectively monitor implementation of States' obligations under the treaties. We therefore welcome the involvement of these stakeholders in the consultation process, and we welcome the consultation that will occur here this afternoon. More crucially, the treaty bodies must continue to be allowed to receive the unfiltered views of these stakeholders in all their work.

Thank you again, co-facilitators, for leading us through this important dialogue, and we stand ready to assist you further in any way we can. As in the first half of the agenda, delegations joining this statement may wish to provide supplementary comments.

Countries joining Statement 2: Netherlands, Israel, Australia, New Zealand, Belgium, United Kingdom, Croatia, Japan, Iceland, Czech Republic, Canada, Liechtenstein, Albania, Colombia

\* \* \* \*

The United States provided a written submission to the co-facilitators in response to a questionnaire they sent out about treaty body reform. The U.S. submission follows.

---

\* \* \* \*

The United States welcomes your invitation of June 17, 2020, to provide this written contribution setting forth our views on the UN treaty body system review process. The 18 issues set forth in your letter identify most of the major areas around which we believe this discussion should focus. In formulating our response we have, as you suggested, used these 18 issues as a guide. This response does not address the issues one by one, but instead groups them together in a manner designed to more effectively convey the points we wish to highlight.

The United States strongly supports the work of the treaty bodies in general and regards them as an important component of the promotion and protection of human rights globally. We

have been integrally involved in conversations about treaty body reform since well before Resolution 68/268, and played an active role in the negotiation of that landmark resolution that has already brought many needed innovations. We therefore welcome the current review, anticipated in Resolution 68/268, as an opportunity to look comprehensively and critically at the benefits brought by Resolution 68/268 as well as areas where it may have fallen short or where updates may be warranted.

This response, as your letter solicited, covers a broad range of issues implicated in reviewing the treaty body system. To be sure, the General Assembly has an important role to play in this process including, as necessary, by adopting in the near term a successor resolution reaffirming and updating Resolution 68/268. We note, however, that the responsibility for changing practices and procedures falls in most respects to the treaty bodies themselves, guided by the provisions of the relevant treaty. We applaud the commitment expressed by the Chairs of the ten treaty bodies in July 2019 (Annex III, A/72/256) to implement, in a coordinated fashion, a series of reforms aimed at harmonizing and streamlining the system, as well as the decision made by the Human Rights Committee in July 2019 to put many of these reforms into actual practice.

The Chairs' position paper, in turn, largely paralleled recommendations made in the June 20, 2019, paper coordinated by the Permanent Mission of Costa Rica on behalf of over 40 Geneva Missions, which was also endorsed by the United States. Those elements continue to be among the most relevant for consideration in the current discussion, and we touch upon several of them below.

### **1. Selection, election, and conduct of treaty body members**

The effectiveness of the treaty bodies, and the quality of their work, is a direct reflection of the quality of their membership. It is imperative that States nominate candidates who are substantively qualified to serve on the treaty body in question and demonstrably independent of their government. States generally must also nominate candidates with legal expertise, given the treaty bodies' primary role in reviewing implementation of States' treaty obligations and, in the process, evaluating the State's domestic legal regime to identify areas where it may fall short. While the treaty bodies may also benefit from non-lawyer experts in the substantive areas covered by the treaty in question, the preponderance of members should be recognized experts in international and relevant domestic law.

In regards to the practice of "vote trading" on treaty body candidates, while certain other considerations, such as regional and gender diversity, may be appropriate, the most relevant criterion should be substantive expertise so that the treaty bodies can effectively fulfil the important roles envisioned for them in the relevant treaties.

Recognizing the importance of impartiality and objectivity to the functioning of the treaty body system, we would also encourage the cofacilitators to consider whether the development and implementation of a code of conduct for treaty body members, similar to the Codes of Conduct for Special Procedures Mandate Holders of the Human Rights Council or for the Judges of the UN Dispute and Appeals Tribunals, could improve the effectiveness of the treaty bodies. Of course, any such code would need to be appropriately tailored to the unique situation of the treaty bodies and respectful of their independence and respective mandates.

### **2. Individual communications**

While the United States has not recognized the competence of any of the treaty bodies to review individual communications alleging violations by the United States, as the most significant financial contributor to the United Nations, including to OHCHR,, we have a keen

interest in ensuring that the treaty bodies are able to process individual communications in a speedy and efficient manner; expeditiously resolve communications, either at the admissibility or merits stage, as appropriate; and avoid the accumulation of backlogs of communications, which strain the treaty bodies' limited time and resources.

In their report, the cofacilitators should explore options for introducing greater efficiencies into the processing of communications, such as splitting communications among "chambers" of a handful of members, which some treaty bodies have already adopted. The cofacilitators should also examine how case-management technology, uniform across the treaty bodies, along with staff appropriately trained in the use of the technology, might be introduced in a manner that takes into account the finite resources available. It is unacceptable that case management continues to be performed primarily through paper files, which has contributed to the accumulation of significant backlogs. By all accounts, treaty bodies now spend far too much of their time processing these communications at the risk of falling behind in their reviews of States parties, which is their primary function.

### **3. Simplified reporting**

The United States welcomes the steps that the treaty bodies have taken to offer simplified reporting procedures to States consistent with Resolution 68/268 and the commitment of the treaty body Chairs, as expressed in their July 2019 position paper, to offer simplified reporting procedures to all States for periodic reports. Simplified reporting procedures were at the forefront of the reforms Resolution 68/268 sought to advance because, by reducing the burden on reporting States and improving the efficiency of the treaty bodies' review process, simplified reporting procedures can help to improve compliance with States' reporting obligations, which is a significant challenge to the current system. We are pleased, in particular, by the steps the Human Rights Committee has taken by making "opt-out" simplified reporting universal, even for initial reports, and we would encourage the cofacilitators to explore means of building on this progress, including, for instance, by making "opt-out" simplified reporting universal across the treaty bodies and ultimately phasing out the "opt-out" mechanism after one or two reporting cycles.

We are similarly encouraged by the progress that States have made in submitting, and updating as appropriate, common core documents to the treaty bodies and believe that these efforts have made States' reports more focused and, in turn, have made the treaty body reporting process more efficient and effective. The cofacilitators should encourage all States to continue to submit common core documents and to update them regularly as appropriate.

### **4. Coordinated and predictable calendars**

The treaty bodies should, as they committed to do in the July 2019 position paper, put in place a coordinated and fixed calendar that takes into account the review of all UN Member States under the Universal Periodic Review (UPR). With the certainty that comes from a predictable calendar, States will be in a better position to plan and draft their reports, and prepare for the oral review, knowing far in advance when these items will need to be completed. States will be able to better focus their energy and resources if the due dates for the reports are as spread out as possible considering the number of treaties to which the State in question is a party. States' reports should, as a result, be better and more complete, and the oral review more substantive and efficient.

States should be held to account for the reporting obligations they have voluntarily undertaken by ratifying human rights treaties. It is regrettably a common practice among many States to ratify a large number of human rights treaties without any intention of abiding by all the

obligations contained therein, or an appreciation for the significance of the reporting obligations undertaken. In an effort to encourage compliance with their reporting obligations, the treaty bodies should review these States parties just as they do States parties that submit reports. Like the UPR, reviews should be universal for the membership of a particular treaty.

While there is understandable reluctance among some to the idea of spacing out reviews by all treaty bodies to as much as eight years, the reality of the challenges facing the treaty body system leave few, if any, viable alternatives. In that vein, the United States welcomes the commitment of the Covenant Committees, expressed in the treaty body Chairs' July 2019 position paper and the Human Rights Committee's July 2019 decision, to review countries on an 8-year cycle and synchronize the timing of their reviews. However, recognizing the increasing number of treaty ratifications and the generally low reporting compliance rate among States, the cofacilitators should urge the Convention Committees to consider adopting longer cycles than 4 years. Even where the relevant treaty may call for a shorter review cycle, there is precedent for treaty bodies to request consolidated periodic reports and presentations, as appropriate. Accordingly, we would encourage the cofacilitators to explore similarly flexible approaches.

#### **5. Alignment of other working methods**

The treaty body chairs' July 2019 position paper sets forth numerous other commitments toward alignment of working methods that represent a positive step forward. Among other things, lists of issues prior to reporting will be limited to 25 to 30 issues; concluding observations and recommendations will follow an aligned methodology and be short, concrete, and focused on the most pressing human rights concerns; and treaty bodies will communicate and coordinate with each other regularly in an effort to avoid unnecessary overlap or duplication in States parties' respective reviews under different treaties.

While these are laudable goals, the treaty bodies should be urged to sharpen their focus as much as possible by restricting lists of issues prior to reporting and restricting concluding observations and recommendations to no more than 20 issues. We would note, moreover, that most of this cross-treaty body alignment has yet to occur, as most treaty bodies have not yet implemented these commitments in their internal procedures. The treaty bodies should be urged to follow through with implementation of the July 2019 position paper without further delay.

On the question of how the treaty bodies may achieve better communication and coordination, the cofacilitators should explore the idea of designating members from each treaty body to be responsible for liaising with counterparts in other treaty bodies about the reporting of each State party. While each treaty body is and should remain independent, the human rights issues they cover—especially when viewed through the expansive lens that many of the treaty bodies have adopted—implicate obligations across human rights treaties. Experience has shown that the treaty bodies are far less effective and the reporting process far less productive when the treaty bodies operate in isolation from one another and stray from the core issues implicated by the treaty obligations each body is responsible for monitoring.

#### **6. Participation of civil society**

While States parties, as the entities that bear obligations under the human rights treaties, are the primary interlocutors with the treaty bodies, civil society organizations also play an indispensable role. Most importantly, civil society organizations provide the treaty bodies with information about the situation on the ground in the State under review, allowing the treaty bodies to have a much fuller picture of the human rights landscape. Civil society's role is not, and should not be seen as, adversarial with respect to the State under review. Their roles are complementary, and the State always retains the ability to respond to or refute any information

provided by civil society it views as erroneous or incomplete. Reprisals against civil society for participation in UN treaty body reviews are unacceptable and should be reported to UN leadership.

The cofacilitators should detail in their report the ways in which civil society adds value to the work done by the treaty bodies. They should also emphasize that it is imperative that States engage in no acts of intimidation or retaliation against civil society members or human rights defenders who provide information to treaty bodies, and that other States should not tolerate any acts of intimidation or retaliation.

#### **7. Other matters**

The cofacilitators should look closely at the feasibility and cost implications of some of the other ideas that have been proposed in the course of the current review and the dialogues that preceded it in Geneva and New York over the past year. For example, the July 2019 treaty body Chairs' position paper and the Human Rights Committee's July 2019 decision raise the prospect of *in situ* reviews. While these may be appealing in theory because they bring the treaty body members closer to the individuals affected by possible human rights violations and abuses, the resource implications and logistical burdens of regular *in situ* reviews may prove prohibitive, especially in the current environment. States parties' and treaty bodies' energies should be focused on those solutions most likely to result in greater efficiency and effectiveness.

The possibility of updating or revisiting the formula for allocating meeting time set out in Resolution 68/268 has also been raised during the course of this review and the preceding dialogues. We note, for instance, that the Secretary General addressed this issue in his January 2020 report and that the Human Rights Committee recommended adjustments to the formula in its July 2019 decision. We are cognizant of the growing demands on the treaty bodies, given the increasing number of ratifications by States and increasing number of individual communications received by the relevant committees, while mindful of the finite resources available to the treaty body system and the potential resource implications of any proposed modifications to the formula. Accordingly, the co-facilitators may wish to explore with States whether the formula in Resolution 68/268 remains the most appropriate one.

\*\*\*

Excellencies, we stand ready, with our counterparts in Geneva, to continue to engage in these discussions with you in advance of your upcoming report. We welcome your stated commitment to consult widely with civil society and the treaty body members themselves, as both are critical stakeholders in this review process and their voices must also be heard.

\* \* \* \*

Attorney-Adviser Brian Kelly delivered the intervention of the United States during the September 11, 2020 meeting with co-facilitators of the 2020 treaty body review process in New York. The U.S. intervention follows.

---

\* \* \* \*

Thank you your excellencies for your work on this process. We know how important it is and we express our appreciation for your work. We look forward to seeing the report next week.

The United States strongly supports the work of the treaty bodies in general and regards them as an important component of the promotion and protection of human rights globally. We have been integrally involved in conversations about treaty body reform since well before Resolution 68/268, and we welcomed this review process as an opportunity to look comprehensively at the benefits brought by 68/268 as well as areas where it may have fallen short or where updates may be warranted.

We would take this opportunity once again to emphasize the importance of the independence and neutrality of the treaty bodies and note that a number of the issues discussed during this process are within the purview of the treaty bodies themselves to undertake. Throughout this process, we have expressed our view that it not be used as an excuse by States to encroach on the independence of the treaty bodies or to evade appropriate scrutiny of their compliance with their human rights obligations.

We are pleased to hear the emphasis on a number of the issues you summarized at the outset of your briefing, including with respect to the alignment and harmonization of working methods, fixed calendars, a modernized case management system, and accessibility, including for persons with disabilities, and ensuring that critically important voices from civil society and human rights defenders are heard in the treaty review process.

Civil society plays an indispensable role in State Party reviews, as we and others have repeatedly explained in this process. States have nothing to fear from a full airing of views by civil society or treaty body members themselves—they may always refute any assertions they disagree with. Dialogues should be open and transparent; no participant should be silenced.” We again emphasize that reprisals against civil society for participation in treaty body reviews are unacceptable.

We look forward to the release of the report and reading it in more detail. Thank you.

\* \* \* \*

## **B. DISCRIMINATION**

### **1. Race**

#### ***a. CERD Committee assertion of jurisdiction over Palestinian communication against Israel***

On January 6, 2020, the United States issued a statement on the decision of the Committee on the Elimination of Racial Discrimination (“CERD Committee”) to exercise jurisdiction over the inter-state communication submitted by the “State of Palestine” against Israel under Article 11(2) of the CERD Convention. The U.S. statement is excerpted below and available at <https://geneva.usmission.gov/2020/01/06/statement-on-the-decision-of-cerd-regarding-jurisdiction-over-an-inter-state-communication-against-israel/>.

\* \* \* \*

Shortly after the deposit of an instrument of accession to the CERD with respect to the “State of Palestine,” Israel communicated to the depositary that “[t]he Government of Israel does not recognize ‘Palestine’ as a State, and wishes to place on record, for the sake of clarity, its position that it does not consider ‘Palestine’ a party to the Convention and regards the Palestinian request for accession as being without legal validity and without effect upon Israel’s treaty relations under the Convention.”

The Committee has rightly “acknowledge[d] that under general international treaty law, a State Party to a multilateral treaty may exclude treaty relations with an entity it does not recognize, through a unilateral statement.” However, in determining nonetheless that it has jurisdiction to consider the communication, the Committee has wrongly asserted that this principle of treaty law does not apply, on the grounds that human rights treaties, and the CERD in particular, are for “the common good.” This legally incorrect assertion ignores established rules of treaty interpretation, a conclusion also reached by five members of the Committee in a dissenting opinion.

Ambassador Andrew Bremberg, noting his concern with the decision, stated, “The Committee’s disregard for treaty law raises serious questions about the legitimacy of this process. The United States will continue to advocate for fair treatment for Israel in this and other international fora.”

\* \* \* \*

**b. Resolution on the “International Day for People of African Descent”**

The U.S. Mission to the UN delivered an explanation of position on the "International Day for People of African Descent" resolution during the meetings of the Third Committee in November 2020. The United States dissociated from consensus on preambular paragraph 5 of the resolution, but supported the resolution otherwise. The U.S. explanation of position follows.

---

\* \* \* \*

The United States remains firmly committed to addressing issues of racism and racial discrimination, both within our borders and around the world. No one should be denied their fundamental freedoms and human rights because of their race or ethnicity. We look forward to continuing to work with the UN to promote respect for the human rights and fundamental freedoms of all persons.

However, the United States must dissociate from preambular paragraph 5, because it distracts from the intent of this important resolution by focusing on the Human Rights Council’s divisive June 2020 resolution that targeted the United States’ record on policing and race. In his June 20 statement, Secretary Pompeo criticized the Council’s failure to urge authoritarian regimes to hold their nations to the same high standards of accountability and transparency as the United States applies to itself. As Secretary Pompeo said, the United States “is serious about holding individuals and institutions accountable, and our democracy allows us to do so.”

In addition, we are concerned with this resolution's reference to and incorporation of language from the Durban Declaration and Programme of Action, which includes endorsement of overbroad restrictions on freedom of expression and gives vent to anti-Israel and anti-Semitic voices. The United States recognizes the pernicious effects of racism throughout society and is committed to working fully with the multilateral system to continue to make progress in this area in more inclusive, non-divisive, and constructive ways.

With regard to this resolution's references to the 2030 Agenda for Sustainable Development, we addressed our concerns in a previous statement on Third Committee resolutions that we delivered on November 13.

\* \* \* \*

**c. *Resolution on the Durban Declaration and Program of Action***

On November 19, 2020, Acting U.S. Representative to ECOSOC Courtney R. Nemroff provided the explanation of the U.S. "no" vote for the resolution on the Durban Declaration and Program of Action. The U.S. statement outlines long-standing concerns regarding anti-Semitism and freedom of expression restrictions in the underlying Durban documents, the resolution's avoidance of China's mistreatment of Uyghurs, and the new High Level Week event at the next session of the UN General Assembly to commemorate the 2001 Durban Conference. The U.S. explanation of vote follows and is available at <https://usun.usmission.gov/explanation-of-vote-on-a-resolution-on-the-durban-declaration-and-program-of-action/>. The Third Committee adopted the resolution on the Durban Declaration.

\* \* \* \*

The United States remains firmly committed to countering racism and racial discrimination in all its forms. Indeed, we recognize a special obligation to do so given historical injustices perpetrated during past eras of colonial expansion into indigenous communities, slavery, and the Jim Crow period. Our transparency, commitment to a free press, and insistence on ensuring that justice is served allow the world to witness our challenges and contribute to our efforts to find solutions. These values, often discussed in multilateral organizations, are fundamental to our nation. We pledge to continue our work with civil society, international mechanisms, and all nations of goodwill to combat the consequences of this legacy of injustice.

As a State Party to the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the United States believes the CERD provides comprehensive protections in this area and constitutes the most relevant international framework to address all forms of racial discrimination. We continue to raise the profile of, and participate in, activities in support of the International Decade for People of African Descent. In addition, we remain deeply concerned about speech that advocates national, racial, or religious hatred, particularly when it constitutes discrimination, hostility, or incitement to violence. From our own experience and history, the United States remains convinced that the best antidote to offensive speech is not a ban and punishment, but a combination of robust legal protections against discrimination and



hate crimes; proactive government outreach to racial and religious minority communities; and the vigorous protection of freedom of expression, both on- and off-line.

As in similar years, however, we regret that we cannot support this resolution—on such an important topic—because the text is not genuinely focused on countering racism, racial discrimination, xenophobia and related intolerance. Among our concerns about the resolution are its endorsements of the Durban Declaration and Program of Action (DDPA), the outcome of the Durban review conference and its endorsement of overbroad restrictions on freedom of speech and expression. We reject any effort to advance the “full implementation” of the DDPA. We believe this resolution serves as a vehicle to prolong the divisions caused by the original Durban conference and its follow-up mechanisms, rather than providing a comprehensive and inclusive way forward for the international community to counter the scourge of racism and racial discrimination.

In addition, the United States cannot accept the resolution’s call for States to consider withdrawing reservations to Article 4 of the CERD. We note, further, that this resolution has no effect as a matter of international law. We also categorically reject the resolution’s call for “former colonial Powers” to provide reparations “consistent with” the DDPA.

The United States notes with concern that the resolution remains silent on the issue of oppression of members of ethnic minority groups in the People’s Republic of China, which regularly oppresses its own people, including members of minority groups of Asian, Turkic, and other descent. In Xinjiang, a merciless crackdown has resulted in the mass arbitrary detention of more than one million Uyghur Muslims and members of other ethnic and religious minority groups, forced labor, forced sterilizations, and other serious human rights abuses.

In addition to our longstanding concerns with this resolution, we are troubled that it would also create a new High-Level Week official event during the 76th General Assembly commemorating the Durban Declaration and Program of Action. It is inappropriate for the General Assembly to host this divisive and costly event.

For these reasons, we must again vote against this resolution, and we urge other delegations to do the same.

\* \* \* \*

## **2. Gender**

### ***a. Women, Peace, and Security***

On June 11, 2020, the Department of State released its plan to implement the U.S. strategy on Women, Peace, and Security. The implementation plan is available at <https://2017-2021.state.gov/the-department-of-states-plan-to-implement-the-u-s-strategy-on-women-peace-and-security/>. The press statement announcing the release of the plan is available at <https://2017-2021.state.gov/state-department-releases-women-peace-and-security-implementation-plan/>. On June 12, 2020, Ambassador-at-Large for Global Women’s Issues Kelley E. Currie held a special briefing on the implementation plan, which is available at <https://2017-2021.state.gov/briefing-with-ambassador-at-large-for-global-womens-issues-kelley-currie-on-the-women-peace-and-security-implementation-plan/>.

**b. Commission on Status of Women**

On March 9, 2020, Ambassador Cherith Norman Chalet, acting deputy permanent representative for the U.S. Mission to the UN, delivered the U.S. explanation of position on the political declaration at the 2020 Commission on the Status of Women (“CSW”). A longer U.S. statement was posted online, at <https://go.usa.gov/xdssF>. Ambassador Chalet’s remarks are available at <https://usun.usmission.gov/csw-2020-u-s-eop-for-political-declaration-as-delivered/> and excerpted below.

---

\* \* \* \*

Enhancing women’s participation in power structures across economic, political, and social spheres is critical to advancing human dignity and enabling societies to prosper. The United States is proud to be leader in the promotion and protection of human rights of women and girls, at home and abroad.

We are working to ensure that women worldwide enjoy the opportunity to participate fully in their communities and nations, just as women do in our country.

We hope today’s declaration will advance global cooperation toward these goals. The declaration is not perfect but largely captures our priorities and commitments to continued progress in enhancing women’s rights around the world.

The United States is committed to ensuring women all around the world can hold and lead from both unofficial and official seats of power in their communities and on the international stage. We strongly supported the passage of Security Council Resolution 1325 20 years ago, which recognized women’s essential contributions to establishing and maintaining global peace and security. Although this is not specifically mentioned in the declaration, my delegation notes this of our efforts to level the playing field.

A range of stakeholders play a critical role in realizing the human rights of women and girls, including faith-based and civil society organizations, the family, the private sector, academia, unions, and media. Civil society including those who fight for human rights continue to be important partners for all of us. To this end, we will continue to press for recognition in future declarations and UN documents.

In closing, as we mark 25 years since the Beijing Declaration we still have work to do as to ensure that every woman and girl has the opportunity to succeed. The United States will continue to lead, through the empowerment of its own citizens and in partnership with countries who recognize the wisdom and value of empowering all of their citizens.

\* \* \* \*

On July 14, 2020, the United States submitted an explanation of position for the record on the CSW resolution entitled, “Release of Women and Children Taken Hostage in Armed Conflicts.” The U.S. statement is excerpted below and available at <https://usun.usmission.gov/explanation-of-position-for-the-commission-on-the-status-of-womens-resolution-titled-release-of-women-and-children-taken-hostage-including-those-su/>.

\* \* \* \*

We are pleased that this resolution contains not only the abuses and violations of international law that women and children taken hostage face but also specific recommendations for addressing them, including through accountability measures and prosecution of perpetrators.

The United States is also pleased that the final resolution text contains an explicit reference to UN Security Council Resolution 1325. This resolution has remained pivotal to addressing issues women taken hostage face in the 20 years since the adoption of the Women, Peace and Security agenda.

While we join consensus, my delegation also takes this opportunity to express some concerns we have with the final text.

The United States understands that this resolution does not change the current state of conventional or customary international law, and we do not read it to imply that states must join or implement obligations under international instruments to which they are not a party. The United States understands that any reaffirmation of prior documents applies only to those states that affirmed them initially, and, in the case of international treaties or conventions, to those States who are party.

Women and children bear a number of vulnerabilities when taken hostage, some of which include starvation, restriction from practicing their religion, physical abuse, forced labor, exposure to violence, including sexual violence, and/or forced radicalization. The United States encourages a broad view of women’s needs and vulnerabilities, including but not limited to “sexual violence and reproductive health concerns.”

\* \* \* \*

**c. Geneva Consensus Declaration on Promoting Women’s Health and Strengthening the Family**

On October 22, 2020, Secretary Pompeo participated in a signing ceremony of the “Geneva Consensus Declaration on Promoting Women’s Health and Strengthening the Family” at the Department of Health and Human Services (“HHS”), hosted by HHS Secretary Alex Azar. The Geneva Consensus Declaration is available at <https://www.hhs.gov/sites/default/files/geneva-consensus-declaration-english.pdf>. The United States, Brazil, Egypt, Hungary, Indonesia, and Uganda co-sponsored the non-binding declaration, which was signed by 34 countries. Paragraph 4 of the Geneva Consensus Declaration follows:

*[We, ministers and high representatives of Governments,] Emphasize that “in no case should abortion be promoted as a method of family planning” and that “any measures or changes related to abortion within the health system can only be determined at the national or local level according to the national legislative process”; Reaffirm that “the child... needs special safeguards and care... before*

as well as after birth” and “special measures of protection and assistance should be taken on behalf of all children,” based on the principle of the best interest of the child;\*

### 3. Age

On November 13, 2020, Jason Mack, counselor for economic and social affairs for the U.S. Mission to the UN, delivered the U.S. explanation of position on a resolution entitled “Follow-Up to the Second World Assembly on Ageing.” He also delivered an abbreviated version of the general statement for the United States on cross-cutting issues (the full version of which is included in section A.3., *supra*, and is referred to as the general statement of November 13, 2020). The portion of the statement on aging is excerpted below and the statement as delivered is available at <https://usun.usmission.gov/explanation-of-position-on-a-resolution-entitled-follow-up-to-the-second-world-assembly-on-ageing-and-general-statement-on-cross-cutting-issues/>.

\* \* \* \*

We thank the G-77 for its resolution on “Follow-Up to the Second World Assembly on Ageing.” The U.S. is pleased to join consensus on the resolution.

The resolution calls upon member states to act to protect and assist older persons in emergency situations, in accordance with the Madrid Plan of Action and the Sendai Framework (OP 38). We note that these two documents are voluntary, and that there are other documents which also figure in protecting and assisting persons, including older persons, in humanitarian crisis situations. The Guidelines to Protect Migrants Experiencing Conflict or Natural Disaster and the Guiding Principles on Internal Displacement are two prominent examples.

The United States would like to underscore the importance of promoting the Fundamental Principles and Rights at Work for all workers.

\* \* \* \*

---

\* Editor’s note: On January 28, 2021, President Biden issued a “Memorandum on Protecting Women’s Health at Home and Abroad,” which, among other things, directs the State Department and HHS to “withdraw co-sponsorship and signature from the Geneva Consensus Declaration . . . and notify other co-sponsors and signatories to the Declaration and other appropriate parties of the United States’ withdrawal.” The Presidential Memorandum is available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/28/memorandum-on-protecting-womens-health-at-home-and-abroad/>.

## C. CHILDREN

### Children in Armed Conflict

Consistent with the Child Soldiers Prevention Act of 2008 (“CSPA”), Title IV of Public Law 110-457, as amended, the State Department’s 2020 Trafficking in Persons (“TIP”) report lists the foreign governments that have violated the standards under the CSPA, *i.e.* governments of countries that have been “clearly identified” during the previous year as “having governmental armed forces or government-supported armed groups, including paramilitaries, militias, or civil defense forces, that recruit and use child soldiers,” as defined in the CSPA. Those so identified in the 2020 report are the governments of Afghanistan, Burma, Cameroon, the Democratic Republic of the Congo, Iran, Iraq, Libya, Mali, Nigeria, Somalia, South Sudan, Sudan, Syria, and Yemen.

The CSPA list is included in the TIP report, available at <https://www.state.gov/reports/2020-trafficking-in-persons-report/>. For additional discussion of the TIP report and related issues, see Chapter 3.B.3. Absent further action by the President, the foreign governments listed in accordance with the CSPA are subject to restrictions applicable to certain security assistance and licenses for direct commercial sales of military equipment for the subsequent fiscal year. In a memorandum for the Secretary of State dated October 14, 2020, 85 Fed. Reg. 69,117 (Oct. 30, 2020), the President determined that:

it is in the national interest of the United States to waive the application of the prohibition under section 404(a) of the CSPA with respect to Afghanistan, Cameroon, Iraq, Libya, and Nigeria; to waive the application of the prohibition in section 404(a) of the CSPA with respect to the Democratic Republic of the Congo to allow for the provision of International Military Education and Training (IMET) and Peacekeeping Operations (PKO) assistance, to the extent that the CSPA would restrict such assistance or support; to waive the application of the prohibition in section 404(a) of the CSPA with respect to Somalia to allow for the provision of IMET and PKO assistance and support provided pursuant to 10 U.S.C. 333, to the extent that the CSPA would restrict such assistance or support; to waive the application of the prohibition in section 404(a) of the CSPA with respect to South Sudan to allow for the provision of PKO assistance, to the extent that the CSPA would restrict such assistance; and, to waive the application of the prohibition in section 404(a) of the CSPA with respect to Yemen to allow for the provision of PKO and IMET assistance and support provided pursuant to 10 U.S.C. 333, to the extent that the CSPA would restrict such assistance or support...

On February 12, 2020, Ambassador Chalet delivered remarks at a UN Security Council briefing on children and armed conflict. Her remarks are excerpted below and available at <https://usun.usmission.gov/remarks-at-a-un-security-council-briefing-on-children-and-armed-conflict/>.

---

\* \* \* \*

There is perhaps no group of people harmed more by the absence of peace and security than children. In most cases, they are the most vulnerable among us. And so, we deeply appreciate the efforts of Belgium to highlight global child protection, including through leading consensus on conclusions on Syria, Burma, and Sudan, and by chairing the Security Council's Working Group on Children and Armed Conflict since last year.

We also thank Secretary-General Guterres, and Commissioner Chergui, and Ms. Becker, for your briefings today. Yesterday, Ambassador Craft noted how we allocate our time defines what we believe is important, and your presence here today affirms the importance of integrating the Children and Armed Conflict agenda into our discussions on peace processes and conflict prevention, and we thank you. The importance of doing so was also reaffirmed by the Council this past August, as it has been by members in numerous resolutions and presidential statements since 1999. In August, we reiterated that those who suffer the most in war are often children and that our discussions about armed conflict cannot ignore the devastating impact it has on them. We are hopeful that both the frequency of the Council's Working Group meetings and SRSG Gamba's engagement and advocacy with parties to armed conflict will increase. Continued meetings, signed action plans, and briefings like today will all help generate needed progress.

We should see the Council's unity on this issue as an opportunity to better protect children from armed conflict. By engaging with armed groups, building trust, and offering alternatives to violence as allowed by our mandate, the UN and other regional organizations – including the AU and the EU – can create new possibilities for sustainable peace. Today's adoption of a Presidential Statement recognizes just that. As we see in countries around the world, conflict prevents children from achieving their potential and saddles them with burdens that no young person should have to carry. For example, in South Sudan, most children have never known peace – only the threat of violence, abduction, and abuse. A pause in political violence has created space for advocacy, including the Action Plan signed last week. But the best protection for children in South Sudan will not come from an action plan. It will come from President Kiir and Dr. Machar sitting down and negotiating a lasting peace. Today, we call on South Sudan's leaders to finally put aside their differences and prioritize the hopes of their nation's children.

In Colombia, the United States is dismayed by continuing violations and abuses against children. Yet recent trends give reason for optimism, as the Final Peace Agreement and the demobilization of the FARC are clearly improving circumstances for the nation's young people. Amid the regional fallout of the crisis in Venezuela, we also applaud President Duque's efforts to protect the children of Venezuelan refugees, including by granting citizenship to those born in Colombia. Additionally, in the DRC, UN efforts to extricate child combatants from armed groups have led to the signing of agreements to disarm and demobilize. And in the Central African Republic, MINUSCA's engagement with armed groups appear to offer the same inroads for education and change.

Beyond country situations on the Children and Armed Conflict agenda, we are deeply concerned that at least 600,000 children in Cameroon have not been able to safely attend schools in the country's English-speaking regions for more than three years. This is a stark reminder that

mediation requires follow-through to prevent children from once again falling prey to the deadly cycles of violence. This Council has a duty to speak out on behalf of children, for they are our future, and our hope. But to realize a future of greater safety and prosperity for all children, there must be meaningful action. This is what makes the Children and Armed Conflict agenda so critical, and we are grateful for the opportunity to discuss its implementation today.

\* \* \* \*

Ambassador Chalet delivered further remarks on September 10, 2020 at a UN Security Council open debate on children and armed conflict. Those remarks are available at <https://usun.usmission.gov/remarks-at-a-un-security-council-open-debate-on-children-and-armed-conflict-2/> and excerpted below.

---

\* \* \* \*

The United States remains fully committed to supporting the UN's critical work to address the effects of conflict on children. There is no issue more important than those affecting the next generations of leaders and citizens in the world. It is only when we support every child in reaching their fullest potential that we will create a safer and more secure world.

Our support also extends to the protection of families, teachers, and schools whenever possible so that children can retain safe and equitable access to quality education.

As Rimana highlighted earlier, schools should provide a safe space free from the threat of violence. When protected, schools also serve as a hub for other life-saving and life-sustaining services. Furthermore, safe access to education is critical to breaking the cycles of poverty and social grievance that underpin countries' vulnerability to violent extremism and future conflict. Therefore, we cannot approach the pursuit of peace and international security without considering the consequences of failures to uphold the laws that protect children and schools.

The irony, of course, is that terrorists often deliberately target or use schools because schools are critical to building resilient communities and also represent government institutions. This lack of respect for the civilian character of schools can place them at heightened risk of attack. In some cases, malign actors use education to perpetuate prejudice, intolerance, and distorted views of history or of others in their community. Meanwhile, armed groups also target schools and routes to schools to abduct children and youth, often for the purpose of recruiting them as soldiers or into forced marriage, sexual slavery, or other horrific activities.

In this regard, I do want to highlight that women and girls are disproportionately affected by sexual violence and early and forced marriage amid conflict, and tend to be deliberately targeted by groups that oppose gender equity in education. The threat of rape, sexual assault, and abduction on their way to school, or because they want to seek an education severely constrains women's and girls' mobility and, along with other harmful gender norms, often compels them to stay home.

We note the Council's Working Group on Children and Armed Conflict has made progress on numerous conclusions documents, including those recently finalized on Iraq, Colombia, and Somalia. We very much appreciate Belgium's work on this area. This important work goes on as we continue to discuss Sudan. We also appreciate Special Representative

Gamba's ongoing commitment to preparing the reports including important details on abuses and violations against children. As we know, however, our work is far from over.

In the Central Sahel, for example, attacks on children continue to increase; close to 5 million children are in need of humanitarian assistance. The surge of violence across Burkina Faso, Mali, and Niger is having a devastating impact on children's survival, education, protection, and development. Hundreds of children, as we've heard even this morning, in the region have been killed, maimed, or forcibly separated from their families, while thousands of school closures have affected almost 650,000 children. The violence prompting these closures must stop immediately, its perpetrators must be brought to justice, and children's access to education must be restored.

These tragedies in the Sahel illuminate the fact that armed conflict impacts children in ways beyond affecting their immediate safety. These children require holistic interventions that support their ability to contribute to peaceful societies, including the provision of equal access to education, age-appropriate vocational training, and job opportunities for both boys and girls. They also need familiar, safe, and nurturing routines – particularly within families and in supportive school environments – to heal, build resilience, and cope with stress and trauma.

That is why the U.S. government prioritizes not only life-saving child protection programming but efforts that support children's longer-term recovery, including through education. To demonstrate the U.S. government's commitment to the children, families, and communities of the Sahel in this regard, we recently provided \$2.3 million to extend Education Cannot Wait's Burkina Faso First Emergency Response program to sustain education services in conflict-affected communities.

\* \* \* \*

#### D. SELF-DETERMINATION

On September 14, 2020, the U.S. explanation of vote on a resolution to support non-self-governing territories was delivered by Jason Mack, counselor for economic and social affairs. His statement is excerpted below and available at <https://usun.usmission.gov/explanation-of-vote-on-the-resolution-on-support-to-non-self-governing-territories-by-the-specialized-agencies-and-international-institutions-associat/>.

\* \* \* \*

The resolution now before the Council is similar to resolutions considered by ECOSOC since 2006 and identical to the one considered in the 2019 ECOSOC year. The United States will maintain its past practice and abstain on this vote.

We agree in principle that UN funds, programs, and specialized agencies can provide useful support to territories that are not UN members. However, the Administering Power has the sovereign responsibility to determine the manner in which its territories can participate in the UN system. We reiterate that the domestic laws and policies of a territory's Administering Power determine whether such support is allowed.



In the United States, the Constitution states that the sole authority for the conduct of foreign relations, including the foreign relations of U.S. territories, rests with the federal government. Consequently, we object to language in this resolution that is inconsistent with U.S. constitutional arrangements, and therefore cannot support the resolution as it currently stands.

\* \* \*

On November 19, 2020, Courtney R. Nemroff, acting U.S. representative to the Economic and Social Council, delivered the U.S. explanation of vote on a resolution on the universal right to self-determination. Her statement follows, and is available at <https://usun.usmission.gov/explanation-of-vote-on-a-resolution-on-the-universal-right-to-self-determination/>.

The United States recognizes the importance of the right of peoples to self-determination and therefore joins consensus on this resolution. We note, however, as frequently stated by the United States and other delegations, that this resolution contains many misstatements of international law and is inconsistent with current state practice.

We also refer to our general statement made on November 13.

## **E. ECONOMIC, SOCIAL, AND CULTURAL RIGHTS**

### **1. Safe Drinking Water and Sanitation**

On November 24, 2020, the United States provided a statement on a Second Committee resolution on “Water for Sustainable Development,” which is excerpted below and available at [https://usun.usmission.gov/explanation-of-position-on-a-resolution-on-water-for-sustainable-development/?\\_ga=2.84185050.2100943753.1613669895-1488883581.1611183416](https://usun.usmission.gov/explanation-of-position-on-a-resolution-on-water-for-sustainable-development/?_ga=2.84185050.2100943753.1613669895-1488883581.1611183416).

---

\* \* \* \*

The United States appreciates the outstanding work of the co-facilitators—Tajikistan and the Netherlands—and is happy to co-sponsor this resolution, which lays out the modalities for the 2023 conference. We also appreciate the efforts of the co-hosts to ensure the conference will be open to participation of all members of civil society, in recognition of the important role they play in achieving results on the ground, and the valuable voice they can contribute to intergovernmental dialogues. You will find the United States [a] ready and willing partner to ensure this event is a success.

The United States joins consensus on this resolution with the express understanding that PP8 does not imply that States must implement obligations under human rights instruments to which they are not a party. The United States is not a party to the International Covenant on Economic, Social, and Cultural Rights (ICESR), and the rights contained therein are not justiciable in U.S. courts. In addition, we do not believe that a State’s duty to protect the right to

life under the International Covenant on Civil and Political Rights (ICCPR) would extend to addressing general conditions in society or nature that may eventually threaten life or prevent individuals from enjoying an adequate standard of living.

Finally, regarding references to the 2030 Agenda for Sustainable Development, the Addis Ababa Action Agenda, the Paris Agreement, climate change, reports of the Intergovernmental Panel on Climate Change, the characterization of technology transfer, and build back better we addressed our concerns in our General Statement delivered on November 18, 2020.

\* \* \* \*

## 2. Food

On November 17, 2020, Mordica Simpson, U.S. advisor for economic and social affairs for the U.S. Mission to the UN, provided the U.S. explanation of vote on a resolution on the right to food. Her statement is excerpted below and available at <https://usun.usmission.gov/explanation-of-vote-on-a-resolution-on-the-right-to-food/>.

\* \* \* \*

This Committee is meeting at a time when the international community is confronting one of the most serious food-security emergencies in modern history. Hunger is on the rise for the third year in a row, after a decade of progress. And now, for communities already experiencing poverty and hunger, the COVID-19 pandemic is disproportionately affecting lives by harming how people provide for themselves and feed their families – both today and long after the pandemic subsides. More than 35 million people in South Sudan, Somalia, the Lake Chad Basin, and Yemen are facing severe food insecurity exacerbated by the global pandemic, and in the case of Yemen, potential famine. The United States remains fully engaged and committed to addressing these complex crises.

This resolution rightfully acknowledges the hardships millions of people are facing, and importantly calls on States to support the emergency humanitarian appeals of the UN. However, the resolution also contains many unbalanced, inaccurate, and unwise provisions the United States cannot support. This resolution does not articulate meaningful solutions for preventing hunger and malnutrition or avoiding their devastating consequences.

The United States is concerned that the concept of “food sovereignty” could justify protectionism or other restrictive import or export policies that will have negative consequences for food security, sustainability, and income growth. Improved access to local, regional, and global markets helps ensure food is available to the people who need it most and smooths price volatility. Food security depends on appropriate domestic action by governments, including regulatory and market reforms, that is consistent with international commitments.

We also do not accept any reading of this resolution or related documents that would suggest that States have particular extraterritorial obligations arising from any concept of a “right to food,” which we do not recognize and has no definition in international law.

For these reasons, we request a vote and we will vote against this resolution.

\* \* \* \*

## F. LABOR

### **Postponing the International Labor Conference to June 2021**

Due to the COVID-19 pandemic, the Director-General of the International Labor Organization (“ILO”) recommended postponing the 2020 International Labor Conference (“ILC”) to June 2021. The ILO Secretariat drafted a paper justifying postponement on the basis of force majeure; noting that available alternatives—such as a virtual or reduced ILC—were not feasible; and citing, as precedent, the postponement of the 26th Session of the ILC from 1940 to 1944 due to World War II. Postponement was approved by a vote of 88 in favor, one abstention, and no votes against, with 33 members not responding.

The United States issued the following explanation of vote (“EOV”), available at <https://geneva.usmission.gov/2020/04/24/u-s-explanation-of-vote-in-favor-of-postponing-the-international-labor-conference-to-june-2021/>:

Through our vote today, as a Governing Body member, the United States expresses its agreement with the recommendation to postpone the 109th Session of the International Labor Conference until June 2021. We concur that the unforeseeable situation prevailing globally as a result of the COVID-19 pandemic renders it materially impossible to hold the Conference this year, not least owing to the practical inability of conducting virtually a conference that involves the participation of thousands of government, employer, and worker representatives from nearly all 187 ILO member States. Our vote in favor of postponement should be understood in this unique context, and should not be regarded as support for the idea that the Governing Body possesses a general implied power to dispense with annual sessions of the Conference notwithstanding Article 3 of the ILO Constitution. We look forward to the day when we can again convene as an Organization to address the many important issues in the world of work.

## G. TORTURE AND EXTRAJUDICIAL KILLING

On June 26, 2020 (the anniversary of the date on which the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment came into effect), the State Department again issued a statement in support of the International Day in Support of Victims of Torture. That statement is available at <https://2017-2021.state.gov/international-day-in-support-of-victims-of-torture-2/>.

On November 19, 2020, Courtney R. Nemroff, acting U.S. representative to the Economic and Social Council, delivered the U.S. explanation of position on a resolution on extrajudicial killing in the UN Third Committee. Her statement is excerpted below and available at <https://usun.usmission.gov/explanation-of-position-on-a-resolution-on->

[extrajudicial-killings/](#). Due in part to U.S. advocacy, the resolution on extrajudicial killing was adopted with 122 countries voting “yes.” The United States succeeded in defeating an Egypt-tabled oral amendment that would have deleted references to protecting victims targeted solely because of their sexual orientation and gender identity.

---

\* \* \* \*

We join the sponsors of the text in condemning extrajudicial, summary, or arbitrary executions against any persons, irrespective of their background or status. We continue to stress that all states have obligations to protect human rights and fundamental freedoms. As such, we agree that all states should take effective action to combat all extrajudicial, summary, or arbitrary executions, including fully and transparently investigating suspected cases and by prosecuting and punishing the perpetrators in accordance with the law.

We also strongly support the existing language on civil society and human rights defenders and further welcome the new additions this year on democracy, civil society, and protection of journalists and media workers. Moreover, we strongly support the language condemning extrajudicial, summary, or arbitrary executions that target members of marginalized or vulnerable groups, including members of the LGBTI community and human rights defenders. We applaud the sponsors’ ongoing effort to reflect this support in OP7 for over a decade.

Furthermore, we agree that countries that have capital punishment must abide by their international obligations, including those related to fair trial guarantees and use of such punishment for only the most serious crimes, as outlined in the International Covenant on Civil and Political Rights (ICCPR). The United States’ understanding of this resolution is that it is not an effort to reflect or change the current state of customary law or to interpret treaty law, in particular Articles 2 and 6 of the ICCPR.

With regard to this resolution’s references to the International Criminal Court, we have addressed our concerns separately, including in a U.S. statement on November 13, 2020. As was done during Third Committee this year, the United States has consistently voted against the Resolution on the Moratorium on the Use of the Death Penalty, and we refer you to our Explanation of Vote on that resolution.

The United States fully supports the use of less-than-lethal devices when appropriate, and we have federal programs in place to encourage their use under appropriate circumstances. Many subnational law enforcement agencies also employ them. However, we cannot agree that the use of less-than-lethal devices may decrease the need to use any kind of weapon in all circumstances. In some situations, the use of less-than-lethal devices can increase the risk of injury or death to law enforcement officers. We support a balanced approach that recognizes that situations are fact-specific and that some situations may not be appropriate for less-than-lethal devices.

The use of force by law enforcement officers in peacetime in the United States is governed by the “objective reasonableness” standard set forth by the U.S. Supreme Court. Additionally, we note that use of the terms “conform” and “to ensure” suggest, incorrectly, that Member States have undertaken obligations to apply the Mandela Rules, the Code of Conduct for Law Enforcement Officials, and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, which are non-binding.

While we reaffirm our belief that country visits are an important human rights tool, U.S. federal and state prison officials cannot in all contexts grant to the Special Rapporteur the kind of access being sought.

While this resolution covers a variety of situations in which extrajudicial, summary, or arbitrary executions occur, we do not want to lose sight of the fact that there are not one, but two, bodies of international law that regulate unlawful killings of individuals by governments – international human rights law and international humanitarian law. As the resolution notes, these two bodies of law are complementary and mutually reinforcing, and set forth two legal frameworks on this issue. We also recognize that determining which international law rules apply to any particular government action can be highly fact-specific. However, international humanitarian law is the *lex specialis* during situations of armed conflict and, as such, is the controlling body of law with regard to the conduct of hostilities and the protection of war victims; and we read this text on that basis.

\* \* \* \*

## H. BUSINESS AND HUMAN RIGHTS

On July 1, 2020 the State Department issued a press statement, available at <https://2017-2021.state.gov/issuance-of-the-xinjiang-supply-chain-business-advisory/>, and a fact sheet, available at <https://2017-2021.state.gov/issuance-of-xinjiang-supply-chain-business-advisory/>, regarding the issuance of a supply chain advisory to caution against engaging in transactions with entities linked to human rights abuses in China, including forced labor in Xinjiang. The Departments of State, Treasury, Commerce, and Homeland Security jointly issued the business advisory. The fact sheet identifies three types of entities posing potential supply chain exposure, namely, those:

Assisting in developing surveillance tools for the PRC government in Xinjiang;

Relying on labor or goods sourced in Xinjiang, or from factories elsewhere in China implicated in the forced labor of individuals from Xinjiang in their supply chains, given the prevalence of forced labor and other labor abuses in the region; and

Aiding in the construction of internment facilities used to detain Uyghurs and members of other Muslim minority groups, and/or in the construction of manufacturing facilities that are in close proximity to camps operated by businesses accepting subsidies from the PRC government to subject minority groups to forced labor.

Further information is available at [www.state.gov/xinjiang-supply-chain-business-advisory/](http://www.state.gov/xinjiang-supply-chain-business-advisory/).

To follow up on the business advisory, Under Secretary of State for Economic Growth, Energy and the Environment Keith Krach co-authored with Acting Deputy Secretary for Department of Homeland Security Ken Cuccinelli an op-ed published in *The Hill* on July 17, 2020, entitled, “U.S. Businesses Must Take a Stand Against China’s

Human Rights Abuses.” The article is available at <https://2017-2021.state.gov/us-businesses-must-take-a-stand-against-chinas-human-rights-abuses/> and excerpted below.

---

\* \* \* \*

Many American brands have become household names around the globe, renowned for their exceptional quality and value. But with that visibility and consumer trust come great responsibility. American companies increasingly realize that corporate responsibility isn’t just social responsibility, it is also national security. As part of this, companies must perform human rights due diligence and ask themselves tough questions to make sure their foreign deals do not, in the words of Secretary of State Pompeo, “tighten a regime’s grip of repression.”

This is particularly true when it comes to doing business in the People’s Republic of China (PRC), given [its authoritarian surveillance practices](#) and egregious human rights abuses against its citizens, particularly against [Uyghurs and members of other Muslim minority groups in Xinjiang](#).

Businesses, countries, and citizens around the world are waking up to the truth about the Chinese Communist Party (CCP) and its efforts to coopt intellectual property and technology systems for their own pernicious ends. We have seen this from the COVID-19 pandemic to the crackdown in Hong Kong, to the skirmish at the Indian border. Now more than ever, U.S. companies that do business with Chinese companies must make sure their commerce and investments do not enable and perpetuate the PRC’s human rights abuses.

To help our companies navigate this difficult landscape, the State Department and Department of Homeland Security have joined with the Departments of the Treasury and Commerce to issue a business advisory on the risks and considerations for businesses with potential supply chain exposure to entities engaged in forced labor and other human rights abuses in Xinjiang. By following this guidance, businesses can be more confident that they are not contributing to human rights abuses in China. Specific to Xinjiang, we see at least three major risks for U.S. companies.

First, businesses may inadvertently assist the PRC government in developing surveillance tools for use in abusive practices. While most attention in recent months has focused on the million-plus Uyghurs and members of other Muslim minority groups held in internment camps, we must also remember that millions more living in the region are effectively prisoners in what can best be described as a vast, open-air detention center. These individuals are under constant watch from ubiquitous cameras that use artificial intelligence-based facial and gait recognition technologies, while local authorities monitor internet activity and collect DNA samples. There is no escape and no due process. Big Brother is always watching. And what he sees determines who goes to the camps.

A second risk is relying on labor or goods sourced in or from Xinjiang from entities implicated in the forced labor of individuals in their supply chains. The [Australian Strategic Policy Institute reported that 27 factories in nine Chinese provinces](#) — collectively claiming to be part of supply chains of more than 80 global brands — have placed Uyghurs in “potentially abusive labor transfer programs” since 2017. In early May, additional reports showed that the PRC was dramatically expanding this program far beyond its original limits.

To mitigate risks and reduce unwanted exposure, U.S. businesses can look for potential indicators of forced labor and other abuses from Chinese business partners including very few employees paying into the government social security insurance program, the hiring of workers through government recruiters, and connections to cotton manufacturing.

This introduces the third risk. Hard currency is the lifeblood of the CCP. It is not difficult to imagine how companies that do business in China may have unknowingly funded the CCP's authoritarian machine, entirely unbeknownst to their shareholders. Your boards at a minimum should disclose to your constituents the Chinese companies in which you invest, and consider divesting from or exiting businesses that pose a risk of financing China's human rights violations.

The repressive environment in Xinjiang presents unique challenges to conducting human rights due diligence. Businesses should consider the risks and determine if it is possible to mitigate them. Any U.S. business with potential supply chain links to Xinjiang should implement reasonable human rights due diligence in line with the UN Guiding Principles on Business and Human Rights and other relevant guidance.

Earlier this year when talking about the China challenge, Secretary Pompeo told Silicon Valley tech executives that it is critical that American principles and values are not sacrificed for profits. This is advice worth remembering.

Ask yourself: With whom am I dealing? And with whom are they dealing? What is a true risk-return calculus to doing business in Xinjiang, or China writ large?

Am I educating my senior executives, my board, my employees, and most of all my shareholders and investors about the choices my company faces?

What is my moral obligation and perhaps even a fiduciary duty to: a) disclose investments or involvement in Chinese companies that may be complicit in human rights abuses and b) divest from or exit these businesses?

Do human rights due diligence. Get the answers. Businesses can reaffirm corporate America's role as a powerful force for good around the world. Your companies can make a profound and enduring difference in this human rights tragedy.

\* \* \* \*

On September 30, 2020, the State Department issued "Guidance on Implementing the 'UN Guiding Principles' for Transactions Linked to Foreign Government End-Users for Products or Services with Surveillance Capabilities," available at <https://www.state.gov/key-topics-bureau-of-democracy-human-rights-and-labor/due-diligence-guidance>.

This guidance is a first-of-its-kind tool intended to provide practical and accessible human rights guidance to U.S. businesses seeking to prevent their products or services with surveillance capabilities from being misused by government end-users to commit human rights abuses.

It is meant to be an easy-to-use roadmap in line with the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for assessing the human rights impacts of relevant products or services, and evaluating a series of considerations before engaging in transactions with governments. The guidance also recommends human rights safeguards if a U.S. business considers

proceeding with a transaction, such as developing a grievance mechanism, and publicly reporting on sales practices.

Businesses that implement this guidance will be better positioned to demonstrate to their stakeholders and the public at large their commitment to respect human rights. They will be better suited to minimize reputational and operational risk. And, most importantly, they will be able to undertake more rigorous measures to mitigate the risk that their products or services will be misused to infringe on the rights of others.

On October 26, 2020, the U.S. Mission to International Organizations in Geneva issued a press release on the U.S. government's opposition to the process of working on a business and human rights treaty. The press release is excerpted below and available at <https://geneva.usmission.gov/2020/10/26/the-u-s-governments-opposition-to-the-business-and-human-rights-treaty-process/>.

---

\* \* \* \*

The U.S. government will not participate in the Open-Ended Intergovernmental Working Group (OEIGWG) session this week on the articulation of a business and human rights treaty. We continue to oppose this treaty based on its substance and the process around its development.

These treaty negotiations have been contentious and run contrary to the consensus-based, multi-stakeholder approach laid out by the UN Guiding Principles on Business and Human Rights (UNGPs) – a framework for preventing and addressing adverse human rights impacts that involve business activity. There remain a host of substantive concerns with the treaty including, but not limited to, its imposition of binding obligations on all parties; its extraterritorial application of domestic laws; and its broad criminal liability for an undefined range of human rights abuses.

We appreciate the concerns raised by some civil society participants, including those regarding access to remedy, that have motivated support for the treaty process. However, we believe that the one-size-fits-all, heavy-handed, and prescriptive approach set out by this draft treaty is not the best way to address these legitimate issues. The U.S. government is open to exploring alternative approaches that align with the UNGPs developed in collaboration with, and that ultimately reflect a broad consensus of, businesses, civil society, and other relevant stakeholders. Anything less risks undermining, rather than furthering, the important work the international community has made on the UNGPs.

June 2021 will mark one decade since the UNGPs were endorsed by consensus at the UN Human Rights Council. In this time, governments, civil society, and business have built strong foundations for the UNGPs and made important advances in disseminating good practice. The U.S. government looks forward to collaborating with the UN Business and Human Rights Working Group in its project to assess existing gaps and challenges and develop a strong vision for the next decade. We are confident that this concerted effort will help shape a strong agenda for years to come and that we will continue to build upon the remarkable progress made possible by the consensus-based approach of the UNGPs.



The U.S. government released public statements in 2018 and 2019 on the margins of the OEIGWG treaty negotiations articulating our opposition to this treaty process.

\* \* \* \*

## I. INDIGENOUS ISSUES

On November 19, 2020, Mordica Simpson, advisor for economic and social affairs for the U.S. Mission to the UN, delivered the U.S. explanation of position on a resolution on indigenous peoples. Her statement follows and is available at

<https://usun.usmission.gov/explanation-of-position-on-a-resolution-on-indigenous-peoples/>.

---

\* \* \* \*

The United States thanks Ecuador and Bolivia for their resolution entitled “Rights of Indigenous Peoples.” We are pleased to join consensus on the resolution.

The United States commends Ecuador and Bolivia for their leadership in strengthening the text this year to acknowledge the disproportionate impact of the COVID-19 pandemic on indigenous peoples, in particular those belonging to other minority groups, as well as the importance of integrating indigenous languages into global sustainable development frameworks and mechanisms and in public policies across social, economic, and political spheres. We also appreciate support for the new emphasis in operative paragraph 31 on eliminating forced labor. Because of discrimination, marginalization, poverty, and other factors, indigenous persons throughout the world continue to be subjected to forced labor.

The United States reaffirms its support for the UN Declaration on the Rights of Indigenous Peoples. As explained in our 2010 Statement of Support, the Declaration is an aspirational document of moral and political force and is not legally binding or a statement of current international law. The Declaration expresses aspirations that the United States seeks to achieve within the structure of the U.S. Constitution, laws, and international obligations, while also seeking, where appropriate, to improve our laws and policies.

The United States supports the elimination of ambiguity surrounding the use of “health services” in the context of women’s health, because too often the term is used by some UN agencies to promote abortion. We wish to make clear that the United States supports providing holistic health care to indigenous peoples, including in this period of COVID-19 when health needs are considerable.

Concerning OP 14, we note that in the UN, data is disaggregated by sex rather than by gender.

With regard to OP 21, the United States notes that sexual harassment, while condemnable, is not necessarily violent. In U.S. law, the term violence refers to physical force or the threat of physical force.

Finally, with regard to this resolution’s references to the 2030 Agenda for Sustainable Development; the Global Compact for Safe, Orderly, and Regular Migration; and the non-consensus based Conclusions of the Commission on the Status of Women’s 63rd session, we

addressed our concerns in a previous statement on Third Committee resolutions that we delivered on November 13.

\* \* \* \*

## J. FREEDOM OF ASSOCIATION AND PEACEFUL ASSEMBLY

The Human Rights Committee issued draft General Comment No. 37 on Article 21 of the International Covenant on Civil and Political Rights (“ICCPR”) regarding peaceful assembly in 2019. The United States submitted its observations on February 14, 2020. The observations of the United States are excerpted below (with most footnotes omitted) and available at <https://www.ohchr.org/EN/HRBodies/CCPR/Pages/GCArticle21.aspx>. On July 23, 2020, the Committee adopted General Comment No. 37 during its 129<sup>th</sup> session (held online). General Comment No. 37 is available at [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=11](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=11).

\* \* \* \*

2. The United States agrees, as the Committee states in paragraph 1 of its draft General Comment, that peaceful assembly, “[t]ogether with other rights related to political freedom,[] . . . constitutes the very foundation of a system of participatory government based on democracy.” The United States maintains protection for peaceful assembly, as provided for in the U.S. Constitution and the law of the United States.<sup>2</sup>

### A. General Observations

#### Authority and Capacity of the Committee

3. As the United States has stated previously, it is for each State to decide as an exercise of its sovereignty to assume treaty obligations which, once entered into, it has a legal obligation to fulfill.<sup>3</sup> Treaty parties could, through provisions in the treaty, agree to allow another entity to render authoritative treaty interpretation or to resolve definitively legal disputes or questions relating to their obligations, but States Parties to the ICCPR have not given authority to the Human Rights Committee or to any other entity to fashion or otherwise determine their treaty obligations.

<sup>2</sup> Because, as the United States declared upon ratification, the provisions of articles 1 through 27 of the Covenant are not self-executing, the United States generally meets its obligations regarding Article 21 through the United States Constitution and other domestic laws. See United Nations Treaty Collection Depository, Chapter IV Human Rights, 4. International Covenant on Civil and Political Rights, “United States of America”, available at [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=en).

<sup>3</sup> See Statement of Robert K. Harris to the UN Human Rights Committee, July 17-18, 2006, reprinted in Digest of United States Practice in International Law 2006 pp. 284-287 at p. 285, paragraph 2, available at <https://2009-2017.state.gov/s/l/c24878.htm>.

4. The United States repeatedly has expressed concerns with the Committee's interpretive practice generally, explaining in detail our view that this practice is beyond the Committee's authority and mandate and contrary to international law. The United States reiterates this view here with regard to draft General Comment No. 37.

5. The United States urges the Committee to make explicit at the beginning of any final general comment that it reflects the Committee's views, which are not legally binding, and that the purpose of the general comment is to provide recommendations to States Parties with regard to their implementation of the Covenant and in fulfilling their periodic reporting requirements under Article 40 and to refrain from providing its recommendations in imperative ("must") or mandatory ("required") terms. As the United States stated in its Observations on General Comment No. 36, "To the extent that the Committee undertakes to express its views regarding States Parties' obligations or how it believes a provision should be interpreted beyond the terms contained in the treaty text, we urge the Committee to frame any such interpretation as Committee views regarding best practices, and to ensure that the opposing views of States Parties, including the United States, are also reflected in the text of the general comment, in order to avoid the impression that the interpretation advanced is authoritative, legally-binding, or otherwise accepted by the States Parties."

Relevance of Regional Jurisprudence and Guidance and Other Nonbinding Documents

6. Throughout the Draft Comment, the Committee relies on regional jurisprudence and guidance as the basis for its positions and views, a significant departure from the Committee's past practice. In some cases, this is true even when a more obvious citation to the ICCPR itself is available. For example, in paragraph 8, footnote 11, the Comment cites to a European Court of Human Rights (ECtHR) judgment for the proposition that States Parties have an obligation "to respect and ensure the exercise of this right." But Article 2(1) of the ICCPR states that States Parties to the ICCPR "undertake[] to respect and to ensure . . . the rights recognized in the present Covenant." The United States reminds the Committee that the ECtHR is interpreting Article 11 of the European Convention on Human Rights (ECHR), rather than Article 21 of the ICCPR. Article 11, while similar to Article 21 in some regards, contains different language than the Covenant and is interpreted by a Court that was established under the ECHR to ensure the observance of the obligations by its States Parties and that binds States Parties to abide by its final judgment in any case to which they are party. Further, only a small subset of ICCPR States Parties are also party to the ECHR and are bound by final judgments of the ECtHR. The United States is not a party to the ECHR and the ECtHR does not have authority to interpret U.S. treaty obligations. Thus, the United States encourages the Committee in its final text to refrain from categorical statements regarding State Party obligations unless grounded in and referring to the specific text of the Covenant or other relevant sources of treaty interpretation under international law.

7. The United States is also concerned about the Committee's use of other non-authoritative materials as the basis for statements about the meaning of Covenant provisions. In a number of places, the Committee makes statements about the meaning of terminology in the ICCPR for which the only authority cited is a nonbinding, nonauthoritative document. The meaning of the ICCPR's provisions should be discerned through application of standard principles of treaty interpretation reflected in VCLT Articles 31 and 32, not by reference to the views of outside bodies.

8. Regional jurisprudence and guidance, as well as other nonbinding documents, may be useful in identifying good practices that might help advance some objective of the Covenant.

But in referring to such documents the Committee should clarify that they are not sources relevant to interpreting the Covenant's meaning, but rather have informed the Committee's recommendations regarding steps States may wish to consider taking in connection with their implementation of the Covenant.

### **B. Scope of Peaceful Assembly Protection**

9. The first sentence of Article 21 states that “[t]he right [of] peaceful assembly shall be recognized.” For clarity, we encourage the Committee to use the language from Article 21 consistently throughout the Comment and avoid variations such as “right of assembly” (para. 80) or “freedom of assembly” (para. 112), or even “freedom of peaceful assembly,” which draws from the Universal Declaration rather than the Covenant. Further, while the United States agrees that “the right of peaceful assembly is not absolute” as stated in paragraph 8, we consider only the limitations delineated by Article 21—that is, those that are “imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public safety (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others”—to be permissible. Any references to such limitations should track Article 21's language precisely.

10. In paragraph 6, the Committee lists examples of various forms of assemblies. Footnote 10 of the Comment explains that “During the drafting of article 21 of the Covenant, specific examples of peaceful assemblies were not included, in order to keep the formulation of the right open.” For the same reason, the United States cautions against including a list in the Committee's comment. If a list is included, the United States urges that it be as expansive as possible, use broader terms such as “protest,” and be explicitly non-exhaustive. At the same time, it should be clear that inclusion on the list in paragraph 6 does not imply that these activities may not be regulated in accordance with Article 21. The United States supports inclusion of illustrations that indicate Article 21 applies to all peaceful assembly, as in the second and third sentences of paragraph 6 (mobile or stationary, indoors or outdoors).

11. “Publicly accessible space”: The text of Article 21 does not limit the right to gatherings in public or publicly accessible spaces. Rather, concerns for property rights are addressed by the language in Article 21 that allows restrictions to be placed on the right of peaceful assembly that are necessary for the protection of the rights and freedoms of others. The United States recommends that the comment be revised to reflect that the right itself protects peaceful assembly whether the assembly is on publicly accessible or private property, *provided that* the owner of the private, non-publicly accessible property consents. Laws protecting private property (e.g., prohibitions on trespass) are legitimate restrictions on the right of peaceful assembly and generally are permissible under the limitations clause of Article 21 itself, but the individuals peacefully assembling have no less protection from government interference in the assembly because they happen to be doing so on private property. Such a reading would be contrary to the text of Article 21, as a restriction on peaceful assembly on private land that was permitted or even supported by the owner of that land would hardly be “necessary” for the landowners' rights or freedoms. A contrary reading could provide justification for governments to restrict peaceful gatherings on private land without meeting the strict test in Article 21. Limitations on government action towards a peaceful assembly should apply with equal force whether the assembly is on publicly accessible or fully private land, so long as the individuals gathering are rightfully present on the private land. Given the brackets in paragraph 4 and 13, it appears that the Committee is not in agreement on this issue. Likewise, paragraph 67 states that “assembly rights may require some recognition on private property that is open to the public.”

The United States believes the Comment would be strengthened by a clear statement that Article 21 applies to peaceful assembling wherever it takes place.

12. “Peaceful or Violent Assemblies”: The United States is concerned by the Comment’s articulation of a “two-stage process” for determining whether an individual is engaging in a peaceful assembly as protected by Article 21. The right of peaceful assembly, like human rights generally, belongs to individuals, not to groups. When some members of an assembly resort to violence, the other individuals do not lose protection under Article 21, as paragraph 10 *et seq.* of the current draft suggests. This does not mean that law enforcement cannot lawfully disperse an assembly that has become violent, but this action should be analyzed through the applicable exceptions articulated in Article 21 rather than an assessment that Article 21 no longer applies at all. By separating the questions of whether an assembly is peaceful and whether any peaceful assembly is otherwise subject to restrictions permitted by Article 21, the Committee is suggesting that once the government deems an assembly “violent,” it may impose restrictions that are not in conformity with law or not necessary for one of the governmental interests listed exhaustively in Article 21, or both. In many cases, law enforcement may be able to lawfully arrest and/or detain individuals engaging in violence while allowing the majority of those engaging in peaceful protest to continue; widespread arrests or dispersing an assembly should only be done when necessary. Indeed, this appears to be the Committee’s approach in paragraph 19, and the United States believes this should be the Committee’s consistent approach throughout the Comment. This approach also obviates the need for a more searching assessment of whether an assembly itself is peaceful or violent, since the appropriate question is whether an individual is peaceful.

13. The United States does not dispute that an *individual*’s activity does not fall within the scope of Article 21’s protection if the *individual* becomes violent, e.g., if the individual engages in criminal use of force against another person or property. The United States also recognizes that in some very narrow circumstances, an individual may be deemed as violent who has not yet engaged in criminal use of force, such as where an individual is involved in a conspiracy to commit violence or where the individual’s violence is imminent. It is the United States’ position that any restriction on an individual’s rights under Article 21 based on their speech alone must also comply with Article 19. As the United States explained in its observations on Draft General Comment No. 34,

there are some types of advocacy of national, religious, or racial hatred, namely incitement to *imminent* violence, or to imminent hostile acts such as when genuine, intentional threats of violence or intimidation are made to an individual, whereby prohibition is a legitimate government response to protect public order given the potential immediacy of the harm that may be caused by the speech. Given the difficulties in countering or preventing violence resulting from incitement to imminent violence or to hostile acts due to its immediacy, it is an appropriate governmental response to prohibit such expression to maintain public order without risking the underlying human right.”<sup>10</sup>

---

<sup>10</sup> Observations of the United States of America On the Human Rights Committee’s Draft General Comment No. 34 On Article 19 – Freedom of Expression July 5, 2011, (hereinafter “U.S. Observations on Draft General Comment No. 34”), *excerpted in* Digest of U.S. Practice in International Law 2011, pp. 225-230, at 229 paragraph 13, available at <https://2009-2017.state.gov/s/1/2011/index.htm>.

The United States therefore recommends that the Committee remove the brackets from “imminent” in paragraph 21.

14. Peaceful Assemblies and Civil Disobedience: The United States agrees that an individual engaging in peaceful but unlawful activity, including civil disobedience, is still protected by Article 21. However, Article 21 does not protect an individual from arrest or detention for breaking the law, including laws relating to trespass, so long as the law itself is “necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others,” and the arrest and/or detention are consistent with the State’s other obligations under the Covenant, and in particular Article 9.

15. Similarly, the United States agrees that assemblies that fail to meet domestic legal requirements do not fall outside the scope of Article 21 protection, as stated in paragraph 18 of the draft Comment. Once again, however, this does not mean that the assembly cannot be subjected to the restrictions permissible under Article 21. Depending on the facts and circumstances, this may mean that an assembly that fails to meet domestic legal requirements can lawfully be disbanded or the organizers fined, so long as such actions are in conformity with law and necessary for one of the legitimate governmental interests articulated in Article 21.

### **C. Permissible Limitations**

16. Time, Place, and Manner: The United States strongly agrees that reasonable “time, place, and manner” restrictions on assemblies in traditional public fora, such as streets, parks and other places traditionally used for public assembly and debate, are lawful under Article 21 of the Covenant. In the United States, such restrictions must be content-neutral and be narrowly tailored to serve a legitimate state interest. Indeed, time, place, and manner restrictions are often the simplest way to maintain public order and protect the rights and freedoms of others without discriminating on the content or viewpoint of the individuals peacefully assembling. However, in limited public fora where the government has opened property for certain types of communicative activity, we believe it is consistent with Article 21 for the government to limit the forum to use by certain types of groups or discussion of certain subjects. In such fora, any restrictions based on content must still be justified by a compelling state interest. In areas that the government has reserved for a specific intended purpose, the United States believes that restrictions on peaceful assembly are permissible under Article 21 so long as the limitation is reasonable. The United States believes that the Comment could be strengthened by clarification that the appropriateness of restrictions under Article 21 may depend on the location of the peaceful assembly.

17. Disruptions: In paragraph 7, the Committee correctly observes that the disruption of vehicular or pedestrian traffic or economic activity does not necessarily call into question the protection such (peaceful) assemblies should enjoy. The United States believes that this paragraph could be clarified by stating that any risks such assemblies may cause should be managed in a manner consistent with the permissible limitations in Article 21 itself and other provisions in the Covenant, rather than using the phrase “human rights framework.” The phrase “human rights framework” is not well-defined.

18. Permitting vs. Prior Notification: The United States believes that permitting regimes are consistent with Article 21 so long as they do not delegate overly broad licensing discretion to government officials, are narrowly tailored to serve a significant government interest, and leave open ample alternatives for communication. They should not discriminate on the basis of the viewpoint of the speakers or organizers or the content of their speech or message unless such

restrictions comply with the strict tests set out in Articles 19(3) and 21 of the Covenant. In general, permitting regimes should provide for flexibility where a peaceful assembly is responding to emerging current events.

19. Proportionality: The Comment articulates a number of standards for when limitations on peaceful assembly are permissible. For example, in paragraph 40, the draft General Comment states, “Restrictions are not permissible unless they can be shown to have been provided for by law, and are necessary and proportionate to the permissible grounds for restrictions enumerated in article 21” and in paragraph 43, the draft General Comment states, “Article 21 spells out a *general framework* which any restrictions on the right of peaceful assembly must meet, namely the cumulative requirements of legality, necessity and proportionality . . . .”

20. The United States respectfully submits that these standards are not sound because they are not grounded in the treaty text. Under Article 21, the only circumstances in which peaceful assembly may be restricted is when the restriction is 1) imposed in conformity with law and 2) necessary in a democratic society in the interests of a) national security or public safety; b) public order; c) the protection of public health or morals; or d) the protection of the rights and freedoms of others.

21. As noted above, the United States believes that Article 21 provides a strict and exhaustive list of the requirements for limiting peaceful assembly. As a general matter, restrictions that are truly necessary for one of the governmental interests articulated in Article 21 will not be disproportionate. As the United States explained in its observations on Draft General Comment No. 34 regarding freedom of expression:

the Committee should also clarify that for a restriction to be “necessary,” it must be the least restrictive means for protecting one of the legitimate purposes described in [Article] 19(3), it cannot be overly broad, and must be narrowly tailored to prohibit the least amount of expression possible.

. . . The principle of proportionality [] appears to depart from the strict test of justification [discussed earlier in draft General Comment No. 34] and as is required for any permissible limitation of the freedom of expression under Article 19(3). The United States respectfully recommends that the Committee revise this section for greater clarity, precision reflective of the language in Article 19(3) and the principles discussed in paragraph 4 of these Observations.

22. Derivations from the text of the Covenant, even for the purpose of narrowing the permissible limitations on peaceful assembly, creates precedent for derivations from the text of the Covenant that may not be harmless in the future. The United States urges the Committee to consistently apply the strict test from Article 21 itself, rather than introducing new, nontextual standards.

23. Similarly, in paragraph 8, the Draft states that “any restrictions [on peaceful assembly] must be narrowly drawn.” While the United States agrees that Article 21 places significant limitations on any restriction the government might place on peaceful assembly, the fact that a limitation is narrowly drawn does not make it lawful under Article 21. To be permissible under Article 21, a restriction must [be] imposed in conformity with the law and necessary *for* one of the legitimate government interests articulated in the Article.

24. Indeed, the United States believes that the Draft Comment could be strengthened by greater elaboration of the necessity prong of Article 21 rather than discussing alternative

standards. For example, in paragraph 90, the Draft Comment discusses the possibility that an assembly may need to be dispersed by law enforcement. However, the paragraph focuses solely on the use of force, rather than alternatives to force that could achieve the same objective, such as providing a verbal warning to non-violent assembly participants.

**D. The Relationship Between Article 20 and Article 21**

25. The United States has a reservation to Article 20 given its potential to be interpreted and applied in an overbroad manner. The United States respectfully submits that the Committee's discussion of the relationship of Articles 21 and 20 should be consistent with the Committee's discussion of Articles 19 and 20 in General Comment No. 34, in which the Committee wrote:

50. Articles 19 and 20 are compatible with and complement each other. The acts that are addressed in article 20 are all subject to restriction pursuant to article 19, paragraph 3. As such, a limitation that is justified on the basis of article 20 must also comply with article 19, paragraph 3.

51. What distinguishes the acts addressed in article 20 from other acts that may be subject to restriction under article 19, paragraph 3, is that for the acts addressed in article 20, the Covenant indicates the specific response required from the State: their prohibition by law. It is only to this extent that article 20 may be considered as *lex specialis* with regard to article 19.

52. It is only with regard to the specific forms of expression indicated in article 20 that States Parties are obliged to have legal prohibitions. In every case in which the State restricts freedom of expression it is necessary to justify the prohibitions and their provisions in strict conformity with article 19.

26. In particular, the Committee's discussion of Article 20 in paragraphs 22 and 57 of the draft Comment should be revised. In the bracketed paragraph 22, the draft Comment states that "[t]he scope of article 21 is *further determined* by article 20" (emphasis in original). Because, as the Committee has previously articulated, Article 20 does not expand the bases for restricting other rights in the Covenant, this paragraph should be deleted.

27. In paragraph 57, the Committee does not make any reference to the permissible limitations under Article 21 but looks only to Article 20 for its discussion of the circumstances in which an assembly must be prohibited. Paragraph 57 should be revised to reflect the Committee's earlier analysis of Article 20 and state explicitly that any restriction of peaceful assembly pursuant to Article 20 must also meet the requirements of Article 21, which articulates when restrictions on peaceful assembly are permitted: when they are imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. As the United States made clear in its observations on Draft General Comment 34:

Indeed, to protect public order or national security, it is not *necessary* to prohibit all advocacy of racial, religious or national hatred. There are other less restrictive (and more effective) means of protecting public order in the face of this type of expression. For example, a combination of efforts can protect public order in the face of hateful expression: ensuring robust protections for freedom of expression of all individuals



allows everyone to have a voice and to counter any offensive speech, encouraging government leaders to speak out against such speech, promoting initiatives to create environments of mutual respect and understanding, reaching out to affected communities, providing conflict-resolution services, and rigorously enforcing anti-discrimination and violent hate crimes laws to contribute to a climate of respect. The efficacy of these types of actions in maintaining public order in the face of hostile expression negates any premise that a prohibition on advocacy of hatred, even when some may consider it amounting to incitement to hostility, discrimination or violence, is necessary for public order or national security. In fact, there are instances in which such prohibitions can actually contribute to discrimination, hostility or violence.

We strongly urge the Committee to revise the draft Comment, and in particular paragraphs 22 and 57, to reflect its past discussion of Article 20's relationship to other rights in the Covenant.

#### **D. Relationship to Other Rights & Provisions**

28. The United States strongly agrees that in addition to Article 21, many other provisions may provide protection for individuals engaging in peaceful assembly, including but not limited to Articles 6, 9, 17, 18, 19, and 22. The United States also agrees that even when an individual engages in violence and whose activity therefore falls outside the scope of Article 21, or when a peaceful assembly is restricted lawfully pursuant to Article 21, other rights of the Covenant generally remain applicable.

29. Throughout the Comment, the Committee makes use of shorthand reference to a number of rights in this Covenant and the International Covenant on Economic, Social and Cultural Rights ("ICESCR"). The United States recommends using the language directly from the Covenants to avoid confusion about the source of these rights.

30. Freedom of Expression: The United States agrees with the Committee that freedom of expression is often directly relevant to the exercise of the right of peaceful assembly. We strongly agree that "[t]he rules applicable to freedom of expression should be followed when dealing with the expressive element of peaceful assemblies" and that "restrictions on peaceful assembly may only under strictly limited circumstances be based on the message conveyed by the participants." Any restriction based on the message of the individuals exercising their right of freedom of expression must comply with the narrow test for restrictions on freedom of expression articulated in Article 19(3) of the Covenant. As noted above, this is true for restrictions under Article 20 as well.

31. Privacy: The Committee correctly highlights the important relationship between privacy and the exercise of the right of peaceful assembly. As noted above in paragraph 29 discussing the importance of using proper terminology rather than shorthand, wherever privacy is discussed as a human right or "international standard," we urge the Committee to use the language from the ICCPR, specifically the right to be free from arbitrary or unlawful interference with privacy, as set out in Article 17, to be clear that privacy is not an absolute right. Paragraph 94 should also be revised, as it currently suggests that law enforcement may only engage in stop and search or frisk activity on suspicion of a "threat," rather than any unlawful activity. The United States suggests the following alternative: "Powers of 'stop and search' or 'stop and frisk,' applied to those who participate in assemblies, or are about to do so, may not be used in a discriminatory manner. The mere fact that an individual is connected to a peaceful assembly does not constitute reasonable grounds for stopping and searching them."

32. Similarly, paragraph 72 should be clarified and revised to indicate that lawful surveillance for *legitimate* law enforcement or national security purposes is not an infringement of Article 17. The fact that an individual is appearing in a public space diminishes their reasonable expectation of privacy; further, a warrant, court order, or similar legal process (which the Committee's language in the final clause of this paragraph appears to contemplate) may not be legally necessary or required by respective domestic legal regimes of the Parties to the ICCPR. We recommend deletion of this final clause, or a change from "must be" to "may need to be." This is also consistent with how the Committee has crafted paragraph 112, with the permissive "may" in the first clause of that paragraph.

33. Liability of States: In Paragraphs 100 and 101, the Committee represents that the State is "responsible under international law for the acts and omissions of its law enforcement agencies and individual officials." Under the United States' domestic accountability structure, the State does not always assume liability for the bad acts of law enforcement officials; rather, there are a number of factors to consider regarding whether liability will shift to the individual suspected of acting negligently, recklessly, or potentially criminally. We recommend revising the Paragraph 100 to read "The State is responsible under international law for the acts and omissions of its law enforcement agencies and individual officials acting in their official capacity and should promote a culture of accountability for law enforcement officials during assemblies. This may be achieved under domestic law by holding either the government liable or by holding the individual liable, depending on the specific facts and circumstances." Similarly, in Paragraph 101, we recommend changing "[I]aw enforcement agencies and individual officials must be held accountable for their actions . . ." to read "those responsible for a violation of international human rights law should be held accountable for their actions . . ."

34. Non-discrimination: In paragraph 112, the Committee suggests that Article 26 provides a right to non-discrimination that protects individuals from discrimination in their exercise of the right of peaceful assembly. The United States respectfully submits that reference to Article 2(1), which requires States Parties to respect and ensure the rights recognized in the Covenant "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status," would be more appropriate than reference to Article 26, which addresses only equality before the law and equal protection of the law. The United States notes that Article 26 does not create a freestanding right to non-discrimination.

35. Economic, Social and Cultural Rights: The United States reiterates that only States are parties to this Covenant and to the ICESCR, and thus only States, not private individuals, have the capacity to violate the rights under the Covenants. Further, the United States reminds the Committee that not all States Party to the ICCPR are party to the ICESCR, and that States only have the obligations they have undertaken.

#### **E. Obligations**

36. The United States believes that it is a good practice of States Parties to facilitate the right of peaceful assembly, including where necessary and appropriate, through the use of law enforcement to maintain order and protect individuals exercising their right of peaceful assembly. However, from the start of negotiations in 1948, the United States has maintained that the Covenant was intended to protect individuals from State action and that existing codes of criminal law already covered actions committed by individuals or groups. The United States has repeatedly made known its longstanding view that the Covenant in general does not impose an affirmative duty on the State to protect individuals' life, liberty, or security of person from

interference by private actors and consequently such interference does not constitute a violation of the Covenant; our position on Articles 6 and 9 does not change simply because an individual is exercising their right of peaceful assembly. The United States objects to the Committee's imputing affirmative obligations to States Parties to prevent, regulate, or punish the non-governmental conduct of private actors. The ordinary meaning of the text of the Covenant does not support such a reading, and the negotiating history makes clear that there was not universal agreement among the negotiating parties to impose obligations on States to prevent interference from private actors. The provisions concerning the affirmative duties of the state should be revised to reflect that these are good practices of states to promote enjoyment of the right of peaceful assembly.

37. This is not to suggest that the government has no duties with regard to the right of peaceful assembly. In addition to continuing to comply with the State's other obligations under the Covenant, in particular Articles 6 and 9, law enforcement, once engaged in maintaining order during an assembly, must not discriminate against individuals on the basis of the viewpoint they are presenting, as discussed above in section C. And where a permitting or notification system is in place, government officials must administer the system in an impartial and timely way, consistent with Article 21.

38. Nor does the United States disagree that as a general matter it is the government's role to protect individuals from violent and other crime. However, the government must ensure that its actions in this regard do not conflict with the right of peaceful assembly or other obligations under the Covenant. In paragraph 31, the Draft states that the "State is obliged to take all [possible / appropriate] measures to protect the participants . . . ." The United States strongly suggests the Committee use "appropriate" rather than "possible", because "possible" could include measures inconsistent with the right of peaceful assembly, such as refusing to issue a permit for a protest that could spark violence rather than a more targeted, and thus appropriate response.

\* \* \* \*

## **K. FREEDOM OF EXPRESSION**

### **1. Freedom Online Coalition**

On May 27, 2020, the State Department issued a media note regarding the Freedom Online Coalition ("FOC") statement on COVID-19 and internet freedom. The FOC is a group of 31 countries committed to promoting the Universal Declaration of Human Rights ("UDHR"). The media note regarding the FOC statement on internet freedom during the COVID-19 pandemic is excerpted below and available at <https://2017-2021.state.gov/freedom-online-coalition-statement-on-covid-19-and-internet-freedom/>.

---

\* \* \* \*

The FOC shares the concerns of people everywhere in the face of the COVID-19 global pandemic, including the negative economic impact associated with it, and recognizes government efforts to mitigate the spread of the virus by enacting emergency measures. At the same time, more activities are taking place online than ever before, and we are concerned with the human rights implications of certain measures, practices, and digital applications introduced by governments in response to the crisis. This includes the use of arbitrary or unlawful surveillance practices; partial or complete Internet shutdowns; online content regulation and censorship that are inconsistent with human rights law. We are further concerned with the potential short-and-long-term impact of these actions on the rights of freedom of expression, association, and peaceful assembly, and privacy rights, even after the pandemic is over.

Lack of accountability and lack of effective remedy for violations and abuses of human rights online pose a risk of reduced trust in public authorities, which, in turn, might undermine the effectiveness of any future public response. Violations and abuses of human rights also increase risk of discrimination and may disproportionately harm members of already marginalized and vulnerable communities, including women and girls and other individuals who may face multiple and intersecting forms of discrimination. Human rights violations and abuses online are a direct challenge to the FOC's goal of protecting and promoting both the exercise of human rights online and an open, free<sup>[1]</sup>, secure, reliable, and interoperable Internet.

Furthermore, the FOC is concerned by the spread of disinformation online and activity that seeks to leverage the COVID-19 pandemic with malign intent. This includes the manipulation of information and spread of disinformation to undermine the international rules-based order and erode support for the democracy and human rights that underpin it. Access to factual and accurate information, including through a free and independent media online and offline, helps people take the necessary precautions to prevent spreading the COVID-19 virus, save lives, and protect vulnerable population groups.

We reiterate that commitments and principles outlined in FOC founding documents remain of the utmost importance. We further emphasize that countries must ensure that measures implemented to address the pandemic are in compliance with international human rights law. Measures should also be limited to what is necessary for the legitimate protection of public health, including by limiting these measures in time only as necessary to address the COVID-19 crisis. Any interference with privacy and other relevant rights and freedoms need also be consistent with the International Covenant on Civil and Political Rights and the UDHR. This is true whether the restrictions apply to activity online or offline. We welcome the focus on this issue by the UN Secretary General, the UN High Commissioner for Human Rights, and UN Special Rapporteurs and experts.

In response to the COVID-19 pandemic, we call upon governments worldwide:

- To refrain from adopting or implementing laws and policies that may negatively affect the enjoyment of human rights, or that unreasonably restrict civic space online and offline, in violation of states' obligations under international human rights law;
- To promote an enabling environment for free expression and access to information online to protect privacy and to refrain from content restrictions that violate international human rights law;
- To take appropriate measures to counter violence, intimidation, threats and attacks against individuals and groups, including human rights defenders, on the Internet and through digital technologies.

- To immediately end Internet shutdowns, and ensure the broadest possible access to online services by taking steps to bridge digital divides; and
  - To commit that any actions taken pursuant to emergency measures or laws be subject to effective transparency and accountability measures and lifted when the pandemic has passed.
- ...while committing ourselves to do the same.

[1] ‘Free’ in this context does not mean ‘free of cost’.

\* \* \* \*

## 2. Russian decree targeting RFE/RL and Voice of America

On August 10, 2020, Secretary Pompeo issued a press statement regarding a Russian decree targeting RFE/RL and Voice of America in Russia. The statement is excerpted below and available at <https://2017-2021.state.gov/russian-decree-targeting-rfe-rl-and-voice-of-america-in-russia/index.html>.

The United States is deeply concerned by the recent draft decree published by Russian authorities targeting U.S. Agency for Global Media (USAGM)-funded entities in Russia. For more than 70 years, Voice of America (VOA) and Radio Free Europe / Radio Liberty (RFE/RL) have been vital sources of independent news and information for the people of Russia. This decree will impose new burdensome requirements that will further inhibit RFE/RL’s and VOA’s ability to operate within Russia, compounding the significant and undue restrictions these outlets already face. We remain troubled by the ongoing crackdown on independent press in Russia and call on Russia to uphold its international obligations and OSCE commitments to freedom of expression. We urge the Russian government to reconsider these actions, which will further damage the bilateral relationship.

## 3. Joint Statement on Internet Shutdowns in Belarus

On September 17, 2020, the following joint statement on internet shutdowns in Belarus was released by the Governments of the United States of America, Australia, Austria, Belgium, Bulgaria, Canada, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Iceland, Ireland, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, the Netherlands, Norway, Poland, Slovenia, Sweden, Switzerland, the United Kingdom, and Ukraine. The State Department issued the joint statement as a media note, available at <https://2017-2021.state.gov/joint-statement-on-internet-shutdowns-in-belarus/>.

---

\* \* \* \*

We, the signatories, are deeply troubled by and condemn the recently reported and ongoing use of partial and complete Internet shutdowns, as well as targeted content blocking, by the Government of Belarus in the aftermath of the fraudulent 2020 Belarusian presidential elections. Shutdowns and blocking or filtering of services unjustifiably limit the rights of peaceful assembly and freedoms of association and expression, especially when they lack procedural fairness and transparency. In conjunction with restrictive measures and intimidation employed against opposition candidates and the mass arrests and detentions of Belarusian civil society members and journalists, actions to limit access to the Internet, including social media and other digital communication platforms, further erode civic space. We will continue to stand with the people of Belarus, who are making their voices heard in spite of these oppressive measures, and we are especially heartened by the critical and central role women are playing in calling for fairness and accountability.

Civic space online is integral to a vibrant civic space off-line. Governments should not block or hinder Internet connectivity, as shutdowns often undermine human rights and fundamental freedoms, including the rights of peaceful assembly and freedoms of association and expression that form the basis of a democratic society. Internet shutdowns impact all users, especially marginalized groups and those in vulnerable situations. Shutdowns limit media freedom and the ability of journalists and human rights defenders to report on human rights violations or abuses and hold governments accountable. Shutdowns and restrictions also limit the dissemination and free flow of information, harm economic activity, contribute to social and political disorder, and negatively affect public safety.

Human rights must be protected online just as they are protected off-line. We call on Belarusian authorities to refrain from Internet shutdowns and blocking or filtering of services and to respect Belarus's international human rights obligations, including under articles 19 and 21 of the International Covenant on Civil and Political Rights. We call on the Government of Belarus to respect civic space, including respect for human rights and fundamental freedoms, democracy and the rule of law.

Independent, transparent and impartial investigations into all allegations of human rights violations in the context of the election must be conducted and the perpetrators brought to justice.

\* \* \* \*

## **L. FREEDOM OF RELIGION OR BELIEF**

### **1. Religious Freedom or Belief Alliance**

On February 5, 2020, Albania, Austria, Bosnia and Herzegovina, Brazil, Bulgaria, Colombia, Croatia, Czech Republic, Estonia, The Gambia, Georgia, Greece, Hungary, Israel, Kosovo, Latvia, Lithuania, Malta, the Netherlands, Poland, Senegal, Slovakia, Slovenia, Togo, Ukraine, and the United Kingdom, joined the United States to create the International Religious Freedom Alliance ("Alliance," subsequently renamed "International Religious Freedom or Belief Alliance"). See February 5, 2020 press statement, available at <https://2017-2021.state.gov/answering-the-call-to-advance-religious-freedom/>. Secretary Pompeo's remarks at the Alliance dinner on February 5, are available at <https://2017-2021.state.gov/secretary-michael-r-pompeo-at-the->

[international-religious-freedom-alliance-dinner/](https://2017-2021.state.gov/senior-state-department-official-on-the-launch-of-the-international-religious-freedom-irf-alliance/). A senior State Department official provided a briefing on the Alliance, available at <https://2017-2021.state.gov/senior-state-department-official-on-the-launch-of-the-international-religious-freedom-irf-alliance/>.

Also on February 5, 2020, the United States announced that Poland would host the next “Ministerial to Advance Religious Freedom.” See media note, available at <https://2017-2021.state.gov/u-s-poland-joint-statement-on-ministerial-to-advance-religious-freedom/>.

## 2. Executive Order on International Religious Freedom

On June 2, 2020, President Trump issued Executive Order 13926, “Advancing International Religious Freedom.” 85 Fed. Reg. 34,951 (June 5, 2020). Excerpts follow from the order.

---

\* \* \* \*

**Section 1. Policy.** (a) Religious freedom, America’s first freedom, is a moral and national security imperative. Religious freedom for all people worldwide is a foreign policy priority of the United States, and the United States will respect and vigorously promote this freedom. ...

(b) Religious communities and organizations, and other institutions of civil society, are vital partners in United States Government efforts to advance religious freedom around the world. It is the policy of the United States to engage robustly and continually with civil society organizations—including those in foreign countries—to inform United States Government policies, programs, and activities related to international religious freedom.

**Sec. 2. Prioritization of International Religious Freedom.** Within 180 days of the date of this order, the Secretary of State (Secretary) shall, in consultation with the Administrator of the United States Agency for International Development (USAID), develop a plan to prioritize international religious freedom in the planning and implementation of United States foreign policy and in the foreign assistance programs of the Department of State and USAID.

**Sec. 3. Foreign Assistance Funding for International Religious Freedom.** (a) The Secretary shall, in consultation with the Administrator of USAID, budget at least \$50 million per fiscal year for programs that advance international religious freedom, to the extent feasible and permitted by law and subject to the availability of appropriations. Such programs shall include those intended to anticipate, prevent, and respond to attacks against individuals and groups on the basis of their religion, including programs designed to help ensure that such groups can persevere as distinct communities; to promote accountability for the perpetrators of such attacks; to ensure equal rights and legal protections for individuals and groups regardless of belief; to improve the safety and security of houses of worship and public spaces for all faiths; and to protect and preserve the cultural heritages of religious communities.

(b) Executive departments and agencies (agencies) that fund foreign assistance programs shall ensure that faith-based and religious entities, including eligible entities in foreign countries, are not discriminated against on the basis of religious identity or religious belief when competing for Federal funding, to the extent permitted by law.

**Sec. 4. *Integrating International Religious Freedom into United States Diplomacy.*** (a) The Secretary shall direct Chiefs of Mission in countries of particular concern, countries on the Special Watch List, countries in which there are entities of particular concern, and any other countries that have engaged in or tolerated violations of religious freedom as noted in the Annual Report on International Religious Freedom required by section 102(b) of the International Religious Freedom Act of 1998 (Public Law 105–292), as amended (the “Act”), to develop comprehensive action plans to inform and support the efforts of the United States to advance international religious<sup>[1]</sup>freedom and to encourage the host governments to make progress in eliminating violations of religious freedom.

(b) In meetings with their counterparts in foreign governments, the heads of agencies shall, when appropriate and in coordination with the Secretary, raise concerns about international religious freedom and cases that involve individuals imprisoned because of their religion.

(c) The Secretary shall advocate for United States international religious freedom policy in both bilateral and multilateral fora, when appropriate, and shall direct the Administrator of USAID to do the same.

**Sec. 5. *Training for Federal Officials.*** (a) The Secretary shall require all Department of State civil service employees in the Foreign Affairs Series to undertake training modeled on the international religious freedom training described in section 708(a) of the Foreign Service Act of 1980 (Public Law 96–465), as amended by section 103(a)(1) of the Frank R. Wolf International Religious Freedom Act (Public Law 114–281).

(b) Within 90 days of the date of this order, the heads of all agencies that assign personnel to positions overseas shall submit plans to the President, through the Assistant to the President for National Security Affairs, detailing how their agencies will incorporate the type of training described in sub- section (a) of this section into the training required before the start of overseas assignments for all personnel who are to be stationed abroad, or who will deploy and remain abroad, in one location for 30 days or more.

(c) All Federal employees subject to these requirements shall be required to complete international religious freedom training not less frequently than once every 3 years.

**Sec. 6. *Economic Tools.*** (a) The Secretary and the Secretary of the Treasury shall, in consultation with the Assistant to the President for National Security Affairs, and through the process described in National Security Presidential Memorandum–4 of April 4, 2017 (Organization of the National Security Council, the Homeland Security Council, and Subcommittees), develop recommendations to prioritize the appropriate use of economic tools to advance international religious freedom in countries of particular concern, countries on the Special Watch List, countries in which there are entities of particular concern, and any other countries that have engaged in or tolerated violations of religious freedom as noted in the report required by section 102(b) of the Act. These economic tools may include, as appropriate and to the extent permitted by law, increasing religious freedom programming, realigning foreign assistance to better reflect country circumstances, or restricting the issuance of visas under section 604(a) of the Act.

(b) The Secretary of the Treasury, in consultation with the Secretary of State, may consider imposing sanctions under Executive Order 13818 of December 20, 2017 (Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption), which, among other things, implements the Global Magnitsky Human Rights Accountability Act (Public Law 114– 328).



\* \* \* \*

### 3. U.S. Annual Report

On June 10, 2020, the U.S. Department of State announced the release of the 2019 International Religious Freedom Report. The report is available at <https://www.state.gov/reports/2019-report-on-international-religious-freedom/>. Secretary Pompeo and Ambassador Brownback delivered remarks and answered questions from the media on the release of the 2019 Report, which are available at <https://2017-2021.state.gov/secretary-michael-r-pompeo-at-a-press-availability-on-the-release-of-the-2019-international-religious-freedom-report/>.

### 4. Designations under the International Religious Freedom Act

On December 2, 2020, the Department of State re-designated Burma, China, Eritrea, Iran, the Democratic People’s Republic of Korea, Pakistan, Saudi Arabia, Tajikistan, and Turkmenistan as Countries of Particular Concern and, also, designated Nigeria as a Country of Particular Concern under the International Religious Freedom Act of 1998, as amended. 86 Fed. Reg. 2718 (Jan. 13, 2021). The “Countries of Particular Concern” were so designated for having engaged in or tolerated “particularly severe violations of religious freedom,” *id.*, which the Act defines as “systematic, ongoing, egregious violations of religious freedom.” 22 U.S.C. § 6402(13). The Department again placed Comoros, Cuba, Nicaragua, and Russia on a Special Watch List (“SWL”) for governments that have engaged in or tolerated “severe violations of religious freedom.” 86 Fed. Reg. 2718-19. The “Presidential Actions” or waivers designated for each of the countries designated by the Secretary as Countries of Particular Concern are listed in the Federal Register notice. *Id.* The Department also designated Al-Shabaab, al-Qa’ida, Boko Haram, Hayat Tahrir al-Sham, the Houthis, ISIS, ISIS-Greater Sahara, ISIS-West Africa, Jamaat Nasr al-Islam wal Muslimin, and the Taliban as “Entities of Particular Concern,” under section 301 of the Frank R. Wolf International Religious Freedom Act of 2016 (Pub. L. 114–281). *Id.*

The State Department issued a press statement from Secretary Pompeo on December 7, 2020, available at <https://2017-2021.state.gov/united-states-takes-action-against-violators-of-religious-freedom-2/>, announcing the designations. The press statement explains:

The United States is designating Burma, China, Eritrea, Iran, Nigeria, the DPRK, Pakistan, Saudi Arabia, Tajikistan, and Turkmenistan as Countries of Particular Concern under the International Religious Freedom Act of 1998, as amended, for engaging in or tolerating “systematic, ongoing, egregious violations of religious freedom.”

We are also placing the Comoros, Cuba, Nicaragua, and Russia on a Special Watch List for governments that have engaged in or tolerated “severe

violations of religious freedom.” Additionally, we are designating al-Shabaab, al-Qa’ida, Boko Haram, Hayat Tahrir al-Sham, the Houthis, ISIS, ISIS-Greater Sahara, ISIS-West Africa, Jamaat Nasr al-Islam wal Muslimin, and the Taliban as Entities of Particular Concern under the Frank R. Wolf International Religious Freedom Act of 2016.

We have not renewed the prior Entity of Particular Concern designations for al-Qa’ida in the Arabian Peninsula and ISIS-Khorasan, due to the total loss of territory formerly controlled by these terrorist organizations. While these two groups no longer meet the statutory criteria for designation, we will not rest until we have fully eliminated the threat of religious freedom abuses by any violent extremist and terrorist groups.

There are also positive developments to share. I am pleased to announce that Sudan and Uzbekistan have been removed from the Special Watch List based on significant, concrete progress undertaken by their respective governments over the past year. Their courageous reforms of their laws and practices stand as models for other nations to follow.

Ambassador Brownback also held a briefing on the designations under the International Religious Freedom Act, a record of which is available at <https://2017-2021.state.gov/ambassador-at-large-for-international-religious-freedom-samuel-d-brownback-briefing-on-rollout-of-u-s-actions-against-religious-freedom-violators/>.

## **M. OTHER ISSUES**

### **1. Privacy**

On November 17, 2020, Mordica Simpson, advisor for economic and social affairs for the U.S. Mission to the UN, delivered the explanation of position on a resolution on the right to privacy in the digital age. Her statement follows.

---

\* \* \* \*

The United States appreciates the efforts of Germany and Brazil on this resolution, and, despite concerns with some aspects of the text, we join consensus today because it reaffirms privacy rights, as well as their importance for the exercise of the right to freedom of expression and holding opinions without interference, and the right of peaceful assembly and freedom of association. These rights, as set forth in the International Covenant on Civil and Political Rights (ICCPR), are pillars of democracy in the United States and globally.

We are pleased the resolution recognizes that the same rights that people have offline must also be protected online. While the resolution expresses concern that the automatic processing of personal data in the commercial context for profiling may lead to discrimination or other negative effects on the enjoyment of human rights, it is also worth noting that data flows

and data analytics can create great benefits for economies and societies when combined with appropriate data protection and privacy safeguards, including safeguards against discriminatory effects. Robust data protection and privacy safeguards should also not prohibit legitimate access to data by law enforcement entities through proper legal process requests.

We believe that the portion of the resolution addressing business enterprises is too prescriptive. While the resolution expresses concern about obtaining free, explicit, and informed consent to the commercial re-use of personal data, we also note that in many commercial contexts, other mechanisms for meaningful consent may be appropriate, such as opt-out agreements or conditioning the provision of free or low-cost goods or services to consumers in exchange for use of their personal information. We understand the reference to consent in this resolution as emphasizing those contexts where such explicit consent is important.

We understand this resolution to be consistent with longstanding U.S. views regarding the ICCPR, including our position on Articles 2, 17, and 19, and interpret it accordingly. The United States further reaffirms its position that a State's obligations under the Covenant are applicable only to individuals within that State's territory and subject to its jurisdiction, and interpret the resolution, including PP20, PP22, and PP28, consistent with that view. Further, we reiterate that the appropriate standard under Article 17 of the ICCPR as to whether an interference with privacy is impermissible is whether it is unlawful or arbitrary and welcome the resolution's reference to this standard. While the resolution references a view held by some regarding what they refer to as the principles of legality, necessity, and proportionality, Article 17 does not impose such a standard and States are not obligated to take such principles into account in implementing their obligations under Article 17 of the ICCPR. For this reason, we dissociate from OP4.

We also are pleased the resolution supports the consideration of legal frameworks designed to enhance data protection and privacy safeguards, and note that legal frameworks implementing appropriate and effective controls, oversight, accountability, and remedies can effectively protect privacy rights consistent with international human rights law, whether they are in the form of legislation, regulations, or policies, and whether they are context or sector-specific or comprehensive, and whether they include a national independent authority.

We hope that further work on this topic, including the work of the Special Rapporteur, can touch on other areas relating to privacy rights beyond the digital environment, including examination of how abuses of privacy may be implicated in broader repression of the exercise of human rights and fundamental freedoms within States.

\* \* \* \*

## 2. Purported Right to Development

On November 17, 2020, the United States provided an explanation of its "no" vote on the resolution in the Third Committee on the "right to development." The statement is excerpted below and available at [https://usun.usmission.gov/explanation-of-vote-on-a-resolution-on-the-right-to-development/?\\_ga=2.113043015.2100943753.1613669895-1488883581.1611183416](https://usun.usmission.gov/explanation-of-vote-on-a-resolution-on-the-right-to-development/?_ga=2.113043015.2100943753.1613669895-1488883581.1611183416).

\* \* \* \*

The United States is firmly committed to the promotion and advancement of global development efforts. The U.S. government collaborates with developing countries, other donor countries, non-governmental organizations, and the private sector in order to alleviate poverty and aid development efforts across all dimensions. However, the United States maintains its long-standing concerns over the existence of a purported “right to development” within existing human rights law.

We note that the “right to development” discussed in this resolution is not recognized in any of the core UN human rights conventions, does not have an agreed international meaning, and, unlike with human rights, is not recognized as a universal right held and enjoyed by individuals and which every individual may demand from his or her own government. Indeed, we continue to be concerned that the “right to development” identified within the text protects states instead of individuals.

States must implement their human rights obligations, regardless of external factors, including the availability of development and other assistance. Lack of development may not be invoked to justify the abridgement of internationally recognized human rights. To this end, we continually encourage all states to respect their human rights obligations and commitments, regardless of their levels of development.

Additionally, the United States cannot support the inclusion of the phrase “to expand and deepen mutually beneficial cooperation.” This phrase has been promoted interchangeably with “win-win cooperation” by a single Member State to insert the domestic policy agenda of its Head of State in UN documents. None of us should support incorporating political language targeting a domestic political audience into multilateral documents – nor should we support language that undermines the fundamental principles of sustainable development. It should also be noted that while the United States supports access to safe, effective, affordable and quality essential medicines and vaccines for addressing COVID-19, that access should not undermine incentives for innovation. Additionally, the United States does not recognize the term “global public good” as applied to medicines and vaccines more generally.

For these reasons, we request a vote and we will vote against this resolution.

\* \* \* \*

**Cross References**

*Asylum, Refugee, and Migrant Issues*, **Ch. 1.C**

*Trafficking in Persons*, **Ch. 3.B.3.b**

*Nestle/Cargill litigation (Alien Tort Statute)*, **Ch. 5.B.2**

*Inter-American Commission on Human Rights ("IACHR")*, **Ch. 7.D.3**

*Belarus*, **Ch. 9.A.5**

*Iran sanctions related to human rights*, **Ch. 16.A.1.c(8)**

*China sanctions related to human rights (including in Xinjiang)*, **Ch. 16.A.4.a**

*Magnitsky sanctions and other measures related to corruption and human rights*, **Ch. 16.A.12**

*Export controls relating to human rights abuses in China*, **Ch. 16.B.1.c**

*Atrocities prevention*, **Ch. 17.C**

*International humanitarian law*, **Ch. 18.A.4**