

Information about the organizations submitting the Written Opinion



International Commission of Jurists (ICJ)

Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952 and active on five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.

Rue des Buis 3
P.O. Box 1740
1211 Geneva 1, Switzerland

T +41 (0)22 979 38 00
F +41 (0)22 979 38 01
info@icj.org

Website: www.icj.org



Due Process of Law Foundation (DPLF)

DPLF is a regional organization based in Washington D.C. that promotes the Rule of Law and human rights in Latin America through applied research, advocacy activities, strategic alliances with local actors, and effective communication of our messages throughout the region. Our goal is to achieve full respect for the Rule of Law and human rights, as enshrined in international norms and standards.

2629 Connecticut Ave. NW, Suite 200
Washington, DC 20008
Teléfono: (202) 462-7701
info@dplf.org

Website: www.dplf.org

Table of Contents

Section	Page
I. Introduction	3
II. The impact of arms transfers on the enjoyment of human rights in the Americas and worldwide	3
III. The human rights responsibilities of firearms producers and marketers	6
IV. The international State obligation to prevent, and ensure cessation of human rights harms, including from non-State actors	8
V. State duty to protect with extraterritorial effects	10
VI. State obligation to investigate alleged violations and abuses of human rights	12
VII. State Responsibility to Guarantee Access to Justice and effective remedies	13
VIII. Conclusion	16

I. Introduction

1. The present submission by the International Commission of Jurists (ICJ) and the Due Process of Law Foundation (DPLF) is in response to the public invitation from the Inter-American Court of Human Rights (IACHR) in relation to the Advisory Opinion requested by Mexico on "*the activities of private companies engaged in the firearms industry and their effects in human rights*".

2. The United Mexican States (Mexico) have requested the IACtHR the Advisory Opinion to clarify the scope of States' obligations under Articles 1, 2 4, 5, 8 and 25 of the American Convention on Human Rights (ACHR) and Articles 2 and 6 of the International Covenant on Civil and Political Rights (ICCPR). Its request is based on Article 64 of the American Convention, which entitles members of the Organization of American States (OAS) to request advisory opinions from the Court on the interpretation of "the American Convention or other treaties concerning the protection of human rights in the American States".

3. The ICJ and DPLF consider this request for an Advisory Opinion important for the clarification of the obligations under Articles 1,2, 4, 5, 8 and 25 of the ACHR and Articles 2 and 6 of ICCPR and for the practical protection of human rights in the Americas. It might also enrich the global discussions and actions to address the human rights impact of arms production and facilitation.

4. This Written Opinion is submitted in response to the IACtHR's invitation to all interested parties to submit their opinion on the issues covered by the request for an Advisory Opinion, in accordance with Article 73(3) of the Rules of Procedure of the Inter-American Court.¹ Due to their specialized knowledge and analytical contributions in the field of international human rights law and standards applicable to the request, the International Commission of Jurists (ICJ) and the Due Process of Law Foundation (DPLF) are confident that the IACtHR will find this submission useful.

5. This Opinion follows the following structure: 1) this introductory section; 2) The impact of arms transfers on the enjoyment of human rights in the Americas and worldwide; 3) the human rights responsibilities of private actors involved in the arms business and 4) the international obligations of States in relation to the firearms industry and the human rights violations that may result from their activity, including obligations in relation to access to justice and reparation.

II. The impact of arms transfers on the enjoyment of human rights in the Americas and worldwide

6. The production and sale or other form of transfer of firearms² under various modalities has grown exponentially, affecting all regions of the world.³The sale and transfer of firearms poses increasingly adverse human rights impacts on Latin America and Caribbean (LAC) countries, "which are affected by high rates of violence carried out by SALW [small arms and light weapons]. ... The region registers

¹ I/A CtHR, Observations on the Request for an Advisory Opinion, https://www.corteidh.or.cr/observaciones_oc_new.cfm?lang=en&lang_oc=en&nId_oc=2629 ; The Mexico's request for an advisory opinion can be found at https://www.corteidh.or.cr/docs/opiniones/soc_1_2022_en.pdf

² The term "firearms" potentially encompasses a broad range of arms and weaponry. The scope of the international Arms Trade Treaty, for example, encompasses in article 2(1): Battle tanks; Armoured combat vehicles; Large-calibre artillery systems; Combat aircraft; Attack helicopters; Warships; Missiles and missile launchers; and small arms and light weapons. A 2017 report by OHCHR notes that: Conventional arms include hand grenades and manually emplaced anti-personnel and anti-vehicle mines; law enforcement weaponry that fire lethal ammunition and, for instance, riot launchers and related ammunition of all kinds, including tear gas grenades and cartridge-launched projectiles, kinetic-impact projectiles, projectile electrical weapons, directed energy weapons, shotgun-fired birdshot and buckshot, and water cannons and other riot control-type vehicles; and other types of conventional means of warfare, such as flamethrowers, directed energy weapons and bayonets. However, it is understood that the request for an Advisory Opinion concerns mainly firearms that are portable and for personal use.

³ Arms Trade Litigation Monitor, *About Us*, <https://armstradelitigationmonitor.org/about/about-the-site/> (Accessed 19 July 2023); Arms Trade Litigation Monitor, *Analysis*, <https://armstradelitigationmonitor.org/analysis/> (Accessed 19 July 2023).

the highest toll of gun-related violence in the world.”⁴ The production and transfer from some countries towards others generates a spillover effect. For instance, the firearms manufactured in the United States have flown by the thousands over the country’s southern border and into Mexico,⁵ where most homicides are committed with a firearm,⁶ despite Mexico’s strict gun laws and limited domestic firearm production.⁷

7. The manufacture, distribution, and sale of firearms facilitates the commission of human rights violations and abuses that disproportionately affect persons from marginalized and disadvantaged groups, and those experiencing widespread or systematic discrimination, including racial, ethnic and other minorities. A 2020 report by the UN High Commissioner for Human Rights highlighted that “[s]mall arms and light weapons is the category of weapons most implicated in human rights violations in general, and gender-based violence in particular.” The UN Committee on the Elimination of Discrimination against Women, the supervisory body for the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), has repeatedly recognized the detrimental impact of small arms and light weapons on women and girls, including those that have been diverted and transferred unlawfully.⁸

8. With regard to children, a 2021 report commissioned by the UN Children’s Fund Latin America and Caribbean Regional Office indicates that “data shows that homicides among children and youth may be rising,” and “[w]hile recent data does not disaggregate data for armed and unarmed homicide among children, trend analyses have shown that over the last two decades firearm control strategies (such as the 2003 Brazilian Disarmament Statute) have influenced the decrease in child and youth homicide rates.”⁹ Finally, in the United States, gun violence disproportionately affects the African American minority population.¹⁰

9. In this context, a range of human rights are impacted. Under international human rights law, States have an obligation not only to respect human rights, but also to protect persons from conduct of non-State actors, including business enterprises like arms companies, that impair the enjoyment of enjoyment of human rights.¹¹

10. Business enterprises such as firearm manufacturers, distributors, and sellers may be engaged in practices, including through a range of business relationships, that make them accessory to or complicit in the commission of violations or abuses of rights such as the right to life as guaranteed by Article 4 of the ACHR and Article 1 of the American Declaration on the Rights and Duties of Man (“the American Declaration”) and ICCPR Article 6(1). The high rates of lethal gun violence in several countries in the region indicate the widespread impairment of the enjoyment of these rights.

⁴ Control Arms Secretariat, *ATT Monitor 2018*, 20 August 2018, p. 101, available at: https://attmonitor.org/wp-content/uploads/2020/07/EN_ATT_Monitor_Report_2018_ONLINE.pdf

⁵ McDougal, T., Shirk, D.A, Muggah, R., and Patterson, J.H. “The Way of the Gun: Estimating Firearms Traffic Across the U.S.-Mexico Border”, University of San Diego Trans-Border Institute, March 2013, p. 15, available at: https://catcher.sandiego.edu/items/peacestudies/way_of_the_gun.pdf

⁶ Vision of Humanity, *Homicides in Mexico – Statistics*, <https://www.visionofhumanity.org/homicides-in-mexico-statistics/> (Accessed 19 June 2023).

⁷ McDougal, Shirk, Muggah and Patterson, “The Way of the Gun: Estimating Firearms Traffic Across the U.S.-Mexico Border”, University of San Diego Trans-Border Institute, Op. Cit. note 5, pp. 1, 7.

⁸ Report of the United Nations High Commissioner for Human Rights: Impact of arms transfer on human rights, A/HRC/44/29 (June 2020), para. 14 (internal citation omitted).

⁹ Fry, D., Padilla, K., Germanio, A., Lu, M., Ivatury, S., and Vindrola, S. *Violence against children in Latin America and the Caribbean 2015-2021: Executive Summary*, United Nations Children’s Fund, Panama City, 2021, p. 9, available at: <https://www.unicef.org/lac/media/29036/file/Violence-against-children-in-Latin-America-and-the-Caribbean-2015-2021.pdf>

¹⁰ Amnesty International, *In the Line of Fire: Human Rights and the US Gun Violence Crisis*, 2018 pp. 9, 15, available at: https://www.amnestyusa.org/wp-content/uploads/2018/09/Gun-Report-Full_16.pdf

¹¹ UN Human Rights Committee, General Comment No. 31 (80), *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, UN Doc. CCPR/C/21/Rev.1/Add.13, 26 March 2004, para. 8; see also UN Committee on the Rights of the Child, General Comment No. 16, *On State obligations regarding the impact of business on children’s rights*, UN Doc. CRC/C/GC/16, 7 February 2013; UN Committee on Economic, Social and Cultural Rights, General Comment No. 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, UN Doc. E/C.12/GC/24, 10 August 2017; OHCHR, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, HR/PUB/11/04, 2011, p. 3, Principle 1

11. The prohibition against the arbitrary deprivation of life is a peremptory norm of international law (*jus cogens*)¹², and non-derogable under human rights treaties, including the ICCPR and the ACHR, meaning that it must be fully respected even in times of public emergency. As the Inter-American Court has expressed, “the right to life plays a fundamental role in the American Convention, since it is the essential prerequisite for the exercise of all other rights.”¹³ The UN Human Rights Committee has also emphasized the essential nature of the right to life, stating that it “constitutes a fundamental right, the effective protection of which is the prerequisite for the enjoyment of all other human rights [...]”.¹⁴ According to the Committee, “[d]eprivation of life” includes “foreseeable and preventable life-terminating harm or injury.”¹⁵ The availability of studies and statistics on the use of firearms for the commission of human rights abuses, including death,¹⁶ make such abuses foreseeable to the firearm companies and the States responsible for regulating them.

12. Similarly, the injuries and death that result from the conduct of such firearm manufacturers, distributors, and sellers typically constitute an impairment to the enjoyment of the right to physical and mental integrity and freedom from torture and cruel, inhuman or degrading treatment, guaranteed by Article 5 of the American Convention, the UN Convention against Torture and the ICCPR (article 7). The prohibition against torture is also a peremptory norm of international law (*jus cogens*),¹⁷ and non-derogable under human rights treaties, including the ICCPR and the ACHR, meaning that it must also be fully respected even in times of public emergency. The use of firearms also impairs the enjoyment of Article 9 of the ICCPR, which guarantees the right to personal security. The Human Rights Committee has explained that Article 9 of the ICCPR “obliges States parties to take appropriate measures...to protect individuals from foreseeable threats to life or bodily integrity proceeding from any governmental or private actors.”¹⁸ This means that States should “protect their populations...against risks posed by excessive availability of firearms.”¹⁹

13. A number of other rights protected by the ACHR, the American Declaration and other human rights treaties, may be impacted by the gun violence that results from the business activities and business relationships of firearm manufacturers, distributors, and sellers and the failure by States to undertake protective measures, including the adequate regulation of these activities and relationships. These rights include the right to peacefully assemble, guaranteed by ICCPR article 21, Article 16 of the American Convention and Article 21 of the American Declaration. For instance, apart from violations to the right to life and the right to personal integrity, the frequent occurrence of mass shootings in schools, religious institutions, and other public spaces in the United States²⁰ threatens the ability of people to peacefully assemble.

14. As stated above, widespread access to and use of firearms may disproportionately impact the rights of persons from marginalized or disadvantaged communities and racial and minority populations. Such practices may engage ICCPR Article 26 that guarantees non-discrimination, equality and equal protection of the law in all State conduct. These rights are protected by widely ratified international human rights instruments. For example, the Convention on the Rights of the Child requires States to “ensure to the maximum extent possible the survival and development of

¹² UN Human Rights Committee, General Comment No. 29, States of Emergency (article 4), UN Doc. CCPR/C/21/Rev.1/Add.11, 31 August 2001, para. 11.

¹³ Inter-American Court of Human Rights, Case of the Miskito Divers (Lemoth Morris et al.) v. Honduras, Judgment of August 31, 2021, para. 54, available at: https://www.corteidh.or.cr/docs/casos/articulos/seriec_432_ing.pdf

¹⁴ UN Human Rights Committee, General Comment No. 36 on article 6 of the International Covenant on Civil and Political Rights, on the right to life, CCPR/C/GC/36 (2018), para. 2.

¹⁵ *Ibid.* para. 6

¹⁶ See, e.g., Amnesty International, *In the Line of Fire: Human Rights and the US Gun Violence Crisis*, 2018 pp. 9, 15, available at: https://www.amnestyusa.org/wp-content/uploads/2018/09/Gun-Report-Full_16.pdf; see also Control Arms Secretariat, *ATT Monitor 2018*, 20 August 2018, p. 101, available at: https://attmonitor.org/wp-content/uploads/2020/07/EN_ATT_Monitor_Report_2018_ONLINE.pdf

¹⁷ UN Human Rights Committee, General Comment No. 29, States of Emergency (article 4), U.N. Doc. CCPR/C/21/Rev.1/Add.11, 31 August 2001, para. 11

¹⁸ UN Human Rights Committee, General Comment No. 35, Article 9 (Liberty and security of person), CCPR/C/GC/35 (2014), para. 9.

¹⁹ *Ibid.*

²⁰ See, e.g., Amnesty International, *Gun Violence*, <https://www.amnesty.org/en/what-we-do/arms-control/gun-violence/>

the child.”²¹ The Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women guarantees the right of women to be free from violence and discrimination.²² The UN Convention on the Elimination of All Forms of Discrimination Against Women also guarantees the right of women to be free from discrimination.²³ The Office of the High Commissioner for Human Rights (OHCHR), the UN Secretary General and other UN bodies have highlighted the role of widespread availability and use of firearms in the reinforcement of gender roles and social norms that underpin violence against women, which is effected not only by the discharge of the arm but even by its own mere presence at the household.²⁴ Finally, the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) requires State parties to “take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations with the effect of creating or perpetuating racial discrimination wherever it exists.”²⁵

III. The human rights responsibilities of firearms producers and marketers

15. The first section of Mexico’s request concerns the international responsibility of arms business enterprises for their negligent or intentional marketing and selling of firearms that facilitate their illicit trafficking and wide access which increase risks of violence.

16. Adopted by consensus of the Human Rights Council, the United Nations Guiding Principles on Business and Human Rights (UNGPs) establishes a global standard of responsibility for all business enterprises: the responsibility to respect internationally recognized human rights. This entails the responsibility to refrain from “causing or contributing to adverse human rights impacts through their own activities” and the responsibility to “prevent or mitigate adverse human rights impacts that are directly linked to their operations, *products* or services by their business relationship, even if they have not contributed to those impacts.”²⁶

17. The human rights responsibilities of business enterprises under the UNGPs are different and independent from the States’ international human rights obligations. In addition to the requirement for business to respect national laws and regulations, these responsibilities “exist... over and above compliance with national laws and regulations[.]”²⁷ To implement these responsibilities, the UNGPs also enjoins businesses to “carry out human rights due diligence.”

18. Human rights due diligence processes are indispensable for business to meet their human rights responsibilities. This process comprises the identification of risks for human rights, the adoption of measures of mitigation or prevention, the public communication of those efforts and the integration in company’s internal processes of the outcomes of the process.²⁸

19. Several other instruments have adopted a similar standard of human rights due diligence as the Guiding Principles and offer additional guidance for private companies for fulfilling their human rights due diligence responsibilities.²⁹ Of particular importance are the ILO Tripartite Declaration on Social Policy, and the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises. The two enjoin businesses to “[c]arry out human rights due diligence[.]”

²¹ Convention on the Rights of the Child, article 6; Cf., e.g., Amnesty International, In the Line of Fire: Human Rights and the US Gun Violence Crisis, 2018 pp. 71-86, available at: https://www.amnestyusa.org/wp-content/uploads/2018/09/Gun-Report-Full_16.pdf

²² Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women art. 3 and art. 6

²³ Convention on the Elimination of All Forms of Discrimination against Women, Article 2

²⁴ OHCHR, Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, HR/PUB/11/04, 2011, p. 14, Principle 13 (emphasis added).

²⁵ International Convention on the Elimination of All Forms of Racial Discrimination, Article 2(1)(c)

²⁶ OHCHR, *Ibid.*, p. 14, Principle 13 (emphasis added)

²⁷ *Ibid.*, p. 13, (see Commentary to Principle 11)

²⁸ *Ibid.*, Principle 14 - 15

²⁹ See, e.g., Kanetake M. and Ryngaert, C. Due diligence and corporate liability of the defence industry: Arms exports, end use and corporate responsibility,” Flemish Peace Institute, 10 May 2023, p. 34, available at: <https://vlaamsvredesinstituut.eu/wp-content/uploads/2023/05/VVI-Rapport-Due-Dilligence-WEB-new.pdf> (discussing the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for multinational enterprises, and the American Bar Association’s Defense Industry Human Rights Due Diligence Guidance).

by “assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses as well as communicating how impacts are addressed.”³⁰

20. The global standard for businesses to respect human rights and, to that end, carry out due diligence have also been adopted by regional bodies and private associations and organizations. In this vein, the IACHR has stated that “[i]n the context of business and human rights, due diligence...constitutes a continuous management process that a company should carry out in light of its circumstances (including sector, operating context, size and similar factors) to meet its responsibility to respect human rights.”³¹ This contextualized approach should translate to a heightened level of due diligence for firearm manufacturers, distributors, and sellers, given the inherently dangerous nature of firearms and their frequent employment in the commission in human rights violations and abuses.³²

21. Firearms companies should conduct human rights due diligence regardless of whether it is mandated by domestic export and licensing laws.³³ In this connection, the UN Working Group on Business and Human Rights has emphasized that the “[UN] Guiding Principles have implications for arms companies beyond mere compliance with export controls...export controls cannot replace [human rights due diligence].”³⁴

22. In relation to arms, security and defense industry, the American Bar Association’s Defense Industry Human Rights Due Diligence Guidance recommends that arms exporters “develop and implement a comprehensive human rights due diligence policy” comprising several elements. These include end-use monitoring practices like requiring usage reporting from clients and “collecting open-source information.” They should also implement investigation and remediation practices, such as “the cancellation of future deliveries and the termination of business relations” where “the exporter determines that there is a reasonable likelihood that misuse has occurred” and the exporter should be willing to “cooperate fully in the investigation” of misuse by authorities.³⁵

23. The United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean (UNLIREC) highlight that sector specific initiatives setting industry standards of business operations in line with human rights, such as the Voluntary Principles on Security and Human Rights) “are a way to implement the UN Guiding Principles[.]”³⁶ The Voluntary Principles offer risk assessment guidance to companies, including those that “provide equipment (including lethal and non-lethal equipment) to public or private security,” which would encompass certain firearm manufacturers, distributors, or sellers.³⁷ The Voluntary Principles counsel such companies to “monitor the use of equipment provided by the Company and to properly investigate situations in which such equipment is used in an inappropriate manner” and to “consider the risk of such transfers [of equipment to public or private security], any relevant export licensing requirements, and the

³⁰ Organisation for Economic Co-operation and Development, “OECD Guidelines for Multinational Enterprises 2011 Edition”, p. 31, para. 5, p. 34, para. 45 (“Commentary on Human Rights”), The Guidelines are part of the OECD Declaration on International Investment and Multinational Enterprises, whose adherents include Argentina, Brazil, Canada, Chile, Colombia, Costa Rica, Mexico, Peru, the United States, and Uruguay, available at: <https://www.oecd.org/daf/inv/mne/48004323.pdf>

³¹ Inter-American Commission on Human Rights, *Report on Business and Human Rights: Inter-American Standards*, OAS/Ser.L/V/II IACHR/REDESCA/INF.1/19, November 1, 2019, para. 50, available at: http://www.oas.org/en/iachr/reports/pdfs/Business_Human_Rights_Inte_American_Standards.pdf (quoting OHCHR, *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide* (2012), p. 7).

³² See, e.g., Control Arms Secretariat, *ATT Monitor 2018*, 20 August 2018, p. 101, available at: https://attmonitor.org/wp-content/uploads/2020/07/EN_ATT_Monitor_Report_2018_ONLINE.pdf

³³ UN Working Group on Business and Human Rights, *Responsible business conduct in the arms sector: Ensuring business practice in line with the UN Guiding Principles on Business and Human Rights*, 2022, p. 6, available at: <https://www.ohchr.org/sites/default/files/2022-08/BHR-Arms-sector-info-note.pdf>

³⁴ *Ibid.*

³⁵ American Bar Association Center for Human Rights, “Defense Industry Human Rights Due Diligence Guidance”, July 2022, pp. 1-2, available at: https://www.americanbar.org/content/dam/aba/administrative/human_rights/justice-defenders/chr-due-diligence-guidance-2022.pdf

³⁶ United Nations Office for Disarmament Affairs Regional Centre for Peace,, Disarmament and Development in Latin America and the Caribbean (UNLIREC) and the Geneva Centre for the Democratic Control of the Armed Forces (DCAF), “Armed Private Security in Latin America and the Caribbean: Oversight and accountability in an evolving context, Regional Study”, 2016 p. 53, available at: <https://unlirec.org/wp-content/uploads/Regional-study-private-security-Oct-2016.pdf>

³⁷ Voluntary Principles on Security and Human Rights, p. 7, available at: https://www.voluntaryprinciples.org/wp-content/uploads/2023/03/Voluntary-Principles_ENG.pdf

feasibility of measures to mitigate foreseeable negative consequences, including adequate controls to prevent misappropriation or diversion of equipment which may lead to human rights abuses.”³⁸

V. The international State obligation to prevent, and ensure cessation of human rights harms, including from non-State actors

24. A central part of Mexico’s request of an Advisory Opinion concerns the obligation of States vis-à-vis the activities of firearms companies, including the duty to prevent violations and abuses of the right to life and personal integrity through a stricter regulation of firearms commercialization.

25. Despite the normative framework applicable to business enterprises described above, many of them continue operating without complying with those standards. Enforcement of the standards of business human rights responsibility remains a problem. In the case of firearms, they continue to be exported into “contexts of severe human rights violations” due to several factors [including]...a lack of human rights due diligence (HRDD) conducted by arms companies, as well as a failure by States to require them to do so.”³⁹

26. As discussed above, international human rights law generally, and human rights treaties in particular contain obligations for States to protect human rights against harmful conducts of non-State actors. Certain treaty bodies have detailed the nature and scope of this obligation as it pertains to business enterprises. In its General Comment 16 (2013) in respect of this obligation under the Convention on the Rights of the Child, the Committee on the Rights of the Child recognized:

that duties and responsibilities to respect the rights of children extend in practice beyond the State and State-controlled services and institutions and apply to private actors and business enterprises. Therefore, **all businesses must meet their responsibilities regarding children’s rights and States must ensure they do so.** (emphasis added)

To fulfil that obligation, “States should require businesses to undertake child-rights due diligence”.⁴⁰ Similarly, the Committee on Economic, Social and Cultural Rights has adopted General Comment 24 on the protective obligations in respect of business enterprises under the International Covenant on Economic, Social and Cultural Rights. The Committee stressed that the obligation to protect “means that States parties must prevent effectively infringements of economic, social and cultural rights in the context of business activities”, and “entails a positive duty to adopt a legal framework requiring business entities to exercise human rights due diligence.”⁴¹

27. Under both the ICCPR (Article 2(1)) and the American Convention (Article 1.1), States are bound not only to respect the human rights guaranteed therein, but also to “ensure” them. Both the Human Rights Committee and the Inter-American Court have understood this as a positive obligation that requires States to adopt measures to prevent and/or stop, non-State actors from impairing the enjoyment of the rights and providing for avenues of redress in such instances.

28. Specifically, the Human Rights Committee has affirmed that it is a general obligation covering the entirety of the rights guaranteed under the ICCPR that States protect individuals not just against violations by State agents “but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights...”.⁴² In relation to the right to life (Article 6 ICCPR), the

³⁸ *Ibid.* pp. 4, 7

³⁹ UN Working Group on Business and Human Rights, Responsible business conduct in the arms sector, Op. Cit note 33, p. 1

⁴⁰ Committee on the Rights on the Child, General Comment No. 16 on State obligations regarding the impact of the business sector on children’s rights, UN Doc. CRC/C/GC/16, 17 April 2013, para 8 and 62

⁴¹ Committee on Economic, Social and Cultural Rights, General Comment 24, on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities , E/C.12/GC/24, 10 August 2017, paras 14 and 16.

⁴² Human Rights Committee, General Comment 31, para 8: “the positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities. There may circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States Parties of those rights, as a result of States Parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.”

Committee said that States have a duty to act with due diligence to adopt reasonable measures in response to “foreseeable threats to life originating from private persons and entities whose conduct is not attributable to the State.”⁴³ With regard to the right to be free from cruel, inhuman, or degrading treatment under Article 7 of the ICCPR, the Committee has explained that States must “afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by article 7, whether inflicted by people acting in their official capacity...or in a private capacity.”⁴⁴ According to the Committee, mere prohibition of such acts is not sufficient, but that States should also take “legislative, administrative, judicial and other measures...to *prevent* and punish acts” that violate Article 7.⁴⁵

29. Similar to the ICCPR, Article 1.1 of the American Convention requires States to “respect” and “ensure” the enjoyment of human rights,⁴⁶ and under Article 2 further requires the adoption and annulment of domestic legislation as may be necessary to facilitate access to and enjoyment of rights under the Convention.⁴⁷

30. In light of this duty, as well as the responsibilities outlined in the UNGPs, the Inter-American Court of Human Rights explained in the Case of the *Miskito Divers vs. Honduras* (hereinafter *Miskito Divers*) that “States have a duty to prevent human rights violations by private companies, and therefore must adopt legislative and other measures to prevent such violations, and to investigate, punish and provide reparation when they occur.”⁴⁸

31. The Court’s opinion in *Miskito Divers* goes on to elaborate this duty to regulate, explaining that “the regulation of business activities...should aim to ensure that they carry out continuous assessments of the risks to human rights, and respond through effective and proportional measures to mitigate the risks caused by their activities, in consideration of their resources and possibilities, and with accountability mechanisms to remedy any damage caused.”⁴⁹

32. Furthermore, in relation to the right to life and the right to personal integrity and dangerous activities, in *Miskito Divers* the Inter-American Court held that:

In fulfilment of its obligation to ensure the rights to life and personal integrity...States have a duty to regulate, supervise and monitor the implementation of dangerous activities that entail significant risks for the life and integrity of persons under their jurisdiction.⁵⁰

33. In the case of the *Workers of the Firework Factory in Santo Antônio de Jesus vs. Brazil*, the IACtHR addressed the State obligation of supervision and oversight over hazardous activities, such as the operation of a firework factory. The Court affirmed that:

[...] owing to the specific risks that it involved for the life and integrity of the individual, the State had the obligation to regulate, supervise and oversee its exercise, to prevent the violation of the rights of those who were working in this sector.⁵¹

34. Accordingly, States must adequately regulate firearm manufacturers, distributors, and sellers to prevent the interference with the enjoyment of the rights to life and physical integrity that presently result from their activities.

⁴³ UN Human Rights Committee, General Comment No. 36 on article 6 of the International Covenant on Civil and Political Rights, on the right to life, CCPR/C/GC/36 (2018), para. 7 and 21.

⁴⁴ UN Human Rights Committee, General Comment No. 20: Article 7 Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment, HRI/GEN/1/Rev.9 , 1992, para. 2

⁴⁵ *Ibid.*, para. 8 (emphasis added)

⁴⁶ American Convention on Human Rights, Article 1.

⁴⁷ I/A Court H.R., Case of Almonacid Arellano et al. v. Chile. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 26, 2006. Series C No. 154, paras. 117, 118.

⁴⁸ I/A Court H.R., Case of the Miskito Divers (Lemoth Morris et al.) v. Honduras. Judgment of August 31, 2021. Series C No. 432, para. 48.

⁴⁹ *Ibid.*, para. 51 (emphasis added).

⁵⁰ *Ibid.*, para. 55.

⁵¹ I/A Court H.R., Case of the Employees of the Fireworks Factory of Santo Antônio de Jesus and their families v. Brazil. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 15, 2020. Series C No. 407, para. 112.

35. The IACHR has expressed similar principles regarding State responsibility for abuses committed by private actors. Both the universal and Inter-American human rights organs “have underscored that the duty of the State to implement human rights obligations in practice can extend to the prevention and response to the acts of private actors.”⁵²

36. In line with this well-established body of international standards, the first principle of the UNGPs reaffirms that “States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.”⁵³

37. The Arms Trade Treaty establishes a particular regime applicable also to transfers of certain conventional arms, which may complement the regime provided under human rights treaties but do not substitute for it. Under Article 11, States are required to take measures to prevent the diversion of conventional arms from lawful transfers between exporting and importing States, with “conventional arms” including “[s]mall arms and light weapons.”⁵⁴ Specifically, Article 11 mandates states to prevent such diversion by, *inter alia*, “assessing risk of diversion of the export and considering the establishment of mitigation measures” and “[o]ther prevention measures” such as “examining parties involved in the export, requiring additional documentation, certificates, assurances, not authorizing the export or other appropriate measures.”⁵⁵

38. Article 7 of the Arms Trade Treaty establishes due diligence requirements for exporting States where exports are not otherwise prohibited under the treaty but might nonetheless “undermine peace and security” or “be used to...commit or facilitate a serious violation of international human rights law.”⁵⁶ Widespread access to and use of firearms by criminal organizations and perpetrators of violence creates physical, economic, and social instability and thereby undermines peace and security. As explained in a recent report, “[w]hile determining what constitutes ‘serious’ violations requires case-specific information, exported military items and technologies can indeed be used in violations of human rights that have an irreparable impact on victims (e.g., infringement of the right to life, the right to be free from torture).”⁵⁷

39. In light of these established obligations, a growing number of States are moving to regulate due diligence of business enterprises under domestic law. Such laws include the French Corporate Duty of Diligence Law[,],...Italian Due Diligence Laws, Dutch Child Labour Due Diligence Law, and the German Supply Chain Due Diligence Act. This movement is coalescing around a European-wide regulation on human rights due diligence for businesses.⁵⁸

V. State duty to protect with extraterritorial effects

40. Because the transfers of firearms -under all denominations- necessarily involves two or more States or separate territories, it is important to clarify the scope of obligations of each State in relation to the protection of human rights within its territory and jurisdiction and extraterritorially. In the typical situations that motivate Mexico’s request for an advisory opinion, producers offer for sale -and eventually perform the transfer and deliverance of - firearms specifically designed for the purpose and taste of the buyers, who many times are located and operate in the territory of other countries.

⁵² Report No. 80/11 of 21 July 2011, Inter-American Commission on Human Rights, Case No. 12.626, Jessica Lenahan (Gonzales) et al. v. United States, paras. 119, 122, available at: <https://www.oas.org/en/iachr/decisions/2011/USPU12626EN.DOC>

⁵³ OHCHR, Guiding Principles on Business and Human Rights, p. 3, Principle 1

⁵⁴ Arms Trade Treaty (ATT), Articles 11 and 2(1)

⁵⁵ United Nations Security Council, Small arms and light weapons, Report of the Secretary-General, S/2021/839, 30 September 2021, para. 72, available at:

<https://www.undocs.org/Home/Mobile?FinalSymbol=S%2F2021%2F839&Language=E&DeviceType=Desktop&LangRequested=False>

⁵⁶ Arms Trade Treaty Articles 7(1)(a) and (b)

⁵⁷ Kanetake M and Ryngaert, C. Op. Cit. note 29, p. 16, (internal citations omitted)

⁵⁸ Council of the European Union, Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, 30 November 2022, available at: <https://data.consilium.europa.eu/doc/document/ST-15024-2022-REV-1/en/pdf>; European Parliament, Amendments adopted by the European Parliament on 1 June 2023 on the proposal for a directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, available at: https://www.europarl.europa.eu/doceo/document/TA-9-2023-0209_EN.html

41. International human rights law contains an obligation for States to take measures to protect human rights outside its territory, rights which otherwise will be impaired by conduct of an actor located in the territory or under the jurisdiction of the first state.

42. The general contours of this obligation are set out in the Maastricht Principles on the Extraterritorial Obligations of States,⁵⁹ and detailed in its commentary⁶⁰ in respect of the obligation to protect, and specifically against conduct by business enterprises, in the following circumstances: "a) the harm or threat of harm originates or occurs on its territory; b) where the non-State actor has the nationality of the State concerned; c) as regards business enterprises, where the corporation, or its parent or control-ling company, has its centre of activity, is registered or domiciled, or has its main place of business or substantial business activities, in the State concerned; d) where there is a reasonable link between the State concerned and the conduct it seeks to regulate, including where relevant aspects of a non-State actor's activities are carried out in that State's territory; e) where any conduct impairing ...rights constitutes a violation of a peremptory norm of international law. Where such a violation also constitutes a crime under international law, States must exercise universal jurisdiction over those bearing responsibility or lawfully transfer them to an appropriate jurisdiction."

43. This is supported by what is now a large volume of international jurisprudence, a small fraction of which is described in the following paragraphs.

44. Specifically, relation to the obligation to protect the right to life (Article 6 ICCPR), the Human Rights Committee affirmed that States Parties to the Covenant must take

[A]ppropriate legislative and other measures to ensure that all activities taking place in whole or in part within their territory and in other places subject to their jurisdiction, but having a direct and reasonably foreseeable impact on the right to life of individuals outside their territory, including activities taken by corporate entities based on their territory or subject to their jurisdiction... are consistent with article 6 ...⁶¹

45. The Committee considers that in the light of Article 2(1) ICCPR, States have an obligation to respect and ensure rights under Article 6 also to "all persons over whose enjoyment of the right to life it exercises power or effective control". This notion of extraterritorial obligations refers to the power or effective control over the **situation** of enjoyment of the rights, not only effective control over the territory or over persons affected. The CESCR has posited a similar obligation with regard to the ICESCR, noting that that treaty "requires States parties to take steps to prevent and redress infringements of Covenant rights that occur outside their territories due to the activities of business entities over which they can exercise control".

46. The Committee on the Rights of the Child has also stated that businesses' home states have obligations under the Convention on the Rights of the Child and its Optional Protocols "to respect, protect and fulfil children's rights in the context of businesses' extraterritorial activities and operations, provided that there is a reasonable link between the State and the conduct concerned. A reasonable link exists when a business enterprise has its centre of activity, is registered or domiciled or has its main place of business or substantial business activities in the State concerned." The obligation extends to the provision of remedy for extraterritorial human rights abuse by businesses in the same circumstances.⁶²

47. Furthermore, in its 2019 thematic Report on Business and Human Rights, the IACHR explained "that even in the absence of effective control or authority over a situation or person, a

⁵⁹ Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights, 2011, Principle 25, available at: https://www.etoconsortium.org/wp-content/uploads/2023/01/EN_MaastrichtPrinciplesETOs.pdf?tx_drblob_pi1%5BdownloadUid%5D=23 (English version) and https://www.etoconsortium.org/wp-content/uploads/2023/01/ES_PrincipiosMaastrichtETOs.pdf (Spanish version)

⁶⁰ De Schutter, O., Eide, A., Khalfan, A., Orellana, M., Salomon, M., and Seiderman, I. "Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights", in *Human Rights Quarterly*, Volume 34, No. 4, 2012, available at: <https://icj2.wpenlinepowered.com/wp-content/uploads/2012/12/HRQMaastricht-Maastricht-Principles-on-ETO.pdf>

⁶¹ UN Human Rights Committee, General Comment No. 36, para. 22.

⁶² UN Committee on the Rights of the Child, General Comment 16, paras 43 and 44

State may, through its conduct, influence or produce foreseeable effects on the enjoyment of human rights outside its territory.”⁶³ According to the Commission,

In these circumstances...although there is no strict exercise of extraterritorial jurisdiction...by the home State, it does have a basis for exercising a degree of jurisdiction that has extraterritorial effects over the protection of human rights in terms of the possibility to influence, through its obligations to regulate, prevent, oversee, and where appropriate hold such companies accountable in accordance with international law.⁶⁴

48. Therefore, States have an obligation to regulate the business activities and business relationships of companies, within their jurisdiction, i.e., where the company has its centre of activity, is registered or domiciled, or has its main place of business or substantial business activities in that State, to address the human rights violations and abuses resulting from the illicit flow of firearms across state borders and throughout the region.⁶⁵ As the home State of many of the companies involved in the chain of firearms production and trade, the United States, for example, must regulate the companies domiciled and registered under its jurisdiction that manufacture, distribute, or sell firearms that end up in the hands of individuals or criminal networks that use them to abuse human rights, a foreseeable result given existing studies on gun violence perpetrated in Mexico, Central America, and elsewhere.⁶⁶

VI. State obligation to investigate alleged violations and abuses of human rights

49. Under international law, including under the ICCPR and the American Convention and other human rights treaties, States also have an obligation to investigate violations and abuses of protected human rights, including when such conduct are perpetrated by private actors. Such investigation must be undertaken with a view to bringing those responsible to justice. In all situations where a breach of obligations is established, this will engage the responsibility of the States. However, in relation to violations or abuses constituting crimes under international law, i.e. conduct for which international law requires criminalization, this will also require an investigation into the alleged criminal wrongdoing of individuals with a view to ascertaining individuals’ criminal liability. Such include international crimes of genocide, war crimes, crimes against humanity, aggression; slavery, torture, enforced disappearance, and arbitrary deprivation of the right to life.⁶⁷

50. The duty to investigate is reinforced by the general duty to ensure the rights under the Covenant in conjunction with the duty to provide an effective remedy to victims of human rights violations (Art 2.3 ICCPR). Investigations of violations, including of Articles 6 and 7 ICCPR must be independent, impartial, prompt, thorough, effective, credible, and transparent.⁶⁸

⁶³ IACHR, *Report on Business and Human Rights: Inter-American Standards*, OAS/Ser.L/V/II IACHR/REDESCA/INF.1/19, November 1, 2019, para. 152, available at : http://www.oas.org/en/iachr/reports/pdfs/Business_Human_Rights_Inte_American_Standards.pdf

⁶⁴ *Ibid.*

⁶⁵ Control Arms Secretariat, *ATT Monitor 2018*, 20 August 2018, p. 101, available at: https://attmonitor.org/wp-content/uploads/2020/07/EN_ATT_Monitor_Report_2018_ONLINE.pdf (“Latin America is home to 10 of the 15 countries with the highest rates of homicide outside of armed conflict. Chief among the factors contributing to this armed violence epidemic is the diversion of SALW across the Americas...” (internal citation omitted)).

⁶⁶ See, e.g., Fabre, A-S, Florquin, N., Karp, A., and Schroeder, M. *Weapons Compass: The Caribbean Firearms Study*, Small Arms Survey, Switzerland, April 2023, p. 6, available at: <https://www.smallarmssurvey.org/sites/default/files/resources/CARICOM-IMPACS-SAS-Caribbean-Firearms-Study.pdf>; Arindrajit Dube, Oeindrila Dube, and Omar García-Ponce, “Cross-Border Spillover: U.S. Gun Laws and Violence in Mexico”, in *American Political Science Review*, Volume 10, No. 3, August 2013, p. 402, available at: http://odube.net/papers/Cross_border_spillover.pdf

⁶⁷ UN Human Rights Committee, General Comment No. 31, paras 15 and 18. See also UN Updated Set Principles Updated Set of principles for the protection and promotion of human rights through action to combat impunity, UNN Doc ECN.4/2005/102/Add. 1, Recommended by the UN Human Rights Commission in Resolution 2005/81; International Commission of Jurists Practitioners Guide 7, International Law and the Fight against Impunity, available at <https://www.icj.org/international-law-and-the-fight-against-impunity-icj-practitioners-guide-no-7-now-available-in-english/>

⁶⁸ UN Human Rights Committee, General Comment No. 36, paras 27-28; see also UN Human Rights Committee, General Comment No. 31, para 15

51. According to the Human Rights Committee, failure “to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant.”⁶⁹ This applies to the right to life as well as to the violations of other rights under ICCPR.

52. The duty to investigate violations and abuses of rights protected under the American Convention is firmly established in the jurisprudence of the Court, which has abundantly explained its content. For the Court, if the state lets a violation constituting criminal conduct go unpunished, it breaches its duty to guarantee the free and full enjoyment of rights under its jurisdiction. This is equally valid when “the state tolerates that private actors or groups acts that impair human rights under the Convention go free and unpunished.”⁷⁰

53. The duty to investigate allegations and punish perpetrators comprises the investigation about the role of all those who may have responsibility for the violations and abuses constituting crimes under international law, including the authors (material and intellectual) or direct perpetrator, the accomplices, those who acquiesced, any accessory after the fact, and all persons who may have participated in the acts.⁷¹ In the context of firearms transfers and trafficking, those who provide firearms to individuals who are known or are likely to use the arms to commit crimes against other persons, including women and children, may also fall under the investigations and potential sanctions.

54. Investigations must be carried out in accordance with international standards, and all obstacles legal and factual should be removed to avoid impunity. These include, for example, the Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016); the Revised United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions⁷² (Minnesota Protocol); and the Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2022 edition).⁷³

55. Failure to carry effective investigations in this way may result in international responsibility of the State for breach of its obligations.

VII. State Responsibility to Guarantee Access to Justice and effective remedies

56. The request of an advisory opinion also asks about the States’ obligations under the ICCPR and the American Convention to guarantee access to justice and whether obligations under Articles 8.1, 25 of the American Convention and Article 2.3 of the ICCPR are compatible with laws that establish legal immunity of firearms producers and marketers against claims by potential victims.

57. The right to an effective remedy for human rights violations is a general principle law. As set out in universal standards adopted by consensus of the UN General Assembly,⁷⁴ the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law:

⁶⁹ UN Human Rights Committee, General Comment No. 31, para 15

⁷⁰ I/A Court H.R., Case of Velásquez Rodríguez v. Honduras. Merits. Judgment of July 29, 1988. Series C No. 4., paras 176 and 177

⁷¹ I/A Court H.R., Cases of Garrido y Baigorria v Argentina, judgment 27 August 1998, para 74; Mapiripan Massacre v Colombia, judgement 15 September 2005, para 298.

⁷² OHCHR, The Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016), UN Doc. HR/PUB/17/4 (2017), available at:

<https://www.ohchr.org/sites/default/files/Documents/Publications/MinnesotaProtocol.pdf>

⁷³ OHCHR, Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), UN Doc. HR/P/PT/8/Rev. 2 (2004), available at:

https://www.ohchr.org/sites/default/files/documents/publications/2022-06-29/Istanbul-Protocol_Rev2_EN.pdf

⁷⁴ UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN GA Resolution 60/147 of 15 December 2005, available: <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation>.

the obligation to respect, ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law, includes, inter alia, the duty to:

- (a) Take appropriate legislative and administrative and other appropriate measures to prevent violations;
- (b) Investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law;
- (c) Provide those who claim to be victims of a human rights or humanitarian law violation with equal and effective access to justice..... **irrespective of who may ultimately be the bearer of responsibility for the violation;** and
- (d) Provide effective remedies to victims, including reparation..... (emphasis added)⁷⁵

Forms of reparation include compensation, guarantees of non-repetition, rehabilitation, restitution, and satisfaction.

58. Article 2(3) of the ICCPR guarantees victims of human rights violations the right to access to “an effective remedy,” including judicial remedies.⁷⁶ In its General Comment 31, the Human Rights Committee clarified that this obligation entails “establishing appropriate judicial and administrative mechanisms for addressing claims of rights violations under domestic law.” Administrative mechanisms are particularly important “to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies.”⁷⁷ Article 2.3 also requires the provision of reparation for the violation(s) without which “the obligation to provide an effective remedy ... is not discharged”. Reparations include “restitution, rehabilitation and measures of satisfaction....guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations s.”⁷⁸

59. As noted above, in relation to the right to life (Article 6 ICCPR) and Article 7, the Human Rights Committee has made clear that violations should generally not be addressed solely through administrative or disciplinary measures, but also require criminal investigations and prosecution. The Convention against Torture also requires criminalization and prosecution for conduct amounting to torture. When investigations reveal violations of ICCPR rights that are criminal in character, such as deprivations of the right to life, torture and other ill—treatment and enforced disappearance, “States parties must ensure that those responsible are brought to justice. Accordingly, the Committee underscored that granting immunity to perpetrators of such violations conflicts with states’ obligations under the ICCPR:

Immunities and amnesties provided to perpetrators of intentional killings and to their superiors, and comparable measures leading to de facto or de jure impunity, are, as a rule, incompatible with the duty to respect and ensure the right to life, and to provide victims with an effective remedy.⁷⁹

The requirement of criminal prosecution for serious crimes under international law, and the scope of the obligations in this regard is set out also in the UN Updated Set of principles for the protection and promotion of human rights through action to combat impunity.⁸⁰

⁷⁵ Ibid. See also International Commission of Jurists, Practitioners’ Guide (number 2) on the Right to Remedy and Reparation for Gross Human Rights Violations (2018 edition) <https://www.icj.org/the-right-to-a-remedy-and-reparation-for-gross-human-rights-violations-2018-update-to-practitioners-guide-no-2/>

⁷⁶ International Covenant on Civil and Political Rights, Article 2(3)

⁷⁷ UN Human Rights Committee, General Comment No. 31, para 15

⁷⁸ Ibid., paras. 16 and 17

⁷⁹ UN Human Rights Committee, General Comment No. 36, para. 27.

⁸⁰ Updated Set of principles to combat impunity, UN Doc. E/CN.4/2005/102/Add.1 (8 February 2005), available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G05/109/00/PDF/G0510900.pdf?OpenElement>. These principles were recommended for implementation to all States by the Human Rights Commission in Resolution 2005/81.

60. There is a general agreement that international legal obligations of States to provide access to an effective remedy and reparation also apply in the context of business-related human rights abuses, even where the alleged perpetrator's conduct is not attributable to the State. For instance, in interpreting States obligations under the Convention on the Rights of the Child in relation to the business sector, the Committee on the Rights of the Child has stated:

States have an obligation to provide effective remedies and reparations for violations of the rights of the child, including by third parties such as business enterprises. The Committee states in its general comment No. 5 that for rights to have meaning, effective remedies must be available to redress violations.⁸¹

61. Similarly, carrying out its own interpretation and guidance in relation to the obligations of States under the ICESCR in relation to business enterprises, the CESCR has stressed that "States parties must provide appropriate means of redress to aggrieved individuals or groups and ensure corporate accountability"⁸² and that the redress should preferably take the form of ensuring access to independent and impartial judicial bodies. The Committee stresses that States must take measures to remove obstacles to such access.

62. As noted above, the Human Rights Committee has made clear that Article 2(3) of the ICCPR contains positive obligations for States to protect individuals not just against violations of their rights by its own agents "but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights..."⁸³. Therefore, if the rights are impaired, the victims should have the possibility to vindicate them before an adjudicatory body, which should be a judicial authority where the violation or abuse amounts to a crime under international law. As described above in the discussion on extra-territorial obligations, these obligations also apply when the conduct takes place in one country but impairs or contributes to the impairment of rights occurring in the territory of other countries. As indicated, those who have a claim, should be able to access a judicial remedy in the home State, host State, or any place where the entity, if it is a business enterprise, conducts substantial business.

63. Articles 8.1 and 25 of the American Convention provides for an obligations for States to guarantee victims of human rights violations access to a fair trial and to an effective judicial remedy.⁸⁴ As articulated in the IACHR 2019 Business and Human Rights Report, "every person who has suffered a violation of their human rights has the right 'to obtain clarification of the events that violated human rights and the corresponding responsibilities from the competent organs of the State...'"⁸⁵ More specifically, according to the Inter-American Court in the *Miskito divers vs. Honduras* case, this means that "States must ensure the existence of judicial or extrajudicial mechanisms that provide an effective remedy for human rights violations[,]" and, moreover, "States have the obligation to eliminate existing legal and administrative barriers that limit access to justice, and adopt those aimed at achieving its effectiveness."⁸⁶

64. The UNGPs articulate the responsibility of States to guarantee access to justice in Principle 26, which affirms that States should "take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy."⁸⁷

65. In accordance with obligations under ICCPR, the American Convention and other international standards such as the UN Impunity Principles and the UN Basic Principles and

⁸¹ UN Committee on the Rights of the Child, General Comment No. 5, General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6), UN Doc. CRC/GC/2003/5, 27 November 2003, para. 30

⁸² Committee on Economic, Social and Cultural Rights, General Comment No. 24, para. 39; See also the Committee's General Comment No. 9: The domestic application of the Covenant, UN Doc. E/C.12/1998/24, 3 December 1998, para. 2.

⁸³ Human Rights Committee, General Comment 31, para 8

⁸⁴ See, e.g., IACHR, *Report on Business and Human Rights: Inter-American Standards*, OAS/Ser.L/V/II IACHR/REDESCA/INF.1/19, November 1, 2019, para. 122

⁸⁵ *Ibid.*

⁸⁶ I/A Court, *Case of the Miskito Divers*, para. 50 (quoting Article 25 of the American Convention on Human Rights).

⁸⁷ *Ibid.*, p. 28, Principle 26

Guidelines on remedy and reparation, States should remove any impediments to the establishment of legal responsibility for violations of human rights and combat impunity. In this light, legislation that bars persons from bringing allegations of rights violations to investigation and justice is inconsistent with State obligations under Articles 8 and 25 of the American Convention and Articles 2(3) and 6 and 7 of the ICCPR, and Article 14 of the CAT to ensure protection of rights and guarantee access to remedy.

66. In the United States, the Protection of Lawful Commerce in Arms Act (“PLCAA”) insulates firearm manufacturers, distributors, dealers, and importers from civil liability actions where a third party uses a firearm to commit a human rights abuse.⁸⁸ This and similar laws constitute an impediment to the exercise of the State obligation to effectively investigate and hold accountable those responsible for the abuse or violation and the duty to provide access to an effective remedy and reparation, include for the victims of crimes committed with firearms specifically produced and marketed, for example, to organized criminal gangs operating in neighbouring countries. As articulated by the Human Rights Committee, States must remove impediments to the establishment of the legal responsibility of the perpetrators of such acts of accessory facilitation and contribution to the commission of crimes under international law, which seriously impair the life and/or physical integrity of all persons, including in other countries. If firearm manufacturers, distributors, and sellers are not held accountable for the human rights abuses that result from their business activities and relationships, such abuses are likely to continue, creating a pattern of impunity that is prohibited under international law.

IX. Conclusion

67. States legal obligations, as reflected in international jurisprudence, including under the ICCPR and the American Convention include the duty to regulate, monitor and hold accountable those responsible for human rights abuses arising from the operations of certain business activities which by their very nature pose a danger to the rights, principles and values that international human rights law protects. States should also provide for adequate access to justice and effective remedies and reparations for the victims, including in the context where firearms industry’s actions or omissions have contributed to the violation or impairment of human rights in other countries. To that end, States must eliminate any legal or procedural impediment to accountability and legal responsibility.

68. The undersigned organizations respectfully request the Inter-American Court of Human Rights the consideration of this Written Opinion in the disposal of the request by Mexico of an Advisory Opinion, in accordance with Article 44 of its Rules of Procedure.

Respectfully,

Santiago Canton, Secretary General- International Commission of Jurists

Carlos López Hurtado, Senior Legal Advisor- International Commission of Jurists

Katya Salazar, Executive Director -Due Process of Law Foundation

Daniel Cerqueira, Program Director -Due Process of Law Foundation

Reagan Williams, Legal Researcher, International Commission of Jurists, contributed to this submission.

⁸⁸ 15 U.S.C. § 7902