

United States

Submission to the UN Universal Periodic Review

In this submission, The Rachel Corrie Foundation provides information under sections B, C and D (as stipulated in the General Guidelines for the Preparation of Information under the Universal Periodic Review):

- Under section B, The Rachel Corrie Foundation voices concern over the United States' failure to initiate independent investigations into violations of the human rights of its citizens abroad, and failure to assess gross violations of internationally recognized human rights when administering foreign assistance and foreign military sales.
- Under section C, the foundation details failures in corporate accountability for gross human rights violations, concerns about the impartiality and credibility of U.S. investigations into extraterritorial human rights violations, and the failure to provide an effective judicial remedy for extraterritorial human rights violations.
- The foundation provides suggested recommendations in the areas outlined above. 1

Background Information on The Rachel Corrie Foundation for Peace & Justice

The Rachel Corrie Foundation for Peace & Justice is a grassroots, 501(c)(3) non-profit organization which was founded in 2003. The foundation conducts and supports programs that foster connections between people, that build understanding, respect, and appreciation for differences, and that promote cooperation within and between local and global communities. The foundation encourages and supports grassroots efforts in pursuit of human rights and social, economic, and environmental justice, which we view as pre-requisites for world peace. Continuing the work begun and envisioned by Rachel Corrie, our initial emphasis has been on Israel/Palestine. 2

We conduct and support projects that educate for peace and justice, that foster connections and understanding between peoples on global and local levels, that promote the use of art and the written word in fostering justice and peace, and that encourage individual grassroots participation in bringing to fruition a positive world vision. 3

B. Normative and Institutional Frameworks for the Promotion and Protection of Human Rights

The Rachel Corrie Foundation calls upon the U.S. to enforce 22 U.S.C. § 2304 (1994), protocol on Human Rights and Security Assistance, and the “Leahy Amendments” to the Foreign Operations Appropriations and Defense Appropriations Acts (e.g. P.L. 105-118 § 570), which prohibit the provision of security assistance to countries and military units that engage in a pattern of gross violations of human rights. Similarly, the foundation voices its concern that, in failing to require credible investigations of human rights violations against its citizens, the U.S. ignores its responsibilities under the ICCPR and the Charter of the United Nations. The

foundation further calls upon the U.S. to enforce universally recognized norms of international law through the Alien Tort Statute and the Torture Victims Protection Act, 28 U.S.C. § 1330. 4

C. Failure to Assess Gross Violations of Internationally Recognized Human Rights When Administering Foreign Security Assistance and Foreign Military Sales – Individual Cases

U.S. Department of State Country Reports on Human Rights

The Rachel Corrie Foundation is concerned by the attempts of U.S. officials to deny or limit the applicability of their obligations under international human treaties, domestic human rights law, and domestic foreign assistance protocols.

- The Rachel Corrie Foundation calls on the U.S. to make clear that Country Reports on Human Rights Practices prepared by the State Department will include relevant findings of international nongovernmental organizations such as Amnesty International and Human Rights Watch.
- We also call upon the U.S. to include an assessment of Israel's ability to provide clear, transparent investigations of human rights violations in the country reports, as required by 22 U.S.C. § 2304. 5

The Rachel Corrie Foundation is concerned that the State Department's Country Reports on Human Rights Practices systematically exclude the State Department's own analysis of Israel's failure to perform a credible investigation into the killing of Rachel Corrie, an American citizen, by the Israeli Defense Forces [IDF]. In so doing, the State Department undermines its ability to assess consistent patterns of gross human rights violations and limits the ability of the U.S. government to deny foreign assistance to countries which commit these violations. 6

The foundation is also concerned that reports generated by international NGOs such as Human Rights Watch and Amnesty International, which have noted a pattern of negligence in Israeli investigations into civilians killed by the IDF, were ignored in the creation of the Country Reports. 7

Rachel Corrie was run over by a bulldozer operated by the IDF in the Gaza Strip on March 16th, 2003. Although Prime Minister Ariel Sharon personally assured President George Bush that a thorough, credible and transparent investigation into her death would be performed, the report prepared by the IDF Advocate General from the investigation undertaken by the IDF Military Police and the command report prepared by members of the IDF's Southern Command contained multiple factual errors, failed to include the testimony of Palestinian eyewitness and selectively incorporated international eyewitness testimony. While the Advocate General's report itself has never been released publicly or to the United States Government, U. S. Embassy and Department of State officials, along with members of the Corrie family, were allowed to read it.⁸

In 2004, Lawrence Wilkerson, then Chief of Staff to Secretary of State Colin Powell, stated in a letter to the Corrie family that IDF Advocate General's report did not reflect an investigation that was "thorough, credible and transparent". 9

Mr. Wilkerson's assessment was verified in recent court testimony in the Haifa District Court in northern Israel. In *Corrie v. The State of Israel*, a military police investigator who was a member of the team investigating Corrie's killing testified that he never visited the site of Corrie's death and never questioned the bulldozer operation about existent IDF regulations forbidding D9 bulldozer operations near civilians. The MPI also testified that his gathering of the testimony of the operator of the bulldozer that killed Corrie was interrupted by the operator's commander, who informed the operator that the head of the IDF Southern Command had issued an order to not cooperate with the investigation.¹⁰

Despite Mr. Wilkerson's analysis, however, the State Department's Country Reports on Human Rights Practices for Israel in 2003, 2004 and 2005 (released in 2004, 2005, and 2006, respectively) address Rachel's killing without mentioning the lack of a credible investigation into her death. The 2004 report suggested that "the Corrie family" believed the Israeli investigations to be inadequate, while the 2005 report noted "inconsistencies" between Israeli investigations and "statements among those observing the incident." Exclusion of U.S. government opinions in the reports creates a misleading sense that the U.S. was ignorant of the inadequacy of Israeli investigations. Such withholdings effectively forestall the ability of the Committee on Foreign Relations of the United States Senate to deliberate on Israel's compliance with international human rights obligations when considering foreign assistance.¹¹

The Rachel Corrie Foundation believes that the lack of a credible investigation into Rachel's death serves as an index for Israel's ability to adequately investigate other civilian deaths within the Occupied Territories. Similarly, the failure to report on the Israeli military's program of home demolitions in the Occupied Territories obscures the context of Rachel's killing, thus ignoring a pattern of gross human rights violations. We are concerned that the U.S.'s failure to observe the requirements for preparation of the Country Reports creates a culture of impunity when dispersing foreign military, economic, and military training aid to Israel.

- The Rachel Corrie Foundation calls upon the U.S. government to ensure that Country Reports on Human Rights Practices incorporate the U.S.'s current assessment of the accuracy and credibility of the Israeli investigations into civilian killings.
- Similarly, the foundation urges the U.S. government to include in the Country Reports information gathered from NGOs such as Amnesty International exploring the effects of ongoing home civilian demolitions in the Occupied Territories.¹²

Leahy Amendment

The Leahy Amendment (or "Leahy Law") was first enacted as part of the 1998 Foreign Operations Appropriations Act (P.L. 105-118, § 570). The amendment prohibits the provision of assistance under the Foreign Operations, Export Financing, and Related Programs Appropriations Act (FOAA) to foreign security force units implicated in gross human rights violations unless the Secretary determines that the host government is taking effective measures to bring those responsible to justice.¹³

Rachel Corrie, who was crushed to death by a Caterpillar D9R bulldozer, was one of many civilian deaths and injuries at the hands of the IDF's Southern Command in 2003. According to B'Tselem, the Israeli Information Center for Human Rights in the Occupied Territories, 1,353

Palestinian civilians (non-combatants) were killed by Israeli security forces in the Gaza Strip between 2000 and 2008.¹⁴

As of May 2008, the Government of Israel had not addressed multiple requests from officials in the U.S. Department of State for evidence of a full and transparent investigation into Rachel Corrie's killing. The Department of State itself acknowledged that it was not in a position to conduct such an investigation or to determine if Israeli officials misrepresented key facts regarding the death of Rachel Corrie.¹⁵

Furthermore, the U.S. Department of State acknowledged that the Israeli government's inability to provide a credible investigation into Rachel Corrie's death was not an isolated incident: an investigation into the death of James Miller, an HBO journalist and UK citizen, ended when the Israeli government determined that the facts of his case could not be ascertained.¹⁶

While State Department officials determined that, in light of the facts available, the circumstances of Rachel Corrie's death did not occasion a Leahy Amendment investigation, we are concerned that the U.S. willingly accepts scant evidence, upholding assertions by the Israeli government that no human rights violations occurred in the deaths of multiple civilians without adequately investigating the circumstances of those deaths.¹⁷

The Rachel Corrie Foundation believes that the U.S. government is obligated to enforce the "Leahy Amendment" in Defense Appropriations Acts and Foreign Operations Appropriations Acts by investigating credible evidence of human rights violations. Moreover, we believe that the Israeli government's failure to perform credible investigations into the pattern of civilian killings in the Gaza Strip, as acknowledged by U.S. government officials and documented by Human Rights Watch, makes such investigations an unacceptable basis to stop vetting of potential Leahy Amendment violations.

- The Rachel Corrie Foundation calls upon the U.S. to make the deliberative process for potential violations of the "Leahy Amendment" transparent, to inform interested parties of the progress of deliberations, and to incorporate the testimony of relevant NGOs into the vetting process.¹⁸

Corporate Accountability

In 2005, the Center for Constitutional Rights filed a lawsuit against Caterpillar, Inc. on behalf of Rachel Corrie's family, *Corrie v. Caterpillar, Inc.*, 403 F. Supp. 2d 1019 (W.D. Wash. 2005). The suit charged Caterpillar, Inc. with aiding and abetting war crimes and other serious human rights violations on the grounds that the company provided bulldozers to the Israeli Defense Forces knowing they would be used unlawfully to demolish homes and endanger civilians in the Occupied Territories. The other plaintiffs included four Palestinians families – the Al Sho'bis, the Abu Husseins, the Fayeds, and the Khalafallahs - whose homes were destroyed and members killed by Caterpillar bulldozers used by the IDF.¹⁹

On November 22, 2005, U.S. District Court for the Western District of Washington Judge Franklin Burgess dismissed the case. His ruling stated, in part, that selling products to a foreign

government does not make the seller a participant in or aider and abettor of that government's alleged international law violations. 20

As the Center for Constitutional Rights states:

"Much of the world community, including international human rights organizations and the United Nations, has consistently condemned these demolitions as a clear violation of international humanitarian law. For years, Caterpillar has had notice that the IDF was using its bulldozers for human rights violations, yet has continued to provide them." 21

On September 17, 2007 the U.S. Court of Appeals for the Ninth Circuit upheld the dismissal. *Corrie v. Caterpillar, Inc.*, 503 F.3d 974 (9th Cir. 2007). The three-judge panel stated that it did not have jurisdiction to decide the case because any ruling would intrude upon the foreign policy and national security decisions of the political branches. 22

Caterpillar bulldozers are sold to the IDF through the Foreign Military Financing (FMF) program. The President, then President George W. Bush, authorized Israel's participation in the FMF program, allowing Israel to buy U.S. military equipment. 23

The Caterpillar bulldozers sold to the IDF, however, were not U.S. military equipment: they were sold to the IDF *before* being fitted with armor kits in Israel. As such, they should not have been sold under the FMF. If the bulldozers were indeed military equipment, then a license would be required for their exportation (as stipulated by the Arms Export Control Act, 22 U.S.C. § 2778).

- The Rachel Corrie Foundation is concerned that the Ninth Circuit Court of Appeals' ruling in *Corrie v. Caterpillar* affirms an over-reach of executive powers, allowing the U.S. government's assertion of foreign policy concerns to override evidentiary proof that Caterpillar, Inc. was complicit in extraterritorial human rights violations. It calls upon the U.S. government to re-evaluate the political question doctrine in order to maintain appropriate balance between judicial and executive branches, particularly in light of the statutory requirement under the Leahy Amendment that the U.S. not provide assistance to militaries that consistently violate human rights..
- The Rachel Corrie Foundation is concerned that the court's ruling effectively allows corporations to knowingly export products that will be used in contravention of international human rights law without disclosing their methods of sale or holding them accountable for complicity with human rights violations. The foundation believes that the U.S. government has an affirmative commitment to international human rights law which extends to monitoring and reviewing U.S. corporate involvement in extraterritorial human rights violations, and it calls upon the U.S. government to make sales of military equipment transparent and contingent upon compliance with international human rights law.
- Similarly, the foundation urges the U.S. government to cease Foreign Military Financing and Foreign Military Sales for military equipment and/or training used by other countries to commit gross human rights violations. The foundation calls upon the U.S. government to institute a review process that incorporates the opinions of NGOs and other international human rights monitoring organizations into the decision-making process when distributing foreign military aid. 2

Appendix: Documents for Further Consideration

Failure to Assess Gross Violations of Internationally Recognized Human Rights

United States Department of State Country Reports on Human Rights Practices: Israel and the Occupied Territories, 2003. 02/25/2004 <http://www.state.gov/g/drl/rls/hrrpt/2003/27929.htm>

United States Department of State Country Reports on Human Rights: Israel and the Occupied Territories, 2004. 02/28/2005 <http://www.state.gov/g/drl/rls/hrrpt/2004/41723.htm>

United States Department of State Country Reports on Human Rights: Israel and the Occupied Territories, 2005. 03/08/2006 <http://www.state.gov/g/drl/rls/hrrpt/2005/61690.htm>

Civilian Deaths and International Human Rights Violations in the Occupied Territories of Palestine

Israel/Occupied Territories: International Rights Groups Decry Increased Harassment of Monitors Amnesty International, 05/26/2003

<http://www.amnesty.org/en/library/info/MDE15/046/2003/en>

Israel/OPT: Briefing to the Committee against Torture Amnesty International, 09/30/2008
<http://www.amnesty.org/en/library/info/MDE15/040/2008/en>

Razing Rafah: Mass Home Demolitions in the Gaza Strip Human Rights Watch, 10/17/2004
<http://www.hrw.org/en/reports/2004/10/17/razing-rafah>

Statistics on non-combatant civilian deaths in the Occupied Territories of Palestine B'tselem, the Israeli Information Center for Human Rights in the Occupied Territories
<http://www.btselem.org/english/Statistics/Casualties.asp>

Inadequate Investigations of Rachel Corrie's Death

Promoting Impunity: The Israeli Military's Failure to Investigate Wrongdoing Human Rights Watch, 06/21/2005 <http://www.hrw.org/en/reports/2005/06/21/promoting-impunity>

Testimony of IDF Military Investigator during Corrie vs. the State of Israel, The Rachel Corrie Foundation, 03/2010
<http://rachelcorriefoundation.org/trial>

Corrie v. Caterpillar, Inc.

Corrie et. al. v. Caterpillar, The Rachel Corrie Foundation
<http://ccrjustice.org/ourcases/current-cases/corrie-et-al.-v.-caterpillar>