



No. 049/12

The Permanent Mission of the United States of America to the United Nations and Other International Organizations welcomes the opportunity to respond to Special Rapporteur Margaret Sekkaggya's letter of April 27, 2012 and is pleased to provide a response on the use of legislation to regulate the activities and work of human rights defenders. Please find the U.S. Government's response attached.

The Permanent Mission of the United States of America to the United Nations and Other International Organizations thanks the Special Rapporteur for her dedicated work and avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

The Permanent Mission of the
United States of America, Geneva,
August 9, 2012.



OHCHR REGISTRY

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Recipients: SPD
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DIPLOMATIC NOTE

Questionnaire:

Question 1:

a) Please indicate if your country has a specific legal framework, laws or regulations that aim to facilitate or protect the activities and work of human rights defenders. Please cite the names of any such laws in full.

- The framework in the United States that protects “human rights defenders” is found in the First Amendment to the United States Constitution. As discussed below, this constitutional provision protects activities pursued by persons undertaking to defend human rights.
- Freedom of Assembly: The First Amendment to the United States Constitution prohibits Congress from making any law abridging “the right of the people peaceably to assemble.” This right has been interpreted broadly. Thus, for example, more than 70 years ago the Supreme Court held that participation in a Communist Party political meeting could not be made criminal. *DeJonge v. Oregon*, 299 U.S. 353 (1937). Assembly for marches, demonstrations, and picketing is also protected, see *Hague v. CIO*, 307 U.S. 496 (1939), as is the right to conduct labor organization meetings. *Thomas v. Collins*, 323 U.S. 516 (1945). Although to a certain extent individual law enforcement organizations are free to develop their own policies regarding conduct during a demonstration or a riot, the United States Constitution provides limits on the actions of law enforcement officers at all times – including during times of demonstration. While federal, state, or local law enforcement organizations may develop policies which assure protestors *more* rights than guaranteed by the Constitution, these policies may not be less protective than the Constitution. These limitations to law enforcement actions are not mere “guidelines” but enforceable rights.
- Freedom of Association: Although freedom of association is not specifically mentioned in the U.S. Constitution, it has been found to be implicit in the rights of assembly, speech, and petition. *See, e.g., NAACP v. Claiborne Hardware Co.*, 458 U.S. 898 (1982); *Healy v. James*, 408 U.S. 169 (1972). Taken together, the provisions of the First, Fifth, and Fourteenth Amendments guarantee freedom of association in many contexts, including the right of workers to establish and join organizations of their own choosing, without previous authorization by or interference from either the federal government or the state governments. *See Brotherhood of Railroad Trainmen*

v. Virginia, 377 U.S. 1 (1964); *United Mine Workers v. Illinois State Bar Assn.*, 389 U.S. 217 (1967).

- The right to associate for purpose of expressive activity receives heightened protection. This right, termed the right of “expressive association,” encompasses both the expression of ideas within a group among its members, and expression by the group to the wider public.
- Freedom of Expression: Freedom of expression is central to the work of human rights defenders so they can voice their opinions about the human rights situation and important human rights cases. The First Amendment to the United States Constitution provides that “Congress shall make no law abridging the freedom of speech.” Freedom of opinion and expression are zealously guarded in the United States. In the case of *Snyder v. Phelps*, 131 S. Ct. 1207 (2011), which involved a church congregation that picketed near a soldier’s funeral to communicate its view that God hates the United States for its tolerance of homosexuality, the Supreme Court ruled that the picketers on a public street, acting in compliance with police guidance, had a First Amendment right to express their views on a matter of public concern. On that basis, the Court set aside a jury verdict awarding tort damages to the soldier’s father for intentional infliction of emotional distress. In another recent free speech case, *Brown v. Entertainment Merchants*, 131 S. Ct. 2729 (2011), the Court struck down a California law restricting the sale or rental of violent video games to minors. The Court found that video games qualify for First Amendment protection as protected speech and that the law was invalid unless it was justified by a compelling governmental interest and was narrowly tailored to achieve that interest. The Court ruled that California could not meet that standard in part because (1) California had not demonstrated a direct causal link between exposure to violent video games and harmful effects on children; (2) California had not placed restrictions on other violent media, such as Saturday morning cartoons; and (3) there were other, less speech-restrictive ways to shield children from violent video games, e.g., the industry’s voluntary rating system.

b) Please indicate how these laws and regulations are in line with international human rights standards, including, but not limited to, the Declaration on Human Rights Defenders.

- The United States is a party to the International Covenant on Civil and Political Rights (ICCPR), which provides a number of protections that are relevant to human

rights defenders. It obligates parties to respect the rights to freedom of association, assembly, and expression, among others. The United States reports to the Human Rights Committee to explain how the United States implements its obligations under the ICCPR. Many of these rights are elaborated upon in the UN Declaration on Human Rights Defenders, which the United States has supported.

c) Please also indicate what legal or administrative safeguards are put in place to prevent baseless legal action against and/or prosecution of human rights defenders for undertaking their legitimate work.

- Criminal and legal action brought by governments against NGOs and/or members of civil society, like those brought against all individuals and organizations, are based on tenets of due process and equality before the law.
- Many governments use defamation laws to repress human rights defenders. Defamation involves the communication of a false statement that harms the reputation of another. The communication is typically written (libel), but may be in another tangible form or an oral communication (slander). The primary purpose of modern libel law is the prevention of reputational harm. Typically, individuals protect their reputation through civil suits (i.e., legal claims between private parties) in which the injured party seeks money damages. Most U.S. states do not have criminal libel laws. For those that do, prosecutions are extremely rare. In those instances where convictions have been rendered, defendants have generally been ordered to pay fines or perform community service. Incarceration, though allowed under certain U.S. statutes in some states, is exceedingly rare and only for short periods of time.
- Where a U.S. state does prosecute an individual for libel, such prosecution must be consistent with the U.S. Constitution. It is well known that the U.S. Constitution has far reaching protections with respect to freedom of expression. Throughout our history, U.S. courts have overturned many criminal libel convictions and entire statutes for failure to meet the protections provided by our Constitution.
- Legal protections are even greater for individuals accused of libeling public officials. In 1964, the U.S. Supreme Court stated that when criminal libel prosecutions are instituted based on communications about public officials, they cannot succeed without proof that the communication made by the defendant was untruthful and that

it was uttered as a knowing or reckless falsehood. In fact, considering our Constitutional protections, such convictions are virtually unheard of in the United States.

- Risk of death for journalists/human rights defenders in response to speech/expression in the United States is generally nonexistent.
- The United States also has “whistleblower” laws that protect those who tell the public or someone in authority about alleged illegal activities being committed in a government agency, public or private organization or company. Under most U.S. federal whistleblower statutes, in order to be considered a whistleblower, the federal employee must have reason to believe his or her employer has violated some law, rule or regulation; testify or commence a legal proceeding on the legally protected matter; or refuse to violate the law. In the United States, legal protections vary according to the subject matter of the whistleblowing, and sometimes the state in which the case arises.
- The Whistleblower Protection Act of 1989 is a United States federal law that protects federal whistleblowers who work for the government and make a protected whistleblower disclosure reporting agency misconduct. It is a violation of the Act if agency authorities take, or threaten to take, retaliatory personnel action against any employee because of a protected whistleblower disclosure by that employee. The United States Office of Special Counsel has responsibility for investigating and enforcing the Whistleblower Protection Act of 1989.
- The Office of the Whistleblower Protection Program of the United States Department of Labor’s Occupational Safety and Health Administration has responsibility for enforcing the whistleblower protection provisions of 21 federal statutes.

Question 2:

- a) Please describe the measures taken, if any, to ensure that your country’s national security-related laws (including laws on public order, public safety, respect for morals and counter-terrorism laws) are not used to unduly restrict the scope of activities of human rights defenders.**