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**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

## **Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his follow-up mission to the United States of America\***

### **Note by the Secretariat**

The Special Rapporteur on the rights to freedom of peaceful assembly and of association carried out an official visit to the United States of America from 11 to 27 July 2016 to assess the situation of freedom of peaceful assembly and of association in the country, upon the Government's invitation.

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\* The present report was submitted after the deadline in order to reflect the most recent developments.

## **Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his follow-up mission to the United States of America\*\***

### Contents

	<i>Page</i>
I. Introduction .....	3
II. Background and context.....	4
III. Freedom of peaceful assembly .....	7
A. General Legal Framework .....	4
B. Management of assemblies.....	5
C. Civil society's achievements .....	9
IV. Freedom of association .....	10
A. Workers rights .....	10
B. Migrant workers rights .....	12
C. Counter terrorism .....	13
D. Political parties .....	15
V. Conclusions and recommendations.....	17

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\*\* Circulated in the language of submission only.

## I. Introduction

1. Pursuant to Human Rights Council resolution 24/5, the Special Rapporteur on the rights to freedom of peaceful assembly and of association visited the United States of America from 11 to 27 July 2016, at the invitation of the Government. The purpose of the visit was to assess the situation of the freedoms of peaceful assembly and of association in the country.

2. The Special Rapporteur visited Washington DC, New York (New York), Baltimore (Maryland), Ferguson (Missouri), Cleveland (Ohio), Phoenix (Arizona), Baton Rouge and New Orleans (Louisiana), Jackson (Mississippi) and Philadelphia (Pennsylvania). In Washington DC, the Special Rapporteur met with representatives of several federal government departments including the Departments of State, Homeland Security, the Treasury, Interior, Labour and Justice. He also met with representatives from the White House, the National Labour Relations Board, the Metropolitan Police Department, the Federal Elections Commission, and with one member of Congress and representatives of other members of Congress. Outside of Washington DC, he met with police departments and various officials of city, county and state governments.

3. The Special Rapporteur thanks the authorities at federal, state and local levels for their excellent co-operation in the preparation for, and throughout, the visit. He regrets however that the Department of Defence and the Supreme Court declined to meet with him despite the relevance of their work to some of the issues of concern.

4. In Cleveland and Philadelphia, the Special Rapporteur observed assemblies organised around the Republican and Democratic Party conventions.

5. The Special Rapporteur met with a diversity of civil society groups and representatives working on the four issues he prioritised for the visit: (a) freedom of peaceful assembly in relation to protests; (b) labour rights; (c) the effects of counter-terrorism efforts on peaceful assembly and association rights; and (d) freedom of association as it relates to campaign financing. He thanks everyone for taking the time to speak with him, for the written submissions and background material they provided and for the opportunity to observe their work. The Special Rapporteur appreciates the individuals and organisations who provided background research and co-ordinated the meetings for the country visit.<sup>1</sup>

6. The United States of America has been a key supporter of the Special Rapporteur's mandate, as the main sponsor of the resolutions establishing and extending it at the Human Rights Council.<sup>2</sup> Further, the United States has sponsored resolutions on peaceful protests<sup>3</sup> and on civil society space, and has played a positive role within the United Nations' ECOSOC NGO accreditation process<sup>4</sup> and in the promotion of Lesbian, Gay, Bisexual, Transgender and Intersex rights. The Special Rapporteur is grateful for the leadership that the United States has displayed on the issue of civic space generally.<sup>5</sup>

7. He notes with concern, however, that the new administration of President Donald Trump has talked of taking a radically different approach on all fronts: its engagement with the United Nations, its promotion of human rights abroad, and even its attitude towards fundamental rights domestically. The signals coming from the current administration – including hateful and xenophobic rhetoric during the presidential campaign, threats and actions to lock out and expel migrants on the basis of nationality and religion, a dismissive position towards peaceful protesters, the endorsement of torture, intolerance of criticism and threats to withdraw funding from the United Nations – are deeply disturbing.

<sup>1</sup> Solidarity Center, ACLU, ICNL, Tova Wang (DEMOS) and pro bono background legal research provided by Lawrence M Hill & Richard A Nessler.

<sup>2</sup> Resolutions 15/21, 24/5 and 32/32

<sup>3</sup> Resolution 25/38

<sup>4</sup> Resolutions 27/31 and 32/31

Meanwhile, legislatures in at least 19 states are taking a cue from the administration and pushing new bills – some proposed, some passed – to restrict the right to freedom of peaceful assembly<sup>6</sup>. The Special Rapporteur urges the administration to continue the United States’ tradition of leading and supporting peaceful assembly and association rights and the mandate.

8. This report builds on relevant aspects of the findings of various Working Groups that undertook missions to the United States, including: the Working Group of Experts on People of African Descent (A/HRC/33/61/Add.2); the Working Group on the issue of discrimination against women in law and in practice (A/HRC/32/44/Add.2); and the Working Group on the issue of human rights and transnational corporations and other business enterprises (A/HRC/26/25/Add.4).

9. The Special Rapporteur emphasises that his frame of reference for this report is the United States’ obligations by virtue of its membership to the United Nations, the ILO and other multilateral organisations, and its ratification of a number of international human rights instruments.<sup>7</sup> He stresses the requirement that States must ensure their domestic laws conform to international human rights standards.

10. Finally, the Special Rapporteur offers this report and its recommendations in the spirit of constructive engagement. He is under no illusions concerning the impediments to reform placed by the complex legal and political environment, yet he is reassured by the passion, dedication and tirelessness demonstrated by advocates for equality, justice and fairness that he met with.

## II. Background and Context

11. The United States of America is a federal State with a complex multi-layered political and legal system. It is an ‘old’ democracy, a military superpower, and an economic giant. Authority and responsibility to ensure the free exercise of assembly and association rights is distributed between all levels of government. Nevertheless, under international law, the responsibility to ensure compliance with obligations under ratified international instruments lies with the federal government.<sup>8</sup>

12. The Special Rapporteur provides this assessment against the backdrop of the United States’ stature as a longstanding democracy that holds itself and other states to high democratic ideals. He nevertheless wishes to underscore that democracy is a continuous process that is never truly complete. What we have is a structure, and the task of governments and citizens is to continually build upon that structure, strengthening its foundation and cultivating its resilience.

13. While the Special Rapporteur’s focus is the status of the rights to freedom of peaceful assembly and of association, he necessarily situates his assessment within the context of several overarching concerns. It is impossible to discuss these rights, for example, without issues of racism pervading the discussions. Racism and the exclusion, persecution and marginalization that come with it, affect the environment for exercising association and assembly rights. Understanding this context means looking back at 400 years of slavery, the Civil War, the Jim Crow laws that destroyed the achievements of the Reconstruction Era, and enforced segregation and marginalized the African-American community to a life of misery, poverty and persecution. It means looking at what happened after Jim Crow laws, when old philosophies of exclusion and discrimination were reborn,

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<sup>6</sup> <http://freeassembly.net/news/us-protest-bills/>

<sup>7</sup> For a full list of ratifications, see

[http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=187&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=187&Lang=EN)

<sup>8</sup> General Comment 31 para 4 – State obligations are binding on the State Party as a whole including all branches of government at whatever level. Internal law and arrangements cannot be used to relieve the State Party from responsibility to perform or give effect to obligations under a treaty.

cloaked in new and euphemistic terms. A stark example is the so-called “War on Drugs,” which has resulted in a situation where one out of every 15 black men is currently jailed<sup>9</sup> and one out of every 13 African-Americans has lost their right to vote due to a felony conviction<sup>10</sup>.

14. In contradistinction, Wall Street bankers looted billions of dollars through crooked schemes, devastating the finances of millions of Americans and saddling taxpayers with a massive bailout bill. Meanwhile, crimes against workers – including wage theft, sexual abuse, union busting and more – remain rampant. Yet we do not hear of a “War on Wall Street theft” or a “War on Abusive Employers.” Instead, criminal justice resources go towards enforcing a different type of law and order, targeting primarily African-Americans and other minorities. As a result, there is justifiable and palpable anger in the black community that needs to be expressed. This is the context that gave birth to the non-violent protest movement Black Lives Matter and the context in which it must be understood<sup>11</sup>.

15. The Special Rapporteur also recognises that his visit coincided with a tumultuous election period marked by divisive and corrosive rhetoric. The election period sharply exposed intolerance, inequality and exclusion that have been building without being adequately addressed.

16. Within the election milieu, examining the impact of campaign financing was timely. True democratic participation requires a system where ordinary people can mobilise, organise and claim their rights, including through the ballot. Yet in the United States, a majority of people are locked out of political spaces because access to leaders is so dependent on money, i.e., ‘political contributions’. The result is a type of open and legalized corruption, where politicians unapologetically prioritise the views and policy preferences of their paymasters – a few super-wealthy individuals and corporations. These policies often conflict with the aspirations of the majority of citizens, and are detrimental to marginalised groups such as communities of colour, women and migrant workers.

17. The Special Rapporteur heard repeatedly that discrimination and biases by law enforcement on the basis of race, religion, gender and other prohibited factors are common in the United States. Examples include:

- a. Racial and religious biases in combatting terrorism and violent extremism;
- b. Routine use of racial and ethnic profiling by immigration and law enforcement agencies, now extending to the current administration’s so-called “Muslim ban” executive orders the first now revoked and the second legally contested;
- c. Policies that incentivise actions with an indirect and disproportionate impact on disadvantaged groups, e.g., police departments raising revenue through fines and rewarding or sanctioning police officers based on the number of arrests.

18. The role of law enforcement in keeping America safe from internal and external threats should not be understated. The dangers they face in their day-to-day work are very real, as illustrated by the tragic murders of eight police officers in Baton Rouge and Dallas, Texas, around the time of the Special Rapporteur’s visit in 2016. On the whole, law enforcement agencies and officers take pride in their work and the service they provide. Many perform their duties well, properly engage with relevant stakeholders, respect individuals’ rights, and enjoy the confidence and trust of the communities they serve. The Special Rapporteur found the Jackson, MS, police department to be a particularly good

<sup>9</sup> <https://www.aclu.org/infographic-combating-mass-incarceration-facts?redirect=combating-mass-incarceration-facts-0>

<sup>10</sup> <http://www.sentencingproject.org/issues/felony-disenfranchisement/>

<sup>11</sup> This background is discussed at length in the Special Rapporteur’s preliminary observations presented at the conclusion of his visit on 27 July 2016: <http://freeassembly.net/news/usa-statement/>

example of this. Nevertheless, systemic shortcomings still exist in some jurisdictions as evidenced by investigations by the Civil Rights Division of the Department of Justice.<sup>12</sup>

19. Of significant concern is the vehement rejection in some quarters of any scrutiny or criticism of misconduct by law enforcement officials. The Special Rapporteur was informed that police often make arrests for perceived disrespect or disagreement with their actions; that some supporters have adopted ‘Blue Lives Matter’, as a phrase in opposition to the Black Lives Matter movement; and that states are considering or have enacted laws which classify attacks on police as a ‘hate crime’ with aggravated sentences.

20. The Special Rapporteur is disturbed by the hostility towards the Black Lives Matter movement, which seeks, among other things, to reform law enforcement practices in the wake of numerous killings of African Americans by police. Perhaps most troubling is the fact that some Americans view the movement as divisive, when in fact it is about inclusion. The Black Lives Matter movement is not about demanding special status or privilege for African Americans; it is about a historically and continuously targeted community seeking to elevate itself to the same level as everyone else. Black Lives Matter members exercise the rights to freedom of peaceful assembly and association to aggregate their voices, address problems and achieve change. The government has an obligation under international law to protect and promote their ability to do this.

21. In his 2016 report to the Human Rights Council, the Special Rapporteur highlighted the challenges posed by a variety of fundamentalisms to the exercise of rights. During his visit to the United States, he found that market fundamentalism - the idea that free market economic policies are infallible and are the best way to solve economic and social problems, coupled with intolerance towards competing ideas – taints many policies by undermining human rights.

22. Nowhere is this free market fundamentalist approach more evident than in the United States’ approach to labour rights, which overwhelmingly favours the wellbeing of employers over workers. The statistics paint a depressing picture: The unionisation rate in the US was a mere 11.1% in 2015, according to the Bureau of Labour Statistics, one of the lowest union density rates amongst OECD member countries.<sup>13</sup> Further, 28 states have enacted so-called ‘right to work’ laws, which are deliberately crafted to weaken unions by eroding their base of dues-paying members. The Special Rapporteur is appalled by the deceptive labelling of these laws: they are marketed as protecting workers’ rights, but in fact erode them.

23. Although unions have fought hard to maintain their ground, employers’ lobbies have the upper hand, aided by the revolving door between the private sector and political office, the generally collaborative relationships between companies and government agencies and lax enforcement of violations of workers’ rights. Employers engaged in serious violations of workers’ rights – such as wage theft, slavery, evidence tampering, giving misleading information, threatening workers, sexual harassment and assault – frequently avoid criminal sanction due to weak enforcement that simply ‘encourages’ them to comply with the law. In this permissive environment, many European companies aggressively pursue anti-union activities in the United States that they would never contemplate in Europe.<sup>14</sup>

24. Market fundamentalism also undermines indigenous people’s land, territorial and resource rights. Due to time constraints, the Special Rapporteur was unable to visit the site of the Dakota Access Pipeline protests but continues to keenly follow the community’s struggles for the protection of its interests.<sup>15</sup> The Special Rapporteur is alarmed by how the Trump administration’s aggressive free-market fundamentalist approach influenced its dismissive response to the Dakota Access protests. This stance completely rejects the interests of those who elevate other values above monetary profit, and will limit

<sup>12</sup> <https://www.justice.gov/crt/page/file/922456/download>

<sup>13</sup> See [https://stats.oecd.org/Index.aspx?DataSetCode=UN\\_DEN](https://stats.oecd.org/Index.aspx?DataSetCode=UN_DEN)

<sup>14</sup> See <https://www.hrw.org/report/2010/09/02/strange-case/violations-workers-freedom-association-united-states-european>

<sup>15</sup> See <http://freeassembly.net/news/dakota-pipeline-protests/>

opportunities for marginalised groups to exercise their assembly and association rights, precisely at the time when these rights are needed most.

25. The Special Rapporteur has been heartened, however, by US civil society's overwhelmingly positive response to this difficult environment. Indeed, at the time of writing, the United States is seeing some of the largest and most frequent protests in its history. The US civil society sector's energy in the face of such obstacles is a credit to their resilience, and is something that the country should be proud of.

### III. Freedom of peaceful assembly

#### a. General legal framework

26. The First Amendment to the Constitution prohibits Congress from enacting legislation to curtail the right to peaceful assembly. The regulation of assemblies in the United States is generally implemented at the local or municipal level.

27. The US Supreme Court has held that the right to assemble is not absolute, allowing authorities to impose time, place and manner restrictions and to require permits. Issuing authorities are prohibited from restricting assemblies based on their content. The exercise of the right to freedom of peaceful assembly is relatively healthy in the United States, even when permits are not secured. However, the Special Rapporteur remains concerned by the pervasiveness of the permit system in the United States, and its potential for abuse and arbitrary enforcement. The fact that authorities have a permissive attitude towards an "unauthorized" assembly today does not guarantee that they will tomorrow.

28. The Special Rapporteur notes that the interpretation by the Supreme Court of this right falls short of international standards due to the country's approach to time, place and manner restrictions.<sup>16</sup> The practice and jurisprudence in the United States suggest a heightened protection for freedom of expression with less emphasis on protecting the distinct right to freedom of peaceful assembly.

29. International human rights law favours a prior notification system rather than a permission system for holding assemblies<sup>17</sup>. Notification is not the same as permission; its purpose is to allow authorities to facilitate assemblies and to take measures to protect protesters, public safety, order and the rights and freedoms of others. Moreover, international standards dictate that spontaneous assemblies should be exempted from notification requirements and that assembly organizers should never be sanctioned for failure to provide notification<sup>18</sup>. To do so risks turning the right into a privilege, where the exercise of fundamental freedoms is dependent on State discretion.

30. Implicit in the right to freedom of peaceful assembly is the right to choose logistical arrangements, including the time and location of the assembly. As such, the complete prohibition of assemblies at certain locations (including by granting control of public areas to private interests which then prohibit assemblies) is problematic and may constitute a violation of the right to assemble under international law since it prevents a case-by-case consideration of restrictions of the right.

31. Other laws and policies have the potential to impede the free exercise of assembly rights. The Special Rapporteur was informed that many local authorities impose permit application fees, some of which carry prohibitive costs (as high as \$400 in Phoenix). Others require applications early in advance – e.g., a minimum of three months notice for a public procession in Phoenix and 30 days in advance for a demonstration in a New York City public park. Applicants for permits from the City of New York Parks and Recreation Department are required to indemnify the city for any claims, damages or expenses

<sup>16</sup> See OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly <http://www.osce.org/odihr/73405?download=true> p.17

<sup>17</sup> See A/HRC/20/27, para. 28

<sup>18</sup> See A/HRC/31/66, paras 23-24

resulting from their assembly<sup>19</sup>. The notice period should not be unreasonably long, and the procedure should be free of charge and widely accessible<sup>20</sup>.

32. More troubling is the increasingly hostile legal environment for peaceful protesters in some states. This is evidenced by a large number of legislative proposals at the state level aiming to criminalize or impede the rights to freedom of peaceful assembly and expression.<sup>21</sup> There were more than 20 such proposals in some 19 states, as of late March 2017<sup>22</sup>. One of the more egregious examples is a bill in Florida, which would eliminate liability for a driver who unintentionally injures or kills a protestor interfering with traffic during an unpermitted demonstration<sup>23</sup>. Other bills in Iowa and Missouri would make the obstruction of traffic by protesters a felony, punishable by five and seven years in prison, respectively.

33. The Special Rapporteur is dismayed by the blatant contempt for the importance of assembly rights illustrated by these bills, as well as the prioritization of motorists' convenience over protesters' right to life. Peaceful protests are a legitimate use of public space. The exercise of this right may not always be convenient, but it is nonetheless an essential component of any functioning democracy<sup>24</sup>. A certain level of disruption to ordinary life, including disruption of traffic, annoyance and even inconvenience to commercial activities must be tolerated if the right is not to be deprived of meaning<sup>25</sup>.

#### **b. Management of assemblies**

34. The Special Rapporteur was pleased to observe that police in the cities he visited have a good understanding of the best practices of managing assemblies, and that they have the capacity to implement them, which they often do. But he was troubled to learn that they sometimes diverge from these best practices, favouring intimidating and discriminatory tactics.

35. One of the most troubling examples of this has been the use of military equipment and excessive force against peaceful protestors. Both were particularly evident during protests organised to protest the killings of African Americans in Ferguson, Baltimore, Baton Rouge and elsewhere.

36. The Special Rapporteur heard numerous complaints that police used excessive force to arbitrarily arrest protestors for minor acts such as stepping off crowded sidewalks, and targeted arrestees based on their race or ethnicity. Many protestors also said they were arrested for or charged with offenses such as 'obstructing traffic', 'failure to obey a police officer' and 'resisting arrest' in dubious circumstances that suggested police abuse of power. Other common complaints mentioned – and in some instances observed by the Special Rapporteur – included: overwhelming police presence during protests; confiscation of devices used to record potentially unlawful police behaviour and deleting of these recordings; infiltration of protests by plain clothed police officers; and pre-emptive home visits by law enforcement to warn against attending protests. Some potential protestors were also threatened with resurrection of previous charges as a means of intimidation.

37. The Special Rapporteur is also concerned that it has become commonplace for police to respond to peaceful demonstrations with military-style tactics, full body armour, and an arsenal of weaponry suited more to a battlefield than a protest. While the Special Rapporteur is sensitive to police concerns that they must be properly equipped to deal with potential unlawful activity, he is convinced that the widespread militarization of police

<sup>19</sup> Organizers of assemblies should not be held liable for failure to perform their responsibilities if they have made reasonable efforts to do so. See OSCE Guidelines on Freedom of Peaceful Assembly, Guideline 5.7.

<sup>20</sup> A/HRC/31/66, para. 22

<sup>21</sup> See <http://freeassembly.net/news/us-protest-bills/> and [http://www.ohchr.org/Documents/Issues/Opinion/Legislation/OL\\_USA\\_3\\_2017.pdf](http://www.ohchr.org/Documents/Issues/Opinion/Legislation/OL_USA_3_2017.pdf)

<sup>22</sup> See [http://www.icnl.org/US\\_protest\\_law\\_tracker.pdf](http://www.icnl.org/US_protest_law_tracker.pdf)

<sup>23</sup> <http://www.flsenate.gov/Session/Bill/2017/1096/BillText/Filed/PDF>

<sup>24</sup> A/HRC/31/66 para 5

<sup>25</sup> A/HRC/31/66 para 32



needlessly escalates tensions and provokes equally aggressive reactions. Protesters are not war enemies and should never be treated as such. It is ill advised to use military equipment to manage activities so fundamental to democratic societies. The Special Rapporteur believes more facilitative and collaborative approaches would lead to the better management of protests overall. The Special Rapporteur is encouraged, however, by the previous administration's attempts to scale back the Department of Defence's 1033 program, which allows the transfer of military equipment to state and local law enforcement agencies – some of which is used to police peaceful protests.<sup>26</sup>

38. It was reported to the Special Rapporteur that demonstrations by different communities are policed differently, with racial, ethnic, cultural and class-based biases. The curfew imposed in Baltimore, ostensibly to quell protests after the death of Freddie Gray, was aggressively enforced in black communities, but not in predominantly white locales. Stop and search tactics, implemented as part of the 'broken windows' approach to policing adopted by New York City and elsewhere, predominantly target minority individuals. The Special Rapporteur also heard reports of Immigration and Customs Enforcement (ICE) agents conducting surveillance at assemblies focused on migrant issues. ICE has no role to play in managing assemblies; their presence only instils fear and chills the exercise of assembly rights. Moreover, migrants are often excluded from other forms of democratic participation, such as the right to vote, leaving peaceful assemblies as one of the only tools they have to voice their concerns<sup>27</sup>. The government should encourage the exercise of this right by everyone, especially marginalized groups.

39. Aggressive street policing also affects assembly rights: Young African-Americans who met with the Special Rapporteur in a number of cities described their inability to meet in public places, even within their own communities, without police harassment. The effects of these encounters, repeated over a lifetime, can snowball: A minor criminal offense – or even an arrest without substantiated charges – can show up on a background check, making it difficult to find a job, secure a student loan or find a place to live. This marginalization in turn makes it more likely that a person will turn to crime, for lack of any other option, and the vicious cycle continues.

40. The Special Rapporteur observed a distinct lack of independent and effective oversight of law enforcement, particularly regarding the broad discretion police are given to arrest and investigate suspects. While there are benefits to granting law enforcement agencies autonomy, this autonomy has in many instances morphed into overreach. The Special Rapporteur found that one of the most effective ways to address these abuses is the use of "consent decrees", which allow the federal Department of Justice to identify systemic problems with local enforcement and supervise reforms<sup>28</sup>. The Special Rapporteur was thus disappointed to learn in April 2017 that the Attorney General has ordered a review of all consent decrees, in effect prioritizing respect for law enforcement over accountability for abuses<sup>29</sup>. This is troubling, since true respect can only be achieved through trust and accountability.

41. To that end, the Special Rapporteur is concerned about the Law Enforcement Officers' Bill of Rights (and its variants), which prevents prompt and effective investigation into possible misconduct by police and creates an impression that police officers deserve privileged status not granted to others facing similar investigations. The lack of federally collected, publicly available and comprehensive data on many issues related to police abuse of power prevents an accurate assessment of the scope of the problem. The Special Rapporteur is encouraged, however, by the Department of Justice's recent decision to collect statistics of all deaths that occur at the hands of police.

<sup>26</sup> See <https://www.whitehouse.gov/the-press-office/2015/01/16/executive-order-federal-support-local-law-enforcement-equipment-acquisit>; <https://www.justice.gov/sites/default/files/criminal-afmls/legacy/2015/05/21/05-18-15-wire.pdf>

<sup>27</sup> A/HRC/26/29 para 25

<sup>28</sup> <https://www.justice.gov/crt/special-litigation-section-cases-and-matters0>

<sup>29</sup> <https://www.documentcloud.org/documents/3535148-Consentdecreebaltimore.html>

## IV. Freedom of association:

42. The right to freedom of association is implicitly guaranteed by the Constitution's First and Fourteenth Amendments read together, which protect the rights of free speech and assembly and due process, as affirmed by the Supreme Court in a number of cases.<sup>30</sup>

### a. Workers rights

43. Workers' freedom of association is guaranteed in various international human rights instruments. The United States is obliged by virtue of its membership in the ILO to respect, promote, facilitate and realise the rights enshrined in ILO Conventions, including the right to freedom of association and to collective bargaining. The Special Rapporteur is encouraged by the positive role that the United States plays internationally by regularly championing these rights. He is particularly pleased to note that the US Government played a leading role in defeating efforts at the ILO to roll back the right to strike.

44. This stands in stark contrast to the situation domestically. Interlocutors expressed a range of concerns, both in relation to the legal framework and the practical reality of exercising association rights in the workplace, portraying a dismal picture for workers.

45. Workers' rights to associate, organise and act collectively are regulated by several pieces of legislation at the federal, state and local levels. The laws are supplemented by court and tribunal decisions that establish related standards and principles. The Special Rapporteur's primary focus was on the federal statute, the National Labour Relations Act (NLRA). Overall he finds that the legal framework legalises practices that severely infringe workers' rights to associate. It also provides few incentives for employers to respect workers' rights. This is largely due to the fact that enforcement is weak and underfunded, particularly when compared to the massive resources dedicated to other law enforcement functions in the United States. This is shameful, considering that various forms of wage theft by employers cost US workers as much as \$50 billion dollars annually – more than three times the \$14.3 billion that Americans lost to common property crimes in 2015 .

46. The NLRA governs labour relations in the private sector, guaranteeing employees the right to form and join trade unions, collectively bargain and engage in concerted activities. However agricultural workers, domestic workers in private homes, managers, supervisors, independent contractors and others are excluded from coverage of this law. Employers increasingly categorise workers under these groupings in order to prevent them from organising and to avoid the demands of improved working conditions. Such workers have no recourse under the NLRA for violation of their rights. Some might have coverage under state laws, but protection is often inadequate because of ineffective redress mechanisms.

47. Strikes are among the concerted activities protected by the NLRA. The law prohibits secondary boycotts, however, preventing workers from soliciting and expressing solidarity for strikes among workers of different employers. Employers can permanently replace employees engaged in economic strikes (those strikes concerning higher wages, shorter hours, or better working conditions), but not employees striking against unfair labour practices (such as interfering with an employee's right to organize, join, or assist a union). Moreover, replacement workers can vote to decertify a union on strike. In the Special Rapporteur's view, the permanent replacement of striking workers negates the right to strike, stripping employees of their strongest tool for pressing their demands. While the right to strike can be restricted in international law, such restrictions cannot be aimed at the destruction of the right itself, which permanent replacement effectively does.

48. The Special Rapporteur is also gravely concerned that the NLRA allows states to enact so called "right to work" laws, which are better described as "union busting" or

<sup>30</sup> See e.g. *Rotary Int'l v. Rotary Club of Duarte*, 481 U.S. 537 (1987); *NAACP v. Patterson*, 357 U.S. 449 (1958)

“right to work for less pay” laws. These laws, currently enacted in 28 states, prevent compulsory payment of dues or fees to unions. Proponents of such laws style them as a promoting “fairness”: No one should be forced to pay union dues. This argument is intentionally misleading, however, because the NLRA requires unions to represent and bargain for all employees in a bargaining unit. Thus, under “right to work” laws, non-dues paying workers continue to reap the benefits of union representation. The laws thus eliminate the most compelling incentives for belonging to a union, and serve no purpose except to erode unions’ dues-paying membership base.

49. The Special Rapporteur deplores the use of ‘right to work’ terminology to describe practices that actually violate or weaken fundamental rights. This language falsely suggests that the laws promote workers’ rights, but by weakening unions, they contribute to exactly the opposite: unfair labour practices, poor working conditions and potential retribution or unemployment for those advocating for workers’ rights. The Special Rapporteur recalls that international human rights law requires States to take necessary measures to ensure the exercise of rights, including labour rights. This means that States cannot take action to undermine rights, and that they cannot maintain a “neutral” approach in response to third party actions that undermine these rights (A/71/385, para 80; A/HRC/32/36/Add.2, para. 68).

50. Under section 8(c) of the NLRA, employers enjoy the right to express ‘any views, argument, or opinion ... without threat of reprisal or force or promise of benefit’. This section is styled as the ‘employer’s right to free speech,’ but in practice it facilitates pervasive employer interference with the ability of employees to form or join unions. For example, employers may hold “captive audience” meetings – which employees are obliged to attend – at which they can aggressively discourage union activity. Employers may also threaten employees’ right to strike by emphasizing their ability to permanently replace striking workers and engage companies to help them undermine workers’ organizing efforts (a \$4 billion dollar ‘union-busting’ industry). Unions have no right to speak during the captive audience meetings, to distribute union literature in the workplace, to conduct meetings in the workplace without management being present, or to hold similar captive-audience meetings. All of this combined creates an imbalanced environment where it is extremely difficult for employees to make free and informed choices about unionization.

51. The NLRA defines ‘unfair labour practices,’ but does not adequately protect workers from these practices. The law provides some remedial measures, which in practice are mostly inadequate. There are no deterrent penalties that would abate future violations of workers’ rights. Employers found to have engaged in unfair labour practices are required for example, to post notices promising not to engage in the practices again. If they are found to have dismissed workers for engaging in union (formation) activities, the only remedies are reinstatement and back pay. The lack of fines, punitive damages and compensation provisions compounds the injustice of a redress process characterized by long delays. In addition, employers’ frequent recourse to appeal processes, as a way to maintain the status quo, often to greatly disadvantages workers.

52. Even where unions are able to form or win exclusive representation in collective bargaining, employers in many cases do not engage in good faith negotiations. Between 1999 and 2003, more than 50 per cent of newly organised bargaining units were unable to secure a collective bargaining agreement one year after the election, and 37 per cent had no agreement after two years. Employers who are found to delay or engage in other bad faith tactics are merely required to return to the bargaining table, without any sanction that would encourage an agreement. The effect of this long, drawn out process and the lack of remedy is to demoralize and frustrate union members, thus weakening their bargaining power. This is the situation of AZARCO workers in Arizona, who the Special Rapporteur met during his visit.

53. The National Labour Relations Board (NLRB) is the federal statutory body empowered to ensure that workers can exercise their rights to organise and determine their collective bargaining representatives, and to prevent and remedy unfair labour practices in accordance with the NLRA. The Special Rapporteur’s meeting with the NLRB was illuminating of the challenges that the agency faces. For example, the agency’s funding is authorized by Congress and is thus prone to partisan interests that can manifest as budget

cuts or funding with policy riders, preventing the NLRB from pursuing a particular agenda. This seriously curtails the NLRB's independence and effectiveness. The body also has a very limited set of instruments to ensure implementation of its decisions.

54. The Special Rapporteur was alarmed to learn that Mississippi and other states openly court companies by touting the lack of unionization and ability to exploit workers. The situation at the Nissan plant in Canton, Mississippi, where the company has aggressively worked to prevent unions from organizing is an egregious example. This plant is one of only three Nissan plants that are not unionised out of a total of 55 manufacturing facilities worldwide; all of these plants are in the US south. The company no longer hires new employees directly, enabling it to avoid employer responsibilities; new workers are all outsourced to a temp agency, which pays significantly lower wages and benefits.

55. In a letter to the Special Rapporteur dated 23 February 2017, Nissan defended its handling of the situation at its plants in the US south, and emphasized that it followed domestic law and paid relatively high wages for the region. The Special Rapporteur appreciates Nissan's engagement, but finds their response emblematic of multinational corporations' duplicity on the issue of workers' rights. The poor environment for labour rights in the United States today is almost entirely a legacy of decades of political lobbying by well-funded business interests, who outspend workers by several orders of magnitude. Indeed, some union busting efforts at the Nissan plant in Canton itself were linked to the Center for Worker Freedom, a special project of the group Americans for Tax Reform. The latter is almost entirely funded by corporate interests. Whether or not Nissan itself engages in union busting is only a small piece of the puzzle. The bigger issue is that the company, along with many others, knowingly benefits from these efforts. The Special Rapporteur finds this complicity in the violation of workers' right to freedom of association unconscionable.

**b. Migrant workers' rights**

56. The plight of migrant workers – both documented and undocumented – further highlights the appalling situation of workers in the United States. Guest workers are particularly vulnerable to exploitation and violation of their rights because of their precarious immigration status. They are the most in need of the benefits that organising and collective action offer, yet are the least able to take advantage of association rights. The potential that lies in using association rights as a vehicle to improved working conditions cannot be understated, as the Special Rapporteur saw first-hand during a meeting with teachers from the Philippines who were trafficked to work in Louisiana. The teachers were cheated out of tens of thousands of dollars and forced into exploitative contracts by an international trafficking ring. But despite tremendous odds, they managed to organise, expose the wrongdoing of the traffickers and improve their conditions of work.

57. The abuses suffered by migrant workers often start before they even arrive in the United States, when they go into debt to pay exorbitant fees to recruitment agencies. This debt leaves them vulnerable to further exploitation and less likely to complain about or report abuses, such as: terms of employment which are significantly worse than promised; confiscation of passports; unsafe working conditions; appalling housing conditions; denial of their freedom of movement; denial of their right to organise, associate and assemble; physical, psychological and sexual harassment; unpaid or underpaid wages; denial of access to recourse; and the threat of deportation or actual deportation.

58. A key driver behind injustices facing documented migrants is the H-visa regime that ties the legal immigration status of a worker to a single employer. This ensures that the balance of power favours the employer, and has profound consequences for workers in precarious and exploitative working environments. This arrangement is not dissimilar to the Kafala system of bonded labor practiced in a number of countries in the Middle East region. Workers who attempt to organise or otherwise seek remedies to labour-related issues jeopardise their continued and future employment, as they may be terminated, deported and blacklisted from future opportunities.

59. Undocumented workers in Arizona bore witness to the grave situation they and other workers face. They described experiences of being subjected to stops and searches based on

racial profiling, surveillance, arbitrary raids, illegal arrests, arbitrary detention, denial of food and medical attention, denial of access to family and lawyers during detention, and solitary confinement. Partly as a result of these measures, many undocumented migrant workers are fearful of exercising their association rights in general, and even more so in the workplace. The Special Rapporteur emphasises that under international law all workers, regardless of nationality or immigration status, are entitled to their human rights, including the right to freedom of association. Crossing national borders – whether legally or otherwise – does not take away these rights.

60. The Special Rapporteur also finds it problematic that immigration enforcement takes priority over protecting undocumented workers' labour rights – so much so, that the Supreme Court ruled that undocumented workers are not entitled to back pay because they are not legally authorised to work. Workers are also deported despite on-going labour disputes against their employers.

61. Authorities have taken various steps to address some of these concerns, but more needs to be done to ensure that these measures reflect the magnitude of the problem, address root causes, and are efficiently implemented. Examples of challenges include:

- a. 'T' visas for trafficking victims are difficult to obtain and cover only a small proportion of workers in need of protection for exercising their rights;
- b. The interagency task force that facilitates co-ordination of agency actions so that immigration proceedings do not interfere with labour investigations is perceived by some as ineffective and not inclusive of all stakeholders' perspectives;
- c. Understaffing to tackle migrant-related abuses at the Department of Labour, which limits its ability to carry out inspections and degrades the quality of inspections, investigations and remedial actions;
- d. Work visa and labour recruitment frameworks – which are at the root of many of the problems discussed above – remain unchanged despite overwhelming evidence of their negative effects. While ICE has exercised prosecutorial discretion to refrain from deportation in some cases that implicate protected civil, labour, and human rights, this discretion is inconsistently applied, and sometimes not exercised at all. security.

**c. Counter-terrorism**

62. The Special Rapporteur acknowledges the responsibility of government to ensure national security and the difficulty of this task. However, he remains deeply concerned that some measures instituted in the United States may impermissibly infringe upon the right to freedom of association.

63. The Special Rapporteur would like to commend the United States for the pivotal role it, together with a coalition of civil society organizations, played in recently securing a revision of the Financial Action Task Force's (FATF) Recommendation 8. The original version of the FATF rule implied that the not-for-profit sector was inherently vulnerable to exploitation as a conduit for money laundering or terrorist financing. This language has been changed. Now, FATF advocates a more nuanced approach to counter-terrorism and anti-money laundering measures.

64. In his discussions with interlocutors, the Special Rapporteur was informed that both the United States' legal framework relating to counter-terrorism and its implementation raise concerns for the work of non-profit organisations, particularly those working in the humanitarian field in conflict areas.

65. Concerns over the legal framework include:

- a. That the definition and description of what constitutes 'material support' to terrorists or terrorist organizations is overly broad. It potentially criminalizes legitimate activities by non-profit organizations, if support provided by these groups – humanitarian or otherwise – reaches the hands of terrorists, even inadvertently. Thus, the provision of water, medical care or human rights training in conflict areas become nearly impossible, as they might directly or indirectly benefit terrorists. The

organisation's intent is immaterial to the crime. Further, the fact that according to the US Government inadvertent provision of material support is not criminalised under relevant laws does not provide adequate protection for legitimate humanitarian activities. The tragic irony is that these rules are effective in stopping the flow of humanitarian aid to war-torn areas, but have failed to stop the flow of weapons to many terrorist groups. The so-called Islamic State, for example, reportedly has a substantial arsenal of US-made arms and materiel .

b. That the administrative authority to designate terrorist groups under the International Emergency Economic Powers Act (IEEPA) derives from emergency powers triggered by an unusual and extraordinary threat to the national security, foreign policy or economy of the United States. Designation procedures are thus subject to a low evidentiary threshold considering the impact they have on non-profit organisations so designated, are not adequately transparent and do not offer the same due process safeguards that are embedded in a criminal or civil proceeding. Furthermore, the USA PATRIOT Act of 2001 provides for blocking of assets during an investigation, meaning an organisation is rendered unable to function without any prior determination of wrongdoing.

c. The Department of Treasury has broad powers to designate entities and individuals as Specially Designated Global Terrorists and freeze all of their US assets if it has "reasonable suspicion" that they provide financial, material or technological support to a terrorist group, or are associated with one. Affected organisations may seek an administrative review, but this review process is conducted *ex parte* and in closed proceedings. There is no obligation to provide applicants with the evidence against them, thus preventing them from mounting an effective defence.

66. Although the Government has not relied on these laws routinely to pursue charities, the Special Rapporteur was informed that at least nine charities have been effectively shut down, though none since 2009. The lack of recent prosecutions does not guarantee that a future Government will not take a different approach. The mere existence of this regulatory regime – with its harsh punishments, limited transparency and lack of due process protections – contributes to creating an environment where many people, particularly Muslims, fear exercising their association rights.

67. Interlocutors also highlighted inadequacies in the implementation of the legal framework, including:

a. Muslim charities feel particularly targeted by counter-terrorism measures and this has had a chilling effect on charitable giving, which is a pillar of their religious practice. Of the nine organisations whose assets have been seized by the Department of Treasury, seven are Muslim charities. At least six other Muslim organisations have been targeted for investigation and raids; these were publicised, creating a perception that they were engaged in terrorist financing, despite the fact that no designation or criminal proceedings subsequently took place. The damage caused to the organisations' reputations was enormous, in some cases fatal to the life of that organisation and detrimental to their communities.

b. The Special Rapporteur was informed that the Terrorist Screening Database maintained by the Federal Bureau of Investigation (the so-called "watchlist," and from which the No Fly and Secondary Security Screening Selection lists derive) contains at least 1 million names of individuals, most of whom are Muslim. The watchlist is reportedly subject to some oversight, aimed at ensuring that proposed additions meet a 'reasonable suspicion' standard, and proactive review is regularly carried out. But structural deficiencies – such as a low threshold for listing individuals; inadequate due process protections and avenues for redress; insufficient identifying information, allowing for mistaken identities; and unclear, lengthy and difficult processes for de-listing – undermine these efforts.

c. A broad array of interlocutors – including political and religious groups, civil and human rights advocacy groups, and Muslim leaders – narrated chilling experiences of surveillance, infiltration, home visits, attempts at recruitment as

informers and entrapment by law enforcement agents. In most cases, these actions appeared to be taken in response to these individuals exercising their peaceful assembly and association rights.

68. The Countering Violent Extremism (CVE) program of the Department of Homeland Security is another approach adopted to combat terrorism. While the approach is billed as a means to empower communities and build resilience to extremism, it has flaws both in conception and implementation.

69. CVE programs are based on the assumption that a defined set of factors or conditions such as psychological disorders, social marginalization, alienation, and political grievances are pre-cursors to radicalisation, violence or terrorism. There is no conclusive credible evidence that this is true, yet the CVE policy calls for increased community vigilance to help identify individuals who allegedly exhibit these characteristics. This approach risks drawing in wholly innocent individuals, adversely interfering with community relations and is ultimately counterproductive to preventing radicalisation. Also problematic is the fact that the government has kept all but the broadest outlines of these programs secret.

70. Although the CVE program does not explicitly target any one community or group, pilot programs are reportedly focussed largely on Muslim communities. Interlocutors spoke about the surveillance that Muslim communities are subjected to, without suspicion of wrongdoing, under the guise of community engagement, including the presence of undercover police and FBI in community activities, recruitment of informers and threats to induce collaboration and entrapment, all of which chill community participation and potentially violate the rights to freedom of association, peaceful assembly, expression and privacy. The underlying assumption that whole communities are particularly susceptible to violent extremism is alarming.

71. The Special Rapporteur observes the striking similarities between the United States' CVE program and the Prevent strategy in the United Kingdom. He has expressed deep concern about the latter program (see A/HRC/35/28/Add.1) and considers it manifestly unwise that the United States has not sufficiently mitigated in its program in light of the shortcomings identified in the UK strategy.

72. The Special Rapporteur is further concerned about differential treatment of charities and business entities in the realm of counter-terrorism, as exemplified by the Chiquita Brands case. Despite admitting to financing terrorist groups in Colombia, Chiquita Brands settled a criminal claim by the US Government in 2007 by paying a \$25 million fine, a mere fraction of the company's 2014 estimated value of \$682 million. Comparatively, the impact of a terrorist designation on a charity is far more severe, effectively shutting down the organisation, even where no criminal liability is attributed. At least four not-for-profits have been suspended pending investigation for a possible designation. Moreover, donations and assets of designated organisations remain frozen, denying beneficiaries any support.

73. In another example of unreasonable differentiation, the Special Rapporteur notes the efforts made by the Government to reassure the banking sector that its supervisory and enforcement approach to violations of money laundering and terrorism financing laws is not one of 'zero tolerance'. Regulators are extremely deferential to banks in this respect, typically preferring to correct most violations through cautionary letters or guidance rather than large penalties and fines. On the other hand, charities that make good faith, due diligence efforts to comply with the law and guidelines provided by the Government do not receive the same reassurance and accommodation, despite repeated requests.

74. The Special Rapporteur notes the disproportionate and negative impact that this differentiation has on both charities and their beneficiaries. Governments should follow a policy of sectoral equity in their treatment of businesses and non-profits, so that civil society organisations are able to operate in an environment at least as favourable as the one provided for businesses.

**d. Political parties and campaign financing:**

75. The Special Rapporteur has on previous occasions highlighted the role of peaceful assembly and association rights in the promotion of democracy and participation in public affairs (A/68/299, paras 5-6)<sup>31</sup>.

76. The outsize influence of money in US elections impedes the ability of people to effectively participate in the conduct of public affairs. In the United States, relatively unfettered cash flows to, and spending by, candidates in federal and state elections allow a small number of people to inordinately influence public policy.

77. Associations are vehicles through which individuals can come together to express and act on their political views, and the Special Rapporteur views the effects of unregulated political campaign spending through this lens. A campaign finance system which drastically – and intentionally – favours wealthy associations or individuals may not be a direct restriction on the right to freedom of association, but it acts as one in practice: The enabling environment for associations is necessarily diminished when large amounts money are a prerequisite for access to political leaders<sup>32</sup>.

78. The Special Rapporteur is particularly concerned that a great deal of money going into campaign coffers, whether directly to candidates or to their causes, is contributed by a very small fraction of the American population<sup>33</sup>. The amount of money – nearly \$7 billion for the 2016 federal election alone<sup>34</sup> – is staggering, and likely unparalleled in the history of democracy. This has three important consequences. First, this small group is likely to have disproportionate influence over candidates and elected officials. Secondly, the need to raise massive amounts of money in order to mount a successful political campaign – even at lower levels of government – severely restricts the ability of ordinary people to become candidates, even more so for traditionally marginalized groups, such as women<sup>35</sup> and communities of colour.<sup>36</sup> Third, the system allows the power of associations to be superseded by money, since government policy is often set by the highest bidder.

79. This state of affairs has developed over time, not least as a result of Supreme Court decisions including: (1) *Citizens United v. FEC*<sup>37</sup>, which held that the US Constitution forbids the government from regulating “independent” spending on political campaigns; and (2) *McCutcheon v. FEC*<sup>38</sup>, which struck down aggregate limits on political campaign contributions. These cases opened the way for a few individuals to contribute large amounts to more candidates and campaigns. Additionally, the absence of limits on campaign expenditures, the lack of effective regulation and inadequate transparency allow vast amounts of money into the political system; and in the case of so called ‘dark money,’ funds given to non-profit organizations which are not required to disclose their donors.<sup>39</sup> The system effectively equates money with constitutionally protected free speech. But it fails to take into account that this approach necessarily diminishes the speech rights of those who have less money, or none at all.

<sup>31</sup> See also Universal Declaration of Human Rights, Articles 21 and 25

<sup>32</sup> The environment is further diminished by the fact that labour unions have more obstacles to funding political activity than corporations, including stricter disclosure requirements. See <http://www.demos.org/sites/default/files/publications/CorpExplainer.pdf>

<sup>33</sup> 100 families had given about 11.9% of all campaign finance contributions as of October 2016 according to the Center for Responsive Politics <https://www.opensecrets.org/news/2016/10/total-cost-of-2016-election-could-reach-6-6-billion-crp-predicts/>. See also <https://www.opensecrets.org/overview/cost.php>;

<sup>34</sup> <https://www.opensecrets.org/news/2016/11/update-federal-elections-to-cost-just-under-7-billion-crp-forecasts/>

<sup>35</sup> Women only make up only 19.4 per cent of US Congress in 2017. See <http://www.cawp.rutgers.edu/women-us-congress-2017>

<sup>36</sup> See <http://scholar.valpo.edu/vultr/vol49/iss2/11>

<sup>37</sup> 558 U.S. 310 (2010)

<sup>38</sup> 134 S.Ct. 1434 (2014)

<sup>39</sup> An estimated \$183 million in “dark money” was spent during the 2016 election cycle. See [https://www.opensecrets.org/outsidespending/nonprof\\_summ.php](https://www.opensecrets.org/outsidespending/nonprof_summ.php)



80. Combatting corruption and the appearance of corruption are legitimate government concerns. In *Citizens United* and *McCutcheon* however, the Supreme Court narrowly defined corruption to mean bribery or a direct quid pro quo exchange of money for influence.<sup>40</sup> Specifically, the Court distinguished quid pro quo from “general influence” that an individual may have due to their political contributions. In the Special Rapporteur’s view, whether labelled as corruption or not, this distinction legitimises the disproportionate influence and access that inevitably accrues to a small number of donors who give large sums of money to candidates. This drastically diminishes choices made by other voters and distorts the democratic process.<sup>41</sup> Government has a legitimate interest in ensuring a level playing field for the expression of all citizens’ concerns and should take measures to ensure this interest<sup>42</sup>.

## IV. Conclusions and recommendations:

### a. Conclusion

81. The United States is at a moment where it is struggling to live up to its ideals on a number of important issues, the most critical being racial, social and economic equality. But it is also, as history shows, a nation of struggle, resilience, diversity and ambition – all of which make it eminently capable of learning from its failures, overcoming its problems, and emerging in a better place.

82. Assembly and association rights have always played a central role in the United States’ past struggles for justice and equality. Indeed, the country’s history reads like a guidebook on just how pivotal these rights can be – from the abolition of slavery, to women’s suffrage, to the civil rights movement, to the Lesbian, Gay, Bisexual, Transgender and Intersex rights movement and more. Assembly and association rights remain just as important today, at a time when the United States is experiencing some of its deepest social and political divisions in a generation. These divisions cannot be healed by decrees from above, by criminalizing protests, or by keeping people from organizing. Addressing them requires an environment that encourages participation, openness, dialogue and a plurality of voices. And achieving this kind of pluralism requires maximum protection and promotion of peaceful assembly and association rights.

83. Despite these challenges, the Special Rapporteur is confident in the ability and goodwill of the American public to decisively address these concerns. He also hopes that the Government will continue to be a lead advocate for the rights to freedom of peaceful assembly and of association both in the national and international arena, including in the context of the future renewal of his mandate.

84. The Special Rapporteur offers the following recommendations in the spirit of constructive engagement and hopes these will inform the Government in its efforts to ensure that its legal framework and practice are in full compliance with international human rights norms and standards governing the freedoms of association and peaceful assembly.

### b. Recommendations

#### General recommendations

85. **The Special Rapporteur calls upon the competent authorities to:**

**(a) Recognise uniformly in law and practice that the rights to freedom of peaceful assembly and of association are a legitimate means through which individuals, especially those belonging to marginalised groups, can aggregate and express their views; further recognize that it is incumbent on authorities to facilitate rather than to diminish the exercise of these rights;**

<sup>40</sup> [https://www.brennancenter.org/sites/default/files/analysis/Rethinking\\_Campaign\\_Finance.pdf](https://www.brennancenter.org/sites/default/files/analysis/Rethinking_Campaign_Finance.pdf)

<sup>41</sup> General comment No 25 para 19.

<sup>42</sup> See, e.g., *Animal Defenders International v United Kingdom*, [2013] ECHR 362

(b) Ensure that the legal framework affecting these rights conforms to international human rights norms, including by providing an objective and detailed framework through which decisions restricting rights are made while ensuring that restrictions are the exception and not the rule;

(c) Prohibit all forms of racial profiling;

**Right to freedom of peaceful assembly**

86. The Special Rapporteur calls upon the competent authorities to:

(a) Eliminate permission requirements and excessive permit fees required to hold peaceful assemblies, and adopt a notification system instead;

(b) Limit restrictions on the time, place and manner of assemblies to those which can be justified under international law as fulfilling a legitimate government interest that is necessary in a democratic society;

(c) Refrain from enacting new laws at the local, state and federal levels which unduly restrict the right to freedom of peaceful assembly;

(d) Review tactics for the management of assemblies – including the use of military-style weapons and equipment by police, use of force and arbitrary arrests – to ensure their compatibility with international human rights norms and standards, including the joint report on the proper management of assemblies (A/HRC/31/66). In particular, ensure that management tactics are directed at facilitating rather than preventing the exercise of assembly rights, and do not result in escalation of tensions;

(e) Implement a more facilitative and collaborative approach to policing assemblies to encourage cooperation with and respect for organizers and non-discriminatory policing of protests by communities of colour;

(f) Investigate and hold accountable police officers who use excessive force or discriminatory behaviour when policing assemblies;

(g) Recognize in law and in practice that the right to freedom of peaceful assembly is an individual right, and that the violent actions of one person at a protest do not strip others of this right. When violence occurs, police should identify, isolate and deal with the individuals engaged in those acts, in accordance with the rule of law, and not indiscriminately arrest, detain or otherwise interfere with the rights of others;

(h) Eliminate all federal programs – such as the 1033 program – which facilitate the transfer of military equipment to state and local law enforcement departments for use in policing peaceful assemblies;

(i) Increase funding and activities for the Department of Justice’s Civil Rights Division, particularly for its programs to monitor local police forces’ respect for human rights via consent decrees;

(j) Follow through on the previous administration’s pledge to create a database that accurately tracks national statistics concerning deaths caused by police;

(k) Abandon “broken windows” policing tactics that encourage racial discrimination and the systematic harassment of African-Americans and other marginalized communities, in the context of peaceful assemblies or otherwise;

**Right to freedom of association**

87. The Special Rapporteur calls upon the competent authorities to:

(a) Ratify outstanding international labour conventions, particularly ILO Convention Nos. 29, (forced labour), 87 (freedom of association and the right to organise), 98 (collective bargaining), 100 (equal remuneration), and 111 (discrimination).

(b) Increase funding and staffing at the National Labour Relations Board and the Department of Labour to vigorously enforce the NLRA and other labour laws;

- (c) Ensure that migrant workers involved in on-going labour disputes are not deported for immigration violations until after the disputes are resolved;
- (d) Take measures to strengthen the independence of the National Labour Relations Board, so that its work and budget are not subject to partisan politics;
- (e) Amend the National Labour Relations Act to:
- a. Impose tougher sanctions on employers who are found to delay or engage in bad faith tactics during collective bargaining negotiations;
  - b. Prohibit state “right to work” laws as a violation of workers’ right to freedom of association under international human rights law.
  - c. Strengthen sanctions against employers who engage to unfair labour practices, adding fines, punitive damages and compensation provisions, in order to deter future violations of workers rights;
  - d. Forbid the permanent replacement of striking workers;
  - e. Allow union meetings without management being present and the distribution of information on the premises of the workplace without harassment or retaliation; also give union organizers the right of rebuttal in “captive audience” meetings or to hold their own such meetings without harassment or retaliation;
  - (f) Provide legal assurance for not-for-profit organizations and their donors that legitimate aid work in conflict areas will not immediately attract sanction or adverse actions;
  - (g) Adopt a consistent policy of “sectoral equity” in the regulation of businesses and associations (including trade unions) to ensure a fair, transparent and impartial approach to regulating each sector;
  - (h) Revamp campaign finance laws to reduce the influence of money in the political process and to ensure a level playing field for the expression of all citizens’ concerns during elections.
  - (i) Establish an independent counter-terrorism ombudsperson to monitor compliance of US laws and practices in the fight against terrorism with international human rights law.

88. The Special Rapporteur calls upon businesses to commit to upholding the rights to freedom of association for workers as defined in international law, even when domestic standards are lower, and to operationalize the UN Guiding Principles on Business and Human Rights.

89. The Special Rapporteur upon civil society to:

- (a) Continue their important advocacy and monitoring work in relation to the enjoyment of the rights to freedom of peaceful assembly and of association;
- (b) Use every opportunity to participate in decision-making processes, including in relation to the elaboration of draft legislation; and
- (c) Follow up and monitor the implementation of the recommendations contained in this report.