



United States' Compliance with the International Covenant on Civil and Political Rights

Suggested List of Issues to Country Report Task Force on the United States

Submitted by: Global Justice Clinic at New York University School of Law

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¹ Human Rights Committee, *Consideration of reports and country situations in the absence of a report*, <http://www2.ohchr.org/English/bodies/hrc/hrcs107.htm> (last visited Dec. 22, 2012).

I. Reporting Organization: The Global Justice Clinic (New York University School of Law)

The Global Justice Clinic (GJC) at NYU School of Law provides high quality, professional human rights lawyering services to individual clients and non-governmental and inter-governmental organizations, partnering with groups based in the U.S. and abroad, or undertaking its own projects. Serving as legal advisers, counsel, co-counsel, or advocacy partners, Clinic students work side-by-side with human rights activists from around the world. In 2011-2012, the GJC extensively investigated and reported on expression and assembly rights violations by the U.S. in the context of the Occupy Wall Street protests, and co-authored a report entitled *Suppressing Protest: Human Rights Violations in the U.S. Response to Occupy Wall Street*.² The clinic is directed by Professor Margaret Satterthwaite, and this project was supervised by Clinic Professor Sarah Knuckey. Clinic student Meghan Ragany worked on this submission.

II. Issue Summary

Full respect for assembly and expression rights is necessary for democratic participation, the exchange of ideas, and for securing positive social reform. The rights are guaranteed in international law binding upon the U.S.

Yet U.S. authorities engaged in persistent breaches of protest rights in the context of the Occupy Wall Street movement.

In June 2012, the GJC co-authored a report extensively detailing rights violations in the government's response to Occupy Wall Street in New York City. Some of the worst practices documented included:

- Aggressive, unnecessary and excessive police force against peaceful protesters, bystanders, legal observers, and journalists
- Obstruction of press freedoms and independent legal monitoring
- Pervasive surveillance of peaceful political activity
- Violent late-night raids on peaceful encampments
- Unjustified closure of public space, dispersal of peaceful assemblies, and kettling (corralling and trapping) of protesters
- Arbitrary and selective rule enforcement and baseless arrests
- Failures to ensure transparency about applicable government policies
- Failures to ensure accountability for those allegedly responsible for abuses³

² GLOBAL JUSTICE CLINIC (NYU SCHOOL OF LAW) & WALTER LEITNER INTERNATIONAL HUMAN RIGHTS CLINIC AT THE LEITNER CENTER FOR INTERNATIONAL LAW AND JUSTICE (FORDHAM LAW SCHOOL) AS PART OF THE PROTEST AND ASSEMBLY RIGHTS PROJECT, *SUPPRESSING PROTEST: HUMAN RIGHTS VIOLATIONS IN THE U.S. RESPONSE TO OCCUPY WALL STREET* (2012) available at <http://chrgj.org/wp-content/uploads/2012/10/suppressingprotest.pdf>.

³ *Id.*

These practices breach the U.S. government's international legal obligations under the International Covenant on Civil and Political Rights (ICCPR) to respect, protect, promote, and fulfill expression and assembly rights.⁴

The GJC called on the U.S. to respond to these documented violations by:

- Undertaking a major independent review of New York City's response to Occupy Wall Street in order to assess past practice, promote accountability for abuse, and reform authorities' responses to bring them into line with binding international legal obligations
- Establishing an independent Inspector General to oversee policing practices
- Implementing a new protest policing policy that prioritizes respect for civil liberties and human rights
- Exercising the federal authorities' powers to institute investigations and oversight if city and state authorities fail to take the necessary steps of review and reform.

However, to date, the U.S. has issued no public response, and has not acted upon these necessary recommendations.

III. Concluding Observations from 2006

The Human Rights Committee has not yet addressed the issue of responses to protests in the U.S. In its previous review of the U.S. in 2006, however, the Committee did express concern about police brutality and excessive use of force, urging that the U.S. should "increase significantly its efforts towards the elimination of police brutality."⁵

IV. U.S. Government Report

In its most recent report to the Human Rights Committee (December 30, 2011), the U.S. stated that federal law prohibits excessive use of force by law enforcement officers and highlighted the legal remedies available to victims of police brutality. It also referred to increased training to combat prejudice and discussed the Department of Justice's convictions of various officers for crimes related to excessive force.⁶

⁴ International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976 [hereinafter ICCPR]).

⁵ Human Rights Comm., 87th Sess., July 10-28, 2006, Concluding Observations of the Human Rights Committee: United States of America, ¶30, U.N. Doc. CCPR/C/USA/CO/3/Rev. 1 (Dec. 18, 2006) [hereinafter "Concluding Observations 2006"] *available at* <http://www1.umn.edu/humanrts/usdocs/hruscomments2.html>.

⁶ Human Rights Comm., Fourth Periodic report: United States of America, ¶¶ 660-63, U.N. Doc. CCPR/C/USA/4 (May 22, 2012) [hereinafter "Fourth Periodic Report"] *available at* <http://www.state.gov/j/drl/rls/179781.htm>.

The government also stated that the freedom of assembly should be protected, with only “narrowly tailored” exceptions to protect significant government interests. It also laid out some restrictions on freedom of assembly that may be considered justified, such as limiting the time in which a public park can be used even if it interferes with using protest camps as a form of protest, and imposing permit requirements.⁷

V. Legal Framework

The rights of those engaging in peaceful protest are protected through an interconnected set of universally recognized human rights and fundamental freedoms. The freedom to protest is guaranteed by the twin pillars of freedom of assembly⁸ and freedom of expression.⁹ Peaceful protest and political assembly are also protected by the freedoms of opinion¹⁰ and of association,¹¹ the rights to participate in the conduct of public affairs,¹² to liberty and security, and to be free from arbitrary detention¹³ and torture or cruel, inhuman or degrading treatment or punishment.

The ICCPR permits restrictions on protest rights only for the following limited legitimate grounds: national security, public safety, public order, the protection of public health or morals, or the protection of the rights of others.¹⁴ If a legitimate ground is satisfied, the manner of restriction to achieve that aim must satisfy the necessary and proportionate tests. With respect specifically to police use of force, States have a clear legal duty to investigate allegations of excessive force by police, and to hold police officers responsible for any misconduct.¹⁵

VI. Previous Human Rights Committee General Comments, Other United Nations, and International Body Recommendations

The Human Rights Committee has addressed the freedom of expression in General Comment 34, which provides that the freedom of expression includes the right to seek, receive, and impart

⁷ *Id.* ¶¶ 375-79.

⁸ ICCPR, art. 21.

⁹ ICCPR, art. 19(2).

¹⁰ ICCPR, art. 19(1).

¹¹ ICCPR, art. 22.

¹² ICCPR, art. 25; *see also* U.N Human Rights Comm., General Comment No. 25 (art. 25), *The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service* ¶ 25, U.N. Doc. CCPR/C/21/Rev.1/Add.7 (July 12, 1996).

¹³ ICCPR, art. 9.

¹⁴ ICCPR, art. 19, 21.

¹⁵ *See, e.g.,* Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association, *First Rep. on the Rights to Freedom of Peaceful Assembly and Association* ¶¶ 77-81, Hum. Rts. Council, U.N. Doc. A/HRC/20/27 (May 21, 2012) (by Maina Kiai) (outlining state obligations to investigate and remedy, and stressing the importance for accountability of police wearing visible identification numbers on their uniforms).

information and ideas through any medium.¹⁶ General Comment 34 also addresses the limited legitimate grounds for restriction of the freedom. General Comment 31 states that a failure by a State to investigate allegations or a failure to bring perpetrators to justice can itself give rise to a “separate breach” of the ICCPR. States must make reparation to individuals whose rights have been violated, in the form of restitution, public apologies, guarantees of non-repetition, changes in laws and practice, and bringing the perpetrators to justice.¹⁷

The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association have expressed concerns about the U.S. government’s response to the Occupy Wall Street protests. In a joint letter to the U.S. (December 21, 2011) the Special Rapporteurs discussed allegations of excessive use of police force against peaceful protesters, and urged the government to “adopt effective measures to investigate, sanction those responsible, and prevent the recurrence of these acts.”¹⁸ In an interview, Frank La Rue, the Special Rapporteur on freedom of opinion and expression, expressed serious concerns about the U.S. treatment of the protests.¹⁹

In November 2012, the Organization for Security and Cooperation in Europe (OSCE) issued a lengthy report on its investigations into the U.S. treatment of protesters, and the U.S. government’s compliance with the OSCE’s Guidelines on Freedom of Peaceful Assembly²⁰. The report found a broad range of concerns in the U.S. response, including excessive force, mass arrests, kettling, the arrests of journalists, camp evictions, and permit requirements. It made specific factual findings about New York, Chicago, and Oakland.²¹ A large number of U.S. civil society organizations provided a verbal and written statement welcoming the OSCE report, and stating that it contained key findings and recommendations.²²

¹⁶ General Comment No. 34.

¹⁷ General Comment No. 31 ¶ 15-16, 18.

¹⁸ Letter from Frank La Rue & Maina Kiai to Hillary Clinton (Dec. 21, 2011), USA 23/2011, *available at* [https://spdb.ohchr.org/hrdb/20th/UA_USA_21.12.2011_\(23.2011\).pdf](https://spdb.ohchr.org/hrdb/20th/UA_USA_21.12.2011_(23.2011).pdf).

¹⁹ Dan Froomkin, *U.N. Envoy: U.S. Isn’t Protecting Occupy Protesters’ Rights*, HUFFINGTON POST (Dec. 2, 2011), http://www.huffingtonpost.com/2011/12/02/occupy-wall-street-un-envoy_n_1125860.html.

²⁰ ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE, OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, GUIDELINES ON FREEDOM OF PEACEFUL ASSEMBLY (2d ed. 2010) *available at* <http://www.osce.org/odihr/73405>.

²¹ ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE, OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, MONITORING OF FREEDOM OF PEACEFUL ASSEMBLY IN SELECTED OSCE PARTICIPATING STATES (MAY 2011 – JUNE 2012), (Nov. 9, 2012) *available at* <http://www.osce.org/odihr/97055>.

²² Written Statement by U.S. Civil Society on the OSCE-ODIHR ‘Report on the Monitoring of Freedom of Peaceful Assembly’ (Nov. 16 2012), <http://chrgj.org/wp-content/uploads/2012/11/US-Civil-Society-Written-Statement-on-OSCE-ODIHR-Monitoring-Report-November-2012.pdf>. The statement was made on behalf of the Global Justice Clinic at NYU School of Law, The International Human Rights Clinic at Harvard Law School, The Walter Leitner International Human Rights Clinic at the Leitner Center for International Law and Justice at Fordham Law School, The International Human Rights and Conflict Resolution Clinic at Stanford Law School, the Center for Constitutional Rights, The American Civil Liberties Union, The National Lawyers Guild Massachusetts Chapter, The National Lawyers Guild New

VIII. Recommended Questions

1. In light of serious allegations of protest rights violations in response to Occupy Wall Street, what steps is the U.S. taking to ensure full accountability for past violations, including through systematic independent reviews, prosecutions where appropriate, and policy reform?
2. What, if any, coordination existed between cities – or via federal authorities – in relation to the violations of protest rights alleged across the country?
3. What steps is the U.S. taking to ensure that authorities promulgate and respect rights - promoting protest policing guidelines, and ensuring that police departments have adequate independent oversight mechanisms in place?
4. International law allows “notification” but not “permit” schemes for protests, but many jurisdictions in the United States require permits for protests. How will the U.S. ensure that its notification/authorization regulations for protests comply with international law?

IX. Suggested Recommendations

1. The U.S. government should ensure that protest policing policies are made public and that policies promote the protest rights secured by international human rights law. Federal authorities in the U.S. should consider preparing model protest policing guidelines, and disseminate such guidelines to local authorities.
2. U.S. authorities at all levels should ensure that they fulfill their transparency obligations, including by promptly and fully responding to freedom of information requests about authorities’ responses to the Occupy Wall Street protests.
3. The U.S. should review whether city and state authorities have adequately investigated allegations of protest rights violations, and whether they provided an effective remedy for victims of abuse, particularly in New York City. If local authorities have failed to do so, the federal government, especially the Department of Justice, should exercise its authority to investigate allegations of official misconduct.