



Factsheet: United States Country Visit

UN Special Rapporteur on the rights to freedom of peaceful assembly & of association



Are assembly rights impeded by the 'permit' system so prevalent in the US?

Yes

Assembly rights are relatively healthy in the US, but the Special Rapporteur is concerned that most jurisdictions require permits to protest. International human rights law favours a prior notification system rather than a permission system. Requiring advance permission risks turning the right to assembly into a privilege, where the exercise of fundamental freedoms is dependent on State discretion. The Special Rapporteur is also concerned 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 – up to three months notice for a public procession in Phoenix, for example ([A/HRC/35/28/Add.2](#), paras 26-31).

Is the increasingly aggressive and militarized police response to protests justifiable?

No

Most US police understand and implement best practices for managing assemblies, but they sometimes diverge. One of the most troubling examples has been the use of military equipment and excessive force. Both were particularly evident during recent protests in Ferguson, Baltimore and elsewhere. The Special Rapporteur heard numerous complaints that police used excessive force to arbitrarily arrest protesters for minor acts, such as stepping off crowded sidewalks, and targeted arrestees for their race or ethnicity. Also concerning: the now-common police response to demonstrations with military-style tactics, full body armour, and an arsenal of weaponry suited more to a battlefield than a protest. Protesters are not war enemies and should never be treated as such ([A/HRC/35/28/Add.2](#), paras 34-37).

Are peaceful assemblies by minority groups policed differently?

Yes

The Special Rapporteur learned 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 predominantly target minority individuals. Immigration and Customs Enforcement (ICE) agents have also reportedly conducted surveillance at assemblies focused on migrant issues. Aggressive street policing also affects assembly rights: Young African-Americans in a number of cities described their inability to meet in public places, even within their own communities, without police harassment ([A/HRC/35/28/Add.2](#), paras 38-39).

Do so-called 'right-to-work' laws promote workers' assembly & association rights?

No

So-called "right to work" laws – better described as "union busting" laws – are emblematic of the "dismal picture" for the exercise of association rights in US workplaces that the Special Rapporteur found ([A/HRC/35/28/Add.2](#), para 48). These laws, currently in force in 28 states, prevent compulsory payment of dues or fees to unions. Proponents style them as a promoting "fairness," but this argument is intentionally misleading, as the US law requires unions to represent and bargain for all employees in a bargaining unit. Thus, under "right to work" laws, non-dues paying workers still 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 (*Id.*, paras 48-49).

Are migrant workers at particular risk of rights violations?

Yes

Guest workers are particularly vulnerable to violation of their assembly and association rights because of their precarious immigration status. A key driver of injustices facing documented migrants is the H-visa regime that ties the legal immigration status of a worker to a single employer ([A/HRC/35/28/Add.2](#), paras 56-58). This ensures that the balance of power favours the employer; workers who attempt to organise or remedy labour-related issues jeopardise their continued employment, as they may be terminated, deported and blacklisted from future opportunities. The situation is even worse for undocumented migrant workers (*Id.*, paras 59-60). 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 borders does not take away these rights (*Id.*).

Does the US election campaign finance system impact association rights?

Yes

In the US, 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. 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 favours the wealthy may not be a direct restriction on the association rights, but it acts as one in practice ([A/HRC/35/28/Add.2](#), para. 75-80).

About this factsheet

This factsheet was produced by the former UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai (2011-17). It summarizes the findings of his official visit to the United States of America on July 11-27, 2016, which he made as Special Rapporteur at the invitation of the Government. For Kiai's end of mission statement from July 2016, see <http://www.freeassembly.net/news/usa-statement/>

What are country visits?

The Special Rapporteur conducts country visits to UN Member States, when invited, to examine in detail the enjoyment of the rights to freedom of peaceful assembly and of association, to identify any problems and to make recommendations on how these could be resolved. Following the visit, the Special Rapporteur presents a final report to the Human Rights Council.

The United States of America at a glance

- **Official name:** United States of America
- **Population:** 325,000,000
- **Capital:** Washington, DC
- **Type of government:** Federal presidential constitutional republic
 - **Head of state and government:** President Donald Trump (since 2017)
 - **UN Member State since:** Oct. 24, 1945
- **Member of the Human Rights Council:** Yes (through 2019)
 - **Standing invitation to UN Special Procedures:** No
 - **Visits by other Special Procedures mandate holders:** 15 (since 2009)

Check out the full report

The report ([A/HRC/35/28/Add.2](#)), along with the Government of the United States of America's official response, is available at the following link: <http://freeassembly.net/reports/usa/>

"At a glance" sources available via hyperlinks

Former United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai (published June 2017)

<http://www.freeassembly.net> • <https://www.facebook.com/MainaKiaiHumanRights/> • https://twitter.com/Maina_Kiai • <https://www.flickr.com/photos/mainakiai> • <http://ohchr.org>

A note on race and its relation to FOAA rights

The Special Rapporteur's visit focused on peaceful assembly and association rights, but he found it is impossible to evaluate these rights without issues of racism pervading 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, Jim Crow laws, 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, cloaked in euphemistic terms such as the "War on Drugs" - which has resulted in a situation where one out of every 15 black men is currently jailed. 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 (A/HRC/35/28/Add.2, para 13-14).

What are the Special Rapporteur's findings?

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 a nation of struggle, resilience, diversity and ambition - all of which make it eminently capable of overcoming these problems. 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, 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, dialogue and a plurality of voices. Achieving this kind of pluralism requires maximum protection and promotion of peaceful assembly and association rights. 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 (see paras 81-83).

What is the United States Government's response?

The United States Government's official response to the report had not yet been made public at the time this factsheet was published. When it is released, it will be available at the following link in the "related materials" section at the bottom of the page: <http://freeassembly.net/reports/usa/>

"ASSEMBLY AND ASSOCIATION RIGHTS HAVE ALWAYS PLAYED A CENTRAL ROLE IN PAST STRUGGLES FOR JUSTICE AND EQUALITY IN THE UNITED STATES. ... THEY REMAIN JUST AS IMPORTANT TODAY, AT A TIME WHEN THE UNITED STATES IS EXPERIENCING SOME OF THE DEEPEST SOCIAL AND POLITICAL DIVISIONS IN A GENERATION."

A/HRC/35/28/Add.2, para 82

Selected recommendations to the US Government

- Eliminate permission requirements and excessive permit fees required to hold peaceful assemblies, and adopt a notification system instead;
- Refrain from enacting new laws at the local, state and federal levels which unduly restrict the right to freedom of peaceful assembly;
- 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);
- Increase funding and staffing at the National Labour Relations Board and Department of Labour to vigorously enforce the NLRA and other labour laws;
- Establish an independent counter-terrorism ombudsperson to monitor compliance of US laws and practices in the fight against terrorism with international human rights law.

Full recommendations available at [paras 85-89 of the report](#)

Scorecard: the USA's ratification of key UN human rights treaties

International Convention on the Elimination of All Forms of Racial Discrimination	✓
International Covenant on Civil and Political Rights	✓
International Covenant on Economic, Social and Cultural Rights*	
Convention on the Elimination of All Forms of Discrimination against Women*	
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	✓
Convention on the Rights of the Child*	
International Convention on the Protection of the Rights of All Migrant Workers and their Families	
International Convention for the Protection of all Persons from Enforced Disappearance	
Convention on the Rights of Persons with Disabilities*	

(Red circles & check marks indicate USA is a State party to the instrument in question)
* signed but has not yet ratified
Source: [OHCHR](#)