

**ISHR**INTERNATIONAL SERVICE
FOR HUMAN RIGHTS

THE SITUATION OF HUMAN RIGHTS DEFENDERS

UNITED STATES OF AMERICA

UPR Briefing Paper - September 2014

The United States of America (US) underwent its first Universal Periodic Review (UPR) in November 2010. While there were no specific recommendations made regarding human rights defenders (HRDs), the US rejected the one recommendation concerning freedom of expression vis-à-vis journalists. Furthermore, the US rejected two recommendations that called for the State to establish an independent national human rights institution (NHRI) in conformity with the Paris Principles and two recommendations regarding access to the UN Special Procedures, signalling an attempt to limit HRD access to international protection mechanisms. While the US maintains a relatively strong legal framework for HRDs, activists and journalists, its national security policy has increasingly threatened their freedoms and shrunk the space in which they can work. Also, despite this strong legal framework, HRDs addressing sexual and reproductive health and rights are particularly vulnerable.

RISKS FACING HUMAN RIGHTS DEFENDERS

- The Committee to Protect Journalists notes that since 2009 there have been eight felony criminal prosecutions for leaking classified information, a sharp increase from the three cases brought by all previous administrations combined.¹ This, coupled with the trend of federal prosecutors attempting to compel testimony from journalists or holding them in contempt, has shrunk the enabling environment for whistleblowers and journalists to operate.
- Amnesty International and the Center for Constitutional Rights have questioned the National Security Agency (NSA) and Federal Bureau of Investigations (FBI) warrantless surveillance program that allows for spying on lawyers that represent Guantanamo detainees, infringing on the most basic fair trial rights.²
- Edward Snowden, NSA whistleblower, alleged that HRDs have been the targets of mass surveillance by US spy agencies.³
- In December 2012, a number of Special Procedures of the Human Rights Council highlighted a 'continued and escalated campaign of violence against sexual and reproductive rights defenders in the US.'⁴

OFFICIAL RESTRICTIONS ON THE SPACE FOR HUMAN RIGHTS DEFENDERS

- Journalists and HRDs demonstrating are occasionally denied access, physically abused or detained by police, as happened during the 2011-2012 'Occupy' protests.⁵ In one of the cases the officers sprayed pepper spray at point blank range in the faces of the unarmed, peacefully protesting students.⁶
- While the legal framework for protecting HRDs and journalists is robust, revelations about surveillance have led to self-censorship as writers assume they are under watch.⁷
- The PATRIOT Act⁸ has allowed for continued surveillance of HRDs and organisations dealing with minority rights, specifically religious minority rights (for example, Executive Director and co-founder of the Council on American-Islamic Relations (CAIR), Nihad Awad).⁹
- The Espionage Act criminalises the 'unauthorised communication of national defence information'. However, the vague wording of the Act and its application (or attempted application) in cases involving Private Chelsea (formerly Bradley) Manning, Julian Assange and Edward Snowden have raised concern that news organizations, and anyone who reported, printed, or disseminated

information from Wikileaks could be subject to prosecution.¹⁰ This has not come to fruition as of yet, due in large part to NGO campaigns promoting the First Amendment.¹¹

- HRD Steve Richardson faced criminal charges, allegedly in retaliation for representing a low-income community protesting the elimination of rent freezes in LA. Since he reported to the UN Special Rapporteur on the situation of HRDs,¹² he has been arrested at least twice more, once while apparently only drinking coffee on the street.¹³

INTIMIDATION AND REPRISALS AGAINST DEFENDERS ACCESSING INTERNATIONAL HUMAN RIGHTS MECHANISMS

- While there is no evidence of reprisals against HRDs in the US for using international mechanisms, Amnesty International has expressed its concern at the precedent set by the US in the case of Edward Snowden, in which the US 'leant on other governments worldwide' to impede the freedom of movement and access to asylum of whistleblowers.¹⁴

HUMAN RIGHTS DEFENDERS FACING PARTICULAR RISKS

- HRDs working on sexual and reproductive rights face a particularly elevated level of risk, as evidenced by the 2009 assassination of Dr George Tiller, who performed late-term abortions to women who faced substantial health risks.¹⁵ Tiller and his clinic were faced with, inter alia, attacks, violent protests and smear campaigns. From March to May 2012, four burglaries and two arson attacks were reported against medical associations in Georgia that opposed a bill criminalising abortion being debated in the State legislature. Moreover, the offices of Women With a Vision in New Orleans were broken into and torched. Reportedly, police did not carry out a criminal investigation.¹⁶
- Since 2005, HRDs working for religious minority rights have apparently been at the centre of warrantless NSA surveillance. In July 2014, it was reported that Nihad Awad, Executive Director of CAIR, has been the subject of NSA surveillance for years. In April 2014, it was reported that the FBI sought to recruit informants from the defence team in the 9/11 military commission, thus attempting to undermine the constitutional right to attorney-client privilege.¹⁷

- Whistleblowers and journalists are at a heightened risk of judicial harassment. James Risen, Ed Moloney, Anthony McIntyre and James Rosen have all been subject to contempt of court for refusing to reveal sources and more than twenty desk phone lines from the Associated Press have been subject to warrantless surveillance over the past two years.¹⁸
- Journalists requesting access to proceedings and facilities related to counterterrorism have been denied or have noted increased restrictions on their ability to cover routine events or conditions at Guantanamo.¹⁹

THE RESPONSE OF THE STATE REGARDING THE PROTECTION OF HUMAN RIGHTS DEFENDERS

- The USA Freedom Act,²⁰ aiming to 'rein in the dragnet collection of data by NSA and increase transparency of the Foreign Intelligence Surveillance Court' was severely weakened before it was passed in the House of Representatives earlier this year. Not only does its current form not fully repeal the US PATRIOT Act, it extends the Patriot Act through 2017. It is currently up for consideration in the Senate.
- In addition to the US Freedom Act, more than twenty bills have been written in an attempt to reign in the NSA surveillance program. None have passed both houses of the legislature.
- In June 2014, the House of Representatives overwhelmingly approved the 'Massie Amendment' to block the NSA from performing warrantless searches on citizens' communications. However the amendment is yet to be approved by the Senate.

ABOUT THIS BRIEFING PAPER

ISHR encourages States to consult UPR submissions by local activists and make recommendations to US regarding the protection of HRDs. An excellent local source of information on human rights and civil society in the US is Amnesty International USA (<http://www.amnestyusa.org>). For further information on this briefing paper, contact Eleanor Openshaw e.openshaw@ishr.ch.

RECOMMENDATIONS TO THE GOVERNMENT OF THE UNITED STATES OF AMERICA

- The US Congress must reform legislation to ensure that national security activities respect civil liberties and human rights. In particular, the Massie Amendment should be passed and the Patriot Act fully reformed or repealed in consultation with civil society.
- A full investigation should be carried out into all allegations that State agencies have spied on HRDs and journalists, with accountability and future protection from such intrusion ensured.
- Demonstrate strong, high-level political support for HRDs through public statements by Federal and State level authorities which recognise the legitimacy of human rights defense and the importance of respecting freedom of expression, particularly around sensitive issues such as sexual and reproductive rights.
- Guarantee a thorough, impartial investigation into all reported incidents of human rights violations against HRDs and protesters, in particular those carried out in the context of the Occupy Protests, ensuring the perpetrators are prosecuted, the violations publically acknowledged as unacceptable, and guarantees of non-repetition ensured.
- Enact specific laws and policies to recognise and protect HRDs and specifically prohibit intimidation or reprisal by giving full force and effect to the international Declaration on HRDs at the national level.
- Ensure the creation of a strong and independent NHRI that adheres to the Paris Principles and includes a focal point for HRDs.
- Issue a standing invitation to the Special Procedures.
- Accept the individual communications procedures provided for in international human rights instruments.

As a member of the Human Rights Council, the US should strive to create a model domestic system for promoting and protecting human rights as an example of best practice. Unfortunately, since the last UPR, the US has experienced difficulty in balancing its perceived and actual national security threats with human rights. In a fully developed democracy, HRDs, journalists, lawyers, and whistle blowers must be provided with an enabling environment in which they can work in order for human rights to be guaranteed.

1. <http://freedomhouse.org/report/freedom-press/2014/united-states#.U77YulIdW60>
2. <http://www.amnestyusa.org/news/press-releases/amnesty-responds-to-allegations-that-the-fbi-spied-on-guantanamo-lawyers> and <http://ccrjustice.org/newsroom/press-releases/privacy-board-report-strongly-suggests-attorney-client-communications-subject-nsa-spying>
3. <http://www.amnestyusa.org/news/news-item/usauk-snowden-alleges-spy-agencies-have-targeted-human-rights-defenders>
4. [https://spdb.ohchr.org/hrdb/23rd/public_-_AL_USA_04.12.12_\(33.2012\).pdf](https://spdb.ohchr.org/hrdb/23rd/public_-_AL_USA_04.12.12_(33.2012).pdf)
5. <http://www.dailymail.co.uk/news/article-2043118/Occupy-Wall-Street-protests-journalists-harrowing-treatment-police.html>
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17. <http://www.amnestyusa.org/news/press-releases/amnesty-responds-to-allegations-that-the-fbi-spied-on-guantanamo-lawyers> and <http://ccrjustice.org/newsroom/press-releases/privacy-board-report-strongly-suggests-attorney-client-communications-subject-nsa-spying>
18. <http://www.freedomhouse.org/report/freedom-press/2014/united-states#.U78AplIdW60>
19. <http://www.freedomhouse.org/report/freedom-press/2014/united-states#.U78AplIdW60>
20. <https://beta.congress.gov/bill/113th-congress/house-bill/3361>

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