

**ICCPR ISSUE STATEMENT SUBMISSION:
THE MISUSE OF UNITED STATES LAW TO SILENCE PRO-PALESTINIAN STUDENTS' SPEECH
DECEMBER 17, 2012**

I. Reporting Organizations

This Issue Statement is being submitted by a coalition of five organizations: Asian Law Caucus,¹ American Muslims for Palestine,² Council on American Islamic Relations-San Francisco Bay Area,³ Center for Constitutional Rights,⁴ and National Lawyers Guild, International Committee.⁵

II. Summary of Issue

In recent years, pro-Israeli organizations and individuals have escalated what appears to be a coordinated campaign to silence the speech of individuals expressing pro-Palestinian viewpoints on college campuses.⁶ These efforts are part of a still broader trend, involving government surveillance of student groups,⁷ criminal prosecution of peaceful protestors,⁸ and

¹ ALC seeks to promote, advance, and represent the legal and civil rights of Asian Pacific Islander communities. As part of its mission, ALC challenges national laws, policies, and practices that lead to racial and religious profiling of African, Arab, Middle Eastern, Muslim, and South Asian communities in the United States. Though based in the state of California, it addresses these issues at a national level. See <http://www.asianlawcaucus.org/>.

² AMP's mission is to educate the public about the Palestine cause and the rights of self-determination, liberty, and justice. Through providing information, training, and networking with like-minded individuals and organizations that support peace, AMP aims to raise awareness of the issues pertaining to Palestine and its rich cultural heritage. See <http://www.ampalestine.org/>.

³ CAIR-SFBA is an office of CAIR, America's largest Muslim civil liberties and advocacy organization. Its mission is to enhance the understanding of Islam, encourage dialogue, protect civil liberties, empower American Muslims, and build coalitions that promote justice and mutual understanding. See <http://ca.cair.com/sfba/>.

⁴ CCR is dedicated to advancing and protecting the rights guaranteed by the United States Constitution and the Universal Declaration of Human Rights. CCR uses litigation proactively to advance the law in a positive direction, to empower poor communities and communities of color, to guarantee the rights of those with the fewest protections and least access to legal resources, to train the next generation of constitutional and human rights attorneys, and to strengthen the broader movement for constitutional and human rights.

⁵ NLG IC supports legal work around the world to the end that human rights shall be regarded as more sacred than property interests. NLG IC seeks to change U.S. foreign policy that threatens, rather than engages, or is based on a model of domination rather than respect. NLG IC provides assistance and solidarity to movements in the U.S. and abroad that work for social justice. See <http://www.nlginternational.org/>.

⁶ For a detailed description of some of the methods by which speech is being silenced at the University of California, one of the largest public university systems in the U.S., see Letter to University of California President Regarding the Chilling of Arab and Muslim Students' Speech, Dec. 03, 2012, available at <http://www.ccrjustice.org/update:-letter-university-of-california-president-advising-him-of-need-protect-protect-palestinian-s/> (hereinafter Letter to UC President). See also Fact Sheet: The Systematic Attempt to Shut Down Student Speech at the University of California, available at <http://ucsjp.posterous.com/fact-sheet-the-systematic-attempt-to-shut-dow> (hereinafter Fact Sheet).

⁷ There are numerous examples of the surveillance of Muslim student groups and pro-Palestinian student groups. See, e.g., Highlights of AP's Pulitzer Prize-winning probe into NYPD intelligence operations, available at <http://www.ap.org/media-center/nypd/investigation>.

⁸ The most notable example of this is the so-called "Irvine Eleven," a group of non-violent student protestors who briefly interrupted an Israeli political figure who was speaking at the students' campus, and who were singled out for criminal prosecution for their actions, despite the fact that such minor interruptions of political speeches is common practice across U.S. campuses. See generally <http://www.irvine11.com/>; Letter from Civil Rights Organizations

University stigmatization of Palestinian human rights activism, but are particularly alarming because they seek to use United States law designed to end discrimination – Title VI of the Civil Rights Act of 1964 (“Title VI”) – in a manner that singles out speech that is critical of Israel. One of the great dangers of these efforts is that they falsely equate speech critical of Israeli policies as inherently anti-Semitic.

Title VI prohibits universities that receive federal financial assistance (which represents most universities in the country) from discriminating against persons on the basis of race, color or national origin.⁹ It is an important law designed to protect racial and religious minorities from unequal treatment. The United States Department of Education (“DOE”), an agency of the U.S. federal government, is responsible for investigating valid complaints of Title VI violations by Universities.

We are deeply concerned that the DOE is using Title VI to investigate allegations of anti-Semitism on several campuses for activity that on its face only concerns purely political criticism of Israeli state policy by student groups that advocate for Palestinian human rights. Groups targeted by these investigations include the various chapters of Students for Justice in Palestine as well as the many Muslim Students Associations / Muslim Student Unions. These federal investigations are conducted in secret, without the input of the student groups whose speech is being mislabeled. As of December 2012, there are no less than four separate Title VI complaints being investigated by the DOE (a fifth¹⁰ was thrown out in 2012) that allege that speech critical of the state of Israel is anti-Semitic and creates a hostile environment for Jewish students; these complaints are against the University of California (“UC”) at Berkeley, UC Irvine, UC Santa Cruz, and Rutgers University. These government investigations have, as a consequence, significantly chilled the speech and expression of student groups who wish to draw attention to issues of major public concern.

The investigation at UC Berkeley is illustrative of the problematic and damaging nature of these investigations. The UC Berkeley investigation began as a lawsuit in federal court, when two students affiliated with a pro-Israel student group sued the university, claiming that advocacy on campus that criticized Israeli policies created an anti-Semitic environment for Jewish students; it was dismissed by the judge very early on. In dismissing the case,¹¹ the judge wrote that “a very substantial portion of the conduct to which [the complainants] object represents *pure political speech* and expressive conduct, in a public setting, regarding matters of public concern, which is entitled to special protection under the [U.S. Constitution].”¹² Despite the fact that a federal court had just ruled that that the activity being complained of was protected political speech, the DOE nonetheless opened a Title VI investigation upon the complainants’ request. This means that this instance of political expression will be subject to governmental

Condemning Recommended Suspension of U.C. Irvine’s Muslim Student Union, July 23, 2010, *available at* <http://archive.constantcontact.com/fs013/1103244704062/archive/1103583415011.html>.

⁹ 42 U.S.C. §§ 2000d *et seq.*

¹⁰ The investigation against Barnard College was thrown out for lack of evidence on January 11, 2012.

¹¹ After dismissing the case, the judge gave the complainants an opportunity to change and resubmit their complaint, which they did. At that point, the complainants and the university entered into a largely symbolic settlement; the complainants agreed to drop the lawsuit in exchange for the university considering clarifying two of its existing policies, with no obligation on the university to actually change those policies. *See* Fact Sheet, *supra* note 6, at 1.

¹² *Felber v. Yudof*, 851 F. Supp. 2d 1182, 1188 (N.D. Cal. 2011) (emphasis added).

scrutiny a second time, for an indeterminate length of time. As U.S. courts have long recognized, this type of governmental scrutiny can lead to the chilling of speech and other expressive activity.¹³ The chilling and other negative repercussions of this intentional and continuous attack on speech critical of Israeli policy can already be seen. For example, many students have reported that they deliberately stay silent on this issue for fear of reprisals, harassment, immigration consequences, criminal investigations into their activities, being labeled anti-Semitic, or other stigmatization.¹⁴

At the same time, the DOE has failed to resolve pending investigations at other college campuses expeditiously, apparently drawing them out despite the demonstrated harm such investigations are having on the targeted students.¹⁵ The complaint against UC Irvine was filed in October 2004 and was not dismissed by the DOE until three years later; a similar investigation was then opened in April 2008.¹⁶ The investigation against UC Santa Cruz¹⁷ has been pending since March 2011, and the investigation against Rutgers¹⁸ has been open since October 2011. Many of these investigations have been going on for years, and thus affect a significant portion of students' time at these institutions. The indefinite duration of these investigations as well as their marked lack of transparency prolongs and intensifies the chilling of speech and expression by students whose political viewpoints are targeted by these investigations.¹⁹

III. Prior Concluding Observations and U.S. Government Reports

The U.S. has not addressed this specific issue in its December 2011 report or any previous reports, nor have there been any prior recommendations by the Committee. However, the Committee's General Comment No. 34, discussed in Section V, details at length the importance of the rights implicated by this issue.

¹³ *Sweezy v. New Hampshire*, 354 U.S. 234, 248 (1957).

¹⁴ See Letter to UC President, *supra* note 6, at 10-12.

¹⁵ *Id.*

¹⁶ The investigation against UC Irvine alleged that campus administrators had failed to adequately address incidents of anti-Semitism and that the campus environment was hostile to Jewish students, even though these allegations were refuted by many of the campus' Jewish students. See generally Saul Elbein, *Who Speaks for Jewish Students at UC Irvine?*, New Voices, May 2008, available at <http://cosmos.ucc.ie/cs1064/jabowen/IPSC/php/art.php?aid=137669>.

¹⁷ The Title VI complaint against UC Santa Cruz was opened in March 2011. It was filed by a Hebrew lecturer who claimed *inter alia* that university sponsored events critical of Israeli policies created an "emotionally and intellectually hostile environment" for UCSC Jewish students. See <http://mondoweiss.net/2011/03/dept-of-education-opens-investigation-into-anti-semitism-at-uc-santa-cruz-following-events-protesting-the-occupation.html>. It stated specifically that "Pulse on Palestine" and "Understanding Gaza" are two recent examples of University sponsored Israel bashing, which has had the effect of creating an emotionally and intellectually hostile environment for Jewish students at UCSC."

¹⁸ The Rutgers investigation has been open since October 2011 in response to a complaint alleging that the university had failed to adequately respond to complaints of anti-Semitism. See *Rutgers University Anti-Semitism Allegation Investigated by U.S. Department of Education*, Huffington Post, Dec. 2, 2011, available at http://www.huffingtonpost.com/2011/12/02/department-of-education-investigates-rutgers-for-anti-semitism_n_1125898.html.

¹⁹ For a general overview of these investigations, see Naomi Zeveloff, *Coming Up Empty on Title VI: Little Success in Applying Civil Rights Law to Anti-Israel Activity*, Jewish Forward, Mar. 13, 2012, available at <http://forward.com/articles/152691/coming-up-empty-on-title-vi/?p=all>.

IV. Legal Framework

Article 19 of the ICCPR relates directly to this issue. It states in relevant part:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

As pointed out in General Comment No. 34,²⁰ actions by any branch of the State, including all public or governmental authorities of all levels, can implicate the responsibility of the State party with respect to the ICCPR. Thus, the U.S. is responsible for the actions of the DOE, and is required to provide adequate remedies to prevent violations of Article 19.

V. Human Rights Committee General Comments

General Comment No. 34 discusses the importance of Article 19, and points to the broad scope of the rights ensured by it, in the interest of preserving free and democratic societies.²¹ It also specifically states that Article 19's freedom of expression provision includes political discourse discussions of human rights, which undeniably encompasses the speech at issue.

VI. Recommended Questions

We recommend that the Committee pose the following questions to the U.S.:

1. How will you ensure that federal agencies, such as the U.S. Department of Education, do not use Title VI to conduct investigations that are based on the false premise that political speech critical of Israeli policies is racist speech, or prolong investigations unnecessarily?
2. What steps will you take to ensure that the pending Department of Education complaints that threaten student speech rights are expeditiously resolved?
3. How will you mitigate the harm already done, and the harm currently being done, to students across the country, whose speech rights continue to be chilled or otherwise adversely impacted by the DOE's investigations?
4. More broadly, how will you ensure that Title VI and other federal laws are not misused in a manner that runs afoul of Article 19's freedom of opinion and freedom of expression provisions?

²⁰ HRC Gen'l Comments, 102nd Sess., U.N. Doc. CCPR/C/GC/34 (July 11-29, 2011) at 2, *available at* <http://www2.ohchr.org/english/bodies/hrc/comments.htm> (hereinafter GC/34).

²¹ GC/34, *supra* note 20.