



NEW YORK
CITY BAR

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The Honorable Michael R. Pompeo
U.S. Secretary of State
United States Department of State
2201 C Street, NW
Washington, D.C. 20520

The Honorable Jonathan Cohen
U.S. Acting Permanent Representative to the United Nations
United States Mission to the United Nations
799 United Nations Plaza
New York, NY 10017

Re: United Nations Special Procedure Mandate Holders

Dear Secretary Pompeo and Ambassador Cohen:

On behalf of the New York City Bar Association (the “Association”), I write respectfully to express concern at the apparent new policy of the Administration not to communicate with United Nations special procedure mandate holders (“Mandate Holders”). Specifically, it has been reported in the press and by a coalition of nongovernmental organizations that since May 2018, the State Department has received 17 requests for communication from Mandate Holders and has responded to none of them.¹ This contrasts notably with the Department’s record over the previous 15 months and the practice of previous administrations.

The Association is an independent nongovernmental organization of over 24,000 private and public sector lawyers, judges and law professors from throughout the United States and over 50 other countries. Through the Cyrus R. Vance Center for International Justice (“Vance Center”), we work with non-governmental organizations in the United States and around the world to promote human rights and the rule of law.

¹ *Communication report and search*, United Nations Human Rights: Office of the High Commissioner, <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>. (All websites cited in this letter were last visited on February 27, 2019.)

We are concerned that the United States' apparent change in practice has not been explained in any public announcement. It first came to our attention in an article published in *The Guardian* newspaper,² and has since been commented upon by several leading human rights organizations.³ United Nations' documents suggest that in the first 15 months of the current administration, United States officials responded to 19 of the 24 requests for communication it received from Mandate Holders (a rate of response consistent with the previous administration). This appears to have stopped abruptly in May 2018. We are concerned at the lack of transparency and public explanation for this change.

The Association has a longstanding association with Mandate Holders. Through the Vance Center, our members often provide pro bono legal advice to Mandate Holders. Through this work, Association members have advised on matters relating to torture, violence against women, indigenous rights, and climate change. We have also hosted Mandate Holders as speakers at the Association, thus benefitting from their insights and expertise.

Mandate Holders are an essential component of international human rights protection. A report by the Brookings Institution concluded that the special procedure system is "one of the most effective tools in the international human rights system," and has directly led to the release of political prisoners, protection of migrants, and improvements in access to health in several countries.⁴ Mandate Holders are the primary mechanism for monitoring compliance with human rights in practice. Without them, the plight of many human rights victims would be left unnoticed, and the international community would lack an official spotlight on repressive regimes ranging from Iran to North Korea.

We are proud that the United States has taken a lead role in setting up the system of special procedures. In particular, U.S. diplomats led efforts to establish experts to focus on nations of concern, such as Myanmar and Sudan. Furthermore, the United States was instrumental in establishing the mandate of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and to Association. In this way, the United States has led global protections of human rights.

The United States' apparent refusal to respond to communications from Mandate Holders concerns us for two reasons. First, it undermines U.S. foreign policy interests. Responding to

² Ed Pilkington, *US halts cooperation with UN on potential human rights violations*, THE GUARDIAN, Jan. 4, 2019, <https://www.theguardian.com/law/2019/jan/04/trump-administration-un-human-rights-violations>.

³ See e.g. *NGOs Urge US to Cooperate with UN Special Rapporteurs*, Freedom House, Jan. 14, 2019, <https://freedomhouse.org/article/ngos-urge-united-states-cooperate-with-un-special-rapporteurs>.

⁴ Ted Piccone, *Catalysts for Rights: The Unique Contribution of the UN's Independent Experts on Human Rights*, BROOKINGS INSTITUTION, ix (2010), https://www.brookings.edu/wp-content/uploads/2016/06/10_human_rights_piccone.pdf.

Mandate Holder communications allows the United States to respond to allegations made against it concerning both domestic and foreign policy. By leaving communications unanswered, Mandate Holders are unable to gather the full range of facts, consider all viewpoints, or conduct country visits to the United States. Thus, reports by Mandate Holders may include un rebutted and unwarranted criticism of the United States, damaging our country's reputation in the international community.

Secondly, we are concerned that the lack of engagement with Mandate Holders may undermine the entire international human rights system. From our members' work in advising Mandate Holders, we know that Mandate Holders are at their most effective when they have access to a full range of information. In many countries around the world, gathering information can be dangerous. Cooperation from national governments, therefore, is crucial.

Because Mandate Holders have no means of compelling cooperation, they rely on norms generated by the international community. The United States, as a leading global citizen, is extremely influential in setting those norms. It is because of historic cooperation of rights-respecting countries such as the United States that the Mandate Holder system has been so successful.

We are concerned that the United States' apparent practice of not responding to Mandate Holders will set an example. Repressive regimes, which require the strongest international scrutiny, may point to the United States' practice as an excuse to keep out international observers. In this way, the United States' refusal to answer communications from Mandate Holders may have widespread repercussions for human rights across the world. With human rights a principal U.S. foreign policy goal for many decades,⁵ the new practice undermines the U.S. national security interests of promoting human rights throughout the world.⁶

We therefore respectfully ask that you reconsider the United States' apparent new policy on communications with Mandate Holders. We ask that at the very least you explain publicly what the policy is and why it has been implemented. If, on the other hand, the reports of a policy of non-communication are inaccurate, we urge that you correct the public record. We would welcome the opportunity to discuss this further with you or your staff.

Sincerely,



Roger Juan Maldonado
President

⁵ *Human Rights*, U.S. DEPARTMENT OF STATE, <https://www.state.gov/j/drl/hr/>.

⁶ UNITED STATES NATIONAL SECURITY STRATEGY, Feb. 2015, i, ii, 19, <http://nssarchive.us/wp-content/uploads/2015/02/2015.pdf>.