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# **FREEMUSE**

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**FREEDOM OF MUSICAL EXPRESSION**

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**National Coalition Against Censorship** is an alliance of more than 50 national (U.S.) organizations promoting free expression. A signature program, the Youth Free Expression Project, defends young people's right of access to information and their right to question, learn, and think for themselves.

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**FREEMUSE** – The World Forum on Music and Censorship is an independent international membership organization advocating and defending freedom of expression for musicians and composers worldwide. Freemuse has held Special Consultative Status with the United Nations Economic and Social Council (ECOSOC) since 2012.

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## **SUMMARY**

1. In her June 2013 report, “The Right to Artistic Freedom and Creativity,” the United Nations Special Rapporteur in the field of cultural rights, Ms. Farida Shaheed, observed that the “vitality of artistic creativity is necessary for the development of vibrant cultures and the functioning of democratic societies. Artistic expressions and creations are an integral part of cultural life, which entails contesting meanings and revisiting culturally inherited ideas and concepts.”<sup>1</sup>

2. As the Special Rapporteur noted, the right to artistic freedom and creativity is explicitly guaranteed by international instruments; most importantly, Article 15(3) of the International Covenant on Economic, Social, and Cultural Rights (ICESCR), under which state parties to the treaty “undertake to respect the freedom indispensable for . . . creative activity” and in International Covenant on Civil and Political Rights (ICCPR) Article 19(2), which provides that the right to freedom of expression includes the freedom to seek, receive and impart information and ideas of all kinds “in the form of art.” This protection is echoed in Article 13(1) of the Convention on the Rights of the Child (CRC), which also provides in Article 31(2) that parties “shall respect and promote the right of the child to participate fully in cultural and artistic life.”<sup>2</sup>

3. Artistic and cultural freedom entails not only the freedom to create and express works but also the freedom to read, hear, view or otherwise experience works. Moreover, artistic freedom is enabled not only by the protection of freedom of expression but also other fundamental rights; namely, liberty and security of person; freedom of association, assembly, and movement; freedom of thought, conscience, and religion; and equal protection of the law. The practice of artistic freedom in turn can support these fundamental rights and freedoms by witnessing to their violation and by enriching cultures that affirm the inherent and equal dignity of the person.

4. This Universal Periodic Review (UPR) submission draws attention to the protection of artistic freedom within two particularly vulnerable populations: young persons (under the age of 18) and incarcerated persons. Concerning youth, we concentrate on the freedom to seek, receive and impart information and ideas in the form of art in the context of mandatory public education in the United States. Concerning incarcerated persons, we concentrate on the protection of this freedom within U.S. prisons, jails and detention centers. We find that the U.S. could do more to honor its international commitments and we conclude with several proposals for the implementation of the recommendations accepted by the U.S. during the previous review.

### **FREEDOM TO SEEK AND RECEIVE ARTISTIC AND CULTURAL EXPRESSION: YOUTH IN PUBLIC EDUCATION**

5. During the first cycle of its UPR in 2010, the U.S. accepted a number of recommendations relevant to the human rights of children and youth in public education. It accepted the recommendation by Egypt that it review its laws at the federal and state levels with a view to bringing them in line with its international human rights obligations<sup>3</sup> as well as Norway’s recommendation that a human rights institution at the federal level be considered in order to ensure implementation of human rights in all states.<sup>4</sup> Finally, the U.S. accepted the recommendation by Turkey that it ratify and implement into domestic law the Convention on the Rights of the Child<sup>5</sup> along with similar recommendations to ratify or to consider ratifying the Convention by Australia, Austria, India, Malaysia, New Zealand, People’s Republic of Korea, Qatar, Trinidad and Tobago, and Uruguay.

6. The U.S. accepted the recommendation by Israel that it continue to undertake all necessary measures to ensure fair and equal treatment of all persons, without regard to sex, race, religion, color, creed, sexual orientation, gender identity or disability.<sup>6</sup> It accepted the recommendation by Indonesia that it continue to create an enabling climate for religious and cultural tolerance and understanding at the grass roots level<sup>7</sup> as well as the recommendation by Costa Rica that it incorporate human rights training and education strategies in [its]<sup>8</sup> public policies.<sup>8</sup>

7. According to the *Mid-term Implementation Assessment* published in July 2013 by UPR Info incorporating input from twenty-four NGOs including Reporters sans Frontières and PEN American Center, the USA has not implemented these recommendations. Most notably, the United States remains alone in the world—alongside Somalia and South Sudan—in its failure to ratify the Convention on the Rights of the Child. In addition to its guarantees of freedom of expression and freedom of thought, conscience, and religion, the CRC guarantees a system of education that is directed, inter alia, to the “development of the child’s personality, talents and mental and physical abilities to their fullest potential” and the “preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin” (Article 29).

8. Each year in the United States, hundreds of books are removed or banned from primary and secondary public school classrooms and libraries as a result of moral and religious objections to their content. Most formal complaints, or challenges, are brought by parents concerned about potential harms to the emotional wellbeing or moral development of their children or the community as a whole. Most challenges involve sexual content, racial language, religious views, or profanity. Commonly challenged books include classic and popular titles such as *The Adventures of Huckleberry Finn*, by Mark Twain; *Slaughterhouse Five*, by Kurt Vonnegut; *The Color Purple*, by Alice Walker; *Beloved*, by Toni Morrison; and *The Absolutely True Diary of a Part-Time Indian*, by Sherman Alexie. Although the precise number of challenges is unknown, the following statistic indicates the significance of the phenomenon. During the period between 2007 and 1990, when the American Library Association (ALA) began to compile and publish censorship data electronically, there were 9,600 book challenges.<sup>9</sup> ALA estimates that for every one challenge that is reported, four to five go unreported.<sup>10</sup> We present three illustrative case studies below.

#### *Slaughterhouse Five*

9. In July 2011, the Republic School District of Republic, Missouri removed from public schools the books *Slaughterhouse Five* by Kurt Vonnegut and *Twenty Boy Summer* by Sarah Ockler. As the National Coalition Against Censorship (NCAC) put it in an 18 August letter to the Superintendent, “*Slaughterhouse Five* holds a place of honor in contemporary American literature. This semi-autobiographical account of the bombing of Dresden in World War II, drawn in part from Vonnegut’s experiences as a young soldier and prisoner of war, is widely recognized as a work of significant literary and artistic merit. It has been called a ‘thundering moral statement.’ In 1998, the Modern Library placed it as #18 on its list of the 100 top novels. Although less well known, *Twenty Boy Summer* is recommended for teenage readers by *Booklist* and *Kirkus Reviews* for its ‘lyrical writing’ and ‘authentically depicted feelings.’” *School Library Journal* describes it as ‘a thoughtful, multilayered story about friendship, loss, and moving on.’”

10. A complaint by Wesley Scroggins, a local resident and professor of management at Missouri State University, initiated the review process that ultimately resulted in the removal of the two books. NCAC reviewed the complaint, which objects to “vulgar language,” violence, and sexual content, particularly “sex outside of marriage and homosexuality.” The complaint asserts that “[r]equiring children to be exposed to this content at school is immoral. It is an abomination to God to expose children to this material . . . . It is difficult to understand how a school board and school administration that claims to be Christian and profess Jesus Christ can expose children to such immoral and vulgar content.’ This complaint provided the basis for all the decisions that followed. There were no other challenges to these books, and no books other than those identified by Mr. Scroggins were reviewed.” NCAC concludes: “[c]learly, these books would not have been subjected to review if the complaint had not been filed, and Scroggins’ religious objections thus tainted the entire review process.”

11. In an apparent response to public protest of the removal of *Slaughterhouse Five* and *Twenty Boy Summer*, the Republic School District decided that the titles would be stored in a “special section” of the library to be individually accessed by students only when accompanied by a parent or guardian.<sup>11</sup>

### *Persepolis*

12. *Persepolis* is a graphic novel by Marjane Satrapi published in French in 2001 and in English in 2003. It tells the story of a young girl coming of age in Iran during the turbulent period from the Iranian revolution to the Iran-Iraq war. In a statement presenting a rationale for teaching the work in schools<sup>12</sup>, The National Council of Teachers of English comments that the novel is “intriguingly both foreign and familiar for young readers. The reader is able to connect with Marji and her typical struggles of adolescence, while getting a personal perspective on the experiences of a country that most people are unfamiliar with.” The novel has received awards and endorsements from numerous associations, libraries, and journals. Much of the praise and positive attention given to *Persepolis* concerns its “portrayal of Marji and her family as an Iranian family who do not share the qualities of the stereotypical Iranian.” In the opinion of the National Council of Teachers of English, “*Persepolis* is a book that has a place in every classroom and library.”

13. In March 2013, the administration of the Chicago Public Schools (CPS) system abruptly announced that *Persepolis* was to be immediately removed from seventh grade classrooms, despite the fact that the book was part of the seventh grade Literacy Content Framework. In a 15 March email letter to school principals, CPS Chief Executive Officer Barbara Byrd-Bennett explained: “It was brought to our attention that it contains graphic language and images that are not appropriate for the seventh grade,” apparently a reference to the work’s isolated use of profanity and a scene depicting torture by the authorities of the Shah’s regime.<sup>13</sup> “If your seventh grade teachers have not yet taught this book,” Ms. Byrd-Bennett directed, “please ask them not to do so and to remove any copies of the book from their classrooms. . . . We are also considering whether the book should be included, after appropriate teacher training, in the curriculum of eighth through tenth grades.”

14. While this directive may suggest that the content of *Persepolis* was previously unknown to the administration, the National Coalition Against Censorship has reported<sup>14</sup> that *Persepolis* was “included as a foundational text to discuss violence against women and equal rights in a curriculum developed and endorsed by CPS itself, the Chicago Teacher’s Union and the Robert

F. Kennedy Center for Justice and Human Rights. The curriculum, called ‘Speak Truth to Power,’ was built by Chicago teachers and launched in 2011 and ‘is aligned with the Illinois State Standards and the national Common Core State Standards.’ The curriculum, according to CPS, not only serves ‘as the jumping off point for a larger examination of human rights, but also, through concrete activities, give the students a way to identify as human rights defenders themselves.’”

### *Pedagogy of the Oppressed*

15. In 1978, a lawsuit brought by black and Latino students against the Tucson Unified School District (TUSD) in Tucson, Arizona resulted in a desegregation order compelling TUSD to address racial and ethnic disparities in student performance. Nearly four decades and close to \$1 billion in public spending later, the District continues to be plagued by low graduation rates disproportionately affecting black and Latino students. Latinos, who comprise 62 percent of TUSD students, are nearly twice as likely to drop out and three times as likely to be suspended as white students. In compliance with the desegregation order and in response to demands by community activists, in 1998 TUSD created a Mexican-American Studies (MAS) program that taught American history with a focus on issues of colonialism, immigration, civil rights, and student empowerment.<sup>15</sup> A study commissioned by the Arizona’s Department of Education found that students who participated in this program were at least 46 percent more likely to graduate from high school than those who did not.<sup>16</sup>

16. In 2010, two conservative state lawmakers championed a bill in the legislature that targeted TUSD’s Mexican-American Studies program. Passed in April 2010, the bill amended Arizona statute §15-112(A) relating to school curriculum so as to prohibit any courses that advocate “the overthrow of the United States government,” promote “resentment towards a race or class of people,” are “designed primarily for pupils of a particular ethnic group” or that “advocate ethnic solidarity instead of the treatment of pupils as individuals.” In the following year, one of the bill’s sponsors, John Huppenthal, who was then Superintendent of Public Instruction, determined that Tucson’s MAS program violated the law. He judged that the program catered to a particular ethnic group and presented “white people as ‘oppressors.’” Threatened with a loss of millions of dollars in state funding, the school district voted to discontinue the MAS program and to eliminate seven books taught in it.<sup>17</sup> Among them were *Pedagogy of the Oppressed*, by Paulo Freire, *Chicano! The History of the Mexican American Civil Rights Movement*, by Arturo Rosales, and *Rethinking Columbus: The Next 500 Years*, by Bill Bigelow.

17. Although the district board subsequently voted to lift its opposition to “culturally relevant curriculum,” and although an ongoing federal lawsuit involving MAS students has challenged statute §15-112(A), the state law remains in force.<sup>18</sup> In an *amicus curiae* submitted in the Ninth Circuit appellate court case *Arce v. Huppenthal*, the NCAC, the ALA, and seven other organizations have argued that the statute violates students’ constitutional right under the First Amendment to receive information in schools since it furthers political and partisan interests rather than legitimate pedagogical purposes. Furthermore, the statute is overbroad. Its severe sanctions can be expected to have a chilling effect on instruction beyond the purposes of the law, leaving educators in doubt as to whether it would be criminal merely to assign texts by celebrated authors such as Maya Angelou, Martin Luther King, Jr., Malcolm X, and Henry David Thoreau.

## FREEDOM OF ARTISTIC AND CULTURAL EXPRESSION: THE INCARCERATED

18. During its previous UPR, the U.S. accepted a number of recommendations relevant to the artistic freedom of persons held in prisons, jails, and detention centers. We have already mentioned (at paragraphs 5 and 6 above) the commitments to bringing domestic law into conformity with international human rights obligations, promoting nondiscrimination, and incorporating human rights training and education into public policy. In addition, the U.S. accepted the recommendation by Sweden that it ensure the full enjoyment of human rights by persons deprived of their liberty, including by way of ensuring treatment in maximum security prisons in conformity with international law;<sup>19</sup> the recommendation by Algeria that, inter alia, it review measures to improve the situation of inmates in prisons;<sup>20</sup> and the recommendation by Thailand that it address the problem of prison conditions with a view to preserving the rights and dignity of all those deprived of their liberty.<sup>21</sup> Finally, the U.S. accepted Austria's recommendation that it take appropriate legislative and practical measures to improve living conditions through its prisons systems, in particular with regard to access to health care and education.<sup>22</sup>

19. The First Amendment provides exceptionally robust protection for the fundamental freedoms of expression, thought, conscience, and religion set forth in universal human rights standards. While U.S. courts have consistently held that prison walls “do not form a barrier separating prison inmates from the protections of the Constitution,”<sup>23</sup> they have also found that the Constitution permits greater curtailment of First Amendment rights in the penal context than it would elsewhere. Restrictions on citizens' First Amendment rights in other contexts are subject to heightened government scrutiny. Restrictions on prisoners' rights must meet a less demanding standard of scrutiny set forth in *Turner v. Safley*,<sup>24</sup> the “Turner test” or “Turner standard,” which requires that prison regulations burdening fundamental rights be “reasonably related” to a legitimate penological interest and not an “exaggerated response” to such interests.<sup>25</sup> The precedent in *Turner* also grants a high degree of deference to the judgment of corrections officials in light of the “complex and intractable” problems of prison administration.

### *Freedom to seek, receive, and impart information*

20. In recent years, an increasing number of county jails have restricted incoming and outgoing prisoner correspondence to postcards, sometimes sighting efficiency or budgetary constraints associated with inspecting sealed mail for contraband. According to a report by Prison Policy Institute, this national trend began in 2007, “when controversial Maricopa County Sheriff Joe Arpaio instituted a ban on any incoming non-legal mail except for postcards. Since then, sheriffs from jails in at least 13 states around the country—Arizona, California, Colorado, Florida, Georgia, Kentucky, Kansas, Michigan, Missouri, Oregon, Tennessee, Utah, and Washington—have followed suit . . . .”<sup>26</sup> The constitutionality of postcard-only policies is now being challenged in a series of legal actions by American Civil Liberties Union and Prison Legal News, a publication of the Human Rights Defense Center.

21. In April 2013, U.S. District Court found that Columbia County's postcard-only policy violated the First Amendment and permanently blocked the jail from implementing the policy. According to the court, the County “failed to offer evidence or even an intuitive, common-sense reason why the postcard-only mail policy more effectively prevents the introduction of contraband than opening and inspecting letters.”<sup>27</sup> Furthermore, the court observed that the policy “prevents an inmate's family from sending items such as photographs, children's report cards and drawings, and copies

of bills, doctor reports, and spiritual and religious tracts. . . . It prevents an inmate's friends and other correspondents from sending printed copies of articles published in newspapers, magazines, or the internet. . . . It prevents educational, community, and religious organizations from sending lessons, book and periodical offers, and fundraising appeals." Best practices are indicated by Immigration and Customs Enforcement's 2011 *National Detention Standards*, which stipulate that "[f]acilities shall not limit detainees to postcards and shall allow envelope mailings."<sup>28</sup>

23. Another infringement on incarcerated persons' right to seek, receive, and impart information and ideas comes in the form of the banning of particular books and magazines on the basis of their content. Like many state prison other systems, the Texas Department of Criminal Justice permits books and magazines to be mailed directly from the publisher to an individual inmate, subject to inspection.<sup>29</sup> When books arrive, they are checked against a master list of accepted publications. If they do not appear on the list, the mailroom officer decides whether they are objectionable by determining whether they

- 1) contain contraband;
- 2) contain information about manufacturing explosives, drugs or weapons;
- 3) are written "solely for the purpose of" "achiev[ing] the breakdown of prisons" through strikes, riots, or gang activity;
- 4) encourage "deviant criminal sexual behavior";
- 5) contain instructions on how to set up "criminal schemes"; or,
- 6) contain "sexually explicit images."

TDCJ provides no legal training to the responsible officials. A single instance of prohibited content is enough to result in the banning of the entire work for the entire prison population. The senders of the materials are not notified of the ban.

24. A database maintained by the Texas Department of Criminal Justice (TDCJ) lists 11,851 titles banned from its facilities.<sup>30</sup> They range from the ostensibly reasonable—*How to Create a New Identity* (Criminal Schemes); *Essential Throwing and Grappling Techniques* (Fighting Techniques); *Art & Design of Custom Fixed Blades* (Manufacturing Drugs, Alcohol, Weapons, or Explosives); *Fun Under the Swastika* (Racial Content), to the telling—*Write it in Arabic* (Symbols & Translations); *Mayo Clinic Family Health Book* (Sexually Explicit Images); *The Hite Report* (Homosexuality); *Thurgood Marshall: American Revolutionary* (Racial Content), to the bizarre—*Arrival of the Gods: Revealing the Alien Landing Sites at Nazca* (Homosexuality)—and arbitrary: *Guns & Ammo* magazine is banned while *Guns Illustrated* is permitted.

25. Of the 11,851 total blocked titles, 7,061 were blocked for "deviant sexual behavior" and 543 for "sexually explicit images." Sexual content has kept from Texas state prisons collections of works by the following artists, despite an official TDCJ policy against censoring "artistic reference material": Botticelli, Caravaggio, Cezanne, Dali, Da Vinci, Gauguin, Goya, Kahlo, Magritte, Matisse, Michelangelo, Miro, Modigliani, Picasso, Raphael, Ray, Rembrandt, Renoir, Rubens, Van Gogh, and Vermeer. Anthologies on Greco-Roman art, the pre-Raphaelites, impressionism, Mexican Muralists, pop surrealism, graffiti art, art deco, art nouveau, and the National Museum of Women in the Arts are banned for the same reason, as are numerous textbooks on pencil drawing, watercolor, oil painting, photography, graphic design, architecture, and anatomy for artists. Prohibited literary titles include works by Gustav Flaubert, Langston Hughes, Flannery O'Connor, George Orwell, Ovid, Philip Roth, Salman Rushdie, John Updike, Shakespeare, Sojourner Truth, and Alice Walker.

26. Texas' practices exemplify the dangers of the broad discretionary powers granted to prison officials under the concept of "legitimate penological interest." Prisoners' appeals are formally possible, but without the benefit of legal assistance—or even an opportunity to see the banned book in question—they succeed in only 13% of cases. Documents produced in litigation have revealed similar censorship practices in states across the country.<sup>31</sup> Such practices systematically violate of the freedom of incarcerated persons to seek, receive and impart information and ideas.

#### *Opportunities for creative activity*

27. One narrative in American public discourse portrays prison life as too "soft" on inmates. From this perspective, educational and artistic activities are incompatible with the aims of incarceration. This perspective is embodied by the Zimmer Amendment, or "No Frills Prison Act," introduced in 1995 by congressman Dick Zimmer as rider to the federal budget prohibiting the use of appropriated funds to provide federal prisoners with "amenities or personal comforts" to federal prisoners, including weightlifting equipment, R-rated movies, and "the use or possession of any electric or electronic musical instrument." At the time, Zimmer commented, "[p]rison perks are bad public policy and a waste of taxpayer dollars. . . . In some prisons, inmate amenities are better than what law-abiding Americans have. Prisons should be places of detention and punishment; prison perks undermine the concept of jails as a deterrence."

28. In the context of severe overcrowding and overburdened resources, educational programs face cuts. A 2014 study by the Rand Corporation found that state-level spending on educational programs declined sharply during the economic downturn. Large states cut spending by an average of 10 percent between the 2009 and 2012 fiscal years, and medium-sized states cut spending by 20 percent. The same study found 43 percent less recidivism among inmates who participated in such programs than those who did not. The President's Commission on Law Enforcement and Administration of Justice has called idleness among the incarcerated a "pervasive evil" and endorsed educational and recreational activities to "ease institutional tensions and contribute to an atmosphere less detrimental to rehabilitation."<sup>32</sup>

29. The Federal Bureau of Prisons (BOP) had 215,834 people in its custody as of 7 August 2014, 81 percent held in BOP facilities and 19 percent held in privately managed and other facilities.<sup>33</sup> BOP regulations state: "Recreation staff will provide music instruments; however, no electric or electronic musical instrument [including keyboards and electric guitars] may be purchased. Existing electric or electronic musical instruments that break may not be repaired. This equipment may be given to Religious Services if it is needed to provide music for religious services. If not, this equipment should be disposed of through normal excess property procedure. An inmate may not purchase or have sent in any personal musical instruments, except for a harmonica."<sup>34</sup>

29. The BOP has interpreted the Zimmer Amendment so as to exempt electrical instruments used for "religious" purposes, arguing that "[c]ongregational singing with musical instrument accompaniment is a traditional component of the worship experience. This exception was made because the BOP does not find that it was the intent of Congress to restrict the use of musical instruments as part of the religious services ceremonies. The legislation did not refer to elimination of electric musical instruments used in performance of religious services, only those electric instruments that were amenities or personal comforts of inmates."<sup>35</sup> By arbitrarily privileging "religious" activities over comparable secular musical activities, this federal policy arguably fails to provide equal protection of the law to all incarcerated persons.<sup>36</sup>

## RECOMMENDATIONS

30. The United States of America is failing to abide by its international commitments to protect fully the fundamental rights of some of its most vulnerable citizens: youth enrolled in mandatory public education and persons incarcerated in prisons, jails, and detention centers. Among many other consequences, this failure diminishes vital artistic and creative freedoms that are both integral to the dignity of the person and instrumental to the enjoyment and defense of a culture of human rights. We therefore offer the following recommendations to the government:

1. **Ratify the Convention on the Rights of the Child.** Although the U.S. government signed the Convention on the Rights of the Child in 1995 and ratified the optional protocols on armed conflict and slavery/prostitution in 2002, it has not ratified the treaty. The executive should submit to Congress and the Congress should ratify without further delay the Convention on the Rights of the Child.
2. **Urge school districts to adopt formal review policies on book challenges.** The role of the federal government in education is limited by the Constitution and federal law primarily to the distribution of public funds. However, the Department of Education regularly acts within its mandate to release “key policy letters” and “significance guidance documents” that share research, best practices, and legally non-binding guidance on issues from Memorial Day remembrances to breakfast programs to school discipline. Education and civil liberties experts advocate the use of formal review policies (such as those developed by the National Council of Teachers of English) for the reconsideration of books and other materials that face challenges. The Education Secretary should remind education officials of their obligation to protect young people’s freedom to read and encourage the adoption of formal review policies to ensure fairness for all.
3. **Discourage the use and adoption of postcard-only policies.** “Immigration and Customs Enforcement should refuse to enter into or renew contracts with local jails that violate Immigration and Customs Enforcement national detention standards by limiting mail correspondence to postcards only. Such restrictions can dramatically impair detained individuals’ ability to handle their cases and maintain contact with their communities.”<sup>37</sup>
4. **Investigate violations of incarcerated citizens’ artistic freedoms.** Attorney General Eric Holder has recently announced a “Smart on Crime” initiative to reform the federal criminal justice system by changing mandatory federal sentencing guidelines. The Attorney General and the Offices of the United States Attorneys should identify protection of federal prisoners’ human right to artistic freedom as a priority for a comparable initiative. Additionally, pursuant to the Civil Rights of Institutionalized Persons Act, the Department of Justice’s Civil Rights Division should conduct an investigation of possible patterns of civil rights violations and transmit a findings letter defining minimum remedial measures.

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- <sup>1</sup> Report of the Special Rapporteur in the field of cultural rights: The right to freedom of artistic expression and creativity, A/HRC/23/34, 13 March 2013, para.3.
- <sup>2</sup> Additional explicit provisions protecting the freedom of artistic expression and creativity are to be found in article Articles 13 and 31 of the Convention on the Rights of the Child, article 13 (1) of the American Convention on Human Rights and article 14 of its Protocol in the area of Economic, Social and Cultural Rights, and article 42 of the Arab Charter for Human Rights also contain such explicit provisions.
- <sup>3</sup> Human Rights Council, Report of the Working Group on the Universal Periodic Review, United States of America, A/HRC/16/11, 4 January 2011, para. 92(65).
- <sup>4</sup> A/HRC/16/11 para. 92(74).
- <sup>5</sup> A/HRC/16/11 para. 92(100).
- <sup>6</sup> A/HRC/16/11 para. 92(116).
- <sup>7</sup> A/HRC/16/11 para. 92(191).
- <sup>8</sup> A/HRC/16/11 para. 92(87).
- <sup>9</sup> <http://www.ala.org/news/news/pressreleases2008/September2008/OIFbookbanning>
- <sup>10</sup> <http://www.ala.org/news/press-releases/2011/10/it's-everybody's-job-report-challenges>
- <sup>11</sup> <http://ncac.org/incident/slaughterhouse-five-sent-to-literary-gulag-in-republic-mo/>
- <sup>12</sup> <http://www.scribd.com/doc/135192672/NCTE-Rationale-Persepolis>.
- <sup>13</sup> <http://www.scribd.com/doc/134998215/CPS-FOIA-Reply-March-2013>
- <sup>14</sup> <http://ncac.org/update/chicago-schools-offer-few-answers-on-removal-of-persepolis/>
- <sup>15</sup> Fernanda Santos, "Tucson Schools Overhaul a Program to Help Struggling Hispanic Students," *New York Times* (15 September 2012): [http://www.nytimes.com/2012/09/16/us/tucson-school-district-tailors-program-to-struggling-hispanic-students.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2012/09/16/us/tucson-school-district-tailors-program-to-struggling-hispanic-students.html?pagewanted=all&_r=0).
- <sup>16</sup> Cabrera, N. L., Milem, J. F., & Marx, R. W. (2012). An empirical analysis of the effects of Mexican American Studies participation on student achievement within Tucson Unified School District. Tucson, AZ: Report to Special Master Dr. Willis D. Hawley on the Tucson Unified School District Desegregation Case.
- <sup>17</sup> <http://ncac.org/censorship-article/arizona-the-censorship-state/>.
- <sup>18</sup> [http://www.nytimes.com/2013/02/08/education/tucson-school-district-struggles-for-equality.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2013/02/08/education/tucson-school-district-struggles-for-equality.html?pagewanted=all&_r=0)
- <sup>19</sup> Human Rights Council, Report of the Working Group on the Universal Periodic Review, United States of America, A/HRC/16/11, 4 January 2011, para. 92(177).
- <sup>20</sup> A/HRC/16/11, para. 92(179).
- <sup>21</sup> A/HRC/16/11, para. 92(62).
- <sup>22</sup> A/HRC/16/11, para. 92(70).
- <sup>23</sup> *Turner v. Safley*, 482 U.S. 78 (1987)
- <sup>24</sup> *Ibid.*
- <sup>25</sup> *Amatel v. Reno*, 156 Fd 192 (1998). The Turner test directs courts "to uphold a regulation, even one circumscribing constitutionally protected interests, so long as it 'is reasonably related to legitimate penological interests.' We are to assess the overall reasonableness of such restrictions with attention to four factors: first, whether the restriction bears a 'valid, rational connection' to the 'legitimate governmental interest put forward to justify it,' such that the 'asserted goal is [not] so remote as to render the policy arbitrary or irrational'; second, whether inmates retain alternative means of exercising the circumscribed right; third, the costs that accommodating the right imposes on other inmates, guards, and prison resources generally; and fourth, whether there are alternatives to the regulation that 'fully accommodate[ ] the prisoner's rights at de minimis cost to valid penological interests.'"
- <sup>26</sup> Leah Sakala, *Return to Sender: Postcard-Only Mail Policies in Prisons* (Northampton, Mass.: Prison Policy Institute, 2013), 1. See Associated Press, Restricting Mail to Inmates to Postcards, KTAR, (12 March 2007): <http://ktar.com/?sid=414226&nid=6>; Maricopa County Sheriff's Office, "Inmate Notice," Maricopa County Sheriff's Office Website: [http://www.mcso.org/About/FAQ/pdf/jail\\_mail\\_rules.pdf](http://www.mcso.org/About/FAQ/pdf/jail_mail_rules.pdf). Cited by Sakala, *Return to Sender*.
- <sup>27</sup> *Prison Legal News v. Columbia County*, 3:12-cv-00071-SI (D. Or.).
- <sup>28</sup> Immigration and Customs Enforcement, "5.1 Correspondence and Other Mail" in 2011 Operations Manual ICE Performance- Based National Detention Standards (Washington, D.C.: U.S. Department of Homeland Security, 2011), 276. Cited in *Return to Sender*, n43.
- <sup>29</sup> See *Banned Books in the Texas Prison System How the Texas Department of Criminal Justice Censors Books Sent to Prisoners: A Texas Civil Rights Project 2011 Human Rights Report* (Austin: Texas Civil Rights Project, 2011). The Texas Civil Rights Project produced this report by examining testimony and documents produced in discovery in the case of *Prison Legal News v. Livingston*.
- <sup>30</sup> A downloadable spreadsheet of TDCJ-banned books and analysis is provided by the Texas Civil Rights Project at <http://www.texascivilrightsproject.org/2803/banned-books-in-the-texas-prison-system-how-the-texas-department-of-criminal-justice-censors-books-sent-to-prisoners/>.
- <sup>31</sup> Documents from Connecticut, Florida, and Nevada provided to Human Rights Defense Center legal team during the discovery (personal communication with Sabarish P. Neelakanta, staff attorney, 3 July 2014).

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<sup>32</sup> Peter M. Carlson and Judith Simon Garrett, eds., *Prison Administration: Practice and Theory*, 2<sup>nd</sup> ed. (Sudbury, MA: Jones and Bartlett Publishers, 2008), 93.

<sup>33</sup> U.S. Department of Justice, Bureau of Prisons website, accessed 14 August 2014:  
[http://www.bop.gov/about/statistics/population\\_statistics.jsp](http://www.bop.gov/about/statistics/population_statistics.jsp).

<sup>34</sup> U.S. Department of Justice Federal Bureau of Prisons, Program Statement P5370.11 6/25/2008 Recreation Programs, Inmate. 15.

<sup>35</sup> *Kimberlin v. U.S. Department of Justice*, 150 F.Supp.2d 36 (2001).

<sup>36</sup> See *Kimberlin v. U.S. Department of Justice*, 351 F.3d 1165 (D.C. Cir. 2003).

<sup>37</sup> Sakala, *Return to Sender*, 9.