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Human Rights Council

Agenda Item 9

Racism, racial discrimination, xenophobia and related forms of intolerance

Written Statement by Atty. Aneesa Mitchell, submitted by the International Human Rights Association of American Minorities (IHRAAM), an international NGO in Consultative Status (Roster)

“Jim Crow Revamped:

The Re-emergence of African American Voter Registration Suppression Laws”

The right to vote was first guaranteed in Article 21 of the Universal Declaration of Human Rights (“UDHR”)[1] and later further codified in Article 25 of the International Covenant on Civil and Political Rights (“ICCPR”). Article 25 states that:

“Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.” [2]

General Comment 25 to the ICCPR clarifies that article 25 “recognizes and protects the right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service.”[3] In paragraph 4 and 14, the Human Rights Committee emphasizes that any conditions or limitations placed on the ability to exercise the right to vote must be based on “objective and reasonable criteria.” [4]

The right to vote is further established in article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (“ICERD”) which requires States “to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, ... [p]olitical rights, in particular the right to participate in elections to vote and to stand for election on the basis of universal and equal suffrage.”[5]

Although the United States has taken steps to fulfill its obligations under these treaties and ensure the right to vote through the 15th and 19th Amendment and the Voting Rights Acts of 1965, over the past 2 years, states have taken drastic steps to restrict voter registration and effectively disenfranchise over 5.5 million African Americans. This is being accomplished through various methods including: photo identification requirement (the most common method); proof of citizenship requirements; reducing the number of days for early voting; restrictions on third-party voter registration activities; limiting the opportunity to make an address change at the polls; purges of

registered voters (subject to litigation); challenges to student voters as non-residents; allegations of voter fraud; and moving or closing precincts in minority communities. [6]

The extent of these activities is significant:

- 34 states have proposed or passed laws that suppress the right to vote
- 14 states have successfully enacted laws that suppress voter registration
- 12 states require proof of citizenship, such as a birth certificate, to register and vote
- 13 states have introduced proposals that limit voter registration opportunities
- 5 states will require voters to display a government-issued photo identification before voting [7]

Photo identification and other additional requirements to register to vote disproportionately affect the elderly, persons with disabilities, the poor, and the youth, but have the most significant impact on minorities, particularly African Americans. According to a 2006 Brennan Center survey, “African-American citizens disproportionately lack photo identification. Twenty-five percent of African-American voting-age citizens have no current government-issued photo ID, compared to eight percent of white voting-age citizens. Using 2000 census figures, this amounts to more than 5.5 million adult African-American citizens without photo identification.”[8] Additionally, voter registration suppression can have devastating effects on African Americans in each individual state. For example, if the State of Wisconsin passes a photo identification law, the 55% of male and 49% of female African-Americans that lack a driver’s licenses would have to obtain a form of photo identification.[9] Thus, half of the African American population in Wisconsin, a battleground state, could be denied the right to vote or at the very least have to overcome a heavy burden in order to vote.

Unfortunately, photo identification is not the only means by which African Americans are being disenfranchised. Felon-based voting denial laws also disproportionately affect African Americans.

General Comment 25 to the ICCPR explains that “[i]f conviction for an offence is a basis for suspending the right to vote, the period of such suspension should be proportionate to the offence and the sentence.”[10] A voting denial law leaving 1 in every 40 voting-age adults unable to participate in democratic elections because of a past or current felony conviction [11] is excessive and disproportionate to the offense, and undermines the right to vote required by the ICCPR. Furthermore, of the 5.4 million Americans denied the right to vote, 1.4 million are African American, meaning that 1 in 4 African American men are denied the right to vote due to a felony conviction. [12]

Despite this devastating and disproportionate impact on African Americans’ democratic rights, proponents claim that the felony-based voting denial laws are reasonable and do not create an undue burden on United States citizens because most US citizens have photo identification. This assumption is inaccurate. 13 million US citizens do not have access to citizenship documents,[13] thus making it difficult to obtain photo identification.

Additionally, these laws also do not effectively prevent voter fraud as claimed by their proponents. Photo identification and proof-of-citizenship laws only confirm identity at the polls and block ineligible noncitizens from registering. An extensive five-year investigation by the Bush Department of Justice found only 86 occasions of improper voting, indicating that fraud at the polls was very limited.[14] Also, laws already in place to punish voter fraud are sufficiently severe to deter potential criminals. [15]

Based on the above facts, it seems clear that the primary purpose of these initiatives is to reduce the vote of disadvantaged populations, and African Americans in particular.[16] Some claim that these restrictions, supported and passed in largely Republican-run states, are a partisan attempt to control the polls in that party’s favor, yet opposing parties have failed to mount an adequate and vocal defense of voting populations which have in the past included numerous of their supporters. Despite its aggressive promotion of democracy abroad, the United States has failed to protect fundamental democratic rights at home that are espoused not only in its own constitution, but included in its obligations under the ICCPR, UDHR, and ICERD.

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1. G.A. Res. 217A(III), U.N. Doc. A/810 (1948).
 2. Dec. 16, 1966, 999 U.N.T.S. 171.
 3. HRC General Comment 25, para. 1, U.N. Doc. CCPR/C/21/Rev.1/Add.7 (1996).
 4. HRC General Comment 25, para. 4, U.N. Doc. CCPR/C/21/Rev.1/Add.7 (1996).
 5. Dec. 21, 1965, 660 U.N.T.S. 195, Art. 5
 6. <http://www.aclu.org/voting-rights>
 7. <http://www.ncsl.org/legislatures-elections/elections/voter-id.aspx>.

States requiring strict photo identification: Georgia Indian, Kansas, Mississippi, Tennessee, South Carolina, Pennsylvania, Texas Wisconsin, Alabama, Florida, Hawaii, Idaho, Louisiana, Michigan, New Hampshire, South Dakota.

Require identification: Arizona, Ohio, Virginia, Alaska, Arkansas, Colorado, Connecticut, Delaware, Kentucky, Missouri, Montana, North Dakota, Oklahoma, Rhode Islands, Utah, Washington.

Timeline of Voter Registration Suppression:

- 2003: New voter ID laws were passed in Alabama, Colorado, Montana, North Dakota and South Dakota
- 2005: New voter ID laws were passed in Indiana, New Mexico and Washington; Georgia tightened an existing voter ID law to require photo ID
- 2006: New voter ID law passed in Ohio; Georgia passed a law providing for the issuance of voter ID cards at no cost to registered voters who do not have a driver's license or state-issued ID card; Missouri tightened an existing voter ID law to require photo ID
- 2008: New Mexico relaxed an existing voter ID law, and now allows a voter to satisfy the ID requirement by stating his/her name, address as registered, and year of birth
- 2009: New voter ID law passed in Utah
- 2010: New voter ID law passed in Idaho; Oklahoma voters approved a voter ID proposal placed on the ballot by the Legislature
- 2011: New voter ID laws passed in Kansas, Mississippi, Rhode Island and Wisconsin. Alabama, South Carolina, Tennessee and Texas tightened existing voter ID laws to require photo ID (new laws in Texas and South Carolina are on hold pending USDOJ preclearance). Governors in Minnesota, Missouri, Montana, New Hampshire and North Carolina vetoed strict new photo ID laws in 2011. 34 states introduced Voter ID legislation. There were just three states--Oregon, Vermont and Wyoming--that didn't have a voter ID law and didn't consider voter ID legislation that year. The voter ID legislation under consideration fell into two general categories: proposals for new voter ID laws in states that didn't already require voter ID at the polls (considered in 20 states), and proposals to strengthen existing voter ID requirements in order to require photo ID at the polls (considered in 14 states).
- 2012: legislation is pending in 32 states so far. That includes new voter ID proposals in 14 states, proposals to strengthen existing voter ID laws in ten states, and bills in nine states to amend the new voter ID laws passed in 2011. The governor signed a new voter ID bill on March 14 in Pennsylvania, and the Virginia General Assembly has sent a new voter ID bill to the governor.

More information can be found at: <http://www.ncsl.org/legislatures-elections/elections/voter-id.aspx>.

8. Brennan Center for Justice, Citizens Without Proof: A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification, 3 (2006). Available at: http://www.brennancenter.org/page/-/d/download_file_39242.pdf.

9.. John Pawasarat, University of Wisconsin-Milwaukee Employment & Training Institute, The Driver License Status of the Voting Age Population in Wisconsin 4-5 (2005). Available at <http://www.uwm.edu/Dept/ETI/barriers/DriversLicense.pdf>.

10. HRC General Comment 25, para. 14, U.N. Doc. CCPR/C/21/Rev.1/Add.7 (1996).

11. Jeff Manza and Christopher Uggen, Locked Out: Felon Disenfranchisement and American Democracy (2006).

12. Id.

13. Brennan Center for Justice, Citizens Without Proof: A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification, 2 (2006). Available at: http://www.brennancenter.org/page/-/d/download_file_39242.pdf.

14. Advancement Project, Disenfranchisement: What's Wrong with This Picture?, 4 (2011). Available at: <http://www.advancementproject.org/sites/default/files/publications/Picture%20ID%20low.pdf>.

15. http://www.law.cornell.edu/uscode/18/usc_sup_01_18_10_I_20_29.html

16. Viviette Applewhite, a 93-year-old African-American woman who once marched with the Rev. Martin Luther King, Jr. for the right to vote, cannot vote in the upcoming 2012 presidential election because of Pennsylvania's new voter identification law. The law requires that citizens present a state-issued photo identification card before voting, which would require Applewhite to obtain a birth certificate. However, due to misplaced and lost adoption papers by state government agencies, Applewhite cannot verify the surname discrepancy on her birth certificate, and therefore cannot obtain the proper photo identification and cannot vote. These are the facts surround the Pennsylvania case, Applewhite v. Commonwealth of Pennsylvania, 330-md-2012, Commonwealth Court of Pennsylvania (Harrisburg) challenging the latest addition of voter suppression laws. The Pennsylvania Supreme Court agreed to hear the case with written arguments due by September 7.