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OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on the human rights of migrants; the Independent Expert on minority issues; and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.

REFERENCE: AL G/SO 214 (106-10) Minorities (2005-4) G/SO 214 (78-15)
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24 April 2012

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the human rights of migrants; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; and Independent Expert on minority issues pursuant to General Assembly resolution 60/251 and to Human Rights Council resolution 17/12, 16/33, and 16/6.

We would like to bring to the attention of your Excellency's Government information we have received regarding the **Alabama Taxpayer and Citizen Protection Act**, Act No. 2011-535 (HB 56) of 9 June 2011. As you will recall, the Special Rapporteur on the human rights of migrants sent a letter to your Excellency's Government on 16 September 2011 which dealt with, inter alia, HB 56, to which the Special Rapporteur unfortunately has not yet received a reply. In that letter, the Special Rapporteur referred to the fact that the entry into force of HB 56 had been temporarily suspended by an order of a federal court.

According to the information received:

On 28 September 2011, United States District Court for the Northern District of Alabama blocked parts of the Alabama Taxpayer and Citizen Protection Act (HB 56), while other parts of it went into effect. HB 56 prohibits unauthorized immigrants from entering into "business transactions" with the state (section 30), and this has barred some immigrants from renewing the registration on their mobile homes, signing up for water or other utility services, and paying property taxes for their homes. Other immigrants have had their electricity or water cut off because they could not prove their regular residence status. Renewing a business permit is also considered a "business transaction", and irregular immigrants have been forced to close their businesses because of this act.

The act requires schools to verify the immigration status of their students (section 28), and some parents have stopped sending their children to school after their teachers questioned the children about their residential status, and that of their parents. This also affects children who are U.S. citizens, but whose parents are not. Hispanic school children have also been withdrawn from school by their parents due to harassment and bullying based on their ethnic appearance.

The act also provides for prolonged detention without bail for anyone who is suspected of being “unauthorized” (section 19). As a result, a large number of individuals have reportedly been detained in county and local jails with no criminal charges or other legal basis.

The act also provides that Alabama courts shall not enforce contracts in which one of the parties is known to be “unlawfully present” (section 27). As a result, employers have refused to pay their employees, claiming that they have no right to be paid under the new act. It is also reported that in a recent lawsuit, the defendants accused of defrauding in the sale of two cars raised HB 56 as a defence, stating that the plaintiffs were “illegal residents”. Migrants in an irregular situation who have sought advice from lawyers have been told that the lawyers may be forced to disclose their clients’ immigration status, further hampering their access to the courts.

HB 56 requires local law enforcement authorities to make a reasonable attempt to ascertain the citizenship or immigration status of any person upon any stop, detention or arrest if there is reasonable suspicion that the person is unlawfully present (section 12). It is alleged that the adoption of the act has increased the level of harassment and abuse against Hispanic persons, both by police and by private individuals, also affecting U.S. citizens. A large number of migrants in an irregular situation have found themselves forced to leave the state of Alabama, and those who remain curtail their everyday activities and stay at home as much as possible. This has had a negative impact on children’s access to education, health care and other activities. Some irregular immigrants who have been victims of crime, such as beatings, robberies and burglaries, have not reported these crimes to the authorities, due to fear of being deported.

On 14 October 2011, the 11th Circuit Court of Appeals reportedly put several provisions of the act on hold, including the provision requiring schools to verify the immigration status of their students. On 23 November 2011, the U.S. District Court for the Middle District of Alabama reportedly blocked the provision of the law which prevented irregular migrants from registering their mobile homes. Furthermore, on 2 December 2011, the Attorney General’s Office issued a guidance letter stating that “business transaction” does not encompass water, sewer, power, sanitation, food and healthcare. On 8 March 2012, the 11th Circuit Court of Appeals reportedly enjoined the provision that barred Alabama courts from enforcing contracts with irregular immigrants; and the provision that barred the state from entering into “business transactions” with irregular immigrants.

Reportedly, a new bill would remove a few sections of the law that have been blocked in the courts, including the requirement that public schools verify the immigration status of their students. It would also eliminate the provision that makes it illegal to rent property to an irregular immigrant, and would require the police to ask about immigration status only after an arrest or traffic citation, not at any legal stop.

It is reported that on 25 April 2012, the U.S. Supreme Court will hear arguments about a similar immigration act in Arizona (SB 1070), and the court is expected to rule by June on its constitutionality.

While taking note of the on-going processes before the Courts regarding the provisions of HB 56, we are concerned that its implementation has already led to discrimination in the access to adequate housing, employment, education, justice and legal remedies against migrants, including migrants in an irregular situation. We are also concerned about cases of arbitrary detention of irregular migrants that may have derived from the enforcement of the act and that migrants in an irregular situation are not entitled to equal protection before the law. Furthermore, we are concerned that the act in question may lead to possible discriminatory treatment of those belonging to ethnic minorities who are United States citizens and legally resident in the country, based on their perceived ethnic origin and suspicion relating to their legal status. Such a law may lead to the detention or subjection to interrogation of persons primarily on the basis of their perceived ethnic characteristics, including persons of African-American, Hispanic, or indigenous ethnicity. In this relation we are concerned that U.S. citizen children whose parents are not U.S. nationals have also been affected in their access to education.

While we do not wish to prejudge the accuracy of these allegations, we would like to remind your Excellency's Government of article 26 of the International Covenant on Civil and Political Rights, ratified by the United States of America on 19 June 1992, which provides that "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." We would also like to recall article 2.1 of the Covenant, which provides that "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

Furthermore, we would like to draw the attention of your Excellency's Government to article 2 (1) of the International Convention on the Elimination of All Forms of Racial Discrimination ratified by the United States of America on 21 October 1994, which provides that "States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial

discrimination in all its forms [...] and to this end: (a) each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation; (c) each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists”.

We would also like to recall General Recommendation no. 30 relating to discrimination against non-citizens, in which the Committee on the Elimination of Racial Discrimination recommends States “to ensure that legislative guarantees against racial discrimination apply to non-citizens regardless of their immigration status, and that the implementation of legislation does not have a discriminatory effect on non-citizens”. Furthermore, the Committee states that States should “take resolute action to counter any tendency to target, stigmatize, stereotype or profile, on the basis of race, colour, descent, and national or ethnic origin, members of “non-citizen” population groups”.

Finally, we would like to draw the attention of your Excellency’s Government to international standards relevant to the protection and promotion of the rights of minorities. The 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities requires under article 1.1 that “States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.” Article 4.1 of the Declaration establishes that: “States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.” While recognizing the prerogative of States to control irregular immigration this must be achieved in accordance with fundamental principles of non-discrimination and respect for ethnic and cultural diversity.

As it is our responsibility according to the mandates entrusted to us by the Human Rights Council to clarify all information brought to our attention, we would greatly appreciate additional details from your Excellency’s Government concerning the above act. We would in particular appreciate to receive information on the following points:

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide detailed information on any action taken by your Excellency’s Government to challenge the constitutionality of HB 56.
3. Please provide information on the new bill which would reportedly amend HB 56.
4. What measures have been taken by your Excellency’s Government to monitor the implementation of legislation adopted and implemented at

state level, to ensure their compliance with its international human rights obligations and commitments, including HB56 and similar legislation adopted at State level?

5. Please provide detailed information on human rights training provided to government officials, including the police and other law enforcement officials, including with regard to the principle of non-discrimination as enshrined in the relevant international human rights instruments and standards.
6. Please provide information about measures taken to teach or raise awareness among teachers and students about human rights, racial discrimination and respect for diversity in schools.

We would greatly appreciate receiving a response within sixty days. Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

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