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HIGH COMMISSIONER FOR HUMAN RIGHTS

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

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Excellency,

We have the honour to address you in our capacities as Independent Expert on minority issues and Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance pursuant to Human Rights Council resolution 16/6 and 16/33.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **alleged challenges and obstacles to full voter participation and voting rights particularly for those belonging to minority groups including African-Americans and Latinos in the United States of America.**

According to the information received:

Since 2011, several U.S. States have allegedly enacted a broad array of voting restrictions and discriminatory laws, or have otherwise impeded democratic political participation. These various restrictive measures fall into three general categories, each of which operates at a different point in the voting process: first, at the voter registration stage; second, at the early voting stage; and third, on Election Day itself. These measures and other efforts reportedly discourage or suppress political participation, particularly by persons belonging to minority groups. Specifically, in 2011, 14 states passed 25 laws that together allegedly block more than 5,000,000 citizens access to voting. Moreover, more than a dozen other states tried but failed last year to pass similar measures. In each of those states, the proponents have declared their intent to try again soon.

Nearly 70 percent of all eligible African Americans were registered to vote in 2008, of which 65 percent cast a ballot (upwards of 16 million voters). Approximately 60 percent of all eligible Latinos were registered to vote in 2008,

of which nearly 50 percent voted (nearly 8 million people). However, since 2008 the ability to vote of persons belonging to such minority groups has allegedly been discouraged or impeded through state legislative initiatives, state constitutional amendments, and executive orders that result in barriers to voting.

According to information received, various states have sought to restrict the voter registration process in five main ways: restrictions on access to voter registration channels; non-compliance with the National Voter Registration Act (NVRA), limitations on when and where individuals can register to vote, increased eligibility requirements, and voter roll purges.

Two states (Florida and Texas) passed laws substantially restricting voter registration drives, reportedly to the detriment of African-American and Latino voters, who rely heavily on third party non-partisan voter registration drives. Reportedly, in Florida, 15 percent of Latinos and nearly 20 percent of African-Americans registered to vote in registration drives in 2008, as compared to only 6 percent of whites. These restrictive voter registration measures are expected to have a disproportionate impact on ethnic minority, low-income, disabled, elderly, women, and young voters.

Several states, including Louisiana, Georgia, and Texas are failing to comply with their obligations under the National Voter Registration Act (NVRA) to provide voter registration services to low-income constituents at state public assistance agencies. Because African-Americans and Latinos have registered to vote at public assistance agencies three times more frequently than white voters, non-compliance with the NVRA closes off a crucial avenue for registration for minority voters. Four states (Florida, Maine, Ohio and Wisconsin) enacted laws restricting the time and/or place at which a person can register to vote. Ohio eliminated a one-week period during which a person could register to vote and cast a ballot at the same time, a restriction expected to have a disproportionate effect on minority voters.

Enhanced eligibility requirements include: proof of citizenship; durational residency requirements; voter roll purges and restrictions of the voting rights of ex-felons. Three states including Alabama, Kansas, and Tennessee enacted legislation requiring documented proof of citizenship to register to vote. These requirements will reportedly have a uniquely burdensome impact on elderly African-American voters, many of whom were born when de jure segregation or other obstacles prevented access to hospitals, and as such were never issued a birth certificate.

Restrictive government-issued photo identification requirements have been proposed throughout the United States, and have been passed in seven states (Alabama, Texas, Mississippi, South Carolina, Kansas, Rhode Island, Tennessee, and Wisconsin). Eleven percent of U.S. citizens nationwide – approximately 22.9

million people – do not have government-issued photo IDs. Twenty-five percent of African-American voting age citizens (over six million people), and 16 percent of Latino voting age citizens (nearly three million people) do not possess valid government-issued photo ID's which meet the new more rigid standards. In Milwaukee, Wisconsin, 3 out of 4 black men between 18 and 25 do not currently have a valid ID with their current address—because they are too poor to own a car, or are renters or students who move frequently— and thus could not vote if an election was held today.

Durational residency requirements have been increased in Wisconsin in order to register to vote, which will reportedly have a disproportionate effect on African-American and Latinos, who tend to move more frequently than whites. Several states, such as Florida and Mississippi, are also allegedly improperly purging voters from the registration rolls. Purge programs purport to maintain the purity of voter registration lists by removing names of individuals ineligible to vote in that state or jurisdiction, but reportedly are disqualifying eligible voters. For example, in Florida, a purge program allegedly erroneously flagged and purged 12,000 voters mostly due to typing errors, not utilizing specific unique identifiers and other clerical errors. Over 70 percent of those flagged voters were allegedly African-American or Latinos.

Despite some progress noted in recent years, the disenfranchisement of people with felony convictions was reportedly expanded in 2011. Two states (Florida and Iowa) reversed executive orders that restored the voting rights of people who had finished serving their sentences for felony convictions, permanently denying the right to vote to hundreds of thousands of citizens. These measures will operate to the particular detriment of minority communities because African-Americans and Latinos suffer disproportionate rates of criminal convictions and incarceration. Across the United States upwards of 5 million individuals – the majority of whom are African-American men – are reportedly disenfranchised. Included in this figure are an estimated 4 million formerly convicted people who are no longer incarcerated. Felony disenfranchisement was originally adopted by many southern states to quell participation by newly freed slaves. In 2012 four states continue to disenfranchise persons convicted of a felony for life. In Virginia alone, a former slave and permanent disenfranchisement state, there are an estimated 300,000 disenfranchised people.

According to the information received, laws which are often framed as “vote security” measures will disproportionately block minority groups from voting. These voting restrictions have been advocated for and often implemented in US states with large communities of colour where political participation has continued to rise since 2000. It is reported that the majority of these laws have been passed in populations with increasing growth of ethnic minority participation and that they will have a disproportionate impact on millions of minority voters.

While we do not wish to prejudge the accuracy of these allegations, we wish to appeal to your Excellency's Government to seek clarification of the circumstances regarding these alleged restrictions to voter participation in the United States.

We wish 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 1.2 requires that States "shall adopt appropriate legislative and other measures to achieve those ends". A fundamental component to the full enjoyment of minority rights is the right to participate effectively in all aspects of life including political life. Article 2.2 of the Declaration establishes that "Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life" while article 2.3 states that "Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation." 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."

Furthermore we wish to draw your Excellency's Government's attention to the recommendations of the 2nd session of the United Nations Forum on Minority Issues, which addressed the issue of minorities and effective political participation (available in UN Document A/HRC/13/25). Those recommendations highlight that implementation of the right to effective political participation of minorities is fundamental to the effective realization of full minority participation in political life. It is also a necessary condition to ensure the enjoyment of other fundamental human rights by persons belonging to minorities. Consequently, the recommendations urge governments to take effective measures to end discrimination. They should consider, for instance, instituting independent monitoring and complaints mechanisms designed to prevent discrimination in voting, vote fraud, intimidation and similar acts that inhibit the effective participation of all, especially members of minorities, in electoral activities. The Forum recommended that literacy, language, religious or other requirements that exclude minorities from the right to vote or to stand for elected office at the national, regional or local level should be removed, as they may breach the prohibition of discrimination and result in minorities not being able to participate effectively in political life. The Forum recommendations call upon States to consider positive measures that should be taken to overcome specific difficulties, such as illiteracy, language barriers, poverty or impediments to freedom of movement, which prevent people entitled to vote from exercising their rights effectively.

Your Excellency's Government is requested to consider these recommendations and their implementation.

Concerned about the alleged restrictions to the right to vote which may have a discriminatory effect on the enjoyment of this right by African and Latino Americans, we would like to draw the attention of your Excellency's Government to the International Convention on the Elimination of All Forms of Racial Discrimination, which in article 2 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: [...] (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 [...]. Furthermore, article 5 of the Convention provides that in compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: [...] (c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service[...].

As it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your cooperation and observations on the following matters:

1. Are the facts alleged in the summary of the case accurate?
2. Have complaints been lodged with regard to the allegations mentioned above?
3. Please provide the details and where available, the results, of any federal or state judicial investigation, and other inquiries carried out in relation to voting rights and in particular the voting rights of persons belonging to minorities.
4. Please provide details of any legislative, policy or programmatic measures undertaken at the national or state level to ensure and promote the voting rights of persons belonging to minorities.

We would appreciate a response within sixty days. We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the reports we will submit to the Human Rights Council for its consideration.

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

Izsák Rita
Independent Expert on minority issues

Mutuma Ruteere
Special Rapporteur on contemporary forms of racism, racial
discrimination, xenophobia and related intolerance