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**Racism, racial discrimination, xenophobia and related
forms of intolerance, follow-up and implementation
of the Durban Declaration and Programme of Action**

Written statement* submitted by the National Association for the Advancement of Colored People, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[4 June 2012]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Racial disparities and discriminatory impact in the use of felony voting disenfranchisement laws

The National Association for the Advancement of Colored People (NAACP) would like to bring to the attention of the Human Rights Council the most enduring affront to voting rights in the United States, the dissolution of voting rights for people with felony convictions. Known as ‘felony disenfranchisement,’ it allows individual states to suspend the voting rights of people with felony convictions on either a temporary or permanent basis, even when individuals are no longer incarcerated.¹

Overview

As affirmed by several resolutions and decisions of the Human Rights Council the right to vote is the cornerstone of a country’s democracy as the opportunity to join one’s voice to their fellow citizens in selecting leaders and speaking to issues, affirms the legitimacy of a nation. The right to vote is essential because in its purest form it preserves and protects all other Constitutional rights and serves as a check on political leaders. In this way, an unobstructed path to the ballot box and the opportunity to cast a vote that gets counted on Election Day is a tangible measure of what a nation is and what it aspires to be.

The United States Constitution leaves the time, place and manner in which an election is carried out to individual states. This has created a patchwork of divergent laws, rules, and procedures marked by a history of barriers to the voting franchise grounded in race, gender, social, and economic class. Chief among those barriers is felony disenfranchisement which emerged with force in the late 1890s in response to former slaves’ rapid ascension to elected office after receiving the right to vote. Ratified in 1870, the 15th Amendment to the United States Constitution extended the right to vote to all male citizens without regard to race, color, or previous condition of servitude.

With the “question of negro suffrage” pending before the nation Delegate Stephen Colahan declared a common sentiment before the 1867 New York constitutional convention, “I believe, sir, that the white race, politically, should have some superior and distinctive position; and that the black race...is no race that can command or justly deserve the suffrage.” Subsequently, a delegate from the commonwealth of Virginia said of their effort to write felony disenfranchisement into their constitution, “This plan...will eliminate the darkey as a political factor in this State in less than 5 years so that in no single county...will there be the least concern felt for the complete supremacy of the white race in the affairs of government.”

In the United States, felony disenfranchisement continues to have far-reaching effects as summarized below

I. Felony disenfranchisement today

The offenses which trigger disenfranchisement reach across a broad range of criminalized conduct, including non-violent offenses such as personal drug use, larceny, and

¹ This written intervention includes excerpts from: “Defending Democracy: Confronting Modern Barriers to Voting Rights in America,” a report by the National Association for the Advancement of Colored People and the NAACP Legal Defense and Educational Fund, Inc. The full report can be downloaded at www.naacp.org.

embezzlement for instance, and crimes involving the unlawful taking of life. On any given day there are over 2.4 million people behind bars in the United States of which more than 60 per cent are racial or ethnic minorities.

When coupled with felony disenfranchisement which remains intact in 48 states and the District of Columbia, nearly 5.3 million citizens have been stripped of their voting rights on either a temporary or permanent basis, including more than 4,800,000 individuals who are no longer incarcerated. More than 2 million of those forced into the margins of democracy are African American and additional half million are Latino.

Structure

Forty-eight states and the District of Columbia strip individuals convicted of a felony of the right to vote on either a temporary or permanent basis. For instance, while each of these jurisdictions prohibits voting by individuals while incarcerated on a felony conviction, 12 states and the District of Columbia automatically restore voting rights upon release. Thirty-six states disenfranchise individuals convicted of a felony even when they are no longer incarcerated if they remain subject to periods of direct supervision, such as probation or parole. Nine of these states however, extend disenfranchisement beyond probation or parole. Through the imposition of ‘waiting periods’ that do not begin until probation or parole has ended, they extend disenfranchisement for an additional two to seven years after an individual has completed all the terms of their sentence.

II. Permanent dissolution of voting rights

Included in the aforementioned group, are four states that disenfranchise formerly incarcerated and convicted people for life: Florida, Iowa, Virginia, and Kentucky. Here, only the governor can reinstate the right to vote however individuals must first affirmatively seek restoration of their rights.

Restoration procedures are marked by a multi-step application process which can prove intrusive for those whose felony record is far removed from their current life and cumbersome for individuals with reading barriers and limited economic resources, for instance. Compounding the barriers, if an applicant is denied they become subject to a three to five year waiting period before they can apply again; but in jurisdictions like Virginia, the governor is not required to explain why the application was denied.

Kemba Smith, a Virginia resident convicted of a non-violent felony while in college, was granted Presidential clemency in the year 2000. To date however, Virginia has not deemed restoration of her voting rights appropriate; Ms. Smith is a wife, mother, author, public speaker, tax payer, and the founder of a public education foundation. There are an estimated 400,000 disenfranchised Virginians.

(a) Privacy concerns

Efforts to engage the disenfranchised in active restoration of their voting rights have revealed hesitancy to engage the process because it stands to disclose a past not readily apparent in the present. For instance, the restoration process commonly requires individuals to append multiple character references to their applications thereby requiring them to disclose their underlying offense to their sources.

(b) Barriers to engaging the process

Additionally, the process commonly requires an applicant to append a personal statement setting forth their development in responsible citizenship. Writing these statements however, can prove insurmountable for individuals with writing barriers. The process also requires applicants to append official copies of various court records to their application.

Most often, these records come at a cost in both time and money as applicants may have to travel to the sentencing court to obtain official copies.

(c) *Sample of permanent disenfranchisement states*

Florida wrote felony disenfranchisement into its state constitution in 1868 to avoid what one legislator called “a negro legislature.” Today, the state disenfranchises over 1 million individuals of which an estimated 950,000 have completed all the terms of their sentence. In 2007 the Florida governor issued an Executive Order making it easier for individuals to restore their voting rights enabling an estimated 100,000 people to move onto the rolls in advance of the 2008 Presidential election. With thousands of applications reported to be awaiting review, the sitting governor not only rescinded the order but added a five year waiting period slated to begin running only after the individual has completed all periods of post-release supervision. All pending applications became subject to the new rules.

Similarly, in 2005 the governor of Iowa issued an Executive Order making it easier for people with felony convictions to transition back into civic engagement. Upon issuance, the order restored voting rights to approximately 80,000 people. In 2011, the sitting governor rescinded the order. Today, Iowa also imposes a post-release waiting period.

Recommendations

- We strongly urge the Human Rights Council to closely examine the access to political and voting rights and its intersection with race and ethnicity globally.
- We ask that the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerances pay particular attention to situation of voting rights in the United States.
- We request that the issue of ex-felon voting rights and its intersection with race and ethnicity be included in the next report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerances.