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THE RIGHT TO VOTE:

Interference by Voter Registration Laws

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I. Introduction

Voting is a mechanism by which citizens hold their leaders accountable and promote good governance. The right to vote is a basic human right that empowers citizens to influence governmental decision-making and to safeguard their own human rights. Several international declarations and covenants provide for the right to vote; however, the importance of this right requires more monitoring and further definition of its contours. The Human Rights Council at its 19th Regular Session adopted Resolution 19/36 on “Human Rights, democracy, and the rule of law,”¹ which reaffirms the right of every citizen to vote and calls on states to make continuous efforts to strengthen the rule of law² and promote democracy by “[t]aking appropriate measures and steps to amend electoral laws in order to enable people to vote and participate in elections, without unreasonable restrictions.”³ This landmark Resolution by the Council is a positive step for strengthening protections of every citizen’s right to vote. However, states continue to interfere with this right by enacting electoral legislation, particularly laws governing voter registration, that are neither reasonable, objective, nor proportional.

II. Legal Basis

The right to vote is enshrined in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). Article 21 of the UDHR establishes the right to vote as it states that “[t]he will of the people shall be...expressed in periodic and genuine elections which...shall be held by secret vote or by equivalent free voting procedures.”⁴ Article 25 of the ICCPR further ensures that “[e]very citizen shall have the right and opportunity...[t]o vote...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.”⁵ The right to vote is further clarified in the Human Rights Committee’s General Comment No. 25 to the ICCPR. Article 25 of the ICCPR and General Comment No. 25 also impose obligations on states to provide for and protect this right. Such state obligations include the obligation to take “effective measures” to ensure all persons entitled to vote can exercise that right;⁶ take “positive measures” to overcome specific difficulties that prevent persons from exercising the right to vote (such as illiteracy, language barriers, poverty, or impediments to freedom of movement);⁷ ensure that legislation that restricts the right be “objective and reasonable”;⁸ establish an independent electoral authority;⁹ and to submit periodic state reports that indicate what measures they have adopted to guarantee genuine, free, and periodic elections

¹ Resolution 19/36, “Human Rights, democracy, and the rule of law,” A/HRC/RES/19/36, UN Human Rights Council, adopted at its 19th session in March 2012, *available at* http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/19/36.

² *Id.*, at para. 2.

³ *Id.*, at para. 16(h).

⁴ Universal Declaration of Human Rights (UDHR), at Art. 21.

⁵ International Covenant on Civil and Political Rights (ICCPR), at Art. 25.

⁶ “General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access of public service (Art. 25),” CCPR/C/21/Rev.1/Add.7, adopted by the Human Rights Committee at its 57th session (July 12, 1996), at para. 11, (hereinafter General Comment No. 25).

⁷ *Id.*, at para. 12

⁸ *Id.*, at para. 14

⁹ *Id.*, at para. 20

and describe the laws and procedures which ensure that the right to vote can “in fact” be freely exercised by all citizens.¹⁰

Other regional and international treaties also protect the right to vote. The American Convention on Human Rights (Article 23) explicitly protects the right to vote, stating that “[e]very citizen shall enjoy the...rights and opportunities...to vote and to be elected in genuine periodic elections...”¹¹ The European Convention on Human Rights (ECHR) (Protocol I, Article 3),¹² the African Charter on Human and People’s Rights (Banjul Charter) (Article 13), and the Arab Charter on Human Rights (Article 24) provide similar guarantees, particularly regarding the right to participate in elections.¹³ International agreements aimed at combatting discrimination also guarantee the right to vote. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) obligates states parties to ensure women the right to vote on equal terms with men.¹⁴ The Convention on the Elimination of All Forms of Racial Discrimination (CERD) obligates states parties to guarantee the right to vote without distinction as to race, color, or national or ethnic origin.¹⁵ Further, the Convention on the Rights of Persons with Disabilities obligates states parties to ensure that persons with disabilities can effectively and fully participate in political life, including the right to vote.¹⁶ In addition to the right to vote, many international agreements provide for the right to self-determination.¹⁷

III. Interference by Law: Registration of Voters

Though the right to vote is enshrined in various international covenants and declarations, the right to vote is not absolute. Article 25 of the ICCPR provides that citizens shall have the right to vote without “unreasonable restrictions,”¹⁸ which include only those limitations and restrictions that are “reasonable” and “proportional.” The Human Rights Committee General Comment No. 25 to the ICCPR provides that any conditions that apply to the exercise of the right guaranteed by Article 25 should be based on “objective and reasonable criteria.”¹⁹ For example, setting a minimum age limit for the right to vote would be a reasonable restriction.²⁰ Alternatively, an unreasonable restriction is one based on grounds of physical disability or one that imposes a literacy, educational, or property requirement.²¹ Reasonableness can also be assessed based on outcomes. For example, reasonable laws are those that “maximize participation and minimize fraud given the particular political and historic background and cultural environment of that country.”²² In regards to the principle of “proportionality,” the

¹⁰ *Id.*, at para. 22

¹¹ American Convention on Human Rights, at Art. 23.

¹² European Convention on Human Rights (ECHR), Protocol I, at Art. 3.

¹³ Arab Charter on Human Rights, Art. 24 (hereinafter Arab Charter).

¹⁴ Convention on the Elimination of All Forms of Discrimination Against Women, at Art. 7.

¹⁵ Convention on the Elimination of All Forms of Racial Discrimination (CERD), at Art. 5.

¹⁶ Convention on the Rights of Persons with Disabilities, at Art. 29.

¹⁷ UDHR, at Art. 21; ICCPR, at Art. 1; International Covenant on Economic, Social, and Cultural Rights (ICESCR), at Art. 1; African Charter, at Art. 20; Arab Charter, at Art. 2.

¹⁸ ICCPR, at Art. 24

¹⁹ General Comment No. 25, at para. 4.

²⁰ *Id.*, at para. 10

²¹ *Id.*

²² The Carter Center, “Voter Identification Requirements and Public International Law: An Examination of Africa and Latin America,” (January 14, 2013), at 33-34, *available at*

Human Rights Committee concluded that this principle requires that a measure as harsh as the deprivation of all political rights must be specifically justified.²³

Despite these requirements, there is wide derogation by states in protecting the right to vote as states often interfere with this right through electoral legislation that is neither reasonable nor proportional. This interference can directly disenfranchise voters through laws denying the right to certain demographic groups, such as convicted prisoners, or through procedural requirements, such as voter identification laws that disparately impact certain communities, including ethnic and linguistic minorities. This is particularly prevalent in state legislation regarding registration of voters, voter identification requirements, prisoner disenfranchisement, and language barriers.²⁴ This report focuses on the United States (U.S.) as an example of state practices regarding the right to vote. While this report will only address one aspect of this right, namely voter registration laws, Human Rights Advocates recommends the creation of a separate mandate on the right to vote to investigate various aspects of this right, including states' electoral laws that derogate from the reasonable, objective, and proportionate requirements under Article 25 of the ICCPR, and promote good practices that encourage free and fair elections.

A. Voter Identification (ID) Requirements

While international law provides some guidance on the role and process of voter registration, states are afforded wide discretion in the implementation of voter identification practices.²⁵ Four countries do not require identification, including Denmark, Australia, New Zealand, and the United Kingdom (with the exception of Northern Ireland).²⁶ Other countries issue single national IDs, particularly countries in Latin America. Discrepancies in countries' voter ID laws vary depending on numerous factors, including politics, government capacity, environment, culture, history of conflict, and levels of poverty. Because voter ID laws significantly impact the ability to register to vote and cast a ballot, laws governing proof of identity can be helpful to facilitate and increase confidence in the voting process; however, voter ID laws too often cause substantial disenfranchisement of certain communities.²⁷ When enacting laws, countries must delicately balance electoral fraud prevention with maximizing inclusion of potential voter participants.²⁸ This section will cover the discriminatory effects of voter ID laws and discuss various issues related to registration procedures.

<https://www.cartercenter.org/resources/pdfs/peace/democracy/des/voter-identification-requirements.pdf> (hereafter Carter Center Report).

²³ UN Human Rights Committee, Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the ICCPR Communication No. 44/1979, CCPR/C/12/D/44/1979 (Apr. 9, 1981), at para.16.

²⁴ Voter ID laws also raise issues regarding residency requirements and discrimination issues against persons with physical disabilities; however, this falls outside the scope of this paper.

²⁵ Carter Center Report, at 1.

²⁶ Frederic Charles Schaffer and Tova Andrea Wang, "Is Everyone Else Doing It? Indiana's Voter Identification Law in International Perspective," *Harvard Law & Policy Review*, Vol. 3-2 (2009), at 398.

²⁷ Carter Center Report, at 10.

²⁸ Though states justify voter ID laws to prevent electoral fraud, in U.S., for example, there is no credible evidence that in-person impersonation voter fraud is even a minor problem. There are other less discriminatory means that more effectively prevent the type of voter fraud that actually threatens the integrity of elections, such as improper purges of voters, voter harassment, and distribution of false information about when and where to vote. American Civil Liberties Union (ACLU), "Oppose Voter ID Legislation," *available at*

1. Discriminatory Effects

Most electoral laws are not blatantly discriminatory; however, many laws result in pervasive *de facto* discrimination.²⁹ The U.S. presents an example of violations of the international obligation ensuring every citizen the right to vote. Voter turnout in the U.S. during presidential elections is consistently low. While an estimated 222 million Americans were eligible to vote during the presidential elections in 2012, an increase of about nine million over 2008, 51 million of those eligible voters were not registered and could not have voted.³⁰ Approximately 130.3 million voters, or 59% of eligible voters, actually turned out to vote in the 2012 presidential elections, compared to 62% of eligible voters in 2008.³¹

Under the U.S. Constitution, state governments rather than the federal government, have the authority to determine voting eligibility criteria. Each state in the U.S. has its own laws governing voter registration, including voter ID laws. While international law and U.S. federal law under Section 2 of the Voting Rights Act prohibits states and subdivisions from enacting discriminatory voting laws that have the purpose or result of discriminating members of a racial or minority language group, many states have voter ID laws that have a disproportionate and unfair impact on U.S. citizens.³² Following a recent U.S. Supreme Court case in 2013 that struck down a key provision of the Voting Rights Act, racial and linguistic minorities located in certain jurisdictions are now increasingly subject to voter disenfranchisement.³³ Previously, states and jurisdictions with a history of discrimination were required to obtain federal permission (or preclearance) before changing their voting procedures. Now that this requirement has been eliminated, such jurisdictions have subsequently placed new restrictions on voting eligibility.³⁴

Approximately 21 million would-be eligible voters, a significant number of whom are low-income, racial and linguistic minorities, elderly, and physically disabled, are disenfranchised as a result of states' discriminatory voter ID laws.³⁵ This is because many of these Americans cannot obtain necessary forms of identification required by states since they cannot afford to pay for the required documents or have limited physical mobility to obtain an ID due to old age.³⁶ More than 30 states in the U.S. require voters to present identification in order to vote in federal, state, and local elections; in 15 of these states, voters must present a photo ID in order to cast a ballot.³⁷ Women in the U.S. are also disproportionately impacted as they not only tend to vote more than men, but also make up large shares of every sub-group that are least likely to have

https://www.aclu.org/files/assets/aclu_factsheet_on_voter_id_legislation_7_2011.pdf (accessed on January 29, 2014).

²⁹ Carter Center Report, at 34-35.

³⁰ The 51 million unregistered voters could not vote except in the 10 states that allow voters to register or update their registration on Election Day. Nonprofit Vote, "America Goes to the Polls 2012: A Report on Voter Turnout in the 2012 Election," (2013), at 6, available at <http://www.nonprofitvote.org/documents/2013/03/america-goes-to-the-polls-2012.pdf>.

³¹ *Id.*

³² The Voting Rights Act of 1965, 42 U.S.C. § 1973.

³³ U.S. Department of Justice, "About Section 5 of the Voting Rights Act," available at http://www.justice.gov/crt/about/vot/sec_5/about.php (accessed on February 4, 2014).

³⁴ *Shelby County v. Holder*, 133 S. Ct. 2612 (2013).

³⁵ ACLU, "Oppose Voter ID Legislation."

³⁶ *Id.*

³⁷ *Id.*

current and valid identification.³⁸ Women not only comprise large shares of the poor, as women are more likely to live in poverty than men, but also the elderly, as women have longer life expectancy rates than men.³⁹ Additionally, since women are more likely to be enrolled in college than men, women represent a majority of students who attend out-of-state colleges and do not get driver's licenses in the new state, and thus lack the requisite form of ID needed to register to vote.⁴⁰ Married women are particularly disadvantaged—since around 90% of women change their last names when they get married, and many change their last names back if they get divorced, married women are more likely to lack up-to-date government-issued IDs that reflect their legal name and match the voter registry.⁴¹

The Voting Rights Act has been frequently used to challenge these discriminatory laws on grounds that voter ID laws dilute minority-voting strength.⁴² While the U.S. Supreme Court upheld Indiana's voter ID law in 2008 (even though the state failed to present evidence that the law would prevent fraud),⁴³ voter ID laws are being challenged across the U.S. Federal courts under the Obama Administration have blocked or deferred several states' voter ID laws, including in Texas, South Carolina, Pennsylvania, and Wisconsin, on grounds that they disproportionately affect minority voters who lacked requisite state-issued IDs.⁴⁴ Additionally, recent legislation has been introduced in the U.S. Congress that would amend the Voting Rights Act to include a revised preclearance formula that will cover jurisdictions with recent, egregious voting records; an expanded judicial bail-in provision; the ability for plaintiffs to obtain preliminary injunctive relief for some voting changes; and requirements for jurisdictions to provide public notice of proposed voting changes.⁴⁵

In Latin America, all countries require a national ID card for voting. However, many citizens in South and Central America lack documentation entirely, including birth certificates, the majority of whom are indigenous, poor, rural, youth, and are displaced due to armed conflict.⁴⁶ As a result, millions of undocumented citizens in Latin America cannot even start the process of registering to vote.⁴⁷ While Peru has historically experienced problems with lack of documentation among its citizens, the Peruvian election management body is confronting the problem of undocumented citizens by undertaking efforts to reach out and register many

³⁸ During the 2012 elections, women comprised 53% of voters, while men comprised 47%. Reid Wilson, "GovBeat Blog: Five reasons voter identification bills disproportionately impact women," The Washington Post (November 5, 2013), available at <http://www.washingtonpost.com/blogs/govbeat/wp/2013/11/05/five-reasons-voter-identification-bills-disproportionately-impact-women/>.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Lawyers Committee for Civil Rights Under Law, "The Voting Rights Act," available at http://www.lawyerscommittee.org/projects/voting_rights/page?id=0005 (accessed on January 29, 2014).

⁴³ *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008).

⁴⁴ David Ingram, "South Carolina voter ID law blocked until 2013," Reuters (October 10, 2013), available at <http://www.reuters.com/article/2012/10/10/us-usa-campaign-south-carolina-idUSBRE89916820121010>.

⁴⁵ ACLU Press Release, "Bill Not Perfect, But Big Step in Right Direction," (January 16, 2014), available at <https://www.aclu.org/voting-rights/aclu-comment-new-voting-rights-bill>.

⁴⁶ Carter Center Report, at 23.

⁴⁷ *Id.*

undocumented citizens. The election body has particularly focused on the most isolated regions of the country to reach poor, remote, and indigenous communities.⁴⁸

2. Permissible forms of ID

Permissible and requisite forms of ID used to register to vote vary across different countries. It is easier to obtain identification in some countries than it is in others, particularly in those countries that automatically issue ID cards to citizens. This single ID system works well in countries whose governments have committed substantial efforts to address the problem of undocumented citizens. For example, Panama's registration and identification system presents a positive example of voter ID laws. This is primarily because almost every Panamanian person is entered into the civil registry and issued a birth certificate and identity number at birth.⁴⁹ As a national ID card is required to vote, Panamanians, upon turning 18 years old, must petition the Electoral Tribunal (TSE) for a national ID card, which upon receipt, allows each citizen to be automatically added to the voter registration list. The Panamanian government has undertaken special efforts to document unregistered Panamanians, by including notices in payroll checks and in electricity, telephone, and water bills.⁵⁰ In Chile, nearly 100% of Chileans are registered at birth and given a unique ID number (called "the RUN"), which appears on the national ID card that is required to vote.⁵¹ Other countries, such as Spain, Greece, France, Malta, Belgium, and Italy also provide national ID documents to citizens for various uses, including travel, banking, healthcare services, and voting.⁵²

In Africa, voter ID laws vary amongst different countries. While most require individuals to provide proof of identity to register and vote, some countries allow for either one of many types of identity documents or third party attestation, where an applicant may rely on witness testimony or affirmation of a traditional leader as proof of identity.⁵³ These countries include Angola, Benin, Chad, the Democratic Republic of Congo, Ethiopia, the Gambia, Ghana, Guinea, Lesotho, Liberia, Malawi, Mozambique, Namibia, Niger, and Sudan.⁵⁴ Some critics argue that allowing such a range of ways to prove identity leads to potential fraud; however, research has found little evidence of manipulation or major election fraud.⁵⁵ Instead, flexible identification laws reflect many African countries' efforts to meet the reasonable and objective standard mandated by Article 25 of the ICCPR. Such flexible regimes recognize the reality of post-conflict and poor environments of Africa, where many people do not have identifying documents.⁵⁶

However, countries with ID laws that have vague or no apparent requirements regarding identification procedures are insufficient and do not meet the reasonable and objective requirements. While a single national ID model may work in some Latin American countries,

⁴⁸ *Id.*, at 28.

⁴⁹ *Id.*, at 27.

⁵⁰ *Id.*

⁵¹ *Id.*, at 28.

⁵² Schaffer and Wang (2009), at 400.

⁵³ Carter Center Report, at 15.

⁵⁴ *Id.*

⁵⁵ *Id.*, at 16.

⁵⁶ *Id.*, at 33.

critics are wary of such a system in African countries, particularly due to inadequate resources.⁵⁷ Currently, six countries require a single type of document to prove identity, including Botswana, Cameroon, Kenya, Madagascar, South Africa, and Zanzibar (a semi-autonomous territory in Tanzania).⁵⁸ The Kenyan election management regime has confronted difficulties with the single ID system. Kenya's strict requirement of presenting a voter card in addition to a national ID card or passport (which can only be obtained through a showing of a national ID card) has led to substantial problems leading to disenfranchisement of youth and marginalized communities. Due to complicated bureaucratic processes and administrative delays, it takes approximately two to six months to obtain the requisite ID card.⁵⁹ Such long delays impact the ability of citizens to register to vote in time for an election, resulting in disenfranchisement.⁶⁰ Reports have found that while 95% of Kenyans possess the national ID card, youth comprise the majority of Kenyans that do not have the national ID card. This is primarily due to long distances to registration centers, the length of the process, and waiting periods.⁶¹

In the U.S., more than 30 states have passed voter ID laws with varying degrees of strictness that either require or request the voter to produce some form of identification. Several states have strict laws requiring a photo ID (such as Texas, Kansas, and Pennsylvania), some have strict laws requiring some form of ID but not necessarily a photo ID (Arizona, Ohio, and Virginia), and others do not request or require any form of ID (including California and New York).⁶² In Texas, the strict law accepts seven forms of photo ID including a state-issued driver's license, license to carry a concealed handgun, or identification card; military ID cards; citizenship cards; passports; and the Texas Election Identification Certificate (EIC),⁶³ which is a free ID card distributed by the Department of Public Safety that can be used to vote. Voters who show up at the polls without an acceptable form of ID are allowed to cast provisional ballots.⁶⁴ Colorado's law is more flexible on the acceptable forms of ID, as voters may provide a state driver's license; a state Department of Revenue ID card; a U.S. passport; a government-issued employee photo ID card; pilot's license; military photo ID; copy of a current utility bill, bank statement, paycheck or other government document that shows the name and address of the voter; a Medicare or Medicaid card; birth certificate; or certified document of naturalization.⁶⁵

Other countries have less strict and more flexible voter ID laws in comparison to the U.S. In Ireland, poll workers may request proof of identity. Voters may present several permissible forms including five different forms of photo ID, bank books, credit cards, checkbooks, and marriage certificates, as long as the voter can also provide a document that establishes his or her address.⁶⁶ Canada also has very flexible voter ID laws, as any voter who lacks one of the

⁵⁷ *Id.*, at 17-18.

⁵⁸ *Id.*, at 15.

⁵⁹ *Id.*, at 42-43.

⁶⁰ *Id.*, at 21.

⁶¹ *Id.*, at 42-43, citing Institute for Education in Democracy, "Designing a New Voter Registration System in Kenya: A Recipe for Regaining Voters' Confidence in the Electoral Processes," (2010), at 2, available at http://www.iedafrica.org/documents/EVR_AND_OMR_Voter_Registration_Monitoring_Report.pdf.

⁶² National Conference of State Legislatures (NCSL), "Voter Identification Requirements," (October 17, 2013), available at <http://www.ncsl.org/research/elections-and-campaigns/voter-Id.aspx> (accessed on February 22, 2014).

⁶³ See Section "4. Poll Taxes/Fees," footnote 78.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Schaffer and Wang (2009), at 399.

allowed forms of photo ID may present two of 45 other forms of identification, or at least one document that has the voter's name and address. Acceptable documents include leases, student transcripts, and utility bills.⁶⁷ India allows for the use of 15 different types of identification that range from property documents, to arms licenses, to income tax ID cards, as well as forms of identification most likely to be possessed by the poor, such as ration cards. Around 80% of rural households and 70% of urban households, who would otherwise be disenfranchised, hold such cards.⁶⁸ Additionally, in Northern Ireland, a free electoral ID card is made available to those who do not possess any of the other prescribed forms of identification. Applicants only need to fill out a form, attach a photo, and mail it in a pre-paid envelope.⁶⁹

3. Innovative Methods to Register Voters

The U.S. passed the National Voter Registration Act (NVRA or "Motor Voter Act") in 1993 to increase opportunities for eligible voters to register and vote in federal elections. The NVRA, supplemented by the 2002 Help America Vote Act (HAVA),⁷⁰ requires states⁷¹ to provide the opportunity for U.S. citizens to apply to register to vote, or "opt-in", in federal elections via three means: 1) when applying for or renewing a driver's license; 2) by mail using mail-in-forms developed by each state and the U.S. Election Assistance Commission;⁷² and 3) at offices that provide public assistance or state services to people with disabilities (i.e. offices that provide food stamps, disability services, and other social services).⁷³ While the purpose of offering voter registration services at such offices was to increase registration amongst disproportionately affected communities, this method been the least popular source of registration.⁷⁴ Despite some problems with implementation of NVRA requirements at local levels, the NVRA has been fundamental in increasing registration of eligible voters since its enactment in 1993.⁷⁵ Between 1996-2012, voter registration increased nationally by over 10%.⁷⁶

Mexico also presents a positive example of innovative methods used to register voters. In Mexico, almost 95% of Mexicans are registered to vote. Though the voter registration process is fairly strict, as citizens must present three documents (a birth certificate, a photo ID, and proof

⁶⁷ *Id.*

⁶⁸ *Id.*, at 399-400.

⁶⁹ *Id.*, at 404-405.

⁷⁰ Help America Vote Act of 2002, 42 U.S.C. §§ 15481-15485 (2002).

⁷¹ Six states (Idaho, Minnesota, New Hampshire, North Dakota, Wisconsin, and Wyoming) are exempt from the NVRA because on and after August 1, 1994, they either had no voter-registration requirements or had election-day voter registration at polling places with respect to elections for federal office. U.S. Department of Justice, "The National Voter Registration Act of 1993: Questions and Answers," available at http://www.justice.gov/crt/about/vot/nvra/nvra_faq.php (accessed on February 19, 2014).

⁷² In addition to mailing in forms, some states also accept registration forms via fax or email. U.S. Election Assistance Commission (EAC), "The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office 2011-2012," Report to the 113th Congress (June 30, 2013), at 1, available at http://www.eac.gov/assets/1/Documents/EAC_NVRA%20Report_lowres.pdf (hereinafter EAC Report).

⁷³ U.S. Justice Department, "The National Voter Registration Act," available at http://www.justice.gov/crt/about/vot/nvra/activ_nvra.php (accessed on February 19, 2014).

⁷⁴ Congressional Research Service (CRS) Report R40609 "The National Voter Registration Act of 1993: History, Implementation, and Effects," by Royce Crocker (September 18, 2013), at 6-7, available at <https://www.fas.org/sgp/crs/misc/R40609.pdf>; EAC Report, at 6.

⁷⁵ CRS Report R40609, at 27.

⁷⁶ The year 1996 was the first post-NVRA presidential election year. *Id.*, at 24.

of residence) to obtain the national ID card required to vote and are subject to strict renewal deadlines, the Mexican government engages in registration and renewal campaigns. During these campaigns, the government opens additional offices, provides same-day credentials in remote areas, and ensures that existing offices stay open on the weekends. The Mexican government also hosts birth registration awareness campaigns for women and midwives to encourage them to report births of children ranging from 0 to 15 years old.⁷⁷

4. Poll Taxes/Fees

Requiring voters to obtain an ID in order to vote may have the same effect as imposing a poll tax. While U.S. federal law prohibits poll taxes under the Voting Rights Act, some states charge a fee to obtain the requisite government-issued ID to register to vote.⁷⁸ Some states in the U.S. issue IDs at no cost; however, other forms of government-issued IDs, such as birth certificates or passports, cost money.⁷⁹ In Texas, though the state allows voters to obtain a “free” Texas Election Identification Certificate, voters are required to provide documentation that verifies U.S. citizenship and their identity, all of which cost money.⁸⁰ Thus, not only are there many Americans who simply cannot afford to pay for government-IDs at cost, but state requirements that mandate payment for IDs that are required to register to vote violate U.S. federal law and international human rights law. Many Latin American countries, including Argentina, Chile, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Panama, and Peru, also charge a fee to obtain the required national ID card, thus amounting to a poll tax.⁸¹ Similarly, some countries in Africa charge a fee to obtain a government-issued ID. In Cameroon, prior to 2011, obtaining the requisite national ID card was difficult due an expensive fee that totaled the equivalent of more than \$14 U.S. per card. However, in 2011, Cameroon lowered the cost to approximately \$5.39 U.S. and eventually made the cards free the registration period in order to encourage registration in advance of the election.⁸²

5. Privacy Concerns

Voter IDs laws raise privacy concerns because voter ID requirements require self-identification in order to exercise a citizen’s right to vote.⁸³ Aside from the general privacy concern of mandating voters to provide a photo, an address, and other private information as a condition to register to vote, other laws also infringe on privacy rights even when implementing public outreach efforts to register undocumented citizens. For example, in Panama, the government has undertaken special efforts to document unregistered Panamanians by publicizing the voters’ list. Such publication allows Panamanians to make sure appropriate information, i.e. an address or phone number, is included in the list. As part of a public outreach campaign, the Panamanian Electoral Tribunal uses numerous outlets to publicize the voters’ list, such as the

⁷⁷ Carter Center Report, at 28.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ Texas Department of Public Safety, “Election Identification Certificates (EIC) – Documentation Requirements,” available at <http://www.txdps.state.tx.us/DriverLicense/eicDocReqmnts.htm>, (accessed on February 23, 2014).

⁸¹ Carter Center Report, at 26.

⁸² *Id.*, at 18.

⁸³ Electronic Privacy information Center (EPIC), “Voter Photo ID and Privacy,” (2012), available at <http://epic.org/privacy/voting/photo-identification.html> (accessed on February 23, 2014).

media, the internet, in new housing developments, shopping centers, and transportation hubs. This method of putting eligible voters on notice, however, threatens the privacy interests of those Panamanians who do not want such widespread publication of private information.⁸⁴

The issue of biometric voting systems also raise privacy concerns and requires a delicate balance of countervailing interests. Biometric voter registration uses fingerprints and facial features to uniquely identify each voter to help support fair and credible elections without fraud and illegal practices.⁸⁵ The United Nations Development Program (UNDP) supports numerous projects to reform outdated voter registries in various countries, including in Zambia ahead of the 2011 elections⁸⁶ and in Yemen in 2013.⁸⁷ Other African countries, including Kenya, Nigeria, Ghana, and the Democratic Republic of the Congo, have also adopted fingerprint-scanning technology to help prevent electoral fraud.⁸⁸ While biometric systems represent advanced technology that confirms voter eligibility (i.e. via a current picture, address, and fingerprints or other unique data) at any location, countries must weigh the opposing concerns when deciding to implement such a politically controversial system. Biometric technology is not only extremely costly, but also has serious privacy implications and is subject to abuse and fraud.⁸⁹ Thus, countries must weigh the ease of methods to register voters with providing secure, effective, and efficient elections.

B. Prisoner Disenfranchisement

State legislation that prohibits prisoners from voting, and thus disenfranchises individuals convicted of crimes, is a prevalent form of direct interference by law in guaranteeing the right to vote. The Human Rights Committee has stated that “[i]f conviction for an offense is a basis for suspending the right to vote, the period of such suspension should be proportionate to the offence and the sentence.”⁹⁰ Further, in 2005, European Court of Human Rights determined that a blanket ban on voting from prison violates the European Convention on Human Rights, which guarantees the right to free and fair elections under Protocol I, Article 3.⁹¹

⁸⁴ Carter Center Report, at 27.

⁸⁵ “Voter Registration: Biometric Voting Registration for fair and credible elections,” M2SYS Accelerated Biometrics, available at <http://www.m2sys.com/automated-fingerprint-identification-system-afis-voter-registration.htm> (accessed on February 24, 2014).

⁸⁶ United Nations Development Program (UNDP), “UNDP Support to Zambia’s electoral system – Advancement of Technology Integrated,” available at <http://www.undp.org/content/zambia/en/home/ourwork/democraticgovernance/successstories/advancement-of-technology-integrated-into-electoral-system/> (accessed on February 23, 2014).

⁸⁷ UNDP, “Biometric Voter Registration Kits Arrive in Yemen, Signaling a New Era for Yemen,” (September 15, 2013), available at <http://www.undp.org/content/yemen/en/home/presscenter/pressreleases/2013/09/15/biometric-voter-registration-kits-arrive-in-yemen-signaling-a-new-era-for-yemen/> (accessed on February 23, 2014).

⁸⁸ Joana Mantey, “Ghana Confronts Challenges of Biometric Voter Registration,” Voice of America (March 18, 2012), available at <http://www.voanews.com/content/ghana-confronts-challenges-of-biometric-voter-registration-143308506/181380.html> (accessed on February 23, 2014).

⁸⁹ J. Kenneth Blackwell and Kenneth A. Klukowski, “Policy Essay: The Other Voting Right: Protecting Every Citizen’s Vote by Safeguarding the Integrity of the Ballot Box,” 28 Yale Law & Policy Review 107 (Fall 2009).

⁹⁰ General Comment No. 25, at para. 14.

⁹¹ *Hirst v. United Kingdom* (No. 2), 681 European Court of Human Rights (2005).

The U.S. has some of the most restrictive prisoner disenfranchisement policies at the subnational level as the laws prohibit an estimated 5.85 million Americans from voting because of a past criminal conviction.⁹² Further, felony disenfranchisement is exacerbated by racial disparities in the criminal justice system. In the U.S., one of every 13 adult African Americans (or 7.7%) is unable to vote. Additionally, Hispanic men and Hispanic women are incarcerated in state and federal prisons at higher rates than non-Hispanics.⁹³ Each state in the U.S. has its own laws governing criminal disenfranchisement, which vary widely from state to state. While most U.S. states terminate voting restrictions at the end of an offender's term of incarceration, some states permanently disenfranchise prisoners.⁹⁴ Fourteen states prohibit only current inmates from voting, four states prohibit prisoners and parolees from voting, 20 states prohibit prisoners and those on parole and probation from voting, and 11 states allow for permanent disenfranchisement of prisoners. Only two states, Maine and Vermont, do not restrict the rights of anyone with a felony conviction from voting, as both states allow felons to vote even while in prison.⁹⁵

Permanent disenfranchisement for a felony conviction fails to meet the reasonable, objective, and proportional requirements of permissible electoral laws under ICCPR Article 25.⁹⁶ Such legislation is not only inconsistent with the length of the sentence or type of crime, but also inconsistent in regards to the length of the prohibition. This conclusion is consistent with the Human Rights Committee's 2006 Concluding Observations after the U.S.' review.⁹⁷ The 11 U.S. states that allow for the permanent disenfranchisement of current prisoners and former prisoners on parole, probation, and post-sentence total about 45% of the entire disenfranchised population.⁹⁸ Florida disenfranchises the highest proportion of the African American voting age population among all 50 U.S. states and disenfranchises African American citizens at more than twice the rate of non-African American citizens.⁹⁹ Iowa, Kentucky, and Virginia also have laws that permanently disenfranchise all people with felony convictions.¹⁰⁰ However, the U.S. federal government and several states have advocated for the repeal of felony disenfranchisement laws,

⁹² The Sentencing Project, "Felony Disenfranchisement," *available at*

<http://www.sentencingproject.org/template/page.cfm?id=133> (accessed on February 24, 2014).

⁹³ The Sentencing Project, "Democracy Imprisoned: A Review of the Prevalence and Impact of Felony Disenfranchisement Laws in the United States," (September 2013), at 2, *available at*

http://www.sentencingproject.org/doc/publications/fd_ICCPR%20Felony%20Disenfranchisement%20Shadow%20Report.pdf.

⁹⁴ Joint Submission Authored by ACLU of Florida "United States' Compliance with the International Covenant on Civil and Political Rights," 107th Session of the Human Rights Committee, Geneva (March 11-28, 2013), at 2, *available at* http://www2.ohchr.org/english/bodies/hrc/docs/ngos/ACLUFLJointSubmission_USA107.pdf.

⁹⁵ Jean Chung, "Felony Disenfranchisement: A Primer," The Sentencing Project (June 2013), at 1, *available at* http://www.sentencingproject.org/doc/publications/fd_Felony%20Disenfranchisement%20Primer.pdf.

⁹⁶ The Sentencing Project, "Democracy Imprisoned," at 2-3.

⁹⁷ "Concluding Observations of the Human Rights Committee: United States of America," CCPR/C/USA/3/Rev.1, UN Human Rights Committee 87th session from July 10-28, 2006 (December 18, 2006), at para. 35, *available at* <http://www.refworld.org/publisher,HRC,CONCLOSURE,USA,45c30bec9,0.html>.

⁹⁸ Jean Chung, "Felony Disenfranchisement: A Primer," (June 2013), at 1.

⁹⁹ Florida passed legislation in 2011 that re-introduced the permanent disenfranchisement of all prisoners and ex-prisoners unless they receive discretionary executive clemency. Joint Submission Authored by ACLU of Florida (2013) at 2.

¹⁰⁰ Brennan Center for Justice, "Criminal Disenfranchisement Laws Across the United States," (2011), *available at* <http://www.brennancenter.org/sites/default/files/legacy/Democracy/USA%20MAP%203.23.2011.pdf>

including the state of Kentucky, which has a permanent felony disenfranchisement law.¹⁰¹ Opponents of such laws also argue that criminal disenfranchisement violates Section 2 of the Voting Rights Act.¹⁰²

In addition to the U.S., four other countries, including Armenia, Belgium, Chile, and Finland, place restrictions on felons subsequent to their release. Whereas Belgium restricts felons from voting after they are released if the sentence was over seven years, Finland bans felons from voting for up to seven years after imprisonment.¹⁰³ Other countries restrict felons from voting while in prison, however, do not limit felons' voting rights upon release. These countries include Argentina, Brazil, Bulgaria, Estonia, Hungary, India, Mexico, New Zealand, Russia, San Marina, and the United Kingdom.¹⁰⁴ In Mexico, incarcerated persons are prohibited from voting; however, voting rights are restored subsequent to release.¹⁰⁵ Some countries place selective restrictions on felons while in prison, including Australia, Belgium, Bosnia, France, Germany, Greece, Iceland, Italy, Luxembourg, Malta, Poland, Portugal, Romania, and some states in the U.S.¹⁰⁶ Though Germany generally does not restrict convicted felons from voting and even allows felons to vote while in prison, German courts may ban felons from voting in rare cases.¹⁰⁷ In Iceland, another example, felons' whose sentence is at least four years are banned from voting.¹⁰⁸

In comparison, 21 countries represent positive examples in eliminating blanket disenfranchisement of prisoners, including Austria, Canada, South Africa, Sweden, Israel, Ireland, Slovenia, Switzerland and others.¹⁰⁹ For example, the Supreme Court in Canada and the Constitutional Court of South Africa have both found that blanket disenfranchisement of prisoners violates democratic principles. Canada and South Africa now allow convicted persons to vote even while in prison.¹¹⁰

C. Language Barriers

In addition to the obligation of states to take "positive measures" to overcome language barriers that prevent persons from exercising the right to vote, General Comment No. 25 to the ICCPR also provides that states should make available information and materials about voting in

¹⁰¹ Tomas Lopez and Rev. Patrick Delahanty, "Felony Disenfranchisement Laws Have a Long, Shameful History," Brennan Center for Justice (February 24, 2014), available at <http://www.brennancenter.org/analysis/felony-disenfranchisement-laws-have-long-shameful-history>.

¹⁰² Andrew L. Shapiro, "Challenging criminal disenfranchisement under the Voting Rights Act: A new strategy," Yale Law Journal, 103 (2) (November 1993), 537-566.

¹⁰³ Felon Voting, "International Comparison of Felon Voting Laws," available at http://felonvoting.procon.org/view_resource.php?resourceID=289 (accessed on February 4, 2014) (hereinafter International Felon Voting Laws).

¹⁰⁴ *Id.*

¹⁰⁵ International CURE, "Dignity of the Individual: Evaluation of Prisons in the Organization of American States," Third World Conference (June 2006), at 77, available at http://www.internationalcure.org/pdfs/oas_justice.pdf.

¹⁰⁶ International Felon Voting Laws.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Sauvé v. Canada* (Chief Electoral Officer), 2002 SCC 68; *Minister of Home Affairs v. Nat'l Inst. for Crime Prevention & the Re-Integration of Offenders (NICRO)*, 2004 (5) BCLR 445 (CC) (S. Afr.).

minority languages.¹¹¹ Language barriers can affect voter participation because language minorities are less able to navigate the voter registration process. Further, language minorities face the dual problem of voting difficulty due to the inadequate number of bilingual poll workers or ballots, as well as logistical problems that result from other forms of geographic and social isolation from election authorities.¹¹²

The U.S., Canada, Australia, New Zealand, the United Kingdom, Sweden, and Denmark provide multilingual information about registration and voting in non-national languages.¹¹³ In the U.S., federal law targets language minorities suffering from a history of political exclusion and mandates states to provide notices, forms, and other election-related materials in English and in minority languages.¹¹⁴ Some U.S. states have failed to uphold such obligations; however the U.S. federal government has made positive steps by issuing guidelines for individual states on effectively implementing federal law regarding language minority groups.¹¹⁵ The guidelines intend to effectuate the objective of the Voting Rights Act, particularly to enable members of applicable language minority groups to participate effectively in the electoral process, and call on states and political subdivisions to “take all reasonable steps to achieve that goal.”¹¹⁶ Canada, on the other hand, relies on communication and outreach strategies rather than legislation to encourage electoral participation of immigrants and cultural minorities. During the 2006 federal election, Canada’s electoral authority published a “Voter Information Guide,” conducted radio broadcasts, and published ads in over 20 different languages; placed advertisements in minority-language newspapers and ethnocultural newspapers; and issued a television campaign with voice-overs of ads in 12 additional languages.¹¹⁷

The experience in the country of Georgia illustrates another positive example. Following the introduction of specific initiatives to produce voting resources in national minority languages, studies show that members of minority communities, Azeris and Armenians, have increased understanding of the electoral process.¹¹⁸ However, other Eastern European countries, including those with Roma populations, fail to uphold their respective obligations to provide election materials in minority languages. For example in Latvia, the electoral law was interpreted as allowing only for election materials in Latvian.¹¹⁹ Similarly in Ukraine, the

¹¹¹ General Comment No. 25, at para. 12.

¹¹² *Id.*

¹¹³ Livianna Tossutti, “The Electoral Participation of Ethnocultural Communities,” Elections Canada, Working Paper Series on Electoral Participation and Outreach Practices (2007), at 25, *available at* http://www.elections.ca/res/rec/part/paper/ethnocultural/ethnocultural_e.pdf.

¹¹⁴ This includes Spanish, Asian, Native American, and Alaskan Native. Voting Rights Act of 1965, 28 CFR Part 55.6 (1975).

¹¹⁵ “Part 55—Implementation of the Provisions of the Voting Rights Act Regarding Language Minority Groups,” 28 CFR Part 55, Department of Justice, Federal Register Vol. 76, No. 169 (August 11, 2011), *available at* http://www.justice.gov/crt/about/vot/sec_203/28cfr55_2011.pdf (hereinafter Part 55).

¹¹⁶ *Id.*, § 55.2 (2011).

¹¹⁷ Tossutti (2007), at 27.

¹¹⁸ Organization for Security and Cooperation in Europe (OSCE), “Georgia Extraordinary Presidential Election OSCE/ODIHR Election Observation Mission Report,” (February 28, 2004), at 15, *available at* <http://www.osce.org/odihr/elections/georgia/24600>.

¹¹⁹ OSCE, “OSCE/ODIHR Review of Electoral Legislation and Practice in OSCE Participating States,” (October 15, 2013), at 38, *available at* <https://www.osce.org/odihr/elections/107073>.

election law only allowed for campaign materials in Ukrainian during the 2012 elections.¹²⁰ Additionally, Lithuania and Slovakia lacked adequate voter education materials in minority languages during recent elections.¹²¹

IV. Recommendations for Action

The right to vote is a fundamental human right, crucial to protecting and promoting access to other human rights. Violations of this right have a particularly adverse and disproportionate impact on low-income populations, racial and linguistic minorities, women, youth, physically disabled, and the elderly. Human Rights Advocates (HRA) urges:

1. States to:

- Reform their voting laws to ensure any restrictions on voting are reasonable, objective, and proportional; and
- Develop effective mechanisms for challenging electoral irregularities.

2. The Human Rights Council to create a separate mandate regarding the right to vote to investigate various aspects of this right, including states' electoral laws that derogate from the reasonable, objective, and proportionate requirements under Article 25 of the International Covenant on Civil and Political Rights, and promote good practices that encourage free and fair elections.

¹²⁰ *Id.*

¹²¹ *Id.*