Unrepresented Nations and Peoples Organization (UNPO)

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UNREPRESENTED PEOPLE OF THE U.S.A.

The UNPO is an international membership-based organization established to empower the voices of unrepresented and marginalized peoples worldwide and to protect their fundamental human rights. The peoples represented within the UNPO membership are all united by one shared condition: they are denied equal representation in the institutions of national or international governance. As a consequence, their opportunity to participate on the national or international stage is limited, and they struggle to fully realize their rights to civil and political participation and to control their economic, social and cultural development. The UNPO membership includes the District of Columbia, whose citizens are the subject of this report. The UNPO acts independently of its members and works on the issues of unrepresented peoples worldwide. To that end, it is established a Netherlands-registered non-governmental organization, established as “Public Benefit Organization” under the law of the Kingdom of the Netherlands.
SUMMARY

1. This submission provides additional information on the implementation of civil and political rights in the United States of America (U.S.A. or U.S.). It focuses on the implementation of the International Covenant on Civil and Political Rights (ICCPR or the Covenant) and the Convention on the Elimination of Racial Discrimination (CERD) and the disenfranchisement of the people of the District of Columbia and the five, permanently-inhabited, “unincorporated” U.S. territories (Puerto Rico, Guam, U.S. Virgin Islands, American Samoa, and the Northern Mariana Islands). Because of legal restrictions on the citizenship rights of these people, currently over 4 million people in the U.S.A. are summarily denied the right to vote by law simply on account of their national origin, birth or place of residence in direct contravention of U.S. obligations contained in the ICCPR and the CERD.

BACKGROUND

I. Composition of the U.S.A

2. The U.S.A. is comprised of the 50 States, the District of Columbia, the seat of the U.S. government, five permanently-inhabited, “unincorporated” U.S. Territories (Puerto Rico, Guam, U.S. Virgin Islands, American Samoa, and the Northern Mariana Islands), and various uninhabited possessions.¹

3. The District of Columbia, as the seat of the Federal government, occupies a special place in the U.S. Constitutional order. It has had various Constitutional arrangements through its history, originally being placed under the exclusive control of the U.S. Federal government. In 1971 it gained a measure of self-government with the passage of the District of Columbia Home Rule Act, providing for an elected mayor and a 13-member Council for the District.

4. However, the Federal government continues to exercise significant control. Congress reviews all legislation. The U.S. President appoints the District’s judges. And the Council is prohibited from enacting certain laws, such as taxing workers in the District who live outside of it, making any changes to the act governing the height of buildings in the District, enacting an unbalanced budget, or taking over additional authority over planning, water and civil defense functions currently assigned to designated commissions and agencies.

5. The U.S. Territories are historically different. The concept of a territory is an old one, in U.S. terms. As the U.S. expanded across the North American continent – subjugating and eliminating the indigenous populations along the way – newly conquered areas were organized into “Territories”. Over time, these territories were “incorporated” into the U.S.A by being granted statehood. Overseas territories were later conquered as a result of the U.S. policies during the colonial era.

6. Colonial possessions gained in this regard included Alaska, Hawaii, the Phillipines, Puerto Rico, Guam, the Northern Mariana Islands, American Samoa and the U.S. Virgin Islands. Of these, the Phillipines was granted independence in 1946, and Alaska and Hawaii were granted statehood in 1959, following referenda. The
 Territories of Puerto Rico, Guam, Northern Mariana Islands, American Samoa and the U.S. Virgin Islands, however, continue in the legal limbo of neither being a state nor an independent country.

7. Similar to the District of Columbia, the U.S. Territories have measures of local governmental powers, contrasted with certain additional powers of the U.S. Congress. The U.S. Territories have a larger degree of sovereignty than the District of Columbia, for instance, being exempt from Federal taxation. But conversely they have more restricted civil rights.

II. U.S. Citizens & Nationals

8. In the U.S.A. a distinction exists between U.S. Citizens and U.S. Nationals. All U.S. Citizens are considered also to be U.S. Nationals, whereas U.S. Nationals are not always considered U.S. Citizens. Put simply, a U.S. National is a person who owes “permanent allegiance” to the United States, but who is not granted full citizenship or citizenship rights.2

9. Overtime, full citizenship has been granted to the residents of Puerto Rico (1917), U.S. Virgin Islands (1927), Guam (1950), and the Northern Mariana Islands in 1986.3 However, the people of American Samoa remain as U.S. Nationals and are thus denied the rights of U.S. Citizenship.

10. The people of the remaining U.S. Territories – and, of course, the District of Columbia – are all theoretically “full” U.S. Citizens. However, in fact and in law they, as with the people of American Samoa, they are not accorded all of the rights that are accorded to U.S. Citizens in the 50 States.

III. Voting and Representation

11. There are approximately 223,500,000 potentially-eligible voters in the U.S.A. In its 2018 report4 on the U.S. Federal elections, the Organization for Security and Cooperation in Europe (OSCE) noted that 5% of these otherwise eligible voters (11 million adults) are de jure disenfranchised. 6.1 million, or 3% of the potential electorate are disenfranchised because of laws restricting voting rights for those convicted of felony-level crimes. 4.7 million, or 2% of the potential electorate are disenfranchised because they reside in the District of Columbia or one of the five U.S territories. The people of the District of Columbia and the U.S. Territories are denied equal voting rights and representation at the Federal-government level compared to U.S. citizens residing in the 50 States of the U.S.A.5

12. The people of American Samoa, for example, are denied participation in U.S. Federal elections in toto. They may not vote in U.S. Federal elections even if they reside in the mainland U.S.A. The people of the District of Columbia and the four other U.S. Territories, may vote in U.S. elections if they reside elsewhere in the U.S.A. But they have highly-limited voting and representation rights when residing at home. For instance, none have any right of representation whatsoever in the U.S. Senate, even in terms of non-voting members.e6
13. Similarly, none have any direct and equal representation in the U.S. Congress, whether in the House of Representatives or the U.S. Senate. Rather, each may elect one non-voting member of the U.S. House of Representatives. These members may participate in and vote in Committees to which they are assigned, but they have no rights to vote at all outside of the Committees, meaning that their voting rights and influence is limited only to those subject matters governed by the Committees to which they are assigned and only to on the issues presented to them before a committee, not for example of a final piece of legislation, including the budget.

14. Voting rights are further limited with regard to participation in the election of the U.S. President. The people of the U.S. Territories are entirely ineligible to participate in U.S. Presidential elections when residing in the U.S. Territories. Prior to 1961, residents of the District of Columbia were not entitled to participate in these elections. The passage of the 23rd Amendment to the U.S. Constitution (ratified in 1961) brought the residents of the District closer to equality with other U.S. Citizens. The 23rd Amendment provides that the voting weight of the voters the District of Columbia may never be more than the least populous State, and thus does not provide full legal equality in U.S. Presidential elections.

IV. Impacts

15. This disenfranchisement is particularly troubling given the outsized role that the Federal government plays in the District of Columbia and the U.S. Territories. By disenfranchising the voters in these areas, the Federal government is shielded from direct democratic accountability, often resulting in policies and actions that run contrary to the interests of the resident and indigenous populations.

16. Stark examples of this disconnect between Federal government action and the interests of the resident populations have been regularly seen. For example, during the “Jim Crow” segregation-era, segregation laws applied in the District of Columbia, even as many States chose not to copy them, despite the District’s overwhelmingly African-American population. Since the end of segregation, the lack of voting representation combined with the circumscribed taxing, spending and legislating powers under the District’s “Home Rule” have constrained the people and government of the District of Columbia from being able to redress this historical wrong. The District, for example, continues to lag behind the rest of the United States in areas such as education and healthcare and, more generally has long struggled with high levels of inequality and violent crime and continued de facto segregation. The lack of representation has also led to environmental impacts, with the District still home, for example, to a coal plant used to provide heating and electricit to the U.S. Federal government in spite of local opposition.

17. The U.S. Territories also suffer significantly as a result of a lack of a true equal voice for their people. The 2017 Federal government response to the destruction caused to Puerto Rico by hurricane Maria, for example, was widely considered wholly inadequate and not responsive to Puerto Rican needs and interests. The people of Guam continue to struggle to have their contribution to the U.S. war effort in the Second World War adequately recognized by the U.S. Federal government.
And, on a larger and ultimately more devastating level, the recent withdrawal of the U.S.A from the various international efforts to combat climate change and rising sea levels runs contrary to the interests of the islands that make up the US. Territories for whom rising sea-levels and climate change pose an existential threat.

V. Attempts to Exercise Rights

18. To-date, residents of the District of Columbia and the U.S. Territories have been unable to secure their rights despite many efforts. In 2003, for instance, the Inter-American Commission on Human Rights in 2003 found the U.S. to be in violation of the American Declaration on the Rights and Duties of Man in disenfranchising residents of the District of Columbia. Yet, to-date, no effective measures have been taken to implement this judgment. Moreover, in 2018, the US Supreme Court declined to hear an appeal from the U.S. Territories in a case similar to the one brought by the District of Columbia and as a result, this case has now moved on to the Inter-American Commission.

19. In addition, a number of initiatives have been attempted to enable the people of the District of Columbia and the U.S. Territories to exercise their voting rights and express their will. The District of Columbia held a referendum on statehood in 2016 in which 86% of voters expressed a desire for statehood. Puerto Rico held a similar referendum in 2017 in which 97% of voters expressed a desire for statehood. Similar efforts in Guam and the Northern Mariana islands have been frustrated by U.S. Federal Court judgements preventing the holding of referenda targeted the wishes of the indigenous and ‘native-born” populations of those territories. Irrespective, the outcomes of the referenda in the District of Columbia and Puerto Rico have not led to concrete action by the U.S. government.

VIOLATION OF THE RIGHTS IN THE COVENANT

20. The denial of voting rights of the people of the District of Columbia and the U.S. Territories plainly violate the ICCPR and CERD.

21. **Article 1 (Self-Determination):** ICCPR Article 1 guarantees that “[a]ll peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” The Committee on the Elimination of Racial Discrimination in its General Recommendation Number 21 (CERD General Recommendation 21) emphasized that this right is inextricably linked “with the right of every citizen to take part in the conduct of public affairs at any level” and requires governments “to represent the whole population without distinction as to race, colour, decent, national, or ethnic origin.” By denying direct representation in the U.S. Congress and the voting rights of the people of the District of Columbia and the U.S. Territories, the U.S.A, is persistently failing to establish a system of government that is capable of representing the whole population of the U.S.A.

22. Furthermore, CERD General Recommendation 21 emphasized that the right to self-determination implies that all people have the right to determine freely their political status “based upon the principle of equal rights and exemplified by the liberation of
peoples from colonialism and by the prohibition to subject peoples to alien
subjugation, domination, and exploitation.” By ignoring the referenda in the District
of Columbia and Puerto Rico and in denying the indigenous inhabitants of its
colonial possessions, such as Guam and the Northern Mariana Islands, the right to
hold referenda targeting the indigenous populations, the U.S.A. is acting in
violation of these principles.

23. **Article 2 (Equality & Remedies):** ICCPR Article 2(1) requires each State to
guarantee “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.” The U.S. has implemented ICCPR-
guaranteed public participation rights in a manner that has inherent distinctions
between and among individuals within its territory on the basis of their national or
social origin, birth and geographic location. The people of American Samoa are
summarily denied any voting rights simply as a result of their birth. The people of
the District of Columbia and the other US Territories are similarly constrained
simply as a result of their geographic location and, in many instances, their birth.

24. As highly ethnically-diverse areas, the disenfranchisement of these U.S. Citizens
cannot be separated from the history of racial discrimination in the U.S.A. This is
particularly true with regard to the majority-African American District of Columbia.
The failure to guarantee rights to the people of the District contributes to the overall
failure of the United States to guarantee the rights contained in CERD Article 5. It
also contributes to the failure to provide adequate remedies, guaranteed in ICCPR
Article 2 and CERD Article 6, for the past violations of the rights caused by the
history of slavery and segregation in the U.S.A.

25. Furthermore, the failure of the U.S.A. to adequately implement the judgment of the
Inter-American Commission on Human Rights with regard to violations resulting
from the denial of voting rights to the people of the District of Columbia, or to
respond to the referenda in the District of Columbia or Puerto Rico evinces a failure
to accord remedies to this problem more generally in the U.S.A.

26. **Article 25 (Public Participation):** ICCPR Article 25 guarantees that “[e]very
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.” Each of these provisions are violated both in law and in fact
by the U.S.A. by the denial of rights to the people of the District of Columbia and
the U.S. Territories.

27. In addition to creating a distinction between “ordinary” U.S. Citizens and the people
of the District of Columbia and the U.S. Territories in violation of ICCPR Article 2,
the U.S.A. directly denies these people the right to take part in the conduct of public
affairs through freely chosen representatives, by denying representation in the U.S. Senate and limiting the representation in the U.S. Congress. It also denies them their basic rights to vote on the basis of universal and equal suffrage. And, in terms of the U.S. Nationals of American Samoa, it denies access to public service.\textsuperscript{15}

**RECOMMENDATIONS**

In light of the persistent and long-standing discrimination against the people of the District of Columbia and the U.S. Territories the U.S.A. should:

i. Allow all Citizens and Nationals of the U.S.A. the right to participate on an equal basis in the elections for the U.S. President.

ii. Grant full and equal representation in the U.S. Congress to the people of the District of Columbia and the U.S. Territories, by for instance, putting the elected representatives in the U.S. House of Representatives on an equal footing with other representatives, and giving the District of Columbia and the U.S. Territories representation in the U.S. Senate.

iii. Take steps to ensure that the will of the people in the District of Columbia and the U.S. Territories with regards to the question of their political status is adequately accorded by, for instance, ensuring a process towards statehood in light of the referenda results in Puerto Rico and the District of Columbia, and by determining a way through which the indigenous populations of U.S. colonial possessions can adequately express their political will.
1 Under the U.S. Constitution, each State is guaranteed two Senators in the Senate of the U.S. Congress, the upper house. Meanwhile, each State elects between one and (currently) 53 representatives to the House of Representatives, the lower-house of the U.S. Congress, with the number of representatives determined by population and a district-level apportioning system that aims to achieve a level of parity to give all citizens an equal vote. A similar formula is applied to create the “electoral college” to elect the U.S. President. While there are significant criticisms of this system, baseline assumption is that each citizen should have an equal vote and equal representation within the U.S. Congress and in electing the President. This assumption, however, simply does not apply when it comes to the people of the District of Columbia and the U.S. Territories.

2 U.S. Nationals have the right to live and work in the mainland U.S.A., similar to U.S. permanent residents. They may apply for a U.S. passport and are entitled to the protection of U.S. consular offices when they are traveling abroad. However, they are denied many other benefits of U.S. citizenship, including the right to apply for jobs that require U.S. citizenship and the right to vote in U.S. elections.

3 The people of the Northern Mariana Islands can elect to become non-citizen U.S. nationals within six months of turning 18.

4 Available at https://www.osce.org/odihr/elections/usa/411251

5 Notably, this situation contrasts with the rights of overseas voters from the U.S. mainland. Residents of the 50 States and the District of Columbia retain their rights to vote via those States or the District even after they have established official residence in a foreign country. It is estimated that there are approximately 3 million voting age U.S. citizens living abroad, eligible to vote in U.S. federal elections, an unfortunate contrast with the approximately 4 million U.S. Citizens currently living within the United States who are ineligible to vote because of where they live. (see https://www.fvap.gov/uploads/FVAP/OCPANewsRelease_20180911_FINAL.pdf)

6 Puerto Rico and the District of Columbia have created “Shadow Representatives” and “Shadow Senator” positions, locally-elected officials who are neither seated nor sworn by the U.S. House or Representatives or Senate, but who are recognized as equivalent to full Representatives and Senators locally and who seek to advance rights to and prepare for statehood. These positions follow similar positions historically created in some territories that subsequently gained statehood (e.g. Tennessee, Michigan, California, Minnesota, Oregon and Alaska).

7 Those living in the U.S. Territories may remain eligible to vote if they retain official residence in one of the 50 States or the District of Columbia. However, this does not equally benefit the historical and/or indigenous populations of the U.S. Territories, many of whom do not have historical ties to the U.S. mainland, furthering inequality between those populations and those from the U.S. mainland.

8 As yet this does not have a practical consequence because the population of the District (approx. 633,000) is not materially different from the population of the least populous state, Wyoming (approx. 578,000).

9 The District of Columbia is the seat of the Federal government and the U.S. Territories host major U.S. government military installations because of their strategic locations.


11 Available at http://cidh.org/annualrep/2003eng/USA.11204.htm


14 There is currently proposed legislation in the U.S. Congress, House Bill HR 51 and Senate Bill S. 631, that would make the District of Columbia a state.

15 While it is true that these people, with the exception of the people of American Samoa, can “gain” voting rights by moving to another part of the U.S.A., such a requirement imposes a heavy burden, particularly on those born in these areas, because it would likley require separation from family, cultural and historical ties and potentially the relinquishment of jobs and property. It does not provide a level of equality with the people of the mainland U.S.A. or the 50 States, including those living abroad, and, as a result, constitutes an unreasonable restriction of rights.