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**International Human Rights Association of American Minorities (IHRAAM)**

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COSPONSORS:

**Indigenous Peoples' and Nations' Coalition, Geneva**

**International Human Rights Council, London**

**Iota Phi Theta Fraternity, Baltimore**

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**National Coalition of Blacks for Reparations in America (N'COBRA), Washington, DC**

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**National Conference of Black Lawyers, Chicago Chapter**

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**This Report is prepared by IHRAAM<sup>1</sup> in collaboration with cosponsoring organizations.<sup>2</sup> It addresses violations of African Americans' right to education, and in particular the threat to Historically Black Colleges and Universities (HBCUs) in the United States, resulting from United States federal and state policies and Supreme Court decisions, despite their international legal protection under numerous instruments.**

## **Discrimination Against African Americans in Education**

1. Longitudinal data covering the last 50 years suggest that African Americans still suffer from disproportionately lower standing in social indicators measuring well being.<sup>3</sup> This is no less the case with indicators related to education.<sup>4</sup> They are also disproportionately impacted by closings of schools and firings of

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<sup>1</sup> IHRAAM is an international NGO in Consultative Status with ECOSOC since 1993 (see <http://www.ihraam.org>). Preparatory to and as documentary sources cited in this report, it sponsored the original research presented at the following events with the published proceedings available in pdf format: [From Civil Rights to Human Rights & Self-Determination? Published Proceedings of the IHRAAM Chicago Conference 2012](#) and [International Human Rights & Empowering HBCUs. Published Proceedings of the IHRAAM Atlanta Seminar 2014](#). It also sponsored the research surveys referenced below.

<sup>2</sup> The following organizations are cosponsors of this report:

Indigenous Peoples' and Nations' Coalition  
International Human Rights Council  
Iota Phi Theta Fraternity, Baltimore  
National Coalition of Blacks for Reparations in America (N'COBRA)  
National Conference of Black Lawyers, Chicago Chapter

<sup>3</sup> Brad Plumer, "These ten charts show the black-white economic gap hasn't budged in 50 years," Washington Post, August 28, 2013. <<http://www.washingtonpost.com/blogs/wonkblog/wp/2013/08/28/these-seven-charts-show-the-black-white-economic-gap-hasnt-budged-in-50-years/>> The charts were prepared by the Economic Policy Institute in its report of June 18, 2013 titled "The Unfinished March" <<http://www.epi.org/publication/unfinished-march-overview/>> The Report noted:

**Still in segregated and unequal schools. Marchers demanded adequate and integrated education, but that has not been achieved.** In 1963, Roy Wilkins, executive secretary of the NAACP, noted that in the nine years since the 1954 *Brown v. Board of Education* decision, "our parents and their children have been met with either a flat refusal or a token action in school desegregation." In the late 1960s, 76.6 percent of black children attended majority black schools. In 2010, 74.1 percent of black children attended majority nonwhite schools. These segregated schools do not have the same resources as schools serving white children, violating the core American belief in equality of opportunity.

<sup>4</sup> 1) "Achievement Gaps: How Black and White Students in Public Schools Perform in Mathematics and Reading on the National Assessment of Education Progress: Statistical Analysis Report", National Center for Education and Statistics, <http://s3.documentcloud.org/documents/229044/achievementgaps-naep.pdf>; "At the state level, gaps in grade 4 reading existed in 2007 in the 44 states" (p...) "The fourth-grade mathematics gap in 2007 was statistically significant in all 46 states for which data could be reported" (p. 25). 2) "Status and Trends in the Education of Racial and Ethnic Groups", US Department of Education, National Center for Education Statistics, July 2010, <http://nces.ed.gov/pubs2010/2010015.pdf> "Of the students who entered high school in the 2003–04 school year, 74 percent graduated within 4 years, including 91 percent of Asians, 80 percent of Whites, 62 percent of Hispanics, 61 percent of American Indians/Alaska Natives, and 60 percent of Blacks. (Indicator 18.2)" (p. 7) "In 2008, some 44 percent of White 18- to 24-year-olds were enrolled in colleges and universities, while in 1980 some 28 percent were enrolled. In addition, approximately 32 percent of Black 18- to 24-year-olds were enrolled in colleges or universities" (p.8). Statistics cited here represent only a few of the many areas of comparison available in the cited government documents.

teachers in their communities.<sup>5</sup> Article 13:1<sup>6</sup> and 13:2:c<sup>7</sup> of the International Covenant on Educational, Social and Cultural Rights (IESCR) and Article 5 (d)(v)<sup>8</sup> of the Convention on the Elimination of All Forms of Racism (CERD) underscore the right of all to education. CERD Article 4.1<sup>9</sup> implicitly calls upon states to enact Special Measures (Affirmative Action) in order to address these violations and explicitly specifies that until such time as equal standing of racial/ethnic groups has been achieved, “such measures are not to be regarded as a form of reverse discrimination”.

2. However, as it relates to K-12, the US has decreased affirmative action programs such as No Child Left Behind,<sup>10</sup> Pell Grants,<sup>11</sup> and Head Start<sup>12</sup> related to public schooling.
3. In higher education, US Supreme Court decisions from *Regents of the University of California v. Bakke* (1978), which found that racial quotas violated the Equal Protection Clause of the 14<sup>th</sup> Amendment, on through to *Fisher vs. Texas* (2013) which required the university’s program to pass a test of “strict scrutiny” to prove that there are no other alternatives for diversifying the student

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<sup>5</sup> Lindsay Layton, “Are School Closings ‘the New Jim Crow’? Activists File Civil Rights Complaints,” *Washington Post*, May 18, 2014. MSNBC, “School closures disproportionately impact African American and Latino students,” 01/02/14 <<http://www.msnbc.com/jansing-and-co/watch/school-closures-impacting-minority-students-10532819562>> 6See chart, Shrinking Public School Districts, <<http://thinkprogress.org/wp-content/uploads/2014/05/Screen-Shot-2014-05-14-at-11.26.42-AM-638x539.png>>

<sup>6</sup> IESCR 13:1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace

<sup>7</sup> IESCR 13:2:(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

<sup>8</sup> CERD 5(d)(v): The right to education and training.

<sup>9</sup> CERD 1:4. “Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.”

<sup>10</sup> As at December 2011, 156 civil rights, religious, children's, disability, and civic organizations (see Joint Organizational Statement on No Child Left Behind (NCLB) Act at <http://www.fairtest.org/joint-organizational-statement-no-child-left-behind>) called for the following funding changes:

- Raise authorized levels of NCLB funding to cover a substantial percentage of the costs that states and districts will incur to carry out these recommendations, and fully fund the law at those levels without reducing expenditures for other education programs.
- Fully fund Title I to ensure that 100 percent of eligible children are served.

<sup>11</sup> See Table, Highlights of Obama's Fiscal-2014 Budget for Higher Education and Science, *Chronicle of Higher Education*, April 10, 2013, reporting on release of Obama’s 2014 budget: <http://chronicle.com/article/Presidents-Plan-Would/138473/> The article is misleadingly entitled “Obama’s Plan Would Increase Pell Grants...” referring to the 2% increase in individual grants, ignoring the more significant 15% reduction in Pell Grants overall, as indicated in the Table.

<sup>12</sup> Adrienne Liu, “Head Start hit with worst cuts in its History” *USA Today*, August 20, 2013 <http://www.usatoday.com/story/news/nation/2013/08/19/stateline-head-start/2671309/>

body without specifically addressing the issue of race<sup>13</sup>—a requirement which might well be viewed as elusive of proof<sup>14</sup>—judicial rulings have sought to brake African American efforts to seek redress through this affirmative action, in violation of US obligations under CERD.

**Recommendation:**

4. Restore/expand federal funding for No Child Left Behind, Pell Grants, Head Start, TRIO, Title III and cognate programs
5. Establish by democratic process a White House Initiative for African American Public Education<sup>15</sup>

## **HISTORICALLY BLACK COLLEGES AND UNIVERSITIES (HBCUS) AS AN AFRICAN AMERICAN INTERNATIONAL MINORITY RIGHT**

6. The threat to Historically Black Colleges and Universities (HBCUs) is viewed in the context of Articles 1<sup>16</sup> and/or Article 27 of the International Covenant on Civil and Political Rights (ICCPR), as the international legal framework most applicable to African Americans, who are a national minority or a people,<sup>17</sup> not a racial minority.

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<sup>13</sup> See <http://www.ncsl.org/research/education/affirmative-action-court-decisions.aspx> The Court-animated ambiguities and complexities applied to the issue and the resultant lack of clarity in the applicability of affirmative action (special measures) in US law is well expounded in John C. Brittain, "Affirmative Action Survives Again in the Supreme Court on a Legal Technicality: An Analysis of *Fisher v. University of Texas at Austin*", *Howard Law Journal*, Vol. 57, No. 3, 2014.

<sup>14</sup> The difficulties of proving a negative are self-evident, deriving from an inability to exhaust the possibilities, to say nothing of the costs and logistics required to do so..

<sup>15</sup> This White House Initiative for African American Public Education might parallel the White House Initiative of HBCUs, but avoiding the present shortcomings in the latter, as addressed below.

<sup>16</sup> The right of African Americans to exercise the self-determination rights of peoples as protected in common article 1 of the International Bill of Rights as elaborated by international legal expert and IHRAAM Director, Professor Francis A. Boyle, derives from the United States' historic systemic violations of their rights via slavery and apartheid, and ongoing deleterious standing in social well being indicators. This international legal perspective was delivered at the 2012 IHRAAM-sponsored 2-day Conference, FROM CIVIL RIGHTS TO HUMAN RIGHTS & SELF-DETERMINATION? The Conference Proceedings were co-published by IHRAAM and Clarity Press, Inc., see < <http://www.ihraam.org/Conferences-Chicago2012-Book.html>>. The text is available online at <<http://www.ihraam.org/Documents/Conferences-Chicago2012-Boyle.html>>

<sup>17</sup> It was not until 1954 via *Brown v. Board of Education* that the United States began to officially establish *de jure* equality between African Americans and the rest of the American population. Over the 165-year period between the official founding of the United States in 1789 and *Brown* in 1954, African Americans' systemic legal relationship with the United States was as a separate people via the institutions of slavery and segregation. For a little over a century prior to that, captured Africans had been involuntarily imported to North America where they were collectivized by the institutions of slavery, leading to the appearance of a new ethnicity endemic to America: African Americans. When the United States officially came into existence as a state in 1776, the African American people, albeit enslaved, comprised one of the founding peoples, along with the similarly emerging new ethnic group endemic to the United States forged from the Anglo-Saxonization of the European settler population: white Americans. While this Report views African Americans as a national minority, IHRAAM recognizes that African Americans may in future self-define as a people, based on research and surveys which indicate that this is their preferred direction. Whether African Americans are a people or not is primarily dependent, per international legal norms, on whether they so identify. No process was instituted to officially seek the approval of the African American people as a whole concerning the mode of their new incorporation into America upon the dissolution of segregation, or to indicate that there was a choice among various means by which same might be accomplished (an assimilationist civil rights model, or a collective /

7. The customary law of states and the general comment and writings of experts on Article 27 all attest to the fact that the right to cultural identity requires special rights for its enforcement, rights for which the group concerned is to be the specific beneficiary, rights which are not temporary, but ongoing. The rights of such groups have been summarized as the special right to institutions:<sup>18</sup> systemic rights which enable them to have policy and rule-making powers to address their unique needs for cultural protection and socio-economic development, with the latter seen as needed to ensure the former.<sup>19</sup>

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minority rights model which might have facilitated their constitutional-legal recognition as a founding people, with retention and control over their existing institutions).

In 1975 the Ph.D. thesis of IHRAAM Founder, Dr.Y. N. Kly, titled *International Law and the Black Minority in the US* (subsequently published and well-reviewed in the *American Journal of International Law*) surveyed African American organizations, finding that the majority of them did not support the notion of being assimilated into Euro-American culture. While it might be argued that in the Civil Rights era support for that view has eroded, an IHRAAM-conducted scholarly survey related to assessing African American support for internal self-determination and collective empowerment conducted by Dr. Farid I. Muhammad in 1999 provided findings that indicated: (a) 81% of African-Americans would opt for some form of independent control of their own communities, (b) 69% felt they had the right to have their unique issues addressed in a "collective" manner, and (c) 67% approved of the independent creation of a National Assembly to represent their own collective interests. A follow-up survey conducted in 2013 indicated that the percentage demonstrating attitudinal support relative to these 3 areas had increased to: (a) 92%, (b) 74% and (c) 76% respectively. See [http://www.ihraam.org/Documents/Muhammad\\_2000Survey.html](http://www.ihraam.org/Documents/Muhammad_2000Survey.html)

(This link will soon include results of a similar community survey being conducted among 130,886 residents of Atlanta, Georgia (85.3 % of whom are African-American) and who live in U.S. census tract areas that are geographically contiguous to three (3) major HBCUs. This study, which will be completed by December, 2014, is designed to assess the levels of socio-political, economic and cultural synergy that exist between these premier and exemplary HBCUs and the largely blighted ethnic communities in which these institutions exist.)

<sup>18</sup> This succinct encapsulation of minority rights was personally conveyed by then UN Special Rapporteur on Minorities, Asbjorn Eide, to current IHRAAM Chair, Diana Kly, at a conference on self-determination held in Saskatoon, Canada on March 4, 1992.

It is well summarized here:

“Special protection of minorities derives legitimacy from the internationally recognized vulnerability of identity-based groups caused by their non-dominance in terms of number and power, which makes it difficult for them to achieve equality in the common national domain, while preserving their distinct identity. The idea of their guaranteed special rights is as old as the idea of the nation state. It got fully reflected in the charter of the League of Nations and the treaties on minorities signed under it. Under the multilateral treaties in the UN system, these rights have found more comprehensive and definitive expression in the now-binding Article 27 of the International Covenant on Civil and Political Rights (ICCPR) of 1966 and subsequently in the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992) along with the official explanations by the UN Human Rights Committee in 1994 and by Asbjorne Eide in 2001, which put an obligation on states parties (India included) to not only give minorities cultural freedom, but to create conditions favourable for the preservation and development of their identity. One important principle of the jurisprudence on minorities was propounded by the Permanent Court of International Justice in the Albania school case in 1935, under which different treatment of minorities for their effective enjoyment of substantive equality with the majority has not only been permitted but considered necessary.”

Iqbal A. Ansari, “Minority Education Rights: Supreme Court Judgment,” *Economic and Political Weekly*, May 10, 2003.

<sup>19</sup> The Declaration on Minorities Rights, supra note 9, states in Article 1:

1. 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.
2. States shall adopt appropriate legislative and other measures to achieve those ends.

8. IHBCUs represent the historic United States institutionalization of African American higher education upheld in 1896 (*Plessy v. Ferguson*) prior to the ending of the American apartheid policies commencing in 1954. As a result of the federally recognized and supported Civil Rights movement of the 1960s, the systemic relation of the African American people to the United States was changed from “separate but equal” to the civil rights paradigm of “same rights for all”. The impact upon black businesses and community empowerment was profound and negative.<sup>20</sup> This changed institutionalization has not relieved the ongoing disproportionately negative standing of African Americans in social well being indicators.<sup>21</sup>
  
9. While the United States did remove *de jure* segregation and proceed to replace it with equality before the law, it nonetheless continued to recognize HBCUs as an African American entitlement, reflecting not simply the logistical requirements of systemic transition, but also the fact that over the ensuing decades, a range of the most powerful civil rights organizations such as the NAACP and private fundraisers such as the Thurgood Marshall College Fund all had as a primary plank of their fundraising campaigns the fact that they were raising money to sustain HBCUs. This demonstrates the high degree of HBCUs’ support not only by African American organizations but also by the African American people as a whole from whom the money was raised—irrespective of the historical blemish of HBCUs having been, in their inception, involuntarily separate, unequally resourced, and instituted with a clear intent to deny equality between the founding African-descent and European-descent peoples of the United States.
  
10. Today, HBCUs are a major institutionalization serving the higher educational needs of the African American people.<sup>22</sup> They are crucial to the economic sustainability of African American towns and

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<sup>20</sup> See Jahi Issa, “The Ethnic Cleansing of Historically Black Colleges & Universities in the Age of Obama” <http://blackagendareport.com/content/ethnic-cleansing-historically-black-colleges-universities-age-obama-part-1-3>. Also see Robert Weems, “The Decline of Black Business in Contemporary America: An Economic Consequence of the Civil Rights Movement,” in Leonard L. Bethel, ed. *Introduction to Africana Studies* Kendall/Hunt Publishing Company, 1999.

<sup>21</sup> See footnote 1.

<sup>22</sup> While HBCUs currently represent about 3% of colleges in the U.S. they enroll 12% of all students who identify as black or African American. They produce 23% of all African American college graduates. Remarkably, this small group of colleges confers 40% of STEM and 60% of engineering degrees earned by African American students. They also educate half of the country’s African American teachers and 40% of all African American health professionals. They are a major force in producing an African American professional sector. This success rate should be viewed in the context of ongoing efforts to address African American higher education needs by funding efforts related to enrolling them in historically white institutions.

Dr. Abdulalim Shabazz, a highly respected scholar and endowed professor at Grambling State University, an historically Black university, who also served at Lincoln University, Cheney State, Tuskegee Institute, and Clark Atlanta University during his distinguished career and in 2000, who was honored with a National Mentor award by President Bill Clinton, made the following assessment of how the affirmative action process works in reality:

“Often, African American students are bought into majority institutions for reasons other than educating them. In many cases, majority institutions receive money from various governmental and private sources to recruit African American students. These students are bought in the front door but leave through the side or back door. Interest centers on getting the money rather than on developing scholars. Those of us who are actually educating Black students in the HBCUs do not get the resources. Foundations prefer to support

cities in the African American heartlands.<sup>23</sup> This double function (providing education and economic sustainability) means HBCUs play a vital role in counteracting the overall negative standing of African Americans in all other sectors measuring social well being.<sup>24</sup> **They are therefore key to proactive remedy for African Americans' human rights deprivation in these other sectors.**

## THE THREAT TO HBCUS FROM U.S. FEDERAL POLICIES AND SUPREME COURT RULINGS

11. Recent government changes to lending criteria of the federal Parent PLUS student loan program have disproportionately impacted African American students, leading to a precipitous decline in African American enrollment in HBCUs and imperiling the survival of many.<sup>25</sup> There was no official consultation with the African American national minority<sup>26</sup> prior to the passing of legislation which has directly and disproportionately impacted them, and the government has proved resistant to their protest after the fact. While the White House Initiative for HBCUs has monitoring powers, it failed to alert HBCUs to their diminishing prospects. Its Chair is appointed by the White House, and it has no policy-making powers.
12. While heretofore HBCUs received funding from Title III grants, these one-time allocations must be repeatedly applied for, and are not an entrenched funding source. For the year 2014, due to sequestration, HBCUs received *no* funding from this source.<sup>27</sup>

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Whites and White institutions to develop African American students, despite their continuing incapacity to do so.”

<sup>23</sup> According to a 2006 report by the National Center for Education Statistics, the short-term economic impact of HBCUs is \$10 billion. Updated data indicate that today's short-term economic impact of HBCUs is \$13B. HBCUs create roughly 188,000 full and part-time jobs. The rolled-up employment impact of the nation's HBCUs exceeds the 177,000 jobs at the Bank of America, which is the nation's 23<sup>rd</sup> largest employer,<sup>23</sup> indicative of the key role that HBCUs play in the protection of African American cultural identity and sustainability of their communities.

<sup>24</sup> The disproportionately negative standing of African Americans as it relates to incarceration, healthcare, poverty, homelessness, unemployment, see footnote 1.

<sup>25</sup> See Nick Anderson, “Tighter Federal Lending Standards Yield Turmoil for Historically Black Colleges,” *Washington Post*, June 22, 2013. <[http://www.washingtonpost.com/local/education/tighter-federal-lending-standards-lead-turmoil-for-historically-black-colleges/2013/06/22/6ade4acc-d9a5-11e2-a9f2-42ee3912ae0e\\_story.html](http://www.washingtonpost.com/local/education/tighter-federal-lending-standards-lead-turmoil-for-historically-black-colleges/2013/06/22/6ade4acc-d9a5-11e2-a9f2-42ee3912ae0e_story.html)>

<sup>26</sup> As required by the Declaration on the Rights of Minorities, Article 2:3: “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.”

<sup>27</sup> As noted in the education journal *Diverse* (Afi-Odelia Scruggs, “Sequestration: HBCUs Cast a Worried Eye at Title III and Student Aid Funding” March 12, 2013)

In fiscal 2011, 95 of the schools received approximately \$237 million in Title III Part B funds. The money underwrites a host of programs: student services, faculty and staff development, construction and improvement of campus facilities, and outreach programs that prepare students for college. Work study and other student aid would take a similar hit. The latter could have students scrambling to make tuition—a crucial source of revenue for the country's 105 HBCUs.

These are by no means insignificant losses to HBCU budgets. In situations of budget liquidity shortfalls, such hiatuses can cause failure to otherwise sustainable institutions.

13. The Department of Education has allocated accreditation authority to private institutions whose rulings can have pernicious impact on HBCUs, allowing them to close an institution without the direct review and approval of the USDOE.<sup>28</sup>
14. Furthermore, state funding programs are not providing parity between state land-grant institutions and land-grant HBCUs as required by the 1890 Morrill Act: clear discrimination against HBCUs in favor of Traditional White Institutions (TWIs).<sup>29</sup>
15. The Supreme Court *United States v. Fordice* decision, which notably upheld the right to equality between HBCUs and historically white institutions (HWIs), sought subsidizing white students to attend HBCUs as a financial remedy,<sup>30</sup> thereby not only discriminating by financial favoring of white students, but also possibly impacting the identity, direction and goals of HBCUs in guise of helping them. This SCOTUS ruling reflects a range of purported solutions to HBCU funding which entail a dilution of their identity as African American institutions, inter alia by creating conditions to promote non-African American enrollment but not African American enrollment, and by re-termining them “minority-serving” institutions. Such solutions set the stage for future removal of existing HBCUs federal funding on the grounds that these institutions are now no longer “black”.<sup>31</sup>

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<sup>28</sup> “Most historically black colleges in the country are located in the region SACS [The Southern Association of Colleges and Schools] accredits, and many times that SACS announces actions involving colleges, black colleges figure prominently.” Scott Jaschchik, “Saint Paul’s loses accreditation,” *INSIDE Higher Ed.*, June 22, 2012. See <<https://www.insidehighered.com/news/2012/06/22/southern-accreditor-strips-st-pauls-recognition>>

<sup>29</sup> “According to a recent [analysis](#) by the Association of Public and Land-Grant Universities of state funding for historically black land-grant institutions established by the 1890 Morrill Act, HBCUs received far less of the 1-to-1 state matching funds — nearly \$57 million from 2010 to 2012 — than they are entitled to under a federal mandate.” Dexter Mullins, “Historically Black Colleges in Financial Fight for their Future,” Aljazeera America, October 22, 2013. <<http://america.aljazeera.com/articles/2013/10/22/historically-blackcollegesfightfortheirfuture.html>> The link to the APLU study is no longer functional. APLU has not responded to IHRAAM requests for access to this study. An additional study attesting to inequitable funding of HBCUs at state level finds: “Public Historically Black Colleges and Universities (HBCUs) continue to receive inequitable funding at state-levels “. See Donald Mitchell, Jr., “Funding U.S. Historically Black Colleges and Universities: A Policy Recommendation,” *Journal of Education Policy*, Fall 2013 <<http://nau.edu/COE/eJournal/Forms/Fall2013/Mitchell/>> While this study recommended Partnership Programs, it noted: “When comparing the three policy alternatives, all three are similar in that they are regulatory policies. The “penny-for-education” tax appears to be the least affordable option, while the partnership program alternative is the most affordable. In addition, the “penny-for-education” tax appears to promote the most institutional autonomy. The “penny-for-education” tax would also appear to be the most administratively operable because of the subtle changes it requires in existing policies however, it is not as politically feasible as partnership programs or HBCUs mergers.

<sup>30</sup> See Armenta Hinton, “HBCUs and Their Struggle for Equity Post *Fordice* “ in *International Human Rights & Empowering HBCUs*, copublication by IHRAAM (Canada) and Clarity Press, Inc.,(Atlanta, USA) 2014, being the proceedings of the IHRAAM-initiated Seminar held at historic Clark Atlanta University on July 11, 2014, co-sponsored by 100 Black Men, Inc. of Atlanta and the Iota Phi Theta Fraternity of Baltimore. There are many possible options for improving the financing of HBCUs, not just by direct federal support, but through policy changes or new initiatives. This Report includes recommendations in this regard.

<sup>31</sup> Such a questioning of this historic entitlement has already begun. The recent MSNBC series on HBCUs questioned the ongoing validity of the present federal \$250 million support, while understating the significance of HBCUs’ role in African American higher education, focusing on the fact that 11 percent of African Americans enroll in HBCUs, rather than the fact that the latter account for 23% of actual college graduates. See <<http://hbcudigest.com/watch-msnbcs-hbcu-series-talks-funding-diversity/>>



16. Achieving equality between HBCUs and HWIs would address both discrimination issues and African Americans' minority right to educational institutions. Here we favorably cite a case<sup>32</sup> directed at the University of Maryland addressing the duplication of programs in HBCUs and HWIs (another factor negatively impacting HBCUs), resulting in a favorable ruling that such duplication should cease, with equity to be established by creation of exciting new programs for HBCUs to increase their student draw.<sup>33</sup>

**Recommendations:**

17. Funding:

- 17.1. Restore the Parents PLUS program lending criteria
- 17.2. Legally entrench federal support to HBCUs and index to cost of living<sup>34</sup>
- 17.3. Create a new fund which will at least match the dollars raised by minorities specifically giving to HBCUs
- 17.4. Apply the current IRS tax structure that is applied to other nonprofit groups to HBCUs

18. Institutional change:

- 18.1. Create a new accreditation organization approved by the DOE, empowered to review accreditation denials of HBCUs and defer them pending further investigation into possible resolution.<sup>35</sup>
- 18.2. Re-establish the White House Initiative for HBCUs requiring African American selection of Chair and Members, and accord this body the right to advance policy consultation and approval as it concerns policies impacting HBCUs.

19. Judicial review

- 19.1. Enforce existing state-based legal requirements for parity support to HBCUs/HWIs.

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<sup>32</sup> <http://www.lawyerscommittee.org/admin/education/documents/files/Coalition-v-MHEC-memorandum-decision.pdf>

<sup>33</sup> [On October 7, 2013, Federal District Judge Catherine Blake ruled](#) that Maryland has violated the constitutional rights of students at Maryland's four Historically Black Institutions (HBIs) by unnecessarily duplicating their programs at nearby white institutions. Judge Blake did not order a specific remedy but provided direction for the parties to consider in developing a remedy. The court stated that a likely remedy will include "expansion of mission and program uniqueness and institutional identity at the HBIs." Judge Blake further concluded that as a remedy for Maryland's constitutional violations "it is also likely that the transfer or merger of select high demand programs from [traditionally white institutions] to HBIs will be necessary." <http://www.lawyerscommittee.org/projects/education/page?id=0018>

<sup>34</sup> See table, Highlights of Obama's Fiscal-2014 Budget for Higher Education and Science, *Chronicle of Higher Education*, April 10, 2013, <http://chronicle.com/article/Presidents-Plan-Would/138473/> which indicates a 0% increase for HBCUs.

<sup>35</sup> This new organization might be headed by an eminent HBCU president.