



General Assembly

Distr.: General
22 February 2010

English only

Human Rights Council

Thirteenth session

1–30 March 2010

Agenda item 3

**Promotion and protection of all human rights,
civil, political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by Human Rights Advocates, Inc. (HRA), a non-governmental organization in special consultative status

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

[13 February 2010]

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

Need for a Special Procedure on the Right to Vote

Despite consensus on the fundamental nature of the right to vote, its inclusion in many international human rights instruments, and its significance in protecting other human rights, derogation of this right remains pervasive. It is critical that the Council take action to promote protection of the right to vote because the violation of this right often leads to larger patterns of human rights violations of grave concern for the UN.

Legal Basis for the Right to Vote

The right to vote and the right to public participation in government are asserted in Article 21 of the Universal Declaration of Human Rights (UDHR).¹

Article 25 of the International Covenant on Civil and Political Rights (ICCPR) codifies these rights, requiring that every citizen shall have the right: “[t]o take part in the conduct of public affairs, directly or through freely chosen representatives; [t]o vote and to be elected at genuine periodic elections which shall be universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; [t]o have access, on general terms of equality, to public service in his country.”²

General Comment 25 to the ICCPR emphasizes that “[a]rticle 25 of the Covenant recognizes and protects the right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service. Whatever form of constitution or government is in force, the Covenant requires States to adopt such legislative and other measures as may be necessary to ensure that citizens have an effective opportunity to enjoy the rights it protects.”³

The right to vote is additionally protected under regional human rights instruments, including article 23 of the American Convention on Human Rights (ACHR), article 13 of the African Commission on Human and People’s Rights (ACHPR), and article 14 and article 3, Protocol 1 of the European Convention on Human Rights (ECHR).

The right to vote is continually violated in various ways, but this statement will focus on recent derogations of the right by fraudulent means and by operation of law and procedure.

Derogation of the Right to Vote by Fraud, Intimidation, and Violence

Accusations of voting fraud in the 2009 presidential election in Iran led to mass protests and the concurrent rise in human rights abuses, including, *inter alia*, arbitrary arrests, detention or disappearances of those exercising their right to peaceful assembly and association, allegations of rape and torture of prisoners, and further restrictions on freedom of expression, prompted international denouncement.⁴ The infringements on essential conditions for the right to vote leading up to the election, including restrictions on debates

¹ G.A. Res. 217A(III), U.N. Doc. A/810 (1948) [hereinafter UDHR].

² Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

³ HRC General Comment 25, para. 1, U.N. Doc. CCPR/21/Rev.1/Add.7 (1996).

⁴ U.N. General Assembly, 64th Session. Third Committee. *Promotion and Protection of Human Rights: Human Rights Situations and Reports of Special Rapporteurs and Representatives*. (A/C.3/64/L.37), October 29, 2009.

between candidates and the free exchange of information, as well as the disqualification of most candidates, only served to increase doubt in the results.⁵

The right to vote was also derogated by widespread fraud in Afghanistan's presidential elections in August. Allegations of fraud included ballot stuffing, inflated turn-out and vote selling.⁶ A call for a run-off election resulted from the investigation by the UN-backed Electoral Complaints Commission of Afghanistan, which found clear and convincing evidence of fraud at 135 polling stations, requiring the Independent Election Commission (IEC) to invalidate a large percentage of votes.⁷ Harmid Karzai was named president after the main challenger, Abdullah Abdullah, dropped out of the run-off race when the IEC rejected his demands for changes to reduce the risk of fraud in the run-offs.⁸ Thus the Afghani people were deprived of their right to a meaningful vote.

Doubts linger about the legitimacy of Honduras' November 29, 2009 elections occurring without UN or OAS observation and support just a few months after the June 28 coup and amidst increasing patterns of human rights violations. Many nations state the election was illegitimate, alleging it was backed by military leaders of the coup and did not occur under constitutional conditions.⁹

The events in these countries underscore the dire need for safeguards protecting the right to vote and ensuring the legitimacy of elections as well as the necessity of developing international best practices for guidance in protecting this right.

Derogation of the Right to Vote by Operation of Law and Procedure

Article 25 of the ICCPR explicitly extends the right to vote to "every citizen," and calls for "universal and equal suffrage." Nonetheless, some countries deny certain citizens voting rights as a matter of law.

In the United States, many citizens with criminal convictions are denied their voting rights. Some U.S. states bar ex-offenders from voting even after they have fully served their sentences. This restriction is disproportionate to the offense and sentence and undermines the right to vote as mandated by the ICCPR.¹⁰ Other bodies have affirmed this finding. For example, the European Court of Human Rights found that the restriction of voting rights of all convicted prisoners violates Article 3 of Protocol No. 1 of the ECHR.¹¹ On this subject, the High Court of Australia's recent ruling invalidating legislation that would have

⁵ Amnesty International, *Iran: Election Contested, Repression Compounded*, December 2009, available at <http://www.amnesty.org/en/library/asset/MDE13/123/2009/en/1e69a8fb-dcf1-4165-a7fc-a94369e364bf/mde131232009en.pdf>.

⁶ Ghaith Abdul-Ahad, *New Evidence of Widespread Fraud in Afghanistan Election Uncovered*, THE GUARDIAN, September 19, 2009.

⁷ Islamic Republic of Afghanistan Electoral Complaints Commission, *Factsheet: ECC Decisions of 18 October Regarding the Certification of Presidential Election Results*, available at <http://www.ecc.org.af/en/images/stories/pdf/ECC%20Factsheet%2018%20Oct%20DecisionsFINALENG.pdf>.

⁸ Jon Boone & Mark Tran, *Hamid Karzai Declared Winner of Afghanistan's Presidential Election*, THE GUARDIAN, November 2, 2009.

⁹ Shrikesh Laxmidas & Cesar Illiano, *Latin American Leaders Divided over Honduras Vote*, REUTERS, November 30, 2009.

¹⁰ Paragraph 14 of the Human Rights Committee's General Comment 25 provides that restrictions on the right should be proportionate to the offense and sentence. HRC Gen. Comment 25, U.N. doc. CCPR/C/21/Rev.1/Add.7 (1996).

¹¹ *Hirst v. United Kingdom*, no. 74025/01, ECHR (2005), available at <http://www.echr.coe.int>

disqualified all prisoners from voting is commendable.¹² The court correctly noted that voting in elections lies at the heart of a system of representative government and disenfranchisement of a group of adult citizens without substantial justification is inconsistent with such a system.

Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) requires States to guarantee the right to participate in elections to everyone, without distinction as to race.¹³ Paragraph 3 of the General Comment to the ICCPR also affirms that under ICCPR article 25, no distinctions may be made on the grounds of race in the enjoyment of voting rights.

Criminal disenfranchisement in the U.S. is disproportionate to the sentence and disproportionately impacts racial minorities in violation of CERD. African Americans are criminally disenfranchised at a rate three times the national average and also less likely to have their voting rights restored.¹⁴ A Ninth Circuit Court of Appeals recently held Washington's felon disenfranchisement law violated the Voting Rights Act of 1965's prohibition against a voting rule having a discriminatory purpose or effect.¹⁵ The court noted that Washington's criminal justice system was biased against African Americans and other racial minorities and the voting law was illegal because it diluted the electoral clout of minorities. The court's findings demonstrate that the criminal disenfranchisement laws of most U.S. states result in restrictions of the exercise of voting rights based on race. Although the court's decision is an important development, the impact is limited because it is only the finding of one state, thus more action is still needed on the national level.

Election Administration

Haiti's Provisional Electoral Council's (PEC) 2009 exclusion of 15 political parties, including the most popular party, Fanmi Lavalas, from parliamentary elections originally scheduled for February and March, would deprive Haitians of their right to "freely chosen representatives."¹⁶ The PEC previously excluded Fanmi Lavalas and other political parties from senate elections held last June and April, and the ensuing elections were met with low participation.¹⁷ In the shift from emergency response to the recent tragedy to longer-term relief and recovery, it is imperative to improve Haiti's ability to self-govern, and a key step is enhancing election credibility.

In contrast, the recent decision of an Iraqi appeals court to overturn Iraq's High Election Commission ban on nearly 500 Sunni politicians from March parliamentary elections

¹² *Roach v Electoral Commissioner and Commonwealth of Australia*, 30 August 2007, High Court of Australia.

¹³ Dec. 21, 1965, 660 U.N.T.S. 195 [hereinafter CERD].

¹⁴ Submission by the Lawyers' Committee for Civil Rights Under Law and the Sentencing Project to the United Nations Forum on Minority Issues, Human Rights Council, 2nd Session, Geneva, November 12-13, 2009, *The Discriminatory Effects of Felony Disenfranchisement Laws, Policies and Practices on Minority Civic Participation in the United States*, at 2.

¹⁵ *Farrakhan v. Gregoire*, --F.3d--, No. 06-35669 (9th Cir. January 5, 2010).

¹⁶ Evens Sanon & Jonathan M. Katz, *U.S. Lawmaker Criticizes Haiti Election Exclusions*, SAN JOSE MERCURY NEWS, December 23, 2009, available at http://www.mercurynews.com/news/ci_14058968?nclick_check=1.

¹⁷ Brian Concannon Jr. & Ira Kurzban, Opinion, *Don't Honor Tainted Election*, MIAMI HERALD, December 11, 2009, available at <http://www.miamiherald.com/opinion/other-views/story/1376563.html>.

deserves recognition.¹⁸ The ban, handed down by the Accountability and Justice Commission, jeopardized the perceived legitimacy of Iraq's upcoming elections.¹⁹ Many threatened to boycott the election, imperiling the already fragile reconciliation process between Sunni and Shi'ite communities. The court's decision addressed these concerns and restored to many their right to participate in "fair and free" elections.

An example of another election administration practice is the election run-off election proposal in Mexico, requiring an automatic run-off if no presidential candidate receives at least fifty percent of the vote.²⁰ Such practice could avert claims of fraud in close elections, avoiding resultant civil unrest.

Recommendations

HRA urges all nations to take necessary legislative measures to comply with all relevant international instruments mandating the protection of the right to vote, including the UDHR, ICCPR, CERD, CEDAW, ACHR, ACHPR, and ECHR.

HRA urges the Council to appoint a Special Rapporteur on the right to vote to investigate derogations of the right to vote before they lead to massive violations. HRA also urges the Council to include in the mandate a study of election-related norms, in order to define meaningful parameters for commitments, principles, and best practices. Although the UN has provided resources to address voting rights issues in the past, such as in Afghanistan and in Iran, this has largely been on an ad hoc basis. Well established guidelines would be helpful for UN efforts to address these violations and for countries in setting up their own laws to comply with international standards.

¹⁸ Margaret Coker, *Iraqi Court Lifts Election Ban*, THE WALL STREET JOURNAL, February 3, 2010.

¹⁹ See Anthony Shadid, *Political Turmoil Follows Barring of Hundreds from Iraq Ballot*, N.Y. TIMES, January 15, 2010; Andrew Lee Butters, *Could a Sunni Candidates Ban Imperil Iraq's Election?*, TIME, January 19, 2010, <http://www.time.com/time/world/article/0,8599,1954606,00.html?xid=rss-topstories>.

²⁰ Olga R. Rodriquez, *Mexico's President Proposes Run-off Amendment*, SAN FRANCISCO CHRONICLE, December 16, 2009, available at http://articles.sfgate.com/2009-12-16/news/17224317_1_election-runoff-protests.