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CIVIL AND POLITICAL RIGHTS

**Written statement* submitted by Human Rights Advocates,
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.

[10 February 2005]

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

THE RIGHTS TO VOTE AND TO BE FREE FROM ARBITRARY DETENTION

1. Human Rights Advocates, Inc. (HRA), a non-governmental organization with Category II Consultative Status with ECOSOC, submits the following statement on the issues of voting rights and arbitrary detention.

Voting Rights

2. Article 25 of the International Covenant on Civil and Political Rights (ICCPR) codifies the principles of public participation and voting first pronounced in article 21 of the Universal Declaration of Human Rights (UDHR). Article 25 states 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 by 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.” Recent examples show that voting rights continue to be derogated by both operation of law and fraudulent means, and it is critical that this Commission take some action to enforce this very basic right.

Abridgment of Voting Rights by Operation of Law

3. Although Article 25 of the ICCPR extends voting rights to “every citizen,” in some countries even citizens are denied the right to vote as a matter of law. 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.¹ However, this is not always the case. For example, in the United States, all mentally competent adults have the right to vote with the exception of convicted criminal offenders. An estimated 3.9 million U.S. citizens are denied the right to vote, including over one million who have fully completed their sentences.² Seven states of the United States deny the right to all criminal offenders after completion of their sentences.³ Over 30 states prohibit felony offenders from voting while they are on parole or probation. Many states have established difficult procedures for former prisoners to restore their voting rights, accordingly, very few former offenders in the United States have regained their voting rights.⁴

4. Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) requires States “to guarantee the right of everyone, without distinction as to race ... [p]olitical rights, in particular the right to participate in elections ... on the basis of universal and equal suffrage.” Additionally, the General Comment states that article 25 of the ICCPR provides that “no distinctions are permitted between citizens in the enjoyment of these rights on the grounds of race ... or other status.” The impact of disenfranchisement laws in the

¹ U.N. Doc. CCPR/C/21/Rev.1/Add.7 (1996) [hereinafter General Comment].

² David Weissbrodt and Connie de la Vega, Introduction to International Human Rights Law: A Beginner’s Guide [forthcoming 2005].

³ *Id.*

⁴ *Id.*

United States create a distinction that is racially disproportionate. African Americans constitute almost one-third (1.4 million) of those disenfranchised based on a previous criminal conviction.⁵

5. Developments in electronic voting technology pose new challenges to the principle of transparent and accountable elections. Such systems may be subject to tampering, particularly where there is no paper record of citizens' votes to authenticate computer records. Where an electronic malfunction occurs or fraud is alleged, the absence of a paper record verified by the voter may make it impossible to discern whether votes are recorded accurately, and to conduct a meaningful recount.

Abridgment of Voting Rights by Fraud

6. Concerns over the abridgment of voting rights of minority groups by fraudulent means persist in even the most developed of electoral systems. In the U.S. state of Ohio, partisan operatives may challenge voters on their citizenship, age or residency.⁶ It is alleged that during the election of 2004, under the guise of preventing electoral fraud, Republican Party challengers targeted polling stations in overwhelmingly African American communities, tactics that infringed on the right to vote. This led to massive delays and caused those voters to leave polls without ever casting their ballots.⁷ This is an example of a violation of article 5 of CERD.

7. In addition to accounts of physical violence and intimidation against voters, widespread election fraud took place in the initial round of presidential elections in November 2004 in Ukraine.⁸ Election observers reported that the most common type of fraud in the election was "carousel" voting, in which busloads of supporters of one candidate simply drove from one polling station to another casting multiple false absentee ballots.⁹ At some polling stations ballot papers were destroyed by acid poured into a ballot box, and at others, voters were given pens filled with ink that disappeared, leaving ballots unmarked and invalid.¹⁰ Such acts of fraud require that the international community establish meaningful parameters of election-related norms.

8. Concerns of electoral fraud during the November 2004 parliamentary elections in Romania persist. International observers raised concerns that voters were able to vote at any polling station around the country by easily removing a stamp placed on national identity cards, creating large-scale election fraud. This reiterates the need for the establishment of meaningful parameters regarding the electoral process.

Arbitrary Detention

⁵ *Id.*

⁶ *Two Big Legal Wins For Ohio GOP*, CBS News, Nov. 2, 2004, available at <http://www.cbsnews.com/stories/2004/11/02/politics/main652779.shtml>

⁷ *Id.*

⁸ *Ukraine Court Annuls Poll Result*, BBC News, Dec. 3, 2004, available at <http://news.bbc.co.uk/1/hi/world/europe/4066617.stm>

⁹ Tom Parfitt and Colin Freeman, *Revealed: The Full Story of the Ukrainian Election Fraud*, The Telegraph (U.K.), Nov. 28, 2004, available at <http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2004/11/28/wukra28.xml>.

¹⁰ *Id.*

9. In enforcing emergency anti-terror laws and national immigration laws, many nations have failed to keep in place effective safeguards against arbitrary deprivation of liberty, in particular effective judicial control over detention orders.

10. Articles 9, 10, 11 and 14 to 22 of the ICCPR codify the principles of non-arbitrary deprivation of liberty and fair judicial control over detention orders first pronounced in articles 3, 9, 10 and 29 of the UDHR.

Arbitrary Deprivation of Liberty in the Enforcement of Anti-Terror Laws

11. Prosecution of the war against terrorism in Afghanistan and elsewhere has resulted in the detention by the United States of citizens of at least 43 other countries. The detainees are designated “enemy combatants” as opposed to a recognized legal status such as “prisoner of war” (POW). This category violates the Geneva Convention, which provide that “*There is no intermediate status.*”¹¹

12. The United States Supreme Court has ruled that detainees at the U.S. naval base at Guantánamo Bay may challenge their indefinite detention in U.S. courts.

13. However, the United States continues to impede full judicial review of detention, and access to lawyers and independent human rights monitors, which are basic safeguards against torture and ill-treatment, arbitrary detention, and “disappearance.” Evidence that Guantánamo detainees have been tortured and ill-treated in violation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, continues to mount. The United States continues to hold more than 500 without charge or trial in Guantánamo. Four have been charged for trial by military commission, trials which would violate international law and standards, and lack independence from the executive. Although a federal court suspended military commission proceedings, the Government has appealed the ruling.¹²

14. In addition to the United States, China, Egypt, Indonesia, Russia, and the United Kingdom have enacted stringent anti-terror legislation, allowing states to arbitrarily detain individuals and jeopardize fundamental due process rights recognized by the ICCPR and customary international law.¹³

Arbitrary Deprivation of Liberty in the Enforcement of National Immigration Laws

15. Approximately 175 million migrant workers worldwide are being arbitrarily detained in increasing numbers while crossing borders, because of tighter border control policies of host countries intended to deter the flow of illegal immigrants and in relation to anti-terror

¹¹ International Committee of the Red Cross, Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Geneva: 1958), p.51 (emphasis in original).

¹² USA: Guantánamo Detentions Enter Fourth Year as Torture Allegations Mount, Amnesty International, Jan. 7, 2005, available at <http://web.amnesty.org/library/Index/ENGAMR510032005>.

¹³ HRA will make available more detailed reports at the Commission on Human Rights, March – April 2005.

legislation.¹⁴ In fact, several countries have stated that they use indefinite detention as a means of deterring immigration.

16. In addition to causing injustice, detention is ineffective in decreasing illegal immigration and has enormous financial costs. For example, Australia spends more than \$120 million annually on mandatory detention of migrants – the majority of which do not need to be detained.¹⁵ HRA supports the statement made by a group of Australian legislators, concluding that “the current system of mandatory detention [] is economic irrationalism at its worst. The administrative reasons for detention are false and the costs far outweigh the purported benefits.”¹⁶

Recommendations

Voting Rights:

17. HRA calls on the Commission on Human Rights (Commission) to authorize a study on meaningful parameters of election-related norms, commitments, principles, and good practices.

18. HRA calls on all nations to strictly comply with all relevant international instruments, in particular the provisions of the UDHR, ICCPR and CERD that protect basic human rights involving the electoral process.

Arbitrary Detention:

19. HRA calls on all nations combating terrorism to strictly comply with all relevant international instruments, in particular the that prohibit the derogation of rights, the right to counsel, other safeguards against arbitrary detention, the right to be brought promptly before a judge or other officer authorized by law to exercise judicial power and to a speedy trial, and the freedom from discrimination based on national origin mandated.

20. Nations should also study the ways in which their border control policies cause the arbitrary detentions of migrants.

21. HRA calls on the Working Group on Arbitrary Detention to study and make recommendations on strategies for border reform that will prevent arbitrary detention of migrants.

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¹⁴ W. R. Bohning, *Protection, International Norms and ILO Migrant Workers Standards*, International Labour Organization – SEAPAT (6-8 December 1999), available at <http://www.ilo.org/public/english/region/asro/mdtmania/speeches/mistanda.htm>.

¹⁵ *Australian Democrats Immigration Budget Paper*, May 2004.

¹⁶ *Id.*