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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 (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.

[18 February 2008]

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

THE RIGHT TO VOTE

1. Human Rights Advocates supports the view that ensuring equal voting rights is essential to maintaining a participatory democracy. The right to participate in free and fair elections is directly correlated with protecting other human rights, such as the right to freedom of expression, the right to peaceful assembly, the right to association, the right to participate in one's government and the right to be free from discrimination. The right to vote is an important right that has not been addressed at the broad international level. It is critical that the Council establish a mechanism for the protection of this right.
2. The right to vote is defined in international law under both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR). Article 21 of the Universal Declaration of Human Rights (UDHR) provides for public participation in government and voting rights.¹ It states that "everyone has the right to take part in the government of his country . . . and the will of the people shall be expressed in periodic and genuine elections which shall be universal and equal suffrage and shall be held secret vote or by equivalent free voting procedures."²
3. Article 25 of the ICCPR codifies the principles of democratic participation and the right to vote. 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 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."³
4. The Human Rights Committee adopted General Comment 25 to the ICCPR which emphasizes 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."⁴ Recent examples show that voting rights continue to be derogated by procedural means and operation of the law. Derogation of the right to vote can have a racially disproportionate impact. In addition, the derogation of the right to vote can lead to violations of other human rights.

Derogation of Voting Rights

5. Although Article 21 of the UDHR guarantees equal representation in voting, this standard has not been achieved by many states in the United States. In the U.S., where each state has its own method of instituting elections, choosing the method of voting and counting the votes, there are inconsistent procedures throughout the country. For the 2008 presidential election, it is reported that computerized voting machines are a cause of concern in numerous states including Florida, Arizona⁵, Colorado⁶, and Ohio⁷

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

² *Id.*

³ Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

⁴ HRC General Comment 25, para. 14, U.N. Doc. CCPR/C/21/Rev.1/Add.7 (1996) [hereinafter General Comment].

⁵ Steve Rosenfeld, *Voting Rights Activists Win Big Cases in Florida and Arizona*, AlterNet, December 21, 2007, <http://www.alternet.org/story/71260/>.

for being inaccurate in counting the votes. Computerized voting machines were instituted across the U.S. as a remedy for the problems of paper ballots but these machines have proven unreliable and problematic. The machines often crash during the process of tabulating the votes and attempts to manually retrieve the voting data are lost.⁸ States have yet to implement a comprehensive policy that addresses these problems in a unified manner.

6. The right to vote is also derogated through procedural requirements. The U.S. Supreme Court recently heard the case, *Crawford v. Marion County Election Board*, concerning the constitutionality of Indiana's mandatory photo identification law where citizens were required to show valid state photo identification in order to cast their ballots.⁹ Citizen advocate groups were concerned that this law would have a disproportionate and discriminatory impact on poor and minority citizens.¹⁰ The Supreme Court has yet to publish its decision on this case but the lower court, the Seventh Circuit Court of Appeals, upheld the Indiana law and held that mandatory photo identification was not unduly burdensome on voters.¹¹
7. The right to vote also is derogated by corruption in the electoral process. In the recent Kenyan presidential election, it is reported that the Election Commission played a large role in deception and irregular vote counting.¹² Officially, the election results gave President Kibaki a 2 percent lead over the opposition candidates. But exit polls by the International Republican Institute found that the main rival, Raila Odinga, had won by an 8 percent margin.¹³ The chairman of the election commission reportedly played a large role in the deception where "results were announced even when documents were missing, incomplete, unsigned by officers or party representatives, incorrectly tabulated, photocopied or forged."¹⁴
8. Another issue to consider is whether the right to vote is derogated when the leader of a country rules by a non-majority vote. For example, in the Mexican Presidential election of 2006, eight political parties participated and there were three main candidates. Felipe Calderón Hinojosa won by a 35.89% of the popular vote but there was widespread dispute about the accuracy of the count.¹⁵ The second place candidate, Andrés Manuel López, won 35.31% of the vote and the third place candidate, Roberto Madrazo, won 22.26% of the vote. In addition to non-majority vote, there are questions

⁶ Kirk Johnson, *With Few Options, Colorado Considers All-Mail Vote*, The New York Times, January 4, 2008, available at

<http://www.nytimes.com/2008/01/04/us/04voting.html?ex=1357102800&en=bff2c7fe699fe88c&ei=5088&partner=rssnyt&emc=rss>.

⁷ Clive Thompson, *Can You Count on These Machines?*, The New York Times, January 6, 2008, available at: <http://www.nytimes.com/2008/01/06/magazine/06Vote-t.html?ref=magazine>.

⁸ *Id.*

⁹ *Crawford v. Marion County Election Board*, No. 07-21 (U.S. argued Jan. 9, 2008).

¹⁰ Brief for the Lawyers' Committee for Civil Rights Under Law, et al. as Amici Curiae Supporting Petitioners, *Crawford v. Marion County Election Board*, No. 07-21 at 15 (U.S. argued Jan. 9, 2008).

¹¹ *Crawford v. Marion County Election Board*, 484 F.3d 436 (7th Cir. 2007).

¹² Shashank Bengali, *How Kenya's Election Was Rigged*, McClatchy Newspapers, January 31, 2008, http://www.truthout.org/docs_2006/printer_013108S.shtml.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Mexico: Election Results Disputes, Worldpress.org, July 6, 2006, <http://www.worldpress.org/Americas/2406.cfm>.

regarding whether other reforms are needed in the Mexican electoral system to ensure a fair and judicial process.¹⁶ An important reform of the system is to implement full transparency, including issues relating to the fairness of the pre-electoral playing field and to investigate any troubling voting rights concerns.¹⁷

Interrelationship of the right to vote with other human rights

9. The derogation of the right to vote implicates other human rights. In Kenya, suspicion around and opposition to the recent Presidential election gave rise to civil unrest across the country.¹⁸ Opposition leaders accused the government of manipulating and rigging the vote while violence escalated in many regions of the country. The perception that the election was unfair led to the violation of other human rights. In Kenya, the upsurge in attacks and killing along ethnic lines has been attributed to the disputed Presidential election.¹⁹
10. An important aspect of protecting the right to a free and fair election is to protect the lives of the candidates. On December 27, 2007, Benazir Bhutto, Pakistan's former Prime Minister and current presidential candidate, was assassinated in Rawalpindi, Pakistan after addressing a crowd of supporters at a political rally. Bhutto's assassination is a serious detriment to the political process in Pakistan. With one major candidate eliminated from the presidential election, Bhutto supporters in Pakistan have lost the ability to vote for the candidate of their choice. In order to ensure fair and democratic elections, the Pakistani government should have taken stronger steps to protect Bhutto's life. The duty of the government to protect Bhutto was heightened by the fact threats to her life were widely-known and there were previous attempts to assassinate her. Protecting the candidate's life is an important means of ensuring that all voters have an opportunity to vote for the candidate of their choice.

Recommendations

11. HRA urges all States to give full effect to the right to vote and to take all necessary legislative measures that safeguard the integrity of ballots and other sensitive election materials before, during and after the vote; to guarantee that all persons can exercise their right to vote without any discrimination; to ensure that all voting is conducted in a secure and orderly manner; to implement procedures that safeguard other human rights, including the right to life and right to association, that are connected with the right to vote; to ensure that elections, voting and reporting occur in a secure atmosphere free from civil unrest; and to emphasize the importance of transparency in the election process.
12. HRA recommends the establishment of a Special Rapporteur on the right to vote to investigate cases of derogation of voting rights in a manner consistent with the relevant

¹⁶ Todd A. Eisenstadt & Alejandro Poire, *Explaining the Credibility Gap in Mexico's 2006 Presidential Election, Despite Strong Electoral Institutions*, November 8, 2006, available at http://www.american.edu/ia/cnas/pdfs/workingpaper4_elections.pdf

¹⁷ *Id.*

¹⁸ Robyn Dixon, *In Kenya, a Spiral of Killings*, The Los Angeles Times, January 4, 2008.

¹⁹ Jeffrey Gentleman, *Ethnic Violence in Rift Valley is Tearing Kenya Apart*, The New York Times, January 27, 2008, available at http://www.nytimes.com/2008/01/27/world/africa/27kenya.html?_r=1&ref=world&oref=slogin.

international standards set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, or other relevant international legal instruments accepted by the States concerned. The Special Rapporteur should aid in defining the standards and parameters of the right to vote, including the issues addressed above.

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