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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, 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.

[12 February 2009]

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

Legal Basis Of The Right To Vote

1. Despite consensus on the importance of the right to vote, its inclusion in many international human rights instruments, and its significance in protecting other human rights, derogations voting rights remain all too common. This statement will outline the international standards of the right and discuss some current violations.
2. The right to vote and the right to public participation in government is asserted in Article 21 of the Universal Declaration of Human Rights (UDHR).¹
3. 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 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.”²
4. 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
5. Furthermore, the right to vote is 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).

DEROGATION OF THE RIGHT TO UNIVERSAL AND EQUAL SUFFRAGE

6. Article 25 of the ICCPR explicitly extends the right to vote to “every citizen,” and calls for “universal and equal suffrage.” Nevertheless, in some countries, certain citizens are denied the voting rights as a matter of law.
7. In the U.S., many citizens who have been convicted are denied their voting rights. In some states, ex-offenders who have fully served their sentences remain barred from voting for the rest of their lives. Such a restriction is disproportionate to the offense and undermines the right to vote mandated by the ICCPR.⁴ The European Court of Human Rights has found that the restriction of voting rights of all convicted prisoners violates Article 3 of Protocol No. 1 of the ECHR.⁵ In this regard, South Africa should be commended for its efforts to facilitate and encourage its citizens to vote even if they have

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/C/21/Rev.1/Add.7 (1996).

⁴ Paragraph 14 of the Human Rights Committee’s General Comment 25 provides that restriction 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).

⁵ *Hirst v. United Kingdom*, no. 74025/01, ECHR (2005), available at <http://www.echr.coe.int>

been convicted and even while they are in prison. South Africa has held that the disenfranchisement of prisoners is a violation of South African and international law, and that the State has a positive obligation to enable the prisoners to vote.⁶

8. Article 7 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) protects the right of women to vote on an equal basis with men. Although Saudi Arabia ratified CEDAW in 2000, it denied women the vote in its 2005 municipal elections. At the time, Saudi authorities agreed to allow women to vote in the next municipal elections to be held in 2009.⁷ HRA commends Saudi Arabia for making this commitment to uphold its obligations under CEDAW and looks forward to seeing Saudi women exercise their right to vote this year.

9. 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.⁸ Paragraph 3 of the General Comment to the ICCPR also emphasizes that under ICCPR article 25, no distinctions may be made on the grounds of race in the enjoyment of voting rights.

10. The U.S. passed the Voting Rights Act in 1965. It was a landmark in civil rights legislation, and has prohibited widespread discriminatory voting practices ever since. Section 5, the heart of the Voting Rights Act, requires certain jurisdictions to demonstrate that new voting rules do not have the purpose or effect of discriminating against minority voters.⁹ However, Section 5 is now being challenged as being unconstitutional by a municipal utility district in Texas, and the U.S. Supreme Court is expected to hear arguments on whether to strike it down. Although discrimination against minority voters in the U.S. may not be as blatant as it once was, minority voters are still targeted and still face unfair obstacles to voting at the polls.¹⁰ If Section 5 is repealed, it would likely facilitate an increase in systematic and deliberate attempts to reduce minorities' abilities to vote, which would undermine article 5 of CERD.

DEROGATION OF THE RIGHT TO VOTE BY FRAUD, INTIMIDATION, AND VIOLENCE

11. In the recent Kenyan presidential election, the Election Commission obstructed independent election observers and allegedly manipulated the vote count.¹¹ Frustration at how the election was conducted led to an eruption of violence, which degenerated into widespread human rights abuses, and left hundreds dead before a power-sharing agreement

⁶ *Minister of Home Affairs v. NICRO*, 2004 (5) SA 1 (CC), available at <http://www.sentencingproject.org/pdfs/southafrica-decision.pdf>.

⁷ *How Democratic is the Middle East?*, BBC NEWS, Sept. 9, 2005, http://news.bbc.co.uk/2/hi/middle_east/3784765.stm#saudi.

⁸ Dec. 21, 1965, 660 U.N.T.S. 195 [hereinafter CERD].

⁹ 42 U.S.C. § 1973-1973aa-6

¹⁰ *Upholding the Voting Rights Act*, N.Y. Times, January 24, 2009, <http://www.nytimes.com/2009/01/25/opinion/25sun1.html>

¹¹ Shashank Bengali, *How Kenya's Election Was Rigged*, McClatchy Newspapers, January 31, 2008, <http://www.truthout.org/article/how-kenyas-election-was-rigged-0>

was made.¹² Kenya's election highlights the devastating importance of ensuring the legitimacy of elections and protecting the right to vote.

12. The right to vote was also derogated by intimidation and violence in Zimbabwe's presidential runoff election this past year. President Mugabe used security forces to carry out a brutal crackdown on supporters of the opposition leader, Mr. Tsvangirai. Consequently, Mr. Tsvangirai withdrew from the run-off election, and Mugabe claimed victory in an uncontested election. Although Mr. Mugabe has now agreed to allow Mr. Tsvangirai limited authority over some economic and social ministries, the population have lost their right to a meaningful count of their votes.¹³

Election Administration

13. Independent and impartial election administration is critical to the right to vote. Ghana's elections this year were by and large free, transparent, and nonviolent, and represent a striking example for other countries. The elections in Ghana were successful for many reasons including: Ghana's Electoral Commission was impartial and effective, there were widespread voter education efforts, polling officials were well trained, a host of independent institutions observed the elections, effective fraud prevention measures and transparency procedures were put in place, security helped to prohibit violence, there were efficient electoral dispute mechanisms, and the two leading candidates made explicit efforts to maintain the peace.¹⁴ This election allowed for a peaceful transfer of power that has enabled Ghana to continue to expand its economy and better serve its citizens' interests without being consumed by civil strife.

14. The U.S. presidential elections of 2000 and 2004 faced many serious election administration problems. Although notable improvements have been made since then, serious problems also arose in the 2008 presidential election that disenfranchised many voters. In particular, there were reports of fraudulent registration practices, misinformation campaigns intended to discourage voting, shortages in voting materials and long lines in allegedly targeted districts, and problems with provisional votes.¹⁵ Furthermore, in *Crawford v. Marion County Election Board*,¹⁶ the U.S. Supreme Court upheld mandatory photo identification laws, which likely pose an unreasonable barrier to voting for many poor and minority citizens. Relatively simple reforms such as universal registration laws, accommodating voter identification laws, and a deceptive-practices bill might go far to strengthening voting rights in the U.S.

¹² Mike McIntire and Jeffrey Gettleman, *A Chaotic Kenya Vote and a Secret U.S. Exit Poll*, N.Y. Times, January 30, 2009, http://www.nytimes.com/2009/01/31/world/africa/31kenya.html?_r=1&ref=world.

¹³ Sarah Childress, *Mugabe, Rivals to Rule Zimbabwe*, The Wall Street Journal, January 31, 2009, <http://online.wsj.com/article/SB123332129713033159.html>.

¹⁴ Julie Benz-Pottie, *Carter Center Finds Ghana's Presidential Run-off Elections Credible and Peaceful*, The Carter Center, December 30, 2008, http://www.cartercenter.org/news/pr/ghana_prelim_123008.html

¹⁵ Ben Adler, *Ballot Boxed: Just because Obama Won a Landslide Doesn't Mean Our Voting System Has Been Fixed*, The New Republic, December 4, 2008, <http://www.tnr.com/politics/story.html?id=66c8b907-3673-4366-a68c-a1d4a75b7b49>

¹⁶ 553 U.S. ___, 128 S. Ct. 1610 (2008).

Electronic Voting

15. Electronic voting machines used in the U.S. are often unreliable and insecure, and pose new challenges to conducting fair and transparent elections. The software of these electronic voting systems is confidential, and is not even disclosed to election officials who purchase the machines. Furthermore, these machines provide no paper record of the votes, so there is no way to ensure that the computer records are being accurately tallied. To make matters worse, these electronic voting machines can be easily hacked, and the vote count can be manipulated without leaving any sort of trace. Research consistently stresses the new and serious threats that these systems pose to the right to vote.¹⁷ Growing concerns, over these electronic voting machines have lead to several lawsuits in the U.S. and have prompted a growing number of states to ban their use.¹⁸ Electronic voting machines should not be used until these problems have been resolved.

Recommendations

16. 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.

17. HRA urges the Council to appoint a Special Rapporteur on the right to vote to investigate derogations of the right to vote. 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.

¹⁷ Andrew Appel, et. al., *Insecurities and Inaccuracies of the Sequoia AVC Advantage 9.00H DRE Voting Machine*, October 17, 2008. <http://citp.princeton.edu/voting/advantage/>

¹⁸ Voter Action, *Pennsylvania State Supreme Court Allows Voting Rights Case to Proceed*, December 19, 2008. http://www.votetrustusa.org/index.php?option=com_content&task=view&id=3000&Itemid=113