



General Assembly

Distr.: General
15 February 2012

English only

Human Rights Council

Nineteenth session

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 the Human Rights Advocates, Inc., 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.

[9 February 2012]

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

Human rights defenders and the right to vote

Legal foundation

Article 21 of the Universal Declaration of Human Rights establishes the right to vote, stating “[t]he will of the people shall be . . . expressed in periodic and genuine elections which . . . shall be held by secret vote or by equivalent free voting procedures.” Similar guarantees are found in the International Covenant on Civil and Political Rights (ICCPR) (Article 25), European Convention on Human Rights (Article 3 of Protocol I), American Convention on Human Rights (Article 23), African Convention on Human and People’s Rights (Article 13), and Arab Charter on Human Rights (Article 24).

Additionally, the Convention on the Elimination of Discrimination Against Women (Article 7) obligates states parties to ensure women have the right to vote on equal terms with men. The Convention on the Elimination of Racial Discrimination (Article 5) obligates states parties to guarantee the right to vote without distinction as to race, colour, or national or ethnic origin. Finally, the Convention on the Rights of Persons with Disabilities (Article 29) obligates states parties to ensure that persons with disabilities can effectively and fully participate in political life, including guaranteeing the right to vote.

Impact of violations on human rights defenders

The right to vote is foundational to accessing other human rights. Voting is a mechanism by which citizens hold their leaders accountable and promote good governance. Therefore, voting is a key tool for human rights defenders to effect change.

Although the right to vote is guaranteed under international law, there is wide derogation in practice. Disenfranchisement, by exclusion from voting or discarding of votes that are cast, eliminates human rights defenders’ access to this important means of protecting and promoting human rights. Moreover, lack of mechanisms to challenge disenfranchisement often results in violence, which poses a particular threat to human rights defenders. The UN Special Rapporteur on the Situation of Human Rights Defenders has identified election periods as times of heightened risk for human rights defenders.¹

Interference by law

States might interfere with the right to vote through their electoral legislation. This interference can directly disenfranchise voters by denying the vote to specific demographic groups, such as convicted prisoners or the disabled. Interference by law can also indirectly disenfranchise voters through procedural requirements, such as voter identification laws, that disparately impact certain demographic groups such as minorities. Peru recently provided a positive example of remedying direct disenfranchisement, when the National Registry of Identification and Civil Status nullified policies excluding people with certain mental disabilities from voting. The resolution restored the voting rights of more than 23,000 people.²

Article 25 of the ICCPR provides that citizens shall have the right to vote without “unreasonable restrictions.” General Comment 25 on voting rights further explains:

¹ Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, A/HRC/13/22, Dec. 2009, ¶ 56.

² Human Rights Watch, Peru: Voting Rights Victory for People With Disabilities, Oct. 17, 2011.

The right to vote . . . may be subject only to reasonable restrictions, such as setting a minimum age limit . . . It is unreasonable to restrict the right to vote on the ground of physical disability or to impose literacy, educational or property requirements.

Thus, while some restrictions on the right to vote are allowable, they must be reasonable and subject to the principle of proportionality.

One prevalent form of interference by law is prisoner disenfranchisement. The Human Rights Committee has stated that “[i]f conviction for an offence is a basis for suspending the right to vote, the period of such suspension should be proportionate to the offence and the sentence.”³ Nonetheless, a number of states retain prohibitions on voting inconsistent with the length of sentence or type of crime, including blanket prohibitions applicable to all prisoners. Additionally, the prohibitions range temporally, with some states permanently disenfranchising prisoners. The United States has some of the most restrictive subnational level policies among democratic nations.⁴ An estimated 5.3 million US citizens currently cannot vote as a result of state-level legislation. Nearly 74 percent of these individuals are not imprisoned, but are on probation, paroled or ex-offenders. Approximately two million of these disenfranchised voters have completed their sentence.⁵

Prisoner disenfranchisement laws particularly impact on human rights defenders. Human rights defenders are often the object of criminal charges, leading to prosecution, conviction, and imprisonment.⁶ For example, Egyptian Law 73/1956 provides for the disenfranchisement of convicted prisoners. It has been reported that many of an estimated 30,000 disenfranchised individuals are political prisoners convicted for opposition to the previous regime.⁷ These individuals could be barred from participating in the elections brought about by the activism for which they were convicted.

Interference by intimidation

States might interfere with the right to vote by using violence to coerce individuals to vote in a particular manner. In the months surrounding Zimbabwe’s 2008 presidential election, state agents and other individuals affiliated with the ruling party participated in a campaign of politically motivated rape. The victims consistently reported being told by the rapists that the victims were targeted because of their involvement with the opposition party. The reports of rape surged between the first and second rounds of the election. One nongovernmental organization interviewed 70 women who reported being raped 380 times by 241 men affiliated with the ruling party.⁸

Interference by fraud

The right to vote includes not only the right to cast a vote for the candidate of one’s choice, but also the right to have one’s vote counted. Fraud in the tabulation of the votes often result in disenfranchisement even for those who have cast a vote. Fraud in vote tabulation not only violates the right to vote, but can also lead to controversy over election results and incite violence. This violence frequently targets those advocates who are most visible, such as human rights defenders.

³ General Comment 25, CCPR/C/21/Rev.1/Add.7, 1996, ¶ 14.

⁴ Mandeep K. Dhami, *Prisoner Disenfranchisement Policy: A Threat to Democracy*, *Analyses of Social Issues and Public Policy* Vol 5, No. 1, 2005.

⁵ Draft Democracy Restoration Act of 2011, HR 2212, June 16, 2011.

⁶ Human Rights Defenders: Protecting the Right to Defend Human Rights, UN Fact Sheet No. 29, p. 12.

⁷ Al-Jazeera, *Egypt Elections: Those Who Cannot Vote*, Nov. 1, 2011.

⁸ AIDS-Free World, *Electing to Rape: Sexual Terror in Mugabe’s Zimbabwe*, Dec. 2009.

The 2007 election in Kenya provides an example of electoral fraud and its potential violent impact. Election monitors reported inconsistencies in the election results announced at the local level compared to the national level, missing results from some constituencies, and implausibly high voter turnout figures, leading to inferences of ballot-stuffing, impersonation of absent voters, and bribery. An independent review commission later determined that “[t]he conduct of the 2007 elections was so materially defective that it [was] impossible . . . to establish true or reliable results . . .”⁹ The violence that erupted in the wake of the election killed more than 1,000 people and displaced 300,000.¹⁰ Kenya should be commended for its subsequent constitutional and electoral reforms, but should strive to implement remaining reforms before the upcoming elections.¹¹

General Comment 25 highlights the need for recourse through “judicial review or other equivalent process so that electors have confidence in the security of the ballot and the counting of the votes.” Such a mechanism is integral to ensuring the right vote and preventing violence. According to the European Court of Human Rights “the existence of a domestic system for effective examination of individual complaints . . . concerning electoral rights is one of the essential guarantees of free and fair elections. Such a system ensures an effective exercise of individual rights to vote . . .”¹² This system also must be accessible. Although the Myanmar government has established a procedure for filing electoral complaints, an individual submitting a complaint must pay a non-refundable fee of approximately \$1,200, an amount more than 2.5 times the average annual salary in Myanmar.¹³ Such a prohibitive expense renders the process virtually useless.

Conclusion and recommendations

The right to vote is a fundamental human right, crucial to protecting and promoting access to other human rights. Violations of the right to vote have a particularly adverse impact on human rights defenders. Human Rights Advocates (HRA) urges countries to:

- reform their voting laws to ensure any restrictions on voting are proportional, objective, and reasonable;
 - develop effective mechanisms for challenging electoral irregularities; and
 - hold perpetrators of election-related violence accountable.
- Further, HRA urges the Human Rights Council to create a Special Rapporteur to study best practices for ensuring voting rights.

⁹ Report of the Independent Review Commission on the General Elections, Sep. 2008, p. 9.

¹⁰ *Id.*

¹¹ Opening Remarks by H.E. Mr. Kofi A. Annan, “The Kenya National Dialogue and Reconciliation: Building a Progressive Kenya,” Dec. 5, 2011.

¹² Eur. Ct. H.R. Case of *Namat Aliyev v. Azerbaijan*, Application no. 18705/06, 2010, ¶ 81.

¹³ Progress report of the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana, A/HRC/16/59, Mar. 7, 2011, ¶ 17.