



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/2006/NGO/84
28 February 2006

ENGLISH ONLY

COMMISSION ON HUMAN RIGHTS
Sixty-second session
Item 11 of the provisional agenda

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.

[12 February 2006]

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

The Right to Vote, Arbitrary Detention, and Freedom of Association

1. Human Rights Advocates, Inc. (HRA) submits the following statement on the issues of voting rights, arbitrary detention, and freedom of association.

The Right to Vote

2. Article 25 of the International Covenant on Civil and Political Rights (ICCPR) codifies the principles of public participation and voting, stating that every citizen shall have the right to vote in general elections, by universal and equal suffrage, having equal access to public service in his country. Nonetheless, voting rights continue to be derogated worldwide by both the operation of law and fraudulent means, the use of new technology, and media bias. It is critical that the Commission take action to promote this fundamental right.

Abridgement by Operation of Law

3. Article 25 extends voting rights to “every citizen,” however in some countries even citizens are denied the right to vote as a matter of law. For example in the United States, all mentally competent adults have the right to vote except for convicted felons. This restriction on the right to vote is disproportionate to the offense and sentence, and results in a disproportionate racial impact on minorities.¹ Disenfranchisement because of conviction has been criticized by the Human Rights Committee in the past. The European Court of Human Rights has also found that the restriction of voting rights of all convicted prisoners violated Article 3 of Protocol No. 1 of the European Convention on Human Rights.²
4. Article 7 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) states in part, that “States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right ... [to] vote in all elections.” Thus for example, by denying women as citizens the right to vote in its municipal elections in 2005, Saudi Arabia violated its obligations under CEDAW.³
5. The laws of nations which allow for the use of electronic voting systems worldwide pose new challenges to the principle of free, fair, and transparent elections. Such electronic systems may be subject to tampering, and where there is no paper record of citizens’ votes to authenticate computer records, the lack of consistent reliability and security standards provide no safeguards.

Abridgment by Fraud

6. There is also concern over abridgment of voting rights through fraudulent means. One example is the derogation of the voting rights of African-Americans in the U.S. state of

¹ 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).

² *Hirst v. United Kingdom*, no. 74025/01, ECHR (2005), available at <http://www.echr.coe.int>

³ *Saudi Women Barred From Voting*, BBC News, October 11, 2004, available at http://news.bbc.co.uk/2/hi/middle_east/3734420.stm.

Ohio during the 2004 presidential elections. There partisan operatives may legally challenge voters on their citizenship, age, or residency. Republican Party challengers targeted polling stations in largely African-American communities, leading to massive delays and causing those voters to leave polls without casting a ballot.⁴

7. Another example is the widespread election fraud, physical violence, and intimidation against voters in the initial round of the Ukrainian presidential elections in 2004. A common type of fraud was “carousel voting” where busloads of supporters of one candidate drove from one polling station to another casting multiple false absentee ballots. At some polling stations, ballot papers were destroyed by acid poured into ballots box; at others voters were given pens filled with disappearing ink, leaving ballots unmarked and invalid, displaying the lack of meaningful parameters of election-related norms.⁵
8. Also in 2004, voters in Romanian elections were able to vote at any polling station in the country by easily removing stamps placed on national identity cards, harming the integrity of the vote.⁶
9. In Azerbaijan & Kazakhstan, OSCE election monitors found the countries’ elections to be undemocratic because of flaws in the election process. For example, in Kazakhstan, this included campaign restrictions, pressure on students to vote for the incumbent, ballot stuffing, among many others.⁷
10. The role of the media in elections also affects the right to vote. The media is the principal means through which the voter collects information during elections; therefore it is vital that it exercise an objective role in delivering complete and unbiased information to aid the voter to effectively cast his or her ballot. Elections suffering from media bias oftentimes include media bias in favor of incumbents such as in Kazakhstan.⁸
11. HRA calls on all nations to comply and respect all relevant treaties supporting the right to vote; and calls upon the Commission to appoint a first Special Rapporteur dealing with the right to vote, who can conduct a study on meaningful parameters of election-related norms, commitments, principles, and good practices.

⁴ *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>

⁵ 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>.

⁶ OSCE/ODIHR, *Assessment Mission Report on the Parliamentary and Presidential Elections in Romania on 28 November and 12 December 2004*, February 14, 2005, available at <http://www.osce.org/odihr-elections/documents.html?lsi=true&limit=10&grp=217>.

⁷ OSCE Press Release, *Kazakh Election Flawed Despite Some Administrative Improvements*, available at http://www.osce.org/odihr-elections/item_1_17236.html

⁸ *Id.*

Arbitrary Deprivation of Liberty and Torture

12. Torture is a practice commonly seen as absolutely prohibited in domestic and international jurisdictions, recently ruled as a “*peremptory norm of international law*” by the International Criminal Court for the Former Yugoslavia.⁹
13. Arbitrary deprivations of liberty are also subject to various provisions in international instruments, such as the Universal Declaration of Human Rights (Article 9), the ICCPR (Article 9(1)), and the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Principles 2 and 4). Notwithstanding, the prohibition of arbitrary deprivations of liberty is still protected to a lower degree; whereas the prohibition of torture is nonderogable, the prohibition of arbitrary deprivations of liberty is not (as can be seen, for instance, in Article 4(2) of the ICCPR). HRA comprehends the reasons for this difference, where in cases of public emergency States sometimes have the need, and may derogate some rights of its citizens in order to pursue a greater interest as long as the proportionality test is met. However, this should not be an excuse for arbitrary deprivations of liberty.
14. HRA expresses its concerns and appeals for a stricter scrutiny of arbitrary deprivations of liberty. Gone is the time when torture was an official policy of States; nowadays most, if not all, cases of torture derive from a previous violation of the freedom from arbitrary deprivation of liberty. The illegal arrest and detention without basic rights such as the right to counsel, the right to a judicial review of the reasons behind the incarceration, or even the right to communicate with the outside world can easily lead to torture or mistreatment of those detained. This connection has appeared repeatedly, as can be seen in the *Velázquez Rodríguez*¹⁰ and *Castillo-Páez*¹¹ cases before the Inter-American Court of Human Rights and in many accounts of the war on terror led by the U.S. after 9/11,¹² where allegations of torture often follow an arbitrary deprivation of liberty.
15. Another issue of concern to HRA is the increasing number of anti-terrorism laws adopted by many States. Generally, these types of laws have led to the arbitrary deprivations of liberty in two main ways: broad definitions of terrorism and diminishing of due process standards. These lead to situations where States keep arbitrarily detained people incarcerated for extremely long periods of time, subject to torture and other ill-treatment either in the place of arrest or in other countries where torture is “*endemic*”, this violating the prohibition of nonrefoulement stated in article 3(1) of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
16. HRA, therefore, encourages all appropriate UN bodies to engage in a thorough analysis and discussion of the indirect consequences of arbitrary deprivation of liberty; to make its

⁹ Furundzija, IT-95-17/1, Trial Chamber, Judgment of 10 December 1998, §§ 144 and 153 to 157, available at <http://www.un.org/icty/furundzija/trialc2/judgement/fur-tj981210e.htm>

¹⁰ http://www.corteidh.or.cr/seriecpdf_ing/seriec_04_ing.pdf

¹¹ http://www.corteidh.or.cr/seriecpdf_ing/seriec_34_ing.pdf

¹² As can be seen in the Amnesty International/Reprieve conference’s conference report: Guantánamo -- only the tip of an iceberg of abuse, available at <http://news.amnesty.org/index/ENGPOL300372005> or an International Committee of the Red Cross report on its role on detention issues on the aftermath of 9/11, available at <http://www.icrc.org/Web/Eng/siteeng0.nsf/iwpList74/593709C3D0B1296DC1256F430044235D>

prohibition more absolute; to recognize that its violation is connected with torture, with the goal of further reaffirming protections during times of emergency when this right is derogated; and finally, to encourage and oversee the implementation of all measures regarding the prohibition of arbitrary forms of deprivation of liberty by Member States.

Freedom of Association

17. The right to freedom of association is guaranteed in Article 22(1) of the ICCPR, Article 8 of the International Covenant of Economic, Social, and Cultural Rights, and International Labour Organization Conventions 87 and 98.¹³
18. HRA is concerned that language in the Commission's Resolution 2005/37¹⁴ might be interpreted to allow Member States to limit labor rights on the grounds of protecting the right to freedom of association, when such limits would actually undermine the right to freedom of association.
19. For example, federal labor legislation in the U.S. makes it unlawful for union collective bargaining agreements to require union membership as a condition of employment.¹⁵ Furthermore, 22 states in the U.S. have enacted so-called "right-to-work" laws that prevent unions from collecting fees from nonmember employees, while still guaranteeing those employees the benefits of union membership.¹⁶ The result is weaker unions with inadequate resources to represent their members.¹⁷ Consequently, workers in states with "right-to-work" laws have lower wages, fewer people with health care, higher poverty and infant mortality rates, lower workers' compensation benefits for workers injured on the job, and more workplace deaths and injuries.¹⁸
20. HRA urges the Commission to affirm that full labor rights are essential to guarantee the right to freedom of association, and that limits on labor rights such as "right-to-work" laws are a violation of the right to freedom of association essential to guarantee workers' human rights.

¹³ ILO Convention 87 Concerning Freedom of Association and Protection of the Right to Organise and ILO Convention 98 Concerning the Right to Organise and Collective Bargaining (ILOLEX).

¹⁴ *Promoting the Rights to Peaceful Assembly and Association*, U.N. Commission on Human Rights Resolution 2005/37, E/CN.4/2005/RES/37 (2005). The resolution stated "Recognizing also that no one may be compelled to belong to an association."

¹⁵ Labor-Management Relations Act of 1947 (Taft-Hartley Act), 29 U.S.C. § 164(b).

¹⁶ American Federation of Labor and Congress of Industrial Organizations [hereinafter AFL-CIO], *Rights to Work for Less*, <http://www.aflcio.org/issues/legislativealert/stateissues/work/> (last visited Feb. 3, 2006).

¹⁷ *Id.*

¹⁸ AFL-CIO, *The Truth About Right to Work for Less: Right to Work Hurts Everyone*, <http://www.aflcio.org/issues/legislativealert/stateissues/upload/rtw.pdf> (last visited Jan. 29, 2006). The average worker in a right-to-work state makes about \$5,333 a year less than workers in other states. 21 percent more people lack health insurance in right-to-work states compared to free-bargaining states. Right-to-work states have a poverty rate of 12.5 percent, compared with 10.2 percent in other states. The infant mortality rate is 16 percent higher in right-to-work states. Maximum weekly worker compensation benefits are \$30 higher in free states than in right-to-work states. Finally, the rate of workplace deaths is 51 percent higher in states with right-to-work laws, where unions can not speak up on behalf of workers.