

VIOLATIONS OF EQUAL POLITICAL PARTICIPATION

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1. SUMMARY STATEMENT

SINCE 1801, the United States government has systematically denied the residents of the District of Columbia the right to enjoy equal political participation in their own national legislature. Unlike all other taxpaying citizens, who reside in the fifty states, the approximately 550,000 residents of the District of Columbia—the national capital—are denied the fundamental right to equal suffrage in the U.S. Congress. They are prohibited from voting for and electing representatives to the U.S. Senate and the U.S. House of Representatives. The residents of the District of Columbia are the only U.S. taxpaying citizens denied the right to universal and equal suffrage— fundamental rights guaranteed under Articles 25¹ and 26² of the ICCPR³— as well as under numerous other international human rights instruments detailed below.

Despite two centuries of citizen initiatives designed to secure equal congressional voting rights, including acts protests, congressional lobbying, acts of civil disobedience, and a long chain of federal lawsuits, the U.S. Congress continues to deny the residents of the District of Columbia representation in Congress through duly elected representatives on general conditions of equality. However, on December 31, 2003, the United States was found to be in violation of human rights provisions under the Charter of the Organization of American States by the Inter-American Commission on Human Rights regarding its treatment of District of Columbia residents.⁴ On March 31, 2005, the Organization for Security and Cooperation in Europe’s (OSCE) Office of Democratic Institutions and Human Rights (ODIHR) issued a report that observed that the disenfranchised status of the residents of the District was at variance with OSCE democratic election standards.⁵ And on July 5, 2005, the Parliamentary Assembly voted unanimously to call on the U.S. Congress to observe its human rights obligations under the OSCE’s 1990 Copenhagen Document and grant the residents of the District of Columbia equal congressional representation.⁶

¹ Article 25 of the ICCPR states that “Every citizen shall have the right and the opportunity, without unreasonable restrictions: (a) to take part in the conduct of public affairs, directly or through freely chosen representatives; (b) to 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.” (emphasis added.)

² Article 26 of the ICCPR states that “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, *political* or other opinion, national or social origin, property, birth or *other status*.” (emphasis added.)

³ UN General Comment 25 asserts that “The conduct of public affairs... is a broad concept which *relates to the exercise of political power, in particular the exercise of legislative, executive and administrative powers*. It covers all aspects of public administration, and the formulation and implementation of policy at *international, national, regional and local levels*. The allocations of powers and the means by which individual citizens exercise the right to participate in the conduct of public affairs protected by article 25 should be established by the constitution and other laws.” (emphasis added.)

⁴ OAS Final Report, 98/03 USA 11.204-MERITS

⁵ OSCE Office of Democratic Institutions and Human Rights, United States of America, OSCE/ODIHR Election Observation Mission Final report, Executive Summary, at page 2.

⁶ Washington, DC Declaration of the OSCE Parliamentary Assembly and Resolutions Adopted at the Fourteenth Annual Session, 1-5 July 2005, at page 8, paragraph 58.

SUGGESTED RECOMMENDATIONS FOR THE HRC:

That the UNHRC call on the Congress of the United States to adopt such legislation as may be necessary to grant the residents of the District of Columbia equal voting rights in their national legislature in accordance with its obligations under Articles 25 and 26 of the International Covenant on Civil and Political Rights, which guarantee to all citizens the right to universal and equal suffrage under law.

2. BACKGROUND ON VIOLATIONS IN DISTRICT OF COLUMBIA

On December 31, 2003, the Inter-American Commission on Human Rights (IACHR) of the Organization of American States (OAS) issued OAS Final Report, 98/03 USA 11.204-MERITS (OAS Report), which declared, inter alia, that the United States was “responsible for violations” under Articles 2 and 20 of the *American Declaration of the Rights and Duties of Man (ADRDM)*.⁷ The ADRDM defines the human rights obligations of OAS member states. The U.S. was a founding member of the OAS.

The Report observed that The OAS Final Report, 98/03 USA 11.204-MERITS, addresses the U.S. defense and rejects it, noting that the legal status of D.C. residents under the U.S. Constitution and the historical rationale for that status do not justify the deprivation of equal voting rights to U.S. citizens.⁸ At paragraph 104-105 of the OAS Report it states:

“Both the Petitioners and the State have suggested that the foundation of the denial to the Petitioners of the right to vote for and elect members of Congress lay upon concerns existing at the time the U.S. Constitution was negotiated over 200 years ago that the seat of the federal government may be disproportionately threatened, or the position of a state correspondingly enriched, by placing Congress within a State.

“The Commission has recognized and given due consideration to the fact that these concerns may have justified depriving residents of the District of elected representation in Congress at the time that the U.S. Constitution was enacted and indeed may have been indispensable to the Constitution’s negotiation. However, as with all protections under the American Declaration, the Commission must interpret and apply Articles II and XX in the context of current circumstances and standards. Not only has the State failed to offer any present-day justification for the Petitioners’ denial of effective representation in Congress, but modern developments within the United States and the Western Hemisphere more broadly indicate that the restrictions imposed by the State on the Petitioners’ right to participate in government are no longer reasonably justified.”⁹

⁷ See Paragraph 117 of OAS Final Report 98/03 USA 11.204-MERITS: “The Commission hereby concludes that the State is responsible for violations of the Petitioners’ rights under Articles II and XX of the American Declaration by denying them an effective opportunity to participate in their federal legislature.” Also see: **APPENDIX I: OAS Final Report 98/03 USA 11.204-MERITS**; or <http://www.cidh.oas.org/annualrep/2003eng/USA.11204.htm>

⁸ UN General Comment 25 declares that, “Where citizens participate in the conduct of public affairs through freely chosen representatives, *it is implicit in article 25 that those representatives do in fact exercise governmental power...*” and that “[n]o distinctions are permitted between citizens in the enjoyment of these rights on the grounds of race, colour, sex, language, religion, *political*, national or social origin, property, birth *or other status*.”

⁹ UN General Comment 25 also states that “Any conditions which apply to the exercise of the rights protected by article 25 should be based on *objective and reasonable criteria*... The exercise of these rights

Based on a finding of human rights violations, the IACHR made the following recommendations to the U.S. under paragraph 119 of the OAS Report to remedy the violations:

“Provide the [residents of the District of Columbia] with an effective remedy, which includes adopting the legislative or other measures necessary to guarantee to the [residents of the District of Columbia] the effective right to participate, directly or through freely chosen representatives and in general conditions of equality, in their national legislature.”

To date, the Government of the United States has failed to enact legislation guaranteeing District of Columbia residents representation in the U.S. Congress on general conditions of equality.

3. **ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE’S OFFICE OF DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS REPORTS ON ABSENCE OF CONGRESSIONAL VOTING RIGHTS**

On March 31, 2005, the Office of Democratic Institutions and Human Rights (ODIHR) of the OSCE observed in its final report on the 2004 U.S. presidential elections that the US Government’s policy toward the disenfranchised residents of the District of Columbia was at variance with its OSCE obligations under democratic election standards of 1990 Copenhagen Document:

“The U.S. constitutional framework grants full representation and voting rights in elections for federal office to US citizens, who are also citizens of individual states. However, to varying degrees, these rights are limited for citizens of other U.S. jurisdictions, such as Washington D.C.... Ensuring equal voter rights is a fundamental OSCE commitment.”

4. **PARLIAMENTARY ASSEMBLY OF THE ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE (OSCE) ACKNOWLEDGES U.S. VIOLATIONS OF OSCE DEMOCRATIC ELECTION STANDARDS**

On July 5, 2005, the Organization for Security and Cooperation in Europe’s (OSCE) Parliamentary Assembly voted unanimously to call on the U.S. Congress to pass such legislation as may be necessary to grant the residents of the District of Columbia equal congressional representation in conformity with its OSCE’s obligations under the 1990 Copenhagen Document. Chapter III of the Washington, D.C. Declaration on Democracy, Human Rights and Humanitarian Questions at paragraph 58 reads:

“[The OSCE Parliamentary Assembly:] calls on the Congress of the United States to adopt such legislation as may be necessary to grant the residents of Washington, D.C. equal voting rights in their national legislature in accordance with its human dimension commitments.”

5. **U.S. COMPLIANCE REPORT ACKNOWLEDGES PROHIBITION ON D.C CONGRESSIONAL VOTING RIGHTS**

by citizens may not be suspended or excluded on grounds which are established by law and which are objective and reasonable. For example, established *mental incapacity* may be a ground for denying a person the right to vote or to hold office.”

Under Section 414 of the Second and Third Periodic Report of the United States of America to the United Nations Committee on Human Rights (U.S. Report), the U.S. recognizes that D.C. residents voting representation in Congress is proscribed under the U.S. Constitution, stating that:

“[D.C. residents] are represented in the House of Representatives by a non-voting Delegate, who sits on committees and participates in debate, but cannot vote. D.C. does not have representation in the Senate.”¹⁰

However, under Article 25 of the ICCPR,¹¹

“Every citizen shall have the right and the opportunity, without unreasonable restrictions: (a) to take part in the conduct of public affairs, directly or through freely chosen representatives; (b) to vote and to be elected at genuine periodic elections which shall be by *universal and equal suffrage*...”¹² (emphasis added.)

Article 25 is consistent with the political participation provisions under the ADRDM. It follows, therefore, that a violation of Article 20 the ADRM constitutes a violation of Article 25 of the ICCPR.¹³

Further, under Article 26 of the ICCPR,

“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, *political* or other opinion, national or social origin, property, birth or *other status*.” (emphasis added.)

¹⁰ “[T]he United States appears to suggest that District residents are afforded an adequate right to participate in the government of the United States and to take part in popular elections in compliance with Article XX of the Declaration, by reason of other political activities that are open to them. According to the State, these include their ability to vote in Presidential elections, to elect a mayor and city council, and the presence of one non-voting delegate in the House of Representatives and three “shadow” representatives in Congress. The State also points to the fact that the District’s status is freely and openly debated in the government through, for example the presentation of statehood bills in Congress. The State therefore contends that by any measure, District residents have been able to take part in “healthy and robust debate” concerning all issues of national concern, including the status of the District itself.” OAS Report at 96

¹¹ On ratification of the ICCPR, the U.S. Senate attached no reservation to Articles 25 or 26.

¹² UNHRC, General Comment 25(57), General Comments under Article 40, paragraph 4 of the International Covenant on Civil and Political Rights, adopted by the Committee at its 1510th mtg., U.N. Doc. CCPR/C/Rev.1/Add.7 (1996), para. 4. According to the *travaux préparatoires* to the ICCPR, permissible restrictions under Article 25 would include, for example, prescription of a minimum age for voting. Marc J. Bossuyt, Guide to the “Travaux Préparatoires” of the International Covenant on Civil and Political Rights 473 (1987), citing Third Committee, 16th Session (1961), A/5000, § 93, referring to A/C.3/SR/1096, §36 (GH), §37 (CL), §46 (GH); A/C.3/SR.1097, §5 (IQ), §9 (TR), §21 (U).

¹³ “Like the European Court and this Commission, the UN Human Rights Committee has recognized that the rights protected under Article 25 of the ICCPR are not absolute, but that any conditions that apply to the right to political participation protected by Article 25 should be based on “objective and reasonable criteria.” The Committee has also found that in light of the fundamental principle of proportionality, greater restrictions on political rights require a specific justification.” OAS Report at 93.

Article 26 of the ICCPR is consistent with right to equality provisions under Article 2 of the ADRDM. It follows, therefore, that a violation of Article 2 of the ADRM constitutes a violation of Article 26 of the ICCPR.¹⁴

Under Section 413 of the U.S. Report, the U.S. justifies depriving D.C. residents full congressional voting rights, noting its constitutional prohibition.

“The United States was founded as a federation of formerly sovereign states. In order to avoid placing the national capital under the jurisdiction of any individual state, the United States Constitution provides Congress with exclusive jurisdiction over the ‘Seat of Government of the United States,’ which is the District of Columbia. U.S. Const. art. 1 Sec. 8...”¹⁵

The U.S., in its pleadings before the IACHR, emphasized an identical rationale. The OAS Report, at paragraph 106,¹⁶ nevertheless found no justification, based upon a constitutional sanction, for the disenfranchisement of D.C. residents:

“Significantly, the State’s judicial branch has specifically concluded that the historical rationale for the District Clause in the U.S. Constitution would not today require the exclusion of District residents from the Congressional franchise and has accepted that denial of the franchise is not necessary for the effective functioning of the seat of government. It is also notable in this regard that domestic courts in the United States have found that the exclusion of District residents from the Congressional franchise does not violate the right to equal protection under the U.S. Constitution, not because the

¹⁴See The Pietraroia Case, Communication N° 44/1979, para. 16. See similarly Manfred Nowak, U.N. Covenant on Civil and Political Rights – CCPR Commentary 444-5 (1993). Nowak notes that universal suffrage in various countries is not an absolute precept but rather only a relative principle molded by the respective understanding of democratic participation. At the same time, he emphasizes that the principle of universal suffrage obligates States Parties not only to extend the circle of persons eligible to vote and to be elected to as many citizens as possible, but also to take positive steps to ensure that these persons are truly able to exercise their right to vote.

¹⁵The European Court of Human Rights, for example, had occasion to interpreting Article 3 of Protocol I to the European Convention in the context of a complaint challenging Belgian legislation that transitionally demarcated the territory of Dutch-speaking and French-speaking regions of Belgium and placed linguistic restrictions upon representation and membership for minority language groups in the Community and Regional Councils and Executives of those regions. In disposing of the complaint, the European Court indicated that the rights encompassed in Article 3 of Protocol I are not absolute, but rather that there is room for “implied limitations.” Moreover, the Court proclaimed that states have a “wide margin of appreciation” in implementing the rights under Article 3 of Protocol I, but that [i]t is for the Court to determine in the last resort whether the requirements of Protocol N° 1 (P1) have been complied with; it has to satisfy itself that the conditions do not curtail the rights in question to such an extent as to impair their very essence and deprive them of their effectiveness; that they are imposed in pursuit of a legitimate aim; and that the means employed are not disproportionate. In particular, such conditions must not thwart ‘the free expression of the opinion of the people in the choice of the legislature.’” OAS Report at 91.

¹⁶UN General Comment 25 states that, “Article 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. Article 25 lies at the core of democratic government based on the consent of the people and in conformity with the principles of the Covenant.” (emphasis added.)

restriction on their right to elect Congressional representatives have been found to be justified, but because the limitation is one drawn by the Constitution itself and accordingly cannot be overcome by the one person, one vote principle. The American Declaration prescribes no similar limits or qualifications upon the guarantee of the rights under Articles II and XX and, as indicated above, establishes standards that apply to all legislative or other enactment by a state, including its constitutional provisions.”¹⁷

6. **NO OTHER FEDERAL ENCLAVES IN THE WESTERN HEMISPHERE DENY THEIR RESIDENTS EQUAL VOTING RIGHTS IN THE NATIONAL LEGISLATIVE**

The OAS Report also found that no other federal enclaves in the Western Hemisphere denied their residents equal voting rights in the national legislature. At paragraph 108, the IACHR notes:

“The Commission also considers it significant that according to the information available, no other federal state in the Western Hemisphere denies the residents of its federal capital the right to vote for representatives in their national legislature. In Canada, for example, the City of Ottawa constitutes a part of the Province of Ontario and accordingly its residents are entitled to elect Members of Parliament in the federal House of Commons on the same basis as residents in other provincial electoral divisions. The City of Buenos Aires, while constituting a separate enclave similar to the District of Columbia, is entitled to elect deputies and senators to Argentina’s national legislature. Similarly, the residents of Brasilia, Brazil, Caracas, Venezuela and Mexico City, Mexico, all of which constitute federal enclaves or districts, have voting representation in their national legislatures.”

7. **CONCLUSION**

Based on the legal findings and analysis of the OAS Report under the ADRDM, the considered statements of the OSCE’s Office of Democratic Institutions and Human Rights and the OSCE’s Parliamentary Assembly under the 1990 Copenhagen Document: Democratic Election Standards; the plain language of Articles 25 and 26 of the ICCPR; and the HRC’s General Comment 25, Worldrights respectfully request that the HRC issue the following recommendations to the United States:

“That the UNHRC calls on the Congress of the United States to adopt such legislation as may be necessary to grant the residents of the District of Columbia equal voting rights in their national legislature in accordance with its obligations under Articles 25 and 26 of the International Covenant on Civil and Political Rights, which guarantee to all citizens the right to universal and equal suffrage under law.”

¹⁷ It is well-established that all obligations imposed on a State by international law must be fulfilled in good faith and that domestic law may not be invoked to justify nonfulfillment, even in cases involving constitutional provisions. See I/A Court H/R., Advisory Opinion OC-14/94 of December 9, 1994, Ser. A N° 14 (1994), para. 35.