

Violations of Article 25:
A response to the U.S. Second and Third Periodic Report and to CCPR/C/USA/Q/3
On issues related to the right to vote and participate in public affairs

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Executive Summary

1. Upon review of the Committee's *List of Issues to be taken up in connection with the consideration of the Second and Third periodic reports of the United States of America*, adopted on March 30, 2006, this update was drafted to address the Committee's priority concerns under Article 25. While we believe that there are other significant concerns about violations of this Article by the U.S. government, in the interests of being concise we have limited this update to the following issues: (1) felony disfranchisement; (2) loss of voting rights for victims of Hurricane Katrina; and (3) lack of voting rights for Washington, D.C., residents.
2. In the United States, felony disfranchisement laws are adopted at the state level and thus have resulted in wide disparities in both the terms and the application of the laws. Serious problems exist in the procedures for removing voters from electoral databases because of a felony conviction, as well as in the education of public officials charged with upholding the laws. There is also significant variance in state determinations of which crimes will result in disfranchisement.
3. *Recommendation:* To respond to this violation of Article 25, the U.S. Government must ensure that local governments are informed about and uphold their obligations under the ICCPR, and it must adopt measures to make reasonable and uniform throughout the country

the procedures for disfranchisement of those who convict a crime, as well as the procedures for restoring the rights of those individuals.

4. In the April elections in Orleans Parish, tens of thousands of voters were denied access to voting because the U.S. Government failed to take actions to accommodate those displaced by Hurricane Katrina. Despite precedents set by the responses to other disasters including the September 11 attacks in New York City, the federal government chose to provide only a fraction of the financial assistance requested by the Louisiana State government to hold these elections. Of particular concern, the impact of the denial of voting rights for the displaced population was racially disparate; a review of the April voter turnout shows a significant drop among African-American voters and an actual increase in the percentage of white voter turnout.
5. *Recommendation:* The U.S. Government must take immediate action to prepare for the national and state elections in the autumn and ensure that the right to vote of all persons displaced by Hurricane Katrina is protected.
6. The residents of Washington, D.C., pay taxes like any other U.S. resident, but they are denied representation in the federal legislature. In December 2003, the Inter-American Commission on Human Rights ruled that the U.S. Government is in violation of international law because Washington, D.C., residents have no representation.
7. *Recommendation:* The U.S. Government should support and enact federal legislation to extend equal voting rights to all citizens residing in Washington, D.C.

Felony disfranchisement

8. The United States maintains in its October 2005 Report (“Report”) submitted to the United Nations Human Rights Committee that “most states deny voting rights to persons who have been convicted of certain serious crimes” and “[i]n most states, this disability is terminated by the end of a term of incarceration or by the granting of pardon or restoration of rights.”¹ In fact, *every* state save two (Maine and Vermont) denies voting rights to persons convicted of a felony. Thus, 99.35% of all American citizens are subject to felony disfranchisement laws. The Report observes that the Fourteenth Amendment of the United States Constitution “explicitly recognizes” the right of states to bar an individual from voting because of his or her participation in a crime. However, most states routinely fail to implement the disfranchisement laws fairly or accurately, and the option of restoration is frequently elusive.
9. A recent survey of state procedures regarding the removal of voters from electoral databases due to a felony conviction found no systematic protocol for identification or verification, leading to results that were fraught with inaccuracies.² None of the 15 states analyzed employs standardized criteria to verify eligibility on the “purge” list. Moreover, two-thirds of those states lack any notification requirement, meaning that individuals are not informed when they have been purged, which is an obvious impediment to seeking an appeal of an incorrect removal.
10. This is exacerbated in states that have a statutorily prescribed waiting period before certain individuals can seek to have their rights restored. Maryland requires a three-year waiting period for some categories of offenders prior to restoring their eligibility to vote. However, there is no process in place to measure the elapsed time and no means of notifying an individual when s/he is eligible to vote. This leads to a confusing situation in which people are often unaware as to whether they are entitled to apply for restoration or register to vote.
11. In those states without a waiting period, there are substantial difficulties in synchronizing databases and determining the accuracy of the purged voting list. The process of removal varies from state to state, but usually requires substantial interagency coordination. Frequently this necessitates communication between the secretary of state, the department of correction, the administrative office of the courts, and local boards of election. The procedure of matching voter registration data and corrections data is complicated by the fact that these databases frequently use agency-specific identifiers that do not match those of outside parties. This results in an increased likelihood of “false positives.”
12. In the summer of 2004, in the months preceding the presidential election, the Florida Division of Elections, a state with lifetime disfranchisement for a felony conviction, sent to local election boards a list of 47,000 persons to be deleted from the eligible voter database due to a felony conviction. After resisting efforts to make the purge list public, the state was eventually ordered by a court to release the names of those persons who had been removed.

¹ Second and Third Periodic Report of the United States of America to the United Nations Committee on Human Rights Concerning the International Covenant on Civil and Political Rights, at § 410 (October 21, 2005).

² American Civil Liberties Union and Demos. *Purged! How a Patchwork of Flawed and Inconsistent Voting Systems Could Deprive Millions of Americans of the Right to Vote*, (American Civil Liberties Union, 2004).

An investigation by the *Miami Herald* revealed that more than 2,000 people on the list had been incorrectly identified for removal.³ The state had failed to accurately verify the individuals on the list, despite the fact that Florida was under intense scrutiny in light of alleged voting irregularities in the 2000 presidential election. This faulty mechanism, resulting in thousands of erroneous matches, exists in a similar form in many other states and has been identified by the American Civil Liberties Union and Demos as a fundamental flaw in the implementation of felony disenfranchisement law.

13. Confusing state laws and misinformed state officials also contribute to low restoration rates. In one survey of ten states, more than one-third (37%) of local officials incorrectly described their state's disenfranchisement law or were unaware of specific components.⁴ The report also found ambiguities and inconsistencies in a number of state disenfranchisement laws. For example, in Alabama, crimes of "moral turpitude" result in the loss of voting rights, but the state remains unwilling to produce an accounting of all offense types that can be classified under that category. Most states also lack a coherent policy in how to address persons convicted of a federal or out-of-state crime. These legal breakdowns provide additional barriers to voter restoration and decrease the likelihood of application.
14. For those persons who are aware of the restoration process, the application protocol in the eleven states that have lifetime disenfranchisement can be daunting. The restoration process in these states often requires applying for a pardon, but the specifics of this process vary from state to state. In Florida, many applicants need to navigate a process which will require a hearing before a four-member Clemency Board where one may need to answer questions regarding character. In Kentucky, an applicant must submit three letters of reference; Virginia employs a waiting period based on the type of offense (which raises similar issues as in those states that have a waiting period for automatic restoration), as does Wyoming. These application processes often require copious paperwork and a cumbersome set of rules and deadlines.
15. Not surprisingly, as a result of the mystery surrounding eligibility and the complexity of the process, few persons ever take advantage of the restoration process or are successfully granted voting rights. Insufficient assistance available for applicants is another impediment to restoration, resulting in less than 3% of disenfranchised persons having their rights restored.⁵ Even for those persons who do apply, the review process can take substantially longer than promised. A recent study of Alabama's restoration procedure found that more

³ Erica Bolstand, Jason Grotto, and David Kidwell. "Thousands of Eligible Voters are on Felon List," *Miami Herald*, July 2, 2004.

⁴ Alec Ewald, *A 'Crazy-Quilt' of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law*. (Washington, DC: The Sentencing Project, 2005); see also *Boards of Elections Continue Illegally to Disenfranchise Voters with Felony Convictions*, (New York, NY: Brennan Center for Justice and Demos, 2006). Available online <http://www.brennancenter.org/programs/downloads/RTV%20state%20work/NY%20Survey%20report%20FINAL%203-.pdf> (Accessed April 26, 2006).

⁵ Marc Mauer and Tushar Kansal, *Barred for Life: Voting Rights Restoration in Permanent Disenfranchisement States*. (Washington, DC: The Sentencing Project, 2005).

than 80% of restoration applications remain un-reviewed after the 50-day statutorily prescribed period.⁶

16. For more information on the U.S. practice of felony disfranchisement compared to that of other countries of the world, please see the report submitted by the American Civil Liberties Union.

Committee jurisprudence

17. Article 25 of the ICCPR recognizes the rights of all citizens to vote in elections and to take part in public affairs “without unreasonable restrictions.”

18. Under *General Comment No. 25*, paragraph 4, the Committee has stated clearly that “the exercise of these rights by citizens may not be suspended or excluded except on grounds... which are objective and reasonable.” Also under *General Comment No. 25*, paragraph 11, the Committee notes that “States must take effective measures to ensure that all persons entitled to vote are able to exercise that right. Where registration of voters is required, it should be facilitated and obstacles to such registration should not be imposed.”

Recommendations:

19. Given the wide disparities among the states and territories of the U.S. in their disfranchisement laws and in the application of those laws, the U.S. government has failed to meet its obligations to ensure that the rights of its citizens to vote are protected. The U.S. government should:

- a. ensure that local governments are informed about their obligations under the ICCPR; and
- b. adopt measures to make reasonable and uniform throughout the country the procedures for disfranchisement of those who convict a crime, as well as the procedures for restoring the rights of those individuals.

Loss of voting rights for victims of Hurricane Katrina

20. The devastation caused by Hurricane Katrina in September 2005 has created a displacement of citizens from the Gulf Coast unlike anything in modern United States history. Hundreds of thousands of New Orleans residents remain displaced. One of the many problems created by Hurricane Katrina relates to voting. The recent elections in Orleans Parish are an example of the failure of the United States government to take action or to ensure that the State of Louisiana took measures to protect the voting rights of citizens displaced by Hurricane Katrina. The victims of this failure have been black voters: in the 2006 Orleans Parish mayoral primary election, there was a substantial decrease in the turnout of black voters

⁶ *Voting Rights Denied in Alabama: A Report by the Brennan Center and the Alabama Alliance to Restore the Vote*, (New York, NY: Brennan Center for Justice, 2006). Available online <http://www.brennancenter.org/programs/downloads/AL%20BPP%20Report%202.2.06%20FINAL%20-%20not%20embargoed.pdf>

compared to the last mayoral primary election in 2002, whereas white turnout actually increased.⁷

21. The United States government has demonstrated that it can provide extraordinary and necessary resources to enable individuals to exercise their right to vote when it so chooses. For example, for the 2005 Iraqi election, the United States government offered \$40 million of “financial support for the implementation and logistics of the election.”⁸ The United States also enabled Iraqi citizens residing in the United States to vote in Iraqi elections by means of satellite voting. In another example, the Federal Emergency Management Agency (“FEMA”) reimbursed New York City \$7.9 million and Nassau County (located on New York State’s Long Island) another \$1 million, to pay for the entire cost of rerunning elections that were suspended as a result the September 11, 2001 terrorist attack.⁹
22. In contrast to the examples noted above, the United States government has chosen to offer little assistance relating to the costs of elections to jurisdictions affected by Katrina. Louisiana Secretary of State Al Ater requested \$3-\$4 million in assistance, much of which would be used for outreach of displaced voters. FEMA denied most of this request and announced plans only to reimburse local governments for the cost of destroyed voting machines.¹⁰ Moreover, unlike Iraqi citizens living in the United States, displaced citizens of Orleans Parish were not able to vote in locations outside of Louisiana because the Louisiana General Assembly refused to pass legislation permitting it. Though Secretary of State Ater at one point publicly supported out-of-state satellite voting, the state defended against a legal challenge providing for out-of-state satellite voting.¹¹ The lack of out-of-state satellite voting had a much greater impact on African-Americans. An analysis by a professor from Brown

⁷ Because the Louisiana Secretary of State does not breakdown “other” voters by their racial or ethnic characteristics beyond black and white, the impact of Hurricane Katrina on the Asian American community and its ability to vote cannot be measured. However, it is likely that the Asian American community’s ability to cast an effective ballot suffered as it did for the African American community. Prior to Hurricane Katrina, Louisiana was home to over 50,000 Asian Americans, of which more than half were Vietnamese. New Orleans, steeped in a rich and multicultural heritage, was home to the oldest Filipino community in the nation. Southern Mississippi was home to about 7,000 Vietnamese and other Asian residents. Many lived in the areas affected by Hurricane Katrina and in places such as Bayou La Batre, Alabama, Baton Rouge, Louisiana and Gulfport, Mississippi. To date, an estimated 10,000 Vietnamese evacuees relocated to Houston. Katrina also affected Chinese, Filipino, Bangladeshi and Korean Americans. These Asian American victims of Hurricane Katrina have also been negatively impacted by the failure of the United States government to take action or to ensure that the State of Louisiana took measures to protect the voting rights of citizens displaced by Hurricane Katrina.

⁸ U.S. Department of State, “*Iraqi Elections, January 30, 2005*,” available at <http://www.state.gov/documents/organization/41314.pdf> (last visited May 11, 2006)

⁹ Federal Emergency Management Agency, “*FEMA To Reimburse New York City For Cancelled And Rescheduled 9/11 Primarily (sic) Elections*,” available at <http://www.fema.gov/news/newsrelease.fema?id=5518> (last visited May 11, 2006); Federal Emergency Management Agency, “*FEMA Obligates \$33.5 Million To New York State For Agencies Involved In Response And Recovery Effort*,” available at <http://www.fema.gov/news/newsrelease.fema?id=3558> (last visited May 11, 2006).

¹⁰ John Hill, “*Entire state to fund New Orleans election*,” 9The Daily Advertiser, April 17, 2006), available at <http://theadvertiser.com/apps/pbcs.dll/article?AID=/20060417/NEWS01/604170306&theme=LEGISLATURE> (last visited May 11, 2006).

¹¹ Robert Travis Scott, “*Senate committee to hear satellite-voting bill today*” (The Times-Picayune, March 29, 2006), available at <http://www.nola.com/news/t-p/index.ssf?/base/news-3/1143617888106940.xml> (last visited May 11, 2006).

University estimates that the percentage of whites who were displaced by the hurricane but have returned home is an estimated 67%; the percentage of African-Americans who were displaced and returned home is less than 40%.¹² Though absentee voting was available for many displaced voters, there were not adequate resources to notify voters of the availability of these satellite polling stations.

23. The following table compares voter participation in the February 2002 Orleans Parish mayoral primary and the April 2006 Orleans Parish mayoral primary by race:¹³

Race	Registered voters 2002	Registered voters 2006	Change in Reg. Voters	Voter Turnout 2002	Voter Turnout 2006	Change in Voter Turnout	% Voter Turnout 2002	% Voter Turnout 2006	Change in % Voter Turnout
All	295,050	298,512	3,462	134,973	109,979	- 24,994	45.7	36.8	- 8.9
White	94,087	90,919	- 3,168	47,256	46,061	- 1,195	50.2	50.7	0.5
Black	184,798	188,316	3,518	83,164	58,474	- 24,690	45.0	31.1	-13.9
Other	16,165	19,287	3,122	4,553	5,444	891	28.2	28.2	0

24. As these numbers show, even though there were more black registered voters in 2006 than in 2002, almost 25,000 fewer black voters turned out in 2006 whereas the number of white voters was almost the same. The impact of the failure of the United States government and Louisiana state government to adequately enable displaced voters to participate was borne almost entirely by black voters. The elections in Orleans Parish appear to violate the obligations under Article 25 of the ICCPR that every citizen is able to participate in public life without unreasonable restrictions.

Committee jurisprudence

25. Article 25 of the ICCPR recognizes the rights of all citizens to vote in “genuine periodic elections which shall be by universal and equal suffrage.”

26. Under *General Comment No. 25*, paragraph 11, the Committee instructs States Parties to “take effective measures to ensure that all persons entitled to vote are able to exercise that right.” Also under *General Comment No. 25*, paragraph 12, the Committee notes that “[p]ositive measures should be taken to overcome specific difficulties, such as... impediments to freedom of movement which prevent persons entitled to vote from exercising their rights effectively.”

Recommendations:

27. The U.S. government did not take action to protect the rights of the displaced survivors of Hurricane Katrina to vote in their local elections, nor did it take measures to assist the State

¹² John R. Brown, “Population Displacement and Post-Katrina Politics: The New Orleans Primary” (Brown University: May 10, 2006), available at <http://www.s4.brown.edu/katrina/report2.pdf> (last visited May 11, 2006).

¹³ Louisiana Secretary of State, “POST ELECTION STATISTICS FOR ELECTION OF 04/22/06 IN ORLEANS,” available at http://sos.louisiana.gov/stats/Post_Election_Statistics/Parish/ (last visited May 11, 2006).

of Louisiana government to meet its obligations to protect these rights. Because of these failures, the U.S. is in violation of its obligations under Article 25 and should:

- a. Take immediate action to ensure that the voting rights of Katrina victims are protected in the national and state elections scheduled for the autumn; and
- b. Work with the Louisiana State government to provide the resources necessary to protect the voting rights of the displaced population.

Lack of voting rights for Washington, D.C., residents

28. The Committee previously addressed the issue of the lack of voting rights of residents of Washington, D.C., in the 1995 review of the U.S. Government's initial report to the Committee. During that review, the U.S. Government noted that Washington, D.C., residents are entitled to vote in elections for President and Vice-President, and they elect a mayor and other local representatives. However, they do not have full voting representation in Congress. The U.S. Government did not address why Washington, D.C., residents are disfranchised.

29. For a more detailed discussion of this concern, please refer to the report submitted by Worldrights.

International jurisprudence

30. Although the Human Rights Committee raised questions about this issue in the March 1995 review of the U.S. Initial Report to the Committee, it did not address the issue in its Concluding Observations, adopted on October 3, 1995. However, the issue was also raised by the U.N. Committee on the Elimination of Racial Discrimination (CERD) in its review of the U.S. Government's Initial Report to that Committee. The CERD expressed its concern about the racial impact of the disfranchisement of the residents of Washington, D.C., a majority of who (as many as 75%) are African-American.

31. Outside of the United Nations system, the Inter-American Commission on Human Rights issued a ruling in December 2003 concluding that the U.S. Government is in violation of its legal obligations under the *American Declaration of the Rights and Duties of Man* because of the denial of the rights of Washington, D.C., residents to participate in the federal legislature.

Recommendations:

32. The U.S. government must take immediate measures to protect the equal rights of Washington, D.C., residents to vote. There is draft legislation currently pending in the U.S. Congress to provide residents of Washington, D.C., with a voting representative in the House of Representatives. The U.S. Government should support and enact legislation to extend equal voting rights to all citizens residing in Washington, D.C.