

CONTINUING VIOLATIONS OF EQUAL POLITICAL PARTICIPATION FOR THE RESIDENTS OF THE DISTRICT OF COLUMBIA

This report is submitted on behalf of Worldrights by Timothy Cooper, its executive director. Worldrights is an NGO based in Washington, DC. It specializes in human rights in Asia and the United States. Over the years, it has done extensive work defending dissidents in China and Singapore. It has also successfully prosecuted arbitrary detention cases before the UN Working Group on Arbitrary Detention concerning the illegal use of “black sites” by the Bush Administration during its “war on terror.” Further, it has effectively brought the issue of the disenfranchisement of Washington DC residents before the world’s leading human rights bodies, including the OAS, OSCE and the UN Human Rights Committee.

1. Issue Summary

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 620,000 residents of the District of Columbia—the nation’s capital—are denied the fundamental right to equal suffrage in the U.S. Congress. They’re prohibited from voting for and electing representatives to the United States Senate and the United States 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 25 and 26 of the ICCPR— as well as under numerous other international human rights instruments as detailed below.

In 2006, the U.N. Human Rights Committee took note of this fact in its Concluding Observations and Recommendations, stating that the non-voting status of the residents of the District of Columbia appeared to be inconsistent with U.S. treaty obligations. The Committee called on the U.S. Government to grant the residents of Washington, D.C. full representation in Congress, noting that it

. . . remains concerned that residents of the District of Columbia do not enjoy full representation in Congress, a restriction which does not seem to be compatible with article 25 of the covenant.

The Committee recommended that the United States provide the citizens of the District of Columbia, at the very least, the right to representation in the national legislature of the United States with regard to the House of Representatives.¹

To date, the U.S. Government has ignored the Committee’s recommendations, as well as similar recommendations issued by various other international human rights monitoring bodies, including the Organization of American States (OAS) and the Organization for Security and Cooperation in Europe (OSCE).

Despite two centuries of citizen initiatives designed to secure equal congressional voting rights, including protests, congressional lobbying, acts of civil disobedience, and lawsuits, the United States Congress continues to curtail the right the residents of the District of Columbia to enjoy equal representation in the national legislature of their own country on general conditions of equality with those residents living in

¹ See, U.N. Human Rights Committee Calls for Full Representation in Congress for DC Residents at <http://world-rights.org/home.htm>

the fifty states.

There are three bills currently before Congress which, if passed, would grant the residents of the District of Columbia various degrees of voting rights in Congress. However, as has been the case for over two hundreds years, their passage any time soon remains highly doubtful. While the United States Constitution restricts the voting rights of District of Columbia residents, permitting only a *non-voting* delegate to be elected by them to the United States House of Representatives, with no representation whatsoever permitted in the United States Senate, international human rights law mandates equal political participation in the national legislature for all citizens of any signatory country, regardless of where they might live. This fact is illustrated by the conclusions of the world's leading human rights bodies, which have exhaustively examined the disenfranchisement of the residents of Washington, D.C. over the past twenty years.

2. Concluding Observations

EXPRESSIONS OF CONCERN UNDER THE ICCPR BY THE U.N. HUMAN RIGHTS COMMITTEE ON D.C. VOTING RIGHTS

The U.N. Human Rights Committee has twice reviewed and twice expressed concern about the congressional non-voting status of the District of Columbia.

In 1995, the Committee questioned the delegation of the United States when it appeared before the Committee to report on U.S. compliance. Regarding the disenfranchisement of the citizens of the District of Columbia, committee member and international human rights expert Ms. Cecilia Medina Quiroga of Chile sought clarification on the voting rights of D.C. residents.²

Mr. Deval Patrick, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, responded on behalf of the United States, stating that the District's "delegate" in the U.S. House of Representatives for the District of Columbia enjoyed a "voice" in Congress, but had no right to vote in Congress. Committee member Quiroga responded by stating that the representative had responded by stating what the status of the District of Columbia's voting right were, but not "why."³

As noted above, in 2006, the U.N. Human Rights Committee again questioned the delegation of the United States when it appeared before them on U.S. compliance on the matter of the disenfranchisement of the citizens of the District of Columbia in the U.S. Congress.⁴ Finding that their non-voting status was inconsistent with its treaty obligations, the U.N. Human Rights Committee addressed the issue in its Concluding Observations and Recommendations.

The U.N. Committee called on the U.S. Government to grant the residents of Washington, D.C. full representation in Congress, noting that the Committee

. . . remains concerned that residents of the District of Columbia do not enjoy full representation in Congress, a restriction which does not seem to be compatible with article 25 of the covenant.

² The U.N.'s intervention with the official U.S. Delegation to the Human Rights Committee was prompted by testimony before the U.N. Committee by Timothy Cooper of the Statehood Solidarity Committee. Source: Washington Post, April 1, 1995.

³ DC Human Rights Time Line (1993-2007) Available at, <http://world-rights.org/home.htm>

⁴ The U.N. Human Rights Committee issued its Concluding Observation on D.C. voting rights based on an intervention by Worldrights. Available at, <http://world-rights.org/home.htm>

The Committee recommended that the United States provide the citizens of the District of Columbia, at the very least, the right to representation in the national legislature of the United States with regard to the House of Representatives.⁵

3. U.S. Government Report

The U.S. Government makes note of the issue of the disenfranchisement of the citizens of the District of Columbia at Paragraphs 461 and 461 of its report:

The United States was founded as a federation of formerly sovereign states. In order to avoid placing the nation's 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. The right of residents of the District of Columbia (D.C.) to vote for the President and Vice President is guaranteed by the 23rd Amendment. D.C. residents are represented in the House of Representatives by a Delegate, who sits, votes and participates in debate in House committees. In some Congresses in the past, the District of Columbia delegate has also had a vote in the Committee of the Whole of the House. This vote was eliminated in a revision of House rules at the beginning of the 112th Congress, H.Res. 5, January 5, 2011. D.C. does not have representation in the Senate.

The issue of full representation in the U.S. Congress for residents of the District of Columbia has been under active discussion during the last several years and is currently under consideration by Congress. Currently, although residents of the District of Columbia may vote in Presidential elections, they cannot vote to elect a Member of the U.S. House of Representatives or of the U.S. Senate who has full voting rights in the Congress. Since submission of the Second and Third Periodic Report in 2005, several bills have been introduced in both houses of Congress, including the District of Columbia House Voting Rights Act of 2009, H.R. 157 and S. 160. This bill was passed by the Senate in February 2009, but was made subject to an amendment modifying D.C. gun control laws. Because of complications raised by this amendment, the bill did not come up for a vote in the House of Representatives. The bill has been reintroduced in the House in the 112th Congress. This is also an issue about which some civil society representatives have expressed particular concern.

4. Legal Framework

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.)

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.)

⁵ See, U.N. Human Rights Committee Calls for Full Representation in Congress for DC Residents at <http://world-rights.org/home.htm>

5. Human Rights Committee General Comments

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.)

6. Other International Body Recommendations

EXPRESSIONS OF CONCERN BY THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS REGARDING THE STATUS OF THE RESIDENTS OF THE DISTRICT OF COLUMBIA

In 2003, the Inter-American Commission on Human Rights⁶ released its decision in the case of a petition that “alleged that the United States was responsible for violations of Articles II (right to equality before law) and XX (right to vote and to participate in government) of the American Declaration of the Rights and Duties of Man in connection with the inability of citizens of the District of Columbia to vote for and elect members of the U.S. Congress.”⁷

On December 29, 2003, after 11 years of litigation between the Statehood Solidarity Committee and the United States Government, the Inter-American Commission issued REPORT N° 98/03 CASE 11.204 STATEHOOD SOLIDARITY COMMITTEE UNITED STATES.⁸ It reached the following conclusions regarding the denial of the right of the citizens of the District of Columbia to enjoy equal political participation in the U.S. House of Representatives and the U.S. Senate:

[B]ased upon the foregoing considerations of fact and law, and in light of the response of the State [the United States] to Report 115/01.... [t]he 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.

Therefore...In accordance with the analysis and conclusions in the present report, THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS REITERATES THE FOLLOWING RECOMMENDATIONS TO THE UNITED STATES: ... [That it provide] the Petitioners with an effective remedy, which includes adopting the legislative or other measures necessary to guarantee to the Petitioners the effective right to participate, directly or through freely chosen representatives and in general conditions of equality, in their national legislature.⁹

To date the United States has failed to comply with the Commission’s recommendations.

⁶ The IACHR has the principal function of promoting the observance and the defense of human rights [for the OAS]. In carrying out its mandate, the Commission: a) Receives, analyzes and investigates individual petitions which allege human rights violations, pursuant to Articles 44 to 51 of the [Inter-American] Convention [on Human Rights or under the American Declaration of the Rights and Duties of Man].

⁷ Available at, <http://www.cidh.oas.org/annualrep/2003eng/USA.11204.htm> (Report, at 1)

⁸ In its summary the report states “[o]n April 1, 1993, the Inter-American Commission on Human Rights (the “Commission”) received a petition from Timothy Cooper on behalf of the Statehood Solidarity Committee (the “Petitioners”) against the Government of the United States (the “State” or “United States”). The petition indicated that it was presented on behalf of the members of the Statehood Solidarity Committee and all other US citizens resident in the District of Columbia.”

⁹ See Note 100.

EXPRESSIONS OF CONCERN UNDER THE 1990 COPENHAGEN DOCUMENTS BY THE OSCE PARLIAMENTARY ASSEMBLY ON D.C. VOTING RIGHTS

In 2005, the OSCE Parliamentary Assembly (PA), composed of 320 members from 55 parliaments assembled in Washington, D.C. and passed a unanimous resolution calling on the U.S. Congress to grant equal congressional voting rights to Washingtonians; i.e., one member of the U.S. House of Representatives and two representatives in the U.S. Senate.

The PA resolution called

...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.”¹⁰

EXPRESSIONS OF CONCERN UNDER THE COPENHAGEN DOCUMENT 1990 BY THE OSCE/ODIHR ON D.C. VOTING RIGHTS

The OSCE has expressed serious concern about the denial of voting rights to the residents of the District of Columbia. The Office of Democratic Institutions and Human Rights (ODIHR), a “specialized institution of the OSCE dealing with elections, human rights, and democratization,”¹¹ issued its final report on U.S. 2004 presidential elections, expressing serious concern about the failure of the United States to meet its obligations under the OSCE Copenhagen Document in this regard.¹²

The OSCE report observed

[t]he U.S. constitutional framework grants full representation and voting rights in elections for federal office to U.S. 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.¹³

On March 9, 2007, the OSCE/ODIHR issued its U.S. 2006 mid-term congressional elections report, concluding similarly to its 2004 report that United States Government policy concerning District residents was inconsistent with OSCE human rights standards.

The OSCE report stated U.S. citizens who are not citizens of one of the fifty states are not able to vote for members of Congress and do not have the right to vote on the floor.... These restrictions exist even though such U.S. citizens are subject to U.S. federal law and pay federal taxes.... It is...estimated that in Washington D.C. alone, without including U.S. citizens of U.S. territories, up to half a million U.S. citizens are not permitted to vote in federal elections for full congressional representation. As these citizens are subject to U.S. laws, including taxation, the denial of full representation, as underscored by the Constitution and Supreme Court decisions, would appear to be a limitation of voting rights.

The OSCE/ODIHR made the following recommendations to the U.S. Government:

¹⁰ The OSCE Parliamentary Assembly’s resolution language was authored by the NGO, Worldrights.

¹¹ <http://www.osce.org/odihr/13421.html>

¹² Democracy First, a Washington, DC-based NGO, intervened on behalf of the District of Columbia in 1992, 1993, 1994, and 1995 before OSCE Human Dimension Implementation Meetings in Warsaw, Poland, calling on the OSCE to intervene.

¹³ UNITED STATES OF AMERICA, 2 NOVEMBER 2004 ELECTIONS, OSCE/ODIHR, Warsaw, Poland, at 2.

U.S. authorities should consider all possibilities to provide full representation rights for all U.S. citizens.¹⁴

On March 13, 2009 the OSCE/ODIHR issued its U.S. 2008 presidential election report,¹⁵ concluding similarly to its 2006 report that

Some 600,000 residents of Washington D.C. are entitled to vote only for Electors, i.e. for the President and the Vice-President as if the District of Columbia was a state, but are not represented in Congress by representatives with full voting rights.”¹⁶

It added

The D.C. Court of Appeals rejected the “taxation without representation” argument in *Green v. D.C.* in 1966. In *Adams v. Clinton* in 2002 the D.C. Court of Appeals said that voting rights were a matter for legislative, not judicial relief. The U.S. Supreme Court refused to reconsider this ruling. This effectively closes the judicial approach to voting rights for D.C. residents for the near future. A draft bill to address the issue was passed by the House in 2007 but is yet to be passed by the Senate. The OSCE Parliamentary Assembly, in its 2005 Washington Declaration, called on the U.S. Congress to adopt “such legislation as may be necessary to grant the residents of Washington D.C. equal voting rights.”

The OSCE reiterated its previous recommendation to the United States that

Consideration should be given for providing full representation rights in Congress for all U.S. citizens, including those of Washington D.C. and U.S. territories.”¹⁷

7. Recommended Questions

- a. *How is the government’s position on the curtailment of the right to genuine voting representation for District of Columbia residents in the U.S. Congress NOT inconsistent with Article 25 of the ICCPR?*
- b. *Why has the U.S. government failed to enact such legislation as may be necessary to remedy the human rights violations regarding the right to vote in Congress for the residents of the District of Columbia as recommended by the UN Human Rights Committee, the OAS and the OSCE?*

8. Suggested Recommendations

That the U.S. government enact such legislation as may be necessary to grant the residents of the District of Columbia equal representation in the U.S. Congress, consistent with its obligations under Article 25 of the ICCPR.

¹⁴ UNITED STATES OF AMERICA, MID-TERM CONGRESSIONAL ELECTIONS, 7 November 2006 OSCE/ODIHR Election Assessment Mission Report, Warsaw, Poland, at 19-20.

¹⁵ UNITED STATES OF AMERICA GENERAL ELECTIONS, 4 November 2008, OSCE/ODIHR Limited Election Observation Mission Final Report, Issued on March 13, 2009, Warsaw, Poland. Source: <http://www.osce.org/odihr-elections/documents.html?lsi=true&limit=10&grp=221>

¹⁶ *Id.* at 8.

¹⁷ *Id.* at 32.