

Democracy and the Displaced: Political Participation Rights, in Particular the Right to Vote and to Be Elected

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INTRODUCTION

Internally displaced persons (IDPs) remain entitled to the full range of rights enjoyed by other persons in the country, including the right to participate in governmental and public affairs. The principle of universal and equal suffrage, guaranteeing that every person who has the right to vote is able to exercise this right without distinction of any kind, by definition extends to persons who are internally displaced. In practice, however, IDPs often face obstacles that impede their exercise and enjoyment of their rights to political participation and may even lead to their disenfranchisement and exclusion from the political process and public affairs. Overcoming these obstacles is critically important, both for the respect of IDPs' rights and for the legitimacy of a country's electoral process and governance structures. Above all, it is essential for enabling IDPs, who so often are already marginalized, to take part in the public affairs of their community and country and thereby to have a say in the political, economic and social decisions that affect their lives.

Governments have a central role and responsibility to ensure that IDPs are able to fully and freely exercise their rights to political participation. This responsibility remains in force *during* a situation of displacement as well as upon IDPs' return or resettlement. Indeed, the ability of IDPs to exercise their rights to political participation on an equal basis is an essential element of their reintegration. National legislation and practice therefore must safeguard, through substantive, procedural and institutional elements of regulation, IDPs' rights to political participation.

1. LEGAL FRAMEWORK

IDPs have the right to political participation, including the right to vote and to be elected as well as to participate in governmental and public affairs. This right is expressly affirmed in the *Guiding Principles on Internal Displacement*,¹ the internationally-recognized framework setting forth the rights and guarantees of IDPs, and it is rooted in well-established standards of international human rights law.

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¹ United Nations, *Guiding Principles on Internal Displacement*, presented by the UN Secretary-General Francis M. Deng to the United Nations Commission on Human Rights, UN doc. E/CN.4/1998/53/Add.2.

A. *The Guiding Principles on Internal Displacement*

The principles of equality and non-discrimination are the cornerstones of the normative framework for protection of the rights of the internally displaced that is provided in the *Guiding Principles on Internal Displacement*. As an overarching principle, Guiding Principle 1(1) provides that internally displaced persons “shall enjoy in full equality, the same rights and freedoms under international and domestic law as do other persons in their country” and “shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced.”

Guiding Principle 22(1)(d) expressly affirms that these tenets apply to the right to political participation. It specifies,

Internally displaced persons, whether or not they are living in camps, *shall not be discriminated* against as a result of their displacement in the enjoyment of...[t]he right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right. [Emphases added]

To give effect to this right, also relevant is Guiding Principle 22(1)(a) affirming for IDPs the “rights to freedom of thought, conscience, religion or belief, opinion and expression” and Principle 22(1)(c) providing the “right to associate freely and to participate equally in community affairs.”

Principle 29 (1) reaffirms the right of internally displaced persons “to participate fully and equally in public affairs at all levels” also upon their return or their resettlement.

Internally displaced persons therefore have the right to political participation, including a specific right to vote, to participate in public affairs, and to freedom of assembly. These rights apply equally to IDPs living in camps as well as to IDPs in non-camp situations. They also apply regardless of whether IDPs choose to return to their area of origin, integrate locally, or resettle elsewhere in the country. Indeed, the ability to participate on an equal basis in public affairs is an essential element of IDPs’ reintegration and among the benchmarks of a durable solution to displacement.

B. *Legal Basis*

The Guiding Principles, as noted in their introduction, “reflect and are consistent with international human rights law and international humanitarian law.” The Principles’ reaffirmation of the right of IDPs to political participation is grounded in a rich body of international human rights law.

Universal and Equal Suffrage

Underpinning the right to political participation, in particular the right to vote and to be elected, is the principle of universal and equal suffrage. The first international statement of this principle as a right appears in the Universal Declaration of Human Rights (1948). Article 21 that,

Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. Everyone has the right of equal access to public service in his country. The will of the people shall be the basis of the authority of government; this shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.²

The International Covenant on Civil and Political Rights (ICCPR)³ codified this right, affirming in Article 25,

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2⁴ and 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; (c) To have access, on general terms of equality, to public service in his country.

To give practical effect to this right, and essential to a meaningful election process, are what have been termed the “political and campaign rights”, also elaborated in the ICCPR.⁵ Of particular relevance are Article 19 guaranteeing freedom of opinion and expression, Article 21 guaranteeing the right to peaceful assembly and Article 22 guaranteeing the right to freedom of association. As noted above, these rights are reflected in *Guiding Principle 22*.

It is important to highlight that unlike other rights and freedoms recognized by the Covenant, Article 25 protects the rights of “every citizen”, as opposed to every human being generally. In other words, there is an eligibility requirement of citizenship in order for individuals, including IDPs, to be able to claim this right.

Regional human rights instruments reaffirm and reflect rights to political participation articulated in the ICCPR. The African Charter on Human and Peoples’ Rights⁶ affirms in Article 13 that “[e]very citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law” as well as the “right of equal access to the public service of his country.” In the Americas, the American Convention on Human Rights⁷ restates the

² *Universal Declaration of Human Rights*, G.A. res. 217A (III), U.N. doc. A/810 at 71 (1948).

³ *International Covenant on Civil and Political Rights*, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1967, entered into force Mar. 23, 1976).

⁴ That is, without “distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. ICCPR, Article 2.

⁵ Guy Goodwin-Gill, *Free and Fair Elections*, New Expanded Edition (Geneva: Inter-Parliamentary Union, 2006), p. 102, citing Larry Garber and Clark Gibson, *Review of United Nations Electoral Assistance 1992-1993* (New York: United Nations, Aug. 1993), p. 58; and Thomas Franck, ‘The Emerging Right to Democratic Governance’, *American Journal of International Law*, Vol. 86 (1992), p. 61.

⁶ African [Banjul] Charter on Human and Peoples’ Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986.

⁷ American Convention on Human Rights, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992).

principles in the ICCPR almost verbatim, providing in Article 23 concerning the “Right to Participate in Government” that,

Every citizen shall enjoy the following rights and opportunities: (a) to take part in the conduct of public affairs, directly or through freely chosen representatives; (b) to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters...

In Europe, the First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms⁸ provides in Article 3 that state parties “undertake to hold free elections at reasonable intervals by secret ballot, under conditions which ensure the free expression of the opinion of the people in the choice of the legislature.” Although this language appears only to provide a guarantee for the holding of free elections rather than the right of individuals to participate, jurisprudence in the European Commission on Human Rights and the European Court of Human Rights have pronounced that the principle of universal and equal suffrage is implied by this provision, in particular the right to vote and the right to stand for election.⁹

Mention must also be made of the “human dimension” commitments undertaken by participating states in the Organization for Security and Cooperation in Europe (OSCE). This regional organization emerged from the Conference on Security and Cooperation in Europe (CSCE) and currently comprises 56 participating states, across Europe (including the successor states of the former Soviet Union) along with Canada and the United States. Of particular importance is the Copenhagen Document of 1990, by which CSCE participating states declared that “the will of the people, freely and fairly expressed through periodic and genuine elections, is the basis of the authority and legitimacy of all government.” Accordingly, they committed themselves to “respect the right of their citizens to take part in the governing of their country, either directly or through representatives freely chosen by them through fair electoral processes” and to “guarantee universal and equal suffrage to adult citizens.”¹⁰

Finally, central to the concept of universal and equal suffrage is the principle of non-discrimination. Article 25 of the ICCPR specifies that the political participation rights articulated therein are to be guaranteed without any of the distinctions mentioned in Article 2, that is, without “distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.¹¹ Regional human rights instruments restate a general principle of non-discrimination on similar grounds.¹² It is

⁸ Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms, (ETS 9), 213 U.N.T.S. 262, *entered into force* May 18, 1954.

⁹ *Mathieu-Mohin and Clerfayt v. Belgium* (2 March 1987), Ser. A, No. 113, para. 51. See Guy Goodwin-Gill, *Free and Fair Elections*, New expanded edition (Geneva: Inter-Parliamentary Union, 2006), pp. 103-104; Jeremy Grace, *The Electoral Rights of Conflict Forced Migrants: A Review of Relevant Legal Norms and Instruments*, Participatory Elections Project (PEP), Discussion Paper No. 1 (International Organization for Migration: June 2003), p. 12.

¹⁰ Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference for Security and Cooperation in Europe, 29 June 1990, paras. 6-7.

¹¹ ICCPR, Article 25, Article 2.

¹² African Charter, Article 2; American Convention, Article 1; European Convention, [European] Convention for the Protection of Human Rights and Fundamental Freedoms, (ETS 5), 213 U.N.T.S. 222, *entered into force* Sept. 3, 1953, as amended by Protocols Nos 3, 5, and 8 which entered into force on 21 September 1970, 20 December 1971 and 1 January 1990 respectively, Article 14.

of significance to internally displaced persons that the American Convention adds “any other social condition” to the standard list of grounds on which discrimination in the enjoyment of rights is prohibited.¹³

Special Protection for particular groups

Additional human rights instruments have sharpened the principle of non-discrimination in the enjoyment of rights to political participation for particular groups of persons who historically have been marginalized. Of relevance to this study are the specific provisions guaranteeing these rights for women, racial and ethnic groups, minorities and indigenous persons, all of whom typically comprise disproportionately high numbers of the internally displaced.

Supplementing general provisions of non-discrimination based on sex are a number of international and regional instruments specifically articulating the political participation rights of women. The Convention on the Political Rights of Women affirms that women shall be entitled to vote in all elections and be eligible for elections to all publicly elected bodies on equal terms with men, without any discrimination.¹⁴ The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) requires state parties to,

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 and public referenda and to be eligible for election to all publicly elected bodies.¹⁵

Among regional instruments affirming this right is the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.¹⁶ Article 9, entitled the Right to Participation in the Political and Decision-Making Process, requires state parties to,

take specific positive action to promote participative governance and the equal participation of women in the political life of their countries through affirmative action, enabling national legislation and other measures to ensure that: a) women participate without any discrimination in all elections; b) women are represented equally at all levels with men in all electoral processes; c) women are equal partners with men at all levels of development and implementation of state policies and development programs.

Specific provisions also exist to protect the political participation rights of ethnic and minority groups, who often are disproportionately affected by displacement due to conflict and political tensions. The Convention on the Elimination of All Forms of Racial

¹³ American Convention, Article 1.

¹⁴ Convention on the Political Rights of Women, 193 U.N.T.S. 135, *entered into force* July 7, 1954.

¹⁵ Convention on the Elimination of All Forms of Discrimination against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, *entered into force* Sept. 3, 1981. Art.7

¹⁶ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, CAB/LEG/66.6 (Sept. 13, 2000); *reprinted in* 1 Afr. Hum. Rts. L.J. 40, *entered into force* Nov. 25, 2005.

Discrimination (CERD) obliges states to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law in the enjoyment of their rights. Express reference is made in Article 5(c) to “political rights, in particular the right to participate in elections - to vote and to stand for election- on the basis of universal and equal suffrage, to take part in the government as well as in the conduct of public affairs at any level and to have equal access to public service”.¹⁷

The fact that displacement often particularly affects minority groups has not been lost on the U.N. Committee on the Elimination of Racial Discrimination, which monitors state compliance with the Convention. In a general recommendation, the Committee has made a point of emphasizing that “[a]ll such refugees and displaced persons have, after their return to their homes of origin, the right to participate fully and equally in public affairs at all levels”.¹⁸ While an important statement, this language neglects to mention IDPs’ political rights *during* displacement or in the event that IDPs choose *resettlement* rather than return as a durable solution. Clarification by the Committee that IDPs have political rights during displacement as well as regardless of whether they opt to return or to resettle therefore would be important.

In addition, the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities affirms that persons belonging to minorities have the right to participate effectively in public life, including “to participate in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.”¹⁹

Indigenous persons also are disproportionately affected by displacement. The International Labour Organization Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries²⁰ specifies in Article 6 (b) that governments shall,

Establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programs which concern them.

Situation-specific issues

Restrictions on rights to political participation are permissible under the ICCPR and most of the regional instruments in time of war or other public emergency. However, under the American Convention on Human Rights, no derogation is permitted.²¹

¹⁷ Convention on the Elimination of All Forms of Racial Discrimination (21 December 1965), 660 UNTS 195 *entered into force* Jan. 4, 1969.

¹⁸ Committee on the Elimination of Racial Discrimination, General Recommendation XXII, Refugees and displaced persons (Forty ninth session, 1996), U.N. Doc. A/51/18, annex VIII at 126 (1996), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 211 (2003). Art. 2 (d)

¹⁹ Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities, G.A. res. 47/135, annex, 47 U.N. GAOR Supp. (No. 49) at 210, U.N. Doc. A/47/49 (1993). Article 2. See also Article 3.

²⁰ Convention concerning Indigenous and Tribal Peoples in Independent Countries (ILO No. 169), 72 ILO Official Bull. 59, *entered into force* Sept. 5, 1991. Art.6.1 (a) (b)

²¹ American Convention on Human Rights, Article 27.

Situations of internal displacement often arise in the context of armed conflict. Unlike human rights law, international humanitarian law does not address the issue of political participation. Nonetheless, in the event that elections were to be conducted in a situation of armed conflict (whether internal or international conflict), the continued application of the principle of non-discrimination under international human rights law would ensure that IDPs in any case could not be denied the right of political participation.

In addition, Article 25 of the ICCPR prohibits “unreasonable restrictions” on the rights to political participation. Residency requirements often are employed to determine voter eligibility and voter registration. The U.N. Human Rights Committee has specified that “[i]f residence requirements apply to registration, they must be reasonable, and should not be imposed in such a way as to exclude the homeless from the right to vote.”²² Indeed, the Committee has stressed that states “must take effective measures to ensure that all persons entitled to vote are able to exercise this right.”²³ The OSCE similarly has specified that “[t]he absence of a permanent residence should not prevent an otherwise qualified person from being registered as a voter.”²⁴

In recent years, the importance of ensuring rights to political participation specifically in the context of internal displacement also has been expressly affirmed in normative statements by inter-governmental organizations. The OSCE has underscored that “it should be a matter of special scrutiny whether IDPs can freely exercise their right to vote.”²⁵ More concretely, the Council of Europe has underscored that “[m]ember states should take appropriate legal and practical measures to enable internally displaced persons to exercise their right to vote in national, regional or local elections and to ensure that this right is not infringed by obstacles of a practical nature.”²⁶

In situations of natural disaster, the UN Inter-Agency Standing Committee’s Guidelines on Human Rights and Natural Disasters, which are informed by and draw on relevant international human rights law, affirm,

Those affected by natural disasters, whether displaced or not, should have, as soon as possible, the right to participate, either directly or through elected representatives, in public affairs...They have the right to vote in elections and to be elected even if they cannot exercise these rights at their places of habitual residence.²⁷

²² U.N. Human Rights Committee, ‘General Comment 25: The rights to participate in public affairs, voting rights and the right of equal access to public service (Article 25),’ para. 11. Reproduced in *report of the Human Rights Committee*, Volume I, U.N. Doc. A/51/540 (1996).

²³ *Ibid.*, para. 3.

²⁴ OSCE/Office for Democratic Institutions and Human Rights (ODIHR), *Existing Commitments for Democratic Elections in OSCE Participating States* (Warsaw: October 2003), p. 16.

²⁵ OSCE, *Final Report, Supplementary Human Dimension Meeting on Migration and Internal Displacement*, Vienna, Austria, 25 September 2000, p. 5.

²⁶ Council of Europe, Recommendation Rec(2006)6 adopted by the Committee of Ministers on 5 April 2006, para. 9.

²⁷ United Nations, Inter-Agency Standing Committee (IASC), *Operational Guidelines on Human Rights Protection in Situations of Natural Disasters, with Particular Reference to the Persons who are Internally Displaced (Guidelines on Human Rights and Natural Disasters)*, Guideline D.5.1, 2006, p. 32.

C. Summary

The principle of universal and equal suffrage, by definition, encompasses IDPs, extending to all internally displaced citizens who are eligible to vote and to stand for election. In other words, for individuals meeting the eligibility requirements specified in national electoral legislation (for instance, having attained age of majority), the right to vote and the right to be elected remain untrammelled by displacement. These rights extend to all citizens, without distinction of any kind, including on the grounds of being displaced. Special protections exist to ensure this right is enjoyed by historically disadvantaged groups, including women, ethnic groups, minorities and indigenous persons, who typically comprise disproportionate numbers of internally displaced populations. Further, whereas residency requirements often apply, it is well-established that these cannot exclude the internally displaced from being able to exercise their rights to political participation. Indeed, a number of normative statements expressly affirm that the right to political participation continues to apply in situations of internal displacement.

In short, all IDPs who are otherwise eligible to vote and to stand for election continue to be entitled to these rights upon displacement. In the words of an internally displaced man in Liberia, when asked why voting was important to IDPs, the answer was simple, “Mainly we want to vote, because we are citizens. We suppose [*sic*] to vote.”²⁸

2. OVERVIEW OF OBSTACLES TO IMPLEMENTATION OF THE GUIDING PRINCIPLES

Whereas IDPs’ right to political participation is clear, in practice IDPs often face obstacles in exercising this right. These obstacles in many cases result in a denial of IDPs’ rights, their disenfranchisement and their exclusion from the political life and public affairs of their community.

A. Residency Requirements

Generally, the right to vote is closely tied to an elector’s place of residence. National electoral legislation and electoral codes typically condition the right to participate in elections on residency requirements, specifying that electors can only participate in the constituency in which they reside. In situations of internal displacement, which by definition entails at least a temporary loss of residence, the general rule that one votes in the electoral district of one’s habitual place of residence is inherently problematic. This is especially true for the vast majority of IDPs who are displaced outside of their normal electoral district.

In direct presidential elections, single-constituency parliamentary elections, or national referendums, a change of residence generally poses no problem. However, in local and gubernatorial as well as multiple-constituency parliamentary elections, residency requirements can be particularly problematic for displaced persons. Several questions arise concerning the electoral district in which IDPs are eligible to vote. More specifically:

²⁸ *War is Behind Us Now: A Report on Focus Group Research in Liberia* (Washington, D.C.: National Democratic Institute, October 2004), p. 21.

- Must IDPs *only* vote in their home areas? Is it possible and safe to do so? What if elections cannot be held there due to insecurity or lack of effective control over the territory? Suppose these conditions persist for years or even decades?
- Suppose IDPs do not intend to return to their area of origin, even when conditions would enable them to do so, but rather have opted to rebuild their lives in another part of the country?
- Should IDPs be eligible to cast votes for elections taking place in the electoral district of their habitual place of residence or where they are currently residing?
- What, if any, might be the consequence for IDPs if they choose to register as a voter in the electoral district in which they are residing while displaced?

In Georgia, national legislation for many years expressly denied IDPs the ability to elect municipal or parliamentary representatives for the districts in which they were residing while displaced.²⁹ Although IDPs were permitted to re-register as an elector in this area, according to national legislation doing so would come at a cost of relinquishing their IDP “status” and all the benefits this entailed under the Law on IDPs.³⁰ In part, these regulations reflected the lingering influence of the *propiska* system in place during the Soviet Union, which restricted freedom of movement by tying rights to an individual’s approved place of residence.³¹

In Sri Lanka, while IDPs have not been hindered by any legal restriction to change registration of one’s official residence from one administration region to another, they at times have faced significant administrative, practical and political barriers.³² To change the place of registration, an IDP must return to the area where they were registered prior to displacement to collect a letter of confirmation – a requirement that is neither practical nor safe. There has also been a strong fear among IDPs that by changing their place of residence they risk losing their “status” as IDPs and the associated relief aid as well as potential assistance to return and rebuild their homes should this possibility ever arise. Moreover, for Muslims expelled from the north, the government policy in Puttalam district has long been that they are living temporarily in the area as IDPs until they can return to their places of origin. Reflecting this, their right to vote is tied strictly to the area where they were registered as voters prior to displacement, i.e. the North, through absentee voting. However, unless IDPs are able to safely visit these areas, they cannot verify that their names are included on the annually updated voters’ lists, which are posted only in the area of electoral administration. Of particular consequence, for IDPs who reached the legal voting age (18 years) after displacement, they have been unable to register in the voting lists either in their area of origin or their present location. Overall, the result for Muslim IDPs in Puttalam has been that ‘the relationship between the individual and the state does not function as it should because they

²⁹ Parliament of the Republic of Georgia, Law of Georgia on the Elections of Bodies of Local Government – “Sakrebulo”, Article 36 (2) (25 June 1998).

³⁰ Parliament of the Republic of Georgia, Law of Georgia on Forcibly Displaced Persons-Persecuted Persons, Article 6.2c (1996), available at: <http://www.unhcr.org/cgi-bin/texis/vtx/rsd?search=c&ISO=GEO&CATEGORY=RSDLEGAL&next=10>.

³¹ Mooney and Jarrah, *Voting Rights in the OSCE*, pp. 32-41.

³² Cathrine Brun, ‘Local Citizens of Internally Displaced Persons? Dilemmas of Long Term Displacement in Sri Lanka,’ *JOURNAL OF REFUGEE STUDIES*, 16 (2003) 4, pp. 386-390.

are out of “their” places, and the local authorities at the place where they live as IDPs are not willing to take responsibility for them.’³³

Re-registering one’s place of residence and therefore the constituency in which a voter is registered also often entails cumbersome administrative and procedural requirements, which can be particularly unreasonable in situations of internal displacement. Often, as in the case of Sri Lanka noted above, it requires IDPs to return to their place of origin to obtain a transfer form. In Armenia, IDPs faced exacting evidentiary requirements.³⁴ In Zimbabwe, transfer forms are provided for under the Electoral Act but entail stiff documentation requirements; to participate in the October 2005 senate elections, IDPs, whose homes were demolished without warning only months earlier, were expected to produce for their current locations (where most lacked any formal shelter or address), a certificate of occupation, a lodger’s card, or a written statement from the landlord confirming their residential address, together with electricity bills in the name of the landlord. These and other procedural requirements impeded large numbers of IDPs (many of whom were believed to be opposition supporters) from participating in the elections.³⁵

In Liberia, the nearly 150,000 IDPs remaining in camps during the period of voter registration in advance of elections in October 2005 had the option to register to vote either in the camps or in their home areas. However, they were required to decide several months before the election, and at a time when the return process was just beginning and tentatively so, whether their residence on polling day would be still in the camps or back in their home communities. The situation epitomized how election scenarios can drive repatriation and return programs, and potentially without due regard to core humanitarian principles of voluntary, safe and dignified return.³⁶ Over-ambitious statements about timelines for return encouraged the majority of IDPs who registered to opt to vote back home. However, delays in the actual return process (which in fact was completed only in spring 2006), meant that IDPs who had registered to vote at home but who were still in the camps on polling day would be disenfranchised.³⁷

B. Lack of documentation

³³ *Ibid.*

³⁴ Mooney and Jarrah, *Voting Rights in the OSCE*, p. 11.

³⁵ ‘Zimbabwe: Thousands of Clean-Up Victims May Fail to Vote in Senate Election,’ ZimOnline, 20 Oct. 2005. According to the Internal Displacement Monitoring Centre, “Authorities in Zimbabwe refused to address the deprivation of voting rights imposed on IDPs as a result of their forced eviction in 2005. Following the “clean-up” operation launched by the government in cities in May 2005, displaced people were removed from the voters’ lists in their constituencies, and thereby unable to participate in a number of rural and urban council by-elections. Despite appeals from civil society groups, the Attorney General’s office ruled out the possibility of updating the voters’ roll.” Internal Displacement Monitoring Centre, *Internal Displacement: Global Overview of Trends and Developments 2005*, p. 44. Available at: [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/895B48136F55F562C12571380046BDB1/\\$file/Global%20Overview05%20low.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/895B48136F55F562C12571380046BDB1/$file/Global%20Overview05%20low.pdf)

³⁶ According to IDMC, “International NGOs in Liberia have consistently voiced concerns that humanitarian coordination, particularly of the return process, has been politically driven by UNMIL. The UN’s desire for a ‘success story’ ahead of October 2005 elections in Liberia, they argue, has been the main reason for what they see as a rushed and poorly planned reintegration process. They have argued that the necessary safeguards of voluntariness, the availability of full and objective information, and the declaration of return areas as safe based on an objective assessment, all risked being jeopardised. A dire lack of services as well as continuing protection concerns in areas of return has reportedly resulted in IDPs returning to the camps – evidence, say NGOs, of the failure of the process.” IDMC, *Global Overview 2005*, p. 37.

³⁷ ‘Liberia and Cote d’Ivoire: Upcoming Elections May Exclude Displaced Persons,’ Refugees International (22 July 2005).

Registering to vote as well as actual access to voting through obtaining a ballot generally will require proof of identity, with an elector having to show personal identity documentation attesting to citizenship and civil registration or residency. However, such requirements can be difficult for IDPs, as personal documentation often is lost or destroyed, or even confiscated, in the course of displacement. Moreover, voter registries compiled prior to the events causing displacement may be destroyed in situations of displacement, whether conflict or natural disaster. Without documentation, it will be difficult for IDPs to register to vote as well as to certify their eligibility at polling stations.

Obtaining replacement documentation often is very difficult; in some countries, it may even require that IDPs return to their areas of origin although these remain unsafe (such requirements are prohibited in the *Guiding Principles* – as discussed below). Moreover, even prior to displacement, it may be that requirements for documentation can discriminate against women and minorities. In a number of countries, women lack government-issued identify documentation in their own names and instead must rely on their husbands or other male family members, with whom they are registered as ‘dependents’. In the event of the deaths of their male relatives or the family separation that often occurs in situations of displacement, those women lose all legal identity and also face tremendous obstacles replacement documentation in their own names.³⁸ As regards minorities, the lack of documentation among Roma IDPs, for instance, has been a major obstacle to their participation in elections.³⁹

C. Discrimination

In addition to general discrimination IDPs may suffer on account of being displaced, IDPs often are members of ethnic or religious minority groups who continue to suffer discrimination during displacement. Discrimination can mar all aspects of the electoral process, including: voter registration; access to information on electoral procedures in a language IDPs understand; discrepancies in number of polling stations open and hours of operation; and harassment at polling stations.

In Croatia, for example, legislation in place in the mid to late 1990s made a legal distinction between displaced ethnic Serbs and displaced ethnic Croats, which resulted in systematic discrimination against displaced Serbs, including as regards their political participation. Displaced Serb voters faced more cumbersome registration procedures, had access to fewer polling stations than displaced Croats and in some cases were even directly turned away by the staff of polling stations.⁴⁰ Discriminatory language policies can also have significant repercussions on IDPs’ political participation (see below, section F).

D. Insecurity and acts of intimidation

In situations of displacement caused by conflict or communal tensions, exercising the right to vote and to stand for election can result in intimidation and entail risks to physical security.

³⁸ UN Office of the Special Adviser on Gender Issues and Advancement of Women, *Enhancing Women’s Participation in Electoral Processes in Post-Conflict Countries*, Expert Group Meeting Report, 20 February 2004, UN Doc. EGN/ELEC/2004.

³⁹ OSCE/ODIHR, *Republic of Serbia, Serbia and Montenegro, Presidential Election 13 and 27 June 2004*, OSCE/ODIHR Election Observation Mission Report, 22 September 2004, p. 2.

⁴⁰ Simon Bagshaw, *Internally Displaced Persons and Political Participation: The OSCE Region*, Occasional Paper, The Brookings Institution Project on Internal Displacement (Sept. 2000), p. 13.

These risks can occur at the various different stages of the electoral process, from voter registration, to obtaining the necessary identity documentation, through to the casting of ballots and even the arrival of elected officials to assume their duties of office. For instance, IDPs from Chechnya were required to travel back to their homes areas, even though these remained unsafe, to collect a voting certificate.⁴¹ In a number of countries, displaced voters have been harassed and attacked while traveling to or once at polling stations. In Moldova, IDP returnees crossing from the secessionist Transnistrian region to cast their vote in Moldovan elections regularly have faced obstruction, intimidation and harassment from the *de facto* Transnistrian authorities.⁴² In post-conflict elections held in Sierra Leone, acts of intimidation marred the electoral participation of IDP women voters.⁴³ In Zimbabwe, displaced voters who opted to return to rural areas to vote in the October 2005 elections required letters from the village leaders whom allegedly had been mobilized to intimidate electors to vote for the ruling party.⁴⁴ Elections can only be free, fair and legitimate if voters can cast their ballots and participate in the overall electoral process without fear or risk of harm.

E. Physical access to polling stations

Problems of physical access to polling stations, due for instance to insecurity, disaster conditions or distance can also impede IDPs' political participation. In the post-conflict elections held in Sierra Leone in 2002, despite positive steps taken by the government to enable the participation of internally displaced women, many were required to travel long distances to vote and had great difficulty in paying for transportation.⁴⁵ Absentee voting arrangements may be the only means by which displaced persons are able exercise their right to vote. However, absentee voting is not provided for in all cases. In the 1996 municipal elections in Mostar, Bosnia-Herzegovina (BiH), absentee voting was an option for refugees, but not for IDPs.⁴⁶

Even when absentee voting procedures are in place, these sometimes can be so complicated as to frustrate IDPs' ability to make use of them. In the United States, a federal lawsuit was filed on behalf of electors from the state of Louisiana displaced by Hurricane Katrina to protest cumbersome mail-in voting procedures in the New Orleans municipal elections. As most of the displaced electors were African Americans, it was pointed out that there risked serious repercussions for the electoral viability prospects of African American candidates.⁴⁷ The National Association for the Advancement of Colored Peoples (NAACP) was among the organizations calling for alternative absentee voting arrangements, such as for polling stations to be set up in various locations in Louisiana. There was also the problem of delivering absentee ballots to registered electors who were displaced. Only the Federal Emergency Management Agency (FEMA) had an updated and relatively comprehensive list of new

⁴¹ For example, see Mooney and Jarrah, *Voting Rights of IDPs in the OSCE*.

⁴² Mooney and Jarrah, *Voting Rights of IDPs in the OSCE*, p. 47, citing OSCE/ODIHR election observation reports.

⁴³ *Voting for Peace, Survival and Self-Reliance: Internally Displaced Women Go to the Polls in Sierra Leone*, Women's Commission for Refugee Women and Children, September 2002.

⁴⁴ 'Zimbabwe: Thousands of Clean-Up Victims May Fail to Vote in Senate Election,' *ZimOnline* (20 October 2005).

⁴⁵ *Ibid.*

⁴⁶ Bagshaw, p. 8.

⁴⁷ 'Group Sues Over New Orleans Election Plans,' Associated Press, 10 Feb. 2006.

addresses. However, it refused, citing privacy concerns, to share this list with state electoral officials and only was eventually persuaded to do so under the threat of a lawsuit.⁴⁸

F. Lack of information and issues of transparency

A lack of adequate and timely information is often a further impediment to IDP voting. Ensuring that the electorate has access to information, in particular regarding the voting procedures but also concerning campaign information, is a critical ingredient for a free and fair electoral process.

Electoral officials themselves often lack clear guidance on the particular legislative provisions as well as procedural arrangements and safeguards in place to enable IDPs' participation in the political process. Epitomizing this problem was the 2003 presidential election held in Chechnya, when dramatically conflicting information about the voting arrangements for IDPs located in Ingushetia created such confusion as to lead to IDPs' *de facto* disenfranchisement. While authorities at the Russian Central Election Commission announced that polls would be established for IDP voters at their places of temporary residence in Ingushetia, public statements by other government officials indicated that IDPs would only be entitled to vote by returning to their place of permanent residence in Chechnya, which remained unsafe. The resulting confusion about the arrangements for IDP voting deterred many IDPs from heading to the polls and, moreover, diminished confidence in the transparency and legitimacy of the electoral process.⁴⁹ In Georgia, when electoral reforms were introduced in national legislation to enable IDPs to vote in all types of elections (see below), these important changes to the electoral law and procedures were not adequately known or understood by local electoral officials, who in some cases continued to turn IDP voters away.⁵⁰ In the 2005 presidential elections in Liberia, IDP organizations underscored the 'urgent need' for voter education in IDP camps, with a particular appeal for information on political parties' platforms on return, resettlement and reintegration of displaced and other war-affected Liberians.⁵¹

Language barriers can also be an issue. In Serbia, the OSCE has pinpointed the lack of voter information provided in the Roma language as one of the main reasons for low electoral participation by Roma IDPs.⁵² In Azerbaijan, the government's change for official use to the Latin alphabet as opposed to the Cyrillic script, in which IDPs were schooled prior to their displacement, has resulted in IDPs' experiencing difficulties in comprehending public information from the government and media about elections.⁵³ In Turkey, the prohibition of languages other than Turkish in political campaigning, coupled with low levels of literacy among the Kurdish population in the south-east of the country, where the internal

⁴⁸ Rob Richie and Ryan O'Donnell, 'Louisiana's Electoral Disaster,' WASHINGTON POST, 22 December 2005.

⁴⁹ Mooney and Jarrah, *Voting Rights in the OSCE*, p. 50; Mooney and Jarrah, *Displaced and Disenfranchised*, p. 38.

⁵⁰ Mooney and Jarrah, *Voting Rights in the OSCE*, p. 37, Mooney and Jarrah, *Displaced and Disenfranchised*, pp. 38-39.

⁵¹ "'Visit Us Now,' IDPs Leadership Urges UP,' *Daily Observer* (1 November 2005).

⁵² OSCE/ODHIR, *Republic of Serbia (Federal Republic of Yugoslavia), Presidential Elections, 29 September and 13 October 2002, and Repeat Presidential Election, 8 December 2002, Final Report, 18 February 2003*.

⁵³ International Organization for Migration, *Electoral Displacement in the Caucasus: Georgia and Azerbaijan, Action Plan II* (2003).

displacement has been concentrated, is an obstacle to Kurdish IDPs participating in elections and making an informed choice.⁵⁴

Overall, IDPs frequently face a range of obstacles to enjoying and exercising their rights to political participation, in particular affecting *whether* they can vote, *where* their vote counts, and even *who* they can vote for. Left unaddressed, these barriers deny IDPs their rights, disenfranchise displaced voters, and deprive the displaced of a say in the decisions affecting their lives.

3. REGULATORY FRAMEWORK

IDPs' political and voting rights must be protected through the national electoral framework, defined as "a group of constitutional, legislative, regulatory, jurisprudential and management rules"⁵⁵ that govern the electoral process. In general, an electoral framework should address the following issues: the type of electoral system; district delimitation and seat apportionment; voter registration and management of the voter lists; the legal status and codes of conduct for candidates and political parties; balloting procedures; counting and results reporting; and resolution and adjudication of disputes.⁵⁶

The centerpiece of this framework typically is a national electoral code or elections act. Complementing this are the administrative decisions of election management bodies (EMBs) and rulings of electoral tribunals and adjudication mechanisms, which clarify and make operational elements of election administration. In addition, any relevant decisions or rulings by the national human rights commission or constitutional court must be taken into account. In conflict or post-conflict environments, legislators often also need to ensure compliance with a variety of additional legal obligations, including transitional law and provisions embedded in peace agreements and treaties. In addition, domestic legislation and policy specifically related internal displacement must also be taken into account.

Ensuring that IDPs are able to exercise their voting rights therefore requires a detailed analysis of the domestic electoral administration framework and how this relates to the particular situation of IDPs. In general, two broad categories of concern can be identified: (1) ensuring that IDPs are guaranteed full and equal rights to political participation, and (2) that this participation does not compromise the integrity of the electoral process or threaten the security of IDPs. Particular attention must be made to issues of residency requirements, documentation requirements, and of voter registration. To ensure that IDPs are able to exercise their voting rights, the regulatory framework will likely need to address the following critical issues: absentee balloting; residency requirements; lack of documentation; non-discrimination, and election security.

More broadly, of course, the national electoral framework must be consistent with the State's obligations under international law. Where it is not, the electoral framework will need to be

⁵⁴ Mooney and Jarrah, *Voting Rights in the OSCE*, p. 62.

⁵⁵ Jesús Orozco & Yuri Zuckermann, Legal Framework Overview, ACE Electoral Knowledge Network, at <<http://www.aceproject.org/ace-en/topics/vo/voa/voa02/voa02f>> (visited July 9, 2006).

⁵⁶ Recent attention has focused on promoting international standards and norms for these rules and processes, and domestic and international observers routinely monitor the quality of a country's overall electoral framework in terms of the consistency and transparency of the relevant rules. See OSCE, Guidelines for Reviewing a Legal Framework for Election, (Jan. 2001), available at <http://www.osce.org/documents/odihr/2001/01/1566_en.pdf>.

modified to be brought in line with international standards. Building on the provisions embedded in the international and regional human rights instruments, detailed criteria for free and fair elections have been developed by international and regional inter-governmental organizations, which provide specific guidance and examples of best practices in relation to different elements of the election cycle. Key sources of guidance include:

- United Nations Human Rights Committee, *General Comment 25*
- European Commission for Democracy through Law (Venice Commission), *Guidelines on Elections*;
- Inter-Parliamentary Union (IPU), *Declaration on Criteria for Free and Fair Elections*;
- Commonwealth Secretariat, *Good Commonwealth Electoral Practices*.
- Southern African Development Community (SADC) Parliamentary Forum, *Norms and Standards for Elections in the SADC Region*;
- Association of Central and Eastern European Election Officials (ACEEEO), *Draft Convention on Election Standards, Electoral Rights and Freedom*;
- OSCE, *Guidelines for Reviewing a Legal Framework for Elections*.

While none of these documents directly reference IDP voting rights, legislators will find valuable guidance on particular aspects of the electoral process, including issues of residency and documentation, which are essential to address in order to ensure that universal suffrage includes IDPs.

4. SUBSTANTIVE ELEMENTS OF STATE REGULATION

States hosting internally displaced populations differ in terms of their historical experience with competitive elections. Some will have established electoral frameworks in place, while others may have limited or no prior democratic experience and must devise the framework from scratch, often in the context of an interim constitution and a transitional parliament. In the former situation, the inclusiveness and transparency of the framework will contribute to the integrity of electoral processes and the ability of IDPs to participate once displacement occurs. In the latter case, careful consideration of the unique needs of IDPs is essential to guaranteeing their voting rights.

A. Prior to Displacement

Prior to displacement, the electoral framework should be institutionalized in the form of an independent and non-partisan electoral management body (EMB).⁵⁷ In particular, the electoral framework should be robust enough to withstand the political and natural forces that lead to displacement. This includes provisions that allow for the re-issue of documentation, the ability to update a voter's information in the registration system, provisions to keep backup copies of the databases in a centralized location, mechanisms to facilitate absentee balloting, and the basic guarantees associated with the conduct of free and fair elections, including principles of non-discrimination and equality of the vote.

⁵⁷ For general information on the establishment, structure, and functioning of EMBs, see ACE Electoral Knowledge Network, at < <http://aceproject.org/ace-en/topics/em> > (visited March 21, 2007).

B. During Displacement

Elections are often conducted in environments where substantial numbers of persons remain displaced and voters may continue to move throughout the election cycle. As a result, special procedures are required to ensure: (1) that IDPs are able to participate; (2) that their participation does not threaten their physical security and access to humanitarian services; and (3) that their participation does not jeopardize the overall transparency of the electoral process. The basis for the realization of these rights is the electoral framework, supplemented by additional statutory and constitutional provisions, particularly a national IDP policy.

The first issue is the type of electoral formula to be employed. Two basic models, single member majoritarian and proportional representation, are commonly used, and many countries combine elements of both.⁵⁸ Other than a proportional representation system in which the entire country serves as a single electoral district (e.g. Liberian Parliamentary elections in 1997 or Iraq's National Assembly elections in 2005) most countries use sub-national districts, requiring unique ballots for each constituency. Elections for regional and municipal legislative bodies also require many unique ballots. This raises two immediate issues: First, where should IDPs who reside outside of their regular electoral constituency cast their ballots and for which contests? Second, how should eligibility requirements be structured so as to guarantee the right of IDPs to participate?

Absentee Balloting and Residency Requirements

Any election conducted in a situation of ongoing conflict-induced displacement indicates that IDPs do not feel secure enough to return to their homes - even temporarily - in order to participate. Since displacement is often a political tool used to forcibly alter demographic "facts" in support of contested political claims to a territory, guaranteeing IDPs the right to vote for their home district via an absentee ballot can be important in order to curb this political manipulation. The electoral framework should explicitly provide for this mechanism.

In situations of protracted displacement, however, it can be expected and is entirely reasonable that IDPs may prefer to participate in the political life of their current location. Under such circumstances, IDPs generally should have the right, should they so choose, to vote in elections for their current place of residence instead of being limited to vote for their home district. Political participation in their current place of residence can facilitate IDPs' ability to organize and advocate for better protection while in displacement. In cases where IDPs choose to settle permanently in their new location, IDPs' equal access to political participation and voting will be instrumental and indeed be an essential measure of their integration into the local community.

Residency requirements establish a genuine link between the voter and their electoral constituency (district). In some situations, this requirement obligates the voter to be present in the constituency on polling day in order to cast a ballot. In other cases, the voter must prove residence in the constituency at or before a previous date (often six months prior to the election, but in some cases several years), which further demonstrates a "genuine link." In

⁵⁸ International norms do not offer specific guidance on the various electoral district issues that have the effect of obstructing IDPs' rights to political participation. Jeremy Grace & Jeff Fischer, *Enfranchising Conflict-Forced Migrants: Issues, Standards, and Best Practices*, PEP Discussion Paper No. 2, 11 – 12 (Sept. 29, 2003), *available at* <http://www.geneseo.edu/~iompress/Archive/Outputs/Standards_Final.pdf>.

states that allow absentee voting, residency requirements mean that the voter must have resided within the constituency during a defined time period (ranging from six months to as many as twenty years) in the past in order to remain eligible to vote from outside of the constituency.⁵⁹

Residency requirements impact IDPs in two ways. First, for IDPs who wish to vote for their previous constituency (whether in person or by absentee ballot), the required date of last residence in the constituency will determine whether they can exercise this right. Legislators should ensure that the length of absence built into the residency requirement allows any displaced voter to participate in their original constituency, so long as the individual has not permanently resettled elsewhere. Second, for IDPs who wish to vote in the constituency where they reside while displaced, the residency requirement operates to ensure an effective link to that territory. However, legislators will need to consider both the how long the IDP has been in residence in the district and how IDPs came to be in their current residence when determining an appropriate date for proving residence.

The determination of an appropriate length of residence in the current constituency can be a politically charged issue, especially in situations where there are relatively large numbers of potential IDP electors. Legislators will need to balance human rights issues against the political reality of any particular situation. However, basic human rights obligations hold that citizens should have a right to change their place of residence and participate in politics equally, after a reasonable period of time, with other residents of their new constituency.

In cases where displacement is forced and intended to establish political control over an area through demographic manipulation (as in Bosnia and Herzegovina, Kosovo, and Iraq), and IDPs generally prefer to eventually return, a longer period of residence in the current location might be appropriate. A best practice in this regard can be identified in the post-conflict elections organized by the OSCE Provisional Election Commission (and later by the Central Election Commission) in Bosnia-Herzegovina (BiH). The 1995 *General Framework Agreement on Peace* (Dayton Agreement) explicitly addressed the voting rights of displaced populations, holding that,

“...a citizen who no longer lives in the municipality in which he or she resided in 1991⁶⁰ shall, as a general rule, be expected to vote, in person or by absentee ballot, in that municipality ... Such a citizen may, however, apply to the Commission to cast his or her ballot elsewhere.”⁶¹

The election rules and regulations gave effect to this right by holding that, “Every effort will be made ... to facilitate the return of citizens to the municipality where they were registered in 1991 to vote in person. Those who cannot do so will be provided, on application, with an absentee ballot ...”⁶²

⁵⁹ Election standards initiatives point to a six month residence requirement as a reasonable rule. See Venice Commission of the Council of Europe, Guidelines on Elections, CDL-AD (2002) 13, Sec. I 1 (5-6 July 2002), available at <<http://www.venice.coe.int/site/interface/english.htm>>; and U.N. Human Rights Committee, General Comment 25 (57), International Covenant on Civil and Political Rights, U.N. Doc. CCPR/C/21/Rev.1/Add.7, article 40, para. 4 (1996).

⁶⁰ 1991 was the date of the last pre-war census, which served as the basis for voter registration.

⁶¹ Office of the High Representative, The General Framework Agreement for Peace in Bosnia and Herzegovina, Annex 3 Art. IV (December 14, 2005), available at <http://www.ohr.int/dpa/default.asp?content_id=371>.

⁶² OSCE/ODIHR, Rules and Regulations: As Amended and Recompiled from the 1996 Rules, Provisional Election Commission Doc. (Oct. 14, 1997).

The issue of absentee balloting became especially important during the 1997 BiH Municipal Elections. Given that one of the aims of combatants had been to control territory through ethnic cleansing, political actors were especially interested in whether the displaced would choose to vote for their current or their original municipality. In order to prevent attempts to influence the election outcome by pressuring IDPs to cast their ballot for particular constituencies, the Provisional Election Commission (PEC) established a residency requirement that limited displaced voters' right to vote for their current location. The *1997 Rules and Regulations* held that,

Article 10 Displaced Persons who were citizens of Bosnia and Herzegovina on 6 April 1992, but who have changed their place of residence ... either forcibly as a result of war or voluntarily, may apply during the voter registration period to vote in person in the municipality in which they now live and intend to continue to live, only if they present documentary proof of continuous residence in the current municipality since 31 July 1996 or before.⁶³

Thus, IDPs were able to vote for their original municipality (either in person or by absentee ballot) or for their current municipality, subject to proof of residence on or before July 1996. This meant that voters who had moved to a new municipality less than 14 months prior to the election could not select this option. Subsequent elections have continued to allow IDP voters to make this choice, although the residency requirement has been decreased to six months prior to each subsequent election.

Sri Lanka presents a more problematic case. While the country has substantial experience organizing elections that include IDP populations, the electoral framework provides insufficient guarantees for the displaced to vote by absentee ballot for their home communities. Article 127B of the Sri Lanka *Parliamentary Elections (Amendment) Act No. 15 of 1988* holds,

(1) Notwithstanding the provisions of any other Law, any registered elector who reasonably fears that due to conditions prevailing in the area within which his polling station is situated, that he is unable to cast his vote at such polling station, may make an application to the Commissioner of Elections ... requesting that he may be allowed to cast his vote at another polling station determined by the Commissioner, in his absolute discretion. (2) The Commissioner shall within a week of receipt of an application inform such elector whether such application is accepted or rejected. The decision of the Commissioner shall be final and shall not be questioned in any Court of law. (3) Where such vote is cast, such vote shall be counted along with the votes of the electoral district where such elector is registered.⁶⁴

While this language appears to protect IDP absentee voting rights, several substantive issues remain unresolved. Most importantly, the Act pertains only to IDPs who can prove they were previously entered on the voter register in their original place of residence. Two categories of

⁶³ OSCE/ODIHR, *Rules and Regulations: As Amended and Recompiled from the 1996 Rules*, Provisional Election Commission Doc. Art. 10 Sec. c1 (Oct. 14, 1997).

⁶⁴ Sri Lanka Department of Elections, *Parliamentary Elections Act No. 1 of 1981, as amended by Parliamentary Elections (Amendment) Act No. 15 of 1988*, (2001), at <<http://www.slelections.gov.lk/notices1.html>>.

IDPs (those who reached voting age after being displaced and those lacking documentary proof of their previous registration) are therefore not protected.

In 2000, a Sri Lankan NGO petitioned the Supreme Court claiming that the Act discriminated against voters who either were not registered or could not prove their registration in their pre-displacement constituency. The Court rejected the claim, arguing that the Act and other regulations regarding voter registration provided "...adequate provisions for the public to scrutinize the revised Electoral Registers, ... as well as to ask the Registering Officer to have a person's name entered in the Register."⁶⁵ Many IDPs, however, cannot access their home district electoral registers and many more lack documentation with which to confirm their identity.⁶⁶ This problem has been partially addressed by the Commissioner of Elections through an administrative measure that allows IDPs to be entered on the register in their current location. As a consequence, however, these voters are limited to casting ballots for their current place of residence.⁶⁷

Constituencies Not Under the Control of the Recognized Government

Elections conducted in countries where part of a state's territory is not under the effective control of the central government raise specific questions. Georgia, for example, employs a parallel system for electing parliament, where some seats are elected via single-member constituencies and the rest are elected through proportional based on national or regional party lists. IDPs displaced from Abkhazia and South Ossetia (secessionist areas controlled by insurgent forces), however, were specifically denied by law the right to participate in the single-member component of the election. Article 33(1) of the *1995 Organic Law of Georgia on Parliamentary Elections* stated,

"Forcefully displaced persons shall be included in the voter's lists according to their present places of residence. A separate list shall be compiled for displaced persons and they shall not participate in the majority elections held in single-mandate districts."⁶⁸

The government maintained that this regulation complied with the wishes of the IDPs. According to one analyst, "...there [were] genuine concerns among some of the internally displaced that by voting for the local candidate they would be accepting the *de facto* territorial situation and would thereby relinquish their right to return to their homes ..."⁶⁹ Indeed, political actors promoted a belief that allowing IDPs to vote for the single-mandate districts would signal a concession to "ethnic cleansing." Instead, IDPs were denied the right to vote in the single-mandate elections and the mandates of the Deputies elected from

⁶⁵ Rohan Edrisinha and Sundari de Alwis, *The Right to Vote: Its Impact on Election Laws in Sri Lanka*, 14-16 (2000), available at <http://www.cpalanka.org/research_papers_archives.html>.

⁶⁶ *Ibid*, p.16

⁶⁷ However, implementation of these procedures is not uniformly followed at the district level, and many IDPs complain that they continue to face difficulties establishing their right to vote for parliamentary constituencies, even in their current place of residence. See Jeremy Grace, *Sri Lanka: Voting Rights of IDPs, Refugees, and Economic Migrants*, PRESS Action Plan V (April 2006), available at <<http://www.geneseo.edu/~iompress/CaseStudies/SriLanka.htm>>.

⁶⁸ Parliament of the Republic of Georgia, *Organic Law of Georgia on Parliamentary Elections*, Article 33(1), (1995).

⁶⁹ Simon Bagshaw, *Internally Displaced Persons and Political Participation: the OSCE Region*, An Occasional Paper, The Brooking Institute Project on Internal Displacement, (Sept. 2000).

Abkhazia prior to displacement were continually extended without re-election.⁷⁰ By the late 1990s, however, many Georgian IDPs began to complain that these Deputies no longer represented their interests in the parliament.⁷¹ Under considerable pressure from the OSCE, the Council of Europe, and following questioning of the Georgian Government regarding IDP voting rights in the UN Human Rights Committee as well as consideration of a case brought by IDPs to the Georgian Constitutional Court, the Georgian parliament modified the electoral framework in August 2003, removing restrictions in electoral legislation on IDP participation in the majoritarian contests and also guaranteeing their voting rights in local-level elections without placing IDP status or benefits in jeopardy.⁷²

In Azerbaijan, legislators continue to struggle with the issue of electing representatives from the disputed region of Nagorno-Karabakh. For the 2005 Parliamentary Elections, the election law established eleven “constituencies in exile” for these regions. IDP voters (who overwhelming are ethnic Azeri) were able to register and vote for their constituencies of origin, which are currently under Armenian control, from elsewhere in Azerbaijan. While the parliament sought to also allow ethnic Armenians resident in the Nagorno-Karabakh constituencies to vote, no mechanism could be established for their participation.⁷³ These eleven constituencies were therefore essentially virtual. According to OSCE/ODIHR, “Some 283,000 voters were on the voter list in the IDP polling stations located either ‘in exile’ within other regions or in areas that are partially occupied.”⁷⁴ IDPs have not been allowed to vote for the constituencies in which they currently reside, which is unfortunate as displacement from Nagorno-Karabakh has been ongoing since the early 1990s.

In Sri Lanka, the issue of elections for the constituencies under the control of the Liberation Tigers of Tamil Elam (LTTE) has been addressed through administrative decrees issued by the Commissioner of Elections. In contrast to Azerbaijan, the Sri Lankan government does maintain a limited presence in LTTE-controlled areas through appointed Government Agents, who also act as voter registration officers. Thus, all voters inside these areas, whether displaced or not, are able to register in their current location. However, since police and other government officials cannot enter the LTTE areas, the Commissioner of Elections has established “cluster polling stations” in the government-controlled areas along the line of control. On voting day, the Department of Elections works with the LTTE to provide transportation for all voters resident in the LTTE-areas, including IDPs, to the cluster stations. Unfortunately, this means that the Department of Elections is not able to fully implement all aspects of the election law, particularly regarding campaigning, throughout the

⁷⁰ The deputies elected from these constituencies prior to the outbreak of hostilities continued to occupy those seats until 2004, when Parliament removed them from office and determined that the seats would be left vacant until Parliamentary Elections could again be held.

⁷¹ Mooney & Jarrah, *The Voting Rights of Internally Displaced Persons: The OSCE Region*, p. 40.

⁷² Mooney & Jarrah, *The Voting Rights of Internally Displaced Persons: The OSCE Region*, pp. 32-38. The amended law is found in The Organic Law of Georgia: Unified Election Code of Georgia, as amended August 14, 2003. Available at: <http://www.cec.gov.ge/kanonebi/kodeqsiENG.pdf>

⁷³ The CEC announced: “...appeals are sent by Azerbaijani citizens of Armenian origin and of other origins living in these [Armenian Controlled] areas and wishing to participate in elections. In this aim, Central Election Commission calls Armenians living within the territory of Nagorno Karabakh and all citizens of the Republic of Azerbaijan of other origins to participate in the voting during the forthcoming elections by enjoying their constitutional rights.” See Central Election Commission of the Republic of Azerbaijan, Address (Oct. 19 2005), available at <<http://www.cec.gov.az/en/4millimajlis2005/address2.htm>>.

⁷⁴ OSCE/ODIHR, Republic of Azerbaijan Parliamentary Elections: Election Observation Mission Final Report, ODIH R.GAL/7/06, Sec. V (Feb. 1 2006), available at <http://www.osce.org/documents/odihr/2006/02/17923_en.pdf>.

country, and many voters are subject to profound pressures from the LTTE political and militia structures prior to arriving at the line of control.⁷⁵

Aside from the issue of IDPs' electoral district, additional common issues confronting these "exile" constituencies include difficulty presenting election-related information to the affected voters, administration of the voter registration, and threats to voter safety if they are forced to travel to a polling station on the other side of a frontline.⁷⁶ While the electoral framework should include specific provisions to mitigate these challenges, including codes of conduct for campaigning, it will obviously be difficult to fully to implement protective measures in electoral districts in areas where the state is unable to exercise effective sovereignty. Nevertheless, these programs represent an improvement over the situation that prevailed in Georgia, where the mandates of the deputies elected from the contested constituencies were simply extended indefinitely without subjecting the office holders to electoral competition.

⁷⁵ Furthermore, the system requires the cooperation of the LTTE in order to meet the logistical challenges of moving hundreds of thousands of voters across the line of control on election day; If the LTTE decides not to support a particular election (as it did in 2005), it is able to obstruct and severely limit voter participation. See Jeremy Grace, Nepal: Supporting the Democratic Transition Through the Participation of Internally Displaced Persons and Migrants in Constituent Assembly Elections, Action Plan VI, 7-8 (June 2006), *available at* <http://www.geneseo.edu/%7Eiompres/Archive/Outputs/NEPAL_IOM_AP_FINAL.pdf>.

⁷⁶ Other cases include Moldova and Cyprus. See Mooney & Jarrah, The Voting Rights of Internally Displaced Persons: The OSCE Region, 32-41.

Documentation

In order to ensure that only eligible voters are able to participate and to prevent double voting, the electoral framework must provide guidance on which documents will prove the voter's identity, citizenship, and residency in a particular constituency. However, IDPs have often lost these documents, or they have been confiscated or destroyed.⁷⁷ Since situations of internal displacement often result in the breakdown of administrative services, IDPs may have limited or no means of re-acquiring documents prior to voter registration and/or the elections.⁷⁸ In some instances (e.g., Sri Lanka and Chechnya⁷⁹) IDPs have been required to make a potentially dangerous journey to their home municipality in order to apply for replacement documents.

Thus, the electoral framework must provide guidance on how persons lacking documentation will be accounted for without compromising the integrity of the overall electoral process or the safety and rights of the internally displaced. The first and most basic statutory need is to guarantee IDPs' right to documentation. Guiding Principle 20 holds that,

- (1) Every human being has the right to recognition everywhere as a person before the law.
- (2) To give effect to this right for internally displaced persons, the authorities concerned shall issue to them all documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates and marriage certificates. In particular, the authorities shall facilitate the issuance of new documents or the replacement of documents lost in the course of displacement, without imposing unreasonable conditions, such as requiring the return to one's area of habitual residence in order to obtain these or other required documents.
- (3) Women and men shall have equal rights to obtain such necessary documents and shall have the right to have such documentation issued in their own names.

Many national IDP policies draw directly from this language, a practice that should be encouraged. Article 3.5 of Uganda's 2004 *National Policy for Internally Displaced Persons*, for example, holds,

- (1) Local Governments shall issue to IDPs all necessary documents to enable them to realize full enjoyment and exercise of their rights. In particular, authorities shall facilitate issuance of new documents lost in the course of displacement, without

⁷⁷ Tim Cocks, reporting on the 2006 elections in the Democratic Republic of Congo, described a typical scenario: "When militiamen raided his refugee camp in eastern [DRC], the last thing Bagaya Makambo thought of rescuing was his voter registration card. 'I had to run for my life,' the 33-year-old said, as he queued outside an electoral office in Bunia, capital of DRC's conflict-scarred Ituri district. 'They were shooting people at random, burning huts. So I grabbed my younger sister and ran. We left our identity cards with everything else – now I'm scared I won't be able to vote.'" Tim Cocks, "Displaced Congolese Struggle to Take Part," *Gulf Times*, October 29, 2006. Available at <http://www.gulf-times.com/site/topics/article.asp?cu_no=2&item_no=114854&version=1&template_id=39&parent_id=21>

⁷⁸ In addition, IDP populations may have come under the control of militias that issue their own documents during the conflict, which may or may not be recognized by whichever government winds up in power after the conflict is over. During the Bosnian war, for example, the Croatian authorities established the "Republic of Herceg-Bosna," and began issuing ID cards to both regular residents and displaced Croats. These documents were not recognized by the OSCE as acceptable documentation for electoral purposes.

⁷⁹ To participate in elections administered by the Russian Federation, IDPs from Chechnya were required to travel to their permanent place of residence to obtain an "absentee voting certificate." See Mooney & Jarrah, *The Voting Rights of Internally Displaced Persons: The OSCE Region*, 32-41.

imposing unreasonable conditions, such as requiring the return to one's area of habitual residence, payment of fines or extra costs in order to obtain these or other required documents.

(2) Women and men shall have equal rights to obtain identification documents and shall have the right to have such documentation issued in their own names.⁸⁰

In practice, however, national capacity may be unable to provide for the implementation of this right. Legislators in post-conflict countries must therefore determine how to enfranchise IDPs who lack requisite documentation. Three possible mechanisms include:

- Using pre-crisis data obtained from census and civil registration programs and other municipal records to verify citizenship and eligibility, combined with special mechanisms for electoral authorities to perform documentation searches and/or verifications;
- Conducting a census or civil registration prior to the elections and using these newly issued documents as a basis for voter registration; and,
- Allowing “social documentation,” through which applicants to vote are allowed to swear their identity, residence, and/or citizenship in front of a recognized legal authority or village/tribal notable.⁸¹

Whichever mechanism or combination of mechanisms is to be employed should be clearly stated in the electoral code – along with relevant rules regarding evidentiary requirements – in order to provide clear and consistent guidance to election administration staff on how to accommodate persons who lack documents at the time of voter registration. For example, during the 1999 Popular Consultation on Autonomy for East Timor, organized by the United Nations Assistance Mission in East Timor (UNAMET), persons who lacked regular documents were able to register after undergoing a process of “social verification.” Given the widespread lack of documents (affecting both IDPs and the non-displaced), the Chief Electoral Officer issued an administrative decree on procedures for these populations to prove their eligibility and register. According to Section D(1) of UNAMET *Notification I: Guidelines on Assessments of Documents*,

Where a person is not in possession of sufficient documentation to support his or her application to register, the District Electoral Officer shall require such an individual to: Produce an affidavit sworn before a religious leader or *Kepala Desa* (Village Chief) and witnessed by a person who knows the applicant. In addition, the application for registration must be witnessed by a fully documented registered voter. Where the District Electoral Officer is satisfied that the applicant has met these conditions, he or she shall register the applicant.⁸²

The Notification described additional procedures to be employed by the electoral workers, including completion of a special form and allowing each registration application made

⁸⁰ Government of Uganda, National Policy for Internally Displaced Persons, Article 3.5 (2004).

⁸¹ Jeremy Grace & Jeff Fischer, *Enfranchising Conflict-Forced Migrants: Issues, Standards, and Best Practices*, PEP Discussion Paper No. 2, 34 (Sept. 29, 2003), available at <http://www.geneseo.edu/~iompress/Archive/Outputs/Standards_Final.pdf>.

⁸² UNAMET, Notification I: Guidelines on Assessments of Documents, Sec. D1 (1999), available at <<http://www.geneseo.edu/~iompress/LeftNav/PRESSElectionArchive.htm>>.

through this process to be challenged by another registered voter. Legislators should note, however, that social documentation presents additional administrative challenges and potential opportunities for voter fraud (see discussion related to Documentation in Section 5 “Procedural Elements of State Regulation” below).

Non-discrimination

The electoral framework should guarantee voting rights to all segments of the state’s population on a non-discriminatory basis. These provisions should be subject to judicial remedy based on individual and collective petitions to an electoral appellate body or to the courts. The principle should be clearly embedded in the constitution (principles of universal and equal suffrage), re-stated in the core election laws and regulations (with mechanisms for those who believe they have been discriminated against to petition the EMB and/or a judicial body for redress), and again in the National IDP Policy. For states undergoing a post-conflict democratic transition, it would be especially useful to articulate the voting rights of IDPs (and refugees) directly into the peace agreement and/or interim constitution, as was done in the Dayton Agreements for Bosnia and Herzegovina.

The electoral framework should also address issues of discrimination based on gender, race, religion, ethnic/social groups, language, and other grounds, as a result of which internally displaced communities often are doubly discriminated. Particular attention must be paid to removing any legal or practical barriers hindering women’s equal right to participate in the political process.⁸³ Specific guarantees of equality of the vote and remedies for its arbitrary denial, either through direct petition of the EMB or domestic adjudication procedures capable of providing effective remedies, should be embedded in the election law. Discrimination against minority communities in terms of the right to register or to vote should be explicitly prohibited, and judicial remedies prescribed for minority groups to pursue claims of discrimination. The right of all candidates and parties to have access to IDP populations, particularly those residing in camps and welfare centers, should be protected.

In addition, the electoral framework needs to address non-discrimination in terms of the ability to communicate and receive information in a language IDPs understand. As noted earlier (see section 2), linguistic barriers to IDP’s political participation have included bans on political campaigning in Kurdish in Turkey and the lack of voter information in Romani in Serbia. These are important issues to address in electoral legislation. In Kosovo, for example, the election law governing the 2000 and 2001 municipal elections required the EMB to produce all election related information in four languages: Serbian, Albanian, Romani, and Turkish.⁸⁴

Election Security

IDPs displaced by violence, war, and human rights abuses have been forced to flee a community specifically because their physical security has been threatened and they are unable to access national protection. Unless these threats have been removed and their safety

⁸³ Muna Ndulo, ‘Enhancing the Role of Women in Electoral Processes in Post-Conflict Countries: Constitutional and Legislative Measures,’ in Muna Ndulo (ed.) *Security, Reconstruction and Reconciliation: When the Wars End* (London: University College Press, 2007), 117-130.

⁸⁴ Unfortunately, the OSCE found it difficult to produce sufficient materials in some of these languages and minority communities repeatedly claimed that they received too little information, and often too late.

can be assured, return to their area of origin is unrealistic and, according to international law, cannot be compelled.⁸⁵

Another security risk is that IDP populations can be considered as *subject voters* in that their ability to make free political choices is compromised by an overwhelming dependence for survival upon the services of the government seeking to retain power or upon political/military force controlling the area where they reside.⁸⁶ Thus, the election security of IDPs should be considered more broadly than simply their right to cast a ballot in accordance with their conscience and without risking their lives or property. Legislators should also consider the effects of their dependence on humanitarian support networks and possible attempts by political actors to use this dependence to their advantage.

While election-related violence is a potential threat to both displaced and non-displaced voters, the electoral framework should make specific reference to the inherent rights of IDPs to participate in elections without risking their physical security (i.e., forcing them to return to their home communities) or compromising their access to basic social services (e.g., the previous rule in Georgia that discontinued benefits to IDPs who registered to vote in their current place of residence). Model language in this regard is contained in the 2002 Rules and Regulations governing general elections in Bosnia and Herzegovina. In Article 3.7, the law provides that:

No citizen of Bosnia and Herzegovina shall forfeit any right or entitlement because he or she has registered as a voter, or because his or her registration to vote for a municipality is not the one in which he or she currently resides ... No person shall be required to present any document issued to him or her by a competent municipal body relative to the registration or voting for any other purpose except as necessary for the purpose of voter registration, confirmation of registration or voting.⁸⁷

The electoral framework should guarantee that the principle of the secret ballot is respected and that voters are able to cast their ballots without fear or intimidation. Specific guidance should be provided on the appropriate role of military and police forces in the electoral process, the prohibition of weapons in or near registration and polling facilities, and the demarcation of a defined space surrounding these facilities where political campaigning and posters are prohibited. In the event of a disturbance, only duly constituted and legally recognized police forces should be allowed entry into election facilities, and only until such time that the disturbance persists.⁸⁸

⁸⁵ Guiding Principle 15 holds: “Internally Displaced persons have (a) The right to seek safety in another part of the country; ... (d) The right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk. This provision reflects the non-refoulement principle embedded in the 1951 Convention Related to the Status of Refugees. The principle of non-refoulement is considered to have become a part of customary international law.

⁸⁶ Jeremy Grace & Jeff Fischer, *Enfranchising Conflict-Forced Migrants: Issues, Standards, and Best Practices*, PEP Discussion Paper No. 2, 34 (Sept. 29, 2003), available at <http://www.geneseo.edu/~iompress/Archive/Outputs/Standards_Final.pdf>.

⁸⁷ Bosnia and Herzegovina, *Electoral law of Bosnia and Herzegovina*. Translated by OSCE, 2002. Available at http://www.geneseo.edu/~iompress/Archive/BiHelection_law-eng_language2002.pdf

⁸⁸ See for example the OSCE Mission in Kosovo Central Election Commission, “Electoral Rule No. 11/2001,” Section 4(a): “No weapons or arms shall be allowed in a polling station unless the OSCE international supervisor or Chairperson of the Polling Station Committee asks for the assistance of security/police personnel.” Similar statements appear in almost all electoral codes.

In situations where conflict-displaced IDPs prefer to vote in their home communities but are unable to do so due to security concerns, absentee balloting mechanisms are advisable. Best case examples of this principle can be found in BiH, Kosovo, and Sri Lanka, all of which provided for absentee balloting in the respective electoral framework (as described above). A more problematic case can be found in elections in the Russian Federation regarding the participation of Chechen IDPs (both inside and outside of the province). While the relevant electoral codes governing IDP voting provided for absentee polling stations, to exercise the option of absentee voting, IDPs paradoxically were required to return to their place of permanent residence *in Chechnya* to obtain an absentee voting certificate. In most cases, these areas remained unsafe, which was precisely the reason why absentee voting was necessary; specifically, to *avoid* having to return to an unsafe area in order to be able to participate in the election. Furthermore, the requirement followed a decision that IDPs could no longer choose between voting for their permanent or current residences, but could *only* vote as absentee voters according to their permanent place of residence.⁸⁹

The electoral framework should also establish procedures and institutions that minimize the potential for electoral related violence. The rules should be designed so that all actors believe they have a fair chance of contesting the election, and that their interests are not repeatedly discriminated against. Transparency in the framework can convince all sides that the process is fair, making it more difficult for spoilers to claim that the electoral process is biased. Key procedures here include,

- A balanced and non-partisan election commission to ensure that all groups are represented;
- A neutral authority to provide transparent judicial overview of the process;
- An effective and workable elections appeals and complaints procedure;
- Transparent election processes, including the ability for interested political parties and grass-roots organizations to monitor all phases of the elections process;
- Reasonable timeframes to accomplish the movement of ballots and counting procedures, combined with effective public information campaigns explaining why results may not be available for several days after the balloting.⁹⁰

Finally, in order to prevent political actors from exploiting the vulnerabilities of IDPs, the electoral framework should prohibit government relief ministries, other humanitarian actors, and political parties from linking electoral participation or where one participates to the continued provision of humanitarian benefits. In BiH elections during the 1990s, for example, observers reported that government relief ministries threatened to curtail benefits for certain IDPs if they did not register to vote in constituencies where the parties were looking to establish a particular ethnic majority.⁹¹ Similarly, the electoral code and/or political party codes of conduct should prohibit candidates from promising or providing relief materials and food in IDP camps during campaign appearances, a practice which has been unfortunately common in Liberian elections.

⁸⁹ Mooney and Jarrah, *The Voting Rights of Internally Displaced Persons: The OSCE Region*, p. 49.

⁹⁰ Jeremy Grace & Jeff Fischer, *Enfranchising Conflict-Forced Migrants: Issues, Standards, and Best Practices*, PEP Discussion Paper No. 2, 46 (Sept. 29, 2003), available at <http://www.geneseo.edu/~iompress/Archive/Outputs/Standards_Final.pdf>.

⁹¹ Participatory Elections Project, IOM, Case Studies on the Participation of Conflict Forced Migrants in Elections, Case I Bosnia and Herzegovina (May 2003), available at <<http://www.geneseo.edu/~iompress/Archive/Outputs/PEP%20Case%20Studies%202003.pdf>>.

C. *In the Context of Durable Solutions*

IDP participation in the political affairs of their state can, if organized transparently and inclusively, contribute to the amelioration of the structural causes that led to displacement. In addition, it can facilitate and indeed counts among the key benchmarks of their reintegration into their home communities. Similarly, in cases where IDPs instead opt to resettle in their current place of residence or elsewhere in the country, even after conditions permit return, the right to register and vote in elections will be an essential component of integration and attainment of a durable solution.⁹²

Yet, in a number of cases electoral discrimination against former IDPs remains in place even after conflicts have ended. In Croatia, for example, displaced and resettled Serbs have faced obstacles claiming citizenship rights through administrative measures that do not recognize documents commonly carried by this community. In BiH, ten years after the first post-war elections, many IDPs and returnees continue to face prohibitive and discriminatory requirements and fees when applying for documents from municipal authorities.⁹³

IDPs can also become pawns in the calculations of policy-makers in the pursuit of political objectives in the conflict-resolution process. IDPs in Georgia and Azerbaijan, for example, face discrimination not because they represent a national minority, but because durable solutions other than return – i.e. resettlement and local integration - are viewed as recognition of the territorial status quo and relinquishment of the right of return. As a result, IDPs are viewed as a potent rallying point by political actors who remain unprepared to relinquish claims to occupied territory.

The post-displacement electoral framework should be able to accommodate population movements by allowing re-registration in the home community or normalization of residence rights in the current location. This entails a broad review of any restrictive citizenship and/or residency requirements. In many former Soviet Republics and Eastern Bloc countries, for example, the Soviet-era “Propiska” system, under which all persons are assigned to a particular district and movements are tightly controlled, often makes it difficult for IDPs (and indeed, all migrants) to normalize their status in their current locations.⁹⁴ While most countries have officially abolished Propiska, in practice its influence has been found to continue to shape legal and administrative regulations, including in hindering IDPs’ political participation rights.⁹⁵ More broadly, residency requirement thresholds should be relaxed for

⁹² As noted above, however, the option to vote in their current location must be available to IDPs – especially in protracted situations- even before conditions permit a possible return.

⁹³ U.S. State Department, 2004 Country Report on Human Rights Practices in Croatia, (Feb. 28, 2005), available at <<http://www.state.gov/g/drl/rls/hrrpt/2004/41675.htm>>.

⁹⁴ In 2001, for example, the Ukrainian Supreme Court struck down the Soviet-era Propiska law as unconstitutional, holding that the practice of allowing the Ministry of Internal Affairs to approve or reject applications to change residence, “...contradicted Articles 24, 33 and 64 of the Constitution of Ukraine. Those articles hold that the privilege of the right to choose one’s place of residency cannot be denied and that a person who lives within the parameters of the law can move about the country freely, without limitations or control.” See Roman Woronowycz, *Constitutional Court Strikes Down Internal Passport System*, THE UKRAINIAN WEEKLY, (Nov. 25, 2001), at <<http://www.ukrweekly.com/Archive/2001/470102.shtml>>.

⁹⁵ Erin Mooney & Balkees Jarrah, *Displaced and Disenfranchised: Internally Displaced Persons and Elections in the OSCE Region*, 29 ETHNOPOLITICS, 36 (March 2005), available at <http://www.brookings.edu/fp/projects/idp/articles/200503_Mooney-Jarrah_Ethnopolitics.pdf>.

returnees, as they may not meet the current requirement as a consequence of their previous displacement.

5. PROCEDURAL ELEMENTS OF STATE REGULATION

A. Prior to Displacement

Basic administrative safeguards, such as a computerized voter register with off-site backup (or at least a duplicate copy of hand-compiled voter lists at the district-level) clear procedures for obtaining replacement documents, and functional EMB representation at the local level are basic good practices associated with electoral management and will help in the event of sudden and unexpected displacement. As both Sri Lanka and the state of Louisiana discovered for instance, failure to adequately plan for disaster can complicate the ability to move from a normal registration and voting program to one conducted in the context of an emergency.

In addition, many of the substantive issues addressed above require implementation. In particular, rules providing for absentee balloting, change of registration details, and issuance of new or replacement documentation (including for women to have documentation in their own names) need to be translated into procedures aimed at ensuring these rights. Prior to displacement, this requires that EMB staff at the national and local levels are able to implement the rules consistently throughout the country. This requires training and resources, as well as a commitment to protect the voting rights of all eligible citizens.

B. During Displacement

Absentee voting procedures can be costly and logistically complex if they are to deliver on the commitments contained in the electoral framework and national IDP policy. The more constituencies and levels of government holding electoral contests, the more unique ballots that the EMB will need to deliver to a widely dispersed electorate. The EMB will also need to account for IDPs who reside in camps and welfare centers, as well as for persons who return to their original homes in the period between voter registration and Election Day. These technical elements of electoral administration are certainly feasible, and should not daunt legislators from meeting their commitments to protect IDP political rights as per the Guiding Principles. However, careful consideration of timelines and operational planning are required in order to ensure that IDP voting programs are transparent and inclusive.

Registration and Population Movements

The voter registration process is central to the inclusiveness and transparency of the overall elections. Political actors often seek to manipulate electoral outcomes by either stacking the voter registers in areas favorable to their particular interests, or placing obstacles in the way of registration of communities viewed as potential opposition blocs. In Macedonia, for example, election observers have raised concerns regarding incomplete voter lists that disenfranchised large number of ethnic Albanians, primarily IDPs. According to the International Helsinki Federation for Human Rights, “At two polling stations where IDPs from the municipalities of Lipkovo and Aračinovo were to vote, large numbers of the IDPs were not named on the voters’ lists. Allegedly, an ‘administrative error’ obstructed these

people from exercising their rights to vote.⁹⁶ Even if the omission of IDPs from voters registers is not politically motivated, the outcome remains disenfranchisement, a violation of basic obligations related universal and equal suffrage.

As a starting point, voter registration needs to capture data on the current location of IDPs, their previous residence, and whether they intend to return to vote or wish to vote by absentee ballot. Electronic registration is highly desirable (although not always financially realistic), as the resulting database can easily adjust to notification by voters of their movements and allow for duplicate registrations to be identified. Registration should also result in the issuance of a receipt or voter identification card that can be used to verify entry on the voters list and allow voters to change their assigned constituency and polling station should they move prior to Election Day. Local Election Commissions (LECs) should be provided the capacity to verify these registrants, and communicate change of registration information to the national election commission and the local commission where the returnee originally registered. If the returns occur at a point too late in the election cycle for the final voter register to be updated, returning IDPs should be able to cast a provisional or tendered ballot.⁹⁷

An example of a well intentioned program that suffered from weak implementation can be found in the 2002 elections in Sierra Leone. Article 5.(1) of The Electoral Laws Act of 2002 held that:

“Where any elector who is registered in one ward becomes ordinarily a resident in another ward ... he may apply to the Registration Officer of the ward in which he is an ordinary resident, and the Registration Officer shall [provided they meet residency criteria and are a registered voter] ... register the applicant in the register for the ward and issue to the applicant a voter registration card for that ward.”⁹⁸

This “transfer of the vote” program meant that voters who moved between registration and polling (mainly IDPs or refugees at transit stations) were able to apply at any registration or polling facility to be added to the list, contingent on the production of a valid voter ID card. The transferees completed a two part form; with the district election commission retaining half of the form to process the transfer and the transferee retaining half for production at the polling station. The closing date for vote transfers was fifteen days before Election Day, later extended to nine days.⁹⁹ Unfortunately, the lack of a computerized voter register and clear procedures to communicate the transfers between the respective polling stations meant that many of the applications were not adequately processed. As a result, many voters appeared at their new polling stations on Election Day to discover they had not been added to the lists. According to the Carter Center, “In response, the NEC announced a policy change

⁹⁶ International Helsinki Federation, *Human Rights in the OSCE Region: Europe, Central Asia and North America: Report 2005*, 3 (2004), at <www.ihf-hr.org/viewbinary/viewdocument.php?doc_id=6342>.

⁹⁷ Tendered ballots allow for persons who believe they should be listed on the final voters register, but cannot be found, to cast their vote at the time they present themselves at the polling station. These ballots are subject to secondary verification procedures by the EMB after polling closes. See Allan Wall & Louise Ollivier, *Provisional or Tendered Ballots*, ACE Electoral Knowledge Network, at <<http://www.aceproject.org/ace-en/topics/vo/voa/voa02/voa02f>> (visited July 9, 2006).

⁹⁸ Sierra Leone, “The Laws of Sierra Leone on the Web; The Electoral Laws Act,” 2002. Available at <<http://www.sierra-leone.org/Laws/2002-2.pdf>>

⁹⁹ European Union, Election Observation Mission, “Sierra Leone Presidential & Parliamentary Election, 14 May, 2002”. Available at <http://ec.europa.eu/comm/external_relations/human_rights/eu_election_ass_observ/sleone/rep02.pdf> P.15

midmorning on election day that was interpreted differently around the country, causing disenfranchisement of some voters and a lack of uniformity in the voting process.”¹⁰⁰

As a general rule, displaced registration processes should drive the election timeline. Election organizers must allow sufficient time following the close of registration to produce a provisional voters register (PVR), remove duplicate registrants, adjudicate disputed claims to eligibility, allow public inspection of the PVR, make updates based on claims and challenges to the PVR, calculate which ballots will be needed at which polling station, and ensure sufficient time to transport these ballots. This requires that a fixed date for the end of registration be established well in advance of election day.

Nevertheless, the EMB might consider whether to extend deadlines specifically for IDPs or returnees. In the 2005 Liberian elections, for example, Section 7 of the Electoral Reform Law instructed the National Election Commission (NEC) to, “adopt measures to facilitate the registration of [IDPs] ... after the registration deadline where justifiable reasons for failure to register before the deadline are shown.”¹⁰¹ Given that the NEC proved over-optimistic regarding the number of IDPs who would return before the election, last-minute procedures were adopted allowing for the establishment of polling station in the camps. Unfortunately, these IDPs were only able to cast ballots for the presidential contest, as it was too late to distribute constituency-based ballots in the short period of time available. According to the Observation Report of the European Union Election Observation Mission: “Of those [IDPs] who registered, 71% opted to register to vote in the county of their origin. Ultimately, some 30,000 were not repatriated [sic] ...prior to election day and ... were deprived of the possibility to vote in the Senatorial and HoR [House of Representative] elections.”¹⁰²

Documentation

In a best case scenario, authorities would conduct a document re-issuance program prior to or in conjunction with voter registration. While not always possible given resource and time constraints, such a program can contribute to overall confidence in the electoral outcome, and the data captured can be used to help delimit and apportion electoral districts, and provide additional information on IDP demographics and assistance needs. IDPs should never be required to return to their original municipalities -- which may be controlled by hostile political forces -- in order to apply for and receive replacement documents. Thus, local administrative bodies will need to verify IDP claims to citizenship, age, marital status, and previous residency via records searches conducted by authorities in the previous municipal authority. Additionally, data from social welfare ministries and camp management agencies can be utilized to validate claims to identity and citizenship. The documentation program should also provide an appeals procedure for IDPs who believe their eligibility claims have been unfairly rejected.

One option is to administer a national-level civil registration process that results in the issuance of new documents prior to or in tandem with voter registration. The 2000 Municipal

¹⁰⁰ Carter Center, “Observing the 2002 Sierra Leone Elections,” available at <<http://www.cartercenter.org/documents/1349.pdf>>

¹⁰¹ Republic of Liberia, Electoral Reform Law, 6 (Dec. 17, 2004), available at <<http://www.necliberia.org/links/Legislatures.shtml>>.

¹⁰² European Union, Election Observation Mission, “Liberia Presidential & Legislative Elections, 11 October, 8 November 2005.” p. 6. Available at <http://ec.europa.eu/comm/external_relations/human_rights/eu_election_ass_observ/liberia/liberia_final_030206.pdf>

Election Program in Kosovo, for example, included a nationwide Civil Registration that also served as the basis for production of the voters register. The electoral framework held that participation in the elections was limited to persons who were “habitual residents”¹⁰³ of Kosovo and who could prove residence in Kosovo on or before January 1 1998. Since many Kosovars had been stripped of their documents during the conflict in a process of “identity cleansing” and many municipal records had been lost or destroyed, the regulations governing civil registration allowed an exceptionally wide array of documents to prove eligibility (including utility bills, student ID cards, and membership in various Yugoslav clubs and associations).

The United Nations Mission in Kosovo (UNMIK) and OSCE established a Joint Registration Task-Force (JRT) to administer the civil registration. Persons lacking documents underwent a review process through which applicants filled in a detailed questionnaire regarding their claim to eligibility. The questionnaire was forwarded to the appropriate municipality of origin where registration officials searched for evidence to verify the applicant’s claim.

Unfortunately, the review process was unable to accommodate the volume of cases forwarded to it and the JRT established a second-level “inquiry” division.¹⁰⁴ This division was initially designed as an anti-fraud tool to conduct random sampling of civil registrants and ensure that fraud would be identified. However, as the case-load of undocumented registrants grew, the inquiry division became the primary mechanism through which applicants who could not be identified through the review procedure would be provided one final opportunity to have their status verified. Ultimately, the review and inquiry divisions processed some 113,000 cases, approving the vast majority.¹⁰⁵

While not technically a civil registration program, the 1996 and 1997 BiH elections also established procedures through which persons lacking documents could petition authorities in their home municipality for documentary proof of voter eligibility. The OSCE established a “Citizenship Verification Sub-Commission” to assist registrants who were not listed on the 1991 census and were unable to procure either a citizenship certificate or a receipt from a municipal authority (the two methods by which voters not on the census could be added to the voters register). Article 17.1 of the Rules and Regulations provided that:

“In those cases where an individual has difficulty obtaining a receipt from a municipality, a representative of the OSCE is given the authority to make a written request for a receipt to the municipality on the individual’s behalf. In those cases, the municipality shall, within five days of the request, produce either the receipt or full written reasons why the receipt cannot be produced.”

Unfortunately, many municipal officials, particularly in strategically important areas -- such as the town of Brcko -- refused to provide this documentation, and security concerns kept

¹⁰³ Persons could prove a “genuine connection” to Kosovo by meeting one of five criteria: 1) Persons born in Kosovo; 2) persons with at least one parent born in Kosovo; 3) persons who lived in Kosovo for a period of five continuous years; 4) Persons forced out of Kosovo and are therefore unable to meet the five continuous years option; and 5) dependant children under 18 during registration but reaching 18 by election day. See UNMIK Regulation No. 2000/13 On the Central Civil Registry, Section 3. Available at: http://www.unmikonline.org/regulations/2000/re2000_13.htm

¹⁰⁴ [Unpublished OSCE document] OSCE, OSCE Inquiry Division: Final Report, 3 (October 2000).

¹⁰⁵ [Unpublished OSCE document] OSCE, OSCE Inquiry Division: Final Report, 3 (October 2000).

many IDPs from returning to their former municipalities to request replacement documents.¹⁰⁶

In situations where the electoral framework specifically allows “social verification” (described above in Section 3), these mechanisms can open loopholes through which ineligible persons are able to register and vote. In Western Sahara, for example, disputes over identification of eligible voters for the referendum on self determination (agreed to by Morocco and the Frente Popular para la Liberación de Saguia el-Hamra y de Río de Oro [POLISARIO] in 1989) have derailed any prospect that the referendum will ever be held. The United Nations was tasked with establishing an “Identification Commission” to prepare a voter register.¹⁰⁷ A copy of the 1974 census (conducted before Spain’s departure) was provided to Morocco and to POLISARIO with instructions to provide information on persons who had died since 1974, those who had reached voting age, and those who had moved. The Identification Commission established a process whereby those not listed on the census could petition to be added to the voter register. These persons were required to present themselves to a registration committee composed of a UN official, an Organization of African Unity (OAU) observer, observers from each party, and two sheiks (one chosen by each party). The sheiks were tasked with confirming that individuals appearing before the committee were indeed who they claimed and that they met eligibility requirements for participation.

Initially the system worked; the sheiks functioned independently and frequently ruled against the expected decision of the applicant’s sponsor. By the end of the process, however, the sheiks’ testimony had become “almost entirely predictable – each recognized all applicants presented by his party and refused those sponsored by the other ... the sheiks loss of credibility removed a key element needed to substantiate or refute oral testimony by the applicants.”¹⁰⁸ As a result, the registration program has ground to a halt, and prospects for the proposed referendum ever being held are dim.

Because the loss, destruction or confiscation of identity documentation is so often a problem for IDPs, in many instances there is no other option but to utilize social verification in order to prove voter’s identity and eligibility for electoral participation. In order to counter some of the problems and minimize fraud, EMBs will need to ensure full and comprehensive observation of the verification process, including mechanisms to conduct random sampling of undocumented registrants. In addition, data from pre-displacement civil registration or census programs can provide a baseline to measure the registration results and identify areas where the number of registrants appears suspiciously high.

Voter Information

“Knowledge,” one electoral analyst has concluded, “is the crucial link to the effective empowerment of marginalized groups.”¹⁰⁹ Among the key measures for countries therefore to take is to ensure that IDP voters are equipped with election-related information. Targeted

¹⁰⁶ In addition, the OSCE was unprepared for the overwhelming volume of requests and it quickly became evident that the organization lacked the financial and personnel requirements to make the system work properly.

¹⁰⁷ United Nations Security Council, The Situation Concerning Western Sahara, UN Doc S/21360, 60 (1991), available at <<http://documents-dds-ny.un.org/doc/UNDOC/GEN/N90/151/39/pdf/N9015139.pdf?OpenElement>>.

¹⁰⁸ Charles Dunbar, *Saharan Stasis: Status and Future Prospects of the Western Sahara Conflict*, 522 THE MIDDLE EAST JOURNAL, Vol. 54, 529 (2000).

¹⁰⁹ Ndulo, p. 126.

voter education programs should be developed to reach IDPs and address their particular situation.

Two types of information will be required; information on: (1) elections processes; and (2) party and candidate platforms. Election process information (when, where and how to participate) should be made widely available by the EMB through media and press outlets, posters, civil society organizations, and relief organizations working directly with the displaced. Platform information (the programs and priorities of candidates and political parties) should normally be produced and distributed by the parties and candidates, either directly through paid advertisements, posters, and rallies, or indirectly through radio/press coverage and editorials.

Moreover, the most effective voter education programs to marginalized communities emphasize not only the technical aspects of voting but also the importance of the electors' voice in the political process. In the United States, in the aftermath of Hurricanes Katrina and Rita of September 2005, the state of Louisiana requested financial support from the Federal Emergency Management Agency to fund a national media campaign to reach an estimated 400,000 registered voters scattered across the U.S. with information on absentee voting procedures for forthcoming state and local elections. A spokesperson for the state agency explained that it was important to get the message to those displaced by the disaster, "[y]ou may not be in your city or in Louisiana, but you still have the right to vote, and we want you to."¹¹⁰

In countries with modern communications infrastructure, the internet can prove a valuable outreach tool. In Louisiana, the Elections Division established a comprehensive guide to participation in post-hurricane Katrina elections that included detailed instructions on how to register and cast ballots.¹¹¹ The site also included downloadable forms for different categories of voters, and posted locations for in-person voting at satellite stations and instructions for those who would participate through the mail.

However, the states most affected by internal displacement are often those with the weakest information technology capabilities. Even when these capabilities exist, IDPs are among the most economically disadvantaged communities and thus cannot be assumed to have access to digital media. In these situations, reliance on the internet for voter education would be insufficient and more direct voter education methods are required. In particular, the EMB should work closely with IDP associations, civil society organizations and with international agencies in order to provide outreach and information on process information as widely as possible. In Georgia, for example, the Norwegian Refugee Council teamed with the Central Election Commission, the International Foundation for Electoral Systems (IFES), the UN Development Programme (UNDP) and several local civil society organizations to produce and disseminate a detailed guide to recent reforms in the Georgian Electoral Code and the specific steps IDPs could take to become registered and to cast a ballot.¹¹²

¹¹⁰ 'Louisiana Seeks Funds to Reach Displaced Voters,' *Wall Street Journal* (8 October 2005), p. A4.

¹¹¹ State of Louisiana Elections Division, *Displaced Voter Information*, at <<http://sos.louisiana.gov/elections/DisplacedVoterFAQs.htm>> (visited July 9 2006).

¹¹² The pamphlet is available at: IOM PRESS, Election Tools and Resources. http://www.geneseo.edu/~iompress/?pg=election_tools_and_resources.html

In camp situations, EMBs should make special efforts to engage IDP camp leadership structures as conduits for voter information. Capacity building and training for the camp leadership structures is particularly useful and can be organized under the leadership of the Local Election Commission in cooperation with camp management agencies. Humanitarian agencies can also serve as important information conduits, and should be consulted by the EMB throughout the electoral process. As women often are not adequately represented in camp leadership structures, additional efforts should be made to reach IDP women voters. International technical assistance agencies such as the National Democratic Institute (NDI) for International Affairs can play a particularly useful role in this regard. In Uganda, for example, NDI partnered with Ugandan civil society groups within the camps to extend their outreach activities to IDP camps and particularly to marginalized populations within the camps. For the 2006 elections, NDI “looked for groups who were outside of the mainstream ... and could be incorporated into the election process. This usually meant working with the most disenfranchised people, such as people with disabilities, former child soldiers and women... One group in particular, Charity for Peace Foundation, discovered community theater as an entertaining way to get out the vote. Taking the content from the ‘National Civic Education Program Handbook,’ the group enacted dramas that drew on the real life experiences of IDPs. The performances imparted lessons on civic rights how to develop an active citizen base who will participate on Election Day.”¹¹³ Generally, whether in camp or non-camp situations, special efforts should be made to targeting civic education programs to IDPs and marginalized groups with the IDP community, in particular to women.¹¹⁴

The issue of political party campaigning in IDP camps requires careful consideration. High population densities, difficult living conditions, weak security infrastructure and the risk of politicization of the IDP issue may make the campaign period especially dangerous. As a general rule, political parties should be allowed to campaign in the IDP camps during the official campaign season; yet their activities should be monitored and subject to clearly defined regulations. Party access to the camps should be coordinated through the camp leadership structures, LECs, civil society organizations and security organizations as required.

The EMB can consider organizing political party “pacts,” through which parties and candidates pledge not to campaign coercively within camps. Actions such as distributing food or benefits near the Registration Centers in the camps should also be prohibited. The pact should guarantee that all parties will be provided equal access to the camps. The local EMB would ensure compliance with the pact and accredited international and domestic monitors should be permitted free access to the camps in order to report on party activities throughout the campaign period. The EMB should also make special arrangements to collect and distribute platform information for IDPs residing in the areas where candidates are not focusing their efforts. In addition, IDPs running as candidates for constituencies where they are not resident may need assistance in delivering their platforms to voters in other IDP camps and to voters in their original constituency. In BiH, for example, the OSCE-PEC made special arrangements to escort IDP candidates to their home municipalities in order for them to campaign.

¹¹³ National Democratic Institute for International Affairs, “Civic Update, May 2006”. p.2. Available at <http://www.accessdemocracy.org/library/2008_citpart_civicupdate_050106.pdf>

¹¹⁴ Muna Ndulo, “Enhancing the Role of Women in Electoral Processes in Post Conflict Countries: Constitutional and Legal Measures” (London: University College London Press, 2007), 126.

Finally, the EMB should ensure that IDPs are provided voter information in a language they understand. In Azerbaijan, for example, observers report that, “the government ... is conducting a program to increase the use of the Latin alphabet in government, commercial, and personal transactions. When most of the current IDPs were thrust into displacement in the early 1990s, the Cyrillic alphabet was widely and officially used. In their current state of displacement, IDPs do not have the same access to this conversion process as others who are regularly receiving information and media. This disadvantage is felt particularly by the older generation and for women in general. As a result, many IDPs are linguistically disadvantaged because of their lack of Latin alphabet skills.”¹¹⁵

Election Facilities

In situations where large numbers of IDPs reside in camps and welfare centers, authorities should ensure that these camps have adequate election facilities that are staffed by personnel trained in the unique processes associated with absentee balloting. For IDPs not in camps, authorities should consider establishing IDP-specific registration and polling stations. Co-mingling voters with varying identification and balloting needs can create overcrowded and potentially insecure polling stations. In the 1997 BiH municipal elections, for example, the typical IDP station had to distribute up to 139 different municipal ballots to IDPs scattered across the country. Some of these municipalities had been redistricted as part of the Dayton Agreement and some were not even conducting elections. The IDP stations generated long lines of frustrated voters, and several were forced to shut-down when angry voters mobbed the facilities.

The separation of displaced voters can speed up the voting process and ensure that long lines and crowded facilities do not result in violence.¹¹⁶ This separation can occur either through separate voting rooms in a “twin” station, or through dedicated absentee balloting stations. In either event, authorities will need to carefully plan the location of absentee stations in order to reserve a rough equity in terms of the number of polling stations per population and the distance that IDPs have to travel in order to participate.

Absentee polling also requires mechanisms to track the movement and issuance of ballots. The more constituencies involved in the election, the greater the number of specific ballots that will need to be distributed to polling stations, placed in the correct ballot box or sorted after the close of polling, and assigned to the correct constituency during the vote count. The EMB will also need to determine whether the absentee ballots should be:

- Counted on-site following the close of polling with results reported via the EMB headquarters and added to the relevant constituency totals;
- Moved to a centralized sorting and counting facility for all absentee ballots; or
- Moved to the municipality where the ballots are counted and mixed with regular ballots from within that municipality.

¹¹⁵ Jeff Fischer & Jeremy Grace, *Electoral Displacement in the Caucasus*, PRESS Action Plan II, 35 (Sept. 2003), available at < <http://www.geneseo.edu/~iompress/LeftNav/PressPepOutputs.htm> >.

¹¹⁶ During the 2005 Lebanese parliamentary elections, for example, dedicated absentee stations were established in the villages of origin for displaced Christians mitigate tensions between these voters and current residents. While it would have been preferable to allow absentee voting for these populations, the mechanism at least addressed the security issues confronting these voters. See Internal Displacement Monitoring Centre, *Internal Displacement: Global Overview of Trends and Developments in 2005*, 44-46 (March 2006).

Depending on the number of constituencies involved, poll workers may not be able to count the ballots on-site in a timely fashion, delaying the return of results. A centralized counting facility can alleviate this problem, although the EMB will need to ensure security for the movement of uncounted ballots in sealed boxes. International election observers and police forces can be engaged to monitor and secure ballot movements. Accredited domestic observers (political party and civil society) should also be allowed to monitor the ballot movement, although they should never be directly tasked with physically controlling the ballots.

Ballots from IDP camps should generally be moved to a central sorting and counting station where they are to be mixed with all other ballots. This prevents political parties or other actors from calculating the electoral results from each camp and reduces the likelihood of retribution (threatened or actual).

Security

Election-related violence is a potential threat to all voters, but problems may be particularly acute for the displaced. Political parties often perceive IDP populations as either a source of potential votes or a major opposition cluster. As a result, political parties may have a strong incentive to interfere with the voting process, either directly through violence and intimidation, or indirectly through electoral fraud in the camps. Managing these security needs requires a careful consideration of the political context of the elections.

The first question is whether the situation warrants the conduct of polling. On one hand, post-conflict elections are critically important to peace-building and reconciliation processes in divided societies. On the other, a flawed electoral process, particularly one that disenfranchises significant social groups can work against these goals. Nevertheless, there is often strong pressure (both international and domestic) to proceed with elections, even if conditions may not be ripe. The 1992 elections in Angola, for example, failed to solidify a tenuous peace agreement, primarily because the actors were not yet prepared to move from the battlefield to the ballot box. In these situations, the decision to proceed with elections can potentially result in further human suffering. In some cases, however, elections have proceeded in the face of an apparently unsuitable security environment and nevertheless played an important role in the peace process. Despite the fact that observers and even some election administrators called for a postponement or cancellation of elections in Cambodia, East Timor, and BiH due to security fears, these electoral events have helped sustain the peace process.

If the decision is taken to proceed, but the situation remains dangerous for IDPs in their home community, then the provision of an absentee ballot is an essential pre-requisite to a free and fair election. If absentee polling stations are not provided, however, procedures will need to be in place to protect election-related movements of people. These procedures can include the creation of safe transit routes, protected by neutral security forces and organized movement programs, such as those conducted by UNHCR and NATO in the 1996 and 1997 BiH elections. In addition, procedures to ensure that neutral monitors have access to election facilities and registration/polling stations are essential, both to monitor the transparency of the process and the safety of returning IDP voters. If hostilities remain high, the presence of international peacekeepers and observers can also help ease tensions and create conditions favorable to the personal security of the returning voter. Election administrators need to find

the proper balance between providing effective security all the while ensuring that security and police forces do not have unrestricted access to polling stations as this would jeopardize the transparency of the entire electoral process. Moreover, EMBs should be careful not to promise more in this regard than they can realistically deliver, which puts voters at risk on election day.

C. In the Context of a Durable Solution

National authorities will need to ensure that the procedural elements of state regulations remain in place even after the conditions that gave rise to displacement have been ameliorated. IDPs may have found employment, placed children into local schools, and wish to remain in their current location. They should therefore be provided the right to normalize their status in their current location, be issued documents and receive other administrative services from the local authorities on an equal basis with original residents, and be fully integrated into the political and social life of that community. In particular, voting rights should not be linked to their eventual return.

In cases where IDPs do return to their home communities, mechanisms should be in place to issue documents promptly and without placing undue burdens on the returnees (such as special fees or unreasonable conditions). For countries that do not maintain an ongoing voter-registration process, special procedures may be needed to allow returnees to update their voter registration details. Procedures should also be in place to channel communications between different government ministries and humanitarian agencies to update the voters register and distribute voter information to returnees.

6. INSTITUTIONAL ELEMENTS OF STATE REGULATION

A. Prior to Displacement

Countries with a history of genuine democratic elections will have an established national EMB and local administrative capacity to implement the substantive and procedural rules governing the electoral process. Most countries maintain a national EMB, with a small group (three to seven) of appointed “Commissioners” and a large support staff. The EMB should establish offices at the regional and local level, generally housed within existing government facilities. EMBs should remain highly independent from political parties and function under the electoral framework promulgated by the national legislature. The EMB requires staff who are well versed on electoral legislation, in particular, provisions on exceptional measures required for absentee registration and balloting and the relaxation of residency requirements in the event of population displacement due to conflict or disaster.

B. During Displacement

In situations of displacement, the EMB should establish an IDP unit or focal point that reports directly to the Chief Election Commissioner. The unit should be chaired by a commissioner and include EMB staff from the legal, information technology, logistics, and training divisions. Ex-officio representatives from other key national actors (i.e., ministries with responsibility for IDP protection and police forces) should also be included in discussion, although they should not be able to dictate procedures. The participation of the national human rights commission would also be useful in ensuring that policies developed accord with human rights standards. In some cases, representatives from international agencies such

as the UN or regional inter-governmental organizations might also be invited to participate in the EMB-IDP unit.

The focal point would be charged with:

- Reviewing national electoral legislation and procedures to assess potential implications for IDPs' ability to exercise their rights to political participation, identifying areas requiring reform and recommending necessary legislative reform and procedural amendments;
- Ensuring that the electoral rules, constitutional guarantees and amended policies and procedures concerning IDP voting rights are understood within different branches of the EMB, at the national as well as regional and local levels, in terms of the implications for election programming;
- Developing operational plans for registration of the displaced, including contingencies for different movement scenarios and procedures for a relaxation of residency requirements;
- Ensuring, in cooperation with other relevant branches of government, that IDPs are (re)issued documentation or alternative documentation procedures are put in place such as "social documentation" to enable IDPs to exercise their rights to political participation;
- Producing voter information for IDPs, both through public information campaigns and by establishing voter information networks among IDP communities and producing IDP specific information on the election process and any specific procedures that apply in their case;
- Working with political parties to ensure that candidates campaign in accordance with best practices vis-à-vis IDP voters;
- Training regional and local level staff and election workers on the specific procedures and considerations relevant to IDP voters;
- Working with the election complaints and appeals mechanisms to ensure that IDPs are not discriminated in their access to judicial remedies should their voting rights be unfairly restricted;
- Evaluating IDPs' access to exercise their political rights in elections and where obstacles are noted, including by domestic and international observer groups, addressing these in further amendments to electoral legislation, procedures and programming.

National human rights institutions and/or constitutional courts can also play an important role in supporting and monitoring the work of national electoral mechanisms and processes in terms of IDPs' ability to exercise their political rights and recommending any necessary legislative reform. In Georgia, IDPs filed a case with the Constitutional Court specifically on the discriminatory provisions in national legislation, which limited their political rights.¹¹⁷ Although the applicants lost the case, the basic discrimination they alleged was later rectified through parliamentary reform of the electoral code. In many countries (Nepal, Sri Lanka,

¹¹⁷ Mooney & Jarrah, "The Voting Rights of Internally Displaced Persons: The OSCE Region," 32-41.

Bosnia and BiH) national human rights institutions have monitored IDPs' right to political participation and provided judicial review of national legislation. They can also advocate for compliance with international standards and reform.

C. In the context of durable solutions

In some situations, elections may be conducted while substantial IDP returns are underway. Coordination between the national local level EMBs, and amongst local EMBs directly can facilitate the ability of IDPs to change their registration details and ensure that IDPs are able to exercise rights to political participation in areas of return or resettlement. Local and national EMBs should also establish channels of communication with national agencies overseeing return and resettlement programs, as well as international agencies providing protection and movement assistance to IDP populations. These channels can be used to ensure proper updating of the voters register, ensuring IDPs have access to all necessary documentation to register to vote, and the distribution of election information newly returned voters.

7. INTERNATIONAL ROLE

There are a number of ways in which the international community can support national efforts and assist governments to protect IDPs' rights to political participation. These include:

A. Technical assistance in electoral legislation reform

At the global level, the United Nations Electoral Assistance Division (EAD) of the Department of Political Affairs has extensive experience providing technical assistance to governments undergoing democratic transitions. EAD is mandated to provide a variety of election related support activities, including, in some cases, advice on “the establishment of a system of laws, procedures and administrative measures necessary for the holding of free and fair elections.”¹¹⁸ OSCE/ODIHR also provides guidance to national authorities in its member countries on ensuring that electoral frameworks meet the criteria for free and fair elections embedded in the relevant instruments applicable to OSCE member states. The Venice Commission of the Council of Europe also has commented widely on the electoral laws (both current and proposed) of member states in terms of whether they meet the criteria for genuine elections established under various human rights instruments. The International Institute for Democracy and Electoral Assistance (IDEA) is another inter-governmental mechanism providing technical and legal experts to assist national authorities. Outside of the intergovernmental system, IFES is the premier NGO (funded primarily by national donors) providing assistance on reform of electoral framework.

B. Technical and capacity-building assistance in electoral administration

Both UNEAD, and the OSCE have extensive experience with electoral administration and can provide electoral administration support directly to EMBs. At the regional level, the Organization of American States (OAS) Unit on Democracy provides advice and assistance

¹¹⁸ United Nations Electoral Assistance, “Types of Assistance”. Available at <http://www.un.org/depts/dpa/french/electoral_assistance/ea_content/ea_types_of_assist.htm>

as well. IFES also provides donor financed technical support to election administrators around the globe, and its many experts have extensive familiarity with IDP-related issues in an electoral context.

Special note should be made of the work of the International Organization for Migration, which has extensive experience organizing electoral processes for displaced persons (both refugees and IDPs) on behalf of the national authorities and the United Nations, including in BiH, East Timor, Kosovo, Afghanistan, and Iraq. In addition, it has recently stepped up its advocacy for the voting rights of persons displaced by conflict through the Political Rights and Enfranchisement Strengthening Project,¹¹⁹ which is working to identify global standards and provide national strategies for the electoral inclusion of IDPs and refugees.

Donor supported programs extend beyond direct assistance to EMBs to include capacity building for local NGOs in the areas of voter education and election observation. In particular, this assistance has sometimes ensured targeted information dissemination among IDP communities regarding their voting rights and the electoral procedures and processes for exercising their rights. The U.S. based National Democratic Institute for International Affairs (NDI) has frequently undertaken programs along these lines (described above in reference to voter information programs in Uganda), as have IFES and other NGOs, including NRC (Georgia example cited above).

C. Election observation and election monitoring

Election observation has become increasingly important to verifying the inclusiveness and transparency of election processes in terms of meeting global standards for genuine elections. At the inter-governmental level, the UN, the Commonwealth, the European Union, the OAS, the AU, and the OSCE/ODIHR have all fielded election observers around the globe in recent years. While some work is needed to ensure better coverage of IDP political and voting rights by these organizations, many of the resulting reports have discussed specific instances of IDP disenfranchisement and/or the curtailment of other rights. International non-governmental organizations such as the Carter Center, NDI and the International Republican Institute (IRI) also field election observation missions and have commented on IDPs in election.

To encourage systematic attention to the issue, it is important that election monitors are sensitized, through training and guidance notes, to the rights of IDPs and the particular obstacles that they often face in exercising their rights to political participation, and expected to integrate attention to these issues in their reports.

Donors have also provided funding for domestic NGOs to enhance their capacity to field observation teams. Local ownership of election observation is essential to the sustainability of democratic transitions and can contribute to the long-term health of an independent civil society. In some instances, donor support to local NGOs has specifically helped these organizations to observe the implementation of voting rights for IDPs, a practice which should be encouraged.

D. Monitoring state compliance with international human rights standards

¹¹⁹ Political Rights and Enfranchisement System Strengthening. Available at <www.geneseo.edu/~iompress>

The international human rights treaty bodies have a particularly important role to play in monitoring state compliance, both in law and practice, as regards IDPs' rights to political participation and should systematically address the issue in their consideration of reports from states experiencing internal displacement. The UN Human Rights Committee, which monitors state compliance with the ICCPR, has a particularly important role and increasingly has begun to give attention to this issue. A General Comment by the Human Rights Committee on the political participation rights of IDPs and they need for specific measures by states to ensure that IDPs have the means to exercise these rights could help to encourage more systematic attention to the issue. The Committee on the Elimination of Racial Discrimination also on occasion has addressed the issue of IDP voting rights, in particular in the context of return. The Committee could usefully extend its coverage of the issue to also encompass IDPs *during* displacement as well as in the event that IDPs opt for resettlement rather than return. The UN Committee on the Elimination of Discrimination against Women, which monitors state compliance to the Convention by the same name (CEDAW), also has to role to play. The Committee, along with the UN Commission on the Status of Women, should address the participation of IDP women in elections, including ensuring that IDP women have access to information about their rights to political participation, a means for registration, individual identification and documentation, and adequate security to exercise these rights.¹²⁰

The Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons, an independent expert tasked with promoting the rights of IDPs, also has begun to give attention to the issue, both generally and in the context of specific country missions.¹²¹

Similar mechanisms exist at the regional level and should also give systematic attention to the issue of IDPs' rights to political participation. These include the African Commission on Human and People's Rights (including its Special Rapporteur on the Rights of Refugees, Asylum Seekers and Internally Displaced Persons), the Inter-American Court on Human Rights (including its Special Rapporteur on Internally Displaced Persons), the Council of Europe and the European Court on Human Rights.

Overall, monitoring efforts by the international community to ensure IDPs' rights to political participation must be comprehensive, including *all* IDPs, not only IDPs in post-conflict environments but also IDPs' voting rights while displaced, whether in the context of conflict or natural disaster, as well as upon IDPs' return or resettlement.

8. SUMMARY OF RECOMMENDATIONS

To protect and promote the practical realization of IDPs' rights to political participation, in particular the right to vote and the right to be elected, among the key steps that governments would do well to take are to:

¹²⁰ Women's Commission on Refugee Women and Children, Key Issues for Refugees, Returnees and the Internally Displaced, Statement to the UN Commission on the Status of Women, 48th Session: Women's Equal Participation in Conflict Prevention, Management and Conflict Resolution and in Post-Conflict Peace-building, March 2004.

¹²¹ Walter Kälin, Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons, Political Rights of Persons Displaced by Conflict, International Organization for Migration Colloquium, 12-13 June 2006.

- √ *Review* the impact of national electoral legislation and procedures on the political participation of IDPs and introduce legislative and procedural reform as required to ensure IDPs' ability to exercise their rights to political participation. Special attention should be paid to residency and documentation requirements and their potential repercussions for internally displaced electors;
- √ *Prepare* for the possibility of displacement, for instance in ensuring that electoral residency requirements have built-in safeguards against the disenfranchisement of electors in the event of displacement and issues such as temporary loss of residence and loss of documentation,
- √ *Establish*, in countries affected by internal displacement, a special office or focal point within the national electoral management body to monitor and work to ensure the equitable political participation of IDPs, promoting legislative reform and other initiatives to support this;
- √ *Issue* replacement documentation to IDPs as soon as possible and without unreasonable conditions such as having to return to the place of origin, and ensuring women are issued with individual documentation in their own names;
- √ *Enable* IDPs to choose their electoral district, as either their place of origin or to re-register in another part of the country where they are residing while displaced, without repercussion such as loss of assistance or other benefits;
- √ *Provide* absentee voting facilities when IDPs are unable, due to reasons such as safety or distance, to physically vote in their habitual place of residence and electoral district;
- √ *Consult with* and enable the participation of IDPs, including women and affected minority groups, in the formulation, monitoring, review and appraisal of national, regional and local electoral legislation and procedures, so as to ensure the particular obstacles IDPs may face to their political participation are understood and taken into account as well as effectively addressed;
- √ *Train* electoral officials on the right of IDPs to political participation, the particular types of obstacles that IDPs often face in exercising this right, and the national legislative and procedural provisions in place to enable IDPs to exercise this right;
- √ *Educate* voters on their rights, ensuring that voter education campaigns reach IDP communities and provide clear and timely information in a language they understand, including on the particular electoral procedures in place to enable IDPs to exercise their rights to political participation;
- √ *Ensure* safe access to voting including safe transportation for IDP electors to and from polling stations;
- √ *Clarify* through a revised General Recommendation of the UN CERD Committee and the formulation of a General Comment of the UN Human Rights Committee that IDPs

have political rights *during* displacement as well as whether they opt to return or resettlement;

- √ *Facilitate* access by domestic and international election observers and take into account the recommendations made by election observation missions as regards ensuring equitable political participation of IDPs.

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