

# **Enfranchising Conflict-Forced Migrants: Issues, Standards, and Best Practices**

## **Participatory Elections Project (PEP)**

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### **Discussion Paper No. 2**

Jeremy Grace  
Jeff Fischer  
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Questions and Comments:  
[jeremygrace@yahoo.com](mailto:jeremygrace@yahoo.com)



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IOM International Organization for Migration  
OIM Organisation Internationale pour les Migrations  
OIM Organización Internacional para las Migraciones

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## Acronyms

ACEEEO	Association of Central and Eastern European Election Officials
American CHR	American Convention on Human Rights
African CHPR	African Charter on Human and People's Rights
BiH	Bosnia and Herzegovina
CFM	Conflict-forced Migrant
CSCE	Conference for Security and Cooperation in Europe
CVSC	Citizenship Verification Sub-Commission
DEO	District Election Office
ECOMOG	Economic Community of Western African States Cease-fire Monitoring Group
EMB	Election Management Body
EPLF	Eritrean People's Liberation Front
European CHRFF	European Convention for the Protection of Human Rights and Fundamental Freedoms
FPP	First Past the Post
FRY	Federal Republic of Yugoslavia
HDZ	Hrvatska Demokratska Zajednica (Croatian Party of Democratic Action)
HTR	Radio Television Croatia
ICCPR	International Covenant on Civil and Political Rights
IDEA	International Institute for Democracy and Electoral Assistance
IFES	International Foundation for Election Systems
IFOR/SFOR	The Implementation/Stabilization Forces (NATO)
IPU	Inter-Parliamentary Union
KLA	Kosovo Liberation Army
MINURSO	United Nations Mission for the Referendum in Western Sahara
MoU	Memoranda of Understanding
NATO	North Atlantic Treaty Organization
NDI	The National Democratic Institute for International Affairs
OAS	Organization of American States
OAU	Organization of African Unity
OCV	Out of Country Voting (Bosnia and Herzegovina)
ODIHR	Office for Democratic Institutions and Human Rights
OKV	Out of Kosovo Voting
OSCE	Organization for Security and Cooperation in Europe
PEC	Provisional Election Commission
POLISARIO	Frente Popular para la Liberacion de Saguia el Hamra y Rio de Oro (Western Sahara)
PR	Proportional Representation
RCE	Referendum Commission of Eritrea
RESG	Refugee Election Steering Group
RS	Republika Srpska (Bosnia and Herzegovina)
RTK	Radio Television Kosovo
SADC	Southern Africa Development Community
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNAMET	United Nations Assistance Mission in East Timor
UNHCR	United Nations High Commissioner for Refugees
UNMIK	United Nations Mission in Kosovo

## 1. INTRODUCTION

The participation of conflict-forced migrants (CFM)<sup>1</sup> in elections raises complex technical and political issues. Unfortunately, there are no consistent best practices and international standards framing the electoral rights of these populations. This paper explores these issues with an eye towards ensuring that CFM voting corresponds with criteria for genuine elections. The topics are divided thematically by area of interest to election administrators, political actors, and negotiators. Each topic is discussed in terms of the relevance of international human rights law and existing election standards, issues and options confronting electoral actors,<sup>2</sup> and concludes with proposals distilled from both human rights law and recent experience.

Refugee/IDP voting is a recent phenomenon and has not generated much attention from students of democratization and electoral systems. As a result, the best practices and standards proposed here do not always have a direct reference in international human rights law or a direct correlation with election standards initiatives. It is precisely where there are such gaps and deficiencies that we propose recommendations based on recent experience – primarily in Bosnia and Herzegovina (BiH), Kosovo, and East Timor, although other cases are referenced as well. Detailed descriptions of ten electoral events used to delineate the proposals are available in a separate PEP study entitled: “Case Studies on the Participation of Conflict-Forced Migrants in Elections.”<sup>3</sup>

Elections conducted in post-conflict situations are complicated affairs. International commitment and interest can range from the provision of election commodities alone, to international supervision and certification of the process. Where international interest is high, better funding may be available, but diplomatic and political imperatives can complicate election timelines and procedures. Where interest is low, the election process may be more susceptible to electoral engineering. Post-conflict elections also occur in the framework of a negotiated political agreement. Since the country’s political and electoral system – and perhaps even timelines and procedures – may form part of a peace agreement, electoral actors may have only limited ability to influence the design of the process.

Domestically, post-conflict elections are characterized by suspicion between formerly warring parties, damaged communications and transport infrastructure, poor security environments, and chaotic legal and regulatory systems. As a consequence, elections often proceed – and are often certified – with technical and procedural flaws that would be unacceptable in a consolidated democracy.<sup>4</sup> These flaws should be interpreted on a case-by-case basis and against the backdrop of the above conditions; even less-than-perfect elections can contribute to peace and reconstruction by serving as catalysts for foreign assistance and transforming conflictive relationships into co-habitational policy rivalry. But non-genuine elections can also trigger the renewal of hostilities or generate resentment and dissatisfaction with the peace process. Transparency, inclusion, and the active participation of all political groups and actors are critical to ensuring that the election serves as a confidence-building exercise.

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<sup>1</sup> We use the term “conflict-forced migrant” (CFM) to refer to any person displaced from their home community due to a deteriorating security or human rights situation, generally as a consequence of violence. The term encompasses most, but not all persons who could be categorized as a refugee or internally displaced person. Persons not covered by the term, for example, would include economic migrants and those displaced by natural disasters.

<sup>2</sup> Electoral actors include the constellation of election management bodies, political parties and prominent individuals, and civil society groups. We also use the term “Election Management Bodies” (EMBs) when referring specifically to national election commissions and administrators (including, where appropriate, international agencies implementing elections such as the UN and OSCE).

<sup>3</sup> Available at [www.iom.int/pep](http://www.iom.int/pep).

<sup>4</sup> As Rafael Lopez-Pintor writes about reconciliation elections: “These experiences shed new light on the importance of elections as part of a broader process of national reconciliation and political movement to multiparty democracies. In these cases, the transitional elections have traits distinctive from those of elections that have taken place elsewhere after peaceful reform by authoritarian governments.” See Lopez-Pintor, Rafael. “Reconciliation Elections: A Post-Cold War Experience,” in Krishna Kumar, ed., *Rebuilding Societies after Civil War*. (Boulder: Lynne Rienner Publishers, 1997): 42.

The aim of the Participatory Election Project (PEP) is to promote consistent international standards and practices for refugee and IDP participation in post-conflict elections. The balance of this paper examines what genuine elections mean and proposes baseline standards and practices that electoral actors should consider when designing procedures for CFM participation.

This discussion paper is an output of the desk-research component of the Participatory Elections Project, an IOM initiative funded by the United States Agency for International Development. Overall research and drafting was conducted by Jeremy Grace of the State University of New York at Geneseo with significant input, advice, and drafting from Jeff Fischer of the International Foundation for Electoral Systems (IFES). In addition, invaluable commentary and discussion of earlier drafts of the document and proposed standards were provided by the PEP Advisory Committee, particularly Michael Maley, Director of International Services at the Australian Elections Commission, Ron Gould, Former Assistant Chief Electoral Officer of Elections Canada, Kay Hailbronner, Professor of Law at the University of Konstanz, and Alenka Mesojedec Pervinšek, Migration Law Expert representing the Government of Slovakia in the Council of Europe. In addition, Logistical help and editing was provided by Dana Graber and Autumn Silaphath at IOM Washington, DC and by Angelo Valente and Courtney Abrams, students at SUNY Geneseo.

## 2. ELECTION STANDARDS

As noted in “The Electoral Rights of Conflict-Forced Migrants: A Review of Relevant Legal Norms and Instruments,”<sup>5</sup> IOM believes there is an emerging consensus that international human rights law guarantees a “democratic entitlement.” The operative elements of this right, however, require more than superficial adherence to the principles of democracy and periodic elections. Elections can be manipulated to provide a gloss of legitimacy to a pre-ordained outcome. Thus, much of the recent work in the field of electoral assistance and democratization has focused on the development of standards to ensure that elections proceed on a level playing field, with ample opportunity for challengers to win power. Recent examples of non-genuine elections in Zimbabwe, Yugoslavia, and Belarus illustrate the value of international standards and practices in making judgments and directing criticism.

While the right to political participation is widely touted and codified in international law, the development of a universally applicable set of standards and practices has lagged. Much of the work has occurred at the regional level, resulting in a variety of initiatives that – while not generally in conflict – prioritize different elements of electoral processes. From the perspective of an election administrator, knowing whether or not specific procedures conform to basic principles of free and fair elections can be a difficult task. Nevertheless, it is possible to identify core themes in the different human rights instruments and regional standards initiatives that can be applied to refugee and IDP participation.

### A. Election Standards and Criteria in the Human Rights Conventions

In discussing standards, it is useful to distinguish between the general and the specific. At the general level, criteria for genuine elections can be found in the major international human rights instruments, including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), in various regional instruments such as the European, African, and American conventions on Human Rights, and in the charters of the regional inter-governmental organizations (particularly in the European and inter-American systems). These instruments provide concrete guidelines on the right to participate in government. They also guarantee many auxiliary rights that promote free and fair elections.

Article 21(3) of the UDHR provides that “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.” Several key concepts stem from this statement: First, elections must be “periodic and genuine,” occurring with a defined regularity that reflects social and political changes over time (a twenty-year cycle between elections, for instance, would not produce governments reflecting the will of the people). Second, “genuine” implies that elections cannot be structured in such a way that the outcome is pre-ordained. Third, elections must be conducted by secret ballot to ensure that political actors are not able to intimidate or threaten the electors into voting for particular candidates or parties against their will. Finally, elections must not discriminate against a citizen’s right to participate based on factors such as race, creed, religion, or political belief. All citizens are to have an equal voice in the political processes of the state.

Article 25 of the ICCPR codifies these core principles into a binding human rights instrument. Optional Protocol I to the ICCPR also provides remedies for individuals to challenge governments that do not meet their obligations via the Human Rights Committee.<sup>6</sup> A number of cases have been brought in this regard, and the Committee’s findings on state compliance form an emerging

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<sup>5</sup> IOM/PEP Discussion Paper I. Available at: [www.iom.int/pep](http://www.iom.int/pep).

<sup>6</sup> Only 94 of the 143 states party to the ICCPR have signed the First Optional Protocol. See UNHCR, “Status of Ratifications of the Principal International Human Rights Treaties as of 07 July, 2003.” Available at: <http://www.unhcr.ch/pdf/report.pdf>.

basis of international law covering the proper conduct of free and fair elections.<sup>7</sup> The Committee also plays an important role in further defining and clarifying the rights contained in the ICCPR through its periodic “General Comments.” General Comment 25, in particular, sets the framework through which the international community should understand the election rights detailed in ICCPR.

Similar statements on minimum standards for elections can also be found in the regional human rights instruments, including:

- The European Convention for the Protection of Human Rights and Fundamental Freedoms (which also provides remedies for individuals to challenge the actions of their governments via the European Commission on Human Rights<sup>8</sup>);
- The American Declaration on the Rights and Duties of Man; and
- The Organization of American States (OAS) Santiago Declaration.

These statements often resemble the language (and thus lack of specificity) contained in the UDHR and ICCPR. Nevertheless, they further strengthen government commitments to the principles of free and fair elections and can serve a secondary basis on which to build a case that elections must be conducted according to minimum international standards.

The applicability of the human rights conventions to free and fair elections is not limited to their specific, election related provisions. Other articles, including the right to non-discrimination, freedom of expression, association, and movement, the right to peaceable assembly, the right to a nationality, and the right to life and personal security, are also important elements of a genuine electoral event. Many of these rights are non-derogable, except in times of public emergency or as needed to ensure domestic order; but even here, the right to derogate the human rights norms is limited. Electoral actors and EMBs should be aware that these universal and regional instruments provide coverage of the various sub-components and processes necessary for a genuine election, and ensure that measures taken as part of an election process do not contravene these core rights.

In terms of CFM participation, the fundamental rights contained in the UDHR, ICCPR, and regional conventions are supplemented by specific instruments, including the 1951 Refugee Convention and the Guiding Principles on Internal Displacement.<sup>9</sup> The standards for refugee and IDP treatment contained in these documents can provide further guidance to governments and election management bodies. While the Refugee Convention contains only a few protections (e.g. the right to documentation and freedom of movement), the Guiding Principles identify a broad range of rights that apply to internally displaced populations and specifically speak to the right to participate in the conduct of public affairs in a non-discriminatory fashion.

## **B. Regional Standards Initiatives**

Several regional inter-governmental organizations have undertaken initiatives to identify best practices and establish standards on the conduct of elections. However, these initiatives remain general in nature and have not been reconciled for gaps, disparities, or contradictions. The most important documents in this area are:

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<sup>7</sup> Human Rights Committee, Communications: 760/1996 *J.G.A. Diergaardt et al v Namibia*, 500/1992 *Joszef Debreczeny v the Netherlands*; 034/1978 *Jorge Landinelli Silva et al. v. Uruguay*, 932/2000 *Marie-Hélène Gillot et al. v France*, 923/2000 *Istvan Mátyus v. Slovakia*.

<sup>8</sup> See for example: European Court of Human Rights: *Matthews v The United Kingdom* No. 24833/94 (18-02-1999); *Piermont v France* No. 15773/89 (27-04-1995); *Selim Sadak and others v Turkey* No. 25144/94, 26149/95 to 26154, 27100/95, 27101/95 (11-06-2002); *Gitonas and others v Greece* No. 18747/91, 19376/92, 28208/95, 27755/95 (01-07-1997).

<sup>9</sup> See Section I of the PEP Research Package for discussion of the legal effects of the Guiding Principles.



- The Organization for Security and Cooperation in Europe, Office of Democratic Institutions and Human Rights (OSCE/ODIHR) draft “International Standards and Commitments on the Right to Democratic Elections: A Practical Guide to Democratic Elections Best Practice;”<sup>10</sup>
- “The Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE;”<sup>11</sup>
- The European Commission for Democracy through Law (Venice Commission) “Guidelines on Elections;”<sup>12</sup>
- The Inter-Parliamentary Union (IPU) “Declaration on Criteria for Free and Fair Elections;”<sup>13</sup>
- The Commonwealth Secretariat, “Good Commonwealth Electoral Practices.”<sup>14</sup>
- The Southern Africa Development Community (SADC) Parliamentary Forum “Norms and Standards for Elections in the SADC Region;”<sup>15</sup>
- The Association of Central and Eastern European Election Officials (ACEEEO) draft “Convention on Election Standards, Electoral Rights and Freedom”<sup>16</sup>

Each of these initiatives seeks to clarify the procedural requirements of free and fair elections, while noting specific problem areas and describing best practices. The initiatives differ, however, in the degree to which they mix principles of international human rights law with actual election practices. The OSCE/ODIHR Standards and Commitments, for example, are highly legalistic in nature, identifying core rights contained in the human rights conventions and adding a detailed compendium of case law from the European Court of Human Rights in order to identify state obligations regarding the conduct of elections. The Copenhagen Document, on the other hand, represents an inter-governmental statement concerning basic principles to which the OSCE member states commit themselves. The obligations are far more generic than the OSCE Standards and Commitments, but create a firmer obligation on governments.

The IPU and Venice Commission guidelines and criteria emphasize procedural requirements rather than identifying obligations from international human rights law. The IPU Declaration provides a brief, but comprehensive overview of the core elements of free and fair elections. The Venice Commission guidelines cover many of the same topics, but are far more comprehensive, delving into matters of electoral system design and providing detailed procedural requirements covering an entire electoral process.

The SADC Norms and Standards represent the only non-European effort. The SADC approach is also unique in that it specifically looks to problematic areas in the Southern African electoral experience based on SADC’s electoral observation missions. The document breaks down the electoral sequence, identifies problematic areas, and provides recommendations to governments and electoral administrators on how to overcome these recurring difficulties. It is a novel and potentially very important effort.

Finally, the ACEEEO Draft Convention is the only initiative that takes the form of a legal instrument. Once finalized, the Convention could become a regional treaty under the auspices of the Council of Europe. According to the explanatory note attached to the document, the Convention “was drafted with the aim of summarizing in a legally binding international-law act the experience of legal regulation and administration of democratic elections accumulated by the Council of Europe and various states; specifying and amplifying the basic provisions set forth in Article 3 of Protocol No. 1 ... to the European Convention for the Protection of Human Rights and

<sup>10</sup> Available at: [http://www.osce.org/odihr/documents/elections/intstand\\_draft.pdf](http://www.osce.org/odihr/documents/elections/intstand_draft.pdf).

<sup>11</sup> Available at: <http://www.osce.org/docs/english/1990-1999/hd/cope90e.htm>.

<sup>12</sup> Available at: [http://www.venice.coe.int/docs/2002/CDL-AD\(2002\)013-e.html](http://www.venice.coe.int/docs/2002/CDL-AD(2002)013-e.html).

<sup>13</sup> Available at: <http://www.ipu.org/cnl-e/154-free.htm>

<sup>14</sup> Commonwealth Secretariat, “Good Commonwealth Electoral Practice,” Working document, (London: Commonwealth Secretariat, 1997).

<sup>15</sup> Available at: [http://www.accessdemocracy.org/NDI/library/1372\\_elect\\_sadcpf\\_normsstandards.pdf](http://www.accessdemocracy.org/NDI/library/1372_elect_sadcpf_normsstandards.pdf).

<sup>16</sup> Available at: [http://www.cikrf.ru/conference/conference\\_en\\_konv.htm](http://www.cikrf.ru/conference/conference_en_konv.htm).

Fundamental Freedoms ... and in the other documents; defining the international-law features of the modern democratic electoral process in new integrated Europe.”<sup>17</sup> Thus, as with the OSCE/ODIHR Standards, the initiative looks to other human rights instruments, but also applies a comprehensive set of procedural requirements.

One final initiative, while not regional in nature, should also be mentioned. The International Institute for Democracy and Electoral Assistance (IDEA) is an intergovernmental research organization promoting sustainable electoral processes and democratization programs.<sup>18</sup> Two IDEA initiatives deserve mention. First, its handbook entitled *International Electoral Standards: Guidelines for Reviewing the Legal Framework of Elections* provides detailed analysis of various election-related rights and obligations in the context of a manual for consultants or electoral experts when reviewing electoral legislation. This document, slightly modified, has also been adopted by OSCE/ODIHR for use by its country-mission members. Second, IDEA has created a comprehensive information resource on election administration through its Administration and Cost of Elections (ACE) Project,<sup>19</sup> which provides analysis of issues facing election administrators. While the overall emphasis is on administration and cost-containment rather than the active promotion of standards, the project represents a compendium of best practices, which, if faithfully implemented, would produce a well-organized, free and fair election.

### C. Non-Governmental Initiatives

Finally, several non-governmental organizations have also sought to enumerate core standards for elections. Important statements here include:

- The National Democratic Institute for International Affairs (NDI) “Democratic Elections: Human Rights, Public Confidence and Fair Competition;”<sup>20</sup>
- The International Foundation for Electoral Systems (IFES) “Universal Standards for Free and Fair Elections.”<sup>21</sup>

While not creating binding obligations on governments, these initiatives provide helpful clarification and commentary on some of the core procedural requirements for genuine elections, and should be considered by election administrators as supplementary statements on best practices. In addition, several studies by academics and elections practitioners also provide guidance and insight. Two overviews stand out. First, Jørgen Elklit and Palle Svensson’s article “What Makes Elections Free and Fair?”<sup>22</sup> provides a useful bridge between theory and practice. They produce a “Checklist for Election Assessment” that identifies the necessary components of an election by distinguishing between the terms “free” and “fair” and examining the range of procedures necessary to ensure that both dimensions are upheld. Second, Guy S. Goodwin-Gill’s study on election standards for the Inter-Parliamentary Union<sup>23</sup> provides a detailed analysis of the human rights instruments and relates them to actual state practice. Both these documents provide election administrators with a useful compendium of issues and practices upon which to build a transparent electoral system.

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<sup>17</sup> Association of Central and Eastern European Election Officials (ACEEEO), “Draft Convention on Election Standards, Electoral Rights and Freedoms.”

<sup>18</sup> <http://www.idea.int/institute/inst-intro.html>.

<sup>19</sup> The project is a three way partnership between International IDEA, IFES, and the United Nations. Available at [www.aceproject.org](http://www.aceproject.org).

<sup>20</sup> Available at: [http://www.accessdemocracy.org/NDI/libr/v/005\\_ww\\_demelections.pdf](http://www.accessdemocracy.org/NDI/libr/v/005_ww_demelections.pdf).

<sup>21</sup> Available at: [http://www.ifes.org/reg\\_activities/Pdf/05\\_21\\_02\\_angola\\_eng\\_annex2.pdf](http://www.ifes.org/reg_activities/Pdf/05_21_02_angola_eng_annex2.pdf).

<sup>22</sup> Elklit, Jørgen and Svensson, Palle. “What Makes Elections Free and Fair?” *Journal of Democracy*. Volume 8.3, July 1997.

<sup>23</sup> This study served as the baseline document for the “IPU Declaration on Criteria for Free and Fair Elections.” See Guy S. Goodwin Gill, Free and Fair Elections: International Law and Practice, Inter-Parliamentary Union, Geneva, 1994.

#### **D. Election Standards and the Displaced**

None of these initiatives speak to conflict-forced migrant participation, although some of the initiatives do address external voting without directly speaking about refugees and IDPs. Nevertheless, once refugee and IDP participation is accepted as a basic human right, the same standards should apply to their participation as apply to regular non-displaced voters. The balance of this report applies these standards and best practices to the issue of refugee and IDP voting. Each topic begins with a general discussion of the issue and its application. This is followed by an examination of the relevant standards contained in international law and the regional standards initiatives. Each section concludes with a discussion of examples from recent practice and proposes specific guidelines for standards for displaced participation. An overview of the relevant international law is contained in Annex III.

### 3. ELECTORAL SYSTEMS AND THE DISPLACED

Representative democracy requires that the will of the people correspond with the behaviors and actions of the holders of political office. Electoral systems translate the will of the people – as expressed through votes – into the mandates of office holders and political parties in a parliament. The choice of a system is thus crucially important to determining the nature of political competition.<sup>24</sup> The choice of an electoral system also raises both logistical and political issues in elections with significant CFM participation. This section examines these issues, discussing both presidential and parliamentary elections systems.

#### A. Legal Norms and Standards

In general, international legal norms and election standards do not hold that one form of electoral system is inherently superior to any other. According to Article 1 of the ICCPR, for example: “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” Similarly, the African Convention on Human and Peoples Rights Article 20(1) holds that: “All peoples shall have the right to ... freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.” This position was reinforced by the UN General Assembly in Resolution 46/137 *Enhancing the Effectiveness of the Principle of Periodic and Genuine Elections*, which holds:

“[Member states recognize] that there is no single political system or electoral method that is equally suited to all nations and their people and that the efforts of the international community to enhance the effectiveness of the principle of periodic and genuine elections should not call into question each State's sovereign right, in accordance with the will of its people, freely to choose and develop its political, social, economic and cultural systems whether or not they conform to the preferences of other States.”<sup>25</sup>

These statements reflect the continued importance and sensitivity of national sovereignty in international life as well as the ongoing tension between the principles of universal human rights and the sovereign rights of states, particularly in the post-colonial era. While democracies are increasingly seen as the preferred form of political organization, state sovereignty still trumps external attempts to dictate what constitutes a proper electoral system. Thus, countries largely consider themselves free to determine how their electoral systems will operate.

Nevertheless, case law in the Human Rights Committee and the European Court of Human Rights indicates that this latitude does not allow states to violate the basic principle of periodic elections conducted under conditions of universal and equal suffrage and ensuring the chance for genuine competition. Thus, the OSCE/ODIHR Draft Standards and Commitments hold that: “whatever the system chosen, elections must result in a legislature representative of the country's political forces.”<sup>26</sup> As Goodwin–Gill observes, states need “to strike a balance between two essential considerations: that a legislative election above all must make it possible to designate a cohesive government responsible for conducting a national policy; and that the election primarily must guarantee representation at the national level of the country's political forces, and reproduce in Parliament as faithful an image as possible of their relative strength...”<sup>27</sup>

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<sup>24</sup> As Reilly and Reynolds note, the type of electoral system chosen by a government “can be purposively designed to achieve particular outcomes ... they structure the arena of political competition, including the party system; offer incentives to behave in certain ways; and reward those who respond to the electoral system with electoral success.” Reilly, Ben and Andrew Reynolds: National Research Council, *Electoral Systems and Conflict in Divided Societies*, Washington DC: National Academy Press, 1999: 16.

<sup>25</sup> General Assembly, “Enhancing the effectiveness of the principle of periodic and genuine elections” A/RES/46/137, 17 December 1991 available at: [http://democracy.ru/english/library/international/1998-18\\_a1-a44/page3.html](http://democracy.ru/english/library/international/1998-18_a1-a44/page3.html).

<sup>26</sup> OSCE/ ODIHR Draft “International Standards and Commitments on the Right to Democratic Elections: A Practical Guide to Democratic Elections Best Practice.”

<sup>27</sup> IPU, *Electoral systems. A world-wide comparative study*, Geneva: IPU Press, 1993.

Several studies have examined the effect of various electoral systems on deeply divided societies.<sup>28</sup> However, while the choice of an electoral system can affect the prospect for future violence, different systems have varying effects based on the structural characteristics of the society in question. In some situations, consociational systems that devolve significant autonomy to competing groups can help overcome mutual suspicions. In other cases however, institutions that work to overcome group identities and integrate communities into a single national identity tend to work better.

Electoral systems operate according to the nature of the institutions under contestation. Thus, distinct types of systems operate for presidential, parliamentary, and local elections. In addition, the system used to conduct referenda and popular consultations present their own unique considerations.

## **B. Presidential Elections**

In presidential elections, the voter is presented with a list of individual candidate names and instructed to choose one. In a direct system, the candidate with the largest number of votes wins the seat, whether as president, governor, or local official (such as a mayor). In an indirect system (such as the electoral college used in the United States) the popular vote is filtered through a second selection stage. While the procedures here are fairly straightforward, there are numerous differences in actual practice. These practices differ in terms of:

- Whether the contestant wins based on a plurality of votes such as in Bosnia and Herzegovina, or an absolute majority of votes cast, such as Liberia, Georgia and Yugoslavia (thus requiring a run-off if no candidate wins 50% plus 1);
- Whether a minimum percentage of the electorate is required to participate in the election, generally 50% or more, such as in Yugoslavia and Russia;
- Whether more than one person occupies the office, such as in the consociational system employed by Bosnia and Herzegovina, in which the presidency is composed of one representative from each of the three ethnic groups in the country.

### **B.1. Legal Norms and Standards**

The human rights conventions or regional standards initiatives do not directly speak to the above issues.

### **B.2 Considerations**

In terms of CFM participation, presidential elections are logistically simpler to conduct than local and national assembly elections as the entire electorate is choosing from a single ballot. Election administrators must simply ensure that eligible voters are provided the opportunity to receive, mark, and return the ballot. As a consequence, a simple plurality system appears preferable to the absolute majority, as the latter requires a second round of voting and thus the remobilization of the refugee and IDP voting mechanism.<sup>29</sup> In the 1992 Angolan elections, for example, the president was to be elected by an absolute majority. If no candidate received an absolute majority, a runoff election would be scheduled with the top two candidates appearing on the ballot. In this case, the election commission specifically rejected the enfranchisement of Angolans abroad due to the difficulties that would be encountered should a run-off election be

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<sup>28</sup> See Reilly, Ben and Andrew Reynolds, *Electoral Systems and Conflict in Divided Societies*. Washington DC: National Academy Press, 1999; Lijphart, Arend. *Democracy in Plural Societies*. New Haven, CT: Yale University Press, 1977; Horowitz, Donald L. *Ethnic Groups in Conflict*. Berkeley: University of California Press, 1985. International IDEA, "Democracy and Deep Rooted Conflict: Options for Negotiators," Available at: [http://www.idea.int/publications/democracy\\_and\\_deep\\_rooted\\_conflict/ebook\\_contents.htm](http://www.idea.int/publications/democracy_and_deep_rooted_conflict/ebook_contents.htm).

<sup>29</sup> The same principle holds true for minimum participation thresholds, which also require a second round of balloting if the number of ballots does not meet the threshold requirements.

necessary. While the elections code did contain (unfulfilled) provisions for external voting for the national assembly, it specifically rejected this option for the presidency.

The issue is not so simple, however. In countries with a highly fractured party system, an absolute majority system (with consequent run-off if no candidate achieves 50% plus one) would provide greater legitimacy to the election results. In this case, the absence of an absolute majority could weaken the legitimacy of the elected official, with profound consequences for the future stability of the country.

Consociational presidencies, such as the tri-partite presidency of BiH, are more complicated. In this case, there may be more than one ballot that must be made available to the voters, and procedures must be developed to ensure that the voter receives the correct ballot. In the case of BiH, voters were assigned one of two ballots based upon whether they were voting for candidates from the Republika Srpska (RS) or Federation entities. The RS ballot elected a single person to the presidency, while the Federation ballot elected both the Bosniak and the Croat that achieved the highest number of votes respectively. As a consequence, election administrators had to make sure that displaced voters received the proper ballot based on their registration details. Nevertheless, a consociational presidency does not provide significant complication compared to balloting for national assemblies with multi-member districts (discussed below) and the logistical complications of reaching the displaced should not influence the determination of whether to implement a consociational presidency.

### ***B.3 Summary of Conclusions and Recommendations***

- **The plurality system should be avoided in situations where highly fractured party systems would weaken the legitimacy of an official elected with less than 50% of the vote. Thus, facilitation of the refugee and IDP vote should NOT be a primary consideration when determining whether to implement this requirement.**
- **If politically feasible, however, presidential elections with a substantial number of displaced persons should avoid absolute majority and participation thresholds, which can prompt a second round of balloting. The extra costs and lengthened timeframes required to conduct balloting for displaced persons makes repetition of balloting undesirable.**

## **C. Parliamentary and Regional/Local Assembly Elections**

Parliamentary elections present considerably more variation and complexities than presidential elections. In these processes, the voter is presented with a list of individual names and/or parties and instructed to choose one or more according to the electoral formula employed. The contestant(s) with the largest number of votes are awarded seats.

Arend Lijphart identifies two key elements of a parliamentary electoral system: the electoral formula and district magnitude.<sup>30</sup> Electoral formulas come in two dominant forms, although there is often significant mixing of the two. The most common form is the Proportional Representation (PR) system, where a party wins seats in a legislative body based on the number of votes it receives in pre-defined districts. This form is especially common in Europe and much of Latin America and has been the dominant form adopted by many newly democratizing countries. The alternative system is the Majority-Plurality system (also called First Past the Post, or FPP), which uses single-member districts to elect one candidate to political office based on winning the largest number of votes in a geographical area. This system is employed in the United States, Great Britain, and many former British colonial territories. However, there is significant overlap between

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<sup>30</sup> Arend Lijphart, *Electoral Systems and Party Competition: A Study of Twenty-Seven Democracies, 1945 – 1990*. 1994. New York: Oxford University Press, 1994.

the two forms, with many countries using some combination of the two (referred to as a “parallel” system). The popularity of PR systems is that they tend to achieve a more accurate representation of the will of the population in the distribution of seats in national and regional assemblies. On the other hand, the Majority-Plurality (FPP) system is perceived to create a tighter bond between geographic regions and their representatives. There are a wide variety of sub-variants of each form.<sup>31</sup>

The second key element of an electoral system (in a PR formula) is district magnitude. District magnitude indicates the number of seats that a given district elects to an assembly. Some countries (such as Liberia) use a single national district; all voters select parties or candidates from a single, nation-wide list. In BiH, the country was divided into two districts reflecting the Federation and RS (in the 2002 elections, BiH further subdivided the Federation into several districts). Other countries (such as Angola) use multiple districts. Still others (such as Georgia) elect a portion of the representatives based on a PR system with a single national list and the remainder by FPP from multiple districts. Despite such differences, most electoral codes do strive to ensure some uniformity in the weight that each vote carries in the distribution of mandates. Districts are usually determined based on census data combined with historical, geographical and cultural factors.

### **C.1 Legal Norms and Standards**

The human rights instruments and regional standards initiatives do not address the issue of electoral system design, except to reconfirm the need to ensure that -- whatever system is employed -- it is non-discriminatory and reflects the principle of one person one vote. Some of the standards initiatives do, however, directly address the issue of district magnitudes and boundary delimitation. Notable in this regard are:<sup>32</sup>

- **Human Rights Committee, General Comment 25, Para 21:** The drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely.
- **SADC, Norms and Standards Part C. 3 (3):** The main function of a Boundary Delineation Commission is to draw the boundaries of constituencies in a fair manner applying a stipulated formula such as an electoral quota which uses the average electorate of the constituencies as the basic size of the electorate to be placed in the constituency. Experience has shown this is not always adhered to... The drawing up of constituency boundaries should be left up to the competence of the Boundary Delineation Commission without political interference. The Commission should consult stakeholders in this process. Gerrymandering should be outlawed.
- **OSCE/ODIHR, Draft Standards and Commitments IV.B:** Electoral units (voting districts) should be drawn in a manner that preserves equality among voters, a cornerstone of democratic elections ... Electoral units should be drawn under the following guidelines: (1) They should be drawn periodically to ensure that equality among voters is not disregarded due to population movements ...
- **Venice Commission Guidelines Art 2(b):** Equal voting power: seats must be evenly distributed between the constituencies. i. This must at least apply to elections to lower houses of parliament and regional and local elections: ii. It entails a clear and balanced distribution of seats among constituencies on the basis of one of the following allocation criteria: population, number of resident nationals (including minors), number of registered

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<sup>31</sup> An excellent introduction to the structure and effects of differing electoral formulas can be found online at: [www.aceproject.com](http://www.aceproject.com). See also Lijphart.

<sup>32</sup> See Annex 1 for a summary of the relevant human rights and election standards provisions.

voters, and possibly the number of people actually voting. An appropriate combination of these criteria may be envisaged. iii. The geographical criterion and administrative, or possibly even historical, boundaries may be taken into consideration. iv. The permissible departure from the norm should not be more than 10%, and should certainly not exceed 15% except in special circumstances (protection of a concentrated minority, sparsely populated administrative entity). v. In order to guarantee equal voting power, the distribution of seats must be reviewed at least every ten years, preferably outside election periods... vii. When constituency boundaries are redefined – which they must be in a single-member system – it must be done: impartially; without detriment to national minorities; taking account of the opinion of a committee, the majority of whose members are independent; this committee should preferably include ... representatives of national minorities.”

## **C.2 Considerations**

In terms of assuring constituency-relevant CFM participation, both PR and plurality/majority electoral formulas present costs and benefits. The PR system with a single national district provides a straightforward formula that is easy to implement and, depending on specific features, can promote reconciliation. A single nation-wide district also eliminates the need to provide displaced and absentee voters with a unique ballot based on their area of origin (as is required in a plurality/majority system or PR system with multiple districts) and removes the need to delineate and apportion districts, which can be a time-consuming, expensive, and politically sensitive task.<sup>33</sup> Liberia adopted a single national district during the 1997 elections for exactly this reason. Despite the fact that the country had historically used a plurality/majority system with multiple districts, the Independent Election Commission felt the logistics involved with a PR system were more conducive to participation of displaced populations. Similarly, a single national district was employed by the OSCE in Kosovo for the 2001 Kosovo Assembly elections (although minorities were guaranteed a set-aside portion of the seats up for contestation disproportionate to their population weight). In this case, the choice of a single district considerably simplified the conduct of the balloting.

Few post-conflict elections have utilized a majority/plurality system. Ethiopia is perhaps the prime example and does not provide much evidence in support of such a system as a reconciliation tool in an immediate post-conflict setting. For the 1995 National Legislature elections, Ethiopia adopted a plurality system utilizing 547 single-mandate districts that were drawn along reconfigured administrative lines. The Ethiopian People’s Revolutionary Democratic Front (EPRDF – a coalition of six rebel groups that had overthrown the Mengistu in 1991), substantially modified existing administrative districts in order to consolidate various ethnic groups. As one study notes: “The EPRDF marked off administrative regions to coincide generally with established spheres for the ethnically defined politico-military movements that overthrew Mengistu. In doing so, the EPRDF in effect reinforced a pre-existing barrier to nationally based competitive political parties. The redrawing discouraged existing ethnically defined movements from transforming themselves into national political parties for the purposes of: 1) reaching across ethnic lines to build national coalitions and 2) developing issues along lines that cross-cut ethnic divisions.”<sup>34</sup> No evidence is available on how displaced voters were factored into the system.

Over time, however, voters typically began to demand the constituency-relevant representation inherent in majority/plurality systems. As a consequence, an increasing number of countries are moving to a majority/plurality or parallel system. In terms of both CFM participations and national

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<sup>33</sup> It should be noted that elections conducted for multiple administrative levels already require that displaced voters receive different ballots based on their region of origin. The 1996 BiH National Assembly Elections, for example, occurred concurrent to elections for the ten cantons in the Federation. As a consequence, even though the country used only two districts, it would have been possible to easily provide at least ten different ballots for ten different multi-member constituencies to these voters, as they already required unique ballots based on their canton.

<sup>34</sup> Harbeson, John W. “Elections in Post-Mengistu Ethiopia,” in Krishna Kumar (ed.), *Post-Conflict Elections, Democratization and International Assistance*. (Boulder: Lynne Rienner Publishers, 1998): 117.



reconciliation, however, PR systems seem to provide a more efficient and inclusive formula in the short-term. Once the political process is consolidated, then a national dialogue on this issue is in order.<sup>35</sup>

Once the electoral formula is established, the next issue is how to delineate and apportion electoral districts (if required). A number of questions should be addressed early in the election cycle in order to ensure that the district delimitation is fair and non-discriminatory. The key issues here include:

- What formal criteria should be used to delimit districts? Population? Geography? Historical and social considerations?
- How displaced populations should be counted when determining the number of mandates: Based on their original locations or in their place of current residence?<sup>36</sup>

In terms of standards, the Venice Commission Guidelines present the most comprehensive set of guidelines, including recommendations that the delimitation produce: "... a clear and balanced distribution of seats among constituencies on the basis of one of the following allocation criteria: population, number of resident nationals (including minors), number of registered voters, and possibly the number of people actually voting...." The Venice Commission also recommend that: "a) any deviation between district representation and population never exceed 15%; b) that districts should be redefined at least every ten years to account for population movements, and; c) that delimitation committees should always include members of national minorities."

How to account for displaced populations in the districting process is difficult. Since post-conflict elections serve the dual functions of establishing legitimate and workable political institutions while solidifying the right of conflict-forced migrants to return home, a balance must be found between the principles of accurate representation and the creation of stable institutions. In addition, it should be stressed that large-scale CFM voting is an "abnormality," and the process through which this occurs is transitional in nature. As the post-conflict democracy is further consolidated, these considerations will no longer apply.

One unique approach to districting is characterized by the Croatian and Angolan cases, where refugees (including non-conflict-forced migrants)<sup>37</sup> were provided with special "external" districts. This process can simplify election implementation, but should be approached cautiously. Key issues include what weight the external district carries relative to regular in-country districts and ensuring that external voters do not receive disproportionately more or less seats in the legislature. In Angola, the voting for the three reserved seats for Angolans abroad never took place. In Croatia, however, the use of this mechanism provided an advantage to the ruling party, as the Diaspora was provided with seats disproportionate to its weight and these voters tended to overwhelmingly support the HDZ.<sup>38</sup> The Council of Europe, for example, noted that: "Election results confirmed the preference of Diaspora voters for the ruling party, which obtained 90% of the votes from abroad compared to approximately 45% of the votes from inside the country. The turnout of the voters abroad was much lower than inside the country so that finally citizens from abroad are better represented in parliament than citizens from inside the country."<sup>39</sup>

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<sup>35</sup> Obviously, the choice of an electoral system for societies emerging from violent conflict is considerably more complicated than presented here. For detailed discussion of various electoral systems and societies in conflict, see Reilly, Ben and Andrew Reynolds, *Electoral Systems and Conflict in Divided Societies*. Washington DC: National Academy Press, 1999.

<sup>36</sup> An excellent overview of considerations related to districting can be found at [www.aceproject.org](http://www.aceproject.org). The International Foundation for Electoral Systems has also recently launched a project examining best practices and standards related to boundary delimitation.

Further analysis on the distinction between Diasporas and refugee populations is provided below.

<sup>38</sup> For an interesting analysis on why Diaspora communities tend to vote for more nationalistic parties, see "Diasporas: A World of Exiles," *The Economist*, 2 January 2003.

<sup>39</sup> During elections in the 1990s, Croatia provided 12 set-aside seats in the House of Representatives for the Diaspora. In 2000, however, a revised election law "... created a special constituency for non-resident citizens to elect between 0 and 14 members of parliament according to the relationship between turn-out for this constituency and average turn-out per

Thus, the key question is determining the number of seats to be reserved. The answer depends on the nature and extent of predicted returns. If large number of refugees will return shortly after the elections, then the reserved seats will be disproportionate to the seats held by regular in-country voters. On the one hand, this might be useful as those who occupy these seats might be a constructive political force advocating for refugee issues even after they return.<sup>40</sup>

However, a dedicated external district for refugees presents some disadvantages. Most importantly, the creation of refugee seats may serve to institutionalize displacement and create only “virtual constituencies.” The purposes of CFM participation are to guarantee the political rights of those displaced by conflict (and thus thwart those who would use displacement as a political tool), facilitate and support repatriation, and allow refugees to play a constructive role in the peace-building process. The creation of “virtual constituencies” will likely not contribute to these goals. Competition will most likely emerge between refugee parties and candidates, weakening the voice of the displaced against those who remained at home. While special external districts might be considered once the democracy is consolidated and electoral actors seek to enfranchise national Diasporas, this system should be avoided in the immediate aftermath of war.

In some situations, a country emerging from violent conflict may not maintain effective power in parts of the country. This situation is evident in the Republic of Georgia, which has held several national level elections over the past decade despite the fact that the region of Abkhazia remains *de facto* off limits to the Georgian state. As a consequence, some 270,000 ethnic Georgians displaced from Abkhazia are represented by three parliamentarians elected from Abkhazia in 1992. These IDPs have been prevented by law from voting for single-mandate representatives in their current place of residence, and thus remain represented by the office holders elected in 1992. The fact that these three representatives have had their mandates extended without a popular vote is essentially non-democratic.

If no special reserved district is employed, the question becomes how to assign the population weights of displaced voters to districts. In the case of refugees, there is no other feasible option but to assign them to their original place of residence.<sup>41</sup> IDP populations, however, could potentially be assigned their original or their current district. In this case, the question of projected returns once again becomes important. If IDPs are assigned to their original districts but large-scale returns do not immediately follow the election, those districts could have a disproportionate number of seats. On the one hand, these seats would theoretically include representation of the displaced populations as they are casting ballots and influencing the allocation of mandates. On the other hand, if prospects for return do not appear likely, at some point a determination will have to be made to allocate displaced populations to their current district. In the short term, the goal of promoting an effective link between the displaced and their home district should dominate. However, if the population weights are assigned to the original district, then the rules should require that displaced voters cast ballots for those districts, otherwise an imbalance will develop. In the long term, if returns appear unlikely, mechanisms will need to be devised to ensure that districts are re-weighted accordingly and provisions for participation in their current location.

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elected member throughout Croatia. Six seats were finally allocated to the Croatian *diaspora*,” a move that satisfied the Council of Europe, without disenfranchising the Diaspora. See Council of Europe, Parliamentary Assembly, Committee on the Honouring of Obligations and Commitments of Member States of the Council of Europe, “Croatia” Draft Report AS/Mon (1998), January 1999. Available at: <http://assembly.coe.int/Documents/WorkingDocs/doc00/edoc8823.htm>

<sup>40</sup> On the other hand, if large numbers of refugees return after the elections, the disproportionality might cause resentment on the part of the in-country population. Thus, if reserve seats are to be used, the number of these seats should be subject to regular review and revision. At a minimum, the number should be revised at each electoral cycle.

<sup>41</sup> In BiH, however, refugees were able to choose a “future municipality” option, in which they declared in advance that they intended to live in a different district from the one from which they were displaced. In terms of district delimitation, this presents obvious problems to electoral actors, as the population dynamics of each district are not known until the close of registration. Other problems with the “Future Municipality” option are further discussed below.

It is important to note that the problem of district delimitation may reflect other considerations. In BiH, for example, the consociational nature of the political framework agreed to as part of the Dayton Peace Agreement created two districts, the Federation and the RS. Each of the three ethnic groups, however, was allocated 14 seats in the national assembly. Thus, the Federation elected 28 representatives (14 each Croat and Muslim) and the RS elected an additional 14. These figures were not based on strict population data, but instead reflected the compromises reached as part of the Dayton Negotiations. As a result, the RS commands seats in the National Assembly disproportionate to its population.

### ***C.3 Summary of Conclusions and Recommendations***

- **Proportional representation systems utilizing a single national district are useful in transitional situations for their inclusiveness and simplify the distribution of ballots to displaced populations. Nevertheless, multiple districts should not be ruled out simply because of logistical difficulties. The determination of how many districts to employ should be primarily a function of which political structures are best suited to the unique social patterns of the country.**
- **External districts for conflict-forced migrants should be evaluated on a case-by-case basis. If it is employed as a representational technique, it must be considered transitional from the outset so that the conflict induced migration patterns do not become statutory.**
- **If multiple districts will be created, displaced populations should be assigned to their district of origin,<sup>42</sup> particularly if they are expected to cast ballots for candidates from that district. Over time, however, the districts should be updated and seats modified based on whether returns appear to be feasible. In either case, it is important that displaced voters vote in the districts to which their population weights have been assigned for the purpose of district delimitation.**

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<sup>42</sup> Although it is not always clear what the "home district" is. Michael Maley notes: "In Papua New Guinea, for example, voters continually seem to want to register for the areas where their clans live, even if they themselves are no longer ordinarily resident there." Michael Maley. Personal communication to author. 2003. This has larger implications for voter eligibility, further discussed below.

## 4. VOTER REGISTRATION AND ELIGIBILITY

A foundation requirement of post-conflict electoral processes is the definition and identification of an electorate. This exercise involves determining electoral eligibility, establishing voter identity, and registering qualified electors. Since conflicts produce death, disruption, and displacement, identifying those who are eligible voters is a difficult task. A comprehensive and accurate voter register ensures a free and fair election and maximizes enfranchisement. Advance registration – with full public scrutiny and the right to inspect and challenge the voter rolls – is essential to a transparent election.<sup>43</sup>

Displaced populations, however, may find that the registration process and eligibility rules are biased against their ability to participate. Such populations often do not meet residency requirements and can face difficulties proving that they qualify for citizenship in the polity conducting the election. Even if these criteria guarantee inclusion, CFM populations are often unable to prove eligibility due to the loss or theft of documents and difficulties in obtaining new documents in their place of exile. On the other hand, while registration and documentation criteria that are structured too loosely help enfranchise the displaced, they also open the election to fraud. Election administrators need to find a proper balance between maximum inclusiveness and maximum transparency.

Thus, refugee status, citizenship and residency requirements, and documentation are of particular importance to refugee and IDP voters. The following sections discuss each issue in turn and conclude with recommendations and examples from state practice.

### A. Determining Refugee Status

“The Electoral Right of Conflict-forced Migrants: A Review of Relevant Legal Norms and Instruments,” (PEP Discussion Paper I) argues that those displaced by conflict have an inherent right to electoral inclusion while other migrants do not. As a consequence, the first priority for electoral actors is to define who meets the criteria of a “conflict-forced migrant.” While this may appear simple, in practice this determination can raise some delicate political issues. Therefore, the following discussion examines how refugee status was determined during recent electoral events. Note that this section applies exclusively to refugees, as IDP circumstances are fundamentally different.

#### A.1 Legal Norms and Standards

- **1951 Refugee Convention:** [T]he term “refugee” shall apply to any person who: ... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group or political opinion, is outside the country of his nationality and is unable ... to avail himself to the protection of that country ... or is unable to return to it;
- **OAU Convention Governing the Specific Aspects of Refugee Problems in Africa:** The term ‘refugee’ shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave

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<sup>43</sup>As OSCE/ODIHR notes: “[t]he method of establishing voter identity, including what documentation is required, should be clearly stated so that the process is fully transparent, not subject to arbitrary decision, and can be publicly monitored in an objective manner... The study continues, “...there is a body of developing jurisprudence addressing what limits may be imposed on the right [to registration] without violating the principles of the international human rights background. In general, these limitations may fall within four categories: (1) minimum age requirements, (2) citizenship requirements, (3) residency requirements, and (4) loss of right due to an adjudication of mental capacity or criminal conduct.” OSCE/ODIHR, “International Standards and Commitments on the Right to Democratic Elections” 28.

his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality;<sup>44</sup>

- **1994 Cartagena Declaration on Refugees:** ... the definition or concept of a refugee to be recommended for use in the region is one which, in addition to containing the elements of the 1951 Convention and the 1967 Protocol, includes among refugees persons who have fled their country because their lives, safety, or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.<sup>45</sup>

## **A.2 Considerations**

If conflict-forced migrants are to be enfranchised outside of an effort to enfranchise a national Diaspora, electoral actors must develop eligibility criteria that differentiate who is a refugee and who is an economic migrant or member of a Diaspora. This is not to suggest that Diasporas should necessarily be excluded, but reflects the fact that refugees have “inherent” voting rights while other non-resident nationals do not.

Recent practice provides little guidance in terms of making these determinations. In some cases, such as the 1999 East Timor Popular Consultation, no reference was made to formal refugee status. As discussed below, the simple fact that a person could prove that they were born in East Timor (or that they were born of a parent born in East Timor, married someone who was born in East Timor, or even were married to someone whose parents were born in East Timor) makes it plain that this electoral event was a Diaspora voting exercise through which conflict-forced migrants were also eligible to participate. Similarly loose thresholds were applied in Eritrea and Angola.

In BiH, the emphasis on refugee voting was intrinsic to the Dayton Peace Agreement. The rules, however, allowed significant non-conflict-forced migrant participation. The 1996 electoral code defined eligible voters as: “Any citizen of Bosnia and Herzegovina age eighteen or older whose name appears on the 1991 census ...”<sup>46</sup> Thus, any person, whether inside BiH or not, could be registered to vote provided their name was included on the 1991 Census. Since the war in BiH did not begin until April of 1992, this rule also allowed a small portion of the non-conflict-forced Diaspora to participate. In addition, Bosnian economic migrants who maintained their linkages to BiH (by holding a “Certificate of Citizenship” or through entry into the municipal records books) were also eligible for participation. In fact, the only Bosnians outside of the country in 1996 that could not potentially vote were those not listed on the census, had received citizenship in another country or had no documentation, and came from a municipality where all municipal records had been destroyed.

The eligibility requirements had a greater impact during the 1997 Municipal Elections. In this case, persons who were not listed on the 1991 census had to prove residence in a specific municipality in 1991, essentially eliminating Bosnians who had migrated abroad, not been included on the census, and did not maintain documentary proof of residence in a specific municipality while abroad. In sum, however, the Bosnian elections were, for all intents and purposes, also a Diaspora election.

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<sup>44</sup> The Assembly of Heads of State and Government at its Sixth Ordinary Session, Organization of African Unity. *Convention Governing the Specific Aspects of Refugee Problems in Africa*, (10 September 1969). Available at [http://www.afrol.com/archive/documents/refugees\\_convention.htm](http://www.afrol.com/archive/documents/refugees_convention.htm); Internet -accessed on 15 May, 2002.

<sup>45</sup> *Cartagena Declaration on Refugees*, adopted at a colloquium entitled “Coloquio Sobre la Proteccion Internacional de los Refugiados en American Central, Mexico y Panama: Problemas Juridicos y Humanitarios,” held at Cartagena, Columbia (19 - 22 November 1984). Available at <http://www.asylumlaw.org/docs/international/CentralAmerica.PDF>; Internet-accessed on 1 June 2002.

<sup>46</sup> PEC, “Rules and Regulations,” Article 5, July 1996. Citizenship in BiH was governed by the “Decree on the Citizenship of the Republic of Bosnia and Herzegovina,” available at <http://www.unhcr.ba/protection/as@refugee/bhcitizenship.pdf>.

In fact, the only recent elections that explicitly sought to enfranchise refugees while excluding economic migrants occurred during the 2000 – 2002 Kosovo elections. Aside from other “citizenship” type requirements (discussed below) eligible Kosovars had to prove residence in a municipality in Kosovo on 1 January 1998. This requirement enfranchised persons displaced during the mass exodus that occurred 1998 and 1999 while expressly excluding those who had left the province prior to that date for economic reasons or due to the deteriorating human rights situation during the early 1990s.

In response to criticism that this rule effectively disenfranchised many conflict-forced migrants, election organizers later modified the criteria to include Kosovars who had achieved “Convention Status” on or after 1 January 1995. These registrants were required to provide documentary proof of their conventions status – either through a UNHCR-issued identity card or through documentation issued by host state governments demonstrating that the applicant had entered a host country’s asylum process or had been granted Temporary Protection Status (TPS). Nevertheless, many Kosovars who were displaced by conflict and human rights violations remained ineligible. Election organizers argued that the election was not designed to be a Diaspora voting program, or one that would address previous human rights violations. Nevertheless, it illustrates the difficulties in making a distinction between a person’s status (refugee or economic migrant) for electoral purposes.

The only other mechanism for implementing criteria that distinguish between CFM and Diaspora participation is through returnee voting. In this case, EMBs provide special procedures to ensure that returnees are able to be entered on the voter rolls, but only after their return to the country. This occurred in Namibia, Cambodia, and to a lesser extent, in Liberia. By requiring return (either facilitated through UNHCR or spontaneous) for registration, most economic migrants will probably be excluded. The major short-coming to this type of program, however, is the fact that elections often proceed prior to the establishment of conditions conducive to large-scale return.

### ***A.3 Summary of Conclusions and Recommendations***

- **Since refugees have “inherent” voting rights while Diaspora participation is not guaranteed under international human rights law, electoral actors need to define who is a refugee in any instance where the intent is to enfranchise conflict-forced migrants without enfranchising a Diaspora;**
- **One important tool in this regard is to have the applicant demonstrate that they had achieved “convention status” as of a particular date (usually shortly before conflict erupted and mass displacement occurred). Convention status can generally be demonstrated through presentation of UNHCR identity documents or through host-government-issued documentation demonstrating the applicant’s filing of an asylum claim;**
- **In situations where no asylum has been granted, documentation is still usually provided indicating that the conflict-forced migrant has been granted this status. TPS status on the date indicated should be considered acceptable proof of the registrant’s status;**
- **In situations where the host state is accepting mass influxes on a TPS basis but not issuing identity documents, electoral actors will need to make status determinations. Refugees are often housed in camps, and local authorities generally maintain some form of records on these populations. Any sharing of such information must conform to appropriate data-protection procedures.**

## B. Citizenship<sup>47</sup> and Participation

Some electoral processes require citizenship, as defined by the country's citizenship laws and/or constitution, as a prerequisite to enfranchisement.<sup>48</sup> How citizenship eligibility requirements are structured can have important implications for the participation of conflict-forced migrants and need to be carefully considered by negotiators and electoral actors. Three questions are central:

- How can the citizenship requirement be structured so as not to discriminate against conflict-forced migrants?
- How does the concept of “belonging” to a polity work when elections and referenda are held in non-self-governing territories?<sup>49</sup>
- Should dual nationals be excluded?

Conferring citizenship is one of the first and most basic tasks of any state, yet criteria for the conferral of citizenship vary widely. Generally, its conferral is linked with some combination of lineage, residence, and naturalization. Legal scholars have identified three major categories of policies states adopt with regards to conferring citizenship:

- *Jus soli*, or citizenship based on birth on state territory;
- *Jus sanguinis*, or citizenship based on descent; and
- Naturalization.<sup>50</sup>

States differ sharply in how they approach the issue and there is much overlap between *jus soli* and *jus sanguinis*. Virtually all states automatically provide citizenship to any person born in the state's territory of one or more parents who already possess citizenship. Other states (including most Western Hemispheric states) take the practice further and grant citizenship to any person born on their territory, regardless of the parents' nationality. Some newly independent states have also defined citizenship with reference to residency in the territory at some pre-determined point (Eritrea, for example). Other common differences include whether citizenship can be conferred through marriage, the mechanics for gaining citizenship upon immigration, whether a citizen is allowed to maintain dual nationality, and the effect of state succession on nationality.<sup>51</sup>

Citizenship laws are generally delineated in state constitutions and legislation enacted outside of the context of a country's electoral code. Nevertheless, in instances where the electoral code is being promulgated concurrent to a revision or reformulation of citizenship laws,<sup>52</sup> negotiators and political actors should strive to ensure that citizenship requirements conform to international

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<sup>47</sup> While “citizenship” and “nationality” are often used interchangeably, there are important differences between the two. Citizenship is a legal construct, denoting that an individual is entitled to receive the full benefits and protections of a recognized state government. Nationality, on the other hand, can also refer to membership in a distinct community within the state; one that shares a common culture, language, religion, or heritage and is recognized as distinct in some way. Membership in a national group can also extend across state borders, as in the case of Serbs who reside in Croatia and BiH or Hungarians in Serbia and Romania.

<sup>48</sup> There is an emerging trend of non-citizen residents being enfranchised in local elections. This practice is common in Europe and is also recognized in Canada. Note that the ACEEEO Draft Convention would obligate states party to “strive to make the right to elect and to be elected at elections to bodies of *local administration* [emphasis added] ... enjoyable by foreign nationals and stateless persons who reside permanently on lawful grounds in the territory of the state party to this convention provided they meet the same criteria as citizens of the state.”

<sup>49</sup> Note that in elections and referenda in non-self-governing territories, formal citizenship does not apply. Instead, eligibility in these instances is generally linked to historic attachment or residence in the territory.

<sup>50</sup> Excellent studies of the changing conception of citizenship and state policy in an era of globalization can be found in: Alexander Aleinikoff and Douglas Klusmeyer, Eds., *Citizenship Today: Global Perspectives and Practices*, Washington DC: Carnegie Endowment for International Peace, 2001, and Gerhard Von Glahn, *Law Among Nations (7<sup>th</sup> Ed.)*, Boston: Allyn and Bacon, 1996.

<sup>51</sup> An overview of citizenship laws can be found in Patrick Weil, “Access to Citizenship: A Comparison of Twenty-Five Nationality Laws,” in Aleinikoff and Klusmeyer, Eds., *Citizenship Today: Global Perspectives and Practices*.

<sup>52</sup> In elections following peace-agreements, particularly in cases where new states have emerged, election administrators may have a unique window of opportunity to be involved in the drafting of both the citizenship and electoral laws and regulations. In Eritrea, for example, citizenship was expressly defined in the context of the electoral laws drafted for the referendum on autonomy. In BiH, a new citizenship law was drafted concurrently with the conduct of elections.

human rights standards. Once the criteria for determining conferral of citizenship are established, EMBs and other political actors must then determine how citizenship relates to electoral eligibility.

### **B.1 Legal Norms and Standards**

Questions of citizenship fall within the jurisdiction of each state.<sup>53</sup> However, a number of human rights instruments address the minimum standards and requirements that states have to ensure that nationality and citizenship laws are clear and consistently applied.<sup>54</sup> The principles that everyone has the right to a nationality, that no citizen should be discriminated against in the realization of this right, and that the right applies in instances of state succession can be found in:

- **UDHR, Art 15:** Everyone has the right to a nationality ... [and] No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.
- **Convention on the Reduction of Statelessness, Art 8(1):** A Contracting State shall not deprive a person of his nationality if such deprivation would render him stateless... **Art 9:** A Contracting State may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds.<sup>55</sup>
- **American CHR Art 20:** 1. Every person has a right to a nationality; 2. Every person has the right to the nationality of the state in whose territory he was born if he does not have a right to another nationality; and 3. No one shall be arbitrarily deprived of his nationality or of the right to change it.<sup>56</sup>
- **European Convention on Nationality, Art 4:** The rules on nationality of each State Party shall be based on the following principles: everyone has the right to a nationality; statelessness shall be avoided; [and] no one shall be arbitrarily deprived of his or her nationality... **Art 5:** The rules of a State Party on nationality shall not contain distinctions or include any practice which amount to discrimination on the grounds of sex, religion, race, colour or national or ethnic origin. Each State Party shall be guided by the principle of non-discrimination between its nationals, whether they are nationals by birth or have acquired its nationality subsequently... **Art 18:** In matters of nationality in cases of state succession, each State Party concerned shall respect ... the principles contained in Articles 4 and 5 of this Convention ... In deciding on the granting or the retention of nationality in cases of State succession, each State Party concerned shall take account in particular of: the genuine and effective link of the person concerned with the State; the habitual residence of the person concerned at the time of State succession; the will of the person concerned; the territorial origin of the person concerned.<sup>57</sup>

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<sup>53</sup> Article 1 of the *Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws* of 12 April 1930 stipulates that it is "for each State to determine under its own law who are its nationals."

<sup>54</sup> According to OSCE/ODIHR, "International coverage of the law of nationality has mainly focus ed on three aspects, statelessness, dual or multiple nationality and state succession, as such situations may involve changes of nationality on a large scale ... The primary concern was to reconcile nationality laws and thereby reduce cases of double nationality and statelessness. A major contribution in this regard is the European Convention on Nationality ... which deals with all major aspects related to nationality: principles, acquisition, retention, loss, recovery, procedural rights, multiple nationality, nationality in the context of State succession, military obligations in cases of multiple nationality and co-operation between States parties. Only questions relating to conflict of laws have not been included." See <http://www.legislationline.org/index.php?topic=3&subtopic=0&subsubtopic=0&intst=0&eu=0&country=0>

<sup>55</sup> Available at: [http://www.unhcr.ch/html/menu3/b/o\\_reduce.htm](http://www.unhcr.ch/html/menu3/b/o_reduce.htm)

<sup>56</sup> Available at: <http://www1.umn.edu/humanrts/oasinstr/zoas3con.htm>. See also the Inter-American Court of Human Rights, Advisory Opinion OC-4/84 (19 January 1984), which held that the powers of states in respect of nationality are limited by their obligation to guarantee full protection of human rights. See Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica, Advisory Opinion January 19, 1984, Inter-Am. Ct. H.R. (Ser. A) No. 4 (1984) available at [http://www1.umn.edu/humanrts/iachr/b\\_11\\_4d.htm](http://www1.umn.edu/humanrts/iachr/b_11_4d.htm)

<sup>57</sup> Available at: <http://conventions.coe.int/Treaty/en/Treaties/Html/166.htm>



In terms of elections standards, the issue of citizenship as a component of voter registration has not been clearly addressed by the standard initiatives. Each denotes citizenship as a component of suffrage rights, but holds that they should not be applied in a discriminatory fashion.

## **B.2 Considerations**

Several recent post-conflict and reconciliation elections followed violence that resulted from a weakening of a central state and the creation of new political entities (BiH, Croatia, Eritrea, and East Timor), each of which resulted in some form of state succession. Other conflicts involved secessionist demands for new states but these entities have not yet been recognized as possessing juridical sovereignty (Kosovo, Chechnya, Georgia/Abkhazia). A third category includes conflicts driven by exclusionary national policies (Burundi, South Africa) that did not produce new states, but transferred power to new political actors and fundamentally changed the concept of nationality in the state.

In the case of secessionist conflicts, nationality can become a hotly contested political issue with the denial of rights playing a central role in the conflict. In such cases, those displaced from their home territories face conscious attempts to deny them of the formal-legal citizenship. The conflict in Bosnia and Herzegovina, for example, was in large part driven by attempts to deny minority groups the right to belong to new political structures and entities. As a consequence, the issue of how to confer nationality at both the national and sub-national levels became a central element of the post-conflict settlement, and deeply influenced how citizenship requirements were folded into the voter registration process.<sup>58</sup>

Electoral actors must confront several important issues when designing the citizenship element of registration requirements. First and most importantly, the electoral requirement that voters must be citizens should be defined broadly enough to include displaced populations and members of national minorities. The denial of citizenship and forced removal of civilian populations from a territory based on their ethnic, political, or cultural characteristics is a blatant violation of human rights norms and international law.<sup>59</sup> Any electoral process that allows this tactic to stand must be considered invalid. In situations involving large numbers of displaced persons, the electoral code should provide a feasible avenue for displaced populations to meet any citizenship requirements.

A caveat is in order, however. An electoral code that is overly lenient on citizenship requirements could provide political actors with an opportunity to enfranchise non-citizens and thus change the election outcome (Moroccan settlers in Western Sahara and Croatian Serbs in BiH, for example). The OSCE/ODIHR and Venice Commission Guidelines, for example, both hold that citizenship requirements should be structured in such a fashion as to allow non-citizen residents to vote in local elections after a fixed period of time.<sup>60</sup> The logic here is that long-term residents may be paying taxes and ought to have a voice in community decisions over how that money is spent. However, allowing non-citizen nationals the right to vote could affect electoral outcomes. In BiH,

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<sup>58</sup> The experience of ethnic Serbs displaced from Croatia is particularly instructive. As a result of the conflict, nearly 300,000 Serbs from Croatia are living as refugees in Yugoslavia and BiH. Croatia follows a *jus sanguinis* model of citizenship by descent, which has made it far more difficult for ethnic Serbs who resided in Croatia prior to the dissolution of Yugoslavia in 1991 to obtain citizenship than members of the ethnic Croat diaspora, many of whom emigrated to other countries years earlier. Despite chastisement from the OSCE, the Council of Europe, and the European Union, Croatian citizenship laws continue to discriminate against Serb claims for citizenship, and onerous documentation requirements, including the requirement to travel to their original municipality in order to file citizenship claims, have effectively disenfranchised the majority of otherwise eligible Serbs.<sup>58</sup> Thus, the citizenship law of Croatia, combined with the mechanisms for proving citizenship contained in the country's electoral code, have substantially worked against the participation of a significant portion of the otherwise eligible voting population.

<sup>59</sup> Aside from the core human rights standards related to citizenship and nationality identified in the legal norms and standards section above, the international law basis for this statement can also be found in the Genocide Convention and the Geneva Conventions.

<sup>60</sup> Many countries (particularly in Europe) have begun to offer the right to participate in local and regional elections to non-citizen residents.

electoral eligibility was limited to Bosnian citizens.<sup>61</sup> Bosnian citizenship was defined by Annex V of the Dayton Peace Agreement, which promulgated a constitution for BiH. The Constitution holds that:

All persons who were citizens of the Republic of Bosnia and Herzegovina immediately prior to the entry into force of this Constitution are citizens of Bosnia and Herzegovina. The citizenship of persons who were naturalized after April 6, 1992 and before the entry into force of this constitution will be regulated by the Parliamentary Assembly.<sup>62</sup>

In order to prove citizenship for the purposes of electoral eligibility, the voter's name was required to be listed on the 1991 Census. Since the census was incomplete, however, voters who claimed to be Bosnian citizens but were not listed on the census were required to present either "a certificate of citizenship issued prior to 1991 or a receipt issued by the appropriate municipal authority to establish that he or she was recorded as a citizen in one of the official municipal record books prior to the 1991 Census."<sup>63</sup>

Thus, Croatian Serb refugees who fled to BiH during the war were not granted citizenship by the new state. The OSCE determined that enfranchising these refugees at the municipal level would have had dramatic consequences for the balance of power in several key municipalities, undermining the peace process. Thus, the election code specifically excluded these individuals in order to ensure that the outcome of the vote reflected the pre-war demographic profile. While this preclusion was inherently sensible in the short term, many of these Croatian Serb refugees remain in BiH seven years after the signing of the Dayton Peace Agreement, with little prospect of a return to Croatia. As a consequence, they have been denied the right to participate in their home country's (Croatia) political process, are unable to establish citizenship in their current country (BiH), and therefore remain unable to exercise their inherent right to political participation eight years after the end of hostilities.

Citizenship for the purposes of establishing electoral eligibility can also be problematic in non-self governing territories. Particularly during referenda on national independence or autonomy, electoral actors need to determine who is part of the eligible electorate, yet cannot rely on the citizenship criteria of the country as a whole (unless the entire country is to vote in the referendum, which is unusual). The usual solution is to link eligibility with historical attachment to the territory, descent from a particular ethnic or cultural group, and/or with current residence.

Western Sahara is an excellent example of the difficulties this can raise. Disagreements between the Moroccan government and the Frente Popular para la Liberacion de Saguia el Hamra y Rio de Oro (POLISARIO) over which populations will be eligible to vote are the single-most important reason that the referendum has not yet taken place. Morocco had initially argued that all descendants of Saharawis should be eligible to participate, regardless of how many generations had intervened since their families had left the territory of Western Sahara. This proposal could have opened up eligibility to thousands of persons residing in Southern Morocco who could claim some form of lineage to one of the ten tribes that formed the backbone of the eligibility criteria (see case study on Western Sahara). Further disagreement centered on the ten tribes listed on the census. POLISARIO argued that three of the tribes were actually Moroccan. In addition, Morocco has made blanket appeals for thousands of Moroccan settlers, claiming that

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<sup>61</sup> Article IV of Dayton Annex IV on Elections held that, "... Any citizen of Bosnia and Herzegovina aged 18 or older whose name appears on the 1991 census for Bosnia and Herzegovina shall be eligible, in accordance with electoral rules and regulations, to vote."

<sup>62</sup> The Constitution continues, "Citizens of Bosnia and Herzegovina may hold the citizenship of another state, provided that there is a bilateral agreement, approved by the Parliamentary Assembly in accordance with Article IV(4)(d), between Bosnia and Herzegovina and that state governing this matter. Persons with dual citizenship may vote in Bosnia and Herzegovina and the Entities only if Bosnia and Herzegovina is their country of residence."

<sup>63</sup> OSCE, Mission to Bosnia and Herzegovina, Provisional Election Commission, "1997 RULES AND REGULATIONS: As Amended and Recompiled from the 1996 Rules," 14 October 1997

POLISARIO sheiks have denied these individuals voter eligibility based on their affiliation with these three contested tribes.

Elections in Eritrea, Kosovo, and East Timor<sup>64</sup> also occurred while these areas were/are formally considered territories of another state. In these cases, citizenship for the purposes of electoral participation was linked with historical attachment to a territory. Table I outlines the citizenship-type requirements for electoral participation in each of these cases.

**Table I: Eligibility Requirements in Non-self-governing territories**

<b>Eritrea</b>	<b>East Timor</b>	<b>Kosovo</b>
<p>Had Eritrean origin (were resident in Eritrea in 1933);</p> <p>Had been born to a father or mother of Eritrean origin (i.e. who were resident in Eritrea in 1933) in Eritrea or abroad;</p> <p>Had been born in Eritrea to parents whose origin was unknown;</p> <p>Were not of Eritrean origin but had resided in Eritrea between 1934 and 1951 and had not committed "anti-people acts" during the struggle for liberation;</p> <p>Entered and resided in Eritrea in or after 1952; and</p> <p>Had resided in Eritrea for a period of ten years before 1974 or had resided in Eritrea for twenty years while making periodic visits abroad; and (1) Possessed high integrity and had not been convicted of any crime; (2) Spoke and understood an Eritrean language; (3) Were free of physical or mental handicap; (4) Had renounced other nationalities; (5) Had decided to reside permanently in Eritrea upon obtaining Eritrean nationality...</p>	<p>Persons born in East Timor;</p> <p>Persons born outside East Timor but with at least one parent having been born in East Timor;</p> <p>Persons whose spouses fall under either of the two categories above;</p>	<p>Persons born in Kosovo;</p> <p>Persons with one parent born in Kosovo;</p> <p>Persons who lived in Kosovo continually for five years;</p> <p>Otherwise ineligible dependent children of persons eligible because of the above, who are under the age of 23 years but proved to be in full-time attendance at a recognized educational institution.</p>

Note that each case links voting eligibility with birth or residence in the territory during some specified period, indicating again a tendency in these situations to employ a combined *Jus Sanguinis* and *Jus Soli* model for eligibility determination. In addition, the model employed in each case appears to have had the effect of limiting participation to those who could prove this continuous link to the territory while excluding those who settled in the territory and whose participation could have affected the outcome of the balloting. In East Timor, for example, these criteria blocked the participation of 300,000 Indonesian *trans-migraci*, although the children of *trans-migraci* born between 1975 and 1981 could have potentially been included, as they would have reached the age of 18 by the election date and met the above criteria. Still, the requirements here had a direct political implication in disenfranchising the vast majority of Indonesian settlers.

<sup>64</sup> Note that most states only recognized Indonesian sovereignty of East Timor as *de facto*, not *de jure*. The UN considered the province as a "non-self governing territory" from 1975 until the popular consultation.

One final consideration concerning citizenship is whether to grant suffrage rights to dual nationals. An estimated 90 countries allow some form of dual citizenship, although there are significant differences in how each state interprets the rights and obligations associated with dual nationals. According to the 1951 Refugee Convention, a refugee loses their status should they acquire citizenship (and thus protection) in any other state. Thus, asylum status is relinquished when a refugee acquires citizenship in the host state, even if they do not relinquish their nationality of the state of origin.

States may take a variety of approaches when determining whether to enfranchise dual nationals. Croatia actively encourages members of its Diaspora to participate in Croatian elections. BiH, on the other hand, specifically limited the voting rights of dual nationals to those who were resident in BiH at the time of the election. Any Bosnian refugee who had attained a second citizenship and remained outside of BiH was *de jure* disenfranchised, although it is unlikely that election administrators could have determined whether or not each individual voter had dual nationality.

In general, conflict-forced migrants should always be ensured the opportunity to participate in their home state political process. Yet if the conflict-forced migrant attains the nationality of another state and thus loses status as a refugee, should they still be eligible to participate? No human rights or refugee protection instrument speaks to the electoral rights of Diasporas. Nevertheless, they still are still technically “conflict-forced migrants,” and their participation might be important to the political process of the home state. Electoral actors should seek to include this population. This recommendation is further strengthened by difficulty inherent in determining whether each potential voter does or does not maintain a dual nationality.

### ***B.3 Summary of Conclusions and Recommendations***

- **Citizenship of the polity conducting elections can serve as the basis for electoral rights and inclusion in the voters register;**
- **All persons who possessed citizenship in a state or territory before the outbreak of conflict or state succession should be automatically eligible for citizenship in whatever polity emerges;**
- **In post-conflict situations, requirements for the conferral of citizenship should be determined and promulgated by law prior to the registration process. It is generally preferable that the conferral of citizenship be established through state constitutions or through acts of parliament, not through the electoral code;**
- **In non-self-governing territories, citizenship for the purposes of electoral participation should be linked to historical attachment to that territory. A variety of models for proving that effective link can be considered.**
- **Conferral of voting rights to non-citizen residents, particularly at the municipal level, ought to be avoided during immediate post-conflict elections. Since conflicts are often characterized by two-way population movements, enfranchising these non-citizens can affect electoral outcomes;**
- **The political implications of allowing dual nationals to vote should be considered when designing citizenship requirements. However, it will likely be difficult for election administrators to enforce a rule disenfranchising dual nationals.**

## C. Residency Requirements

Most electoral codes condition the right to participate in elections on the physical presence of the voter in the country or municipality conducting the election.<sup>65</sup> Common justifications for restricting the right to vote to residents include:

- Non-residents may not be directly affected by policy decisions and therefore might not vote as responsibly as residents;
- Non-residents may not have access to the information necessary to make an informed decision when casting a ballot;
- The difficulty of presenting candidate platforms and positions to non-residents;
- The costs associated with reaching a voter who has voluntarily chosen to reside abroad may be prohibitive or place an undue burden on those who remain;
- Ballot secrecy and transparency issues, including the problem of “judicial review of elections held in a foreign territory.”<sup>66</sup>

Displaced persons, by definition, will not meet stringent residency requirements and the nature of the residency rules will have a significant impact on their ability to participate. Nevertheless, recent experiences in BiH and Kosovo indicate that the residency requirement can easily be structured in such a way as to allow enfranchisement, although electoral actors have to take care when designing the rule; both technical and political considerations will come into play.

### C.1 Legal norms and standards

As with citizenship, residency requirements are the jurisdiction of the national state and few international instruments speak to how they should be structured. In terms of international treaty law, the UDHR and ICCPR say nothing on the issue. Probably the most important international statement is General Comment 25 of the Human Rights Committee, which holds that: “States must take effective measures to ensure that all persons entitled to vote are able to exercise that right. ... If 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.”<sup>67</sup> Another important statement can be distilled from the Principle 22 of the Guiding Principles, which holds that: “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...” While not directly addressing residency requirements for registration, this statement provides a generic protection for displaced populations against overly stringent residency requirements.

The regional standards initiatives also address the issue, although even here clear guidance is lacking. The OSCE/ODIHR argues that residency requirements should not be imposed for national elections, and that any requirements for local and regional elections should be “reasonable.” The Venice Commission and ACEEEO both argue that the requisite standard for length of residency should not exceed six months.

- **OSCE/ODIHR, Draft Standards and Commitments Art III (D)(1):** As the right to vote is the most basic element of a system for democratic election, there is a body of developing jurisprudence addressing what limitation may be imposed on the right without violating

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<sup>65</sup> Indonesia and the US do not have residency requirements for their overseas voters. For Australia and Canada, the intent to resume residency in said countries is a requirement for overseas voting. In Sweden, the length of residency in Sweden determines the level of offices to be elected by the overseas Swedish citizen.

<sup>66</sup> Expanded from Deiter Nohlen and Florian Grotz, “Legal Framework and Overview of Electoral Legislation,” Draft Chapter for International IDEA: External Voting Handbook. Forthcoming, International IDEA.

<sup>67</sup> Human Rights Committee. *General Comment 25*(57). General Comments under article 40, paragraph 4, of the International Covenant on Civil and Political Rights, Adopted by the Committee at its 1510th meeting, U.N. Doc. CCPR/C/21/Rev.1/Add.7 (1996).

the principles of the international human rights background. In general these limitations fall within four categories...residency requirements...specific human rights instruments provide that foreigners be allowed to vote in local elections after a certain period of residence. Thus, the right to vote may be subject to reasonable residency requirements...

**Annex 1: Right to Universal and Equal Suffrage:** There should be no residency requirements for citizens in national elections...Residency requirements for local and regional elections should be reasonable

- **Venice Commission Art 1(cc):** i. A residence requirement may be imposed. ii. Residence in this case means habitual residence. iii. A length of residence requirement may be imposed on nationals solely for local or regional elections. iv. The requisite period of residence should not exceed six months; a longer period may be required only to protect national minorities...
- **ACEEEO Draft Convention on Election Standards Art 8 (1.3):** ... the requirement to the period of residence may be imposed only at regional and/or local elections and such period of residence shall not exceed six months, unless a longer and more reasonable period is established to assure electoral rights of the representatives of national minorities and/or ethnic groups of voters, voters of the given territory as a whole;

A related standard should be noted as stemming from a communication from the Human Rights Committee. In the case of *Marie-Helene Gillot et al. v. France* (Communication N0. 932/2000), the Committee argued that it is acceptable to enact stringent residency requirements during referenda on autonomy. This case stemmed from eligibility criteria that had the effect of discriminating against French settlers on the Pacific territory of New Caledonia. According to the Committee, the criteria were acceptable under the ICCPR given that the referendum in question concerned the future status of a non-self governing territory. As a result, residency requirements that had the effect of discriminating against settlers from a different ethnic community were acceptable under the terms of the ICCPR. This is an important caveat, and will likely be raised again in the context of referendums on autonomy and independence.<sup>68</sup>

## C.2 Considerations

While stringent residency requirements can potentially disenfranchise external voters, recent experience suggests that this does not have to be the case. In East Timor and Eritrea, for example, no residency requirements were imposed at all, except in the context of delimiting citizenship, which occurred outside of the electoral process. In both cases, the core element of eligibility was based on a combined *jus sanguiness* and *jus soli* conception of citizenship, regardless whether the individual had ever resided in the territory conducting the ballot. Conversely, in the Palestinian elections of 1996, non-residents of the West Bank and Gaza Strip were disenfranchised by the requirement that voters prove an “abode” or fixed physical address within the polling district which the applicant resided at the time of application (various forms of proof of residency were accepted, including the testimony of three other eligible district residents or the presentation of documents proving that the individual had paid municipal taxes within the polling district). Thus, the residency requirement was used as a political instrument to disenfranchise all members of the Palestinian Diaspora.

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<sup>68</sup> A group of French nationals living in New Caledonia and intending to live there permanently were disenfranchised by the onerous (twenty years) residency requirements for participation in the 1999 ballot on autonomy. After exhausting local remedies, the French nationals raised the issue in the HRC, arguing that the residency requirements discriminated against them as an ethnic group in violation of Articles 2, 25 and 26 of the ICCPR (see Annex 1). The Committee disagreed and stated that this was a different type of election due to the fact that it involved self determination and the end of colonization in the territory. In such situations, states may establish high requirements to make sure that only long-term residents have the right to change the nature of the political status of the territory. If all were allowed to vote it might have upset the balance whether or not they chose to live there permanently. The claim of these twenty-one petitioners for discriminatory and unfair practices was denied and, due to the extraordinary circumstances of the territory, the twenty-year standard for enfranchisement held.

In BiH, the rules and regulations for the 1996 and 1997 elections did not directly include a residency requirement for general eligibility, but did for persons who wished to vote in specific municipalities where they had moved since the outbreak of war in 1992. The Bosnian residency requirements, while complex, are instructive and worth considering in some detail. Both the Dayton Peace Agreement and the 1996 Rules and Regulations mandated that: "...a citizen who no longer lives in the municipality in which he or she resided in 1991 shall, as a general rule, be expected to vote, in person or by absentee ballot, in that municipality..."<sup>69</sup> For the 1996 elections, the "general rule" was modified by three significant exceptions. Article 10 of the Rules and Regulations provided that:

"[The Provisional Election Commission] will grant the right to change the place of registration in the following circumstances: a) Citizens of Bosnia and Herzegovina who changed their place of residence between the 1991 Census and 6 April 1992; b) ... persons who were citizens of Bosnia and Herzegovina on 6 April 1992 but who have changed their place of residence since that date, either voluntarily or forcibly as a result of the war, may register to vote in the municipality in which they now live and intend to continue to live; they may vote there in person, but not by absentee ballot; c) ... refugees and displaced persons who do not wish to exercise the right [to] ... 'freely return to their homes of origin' may be registered to vote in the municipality in which they intend to live in the future, and may vote there in person but not by absentee ballot."<sup>70</sup>

As such, four ballot casting possibilities existed, each of which was dependent upon the voter's current residence. Provided that they were found on the census, both IDPs and refugees had the option of voting for the municipality of origin prior to the outbreak of hostilities. This was the most straightforward option and the one the international community expected most voters to exercise. Nevertheless, two other options for displaced voters were available: 1) IDPs could petition the OSCE to cast a ballot for their current municipality;<sup>71</sup> or, 2) refugees and IDPs could apply to cast a ballot for a "future municipality," where they intended to resettle. Recognizing that the political dynamics might open this option to abuse, the OSCE required that these voters prove the following ties to their proposed future municipality:

- Lawful title to real property;
- Ownership of a business;
- Invitation by an immediate family member;
- Official confirmation of employment; or
- Other documentation to be considered by the PEC on a case-by-case basis.

Both the current and future municipality options caused severe problems. In general, the Bosnian Serb parties sought to consolidate their power in the Republika Srpska (RS) by registering IDPs in their current municipality while the Bosnian Muslim parties sought to have voters register in their pre-war municipalities. Furthermore, Bosnian Serb refugees in Yugoslavia were heavily pressured to adopt the "future municipality" option in order to further swing the demographics of key strategic municipalities (such as Brcko and Srebrenica) in their favour.<sup>72</sup> This dynamic, and

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<sup>69</sup> This language comes directly from Dayton, Annex 3, which continues: "The exercise of a refugee's right to vote shall be interpreted as confirmation of his or her intention to return to Bosnia and Herzegovina. By Election Day, the return of refugees should already be underway, thus allowing many to participate in person in elections in Bosnia and Herzegovina." See The General Framework Agreement for Peace, available at [http://www.ohr.int/dpa/default.asp?content\\_id=371](http://www.ohr.int/dpa/default.asp?content_id=371)

<sup>70</sup> OSCE, Mission to Bosnia and Herzegovina, Provisional Election Commission, "1997 RULES AND REGULATIONS: As Amended and Recompiled from the 1996 Rules," 14 October 1997.

<sup>71</sup> In 1996, no cut-off date was established. In 1997, IDPs voting for their current municipality had to prove residence prior to 31 July 1996.

<sup>72</sup> Both Brcko and Srebrenica had a Muslim majority prior to the war. As a result of the fighting, most Muslims were displaced from these communities and were replaced by Serb refugees from other parts of BiH. As a result, Serbs sought to solidify their control by having their IDPs register for the current municipality option and the refugees declare these strategic villages as their future municipality. The Muslim parties, on the other hand, sought to ensure that Bosnian

the evident fraud on the part of Serbian registrants in Yugoslavia who attempted to prove a future municipality, was one of the chief reasons that the OSCE eventually postponed the municipal election from 1996 to 1997 and made the future municipality option significantly more stringent. Nevertheless, the current municipality option was maintained, and rightfully so, as many of the IDPs had no intention of returning to their pre-war homes.

The 2000 municipal elections in Kosovo presented a somewhat different dilemma for election administrators. In this case, while the territory had clearly been divided into areas dominated by one of the two competing ethnic groups, the political dynamics operated differently. As a result of the NATO air strikes and the mass exodus of Serbs from the province following the cessation of hostilities, only a few enclaves remained where Serbs formed a majority, and a mass repatriation of expelled Kosovar Albanians began almost immediately. Furthermore, the pre-war demographics in Kosovo were structurally different. Whereas in BiH no single ethnic group formed an absolute majority of the population, in Kosovo, one ethnic group, the Kosovar Albanians, formed at least 80% of the province's population and was in a position to solidify political control in at least twenty-eight of the thirty municipalities holding elections. So in this case, the international community's decision to include IDP and refugee voting was strongly influenced by a desire to ensure adequate representation of the Serbian minority, despite the fact that their electoral prospects were grim. There was very little prospect that either ethnic community would be able to manipulate the post-conflict demographics for political gain at the municipal level. Instead, the residency requirement was implemented with two key goals in mind:

- Ensuring that those displaced as a result of the conflict (both ethnic Albanians and ethnic Serbs) were able to cast a ballot, but preventing members of the Kosovar Albanian diaspora from participating, at least in the short run;
- Preventing non-Kosovars from participating.

The basic eligibility requirements that emerged included: 1) persons born in Kosovo; 2) persons with one parent who was born in Kosovo; or 3) persons who lived in Kosovo continually for five years. In addition, voters were required to prove residence in a municipality in Kosovo on 1 January 1998 by submitting a wide variety of documents issued between January 1996 and January 1999. Late in the process this requirement was expanded to include Kosovar refugees who had "convention status" (i.e. had been granted formal asylum by a host state as per the 1951 Refugee Convention) after 1 January 1995. This rule had a number of important consequences: first, it effectively disenfranchised many Kosovars who had left the province as a result of the deteriorating human rights and political conditions prior to 1995; second, there was a small chance that these criteria could have enfranchised individuals who had no link to Kosovo other than the fact that they had been militarily involved in the province during that period; finally, many applicants who were, in fact, residents in Kosovo on 1 January 1998 were unable to successfully register due to a lack of acceptable documentation.

These examples provide some important lessons for election administrators and those negotiating the eligibility requirements for post-conflict elections. First, in each case the residency requirement worked to ensure inclusion of those displaced by conflict. However, the dates chosen for residency had important political implications. In Kosovo, the Kosovar diaspora was effectively disenfranchised. Furthermore, anyone who left the province as a result of the deteriorating human rights situation between 1989 and 1995 was effectively disenfranchised. The stated purpose of this rule, according to the OSCE was to "recreate the electorate as it was before the population movements that occurred in relation to the conflict."<sup>73</sup>

Second, in municipal level elections, the structure of the residency requirement can essentially pre-determine the election outcome. The Bosnian case illustrates the complications that can arise

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Muslims displaced from these communities cast their ballots for them, rather than their current municipality, in order to reverse the effects of "ethnic cleansing."

<sup>73</sup> See: <http://www.osce.org/kosovo/elections/faq/answers.php3?x=3>.



by having weak residency requirements or those that can be exploited by political gain. The OSCE quickly realized the problems inherent in the “future municipality” option and discontinued it after postponing the municipal elections from 1996 to 1997.

### **C.3 Summary of Conclusions and Recommendations**

- **Conflict-forced migrants should always be eligible to register (either in person or by mail) and cast a ballot for the constituency from which they were forcibly displaced, regardless of current location or length of absence from their home constituency;**
- **Residency requirement should be structured so as to maximize the prospects for CFM participation. In general, no residency requirement should be imposed for presidential and national level contests. If the residency requirement is employed for municipal level elections, it should be structured in such a way as to enfranchise conflict-forced migrants who fled the region without enfranchising otherwise ineligible settler populations;**
- **IDPs should be provided the option of voting for representatives from either their current municipality or their home municipality (not both).**
- **In general, displaced populations should be expected and encouraged to vote for candidates in their home region and territory. This maximizes the potential of the ballot to deny efforts at “ethnic cleansing.”**
- **Nevertheless, it is important to ensure that displaced populations be allowed to exercise their voice in the political processes of their current residence if they so choose. This is particularly true if short-run prospects for return do not appear strong and the displaced have no political means to advocate for improved living conditions.**
- **In referenda concerning self-determination, the residency requirement ought to be sufficiently stringent to prove a “demonstrable link” to the territory holding the ballot. In addition, electoral actors should avoid writing criteria that have the effect of discriminating against persons based on their race or ethnicity. However, criteria that disenfranchise settler populations who migrated to the territory after an agreed date are acceptable, even if this disenfranchisement has the effect of discriminating against persons based on their race or other criteria.**

## **D. Documentation**

Refugees and displaced populations face special challenges in providing necessary documentation for voter registration. Documents have often been lost or destroyed and the capacity to obtain new documents is hampered by the inability to return to their home municipalities. Electoral authorities therefore face a stark dilemma: in order to minimize the potential for fraud, strict documentation criteria should be implemented. Unfortunately, the stricter these criteria, the more likely it is that refugee and IDP applicants will be unable to prove their citizenship and/or residency and will thus be disenfranchised through no fault of their own.

### **D.1 Legal Norms and Standards**

The right to documentation is guaranteed in a variety of human rights instruments. The UDHR, ICCPR, the American Convention, and the African Charter all contain language indicating a non-

derogable right to a legal personality and “recognition as a person before the law.”<sup>74</sup> A basic prerequisite to the realization of this right is adequate documentation proving identity, citizenship, and residence. Important statements on this right can be found in:

- **1951 Refugee Convention, Art 25:** (2) ... [A]uthorities ... shall deliver or cause to be delivered under their supervision to refugees such documents or certifications as would normally be delivered to aliens by or through their national authorities. (3) Documents or certifications so delivered shall stand in the stead of the official instruments delivered to aliens by or through their national authorities, and shall be given credence in the absence of proof to the contrary.
- **Convention Governing the Specific Aspects of Refugee Problems in Africa, Article 6(1):** Member States shall issue to refugees lawfully staying in their territories travel documents in accordance with the United Nations Convention relating to the Status of Refugees and the Schedule and Annex thereto, for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require. Member States may issue such a travel document to any other refugee in their territory.
- **Guiding Principles, Principle 20:** Every human being has the right to recognition everywhere as a person before the law ... To give effect to this right for internally displaced persons, the authorities concerned shall issue them all documents necessary for the exercise and enjoyment of their legal rights ... 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.

In terms of specific standards, several of the regional initiatives address the issue of documentation in a general way. The SADC Norms and Standards mirror the human rights instruments in obliging the issuance of a national ID card good for registration. The OSCE/ODIHR Standards and Commitments only mention the issue in relation to transparency in the process of determining what documents will be required.

- **SADC, Norms and Standards C. (1) (1)(v):** Provisions should be made to ensure that prospective voters are provided with a form of national identity card in good time for registration.
- **OSCE/ODIHR, Draft Standards and Commitments IV (D)(4):** ...[t]he method of establishing voter identity, including what documentation is required, should be clearly stated so that the process is fully transparent, not subject to arbitrary decision, and can be publicly monitored in an objective manner.

## ***D.2 Considerations***

Administrative services of the national government or home municipality often remain off limits to IDPs and refugees. In BiH, competing ethnic groups had solidified control of local political structures by expelling unwanted members of other groups and often denied displaced persons access to administrative services as part of a campaign to prevent their return. As a consequence, these populations were unable to replace their lost or destroyed documents. In some instances, the home state government may provide consular services, including the issuance of new documents such as passports or national ID cards, through its embassies in the country of asylum. The acceptability of these documents for electoral participation, however, may be rejected by political actors or may not provide a sufficient and demonstrable link to the

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<sup>74</sup> UDHR Article 6; ICCPR Article 16, American Convention Article 17; African Convention Article 5.

municipality of origin, which is a requirement for voting for multi-district assemblies or sub-national elections.

Refugees who are unable to avail themselves of their home state consular services frequently possess documents issued by the UNHCR or the state in which they are seeking asylum, which should certainly be considered as sufficient documentation (at least in terms of establishing identity) for voter registration. In the case of IDPs, however, UNHCR is not mandated to provide protection services and rarely provides documentation for these populations. As a consequence, IDPs who have lost or who have never possessed suitable documents have no recourse to either national authorities or international agencies. In some instances, IDP populations may come under the protection of rebel factions or militias, who may issue their own documents.<sup>75</sup> Unfortunately, these documents will not have legal status unless the faction manages to consolidate control of the territory or legitimate its authority as part of a peace-agreement.

Ultimately, the decision on whether to include populations without appropriate documents will depend on the political sensitivities of the election. In BiH and Kosovo, for example, the decision was taken to implement strict documentation requirements in order to minimize the potential for fraud. Even so, political actors engaged in repeated attempts at fraud through the production of counterfeit documents. However, these attempts would have been far more difficult to recognize and prevent had the documentation requirements not been so severe. On the downside, many potential voters, particularly refugees, were unable to participate in the elections as a consequence.

In sum, election authorities in post-conflict countries must determine whether and how to enfranchise displaced populations who lack acceptable documentation. Depending on the scale of the displacement, this population can compromise a substantial portion of the otherwise eligible electorate. Three possible mechanisms include:

- Establishing special mechanisms whereby electoral authorities 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.

In terms of the first option, the most notable attempt to implement a program along these lines occurred in BiH, where the OSCE established a “Citizenship Verification Sub-Commission” to assist applicants whose names were not found on the 1991 census and who were unable to procure either a citizenship certificate or a receipt from a municipal authority (the two methods by which voters not found 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, however, many municipal officials, particularly in strategically important areas -- such as the town of Brcko -- refused to provide this documentation, and security concerns kept many displaced persons from returning to their former homes to procure the necessary documents. 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.

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<sup>75</sup> 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.

The second option is to organize a combined census and/or civil registration program in conjunction with the registration process. In Kosovo, for example, a civil registration program was conducted through a joint UN and OSCE operation, although only for IDPs. All persons in Kosovo presented themselves at a civil registration center, where they were required to produce documents proving that they were a “habitual resident” of Kosovo (see criteria above). If successful, they were added to the civil register and issued an ID card.<sup>76</sup> However, the volume of applicants possessing no documentation quickly overwhelmed the program. The registration organizers initially implemented a “Review Process” to provide solutions for those lacking documents. Applicants filled in a detailed questionnaire regarding their claim to eligibility which was forwarded to one of the thirty municipal records offices where UN/OSCE staff searched for evidence verifying the claim by searching through available records such as application forms for FRY ID cards, driving licenses, and passports. However, even the review process was only able to approve 20% of the claims forwarded to it and the UN/OSCE was forced to establish a second-level “inquiry” division.<sup>77</sup> This division was initially designed as an anti-fraud tool, to conduct random sampling of civil registrants and ensure that document fraud would be identified. As the caseload of undocumented registrants grew, however, the division became the primary mechanism through which applicants denied under the review procedure were provided a final opportunity to have their status verified.

Given time, personnel, and logistical constraints, the inquiry division adopted a sampling system in order to process the caseload. The process unfolded as follows:<sup>78</sup>

<b>Step 1 – Sorting and Evaluation</b>	Cases sorted to determine the characteristics of the applicant pool.
<b>Step 2 – Formulate Inquiry Concept</b>	Caseload divided into seven groups based on gender, age, and the existence of supporting documentation at municipal registration centres. The groups were based upon certain assumptions of risk for fraud. Sample investigations determined whether the assumptions were correct.  Cases were divided by:  <ol style="list-style-type: none"> <li>1) Females older than age 45</li> <li>2) Males older than age 55</li> <li>3) Females under age 20</li> <li>4) Males under age 18</li> <li>5) Females age 20-45</li> <li>6) Males age 18-35</li> <li>7) Males age 35-55</li> </ol>
<b>Step 3 – Identification of Fraud “Hotspots”</b>	Based upon factors such as proximity to a border/boundary, identified fraud, incidents of political intimidation, ethnic population shifts and other variables, the number of sample investigations would be adjusted by municipality. Areas with a high risk for fraud required more investigations. Areas with a low threat for fraud required fewer investigations.
<b>Step 4 – Sample Investigations</b>	Sample investigations performed in all municipalities. Sample size gauged by the risk of fraud associated within a municipality or with one of the sub-groups groups.
<b>Step 5 – Validation of Profiles</b>	Based upon the results of the sample investigations, a group profile would be validated. For instance, if little or no denials turned up for women over 45 years of age in Prizren, then the Inquiry Division would be able to recommend approval of all women fitting that description without further investigation because of the low risk for registration fraud. A sample would, therefore, be used to approve a group with similar characteristics in a specific municipality.

<sup>76</sup> The voters register was extracted from the civil register based on the applicant meeting several additional criteria.

<sup>77</sup> Much of this discussion is drawn from an unpublished OSCE document entitled, “OSCE Inquiry Division: Final Report,” issued in October 2000.

<sup>78</sup> Table adapted from OSCE Inquiry Division: Final Report,” p. 8, 9.

<b>Step 6 – Profile Approved Cases</b>	Once approved, the JRT issued an approval letter to the applicant. A database was designed to enter approved applicants into the civil and voters' registers.
<b>Step 7 – Denials</b>	Cases found not eligible for civil and/or voters' registration would be denied only through investigation. If denials occurred in one group, more investigations were performed to determine the extent of the problem. In some instances, a gender/age grouping may be broken down further, possibly into registration sites, in order to identify where a problem exists.

This mechanism proved to be an extremely efficient means of ensuring that applicants without proper identification could be registered while minimizing fraud. Of the 92,000 cases submitted to the inquiry division, only 347 were rejected for registration. According to the final report of the inquiry division: "An evaluation of the inquiry cases revealed roughly 70 percent of the inquiry cases were for women and most of those cases were for young women who, for many reasons, would not have obtained documents. In other words, most applicants were not in the caseload because of fraud; they were there because they legitimately had insufficient documentation."<sup>79</sup>

One shortcoming to the process was that it only worked for in-Kosovo registrants. Given that the sampling techniques relied on geographical location to validate claims, the process could not be conducted for Kosovars outside the province that did not possess documents. However, it may be possible to modify these procedures to include external applicants in future elections.

The third option for those lacking documents to prove identity, status, citizenship, or residency requirements for enfranchisement is through "social documentation." In this case, the electoral rules allow persons to register without providing documentary proof of their identity, citizenship, residency, or other requirements. Instead, the applicant swears an affidavit in front of a judge, notary, religious leader, or other notable and reputable person. Obviously, the integrity of the officials involved will prove the key element in ensuring that the process is not open to exploitation or fraud. The following case studies discuss some of the issues and practices stemming from experiences with social documentation. In the case of Western Sahara, the social documentation process has broken down completely. In East Timor, social documentation was also allowed, but the practice was not widely used and does not appear to have been widely abused.

#### *Western Sahara*

Participation in the yet-to-be-held Western Sahara Referendum is open to "all Saharawis, to whom the 1974 census undertaken by the Spanish authorities related and who are presently aged eighteen years or over will have the right to vote, whether they are currently present in the Territory or living outside it as refugees or for other reasons."<sup>80</sup> The census was to be revised by the United Nations Mission for the Referendum in Western Sahara (MINURSO) to remove those who had died since 1974 and to add those who had not been counted. MINURSO established an "Identification Commission" to update the census and prepare a voter register. The tribal nature of the Saharawi population, however, had resulted in very few eligible participants having proper documentation. In 1990, a copy of the census was provided to Morocco and POLISARIO with instructions to provide any information on persons who had died since 1974 and information on

<sup>79</sup> "OSCE Inquiry Division: Final Report," p. 3

<sup>80</sup> United Nations Secretary General, Report S/22464 (1991) details the eligibility requirements for participation in the referendum. The term "related" implies that all applicants must demonstrate an affiliation with one of the ten tribes that had been listed on the 1974 census. The census contains 72,000 names and divided the population into ten categories labeled A through J, each corresponding to one of the ten tribes present in the territory. Registration depends on the applicant meeting one of five criteria: those on the revised list of the 1974 Spanish census; those living in Western Sahara in 1974, but not on the revised Spanish census; immediate family members (mother, father, children) of someone meeting criteria 1 or 2; any offspring born outside the territory to a man who was born in the territory; and, anyone who had lived in Western Sahara for six consecutive years or twelve intermittent years before the 1974 census.

the locations of those who had moved. The Identification Commission was then to open a process whereby those excluded from the census could petition to be added onto the voter register.

In the case of those not counted on the census, the Identification Commission had to devise a method of determining that their claims to eligibility were indeed valid. In addition, mechanisms were required to ensure that those who were absent from the territory in 1974, but were "related" to one of the ten tribes, would be able to participate.<sup>81</sup> The solution agreed upon by the parties involved a novel form of "social documentation." Those who were not on the census but claimed eligibility 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) representing the sub-fraction to which the registrant claimed relationship.<sup>82</sup>

Initially the system seemed to function well. Sheiks decided independently and frequently went against the expected decision of their sponsor. Dunbar (2000) notes that 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."<sup>83</sup> Therefore, the registration process has not proceeded smoothly. Since 1994, three identification rounds have commenced and then crumbled as disputes between the parties, primarily over eligibility, have resulted in one or the other of the parties threatening to withdraw from the process.

#### *East Timor*

Eligibility criteria for the 1999 Popular Consultation included all persons, aged seventeen years or above, who satisfied the following criteria: (a) persons born in East Timor; (b) persons born outside East Timor but with at least one parent having been born in East Timor, and (c) persons whose spouses fall under either of the two above categories.

The UN Assistance Mission to East Timor (UNAMET) decided early on that two forms of identity would be required for voters born in East Timor: one to prove identity and one to prove birth in East Timor. Identity documents included passports, national ID cards, refugee cards, and driving licenses, among others, while proof of birth could be established through baptism certificates, birth certificates, and several others. Voters claiming eligibility based on marriage to or descent from persons born in East Timor had to further prove their relationship (i.e. marriage certificates) and the claim that the spouse or parent was actually born in East Timor.

Many registrants possessed none of the necessary documentation, prompting UNAMET to amend the criteria to allow for persons swearing an affidavit before a religious leader or village chief to register and vote. UNAMET, Notification Number 1, Section D issued July 1999, stated: "Where a person is not in possession of sufficient documentation to support his or her application to register, the District Election Officer (DEO) shall require such an individual to: Produce an

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<sup>81</sup> In his report to the Security Council in December 1991, the Secretary General noted that, "... it is considered that their absence from the territory at that time (of the 1974 census) cannot justify that they be automatically deprived of their right to participate in the decision regarding the future of Western Sahara ... It is necessary, however, that the link with the territory of people absent in 1974 be solid and demonstrable." See: United Nations Secretary-General, "United Nations Secretary-General's Report S/23299."

<sup>82</sup> According to Adebajo (1996), "The Sheiks have a particularly important role to play in the whole process ... The task of the Sheiks is twofold: to confirm, after swearing, and oath, that individuals appearing before them are indeed who they say they are ... and to confirm information relevant to the applicant... The knowledge and seemingly photographic memory of the Sheiks has often astounded and impressed UN officials, and the emotional reunions that occur during the process between sheiks and siblings, and parents and children, of factions separated by two decades of war add a human touch to the process." See Adekeye Adebajo, "The UN's Unknown Effort," 1995:63.

<sup>83</sup> Charles Dunbar, "Saharan Status: Status and Future Prospects of the Western Sahara Conflict," The Middle East Journal 54: i4 (2000).

affidavit sworn before a religious leader or *Kepala Desa* (Village Chief) and witnessed by a person who knows the applicant. In addition to the affidavit, the application for registration must be witnessed by a fully documented registered voter." This Notification was further modified in Notification Number 5, issued July 12<sup>th</sup>, which provided that: "With respect to registration to be conducted at registration/polling centres outside East Timor and where the applicant for registration is not in possession of sufficient documentation ... the affidavit shall be sworn, affirmed before a notary public or any authority that performs similar functions in the jurisdiction where the registration/polling centre is located."

The lack of documentation presented a considerable challenge to electoral administrators. Nevertheless, most observers concluded that the relatively weak documentation standards did not unduly influence the outcome of the ballot. Registration officials were permitted to refuse persons if they could not provide adequate documents, or if they believed the documents (including the sworn statements in front of a notary) to be false. Anyone refused the right to register was allowed to appeal to the Regional Electoral Officer if they felt they had been unfairly denied registration. Only four appeals were submitted in Indonesia (of which three were accepted), and none were entered in any other external voting centers.<sup>84</sup>

### *Eritrea*

The referendum proclamation did not identify the mechanisms or standards by which Eritrean nationality could be established. It instead asked the Department of Internal Affairs to implement the proclamation and issue the necessary procedures and regulations. Ultimately, the process of establishing Eritrean nationality (obtaining a national ID card) and the electoral registration process (obtaining a voter ID card) proceeded concurrently at Referendum Commission of Eritrea (RCE) branch offices and registration centers.<sup>85</sup> One report noted that: "rigorous tests, involving traditional Eritrean methods of identification, were used to determine identity as objectively and fairly as possible."<sup>86</sup> No other information is available on how these "tests" were conducted.

### *Considerations for Social Documentation*

The Sahara and East Timor cases differ in several important respects. On the surface, the Saharan program appears more rigorous, requiring two sheiks, one chosen by each of the two parties, to be physically present in the identification center and observed by representatives of the UN and OAU. Nevertheless, it quickly became apparent that the sheiks received instructions from their respective sponsors and could not carry out their functions in an impartial matter. Conversely, the Timor program did not require that the social documentation procedure actually be carried out in the presence of election officials or observers. Registrants could simply find a village elder or notary public, make an oath in the presence of a registered voter, and then present the notarized document as proof of eligibility. In addition, the use of notaries in Indonesia was especially problematic. A notary simply confirmed that the applicant made a solemn oath of their eligibility. They were not required to know or have any pre-existing relationship with the applicant.

Of the two programs, the Saharan one should have been more transparent. Yet fraud has been a common feature of the Saharan identification process while it was non-existent in Timor. Why? The answer probably lies in the resources and attention that institutional actors place on the registration process. The Indonesian government and its client pro-autonomy groups either did not understand that they could fraudulently manipulate the voter rolls to get 300,000 non-eligible *transmigraci* registered, or decided not to pursue organized fraud. Conversely, the pro-independence groups obviously believed that without substantial fraud on the part of their

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<sup>84</sup> International Organization for Migration (IOM), *Final Report: External Voting for East Timor Popular Consultation*, September 1999. Unpublished paper.

<sup>85</sup> Amare Tekle, "The Experience of the Eritrean Referendum," in *External Voting Handbook*, Stockholm: International IDEA, Unpublished Paper.

<sup>86</sup> *Ibid.*

opponents, the outcome of the vote was stacked in favor of independence. In Sahara, however, the Moroccan government and POLISARIO both believe that the outcome of the referendum is not pre-determined, and suspicions on both sides that the other actor is cheating have prompted each party to manipulate the rules.

In referenda where the results are not clearly pre-determined and well-organized groups have the capacity to manipulate the voters' register through fraud, social documentation can open avenues for fraud. Even seemingly comprehensive programs such as those in Sahara can be manipulated. Furthermore, all of the cases considered above were referenda. In multi-district national assembly and local elections, registrants generally must not only prove their citizenship and identity, but a clear linkage to an electoral district in order to participate. In the case of BiH, for example, election authorities had to establish some form of residency requirement. The political dynamic at work in the country – where Serbs appeared intent on not allowing refugee and IDP returns – caused political actors to use the election process as a means of consolidating their control over the Republika Serbska. Even the onerous documentation requirements established by the OSCE did not prevent organized attempts to manufacture documents for otherwise ineligible registrants.<sup>87</sup> Had the documentation criteria been less stringent, more fraud would have occurred.

Unfortunately, the only other options are to either conduct a census/civil registration process prior to elections, or to require onerous documentation requirements that will effectively disenfranchise large portions of the population.

### ***D.3 Summary of Conclusions and Recommendations***

- **Everyone has a right to recognition as a person before the law and to receive documents that give effect to this right;**
- **Conflict-forced migrants often lack sufficient documentation to prove their identity or other eligibility requirements for the purposes of electoral participation. Therefore, electoral actors need to determine how best to enfranchise these populations. Three possible mechanisms include: verification commissions within the election management body; combined voter registration and census/civil registration programs; and, social documentation;**
- **Which of these mechanisms to employ depends on the political issues at stake, the finances available, and logistical constraints;**
- **In the case of verification commissions, these programs should be avoided unless the election management body possess sufficient resources and personnel to actually implement a comprehensive program;**
- **Statistical sampling through a review process (as employed in Kosovo) is a highly useful tool for processing large numbers of applicants who lack documentation.**
- **Census and civil registration programs in conjunction with voter registration are a useful mechanism to both get conflict-forced migrants registered and to provide them with documentation;**

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<sup>87</sup> One significant exception to the above is when the registration process is linked to a pre-existing census. In BiH, most registrants were able to prove residency through listing on the 1991 census, and thus only had to prove their identity and citizenship. However, a related PEC rule that voters could register to vote in their current municipality, provided they prove residence prior to a specific date, became the avenue through which many local groups sought to stack the voters' registers in strategically important municipalities such as Brcko.



- **Social Documentation programs should be carefully devised and monitored during referenda on independence or autonomy, particularly where there are profound differences regarding which populations are eligible to participate. However, criteria must be clear and this aspect monitored closely to control for fraud.**

## 5. ELECTION SECURITY

Elections in which the voting population has been subject to threats or physical attacks are *inter alia* compromised and cannot reflect the will of the people. Providing adequate security in post-conflict elections is a complex task; combatants may have signed cease-fires but often hesitate to relinquish the advantage accrued through the threat or use of violence. While the presence of peace-keepers and internationally funded demobilization and reintegration programs can improve the overall security situation, electoral actors and EMBs should expect combatants to resist moves that weaken their bargaining position. This will be particularly true if the balance of political power stemming from the elections is not expected to reflect the balance of military power following the end of the conflict. In this case, important actors may exit the process and use violence as a means of securing a more favorable outcome.<sup>88</sup>

According to Fischer (2002): “Electoral conflict and violence can be defined as any random or organized act or threat to intimidate, physically harm, blackmail, or abuse a political stakeholder in seeking to determine, delay, or to otherwise influence an electoral process. Election security can be defined as the process of protecting electoral stakeholders, information, facilities, or events.”<sup>89</sup> Election-related violence stems from a wide variety of sources: government forces and rebel combatants may seek to intimidate voters in order to ensure that their positions on the battlefield are reflected in the distribution of mandates stemming from the election; external governments and non-governmental political actors with a stake in the conflict may seek to influence the outcome of the vote; and local populations and actors may seek to extract revenge on returning voters for perceived wrongs committed during the conflict. Elections conducted in these environments must take special care to recognize the political dynamics at work, and ensure that provisional measures are in place to eliminate, or at least minimize, the security threat that these dynamics present to the electorate.

Conflict-forced migrants may face unique security considerations depending on how the election is structured. A conflict-forced migrant is one who has been forced to flee a community or country because of violence or the threat of violence. By connection, these voters 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. While election-related violence is a threat to both displaced and non-displaced voters, mechanisms for CFM participation should be designed so as to minimize threats to any voter’s physical safety. If conflict-forced migrants are to effectively participate, special considerations are required to ensure their security.

### A. Legal Norms and Standards

At the general level, the core human rights instruments specifically obligate governments to protect the physical security of their citizens, regardless of whether or not threats are related to an elections exercise. Article 3 of the UDHR declares: “Everyone has the right to life, liberty and security of person.” Similarly, Article 6(1) of the ICCPR declares: “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.” In terms of displaced populations, the 1951 Refugee Convention, while not specifically addressing physical security, does obligate states party to provide legal protections “no less

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<sup>88</sup> In discussing electoral violence, an important distinction should be made between the short-term priority of protecting the safety of voters during the electoral period and the longer-term issue of ensuring that elections do not lead to a resumption of violence. This analysis emphasizes the former, but the issue of post-conflict violence (such as the horrifying events following the referendum in East Timor) is briefly considered as well. Further research is needed on the relationship between democratization/elections and violence. See Jack Snyder, *From Voting to Violence*, New York: W.W. Norton, 2000.

<sup>89</sup> Jeff Fischer, “Electoral Conflict and Violence: A Strategy for Study and Prevention.” IFES White Paper, 2002.

favorable” than that accorded to their nationals, which would presumably include protection of physical security as outlined in the UDHR and ICCPR. The Guiding Principles provide extensive provisions related to IDP physical security, including:

- **Principle 10:** 1. Every human being has the inherent right to life which shall be protected by law. No one shall be arbitrarily deprived of his or her life... 2. Attacks or other acts of violence against internally displaced persons who do not or no longer participate in hostilities are prohibited in all circumstances.
- **Principle 11:** 1. Every human being has the right to dignity and physical, mental and moral integrity. 2. Internally displaced persons, whether or not their liberty has been restricted, shall be protected in particular against ... (a) Rape, mutilation, torture, cruel, inhuman or degrading treatment or punishment, ... (c) Acts of violence intended to spread terror among internally displaced persons. Threats and incitement to commit any of the foregoing acts shall be prohibited.
- **Principle 12:** 1. Every human being has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. 2. To give effect to this right for internally displaced persons, they shall not be interned in or confined to a camp. If in exceptional circumstances such internment or confinement is absolutely necessary, it shall not last longer than required by the circumstances. 3. Internally displaced persons shall be protected from discriminatory arrest and detention as a result of their displacement.

The right to physical security as part of an elections process has also been addressed in regional standards initiatives. These include:

- **SADC, Norms and Standards C. (1)(20)(ii):** Any measures such as political violence, kidnapping, murder, threats and sanctions ... that prevent eligible individuals to register to vote and to vote in secrecy should be perpetually outlawed by SADC member states.” Similarly, **Part 3 Article 5:** “The electoral commission and all stakeholders in the electoral process should therefore be required by law and be empowered to ensure that political parties and candidates should denounce violence in elections in order to ensure ... unimpeded freedom of campaign throughout the country; free and unimpeded access to voter rolls; all government security forces should act impartially and professionally; presidential candidates must be provided with free and adequate security during the election process [and] ... reasonable safeguards at political meetings rallies, polling stations and party premises”
- **IPU, Declaration on Criteria for Free and Fair Elections Article 4(5):** States should take all necessary and appropriate measures to ensure that the principle of the secret ballot is respected, and that voters are able to cast their ballots freely, without fear or intimidation.” Finally, Article 4(8) states: “States should take the necessary measures to ensure that parties candidates, and supporters enjoy equal security, and that state authorities take the necessary steps to prevent electoral violence.”
- **ACEEEO Draft Convention on Election Standards Art 2(3-4):** Observance of the principle of free elections makes it possible for voters and other election participants to choose, without coercion, threat of coercion or any other unlawful influence, whether to participate or not to participate in elections in the forms allowed by law and by lawful methods, without fear of punishment, influence or compulsion, specifically, depending on voting and election results... Participation of a citizen in elections shall be free and voluntary. Nobody shall influence a citizen to compel him to participate or not to participate in elections and/or electoral actions (procedures). Nobody shall compel a voter to vote for or against any definite candidate (candidates), any definite list of candidates of a political party (coalition) or prevent a voter from freely expressing his will.

No voter shall be compelled by anybody to declare how he intends to vote or has voted. It shall not be allowed to gather and/or publish (disseminate) personal information about voters who have or have not taken part in the voting... **Art 21(2.14):** [States party undertake] ...to take measures to ensure that the election campaign is conducted in the conditions of public safety and calmness, to thwart any attempt at violence, intimidation or similar actions or threats in the course of elections.”

## B. Considerations

Refugees and IDP are particularly exposed to conflict in the five major stages of an electoral process. Fischer describes these threats below:

- Identity conflict can occur during the registration process when refugees or other conflict-forced migrants cannot establish or re-establish their officially recognized identities...
- Campaign conflict can occur as rival seeks to disrupt the opponent's campaign, intimidate voters and candidates, and use threats and violence to influence participation in the voting...
- Balloting conflict can occur on Election Day when political rivalries are played out at the polling station;
- Results conflict can occur in disputes over elections results and the inability of judicial mechanisms to resolve these disputes in a timely, fair, and transparent manner...
- Representation conflict can occur when elections are organized as “zero sum” events where “losers” are left out of participation and governance....<sup>90</sup>

Election security for refugee/IDP participations must address the exposure to physical threat that displaced persons must manage in their current location, while in transit, and in re-establishing themselves in their home communities (if facilitated repatriation is pursued). However, election security also involves extra veils of secrecy of the ballot for displaced voters in order to blunt attempts by some to intimidate voters. For example, if electoral stain is employed to prevent multiple voting, ultra-violet stain can be employed so that any such marking is not readily visible. In addition, the ballots for conflict-forced voters should be mixed with other votes so that the voting preference of the displaced as a discrete group cannot be discerned.

The most important element for ensuring voter security is through effective day-to-day cooperation between election authorities and on-the-scene security forces (whether international or domestic). In most post-conflict elections, however, it cannot be assumed that local security forces are impartial, and the presence of local police or military units could intimidate voters or use their access to undermine the transparency of the vote. Sometimes the situation may not be clear. In East Timor, for example, the Indonesian government had formally committed to providing security during the consultation process, yet many observers and UN officials pointed out that elements of the Indonesian military were providing support to the militia groups opposed to independence, and that these groups were actively terrorizing the population to influence the outcome of the ballot.<sup>91</sup> In BiH, all three parties to the Dayton Peace Agreement had committed to protect minority rights and allow for minority returns for the purposes of voting. Yet observers concluded that in many areas local security and police forces either did nothing to prevent (and even actively participated in) actions threatening the security of minority groups that sought to return to their home municipalities in order to vote. While the presence of the 60,000 NATO troops and thousands of UN Civilian Police prevented full-scale violence, isolated attacks and intimidating behavior on the part of local police was commonplace. In Liberia, the Economic Community of Western African States Cease-fire Monitoring Group (ECOMOG) troops managed to maintain an overall sense of calm and security for the elections, but the troop density was

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<sup>90</sup> Jeff Fischer, “Electoral Conflict and Violence: A Strategy for Study and Prevention.” IFES White Paper, 2002.

<sup>91</sup> Local police are nearly always involved in locally conducted elections. However, with East Timor this was an internationally-conducted election, and it was unusual that the election security was not entrusted to a multi-national force but to be provided by one side that had a vested interest in the outcome.

insufficient, and many areas of the country (particularly in the rural areas) remained off-limits to returning voters.

The issue is even more complicated in elections without international peace-keeping forces. In Russia/Chechnya, for example, the absence of a neutral security guarantor prevented many ethnic Chechens from returning home to vote. Similarly, in the 1996 Palestinian elections, many potential voters were dissuaded from participating in the Israeli-controlled areas of East Jerusalem and in Hebron by the intense presence of Israeli Defense Forces.

The first order of business for electoral actors is determining whether conditions warrant proceeding with the ballot. This is a difficult decision as elections have increasingly come to be seen as a key component of a peace-building process and the political imperative to proceed can be very strong. As Kumar notes, post-conflict elections have three primary objectives: the transfer of power to a legitimate government so that the international community can begin the delivery of foreign assistance; the consolidation of democratic institutions and processes; and the reconciliation of the formerly warring parties.<sup>92</sup> As a consequence, and particularly where the conflict has generated intense international involvement and oversight, there can be strong political pressure to proceed with elections, even if conditions may not yet be ripe. The 1992 elections in Angola are a paradigm example of elections that achieved none of the above objectives, 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 contributed to solidifying peace. However, the converse can just as well occur. In the 1997 Liberian elections security fears kept many eligible CFM voters from participating, contributing to the victory of Charles Taylor. Liberia also presents an interesting lesson in how voters tend to perceive their choices. Many of those who voted for Taylor believed that they were voting for peace, not necessarily Taylor, as Taylor was widely considered the only candidate who could stabilize the country and many voters feared his likely reaction to a loss.<sup>93</sup> As one voter stated, “[Taylor] killed my father but I’ll vote for him. He started all this and he’s going to fix it.”<sup>94</sup> This sentiment appears to have been shared by many Liberians, ranging from IDPs and refugees to regular non-displaced voters. Thus, even if a perfect election occurred, in which all eligible voters took part in the process, the result most likely would not have been different.

If the determination is made to proceed with elections, the next question becomes how to control militia and police forces that might interfere with the conduct of the ballot. As a general rule, weapons of any kind should be off-limits in polling and registration stations except in emergency situations. In the event of a disturbance, only duly constituted and legally recognized police forces (not military) should be allowed entry and only until the disturbance is ended. Nevertheless, police forces should work closely with local elections officials to ensure a rapid response time in the event of a disturbance. Military forces should have their own dedicated registration and polling facilities. These rules should be clearly stated in the electoral code.<sup>95</sup>

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<sup>92</sup> Krishna Kumar, *Postconflict Elections, Democratization and International Assistance*, Boulder: Lynne Rienner Publishers, 1998: 6 – 7.

<sup>93</sup> Terrence Lyons, “Peace and Elections in Liberia,” in *Postconflict Elections, Democratization & International Assistance*, Krishna Kumar, ed., (Lynne Rienner Publishers: London, 1998): 192.

<sup>94</sup> *Ibid.*, 191-192.

<sup>95</sup> 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.

The choice of electoral systems and registration and voting procedures can also contribute to a peaceful ballot. At a general level, election rules and regulations need to ensure that all actors believe they have a fair chance of contesting the election, and that their interests are not repeatedly discriminated against. Transparent and fair rules can help convince all sides that the process is working, making it more difficult for spoilers to claim that the election is biased against their interests. Key procedures here include:

- A neutral authority to provide transparent judicial overview of the process;
- A balanced composition of the election commission to ensure that all groups are represented;
- 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.

Providing for the security of conflict-forced migrants is especially challenging. For IDPs, security depends on the relationship between electoral authorities and security forces in country, as well as the mechanisms designed to ensure transparent processes. For refugees, security depends on cooperative relationships with host country governments and/or protection in transit if the vote is conducted as part of the repatriation program. The following discussion highlights the major security challenges facing conflict-forced migrants and examines best and worst practices that emerged during the 1990s.

#### *Providing Election Security to IDPs*

IDP voting raises significant security issues that might not apply to regular voters. Meeting these security needs depends on a careful consideration of the issues confronting these populations and the procedures and mechanisms of their enfranchisement. First, and most importantly, procedures must be in place for universal absentee registration and balloting. Requiring displaced populations to return to their home communities to vote will put them in direct contact with individuals and groups that may have been responsible for their displacement. As a general rule, the absence of a large scale, spontaneous return prior to the elections indicates that the security situation does not warrant the use of repatriation prior to elections as a means for IDP enfranchisement. In these situations, the only option for protecting IDPs' physical safety is through registration and balloting in their place of current residence.

Second, because of their collective experience, IDP communities tend to function as close-knit sub-groups. As a result, they should be served by dedicated registration and polling centers near their location and staffed by fellow IDPs (and other election workers) who understand their unique needs and procedures. Mixing displaced voters in with regular voters is certainly possible; however, co-mingling voters with varying identification and balloting needs can create long queues and overcrowded polling stations. In the 1997 Bosnian municipal elections, for example, the typical absentee station had to ensure that the voter received the proper ballot for one of 139 different municipalities, some of which had been reconstituted as part of the Dayton Peace Agreement and others of which were not even conducting elections. As a consequence, absentee polling stations generated enormous lines of often frustrated and angry voters. The separation of these voters from regular voters can speed up the voting process and ensure that long lines and crowded facilities do not result in violence. This separation can occur either through separate lines and voting station within a "twin" station, or through providing special absentee balloting stations.

In addition, IDP voters are more difficult to reach and instruct on election rules and procedures. IDP populations often interpret voter registration and voting as a reaffirmation of their citizenship or their right to return home. While registration for elections should never be formally equated with other rights (such as citizenship or with property claims), it is difficult to make this distinction clear to the displaced voter. Thus, denial of registration can be interpreted as a broader denial of the individual's right to membership in the polity conducting elections or of their right of return. If large numbers of IDPs are denied registration, crowded facilities may suddenly become flashpoints for demonstrations of anger at electoral authorities. Clear procedures should be in place to ensure that those denied registration: a) understand that this denial has no bearing on their right of return; and b) are provided the opportunity to appeal the decision through a formal judicial or administrative process. If the IDP is denied at the polling station, a universal conditional ballot should be implemented to afford the displaced voter a non-conflictive opportunity to participate.

If absentee polling stations are not provided, or a dual program where the voter has the option of voting in their former or current residence is implemented, procedures will need to be in place to protect election-related movements of people. These procedures should at a minimum include the creation of safe transit routes, protected by neutral security forces, as well as potentially organized movement programs such as those conducted by the UNHCR and NATO in the 1996 Bosnian elections, where recommended inter-entity voter routes were secured by additional security assets. In addition, procedures to ensure that neutral monitors have access to election facilities and registration/polling stations can reassure IDPs seeking to return to their home localities to participate. 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. Here again, however, election administrators need to find the proper balance between providing effective security without sending signals that military forces should have unrestricted access to polling stations. In the Bosnian elections, the effective working relationship between the OSCE Election department and the NATO Implementation and Stabilization Forces (IFOR/SFOR) hierarchy through the Joint Elections Operations Commission provides a good example of ensuring that the military presence is not intrusive with effective coordination and cooperation to ensure that a response is possible should conditions deteriorate in a registration or polling station. Again, this cooperation is easier to accomplish in the midst of a massive international multi-mandate peace-keeping operation.

#### *Providing Election Security to Refugees*

Host governments are primarily responsible for the security of refugee voters within their borders. As a result, election administrators need to establish strong communication channels and cooperative relationships with the host states. As foreign relations are beyond the competence of election commissions, administrators will need to work with their government's diplomatic branches as a first step to reaching out to host state governments. This entails briefing foreign ministry staff on elections procedures and requirements, as well as ensuring that procedures are in place for rapid communication of election issues between governments. Because of the regional nature of refugee enfranchisement exercises, inter-governmental organizations may need to be engaged or ad hoc instruments devised with a regional reach and mandate. For example, IOM has been engaged in the conduct of refugee registration and voting for Bosnia and Herzegovina, East Timor, and Kosovo. An important tool in this regard is the negotiation of detailed Memoranda of Understanding (MoUs) with host state governments and the assignment of dedicated officials in the host state to working on the elections process. Best practices in this regard occurred in Bosnia, Kosovo and East Timor, where the major host states all committed significant personnel and resources to the elections. These memoranda included detailed descriptions of the respective rights and obligations of each actor, and included, where necessary, payment to host states to help in election implementation.

In terms of security, the MoUs mentioned above all included specific security provisions at external registration and voting facilities. Host state governments formally undertook to ensure this security through close cooperation with election implementers in the host state. The

provisions included support from local police and security forces, as well as mechanisms to ensure dialog and cooperation between the election administrators and the host state security services. In all three cases, while occasional security issues arose, no refugee voter was ever killed or seriously injured as part of their electoral participation.

The above examples all apply to instances where elections were conducted as part of a large, multi-mandate peace-keeping operation and included organized election activities in multiple locations throughout the host states. In other cases, such as the Eritrean Referendum, the intense international supervision and support did not exist. In these cases, less formal relationships were established between the states conducting elections and the host states. For the Eritrean referendum, the relationships between the transitional regime in Ethiopia and Sudan were generally amicable, owing largely to the cooperative arrangements the Eritrean People's Liberation Front (EPLF) had established with these governments during the struggle for independence. Furthermore, Ethiopia and Sudan were anxious to see a formal end to the conflict that had precipitated refugee flows. By finalizing Eritrea's independence, Sudan and Ethiopia hoped to be relieved of their legal obligations under the 1951 Convention, and thereby, anticipated that the repatriation of the remaining refugee population would be expedited. Thus, Sudan made financial and logistical contributions in order to facilitate the RCE's efforts - both in refugee camps and in other locations where Eritreans resided. Ethiopia contributed by providing security details. Outside of the region, the balloting was largely organized by the extremely cohesive and strong networks of expatriate civic organizations. Security in these registration and polling stations was largely managed by the local contacts these organizations enjoyed with the host state local and regional governments.

#### *Other Security Issues Related to Refugee/IDP Voting*

On a more general level, the participation of refugees and IDPs in elections can create wider security problems. First, if the displaced ballots are counted and reported separate from the regular ballots, it can quickly become obvious what the political preferences of these communities are. This information could potentially be used against the displaced populations and might create high levels of resentment against them in the area for which their ballots are cast. One solution to this problem would be to mix displaced ballots with regular ballots before the count.

Second, the delays resulting from absentee voting programs could undermine the election process and create suspicions on the part of political actors that the election is not transparent. The political incentive to conduct and report results from an election can be enormous, and the extended timelines required to process and count absentee ballots can significantly slow down the reporting of results. The only solution here is to ensure that all political actors are aware that results might not be available immediately, and to ensure the full transparency of all components of absentee balloting, transport, and counting. It is probably not wise to report election results from the regular ballots prior to the count of absentee ballots, which would create expectations on the part of candidates and parties, which would be upset if the absentee ballots substantially change the outcome.

### **C. Summary of Conclusions and Recommendations**

- **Refugees and IDPs should always be provided the option of absentee balloting, particularly when conditions in the country organizing elections are not yet conducive for return as demonstrated by the absence of large-scale, country-wide spontaneous returns;**
- **Dedicated absentee polling stations should be established for IDP voters, rather than having them vote in the same station as regular voters;**



- **If voting will only occur through repatriation or if a dual absentee/repatriation program is conducted, election authorities need to establish safe transit routes and create procedures to ensure that displaced voters are able to return to their home polling station safely and securely. Election administrators should work closely with international security forces and with UNHCR, IOM and other international humanitarian organizations to provide safe means of transport;**
- **Voter registration should never be linked to property claims or the provision of social welfare benefits. In some cases, it is desirable to link the registration with a wider civil registration or national census, but perceptions that voter registration will in some way affect the displaced person's welfare benefits or claims to specific property should be avoided.**
- **In instances where the act of participating in elections would subject displaced voters to intimidation or retribution, ultra-violet stain should be employed rather than visible stain, when the staining method is used to prevent double voting.**
- **Ballots for conflict-forced voters should be mixed with other votes during counting so that the voting preference of the displaced as a discrete group cannot be discerned.**
- **Security for refugees is the responsibility of host state governments and is governed by their obligations under the 1951 Refugee Convention. Nevertheless, electoral actors need to work closely with host state governments and should negotiate detailed MoUs that include provisions for election security. Because of the regional nature of refugee problems, international organizations can be engaged to facilitate contact and cooperative relationships with refugee-hosting states.**

## 6. MOVEMENT AND LEGAL STATUS OF CONFLICT-FORCED MIGRANTS

A free and fair election requires that voters be able to travel to registration and polling stations, receive unbiased election or campaign information, and participate in rallies and public events. In addition, the participation of conflict-forced migrants should never be linked to their legal status, whether inside the state conducting elections (IDPs) or in a host country (refugees). Conflict-displaced populations should be seen as *subject* voters in that their ability to make free political choices is compromised by an overwhelming dependence upon the services of governments. Their capacity for free movement and even their access to basic services may be subject to limitations. In some cases, refugees/IDPs may find that their legal status might change as a consequence of their electoral participation. Either outcome will undermine participation and produce electoral outcomes in which CFM populations are not guaranteed an equal voice and vote.

### A. Freedom of Movement

Restrictions on freedom of movement can take two forms. First, continued security problems in parts of the country and/or widespread mine infestation along travel routes creates a passive barrier to movement. While these conditions affect both displaced and non-displaced populations, the displaced may suffer disproportionately if the election does not include mechanisms for absentee balloting. Regular voters generally register and cast ballots near their home locations. The displaced may have to travel enormous distances. This problem reinforces the recommendation made above (see Election Security) that absentee ballot programs be implemented. An example of the former situation would be in BiH and East Timor, where it was largely these security issues that prevented freedom of movement.

Second, conscious government policies that restrict IDP freedom of movement create an active barrier to movement. These restrictions generally result from policies that force displaced populations into internment camps for security purposes (such as Burundi's *regroupment* policy), or from policies that limit freedom of movement to the entire population, such as the regular closing of transit routes in the West Bank by Israeli Defense Forces. In the case of refugees, freedom of movement is most commonly restricted by policies such as detention of asylum seekers and the emergence of temporary protection status (TPS).

#### A.1 Legal Norms and Standards

The right to freedom of movement, both in general and specifically as applicable to displaced populations, is promulgated in the following instruments:

- **UDHR, Art 13 (1-2):** Everyone has the right to freedom of movement and residence within the borders of each state... Everyone has the right to leave any country, including his own, and to return to his country.
- **ICCPR, Art 12 (1-4):** Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence... Everyone shall be free to leave any country, including his own... The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant... No one shall be arbitrarily deprived of the right to enter his own country.
- **1951 Refugee Convention, Art 26:** Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory subject to any regulations applicable to aliens generally in the same circumstances.

- **Guiding Principles, Section III, Principles 14 and 15:** Every internally displaced person has the right to liberty of movement and freedom to choose his or her residence... In particular, internally displaced persons have the right to move freely in and out of camps or other settlements. Internally displaced persons have: (a) The right to seek safety in another part of the country; (b) The right to leave their country; (c) The right to seek asylum in another country; and (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.
- **African CHPR, Art 7:** Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law ... Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality.
- **American CHR Art 22 (1-3):** Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law... Every person has the right to leave any country freely, including his own... The exercise of the foregoing rights may be restricted only pursuant to a law to the extent necessary in a democratic society to prevent crime or to protect national security, public safety, public order, public morals, public health, or the rights or freedoms of others.
- **Copenhagen 9 Para 5:** [All states] will respect the right of everyone to leave any country, including his own, and to return to his country, consistent with a States' international obligations and CSCE commitments. Restrictions on this right will have the character of very rare exceptions, will be considered necessary only if they respond to a specific public need, pursue a legitimate aim and are proportionate to that aim, and will not be abused or applied in an arbitrary manner;

The right to move freely in the context of elections is covered in only two of the standards initiatives. In each case, the right appears to be linked primarily with the right to campaign freely. Note that the ACEEEO Convention references freedom of movement "on an equitable basis," which could imply that some restrictions are allowable so long as they are not discriminatory. On the other hand, it also lends support to the notion that displaced persons should not be discriminated against in any way. The core statements can be found in:

- **IPU Criteria for Free and Fair Elections Article 3.3:** Everyone individually and together with others has the right ... to move freely within the country in order to campaign for elections.
- **ACEEEO Draft Convention on Election Standards Art 14.1.d:** Each citizen, individually or together with other persons, shall be entitled to: ... freely travel over the country and/or territory of the constituency ... while participating in an election campaign on an equitable basis with other election participants.

## **A.2 Considerations**

Since post-conflict elections almost always occur in situations where full freedom of movement is not possible, election organizers should offer multiple opportunities for access. These include absentee stations in the current place of residence, the use of "border stations" (as in Kosovo, where election facilities were located on the boundary with Serbia-proper), and the judicious use of the Internet as a means of publicizing election information and making application forms available to displaced populations. Freedom of movement means that the displaced voter can move closer to the electoral activity; opportunity for access means that the electoral activity can move closer to the displaced voter.

In general, conditions should be facilitated to ensure that all registrants and potential voters are free to travel to election facilities. In BiH, for example, one of the criteria for certifying that the 1996 elections would proceed was linked to freedom of movement, particularly between the two entities created by the Dayton Agreements. Working closely with IFOR, the OSCE established designated "voters' routes" by which voters could return to their home municipalities to vote. Nevertheless, as Election Day neared, it became apparent that many municipalities remained off limits to IDP returns for voting purposes. As a consequence, the OSCE established special displaced voting stations throughout the country, as well as "border stations" where voters that attempted to return home to vote in person could cast a ballot if they were unable to cross the boundary line between the Federation and the RS. While some Bosnian political parties claimed that the establishment of the absentee stations would officially recognize the partition of BiH, most voters preferred the option of voting in their current municipality, rather than taking the risk of returning to their homes (only about 15,000 voters chose to return to their homes on Election Day).<sup>96</sup> Thus, in situations where security considerations limit the freedom of movement, absentee balloting stations, either in the IDPs' current municipality of residence, or in areas nearest their municipality of origin that are safe for IDPs to reach, should be established.

Active government policies that limit the freedom of movement of displaced populations should be subject to scrutiny. States party to the international human rights machinery should ensure that their actions conform to the principle of freedom of movement. If possible, the guarantee of freedom of movement should be clearly stated in the state's constitution and its election code. Election observers should pay special attention to freedom of movement issues, and elections that proceed where the government has limited this right and not provided the absentee balloting option should be viewed skeptically when determining whether the election has been conducted in a free and fair manner.

In the case of refugees, freedom of movement is a host country consideration. As noted above, the 1951 Refugee Convention obligates governments to allow freedom of movement to recognized refugees, "...subject to any regulations applicable to aliens generally in the same circumstances." Although not directly stated in the Convention, it is widely held that governments may derogate this right in strategic and frontier zones, particularly in zones where rebellion and active hostilities may be ongoing. In general, developed countries do not limit the right to freedom of movement to recognized refugees. In many developing countries, however, even recognized refugees are frequently forced into closed camps and face severe restrictions on their ability to travel. Host states often justify these policies as necessary for reasons of national security or for logistical purposes, such as facilitating the distribution of humanitarian aid.

A related concern has to do with movement from the host state to the country conducting elections and back. In Liberia, for example, many of the neighboring states severely limited the freedom of movement for refugees during the election cycle. Guinea closed its border crossing with Liberia for several weeks surrounding the election; while Liberian refugees could travel into Liberia, movement back into Guinea was prohibited due to government fears that Taylor's forces were considering an incursion into Guinean territory. As a consequence, the majority of refugees in Guinea were disenfranchised.

Since election authorities have no jurisdiction inside host state territories, freedom of movement in connection with an election needs to be negotiated between the foreign ministries of the states concerned. If the participation of refugees is occurring under the framework of a MoUs, election administrators should seek to include language guaranteeing the free movement of persons in connection with the election. If possible, registration and polling stations in the host countries

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<sup>96</sup> CNN, "Izetbegovic holds lead in Bosnian elections: Final results available Wednesday, OSCE says," September 17, 1996. Available at: <http://www.cnn.com/WORLD/9609/17/bosnia.update>.

should be within easy reach of refugee population, perhaps even in refugee camps and in major cities where refugees have settled.

The legal situation is more complex in regards to persons who have not been granted asylum status. In the case of temporary protection status, or in instances where governments place asylum seekers in detention before recognizing their status as refugees, freedom of movement may be far more limited. In general, the European states that hosted large numbers of Bosnians and Kosovars under the TPS system allowed widespread freedom of movement and most were able to participate in the elections. Countries that hold large numbers of asylum seekers in detention, however, present a far more problematic scenario. On the one hand, the concentration of potential voters might help ensure their enfranchisement if registration and polling centers are established in the camps. On the other hand, mass detention of asylum seekers raises problematic human rights issues and ought not to be encouraged. Ultimately, this is an issue well beyond the competence of election administrators.

### **A.3. Summary of Conclusions and Recommendations**

- **Freedom of movement, particularly for displaced populations, should be expressly stated in a country's electoral code, and should also serve as one of the criteria for determining whether conditions warrant proceeding with elections;**
- **In the case of IDPs, if the election is occurring as part of a multi-mandate peace-keeping operation, EMBs should coordinate with international security forces to provide and protect designated "voters' routes" for voters who will be traveling to reach election facilities.**
- **In the case of refugees, freedom of movement issues should be discussed by the foreign ministries of the states concerned. If possible, host state commitments to allow freedom of movement should be included in MoUs. It is desirable that host states allow refugees two-way movement (into the home country to register/vote and back into the host state following the election).**
- **If host states detain asylum seekers, special procedures should be implemented to provide either postal or in-person registration/voting processes in the detention facilities.**

### **B. Host country status**

Recent experiences suggest that the participation in elections is sometimes interpreted by host states as signifying that conditions in the home country have sufficiently stabilized to warrant repatriation, perhaps against the refugee's will. The argument is that since the conflict is over and conditions have stabilized to the point that elections are possible, then the *non-refoulement* prohibition no longer applies. This notion has been reinforced by statements in peace agreements and electoral codes that link participation with intent to return. The 1997 Rules and Regulations for the Bosnian election, for example, held that "[t]he exercise of a refugee's right to vote shall be interpreted as confirmation of his or her intention to return to Bosnia and Herzegovina. By Election Day, the return of refugees should already be underway, thus allowing many to participate in person in elections in Bosnia and Herzegovina." While this language can be interpreted positively as reinforcing the refugee's fundamental right of return, it could also be interpreted by the refugees as implying that their participation might influence their status and ability to remain in the host country. It should be stressed that elections in societies emerging from or even in the midst of wide-spread conflict should never be interpreted as a "green light" for forced refugee repatriation. Elections in places such as the Palestinian Territories, Sri Lanka, Northern Ireland, Kashmir, and Colombia are elections held in continuing conflict zones. A displaced person's participation is not a signal that the conflict is over.

A second issue regarding host country status has to do with linking the provision of social welfare benefits to electoral participation. As noted in the discussion on election security, IDPs and refugees are “subject voters,” and as such, may face pressure to register for certain districts or to vote in certain ways. In the Bosnian elections, for example, both the Croatian and Yugoslavian government relief agencies sought to link electoral participation with the care and protection offered to refugees. The Yugoslav case, where the government-controlled Red Cross demanded that Bosnian Serb refugees provide a registration receipt in order to receive financial and material support, was the more dramatic of the two. Even in Croatia, however, the government sought to use the voter registration statistics as a basis for continued social welfare support. This practice should be strictly curtailed.

### **B.1. Legal Norms and Standards**

The core statement on *non-refoulement* can be found in the 1951 Refugee Convention and the Cartagena Declaration and African Convention on Refugees:

- **1951 Refugee Convention, Art 33(1):** No Contracting State shall expel or return (“*refouler*”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.
- **Cartagena Declaration on Refugees: Para. 5:** To reiterate the importance and meaning of the principle of *non-refoulement* (including the prohibition of rejection at the frontier) as a corner-stone of the international protection of refugees. This principle is imperative in regard to refugees and in the present state of international law should be acknowledged and observed as a rule of *jus cogens*... **Para 12:** To reiterate the voluntary and individual character of repatriation of refugees and the need for it to be carried out under conditions of absolute safety, preferably to the place of residence of the refugee in his country of origin.
- **Convention Governing the Specific Aspects of Refugee Problems in Africa, Art 2(3):** No person shall be subjected by a Member State to measures such as rejection at the frontier, return or expulsion, which would compel him to return to or remain in a territory where his life, physical integrity or liberty would be threatened ... **Art 5(1):** The essentially voluntary character of repatriation shall be respected in all cases and no refugee shall be repatriated against his will....

None of the refugee protection or election standards initiatives directly address the issue of linking voter registration with provision of social welfare benefits.

### **B.2. Considerations**

Despite the clear peremptory norm of *non-refoulement*, the cost associated with processing asylum claims and providing social welfare benefits to refugees resulted in a weakening of support for the refugee protection regime during the 1990s. Situations of mass refugee influxes can overwhelm the asylum procedures of host states and generate popular resentment on the part of host state populations to asylum seekers. In response to the mass inflow of asylum seekers from BiH, for example, Germany and a number of other European governments offered “Temporary Protections Status,” rather than formal refugee status.<sup>97</sup> Under this arrangement, those fleeing the chaos of the Bosnian conflict were allowed entry into the receiving states, but

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<sup>97</sup> Many analyses note that TPS first came to prominence as a consequence of refugees from Yugoslavia. UNHCR, however, notes that the notion was also used by states in Asia to deal with the influx of Vietnamese boat people and by Pakistan, which granted similar status to Afghan refugees during the 1980s and 1990s. See, UNHCR, The State of the World’s Refugees – In Search of Solutions. (Oxford: Oxford University Press, 1999)

were denied the opportunity to have a formal asylum hearing as mandated by the 1951 Convention. Since host states were clearly unwilling to comply with the Convention, UNHCR proposed that while mass influxes do indeed indicate that the asylum seekers warrant protection under the terms of the 1951 Convention, temporary protection status is a useful, albeit second best approach, to overcoming the political problems confronting the refugee receiving states.<sup>98</sup> According to the UNHCR, "Temporary protection is a device used to respond to an emergency where there are clear protection needs but little or no possibility to determine such needs quickly on an individual basis. Temporary protection needs to last only until there is a fundamental change in the circumstances that prompted people to flee. When this fundamental change occurs, the country of asylum may presume that the need for protection no longer exists and that the vast majority of beneficiaries can return in safety. Nevertheless, the countries of asylum must be aware that some people will continue to be in need of protection..."<sup>99</sup>

Given that temporary protection is not directly addressed by the 1951 Convention, governments have the ability to limit or curtail the full range of rights that must be afforded to persons granted asylum. While the key principle of *non-refoulement* continues to apply, host states have more flexibility to terminate temporary protection should they feel that the conditions leading to the mass displacement have been rectified. According to Amnesty International: "The termination of refugee status requires that a change of circumstances in a country is of such a profound and enduring nature that refugees from that country no longer require international protection, and can no longer continue to refuse to avail themselves of the protection of their country. There is no such international standard for the termination of temporary protection, which means that states which host refugees on a temporary basis are not held accountable for the ending of temporary protection."<sup>100</sup>

The participation of refugees in their home country election can be an important step towards peace-building in that country. It is not, however, the final step, but rather the beginning of a protracted process. While elections may contribute to the conditions necessary to return home, in the short term there is no evidence that elections will necessarily convince the refugee that they would be free from persecution should they return. Thus, the registration and voting of refugees should never be interpreted by the host state as signaling the termination of asylum or temporary protection status. EMBs and electoral actors should attempt to convince refugee-hosting states that registering to vote bears no relation to the refugee's status in the host state. Once these commitments are in place, this information should be made clear to refugee populations as well. Language such as that appearing in the 1997 Bosnian Rules and Regulations ought to be avoided.

The second key issue related to host country status is the linkage of electoral participation with continued provision of social support services to refugees. In some cases, the participation (or non-participation) of refugee populations in an election is of strategic interest to host governments or other actors in the host state. The Bosnian and Kosovo elections both produced instances where host state governments sought to either ensure maximum enfranchisement or boycott the ballot. During the BiH elections, the government-controlled Yugoslavia Red Cross at one point conditioned the provision of benefits to Serbian refugees in the Federal Republic of Yugoslavia (FRY) on their registering to vote. Even further, some refugees reported that they were required to show forms from the OSCE indicating their intent to vote in a "future municipality" where the Bosnian Serbs sought to generate a *de facto* electoral majority. Such practices directly threaten the material welfare of refugees and are a clear violation of basic election standards as well as government obligations under the Refugee Convention. Election administrators thus must make

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<sup>98</sup> The UNHCR Executive Committee has noted that "In situations of large-scale influx, asylum seekers should be admitted to the state in which they first seek refuge, and if that state is unable to admit them on a durable basis, it should always admit them on a temporary basis and provide them with protection..." UNHCR Executive Committee Conclusion No. 22 (1981).

<sup>99</sup> UNHCR, "Refugee Protection: A guide to International Refugee Law." Available at <http://www.unhcr.ch/cgi-bin/texis/vtx/rsd/rsddocview.pdf?CATEGORY=RSDLEGAL&id=3cd6a8444>.

<sup>100</sup> <http://www.amnesty.org/ailib/intcam/refugee/report/chapter6.htm>

sure to understand the political interests of host states and communicate to government counterparts in the host state the unacceptability of these practices. Again, one mechanism through which this can be accomplished is through MoUs between the host and home states.

The issue is further complicated by one of the core components of a transparent election, i.e. the right of all citizens to review the voters register. The public display of names on the voters register is widely considered a necessary component of free and fair election, but also makes available to any interested government or political group detailed information about refugees' names, places of residence, and perhaps even information related to their likely voting preferences. In BiH, for example, the political parties were able to determine likely voting behavior of the CFM registrants based on the fact that an individual's name often signified his or her ethnic affiliation. Political parties were thus able to calculate how the voting was expected to turn out in various municipalities and used this information to prioritize areas where an emphasis should be placed on stacking the roles with their own supporters.

As a rule, voters registers must be public documents, fully accessible for the purposes of making challenges to the register. Thus, the collection and display of a voter's personal data should be allowed, but should never be used for any other purpose than for suffrage rights. In post-conflict elections, the legal framework of the elections should clearly state who may have access to the voters register, during what periods and under what conditions, and should clearly specify what uses may be made of the voters' information. The information should never be linked to the provision of social welfare benefits, and attempts to do so should be sanctioned by election management bodies. A useful tool in this regard is the striking of candidates from party lists, a punishment that was often employed by the OSCE in BiH. This technique is effective because when host states link social services to voter registration, they generally do so with the intent of influencing the electorate in favor of one or more political parties. As a consequence, where it can be determined that this is the purpose of the host state, punishing the political parties that benefit from this tactic will prompt them to lobby the offending state not to engage in this behavior.

### ***B.3. Summary of Conclusions and Recommendations***

- **Participation in a home country election should never be interpreted by refugee-hosting governments as implying that conditions in the home country are suitable for forced repatriation;**
- **Registration for elections should never be linked with other government programs, particularly the distribution of social welfare benefits;**
- **Election actors should be cautious when making refugee voters registers available for public inspection. While minimum standards for free and fair elections require these be public documents, they should only be made available in election-related locations, and should not be photocopied or in any other way distributed on a mass basis**



## 7. VOTER EDUCATION AND CAMPAIGN IN ASYLUM

A free and fair election requires that the voter can obtain information on how to participate and on the platforms of the various political parties and candidates. The two issues are distinct. Information on how to participate is primarily the task of the election management body while campaign and platform information is ultimately the responsibility of the political parties themselves. The election code should provide guarantees of equitable access to media by political contestants (.e.g. state owned media should remain neutral, no law should prohibit registered parties and candidates from campaigning, etc.). Obviously, these rights are difficult to implement in third countries, where the election management body does not have a mandate to operate. Nevertheless, administrators do have a number of options at their disposal to ensure that refugees are provided sufficient information to participate in an informed manner.

### A. Legal Norms and Standards

The human rights instruments and standards initiatives address these issues in several ways. The right to freedom of belief and to obtain information is contained in:

- **UDHR, Art 19:** Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.
- **ICCPR, Art 19:** (1) Everyone shall have the right to hold opinions without interference. (2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
- **Guiding Principles Sec III Principle 22 (1):** 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 the following rights: (a) The rights to freedom of thought, conscience, religion or belief, opinion and expression... (d) The 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.

Governments also have an obligation to provide election-related information and allow freedom of campaigning. These rights are contained in:

- **IPU, Declaration on Criteria for Free and Fair Elections: Article I.3.a:** aa: State authorities must observe their duty of neutrality. In particular, this concerns: i. media; ii. billposting; iii. the right to demonstrate; iv. funding of parties and candidates. bb. The public authorities have a number of positive obligations; inter alia, they must: i. submit the candidatures received to the electorate; ii. enable voters to know the lists and candidates standing for election, for example through appropriate posting. iii. The above information must also be available in the languages of the national minorities. cc. Sanctions must be imposed in the case of breaches of duty of neutrality and voters' freedom to form an opinion. **Art 3 (3):** To seek, receive and impart information and to make an informed choice, as well as **Article 3(4):** Every candidate for election and every political party shall have equal opportunity access to the media, particularly the mass communications media, in order to put forward their political views. **Article 4(1):** States should take the necessary legislative steps [to] ... initiate or facilitate national programs of civic education, to ensure that the populations are familiar with election procedures and issues. **Art 4 (2):** Ensure that those responsible for the various aspects of the election are trained and act impartially, and that coherent voting procedures are established and made known to the voting public. **Art 4(3)** States shall respect and ensure the human rights of all individuals within their territory and subject to their jurisdiction. In time of elections, the State and its organs should therefore ensure: That freedom of movement,

assembly, association and expression are respected, particularly in the context of political rallies and meetings; That parties and candidates are free to communicate their views to the electorate, and that they enjoy equality of access to State and public-service media ... **Art 4(4)** In order that elections shall be fair, States should take the necessary measures to ensure that parties and candidates enjoy reasonable opportunities to present their electoral platform...

- **SADC Norms and Standards C. (2)(4):** The Electoral Commission should be required by law to provide for a satisfactory and adequately funded voter education program that helps voters to be acquainted with the voting procedures and other aspects of civic awareness...
- **OSCE/ODIHR Draft Standards and Commitments III.E:** ... law and public policy *should* require that state authorities inform and educate voters concerning elections processes, candidates and political parties. In light of these principles ... election administration bodies should provide timely information to the public on (1) candidates and political parties (2) voting procedures, and (3) procedures for protecting electoral rights. This information should be provided in the languages of national minorities ...
- **Copenhagen 7 Para 7:** [Binds participating states to ensure] ...a free and fair atmosphere in which neither administrative action, violence, nor intimidation bars the parties and candidates from freely presenting their views and qualifications, or prevents the voters from learning and discussing them ... **7 Para 8:** provide that no legal or administrative obstacle stands in the way of unimpeded access to the media on a non-discriminatory basis for all political groupings and individuals wishing to participate in the electoral process;...**Copenhagen 9 Para 1:** ... everyone will have the right to freedom of expression including the right to communication. This right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
- **ACEEEO Draft Convention on Election Standards Art 4 (3):** In genuine elections voters shall have timely and free access to the information about candidates (lists of candidates), political parties (coalitions) and about the electoral process and a candidate (candidates), political parties (coalitions) shall have access to the mass media and telecommunications media on equal legal conditions... **Art 14 (1)(c) and (4)** Each citizen, individually or together with other persons, shall be entitled to ... search for, obtain and communicate information about the electoral process and make a sound personal choice... The States Parties to this Convention shall make arrangements for informing citizens and other election participants about the legislative requirements to the procedure for nomination and registration of candidates, lists of candidates of political parties (coalitions), about the status of candidates, political parties (coalitions) participating in elections, about the periods for the performance of electoral actions and procedures and also about the statutory acts and their provisions relating to the preparation and administration of elections.

## B. Considerations

Voter and civic information are separate processes. Voter information has to do with providing information on “how” to participate, and is thus an education program resulting in the transfer of skills. In this case, those skills are how to register and how to vote. Civic information programs disseminate information related to political parties and platforms. The programs ensure that the electorate is provided sufficient knowledge of the issues and candidate stances so as to make an informed and responsible choice. Since these programs each serve a different end, they are dealt with separately below.

## **B.1 Electoral Process Information**

One of the key tasks facing an external voting program is informing eligible registrants of the timelines, eligibility criteria, and mechanisms for registering and casting a ballot. A recurring problem in postal voting programs is that rules and regulations in post-conflict elections are often newly devised, transitional in nature, and may be significantly different than pre-war electoral procedures. In Liberia, for example, the pre-war electoral formula was based on a single-member majoritarian system. Given the massive population displacement, both ECOWAS and the UN believed a new electoral formula would be required and instituted a proportional system in a single national constituency. As one report notes: "This decision allowed Liberia to defer the difficult process of conducting a census and redistricting, but it was never understood by many Liberians."<sup>101</sup>

A related issue is that given the dynamic political situation in post-conflict elections (particularly those undertaken in the context of a peace-keeping operation), electoral procedures are often not agreed to until the last minute or are changed mid-way through the process. Since postal elections for refugees require a longer lead time to mail out and return election materials, these changes can have unfortunate consequences on refugee enfranchisement. In Kosovo, for example, the original operational plan called for an intensive refugee information campaign to begin one month prior to the start of registration. Unfortunately, the Kosovo Central Elections Commission (CEC) was unable to agree on eligibility criteria until one day before the beginning of registration, making it impossible to inform the refugee voters of basic information during the first few weeks of registration. Furthermore, the CEC made important changes to the rules and regulations mid-way through the process, which forced the postal program to adapt materials and attempt to clarify issues with individual voters and registrants on an ad-hoc basis.

The issue then becomes how to inform the refugee electorate of procedures, given that the population may be dispersed around the globe. In this regard, the 2000 and 2001 Kosovo elections provide an excellent case of best practices. In order to facilitate contact with a widely dispersed and mobile Kosovar displaced population, the IOM, which had been subcontracted by the OSCE to manage the refugee voting program, established an Information Cell at the by-mail headquarters in Vienna to implement and oversee the information campaign. A media relations expert managed the office, providing oversight and guidance to five Information Liaison Offices established in Berlin, Brussels, Geneva, Rome, and Washington DC.<sup>102</sup> The campaign disseminated information on the registration procedures and regulations to thirty-two host-countries, resulting in 180,000 applications for registration, and nearly 90% of eligible ballots being returned in time for counting in the election. The primary information outlets included:

- *Albanian Language Newspapers: Koha Ditore and Bota Sot*, both widely available in Western Europe, published information furnished by IOM on the registration and voting process. They also published a cutout insert of the actual registration form that applicants could return to the registration headquarters in Vienna.
- *Radio and Television*: The satellite television station RTK (Radio Television Kosovo), broadcasted several hours per week in Western Europe, and ran advertisements publicizing the registration and voting procedures, guidelines, and dates.
- *Internet*: The OSCE Secretariat in Vienna hosted an external voting Internetsite, which contained information on eligibility, as well as a downloadable registration form.
- *Kosovar Clubs and Associations*: A database of over 2,000 Kosovar clubs and associations was produced early in the campaign. These clubs served as information

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<sup>101</sup> Lyons in Kumar., 182.

<sup>102</sup> The five Information Liaison Offices were each responsible for a specific country or region and were geographically distributed based on locations of identified large populations of Kosovars. Each was tasked with identifying and maintaining contact with local Kosovar clubs and associations and operating telephone hotlines to answer questions and provide information to registrants and voters. The five offices served as a key link between the program coordinator and activities in the field.

“multipliers” in that the IOM would forward information and materials and have the clubs pass them on through their existing networks of connections and members. This was probably the single-most important source of information distribution.

- *Posters*: These were disseminated to the Government contacts, International Organizations, and the Kosovar Associations in the various host countries.
- *Telephone and Fax*: The IOM operated a centralized telephone “hotline” system in Vienna and other European Countries. The hotlines were staffed with both Albanian and Serbian speakers, and ultimately responded to over 32,000 calls (25,000 during registration alone). Via the hotlines, registrants and voters were able to inquire about the procedures and check the status of their registrations and ballots.

For the in-person registration and voting, the IOM signed MoUs with the host country government counterparts that tasked the host-government with managing the information campaign in cooperation with IOM. Host-governments assumed the lead role because of: a) their extensive networks and contacts among refugee populations; b) the capacity to negotiate less expensive rates with local media outlets; and c) better knowledge of the geographic dispersion of the target audience. IOM maintained a strong role in ensuring that the information distributed by governments was accurate and non-partisan. For the most part, the management of official information campaigns worked well, which was not always the case in the Bosnian elections. In that case, the host states (primarily Yugoslavia and Croatia) frequently sought to use the official information campaign to influence the outcome of the vote.

A third issue confronting EMBs is what role non-governmental refugee clubs and associations should play in the education process. In both BiH and Kosovo, these groups proved to be very helpful in distributing information and raising voter awareness. On the other hand, these groups are rarely neutral in political orientation, and often seek to guide the registration and voting behavior of their members. In the Bosnian elections, for example, Bosnian refugee associations in Croatia deliberately published and distributed misinformation related to eligibility criteria in order to stack the refugee voters registers. In Kosovo, some of the clubs assumed inappropriately intrusive roles in the process. One club in Switzerland sought to actually operate registration centers and demanded that IOM pay for the provision of space and staff. In Germany, a club distributed and collected registration forms from applicants, and then demanded that IOM pay for its services and the shipping of forms to Vienna (in both cases, IOM refused). In general, election administrators should encourage the active participation of civil society organizations, but their role must be limited.

One major issue that plagued the refugee voting in BiH, (but was notably absent during the Out-of-Kosovo program) had to do with the role of the host country press. Observers noted that press reporting on the elections in Croatia and FRY was heavily partisan, and often included erroneous information on registration criteria in order to maximize potential registrants.<sup>103</sup> In addition, host state press often reaches beyond national borders, with signals and distribution channels that penetrate deeply into the country holding elections. The problem here is that the election rules and regulations often stipulate guidelines for media behavior, but the press in neighboring states is not bound by these guidelines. Thus, during the 1998 Bosnian refugee voting program in Croatia, the government-run HRT repeatedly broadcast highly partisan stories and commentary in support of the government’s sister party inside BiH. The OSCE reacted by striking candidates from the party lists. The Croatian government and refugee associations threatened a possible boycott in response, arguing that OSCE had no right to censor the media in a sovereign country in which the OSCE mission in BiH had no legal authority to operate. Similarly, the Indonesian Press often reported erroneous information related to the conduct of the East Timor Consultation.

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<sup>103</sup> See “The 1997 Municipal Elections in Bosnia-Herzegovina,” Report prepared by the staff of the Commission on Security and Cooperation in Europe, October 1997; and, Council of Europe, Parliamentary Assembly, “Observation of Elections in Bosnia and Herzegovina” (12 – 13 September 1998), Doc 8216.

## **B.2. Campaign Platforms and Political Party Guidelines**

Civic information extends beyond technicalities and includes elements of candidate/party platforms and information. This information is critical to ensuring that voters are correctly informed and understand for whom they will be voting. It not only improves the capacity of voters to select their candidates/positions, but also is a basic element of any free and fair democratic process.

Yet sovereign states are under no obligation to allow representatives of political parties from another state to campaign within their territory. Furthermore, the election management body will find it difficult to control the behavior of campaigners outside the territory of the country holding elections. This problem can be particularly acute when election activities occur in refugee camps. Political parties often maintain a strong, if informal, presence inside refugee camps, and might be in a position to manipulate or control the information available to voters. Once again, the election management body will have no authority in the host state and will need to rely on MoUs with the host state government that stipulate the rights and obligations of political parties vis-à-vis refugee voters. Another mechanism that can be employed is a “Code of Conduct” that directly addresses their behavior in third states. These codes should contain commitments “to a set of ethical standards with respect to campaigning and soliciting votes from displaced communities. The pact will forbid the parties to engage in any form of intimidation or inducements, such as food for votes, while campaigning in refugee/IDP communities.”<sup>104</sup>

## **C. Summary of Conclusions and Recommendations**

- **Refugees and IDPs should be provided sufficient information on election processes and campaign information in order to fully participate and make an informed choice in the election process;**
- **Election administrators should be aware that refugee voting requires a significant lead time. Rules and regulations regarding eligibility requirements and procedures should be made in sufficient time for refugee populations to be informed;**
- **Changes to the rules and regulations that have a significant impact on the registration or voting process should be avoided once the programs are underway;**
- **Election administrators should establish cooperative relationships with refugee clubs and associations to help spread election information. The appropriate role of these clubs should be clearly defined;**
- **By-mail voting programs should operate a telephone- and internet-based information program where refugees can ask specific questions related to their participation;**
- **Electoral actors should monitor the press in host countries to ensure neutrality. Nevertheless, the lack of EMB jurisdiction in the host state can make this difficult to enforce;**
- **Political parties should be allowed to present their platforms to refugee communities. Agreements with host states should include provisions guaranteeing access;**
- **Codes of Conduct should govern the behavior of political parties and candidates when campaigning abroad.**

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<sup>104</sup> IOM, “Angolan Elections: Promoting Reconciliation Through Participation By Conflict-Forced Migrants,” Washington DC, January 2003. Available at: [www.iom.int/pep](http://www.iom.int/pep).

## 8. BALLOT TRANSPARENCY AND CONFIDENCE

One of the common justifications for limiting external voting is that the procedures may open the election to possible fraud. This is particularly true in terms of by-mail registration and voting programs or during in-person voting programs that do not provide for neutral observation and supervision. Consequently, procedures and guidelines are needed to ensure that the voting of displaced populations does not undermine the “genuineness” of the elections process. This is particularly important in the context of post-conflict elections, which tend to occur in unstable political and security situations. Election fraud or the perception of bias against political groups or parties can easily result in the resumption of violent conflict.

Transparency means that the entire electoral process is organized and conducted in conditions that protect the secrecy of voter information and the ballot, allow full public scrutiny of regulations and election processes, and provide mechanisms to challenge procedures that discriminate against individual voters or political parties. The concept is different from other common electoral buzzwords, such as “free,” “fair,” or “genuine,” although transparent practices support each of these criteria. For the purposes of this report, we use this concept as a catch-all to include a variety of issues unique to refugee and IDP voting that cannot be categorized elsewhere, but are vital to ensuring that the participation of refugee and IDP voters contributes to democratic consolidation and peace-building. Thus, much of the following discussion is process-oriented, rather than issue-oriented.

### A. Legal Norms and Standards:

In a broad sense, all of the human rights treaties related to political participation and the regional standards initiatives are designed to promote transparent elections. The requirement that election authorities implement procedures designed to minimize the prospect of fraud can be found in:

- **IPU Criteria for Free and Fair Elections, Art 4 (6-7):** ... State authorities should ensure that the ballot is conducted so as to avoid fraud or other illegality, that the security and the integrity of the process is maintained, and that ballot counting is undertaken by trained personnel, subject to monitoring and/or impartial verification. States should take all necessary and appropriate measures to ensure the transparency of the entire electoral process including, for example, through the presence of party agents and duly accredited observers... **Art 6:** Furthermore, State authorities should ensure that the ballot is conducted so as to avoid fraud or other illegality, that the security and the integrity of the process is maintained, and that ballot counting is undertaken by trained personnel, subject to monitoring and/or impartial verification.
- **Copenhagen 5 Para 1:** [The participating states express their conviction that ] ... free elections that will be held at reasonable intervals by secret ballot or by equivalent free voting procedure, under conditions which ensure in practice the free expression of the opinion of the electors in the choice of their representatives; **7 Para 1 – 7 Para 2 and 7 Para 4 7 Para 5:** To ensure that the will of the people serves as the basis of the authority of government, the participating States will... hold free elections at reasonable intervals, as established by law;... ensure that votes are cast by secret ballot or by equivalent free voting procedure, and that they are counted and reported honestly with the official results made public;... respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination;
- **ACEEEO Draft Convention on Election Standards Art 5 (2.4):** ... honest performance of electoral actions and electoral procedures provided for by laws, specifically during voting and vote counting; rapid provision of full information about all voting results,

beginning from the level of election precincts, including provision of the possibility for observers to receive official copies of protocols of voting and/or election results from election bodies with subsequent official publication of all voting and election results within a reasonable time;

More detailed requirements governing non-traditional and alternative forms of balloting are contained in:

- **Venice Commission Guidelines, Art 3 Sec b:** ... ii. Voters should always have the possibility of voting in a polling station. Other means of voting are acceptable under the following conditions: iii. Postal voting should be allowed only where the postal service is safe and reliable; the right to vote using postal votes may be confined to people who are in hospital or imprisoned or to persons with reduced mobility or to electors residing abroad; fraud and intimidation must not be possible. iv. Electronic voting should be used only if it is safe and reliable; in particular, voters should be able to obtain a confirmation of their votes and to correct them, if necessary, respecting secret suffrage; the system must be transparent. ... vi. Mobile ballot boxes should only be allowed under strict conditions, avoiding all risks of fraud. vii. Two criteria should be at least used to assess the accuracy of the outcome of the ballot: the number of votes cast and the number of voting slips placed in the ballot box. viii. Voting slips must not be tampered with or marked in any way by polling station officials. ix. Unused voting slips must never leave the polling station. x. Polling stations must include representatives of a number of parties, and the presence of observers appointed by the candidates must be permitted during voting and counting. xi. Military personnel should vote at their place of residence whenever possible. Otherwise, it is advisable that they be registered to vote at the polling station nearest to their duty station. xii. Counting should preferably take place in polling stations. xiii. Counting must be transparent. Observers, candidates' representatives and the media must be allowed to be present. These persons must also have access to the records. xiv. Results must be transmitted to the higher level in an open manner. xv. The state must punish any kind of electoral fraud.

Finally, although not cited under any of the previous topics, International IDEA's "International Electoral Standards: Guidelines for Reviewing the Legal Framework of Elections," provides a comprehensive treatment of standards related to postal and mobile polling systems:

- [T]o safeguard the integrity of special voting activities, the legal framework should include the following:
  - There must be a process to clearly identify voters eligible to use alternative voting systems ...
  - Representatives of parties and candidates as well as election observers should be permitted to monitor special voting stations.
  - The number of ballot papers with serial numbers and other security features used, and the number later returned, should be formally and transparently recorded.
  - The number of ballot papers issued should correspond with the number of requests received, plus a specified small number of extra ballots to allow for voters who may spoil their ballot paper.
  - The names and number of requesting voters who have used or are using the special provisions should be recorded in polling-station and other protocols in order to avoid double voting and to identify particular areas where the proportion of votes cast is unusually high, which may point to the occurrence of fraud.

## **B. Considerations**

A structural consideration for improving the transparency of a displaced voting process is to ensure that the EMB includes avenues for representatives of displaced communities to be

actively engaged in the process. While direct representation inside the EMB might not be desirable, clear linkages would ensure that the displaced maintain a voice in the design of the electoral code and that issues related to their unique situation will be addressed. Unfortunately, however, few of the elections considered in the preparation of this report provided for this access.

Transparency issues differ depending on whether the election includes in-person or by mail voting programs. In terms of absentee station IDP and/or in-person refugee voting (where the voter returns to the country to cast a ballot, but not necessarily to their home municipality), the procedures should mirror how regular polling is conducted, particularly in regard to the right of observers to access election facilities. This requirement can be problematic, however, if security concerns prevent observers from traveling to their home municipality. In BiH, for example, many absentee polling stations (particularly those along the inter-entity boundary line) were staffed by opposing ethnic groups that were hostile to the presence of political party and civil observers of different ethnic affiliation. As a result, some absentee polling stations were staffed and observed solely by representatives from a single ethnic community, a situation which should be avoided.

A second consideration for special absentee polling stations has to do with the movement of ballots and materials. Election administrators will need to determine whether the absentee ballots should be:

- Counted on-site following the close of the polling station;
- 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.

In BiH, counting for the IDP absentee ballots occurred in the stations in which they were cast. The local election commissions tallied the votes and forwarded the results to the election headquarters in Sarajevo, which added the tallies to the regular results. The system appears to have worked fine. The only problem occurred in the context of the 1997 municipal elections, where some absentee stations had to sort and count well over one hundred unique ballots. In some cases the polling station staff was unable to complete this process in a timely fashion, which delayed the return of results. A central counting facility could alleviate this process, although this raises the problem of ensuring that ballot movement is secure. Much will depend on the nature of security forces present in the country. In the context of international organized elections as part of a multi-mandate peace-keeping operation, international election observers and security forces can be engaged to 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.

#### *Postal Voting Programs*

The popularity of postal voting is growing. Major by-mail operations occurred in BiH and in Kosovo, enfranchising hundreds of thousands of refugees at a reasonable cost.<sup>105</sup> Other states that have successfully conducted by-mail voting include Australia, New Zealand, and, in the United States (state-level elections in Oregon and Arizona).<sup>106</sup> Other countries have also employ a modified form of postal voting in which citizens register at embassies abroad, but are mailed a ballot for marking and return via post.

The single-most important guarantee of transparency stems from the right of unrestricted access to political party and civil society observation groups to the by-mail operations headquarters. Any election procedure carried out under conditions of secrecy will undermine public confidence in the

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<sup>105</sup> Although the cost per voter reached through these programs will frequently be greater than in-person voting.

<sup>106</sup> The experience of these non-post-conflict states is included here as a basic reference point, although the administrator should keep in mind that in these instances election commissions started with comprehensive and well developed voters registers, whereas in BiH and Kosovo, the voters registers had to be developed from scratch.



process. Special measures should be included in the electoral code guaranteeing access to observer groups. At the same time, however, their level of participations should be clearly stipulated. It is unacceptable, for example, to allow observers to participate in the determination of voter eligibility. They should, however, be provided the right to raise objections in an appellate body if they believe that applicants are being registered against the stipulated criteria or if ineligible ballots are being tallied and allowed. This right, and procedures for observers to raise objections, was implemented in both the Bosnian and Kosovo by -mail programs.

A second consideration for postal voting is the fact that it is impossible to guarantee absolute secrecy of the ballot. During regular in-person polling, elections staff lose control of the ballot only momentarily, when it is handed to the voter for marking. Even then the staff can ensure that only the qualified voter enters the voting booth, marks the ballot according to his/her free will, and deposits it in the ballot box. Sending a postal ballot to a voter results in a period of time in which the ballot is completely outside the supervision of elections staff. Thus, the voter could be subject to a wide range of pressures that compromise the freedom of choice.<sup>107</sup> In some instances, for example, husbands may seek to control how the ballot is marked by a wife. In addition, refugees often live in concentrated areas where they can be subject to pressure from refugee groups and associations that attempt to influence the vote. Normal in-person balloting procedures prohibit third parties from entering the voting booth (unless invited by the voter due to specific disabilities) and generally demarcate a space around a polling station where electioneering (handing out political platforms, posters urging a particular candidate or option) is prohibited. It is impossible to implement these rules in a postal system.

A third problem stemming from postal balloting is the difficulty of convincing voters that their ballot is truly secret. Postal voting systems for the BiH and Kosovo elections required voters to return the ballot inside a sealed "secrecy envelope" together with their registration receipt inside a larger second envelope. While these postal voting programs were conducted under strict conditions and supervision by the international community (specifically IOM) the voter would rightly be nervous that the system allows other persons to match the voters name with the marked ballot and use that information in a particular way.

One final problem relates to potential double voting. Under a postal voting system, refugees could easily cast their ballot by mail in advance of Election Day and then return to the country and vote again in person on Election Day. This situation was rampant in BiH during the 1996 elections due to the inadequacies of the voters register and the fact that refugees in FRY were eligible for the postal vote and could then travel relatively easily and inexpensively back into BiH to vote again.<sup>108</sup> This problem is relatively easy to fix, however. First, postal voting should not be conducted for refugees in contiguous states. The OSCE realized this and has subsequently conducted in-person registration and voting programs in these situations. Second, special voters registers must be produced and checked against the in-country registers to remove duplicate registrations. This requires using standardized protocols for data input and manipulation.

Despite these objections, postal voting is the only cost-efficient mechanism for enfranchising a large and geographically dispersed refugee electorate. Nevertheless, in post-conflict situations it is highly recommended that neutral third-parties (particularly inter-governmental organizations) be tasked with the actual conduct of the balloting. In addition, as mentioned above, full observation of all facets of the postal vote should be open to political party and civil-society observation.

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<sup>107</sup> Even in the United Kingdom, which has recently been expanding postal voting opportunities, a report on postal voting by the Electoral Commission found that: "We have received reports of party workers seeking to influence how votes are cast by exerting pressure (or even, in a handful of reported cases, completing the ballot on behalf of the voter). Practices such as these clearly raise concerns ..." The Electoral Commission (UK), "Absentee Voting in Great Britain: Report and Recommendations," 2003: 27. Available at: <http://www.electoralcommission.org.uk>

<sup>108</sup> The international Crisis Group reported that an estimated 37,000 Serbian refugees from FRY crossed into BiH on Election Day. These movements were coordinated by refugee associations in FRY, which organized free transportation and food and coordinated where the refugees would go to vote. How many of these voters were able to vote twice is unclear. See ICG, "Elections in Bosnia and Herzegovina," ICG Bosnia Report 16, 22 September 1996 :51. Available at: [http://www.crisisweb.org/projects/balkans/bosnia/reports/A400148\\_22091996.pdf](http://www.crisisweb.org/projects/balkans/bosnia/reports/A400148_22091996.pdf)

### ***C. Summary of Conclusions and Recommendations***

Several guidelines and conclusions emerge from the above discussion.

- **EMBs should maintain linkages and communication channels with displaced populations to provide them with a voice in the design of the electoral code;**
- **Election observers (international, political party, and civil society groups) should be granted full access to all absentee and postal voting facilities and stations. Clear guidelines should be promulgated regarding the appropriate roles of accredited observers in these facilities;**
- **Political party and civil society observers should not be empowered to make formal determinations of whether a registration or ballot is valid. They should be provided, however, with a means of raising objections in an appellate process if they believe the by-mail program is violating the rules and regulations of the election;**
- **Electoral actors should be aware of the ballot secrecy problems associated with postal voting. EMBs should closely monitor reports of electoral engineering and design comprehensive voter information campaigns regarding the importance of secrecy of the ballot.**
- **Electoral actors should strongly consider engaging international organizations to conduct a post-conflict postal voting program. Once confidence in the electoral system is restored, this function can be returned to the jurisdiction of the local EMB (as it has been in BiH).**
- **Separate voter rolls should be compiled for the postal vote. These registers should be cross-checked against in-country voters registers to ensure that duplicate registrants are caught.**
- **Postal voting should not be conducted in states contiguous to the state holding an immediate post-conflict election. These voters should be provided in-person voting opportunities in order to minimize the prospects for double voting. Over time, however, these voters could be integrated into the postal voting program.**

Annex 1 of this report provides a process-oriented overview of how to implement a postal registration and voting program based on the experiences of BiH and Kosovo.

## 9. General Framework for Standards on the Electoral Rights of Conflict-forced Migrants

### Electoral Systems and the Displaced

Presidential Elections	<ul style="list-style-type: none"> <li>• The plurality requirement as part of presidential elections should be avoided in situations where highly fractured party systems would weaken the legitimacy of an official elected with less than 50% of the vote. Thus, facilitation of the refugee and IDP vote should NOT be a primary consideration when determining whether to implement this requirement.</li> <li>• If politically feasible, however, presidential elections with a substantial number of displaced persons should avoid absolute majority and participation thresholds, which can prompt a second round of balloting. The extra costs and lengthened timeframes required to conduct balloting for displaced persons makes repetition of balloting undesirable.</li> </ul>
Parliamentary Elections	<ul style="list-style-type: none"> <li>• Proportional representation systems utilizing a single national district are useful in transitional situations for their inclusiveness and simplify the distribution of ballots to displaced populations. Nevertheless, multiple districts should not be ruled out simply because of logistical difficulties. The determination of how many districts to employ should be primarily a function of which political structures are best suited to the unique social patterns of the country.</li> <li>• External districts for conflict-forced migrants should be evaluated on a case-by-case basis. If it is employed as a representational technique, it must be considered transitional from the outset so that the conflict induced migration patterns do not become statutory.</li> <li>• If multiple districts will be created, displaced populations should be assigned to their district of origin,<sup>109</sup> particularly if they are expected to cast ballots for candidates from that district. Over time, however, the districts should be updated and seats modified based on whether returns appear to be feasible. In either case, it is important that displaced voters vote in the districts to which their population weights have been assigned for the purpose of district delimitation.</li> </ul>

### Voter Registration:

Determining Refugee Status for Eligibility	<ul style="list-style-type: none"> <li>• Since refugees have “inherent” voting rights while Diaspora participation is not guaranteed under international human rights law, electoral actors need to define who is a refugee in any instance where the intent is to enfranchise conflict-forced migrants without enfranchising a Diaspora;</li> <li>• One important tool in this regard is to have the applicant demonstrate that they had achieved “convention status” as of a particular date (usually shortly before conflict erupted and mass displacement occurred). Convention status can generally be demonstrated through presentation of UNHCR identity documents or through host-government-issued documentation demonstrating the</li> </ul>
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<sup>109</sup> Although it is not always clear what the “home district is. Michael Maley notes: “In Papua New Guinea, for example, voters continually seem to want to register for the areas where their clans live, even if they themselves are no longer ordinarily resident there.” Michael Maley. Personal communication to author. 2003. This has larger implications for voter eligibility, further discussed below.

	<p>applicant's filing of an asylum claim;</p> <ul style="list-style-type: none"> <li>• In situations where no asylum has been granted, documentation is still usually provided indicating that the conflict-forced migrant has been granted this status. TPS status on the date indicated should be considered acceptable proof of the registrant's status;</li> <li>• In situations where the host state is accepting mass influxes on a TPS basis but not issuing identity documents, electoral actors will need to make status determinations. Refugees are often housed in camps, and local authorities generally maintain some form of records on these populations. Any sharing of such information must conform to appropriate data-protection procedures.</li> </ul>
<p>Citizenship and Participation</p>	<ul style="list-style-type: none"> <li>• Citizenship of the polity conducting elections can serve as the basis for electoral rights and inclusion in the voters register;</li> <li>• All persons who possessed citizenship in a state or territory before the outbreak of conflict or state succession should be automatically eligible for citizenship in whatever polity emerges;</li> <li>• In post-conflict situations, requirements for the conferral of citizenship should be determined and promulgated by law prior to the registration process. It is generally preferable that the conferral of citizenship be established through state constitutions or through acts of parliament, not through the electoral code;</li> <li>• In non-self-governing territories, citizenship for the purposes of electoral participation should be linked to historical attachment to that territory. A variety of models for proving that effective link can be considered.</li> <li>• Conferral of voting rights to non-citizen residents, particularly at the municipal level, ought to be avoided during immediate post-conflict elections. Since conflicts are often characterized by two-way population movements, enfranchising these non -citizens can affect electoral outcomes;</li> <li>• The political implications of allowing dual nationals to vote should be considered when designing citizenship requirements. However, it will likely be difficult for election administrators to enforce a rule disenfranchising dual nationals.</li> </ul>
<p>Residency Requirements</p>	<ul style="list-style-type: none"> <li>• Conflict-forced migrants should always be eligible to register (either in person or by mail) and cast a ballot for the constituency from which they were forcibly displaced, regardless of current location or length of absence from their home constituency;</li> <li>• Residency requirement should be structured so as to maximize the prospects for CFM participation. In general, no residency requirement should be imposed for presidential and national level contests. If the residency requirement is employed for municipal level elections, it should be structured in such a way as to enfranchise conflict-forced migrants who fled the region without enfranchising otherwise ineligible settler populations;</li> <li>• IDPs should be provided the option of voting for representatives from either their current municipality or their home municipality (not both).</li> <li>• In general, displaced populations should be expected and encouraged to vote for candidates in their home region and territory. This maximizes the potential of the ballot to deny efforts at "ethnic cleansing."</li> <li>• Nevertheless, it is important to ensure that displaced populations be allowed to</li> </ul>

	<p>exercise its voice in the political processes of their current residence if they so choose. This is particularly true if short-run prospects for return do not appear strong and the displaced have no political means to advocate for improved living conditions.</p> <ul style="list-style-type: none"> <li>• In referenda concerning self-determination, the residency requirement ought to be sufficiently stringent to prove a “demonstrable link” to the territory holding the ballot. In addition, electoral actors should avoid writing criteria that have the effect of discriminating against persons based on their race or ethnicity. However, criteria that disenfranchise settler populations who migrated to the territory after an agreed date are acceptable, even if this disenfranchisement has the effect of discriminating against persons based on their race or other criteria.</li> </ul>
Documentation	<ul style="list-style-type: none"> <li>• Everyone has a right to recognition as a person before the law and to receive documents that give effect to this right;</li> <li>• Conflict-forced Migrants often lack sufficient documentation to prove their identity or other eligibility requirements for the purposes of electoral participation. Therefore, electoral actors need to determine how best to enfranchise these populations. Three possible mechanisms include: verification commissions within the election management body; combined voter registration and census/civil registration programs; and, social documentation;</li> <li>• Which of these mechanisms to employ depends on the political issues at stake, the finances available, and logistical constraints;</li> <li>• In the case of verification commissions, these programs should be avoided unless the election management body possess sufficient resources and personnel to actually implement a comprehensive program;</li> <li>• Statistical sampling through a review process (as employed in Kosovo) is a highly useful tool for processing large numbers of applicants who lack documentation.</li> <li>• Census and civil registration programs in conjunction with voter registration are a useful mechanism to both get conflict-forced migrants registered and to provide them with documentation;</li> <li>• Social Documentation programs should be carefully devised and monitored during referenda on independence or autonomy, particularly where there are profound differences regarding which populations are eligible to participate. However, criteria must be clear and this aspect monitored closely to control for fraud.</li> </ul>

### Election Security

Election Security	<ul style="list-style-type: none"> <li>• Refugees and IDPs should always be provided the option of absentee balloting, particularly when conditions in the country organizing elections are not yet conducive for return as demonstrated by the absence of large-scale, country-wide spontaneous returns;</li> <li>• Dedicated absentee polling stations should be established for IDP voters, rather than having them vote in the same station as regular voters;</li> <li>• If voting will only occur through repatriation or if a dual absentee/repatriation program is conducted, election authorities need to establish safe transit routes</li> </ul>
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	<p>and create procedures to ensure that displaced voters are able to return to their home polling station safely and securely. Election administrators should work closely with international security forces and with UNHCR, IOM and other international humanitarian organizations to provide safe means of transport;</p> <ul style="list-style-type: none"> <li>• Voter registration should never be linked to property claims or the provision of social welfare benefits. In some cases, it is desirable to link the registration with a wider civil registration or national census, but perceptions that voter registration will in some way affect the displaced person's welfare benefits or claims to specific property should be avoided.</li> <li>• In instances where the act of participating in elections would subject displaced voters to intimidation or retribution, ultra-violet stain should be employed rather than visible stain, when the staining method is used to prevent double voting.</li> <li>• Ballots for conflict-forced voters should be mixed with other votes during counting so that the voting preference of the displaced as a discrete group cannot be discerned.</li> <li>• Security for refugees is the responsibility of host state governments and is governed by their obligations under the 1951 Refugee Convention. Nevertheless, electoral actors need to work closely with host state governments and should negotiate detailed MoUs that include provisions for election security. Because of the regional nature of refugee problems, international organizations can be engaged to facilitate contact and cooperative relationships with refugee-hosting states.</li> </ul>
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### **Movement and Legal Status of Displaced Populations**

Freedom of Movement	<ul style="list-style-type: none"> <li>• Freedom of movement, particularly for displaced populations, should be expressly stated in a country's electoral code, and should also serve as one of the criteria for determining whether conditions warrant proceeding with elections;</li> <li>• In the case of IDPs, if the election is occurring as part of a multi-mandate peace-keeping operation, EMBs should coordinate with international security forces to provide and protect designated "voters routes" for voters who will be traveling to reach election facilities.</li> <li>• In the case of refugees, freedom of movement issues should be discussed by the foreign ministries of the states concerned. If possible, host state commitments to allow freedom of movement should be included in MoUs. It is desirable that host states allow refugees two way movement (into the home country to register/vote and back into the host state following the election).</li> <li>• If host states detain asylum seekers, special procedures should be implemented to provide either postal or in-person registration/voting processes in the detention facilities.</li> </ul>
Host country Status	<ul style="list-style-type: none"> <li>• Participation in a home country election should never be interpreted by refugee-hosting governments as implying that conditions in the home country are suitable for forced repatriation;</li> <li>• Registration for elections should never be linked with other government programs, particularly the distribution of social welfare benefits;</li> </ul>

	<ul style="list-style-type: none"> <li>• Election actors should be cautious when making refugee voters registers available for public inspection. While minimum standards for free and fair elections require these be public documents, they should only be made available in election-related locations, and should not be photocopied or in any other way distributed on a mass basis.</li> </ul>
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### **Voter Education and Campaigning in Asylum**

<p>Voter Education and Campaigning in Asylum</p>	<ul style="list-style-type: none"> <li>• Refugees and IDPs should be provided sufficient information on election processes and campaign information in order to fully participate and make an informed choice in the election process;</li> <li>• Election administrators should be aware that refugee voting requires a significant lead time. Rules and regulations regarding eligibility requirements and procedures should be made in sufficient time for refugee populations to be informed;</li> <li>• Changes to the rules and regulations that have a significant impact on the registration or voting process should be avoided once the programs are underway;</li> <li>• Election administrators should establish cooperative relationships with refugee clubs and associations to help spread election information. The appropriate role of these clubs should be clearly defined;</li> <li>• By-mail voting programs should operate a telephone and internet based information program where refugees can ask specific questions related to their participation;</li> <li>• Electoral actors should monitor the press in host countries to ensure neutrality. Nevertheless, the lack of EMB jurisdiction in the host state can make this difficult to enforce;</li> <li>• Political parties should be allowed to present their platforms to refugee communities. Agreements with host states should include provisions guaranteeing access;</li> <li>• Codes of Conduct should govern the behavior of political parties and candidates when campaigning abroad.</li> </ul>
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### **Transparency**

<p>Transparency</p>	<ul style="list-style-type: none"> <li>• EMBs should maintain linkages and communication channels with displaced populations to provide them with a voice in the design of the electoral code;</li> <li>• Election observers (international, political party, and civil society groups) should be granted full access to all absentee and postal voting facilities and stations. Clear guidelines should be promulgated regarding the appropriate roles of accredited observers in these facilities;</li> <li>• Political party and civil society observers should not be empowered to make formal determinations of whether a registration or ballot is valid. They should be provided, however, with a means of raising objections in an appellate process if they believe the by-mail program is violating the rules and regulations of the election;</li> </ul>
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	<ul style="list-style-type: none"><li>• Electoral actors should be aware of the ballot secrecy problems associated with postal voting. EMBs should closely monitor reports of electoral engineering and design comprehensive voter information campaigns regarding the importance of secrecy of the ballot.</li><li>• Electoral actors should strongly consider engaging international organizations to conduct a post-conflict postal voting program. Once confidence in the electoral system is restored, this function can be returned to the jurisdiction of the local EMB (as it has been in BiH).</li><li>• Separate voter rolls should be compiled for the postal vote. These registers should be cross-checked against in-country voters registers to ensure that duplicate registrants are caught.</li><li>• Postal voting should not be conducted in states contiguous to the state holding an immediate post-conflict election. These voters should be provided in-person voting opportunities in order to minimize the prospects for double voting. Over time, however, these voters could be integrated into the postal voting program.</li></ul>
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## **Annex 1: Best Case Procedures for Implementing a Postal Voting System for Refugees**

The following discussion outlines the procedural aspects of implementing a postal voting program. It is broken into the various stages of the electoral cycle and describes best practices that have recently emerged in this area. It is not relevant to postal-voting programs in general, but only to instances where these programs have been incorporated as part of a post-conflict election.

### **1) Establishing a postal registration center**

In BiH and Kosovo, the OSCE sub-contracted the IOM to establish by-mail registration and voting centers in Vienna that centralized all aspects of the voting process. Refugees as far as Australia and as near as Vienna interacted with a single, centralized postal voting station. These centers operated under full international supervision and were open to political party observers and candidates. Staff were largely recruited from among the local refugee populations in order to ensure the language skills necessary to process paperwork and field questions from potential voters. The postal centers reported directly to the respective OSCE Elections department in BiH or Kosovo, and followed nearly identical procedures in terms hiring election workers, of eligibility criteria, ballot tracking, and observation.

The development of this institutional structure was largely the result of trial and error. In the 1996 Bosnian election (the first internationally conducted election that enfranchised refugees via post), the original system devolved significant procedures to the Out of Country Voting (OCV) offices established in the major refugee hosting states. Thus, any country with more than 5000 refugees operated its own registration and voting program based on consultations with host state governments. Thus, some countries, such as Turkey and Germany, established their own in-country by-mail system. This experience proved to be unwieldy, and the by-mail component was centralized in Vienna for all following elections. In 2000, the Bosnian refugee voting program moved from Vienna to Sarajevo, as conditions in the country had improved to the point that the postal system was seen as reliable.

The key issues surrounding the establishment of a by mail registration and voting operational headquarters include:

- *Deciding whether conditions in the host country warrant its establishment in that country or a third country:* This determination will largely rest on the conditions of the postal and communications system in-country. On the one hand, it is obviously desirable to keep election operations centralized, and the by-mail center should be located as close as possible to the election headquarters. On the other, inadequate postal systems, and perhaps even cost, should be considered as possible reasons to move the center to a third country.
- *Ensuring that the postal voting operation is fully transparent:* Political parties and international observers should have full access to all elements of the postal operation. Rules and guidelines governing their ability to intervene in eligibility disputes should be clearly formulated in advance. Observers should have full rights to challenge the operations of a postal center in the home countries election adjudication bodies.
- *Ensuring that staff employed are able to carry out their duties impartially:* As a general rule, staff and the postal headquarters should be subject to the same hiring criteria as in-country. They should meet similar requirements in terms of capabilities, and should not include representatives from political parties or from major refugee/Diaspora organizations that have an overtly political orientation. While it may be impossible to employ a staff representative of the various ethnic groupings in the home country (i.e.,

most of the Bosnian refugees in Austria were Bosnian Muslim), care should be taken to employ as many capable individuals as possible from each group

## **2) Ensuring that incoming applications for registration are processed and decided upon in conformity with the electoral rules and regulations**

Clear procedures need to be developed to ensure that all documents can be tracked throughout processing. Incoming application forms, along with all supporting documentation, should be stamped and tracked with a unique identification code. Election staff should make an initial check of the application to ensure that required information fields have been completed and supporting documentation is attached. This process should result in the application either proceeding to a registration center, or being forwarded to a station for applications that do not meet eligibility criteria or have not provided adequate supporting documentation.

If the application is complete, and a determination is made that the applicant meets the criteria for registration, the next step is to register the applicant. Assuming that the in-country voter register is computerized, a mechanism needs to be designed to ensure that by-mail applications are checked against the in-country lists to prevent double registrations. A system should be in place to ensure that data movement between the by-mail center and the in-country registration center is rapid and secure. Once the registration is checked against in-country lists and double registrants are removed, the registrant should be mailed a registration receipt containing a unique numeric code. The registrant should then be provided an opportunity to inspect and make changes to their registration details through an organized claims and challenges process. For by-mail voters, this implies the operation of a telephone, fax, or e-mail verification center where voters can make contact with election authorities.

## **3) Procedures and Appeals for Rejected Applications**

Rejected applicants need to be informed, by-mail, of the reasons for the rejection and any further measures available to them to challenge their rejection. If the applicant clearly does not meet eligibility criteria, these criteria should be clearly explained in the rejection letter. If the rejection is based on insufficient documentation, the rejection letter should specify precisely what the applicant must do to provide further information within the timeframes of the registration program. A number of generic letters can be created in advance, and sent out to rejected applicants based on the reason for their rejection. Since some applicants might become eligible upon furnishing additional documentation, all applications from rejected applicants should be tracked and filed. These files should contain a unique numeric serial code and include copies of further correspondence.

Rejected applications should be afforded the opportunity to challenge the denial of franchise decision through an appeals process. In BiH, this involved the creation of a Citizenship Verification Sub-Commission (CVSC), which provided an appellate process.<sup>110</sup> In this instance, applicants that were not found on census and rejected for registration were provided with an institutional mechanism whereby the OSCE attempted to verify their eligibility. Out-of-country registrants who were rejected completed special forms which were forwarded to the OSCE in Sarajevo, and from there to the OSCE regional field offices where election officials attempted to

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<sup>110</sup> Article 17(3) of the 1997 Rules and Regulations governing the Bosnian elections provided that: "... if an individual's name is not found on the 1991 Census as adjusted for use in the 14 September 1996 Elections during the voter registration period, proof of citizenship in 1991 will require the individual to present during the voter registration period either: i) a certificate of citizenship issued prior to 1991, or ii) a receipt issued by the appropriate municipal authority to establish that he or she was recorded as a citizen in one of the official municipal record books prior to the 1991 Census." Article 17.1 established the CVSC and 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. Any municipality issuing false receipts or statements will be subject to appropriate penalties imposed by the Provisional Election Commission."

verify their eligibility by looking for the applicants in municipal records. While some rejected registrants were approved, budget and personal constraints, combined with the mass destruction of records that had occurred during the conflict, hampered this process and many appeals were denied. If possible, therefore, more resources need to be focused on checking appeals from external voters. The OSCE process in 1996 and 1997 was well designed, but did not provide sufficient resources and time to complete a thorough review of all appeals.

Similar constraints during the Kosovo election resulted in the same problem. During the 2000 and 2001 elections, applications for registration that did not provide sufficient documentation were first checked against a computerized database of municipal records made available to the IOM by-mail operation in Vienna. Applications with no documentation attached or that did not meet eligibility criteria were archived separately and a response was sent to the applicant explaining the additional steps necessary to register and/or appeal. In some cases, however, the applications did contain some supporting documentation. In these cases the application was subject to a "review" procedure through which IOM searched for the applicant on a "Kosovo Consolidated Database,"<sup>111</sup> which had been compiled by UNMIK and contained detailed records from Kosovo telephone, electric and utility companies. If the applicant was found, they were registered normally. In contrast to BiH, however, no process was implemented to provide for a field check of other municipal record inside Kosovo.

#### **4) Issuing Ballots by-mail**

Sending ballots via post compromises normal ballot security mechanisms. As a general rule, ballots should always be tracked and in possession of election staff except for the few moments when a ballot is issued to a voter for marking. Sending large number of ballots by-mail obviously compromises these guidelines. However, a number of precautions can be taken to minimize the risk that ballots will be lost or stolen or arrive in the hands of persons that might use the ballots fraudulently. These include

- *Utilizing a commercial bulk mail-processing firm which packages the ballots under the supervision of election staff and delivers envelopes directly to the postal authority.* One of the important reasons that the by-mail centers for both BiH and Kosovo were established in Vienna was the availability of reputable bulk-mail firms and a well established and run postal system;
- *Ensuring that ballot can only be mailed directly to the individual voter.* Bulk mailing to refugee associations and clubs for further distribution to the individual voter should always be avoided;
- *Ensuring that the ballot does not contain any unique identifying numbers or codes.* While tracking ballots would provide a simple mechanism to ensure that the ballot is cast by the only the correct voter, marking ballots interferes with voter secrecy;
- *Including a "secrecy envelope" in which the voter places the marked ballot.* For the Bosnian and Kosovo elections, the voter was required to return their registration receipt with the ballot. The secrecy envelope should be clearly marked and used for the ballot only. The registration receipt should be included, together with the secrecy envelope, in the regular envelope returned by the voter to the postal voting station. Clear instructions

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<sup>111</sup> Unfortunately, the majority of names in the database were generally the male head of household, and thus its utility was limited. Ultimately, nearly 107,000 applications underwent the review procedures. As this figure was far in excess of initial predictions, the by-mail headquarters in Vienna was forced to hire additional staff and conduct reviews in two daily shifts. The recruitment, training, and logistical costs associated with this process were a significant challenge and resulted in higher than anticipated costs for the by-mail program. At the height of the program, the center employed over 140 casual workers, each of whom was required to speak English and either Serbian or Albanian. Ultimately, over 180,000 persons applied for registration.

should be included with the ballot package mailing detailing the importance of using the secrecy envelope correctly.<sup>112</sup>

**5) Some procedural guidelines for postal voting:**

- **By-mail registration centers should preferably be established in or near the election administration headquarters. If postal systems and infrastructure are insufficient, however, the headquarters should be moved to the nearest possible third country where conditions are acceptable;**
- **Staff hired to work in the by-mail operations should be strictly neutral. Staff should be hired based on language requirements, as well as an eye to ensuring that the staff reflects the ethnic and cultural composition of the country conducting the ballot;**
- **Clear tracking procedures should be in place to ensure that by-mail registrations and applications can be monitored throughout the process;**
- **Rejected applications for registration should have the opportunity to appeal that decision or provide further documentation in support of the application;**
- **Ballots should always be mailed directly to the individual voter, and never to a non-governmental club or association for further distribution;**
- **By-mail ballots should be returned together with the voter's a registration receipt. The ballot, however, should be placed in a special secrecy envelope that ensures that the ballot can be separated from the registration receipt and thus be processed in complete anonymity.**

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<sup>112</sup> During both the Bosnian and Kosovo elections, voters consistently misunderstood the purpose of the secrecy envelope. The voters often enclosed their identification documents in the ballot envelope which they sealed, leaving the ballot itself open in the return envelope. The ballot envelope should be of a different colour and the ballot envelope clearly marked.

## ANNEX 2: Election Standards and the Displaced

The following chart outlines the core election standards stemming from the international human rights instruments and from the regional standards initiatives discussed in this report. It highlights best practices related to free and fair elections and identifies the legal basis for that right. Where the standard is clearly applicable to refugee/IDP voting, it is listed in that box. Each section concludes by listing the standards and practices related to voting by conflict-forced migrants that are proposed by this report, but that do not necessarily have a basis in human rights law or the regional standards initiatives. In these cases, we propose specific standards and considerations for election administrators based on recent practice and experience with elections that included large numbers of refugees and IDPs. The basis for the proposed standard is thus based more on recent experience than on clear exposition in human rights law or in the regional standards initiatives.

### Electoral Systems and the Displaced

STANDARD	BASIS
<p><b>The choice and design of an electoral system is the inherent sovereign right of a state.</b></p>	<p><b>UDHR Article 21(3):</b> 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.</p> <p><b>ICCPR Art I (1):</b> All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. <b>Art 25 (a-b):</b> Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 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.</p> <p><b>Human Rights Committee, General Comment 25, Para. 2:</b> By virtue of the rights covered by article 1(1), peoples have the right to freely determine their political status and to enjoy the right to choose the form of their constitution or government.</p> <p><b>UN GA Res 46/137 (Preamble):</b> Recognizing that there is no single political system or electoral method that is equally suited to all nations and their people and that the efforts of the international community to enhance the effectiveness of periodic and genuine elections should not call into question each state's sovereign right in accordance with the will of the people freely to choose and develop its political, social, economic and cultural systems whether or not they conform to the preferences of other states.</p> <p><b>African CHPR Art 20(1):</b> All peoples shall have the right to ... freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.</p>
<p><b>No person shall be discriminated against in the realization of the right to be treated equally under the law.</b></p>	<p><b>UDHR Art. 7:</b> All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.</p> <p><b>ICCPR Art 2(1):</b> Each state party to the present covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.</p> <p><b>Guiding Principles Sec I, Prin 1:</b> 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. They shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced.</p>

	<p><b>American CHR Art 24:</b> All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law... <b>Art 25:</b> No provision of this Convention shall be interpreted as: a. permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to a greater extent than is provided for herein.</p> <p><b>African CPHR Art 3 (1):</b> Every individual shall be equal before the law. <b>2.</b> Every individual shall be entitled to equal protection of the law.</p> <p><b>Copenhagen 5 Para 9:</b> All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law will prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground.</p>
<p><b>Districts should be delimited by procedures described by law and should produce a clear balanced distribution of seats among constituencies.</b></p>	<p><b>Human Rights Committee, General Comment 25, Para 21:</b> The drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely.</p> <p><b>SADC, Norms and Standards C. (3) (3):</b> The main function of a Boundary Delineation Commission is to draw the boundaries of constituencies in a fair manner applying a stipulated formula such as an electoral quota which uses the average electorate of the constituencies as the basic size of the electorate to be placed in the constituency. Experience has shown this is not always adhered to. (ii) The drawing up of constituency boundaries should be left up to the competence of the Boundary Delineation Commission without political interference. The Commission should consult stakeholders in this process. Gerrymandering should be outlawed.</p> <p><b>OSCE/ODIHR, Draft Standards and Commitments IV (B):</b> Electoral units (voting districts) should be drawn in a manner that preserves equality among voters, a cornerstone of democratic elections ... Electoral units should be drawn under the following guidelines: (1) They should be drawn periodically to ensure that equality among voters is not disregarded due to population movements ..."</p> <p><b>Venice Commission Guidelines Art 2 (b):</b> <u>Equal voting power:</u> seats must be evenly distributed between the constituencies. i. This must at least apply to elections to lower houses of parliament and regional and local elections: ii. It entails a clear and balanced distribution of seats among constituencies on the basis of one of the following allocation criteria: population, number of resident nationals (including minors), number of registered voters, and possibly the number of people actually voting. An appropriate combination of these criteria may be envisaged. iii. The geographical criterion and administrative, or possibly even historical, boundaries may be taken into consideration. iv. The permissible departure from the norm should not be more than 10%, and should certainly not exceed 15% except in special circumstances (protection of a concentrated minority, sparsely populated administrative entity). v. In order to guarantee equal voting power, the distribution of seats must be reviewed at least every ten years, preferably outside election periods. vi. With multi-member constituencies, seats should preferably be redistributed without redefining constituency boundaries, which should, where possible, coincide with administrative boundaries. vii. When constituency boundaries are redefined – which they must be in a single-member system – it must be done: impartially; without detriment to national minorities; taking account of the opinion of a committee, the majority of whose members are independent; this committee should preferably include a geographer, a sociologist and a balanced representation of the parties and, if necessary, representatives of national minorities.</p>

## Registration

STANDARD	BASIS
<p><b>A registration process should be conducted in advance of the election.</b></p>	<p><b>Human Rights Commission, General Comment 25 Para 11:</b> States must take effective measures to ensure that all persons entitled to vote are able to exercise that right. Where registration of voters is required, it should be facilitated and</p>

<p><b>Displaced populations should have sufficient opportunity, without undue burdens to register either in person or by post.</b></p> <p><b>Registration and election schedules should provide sufficient time to process all displaced persons to be registered and provided the opportunity to inspect the registration lists for errors or omissions.</b></p> <p><b>Denial of the right to register should be subject to the right of judicial review or appeal.</b>  <b>Persons who move to a new administrative district after the close of registration but prior to balloting should be provided an opportunity to either change their registration or to be provided an absentee ballot from their original constituency.</b></p>	<p>obstacles to such registration should not be imposed... Any abusive interference with registration or voting as well as intimidation or coercion of voters should be prohibited by penal laws and those laws should be strictly enforced. Voter education and registration campaigns are necessary to ensure the effective exercise of article 25 rights by an informed community.</p> <p><b>SADC, Norms and Standards C. (9) (1):</b> (i)... eligible individuals should have the right to non-discriminatory voter registration and nomination procedures. The right should be enshrined in the constitution of a country. (ii) There should be provisions and practical arrangements for continuous voter registration and an updated voters' register must be made available to all stakeholders in the elections... <b>C. (3)(1):</b> A properly compiled register of voters provides a sound basis for the organisation of free and fair elections... Registration of voters should therefore be a continuous exercise and not just wait for an election.</p> <p><b>OSCE/ODIHR, Draft Standards and Commitments Art IV (D)(4):</b> The right to vote is of diminished value if it is difficult for a person to register to vote or there are an unacceptable number of inaccuracies in voter registers. Voter registration and maintenance of registers should be conducted in a fully and completely transparent process.</p> <p><b>IPU, Declaration on Criteria for Free and Fair Elections Art 2 ... (2)</b> Every adult citizen has the right to access to an effective, impartial and non-discriminatory procedure for the registration of voters. (3) No eligible citizen shall be denied the right to vote or disqualified from registration as a voter, otherwise than in accordance with objectively verifiable criteria prescribed by law, and provided that such measures are consistent with the State's obligations under international law. (4) Every individual who is denied the right to vote or to be registered as a voter shall be entitled to appeal to a jurisdiction competent to review such decisions and to correct errors promptly and effectively.</p> <p><b>Venice Commission Guidelines Art I (1)(b):</b> Fulfillment of the following criteria is essential if electoral registers are to be reliable: i. Electoral registers must be permanent. ii. There must be regular up-dates, at least once a year. Where voters are not registered automatically, registration must be possible over a relatively long period. iii. Electoral registers must be published. iv. There should be an administrative procedure - subject to judicial control - or a judicial procedure, allowing for the registration of the voter who was not registered; the registration should not take place at the polling station on election day. v. A similar procedure should allow the voter to have incorrect inscriptions amended. vi. A supplementary register may be a means of giving the vote to persons who have moved or reached statutory voting age since final publication of the register.</p> <p><b>ACEEEO Draft Convention on Election Standards Art 8 (1.5):</b> Everyone has the right of free access to an effective, impartial and equitable procedure of state registration of voters or other voter registration established by law... Registration of voters may be carried out on a permanent (regular) basis and the information about voters shall be updated at least once a year or within other reasonable periods conditioned by the nature of the voter registration procedure and its realization. Voter lists shall be made available for examination and additional correction. Voters who settled down in the territory of an election precinct after the voter lists had been made available for examination and voters who were not put on the voter list without any valid reasons shall be additionally included by the election body on the voter list (or additional voter list).</p>
<p><b>Eligibility rules should be structured so as to maximize the ability of displaced persons to participate.</b></p> <p><b>But eligibility should not be structured so widely as to allow neighboring states or political actors to stack the registration roles with persons sympathetic to their political views but are otherwise not eligible.</b></p> <p><b>Refugees from neighboring countries who reside in the territory</b></p>	<p><b>UDHR Art. 21:</b> Op Cit</p> <p><b>ICCPR Art 25:</b> Op Cit</p> <p><b>Human Rights Committee, General Comment 25, Para 1 and Para 11:</b> Op Cit</p> <p><b>SADC Norms and Standards C. (1)(1)(i):</b> Op Cit</p> <p><b>IPU Declaration on Criteria for Free and Fair Elections Art 2 (1):</b> Op Cit</p> <p><b>ACEEEO Draft Convention on Election Standards Art 2 Sec 7:</b> Foreign nationals, foreign legal entities, international political movements shall not be allowed to unlawfully participate in any activity with the calling and holding of elections, in the funding (including donation of funds) of the election campaign of candidates, political parties (coalitions) intending to participate or participating in</p>

<p><b>of the country holding elections should not be allowed to participate if the election is occurring shortly after a conflict with regional dimensions.</b></p>	<p>elections, in the activity of other organizations which are directly or indirectly associated with a political party (coalition) or are under its influence or control and contribute to the achievement of the aims of a political party (coalition) in the course of the preparation and holding of elections.</p>
<p><b>Any denial of the right to vote must be objective, reasonable, clearly stated in law and non-discriminatory.</b></p>	<p><b>Human Right Committee, General Comment 25 Para. 14:</b> ... States parties should indicate and explain the legislative provisions which would deprive citizens of their right to vote. The grounds for such deprivation should be objective and reasonable. If conviction for an offence is a basis for suspending the right to vote, the period of such suspension should be proportionate to the offence and the sentence. Persons who are deprived of liberty but who have not been convicted should not be excluded from exercising the right to vote.</p> <p><b>Copenhagen 5 Para 11:</b> Administrative decisions against a person must be fully justifiable.</p> <p><b>Venice Commission Guidelines Art I (1) (dd):</b> i. Provision may be made for depriving individuals of their right to vote and to be elected, but only subject to the following cumulative conditions: ii. It must be provided for by law. iii. The proportionality principle must be observed; conditions for depriving individuals of the right to stand for election may be less strict than for disenfranchising them. iv. The deprivation must be based on mental incapacity or a criminal conviction for a serious offence. v. Furthermore, the withdrawal of political rights or finding of mental incapacity may only be imposed by express decision of a court of law.</p>
<p><b>Public Inspection of Voter Lists</b></p>	<p><b>SADC Norms and Standards C. (1)(1)(ii):</b> ... an updated voter's register must be available to all stake holders in the election.</p> <p><b>Venice Commission Guidelines Art I (b):</b> ... iii. Electoral registers must be published.</p> <p><b>ACEEEO Draft Convention on Election Standards Art 6 (1.5):</b> everyone has the right of free access to an effective, impartial and equitable procedure of state registration of voters or other voter registration established by law, on the basis of the documents and information indicated in laws and to the documentary information about himself (personal data), including such information on computer-readable media, the right to correct this information to ensure its completeness and accuracy, and also the right to know who and why uses or have used this information, to whom it has been supplied. A voter has a guaranteed right to receive information about his inclusion on a voter list and appeal, in a court and/or in some other procedure established by law, the refusal to include him on, or his removal from, a voter list or any inaccuracy in the information about voters. Registration of voters may be carried out on a permanent (regular) basis and the information about voters shall be updated at least once a year or within other reasonable periods conditioned by the nature of the voter registration procedure and its realization. Voter lists shall be made available for examination and additional correction. Voters who settled down in the territory of an election precinct after the voter lists had been made available for examination and voters who were not put on the voter list without any valid reasons shall be additionally included by the election body on the voter list (or additional voter list).</p>

## Citizenship

STANDARD	BASIS
<p><b>Everyone has a right to a nationality/citizenship.</b></p> <p><b>In the case of state succession states should insure that the rules governing the acquisition of nationality in the new state shall be based upon a demonstrated historical linkage between the person and the new state.</b></p>	<p><b>UDHR, Art 15:</b> "Everyone has the right to a nationality ... [and] No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality."</p> <p><b>Human Rights Commission, General Comment 25, Sec 3:</b> Distinctions between those who are entitled to citizenship by birth and those who acquire it by naturalisation may raise questions of compatibility with article 25. State reports should indicate whether any groups, such as permanent residents, enjoy these rights on a limited basis, for example, by having the right to vote in local elections or to hold particular public service positions.</p> <p><b>Convention on the Reduction of Statelessness, Art 8(1):</b> A Contracting State</p>



	<p>shall not deprive a person of his nationality if such deprivation would render him stateless... <b>Art 9:</b> A Contracting State may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds.</p> <p><b>European Convention on Nationality Art 4:</b> The rules on nationality of each State Party shall be based on the following principles: everyone has the right to a nationality; statelessness shall be avoided; [and] no one shall be arbitrarily deprived of his or her nationality...<b>Art 5:</b> The rules of a State Party on nationality shall not contain distinctions or include any practice which amount to discrimination on the grounds of sex, religion, race, colour or national or ethnic origin...Each State Party shall be guided by the principle of non-discrimination between its nationals, whether they are nationals by birth or have acquired its nationality subsequently... <b>Art 18:</b> In matters of nationality in cases of state succession, each State Party concerned shall respect ... In deciding on the granting or the retention of nationality in cases of State succession, each State Party concerned shall take account in particular of: the genuine and effective link of the person concerned with the State; the habitual residence of the person concerned at the time of State succession; the will of the person concerned; the territorial origin of the person concerned.</p> <p><b>American CHR Art 20:</b> 1. Every person has a right to a nationality; 2. Every person has the right to the nationality of the state in whose territory he was born if he does not have a right to another nationality; and 3. No one shall be arbitrarily deprived of his nationality or of the right to change it.</p>
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### Residency Requirements

STANDARD	BASIS
<p><b>A residency requirement may be used as criteria for eligibility.</b></p>	<p><b>Human Rights Commission, General Comment 25, Para 11:</b> [States must take effective measures to ensure that all persons entitled to vote are able to exercise that right] If 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...<b>Para 15:</b> Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence...</p> <p><b>OSCE/ODIHR, Draft Standards and Commitments Art III (D)(1):</b> As the right to vote is the most basic element of a system for democratic election, there is a body of developing jurisprudence addressing what limitation may be imposed on the right without violating the principles of the international human rights background. In general these limitations fall within four categories...residency requirements...specific human rights instruments provide that foreigners be allowed to vote in local elections after a certain period of residence. Thus, the right to vote may be subject to reasonable residency requirements...<b>Annex 1: Right to Universal and Equal Suffrage:</b> There should be no residency requirements for citizens in national elections...Residency requirements for local and regional elections should be reasonable.</p> <p><b>Venice Commission Art 1(cc):</b> i. A residence requirement may be imposed. ii. Residence in this case means habitual residence. iii. A length of residence requirement may be imposed on nationals solely for local or regional elections. iv. The requisite period of residence should not exceed six months; a longer period may be required only to protect national minorities...</p> <p><b>ACEEEO Draft Convention on Election Standards Art 8 (1.3):</b> (Observance of the principle of universal suffrage means the following...) residence of the voter in the territory where the elections are held; the requirement to the period of residence may be imposed only at regional and/or local elections and such period of residence shall not exceed six months, unless a longer and more reasonable period is established to assure electoral rights of the representatives of national minorities and/or ethnic groups of voters, voters of the given territory as a whole.</p>

## Documentation

STANDARD	BASIS
<p><b>The Right to Documentation</b></p>	<p><b>UDHR, Art 6:</b> Everyone has the right to recognition everywhere as a person before the law.</p> <p><b>ICCPR, Art 16:</b> Everyone shall have the right to recognition everywhere as a person before the law.</p> <p><b>1951 Refugee Convention: Art 27:</b> The Contracting State shall issue identity papers to any refugee in their territory that does not possess a passport. <b>Art 28(1):</b> The Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require, and the provisions of the Schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other refugee in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to refugees in their territory who are unable to obtain a travel document from the country of their lawful residence.</p> <p><b>Convention of Refugee Problems in Africa, Art 6 (1):</b> Subject to Article III, Member States shall issue to refugees lawfully staying in their territories travel documents in accordance with the United Nations Convention relating to the Status of Refugees and the Schedule and Annex thereto, for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require. Member States may issue such a travel document to any other refugee in their territory.</p> <p><b>Guiding Principles Sec III Prin 20:</b> "Every human being has the right to recognition everywhere as a person before the law ... To give effect to this right for internally displaced persons, the authorities concerned shall issue them all documents necessary for the exercise and enjoyment of their legal rights ... 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."</p> <p><b>African CHPR, Art 5:</b> Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status.</p> <p><b>SADC, Norms and Standards C. (1) (1)(v):</b> Provisions should be made to ensure that prospective voters are provided with a form of national identity card in good time for registration.</p> <p><b>OSCE/ODIHR, Draft Standards and Commitments IV (D)(4)</b> [t]he method of establishing voter identity, including what documentation is required, should be clearly stated so that the process is fully transparent, not subject to arbitrary decision, and can be publicly monitored in an objective manner.</p>

## Election Security

STANDARD	BASIS
<p><b>Persons have a right to be secure in their persons.</b></p>	<p><b>UDHR, Art 3:</b> Everyone has the right to life, liberty and security of person.</p> <p><b>ICCPR Part III (6) (1):</b> Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life...Everyone has the right to liberty and security of person.</p> <p><b>Guiding Principle, 10, 11, 12:</b> 1. Every human being has the inherent right to life which shall be protected by law. No one shall be arbitrarily deprived of his or her life. Internally displaced persons shall be protected in particular against: (a) Genocide; (b) Murder; (c) Summary or arbitrary executions; and (d) Enforced disappearances, including abduction or unacknowledged detention, threatening or resulting in death... Every human being has the right to dignity and physical, mental and moral integrity. 2. Internally displaced persons, whether or not their liberty has been restricted, shall be protected in particular against: (a) Rape, mutilation, torture, cruel, inhuman or degrading treatment or punishment, and other outrages</p>

	<p>upon personal dignity, such as acts of gender-specific violence, forced prostitution and any form of indecent assault; (b) Slavery or any contemporary form of slavery, such as sale into marriage, sexual exploitation, or forced labour of children; and (c) Acts of violence intended to spread terror among internally displaced persons. Threats and incitement to commit any of the foregoing acts shall be prohibited... 1. Every human being has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. 2. To give effect to this right for internally displaced persons, they shall not be interned in or confined to a camp. If in exceptional circumstances such internment or confinement is absolutely necessary, it shall not last longer than required by the circumstances. 3. Internally displaced persons shall be protected from discriminatory arrest and detention as a result of their displacement.</p> <p><b>European CHRFF Art 2 (1):</b> Everyone's right to life should be protected by law...  <b>Art 5 Sec 1:</b> Everyone has the right to the liberty and security of person.</p> <p><b>African CHPR Art 4 (1-2):</b> Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person... No one may be arbitrarily deprived of this right.</p> <p><b>American CHR Art 4(1):</b> Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life... <b>Art 7 (1):</b> Every person has the right to personal liberty and security.</p>
<p><b>Candidates and voters have a right to express their views and to vote free from threats against their personal security.</b></p>	<p><b>UDHR, Art. 20 (1):</b> Everyone has the right to freedom of peaceful assembly and association.</p> <p><b>Human Rights Committee, General Comment 25 Sec 19:</b> ...elections must be conducted fairly and freely on a periodic basis within a framework of laws guaranteeing the effective exercise of voting rights. Persons entitled to vote must be free to vote for any candidate for election and for or against any proposal submitted to referendum or plebiscite, and free to support or to oppose government, without undue influence or coercion of any kind which may distort or inhibit the free expression of the elector's will. Voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind.</p> <p><b>SADC, Norms and Standards C. (1)(20)(ii):</b> "Any measures such as political violence, kidnapping, murder, threats and sanctions ... that prevent eligible individuals to register to vote and to vote in secrecy should be perpetually outlawed by SADC member states." <b>C. (3)(5):</b> The electoral commission and all stakeholders in the electoral process should therefore be required by law and be empowered to ensure that political parties and candidates should denounce violence in elections in order to ensure ... unimpeded freedom of campaign throughout the country; free and unimpeded access to voter rolls; all government security forces should act impartially and professionally; presidential candidates must be provided with free and adequate security during the election process [and ... reasonable safeguards at political meetings rallies, polling stations and party premises.</p> <p><b>IPU, Declaration on Criteria for Free and Fair Elections Art 2 (7) :</b> candidates, and supporters enjoy equal security, and that state authorities take the necessary steps to prevent electoral violence. The right to vote in secret is absolute and shall not be restricted in any manner whatsoever ... <b>Art 3(5)</b> "The right of candidates to security with respect to their lives and property shall be recognized and protected."  <b>Art 3(9):</b> Candidature, party, and campaign rights carry responsibilities to the community. In particular, no candidate or political party shall engage in violence."  <b>Art 4(5)</b> States should take all necessary and appropriate measures to ensure that the principle of the secret ballot is respected, and that voters are able to cast their ballots freely, without fear or intimidation." <b>Art 4(8):</b> "States should take the necessary measures to ensure that parties."  <b>Art 5:</b> States should take all necessary and appropriate measures to ensure that the principle of the secret ballot is respected, and that voters are able to cast their ballots freely, without fear or intimidation.</p> <p><b>ACEEEO Draft Convention on Election Standards Art 2 (3-4):</b> Observance of the principle of free elections makes it possible for voters and other election participants to choose, without coercion, threat of coercion or any other unlawful influence, whether to participate or not to participate in elections in the forms allowed by law and by lawful methods, without fear of punishment, influence or</p>

	<p>compulsion, specifically, depending on voting and election results... Participation of a citizen in elections shall be free and voluntary. Nobody shall influence a citizen to compel him to participate or not to participate in elections and/or electoral actions (procedures). Nobody shall compel a voter to vote for or against any definite candidate (candidates), any definite list of candidates of a political party (coalition) or prevent a voter from freely expressing his will. No voter shall be compelled by anybody to declare how he intends to vote or has voted. It shall not be allowed to gather and/or publish (disseminate) personal information about voters who have or have not taken part in the voting... <b>Art 21(2.14):</b> ...to take measures to ensure that the election campaign is conducted in the conditions of public safety and calmness, to thwart any attempts at violence, intimidation or similar actions or threats in the course of elections.</p>
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### Voter education and Campaign in Asylum

STANDARD	BASIS
<p><b>The Right to Freedom of Opinion</b></p>	<p><b>UDHR, Art. 19:</b> Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.</p> <p><b>ICCPR, Part III, (19) (1):</b> Everyone shall have the right to hold opinions without interference.</p> <p><b>Human Rights Committee General Comment Para 25 (8+12+17):</b> Citizens also take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves. This participation is supported by ensuring freedom of expression, assembly and association... Freedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote and must be fully protected. Positive measures should be taken to overcome specific difficulties, such as illiteracy, language barriers, poverty or impediments to freedom of movement which prevent persons entitled to vote from exercising their rights effectively. Information and materials about voting should be available in minority languages. Specific methods, such as photographs and symbols, should be adopted to ensure that illiterate voters have adequate information on which to base their choice... The right of persons to stand for election should not be limited unreasonably by requiring candidates to be members of parties or of specific parties. If a candidate is required to have a minimum number of supporters for nomination this requirement should be reasonable and not act as a barrier to candidacy. Without prejudice to paragraph (1) of article 5 of the Covenant, political opinion may not be used as a ground to deprive any person of the right to stand for election.</p> <p><b>Guiding Principles Sec III Prin 22 (1):</b> 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 the following rights: (a) The rights to freedom of thought, conscience, religion or belief, opinion and expression... (d) The 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.</p> <p><b>African CHPR Art 9 (2):</b> Every individual shall have the right to express and disseminate his opinions within the law.</p> <p><b>American CHR Art 13 (1):</b> Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.</p> <p><b>SADC Norms and Standards C. (I) (3) (i):</b> The sanctity of the freedom of association and expression should be protected and strictly adhered to.</p> <p><b>Copenhagen 7 Para 7:</b> [Participating States undertake to...] ensure that law and public policy work to permit political campaigning to be conducted in a fair and free atmosphere in which neither administrative action, violence nor intimidation bars the parties and the candidates from freely presenting their views and qualifications, or prevents the voters from learning and discussing them or from casting their vote</p>

	<p>free of fear of retribution... <b>7 Para 8:</b> provide that no legal or administrative obstacle stands in the way of unimpeded access to the media on a non-discriminatory basis for all political groupings and individuals wishing to participate in the electoral process;... <b>9 Para 1:</b> everyone will have the right to freedom of expression including the right to communication. This right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.</p> <p><b>Venice Commission Guidelines Part II (1)(1):</b> Democratic elections are not possible without respect for human rights, in particular freedom of expression and of the press, freedom of circulation inside the country, freedom of assembly and freedom of association for political purposes, including the creation of political parties.</p> <p><b>IPU, Declaration on Criteria for Free and Fair Elections Article 3(3):</b> Everyone individually and together with others has the right: ... To seek, receive and impart information in order to make an informed choice [and] ... To move freely within the country to campaign for election.</p>
<p><b>Governments have an obligation to provide factual and impartial information on voting procedures and requirements to all eligible voters.</b></p> <p><b>All political parties and candidates have an equal right to impart their views and positions to all eligible voters.</b></p>	<p><b>SADC Norms and Standards C. (2)(4) and (3)(2):</b> The Electoral Commission should be required by law to provide for a satisfactory and adequately funded voter education program that helps voters to be acquainted with the voting procedures and other aspects of civic awareness.</p> <p><b>OSCE/ODIHR, Draft Standards and Commitments III.E:</b> A system, for democratic elections should provide voters to learn about the purpose of elections and political parties and candidate. This may include education about the function and purpose of democratic institutions, the importance of and reason for alternating government through periodic elections, and the essential role of opposition parties in parliamentary government. Voters should also be informed and educated concerning the election processes.</p> <p><b>IPU Criteria for Free and Fair Elections Article I.(2)(C):</b> Equality of opportunity must be guaranteed for parties and candidates alike. This entails a neutral attitude by state authorities, in particular with regard to: i. the election campaign; ii. coverage by the media, in particular by the publicly owned media; iii. public funding of parties and campaigns ... Article I.3.a: aa: State authorities must observe their duty of neutrality. In particular, this concerns: i. media; ii. billposting; iii. the right to demonstrate; iv. funding of parties and candidates.bb. The public authorities have a number of positive obligations; inter alia, they must: i. submit the candidatures received to the electorate; ii. enable voters to know the lists and candidates standing for election, for example through appropriate posting. iii. The above information must also be available in the languages of the national minorities. cc. Sanctions must be imposed in the case of breaches of duty of neutrality and voters' freedom to form an opinion. <b>Art 3 (3):</b> To seek, receive and impart information and to make an informed choice, as well as <b>Article 3(4):</b> Every candidate for election and every political party shall have equal opportunity access to the media, particularly the mass communications media, in order to put forward their political views. <b>Article 4(1):</b> States should take the necessary legislative steps [to] ... initiate or facilitate national programs of civic education, to ensure that the population are familiar with election procedures and issues.and <b>Art 4 (2):</b> Ensure that those responsible for the various aspects of the election are trained and act impartially, and that coherent voting procedures are established and made known to the voting public <b>Art 4(3)</b> States shall respect and ensure the human rights of all individuals within their territory and subject to their jurisdiction. In time of elections, the State and its organs should therefore ensure : That freedom of movement, assembly, association and expression are respected, particularly in the context of political rallies and meetings; That parties and candidates are free to communicate their views to the electorate, and that they enjoy equality of access to State and public-service media ... <b>Art 4(4)</b> In order that elections shall be fair, States should take the necessary measures to ensure that parties and candidates enjoy reasonable opportunities to present their electoral platform.</p> <p><b>ACEEEO Draft Convention on Election Standards Art 4 (3):</b> In genuine elections voters shall have timely and free access to the information about candidates (lists of candidates), political parties (coalitions) and about the electoral process and a candidate (candidates), political parties (coalitions) shall have access to the mass media and telecommunications media on equal legal conditions... <b>Art 14 (1)(c) and (4)</b> Each citizen, individually or together with other persons, shall be entitled to ... search for, obtain and communicate information about the electoral process and</p>

	<p>make a sound personal choice... The States Parties to this Convention shall make arrangements for informing citizens and other election participants about the legislative requirements to the procedure for nomination and registration of candidates, lists of candidates of political parties (coalitions), about the status of candidates, political parties (coalitions) participating in elections, about the periods for the performance of electoral actions and procedures and also about the statutory acts and their provisions relating to the preparation and administration of elections.</p>
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**Transparency (postal and in-person voting)**

STANDARD	BASIS
<p><b>The entire electoral process should be organized and conducted in conditions that protect the secrecy of voter information and the ballot, allow full public scrutiny of rules, regulations, and election procedures, and provide mechanisms to challenge procedures that discriminate against votes or political parties.</b></p>	<p><b>IPU Criteria for Free and Fair Elections, Art 4 (6-7):</b> ... State authorities should ensure that the ballot is conducted so as to avoid fraud or other illegality, that the security and the integrity of the process is maintained, and that ballot counting is undertaken by trained personnel, subject to monitoring and/or impartial verification. States should take all necessary and appropriate measures to ensure the transparency of the entire electoral process including, for example, through the presence of party agents and duly accredited observers... <b>Art 6:</b> Furthermore, State authorities should ensure that the ballot is conducted so as to avoid fraud or other illegality, that the security and the integrity of the process is maintained, and that ballot counting is undertaken by trained personnel, subject to monitoring and/or impartial verification.</p> <p><b>Venice Commission Guidelines, Art 3 Sec b:</b> i. Voting procedures must be simple. ii. Voters should always have the possibility of voting in a polling station. Other means of voting are acceptable under the following conditions: iii. Postal voting should be allowed only where the postal service is safe and reliable; the right to vote using postal votes may be confined to people who are in hospital or imprisoned or to persons with reduced mobility or to electors residing abroad; fraud and intimidation must not be possible. iv. Electronic voting should be used only if it is safe and reliable; in particular, voters should be able to obtain a confirmation of their votes and to correct them, if necessary, respecting secret suffrage; the system must be transparent. v. Very strict rules must apply to voting by proxy; the number of proxies a single voter may hold must be limited. vi. Mobile ballot boxes should only be allowed under strict conditions, avoiding all risks of fraud. vii. Two criteria should be at least used to assess the accuracy of the outcome of the ballot: the number of votes cast and the number of voting slips placed in the ballot box. viii. Voting slips must not be tampered with or marked in any way by polling station officials. ix. Unused voting slips must never leave the polling station. x. Polling stations must include representatives of a number of parties, and the presence of observers appointed by the candidates must be permitted during voting and counting. xi. Military personnel should vote at their place of residence whenever possible. Otherwise, it is advisable that they be registered to vote at the polling station nearest to their duty station. xii. Counting should preferably take place in polling stations. xiii. Counting must be transparent. Observers, candidates' representatives and the media must be allowed to be present. These persons must also have access to the records. xiv. Results must be transmitted to the higher level in an open manner. xv. The state must punish any kind of electoral fraud.</p> <p><b>Copenhagen 5 Para 1:</b> free elections that will be held at reasonable intervals by secret ballot or by equivalent free voting procedure, under conditions which ensure in practice the free expression of the opinion of the electors in the choice of their representatives; <b>7 Para 1 – 7:</b> To ensure that the will of the people serves as the basis of the authority of government, the participating States will... hold free elections at reasonable intervals, as established by law;... permit all seats in at least one chamber of the national legislature to be freely contested in a popular vote; ... - ensure that votes are cast by secret ballot or by equivalent free voting procedure, and that they are counted and reported honestly with the official results made public;... respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination.</p> <p><b>ACEEEO Draft Convention on Election Standards Art 5 (2.4):</b> honest performance of electoral actions and electoral procedures provided for by laws, specifically during voting and vote counting; rapid provision of full information about all voting results, beginning from the level of election precincts, including provision</p>

	of the possibility for observers to receive official copies of protocols of voting and/or election results from election bodies with subsequent official publication of all voting and election results within a reasonable time.
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## Movement and Legal Status of Displaced Populations

STANDARD	BASIS
<p><b>Everyone has the right to freedom of movement</b></p>	<p><b>UDHR, Art 13(1-2):</b> Everyone has the right to freedom of movement and residence within the borders of each state... Everyone has the right to leave any country, including his own, and to return to his country.</p> <p><b>ICCPR Art 12 (1-4):</b> 1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his Residence... Everyone shall be free to leave any country, including his own... The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant... No one shall be arbitrarily deprived of the right to enter his own country.</p> <p><b>1951 Refugee Convention, Art 26:</b> Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory subject to any regulations applicable to aliens generally in the same circumstances.</p> <p><b>Guiding Principles Sec III (13-15):</b> Every internally displaced person has the right to liberty of movement and freedom to choose his or her residence... In particular, internally displaced persons have the right to move freely in and out of camps or other settlements. Internally displaced persons have: (a) The right to seek safety in another part of the country; (b) The right to leave their country; (c) The right to seek asylum in another country; and (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.</p> <p><b>African CHPR, Art 7:</b> Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law ... Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality.</p> <p><b>American CHR Art 22 (1-3):</b> Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law... Every person has the right to leave any country freely, including his own... The exercise of the foregoing rights may be restricted only pursuant to a law to the extent necessary in a democratic society to prevent crime or to protect national security, public safety, public order, public morals, public health, or the rights or freedoms of others.</p> <p><b>Copenhagen 9 Para 5</b> [All states] will respect the right of everyone to leave any country, including his own, and to return to his country, consistent with a States international obligations and CSCE commitments. Restrictions on this right will have the character of very rare exceptions, will be considered necessary only if they respond to a specific public need, pursue a legitimate aim and are proportionate to that aim, and will not be abused or applied in an arbitrary manner.</p>
<p><b>Participation by a refugee in elections in his or her country of origin should not be used by host states to justify <i>refoulement</i> against the refugee's will or the termination of temporary protection status.</b></p>	<p><b>1951 Refugee Convention, Art 33(1):</b> No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.</p> <p><b>Cartegena Declaration on Refugees: Para. 5:</b> To reiterate the importance and meaning of the principle of <i>non-refoulement</i> (including the prohibition of rejection at the frontier) as a corner-stone of the international protection of refugees. This principle is imperative in regard to refugees and in the present state of international</p>

	<p>law should be acknowledged and observed as a rule of <i>jus cogens</i>... <b>Para 12:</b> To reiterate the voluntary and individual character of repatriation of refugees and the need for it to be carried out under conditions of absolute safety, preferably to the place of residence of the refugee in his country of origin.</p> <p><b>Convention Governing the Specific Aspects of Refugee Problems in Africa, Art 2(3):</b> No person shall be subjected by a Member State to measures such as rejection at the frontier, return or expulsion, which would compel him to return to or remain in a territory where his life, physical integrity or liberty would be threatened ... <b>Art 5(1):</b> The essentially voluntary character of repatriation shall be respected in all cases and no refugee shall be repatriated against his will.</p>
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### Annex 3: Where to Find Conventions and Standards Initiatives Referenced in this Report

Full Title	Abbreviated as
Universal Declaration of Human Rights available at : <a href="http://www.un.org/Overview/rights.html">http://www.un.org/Overview/rights.html</a>	UDHR
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	Migrant Workers Convention
United Nations International Covenant on Civil and Political Rights available at: <a href="http://www.tufts.edu/departments/fletcher/multi/texts/BH498.txt">http://www.tufts.edu/departments/fletcher/multi/texts/BH498.txt</a>	ICCPR
International Convention on the Elimination of All Forms of Discrimination available at: <a href="http://193.194.138.190/html/menu3/b/d_icerd.htm">http://193.194.138.190/html/menu3/b/d_icerd.htm</a>	CERD
Convention on the Elimination of All Forms of Discrimination Against Women available at: <a href="http://193.194.138.190/html/menu3/b/e1cedaw.htm">http://193.194.138.190/html/menu3/b/e1cedaw.htm</a>	CEDAW
Convention on the Reduction of Statelessness Available at: <a href="http://www.unhchr.ch/html/menu3/b/o_reduce.htm">http://www.unhchr.ch/html/menu3/b/o_reduce.htm</a>	Convention on Statelessness
United Nations World Conference on Human Rights: Vienna Declaration and Programme of Action United Nations General Assembly Resolution available at: <a href="http://democracy.ru/english/library/international/1998-18_a1-a44/page3.html">http://democracy.ru/english/library/international/1998-18_a1-a44/page3.html</a>	Vienna Declaration UN GA Res 46/137 (1991)
Convention Relating to the Status of Refugees available at: <a href="http://193.194.138.190/html/menu3/b/o_c_ref.htm">http://193.194.138.190/html/menu3/b/o_c_ref.htm</a>	1951 Refugee Convention
Guiding Principles on Internal Displacement available at: <a href="http://www.reliefweb.int/ocha_d/pub/idp_gp/idp.html">http://www.reliefweb.int/ocha_d/pub/idp_gp/idp.html</a>	Guiding Principles
Convention Governing the Specific Aspects of Refugee Problems in Africa, available at: <a href="http://www1.umn.edu/humanrts/instreet/z2arcon.htm">http://www1.umn.edu/humanrts/instreet/z2arcon.htm</a>	Convention Governing the Specific Aspects of Refugee Problems in Africa
Cartegena Declaration on Refugees available at: <a href="http://pbosina.kentlaw.edu/services/chicago/legal_aid/treaties/artegena.htm">http://pbosina.kentlaw.edu/services/chicago/legal_aid/treaties/artegena.htm</a>	Cartegena Declaration on Refugees
European Convention for the Protection of Human Rights and Fundamental Freedoms available at: <a href="http://www.hri.org/docs/ECHR50.html#P1.Art3">http://www.hri.org/docs/ECHR50.html#P1.Art3</a>	European CHRFF
African Charter on Human and People's Rights available at: <a href="http://www1.umn.edu/humanrts/instreet/z1afchar.htm">http://www1.umn.edu/humanrts/instreet/z1afchar.htm</a>	African CHPR
American Convention on Human Rights available at: <a href="http://www1.umn.edu/humanrts/oasinstr/zoas3con.htm">http://www1.umn.edu/humanrts/oasinstr/zoas3con.htm</a>	American CHR
SADC Parliamentary Forum: Norms and Standards for Elections in the SADC Region available at: <a href="http://www.accessdemocracy.org/NDI/library/1372_elect_sadcpf_normsstandards.pdf">http://www.accessdemocracy.org/NDI/library/1372_elect_sadcpf_normsstandards.pdf</a>	SADC, Norms and Standards
International Standards and Commitments on the Right to Democratic Elections: A Practical Guide to Democratic Elections Best Practice available at: <a href="http://www.osce.org/odihr/documents/elections/intstand_draft.pdf">http://www.osce.org/odihr/documents/elections/intstand_draft.pdf</a>	OSCE/ODIHR, Draft Standards and Commitments
Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE available at: <a href="http://www.osce.org/docs/english/1990-1999/hd/cope90e.htm">http://www.osce.org/docs/english/1990-1999/hd/cope90e.htm</a>	Copenhagen
Inter-Parliamentary Union Declaration on Criteria for Free and Fair Elections available at: <a href="http://www.ipu.org/cnl-e/154-free.htm">http://www.ipu.org/cnl-e/154-free.htm</a>	IPU, Declaration on Criteria for Free and Fair Elections
Council of Europe: European Commission for Democracy Through Law: Venice Commission Guidelines on Elections available at: <a href="http://www.venice.coe.int/docs/2002/CDL-AD(2002)013-e.html">http://www.venice.coe.int/docs/2002/CDL-AD(2002)013-e.html</a>	Venice Commission Guidelines
Association of Central and Eastern European Election Officials Convention on Election Standards, Electoral Rights and Freedoms available at: <a href="http://www.cikrf.ru/conference/conference_en_konv.htm">http://www.cikrf.ru/conference/conference_en_konv.htm</a>	ACEEEO, Draft Convention on Election Standards

## **ANNEX 4: PARTICIPATORY ELECTIONS PROJECT TEAM**

### ***Jeff Fischer***

Jeff Fischer is the Senior Coordinator for PEP. In this role, he is responsible for the conduct of the project modules and the direction of the research. Mr. Fischer is currently Senior Advisor for Elections at the IFES for which he has conducted numerous assignments. In 2000, Mr. Fischer was the Director of Election Operations for the Organization for Security and Cooperation in Europe (OSCE) and Head of the Joint Registration Task Force of United Nations (UNMIK) and OSCE in Kosovo. He served in 1999 as Chief Electoral Officer for the United Nations in East Timor (UNAMET) and Director General of Elections in 1996 for the OSCE in Bosnia and Herzegovina. Each of these electoral processes involved major initiatives to assure that refugees and displaced persons were able to register and cast their ballots.

### ***Jeremy Grace***

Jeremy Grace is the Research Coordinator for PEP, responsible for organizing and conducting the research modules of the study. Mr. Grace is currently visiting professor in international politics, law, organization, and comparative politics at State University of New York at Geneseo. In 1998, he directed the IOM out-of-country voting program for Bosnian refugees residing in Croatia and was, in 1999, the IOM Deputy Director for the registration and polling of East Timorese displaced persons in Indonesia. He also authored an evaluation of IOM's role in the 2000 Kosovo elections. From 1996 to 2000, Mr. Grace had multiple assignments with the OSCE in Croatia, Bosnia and Herzegovina and Kosovo. He is also a consultant for the World Bank.

### ***Bruce Hatch***

As the Technical Coordinator for PEP, Bruce Hatch is responsible for examining the logistical and other technical issues that must be managed in order to conduct out-of-country registration and voting. In 2002, Mr. Hatch acted as elections operations advisor to the State Election Commission of the Republic of Macedonia. In 2001, Mr. Hatch was the operations advisor to the Out-of-Kosovo voting program conducted by IOM for the OSCE. From 1999 to 2000, he served as operations and logistics advisor to the Joint Registration Task Force (UN and OSCE) in Kosovo and as operations advisor to the OSCE Mission in Kosovo. Mr. Hatch was an operations and logistics consultant for IFES, Elections Canada, the Canadian International Development Agency (CIDA), and the United Nations Electoral Assistance Division (UNEAD), working in such elections as East Timor, Cambodia, Haiti, Sierra Leone, and Tanzania.

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