



Building Accountability, Legitimacy, and Peace: Refugees, Internally Displaced Persons, and the Right to Political Participation

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INTRODUCTION

The participation of refugees and internally displaced persons (IDPs) in post-conflict elections is critical to ensure governance that is legitimate and accountable. Unfortunately, the enfranchisement of those displaced by conflict is often forgone due to tight electoral timetables and weak support from the international community. Each post-conflict environment presents unique challenges to an electoral process, whether it be addressing the aftermath of “identity cleansing” in Kosovo, genocide in Rwanda, or prolonged civil war in Sudan. The nature of the conflict, as well as the patterns of displacement it produces, will require different mechanisms to facilitate full participation.

Decisions regarding refugee and IDP enfranchisement are often made against a backdrop of rushed timetables and political/resource concerns of international donors, governments who host refugees, and the country where the election is to take place. Elections themselves are often seen as a classic component of donor countries’ exit strategies, resulting in election administrators and international organizations racing against time to design a “quick fix” and make an election happen. However, addressing the refugee and IDP problem well requires time and resources—luxuries that are often not available.

Inclusive electoral processes in post-conflict societies can create an environment for reconciliation and lay the foundation for the development of strong democratic institutions. Particularly in divided post-conflict societies, participatory elections provide a mechanism to attain meaningful reconciliation and sustainable peace. The *process* of conducting the election is, in and of itself, a step towards reconciliation. Rafael López-Pintor has written that “reconciliation elections are aimed primarily at incorporating into a democratic political system political antagonists who related to each other by the use of sheer force prior to the election.” An electoral process in which refugees and IDPs do not participate can reward the very groups who instigated the conflict. Furthermore, “the effectiveness of reconciliation elections should be judged by their contribution to the solution of the two main issues facing the political system: the ending of a civil conflict and the establishment of a state authority democratic control over all the country.”¹

The research presented in this paper suggests that in order for such an election to be judged effective, conflict-forced migrants must be enfranchised. When a significant portion of the population is excluded from the electoral process, the resulting system of governance suffers from a lack of legitimacy, accountability, and sustainability. The absence of these pillars of democracy has potentially drastic consequences for peace and stability in the region.

My research as the 2004 Hybl fellow explores the international legal framework related to displaced people—in particular, the right to political participation and the definition of refugees and IDPs. While the right to political participation is clear in international law, particularly in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, political participation is absent from international refugee law, namely the 1951 Convention Relating to the Status of Refugees

¹ Rafael López-Pintor, “Reconciliation Elections: A Post-Cold War Experience,” in *Rebuilding Societies After Civil War: Critical Roles for International Assistance*, ed. Krishna Kumar (Boulder, Colorado: Lynne Rienner Publishers, 1997), pp. 49–56.

and its 1967 Protocol. Although international treaties represent minimum standards, the gap between international law and the realization of these rights is alarming.

The right to the restoration of personal identity is also etched in the international legal framework: everyone has the right to recognition everywhere as a person before the law. However, the realization of this right is particularly challenging in post-conflict environments where lost, stolen, or damaged identity documents are the norm. Restoring identity to those displaced by conflict is essential to their enfranchisement, as it is to their right to return, to property, and to marry. In this paper, I review methods used to confirm the identity and eligibility of an applicant for voter registration, particularly when the restoration of lost documentation is necessary. Possible weaknesses of these methods are identified, and I offer solutions to address them.

The lack of accurate population data (the result of conflict-forced migration) also presents unique challenges to constituency delineation in post-conflict elections. This paper reviews a number of methods that have been used in the past to address this challenge, including the single national district, the district block system, and non-geographic districts. Decisions regarding whether the displaced will cast ballots in their current location, original home district, or intended future district of residence impact the effectiveness of electoral participation of conflict-forced migrants.

My research draws upon examples from past post-conflict elections, particularly Liberia, Sierra Leone, Kosovo, East Timor, Bosnia and Herzegovina, and Cambodia. The elections selected for this study represent a variety of models used to enfranchise the displaced. Some feature out-of-country registration and voting while others required the displaced to return to their home districts to participate. Some boast high levels of participation, while in others participation of the displaced was negligible at best.

PARTICIPATION

For the purposes of this paper, I distinguish between political, civic, and electoral participation. Electoral participation in post-conflict elections can take many forms, including running for office, developing political party platforms, monitoring and reporting on elections, developing and implementing electoral laws, and designing and implementing civic and voter education programs. For a democratic electoral process to truly represent the will of the people, a representative group of the voting population must be involved at each level of the process. The act of casting a ballot in and of itself does not result in a representative government that will be accountable to its constituents. Effective participation includes helping to define the choices and party agendas, and shaping and implementing electoral processes. Democratic values can only be realized when participation extends beyond electoral and political participation to true civic participation. However, in an effort to address the immediate needs of post-conflict societies, this paper focuses on electoral participation, specifically on voting.

There are a number of preconditions to meaningful electoral participation. A necessary first step is ensuring the legitimacy and transparency of peace agreements themselves. In divided post-conflict societies, an electorate must feel safe enough to participate, must have confidence in the process, and must feel they have a vested interest in participating. So that voters feel safe, disarmament must be underway. To promote

confidence in the process, voters must feel that casting their ballots will be effective, and space must exist for the development of a strong civil society.

Where these preconditions are met, the electoral participation of conflict-forced migrant populations ensures greater acceptance of the results of an election, increasing sustainability of the peace process. As López-Pintor writes, "...acceptance of results by all contenders becomes a fundamental and necessary test for founding democratic polity."² Acceptance of results at the grassroots level is equally important. If a large portion of a particular ethnic, religious, ideological, or other group is absent from the process, the outcome cannot be legitimized.

The participation of displaced populations in elections has an impact beyond the legitimization of the outcome of an election: their participation promotes the success of reconciliation and nation-building processes in divided post-conflict societies. Furthermore, if conflict-forced migrants are able to participate in electoral processes, they are more likely to return, bringing with them skills that will be invaluable to reconstruction processes. An electoral process also provides an opportunity to establish communications among displaced communities so that there is a visibility, transparency, and confidence as reconciliation continues.³

International legal framework

The right to political participation is clearly established in international law, including in the 1948 Universal Declaration of Human Rights (UDHR)

1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. 2) Everyone has the right to equal access to public service in his country. 3) 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 the equivalent free voting procedures.⁴

and the 1976 International Covenant on Civil and Political Rights (ICCPR).

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

² López-Pintor (1997), p. 55.

³ Jeremy Grace, "The Electoral Rights of Conflict Forced Migrants: A Review of Relevant Legal Norms and Standards." USAID/IOM/PEP Discussion Paper No. 1 (March 2003). Available at <http://www.iom.int/pep>.

⁴ UN, *Universal Declaration of Human Rights*, G.A. Res. 217A (III), U.N. Doc. A/810 (1948). Available at <http://www.unhcr.ch/udhr/lang/eng.htm>, accessed July 2004. Henceforth referred to as UDHR.

elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free will of the electors...⁵

Based on these definitions, the right to political participation is most commonly thought of as electoral participation in a democratic election, which includes the right to vote or serve as a candidate and which results in government that represents the will of the people. These documents also discuss other rights that could be applicable to political participation, such as freedom of thought, opinion, peaceful assembly and association.⁶

While the UDHR and ICCPR apply widely, the two key documents that deal specifically with refugees, the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, do not explicitly discuss the right to political participation. It should be noted that these documents of international law reflect only the basic *minimum* standards for treatment of refugees. Indeed, a March 1996 introduction to the Convention and Protocol by the UN High Commissioner for Refugees urges states to go above and beyond these minimum standards.⁷

To date, there is no formal treaty that recognizes the rights of the internally displaced in the way the 1951 Convention and its Protocol address those displaced outside of internationally recognized borders. However, a document crafted in 1998 by Francis Deng, “Guiding Principles on Internal Displacement,” does directly discuss the rights of IDPs to political participation. Principle 22 addresses their political and electoral participation rights:

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: ...c) the right to associate freely and participate equally in community affairs, 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...⁸

Principle 29 recognizes broader rights of political and civic participation:

Internally displaced persons who have returned to their homes or places of habitual residence or who have resettled in another part of the country shall not be discriminated against as a result of their having been displaced. They shall have the right to participate fully

⁵ UN, *International Covenant on Civil and Political Rights*, G.A. Res. 2220A(XXI), 21 U.N. GAOR Supp. (No. 16), U.N. Doc. A/6316 (1966, entered into force 1976), Article 25. Available at http://www.unhcr.ch/html/menu3/b/a_ccpr.htm, accessed July 2004.

⁶ See Articles 18, 19 and 20 of the UDHR.

⁷ The Office of the UNHCR in its March 1996 introductory note wrote “[The Convention] lays down basic minimum standards for the treatment of refugees, without prejudice to the granting by States of more favorable treatment.”

⁸ Francis M. Deng, “Guiding Principles on Internal Displacement,” submitted pursuant to Commission on Human Rights resolution 1997/39. UN doc E/CN.4/1998/53/Add.2 (1998). Available at <http://www.idproject.org>, accessed November 2003.

and equally in public affairs at all levels and have equal access to public services.

The Guiding Principles are not legally binding. However, they are widely recognized by the international community and their frequent application may create a foundation of international legal norms as they relate to the internally displaced.

The right to “equal access to public services” in both the UDHR and the Guiding Principles is a particularly important objective of electoral participation. As a result of their displacement, refugees and IDPs have a high demand for regular access to a variety of public services. Where the displaced are able to participate in politics at the local level, as candidates for office as well as voters, the accountability of government in providing these services to the displaced and returnees will increase.

WHO ARE THE DISPLACED?

Any group—from the professional elite to the rural poor—can be displaced. Some of the displaced are economic migrants, members of the military, world citizens, or professionals who may be living and working beyond the border of their country of origin. All have something to gain and to contribute through electoral participation. However, this research focuses primarily on formally recognized refugees and the internally displaced. According to the Refugee Policy Group, “Refugees are products of conflict and gross humanitarian violations. As such, they have a deep stake in creating conditions for stability, peace, and development in their countries of origin.”⁹ Depending on the nature of the conflict, displaced populations can represent a particular political, ideological, ethnic, racial, or linguistic group.

International legal framework

International law does offer a definition to guide designation of refugee status. However, considerable debate surrounds the term “refugee” in today’s context. The 1951 Convention defines a refugee as a person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political option, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence as a result of such events is unable or, owing to such fear, is unwilling to return to it.¹⁰

The final act of the conference on the status of refugees also noted that states should not hesitate to extend the terms of the Convention to people who fall outside of the relatively narrow definition of “refugee.” When analyzing how the Convention defines “refugee,” it

⁹ Dennis Gallagher and Anna Schowengerdt, “Refugees in Elections: A Separate Peace,” Refugee Policy Group (October 1997).

¹⁰ UN, *Convention Relating to the Status of Refugees*, July 28, 1951, art. 1, para A(2), 189 U.N.T.S. 137.

is important to keep in mind that the Convention was prepared in the aftermath of World War II, when conflict and the migrants it produced were of a different nature.

At the regional level, organizations have developed definitions that are appropriate for their contexts. For example, the Organization of African Unity applies a broader definition than the 1951 Convention, categorizing a “refugee” as:

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 his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality...¹¹

The internally displaced do not have a legal status comparable to the status of refugees. It is nonetheless important to recognize the definition of internal displacement that is offered by the Guiding Principles:

...internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border.¹²

Who are not refugees or IDPs?

It may be more appropriate to define who is *not* an IDP or refugee rather than who is. The Convention, its Protocol, and the Guiding Principles discuss persons who fall outside of their umbrella in greater depth than they do those who are protected by it. The UDHR, signed into effect just three years before the Convention, lays the foundation for the applicability of these documents by distinguishing groups who have the right to asylum from those who do not:

1) Everyone has the right to seek and to enjoy in other countries asylum from persecution. 2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.¹³

¹¹ Organization of African Unity, “Convention Governing the Specific Aspects of Refugee Problems in Africa,” (1969). Also see the IOM PEP Discussion Paper No. 1 for a discussion of the practices of regional organizations as well as international treaty law.

¹² “Guiding Principles on Internal Displacement.”

¹³ UDHR, Article 14.

The 1951 Convention builds upon the language of the UDHR by expanding the conditionality from non-political crimes to crimes against peace, war crimes, or crimes against humanity:

a) he has committed a crime against peace, a war crime, or a crime against humanity...; b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee; [and] c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

In stark contrast, the Guiding Principles, prepared more than four decades later, are “without prejudice to individual criminal responsibility under international law, in particular to genocide, crimes against humanity and war crimes.”¹⁴

Decisions regarding who is a refugee or IDP are increasingly contentious and can be subjective. The 1951 Convention applies exclusively to refugees who fall under the umbrella of UNHCR. This means that persons outside of UNHCR, including Palestinian refugees who receive protection and assistance from the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), cannot be guaranteed the rights and protections of the 1951 Convention.

The conditional language of the UDHR and the 1951 Convention raises both practical and ethical concerns. It is unlikely that those granting refugee status will have access to records of an individual’s criminal history. It is equally unlikely that an individual will have such documentation or openly admit any convictions. Furthermore, in a volatile post-conflict situation, a justice sector may not yet be prepared to address such accusations with due process. Even with the absence of a sound judicial sector, international law maintains that “...everyone has the right to be presumed innocent until proven guilty...”¹⁵

Determining refugee status, as these documents attempt to do, has important implications for achieving full participation in post-conflict settings, particularly when reconciliation is a priority. Interpreting these criteria to achieve a certain political end could raise ethical concerns, compromising the principle of “non-discrimination” that is an essential component of most international instruments of human rights law. Countries with histories of ethnic cleansing or genocide are particularly vulnerable to such manipulation and increasingly advocate systems of restorative justice. While states must be careful to avoid awarding the perpetrators of crimes, everyone must be able to exercise their rights to political participation without prejudice of criminality in order to support the process of reconciliation and healing that is essential to sustainable peace.

When does displacement end?

When developing practices to enfranchise conflict-forced migrants, many ask when refugee status and displacement ends. The question has both political and financial implications, which determine the extent of the international community’s responsibilities. A partial answer can be found in international law. The 1951 Convention does contain a cessation clause that stipulates refugee status ends when “the

¹⁴ “Guiding Principles on Internal Displacement,” Principle 1.2.

¹⁵ UDHR, Article 11.

circumstances in connection with which he has been recognized as a refugee have ceased to exist.” To guide such a decision, the Convention further stipulates that developments in the home country must be fundamental and sustainable, ensuring that the basis of the fear of persecution no longer exists.¹⁶ Of course such a determination is difficult to make and is at risk of being influenced by external factors.

The Guiding Principles deliberately do not contain a cessation clause.¹⁷ In its absence, some argue that the cessation of refugee status should be a guide for determining when internal displacement ends, based on the reasoning that the circumstances that displace refugees are similar to those that cause internal displacement. Others argue that as internal displacement is not a legal status, such a transfer of cessation would be inappropriate.¹⁸ In fact, the end of refugee status combined with a lack of confidence in the durability of peace can actually lead to an increase in the number of IDPs as refugees are forced to return around an electoral process.¹⁹

Electoral participation and ending refugee status

Refugees cannot legally lose their refugee status by voluntarily leaving their country of asylum, casting their ballots, and returning to asylum. However, in the context of Liberia’s 1997 election, many refugees feared that their refugee status would be compromised by participating in the election. Their concerns were, in the end, justified as Guinea did officially close its border with Liberia during voting, refusing re-entry to refugees who had returned to Liberia to vote. The Refugee Policy Group pointed out that “these refugees placed their refugee status in jeopardy by exercising their franchise.”²⁰

When an electoral process defines the end of a peace agreement (and humanitarian assistance programs), there is a risk that political participation becomes a tool of premature, forced repatriation. In the case of Bosnia and Herzegovina, the Dayton Peace Accords state, “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...”²¹ The Accords also state that the signatories of the agreement “shall ensure that refugees and displaced persons are permitted to return in safety, without risk of harassment... on account of their... political opinion.”²²

Democratic elections can contribute to fundamental and sustainable change, but elections alone should not be the basis for ending refugee status. Other factors include dismantling former security services, establishing an independent judiciary, and adhering to international human rights standards.²³

¹⁶ Raphael Bonoan, “Cessation of Refugee Status: A Guide for Determining when Internal Displacement Ends?” *Forced Migration Review*, No. 17 (May 2003).

¹⁷ Erin Mooney, “Bringing the End into Sight for Internally Displaced Persons” *Forced Migration Review*, No. 17 (May 2003).

¹⁸ Bonoan, (May 2003).

¹⁹ Mooney, (May 2003).

²⁰ Gallagher and Schowengerdt (October 1997).

²¹ Dayton Peace Accords, Annex 3: Agreement on Elections. Dayton, Ohio, and Paris, France: 1995. Also see RPG, October 1997, p. 16.

²² Dayton Peace Accords, Annex 7: Agreement on Refugees and Displaced Persons.”

²³ Bonoan, (May 2003). Also see Executive Committee of the High Commissioner’s Program, Sub-Committee on the Whole on International Protection, “Discussion Note on the Application of the “Ceased

ENFRANCHISING THE DISPLACED

The decision to enfranchise conflict-forced migrants is necessarily a political one. Due to the circumstances forcing their displacement, refugees may seek to avoid being seen as politically aligned with either the force that drove them out or the opposition to this force. Nonetheless, their political affiliation is often assumed and refugee communities are seen to be strong voting blocks for a particular political party. Thus politics drives the decisions of neighboring countries that host refugees and other international actors who may feel they have a stake in the outcome of a post-conflict election.

There are three main methods to enfranchise conflict-forced migrants: 1) temporarily returning to their place of origin, 2) casting ballots in person at polling stations out-of-country, or 3) voting by mail. The effectiveness of each method is determined by the nature of the conflict, the patterns of displacement it produces, questions of international will and the availability of resources.

Temporary return

As full repatriation before any election is unlikely, one method to facilitate the electoral participation of conflict-forced migrants requires electors to return to their place of origin both to register and vote. To be feasible, temporary return requires that a host of conditions be met, and too often it is used before they have been. In post-conflict situations, the security situation may not be able to support large numbers of returnees in the short period of time surrounding an electoral process, even if they are only staying temporarily. In addition, post-conflict states often do not have infrastructure adequate to meet the transportation, food, and shelter needs of a large influx of temporary returnees. Where crops and livestock have become weapons in a conflict, or where harvests have been abandoned during flight, food supplies may simply not be available to support a mass influx of returnees. However, because regional and international donors do not always support organizing voting outside the borders of a host country or by mail, temporary return is sometimes the only practical option for enfranchisement.

In the case of the 1997 Liberian elections as well as the 2002 elections in neighboring Sierra Leone, the international community yielded to the host country's resistance to external voting. However, in these cases, the refugees' close proximity to their home country, porous borders, and the presence of international peacekeeping forces made temporary return feasible. In other cases, such as the 1999 referendum in East Timor, wider patterns of displacement overseas made temporary return a less practical option.

The decision to consider an area safe for return is complex. In the 2002 elections in Sierra Leone, for example, there were accusations that political motives guided this decision.²⁴ A member of the Global IDP Project has written of Sierra Leone "...concern has been expressed in some cases that certain areas were prematurely classified as safe,

Circumstances" Cessation Clause in the 1951 Convention," UN doc. EC/SCP/1992/CRP.1, para. 11, December 20, 1991.

²⁴ The Carter Center, "Observing the 2002 Sierra Leone Elections: Final Report." Special Report Series of the Democracy Program (Atlanta, Georgia: May 2003).

or that established criteria were not properly applied, especially in light of the volatile situation in Liberia that has already resulted in cross-border raids and abductions of Sierra Leonean civilians.”²⁵

In Cambodia, it was not safety but time that disrupted the smooth conduct of elections. After negotiations to allow external voting failed, temporary repatriation was required for all Cambodians to vote. However, the repatriation of Cambodians from Thailand progressed more slowly than had been expected, affecting voter registration timetables and jeopardizing the integrity of the electoral process. In order to register returnees in time, the UN and the Thai government reached an agreement to allow most of the registration process to be conducted in Thailand. Because electoral law did not allow for voter registration on foreign soil, voters did not receive registration cards until they reached Cambodia.²⁶ In this case, electoral law did not allow enough time for full temporary repatriation to occur in advance of the election, and a combination of in- and out-of-country electoral activity was devised to ensure enfranchisement.

External voting

Systems of out-of-country or external voting can enfranchise the largest numbers of refugees when full repatriation is not possible. However, out-of-country voting has been utilized infrequently due to the strain it places on financial and human resources as well as the complexities of negotiating with governments who host refugee populations. Most post-conflict elections held in the 1990s did not use external voting.

External voting programs are essentially an extension of the election administration activities in the country of origin. Mobile teams can register voters in accordance with eligibility requirements, and polling stations can be established in refugee camps to facilitate enfranchisement. Such programs can be costly; however, external voting does eliminate many of the problems associated with temporary return, including fears related to premature return and the lack of infrastructure adequate to support a massive influx of refugees.

Negotiating with governments who host refugee populations is seen as the foremost challenge in developing external voting systems. Host governments are often concerned about security, stability, and sovereignty, the last issue making them resistant to the idea of a neighboring country’s political activity occurring on their soil. Such activity includes political party campaigning, voter education, and voter registration—all of which are essential to a successful electoral process. It is important to remember that, although refugees have crossed internationally recognized borders, they maintain the citizenship of their country of origin and all of the rights that it encompasses, including the right to vote.²⁷

External voting in East Timor

²⁵ Claudia McGoldrick, “Sierra Leone: Resettlement Doesn’t Always End Displacement” *Forced Migration Review*, No. 17 (May 2003).

²⁶ Gallagher and Schowengerdt (October 1997).

²⁷ Dennis Gallagher and Anna Schowengerdt, “Participation of Refugees in Postconflict Elections” in Postconflict Elections, Democratization, & International Assistance, ed. Krishna Kumar (Boulder, Colorado: Lynne Rienner Publishers, 1998), p. 199.

East Timor's history of occupation and conflict had produced an important diaspora of leaders who had sustained the struggle for independence. However, relatively few of these East Timorese were formally classified as refugees. As East Timor approached independence—holding a referendum in 1999 to determine whether it would become independent or remain part of Indonesia—and took up the tasks of forming an independent government—in the 2001 Constituent Assembly elections and the 2002 presidential elections, it had to decide whether to make use of external voting to enfranchise its diaspora.

In 1999, East Timor established an external voting program that aimed to enfranchise not just formal refugees but also members of its political and intellectual diaspora. Eligible voters had to be at least 17 years old and either a) born in East Timor, b) born outside of East Timor with at least one parent born in East Timor, or c) have a spouse in either of the previous categories.²⁸ Voting by mail was not allowed, but external voting could be done in person. The inclusion of leaders such as Xanana Gusmao, the current President, and José Ramos Horta, the current Minister of Foreign Affairs, had great symbolic importance, minimized fears, and bolstered the confidence of East Timorese in the referendum process.

In order to enfranchise the diaspora, the External Voting for East Timor program, coordinated by the IOM, established special registration centers and conducted polling in a number of countries outside of East Timor including Indonesia, Portugal, Mozambique, Australia, and the United States. External voting was perhaps easier to negotiate in the East Timor context given that large portions of the displaced were located in former colonizers, such as Indonesia and Portugal; formerly colonized states that sympathized with the East Timor cause, such as Mozambique; or in neighboring Australia, whose foreign policy has been intricately tied to East Timor's path to independence. However, some East Timorese had to travel great distances to register and then to vote, incurring high costs.²⁹ By extending the franchise to both refugees and members of the diaspora, the 1999 referendum on independence offered an opportunity to begin to define "who is East Timorese" in a way that would include all those who had played a role in the territory's turbulent history.

The other transitional elections in East Timor's recent history, though, did not offer external voting. The costs of overseas voting for these elections were prohibitive. In addition, security was a concern for all involved, and there was considerably anxiety among East Timorese that forces in Indonesia might attempt to rig the vote.

Given such security concerns, East Timorese leaders encouraged citizens to repatriate prior to the 2001 and 2002 elections. Some people felt that enough time had passed following the referendum to allow the diaspora to return home to participate in the

²⁸ IOM Case IV, May 2003. Also see Martin, Ian. Self-Determination in East Timor: The United Nations, the Ballot, and International Intervention. Boulder: Lynne Rienner Publishers, 2001, p. 54. Also see the "Agreement Regarding the Modalities for the Popular Consultation of the East Timorese Through a Direct Ballot" between the Governments of Indonesia and Portugal and the Secretary General of the United Nations signed on May 5, 1999. The Agreement can be found at www.usip.org/library/pa/et/east_timor205051999mod.html.

²⁹ International Organization of Migration. "Case IV: East Timor, The 1999 Popular Consultation on Autonomy." In "Case Studies on the Participation of Conflict Forced Migrants in Elections." Participatory Elections Project, May 2003.

remaining two transitional elections.³⁰ However, the retaliation of pro-Indonesian militia following the overwhelming vote for independence had displaced nearly one third of the territory's population, and many refugees and internally displaced persons were fearful of returning until they knew the outcome of the elections and felt confident that their safety would be guaranteed.

By-mail voting

Where conflicts have produced a wide pattern of displacement beyond neighboring countries, registration and voting can be done by mail. Some practices for by-mail voting have been drawn from the United States, where there is a history of voting through absentee ballots issued to voters outside of their municipalities on polling day. There are also examples of "all-mail-ballot" elections in which no traditional polling stations are established and ballots can only be distributed and cast through the mail.³¹ By-mail registration and polling procedures have been used in post-war elections in Bosnia and Kosovo with varying degrees of success.

In the 1996 and 1997 post-war elections in Bosnia and Herzegovina, an external voting program was carried out through a network of out-of-country voting (OCV) offices that were established in any country that hosted at least 5,000 refugees. In countries that hosted less than 5,000, a by-mail program was implemented. In some countries, both in-person and by-mail programs were used.³² The by-mail program was coordinated by the OCV headquarters in Vienna and utilized the network of country offices to transport registration forms and ballots. However, the by-mail program was weak on a technical level, and it became a source of electoral fraud. No provisions were made to remove refugee voters from in-country electoral rolls. Therefore, refugee voters could cast their ballots by-mail and then return to BiH to vote in their original or 1991 municipality. Indelible ink, which is an ineffective means of preventing double voting when absentee ballots are used, was not used in this case.

In Kosovo, the out-of-country voting program drew upon lessons learned in Bosnia and Herzegovina. Similar to the BiH elections, voter information offices were established to cover countries that would participate in the mail-in program and had the largest concentrations of Kosovars. Registration and voting did not occur at these regional offices, but rather all applicants were instructed to mail their registration applications to the Out-of-Kosovo headquarters in Vienna. Registration receipts, secured with watermarks and bar codes, were mailed to all successful registration applicants. Voters then returned this official receipt along with their ballots. When ballots were processed for counting, each bar code on the registration receipts was scanned to prevent double voting. Following the completion of the registration period, all successful registrants were entered into an electronic database in order to ensure there were no duplications.³³

³⁰ Colin Stewart. Personal Communication.

³¹ International IDEA. "Voting by Mail." The International IDEA Technical Paper Series for Election Administrators, No. 2. Stockholm, Sweden: 1999. The state of Oregon has a recent history of conducting elections exclusively by mail.

³² IOM. "Case I: Bosnia and Herzegovina, The 1996 General Elections and the 1997 Municipal and RS Assembly Elections." In "Case Studies on the Participation of Conflict Forced Migrants in Elections." Participatory Elections Project, May 2003.

³³ IOM. "Out of Kosovo Registration and Elections Operational Plan." Submitted on May 3, 2001.

By-mail programs present unique challenges to voter and civic education programs. In Kosovo, hotlines were established to provide information on the modalities of registration in both Albanian and Serbian languages. People could call the hotline to learn details about the registration process, confirm the status of their application or amend details in their record, or to learn information regarding voting.³⁴

In addition, voting-by-mail systems require that eligible voters have a reliable address and depend upon a sometimes unreliable postal system. Indeed, in the 1997 BiH elections, a postal strike in Canada delayed the delivery of voting materials, including registration receipts and ballots, disenfranchising some voters who were not able to postmark their ballots by the deadline.

IDENTITY, DOCUMENTATION, AND VOTER REGISTRATION

Confirming a person's identity is a prerequisite to determining whether he or she is eligible to vote. Notions of identity among persons displaced by conflict are complex, influenced by psychological and political factors. Beyond identity politics, verification of eligibility to vote is complicated when the displaced do not have any documentation. It is common for identity papers to be lost, stolen, destroyed, or intentionally falsified, if they ever existed at all. The following section explores the right to identity in international law as well as methods that have been commonly used to restore identity to people who do not have documentation.

International legal framework and restoration of personal identity

*Everyone has the right to recognition everywhere as a person before the law.*³⁵ This is a fundamental right guaranteed in cornerstones of international law, including the UDHR and the ICCPR. Regarding nationality and citizenship components of identity, the UDHR goes on to guarantee that "everyone has the right to a nationality."³⁶ The 1951 Convention on refugees protects the citizenship of refugees and provides for their documentation. Article 25 of the Convention discusses the right to restoration of personal identity with the following language:

2. The [A]uthority... 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.

³⁴ IOM, Case I, May 2003, p. 30.

³⁵ This fundamental right can be found in a number of international legal documents, including Article 16 of the Universal Declaration of Human Rights, Article 16 of the International Covenant on Civil and Political Rights, Article 5 of the African Convention, and Article 16 of the American Convention.

³⁶ UDHR, Article 15.

Article 27 states further, “The Contracting States shall issue identity papers to any refugee in their territory who does not possess a valid travel document.” Article 28 guarantees that states must issue travel documents to refugees to allow them to travel outside of the host states territory “unless compelling reasons of national security or public order otherwise require” a host state to limit their movement or travel. This provision is particularly important when temporary return is required for people to register and vote.

The Convention does say that fees can be charged for restoration of documentation but suggests that any fees should be moderate and should be similar to what host country nationals are charged for similar services (though such fees for nationals can be prohibitively high).

The Guiding Principles also establish a framework to ensure the right of restoration of personal identity to IDPs:

1. Every human being has the right to recognition everywhere as a person before the law.
2. To give effect to this right for internally displaced persons, the authorities concerned shall issue to them all documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates and marriage certificates. In particular, the authorities shall facilitate the issuance of new documents or the replacement of documents lost in the course of displacement, without imposing unreasonable conditions, such as requiring the return to one’s area of habitual residence in order to obtain these or other required documents.
3. Women and men shall have equal rights to obtain such necessary documents and shall have the right to have such documentation in their own names.³⁷

Validating identity through social documentation

This section explores a number of ways to validate a person’s eligibility to vote and concurrently restore his or her identity. Some validation mechanisms rely on existing documentation; however, this section is primarily concerned with processes to restore identity to those who lack documentation. In some post-conflict situations, a process of social documentation has been used to confirm the identity of eligible voters during registration. There are two main types of social documentation: affidavits and vetting.

Affidavits

This method of social documentation relies on community members to confirm a person’s identity and attest that he or she meets the requirements to vote. In most cases the applicant will make a statement or sworn affidavit that is affirmed and signed by those present. Affidavits have been utilized in a number of post-conflict elections, including East Timor, Sierra Leone, Liberia, and BiH, meeting different challenges in each context.

³⁷ “Guiding Principles on Internal Displacement,” Principle 20.

In the 1999 referendum in East Timor, documentation was initially required to prove identity and birth in the territory of East Timor. As many registrants did not possess documentation (including passports, ID cards, refugee cards, driving licenses, and certificates of birth or baptism), the registration criteria were amended to allow social documentation. The process required that a potential registrant make an oath before a religious leader or village chief. Voters living outside the borders of the territory were allowed to swear their affidavits in front of a notary or legal authority, even though this option was potentially problematic as the notary or legal official was unlikely to have first-hand knowledge of the registrant's identity.³⁸

Affidavits were also used in post-war elections in Bosnia and Herzegovina. Here applicants were required to confirm that they met the registration criteria, in this case to declare their name, current address, identity number (if known) and their 1991 or pre-war address. The declaration was made in the presence of a religious authority, a municipal official, a magistrate, or two "reputable" persons whose names appeared on the provisional voters list.³⁹ In Sierra Leone, the 2002 Electoral Act provided for "the testimony of a member of the local authority in the area of his residence" or "a statutory declaration giving particulars of his birth" as possible ways for a voter to support the validity of his claim for registration.

Vetting

Another form of social documentation used to restore identity and confirm eligibility of potential voters who lack documentation is vetting. Vetting is a process in which each applicant appears in person before a panel that asks questions to determine that a person is in fact eligible to vote. Vetting is a more time consuming form of identity restoration and voter registration as each applicant must be interviewed by a panel and the panel must be allowed time to make a decision (either by majority or consensus). If a vetting process is used, this fact must be taken into consideration when setting timetables and establishing the voter registration period.

In highly charged post-conflict societies, the vetting process also presents the possibility of violence, particularly if a person feels that he or she has been unfairly rejected. Given this fact, an adequate appeals process is essential to the viability of vetting in post-conflict environments. This complaint mechanism must be described in voter education campaigns to increase voter confidence in the process and quell the potential for violence in reaction to a process that people feel is unfair. In addition, it is essential to ensure the composition of the panel is representative of the wider population. It is also important to couple vetting with a strong monitoring and evaluation program in order to build voter confidence in the process and ensure that it is fair. However, depending upon the patterns of displacement, assembling enough panels to ensure equal distribution and accessibility could be challenging.

Both forms of social documentation could potentially open the doors to two different types of fraud: 1) systematically denying a particular segment of eligible voters

³⁸ IOM. Case IV, May 2003 (p. 60). Also see International Organization for Migration (IOM). "Enfranchising Conflict-Forced Migrants: Issues, Standards, and Best Practices." Discussion Paper No. 2. Participatory Elections Project (PEP). Prepared by Jeremy Grace and Jeff Fischer. September 29, 2003, p. 38.

³⁹ IOM. Case I, May 2003.

their registration through intimidation or refusal to validate their eligibility and 2) registering ineligible persons with the aim to “stack” the voters list and influence the outcome of the election. The first possibility can be avoided by establishing a system through which people can contest a denial of registration. The second is more difficult to prevent. One step would be for electoral authorities to ensure that witnesses of affidavits and vetting panel members are representative of eligible voters, fair, and balanced. Social documentation processes must be closely monitored to prevent fraud—or to ensure that, if fraud does occur, it is addressed quickly and effectively.

In post-conflict situations, everyone must take care that social documentation processes proceed with caution and contribute to the overall process of reconciliation. For a survivor of genocide, his or her identity has been a source of persecution. It can be extremely challenging for a survivor to stand before members of their community, confront their fears, and attest to their true identity. Other citizens might also be resistant to the idea of a voters’ roll for fear that the list might fall into the “wrong hands.” It is therefore essential that voter and civic education programs establish confidence in the process and alleviate fears related to the restoration of identity.

Same-day registration

There are cases of post-conflict elections where no voter registration campaign was completed in advance of the election, and no valid voters list existed before election day. In these instances, registration and voting were conducted on election day(s) at the polling stations. Same-day registration could include a combination of pre-election and election day registration or could be a system where all voters are registered exclusively on election day(s).⁴⁰

Same-day registration avoids the burdens of temporary repatriation to register, including the costs and transportation problems associated with such movement. Neither the 2002 Sierra Leone elections nor the 1997 Liberia elections provided for external voting, requiring the displaced to return to their places of origin to register and to vote. In some cases, the displaced made two trips—one to register and a second to vote—while others could only make one trip, staying in their place of origin between the end of registration and polling day. Where the displaced made two trips, same-day registration could have cut travel costs in half. Where the displaced made one trip, the length of their stay would be dramatically reduced, reducing security concerns as well as reducing the strain of meeting basic food and shelter needs in the post-conflict environment. Same-day registration also relieves time pressure during the registration period, reducing the threat that extensions to the registration period will push back the electoral timetable, affect the time needed to distribute the list prior to election day, or compromise the quality of the voter’s list.

Same-day registration often requires that polling take place over several days. Rafael López-Pintor has warned that more than one polling day “increases political uncertainty and poses greater risks for the security of both the people and the electoral materials.”⁴¹ In a volatile post-conflict society, multiple polling days may increase anxiety among voters or increase the chances of intimidation or fraud. Although security is of utmost importance in elections whether there are one or six polling days, multiple

⁴⁰ Same-day registration was utilized in South Africa’s 1994 transitional elections.

⁴¹ López-Pintor (1997), p. 57.

polling days put an additional strain on security arrangements and may test a population's confidence in the process. In addition to requiring additional polling staff, multiple days also depend upon an expansive infrastructure of communication and transportation systems that are a rarity in post-conflict societies. When full participation is critical and same-day registration and multiple polling days are mandated, election administrators must put systems into place to minimize these risks.

Same-day registration also presents some unique logistical and planning challenges to those administering an election. Without a reliable voters' roll or census data, election administrators must guess where the most accessible locations will be for polling stations. They must also estimate the number of voters who are likely to turn up at each polling station in order to distribute supplies, including ballots. In cases where it is necessary to use same-day registration, authorities should establish area supply stations and a system to redistribute materials on election day in response to the needs of particular polling stations. Such a system will require reliable communication systems and additional security for the storage and transportation of election materials.

Restoring identity in Kosovo: The 2000 Municipal Assembly Elections

When NATO forces began their bombing of Kosovo in 1999, Serbs began a systematic campaign of identity cleansing—confiscating and destroying documentation—with the objective of preventing ethnic Albanians from proving their residency or citizenship in Kosovo. Identity cleansing was hence a method to gain a post-war advantage by increasing the Serb percentage of the population in proportion to that of ethnic Albanians. The destruction of documentation was further complicated by a NATO bombing of the Ministry of Interior, where many identification records were stored.⁴²

Following the end of the NATO campaign, across the country people began to collect and secure documents that could be used to confirm a person's identity during voter registration. This included records such as applications for passports, utility bills, and certificates of birth and marriage. Similar to the system used just a few years earlier in Bosnia and Herzegovina, a restoration of identity system was established in which an applicant for voter registration would complete a questionnaire regarding their residency and any types of documentation they might have previously had. The questionnaire was then be forwarded to one of 30 Municipal Records Offices where staff searched for any evidence that could verify the application, including original applications for driver's licenses, passports, and even utility bills.⁴³ As many documents and records were destroyed during the conflict, only about 20 percent of applications were approved using this process.⁴⁴

This marginal success rate continued to decline as the number of applications continued to grow. Furthermore, the system required considerable human resources and time to process the applications. A centralized process of sorting, storing, and cataloging documents from municipalities across the country would have saved considerable time in

⁴² Alexander Knapp. Personal communication.

⁴³ IOM. "Case VII: Kosovo, 2000 Municipal Assembly Elections." In "Case Studies on the Participation of Conflict Forced Migrants in Elections." Participatory Elections Project, May 2003.

⁴⁴ IOM, Case VII, May 2003.

processing applications, but such centralization was not logistically possible given the electoral timeframe.

To ensure that the registration process could be completed before election day, a decision was made to employ a methodology of random sampling. The probability for fraud in a particular geographic area determined the percentage of that region's case load that would be reviewed. If the cases reviewed were approved with no instances of fraud, the applicants in the entire case load were then approved.⁴⁵

This process, which excluded out-of-country applicants, depended on two important assumptions: 1) all eligible applicants had possessed acceptable documentation of their identity before the war and 2) the probability of fraud for a particular municipality, which determined the sample size, could in fact be established (despite the fact that it is an inherently subjective process open to political manipulation and stereotyping). The process was also extremely complex and relied upon a tightly knit infrastructure and a dependable and secure communications system.

Though this sampling methodology was used in the end, two interesting systems to restore identity were proposed in Kosovo. One was a point system in which an applicant needed a certain number of points to confirm his or her citizenship. A lower number of points would have restored residency (but not citizenship) and would have allowed a person to vote. Various types of identity documents were given different point values, with a passport or national identity card carrying the most points, birth certificate or marriage licenses being in the middle range, and driver's licenses, utility bills, UNHCR card, and social documentation also providing some points.⁴⁶ Though the system ultimately was not implemented, it provides as a model that could be adapted for other post-conflict situations.

Another proposal was to go beyond voter registration and create a comprehensive civil registry. The proposed civil registry would include bio-data capture (photographs and fingerprints of each applicant) and would be a centralized record of all aspects of a person's identity, including birth, marriage, voter registration, and criminal history. The complexities of designing such a civil registry combined with the labor intensive requirements led authorities to conduct only a registration of voters. However, the development of a civil registry at the time of voter registration could be a valuable tool for post-conflict societies.

WHO CAN CAST BALLOTS WHERE?

Who can cast ballots where is one of the most important questions when designing a system to facilitate the political participation of conflict-forced migrants. To find an answer to the question, one must grapple with methods to delineate constituencies as well as decisions regarding who is eligible to vote in which district.

Constituency delineation

Reliable census data or a completed voter registry is desirable when demarcating constituencies. In many post-conflict elections, such census data is either not available or inaccurate and a sound electoral roll either does not exist or is under construction up until

⁴⁵ IOM, Case VII, May 2003.

⁴⁶ Alexander T. Knapp, personal communication.

election day. The models explored below represent those that do not necessarily rely on an existing census or voters' roll, making them more useful in elections that seek to enfranchise a significant displaced population.

There are also factors beyond constituency delineation that will affect the legitimacy, accountability, and representativeness of governance with respect to refugees and the internally displaced. These factors include the type of electoral system utilized (first-past-the-post, party list, alternative vote, etc.), thresholds necessary to earn a seat in proportional representation systems, as well as the regulations for registering political parties and candidates.

Single national district

The single national district is most commonly used in presidential or head-of-state elections. In such a system, the entire nation is considered one district for the purposes of the election. The system is helpful to displaced voters in that electors can cast their ballots anywhere in the country and are not forced to return to their home municipalities prematurely. The single national district has been used in a number of post-conflict and transitional elections, including Sierra Leone's 1996 presidential and parliamentary elections and East Timor's 1999 referendum on independence and first presidential elections in 2002.

The single nation district is most effective when a single voter register is compiled and security measures are put into place to prevent double voting. Given that a voter could cast his or her ballot at any polling station in the country, a foolproof security system must be in place to prevent a person from casting ballots in multiple polling stations. Even when a centralized electoral roll has been compiled, other mechanisms such as indelible ink must be utilized to ensure that a voter does not cast more than one ballot.

The single national district can also offer a security benefit. As the results of an election can be announced as a single national result, rather than multiple results by district, the single national district can make it more difficult for extremist groups (who may wish to retaliate against particular communities) to determine which groups may have supported any given candidate.

Although the single national district allows for the freedom of movement during an electoral period, it does have consequences for the accountability of elected officials. When used for parliamentary, municipal, or other local elections, the single national district decreases politicians' accountability—an attribute that is essential to the sustainability and consolidation of democracy, because the accountability of officeholders tends to increase as their district size decreases. In Sierra Leone's 1996 presidential and parliamentary elections, because reliable census data was lacking to determine districts, the single national district was used. However, the model was widely unpopular as Members of Parliament were not accountable to any one constituency.⁴⁷ When the single national district was used in Liberia's 1997 elections, many Liberians and international observer groups argued that the system placed too much power in the hands of the President.⁴⁸ This model is therefore most effective when used for

⁴⁷ The Carter Center, p. 21.

⁴⁸ IOM. "Liberia: Refugees and Internally Displaced Persons in the October 2005 Elections." Action Plan III. Participatory Elections Project (PEP). Prepared by Jeremy Grace. May 5, 2004. (p. 29)

referendums or presidential elections that depend less on districts to enhance accountability.

District block system

A district block system is one that does not rely upon census data or a voters' roll to demarcate the country. Each district block is assigned the same number of representative seats. Given the complaints surrounding accountability and the single national district used in 1996 and the lack of reliable census data with which to determine constituencies, Sierra Leone adopted a provisional arrangement and employed a district block system for its 2002 elections. The country's existing 14 districts were allocated eight parliamentary seats each. The use of the transfer ballot that allowed voters to cast their ballots in any district (discussed below) meant that the number of voters in each district was more unpredictable. As a result, both the population size and the number of eligible voters exercising their right to vote in each district varied widely.⁴⁹ Similar to the US Senate system in which each state has two seats regardless of population size, this system means that votes cast in smaller districts carry more weight than those cast in larger districts.⁵⁰

Non-geographic districts

Non-geographic districting is a method of constituency delineation by means other than population size, demographics, and geography. Rather, this system involves defining districts using factors like economic standing, ethnicity, race, or language. Non-geographic districts can benefit smaller political parties that may not have a territorial concentration, by ensuring them representation they may not otherwise achieve. Non-geographic districting is particularly applicable when representation of a non-territorial sector is necessary, such as the election of a special rapporteur on a particular subject or a special member of Parliament. For example, in 1990 Croatian workers elected members to 160 seats in a chamber of Parliament dedicated to associated labor.⁵¹

A 1995 Croatian law states that Croatian citizens who reside outside of the country can elect 12 representatives to the House of Representatives. Croatian law also establishes special voting units through which national minorities (without regard to territorial boundaries) elect a representative.⁵² Members of national minorities estimated to be less than 8 percent of the population were assigned to these special constituencies, which are intended to "enable less numerous ethnic and national communities or minorities of the same language, religion and race, a free development of their distinctive

⁴⁹ The Carter Center, p. 21.

⁵⁰ Ashley Barr, personal communication. Also see Katz, *Democracy and Elections*, p. 180.

⁵¹ Lawyers for Democratic Reform. "Croatian Election Report." April, 1990.

⁵² Republic of Croatia. "The Law on Voting Units for the House of Representatives of the Parliament of the Republic of Croatia." Article 5. in *The Principal Acts Regulating Elections from the Election Commission of the Republic of Croatia*. Zagreb: October, 1995. Also see Stefica Derek-Antolijak, "The Croatian Electoral Model – Its Most Important Elements," in *Croatian Political Science Review* ISSN 0032-3241, Vol. 1, No. 1, pp. 107-109. Zagreb: 1992.

characteristics within the majority citizen community or majority communities without abuses by either the majority or the minority...”⁵³

Depending upon the nature of the post-conflict environment, non-geographic districts could hinder reconciliation efforts and further divide a society along ethnic, religious, or linguistic lines. Non-geographic districts also depend upon a governance system and constitution that ensures that seats are proportionate to the weight of their constituencies. Where both non-geographic and geographic districts are used, as in Cambodia, groups may require accountability of officials from both their geographic and non-geographic district representatives.

Voting in current, home, or future districts

When a country is emerging from an incident of ethnic cleansing or genocide (or other event that dictated where people live), it is essential that an electoral process avoid institutionalizing these discriminatory practices. Given this goal, who can cast ballots where is a critical question. When it comes to deciding where external voters, returnees, or internally displaced voters will cast their ballots, there are three basic choices.

The first is for the displaced to cast their ballots in the district where they *currently* reside. This option is available to the internally displaced and returnees, not refugees or persons who remain in exile. Voting in current districts has the highest risk of institutionalizing the pattern of displacement that the previous regime created through conflict. In the 1996 and 1997 elections in Bosnia and Herzegovina, for example, “each hard-line party sought to consolidate the territorial gains made during the war by legitimizing the party’s political control of ethnically cleansed areas through the electoral process.”⁵⁴

The second possibility is for the displaced to cast ballots in their *home* districts. Home districts are usually defined by a person’s latest address before their displacement. The 1951 Convention on refugees provides for “continuity of residence,” stipulating that, if a person returns to his or her original place of residence, the time before and after his or her displacement should be considered as “one uninterrupted period for any purposes for which uninterrupted residence is required.”⁵⁵ In the case of Bosnia and Herzegovina, a general rule of the Dayton Agreement stated “...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.” The general rule was designed to avoid giving power to the perpetrators of ethnic cleansing and to return the organization and structure of BiH to its pre-war state.

The third possibility is for the displaced to cast their ballots in *future* municipalities, defined as where the displaced intend to live upon their return. Sierra Leone’s 2002 elections made use of this option with no major complaints of fraud. However, the future municipality option was inappropriately exploited in the 1996 general elections when Bosnian Serb refugees and IDPs were coerced into casting their by-mail ballots in a future municipality as a means to create concentrations of Serb votes

⁵³ Republic of Croatia. “The Constitutional Law of Human Rights and Freedoms and the Rights of National and Ethnic Communities or Minorities in the Republic of Croatia.” Zagreb: May 8, 1992. In *Croatian Political Science Review* ISSN 0032-3241, Vol. 1, No. 1, pp. 107-109. Zagreb: 1992.

⁵⁴ IOM, Case I, 2003, p. 24.

⁵⁵ UN, 1951 Convention, Article 10

that would otherwise be spread throughout the territory. In some locations, the provision of humanitarian aid was conditioned upon a person having documentation of voting in a future municipality.⁵⁶ To prevent such fraud, the system was adjusted so that people voting in their current or future municipality had to do so in person, not by absentee ballots. Absentee ballots could only be used to vote in one's 1991 home municipality with documented proof of their 1991 residency.

To date no study has been done, to my knowledge, to track repatriation and determine if refugees indeed returned to their country of origin and are now living in the municipality where they cast ballots. When these options are utilized it is essential that the conditions be in place for refugees and IDPs be able to repatriate to the municipality where they cast their ballots. Otherwise the accountability and legitimacy of government will be jeopardized.

Transfer voting

Transfer voting systems allow an elector to vote from literally anywhere in the country, regardless of where he or she may be registered. The transfer vote system as it was implemented in the 2002 Sierra Leone elections allowed voters to cast their ballots from anywhere for any district they desired, be it their current, home, or intended future district. In contrast to requirements to cast ballots in one's district of registration, transfer voting allows freedom of movement between the end of the registration period and election day.

The transfer ballot was implemented by administrators in an effort to ensure that no one was disenfranchised. However, transfer voting presents a number of challenges to an electoral process. Transfer voting means that it is impossible to know how many voters will cast their ballots in each district. This has repercussions for the distribution of supplies, location of polling stations, and staffing. The use of transfer voting in Sierra Leone also contributed to the decision to use the district block system, assigning equal numbers of seats to each district. Even if a reliable voter registry had been in place, there would have been no way to predict where the holders of each transfer ballot would choose to cast their vote. One way to address this accountability problem would have been to use the party list system of proportional representation, allowing the number of seats to be determined by the number of ballots cast.

The use of transfer ballots can also delay the counting and announcement of results. The ballots must be transferred to their intended district before they can be counted, putting additional pressure on transportation and security systems. In the case of Sierra Leone, the weakness of the multiple voter registration lists combined with the complexity of the transfer vote system threatened the integrity of the electoral process. Reports of multiple voting (and underage voting) were common.⁵⁷

CONCLUSIONS

There is a clear gap between policy and practice when it comes to the right of political participation and conflict-forced migrants. This issue has fallen through the cracks: it is off the radar screen of human rights organizations, international legal

⁵⁶ IOM, Case I, 2003, pp. 22-23.

⁵⁷ The Carter Center, p. 10.

professionals, democracy and governance organizations, and humanitarian aid and refugee organizations. For example, election observation groups have given their stamp of approval with minimal recognition of “the refugee issue” where displaced groups have been disenfranchised. The roles and responsibilities of the international community in advocating with respect to these issues have not been solidified. These communities must work together to ensure the enfranchisement of conflict-forced migrants. International law must be clarified and strengthened regarding the right to political participation for conflict-forced migrants. Furthermore, international standards for post-conflict elections and election observation must specifically address the participation of the displaced.

As with any electoral process, there are risks involved with systems that enfranchise conflict-forced migrants. These include avenues for fraud/intimidation, time considerations, and the possibility of reigniting conflict. However, it is important to recognize that these risks are not unique to refugee and IDP participation. Rather, they are simply a different dimension of risk that exists within any post-conflict electoral context. My research indicates that the risk of *not* including conflict-forced migrants is far more dangerous. Widespread disenfranchisement could reignite or perpetuate the conflict with significant consequences for stability in the country and the region. Such a scenario also has significant financial implications, and full enfranchisement could potentially reduce the total time and cost of aid efforts.

Beyond electoral participation, aspects of political and civic participation must also be addressed. Other considerations not discussed in this paper include voter and civic education programs and political party campaigning. Questions in this realm involve how to conduct such programs out-of-country as well as how to incorporate the displaced in their implementation. Other important issues that fall beyond the scope of this research include facilitating the participation of the displaced as candidates or otherwise ensuring that they are represented in governmental bodies.

The questions of enfranchisement raised in this paper also extend to people living outside the borders of their country of origin who are not included in the traditional definition of “refugee” and “IDP.” These include international civil servants, business professionals, members of diasporas from unique conflict situations such as that in Zimbabwe, regional migrants in the Americas and parts of Africa, the stateless, and those who are considered to be economic migrants. There is a growing population of displaced people who are not allowed to vote at home or in the place where they live and work. Yet, these people are not without government. Everyone has the right to recognition everywhere as a person before the law, and this right includes the basic right to vote and participate in a government.

The international community should reflect upon experiences to date in order to extract lessons that can be applied to upcoming post-conflict elections around the world, including Afghanistan, Iraq, Angola, Liberia, and Burundi, to name just a few. The enfranchisement of conflict-forced migrants (however they are defined) is vital to building governance that is accountable and legitimate and that can lead towards lasting peace.

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