

# Incorporating the Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges

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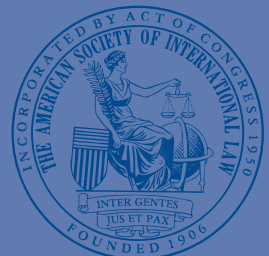
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## Chapter 13

### Political Participation Rights in Particular the Right to Vote

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#### INTRODUCTION

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

Governments have the primary role and responsibility to ensure that IDPs are able fully and freely to exercise their rights to political participation. This responsibility remains in force during a situation of displacement as well as upon IDPs' return or resettlement. Indeed, the ability of IDPs to exercise their rights to political participation on an equal basis with others in the community

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is an essential element of a durable solution. National legislation and practice therefore must safeguard IDPs' rights to political participation.

## LEGAL FRAMEWORK

The right to political participation, including the right to vote and to be elected as well as to participate in governmental and public affairs is expressly affirmed in the *Guiding Principles on Internal Displacement* (the *Guiding Principles*),<sup>2</sup> the internationally-recognized framework setting forth the rights and guarantees of IDPs, and it is rooted in well-established standards of international human rights law.

### Relevant Guiding Principles

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

Principle 22(1)(d) expressly affirms that these tenets apply to the right to political participation. It specifies that “[i]nternally 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.”

To give effect to this right, Principle 22(1)(a) affirms the “rights to freedom of thought, conscience, religion or belief, opinion and expression” and Principle 22(1)(c) provides for the “right to associate freely and to participate equally in community affairs.” Principle 29(1) reaffirms the right of internally displaced

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

persons “to participate fully and equally in public affairs at all levels” also upon their return or their resettlement.

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

## Legal Basis

### *Universal and Equal Suffrage*

Underpinning the right to political participation, in particular the right to vote and to be elected, is the principle of universal and equal suffrage. The first international statement of this principle appears in Article 21 of the 1948 Universal Declaration of Human Rights (UDHR) and is codified as a right in Article 25 of the International Covenant on Civil and Political Rights (ICCPR),<sup>3</sup> which affirms that:

[e]very citizen shall have the right and the opportunity ... without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the

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<sup>3</sup> Universal Declaration of Human Rights, G.A. res 217A (III), U.N. Doc. A/810 at 71 (1948); International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1967), entered into force Mar. 23, 1976.

free expression of the will of the electors; (c) To have access, on general terms of equality, to public service in his country.

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

However, Article 25 prohibits “unreasonable restrictions” on the right to political participation. Typically, the right to vote is contingent upon citizenship, age, residence in a particular electoral or administrative district, and other criteria. For IDPs, residency requirements are inherently problematic as IDPs have been forced to flee their habitual residence. While residency requirements for voter eligibility are legitimate, the U.N. Human Rights Committee has specified that “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>4</sup> Indeed, the Committee has stressed that states “must take effective measures to ensure that all persons entitled to vote are able to exercise this right.”<sup>5</sup> The Organization for Security and Cooperation in Europe (OSCE) similarly has specified that “the absence of a permanent residence should not prevent an otherwise qualified person from being registered as a voter.”<sup>6</sup>

Aside from Article 25 of the ICCPR, also essential to a meaningful election process are what have been termed the “political and campaign rights,”

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<sup>4</sup> Human Rights Comm., General Comment No. 25, *The Rights to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service*, ¶ 11, U.N. Doc. A/51/540 (1996).

<sup>5</sup> *Id.* ¶ 3.

<sup>6</sup> Organization for Security and Co-operation in Europe/Office for Democratic Institutions and Human Rights [OSCE/ODIHR], *Existing Commitments for Democratic Elections in OSCE Participating States*, at 16 (Oct. 2003).

elaborated elsewhere in the ICCPR.<sup>7</sup> Of particular relevance are Article 19, guaranteeing freedom of opinion and expression; Article 21, guaranteeing the right to peaceful assembly; and Article 22, guaranteeing the right to freedom of association. As with residency requirements, any restrictions that serve to impede the full and free participation of citizens in genuine elections should be subject to scrutiny.

Regional human rights instruments reaffirm and reflect rights to political participation articulated in the ICCPR, including the African Charter on Human and Peoples' Rights<sup>8</sup> (Article 13); the American Convention on Human Rights<sup>9</sup> (Article 23); and the First Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms<sup>10</sup> (Article 3). Mention also should be made of the "human dimension" commitments undertaken by participating states in the OSCE. Of particular importance is the Copenhagen Document of 1990 (Articles 3, 6, 7, and 8).<sup>11</sup>

Finally, central to the concept of universal and equal suffrage is the principle of non-discrimination. Article 25 of the ICCPR specifies that the political participation rights articulated therein are to be guaranteed without any of the

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<sup>7</sup> GUY GOODWIN-GILL, *FREE AND FAIR ELECTIONS* 102 (New expanded ed., 2006), citing Larry Garber and Clark Gibson, *Review of United Nations Electoral Assistance 1992-1993*, at 58 (Aug. 1993); Thomas Franck, *The Emerging Right to Democratic Governance*, 86 AM. J. INT'L L. 61 (1992).

<sup>8</sup> African Charter on Human and Peoples' Rights, June 26, 1981, O.A.U. Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).

<sup>9</sup> American Convention on Human Rights, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992).

<sup>10</sup> Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms, (ETS 9), 213 U.N.T.S. 262.

<sup>11</sup> Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference for Security and Cooperation in Europe, June 29, 1990.

distinctions mentioned in Article 2, that is, 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.”<sup>12</sup> Regional human rights instruments restate a general principle of non-discrimination on similar grounds.<sup>13</sup> Potentially of significance to IDPs, the American Convention adds “any other social condition” to the standard list of grounds on which discrimination in the enjoyment of rights is prohibited.<sup>14</sup>

### *Special Protection for Particular Groups*

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

Supplementing general provisions of non-discrimination based on sex are a number of international and regional instruments specifically articulating the political participation rights of women. These instruments include the Convention on the Political Rights of Women,<sup>15</sup> the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and

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<sup>12</sup> ICCPR, arts. 25, 2.

<sup>13</sup> African Charter, art. 2; American Convention, art. 1; European Convention, [European] Convention for the Protection of Human Rights and Fundamental Freedoms, (ETS 5), 213 U.N.T.S. 222, entered into force Sept. 3, 1953, as amended by Protocols Nos 3, 5, and 8 which entered into force on Sept. 21, 1970, Dec. 20, 1971 and Jan. 1, 1990 respectively, art 14.

<sup>14</sup> American Convention, art. 1.

<sup>15</sup> Convention on the Political Rights of Women, 193 U.N.T.S. 135.

the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.<sup>16</sup>

Ethnic and minority groups often are disproportionately affected by displacement. Thus, the political participation rights articulated in the Convention on the Elimination of All Forms of Racial Discrimination (CERD),<sup>17</sup> the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities,<sup>18</sup> and International Labour Organization (ILO) Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries are also relevant.<sup>19</sup>

### *Situation-specific Issues*

In times of public emergency, including war, restrictions on rights to political participation are permissible under the ICCPR and most of the regional instruments. However, under the American Convention on Human Rights, no derogation is permitted.<sup>20</sup>

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<sup>16</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, CAB/LEG/66.6 (Sept. 13, 2000), art. 9, entered into force Nov. 25, 2005.

<sup>17</sup> Convention on the Elimination of All Forms of Racial Discrimination against Women, G.A. res. 34/180, 34 U.N. Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force Sept. 3, 1981, art. 7.

<sup>18</sup> Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities, G.A. res. 47/135, annex, 47 U.N. GAOR Supp. No. 49 at 210, U.N. Doc. A/47/49 (1993). art. 2.

<sup>19</sup> Convention concerning Indigenous and Tribal Peoples in Independent Countries (ILO No. 169), 72 ILO Official Bull. 59, entered into force Sept. 5, 1991. art. 6.1 (a)-(b).

<sup>20</sup> American Convention on Human Rights, art. 27.



Situations of internal displacement often arise in the context of armed conflict. Unlike human rights law, international humanitarian law does not address the issue of political participation. Nonetheless, in the event that elections were to be conducted in a situation of armed conflict (whether internal or international conflict), the continued application of the principle of non-discrimination under international human rights law would ensure that IDPs in any case could not be denied the right of political participation. In situations of natural disaster, persons affected by natural disasters “have the right to vote in elections and to be elected even if they cannot exercise these rights at their places of habitual residence.”<sup>21</sup>

Indeed, in situations of internal displacement, whatever their cause, the importance of ensuring rights to political participation has been expressly affirmed in normative statements by inter-governmental organizations. The OSCE has underscored that “it should be a matter of special scrutiny whether IDPs can freely exercise their right to vote.”<sup>22</sup> The Council of Europe has affirmed that “member states should take appropriate legal and practical measures to enable internally displaced persons to exercise their right to vote in national, regional or local elections and to ensure that this right is not infringed by obstacles of a practical nature.”<sup>23</sup> The African Union, in its draft Convention on Internal Displacement and Protecting and Assisting Internally Displaced Persons affirms that internal displacement does not infringe on IDPs’ right to vote.

In summary, the principle of universal and equal suffrage clearly extends to all internally displaced citizens who meet the voter eligibility criteria specified in

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<sup>21</sup> United Nations, Inter-Agency Standing Committee (IASC), *Operational Guidelines on Human Rights Protection in Situations of Natural Disasters, with Particular Reference to the Persons who are Internally Displaced (Guidelines on Human Rights and Natural Disasters)*, Guideline D.5.1, 32 (2006).

<sup>22</sup> Organization for Security and Co-operation in Europe [OSCE], *Final Report, Supplementary Human Dimension Meeting on Migration and Internal Displacement*, Vienna, Austria, at 5 (Sept. 25, 2000).

<sup>23</sup> Council of Europe, Recommendation (2006), adopted by the Committee of Ministers on Apr. 5, 2006, ¶ 9.

national electoral legislation. Special protections exist to ensure this right is enjoyed by historically disadvantaged groups, including women, ethnic groups, minorities, and indigenous persons, who typically comprise disproportionate numbers of internally displaced populations. Further, whereas residency requirements often apply, it is well-established that these cannot exclude the internally displaced from being able to exercise their rights to political participation.

## **OVERVIEW OF OBSTACLES TO THE IMPLEMENTATION OF THE GUIDING PRINCIPLES**

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

### **Residency Requirements**

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

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

following:

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

In Georgia, national legislation for many years expressly denied IDPs the ability to elect municipal or parliamentary representatives for the districts in which they were residing while displaced. Although IDPs were permitted to re-register as an elector in this area, according to national legislation, doing so would come at a cost of relinquishing their IDP “status” and all the benefits this entailed under the Law on IDPs. In part, these regulations reflected the lingering influence of the *propiska* system in place during the Soviet Union, which restricted freedom of movement by tying rights to an individual’s approved place of residence.<sup>24</sup>

In Sri Lanka, while IDPs are not prevented by any legal restriction to change registration of official residence from one administration region to another, administrative, practical, and political barriers have been an issue. To change the place of registration, an IDP must return to the area where they were

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<sup>24</sup> Erin Mooney & Balkees Jarrah, *The Voting Rights of Internally Displaced Persons: The OSCE Region*, at 32-41 (2004), available at [http://www.brookings.edu/~media/Files/rc/papers/2004/1105humanrights\\_mooney/20041105\\_osce.pdf](http://www.brookings.edu/~media/Files/rc/papers/2004/1105humanrights_mooney/20041105_osce.pdf).

registered prior to displacement to collect a letter of confirmation—a requirement that is neither practical nor safe. As in Georgia, by registering to vote in their place of residence while displaced, IDPs risked losing their status as IDPs and the associated relief aid as well as potential assistance to return and rebuild their homes should this possibility ever arise. Moreover, for Muslims expelled from the north, the government policy in Puttalam district has long been that they are living temporarily in the area as IDPs until they can return to their places of origin. Reflecting this, their right to vote is tied strictly to the area where they were registered as voters prior to displacement, i.e., the North, through absentee voting. However, unless IDPs are able to safely visit these areas, they cannot verify that their names are included on the annually updated voters' lists, which are posted only in the area of electoral administration. IDPs who reached the legal voting age (18 years) after displacement therefore have been unable to register in the voting lists either in their area of origin or their present location.<sup>25</sup>

In many countries, re-registering one's place of residence and therefore the constituency in which a voter is registered also often entails cumbersome administrative and procedural requirements, which can be particularly unreasonable in situations of internal displacement. Often, as in the case of Sri Lanka noted above as well as Chechnya, Armenia, and Zimbabwe, registering to vote requires IDPs to return to their place of origin to obtain a transfer form. In Armenia, IDPs faced exacting evidentiary requirements.<sup>26</sup> In Zimbabwe, transfer forms are provided for under the Electoral Act but entail stiff documentation requirements, which have impeded large numbers of IDPs (many of whom were believed to be opposition supporters) from participating in the elections.<sup>27</sup>

In Liberia, the nearly 150,000 IDPs remaining in camps during the period of voter registration in advance of elections in October 2005 had the option to

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<sup>25</sup> Catherine Brun, *Local Citizens of Internally Displaced Persons? Dilemmas of Long Term Displacement in Sri Lanka*, 16 J. OF REFUGEE STUDIES 386-390 (2003).

<sup>26</sup> Mooney & Jarrah, *supra* note 24.

<sup>27</sup> *Zimbabwe: Thousands of Clean-Up Victims May Fail to Vote in Senate Election*, ZIMONLINE, Oct. 20, 2005.

register to vote either in the camps or in their home areas. However, they were required to decide several months before the election, and at a time when the return process was just beginning and was encountering obstacles, whether their residence on polling day would still be in the camps or would already be back in their home communities. The situation epitomized how election scenarios can drive repatriation and return programs, and potentially without due regard to core humanitarian principles of voluntary, safe, and dignified return.<sup>28</sup> Over-ambitious statements about timelines for return encouraged the majority of IDPs who registered to opt to vote back home. However, delays in the actual return process (which in fact was completed only in spring 2006), meant that IDPs who had registered to vote at home but who, in fact, were still in the camps on polling day would be disenfranchised.<sup>29</sup>

### **Lack of Documentation<sup>30</sup>**

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

Obtaining replacement documentation often is very difficult; in some countries, as noted above, it may even require that IDPs return to their areas of origin although these remain unsafe. Moreover, even prior to displacement, it may be that requirements for documentation can discriminate against women

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<sup>28</sup> Internal Displacement Monitoring Centre, *Internal Displacement: Global Overview of Trends and Developments in 2005, 2006* INTERNAL DISPLACEMENT MONITORING CTR., at 37.

<sup>29</sup> *Liberia and Cote d'Ivoire: Upcoming Elections May Exclude Displaced Persons, Refugees* Int'l 2005.

<sup>30</sup> See chapter nine in this volume on the recovery of personal documentation.

and minorities. In a number of countries, women lack government-issued identity documentation in their own names and instead must rely on their husbands or other male family members, with whom they are registered as “dependents.” In the event of the deaths of their male relatives or the family separation that often occurs in situations of displacement, these women lose all legal identity and also face tremendous obstacles obtaining replacement documentation in their own names.<sup>31</sup> As regards minorities, the lack of documentation among Roma IDPs in the Balkans, for instance, has been a major obstacle to their participation in elections.<sup>32</sup>

### **Discrimination**

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

In Croatia, for example, legislation in place in the mid to late 1990s made a legal distinction between displaced ethnic Serbs and displaced ethnic Croats, which resulted in systematic discrimination against displaced Serbs. Displaced Serb voters faced more cumbersome registration procedures, had access to

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<sup>31</sup> U.N. Office of the Special Adviser on Gender Issues and Advancement of Women, *Enhancing Women’s Participation in Electoral Processes in Post-Conflict Countries*, Expert Group Meeting Report, Feb. 20, 2004, U.N. Doc. EGN/ELEC/2004.

<sup>32</sup> Organization for Security and Co-operation/Office for Democratic Institutions and Human Rights [OSCE/ODIHR], *Republic of Serbia, Serbia and Montenegro, Presidential Election 13 and 27 June 2004, OSCE/ODIHR Election Observation Mission Report*, at 2 (Sept. 22, 2004).

fewer polling stations than displaced Croats, and in some cases, were even directly turned away by the staff of polling stations.<sup>33</sup>

Discriminatory language policies can also have significant repercussions on IDPs' political participation. In Turkey, the prohibition of languages other than Turkish in political campaigning, coupled with low levels of literacy among the Kurdish population in the south-east of the country, where the internal displacement has been concentrated, was a significant obstacle to Kurdish IDPs participating in elections and making an informed choice.<sup>34</sup>

### **Insecurity and Acts of Intimidation**

In situations of displacement caused by conflict or communal tensions, exercising the right to vote and to stand for election can result in intimidation and entail risks to physical security. These risks can occur at the various different stages of the electoral process, from voter registration, to obtaining the necessary identity documentation, through to the casting of ballots and even the arrival of elected officials to assume their duties of office. For instance, IDPs from Chechnya were required to travel back to their home areas, even though these remained unsafe, to collect a voting certificate.<sup>35</sup> In a number of countries, displaced voters have been harassed and attacked while traveling to, or once at, polling stations. In Moldova, IDP returnees crossing from the secessionist Transdniestrian region to cast their vote in Moldovan elections regularly have faced obstruction, intimidation, and harassment from the *de facto* Transdniestrian authorities.<sup>36</sup> In post-conflict elections held in Sierra Leone, acts of intimidation marred the electoral participation of IDP

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<sup>33</sup> Simon Bagshaw, *Internally Displaced Persons and Political Participation: The OSCE Region*, Occasional Paper, The Brookings Institution Project on Internal Displacement, 13 (2000).

<sup>34</sup> Mooney & Jarrah, *supra* note 24.

<sup>35</sup> See, e.g., *id.* at 49-54.

<sup>36</sup> *Id.* at 47 (citing OSCE/ODIHR election observation reports).

women voters.<sup>37</sup> In Zimbabwe, displaced voters who opted to return to rural areas to vote in the October 2005 elections required letters from the village leaders whom allegedly had been mobilized to intimidate electors to vote for the ruling party.<sup>38</sup> Elections can only be free, fair, and legitimate if voters can cast their ballots and participate in the overall electoral process without fear or risk of harm.

### **Physical Access to Polling Stations**

Problems of physical access to polling stations due, for instance, to insecurity, disaster conditions, or distance, can also impede IDPs' political participation. In the post-conflict elections held in Sierra Leone in 2002, despite positive steps taken by the government to enable the participation of internally displaced women, the need to travel long distances to reach voting stations and the cost of transportation impeded many IDP women from casting their vote.<sup>39</sup> Absentee voting arrangements may be the only means by which displaced persons are able to exercise their right to vote, although it is not provided for in all cases. Even when absentee voting procedures are in place, these sometimes can be so complicated as to frustrate IDPs' ability to make use of them. In the United States, a federal lawsuit was filed on behalf of electors from the state of Louisiana displaced by Hurricane Katrina to protest cumbersome mail-in voting procedures in the New Orleans municipal elections.<sup>40</sup>

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<sup>37</sup> Binta Mansaray & Courtney Mireille O'Connor, *Voting for Peace, Survival and Self-Reliance: Internally Displaced Women Go to the Polls in Sierra Leone*, Sept. 2002, available at <http://www.womenscommission.org/pdf/sl.pdf> [hereinafter *Voting for Peace*].

<sup>38</sup> *Zimbabwe: Thousands of Clean-Up Victims May Fail to Vote in Senate Election*, ZIMONLINE, Oct. 20, 2005.

<sup>39</sup> See *Voting for Peace*, *supra* note 37.

<sup>40</sup> *Group Sues Over New Orleans Election Plans*, ASSOCIATED PRESS, Feb. 10, 2006.



### **Lack of Information and Issues of Transparency**

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

Electoral officials themselves often lack clear guidance on the particular legislative provisions as well as procedural arrangements and safeguards in place to enable IDPs' participation in the political process. Epitomizing this problem was the 2003 presidential election held in Chechnya, when dramatically conflicting information about the voting arrangements for IDPs located in Ingushetia created such confusion as to lead to IDPs' *de facto* disenfranchisement.<sup>41</sup> In Georgia, when electoral reforms were introduced in national legislation to enable IDPs to vote in all types of elections (see below), these important changes to the electoral law and procedures were not adequately known or understood by local electoral officials, who in some cases continued to turn IDP voters away.<sup>42</sup> In the 2005 presidential elections in Liberia, IDP organizations underscored the urgent need for voter education in IDP camps, with a particular appeal for information on political parties' platforms on return, resettlement, and reintegration of displaced and other war-affected Liberians.<sup>43</sup>

Language barriers can also be an issue. In Serbia, the OSCE has pinpointed the lack of voter information provided in the Roma language as one of the main reasons for low electoral participation by Roma IDPs.<sup>44</sup> In Azerbaijan,

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<sup>41</sup> See Mooney and Jarrah, *supra* note 24.

<sup>42</sup> *Id.* at 37.

<sup>43</sup> 'Visit Us Now' IDPs Leadership Urges UP, DAILY OBSERVER, Nov. 1, 2005.

<sup>44</sup> Organization for Security and Co-operation/Office for Democratic Institutions and Human Rights [OSCR/ODIHR], Republic of Serbia (Federal Republic of Yugoslavia), Presidential Elections, Sept. 29 and Oct. 13, 2002, and Repeat Presidential Election, Dec. 8, 2002, Final Report, Feb. 18, 2000.

the government's change for official use to the Latin alphabet as opposed to the Cyrillic script, in which IDPs were schooled prior to their displacement, has resulted in IDPs' experiencing difficulties in comprehending public information from the government and media about elections.<sup>45</sup>

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

## REGULATORY FRAMEWORK

IDPs' political and voting rights must be protected through the national electoral framework, defined as "a group of constitutional, legislative, regulatory, jurisprudential and management rules"<sup>46</sup> that govern the electoral process. In general, an electoral framework should address the following issues: the type of electoral system; district delimitation and seat apportionment; voter registration and management of the voter lists; the legal status and codes of conduct for candidates and political parties; balloting procedures; counting and results reporting; and resolution and adjudication of disputes.<sup>47</sup>

The centerpiece of this framework typically is a national electoral code or elections act. Complementing this are the administrative decisions of election management bodies (EMBs) and rulings of electoral tribunals and adjudication

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<sup>45</sup> International Organization for Migration, *Electoral Displacement in the Caucasus: Georgia and Azerbaijan, Action Plan II* (2003).

<sup>46</sup> Jesus .Orozco Hernandez & Y. Zuckermann, *Legal Framework Overview, ACE Electoral Knowledge Network*, available at <http://www.aceproject.org/ace-en/topics/vo/voa/voa02/voa02f>.

<sup>47</sup> See Organization for Security and Co-operation in Europe [OSCE], *Guidelines for Reviewing a Legal Framework for Election*, Jan. 2001, available at [http://www.osce.org/documents/odihr/2001/01/1566\\_en.pdf](http://www.osce.org/documents/odihr/2001/01/1566_en.pdf).

mechanisms, which clarify and make operational elements of election administration. In addition, any relevant decisions or rulings by the national human rights commission or constitutional court must be taken into account. In conflict or post-conflict environments, legislators often also need to ensure compliance with a variety of additional legal obligations, including transitional law and provisions embedded in peace agreements and treaties. In addition, domestic legislation and policy specifically related to internal displacement must also be taken into account.

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

More broadly, the national electoral framework must be consistent with the state's constitutional protections and obligations under international law. Where it is not, the electoral framework will need to be modified to be brought in line with international standards. Building on the provisions embedded in the international and regional human rights instruments, international and regional inter-governmental organizations as well as non-governmental organizations have developed detailed criteria for free and fair elections, which provide specific guidance and examples of best practices in relation to different elements of the election cycle. Key sources of guidance include:

- United Nations Human Rights Committee, General Comment 25;
- European Commission for Democracy through Law (Venice Commission), Guidelines on Elections;

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

While none of these documents expressly address internal displacement, legislators will find valuable guidance on particular aspects of the electoral process, including issues of residency and documentation, which are essential to address in order to ensure IDPs' voting rights.<sup>48</sup>

## **SUBSTANTIVE AND PROCEDURAL ELEMENTS OF STATE REGULATION**

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

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<sup>48</sup> See Office of the United Nations High Commissioner for Human Rights, *Compilation of Documents or Texts Adopted and Used by Various Intergovernmental, International, Regional and Subregional Organizations Aimed at Promoting and Consolidating Democracy*, available at [http://www2.ohchr.org/english/law/compilation\\_democracy/index.htm](http://www2.ohchr.org/english/law/compilation_democracy/index.htm).

### **Prior to Displacement**

Prior to displacement, the electoral framework should be institutionalized in the form of an independent and non-partisan electoral management body (EMB).<sup>49</sup> In particular, the electoral framework should be robust enough to withstand the political and natural forces that lead to displacement. This includes provisions that allow for the re-issue of documentation, the ability to update a voter's information in the registration system, provisions to keep backup copies of the databases in a centralized location, mechanisms to facilitate absentee balloting, and the basic guarantees associated with the conduct of free and fair elections, including principles of non-discrimination and equality of the vote. To ensure their implementation, these provisions will need to be translated into specific procedures, adequate resources will need to be allocated, and EMB staff at the national and local levels trained.

### **During Displacement**

Elections are often conducted in environments where substantial numbers of persons are already displaced, and new displacements and spontaneous or organized returns may continue throughout the election cycle. As a result, special procedures are required to ensure that IDPs are able to participate; their participation does not threaten their physical security and access to humanitarian services; and their participation is transparent and promotes confidence in the overall electoral process. The basis for the realization of these rights is the electoral framework, supplemented by additional statutory and constitutional provisions, particularly a national IDP policy.

Most countries use sub-national electoral districts to elect members of parliament, requiring unique ballots for each constituency.<sup>50</sup> Elections for

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<sup>49</sup> See ACE Electoral Knowledge Network, available at <http://aceproject.org/ace-en/topics/em>.

<sup>50</sup> Jeremy Grace & Jeff Fischer, *Enfranchising Conflict-Forced Migrants: Issues, Standards, and Best Practices*, PEP Discussion Paper No. 2, 11-12 (2003), available at [http://www.geneseo.edu/~iompres/Archive/Outputs/Standards\\_Final.pdf](http://www.geneseo.edu/~iompres/Archive/Outputs/Standards_Final.pdf).

regional and municipal legislative bodies also require unique ballots. This raises two immediate issues. First, where should IDPs who reside outside their regular electoral constituency cast their ballots and for which contests? Second, how should eligibility requirements be structured so as to guarantee the right of IDPs to participate?

### *Absentee Balloting and Residency Requirements*

Any election conducted in a situation of ongoing conflict-induced displacement indicates that IDPs do not feel secure enough to return to their homes—even temporarily—in order to participate. However, especially when displacement is used as a political tool used to forcibly alter demographic “facts” in support of contested political claims to a territory, guaranteeing IDPs the right to vote, should they so choose, for their pre-displacement home district via an absentee ballot can be essential to countering this political manipulation. The electoral framework should explicitly provide for absentee voting.

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

Residency requirements establish a genuine link between the voter and their electoral constituency (district). In some situations, this requirement obligates the voter to be present in the constituency on polling day in order to cast a ballot. In other cases, the voter must prove residence in the constituency at or before a previous date (often six months prior to the election, but in some cases several years), which further demonstrates a genuine link. In states that allow absentee voting, residency requirements mean that the voter must have resided within the constituency during a defined time period (ranging from six

months to as many as twenty years) in the past in order to remain eligible to vote from outside of the constituency.<sup>51</sup>

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

The determination of an appropriate length of residence in the current constituency can be a politically charged issue, especially where there are large numbers of IDP electors. However, basic human rights obligations hold that citizens should have a right to change their place of residence and participate in politics equally, after a reasonable period of time, with other residents of their new constituency.

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

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<sup>51</sup> See Venice Commission of the Council of Europe, *Guidelines on Elections*, CDL-AD (2002) 13, Sec. I 1 (July 5-6, 2002), available at <http://www.venice.coe.int/site/interface/english.htm>; U.N. Human Rights Committee, General Comment 25 (57), International Covenant on Civil and Political Rights, art. 40, ¶ 4, U.N. Doc. CCPR/C/21/Rev.1/Add.7.

addressed the voting rights of displaced populations, providing 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 ... Such a citizen may, however, apply to the Commission to cast his or her ballot elsewhere.”<sup>52</sup>

The election rules and regulations gave effect to this right by holding that, “[e]very effort will be made ... to facilitate the return of citizens to the municipality where they were registered in 1991 to vote in person. Those who cannot do so will be provided, on application, with an absentee ballot.”<sup>53</sup> Given that a central aim of one of the parties to the conflict had been to secure control of territory through ethnic cleansing, political actors were especially interested in whether the displaced would choose to vote in their current or their original municipality. In order to prevent attempts to influence the election outcome by pressuring IDPs to cast their ballot for particular constituencies, the Provisional Election Commission (PEC) established a residency requirement that limited displaced voters’ right to vote for their current location. The *1997 Rules and Regulations* provided that:

Article 10 Displaced Persons who were citizens of Bosnia and Herzegovina on 6 April 1992, but who have changed their place of residence...either forcibly as a result of war or voluntarily, may apply during the voter registration period to vote in person in the municipality in which they now live and intend to continue to live, only if they present documentary proof of continuous residence in the current municipality since 31 July 1996 or before.<sup>54</sup>

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<sup>52</sup> Office of the High Representative, *The General Framework Agreement for Peace in Bosnia and Herzegovina*, Annex 3, art. IV (Dec. 14, 2005), available at [http://www.ohr.int/dpa/default.asp?content\\_id=371](http://www.ohr.int/dpa/default.asp?content_id=371).

<sup>53</sup> Organization for Security and Co-operation in Europe/Office for Democratic Institutions and Human Rights [OSCE/ODIHR], *Rules and Regulations: As Amended and Recompiled from the 1996 Rules*, Provisional Election Commission Doc. (Oct. 14, 1997).

<sup>54</sup> *Id.* at 14.



Thus, in the 1997 municipal elections, IDPs were able to vote for their original municipality (either in person or by absentee ballot) or for their current municipality, subject to proof of residence on or before July 1996. This meant that voters who had moved to a new municipality less than fourteen months prior to the election could not select this option. Subsequent elections have continued to allow IDP voters to make this choice, although the residency requirement has been decreased to six months prior to each subsequent election.

*Constituencies Not Under the Control of the Recognized Government*

Elections conducted in countries where part of a state's territory is not under the effective control of the central government raise specific questions. Georgia, for example, employs a parallel system for electing parliament, where some seats are elected via single-member constituencies and the rest are elected through national or regional party lists. IDPs displaced from Abkhazia and South Ossetia (secessionist areas controlled by insurgent forces), however, were specifically denied by law the right to participate in the single-member component of the election. Under considerable pressure from the OSCE, the Council of Europe, and following questioning of the Georgian Government regarding IDP voting rights in the UN Human Rights Committee as well as consideration of a case brought by IDPs to the Georgian Constitutional Court, the Georgian parliament modified the electoral framework in August 2003. The Georgian parliament removed restrictions in legislation on IDP participation in the majoritarian contests and also guaranteed their voting rights in local elections, making clear that this was without placing IDPs' benefits in jeopardy.<sup>55</sup>

In Azerbaijan, legislators continue to struggle with the issue of electing representatives from the disputed region of Nagorno-Karabakh. For the 2005 parliamentary elections, the election law established eleven "constituencies in exile" for these regions. IDP voters, who overwhelming are ethnic Azeri, were

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<sup>55</sup> Mooney & Jarrah, *supra* note 24, at 32-38. The amended law is found in The Organic Law of Georgia: Unified Election Code of Georgia, as amended Aug. 14, 2003, available at <http://www.cec.gov.ge/kanonebi/kodeqsiENG.pdf>.

able to register and vote for their constituencies of origin, which are currently under Armenian control, from elsewhere in Azerbaijan. While the parliament sought to also allow ethnic Armenians resident in the Nagorno-Karabakh constituencies to vote, no mechanism could be established for their participation. These eleven constituencies were therefore essentially virtual. According to the OSCE's Office for Democratic Institutions and Human Rights (the OSCE/ODIHR), "[s]ome 283,000 voters were on the voter list in the IDP polling stations located either 'in exile' within other regions or in areas that are partially occupied."<sup>56</sup> However, IDPs have not been allowed to exercise their voting rights by voting for the constituencies in which they have been residing for more than fifteen years, since their displacement from Nagorno-Karabakh in the early 1990s.

In Sri Lanka, the issue of elections for the constituencies under the control of the Liberation Tigers of Tamil Elam (LTTE) has been addressed through administrative decrees issued by the Commissioner of Elections. The Sri Lankan Government does maintain a limited presence in LTTE-controlled areas through appointed government agents, who also act as voter registration officers. Thus, all voters inside these areas, whether displaced or not, are able to register in their current location. However, since police and other government officials cannot enter the LTTE areas, the Commissioner of Elections has established "cluster polling stations" in the government-controlled areas along the line of control. On voting day, the Department of Elections works with the LTTE to provide transportation for all voters resident in the LTTE-areas, including IDPs, to the cluster stations. Unfortunately, this means that the Department of Elections is not able to fully implement all aspects of the election law, particularly regarding campaigning throughout the country, and many voters are subject to pressures from the LTTE political and militia structures prior to arriving at the line of control.<sup>57</sup>

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<sup>56</sup> Organization for Security and Co-operation in Europe/Office for Democratic Institutions and Human Rights [OSCE/ODIHR], *Republic of Azerbaijan Parliamentary Elections: Election Observation Mission Final Report*, ODIH R.GAL/7/06, Sec. V (Feb. 1, 2006), available at [http://www.osce.org/documents/odihr/2006/02/17923\\_en.pdf](http://www.osce.org/documents/odihr/2006/02/17923_en.pdf).

Aside from the issue of IDPs' electoral district, additional common issues confronting these "exile" constituencies include difficulty presenting election-related information to the affected voters, administration of the voter registration, and threats to voter safety if they are forced to travel to a polling station on the other side of a frontline.<sup>58</sup> While the electoral framework should include specific provisions to mitigate these challenges, including codes of conduct for campaigning, it will obviously be difficult to fully implement protective measures in electoral districts in areas where the state is unable to exercise effective sovereignty.

### *Voter Registration*

As a starting point, voter registration needs to capture data on the current location of IDPs, their previous residences, and whether they intend to return to vote or wish to vote by absentee ballot. Electronic registration is highly desirable (although not always financially realistic), as the resulting database can easily adjust to notification by voters of their movements and allow for duplicate registrations to be identified. Registration should also result in the issuance of a receipt or voter identification card that can be used to verify entry on the voters list and allow voters to change their assigned constituency and polling station should they move prior to election day. Local election commissions (LECs) should be provided the capacity to verify these registrants, and communicate change of registration information to the national election commission and the local commission where the returnee originally registered. If the returns occur at a point too late in the election cycle for the final voter registration to be updated, returning IDPs should be able to cast a provisional or tendered ballot.<sup>59</sup>

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<sup>57</sup> See Jeremy Grace, *Sri Lanka: Voting Rights of IDPs, Refugees, and Economic Migrants*, Action Plan V, (Apr. 2006), available at [http://www.geneseo.edu/%7Eiompress/Archive/Outputs/Sri\\_Lanka\\_Final.pdf](http://www.geneseo.edu/%7Eiompress/Archive/Outputs/Sri_Lanka_Final.pdf).

<sup>58</sup> Other cases include Moldova and Cyprus. See Mooney & Jarrah, *supra* note 24, at 32-41.

<sup>59</sup> See *Provisional or Tendered Ballots*, ACE Electoral Knowledge Network, available at <http://www.aceproject.org/ace-en/topics/vo/voa/voa02/voa02f>.

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

### *Documentation*

In order to ensure that only eligible voters are able to participate and to prevent double voting, the electoral framework must provide guidance on which documents will prove the voter's identity, citizenship, and residency in a particular constituency. However, IDPs have often lost these documents, or they have been confiscated or destroyed.<sup>60</sup> IDPs should never be required to return to their original municipalities—which may be controlled by hostile military or political forces—in order to apply for and receive replacement documents. In a best case scenario, authorities would conduct a document re-issuance program prior to, or in conjunction with, voter registration. However, since situations of internal displacement often result in the breakdown of administrative services, IDPs may have limited or no means of re-acquiring documents prior to voter registration and/or the elections.

Thus, the electoral framework must provide guidance on how persons lacking documentation will be accounted for without compromising the integrity of the overall electoral process or the safety and rights of the internally displaced. The first and most basic statutory need is to guarantee IDPs' right to documentation, as affirmed in Guiding Principle 20. Many national IDP policies draw directly from the language in this Principle, a practice that should be encouraged. Often, however, national capacity may be unable to

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<sup>60</sup> Tim Cocks, *Displaced Congolese Struggle to Take Part*, GULF TIMES, Oct. 29, 2006, available at [http://www.gulf-times.com/site/topics/article.asp?cu\\_no=2&item\\_no=114854&version=1&template\\_id=39&parent\\_id=21](http://www.gulf-times.com/site/topics/article.asp?cu_no=2&item_no=114854&version=1&template_id=39&parent_id=21).

provide for the implementation of this right. Legislators in post-conflict countries must therefore determine how to enfranchise IDPs who lack requisite documentation. Three possible mechanisms include:

1. Using pre-crisis data obtained from census and civil registration programs and other municipal records to verify citizenship and eligibility, combined with special mechanisms for electoral authorities to perform documentation searches and/or verifications (this model was used in Bosnia and Herzegovina and Iraq);
2. Conducting a census or civil registration prior to the elections and using these newly issued documents as a basis for voter registration (this model was used in Kosovo); and,
3. 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/traditional notable (this model was used in East Timor,<sup>61</sup> Sierra Leone, and Afghanistan).<sup>62</sup>

Whichever mechanism or combination of mechanisms is to be employed should be clearly stated in the electoral code, along with relevant rules regarding evidentiary requirements, in order to provide clear and consistent guidance to election administration staff on how to accommodate persons who lack documents at the time of voter registration.

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<sup>61</sup> United Nations Mission in East Timor [UNAMET], *Notification I: Guidelines on Assessments of Documents*, Sec. D1 (1999), available at <http://www.geneseo.edu/~iompress/LeftNav/PRESS ElectionArchive.htm>.

<sup>62</sup> Issues associated with each of these types of program are considered in detail in Jeremy Grace & Jeff Fischer, *Enfranchising Conflict-Forced Migrants: Issues, Standards, and Best Practices*, PEP Discussion Paper No. 2, 34 (2003), available at [http://www.geneseo.edu/~iompress/Archive/Outputs/Standards\\_Final.pdf](http://www.geneseo.edu/~iompress/Archive/Outputs/Standards_Final.pdf).

*Voter Information*

“Knowledge is the crucial link to the effective empowerment of marginalized groups.”<sup>63</sup> Among the key measures for countries therefore to take is to ensure that IDP voters are equipped with election-related information. Targeted voter education programs should be developed to reach IDPs and address their particular situation. Information on the following two issues will be required: (1) elections processes and (2) party and candidate platforms. Election process information (when, where, and how to participate) should be made widely available by the EMB through media and press outlets, posters, civil society organizations, and relief organizations working directly with the displaced. Platform information (the programs and priorities of candidates and political parties) should normally be produced and distributed by the parties and candidates, either through paid advertisements, posters, and rallies, or through radio/press coverage and editorials. Moreover, the most effective voter education programs to marginalized communities emphasize not only the technical aspects of voting but also the importance of the electors’ voice in the political process.

In countries with modern communications infrastructure, the internet can prove a valuable outreach tool. However, the states most affected by internal displacement are often those with the weakest information technology capabilities. Even when these capabilities exist, IDPs are among the most economically disadvantaged communities and thus cannot be assumed to have access to digital media. In these situations, more direct voter education methods are required. In particular, the EMB should work closely with IDP associations, civil society organizations, and with international agencies in order to provide outreach and information on process information as widely as possible.

In camp situations, EMBs should make special efforts to engage IDP camp leadership structures as conduits for voter information. Capacity building and training for the camp leadership structures is particularly useful and can be

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<sup>63</sup> Muna Ndulo, *Enhancing the Role of Women in Electoral Processes in Post-Conflict Countries: Constitutional and Legislative Measures*, in SECURITY, RECONSTRUCTION AND RECONCILIATION: WHEN THE WARS END 126 (Muna Ndulo ed., 2007).

organized under the leadership of the Local Election Commission in cooperation with camp management agencies. Humanitarian agencies can also serve as important information conduits and should be consulted by the EMB throughout the electoral process. As women often are not adequately represented in camp leadership structures, additional efforts should be made to reach IDP women voters. International technical assistance agencies engaged in voter education can play a particularly useful role in this regard.

The issue of political party campaigning in IDP camps requires careful consideration. High population densities, difficult living conditions, weak security infrastructure, and the risk of politicization of the IDP issue may make the campaign period especially dangerous. As a general rule, political parties should be allowed to campaign in the IDP camps during the official campaign season; but, their activities should be monitored and subject to clearly defined regulations to safeguard against manipulation of IDP voters. Party access to the camps should be coordinated through the camp leadership structures, LECs, civil society organizations, and security organizations as required. The EMB should also consider organizing political party “pact,” through which parties and candidates pledge not to campaign coercively within camps. Actions such as distributing food or benefits near the registration centers in the camps should also be prohibited.

The pact should guarantee that all parties will be provided equal access to the camps. The local EMB would ensure compliance with the pact and accredited international and domestic monitors should be permitted free access to the camps in order to report on party activities throughout the campaign period. The EMB should also make special arrangements to collect and distribute platform information for IDPs residing in the areas where candidates are not focusing their efforts. In addition, IDPs running as candidates for constituencies where they are not resident may need assistance in delivering their platforms to voters in other IDP camps and to voters in their original constituency. Finally, the EMB is responsible for ensuring that IDPs are provided with adequate voter information in a language they understand.

*Non-discrimination*

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

The electoral framework should also address issues of discrimination based on gender, race, religion, ethnic/social groups, language, and other grounds, which may have a disproportionate impact on internally displaced communities. Particular attention must be paid to removing any legal or practical barriers hindering women's equal right to participate in the political process.<sup>64</sup> Specific guarantees of equality of the vote and remedies for its arbitrary denial, either through direct petition of the EMB or domestic adjudication procedures capable of providing effective remedies, should be embedded in the election law. Discrimination against minority communities in terms of the right to register or to vote should be explicitly prohibited and judicial remedies prescribed for minority groups to pursue claims of discrimination. The right of all candidates and parties to have access to IDP populations, particularly those residing in camps and welfare centers, should be protected.

In addition, the electoral framework needs to address non-discrimination in terms of the ability to communicate and receive information in a language IDPs understand. In Kosovo, for example, the election law governing the 2000 and 2001 municipal elections required the EMB to produce all election-related information in four languages, Serbian, Albanian, Romani, and Turkish.

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<sup>64</sup> *Id.* at 117-130.



### *Election Facilities*

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

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

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

Depending on the number of constituencies involved, poll workers may not be able to count the ballots on-site in a timely fashion, delaying the return of results. A centralized counting facility can alleviate this problem, although the EMB will need to ensure security for the movement of uncounted ballots in sealed boxes. International election observers and police forces can be

engaged to monitor and secure ballot movements. Accredited domestic observers (political party and civil society) should also be allowed to monitor the ballot movement, although they should never be directly tasked with physically controlling the ballots.

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

### *Election Security*

IDPs displaced by violence, war, and human rights abuses have been forced to flee a community because their physical security has been threatened and they are unable to access national protection. Unless these threats have been removed and their safety can be assured, return to their area of origin is unrealistic and, according to international law, cannot be compelled. In addition, IDPs may lack the ability to make free political choices, as they often depend upon the services of a government seeking to retain power or upon political/military forces controlling the area where they reside.<sup>65</sup> Thus, the election security of IDPs should be considered more broadly than simply their right to cast a ballot without risking their lives or property. Legislators should also consider the effects of IDP dependence on humanitarian support networks and address attempts by political actors to use this dependence to their advantage.

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

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<sup>65</sup> See Grace & Fisher, *supra* note 62.

recognized police forces should be allowed entry into election facilities, and only until such time that the disturbance persists.<sup>66</sup>

In situations where conflict-displaced IDPs prefer to vote in their home communities but are unable to do so due to security concerns, absentee balloting mechanisms are advisable. Best case examples of this principle can be found in BiH, Kosovo, and Sri Lanka, all of which provided for absentee balloting in the electoral framework.

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

[n]o citizen of Bosnia and Herzegovina shall forfeit any right or entitlement because he or she has registered as a voter, or because his or her registration to vote for a municipality is not the one in which he or she currently resides ... No person shall be required to present any document issued to him or her by a competent municipal body relative to the registration or voting for any other purpose except as necessary for the purpose of voter registration, confirmation of registration or voting.<sup>67</sup>

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<sup>66</sup> See, e.g., the OSCE Mission in Kosovo Central Election Commission, Electoral Rule No. 11/2001, §4(a).

<sup>67</sup> *Bosnia and Herzegovina: Electoral law of Bosnia and Herzegovina* (translated by OSCE, 2002), available at [http://www.geneseo.edu/~iompress/Archive/BiHelection\\_law-eng\\_language2002.pdf](http://www.geneseo.edu/~iompress/Archive/BiHelection_law-eng_language2002.pdf).

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

- A balanced and non-partisan election commission to ensure that all groups are represented;
- A neutral authority to provide transparent judicial overview of the process;
- An effective and workable elections appeals and complaints procedure;
- Transparent election processes, including the ability for interested political parties and grass-roots organizations to monitor all phases of the elections process; and
- 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.<sup>68</sup>

Finally, in order to prevent political actors from exploiting the vulnerabilities of IDPs, the electoral framework should prohibit government relief ministries, other humanitarian actors, and political parties from linking electoral participation or where one participates to the continued provision of humanitarian benefits.

### **In the Context of Durable Solutions**

IDP participation in the political affairs of their state can, if organized transparently and inclusively, contribute to the amelioration of the structural causes that led to displacement. In addition, it can facilitate and, indeed,

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<sup>68</sup> See Grace & Fisher, *supra* note 62.

counts among the key benchmarks of their reintegration into their home communities. The post-displacement electoral framework should be able to accommodate population movements by allowing re-registration in the home community or normalization of residence rights in the current location. This entails a broad review of any restrictive citizenship and/or residency requirements. Residency requirement thresholds should be relaxed for returnees, as they may not meet the current requirement as a consequence of their previous displacement. Mechanisms should also be in place to issue documents promptly and without placing undue burdens on the returnees (such as special fees or unreasonable conditions), and special procedures may be needed to allow returnees to update their voter registration details.

Similarly, in cases where IDPs instead opt to resettle in their current place of residence or elsewhere in the country, even after conditions permit return, the right to register and vote in elections in their new permanent place of residence will be an essential component of integration and attainment of a durable solution. IDPs should be provided the right to normalize their status in their current location, be issued documents and receive other administrative services from the local authorities on an equal basis with original residents, and be fully integrated into the political and social life of that community. In particular, voting rights should not be linked to expectations of their eventual return, as IDPs also have the right *not* to return, but instead to resettle elsewhere in the country.

## **INSTITUTIONAL ELEMENTS OF STATE REGULATION**

### **Prior to Displacement**

Countries with a history of genuine democratic elections will have an established national EMB and local administrative capacity to implement the substantive and procedural rules governing the electoral process. EMBs should establish offices at the regional and local level. It should remain highly independent from political parties and function under the electoral framework promulgated by the national legislature. The EMB also requires staff well versed on electoral legislation, in particular, provisions on exceptional measures required for absentee registration and balloting and the relaxation of

residency requirements in the event of population displacement due to conflict or disaster.

### **During Displacement**

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

The IDP unit or focal point would be charged with:

- Reviewing national electoral legislation and procedures to assess potential implications for IDPs' ability to exercise their rights to political participation, identifying areas requiring reform, and recommending necessary legislative reform and procedural amendments;
- Ensuring that the electoral rules, constitutional guarantees, and amended policies and procedures concerning IDP voting rights are understood within different branches of the EMB at the national as well as regional and local levels, in terms of the implications for election programming;
- Developing operational plans for registration of the displaced, including contingencies for different movement scenarios and procedures for a relaxation of residency requirements;
- Ensuring, in cooperation with other relevant branches of government, that IDPs are (re)issued documentation or alternative documentation procedures are put in place such as "social documentation" to enable IDPs to exercise their rights to political participation;

- Producing voter information for IDPs, both through public information campaigns and by establishing voter information networks among IDP communities and producing IDP specific information on the election process and any specific procedures that apply in their case;
- Working with political parties to ensure that candidates campaign in accordance with best practices vis-à-vis IDP voters;
- Training regional and local staff and election workers on the specific procedures and considerations relevant to IDP voters;
- Working with the election complaints and appeals mechanisms to ensure that IDPs are not discriminated against in their access to judicial remedies should their voting rights be unfairly restricted; and
- Evaluating IDPs' access to exercise their political rights in elections and where obstacles are noted, including by domestic and international observer groups, addressing these in further amendments to electoral legislation, procedures, and programming.

### **In the Context of Durable Solutions**

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

## INTERNATIONAL ROLE<sup>69</sup>

### Technical Assistance in Electoral Legislation Reform

At the global level, the United Nations Electoral Assistance Division (EAD) of the Department of Political Affairs has extensive experience providing technical assistance to governments undergoing democratic transitions and is mandated to provide a variety of election-related support activities.<sup>70</sup> OSCE/ODIHR also provides guidance to member countries to ensure that electoral frameworks meet the criteria for free and fair elections embedded in the relevant instruments applicable to OSCE member states. The Venice Commission of the Council of Europe also has commented widely on the electoral laws (both current and proposed) of member states in terms of whether they meet the criteria for genuine elections established under various human rights instruments. The Southern African Development Community (SADC) has also provided advice for a number of transitional electoral processes in Southern Africa. The International Institute for Democracy and Electoral Assistance (IDEA) is another inter-governmental mechanism providing technical and legal experts to assist national authorities. Outside of the intergovernmental system, a number of NGOs (funded primarily by national donors) provide assistance on reform of the electoral framework.

### Technical and Capacity Building Assistance in Electoral Administration

Both UN EAD and the OSCE have extensive experience with electoral administration and can provide electoral administration support directly to EMBs. At the regional level, the Organization of American States (OAS) Unit on Democracy provides advice and assistance as well. IFES also provides donor financed technical support to election administrators around the globe,

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<sup>69</sup> For further guidance, see the chapter action sheet on political participation rights for IDPs in the *Handbook for the Protection of Internally Displaced Persons, Provisional Edition* (Global Cluster Protection Working Group, Dec. 2007), at 263-268.

<sup>70</sup> United Nations Electoral Assistance, *Types of Assistance*, available at [http://www.un.org/depts/dpa/french/electoral\\_assistance/ea\\_content/ea\\_types\\_of\\_assist.htm](http://www.un.org/depts/dpa/french/electoral_assistance/ea_content/ea_types_of_assist.htm).



and its many experts have extensive familiarity with IDP-related issues in an electoral context.

Special note should be made of the work of the International Organization for Migration (IOM), which has extensive experience organizing electoral processes for displaced persons (both refugees and IDPs) on behalf of the national authorities and the United Nations, including in BiH, East Timor, Kosovo, Afghanistan, and Iraq. In addition, it has recently stepped up its advocacy for the voting rights of persons displaced by conflict through the Political Rights and Enfranchisement Strengthening Project,<sup>71</sup> which is working to identify global standards and provide national strategies for the electoral inclusion of IDPs and refugees.

Donor supported programs extend beyond direct assistance to EMBs to also include capacity building for local NGOs in the areas of voter education and election observation. Important examples exist of programs targeting voter information dissemination efforts to reach IDP communities and explain the particular electoral procedures and processes in place to address their situation and enable them to exercise their voting rights. The U.S. based National Democratic Institute for International Affairs (NDI) has frequently undertaken programs along these lines, as have IFES and other NGOs, including the Norwegian Refugee Council.

### **Election Observation and Election Monitoring**

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

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<sup>71</sup> Political Rights and Enfranchisement System Strengthening Project, *available at* <http://www.geneseo.edu/~iompress>.

as the Carter Center, NDI, and the International Republican Institute (IRI) also field election observation missions and have begun reporting on the ability of IDPs to participate in elections.

To encourage systematic attention to the issue, it is important that election monitors are sensitized, through training and guidance notes, to the rights of IDPs and the particular obstacles that they often face in exercising their voting rights. These issues should be integrated in their reports.

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

### **Monitoring State Compliance with International Human Rights Standards**

The international human rights treaty bodies have a particularly important role to play in monitoring state compliance, both in law and practice, as regards IDPs' rights to political participation and should systematically address the issue in their consideration of reports from states experiencing internal displacement. The UN Human Rights Committee, which monitors state compliance with the ICCPR, has a particularly important role and has begun to give attention to this issue. In a particularly significant initiative, the Committee on the Elimination of Racial Discrimination issued, in 1996, a General Comment which includes attention to the issue of IDP voting rights, in particular in the context of return.<sup>72</sup> The UN Committee on the Elimination of Discrimination against Women, which monitors state compliance with

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<sup>72</sup> Comm. on the Elimination of Racial Discrimination, General Rec. XII, *Refugees and Displaced Persons*, U.N. Doc. A/51/18, annex VIII at 126 (1996), *reprinted in* *Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 211 (2003), art. 2(d).

CEDAW, also has a role to play. The Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons, an independent expert tasked with promoting the rights of IDPs, also has begun to give attention to the issue, both generally and in the context of specific country missions.<sup>73</sup> Similar mechanisms have existed at the regional level, including the African Commission on Human and Peoples' Rights (which had a Special Rapporteur on the Rights of Refugees, Asylum Seekers and Internally Displaced Persons), the Council of Europe, and the European Court on Human Rights.

## **SUMMARY OF RECOMMENDATIONS**

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

1. Review the impact of national electoral legislation and procedures on the political participation of IDPs and introduce legislative and procedural reform as required to ensure IDPs' ability to exercise their rights to political participation. Special attention should be paid to residency and documentation requirements and their potential repercussions for internally displaced voters.
2. Prepare for the possibility of displacement, for instance in ensuring that electoral residency requirements have built-in safeguards against the disenfranchisement of voters in the event of displacement, temporary loss of residence, and loss of documentation.
3. Establish, in countries affected by internal displacement, a special office or focal point within the national electoral management body to monitor and work to ensure the equitable political participation of IDPs, promoting legislative reform and other initiatives to support this.

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<sup>73</sup> Walter Kälin, Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Keynote Address at the International Organization for Migration: Political Rights of Persons Displaced by Conflict (June 12-13, 2006).

4. Issue replacement documentation to IDPs as soon as possible and without unreasonable conditions such as having to return to the place of origin, and ensuring women are issued with individual documentation in their own names.
5. Enable IDPs to choose their electoral district, as either their place of origin or to re-register in another part of the country where they are residing while displaced, without repercussions such as loss of assistance or other benefits.
6. Provide absentee voting facilities when IDPs are unable, due to reasons such as safety or distance, to physically vote in their habitual place of residence and electoral district.
7. Consult with, and enable the participation of, IDPs, including women and affected minority groups, in the formulation, monitoring, review, and appraisal of national, regional, and local electoral legislation and procedures, so as to ensure the particular obstacles IDPs may face to their political participation are understood and taken into account as well as effectively addressed.
8. Train electoral officials on the right of IDPs to political participation, the particular types of obstacles that IDPs often face in exercising this right, and the national legislative and procedural provisions in place to enable IDPs to exercise this right.
9. Educate voters on their rights, ensuring that voter education campaigns reach IDP communities and provide clear and timely information in a language they understand, including on the particular electoral procedures in place to enable IDPs to exercise their rights to political participation.
10. Ensure safe access to voting, including safe transportation for IDP voters to and from polling stations.
11. Clarify through a revised General Recommendation of the UN CERD Committee and the formulation of a General Comment of the UN Human Rights Committee that IDPs have political rights during displacement as well as whether they opt to return or resettle.

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