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## Challenging the Norms and Standards of Election Administration: Standards for External and Absentee Voting

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### I. Introduction

An estimated 150 to 200 million persons currently reside outside of their home communities or countries of citizenship, and therefore live outside of their regular electoral constituencies. Some left their homes unwillingly due to war or civil strife; others left freely but continue to pay taxes and contribute to the economies of their home countries. This paper examines the extension of franchise to these people. While an increasing number of countries provide absentee voting services, national legal frameworks and procedures vary widely. Furthermore, the core human rights instruments and election standards initiatives provide only partial guidance on this issue. As a result, parliamentarians and election management bodies (EMBs) face a knowledge and skills gap regarding who should be eligible for absentee voting and how to best design a workable, transparent program.

Many democracies have struggled with the logistical and political difficulties associated with external voting. In the United States, the 2000 Presidential Election was seriously marred by accusations that Florida election officials used different standards to determine the validity of absentee ballots depending on where they were counted.<sup>1</sup> Regardless of the challenges of external voting, however, there is rarely a good reason to avoid it. In Liberia, refugees were excluded from the 1997 election, denying them a chance to participate in the political reconciliation of the country.<sup>2</sup> On the other hand, in Bosnia and Herzegovina, absentee voters have been integrated into the elections process and have played an important role in the political reconstruction of the country, although this process has not been free from irregularities.<sup>3</sup>

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<sup>1</sup> David Barstow and Don van Natta, Jr., "How Bush Took Florida: Mining the Overseas Absentee Vote," *New York Times*, 15 July 2001.

<sup>2</sup> See Jeffrey Farr, Anuschka Meyer, Anna Schowengerdt, and Victor Tanner, "Refugees in Elections: The Liberian Experience," Refugee Policy Group paper, August 1997.

<sup>3</sup> See International Organization for Migration, "Case Studies on the Participation of Conflict Forced Migrants in Elections," IOM Participatory Elections Project, Desk Research Package Backgrounder, (May 2003): 3-34. Available at [www.iom.int/pep](http://www.iom.int/pep).

The key considerations surrounding external voting can be divided into three general questions: First, who should be eligible to vote from outside of their home districts? Second, what sorts of systems of representation should be established for these voters? Third, how can the secrecy of the ballot and election transparency be protected and costs contained when election activities occur on the territory of a foreign state? The first two questions are political, requiring a consultative process between parliamentarians and stakeholders. The final question is technical, requiring the application of best practices by EMBs.

The balance of the paper first reviews election standards and the reasons to allow external voting and then explores each of the three questions in turn, comparing state practices and identifying areas where the development and application of standards would result in better management of external voting programs. The paper will conclude by discussing the challenges of implementing external voting, reviewing existing literature on the subject and suggesting areas for further investigation.

## II. Democracy and Election Standards

Article 25 of the 1976 International Covenant on Civil and Political Rights (ICCPR) holds that:

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

The language of the ICCPR is now common in global and regional human rights instruments, has been upheld by international human rights commissions and tribunals,<sup>4</sup> and has become standardized in the practice of international organizations. As a result, a number of scholars argue that the human rights system now guarantees a “democratic entitlement,” or the right of all citizens to vote in free and fair elections.<sup>5</sup>

However, holding elections does not necessarily imply the full realization of democratic rights as elections can be structured to legitimate pre-ordained outcomes. Thus, the international community has sought to further develop standards and guidelines to ensure that elections meet the twin tests of “free and fair.”<sup>6</sup> Two types of initiatives are important. The first stems directly from global and regional human rights instruments such as the ICCPR. The second derives from the work of human rights commissions and regional intergovernmental organizations such as the

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<sup>4</sup> See Annex 1 for a detailed list of the relevant instruments. Relevant cases include Human Rights Committee, Communications: 760/1996 *J.G.A. Diergaardt et al. v. Namibia*; 500/1992 *Joszef Debreczeny v. the Netherlands*; 034/1978 *Jorge Landinelli Silva et al. v. Uruguay*; 932/2000 *Marie-Hélène Gillot et al. v. France*; 923/2000 *Istvan Mátyus v. Slovakia*. At the regional level, see “*X v. United Kingdom*,” App. Nos. 7730/76 (1979) and 7566/76 (1976) and “*Mathews v. United Kingdom*,” App. No. 24833/94, Secretariat of the European Commission of Human Rights, Decisions/Reports of the Council of Europe by the European Commission on Human Rights, and Secretariat of the European Commission of Human Rights.

<sup>5</sup> See Gregory H. Fox and Brad R. Roth, eds., *Democratic Governance and International Law* (Cambridge: Cambridge University Press, 2000).

<sup>6</sup> Jørgen Elklit and Palle Svensson, “What Makes Elections Free and Fair?” *Journal of Democracy* 8: 3 (July 1997).

OSCE/ODIHR and others.<sup>7</sup> Unfortunately, given the wide divergence in state practice regarding external voting, these initiatives provide little guidance about the specifics of organizing a transparent process.

### III. Justifications for Voting Abroad

The 150 to 200 million persons living outside of their home communities left for a variety of reasons, and this diversity affects the decision to allow them to retain the right to vote in home-state elections. In general, three categories of external voters can be distinguished:

- Conflict-forced migrants: These persons are outside of their home community against their will. There are two distinct types: refugees or asylum seekers who flee across an international border because of a “well founded fear of persecution” and are “unable to avail themselves of the protection of their home state government;”<sup>8</sup> and internally displaced persons (IDPs) who have fled natural or man-made catastrophes, including war and persecution, but do not cross an international frontier.
- Expatriates and economic migrants: These persons are outside of their home-states for reasons of economic remuneration, diplomatic/military service or personal preference. In general, they intend to return to their home states, maintain their citizenship and often continue to pay taxes and/or send money home.
- Members of a diaspora:<sup>9</sup> These persons and their descendants have permanently left the home state and do not intend to return. They generally assume citizenship in their country of residence, either renouncing their former citizenship or assuming dual nationality. The chief characteristic of a diaspora is the maintenance by its members of a common cultural, religious or ethnic tradition, combined with an abiding interest in the affairs of the state of origin.

Should any or all of these populations retain their right to political participation while abroad? Opponents of absentee voting advance a number of arguments against the practice, including: 1) because external voters reside outside of the jurisdictions where their votes will help determine who wields power, they do not live with the direct consequences of the vote and may therefore vote less responsibly than those who do; 2) external voters may lack the information needed to make an informed decision because of difficulties in presenting candidate platforms and positions to non-residents; 3) the costs associated with reaching a voter who has voluntarily chosen to reside abroad may place an undue burden on those who remain; and 4) election administrators

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<sup>7</sup> See Annex 2 for a list of the important documents that address this topic.

<sup>8</sup> *Convention Relating to the Status of Refugees*, Art. 1(A)(2), 19 U.S.T. 6259, 6261, 189 U.N.T.S. 137, 152, 28 July 1951, entered into force 22 April 1954.

<sup>9</sup> The 1993 Oxford English Dictionary defines “diaspora” as “any body of people living outside their traditional homeland.” This can include all categories of expatriate nationals, including refugees and economic migrants. We use the term to refer primarily to people who have no intention of returning to live permanently in their national homeland. Many will have renounced their citizenship; others may maintain dual citizenship.

must confront issues of ballot secrecy and transparency in territories where they lack jurisdictional capacity.<sup>10</sup>

Nevertheless, a growing number of states allow external voting. In the case of conflict-forced migrants, the case for inclusion is strong.<sup>11</sup> To deny conflict-forced migrants the franchise would reward ethnic cleansing; those who use large-scale forced displacement of civilian populations should not be permitted to achieve political legitimacy in an election in which the displaced are not provided a voice. The international community has recognized the gravity of this problem and has included refugee and IDP voting programs in many post-conflict elections, including those in Namibia, Cambodia, Bosnia and Herzegovina, Kosovo and East Timor.

A case for the enfranchisement of conflict-forced migrants is also based on international human rights law, although the protections are stronger for IDPs than for refugees. IDP political participation is grounded in the non-discrimination principles contained in Article 2 of the ICCPR and in most other global and regional human rights instruments.<sup>12</sup> The *Guiding Principles on Internal Displacement*, although not treaty law, also address this issue, declaring in Principle 22 that:

“Internally displaced persons ... shall not be discriminated against as a result of their displacement in the enjoyment of the following rights: (a) The rights to freedom of thought, conscience, religion or belief, opinion and expression; ... (c) The right to associate freely and participate equally in community affairs; (d) The right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right...”<sup>13</sup>

However, the 1951 Refugee Convention does not address the political rights of refugees vis-à-vis their home states, so the legal case must be deduced. As Gallagher and Schowengerdt note: “Refugees have not in any way relinquished their citizenship by seeking asylum, but rather cannot avail themselves of the protection of their country of origin because current conditions therein pose a threat to either their lives or livelihood. As citizens, therefore, they have the right to participate in the electoral processes of their country.”<sup>14</sup> In line with this reasoning, the 1999 *Istanbul Summit Declaration* of the Organization for Security and Cooperation in Europe (OSCE)

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<sup>10</sup> Dieter Nohlen and Florian Grotz, “Legal Framework and Overview of Electoral Legislation,” in Draft Chapter for International IDEA: External Voting Handbook, Unpublished Report, International IDEA, 2000.

<sup>11</sup> For a detailed analysis of the international rules and norms surrounding this issue, see Jeremy Grace, “The Electoral Rights of Conflict Forced Migrants: A Review of Relevant Legal Norms and Instruments,” IOM/PEP Discussion Paper No. 1 (June 2003). Available at <http://www.iom.int/pep>.

<sup>12</sup> Article 5(c) of the Convention on the Elimination of Racial Discrimination (CERD) holds that “States Parties undertake to ... guarantee the right of everyone, without distinction ... Political rights, in particular the right to participate in elections—to vote and to stand for election—on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service...”

<sup>13</sup> “Guiding Principles on Internal Displacement,” United Nations Office for the Coordination of Humanitarian Affairs, U.N. Doc. E/CN.4/1998/53/Add.2, 2 November 1998. Available at [http://www.reliefweb.int/ocha\\_ol/pub/idp\\_gp/idp.html](http://www.reliefweb.int/ocha_ol/pub/idp_gp/idp.html).

<sup>14</sup> Dennis Gallagher and Anna Schowengerdt, “Participation of Refugees in Postconflict Elections,” in *Postconflict Elections, Democratization, and International Assistance*, ed. Krishna Kumar (Boulder: Lynne Rienner Publishers, 1998), 199.

declared: “We are committed to secure the full right of persons belonging to minorities to vote and to facilitate the right of refugees to participate in elections in their countries of origin.”<sup>15</sup>

However, for non-conflict-forced migrants (i.e., expatriates or economic migrants) the case for inclusion is not so clear. The general argument rests on the notion that citizens living abroad often pay taxes or provide remittances to their home states and should therefore have some say in how these resources are collected and re-distributed. In 2002 in the Philippines, for example, Parliament approved the “Absentee Voting Bill,” which enfranchised the substantial Filipino migrant community, provided they intend to retain their citizenship. This decision followed years of campaigning by expatriate Filipinos and was largely attributed to the growing recognition of the economic and social benefits that flow from an estimated 7.4 million Filipinos abroad who send home an estimated USD six billion per year.<sup>16</sup>

From the perspective of international law, there is no clear obligation to enfranchise economic migrants. The only relevant instrument is the 1990 *International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families*,<sup>17</sup> which declares in Article 41 that: “Migrant workers and members of their families shall have the right to participate in public affairs of their State of origin and to vote and to be elected at elections of that State...” However, as of April 2004, only 25 states have ratified this convention. Most ratifying states do have significant populations of expatriate workers (Mexico, Philippines, El Salvador, Ghana and Belize, for example), but few industrial democracies have demonstrated an interest in ratification. As opposed to the generic “right to political participation,” the obligation to enfranchise migrants falls far short of constituting a customary rule of international law and is not universally applicable.

The issue of diaspora voting is the most politically sensitive. Arguments in favor emphasize the important role these communities play in advancing a country’s interests at the international level and their contribution to cultural and economic development. Many countries with substantial diasporas even maintain government ministries in charge of diaspora relations.<sup>18</sup> Yet few countries have formally enfranchised a national diaspora,<sup>19</sup> and no country has enfranchised members of a diaspora who do not maintain the citizenship of the home country.<sup>20</sup> In general, the larger the diaspora, the less likely the country of origin will offer external voting. Consider Ireland, Greece and Kosovo. All three have well organized diasporas, which are equal in size or even larger than the populations of the home states. In these cases, the extension of franchise to external voters could potentially swamp the electorate at home.<sup>21</sup>

<sup>15</sup> *Istanbul Summit Declaration*, OSCE, SUM.DOC/2/99, 19 November 1999: Para. 26.

<sup>16</sup> “Filipino Overseas Workers Given Vote,” *BBC News Online*, 13 February 2003. Available at <http://news.bbc.co.uk/2/hi/asia-pacific/2756791.stm>

<sup>17</sup> *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, G.A. res. 45/158, annex, 45 U.N. GAOR Supp. (No. 49A) at 262, U.N. Doc. A/45/49 (1990). Available at <http://www1.umn.edu/humanrts/instree/n8icprmw.htm>.

<sup>18</sup> Armenia and France both have special divisions in the foreign ministry dedicated to diaspora relations.

<sup>19</sup> A national diaspora is defined as migrants who have been absent from the home state for extended periods of time and have no intention of returning.

<sup>20</sup> Note that the issue is complicated for referenda in territories that are not self-governing, where citizenship must be determined for the purposes of electoral eligibility. See Jeremy Grace and Jeff Fischer, “Enfranchising Conflict Forced Migrants: Issues, Standards and Best Practices,” IOM Discussion Paper 2, 29 September 2003. Available at [http://www.iom.int/pep/Standards\\_Final.pdf](http://www.iom.int/pep/Standards_Final.pdf).

<sup>21</sup> In Ireland, the denial of the external vote probably reflected both the size of the potential diaspora electorate and the political complications that would result from enfranchising the Irish in Northern Ireland.

A related problem stems from regional tensions that can occur when a state enfranchises its diaspora. In the aftermath of the fall of the Berlin Wall, several Eastern European states (Croatia, Hungary, Poland, Romania and Bulgaria) offered citizenship to diasporas that formed a “national minority” in neighboring states. The Hungarian offer of citizenship to ethnic Hungarians in nearby states, for example, has contributed to regional tensions, as Romania and Slovakia see the move as the staking of an irredentist claim to territory and as an effort to inflame secessionist movements. Similarly, the extension of citizenship rights and the right of franchise to some 300,000 ethnic Croats residing in Bosnia and Herzegovina was widely viewed by the international community as complicating the implementation of the Dayton Peace Accords and as an attempt at electoral manipulation by the ruling Croatian nationalist party.

#### **IV. International Law, Election Standards and Eligibility Requirements**

Voter eligibility is generally based on criteria related to age, citizenship and residency.<sup>22</sup> The requirement of citizenship is universal to nearly all electoral codes. While some states (primarily in Europe) grant municipal-level voting rights to resident non-citizens, few, if any, allow non-citizens to vote in national elections.<sup>23</sup>

Absentee voting rights can be denied either actively or passively.<sup>24</sup> Where the prohibition is active, a constitutional provision, an act of parliament, or the election law specifically prohibits voting abroad. For example, Article 29 of the 1953 Danish Constitution reserves voting rights only to “[a]ny Danish subject whose permanent residence is in the Realm...”<sup>25</sup> However, a number of amendments to the constitution have subsequently expanded voting rights to certain categories of expatriates. In 1970, employees of the state abroad on official business were granted external voting rights. In 1988, voting rights were extended to any employee of a Danish firm, international organization (of which Denmark is a member) and humanitarian relief organization as well as to students and those abroad for health reasons. Currently, the only Danes who cannot vote from abroad are employees of a non-Danish private sector firm or unemployed Danes who do not meet any of the other exceptions.

Passive prohibition can take two forms. First, the election law or constitution might impose a residency requirement that effectively prohibits external participation. Prior to the 2002 “Absentee Voting Bill,” for example, Filipino voters were required by Article 5 of the Constitution to have resided in the Philippines for a minimum of one year and in the electoral constituency for a minimum of six months prior to the election.<sup>26</sup> The Constitution makes no mention of explicitly denying the franchise to those abroad, but the residency requirement did exactly that, resulting in a Supreme Court challenge to the constitutionality of the Absentee

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See “Ireland and the Irish Abroad,” *Report of the Task Force on Policy Regarding Emigrants to the Minister of Affairs*, August 2002. Available at [http://www.irelandemb.org/task\\_force.html](http://www.irelandemb.org/task_force.html).

<sup>22</sup> Other common criteria relate to mental competence and criminal record.

<sup>23</sup> Some European states extend the municipal right only on a reciprocal basis (i.e., if a national from state A can vote for local elections while resident in State B, then state A will extend the same right to nationals of state B resident in State A).

<sup>24</sup> Dieter Nohlen and Florian Grotz, “External Voting: Legal Framework and Overview of Electoral Legislation,” *Boletín Mexicano de Derecho Comparado*, nueva serie, año XXXIII, núm. 99 (Sept./Dec. 2000): 1115-1145.

<sup>25</sup> The Constitution is available at [http://www.oefre.unibe.ch/law/icl/da00000\\_.html](http://www.oefre.unibe.ch/law/icl/da00000_.html).

<sup>26</sup> Constitution of the Philippines, available at <http://www.chanrobles.com/philsupremelaw1.htm>.

Voting Bill. Second, passive denial of franchise also occurs when the relevant electoral legislation contains no formal residency requirement for participation, but the state simply does not implement the machinery to make external voting possible (as in Nicaragua, Ireland and Greece).

States that do allow absentee voting generally determine eligibility by the length of a citizen's absence. Canadian voters may vote by absentee ballot for up to five years following their departure from Canada, so long as they intend to resume permanent residence at some point in the future. In the United Kingdom, voters are automatically removed from the electoral rolls 15 years after moving abroad, regardless of their intent to return (this number was reduced from 20 years in 2001). In Germany, voters may reside abroad up to 25 years before losing eligibility, although German nationals residing in member states of the Council of Europe retain their voter eligibility indefinitely. New Zealand maintains no fixed time-away threshold but does require that citizens return to their home constituency at least once every three years in order to remain on the voting rolls.

Election standards efforts have yet to set forth clear guidelines on residency requirements. The Venice Commission's "Guidelines on Elections" notes, "Universal suffrage means in principle that all human beings have the right to vote and to stand for election. This right may, however, and indeed should, be subject to certain conditions [including] ... residence." However, the Human Rights Committee's General Comment 25 limits a country's latitude in applying these restrictions, holding 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>27</sup> Furthermore, the Comment requests that states party to the ICCPR justify and explain "...legislative provisions which would deprive citizens of their right to vote. The grounds for such deprivation should be objective and reasonable."<sup>28</sup> Similarly, the OSCE/ODIHR standards bluntly hold that "Any limitation or restriction on the right to vote, however, must be scrutinized as to whether it is clearly justified due to exceptional circumstances."<sup>29</sup>

The only multilateral human rights mechanism to have issued specific rulings related to an expatriate's right to vote is the European Commission of Human Rights.<sup>30</sup> In a case involving British nationals, the Commission ruled that:

"this right [universal suffrage] was neither absolute nor without limitations but subject to such restrictions imposed by the Contracting States as are not arbitrary and do not interfere with the free expression of the people's opinion."<sup>31</sup>

Residency requirements do not only affect those outside the country. IDPs may also be excluded from participation in sub-national elections if they live outside of their original electoral districts.

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<sup>27</sup> Human Rights Committee, General Comment 25 (57), General Comments under article 40, paragraph 4, of the International Covenant on Civil and Political Rights, U.N. Doc. CCPR/C/21/Rev.1/Add.7 (1996).

<sup>28</sup> HRC, General Comment 25(14).

<sup>29</sup> "Existing Commitments for Democratic Elections in OSCE Participating States," OSCE/ODIHR (Warsaw: October 2003): 59.

<sup>30</sup> Protocol No. 11 of the ECHR, which came into force on 1 November 1998, folded the Commission and Court into a single institution, now referred to as the European Court of Human Rights.

<sup>31</sup> *X v. United Kingdom*. As a consequence, the fact that the United Kingdom did not allow absentee voting was interpreted as a function of practical expediency, and the European Convention and First Optional Protocol, both of which require universal suffrage, could not be interpreted to guarantee expatriate electoral rights. The United Kingdom has since instituted external voting.

In the Republic of Georgia, until a 2003 revision of the election law, IDPs were permitted to vote only for the nationwide list and are specifically precluded from voting for representatives in either the district from which they were displaced or the district in which they currently resided. As a consequence, they were largely barred from exercising a political voice in the search for a solution to their displacement.

Election standards initiatives guarantee the right to universal and equal suffrage. However, aside from refugees and IDPs, there is only a weak claim to be made that governments are obligated to enfranchise those abroad, and parliamentarians should exercise care when determining eligibility requirements. If they decide not to allow external voting, this decision should be based on a transparent discussion between stakeholders and parliamentarians and should be clearly articulated in the electoral code. Practices such as those in Nicaragua—where there is no explicit denial of the right, but the EMB does not make it possible for external voters to participate—should be avoided. Further research on requirements regulating the length of time away from the home constituency would also help to provide a better picture of best practices.

## **V. Systems of Representation**

If a country decides to enfranchise external voters, parliamentarians must determine how to translate the will of this electorate into the country's system of representation. Again, election standards initiatives do not address the issue from the perspective of external voting. Rather, the emphasis has been on ensuring that, whatever the electoral formula employed, it satisfies the ICCPR criteria for genuine elections. In general, this is interpreted to mean that at least one chamber of the national parliament is directly elected and that, if the country uses sub-national districts, the districts are drawn so as to protect a rough equality of the vote.

However, adding external voters to an electoral formula will complicate election administration. Two general questions should be addressed:

- Should external voting be limited to specific institutions (president, houses of parliament, sub-national elections and referenda)?
- How should external voters be counted when calculating the district delimitation and apportionment process?

### **1. Which institutions should be contested externally?**

Many states that allow absentee voting do so only for national elections. The logic here is that while external voters can generally follow national political news, they probably cannot obtain the information necessary to make an informed vote at the local or municipal level. In addition, sub-national elections require many different ballots, which would necessitate a complicated logistical operation to ensure that each external voter received the correct ballot for each contest. Finally, while many economic migrants and expatriates may continue to pay national taxes while abroad, most do not pay taxes at the municipal or local level.

Countries that allow absentee voting for local elections include the United States, France, Finland, Norway, and Bosnia and Herzegovina. In the U.S., elections are managed at the state and county levels, and voters apply directly to the EMB to cast an absentee ballot in their state or county of origin. In France, voters are eligible to vote by absentee ballot for all national elections but may only vote by proxy for local contests. Finnish expatriates are

eligible to vote in both national and regional contests, but eligibility to vote at the local level is contingent upon an absence from the municipality of no more than one year. At the national level, there is no length-of-absence requirement. Norway requires that no more than 10 years have elapsed since the voter left the municipality.

In Bosnia, election organizers were convinced that enfranchising refugees at the local level was critical to reversing the effects of ethnic cleansing, particularly in municipalities such as Srebrenica and Brcko. In 1997, the OSCE organized a highly complex operation to identify all Bosnian refugees by municipality of origin and to provide them with appropriate ballots. As a result, ethnic groups were able to capture political control in some of the post-war municipal assemblies in which they had held pre-war majorities, even though the refugees had not felt safe enough to return.

Even at the national level, however, external voting may not be allowed for all elections. In the 1992 Angolan elections, presidential candidates were elected based on an absolute majority, with a runoff election slated between the top two candidates if the first round failed to produce 50% plus one. As a result, the election commission rejected proposals for external voting due to the difficulties that would be encountered should a runoff election be necessary. While the elections code did contain (unfulfilled) provisions for external voting for the national assembly, it specifically rejected this option for the presidency.

## **2. Constituency Delimitation Issues**

Except for proportional representation (PR) systems using a single nationwide district, EMBs must delimit and apportion electoral districts.<sup>32</sup> Most states delimit districts based on census or voter registration data, giving some consideration to existing administrative boundaries, geographic features, and ethnic and social composition. Election standards initiatives hold that there should be a rough uniformity in the weight that each vote carries in the distribution of mandates across different constituencies. But district delimitation is complicated by an absentee voting program. How should these populations be tallied when determining either the apportionment or delimiting of their home constituencies?

In the Russian Federation, external voters are included in specified single-mandate electoral districts for the Duma. According to one observer, "Assignment to a voting district is based on the foreign state in which the voter is residing abroad. Depending on the foreign state...he or she will be assigned automatically to one of several designated electoral districts in the Moscow Region or the St. Petersburg Region."<sup>33</sup> In practice, the CEC is required to ensure that "[t]he number of additional voters included in a single-mandate electoral district shall not exceed 10 percent of the number of voters registered in the territory of the given single-mandate electoral district."<sup>34</sup> In principle, this means that external voters are factored into the delimitation process, but no constituency can have more than 10 percent of its votes cast from

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<sup>32</sup> Electoral formulas for parliamentary elections come in two basic forms. The most common is the Proportional Representation (PR) system, in which parties win parliamentary seats in proportion to the percentage of votes they receive either nationally or in multi-member sub-national districts. The alternative system is the Majority-Plurality system, which uses single-member districts to elect individual candidates to political office according to who wins the largest number of votes in the district.

<sup>33</sup> Linda Edgeworth, "Voting Abroad. Laws and Procedures of the Russian Federation," Unpublished draft prepared for International IDEA: External Voting Project. 2001.

<sup>34</sup> Federal Law on the Election of Deputies to the States Duma.... Available at: <http://www.legislationline.org/view.php?document=55002>.

abroad. No information is available on what mechanisms should be employed if a constituency reaches the 10 percent threshold.

One option for securing representation for external voters in parliamentary elections is to establish a non-geographic constituency. Since 1983, for example, French expatriates have been represented in the Senate by 12 members. However, these Senators are not directly elected. Rather, French expatriates vote for members of the Conseil supérieur des Français de l'étranger (CSFE),<sup>35</sup> a government agency reporting to the Ministry of Foreign Affairs. Expatriates cast ballots for the 150 CSFE members based on a PR system in which various countries and regions form constituencies; these regions must have resident at least a minimum number of French citizens. Once elected, CSFE members select 12 senators, who retain full voting rights. Similarly, in Portugal, the parliament is elected through a PR system based on 20 sub-national districts. Two districts—each with two seats—are reserved for Portuguese abroad, one for those in Europe and one for those elsewhere. Croatia follows a similar model, except that its external representatives are directly elected and the number of external seats is not fixed. Instead, the overall turnout of external voters is compared to the overall turnout of in-country voters before the number of dedicated external seats is established.

As with residency and eligibility requirements, there is no identifiable set of specific standards that cover how best to secure representation for external voters. While some guidance can be found related to delimiting districts and the equality of the vote, the issue of dedicated external districts is not even mentioned in the standards initiatives. Further research on best practices and pitfalls is needed on this issue.

## VI. Implementation

Once the choice of election framework is settled, implementation must be coordinated by national EMBs. Voting abroad can be conducted through a variety of mechanisms. The two dominant modes are postal and embassy balloting. Less common mechanisms include proxy-voting, where citizens designate a representative to cast a ballot at a regular polling station in their home communities, and the as-yet-untested internet voting.<sup>36</sup> In addition, some states (such as Turkey) allow nationals abroad to remain on the electoral register but require that they return to Turkey to cast a ballot on Election Day. This approach has also been used for refugee elections, where the international community organizes repatriation of refugees on a schedule linked to the election calendar (as in Cambodia and Namibia).

Finally, in a few cases, states holding elections have established registration and voting stations outside of embassies and consulates in host states, but this has only occurred in the case of internationally organized large-scale voting by refugees (i.e., in Croatia and Serbia/Montenegro for elections in Bosnia; in Serbia/Montenegro, Macedonia and Albania for Kosovo elections; and in a variety of host states for the Eritrean referendum on independence) and has required substantial support from intergovernmental organizations in order to promote transparency. A

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<sup>35</sup> Chaired by the Foreign Minister, the CSFE represents expatriate interests and provides the government with reports and analyses of issues concerning French citizens abroad. See <http://www.senat.fr/etranger/index.html> for more information.

<sup>36</sup> The United Kingdom may run a pilot scheme for e-voting during the June 2004 EU elections. See "In Service of Democracy: A Consultation Paper on a Policy for Electronic Democracy," Electoral Commission (U.K.), October 2002. Available at <http://edem.tagish.net/downloads/e-Democracy.pdf>.

detailed study of standards related to these programs can be found at the Web site of the IOM's Participatory Elections Project ([www.iom.int/pep](http://www.iom.int/pep)).

## **1. Postal Voting**

Postal voting is an increasingly common form of absentee enfranchisement. Many countries (including Canada, the U.K. and Sweden) even allow postal voting for non-absentee populations who simply prefer the convenience. Focus group research of postal-voting programs has found that while the programs are widely popular and improve voter turnout, concerns among members of the focus group regarding voter fraud and transparency were high.<sup>37</sup>

In absentee voting programs, participants can register and vote through the mail, consulates, the Internet, expatriate associations and fax technology. In general, voters submit an application form and supporting documentation by mail to either the national or regional election commission. The application typically requires a notarized affidavit certifying that the voter is indeed the person he or she claims to be and/or a photocopy of an officially approved identity document. If the voter's identity is confirmed, he or she is sent a ballot which must be marked and returned by a specified deadline for tabulation.

The benefits of voting by mail result from economies of scale and a reduction in clerical work at embassies and consulates. If all external votes are processed at the national or regional EMB facilities, there is no need for separate facilities and staffing in host countries. As a result, the operation is significantly cheaper per vote cast than in-person voting. In addition, by-mail programs can reach potential voters in countries that may not wish to allow election operations on their soil.

The major drawback of postal voting is that EMBs do not retain full control over the ballots. Using the mail system means there is a period when the ballots are unsupervised by elections staff, which creates several problems. First, one voter's ballot could be received (or intercepted) and returned by another voter, particularly if the intended voter has moved since registering. Second, even if the proper voter receives the ballot, he or she might be subject to pressures that compromise freedom of choice.<sup>38</sup> For example, refugee communities often live in concentrated areas in which they can be subject to pressure from political groups that attempt to influence the vote. Normal balloting procedures prohibit third parties from entering the voting booth (unless invited by the voter due to specific disabilities) and generally demarcate a space around a polling station where electioneering (handing out political

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<sup>37</sup> In the United Kingdom, several constituencies used postal balloting as the only voting option during the May 2003 elections. A review by the U.K. Electoral Commission found that the turnout in these constituencies averaged more than 10 percent higher than the overall turnout. See "The Shape of Elections to Come: A Strategic Evaluation of the 2003 Electoral Pilot Schemes," The Electoral Commission (U.K.), July 2003. Available at [http://www.electoralcommission.org.uk/files/dms/The\\_shape\\_of\\_elections\\_to\\_come\\_final\\_10316-8346\\_ENSW.pdf](http://www.electoralcommission.org.uk/files/dms/The_shape_of_elections_to_come_final_10316-8346_ENSW.pdf)

<sup>38</sup> Even consolidated democracies are not free from attempts to manipulate postal balloting. A report on postal voting by the U.K. Electoral Commission found that "We have received reports of party workers seeking to influence how votes are cast by exerting pressure (or even, in a handful of reported cases, completing the ballot on behalf of the voter). Practices such as these clearly raise concerns ...." See "Absentee Voting in Great Britain: Report and Recommendations," The Electoral Commission (U.K.), 2003: 27. Available at <http://www.electoralcommission.org.uk>.

platforms or posters urging a particular selection) is prohibited. It is impossible to implement these rules when using the postal system.

Electoral systems that use postal voting also face a related problem: the difficulty of convincing voters that their ballots are truly secret. Postal voting systems for the Bosnian and Kosovo elections required voters to return the ballot inside a sealed “secrecy envelope” together with their registration receipt inside a larger second envelope. While these postal voting programs were conducted under strict conditions and supervision, voters complained that the system could allow election officials to match voters’ names with the marked ballots, compromising voter secrecy.<sup>39</sup>

## 2. Embassy Voting

Embassy voting, which is used by Russia, Australia and South Africa (among others) requires electors to present themselves at their home-state embassies or consulates. Consular staff and perhaps specially trained EMB personnel help voters confirm their registration and cast their ballots. The main advantage of this system is that EMBs retain full supervision of the process, and voting procedures can mimic those of in-country polling stations. This system also helps address the related problems of intimidation and secrecy that can occur when using postal voting. The main problem with embassy voting is limited geographical coverage; any external voters who do not reside in the capital district will have to assume the costs of traveling to a diplomatic facility. Other potential problems include a) the challenge of ensuring in post-conflict environments that embassy staff are not subject to political pressures that could result in electoral fraud; and b) the need to design mechanisms that allow political parties and members of civil society to observe the process.

In some cases, such as during the 1996 Russia presidential elections and the 1993 Eritrean referendum on independence, additional election facilities have been set up in the host state to augment voting at embassies. In 1996, the Russian embassy in Washington, D.C. organized polling stations in Chicago, Cleveland and Miami, where polling occurred under the supervision of EMB staff. According to an IFES observation report of the 1996 Russian presidential elections, “In general, procedures followed by the polling officials serving the embassies were consistent with those implemented at polling stations within the Russian Federation... [however] The [election] law is silent with regard to ... the creation and organization of subsidiary voting sites which are not fully recognized as polling stations. Nor does the law address procedures which are to be implemented to ensure that voting at these sites is transparent and accountable. Since these subsidiary sites were not fully accredited polling stations and no individual protocols were generated for them, their activity cannot be tracked by normal avenues.”<sup>40</sup>

## VII. Election Standards and Absentee Voting

The literature on absentee voting is extremely limited. Theoretical work tends to focus on transnational political bonds in a broad sense, particularly the relationship between diasporas and

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<sup>39</sup> See IOM Participatory Elections Project, “Case Studies.” Available at <http://www.iom.int/pep/studies.htm>.

<sup>40</sup> “The Election of the President of the Russian Federation,” IFES (1996). Available at [http://democracy.ru/english/library/comments/eng\\_1996-6/page9.html](http://democracy.ru/english/library/comments/eng_1996-6/page9.html).

their homeland.<sup>41</sup> However, literature on democratization has been largely silent on the issue. Some EMBs (notably in the U.K. and Australia) have conducted careful evaluations of postal voting programs, and the IOM has sought to develop standards for refugee and IDP voting programs.<sup>42</sup> In general, however, further research is needed on modalities.

In one of the few detailed studies by election specialists, Nohlen and Grotz note that "...external voting is a rather heterogeneous phenomenon ... In most cases the moment and reasons for the introduction of external voting were highly dependant on national peculiarities."<sup>43</sup> The existence of "national peculiarities" highlights the difficulties in advancing the claim that the human rights regime obligates governments to extend the right of political participation to all nationals residing abroad. Each situation has its own context and must account for the political implications of external voting. In some cases (as in Croatia), the external vote might increase regional instability. In other cases (as in Kosovo), voting on the part of the entire Kosovar diaspora would produce a situation in which the Kosovo political system was dominated by non-resident voters.

Nevertheless, there does appear to be an emerging consensus that conflict-forced migrants should be afforded full political rights in post-conflict elections. With respect to IDPs, the right to external voting is firmly grounded in the nondiscrimination principles of global and regional human rights instruments and has been forcefully restated in the OCHA's *Guiding Principles on Internal Displacement*. These same principles must be extended to refugee populations, who have not left their home states of their own free will and thus should not be denied equal rights with citizens who remain at home. Unfortunately, countries do not always meet this obligation (for example, Liberia and Angola). The reasons are complex, but they generally revolve around political opposition from those who perceive the refugee/IDP vote as an obstacle their victory and around technical difficulties associated with absentee balloting.

In future elections, universal standards, combined with better monitoring of implementation, would prevent conflict-forced migrant disenfranchisement. Unfortunately, the only directly relevant statement in support of refugee voting rights is found in the OSCE's *Istanbul Summit Declaration*, which does not constitute a clear statement of a global norm. Clarification of human rights norms should be a priority. Possible avenues include:

- A "General Comment" from the Human Rights Committee examining issues of CFM political rights in the context of Article 25 of the ICCPR;
- The appointment by the Commission on Human Rights of a Special Rapporteur with a mandate to investigate and publicize the issue;
- Work in the regional IGOs to promote baseline standards at the regional level; and

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<sup>41</sup> This literature, which can be found primarily in the field of migration studies, is largely concerned with how diaspora communities maintain their cultural connections and why they tend to adopt more nationalistic political outlooks than citizens who live in the home state (such as in Croatia and Armenia, for example). See Rainer Baubock, "Towards a Political Theory of Migrant Transnationalism," IWE Working Paper Series (October 2002). Available at <http://www.iwe.oeaw.ac.at/workingpapers/WP34.pdf>; see also the now defunct Transnational Communities Program, a joint collaboration between Oxford University and the U.K. Economic and Social Research Council available at <http://www.transcomm.ox.ac.uk/>; and Terrence Lyons, "Globalization, Diasporas, and Conflict," Institute for Conflict Analysis and Resolution (January 2004).

<sup>42</sup> See [www.iom.int/pep](http://www.iom.int/pep).

<sup>43</sup> Nohlen and Grotz. [page?]

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- Training for election observation groups on the core commitments related to CFM political rights and how to evaluate electoral codes and election processes to identify shortcomings.

In terms of modalities, further research on actual state practice is needed. This paper has examined a variety of different approaches and identified problematic areas in terms of election transparency, but it would be useful to produce a comprehensive global study of absentee voting practices. Further research should involve surveying national EMBs and policymakers as well as a global review of election codes. This initiative could be augmented by a conference on external voting in which practitioners and policymakers interacted directly with their counterparts on the questions of inclusion and representation.

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