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Summary

People's right to participate in their government is firmly established in international treaties, documents, and institutions. One of the most basic means of political participation and expression is voting at elections. However, it appears that forced migrants' rights and means for voting are not always upheld. International standards for elections essentially make no reference to forced migrants. The fact that forced migrants are frequently unable to exercise an absolutely basic right raises a number of questions: Why and how is the right to vote being denied? What are the consequences for forced migrants if they are denied the vote? Could denial of the right to vote undermine the legitimacy of an election? These issues have implications not just for forced migrants' country of origin, but also for the receiving country, as lack of political opportunity through elections may increase tension and inhibit return.

This guide explores: democracy and its universal applicability, international legal provision for electoral participation, international election standards, the relevance of

electoral rights to forced migrants, difficulties with facilitating voting, and the risks of non-participation. It is not a definitive guide; it provides an overview of some of the issues and indicates points for further research and action. For up-to-date information and in-depth analysis on forced migration and post-conflict elections, readers are encouraged to visit the [Participatory Elections Project](http://www.iom.int/pep) website <http://www.iom.int/pep>.

‘We show a government to be representative not by demonstrating its control over its subjects but just the reverse, by demonstrating that its subjects have control over what it does.’¹

1. Overview

1.1 Forced migrants

‘Forced migration’ is defined by the International Association for the Study of Forced Migration (IASFM) as ‘a general term that refers to the movements of refugees and internally displaced people (those displaced by conflicts) as well as people displaced by natural or environmental disasters, chemical or nuclear disasters, famine, or development projects’. Forced migrants include: refugees, asylum seekers, and internally displaced persons (IDPs).

The legal definition of a ‘refugee’ comes from the 1951 United Nations Convention Relating to the Status of Refugees. Article 1 of the Convention defines a refugee as a person outside his or her country of nationality, who is unable or unwilling to return because of a ‘well-founded fear of persecution for reasons of race, religion, nationality, membership of a political social group, or political opinion’. Refugees who are recognized as such in their country of refuge have a clear legal status. If that State has ratified the Convention, they will enjoy the rights and benefits which it provides, and may also be able to rely on the protection of the United Nations High Commissioner for Refugees (UNHCR). At the end of 2001, there were estimated to be some 14 million refugees around the world, the vast majority of which are in Asia and Africa.

Asylum seekers are people who have left their country and are seeking protection under the 1951 Refugee Convention, but whose claim for refugee status has yet to be determined. Most asylum seekers do not come from the world’s poorest states, but from failed or failing states enduring civil war, and with high degrees of human rights abuses and significant levels of poverty. Annual asylum claims in Western Europe, Australia, Canada, and the USA combined peaked at 828,645 in 1992, fell sharply by the mid-1990s steadily rose again towards the end of the decade before falling again. However, the number of people who are seeking asylum in Western states comprises a small fraction of the total number displaced around the world.

IDPs are defined as ‘persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised State border’. (Report of the Secretary-General of the UN, UNOCHA 1999 http://www.reliefweb.int/ocha_ol/pub/idp_gp/idp.html)

¹ Pitkin, H.G., *The Concept of Representation*. Berkeley, CA: University of California Press, 1967.

Estimates on the numbers of IDPs continue to be controversial, due to debate over definitions as well as methodological and practical problems in counting. At the end of 2001, there were estimated to be 22 million IDPs worldwide. Most of the issues raised in this guide are relevant to IDPs; it also includes a section covering issues specific to IDPs.

This guide focuses on forced migrants' electoral participation in the territory from which they have moved. Forced migrants' electoral participation in the new place of living is not within the scope of this article – for further information on this issue see Blais, A., Massicotte, L. and Yoshinaka, A. 'Deciding Who Has the Right to Vote: A Comparative Analysis of Election Laws', *Electoral Studies*, vol. 20, 2001.
<http://www.elsevier.com/locate/contentsdirect>

Other forms of political participation, besides electoral participation, are also not the subject of this guide. Forced migrants may well be involved in actively supporting or influencing political parties, in providing independent information and media, and in lobbying and campaign activities. While all of these are important, this guide focuses on election activity as the most basic and fundamental form of political participation.

This guide does not address the electoral participation of people who have migrated as a positive choice. For more information on this, see *International Migration Review*, vol. 19, no. 3, Fall 1985. *Special Issue: Civil Rights and the Socio-political Participation of Migrants*.

1.2 Research sources

Listed below are various different sources of information available on elections. Forced migration is clearly also an expanding area of research. However there is very little information available on forced migrants' electoral participation. What literature does exist is widely dispersed and is generally concerned with one particular election, rather than the issue as a whole. The only exception to this is the Participatory Elections Project (see below).

There are various possible reasons for the lack of attention to the issue. First, there may be an assumption that forced migrants are generally only a small minority whose votes would not be enough to alter the outcome of an election (therefore facilitating or analysing their participation is only of minimal importance). Second, electoral participation may be regarded as a low-priority luxury right for forced migrants who have more pressing issues to be dealing with. Such views are perhaps compounded by the lack of international standards on the issue. Third, it may be assumed that most forced migrants are not from democratic states (as democracies are generally assumed to have lower levels of repression). However, as is discussed later, 'democratic' countries have been found to have some of the highest levels of repression.

Books:

Blaug, Ricardo and Schwarzmantel, John (eds), *Democracy: A Reader*. Edinburgh: Edinburgh University Press, 2000.

Brownlie, Ian and Goodwin-Gill, Guy S. (eds), *Basic Documents on Human Rights*, 4th edn. Oxford: Oxford University Press, 2002.

Crick, Bernard, *Democracy. A Very Short Introduction*. Oxford: Oxford University Press, 2002.

Donnelly, Jack, *Universal Human Rights in Theory and Practice*. Cornell University Press, 2002. New Jersey, USA.

Goodwin-Gill, Guy S., *Codes of Conduct for Elections*. Inter-Parliamentary Union, 1998. Geneva, Switzerland.

<http://www.ipu.org/english/books.htm>

Goodwin-Gill, Guy S., *Free and Fair Elections*. Inter-Parliamentary Union, 1994. Geneva, Switzerland. <http://www.ipu.org/english/books.htm>

Kumar, Krishna (ed.), *Postconflict Elections, Democratization, and International Assistance*. Lynne Reinner Publishers, 1998. Colorado, USA.

Potter, David, Goldblatt, David, Kiloh, Margaret, and Lewi, Paul (eds), *Democratization*. Polity Press, 1997. Oxford, UK.

Snyder, Jack, *From Voting to Violence*. W. W. Norton and Company, 2000. New York, USA.

Websites:

Journals

Commonwealth and Comparative Politics

<http://www.frankcass.com/jnls/ccp.htm>

Democratization

<http://www.frankcass.com/jnls/dem.htm>

East European Constitutional Review

<http://www.law.nyu.edu/eecr/volumes.html>

Elections Today

http://www.ifes.org/research_comm/publications.html

Electoral Studies, an International Journal

<http://www.elsevier.com/locate/contentdirect>

Journal of Democracy

<http://www.journalofdemocracy.org/>

Representation

<http://www.electoral-reform.org.uk/>

The Round Table – The Commonwealth Journal of International

<http://www.tandf.co.uk/journals>

Third World Quarterly – Journal of Emerging Areas

<http://www.tandf.co.co/journals>

Organizations

Carter Center

<http://www.cartercenter.org>

Commonwealth Secretariat

<http://www.thecommonwealth.org>

Council of Europe

<http://www.coe.int>

European Union

• External relations:

http://europa.eu.int/comm/external_relations/index.htm

http://www.europa.eu.int/comm/external_relations/human_rights/eu_election_ass_observ/index.htm

• EuropeAid – Elections:

http://www.europa.eu.int/comm/europeaid/projects/eidhr/elections_en.htm

Human rights and democratization policy:

http://www.europa.eu.int/comm/external_relations/human_rights/doc/index.htm
http://www.europa.eu.int/comm/external_relations/human_rights/doc/eidhr02_04.htm
http://europa.eu.int/comm/external_relations/human_rights/eu_election_ass_observ/index.htm

Freedom House

<http://www.freedomhouse.org>.

International Foundation for Elections (IFES)

<http://www.ifes.org>.

International Institute for Democracy and Electoral Assistance (IDEA)

<http://www.idea.int>

International Organization for Migration (IOM)

<http://www.iom.int>

Inter-Parliamentary Union

<http://www.ipu.org>

National Democratic Institute (NDI)

<http://www.ndi.org>

Organization for Security in Europe (OSCE)

<http://www.osce.org>

OSCE Office for Democratic Institutions and Human Rights (ODIHR)

<http://www.osce.org/odihr/>

Organization of American States (OAS)

<http://www.oas.org>.

Participatory Elections Project (PEP)

<http://www.iom.int/pep>

The National Endowment for Democracy

<http://www.ned.org>

United Nations. Electoral Assistance Division

<http://www.un.org/Depts/dpa/ead/eadhome.htm>

Miscellaneous:

The Comparative Study of Electoral Systems (CSES)

<http://www.cses.org/>

<http://confinder.richmond.edu/> (lists constitutions)

<http://www.electionaccess.org> (electoral participation for people with disabilities)

<http://www.ElectionGuide.org>

<http://electionresources.org/>

<http://www.electionworld.org>

<http://www.electoral-reform.org.uk/>

<http://www.klipsan.com/elecnews.htm> (news clipping service)

<http://www.parties-and-elections.de/>

<http://www.psr.keele.ac.uk/election.htm>

1.3 The Participatory Elections Project

A major source of information for this guide is the Participatory Elections Project (PEP), <http://www.iom.int/pep>. The project is producing a global overview of the practices, standards, and policy issues surrounding forced migration and post-conflict elections. This includes theoretical, legal, and political issues. PEP aims to frame a strategy for developing global standards to protect the political rights of refugees and

IDPs in their countries and territories of origin. PEP is funded by the United States Agency for International Development (USAID) and is organized by the International Organization for Migration (IOM). Since 1996, the IOM has assisted in 74 different countries with migrants' voting.

2. Democracy and elections

2.1 The arguments for democracy

'Democracy' is defined by the *Oxford English Dictionary* as 'a form of government in which people have a voice in the exercise of power, typically through elected representatives'. Democracy is most obviously manifest through elections which enable people to choose representatives. However 'democracy' is not an absolute category, whereby if a country has an election it can be regarded as 'democratic'. Instead, a state's democratic credentials involve assessing many, if not all, aspects of governance and the political system. There is much debate over what constitutes democracy both in theory and in actuality.

In one classic definition, by Robert Dahl, democracy requires 'not only free, fair, and competitive elections, but also the freedoms that make them truly meaningful (such as freedom of organization and freedom of expression), alternative sources of information, and institutions to ensure that government policies depend on the votes and preferences of citizens' (Dahl 1971). Thus democracy is not just about majority rule, but requires political freedoms so there can be debate and independent decision making. Commonly recognized essential components of democracy include: multi-party electoral competition, freedom of association, freedom of movement, independent media, and the rule of law. Achieving such freedoms may be a staggered process in which there are different patterns of democracy.

It is widely suggested that democracy enables people to fulfil a basic human interest and need to participate in civil and political life. The Inter-Parliamentary Union comment in their Declaration on Criteria for Free and fair Elections (<http://www.ipu.org/english/books.htm>): 'Recognising the right of everyone to take part in the government of his or her country is a crucial factor in the effective enjoyment by all of human rights and fundamental freedoms. Democracy is argued to benefit the society as a whole, as dialogue enables relevant issues to be addressed and the best solutions to be found based on informed and considered choices, and those in governance are kept responsible and accountable and under a limited mandate.'

It is argued that democracy increases the chances of peace within a state and with other states – for more information on the Liberal (Kantian) contention that democratic states are less inclined to go to war with one another, see Brown (1996). Democracy is also thought to reduce the likelihood of political repression and to increase the chances of stability and economic growth. Amartya Sen points out one dramatic example of this indivisibility of civil-political and socio-economic rights in identifying that 'no substantial famine has ever occurred in any independent democratic country with a relatively free press' (Sen 1999). The American non-governmental organization, Freedom House, in its 2002 global survey concluded 'the GDP of Free countries stood at \$26.8 trillion, while the GDP of Not Free countries was \$1.7 trillion' (<http://www.freedomhouse.org/research/survey2002.htm>).

The European Union comments in its 2000 *Communication from the Commission on EU Election Assistance and Observation*

(http://europa.eu.int/comm/external_relations/human_rights/eu_election_ass_observ/index.htm): 'The promotion of genuine democracy and respect for human rights is therefore not only a moral imperative: it is also the determining factor in building sustainable human development and lasting peace. Actions in support of democratization and respect for human rights, including the right to participate in the establishment of governments through free and fair elections, can make a major contribution to peace, security and the prevention of conflicts ... [the EU] considers the protection and promotion of human rights as well as support for democratization as corner stones of EU foreign policy and EU development co-operation.' Thus democratic functioning is commonly a fundamental consideration/component of peace agreements, trade arrangements, aid packages, etc.

Holding multi-party elections is an indisputable and concrete requirement of democracy. However, history has many examples of 'elections' which are far from 'free and fair'. Rather than facilitating political participation, such elections may provide a false legitimacy to unrepresentative governments (Serbia in the 1990s being a recent example). Larry Diamond notes that 'the distinction between electoral democracy and electoral authoritarianism turns crucially on the freedom, fairness, inclusiveness, and meaningfulness of elections' (Diamond 2002).

Elections provide a basic measure of a state's democratic credentials, and thus good elections can acquire value as a means for gaining international validity and standing. Therefore there is a growing emphasis on domestic and foreign observation of elections, in order to provide independent assessment of the legitimacy of the electoral process. This requires thorough examination of a state's laws and practices, using criteria such as independent and politically balanced electoral administration, universal suffrage, the independence of the media, access to campaigning, party organization, transparent procedures, secrecy of the ballot, lack of intimidation, and effective appeals and complaints procedures.

2.2 The applicability of democracy

The American political scientist Samuel Huntington has written of democracy's 'third wave', in which, following the recent transition of many countries' political structures, democracy now dominates the global political map (Huntington 1991). Such democratic growth is often taken as evidence that democracy is a universal value with universal benefit. The 2002 Freedom House survey found that:

'The number of countries rated "free" has more than doubled from 30 years ago. The highest-ever proportion of the world's population is living in freedom today.' According to the annual survey, 89 countries are now 'free', up from 43 in 1972. Their inhabitants enjoy a broad range of rights. 56 countries are considered 'partly free', an increase from 38 in 1972. Political rights and civil liberties are more limited in these countries, in which corruption, dominant ruling parties, and, in some cases, ethnic or religious strife are often the norm. The survey finds that 47 countries fall into the 'not free' category, down sharply from 69 in 1972. Inhabitants of these countries are denied basic political rights and civil liberties. 'The dramatic increase in the number of free countries points to the broad and growing appeal of democracy among the world's many peoples and cultures', said Freedom House Co-Vice

Chairman Mark Palmer. ‘This underscores the universality of democracy and its basic principles, including freedom of speech, religion, and thought’, he said. There are 121 electoral democracies in the world today, out of 192 states (63 per cent). In 1987, 66 countries were electoral democracies out of a total of 167 (40 per cent). However, only 89 of today’s 121 electoral democracies have an environment in which there is broad respect for human rights and stable rule of law. The remaining democracies fail to provide systematic protection for all basic civil liberties. (<http://www.freedomhouse.org/research/survey2002.htm>).

Sen argues that during the twentieth century, ‘democracy became established as the ‘normal’ form of government to which any nation is entitled – whether in Europe, America, Asia or Africa ... in the general climate of world opinion, democratic governance has now achieved the status of being taken to be generally right’ (Sen 1999).

However, there are criticisms of theories of democracy’s ‘natural expansion’. Firstly, measurements of democratic functioning are crude and controversial and what one person may qualify as an electoral democracy, may be regarded by another as a competitive authoritarian system, a hegemonic-party system, or a semi-democratic hybrid regime (see Diamond 2002). Secondly, expansion of democracy may be due less to democracy’s inherent value and attraction, and may be more to do with the agenda and requirements of Western governments. As Ricardo Blaug and John Schwarzmantel comment: ‘there arises the possibility that the ideals of democracy are “universal” merely because the Western liberal-democracies have been so effective in exporting – or imposing – their own values’ (Blaug and Schwarzmantel 2000).

In particular, the disproportionately low number of states with Muslim majorities with democratic government raises the question of whether Islam is compatible with democracy. The 2002 Freedom House survey comments: ‘Despite the lack of progress in large parts of the Islamic world, especially its Arabic core, the survey analysis finds no inexorable link between Islam and political repression. Indeed, it shows that the majority of the world’s 1.2 billion Muslims lives under democratically elected governments, in countries like Bangladesh, India, Indonesia, and Turkey. The overall lack of progress on democratic reform within specific Muslim countries can be attributed to high degrees of military influence, the persistence of monarchies and personal authoritarianism, and the influence of radical ideologies such as Baathism and jihadist Islamism. All have helped give birth to tyrannical regimes and violent movements in the region’ (<http://www.freedomhouse.org/research/survey2002.htm>). It is also argued that research ‘demonstrates the pitfalls of focusing only on the problems for democracy related to Islam, while neglecting the overall socio-political, military, ethnic, economic, and international contexts’ (Stepan 2000).

Analysts, such as Abdou Filali-Ansary identify other reasons for the apparent lack of democratic Muslim states. ‘Muslim confrontations with European colonial powers in the nineteenth century gave birth to some great and lasting misunderstandings, as a result of which Muslims have rejected key aspects of modernity (secularization and, to some degree, democratization) as an alienation and a surrender.’ Filali-Ansary also argues that democracy now enjoys popularity and prestige within contemporary Muslim societies (Filali-Ansary).

Adrian Karatnycky points out that ‘if one examined the political map of the world at the beginning of the 1950s, one might have observed the singular absence of democratic governance in countries with Catholic majorities ... Similarly, someone looking at the European political landscape in the late 1980s might have pointed to the fact that the Orthodox Christian states seemed resistant to democratic practice’ (Karatnycky 2002).

A recent survey based on 1,890 interviews in Kazakhstan and 1,964 interviews in Kyrgyzstan found people of Muslim faith to be as pro-democracy as other citizens. ‘Evidence from Kazakhstan and Kyrgyzstan, countries that are geographically close to centres of Islamic fundamentalism, shows that being a Muslim does not make a person more likely either to reject democracy or to endorse dictatorship ... In both Kazakhstan and Kyrgyzstan there is very little difference between Muslims, the Orthodox, and non-believers ... an absolute majority in each category of observance endorses democracy. In short, neither nominal religion nor the degree of religious observance has much influence on democratic values’ (Rose 2002).

Such research indicates that democratic interest can be found across cultures. Sen comments that ‘As democracy has spread, its adherents have grown, not shrunk.’ He also argues that ‘A country does not have to be deemed fit *for* democracy; rather, it has to become fit *through* democracy ... that universal consent is not required for something to be a universal value’ (Sen 1999). Thus there is the view that in the twentieth century democracy has become a ‘universal commitment’. The following section examines how the right to democratic governance has become enshrined in international law, agreements, and practice.

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<http://www.journalofdemocracy.org>
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<http://www.journalofdemocracy.org>
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<http://www.journalofdemocracy.org>
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<http://www.journalofdemocracy.org/>.
- Sen, Amartya, ‘Democracy as a Universal Value’. *Journal of Democracy*, vol. 10, no. 3, July 1999.
<http://www.journalofdemocracy.org>
- Stepan, Alfred, ‘Religion, Democracy, and the “Twin Tolerations”’. *Journal of Democracy*, vol, 11, no. 4, October 2000

<http://www.journalofdemocracy.org/>

3. Electoral Rights: international law and practice

3.1 International law

The Universal Declaration of Human Rights (1948) states that: ‘Everyone has the right to take part in the government of his country, directly or through freely chosen representatives ... The will of the people shall be the basis of the authority of government; this shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures’ (GA res. 217A(III), UN Doc A/810 at 71 (1948), available at <http://www1.umn.edu/humanrts/instree/b1udhr.htm>). Although the Universal Declaration of Human Rights is not a binding treaty, it is nearly universally accepted and compliance carries considerable political weight.

The United Nations’ International Covenant on Civil and Political Rights (of 1966, coming into force in 1976) in Article 25 states that: ‘Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions: To take part in the conduct of public affairs, directly or through freely chosen representatives; 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 ...’

Article 2 prohibits governments from discrimination (GA res. 2200A(XXI), 21 UN GAOR supp. (no 16) at 49, <http://www1.umn.edu/humanrts/instree/b2sec.htm>). The Participatory Elections Project (PEP) comments that ‘The ‘non-discrimination’ principle is a central feature of almost all recent human rights instruments, including those related to electoral participation. The core idea is that all rights are to be equally enjoyed by each segment of a state’s population.’

Various regional human rights instruments also require democratic entitlement:

The American Convention on Human Rights (1969, Article 23, states that: ‘Every citizen shall enjoy the following rights and opportunities: (a) to take part in the conduct of public affairs, directly or through freely chosen representatives; (b) to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters...’ (see <http://www1.umn.edu/humanrts/oasinstr/zoas3con.htm>).

This commitment to democracy is reinforced by statements by the Inter-American Commission on Human Rights. The Organization of American States (OAS) General Assembly resolution 510 declares democracy to be the basis of a just human society, and resolution 1080 (1991) adopts mechanisms for the OAS for upholding and defending democratic practice. The Inter-American Democratic Charter of 2001 declares in Article 1 that ‘The peoples of the Americas have a right to democracy and their governments have an obligation to promote and defend it.’

In Europe the First Protocol to the European Convention on Human Rights states that ‘the High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which ensure the free expression of the opinion of the people in the choice of the legislature’ (<http://www.hri.org/docs/ECHR50.html>).

This binding legislation has produced case law at the European Court of Human Rights and the European Commission on Human Rights that upholds not only the right to free elections but also the guaranteed right to universal and equal suffrage. (Mathieu-Mohin and Clayfert v. Belgium, 2 March 1987, Series A, no. 113). See the Council of Europe's website (<http://www.coe.int>) for treaties and case law.

In Africa, the African (Banjul) charter on Human and Peoples' Rights (1981) requires that 'Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law' (OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58, 1982).

Thus there is extensive legal promotion and protection of citizens' right to participate democratically in the governance of their country. Consequently, it is argued that citizens have a 'democratic entitlement', and that this requires effective practices and standards to ensure that elections and governance do actually reflect the will of the people. (See Fox 2000.)

3.2 International organizations' practice

Declarations and work programmes of the UN and other international governmental organizations (IGOs) show an increasing prioritization of the promotion of democracy. These include democratization and electoral assistance components in peacekeeping missions, and commitments to multilateral intervention into the internal affairs of states in support of democracy.

Examples of the UN's promotion of democracy include providing technical and financial assistance, and implementing and monitoring elections. This work is coordinated and supported by the UN's Electoral Assistance Division (<http://www.un.org/Depts/dpa/ead/eadhome.htm>). (See UN General Assembly 1992.)

On a regional level, the Organization of American States (OAS) includes democracy promotion as one of its fundamental goals and in 1990 established a Unit for the Promotion of Democracy, which provides member states with technical support and advice, and observes elections. In 1991, resolution 1080 was adopted, which provides for emergency sessions of the hemisphere's foreign ministers when any democracy in the region is interrupted. (<http://www.oas.org/assembly2001/assembly/GAassembly200/resolucion1080.htm>)

In Europe the Organization for Security and Cooperation in Europe (OSCE), in particular through its Office for Democratic Institutions and Human Rights (ODIHR), has been a leading force in promoting democracy in the former Eastern European countries. This has ranged from technical support to conducting elections, and observation of the election process. Since 1991, ODIHR has observed over 110 elections in the OSCE region, deploying in the process more than 10,000 international observers. Electoral functioning is regarded as critical in creating a political environment that protects human rights (see the 1990 Copenhagen Document, <http://www.osce.org/docs/english/1990-1999/cope90e.htm>). Other European organizations involved in technical assistance and election monitoring include the Council of Europe and the European Union.

The Organization of African Unity (OAU), now renamed the African Union, has also been increasing its role in promoting and protecting democracy. The organization sends observer missions, and has sanctions that can be invoked in the event of an interruption of constitutional rule.

In addition to IGOs there are numerous non-governmental organizations involved in supporting and developing democracy – see the bibliography for further information.

Thus there are a plethora of international agreements and international governmental organizations involved in protecting and promoting democratic rights. This has resulted in practical assistance and financial support being available, as well as independent observer missions. There are also negative international consequences if democratic rights are not upheld (e.g., exclusion from agreements and organizations, denial of visas, and commercial restrictions). The question arises as to whether a state's failure to provide for its people's 'democratic entitlement' should result in international intervention into the state's internal affairs.

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OSCE/ODIHR, *International Standards and Commitments on the Right to Democratic Elections: A Practical Reference Guide to Democratic Elections Best Practice*. OSCE/ODIHR Draft Paper, 20 November 2002.

(http://www.osce.org/odihr/documents/elections/intstand_draft.pdf)

Participatory Elections Project (PEP), The PEP Research Package, Section 1

(http://www.iom.int/pep/news_introduction.pdf)

UN General Assembly, *Enhancing the Effectiveness of the Principle of Periodic and Genuine Elections*. 9 March 1992).

<http://www.un.org/Depts/dpa/ead/2res92.htm>.

Websites:

Association of Central and Eastern European Election Officials (lists conventions and declarations concerning election management)

(<http://www.aceeeo.org/projects/standards.html>)

4. International election standards

As discussed, international treaties contain democratic requirements. However these are general, stating the aim of periodic multi-party elections, but are not specific about what is required for an election to be acceptable. The Inter-Parliamentary Union state in *Free and Fair Elections* (Goodwin-Gill 1994) that 'The individual's right to take part in government, either directly or through freely chosen representatives, and the principle that the will of the people shall be expressed in periodic and genuine elections, reflect what are called "obligations of result".' States undertake to achieve a specific result, but enjoy substantial choice of means in determining which path they will follow to reach the internationally required objective ... Existing universal and regional human rights instruments, provide little detailed guidance on key issues, such as the periodicity of elections, the organisation and entitlements of political parties,

voter rights and registration, or the conduct of the ballot. That elections should allow expression of the “will of the people” may offer a standard of effectiveness, but the ways and means by which progress towards that standard can be measured remain variable ... a variety of inter-governmental and non-governmental organisations in election monitoring and technical assistance at the field level, is even now producing a body of practice that is contributing to the consolidation of norms and practices.’

The UN Human Rights Committee, which has a supervisory role under the 1966 International Covenant on Civil and Political Rights, established international Standards of Elections in 1996 (‘The Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service,’ General Comment 25, 510th meeting, 57th session):

- Article 25 of the covenant recognizes and protects the right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service. Whatever form of constitution or government is in force, the covenant requires states to adopt such legislative and other measures as may be necessary to ensure that citizens have an effective opportunity to enjoy the rights it protects.
- No distinctions are permitted between citizens in the enjoyment of these rights on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
- Any conditions which apply to the exercise of the rights protected by Article 25 should be based on objective and reasonable criteria. The exercise of these rights by citizens may not be suspended or excluded except on grounds which are established by law and which are objective and reasonable.
- Citizens also take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves. This participation is supported by ensuring freedom of expression, assembly and association.
- The right to vote at elections and referenda must be established by law and may be subject only to reasonable restrictions, such as setting a minimum age limit for the right to vote. It is unreasonable to restrict the right to vote on the ground of physical disability or to impose literacy, educational or property requirements.
- States must take effective measures to ensure that all persons entitled to vote are able to exercise that right. Where registration of voters is required, it should be facilitated and obstacles to such registration should not be imposed. 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. Voter education and registration campaigns are necessary to ensure the effective exercise of Article 25 rights by an informed community.
- Freedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote and must be fully protected. Positive measures should be taken to overcome specific difficulties, such as illiteracy, language barriers, poverty, or impediments to freedom of movement which prevent persons entitled to vote from exercising their rights effectively. Information and materials about voting should be available in minority languages.
- In their reports, state parties should indicate and explain the legislative provisions which would deprive citizens of their right to vote. The grounds for such deprivation should be objective and reasonable.

- In conformity with paragraph (b), elections must be conducted fairly and freely on a periodic basis within a framework of laws guaranteeing the effective exercise of voting rights. Persons entitled to vote must be free to vote for any candidate for election and for or against any proposal submitted to referendum or plebiscite, and free to support or to oppose government, without undue influence or coercion of any kind which may distort or inhibit the free expression of the elector's will. Voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind.

In 1990, the CSCE (the OSCE's predecessor) adopted the Copenhagen Document, which at the time was said to represent the most coherent compilation of international standards for democratic elections, and the first time that states had made specific international commitments concerning election processes. Since 1990, additional commitments have supplemented the initial provisions of the Copenhagen Document in the OSCE area, the most recent example being the Istanbul Summit Declaration's commitment to implement ODIHR election-related recommendations.

ODIHR (<http://www.osce.org/odihr/>) notes that during the past eleven years, ODIHR and other institutions 'have contributed to the codification of international standards related to elections. In Europe, the work in the field by the Council of Europe's Parliamentary Assembly, Council for Democratic Elections and the European Commission for Democracy Through Law (Venice Commission), and the case law for the European Court of human Rights have enriched the international standards for democratic elections. The Parliamentary Assembly of the Commonwealth of Independent States is the most recent contributor to the effort. On the global scale, the UN Human Rights Committee adopted a General Comment on standards for democratic elections in 1996 and other UN fora have contributed to a growing list of international documents on the subject as consensus in support of democracy emerged in the 1990s. These commitments, standards, case law, comments and reports are dispersed across a considerable number of documents in various fora.' In November 2002, ODIHR produced a draft paper on standards and commitments, which, when finalized, aims to contribute to the development of consistent methodology in observation and technical assistance. The document strives to 'state norms that can be applied objectively, to provide clear criteria for judging the democratic nature of elections, to be a practical guide to best practice and to initiate debate'.

The ODIHR draft standards include requirements such as:

- Universal and equal suffrage.
- Non-discrimination. 'Every person who has the right of suffrage must be allowed to exercise his/her suffrage right in a non-discriminatory manner on the basis of equal treatment before the law. This principle requires that a person, who has the right of suffrage, be allowed to exercise his/her suffrage right without distinction of any kind, such as race, colour, gender, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, disability, or other status.'
- Any limitation or restriction on the right to elect or be elected must be scrutinized, and any limitation or restriction must clearly be justified due to exceptional circumstances.

- Deprivation of the right to vote and to be elected may occur only under limited circumstances expressly stated in law, and in accordance with the proportionality principle.
- There should be no residency requirement for citizens to vote in national elections. Residency requirements for local and regional elections should be reasonable.
- Human rights protection includes no unreasonable limitations on the right to freedom of speech or expression, freedom of assembly or freedom of association.
- National minorities be effectively represented ... without discrimination.

The Inter-Parliamentary Union has adopted a Declaration on Free and Fair Elections which ‘urges governments and parliaments throughout the world to be guided the principles and standards set out’ (154th session, Paris, 26 March 1994, <http://www.ipu.org/cnl-e/154-free.htm>). This document comments that: ‘states must recognise and make provision for:

- The right of the individual to vote, on a non-discriminatory basis.
- The right of the individual to access an effective, impartial and non-discriminatory procedure for the registration of voters.
- The right of every eligible citizen to be registered as a voter, subject only to disqualification in accordance with clear criteria established by law, that are objectively verifiable and not subject to arbitrary decision.’

Other international organizations that have produced election standards include:

- The Association of Central and Eastern European Election Officials (ACEEEO) draft ‘Convention on Election Standards, Electoral Rights and Freedom’, http://www.cikrf.ru/conference/conference_en_konv.htm
- The European Commission for Democracy through Law (Venice Commission) ‘Guidelines on Elections’, [http://www.venice.coe.int/docs/2002/CDL-AD\(2002\)013-e.html](http://www.venice.coe.int/docs/2002/CDL-AD(2002)013-e.html)
- International Institute for Democracy and Electoral Assistance (IDEA), <http://www.idea.int/institute/inst-intro.html>. ‘International Electoral Standards: Guidelines for Reviewing the Legal Framework of Elections’ and the ‘ACE Project’, <http://www.aceproject.org>
- The International Foundation for Electoral Systems (IFES), ‘Universal Standards for Free and Fair Elections’, http://www.ifes.org/reg_activities/Pdf/05_21_02_angola_eng_annex2.pdf
- The National Democratic Institute for International Affairs (NDI), ‘Democratic Elections: Human Rights, Public Confidence and Fair Competition’, http://www.accessdemocracy.org/NDI/library/005_ww_demelections.pdf
- The Southern Africa Development Community (SADC), Parliamentary Forum ‘Norms and Standards for Elections in the SADC Region’, http://www.accessdemocracy.org/NDI/library/1372_elect_sadcpf_normsstandards.pdf

(See also Elklit and Svensson 1997.)

None of the above-mentioned international election standards include explicit requirements about electoral provision for forced migrants. However, they do contain many points that are relevant and applicable to forced migrants, for example by addressing issues around residency requirements and protection from discrimination.

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5. The relevance of electoral participation rights to forced migrants

This section firstly looks at whether forced migrants come from countries that hold elections. It then goes on to consider whether forced migrants have access to adequate electoral provision through services that exist for migrants in general. The final part then considers the lack of explicit international provision for forced migrants' voting.

5.1 'Democratic' countries do produce forced migrants

Given the argument that human rights, peace, and stability prosper through democracy, it might be assumed that democratic countries do not produce forced migrants. Thus, forced migrants might be assumed to come only from countries that do not hold elections, and therefore electoral participation in the home country would not be an issue.

However, in practice, countries that hold elections still do produce forced migrants. As has been discussed above, democracy requires more than simply holding elections. A country that appears democratic by holding elections may in fact be profoundly undemocratic in the form of the elections held and in all other aspects of the political and state system.

Larry Diamond refers to 'pseudo-democracy' in which 'democracy is the only broadly legitimate regime form, and regimes have felt unprecedented pressure (international and domestic) to adopt – or at least to mimic – the democratic form ... democratic political institutions, such as multiparty electoral competition, masks (often, in part, to legitimate) the reality of authoritarian domination. All such regimes lack an arena of contestation sufficiently open, free, and fair so that the ruling party can readily be turned out of power if it is no longer preferred by a plurality of the electorate. While an opposition victory is not impossible in a hybrid regime, it requires a level of opposition mobilization, unity, skill, and heroism far beyond what would normally be required for victory in a democracy' (Diamond 2002). Diamond argues that 'the trend toward democracy has been accompanied by an even more dramatic trend toward pseudo-democracy ... in proportional terms, authoritarian forms of multi-party electoral competition have increased during the third wave much more rapidly than democratic ones.'

It is also argued that countries with intermediate levels of democracy exhibit high levels of violent repression. In an examination of 91 less developed countries from 1979 to 1992, Patrick Regan and Errol Henderson found that less developed states with semi-functioning democracies have higher levels of violent repression than democracies or autocracies (Regan and Henderson 2002). Regan and Henderson comment that 'demands in a highly autocratic society will in effect be muted by fear of retribution, while demands in a highly democratic society will be channelled politically. In the middle (i.e. in semi-democracies), where demands are high yet mechanisms for addressing these demands inadequate, repression will be greater.' It is

argued that in semi-democratic states the regime will feel the highest level of perceived threat. Although, violent repression does not equate exactly with forced migration, it may be taken as an indicator of negative governance that is frequently associated with forced migration. Therefore it could be inferred that semi-democratic countries that hold elections are more likely to produce forced migrants than states that have other regime structures. The 2002 Freedom House survey found there to be a greater number of semi-democratic countries (56) in the world than ‘not-free’ countries (47) (<http://www.freedomhouse.org/research/survey2002.htm>).

Interestingly, this argument, that intermediate democracies exhibit the highest levels of violent repression, suggests that regime change from autocratic governance to semi-democratic (and then hopefully to democratic governance) may in the short term increase the likelihood of political repression. Snyder (2000) considers the dangers of promoting democracy. However, as Donnelly points out, transition to democracy should not have to involve the subjugation of human rights.

It may also be argued that if a state is producing forced migrants, it is not respecting human rights, and therefore cannot have meaningful elections involving informed and free choices, and that there is thus little reason for forced migrants to want to participate. However, a state may be holding reasonably free and fair elections while abusing its citizens’ other fundamental rights. Furthermore, as is discussed later in this guide, even with imperfect electoral conditions, elections may be positive in developing legitimate political channels and as part of a process of democratization. As a result, electoral participation is also relevant to forced migrants who are from countries that have been non-democratic, are currently in transition, and will be holding elections in the future.

5.2 Lack of electoral provision for all migrants who have moved abroad

To date, there is no international standard requiring people living outside of their home country to be able to vote. This means that forced migrants who are displaced from a country that has no voting provision for its citizens residing in other countries are unable to access mainstream registration or voting facilities while in their new country of residence.

Blais *et al.* note that ‘Demanding actual residence in the country for voting purposes was for a long time a standard and firm requirement of election laws. This rule was relaxed for soldiers who had to fight wars abroad. It was felt unfair that the peculiar circumstances of their service should deprive them of a voice in the running of the country. This rationale led to the extension of the same privilege to diplomats and other civil servants abroad. Many feel that preserving the right to vote of civil and military servants abroad while disfranchising other citizens who happen to be abroad for study, travel, international assistance and so on, amounts to discrimination ... maintaining the right to vote of expatriates may be seen as a message that they are still part of the national community, and will be welcome if they come back. Others insist that expatriates have a lesser interest in the running of their country of origin, especially if they do not pay taxes in that country, or point out the costs necessitated by their inclusion in the electorate as well as the danger of fraud’ (Blais *et al.* 2001). Another argument given for restricting the right to vote to current residents is that non-residents may not be directly affected by policy decisions and therefore might not vote as responsibly as residents.

The European Commission on Human Rights² upheld states' rights to have a residency requirement for electoral participation. However, PEP points out that 'the Commission clearly indicates that it is concerned with the issue of persons who are outside of their home state by their own free will ... Secondly, the Commission argues that one of the key justifications for limiting external voting has to do with transparency ... By this logic, an electoral process that guaranteed transparency to the external vote would not face this problem.'

The 1990 International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families declares 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, in accordance with its legislation' (United Nations General Assembly, Article 41). This only came into force on 1 July 2003, following ratification by 21 states (Bosnia and Herzegovina is the only one from Europe). How states abide by their obligations under the Convention will be monitored by a panel, to be known as the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families.

The 2002 OSCE Draft International Election Standards states that: 'There should be no residency requirement for citizens to vote in national elections. Residency requirements for local and regional elections should be reasonable' (http://www.osce.org/odihr/documents/elections/intstand_draft.pdf).

Blais *et al.*'s 2001 study of 63 democracies found 'little consensus about ... which electors residing abroad (if any) should have the right to vote'. In over a third (23) of the 63 democracies studied, citizens residing abroad do not have the right to vote. Of the remaining 40 countries, in ten, citizens retain the right to vote for a limited period, ranging from three to 20 years. In three, those residing abroad must, upon application for registration, state their intention of returning to the country in order not to be disfranchised. In ten, citizens residing abroad must return to the country in order to cast their vote on election day. The authors note 'that 'stronger' democracies are less inclined to disfranchise citizens residing abroad' (Blais *et al.* 2001).

Blais *et al.*'s (2001) study shows that frequently there is no voting provision for those residing in another country. Furthermore if there is such provision, forced migrants may not be able to partake, as they may not be able to confirm that they will return to their home country, and are highly unlikely to be able to return in person at the time to cast their ballot. Thus, it may be argued that current mainstream practice does not enable forced migrants to participate electorally, and special provision needs to be made if forced migrants are to be able to have their democratic rights honoured.

5.3 International standards on forced migrants' electoral participation

The 1951 Refugee Convention does not address the right of refugees to participate in the political life of their country of origin. International election standards also fail to address forced migrants' participation (see above).

² The Commission is no longer in existence as it is integrated into the European Court of Human Rights.

However, 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’ (Gallagher and Schowengerdt 1998).

PEP comments that: ‘As a basic principal, individuals who have been forced from their homes against their will yet intend to return cannot and should not be discriminated against in the realization of their basic human rights – including the right to electoral participation ... yet countries continue to run elections that discriminate against conflict forced migrants (CFM). While some recent elections have included CFM participation (i.e. Eritrea, Bosnia, East Timor, and Kosovo), other elections have earned the seal of approval from international observers and monitors even though large numbers of displaced persons were disenfranchised. In some cases the disenfranchisement stems from financial, transparency and logistical constraints associated with reaching a displaced population. In other cases, the disenfranchisement resulted from a determination that either the displaced population was too small to make a difference in the election outcome or that the displaced population was subject to political control that would result in their inability to exercise freedom of choice in the balloting. Almost always, however, this disenfranchisement serves the interests of political actors. Technical and logistical constraints can then become an excuse to provide political cover to those who prefer to exclude certain categories of eligible voters. This tension will continue as long as the international community continues to accept the results of elections that do not meet the criteria of full participation. As a consequence, better standards are required in order to de-legitimate and prevent exclusion as a political strategy’ (PEP Research Package).

PEP argues that as there are no specific statements or agreements covering forced migrants’ right to electoral participation, the right must be deduced from the non-discrimination requirements laid out in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) and regional instruments.

The OSCE’s 1999 Istanbul Summit Declaration states that: ‘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’ (<http://www.osce.org/docs/english/1990-1999/summits/istadec100e.htm>). Indeed, the OSCE has organized elections in Bosnia and Herzegovina, and in Kosovo that involved major efforts and costs to include forced migrants. Similarly, PEP note that ‘where the UN system has taken an overall role in the conduct of an election (Namibia, Cambodia, Western Sahara, and East Timor), the organisation has strived to include displaced populations, either through direct external registration and balloting, or through co-operative programmes with the UNHCR where the repatriation of refugees and displaced persons is directly linked to in-country election operations’ (PEP Research Package).

The lack of international norms and standards, makes it easy for the electoral participation rights of forced migrants to be overlooked. PEP comment: ‘Conflict-

forced migrants are routinely denied the right to participate in the political process because of the lack of widely recognized legal imperatives protecting their political rights. Many post-conflict elections have not provided for the participation of refugees and IDPs ... Even when conflict-forced migrants have been included, mechanisms and standards for their participation have often varied, leading to inconsistent practices that can undermine the transparency of elections' (PEP Research Package).

PEP is in the process of producing a set of standards on forced migration and post-conflict elections. Producing such standards includes addressing issues such as:

- considering the most inclusive and effective electoral system
- whether to have reserved seats for a displaced population
- the right of forced migrants to continue to vote in their home territory, even if they are no longer classified as refugees (e.g., after having obtained nationality in a new state)
- the right to participate simultaneously in local elections in the new area of residence
- the heightened need for security (forced migrants may be at a disproportionately high risk of political violence and intimidation)
- the importance of not linking forced migrants' electoral participation with their legal status –such a link would result in forced migrants not having an equal voice to regular voters
- not linking electoral participation with provision of social welfare (as has happened in Bosnian elections)
- the importance of registration and voting of refugees never being interpreted by the host state as signalling the existence of safe conditions for return and/or the termination of asylum or temporary protection status
- not using registration data for any other purpose
- the usefulness of having members of the displaced community in the election management body.

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6. Difficulties with facilitating forced migrants' electoral participation

As mentioned above, common reasons given for not enfranchising people who live outside a state are the logistical problems and financial requirements involved. While these are considerable, they are not insurmountable; hence it has been possible to facilitate forced migrants' voting.

6.1 Out-of-country voting: practical difficulties

There are various ways that registration and voting services can operate in another country. These include: voting in person at an embassy or consulate, postal voting, and operating registration and voting services in the community. These are briefly considered below. For a comprehensive discussion on the issue of external voting, see International IDEA, *External Voting Handbook* (forthcoming).

Voting in person at an embassy or consulate results in potential election services in a large number of countries. However, this is likely to be a centralized service in which people are expected to travel to a capital city, maybe on at least two occasions (for registration and for voting). The time and financial implications of this may result in people with little or no incomes being severely disadvantaged from participating. In particular, there is the risk that women will not vote, as typically one adult may be required to stay and care for children and/or dependent relatives.

Postal voting overcomes the above-mentioned problems of an over-centralized service, and has the potential to operate in a very large number of countries. However it has other disadvantages. For example, last minute changes in rules may not be incorporated in a postal voting process, which requires a much longer timeframe. Furthermore, postal voting involves issues of the secrecy of the ballot. If voting is not in person, there is no way of securing that each person has a chance to mark his or her ballot in private. There is also no way of securing that intimidation, in which people are being directed and pressured to vote in a certain way, is not taking place. Again, this may be particularly disadvantageous to women, who traditionally may be expected to follow the instructions of the man of the household.

Registration and voting services in the community overcome the centralization problem and, like voting in person, also provide for the secrecy of the ballot and protection from intimidation. There is greater transparency, as people can see more of the process, and can ask questions. It is logical that the more localized and accessible the service is, the greater chance there is of participation. It may also be argued that such services provide a greater degree of fairness, as in the home country people have in-person access to local voting services. It is for reasons such as these that the OSCE offered in-person registration and voting facilities to Serbs and Roma displaced from Kosovo living in Serbia Proper³ or Montenegro.

³ 'Serbia Proper' is the term that was used to refer to the state of Serbia, not including Kosovo.

However, registration and voting services in the community are also problematic. Firstly, they are costly and are therefore likely to be limited to areas where there is a high number of people from the home country. Secondly, the services may still be more difficult to access than in the home country – as a limited number of registration and voting centres may have to be spread over a large area (especially if there is only a small number of people from the home country). Providing such a service may also be difficult to organize. For example, in the 2001 Kosovo Assembly elections, the OSCE operated its services in Serbia Proper and Montenegro through the International Organization for Migration (IOM), which worked with the Yugoslav Commissariat for Refugees. Thus, the OSCE needed to make agreements with two other bodies. This may be challenging and time consuming, with different bodies having different understandings, methodologies, and agendas.

Of course such systems are not mutually exclusive and can be simultaneously operated. For example, in the 2001 Kosovo Assembly elections, in-person services were operated in Serbia and Montenegro, and postal services were offered in other countries. Using multiple systems raises the question of how to decide where each service is offered. The tendency has been to use in-person programmes in neighbouring states, where political interests can be much more intense. Political considerations and negotiated agreements may also be used (e.g., in East Timor, countries with in-person programmes were determined in the May 5 agreements).

Other out-of-country voting issues include ensuring there is sufficient voter education and information on voting rights and processes, access to neutral media, the availability of campaign material and the ability of candidates to present electoral issues, and the possibilities for assembly. These are all deemed to be vital elements of the election process, but are hard to manage in a third country where the electoral body has no mandate (agreements with the host state may be made to try to overcome these obstacles). All these issues should be considered when assessing how adequate out-of-country services are. A further challenge is ensuring that there is adequate observation by domestic and/or international groups. This is especially important as out-of-country voters are separated from areas of central processing, and therefore have less opportunity to assess the transparency and adequacy of the electoral process.

6.2 Forced migrants' voting: practical difficulties

In addition to the problems that all citizens face in voting when living out of their home country, there are difficulties particular to people who are living away from their home area as a result of forced migration. While these difficulties are serious, they are not insurmountable – see the PEP document *Enfranchising Conflict Forced Migrants*.

Firstly, relations between the electoral body and the state where forced migrants are located may be delicate and highly politicized. For example, in the 2001 Kosovo Assembly elections, the Serbian authorities in Belgrade only agreed to have polling in Serbia Proper two weeks prior to election day. This decision followed months of discussion about whether Serbs would participate or would boycott the election. Thus the Serbian state's decision to allow polling signified acceptance of Serb' participation.

Secondly, a new electoral register may need to be formed (in the home country the electoral register may just require updating). Compiling an electoral register is a complex process requiring a person to submit an application, an electoral list to be formed, and then the opportunity for people to check and contest their entry. As mentioned above, the difficulties of operating in another country in a potentially highly politicized situation may result in all of this having to be conducted in a contracted time period.

A further obstacle can arise for forced migrants in providing the documentation needed for registration and voting. During flight, people may not have had the opportunity to bring their documentation with them, or may not have realized how useful and important it would be. Furthermore, state authorities may be obstructive in issuing new documentation to a member of the displaced population. This may result in registration applications being incomplete. If forced migrants are not to be disadvantaged, a system may be needed whereby claims can be confirmed from alternative sources (as the OSCE did in Kosovo in 2001). This is a challenging task as registration and documentation criteria that are too loose can result in fraudulent registration and lack of confidence in the electoral process.

Additionally, there is the challenge of identifying where forced migrants are located. This may be a complex process, especially if the forced migrants are unregistered in the new state. Such a situation can easily arise, if the forced migrants do not have enough information, or fear registration resulting in expulsion or the jeopardization of unofficial employment opportunities. There may need to be an active process of information dispersal through, for example, websites, specialized media, clubs and associations, posters, and phone services.

Providing adequate information about voting to forced migrants may require more than simply facts, especially as this may be some people's first contact with the home country and state authorities. Such contact may be emotionally laden and may require other issues to be considered before a person could be expected to think about voting technicalities. For this reason, during the 2001 Kosovo Assembly elections, the OSCE funded outreach teams in Serbia Proper to visit displaced Kosovan Serbs and Roma. In order effectively to impart information on the election and registration, outreach teams frequently felt it necessary to let people talk and to offer some information on other related issues (such as current conditions in Kosovo and access to further assistance in Serbia). This enabled the attendees to engage with the teams, and then hear the electoral information.

There are various personal reasons why it may be difficult for forced migrants to participate in registration and voting. In particular, it is very understandable if a person, who has been forced to leave a state has little faith in that state's democratic and election apparatus. Thus, for example, there may be fear that a vote could be traced and that if a person votes the 'wrong' way, there could be negative consequences for them or their family, friends, and associates in the home country. Hence, thorough independent observation is of heightened importance. It would also be very understandable for forced migrants to feel disconnected and ill-informed about what is happening in the home country, and perhaps to have little interest.

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7. The risks of forced migrants' non-participation

This section looks at some of the risks of non-participation, and some of the benefits of participation. It then goes on to consider various issues relating to decisions about whether to participate in a weak or flawed electoral system.

Denial of a person's right and ability to vote is a fundamental denial of their human rights. For forced migrants, such ill-treatment is likely to be additional to other abuses they have endured (in the home country and maybe also in the new country of residence). As well as being damaging to a person's sense of self-worth and place in the world, such disenfranchisement has implications for how a forced migrant may relate to the home and host states. It is possible that as a result of not being able to vote, a forced migrant is likely to feel more disconnected from the homeland, and therefore more likely to remain in the host state. They may also lose all faith in the potential of the political apparatus of the home state, and so look to other means to have influence (including perhaps armed and violent methods).

If segments of a society have not been able to participate in an election, it can be argued that those elected are not representative, and that therefore they may not be making the best choices for the population and the country. Furthermore, both domestically and internationally, there may be a lack of confidence in the 'representatives'' legitimacy.

PEP note that the disenfranchisement of forced migrants 'may reward groups who impose their will through violence, intimidation, and the forced deportation or expulsion of civilian populations'. If forced migrants are disenfranchised and unrepresented, this can 'embolden those in power who would use human displacement as a political tool'. By this argument, lack of facility for forced migrants to vote may perpetuate corrupt and violent politics based on abuses of power.

Another risk of not providing forced migrants with the opportunity to vote, is that insufficient voter turnout can invalidate election results – for example, in four recent elections in Serbia and Montenegro, 50 per cent of those on the electoral register did not vote, and therefore all four elections failed to secure a president for either Serbia or Montenegro (for further information, see the ODIHR election observation reports http://www.osce.org/odihr/documents/reports/election_reports/). Thus if forced migrants are on the voters' register but are unable to vote, this could jeopardize an election achieving any outcome at all.

Finally, by failing to facilitate forced migrants' voting, a state is going against the above-mentioned international principles of universal suffrage and non-discrimination, and is therefore potentially risking legal challenges and having its human rights record discredited.

In contrast, upholding forced migrants' right to vote shows a commitment to human rights, and increases the likelihood of securing a representative government and

political dialogue, and therefore stability. Ensuring that forced migrants are able to vote reduces the chances of displacement being used as a means of silencing sectors of a society. Furthermore, such basic political empowerment of forced migrants maintains people's connection with the homeland, and may increase the chances of people making the transition back to the home country.

7.1 Imperfect electoral conditions

As has been discussed, there are numerous practical difficulties with providing electoral services for forced migrants. Furthermore, there is the argument that if people's rights are so abused that they needed to flee, then surely the conditions are not there for political expression, and therefore for meaningful electoral participation. It was along these lines that some displaced Kosovan Serbs called for a boycott of the 2001 Kosovo Assembly elections. They argued that if it was not safe for them to be in their own homes, they could not participate in an election, and that their participation would only serve to legitimize and strengthen an inadequate political system that was failing to offer sufficient security to Serbs. Furthermore, there were serious concerns that there would be a risk to the lives of any Serbs elected.

While these are clearly legitimate issues that understandably could result in forced migrants boycotting an election, this does not justify denying forced migrants the opportunity to vote. First of all, providing the facility for forced migrants to vote shows some commitment to human rights and to engaging people in the political process. Thus, although conditions may not be perfect, they may represent movement in the right direction – in opening dialogue, increasing representation, and in encouraging inclusion and return. Failure to provide voting facilities, on the grounds that a population would not participate, not only denies people their rights, but also reduces the chances of dialogue and political solutions. People are perfectly within their rights to choose not to participate in voting; indeed non-participation may be regarded as a legitimate means of political expression.

The concern of some of the displaced Serb population from Kosovo that their participation was being sought to legitimise a fundamentally flawed political system indicates the need for assessment of a state's democratic credentials not to be overly based on the holding of elections. Some displaced Serbs feared that the holding of 'successful' elections would result in reduced attention for their needs in Kosovo, as the international community would assume mechanisms of governance in Kosovo were functioning adequately. Thus, to avoid all-or-nothing situations whereby participation could result in reduced international support, it is necessary that the international community clearly emphasizes that elections are only one of the institutional prerequisites for democracy.

To conclude, although an electoral landscape and the electoral system may be flawed, and although certain sectors may choose to boycott an election, the electoral process may, on balance, still be beneficial. Some attempt at electoral provision and participation may show a commitment to the goal and process of democracy, and may represent a constructive movement in a positive direction. However, in order to avoid triggering disillusionment and further hostilities, attention must be paid to ensuring as many core components are in place as possible before an election is held (including freedom of movement and assembly, independent media, political party formation, etc.).

8. Internally displaced persons (IDPs)

Frequently, IDPs, people who have fled within their own country, have less international protection than refugees (who have fled to another country). However, as PEP note, ‘the international human rights system appears to provide stronger protections to the political rights of IDPs than to refugees ... The UNHCHR (United Nations High Commissioner for Human Rights), particularly the work of the Special Representative on Internal Displacement and the rights contained in the Guiding Principles [www.reliefweb.int/ocha_ol/pub/idp_gp/idp.html], directly addresses this fundamental right as applied to IDPs ... The Guiding Principles on Internal Displacement, although not treaty law, directly addresses this issue. Principle 1 declares that: “Internally displaced persons shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country. They shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced.” This language is strengthened in Principle 22 (<http://www.unhcr.ch/htm/menu27/b/principles.htm>) ... however a considerable debate has emerged regarding whether these principles have the status of binding international law ... A number of governments, particularly former colonies and trusteeships believe that matters of internal displacement are exclusively the prerogative of the national state, and suggest that the Guiding Principles are intrusive into their domestic autonomy.’ Principle 22 states that ‘internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of ... 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 ...’.

Francis Deng, the first UN Representative of the Secretary-General on IDP, commented that: ‘Amidst the many deprivations they face, internally displaced persons often are stripped of the opportunity to participate in government on a local or national basis. This denial may be enhanced by the fact that they have lost their identification papers and/or property. The ability to participate in governmental or public affairs can enable internally displaced persons to influence or possibly ameliorate their own situation of displacement’ (Deng).

Deng’s comment indicates that IDPs face practical obstacles in voting similar to those faced by people who have been displaced to another country. Participation in local elections may be particularly problematic (especially if polling is not available nationally as only certain electoral districts are being contested). If voting has to be conducted in person, IDPs may effectively be left disenfranchised if they are unable to return to their home area. This may be for logistical reasons or for fear of intimidation. Understandably, people who have fled from an area may not feel safe returning, especially for a politically charged action such as voting. In-person voting can become highly symbolic and contentious. For example, in the 2000 Bosnia and Herzegovina municipal elections, many Bosnian Muslims wanted to vote in-person in the Serb dominated area of Srebrenica, as a mark of their continued intention to return. However, in the end, the Muslim population did not vote in person, but cast ballots elsewhere in the country (for the municipality of Srebrenica). Clearly threats to safety and violent incidents during the campaign (as occurred in Srebrenica in 2000), may also result in IDPs being unwilling to stand for municipal positions, which could leave IDPs without a genuine choice on the ballot. Furthermore, as IDPs are not living

in the area in which they are voting, they may also lack information on the parties and candidates from which they must choose. PEP recommend that absentee registration and balloting must be available; however, care must be taken to ensure transparency and that the process of counting does not reveal voters' choices (this is an issue particularly if the IDP population for one municipality is small in an electoral area).

For further information, see the upcoming paper on IDPs on the PEP website, <http://www.iom.int/pep>.

Bibliography:

Deng, Francis, *Internally Displaced Persons: Compilation and Analysis of Legal Norms*. Report of the Representative of the Secretary-General submitted pursuant to Commission on Human Rights resolution 1995/57.

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9. Conclusions

Despite international commitment to electoral participation, such rights for forced migrants frequently remain marginalized, if they are recognized at all. The PEP comments that: 'Many post-conflict elections have not provided for the participation of refugees and IDPs.' Further work is needed to identify the number of forced migrants that have been or are disenfranchised. Very approximately, if there are 37 million forced migrants (refugees, asylum seekers, and IDPs), and if 55 per cent are eligible to vote (e.g., are 18 or over), then over 20 million people could be disenfranchised. Of course, many of these forced migrants will be from countries that are not likely to be holding meaningful elections.

As democratic credentials become increasingly important internationally, the implementation of elections has become a subject for scrutiny. However, emerging election standards do not specifically address provision for forced migrants. This leaves forced migrants in a difficult position for challenging decisions and practices – in addition to having to make a complaint from another country, they are left without explicit international standards to refer to.

Forced migrants' non-participation has implications not only for the forced migrants themselves, but for the whole country, which may be left without a representative government, and with reduced chances of peaceful political solutions based on dialogue and negotiation. There may also be consequences for the international community, which may have to deal with a government that could be regarded as illegitimate, with the increased chance of continuing conflict, and with the reduced likelihood that refugees will return.

There are many issues that warrant further study. These include the impact on forced migrants of being disenfranchised; the most effective and economical means for conducting forced migrants' electoral registration and voting; observation methodologies; and ways of promoting electoral engagement in forced migrants – to name but a few.

What is clear so far, however, is that forced migrants' electoral rights need to be put securely on the agenda. There are various ways that this may be achieved: through

developing international standards, legal cases, and technical support, making provisions within peace and settlement agreements, developing monitoring systems, and inviting special comments and rapporteurs from international organizations. There is legal argument to support forced migrants' participation. General practice and policies need to be developed accordingly, so that forced migrants, who have after all not chosen to leave their homes, are not stripped of their most basic political voice and human right.