

Case Studies on the Participation of Conflict Forced Migrants in Elections

Participatory Elections Project (PEP)

Desk Research Package : Backgrounder

May 2003



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

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Note

The following case studies provide further information on recent elections that have either enfranchised or disenfranchised conflict forced migrants. The cases range from very short overviews to more exhaustive political and technical analyses. The purpose of these studies is not to provide a comprehensive overview of all elections in all countries with significant displaced populations. Instead, we aim to provide a general overview that serves as background to other PEP outputs, particularly Discussion Paper No. 2 of the Desk Research, "Refugee and IDP Voting: Issues, Standards, and Best Practices."¹ Much of the discussion of particular election technical issues in that study is based directly upon these cases.

The cases differ in orientation. Some focus more on political dynamics while others are procedural in nature. At a minimum, they all include core background information, including the nature on the conflict and its' settlement, the conditions of displacement in/from the country or territory, an overview of the electoral codes relevant to the election, and description of the actual voting, along with references to reports and analyses conducted by domestic and international media and observers. Some of the cases are substantially more detailed than others. These are typically the cases where significant displaced population participation occurred (Bosnia and Herzegovina, Kosovo, Eritrea, and East Timor). In these studies, the emphasis is on both technical implementation and political considerations. The other cases are often very brief descriptions of events.

Case selection was based on trying to find an appropriate mix between successful and unsuccessful attempts at enfranchising conflict-forced migrants (or the lack of any attempt at all due to political considerations). Other criteria guiding case selection included: 1) global coverage, 2) availability of information and analyses, and 3) prioritizing countries/territories which may be conducting elections in the near future.² As always in case selection, electoral events of particular interest to any individual reader may not have been included. Readers are urged to visit the PEP website, where a significantly larger group of cases have been identified, and links to reports by other agencies and individuals are provided.

The cases were prepared as part of the first stage of research activities conducted by the Participatory Elections Project. They were researched by Jeremy Grace, research coordinator of PEP, with substantial assistance from a team of students at SUNY Geneseo. These include: Phil Weaver (Bosnia, Eritrea, West Bank), Erin Conklin (Liberia, Western Sahara), and Anna Borshchevskaya (Burundi, Chechnya, Georgia).

¹ Available at www.iom.int/pep

² A comprehensive case study was also completed on Angola, although this is not included here as the case was eventually incorporated into a separate PEP action plan: "Angolan Elections: Promoting Reconciliation through Participation of Conflict-Forced Migrants." Available at www.iom.int/pep

Case I: Bosnia and Herzegovina

The 1996 General Elections and the 1997 Municipal and RS Assembly Elections

Introduction

The post-war elections in Bosnia and Herzegovina (BiH) were the first ever that guaranteed enfranchisement of conflict forced migrants both by rule and by actual practice. As such, the case presents a number of intriguing lessons for those interested in the technical and political implications of refugee and IDP voting. With close to 60% of the eligible voting population in some form of displacement, the election organizers needed to design a workable system of absentee balloting that contributed to the peace and reconciliation process. This case study therefore differs from others prepared as part of the PEP project in the substantial attention to the political consequence of the external vote and the relationship between the procedures adopted and the larger goals expressed in the General Framework Agreement for Peace (Dayton) that ended the war. In addition, the fact that elections have occurred nearly every year since 1996 has allowed election organizers to respond to shortcomings and lessons learned almost immediately, particularly as they sought to close the loop-holes through which the nationalist political forces exploited the absentee vote. The case is also important in that many of the absentee voting systems developed by the OSCE and IOM were subsequently applied in elections in Kosovo in 2000 and 2001. It is recommended that the reader approach the BiH and Kosovo cases together in order to track the evolution of best-practices and procedures.³

Background

The conflict in Bosnia and Herzegovina stemmed from the collapse of the federal state of Yugoslavia in the early 1990s. By the end of 1991, Yugoslavia had unraveled largely along ethnic lines: Slovenia, Croatia, and Macedonia each had declared independence. BiH followed suit, initially declaring sovereignty in October of 1991 and, after a referendum boycotted by ethnic Serbs, independence in March 1992.⁴ The remaining two republics, Serbia and Montenegro, joined forces in April 1992, together forming the Federal Republic of Yugoslavia (FRY) under the leadership of Slobodan Milosevic. Prior to the outbreak of hostilities, BiH had been the most ethnically integrated republic of Yugoslavia.

The FRY and Bosnian Serbs, united by a common ethnicity, pursued the goal of a "Greater Serbia" by attempting to militarily annex non-FRY territories in which ethnic Serbs were residing – including areas of Croatia and BiH. Croatia pursued similar policies with respect to Bosnian Croats. The result was three warring parties – Bosniaks (Bosnian Muslims), ethnic Bosnian Serbs united with the FRY as the Republika Srpska (RS), and ethnic Bosnian Croats united with Croatia – and a fractured Bosnian



BiH Today: Republika Srpska & Federation
Source: [CIA World Factbook 2002](#)

³ The case studies differ in their orientation. The Kosovo case focuses primarily on the procedural implementation of the external vote. The political imperatives at work were completely different given the differing demographics of the two and the fact that Serbs boycotted the 2000 Kosovo municipal elections..

⁴ CIA, [CIA World Factbook 2002](#) <http://www.cia.gov/cia/publications/factbook/geos/bk.html>

state. The subsequent scramble for political power and territory – both amongst and within the former republics - was based almost exclusively upon nationalist claims. According to Cousins and Carter, “As the Yugoslav state disintegrated, the status of Bosnian Serbs and Croats within an independent Bosnia was put in doubt ... [N]ationalist leaderships among both communities and their respective patrons in Belgrade and Zagreb effectively launched a civil war as a preemptive strike against the prospect of a Muslim Bosnia. Their goal was an ‘ethnic cleansing’ of territory that could later be incorporated in Serbia or Croatia, and the primary tactic was forced migration.”⁵

A 1994 agreement between Bosniaks and Croats tempered one dimension of the conflict by establishing the Bosniak/Croat Federation of BiH. However, conflict with ethnic Serbs continued until the signing of the Dayton Agreement in December 1995. In the end, fighting had claimed more than 200,000 lives (some 6% of the pre-war population), had produced an estimated 1.3 million refugees and 1.2 million internally-displaced persons (combined, nearly 60% of the pre-war population was displaced by late 1995).⁶

The remainder of this case study will focus on the mechanisms by which the displaced populations of BiH were enfranchised for the 1996 National and Cantonal Elections, the 1997 Municipal Elections, and the 1997 Republika Srpska National Assembly Elections. It will also focus on the political environment within BiH and how the international community re-shaped the implementation of the Dayton Accords. The intent is to distill the successes and failures of the external and IDP voting programs that were put into place for these election cycles. As such, most aspects of “normal” in-country balloting are not covered in any great detail.

Size and location of displaced population

Refugees

The US Committee for Refugees (USCR) estimates that at the end of 1996, at least 1 million Bosnians remained as refugees: 600,000 in Europe, 425,000 in other republics of the former Yugoslavia, and the rest scattered around Asia, the Middle East, Oceania and North America. The conditions facing refugees varied widely.⁷

In Germany, the vast majority of Bosnians were not granted asylum and were instead given “temporary protection status.” Their care and protection fell to the state governments (Laender), which provided varying levels of social welfare benefits and rights enumerated by the 1951 Refugee Convention. By and large, their treatment was satisfactory. Following Dayton, the Laender governments began to agitate for large-scale repatriation – an effort that increased in intensity following the 1996 election cycle. By 2000, at least 200,000 Bosnians had voluntarily repatriated. An estimated 10,000 were forcibly repatriated and an additional 40,000 Bosnians left Germany for other third states.

In Croatia, the government’s Office of Displaced Persons and Refugees (ODPR) cared for both Bosnian refugees and Croatian IDPs (from the Croatian/Serbian conflict). Approximately 75% of the refugees were ethnic Croats from Bosnia with the remainder Muslims from central BiH and the RS. Croatia generally pressured refugees to return to areas in the Federation while providing protection for those displaced from the RS. The treatment of Bosnian refugees varied on the basis of ethnicity. Ethnic Croats were generally able to integrate into Croatian life. Bosniaks tended to have more difficulty in obtaining work permits or permission to reside outside of the refugee camps and refugee hotels scattered throughout the country. Croatia also resettled many

⁵ Elizabeth M. Cousins and Charles K. Carter, *Toward Peace in Bosnia: Implementing the Dayton Accords*. (Boulder: Lynne Rienner, 2001): 71. Bracketed text is added for clarification.

⁶ USCR, *World Refugee Survey 1997* (Washington, D.C.: Immigration and Refugee Services of America, 1997).

⁷ *Ibid*; other statistics derived from UNHCR, Global IDP Project, and OSCE and RESG reports.

ethnic Croats from the RS into areas from which large numbers of Croatian Serbs had fled following the Dayton Agreement. This made the return of the Croatian Serbs more difficult.

The FRY hosted a total of 600,000 persons, including the 250,000 Bosnian Serbs. According to the USCR, “the lack of a federal refugee structure has meant that host families, municipalities, and republic governments have had to shoulder the burden of assisting refugees in the FRY’s two republics.”¹¹

IDPs

Estimates on the IDP population vary widely, but most arrive at a figure of roughly one million at the end of 1996. Statistics from mid-1997 probably provide a more accurate snapshot, as significant returns did not occur between late 1996 and 1997.

The Global IDP Project estimates that the Federation hosted some 450,000 IDPs – 117,000 of which had originated from within the Federation and 333,000 that had originated from the RS. The RS hosted between 350,000 and 400,000 IDPs – 317,000 of which had originated from the Federation and between 40,000 to 50,000 that had originated from within the RS.¹²

Displaced Bosnians By Host State		
Country	1996	1997
Germany	335,000	335,000
Croatia	160,300	47,000 ⁸
F.R. Yugoslavia	250,000	241,000
Austria	73,000	8,300
Sweden	55,000	59,000 ⁹
Switzerland	25,000	13,000
Netherlands	25,000	6,200
Slovenia	10,300	5,300
Denmark	19,000	1,400
United Kingdom	13,000	unclear
France	12,000	7,400
Norway	11,000	12,500
Italy	10,000	9,285
IDPs in Fed. BiH ¹⁰	450,000	450,000
IDPs in RS	300,000	366,000
Totals	1,748,600	1,506,385

Legal Framework: The Dayton Accords

On its entry into force in December 1995, the General Framework Agreement for Peace (Dayton Accords) ended the war and produced a unitary state composed of two autonomous entities: the Federation of Muslims and Croats (Federation), and the Republika Srpska. Beyond securing an immediate – albeit imposed – peace, Dayton and its annexes provided a comprehensive roadmap for the vision of a multi-ethnic, tolerant, and democratic Bosnian state – a state which would welcome the return of the refugee and IDP populations displaced during the conflict.¹³ Accordingly, the Dayton Agreement included, *inter alia*, a new constitution, a framework for the international organization and supervision of free and fair elections, mechanisms to promote and ensure that conditions were conducive to the holding of free and fair elections, as well as an unprecedented commitment to the political inclusion, reintegration, and return of refugee and IDP populations.¹⁴

Political Pluralism & Ethnic Inclusion

The central aspect of the Dayton Agreement was the framers’ attempt to promote political pluralism as *the* mechanism for sustainable peace and viable reconciliation. War and the resulting displacement had transformed once tolerant and diverse communities into xenophobic ethnic enclaves – in both the Federation and the RS. This dynamic was perhaps the largest

⁸ Many Bosnian Croats assumed Croatian citizenship in early 1997.

⁹ Durable solutions were found for 55,000.

¹⁰ All IDP figures are as reported by Global IDP.

¹¹ USCR, 1997 Country Reports: Bosnia & Herzegovina, available at http://www.uscr.org/world/countryindex/bosnia_and_herzegovina.cfm

¹² Global IDP Database Database, available at

<http://www.db.idpproject.org/Sites/IdpprojectDb/idpSurvey.nsf/SearchResults/B6E47540CC1D0629C125686A00541056?OpenDocument>

¹³ Before the collapse of Yugoslavia, Bosnia had been the most ethnically diverse of the Yugoslav republics.

¹⁴ The Dayton Accords are remarkably brief – only three pages. The substance of the Accords is contained in the document’s annexes. In the interest of brevity, only those annexes that are germane to the conduct of elections or refugees are considered in this case study. Please see the table on the following page for links to the relevant Annexes and the full text of the Dayton Accords.

obstacle to the realization of political pluralism at the ballot box. Left unchecked, elections would only result in the institutionalization of nationalist ideologies, political parties, parochial legitimacy in state and local institutions, and by extension, public policy – the very repeat of the 1990 elections that had led to war. As such, the challenge was to temper the political effects of ethnic cleansing and mitigate the power and potentially inflammatory rhetoric of nationalist parties *before* the first election cycle.

The plan the framers adopted – and the parties were coerced to accept on paper – was to encourage refugees and IDPs (ostensibly the victims of ethnic cleansing) to return to their municipalities of origin. Once there, the voting power that they represented would act as a hedge against ethno-nationalist political ambitions. According to Jeff Fischer, who served as the first Director of Elections for the OSCE, “[t]he absentee ballot was intended to ensure that ethnic cleansing, which dictated where people live, would not dictate how and where they voted or where eventual power would lie.”¹⁵ The underlying strategy was that the infusion of displaced voters would encourage candidates to practice campaigns based on ethnic *inclusion* and pluralism. By placing an onus on (but not mandating) refugees and IDPs to vote in their municipalities of origin, Dayton’s drafters sought to ensure that the balance of power in the entities would reflect the pre-war ethnic balance, requiring political actors to appeal to a multi-ethnic electorate. According to one analysis, “Elections would thus enable refugees and displaced persons to challenge the power of authorities put into place as a result of [ethnic] cleansing and help to reverse the chain of events which led to the *de facto* partition of Bosnia.”¹⁶

In theory, it would have been to the advantage of candidates, and elected officials alike, to appeal to the political preferences of displaced ethnic minorities (and those who had either remained or relocated) within their respective constituencies. Assuming that significant returns would take place before the 1996 elections, the power of hard-line nationalist parties would have been reduced, on one hand, by forcing once warring communities to settle their differences in the political arena rather than on the battlefield, and on the other, by de-politicizing ethnicity as much as possible over time. In this sense, Dayton aspired to temper the ethnic dimensions of post-conflict BiH and lay the groundwork for a sustainable and tolerant democratic peace. In any event, the chief goal was to prevent the stratification of ethnically based political parties and, especially, to deny those who had ethnically-cleansed the fruit of their labor.

Annexes to the Dayton Accords (General Framework Agreement for Peace)¹⁷

- 1: Agreement on Military Aspects of the Peace Settlement
- 1B: Agreement on Regional Stabilization
- 2: Agreement on the Inter-Entity Boundary Line and Related Issues
- 3: [Agreement on Elections](#)
- 4: [Constitution](#)
- 5: Agreement on Arbitration
- 6: [Agreement on Human Rights](#)
- 7: [Agreement on Refugees and Displaced Persons](#)
- 8: Agreement on the Commission to Preserve National Monuments
- 9: Agreement on Bosnia and Herzegovina Public Corporations
- 10: Agreement on Civilian Implementation
- 11: Agreement on International Police Task Force

¹⁵ Jeff Fischer, “The Experience of Bosnia and Herzegovina,” in [External Voting Handbook](#), (International IDEA, forthcoming).

¹⁶ John Malik, *The Dayton Agreement and Elections in Bosnia: Entrenching Ethnic Cleansing Through Democracy*, 36 *Stanford Journal of International Law*, 303 (2000).

¹⁷ The General Framework Agreement for Peace (Dayton Accord or Dayton Agreement) is archived on the Office of the High Representative website. Only those annexes germane to this case study have been hyperlinked. For an indexed full text, please see: http://www.ohr.int/dpa/default.asp?content_id=371.

Annex 3: Agreement on Elections

Annex 3 of the Dayton Agreement tasked the Organization for Security and Cooperation in Europe (OSCE) with conducting and supervising elections for the country's new political structures. The OSCE was thus shouldered with the heavy responsibility of developing the regulatory, legal, technical, and logistical framework for the first set of National and Cantonal elections. The annex established a non-negotiable timeframe for the elections – between six and nine months after Dayton's entry into force (14 December 1995). As such, the OSCE faced a host of time-related challenges. In January 1996, the OSCE Mission to Bosnia and Herzegovina established the Provisional Election Commission (PEC) to begin the process of organizing the elections (discussed in detail below).

In order to uphold the ideals embedded in the Accords and to ensure domestic and international legitimacy, Annex 3 predicated the conduct of the September elections on the existence of an electoral environment conducive to holding Democratic elections: "The Parties shall ensure that conditions exist for the organization of free and fair elections, in particular a politically neutral environment; shall protect and enforce the right to vote in secret without fear or intimidation; shall ensure freedom of expression and of the press; shall allow and encourage freedom of association (including of political parties); and shall ensure freedom of movement."¹⁸ Accordingly, Annex III required the OSCE to certify that conditions were favorable enough for meaningful elections to proceed, using the criteria quoted above as the standard.¹⁹ Although the OSCE had the ability to postpone elections if those conditions had not been satisfied, the timeframe for postponed elections was narrow. Elections were limited to a nine month window as established by Annex III.²⁰ The original intent had been for the elections to take place in June.

Annex IV: Constitution of Bosnia and Herzegovina (National & Entity Institutions)

Under the Dayton constitution, BiH became a single state with two highly autonomous "entities": The Republika Srpska (RS) and the Muslim-Croat Federation (Federation). All Bosnians were to vote for two national institutions: the tri-partite BiH Presidency and the BiH House of Representatives. The members of the upper house, the House of Peoples, are selected by members of the lower house, the House of Representatives.

The Presidency is composed of one member from each of the three ethnic communities (Bosniak, Serb, Croat). In the RS, a single direct ballot is used to fill the Serb Presidential seat.²¹ The Bosniak and Croat Presidential seats in the Federation are filled by means of a single ballot made available to all registered voters in the Federation. The Bosniak and Croat candidate(s) receiving the most votes, respectively, fill the two remaining presidential seats.

Voting for the National House of Representatives is held on regional basis. Twenty-eight members are elected from the Federation (14 Bosniak and 14 Croat candidates), while 14 are elected from the RS. The country is composed of two districts, with parties and independent candidates competing either in the Federation or RS.²² A closed list PR system with the highest remainder is used to allocate seats.

Political structures inside the two entities are not identical. In the Federation, eligible voters cast ballots for a Federation House of Representatives, Cantonal Assemblies, and Municipal Assemblies. In the RS, voters cast a ballot for a President and Vice President of the RS (on a single ticket), the RS House of Representatives, and municipal assemblies. Except for the Presidency of the RS, each level uses a PR system and a closed party list.

¹⁸ Dayton Accords, Annex III, Article I, Paragraph 1.

¹⁹ Except for the 1996 municipal election in Mostar, which was monitored by the European Union.

²⁰ Dayton Accords, Annex III, Article II, Paragraph 4.

²¹ PEC, Rules and Regulations, Art. 93, 1996.

²² In 1996, Parties were able to compete for seats in both entities at the same time. A 1998 PEC ruling required that only parties representing the dominant ethnic groups in each entity could compete for seats in the national institutions from that entity.

The wide array of national, entity, cantonal and municipal political structures produced the most complicated and expensive elections ever organized by the international community. Voting involved multiple ballots for different institutions, with the institutions differing between the RS and the Federation. Further complicating matters, more than half of the registered voters required an absentee ballot for the 1996 elections. As such, election officials had to ensure that every voter received the correct ballot for the correct entity in their current place of residence. These complications, combined with the extremely tight time frame and evidence of organized attempts at voter fraud, prompted the OSCE to postpone municipal elections until 1997 – making the 1996 elections somewhat more manageable.

Annex VI: Agreement on Human Rights

Annex VI establishes the Commission on Human Rights in order to facilitate inter-entity obligations to uphold internationally recognized human rights treaties and conventions, including the 1951 Convention on Refugees and the 1966 Protocol, the 1961 Convention on Reduction of Statelessness, the 1966 International Convention on Civil and Political Rights and the 1966 and 1989 Optional Protocols thereto, as well as the 1966 International Covenant on Economic, Social, and Cultural Rights.²³ As a consequence, BiH was obligated to adhere to the human rights standards, including those related to electoral participation, contained in these convention. The Commission was charged with investigating alleged abuses of human rights violations, issuing decisions confirming or dismissing allegations, and imposing binding set of steps to remedy abuses. Remedial actions included the ability to issue orders to: “cease and desist, [for] monetary relief (including pecuniary and non-pecuniary measures), and provisional measures.”²⁴

Annex VII: Agreement on Refugees and Displaced Persons

Annex VII is primarily intended to facilitate the return of refugees and IDPs to their points of origin (if possible) or to other locations within BiH where conflict-forced migrants intended to establish new but permanent residences. According to the agreement, all three BiH governments (Republic, Republika Srpska, & Federation) were to cooperate with each other and to assist relief agencies, NGOs, and other organizations who were facilitating repatriation programs. Annex VII also makes provisions for compensation or return of properties lost during the war. In order to promote conditions conducive to refugee and IDP return, Annex VII makes numerous provisions binding the Parties to remove structural obstacles to return, as well as to operationalize inter-entity confidence-building measures:

- The repeal of domestic legislation and administrative practices with discriminatory intent or effect;
- The prevention and prompt suppression of any written or verbal incitement, through media or otherwise, of ethnic or religious hostility or hatred;
- The protection of ethnic and/or minority populations wherever they are found and the provision of immediate access to these populations by international humanitarian organizations and monitors;
- The Parties shall not interfere with the returnees' choice of destination, nor shall they compel them to remain in or move to situations of serious danger or insecurity, or to areas lacking the basic infrastructure to resume normal life.²⁵

Additionally, individuals charged with crimes by wartime institutions and entities were granted amnesty. The intent of this measure was to encourage refugees and IDPs who had in fact been charged with crimes –regardless of the severity or legitimacy - to return. However, those charged with violating international humanitarian law or having committed war crimes were not considered eligible for amnesty.

²³ Dayton Accords, Annex VI, Appendix: Human Rights Agreements. The annex requires the Parties to uphold a total of sixteen internationally recognized human rights conventions/agreements.

²⁴ Dayton Accords, Annex IV, Part C, Article XI, Paragraph 1b.

²⁵ Dayton Accords, Annex VII..

Refugee Return

The right of return is articulated throughout the Dayton Accords. As such, the signatories expressly committed themselves to creating an environment conducive to IDP and refugee return. However, these conditions failed to materialize and, in some cases, continued to deteriorate between the signing of the Accords and the September 1996 elections. According to an International Crisis Group assessment, "By mid-August, only 100,000 of 2 million refugees and displaced persons had returned, and principally to areas where the returnees belonged to the majority ethnic group. And even this is a misleading figure because close to 80,000 persons belonging to minority groups [had been] displaced since the signing of the [Dayton Accords]."²⁶

Despite the framers' expectation in the Elections Annex that: "By election day, the return of refugees should be well underway, thus allowing many to participate in person in elections in Bosnia and Herzegovina," alternate plans were made in anticipation of the need to enfranchise those refugees and displaced persons who had not yet returned.²⁷ These alternate plans, including options for absentee balloting, are alluded to in Annex III, Article IV of the Accords and outlined in detail in Articles 6-8 of the Provisional Election Commission's (PEC) electoral "Rules and Regulations." The OSCE, as mandated by the Accords, was charged with organizing the modalities and technical aspects of out-of-country voting. A special body, the Refugee Elections Steering Group (RESG) was created to deal specifically with refugee voting (discussed in detail below).

Summary

The ensuing Bosnian elections in September of 1996 set the standard for ensuring the electoral rights of conflict-forced migrants. The Dayton Agreement not only mandated the inclusion of displaced Bosnians within the electoral process, but also provided the tools, mechanisms and extensive powers election administrators would need to have at their disposal in order to secure the electoral right. However, the international community's lackluster commitment to ensuring adequate electoral preconditions, when combined with the social wounds of the conflict – which included ethnic cleansing, rape as an instrument of war, and the extensive loss of civilian life – made these goals a daunting challenge. Additionally, the tension between securing an immediate peace (i.e., the highly autonomous powers granted to the two entities) and the long-term goal of creating a tolerant and multiethnic Bosnia appear to be at odds. Political elites continue to base their support on fear and nationalist claims, making the implementation of the Dayton Agreement highly problematic.

The 1996 Elections: Institutional Structures and Relationships

The Provisional Election Commission

The PEC was chaired by the Head of Mission of OSCE-Sarajevo²⁸ and was composed of four international members (representing the Office of the High Representative) and three Bosnian members.²⁹ Ultimate power rested with the Chair, who had the power to veto any group decisions or to unilaterally impose procedural or policy changes as conditions warranted.

It was not until mid-July (one month after pre-electoral conditions had been certified and some two months before the September elections) that the PEC published a "finalized" version of the electoral code. Within these "Rules and Regulations," the PEC established eligibility and

²⁶ ICG, "Why the Bosnian Elections Must Be Postponed," ICG Bosnia Report No. 14, 14 August 1996: p.5-6. Bracketed text is for clarification and context.

²⁷ Dayton Accords, Annex III, Article IV, Paragraph 2.

²⁸ The OSCE has subsequently organized and supervised elections in BiH since 1996. In 1999, electoral administration was gradually being "nationalized" as increased authority was turned over to the BiH government. In November 2001, the OSCE was discharged of its electoral responsibilities, in accordance with the Dayton Agreement, when the BiH government adopted its own Election Law and appointed members to the newly-established Election Commission of BiH. See: OSCE, "Elections/Implementation – Election Activities 1996-2001, available at <http://www.oscebih.org/elections-implementation/homeelections.asp>.

²⁹ ICG, "Elections in Bosnia & Herzegovina," ICG Bosnia Report No. 16, 22 September 1996: p.6-7.

registration requirements; codes of conduct for political parties, individual candidates, and the media; two supervisory bodies (the Election Appeals Sub-Commission (EASC) and the Media Experts Commission (MEC)); and the Refugee Election Steering Group (RESG). A fourth body, the independent Coordinator for International Monitoring (CIM) was established directly under OSCE control in order to prevent conflicts of interest with the OSCE-Sarajevo/PEC mission.³⁰ Due to the limited timeframe, most of these subsidiary bodies began to operate before the Rules and Regulations were finalized. The PEC also supervised the creation of local election commissions (LECs). LECs were tasked with organizing voter registration, securing locations for polling stations, supplying polling station staff, and administering balloting at the local level.

During the first three rounds of elections, the OSCE seconded thousands of international observers to monitor and supervise the process. The Office of Democratic Institutions and Human Rights (ODIHR) and other PEC-accredited international and domestic observers undertook separate observation missions.³¹

The Refugee Elections Steering Group (RESG)³²

A key component of the OSCE's mandate was to organize external voting procedures for the refugees displaced during the 1992-1995 period. Early planners had considered various options: having UNHCR register voters in their current locations, asking host-governments to administrate voting programs, and working with refugee NGOs in the host-countries. By early 1996, however, it became apparent that the OSCE-Sarajevo Mission did not possess the institutional capacity to carry out the logistical aspects of external registration, let alone refugee voting. When, as late as May, a feasible framework for external voting had not yet emerged, OSCE-Sarajevo formed the RESG to manage balloting outside of BiH.³³ The OSCE maintained full operational control over the program for IDPs.

Together, the IOM and ICMPD assumed the lead role in managing the out-of-country voting program and signed Memoranda of Understanding (MoUs) with the OSCE to carry out the logistical and technical operations. The United Nations High Commissioner for Refugees (UNHCR) provided important information on refugee statistics and facilitated contacts with various refugee offices and organizations but did not work directly on the program. The respective MoUs specified the division of labor between the OSCE and RESG. The OSCE/PEC maintained overall responsibility for the rules and regulations and agreed to make all the necessary materials and equipment for the program available to RESG (registration forms, the 1991 census, voter education materials, computers, etc). The OSCE Mission in Bosnia established the Out-of-Country Voting office (OCV) in Sarajevo, which oversaw the work of RESG, provided the necessary materials, and served as an information conduit with elections headquarters. IOM and ICMPD were ideal choices because of their combined institutional expertise on migration, their local and cultural knowledge bases, and, given the short time frame, the convenience that the two organizations' already-existing networks of country offices in BiH and in refugee host states around the world offered.

The RESG established its headquarters in Vienna in June. Due to the extreme time pressures, the decision was made to limit an official presence (establishing country offices) to those countries that hosted more than 5,000 refugees. These country-offices, staffed by RESG "Country Representatives," worked with the host governments to devise and implement the

³⁰ ICG Report No. 16, p.8.

³¹ Since 2000, international supervision and monitoring has decreased, with an increased emphasis being placed on BiH civil society groups' own monitoring regimes.

³² Much of the following discussion comes from two unpublished documents: OSCE-RESG, "RESG Final Report on Bosnia and Herzegovina National and Cantonal Elections Abroad." And OSCE-RESG, "The Relationship Between Large-Scale Forced Migration and the Electoral Process: The Case of Bosnia and Herzegovina."

³³ The RESG was composed of the Senior Advisor to the OSCE Chair-in-office as chairperson; the International Organization for Migration (IOM); the International Centre for Migration Policy Development (ICMPD); and the Coordinator of Refugee Elections for OSCE Sarajevo.

registration and voting programs – taking into account the unique situations that presented themselves in each country. In countries with refugee camps, direct registration arrangements were made. In countries hosting less than 5,000 refugees, no official presence was established; refugees were instead provided the opportunity to register and vote via a by-mail system coordinated out of the Vienna HQ.³⁴

Each country office was responsible for devising a workable and transparent system for conducting the elections within the parameters of the PEC's Rules and Regulations. In most cases, this involved working with the host governments to implement a by-mail program, whereby registration forms and ballots were delivered to voters and returned to the country office for transmission to Vienna.³⁵ In three countries, Albania, Croatia, and Macedonia, the process was carried out through in-person registration and polling. In Hungary and Turkey, both in-person and by-mail programs were implemented. The decision on which method to use was determined through consultations with host governments and the recommendations of the Country Representatives.

The Election Appeals Sub-Commission (EASC)

The Election Appeals Sub-Commission (EASC) was formed in May of 1996 as an enforcement mechanism for the rules and regulations imposed by the PEC. The EASC consists of an International Chief Judge, three National Judges, one from each ethnic group, and three National Legal Counsel, also one from each ethnic group. The EASC may impose a variety of sanctions on political actors, including fines, formal censure, demanding apologies for violations, and, its strictest option, striking candidates from the party lists to ensure compliance with PEC regulations. Since 1996, the EASC has reviewed over a thousand complaints of violations of PEC regulations and returned over seven hundred decisions. Of these seven hundred decisions, four hundred and forty-nine have resulted in some form of punitive action.³⁶

During the 1996 election campaign the EASC ruled on several complaints of refugee and IDP voter fraud. Immediately following the 1996 balloting, for example, the SDA (Bosniak "Party for Democratic Action") alleged that authorities in the FRY had transported refugees from Serbia into specific areas of the RS and that a substantial number of refugees living in Serbia and Croatia had voted twice, both in person and by absentee ballot. Based upon the reports of several observers, the EASC determined that significant voter manipulation had occurred. The sub-commission noted that many refugees had expressed concern because officials in the FRY had told them their refugee benefits were contingent upon voting in a specific municipality. The EASC decision was twofold: first, because of the refugee voter manipulation, they recommended that registration procedures for any municipal elections be reviewed in order to prevent future abuses; second, as a result of the significant avenue left open for double voting, they recommended that the PEC adjust the voting procedures for absentee voting in order to prevent future fraud.³⁷

³⁴ RESG Final Report, p10.

³⁵ These countries included Austria, Belgium, Canada, Denmark, Finland, France, Germany, Ireland, Italy, Luxembourg, the Netherlands, Norway, Slovenia, Sweden, Switzerland, the United Kingdom, the United States, and the Federal Republic of Yugoslavia.

³⁶ "The EASC and its Cases," *Association of Elected Officials in BiH*, available at http://www.aeobih.com.ba/tech_series1p11.htm.

³⁷ EASC, Case No. 96-137, 20 September 1996. The EASC also dealt with several other cases related to the refugee and IDP voting. Unfortunately, the case decisions have been removed from the OSCE Mission to BiH website. Other notable cases include: 1) During the 1997 elections, the EASC found that SDS officials were distributing falsified registration documents to displaced voters allowing them to vote in Brcko, rather than their pre-war municipality. In response, the EASC rejected over three thousand registrations and removed three candidates from the SDS candidate list. 2) In July 1997 the EASC issued a ruling against the SDA for distributing false registration documents to 350 displaced persons residing in Maglaj and Dobojo, which would have allowed them to vote in Zepce; and 3) Again in July of 1997 the EASC found that local HDZ officials in Jajce were distributing false registration documents to displaced persons. As a result, the first three HDZ candidates were struck from the Jajce candidate list. See ICG Report No. 16, p.38-39 and OHR, "Human Rights Report 21-26 July 97," available at http://www.ohr.int/ohr-dept/hr-rol/thedepthr-reports/hrcc-hr-rep/97-weekly/default.asp?content_id=5055.

Citizenship, Voter Eligibility and Registration under the “Rules & Regulations”

Citizenship & Voter Eligibility Criteria

The 1996 electoral code defined eligible voters as: “Any citizen of Bosnia and Herzegovina age 18 or older whose name appears on the 1991 census ...”³⁸ Citizenship in Bosnia was governed by the “Decree on the Citizenship of the Republic of Bosnia and Herzegovina”³⁹ that predated the conflict. Citizenship was automatically conferred on any person born in BiH so long as at least one parent had Bosnian citizenship. Persons that had formal citizenship in other republics of Yugoslavia prior to its dissolution could also claim citizenship if they had been born in Bosnian territory and had been permanent residents for the five year period immediately prior to the outbreak of the war in 1992. These persons were required to make a statement accepting Bosnian citizenship within 6 months of the end of the conflict and to renounce any other citizenship they had previously carried.⁴⁰

The 1991 (pre-war) census was used as a baseline for constructing the provisional electoral role for 1996. However, the 1991 census had never been updated and, as such, was incomplete and substantially inaccurate. To make room for those not listed on the 1991 census, Article 14 of the Rules and Regulations provided for a public display of the provisional electoral role and the opportunity for those eligible individuals whose names did not appear (due to errors, name changes resulting from marriage, or the fact that they had turned 18 in the interim) to petition the PEC to have their name added by completing the “Pik-1” Form.⁴¹ Provisions were also made for removing deceased voters from the list.

Given the tight timeframe of the 1996 elections, a comprehensive registration period was not feasible. The OSCE did organize a limited registration period prior to elections during which voters could check for their names against the provisional electoral register and make arrangements if their names did not appear. In addition, IDPs who wished to vote in their current place of residence were required to register with the OSCE in order to do so. To this end, the OSCE aired radio and television advertisements to encourage potential voters to check the provisional register for their names. Most voters, however, did not take advantage of this period and simply turned up at local election stations on election day. If they were found on the 1991 census and could provide acceptable identification, they were able to cast a ballot. If their names were not found, they were instructed to check the final electoral register maintained at Local Election Commissions. In subsequent elections the OSCE ran registration programs in order to clean up the voter roles and to ensure that individuals who had not been on the census were eligible to cast ballots.

For those that believed they were eligible to vote but did not appear on the provisional electoral role, two options were available. First, they were to file a “Pik 1” form. If this application for registration was denied, an appeals process was available to those who subsequently completed a “Pik 3” form. The appeal was evaluated by the LEC and then forwarded to the PEC in Sarajevo.⁴² However, according to a 1997 RESG report, provisions for those refugees who did not appear on the 1991 census were inadequate:

A significant number of potential registrants were not on the census, and RESG representatives often had to find other means for certifying eligibility. The need for such other measures was not fully recognized or provided for by OSCE-Sarajevo. Time

³⁸ PEC, “Rules and Regulations,” Article 5, July 1996.

³⁹ “Decree on Citizenship of the Republic of Bosnia and Herzegovina,” available at <http://www.unhcr.ba/protection/as@refugee/bhcitizenship.pdf>.

⁴⁰ IFES, “OSCE Election Assessment Team Mission to Bosnia and Herzegovina: Final Report,” 30 January 1996, p. 41.

⁴¹ The provisional role had been updated, to the extent possible, to reflect those BiH citizens that had turned 18 since 1991, had changed their names due to marriage, and to de-list those who were known to have died during the conflict. Nevertheless, these adjustments were incomplete and required public display for a final electoral role.

⁴² The appeals process differed slightly for refugee voters who did not find their names on the provisional register. Refugee Pik 3 forms (identical to those used in country) were first evaluated by the country coordination offices, then forwarded to RESG-Vienna, and finally, to OSCE-Sarajevo for a final and binding decision. See: RESG Final Report, p13.

pressure often precluded measures that would have allowed those not registered on the census to produce other forms of documentation.⁴³

In order to facilitate voting, voters were not required to cast their ballot at a particular polling station and a country-wide final voter register was distributed to all polling stations. Theoretically, this meant that internal voters could cast their ballot at any polling station, provided that they had the appropriate identification, and could prove that they had not already voted in-person.⁴⁴ (This mechanism was changed in 1997 and thereafter to require voters to register and vote in a particular station)

Article 16 of the Rules and Regulations specified acceptable forms of identification for the registration process *and* for voter identification on election day. Only the following documents, issued by government authorities in BiH, the RS, the Federation, or the former Yugoslav authorities within BiH, were considered valid for identification purposes:

- | | |
|----------------------------|------------------------------------|
| ➤ ID-Card; | ➤ Driving-License; |
| ➤ Citizenship Certificate; | ➤ Military-Booklet; |
| ➤ Passport; | ➤ Health Booklet; |
| ➤ Birth-Certificate; | ➤ Certification of name change; |
| ➤ Resident-Certification; | ➤ Or, a declaration. ⁴⁵ |

As in most post-conflict elections, the issuance or presentation of valid identification was problematic in BiH. Those lacking identification were able to submit a declaration containing their name, 1991 address, identity number (if known) and their current address. The declaration had to be made in the presence of a magistrate, a religious authority, a municipal official, or in the presence of two "reputable" persons whose names appeared on the provisional voters list.⁴⁶

Residency and Balloting Options

Determining a potential registrant's municipal residency was necessary for the conduct of entity-level cantonal and municipal elections. For these lower-level elections, a separate district-specific ballot would be required for district-specific seats. In effect, this meant that absentee stations and the RESG would have to be supplied with all of the local-level ballots in order to distribute the appropriate ballot to IDP or refugee voters. The PEC's original intent had been to conduct the national and local level elections concurrently in September 1996. However, the local elections were postponed when massive registration fraud was uncovered (discussed in detail below).

Both the Dayton Agreement and the 1996 Rules and Regulations mandated that: "...a citizen who no longer lives in the municipality in which he or she resided in 1991 shall, as a general rule, be expected to vote, in person or by absentee ballot, in that municipality..."⁴⁷ The "general rule" was modified by three significant exceptions. Article 10 of the Rules and Regulations provided that: "[The PEC] will grant the right to change the place of registration in the following circumstances:

- Citizens of Bosnia and Herzegovina who changed their place of residence between the 1991 Census and 6 April 1992;

⁴³ OSCE, "The Relationship Between Large-Scale Forced Migration and the Electoral Process: The Case of Bosnia and Herzegovina," June 1997, p.47.

⁴⁴ Before voters were allowed to cast their ballots, their hands were scanned with a UV light source to detect iridescent ink. Iridescent ink was applied to all voters' hands once they had been given a ballot in order to prevent double voting.

⁴⁵ PEC Rules and Regulations 1996, Article 16.

⁴⁶ PEC Rules and Regulations 1996, Article 16.

⁴⁷ This language comes directly from Dayton, Annex 3, which continues: "The exercise of a refugee's right to vote shall be interpreted as confirmation of his or her intention to return to Bosnia and Herzegovina. By Election Day, the return of refugees should already be underway, thus allowing many to participate in person in elections in Bosnia and Herzegovina." See The General Framework Agreement for Peace, available at

http://www.ohr.int/dpa/default.asp?content_id=371

- ... persons who were citizens of Bosnia and Herzegovina on 6 April 1992 but who have changed their place of residence since that date, either voluntarily or forcibly as a result of the war, may register to vote in the municipality in which they now live and intend to continue to live; they may vote there in person, but not by absentee ballot;
- ... refugees and displaced persons who do not wish to exercise the right [to] ... 'freely return to their homes of origin' may be registered to vote in the municipality in which they intend to live in the future, and may vote there in person but not by absentee ballot."⁴⁸

Pre-Election Environment in 1996

Technical Aspects of Refugee Voting⁴⁹

As in other PEP case studies, time and resources proved to be the most precious commodities for all facets of the 1996 BiH elections. This was especially true for organizing the technical aspects of external voting for the Bosnian refugees scattered across the globe. In hindsight, the OSCE/PEC should have formed the RESG much earlier in the process. Although the anticipation was that significant returns would take place during the interim period, it was illogical to assume that conflict-forced migrants would voluntarily return to their municipalities of origin under conditions where their personal security could not be guaranteed. Moreover, the war had left the country's infrastructure in ruin. Countless homes and apartment blocks had been destroyed - adding a housing-shortage dimension to the other barriers of voluntary return. It was only when it became evident that significant returns would not occur in time for the elections and that the OSCE did not have the institutional capacity to organize external voting that a large scale effort was made to enfranchise the refugee population. As such, the RESG, from the outset, was something of a stop-gap measure. Despite the RESG's late start-up, the external registration and voting program was extremely successful and as such, should be considered a model. All the same, additional time would have allowed for a more consistent and streamlined process as well as improved monitoring and accountability.

The condensed timeframe amplified a number of organizational, logistical, technical, and communication deficiencies. In most cases, OSCE deadlines were designed to meet the needs and timeframes of in-country voting. Due to the inherent time lag in out-of-country voting, operational deadlines for external voting predated those established for in-country voting. OSCE-Sarajevo materials were frequently not-yet available for RESG deadlines. As such, the RESG was often hampered by conflicting deadlines – especially as they pertained to registration. Under ideal conditions, in-country deadlines should have been established only after realistic deadlines for external voting became apparent.

As indicated by the RESG's final report for the 1996 elections:

The RESG was handicapped in its ability to get programme concepts across to Government counterparts and for [Country Representatives] to train . . . staff by the lack of promised, timely, or complete technical materials and official policy decisions from Sarajevo. In many cases, PEC and/or OSCE Sarajevo policy guidelines, physical samples, and materials themselves were not prepared for RESG use in time. This compromised RESG's ability to maintain the official time line . . . which was presented to RESG as sacrosanct, but was then abused many times through late deliveries from the mission.

⁴⁸ PEC Rules and Regulations 1996, Article 10.

⁴⁹ This section owes a great deal to a report written by RESG members and issued by the OSCE. "The Relationship between Large-Scale Forced Migration and the Electoral Process: The Case of Bosnia and Herzegovina" provides a framework for, and is heavily relied upon, for the discussion in this section.

Likewise, many of these same materials, once prepared in Sarajevo, could not be delivered to RESG or Country Representatives in an efficient and timely manner. This problem was maddening for programme staff at all levels, who, in good faith, were establishing systems which were entirely dependent upon the availability of their materials. . . .⁵⁰

Due to form delivery delays, RESG offices proceeded with local copying of forms, as well as making local decisions on how to register return information. This allowed a wide variety of individual office recording systems to develop during the registration periods. Unfortunately this rich diversity of format came back to haunt the programme; requests by OSCE Sarajevo to summarize statistics in certain fields could not be accommodated.⁵¹

The largest criticism of the RESG's efforts revolved around the number of Bosnian refugees that actually had been registered. Disagreements on the total estimated number of Bosnians residing abroad led to allegations that the RESG had disenfranchised as much as 50 percent of the refugee Diaspora. However, this allegation was most often based on the erroneous assumption that 100 percent of the Diaspora was, in fact, eligible to vote. Those that took this point of view failed to account for minors (who were indigible to vote) and permanent economic migrants (who, although they were technically eligible, chose not to participate in the elections).⁵²

Political Aspects of Refugee Voting

In addition to the technical difficulties involved in Bosnian refugee voting, a number of political issues prevented proper implementation of the electoral process. Under Dayton, the OSCE was charged with the responsibility of certifying that conditions were conducive for the September elections. Theoretically, the OSCE certification was contingent upon the Parties' compliance with the criteria for "free and fair elections" as laid out by the Dayton Agreement. As such, the Parties' were required to actively promote and adhere to the fundamental human rights principles enumerated within Dayton, including freedom of movement, freedom of expression, a free, but un-biased press, and, most critically for BiH, the presence of a politically neutral environment. Additionally, OSCE chairperson-in-office Flavio Cotti argued that the single most important pre-condition lay in the prevention of "every single possibility of direct or indirect influence by indicted war criminals."⁵³

Despite the readily apparent indications that the minimum conditions had not yet been secured, the OSCE, pressured by the international community, IGOs, NGOs, and the "Contact Group" (United States, United Kingdom, France, Germany, Italy and Russia), certified in late June that the September elections would take place and that they would be effective.⁵⁴ According to International Crisis Group (ICG), "The decisive influence of foreign governments in the scheduling of the Bosnian elections was harmful not only because it did not take adequate account of the prevailing conditions, but also because it vastly undermined the authority and the leverage of the OSCE."⁵⁵ In a speech before the OSCE Permanent Council, Flavio Cotti, who was well aware of the fact that the certification was questionable, acknowledged that conditions still warranted significant improvement. Cotti argued that unless conditions improved, the elections risked, ". . . [a] pseudo-democratic legitimization of extreme nationalist power structures."⁵⁶ Nevertheless, the international community prioritized the Dayton timeline – convenient for individual states' domestic political agendas – over ensuring that satisfactory electoral pre-conditions were actually in place for meaningful elections.

⁵⁰ RESG Final Report, p.11 (IV.1.).

⁵¹ RESG Final Report, p.12 (IV.6.).

⁵² RESG Final Report, p.19.

⁵³ As quoted in: ICG Bosnia Report no.16, pg.11.

⁵⁴ See ICG Bosnia-Report No. 14, "Why the Bosnian Elections Must Be Postponed" for a comprehensive argument against the pre-electoral certification.

⁵⁵ ICG Report No.16, p. 16.

⁵⁶ OSCE Relationship, p.36.

The heated debate surrounding the certification period was framed in terms of the legitimacy and purpose of the first round of elections. International pressure (exerted on the OSCE) to certify the pre-conditions, and thus, move ahead with the Dayton timeline was explained by OSCE officials in terms of establishing a baseline of legitimate post-conflict Bosnian leadership and the “larger context.”⁵⁷ The claim here was that the existing wartime political leadership did not have a democratically-legitimate mandate to be in office. Furthermore, the remaining leaderships’ orientations were decidedly nationalist and counterproductive to the “spirit” of Dayton, reconciliation, and the long term peace process. As such, the international community felt that the sooner the wartime leadership was replaced, the sooner democratically-mandated officials (an apparently inherent improvement) and the institutions envisioned by Dayton could be brought on line. The danger was that the anything-but-neutral political environment would likely give the same hard-line nationalist parties already in power a distinct advantage. Nevertheless, if elections were postponed, the probability that conditions would continue to deteriorate was all but certain. With this expectation, it became of paramount importance to capitalize on prevailing conditions, as a delay in elections may have completely derailed the Dayton process. Countries that had contributed forces to IFOR, and those that would be contributing to SFOR, considered the elections as a definitive step toward realizing their own exit strategies. There was no guarantee that these countries would keep troops in country if conditions did deteriorate – never mind expanding IFOR/SFORs’ mandates to play a more pro-active peacekeeping role. The consolidated logic for forging ahead with the elections was that the first elections cycle would only be one part of a long-term process of democratization, according to Cotti, “. . . [that] perfectionism [was] out of place,” and that subsequent election cycles would gradually excise ethnically divisive ideologies.⁵⁸

Opponents to the OSCE’s pre-certification argued that going ahead with the elections would be antithetical to the spirit and letter of Dayton. By holding the elections without waiting for the political environment to improve, opponents correctly anticipated that nationalist candidates would sweep the election - thereby legitimizing the very nationalist ideologies that had led to war, entrenching those ideologies in the new institutions, creating institutional gridlock, *de facto* partition, and ultimately, neutralizing any promise Dayton held for a sustainable and multiethnic Bosnia.

Two major factors contributed to the decline of “free and fair” conditions between Dayton’s entry into force and the September 1996 elections. First, Dayton established the six-to-nine month timeframe for elections without first establishing an electoral code or interim regulatory mechanism to check the behavior of political parties. This effectively allowed the still-in-power nationalist parties to begin campaigning even before Dayton was signed. In this sense, the parties were able to base their platforms on destructive nationalist ideologies – and broadcast those ideologies through the media - without being constrained by formal rules or being deterred by the threat of punitive measures. By the time that the PEC published the electoral code, the political parties already had six months of momentum behind their divisive platforms. Although the EASC and Media Experts Commission (MEC) were well-equipped to constrain the behavior of these parties, their ability to do so was extremely limited by the fact that they had only just come up to speed in August – a month before the elections – and because the OSCE’s ability/authority to postpone the election was undercut by the international pressure. According to ICG:

As of 13 September, the EASC had issued 53 judgments and seven advisory opinions since its first meeting on 2 July. Significantly, 27 of these decisions were published during the last two weeks of the electoral campaign, thus minimizing the deterrent effect they could have otherwise had. Of the 53 decisions, 33 were dismissals of complaints, two were interim judgments on complaints in need of further investigation, four were limited to warnings of future action or censoring of local officials, one judgment ordered

⁵⁷ Flavio Cotti, “Certification of the Elections in Bosnia-Herzegovina,” *Helsinki Monitor* 7, No. 3 (June 1996) available at http://www.spn.ethz.ch/static/osce/h_monit/hel96_3/doc3.htm.

⁵⁸ *Ibid.*

the OSCE to correct registration errors for 13 voters, and *13 decisions resorted to punitive action. . . . Only in three decisions did the EASC use the most powerful tool in its mandate – the removal of candidates from party lists for violations of the PEC Rules and Regulations.*⁵⁹

Second, different communities in Bosnia had decidedly different interests in securing power in the areas that fell under their control following Dayton. Where the international community and electoral administrators clearly believed that conflict-forced migrants ought to cast ballots in areas where their voice might serve as a moderating force within the nascent political institutions, political actors (particularly in the RS) were interested in consolidating political control over the areas they held following the territorial agreement. At the end of the war, ethnic cleansing had reversed the ethnic demographics of many municipalities. Towns that had had Bosniak majorities before the war ended up with artificial Serb majorities after the war, and vice versa. The “new” majorities, in both cases, had an interest in maintaining their majority status and, through the elections, obtaining a “democratic” mandate to remain in control of these ethnically-cleansed municipalities. As such, the hard-line parties adopted a number of different strategies to improve their chances. Regrettably, conflict-forced migrants became the pawns in this game of ethnic chess. Although the international community clearly expected the majority of voters to cast ballots in the municipalities from which they had been driven and thus weaken the hand of the nationalist parties, political actors in the various communities realized that IDPs who voted in their current municipality would ensure the continued dominance of ethnic parties in that region. The result was that political parties pressured and/or coerced conflict-forced migrants to vote in such a way as to guarantee the parties’ continued control over the demographically-reversed municipalities. Meanwhile, party-controlled media sources continued to print and broadcast ethnically divisive material.

Electoral manipulation generally manifested itself in four ways. In the RS, for example, the SDS encouraged resident Bosnian Serb IDPs (who had originated from Federation territory) to vote in person at a polling stations in RS municipalities (casting a ballot for their “current” municipality) and not via absentee ballot for their 1991 municipalities in the Bosnian-Croat Federation. Second, the SDS encouraged Serbs not resident in RS territory to cast absentee ballots for municipalities within the RS. Third, the SDS encouraged Serbs who lived in Serb-majority RS municipalities to cast absentee ballots for RS municipalities in which a Serb majority was not guaranteed (Zvornik, Brcko). The fourth, and most egregious manipulation involved the abuse of the Pik-2 future municipality balloting option.

Election Day: 13-14 September 1996

The only system-wide technical problem that emerged on election day involved the final voter register. Transcription and organizational errors led to a poorly constructed list. By some estimates, as many as 50 percent of registered voters could not find their names on the final register. This proved to be a real problem for IDPs who crossed the Inter-Entity Boundary Line (IEBL). Unlike “normal” voters, who, upon finding that their names had been omitted on the final register could immediately appeal to the Local Election Commission (LEC) and obtain a certificate, IDPs did not have access to LECs.⁶⁰ As such, they were either disenfranchised out of hand or were forced to return to their current municipality before polling stations closed in order to cast absentee ballots.

A number of smaller problems were reported that involving the ballot forms themselves. By and large, the majority of these problems involved confusion over what to do with ballots for the

⁵⁹ ICG Report No.16, p.38. Italic emphasis is added.

⁶⁰ OSCE, “The Elections in Bosnia and Herzegovina: Second statement of the Coordinator for International Monitoring (CIM),” 14 September 1996, p.2.

cancelled municipal elections (which had been delivered to polling stations along with the national level ballots). Additionally, a number of absentee polling stations ran out of ballots, creating delays for voters. The most significant criticism of the ballot form related to the roman character script in which they were printed. Due to the fact that both Roman and Cyrillic character sets are used in BiH, some voters were unable to read the ballot form. Since all BiH voters received identical ballots, this created confusion - most notably for refugee voters in Croatia. Michael Meadowcroft, the OSCE/ODIHR Coordinator for Out-of-Country Refugee Vote Observation, suggested that "this is such a delicate matter that, even with the different problems that would have been caused, it would probably have been wise to publish all ballots in both scripts rather than cause offense to those who received ballots in a script which signified their past oppression, as happened."⁶¹

IDP Balloting

With a few isolated exceptions, elections (including refugee and IDP) took place without violence or overt physical intimidation. The explanation for this lies in the hard-line parties' interest to legitimize their candidates' election to public office. Subversive activities that may have thrown the legitimacy of the elections into question by raising the suspicions of international monitors were avoided. Rather than overt acts, voter intimidation, where it did occur, took on somewhat more subtle and nuanced forms. According to ICG:

The choice of premises for some polling stations for displaced persons was tactless at best, gross at worst: one station in Foca was located at a notorious execution site where bullet holes from the massacre of Bosniaks could still be seen. In Lazete, near Zvornik, the voting took place at the exact spot where Bosniacs had been rounded up and detained in 1992 before being shot. A polling station in Doljani was located in a Roman Catholic Church which [was] also the residence of the Catholic priest; Bosniak voters refused to vote there. And in Koraj, in Republika Srpska, the polling station was located next to a destroyed mosque.⁶²

According to UN estimates, a total of 157,000 IDPs had not registered for an absentee ballot and were eligible to cross the boundary line to vote in their 1991 municipality.⁶³ Of this total number, only 25,000 actual crossings were anticipated. However, on election day, only 14,700 IDPs actually made the journey: 13,500 crossed from the RS into the Federation, 1,200 crossed from the Federation into the RS.⁶⁴ This less-than-expected IDP turnout pointed to the fact that the international community had failed to fully implement Article 8 of the "Rules and Regulations," which that: "Every effort will be made by the OSCE and the other international organizations concerned to facilitate the return of citizens to the municipality where they were registered in 1991 to vote in person."⁶⁵

The major incentive motivating IDPs to return to their 1991 municipality to cast their ballots was the opportunity to see their former homes, however briefly. Regrettably, polling stations for voters crossing the IEBL were most often located close to the boundary line - far away from the actual municipalities and homes that IDPs had been displaced from. By and large, the necessity for these "remote" polling stations was explained in terms of maintaining security. However, the remote stations acted as a disincentive for IDPs that had planned to return to their 1991 municipality to vote. In some cases, IDPs who did make the journey refused to vote when they realized that they would have to cast their ballots at remote polling stations, and consequently, not be afforded the opportunity to see their former homes.⁶⁶ In other cases, IDPs either voted by absentee ballot in their current municipality or chose not to participate in protest.

⁶¹ Michael Meadowcroft, "Report on Out-of-Country Refugee Vote in Bosnia and Herzegovina Elections," Annex G of RESG Final Report, 1996.

⁶² ICG Report No. 16, p.46

⁶³ These 150,000 IDPs did not register for an absentee ballot.

⁶⁴ ICG Report No. 16, p.47

⁶⁵ PEC Rules and Regulations 1996, Article 8.

⁶⁶ ICG report No. 16, p.49.

The major disincentives for IDP return on election day were grounded in continued fear for personal safety and restricted freedom of movement on election day. ICG attributed the continued fear to: “[T]he string of well-publicized incidents involving displaced persons who crossed the IEBL in [the months prior to the election] and memories of the bitter personal experiences of many members of ethnic groups venturing inside the territory of the other group clearly put off other less-determined voters.”⁶⁷ During the period between Dayton and election day, conflict–forced migrants who traveled to areas where their ethnic group represented the minority were often the victims of arbitrary detention, violence, and expulsions. According to ICG, “In late August . . . Bosniaks who attempted to return to the town of Mahala (which had a pre-war Bosniak majority but which now lies in the Republika Srpska) stoned the Bosnian Serb police who in turn opened fire, prompting IFOR intervention and the arrest of 47 Bosnian Serb policemen.”⁶⁸

Transportation issues also contributed to the lower than expected turnout for IDPs voting in 1991 municipalities. In order to facilitate secure transportation, the OSCE, IFOR, and UNHCR made special provisions to move the projected IDP voters, who were informed that their safety could not be guaranteed unless they chose to ride official busses on the 19 voter routes, patrolled by security forces.⁶⁹ Confusion over these special arrangements prevented individual IDPs traveling in private vehicles, on bicycle or by foot to cross the IEBL to cast their ballots.⁷⁰ Other bussing-related transportation problems were either caused by inexplicable and apparently politically-motivated delays or by the failure of busses to arrive at designated spots on time.

As a consequence of the above, the vast majority of IDPs voted at specially designated absentee polling stations in their current municipality of residence. Elections observers noted that these absentee polling stations (sometimes twinned with regular polling stations) were often overcrowded, understaffed, and did not have enough ballots to accommodate the large number of IDPs that chose the absentee balloting option.⁷¹ To be sure, organizers did not plan for such a large turnout at absentee stations, which was caused by disincentives to return to 1991 municipalities. It is unclear how many IDP/absentee voters did not vote because of overcrowding.

External Refugee Balloting

Generally speaking, external voting took place without incident. However, a number of deadline-related issues arose with respect to the actual date of polling. In Turkey, for example, voting began without the knowledge of the Bosnian party. Thus, SDA party representatives were unable to attend the voting on 25 August. In addition, many refugees from Mostar had received ballots for the municipal elections there, despite the fact that the elections had already occurred several months earlier. The same situation occurred in Hungary as well. There were a number of reported cases of mix-ups in the ballots in Australia as well as Germany, where many refugees from the Federation had received ballots for the Republika Srpska and vice versa. As a result of the numerous deadline-related issues, the PEC was forced to extend polling abroad in order to correct for the problems encountered.⁷²

Absentee Voting and Electoral Fraud

Future Municipality Option

⁶⁷ *Ibid.*, p.49.

⁶⁸ *Ibid.*, p.18

⁶⁹ OSCE, “The Elections in Bosnia and Herzegovina: Preliminary Statement of the Coordinator for International Monitoring (CIM),” 14 September 1996, p.3.

⁷⁰ ICG Report No. 16, p.48. The use of private automobiles was considered somewhat dangerous because license plates made it easy to identify the occupants as IDPs of the opposite entity who intended to vote.

⁷¹ ICG report No. 16, p.49.

⁷² ICG Report No. 16, p.50.

The absentee and future municipality balloting options created two significant avenues for electoral fraud. First, no provision was made to remove refugee voters from the in-country final voters register. Consequently, it was possible for refugee voters to cast their absentee ballots during the mail-in period *and* subsequently return to BiH to vote in their 1991 municipality on election day. Although this form of double voting would most likely have been limited to refugees residing in the countries that shared a border with BiH, it would not have been impossible for refugees residing elsewhere to return for election day.

The second avenue for electoral fraud and manipulation stemmed from the instrumental abuse of the Pik-2 "future municipality" balloting option. The 1996 electoral code did not condition the use of this option on the provision of any information that directly tied the voter to a future municipality - a voter wishing to exercise this option needed only to request and submit the Pik-2 form. The hard-line Serb party, the SDS, realized that they could "stack the deck" in pivotal municipalities by registering IDPs and refugees for those municipalities in which the party was not likely to win a clear majority of seats. In the FRY and RS, Bosnian Serb refugees *and* IDPs (who had originated from Federation territory) were coerced into using the "future municipality" option for registration. This was accomplished by Serb authorities who conditioned the continued provision of humanitarian assistance on the ability to produce a stamped registrant copy of the Pik-2 form.⁷³ In most cases, the intended future municipality portion of the form had been filled in (by FRY or Serb officials) for strategic RS municipalities *before* the refugee received the "blank" form to complete (see table below). In reference to the magnitude of the electoral fraud that occurred, Soren Jessen-Peterson, UNHCR special envoy for Former Yugoslavia, noted that, "We only know of the cases of people who had the courage to report them. The real scale of the problem, however, may be much greater."⁷⁴

Similar, but less egregious tactics were used by the HDZ in Croatia and Croat controlled areas of the Federation with respect to Bosnian Croat refugees and IDPs. In total, 13,972 and 137,805 Pik-2 forms were submitted by Bosnian refugees residing, respectively, in Croatia and FRY.⁷⁵ The wholesale manipulation of the Pik-2 option pointed to the fact that the supervision of registration in FRY was glaringly inadequate given the enormous loopholes in the Rules and Regulations.

The Effect of Form II Voting in Certain Municipalities⁷⁶

<u>Municipality</u>	Original Population	Max. Potential non-Serb Vote	Max. Potential Serb Vote	Serb Form II Additional Votes
Bos. Brod	29,527	18,063	12,971	6,743
Brcko	87,627	60,869	18,128	31,278
Srebrenica	36,607	27,226	14,467	19,752
Visegrad	29,441	13,355	6,963	10,020
Zvornik	79,167	48,328	30,839	12,009

Source: OSCE Office of the Coordinator for International Monitoring, RESG

The situation in Brcko illustrates the extent to which abuse of the future municipality option was attempted. Because of the strategic importance of Brcko, and given its large Muslim majority, the leaders of Serbian nationalist political parties encouraged Serb refugees outside of Brcko to vote using the future municipality option so that their vote would count within Brcko. According to Sir Terrence Clark, the director of the International Crisis Group, "In Brcko, over 30,000 people have said that want to vote where they have no connection with Brcko, have never lived there and may

⁷³ OSCE, "Human Rights Periodic Report," 18 July 1996, paragraph 16; ICG Report No. 16, p.36. The Pik forms were 3-ply NCR forms. One copy went to Sarajevo, one copy went to the LEC, and the final copy was the registrant's receipt. An additional dimension here is that FRY Serb officials, by manipulating the p2 forms, had to provide transport to the "future" municipalities in the RS.

⁷⁴ ICG Report No. 16, p.36.

⁷⁵ RESG Final Report, p.22.

⁷⁶ OSCE Relationship, p.39. VERBATIM COPY

not even intend to live there in the future.”⁷⁷ By manipulating the vote of refugees, the Serbs would effectively be able to take political control of the municipality.

On 27 August, however, the OSCE announced its decision to postpone the municipal elections until 1997, largely as a result of the experiences in municipalities such as Brcko. The decision came as reports of the electoral engineering illustrated above were made public by international monitors and organizations such as UNHCR. Radio Free Europe, quoting a UNHCR report, indicated that: “Bosnian Serbs have exploited [the future municipality option] to register more than 100,000 Serb refugees from rump Yugoslavia in new residences in the Republika Srpska.”⁷⁸ Nevertheless, the electoral administration decided to proceed with the national level elections on the basis that: (a) the fraudulent registrations would only have had a significant impact on the composition of local and municipal level institutions and (b) that the fraud would only have a minimal impact on the national level elections.

Summary of Major Issues in 1996 Elections

Several Key issues emerge as a result of the experience with the 1996 elections:

- The Dayton Accords were the first major international instrument that explicitly sought to protect the electoral rights of those displaced by the conflict. The operative assumption on the part of the framers was that the absentee vote would temper the vitriolic nationalism prevalent in the country and lead the formerly warring communities to tone down their rhetoric;
- Nevertheless, due to the strict election timeline, the chaotic conditions inside the country, and organizational and financial weaknesses on the part of the OSCE, the nationalist parties were actually able to strengthen their hand as a consequence of the election. Realizing this, the OSCE postponed the most sensitive component of the elections, those for the municipal bodies, until 1997;
- Nationalist parties were able to exploit loopholes in the electoral rules and regulations to stack the voter roles with their preferred constituencies. The OSCE was continually left in a reactive position to blatant violations of the rules;
- Nevertheless, 400,000 Bosnian refugees registered and cast ballots for the election, thereby re-affirming their commitment to the new political structures in the country;
- In addition, close to one million IDPs were able to cast ballots (mostly) free from fear or intimidation.

The 1997 Municipal and RS Assembly Elections

The municipal elections, which had originally been timed to coincide with the September 1996 national elections, were postponed several times. As discussed above, the reasons for the delays included technical problems related to the electoral register, blatant electoral engineering using the Pik 2 registration option, and other attempts at outright fraud. The PEC/OSCE - Sarajevo made the decision to proceed with the 1996 National elections because administrators believed that the fraud that had occurred during the registration period would only have a minimal impact on the allocation of national level seats. However, the same fraud would have had a significant impact on the ethnic and political composition of municipal level governments,

⁷⁷ “Bosnian Elections Delayed over Fraud Charges,” CNN.com, 27 August 1996, available at <http://www.cnn.com/WORLD/9608/27/bosnia.elections/>.

⁷⁸ Stephanie Baker, “Bosnia: Flawed Voter Registration Casts Doubt Over Municipal Elections,” 27 August 1996, available at <http://www.rferl.org/nca/features/1996/08/F.RU.96082717135224.html>.

compromising the broader goal of reconstructing the pre-war ethnic composition of individual municipalities.

Ultimately, the municipal elections were held on 13-14 September 1997 after a new registration drive (conducted under intense international supervision) and under modified "Rules and Regulations." These modifications attempted to rectify the technical problems and fraud experienced during the 1996 cycle. Nevertheless, hard-line nationalist parties were still able to commit fraud by exploiting vulnerabilities in the electoral code and by taking advantage of situational exigencies as they arose. The 1997 Municipal election also witnessed several new - but less systemic - avenues for electoral manipulation at the local level and the continued manipulation of the displaced vote on the part of all major political parties.

A second round of extra-ordinary RS Assembly elections also took place on 22 and 23 November 1997. In June 1997, RS President Plavsic dissolved the National Assembly as a result of an internal (east/west RS) power struggle between Serb political parties (SDS and SNS). Hard-line Serb nationalists -- guided by indicted war criminal Radovan Kardjic and Serbian President Milosevic -- were pitted against President Plavsic's more moderate and multi-ethnic conception of a democratic RS. In order to form a new and more functional government, National Assembly elections were hastily arranged using the same technical and electoral framework that had been used for the municipal elections in September. No new registrations were allowed for the RS National Assembly elections. Only those voters that had registered to vote in or for RS municipalities during the September BiH Municipal elections were eligible to participate in the November election.

In general terms, the cooperative political climate envisioned by Dayton had not materialized, and in many respects, conditions for free and fair democratic elections had continued to decline as international interest ebbed following the 1996 National Elections. Hard-line parties continued to encourage their respective constituencies to place a democratic stamp on the ethnic cleansing that had taken place during the war -- especially in RS. Indicted war criminals continued to exert their influence during the campaign period for both sets of 1997 elections. For the most part, freedom of movement continued to be hampered by acts of intimidation and the resulting fear. Parties again sought to maximize their influence in areas where clear majorities could not be guaranteed in order to consolidate ethnic/territorial gains made during the war.

The remaining analysis focuses primarily upon how the lessons learned from the 1996 election cycle were applied to the 1997 Municipal and RS National Assembly elections. Although the lessons learned addressed a broad spectrum of in-country and out-of-country problem areas, the primary focus for the remainder of this case study will be how technical changes affected IDP and refugee voting for the 1997 elections. In most cases, the technical and political aspects of the elections are interrelated in the sense that new strategies adopted by hard-line parties to counter changes in the revised electoral code had a direct impact not only upon the implementation of the "spirit" of the Dayton Accords, but also upon the implementation and enforcement of the legal and technical framework of the 1997 elections. In order to facilitate this analysis, the major "lessons learned" during the 1996 elections will be followed by how those lessons were addressed for the 1997 elections. Except as where indicated, both the Municipal and RS National Assembly elections will be considered together.

Changes to the Future Municipality Option

The PEC intentionally made the future municipality option significantly more difficult for voters to substantiate in order to minimize the instrumental abuse of the option. In the 1996 elections, nationalist parties had used the future municipality option to "stack the deck" in municipalities where they represented the minority. According to RESG statistics, well over 137,000 IDPs and refugees "chose" this balloting option.⁷⁹ Ultimately, the massive fraud, particularly in FRY, where

⁷⁹ IOM OVC Final Report, p.15.

the provision of humanitarian aid had been conditioned upon the presentation of “future municipality” voting documentation, led to the postponement of the Municipal elections.

Several changes to the electoral code were adopted by the PEC to prevent the abuse of the future municipality option for the 1997 elections. First, the future municipality option (Pik 2) was limited to refugee voters; IDP voters were restricted to voting in either their 1991 municipality or their current municipality. Second, specific criteria were written into the electoral code limiting Pik 2 registrations to those that could prove the following ties to a future municipality:

- Lawful title to real property;
- Ownership of (at minimum 25%) an established business;
- Invitation by an immediate family member;
- Official confirmation of employment; or
- Other documentation to be considered on a case by case basis by the Future Municipality Sub-Commission (see below).⁸⁰

Third, a procedure and process for evaluating the eligibility of Pik 2 registrants was adopted. Refugee voters were first required to register at OCV registration centers located in their host state and obtain a registration receipt. Next, they were required to return to BiH, travel to the future municipality, and present themselves at a normal in-country voter registration center. Once there, the voter was required to present the OCV registration receipt along with documentation proving linkage to the future municipality (as listed above). The materials presented by the refugee voter were then forwarded to international adjudicators, who after evaluating the materials, certified or denied Pik 2 status. In cases where “other documentation” was provided, the international adjudicators automatically forwarded the registrant’s documentation to the Future Municipality Sub-Commission (FMSC)⁸¹ for consideration. In the event that a registrant was denied Pik 2 status by international adjudicators, the registrant could appeal that decision by requesting the FMSC to review the particulars of the case.

Finally, it should be noted that several media sources reported that Pik 2 voters were required to return to BiH (a second time) to cast their ballots in person for the reason that absentee balloting was not allowed under the revised electoral code. These reports were partially in error. Although this had been the case for the 1996 elections, the revisions made for the 1997 elections required that only Pik 2 voters residing in FRY or Croatia return to BiH to cast their ballots. Voters residing in host states that fell under the jurisdiction of the Bonn or Vienna offices were allowed register in person but cast normal OCV by-mail ballots for their future municipality.⁸² Both the 1997 and 1998 electoral codes state, in Article 505 (Voting in a Future Municipality): “The intent of the voter to vote in person or by absentee ballot shall be indicated on the registration form.”⁸³ It remains unclear how many Vienna-based Pik 2 voters cast absentee ballots.

The revisions to the electoral code had a profound impact on limiting Pik 2 registrations and the inherent potential for electoral manipulation. Pik 2 registrations declined most dramatically in FRY and Croatia at rates of 96% and 98%, respectively (see table below).

Refugee Registration type by Host State (1996 National vs. 1997 Municipal)

⁸⁰ Abridged summary from PEC Rules and Regulations 1997, Article 505 (a)(2)(F-IV).

⁸¹ The FMSC was created by the PEC in Article 505.1 of the revised Rules and Regulations in order to process and evaluate all Pik 2 registrants by the same standards in a transparent fashion. The commission was composed of a PEC-appointed Chairperson, and one person each, representing and appointed by the three entities: Bosnia-Herzegovina, the Federation, and the Republika Srpska. Although the FMSC was charged with making final decisions on Pik 2 eligibility by consensus, the Chairperson of the commission was empowered to make a final and binding decision when a consensus could not be reached. See PEC Rules and Regulations 1997, Article 505.1.

⁸² PEC Rules and Regulations 1996 and 1997, Article (10)(c).

⁸³ PEC Rules and Regulations 1997, Article 505 (a)(1).

Host State	"Pik 1" 1991 Municipality		"Pik 2" Future Municipality		Total Refugee Registrations	
	1996	1997	1996	1997	1996	1997
FRY	87,199	67,779	137,805	5,374	225,004	73,153
Croatia	117,836	61,497	13,972	223	131,808	61,720
Totals	205,035	129,276	151,777	5,597	356,812	134,873

Less Sophisticated Forms of Electoral Fraud

Despite the improvements made to the electoral code, hard-line parties developed new avenues for electoral fraud during both 1997 election cycles. Although these new methods tended to be somewhat more parochial and slightly less systemic than the wholesale fraud witnessed in 1996, the potential impact on the ethnic composition of municipal level institutions is not easily dismissed. As in 1996, each hard-line party sought to consolidate the territorial gains made during the war by legitimizing the party's political control of ethnically cleansed areas through the electoral process. As such, the 1997 Municipal elections were of paramount importance to all parties because the outcome would ostensibly establish which ethnic group would retain *de jure* control of each of the 135 municipalities, at least for the foreseeable future.

The most intractable electoral problem for both the 1996 and 1997 elections was that the hard-line post-war parties and officials remained in *de facto* control of the local-level political structures and municipal institutions. In turn, the composition of the personnel chosen by the local-level leadership(s) to administrate LECs, registration centers, polling stations, local media sources, and the provision of everyday municipal services was most often biased in favor of the post-war ethnic majority. In and of itself, this was not particularly problematic for the elections – most notably in cases where the pre-war majority was expected to retain political control following the Municipal Elections. Nevertheless, local-level officials often made it much more difficult for minority voters to obtain residency receipts, complete the registration process, and ultimately, cast ballots. The most common tactics that majority parties adopted to this end were the otherwise inexplicable lack of necessary electoral materials and unofficial work "slowdowns." These subtle tactics were much more difficult for international observers and OSCE registration staff to detect, and, by extension, for the PEC to respond to.

The situation was somewhat different for municipalities where displaced and resident minority voters had enough votes to elect a government in exile (Srebrenica, Brcko), thereby unseating the artificial post-war majority. ICG reported that eight such municipalities existed: two Bosniak-controlled, four Croat-controlled, and two Serb-controlled. Likewise, ICG reported that displaced voters had the voting power to elect a "sizeable" number of post-war minority candidates in 21 additional municipalities: one Bosniak-controlled, six Croat controlled, and 14 Serb-controlled.⁸⁴ In these municipalities, material shortages and work slowdowns also created difficulties for minority voters. However, because the stakes were so high, majority parties again attempted to stack the deck by manipulating the registration process.

During the 1997 election cycles, the most common forms of electoral manipulation in strategically important municipalities revolved around an axis of fraudulently issued residency receipts and citizenship documentation – both of which were issued to registrants by post-war local-level officials. In some cases, voters used falsified documentation to prove that they had resided in a particular municipality in 1991 or, in the case of resettled IDPs, that they had resided in their new municipality prior to the 31 July 1996 residency cutoff date for IDPs opting to avail themselves of the "current municipality" balloting option. In other cases, municipal authorities issued or

⁸⁴ ICG, "Beyond Ballot Boxes: Municipal Elections in Bosnia and Herzegovina," 10 September 1997, p.3.

manufactured backdated citizenship documentation, residency receipts, and falsified IDP identification cards. According to ICG:

On May 26, the EASC found evidence of voter registration irregularities in more than 31 municipalities. These were located primarily in northern Republika Srpska. . . . The fraud detected was so blatant that it did not require close scrutiny of documents. Registration staff were seen completing registration forms for people not present; all displaced persons cards presented at one station were dated between 16-22 June 1996; municipal receipts presented by voters to prove citizenship dated 1991, gave the new name of the municipality (after it had been renamed in 1992); citizenship receipts in two municipalities bore the stamp of the Republika Srpska which did not exist in 1991. . .

. . . Sometimes the fraud could be easily detected: some "old" displaced persons' cards look suspiciously brand new; in some areas, a batch of voters who registered on the same day all had displaced persons cards ostensibly issued on the same day; some displaced persons cards gave residence addresses in totally uninhabited areas.⁸⁵

The most notable example occurred during the registration process in the municipality of Brcko.⁸⁶ The signatories to the Dayton Agreement had purposely left the status of Brcko unresolved. Prior to the war, the municipality had been overwhelmingly Bosniak but was now filled with Bosnian Serb IDPs and Croatian Serb refugees. Although *de facto* control rested with the Serbs, the municipality was viewed as a strategic and symbolic asset by all sides. For Bosniaks, leaving Brcko in the RS would legitimate ethnic cleansing. In addition, the town occupied an economically important transit route across the Sava River and into the transit corridors connecting East and West Europe (see map on page 1). For Serbs, however, the town represented the narrowest point of territory connecting eastern and western portions of the RS; handing it to the Federation would effectively cut the RS in half. Since no compromise was reached at Dayton, the parties agreed that the Office of the High Representative (OHR) would make a status determination at some point in the future. In the absence of this determination, however, both parties were highly motivated to force the issue by creating facts on the ground through an electoral victory.

In one sense, the fact that OHR had yet to make a determination by 1997 provided significant leverage to the OSCE. While the Serbian political actors resettled IDPs from the Federation into Brcko in order to establish an electoral majority, the OSCE indicated that bad behavior and non-cooperation could potentially influence the OHR determination. Nevertheless, local Serb officials did not seem convinced by these threats, or felt that a substantial victory for Serb candidates in the Municipal election would force the OHR to rule in their favor. As a result, early in the registration process it became apparent that local authorities -- working in tandem with the Serbian nationalist parties and with officials from Yugoslavia -- were bussing Serbs in from FRY, pressuring Serb IDPs to register and vote for Brcko rather than their 1991 municipality, and seeking to register otherwise ineligible Serbs in order to stack the voter rolls. Once OSCE discovered the extent of the fraud, it was forced to shut down the registration process and start from scratch. During the second round, additional international supervisors were brought in to conduct highly intrusive monitoring of the municipal offices and registration centers.

Despite these efforts, many Serb IDPs had indeed been resident in Brcko prior to the July 1996 cut-off date and were thus able to cast ballots for Brcko. In addition, it remains unknown to what extent IDPs in Brcko were pressured by local authorities to register in their current municipality. Nevertheless, the election results speak for themselves. Of a pre-war population of roughly 88,000 (44% Bosniak; 25.4% Croat; 20.8% Serb; 9.8% other),⁸⁷ the outcome would have favored Bosniak/Croatian parties by at least a three to one margin. When the votes were tallied, however,

⁸⁵ Ibid p.12-13.

⁸⁶ The following account is based on the author's recollection of events during his time in Brcko working on anti-fraud issues during the second round of registration.

⁸⁷ ICG, "Brcko Arbitration: Proposal for Peace," ICG Bosnia Report No. 18, 20 January 1997, available at www.crisisweb.org.

Bosniak parties had received 41% of the votes, Serb parties had received 51.6%, and Croatian parties 6%.⁸⁸ Whether through fraud or the structure of the balloting options, Serbs were able to maintain control of the municipality. In 1998 the OHR ruled that the municipality would remain in the RS.

In general, most attempts at blatant fraud were probably discovered and brought to the attention of the PEC and EASC. However, the deterrent power of EASC reprisals was outweighed by the incentives for hard-line parties to continue manipulating all possible aspects of the elections. Throughout the registration and campaign periods, party-sponsored violence, including house-burnings in the Federation and ethnically-charged media content, continued to intimidate DPs who intended to cast ballots in their 1991 municipalities. Other instances of sporadic ethnic violence, although not directly connected to the elections, indubitably strengthened the hand of the hard-line parties.⁸⁹

Necessary Improvements to the Final Voter Register

During the 1996 elections cycle, the Final Voter Register (FVR) was flawed. Although the 1991 (pre-war) census proved to be an invaluable tool in constructing the provisional list, the resulting database was largely inaccurate and compounded by organizational problems and transcription errors. Although a formal registration process did take place in 1996, only those voters that had voluntarily moved or been displaced from their 1991 residences were required to register. As a result, many voters who still resided in their 1991 municipalities (and were not required to register) did not confirm that their names were indeed on the provisional register when it was posted for citizen review. As the FVR was prepared for 1996, and revisions were made, more errors crept into the already compromised list. The flawed FVR, thus, created difficulties on Election Day when voters could not find their names on the list. As a result, many were not able to cast ballots.

For the 1997 elections, the PEC conducted a mandatory registration drive *for all voters* in order to clean up the register. The 1991 census, as adjusted for the 1996 elections, was used as a provisional list. Unlike 1996, voters still residing in their 1991 municipalities were also required to register in order to verify the personal information contained on the 1996 FVR.

The balloting process itself was improved by the new FVR, which, unlike 1996, assigned voters to specific polling stations. This allowed for improved planning – especially in terms of limiting the number of voters who would cast ballots at individual polling stations. It also aided election officials in identifying the minimum number and type of ballots that would be required at each polling station.

Registered voters were also issued a registration receipt. On Election Day, voters were required to present the receipt, appropriate identification, and to be found free of invisible ink (applied after voting) in order to receive a ballot. During the 1996 elections, voters were only required to provide identification and pass the ink test in order to receive ballots. This had left a significant opportunity open for double voting (casting absentee ballots in the municipality of residence and casting a ballot in person in the 1991 municipality). By requiring the presentation of a registration receipt, this avenue for fraud was significantly narrowed.

In cases where registered voters' names could not be found on a polling station's FVR, voters were allowed to cast a tendered ballot. Although only one envelope was provided per voter to this end, the adoption of a tendered ballot procedure in 1997 allowed otherwise eligible voters to cast a ballot. According to election observers, the frequency at which voters names could not be found on the FVR was extremely high – as many as 75% of polling stations in Sarajevo/Goradze alone encountered this problem. However, the error does not appear to have been in the FVR

⁸⁸ OSCE, "1997 Municipal Elections Final Results: 028 Brcko," available at www.oscebih.org. Minor parties and candidates with no clear ethnic orientation are not tallied and thus the results add to just under 100%.

⁸⁹ Ibid p.15.

itself. Rather, it appears that voters did not realize that they were only allowed to cast their ballot at their pre-assigned polling station. It should be noted that the tendered ballot procedure was not followed consistently by polling stations. Many voters who found themselves at the incorrect polling station were refused the right to vote.⁹⁰

According to OSCE: “a total of 2,525,230 potential voters were registered and appeared on the [1997] FVR.” Based on 1996 EASC population statistics, approximately 80% of the total electorate was registered for the 1997 Municipal Elections.⁹¹

Identification and The Citizenship Verification Sub-Commission

Although voter eligibility was governed by the PEC Rules and Regulations, many potential 1996 voters found it difficult to provide documentation proving their identity, citizenship, and current municipality of residence. This proved to be particularly problematic for refugees and IDPs. Conflict-forced migrants, wherever they resided, usually had limited means for obtaining the types of documentation the electoral code required to establish eligibility.

Changes to the electoral code for the 1997 elections addressed the identification problem of refugees and IDPs by adding the following forms of identification to the list of acceptable documents:

- A passport issued by a foreign government which permits dual citizenship;
- A refugee card issued by a host government or other international agency; and
- A Displaced Person’s Card that provides all information requested on the document.⁹²

Article 17.1 of the revised Rules and Regulations created the “Citizenship Verification Sub-Commission” (CVSC) to verify and establish the eligibility of potential voters that had limited or no access to proof of residency or citizenship. The commission was composed of a PEC-appointed Chairperson, and one person each, representing and appointed by the three entities: Bosnia-Herzegovina, the Federation, and the Republika Srpska. Although the CVSC was charged with making final decisions on citizenship verification by consensus, the Chairperson of the commission was empowered to make a final and binding decision when a consensus could not be reached.

Aside from refugee and IDP voters, the CVSC may have been a useful tool for potential voters whose names did not appear on the 1996 FVR (the adjusted 1991 census) and could not provide a certificate of citizenship dated before 1991. The electoral code allowed such individuals to present:

A receipt issued by the appropriate municipal authority to establish that he or she was recorded as a citizen in the one of the official municipal record books prior to the 1991 Census. *All such receipts shall be subject to verification in accordance with the practices and procedures established under the authority of the Provisional Election Commission.*⁹³

As such, the PEC established the CVSC to verify residency receipts. The commission also served as an intermediary for potential voters, who, for any number of reasons, were not able to obtain a receipt through normal channels. In cases where the municipal authority was unresponsive to individual requests, the CVSC issued a binding request for a receipt on the individual’s behalf. If the municipality was not able (or willing) to issue a residency receipt, the CVSC required that a written explanation be furnished by the municipality within five days of the

⁹⁰ Hans Schmeets, The 1997 Municipal Elections in Bosnia and Herzegovina: An Analysis of the Observations, (Boston, MA.: Kluwer Academic Publishers, 1998), 166-169.

⁹¹ OSCE, “Bosnia and Herzegovina Municipal Elections,” 13-14 September 1997, p.8.

⁹² PEC Rules and Regulations 1991, Article 16 (a)(10-12).

⁹³ PEC Rules and Regulations 1997, Article 17 (a)(3)(ii). Italics added for emphasis.

original request. The electoral code also allowed the PEC to penalize authorities for issuing false statements or receipts.⁹⁴

Unfortunately, the logistical constraints facing the CVSC limited its effectiveness. The OSCE final report for the Municipal Elections, stated that:

The CVSC was not established until two weeks after the start of voter registration. This, coupled with a series of tight guidelines, resulted in a lot of people having to undergo a long, and in some cases, expensive, administrative process before knowing whether or not they were properly registered ... For voters registering out-of-country, both the registration and subsequent claims process proved far more complicated than for those registering in-country, particularly for those not found on the 1991 Census. The process . . . and problematic nature of acquiring documentation proved very stringent, and subsequently, a high number of potentially eligible out-of-country registrants were rejected by the CVSC.⁹⁵

Efficacy of the Election Appeals Sub-Commission (EASC)

The unwillingness of the EASC to enforce its decisions in the time leading up to the 1996 elections allowed for widespread abuses of electoral regulations, which, in turn, prompted the postponement of the municipal elections. Despite the egregious violations and examples of electoral engineering, the EASC only exercised its power to strike candidates from party lists three times during the 1996 elections. Nationalist parties repeatedly flouted EASC rulings, while generally escaping with a mere apology or fine. Moreover, many of the decisions made by the commission came near the end of the campaign, when the damage had already been done.⁹⁶

In response to these weaknesses the EASC assumed a substantially more activist position in 1997, striking 30 candidates from the SDS party lists in eight municipalities, 21 candidates from the HDZ party lists in six municipalities, and two SDA candidates in one municipality. Nevertheless, manipulation of electoral regulations and incidences of violence remained an all-to-common occurrence. However, the extent of such fraud was undoubtedly lessened as a result of the proactive efforts of the EASC. According to the ICG:

. . .The EASC concluded that house burning and other forms of violence in the HDZ-controlled municipality of Drvar (Federation) just before the start of voter registration were intended to and likely to influence the election environment. Accordingly it decertified one candidate and put parties and authorities around the country on notice that subsequent house destruction would result in the decertification of candidates, possibly at the rate of one or two candidates per house destroyed. Since the ruling, attacks on houses have been substantially reduced.⁹⁷

The EASC also played a proactive role in controlling electoral manipulation of displaced person and refugee voters. In Caplinja, HDZ party officials refused to issue displaced person identification documents, prompting the EASC to order local authorities to issue the appropriate documents.⁹⁸ Incidences of manipulation of displaced person and refugee voter registration in certain areas, particularly the western RS, resulted in the striking of candidates from party lists. Overall, the increased effectiveness of the EASC, coupled with the new regulations, while not preventing all fraud, did produce an environment much more conducive for effective elections than was present in 1996.

⁹⁴ PEC Rules and Regulations 1997, Article 17.1 (b).

⁹⁵ OSCE Bosnia and Herzegovina Municipal Elections, p.11, 13.

⁹⁶ ICG Report No. 16, p.41.

⁹⁷ ICG Beyond the ballot Boxes, p.14.

⁹⁸ Ibid, p. 14.

Organizational & OCV Technical Challenges

For the 1996 elections, the OSCE created the RESG to manage out-of-country voting for refugees displaced during the conflict. Although the RESG accomplished its task with remarkable success, unanticipated technical and organizational problems arose which hampered the group's work. To be sure, the RESG was sailing in uncharted waters and the challenges that arose during the 1996 election cycle provided many opportunities for positive change in subsequent election cycles.

To manage the refugee vote for the 1997 elections, the OSCE created the Out-of-Country Voting Steering Board (OCVSB) – the successor to the RESG. Much like the RESG, the OCVSB signed a MoU with IOM to operationalize the external vote for the municipal elections. An additional MoU between OSCE/OCVSB and IOM was signed in October to continue operations for the November RS National Assembly elections.

The external voting program in 1996 was hindered by three distinct, but fundamentally interrelated problems: the relatively short timeframe between the group's startup and the polling dates, the devolution of operational control to individual country offices, as well as inefficient material and technical support flows from OSCE-Sarajevo. The most significant problem encountered by the RESG in 1996 related to the relatively short timeframe allotted for all aspects of the external vote – from pre-registration activities to balloting.

The 1997 OCV program, from the start, was in a much better position to efficiently operationalize the external vote. Many of the baseline resources were already in place: an existing (albeit imperfect) database of refugees from the 1996 election, an experienced IOM staff, contacts and working relationships with host state governments and OSCE-Sarajevo, Diaspora groups, NGOs, and IGOs such as UNHCR. These substantial resources allowed the IOM and the OCVSB to concentrate on improving the overall efficacy of external voting for both 1997 elections.

The most significant change in the OCV architecture of the 1997 election cycles was that in-person registration and balloting was limited to eligible refugees residing in FRY and Croatia. All other refugees in the Diaspora registered and submitted their ballots by mail to the Vienna OCV headquarters, with the exception of refugees residing in Germany, who mailed only their registration forms to the OCV office in Bonn. This change centralized control by limiting the number of in-country offices. Only four such offices were established: Zagreb, which was responsible for all aspects of refugee elections in Croatia; Belgrade which handled elections in FRY; Bonn, which handled elections in Germany⁹⁹; and the Vienna HQ, which handled the remaining by-mail elections conducted in 55 countries worldwide.¹⁰⁰ The four offices, as opposed to the 17 established by the RESG in 1996, allowed for a more consistent application of the electoral code and greatly facilitated efforts to maintain a standardized procedural approach to all aspects of the OCV program, including the handling of registration forms and ballots.

Despite the vast improvements made for the 1997 elections, a number of unanticipated problems emerged that highlight the need for exhaustive planning and flexibility.

- The OSCE utilized stand-alone computers for registration purposes within BH while the OCV registration process required the use of a large integrated network. Although the problem was solved by OSCE IT specialists in Sarajevo (who developed a software solution integrating the two systems), it delayed the start of the OCV registration process;

⁹⁹ Due to the shortened timeframe, the Bonn office was not reactivated for the RS National Assembly elections. Refugees residing in Germany instead received election materials to the Vienna HQ. Likewise, postal ballots were mailed to the Vienna HQ.

¹⁰⁰ IOM, "Final Report on the Out-of-Country Voting (OCV) Program for Bosnia and Herzegovina Municipal Elections, 13 September 1997, p.6-7.

- Additional problems were encountered as the EASC struck candidates from Municipal lists (and subsequently, from the RS National Assembly lists) shortly before the date that by-mail ballots were printed and sent to OCV voters. This, in turn, meant that the ballots printed for those municipalities needed to be reprinted and mailed at the very last minute;
- Despite the intensive information and education campaigns conducted in host states, the quality of information or documentation submitted with registration forms was often inadequate or incomplete. This necessitated a great deal of follow-up correspondence and time. However, many registrants did take advantage of an international telephone hotline set up to answer questions;
- A widespread fear among refugees that registration and balloting would be used by host states as a justification for involuntary repatriation contributed to lower registration rates. Article 11 of both the 1996 and 1997 PEC Rules and Regulations clearly states that: "The exercise of a refugee's right to vote shall be interpreted as confirmation of his or her intention to return to Bosnia and Herzegovina."¹⁰¹ Thus, refugees feared that host states would take advantage of their participation. This fear was particularly prominent in Croatia.¹⁰²
- A postal strike in Canada delayed the receipt of voting materials. OCV reported that: "...of 965 eligible voters, only 98 ballots were received by the cut-off date. In Germany, many registrants complained that they had either not received registration receipts or ballots at all or had received them too late to return them to Vienna by the cut-off date."¹⁰³

The most significant technical problem occurred during the postal balloting phase of the RS National Assembly elections. Due to the limited timeframe, OCV/IOM informed by-mail voters that their completed ballots would be accepted at the Vienna HQ until 5 December – more than a week after the end of in-person balloting on 22-23 November within RS, Croatia and FRY. OSCE-Sarajevo made the administrative decision not to accept by-mail ballots that had been postmarked after 24 November (the first business day after the weekend election). An appeal was filed with the EASC, which upheld the OSCE's original decision, resulting in the disenfranchisement of 20,879 voters – approximately 14% of the ballots received by the Vienna HQ – through no fault of their own. Part of the problem appears to have been that printing deadlines for external ballots predated the official announcement of the final polling dates. An additional 10,733 Vienna ballots were invalidated for the failure of voters to provide acceptable identification documents and/or registration receipts. Altogether, some 31,612 (15%) of external ballots received by Vienna were invalidated.¹⁰⁴

OCV Balloting for 1997 BiH Municipal Elections¹⁰⁵

Location	Registered	Voters Eligible	Voted	Turnout (%)
Vienna (Diaspora)	273,734	267,396	219,661	82.14
Croatia	61,720	56,857	46,500	81.78
F.R. Yugoslavia	73,153	68,000	35,000	51.47
Total	408,607	392,253	301,161	76.77

Notwithstanding the problems encountered during the 1997 elections, the OCV effectively drew upon the experience of its predecessor, the RESG. As a whole, operation of the OCV program

¹⁰¹ PEC Rules and Regulations 1996 & 1997, Article 11.

¹⁰² The OCV also suggested that the refugee populations residing in FRY and Croatia may have lost interest in voting as they became integrated into the population of their host states;

¹⁰³ *Ibid*, p.5. For the RS elections, the Bonn office was not fully operational. Voters were instructed to return their ballots to the Vienna HQ.

¹⁰⁴ *Ibid*, p1-4.

¹⁰⁵ IOM OCV Final Report, p.14-15. The Vienna HQ processed all registration forms and ballots for the Bosnian Diaspora.

appears to have been much more efficient, illustrating the benefits of longer timelines and the opportunity to learn from experience.

Summary of Lessons Learned

The 1997 elections in Bosnia represented a substantial improvement in the procedures and mechanisms for displaced voting. While significant problems emerged, the OSCE and IOM were able to avoid the more egregious violations that occurred in 1996. In particular, the conduct of a fully transparent and internationally supervised registration process, the closing of the future municipality option to IDPs, and a more robust EASC contributed to a largely free and fair election. Probably the most important lesson learned was to provide adequate time and resources to the election administrators, although whether this lesson can ever be fully integrated into an election -- given the wide-ranging political imperatives and limited windows of opportunity inherent in peace-agreements -- is debatable. The decisions taken in 1996 reflected the intense political pressures to complete elections within the Dayton-mandated time-frame. As a consequence, election administrators were unable to devise and implement a workable operational plan that could have prevented some of the abuses.

Bosnia and Herzegovina continues to hold elections on an almost annual basis. Since 2000, the role of the international community has significantly decreased as more authority is turned over to local authorities. As of 2002, the total displaced BiH population is roughly 600,000 persons, a substantial decline from the more than 2 million recorded in early 1996.

Acronyms

BiH	Bosnia and Herzegovina
CIM	Independent Coordinator for International Monitoring
CVSC	Citizenship Verification Sub-Commission
EASC	Election Appeals Sub-Commission
FRY	Federal Republic of Yugoslavia
FVR	Final Voter Register
HDZ	Hrvatska Demokratska Zajednica (Croatian Party of Democratic Action)
ICMPD	International Centre for Migration Policy Development
ICG	International Crisis Group
ICRC	International Committee for the Red Cross
IEBL	Inter-Entity Boundary Line
LEC	Local Election Commission
MEC	Media Experts Commission
MoU	Memoranda of Understanding
OCVSB	Out-of-Country Voting Steering Board
OCV	Out-of-Country Voting Office
ODIHR	Office of Democratic Institutions and Human Rights
ODPR	Office of Displaced Persons and Refugees (Croatia)
OSCE	Organization for Security and Cooperation in Europe
PEC	Provisional Election Commission
RESG	Refugee Election Steering Group
RS	Republika Srpska (Bosnia)
SDA	Stranka Demokratske Akcije (Democratic Action Party, Bosniak)
SDS	Srpska Demokratska Stranka (Serb Democratic Party, Serb)
UNHCR	United Nations High Commissioner for Refugees
USCR	United States Committee for Refugees

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Case II: Burundi

1993 Presidential Election and the Arusha Process 2000-01

Background

The Republic of Burundi, the world's third poorest country,¹⁰⁶ covers 27,834 square kilometers in East Africa. It remained a German colony from 1890 until 1919 when it fell under Belgian rule. Burundi was incorporated into the Rwanda-Urundi territory and was administered by the Belgians from 1919 until 1962, when Belgium withdrew.¹⁰⁷ The next thirty years were marked by turmoil and countless different leaders and coups.

Much like Rwanda, Burundi's population is 85% Hutu, 14% Tutsi and 1% Twa.¹⁰⁸ Historically, the Hutu were sedentary farmers, while the Tutsi were nomadic herdsman. As ownership of cattle was associated with prestige and wealth, political power gradually shifted towards the Tutsi.¹⁰⁹ Belgian rule was based on the idea that the Tutsi were superior to the Hutu. There are a few distinctions, but for the most part the Hutu and the Tutsi cannot tell each other apart. Nevertheless, the Belgians intensified ethnic tensions by appointing Tutsi administrators and issuing identity cards based on the ethnic distinctions. The Hutu began to associate Tutsi with political oppression and saw them as contemptuous, while the Tutsi viewed the Hutu as a threat to their economic, social and political power. Violence between Tutsi and the Hutu rebel groups broke out several times, for example, in 1965, 1988, 1991, and 1994-2001. According to the UN statistics, the overall death toll by 2001 had reached 150,000, although some estimates are significantly higher.¹¹⁰

Overview of 1993 Election and the Arusha Peace Process

In 1992, a new Constitution¹¹¹ called for the first multi-party elections in Burundi's history. Presidential elections were June 1st and National Assembly elections were on June 29th, 1993. Up until this point the only political party in Burundi was the Union for National Progress (UPRONA), headed by President Pierre Buyoya.¹¹² When the votes were counted, however, Melchior Ndadaye, the leader of the Front for Democracy in Burundi (FRODEBU), the moderate Hutu-dominated party¹¹³, was elected the first Hutu President with about 65% of the vote. FRODEBU also won roughly 80% of the parliamentary seats.¹¹⁴ International observers called the elections "extraordinarily free and fair."¹¹⁵ It was in truth a failed experiment for Buyoya did in fact step down, but only for a short period of time.

Though the military seemed to accept the transition process, the International Foundation for Election Systems (IFES), cautiously warned in 1992 that the military was comprised of 98 percent Tutsi, who could have perceived democracy to mean their "professional, and perhaps physical,

¹⁰⁶ United Nations Development Program, UNDP. Human Development Report 2002: Deepening in A Fragmented World. Available at <http://hdr.undp.org>

¹⁰⁷ Africa Peacebuilding Program, "Burundi. August 2001," Available from: <<http://www.afsc.org/africa/burundi.htm>> (22 July, 2002).

¹⁰⁸ US Department of State Bureau of African Studies, "Background Notes. Burundi," Aug. 2000, Available from: <http://www.state.gov/www/background_notes/burundi_0008_bgn.html> (22 July, 2002).

¹⁰⁹ Africa Peacebuilding Program.

¹¹⁰ Africa Peacebuilding Program.

¹¹¹ The Constitution was based on the 1991 Charter of National Unity, which named ethnic division as a vital national problem. see Matthias Basedau, "Burundi" Elections in Africa. A Data Handbook. Edited by Dieter Nohlen, Michael Krennerich and Bernhard Thubaut, Oxford University Press:1999, p.154.

¹¹² http://www.ipu.org/parline-e/reports/2049_E.htm

¹¹³ Basedau, p.154-155.

¹¹⁴ Africa Peacebuilding Program.

¹¹⁵ Basedau,p.154.

extinction.”¹¹⁶ The same year as the elections, however, the Tutsi dominated military assassinated Ndadaye. It was indicative of their history since the Burundi military traditionally obtained political power “through the barrel of a gun.”¹¹⁷

National Assembly Results ¹¹⁸			
Party	Votes	Percentage	Seats
FRODEUB	1,530,106	72.58%	68
UPRONA	461,691	21.87%	16
Others	117,972	5.59%	0

Presidential Election Results ¹¹⁹		
Name and Party	Votes	Percentage
Ndadaye-FRODEBU	1,483,904	65.7%
Buyoya-UPRONA	742,360	32.9%

Following a succession of short-lived presidents, Major Pierre Buyoya, leader of the Tutsi-dominated Union for Progress and National Unity (UPRONA), seized power in 1996. The coup intensified the Hutu insurgency and fighting claimed at least 60,000 lives between 1996 and 2000. In addition, the government implemented a policy of *regroupment*¹²⁰, in which 800,000 Hutus were forced into heavily guarded camps in order to “deprive rural forces of support in rural areas.”¹²¹ Most of these camps were shut down in 1998. However, a similar program in late 1999 forced an additional 300,000 Hutus into the camps.

In August 2000, Nelson Mandela of South Africa brokered and facilitated the Arusha Peace and Reconciliation Agreement, (Arusha) between the military and fifteen rebel groups.¹²² After several fits and starts, a three-year transition government was installed on 1st of November, 2001. In the absence of a ceasefire, a UN peacekeeping force was not created to back the Agreement. However, a “Burundian Protection Force” was foreseen to provide security and facilitate the return of exiled political leaders. Half of the force was picked from members of the Tutsi-dominated army; the parties representing Hutu interests chose the other half.

¹¹⁶ Ouellet, DeJong, & Purcell, p. 22.

¹¹⁷ Gary Ouellet, Gerrit DeJong, & Randall Purcell, Burundi. A Pre-Election Assessment Report, *International Foundation for Electoral Systems (IFES)*, Washington DC: April 1992, p. 21.

¹¹⁸ http://www.ipu.org/parline-e/reports/2049_E.htm

¹¹⁹ Basedeu. P162.

¹²⁰ As defined by Francis Deng, “...massive forced movement of entire communities to sites at varying distances from their homes.” The government claimed legality of the policy under Article 17 of Additional Protocol II to the Geneva Convention, which allows for forced movement of civilians for security purposes. According to Deng, regroupment caused widespread suffering, both physical and psychological. see Francis Deng. “Specific Groups and Individuals: Mass Exoduses and Displaced Persons.” Report of the Representative of the Secretary-General, Mr. Francis Deng, Submitted pursuant to Commission of Human Rights Resolution 2000/53. E/CN.4/5/Add.1. Annex I. 6 March, 2000. Available from: [http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/aff2c994e03ca244c12569d000471a5d/\\$FILE/G0014212.pdf](http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/aff2c994e03ca244c12569d000471a5d/$FILE/G0014212.pdf) >(22 July, 2002).

¹²¹ USCR, World Refugee Survey 2000. p. 67.

¹²² “Transition at Great Risk in Burundi. Arusha Implementation and Aid Cannot Wait For Ceasefire.” *International Crisis Group CrisisWeb Media Release*. 24 May, 2002. <http://www.crisisweb.org/projects/showpress.cfm?reportid=666>>(22 July, 2002).

NGOs and international observer groups identified two major flaws with the Agreement

- 1) Lack of rigid cease-fire provisions
- 2) Failure to obtain signatures or engage in negotiations the two main rebel groups— Forces for Defense of Democracy (FDD) and the National Liberation Forces (NLF)

According to Africa Peace Building Program, “in late 2001 there was still no cease-fire, no agreed-upon transition plan, and a steady drift toward a more widespread civil war.”

Size and location of displaced population

Refugees¹²³

USCR reports that more than 375,000 Burundians officially remained as refugees in December 2001, the vast majority (350,000) in neighboring Tanzania. In addition, USCR estimates that an additional 300,000 to 400,000 Burundians are currently in refugee like conditions in Tanzania, but without official refugee status.¹²⁴ The largest host countries are as follows (includes official and unofficial refugees):

Burundian Refugees as of 2001	
Tanzania	820,000
Congo-Kinshasa	20,000
Rwanda	2000
Zambia	2000

Refugee living conditions are usually unsatisfactory. Burundian refugees in Tanzania live in northwest areas, where social services barely meet the needs of local residents.¹²⁵ The UN reports that, due to a massive influx of refugees into the country, there is “a considerable hardening of attitude by Tanzania to refugees.”¹²⁶ As the refugees stay there longer they are faced with other hardships such as the abuse of the women and even extermination.¹²⁷ In Rwanda, 500 out of 2000 Burundian refugees live in Kigeme camp in Gikongoro Province where, according to UNHCR, conditions were “not up to the desired standards.”¹²⁸

IDPs

At the end of 2001, over 600,000 IDPs remained in Burundi¹²⁹— both in 210 sub camps and scattered throughout the country. Over 85% of IDPs are located in the four western provinces of Bujumbura, from which rebel forces have launched attacks against the capital in 2000, Rural, Bubanza, Bururi and Makamba.¹³⁰

IDPs in Burundi are commonly referred to as *sinistrés*, a term that includes “all displaced, regrouped, and dispersed persons and returnees.”¹³¹ According to Francis Deng’s 2000 ECOSOC Report, the displacement situation has deteriorated dramatically since 1994, mostly due to the continued *regroupement* policies of the military. The government maintains that the *regroupement* measures are taken for protection of all Burundi citizens, both Hutu and Tutsi. Regardless, the conditions in these camps remain grave.

¹²³ The Arusha Agreement, Protocol IV, Ch. I, A. 1.1 defines a *refugee* according to: the 1951 Geneva Convention Relative to the Status of Refugees, the 1966 Protocol Relative to the Status of Refugees, and the 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa. See Arusha Peace and Reconciliation Agreement for Burundi, 28 August 2000, Available from: <http://www.usip.org/library/pa/burundi/pa_burundi_08282000_toc.html>. (7Aug.,2002) [*hereinafter*, Arusha Agreement]

¹²⁴ USCR World Refugee Survey 2002.

¹²⁵ USCR, “Tanzania 2002,” *Country Report*, Available from: <<http://www.refugees.org/world/countryrpt/africa/tanzania.htm>>. (22 July, 2002).

¹²⁶ USCR, “Tanzania 2002,” *Country Report*, Available from: <<http://www.refugees.org/world/countryrpt/africa/tanzania.htm>>. (22 July, 2002).

¹²⁷ <http://www.hrw.org/africa/burundi.php>

¹²⁸ USCR “Rwanda 2002,” *Country Report*, Available from: <<http://www.refugees.org/world/countryrpt/africa/rwanda.htm>>. (22 July, 2002).

¹²⁹ USCR 2002 report, p.57.

¹³⁰ Deng, ECOSOC Report 2000, p.4.

¹³¹ Arusha Agreement, Protocol IV, Ch.1, A 1.2.

Transitional and Permanent Government Structures under the Arusha Agreement

The three-year transitional period, which started from November 1, 2001, is divided into two 18-month phases. Among other transitional arrangements, both Hutu (G-7 group) and Tutsi (G-10 group) are allotted quotas in the Cabinet—60% for the G-7 and 40% for the G-10. In the first phase, Mr. Buyoya, will act as President, and Mr. Ndayizeye as Vice-President. Phase II will be marked by Ndayizeye taking Presidency. A new Vice-President will be designated by the G-7 group.¹³² Upon completion of phase II, Burundi will hold both Presidential and Parliamentary elections, provided all the provisions of the Agreement are met.

The tri-partite government envisioned in the Agreement consists of the Executive, Legislative, and Judicial branches. The President will be elected for a five-year term by a popular majority vote. If no candidate wins absolute majority in the first round, a second round will be held within fifteen days.¹³³ No one may serve more than two terms. An interesting feature of the Executive office is that the President will have two Vice-Presidents, each belonging to different ethnic groups and political parties¹³⁴

Prior to the Agreement, the Legislature was a unicameral National Assembly with 121 members; 81 elected and 40 appointed.¹³⁵ Members were elected from sixteen multi-member constituencies.¹³⁶ Under the Arusha Agreement, the Legislature will become bicameral, consisting of a Senate and the National Assembly. The Senate is comprised of two members from each province, elected by the Electoral College of each province.¹³⁷ The National Assembly, (Assemblée Nationale) will have 100 members in the first election, and will be further determined by a future Constitution.¹³⁸ Each representative is elected by popular vote for a 5-year term. The electoral system under the Agreement is based on proportional representation in with a 5% threshold, although the National Electoral Committee may lower the threshold to 2%.¹³⁹ Burundi will be divided into provinces, communes, and *collines* (zones), with further subdivisions and magnitude to be determined by future law.¹⁴⁰

Full implementation of the Agreement appears unlikely as fighting intensified six months after installation of the transitional government. As the International Crisis Group (ICG) notes: "The ceasefire was always going to be the most difficult and critical part of the peace process. It has revealed the raw struggle for control of the security forces and other instruments of power. It has become clear that the facilitation team urgently needs support, and its strategy must be clarified. Its members must also work hard to dispel any perceptions of bias".¹⁴¹

Refugee and IDP participation

¹³² Security Council, Interim Report of the Secretary-General to the Security Council on the Situation in Burundi, 14 Nov., 2001.S//2001/1076, .Available from: <http://www.unhcr.ch/cgi-bin/texis/vtx/rsd/+SwwBmeSR_K_wwwnwwwwwwwtFarF1G1DmoMFmqDFqm7y-dFat2lvqZf3zmAwwwwwwGFqmFvBFqAETN0IRjqRj/rsddocview.pdf>(22 July, 2002), p.2.

¹³³ Arusha Agreement, Protocol II, Ch. 2, A. 7.1, A 3.3.

¹³⁴ Arusha Agreement, Protocol II, Ch. 2, A 7.4 Under the transitional structure, Nelson Mandela appointed Pierre Buyoya and Domitien Ndayizeye as president and vice-president of Burundi for the first phase at a summit of regional heads of state. Buyoya leads the UPRUNA party, and Ndayizeye represents the FRODEBU party.

¹³⁵ US Department of State Bureau of African Studies. "Background Notes. Burundi". Aug. 2000. Available from: <http://www.state.gov/www/background_notes/burundi_0008_bgn.html>(22 July, 2002).

¹³⁶ Burundi, Electoral System, (no date) Available from:< http://www.ipu.org/parline-e/reports/2049_B.htm>.(22 July, 2002).

¹³⁷ Arusha Agreement, Protocol II, Ch. 2, A6.14.

¹³⁸ Arusha Agreement, Protocol II, Ch.2, A 5.2.

¹³⁹ Arusha Agreement, Protocol II, Ch. 2, A20.6.

¹⁴⁰ Arusha Agreement, Protocol II, Ch. 1, A3.6.

¹⁴¹ International Crisis Group, "Transition at great risk in Burundi Arusha Implementation and Aid Cannot Wait For Ceasefire," CrisisWeb Media Release.,24 May, 2002, <<http://www.crisisweb.org/projects/showpress.cfm?reportid=666>>(22 July, 2002).

Arusha talks in length on political participation as a citizen's right. Protocol I Ch.II, A7 calls political inclusion a key guiding principle for all Burundi citizens, regardless of sex, ethnicity, and regional or social status in the society. Article 7(4) further calls for "deliberate promotion of disadvantaged groups, particularly the Batwa..."¹⁴² A5.5 of Protocol II establishes an Independent National Electoral Commission to "guarantee the freedom, impartiality, and independence of the electoral process."

More importantly, the Agreement connects reconciliation with elections, naming elections as one key solution to the conflict in Burundi.¹⁴³ Article 5(6) of Protocol I, Ch2, calls for "[e]nactment of an electoral law that takes into account the concerns and interests of all components of the nation on the basis of the provisions of Protocol II to the Agreement."¹⁴⁴ This text suggests that refugee and IDP voting could be crucial in future Burundi elections.

Furthermore, The Agreement relies heavily on the 1992 Constitution and the 1998 Transitional Constitution, which state that all Burundi citizens have the right to participate, directly or indirectly, in the "management of the state."¹⁴⁵ Arusha restates this, adding that, "the right to vote shall be guaranteed."¹⁴⁶ It is reasonable to interpret that the language implies the right to vote for all citizens, including refugees and sinistrés.

Hopes for Repatriation and Suffrage

On December 3, 2002, a ceasefire agreement was signed between the Burundi government and the Forces for the Defense of Democracy (FDD), one of the two main rebel Hutu groups. The ceasefire was scheduled to be implemented 30 days after agreement was reached so as to allow both sides the time to prepare. The Arusha Agreement confers political party status on the FDD, which will now participate on power sharing arrangements of the transitional government. This would follow further negotiations between the Buyoya administration and the FDD about how to proceed on the new transitional institutions.

Once a ceasefire is implemented, new elections could be held in late 2004. The elections are spelled out are directly addressed in Chapter II, A 12 of the Arusha, which states the third goal of the transitional government is, "To ensure the repatriation, resettlement and reintegration of Burundians living outside of the national territory and the rehabilitation of the *sinistrés*."¹⁴⁷ The Agreement goes on to state the need for a standardized electoral system conducted by an independent commission to be instituted at both the national and local level.¹⁴⁸

The Arusha created two additional institutions, which could help ensure refugee/IDP political participation. First, Protocol II, A 9(8) established, the *Ubushingantahe* Council to sit at *colline*¹⁴⁹ level and "administer justice in a conciliatory spirit."¹⁵⁰ Second, Protocol II, A 10(7) established a post of an "independent *Ombudsperson*," who "shall hear complaints and conduct inquiries relating to mismanagement and infringement of citizens' rights committed by members of the public administration and the judiciary, and shall make recommendations thereon to the

¹⁴² *Batwa* is Burundi name for the *Twa*.

¹⁴³ Protocol I, Ch 2 of the Agreement, titled "Solutions," offers a list of solutions to the conflict in Burundi, outlined in the preceding Ch1 of Protocol I.

¹⁴⁴ Arusha Agreement, Protocol I, Ch 2., A5.6. *Note:* Protocol II creates the government structure and outlines election procedures.

¹⁴⁵ Constitution of the Republic of Burundi, as adopted in 1998. Available from: <<http://www.burundi.gov.bi/const2.htm>>(22 July, 2002)., CHIII,A31, [in-office translation]

¹⁴⁶ Arusha Agreement, Protocol II, Ch.1, A5.1

¹⁴⁷ Arusha Agreement, Protocol II, Ch. 2, A12. c.

¹⁴⁸ Arusha Agreement, Protocol II, Ch. 2, A12. g.

¹⁴⁹ Arusha Agreement, Protocol II, Ch.1 A9.8

¹⁵⁰ According to IFES, *Ubushingantahe* is a traditional system "in which wise, honorable and responsible men in each *colline* propose the administrator of the commune who is to be appointed by the central government. Ouellet, DeJong, & Purcell, p.13.

appropriate authorities.¹⁵¹ These two institutions could certainly contribute to addressing “infringement” on electoral rights of Burundi citizens.

Finally, Protocol I established the National Commission for the Rehabilitation of Sinistrés and calls for the “reinstatement of former refugees, taking into account experience gained before and during their exile.”¹⁵² While the text never explicitly establishes political participation through elections as one mechanism for the “reinstatement” of refugees, it can certainly be extrapolated from this wording.

¹⁵¹ Arusha Agreement, Protocol II, Ch. 1A7(8). The article further establishes that *Ombudsperson* shall also “mediate between the administration and citizens and between administration departments and shall act as an observer of the functioning of administration” He/she must be appointed by a ¾ majority in the National Assembly and confirmed by the Senate. He/she is to report to the National Assembly.

¹⁵² Arusha Agreement, Protocol I, Ch. 1, A7.10.

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Case III: Chechnya

1995, 1996, 1999, and 2000 Elections

Background

In the secessionist atmosphere of the crumbling Soviet empire, the Republic of Chechnya¹⁵³ declared independence from the Russian Federation in 1991. Russia refused to recognize Chechen sovereignty and two wars broke out between Chechen rebels and Russian forces. The fighting, characterized by gross human rights violations on both sides, has resulted in the almost complete physical destruction of the Chechen capital, Grozny, and mass human displacement.

Fighting between 1994-96 killed 30,000 people and displaced some 600,000.¹⁵⁴ The second round, beginning in 1999, has killed thousands more¹⁵⁵ and 350,000 people remain displaced as of January 2002.¹⁵⁶ Sporadic fighting, and “mop-up” operations (Russian military actions and village raiding in search of terrorists) continue today.

The Russian government maintains it is defending itself against Chechen terrorist attacks. The current Chechen government is generally regarded as Russia-installed and “pro-Russian,”¹⁵⁷ but large pockets of rebel remain entrenched in parts of the country-side.

Refugee/ IDP conditions and statistics

Refugees and Forced migrants

Russian law divides all displaced persons into two categories: Forced re-settlers, commonly referred to as “forced migrants,”¹⁵⁸ and refugees. According to UNHCR, Russian legal terminology makes no reference to the term ‘internally displaced person’.¹⁵⁹

In 1993, the Russian Federation passed two laws, *The Federal Law of the Russian Federation On Refugees (amended in 1997)* and *The Federal Law of the Russian Federation On Forced Migrants (amended in 1995)*. These amended laws, coupled with the 1951 UN Refugee Convention and its 1967 Protocol, determine the status of an individual as a refugee or forced migrant.¹⁶⁰

¹⁵³ The Republic of Chechnya formerly belonged to the republic of Checheno-Ingushetia. According to the CIA World Factbook, the boundary between Chechnya and Ingushetia has yet to be determined. CIA Factbook. Available from: <<http://www.cia.gov/cia/publications/factbook/geos/rs.html>>. (22 July, 2002).

¹⁵⁴ United States Committee for Refugees (USCR), *World Refugee Survey 2000*, p. 266, Washington DC:2000.

[*hereinafter*, USCR World Refugee Survey]

¹⁵⁵ Projects Plouhouse. “Russia (Chechnya) 1999 – first combat deaths in current phase” (February 2002), Available from: <<http://www.ploughshares.ca/content/ACR/ACR00/ACR00-Russia.html>>. (22 July, 2002).

¹⁵⁶ United Nations High Commissioner for Refugees (UNHCR), *Paper on Asylum Seekers from the Russian Federation in the Context of the Situation in Chechnya*, 24 Jan, 2002, p.4 Available from:

<[http://www.db.idpproject.org/Sites/idpSurvey.nsf/wViewSingleEnv/47DB5D8D73945008C1256B7B0054E4BF/\\$file/hcr-chya-0102.pdf](http://www.db.idpproject.org/Sites/idpSurvey.nsf/wViewSingleEnv/47DB5D8D73945008C1256B7B0054E4BF/$file/hcr-chya-0102.pdf)>. (22 July, 2002). [*hereinafter* UNHCR, *Paper on Asylum Seekers from the Russian Federation*]

¹⁵⁷ Brent Sadler, “Chechnya’s voter turnout in Dispute,” CNN. June 16, 1996, Available from:

<<http://www.cnn.com/WORLD/9606/16/chechnya.voting/>>. (22 July, 2002).

¹⁵⁸ Strictly speaking, “forced resettler” is a more accurate translation than “forced migrant.” While both terms have been used in legal literature, the term “forced migrant” seems to have established more prominence as the official translation. Therefore, the term “forced migrant” will be used here in place of ‘forced resettler’ for consistency.

¹⁵⁹ UNHCR, *Paper on Asylum Seekers from the Russian Federation*, p.7.

¹⁶⁰ USCR World Refugee Survey 1995, p. 157.

The definition of refugee under the current law is straightforward. A refugee is a non-citizen of the Russian Federation or a stateless person who has been forced to flee from their permanent country of residence due to “acts or threats of force or other forms of persecution committed against the individual based on race, national origin, religion, language or membership in a certain social or political group.”¹⁶¹

The definition of a forced migrant, however, has been a source of confusion. Section A1 of the *Federal Law on Forced Migrants* defines a forced migrant as: “... a citizen of the Russian Federation, who was forced to leave his/her place of permanent residence due to violence committed against him/her or members of his/her family or persecution in other forms, or due to a real danger of being subject to persecution for reasons of race, nationality, religion, language or membership of some particular social group or political opinion following hostile campaigns with regard to individual persons or groups of persons, mass violation of public order.”¹⁶²

However, point 2 of the same article stipulates that a forced migrant is a “citizen of the Russian Federation who was forced to leave the place of his/her permanent residence on the territory of a “subject” [regional division]¹⁶³ of the Russian Federation and came to the territory of **another** [emphasis added] subject of the Russian Federation.” UNHCR notes that under this definition, the roughly 160,000 displaced within Chechnya cannot qualify for the forced migrant status.¹⁶⁴ Since the Russian government considers these displaced to be citizens of the Russian Federation, they also do not fit the definition of a refugee. It is unclear what status this population holds under Russian law.

Thus, the difference between a refugee and a forced migrant is essentially based on citizenship¹⁶⁵. A forced migrant is a citizen of the territory of the Russian Federation or a person seeking Russian citizenship, belonging to any one of its 89 subjects, or what is often referred to as the “near abroad.” A refugee is a non-citizen of the Russian Federation, or what is often called the “far abroad”. Both groups of people are displaced for the same reasons, but forced migrants receive more extensive benefits “because Russia places a priority on protecting its citizens.”¹⁶⁶

For the purposes of this report, the term “IDP” is used to describe any person who lost or had to flee his/her home as a result of conflict in Chechnya, irregardless of whether they crossed into another republic. The terms “refugee” and “forced migrant” will be used according to Russian laws on refugees and forced migrants.

Conditions of the Displaced

Conditions of the displaced remain extremely difficult, particularly for ethnic Chechens. The letter of the law, both on refugees and forced migrants, often exceeds internationally accepted standards.¹⁶⁷ However, its correct application has been virtually impossible, due to Russia’s weak

¹⁶¹ “Federal Law of the Russian Federation on Citizenship”, Ch.1 A1 (1).

¹⁶² The law further stipulates that a forced migrant is also a non-citizen of the Russian Federation or a stateless person, residing permanently and legally on the territory of the Russian Federation, forced to change his permanent residence due to conditions stipulated in the above article. “Federal Law of the Russian Federation on Forced Migrants”, as amended 28 Dec., 1995, Ch.1 A1 (3). Available in Russian from: < <http://www.hro.org/docs/rlex/migrants/article1.htm>> (July 18,2002).

¹⁶³ The Russian Federation is divided into 89 entities, or subjects. See section on **Government Structure and Legal Framework** section of this report for more details.

¹⁶⁴ UNHCR, *Paper on Asylum Seekers from the Russian Federation*, p. 7, footnote 6.

¹⁶⁵ The liberal Russian citizenship law was significantly restricted on July 1, 2002, making the procedure of obtaining Russian citizenship significantly harder.

¹⁶⁶ Kevin Tessier, “Immigration Law in the Russian Federation”, *Indiana journal of Global Legal Studies*, v.3 issue 1. < <http://jigls.indiana.edu/archive/03/01/tessier2.shtml>>, (22July, 2002).

¹⁶⁷ The definition of a forced migrant under the current law, under Article 1, includes a citizen who lost his/her residence due to mass disturbances, regardless of whether or not the person was subjected to discrimination based on certain characteristics (such as race or ethnicity). Aside from being more liberal than the 1951 Convention standards, this definition grants, in theory, the status of a forced migrant to all displaced, including those from Chechnya, regardless of whether or not they were subjected to ethnic discrimination.¹⁶⁷ (See Memorial Human Rights Centre, “Refugees and Forced Migrants in Russia”, *Moscow 1998*).

economy, the bureaucratic nature of the Russian Federation Migration Service, and the often blatant discrimination against non-ethnic Russians. USCR notes that the poor conditions also stem from “the government’s failure to improve its asylum system or to grant the benefits and freedoms accorded to refugees and “forced migrants” under Russian law, as well as public mistrust of non-ethnic Russians, perpetuated by the government’s claims that the war in Chechnya was necessary to root out ‘terrorists.’”¹⁶⁸

In fact, “Civic Assistance”, a Moscow NGO that provides legal assistance to displaced, is aware of only one instance of forced migrant status being granted to an ethnic Chechen family, a mixed Chechen/Georgian couple.¹⁶⁹ USCR reports, “... In effect, forced-migrant status has been accorded only to non-ethnic Chechens (Russian-speakers) displaced permanently from Chechnya.”¹⁷⁰

Many believe that the Russian government has been actively encouraging Chechen refugees to return home. While Russia claims this will be done strictly on “voluntary” basis, many refugees reported being denied food and other basic services, as well as other intimidation to force them to return.¹⁷¹

Statistics

As of 2002, UNHCR reports that 350,000 people have been displaced from their homes in Chechnya.¹⁷² The following tables provide the locations of displaced Chechens, both within the Russian Federation and externally.

Persons Displaced by the Chechen Conflict as of 2001		
IDPs	Chechnya	160,000
	Ingushetia	150,000
	Dagestan	5,000
	Other regions of the Russian Fed.	30,000
Refugees	Central Asia (mostly Kazakhstan)	12,000
	Georgia	7,900
	Azerbaijan	6,000
	Moldova	224
	Poland	1,000

Government Structure and Electoral Framework

The Russian Federation consists of 89 regional entities, or ‘subjects’.¹⁷³ These are further divided into 225 districts coinciding with the 225 single mandate electoral constituencies. In the 1999 Duma elections, 93,000 polling stations, serving approximately 3,000 voters each, were established.¹⁷⁴

¹⁶⁸ USCR World Refugee Survey 2002, p. 234-235.

¹⁶⁹ UNHCR, Paper on Asylum Seekers From the Russian Federation, p.8, footnote 9.

¹⁷⁰ USCR World Refugee Survey 2002, p. 235.

¹⁷¹ Institute for War and Peace Reporting, (IWAPR)“Chechens wary of homecoming” 12 July, 2002, Available from: <<http://www.csmonitor.com/2002/0612/p06s01-woeu.html>>, (22 July, 2002).

¹⁷² UNHCR, Paper on Asylum Seekers from the Russian Federation, p.4.

¹⁷³ Organization for Security and Cooperation in Europe, Office for Democratic Institutions, (OSCE/ODIHR), Elections to the State Duma 19 December 1999. Final Report, Warsaw: Feb. 13, 2000. Available from: <http://www.osce.org/odihr/documents/reports/election_reports/ru/rus2-2.pdf> (July 18, 2002) .p. 4 [*hereinafter*, ODIHR Final Report, 1999].

¹⁷⁴ These ‘subjects’ include: 49 oblasts (regions) 21 republics, 10 autonomous okrugs (districts), 6 krais (territories), 2 federal cities (Moscow and St. Petersburg), and 1 autonomous Yeveyskaya (Jewish) oblast. Chechnya holds the status of a republic. Oblasts and krais are administrative subdivisions with no constitutional status, while the republics hold the most autonomy. Under the Constitution, a republic is able to adopt its own constitution, and elect presidents and

Russia's legislature, the Federal Assembly, is bicameral, composed of the Federation Council (upper house) and the State Duma (lower house). The Federation Council consists of 178 members, representing the head of the legislative and executive branches of each entity. The Duma consists of 450 members. 225 elected through a PR system based on party lists and a floating 5% threshold¹⁷⁵, and 225 by the first-past-the-post system in each single-mandate constituency.¹⁷⁶ In the 1999 Duma election there was an average of ten candidates per district.¹⁷⁷ (See Annex I of this study for the legal basis governing district formation.)

The President is elected for a four-year term by a direct popular vote and may not serve more than two consecutive terms.¹⁷⁸ The President is granted "extraordinary"¹⁷⁹ powers under the Constitution. For example, the President may issue decrees, thereby single-handedly exerting control over issues not regulated by formal laws.¹⁸⁰ The President is also entrusted with resolving citizenship issues.¹⁸¹ In addition, ODIHR reports that the President "heads an apparatus that has no constitutional recognition and as a consequence, no constitutional limits."¹⁸²

Parliamentary and Presidential elections are governed by:

- The 1993 Constitution;
- *The Law on Basic Guarantees of Electoral Rights and the Rights of Citizens of the Russian Federation to Participate in a Referendum*, (Basic Guarantees law);
- *The Federal Law For The Election of Deputies to the State Duma* (Duma election law); and,
- *The Federal Law For The Election of the President of the Russian Federation* (Presidential election law).¹⁸³

The latter three laws were passed in 1995 and subsequently amended in 1999.¹⁸⁴

In order for a Presidential election to be considered valid, at least 50% of all registered voters must vote. A new round is held if this benchmark is not reached.¹⁸⁵ In Presidential elections, more than half of the voters must vote for the candidate, in order to avoid a runoff between the top two candidates.¹⁸⁶

Eligibility Requirements

A citizen's right to vote is clearly enshrined in the Russian Constitution. Ch.2 A 32(1) states: "Citizens of The Russian Federation shall have the right to participate in the administration of the

parliaments with the power to pass laws. See Thomas F. Remington, "Politics in Russia" in Almond, Dalton, and Powell eds., *European Politics Today*.

¹⁷⁵ The new Duma election law changes the rigid 5% threshold to requiring smaller parties to pass a 3% barrier instead, "if the combined votes of all parties achieving 5% or more of the vote represent less than 50% of the number of voters participating in the election," see ODIHR Final Report 1999, p. 5.

¹⁷⁶ ODIHR Final Report 1999, p. 4.

¹⁷⁷ Russian Elections Results, 1999, Available from: <http://www.russiavotes.org/Duma_smd.htm> (July 18,2002).

¹⁷⁸ The Constitution of the Russian Federation, as adopted in 1993, Ch.4, A 81 (3). Available from: University of Essex. <http://www2.essex.ac.uk/elect/electip/ru_const93.htm> (July 18,2002). [hereinafter, Russian Constitution]

¹⁷⁹ Organization for Security and Cooperation in Europe, Office for Democratic Institutions, *Elections to the State Duma 19 December 1999. Final Report*. Warsaw:13 Feb., 2000. Available from: <http://www.osce.org/odhr/documents/reports/election_reports/ru/rus2-2.pdf> (July 18,2002), p. 2.[hereinafter, ODIHR Final Report 2000]

¹⁸⁰ ODIHR Final Report 2000, p.2

¹⁸¹ Russian Constitution, Ch.4, A 89 (a)

¹⁸² ODIHR Report 1999, p. 4.

¹⁸³ ODIHR Report 1999, p. 4-5.

¹⁸⁴ The Basic Guarantees law was previously amended in 1997 as well.

¹⁸⁵ ODIHR Final Report 2000, p.32.

¹⁸⁶ Law on the Election of the President of the Russian Federation, Law # 228-F3, A.72 (3), as amended 31 Dec., 1999. Available from: <http://www2.essex.ac.uk/elect/electip/rus_prel99.htm>(July 18,2002).[hereinafter, Presidential election law]

affairs of the state both directly and through their representatives” Citizens also have the “right to elect and be elected to bodies of state governance and to organs of local self-government, as well as take part in the referendum,”¹⁸⁷ unless they are “found by a court of law to be under special disability, and also citizens placed in detention under a court verdict.”¹⁸⁸

The Basic Guarantees law restates these exact requirements using virtually the same language.¹⁸⁹ Article 4 of the Basic Guarantees law further reinforces universal suffrage, “regardless of the sex, race, nationality, language, origin, property, and official status, **place of residence** [emphasis added], religion, beliefs, affiliation to public associations or other factors.” The Constitution provides no further details on voting rights, except to establish a minimum voting age of 18.

The Constitution says nothing on refugees and forced migrants’ voting rights. The Forced Migrant Law, however, extends the provisions of the Russian Constitution and laws directly to forced migrants,¹⁹⁰ so their right to vote as citizens of the Russian Federation could be derived from the Constitution and electoral law.

External Voting

All Russian citizens residing abroad, including refugees, have the right to vote in Russian Federal elections—Duma, Presidential, or nation-wide referendum. No specific provisions are made for refugees. Article 3(4) of the Basic Guarantee law states that, “a citizen of the Russian Federation residing abroad shall have all electoral rights at elections to federal bodies of state power and the right to participate at a referendum.”¹⁹¹

Residence in the Russian Federation and intent to return are irrelevant in establishing eligibility.¹⁹² It is enough to be a Russian citizen. All voting must be done in person at a Russian Consulate or Embassy,¹⁹³ by appearing on the same day as regular voting takes place in Russia¹⁹⁴, and presenting identification, usually a passport. The individual’s name and address is recorded on a list and the voter is issued a ballot, which they cast in secret in the same location.¹⁹⁵

The Presidential Election law specifies that the list of voters residing outside the country are to be prepared no later than twenty-five days prior to the election.¹⁹⁶ The lists are compiled by consular and diplomatic officers, based on records of those Russian citizens who had registered at the embassies or consulates upon arrival to a foreign state. The Russian Central Electoral Commission (CEC) sends ballots to the consulate in advance and the consulate returns the completed ballots to the CEC, which tabulates the results and ensures that the votes are applied to the proper district.

While there are no reserved extra-territorial districts, external voters are only able to cast ballots in specified municipal districts. According to Edgeworth, “Assignment to a voting district is based

¹⁸⁷ Russian Constitution, Ch2 A 32(2).

¹⁸⁸ Russian Constitution, Ch.2 A 32(3).

¹⁸⁹ Federal Law of the Russian Federation on the Basic Guarantees of Electoral Rights of Citizens of the Russian Federation to Participate in a Referendum, as amended in 1999, Ch.1, A 4(3). Available from:

<http://www2.essex.ac.uk/elect/electip/ru_bquar99.htm> (July 18, 2002). [hereinafter, Basic Guarantees law]

¹⁹⁰ Forced Migrant Law, Ch.6 A2 (2).

¹⁹¹ Basic Guarantees law, Ch.1, A 4(1).

¹⁹² Linda Edgeworth, “Voting Abroad Laws and Procedures of the Russian Federation,” *External Voting Project*, p.1.

¹⁹³ “Diplomatic and consular agencies of the Russian Federation shall render assistance to citizens of the Russian Federation in the implementation of his/her electoral rights at elections ... set forth by this federal law.” Basic Guarantees Law, Ch.1, A 4(1).

¹⁹⁴ Early voting is sometimes allowed at “remote sites or when unusual circumstances would make it difficult for groups of voters to get to a regular polling station on election law.” Article 66 of the Law on the Election of the President makes certain provisions for early voting to take place fifteen days prior to the normal election day, but must be approved in advance. (see Linda Edgeworth, p.4).

¹⁹⁵ Edgeworth, p.3.

¹⁹⁶ Edgeworth, p.2.

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.¹⁹⁷ Edgeworth notes that this system, while somewhat arbitrary, is consistent with the laws on formation of electoral districts, as stipulated in Article 19 of the Basic Guarantees Law.¹⁹⁸ (see appendix)

In addition, adding the voters abroad must not raise the total number of voters in a district above the allotted quota, and the ratio of added voters from abroad must not be large enough to “overturn or inappropriately skew” the outcome of the election.¹⁹⁹ Arguably, this is a positive feature, as it ensures that a minority residing outside a district does not govern the majority within it. Still, this system raises a question of whether or not someone who has never resided in a district has the right take part in its decision-making. However, as Edgeworth points out, in the 1999 Duma elections, the 20% participation rate of registered voters abroad hardly had a decisive impact on the outcome of the elections.²⁰⁰

In the 2000 Presidential elections, 360 voting stations were established in 130 countries worldwide.²⁰¹ There are currently over 107,000,000 registered voters in the Russian Federation. According to the Russian CEC, approximately 805,700 Russian citizens are on voter lists for those living abroad.²⁰²

Forced Migrant Voting

ODIHR notes that Basic Guarantees law “set forth relatively specific procedural principles on which subsequent election laws were to be based.” and notes that subsequent election laws have remained consistent with the Basic Guarantees.²⁰³

According to the Basic Guarantees law, voter eligibility is not contingent upon duration of residency in any particular electoral district. Although federal laws may set additional qualifications, “[t]hese qualifications shall **not** [emphasis added] contain any requirements concerning the duration and period of such residence.”

Displaced voters have the option to vote either for the electoral district of their displacement or the electoral district of their origin. In either case, voting takes place in the district of displacement. Ch.3, Article 16 (6) of the Duma electoral law, states that: “...[c]itizens of the Russian Federation who have been granted the status of forced migrants or have applied to the Federal Migration Service of Russia or its territorial agencies for the status of forced migrants shall be included on the voter list at the place of their temporary residence on the basis of a passport or an equivalent identity paper and appropriate documents issued by the Federal Migration Service of Russia or its territorial agencies.”

Ch.6., Article 1(1) of the forced migrant law states that a forced migrant has the right to choose their place of residence, including one offered by the local migration service. Regardless, however, the law obligates a forced migrant to register his residence with the local migration service.²⁰⁴ The Russian CEC recommended in 2000 that “Russian Federation citizens who, on voting day, will remain at places of temporary stay may receive absentee certificates for voting

¹⁹⁷ Edgeworth, p.5.

¹⁹⁸ Edgeworth, p.5.

¹⁹⁹ Edgeworth, p.5.

²⁰⁰ Edgeworth, p.8.

²⁰¹ Edgeworth, p.3.

²⁰² Edgeworth, p.8.

²⁰³ ODIHR notes, “According to the Constitution, certain laws called ‘constitutional laws,’ which can only be passed with super majority in both the upper and lower chambers, have superiority over other federal laws. Although it is not a ‘constitutional law’ and did not gain passage by a ¾ majority of the Federation Council and a 2/3 majority vote of the State Duma, the Basic Guarantees law stipulates that, if another federal law should conflict with its principles, its provisions were to prevail.” See ODIHR Final Report 1999, p.4.

²⁰⁴ Forced Migrant Law, 1995, Ch6.,A2(3).

either personally or through their representatives in the corresponding territorial election commission (from February 21 to March 7, 2000), or the corresponding precinct election commission (from March 8 to March 25, 2000) in the electoral precinct formed where they reside permanently or where they are included on the voter list. For this purpose a citizen must submit an application to the election commission indicating the reason why he/she cannot come to the polling station on voting day” (see also a copy of this application in Annex III). It is unclear whether or not this suggestion was implemented.

Citizenship Requirements²⁰⁵

Prior to the amendments of July 1, 2002, the 1991 Law on Citizenship outlined the basic requirements on citizenship. The liberal eligibility criteria were based on residence, rather than ethnicity, but the law was clearly concerned with the status of ethnic Russians.²⁰⁶ The law “adopted a zero-option,”²⁰⁷ on citizenship—all those who resided in the Russian Soviet Federated Socialist Republic (RSFSR) were considered Russian citizens, provided they did not hold any other citizenship. Originally, the law stipulated that in order to attain citizenship, a person had to “register” as a citizen, but presidential edicts extended registration deadlines until February 2000, and eventually eliminated the need for registration for RSFSR citizens who returned to Russia.²⁰⁸

1995 Parliamentary and 1996 Presidential Elections.

Polling was held in Chechnya for 1995 Duma elections and 1996 Presidential election²⁰⁹. Very little information is available on the details of the displaced voting. Most media reported that the election was a success, primarily based on the fact that the Duma election law states that only a 25% voter turnout is necessary for the election to be valid and this election saw a 27% turnout.²¹⁰ In the 1996 Presidential election, CNN reported that although the Russians projected that they would obtain the 50% voter turnout necessary to make the election legitimate, they only had received 19.4% in Chechnya after the first two days of voting and the 50% threshold was not met.²¹¹ Nevertheless, the 50% threshold applies nationwide, and the elections succeeded.

Chechen attitudes towards elections were mixed. The village of Itagi, south of Grozny, boycotted the 1996 elections. “No one is voting,” one villager told CNN, calling the elections a sham.²¹² Many felt the same way and boycotted the elections and sporadic violence forced some polling stations to close early.²¹³ But Dina Dugeeva, a Grozny resident, voted, telling CNN, “I hope we finally find some people with sense, both here and in Moscow—someone who will stop all this evil.”²¹⁴ CNN reported that although several voting stations came under fire, polling staff were threatened, and the voting atmosphere was tense, elections continued in most locations.²¹⁵

1999 Duma Elections

Voting in Chechnya was suspended during 1999 Duma elections and consequently, only 224 out of 225 first-past-the-post seats in the Duma were filled.²¹⁶ However, over 200,000 displaced who

²⁰⁵ Prior to the July 1, 2002 revisions.

²⁰⁶ Jaqueline M. Miller. “Imperial Designs? Citizenship and Russia’s Policies in the Former Soviet Union.” CSIS. Prepared for the PONARS Policy Conference, Washington DC, 25 Jan., 2002. (December 2001). Available from: http://www.csis.org/ruseura/ponars/policymemos/pm_0240.pdf, (25 July, 2002).

²⁰⁷ Miller.

²⁰⁸ Miller.

²⁰⁹ ODIHR Final Report 2000, p. 14.

²¹⁰ <http://www.rferl.org/nca/special/ruselec96/ruselec96more/news/N.RU.ELC.121595164611.18.html>

²¹¹ Sadler.

²¹² Sadler.

²¹³ Sadler.

²¹⁴ Sadler.

²¹⁵ Sadler.

²¹⁶ In early November of 1999, Sergei Shoigu, Minister of Emergency Situations announced that “polling stations would be organized for IDPs outside Chechnya [and] Chechens in Russian-controlled areas. Such arrangements never materialized. See ODIHR Final Report, p. 12.

fled Chechnya were guaranteed the right to vote on the territory of their temporary residence²¹⁷ if they applied for the status of “forced migrant” through the Federal Migration Service of Russia.²¹⁸

The sad reality is that very few actually applied for such recognition and therefore did not vote. OSCE/ODIHR notes that, “[t]he fact that applications would have had to be submitted approximately three weeks before the elections may have been an inhibiting factor.”²¹⁹ In addition, as noted above, ethnic Chechens faced severe difficulties obtaining forced migrant status.

2000 Presidential elections

The decision to hold the 2000 elections in Chechnya was met with wide criticism, both within Russia and from the international community. One member of the Duma argued that because Chechnya’s population did not want to be part of the Russian Federation, the elections would not accurately reflect the will of its people. Other Duma members expressed concern that the lack of opportunity to establish regional campaign offices or conduct meaningful campaigns would create grave inaccuracies in the election results.²²⁰ Ingush President Rusla Ausheve complained in a telegraph to Putin, that the Russian government had not given displaced Chechens “enough food, much less prepared them for any kind of democratic exercise.”²²¹

ODIHR noted that despite the authorities’ efforts to create suitable conditions for a free and fair election, it was an impossible task in the context of the ongoing military campaign.²²² According to ODIHR, “the population of the Chechen Republic had very limited access to electronic and print media, had limited freedom of movement, and the potential for intimidation and fear could not be ruled out.”²²³ Unfortunately, the little bit of information that was given to them was biased in favor of Putin. Ultimately, the International Election Observation Mission (IEOM), comprised of the Council of Europe, OSCE/ODIHR, and OSCE Parliamentary Assembly, did not send observers to the Chechen Republic for these reasons.

Nevertheless, Russia was determined to hold elections in Chechnya in an effort described by Radio Free Europe (RFE/RL) “to prove that life is normal in what it [Russia] calls ‘liberated’ Chechnya.”²²⁴ Voting was conducted in twelve out of Chechnya’s fifteen districts, with over 300 polling stations set up throughout the republic.²²⁵ No special arrangements were made for the displaced. They were given a stamp (called a *propiska*²²⁶) in their passports and they voted in regular polling stations.

Compilation of voter lists was especially problematic. The list compiled by the Chechen elections Commission enumerated 380,000 voters while the Russian Central Election Commission’s listed closer to 460,000, including federal forces and military units.²²⁷ The Russian CEC also

²¹⁷ ODIHR Final Report 1999, p. 11.

²¹⁸ “Federal Law of the Russian Federation on the Election of Deputies to the State Duma of the Russian Federation”, as amended in 1999. Article 16.6 Available from: <http://www2.essex.ac.uk/elect/electip/ru_elfd99.htm>. (July 18, 2002).

²¹⁹ ODIHR Final Report 1999, p. 12.

²²⁰ ODIHR Final Report, 2000, p. 16.

²²¹ Floriana Fossato & Sophie Lambroschini. “Russia: Normal Voting Not Possible in Chechnya.” Radio Free Europe. <<http://www.rferl.org/nca/features/2000/03/F.RU.000323160345.html>>. (July 18, 2002).

²²² ODIHR Final Report 2000, p. 16.

²²³ ODIHR Final Report 2000, p. 16.

²²⁴ Fossato & Lambroschini.

²²⁵ Fossato & Lambroschini.

²²⁶ A *propiska* is a residence registration passport stamp, required mainly for obtaining employment, housing, pension, and other benefits, used by the Soviet state to control internal migration during the Communist era. *Propiska* was abolished by a 1993 law, only to be reinstated by another law into that effect on October 1 of the same year. In a policy that appeared to be directed mainly against Caucus migrants, the Parliament passed two resolutions allowing Moscow’s mayor to reinstate the *propiska* system which, until then, remained on the books but had not been actively enforced in the capital. See *USCR World Refugee Survey 1994* pp. 146 – 145.

²²⁷ ODIHR Final Report 2000, p. 15.

proclaimed that given the logistical and time constraints, the voter registers would not be updated to remove voters displaced by the conflict and have them added to lists in their current location. But as ODIHR notes, “[m]any of those who had registered as internally displaced persons had already been added to the voter lists of the polling stations in the regions where they had relocated. Anyone else with the stamp in their passports or certificate being domiciled in the camp located in the area served by the polling station but whose name did not appear on the voter lists was added to the ‘additional voters register’ on election day.”²²⁸ These voters were provided a tendered ballot.

Roughly 150,000 displaced Chechens resided in neighboring Ingushetia at the time of the election. Procedures for their inclusion were not at all clear. On March 23, three days before the election, the authorities were still confused about proper polling procedures. The Russian CEC claimed that special polling stations would be established, while the Ingush electoral commission claimed that the displaced would vote in regular polling stations.²²⁹ On the eve of the election, Madrina Prizhova, the executive secretary of the Ingush electoral commission told RFE/RL that she had no voter registration lists for Chechen refugees.²³⁰ This only added to the confusion and difficulty of arranging refugee voting in the otherwise proper overall elections conduct in Ingushetia.

Many Chechens also lacked proper identification. Nonetheless, The Ministry of Interior made special efforts to grant passports or other identification documents acceptable for the election and polling stations accepted “almost any form of identity including even pension books so long as the document reflected residence in the Republic.”²³¹

Ballot transportation was predicted to be a major issue by RFE/RL, though is never mentioned in the final ODIHR report. RFE/RL reports that because it was too dangerous to transport the ballots at night, they would not be delivered to Chechnya until March 27th²³² –the day after the official election took place. It is unclear whether or not and how this fact played itself out in the larger context of the election.

Ultimately, ODIHR concluded that the overall election conduct in the Russian Federation fully met “accepted international standards,”²³³ though it is clear that ODIHR, and other observers believed refugee/displaced voting did not meet these criteria due to all of the confusion and lack of accurate lists of refugees and the displaced. As a consequence, the election did not accurately reflecting the will of displaced voters. While their voice was preserved in the formal procedures, the disorganization resulted in a lack of transparency and different procedures being followed in different polling stations. With different standards for citizenship being accepted and people being given such contradicting information on where they were allowed to vote, it must be votes were lost or even not cast for fear that they would not be counted. It is impossible to know how many people in Chechnya even voted because they neglected to keep track of the number of soldiers who voted as well²³⁴.

²²⁸ ODIHR Final Report 2000, p. 15-16.

²²⁹ ODIHR Final Report 2000, p. 15-16.

²³⁰ Fossato & Lambroschini. It is noteworthy that the Republic of Ingushetia had 110,500 eligible voters, while hosting 250,000 displaced (150,000 from Chechnya) though it was unclear how many were actually eligible to vote

²³¹ Fossato & Lambroschini.

²³² Fossato & Lambroschini.

²³³ ODIHR Report Final 2000, p.3.

²³⁴ Fossato & Lambroschini.

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Case IV: East Timor

The 1999 Popular Consultation on Autonomy

Background

Following Portugal's departure from East Timor in 1975, Indonesian troops occupied the territory and established a "Regional Popular Assembly," whose first act of business was to petition Indonesia to integrate East Timor into the archipelago. In July 1976, President Suharto enacted legislation incorporating East Timor as Indonesia's 27th province. The United Nations and the rest of the world (except Australia) never formally recognized Indonesia's action, although few countries were prepared to apply serious pressure on Indonesia over the issue.

For the next 25 years, conflict between the Indonesian troops and rebel guerillas (Freitelin) resulted in at least 200,000 casualties, numerous human rights abuses, and annual UN resolutions calling for a peaceful settlement to the conflict. As part of the official Indonesian policy of "transmigraci," nearly 300,000 Indonesians were resettled from more densely populated islands into the province. In 1993, Indonesian forces captured Freitelin's leader, Xanana Gusmao, and sentenced him to life in prison in a Jakarta jail.

In 1998, in the midst of an economic meltdown, Suharto resigned as Indonesia's president and was replaced by B.J Habibie. Recognizing that the Timor issue was a drain on both Indonesia's treasury and international standing, Habibie announced a plan to give East Timor wide ranging autonomy. Following intense discussions under the auspices of the Secretary General's Good Offices in New York, Indonesia and Portugal agreed that the question on autonomy would be put to the East Timorese themselves. If they rejected the autonomy offer, then Indonesia would be prepared to revoke the 1976 act incorporating East Timor as an Indonesian province, leading to independence and self-determination.

May 5th Agreements

On May 5, 1999, Indonesia, Portugal, and Secretary General Kofi Annan signed the Agreement between the Republic of Indonesia and the Portuguese Republic on the Question of East Timor (May 5th Agreement) which requested that the UN hold a "popular consultation" through direct universal ballot to determine whether the East Timorese accepted or rejected the Indonesian offer of autonomy.²³⁵ The Agreement also requested the establishment of a UN Assistance Mission to East Timor (UNAMET), and obligated Indonesia to ensure security in order for the consultation to proceed. Other appendixes described the consultation modalities, established eligibility criteria, and set August 8, 1999 as the date for the popular consultation. The May 5th Agreements explicitly called for the participation of eligible voters residing outside of East Timor in the consultation. The displaced population was allowed to register and vote in person through the External Voting for East Timor (EVET) program administered by the International Organization of Migration (IOM), and the Australian Electoral Commission (AEC) under the overall supervision of UNAMET.

Size and location of displaced population

Refugees

Despite twenty-five years of violence, few East Timorese had obtained formal refugee status. Early estimates suggested that the total external vote (i.e. everywhere except East Timor) totaled perhaps 30,000 voters, with very few of these categorized as refugees. The largest population

²³⁵ The details of the autonomous relationship were contained in an appendix to the May 5th Agreement

was in Indonesia, where roughly 20,000 - 25,000 eligible voters (primarily students and other economic migrants within Indonesia) resided. Smaller concentrations resided in Portugal, Macau, Mozambique, and the United States. In addition, Australia hosted approximately 1600 East Timorese asylum seekers.

Internally Displaced Persons

Figures on the number of persons displaced within East Timor prior to 1999 are difficult to determine. As the registration process unfolded following the May 5th agreement, displacement within the province increased sharply. By August, the UNHCR estimated that at least 40,000 persons had been forced to flee their homes by an organized militia campaign (with demonstrable links to the Indonesian military) that sought to terrify the population into voting for autonomy, rather than independence. The majority of displaced fled to hill and mountain regions inside East Timor, although a sizable proportion fled to West Timor. Following the rejection of the autonomy proposal, Indonesian backed militias went on a rampage, driving hundreds of thousands of people from their homes and destroying much of the island's infrastructure. Of a total population of 800,000 people, USCR reports that some 790,000 had been displaced at least once during the year.²³⁶

The Popular Consultation

UNAMET was tasked with the formal management of the consultation. The question to be put to the voters was:

"Do you accept the proposed special autonomy for East Timor within the Unitary State of the Republic of Indonesia?

Or

"Do you reject the proposed special autonomy for East Timor, leading to East Timor's separation from Indonesia?"

The UN Department of Political Affairs conducted several assessment missions to East Timor during the spring of 1999. Immediately following the signing of the May 5 Agreement, the Secretary General opened a trust fund to pay for UNAMET and the mission opened offices in Dili. The early focus was on identifying the logistical and security requirements for conducting a consultation in a rapidly deteriorating political environment.

The timetable for the consultation was extremely tight. The Agreements specified a registration period to run from June 13 to July 17, followed by an immediate public display of the lists until July 23, and the ballot on August 8. This allowed UNAMET less than 6 weeks to prepare for registration, including establishing procedures, finding suitable facilities, hiring staff, preparing materials, and ensuring security. Even though most UNAMET staff were on the ground by the end of May, it was quickly apparent that neither the logistical nor security requirements would be in place in time to commence registration as scheduled. In consultation with Indonesia and Portugal, Kofi Anan announced a one-month delay in registration and a two-week postponement of the ballot.

Eligibility Criteria

Eligibility criteria for the consultation, specified by the May 5 Agreement, included all persons, aged 17 years or above, who satisfied the following criteria: (a) persons born in East Timor; (b) persons born outside East Timor but with at least one parent having been born in East Timor, and (c) persons whose spouses fall under either of the two categories above. These criteria were later expanded to include persons born outside of East Timor but whose spouse's mother or father was born in East Timor.

²³⁶ USCR, World Refugee Survey: 2000, p. 140.

Eligibility could be based on birth, descent, or marriage, with no temporal limits. As Ian Martin, the UN Secretary General's Special Representative in East Timor notes, "[t]he eligibility criteria for the popular consultation, set out in the agreements, were unique, based on neither citizenship nor residence"²³⁷ However, these criteria did have an important political function, very few Indonesian "transmigraci," government, or military personnel would be eligible. Early UNAMET estimates thus suggested that probably 20% of the population residing inside East Timor would be excluded from the consultation.²³⁸

Documents

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

Enfranchising the Displaced:

Administration of the External Voting Program

The May 5 Agreements explicitly provided that, "Outside East Timor, special registration centers will be opened in Jakarta, Yogyakarta, Surabaya, Denpasar, Ujung Pandang, Sydney, Darwin, Perth, Melbourne, Lisbon, Maputo, Macau, New York with adjustments to be made as appropriate. The United Nations may utilize the services of the AEC for the balloting in Australia and of the IOM in Portugal and elsewhere."²³⁹ The specific reference in the May 5 agreement to the external voters was probably due to the fact that several prominent East Timorese (such as Xanana Gusmao and Jose Ramos Horta) lived abroad and their inclusion had important symbolic implications.²⁴⁰

Both IOM and the AEC participated in planning meetings with the UN Electoral Assistance Division (EAD) and UNAMET's Chief Electoral Officer in New York in early May, and subsequently signed memoranda of understanding (MoUs) in early June. The MoUs specified that the UNAMET would retain responsibility for the overall management of the process, with IOM and AEC implementing the rules and regulations in the registration and polling stations. In the end, the UN requested that IOM be responsible for the external voting process in the countries of Indonesia, Mozambique, Macau, Portugal, and the US, with the AEC conducting the external voting in the Australian centers.

External voting was in-person only and limited to the sites specifically mentioned in the agreement. Voting by mail or proxy was not allowed. As the registration process unfolded, additional groups of East Timorese requested a right to vote in Canada, the UK, and the Philippines, arguing that the distances and costs associated with traveling to New York or other centers effectively disenfranchised these voters. Following discussion amongst UNAMET officials, a decision was taken to limit registration centers to those mentioned in the May 5 Agreement.²⁴¹ Thus, many displaced persons had to travel great distances in order to not only register, but then vote as well. Some East Timorese who registered to vote during the registration period did not return to cast their ballot.

²³⁷ Ian Martin, *Self-Determination in East Timor: The United Nations, the Ballot, and International Intervention* (Boulder: Lynne Rienner Publishers, 2001), pg. 54.

²³⁸ Martin, pg. 45.

²³⁹ IOM, pg. 5.

²⁴⁰ Jeff Labovitz, "External Voting: Political Issues," Draft Paper, January 2000.

²⁴¹ IOM, pg. 5.

IOM and AEC quickly established logistical and administrative structures in their mandated areas. Building on previous external voting programs in Bosnia, IOM established Offices of the “Country Representative” in Indonesia, Macau, Portugal, Mozambique, and New York. Each office was staffed with a “Country Representative” (in the case of Indonesia a Deputy was added), each of whom had previous experience in refugee and/or IDP voting programs in Bosnia. These offices were tasked with establishing an administrative center, identifying and establishing suitable facilities in which to conduct in-person registration and polling, managing relations with host governments, and conducting the overall registration and voting process. Coordination of the country offices was maintained through the IOM External Voting for East Timor HQ established in Darwin, Australia.

Key players in the EVET project included District Election Officers (DEOs) who reported to the Country Representative throughout the consultation process. Seconded to IOM and paid for through a grant from the Canadian International Development Agency (CIDA), the DEOs staffed the registration and polling stations, providing international supervision and ensuring that every aspect of the popular consultation was implemented in accordance with UN rules and regulations. Their responsibilities mirrored those of DEOs inside East Timor, who were recruited and paid for by the United Nations Volunteers. DEOs were in direct contact with the external voters throughout the registration and polling process and were provided with local interpreters who aided in fielding questions from the voters. They were essential to the transparency of the EVET program.

In Australia, the AEC established centers in existing AEC facilities in the specific cities mentioned in the May 5 Agreement. These centers were staffed by regular AEC “division returning officers,” and functioned in an identical fashion to the registration and polling stations in East Timor and those administered by IOM elsewhere.²⁴²

Registration

The registration process was due to start on June 13 1999, but security and logistical issues prompted UNAMET to delay registration until July 16 when all registration centers had the necessary documents and were completely prepared. The registration period, which was supposed to last twenty days, was extended two days within East Timor and four days in all external voting locations. Large numbers of registrants registered in Lisbon right from the start with registration gradually increasing in all other locations.²⁴³

At the end of the registration period 6,220 external East Timorese were registered to vote in the IOM registration centers. The AEC carried out a parallel registration process in Australia that registered several thousand additional voters.²⁴⁴ Total registration for the popular consultation within East Timor and outside East Timor totaled 451,792. Approximately 96% of the registered voters in the external IOM centers returned to vote during the popular consultation.²⁴⁵

Eligibility criteria and proof of identity became the two major problem areas facing EVET. Many registrants possessed none of the necessary documentation, prompting UNAMET to amend the criteria to allow for persons swearing an affidavit before a religious leader or village chief to register and vote.²⁴⁶ For external voters, registrants were also allowed to swear an affidavit in

²⁴² Australian Electoral Commission (AEC), “Australian Electoral Commission Support for the East Timor Popular Consultation: Submission to the Senate Foreign Affairs, Defense, and Trade References Committee.” 10 November, 1999.

²⁴³ IOM, pg. 13.

²⁴⁴ AEC statistics on external voting within Australia have not been officially released as of yet.

²⁴⁵ IOM, pg. 15

²⁴⁶ UNAMET, Notification Number 1, Section D Issued 8 July, 1999, stated: “Where a person is not in possession of sufficient documentation to support his or her application to register, the DEO shall require such an individual to: Produce an affidavit sworn before a religious leader or *Kepala Desa* (Village Chief) and witnessed by a person who knows the applicant. In addition to the affidavit, the application for registration must be witnessed by a fully documented registered voter.” This Notification was further modified in Notification Number 5, issued July 12th, which provided that: “With respect to registration to be conducted at registration/polling centres outside East Timor and where the applicant for registration is

front of a notary or legal authority. Many registrants in Indonesia utilized this method in order to vote, and subsequently used it as an identity document as well.

The lack of documentation presented a considerable challenge to electoral administrators. Documentation requirements are key elements in maintaining the integrity of a voting process, preventing those in-eligible to vote from participating and minimizing the prospect of fraud. Yet documentation requirements can be especially onerous on displaced populations. Thus, the temptation is to allow for various forms of "social documentation." These mechanisms, however, provide a loophole to those who might seek to stack the voters registers with ineligible participants in order to unfairly influence the outcome (See the Bosnia case for examples). Nevertheless, most observers concluded that the relatively weak documentation standards did not unduly influence the outcome of the ballot.

The DEOs were permitted to refuse persons if they could not provide adequate documents, or if they believed the documents to be false. Anyone refused the right to register was allowed to appeal to the Regional Electoral Officer if they felt they had been unfairly denied registration. Only four appeals were submitted in Indonesia²⁴⁷ (of which three were accepted), and none were entered in any other external voting centers.

Voter education and public awareness

Annex II of the May 5 Agreement stipulated that UNAMET would "disseminate and explain the content of the main Agreement and the autonomy document in an impartial and factual manner inside and outside East Timor." Both UNEAD in New York and UNAMET in Dili worked with UN counterparts in the host countries (most notably UNIC in Indonesia and Portugal, the UNDP in Mozambique, and EAD in New York). In addition, the UN, IOM, and AEC agreed that IOM and AEC would support the effort by providing specific information relevant to the displaced populations as necessary subject to clearance from UNAMET.²⁴⁸ UNAMET thus retained full control over the production of voter education materials, including radio and television spots and print media advertisements. Upon production, materials would be forwarded to the AEC and the IOM Coordinator's office in Darwin, where relevant materials would be reformatted and forwarded to the offices of the Country Representatives for local dissemination. IOM Country Representatives and the AEC provided interviews with press in the host countries and facilitated the distribution of materials provided by UNAMET. The UNAMET website also facilitated the dissemination process by providing pertinent election information in all relevant languages during the registration period.

The AEC also contributed substantial logistical support to UNAMET by producing information materials after they had been developed by UNAMET. In a description of the services rendered prepared by AEC, these were listed as:

- Radio advertising in Tetum, Indonesian, and Portuguese;
- An information sheet distributed widely through community groups and district electoral officer networks;
- Telephone inquiry lines including translation services;
- Presentations directly to community groups.²⁴⁹

The information campaign outside of East Timor appears to have been largely successful. In addition to the official campaign, Timorese organizations played an important role in raising awareness about the consultation, particularly in Indonesia where student groups actively sought

not in possession of sufficient documentation ... the affidavit shall be sworn, affirmed before a notary public or any authority that performs similar functions in the jurisdiction where the registration/polling centre is located."

²⁴⁷ IOM, pg. 14.

²⁴⁸ IOM, pg. 12

²⁴⁹ AEC, "Australian Electoral Commission Support for the East Timor Popular Consultation: Submission to the Senate Foreign Affairs, Defense, and Trade References Committee." 10 November, 1999.

out and informed potentially eligible voters. These groups sometimes worked in cooperation with the offices of the Country Representative, which ensured that their voter information programs were accurate. In Indonesia, substantial press interest in the consultation resulted in the Country Representative being frequently interviewed by journalists. Despite attempts to ensure accurate and impartial information, the press occasionally reported facts erroneously or misrepresented the words of the Country Representative. On several occasions, the DEOs also gave interviews to local press, although this was closely monitored by the office of the Country Representative to ensure accuracy.

The major issue was the limited number of external locations in which IOM and AEC operated and the tight timeframe of the consultation, which undeniably affected the quantity and quality of information available to voters (particularly in the United States).

Relations with Host Governments

IOM's relations with host governments were for the most part excellent. In Portugal, Mozambique, the United States and Macau, government counterparts provided a safe environment for free and fair electoral participation to take place. Country Representatives were able to utilize existing IOM offices and contacts with government officials to establish cooperative working relationships. The only significant difficulty emerged early on in Indonesia, where previous institutional representation did not exist. Despite several letters of introduction and requests for a meeting with the Foreign Affairs Ministry, IOM was unable to find an institutional counterpart even after the office had established itself and had been operating for several weeks. Ultimately, the office of the coordinator in Darwin requested that EAD in New York ask the Indonesian Ambassador to the UN to facilitate an introduction. Once contacts were established, the Indonesian government provided excellent logistical support to the IOM mission. This cooperation extended to local and regional governments as well, which provided security, and in some cases even the free use of office space.

Overall IOM's final report on the operation noted: "Cooperation received from the local authorities was essential to the success of the project."²⁵⁰

Border control and movement issues

At the time of the popular consultation, East Timor remained a province of Indonesia, and no formal administrative barriers prevented persons from freely crossing in and out of any Indonesian province. Nevertheless, as the registration process unfolded, several movement related issues became apparent. The first set of issues surrounded the ongoing displacement of Timorese by the militia groups supported by the Indonesian military. The second set had to do with the limited number of registration centers and the vast distances some persons were required to travel in order to participate.

Registration was initially scheduled to start in mid-June. However, a combination of logistical constraints and the deteriorating security situation prompted UNAMET to order a delay until July 16. By this time, the anti-independence militias in East Timor had begun the full scale attempt to terrorize the population and tens of thousands of Timorese had become displaced into neighboring West Timor. As the May 5 Agreement provided for no external centers in West Timor, these groups sought to register and therefore vote in stations along the boundary between the two Timors, leading to a large, two-way flow of persons moving across an already very unsafe border. UNAMET infrastructure was not equipped to respond to the high volume of registrants in this area and in late July requested that IOM loan several DEOs from Indonesia in order to handle the overflow. Seven DEOs volunteered to transfer for the remainder of the registration period and were placed in several border stations. Since, the DEOs had been trained specifically to assist external voters, their presence in East Timor proved to be invaluable to the registration centers.

²⁵⁰ International Organization for Migration, *Final Report: External Voting for East Timor Popular Consultation*, September 1999, Summary of Final Reports from Country Representatives.

All seven DEOs returned to Indonesia following the registration period, but five later returned to assist in the polling process.²⁵¹

The limited number of external registration centers also posed a problem to many displaced Timorese who could not make the trip due to time constraints or insufficient income. Many potential voters were dissuaded by the two separate visits to an external voting site (once for registration and again for balloting) required. In Indonesia, for example, many eligible Timorese on the islands of Sumatra and Borneo had insufficient means to make the trip to the nearest centers in Jakarta and Sulawesi respectively. Others had to travel up to two days to the polling centers and also two days back. While some Timorese organizations (and even a few private firms) helped provide group transport, many Timorese were effectively disenfranchised. In addition, "Several hundred potential registrants from Kalimantan could not be registered as they arrived at the Registration Centers after the end of the registration period."²⁵² Similarly, a single registration/polling station in New York covered the entire western hemisphere. As the IOM noted in its final report of the operation, "The one person who registered but did not return to vote was from California and the cost of returning to vote appears to have outweighed the motivation."²⁵³ The AEC also logged many complaints from Timorese in Australia who were unable to travel to the nearest registration/polling station. Unfortunately, given the tight time and budget constraints built into the May 5 Agreement, no alternative means of participating (such as postal balloting) was possible.

IDPS within East Timor

The registration period generated widespread IDP movements. When the registration period began, UNAMET and UNHCR estimated that some 60,000 were conflict-displaced inside East Timor and election administrators were uncertain whether this population would be able to participate.²⁵⁴ Tragically, however, the registration process itself only added to the displacement, as pro-Indonesian militias sought to terrify the population into voting for integration.

Despite this continued displacement and insecurity, many IDPs were able to register. As the eligibility criteria did not include any residency requirement, voters could register at any registration center of their choice, with the only caveat being that the voter would then have to return to the same location to vote. Unfortunately, however, some centers that had been deemed safe during registration were no longer accessible for the polling, as the militia violence moved around the territory. Some East Timorese chose to register in the closest registration center at the risk of violence, but then went into hiding until they had to return and vote on polling day. Many IDPs who had once found a specific registration center safe could not be assured that it would remain safe during the polling period. This lack of security and increased violence within East Timor prior to the voting process disenfranchised a substantial number of registered and eligible voters.

Personal security

Security arrangements for the EVET program were managed by the Country Representatives in cooperation with government counterparts. With the exception of several minor incidents in Indonesia, security for external voters was not an issue. Inside the province, however, security was paramount, and could not be guaranteed by either UNAMET or the Indonesian Government, which proved either unable or unwilling to confront the militias.

In Indonesia, the only serious problems emerged at the registration center in Ujung Pandang. In one instance, registration was disturbed for several hours when a mob of anti-independence

²⁵¹ International Organization for Migration, *Final Report: External Voting for East Timor Popular Consultation*, September 1999, pg 16.

²⁵² International Organization for Migration, *Final Report: External Voting for East Timor Popular Consultation*, September 1999, Summary of Final Reports from Country Representatives.

²⁵³ International Organization for Migration, *Final Report: External Voting for East Timor Popular Consultation*, September 1999, Summary of Final Reports from Country Representatives.

²⁵⁴ Martin, pg. 57.

protesters entered the registration center waving Indonesian flags and demanding to be immediately registered. Many of the protesters were in fact eligible East Timorese, but lacked the proper documentation. Eventually, these protesters were allowed to vote through the affidavit process.²⁵⁵ Also in Ujung Pandang, a local election worker employed by IOM was evacuated from the area after receiving several threats of kidnapping. A district election officer in Yogyakarta was anonymously warned that violence could occur if the registration requirements did not become more lenient. Overall, however, no violence occurred in any of the registration locations and the security situation ran smoothly. Indonesian local authorities responded quickly to the above incidents, and cooperated with IOM to maintain a peaceful and stable atmosphere or the voting process to take place.

The Vote

Both the internal and external voting programs included full international supervision, with UNVs Canadian DEOs, or AEC personnel in every registration and polling center. The electoral rules provided for public inspection of the voter rolls and scrutiny of procedures, and displaced voters were provided an opportunity to present claims and challenges to the voters list. Registrants could challenge any other registered voters based on eligibility criteria and the challenger had to have proof as to why a certain person should not be permitted to vote. There were no challenges in EVET, but the measure helped to avoid charges of corruption or false impersonation for the purpose of voting.

Some elements of the Indonesian press complained that they felt excluded from the process. The intense focus on secrecy in terms of registration statistics, a UNAMET security policy, was widely condemned in the Indonesian press. The press and media had been used extensively during the public information phase, but felt that UNAMET and the IOM were uncooperative when they requested registration statistics, campaign information, and even information relating to eligibility criteria (which were changed several times during the process).

Counting was carried out in the same city as registration and polling. The only exception to this was in Indonesia where ballot boxes were shipped to Jakarta in order to be counted. Indonesian observers felt that transparency was lacking due to the fact that they could not view the final results. UNAMET wished to uphold the secrecy of the results until the overall total was announced from Dili. In order to uphold ballot secrecy the Indonesian observers could not view the final tallied results and therefore claimed that the process was not transparent. Ballot secrecy and counting ran smoothly in all other countries with no cries of exclusion from observers.

Postal voting was not included in the May 5 Agreements for EVET as voting was confined to in-person voting. This decision disenfranchised many voters immediately as they had no way to travel the great distances to register and vote. This was deemed necessary by the UN and IOM for financial and logistical problems that could not be overcome. Voting by mail or proxy would have also introduced a greater risk of fraud into the voting and negatively affected the transparency of the popular consultation. Many IDPs who cast ballots through the mail could not definitively be assured that their vote counted. For these reasons in-person registration and voting was chosen to be the only acceptable form of participation.

Although extensive problems were associated with votes by mail or proxy, this could have been beneficial in certain areas of the world where high volumes of external East Timorese populations were residing. North America, the UK, and the Philippines would have been examples of these locations. The great distances that these groups had to travel to reach either of the registration centers in New York City or Lisbon were too great and gave these populations no chance to become participatory voters. Vote by mail or proxy could be utilized in the future to enfranchise large groups of external voters incapable of reaching the required registration centers. This

²⁵⁵ Refer to registration section for further elaboration on the affidavit process.

process would then include the thousands of voters that could in no way take part in the vote in East Timor.

Costs

The original budget for the External Voting East Timor (EVET) project was originally set at \$US1.71 million and was allocated through existing IOM infrastructure. \$US0.33 million was set aside for the DEO salaries and the remainder was for other expenditures. Australia contributed \$10 million to the UNAMET Trust Fund and an additional \$10 million was provided for in-kind contributions through the Australia aid program. The DEOs utilized in each external polling center were paid for by the Canadian International Development Agency (CIDA). CIDA contributed one million Canadian dollars to cover the costs associated with the DEOs, including their salaries and travel expenditures. The majority of the electoral officers were also hired by EVET through Elections Canada. After adjustments and contributions, the project budget was revised to allow for expenditures up to \$US2.05 million.²⁵⁶

Outcome

Almost 80% of registered voters had voted for independence. But celebrations were short lived as the militia groups, now beyond the control of the Indonesian authorities, commenced a rampage through East Timor. In the chaos that followed, the vast majority of the territory's population was displaced. Villages and towns, including Dili were burned.

The Indonesian government attempted to play down the situation but in the face of international condemnation eventually accepted UN troops into East Timor. On September 20, the Australian-led International Force in East Timor (INTERFET) landed in Timor. After several months, most of the territory was restored to order, and the Security Council created the United Nations Transitional Administration in East Timor (UNTAET) to administer East Timor during the transition to independence.

The first presidential elections were held in April 2002, with Xanana Gusmao winning in a landslide. These elections, administered by UNTAET, did not include mechanisms for external voting.

Lessons Learned

- Clear and effective guidelines regarding documentation for identity purposes must be established prior to registration and must take into account the probability that the majority of the population may be lacking the necessary documentation. Social documentation may be a viable option. It is unclear to which the social documentation option was exploited.
- External voting administrators (IOM and AEC) should be directly involved in the dissemination of public information in order to facilitate the voter education process. UNAMET retained full control over the public information campaign, but this process would have been better served by the IOM because of its direct relationship on the ground with possible registrants. IOM should serve as the primary distributor of information and voter education tools with the UN providing secondary assistance when necessary.
- Vote by mail or proxy could have been utilized in the case of East Timor to include potential voters who were unable to travel the long distances to register and vote. This would have been beneficial to the external voters in the Western Hemisphere where only one center was established.

²⁵⁶ International Organization for Migration, *Final Report: External Voting for East Timor Popular Consultation*, September 1999, pg.10.

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Case V: Eritrea²⁵⁷

The 1993 Referendum on Independence from Ethiopia

Background

After a protracted history of colonialism and a thirty-year war for autonomy, Eritrea achieved *de facto* independence from Ethiopia in May of 1991. Following the fall of the Mengitsu regime in Ethiopia and the subsequent retreat of demoralized Ethiopian troops from Asmara, the Eritrean People's Liberation Front (EPLF) rapidly assembled the secular Provisional Government of Eritrea (PGE) under Issaias Afewerki. Two meetings between Ethiopian delegations, the PGE and other relevant parties were held in London and Addis Ababa, paving the way for the 1993 Referendum on Independence. The new government was charged with the overwhelming task of managing democratic transition, reconstruction, and building peace and stability.

The EPLF, now in power as the PGE, had long been committed to democratization and Eritrean self-determination.²⁵⁸ As such, the PGE decided that the question of *de jure* independence was to be put to the Eritrean people themselves. EPLF leaders had called for a public referendum on the same issue as early as 1980, but prior to the military defeat, Addis-Ababa had been unwilling to entertain the idea. Ethiopia had long-claimed that Eritrea was integrally part of its territory and coveted the strategic and economic value that Eritrea offered to landlocked Ethiopia in terms of access to the Red Sea ports at Massawa and Assab.

Overview of Refugee, Exile and IDP Populations in 1993

At the end of 1992, 1.2 million Eritreans resided abroad or were internally displaced because of thirty years of internecine conflict and a drought during the 1980s. This group could be broken down into four distinct categories. The first group comprised 530,000 refugees residing in neighboring Sudan. Efforts to repatriate these refugees before the referendum were hampered by disagreements between UNHCR and the PGE.²⁶⁰ Approximately half of these refugees resided in UNHCR supported camps with the remainder residing in or near Sudanese villages. According to USCR, half of these refugees were under the age of 15 – making them ineligible to vote.

*Eritreans Residing Abroad in 1992*²⁵⁹

Location	Number
Eritrean IDPs	250,000
Sudan	530,000
Ethiopia	300,000
Saudi Arabia	60,000
Yemen	-
Europe	40,000
North America	20,000
Total	1,200,000

²⁵⁷ This Case Study draws heavily on an unpublished paper by Amare Tekle, then-commissioner of the Referendum Commission of Eritrea. The paper will be included in a forthcoming study by International IDEA on external voting. Thus, all references to Tekle are from: Amare Tekle, "The Experience of the Eritrean Referendum," in External Voting Handbook, (International IDEA, forthcoming).

²⁵⁸ The EPLF became the People's Front for Democracy and Justice (PFDJ) in 1994 as it realigned itself as the sole political party in Eritrea.

²⁵⁹ Tabular data is from Tekle, and from, USCR, World Refugee Survey 1993 (Washington, D.C.: Immigration and Refugee Services of America, 1993).

²⁶⁰ The PGE viewed UNHCR repatriation plans as intrusive and humiliating. For a detailed explanation of the standoff between UNHCR and the PGE, see: United States Committee for Refugees. "Getting Home is Only Half the Challenge: Refugee Reintegration in War-Ravaged Eritrea." www.refugees.org. August 2001.

<<http://www.refugees.org/downloads/Eritrea.pdf>> (25 July 2002).

The second group, numbering 300,000, consisted of Eritreans living in Ethiopia at the end of hostilities. During the period between the cease-fire and the referendum, the legal status of this population was unclear. Technically, before the peace agreement, they could have been classified as either IDPs or run-of-the-mill migrants, depending on individual circumstances. So long as Eritrea remained an Ethiopian territory, Eritreans residing in Ethiopia that had fled from conflict-torn areas of Eritrea were not refugees because no internationally recognized border had been crossed. After the peace agreement, their legal status became murky as they were not refugees and were by definition no longer IDPs. Owing to growing Ethiopian hostility, and the confusing legal status, the now-unwelcome Eritreans might best be described as illegal aliens. As such, Eritreans began voluntarily repatriating themselves due to a fear of persecution. As soon as they crossed the Eritrean border, however, they became either IDPs or homeless until they resettled within Eritrea. Thus, the peace process created a "reverse" flow affecting the majority of Eritreans residing in Ethiopia. At the end of 1993, only 4,000 of the original 300,000 Eritreans²⁶¹ remained in Ethiopia. It is unclear if Ethiopian nationals faced similar circumstances in Eritrea.

The third group, numbering near 150,000, was comprised of Eritrean nationals that were residing in Saudi Arabia and a variety of developed world countries, including the United States, Canada, Europe and Australia. For the most part, this group had integrated into the societies of their host states. In some cases, Eritreans had become naturalized citizens in their state of residence.

Altogether, over one million Eritreans were believed to reside outside of Eritrea at the time of the referendum. This was a significant number in a state whose total population was only 3.5 million.

USCR reported that 250,000 Eritreans were internally displaced at the end of 1992. By the end of 1993, the number had decreased to 200,000.²⁶²

Legal Framework of the 1993 Referendum on Independence

Background Considerations

From the beginning, the PGE felt that the referendum should be a national endeavor - managed and run by Eritreans for Eritreans.²⁶³ Thus, the Referendum Commission of Eritrea (RCE) was reluctant to accept conditioned international aid and technical and material assistance. Eager to promote transparency and the legitimacy of the referendum, however, the Commission gladly invited international monitors and observer missions. The caveat seems to have been that the international community was welcome to observe, but not to interfere with the referendum. Where necessary, the RCE did accept international donor aid channeled through a fund established by UNDP. According to Tekle, Eritrea received US \$3.5 million in external financial and material assistance.²⁶⁴ According to the Secretary General's report, foreign contributions totaled US \$4.3 million.²⁶⁵

²⁶¹ USCR, World Refugee Survey 1994 (Washington, D.C.: Immigration and Refugee Services of America, 1994).

²⁶² USCR, 1994.

²⁶³ Eritrean culture has historically prided itself on self-sufficiency and self-reliance – ideals amplified and consolidated by Italian colonization and the 30-year struggle for self-determination.

²⁶⁴ Amare Tekle, "The Experience of the Eritrean Referendum," in External Voting Handbook (International IDEA, not yet published). According to the March 1998 US-DOS "Background Notes: Eritrea," in FY 1993, the US provided US \$6 million for a "broad range" of technical assistance. Over \$800,000 of this amount was for voter education, training referendum officials, and transportation costs relating to the referendum. Approximately half of the election aid was channeled through UNDP. The other half was channeled through the African-America Institute's "African Regional Assistance Fund."

²⁶⁵ United Nations, "Report of the Secretary-General on UNOVER (A/48/283 of 11 August 1993), in The United Nations and the Independence of Eritrea, (New York, New York: UN Department of Public Information, 1996) 78-81. UNOVER's expenditures were approximately US \$3 million. The PGE's contribution to the RCE for the Referendum was US \$480,000.

The PGE sought to ensure that the registration process and referendum would be free, fair, and beyond reproach.²⁶⁶ It thus requested that the UN establish an observer mission to verify the referendum (UNOVER).²⁶⁷ According to a 1993 Report of the Secretary General, UNOVER recommendations prompted the RCE to make certain special arrangements for three groups of people: Prisoners charged with, but not convicted of, crimes; special arrangements to allow members of the Eritrean Popular Liberation Army (EPLA) to register and vote in their barracks; and the registration of women where “cultural practices” presented a barrier to enfranchisement.²⁶⁸

The PGE faced numerous obstacles in preparing for the 1993 referendum. The most significant of these was the need to create an electoral system from scratch – without the benefit of census data, precedent, a constitution or a pre-existing legal framework. To this end, the PGE issued the “Eritrean Referendum Proclamation” (no. 22/1992) creating the independent Referendum Commission of Eritrea (RCE), mandated to organize, conduct and supervise the upcoming referendum. According to Amare Tekle, then-Commissioner of the RCE, “The proclamation made it clear that the Commission [was to be] an independent organization committed to an internationally-observed, free, fair and impartial referendum.”²⁶⁹ The major challenges facing the Commission included an extremely limited timeframe, finding qualified staff, sourcing and producing election-related materials, enfranchising external Eritrean nationals, and educating the voting public - both at home and abroad.²⁷⁰

Defining Nationality

The first task of any newly independent state is to define nationality criteria. Thus, before mandating the referendum, the PGE issued the “Eritrean Nationality Proclamation” (no. 21/1992) in order to provide a basis for voter eligibility. The proclamation was largely based on the “1933 Eritrean Nationality Law,” enacted while Eritrea was still an Italian colony. The proclamation granted nationality to those who:²⁷¹

- Had Eritrean origin (resident in Eritrea in 1933);
- Had been born to a father or mother of Eritrean origin in Eritrea or abroad;
- Had been born in Eritrea to parents whose origin was unknown;
- Possessed a claim to Eritrean nationality but lived abroad and wished to renounce foreign citizenship;²⁷²
- Were not of Eritrean origin but had resided in Eritrea between 1934 and 1951 and had not committed “anti-people acts” during the struggle for liberation;
- Entered and resided in Eritrea in or after 1952; and

²⁶⁶ Transitional Government of Ethiopia, “Letter Dated 29 October 1991 from the President of the Transitional Government of Ethiopia to the Secretary General of the United Nations Concerning the Results of the Conference on Peace and Democracy held in Ethiopia in July 1991,” in The United Nations and the Independence of Eritrea (New York, New York: UN Department of Public Information, 1996), 154. (UN document number A/C.3/47/5, Annex II, of 29 October 1992.)

²⁶⁷ Referendum Commission of Eritrea, “Letter Dated 19 May 1992 from the Commissioner of the Referendum Commission of Eritrea to the Secretary-General of the United Nations inviting the United Nations to Observe and Verify the Referendum Process,” in The United Nations and the Independence of Eritrea (New York, New York: UN Department of Public Information, 1996), 170. (The letter was assigned the UN document number A/C.3/47/5, Annex III, of 29 October 1992.)

²⁶⁸ United Nations, “Report of the Secretary-General on UNOVER (A/48/283 of 11 August 1993),” paragraphs 32-36.

²⁶⁹ Tekle. It should be noted that this case study is heavily reliant on this report. In part, this is due to the overwhelming lack of information on the 1993 Referendum, specifically, and Eritrea more generally.

²⁷⁰ The PGE had no choice but to issue essentially undemocratic proclamations relating to national identity and the framework for the referendum. The PGE laid out its intentions to revisit these and other issues once a democratically elected government could write a formal constitution. Despite the unavoidable undemocratic nature of the proclamations, the PGE did an admirable job in ensuring that the referendum process was transparent and broadly inclusive.

²⁷¹ Provisional Government of Eritrea, “Proclamation no. 21/1992,” in The United Nations and the Independence of Eritrea (New York, New York: UN Department of Public Information, 1996), 156-158. In the interest of brevity, the language has been somewhat condensed and simplified.

²⁷² An appeal process was established by Proclamation 21/1992 which allowed those eligible for Eritrean nationality status, who had acquired another nationality and were residing abroad, to petition the Department of Internal Affairs to be allowed dual national status.

- Had resided in Eritrea for a period of ten years before 1974 or had resided in Eritrea for twenty years while making periodic visits abroad; and
 - Possessed high integrity and had not been convicted of any crime;
 - Spoke and understood an Eritrean language;
 - Were free of physical or mental handicap;
 - Had renounced other nationalities;
 - Had decided to reside permanently in Eritrea upon obtaining Eritrean nationality;
 - Had not committed “anti-people acts” during the struggle for liberation
- Had been legally adopted by an Eritrean national;
 - Were legally married to Eritrean nationals, provided that they had resided in Eritrea for at least three years and had renounced foreign nationality.

The proclamation did not identify the mechanisms or standards by which Eritrean nationality could be established. It instead asked the Department of Internal Affairs to implement the proclamation and issue the necessary procedures and regulations. Ultimately, the process of establishing Eritrean nationality (obtaining a national ID card) and the electoral registration process (obtaining a voter ID card) proceeded concurrently at RCE branch offices and registration centers.²⁷³ Tekle reports that: “rigorous tests, involving traditional Eritrean methods of identification, were used to determine identity as objectively and fairly as possible.”²⁷⁴

Ethiopian nationals, who had relocated in Eritrea before independence, were eligible for Eritrean nationality as long as they met the residency requirements and the other complementary criteria defined by the nationality proclamation.

Electoral Eligibility

Electoral eligibility was established by Chapter IX of the Referendum Proclamation, which stated that:

Any person having Eritrean citizenship pursuant to Proclamation No. 21/1992 on the date of his application for registration and who was of the age of 18 years or older or would attain such age at any time during the registration period, and who further possessed and Identification Card issued by the Department of Internal Affairs, shall be qualified for registration.²⁷⁵

Voter Registration and Balloting

To facilitate the process of identifying eligible voters, the Referendum Proclamation established an “Identification Board” with a mandate both inside and outside Eritrea. To this end, the board created registration districts – internally and externally.²⁷⁶ The board was also charged with assembling the electoral register. A final list of voters was submitted to the RCE for approval, publication and distribution.

Proclamation 22/1992 expressly prohibited the creation of registration centers or branch offices at police stations, military bases, and at the residences of government officials or village elders. For most Eritreans, the RCE branch office where they had registered would also be the polling station

²⁷³ Tekle.

²⁷⁴ Tekle.

²⁷⁵ Provisional Government of Eritrea, “Proclamation no. 22/1992,” in [The United Nations and the Independence of Eritrea](#) (New York, New York: UN Department of Public Information, 1996), 158-169. In the interest of brevity, the language from Article 24 has been somewhat condensed and simplified.

²⁷⁶ Registration districts were created for refugee camps and other regions around the world where potential voters were believed to reside.

to which they were assigned for the referendum. Mobile registration teams covered inaccessible and remote rural areas.

Registrants and registration officials were required to furnish the following information on the registration form before registration cards were issued:²⁷⁷

- National Identity card for proof of eligibility;
- Serial number of registration;
- Date of registration;
- Full name of prospective voter;
- Name of paternal grandfather;
- Age;
- Place of registration;
- Period of residence at current location;
- Residences prior to current residence;
- Number of family members of immediate family;
- Registration number;
- Signature or pollex digital imprint.

For identity verification purposes, registrants were required to affix their signature or a pollex digital imprint (a fingerprint of the thumb) to the registration card.²⁷⁸ On the day of the referendum, the digital imprint or signature on the registration card was used to verify the identity of the voter. In cases where an individual's identity was still in question, he/she was to submit an additional signature sample or a digital imprint for comparison with the registration card. Once the identity of voters had been confirmed and ballots had been issued to voters, registration cards were destroyed. In cases where individuals' identities could not be established to the satisfaction of polling station officials, the individuals were allowed to cast tendered ballots.²⁷⁹

Provided that individuals met the criteria for registration, they were issued a voter identification card. According to Tekle, 1,544,850 voter registration cards were distributed at home and abroad.²⁸⁰ When reconciling the total population of 3.5 million with the 1.5 million registered voters, it is important to note the presence of a "youth bulge." In 1993, the population growth rate was 3.46 percent and, according to the Secretary General's Report on UNOVER, approximately 50 percent of the Eritrean population was less than 18 years old.²⁸¹ The report also suggests that the "relative remoteness of some regions, and traditional restrictions against public activities for women . . . may have reduced the number if people taking part."²⁸²

In cases where either national identity or voter registration/eligibility were denied, appeals processes were available, pursuant to Proclamations 21 and 22 of 1992, respectively. Disagreements regarding national identity were to be appealed to the High Court. Disagreements relating to voter registration were to be appealed to the Referendum Court. In both situations, the verdict of the court was to be deemed final and otherwise unchangeable. No references to actual cases were found in the preparation of this case study.

²⁷⁷ Provisional Government of Eritrea, "Proclamation 22/1992," Article 22 paragraph 2 and Article 27 paragraphs 1-2.

²⁷⁸ The digital imprint was necessary to accommodate illiterate registrants.

²⁷⁹ Unlike normal ballots, which were counted at the polling stations, tendered ballots and registration cards were sealed in an envelope, forwarded, and counted at the district RCE office. However, before tendered ballots were counted, the identity of the voter was confirmed by matching the serial number of the registration card with that of the original registration form.

²⁸⁰ Tekle. There are significant aberrations in the statistics cited by Tekle and the statistics used by UNOVER. This is somewhat problematic for a concise analysis. However, either set of numbers sufficiently illustrates the trends for present purposes.

²⁸¹ "History of Eritrea," www.open.org. No date given. <www.open.org/~tfl/eritrea/history.html> (21 July 2002).

²⁸² United Nations, "Report of the Secretary-General on UNOVER (A/48/283 of 11 August 1993)," paragraph 31.

IDPs: Registration and Voting

Provisions were made for enfranchising those voters that could not be physically present for the referendum "because of special circumstances," at their assigned polling stations.²⁸³ Non-displaced Eritreans, refugees and internally displaced persons (IDPs) were held to the same standard for establishing national identity and obtaining voter registration cards. All three groups had difficulty providing the documentation relating to citizenship and voter registration. Refugees and IDPs were not at a disadvantage because there was no district-specific residency requirement for eligibility and registration, although an address was required to establish the polling station at which a voter would cast his/her ballot. As such, IDPs should have been able to register and vote in the district of their displacement – assuming that they had not moved between registration and the referendum. If they had moved, registered IDPs could have presented themselves at any polling station and submitted a tendered ballot. As such, neither the registration nor the modalities of voting adversely affected IDPs.²⁸⁴ Although 53,838 tendered ballots were cast, it is impossible to identify how many were cast by IDPs.

Special provisions (the creation of two special polling stations) were made in Asmara for the several thousand refugees that had spontaneously returned to Eritrea between the registration process and the referendum. Although the hope had been that a more significant number of refugees would voluntarily return to Eritrea by the April 1993 referendum, between 50 and 70,000 returned without participating in internationally assisted repatriation programs during 1991 and 1992.²⁸⁵ It is also unclear how many of this latter group were able to vote.

Refugee and exile voting (external) will be covered below under the external voting heading.

Voter Education

The task of voter education fell to the "Publicity and Information Board" of the RCE. Chapter VII of the Referendum proclamation charged the board with ". . . organizing, supervising and overseeing a publicity and information campaign on the referendum process . . . prepare in all languages, copies of the proposition of the referendum as well as all explanatory materials ... [and] Hold seminars, classes, film shows and exhibitions in all parts of Eritrea and abroad, particularly in refugee camps outside Eritrea."²⁸⁶

The board printed 800,000 posters in four languages, distributed 10,000 voter manuals, produced videos in nine languages, created a touring theatrical group and assembled mobile teams to disseminate information to rural and inaccessible regions. All official materials were produced in the capital, Asmara, to ensure uniformity of content and dissemination. The regional RCE offices in host states were responsible for educating the Diaspora. The registration and referendum processes were also thoroughly covered by the only radio station, television station, and newspaper accessible in Eritrea. Media coverage was made available in the four predominate national languages.²⁸⁷

Education efforts also included the implications of voting for or against independence. Observers report that the independence of the RCE was critical in the provision of unbiased information, albeit that there was very little opposition to independence. Non-governmental actors in the education campaign registered with RCE, including: the National Union of Eritrean Women, the National Union of Eritrean Youth, and the National Union of Eritrean Workers. The EPLF also

²⁸³ Provisional Government of Eritrea. "Proclamation 22/1992," Article 34, paragraphs 3-4.

²⁸⁴ Because polling stations were only issued electoral registers with the names specific to those individuals assigned to that particular polling station, the identity of a voter not assigned to that polling station could not be easily verified. In this situation, the polling station would have forwarded the voter's tendered ballot to the district RCE office where the identity of the voter could be verified against the national register.

²⁸⁵ USCR, *World Refugee Survey 1993* (Washington, D.C.: Immigration and Refugee Services of America, 1993).

²⁸⁶ Provisional Government of Eritrea, "Proclamation 22/1992," Chapter VII paragraphs 4-5.

²⁸⁷ United Nations, "Report of the Secretary-General on UNOVER (A/48/283 of 11 August 1993)," paragraphs 38-42.

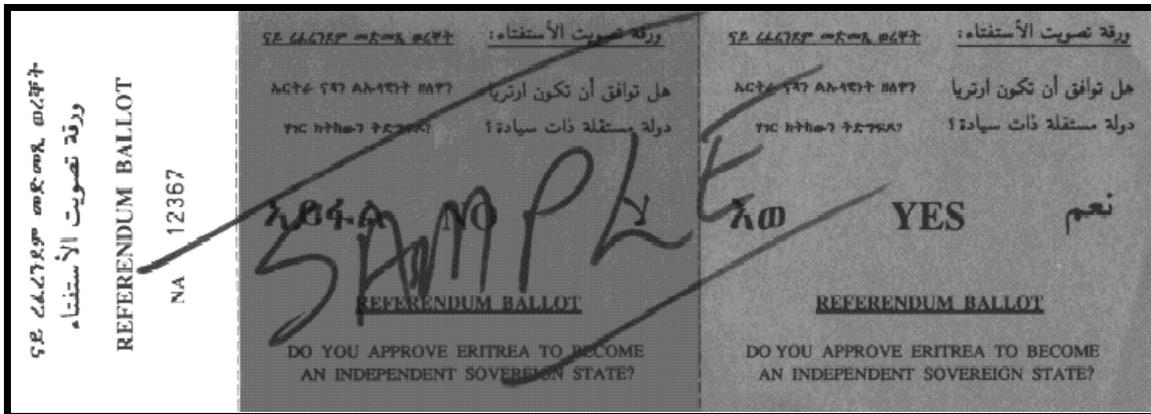
contributed to voter education by campaigning for independence at rallies it organized throughout Eritrea.²⁸⁸ No parties opposed to independence registered with the RCE.

Security Considerations

Security considerations within Eritrea were minimal due to the nature of the referendum; After a prolonged history of foreign control, few things were certain except for the fact that almost all desired an independent Eritrea. However, the Referendum Proclamation included penalties for committing electoral fraud and, for in any way, obstructing the registration and referendum processes. In addition, to minimize the potential for voter intimidation, special provisions were made for members of the Eritrean People’s Liberation Army (EPLA) and for freedom fighters not belonging to the EPLA to vote in their barracks. Because a portion of the EPLA would be on duty during the referendum, members voted one week before the official referendum. Ballots were cast in secrecy behind screens designed to obscure the view of other voters and officials in the polling station.

Ballot Design & Other Referendum-related Materials

The ballot was printed on brown paper and divided into thirds by two perforations. The first section contained the ballot’s serial number. The remaining two sections were colored red and blue, indicating a “no” and “yes” vote, respectively, to the question of independence. When casting their vote, voters separated the two remaining sections, and deposited the ballot stub corresponding to their choice in either the “yes” or “no” ballot box. The remaining stub was deposited in a cardboard trash bin. The discarded stubs were burned at the end of each day of balloting. To accommodate illiterate voters, the ballot boxes were color coded in the same fashion as the ballot stubs. The significance of the color of the ballot stubs and ballot boxes were covered by the voter education process.



The RCE held that any referendum-related materials, supplies, and technical expertise that could be sourced from within Eritrea would not be solicited from abroad. As such, 95 percent of the necessary materials were produced within Eritrea – including the construction of the traditional mat huts used as polling stations.²⁸⁹ In terms of the external vote, the RCE actively sought material and logistical assistance from governments and organizations within host states. The costs relating to the external vote were covered by regionally collected donations – virtually eliminating external RCE expenditures. According to Tekle, the Diaspora “volunteer army” was

²⁸⁸ United Nations, “Report of the Secretary-General on UNOVER (A/48/283 of 11 August 1993),” paragraph 38.

²⁸⁹ Tekle; and United Nations, “Report of the Secretary-General on UNOVER (A/48/283 of 11 August 1993),” paragraph 47.

the keystone for success. "External offices and polling stations abroad were all staffed by unpaid volunteers from the various Eritrean civic organizations."²⁹⁰

External Registration and Voting

Registering and mobilizing external voters was of paramount importance to both the RCE and PGE since a proportionately large number (over one million) Eritreans resided abroad - in 36 states.²⁹³ According to Tekle, "It was concluded very early that all Eritreans were equal wherever they resided and that to deny one-third of any country's population from participation in the determination of the destiny of the country was not only immoral but also a violation of the human rights, self-determination and of the freedom of expression. Consequently, there was the determination to ensure that Eritreans would vote wherever they were located and the necessary legal and administrative arrangements were to be put in place to guarantee it whatever it takes."²⁹⁴ The RCE set about registering the three major groups of external voters: refugees residing in Sudan and Ethiopia and exiles residing in all other host states. External voters were held to the same nationality and registration standards as internal voters.

Internal and External

Voter Registrations (1993 Referendum)²⁹¹ USING UNOVER DATA

State	Registrations
Eritrea	861,074
Sudan	154,136
Ethiopia	66,022
Saudi Arabia	43,765
All other states	76,000
TOTAL	1,200,997²⁹²
External	339,923

External registration and voting procedures were nearly identical to those inside Eritrea. In some cases ballots were modified by adding host-state languages. In most cases, aside from Ethiopia, Sudan and Saudi Arabia, ballots, registration cards and electoral registers were printed in the host states. External ballots, however, were treated as a separate category of tendered ballots. External balloting generally took place a week before the official referendum days in Eritrea in order to allow enough time for the materials to be packaged and shipped to Asmara for counting by the RCE at the national headquarters.

According to the *UN Chronicle*, "An important part of UNOVER's work was to register voters outside of Eritrea." However, no other references to UNOVER technical or administrative assistance with the external vote (other than observation) were encountered in preparation for this case study - including the Secretary General's report to the General Assembly on the UNOVER mission.²⁹⁵ According to the Secretary-General's report, UNOVER did observe registration and referendum activities in Ethiopia and Sudan. Tekle makes no mention of UNOVER - in any capacity - in his report on the 1993 Referendum.

Refugee Registration and Voting in Ethiopia and Sudan

The cooperation of the governments of Ethiopia and Sudan was critical to enfranchising the large refugee populations the two states hosted. The relationships between the transitional regime in Ethiopia, Sudan and the PGE were generally amicable, owing largely to the cooperative arrangements the EPLF had established during the struggle for independence. Furthermore, Ethiopia and Sudan were anxious to see a formal end to the conflict that had precipitated refugee

²⁹⁰ Tekle

²⁹¹ Tabular data is from: United Nations, "Report of the Secretary-General on UNOVER (A/48/283 of 11 August 1993)," paragraph 30.

²⁹² According to the Secretary General's report, a combined total of 1.1 million Eritreans (internally and externally) were registered. However, tallying the UN's own numbers from the same report results in 1,206,997 voter registrations.

Moreover, Tekle reports that some 1.5 million were issued registration cards

²⁹³ United Nations. "UN 'Peace-building' Gives Birth to a New Nation," *UN Chronicle* 30, no.3 (1993): 39. Available from:

<Expanded Academic ASAP> (25 June 2002).

²⁹⁴ Tekle.

²⁹⁵ United Nations. "UN 'Peace Building' Gives Birth to New Nation," 39-40.

flows. By finalizing Eritrea's independence, Sudan and Ethiopia hoped to be relieved of their legal obligations under the 1951 Convention, and thereby, anticipated that the repatriation of the remaining refugee population would be expedited.

Sudan made financial and logistical contributions in order to facilitate the RCE's efforts - both in refugee camps and in other locations where Eritreans resided. Ethiopia contributed by providing security details.

UNOVER and other international observers were present in both states for all phases of the referendum, including registration and education. During the referendum, ten two-person teams monitored 202 polling stations in Ethiopia and twelve two-person teams monitored 335 polling stations in Sudan. No significant irregularities were reported.

Registration and Voting for the Diaspora

With the exception of Saudi Arabia, a state without democratic traditions, host states generally accommodated the idea of an Eritrean referendum being held within their boundaries. The UN eventually brokered a deal with Saudi Arabia, wherein eligible Eritreans were given the opportunity to vote at UN offices.

The existence of ready-made networks of expatriate civic associations and electronic communities with linkages to host governments abroad was critical to mobilizing the external vote. In Commissioner Tekle's own words:

The existence of solid civic associations, created and well organized by the liberation struggle, enabled the Commission to reach a widely dispersed "electorate in the Diaspora." This must be considered the single most important factor that immensely contributed to the success of external voting in the case of the Eritrean referendum. Without such a ready-made organization, it would have nigh-well been impossible to have a census of about one-third of the Eritrean population dispersed over five continents during a thirty year period, and to make the detailed arrangements to conduct a successful election.

In addition to making financial contributions to the general budgetary needs of each country or region, Eritreans in the Diaspora also enthusiastically contributed in kind (transportation, food and refreshment during registration and voting weekends, borrowing voting equipment, providing home, acquiring or renting space for voting and registration, etc...), in service (freely conducting voter education programs and disseminating information as well as staffing registration and polling stations), and in cash at the local (city, country, state) level. No figures are available for such largely invisible costs. Yet, this contributed immensely to enabling the Commission to create the most cost-effective, efficient, and practical means of external voting.²⁹⁶

These tightly knit organizations managed to provide more than adequate levels of financial, material and logistical support to make the external vote possible. The organizations worked closely with the regional RCE offices (in host states) to ensure that eligible Eritreans were identified, registered, educated, and finally, that they were able to cast ballots in the first-ever Eritrean referendum. Newspaper reports and articles indicate that the atmosphere at external polling stations more closely resembled cultural festivals or celebrations than the democratic process that it was.

In toto, the RCE registered and distributed voter ID cards to 293,299 Eritreans residing abroad (UNOVER reports a total of 339,923). According to Tekle, 99.7 percent voted for independence.²⁹⁷

²⁹⁶ Tekle.

²⁹⁷ Tekle.

The Referendum

Internally, the referendum took place between 23 and 25 April 1993. Externally, ballots were cast between 16 April and 25 April 1993. The results were announced on 27 April by the RCE. A staggering 1,154,001 of 1,174,654 registered voters cast ballots – a participation rate of 98.24 percent. According to the Secretary General's report, 1,098,015 voted for independence, 1,825 voted against independence,²⁹⁸ and 323 ballots were considered spoilt. Almost 99 percent had voted for independence.

UNOVER observers monitored 87% (886 of 1,012) of polling stations in Eritrea. Polling stations not located in Eritrea, Ethiopia or Sudan were monitored by a variety of representatives from UN agencies, including UNOVER, NGOs, and diplomatic communities. The Secretary-General's Special Representative reported that: ". . . the referendum process in Eritrea can be said to have been free and fair at every stage."²⁹⁹

The Organization for African Unity (OAU) sent an eighteen-person delegation to observe the referendum. The OAU's participation was something of an exception because of the organization's charter-based policy which prohibited support for secessionist movements. However, due to the General Assembly's approval of the referendum and a formal Ethiopian request, the OAU assembled a delegation to monitor elections.³⁰⁰ In a statement to UNOVER, the OAU delegation reported that: "the manner in which the polling was conducted was generally free, fair and devoid of significant irregularities."³⁰¹

The League of Arab States and the non-aligned movement also sent delegations to observe the referendum and made similar conclusions.

Conclusions

Given the obstacles that the PGE had faced, 1993 Referendum on Eritrean Independence was a remarkable achievement. The extensive provisions for the external vote ensured that a wide range of Eritreans were able to effectively realize their fundamental human right to political participation. In brief, the external vote was successful for the following reasons:

- The PGE's overall commitment to free and fair elections;
- The RCE's ability to maintain its integrity and independence;
- The PGE and RCE's commitment to mobilizing the external vote from the outset;
- The timely provision and promulgation of mechanisms of inclusion combined with an parallel commitment to the provision of administrative and logistical support;
- The cooperation of host states;
- The presence of strong civic organizations in the Diaspora;
- The financial assistance provided by the international community;
- The role expatriate volunteerism, international, and personal donations;
- The unity of purpose and solidarity of cause surrounding long-sought independence;
- A culture of self-reliance – an Eritrean Referendum for Eritreans.

Regrettably, the successes of the referendum and the initial commitment to democratic values have failed to translate into sustainable levels of peace and stability. A constitution was written in

²⁹⁸ United Nations, "Report of the Secretary-General on UNOVER (A/48/283 of 11 August 1993)," paragraphs 52-53.

²⁹⁹ United Nations, "Report of the Secretary-General on UNOVER (A/48/283 of 11 August 1993)," paragraphs 32-36.

³⁰⁰ "Eritrean Votes to Become Africa's Newest Nation," Africa Report 38 no. 3 (1993): 8-10. Available from <Expanded Academic ASAP> (25 June 2002).

³⁰¹ Organization for African Unity, Statement of 26 April 1993 by the Organization of African Unity Observer Mission to the Eritrean Referendum," in The United Nations and the Independence of Eritrea (New York, New York: UN Department of Public Information, 1996), 212. (The letter was assigned the UN document number A/C.3/47/5, Annex II, of 29 October 1992.) Document 27 – OAU letter to UNOVER

1996 but never implemented. A second round of hostilities with Ethiopia broke out in 1998 because of border disputes. At least a quarter of the population (960,000) was displaced. Due to the hostilities, the 1998 round of National Assembly elections were indefinitely postponed. President Afwerki continues to rule by proclamation and the character of his government has become autocratic. The PFDJ remains the only recognized political party. The government has also clamped down on civil liberties and public dissent. The independent media had been shut down. A number of journalists, students and those who have either voiced or challenged President Afwerki have been indefinitely detained and held incommunicado without due process.³⁰² The date and certainty of a new set of elections remains unclear.

³⁰² Human Rights Watch, "Eritrea: Human Rights Developments," www.hrw.org, 2002, <http://www.hrw.org/wr2k2/africa4.html> (26 July 2002).

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Case VI: Georgia

1999 Parliamentary and 2000 Presidential Elections

Background

Following Georgia's independence from the USSR in 1990, fighting (described as "ethnic cleansing" by the UN, OSCE and other human rights monitoring groups³⁰³) broke out between Georgian forces and two separate secessionist regions, Southern Ossetia and Abkhazia.

Both regions had been forcefully incorporated into Georgia between during the 1920s as part of Stalin's "Georgianization" policies, which included the forced resettlement of ethnic Georgians into Abkhazia, forbidding the use of the Abkhaz language, and installing ethnic Georgians into virtually all positions of power. After 1978, reverse Soviet policy strengthened the rights of Abkhazians and reversed many of the discriminatory practices.³⁰⁴ These wavering policies, however, created a strong link between nationality and political power. In the vacuum created by the collapse of the USSR and the independence of Georgia, political actors in Abkhazia and South Ossetia mobilized their local power bases by appealing to the historical grievances of their respective ethnic groups.³⁰⁵

The 1989 Soviet-conducted census, found that ethnic Georgians made up 45 percent of the pre-war population of Abkhazia. Ethnic Abkhazians represented 17 percent of the population, with the remainder comprised of Armenians and Russians (14 percent each).

The conflict in Abkhazia is the most severe of the two. On and off fighting has prevailed between Georgian forces and Abkhazian separatists since 1992, although both sides have largely observed a UN and CIS brokered cease-fire.³⁰⁶ Nevertheless, Global IDP Project reports that "[t]hirteen months of war and ethnic violence with reports of murders, destruction, looting and evictions forced the entire ethnic Georgian population to leave Abkhazia and to settle in neighboring districts under Georgian control."³⁰⁷

The Russian government provides strong support to the Abkhaz separatists. Both regions are currently operating as *de facto* autonomous republics, controlled by separatist forces, although neither has been recognized as sovereign by any other government. Talks on reaching a permanent solution between Georgia and Abkhazia have reached a stalemate. Southern Ossetia appears more conciliatory than Abkhazia. Southern Ossetia's leader, Ludwig Chibirov, has been called "a man Tbilisi 'can do business with."³⁰⁸

³⁰³ Norwegian Refugee Council/Global IDP Project. Profile of Internal Displacement: Georgia. Compilation of the information available in the Global IDP database of the Norwegian Refugee Council. (as of 8 November, 2001). Available from: <<http://www.idpproject.org>>. (25 July, 2002), p. 17. [*hereinafter*, Global IDP Report] See also, Organization for Security and Cooperation in Europe, Office for Democratic Institutions and Human Rights, (OSCE/ODIHR), Republic of Georgia Parliamentary Elections 31 October and 14 November 1999. Final Report, Warsaw: 7 February 2000, p.6. Available from: <http://www.osce.org/odihr/documents/reports/election_reports/ge/geo99-3.pdf>(23 July, 2002)., [*hereinafter*, ODIHR Final Report 1999].

³⁰⁴ The Soviet Union enacted an "Abkhanization" affirmative action program in 1978. Importantly, these vacillating Soviet privileges coincided with one's official nationality, enshrined into a passport of every Soviet citizen at the age of 16. "Thus changing Soviet policies ... concretized the idea of nationality for all residents of Abkhazia as an issue associated with competition for advantage." Global IDP Report, p.10.

³⁰⁵ Nationality was also enshrined into the passport of every citizen at the age of 16. See: Global IDP Report, p.10.

³⁰⁶ Two peacekeeping forces are present in the region—UNOMIG (UN Observer Mission in Georgia) created in 1993, and CISPKF (A Russian-dominated peacekeeping force), created in 1993. While Southern Ossetia has observed the ceasefire since 1993, the ceasefire was broken between Abkhazia and Georgia in 1998.

³⁰⁷ Global IDP Report, p.10.

³⁰⁸ Office for Security and Cooperation in Europe/Office for Democratic Institutions and Human Rights Georgia. Parliamentary Elections 31 October 1999. A Report Prepared by the Staff of the Commission on Security and Cooperation

Refugee/IDP conditions and statistics

Refugees

The Russian Federation hosts roughly 14,800 refugees from Georgia. Most are ethnic Ossets, residing in the Russian Federation Republic of Northern Ossetia. In addition, nearly 6,300 Georgian refugees have applied for asylum in Western nations.³⁰⁹

IDPs

There are 264,000 IDPs within Georgia, out of which 252,200 are ethnic Georgians from Abkhazia. The rest (about 12,000) have been displaced from Southern Ossetia.³¹⁰ The largest concentrations of IDPs are in Tbilisi and Samgrelo Region, particularly the Zugdidi district.³¹¹ Georgians who try to return to Abkhazia face intense resentment, discrimination, and even death.

Living conditions of the displaced remain poor, particularly in the rural areas. A UN assessment mission interviewed IDPs about relocating to better conditions and found that they consistently preferred to remain where they were until they could return home, rather than resettle elsewhere in Georgia. Francis Deng concludes this is due to a widespread fear among IDPs that moving to a more comfortable location would somehow undermine the chances of return.³¹² In a report to ECOSOC, Deng notes that: "For the displaced, who held fast to the hope of returning within...days or weeks, the move to alternative accommodation gave a certain permanence to their situation that proved very difficult to accept."³¹³ This reluctance to accept any solution other than return has influenced a wide variety of Georgian policies, including those related to the country's electoral law.

Government Structure and Legislative Framework for Elections

Between 1995 and 2001, Georgia's elections were governed by:

- The Constitution of The Republic of Georgia of August 1995;
- The Organic Law³¹⁴ on Parliamentary Elections of September 1995, including five subsequent amendments (Parliamentary Electoral Law); and,
- The Organic Law on Presidential Election of September 1995, including three subsequent amendments (Presidential Electoral Law).

Other legislation impacting election modalities include the Administrative Code, the Law on Refugees, the Law on Internally Displaced Persons, the law on Political Parties, the Citizenship law, the law on Rallies, Meetings and Manifestations and the law on the Status of a Member of

in Europe, Washington DC:1999, p.11, Available from:

http://www.osce.org/odihr/documents/reports/election_reports/ge/

³⁰⁹ United States Committee on Refugees (USCR) *World Refugee Survey 2002*, Washington DC:2002. p.213.

³¹⁰ USCR *World Refugee Survey 2002*, p.212-213.

³¹¹ Organization for Security and Cooperation in Europe/Office for Democratic Institutions and Human Rights, (OSCE/ODIHR), "Republic of Georgia Presidential Election 9 April 2000, Final Report." Warsaw: 9 June 2000, Available from: http://www.osce.org/odihr/documents/reports/election_reports/ge/qeo00-1-final.pdf (23 July, 2002), p. 12. [ODIHR Final Report 2000]

³¹² Francis Deng. Specific Groups and individuals mass Exoduses and Displaced Persons. *Report of the Representative of the Secretary-General on internally displaced persons, Mr. Francis Deng, submitted pursuant to Commission on Human Rights resolution 2000/53*, Addendum. Profiles in Displacement: Georgia. ECOSOC: E/CN.4/2001/5/Add.4. 25 Jan., 2001. Available from: <http://www.hri.ca/fortherecord2001/documentation/commission/e-cn4-2001-5-add4.htm> (23 July, 2002).

³¹³ Deng.

³¹⁴ Organic laws supercede ordinary laws, as stipulated by A66 of Georgia's Constitution. Organic laws are passed by the majority of *all existing* representatives entitled to vote. Ordinary laws are passed by a majority of the representatives *present* during the parliamentary voting. (ODIHR Report 2000, p. 3, footnote 2). Therefore, an organic law is a third, intermediary step in the traditional hierarchy of the Constitution and federal laws.

Parliament. However, the organic laws and the Constitution are of most importance as they supercede all other laws and are second only to the Constitution.

The Constitution establishes a bicameral legislature, consisting of the Supreme Council (*Umaghiesi Sabcho*, or Parliament), and the Senate. However, due to the conflict in Abkhazia and Southern Ossetia, the Senate has not been formed and the legislature remains unicameral.³¹⁵

Of the 235 Parliamentary deputies (or representatives), 150 are elected through PR system with a closed party list and 7 percent threshold. Parties compete for these seats in a single nationwide constituency.³¹⁶ The remaining 85 deputies are elected from 85 single mandate districts by a simple majority vote. A wide variation exists in the electoral size between constituencies, and consequently the weight of each vote is unequal. For example, the Kabegi district has approximately 4,000 registered voters while Kutaisi City's registered electorate is over 135,000.³¹⁷

The Parliamentary law establishes a three-tier Election Commission in charge of running all elections of Georgia. The Central Elections Commission (CEC) is at the top, followed by District Election Commissions (DEC) and Precinct Elections Commissions (PEC). Since 2000, the Central Election Commission has the authority to adopt resolutions and issue decrees. The CEC chairperson also has the individual authority to issue decrees, as do the DEC and PEC chairpersons.³¹⁸ In addition, the Constitution grants extraordinary powers to the President, including the power to issue decrees and resolve issues of citizenship³¹⁹

The lack of a clear electoral hierarchy and frequent misinterpretation of the law at various levels produces contradictions and confusion that undermine of legitimacy of the electoral process. ODIHR reports that CEC resolutions often "seem to extend beyond its competence,"³²⁰ adding that instead of interpreting the law, the CEC sometimes changes the law. To cite just one example, CEC Resolution 83 of 1999 provided that the majoritarian candidate registration forms should be submitted to the CEC. The electoral law in fact specified that these forms had to be submitted to the DEC's instead.³²¹ These sorts of confusions appear to be the rule, rather than exceptions.

In order for any election to be considered valid, at least half of the electorate must vote. If that majority is not obtained, a second round is held, where at least one third of the registered voters must cast a ballot. In Presidential elections, in order to win, the candidate must receive an absolute majority of the votes when at least half of the total registered voters vote. If the absolute majority is not obtained, a second round of elections is held two weeks later, where at least one third of the electorate vote.³²²

Eligibility

Article 28(1) of Georgia's Constitution states: "A citizen who has attained the age of 18 has the right to participate in referenda and elections of state and self-governing bodies. The freedom of constituents to express their will is guaranteed."

³¹⁵ Article 4 of the Constitution states: "When conditions are appropriate and self-government bodies have been established throughout the territory of Georgia, Parliament shall be formed with two chambers: the Council of the Republic and the Senate." The Constitution of Georgia, with subsequent 1999 and 2001 amendments." Available from: <http://www.parliament.ge/LEGAL_ACTS/CONSTITUTION/consten.html>(23 July, 2002). Also see ODIHR Final Report, 1999, p. 3. Obviously, the government considers the current conflict in Abkhazia and Southern Ossetia as inappropriate conditions for creating a bicameral Parliament.

³¹⁶ Kuchinka-Lancava & Grotz, p. 377.

³¹⁷ Organization for Security and Cooperation in Europe, Office for Democratic Institutions and Human Rights, (OSCE/ODIHR), Republic of Georgia Parliamentary Elections 31 October and 14 November 1999, Final Report. Warsaw: 7 February 2000, Available from: <http://www.osce.org/odihr/documents/reports/election_reports/ge/ge099-3.pdf>(23 July, 2002), p.4. [ODIHR Final Report 1999]

³¹⁸ ODIHR Final Report 2000, p.4

³¹⁹ Constitution, A73(1.i) and A73(1.k).

³²⁰ ODIHR Final Report 1999, p.10.

³²¹ ODIHR Final Report 1999, p.10.

³²² Constitution, A70(4).

Citizenship in Georgia is determined by the Constitution and the “Law of the Republic of Georgia on Citizenship in Georgia”. A citizen is a person who is either born in Georgia or became naturalized. Since 1997, a person is granted Georgian citizenship within four months, after he/she permanently resided on the territory of Georgia for at least five years.³²³ Citizenship may not be taken away for any reason whatsoever. Dual citizenship is not allowed.

Since 1999, Georgian citizens at least 18 years of age, living outside Georgia are entitled to vote in their foreign place of residence, unless convinced “of unsound mind” by a court of law.³²⁴ No information is available on the mechanics and procedures of external voting.

IDPs and other citizens permanently residing on the territory of a given precinct are registered in that precinct. IDPs appear on a separate voter list, within their current district of temporary residence. Article 33.2 of the electoral law requires that no voter shall be included in more than one voter list. However, it is impossible to implement this provision as civil registers are scattered in multiple offices and on multiple levels.³²⁵

Until 2001, several laws and administrative provisions prohibited IDPs from voting for the representative of the majoritarian district in which they are temporarily residing. Article 33(1) of the Parliamentary Electoral law stated: “Forcefully displaced persons shall be included in the voter’s lists according to their present places of residence. A separate list shall be compiled for displaced persons and they shall not participate in the majority elections held in single-mandate districts.” Thus, as parliamentary elections in 1999 did not include balloting for representatives from the single mandate districts in Abkhazia and South Ossetia, IDPs could vote for nationwide or proportional list elections only.³²⁶

The government maintained that this language complied with the wishes of the IDPs. According to Bagshaw, “there are genuine concerns among some of the internally displaced that by voting for the local candidate they would be accepting the *de facto* territorial situation and would thereby relinquish their right to return to their homes ...” The Georgian government seems to have been largely motivated by this point. According to a 2002 report of the Council of Europe, “For a long time, the Georgian authorities were reluctant to facilitate the durable integration of the displaced in Georgia and considered return as the only solution ... The question of integration has been highly politicised for a long time and the displaced persons have been systematically discouraged from any serious attempts to normalize their status under the pretext that such normalization would allegedly endanger their right to return.”³²⁷ Bagshaw notes, however, that, “[t]he right to return to one’s place of origin and the right to vote at the local level for the person who can work to influence one’s current conditions are not mutually exclusive...”³²⁸ Furthermore, many IDPs had demanded the right to vote, so the government’s assertion that the rule complied with the wishes of IDPs is debatable, at best.

³²³ “Law of Republic of Georgia on the Citizenship of Georgia”, as amended in 1997. A3. Available from: <http://www.legislationline.org/index.php?topic=3&subtopic=0&subsubtopic=0&intst=0&eu=0&country=18> (6 Aug.,2002).

³²⁴ Natalie Kuchinka-Lancava & Florian Grotz, p.378.

³²⁵ ODIHR Final Report 2000, p.11.

³²⁶ A provision is made instead to extend the mandates of the eight deputies from Abkhazia until elections are held there. The two seats from Southern Ossetia remain vacant. Simon Bagshaw, “Internally Displaced Persons And Political Participation: the OSCE Region.” An Occasional Paper. The Brooking Institute Project on Internal Displacement: Sept. 2000. Available from: <http://www.brook.edu/fp/projects/idp/articles/200009.htm> (5 Aug.,2002), p.14.

³²⁷ See: Council of Europe, Committee on Migration, Refugees and Demography, Situation of refugees and displaced persons in Armenia, Azerbaijan and Georgia, Doc. 9480, June 2002, paras 72 – 74. Available from: <http://assembly.coe.int/Main.asp?link=http%3A%2F%2Fassembly.coe.int%2FDocuments%2FWorkingDocs%2FDoc02%2FEDOC9480.htm> (5 Aug., 2002).

³²⁸ Bagshaw, p. 15. He continues, “There is no reasonable or objective reason why the internally displaced should not vote for the representative of the area in which they are ‘temporarily’ residing and at the same time not maintain the right to return, when the necessary conditions are achieved.”

Citizens Besarion Pantsulaia, Elgudja Guledani, Djemal Mikeladze, Murman Zaqaraia and Manguli Khubua v. Parliament of Georgia.³²⁹

On November 25, 1998, an IDP group appealed to the Constitutional Court of Georgia, claiming that legislative provisions denying IDPs the right to vote for majoritarian district representatives were unconstitutional. The Appeal was based on Articles 5.1, 5.2, and 28 of Georgia's Constitution, Articles 21.1 and 21.3 of the Universal Declaration of Human Rights, and Article 25(a) and (b) of the International Covenant on Civil and Political Rights.³³⁰ The plaintiffs specifically challenged the following Georgian statutes:

1. Article 36(1) of *The Law of Georgia on "Elections of Local Representation Bodies-Sakrebulo"*, which denied Georgian citizens, displaced due to conflicts in Abkhazia and Southern Ossetia, to elect local representatives;
2. Article 33 (1) of *The Organic Law of Georgia on "Elections of Parliament of Georgia,"* which stated: "a separate list shall be made for [IDPs] and they shall not participate in the elections of one-mandate districts under majority system";
3. Article 6(3) paragraph 2 of *The Law of Georgia on "Internally Displaced Persons-IDPs,"* which causes an IDP to lose his/her IDP status if he/she "permanently settles and registers in one of the regions of Georgia."³³¹

The Court ruled against the Appeal on December 21, 2000.

As to *The Law of Georgia on "Elections of Local Representation Bodies-Sakrebulo,"* the Court refused to rule on as Article 36(1) and (2) as they specifically referred to the 1998 elections and did not apply to future elections of local representative bodies. Furthermore, the Appeal was submitted 10 days after *Sakrebulo* elections were held, and thus the law was null and void.³³²

Regarding Article 33 (1) of *The Organic Law of Georgia on "Elections of Parliament of Georgia,"* the Court rejected the appeal for four primary reasons:

1. First, the Constitution and Organic law allow enactment of special electoral provisions during extraordinary situations. (i.e, the conflict which caused Georgia to lose effective control over a part of its territory), so preventing IDPs from voting was not unconstitutional;
2. Second, the displaced already had representation in the form of deputies from Abkhazia, whose mandates were extended since 1992;

³²⁹ *Citizens Besarion Pantsulaia, Elgudja Guledani, Djemal Mikeladze, Murman Zaqaraia and Manguli Khubua v. Parliament of Georgia*. Constitutional Court of Georgia, Decision #2/97/03. Tbilisi, 21 Dec., 2000. [Note: the entire subsection is a summary of this Court Decision] See also, "Are All Citizens of Georgia Equal Before the Constitution of Georgia?" Available from: <<http://www.pili.org/lists/piln/archives/msg00723.html>>

³³⁰ Articles 5.1 and 5.2 of the Constitution of Georgia states: "In Georgia, people are the source of the State authority. The state authority is exercised within the framework established by the Constitution...People exercise its power through referenda, other forms of direct democracy, and its representatives."

Article 28 of the Constitution of Georgia states: "Every national of Georgia aged 18 has the right to take part in the government of his country, directly or through freely chosen representatives. A citizen is not entitled to participate in the elections and referenda if he/she is declared to be incapable by the court or is serving his/her sentence in a institution under a trial court decision"

Articles 21.1 and 23.1 of the Universal Declaration of Human Rights states: "Everyone has their right to take part in the government of his country, directly or through freely chosen representation. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which will g by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures."

Article 25(a) and (b) of the International Covenant on Civil and Political Rights states: "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 expression of the will of the electors."

³³¹ "Law of the Republic of Georgia concerning Displaced People" June 1996. Available from: < <http://www.unhcr.ch/cgi-bin/texis/vtx/rsd/rsddocview.htm?CATEGORY=RSDLEGAL&id=3ae6b4e618&page=research>> (6 Aug.,2002).

³³² This ruling was based on Article 31(3) and Article 46(2) of the Law of Georgia on "Normative Acts", and Article 13(2) of Georgia Law of Georgia on "Constitutional Court Proceedings."

3. Third, the Court reasoned that: a) the law established single-mandate districts only for those persons residing in the district; b) that IDPs had a formal-legal claim to displaced status and therefore did not reside in the mandated districts; and c) therefore, they had no claim to participate in electing single-mandate representatives from districts where they did not reside;³³³
4. Finally, the Court found that the “special lists” were NOT discriminatory because the same rules applied to everyone.³³⁴

As to Article 6(3) of *The Law of Georgia on “Internally Displaced Persons-IDPs,”* the Court decided it was not in a position to discuss the question because the appeal “does not make the IDP status disputable and the Applicants did not show that any of their rights recognized by the Constitution of Georgia has been violated by this normative act.”³³⁵

Nonetheless, Zaur Zjinjolava, one member of the Court panel, wrote in a dissenting opinion, arguing that Article 28 of the Constitution allows only three restrictions on the right to vote in Georgia: 1) age, 2) Georgian citizenship, and 3) a formal declaration of inability to vote by the court, or serving a sentence in a prison facility under a trial court decision. “Consequently, it is clear that [limiting the] participation of Georgian citizens displaced from Abkhazia ... is not provided for by Article 28 of the Constitution...”³³⁶

This explicit denial of voting rights to IDPs on the part of Georgia was raised in the UNHCHR, Human Rights Commission in 2000. The Commission demanded that Georgia clarify the political rights of IDPs as per Article 25 of the ICCPR.

The 2001 Unified Electoral Code

In 2001, the Georgian Parliament passed *The Organic Law of Georgia: Unified Election Code of Georgia*, (“Unified Electoral Law” amended in 2002) that removed the explicit prohibition on IDP voting for the majoritarian districts. The law abolished the individual organic laws on electing the President, Parliament, and local municipalities and instead combined these three laws into one. It is unclear what exactly prompted the Parliament to pass legislation giving IDPs the right to vote. On the other hand, the revision does not expressly allow or address how such voting would work.³³⁷ Essentially, the law combines the rules and procedures governing Presidential, Parliamentary, and local elections into a single code. According an opinion issued by the European Commission Democracy through Law (Venice) Commission, while the new law makes some improvements, it still requires major revision.³³⁸

³³³ The only English-language source of this apparently tautological argument is an unofficial translation that is difficult to decipher. The exact wording reads: “...Article 15 of the *Organic Law on ‘Elections of Parliament of Georgia’* prescribes setting up of one-mandate districts according to administrative and territorial division what means that only the persons dwelling on a certain territory are entitled to participate in the elections of this territory. The fact that persons forcibly displaced from Abkhazia enjoy the IDP status (and they have not made their status disputable) and receive assistance from the State acknowledges once again that Abkhazia shall be deemed as their place of residence which is beyond jurisdiction of Georgia; it means that it is not possible to hold elections under majority system with the participation of IDPs. Otherwise, the very concept of the majority system would lose its meaning because it implies holding of election on particular places.”

³³⁴ The Court concluded: “The legislation prescribes the same compulsory rule of registration for everyone without any discrimination against IDPs who are registered under special rules by the Ministry of Refugees and Accommodations, until the possibility of return is created, but they are not restricted to undergo regular registration in the Interior bodies.” *Citizens Besarion Pantsulaia, Elgudja Guledani, Djemal Mikel adze, Murman Zaqaraia and Manguli Khubua v. Parliament of Georgia*, no Page numbers.

³³⁵ *Ibid.*

³³⁶ *Ibid.*

³³⁷ The Organic Law of Georgia: Unified Election Code of Georgia, 11 September 2001. Available from: <http://www.legislationline.org/get.php?id=1561&dots=4.0.0.&country=18&inst=0&topic=1&subtopic=0&subsubtopic=0> Note that the Unified law does not explicitly grant the right to vote for single-district representatives, but it no longer explicitly prohibits them from voting either, and some analyses conclude that it trumps the previous prohibition.

³³⁸ European Commission Democracy Through Law (Venice Commission), [Opinion on the Unified Election Code of Georgia on the Basis of Comments by](#) on the basis of comments by Mr Hiörtur TORFASON (Member, Iceland), Mr Florian

For example, the law is still unclear on voting rights. The law first reaffirms the principle of universal suffrage for all Georgia's citizens, stating: "Elections in Georgia are universal. Citizens of Georgia have the right to an active vote after they reach the age of 18, regardless of their race, skin colour, language, gender, religion, political or other opinions, education, ethnic or social affiliation, descent, property or occupation ... [unless] they have been deemed incapable by the court."³³⁹ However, Article 110(3) states: "Voters who, by the day of the appointment of elections, are permanently or temporarily residing outside the borders of Georgia and voters who are on ships sailing, do not take part in elections of the representative body of local self-governance-*sakrebulo*, elections of *gamgebeli*, mayor." This limitation is not mentioned anywhere in Article 5. Such inconsistencies make the law extremely confusing.

The law makes no exceptions like the one in Article 110(3) for absentee voters residing abroad with regard to any other level of election. Furthermore, Articles 9(5) and 10(4) specifically outline registration and list compilation procedures for voters residing abroad. This procedure seems to imply that Georgian citizens residing abroad are not prohibited from voting in any elections other than those mentioned in Article 110(3). The Venice Commission seems to share this view, adding that Article 5 should be amended to clarify this point.³⁴⁰

IDPs still appear on separate, "supplementary" voting lists, compiled by the relevant DEC. IDPs are included on the lists based on places of their current residence.³⁴¹ The Venice Commission calls these supplementary lists "a definite progress,"³⁴² adding that they are "of special importance due to the large number of Internally Displaced Persons (IDPs) from Abkhazia and other regions. In the 1999 parliamentary elections, several observers reported that IDPs could occasionally cast more votes than they would have been allowed to, because the administration of voter lists did not function properly. Under the new regulation, IDPs can be identified more easily by the election authorities, so 'double voting' of IDPs should not be possible any more."³⁴³

It remains to be seen how this law will be implemented in future Georgian elections. These provisions will need to be clarified and mechanisms should be developed to ensure uniform implementation.

1996 and 1999 Elections in Abkhazia

In 1996 and 1999, Abkhazia held its own Parliamentary and Presidential elections, condemned by Georgia and the international community. The UN Security Council considered "...unacceptable and illegitimate the holding of self-styled elections in Abkhazia..."³⁴⁴ In a 1999 statement, OSCE said, "We consider the so-called presidential elections and referendum in

GROTZ (Expert, Germany) Mr Richard ROSE (Expert, United Kingdom) Opinion no. 182/2001_geo Strasbourg, 24 May 2002, Available from: <<http://venice.coe.int/site/interface/english.htm>> (7 Aug., 2002). [*hereinafter*, Venice Commission]

³³⁹ Organic Law of Georgia, Unified Elections Code of Georgia. A6. A4 also states: "Elections in Georgia shall be held on the basis of universal, equal and direct suffrage and by secret vote."

³⁴⁰ Venice Commission, para.10 The Commission adds that "[s]ince the Constitution does not include Georgian residence as a condition of entitlement to active voting rights (Article 28), it is presumed that the question whether permanence of foreign residence should affect voting rights will depend on the laws concerning citizenship (under Articles 12 and 13 of the Constitution)."

³⁴¹ The Organic Law of Georgia, Unified Election Code of Georgia, with 4/25/2002 amendments, A10(5). Available from: <http://www.ifes.ge/files/laws/el_code_2002.pdf> (3 Aug., 2002). [Unified Electoral Law]

³⁴² Venice Commission, para.16.

³⁴³ Venice Commission, para.16.

³⁴⁴ United Nations Security Council, Resolution 1255, Clause 6., 30 S/RES/1255 (1999), July 1999, Available from: <<http://www.un.org/Docs/scres/1999/99sc1255.htm>>, (7 Aug., 2002).

Abkhazian elections were also held despite the few Georgian returnees in the Gali district of Abkhazia, who created their own government, called "government in exile," which to this day is supported by Shevardnadze.

Abkhazia...as unacceptable and illegitimate.”³⁴⁵ Georgia in particular claims that elections “should only be allowed after refugees return to the region.”³⁴⁶ The roughly 220,000 voters that participated in the elections did not include any of the 300,000 IDPs in Georgia.³⁴⁷

1999 Georgian Parliamentary Elections

Due to the conflict in Abkhazia and Southern Ossetia, parliamentary elections took place in 75 out of 85 single-mandate districts in 1999. In order to participate voters were required to present one of the following documents a: Georgian passport, former USSR passport with *propiska* stamp (record of domicile), in Georgia, or a “certificate issued by an appropriate state body.”³⁴⁸ It is unclear exactly what exactly was that “certificate.”

Little information is available on refugee and IDP voting. Some observers reported that some IDPs were able to cast multiple ballots because the administration of voter lists did not function properly.³⁴⁹ The final ODIHR report does not mention whether or not Georgian citizens residing outside the country were able to cast a ballot. ODIHR does note that IDPs were listed on separate voter lists and suggests that exclusion of IDP votes in the majoritarian districts violated international human rights standards. According to ODIHR:

“The partial IDP vote seems also to contradict the United Nations Guiding Principles on Internal Displacement. Principle 1.1 ‘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 the enjoyment of any rights and freedoms on the ground that they are internally displaced’. Principle 22.1.d: ‘Internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the following rights: [...] 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.’³⁵⁰

ODIHR also noted select instances of voter intimidation, though it is unclear whether or not this applied specifically to IDPs. In Aspindza district, the police confiscated former Soviet passports without returning them, for no apparent reason. A 1999 Presidential decree extended the validity of these documents until 2001 as voting identification, since many voters do not possess any other documentation. Confiscating the passports therefore put the citizens at risk of losing their right to vote.³⁵¹

Overall, ODIHR describes the election as anything but free and fair.

2000 Presidential Elections

Voting for the 2000 Presidential election was not held in parts of Abkhazia and Southern Ossetia. However, the Zugdidi DEC established polling stations for residents of the Gali District³⁵² and

³⁴⁵ OSCE Istanbul Summit Declaration. 19 Nov., 1999. Available from: <<http://www.osce.org/docs/english/1990-1999/summits/istadec199e.htm>>, (7 Aug.,2002).

³⁴⁶ “Georgia :Separatist Abkhaz Region Reports parliamentary Election Results.” RFE/RL.

³⁴⁷“The Abkhaz Parliament”. *Accord “A Question of Sovereignty”* Available from: <<http://www.c-r.org/accord/accord7/profiles.htm>>(7 Aug., 2002).see also, “Georgia: Separatist Abkhaz Region Reports parliamentary Election Results.” RFE/RL.

³⁴⁸ ODIHR Final Report 1999, p. 15.

³⁴⁹ ODIHR Final Report 1999, p. 15.

³⁵⁰ ODIHR Final Report 1999, p. 16

³⁵¹ ODIHR Final Report 1999, p.23.

³⁵² Most refugees and IDPs have been returning to the Gali district, located close to the Inguri river in Abkhazia. (see Global IDP Project, Available from:

<<http://www.db.idpproject.org/Sites/idpSurvey.nsf/wViewSingleEnv/GeorgiaProfile+Summary>>).

mobile ballot boxes were located close to the main bridge over the Inguri River, which separates Abkhazia from the rest of Georgia. IDPs voted in their districts of temporary residence. In addition, voting also took place in 26 polling stations located in diplomatic and consular officers abroad.³⁵³

Severe discrepancies in voter lists were reported. Observer comparison between voter lists provided by the CEC and PECs at polling stations and the lists provided by CEC before elections day revealed significant disparities, especially for IDP voters.³⁵⁴

According to British Human Rights Helsinki Group (BHHRG), many commission chairmen “had no clear grasp of the rule governing refugee³⁵⁵ vote...During the day it became obvious that no chairman applied the same rules concerning refugee voting.”³⁵⁶

The following example clearly illustrates this situation. The chairman of a Mtseta polling station (district 27, station 2) explained to BHHRG observers that in order to be allowed to vote in his particular station, IDPs were allowed to be registered on polling day upon producing a valid ID and an “invitation slip”. The chairman of station number 2 in the same village, claimed that all IDPs had to register by the evening of the previous day. The chairman of station number 8 in the same district said that IDPs could be registered on the additional list if they had the necessary documentation. It was clear that no chairman visited by BHHRG understood the proper IDP voting procedure.³⁵⁷

While overall, the elections were conducted in a relatively peaceful manner ODIHR, notes a “massive presence of police and local officials...without any visible reason.”³⁵⁸

Though the 2000 Georgian elections have been relatively free of fraud, ODIHR refused to label the elections as “free and fair.”³⁵⁹ ODIHR concluded that despite the improvements in the electoral process, the conduct of the 2000 election “demonstrated that the will is deficient to conduct elections in full accordance with the law.”³⁶⁰ This seems to be the sentiment of all observation groups researched for this report.

Ultimately, while Georgia made significant improvements in its electoral legislation, the country still has a long way to go in achieving elections that freely and objectively express the wishes of its citizens, in accordance with internationally accepted standards.

³⁵³ ODIHR Final Report 2000, p.12. No further information is available on the details of external voting.

³⁵⁴ ODIHR Final Report 2000, p. 20.

³⁵⁵ The report refers to IDPs as *refugees*.

³⁵⁶ (British Helsinki Human Rights Group (BHHRG). Georgian Election 2000 Observation Report. Available from : <http://www.bhhr.org/georgia/georgia2000/poll.htm>> (23 July, 2002). [*hereinafter*, BHHRG Report 2000]

³⁵⁷ BHHRG Report 2000.

³⁵⁸ ODIHR Final Report 2000, p. 22. Note that corruption, which is endemic in Georgia, plagues elections as well.

According to the 1999 Corruption Perception Index compiled by Transparency International, ...[Georgia] ranked “as even more corrupt than Russia.” See Slider, p.3.

³⁵⁹ as quoted by Darrell Slider, p. 7.

³⁶⁰ ODIHR Final Report 2000, p 24.

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Case VII: Kosovo

2000 Municipal Assembly Elections

Introduction

The 2000 Kosovo Municipal Assembly Elections provide a number of insights regarding the enfranchisement of conflict forced migrants. Although figures vary, at the time of the election an estimated 250,000 Kosovar refugees resided in third countries, 235,000 had been displaced outside of the province into Serbia and Montenegro, and some 200,000 remained displaced inside the province. Thus, out of a total estimated electorate of 1.2 to 1.5 million persons, close to one third were in some form of displacement.

Learning from the experience in Bosnia and Herzegovina, the OSCE sought to design an electoral system that guaranteed the widest possible participation of the displaced. This case study focuses on the mechanics of that process, with a special eye towards the implementation side. While the political imperatives in the election look on the surface to be remarkably similar to BiH, the ethnic demographics in Kosovo were markedly different. In addition, ethnic Serbs (both inside and outside the province) boycotted the elections, including registration and balloting. As a result, electoral competition did not center on ethnic politics. Therefore, as opposed to BiH, this case is oriented to the procedural aspects of the registration and balloting process.

The Kosovo elections are important for two key reasons. First, the election was integrated into the wider goal of establishing municipal registers and re-establishing official identity through a comprehensive civil registration and the issuance of common identity cards. While that process faced many challenges, in the end a workable set of municipal registers were created (along with a Final Voters List) that is of wider utility to agencies operating in the province. Second, the technical implementation of the displaced and Out-of-Kosovo registration and voting programs demonstrated a remarkable sophistication. The procedures used to inform eligible Kosovar voters of the elections, as well as provide them an opportunity to register and cast a ballot set the standard for "best-practice." Future operations should consider the Kosovo elections as a model for cost-efficient, yet comprehensive, refugee and IDP enfranchisement.

Background

The Province of Kosovo lies in the southern part of Serbia, directly north of Albania. Its population is comprised of roughly 80 - 85% ethnic Albanians, 10 - 15% Serbs and 5% mixed between Roma, Turks, Croats, and others. Serbian historical memory identifies Kosovo as the "cradle" of Serb civilization. Ethnic Albanians, however, consider themselves more closely related to the population of neighboring Albania. In general, however, Albanian irredentism has played only a small role in the province's recent political life.

Kosovo's constitutional relationship with Serbia and with Yugoslavia changed several times since World War II. In the early years of Marshal Tito's rule, the province was given "regional autonomy," but was de facto administered as a part of Serbia. A wave of decentralization in the late 1960s resulted in a 1974 constitutional reorganization that allowed Kosovo to become a Yugoslav republic "in all but name;"³⁶¹ The province established its own central bank, assembly, police force, and was represented on the Yugoslav federal presidency.

In 1989, Yugoslav President Slobodan Milosevic abrogated this autonomous status. Albanians reacted by proclaiming their own national assembly and developed "parallel" political and social

³⁶¹ Tim Judah, Kosovo: War and Revenge, (New Haven: Yale University Press, 2000). p. 38.

structures under the leadership of Ibrahim Rugova. During the mid 1990s, fighting emerged between the Kosovo Liberation Army, which was dissatisfied with the deteriorating human rights conditions, and Serbian police and paramilitary forces. As the conflict intensified in 1998, the international community placed increasing pressure on Milosevic to restrain the actions of Yugoslav military and police forces in the province. Nevertheless, fighting escalated.

Following the breakdown of U.S. sponsored negotiations between Yugoslavia and the KLA at Rambouillet France, NATO launched an 78-day air campaign against Serbian military and government targets. Hundreds of thousands of ethnic Albanians fled or were driven from the province by Yugoslav forces between March and June. NATO and the Yugoslav government signed a military-technical agreement and cease-fire on June 9.

Following the withdrawal of Serb Forces an estimated 150,000 to 200,000 Kosovar Serbs and Roma fled the province in advance of the entrance of the NATO-led a peacekeeping force (KFOR). In Resolution 1244 of 1999, the Security Council established the UN Mission in Kosovo (UNMIK) to reconstruct and administer the province until a political solution was determined.

Refugee Conditions and Statistics

Refugees and IDPs fled their homes in Kosovo in three major waves. Prior to the 1999 NATO military action, a steady flow of people had been fleeing the province in response to the deteriorating human rights environment and sporadic fighting between Kosovar irregular forces and Yugoslav police and paramilitary units. By late 1998, an estimated 250,000 Kosovars were internally displaced in the province and throughout other FRY republics. A further 100,000 Kosovar Albanians remained as asylum seekers in other countries, predominately Western Europe.³⁶² The second wave occurred during the NATO bombing, when Serbian military and police actions drove more than 900,000 people to third countries and an unknown number fled their homes for remote areas inside Kosovo between March and June 1999. This population consisted primarily of ethnic Albanian Kosovars who fled to Macedonia and Albania (where they stayed in temporary camps or were moved to third countries in a massive transport operation organized by UNHCR and the IOM). The vast majority of these persons returned to the province within weeks of the June cease-fire agreement.³⁶³ An additional 200,000 to 300,000 people were internally displaced within the province during the bombing. The majority of these persons also returned to their homes following the cease-fire. Few of these refugees/IDPs have returned to areas where they would be in an ethnic minority.

The third wave of displacement occurred following the ceasefire in June 1999, when an estimated 150,000 to 175,000 ethnic Serbs and Roma – fearing reprisal attacks – fled the province for other Yugoslav Republics (Serbia and Montenegro). This population continues to grow; by December 2001, the UNHCR estimated that Serbia hosted some 201,000 IDPs from Kosovo, while Montenegro hosted roughly 30,000. As the legal status of Kosovo is that of a Serbian province, these persons are classified as IDPs.

The following chart tracks refugee and IDP statistics from 1998 until the 2000 elections.

³⁶² USCR, World Refugee Survey, 1999, available at: <http://www.uscr.org>.

³⁶³ By the end of 2000, more than 900,000 refugees had returned to Kosovo, including 430,000 from Albania, 224,000 from Macedonia, 90,000 from Germany, 44,000 from Switzerland, and 34,000 from Turkey.³⁶³ Many returnees, however, were unable to return to their homes and their status shifted from refugee to IDP.

Patterns of Displacement in/from Kosovo: 1998 – 2000 ³⁶⁴				
		1998 ³⁶⁵	1999	2000 ³⁶⁶
IDPs in	Kosovo	170,000	350,000*	210,000
	Montenegro	35,000	30,000*	32,000
	Serbia	20,000	190,000*	195,000
	Total IDP	225,000	570,000	437,000
Refugees in	Albania	14,000	3,500 ³⁶⁷	500
	Macedonia	1,000	14,000*	9,000
	World	100,000	N/A³⁶⁸	342,323³⁶⁹

Government Structure and Legal Framework

Although Kosovo remains a province of Serbia, the terms of the NATO/Yugoslavia cease-fire provided the province with substantial autonomy and self-administration. Security Council Resolution 1244 provided sweeping powers to the United Nations Mission in Kosovo (UNMIK) to administer the province pending municipal and Kosovo-wide elections. UNMIK began operations in June of 1999, with a mandate to:

- Perform basic civilian administrative functions;
- Facilitate a political process to determine Kosovo's future status;
- Conduct elections at the municipal and province levels to elect local leaders for political reconstruction;
- Support the reconstruction of key infrastructure and coordinate humanitarian and disaster relief of all international agencies;
- Maintain civil law and order;
- Promote human rights; and,
- Assure the safe return of all refugees and displaced persons to their homes in Kosovo.³⁷⁰

A novel institutional structure, UNMIK brings together the UN and several other IGOs under one administrative roof consisting of four "pillars":

- Pillar I: *Police and Justice* -- administered by the United Nations;
- Pillar II: *Civil Administration* -- administered by the United Nations;
- Pillar III: *Democratization and Institution Building* -- administered by the Organization for Security and Co-operation in Europe (OSCE);
- Pillar IV: *Reconstruction and Economic Development* -- administered by the European Union.

³⁶⁴ The mass rapid movements of Kosovars in 1999 makes it almost impossible to provide accurate figures.

³⁶⁵ All figures from 1998 are as of 24 August 1998 and are taken from; ICG, "Kosovo's Long Hot Summer," *Balkans Report No. 41*, 2 September 1998.

³⁶⁶ USCR, *2001 Country Reports*, available at <http://www.uscr.org>. All figures for 2000 are taken from the 2001 USCR Country Report with the exception of the number for BiH, which is taken from; IOM, "Out-of_Kosovo Registration Final Report," August 2000, 9.

* USCR, *2000 Country Reports*, available at <http://www.uscr.org>. Statistics are as of the end of the year in 1999.

* Ibid.

* Ibid.

³⁶⁷ Figure is from USCR *2000 Country Report*. At the height of the crisis in later may there may have been as many as 500,000 refugees in Albania, however, these people were quickly transported out of the country and are thus not included as part of this number.

* Ibid

³⁶⁸ USCR estimates that at the height of the NATO campaign, some 900,000 Kosovar Albanians fled the province, the vast majority to neighbouring countries. Many were then transited to third countries until the conflict ended in June, when they rapidly repatriated. See USCR, *2000 Country Reports*, available at <http://www.uscr.org>.

³⁶⁹ This figure is derived from IOM estimates of the likely voting population based on consultations with IOM offices in host states.

³⁷⁰ See www.unmikonline.org

The OSCE (Pillar III), under the overall guidance of UNMIK, has been responsible for the conduct and planning of the elections. Municipal elections were held in 2000; Kosovo Assembly Elections were held in 2001; A second round of municipal elections were held in 2002; and Assembly elections are scheduled for late fall 2003.

The 2000 Municipal Assembly Elections: Institutional Structures and Relationships

UNMIK Administrative Regulation 2000/45 outlined the structure, function, and legal powers of the 30 municipal assemblies to be elected. These powers included a wide range of normal municipal functions (land use planning, taxation, public services, etc.) with the exception of local policing, which would continue to be provided by the UN and KFOR. Section 47.2 of the Regulation provides that: "The Special Representative of the Secretary-General shall set aside any decision of a municipality, which he considers to be in conflict with United Nations Security Council resolution 1244 or the applicable law or which does not take sufficiently into account the rights and interests of the communities which are not in the majority in the territory of the municipality."³⁷¹ In addition, the Special Representative to the Secretary General (SRSG) retains authority to remove assembly members, appoint new members, and even dissolve an assembly and direct new elections should the assembly persistently take actions that contradicted the spirit of SC Resolution 1244. As a consequence, the authority of these assemblies to take decisions not to the liking of the international community is extremely limited.

Planning for the elections began almost immediately following the cease-fire. Conditions for the conduct of the elections were taken directly from Chapter 3, Article 1(1) of the Rambouillet Agreement.³⁷² The basic standards to be met included:

- Freedom of movement for all citizens;
- An open and free political environment (including an environment conducive to the return of displaced persons);
- A safe and secure environment ensuring freedom of assembly, association, and expression; and,
- An electoral code complying with the OSCE commitments, particularly those detailed in Paragraph 7 of the *Copenhagen Document*.³⁷³

In May of 2000, the SRSG certified that balloting would occur on October 28, 2000 with an estimated 1 million Kosovars, both in and out of the province, eligible to participate. The Assemblies were elected based on a proportional representation system utilizing an open party list and the modified Saint-Lague formula for seat allocation.³⁷⁴

Central Election Commission

UNMIK Regulation No. 2000/21 provides that overall responsibility for the elections is delegated to the Central Election Commission (CEC), which promulgates the rules and regulations, assists and monitors the activities of political parties, and plans the logistical aspects and observation of

³⁷¹ UNMIK Reg 2000/45, "On Self-Government of Municipalities in Kosovo," 11 August 2000, available at: <http://www.un.org/peace/kosovo/pages/regulations/reg045.html>

³⁷² "Interim Agreement for Peace and Self-Government in Kosovo," (Rambouillet Agreement), available at: http://www.state.gov/www/regions/eur/ksvo_rambouillet_text.html

³⁷³ This document and its specific electoral standards commitments are discussed in more detail Section II of the PEP Research Outputs: "Refugee and IDP Voting: Issues, Standards, and Best Practices." Available at www.iom.int/peg. The full text of the Copenhagen Commitments can be found in: Conference for Security and Co-operation in Europe, Second Conference on The Human Dimension Of The CSCE, "Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE. Available at: <http://www.osce.org/docs/english/1990-1999/hd/cope90e.htm>

³⁷⁴ OSCE elections staff had initially sought to run a closed list system in which only parties would appear on the ballots. While perhaps less democratic, this system has the advantage of relative simplicity in party registration and ballot design. Eventually, however, the OSCE decided to run an open list ballot, seeing the open list as providing greater access to the non-major parties and to individual candidates. In addition, the CEC required that all party lists contain minimum 30% female candidates.

the election.³⁷⁵ The CEC is chaired by the OSCE Ambassador, two other international members selected by the Special Representative of the Secretary General (SRSG), and nine Kosovar members: three nominated by the major political parties, three representing “Kosovo’s smaller communities,” and three representing civil society groups such as academics, NGOs, and the media. For the most part, decisions and procedures adopted by the CEC for the 2000 elections were drafted first by the OSCE international staff and then discussed and debated by the CEC.³⁷⁶ In contentious matters, the OSCE Ambassador may issue a binding decision.

Election Complaints and Appeals Commission (ECAC)

The CEC immediately established the ECAC in order to provide judicial oversight to the elections process and monitor compliance with the “Code of Conduct: The ECAC is composed of an international commissioner and two local deputies and has the authority to levy fines and strike candidates from the party lists or ban parties entirely (this latter sanction can only be applied with CEC approval). Complaints to the ECAC may be filed by any individual who feels his/her rights concerning the political process have been violated by other individuals, political parties, local officials, or the CEC itself.

According to a report by the Norwegian Institute of Human Rights:

The Central Election Commission and the Election Complaints and Appeals Sub-Commission adopted from the very beginning a strong line against anyone who violated the Code of Conduct. The LTO [Long term Observer Mission] considers that this firm attitude on behalf of the CEC and the ECAC was an important contribution to prevent a violent development. Taking into consideration the very high level of tension that existed in Kosovo (and still prevails) between ethnic as well as between political groups, it seems fair to characterize the political campaign as relatively peaceful...³⁷⁷

Despite its ability to issue strong penalties for violations of the “Code of Conduct,” during the 2000 elections the ECAC exhibited restraint in exercising the full potential of its punitive powers. Only in one instance on 3 October did the ECAC strike a candidate from a party list, when a PDK candidate was removed following violence at a LDK party rally in Lipljan. In all cases prior to this, the ECAC merely imposed relatively small fines or coercive action in response to violations.

Joint Registration Task-force (JRT)

The major challenge facing election administrators was the widespread destruction of identity documents during the conflict. Because the need to re-establish official identity (both for displaced and regular Kosovars), a decision was taken to link this process with the voter registration. Thus, UNMIK established a cross-pillar structure in which the OSCE (Pillar III) and the UN Civil Administration (Pillar II) would jointly conduct the civil and voter registration during a single, six-week period. A “Joint Registration Task-force” (JRT) was established to provide the opportunity for Kosovars to be simultaneously entered on the 30 municipal registers and registered to vote.³⁷⁸ Municipal registration was also intended to provide for the issuance of a

³⁷⁵ UNMIK Reg 2000/21, “On the Establishment of the Central Election Commission,” 18 April 2000.

³⁷⁶ ICG, “Elections in Kosovo: Moving Toward Democracy?,” ICG Balkans Report No. 97, 7 July 2000, 5.

³⁷⁷ Sigurd Gramstad, “Kosovo: Municipal Elections 2000,” Nordem Working Paper, available at: http://www.humanrights.uio.no/forskning/publ/wp/wp_2001_02.html.

³⁷⁸ Dan Blesington Notes: “Given its role in elections, the OSCE’s interest in the registration was limited to its usefulness in creating a voter list. In contrast, the UN had two central concerns: First- to identify the population then residing in Kosovo; and Second - to provide the population with reliable, standardized documentation to be used for a variety of purposes, such as motor vehicle registration and the issuance of travel documents. As you know, there were widely

common identity card. Following the registration process, the JRT was disbanded and the OSCE took over sole responsibility for the actual balloting.

Out of Kosovo Registration/Voting (OKR/OKV)³⁷⁹

Given the OSCE's extensive relationship with the International Organization for Migration (IOM) as refugee-voting subcontractor for elections in Bosnia in 1996, 1997, and 1998, UNMIK and the OSCE again approached the IOM to conduct the registration and balloting for eligible Kosovar voters residing outside the province. IOM and UNMIK signed a Memorandum of Understanding (MoU), detailing the respective rights and obligations of each party in October 1999. The role of each organization was understood as follows: UNMIK/OSCE Joint Registration Task Force (JRT)³⁸⁰ would establish the rules, regulations, policies, and guidelines under which the registration process would operate while the IOM would be responsible for the project implementation by operationally organizing and managing the Out of Kosovo Registration (OKR) in its entirety (i.e. wherever Kosovars resided outside the province proper).

Following the registration process and the dissolution of the JRT, IOM signed a second MoU with the OSCE to implement the out-of Kosovo voting program (OKV). Under the terms of this MoU, IOM assumed responsibility for organizing the refugee by-mail and in-person balloting based upon the voter's registers compiled during registration. The IOM also implemented an out-of Kosovo Claims, Additions, and Challenges (OKCAC) program whereby Kosovars residing abroad could verify and correct their registration details prior to balloting. An operational description of IOM's activities in this regard is provided below.

Voter Registration for IDPs Inside Kosovo: Eligibility and Documentation Requirements

Eligibility

The Provisional Voter's List (PVL) for non-refugee voters was extracted from the civil register created by the JRT. In order to be eligible for civil registration, Kosovars had to prove that they were "habitual" residents of Kosovo and over 16 years of age. UNMIK determined that the eligibility requirements would include:

- Persons born in Kosovo or who have at least one parent born in Kosovo;
- Persons who can prove that they have resided in Kosovo for at least a continuous period of five years;
- Such other persons who, in the opinion of the Civil Registrar, were forced to leave Kosovo and for that reason were unable to meet the residency requirement in paragraph (b) of this section; or
- Otherwise ineligible dependent children of persons registered pursuant to subparagraphs (a), (b) and/or (c) of this section, such children being under the age of 18 years, or under the age of 23 years but proved to be in full-time attendance at a recognized educational institution.³⁸¹

In order to be added to the PVL, applicants had to prove all of the above plus: A) be 18 years of age by polling day; and, B) prove residence in a municipality in Kosovo on January 1, 1998.³⁸²

varying estimates of how many people had either lost their identification documents or had them confiscated."

http://www.aeobih.com.ba/teslic_conf9.htm

³⁷⁹ The IOM referred to these programs by these monikers. Inside the OSCE, the program was referred to as Out of Kosovo Voting (OOK).

³⁸⁰ According to SC Resolution 1244, UNMIK has the overall responsibility for administering Kosovo pending a decision on the final status of the province. The OSCE forms one of three pillars in the UNMIK structure, specifically tasked with institution building. In 2000, OSCE and UNMIK jointly operated the registration program through the JRT, as inside Kosovo, this program was linked to Civil Registration. Following registration, however, the OSCE took over the elections process in its entirety.

³⁸¹ UNMIK/REG/2000/13, "On The Central Civil Registry" 17 March 2000. Available at:

<http://www.un.org/peace/kosovo/pages/regulations/reg013.html> UNMIK further established a list of 43 documents which could be considered as evidentiary proof that an applicant met one of the criteria.

³⁸² This later requirement could be proved through submission of a wide variety of documents issued between January 1, 1996 and January 1, 1999.

This latter requirement generated significant controversy. According to the International Crisis Group (ICG):

One effect of this is that Serbs who fled Kosovo as a result of Albanian revenge attacks or for any other reason after the 1999 war can vote. But the several hundred thousand Albanians who left Kosovo during the 1990s because of the political, economic, and police repression of the Serb Regime cannot vote. International officials in charge of the registration believe that the poor state of record-keeping in Kosovo would have made it almost impossible for those who departed before 1998 to establish proof of residency in a particular municipality, which is needed to register for the municipal elections. The practical electoral result of this rule is probably limited – it will not materially affect the overwhelming Albanian ethnic preponderance in Kosovo, and as of this writing [July 2000] few Serb refugees will vote anyway. Albanians nevertheless regard this rule as a substantial injustice.³⁸³

The CEC responded to these complaints by adding an additional category of eligible voters – those that could prove they had achieved “convention status” as a refugee on or after 1 January 1995. In the end, however, relatively few Kosovar refugees used this new criterion as a basis for registration.³⁸⁴ However, the eligibility rules could not be further expanded without opening the election to participation by a significant Kosovar Diaspora.

The registration process initially sought to include refugees and those displaced outside the province in both the civil and voting registers. The complex and labor intensive requirements of civil registration (which included “bio-data” capture of each applicants photograph and fingerprint), however, was logistically and financially impossible to implement on a global scale. UNMIK thus decided to only provide voter registration services to refugees.³⁸⁵ These refugees would be eligible to be added to the civil register upon repatriation to one of Kosovo’s 30 municipalities. Although technically IDPs, Serbs displaced from Kosovo to Serbia or Montenegro were also ineligible for civil registration unless they returned to their home municipality in Kosovo.

IDPs inside the province, on the other hand, could be added to either the civil register in their current municipality or in their home municipality. In the latter case, JRT registration centers forwarded their data to Pristina, where they were added to the civil register in their home province. As in Bosnia and Herzegovina, IDPs were also provided the option of casting a ballot for either their current municipality or their original municipality. In a pre-election assessment conducted in July of 2000, the ICG commented on this rule:

IDPs in Kosovo have been allowed the option of registering to vote in the municipality where they lived before the war or where they now reside. There are strong arguments in favor of allowing IDPs to choose to vote in the municipality where they now live if they wish. Most IDPs were forced to move either for security reasons or because their property was damaged during the war or its aftermath. In many cases they do not even intend to return to their original location, especially when they would be returning to a location where they would be an ethnic minority.

On the other hand, the current rule on IDP voting also has the potential to help cement in place the population transfers and territorial divisions between Albanians and Serbs in Kosovo that have emerged in Kosovo since the end of the 1999 war ... Allowing IDPs in these circumstances to vote where they now live has the effect of institutionalizing the results of ethnic cleansing.

³⁸³ ICG Balkans Report No. 97, 6.

³⁸⁴ Of the roughly 180,000 applications for voter registration received by IOM, only 3764 came from persons requesting registration under the convention status provisions.

³⁸⁵ IOM’s final report on the registration process noted that many Kosovar refugees were primarily interested in the civil registration and lost interest in registering to vote upon discovering that they could not be entered on the municipal registers.

Allowing IDPs to vote away from their original homes also offers great opportunities for fraud and manipulation. IDPs usually represent the weakest part of the society. They often depend on institutions that are controlled by political parties or other interest groups for housing, food, and other aid. IDPs, therefore, can easily become subject to political pressure to influence their voting. Under this scenario political parties which controlled the votes and behavior of IDPs could direct them to register to vote in municipalities where their votes were most needed to advance the parties election prospects. Senior officials involved in the process of registration and voting believe that IDP voting offers the largest potential for fraud in the current election process, and acknowledge that their ability to protect or thwart it is limited.³⁸⁶

This observation raises a number of important issues related to conflict forced migrant voting in any election. At first glance, the idea that IDPs should be prevented from voting for candidates in their current municipality appears to make sense. One of the major goals of including these populations is to ensure that they are able to make a claim on political process of their home area and thus use the ballot box to de-legitimize the actions of those who use ethnic cleansing or forced displacement as a strategic tool. On the other hand, by restricting the IDP's right to choose where their ballot is cast, election management bodies effectively make a status determination for the population. In some cases, the displaced simply do not ever intend to return to their home community or must wait many years before security conditions have reached an acceptable level for repatriation. Yet in their new community, the IDP may be under-represented in the decision-making process. Displaced persons face unique circumstances and requirements in terms of social service provision. Denying IDP populations the opportunity to have their interests represented in their current residence perpetuates their disenfranchisement from the democratic process.

Second, the idea that displaced voters are "subject" populations and thus susceptible to political manipulation or intimidation is an important concern. Nevertheless, careful attention to the procedural requirements of free and fair elections, as outlined in the "Issues, Standards, and Best Practices" component of this report, can help mitigate the chances that IDP voting is used to fraudulent ends. The case of Bosnia and Herzegovina is instructive in this regard. Clearly the IDP and refugee vote was manipulated in BiH, resulting in the postponement of the municipal elections until 1997. Even with the enhanced procedures and advanced registration process undertaken by OSCE Mission in BiH in 1997, manipulation of the IDP vote persisted.

By the fall of 2000, however, international officials working at the JRT (many of whom had been involved in the BiH Elections) had become adept at conducting absentee voting programs for IDPs that minimized the potential for fraud. The strict documentation requirements, combined with the sophisticated methods used to verify applicants for registration who lacked documentation (further described below) would have headed off wide-scale abuses of the absentee vote. Furthermore, the political dynamics at work in Kosovo were fundamentally different from BiH. The potential Kosovar electorate was roughly 80 – 85% ethnic Albanian and this population was clearly going to win control of the majority of municipalities. Reinforcing this dynamic, the almost complete Serb boycott of the process meant that political parties and actors were not competing to solidify ethnically-based control over territory. As a consequence, the primary political divisions were intra-ethnic, not inter-ethnic.

Aside from the political issues, absentee registration and voting also generated logistical problems. In terms of who could cast a ballot where, the following options emerged: Refugees (primarily ethnic Albanians) and those displaced from Kosovo into Serbia and Montenegro (primarily ethnic Serbs and Roma) could cast a ballot for their home municipality only, no "Future

³⁸⁶ ICG, Balkans Report No. 97, 7, 8. These concerns are largely based upon the experience of IDP and refugee voting in Bosnia and Herzegovina. See the PEP Case Study on Bosnia, as well as the Standards Paper for further discussion of these issues.

Municipality” option was provided; IDPs could cast ballots either for their current municipality or for their home municipality. In either case, the OSCE had to provide the appropriate ballot to the correct voter in their current place of residence and arrange for that vote to be counted in the home municipality.³⁸⁷

Documentation Issues

The main purpose of the Civil Registration process was to compensate for the fact that no reliable census had been completed in Kosovo since the early 1980s. The 1991 Yugoslav-wide census (used as a basis for the BiH elections) had been widely boycotted by Kosovar Albanians, municipal records had either been destroyed or removed to Serbia, and at least 10% of the in-Kosovo population possessed no identity documents whatsoever -- having lost or been stripped of them during the war. Civil registration was therefore designed to produce a comprehensive account of Kosovo’s population and provide an opportunity for those without documentation to acquire new proof of identity.³⁸⁸

Given the number of different categories of eligibility, determining which documents satisfied which criteria proved difficult. The following table outlines the eligibility criteria for electoral registration and gives examples of appropriate documentation requirements (note that the same document could often prove multiple categories of eligibility, especially state issued documents such as passports, national identity cards, and birth certificates):

Documentation requirements for entry on the PVL

Eligibility Criteria	Requirement	Examples (Not inclusive)
Identity	Photocopy of official Identification document with photograph.	FRY or foreign passport, official identification card, official refugee documentation, driver's license etc.
Age	Photocopy of an official document that shows date of birth. No picture necessary.	FRY or foreign passport, official identification card, birth certificate, educational booklet, health card, military document, club or association membership card etc.
Residency in Kosovo on 1 January 1998 OR	Photocopy of an official document issued in Kosovo at any time between 1 January 1996 and 1 January 1999.	Health booklet, educational booklet or utility bills sent to home address, any other document with address and date, or official refugee documents stating date of departure from Kosovo or arrival into host country
Convention Status Refugee	Proof of Convention Status	UNHCR issued ID or official document from host country confirming status
AND One of the Following		
1) Born in Kosovo	Official document indicating place of birth	Passport or state issued identification card showing place of birth, birth certificate, educational booklet, health card, military documents
2) Parent Born in Kosovo	Document proving parent born in Kosovo	Official document indicating relationship to parent
3) Lived in Kosovo Five Continuous Years	Two or more official documents issued in Kosovo that include dates and, if possible, address	Utility bills, etc.
4) Forced out and therefore unable to meet the five continuous years option	Evidence of being forced out of Kosovo	Official refugee documents combined with document issued in Kosovo indicating dates and address
5) Dependant Child under 18 during registration but reaching 18 by election or student at recognized educational institution and parent is on the civil register	Official document showing proof that parent is on civil register AND official document proving relationship to parent AND (if at a recognized educational institution) official document proving enrollment.	Parent's Registration document, passport, state identification documents, birth certificate, student identification card

³⁸⁷ No statistics are available on how many Kosovo IDPs chose to vote by absentee ballot for their home municipality.

³⁸⁸ As noted below, however, UNMIK made an early determination not to conduct civil registration for those displaced outside of the province. Thus, the following discussion relates primarily to IDPs and regular voters registering within Kosovo.

The process for re-establishing official identity proved far more difficult than planners had initially envisaged. According to a report by the Norwegian Institute of Human Rights:

The main challenge faced by the JRT, in the attempt to register the estimated 950,000 eligible voters in Kosovo, was the widespread lack of identification papers. More than 80,000 applicants could not prove any or not sufficient [sic] documentary evidence with respect to identity, civil eligibility and/or voter eligibility. These cases had to go through a review procedure, which involved searching for further documentation at the Municipal Record Centre. If a review case could not be confirmed by searching for documents, the case had to be sent to inquiry. The inquiry process consisted of gathering non-documentary evidence by field investigations. Seeing that more than 60,000 cases was [sic] sent to inquiry [ed. In the end, 92,000], the JRT realized that it would not be possible to investigate all cases and decided to use a methodology based on (random) samples. This meant, in brief, to investigate only part of the caseload (about 10%), make profiles relating to a specific group in specific municipalities according to low and high threat of fraud, and then approve of all cases (profiles/groups) where no example of fraud have been identified through investigations.³⁸⁹

The first step for applicants lacking any documentary proof of their identity or eligibility was the review process. Applicants filled in a detailed questionnaire regarding their claim to eligibility which was forwarded to one of the 30 Municipal Records Offices (MROs), where OSCE staff searched for evidence verifying the claim by searching through available records such as application forms for FRY ID cards, driving licenses, and passports. According to the Council of Europe Monitoring Mission, “[t]he success of this process depends on the existence of this documentation. In some regions such as for example Peja/Pec the results of the review process are very low. This is a consequence of the large number of destroyed documents and records.”³⁹⁰

Since the review process was only able to approve 20% of the individuals forwarded to it, the JRT established a second-level “inquiry” division inside the election headquarters.³⁹¹ This division was initially designed as an anti-fraud tool, to conduct random sampling of civil registrants and ensure that document fraud would be identified. As the case-load of undocumented registrants grew, however, the division became the primary mechanism through which applicants that could not be identified through the review procedure would be provided one final opportunity to have their status verified. The division initially projected a caseload of 25,000 persons, but ultimately processed nearly 92,000 cases.

Given the time, personnel, and logistical constraints, the inquiry division adopted a sampling system in order to process the caseload. The process unfolded as follows:³⁹²

Step 1 – Sorting and Evaluation	Cases sorted to determine the characteristics of the applicant pool.
Step 2 – Formulate Inquiry Concept	Caseload divided into seven groups based on gender, age, and the existence of supporting documentation at municipal registration centers. The groups were based upon certain assumptions of risk for fraud. Sample investigations determined whether the assumptions were correct. Cases were divided by:

³⁸⁹ Gramstad, “Kosovo Municipal Elections 2000.”

³⁹⁰ Council of Europe, “Council of Europe Election Mission Observation in Kosovo: First Report 18 August 2000,” available at:

[http://www.coe.int/T/E/Secretary_general/Documents/Information_documents/2000/SGInf\(2000\)26E.asp](http://www.coe.int/T/E/Secretary_general/Documents/Information_documents/2000/SGInf(2000)26E.asp)

³⁹¹ Much of this discussion is drawn from an unpublished OSCE document entitled, “OSCE Inquiry Division: Final Report,” issued in October 2000.

³⁹² Table adapted from OSCE Inquiry Division: Final Report,” p. 8, 9.

	<ol style="list-style-type: none"> 1) Females older than age 45 2) Males older than age 55 3) Females under age 20 4) Males under age 18 5) Females age 20-45 6) Males age 18-35 7) Males age 35-55
Step 3 – Identification of Fraud “Hotspots”	Based upon factors such as proximity to a border/boundary, identified fraud, incidents of political intimidation, ethnic population shifts and other variables, the number of sample investigations would be adjusted by municipality. Areas with a high risk for fraud required more investigations. Areas with a low threat for fraud required fewer investigations.
Step 4 – Sample Investigations	Sample investigations performed in all municipalities. Sample size gauged by the risk of fraud associated within a municipality or with one of the sub-groups groups.
Step 5 – Validation of Profiles	Based upon the results of the sample investigations, a group profile would be validated. For instance, if little or no denials turned up for women over 45 years of age in Prizren, then the Inquiry Division would be able to recommend approval of all women fitting that description without further investigation because of the low risk for registration fraud. A sample would, therefore, be used to approve a group with similar characteristics in a specific municipality.
Step 6 – Profile Approved Cases	Once approved, the JRT issued an approval letter to the applicant. A database was designed to enter approved applicants into the civil and voters’ registers.
Step 7 – Denials	Cases found not eligible for civil and/or voters’ registration would be denied only through investigation. If denials occurred in one group, more investigations were performed to determine the extent of the problem. In some instances, a gender/age grouping may be broken down further, possibly into registration sites, in order to identify where a problem exists.

This mechanism proved to be an extremely efficient means of ensuring that applicants without proper identification could be registered while minimizing fraud. Of the 92,000 cases submitted to the inquiry division, only 347 were rejected for registration. According to the final report of the inquiry division: “An evaluation of the inquiry cases revealed roughly 70 percent of the inquiry cases were for women and most of those cases were for young women who, for many reasons, would not have obtained documents. In other words, most applicants were not in the caseload because of fraud; they were there because they legitimately had insufficient documentation.”³⁹³

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

Technical Aspects of the Registration and Voting Outside of Kosovo³⁹⁴

As in BiH, persons displaced from Kosovo came under a completely separate institutional structure managed by the IOM. Under the terms of its contracts with first JRT (for registration) and then OSCE (for claims and balloting), IOM was tasked with the voter registration and polling

³⁹³ “OSCE Inquiry Division: Final Report,” p. 3

³⁹⁴ Note: Much of the following discussion is based on a 2001 study conducted by the author examining IOM’s effectiveness in managing the 2000 out-of-Kosovo program entitled: “Evaluation of External Voting Programmes: An Analysis of IOM’s Role in Kosovo.” This report is available upon request from the Operations Evaluation Department at IOM – Geneva.

operations for all Kosovars outside the province. In-person registration and polling was conducted in Macedonia, Albania, and Montenegro,³⁹⁵ where eligible Kosovars could register at an internationally supervised³⁹⁶ registration center operated by the IOM in conjunction with host-government counterparts. By-mail registration was conducted for Kosovars residing everywhere else in the world, requiring a centralized postal operation in Vienna and the distribution of registration materials and information to Kosovars in 33 different countries.

IOM began making preparations in the fall of 1999 and had opened offices in Vienna and Pristina by January 2000. Operationally, the OKR and OKV closely mirrored previous “Out-of-Country Voting” (OCV) programs in BiH. Project direction and the by-mail registration was carried out in Vienna, and regional offices were established in the in-person countries of Albania and Macedonia, as well as in the Yugoslav Republic of Montenegro. IOM also opened a Liaison Office inside the OSCE/JRT elections building in Pristina to coordinate the work of IOM and JRT and ensure good cooperation and communication between the organizations. IOM’s country missions generated refugee information and supported field operations.

By-Mail Procedures and Issues

IOM made registration application forms and instructions for their completion available through a variety of sources, most importantly, through Kosovar clubs and associations, full-page newspaper cutouts, and through the OKR Internet site. Kosovars were required to fill in this form and submit supporting documentation to the mail-in center in Vienna. The forms were carefully designed to ensure clear, simple instructions on the registration requirements and the capture of all necessary data.

Incoming applications to the Vienna CO were first security screened by the Austrian police, and then opened by OKR staff, who evaluated and tagged the forms to indicate eligibility and supporting documentation. Following the initial assessment they were passed on to a document control officer, who confirmed the original assessment and, if the applicant met the eligibility criteria and provided proper supporting documentation, the officer assigned registration numbers to the applicant. The completed application form was then detached from the supporting documentation and scanned. Scanned registration forms were turned over to the JRT for entry into the voter’s register database.

Applications with none of the required supporting documentation were archived separately and a response was sent to the applicant explaining the additional steps necessary to register and/or appeal. Applications that contained some, but not all, required documentation were subject to a “review” procedure, in which IOM searched for the applicant on a “Kosovo Consolidated Database,”³⁹⁷ and, if found, was registered normally. Ultimately, nearly 107,000 applications underwent the review procedures. Finally, applicants could lodge an appeal against the IOM’s determination with the OSCE Election Complaints and Appeals Commission (ECAC) in Pristina. These appeals were forwarded to OSCE field offices where staff attempted to verify the applicant’s eligibility. As opposed to in-Kosovo registrants, the verification process was not made available to by-mail registrants.

Ultimately, 179,000 persons applied for registration via OKR by-mail program. Of these:

- 16,000 were immediately accepted;

³⁹⁵ Ultimately, the FRY government refused to participate in the process due to a Serb and Roma Kosovar boycott of the registration, so no registration took place in Serbia. IOM did, however, ultimately operate registration centers in FRY Republic of Montenegro, where the government supported the process. The effects that IOM operations in Montenegro had on its relationship with officials in Belgrade is further discussed below.

³⁹⁶ The International Supervisors were sponsored and paid by UNMIK/JRT during registration and recruited by the United Nations Volunteers. Elections observers were recruited and paid for by OSCE.

³⁹⁷ This review database contained detailed records from Kosovo telephone, electric and utility companies. Unfortunately, the majority of names in the database were generally the male head of household, and thus its utility was limited.

- 55,000 were immediately rejected as they either contained no identification documents or were otherwise ineligible to participate in the elections (underage, did not meet eligibility criteria, resided within Kosovo and thus needed to register inside Kosovo, or application unreadable);
- 106,000 were reviewed in the Kosovo Consolidated Database. Of these:
 - 69,000 rejected and instructed to provide further documentation;
 - 13,000 accepted following the review process;
- 7,000 applications were accepted by IOM during the appeals period (mostly those that responded to the initial rejection letter and provided further documentary proof, but after the registration closed);
- 1,700 applications of the 5,300 appeals submitted to the ECAC were further approved.³⁹⁸

The reasons for such a high percentage of rejected and review cases included: 1) The actions of FRY authorities who removed and destroyed documents of the Kosovars when they were forced out of the province during the NATO bombing; 2) The large Kosovar Albanian Diaspora, many of whom had left the province far in advance of the cut-off date to establish residency, who nonetheless, attempted to register to vote; 3) Time constraints related to the information campaign (discussed below); and 4) The fact that by-mail registrants were not eligible for the in-Kosovo inquiry procedure. The corresponding rate of successful applications was lower than in any other IOM administered by-mail voting program. In the BiH elections, the percentage of successful registrants to applicants averaged around 80%, yet this population had also faced systematic attempts to strip them of documentation and contained a large Diaspora that did not meet the criteria for registration.

Nevertheless, by early September, OKR had established a workable by-mail voter's register of 37,000 Kosovars.³⁹⁹ Following the registration, the Vienna CO continued to work on issues related to late receipt of registration forms, the receipt of materials from applicants who had applied in time, but had to be notified of the need for better documentation, and the shipping of appeals forms and responses between the applicant, the Vienna CO, the ECAC in Pristina, and back to the applicant. A final deadline for these cases was established for 7 September, the latest date possible to allow timely preparation and dispatch of registration receipts and ballot packs.

A bulk-mail firm in Germany was contracted to organize and send the by-mail ballot packs to individual voters. 37,000 individual ballot packs were mailed to voters, the majority from the contractor's facility in Germany, and a few more directly from the Vienna CO in response to last-minute returns of approved appeals from the ECAC. The mail-out occurred from September 21 to 25.

Upon receipt of the ballot kit, the voter was required to mark the ballot according to the provided instructions, seal it in a security envelope, and return it, along with the voter's registration receipt inside a second envelope, to the Vienna CO by October 27. The Vienna CO opened the outer envelope to ensure inclusion of the registration receipt, and forwarded all acceptable ballots (still in the security envelope) to Pristina for counting. 27,000 ballots were received by the Vienna CO, of which 21,000 were deemed acceptable and forwarded to Pristina. Ballots returned without the supporting registration receipt were immediately rejected. Additional returned ballots were rejected when OSCE discovered that the layout on the Prizren municipality ballots made it difficult for one party to receive any votes. IOM mailed out new ballots to these voters.

In-person Procedures

For the in-person registration and voting, country Regional Offices (ROs) were established in Albania, Macedonia and Montenegro. The ROs maintained the relationship with government partners, coordinated the operational components of the registration and polling sites, and oversaw the information campaign in each country. The ROs ensured that the registration and

³⁹⁸ IOM, Out-of-Kosovo Registration: Final Report." Unpublished document, August 2000.

³⁹⁹ IOM, Out-of-Kosovo Election: Final Report." Unpublished document, October 2000.

polling stations were fully equipped to carry out their work and that governments met their obligations under the terms of the MoU. While the government counterparts provided the facilities and staff, each center operated under the overall guidance and supervision of an international supervisor, provided and paid for by OSCE or JRT through the United Nations Volunteers program (UNV). Each supervisor was tasked with ensuring that the process followed the rules and regulations established by the CEC.

A schedule of registration locations and centers was devised by IOM with the goal of reaching the maximum number of possible participants. Intensive information campaigns disseminated information about the rules and regulations, procedures, and registration locations and dates. A combination of fixed and mobile stations ensured the widest possible geographic coverage while realizing cost savings by not deploying resources to areas where only a few Kosovars resided. Nevertheless, due to the high level of returns to Kosovo from these countries, only 1,100 people registered as part of the in-person program.

Information Campaign

The information campaign for the 2000 OKR and OKV programs was sophisticated and worthy of detailed examination, as it provides a best-practice example of how to conduct out-of-country voting operations. IOM drew upon its field offices, staff, and pre-existing relationships with refugee and IDP clubs and associations to disseminate information to a targeted and highly interested, audience. Ultimately, the information campaign must be judged a success, as over 90% of the estimated Out-of-Kosovo electorate (excluding Serbia) filed applications to register.

The dynamic nature of the refugee situation made it difficult to determine the numbers and location of potential registrants. Eventually, following substantial input from IOM missions, as well as other governmental and non-governmental organizations, the program arrived at an estimate of 200,000 potential Kosovar voters outside of FRY, and up to 100,000 inside Serbia and Montenegro. The majority of this population resided in Western Europe, with the largest numbers concentrated in Germany, the United Kingdom, France, Belgium, and Switzerland. A large number of potential registrants were also identified in BiH.

Working in close cooperation with the OSCE Media Affairs department in Pristina and the IOM Policy Guidance and Media Division, the IC produced print, audio, and video information material, as well as distributed registration forms to Kosovars. The primary information outlets included:

- *Albanian Language Newspapers: Koha Ditore and Bota Sot* both published information furnished by IOM on the registration and voting process. In addition, *Koha Ditore* published a cutout insert of the actual registration form that applicants could send directly to Vienna;
- *Radio and Television:* The satellite television station RTK (Radio Television Kosovo), broadcasting several hours per week in Western Europe, ran advertisements publicizing the registration and voting procedures, guidelines, and dates. It also broadcast video footage for news stories on the election;
- *Internet:* The OSCE Secretariat in Vienna hosted an external voting Internet sight, which contained information on eligibility, as well as a downloadable registration form. The site was visited over 2,300 times during registration and the registration form was downloaded 550 times;
- *Kosovar Clubs and Associations:* A database of over 2,000 Kosovar clubs and associations was produced early in the campaign. These clubs served as information “multipliers” in that the IOM would forward information and materials to the clubs, who would in turn, pass them on through their existing networks of connections and members. This proved the single-most important source of information distribution.

- *Posters:* These were disseminated to the government contacts, international organizations, and the Kosovar Associations;
- *Telephone and Fax:* IOM operated a centralized telephone “hotline” system in Vienna staffed with both Albanian and Serbian speakers. The hotline responded to over 32,000 calls requesting information, inquiring about the procedures, and checking the status of registrations and ballots.

Country Information Offices

Under the terms of the MoUs, each host state government was responsible for managing -- in consultation with IOM -- a national information campaign. In general, host-governments maintain extensive networks and contacts with the refugee populations under their protection. They also have the capacity to negotiate less expensive rates with local media outlets and a better knowledge of the geographic dispersion of the target audience. However, IOM monitored the information campaigns to ensure accuracy. For the most part, the management of official information campaigns worked well, with a few rough spots related to occasional inaccurate information or differing interpretations of the government obligations and financing of the campaign. All reports indicate that the governments were enthusiastic and capable partners in this process.

In Albania, the Office of Refugees, in consultation with the IOM Regional Coordinator, was responsible for the information campaign. Advertisements were broadcast on radio and television and posters were placed in the Office of Refugees offices and at refugee camps. Posters were also placed in public buildings where Kosovo refugees were known to be residing. In Montenegro, the information campaign was coordinated by the Commissioner for Refugees and the IOM-OKR supervisors. Local radio, local TV, newspapers, interviews on radio and TV stations also made announcements. Posters were distributed in important places visited by the IDPs in all localities. In Macedonia, primary responsibility for the information campaign was delegated to the Ministry of Justice, in consultation with the IOM Regional Coordinator. The IOM prepared all advertising for the Ministry's approval. A campaign was organized on both radio and television and posters were strategically placed in public buildings where Kosovo refugees were known to be residing.⁴⁰⁰

Major OKR/OKV Issues

Timelines and Operational Plans

The OKR/OKV programs were global in scope, requiring sufficient time for the dissemination of information, the distribution and return of registration forms, the mailing of notifications regarding the status of the applicant's registration, time to verify and appeal decisions, the mailing of registration receipts, and the mailing and return of ballots. The movement of these materials from the supplier to the election administrator and on to the field takes longer and is logistically more complex than in-country balloting. Thus, the success of the operation depended on decisions being taken early in order to allow for the complex movements of materials and persons.

Unfortunately, the OKR/OKV programs suffered from fierce debate in the CEC that delayed the promulgation of electoral rules, the definition of eligibility criteria, and the mechanics of how voter data will be entered into a database and ultimately into a comprehensive voter's register. The first two issues were political, the last operational. At the political level, ongoing debates between OSCE staff, the CEC, and the major political actors in Kosovo resulted in the delay of many key decisions. Eligibility criteria, for example, were only finalized the day prior to the start of the registration process, making it difficult for IOM to ensure that forms were designed appropriately

⁴⁰⁰ In the lead up to the election, refugees at a refugee collective center threatened a possible boycott if candidate information was not provided. In consultation with election administrators in Pristina, it was decided that a copy of the list of candidates would be provided to the collective centers to eliminate any possibility of a boycott.

and nearly impossible to provide accurate information to potential voters for several weeks into the registration period.

Operationally, a number of issues were also late in being addressed during the OKR program. The most important decisions had to do with the management of information technology and the design of the forms to be used by registrants. In both cases, IOM pushed JRT to take decisions quickly in order to facilitate the program. IOM submitted detailed operational plans and suggested registration forms and information materials to JRT well before registration commenced. The design of the forms, however, was approved only days before registration. Furthermore, the registration dates were approved only one week before the registration began, and then extended mid-way through the process. JRT continued to modify and change approved documents and procedures well into the process. Most notably, FRY passports were initially approved as a document proving birth in Kosovo. However, this rule was modified mid-way through registration to only apply to passports issued inside of FRY, and not at embassies or consulates abroad. The only available means for informing Kosovars of this change was via the telephone hotlines.

A major problem in the voting program emerged with the late development and approval of the procedural and training manuals, which, when they finally arrived the evening prior to the election, were only designed for the in-country process. Additional timeline problems emerged during the by-mail process when the OSCE informed the IOM that voter-information artwork supplied by OSCE to IOM as part of the ballot kit was incorrect, making it difficult for candidates of one party listed on the Prizren ballot to receive any votes. A second mailing of ballot kits to the affected voters commenced immediately, with extended receive-by dates.

Host-government relations

Host-governments played a highly constructive role in providing registration services to Kosovars in Macedonia, Albania, and Montenegro.⁴⁰¹ However, by the time registration commenced, the majority of these Kosovars had returned home, and the workload was relatively light. Furthermore, these governments did not have a strong political interest in the elections outcome, and as a result, did not approach the registration process as an exercise in securing their interests inside Kosovo.

Relations with the FRY government proved significantly less smooth. The inclusion of Serbs in the electoral process remained a primary concern for UNMIK/JRT. However, as the government of Yugoslavia considered the organization of elections inside Kosovo counter to the spirit and wording of Security Council Resolution 1244, it immediately and unconditionally refused to cooperate with the program. The Serbian boycott was almost total, both inside and outside of Kosovo.

Even before IOM approached the Yugoslav authorities to inquire as to the establishment of OKR operations in Serbia, the Chief of Mission of IOM in Belgrade received a sharply worded letter from the FRY Federal Ministry of Foreign Affairs stating that since the registration and elections were illegal (according to FRY authorities), the FRY government was surprised that IOM had signed an MoU with UNMIK. Furthermore, this MoU was in contravention of other agreements between the IOM and FRY by which the IOM had legal authority to operate in the country. The letter stated that IOM had no legal authority to implement this project, either in FRY, or even in Kosovo proper, which is legally a part of FRY.⁴⁰²

This put the IOM in an awkward position, one which could have potentially impacted its ability to carry out regular operations and other projects in FRY, where it was assisting over 500,000 Serb IDPs and refugees. The Chief of Mission at IOM Belgrade asked the G-8 Working Group in Kosovo to approach the FRY authorities to explain IOM's position and seek a solution. Accordingly, a delegation led by the Japanese Ambassador, and including representatives from

⁴⁰¹ IOM, "Out of Kosovo Election: Final Report," Unpublished Document, October 2000

⁴⁰² Conversation between author and IOM staff, June 2001.

the embassies of Italy, the Russian Federation, and Canada met with the foreign ministry to explain IOM's role in organizing elections and to request FRY cooperation in the program. While the FRY position remained unchanged and registration was never undertaken in Serbia, the meetings did somewhat normalize relations and ensure that OKR did not impact IOM's other work inside Yugoslavia. Nevertheless, no agreement to conduct registration inside Serbia was ever signed, and a potential 150,000 Kosovar Serb voters were effectively disenfranchised.

Contrary to the position of FRY authorities, the government of Montenegro was highly interested in participating. This created a problematic political position for the IOM: On the one hand, the international community expressed strong support for moves on the part of Montenegro to distance itself from the Milosevic regime in Belgrade; On the other, Montenegro is recognized under international law as forming a republic of the FRY, and to operate in their territory, without permission from the FRY government, would have been in direct violation of FRY sovereignty as well as basic norms and customs of international relations. The IOM was initially reluctant to conduct registration in Montenegro, but under intense political pressure, it finally agreed to provide registration services under the cover of a "Joint Steering Committee," composed of UNMIK, OSCE, and IOM.

A MoU between the Steering Committee and the Montenegrin Commissariat for Displaced Persons and Refugees was signed establishing the regional coordination office and detailing the responsibilities of each organization. The government counterparts assumed responsibility for staff and facilities for the mobile and fixed registration centers, as well as an intensive information campaign. IOM provided all necessary registration materials and supported the work of the international supervisors. As with the other in-person countries, the turnout in Montenegro was very low. Ultimately, only 781 applicants registered successfully.

Information technology

The creation and maintenance of the voters register is a highly technical endeavor, requiring expertise and funding. It is also, unfortunately, a frequent source of problems, for three key reasons: First, conditions in a post-conflict environment such as Pristina are not conducive to high-tech operations, as infrastructure and communications can be poor or non-existent; Second, the IT operation must operate in a highly dynamic environment in which decisions are taken at the last minute and procedural changes are implemented in response to political imperatives; Finally, there is a tendency on the part of election administrators to request highly complex systems, which are far more prone to break down.

These factors were complicated by the fact that external registration placed several unique demands on the system. Data entered the system in a different format, and often considerably later than data captured in-country. In addition, OKR required unique fields for the mailing address of by-mail voters; a function not required in-Kosovo. Finally, in-Kosovo registration included civil registration criteria not relevant to the external registration. The OCV programs in BiH also faced recurring problems with the voter registers, and it appears many of the lessons learned from these operations were not applied to the 2000 OKR program.

Early on, a decision was taken by UNMIK that the external registration process would differ from the procedures being followed by UNMIK/JRT inside Kosovo. Most importantly, external registrants would not be eligible to participate in the Civil Registry "bio-data" capturing procedure, in which every resident of Kosovo over the age of 16 would be listed on the municipal roles and issued an identification card. Conducting this process outside Kosovo would have required in-person operations in every country hosting Kosovars at a prohibitive cost. Instead, a decision was taken that the OKR program would concentrate solely on voter registration and Kosovars would only be able to register on the municipal roles upon returning to the province. This created some unique problems for integrating the OKR data into the main OSCE database.

During discussions of the MoU, IOM sought to maintain control over the creation and maintenance of the by-mail voter's register. From IOM's perspective, this control was necessary

given the complications involved in shipping data from the Vienna by-mail office to Pristina and back. The initial agreement reached with JRT called for an integrated data-processing office to be located in Bratislava, Slovakia, where the IOM could have played an active role in monitoring the database development. However, JRT subsequently decided to move the entire data-capture operation to Pristina, and contracted a firm in India to key-in data captured during registration. Thus, the Vienna CO contracted a local firm to scan application forms and shipped this data to the JRT in Pristina, which forwarded it to India. The initial plan called for this information to be quickly returned to IOM in order to generate letters to applicants who required more information and send out registration slips to successful registrants.

Unfortunately, this system broke down almost immediately. First, the IT requirements of the in-Kosovo operation overwhelmed the IT operation run by JRT in Pristina (which was barely able to manage the in-country database). Second, the contract negotiated between JRT and the data processing firm in India neglected to mention the OKR component and no database design or detail was provided in the contract. Thus, OKR did not receive any data back from JRT until well after the close of registration. Finally, once data did begin to return from India, IOM discovered an unacceptably high level of errors and omissions that significantly affected its ability to conduct by-mail voting operations. Ultimately, the Vienna CO assumed control over the database and managed it in-house in Vienna, based upon the data finally returned from India in mid-August. The Vienna CO was forced to recover and reconfigure the data, create its own internal database, hire programmers, and obtain hardware in order to meet the timelines necessary to achieve the mail-out of registration receipts and ballots.

Information Campaign Issues

Late decisions regarding rules, regulations and eligibility criteria proved the single most important problem that the Out-of-Kosovo information program confronted. The original operational plan called for an intensive information campaign to begin one month prior to the start of registration. However, as the JRT did not approve the eligibility criteria until one day before the beginning of registration, the Vienna CO did not begin receiving substantial numbers of registration application until the 7th week of the process. This caused considerable discussions between the OSCE and IOM regarding why figures were so low. A related issue emerged as rules and regulations were changed mid-way through the process, which forced the program to adapt its materials and attempt to clarify issues with individual voters and registrants on an *ad hoc* basis.

A second major issue stemmed from confusing and contradictory messages put out by the various media outlets related to the registration program. Registration in Kosovo included the "Civil Register" component, which had different eligibility criteria and benefits than those required for the external voter registration. However, both operations were publicized via the same media outlets, which inevitably confused potential registrants. An RTK TV spot promoting registration, for example, highlighted images of children, resulting in an immediate surge in underage applications in the Vienna by-mail center. In another case, an IOM-OKR TV spot on RTK was followed by TV spots promoting the Civil Registration in Kosovo. It was not possible to separate the messages because the RTK program lasted only two hours per day.⁴⁰³

A further (relatively minor) problem emerged in the relationship between IOM and the Kosovar Clubs and Associations that served as transmission belts for information to individual Kosovars. While the overall performance and cooperation of these groups was excellent, in a few cases they sought to assume roles in the process that went significantly beyond what was intended. Most notably, one club in Switzerland sought to actually operate registration centers and demanded that IOM pay for the provision space and staff. When IOM refused, the club reluctantly backed down. In Germany, a club distributed and collected registration forms from applicants, and then demanded that IOM pay for its services and the shipping of forms to the Vienna CO. IOM again refused, informing the club's representatives that if they wanted these applicants registered, they would be responsible for delivering the materials.

⁴⁰³ IOM, "Out of Kosovo Election: Final Report." Vienna, October 2000.

Conclusion

Many of the lessons learned in BiH were subsequently applied to the 2000 Kosovo Municipal elections. While the political dynamic in the province was fundamentally different, thus making comparisons difficult, it appears that significant improvements were made by OSCE staff that resulted in less potential for abusing the absentee vote.

Kosovo held elections for a Province-wide national assembly in 2001, and conducted a second round of Municipal elections in 2002. As a result of the fall of the Milosevic Regime and dramatic political changes in FRY during the fall of 2000, Serbian opposition to the Kosovo elections has been toned down. The FRY governments took an active interest in the subsequent elections, and Serbs inside and outside the province have finally ended the boycott.

Acronyms

BiH	Bosnia and Herzegovina
CEC	Central Elections Commission
ECAC	Election Complaints and Appeals Commission
FRY	Federal Republic of Yugoslavia
ICG	International Crisis Group
IOM	International Organization for Migration
JRT	Joint Registration Task-Force
LTO	Long Term Observers Mission
MoU	Memorandum of Understanding
MRO	Municipal Records Office
NATO	North American Treaty Organization
OCV	Out-of-Country Voting
OKR	Out-of-Kosovo Registration
OKV	Out-of-Kosovo Voting
OKCAC	Out-of-Kosovo Claims, Additions and Challenges Program
OSCE	Organization for Security and Cooperation in Europe
PVL	Provisional Voters List
RO	Regional Office
RTK	Radio Television Kosovo
SRSG	Special Representative to the Secretary General
UNHCR	United Nations High Commissioner on Refugees
UNMIK	United Nations Interim Administrative Mission in Kosovo

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Case VIII: Liberia⁴⁰⁴

The 1997 Parliamentary and Presidential Elections

Introduction

The 1997 elections in Liberia proceeded and were validated with almost no refugee participation. This study highlights how the refusal of neighboring states to allow refugee voting, the complicated politics and logistical difficulties confronting the Liberian Elections Commission, and the inability of the international community to provide elections and repatriation information to Liberian refugees resulted in the disenfranchisement of close to 30% of the Liberian electorate.

Background: Nature of the conflict and peace settlement

In 1989, following ten years of the dictatorial and increasingly ethnically based rule of president Samuel Doe, a small rebel force (The National Patriotic Front of Liberia – NPFL) led by Charles Taylor entered Liberia from Cote D'Ivoire. According to Adebajo (2002), “[t]he rebels rallied support from disaffected Nimba citizens, building an ethnic army as they marched towards Monrovia.”⁴⁰⁵ The fighting quickly spread as the NPFL gained strength and other insurgent groups mobilized. Despite repeated international attempts to negotiate a peace process and the presence of a peacekeeping force under the auspices of the Economic Community of Western African States (ECOWAS), by 1996 the NPFL and half a dozen splinter groups controlled most of the countryside.

It soon became apparent that the government and rebel groups were not primarily interested in democratizing the country or even ameliorating humanitarian issues. As one analysis notes: “...[T]he control and exploitation of the hinterland became a primary objective ... as war reaped economic benefits which in turn were necessary for perpetuating the war.”⁴⁰⁶ By 1996, the conflict had killed at least 150,000 people amidst fighting characterized by brutal atrocities and human rights abuses. In seven years of fighting from 1990 to 1997, one tenth of the population was killed, one third had fled and most of the rest had been displaced at one point or another.⁴⁰⁷ For all intents and purposes, Liberia by the early 1990s had ceased to function as a state.

Although not originally ethnic in nature, the conflict did intensify ethnic tensions in the country. The Krahn, constituting approximately 5% of the population and located in the coastal regions around Monrovia, were largely loyal to the Doe regime. Following a failed coup attempt in 1985, the Krahn-dominated military went on a rampage, pillaging wide swaths of territory and killing an estimated 3,000 people belonging to the Gio and Mano tribes. As the security situation deteriorated following Taylor's invasion, ethnic affiliations became an increasingly important source of security for much of the population.⁴⁰⁸

Repeated attempts on the part of ECOWAS, the Organization of African Unity (OAU), and UN mediators to negotiate a peace agreement failed. According to Adebajo, the failure stemmed from “the unwillingness of Taylor to share power; the mutual suspicion of rival warlords and their

⁴⁰⁴ This Case Study draws heavily on three papers prepared by the Refugee Policy Group in the lead-up to the Liberian Elections, footnoted below.

⁴⁰⁵ Adekeye Adebajo, “Liberia: A Banquet for Warlords,” *Building Peace in West Africa*, (Lynne Rienner Publishers: London, 2002), 46.

⁴⁰⁶ Klaas Van Walraven, “The Netherlands and Liberia: Dutch Policies and Interventions with Respect to the Liberian Civil War,” (November 1999), Conflict Policy Research Project, Netherlands Institute of International Relations “Clingendael.”

⁴⁰⁷ Terrence Lyons, “Peace and Elections in Liberia,” in *Postconflict Elections, Democratization & International Assistance*, Krishna Kumar, ed., (Lynne Rienner Publishers: London, 1998), 177.

⁴⁰⁸ *Ibid.*, 178; and Adebajo, 46.

fears of disarmament if others reneged on the deal; and significantly, the lucrative bounties from economic resources that were derived from areas under the warlords' control"⁴⁰⁹

Finally, in September 1995, the principal combatants signed the ECOWAS mediated Abuja Accords. The agreement called for a six member Council of State, consisting of the three civilian advisors and the leaders of the ruling factions. A cease-fire was agreed upon, however it was broken in April and a new round of negotiations took place. Only when the Abuja II Accords were signed in August 1996 did an uneasy cease-fire commence. The Accords called for elections to be monitored by ECOWAS through the creation of regional peacekeeping and monitoring force, Economic Community of Western African States Cease-fire Monitoring Group (ECOMOG), with limited technical support from the United Nations Observer Mission in Liberia (UNOMIL).⁴¹⁰ The agreement constituted a new experiment in "Chapter VIII" peacekeeping, where the United Nations took only a limited role, devolving responsibility to a regional peacekeeping operation under the auspices of ECOMOG. This approach most likely reflects the Security Council's reluctance to sanction missions to Africa in the wake of Somalia and Rwanda. While devolving responsibility to a regional organization allowed for the rapid introduction of an external stabilization force, the experiment was not problem free.

Patterns of Displacement in 1997

Refugees

"The bulk of refugee flow from Liberia during the seven-year war consisted of mass movements of ethnically cohesive groups that fled to areas of similar ethnic composition in the host countries"⁴¹¹ They were dispersed primarily to Guinea, Côte d'Ivoire, Sierra Leone and Ghana. The majority resided in the "zone d'accueil," which is a forest region in Guinea and in western Côte d'Ivoire.

At the time of the elections there were about 800,000 Liberian refugees and about 320,000 (40%) of them were of voting age, representing roughly 25% to 30% of eligible Liberian voters.⁴¹³

In Guinea, the UNHCR operated a network of refugee camps but most refugees integrated into communities along the Liberian-Guinea border.⁴¹⁴

Security conditions were poor and Guinean officials, concerned that rebel factions were posing as refugees, established numerous checkpoints along routes to safety. Refugee interviews described inappropriate searches and seizures, including manual vaginal checks, beatings, and rapes.⁴¹⁵ They also were forced to pay "taxes," to security checkpoint officers to reach safety. Upon reaching their destination, refugees were still subject to random searches and seizures.

Côte d'Ivoire offered a "temporary residency visa" to all Liberians that could be renewed every year for up to five years. After this time, refugees were allowed to apply for citizenship.

Liberian Refugees (end of 1996)⁴¹²

Location	Number
Guinea	400,000
Cote d'Ivoire	320,000
Ghana	15,000
Sierra Leone	15,000
Other locations (Including Nigeria)	5,000
<i>Total</i>	755,000

Estimated Voters 320,000

⁴⁰⁹ Adebajo, 60-62.

⁴¹⁰ Lyons, 180.

⁴¹¹ Ibid.

⁴¹² USCR, "World Refugee Survey 1997," (Washington, D.C.: Immigration and Refugee Services of America), 1997, 76.

⁴¹³ Ibid.

⁴¹⁴ Ibid.

⁴¹⁵ Human Rights Watch Report, 2002, <http://www.hrw.org/press/2002/11/guinea1125.htm>.

Nevertheless, USCR reports that many refugees lacked official status as refugees and were not issued identity cards.⁴¹⁶ Despite government efforts to integrate refugees, infrastructure and resource constraints at the local level generated tension between refugees and residents, often leading to resistance on the part of local authorities to implement protection and humanitarian projects.⁴¹⁷ Conditions in refugee camps and border towns were so unstable that they fueled spontaneous repatriation. Furthermore, incursions by Liberian militias into Cote D'Ivoire prompted large-scale movements and spontaneous repatriations throughout 1996.

Sierra Leone does not have any legislation pertaining to refugees, however it is a signatory of the Refugee Convention. All Liberians claiming refugee status were permitted to work, as well as exit the country and return with proper travel documents. They were officially confined to one refugee camp, but many were scattered throughout the country and were largely self-sufficient.⁴¹⁸

Ghana limited refugee movement across its borders and strove to concentrate those that did succeed in crossing into a single settlement camp. Long-term settlement was not offered to refugees.⁴¹⁹ Nigerian officials documented incoming refugees and either approved or denied them status.⁴²⁰

Returning Refugees

The RPG estimated that approximately 44,000 Liberian refugees returned to the country between the signing of Abuja II and the elections in June of 1997. These returnees could be divided into three main groups. Approximately 31,000 repopulated areas that had been completely abandoned (including significant portions of the districts of Salayea and Zorzor in upper Lofa and Gbarzon in Grand Gedeh), where they needed to rebuild their homes and communities almost from scratch.⁴²¹ Approximately 6,000 returned to towns that either never were never abandoned or had been repopulated by IDPs and other returnees in previous years (primarily the five districts of Nimba County, where ex-refugees represent only 2% of the population).⁴²² The final 8,000 returned to areas of Kolahun, Foya, and Guma Districts of upper Lofa and in Tcien and Konobo Districts of Grand Gedeh, where they became intermingled with IDPs and Sierra Leonean refugees, making their movements and resettlement patterns difficult to track.⁴²³

Internally Displaced Persons (IDPs)

As with refugees, IDP statistics and conditions are difficult to track due to the fact that few Liberian (displaced or not) possessed ID cards to begin with. However it is estimated that at least 1 million persons were displaced during the Liberian conflict.⁴²⁴ UNHCR reported that, "much of Liberia remained under-populated in early 1996 due to persistent insecurity..."⁴²⁵ Estimates suggest that close to half of this population fled to Monrovia and Buchannon, with the rest taking up residence in rural areas, often in the homes and farms of other Liberians that had left the country entirely.⁴²⁶ Many IDPs located in Monrovia and Buchanan stayed with friends or family, while others attempted to find refuge in camps for the displaced organized by ECOMOG and UNHCR.⁴²⁷

⁴¹⁶ Ibid., 78.

⁴¹⁷ UNHCR, *UNHCR Background Paper on Liberian Refugees and Asylum Seekers*, 1994, available from http://www.asylumlaw.org/docs/liberia/unhcr_bpas94_liberia.pdf.

⁴¹⁸ UNHCR, "UNHCR Background Paper on Liberian Refugees and Asylum Seekers," and RPG, "Participation of Refugees," (March 1997) 30.

⁴¹⁹ Ibid.

⁴²⁰ This status could be revoked at any time and such was subject to an appellate system. Ibid.

⁴²¹ Refugee Policy Group, "Field Report: Refugee Repatriation and Electoral Participation in Liberia," (June 1997) 3.

⁴²² Ibid.

⁴²³ Ibid, 4.

⁴²⁴ UNHCR and USCR, "World Refugee Report," available from <http://www.unhcr.ch/cgi-bin/texis/vtx/rsd/+xwwwBme6fJ69wwwowwwwwwwmFggGnh1tnnaENyacoxnGowaENyaWKKsAFqgejhrmFmmDFme26btqt2lyqZf3zmqwwwwww/rsddocview.html>.

⁴²⁵ Ibid.

⁴²⁶ *Human Rights Watch Report*, 1998, available from <http://www.hrw.org/worldreport/Africa07.htm>

⁴²⁷ Refugee Policy Group, "Participation of Refugees and Internally Displaced Persons in the Liberian Election." (March, 1997), 3.

Little information exists on the extent of IDP participation in the elections. For the most part, the electoral system made it relatively easy for IDPs to participate, as the country employed a single national district meaning that all voters received an identical ballot. The only significant issue related to IDP participation had to do with lack of documents (further discussed below)

The July 19 Elections

The Abuja Accords mandated the creation of an Independent Elections Commission (IECOM) to organize the post-conflict presidential and congressional elections. Staffed by seven Liberians and three international non-voting members (representing ECOWAS, the OAU, and UNOMIL), IECOM promulgated the Special Elections Law of Liberia based in part on previous election law while incorporating significant moderations to account for the situation on the ground.⁴²⁸ Despite the non-voting status of the international members, ECOWAS in particular appears to have had a very strong role in determining the election rules and regulations. According to Lyons, “[t]he process of debating and drafting the Special Elections Law took place largely between the IECOM and ECOWAS and did not involve Liberian political parties or civic organizations in a serious or systematic manner.”⁴²⁹

IECOM, which was not constituted until April 1997, faced an exceedingly stringent schedule. Abuja II had specified an election date of May 30, which would have been logistically impossible to implement. Despite initial opposition from both ECOWAS, which was leery of extending the presence of their peacekeepers, and Taylor’s National Patriotic Party (NPP), which warned that if the date were changed, it would no longer be bound to Abuja II, a new date of July 19 was finally agreed. The extension supposedly would allow enough time to negotiate a final draft of the electoral code, train registration workers, and conduct a more intensive voter information campaign.

Another obstacle to overcome revolved around what electoral system to use. The previous method, used in the Doe election, was a single-member majoritarian system. Given the massive population displacement, both ECOWAS and the UN believed a new electoral formula would be required. According to Terrence Lyons the decision was then made to use a “... proportional system with a single national constituency ... This decision allowed Liberia to defer the difficult process of conducting a census and redistricting, but it was never understood by many Liberians.”⁴³⁰ Eligible voters cast separate ballots for a sixty-four seat House of Representatives, a twenty-six seat Senate, and a President. Voting for the House of Representatives and Senate was conducted based on a single-vote PR system with a closed list with a 1.56% and 3.58% threshold for representation respectively.⁴³¹ The President was elected based on an absolute majority system, with a run-off if no candidate achieved 50% in the first round.

Eligibility was based on universal adult suffrage of all Liberians aged 18 years or older, with the only exception being insanity or “judicially declared incompetent.”⁴³² Provisions for by-mail registration were not widely publicized and no system appears to have been implemented.

Enfranchising/Disenfranchising the Displaced

The UNHCR and the Refugee Policy Group both advocated for an out-of-state voting program in order to enfranchise the refugees, who would clearly not be repatriating prior to election day. The

⁴²⁸ IECOM, “Electoral Package for the 1997 Liberia Democratic Elections,” available from the F. Clifton White Resource Center.

⁴²⁹ Lyons, 183.

⁴³⁰ *Ibid.*, 182.

⁴³¹ *Ibid.*

⁴³² IECOM, “Electoral Package for the 1997 Liberia Democratic Elections,” Article 3.1.

suggestion was blocked by the refusal of host countries to allow campaigning or voting booths in their territories and by Charles Taylor's NPP. As U.S. Congressman Donald Payne stated.

"... some of the surrounding States may have felt that refugees may have a prejudice toward candidates who they feel are the result of them being out of the country...from what I understand there was a feeling that the refugees would be obviously against the person that they felt caused them to be refugees, and the surrounding countries are more favorable to Charles Taylor."⁴³³

None of the major refugee host-states allowed registration or voting of Liberians to take place within their territory. The NPFL had long maintained favorable relations both with Ivorian government officials and with commercial actors in the border regions (particularly in the Cote D'Ivoire) and it appears that the surrounding states sincerely believed that the best hope for stability in the region would be a commanding electoral victory for Taylor. Since many officials believed that the refugees would vote against Taylor, the neighboring states limited the host-state voting option as a strategic tactic to ensure his victory. This appears to have been a misguided assumption, as Lyons reports that most refugees, even those forced from their homes, believed that the only way to restore peace in Liberia was through a Taylor victory.⁴³⁴

Once it became clear that no host-state voting would occur, the only mechanism for refugee participation was through repatriation or by twice crossing the borders into Liberia, once to register and once to vote. Guinea, however, formally closed its borders with Liberia on July 18, the night before the election. In Cote D'Ivoire, the RPG reports that rumors circulated widely among refugee populations that a similar action would be taken. Following several days of active lobbying by the UNHCR Representative to Cote D'Ivoire, however, the government appears to have decided not only to allow the borders to remain open, but even allowed refugees to cross at several unofficial stations.⁴³⁵ The cost of making the trip solely to vote, combined with NPFL's presence on the Liberian borders, however, worked against any significant numbers of refugee returns on Election Day. Moreover, refugees in Guinea who had managed to return prior to the border closing found themselves unable to return to Guinea after the election. Guinean officials explained that if refugees returned home to vote, they must feel secure enough to stay permanently.⁴³⁶

In addition to the opposition to host-state voting from Taylor and the host-states themselves, some observers note that portions of Liberian civil society also opposed an active host-state voting program. According to Howard Jeter, U.S. Special Envoy to Liberia:

"The asylum state governments ... indicated that they were not prepared to have refugees either register or vote on their national territory ... [because of] security concerns, and I would add, sovereignty concerns ... In addition, political activists in Liberia itself from civil society opposed the notion of refugee voting in a sovereign State. And with that array of opposition, including from the Liberians, it was very, very difficult to lobby to get this position changed ... We subsequently talked to the asylum states, to the governments of the asylum states. We have lobbied with others to have this decision reversed. It will not be reversed..."⁴³⁷

As a consequence, IECOM proceeded with in-country election activities only. During the registration process from June 24th to July 3rd, over 750,000 voters registered.

⁴³³ Congress, House of Representatives, Subcommittee on Africa of the Committee on International Relations, *The Liberian Elections: A New Hope?*, 105th Cong., 1st sess., 24 June 1997, available from http://commdocs.house.gov/committees/intlrel/hfa43195.000/hfa43195_0.htm

⁴³⁴ Lyons, 192.

⁴³⁵ Refugee Policy Group, "Refugees in Elections: The Liberian Experience," (August 1997) 16-17.

⁴³⁶ Ibid.

⁴³⁷ Congress, House of Representatives, *The Liberian Elections: A New Hope?*

Documentation Issues

A significant number of voters inside Liberia lacked proper documentation. A survey taken by the Refugee Policy Group (RPG) in June found that more than half of those interviewed had no form of identification.⁴³⁸ The most common form of identification, if owned, was the Refugee Identification card issued by host states. However these cards did not supply adequate information proving citizenship and could be easily forged.⁴³⁹

Since many voters did not possess adequate identification, IECOM approved a social documentation process where registrants were obliged to vouch that they were in fact Liberian citizens and were 18 years of age. The process relied on community leaders (i.e. District Commissioners, Chiefs, and Teachers) to validate individual claims.⁴⁴⁰ The IECOM elections package referenced social documentation as a valid form of voter identification in sections 3.8 through 3.10.⁴⁴¹ Unfortunately there is no real information as to how many refugees or IDPs used social documentation as their medium to registration.

Voter Education

With one-third of Liberia's population out of the country the dissemination of election specifics and overall voter education was going to be difficult. As the RPG noted in their June report, "There is a serious information vacuum in the three border countries."⁴⁴² The primary source of information was through radio. In their June survey the RPG stated that 26% of respondents received information from the *BBC*, and 16% from *Radio International Liberia*. Although these stations carried political programming relevant to the elections, it is hard to claim that the information was valuable, simply because the *BBC* reports on Liberia were very limited in content, often only referencing Liberia for a few minutes weekly, and *Radio International Liberia* was owned and operated by one of the candidates (Taylor).⁴⁴³ Taylor's station provided "...general information on voting procedures and the location of polling booths but provided few details as to the policies and platforms for parties other than NPP."⁴⁴⁴

Other forms of electoral information included newspapers and word of mouth, although few refugees appear to have benefited from Newspapers (brought into the refugee camps by traders) as the population was roughly 80% illiterate.⁴⁴⁵ In addition, the UNHCR provided calendars of electoral events to refugee camps and around their offices.⁴⁴⁶

Guinea and Cote d'Ivoire, officially banned and outlawed all forms of political campaigning.⁴⁴⁷ According to the RPG, one month prior to the election, "Most respondents were surprised to learn that there were 16 registered political parties, and many did not know the names of the candidates."⁴⁴⁸ The RPG further noted that many voters indicated that it was extremely difficult to make an educated choice given the paucity of candidate and political party platform information.⁴⁴⁹ In Guinea, for example, refugees "indicated that the lack of impartial and extensive information available to them jeopardized their ability to make informed choices as voters."⁴⁵⁰ RPG found no evidence that IECOM or any NGO's had purposely engaged with any towns to

⁴³⁸ RPG, "Field Report," (June 1997) 13.

⁴³⁹ *Ibid.*, 13-14.

⁴⁴⁰ Lyons, 186; and RPG, "Participation of Refugees," (March 1997) 8, 14.

⁴⁴¹ IECOM, "Electoral Package for the 1997 Liberia Democratic Elections."

⁴⁴² RPG, "Field Report," (June 1997) 15.

⁴⁴³ *Ibid.*, 15.

⁴⁴⁴ *Ibid.*, 12.

⁴⁴⁵ *Ibid.*, 12-13.

⁴⁴⁶ RPG, "Refugees in Elections," (August 1997) 12.

⁴⁴⁷ *Ibid.*, 13. RPG cites a case where the Mayor of Danane, Cote d'Ivoire threatened campaigners with prison in order to prevent political activity. These practices are a violation of Article 19 common to both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

⁴⁴⁸ RPG, "Field Report," (June 1997) 15.

⁴⁴⁹ *Ibid.*

⁴⁵⁰ *Ibid.*; and RPG, "Refugees in Elections," (August 1997) 15.

implement civic or voter education.⁴⁵¹ An RPG survey demonstrated that a significant number of refugees were unaware of basic elections procedures:⁴⁵²

- Can refugees vote outside Liberia: Yes – 11% Don't know – 23%
- Do you have to register before voting: No – 6% Don't know – 28%

In general, refugees were provided with times and dates, but obtained little knowledge or understanding of how to participate, the nature of the new proportional system, and political party and candidate election platforms.

Security Issues

Violence caused the refugees to flee, and peace will bring or has brought them back (at least that is what 42% of ex-refugees told the RPG in June).⁴⁵³ Permanent security was the ultimate goal of the elections, but in order for the election to successfully have refugee participation there needed to be adequate security provided on Election Day. While some disarmament had occurred under ECOMOG supervision, both Refugees and IDPs believed that most weapons remained hidden. Many feared possible violence from large groups of disbanded rebels who had yet to integrate into the communities.⁴⁵⁴

Refugees generally perceived that if ECOMOG was present they could participate safely. The RPG reported that two-thirds of refugees would refuse to leave asylum and give up their inherent right to vote if ECOMOG troops were not present to provide security.⁴⁵⁵ Because of this high demand ECOMOG troops provided security at every registration site, and at nearly every polling station.⁴⁵⁶ Although international observers were uncomfortable with ECOMOG's presence, they understood it to be a necessity, and not a substantial threat to the validity of the outcome.⁴⁵⁷ In general, ECOMOG managed to keep the security situation in control and the elections proceeded free from large scale outbreaks of violence.⁴⁵⁸

Movement Issues

Since host countries denied refugees the ability to participate in political activity, it was required that those who desired to, which was roughly 93% of those surveyed by the RPG, had to cross back into Liberia to do so.⁴⁵⁹ The costs, risks, and uncontrollable factors that accompanied the trip back to Liberia weighed heavily on the decision of refugees and IDPs.

RPG outlined the following factors as being the most significant factors behind the disenfranchisement:⁴⁶⁰

Transportation and Infrastructure	<ul style="list-style-type: none"> • Refugees and IDPs claimed lack of transportation to polling centers as a primary obstacle to registration and voting. RPG notes some transports were available but "were isolated and did not affect a significant percentage of the total population" • The payment of tolls, "unofficial custom fees", or canoe fees to cross the border disenfranchised refugees • Inadequate highways and roads in rural Liberia, as well as deteriorated bridges, schools and clinics prevented and discouraged travel prior to and during elections
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⁴⁵¹ RPG, "Field Report," (June 1997) 15.

⁴⁵² Ibid., Appendix 1.

⁴⁵³ Ibid.,

⁴⁵⁴ RPG, "Participation of Refugees," (March 1997) 4

⁴⁵⁵ Ibid., "Participation of Refugees," (March 1997) 4; and RPG, Field Report," (June 1997) Appendix 1.

⁴⁵⁶ Lyons, 186- 187.

⁴⁵⁷ Ibid., 187.

⁴⁵⁸ Ibid., 184. notes an incident that helped define the ECOMOG role as peace officers. When campaigning began in Nimba County in June of 1997, two of Taylor's former NPFL commanders were detained by ECOMOG as a result of violence that broke out at a Unity Party rally. The ECOMOG commander, in meeting with the two parties the following week, stated that any further political violence would result in a powerful ECOMOG response

⁴⁵⁹ RPG, "Field Report," (June 1997) Appendix 1.

⁴⁶⁰ RPG, "Participation of Refugees," (March 1997) 13; and RPG June 1997; August 1997, 12-26

Border Control	<ul style="list-style-type: none"> • The Guinean government closed its borders to refugees attempting to re-enter Guinea after entering Liberia to register or to vote. As one government official stated, "If it is safe enough to go, it is safe enough to stay." • Rumors of Cote d'Ivoire closing its borders discouraged refugee travel
Maintaining Refugee Status	<ul style="list-style-type: none"> • The benefits and assistance given to people with refugee status outweighed the benefits of repatriating (i.e. UNCHR offered monetary incentives for voluntary repatriation, but still could not match asylum benefits)
Employment and Agriculture	<ul style="list-style-type: none"> • The timing of elections occurred at a demanding time during the farming season. Coupled with the time needed for travel across the border, many farmers (especially women) could not afford to register or vote • With elections in July, educated and informed refugee teachers who wanted to vote, could not leave their classes, being that it was the end of the academic term
Family Obligations	<ul style="list-style-type: none"> • Liberia lacked the advance schooling offered to refugee children in Guinea and Cote d'Ivoire, causing reluctance on the part of parents to remove their children from schooling at the end of the academic year, or even at all • Lack of food in Liberia was cited as a main reason not to repatriate
Environment	<ul style="list-style-type: none"> • Mobility of refugees and IDPs was hindered due to the start of or possible start of the geographic area's rainy season
Security Issues	<ul style="list-style-type: none"> • Uncertainty of actual security inside Liberia was cited as the most important factor on whether to register, or to even vote after registration • Those who witnessed war crimes in Liberia feared being labeled as a political sympathizer • Refugees feared resentment from Liberians who were never displaced • Fear of traveling along "unofficial bush paths" • Frightened of being detained, harassed, or possibly expelled by Guinean military into a more dangerous Liberia

Nature of International Involvement

ECOMOG was the primary international actor during both the civil war and the election process. It was responsible for monitoring the ceasefire, securing and sustaining disarmament, and providing security during the elections. UNOMIL took a lesser role as a monitor and authenticator to the elections process, citing (as many member states, including the United States, reiterated) that this conflict was in need of a regional solution, not one of wide-ranging international interference. According to Security Council Resolution 1020, UNOMIL was expressly mandated only to observe and verify the elections.⁴⁶¹ Nevertheless, IECOM relied extensively on UNOMIL infrastructure, particularly in regards to logistics, transport of ballots, and communications.⁴⁶² The Special Representative of the Secretary General also served on the Joint Electoral Coordination Mechanism, established with ECOWAS to keep the electoral process on track and certify the results. Finally, UNOMIL conducted an intensive public information campaign, conducted through radio and the print media.

Problems stemming from this limited and hands-off involvement included a Nigerian monopoly over the peace and election process. Over 80% of ECOMOG troops and 90% of the mission's funding were Nigerian, and Nigerian strategic interests were reflected in ECOMOG military actions.⁴⁶³ Adebajo also suggested that Nigerian policy shifted from enforcing each cease-fire to creating a relationship with Taylor in order to stabilize the region. Other ECOWAS members'

⁴⁶¹ SC Res 1020, 1995 Available at <http://www.un.org/Docs/scres/1995/scres95.htm>

⁴⁶² Lyons, 184. notes that "UNOMIL's transportation and communication network was the only means for many regional elections workers to move around and to transmit and receive information"

⁴⁶³ Adebajo, 48.

policy toward the Liberian conflict varied, but eventually strains on local economies and political structures as well as high military expenditures culminated in a common desire to end the Liberian issue as quickly and permanently as possible. It seems as though the Special Elections Law was the last of several attempts to invoke a permanent solution to the civil war in order to send ECOMOG troops home.

Other international actors, including the United States, were unenthusiastic in regards to sending a United Nations peacekeeping mission. Fresh from the Somali disaster, the Clinton Administration was eager to avoid entangling US troops and resources on the continent. Instead, money (not enough) and observer missions were sent by foreign states. These same states advocated a short and swift elections process, limiting the ability of the IECOM to produce a comprehensive and transparent elections process. Consequently, conduct regarded as outside the boundaries set by the IECOM and ECOMOG was overlooked in deference to the desire to end the conflict as soon and as permanently as possible.

Conclusion

The Liberian election took place on 19 July 1997. There were 750,000 registered voters, of which an estimated 85% voted. Of the 637,500 votes cast, only 75,000 of them were from refugees (320,000 refugees were of voting age).⁴⁶⁴

Charles Taylor won 75.3% of the vote, with the nearest competitor, Ellen Johnson-Sirleaf, winning 9.6%. In the Senate, the NPP won 21 out of 26 seats, and in the House they took 49 out of 64 seats.⁴⁶⁵ Many of those who voted for Taylor believed that they were voting for peace, not necessarily Taylor, as Taylor was widely considered the only candidate who could stabilize the country; Many voters feared his likely reaction to a loss.⁴⁶⁶ As one voter stated, “[Taylor] killed my father but I’ll vote for him. He started all this and he’s going to fix it.”⁴⁶⁷ This sentiment appears to have been shared by many Liberians, ranging from IDPs and refugees to regular non-displaced voters. Thus, even if a perfect election occurred, in which all eligible voters took part in the process, the result most likely would not have been different.

Nevertheless, the disenfranchisement of 30% of the Liberian electorate was unfortunate, depriving 250,000 to 300,000 persons of the opportunity to engage in the political reconstruction of the country. Despite the best efforts of the UNHCR, international mediators, and the extensive work of the Refugee Policy Group, the refugee population lost their political voice. In sum, this result can largely be attributed to the following factors:

- Lack of voter and civic education
 - No unbiased or full reports on candidates, parties, or platforms
- Lack of cooperation with bordering states
 - The closing of borders
 - Refusal to allow voting or campaigning in host states
 - Unclear rules of refugee status
- Time Constraints
 - Restricted diffusion of information to the public
 - Confusion to rules and regulations
 - Postponements due to inefficient schedule provided confusion
 - Prevented refugees from gaining reassurance of security in Liberia
- Poor Infrastructure
 - High traffic roads for refugees and bridges were in poor condition
 - No transportation to and from polling stations

⁴⁶⁴ Ibid., 65; and RPG, “Participation of Refugees,” (March 1997) 3.

⁴⁶⁵ Lyons, 188.

⁴⁶⁶ Ibid., 192.

⁴⁶⁷ Ibid., 191-192.

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Case IX: West Bank & Gaza Strip

The 1996 Palestinian National Authority Elections

Background

The first Palestinian Authority (PA) Presidential and Legislative Council (PLC) elections were held on 20 January 1996. The 1993 "Declaration of Principles" (Oslo I) and the 1995 "Israeli-Palestinian Interim Agreement" (Oslo II) provided the legal framework for the elections. The Presidential election was based on a single national constituency. Yassir Arafat was elected to the presidency with 88.2 percent of the vote.⁴⁶⁸ The PLC elections were based on 16 open-listed multi-seat constituencies. A total of 88 PLC seats were distributed among 16 administrative districts on the basis of district-level population estimates. The 16 districts were comprised of territories in the West Bank, the Gaza Strip, and portions of East Jerusalem.⁴⁶⁹ Aside from polling stations in East Jerusalem, no provisions were made for external districts, external voting, or external PLC representation. Despite certain administrative irregularities, which had only a minimal impact on individual voting and ballot security, national and international observers generally agreed that the elections had been free and fair.

Overview of Refugee Populations in 1995

According to USCR, the Palestinian refugee population ranged between 3.2 and 4.0 million in 1995. The majority (1.98 million or 49 percent) resided in Jordan. Some 1.2 million (30 percent) resided within the West Bank and Gaza Strip. Approximately 684 thousand refugees (16 percent) were equally split between Lebanon and Syria. Some 200 thousand resided in other regional states, including Egypt, Iraq, Kuwait, Libya and Yemen. Refugee status and conditions varied considerably by host state.⁴⁷⁰

The United Nations Relief and Works Agency for Palestinian Refugees in the Near East (UNRWA) provides health, education, relief, and social services to Palestinian refugees living within the West Bank, Gaza Strip, Jordan, Lebanon and Syria. UNRWA provides its services only to Palestinians in these areas who have lost their homes *and* means of livelihood since 1948.⁴⁷¹ The United Nations High Commissioner on Refugees (UNHCR) provides services for Palestinian refugees residing regionally in non-UNRWA mandated areas. UNRWA and UNHCR do at times cooperate and coordinate their activities, as has occasionally been the case in Egypt. Unlike UNHCR, UNRWA does not provide protection to refugees, seek permanent solutions, or administrate the refugee camps it services. To the extent possible, the agency remains politically uninvolved. Moreover, UNRWA officially recognizes only those camps that are situated on lands allocated by host state governments. Nevertheless, UNRWA does provide some services to non-recognized camps such as the Yarmouk camp in Damascus.⁴⁷² The inordinately complicated relationship and distinctions between UNRWA, UNHCR, and the Palestinian refugees will be explored below.

⁴⁶⁸ Electionworld.org, "Elections in Palestine," www.electionworld.org, No date given, <http://electionworld.org/palestine.htm> (12 June 2002).

⁴⁶⁹ The status of East Jerusalem was left undetermined under Oslo. As a consequence, the PA (and CEC) had no formal mandate to operate in this area. Special provisions were required in order for the Palestinian elections commission to conduct electoral activities in these territories, which in some respects operated much like an external voting program. This issue is addressed below.

⁴⁷⁰ USCR, *World Refugee Survey 1996* (Washington, D.C.: Immigration and Refugee Services of America, 1996).

⁴⁷¹ However, certain exceptions to UNRWA's restricted mandate have been allowed. During the first *Intifada*, and the current *Al-Aqsa Intifada*, UNRWA has provided limited services to vulnerable non-refugees.

⁴⁷² UNRWA, "Questions and Answers," www.un.org/unrwa, No date given, <http://www.un.org/unrwa/about/qa.html> (10 July 2002).

Palestinian Refugees: Population Distribution⁴⁷³ 1995 & 2001⁴⁷⁴

Location	1995		2001	
	Official	Unofficial	Official	Unofficial
UNRWA Areas Inside PA				
<i>West Bank</i>	517,400	-	607,800	-
<i>Gaza Strip</i>	683,600	-	852,600	-
Total	1,201,000	-	1,460,400	-
UNRWA Areas Outside PA				
Jordan	1,288,200	700,000	1,639,700	800,000
Lebanon	346,200	-	383,000	42,000
Syria	337,300	450,000	391,600	75,000
Total	1,971,700	1,150,000	2,414,300	917,000
Range (low, high)	1,971,700	3,121,700	2,414,300	3,331,300
Non-UNRWA Areas				
Algeria	-	-	5,000	-
Egypt	2,700	100,000	50,000	20,000
Iraq	60,000	-	90,000	-
Kuwait	25,000	-	35,000	-
Libya	25,000	-	30,000	-
Saudi Arabia	-	-	123,000	-
Yemen	700	-	150	-
Total	113,400	100,000	333,150	20,000
Range (low, high)	113,400	213,400	333,150	353,150
Total External Refugee Population (official low, unofficial high)	2,085,100	3,335,100	2,747,450	3,684,450
Total Internal Refugee Population	1,201,000	-	1,460,000	-
Total UNRWA Refugee Population	3,172,700	-	3,874,700	-
Total Refugee Population (official low, unofficial high)	3,286,100	4,536,100	4,207,850	5,144,850

Refugees and IDPs in the West Bank and Gaza

Pursuant to Oslo, the transfer of control from Israel to the PA began in 1995 after 28 years of occupation. By the end of the year, large portions of the "Occupied Territories" had shifted to PA control. Optimism surrounding self-rule and new employment prospects within the PA led "thousands" to voluntary repatriate themselves, primarily from Jordan.⁴⁷⁵ Additionally, two small groups of Palestinians were repatriated from Egypt with Israeli approval.⁴⁷⁶

Violence in PA-controlled areas had declined dramatically since the Cairo Agreement of 1994, but clashes with IDF forces in the remaining Israeli-controlled areas were common. As a result of these clashes, USCR reported that 86 Palestinians and 69 Israelis lost their lives in 1995. Israeli settlers in Hebron were reported to have "harassed Palestinians with impunity."⁴⁷⁷

⁴⁷³ USCR, *World Refugee Survey 1996* (Washington, D.C.: Immigration and Refugee Services of America, 1996). And USCR, *World Refugee Survey 2002* (Washington D.C.: Immigration and Refugee Services, 2002). The unofficial statistics for Syria in 1995 are as quoted by an anonymous UNRWA official in the following: Mariam Shaheen, "Those Left Behind," *The Middle East* 252 (1996): 17-19. Available from: <Expanded Academic ASAP> (16 July 2002).

⁴⁷⁴ Because the election took place in January 1996, end-of-the-year 1995 numbers (reported in the 1996 edition) were chosen for this table. The 2002 report (2001 numbers) was chosen to reflect the most current information. Split cells indicate registered refugees on the left, and estimates for non-registered refugees on the right. The difference between official and unofficial totals is meant to provide a high and low range and to illustrate the problem of obtaining reliable statistical data.

⁴⁷⁵ USCR 1996

⁴⁷⁶ The first group had been expelled from Libya – 177 were admitted. The second group consisted of families stranded in Egypt since Israel gave up its hold on the Sinai Peninsula – 80 families returned, 7 remained.

⁴⁷⁷ USCR 1996

In addition to displacement resulting from the 1948, 1967, and subsequent hostilities, the West Bank and Gaza strip were home to somewhere between 13 and 17 thousand internally displaced persons (IDPs) at the end of 1995. In 2002, the primary cause of internal displacement continued to be the razing of Palestinian homes by Israel. Destruction has occurred for “security purposes” during both *Intifadas*, as a result of land confiscation in the West Bank and Gaza, as well as to make room for Israeli settlements in both areas. In East Jerusalem, structures that had been constructed by Palestinians without Israeli-issued building permits were demolished. The Global IDP Project reported that “... about two-thirds of all existing construction in East Jerusalem was undertaken without permit.”⁴⁷⁸ Illegal construction is the result of profound housing shortages. Typically, most IDPs take up residence with family members or decide to move abroad. Global IDP also submits that under Article 53 of the Fourth Geneva Convention, Israel may have the right to destroy homes in a time of war for security purposes. Furthermore, under the UN Guiding Principles on Internal Displacement, “Arbitrary displacement is prohibited in situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand.”⁴⁷⁹

Overall, refugees constituted half of the population residing in the West Bank and Gaza Strip at the end of 1995. UNRWA provided services to 22 percent of the refugee population on a need-prioritized basis. UNRWA was active in a total of 27 refugee camps – 8 within the Gaza Strip and 19 on the West Bank. Almost all Gaza Strip refugees resided in camps. Only 22 percent of West Bank refugees resided in refugee camps. At the time, USCR reported that the overall population of the Occupied Territories was 2.4 million. There were 683,600 UNRWA-registered refugees residing in the Gaza Strip and 517,400 in the West Bank. Data could not be found to indicate the population of non-registered refugees within the PA’s jurisdiction. In the West Bank, the ratio of refugees to non-refugees was 1 : 1. In the Gaza Strip, the ratio was 1 : 3. Overall, inclusive of internal and external refugee populations, the ratio of refugees to non-refugees was 2.7 : 1. *The ratio of Palestinian refugees abroad to the total internal population ranged (using low and high estimates, respectively) between 0.9 and 1.2 : 1.*

With the exception of two refugee camps in Hebron and portions of municipal Jerusalem, Israel transferred control over all other camps to the PA in 1995. Rather than disband within the self-rule areas, UNRWA continued to provide its services. Despite the fact that internal refugees had technically become IDPs once control over the territories had reverted to the PA, UNRWA’s narrow definition for refugees functionally lumped the PA together with the other host states. Primarily, this occurred because the refugees’ origins continued to lie within Israel proper and not within the jurisdiction of the PA. According to the UNRWA web site, “Until the refugee issue is solved and as long as there is a need for relief, UNRWA will continue providing services to refugees in these areas. The Palestinian Authority strongly supports the continuation of UNRWA’s operations in support of the refugees.”⁴⁸⁰

The provision of international relief and development aid shifted somewhat during 1995. Rather than focusing on humanitarian assistance, donors began to fund major infrastructure-related projects such as the construction of schools, health clinics and community centers, as well as improvements to sewers and drainage systems. As such, less aid was available to vulnerable populations and UNRWA was forced by budgetary constraints to cancel services to an increasingly needy number of otherwise qualified UNRWA registered refugees.

Israeli border closures and other restrictions on movement resulted in high levels of unemployment, lost wages, and, in general, an economic decline. Restrictions in the number of

⁴⁷⁸ Global IDP. “Palestinian Territories: Profile Summary,” www.db.idpproject.org, February 2002, <<http://www.db.idpproject.org/Sites/IdpProjectDb/idpSurvey.nsf/wViewSingleEnv/Palestinian+TerritoriesProfile+Summary>> (16 June 2002).

⁴⁷⁹ As quoted in Global IDP, 2002.

⁴⁸⁰ UNRWA, “Questions and Answers,” www.un.org/unrwa No date given, <<http://www.un.org/unrwa/about/qa.html>> (10 July 2002).

Israeli-issued work permits further eroded economic conditions. According to USCR, the unemployment rate was 60 percent in the Gaza Strip and 40 percent in the West Bank.⁴⁸¹

Jordan

Jordan has experienced three waves of incoming Palestinian refugees. By 1950, a combined total of 500 thousand 1948 Palestinian refugees resided on the West and East banks of the River Jordan - - then the territory of Transjordan. Following Jordan's loss of the West bank in 1967, an additional 300 thousand refugees were absorbed - - although most never registered with UNRWA. The Government of Jordan (GOJ) categorizes this second wave of refugees as IDPs because the West Bank had been Jordanian territory at the time of their flight. Post-1967 influxes of refugees have been the result of the first *Intifada*, the return of Palestinian oil workers from Gulf States during the Gulf War, and the *Al-Aqsa Intifada*. By the end of 1995, 1,288,200 Palestinian refugees had registered with UNRWA. Jordan maintains that it is host to an additional 700 to 800 thousand non-registered Palestinian refugees.

Palestinian refugees residing in Jordan generally can be put into three categories: those who have become Jordanian nationals and/or have integrated in Jordanian society, UNRWA-registered residents of refugee camps, and non-registered refugees who reside in unofficial refugee camps and elsewhere.

Lebanon

Lebanon was host to 346,200 Palestinian refugees in 1995. Beyond the Palestinian population, Lebanon also hosted an estimated 400 thousand Lebanese IDPs. By and large, most Palestinian refugees arrived in Lebanon as a result of the hostilities of 1948. The reconstruction of Beirut threatened to displace 5,000 refugees from the *Shatila* camp near the city.⁴⁸²

Because the Oslo process had only addressed the return of 1967 refugees, refugees residing in Lebanon (and Syria) felt alienated and somewhat betrayed by the PLO's closed-door negotiations. In particular, they were unhappy with the fact that the question of their status had been tabled until the final status negotiations - some 6 years away in 1993. As such, the Oslo process bifurcated the refugee population into Arafat supporters and detractors. Low-scale violence came to a head between pro and anti-Arafat factions at the *Ein el-Hilweh* camp when, in January, Arafat announced the reassignment of 400 *Fatah* operatives to the PA police force in Gaza. USCR reports that nine Palestinians died as a result of the violence.⁴⁸³

In general terms, the Lebanese government (GOL) has been hostile to the presence of Palestinian refugees. Unofficial refugee camps have been regularly destroyed along with unofficial additions built on lands adjacent to recognized camps. The GOL has refused to allow UNRWA to aid in the rehabilitation or reconstruction of refugee camps. Unemployment, as high as 40 percent, continued to be problematic as the GOL increased its efforts to eliminate illegal employment. USCR reports that only 7,362 work permits were issued to Palestinians in all of 1995. Most income continued to be earned in the informal economy.

The GOL has outright refused to integrate or resettle Palestinian refugees with its territory. In a 1996 interview, Lebanese Foreign Minister Fares Bouez stated that "Lebanon can not under any circumstances give citizenship to the Palestinians. . . . Lebanon was never before, nor is it now capable of dealing with this large number of Palestinians - it is not right to try to resolve the Palestinian problem by creating a Lebanese one."⁴⁸⁴ Instead, it has suggested that refugees originating from the West Bank and Gaza return there, and that the remaining refugees either be resettled with relatives in other Middle East and North African (MENA) states or in the West. The

⁴⁸¹ USCR, 1996.

⁴⁸² Mariam Shahin, "those Left Behind," *The Middle East* 252 (1996): 17-19. Available from: <Expanded Academic ASAP> (16 July 2002).

⁴⁸³ USCR, *World Refugee Survey 1996* (Washington, D.C.: Immigration and Refugee Services of America, 1996), 120.

⁴⁸⁴ As quoted in Shahin, 1996.

exclusion of Palestinian refugee's civil rights is a function of the delicately balanced political structure, where government posts are divided on the basis of religious affiliation.⁴⁸⁵

Syria

USCR reports that 28 percent of the 337,300 Palestinian refugees residing in Syria were located in refugee camps. Legal matters relating to Palestinians are regulated under Law 260 of July 1957. Refugees are treated as the equal to Syrian nationals with respect to laws and regulations of work, employment, business and military service. However, Uri Davis has written that in practice, “. . . Palestinian refugees have all the duties and responsibilities of a Syrian Arab citizen – but none of the political rights.”⁴⁸⁶ Nevertheless, Palestinian refugees, unlike those residing in other host states, are not required to obtain work permits, do have equal access to jobs, have the freedom to apply to all government job openings, and are able to travel internationally on Syrian-issued *laissez-passeurs*.⁴⁸⁷ The lack of a work-permit requirement has resulted in the lowest unemployment rating in all UNRWA areas – 14 percent. Low unemployment numbers aside, refugee income levels in Syria were the lowest of all UNRWA areas.

Adequate housing continued to be a problem in 1995, especially with respect to the water distribution networks and other sources of potable water. Other information is somewhat sketchy due to the lack of human rights organizations, freedom of speech, and transparency. USCR suggests that this has made it “difficult to gauge the political desires of the Palestinian refugees.”⁴⁸⁸

Non-UNRWA Areas

At the end of 1995, a range of 113,400 to 213,400 Palestinian refugees were believed to reside in non-UNRWA areas, including Algeria, Libya, Egypt, Iraq, Saudi Arabia, Yemen and Kuwait. In Algeria, Palestinian refugees lived in camps or camp like conditions. In Libya, Muammar el-Qaddafi expelled a portion of the state's Palestinian refugees. Qaddafi's justification was that progress on the peace process had created a situation where refugees could return to “Palestine.” Refugees were forced to board busses destined for the Egyptian side of the no-man's land along the two states' border. Others were forced to board ships bound for Syria and Lebanon. In Egypt, a limited number of Palestinian families were repatriated to Gaza with the permission of the Israeli government and the cooperation of UNHCR and UNRWA. USCR reported that as many as 100 thousand unregistered refugees from the 1967 war remained in Egypt. The status of an estimated 25,000 Palestinian refugees in Iraq was unclear. In Kuwait, most Palestinian refugees (oil workers before the Gulf War) were considered stateless. Originally from Gaza, the majority of this group held Egyptian travel documents that were no longer recognized by Egypt, much less Israel. It is likely that similar conditions existed for refugees in Saudi Arabia, although no statistics were available for 1995. However, for 1996, USCR reported that 247,800 Palestinian refugees were residing in urban areas. Some 6,000 Palestinian refugees resided in Yemen.

The Center for Policy Analysis on Palestine Human Rights reported that an additional 500 thousand Palestinians resided in non-Arab states around the world. The status of this latter group was unclear.

UNRWA, UNHCR, the 1951 Convention & 1967 Protocol

Around the world, refugee populations are entitled to the rights and protections guaranteed by the 1951 Convention and the 1967 Protocol. The task of securing these rights and protections falls to the United Nations High Commission on Refugees (UNHCR). However, the vast majority of Palestinian refugees are specifically excluded from these protection regimes and the operational jurisdiction of UNHCR.

⁴⁸⁵ Shahin.

⁴⁸⁶ Uri Davis, “Citizenship Legislation in the Syrian Arab Republic,” *Arab Studies Quarterly* 18 (1996): 29-

48. Available from: <Expanded Academic ASAP> (16 July 2002).

⁴⁸⁷ Davis.

⁴⁸⁸ USCR, *World Refugee Survey 1996* (Washington, D.C.: Immigration and Refugee Services of America, 1996), 123.

Following the cessation of hostilities in 1948, a number of international organizations and NGOs provided assistance to Palestinian refugees. To coordinate the activities of these actors with the assistance already provided by UN bodies (UNICEF, WHO, FAO), the UN created the United Nations Relief for Palestine Refugees (UNRPR). In 1949, the UN transferred the responsibilities and assets of UNRPR to the newly created United Nations Relief and Works Agency for Palestinian Refugees in the Near East (UNRWA). The scope of UNRWA's "temporary" mandate was, and still is, limited to providing relief, humanitarian assistance and "works projects" to the Palestinian refugee populations residing in the West Bank, Gaza Strip, Jordan, Lebanon, Syria and Palestinian IDPs residing within Israel proper.⁴⁸⁹ Palestinian refugees not residing within the UNRWA mandated areas, mainly in other Arab states in the Middle East and North Africa, fall under the jurisdiction of the United Nations High Commission on Refugees (UNHCR). As such, Palestinian refugees are serviced by two UN agencies. The important distinction between the two groups, and by extension, the services provided to them, is that UNHCR refugees are protected by the 1951 Convention, the 1967 Protocol and the UNHCR mandate while UNRWA refugees are not.

Both the UNHCR statute and the 1951 Convention include language that expressly excludes UNRWA refugees from the rights and protections established for other refugee groups. Article 1 (d) of the 1951 Convention states: "This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance." Similarly, paragraph 7 (c) of the UNHCR Statute (A/RES/428 of 1950) states that any individual: ". . . who continues to receive from other organs or agencies of the United Nations protection or assistance," does not fall under the competence of the High Commissioner. As such, Palestinians displaced as a result of hostilities in 1948 were expressly excluded from the protections offered under the Convention and Statute because they were receiving aid under the aegis of UNRWA at the time the instruments went into force. Although refugees displaced in 1967 and subsequent hostilities (up to and including the *al-Aqsa Intifada*), had not received assistance or protection when the instruments went into effect, the General Assembly requested that UNRWA extend its services to these groups. As such, post-1967 UNRWA-registered refugees are also ineligible for UNHCR and Convention-related rights and protections because they receive assistance from UNRWA.

The distinction between the two groups has three major implications. First, as stated above, UNHCR refugees receive protection; UNRWA refugees do not. In particular, UNRWA refugees are not protected from *refoulement*. Other rights, including freedom of movement, to acquisition of identity and travel documents, employment, naturalization, and other protections are severely mitigated. Second, General Assembly Resolution 194 (A/RES/194 of 1948) establishes only return or compensation as a durable solution for terminating refugee status. Therefore, even in cases where 1948 UNRWA-registered refugees (or their descendents) have resettled or become citizens in other UNRWA states, their refugee status does not terminate as it would if they were subject to the Convention and/or within the operational jurisdiction of UNHCR. Although Palestinian refugees have been denied citizenship rights in Syria and Lebanon, Jordan has opted to allow some Palestinian refugees to become full-fledged Jordanian citizens. Under "normal" refugee conditions, and pursuant to the 1951 Convention, 1948 Palestinian refugees would have lost their refugee status when they became Jordanian nationals. However, because Resolution 194 went into effect before the Convention and UNHCR Statute, Jordanian naturalized Palestinians still have the rights embodied by Resolution 194. For post 1948 refugees, only the right to return has been articulated by the General Assembly, most recently in A/RES/55/125.⁴⁹⁰ And third, with the exception of Egypt, Israel, and Yemen, none of the UNRWA or other refugee host states are signatories to the 1951 Convention or the 1967 Protocol. Consequently, non-signatory host states are not bound by international law to guarantee the rights expressed by the

⁴⁸⁹ UNRWA's temporary mandate had been renewed since its creation.

⁴⁹⁰ Abbas Shibliak, "Palestinians in the After-math of September 11: Wishing Refugees out of Existence?" *Forced Migration Review*, 13 (2002): 44. Available online from: <http://www.fmreview.org/mags0_PDFS/fmr13.pdf>.

two instruments. In this sense, the “rights” afforded to Palestinian refugees by host states can be better understood as revocable “privileges” subject to political dynamics. Susan Akram writes that this dynamic “. . . gives the Palestinians a precarious existence in these states with regard to their human and civil rights.”⁴⁹¹

Legal Framework of 1996 Elections

Israel put elections for the West Bank and Gaza Strip on the table in the fall of 1992. With the Declaration of Principles put forward in Oslo I, the more detailed cooperative and operational framework of elections established by Oslo II, and the 1995 Palestinian Elections Law, the legal and structural bases for the 20 January elections were put into place. For the first time since the 1967 occupation, Palestinians residing in refugee camps had not been specifically excluded from participating in elections.⁴⁹²

National Identity, Electoral Eligibility, & Voter Registration

For the purposes of the 1996 elections, the 1995 Electoral Law included language to establish national identity. Palestinian nationality was granted to those who:⁴⁹³

- Were born in Palestine, as defined by the territory covered by the British Mandate, or those who had the right to Palestinian citizenship according to the laws in force during that period;
- Were born in the Gaza Strip or in the West Bank, including Jerusalem;
- Irrespective of place of birth, had one or more direct ancestors that met the requirements of the first item;
- Were the spouses of Palestinians who met the mentioned requirements;
- Did not have Israeli citizenship.⁴⁹⁴

Electoral eligibility was established under Oslo II (Annex II) and the 1995 Elections Law. To be eligible, registrants had to meet the following conditions:

- To be Palestinian (as defined above);
- To be 18 years of age or older on the day of the vote and at least 17 to register;
- To be entered in the electoral register of the polling district where he or she was to exercise the right to vote;
- To be entered in the final electoral register;
- Not to have been deprived from the right to vote [by judicial sentence while that sentence is in force, having been deemed incapable by judicial ruling, or having been incarcerated by sentence of the Palestinian Court for a common crime].⁴⁹⁵

The responsibility for the registration process fell to local Polling Station Commissions. Representatives from the commissions (comprised of some 7,000 teachers) canvassed their districts (including refugee camps), going from door to door on multiple occasions. Although the residency requirement was omitted as a pre-requisite for electoral eligibility, it was a requirement for the registration process. Other personal data required on the registration form included:

⁴⁹¹ Susan M. Akram, “Palestinian Refugees and their Legal Status: Rights, Politics, and Implications for a Just Solution,” *Journal of Palestine Studies* 31 (2002): 36. Available from: <Expanded Academic ASAP> (16 July 2002).

⁴⁹² Although no national level elections occurred during this 1967-1995 time period, refugees residing in camps had been excluded from voting or standing as candidates in local and municipal level elections. Other dynamics are explored below.

⁴⁹³ The sources for the bulleted texts are the laws identified. In the interest of brevity, the language has been somewhat shortened and simplified.

⁴⁹⁴ 1995 Palestinian Elections Law, Article 7, Paragraph 2, clauses a-e.

⁴⁹⁵ Palestinian National Authority, “Palestinian Elections Law,” www.planet.edu, 7 December 1995, <http://www.planet.edu/~cec/law/>, (19 July 2002).

- Full name, sex, place and date of birth;
- Type of identification card presented and its serial number;⁴⁹⁶
- “Abode” or fixed physical address within the polling district which the applicant resided at the time of application (various forms of proof of residency were accepted, including the testimony of three other eligible district residents or the presentation of documents proving that the individual had paid municipal taxes within the polling district);
- The date of application; and
- A signed declaration certifying the truth of the data submitted.⁴⁹⁷

The Electoral Register

The CEC was charged with the task of assembling the electoral register. However, the registration process began in early November – *before* the CEC had been established by the 1995 Elections Law, the final version of which was enacted late on 5 December 1995.⁴⁹⁸ A preliminary register, following the canvassing period, was to be published, distributed to the local Polling Station Commissions (PSC), and made available to the public for inspection and verification of personal data and registration status. Omissions in the initial register were to be reported to the local PSCs. At that time, individuals had the opportunity to file claims for inclusion if their names did not appear on the initial register or to correct errors. In cases where the PSCs denied claims for registration, appeals could be made directly to the CEC, where a final Palestinian decision was made.

Ultimately, voter eligibility was decided by Israel. Pursuant to Oslo II (Annex II, Article II, Paragraph II), once a corrected and amended electoral register had been assembled, it was to be delivered to the Israeli contingent of the Joint Civil Affairs and Cooperation Committee (CAC). At this stage, Israeli officials reconciled the electoral register with Israel’s own Palestinian Population Register, removing “persons whose details [did] not appear, or whose details [were] significantly different from those in the Population Register . . . unless the Palestinian side can provide satisfactory evidence within seven days that the person is entered in the Population Register.”⁴⁹⁹ Final CEC changes were to be delivered to the Israeli contingent 3 days before the election. The final register, as edited by Israel, was then forwarded to the Palestinian CEC. The CEC then published the final register and distributed copies to the district elections offices and PSCs. Reports indicated that many Palestinians who had registered and had registration cards did not find their names on the electoral register and were not able to vote on election day. It remains unclear as to why and how many names were omitted or excluded from the register.⁵⁰⁰ In general,

According to a joint report issued by the National Democratic Institute and the Carter Center,

The CEC reported on January 2, 1996, that 1,013,235 eligible voters had registered: 665,603 in the West Bank including Jerusalem and 347,632 in the Gaza Strip. Of the registered voters eligible to vote, about 49 percent were women and 51 percent men. About 35,000 of the original 1,048,756 registrants were not going to reach the age of 18 before January 20, and thus were disqualified from voting. When the CEC released final voter registration figures it was remarkable that the total number of eligible voters

⁴⁹⁶ Acceptable ID cards included those issued by Israel and UNRWA. Special provisions were made for those who did not have ID cards but could prove residency as outlined by Oslo II, Annex II, Article II. The issuance of new ID cards was delayed due to a jurisdictional dispute between the PA and Israel as to which entity had authority to issue cards in self-rule areas. After several delays, a process was established involving both governments. A \$100 application fee was required. According to NDI, some 4,000 IDs were issued using this process.

⁴⁹⁷ 1995 Palestinian Elections Law, Article 7, Paragraph 1; Article 8. Parenthetical text is an abbreviation of article 8.

⁴⁹⁸ Presumably, the registration process followed the standards for eligibility specified by Oslo II. With a few exceptions, there were very few differences between the registration requirements listed in Oslo II and the 1995 Elections Law.

⁴⁹⁹ The Israeli-Palestinian Interim Agreement on the West Bank and Gaza Strip, Annex II, Article II, Paragraph 2g.

⁵⁰⁰ Lamis Andoni, “The Palestinian Elections: Moving Toward Democracy or One-party Rule?” *Journal of Palestine Studies*, 25, no.3 (1996): 5-17. Available from <Expanded Academic ASAP> (15 July 2002).

dropped beneath 1 million [955,180], a disparity of approximately 10 percent from the original January 2 announcement that has never been explained by the CEC.⁵⁰¹

Election-related Security Issues

Significant right-wing opposition to the elections failed to translate into violence. However, violence at polling stations was anticipated. As such, PA security forces, including the civil police, the *Mukhabarat* (secret, plain-clothes police) and the Preventative Security Forces provided security at local polling stations during the vote as well as for the ballot boxes. Uniformed and armed police were stationed outside polling stations, entering the station only at the behest of the PSC chairman to intervene in a particular problem. The Mukhabarat mingled outside the polling stations with electors waiting to cast their ballots. By monitoring the crowd, the Mukhabarat sought to prevent violence and agitation by acting as trouble shooters. For the most part, the police and security apparatus functioned as it was designed. No significant violence was reported. However, NDI does cite a number of cases where the actions of security personnel was inconsistent with its prescribed role.⁵⁰²

No provisions were made for the participation of security personnel – the vast majority of whom were not able to vote. However, the CEC made last-minute provisions for a limited number of security personnel to vote. Only those that by chance happened to be on duty at the polling station where they were registered were able to cast ballots.

Observation and Monitoring – International and Domestic

Under Oslo II, the European Union (EU) was designated as the coordinating entity for all international monitoring and electoral observation. To that end, the EU Electoral Unit began the process of organizing observation efforts in June of 1995. The National Democratic Institute and the Carter Center sponsored a joint mission, coordinating its activities with those of the EU Electoral Unit. Both the EU and NDI/Carter had established a presence within the West bank and Gaza well before the registration process began in late November, and maintained that presence until final results and recounts had been accomplished in February 1996. As such, these groups were well-positioned to monitor each stage of the elections. Other international monitors included delegations from the Islamic Conference, the Organization for African Unity and the Non-Aligned Movement. All groups agreed that the elections had generally been free, fair, and an accurate reflection of Palestinian preferences. Each group of observers noted a number of irregularities, but none that would have compromised the intent of the Palestinian people. Approximately 600 international observers were in country for the elections.

More than 2,000 domestic observers, organized by the Palestinian Domestic Monitoring Committee (PDMC - a coalition of over 40 NGOs). PDMC dispatched observers to all areas of the West Bank, Gaza and the municipal areas of Jerusalem under Israeli control. The Palestinian Center for Human Rights also contributed to domestic monitoring efforts by assigning 37 monitors to the Gaza Strip. Both groups issued statements mirroring those of the international observers. In some cases, however, domestic observers reported having difficulty obtaining access to polling stations – especially in municipal Jerusalem.

Special Provisions for Jerusalem

The right of Palestinian residents of Jerusalem to participate in the elections was first established in Oslo I (Annex I, paragraph I). Oslo II (Annex II, Article VI), in conjunction with the Palestinian Elections Law of 1995, provided the legal framework for special voting procedures in Israeli-controlled areas of Jerusalem. Special provisions were required for the entire electoral process in municipal Jerusalem because the area lay outside the territorial jurisdiction of the PA. Numerous arrangements were made, encompassing all phases and processes of the elections by the PA

⁵⁰¹ National Democratic Institute for International Affairs and The Carter Center, The January 20, 1996 Palestinian Elections, (Washington, D.C.: 1997), 29. Bracketed figure is from page 84 of the same report.

⁵⁰² NDI, 58-59. For more detail on security, see NDI, pp. 58-62.

and Israeli members of the CAC. According to NDI, 120,000 Palestinians lived in East Jerusalem in 1995.

Two voting procedures were used in Jerusalem. For the majority of electors (154 polling stations, 40,000 registered voters), the voting procedure was identical to that within the West Bank and Gaza Strip. However, in areas annexed by Israel in 1980, including the Old City, Beit Hanina and Jerusalem City, a different voting procedure was implemented affecting 5,000 voters.⁵⁰³ Because these areas lay outside the jurisdiction of the PA, a cooperative arrangement was necessary between Israel and the PA in order to enfranchise Palestinians residing within the Israeli-controlled areas of Jerusalem. Language specific to how elections were to be conducted in Jerusalem was contained in Oslo II.

Palestinian residents of Jerusalem were eligible to be candidates for the Presidential and Palestinian Legislative Council seats so long as they met all electoral eligibility requirements **and** had a secondary residence within PA-controlled areas.⁵⁰⁴ A total of 7 Palestinian Council seats were allocated for Jerusalem, two of which were reserved for Christian candidates.⁵⁰⁵

Electoral eligibility and registration procedures were similar to those for Palestinians residing within the West Bank and Gaza Strip. In Israeli-controlled areas, the registration and administrative processes were contracted out to Ibrahimiyya College. The college's work was supervised by the CEC administrated district elections office for Jerusalem, established within the PA's jurisdiction. All electoral forms used in municipal Jerusalem had to be reprinted in order to remove all official CEC and PA logos. The use of CEC posters and other literature was also prohibited.⁵⁰⁶ The major difference was that the electorate residing within PA-controlled areas cast ballots at polling stations operated by the CEC, while Palestinians residing in Israeli-controlled areas cast their ballots at 11 polling stations in five Israeli post offices.⁵⁰⁷ Electors assigned to Israeli post office polling stations presented their electoral registration cards to Arab-Israeli postal workers for identity verification and a cross-check with the electoral register provided by the CEC. The postal workers, upon verifying the identity of the elector, handed one Presidential and one Palestinian Council ballot to the elector. Ballots were marked and deposited in their respective containers. It is unclear whether electors were able to mark their ballots in secrecy. After the special polling stations closed, the sealed ballot containers were transported by postal workers to the Jerusalem district office. International observers were present at each of the designated post offices. IDF forces and police provided security. According to Stephanie Nolen, a writer for the independent publication *Palestine Report*, voters in East Jerusalem faced wholesale intimidation by the IDF on election day.⁵⁰⁸

At the main *Salah Eddin* Street post office in East Jerusalem, Israel had effectively sealed off the area by dawn. Would-be voters faced a ring of steel police barricades, two lines of soldiers carrying machine guns, then a circle of border police officers on the entrance steps and again inside the building before the ballot boxes. . . . In *A-Tur*, soldiers turned some would-be voters away, and arrested others, lining them up with their faces against the wall near the door where others would have to pass to cast their ballots. . . . In Ras Al-Amoud, in East Jerusalem, observers stood and watched while soldiers repeatedly kicked and punched three young Palestinian men outside a polling station.

⁵⁰³ National Democratic Institute, 1997.

⁵⁰⁴ "Jerusalem – A Special Procedure for Palestinian Elections," www.blueplanet.edu, (30 January 1996), <<http://www.blueplanet.edu/~cec/jerus.htm>> (10 June 2002).

⁵⁰⁵ "The 16 Constituencies," www.blueplanet.edu, (30 January 1996), <<http://www.blueplanet.edu/~cec/constit.htm>> (10 June 2002).

⁵⁰⁶ NDI, 26.

⁵⁰⁷ The post offices specified in Annex II were Salah-a-din, Jaffa Gate, Shuafat, Beit Hanina, and Mount of Olives. Blueplanet.org reports that there were a total of 164 polling stations in Jerusalem: 154 "normal" stations and the five post offices mentioned. The nature of the remaining five polling stations is unclear.

⁵⁰⁸ *Palestinian Report*.

Jimmy Carter, leading his own team of observers, said there was no question the Israeli activities would discourage voters. "I think voting is going well in other areas, but I have concerns about Jerusalem," he said, moments after watching soldiers confiscate the ID card of a candidate trying to cross a check-point and return to Jerusalem, where he was not allowed to vote. "I don't think there is any question that Israel has created obstacles for voters."⁵⁰⁹

Similar cases of voter intimidation were reported in Hebron which, as had municipal Jerusalem, remained under Israeli control.

According to NDI, only 40 percent of registered voters participated in the election (32,316 of 80,051 registered voters). This number is in marked contrast with turnout rates for the West Bank (73 percent) and the Gaza Strip (88 percent). The lower turnout was most likely attributable to voter intimidation by the Israeli security detail, a common but unfounded apprehension of losing residency rights in Jerusalem (by registering and voting), a pronounced transportation and logistical problem experienced by voters attempting to travel to their polling stations within the entire Jerusalem electoral district, and in general, confusion and Israeli disinformation.⁵¹⁰ In an ironic twist, the NDI report states that "throughout the day, the Jerusalem post offices were crowded with journalists, television crews, security forces and international observers. . . . Voters were conspicuously absent."⁵¹¹

Issues Relating to Refugee Camp Voting (within the West Bank & Gaza Strip)

The electoral process was the same for refugee camp populations and non-refugee Palestinians throughout the West Bank and Gaza Strip. No distinctions or special provisions were made for refugee camps under the legal or administrative framework.

Prior to the 1996 elections, and especially under Israeli-occupation, refugee camp residents were prohibited from participating in local and municipal level elections. For the most part, the refugee population tolerated this exclusion or "voluntary disenfranchisement" for fear that by participating in elections they would lose their right to return, as specified by Resolution 194. By voting, camp residents would have attached themselves to a particular address and become civically integrated within an urban constituency – a *de facto* resettlement - invalidating their right to return to their original homes. Nevertheless, refugees participated at all levels of the 1996 elections, especially as electors and as successful candidates for the Council in Nablus, Ramallah and Gaza.⁵¹² The reason behind broad participation was that the elections were at the national level.

External Voting

None of the election-related laws enacted prior to the 1996 election made provisions for mobilizing an external vote. In fact, the perambulatory language of the 1995 Elections Law unapologetically states: "The fact that this Law affects only the inhabitants of the Gaza Strip and the West Bank, including Jerusalem, due to the conditions and circumstances and to the nature of the interim period, does not undermine the rights of the Palestinians of the Diaspora and, above all, the refugees, exiled and expelled, who will have the opportunity to exercise their rights in the elections that will follow their return to the Nation." Additionally, because a physical address within the West Bank, Gaza Strip or East Jerusalem was required for individual voter registration, the non-resident Palestinian Diaspora was automatically ineligible. As such, Palestinian refugees, most notably in Jordan, Syria, and Lebanon, were not able to participate in the 1996 elections (for numbers see table above). However, Lamis Andoni reported in the *Journal of Palestine Studies* that although the *de facto* residency requirement "was intended to prevent Diaspora Palestinians from voting, special arrangements between Fatah and the Israelis

⁵⁰⁹ Stephanie Nolan, "Israeli Military Turns Back Jerusalem Voters," www.imcc.org, January 1996, <<http://www.imcc.org/media/report/96/Jan/3b.htm>> (15 July 2002).

⁵¹⁰ For a more in depth view of the Jerusalem case, see the NDI report.

⁵¹¹ NDI, 69.

⁵¹² Institute of Development Studies, "Case Three: Refugee Mobilization and the Political Legitimacy of the PNA," 7 June 2000, <<http://www.ids.ac.uk/ids/civsoc/final/palestine/pal3.doc>> (15 July 2002).

allowed scores of Fatah members to cross from Amman [Jordan] to the West Bank days before the elections to vote – which meant that they also gained the right of residence.”⁵¹³ It is unclear how this group of refugees was added to the electoral register.

Population Dynamics and the Future Elections

Enfranchising the Palestinian Diaspora raises some interesting political issues. Although the numbers are not concrete, the wholesale enfranchisement of Palestinians residing abroad, as refugees or otherwise, would create a situation where the majority of the electorate actually resides abroad. This raises a number of broad and sweeping theoretical questions. On one hand, enfranchising the Diaspora would empower refugees with citizenship, be a hedge against the authoritarian tendencies of the PA, end the stateless status of refugees, give refugees a hand in determining their own future, and moreover, end the use of the refugee population as a political bargaining chip. On the other hand, enfranchising the Diaspora may enhance already existing fractures between the gamut of political and religious divisions.

Distribution of the Palestinian People (2000)⁵¹⁴

Region	Refugee/Displaced	Non-Refugee	Totals
Jordan	1,570,192	1,026,794	2,596,986
West Bank	583,009	800,406	1,383,415
Gaza	824,622	13,077	837,699
Israel	183,890	735,563	919,453
Lebanon	376,472	86,595	463,067
Syria	383,199	27,400	410,599
Remaining Arab States	599,389	-	599,389
Rest of the World	550,000	-	550,000
Total	5,070,773	2,689,835	7,760,608

Enfranchising the Diaspora may have the unintentional effect of mitigating attempts at reconciliation and repatriation by widening already existing divides between the political interests of Palestinians residing within the territorial jurisdiction of the PA, internal non-refugees, internal refugees, external refugees and others residing abroad. The wholesale enfranchisement of external refugees would create a situation where the majority of registered voters resided *outside* the territorial jurisdiction of the PA. This is the only situation encountered globally where the internal refugee/displaced population is numerically smaller than the larger external refugee population. Arguably, all groups would be affected by the public policies adopted by the PLC in a full-enfranchisement situation. However, due to the limited authority and jurisdiction of the PLC under the Declaration of Principles and the Interim Agreement, only the internal electorate, in this case a minority, would face the direct consequences of the Diaspora’s voting preferences. The external electorate would most likely face only indirect consequences of their own voting preferences. Depending on how the political preferences and goals of refugees present themselves (united or factionalized), several possible voting blocs emerge, each with its own implications for the interrelated prospects of durable peace, return, compensation, and resettlement:

- External refugees vs. the combined internal population;
- External and internal refugees vs. the non-refugee internal population;
- The combined internal population vs. external refugees; or, more likely

⁵¹³ Andoni.

⁵¹⁴ Palestinian Center for Education and Community Development, “Distribution of the Palestinian People Refugee/Displaced and non-refugee Status in 2000,” www.palestinecenter.org. No date given, <http://www.palestinecenter.org/cpap/stats/dist_people_2000.html> (12 June 2002).

- A fragmentation of a variety of factions, based on internal and external host-state divisions, divisions within the Diaspora at large, and already existing political parties and factions.

Other implications lie within the situational exigencies of Israeli strategic and political interests. Israel would most likely be opposed to the enfranchisement of external voters whose top priority rests in UN -GA Resolution 194 of 1948, A/RES/55/125, and document A/56/549 namely, the right to return and compensation. Although Israel is likely to ignore such pressures, the combined strength of internal and external voters would augment existing international calls for the creation of an autonomous Palestinian state, making international relations difficult.

Operating under the assumption that the Oslo process has not ended as a result of the *al-Aqsa Intifada* and is still intact, the political inclusion of external refugees would likely undermine PA-Israeli relations by violating provisions of Oslo I and II. While some degree of regional cooperation (economic, social, and cultural) between the PA and refugee host states is permitted, Oslo I and II expressly prohibit the PLC from conducting foreign relations (the establishment of embassies, missions or diplomatic representation abroad or within PA territorial jurisdiction) and promulgating legislation relating to external Palestinian refugees. Clearly, the central elections commission would have to establish some kind of presence in host states to operationalize external voting. It would also have to promulgate legislation relating to external refugee voting – both violations of Oslo. If Israel should “veto” PLC efforts to enfranchise the external vote, it would risk escalating or renewing hostilities. In this case, Palestinian solidarity would be reinvigorated and enhanced *vis à vis* Israel’s refusal to allow the Palestinian Diaspora to exercise its political rights. Although Article XV of Oslo I, creates a framework under which this type of jurisdictional dispute can be mediated, first through a joint liaison committee, and failing that, by a joint arbitration committee, given the implications of external refugee enfranchisement outlined above, such negotiations would most likely result in deadlock.

As such, the unique characteristics of the Palestinian case warrant special consideration with regard to developing a best practices and standards regime for the political inclusion of refugees. Obviously, the enfranchisement of the Diaspora would necessarily raise a number of related structural, political and administrative questions:

- At what level (municipal, PLC, Presidential) should external voters be enfranchised?
- Does the enfranchisement of external voters necessitate the creation of additional districts and/or PLC seats? And if so, should the external district(s) representation be equally weighted with the population of internal districts?
- Or, rather than creating new external districts, should external voters instead cast municipal and/or PLC level ballots based on the district from which they, or their progenitors, were displaced? Under the current framework, a heated debate already exists in relation to whether the populations of internal refugee camps should be included within adjacent municipal districts, as they are now, or treated as entirely separate and distinct constituencies;
- Assuming external voters are enfranchised, how would the dynamics of multi-seat constituencies and redistricting impact the dynamics of the legislative and, by extension, the reconciliation/peace processes?
- Is there a legitimacy question with respect to enfranchising external voters who, in most cases, do not pay taxes to the PA? What about cases where Palestinians living abroad contribute to the PA economy via remittances from employment abroad?
- Moreover, what would the financial, logistical, and political implications of external voting be in host states? And how would these interstate costs and exigencies be equitably resolved and/or accommodated?
- Would legislation enacted by the PLC to enfranchise the Diaspora be in violation of Oslo I and II?

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Case X: Western Sahara

The Proposed Referendum on Independence

Introduction

Western Sahara, a Spanish possession from the late 1800s until 1976, is the last disputed former colonial territory in Africa. Pressure from the United Nations coupled with increasing conflict between Spanish troops and the rebel insurgent group “Frente Popular para la Liberacion de Saguia el Hamra y Rio de Oro”⁵¹⁵ (POLISARIO) prompted Spain’s sudden exit from the territory in 1976.

Prior to Spain’s departure, Morocco, Mauritania, and Spain met secretly in Madrid to divide up the territory, agreeing that the northern two-thirds would go to Morocco and the southern third to Mauritania.⁵¹⁶ Both countries based their claims on former imperial geographic borders. Morocco’s claim was based on the borders of the “Almoravid Empire” of the 11 and 12 centuries, while Mauritania claimed that historic tribal affiliations to this same empire stretch deep into Mauritania.⁵¹⁷ Mauritania renounced its claims in 1979. The United Nations and the International Court of Justice never recognized either claim.⁵¹⁸

In November of 1975 Morocco mobilized over 300,000 civilians to march across the Moroccan border into the territory.⁵¹⁹ Known as the Green March, it was successful in (1) moving Moroccan permanent residents into the territory; (2) making way for Moroccan troops to enter the country after Spain’s departure; and (3) putting pressure upon Spain to relinquish the territory to Morocco and Mauritania.⁵²⁰

In 1966, the UN had ratified the inalienable right of Saharawi self-determination.⁵²¹ Prior to its withdrawal, Spain conducted a census in 1974 and the UN planned to use this information to put the matter to the Saharawis through a referendum. Unfortunately, the invasion of the territory in the wake of the Spanish withdrawal put this process on hold and POLISARIO redirected its military activities against the new claimants. Refugees began fleeing the territory in 1975, and have been residing in one of four tent camps in Algeria, near the oasis town of Tindouf.⁵²²

By the end of 1979, Morocco had consolidated its control over the Western ¾ of the region and erected a series of walls to prevent POLISARIO incursions into Morocco-controlled territory.⁵²³ A 1988 settlement agreement was brokered under the auspices of the UN and the OAU, and was presented to the Security Council in a 1990 Secretary General’s report.⁵²⁴ However, fighting continued until 1991, when a ceasefire was established and the UN Security Council authorized the establishment of the United Nations Mission for the Referendum in Western Sahara (MINURSO) in order to prepare for a referendum on independence.⁵²⁵

⁵¹⁵ POLISARIO is an offshoot of the Saharawi Liberation Movement, a group that originally advocated for Saharawi equal rights in the colonial territory. Throughout the 1950s and 1960s, the Army of Liberation engaged Spanish troops. After a series of violent conflicts between Saharawis and Spanish troops, POLISARIO was created in the late 1960s to gain independence.

⁵¹⁶ The Madrid Accords, signed also in November of 1974, pledged Spain’s withdrawal in February of 1976.

⁵¹⁷ Shari Berke, “ICE Case Studies: Western Sahara,” ICE Conflict Case, Summer 1997.

⁵¹⁸ <<http://www.american.edu/projects/mandala/TED/ice/sahara.htm>

⁵¹⁹ Frank Ruddy, “The United States Mission for the Referendum in Western Sahara,” *Vital Speeches* 66, i18 (2000).

⁵²⁰ “Green March,” <<http://www.wsahara.net/greenmarch.htm>>

⁵²¹ “Green March,” <<http://www.wsahara.net/greenmarch.html>>

⁵²² “Western Sahara Timeline,” <<http://www.wsahara.net/history.html>>

⁵²³ “In the Saharawi Camps,” *The Economist.com*, 2 November 2000.

⁵²⁴ Sharma, Jagdish, “The Transition in Western Sahara,” *Revolutionary Democracy*. n/d.

⁵²⁵ United Nations Secretary General Report s/22464, 1991.

⁵²⁵ United Nations Security Council Resolution 690, 1991.

More than 10 years later the referendum has yet to happen and as of 2002, MINURSO is still spinning its wheels in the sands of Western Sahara, having spent over 450 million dollars since 1991 with no referendum results. Disagreements over eligibility criteria, stalled negotiations and delay tactics have prevented MINURSO from achieving its mandate and provide important lessons regarding the political issues surrounding refugee voting programs. At present, the process may be suspended indefinitely, if the conflict-wearied Saharawi people accept a new UN "autonomous region" proposal written by James Baker. In June 2002, the U.S. formally backed the autonomous region plan as a replacement for the referendum.⁵²⁶

Refugee/ IDP conditions and statistics⁵²⁷

According to the USCR, roughly 110,000 Saharawis were refugees at the end of 2001. The vast majority, some 80,000 resided in Algeria in camps along the border. An additional 25,000 resided in Mauritania and roughly 5,000 in the rest of the world.⁵²⁸

In Algeria, the Saharawi camps (described as a "shadow-state"⁵²⁹) are located along the border near the oasis town of Tindouf in the driest region of the Sahara Desert. Climate in the area is fierce; temperatures can reach above 150 degrees Fahrenheit during the day and below freezing at night. Lack of food, water, and shelter from sandstorms are commonplace. Children are frequently stunted from lack of basic necessities.⁵³⁰ Many residents have never seen the homeland, as many refugees have been born in Algeria since 1976. Algeria automatically provides asylum status to any person classified as a refugee by the UNHCR, and nearly all Saharawis retain that status.

Shortly after the refugees' arrival in 1975, Algeria gave administrative authority of the camps to POLISARIO. In 1975, POLISARIO declared a government in exile known as Saharawi Arab Democratic Republic, or SADR, which is formally responsible for administering the camps.⁵³¹ The camps are divided into villages and further into quarters called hays. Each hay is provided with a water cistern, a food dispensary, and a nursery. Located in the center of the camps are buildings for education (K-6) and ministries for health, defense, transport, and justice, etc. Officials and ministers are elected by camp residents -- The level of political participation by Saharawi women is exceptionally notable.⁵³²

From 1997 until 2000, the UNHCR conducted a major registration campaign of Saharawis in order to prepare for eventual repatriation. No significant repatriation has yet occurred, although many refugees did move to Mauritania in 2001 in order to seek better conditions.⁵³³ This registration campaign was supposed to be conducted in cooperation with MINURSO efforts at establishing a voter's register (further discussed below).

USCR notes that "Saharawi refugees in Mauritania were largely self-sufficient, and UNHCR and other aid agencies had virtually no contact with them."⁵³⁴

⁵²⁶ Chris Brazier, "Betrayal UN Capitulates to Morocco," New Internationalist.

⁵²⁷ Refugee numbers vary greatly by year and source, ranging from 110,000 (USCR) to 165,000 (UNHCR in 1991). This is exceptionally problematic when the two parties in the eligibility debate are in disagreement over how many refugees are eligible to vote. POLISARIO states that 140,000 are eligible, while Morocco claims that number is inflated.

⁵²⁸ USCR, USCR World Report 2002.

⁵²⁹ See "Western Sahara." Western Sahara Refugees. n/d. <<http://www.oneworld.org/guides/sahara/refugees>> (9 September 2001), and Frank Ruddy, "The United Nations Mission for the Referendum in Western Sahara."

⁵³⁰ Frank Ruddy, "The United Nations Mission for the Referendum in Western Sahara."

⁵³¹ SADR is recognized by roughly 55 other states.

⁵³² Western Sahara: the Refugee Camps.

⁵³³ USCR, USCR World Report 2002.

⁵³⁴ USCR, USCR World Report 2002, 85.

The Referendum Process

The question

The referendum is meant to allow the Saharawis to determine whether they wish to become an independent state, or become integrated with the Kingdom of Morocco.

In June 1990, following two years of intensive discussions with Morocco and POLISARIO, the UN Secretary General published a report on the situation in Western Sahara (S/21360), which contained the full text of proposals that both parties had accepted in 1988 and made a series of recommendations regarding the modalities of the referendum process. Security Council Resolution 658 (1991) welcomed the proposals and directed the Secretary General to oversee all aspects of the referendum. Thus, the UN retained broad and sweeping powers over “... all matters in the territory relating to the referendum, including the power to suspend local laws and regulations that could impede the conduct of a fair and equitable vote.”⁵³⁵ This was the first time since that the UN had assumed full operational and legal authority over all aspects of a country's electoral process, and served as a basis for which the UN subsequently later undertook similar programs in Cambodia and East Timor.

The proposals envisaged a five-stage process leading to the referendum.⁵³⁶ Stage I was comprised of the cease-fire and the deployment of an “Identification Commission” as part of MINURSO in order to identify eligible voters. Stage II requires the removal of a half of Moroccan troops from the territory and restrictions of the remaining troops to certain areas of the territory, the establishment of MINURSO military officers in the territory, a swap between Morocco and POLISARIO of prisoners of war, and the publication of the final registrants' list by the Identification Commission. Stage III consists of the repatriation of refugees back to Western Sahara under the care of UNHCR and MINURSO, prior to their voting. Stage IV is a three-week long campaign process that culminates into Stage V, a referendum on the future of Western Sahara.⁵³⁷ As of 2002, only Stage I has begun, and is not yet finished. The process has been derailed by a lack of agreement on the criteria used for identifying eligible voters.

Eligibility Criteria

In April 1991, the Secretary General reported to the Security Council that, “all Saharawis, to whom the 1974 census undertaken by the Spanish authorities related and who are presently aged 18 years or over will have the right to vote, whether they are currently present in the Territory or living outside it as refugees or for other reasons.”⁵³⁸ The term “related” implied that all applicants must demonstrate an affiliation with one of the ten tribes (more specifically, POLISARIO has argued that they must prove affiliation to a specific tribal “sub-fraction”) that had been listed on the 1974 census. The census contained 72,000 names divided the population into ten categories labeled A through J, each corresponding to one of the ten tribes present in the territory. The census was to be revised by MINURSO in order to remove those who had died since 1974 and add those who had not been counted through a petition process.

Registration then depended on the applicant meeting one of five criteria:

- (1) Those on the revised list of the 1974 Spanish census;
- (2) Those living in Western Sahara in 1974, but not on the revised Spanish census;
- (3) Immediate family members (mother, father, children) of someone meeting criteria (1) or (2);
- (4) Any offspring born outside the territory to a man who was born in the territory; and

⁵³⁵ Farquharson, “The Referendum Process in Western Sahara: The Right to Self-determination in Practice.”

⁵³⁶ “The UN Peace Plan,” ARSO. 1991.

⁵³⁷ “The UN Peace Plan.” ARSO. 1991.

⁵³⁸ United Nations Secretary General, Report S/22464 (1991) paragraph 20.

- (5) Anyone who had lived in Western Sahara for six consecutive years, or twelve intermittent years before the 1974 census.⁵³⁹

Morocco had initially argued that all descendants of Saharawis should be included, regardless of how many generations had intervened. This proposal could have opened up eligibility to thousands of persons residing in Southern Morocco who could claim some form of lineage to one of the ten tribes. According to Abedajo (1995), Morocco believed that "... many authentic Saharans would be excluded if a restrictive policy were adopted: soldiers in the Spanish and anti-colonial army of liberation; people who fled to southern Moroccan towns like Tan Tan and Tarfaya to escape Spanish colonialism; and the roving nomads habituated to a vagrant lifestyle that recognized no political frontiers."⁵⁴⁰ POLISARIO objected to this proposal, as well as the inclusion of categories four and five, arguing that it would be virtually impossible to verify and prove eligibility, and could open the gates to massive fraud. In the event, a compromise brokered by the UN in 1993 rejected the Moroccan position and restricted category four to direct offspring only.

Further disagreement centered on the ten tribes listed on the census. POLISARIO argued that three of the tribes were actually Moroccan. An agreement was reached between POLISARIO and Morocco in the late 1990s that would allow individuals from these three tribal groupings to apply individually. Unfortunately, this has slowed the registration process, as those denied voter eligibility have the right to apply for an appeal. Morocco has made blanket appeals for thousands of Moroccan settlers, claiming that POLISARIO sheiks have denied these individuals voter eligibility based on their affiliation with these three contested tribes. Today, over 200,000 applicants are awaiting presentation, compared to only 70,000 original eligible voters. (Further discussed in the "Identification Issues" section below.)

Identification Issues

According to the settlement proposals contained in S/21360, MINURSO was tasked with creating an "Identification Commission" to update the census and prepare a voter register. In 1990, a copy of the census was provided to Morocco and POLISARIO with instructions to provide any information on persons who had died since 1974 and information on the locations of those who had moved. The Identification Commission was then to open a process whereby those excluded from the census could petition to be added to the voter register.

Category one voters (those listed on the census) faced few problems in registering; they simply applied to the Identification Commission to be added to the voters register. However, other categories of persons, particularly those whose names were not on the census, presented a severe political and logistical challenge. In the case of those not counted, the Identification Commission had to devise a method of determining that their claims to eligibility were indeed valid. In addition, mechanisms were required to ensure that those who were absent the territory in 1974, but were "related" to one of the ten tribes, would be able to participate. In his report to the Security Council in December 1991, the Secretary General noted that, "... it is considered that their absence from the territory at that time (of the 1974 census) cannot justify that they be automatically deprived of their right to participate in the decision regarding the future of Western Sahara ... It is necessary, however, that the link with the territory of people absent in 1974 be solid and demonstrable."⁵⁴¹

The solution agreed to by the parties involved a novel form of "social documentation." Those who were not on the census but claimed eligibility under categories 2 through 5 were required to present themselves to a registration committee composed of a UN official, an OAU observer,

⁵³⁹ United Kingdom Foreign and Commonwealth Office, "Background Brief: Western Sahara: Towards the Referendum."

⁵⁴⁰ Adekeye Adebajo, "The UN's Unknown Effort, 1995 : 62.

⁵⁴¹ United Nations Secretary-General, "United Nations Secretary-General's Report S/23299."

observers from each party, and two sheiks (one chosen by each party) representing the sub-fraction to which the registrant claimed relationship. According to Adebajo (1996), "The Sheiks have a particularly important role to play in the whole process ... The task of the Sheiks is twofold: to confirm, after swearing and oath, that individuals appearing before them are indeed who they say they are, ... and to confirm information relevant to the applicant."⁵⁴²

Initially the system seemed to function well; sheiks functioned independently and frequently went against the expected decision of their sponsor. Dunbar (2000) notes that by the end of the process, however, the sheiks testimony had become "almost entirely predictable – each recognized all applicants presented by his party and refused those sponsored by the other ... the sheiks loss of credibility removed a key element needed to substantiate or refute oral testimony by the applicants."⁵⁴³

Breakdown(s)

The registration process has not proceeded smoothly. Since 1994, three identification rounds have commenced and then crumbled as disputes between the parties, primarily over eligibility, have resulted in one or the other parties withdrawing from the process.

The first round occurred from 1994 to December 1995. During this period, MINURSO managed to process 60,000 of the 233,000 applications put forth by Morocco, POLISARIO, and MINURSO operations in Mauritania. Of the processed claims, 40% resided in the Territory and 51% in the refugee camps near Tindouf.⁵⁴⁴ In August 1995, however, Moroccan authorities presented an additional list of 100,000 individuals residing in Morocco who claimed eligibility based on affiliation with one of three "contested" tribes. These tribes, labeled H, I, and J, had not been divided into sub-factions by the 1974 census because "... their sub-fractions were so sparsely represented in Western Sahara when the census was taken ..."⁵⁴⁵ Dunbar (2000) notes that, "[t]echnically, the settlement plan procedures require that voter identification be conducted by tribal sub-fraction. Since the three groupings were not broken down into sub-fractions, POLISARIO contended, they could not be identified under the procedures developed for identifying all other applicants."⁵⁴⁶

According to a report by the Secretary General, "Morocco maintains that under the settlement plan, all members of the tribal groups which are represented in the census can apply in order to be identified and to establish their eligibility to vote on the basis of any of the five criteria. The Frente POLISARIO insists that the plan's reference to tribal 'subfractions belonging to the Territory' should be interpreted strictly as subfractions, the majority of whose members were found in Western Sahara at the time of the census."⁵⁴⁷

The issue had important political consequences, as many of these individuals probably had little if any claim to have ever resided in or be descended from someone who had resided in Western Sahara. In a letter to the Secretary General, POLISARIO announced it would withdraw from the process, arguing that "the 1974 Spanish census constitutes the only basis recognized in the settlement plan as accepted by the two parties and endorsed by the United Nations." POLISARIO claimed that the Moroccan action represented an attempt to secure "the participation

⁵⁴² Adekeye Adebajo, "The UN's Unknown Effort" 1995:63. He continues, "The Knowledge and seemingly photographic memory of the Sheiks has often astounded and impressed UN officials, and the emotional reunions that occur during the process between sheiks and siblings, and parents and children, of factions separated by two decades of war add a human touch to the process."

⁵⁴³ Charles Dunbar, "Saharan Stasis: Status and Future Prospects of the Western Sahara Conflict," The Middle East Journal, 54: i4 (2000).

⁵⁴⁴ United Nations Secretary-General, "United Nations Secretary-General's Report S/1995/779, paragraph 12.

⁵⁴⁵ ⁵⁴⁵ Charles Dunbar, "Saharan Stasis: Status and Future Prospects of the Western Sahara Conflict," The Middle East Journal, 54: i4 (2000).

⁵⁴⁶ ⁵⁴⁶ Charles Dunbar, "Saharan Stasis: Status and Future Prospects of the Western Sahara Conflict," The Middle East Journal, 54: i4 (2000).

⁵⁴⁷ United Nations Secretary-General, "United Nations Secretary-General's Report S/1995/779, paragraph 16.

of a substitute population, sought by the occupying Power, whose most recent manoeuvre was to attempt to include 100,000 of its nationals in the voters list.⁵⁴⁸

In July 1997 Secretary General Boutros-Ghali appointed James Baker as his Special Representative and tasked him with breaking the logjam. Baker brokered an agreement that neither party would sponsor individuals from the three “contested” tribes except for individuals found on the census and their immediate families and those who presented themselves “on their own, free of encouragement or discouragement by either party.”⁵⁴⁹ As a result, the Identification Commission resumed the processing of registrants in December of 1997 and managed to process a further 80,000 uncontested cases by August of 1998, when a large number of persons from the contested tribes once again presented themselves for identification.⁵⁵⁰ POLISARIO again withdrew from the process and the Secretary General was forced intervene.

In this instance, diplomacy was unable to achieve a resolution. In October 1998, the Secretary General took a unilateral decision that the Identification Commission should “proceed now to consider requests from any applicants from the tribal groupings in question who wish to present themselves individually, in order to verify whether they have the right to vote ... Naturally, the parties will have to adhere strictly to the conditions under which this review is to be implemented, as provided for in ... annex I to my report of 24 September 1997 (S/1197/742), which stipulates that: ‘The parties agree that they will not directly or indirectly sponsor or present for identification anyone’ from these tribal groupings, although the parties will not be obligated to actively prevent individuals from such tribal groupings from presenting themselves.”⁵⁵¹ In addition, in order to speed up the process, the SG decided to launch an appeals process by which those rejected might gain another hearing to determine their status. Although POLISARIO protested, they eventually agreed with the decision and identification re-commenced in June 1999.

A little noticed provision of this agreement required MINURSO to provide a monthly statistical report to each of the parties on the results of identification decisions and the appeals process. It quickly became apparent that very few of the applicants in Morocco were being accepted. Large numbers of applicants in Southern Morocco were appearing at local identification commission offices and requesting to be identified under either criterion 4 or 5.⁵⁵² As MINURSO continually rejected these applicants, the Moroccan government complained that MINURSO was biased against the Moroccan position. Morocco argued that MINURSO was insufficiently attentive to the “oral tradition” of the Saharawi tribes, and thus inadequate in its facilitation of the administration process.

Both parties have the ability to appeal a decision made by the Identification Commission, and both have used this right repeatedly. Morocco has made blanket appeals on behalf of hundreds of thousands of Moroccans, despite the fact that there is no new evidence for eligibility, basing their claims on POLISARIO Sheiks blanket refusal to admit these individuals. POLISARIO has appealed to remove newly eligible voters from the list, claiming they were unqualified for the voter’s list.⁵⁵³

Morocco has slowed this process even more by challenging specific individual words and definitions in the peace agreement, and demanding that the negotiation process take place via

⁵⁴⁸United Nations Secretary-General, “United Nations Secretary-General’s Report S/1995/779 paragraph 6.

⁵⁴⁹United Nations Secretary-General, “United Nations Secretary-General’s Report S/1997/742 Annex I, paragraph 1. See also FCO, 2000: 5, and Charles Dunbar, 2000: 14.

⁵⁵⁰ FCO, 2000: 5

⁵⁵¹ United Nations Secretary-General, “United Nations Secretary-General’s Report S/1998/997,” paragraph 18.

⁵⁵² Charles Dunbar, “Saharan Stasis: Status and Future Prospects of the Western Sahara Conflict,” *The Middle East Journal*, 54: i4 (2000).

⁵⁵³ Bhatia, Michael, “Western Sahara Under Polisario Control: Summary Report of Field Mission to the Sahrawi Refugee Camps (near Tindouf, Algeria).” , “Morocco, UN Continue Negotiations on MINURSO and Refugee Issue, Says UN Spokesman,” *Arabic News*, 3 February 1999.

mail instead of through talks.⁵⁵⁴ It has refused to move troops home, and instead, has moved more settlers into the territory.

In 1991, in direct violation of the Security Council Resolution 621 and Articles 71 and 72 of the Settlement Proposals, Morocco directed over 40,000 Moroccan residents to resettle in Western Sahara. Despite Morocco's default of this peace agreement brokered in 1991, it successfully confused the matter of voter eligibility. Morocco has attempted to register these 40,000 Moroccan settlers for the referendum on several occasions as well as has made blanket appeals when their applications were denied.⁵⁵⁵

The Process has also been slowed by floods and other natural disasters, the absence of OAU observers due to previous commitments, and the difficulties of operating in a remote desert environment.

Mechanism for Participating

The only mechanism in place for participation in the referendum is repatriation, as outlined in Section III of the Settlement Plan (1990). Upon MINURSO's completion of the identification process and the withdrawal of Moroccan troops, the UNHCR would primarily be responsible for transporting refugees back to safe areas within Western Sahara. As of now, the UNHCR's involvement is limited to humanitarian aid in the Tindouf region. Until safety measures are in place, resettlement via UNHCR cannot occur. MINURSO must be able to successfully register and complete a list of registrants. 72,000 people were on the original Spanish census. Now, over 200,000 applicants must be interviewed and re-interviewed in appeal processes.

In 1997-1998, James Baker was successful in embarrassing the Moroccan government and POLISARIO into agreeing upon individual interviews for the three challenged tribal affiliations. At that point, it had seemed that the referendum was to take place in 1998, with a few delays. In the late 1990s, UNHCR began a repatriation registration campaign in order to facilitate speedier execution of Stage III of the Settlement Plan.⁵⁵⁶ UNHCR and MINURSO used the unapproved and unfinished voters' register to actively seek out refugees who wished to repatriate. But since Stage II of the Settlement Plan has yet to be executed, UNHCR cannot begin organized repatriation. Thus far, no Saharawi refugees have returned to Western Sahara spontaneously, and the UNHCR's hands are tied until MINURSO can complete the registration process and verify that Morocco has withdrawn its troops.

Security Issues

Morocco has also been extremely active in the registration process -- so much so that many Saharawis fear for their personal security. Under the registration system created by MINURSO, Saharawis currently living in Western Sahara are forced to register with Moroccan authorities rather than the United Nations. Morocco has provided transportation of Saharawis to Morocco-controlled territory in order to register. However, they have also denied passage to some individuals that may register to vote for independence. It has also been reported that registration cards have been confiscated by the Moroccan authorities as a payment to return to safety.⁵⁵⁷

As repatriation is the only mechanism in place for the election, many Saharawis are uncomfortable and even afraid to return to Morocco-controlled territory. Morocco's history of repression of the Saharawis since 1975 has been notably brutal. According to Human Rights Watch, "these abuses included hundreds of cases of 'disappearances' that remain unresolved today, prolonged arbitrary detention, torture and long-term imprisonment on political charges."⁵⁵⁸

⁵⁵⁴ Frank Ruddy, "The United Nations Mission for the Referendum in Western Sahara."

⁵⁵⁵ Laura Farquharson, "The Referendum Process in the Western Sahara: The Right to Self-Determination in Practice," 1996.

⁵⁵⁶ USCR, "USCR World Report 1998"; United Kingdom Foreign and Commonwealth Office, "Focus International: Western Sahara: Moving the Peace Process Forward."

⁵⁵⁷ Frank Ruddy, "The United Nations Mission for the Referendum in Western Sahara."

⁵⁵⁸ Human Rights Watch, "Morocco/Western Sahara: Freedom of Assembly on Trial," www.hrw.org, November 2001, <<http://www.hrw.org/backgrounder/mena/morocco1121.htm>> (August 2, 2002).

Access to healthcare, passports, and other important documentation and services are also much more limited for Saharawis than for Moroccan settlers.⁵⁵⁹ Human Rights Watch does note that Morocco has moved to improve these conditions since the death of King Hassan in 1998.

Conclusion

The failed referendum process in Western Sahara is a direct result of the political difficulties in establishing eligibility criteria for those displaced by the conflict. The UN has begun to pursue a secondary means to end the dispute over Western Sahara. In 2000, James Baker, the personal Envoy to the Secretary-General, proposed a Framework Agreement that would allow Morocco to retain authority over the Western Sahara territory, while the Saharawi people would be given limited autonomy. The POLISARIO and SADR have refused to consider the proposal. However, the time crunch has loomed large within the past few years, and the United Nations and donor states are putting pressure on the Security Council to wrap up the mission as a failed one, leaving the Saharawis with no recourse in the searing Algerian desert.

⁵⁵⁹ US Department of State, "Western Sahara Human Rights Practices, 1994," www.state.gov, February 1995, <www.arso.org/US94.htm> (September 2001).

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