Challenging the Norms and Standards of Election Administration

JANUARY 2007

Electronic Voting

Election Management Bodies and the Use of the Internet

External and Absentee Voting

Boundary Delimitation

Political Finance

Applied Research Center
For Democracy And Elections

Bridging Theory and Practice

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Challenging the Norms and Standards of Election Administration

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Introduction

Elections are important events in any democracy, but in developing democracies each election is a milestone and often the most prominent indicator used to measure democratic consolidation. Thus, the effective administration of the election process is critical to fostering faith in a democracy. The democratic wave of the past two decades has seen election management bodies (EMBs) in many new and established democracies respond to the challenge of fielding elections in rapidly changing environments. As electoral processes evolve, however, election administrators are faced with even more diverse management challenges and responsibilities. These responsibilities reflect reforms and new requirements for electoral processes to remain viable, sustainable and effective institutions of democracy.

The papers in this collection identify evolving concerns that EMBs increasingly face. The five electoral issues addressed by these papers do not currently have accepted norms and standards that EMBs (and others) can utilize to shape effective policies and procedures. In addressing these issues, IFES' goal is to assist EMBs—particularly those in developing democracies—to manage their responsibilities. To meet this goal, these papers provide guidance for election officials (and democracy assistance providers) as they administer (or support) the entire electoral process.

In ***Challenging the Norms and Standards of Election Administration***, IFES explores five key issues:

- Electronic voting;
- Election administration and use of the Internet;
- External and absentee voting;
- Boundary delimitation; and
- Political finance.

For most EMBs in evolving democracies, these activities represent new areas of responsibility that have not been traditional targets of electoral assistance or best practice evaluation. While any single EMB may not face all of these issues, IFES hopes that the identification of norms and standards in each area will prove to be beneficial to every EMB.

Jarrett Blanc, a former IFES Advisor and currently a Council on Foreign Relations International Affairs Fellow and Visiting Scholar at the United States Institute of Peace, examines **electronic voting** and the advantages and disadvantages of direct recording

electronic (DRE) voting systems for developing democracies. Blanc emphasizes that the use of such systems must enhance, not weaken, the integrity of the electoral process. Through the late 1990s, the use of voting machines (whether electronic or not) was seen as an exclusively United States phenomenon, but in recent years IFES has observed an increased interest in the application of technology in elections in both advanced and developing democracies. Today, computerization of electoral information, validation, and certification requirements have become commonplace. While cautioning donors with respect to direct support for the use of DRE technology, Blanc urges donors to focus on providing expert advice to countries considering or using DRE systems—from the exploratory stage through to the observation of elections using DRE systems.

Steven Clift—one of world's leading experts on e-democracy—examines the **use of the Internet** by EMBs. Clift proposes a standards-established model for "must have" and "should have" online elements to guide EMBs whose online responsibilities are increasing as more citizens become active online. Clift presents policy recommendations for EMBs in four areas: 1) providing information online; 2) establishing an online legal environment; 3) monitoring the Internet media; and 4) ensuring technological access. One particularly compelling proposal he makes is to pilot open-source tools for election administration and voter guides; such a practice promotes cost-effectiveness and increases transparency of the electoral administration process.

Jeremy Grace is a lecturer of international politics, law, and political economy at the State University of New York at Geneseo; he also serves as a senior advisor and research coordinator to the Political Rights and Enfranchisement System Strengthening project of the International Organization for Migration. In his paper on **external and absentee voting**, Grace notes that patterns of forced displacement and economic migration require EMBs to review their policies surrounding external registration and voting, not only in post-conflict and developing countries but also in more established democracies. Grace examines issues of citizens' rights and eligibility, systems of representation, ballot secrecy and cost-effectiveness and identifies "areas where the development and application of standards would result in better management of external voting programs." He concludes by proposing basic principles to guide the design and execution of external voting programs, underscoring that 1) the decision to enable expatriate voting should reflect a broad national consensus rather than partisan calculations; 2) external voting operations should be subject to complete domestic and international observation; and 3) donors and technical assistance providers should pay more consistent attention to external voting in transitional democracies.

Dr. Lisa Handley—president of an election consulting firm specializing in voting rights and electoral boundary delimitation—notes that the role of **boundary delimitation** in determining electoral outcomes often receives inadequate attention in assessing the credibility of the election process. Handley asserts that while some international standards have been proposed by regional and nongovernmental organizations to guide the delimitation process, "a number of proposed guidelines are narrowly focused and less than universally applicable" and "important guiding principles have been neglected." Handley elaborates on the fundamental principles of impartiality, equality, representativeness, non-discrimination and transparency, and stresses the importance of an impartial boundary authority and a consultative and clear delimitation process. Her recommendations not only provide guidance to developing democracies but also to more established democracies, such as the United States.

Dr. Marcin Walecki, IFES Senior Political Finance Advisor, reports that EMBs are the bodies primarily relied on to enforce **political finance** regulations in 63 percent of the

countries that have such measures in place. As with boundary delimitation, broad international standards do exist for this field, but gaps remain in several key areas. Specifically, in order to promote a transparent and accountable system, there is a need for more detailed standards for public disclosure, proper internal control and effective enforcement. For enforcement agencies, financial and operational independence are key, and Walecki makes recommendations concerning a country's legal framework for political finance and the designated regulator's administrative capacity. He also describes the roles parties, candidates and the public can play in strengthening enforcement mechanisms.

As election management bodies, other agencies, domestic stakeholders and international partners tackle new electoral issues, international standards will help strengthen the conduct of elections, thus enhancing the credibility of the process and promoting political participation. All of the papers point to one basic and fundamental standard: access to information. The credibility of the electoral process clearly depends on its transparency, which is only meaningful when that process is open to electoral participants. The standards proposed in the papers that follow will clearly benefit EMBs, but even more importantly, they will benefit the public, which stands not only as a participant in, but also the guarantor of, electoral processes and democracy.

About the Authors

Jarrett Blanc
Electronic Voting

Jarrett Blanc is a Council on Foreign Relations International Affairs Fellow and a Visiting Scholar at the United States Institute of Peace, where he is researching elections conducted during civil conflict. He has managed IFES technical assistance programs in the Palestinian Authority and Iraq, advising senior national and international policymakers on elections and political processes and then organizing politically and logistically challenging elections, including the January 2005 elections in Iraq. Blanc also has field experience in Afghanistan, Kosovo, Nepal, Georgia, Lebanon, and Guyana.

Steven Clift
Election Administration and the Use of the Internet

Steven Clift is an online strategist and public speaker focused on the use of the Internet in democracy, governance, and community. For the last decade he has worked to fundamentally improve democracy and citizen participation through the use of the Internet. One of world's leading experts on e-democracy, he is actively networking people around the world determined to make a difference with this new media. Through Democracies Online, he shares knowledge and practical advice directly to thousands of subscribers on his DO-WIRE e-mail announcement list. His Publicus.Net web site contains dozens of original articles and presentations, including his E-Democracy E-Book. In 2002, Steven received the Minneapolis Award. In 2001 and again in 2003, he was listed among "The 25 Who Are Changing the World of Internet and Politics" by Politics Online and in January, 2000 he was selected as one of Minnesota's 100 rising stars of the decade by Minneapolis St. Paul magazine.

He volunteers as Board Chair of Minnesota E-Democracy. E-Democracy is a non-profit organization that hosts some of Internet's most highly regarded citizen discussions on state and community affairs. In 1994, E-Democracy created the world's first election-oriented web site and online candidate debates.

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External and Absentee Voting

Jeremy Grace is a lecturer of international politics, law, and political economy at the State University of New York at Geneseo. He also serves as senior advisor and research coordinator to the Political Rights and Enfranchisement System Strengthening project of the International Organization for Migration (IOM), an initiative focused on enhancing the political rights of refugees and internally displaced persons. He has also served as a consultant to the IFES Center for Transitional and Post-Conflict Governance, the Brookings/Berne Project on Internal Displacement, and the Organization for Security and Cooperation in Europe.

Dr. Lisa Handley
Boundary Delimitation

Dr. Handley has provided electoral assistance in more than a dozen countries, serving as a consultant on issues of democratic governance – including voting rights, electoral system design, electoral boundary delimitation and electoral dispute resolution – for the United Nations, the United Nations Development Fund (UNDP), the International Foundation for Election Systems (IFES), and International IDEA. In the past few years she has participated in election missions in more than a dozen countries, including Afghanistan, the Democratic Republic of the Congo, Georgia, Liberia, Lebanon, Nigeria, Sierra Leone and Yemen. In the United Sates, Dr. Handley's clients have included the U.S. Department of Justice, several civil rights organizations, and scores of state and local jurisdictions. She has also served as an expert in numerous voting rights and redistricting court cases.

Dr. Handley is the President of Frontier International Consulting, an election consulting firm that specializes in voting rights and electoral boundary delimitation. She holds a Ph.D. in political science from George Washington University.

Dr. Marcin Walecki
Political Finance

Dr. Marcin Walecki has overseen the growth of IFES' Program on Political Finance and Public Ethics since June 2003. Graduating in August 2003 from St Anthony's College, Oxford University, UK, with a D.Phil. in political science, Dr. Walecki has been involved in the management of international development activities since 1995. His areas of expertise include political finance and political party development, curriculum and material development, and training. Dr. Walecki has conducted activities (funded by USAID and DFiD) in Bosnia-Herzegovina, Georgia, Iraq, Lebanon, Liberia, Lithuania, Nigeria, Poland, and Ukraine. He has consulted for a number of international organizations, including the Council of Europe, International IDEA, Transparency International, the Westminster Foundation and the World Bank, on projects in Brazil, Poland, Lithuania, Russia, Ukraine, and Azerbaijan. Additionally, Dr. Walecki has written numerous publications about corruption, political financing, and political parties and regularly participates in international conferences. He is a member of the board of the International Political Science Association Research Committee on Political Finance and Political Corruption and currently a Max Weber Fellow at the European University Institute.

Challenging the Norms and Standards of Election Administration: Electronic Voting

Jarrett Blanc

Unlike the other papers in this series, this one does not attempt to provide a consensus view of the experts on international best practices. Electronic voting is still a relatively young technology, and no consensus has yet emerged.[1] Instead, this paper offers suggestions to international donors about how they should evaluate and respond to requests for help implementing electronic voting systems. It specifically addresses direct recording electronic (DRE) voting systems and their implementation in new, fragile, and transitional democracies (for the purposes of this paper, "new, fragile, and transitional democracies" refers to countries which hold or plan to hold elections but have a limited or nonexistent history of successful free and fair elections).

While some countries claim that their adoption of DRE systems has improved the electoral process, there is little evidence to support these claims, particularly in transitional settings. After considering the advantages and disadvantages of such systems, this paper identifies key questions to ask before adopting a DRE system and proposes a limited role for international donors when new, fragile, and transitional democracies request assistance with electronic voting.

I. Elections and Technology

The information technology revolution has affected election management in a number of ways. Electoral authorities use computer systems to make their internal management and communications more effective, to systematize voter registration records, and to communicate with voters, among other tasks. In recent years, computerized voting has also become prevalent, starting with the adoption of optical scan voting and counting systems in the 1980s and extending more recently to DRE voting systems. DRE systems require a voter to indicate a choice or choices using a computer interface (often either a push-button or a touch-sensitive screen); the voting computer records the votes and eventually calculates the totals. The use of DRE technology has expanded rapidly in the United States since the 2000 elections—from 12 percent in that election to 29 percent in 2004—often encouraged by the availability of federal funds.[2]

DRE technology is in wider use outside of the United States. India, the world's largest democracy with 660 million registered voters, moved to full DRE voting in its 2004

[1] Several organizations have issued technical standards. See, for example, *Report on the Compatibility of Remote Voting and Electronic Voting with the Standards of the Council of Europe*, adopted by the Venice Commission, 12-14 March 2004, and the extensive documentation of the U.S. National Institute of Standards and Technology at www.vote.nist.gov. These efforts are valuable in the context of mature democracies, but they should not be seen as full answers to the often different questions and problems posed by elections in transitional democracies. NIST recommendations, for example, have been adjusted to meet the specific fiscal and management requirements of U.S. counties (http://news.com.com/Panel+changes+course,+approves+e-voting+checks/2100-1028_3-6140956.html). While reasonable within its own terms of reference, these considerations are not useful guides to decision making in transitional environments.

[2] GAO, "Elections: Federal Efforts to Improve Security and Reliability of Electronic Voting Systems Are Under Way, But Key Activities Need to be Completed" (September 2005), p. 10. Available at http://www.gao.gov/new.items/d05956.pdf.

general elections, deploying roughly one million specially designed push-button machines.[3] In 2002, Brazil used roughly 400,000 touch-screen DRE machines for its first fully DRE general election.[4] Venezuela, Ecuador, and other new, fragile, and transitional democracies have also used DRE systems. The use of DRE technology in these elections has fed a growing interest in DRE voting in a wide range of democracies, including new, fragile, and transitional ones. Nigeria's Independent National Electoral Commission announced its intention to use DRE voting in 2007 by including a provision in the Draft Electoral Bill. However, it was changed by the legislators, and the law now says, "The use of Electronic Voting machines for the time being is prohibited." Lebanon's draft electoral law calls for computerized vote counting (although not DRE voting).[5] In the Palestinian Authority and in Iraq, electoral authorities have requested international advice and assistance in computerized and specifically DRE voting operations.

DRE technologies in general raise a number of serious concerns among election professionals. The use of these technologies in new, fragile, and transitional democracies raises still more serious concerns. As pressure for DRE voting builds in these democracies, the international donor community will be forced to decide whether and how to support the deployment of these technologies.

II. Advantages of DRE Voting

Before assessing the possible role of international assistance, we must consider why DRE voting technologies are attractive and why they cause concern (discussed in section III). While not exhaustive, the following list summarizes the major issues raised by electoral authorities in new, fragile, and transitional democracies with respect to DRE voting.

1. Ease of counting

Mechanical voting systems, optical scan voting machines, and DRE systems have all been introduced in order to make vote counting and result tabulation faster and more accurate. This is a serious and important consideration, but it applies in only a small number of elections: namely, elections based on ordered preferences (such as alternative vote and single transferable vote) and elections involving a large number of races and/or referenda questions. Although any election can be conducted using hand-counted paper ballots, these two categories of elections can require time-consuming, costly, and error-prone hand counts, making mechanical or computerized voting systems attractive.

However, few new, fragile, and transitional democracies use ordered preference voting or conduct a large number of races at a single time. Although there have been examples of such elections, such as Bosnia in 2000, these have all been successfully managed without using DRE systems.

2. Ease of voting

Voter confusion can lead to effective disenfranchisement, especially of vulnerable voters (such as illiterate or elderly voters). In Afghanistan's 2005 parliamentary elections, 5

[3] Election Commission of India (ECI) powerpoint. Associated Press, 20 April 2004. Available at http://www.wired.com/news/evote/0,2645,63137,00.html?tw=wn_tophead_4
[4] Kenneth Benoit, "Experience of Electronic Voting Overseas," which is Appendix 2J of *Secrecy, Accuracy and Testing of the Chosen Electronic Voting System* (Commission on Electronic Voting, Ireland, 2004), p. 315. Available at http://www.cev.ie/htm/report/download_first.htm.
[5] Internal IFES translation of the draft electoral law, 2006.

percent of ballots were rejected as spoiled or blank. This is a high proportion in international practice and can be attributed both to Afghanistan's confusing system of representation and high illiteracy rates.[6] DRE technology promises to reduce such figures by making spoiled ballots impossible and unintentionally blank ballots difficult. The Caltech and MIT Voting Technology Project has argued the technology can minimize "lost" votes in a variety of ways.[7] DRE technologies also allow for more sophisticated voter interfaces, potentially resolving many voter access problems for those with disabilities or those using minority languages. Visual interfaces may also be useful for illiterate voters, but (as noted below) this presumption has not been rigorously tested in environments with little computer literacy.

However, in minimizing one potential for voter error, DRE systems may simply increase another. Voters unfamiliar with computers may not cast spoiled or blank ballots, but they may still cast ballots that do not accurately record their intended choice. MIT and Caltech note the possibility of such unintended consequences, reporting that in the United States "since 1988, three percent of voters using hand-counted paper and scanned paper ballots had no vote recorded for Senate or governor, but seven percent of voters using lever machines recorded no vote for Senate or governor."[8] DRE voting systems have not been rigorously tested in the kinds of environments with low literacy rates and limited technical knowledge normally found in new, fragile, and transitional democracies. While the Election Commission of India claims that their DRE system is "User friendly – can be used even by illiterates," neither the electoral authorities in India nor Brazil have published studies of voter interaction with their DRE technology.[9] Without such studies, both the utility of DRE voting and the correct approach to voter education are difficult to establish.

3. Fraud prevention

Electoral authorities have often claimed that DRE or other voting technologies can combat or even prevent fraud. In Brazil, a spokesman for the Superior Electoral Tribunal argued that Brazil's DRE systems are "100 percent fraud free" in contrast to earlier election procedures, which produced charges of uncounted ballots or tampered ballot boxes.[10] The Election Commission of India has made similar arguments, asserting that DRE technology combats common Indian electoral fraud problems, such as capturing polling places or stealing ballot boxes.[11]

However, these election officials do not offer any compelling basis for their expansive claims, and there is no evidence that DRE machines make an appreciable difference in the incidence of electoral fraud. As happened in India prior to the use of DREs, polling places can still be "captured" (i.e., local heavies can monopolize voting booths, voting multiple times), as can DRE machines as they are transported to central tally locations. More importantly, as will be argued below, the use of DRE technology in fact creates dangerous new possibilities for fraud or allegations of fraud.

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[6] Andrew Reynolds, "The Curious Case of Afghanistan." *Journal of Democracy* 17.2 (2006), 113-4.
[7] Caltech / MIT Voting Technology Project, "Voting: What Is, What Could Be" (2001). Available at http://www.vote.caltech.edu/reports/2001report.htm.
[8] "Voting: What Is, What Could Be," p. 8.
[9] Election Commission of India (ECI) presentation, Associated Press, 20 April 2004. Available at http://www.wired.com/news/evote/0,2645,63137,00.html?tw=wn_tophead_4
[10] Associated Press 3 October 2002.
[11] Associated Press 20 April 2004. Available at http://www.wired.com/news/evote/0,2645,63137,00.html?tw=wn_tophead_4.

4. *Cost reductions*

It is often claimed that DRE technology reduces the cost of election administration.[12] Such claims seem credible on their face, as we are accustomed to information technology measures increasing efficiency and thus reducing cost in a range of business and government activities. The cost arguments made for DRE technologies all rely on middle- or long-term projections, though, as the initial investment costs are recouped by lower ballot printing and transportation costs. Despite this, there are no longitudinal studies to confirm these projections. Repair and replacement of DRE equipment, warehousing of DRE equipment in secure and climate controlled facilities, salaries for skilled maintenance workers and trainers, and other continuing costs may well make DRE technologies less cost effective. If voter verified paper records are produced, as described below, the additional costs of paper, toner, printer maintenance, and transportation must also be factored in.

5. *Status*

Many experienced technical assistance providers fear that election technology, including DRE systems, are deployed more to assert a country's (or electoral authority's) modernity than in response to any specific need. According to elections expert Rafael López-Pintor, "It has become a status symbol for many organizations and countries."[13] This may become more prevalent as the U.S. adoption of DRE technologies is highlighted by the media, and as important developing nations, such as Brazil and India, receive attention for their DRE technologies. (Though it is also possible that it could become less prevalent as stable democracies, such as the Republic of Ireland, consider and reject DRE technology.)

III. Disadvantages of DRE Voting

The above discussion has made clear that many of the claims made about the advantages of DREs are largely unsubstantiated, particularly in new, fragile, and transitional democracies. Against these weakened advantages, one major disadvantage must be highlighted: damage to the reliability and credibility of the electoral process.

1. *Damaged credibility of the electoral process*

Any computer program can have an undetected, unintentional error (a "bug"). Any computer program can be changed by malicious programming ("hacked") in a way that is undetectable after the fact.[14] This is true of all manufacturers and, in fact, of all computer software. Various measures can reduce a DRE system's vulnerability, including computer security, physical security, testing and analysis of systems and coding, and good election procedures. None of these steps, and no combination of these steps, can change the irreducible, immutable vulnerability of computer systems. For example, the computer security techniques used in India's DRE systems make it unlikely that they could be reprogrammed by a person with limited, casual access to them (such as a voter), though the machines used in the United States are vulnerable to such attacks.[15]

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[12] Presentation shown to the author by staff of the Election Commission of India on April, 20 2004.
[13] Rafael López-Pintor, "Comparative Costs and Cost Management Case Studies Report" in *Getting to the CORE: A Global Survey of Registration and Elections* (UNDP/IFES, 2006), p. 44.
[14] See www.verifiedvoting.org; see also, Ariel J. Feldman, J. Alex Halderman, and Edward W. Felten, "Security Analysis of the Diebold AccuVote-TS Voting Machine" (September 13, 2006). Available at http://itpolicy.princeton.edu/voting/ts-paper.pdf.
[15] Ibid.

Even the Indian systems are vulnerable to programmers with more extensive access to the DRE machines, such as electoral officials.

This vulnerability means that election results can be manipulated; it also creates the danger that legitimate election results will not be accepted, because allegations of manipulation cannot be refuted conclusively. There are two recent examples of this threat to election credibility. In 2004, Venezuela held a presidential recall referendum. President Hugo Chávez won handily, with 58 percent of the vote. The elections were observed by former U.S. President Jimmy Carter and by the Organization of American States, and both reported that no fraud had been observed. However, because 90 percent of votes were cast on DRE machines, the opposition was not persuaded by the observation reports—and for good reason. The observers could not attest to the reliability of the DRE systems themselves. Unlike elections with paper ballots and hand counts, simply observing the process from beginning to end cannot ensure that no fraud has been perpetrated. While computer scientists critical of DRE voting examined voting statistics and found no patterns that would substantiate the specific allegations of fraud, this possibility cannot be ruled out. In addition, in Ecuador in 2006, technical failures of voting machines in the Guayas province led to allegations of fraud and the temporary detention of a representative of the Brazilian technology provider.[16]

Allegations about DRE voting results can quickly corrode trust in election results because they cannot be proved or disproved. In Ohio, 64 percent of Democrats believe that the 2004 presidential vote count was not fair and accurate, as opposed to 30 percent who believe that it was.[17] In new, fragile, and transitional democracies, such insidious doubt about an election result could well undermine the election and the credibility of any elected government.

It may be possible to salvage the utility of DRE voting by using voter verified paper ballots (VVPB). DRE systems that produce VVPBs allow voters to confirm their choices on a permanent, hard-copy record. In order to be effective, VVPBs need to meet several criteria. First, they must not compromise the secrecy of the vote, so they should not be recorded in order on a paper tape. Second, the printouts must be legible, and procedures should encourage voters to confirm their contents. Third, in case of differences between paper ballots and digital records, the paper ballots must prevail. Fourth, procedures must be in place for extensive, correctly randomized hand-count audits after all elections.

However, VVPBs bring their own challenges. If VVPB procedures are put into place, the additional cost and complexity may well make DRE voting prohibitively expensive, especially for relatively simple elections. In addition, there must be clear procedures for using the VVPBs to determine or verify the election outcome. The DRE systems used in Venezuela in 2005 produced paper records, but because there were insufficiently rigorous audit procedures, the opposition did not accept the ad hoc audits conducted after the election—and academics at Harvard and MIT confirmed the opposition's claims about the unreliability of the audit process.[18]

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[16] MISNA, "Ecuador: Electronic vote-count company rep held" SperoNews (October 20, 2006). Available at http://www.speroforum.com/site/article.asp?id=6211.

[17] CBS/NYT, "Campaign 2006: Ohio" (October 17, 2006), question 65, p. 26. Available at http://realclearpolitics.com/RCP_PDF/NYT-CBS_OHSen.pdf.

[18] Ricardo Hausmann and Roberto Rigobon, "En busca del cisne negro: Análisis de la evidencia estadística sobre fraude electoral en Venezuela" (September 3, 2004). Available at http://www.proveo.org/hausmann.pdf.

2. Operational and logistical constraints of transitional environments

In addition the major disadvantage of DRE voting—that it can undermine the electoral process—several less dramatic dangers must also be considered. These all relate to the practicality of DRE voting in difficult environments. Training of election officials and voters, secure storage and maintenance of the machines, power supplies, replacement machines and parts must all be considered when debating the use of DREs in new, fragile, and transitional democracies. In particular, poll worker training requires special attention, as few poll workers will be experienced computer technicians, able to correctly respond to computer errors (they may even be too unfamiliar with computers to describe the error to remote technical assistants). The use of VVPBs also complicates poll worker training because of the mechanical problems often associated with printers.

Technical complications and spiraling costs have already created problems in the adoption of sophisticated electronic procedures in new, fragile, and transitional democracies. In East Timor, an electronically compiled voter registration was eventually discarded, despite its great cost. In Kosovo, a combined civil and voter registration experienced severe problems, although these were eventually corrected through a series of additional registration periods. In Nigeria in 2007, an electronic voter registration raised serious concerns about its use in the April 2007 elections. In each of these cases, the problem has been a combination of insufficient technicians, computer illiteracy at the grass roots, insufficient training for those managing and utilizing the technology, and equipment ill suited to the physical rigors of the country. Voting technologies are inherently more difficult to deploy than registration technologies because of their larger scale. Many more machines, technicians, power sources, logistics bases, etc., are required to conduct an election than to register voters.

IV. Adopting DRE

This paper is not intended as a guide to jurisdictions considering the adoption of DRE voting technologies. It is, instead, an analysis which may be helpful to international donors considering how to support electoral processes deploying or debating DRE technologies. Nevertheless, it is important to draw together the advantages and disadvantages of DRE voting as described above into a list of issues for consideration by electoral management bodies, in part because analysis of these issues would be important to any donor projects. In the author's view, careful consideration of these issues will most likely lead to a rejection of DRE voting technologies in new, fragile, and transitional democracies.

1. Public and political support

The most critical element of the successful adoption of any electoral reform is broad support from the public and from political actors. DRE voting technologies must be a reaction to a widely perceived need, and they must be accepted as reliable and transparent.

2. Appropriate technologies

DRE voting technology must be able to manage whatever range of elections and systems of representation are required; they must be robust to the physical environment in which they will operate, and they must be user-friendly to the intended voters. In addition, they must be rigorously tested and certified. This requirement is more difficult than it may appear. The laboratory that tested "most of the [U.S.'s]

electronic voting systems" was barred from certifying voting equipment in the summer of 2006 because they failed to follow their own testing and documentation protocols, calling into question the reliability of the equipment they have already certified.[19]

3. Operations and logistics

An electoral management body must have staff with sufficient computer skills to manage the DRE voting process at all levels, including technicians at the polling level and more senior technicians in managerial positions. Controlled storage and transportation must be available to maintain the machines in working condition and to deliver them to polling locations. Power supplies must be available and reliable, either at the polling location or to charge batteries.

4. Consideration of alternatives

The need to undertake special "integrity" measures in emerging democracies has long been understood by practitioners. Integrity measures include "voter security and ballot security," with the latter defined as "arranging the voting and counting in such a way that the voter lists, ballot papers, tallies, and other result records are *tamper-proof* (emphasis added)."[20] While "tamper-evident" may be a more accurate term, the concept is valid. DRE voting technologies that do not employ VVPB are not tamper evident and are therefore dangerous to credible elections. Such technologies used in new, fragile, or transitional democracies pose profound risks to the legitimacy and effectiveness of elected governments and to the gradual development of democracy.

Before turning to the potential for international assistance, it is important to note the existence of a reliable alternative to DRE voting – paper ballots and hand counts. With correct procedures, paper ballots counted by hand at the polling station in the presence of observers and political party agents allow for an almost perfectly transparent electoral process. Although fraud is still possible, it can be detected and proved by adequate observation.

V. Role for International Assistance

Given this stern conclusion, it is not obvious that international assistance should play a role in DRE transitions, but interest in—if not adoption of—DRE technology seems inevitable. Given the international community's interest in promoting the best possible electoral processes, even under difficult circumstances, donors must find ways to support countries considering or adopting such technologies. This paper proposes appropriate donor roles for three phases of the adoption process: assessment, implementation, and observation.

1. Assessment

Many electoral authorities will find DRE technologies attractive, at least in the abstract, and will assess the possibility of adopting them. The international community can provide useful expert assistance at this phase, as it often does when new, fragile, and transitional democracies consider other important electoral reforms, such as the drafting of new electoral laws or the creation of new electoral authorities. Assessments should focus on the following issues:

[19] Christopher Drew, "U.S. Bars Lab from Testing Electronic Voting," *New York Times* (January 4, 2007).
[20] Pintor, *Getting to the CORE: A Global Survey of Registration and Elections*. 15-6.

- What problems are DRE technologies intended to solve? Based on empirical experience and theoretical considerations, is DRE technology suited to solving these problems? Are other techniques available to solve these problems?
- Have all practical considerations been raised? These should include tender processes, technical expertise, warehousing and maintenance, power supplies, staff capacity, and replacement.
- Have all stakeholders been consulted? As with other important electoral reforms, political parties, civil society organizations, voters, elected officials, and other stakeholders need to be consulted in an inclusive and wide-ranging process. International advisors can help to structure consultations and public option research activities (such as polling and focus groups).

2. Implementation

Donors are accustomed to providing the "hardware" and "software" of traditional electoral processes in the form of the procurement of election materials and the provision of expert advisors. It may seem natural, then, to provide similar assistance to DRE voting transitions, for example through procurement of equipment and provision of computer specialists. Because such projects might also allow lucrative contracts to national technology firms (as has been the case in computerized voter and civil registration projects in Kosovo and East Timor), they may seem doubly tempting. Nevertheless, donors should be very cautious in providing implementation assistance to DRE transitions.

Procurement of DRE equipment is not analogous to procurement of traditional election materials for various reasons:

- DRE equipment, as described above, is irreducibly non-transparent. While some nationalist forces may object to international donors providing ballot boxes, ballots, and polling kits, it is difficult to make credible allegations that the donor is manipulating the electoral process through such procurements. This is clearly not the case with DRE voting.
- DRE equipment requires maintenance, updating, and replacement. The procurement of ballot boxes or ballots from a given supplier in a given election does not bind the electoral authority to the same supplier for future elections. DRE technology, however, is not "mix-and-match." Procurement from a given supplier binds the electoral authority's future decisions, perhaps becoming a point of unhappiness if the donor reduces its commitment over time.

Provision of computer experts for DRE voting is also not analogous to provision of traditional election experts, and for a similar reason: procedures and forms designed by international advisors can be understood and assessed by all participants in the electoral process, including voters, political actors, and observers. Specifications and codes for DRE equipment are not accessible in the same way and so may raise issues of international interference.

Therefore, under most circumstances, direct support to DRE transitions should not be provided. However, electoral authorities may request other forms of international assistance during transitions to DRE voting. Traditional forms of assistance (such as legal, procedural, and voter education support) may still be required. Donors should consider the use of DRE technology in determining whether to provide such support.

Donors are understandably reluctant to provide direct support to electoral authorities that are corrupt or incompetent; if donors support their elections at all, it is usually at arms length. Donors should be similarly reluctant to support electoral authorities using DRE technologies without appropriate safeguards, especially VVPB. To the extent that this reluctance is overcome in any specific cases, assistance could well be useful in the operational implementation (as described above). Poll worker training, maintenance and logistics, and voter education will all be complicated by DRE transitions. International donors could play a useful role in sharing best practice experience between countries.

3. Observation

Even the best election observation cannot solve the transparency problems with DRE described above. However, good election observation can review system design and, perhaps, undertake extensive technical validation of a prototype DRE terminal.[21] Such efforts may be important if election results are contested, but they are unlikely to be determinative.

Donors can provide enhanced technical assistance to independent observers, international observers, and political party agents to help them grapple with the specific problems of DRE voting. This assistance can include computer expertise and funds for independent technical validation by a reputable laboratory.

[21] Kåre Vollan, "Observing Electronic Voting" (Norwegian Centre for Human Rights/NORDEM, 2005) Available at http://www.humanrights.uio.no/forskning/publ/nr/2005/1505.pdf.

Challenging the Norms and Standards of Election Administration: Election Management Bodies and Use of the Internet

Steven Clift

I. Introduction

The goal of this paper is to establish new proposals for international electoral standards[1] for the use of the Internet during election campaigns (outside of voting).

Election administrators and governments need to decide how they will use the Internet to improve election processes and better inform voters in the near term regardless of the complexity and controversy surrounding Internet voting. As has been seen in elections around the world, the influence of the Internet is growing.

The recommendations[2] proposed in this paper attempt to answer the following questions:

1. How should the Internet be used to support better election processes and informed voting?
2. What content and services must be online to ensure free and fair elections?

The emerging role of the Internet surrounding elections deserves close attention. It may be that changes in campaigning and citizen action online, rather than e-voting, present the real opportunities for—or challenges to—democratic transformation.

Once documented and shared, best practices can bring existing democratic freedoms and electoral standards to life where applied. However, while most election-related benefits from online activities will be gained through best practices, a standards-established model for "must-have" and "should-have" online elements is proposed. As more citizens come online, electoral management bodies (EMBs) will see their online responsibilities increase. Clearly, these responsibilities will arrive sooner in "wired" countries with active online populations, but they will eventually arrive everywhere. Creating a shared body of best practices now can benefit all democracies over time.

[1] Key documents establishing "electoral standards" include International IDEA's "International Electoral Standards: Guidelines for reviewing the legal framework of elections" (http://www.idea.int/publications/electoral_guidelines.pdf) and the OSCE's "Existing Commitments for Democratic Elections in OSCE Participating States" (http://www.osce.org/odihr/?page=publications&div=topics&topic=elections). These documents extensively reference the Universal Declaration of Human Rights (http://www.unhchr.ch/udhr/index.htm), International Covenant on Civil and Political Rights and related treaties (http://www.unhchr.ch/html/intlinst.htm), and the Copenhagen Declaration on Social Development (http://www.un.org/esa/socdev/wssd/agreements).

[2] As intended, the recommendations in this paper are pr oposed exclusively by the author, Steven Clift. This paper contains updates from January 2007.

II. Two Proposed Internet-Era Electoral Standards

Two key proposals for information-age electoral standards deserve special attention and debate. They inform all of the recommendations below:

1. All information produced, compiled, disseminated, or disclosed to hold a democratic election as established by national laws and international electoral standards must be **publicly accessible** on the Internet in a standard, authoritative format.

2. **Voter privacy** must be established to cover all voter actions online (seeking information about political candidates and issues; communicating with family, friends, and members of private associations about elections or governance; and voting).

The need for the first standard is intuitive. In order to build trust in the electoral process, promote voter participation, encourage informed voting, and ensure legal compliance, EMBs must make public all information about election standards, laws, regulations, and voter education programs. In addition, existing electoral standards require broad and timely access to this information. It is almost impossible to conceive of any democratic purpose served by keeping such information offline.

The second proposed standard opens an area of great debate. The Internet era provides many ways to track individual behavior; however, to ensure continued participation in the electoral system, voters must feel they can freely explore the raw materials of political thought without fearing public exposure by those with state, media, or economic power.

III. Analysis and Recommendations

Based on a review of the Web sites of EMBs and other sites with election and campaign information, the following section outlines policy recommendations in regard to::

- Providing information online
- Establishing an online legal environment
- Monitoring the Internet media
- Ensuring technological access

1. Providing Information Online

A typical EMB Web site should provide extensive access to official government election-related content. The "any time, anywhere" Internet makes election information more accessible now than at any time in history, and is therefore a force for democratization.

a. Make content available online

Ideally, all public election material—text, images, audio/video, voting information, and educational content—produced by EMBs should be available online.[3] However, given

[3] Items not available online should be described there and directions given for how to access them offline.

the variation in EMBs' resources and in online populations across countries, a progression of Internet use for EMBs should be defined and benchmarked.

Must-have elements

For all countries, the items below represent basic items that create democratic legitimacy, regardless of the number of citizens who use the Internet.

- ***Content demonstrating electoral standards are in action***

  Any public information mentioned in existing electoral standards must be made available (and easy to locate) online in a timely manner.

- ***Accurate and authoritative content***

  Even in the most wired countries, governments often place disclaimers on their Web sites suggesting that they are not responsible for the accuracy of the information there. Such disclaimers undermine legitimacy and trust in the electoral process. EMBs must guarantee that their Web sites provide legally accurate and authoritative information.

- ***Multilingual content***

  As required by local law, all content on an EMB's Web site must be available in all official languages. Other relevant languages should be used when possible.

Should-have elements

If "must-have" content establishes legitimacy, trust, and free and fair elections, "should-have" content and services promote voter participation, service transaction convenience for regulated political groups and voters, and other benefits. As more people in a given country go online, the benefit as well as the justification for investment increases. Countries with fewer than 20 percent of the population online may decide to invest gradually in this second tier of online services. On the other hand, in countries where more than 50 percent of the population is online, it is proposed that "should-have" items become "must-have" items.

- ***Candidate and party lists/links***

  EMBs should provide voters with complete and up-to-date access to "who is on my ballot" and "where do I vote?" online look-up tools. Providing such data at low or no cost for use by others, including major media Web sites, will make this high demand information accessible when voters seek it. Further, EMBs should maintain an official registry of candidate and party Web sites and e-mail addresses. Such a registry allows citizens to locate official (not spoofed) political Web sites and to reliably gather information from multiple sources online. Laws or regulations that require candidates or parties to link their Web sites (and their campaign finance or ethics filings) to the official registry should be considered.

- ***Voter registration***

  If EMBs can meet the challenge of electronically verifying identities, they can allow voter registration online, or at least registration address changes. If they do not have the capability to verify identities, they could allow online transactions by verifying e-mail addresses following a transaction and providing clear warnings of the penalties for fraud. As is done in New Zealand, governments should allow voters to verify online their information as it appears in the electoral rolls.

  Alternatively, first-time electronic registration or name changes could be conducted by organizations that meet certain standards. In the future, regulated political

entities and civil society groups may use Tablet PCs or handheld devices that have the ability to collect electronic written signatures. This process would require security procedures, privacy guarantees, and penalties that ensure the signatures collected are not used for other purposes.

- ***Campaign finance reporting and disclosure system***

EMBs should provide full online access to all legally public campaign finance data collected online. This public data should be searchable and downloadable for analysis with third-party tools. The data fields to be released electronically, like postal addresses of campaign donors, may be limited by privacy laws. EMBs could further expand into real-time reporting and disclosure of certain expenditures/donations over a certain amount. They could also create an online register of political campaign advertising in both the mass and online media (including paid "advertorials" on blogs, forums, etc., which should but often do not have required "paid and prepared for" statements). The full potential of the disclosure approach to regulating or limiting undesirable election behavior through public awareness will only be realized through online access.[4]

- ***Voter outreach and education programs[5]***

Judging by the information available, EMBs' online content appears to be used primarily by election officials, candidates/parties, the media, and regulated political entities. As EMBs make more information available, they should reach out to targeted groups to increase voter use of their materials. South Korea provides the most extensive example of such activity to date. An international exchange could help EMBs, media organizations (particularly public broadcasters), and nonpartisan organizations that educate voters to document the outreach practices that best achieve the most democratic results.

Given its highly interactive nature, the Internet also provides a rich opportunity to increase the political participation of young people. However, a CIRCLE survey[6] in the United States suggests that the Internet should complement rather than replace offline efforts. The web is a "pull" medium, where users decide what content to view. While you can entice people to visit a page through online advertising or "tell a friend" viral online marketing, disengaged youth are less likely to choose to view online political content. Active research that fully documents best practices, and EMB, NGO and media projects that build on those best practices would greatly benefit strategic investments in targeted voter outreach and education online.

EMBs should develop an index of online information products used for voter education, particularly those covered by existing electoral standards. EMBs can also prioritize content development by using specific case studies. In addition, they should map out and analyze the associated costs and benefits with checklists to guide development. However, providing online access does not absolve an EMB of the responsibility to disseminate information via traditional methods.

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[4] For a related discussion, see the final section of this report for Dr. Marcin Walecki's discussion of *Political Finance*, p.75 -93.

[5] The ACE Project Web site, an information resource on election administration, details voter education options and provides sample content at http://aceproject.org/ace-en/topics/ve. I will not repeat its important work and detailed advice.

[6] See CIRCLE, "National Youth Survey 2004" (January 15, 2004). Information about the survey is available at http://www.civicyouth.org/research/products/national_youth_survey2004.htm.

- ***Services and searches***

Citizens prefer voting information that is tailored to their geographical location or political interests, and EMBs can easily provide services based on geography, such as locating candidates or elected officials by area. (Media and NGO voter education sites will more likely take the lead with political issues.)

- ***Campaign regulation information and notifications***

EMBs have a special opportunity to provide tailored services to regulated political organizations, including full and reliable disclosure of all election laws, regulations, and policies. Online education and personalized notification services (such as e-mail alerts on deadlines or regulation tracking) will contribute to improved compliance and convenience.

b. Make content accessible online

Accessibility is a cornerstone issue and opportunity for EMBs. Specifically, access should be guaranteed for:

- ***People with disabilities***

EMBs have a democratic obligation to become a model of compliance with e-government accessibility policies. They must make rigorous use of standard HTML and other technologies that ensure greater access for sight-impaired people. In addition, they should use closed captioning of audio/video content for those who are hearing impaired.

- ***Speakers of minority languages***

EMBs should consider providing essential voter information in all local languages. A great advantage of the Web is its ability to provide access to alternative language content in areas of a country where an EMB may not target print distribution.

- ***Users of different Internet interfaces***

In order to reach the greatest number of citizens, EMBs should organize their content for users of different Internet interfaces. The use of database-driven content management systems and standard content formatting (such as HTML, XML, CSS, RSS, etc.) make this task significantly easier, as does the ability to produce low- and high-bandwidth versions of pages. An emerging area is mobile access (often called WAP), which allows users to view the Web via their mobile phones.

- ***Users without computer access***

EMBs may actually achieve better voter outreach by using offline as well as online resources. This is particularly true in countries with limited home Internet access or displaced people. As more and more institutions (from NGOs to political parties to schools) become connected, the Internet can be used as a remote document storage system. This will be particularly useful for achieving the timely distribution of information flyers and small format posters in places where postal service is unreliable. The Internet could also be used to distribute radio programs in MP3 format for use by local radio stations. (See the section on ***Ensuring Technological Access*** below for further discussion of increasing access to voter information in the most remote places.)

2. Establishing an Online Legal Environment

The regulation of online campaign activity is one of the most complicated areas of online election administration.[7] Moving from analysis and proposals to the approval of new laws or rules on this issue has proved exceedingly difficult. However, this may be a good thing. EMBs need experience with the Internet to determine which aspects of campaign regulations are either threatened or enhanced by its use.

However, some individuals and informal groups may use the Internet to exercise influence on par with regulated political groups. The reaction to this event will range from government attempts to regulate individual behavior to calls by regulated groups for Internet campaigning exemptions. A proposed amendment to legislation on Internet taxes in the U.S. House of Representatives that would have exempted Internet campaigning from election regulations failed. Parliaments around the world will need to carefully consider future regulation of online campaigning.

a. Identify applicable laws

In light of today's Internet-driven realities, EMBs must review existing campaign regulatory laws and issue clear guidance. When possible, they should apply to Internet content those laws that currently regulate offline media. However in many areas, EMBs should fundamentally re-evaluate laws and regulations and develop proposals that allow the Internet to contribute positively to democracy. Achieving the original goals of electoral regulations may require that those regulations be repealed in the face of the opportunity afforded by the Internet. There will be instances in which the application of existing "offline" laws may lead to civil or criminal charges for what is considered "normal" **online** campaign or political activity. Further, when it comes to the activities of individual citizens, these may require exemptions for specific activities online and offline in order to make enforcement practical.

b. Establish privacy policies, review proposal for "voter privacy" standard

The proposed "voter privacy" election standard extends the concept of voter privacy while voting to include political privacy while gathering information to make a considered vote. This proposal requires extensive review in all countries. Initial recommendations include the requirement that all regulated political entities should be required to develop, display, and adhere to privacy policies. EMBs should develop a standard template for display on election-related Web sites, providing a checklist of what may and what will not be done with the information generated by an individual's use of the site. The establishment of such a policy will be highly controversial as political organizations' use of data on supporters is typically not made public. Any registered political entity that violates its own privacy policy should be subject to severe legal penalties, and all changes in organizations' privacy policies should be registered with the EMB. In addition, all individuals currently in that organization's database should be notified of the changes and given the opportunity to opt out. Alternatively, or in addition, a country's law could specify allowable privacy and data-sharing practices.

[7] The U.K.'s Electoral Commission has produced both discussion papers and recommendations on the topic of election campaigning and the Internet, which are available from this page (scroll down to find relevant section) http://www.electoralcommission.org.uk/elections/policyreviews.cfm. The U.S. Federal Election Commission has also explored this issue, creating several regulations related to use of the Internet in 2006 (see http://www.fec.gov/pages/brochures/internetcomm.shtml. California's Fair Political Practices Commission has also addressed the issue (see http://www.fppc.ca.gov/index.html?id=362).

c. Provide defamation and libel guidelines

As laws related to online libel and defamation differ from country to country, EMBs should compile all relevant local laws and provide citizens, candidates, and parties with guidance on how to avoid associated legal penalties. The 1999 United Nations Report of the Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression[8] illustrates how easily citizens could be charged with criminal libel in democratic countries that view informal online remarks to friends on par with statements on television or in the newspaper.

d. Protect the right to freedom of expression, assembly online, and the use of information

Through the Internet, the power of national and international freedom of expression guarantees are gaining their full effect. In short, all human and democratic rights apply online as they do in person or in traditional media. It is essential that those promoting free and fair elections advocate for the ability of citizens to exercise their established rights online, including the right to online public/private communication, association, and assembly in the election process. The legal private communication among people must not be monitored for the sake of "free and fair" elections. Finally, as governments, political parties, and candidates make information about elections available online, voters should have a clearly articulated right to use, share, and comment on such information.

e. Guarantee the right of reply online

In some countries, newspapers and broadcast media are obliged to provide equal time for all candidates; more specifically, they must do so for a candidate who has been the focus of criticism. Similar policies could also be implemented on the Internet, where Web site owners might be required to carry a response from someone who is the subject of comments on the site. Such policies have been discussed little in the United States; however, the Council of Europe has explored the application of the right of reply in online media.[9]

Whether voluntary or mandatory, guaranteeing the right of reply might provide a less litigious mechanism to correct the record. Most Web forums allow people to reply to other comments, and some news sites allow people to annotate a story by attaching their comments to it. However, the abuse of government-sanctioned reporting mechanisms must be monitored, because the legal and personal costs related to frivolous complaints might have a chilling effect on the exercise of free expression during elections.

3. Monitoring Internet Media

Because the Internet is an increasingly agenda-setting medium, it will become important to independently monitor media and other significant Web sites during elections in order to ensure fair and balanced coverage.[10] While the Internet does not yet reach as many

[8] Available from http://www.unhchr.ch/html/menu2/7/b/mfro.htm.
[9] See http://www.humanrights.coe.int/media/events/2003/Hearing.htm.
[10] The National Democratic Institute mentions the Internet briefly in its media monitoring guide: NDI, "Media Monitoring to Promote Democratic Elections," (NDI, 2002). Available at http://www.accessdemocracy.org/library/1420_elect_media_02.pdf.

citizens as television, its reach will only grow. Therefore, select parts of the Internet, particularly major media sites, should be integrated into any media monitoring effort.

a. Build from academic online content analysis techniques

While the democratic purposes of online monitoring emanate from traditional media monitoring, current online analysis expertise comes from the world of academic Internet research. According to Dr. Kirsten Foot at the University of Washington, she advises the following:

- Build from online content analysis;
- Define clearly what is being monitored (a Web site, site section, article, a page, forum, e-mail newsletter, etc.);
- Use a tool like "Teleport Pro" to harvest information from sites (perhaps selecting specific times of each hour or each day to check selected pages);
- Create a standard questionnaire for use by monitors; and
- Use a web-based reporting tool with a database backend (like Webarchivist Coder), because it may work better than an Excel spreadsheet for coding.[11]

As reporting systems on election-related media monitoring are often designed with weekly reporting in mind, fair and balanced reporting should be promoted by streamlining analysis and measuring essential content.

b. Monitor the top 100 Web sites

Independently monitor and report on the "surface" pages of the top 100 Web sites carrying news or political content in a given country. Such monitoring will involve a mix of traffic comparison, objective metrics, and commons sense evaluation. This reporting should also cover major portals even if they have limited political content.

It is recommended that an independent designee or research institution monitor the stories or content linked from a site's home page, the top sections (e.g. news, business, etc.), and any special election or political sections. The key is to focus on the parts of the top 100 sites that could influence a general reader (e.g., CNN's home page or MSN Messenger's welcome page). While some automatic content analysis tools might be used to complement staff or volunteer analysis, online media monitoring will remain labor intensive.

c. Research political Web trends

Monitoring and analysis of opinion leader sites, forums, and e-mail lists are also recommended. Such monitoring will help establish how information travels online or how online rumors are picked up by the mass media. Based on its experience in this area, an EMB or other nonpartisan organizations could offer regular reports on its media monitoring as well as resources to correct the factual record online. The goal would be to highlight the diverse sources of information available online and to demonstrate alternative, non-regulatory mechanisms for creating accountability. Presenting a slightly different model, the U.S.-based FactCheck.Org corrects

[11] For details on "web research methods" see: http://www.com.washington.edu/Program/Faculty/Faculty/foot.html Information on Teleport Pro is available from: http://www.tenmax.com.

politicians' statements in a model that could grow into a project that could post corrections to forums or weblogs on agenda-setting political sites.

d. Monitor government Web sites

EMBs should monitor all top-level government Web sites, such as the government's home page, the parliament's home page, and authorized sites of officials running for re-election.[12] In addition, EMBs should look for inappropriate redirection or links to campaign Web sites, which would likely violate election laws. EMBs (or perhaps national libraries) are the government agencies that should link to political party and candidate Web sites, and they must do so in a balanced, uniform way. During elections, all e-government Web sites should link the EMB site in order to alert citizens online that elections are coming.

e. Encourage watchdog groups to aid policy development

While the Global Internet Liberty Campaign (www.gilc.org) and Internews (www.internews.org) both promote global freedom of expression via the Internet, it is important that EMBs encourage the establishment of national groups that can report on the situations in their own countries. Watchdog groups like Reporters without Borders cover issues of Internet freedom[13] from the perspective of the media, but few groups examine the situation from the perspective of clean campaigning. EMBs and parliaments need information about the obstacles and successes people encounter on the Internet in order to develop good Internet policy.

4. Ensuring Technological Access

Because most developing democracies are also developing countries with limited telecommunications infrastructure, it is easy to dismiss the role of the Internet in such countries. However, it is in these countries that the strategic use of the Internet may actually provide the greatest efficiencies and benefits. A key to lower costs is the ability to avoid expensive satellite Internet connections. It is essential to find ways to share costs and connections when satellite or expensive direct connections are the only options available.

Many EMBs around the world are nearing the final stages of integrating technologically advanced Web sites and online services into election administration. The more interactive an electoral administration is within its own offices, the better prepared it will be to deal with the public and online policy issues. In the poorest countries, funding support for an EMB's strategic online infrastructure is recommended.

a. E-mail

All employees of an EMB should have an e-mail account and e-mail access via a Web browser. They should be able to access their accounts outside their office and in remote locations. In many developing countries, staff share computer workstations. It is also important to note in many instances, e-mail is easier to access in remote regions than telephones or postal services. Using the Internet to send short text

[12] Such government-funded sites should be required to link to EMB-produced voting information and should be encouraged to link to other nonpartisan election resources.
[13] See, for example, their section on governments' use of the Internet and treatment of journalists who write online: http://www.rsf.org/rubrique.php3?id_rubrique=273.

messages (SMS) is a bridging technology where mobile phones are often more accessible than landlines.

b. Wireless Internet options

The following technologies should be reviewed for their potential to provide e-mail/Internet access to election officials and other democratic actors (such as candidates, political parties, NGOs, community radio stations, etc.):

- ***E-mail via radio***

  There are places around the world that send and receive e-mail via HF Radio/Shortwave E-mail, which allows them to communicate at a lower cost than when using a satellite. While there are initial equipment costs and the data transfer rate is very slow, such connections provide e-mail access in some of the remotest areas of Africa and other developing countries.[14]

- ***Low-earth satellites, satellite connections***

  These low-earth satellites rotate around the earth providing an opportunity for daily e-mail exchange. Additional research is required to determine where this technology is being used. While expensive, the fixed and mobile satellite connection options increase and costs decrease each year.[15]

- ***Wi-Fi (802.11b/g) and other line-of-sight wireless technologies like WiMax***

  These wireless technologies are being used in creative ways around the world. A satellite link to a community access "telecenter" might be shared in a village via Wi-Fi. In Cambodia, Wi-Fi is placed on motorcycles, which enables the delivery and uploading of e-mail from schools, clinics, and other locations as they drive past. Upon returning to their base office, which has a satellite Internet connection, the devices on the motorcycles pass outgoing messages on to the Internet.

c. Localized content access

Prior to an election, essential voting information, election law guides, and voter participation posters should be compiled and distributed to EMB staff, the media, political parties/candidates, election observers, NGOs, and others electronically. This content can be made available via CD-ROM or one-way satellite radio with data interfaces[16] to NGOs (and other organizations serving displaced persons), who can mirror the content on local computers for local access and printing on demand.

d. Pilot open source tools for election administration and voter guides

If EMBs and the democratic development community focus sufficient political will and resources, the Internet can be used aggressively in even the least wired countries to promote free and fair elections. Two or three countries should be selected for in-depth pilot efforts using sharable open source software. The creation of tools, like a platform

[14] For a good video on radio e-mail, see the site of Radio E-Mail Connections Unlimited at http://www.radiomail1.net. Another example is found at http://www.bushmail.net.
[15] For details on satellite Internet options in developing countries see HumaniNet's site on satellite communications, available at http://www.humaninet.org/wis/satcom/index.shtm.
[16] One-way satellite content distribution is an option that has been used to deliver community radio content in Asia and Africa. See First Voice International's site for more information: http://www.firstvoiceint.org/How/Satellite.html.

for generating non-partisan voter guides by EMBs, civil society, or media (depending upon local roles) could be used in scores of jurisdictions and languages quickly. Overall, leveraging existing open source tools with election administration-related "code" or modules will generate the most cost-effective value. This requires support for the idea that shared tools should serve the needs of more than one EMB and acceptance that they may replace or complement existing administrative technology systems.

V. Conclusion

The legitimacy of modern governance is based on free and fair elections. The new capacities of information and communication technologies, including the Internet, require election laws, rules and practices be updated to ensure that democratic electoral goals are met in the information age. This will be a difficult process due to the speed at which innovations—both good and bad—emerge in the networked world. Let all of us seize this challenge with democratic intent now, so that in a decade, we will not regret a missed opportunity to shape the information age for democratic good.

By gaining practical Internet experience, EMBs can take advantage of the democratic potential of the information age. By focusing on electoral standards and democratic principles, EMBs can leverage the strengths of the information age, counter its negative aspects, and protect and strengthen democracy for generations to come.

Further Readings and Select Bibliography

In addition to the electoral standards documents referenced in my report, the following articles were reviewed (links active as of January 2007):

Bailur, Savita. "Modernizing Participative Democracy through ICTs in the Commonwealth: A report for the inception phase." London: Commonwealth Policy Studies Unit, 2003. Available at http://www.cpsu.org.uk/downloads/MPD%20Final%20Report.pdf.

Barratt, Jim. "ASA and CAP Response to EU - Online Campaigns." 28 October 2002. Available at http://www.asa.org.uk/publicaffairs/pdfs/response_4.pdf.

California Voter Foundation. "How to Make an Online Voter Guide." August 2002. Available at http://www.calvoter.org/issues/votered/pub/quicktips.html.

California Voter Foundation. "Voter Privacy in the Digital Age." May 2004. Available at http://www.calvoter.org/issues/votprivacy/.

Cornfield, Michael, Lee Rainie, and John Horrigan. "Untuned Keyboards: Online Campaigners, Citizens, and Portals in the 2002 Elections.e,ee Available at http://www.pewinternet.org/pdfs/PIP_IPDI_Politics_Report.pdf.

Elections Canada. "On-line Voter Registration Feasibility Study: Executive Summary." March 20, 2003. Available at http://www.elections.ca/content.asp?section=loi&document=index&dir=fea.

Electoral Commission (U.K.). "Electoral Registers: Access, Supply and Sale: Response of the Electoral Commission." Last updated November 2002. Available at http://www.electoralcommission.org.uk/templates/search/document.cfm/6645.

Electoral Commission (U.K.). "The implications of online campaigns." Last updated October 2002. Available at http://www.electoralcommission.org.uk/templates/search/document.cfm/6208.

Electoral Commission (U.K.). "Online campaigns discussion paper." Last updated November 2002. Available at http://www.electoralcommission.org.uk/templates/search/document.cfm/6551.

Electoral Commission (U.K.). "Online election campaigns: Report and recommendations." Last updated April 2003. Available at http://www.electoralcommission.org.uk/templates/search/document.cfm/7286.

Federal Election Commission. "Internet and Federal Elections; Candidate-Related Materials on Web Sites of Individuals, Corporations and Labor Organizations." 66 FR 50358 (2001). Available at http://www.fec.gov/pdf/nprm/use_of_internet/FR66n192p50358.pdf.

Hunter, Christopher D. "Political Privacy and Online Politics: How E-Campaigning Threatens Voter Privacy." *First Monday* 7:2 (February 2002). Available at http://firstmonday.org/issues/issue7_2/hunter/index.html.

Hussein, Abid. "Report of the Special Rapporteur on the protection and promotion of the right to freedom of opinion and expression." UNHCHR E/CN.4/1999/64 (29 January 1999). Available at http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.1999.64.En.

Im, Joa Soon. "Political Participation in Republic of Korea." Paper delivered at the 7th Meeting of Electoral Management Bodies in New Delhi, India (5-7 March 2003). Available at http://www.idea.int/elections/upload/soon_paper.pdf.

International IDEA, "Guidelines for Procurement of Technology for Elections." Accessed 9 June 2004, but no longer online.

Laanela, Therese. "Election and Technology." Presented at the Regional Workshop on Capacity Building in Electoral Administration in Africa. Tangier, Morocco: CAFRAD, 2001. Available at http://unpan1.un.org/intradoc/groups/public/documents/cafrad/unpan005406.pdf.

Mulligan, Deirdre and James X. Dempsey. "Square Pegs & Round Holes: Applying Campaign Finance Law to the Internet—risks to free expression and democratic values." Proceedings of the tenth conference on computers, freedom and privacy: challenging the assumptions. Toronto, Ontario: 2000. Available at http://www.cdt.org/speech/political/Campaignfinance.pdf.

Potter, Trevor. "The Internet and Federal Election Law." Hoover Institution's Campaign Finance Site, 2005. Available at http://www.campaignfinancesite.org/structure/opinions4.html.

Potter, Trevor and Kirk L. Jowers. "Election Law and the Internet." Washington, D.C.: Brookings Institution, November 2001. Available at http://www.brookings.edu/gs/cf/sourcebk01/InternetChap9.pdf.

"Report of the Bipartisan California Commission on Internet Political Practices." December 2003. Available at http://www.fppc.ca.gov/InternetCom/FinalRept01-04.pdf.

Schneider, Steven M. and Kirsten A. Foot. "Online Structure for Political Action: Exploring Presidential Campaign Web Sites From the 2000 American Election." 2002. Available at http://www.sunyit.edu/~steve/schneider-foot-online-structure-javnost.pdf

United Nations. "Consultation on the use of the Internet for the purpose of incitement to racial hatred, racial propaganda and xenophobia." A/CONF.189/PC.1/5 (April 2000). Available at http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.189.PC.1.5.En.

Challenging the Norms and Standards of Election Administration: External and Absentee Voting[1]

Jeremy Grace

I. Introduction

An estimated 175 to 250 million persons currently reside outside of their home communities or countries of citizenship, and are therefore outside of their regular electoral constituencies.[2] Some left their homes unwillingly due to war or civil strife; others left freely but continue to maintain citizenship and often pay taxes or otherwise contribute to the economies of their home countries and communities.

This paper examines the extension of franchise to these people. While an increasing number of countries provide absentee voting services, practices and procedures vary widely. Furthermore, human rights instruments and election standards initiatives provide limited, if any, guidance on ensuring the transparency and integrity of absentee voting. As a result, parliamentarians and election management bodies (EMBs) confront a knowledge and skills gap regarding who should be eligible for absentee voting and how to best design a workable, cost-effective, and transparent program.

Many democracies have struggled with the logistical and political difficulties associated with external voting. In the United States, the 2000 presidential election was marred by accusations that election officials at the state level used different standards to determine the validity of absentee ballots depending on where they were counted.[3] In the 2004 presidential elections in Ukraine, the OSCE/ODIHR reported serious abuse of absentee voting, noting widespread reports of persons voting multiple times by absentee ballot. It further noted that the Central Election Commission maintained inadequate controls and supervision of the 1.5 million absentee ballots that were printed.[4] Less destructive to the integrity of the electoral process, but still problematic, participation rates among absentee voters in the 2006 Mexican presidential elections were far lower than many had expected. According to a poll conducted by the Pew Hispanic Center, less than one percent of eligible Mexican nationals in the United States registered to participate. The

[1] This paper was first drafted for IFES in 2004 and presented at OSCE Human Rights Dimension Meetings, Vienna, November 2004. The research is based on a review of the literature on absentee voting, reports and analyses of EMB and election observations groups, and the author's experiences administering absentee programs on behalf of IOM and IFES. The original paper was also posted online at IFES (www.ifes.org) and formed the basis of several topical pages of the ACE Project at www.aceproject.org. This re-write updates the paper and incorporates new cases and research.

[2] The IOM identified 175 million migrants in 2000 and extrapolates from recent trends that the figure has likely reached 185 to 192 million as of 2005. That figure only includes persons outside of their home state and does not include internally displaced persons (IDPs). The Internal Displacement Monitoring Center (IDMC) estimates a global population of 23.7 million IDPs as of 2005. See IOM at http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published_docs/books/wmr_sec03.pdf and IDMC at http://www.internal-displacement.org.

[3] David Barstow and Don van Natta, Jr., "How Bush Took Florida: Mining the Overseas Absentee Vote," *New York Times*, 15 July 2001.

[4] OSCE Office for Democratic Institution and Human Rights, *Ukraine Presidential Elections: Second Round Re-Run*.2004. Available at http://unpan1.un.org/intradoc/groups/public/documents/UNTC/UNPAN019222.pdf.

survey cited "[s]trict requirements, insufficient information about registration procedures and lack of public interest" as the chief reasons for the disappointing turnout.[5]

Despite these well publicized challenges, a forthcoming (2007) study by the International Institute for Democracy and Electoral Assistance (IDEA) identifies over 100 countries that "…expressly allow their citizens or electors who are residing outside the country, permanently or temporarily, to e3xercise the right to vote from abroad."[6] Several major migrant-sending states such as Mexico and the Philippines are recent additions to this number and have implemented highly publicized external voting programs. Other countries, including Angola, Nicaragua, and Greece, have legal provisions for absentee voting in place but have yet to implement them.[7]

The trend is especially prominent in the context of post-conflict elections. In Iraq, Afghanistan, Kosovo, East Timor, and Bosnia and Herzegovina, absentee voting by refugees and internally displaced persons (IDPs) has been viewed by the international community as important to national reconciliation and to the building of democratic political institutions. However, these processes have not been free from irregularities.[8]

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

The balance of the paper explores each of these questions in turn, comparing state practices and identifying areas where the development and application of standards would result in better management of external voting programs. The paper concludes by discussing the challenges of implementing external voting, reviewing existing literature on the subject, and suggesting areas for further investigation.

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[5] Pew Hispanic Research Center, *Pew Hispanic Center Survey of Mexicans Living in the U.S. on Absentee Voting in Mexican Elections.* (Pew Hispanic Center, 2006). Available at http://pewhispanic.org/files/execsum/60.pdf.
[6] International IDEA, "A Preview of the Forthcoming International IDEA Handbook on External Voting." (International IDEA, 2006). Available at http://www.idea.int/elections/upload/External_voting_Preview_withlayout_07june06_final.pdf.
[7] Note that expatriate Greek nationals are eligible to vote in person if they return to Greece on election day. This paper does not address issues of in-person voting by expatriates.
[8] See International Organization for Migration, "Case Studies on the Participation of Conflict Forced Migrants in Elections," IOM Participatory Elections Project, Desk Research Package Backgrounder (May 2003): 3-34. Available at http://www.geneseo.edu/~iompress.

II. Democracy and Election Standards

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

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

Similar language is common in global and regional human rights instruments,[9] has been upheld by international human rights commissions and tribunals,[10] and is becoming standardized in the practice of international organizations. As a result, a number of scholars argue that the human rights system now guarantees a "democratic entitlement," or the right of all citizens resident in their state to vote in free and fair elections.[11]

However, holding elections does not necessarily imply the full realization of democratic rights; elections can be manipulated to legitimate pre-ordained outcomes. Thus, the international community has sought to develop standards to ensure that elections meet the twin tests of "free and fair."[12] Two types of standards initiatives are important. The first stems directly from global and regional treaty-based mechanisms, such as the Human Rights Committee (particularly its General Comment 25) and the other charter-based human rights mechanisms. These initiatives aim to provide better reporting and commentary on periodic state reports regarding their obligations on the relevant covenants or, in some instances, to apply specific rights in cases brought by individuals against their own state. The second type derives from the work of global and regional intergovernmental organizations such as the Inter-Parliamentary Union, the Organization for Security and Cooperation in Europe Office of Democratic Institutions and Human Rights (OSCE/ODIHR), the Council of Europe (particularly the Venice

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[9] Article 13 of the "African [Banjul] Charter on Human and Peoples' Rights," adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986; Article 23 of the American Convention on Human Rights, OAS. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978 (available at http://www1.umn.edu/humanrts/oasinstr/zoas3con.htm), OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992); and Article 3 of the Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ETS 9), 213 U.N.T.S. 262, entered into force May 18, 1954 (available at http://www1.umn.edu/humanrts/euro/z20prot1.html).

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

[11] See Gregory H. Fox and Brad R. Roth, eds., *Democratic Governance and International Law* (Cambridge: Cambridge University Press, 2000).

[12] There has been a general trend towards the use of "genuine" instead of "free and fair." This paper uses the terms interchangeably. For an overview of basic issues associated with "genuine elections," see Jørgen Elklit and Palle Svensson, "What Makes Elections Free and Fair?" *Journal of Democracy* 8: 3 (July 1997). See also Guy S. Goodwin-Gill, *Free and Fair Elections: New and Expanded Edition* (Geneva: Inter-Parliamentary Union, 2006). Available at http://www.ipu.org/PDF/publications/Free&Fair06-e.pdf#search='goodwin%20gill%20free%20and%20fair. See also Office of the United Nations High Commissioner for Human Rights, *Compilation of documents or texts adopted and used by various intergovernmental, international, regional and subregional organizations aimed at promoting and consolidating democracy.* Available at http://www.ohchr.info/english/law/compilation_democracy/index.htm.

Commission), and others. Unfortunately, given the wide divergence in state practice regarding who should be eligible for absentee voting and how to implement such a program, these initiatives have yet to provide comprehensive guidance on organizing a transparent process.

III. Justifications for External Voting

Persons living outside of their home communities and/or countries of nationality left for a variety of reasons, and this diversity affects decisions regarding whether they should retain the right to vote. In general, three categories of potential absentee voters can be distinguished:

- Forced-migrants: These persons are outside of their home community against their will. There are two distinct types: refugees or asylum seekers who flee across an international border because of a "well founded fear of persecution" and are "unable to avail themselves of the protection of their home state government;"[13] and internally displaced persons (IDPs), who have fled natural or man-made catastrophes, including war and persecution, but do not cross an international frontier.[14]

- Expatriates and migrant laborers: These persons are outside of their home states for reasons of economic remuneration, diplomatic/military service, educational opportunities, or personal preference. In general, they maintain their citizenship, intend to return to their home states, and often continue to pay taxes and/or send remittances home. They may be absent only temporarily, or for long periods of time. Most importantly, they retain citizenship in their home states.

- Non-citizens claiming a linkage through "ethnic kinship" or descent. This group includes members of a diaspora or other individuals sharing a common conception of belonging to a national group based on perceptions of ethnic or cultural identity. These persons often maintain an abiding interest in the affairs of the state of origin, yet do not retain citizenship. Few countries extend voting rights to these non-citizen, non-resident persons.

Should any or all of these populations retain their right to political participation while abroad? Opponents of absentee voting for expatriates and migrant laborers advance a number of arguments against the practice, including 1) because external voters reside outside of the jurisdictions where their votes will help determine who wields power, they do not live with the direct consequences of the vote and may therefore vote less responsibly than those who do; 2) external voters may lack the information needed to make an informed decision because of difficulties in presenting candidate platforms and positions to non-residents; 3) the costs associated with reaching voters who have voluntarily chosen to reside abroad and may be widely dispersed places an undue burden on those who remain; and 4) election administrators must confront issues of ballot secrecy and transparency in territories where they lack jurisdictional capacity.[15]

[13] "Convention Relating to the Status of Refugees," Art. 1(A)(2), 19 U.S.T. 6259, 6261, 189 U.N.T.S. 137, 152, 28 July 1951, entered into force 22 April 1954.
[14] External voting is generally conceived as a procedure related to those outside of their country. In the case of IDPs, and even many economic migrants or students, however, it could potentially refer to persons within their state of citizenship but outside their normal electoral constituency. This paper concentrates primarily on voting while abroad.
[15] For more detailed consideration and analysis of these arguments, see: Rainer Baubock, "Expansive Citizenship – Voting Beyond Territory and Membership," *PS, Political Science and Politics,* 38: 4 (October

Some of these arguments have also been advanced in particular national contexts in relationship to conflict-forced migrant external voting programs.

1. Forced-Migrants

The legal, political, and peace-building arguments for Forced-migrant voting rights are clear.[16] Denial of Forced-migrant voting rights during their displacement rewards those who use large-scale displacement to achieve political legitimacy in an election in which the displaced are not provided a voice. The international community has recognized the gravity of this problem and included refugee and IDP voting programs in many post-conflict elections.

A case for the enfranchisement of forced-migrants is also based on international human rights obligations, although the protections appear stronger for IDPs than for refugees. IDP political participation is grounded in the non-discrimination principles contained in Article 2 of the ICCPR and in most other global and regional human rights instruments.[17] The Guiding Principles on Internal Displacement, although not treaty law, also address this issue, declaring in Principle 22 that:

> Internally displaced persons … shall not be discriminated against as a result of their displacement in the enjoyment of the following rights: (a) The rights to freedom of thought, conscience, religion or belief, opinion and expression; … (c) The right to associate freely and participate equally in community affairs; (d) The right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right…[18]

However, the 1951 Refugee Convention does not address the political rights of refugees vis-à-vis their home states, so the legal case must be deduced. As Gallagher and Schowengerdt argue:

> Refugees have not in any way relinquished their citizenship by seeking asylum, but rather cannot avail themselves of the protection of their country of origin because current conditions therein pose a threat to either their lives or livelihood. As citizens, therefore, they have the right to participate in the electoral processes of their country.[19]

2005): 683 – 689. PSOnline available at: http://infoalert.usembassy.de/01-06/politics_gov.htm. See also Dieter Nohlen and Florian Grotz, "Legal Framework and Overview of Electoral Legislation" in *External Voting Handbook,* Unpublished Draft. (International IDEA, 2000). See also Peter J. Spiro, "Perfecting Political Diaspora," *New York University Law Review*, 81 (April 2006). Available at SSRN, http://ssrn.com/abstract=876955.

[16] For a detailed analysis of the international rules and norms surrounding this issue, see Jeremy Grace, "The Electoral Rights of Conflict Forced Migrants: A Review of Relevant Legal Norms and Instruments," IOM/PEP Discussion Paper No. 1 (June 2003). Available at http://www.geneseo.edu/~iompress/.

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

[18] "Guiding Principles on Internal Displacement," United Nations Office for the Coordination of Humanitarian Affairs, U.N. Doc. E/CN.4/1998/53/Add.2, 2 November 1998. Available at http://www.reliefweb.int/ocha_ol/pub/idp_gp/idp.html.

[19] Dennis Gallagher and Anna Schowengerdt, "Participation of Refugees in Postconflict Elections" in *Postconflict Elections, Democratization, and International Assistance,* ed. Krishna Kumar (Boulder: Lynne Reinner Publishers, 1998):199.

In line with this reasoning, the 1999 Istanbul Summit Declaration of the Organization for Security and Cooperation in Europe (OSCE) declared: "We are committed to secure the full right of persons belonging to minorities to vote and to facilitate the right of refugees to participate in elections in their countries of origin."[20]

However, not all post-conflict elections have included programs to provide refugees with absentee balloting programs. The chief impediments include cost and timelines. These elections are often partially or wholly financed by the international community and resources may be limited. Regardless of how the program is administered, the cost per vote is higher outside of the country than inside. In addition, the political imperative to conduct elections may conflict with the extended timelines necessary to implement a transparent and inclusive program. While the general rule should be to organize absentee registration and voting programs for refugees who remain displaced at the time of the election, political actors and international donors often need to weigh the causes and scale of displacement against available resources.

2. Expatriates and Migrant Laborers

For expatriates and migrant laborers, the case for inclusion is not clear. The most commonly advanced argument holds that citizens living abroad often pay taxes or provide remittances to their home states and should therefore have some say in how these resources are collected and re-distributed. In 2002, for example, the Philippine Parliament approved the "Absentee Voting Bill," which enfranchised the substantial Filipino migrant community, provided they intend to retain their citizenship. This decision followed years of campaigning by expatriate Filipinos and was largely attributed to the growing recognition of the economic and social benefits that flow from an estimated 7.4 million Filipinos abroad who send home an estimated USD six billion per year.[21] Similar initiatives by economic migrants from Turkey, Mexico, Nigeria, and elsewhere have also resulted in national legislation that expands suffrage to these populations.

From the perspective of international law, there is no universal obligation to enfranchise non-refugee expatriate nationals.[22] The only relevant instrument is the 1990 International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families,[23] which declares in Article 41 that "Migrant workers and members of their families shall have the right to participate in public affairs of their State of origin and to vote and to be elected at elections of that State..." However, as of September 2006, only 34 states have ratified this convention, mostly migrant-sending states.[24] Nevertheless, states party to the Convention have found that domestic human

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[20] OSCE, "Istanbul Summit Declaration,"SUM.DOC/2/99, 19 November 1999: Para. 26.
[21] "Filipino Overseas Workers Given Vote," *BBC News Online*, 13 February 2003. Available at http://news.bbc.co.uk/2/hi/asia-pacific/2756791.stm
[22] While Article 25 of the ICCPR cited above would seem to indicate such an obligation, it should be read in relation to Article 2 of the Covenant, which holds that states must "respect and ensure to all individuals within its territory and subject to its jurisdiction…" all the rights identified. Expatriate nationals would meet neither of these criteria. Nevertheless, Rainer Baubock argues that, although international treaty law does not support the conclusion that external voting rights are a universal requirement of public international law, a sufficiently widespread change in state practice might eventually be recognized as constituting a new international standard in customary international law.
Rainer Baubock, "Towards a Political Theory of Migrant Transnationalism," IWE Working Paper Series, October 2002. Available at http://www.iwe.oeaw.ac.at/workingpapers/WP34.pdf
[23] United Nations, General Assembly, "International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families," G.A. res. 45/158, annex, 45 U.N. GAOR Supp. (No. 49A) at 262, U.N. Doc. A/45/49 (1990). Available at http://www.ohchr.org/english/law/cmw.htm.
[24] An additional 14 states have signed the Convention, but not yet ratified it. For a list of signing and ratifying states, see http://www.ohchr.org/english/countries/ratification/13.htm.

rights and migrant advocacy groups use the Convention's language to advocate for legislative reform to establish external voting programs.

The Convention clearly establishes a legal obligation on states party. In its consideration of Mali's periodic report submitted under Article 74 of the Convention, for example, the Committee on the Protection of Migrant Workers noted, "…with satisfaction that many expatriate Malians have the opportunity to participate in presidential elections thanks to mechanisms established in certain countries. The Committee suggests that this opportunity be extended to a larger number of Malian migrant workers living abroad."[25] Since the Committee only became operational in 2004, with only three ratifying states that have thus far submitted periodic reports (Mali, Egypt, and Mexico), it remains to be seen whether the Committee will continue to pay particular attention to voting rights and broaden the scope of its attention to include the processes of absentee voting in its examination of state reports.

The only multilateral human rights mechanism to have issued specific rulings related to an expatriate's right to vote while abroad is the European Commission of Human Rights.[26] In a case involving British nationals, the Commission ruled that:

> this right [universal suffrage] was neither absolute nor without limitations but subject to such restrictions imposed by the Contracting States as are not arbitrary and do not interfere with the free expression of the people's opinion.[27]

The Commission reasoned that the European Convention on Human Rights and Fundamental Freedoms and its related protocols did not guarantee the right to an absentee ballot. Furthermore, the fact that some nationals abroad were provided franchise while others were not did not violate the principle of non-discrimination. The Commission observed that:

> …servicemen and diplomats are not living abroad voluntarily but have been sent to a country other than their own by their government in the performance of services to be rendered their country. They therefore remain closely linked to their country and under the control of their government, and this special situation explains that they are not regarded as being non-residents although physically outside their country. As a consequence of the control referred to above there is also no risk of electoral fraud in their use of postal votes.[28]

3. Members of a National Group or Diaspora

The issue of non-citizen, non-resident enfranchisement is the most politically sensitive. Arguments in favor emphasize the important role these communities might play in advancing a country's interests at the international level and their contribution to cultural and economic development. Many countries even maintain government

[25] United Nations, General Assembly, "International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families," A/45/49 (1990).
[26] Protocol No. 11 of the ECHR, which came into force on 1 November 1998, folded the Commission and Court into a single institution, now referred to as the European Court of Human Rights.
[27] *X v. United Kingdom*. As a consequence, the fact that the United Kingdom did not allow absentee voting was interpreted as a function of practical expediency, and the European Convention and First Optional Protocol, both of which require universal suffrage, could not be interpreted to guarantee expatriate electoral rights. The United Kingdom has since instituted external voting.
[28] *X v. United Kingdom*.

ministries in charge of diaspora relations.[29] Yet few countries have formally enfranchised non-resident non-citizens. Notable exceptions include Eritrea and Iraq. In Eritrea, the issue stemmed from the fact that the state had yet to come into existence and the 1993 referendum on independence required the identification of persons who could claim descent from persons who were linked to the Eritrean nation through *jus sanguines* conceptions of citizenship. In Iraq, the 2005 elections were conceptualized as a new start to the basic nature of the state, and Iraqi leaders pushed for the inclusion of persons who could potentially become Iraqi citizens under the new citizenship law by claiming descent from someone born in Iraq.

A related problem stems from regional tensions that can occur when a state grants dual-nationality to ethnic kin who constitute national minorities in contiguous states. In the aftermath of the fall of the Berlin Wall, several Eastern European states (Croatia, Hungary, Poland, Romania, and Bulgaria) offered or contemplated the offer of citizenship to "national minorities" in neighboring states. The Hungarian offer of citizenship contributed to regional tensions as Romania and Slovakia viewed the move as staking an irredentist claim to territory, and a referendum on the issue was ultimately defeated by Hungarians in 2004.[30] Similarly, Croatia's extension of dual citizenship and suffrage rights to some 300,000 ethnic Croats residing in Bosnia and Herzegovina was widely viewed by the international community as complicating the implementation of the Dayton Peace Accords and contributing to electoral manipulation by the ruling Croatian nationalist party.

4. Considerations for the Development of Standards

Observers have noted that "[t]he introduction of external voting is enabled by legislation passed by elected politicians. While there have been a variety of reasons for the adoption of external voting legislation, almost all have been the result of political impetus, and many have been controversial and even nakedly partisan."[31] The purpose of election standards is to promote public confidence in electoral outcomes by ensuring that the electoral process remains free from bias and results in a genuine expression of the will of the voters. In terms of future work on this issue, the following general propositions can be advanced:

- For states with a substantial displaced population as a result of conflict, human rights abuses, and/or natural disasters, absentee voting should be considered a fundamental right protected by international human rights law. Electoral processes that exclude significant numbers of these populations should be considered suspect, and election observers and the international community should work with governments to ensure their inclusion, on terms of full equality, with non-displaced populations. In addition, forced-migrants should remain analytically separate from other categories or potential voters, as obligations regarding eligibility requirements, systems of representation, and the procedural elements of absentee balloting will differ based on their unique status.

- For states party to the Migrant Rights Convention, emphasis should be placed on transforming the suffrage rights embedded in article 41 into enabling legislation

[29] Armenia, Mali, Pakistan, and France (among others) have special divisions in their foreign ministries dedicated to diaspora relations.
[30] Michael A. Weinstein, "Hungary's Referendum on Dual Citizenship: A Small Victory for Europeanism" *Power and Interest News Report* (December 2004). Available at http://www.pinr.com/report.php?ac=view_report&report_id=245&language_id=1.
[31] International IDEA, "A Preview of the Forthcoming International IDEA Handbook on External Voting."

at the domestic level. Priority should be placed on ensuring that the legislative reform process is conducted transparently and in consultation with stakeholders.

- For states that meet neither of the above criteria, there is no international legal obligation to provide absentee voting to expatriate nationals. Therefore, the process through which absentee voting is enabled should be widely inclusive of the country's political forces. It is reasonable to demand that the process of enabling an external voting program should reflect wide-scale public approval, and initiatives that are clearly motivated by partisan interests should be noted by observers when evaluating the integrity of the process. Similarly, initiatives to enfranchise national diasporas or national minorities who share ethnic kinship in neighboring states should be subject to special scrutiny.

IV. Election Standards and Eligibility Requirements

The right of all citizens to vote is not absolute, and voter eligibility is often based on criteria related to age, citizenship, residency, mental competence, and criminality.[32] The requirement of citizenship in order to obtain voting rights has historically been universal to nearly all electoral codes.[33] In terms of residency, these requirements can take two forms. For states that do not allow absentee voting, the requirement will generally state that the voter prove residence in the electoral constituency on a fixed date prior to the election and on election day. For states that allow absentee voting, the requirement generally states that they must prove they were resident in the electoral constituency at some date prior to the election, although the length of time varies between states.

1. Residency Requirements

Absentee voting rights can be denied either actively or passively.[34] Where the prohibition is active, a constitutional provision, an act of parliament, or the election law specifically prohibits voting abroad. For example, Article 29 of the 1953 Danish Constitution reserves voting rights only to "[a]ny Danish subject whose permanent residence is in the Realm…"[35] However, a number of amendments to the constitution have subsequently expanded voting rights to certain categories of expatriates. In 1970, employees of the state abroad on official business were granted external voting rights. In 1988, voting rights were extended to any employee of a Danish firm, international organization of which Denmark is a member, and humanitarian relief organization as well as to students and those abroad for health reasons. Currently, the only Danes who cannot vote from abroad are employees of a non-Danish private sector firm or unemployed Danes who do not meet any of the other exceptions.

[32] For an overview of various restrictions imposed by democracies on the right to vote, see Andre Balis, Louis Massicotte, and Antoine Yoshinka, "Deciding Who has the Right to Vote: A Comparative Analysis of Election Laws," *Electoral Studies* 20 (2001): 41-62. For a global overview of restrictions employed on voting rights by country, see "Regions and Countries" *ACE Electoral Knowledge Network* at http://www.aceproject.org/regions-en.

[33] Nevertheless, a small, but growing number of states have begun to grant voting rights to resident non-citizens. This move is often contingent on satisfying a period of residence in the state. Some European states extend municipal voting rights only on a reciprocal basis (i.e., if a national from state A can vote for local elections while resident in State B, then state A will extend the same right to nationals of state B resident in State A).

[34] Dieter Nohlen and Florian Grotz, "External Voting: Legal Framework and Overview of Electoral Legislation," *Boletín Mexicano de Derecho Comparado*, nueva serie, año XXXIII, núm. 99 (Sept./Dec. 2000): 1115-1145.

[35] Constitution of Denmark, available at http://www.oefre.unibe.ch/law/icl/da00000_.html.

Passive denial can take two forms. First, the election law or constitution might impose a residency requirement that effectively prohibits external participation. Prior to the 2002 "Absentee Voting Bill," for example, Filipino voters were required by Article 5 of the constitution to have resided in the Philippines for a minimum of one year and in their electoral constituency for a minimum of six months prior to the election.[36] The constitution makes no mention of explicitly denying the franchise to those abroad, but the residency requirement did exactly that, resulting in a Supreme Court challenge to the constitutionality of the Absentee Voting Bill.[37] Second, passive denial of franchise occurs when the relevant electoral legislation contains no formal residency requirement for participation, but the state simply does not implement enabling legislation or procedures to make absentee voting possible (as in Nicaragua and Ireland).

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

In situations of forced-migration, residency requirements can become especially problematic. As states have a far stronger obligation to enfranchise forced-migrants than expatriates, national authorities may need to develop eligibility criteria that differentiate refugees from expatriates and internal migrants. In general, this requires arriving at a date at some point just prior to the conflict at which refugees and IDPs must prove residence in the constituency they wish to vote in. The notional goal is to guarantee the voting rights of refugees and IDPs while limiting the ability of settler populations to stack the electoral roles. The debate over specific residency dates is often hotly contested in post-conflict elections, as the choice of a date can dramatically alter the balance of power in specific municipalities and constituencies.[38]
IDPs can also be discriminated against in the realization of their voting rights by ill-conceived residency requirements. In the Republic of Georgia, for example, until a 2003

[36] Constitution of the Philippines, available at http://www.chanrobles.com/philsupremelaw1.htm.
[37] Commission on Elections (Philippines), *ATTY. ROMULO B. MACALINTAL, petitioner, vs. COMMISSION ON ELECTIONS,* July 2003. Available at http://www.supremecourt.gov.ph/jurisprudence/2003/jul2003/157013.htm.
[38] "In Bosnia and Herzegovina, the 1996 electoral code defined eligible voters as: 'Any citizen of Bosnia and Herzegovina age eighteen or older whose name appears on the 1991 census …' Thus, any person, whether inside BiH or not, could be registered to vote provided their name was included on the 1991 Census. Since the war in BiH did not begin until April of 1992, this rule also allowed a small portion of the non-conflict-forced Diaspora to participate. In addition, Bosnian economic migrants who maintained their linkages to BiH (by holding a "Certificate of Citizenship" or through entry into the municipal records books) were also eligible for participation. In fact, the only Bosnians outside of the country in 1996 that could not potentially vote were those not listed on the census, had received citizenship in another country or had no documentation, and came from a municipality where all municipal records had been destroyed. The eligibility requirements had a greater impact during the 1997 Municipal Elections. In this case, persons who were not listed on the 1991 census had to prove residence in a specific municipality in 1991, essentially eliminating Bosnians who had migrated abroad, not been included on the census, and did not maintain documentary proof of residence in a specific municipality while abroad. In sum, however, the Bosnian elections were, for all intents and purposes, also a Diaspora election." Jeremy Grace and Jeff Fischer, "Enfranchising Conflict Forced Migrants: Issues, Standards and Best Practices," IOM PRESS, 29 September 2003. Available at http://www.geneseo.edu/%7Eiompress/Archive/Outputs/Standards_Final.pdf.

revision of the election law, IDPs were permitted to vote only for the nationwide list and are specifically precluded from voting for representatives in either the district from which they were displaced or the district in which they currently resided. As a consequence, their voting rights were not equal to non-displaced citizens, and they were largely barred from exercising a political voice in the search for a solution to their displacement.

2. Citizenship Requirements

External voting by non-citizens is exceptionally rare. Instances of this phenomenon, however, can be identified in Eritrea, East Timor, Kosovo, and Iraq. It is important to note that all of these cases except that of Iraq relate to non-self-governing territories. In the case of Eritrea and East Timor, the elections involve the question of independence. In Kosovo, the elections involved constituting power structures in a UN-administered province that is formally part of Serbia, although its future status is yet to be determined. Iraq is the only clear case of a recognized sovereign state (although under occupation) that allowed for broad external voting rights for non-citizens.

In each of these cases, a mechanism for determining eligibility needed to be identified that defined the electorate, and thus potential members of a new state. With the exception of Kosovo, which simply employed a residence requirement in order to demonstrate that a voter was a "habitual resident" of Kosovo, each case resulted in a definition of eligibility that relied on *jus sanguines* and/or acquisition by marriage conceptions of national belonging. In Iraq, for example, eligibility for out-of-country voting included anyone "eligible to gain an Iraqi citizenship," according to the interim Iraq Citizenship law. This law, in turn, included all persons whose father is or was a citizen. Subsequently, non-citizens, even those who did not intend to acquire citizenship, were eligible to participate.

In some instances, states have attempted to prohibit voting by their dual nationals who are resident abroad. In 1967, the U.S. State Department sought to revoke the citizenship of a naturalized citizen who voted in an Israeli election. The U.S. Supreme Court overturned the decision, effectively affirming not only the right of American citizens to vote in foreign elections, but establishing the right of dual nationality in the United States.[39] Given the difficulties in monitoring whether a state's dual nationals are participating in elections in more than one country, few states explicitly deny voting rights to their dual citizens residing abroad on the basis that they are able to participate in elections of more than one state.

3. Considerations for the Development of Standards

Election standards efforts have yet to set forth clear guidelines on residency requirements. The Venice Commission's "Guidelines on Elections" notes, "Universal suffrage means in principle that all human beings have the right to vote and to stand for election. This right may, however, and indeed should, be subject to certain conditions [including] … residence." However, the Human Rights Committee's General Comment 25 limits a country's latitude in applying these restrictions, holding that "if residence requirements apply to registration, they must be reasonable, and should not be imposed in such a way as to exclude the homeless from the right to vote."[40] Furthermore, the

[39] *Afroyim v Rusk,* 387 U.S. 253; 87 S. Ct. 1660; 18 L. Ed. 2d 757; 1967 LEXIS/NEXIS 2844 [Database Online].
[40] Human Rights Committee, *General Comment 25* (57), General Comments under article 40, paragraph 4, of the International Covenant on Civil and Political Rights, U.N. Doc. CCPR/C/21/Rev.1/Add.7 (1996).

Comment requests that states party to the ICCPR justify and explain "…legislative provisions which would deprive citizens of their right to vote. The grounds for such deprivation should be objective and reasonable."[41] Similarly, the OSCE/ODIHR standards bluntly hold that "Any limitation or restriction on the right to vote, however, must be scrutinized as to whether it is clearly justified due to exceptional circumstances."[42]

In terms of developing standards for absentee voting in this area, the following basic propositions can be advanced:

- States retain wide latitude when determining the various residence requirements that can be imposed on regular expatriate voting rights. Specific limitations can be imposed related to: 1) whether the voter maintains a fixed residence in the home state; 2) the length of time the voter is absent from the state; and 3) intent to return. Nevertheless, these residency and citizenship requirements should be clearly articulated in the constitution or the electoral code.

- Specific standards can be identified in regards to the eligibility criteria relevant to forced-migrants. Forced-migration, by definition, entails the removal of people from their regular place of residence against their will. As a result, requiring these people to demonstrate residency is problematic. Residence requirements that exclude displaced persons from casting their ballot for their home constituency should, in general, be considered a violation of basic voting rights.

V. Systems of Representation

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

However, adding external voters to an existing system of representation will impact election administration. Three general questions should be addressed:

- Should external voting be limited to specific institutions (president, houses of parliament, sub-national elections and referenda)?
- Should external voters cast their ballots for their constituency of last residence in their home state or for dedicated constituencies established solely for external voters?
- How should external voters be counted when calculating the district delimitation and apportionment process?

1. Which Institutions Should be Contested Externally?

Many states that allow absentee voting do so only for national level elections. The logic here is that while external voters can generally follow national political news, they probably cannot obtain the information necessary to make an informed vote at the local

[41] Human Rights Committee, *General Comment 25* (14).
[42] OSCE/ODIHR, "Existing Commitments for Democratic Elections in OSCE Participating States," (Warsaw: October 2003): 59.

or municipal level.[43] In addition, sub-national elections require many different ballots, which would necessitate a complicated logistical operation to ensure that each external voter received the correct ballot for each contest. Finally, while many economic migrants and expatriates may continue to pay national taxes while abroad, they do not necessarily pay taxes at the municipal or local level.

Countries that allow absentee voting for local elections include the United States, France, Finland, Norway, and Bosnia and Herzegovina. In the United States, elections are managed at the state and county levels, and voters apply directly to the local EMB (often via an embassy) to cast an absentee ballot in their district of origin. In France, voters are eligible to vote by absentee ballot for all national elections but may only vote by proxy for local contests. Finnish expatriates are eligible to vote in both national and regional contests, but eligibility to vote at the local level is contingent upon an absence from the municipality of no more than one year. At the national level, there is no length-of-absence requirement. Norway requires that no more than 10 years have elapsed since the voter left the municipality.

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

Even at the national level, however, external voting may not be allowed for all institutions of governance. In the 1992 Angolan elections, presidential candidates were elected based on an absolute majority, with a runoff election if no candidate received more than 50% of the vote. As a result, the election commission rejected proposals for external voting due to the difficulties that would be encountered should a runoff election be necessary. While the elections code did contain (unfulfilled) provisions for external voting for the national assembly, it specifically rejected this option for the presidency because of the costs associated with a run-off ballot.

2. Representation and Constituency Delimitation Issues

Except for proportional representation (PR) systems using a single nationwide electoral constituency (e.g., Israel, the Netherlands, and Liberia [1997]), EMBs must delimit and apportion electoral constituencies.[44] Most states delimit constituencies based on census or voter registration data, giving some consideration to existing administrative boundaries, geographic features, and ethnic and social composition. Election standards initiatives hold that there should be a rough uniformity in the weight that each vote carries in the distribution of mandates across different constituencies. But delimitation is

[43] Another argument against external voting for local elections holds that politics at the local level has a direct and highly visible impact on residents in terms of taxation and service provision. Since external voters do not have to live directly with the consequences of their vote in this regard, they may vote less responsibly.

[44] Electoral formulas for parliamentary elections come in two basic forms. The most common is the PR system, in which parties win parliamentary seats in proportion to the percentage of votes they receive either nationally or in multi-member sub-national districts. The alternative system is the majority-plurality system, which uses single-member districts to elect individual candidates to political office according to who wins the largest number of votes in the district.

complicated by an absentee voting program. How should these populations be tallied when determining either the apportionment or delimiting of their home constituencies?

Countries that allow external voting tend to utilize one of two options for securing representation of external voters. The vast majority employ a system through which the voter participates in their last constituency of residence (referred to as assimilated representation).[45] In U.S. elections, for example, voters simply apply for an absentee ballot from their last constituency of residence and mail it to that constituency by a particular date, where it is counted along with regular ballots to determine the winner of the seat. The same holds true for countries that employ PR systems, where the external voters are provided the same party-list ballot and those totals are added to the total vote earned by each party.

At least seven[46] countries, however, employ a system whereby external voters participate in "discrete districts," either directly or indirectly, which only represent those abroad. In Portugal, for example, members of parliament are elected via a PR system based on 20 sub-national districts. Two districts—each with two seats—are reserved for Portuguese abroad, one for those in Europe and one for those elsewhere. Croatia follows a similar model, except that the number of external seats is not fixed. Instead, the overall turnout of external voters is compared to the overall turnout of in-country voters before the number of dedicated external seats is established. Prior to an electoral reform in 2000, however, the system had instead guaranteed 12 seats for external voters. The use of this mechanism provided an advantage to the ruling party, as the Croats abroad were provided with seats disproportionate to their voting weight, and these voters tended to overwhelmingly support the ruling HDZ.[47] The Council of Europe noted that:

> Election results confirmed the preference of Diaspora voters for the ruling party, which obtained 90% of the votes from abroad compared to approximately 45% of the votes from inside the country. The turnout of the voters abroad was much lower than inside the country so that finally citizens from abroad are better represented in parliament than citizens from inside the country.[48]

Discrete districts can also be employed to provide indirect voting for members of a national legislative body. Since 1983, for example, French expatriates have been represented in the Senate by 12 members. However, these Senators are not directly elected. Rather, French expatriates vote for members of the Conseil Supérieur des Français de l'Etranger (CSFE),[49] a government agency reporting to the Ministry of Foreign Affairs. Expatriates cast ballots for the 150 CSFE members based on a PR system in which various countries and regions form constituencies; these regions must

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[45] Peter J. Spiro, "Perfecting Political Diaspora," *New York University Law Review*, Vol. 81 (April 2006): pp. 226-231. Available at http://ssrn.com/abstract=876955.

[46] International IDEA, "A Preview of the Forthcoming International IDEA Handbook on External Voting." Available at http://www.idea.int/elections/upload/External_voting_Preview_withlayout_07june06_final.pdf.

[47] For an interesting analysis of why diaspora communities tend to vote for more nationalistic parties, see "Diasporas: A World of Exiles," *The Economist*, 2 January 2003.

[48] The revised election law of 2000 "… created a special constituency for non-resident citizens to elect between 0 and 14 members of parliament according to the relationship between turn-out for this constituency and average turn-out per elected member throughout Croatia. Six seats were finally allocated to the Croatian *diaspora,*" a move that satisfied the Council of Europe, without disenfranchising Croatians abroad. See Committee on the Honouring of Obligations and Commitments of Member States of the Council of Europe (Parliamentary Assembly), "Honouring of obligations and commitments by Croatia," Draft Report AS/Mon (1998), January 1999. Available at http://assembly.coe.int/Documents/WorkingDocs/doc00/edoc8823.htm

[49] Chaired by the foreign minister, the CSFE represents expatriate interests and provides the government with reports and analyses of issues concerning French citizens abroad. See http://www.senat.fr/etranger/index.html for more information.

have in residence at least a minimum number of French citizens. Once elected, CSFE members select 12 senators, who retain full voting rights.

Some countries employ variants that combine elements of both discrete and assimilated systems. In the Russian Federation, external voters are included in specified sub-set of the single-mandate electoral districts for the Duma. According to one observer, "Assignment to a voting district is based on the foreign state in which the voter is residing abroad. Depending on the foreign state…he or she will be assigned automatically to one of several designated electoral districts in the Moscow Region or the St. Petersburg Region."[50] In practice, the EMB is required to ensure that "[t]he number of additional voters included in a single-mandate electoral district shall not exceed 10 percent of the number of voters registered in the territory of the given single-mandate electoral district."[51] In principle, this means that external voters are factored into the delimitation process, but no constituency can have more than 10 percent of its votes cast from abroad. A similar program operates in Belarus, except that the external ballots are distributed to constituencies that have lower than average turnout.

3. Considerations for the Development of Standards

Genuine elections require that constituencies should be delimited by an impartial delimitation commission according to procedures described by law and in accordance with the principle of the equality of the vote and an equitable distribution of seats among constituencies.[52] As with residency and eligibility requirements, however, no specific standards cover how best to secure representation for external voters, and the issue of discrete external districts is not even mentioned in the standards initiatives. In terms of future work on this issue, the following general propositions can be advanced:

- In terms of regular expatriate voters, whether to limit external participation to national contests is a matter of national preference. No specific legal obligation or standard applies.

- Expatriate voters can be represented through discrete districts or through assimilated representation. In either case, their voting weight should not exceed the national average. These voters can and may be "under-represented" as there is no specific international obligation incumbent on states to protect the equality of the absentee vote. In fact, the larger the potential absentee electorate, the more likely it may be that limiting external representation will be necessary in order to avoid a situation in which the domestic population feels it is being governed by voters residing abroad.

- Forced-migrants should be provided the right to participate by absentee ballot for all levels of elections in their home communities and countries on an equal basis with non-displaced populations, particularly if the displacement has resulted from attempts at "ethnic cleansing." In addition, they should generally be provided the right to vote directly for their previous electoral constituencies through

[50] Linda Edgeworth, "Voting Abroad. Laws and Procedures of the Russian Federation," Unpublished draft prepared for International IDEA: External Voting Project. 2001.
[51] Russian Federation, *On the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation*. (Russian Federation, 2002). Available at http://www.legislationline.org/legislation.php?tid=57&lid=482&less=false.
[52] Human Rights Committee, General Comment 25, Para 21 states: "The drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely."

assimilated representation. Their voting weight should never be diminished through the use of "discrete districts."

VI. Implementation

One of the fundamental concerns regarding absentee voting is whether such programs will be transparent and genuine. Voting in the territory of another state raises questions regarding the jurisdiction of the EMB to implement registration and balloting operations in accordance with the electoral rules and regulations. In addition, the right of citizens and political parties to observe the voting process abroad becomes increasingly problematic as the scope of the program grows. Since the inherent function of election standards is to build public confidence in the voting system, moves that seem to weaken public oversight and accountability would seem to contravene the spirit, if not the letter, of the procedural best practices embedded in the standards.

Rainer Baubock observes that:

> … some of the mechanisms commonly used for external voting cannot fully meet all of [the core standards associated with genuine elections]… Some of these can be minimized only in the controlled environment of a polling station… External voting in an uncontrolled environment requires the general trust that voters, political parties, and electoral authorities will refrain from systematically abusing the system and manipulating the vote. Such trust is likely to exist in consolidated democracies … but may be absent during democratic transitions.[53]

Other observers adopt a more sanguine outlook. Peter Spiro argues that

> …modern electoral management techniques, along with the use of international observers, should reduce the risk of fraud even in large-scale non-resident polling. Indeed, it has been suggested that the risk of fraud may be lower with respect to external voting, especially in cases where democratic practices are better established in the country of residence than in the homeland.[54]

If absentee balloting is to be organized, EMBs must consider how the program will address the following issues:

- Maximizing opportunities to register;
- Providing sufficient and timely information on the requirements and processes of absentee registration and voting;
- Ensuring that only eligible voters are registered;
- Preventing voters from misrepresenting themselves as other individuals and/or gaining access to more than one vote;
- Guaranteeing the secrecy of the ballot;
- Ensuring that external voters are not pressured to vote in particular ways by political parties, interest groups, or representatives of the government where they reside or by embassy officials;
- Ensuring that to the extent possible external voting rules and procedures reflect in-country practices;

[53] Rainer Baubock. "Stakeholder Citizenship and Transnational Political Participation: A Normative Evaluation of External Voting." Unpublished draft paper. 2006.
[54] Peter J. Spiro, "Perfecting Political Diaspora," *New York University Law Review*, Vol. 81 (April 2006): p. 233. Available at http://ssrn.com/abstract=876955.

- Protecting sensitive voter information;
- Securing the transport of materials; and
- Guaranteeing access to election observers.

Given the wide divergence in state practice in administering external voting, it is difficult to identify specific, universally applicable best practices in regards to each of these goals. Depending on the nature of the program, different techniques can be employed to mitigate potential threats to electoral integrity. This necessitates a review of the two predominant forms of absentee voting: postal and in-person balloting.[55]

1. Postal Voting

Postal voting is an increasingly common form of absentee enfranchisement. Many countries (including Canada, the U.K., and the United States) even allow postal voting for non-absentee populations who simply prefer the convenience. Focus group–research of postal-voting programs has found that while the programs are widely popular and improve voter turnout, concerns regarding voter fraud and transparency are high.[56]

In postal voting programs, participants can register through the mail, at embassies and consulates, or by fax.[57] In general, voters submit an application form and supporting documentation by mail to either the national or local EMB. The application typically requires a signed (and perhaps notarized) affidavit certifying that the voter is indeed the person he or she claims to be, along with a photocopy of an officially approved identity document. If the voter's identity is confirmed, he or she is sent a ballot, which must be marked and returned by a specified deadline for tabulation.

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

The major drawback of voting by mail is that EMBs do not retain full control and supervision over the ballots. Using the postal system to send ballots means there is a period when the ballots are unsupervised by elections staff, which creates several problems. First, one voter's ballot could be intercepted and returned by another voter, particularly if the intended voter has moved since registering. Second, even if the proper voter receives the ballot, he or she might be subject to pressures that compromise

[55] Other mechanisms to provide expatriates with voting opportunities include proxy-voting (where citizens designate a representative to cast a ballot at a regular polling station in their home communities), Internet voting, or requiring that expatriates return to their home country to cast a ballot on election day. A variant of this last approach has also been used for some refugee elections, where the international community has coordinated the repatriation of refugees with a schedule linked to the election calendar (as in Cambodia and Namibia). Since these are essentially in-country voting operations, they are not considered in this paper.

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

[57] Facsimile transmission of applications for voter registration was used by the International Organization for Migration when it administered by-mail external voting for Bosnia and Herzegovina and for Kosovo.

freedom of choice.[58] For example, refugee communities often live in concentrated areas in which they can be subject to pressure from political groups that attempt to influence the vote. Normal balloting procedures prohibit third parties from entering the voting booth (unless invited by the voter due to specific disabilities) and demarcate a space around a polling station where electioneering (handing out political platforms or posters urging a particular selection) is prohibited. It is impossible to implement these rules when using the postal system.

A related problem is ensuring that the ballots are truly secret. Postal voting systems for the Bosnian and Kosovo elections required voters to return the ballot inside a sealed "secrecy envelope" together with their registration receipt inside a larger second envelope. While these programs were conducted under strict conditions and supervision, voters complained that the system could potentially allow election officials to match voters' names with the marked ballots, compromising voter secrecy.[59]

In terms of developing standards for absentee voting in this area, the following basic propositions can be advanced:

- Postal registration and voting facilities should be open to full observation by political parties, civil society organizations, and international observer missions. This right should be guaranteed in the election law, and the EMB has an obligation to facilitate accreditation for observers. Observation should be allowed at all stages of the electoral cycle until the final counting and reporting of results.

- Postal voting programs should be accompanied by information campaigns that stress the secrecy of the ballot and encourage individual voters to report attempts to manipulate or coerce their votes. The EMB has an obligation to investigate any reports of voter intimidation or vote-buying schemes received.

- Postal voting programs should always use a "secrecy envelope" that separates the actual returned ballot(s) from any identifying information, such as a registration slip, signed affidavit, or photocopied identity document.

- All registration information and data should be protected. In general, individual voter information should only be accessible to the EMB and only used for election-related purposes. This is especially true in the context of post-conflict elections.

- If postal voting is to be used, electoral timelines and calendars should be designed to account for the increased time necessary to mail out ballots, have the voter mark them, and return them by the post in time for counting. Deadlines should be widely publicized.

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

[59] "Case Studies on the Participation of Conflict Forced Migrants in Elections." IOM Participatory Elections Project (May 2003). Available at http://www.geneseo.edu/%7Eiompress/Archive/Outputs/PEP%20Case%20Studies%202003.pdf.

- Postal voting should only be used when the integrity and quality of national postal systems is well established.

2. In-person External Voting

Embassy voting requires that electors present themselves at embassies or consulates in order to register and vote. Consular staff (and sometimes EMB personnel) help voters confirm their registration and cast their ballots. The main advantages of this system are that EMBs retain full supervision of the process, voting procedures can mimic those of in-country polling stations, and observers can be provided access to the program. This system also helps address the problems of intimidation and ballot secrecy that can occur during postal voting and ensures that election materials remain under the control of the EMB or other government officials.

The main problem with embassy voting is limited geographical coverage; any external voters who do not reside in the capital district or cities with a consular office will have to assume the costs of traveling to a facility. In some cases, additional election facilities have been established in host states to augment voting at embassies.[60] Examples include the recent absentee voting programs for the Philippine and Mexican elections and in many internationally organized voting programs for refugees, including during the 2005 Iraq elections. Even so, the cost and logistical complication of providing these services to every area where expatriates may be resident places an undue burden on the EMB and home-state taxpayers.

In-person voting is especially warranted in the case of refugees voting in post-conflict elections undertaken in territorially contiguous states. In the 1996–1998 Bosnian elections, for example, Bosnian refugees in Croatia and Serbia and Montenegro were provided opportunities to register and vote at facilities established by the IOM and OSCE. The logic here is that conflicts often involve a regional dimension, and neighboring state governments or political actors may have strategic interests in the election results and therefore manipulate a postal-voting program. As a result, in-person voting operated by neutral intergovernmental organizations and supervised by political parties and other international observers ensured the transparency of the program and prevented attempts to manipulate the vote on the part of government agencies in the host states.

In terms of developing standards for absentee voting in this area, the following basic propositions can be advanced:

- Any in-person voting operation conducted in the territory of foreign states should be open to observation. This may necessitate close cooperation between the EMB and the Foreign Ministry, as well as reaching agreements with host states to facilitate visa issuance and the entry and exit of observers.

- Embassy and consular staff involved in voting operations should receive clear training on both the relevant processes and the broader principles of neutrality and secrecy involved in genuine elections.

[60] These types of programs may require substantial support from intergovernmental organizations in order to promote transparency.

- Embassy and consular staff should monitor and report on the general political environment in the host state, paying particular attention to reports of vote manipulation.

- For regular expatriate voters, there is no clear legal obligation to extend in-person voting opportunities beyond embassies and consular offices, or even to all countries where expatriates may reside. However, if absentee balloting is to be conducted, general principles of equity would seem to call for the establishment of as many facilities as possible to minimize the travel burden placed on individual voters.

- In the case of refugee voting in post-conflict elections, a much stronger case can be made that EMBs need to expend the maximum available resources to provide a wide geographic dispersal of registration and voting facilities.

VII. Election Standards and Absentee Voting

The literature on absentee voting has until recently been extremely limited. Theoretical work tends to focus on transnational political bonds in a broad sense, particularly the relationship between expatriates and diasporas and their homeland.[61] The democratization literature has been largely silent on the issue. Some EMBs (notably in the U.K. and Australia) have conducted careful evaluations of postal voting programs, and the IOM has sought to develop standards for refugee and IDP voting programs.[62] Another important (and as of November 2006, still forthcoming) initiative is a global survey of external voting practices carried out by the International Institute for Democracy and Electoral Assistance, which will also include thematic chapters on many of the issues addressed in this paper.[63]

Nohlen and Grotz note that "…external voting is a rather heterogeneous phenomenon … In most cases the moment and reasons for the introduction of external voting were highly dependant on national peculiarities."[64] The existence of "national peculiarities" highlights the difficulties in advancing a claim that the human rights regime obligates governments to extend the right of political participation to all nationals residing abroad or even that basic standards of genuine elections, such as equality of the vote, must be applied in all cases. Each situation must account for the political implications of external voting. In some cases (as in Hungary), the external vote might increase regional instability. In other cases (as in Kosovo), voting on the part of the entire Kosovar diaspora would produce a situation in which the Kosovo political system was dominated by non-resident voters.

Nevertheless, there is an emerging consensus that forced-migrants should be guaranteed full political rights in post-conflict elections. With respect to IDPs, the right to vote is firmly grounded in the nondiscrimination principles of global and regional

[61] This literature, which can be found primarily in the field of migration studies, is largely concerned with how expatriate and diaspora communities maintain their cultural connections and why they tend to adopt more nationalistic political outlooks than citizens who live in the home state (such as in Croatia and Armenia, for example). See Rainer Baubock, "Towards a Political Theory of Migrant Transnationalism," IWE Working Paper Series (October 2002). Available at http://www.iwe.oeaw.ac.at/workingpapers/WP34.pdf; see also the now defunct Transnational Communities Program, a joint collaboration between Oxford University and the U.K. Economic and Social Research Council, available at http://www.transcomm.ox.ac.uk/; and Terrence Lyons, "Globalization, Diasporas, and Conflict," Institute for Conflict Analysis and Resolution (January 2004).
[62] See www.geneseo.edu/~iompress.
[63] [63] International IDEA, "A Preview of the Forthcoming International IDEA Handbook on External Voting."
[64] Nohlen and Grotz, p. 1116.

human rights instruments and has been forcefully restated in the Guiding Principles on Internal Displacement. These same principles should, to the extent possible, be extended to refugee populations, who have not left their home states of their own free will and thus should not be denied equal rights with citizens who remain at home. Unfortunately, countries do not always meet this obligation (for example, Liberia and Angola). The reasons are complex, but often revolve around political opposition from those who perceive the refugee/IDP vote as an obstacle to their victory, as well as the costs and technical difficulties associated with absentee balloting.

Clearly articulated standards combined with better monitoring would prevent forced-migrant disenfranchisement and improve the overall integrity of electoral processes in post-conflict environments. IOM has initiated a project to develop standards along these lines, and the issue has received substantial attention from the UN's Representative of the Secretary General on the Human Rights of Internally Displaced Persons. Continued international attention and commitment on the issue are needed and clarification of fundamental human rights norms should be a priority. Possible avenues include:

- A General Comment from the Human Rights Committee further clarifying issues of forced-migrant political rights in the context of Article 25 of the ICCPR.

- Initiatives within the United Nations Electoral Assistance Division and other election technical and observation agencies such as the OSCE/ODIHR to mainstream forced-migrant voting rights into their technical support, monitoring, and other post-conflict election activities. While the UNEAD and OSCE have often played a lead role in ensuring CFM voting rights (c.f. Bosnia and Herzegovina, Afghanistan, East Timor), in some cases these organizations have been either insufficiently resourced to address the issue or have questioned whether the costs and complications of absentee voting programs warrant the implementation of a program.

- Work in the regional IGOs and regional human rights mechanisms (such as the European Court of Human Rights, the American Court of Human Rights, etc.) to promote, apply, and uphold baseline standards.

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

For regular expatriates and economic migrants, further research on state practice is needed. In general, aside from states party to the Migrant Rights Convention, there is no international legal obligation on democracies to extend franchise to their citizens who reside abroad. In addition, should states decide to extend absentee voting services, basic issues associated with residency requirements, intent to return, and other limitations can be placed on these voters. More importantly, issues such as the equality of the vote, limitations on which contests external voters can participate in, and the extent to which states must ensure that all external voters everywhere in the world are provided an opportunity to participate often differ from state to state.

Nevertheless, some basic principles should guide parliamentarians and EMBs in the design and execution of external voting programs. First, the decision to enable expatriate voting should reflect a broad national consensus in favor of such a move, rather than partisan calculations. The process of constitutional or electoral framework reform should be transparent and deliberate. In both Mexico and the Philippines, these

programs followed years of public debate, deliberation and even court challenges. Conversely, the Croatian program (prior to 2000) was implemented through a simple parliamentary act passed by the ruling nationalist party in a fashion that gave all appearances of naked partisanship.

Second, regardless of whether a postal or in-person system is employed, external voting operations should be subject to full observation by domestic and international observers. If in-person programs will be conducted, observers should question whether the program is available in all countries hosting significant numbers of expatriates or only in those where the external vote is perceived to reflect a particular political or ideological outlook. Second, observers should note the extent to which basic protections such as the secrecy of the ballot and the right to vote in free from intimidation are guaranteed.

Finally, donors and technical assistance organizations should pay more consistent attention to external voting in transitional democracies, where resources are short and capacity may be weak. Given the potential for badly managed external voting programs to undermine public confidence in election results, the lack of attention to the issue is surprising. As a start, establishing a network of experts drawn from national EMBs with long experience in external and absentee voting would help identify a pool of expertise that could be called upon to distill lessons learned, identify best practices, and provide concrete guidance to electoral authorities in new and transitional democracies. Such a network could also begin the process of building a knowledge bank of best practices that could ultimately lead to clear and concise standards for external and absentee voting.

Further Readings and Select Bibliography

In addition to the documents referenced in the above footnotes, the following works were consulted:

Electoral Commission (U.K.). "In Service of Democracy: A Consultation Paper on a Policy for Electronic Democracy." October 2002. Available at http://edem.tagish.net/downloads/e-Democracy.pdf.

Farr, Jeffrey, Anuschka Meyer, Anna Schowengerdt, and Victor Tanner. "Refugees in Elections: The Liberian Experience." *Refugee Policy Group*. August 1997.

Fischer, Jeff, Jeremy Grace, and Bruce Hatch. "Electoral Displacement in the Caucuses: Georgia and Azerbaijan." IOM Participatory Elections Project, Action Plan No. 2, June/July 2003. Available at www.geneseo.edu/~iompress.

International Foundation for Election Systems. "The Election of the President of the Russian Federation." 1996. Available at http://democracy.ru/english/library/comments/eng_1996-6/page9.html.

International Organization for Migration. *World Migration Report 2000*. Geneva, 2001.

"Ireland and the Irish Abroad." *Report of the Task Force on Policy Regarding Emigrants to the Minister of Affairs*. August 2002. Available at http://www.irelandemb.org/task_force.html.

Organization for Security and Cooperation in Europe/Office for Democratic Institutions and Human Rights. "International Standards and Commitments on the Right to Democratic Elections: A Practical Guide to Democratic Elections Best Practice." Draft Paper submitted to working session on election standards at September 2002 OSCE Human Dimension Implementation Meeting. Warsaw: 20 August 2002.

Challenging the Norms and Standards of Election Administration: Boundary Delimitation

Dr. Lisa Handley

I. Introduction

Different sets of electoral district boundaries can produce different election outcomes, even if the underlying vote patterns are identical. Electoral abuses such as malapportioned constituencies (electoral districts that vary substantially in population) and electoral districts that have been "gerrymandered" (constituency boundaries intentionally drawn to advantage one political group at the expense of others) can have profound effects on the outcome of an election and the composition of a parliament. If voters and other stakeholders suspect that the electoral boundaries have been unfairly manipulated to produce a particular political outcome, this will affect the credibility of the delimitation process. The legitimacy of the electoral outcome itself could be questioned.

Despite the possible political ramifications of the process, and the fact that the majority of the world's countries undertake periodic delimitations of electoral districts, little in the way of international standards has been proposed. But such standards are important: they direct public expectations, serve as a target for reformers to aspire to and a benchmark for stakeholders in an electoral process to gauge the fairness of the delimitation practices of a given country.

II. Proposed International Standards for Delimitation

Some international election standards have been proposed by regional and nongovernmental organizations to guide the delimitation process. These organizations include the OSCE, the European Commission for Democracy Through Law, the Commonwealth Secretariat, and the Electoral Institute of Southern Africa (EISA). The appendix to this paper—"Proposed International Standards for Delimiting Electoral Boundaries"—provides a list of the standards and guidelines suggested by these entities.

A number of the proposed guidelines are narrowly focused and less than universally applicable. In other instances, important guiding principles have been neglected. Underlying many of the proposed standards are the following fundamental principles:

- ***Impartiality***: The boundary authority should be a nonpartisan, independent, and professional body;

- ***Equality***: The populations of constituencies should be as equal as possible to provide voters with equality of voting strength;

- ***Representativeness***: Constituencies should be drawn taking into account cohesive communities, defined by such factors as administrative boundaries, geographic features, and communities of interest;

- ***Non-discrimination***: The delimitation process should be devoid of electoral boundary manipulation that discriminates against voters on account of race, color, language, religion, or related status; and

- ***Transparency***: The delimitation process should as transparent and accessible to the public as possible.

This paper will elaborate on each of these principles, providing standards that reflect them and offering examples of countries that have employed these standards, as well as countries that have neglected them.

III. Impartial Boundary Authority

Proposed Standard: The delimitation process should be carried out by an impartial boundary authority, one that is independent, professional and not aligned with a particular political party.

Because the political ramifications of delimiting electoral boundaries are considerable, it is essential that the process itself be perceived as nonpartisan and independent. A boundary authority that is closely aligned with the ruling party, for example, may be viewed as committed to a specific election result. If the stakeholders do not have confidence in the boundary authority to carry out its functions in an impartial and unbiased manner, this can seriously damage the credibility of the delimitation process and may even compromise the legitimacy of the election outcome.

During the nineteenth century, in Europe and in self-governing European colonies around the world, the drawing of district boundaries was the responsibility of the legislature. Partisan politics and gerrymandering were a given part of the districting process. But in most Western democracies, the idea that politicians are best excluded from the delimitation process has emerged. The United States is one of the very few long-standing democracies that still allow the legislature a dominant role in the process. The consequence of this is that partisan politics plays a very large, and often quite explicit, role in the delimitation (redistricting) process, as the text box below illustrates.

United States: Re-redistricting in Texas for Partisan Purposes

Traditionally, state legislatures in the United States spend the year or two after the decennial census redrawing congressional districts boundaries to reflect population shifts since the last census enumeration. The political party in control of the state legislature at the time of redistricting almost always draws the electoral boundaries to benefit itself. Litigation may follow, but once the courts have decreed the legality of the plan—or sanctioned the drawing of a new one—both political parties accept the new maps and assume that they will remain in place until the next national census. In 2003, however, the state of Texas broke with tradition and redrew congressional district boundaries mid-decade.

The decision to re-redistrict was made when the Republicans gained control of both houses of the state legislature following the 2002 elections. During the initial redistricting in 2001, the Texas state legislature was divided politically—with a Republican-controlled state senate and a Democratic state house of representatives—and unable to agree on a redistricting plan for the state's 32 congressional seats. As a result, a panel of federal judges drew up the congressional redistrict plan.

The 2002 elections produced 17 Democrats and 15 Republicans in the congressional delegation, and a state legislature completely controlled by Republicans. Tom DeLay, a Houston-area

congressman, decided to revisit the congressional redistricting plan, vowing the make the congressional delegation more Republican.

Under DeLay's guidance, Texas Republicans drew up a new congressional redistricting plan in the spring of 2003, despite the fact that the old plan had only been in place for a single election. The new plan shifted more than 8 million Texans into new districts, concentrating Democratic votes in a handful of massively safe Democratic seats and diluting the Democratic presence in other seats that were, until that point, considered competitive for both parties. The new congressional districts were a resounding success for Republicans: the 2004 congressional elections produced a congressional delegation of 21 Republicans and 11 Democrats.

Currently, the United States sits at one end of the spectrum: electoral boundaries are drawn by politicians with a stake in the outcome, and gerrymandering is an expected part of the process. At the other end of the spectrum are those countries that have established independent boundary authorities or rely on nonpartisan election commissions to carry out delimitation. Many Commonwealth countries, for example, have reformed their delimitation process, granting neutral boundary commissions the authority for delimitation. Britain pioneered the boundary commission approach several generations ago, and most of the long-standing democracies once ruled by the United Kingdom have followed suit and adopted boundary commissions: Australia, New Zealand, and Canada, as well as many of the Caribbean countries (i.e., Bahamas, Barbados, St. Lucia, St. Vincent, and the Grenadines). Several Anglophone African countries (i.e., Botswana, Namibia, and Zimbabwe) have also adopted boundary commissions for delimiting constituencies.

These boundary commissions are typically composed not only of impartial (nonpartisan) public officials but also of professionals with the requisite skills in election administration, geography, cartography, demography, and statistics. In Australia, New Zealand, and the United Kingdom, for example, the commissions incorporate electoral officers or registrar-generals, as well as the Director of Ordnance Survey (United Kingdom) and the Surveyor-General (Australia and New Zealand). In Canada, academics knowledgeable about elections and/or geography may be asked to serve on electoral commissions. Members of the judiciary are also well represented on boundary commissions in many countries, including Australia, Canada, India, New Zealand, and the United Kingdom.

Noticeably missing from the boundary commissions in most countries are legislators and representatives of political parties.[1] The express purpose of this omission is to maintain the political neutrality of the commissions. New Zealand is one exception to this rule.[2] Two political appointees, one a representative for the governing party and the other a representative for the opposition parties, serve on the seven-member Representation Commission. The rationale for their presence is to ensure recognition and rectification of any egregious political bias inherent in a constituency boundary plan. Because the two political appointees constitute a minority of the commission, they cannot outvote the non-political commissioners, and the neutrality of the commission remains unquestioned.

[1] Australia, Botswana, Canada, India, and Mauritius are examples of countries that specifically exclude by constitutional provision any person with political connections from serving on the boundary commission.

[2] Other countries that incorporate political party representatives on the boundary commission include Albania, Bahamas, Barbados, Fiji, Papua New Guinea, and St. Vincent.

Even if politics is not permitted to play an overt role in the drawing of the electoral district boundaries, it is still possible for the legislature or executive to influence the process if the boundary authority and its product are not independent from legislative and executive control. In particular, if parliamentary or executive approval is necessary for implementation of the final electoral boundaries, the outcome may be less than unbiased.[3]

Reforms designed to remove "politics" from the delimitation process have not only assigned the task of drawing to neutral boundary authorities, they have revoked the power of legislatures to approve the delimitation plans in a number of countries. In New Zealand, for example, the final plan of the Representation Committee, once published, cannot be changed or appealed. Since 1983, Australia's augmented Electoral Commission has had the same power. The constituency boundaries created by the Delimitation Commission in India are also final.

In other countries, the legislature can debate and possibly even delay the enactment of a commission's plan, but it cannot modify the plan. In Canada, for instance, Parliament is permitted to consider plans produced by the commissions, but has no vote on their implementation.[4] In the United Kingdom, the final proposals of the four Boundary Commissions take effect only after an affirmative vote by Parliament, but Parliament's power to accept or reject a plan is a formality: it has almost always affirmed Commission proposals. Other countries that require the legislature to either accept or reject the proposed delimitation plan, but do not grant it the authority to modify the plan, include Malaysia, Mauritius, and Papua New Guinea.

Some countries (for example, Cameroon and Zimbabwe) require executive approval, rather than legislative approval, to implement a delimitation proposal. While this approach removes the final decision from legislators—those most directly affected by the delimitation plan—it still leaves the process open to charges of political influence.

Ensuring the impartiality, independence, and professionalism of the boundary authority encourages stakeholders to accept the process as unbiased even though the results may have profound political consequences.

IV. Equality of Voting Strength

Proposed Standard: Constituency populations (or, in the case of multimember electoral districts, the ratio of representatives to voters) should be as equal as possible to ensure that all votes carry the same weight.

The Universal Declaration of Human Rights Article 21 (3) states:

> The will of the people shall be on the basis of the authority of the government; this shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

[3] Legislative or executive influence may be even more subtle. The boundary commissioners may be directly beholden to the legislature for their appointments or funds to carry out their tasks. This kind of dependence, however, may be difficult to avoid.

[4] Parliament used this provision to delay the implementation of plans, prompting a change in the law: there is now a 60-day limit on Parliamentary consideration.

The concept of "equal" suffrage applied to constituency delimitation means that all voters should be granted a vote of equal weight in the election of representatives. This principle translates into a requirement of equal populations across single-member constituencies and the same ratio of voters to elected representatives in multimember constituencies.[5] What, precisely, is meant by equality—that is, how much variation from absolute equality is permissible—as well as what population is to be equalized should be clearly established prior to undertaking delimitation.

The population data used to measure equality differs across countries. The most popular alternative for a population base is total resident population (as enumerated via a national census), followed by the number of registered voters. Some countries (mostly European) use citizen population as the relevant base for determining population equality.[6] Although both practical and theoretical concerns are likely to guide the choice of one of these options over the other possibilities, what is important is to recognize that a choice must in fact be made, and must be clearly identified in advance and used consistently.

The degree to which boundary authorities are permitted to deviate from population equality when constructing constituencies also varies. Countries that have set specific limits regarding the allowable departure from the population quota[7] have established tolerance limits that range from "virtually no deviation allowed" (the United States) to as high as a 30 percent tolerance limit (Singapore).[8] But again, the point is that a reasonable limit should be established, and the boundary authority should be obliged to stay within this limit.

Malapportioned constituencies—constituencies that vary greatly in population—not only violate the principle of equally weighted votes, but may also suggest to stakeholders that intentional bias has been introduced into the delimitation process. This is because malapportionment can be, and not infrequently has been, used to ensure constituency boundaries that favor one group (such as the ruling party) over others. This can be accomplished through active, passive, or systemic malapportionment.

Active malapportionment occurs when a boundary authority makes the conscious decision to draw constituencies that vary dramatically in population, i.e., under-populating constituencies in areas where the ruling party is strong and over-populating constituencies in areas where the opposition parties are likely to win more votes. In Kenya, for example, the ruling party during the 1990s (KANU) used malapportioned constituencies to retain control of the parliament, as the text box below discusses.

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[5] In a multimember constituency context, the population of the electorates may well vary but the number of representatives per constituency should be proportional to the size of the electorate.

[6] Other choices include voting age population (e.g., Lesotho) and the number of voters in the previous election (e.g., Belarus).

[7] The *population quota* is the average number of persons per constituency (or per representative in the case of multimember districts). It is calculated by dividing the total number of districts to be drawn (or representatives to be elected in the case of multimember districts) by the population of the country.

[8] Other common thresholds are 5 percent (e.g., New Zealand, Albania, and Yemen); 10 percent (e.g., Australia, Italy, and the Ukraine); 15 percent (e.g., Armenia, Germany, and the Czech Republic) and 20 percent (e.g., Zimbabwe and Papua New Guinea). In Canada, the independent commissions charged with creating federal electoral districts are allowed to deviate by up to 25 percent from the provincial quotas—and even more under "extraordinary circumstances."

Kenya: Malapportioned Constituencies Favored the Ruling Party

Kenya's single-member constituencies have traditionally varied dramatically in population: constituency populations for the 1997 elections ranged from as few as 3,635 people to as many as 301,558 people (with most constituency populations well above or below the population quota of 102,271). This configuration of constituencies systematically over-represented residents of the most sparsely populated areas (the Rift Valley and northern, eastern, and southern Kenya), and under-represented the residents of Nairobi as well as other more densely populated areas (western and central Kenya). This malapportionment was not a source of controversy, however, until the era of the one-party state (1969-1991) came to an end.

With the reintroduction of multi-party politics in 1992, it became evident that this system of unequal representation favored the regions that supported the then-ruling party, KANU, and discriminated against the regions that supported the opposition parties. In fact, in the 1997 elections, KANU won a narrow majority of 107 of the 210 seats in the National Assembly with only 43% of the vote, in large part because the enormous disparity in constituency populations worked to favor the party.

KANU's defeat in the parliamentary election of 2002 was quite remarkable given the discrepancy in constituency size in favor of their interests. KANU, in fact, had a 20% advantage in the parliamentary election, meaning that Kibaki had to defeat Uhuru Kenyatte by at least 20 percent of the popular vote to ensure that NARC won more seats in the National Assembly than KANU. In fact, NARC defeated KANU by more than 30 percent in both the presidential and parliamentary elections.

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Malapportionment does not have to be active. Simply avoiding the periodic redrawing of boundaries also produces malapportioned constituencies. This form of malapportionment—passive malapportionment—may be the result of an administrative decision (e.g., lack of funds), but it may also be sanctioned for political gain. In the United States, for example, a number of states, beginning in the early twentieth century through the 1960s, neglected to redraw legislative boundaries following the decennial census because to do so would produce a shift of power away from the rural areas to the then rapidly growing urban areas.

The solution to passive malapportionment is to require delimitation at established intervals. The majority of countries that delimit electoral districts have, in fact, set some mandatory time interval within which delimitation must occur. For instance, the Seychelles requires the delimitation of new constituency boundaries as often as every three years if necessary. On the other hand, Ireland, the United Kingdom, and France permit up to 12 years to lapse before undertaking another delimitation exercise. The most popular choice for periodic delimitation appears to be 10 years.[9] However, the establishment of a time interval, without a population deviation tolerance limit, may not produce the desired effect. In Fiji, the mandated delimitation process was carried out in name but not in fact. Public hearings were conducted but no changes were actually made to the boundaries despite large discrepancies in population across constituencies.

One other form of population inequality should be mentioned: "systemic" malapportionment. This exists when administrative boundaries are used as single-

[9] Botswana, Canada, India, Japan, Kenya, Lesotho, Malaysia, Mauritius, Mexico, Nepal, Nigeria, Pakistan, Papua New Guinea, Tanzania, the United States, and Yemen all have electoral laws or constitutional provisions requiring delimitation at least every 10 years.

member constituencies despite large differences in population. Many upper houses of parliament employ territorial units as constituencies and do not adjust the number of representatives elected from these administrative divisions to reflect the differences in population, or do so to only a limited degree.[10] But this approach is usually balanced by a lower chamber that does, at least in theory, reflect the principle of equality of voting strength. There are exceptions, however. In the Republic of Georgia, for instance, even though there is only a single legislative chamber, *rayons* are used as single-member constituencies although they range in population from 5,264 to 180,822.

Equality of voting strength requires constituencies that are as equal in population as possible. The establishment of a population tolerance limit and a mandatory time interval for delimitation helps guarantee equality.

V. Representativeness: Maintaining Communities of Interest

Proposed Standard: The boundary authority should be obliged to take into account criteria relevant to representation such as administrative boundaries, geographic features, and other factors related to communities of interest.

If electoral districts are more than conglomerations of arbitrary groups of individuals—if they unite cohesive communities of voters that share common interests—they are easier to represent. One means of ensuring that the boundary authority recognizes and takes into account such communities is to specify a set of criteria related to these communal interests and obligate the boundary authority to consider these criteria when drawing constituency boundaries. Typically these criteria are relevant to the administrative, geographic, and social milieu of the country and may include such factors as preexisting administrative boundaries, geographic features, and communities of interest.

Respect for administrative boundaries (such as county and municipal boundaries) is the most common delimitation criterion adopted. Dozens of countries stipulate that the boundary authority take into account administrative units when creating constituencies (e.g., Bangladesh, Bulgaria, Croatia, the Czech Republic, Fiji, France, Germany, India, Italy, Japan, Kenya, Lithuania, Malaysia, Mexico, Namibia, Uganda, and the United Kingdom). Some African countries (e.g., Botswana) specify consideration of not only administrative district boundaries but also the boundaries of tribal territories.

Geographic factors are also listed as a criterion in many countries (e.g., Australia, Canada, India, Ireland, Japan, Mexico, Namibia, and New Zealand). This might encompass such features as river valleys and islands, as well as natural barriers like mountain ranges and rivers. The remoteness of a territory and its population density are also sometimes mentioned as factors to consider when delimiting constituency boundaries (e.g., Botswana, Malaysia, Nepal, and the United Kingdom).

Many countries that delimit districts emphasize the importance of creating districts that correspond as closely as possible to communities of interest. Most countries' electoral laws do not elaborate on what specific communities of interest are relevant to

[10] The seats in the U.S. Senate and the Australian Senate are distributed on the basis of equality for states: each state has two senators in the United States and 12 in Australia. Canada employs a version of this principle: each of the four "divisions" of the country has 24 senate seats. In Germany, a compromise was reached between the principle of equal number of seats per Länd and a distribution of seats based strictly on population; the result is that the larger Länder are substantially under-represented. France and Spain also have over-represented rural areas and under-represented urban areas in their upper chambers.

delimitation; the boundary authority is simply instructed to take into account "communities of interest." German electoral law states that constituencies should form a "coherent" area. Nepal, Pakistan, and Papua New Guinea electoral laws instruct the boundary authority to consider "community and diversity of interest" or "homogeneity and heterogeneity of the community." Australian electoral law indicates that the Redistribution Committee shall give due consideration to "community of interests within the proposed Electoral Division, including economic, social and regional interests." In Hungary, the boundary authority is to take account of ethnic, religious, historical, and other local characteristics when creating electoral districts.

Incorporating geographically-based communities of interest into constituencies simplifies the task of representing voters. Establishing a set of delimitation criteria (e.g., respect for administrative boundaries, geographic features, and communities of interest) and obliging the boundary authority to take these criteria into account when drawing constituency boundaries will help ensure more cohesive community-based constituencies.

VI. Non-discrimination to Safeguard Minorities

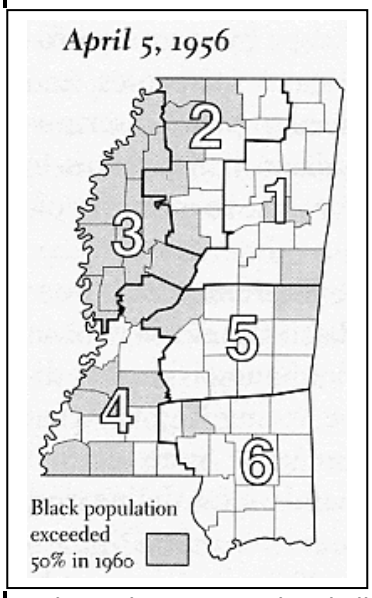
Proposed Standard: Constituencies should not be drawn in a manner which discriminates against disadvantaged minorities

The International Covenant on Civil and Political Rights (ICCPR), Articles 2 and 25 (b), provides that suffrage be non-discriminatory.[11] Electoral district boundary configurations can be discriminatory by fragmenting geographically concentrated minority groups across constituencies to dilute or discount their votes. This practice should be prohibited. By the same token, however, it must be recognized that in the context of boundary drawing, only minority groups that are sufficiently large and geographically compact can be affected by the placement of constituency boundaries. Some traditionally disadvantaged minorities, such as women, will not be impacted one way or the other by a given set of constituencies.

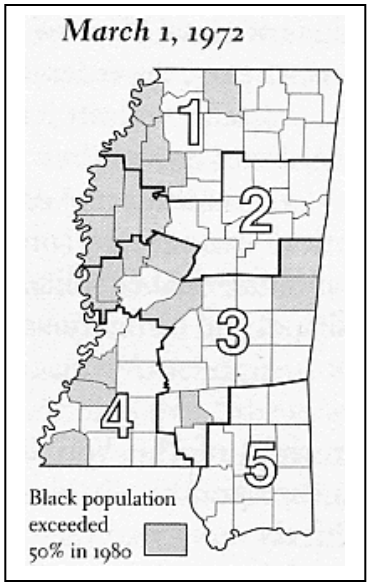
The United States, because of its sizeable racial and ethnic minority population and its history of discrimination against certain minority groups, has had to address the issue of fairness to minorities in promulgating districting plans. The Voting Rights Act of 1965 and its amendments in 1982 have established that a districting plan that dilutes the voting strength of minority voters by dividing a geographically compact minority community across several districts (or packing them unnecessarily into a single, over-concentrated district) is illegal. The text box below provides an example of how constituency boundaries were used to discriminate against blacks in the American South.

[11] ICCPR Article 2(1) states: "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Article 25 provides: "Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic 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; (c) To have access, on general terms of equality, to public service in his country."

United States: Drawing Districts that Discriminate Against Blacks in Mississippi



Until the mid-1960s, the state of Mississippi drew congressional districts such that one district (District 3 in the map to the left) followed the Mississippi River in the northwestern region of the state. Because this area of the state was heavily black in population, the congressional district was majority black in composition. Prior to the passage of the Voting Rights Act of 1965, blacks in Mississippi were denied the right to vote and therefore never had an opportunity to elect a candidate of choice to represent this district despite being in the majority.



When black citizens regained the right to vote in Mississippi in the late 1960s, the all-white state legislature decided that a majority black congressional district posed a threat. It was quite conceivable that black voters would elect a black representative to office. The legislature therefore purposely redrew the congressional district boundaries to ensure that black voters did not constitute a majority in this Delta region district, or any other congressional district in the state. They did this by fragmenting the Delta concentration of black voters across several districts rather than retaining them in a single district. It took several court challenges and nearly a dozen years before the district lines were redrawn in a less discriminatory fashion.

Electoral systems that rely solely on single-member constituencies to elect representatives to parliament cannot guarantee proportional representation or even some minimal percentage of seats to racial, ethnic, religious, linguistic, or other minority groups within the population. Prohibiting discriminatory delimitation will protect only minority groups that are sufficiently large and geographically compact to elect minority representatives to office if not fragmented; it does nothing to promote the representation of minorities that are not geographically concentrated. Affirmative measures for more than simply geographically compact minorities may be merited. Special provisions designed to ensure minority representation include reserved parliamentary seats, constituencies specifically designated for minority candidates, and constituencies specifically drawn to encompass minorities.

Many countries that employ constituencies for electing MPs have instituted special provisions to guarantee some minority representation in the parliament. For instance, Croatia, Mauritius, Singapore, and the Palestinian Territories all reserve a number of parliamentary seats for minorities. India and Pakistan each select a number of constituencies in which only minority candidates can compete. Other examples of countries with special provisions include Fiji and Papua New Guinea, both of which have separate sets of communal seats to guarantee representation of major ethnic groups. A significant feature of New Zealand's electoral system is a provision for representation of the descendants of New Zealand's aboriginal Maori population. The Representation Commission is obliged to create two sets of electoral districts (electorates) in New Zealand: one set of "General" electorates and a second set of "Maori" electorates, with the Maori electorates overlaying the general electorates. To vote in a Maori electorate,

the voter must be a Maori and must register on the Maori roll. This mechanism provides Maori voters the opportunity to select their own set of representatives.

Provisions against discriminatory constituency boundaries protect minority groups that are geographically concentrated. Special provisions, beyond a prohibition against fragmenting minority communities, will be required to facilitate the representation of minority groups that are not sufficiently large and geographically compact to benefit from remaining unified within a single constituency.

VII. Transparency: Public Consultation

Proposed Standard: Constituency boundaries should be drawn in a transparent manner and the procedure should be accessible to the public through a consultation process.

Transparency is important for maintaining public confidence in the integrity of the delimitation process. Stakeholders are more likely to accept the outcome of the process—especially if the ramifications of the process are as political as they can be in delimitation—if they can scrutinize the process. To do this, they must have access to information on, and input into, the decisions of the boundary authority.

There are several factors to consider when designing a delimitation process that is as transparent as possible:

- The approach that is to be taken, and more specifically the criteria that will be employed to draw the electoral district boundaries, should be identified and made public in advance of commencing the drawing phase;

- The stakeholders in the process should be consulted during the process to solicit their comments and concerns regarding the placement of the constituency boundaries; and

- An explanation should be provided for decisions made concerning the final assignment of the boundaries, particularly if objections to these boundaries have been put forward.

A public awareness program designed to educate stakeholders about the process is important, especially because delimitation can be a very technical exercise and not particularly well understood. If the boundary authority makes an effort to inform the public about why the process is undertaken, what the criteria are that the boundary authority is obliged to take into account when drawing the constituencies, and what the final result of the process will be, it is more likely that stakeholders will accept the delimitation process and its outcome.

Voter education, as well as accessibility to the process, is usually fostered by a consultation process that includes a series of public hearings. These hearings should be utilized not only to inform stakeholders about the delimitation process but to solicit their comments and concerns regarding the placement of constituency boundaries. The consultation process may be undertaken prior to drawing any boundaries (e.g., Botswana), or it may be scheduled after a preliminary set of boundaries have been created, allowing stakeholders to react to a specific set of proposed boundaries (e.g., the United Kingdom). In Australia, the boundary authority (Redistribution Committee) receives suggestions from stakeholders and the general public before beginning to draft

a plan and then, once it has completed a plan, the augmented Electoral Commission hears public objections to the proposed plan, if there are any, and produces a final map.

One of the aims of Canada's Electoral Boundaries Redistribution Act of 1964 was to increase the public's awareness of and involvement in the redistribution process. The Act grants the public an opportunity to present suggestions or objections to commission proposals. Once the boundary authority completes its proposal, it publishes the map in local newspapers and the general public is invited to present written briefs or oral presentations at public hearings held by the commission. Commissions have received hundreds of comments from a wide variety of sources, including local jurisdictions, political parties, members of Parliament (MPs), candidates for Parliament, political activists, and other interested citizens. Redistribution plans have often been revised after these hearings.

The final product of the boundary authority should be well publicized (e.g., maps, narrative descriptions, and population reports for the constituencies should be produced and disseminated) and a final report justifying the choices made (particularly if stakeholders objected to the alternative chosen) should be written. This report will allow stakeholders to understand and assess the process and will provide legitimacy to the outcome.

A delimitation process that is transparent and provides stakeholders with the information necessary to assess the process and even affect its outcome is more likely to receive the support of the public.

VIII. Conclusion

There is no single best model for delimiting constituency boundaries. The wide variety of delimitation practices, many of them quite successful, attest to this. However, it is important to establish standards to which the delimitation process might aspire, if current practices do not already meet them. These standards will need to be flexible to be relevant to both mature and transitional democracies, but underlying all of them should be the fundamental principles of impartiality, equality, representativeness, non-discrimination, and transparency.

Meeting standards that include an impartial boundary authority (guided by principles like equal voting strength, representativeness, and non-discrimination) as well as a process that is as transparent as possible offers credibility and legitimacy to a process that can have decided political consequences. The table below provides a summary of the principles that should guide the delimitation process and some examples of best practices that meet these standards.

Summary Table: Boundary Delimitation
International Principles, Standards, and Best Practices

Standards	**Best Practices**
Principle 1: Impartiality	
• Nonpartisan boundary authority	• No legislators or political party officials are permitted to serve on boundary authority, or • If party representatives serve, partisan representation is balanced and in the minority (nonpartisan commissioners control the authority).
• Independent boundary authority	• Constituencies produced by boundary authority are final, or • If parliament must pass legislation to implement constituencies, it is given a limited time to do so and is not permitted to modify boundaries.
• Professional boundary authority	• At least a portion of boundary authority serves ex-officio from government departments, agencies, or commissions relevant to the delimitation process (elections, geography, cartography, and demography).
Principle 2: Equality	
• Constituency populations as equal as possible	• Constituency populations are not permitted to vary more than a set percentage from the population quota. • Constituency populations that fall within tolerance limit but deviate substantially from the population quota are justified with reference to established delimitation criteria.
• Established trigger for undertaking delimitation	• Delimitation is undertaken at mandatory time intervals, or • If other events trigger delimitation, one of these is a pre-determined level of malapportionment.
Principle 3: Representativeness	
• Maintain cohesive communities	• Boundary authority is required to take into account criteria relevant to representation such as administrative boundaries, geographic features, and other factors related to communities of interest.
Principle 4: Non-Discrimination	
• Safeguard representation of racial, ethnic, religious, and linguistic minorities	• Prohibition against fragmentation of geographically concentrated minority groups, or • If justified, use of special provisions such as reserved seats, constituencies designated for minority candidates, or constituencies drawn specifically for minority voters.
Principle 5: Transparency	
• Access to information	• Public awareness program (including publicizing the steps and criteria for delimitation) is required. • Public hearing schedule is established and publicized. • Final report explaining decisions is published.
• Public consultation	• Public consultation is required to provide stakeholders with an opportunity to comment on proposed constituency boundaries.

Appendix:

Other Sources of Proposed International Standards for Delimiting Electoral Boundaries

I. Venice Commission

European Commission for Democracy Through Law: Code of Good Practice in Electoral Matters, Guidelines and Explanatory Report, Adopted October 2002

The *Guidelines* of the Venice Commission Report states:

2.2 Equal voting power: seats must be evenly distributed between the constituencies.

i. This must at least apply to elections to lower houses of parliament and regional and local elections:
ii. It entails a clear and balanced distribution of seats among constituencies on the basis of one of the following allocation criteria: population, number of resident nationals (including minors), number of registered voters, and possibly the number of people actually voting. An appropriate combination of these criteria may be envisaged.
iii. The geographical criterion and administrative, or possibly even historical, boundaries may be taken into consideration.
iv. The permissible departure from the norm should not be more than 10%, and should certainly not exceed 15% except in special circumstances (protection of a concentrated minority, sparsely populated administrative entity).
v. In order to guarantee equal voting power, the distribution of seats must be reviewed at least every ten years, preferably outside election periods.

vi. With multimember constituencies, seats should preferably be redistributed without redefining constituency boundaries, which should, where possible, coincide with administrative boundaries.

vii. When constituency boundaries are redefined—which they must be in a single-member system—it must be done:
- impartially;
- without detriment to national minorities;
- taking account of the opinion of a committee, the majority of whose members are independent; this committee should preferably include a geographer, a sociologist, and a balanced representation of the parties and, if necessary, representatives of national minorities.

II. Office for Democratic Institutions and Human Rights (ODIHR)

Election Observation Handbook

In the *Fourth Edition* of the ODIHR Election Observation Handbook, published in April 1999, in a section entitled "The OSCE Commitments," the ODIHR identifies the following as a commitment:

> The principle of *equality* requires that one's vote be given equivalent weight to that of the other voters in order to ensure equal representation. Under the

> majority voting system it requires that the size of the electorate among constituencies should not vary by more than approximately ten percent (10%). Under the proportional representation system, the size of the electorate may vary but the number of representatives for each district should be proportional to the size of the electorate. Voters should have equal and effective access to polling stations.

Later, in Chapter 9 ("The Pre-Election Phase: The Long-Term Observer"), Section 9.1 (Election Administration), part e (Election Boundaries), the ODIHR elaborates on this commitment:

> According to the OSCE commitments, all votes should carry the same weight to ensure equal representation. This means that each elected representative represents a similar number of registered electors. For example, in a majority voting system, the size of the electorate should not vary by more than approximately ten percent (10%) from constituency to constituency. Under the proportional representation system, the size of the electorate may vary but the number of representatives for each district should be proportional to the size of the electorate.
>
> The election law should provide detailed and uniform criteria for the drawing of electoral district lines, specifying considerations such as the number of voting population per district and natural, administrative and historical continuity of boundaries.
>
> The boundaries must be drawn in a transparent manner, and ideally by a non-partisan commission of experts assigned for this purpose. Otherwise it may be difficult to determine if the boundaries are elaborated on the principle of political neutrality, or in a selective, discriminatory and biased manner.

Strangely enough, in the *Fifth Edition* of the ODIHR *Election Observation Handbook*, the slightly more detailed discussion relating to election boundaries no longer appears, and the only reference made to constituencies is in Chapter 3 (Universal principles on elections and human rights), Section 3.4 (Practical implications), which states:

> EQUAL SUFFRAGE implied that each citizen's vote should have the same value. This means that, under proportional-representation systems, the number of representatives for each district should be proportional to the size of the electorate and that the thresholds for winning seats in parliament should not be set so high as to disregard the political choices of relatively large numbers of voters. Under majority voting systems, equal suffrage means that the population of electoral constituencies should be approximately equal; a variance of more than some 10 per cent could be a cause for concern.

III. Commonwealth Secretariat

Good Commonwealth Electoral Practice: A Working Document, June 1997

The Commonwealth Secretariat identifies the following points with regard to good electoral practice when delimiting electoral constituencies:

Delimitation of constituencies

20 The delimitation of constituency boundaries is a function occasionally performed by an election commission or otherwise by an independent boundaries commission, and in some cases after a population census.

21 General principles guiding the drawing of constituency boundaries include community of interest, convenience, natural boundaries, existing administrative boundaries and population distribution, including minority groups. There should be no scope for any "gerrymandering", and each vote should, to the extent possible, be afforded equal value or weight, in recognition of the democratic principle that all those of voting age participate equally in the ballot.

22 It is important that the general public play a part in the whole process and that the political parties also have an opportunity to respond to proposals before they are finalized. Where the size of a particular constituency is markedly out of line with the target "quota" of voters per seat, the reasons should be capable of being readily understood by both the parties and the general public.

IV. Electoral Institute of Southern Africa (EISA)

Principles for Election Management, Monitoring and Observation in the SADC Region, Adopted November 2003

The Electoral Institute of Southern Africa (EISA) and the Electoral Commissions Forum (ECF) adopted the following principles relating to electoral boundary delimitation:

4.1 Delimitation

In most SADC countries the EMB is responsible for the delimitation of constituencies, however some countries appoint special commissions to handle delimitation. The establishment, composition and status of an EMB applies equally to a delimitation commission. In most cases the mechanisms for establishing the body responsible for delimitation are entrenched in the Constitution.

It is important to note that the delimitation process is a technical exercise that can be used to achieve political goals. It is therefore important that the process be guided by clear criteria (see Table 1).

TABLE 1
Delimitation of Constituencies

Delimitation should ensure that each constituency contains approximately the same number of eligible voters. The following consideration should be taken into account:

i) population density
ii) ease of transportation and communication
iii) geographic features
iv) existing patterns of human settlement
v) financial viability and administrative capacity of electoral area
vi) financial and administrative consequences of boundary determination
vii) existing boundaries
viii) community of interest

Recommended Principles

The delimitation process should:

- be managed by an independent and impartial body that is representative of society, comprising persons with the appropriate skills;
- be conducted on the basis of clearly identified criteria such as population, distribution, community of interest, convenience, geographical features and other natural or administrative boundaries;
- be made accessible to the public through a consultation process;
- be devoid of manipulation of electoral boundaries to favour political groups or political interests;
- be conducted by one body;
- include all spheres of government, both national and local.

Challenging the Norms and Standards of Election Administration: Political Finance

Dr. Marcin Walecki

I. Introduction

James Kerr Pollock wrote in 1932 that "the relation between money and politics has come to be one of the great problems of democratic government. Healthy political life is not possible as long as the use of money is unrestrained."[1] Indeed, money provides access to the basic tools of a modern democracy - for example, advertising, running political parties, selecting candidates, mobilizing voters and polling - and for this reason, political finance affects almost every aspect of democratic politics in both developing and consolidated democracies. Thus, the reform of political finance regimes is very high on the agenda in all democratic countries, as greater transparency in political finance and accountability on the part of party leaders are essential for democracy. For this reason, it is crucial to discuss the standards that every system of political finance should try to meet, and that will encourage parties to undertake more transparent and accountable financial operations. Yet, when discussing the topic of "standards" one should remember that opinions regarding political finance are in a state of evolution with many scholars recently changing their mind on a variety of issues such as public funding of political parties and spending limits. As the new research and evidence question many existing solutions, the future of political finance seems to be far from being decided for many democracies.

Since this is a growing and problematic field, it is important to consider the meaning and boundaries of "political finance" before analyzing any standards.[2] The narrowest definition of "political finance" would be money for electioneering or campaign finance. This money may be collected and spent by candidates for public office, by their political parties or by other individuals and organized groups of supporters. Political parties play a crucial part in election campaigns in many parts of the world, and since it is difficult to differentiate between the campaign costs of party organizations and their routine expenses, political party funds may reasonably be considered "political finance," too. A leading German scholar of comparative politics, Karl-Heinz Nassmacher, rightly notes that there is a fundamental difference between campaign- and candidate-oriented North American and party-orientated European political finance. He suggests that "In Europe, the term political can appropriately be used as a synonym for party finance."[3] However, campaign and party funds are only two kinds of political money and not necessarily the most important. In fact, party expenses and campaign finance are not the only costs of democracy. Many extra-party actors and individuals are involved in political competition with clear political objectives like shaping public policy agendas, and influencing electoral debates and outcomes. Nevertheless, for the purposes of this paper, "political finance" will be understood to mean only campaign and party finance.

[1] Pollock (1932), p. 328
[2] For more details see also Michael Pinto-Duschinsky, Financing Politics: A Global View, Journal of Democracy (2002), pp. 69-86
[3] Karl-Heinz Nassmacher, *Structure and impact of public subsidies to political parties in Europe* , in Herbert E. Alexander (ed.) Comparative Political Finance in the 1980s (Cambridge: Cambridge University Press 1989)

The following pages present some ideas for the discussion of standards for political finance reforms. This paper argues that greater public disclosure, proper internal political party control, effective enforcement by regulatory regimes, and external stakeholder oversight are fundamental for any transparent and accountable political finance system. Before exploring standards in these four key variables, the following two sections of the paper analyse 1) the need for standards governing political finance and 2) the existing solutions and recommendations made by different global players. The paper concludes with an affirmation of the key elements of any political finance regime and the importance of assisting EMBs as they strive to reach existing and emerging standards in these areas.

II. Why Should Political Finance be Governed by Standards?

Political finance-related corruption undermines accountability and good governance in multiple ways.[4] It not only separates the political elite from society but challenges the whole concept of fair democratic representation.[5] When political parties are viewed as ineffective and corrupt, people hesitate to associate with them. Unregulated political money can also shape public debate and therefore influence the results of an election. In addition, the expense of running for office can prevent candidates from doing so, cause them to spend too much time raising money, or accept money from unacceptable sources, and could contribute to public cynicism regarding the political process. Unregulated political finance can also feed the greediness of political parties and candidates, and their increasing financial need can affect the other arenas of democracy. For instance, political parties with authoritarian tendencies can sometimes put pressure on state apparatus, civil society and economic society through the abuse of state resources, making physical threats, and by putting administrative pressure on potential sponsors. In order to prevent the above practices, a democracy must regulate the funding of, and spending on politics, be it for campaign or party activities.

The many complexities involved in controlling political finance mean that moves to implement existing restrictions, or to introduce new ones, need to be considered with particular care. Unfortunately, many of the countries that have recently reformed their political finance systems, with the notable exception of Canada, the United Kingdom, and the United States have not supported these efforts with the necessary research[6] or public consultations.[7] For example, the Fifth Report of the Committee on Standards in Public Life,[8] published nearly a decade ago in 1998, is still the most comprehensive review of the options available to regulators in Europe.

Well-defined, acceptable, and stable political finance rules allow political parties to know what the government expects of them, and what they can expect from it (in terms of sanctions or other regulatory activity). As one scholar observed a few years ago, "The

[4] See also Marcin Walecki, *Political money and corruption*, in Global Corruption Report, Transparency International (London: Pluto Press, 2004), pp. 19-30

[5] As Larry Diamond and Richard Gunther suggest, "The combination of a more or less corrupt system of party and campaign finance with a stream of blatant scandals and a backlog of public aspirations for more responsive government that go unmet (while being amplified by a cynical media) generates growing public disillusionment with democratic politics and government." Larry Diamond and Richard Gunther (eds.), *Political Parties and Democracy* (Baltimore: The Johns Hopkins University Press, 2001), p. XIII.

[6] The UK Electoral Commission and the Elections Canada can serve as good examples. See in particular, 'The funding of political parties - Report and recommendations' The Electoral Commission (London: 2004)

[7] In 2006 the UK Government has tasked Sir Hayden Phillips with undertaking an inquiry into how political parties are funded. See The Review of the Funding of Political Parties, London 2006.

[8] Fifth Report of the Committee on Standards in Public Life "The Funding of Political Parties in the United Kingdom" (Cm 4057, October 1998), see http://www.public-standards.gov.uk/publications/5th_report.aspx.

global nature of this problem raises questions about whether there is at least a global response that might be contemplated, if not yet a global solution."[9]

III. Are There Any Standards Governing Political Finance?

Different international standards have recently been advocated by a number of international governmental and non-governmental organizations (such as Transparency International[10] in particular). Most of them have been broad, permitting considerable scope for national variation. Many of the proposals, such as those emerging from organs of the Organization of American States (OAS)[11], the Council of Europe[12], the African Union (AU)[13] and the Association of Central Eastern European Election Officials (ACEEEO)[14] are a clear indication in which direction future political finance regulations will move. Advocating a set of global standards, even if they are fairly general, is a positive development, yet the principles need to be sufficiently flexible to be relevant to all democracies and transition countries. Not surprisingly, most of them emphasize strategies based on public disclosure and address the question of monitoring. For example, the Convention against Corruption that was negotiated in Merida, Mexico, in December 2003, and which entered into force in December 2005, states in article 7 (3) that:

> Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidates for elected public office and, where applicable the funding of political parties.

While approaches to controlling the effects of money on elections differ, the standard recommendation of all the above organizations focuses on transparency. The European Union and the United States government also emphasise the importance of transparent party funding. For instance, the US Congress "International Anti-Corruption and Good Governance Act Of 2002" states in section 202 (12) that:

> The United States should attempt to improve accountability in foreign countries, including by… promoting financial disclosure by public officials, political parties, and candidates for public office.

In addition, an analysis of the contents of various documents produced by the EU institutions shows that the treatment of political party financing regulations has received extraordinary attention. In the case of Romania, Bulgaria, Croatia, Macedonia, and Turkey, these documents included strong recommendations regarding the transparency of party funding which candidate states and political actors needed to take into consideration in order to join.

Although transparency is a necessary goal of political finance regulations, limiting such regulations to full transparency might not be sufficient. Public disclosure in political

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[9] Ewing "Corruption in party financing: the case for global standards", in TI Global Corruption Report 2001, p. 187

[10] See Policy Position # 01/2005 Standards On Political Funding And Favours and # 02/2005, 'Political Finance Regulations' in particular.

[11] Statement of the Council of Presidents and Prime Ministers of the Americas, the Carter Center and the Organization of American States, Atlanta Georgia March 19, 2003

[12] See www.coe.int

[13] The African Union Convention on Preventing and Combating Corruption (Article 10). The convention was adopted in Maputo on 11 July 2003

[14] www.aceeeo.org

finance does not automatically increase good governance, although it can expose poor governance practices. Transparency can only identify problems or irregularities that should be addressed and solved. The public needs to trust both the agency charged with enforcing the rules as well as the political party eliminating its individual members' misconducts. Thus, it is equally important to make political parties remove corrupt individuals, improve internal and external control mechanisms, and follow up with proper enforcement.

The ambitious program of developing regional standards has recently been accelerated in Europe by the Council of Europe. Over the last decade the Council of Europe has adopted a number of documents concerning the regulation of party financing.[15] However, its most recent Recommendation No (2003/4)[16] seems to be its most comprehensive initiative, asking member countries to take a number of concrete steps to combat political finance-related corruption, ranging from full transparency in party accounts, through restrictions and prohibitions on sources of funds, to reasonable public funding, independent enforcement and meaningful sanctions. The Council of Europe also recommends that its member states adopt legislation regarding the financing of political parties based on more controversial principles, such as limits on party expenditure linked to electoral campaigns. Furthermore, in Recommendation No (2003/4) it prescribes that:

> The governments of member states adopt, in their national legal systems, rules against corruption in the funding of political parties and electoral campaigns – in so far as states do not already have particular laws, procedures or systems that provide effective and well-functioning alternatives.

The Council of Europe has recently instructed "the Group of States against Corruption – GRECO" to monitor the implementation of this recommendation. One of the two themes covered by GRECO's Third Evaluation Round (launched on 1 January 2007), is the "transparency of party funding," as understood by reference to the Committee of Ministers' Recommendation No (2003/4). GRECO formally adopted an evaluation questionnaire designed to collect information which will form the basis of Third Round evaluations and which will be complemented by on-site visits to each of the Council of Europe member States.

Good practice in political finance has also been promoted by the OAS and the ACEEEO.[17] The general principles and recommendations proposed by the above bodies are of particular importance for the less structured democracies of the Americas and Eastern Europe.

Indeed, in recent decades there has been a rush toward more complicated political finance regulations and more public subsidies. The rapidity with which legal changes relating to political finance are occurring in various countries raises serious concerns about their purpose and proper implementation. In general, scholars and practitioners

[15] The Council of Europe has adopted a wide range of instruments related to party funding including among others: Parliamentary Assembly of the Council of Europe, Recommendation 1516 (2001), *Financing of political parties*, Adopted on May 22 2001; PACE Political Affairs Committee, Report "*Financing of Political Parties*", Doc. 9077, 4 May 2001

[16] Recommendation No (2003/4) of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns.

[17] See www.aceeeo.org.

would agree that an effective political finance system should meet the following *minimum* requirements:

1. Equal opportunity to stand and compete in elections;
2. Preventing political actors from corrupting elections through systemic vote-buying or monopolizing the electoral process through the abuse of state resources;
3. Preventing the biased and partisan use of enforcement mechanisms against political opponents; and
4. Demanding that parties and candidates be transparent about how they collect and spend their money.

To achieve a fair and competitive system, a country must also offer a level playing field in which any political actor can participate, and in which political actors behave transparently and are accountable to the citizens. The main provisions of political finance laws serving the above purposes can include: prohibitions against corrupt and illegal practices (such as vote buying); disclosure rules; realistic spending and contribution limits; bans on certain types of contributions (such as foreign contributions, anonymous contributions, or contributions from business corporations) and spending; direct public subsidies, tax relief and subsidies-in-kind (including political broadcasting rules); rules concerning financial representatives, accounting, and audit; and rules and measures to control the use of public resources for campaign purposes.

Such provisions are sometimes contained in laws dealing specifically with party finance or election finance. Often they are included in broader laws addressing elections, political parties, or the prevention of corruption. However, the existence of a variety of separate laws often complicates the task of the regulatory body, or bodies, responsible for enforcing them. Moreover, as Michael Pinto-Duschinsky[18] rightly points out:

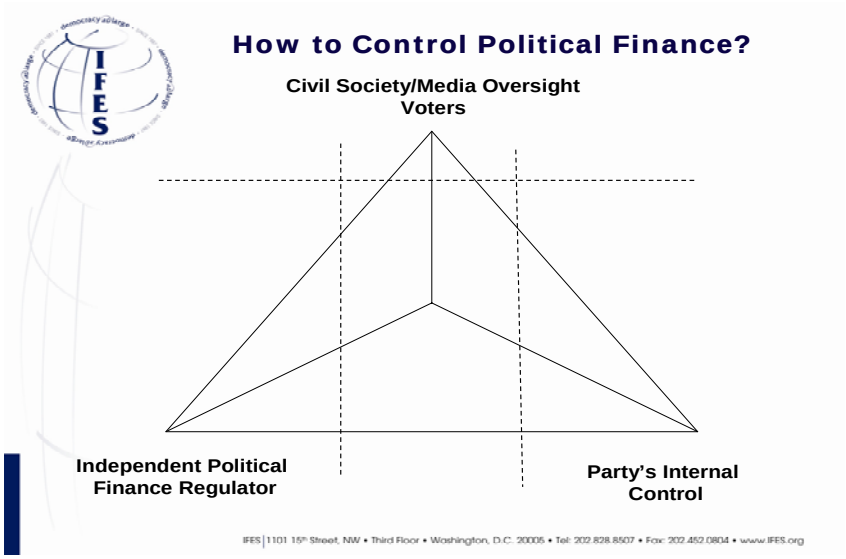
> The desirable scope of political finance regulations and subsidies is bound to remain a subject of debate. There is little doubt, however, that all too often laws express objectives (such as transparency of political donations) without considering in sufficient detail how to implement those objectives. There is, in short, too much law and too little enforcement.[19]

In developing electoral environments, establishing standards in political finance administration should be built into public expectations so that the relative roles and responsibilities are understood by all electoral actors. Furthermore, limits and prohibitions on political finance can only work if there are adequate rules for disclosure and effective enforcement. Without full and timely public disclosure, contribution and spending limits could not be monitored or enforced. Disclosure is also crucial to determine whether a party or candidate is complying with various bans, and in public financing systems, disclosure is necessary to calculate the amount of subsidies.

Although disclosure is a necessary condition for an effective control it is not a sufficient one. As illustrated below, it is crucial to apply a holistic approach to control political finance and devote as much attention to: 1) internal political party controls, 2) the powers of the independent PFR, 3) external complaints allowing for civil society and media oversight. Without adequate enforcement, internal and external control, political

[18] Dr Pinto-Duschinsky is the leading world expert on political finance and the Chairman of the International Political Science Association Research Committee No 20 on Political Finance and Political Corruption.
[19] Pinto-Duschinsky (2002), p. 81

finance subsidies and regulations - whether they involve limits, bans or simply disclosure requirements - have little meaning and are unlikely to be respected. Thus, all mentioned variables are fundamental to maintaining the legitimacy of political finance regulations and secure effective control. The following pages will discuss each of them in more detail.



IV. Proposing Standards in Four Key Areas of Political Finance

A. Disclosure

Disclosure is a necessary condition for any system of public control of political finance, and a variety of disclosure requirements are adopted.[20] Political parties are required to submit routine or periodic financial reports to public officials, and in most systems electoral committees and candidates are required to file special reports during or immediately after election campaigns. In general, disclosure may help achieve the following ends:

1. Financial disclosure contributes to an overall transparency of the electoral process, offering voters an opportunity to learn more about political contenders in order to make an informed decision at the polls.
2. Requirements to disclose sources of funding are likely to stimulate parties/candidates to raise and also spend their financial resources in ways that are acceptable to a majority of voters and do not provoke political scandals.
3. Disclosure emerges as an obstacle to corruption and trading in influence that are likely to be greater when financial transactions between political parties and companies are hidden from the public eye.
4. Public disclosure can serve as a barrier to excessive campaign spending in particular countries/cultures where money in politics is viewed with suspicion, or money is not seen as all-powerful.

[20] For the most comprehensive study of political finance disclosure see *Money in Politics Handbook: A Guide to increasing transparency in Emerging Democracies*, USAID (Washington: Office of Democracy and Governance 2003)

Still, regarding this simplest and least controversial principle of political financing, there is a wide gap between accepting such a principle and understanding the specific problems involved in regulating public disclosure.[21] Any political finance system should require comprehensive disclosure of all financial transactions. Regarding receipts, the party or candidate should disclose the amount and nature of each contribution (*i.e.* whether cheque, cash or non-monetary ["in-kind"]), and the identity, address and employer/business of each contributor. In terms of expenditures, the law should require disclosure of all spending, including the date and amount of expenditure and its recipient, and all debts and liabilities incurred by the committee. The law should also require the disclosure of loans and advances received by the party, including the lender's identity and business/employment, the date and amount of the original loan or advance, and the date when the loan or advance was repaid.[22]

An important issue to be stressed is the timing of disclosure reporting or, rather, the delay in reporting. Ideally, election reports should be submitted and published from one week to 10 days before an election, and following an election (usually 30 days after the election). With the technology available today, information can be sent to the regulatory body in "real time" and then posted on its website. In jurisdictions such as the United States, Canada, the UK, and Lithuania, computer software is provided to parties and/or candidates to ease the submitting of financial reports. These reports should be formatted in such a way that further statistical and/or audit study is simplified.

In addition to providing regulators with the ability to track campaign-related expenditures, pre-election disclosure provides the public with information that is critical to their voting decisions. Such was the U.S. Supreme Court's reasoning in *Buckley v. Valeo*,[23] one of the most important decisions in political finance legislation:

> Disclosure provides the electorate with information as to where political campaign money comes from and how it is spent by the candidate in order to aid the voters in evaluating those who seek federal office. It allows the voters to place each candidate in the political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches. The sources of a candidate's financial support also alert the voter to the interests to which a candidate is more likely to be responsive and thus facilitate predictions of future performance in office.[24]

Furthermore, disclosure enhances the accountability of political parties and provides enforcement agencies, as well as civil society and media with all the information necessary for proper verification. However, for these objectives to be achieved, all financial reports covering routine and campaign funding should fulfil the following criteria:

1. Reports should provide for the full accounting of assets and liabilities by the reporting entity ('Baseline' financial statement – required just once, or on a cyclical basis);

[21] Keith Ewing points to the example of the state regulations in the US — *Brown v. Socialist Workers' 74 Campaign Committee (Ohio)*[21]— with the result that Ohio disclosure laws were held unconstitutional to the extent that they applied to the US Socialist Workers Party.
[22] For more information see relevant section of ACE Project at www.aceproject.org as well as IFES' TIDE Project at www.moneyandpolitics.net
[23] *Buckley v. Valeo*, 424 US 1 (1976).
[24] Ibid. p. 67.

2. Reporting forms should be based on requirements set forth by the independent body as a result of consultations with parties and candidates and should be supported by manuals/guides and training;
3. Reports should be based on a calendar timeline, such as an annual, biannual, or quarterly reporting schedule;
4. Reports should be introduced before the beginning of the reporting period;
5. Reports should be publicly accessible (e.g., Internet, newspapers);
6. Reports should be detailed and comprehensive (but not absurdly detailed) and should reflect conventional accounting standards;
7. Reports should include, in addition to contributions and expenditures, information about donations-in-kind, loans and credits received, and debts;
8. Reports should be standardized for routine and campaign;
9. Reports should be understandable to the public at large;
10. Reports should be available for future reference.

While disclosure is an important element that should be present in all political finance regulatory systems, there are some limits to the reporting that can be required from political parties.

Excessive reporting requirements may act as a deterrent to political participation 1) by increasing the level of intrusion into political parties' internal organization and candidates' personal lives and 2) by raising the costs of standing for elected office beyond the reach of ordinary citizens. The challenge is to create a political finance system that makes political finance regulation meaningful without becoming a barrier to full citizen participation and the development of multi-party democracy. This would depend on a number of factors, including level of democratization, sophistication of the party system, media freedom, and political values. Any funding system should also reflect the needs of smaller parties, and enable entry to the political arena. It is important that the accounting, reporting, and auditing requirements reflect the size of the political party. Thus, when considering the level of reporting details required for smaller parties, it should be recognized that accounts are often produced by volunteers rather than professional accountants.

Finally, though disclosure is desirable in most cases, there are countries in which it can be abused by non-democratic regimes. A study of Ukraine, for example, has demonstrated that donors who declared their financial support for opposition parties before 2002 were then harassed by the tax authorities as a punishment.[25] In potentially violent, repressive regimes, compulsory disclosure of political contributions has the effect of making it very difficult for opposition groups to organise political campaigns.

B. Effective internal (political party) control

In any organization where money and power are so intimately connected, internal mechanisms for political finance control are essential. If political parties do not put enough emphasis on their internal control mechanisms, further restrictions will be imposed, leading eventually to total supervision over every single transaction and action. It should be stressed that political parties, when facing a universal struggle against political corruption, require a certain degree of autonomy to introduce preventive measures. Political parties will attract corrupt individuals as any other organization does. This is inevitable, and political parties should be encouraged to adopt their own

[25] See Marcin Walecki, *Ukraine,* in Global Corruption Report, Transparency International (London: Pluto Press, 2004)

procedures to eliminate dishonest politicians and prevent their financial misconduct. Detailed and persistent internal control mechanisms can provide a crucial foundation for efforts to contain the abuses that are always liable to occur, regardless of the sophistication of legal frameworks. As Anderson (1977) explains:

> [W]ith the best of intentions, most people make mistakes. The mistakes may be the end results of their work, needless inefficiencies in achieving those end results, or both. And sometimes, without the best of intentions, a few people deliberately falsify. Any organization wishing to conduct its business in an orderly and efficient manner and to produce reliable financial accounting information, both for its own and for others' use, needs some controls to minimize the effects of these endemic human failings.

In general, any PFR should encourage political parties to comply with requirements for professional and accurate bookkeeping. Maintenance of proper accounting records will help to ensure that a party is not unnecessarily exposed to avoidable financial risk, and that published financial information is reliable; accurate bookkeeping can contribute to the safeguarding of assets, including the prevention and detection of fraud.

As discussed earlier, the growth of restrictions and disclosure obligations will force many political parties (or even candidates) to appoint specific officials — "financial agents " — who might have the following responsibilities: 1) keeping complete and accurate records of financial activities, 2) submitting reports about financial activity to the relevant bodies, 3) approving all contributions for compliance with legal restrictions; and 4) following accepted accounting procedures in performing record-keeping and reporting duties.[26]

This system of internal control imposes serious and continuing duties on financial agents to monitor donations received. Political parties should consider the standards applying in the banking sector, such as the "know your client" rule in particular. Parties might accept some donations and decline others (of illegal or corrupt character), and report suspicious financial transactions to the relevant authorities. Financial agents often oversee compliance with these requirements and institute action (using intra-party disciplinary codes and codes of conduct) when necessary.

Thus, the law should encourage internal party control (see the following section) and should require each party or candidate to authorize one particular committee, and designate one specific individual, serving as the financial agent ("treasurer"), to be responsible for all receipts and expenditures of that political entity. Any political party or its committee should use only one bank account, which is fully reported and disclosed to the PFR, for all financial transactions. By permitting only one conduit for all financial activity, the law thus enables the PFR to effectively "follow the money" and track political finance activity.

[26] Most importantly, the system based on the "doctrine of agency" foresees that all funds should be channeled through the agent and that all expenditures must be authorized by the agent. In addition, the agent must check incoming donations and expenses to ensure that they are in conformity with the rules.

C. Enforcement

As Keith Ewing rightly suggests:

> The case for a transnational standard for the funding of political parties is a strong one, based on a number of principles of universal application. These principles need to be sufficiently flexible to be relevant to all democracies. And, in addition to strategies based on transparency, controlling costs and regulating the source and size of contributions, there is also a need to address the question of enforcement.[27]

The narrow definition of political finance enforcement is "control exerted by an enforcement agency which gives force and authority to a political finance system."[28] Enforcement is essential to any political finance regulations, starting with disclosure. The reason is quite simple: without enforcement, regulations - no matter how well intentioned - have little value. However, an ideal enforcement mechanism should not only include a controlling body but requires a comprehensive system consisting of all the components found in a system of justice, namely: investigation, prosecution, adjudication, and sanctions. According to a leading scholar, Khayyam Paltiel, "Enforcement demands a strong authority endowed with sufficient legal powers to supervise, verify, investigate and if necessary institute legal proceedings. Anything less is a formula for failure."[29]

The status of the body entrusted with overseeing a political finance system clearly has an impact on the effectiveness of control of the political finance system, as well as on public confidence in it. However, there is no easy answer to the question: What type of PFR should a democracy have? Recent comparative research has shown that in 63 percent of the countries that have agencies responsible for the enforcement of political finance, most of them rely on National Electoral Management Bodies. An additional 28 percent of these countries entrust the task to government departments, such as the ministry of the interior, the ministry of labour and administration, the ministry of justice, the tax office, or the attorney general's office. Other bodies responsible for political finance enforcement might include parliaments, parliamentary speakers, constitutional courts, or tribunals.[30] The work of the above agencies is becoming even more challenging as the laws concerning political finance have become far more extensive and complex in recent years. What is more worrying is a failure of reform-minded politicians to provide regulatory bodies with the necessary knowledge and with the additional resources needed to carry out their new functions.

The effectiveness of any system will also depend on the cooperation of the various stakeholders, and relies on the monitoring mechanisms provided by parties' financial agents, auditors, banking institutions, government bodies, anti-corruption watch-dog organizations, and the media. An effective enforcement regime is one that enjoys legitimacy in the eyes of the parties, the candidates, the media and, especially, the electorate. The enforcement of a political financing law is particularly important, since a

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[27] Keith Ewing "Corruption in party financing: the case for global standards", in TI *Global Corruption Report 2001*, p. 195
[28] See Training in Detection and Enforcement (TIDE) Handbook, (Washington DC: IFES 2005)
[29] Khayyam Z. Paltiel, *Party, Candidate and Election Finance*, study no. 22, Royal Commission on Corporate Concentration (Ottawa, Ont.: Queen's Printer, 1976), pp. 108-109. In addition, Keith Ewing states, "History has taught the lesson that there is little point in enacting promising legislation which is unaccompanied by the necessary administrative support." Ewing (1992), p. 85.
[30] See Training in Detection and Enforcement (TIDE) Handbook, (Washington DC: IFES 2005)

regulatory scheme is only as effective as the consequences of violating it. In practice, a political finance enforcement agency can detect possible law violations through three processes: 1) Monitoring - potential violations are discovered through a review of financial reports or through an audit; 2) Complaint - an individual, a political party or a civil society organization may file a complaint, which alleges violations and explains the basis for the allegations; 3) Referral - possible violations discovered by other agencies should be referred to the main political finance enforcement agency.

There are many democracies with problems of non-enforcement and the following reasons seem to be particularly problematic in many transition countries:

1. Ambiguous laws – terms such as "donation", "campaign expenditure", "campaign period" and "reporting" are often ill-defined or undefined;
2. Failure to specify penalties or setting inappropriate penalties – laws sometimes set out offences but they fail to specify any penalties for them. At the same time if penalties are disproportionately severe, regulatory bodies may be reluctant to impose them;
3. Lack of administrative capacity and lack of authority in a regulatory body – often the resources given to bodies responsible for administering political finance laws are not increased to keep pace with new complex laws and subsidies. In addition, the PFR may lack the powers needed for effective enforcement, including auditing, investigating or assessing penalties;
4. Political constraints and lack of an independent PFR can result in political loyalists, or even politicians who are reluctant to enforce laws against their colleagues. Furthermore, even non-partisan commissioners may be reluctant to challenge the government party due to personal fear or fear that the commission's budget will be cut in retaliation.

Financial and operational independence of the regulator seems to be the major challenge - the state must take on this responsibility and, to fulfil it properly, the agency must do its job regardless of who is in power. Otherwise, efforts to enforce political finance rules and fight corruption and lawlessness might have the opposite effect. In the absence of the rule of law, an unaccountable government might choose selective and partisan implementation of political finance regulations. Such a choice can reduce electoral competition and lead to long periods of one-party domination. Given this risk of abuse, designers of political finance regulations must simultaneously seek to encourage disclosure and protect political donors from possible harassment or invasion of privacy. This is particularly true for countries in transition, during which the party in power tends to use the state apparatus to its advantage.

An accountable system of political finance presupposes that other democratic institutions are sufficiently organized to discipline political actors, and may need to be reconsidered where such conditions do not exist. In countries where a strong and independent PFR is feasible, the following recommendations[31] could enhance enforcement:

1. Obligations, offences and penalties must be clearly identified in law. The PFR should outline clearly who is to be held accountable for which infringement of the law.
2. Lawmakers must anticipate that parties and candidates will seek ways to get around limits and disclosure requirements. Therefore violations and the corresponding penalties should be clearly provided for in the law. At the same

[31] Based on ACE update prepared by the NYCCFB (www.aceproject.org)

time, it should be recognized that penalties such as fines or imprisonment are not the only response, or even the best response, to some types of infractions. Other avenues, particularly administrative sanctions, can often be more effective.

3. The system should encourage political parties and candidates to monitor their own financial activities, prevent financial misconduct, and comply with the requirements of professional bookkeeping and reporting.
4. Sufficient resources - in the form of training, consultations, and professional personnel offered to the regulated community - are also necessary to enable timely and effective reviews and audits.
5. Enforcement requires that an enforcement agency has the capacity to monitor for compliance, review and audit financial reports, investigate alleged infractions, negotiate and, where necessary, apply the appropriate penalties.
6. Public trust and participation are fundamental to any effective enforcement regime. External complaints should be encouraged and treated seriously.

In order to function properly, the enforcement agency must also remain independent and possess adequate resources to monitor and investigate party/candidate finances. Its autonomy and independence must be supported by its budget, but it, too, should be accountable to Parliament for the proper use of public funds. Furthermore, if too little enforcement renders political finance rules meaningless, too much enforcement can paralyze the system by rendering it overly rigid. [32]

In addition to ensuring the presence of a strong and independent enforcement agency, an effective political finance regulatory system also incorporates four other elements that aid the enforcement function: Auditing; External Complaints; Investigation; and Sanctions.

- **Auditing**

One method of attempting to assure the accuracy and integrity of financial accounts submitted by parties and/or candidates is to require that they be examined and certified by professional auditors. An audit is an examination of an entity's financial statements, financial records, and banking information which have been prepared by the entity's financial agents for other interested parties outside the entity, and of the evidence supporting the information contained in those financial statements. There can be several possible levels for audit reviews:

1. Field audits and simple visits to campaign offices (to establish that an actual campaign is being conducted and that records are being properly maintained, among other observations that may be made);
2. Statement review (looking for violations that appear on the face of statements filed by a campaign);
3. Review of back-up documentation (Are copies of cheques from contributors available and do they match the reported contributions in the filed statements?); and
4. Evaluation of overall campaign information (How does this particular campaign compare against an “average” one? Is rent reported? Are certain expenditures unusually high?).

[32] Diane R. Davidson, *Enforcing Campaign Finance Laws: What Others Can Learn From Canada*, Election Law Journal 2004

Audits also look at internal controls to ensure compliance with the legal and regulatory requirements, and internal controls for financial reporting and safeguarding assets. The timing of any audit review can be very important. In a jurisdiction that offers public funds to campaigns, an early field audit/visit can help the campaign correct errors early on, saving it from problems later on, and help regulators uncover activities that are prohibited - before any public funds are dispersed. Auditing, in which the agency is authorized to review all reports to determine whether they are in compliance with the rules and to conduct field audits, including random audits, of the entities required to file financial reports, is a precondition for any serious enforcement system. In some cases, agencies do have random audit authority, although they rarely have the resources necessary to conduct them.

- **Investigation**

While random checks and audits are part of the regular apparatus of control, PFRs need to watch for signs of irregularities that warrant closer scrutiny. Ideally, the legal burden of proof should always be on the political party or the candidate to show compliance with political finance regulations. The tendency in a number of democratic countries is for the political finance enforcement body to have the power, either on its own initiative or in response to complaints, to make enquiries concerning all aspects of political finance. The enforcement agency can investigate, for example, any allegation or suspicion that a political party or candidate has failed to disclose the names of substantial donors or illegally accepted foreign donations. Any successful enforcement agency should have its own written policy on initiating, continuing or terminating an investigation. Agencies should also take into account public interest factors in decisions related to investigations. In many systems, anonymous complaints are not considered; however, in some countries, a citizen may file an application for investigation if he/she has strong proof that the party or candidate has acted illegally.

- **Sanctions**

As a starting point, any political finance system should clearly define violations of disclosure or reporting requirements, such as: 1) Hiding financial activity by use of separate accounts or surrogates; 2) Failure to file reports; 3) Submission of false or incomplete reports; 4) Late filing of reports; and 5) Failure to provide adequate documentation. It should also identify (and impose) effective, proportionate sanctions that can deter malfeasance. Though there is considerable diversity in the penalties currently in use around the world, the more serious of these penalties - the dissolution of a political party, for example - should be used with the utmost restraint, given the essential role political parties play in any democracy. Experience from many countries has shown that effective enforcement more often results from financial penalties (including denial of public funding) than from severe criminal sanctions.[33] PFRs in many established democracies have resorted to small administrative fines as a method of punishing minor infringements and encouraging voluntary compliance with the law. An interesting case comes from Poland where after the 1993 parliamentary elections, dozens of committees failed either to submit an “election expenses return” within the time stipulated by the law or did not write one. The most controversial case was that of the Solidarity Trade Union, which managed to win nine Senate seats and later created its own Senatorial Caucus. Solidarity submitted its election expenses return two days after the stipulated time and subsequently lost a substantial state subsidy equivalent to

[33] For more information on different penalties imposed globally see IFES TIDE Manual or the International IDEA *Handbook on Funding of Political Parties*

approximately US $68,850. After this incident no major political party or committee was late with the election expense return.

Criminal prosecutions that take place after elections do not immediately impact voter behaviour,[34] and some experts counsel against the severest sanctions, arguing that some of the penalties are too severe for the circumstances and might discourage enforcement. Laws that are on the books but are routinely ignored do not serve as deterrents and can undermine the rule of law.

D. External Stakeholder (Civil Society and Media) Oversight

Any enforcement agency will be able to detect only a fraction of violations if it relies exclusively on its internal monitoring of financial reports submitted by the obliged entities. Thus, an effective agency must also engage external stakeholders in the process of monitoring political finance. External complaints of suspected wrongdoing are essential to detect violations. In an ideal system, civil society organizations, journalists, and even individuals who believe that a violation has occurred, or is going to occur, should be able to file a complaint to the regulatory agency. Press reports can be a particularly good source of information. The complaints process can require a formal, written document satisfying specific criteria for a proper complaint, or can have a more liberal character, with the enforcement agency taking action based on press articles or informal allegations. In transition regimes, and particularly in post-conflict societies, voters who are in the best position to observe questionable campaign practices may be the most reluctant to come forward with a formal complaint, since they often fear reprisals. Therefore, in order to encourage individuals to share information some political finance systems even give the enforcement agency the discretion to act on information it receives anonymously. Given the complex nature of political finance regulations, and the importance of receiving external complaints, it is essential that countries invest in public awareness campaigns, media training, and other forms of educating external stakeholders on political finance regulations and on the process for filing complaints.

V. Conclusion

Illicit party and campaign financing is certainly not a recent development and it has long been a common phenomenon in many democracies. Yet, it has only recently started to be perceived as a major source of decline in public trust, although claims that political corruption has significantly increased are not always sustained. There are several factors that make the extent of the problem of political corruption difficult to characterize. First, there is no reliable and objective way of evaluating whether, over the past thirty years, parties and candidates have become more corrupt. Second, what seems to be a growing number of scandals may also result from an increase in the detection of illegal acts, better enforcement, more aggressive investigative journalism, and the specialisation of anti-corruption NGOs. Thirdly, some of the recent scandals also result from a lack of compliance with overambitious regulations (particularly unrealistic spending limits). However, what does seem clear is that with the growth of transparency, public frustration with political corruption has increased. Furthermore, as some leading experts on democratisation have observed:

[34] "Because prosecutions will almost always occur after the election, any adverse publicity surrounding convictions does not threaten immediate voter reaction at the polls, which is supposedly the most effective deterrent to improper conduct. By the time his aides are prosecuted, the candidate who has benefited from violations of the act may well be already in office."Dawid W. Adamany and George E. Agree *Political Money* (Baltimore: The Johns Hopkins University Press, 1975), p. 103.

> Citizens seem to be applying higher standards of ethical behaviour to their representatives and rulers and they are better informed about corrupt practices, thanks to the Internet and to comparative indicators such as that produced by Transparency International. The media have become more inclined to publicise funding scandals; the judiciary more disposed to prosecute those who engage in such acts; the citizenry more likely to react by punishing even those just suspected of corruption.[35]

Given the diversity of political systems and differing levels of democratic development, there is no single or best solution for every regime to combat political finance-related corruption. Rather, systemic differences will always produce a range of effective practices. However, it is important to establish standards in political finance administration to which these diverse practices should aspire. Standards set public expectations and allow all electoral actors to understand their respective roles and responsibilities. To increase the effectiveness of political finance control mechanisms, this paper has argued that greater public disclosure, proper internal political party control, effective enforcement by regulatory regimes, and external stakeholder oversight are fundamental for any transparent and accountable system.

Disclosure and enforcement are essential in order for other political finance regulations to be meaningful, and internal (party) and external (NGOs and Media) control mechanisms must be enhanced rather than undermined. Contemporary analyses of global political finance also show a growing gap between legal requirements and actual practice. Public trust in the regulatory system as a whole is more important than any quantity of restrictions and bans. Political finance regulations and their enforcement should serve to build a climate of trust in the electoral process and should not be used for partisan purposes.

The funding of political parties in some established democracies might be more transparent than that of a decade ago, but many newly democratizing countries still continue to search for a better way of regulating money in politics. Success will come over the long term as new, more realistic, reforms emphasizing disclosure and effective enforcement are proposed, designed and enacted. It took established democracies and their election administrations decades to build the capacity to detect political finance irregularities, move from systemic electoral fraud to individual acts of corruption, educate political parties and civil society, train enforcement agencies and introduce the necessary preventive measures.

[35] Schmitter and Trechsel (2004), p.

Appendix:

Summary of Proposed Political Finance Standards

A. Disclosure

i. Any political finance system should require comprehensive disclosure of all financial transactions.
ii. Receipts: the party or candidate should disclose the amount and nature of each contribution (i.e. whether cheque, cash or non-monetary ["in-kind"]), and the identity, address and employer/business of each contributor.
iii. Expenditures: the law should require disclosure of all spending, including the date and amount of expenditure and its recipient, and all debts and liabilities incurred by the committee.
iv. Loans/advances: the law should also require the disclosure of loans and advances received by the party, including the lender's identity and business/employment, the date and amount of the original loan or advance, and the date when the loan or advance was repaid.
v. Timing: ideally, election reports should be submitted and published from one week to 10 days before an election, and following an election (usually 30 days after the election).

B. Internal (political party) Control

i. Political parties should be encouraged to adopt their own procedures to eliminate dishonest politicians and prevent their financial misconduct. Detailed and persistent internal control mechanisms can provide a crucial foundation for efforts to contain the abuses that are always liable to occur, regardless of the sophistication of legal frameworks.
ii. Political Finance Regulators should encourage political parties to comply with requirements for professional and accurate bookkeeping.
iii. Political parties (or even candidates) should consider appointing specific officials — "financial officers" — who might: 1) keep complete and accurate records of financial activities, 2) submit reports about financial activity to the relevant bodies, 3) approve all contributions for compliance with legal restrictions; and 4) follow accepted accounting procedures in performing record-keeping and reporting duties.
iv. The law should require each party or candidate to authorize one particular committee, and designate one specific individual, serving as the financial agent ("treasurer"), to be responsible for all receipts and expenditures of that political entity.
v. Any political party or its committee should use only one bank account, which is fully reported and disclosed to the PFR, for all financial transactions. By permitting only one conduit for all financial activity, the law thus enables the PFR to effectively "follow the money" and track political finance activity.

C. Enforcement / Regulatory Regimes

i. An ideal enforcement mechanism should not only include a controlling body but might require a comprehensive system consisting of all the components found in a system of justice, namely: investigation,

prosecution, adjudication, and sanctions.

ii. The status of the body entrusted with overseeing a political finance system clearly has an impact on the effectiveness of control of the political finance system, as well as on public confidence in it. There is also an important factor of independence which should always be taken into consideration.

iii. The effectiveness of any system will also depend on the cooperation of the various stakeholders, and relies on the monitoring mechanisms provided by parties' financial agents, auditors, banking institutions, government bodies, anti-corruption watch-dog organizations, and the media.

iv. An effective political finance regulatory system also incorporates four other elements that aid the enforcement function: Auditing; External Complaints; Investigation; and Sanctions.

v. In order to function properly, the enforcement agency must also remain independent and possess adequate resources to monitor and investigate party/candidate finances. Its autonomy and independence must be supported by its budget, but it, too, should be accountable to Parliament for the proper use of public funds.

vi. An accountable system of political finance presupposes that other democratic institutions are sufficiently organized to discipline political actors, and may need to be reconsidered where such conditions do not exist. In countries where a strong and independent PFR is feasible, the following recommendations could enhance enforcement:

1. Obligations, offences and penalties must be clearly identified in law. The PFR should outline clearly who is to be held accountable for which infringement of the law.
2. Lawmakers must anticipate that parties and candidates will seek ways to get around limits and disclosure requirements. Therefore violations and the corresponding penalties should be clearly provided for in the law. At the same time, it should be recognized that penalties such as fines or imprisonment are not the only response, or even the best response, to some types of infractions. Other avenues, particularly administrative sanctions, can often be more effective.
3. The system should encourage political parties and candidates to monitor their own financial activities, prevent financial misconduct, and comply with the requirements of professional bookkeeping and reporting.
4. Sufficient resources - in the form of training, consultations, and professional personnel offered to the regulated community - are also necessary to enable timely and effective reviews and audits.
5. Enforcement requires that an enforcement agency has the capacity to monitor for compliance, review and audit financial reports, investigate alleged infractions, negotiate and, where necessary, apply the appropriate penalties.
6. Public trust and participation are fundamental to any effective enforcement regime. External complaints should be encouraged and treated seriously.

D. Engaging External Stakeholders

i. An effective political finance regulatory strategy must also engage external stakeholders in the process of monitoring political finance. External complaints of suspected wrongdoing are essential to detect violations. In an ideal system, civil society organizations, journalists, and even individuals who believe that a violation has occurred, or is going to occur, should be able to file a complaint to the regulatory agency.

ii. The complaints process can require a formal, written document satisfying specific criteria for a proper complaint, or can have a more liberal character, with the enforcement agency taking action based on press articles or informal allegations. In transition regimes, and particularly in post-conflict societies, voters who are in the best position to observe questionable campaign practices may be the most reluctant to come forward with a formal complaint, since they often fear reprisals. Therefore, in order to encourage individuals to share information some political finance systems even give the enforcement agency the discretion to act on information it receives anonymously.

iii. It is essential that countries invest in public awareness campaigns, media training, and other forms of educating external stakeholders on political finance regulations and on the process for filing complaints.

Further Readings and Select Bibliography

Political finance has been a sub-field of political research for almost five decades. One survey of the field since 1970 found over 1000 published articles, monographs, and books dealing with this issue alone.[36] Among recent studies of political financing in a single country (which constitute the bulk of the literature) are works on: Austria[37], Britain[38], Canada[39], France[40], Germany[41], Poland[42], Spain[43], and the United States[44]. Aside from case studies on political funding within a particular country, there have been a number of edited volumes which have included chapters on several Western[45] and Latin American countries. Furthermore, in 2001 Karl-Heinz Nasssmacher edited a volume containing comparative analyses of political finance in more than 15 countries[46], and in 2002 a study comparing 18 Post-Communist countries was published by IFES. Most recently Kevin Casas-Zamora has published his brilliant study of political finance and state funding for parties (*Paying for Democracy, ECPR Press 2005)*.

Additional references include:

- Marcin Walecki, 'Ukraine: the authoritarian abuse of disclosure', in TI's *Global Corruption Report 2004* (London: Pluto Press, 2004).
- USAID, Money in Politics Handbook: A Guide to Increasing Transparency in Emerging Democracies (USAID: Washington D.C., 2003).
- Work by the National Democratic Institute for International Affairs at www.ndi.org
- Michael Johnston, *Political Finance Policy, Parties, and Democratic Development* (NDI 2006)
- Shari Bryan and Denise Baer (eds.), ***Money in Politics -*** *A study of Party Financing Practices in 22 countries(NDI 2005)*
- IFES (TIDE Project) at www.moneyandpolitics.net
- ACE Project www.aceproject.org
- Political Finance in Post-Conflict societies (IFES&USAID: Washington D.C.,2006)
- International IDEA, 'Funding of Parties and Election Campaigns Handbook' (2003) and Political Finance Database, www.idea.int/parties/finance/db

[36] See Bibliography on Political Finance, 1970-1999 compiled by Mareen Bergemann and Karl-Heinz Nassmacher in Karl-Heinz Nassmacher (ed.), *Foundations for Democracy: Approaches to Comparative Political Finance* (Baden-Baden: Nomos, 2001), pp. 417-499.

[37] Hubert Sickinger, *Politisches Geld: Politikfinanzierung in Osterreich- ein Handbuch* (Taur, Tirol: Druck und Varlaghaus, 1997).

[38] Pinto-Duschinsky (1981); Keith D. Ewing, *The funding of political parties in Britain* (Cambridge: Cambridge University Press, 1987); Justin Fisher, 'The Situation in Britain', in Ewing (ed.), *The funding of political parties: Europe and Beyond*. (Cooperativa Libraria Universitaria Editrice Bologna, 1999).

[39] Harold M. Angell, *Provincial party funding in Quebec* (Lanham: University Press of America, 1996).

[40] Yves-Marie Doublet, *Party funding in France* in K. D. Ewing (ed), *The funding of political parties: Europe and beyond*. (Cooperativa Libraria Universitaria Editrice Bologna, 1999).

[41] Hans Herbert von Arnim, *Die Partei, der Abgeordnete und das Geld: parteienfinanzierung in Deutshland* (Munich: Knauer, 1996).

[42] Marcin Walecki, *Money and Politics* (Warsaw: Institute of Public Affairs 2005).

[43] Juan L. Galaiacho and Carlos Berbell, *Filesa: las tramas del dinero negro en la politica* (Madrid: Temas de Hoy, 1995).

[44] Anthony Corrado, Frank J. Sorauf, Thomas E. Mann, Daniel R. Ortiz, Trevor Potter, *Campaign finance reform: a sourcebook* (Washington, D.C.: Brookings Institution Press, 1997).

[45] These have included Heidenheimer (1970), Alexander (1989), Seidle (1991), Wiberg (1991), Gunlicks (1992), Tsatsos (1992) and Alexander and Shiratori (1994).

[46] Karl-Heinz Nassmacher (ed.), *Foundations for Democracy: Approaches to Comparative Political Finance* (Baden-Baden: Nomos, 2001).

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