

# CHAPTER 7

CHAPTER 7

# 7. The political rights of refugees and displaced persons: enfranchisement and participation

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## 1. Introduction

This chapter describes the processes of enfranchising refugees and internally displaced persons (IDPs) and allowing them to participate in the political processes of their home countries. It presents pertinent issues, lessons and principles that provide the basis for establishing an international policy framework on these issues. The involvement of refugees in electoral processes is particularly significant in elections that are held under international supervision as part of a post-conflict transition to democracy. In such situations electoral and political processes must be pluralistic and inclusive if they are to have credibility. To the extent that refugees are deprived of their political rights, an electoral process must be considered deficient.

Under the definition used for this Handbook, IDPs are not external electors, but they are considered together with refugees in this chapter because they present similar problems and in practice they can constitute a large group of external electors. The term ‘refugee’ is used here to connote both types of displacement.

### 1.1. Who is a ‘refugee’?

International law recognizes four forms of individual displacement that are relevant to the kinds of election and political process under discussion.

The first of these is that of the *refugee*, defined under the 1951 United Nations Convention Relating to the Status of Refugees and the associated 1967 Protocol as a person who ‘owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country’. The 1967 Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa gives

a wider definition, stating that the term 'shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality'.

The second form is that of *asylum seeker*, an individual whose application for asylum or recognition as a refugee under the conventions is pending and who fears persecution if returned home. The third is that of *internally displaced persons* who are refugees within their own country's borders, and the fourth is that of the *returnee*, an internally displaced person or refugee who has returned home but requires continued assistance for a period of time. For the purposes of this chapter, refugees and asylum seekers are the focus of attention because of their forced migration. The standards and best practices for enfranchisement for refugees are largely applicable to both displaced persons and returnees.

At the end of 2004, the United Nations High Commissioner for Refugees (UNHCR) estimated that the collective population of concern had reached 19.2 million individuals. Refugees represented the largest component of that figure (48 per cent), with 9.2 million people classified in that category. Ninety-three per cent of the refugees were in Asia, Africa and Europe, in that order by size of the refugee population. The rest of the Western hemisphere accounted for all but a fraction of the remaining 7 per cent. Of asylum seekers, 35 per cent were in North America, and another 32 per cent in Europe. The UNHCR estimates that women comprise roughly 49 per cent of the total population of concern (UN High Commissioner for Refugees 2004).

In a 1997 report, the Refugee Policy Group provided figures on the presence of refugee populations in some of these countries during election years (see table 7.1).

Demographics aside, the circumstances of refugees compel an examination of their political rights because these rights are often at issue. The political rights of refugees are defined in numerous international and regional conventions. These include the Universal Declaration of Human Rights (1948); the United Nations Convention Relating to the Status of Refugees (1951; entered into force 1954); the International Covenant on Civil and Political Rights (1966; entered into force 1976); the American Convention on Human Rights (1969; entered into force 1978); and the African Charter on Human and People's Rights (1981; entered into force 1986). These documents clearly demonstrate that refugees are afforded full rights of citizenship and political participation, including membership of political parties, the right to stand as candidates for election, access to election information, and enfranchisement.

In post-conflict situations, elections are frequently used as ways of facilitating the repatriation of refugees and their reintegration into the country of conflict. The election process serves to reunite a conflict-torn country into common institutions, incorporating former battlefield antagonists into the political arena. Registration to vote is also the first

**Table 7.1: Refugee populations and electoral events**

Country	Year	Election type	Estimated no. of refugees at signing of peace accord	Refugees as % of total population
Angola	1992	Presidential	350,000	3.5
Bosnia and Herzegovina	1996	Presidential	1.2 million	27
Cambodia	1993	Constituent Assembly	360,000	4
Eritrea	1993	Presidential	900,000	28
Liberia	1997	Presidential	750,000	25
Mozambique	1994	Presidential	1.7 million	10
Namibia	1989	Presidential	41,000	27
Sierra Leone	1996	Presidential	360,000	8

Source: Gallagher, Dennis and Schowengerdt, Anna, 'Refugees in Elections: A Separate Peace', Refugee Policy Group, October 1997.

step in the re-establishment of individual political identity. Because many refugees arrive in a country without identity documents, electoral registration activities that determine individual eligibility will result in a re-establishment of identity by providing a system for the recognition of both refugees' actual residence and their right to residence in their home country. In fact, registration as an elector can be seen as one of the first political rights afforded to refugees.

## 2. Obstacles to refugee enfranchisement

Despite these covenants, the refugee faces an array of the obstacles which must be surmounted before his or her political rights can be fully realized. Such obstacles include intimidation, illustrated among other things by the use of food relief as a tool to gain the political cooperation of groups of refugees; physical obstacles such as destroyed bridges or remote or impenetrable border crossings; and difficulty in accessing both election-specific information and more general reporting on civic life at home.

Refugees traditionally have been among the last of marginalized groups to become enfranchised. International practice on the promotion of the political rights of refugees has not yet been standardized. There is a lack consistency from region to region in terms of resource allocation, practice and institutional leadership. The range of policy differences is illustrated by a comparison of the examples of Bosnia and Herzegovina in 1996, where refugee enfranchisement was written into the 1995 General Framework Agreement for Peace in Bosnia and Herzegovina (the Dayton Agreement) and balloting was conducted for refugees in 55 countries (see the case study), and Liberia in 1997 where there were no out-of-country enfranchisement opportunities and no organized repatriation.

As the Refugee Policy Group study (Gallagher and Schowengerdt October 1997) points out, there are four models of political participation that can be identified in international practice. These models are:

- limited spontaneous repatriation;
- elections in asylum;
- full organized repatriation; and
- limited spontaneous and facilitated repatriation.

The application of consistent international standards takes on special significance in the case of refugees because, by definition, enfranchisement efforts are international: they involve cross-border agreements between the countries and international organizations charged with administrative responsibilities or the implementation of peace accords (see also section 4 below). The recognition of consistent international principles on refugee enfranchisement and participation would also act as a foil to the tactic of ‘cleansing’ a region or community to expel a population and eliminate its political interests. The political motives for displacing people would be reduced if the refugee populations produced by rogue regimes did not lose their political rights but continued to have a voice and to vote regardless of their temporary dislocation.

Not only are there obstacles for refugees to overcome in achieving their political rights, but the international organizations that are charged with implementing enfranchisement programmes and promoting participation by refugees face obstacles of their own. These include competing policy options, time constraints and resource limitations.

### **3. The regulatory framework**

In order to manage programmes for the enfranchisement of refugees and plan for their participation, a regulatory framework must be established. Bilateral agreements for international organizations to conduct electoral registration programmes in host countries must be concluded. This framework will structure a political process that qualifies individuals to vote, produces elected representative bodies, and contributes to the establishment of post-conflict governments. There are several policy issues that must be resolved in the course of developing this regulatory framework.

#### **3.1. Entitlement**

The regulatory framework must establish the rules for entitlement or the qualifications that someone must possess to be eligible to participate. The criteria to be considered in establishing entitlement include age; intention to return; date of expulsion from or last residence in the home country; and proof of identity and eligibility.

#### **Intent to return**

Although consistent standards must be applied, any enfranchisement of refugees must be considered a temporary arrangement and be organized on an election-by-election

basis. Because the creation of suitable conditions that enable refugees to return must be the ultimate objective of a peace initiative, the organizers must assume an implicit intent to return on the part of the refugee. Implicit intent to return provides the demonstrable link that an individual maintains with a former community and forms the basis of the assumption of entitlement to vote.

### **Residential option**

In recent electoral events, refugees have been offered three options as to the locations where their political rights can be exercised:

- from their original residence;
- if internally displaced, from their current residence; or
- from a future intended residence.

### **Proof of identity and eligibility**

The procedures by which identity and eligibility are proved can determine the overall credibility of an election. The procedures employed must specify which documents will be recognized and must prevent counterfeiting. In cases where refugees lack personal documentation because of loss or confiscation, a form of ‘social documentation’ may be considered by which enquiries are made and people can witness to other individuals’ identities and place of residence. However, although they are unavoidable in many situations, social documentation processes are difficult to control and police, and complex to administer.

### **3.2. The election cycle**

The type of election for which refugees or IDPs may vote, and the sequencing of their voting, must be established in the regulatory framework. The timing of refugee voting may differ from that of in-country voting. Differential timing can be advantageous for the practical purposes of expediting the tabulation of the ballot and the announcement of the results.

### **3.3. Systems of representation**

Systems of representation that nominally include refugees are often based on pre-conflict population patterns. The system should also permit refugees to stand as candidates.

### **3.4. Security**

The refugees must feel secure when voting in asylum. If an election or referendum is conducted in a climate of intimidation, this will impair the legitimacy of the result. Security planning should include both people and objects. For people it should include voters, candidates, observers and the media; and for objects it should include facilities and commodities. Such security arrangements must be negotiated with the police and security forces of the host country.

## **4. Special political and logistical requirements**

The political and logistical requirements of such undertakings pose complex policy questions for the organizers of an election. They also give rise to constellations of countries and organizations uniquely brought together for each such event.

### **4.1. Country and organizational constellations**

Every effort or programme of refugee enfranchisement will naturally involve a constellation of countries, both the countries from which refugees have fled and the hosts for the refugee populations. On both sides, wide-ranging negotiations will be required (see also chapter 6, on host country issues). Topics for negotiation include transit agreements to facilitate visa-free travel (if refugees are to vote in the country of origin), Temporary Protection Status, and agreements on dual citizenship. Although standards can be established, there is no single model that can be employed for host country assistance and cooperation. Some parameters are specified by national law and will vary from country to country.

Although voter registration, political campaigning and balloting are conducted within another country's borders, there must be no violation of the host country's sovereignty. These events can also be costly for the host governments. Memoranda of understanding are useful tools for describing the roles of each partner in the enfranchisement initiative.

This constellation can also be defined to include the range of international and non-governmental organizations that are involved in the process. For example, the International Organization for Migration (IOM) managed the voting by refugees in the elections in Bosnia and Herzegovina in 1996–7, the Popular Consultation for East Timor in 1999, and the external voting in the election in Kosovo in 2000. The League of Women Voters conducted refugee balloting for Bosnian refugees residing in the United States in 1996.

In some cases, special administrative structures must be established. For example, in Bosnia and Herzegovina, under the terms of the Dayton Agreement, refugees were given the right to vote in the municipality where they were resident in 1991 or at some future intended municipality of residence. Refugees residing anywhere in the world were afforded the right to vote and the Organization for Security and Co-operation in Europe (OSCE) established the Refugee Elections Steering Group to oversee out-of-country voting. Another instrument required for the implementation of the Dayton Agreement is the Sub-Commission for Future Municipalities, established for the 1997 elections, which adjudicated all claims for future intended municipality registration. In Kosovo, the Joint Registration Taskforce (JRT) of the UN and OSCE has a unit that is devoted to out-of-Kosovo registration of electors. The IOM has two liaison officers working in the JRT facility.

#### **4.2. Information**

One particular challenge for a refugee information programme is finding sufficient resources to reach pockets of people in far-flung areas. The multidimensional politics associated with refugee voting is at once domestic, regional and international in scope. The information campaign should be scoped accordingly. It must be broadly based in order to reach all the different gender, age, language, regional and ethnic sub-populations that comprise the refugee populations.

#### **4.3. The politics of displacement**

New tactics in the politics of displacement can develop. This was the case with the displacement of people during the 1999 UN-sponsored Popular Consultation for East Timor. Under the usual scenario, a population is driven from its homes as a result of a conflict. After the conflict is resolved, a reconciliation election is held and the rules regarding their enfranchisement are decided. However, in the case of East Timor, these individuals were displaced for the purposes of the Popular Consultation ballot: they were unwillingly moved from their homes or were rounded up by militias and evicted. The estimates of the total number of internally displaced ranged from 30,000 to 50,000. On the basis of 450,000 registered electors, that could mean that as many as 10 per cent of the electors were displaced. Obviously, the enfranchisement of that percentage of the electorate was an important objective and essential to the credibility of the election outcome.

### **5. Conclusions**

Elections will continue to follow conflicts as the means of reconstituting post-conflict governments. Refugees will be a factor in each of these election events. Although organizations such as the UNHCR have consistently supported refugee political rights, during the 1990s international responses were inconsistent as regards political will and resources to enfranchise refugees, and varied from event to event and from region to region. Obtaining consistency in the responses should involve the allocation of resources as well as the regulatory framework and practices in host countries.

Commensurate with the implementation of such consistent standards, the capacity to monitor their application must also be provided by the international community, and the responsibility for doing so must be assigned. A programme of focused observation of political processes involving refugee populations must be adopted for an international group to consider.

Finally, one motive for expelling a population—disenfranchising it—can be eliminated by maintaining consistent international responses to guarantee that elections provide for full political participation by refugees.

# Afghanistan's 2004 presidential election: external voting for a large displaced population

Catinca Slavu

A large segment of the Afghan population was forced to migrate to the neighbouring countries as a result of Afghanistan's long history of humanitarian and political crisis. With the UN High Commissioner for Refugees (UNHCR) and host government sources estimating that approximately 2.5 million Afghans were still displaced in Pakistan and Iran at the time of preparations for the 2004 elections, the Transitional Islamic State of Afghanistan undertook to include these refugees in the nation-building process.

Afghans in Pakistan and Iran had previously been given the opportunity to vote in post-conflict Afghanistan for the election to the Emergency Loya Jirga in June 2002, followed by the election to the Constitutional Loya Jirga in December 2003. (A Loya Jirga, or 'grand council' in the Pashto language, is a consultative forum unique to Afghanistan in which, traditionally, tribal elders convene to settle affairs of the nation or rally behind a cause.) The Emergency Loya Jirga was elected to form a transitional government, and the Constitutional Loya Jirga was elected to adopt Afghanistan's first post-conflict constitution. Special procedures were used for both elections, which were indirect elections without universal suffrage.

## **The legal and administrative framework**

The franchise for the 2004 presidential election was regulated by the constitution of Afghanistan; by the Election Law (chapter IV); by decisions of the Afghan Joint Electoral Management Body (JEMB) in consultation with the UN Assistance Mission in Afghanistan (UNAMA) and the government of Afghanistan; and by individual memoranda of understanding on the conduct of the out-of-country elections signed by the government of Afghanistan with the governments of Pakistan and Iran. The decision to offer the franchise outside Afghanistan was taken by the JEMB following an assessment undertaken jointly with UNAMA and the United High Commissioner for Refugees (UNHCR), in consultation with the United Nations Development Programme (UNDP). The location and timing of external voting were the responsibility of the JEMB. Sizeable Afghan communities had also been displaced to Tajikistan, the USA and some European countries. The JEMB's decision to enfranchise only those displaced

to Pakistan and Iran was taken for logistical reasons, as well as because the vast majority of expatriated Afghans were in those two countries.

The decision to provide the external vote to those displaced to Pakistan and Iran became highly political, as voting trends were expected to follow ethnic lines and the bulk of the refugees in Pakistan were Pashto, while those in Iran were Tajik and Hazara. Given its potential for politicization, the decision to conduct external voting was delayed several times; only when it became clear that both host countries would agree to allow and support the external franchise on their territories on conditions generally consistent with international standards was a final decision made by the JEMB.

Because the decision was made very late, the time available, including detailed negotiations with the host governments on the provision of support, was very limited. The International Organization for Migration (IOM) was finally contracted to undertake the operation only 69 days before election day, although it was contemplated much earlier that it would be chosen for the task. The conduct of the operation had to be outsourced, as the JEMB Secretariat had neither the logistical means nor the legal authority to operate outside Afghanistan. The IOM was chosen because of its previous experience in carrying out external voting operations in Bosnia and Herzegovina, East Timor and Kosovo. It contracted IFES (formerly the International Foundation for Election Systems) to provide technical management to the Out-of-Country Registration and Voting Programme.

Time limitations, in turn, meant that it was impossible to establish election facilities (registration and/or polling centres) in all areas where there were clusters of Afghan communities. The operation was therefore limited to the main centres where Afghan populations were concentrated: areas of high security concern in Pakistan and isolated refugee camps in both Pakistan and Iran could not be reached.

External voting operations outside embassy premises (which are the territory of the country they represent) require legal agreements with the host country governments. These establish the general parameters of cooperation between the election management body or the organization contracted to undertake the operation on its behalf. In the case of post-conflict elections or situations where security is a concern, special assistance is often needed from the host government to ensure that the transport of election material takes place without delays or security incidents, that security is provided at the election facilities, that refugees are allowed to move freely and so on. Given the security concerns associated with Afghan elections, the negotiations with the governments of Pakistan and Iran were initially protracted. However, once cooperation was secured, the two governments made all efforts to facilitate the IOM's mandate. This extended particularly to the provision of official security for the operations, without which registration and/or voting could not have taken place.

Although the government of Pakistan offered to become quite deeply involved in the electoral process and assist with the organization of the elections in the areas not reached by the IOM, this was not thought to be appropriate. The point at issue was the electorate's expectations of trust in the electoral process, which outweighed the undoubted value of Pakistan's electoral management infrastructure.

## Eligibility

According to the legal framework, Afghans living in Pakistan and Iran were entitled to participate in the election provided that they were 18 years of age by election day and could prove their Afghan nationality.

Inside Afghanistan, as there was no voter register in place for the 2004 presidential election, a voter registration exercise was also organized before the election. Gender-segregated registration (and, subsequently, polling) stations were established throughout the country from 1 December 2003 to 20 August 2004. Registration procedures established that upon the presentation in person of documentation proving eligibility according to the requirements set out by the JEMB (identity, age and Afghan nationality), Afghans would be registered. Each registered elector was then issued with a registration card containing address and identification information, including a photograph taken at the Registration Centre.

In Pakistan, under criteria determined by the JEMB, all Afghan citizens over the age of 18 at the time of election and who had arrived in Pakistan after 1979 were entitled to register to vote. In order to vote, all eligible electors had to undergo an advance registration process. In exceptional circumstances, where applicants did not have documents showing that they were from Afghanistan, a special interview procedure was put in place which was subject to a ‘challenge’ procedure at the time of voting. Electoral registration followed the same principles as applied to the in-country process—advance in-person registration; the issuing of an electoral registration card, in this instance without a photograph; arrangements for the voter lists to be on public display for a certain period before polling; and gender-segregated registration facilities.

In Iran, the JEMB decided to waive the advance registration requirements as the government authorities were able to make a refugee database available for election purposes. The Iranian Ministry of the Interior had set up a sophisticated documentation system since the refugee flow began, and this database and documentation system were used without further evidence of Afghan nationality being required. The JEMB decided to accept that the government-issued refugee card could be used as means of proving identity and eligibility to vote. The IOM negotiated with the Iranian authorities to extend the eligibility criteria from only those who participated in the 2003 refugee registration process to all Afghans legally residing in Iran. A skeleton electoral register was created on election day itself.

Additionally, Afghans who were on the registers in Afghanistan were allowed to vote from abroad in the election. This special procedure was introduced in response to security concerns, related mostly to geographical areas at the borders with Pakistan and Iran. The threat level here was higher, in the context of widespread cross-border migration between Afghanistan and its two neighbours, Pakistan in particular.

The personal registration and polling method was chosen as the postal infrastructure of the two host countries was deemed unable to support a postal voting option. Proxy registration and proxy voting were also not made available because of the specific cultural context in which the election was to take place and the ease with which identification documents could be forged.

## Implementation and turnout

To implement the Out-of-Country Registration and Voting Programme, the IOM established programme headquarters in Islamabad, Pakistan, and two regional offices in Islamabad and Tehran, Iran. Eight field offices were established in Pakistan and seven in Iran to coordinate registration, polling, voter outreach and counting activities.

Voter registration was organized over four days commencing on 1 October and ending on 4 October. (A three-day process was initially scheduled. However, a one-day extension was decided upon to ensure maximum participation.) A total of 1,657 registration stations in 630 centres, with equal numbers of stations for women and men, were established in eight urban and refugee camp clusters throughout Pakistan. Over the four days of the registration period, 737,976 Afghans registered in Pakistan, of whom 28 per cent were women. The low female turnout was expected given the very short period of time for voter education and registration. This turnout was also comparable with the approximately 33 per cent female turnout inside Afghanistan.

Given that sufficient time was not available for an adequate electoral registration process, the lack of adequate documentation of the refugee population became the most significant challenge to establishing a fraud free election. As voters were not able to be issued with photographic registration cards, an anti-fraud mechanism had to be put in place at the time of registration. Thus, in order to prevent duplication of names on the electoral register, a decision was made to apply voter marking ink at the time of registration as well as at the time of polling.

The election was held on 9 October 2004 both in-country and out-of-country. A total of 2,787 polling stations were established in Pakistan and Iran. In Pakistan, the number of stations was adjusted from 1,657 used during registration to 1,661 which were located in 630 polling centres. In Iran, 1,093 polling stations were opened in 125 polling centres. In total, 818,189 Afghans participated in the election from abroad (577,776 in Pakistan and 240,413 in Iran), which constituted 10.06 per cent of the total electorate (8,128,940 voters).

In Pakistan, 80 per cent of the registered electorate participated in the polls, whereas in Iran voter turnout represented half of the estimated eligible voters (estimated between 400,000 and 600,000). The overall high turnout in both Pakistan and Iran was achieved due to the extensive voter education campaigns conducted by the IOM Out-of-Country Registration and Voting Programme and also to the Afghan community's great interest in participating in their first-ever democratic election. Female turnout reached 32 per cent of the total electorate—29 per cent in Pakistan and 40 per cent in Iran. In Iran, women's participation was in proportion to their share in the population, largely due to high levels of literacy and the influence of Iranian society on the Afghan women. According to government data, women constitute approximately 40 per cent of the total Afghan population in Iran.

## Funding

There were no budgetary constraints on the decision-making process. Once the political decision had been made, funding was made available for voter registration and polling through the voluntary donation project budget. The multilateral Afghanistan

Reconstruction Trust Fund (ARTF) was set up in May 2002 to provide, among other things, support to Afghanistan in the area of recurrent costs of the government. In addition to the United States, 21 donors pledged 430 million US dollars (USD) to the fund. The Transitional Islamic State of Afghanistan maintains an inventory of donor-funded activities through the Afghan Assistance Coordination Unit, a subordinate office of the Ministry of Finance. The ARTF is jointly managed by the Asian Development Bank, the Islamic Development Bank, the UNDP and the World Bank, which also administers the fund. External election-specific fund-raising was coordinated by the UNDP, and 26.7 million USD were made available to the IOM on the basis of a cost estimate contained in its proposal to the JEMB. The total cost of the Out-of-Country Registration and Voting Programme amounted to 91 per cent of the initial estimate of 24,289,322 USD, or approximately 20 USD per voter in Iran and 32 USD per voter in Pakistan, where advance registration increased the cost per voter.

### **The future of external voting in Afghanistan**

Although repatriation exercises have been taking place from both Iran and Pakistan, over half a million Afghans remained displaced in Pakistan towards the end of 2005. If a political decision is made to continue to conduct external voting, similar future operations during the transitional period could probably be funded from the same sources and through the same mechanisms as those used for the 2004 presidential election.

For Afghanistan's elections to the legislature in September 2005, the candidate-centred Single Non-Transferable Vote (SNTV) system in use meant that a different ballot paper had to be used for every electoral district, and getting the correct ballot paper to all external electors would have been immensely costly and complex. The political decision made was not to provide the franchise abroad for these elections because of the high costs involved and because no consensus as to the system to be employed could be reached. However, special registration and polling centres, open until very late on election day, were set up close to the borders to allow migrants in neighbouring countries to come into Afghanistan to vote. This might be seen as a 'half-measure' designed to achieve the maximum extension of the franchise to nationals who were out of country at the time of the elections, short of actually introducing external voting. If it is decided in future to offer the option of external voting for parliamentary elections, changes to the legal framework governing external voting will need to be made to define the method by which external votes are to be translated into seats. Like some other countries, Afghanistan may decide to allow external voting only for presidential elections.

# Bosnia and Herzegovina: post-war trends in external voting

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The devastating war that tore Bosnia and Herzegovina (BiH) apart in the early 1990s and divided the country's three constituent peoples ended with the signing of the General Framework Agreement for Peace in Bosnia and Herzegovina (the Dayton Agreement) in Paris on 14 December 1995. Prior to the war, Bosniac, Croat and Serb ethnic groups were interspersed with no specific concentrations of any group in any particular part of the country. (The term Bosniac has been generally used since the war to describe the Muslim population of Bosnia and Herzegovina.) The pattern of multi-ethnic integration was irretrievably altered as a result of the war. Ultimately, the Dayton Agreement was intended to ensure that BiH remained a single state, but under the terms for peace it was divided into two 'entities': the Muslim–Croat, known as the Federation of Bosnia and Herzegovina, and the Serb, known as the Serb Republic (Republika Srpska, RS). The agreement also outlined a national constitution that specified a basis for power sharing among the three ethnic groups for defined federal institutions, including a tripartite presidency, a shared central legislature, and separate governmental structures for the two entities. For the restructuring to begin, one of the key conditions of the Dayton Agreement was that elections be held throughout the country not later than nine months after its signing. The first post-war elections were held in September 1996. They were to include elections of officials at all levels of government, including municipal elections, taking into consideration the changes of municipal boundaries affected by the drawing of the Inter-entity Boundary Line dividing the Federation from the RS.

Although verifiable statistics have never been readily available, it has been estimated that approximately 2 million people, nearly half of the entire population, was displaced by the war, with about a quarter of the population taking refuge outside the country. The mass emigration caused by the war itself was exacerbated by the severe economic conditions that faced the country afterwards. The sheer numbers of refugees and the international interest in seeing them repatriated as quickly as reasonably possible made it imperative that they be fully enfranchised as participants in the elections that would greatly affect their futures, the stability of their country under the new governmental institutions and structures, and the possibilities for their safe and secure return.

Three factors, which have evolved concurrently, have shaped the process of external voting for BiH since the war and had significant impact on the procedures as they exist today. The first is the transition from a passive voter registration system to an affirmative registration system whereby every citizen must personally apply to register as an elector. The second is the progressive shift of responsibility out of the hands of the international supervisors and back into the hands of the BiH electoral authorities. Finally, the procedures set in place at the end of 2005 have been significantly affected by the dramatic decline in participation by voters living abroad which has been experienced in each successive election since 1997.

Prior to the war, inclusion on the electoral registers required no action on the part of an elector. Local officials compiled the registers on the basis of residency records maintained by the municipality. Because so many municipal records were lost or destroyed during the war, the Dayton Agreement declared that inclusion in the 1991 pre-war census, which identified each person's municipality of residence, would be the basis for establishing eligibility to participate in the elections. Furthermore, it provided that persons who were no longer living in the municipality in which they had resided at the time of the census would, as a general rule, be expected to vote in their pre-war municipalities. The exception to the rule covered people who had moved in the period between the 1991 census and the beginning of the war in April 1992 and who could substantiate that move with appropriate documentation. These general rules applied to all citizens abroad, including refugees (General Framework Agreement, annex 3, article IV).

A small loophole was provided in that a person could apply to the Provisional Election Commission to 'vote elsewhere'. Eventually, under rules and regulations adopted by the Provisional Election Commission working under the direction of the Organization for Security and Co-operation in Europe (OSCE), this was interpreted to mean that a displaced person could apply to vote in the municipality in which he or she currently resided, or in the case of an out-of-country elector in a 'future municipality' to which he or she declared an intention to return. In the latter case a stringent set of rules was adopted defining what documentation would be necessary to substantiate that declaration of intent. Documentation could include, for example, confirmation of a promise of employment, or residence with family members already resident in the intended municipality of future residence.

A significant number of refugees might reasonably have been expected to take advantage of the 'future municipality' option, given that in the post-war environment the three ethnic groups are more clearly concentrated in separate regions. It is estimated, for example, that as many as 300,000 people who formerly lived in the territory of today's Federation now live on the RS side of the Inter-entity Boundary Line; similarly 200,000 people who used to live in the RS now reside on the Federation side of the boundary line (Association of Election Officials of Bosnia and Herzegovina 2003). However, the stringent nature of the documentation, investigation and verification requirements put the future municipality option out of reach for the vast majority of refugees who might have been interested in exercising this option.

The use of the 1991 census as a basis for the electoral register for the 1996 elections, while expedient, failed to provide a sound basis for establishing a verifiable number of

registered electors against which an auditable election result could be definitively and accurately compared. In addition, incidents of electoral fraud were suspected as ethnic groups sought to mobilize voters improperly to use the ballot box to regain territory lost in the war or to consolidate political influence over territory gained in the war. Due to concerns about how such instances could adversely affect the local elections, the municipal elections were postponed altogether and were not held until 1997.

It was in preparation for these municipal elections that a complete shift was made to establish an affirmative registration system whereby every citizen has had to apply to be registered as an elector and has had to provide supporting documentation to establish identity and voting residence. This shift had a particularly burdensome effect on refugee voters because of the time constraints involved in the two-way postal process, and the fact that access to the required documentation was often limited.

External voting procedures were also significantly affected by the step-by-step transition from an election process that was totally supervised by the international community, under the auspices of the Office of the High Representative and administered by the OSCE, to one totally managed by national authorities, specifically the Election Commission of Bosnia and Herzegovina and its secretariat. This transition was completed in August 2001.

Another factor that is seriously affecting the current approach to out-of-country voting in BiH is the continuing decline in both the number of potential voters remaining out of the country and their interest in participating in BiH elections. Both these circumstances have had a major impact on the facilitation of registration and voting by electors who have lived outside BiH since the 1996 external voting efforts began.

In 1996, reaching out effectively to the upwards of 800,000 citizens estimated to be living abroad taxed the logistics and manpower capacities of the OSCE's Sarajevo-based operations. The task of operating the programme within BiH was also hampered by the lack of a reliable postal service within the country. In preparation for the first post-war elections in 1996, the OSCE established an emergency Refugee Elections Steering Group (RESG) to oversee the registration and voting of eligible electors outside the country. The OSCE also entered into a memorandum of understanding with the International Organization for Migration (IOM) to serve as the operational arm of the RESG from its base in Vienna. Outreach to potential voters was accomplished through communications and coordination with refugee organizations, immigration offices, diplomatic missions and consular offices, as well as Bosnian social clubs that had emerged in countries hosting larger numbers of refugees, and through advertising in publications that targeted these refugees. Ultimately, 630,257 electors outside BiH were registered, of whom nearly 400,000 actually voted in the 1996 elections (International Organization for Migration, undated). External voters posted their ballot papers to the IOM's operations office in Vienna. Once verified, they were shipped to the counting centre in Sarajevo where they were counted and integrated into the countrywide results.

The RESG was disbanded for the 1997 elections, but a similar arrangement between the OSCE and the IOM was maintained. In addition to the postal voting services provided to voters scattered in 80 countries around the world, in-person registration centres and polling stations were established in the former Federal Republic of Yugoslavia (FRY) and in Croatia to serve the 156,000 refugees residing in those countries in nearly equal

proportions. Regardless of whether he or she had participated in the 1996 elections, each external elector was required to register anew and submit a copy of an authorized identification document. Acceptable identification included identity documents issued by BiH authorities in either of the entities or by former Yugoslav authorities in the state, or a refugee document issued by a host government or international refugee agency. An applicant could also submit a copy of a passport granted by a host government which permitted dual citizenship. Upon proper registration each elector was sent a confirmation form that was posted to him or her well in advance of his or her ballot packet. This form was to be returned with the completed ballot papers, which were to be sealed in a special envelope to preserve the secrecy of the vote. In the event of a person returning to BiH before voting as an external voter, he or she had the opportunity to present the confirmation form in order to be assigned to a polling place within BiH.

In 1997 the number of out-of-country applications dropped to just under half a million, but turnout among them was over 80 per cent.

Through the 1998 elections the application rules remained the same for new registrants. However, those who had registered successfully in 1997 did not have to re-register. Rather, they were sent a confirmation form to confirm their continued interest in voting, to record any changes in personal status or address, or to change their voting option from their 1991 municipality to a future municipality of intended residence. The major change in the process in 1998 was the development of an external voting department within the OSCE Mission in Sarajevo. The transfer of operations to Sarajevo was deemed a critical step in preparing for the eventual takeover of responsibility for the conduct of elections by the Election Commission of Bosnia and Herzegovina and the inevitable pulling out of international supervisors. The department was supervised by international personnel but was fully staffed by local staff from both the Federation and the RS. The IOM was also retained, but in a much more limited capacity. It continued to arrange for the in-person registration and voting sites in the FRY and Croatia, and to serve as the repository for applications and votes cast by post before they were transported to Sarajevo for processing and counting.

Once again the number of voters abroad declined. Approximately 350,000 external electors received ballot papers. The postal turnout rate remained over 80 per cent, although participation in the FRY and Croatia fell significantly. The decline in these two countries was attributed to a great degree to voters' disappointment at the choices on the ballot paper, as parties continued to be ethnically based. A Croat voter residing in Croatia who had formerly lived in what was now the territory of the RS was likely to find only Serb parties on the ballot paper for his or her 1991 municipality, and Serb voters who had formerly resided in Federation territory would have found predominantly Croat and Bosniac parties to choose from on their ballot papers.

Two major changes in external voting procedures were implemented for the elections in 2000. Operations were managed solely out of Sarajevo, without the assistance of the IOM. In addition the establishment of in-person polling stations in the FRY or Croatia was abandoned, and BiH voters who chose to participate from those countries had to do so by post.

By the 2000 elections it became obvious that the number of registered external electors was decreasing with each election. In 2000 this number fell to 222,000.

In August 2001, the Election Law of Bosnia and Herzegovina was enacted and responsibility for organizing elections was finally transferred from the OSCE Mission to the Election Commission of Bosnia and Herzegovina. The procedure for registration and voting by external electors that had been established by the OSCE was generally maintained. However, under the new law, the eligibility of BiH citizens seeking to register could no longer be confirmed on the basis of their inclusion on the 1991 census. They had to substantiate their claim to citizenship with a copy of a citizenship certificate or a copy of a newly issued national ID card.

By 2002, the total number of successfully registered external electors had dropped to 58,000. The significant decline in external voting is attributed to two important factors. The first is reduced interest in participating in BiH elections as more and more refugees still living abroad have sought and received citizenship in their host countries. In addition, more stringent application and documentation requirements continue to hinder potential voters for whom accessing the proper documents is still burdensome. For the latest elections, in 2004, the total number of successful external registrants was 27,000, while an additional 30,000 applications were rejected due to the lack of acceptable supporting documentation.

The turnout among registered external electors remains high, however, at about 80 per cent—well above the turnout for in-country voters in 2004, which was about 52 per cent. However, some 20 per cent of ballot papers returned from voters abroad could not be counted because registrants had failed to follow the instructions that were sent with them. Those instructions indicated that a copy of an ID document and the confirmation of registration form had to be enclosed in the outer mailing envelope along with the secrecy envelope containing their marked ballot papers.

Given the significant decline in participation by Bosnians living abroad, it is anticipated that the Election Commission of BiH will soon approach the Parliamentary Assembly with proposed amendments to the election law to limit external voting to voting in person in BiH diplomatic offices abroad.

# Iraq: a large diaspora and security concerns

Judy Thompson

## Background

The Law of Administration for the State of Iraq for the Transitional Period (TAL) specified that elections were to occur no later than 31 January 2005. The date was set as 30 January 2005 for elections to the National Assembly, the Governorate councils and the Kurdistan National Assembly. Coalition Provisional Authority (CPA) Order no. 92 established an electoral commission—the Independent Electoral Commission of Iraq (IECI)—to be the exclusive electoral authority for Iraq. The commission is structured in such a way as to ensure its independence.

The IECI requested an assessment of external voting (out-of-country voting, or OCV), and this was undertaken in October 2004 by the International Organization for Migration (IOM). The objective was to provide a general overview of the options available and to ascertain the numbers of Iraqis in the diaspora. Demographic data were almost non-existent. The assessment report was presented to the IECI in late October 2004. It identified two options—one that could be implemented for the January 2005 election to take account of the tight time lines, and a more evolved system to be implemented for future electoral events. If an OCV programme were to be implemented for the January 2005 election, it was recommended that an experienced organization such as the IOM manage it.

## IECI decisions and legal provisions

The IECI recognized the problems and risks of the short time line but decided that it was important to give the diaspora the opportunity to participate. It decided that OCV would apply to the National Assembly elections only, since the voters did not live in a local jurisdiction. The electoral system for the National Assembly elections, under which Iraq is a single electoral district (with proportional representation), made it possible to use a single ballot paper for the out-of-country voters. The suggested threshold for the numbers of potential voters in the diaspora of one country was 10,000. However, of the 14 countries the IECI named to host the OCV programme, most had over 15,000 potential voters. The IECI included France (with only an estimated 6,000 Iraqi electors)

and excluded Norway (which had 23,000). Since the numbers were rough estimates, it was difficult to set a firm threshold. OCV was to take place in Australia, Canada, Denmark, France, Germany, Iran, Jordan, the Netherlands, Sweden, Syria, Turkey, the United Arab Emirates, the United Kingdom and the United States. The estimated total number of eligible Iraqis in these countries was 1.2 million. Estimates of the total diaspora ranged up to 2 million or more but there was no way to confirm this number or even to establish a reasonable estimate of the worldwide total. (The estimated total number of electors in Iraq was 14.2 million.)

A memorandum of understanding (MOU) was signed by the IECI and the IOM on 11 November 2004, authorizing the IOM to conduct the OCV programme in the 14 countries. This gave them just over two months to complete the task. The IOM immediately started to negotiate MOUs for the programme with the various governments. It established cooperation with host countries, deployed staff, identified offices, developed materials and established polling and registration centres in an extremely short time. By 26 December 2004, 11 countries had signed agreements, with the other three signing shortly after. The concern over security issues had to be considered in each of the 14 agreements.

Two IECI regulations provided the legal basis for the OCV programme—10/2004 (Out-of-Country Registration and Voting) and 16/2005 (Polling and Counting Outside Iraq). The regulations outlined the procedures and clarified the counting process.

### **Eligibility to vote**

Iraq has had a series of wars, which has meant that displacement and migration have occurred over a long period, starting as early as 1968. It was therefore difficult to limit eligibility by time period or status for expatriate Iraqis. However, most Iraqis did retain their documents.

The Electoral Law and the TAL specify provisions for eligibility and citizenship that are broad enough to include OCV voters. In order to vote, a person must be deemed an Iraqi citizen, be entitled to reclaim citizenship or be eligible for Iraqi citizenship (which is established only through the paternal, and not through the maternal link); must be born on or before 31 December 1986; and must be registered to vote. According to the TAL, anyone who has Iraqi nationality is deemed an Iraqi citizen; an Iraqi can have more than one citizenship; and no Iraqi can have his/her citizenship withdrawn. This definition was very broad so that estimates of numbers of eligible expatriates included almost anyone who had left the country at any time for any reason.

### **Registration procedures**

There were no databases of Iraqis who would qualify for OCV, so each external elector had to provide proof of eligibility. This was not required in-country as the Public Distribution System (PDS) database was used as the basis for the electoral lists and only names to be added required proof.

Iraqi embassies were inadequate for the numbers of persons expected to register; moreover, not all the countries selected had an Iraqi embassy, so IOM staff in each country identified suitable premises. Security was an issue and security procedures were developed for each country.

The registration period was very close to the voting dates (17–25 January 2005). To accommodate the registrants, opening hours were extended and two days were added to the original registration period. A total of 279,785 Iraqis registered to vote at 74 registration centres in 36 cities (in the 14 countries). This represented some 25 per cent of the number for which the IOM had established registration capacity.

Registration procedures required applicants to present two documents to prove eligibility: this was in an attempt to prevent fraud, irrespective of whether one document, such as a passport, for instance, could prove all criteria. However, after the start of registration it became obvious that in some cases many Iraqis were in possession of only one document. The IOM then approached the IECI for permission to accept one legal document instead of two, and this was granted. There were a very small number of instances of malfeasance by registration staff, including accepting registration by proxy, registration without proper documents and intimidation. These were identified and dealt with by supervisors.

As the registration period was extended by two days, the last day coincided with a display period, during which challenges to the electoral list could be made. Because many Iraqis had to travel long distances to the registration and polling centres, especially at a time when many were attending the hajj, the Iraqi diaspora had requested that same-day registration and voting be allowed. However, the IECI decided, upon the recommendation of the IOM, that, in order to allow for a display period between registration and polling and to reduce the potential for fraud, no registration would be conducted during the polling period.

There was an intensive public information campaign using the media (radio, television and the printed press), distribution of posters and flyers, community meetings, a global information centre, a website, emails and text messaging. Thanks to the support provided by the host governments, there were no serious security incidents.

## **Polling procedures**

The three-day voting period, 28–30 January 2004, ended with a total of 265,148 Iraqis voting from out of country. This was 94.8 per cent of registered external electors or 22 per cent of the estimated expatriate population in the 14 countries. The voting had taken place in 358 polling stations located in 75 polling centres in 36 cities (in the 14 countries).

The personal voting option was chosen as it was deemed to be more credible than other approaches (such as postal voting). Procedures were similar to those for in-country voting, including the use of voter-marking ink to prevent double voting. There were no serious problems but there were reports of minor incidents such as campaigning near polling centres. There were two incidents related to demonstrations against the election. In Auburn, Australia, there was a brief interruption in the polling (for one hour) while the police dispersed disruptive demonstrators. One notable success was that at the polling station in Manchester, UK, there was no disruption in the polling.

Initially, it had been anticipated that all OCV ballot papers would be returned to Iraq and counted in a central location there, but a more practical approach was adopted and counting centres were established in each city where there was external voting. An exception was the case of the Netherlands where, for security reasons, the government

had requested that counting take place in only one of the three cities where OCV voting took place.

Observers (and IECI monitors) were present throughout the programme, from registration to polling and counting, in all locations.

## Financing

It had been estimated that the OCV programme for Iraq would be the most expensive operation of its kind ever undertaken due to the security risks and the costs of addressing them. The figures suggested by the assessment report (including security costs) were in the range of 67–92 million US dollars (USD) in total. The actual expenditure was close to the upper limit of the range. The IECI paid the IOM in instalments according to the arrangements set out in the MOU.

## Conclusion

Given the time constraints and the complexity of the arrangements, it was generally agreed that the IOM had run a successful programme. It reported that it had identified the committed expatriates—those who wanted to participate and were interested in the democratic process in Iraq. The reasons suggested for large numbers of expatriates not registering included security fears, concern about the confidentiality of voter information, lack of interest due to the length of time out of Iraq, lack of documentation, and inconvenience for those living far from the voting centres. Since registering and voting required two visits to the location, it was a costly decision for those living a long distance from the designated cities (the IOM estimated that the selected cities were close to 60–70 per cent of the diaspora in each country). The Danish Government was unique in assisting with these transport costs.

The costs of the OCV programme were very high and questions were raised about the value in relation to the number of registrants. However, it was necessary to prepare for the possibility of over 1 million persons registering and the possible security threats.

As a result of the relatively low registration figures, the IECI is to review the parameters of future OCV programmes for Iraqi elections. Future electoral events will need to be assessed in the light of the security situation and the need for a comprehensive OCV programme. They will take into account expanding the operation to other countries and potentially changing the in-person registration and voting system to a postal system, at least in those countries where the postal infrastructure would allow this.