

Election-Related Rights and Political Participation of Internally Displaced Persons: Protection During and After Displacement in Georgia

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Objectives

This paper is meant to provide participants in technical discussions on amending the Georgian electoral framework with background information on internal displacement and the specific needs and challenges related to elections and political participation that internally displaced persons (IDPs) often experience.

Contained herein is also guidance on how to shape provisions of the electoral framework that address these needs and challenges in a manner that guarantees and protects the election-related rights of IDPs. The following guidance will also include brief reference to and discussion of relevant international legal standards as well as identification of the minimum essential elements of a domestic electoral framework that ensures IDPs are able to effectively exercise their political and civil rights related to elections.

Although this paper may refer to aspects of the Georgian constitutional and legal framework for the organization and conduct of elections, along with normative instruments for protecting the rights of IDPs, these references should not be considered as a formal assessment or endorsement. However, it should be noted, with regards to the rights of IDPs, Georgia's electoral framework is considered to have improved significantly over the past decade.² The task ahead is to seek further improvements to this framework and its implementation in an impartial and uniform matter in light of the situation faced by those who have recently been displaced throughout the country as well as those whose internal displacement has become protracted over time.

Introduction

Guaranteeing the right to vote and to participate in public and political affairs for all citizens is an important responsibility. Given the precarious position that IDPs can find themselves in and considering the extent to which they may need to rely on national authorities for assistance, IDPs have a legitimate and a heightened interest in influencing the decisions that affect their lives by participating in elections.

Internally displaced persons often exist on the margins of society and are subject to a number of vulnerabilities because of their displacement. For instance, IDPs face an immediate need for protection and assistance in finding adequate shelter, food, and health care. Over time, they can suffer discrimination in accessing public services and finding employment on account of being

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² See, Erin Mooney and Balkees Jarrah, *The Voting Rights of Internally Displaced Persons: The OSCE Region*, Occasional Paper (Brookings-SAIS Project on Internal Displacement, November 2004), at 32.

an IDP from another region or town. IDPs also face an especially high risk of losing ownership of their housing, property, and land, something which can lead to loss of livelihoods and economic security as well as physical security. Women and children, who often make up the majority of IDP populations, face an acute risk of sexual exploitation and abuse.

In addition to influencing public policy, elections can also be about reconciliation and addressing divisions and inequities that exist within society. For these reasons and others, IDPs should be afforded an opportunity to fully participate in elections as voters and as candidates.

As noted in a press release of the Representative of the Secretary General of the United Nations on the Human Rights of Internally Displaced Persons following an official mission to Georgia in December 2005,

“[IDP] participation in public life, including elections, needs promotion and support. Supporting internally displaced persons in their pursuit of a normal life does not exclude, but actually reinforces, the option of eventual return. ... Well integrated people are more likely to be productive and contribute to society, which in turn gives them the strength to return once the time is right.”³

Who is an IDP in Georgia?

Those participating in the technical discussions are most likely very well aware and informed of the situation of internal displacement in Georgia. Unfortunately, Georgia has been forced to deal with the internal displacement of hundreds of thousands of its citizens since the 1991 declaration of independence and subsequent tensions and armed conflicts related to the status of Abkhazia and South Ossetia. Although Georgian authorities may offer other estimates of the total number of IDPs based on their own data collection efforts, the Internal Displacement Monitoring Centre in Geneva estimates the number of internally displaced persons resulting from these secessionist conflicts to be somewhere between 257,000 and 277,000.⁴ Of this displaced population, there are an estimated 37,000 IDPs from the August 2008 conflict over South Ossetia who still have not been able to return to their homes.

Making sure the election-related rights of Georgia’s newly displaced population are protected and that these individuals are able to participate without hindrance or discrimination in upcoming elections at all levels of government should be an essential consideration of those involved in reforming the country’s electoral framework. At the same time, the circumstances of those Georgian citizens in situations of protracted displacement should also be kept in mind in order to ensure that elections in Georgia meet basic standards for non-discrimination.

Even though many people in Georgia are familiar with the plight of the internally displaced, for purposes of these technical discussions, it is perhaps useful to review the internationally accepted definition of who is an internally displaced person. According to the *Guiding Principles on Internal*

³ United Nations Press Release - *U.N. Expert Voices Concern for Internally Displaced Persons in Georgia*, 27 December 2005, available at http://www.brookings.edu/projects/idp/RSG-Press-Releases/20051227_georgiapr.aspx.

⁴ Internal Displacement Monitoring Centre (IDMC), *Georgia: IDPs in Georgia Still Need Attention*, July 9, 2009, available at: [http://www.internal-displacement.org/8025708F004BE3B1/%28httpInfoFiles%29/B0CAED10033D3B77C12575EE0041349C/\\$file/Georgia_Overview_Jul09.pdf](http://www.internal-displacement.org/8025708F004BE3B1/%28httpInfoFiles%29/B0CAED10033D3B77C12575EE0041349C/$file/Georgia_Overview_Jul09.pdf)

Displacement, which were endorsed by heads of state from around the world in the 2005 United Nations World Summit Outcome Document as “an important framework” for IDP protections,

“internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular, or as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.”⁵

In contrast to refugees, internally displaced persons do not cross an internationally recognized boundary. They remain within the borders of the country of their citizenship or formal residence. And as such, they are subject to the laws of this country, which, according to the *Guiding Principles*, has the “primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons.”⁶ This responsibility includes protecting IDPs from discriminatory practices and guaranteeing their political and civil rights.

Generally speaking, those ethnic Georgians and others who were uprooted and forced to flee their homes in Abkhazia and South Ossetia in order to find safety elsewhere within the borders of Georgia fit the IDP definition provided by the *Guiding Principles*. They are therefore entitled to the rights and freedoms identified by the *Guiding Principles*. They may also seek formal IDP status and protection under the *Law of Georgia on Forcibly Displaced Persons—Persecuted Persons* and other legal and policy instruments adopted by Georgian national authorities.⁷ Among these instruments is the *State Strategy for Internally Displaced Persons—Persecuted Persons*, which includes provisions on public participation of IDPs.⁸

Election-Related Rights and Freedoms of the Internally Displaced

Like all citizens, internally displaced persons should be able to participate in public and political affairs, including the electoral process at all levels of governance, on the basis of equality and without discrimination of any kind. The principles of universal and equal suffrage, which have been codified in a number of international instruments such as the *Universal Declaration on Human Rights* and the *International Covenant on Civil and Political Rights*, prohibits unreasonable limitations of an individual’s election-related rights.⁹ These human rights apply to IDPs in Georgia as individuals and citizens living within the jurisdiction of Georgian authorities.

The *Guiding Principles on Internal Displacement* compiles and restates established norms of human rights and international humanitarian law and applies them to situations of internal displacement. The *Principles* affirm the most significant election-related rights of internally displaced persons as follows:

⁵ *Guiding Principles on Internally Displaced Persons*, Preamble, para. 2, (UN Doc. E/CN.4/1998/53/Add.2), available in Georgian and English at: http://www.brookings.edu/projects/idp/gp_page.aspx.

⁶ *Id.*, Principle 3.

⁷ Parliament of the Republic of Georgia, *Law of Georgia on Forcibly Displaced Persons—Persecuted Persons*, as amended in 2006, available in English at: <http://www.brookings.edu/projects/idp/Laws-and-Policies/georgia.aspx>.

⁸ Government of Georgia, *Decree #47 on Approval of the State Strategy for Internally Displaced Persons*, February 2, 2007, available at: <http://www.brookings.edu/projects/idp/Laws-and-Policies/georgia.aspx>. (The author recognizes that a more recent or an amended version of this instrument may have been adopted after August 2008.)

⁹ See *UDHR*, Article 21, GA res. 217A (III), UN Doc A/810 at 71 (1948) and *ICCPR*, Article 25, UN Doc. A/6316 (1966).

“Internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the following rights: ... the right to associate freely and participate equally in community affairs; ... the right to vote and to participate in governmental and public affairs, including the right to access to have access to the means necessary to exercise this right.” (*Principle 22.1.b and 22.1.c*);

“Internally displaced persons who have returned to their homes or places of habitual residence or who have resettled in another part of the country shall not be discriminated against as a result of their having been displaced. They shall have the right to participate fully and equally in public affairs at all levels and have equal access to public services.” (*Principle 29.1*).

In accordance with these *Principles* and other norms of international law, the right to be elected and to participate in public and political affairs, in addition to the right to vote in elections and referenda, should be guaranteed for internally displaced persons. IDPs should not be stripped of these rights or their ability to exercise these rights because of their displacement. In this regard, it is important to note that the aforementioned *Strategy for Internally Displaced Persons—Persecuted Persons* explicitly recognizes the importance of guaranteeing the election-related rights of IDPS as means of ensuring the full integration of IDPs into society.¹⁰

In addition to affirming the election-related rights of IDPs, special measures that take into account the specific challenges and obstacles faced by IDPs in the context of elections, whether legal, administrative or practical, should be included in the electoral framework in order to ensure IDP enfranchisement and their active participation in electoral and political processes as called for in the Georgian *State Strategy* on IDPs in addition to the *Constitution*, which protects the rights of all citizens age 18 and older to participate in elections and referenda.¹¹

Voting and Political Participation Challenges Encountered by Internally Displaced Persons

As suggested earlier in this paper, both types of IDP populations, *i.e.* the newly displaced and the protracted, have specific needs and vulnerabilities on account of their displacement. These needs and vulnerabilities distinguish them from other citizens and their ability to exercise their rights and freedoms. Displacement creates these needs and threatens virtually all of an individual’s rights—economic, social, and cultural rights as well as their political and civil rights. Among the latter, election-related rights, such as the right to vote and to participate in public and political affairs, are routinely at risk of being violated in situations of displacement.

Even when the rights of IDPs are recognized by law, IDPs may face challenges in realizing these rights on account of other legal, administrative, and practical obstacles. These obstacles can arise in matters related to voter registration, voter education, and receiving and casting a ballot on Election Day. Other obstacles, such as those connected to counting of ballots cast by IDPs and campaigning as a candidate for election, can also stand in the way of IDPs and their election-related rights.

In many situations of displacement, IDPs are unable or unwilling to return to the area where they previously registered to vote. Also, it is also possible that the area of their origin is under

¹⁰ *Decree #47 on Approval of the State Strategy for Internally Displaced Persons*, Section 2.2.1 (d), *supra* note 8.

¹¹ *Constitution of Georgia* (as amended in 2006), Article 28.1, available at: http://www.parliament.ge/files/68_1944_951190_CONSTIT_27_12.06.pdf.

the control of groups who are not willing to hold elections or allow IDPs to return in order to vote. Unless provisions are included in the electoral framework to allow IDPs to register to vote in other constituencies, they will not be able to exercise the same political rights that other, non-displaced, citizens enjoy. Electoral frameworks should be drafted in a way to anticipate the need of IDPs to register and to vote in the constituency of their displacement or in another constituency where they may decide to resettle. Similarly, special provisions or rules that liberalize length of residency requirements may need to be promulgated in order to facilitate registration and voting of IDPs. It is important that voter registration in the location of displacement not effect IDP status and the receipt of humanitarian assistance they may receive as an IDP.

Lack of documentation is one of the most common challenges encountered by IDPs in trying to exercise their election-related rights. Often, IDPs lose personal identification and other types of documentation, including documentation which establishes one's residency, as they are forced to flee. It is also common for persons to inadvertently leave documentation behind that they are subsequently unable to retrieve or have re-issued by authorities. Sometimes personal documentation can be destroyed along with the official archives where official records, e.g. birth and marriage certificates, residency, and housing, land and property records, are kept. In some situations, authorities in an IDP's area of origin may be unwilling to re-issue documentation or otherwise assist IDPs in securing documentation they may need in the location of their displacement. As a result, IDPs may not be able to satisfy voter registration requirements—unless procedures and rules exist that allow IDPs to obtain new documentation and do so in time to use it for voter registration and on Election Day.

It is also important that IDPs are adequately informed and educated about election timelines, voter registration, balloting procedures, and other aspects of the election such as the political platforms of candidates and political parties. Because IDPs sometimes reside in rural locations, or in otherwise isolated communities, and may lack access to media and public information campaigns, they may not be aware of complicated registration procedures and deadlines. Voter education and information campaigns that target IDPs and their communities will go a long way to ensuring their participation in registration and voting.

Protecting IDPs: Key Objectives and Essential Elements of the Electoral Framework¹²

In order to ensure that IDPs enjoy and are able to exercise election-related rights, both during and after their displacement, the participants in the technical discussion group should ensure provisions exist in the electoral framework that do the following:

- Affirm the electoral-related rights of IDPs, including the right to vote, to be elected, and to participate in public and political affairs at all levels of governance without discrimination;
- Permit IDPs to vote in elections (1) related to the constituency from which they were displaced, or (2) in the constituency in which they found refuge without unreasonable restrictions (such as residency and documentation requirements) and ensure that in the latter case that IDPs do not lose eligibility for humanitarian aid or other benefits if they do so;

¹² The content of this section significantly draws upon and summarizes relevant aspects of *Protecting Internally Displaced Persons: Manual for Law and Policymakers*, (Brookings-Bern Project on Internal Displacement, October 2008), available at: http://www.brookings.edu/papers/2008/1016_internal_displacement.aspx. It is also informed by the conclusions and recommendations found in Mooney and Jarrah, *The Voting Rights of Internally Displaced Persons: The OSCE Region*, *supra* note 2, at 68-70. Both resources have been developed by the Brookings Institution's Project on Internal Displacement, for which the author of this paper serves as Deputy Director.

- Permit IDPs to stand and campaign as candidates for election without unreasonable restrictions (such as residency and documentation requirements) and on terms as favorable as available to non-displaced candidates;
- Inform IDPs in a language they understand about the electoral process, including registration and voting procedures and timelines, and facilitate access to information about the candidates and political parties participating in the elections;
- Formulate election and registration timelines that allow adequate time for IDPs to have an effective opportunity to register, and for election officials to verify and confirm registration;
- Provide for voter registration procedures that take into account the situation of IDPs, including their lack of access to documentation and the need for flexible options in transferring their registration to districts of return;
- Ensure IDP issues are integrated into election administration and management through an IDP unit or focal point that liaises with election officials and representatives of public agencies responsible for IDP protection as well as with IDPs themselves;
- Facilitate IDP participation in the discussion and design of special rules and procedures related to displacement;
- Ensure that election officials at all levels are aware of and understand the special rules and procedures related to displacement as well as the election-related rights of IDPs; and
- Prohibit candidates and political parties from providing relief materials and food to IDPs during campaign appearances in order to ensure that vulnerabilities of IDPs are not exploited for political purposes.

Conclusion

This paper has attempted to raise awareness and understanding of issues of internal displacement in the context of organizing and conducting elections. It has sought to inform the technical discussions with insight into this phenomenon and the challenges faced by IDPs. In addition, this paper has offered those working to revise Georgia's electoral framework with what may be considered the minimum essential elements necessary to ensure IDPs are able to effectively exercise their rights during the election period. While these essential elements have been developed for situations of displacement generally, they have applicability to the specific situation in Georgia and can be used to ensure that the Georgian electoral framework supports elections that are not only free and fair but also inclusive of one of the country's most vulnerable groups.

The participants in the technical discussions are to be commended for their commitment to this objective and to guaranteeing the election-related rights and political participation of internally displaced persons and other citizens of Georgia in accordance with international standards and best practices.