



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

The Role of IOM

Migrants and the Equal Participation in Political and Public Affairs

I. Introduction

The present report is submitted pursuant to the request from the Office of the United Nations Office of the High Commissioner on Human Rights (OHCHR) regarding resolution 27/24 Human Rights Council on “Equal participation in political and public affairs”. The report focuses on migrants’ political rights in relation to the resolution and it encompasses IOM’s observations on best practices, challenges and identifying ways to overcome the challenges migrants face in participation in political and public affairs. At the request of the Human Rights Council, this report will also highlight migrant’s right to vote and be elected as well as migrant’s equal access to public service opportunities. This report will reference international and regional treaties and other legal instruments that support migrant participation in political and public affairs.

II. Mandate

Established in 1951, IOM is the only inter-governmental organization, although formally outside the United Nations system, exclusively focused on migration. IOM works towards orderly and humane migration by delivering people-centered services and advocating for the well-being of migrants and their families. IOM’s mandate allows it to work with migrants, refugees, displaced persons and others in need of migration services or assistance.¹ The prime responsibility for ensuring the respect of the human rights of migrants lies with States. A State has the duty to protect all persons within its territory, nationals and non-nationals alike, be they in a regular or irregular situation. It also has the right – and the duty – to defend and protect its nationals abroad, and to allow other States to protect their nationals residing within its territory. Many international actors, including IOM, have a key supporting role to play in achieving the effective respect of the human rights of migrants. Many of IOM’s operational activities providing assistance to those who migrate result in protection of the rights holders we serve.

Concern for the dignity and well-being of migrants has been present in IOM constituent documents since the Organization’s inception. In 2004, IOM Member States endorsed the consolidation of the International Migration Law and Legal Affairs Department in order to streamline and strengthen IOM’s involvement in International Migration Law (IML). IML is the set of legal rules that constrain, regulate, and channel state authority over migration. The IML Unit of IOM is entrusted with the responsibility to: research and disseminate information on Migration Law; provides training and capacity building on IML for government officials, civil society groups, international governmental organizations, non-governmental organizations (NGOs) and IOM staff; and provides advice on whether existing national legislation complies

¹ See the IOM Constitution.



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with international legal standards. IOM strongly believes in a rights-based approach in migration programming. It also strives to promote the rights of migrants through advocacy and to contribute to their protection.²

III. International Treaties and Law

The guidance available from the international treaties surrounding migrants' right to participate in political and public affairs indicate that the extent to which an individual is granted the enjoyment of political rights will depend on his or her connection to the State concerned as well as their migration status. Regular migrants, internally displaced migrants and permanent residents may be viewed more akin to host country citizens in expression of their political participation. Whereas irregular and displaced migrants from other countries often encounter barriers to participate in political and public affairs such as the lack of work related documentation, illegal residence as well as stigma and hostility from host country citizens. The best practices, challenges and ways to ensure equal participation in political and public affairs for migrants includes approaches reliant on the interplay of the legal status of the migrant, the social climate of the host country, as well as the incorporation and implementation of relevant treaty provisions in the host country's domestic policy and legal framework.

ICCPR

The International Covenant on Civil and Political Rights protects all persons from discrimination based upon race, sex, language, religion, or other status. ICCPR Article 2(1) details the non-discrimination principle "to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present covenant." ICCPR Article 25 states "Every *citizen* (emphasis added) shall have the right and the opportunity... (a) to take part in the conduct of public affairs... (b) to vote and be elected..."³ The Covenant thus allows for restrictions to be placed on migrants' equal participation and access to political and public affairs, if lacking citizenship. This is one of the very few exceptions in international human rights law of a right that only applies to nationals.

ICRMW

The International Covenant on the Rights of Migrant Workers and their Families reiterates the commitments in the ICCPR Article 2 and 25 while focusing on the particular challenges of migrant workers. ICRMW highlights two distinct opportunities for political and public

² See Council Resolution No. 923 (LXXI) of 29 November 1995 on "Future activities of IOM" and Resolution No. 908 (LXIX) of 30 November 1994 on "Role of IOM with regard to trafficking in migrants and the safeguarding of migrants rights". See also "The Human Rights of Migrants IOM Policy and Activities" of 12 November 2009 (MC/INF/298), "IOM Strategy" of 9 November 2007 (MC/INF/287), "Protection of Persons Involved in Migration: Note on IOM's Role" of June 2007, "IOM and International Migration Law" of 30 April 2003 (IC/2004/3) and "Migrants' Rights IOM Policy and Activities" of 13 November 2002 (MC/INF/259).

³ International Covenant on Civil and Political Rights (ICCPR)(1966) arts. 2, 25.

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involvement of migrants; the right to participate in home country affairs and the right to participate in state and local affairs within the host country. It also delineates that the right of migrants to participate in host country political and public affairs is at the discretion of the host country policies.⁴ Unlike the ICCPR, the ICRMW explicitly states that “migrant workers may enjoy political rights of States of employment, if that State, in the exercise of sovereignty, grants them such rights.”⁵ National governments that are signatories or parties to the treaty thus have the discretion to grant equal access of political and public participation to migrants irrespective of legal status and citizenship.

IDP Principles

The Guiding Principles of Internal Displacement (IDP)⁶ identify the rights and relevant guarantees of internally displaced persons who 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 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.”⁷ Recognizing that these individuals often remain in their home countries, the IDP principles 22 and 29 highlight their rights of political participation and engagement in public affairs. IDP grants displaced migrants not only the right to vote but also the right to have access and means to exercise involvement in public affairs in their home country.

Principle 22 states that internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right. These resources can include replacing lost legal documentation from the migrants’ habitual residence to offering language and translation services to internally displaced migrants that may be the minority in their new location.⁸

IV. Regional Treaties and Law

Council of Europe European Treaty Series No. 144

⁴ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) (1990) arts; 41, 42.

⁵ ICRMW(1990) art. 42.3.

⁶ “Guiding Principles on Internal Displacement”. Office of the United Nations High Commission on Refugees (UNHCR) Office for the Coordination of Humanitarian Affairs (OCHA), Brookings Institution Project on Internal Displacement, Sept. 2004. <https://www.brookings.edu/wp-content/uploads/2004/09/GPs.pdf>

⁷ Ibid. para. 2.

⁸ “Handbook for Applying the Guiding Principles on Internal Displacement”. OCHA, Brookings Institution Project on Internal Displacement, 1999. www.idpguidingprinciples.org, pp. 46.47.

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The Council of Europe constructed the Convention on the Participation of Foreigners in Public Life ETS No. 144 to detail the obligations of Member States towards foreigners⁹ in equal participation in political and public affairs.¹⁰ CoE ETS.144 Article 6 and Article 7 grants migrants lawfully resident within Council of Europe member states the right to stand for election and vote in local elections. The Convention is subject to restrictions, similar to the international law standard, maintaining that political and public affairs participation is granted only if the migrant meets the host country's residence requirement. This convention reinforces the principles of the unity between the member states and ensuring foreign residents have the same access to human rights as host country citizens. This convention holds no application outside of member states and only towards national governments that are party to the Council of Europe. Presently, only eight states out of the 47 member states have ratified the Convention on the Participation of Foreigners in Public Life ETS No. 144.

V. National Governments Laws and Policies

Whether party or not to international treaties on the protection of migrants, many countries maintain domestic policies on migrant's ability to participate in political and public affairs. The prevailing standard for national governments is to limit the participation of migrants in relationship to citizenship. IOM supports national governments in creating and defining pathways for enfranchisement for resident migrants.¹¹ Currently, 114 countries and territories allow their citizens to vote abroad¹² and over 40 countries, including the European Union, allow some form of local electoral involvement of migrants within their territory.¹³ Home and host countries are aware of the value of large swaths of potential voters residing abroad and the importance of suitable options for enfranchising migrants of their rights for participation in political and public affairs.¹⁴ It is in the interest of home and host country to establish avenues for equal access to political and public affairs participation for migrants. However, a country can regulate external voting whenever its regulations do not have extraterritorial effects and are subject to the limitations imposed by the laws of the host countries.¹⁵ This allows for the massive

⁹ Council of Europe, European Treaty Series No. 144, Participation of Foreigners in Public Life 5.II.1992 (ETS. 144)(1992) Art 2: For the purposes of this Convention, the term "foreign residents" means persons who are not nationals of the State and who are lawfully resident on its territory.

¹⁰ Ibid. arts; 6, 7.

¹¹ Grace, J. & Fischer, J., "Enfranchising Conflict Forced Migrants: Issues, Standards and Best Practices, IOM/PRESS, 29 September 2003.

¹² Ed. Ellis, Andrew & Alan Wall. "Voting from Abroad: The International IDEA Handbook , Chapter 8: *The political rights of migrant workers and external voting* ", International IDEA: 2007, 179.

¹³ Hayduk, Ron & Michele Wucker. "Immigrant Voting Rights Receive More Attention" 1 November 2004. <http://www.migrationpolicy.org> .

¹⁴ Ellis, Andrew. "Voting from Abroad: The International IDEA Handbook; Chapter 8: *The political rights of migrant workers and external voting* ". International IDEA: 2007, 175.

¹⁵ Ibid at 178.

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discrepancy among states that allow out of country voting and the states that allow migrants to vote in host country elections.

VI. Activities

In order to improve the equal participation in political and public affairs of migrants, IOM partners with international agencies, civil societies, national election agencies and representatives of governments. With the support of its partners, IOM developed electronic and academic resources to approach the issue of enfranchisement of political rights among conflict, displaced and regular migrants.¹⁶ IOM 's objective and role for these initiatives is out of country voting for conflict-forced and displaced migrants, advocating national governments to enforce treaty provisions relevant to migrants, and encouraging regular migrants' political participation.¹⁷

IOM Out of Country Voting (OCV) Initiatives

IOM facilitates cooperation among international agencies, civil societies and national governments aimed conflict, displaced and regular migrants utilizing their right to participate in elections in their home country. OCV initiatives disseminate information, create action plans and engage in specialized training for host and home countries. These initiatives have successfully instituted enfranchisement for migrants to have equal access to political and public affairs participation while out of country. The Out of Country Voting (OCV) Initiatives have proved successful in Bosnia and Herzegovina, East Timor, Afghanistan, Iraq and Ecuador.¹⁸ Specifically, OCV's are useful in the goal of franchising conflict and displaced migrants.¹⁹ OCV initiatives offer conflict and displaced migrants to become active participants in the electoral process, engaging them in the democratic process in anticipation of their return to their area of origin.²⁰ Furthermore, OCV initiatives act as a stabilizing force in home communities reducing the potential for future large population displacement.²¹ The most recent example is IOM's OCV initiative for the Southern Sudan Referendum. This initiative coordinated with the Sudanese officials, host governments of significant population of South Sudanese migrants, the United Nations and IOM facilities within Northern and Southern Sudan.

IOM Political Rights and Enfranchisement System Strengthening Tools (PRESS)

¹⁶ IOM PRESS Colloquium Proceedings "Colloquium on the Political Rights of Persons Displaced by Conflict" of 12 June 2006 <http://www.geneseon.edu/~iompress/>

¹⁷ Ibid. IOM PRESS Colloquium Proceedings, 3.

¹⁸ "IOM Support to Out of Country Voting" of 1 August 2008 (02/ESU-OCV/0710).

¹⁹ Peter Erben, Goldsmith, Ben & Aysha Shujaat. "Out of Country Voting: A Brief Overview". International Foundation for Electoral Systems, Washington, D.C., April 2012, 1.

²⁰ "IOM and Election Support Activities". 23 of January 2015. IOM OCV_-_infosheet.pdf.

²¹ Ibid. at 2.

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IOM PRESS was established to support and develop international and regional capacity to help enfranchise migrants and provides resources to assist Election Management Bodies, international organizations, nongovernmental organizations in the election process.²² The PRESS project drafts Action Plans and Technical Assistance to service political participation in internally displaced communities. IOM employs a strategy to identify organizations in Conflict Forced Migrant (CFM) communities that promote self-advocacy and representation in the local electoral process. IOM maintains a website to share training and information on international commitments, practices and proposed guidelines for the political rights of CFMs. Additionally, the project highlights potential conflict forced migrant enfranchisement based on past elections.²³

IOM Research on Diaspora Population

IOM researches the complex relationship between international migration and economic development for host and home countries of diaspora populations. The research facilitates reliable data on the situation of a diaspora in a given country and design effective communication channels for outreach strategies for equal access in the participation of political and public affairs. Diasporas include regular migrants, irregular migrants or descendants of migrants participating in the local economy, generating tangible and intangible resources for the benefit of host and home countries. Diaspora populations present dual commitments to their local communities as well to their country of origin in terms of economic capital and social capital.

These key characteristics of diaspora can make the community an integral partner in the equal access of participation in political and public affairs of migrants. Diasporas can leverage their economic contribution in their country of origin to demand participation in the political and public affairs. In addition, diasporas can leverage their social capital as a concentrated population in the host country and local economic investment to enforce the rights of migrant participation. IOM research suggests an approach of three pillars of engage, enable and empower as a framework to encourage diasporas involvement in home and host countries.²⁴

Challenges

The primary challenges to migrants' equal access to participate in political and public affairs is the interplay of the migrant person's legal status and the host country and home country's domestic policy. Further barriers include political exclusion by way of intimidation, lack of

²² "Quarterly Report to USAID/DG Political Rights and Enfranchisement System Strengthening (PRESS) for Conflict Forces Migrants (CFMS)" 17 of February 2005. <http://www.geneseo.edu/~iompress/>

²³ Ibid. at 3.

²⁴ "Diasporas and Development: Bridging Between Societies and States" 5 of July 2013. International Dialogue on Migration 2013-Diaspora Ministerial Conference Background Paper. IOM Voting-2013-Diaspora-Ministerial-Conference-EN.pdf

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information regarding voting registration, lack of information on the legal status to stand for election and language difficulty. Migrants are also often vulnerable to discrimination in the host country and are frequently excluded from their home country political processes.

Many countries may have ratified and or are signatories to treaties, such as the ICCPR, ICRMW, or follow IDP Principles that protect the political participation rights of migrants, however many have not implemented enforcement legislation domestically. Political and public affairs participation for migrants is also limited when States don't implement ratified provisions accordingly. Migrants may reside in a host country that not only restricts participation in local elections or running for office, but also limits the financial and, or logistical support for Out of Country Voting initiatives. Host countries may also be under pressure to limit support for OCV initiatives if the general population has negative or stigmatizing attitudes towards migrants.²⁵ Additionally, even when a host country is supportive of OCV initiatives, irregular migrants' legal status and the fear of discovery will often act as a deterrent from participation.²⁶

Ways to Overcome Challenges

The primary way to overcome migrants' challenges of equal access to participate in political and public affairs is to encourage states to sign, ratify, and implement the prevailing international treaties protecting migrants. When state parties agree to enforce and properly implement the ICCPR, ICRMW and similar law, the state has to amend or create domestic policies in alignment with international protections of migrants' right to participate in political and public affairs.

Furthering the path to overcome the challenges to migrants' right to participate in political and public affairs is for the host country to focus resources on de-stigmatizing the presence of migrants in their state.²⁷ Programs such as IOM PRESS provide resources for disenfranchised migrants to receive relevant information and be position to self-advocate. Finally, to overcome the challenges of migrants equal access to political and public involvement is to allocate financial and logistical resources for OCV initiatives.²⁸ OCV initiatives promote reciprocal benefits of political capital from migrant communities. The host country that provides OCV support for another state's migrants may find that their migrants receive the same support.

²⁵ Todzinski, Stawomir, Dorota Pudzianowska & Marta Szaranowicz-Kusz, ed. "Voting Rights for Foreigners-for or against?". International Organization for Migration, Warsaw, October 2014, 22.

²⁶ Ellis, Andrew. "Voting from Abroad: The International IDEA Handbook; Chapter 8: *The political rights of migrant workers and external voting*". International IDEA: 2007, 177.

²⁷ Todzinski, Stawomir, Dorota Pudzianowska & Marta Szaranowicz-Kusz, ed. "Voting Rights for Foreigners-for or against?". International Organization for Migration, Warsaw, October 2014, 22.

²⁸ For more information about the activities of IOM, please consult the Organization's website, www.iom.int

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