



GEORGETOWN UNIVERSITY

Secession Referendum Framework



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International Electoral Policy and
Practices

GOVT 554

Professor Jeff Fischer

2015 Fall

TABLE OF CONTENTS

| | |
|--|----|
| Acronyms | iv |
| Executive Summary..... | 1 |
| I. Mandate to Conduct the Referendum..... | 4 |
| A. Treaties and Agreements..... | 4 |
| B. Legality of the Secession Referendum..... | 5 |
| C. Ethnic Differences | 5 |
| D. Demarcated Boundaries..... | 6 |
| E. International Recognition | 6 |
| II. Pre-Requisite Security and Political Conditions | 7 |
| A. Political conditions necessary for the referendum to occur | 7 |
| 1. Transitional Justice and Secession Movements..... | 9 |
| 2. Preparation of a Successor State | 10 |
| 3. International Influences | 10 |
| 4. Additional political issues..... | 10 |
| B. Security conditions necessary for the referendum to occur | 11 |
| 1. Pre-Referendum Concerns..... | 12 |
| 2. Referendum Day Concerns | 15 |
| 3. Post-Referendum Concerns | 16 |
| C. Section Summary | 16 |
| III. Framing the Referendum Question | 17 |
| IV. Referendum Management Body | 19 |
| A. Purpose..... | 19 |
| B. Legal basis for legitimacy and authority | 19 |
| C. Establishment | 20 |
| 1. Models for referendum management bodies | 20 |
| 2. Composition | 21 |
| i. Governing body | 21 |
| ii. Secretariat | 22 |
| 3. Local electoral commissions | 23 |
| D. Standard operating procedures, rules and regulations for implementation of referendum management body duties..... | 23 |

| | |
|---|----|
| 1. Regulatory framework for standard operating procedures | 23 |
| 2. Preparation for referendum | 23 |
| E. Funding for a referendum management body | 24 |
| 1. Potential Funding Sources | 24 |
| 2. Issues with Undue Influence from Funders | 25 |
| Use of Funding to Meet Referendum Management Body Resource Requirements | 25 |
| V. Definition of the Electorate | 26 |
| A. Citizenship..... | 26 |
| B. Voter Registration..... | 27 |
| VI. Campaign Practices and Financial Transparency..... | 29 |
| A. Campaign Practices..... | 30 |
| 1. Defining Referendum Campaign Groups, and their Management | 31 |
| i. Lead Campaign Organizations..... | 32 |
| ii. Non-Lead Campaign Organizations | 33 |
| iii. Political Parties | 34 |
| iv. Corporations..... | 35 |
| v. Individuals..... | 35 |
| 2. Campaign Management..... | 36 |
| B. Campaign Finance..... | 37 |
| 1. Regulations on Income..... | 37 |
| 2. Regulations on Expenditure | 40 |
| C. Referendum Observation: During and After..... | 41 |
| VII. Voting Modalities – Inside and Outside of the Entity..... | 43 |
| A. Voting Modalities – Inside and Outside of the Entity..... | 43 |
| 1. Legal Framework for Voting Modalities..... | 43 |
| 2. Preparing for Polling | 43 |
| i. Voter Registration..... | 43 |
| ii. Planning Timeline..... | 43 |
| iii. On polling day | 44 |
| 3. Special Voting Arrangements..... | 44 |
| i. Types of Special Voting Arrangements | 44 |
| ii. Out of Entity Voting | 45 |

| | |
|---|----|
| 4. Counting Ballots and Announcing the Results | 46 |
| i. Counting Ballots and Announcing Results | 46 |
| ii. Criteria for a Final Decision | 46 |
| VIII. Referendum Dispute Resolution..... | 47 |
| A. Referendum Justice | 47 |
| B. Timelines..... | 47 |
| C. Determining Violations | 48 |
| D. Submission..... | 49 |
| E. Violation Consequences..... | 49 |
| Conclusion..... | 50 |
| Annexes..... | 53 |
| Annex 1: Referenda Ballot Samples | 54 |
| Ballot Sample of East Timor Independence Referendum 1999:..... | 54 |
| Ballot sample of South Sudanese Independence Referendum 2011: | 55 |
| Ballot Sample of Catalonia Self-Determination Referendum 2014: | 55 |
| Ballot Sample of Crimea Status Referendum 2014:..... | 56 |
| Ballot Sample of Scottish Independence Referendum 2014: | 57 |
| Annex 2: Map of Independence Referenda from 1995 to 2015 and Planned Referenda | 58 |
| Annex 3: Table of Select RMBs by Referenda, Within the Past Twenty Years and Proposed | 59 |
| Annex 4: Example Organizational Chart of a Referendum Management Body..... | 62 |
| Bibliography | 63 |

ACRONYMS

| | |
|--------------------|--|
| AU | African Union |
| CMU | Campaign monitoring unit |
| CPA | Comprehensive Peace Agreement |
| CSO | Civil society organization |
| EMB | Election management body |
| FLEC | Front for the Liberation of the Enclave of Cabinda |
| FRB | Financial review body |
| GoSS | Government of Southern Sudan |
| IFES | International Foundation for Electoral Systems |
| IGO | Intergovernmental organization |
| IHERC | Independent High Electoral and Referendum Commission |
| International IDEA | International Institute for Democracy and Electoral Assistance |
| ISIS | Islamic State of Iraq and Syria |
| LCO | Lead campaign organization |
| N-LCO | Non-lead campaign organization |
| NGO | Non-governmental organization |
| NIHRC | Northern Ireland Human Rights Commission |
| OSCE | Organization for Security and Cooperation in Europe |
| REO | Regional Electoral Officer |
| RMB | Referendum management body |
| SOE | State-owned enterprise |
| SSRA | South Sudan Referendum Act 2009 |
| SSRC | Southern Sudan Referendum Commission |
| TRC | Truth and reconciliation commission |
| UK | United Kingdom |
| UN | United Nations |
| UNAMET | United Nations Mission in East Timor |
| UNIRED | United Nations Integrated Referendum and Electoral Division |
| UNMIS | United Nations Mission in Sudan |

EXECUTIVE SUMMARY

The mandate of the secession referendum depends highly on a treaty or series of agreements to allow the referendum to happen. The treaty or agreements will help determine the outcome and ideally settle the dispute in a legal, binding manner. Examples include the May 5th Agreement regarding East Timor as well as the Comprehensive Peace Agreement (CPA) in Sudan. Other factors regarding the mandate to secede include ethnic differences and international recognition. Secession referendums should have the goal of international recognition as it legitimizes their cause. Legal channels should be used if they are in place and boundaries should likely be clearly demarcated and not a result of recent conflict.

The minimum political and security conditions necessary to conduct a peaceful secession referendum are closely related. In areas of conflict, political negotiations between the ruling government and the secessionist movement are a necessary first step to the discussion of creating a path to independence. Once the sides have reached an agreement, devolution (or the existence of a government-in-exile prepared to govern the post-referendum successor state) helps to ensure that if the citizens' vote for a separation, the transition will proceed smoothly. Next, an assessment of security risks should be taken, accounting for differences in potential risks in the pre-referendum, referendum day, and post-referendum phases of the electoral cycle. Ultimately, while international involvement, recognition, and assistance are often critical to preventing conflict, the commitment of leaders on both sides of the referendum question will determine whether the referendum proceeds smoothly or leads to violence.

When framing a referendum, the question must be presented clearly and neutrally. The procedure by which the question is generated should also be methodologically sound. The traditional procedure through which the question is vetted usually relies on three forces: government, parties, and key stakeholders in civil society. Referendum management bodies will judge the resulting questions and select the most neutral response out of them. Once the referendum management body (RMB) has confirmed the version of question, a political agreement regarding the question should be signed between the separatist government and central government, or among major parties in a local assembly, to pave the legal way for a referendum. Context must be taken into question when creating the ballot. In cases where there are illiterate voters, symbols should be used on the ballot along with words, as in the case of the South Sudanese Independence Referendum. In multilingual states, several local languages used by citizens should be included in the ballot.

For any given referendum, a RMB is responsible for ensuring that the referendum presents a genuine choice for voters and that the outcome of the referendum reflects that freely expressed will. Commonly, RMBs are defined at this basic level through peace agreements or treaties following civil war or other intra-country conflicts. However, in some situations, the legal basis for a RMB may arise from a national or regional law or constitution. Conversely, an already-constituted election management body (EMB) will sometimes be given legal authority for the conduct of a referendum. This again separates the mandate for the RMB from the specific enumeration of roles and responsibilities. The EMBs are instructed by the new legal guidance to run the referendum in accordance with their legal duties and responsibilities outlined elsewhere, occasionally with stipulations and/or additional responsibilities.

As a best practice, the establishment of a RMB should occur well in advance of a referendum, preferably years before. This provides sufficient time for the RMB to be constituted as a neutral body and ensure it capable of carrying out--and follows through with--all of its legally mandated duties. A RMB consists of its governing body, commonly called an "election commission," and its secretariat which are jointly responsible for the implementation of a referendum.

To complement the often political, decision-making governing body, a secretariat is formed which performs the administrative duties required to conduct a referendum. Given the less political or non-political nature of their roles, secretariat staff do not necessarily need to undergo an extensive appointment process. Their appointment is primarily decided based on their ability to handle the roles of their positions. In addition to an RMB overseeing the referendum for the entire region participating, there may also be authority and/or responsibilities devolved to more local electoral commissions.

An important role during the run-up to the referendum is to ensure the process occurs fairly. During the preparation process, the RMB will likely be responsible for reporting on a regular basis to bodies that may oversee the RMB, such as a parliamentary body or a coalition of international actors.

The first place to look for funding an RMB is from the government of the region in which the referendum is being conducted. External funding for an RMB to conduct a referendum may be necessary when a region cannot fund its own referendum. Additionally, external funding may arrive from those wishing to support the effort, whether seeking influence or not. Such external funders can include international organizations like the United Nations (UN), other countries, and even private donors.

Citizenship is paramount to democracy, and as the legal framework for a secession referendum is being developed, it is crucial to determine early on in the process who will and will not constitute the electorate for the referendum election. Voter eligibility will most likely differ from general elections in that different groups are intentionally included and excluded from the referendum. As mentioned above, non-residents of the territory seeking secession are generally not permitted to participate in the vote as well as current prisoners, ex-convicts and individuals who engaged in previous egregious actions.

The entity responsible for voter registration may vary depending on administrative traditions and experiences in a given region. The voter registration period should be open for at least three months prior to the start of the referendum. Voter identification documents play a critical role in the registration process and there are usually numerous options available to potential voters. Once the registry is compiled, individuals should have access to their information to ensure that the registers are accurate and maintained with complete transparency.

Establishing campaign privacy and financial transparency requires implementing best practices in terms of campaign practices, campaign finance, and referendum observation. In this case of a status referendum, this approach proposes that a Campaign Monitoring Unit (CMU) be established within the RMB well ahead of the referendum period. This is the period of time during which the campaign is 'live,' and entities lobbying for one outcome or another are subject to the rules and regulations (laws) that constrain spending and finances.

The CMU must exercise particular scrutiny when tracking account withdrawals and expenditures made by campaign organizations in the final days leading up to the referendum, which may be indicative of vote buying/selling. Working backward from this final reporting moment to assess fairness and compliance with campaign regulation, it is likewise essential that the CMU carry out report reviews in an orderly, timely, and comprehensively over the course of the referendum period. To increase transparency and confidence across-the-board, the CMU is encouraged to publish routine information on revenue and expenditure and disputes (both on-going and resolved) online, or in publicly accessible databases. The CMU monitoring units can be adjusted to suit the particular conditions of a particular region that is holding a referendum, in consideration of electoral security measures, such as role of minorities or multi-ethnic voting blocs, levels and prevalence of modern communications methods, and other considerations that impact the electoral

playing field as discussed by this comprehensive framework for universal referendum framework best practices.

Voting procedures in a secession referendum are usually defined by a referendum act, which directly governs an entire referendum. A planning timeline is essential – helping the RMB prepare for and conduct a referendum on schedule. This enhances transparency as well as the inclusiveness of the referendum. Timelines on the schedule will differ by region but voter registration, campaign period, the election date, announcement of results as well as a dispute time frame should be clearly stated.

Voters need to prove that they are eligible voters both during registration and during voting. Election officers must either check voter identification, use voter lists, or a combination of the two. Following an affirmation, the voter is given a ballot to prevent electoral fraud. Rules should be clearly defined whether eligible voters are still able to cast a ballot when they lose or forget their cards.

Special voting arrangements should be made for those who wish to participate but cannot due to various regions such as work, travel, physical disabilities and more. These arrangements can include early voting and absentee voting to name a few options. Depending on a high rate of displacement, accommodations can be made for those who are out of the country, as in the case of South Sudan.

Local electoral committees and the central election committee are responsible for counting the votes and can be observed by EMBs, international organizations, and representatives from either side of the referendum. The RMB should announce the final results and state the criteria for passing a referendum concerning certain facts such as voter turnout and a super-majority.

When assessing the outcome of a referendum, there is a possibility for voting issues to be reported to existing international bodies to decide on the resolution. There is precedent for different Referendum Resolution Bodies to be set up in response to a situation in which existing mechanisms do not suffice. The Referendum Dispute Resolution Body can use different mechanisms to respond to challenges. It can follow an administrative, judicial or legislative structure. Referendum issues must be resolved quickly before legitimacy of the referendum is questioned. Deadlines must be established for dispute submission and the issuance of the final decision.

When determining violations, the categories being investigated should be: general fraud, voter coercion, obstructing the referendum process, voter registration, and illegal campaign financing. To submit an incident of referendum fraud, registered voters can submit complaints provided they are registered in the constituency they challenge.

There are two distinctions in the referendum crimes and their consequences. There is a difference in referendum challenges versus the determination of referendum liability. Referendum challenges are corrective in nature. The response is to annul, alter or recognize the irregularity, depending on its effect. In contrast, referendum liability is punitive. Specific consequences for various levels of referendum violations vary by country.

I. MANDATE TO CONDUCT THE REFERENDUM

A. Treaties and Agreements

The most important aspect of a secession referendum is establishing a treaty or agreement between two sides in a legal, binding manner that will stand the test of time and resolve the dispute in a civil way. A treaty as defined by The Vienna Convention of 1969 is, “[...] an international agreement concluded between States in a written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.”¹ Agreements are much less formal than treaties and tend to have a smaller scope. They are not dependent on ratification but rather are signed by representatives of respective governments.² Agreements are particularly advantageous when one party (or both parties) does not have a government system that would be able to ratify a treaty, and so an Agreement can be used a precursor to a treaty due to their informal nature. In addition, treaties do not simply exist between governments but can be drawn up between international organizations.

When conducting a secession referendum, both sides must come together and agree on how to establish a framework to settle matters without violence. The resolution should be founded in non-violence and utilize legal tools at hand to set up a stable separation. If there is a threat of violence, or if terrorism has run rampant in the affected area, then an outside body should provide oversight. Intergovernmental organizations (IGOs) will be most useful providing security forces and non-governmental organizations (NGOs) can provide electoral assistance in the event of a secession referendum. UN Peacekeeping troops as well as EU police forces can both contribute to the safety of an area. Either one can be used depending on the regional location of the area trying to conduct a secession referendum. Whenever there is a conflict of interest amongst countries involved, outside organizations should provide troops rather than the domestic actors.

The use of treaties and agreements are fairly commonplace concerning referendums, for example, the cases of South Sudan and East Timor. In South Sudan, there was the CPA which helped to slowly stop the violence in South Sudan and reach an agreement between the two sides. Smaller protocols were signed in the time leading up to the CPA making it much more palatable than one single agreement. Through the CPA – the Sudanese People’s Liberation Movement and the Government of Sudan came to an agreement on when and how to conduct a referendum. In this case, the Intergovernmental Authority on Development presided over the peace process to ensure a less violent outcome by establishing a timetable that allowed both sides to aim for something with their campaigns. South Sudan hosted the referendum on whether or not to secede, which included a census. Polls were set up in South Sudan and outside to account for misplaced people that had moved due to the violence.

In East Timor, the East Timorese and the Indonesians set up a constitutional framework for the area known as the May 5th Agreement. For this, East Timor was given the possibility of a referendum to establish a new government. If the agreement was approved by the denizens East Timor, the area would operate as the Special Autonomous Region of East Timor. Indonesia still controlled the economic policies, national defense, and the people of East Timor were subject to Indonesian laws. East Timor later gained its independence, but hosting a referendum to becoming an autonomous region was the first step in the pursuit of national recognition and independence. Referendums leading to autonomy status should still be

¹ “Vienna Convention on the Law of Treaties (with Annex),” May 23, 1969. <https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf>.

² “Definition of Key Terms Used in the UN Treaty Collection.” United Nations Treaty Collection, 2015. https://treaties.un.org/pages/Overview.aspx?path=overview/definition/page1_en.xml#protocols.

examined especially if the area seeking independence does not have the capabilities for national status and existence in the international realm.

When coming to an agreement or treaty, violence cannot be the determining factor in establishing a referendum. It does not allow a solid foundational groundwork to be created for a legally binding treaty. As seen in the Sudanese example, progress was only possible once both sides agreed to a ceasefire and communicate peacefully. Conflict and intimidation may exist at early stages of independence movements and they are generally unsavory side effects of those seeking freedom but violent tactics cannot be used when proposing a treaty.

B. Legality of the Secession Referendum

When trying to determine a course of policy for a secession referendum it would be advantageous to see if there is a policy already in place through national legislative channels and if that is not the case then base it off other referendums or determine new laws. The first place to examine when trying to exact a referendum would be the national constitution. If there is a system in place, enact that process and allow people to vote. Following current proceedings first at a national level and then a regional level where people are trying to procure independence from the rest of the nation.

If there is no system in place then countries can go the route of the Scottish Independence Referendum held back in 2014. The Scottish Parliament was given powers to draft and hold an independence referendum as long as it had no effect on the Union as a whole. Normally the legislative branch of the national government holds powers like this but it was an exception to the general state of things in this particular case.

If there is no system in place and the legislative branch cannot agree on how to determine a referendum, a constitutional amendment can be enacted to allow a referendum. Requiring a majority or super-majority would be the easiest way to demonstrate a clear mandate for independence. A constitutional amendment could go one of two ways: allowing a region to become autonomous or allowing a vote for a region to become independent.

Legally, there has to be groundwork on determining who can vote and what constitutes a citizen in the case of a referendum. Ideally, the person has been an inhabitant of the area for five years and is of age as determined by the country. Constituting who can vote and what defines a citizen will eliminate floating voters, which could be used as a tool to thwart independence and disrupt the election. Depending on the level of displacement due to violence or the transitory nature of some groups in the world, polling stations might have to be moved to areas where people have to been forced to relocate. For determining what qualifies a voter, see *V. Definition of the Electorate*.

C. Ethnic Differences

Ethnicity is a contentious issue and is rooted in historical differences. Many ethnic conflicts, such as those in Catalonia and the Basque Region are at the heart of secession movements in the present day. Many ethnic groups seeking independence from the rest of the country see their ethnic differences as a clear-cut mandate for independence. They believe that they do not have enough in common with the rest of the country to stay a part of it.

Ethnic groups have a strong mandate to pursue a secession referendum when there are historically rooted differences in the area pursuing independence or a statute of autonomy. Groups like the Basques can trace their differences back further than the Middle Ages, further instilling their differences to the rest of Spain.

Regions with a high concentration of ethnic minorities in many cases face persecution and face biased rulings by governments due to deep-seated historical conflicts. When faced with governmental injustices like the Kurdish people of Iraq, there is a mandate for freedom to pursue impartial government governance from their own choosing through a series of agreements and/or a treaty.

Areas trying to seek a secession referendum must have an overwhelming majority of ethnic homogeneity and/or cultural differences atypical of the rest of the country. These differences could be a byproduct of poorly thought out borders like the British drawing out boundaries in the Middle East – clearing grouping conflicting factions together.³ For example, the Sykes-Picot Agreement in 1916⁴ made by France and Great Britain proposed divisions of the Ottoman Empire following the end of World War I. One of the results was the borders of modern-day Iraq, which grouped both Sunni and Shia Muslims together leading to widespread conflict over the years. Many colonized countries suffer greatly from the problem of poor colonial borders and should be considered when proposing a referendum on changing previously established boundaries in addition to proposing independence. It is important that these differences are historically rooted as opposed to a recent influx of immigrants. For example, the high Cuban population in Miami would not have a clear mandate if they proposed a breakaway from the United States.

D. Demarcated Boundaries

The area or group of people pursuing a referendum must have clearly drawn out boundaries that are not the result of recent conflict and/or an effort to consolidate more natural resources. This would encourage warmongering in some areas of the world as countries seeking to expand resources or land would use a secession referendum as a cover to their ulterior motives. For example, the annexation of Crimea was done to expand the territory of the Russian Federation and regain territory transferred from the former Soviet Union to Ukraine. In the case of a secession referendum, the two sides attempting to come to an agreement must ensure that boundaries stem from ethnic differences or traditional rulings.

Ideally, an outside body like the UN would mediate and ensure that both sides are treated equally. Since both groups have a vested interest in land, especially if it is rich in natural resources, borders are a contentious issue and need a neutral mediator to ensure a bloodless resolution.

In addition, new borders and boundaries should pay attention to the current population and where ethnic groups are located. The boundaries should be included to fit the people possibly being displaced and exclude those who are in conflict with the referendum.

E. International Recognition

International recognition and support from other countries usually lends legitimacy to a secession referendum, and while it is not a central component of establishing a referendum, it is an important factor for the separatists to keep in mind. International legitimacy would aid in putting pressure on the process and focus a proverbial spotlight on the process. It serves as a way to get other countries on board with the referendum and could end up in more resources and aid being sent to help with the process – especially important in war-torn countries like Sudan.

³ Fontana, Guiditta. “Creating Nations, Establishing States: Ethno-Religious Heterogeneity and the British Creation of Iraq in 1919–23.” *Middle Eastern Studies* 46, no. 1 (January 2010): 1–16. doi:10.1080/00263200902760535.

⁴ Fromkin, David. *A Peace to End All Peace: The Fall of the Ottoman Empire and the Creation of the Modern Middle East*. First. New York: Owl Books, 1989, pp. 286, 288.

In cases like Crimea, the international community did not recognize the annexation as legal or legitimate. There was widespread outrage and anti-Russian sentiment following changes. The lack of recognition deeply damaged the reputation of the Russian Federation.

It is important to note that while international recognition can be highly beneficial to a secessionist movement, it is not a necessary requisite in the secession referendum process. The support of the international community has the potential to provide validation for the separatists and if needed, helps when the movement reaches the international sphere. However, international recognition as evidenced in the Atlantic Charter is key to sovereignty.

II. PRE-REQUISITE SECURITY AND POLITICAL CONDITIONS

A. Political conditions necessary for the referendum to occur

In all cases where there is a possibility of a secession referendum, it is a vital that the government currently ruling the territory in question actively communicates and cooperates with a clearly defined secessionist movement. Holding a referendum where state sovereignty is at stake requires a great deal of planning and coordination, including determining when and how a secession referendum will take place and what the next steps will be if voters choose independence. Unless both the secessionist movement and the state itself indicate that they are prepared to accept the referendum's results and actually follow through on that commitment, the situation runs the risk of turning violent. While Serbia, for example, indicated in advance of the Montenegrin independence referendum that although it “did not want separation...it [would] respect the decision”⁵ to avoid the violence that had surrounded the initial breakup of Yugoslavia during the 1990s, in East Timor, the Indonesian military undermined the referendum but assisting anti-independence militia groups as they terrorized the opposition both before and after the independence vote.

It is relatively simple to keep communication channels open in places where independence movements are nonviolent and the separatists' leaders are clear (for example, in Scotland and Quebec). The situation becomes complicated, however, if the separatist movement is violent and/or highly fragmented. In the Cabindan enclave of Angola, the main separatist movement is the Front for the Liberation of the Enclave of Cabinda (FLEC). The group includes both political and armed factions and has experienced varying degrees of fragmentation over its more than fifty years of operation. The problem with fragmentation has been that despite the fact that some of the FLEC leaders have willingly entered into peace talks with the Angolan government and signed a Memorandum of Understanding in 2006 calling for an end to armed conflict, some significant and influential leaders refused to participate and have continued to fight, effectively rendering the agreement meaningless.⁶ If separatist leaders cannot control their supporters—especially armed factions—the chances of holding a secession referendum that is peaceful and recognized by the international community are virtually nonexistent. Thus, in order to conduct a legitimate secession referendum, the government (usually with the assistance of the international community) must be able to bring all significant separatist leaders to the table and negotiate an end to armed conflict between the government and major opposition groups.

⁵ “Montenegro Votes to Secede From Serbia.” The Washington Post. May 22, 2006, Online edition, sec. World. <http://www.washingtonpost.com/wp-dyn/content/article/2006/05/22/AR2006052200154.html>.

⁶ “Rule of Law in Armed Conflict Project (RULAC): Angola - International - Peace Treaties and Agreements.” Geneva Academy of International Humanitarian Law and Human Rights, 2015. http://www.geneva-academy.ch/RULAC/Peace_treaties.php?id_state=7.

The negotiations between armed groups, the British government, and international mediators in Northern Ireland exemplify the value of opening channels of communication with secessionist movements. In Northern Ireland, both the Unionists and the Republicans came to realize that neither group was going to win a decisive victory through violence. Thus, as early as 1972, “The British Government engaged in secret back-channel contacts with the [Irish Republican Army],” utilizing both individuals from the Secret Intelligence Service as well as members of the Catholic clergy as intermediaries.⁷ Those clandestine discussions continued through the 1980s and 1990s, culminating at last in the 1998 Good Friday Agreement, which ended “the Troubles,” set a date for an independence referendum, and laid out a timeline for the disarmament of militias. Notably, both sides recognized that the disarmament process needed to be gradual because after three decades of intense fighting and several hundred years of British-Irish animosity, neither side was prepared to surrender its weapons without proof that the others were doing the same. Demobilization was therefore an extremely slow process that began shortly after the signing of the Good Friday Agreement and continued to be contentious for over a decade. Although disarmament was not possible prior to the referendum, the British agreed to reduce the presence of armed forces in Northern Ireland and to remove security installations and emergency powers so long as the security situation remained under control.⁸ In 1998, the Northern Ireland Act created a devolved regional legislature for the region and also included a provision allowing for an independence referendum to be held in the future.⁹ Although this provision has not yet been used, many have speculated that such a referendum will likely be called if Scotland ever votes “yes” to independence.

In contrast, the East Timorese political agreement that led to the independence referendum failed to adequately deal with the disarmament and demobilization of militia groups and proceeded with the referendum despite pre-referendum violence. The pro-Jakarta loyalists engaged in “a major campaign of terror and intimidation against supporters of independence” in the months running up to the referendum.¹⁰ The loyalists, in collaboration with the Indonesian military and police forces, also carried out another violent campaign following the election that resulted in more than a thousand deaths and the flight of a quarter of the area’s population to West Timor.¹¹ The situation deteriorated so severely that martial law was imposed and Australian-led UN peacekeeping forces had to intervene to restore order and help rebuild.¹²

Perhaps the most important lesson to take from the aforementioned experiences is that getting armed actors to demobilize can be a tricky balancing act to pull off, especially where both sides see the referendum as a zero-sum game. Therefore, the best way to ensure a peaceful referendum process is to have a framework in place between the groups in advance of elections that explicitly acknowledges their mutual respect for the legitimacy of the voting process, the right of both sides to peacefully organize and disseminate information about their views without fear of reprisal, and a commitment to abide by the results even if the

⁷ “The Good Friday Agreement - An Overview.” London: Democratic Progress Institute, June 2013. <http://www.democraticprogress.org/wp-content/uploads/2013/07/The-Good-Friday-Agreement-An-Overview.pdf>.

⁸ “Demobilization: Northern Ireland Good Friday Agreement.” Peace Accords Matrix. University of Notre Dame. Accessed October 4, 2015. <https://peaceaccords.nd.edu/provision/demobilization-northern-ireland-good-friday-agreement>.

⁹ “The Northern Ireland Act (1998).” Northern Ireland Assembly Education Service in Partnership with CCEA, 2015. http://education.niassembly.gov.uk/post_16/snapshots_of_devolution/ni_act.

¹⁰ Robinson, Geoffrey. “People’s War: Militias in East Timor and Indonesia.” *South East Asia Research* 9, no. 3 (2001): 271–318.

¹¹ “East Timor Profile - Timeline.” BBC News, February 17, 2015. <http://www.bbc.com/news/world-asia-pacific-14952883>.

¹² *Ibid.*

outcome is not what they had hoped for. In order to ensure that such an agreement is enforced, it is necessary to involve members of the international community in the enforcement of the agreement (see *II. Pre-Requisite Security and Political Conditions*).

1. Transitional Justice and Secession Movements

In some cases, disarmament and demobilization might not be possible without a discussion of transitional justice mechanisms. Amnesties, truth commissions, reparations, and punishment for the worst perpetrators are all options that might be considered at this stage depending on the unique contextual and political conditions. Discussions of transitional justice do not have to take place prior to secession referendum, they can also occur afterwards and they may be revisited at a later date. In many cases, failing to determine the fates of those who participated in violence during an armed independence struggle might derail the negotiations process.

In Northern Ireland, for example, neither side was going to give up their armed struggle and accept a political solution to the secession question unless they knew that they were not going to be imprisoned once they surrendered their arms. The Good Friday Agreement (1998) addressed the amnesty issue, while the Northern Ireland Act (1998) provided for the creation of the Northern Ireland Human Rights Commission (NIHRC)¹³ to “make sure government and other public bodies protect the human rights of everyone in Northern Ireland” and “help people understand what their human rights are and what they can do if their rights are denied or violated.”¹⁴ However, a major criticism of the Northern Irish peace process is that it allowed amnesty without truth telling, a situation that experts believe contributes to ongoing tensions in the area.¹⁵ In Northern Ireland, there is “a political settlement, but with still bitter divisions over the legacy of violence.”¹⁶ As Chief Commissioner of the NIHRC Michael O’Flaherty said, “some of our most vulnerable people remain at the margins, with inadequate acknowledgment of their suffering; many are dying without ever being able to share their stories of pain and loss. There is not a day that goes by without the unresolved sense of neglect and injustice triggering societal problems. The lack of a truth recovery process means that tribal myths will continue to trump actual memory.”¹⁷ While it is important to remember that there is no “one size fits all” prescription for transitional justice, perhaps the most well-known truth and reconciliation commission (TRC) was in South Africa. Although the South African transition to democracy did not involve secession, post-conflict countries throughout the world have come to view it as a model worthy of emulation and study. Several Northern Irish political figures have called for South African style truth commissions,¹⁸ and a few have traveled to Cape Town in an effort to learn about the TRC and the best

¹³ “Human Rights: Northern Ireland Good Friday Agreement.” Peace Accords Matrix. University of Notre Dame. Accessed November 30, 2015. <https://peaceaccords.nd.edu/provision/human-rights-northern-ireland-good-friday-agreement>.

¹⁴ “About Us.” Northern Ireland Human Rights Commission. Accessed November 30, 2015. <http://www.nihrc.org/about-us>.

¹⁵ “Lack of NI Truth Process ‘encourages Tribal Myth-Making.’” The Irish Times. November 3, 2013, Online edition, sec. Politics. <http://www.irishtimes.com/news/politics/lack-of-ni-truth-process-encourages-tribal-myth-making-1.1582278>.

¹⁶ “Truth and Reconciliation from Belfast to Cape Town.” BBC News, March 19, 2012, Online edition, sec. Northern Ireland Politics. <http://www.bbc.com/news/uk-northern-ireland-17433788>.

¹⁷ “Lack of NI Truth Process ‘encourages Tribal Myth-Making.’” The Irish Times. November 3, 2013, Online edition, sec. Politics. <http://www.irishtimes.com/news/politics/lack-of-ni-truth-process-encourages-tribal-myth-making-1.1582278>.

¹⁸ Ibid.

practices that were developed throughout the experience.¹⁹ The shortcomings of the Northern Irish process might therefore point to the necessity of providing for truth telling mechanisms as a part of the negotiations process preceding discussions of independence for a post-conflict area.

2. Preparation of a Successor State

Once the government has found a clear separatist movement that it can negotiate with and both sides have committed to nonviolence, another necessary political condition for a secession referendum to occur is the existence of a body to whom the original state can hand over control if voters vote in favor of separation. In Sudan, the CPA that ended the civil war in 2005 allowed the south to enjoy increased autonomy by creating the semi-autonomous Government of Southern Sudan (GoSS). The GoSS maintained control over the Sudan People's Liberation Army, "established its own ministries and representation abroad," "issued travel documents," and "inaugurated development projects."²⁰ Thus, by the time the referendum was held in January 2011, there was already an existing government ready to take over. Other aspiring states have also tried to meet this criterion through devolution (regional governments in Northern Ireland, Catalonia, and Scotland all enjoy a degree of autonomy) or by forming "governments in exile" with whom the present state can negotiate (as is the case in the Cabindan enclave of Angola).

3. International Influences

Once the problem of violence has been addressed to the fullest extent possible and both sides have agreed that holding a referendum is the best way to solve the secessionist/unionist dispute, there are additional political conditions that must be met. Ideally, the international community should get involved and demonstrate their support for the referendum process. In the case of South Sudan, there was initially concern that the African Union (AU) would not accept the referendum results out of fear that it would embolden other secessionist movements across the continent. Had the AU refused to recognize South Sudan, the move might perpetuate the north/south conflict. Luckily, this fear was unfounded and the support of both the AU and other key members of the international community, such as the UN and United States, put the referendum under the international spotlight and, it is widely believed, contributed to the peacefulness of the voting process.²¹

4. Additional political issues

Other concerns that must be addressed that have political elements will be discussed in other sections of this paper. Territorial boundaries, for example, must be agreed upon and the electorate defined (see *I. Mandate to Conduct the Referendum* and *V. Definition of the Electorate*), a process that will undoubtedly involve political considerations. The parties must then establish a timeline for the election, being sure to allow adequate time for: 1) voter registration and the repatriation of the displaced or setting up mechanisms to allow for the special registration of internally displaced people and/or absentee voting (see *V. Definition of the Electorate*), 2) education about the referendum and its consequences (see *IV. Referendum Management Body*), 3) encouraging accessibility for women, the disabled, displaced persons, and people who live farther from polling stations, and 4) other logistical concerns. The key to a successful referendum is to ensure that all of those logistical decisions involve or at least receive the tacit support of both sides of

¹⁹ "Truth and Reconciliation from Belfast to Cape Town." BBC News, March 19, 2012, Online edition, sec. Northern Ireland Politics. <http://www.bbc.com/news/uk-northern-ireland-17433788>.

²⁰ Temin, Jon, and Lawrence Woocher. "Learning from Sudan's 2011 Referendum." Special Report. Washington, DC: US Institute of Peace, March 2012. http://www.operationspaix.net/DATA/DOCUMENT/6963~v~Learning_from_Sudan_s_2011_Referendum.pdf, p.3.

²¹ Ibid.

the referendum question so that defections are limited and no side perceives taking up arms as a preferable alternative to peaceful proceedings.

B. Security conditions necessary for the referendum to occur

Pre-requisite political conditions, as seen above, are driven in many cases by security conditions within the region seeking independence. The secession referendum cannot occur without the present government's support, and a secessionist movement that does not believe the referendum will be free and fair might choose not to support the vote and attempt to win independence through more violent means (for instance, by returning to a state of civil war). The support of the international community can also prove critical, especially where, as in South Sudan, a successful secession movement in one state could encourage similar nationalist aspirations in surrounding areas.

However, even after the pre-requisite political conditions have been met and the violence that once prevented the discussions from occurring is resolved (or at least lowered to a manageable level), other electoral security threats will most likely remain. In order to ensure that elections are free and fair once the minimal political conditions to hold a referendum are in place, a thorough electoral security assessment should be taken. Such an assessment should break up the election cycle into three phases—pre-referendum, referendum day, and post-referendum—and assess the likely victims, perpetrators, and forms of violence that are likely to occur at each stage. Some of the observed methods of violence used in elections generally include but are not limited to: murder, kidnapping, physical harm or torture, sexual assault, threat of physical harm, intimidation or psychological abuse, verbal harassment, theft, vandalism, jail or arbitrary detention, and blackmail.²² In states where such tactics are prevalent in general elections, the chances of them being used in the context of a referendum should be considered to determine whether or not they remain relevant.

Extra care should be taken in cases where certain economic, political, and social conditions are present. In general, the risk of electoral violence increases when per capita income is less than \$2,700 per year, when the Gini coefficient is 50.0 or higher, and when annual gross domestic product is below \$100 billion.²³ The risk of electoral violence goes up if the regime is semi-authoritarian (neither fully democratic nor authoritarian), if there is a youth bulge and/or high youth unemployment (since such youths are easily recruited to commit election violence), and/or if significant social cleavages exist that align with the sides of the referendum question (that is, cases where secession benefits one ethnic group and not another).²⁴ Countries with a history of violence in past elections are also more at risk for violence in subsequent elections compared to countries that do not have a history of election violence.²⁵ Although the sample size of secession referendums is not large enough to test if these conditions apply in that specific context, the fact that these trends have been observed in other elections suggests that taking these factors into consideration when assessing security risks might be worthwhile.

For each referenda, the likelihood of each of these occurrences should be examined and prepared for as much as possible. The theme of conflict might also change with the phase of the electoral cycle. Some themes most relevant to referenda include: identity conflict (when voter registration of certain groups, such

²² Fischer, Jeff. "Electoral Violence Session Three: Electoral Violence Analytical Framework." Lecture, Georgetown University, 2014.

²³ Fischer, Jeff. "Electoral Violence Session Two: Early Warning Frameworks for Electoral Violence." Lecture, Georgetown University, 2014.

²⁴ Ibid.

²⁵ Fischer, Jeff. "Electoral Violence Session Four: History of Electoral Violence." Lecture, Georgetown University, 2014.

as refugees, is prevented in order to influence outcomes), campaign conflict (when one side tries to disrupt the opposition's campaign efforts or use intimidation to discourage participation), and results conflict (when results are disputed and the disputes are taken to the streets rather than an election dispute resolution body).²⁶ All of the aforementioned issues may lead to violence and the RMB and security forces need to coordinate to be sure that they are prepared to prevent their occurrence and/or to respond to them if there are incidents. There have been very few independence referendums in recent years and most (with the notable exception of East Timor) have been peaceful. Thus, this section will elaborate upon what successful referendums have done well, assess what could have been done better, and introduce potential risks that, while they have not necessarily been observed in the context of secession referenda, have been observed in other electoral contexts with similar actors and therefore might be worth taking into account when planning security arrangements.

1. Pre-Referendum Concerns

When considering a secession referendum, perhaps the most dangerous phase of the electoral cycle is the pre-referendum phase. Research has shown that “governments are the most common perpetrators of electoral violence”²⁷ before and on the day of voting, so the emphasis in this section of the security assessment should be on ensuring that the government in power (which stands to lose a great deal if the separatists succeed) does not have the opportunity to rig the elections or coerce and intimidate voters. When violence is perpetrated by the current government, it is generally an indication that 1) the government expects to lose and 2) after considering the “menu of manipulation,” it determined that intimidation and coercion would be more effective and/or plausible than committing fraud.²⁸

There is less likely to be a large international presence during the pre-referendum phase of the election cycle, which means that it is the best opportunity for the ruling regime to use violent tactics.²⁹ One way to counter this would be to send in international observers and journalists from the very beginning of the referendum organization process and to encourage prominent international actors to make statements that put pressure on both sides of the referendum to play by the rules. International publicity might make it harder for the regime to use widespread intimidation against those who oppose its continued rule while simultaneously making it more difficult to commit fraud. Of course, such scrutiny should continue through election day, but introducing international actors earlier on might help to mitigate violence in the weeks leading up to the referendum. Regional IGOs such as the AU or the Organization of American States could be useful in this regard. NGOs like the International Foundation for Electoral Systems (IFES), who have staff members who specifically deal with election violence, could also work with local civil society organizations (CSOs) on projects such as conflict mapping to help mobilize security forces in the most effective way possible.

Possible failures that can be made in conflict prevention can be grouped into two categories: warning failures (policymakers fail to anticipate the violence), and response failures (“warning was adequate but preventive action either inadequate or ineffective”).³⁰ While the security forces, both domestic and

²⁶ Fischer, Jeff. “Electoral Violence Session One: Introduction to Electoral Violence.” Lecture, Georgetown University, 2014.

²⁷ Fischer, Jeff. “Electoral Violence Session Four: History of Electoral Violence.” Lecture, Georgetown University, 2014.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Temin, Jon, and Lawrence Woocher. “Learning from Sudan’s 2011 Referendum.” Special Report. Washington, DC: US Institute of Peace, March 2012. http://www.operationspaix.net/DATA/DOCUMENT/6963~v~Learning_from_Sudan_s_2011_Referendum.pdf, p.4.

international, should coordinate to prevent response failures, the prevention of warning failures can be assisted by NGOs specializing in conflict mapping. Ushahidi (meaning “testimony” in Swahili) is an excellent example of a crowdsourcing tool that has helped with conflict mapping and information sharing during elections all over the world. The tool can be used to pinpoint areas where violence is occurring in order to bolster security in those locations. Early warning and other preventative measures taken prior to the referendum in South Sudan resulted in a shockingly peaceful process despite common predictions that the most likely outcome of an independence referendum would be renewed civil war.³¹ Predictions of violence included likely locations (Abyei was expected to be a “flashpoint,” as was the north-south border), perpetrators (“south-south” vs. “north-south” violence), and victims (civilians, “especially southerners living in the north”).³² Some skeptics claim that threats of violence were exaggerated and the “preventative” measures actually made little difference because they prevented violence that was never going to happen anyway, but from an electoral security standpoint, it is better to be over-prepared than under-prepared.

The surprising lack of violence surrounding the secession referendum in South Sudan has widely been attributed to international involvement. The AU was particularly influential throughout referendum preparations, for example creating the AU High-Level

Implementation Panel for Sudan “to investigate and recommend policies to achieve peace, reconciliation and justice in Darfur” and later “to oversee the implementation of the recommendations on Darfur, promote democratization, assist in the implementation of Sudan’s CPA, and facilitate post-referendum negotiations between northern and southern Sudan.”³³ Outside of Africa, there was a “rare degree of international coordination” by the international community, made possible by the fact that the joint message being sent to the Sudanese was agreed upon and clear (in short, “hold the referendum and respect the result”)³⁴ and that the “urgency of the situation would not last indefinitely” because there was a specific, bounded period during which international involvement was necessary.³⁵ Furthermore, several important international leaders—from President Obama to UN Secretary-General Ban Ki-moon—spoke out about “their expectations for a timely and credible referendum,” increasing the pressure on both the NCP and SPLM to follow through and commit to a peaceful process.³⁶

The government should ensure that the rules of the game are clear and advertised in the pre-referendum phase so that there will be less room to challenge the results without cause after the fact. Doing so could potentially mitigate post-election violence. For example, a minimum voter turnout needed to make the results valid should be agreed upon in advance, as should the conditions under which a recount or audit would occur. Vote counting procedures and other RMB practices should be as transparent as they can be without compromising the secrecy of the ballot in order to reassure all interested parties of the referendum’s fairness.

³¹ Ibid.

³² Ibid.

³³ “African Union High-Level Implementation Panel for Sudan.” World Peace Foundation, The Fletcher School, Tufts University. Accessed November 30, 2015. <http://fletcher.tufts.edu/World-Peace-Foundation/Program/Research/Past-Projects/African-Union-High-Level-Implementation-Panel-for-Sudan>.

³⁴ Temin, Jon, and Lawrence Woocher. “Learning from Sudan’s 2011 Referendum.” Special Report. Washington, DC: US Institute of Peace, March 2012. http://www.operationspaix.net/DATA/DOCUMENT/6963~v~Learning_from_Sudan_s_2011_Referendum.pdf.

³⁵ Ibid.

³⁶ Ibid, p.12.

Intimidation can also potentially occur at this stage of the electoral cycle. Ideally, after reaching a political agreement between the independence movement and the state authorities that will allow the referendum to occur, both sets of actors will respect the proceedings and refrain from engaging in violent disruptions. However, the East Timorese case vividly demonstrated that this is not always the case. The stakes are incredibly high in a secession referendum; the winner will gain (or maintain) not only *political* control of a substantial amount of territory, but also access to state resources. In cases where corruption is rampant, access to state resources (for example, oil wealth in South Sudan) can create opportunities for corruption, political patronage, and personal enrichment. Self-interest can be a great motivator in such cases and may raise the stakes of winning the election, thus driving violence. The desires of anti-independence forces to remain a part of the country can also encourage the use of intimidation tactics. When East Timor tried to break away from Indonesia, the government backed anti-independence militias in an effort to maintain control over the territory. During the Popular Consultation of 1999, these militias “use[d] terror to discourage voters”³⁷ during the pre-election phase of the electoral cycle.

Terrorists have also been known to use intimidation during the pre-election phase of the election cycle in non-secession referenda contexts, and although such groups have not yet interfered in secession referenda, if the country where the referendum is taking place has a history of terrorists acting as election spoilers, it might be worthwhile to take the possibility of their interference into consideration. In many cases, terrorist organizations do not see the referendum (and, possibly, democracy itself) as legitimate and therefore attempt to undermine the process itself rather than to influence outcomes. For example, the Taliban in Afghanistan are infamous for sending “night letters” to intimidate people into not voting in general elections. These intimidation tactics could potentially be replicated if a secession referendum were to occur in an area where terrorism is prevalent. For example, if Iraq, Syria, and Turkey decide to hold a referendum on the creation of an independent Kurdistan at some point in the future, Islamic State of Iraq and Syria (ISIS) terrorists might choose to interfere out of animosity towards the democratic process or in order to prevent the Kurds (who have been their enemies throughout the conflict) from forming their own state. ISIS has a history of interfering with general elections, including the alleged killing of 97 people by bombing a Kurdish election rally in Turkey this past November,³⁸ so the possibility that they would use similar tactics to intimidate Kurds seeking independence in a secession referendum is not implausible.

In many cases, looking at conflict patterns in past elections in the area holding a secession referendum as well as taking into account the general security concerns nationally and, possibly, regionally within the state might help policymakers to take proper precautions against risks that might be country specific and, thus, have not yet been observed in other secession referenda. This applies not only to the pre-referendum phase but to all stages of the referendum cycle.

If referendum day violence is anticipated based on the pre-referendum assessment, it might be necessary to consider the option of postponement. Some key questions to consider when deciding whether or not to proceed include: are the threats credible and significant enough to warrant postponement and, if the violence is concentrated in specific areas and there are insufficient security personnel, should voting be staggered to allow additional security forces to be mobilized in those areas? Such judgment calls will ultimately need to

³⁷ “East Timor Profile - Overview.” BBC News, May 21, 2013. <http://www.bbc.com/news/world-asia-pacific-14952878>.

³⁸ Kenyon, Peter. “Turkey Lays Blame For Bombings On ISIS, As Elections Approach _ NPR.pdf.” National Public Radio, October 12, 2015, Online edition, sec. Middle East. <http://www.npr.org/2015/10/12/448059213/turkey-lays-blame-for-bombings-on-isis-as-elections-approach>.

be made by the RMB, although the aforementioned crowdsourcing tools and international actors may provide information to assist in the decision making process.

2. Referendum Day Concerns

In the past secession referendums, it seems that election day itself tends to be relatively peaceful. Though election security is usually provided by the state (often using local police) and this is acceptable in contexts where there is a good relationship between the citizens and the police (as in, for example, Scotland), if the security forces are politicized and have a history of violent behavior, they might have an impact on the independence referendum's outcome if their presence is used to intimidate voters. In these situations, security should be internationalized in order to reassure both sides of the forces' impartiality and to prevent the government in particular from using its position to influence the referendum's outcome.

There are limited options, however, for the provision of international security assistance. Since, as the South Sudanese case demonstrates, the engagement of a *united* international community can be extremely influential in averting potential violence, it might be best if referendum security forces are heavily supported by the UN.

In South Sudan, the Southern Sudan Referendum Commission (SSRC) was “responsible for planning, organizing and conducting the referendum in Southern Sudan.”³⁹ However, although the Sudanese retained “ownership”⁴⁰ of the process, they were greatly assisted by the UN Integrated Referendum and Electoral Division (UNIRED). This group was part of the larger UN Mission in Sudan (UNMIS), which was created through three UN Security Council Resolutions that gave it the mandate to “provide guidance and technical assistance to the parties to the Comprehensive Peace Agreement (CPA)” and to “support preparations for elections and the referenda, including an advisory task related to security arrangements.”⁴¹ UNIRED itself provided support including “Security training for Southern Sudan and Sudan Police Forces officers,”⁴² but it is likely that the heavy presence of international actors throughout the process provided an additional incentive for both sides of the referendum question to remain peaceful.

At a minimum, police should be properly trained to understand their role in providing security for the referendum using a curriculum that addresses “human rights issues in relation to the police's role,” “security objectives and strategy,” “standards of professional, neutral and non-intimidating conduct to be upheld by police forces,” “contact mechanisms and liaisons between the electoral commission/EMB and police/security forces,” “details of specific offenses against electoral laws,” “details of other laws, such as those governing public gatherings that will impact police planning,” and “effective civic education and citizen engagement strategies and tactics.”⁴³ Additional issues to address include the possibilities of “reactionary policing,” “police inaction against perpetrators,” “inadequate investigative capacity,” and the “availability of small arms.”⁴⁴ Other potential threats to referendum day security that are not secession specific but are worth preparing for include “building fire, power failure, after-hours theft, malfunctioning

³⁹ “The UN Integrated Referendum and Electoral Division (UNIRED): Frequently Asked Questions.” United Nations Mission in Sudan, October 11, 2010. <https://unmis.unmissions.org/Portals/UNMIS/Referendum/UNIRED.pdf>, p.1.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Ibid.

⁴³ “Best Practices in Electoral Security: A Guide for Democracy, Human Rights and Governance Programming.” Washington, DC: USAID and Creative Associates, January 2013. https://www.usaid.gov/sites/default/files/documents/2496/Electoral_Security_Best_Practices_USAID.pdf, p.20.

⁴⁴ Fischer, Jeff. “Electoral Violence Session Three: Electoral Violence Analytical Framework.” Lecture, Georgetown University, 2014.

sprinkler system, misprinted ballots, paper ballots counted twice, bomb scares or terrorist acts, failure of election boards to report for duty, [and] disruptions by voters or poll agents.”⁴⁵ The bulk of election day support, however, should focus on making sure that security forces are properly trained and that there is a large international presence to discourage misconduct by either side of the question.

3. Post-Referendum Concerns

Research has shown that post-election violence in general tends to be more severe and is likely to be led by the losers who believe that the process was not free and fair.⁴⁶ However, the most prominent case of post-secession-referendum violence that has been observed was not over perceptions of fairness but rather over anger at the results. When the efforts of anti-independence militias in East Timor failed to intimidate enough citizens in the pre-referendum period and the overwhelming majority of East Timorese voted in favor of independence, violence in the area intensified. In the weeks following the election, “the militia went on the rampage, murdering hundreds and reducing towns to ruins,”⁴⁷ ultimately making international intervention necessary.⁴⁸ Therefore, when conducting an electoral security assessment, the role of the losing side as a potential perpetrator should be seriously considered.

The international community’s role in the pre-referendum phase can be vitally important to preventing post-referendum violence. In the case of South Sudan, a report by the United States Institute of Peace claims that every time a high-profile international leader “affirmed their expectations for a timely and credible referendum,” “the NCP and SPLM were repeatedly compelled to publicly commit to the referendum and its result. With each public commitment, it became increasingly difficult to back away from the pledge.”⁴⁹ Positive peer pressure, then, can play a crucial role in forcing the losing side to accept the results of the referendum and decreasing the chances that their supporters will act out violently.

C. Section Summary

The minimum political and security conditions necessary to conduct a peaceful secession referendum are closely related. In areas of conflict, political negotiations between the ruling government and the secessionist movement are a necessary first step to the discussion of creating a path to independence. Once the sides have reached an agreement, devolution (or the existence of a government-in-exile prepared to govern the post-referendum successor state) helps to ensure that if the citizens vote for a separation, the transition will proceed smoothly. Next, an assessment of security risks should be taken, accounting for differences in potential risks in the pre-referendum, referendum day, and post-referendum phases of the electoral cycle. Ultimately, while international involvement, recognition, and assistance are often critical to preventing conflict, the commitment of leaders on both sides of the referendum question will determine whether the referendum proceeds smoothly or leads to violence.

⁴⁵ “Chapter 3: Physical Security.” In Election Management Guidelines. Silver Spring, Maryland: United States Election Assistance Commission, n.d. http://www.eac.gov/assets/1/workflow_staging/Page/260.PDF.

⁴⁶ Fischer, Jeff. “Electoral Violence Session Four: History of Electoral Violence.” Lecture, Georgetown University, 2014.

⁴⁷ “East Timor Profile - Overview.” BBC News, May 21, 2013. <http://www.bbc.com/news/world-asia-pacific-14952878>.

⁴⁸ “East Timor Profile - Timeline.” BBC News, February 17, 2015. <http://www.bbc.com/news/world-asia-pacific-14952883>.

⁴⁹ Temin, Jon, and Lawrence Woocher. “Learning from Sudan’s 2011 Referendum.” Special Report. Washington, DC: US Institute of Peace, March 2012. http://www.operationspaix.net/DATA/DOCUMENT/6963~v~Learning_from_Sudan_s_2011_Referendum.pdf, p.12.

III. FRAMING THE REFERENDUM QUESTION

Framing the referendum question is a crucial part in the secession process, simply because different ways to ask a same question can lead to different responses. The exact phrasing of the question can be politically manipulated to favor one outcome over another. The question must be presented clearly and neutrally and the procedure by which the question is generated also should be methodologically sound.

The traditional procedure through which the question is vetted usually relies on three forces: government, parties, and key stakeholders in civil society. Due to immense complexity and diversity of interested CSOs in this case, we exclude them and only allow three institutional parts to propose their versions of questions: regional government, the main party in the local assembly which supports independence and the main party which opposes independence. Each of these three parts can propose only one version of question they perceived as the best.

The RMB will then test the three versions of the question by utilizing focus groups to select the most neutral as the final version of question. For example, in the Scottish Independence Referendum 2014, the original version of question proposed by the Scottish government was “Do you agree that Scottish should be an independent country?” Then the Electoral Commission tested this version along with three alternate versions and found that the preface “Do you agree” in the original version was leading to a positive response—yes. Finally the question was changed to “Should Scotland be an independent country?” which was found by the Electoral Commission as the most neutral one.⁵⁰

For RMBs, there are three methods to gather the evidence assessing the question:⁵¹ Carrying out research with voters from different backgrounds and across different areas, through focus groups and one to one interviews; asking for advice from experts on accessibility and plain language; and talking to potential campaign groups, other interested groups and individuals, including political parties who may want to campaign at the referendum.

Once the RMB confirmed the version of question, a political agreement regarding the question should be signed between separatist government and central government, or among major parties in local assembly, so as to pave the legal way for referendum.

⁵⁰ Murray, Lorraine, Steven Treanor, Vanessa Chan, and Chris Martin. “Referendum on Scottish Independence: Question Testing.” Ipsos MORI Scotland, January 24, 2013. http://www.electoralcommission.org.uk/__data/assets/pdf_file/0005/153689/Ipsos-MORI-Scotland-question-testing-report-24-January-2013.pdf.

⁵¹ “EU Referendum Question Assessment.” The Electoral Commission, 2015. <http://www.electoralcommission.org.uk/find-information-by-subject/elections-and-referendums/upcoming-elections-and-referendums/eu-referendum/eu-referendum-question-assessment>.

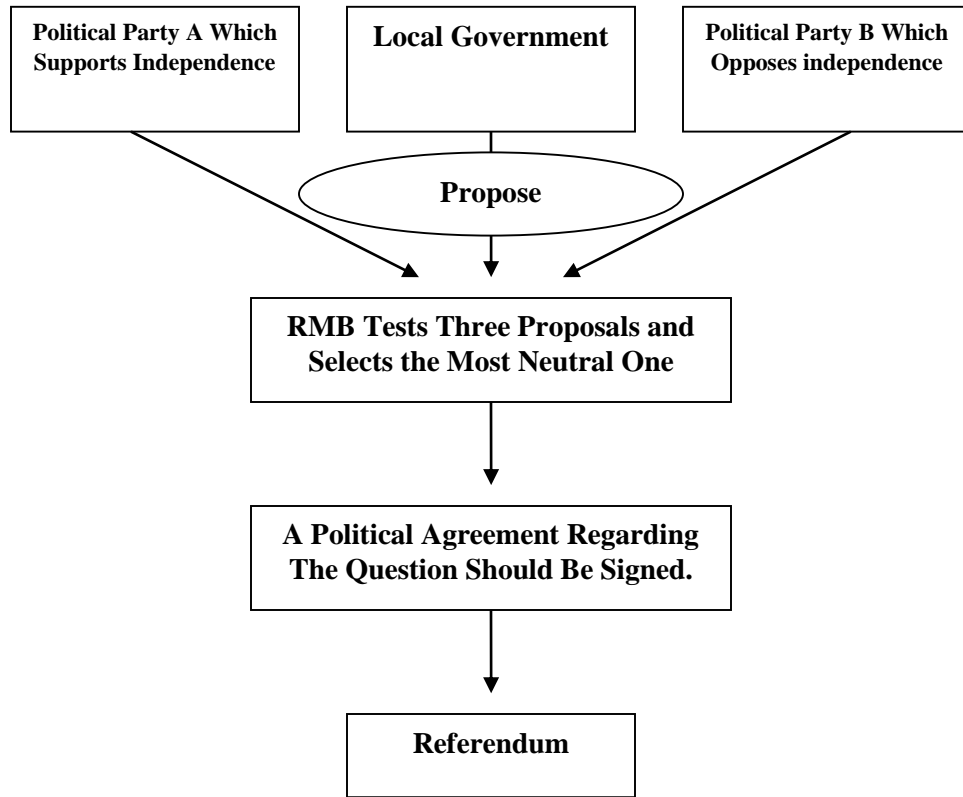


Figure 1: The Procedure of Framing the Referendum

As for the wording of referendum question, there are two principles generally accepted internationally. First, residents will either for or against the independent proposal, should be reflected in the question. Second, wording should be clear and straightforward. Crimea Status Referendum 2014 was a classic example which violates these two principles. The below were two choices on the ballot:

Choice 1: Do you support the reunification of Crimea with Russia with all the rights of the federal subject of the Russian Federation?

Choice 2: Do you support the restoration of the Constitution of the Republic of Crimea in 1992 and the status of the Crimea as part of Ukraine?

Actually, two choices on the ballot were both leading to final separation from Ukraine. The nuance was that the former was more explicit than the latter one. There was no option for people who advocated Crimea being a part of Ukraine as it had been for decades. For the second choice, it was unclear whether the 1992 constitution was to be adopted in its original form or in its amended form. The original 1992 constitution was adopted together with a declaration of independence, but parliament then amended the constitution one day later to affirm that Crimea was a part of Ukraine. This unclear information for second choice inclined to push voters away from this choice.

So, in selecting referendum question, RMB should also take context into account. If the question phrased as only asking about attitude towards independence itself, necessary education about details and possible results of independence should be brought to citizens. For instance, in the Scottish Independence

Referendum 2014, issues like whether Scotland would get North Sea oil resources, would it be a member of European Union, and would it adopt new currency were all well-presented and debated during the whole referendum. So the voters understood the economic and political ramifications of independence as well.

In order to represent referendum questions vividly, symbols will be employed on the ballot, such as thumbs up or thumbs down. For instance, in South Sudanese Independence Referendum 2011, simple symbols which represent specific meanings were printed on the ballot in terms of a large proportion of illiterate population. A hand gesture which means “Stop” (or “Rejection”) represented being in favor of separation. Meanwhile, two hands shaking together represented advocacy of a united Sudan.

Lastly, the language issue should be considered if this is a multi-language region. Generally, languages used by local residents should be included on the ballot. For example, in Crimea Status Referendum 2014, three major local languages (Ukrainian, Russian, and Crimean Tatar) were used to present questions.

IV. REFERENDUM MANAGEMENT BODY

A. Purpose

For any given referendum, a RMB is responsible for ensuring that referendum presents a genuine choice for voters and that the outcome of the referenda reflects that freely expressed will. A subset of EMBs,⁵² RMBs are temporary, largely administrative bodies legally instituted by political agreements (often a peace agreement) with a mandate to implement referenda, whether for independence/succession or for other means. When best implemented, RMBs not only ensure referenda occur but also that they are transparent.

RMBs are always responsible for a few common duties essential to any referendum, with some RMBs also responsible for a wide-range of other duties. At its most basic, the RMB is responsible for making the referendum occur including determining who is eligible to vote and conducting the polling itself as well as counting and tabulating the votes so the results can be certified. Additional duties may include the following: further developing the legal framework for the referendum, particularly when operational gaps exist in the legal basis for the vote; registering voters; conducting civic and voter education efforts; managing financing for campaigns that support the various possible choices voters face; monitoring media; and resolving electoral disputes. Most if not all of these additional duties should occur to best prepare the referendum; however, the RMB is only one possible responsible party that can shoulder the tasks.

B. Legal basis for legitimacy and authority

It is integral for any mandate for the conduct of a referendum to define, at least at the most basic level, the party responsible for the conduct of the referendum and potentially some specific responsibilities of the RMB. Commonly, RMBs are defined at this basic level through peace agreements or treaties following civil war or other intra-country conflicts. For example, the peace agreement Indonesia and the independence movement in East Timor established that the UN Mission in East Timor (UNAMET) would have an electoral commission which would run the referendum.⁵³

In some situations, the legal basis for a RMB may stem from a national or regional law or constitution. As an example, the Iraqi Kurdistan Independent High Electoral and Referendum Commission (IHERC) was

⁵² See Wall et al., *Electoral Management Design* (2006) for further information on general election management bodies.

⁵³ “Agreement between the Republic of Indonesia and the Portuguese Republic on the Question of East Timor,” May 5, 1999. <http://peacemaker.un.org/timorleaste-agreement99>.

established through the passing of the Independent High Electoral And Referendum Commission Law by the Kurdistan Parliament.⁵⁴ Without the support of other actors and particularly without agreement of the state from which independence is being declared, situations that are common when national or regional laws are passed, there is a high chance the international community won't sanction the event or recognize the resulting state.

As foreshadowed by the fact that many RMBs are defined at only a basic level in the political agreement mandating the referendum, there is often a need to further define the responsibilities of an RMB. For example, the Bougainville Peace Agreement, the peace treaty ending civil war in Bougainville, Papua New Guinea which outlines an independence referendum to occur before 2020, outlines only that "The National Electoral Commission and the authority responsible for conducting elections in Bougainville will be jointly responsible for conducting the referendum."⁵⁵ In these cases, a legislative body and/or the RMB itself will further define the electoral process and administration of the RMB.

Conversely, an already-constituted EMB will sometimes be given legal authority for the conduct of a referendum. This again separates the mandate for the RMB from the specific enumeration of roles and responsibilities. The EMBs are instructed by the new legal guidance to run the referendum in accordance with their legal duties and responsibilities outlined elsewhere, occasionally with stipulations and/or additional responsibilities. Examples of the reuse of EMBs can be seen in the 2014 Scottish, 2014 Crimean and anticipated Kurdish referenda.

C. Establishment

As a best practice, the establishment of a RMB should occur well in advance of a referendum, preferably years before. This provides sufficient time for the RMB to be constituted as a neutral body and ensure it capable of carrying out and follows through with all its legally mandated duties. Without an appropriate lead-up, a RMB simply won't have the time to complete all the tasks necessary to make the referendum a genuine choice. As a result, it would be unlikely to receive widespread international recognition, such as occurred with the Crimea elections that was organized in just three weeks and which did not protect the voice of opposition to independence.⁵⁶

1. Models for referendum management bodies

Just as with the larger field of EMBs, RMBs can be in theory be either structurally independent, i.e. "institutionally independent and autonomous from the executive branch of government, and which has and manages its own budget";⁵⁷ governmental, i.e. "organized and managed by the executive branch through a ministry... and/or through local authorities";⁵⁸ or mixed, i.e. a combination of both. In practice, RMBs are nearly always structurally independent, although control of the budget may have some government oversight. Cases where a pre-established EMB conducts the referendum might lead to cases where an RMB

⁵⁴ "Independent High Electoral And Referendum Commission Law." KurdStrat, July 6, 2014. http://kurdstrat.com/2014/07/06/electoral_and_referendum_commission_law/.

⁵⁵ "Bougainville Peace Agreement," August 30, 2001. http://www.usip.org/sites/default/files/file/resources/collections/peace_agreements/bougain_20010830.pdf.

⁵⁶ "The Crimean Referendum - a Comparison with the Scottish Referendum." Foreign and Commonwealth Office, March 21, 2014. [https://en.wikipedia.org/wiki/File:The_Crimean_referendum_-_a_comparison_with_the_Scottish_referendum_\(13306114335\).jpg](https://en.wikipedia.org/wiki/File:The_Crimean_referendum_-_a_comparison_with_the_Scottish_referendum_(13306114335).jpg).

⁵⁷ Wall, Alan, Andrew Ellis, Ayman Ayoub, Carl W. Dundas, Joram Rukambe, and Sara Staino, eds. Electoral Management Design: The International IDEA Handbook. Handbook Series. Stockholm: International IDEA, 2006.

⁵⁸ Ibid.

is structurally under the government. Regardless of the structural model, a RMB must be functionally independent in order to protect the integrity of the referendum process.

2. Composition

A RMB consists of its governing body, commonly called an “election commission,” and its secretariat which are jointly responsible for the implementation of a referendum.

i. Governing body

Often a political body, the governing body of a RMB, is responsible for the conduct of a referendum. The governing body of a RMB generally is made of a small number of “commissioners,” occasionally as low as one, such as in the case of the 2014 Scottish Independence Referendum⁵⁹ and potentially much higher as in the Catalonia Central Electoral Commission with its 15 members.⁶⁰ It is generally best to keep this number smaller to prevent indecision but to have more than one so the body is, at least to some extent, more representative. Additionally, the number of commissioners is generally odd so that no ties are possible during decision-making. The ultimate size of the RMB will also heavily depend on the size of the constituency, the size of the referendum to occur, and the resources available.

These commissioners are given their authority through an appointment process. The decision of who to appoint is often devolved to a legislative body of some form, sometimes with stipulations for ensuring underrepresented groups like, women and ethnic and religious minorities, are represented. For example Scottish Independence Referendum Act 2013 declared that “The Scottish Ministers must, in writing, appoint a Chief Counting Officer for the referendum.”⁶¹ Occasionally, an executive body may be in charge of the appointment process, such as the Sudanese president appointing the nine members of the SSRC. However, care must be taken to ensure bias is not introduced by such a selection – a higher risk with the executive responsible – and oversight or approval by another body is suggested. With the SSRC, the first vice-president as well as the National Legislature had to consent to the appointments. Governing body members are commonly drawn from political parties, academia and positions of authority.

Ideally, commissioners will be required to fulfill certain requirements. These generally fall into the following categories:

- Citizen/resident of the region holding the referendum;
- Attaining a certain level of education;
- Being literate;
- Being of at least a certain age;
- Meeting certain values or having a certain reputation;
- No criminal history; and,
- Certain relationship with political parties, whether in a party or no relation to a party.

⁵⁹ Scottish Independence Referendum Act 2013 (asp 14), 2013. http://www.legislation.gov.uk/asp/2013/14/pdfs/asp_20130014_en.pdf.

⁶⁰ “Election for the Parliament of Catalonia 2015: Composition of Election Commissions.” Government of Catalonia. Accessed December 4, 2015. http://www.parlament2015.cat/web/sites/parlament2015/content/Documentacio/02_Administracio_electoral/EPC-2015_Composicio_JE_1_en_20150704.pdf.

⁶¹ Scottish Independence Referendum Act 2013 (asp 14), 2013. http://www.legislation.gov.uk/asp/2013/14/pdfs/asp_20130014_en.pdf.

Implementation of specific requirements under each category will depend on the specific circumstances of each referendum and the country and context it is being implemented within. For example, members the Iraqi Kurdish IHERC must meet the following requirements: “a) Being citizen and permanent resident of Kurdistan-Iraq; b) Having at least a basic university degree; c) Being not less than 30 years old; d) Being experienced, well known for his/her trustworthiness, competence and impartiality; e) Having a honorable conduct and behavior and not being convicted in any honor related offences; f) Not being involved in any crime committed by the Ba’ath regime in Iraq to oppress the people of Kurdistan and he people of Iraq in general and not have been a Ba’athist according to Law 18 year 2003; and g) Not being a member of any political party during his/her membership of the Council.”⁶² However, in other situations, these requirements may not be appropriate – whether too restrictive or too open.

Additionally, not all of the requirement categories may be used. A potential case would be not using the category “Citizen/resident of the region holding the referendum” in cases where international election experts may fill at least some of the governing body’s seats. In the 1999 independence referendum in East Timor, UNAMET created an independent UN Electoral Commission which consisted of “three prominent international jurists and electoral officials.”⁶³ This might occur when neutrality of parties within the region are questioned or when international experts might give credence to the process. However, it is generally important that the governing body be composed at least partially by citizens of the region for which the referendum is held, to ensure local ownership.

Another important consideration, one not always taken into account, is how commissioners on the governing body might be removed. Reasons for the loss of a position on the governing body may include:

- End of the governing body’s mandate;
- Resignation;
- Death or other reason for being unable to perform their duties;
- Conviction of a crime;
- Impeachment by parliamentary or other oversight body; and,
- Refusal to fulfill duties.

As with the requirements for membership, the potential reasons for loss of membership will vary depending on context.

ii. Secretariat

To complement the often political, decision-making governing body, a secretariat is formed which performs the administrative duties required to conduct a referendum. Secretariat staff handle logistical and managerial issues and tasks such as the procurement of materials and equipment, conduct of trainings, provision of security, handling of public relations and management of general administrative tasks supporting the RMB as a whole like finances and human resources. Additionally, depending on the duties of the RMB, the secretariat will likely have staff handling technical electoral issues such as voter registration and voter education.

Given the less political or non-political nature of their roles, secretariat staff do not necessarily need to undergo as an extensive appointment process. Their hire is primarily decided on their ability to handle the

⁶² “Independent High Electoral And Referendum Commission Law.” KurdStrat, July 6, 2014. http://kurdstrat.com/2014/07/06/electoral_and_referendum_commisision_law/.

⁶³ “Observing the 1999 Public Consultation Process in East Timor - Final Report.” The Carter Center, June 2000. <https://www.cartercenter.org/documents/275.pdf>.

roles of their positions. The secretariat may be drawn from other civil service bodies or openly hired. Additionally, some secretariat members may be international experts, more commonly for roles of a technical nature. The needs of and personnel resources available to the RMB dictate the structure of the secretariat. See Annex 2 for an example organizational chart.

3. Local electoral commissions

In addition to an RMB overseeing the referendum for the entire region participating, there may also be authority and/or responsibilities devolved to more local electoral commissions. They may be structured similarly to the region-wide RMB or they may consist solely of a secretariat. The implementation of the 2014 Catalonia “participation process” asking citizens about their opinion on independence shows how widely responsibility can be devolved as it was implemented by the Catalonian Central Electoral Commission in conjunction with four provincial electoral commissions and thirty-one area electoral commissions.⁶⁴ As another example, the SSRC, based in Khartoum, had a subsidiary named the Southern Sudan Referendum Bureau which was based in Juba, as well as a High Committee in each southern state.⁶⁵ In that situation, the RMB was based in the capital of the country independence ultimately was declared from. The local commission body allowed for representation of the RMB in the region undergoing the referendum.

D. Standard operating procedures, rules and regulations for implementation of referendum management body duties

1. Regulatory framework for standard operating procedures

While a peace or political agreement establishes the referendum and the RMB, the actual procedures to be implemented by the RMB are more commonly delineated in laws passed by the state and/or administrative rules and regulations outlined by the RMB. As mentioned before, this is sometimes a specific framework laid out for the RMB, like will occur for the expected Bougainville independence referendum, or could be a preexisting framework for EMBs filling the RMB role, just as the details for the RMB overseeing the Scottish Independence Referendum, the Electoral Management Board for Scotland was created by the Local Electoral Administration (Scotland) Act 2011.⁶⁶ To ensure transparency for the referendum, all rules and regulations should be publically available.

2. Preparation for referendum

The first step the RMB must take to prepare for a referendum is to determine the amount of time remaining before the referendum and create a timeline for tasks to be implemented during that period. Political agreements mandating referenda typically include language on when the referenda should occur, whether specifically or loosely defined. This provides the ultimate deadline the RMB must meet – the date the referendum must be conducted on. The RMB must then assess what political actions must be taken before the referendum. For example, laws further defining the electoral process may need to be passed or certain staff approved. This all takes time that must be accounted for in the calendar of events. The RMB can use this calendar to provide impetus to political actors, who often have an incentive to delay decisions until they are urgent. Technical tasks also play an important role. Working backwards from the election, the

⁶⁴ “Election Administration and Organisation.” Government of Catalonia. Accessed December 4, 2015. <http://www.parlament2015.cat/en/mes-informacio-faqs/administracio-i-organitzacio-electoral/index.html>.

⁶⁵ “Southern Sudan Referendum Commission: Frequently Asked Questions.” United Nations Mission in Sudan, October 26, 2010. <https://unmis.unmissions.org/Portals/UNMIS/Referendum/SSRC%20FAQ.pdf>.

⁶⁶ Scottish Independence Referendum Act 2013 (asp 14), 2013. http://www.legislation.gov.uk/asp/2013/14/pdfs/asp_20130014_en.pdf.

RMB can determine when tasks need to be started depending on how long they take and when the deliverables of that specific task are required. Combined, the ultimate deadline, the political actions, and the technical tasks form a master calendar which should guide the RMB's strategic planning.

Using their list of necessary tasks and the timeline, the RMB can begin preparing both its staff and, if tasked, the electorate. A large number of actors support the RMB in the conduct of the election who may need training, including the secretariat, poll workers and even the members of the governing body. National and international experts can play a strong supportive role with the conduct of trainings, including assisting the RMB with implementing a training of trainer model for training poll workers. Voter education materials play a similar role for preparing the electorate and can often be developed in conjunction with staff trainings.

Once trained, staff will be responsible for getting materials and personnel in place for the referendum. For example ballots must be procured and transported to each polling location. Similar actions will occur with other materials that need to be procured.

An important role during the run-up to the referendum is to ensure the process occurs fairly. The RMB should have oversight of complaints investigation and adjudication processes. This helps deter fraud or malpractice that might influence the outcome. Importantly, RMBs should have a financial counterparts for the complaints process. Watchdogs should monitor spending by referenda stakeholders to ensure they comply with campaign finance laws. A financial review body (FRB) should be responsible for deciding on cases presented by the watchdogs.

During the preparation process, the RMB will likely be responsible for reporting on a regular basis to bodies that may oversee the RMB, such as a parliamentary body or a coalition of international actors. As an example, the Iraqi Kurdish IHERC is mandated to report "seasonally" to Parliament.⁶⁷ The RMB may also decide to publicly publish the results as a way to increase transparency in advance of the election. This may reduce potential for electoral violence due to uncertainty in the constituency although conversely, it may provide information that bolsters potential "spoilers" of the referendum. Reports would provide information on the status of the preparations potentially including progress in relation to the political and technical calendars and resources required. It would also be wise for an RMB to release a public final detailed report following the referendum in order to increase transparency.

Following the casting of ballots, an RMB is then responsible for coordinating the certification of referendum results. First, the RMB must have procedures in place for the counting of votes. Depending on the context of the referendum, these may be counted the same day at the polling locations, or transported to central locations for counting within a short period. The RMB must then aggregate the counts by tabulating the results from each polling and/or counting location, follow through on the adjudication of any complaints, and then announce the results.

E. Funding for a referendum management body

1. Potential Funding Sources

The first place to look for funding an RMB is from the government of the region in which the referendum is being conducted. The act providing the legal basis for the 2014 Scottish Independence Referendum, for example, "required the Scottish Parliament Corporate Body... to reimburse the Electoral Commission for any expenditure incurred by the Commission that was attributable to the carrying out of the Commission's

⁶⁷ "Independent High Electoral And Referendum Commission Law." KurdStrat, July 6, 2014. http://kurdstrat.com/2014/07/06/electoral_and_referendum_commission_law/.

functions.”⁶⁸ With internal funding, the costs for the referendum are shouldered by those that will vote in the referendum.

The use of internal funding is most common in situations when:

- A region unilaterally decides it will conduct a referendum, such as for Scotland or Crimea;
- The region has sufficient funds to conduct the referendum; and/or,
- When external funding sources are not available, such as when the referendum is not internationally sanctioned, and therefore internationally supported.

In that line, external funding for an RMB to conduct a referendum may be necessary when a region cannot fund its own referendum. Additionally, external funding may arrive from those wishing to support the effort, whether seeking influence or not. Examples external funders are international organizations like the UN, other countries, and even private donors.

2. Issues with Undue Influence from Funders

Receiving funds from any source can open up the possibility of the funder holding influence over the RMB and potentially swaying the outcome of the referendum in the funder’s preferred direction. This can occur regardless of whether the funding source is internal to the region or external. The potential for influence over a referendum is exaggerated when one or more funders make up an overly large portion of the funding. Perception of influence, regardless of the reality, are more likely to be inflated when the funder has a particular stake in an outcome, such as governments from which a region might declared independence from or international donor countries.

One possible way to resolve issues of influence by funders is to create an intermediate mechanism which funnels funding to the RMB. This allows the RMB or potentially even the position campaigns to avoid making direct connections with funders, avoiding real or perceived pressure to sway the referendum results. An example was the creation of a trust fund by the UN Security Council in advance of the 1999 East Timor independence referendum. Member states of the UN contributed over \$21.7 million USD to the fund, which supported both the UN presence and the costs of the referendum.

Use of Funding to Meet Referendum Management Body Resource Requirements

A RMB must procure a variety of resources in order to conduct a referendum including staffing, voting materials, equipment, communication and information technology resources and transportation. Staffing is required for the RMB governing body and secretariat, as well as for each polling station. Voting materials must include ballots, ballot boxes and voter rolls but can also include numerous other goods such as indelible ink and materials to mark ballots with if applicable. In some cases, the RMB may procure large equipment such as ballot printing machines. Finally, as with any office, the RMB will need materials for operation which must include computers, phones, and everyday administrative office supplies.

⁶⁸ “Scottish Independence Referendum: Report on the Referendum Held on 18 September 2014.” The Electoral Commission, December 2014. http://www.electoralcommission.org.uk/__data/assets/pdf_file/0010/179812/Scottish-independence-referendum-report.pdf.

V. DEFINITION OF THE ELECTORATE

A. Citizenship

Citizenship is paramount to democracy, and as the legal framework for a secession referendum is being developed, it is crucial to determine early on in the process who will and will not constitute the electorate for the referendum election. It is equally as important to decide who cannot vote as it is determining who can.

There are numerous international precedents for excluding those who are not part of the specific region looking to secede as well as allowing all individuals in the country to participate. Because the context in which the referendum is held is highly subjective, it would be injudicious to declare one superior than the other.

For example, in the Scottish Independence Referendum, only individuals who could prove residency in Scotland were eligible to participate in the election, despite the fact that the issue affected the entire United Kingdom (UK). This issue was brought to the House of Lords, where Baroness Symons argued that the rest of the UK should be allowed to vote in the Scottish referendum because it would affect the whole country, but her argument was rejected by the British government, as the Advocate General for Scotland Lord Wallace said that "whether or not Scotland should leave the United Kingdom is a matter for Scotland."⁶⁹

Alternatively, Ukraine's Constitution states, "On all-Ukrainian referendum, territorial changes can only be approved via a referendum where all the citizens of Ukraine are allowed to vote, including those that do not reside in Crimea."⁷⁰ In East Timor, the Modalities Agreement stated that voter eligibility would extend to persons born in East Timor, persons born outside East Timor but with at least one parent born in East Timor, or those whose spouses fell into either of these two categories.⁷¹

Once the determination is made in deciding which part of the population should be eligible for voting, the next step is to ensure that universal suffrage is both codified and practiced. Historically, the populations of ethnic minorities, the impoverished, women, the illiterate, people with disabilities, and rural communities are most often directly or indirectly disenfranchised. It is critical that suffrage is indisputably universal and that extra precautions are taken to ensure the inclusion of these groups so that the referendum vote is accessible to all eligible voters.

The European Union Compendium of International Standards for Elections states, "Participation through elections and, where applicable, through referendums must therefore be respected, protected, promoted and fulfilled as a human right."⁷² Additionally, Article 21 of the UN Universal Declaration for Human Rights says that:

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives
2. Everyone has the right of equal access to public service in his country

⁶⁹ "Scottish Independence: SNP Dismisses Expat Voting Call." BBC News, January 18, 2012, Online edition, sec. Scotland Politics. <http://www.bbc.com/news/uk-scotland-scotland-politics-16607480>.

⁷⁰ "Constitution of Ukraine." Council of Europe. Accessed November 30, 2015. https://www.coe.int/t/dghl/cooperation/ccpe/profiles/ukraineConstitution_en.asp.

⁷¹ "Agreement between the Republic of Indonesia and the Portuguese Republic on the Question of East Timor," May 5, 1999. <http://peacemaker.un.org/timorleaste-agreement99>.

⁷² Compendium of International Standards for Elections. Second edition. European Commission, 2007.

3. The will of the people shall be the basis of the authority of government

Voter eligibility will most likely differ from general elections in that different groups are intentionally included and excluded from the referendum. As mentioned above, non-residents of the territory seeking secession are generally not permitted to participate in the vote as well as current prisoners, ex-convicts and individuals who engaged in previous egregious actions. Special considerations may also be made for political prisoners who might have been unjustly arrested by a hostile government opposing independence. Additionally, suffrage may be extended to minors as young as 17 and to non-citizens who have been disenfranchised by discriminatory practices.

B. Voter Registration

Voter registration is an important process that safeguards the right to vote and must be made widely available to all eligible citizens to promote universal and equal suffrage.

The entity responsible for voter registration may vary depending on administrative traditions and experiences in a given region. Some countries delegate the responsibility to Electoral Management Bodies, while others utilize civil registry organizations. Another option is to employ the services of international community organizations such as the UN and the Organization for Security and Cooperation in Europe (OSCE) which can directly compile voter registers with the help of local and state officials in internationally supervised elections.

The voter registration period should be open for at least three months prior to the start of the referendum. However, this did not happen during the South Sudan referendum, in which voter registration took place from November 15th to December 8th. In the Scotland referendum in 2014, special campaigns were undertaken to target certain groups of potential voters such as:

- Work with the prison system to disseminate information on the referendum to those on remand and those who would be leaving prison by the time of the vote
- Coordinate with youth group organizations to educate young voters
- Partner with social services to encourage homeless people and those living in temporary accommodations to take part in the referendum
- Reach out to disability organizations to share information about the registration and voting process and how special accommodations would be made available to ensure their participation

Disputes over participation eligibility in the referendum are capable of causing significant delays and even indefinite postponement of the election.

Since the events preceding secession referenda are uniquely shaped by a state's historical context, it is difficult to develop and advocate for universal guidelines dictating voter eligibility. Because this paper seeks to create an international standard, regardless of circumstance, the following guidelines should be considered best practices in determining the electorate for an independence referendum.

Eligible voters consist of:

- individuals whose national identity card states they are resident in the area;
- individuals who live outside of the region and are registered as "citizens abroad"
- non-citizens who can prove they are residents in the area

- individuals who are over the age of seventeen years old⁷³

Special efforts may need to be taken for nomadic peoples, since denying them the opportunity to register as voters on account of lack of a permanent, verifiable residential address would be infringing upon their rights. Every effort should be put in place to avail them an opportunity to have a say in the referendum.

Voter identification documents play a critical role in the registration process and there are usually numerous options available to potential voters, such as:

- national identity cards
- driver's licenses
- passports
- civil register certificates

In some cases, none of these tangible documents are available in which case a voter's eligibility can be certified by witnesses or by interviewing potential voters. These alternative identification methods are more commonly used for marginalized groups or for people in post-conflict regions where identification records no longer exist.

For example, in South Sudan the regulations required that an applicant provide either official identification documents or verification of the applicant's identity by a designated identifier. This process was to ensure that minority groups such as permanent residents, who may not have the physical and linguistic characteristics presumed of Southern Sudanese, are able to participate fully in the process in keeping with Sudan's international obligations to allow citizens the right to participate in the public affairs of their country.⁷⁴

Similarly, during the East Timor referendum, the UN Mission in East Timor instituted an affidavit procedure, where, in the absence of sufficient documentation, a potential voter could produce an affidavit that attested to his/her identity and birth in East Timor. This affidavit had to be sworn before a village chief or religious leader and also witnessed by a registered voter who knew the applicant.⁷⁵

Once the registry is compiled, individuals should have access to their information to ensure that the registers are accurate and maintained with complete transparency. If a problem or violation of electoral rights takes place during the registration process, voters should have an effective remedy available to them.

In South Sudan, the referendum legal framework included provisions for the establishment of Consideration Committees at referendum centers during the polling times which would hear complaints about the process from registered voters. After the voter registration period was closed, the official Voter Registries were

⁷³ There are numerous precedents (South Sudan, East Timor, and Scotland) in the international community which all call for the minimum voting age to be set at 17 for a national referendum.

⁷⁴ "Observing the 2011 Referendum on the Self-Determination of Southern Sudan - Final Report." The Carter Center, 2011. http://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/FinalReport-Sudan-2011-Self-Determination-Referendum.pdf.

⁷⁵ Martin, Ian. *Self-Determination in East Timor: The United Nations, the Ballot, and International Intervention*. Boulder, Colorado: Lynne Rienner Publishers, 2001, pp. 54-55.

exhibited at each regional center for one week, with the intent to allow voters to review their details and ensure that they were accurate.⁷⁶

The Referendum in East Timor, per the Modalities Agreement, specified that appeals against voter registration “be submitted to the regional offices for a final decision by the Electoral Commission prior to polling day.”⁷⁷ If an individual was refused the right to register, on the grounds that he/she could not produce the appropriate identity documents, the documents were not found to be genuine or for some other reason, that individual could appeal to the Regional Electoral Officer (REO). The REO would then forward the appeal to the Electoral Commission with an enclosed recommendation as to whether or not the appeal should be accepted or rejected.⁷⁸ Once the voter registration period was closed, the voters’ lists were published and made available for 5 days for viewing by registered voters and observers, and the lists for a given region were also available in each regional office as well. Registered voters were allowed to challenge the inclusion of any name on the voter’s list, on the grounds that the alleged registrant did not meet the eligibility criteria. The challenge was sent to the Electoral Commission in Dili for adjudication with a decision rendered before the voting began.⁷⁹

VI. CAMPAIGN PRACTICES AND FINANCIAL TRANSPARENCY

This section discusses acceptable campaign practices for supporting or opposing secession, and outlines the rules for financial transparency in support of entities advocating for either position. This section also presents guidelines for observation of referendum preparations, campaigning, and voting, insofar as observation is focused on the activities of campaigners during the referendum period.

The dual goal of this section is first to establish the framework for a level playing field for the ‘yes’ and ‘no’ campaign entities, and second to guide the RMB to monitor the players to maximize confidence that the playing field remains level on voting day. This serves to increase comprehensive legitimacy of the referendum outcome.

The best practices will be set out along three tracks. These include the following: A) Campaign Practices, B) Campaign Finance, and C) Referendum Observation. A multitude of guidelines exist per these categories where political parties and candidates are agents of central concern for regulatory bodies. However, referenda present the acute challenge of regulating a non-periodic voting event that aims not to select candidates to fill public office, but rather to alter the very structure of the state itself. As such, these sections will first aim to define the campaign entities in reference to authorized referendum constituencies, their formalization and conduct as campaign entities, and the bodies responsible for their regulation.

The central case studies that contribute components of their frameworks to these suggested guidelines include the Scottish referendum and the Crimean Status Referendum, both in 2014. The former constitutes a strong example of how to formalize campaign entities, and create rules and regulations, and management bodies to maintain their compliance. The latter constitutes a strong example of worst-practice scenarios for

⁷⁶ “Preliminary Statement: Peaceful, Credible Voting Process, With Overwhelming Turnout, Mark Southern Sudan Referendum.” Khartoum: European Union Election Observation Mission - Southern Sudan Referendum 2011, January 17, 2011. http://www.eueom.eu/files/pressreleases/english/preliminary-statement-17012011_en.pdf.

⁷⁷ Şen, İlker Gökhan. *Sovereignty Referendums in International and Constitutional Law*. New York: Springer International Publishing, 2015, 230.

⁷⁸ “Final Report: External Voting for East Timor Popular Consultation Conducted: 30 August 1999.” International Organization for Migration, September 1999. <http://www.geneseo.edu/~iompress/Archive/External%20Voting%20East%20Timor.pdf>, pp. 14.

⁷⁹ *Ibid*, pp. 15.

non-legal, binding referenda, and illuminates some areas of contingency planning with which the Scottish referendum otherwise did not need to contend. Broadly speaking, the institutionalization of political finance regulation has increased over the decades following the so-called third-wave of democratization. However, one of the increasingly salient best practices for counter-balancing the use of private funds, which can be incredibly difficult to track to enforce regulated spending, is the use of public funds for campaigns.⁸⁰ In the case of a status referendum that will determine whether or not a territory remains under control of a sovereign, public funds are implicitly biased against a ‘yes’ vote, and as such do not provide remedy to the heavy influence of private funding.

As such, this section will propose an innovative manner of formalizing campaign organizations, to track private donations and expenditure compliance during the referendum period. Here proposed is an administrative framework for campaign regulation, which can be adapted to country-specific conditions, at the discretion and per the needs of the RMB, to facilitate a referendum that yields the highest levels of integrity before voters turn out to cast their ballots.

A. Campaign Practices

According to the International Institute for Democracy and Electoral Assistance (International IDEA) Electoral Finance Database, electoral campaigns are increasingly commercialized, expensive political events.⁸¹ There is a need to establish enforceable measures, which effectively address the role of money in politics in a given country. Universally, these measures must be derived from a close analysis of two factors: origin and destination of the funds. Record must be kept of where the funds come from, where they go, and for what purpose. This analytical perspective for establishing campaign best practices applies equally to the contribution of non-monetary, or in-kind donations. For elections that function to return candidates to a position in government, political parties, and by extension, candidate campaign staff, usually serve as the bodies responsible for collecting, monitoring and reporting on campaign contributions to a centralized oversight authority.

In this case of a status referendum, this approach proposes that a CMU be established within the RMB well ahead of the referendum period. This is the period of time during which the campaign is ‘live,’ and entities lobbying for one outcome or another are subject to the rules and regulations (laws) that constrain spending and finances. The CMU monitors spending and has the authority to refer cases to the RMB electoral justice system and to recommend consequences for noncompliance. The CMU will coordinate all resources affiliated with monitoring referendum campaigns, including donation registries, expenditure reporting systems, and compliance complaints intake and delegation to the RMB unit authorized to arbitrate such disputes.

⁸⁰ Ohman, Magnus, ed. Training in Detection and Enforcement (TIDE): Political Finance Oversight Handbook. International Foundation for Electoral Systems, 2013. http://ifes.org/sites/default/files/tide_political_finance_oversight_handbook_0.pdf, pp. 19

⁸¹ Falguera, Elin, Samuel Jones, and Magnus Ohman, eds. Funding of Political Parties and Election Campaigns: A Handbook on Political Finance. Stockholm: International IDEA, 2014.

Assumptions that underpin the referendum campaign period are as follows: A) spending arms races between competing factions undermine a level playing field and divorce campaign platforms from voters; B) balance in public and private funding to campaigners enhances pluralism, which is in this case structured along two choices, and as such depends on enhanced attention to transparently disclose financial and in-kind donations to each respective camp;⁸² C) campaigners must document

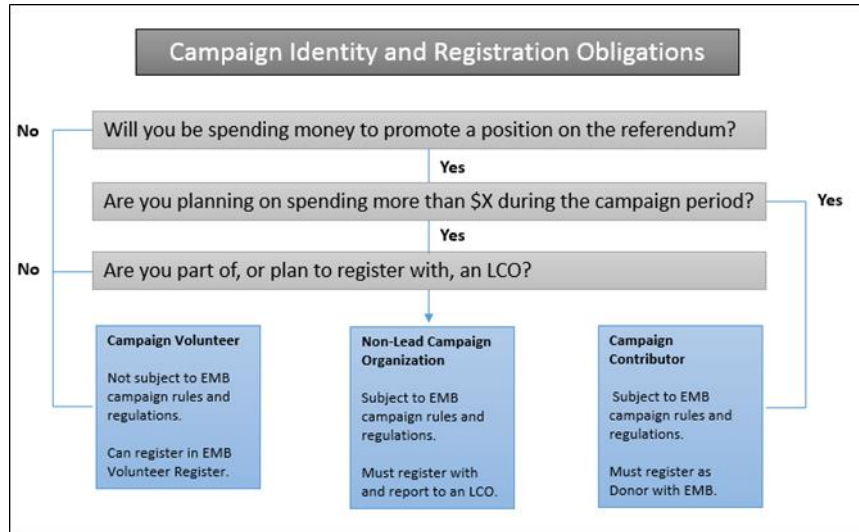


Figure 2: Campaign Identity and Registration Obligations

and publish contributions, regularly reporting to the RMB; and, D) referendums inherently constitute an electoral environment of decreased trust, and as such, campaigners and oversight authorities must showcase integrity at each step in the referendum period. These assumptions shape the behavior of referendum stakeholders in different ways, according to their status quo function in the electoral process, and how such roles evolve to facilitate participation in the referendum period. Below follow explicit guidelines for campaign conduct per stakeholder.

1. Defining Referendum Campaign Groups, and their Management

In status quo elections, political parties, corporate donors, and private individuals take policy positions, and align with the candidate that best facilitates these positions, usually along a liberal-conservative continuum. Campaigns reflect the process of constituency building and policy platform development, to build the campaign war-chest, then increase prospective vote share, and win the election. Secession referendums displace the effect that the liberal-conservative dynamic exercises on a voter’s decision when casting a ballot on the topic of statehood. Referendums place the voter in direct confrontation with the nature of their state. Thus, it is the voter’s relationship to the state that influences their decision when casting the ballot. Given this unique scenario and non-standard alignment of interests, how do political entities engage in the campaign process? What are acceptable campaign practices? And, how do they effectively aggregate all arguments either ‘for’ or ‘against’ the move to establish a new national entity?

The CMU will officially recognize the following campaign entities, and ascribe to each status roles and responsibilities for managing the campaign process for the various positions to be taken on the status referendum. It will have oversight authority to compel compliance to finance regulations. An International IDEA Policy Brief on money in politics notes the importance of focusing on compliance and enforcement to, “give enforcement agencies a strong legal mandate, including independence from political actors they are monitoring...This is especially true for tackling illicit funding and abuse of state resources.”⁸³ The

⁸² Ohman, Magnus, and Hani Zainulbhai, eds. Political Finance Regulation: The Global Experience. Washington, DC: International Foundation for Electoral Systems, 2009. http://www.ifes.org/sites/default/files/political_finance_regulation_the_global_experience_0.pdf, pp. 34-36

⁸³ “Money in Politics.” Policy Brief. Stockholm, Sweden: International IDEA, January 2015. <http://www.idea.int/resources/analysis/upload/PB-Money-in-Politics.pdf>.

specification of centralized entities responsible for reporting and expenditure will supplement the function of political parties as campaign managers. Depending on whether or not a referendum is internationally sanctioned (such as East Timor), or unilaterally performed by the seceding entity (such as in Crimea), the CMU may also host within its staff corps international elections experts to assist with RMB capacity building, and to insure RMB management enforce campaign finance regulations.

i. Lead Campaign Organizations

Lead campaign organizations (LCOs), as the name implies, are entities that have the highest level of non-RMB responsibility for leading and managing campaigns in each of three categories of referendum positions: yes, no, or other. Referendums for independence would appear to be a binary decision; however, an option for a third LCO is to be maintained, to facilitate other positions, such as in the case of Crimean status referendum that saw the minority Tatar community carry out a boycott.⁸⁴ This, in effect, was taking neither a ‘yes’ nor ‘no’ position; as such, this permits availability of a LCO third position, per country case. Provision of this official outlet for alternative positions may be a method of formalizing conflict, and hastening its resolution by increasing the participation of otherwise marginalized campaign constituencies.⁸⁵ The concept of utilizing LCOs to manage campaigners is derived from the 2014 Scottish Referendum. In a summary report of campaign management produced after the referendum, the Scottish Parliament procured recommendations for improvement of the regulatory framework, including the following insight for ‘campaigners that work together:’⁸⁶

[Working together provisions] are needed to ensure there are appropriate and proportionate regulatory requirements to prevent evasion of spending controls. The provisions should...require campaigners to set out information in their post-referendum return about the other campaigners they worked with and the total amounts each spent. This is information that campaigners should each already be compiling to ensure compliance with the rules and for inclusion in their own return.

If the legislation for a future referendum includes a framework which allows for designating a lead body [per position], it will be important that the relevant government consider the implications for the rules on how campaigners can work together alongside... a sole designated lead campaigner.

It is good practice to require *ex post* reports on collaboration across campaign entities throughout the referendum period. Yet, this is an insufficient regulatory requirement to monitor compliance when it matters most - before referendum ballots are cast. As such, this framework suggests that LCOs be appointed shortly after the legal authorization and set-up of the RMB, to structure campaign reporting from the very beginning of the process. (See below graphic to determine campaign identity).

The RMB will define eligibility criteria for LCOs, of which there will be three: one for ‘yea,’ one for ‘nay,’ and one to collect and represent other positions of eligible voters that either propose a third way, or oppose the referendum altogether. In addition to defining the criteria for campaigner eligibility, including non-lead

⁸⁴ “Mejlis to Boycott Crimean Referendum.” Ukrinform News. March 6, 2014. http://www.ukrinform.net/rubric-politics/1628946-mejlis_to_boycott_crimean_referendum_318219.html.

⁸⁵ “Money in Politics.” Policy Brief. Stockholm, Sweden: International IDEA, January 2015. <http://www.idea.int/resources/analysis/upload/PB-Money-in-Politics.pdf>. Which notes importance of “involving more stakeholders in political finance;” see also “Electoral Security Framework: Technical Guidance Handbook for Democracy and Governance Officers.” USAID and Creative Associates, July 2010, pp. 12, on managing boycotts.

⁸⁶ “Scottish Independence Referendum: Report on the Referendum Held on 18 September 2014.” The Electoral Commission, December 2014. http://www.electoralcommission.org.uk/__data/assets/pdf_file/0010/179812/Scottish-independence-referendum-report.pdf.

campaign organizations, the RMB will determine the vetting criteria to select the LCOs. This process will be completed in a timely manner so as not to inhibit the mobilization of official campaign efforts, to conduct outreach and conduct voter education well ahead of voting day. The criteria that determines the leads will be contingent upon proof of a basic start-up budget with top-line limits to start all positions from similar financial footing. A review of assets will also be required, including loans, material, and in-kind resources (such as computers, etc). LCO applications will be required to procure a pre-determined minimal threshold of signatures to support it, including proportional requirements for women and minorities, as determined by the situation in a given population eligible to participate in the secession referendum. Validating signatures will be part of the vetting process, in a manner determined by the RMB, consistent with validation of the voter registration record.

Final selection will be determined by a pre-established score-card that rates the competencies of prospective LCOs per the above criteria and any other criteria specific to a country-case. The Scottish referendum referred to these criteria as a ‘statutory test,’ to be sure the applicant organizations were not in violation of political finance law currently on the books.⁸⁷ In all cases, to demonstrate to the public that LCO selection is based on criteria performance, the score cards for each applicant will be made public by the RMB upon selection, preferably online, but by other means that are reasonably accessible to the general public, such as in newspaper or radio. A dispute processes will exist to appeal initial LCO selection, and must be registered within one week of score card publication. They must be resolved in writing within (at most) two weeks of submission. Following this process, the selected LCOs will be registered with the CMU and begin to set-up operations. This includes recruiting management staff, personnel, and volunteers. It also includes the initiation of fundraising efforts and the start of the regulatory season until voting day.

LCOs will be governed by a board, which will serve executive functions, and bear ultimate responsibility for financial reporting compliance for all campaigners under its umbrella. LCOs must be non-governmental, civil society organizations with non-profit, tax-exempt status, where such legal identities exist. LCOs will undoubtedly have linkages to political parties and other governmental stakeholders but must remain operationally autonomous from them, per the guidelines in the International IDEA policy brief on money in politics. LCO management will be trained by CMU staff in compliance with political finance regulations, including revenue generation and expenditures. LCOs must then flow-down these trainings to non-lead campaign organizations, which operate within the regulatory control of the LCO, and ultimately the CMU.

ii. Non-Lead Campaign Organizations

Non-lead campaign organizations, or N-LCOs, are smaller sub-units of the LCO. N-LCOs must also be officially registered, an initial start-up process managed not by the LCOs, but rather by the CMU. This is to maintain an objective and unbiased review process for entities that will carry out campaigns; if LCOs were able to independently vet N-LCOs, there might be incentive to overlook factors of disqualification from achieving registration. These organizations will follow a similar process to achieve registration on a smaller scale. Rather than a board of directors, N-LCOs must put forward the names of its leadership representatives, to be vetted against the voter register. No individuals ineligible to cast a ballot in the referendum can serve as N-LCO leadership representatives. N-LCOs are also required to secure a certain number of signatures, determined by country-case, to reflect that it represents an existing constituency. Similarly, N-LCOs must submit financial documentation to disclose its assets, their origins, the number of volunteers it has, etc.

⁸⁷ Ibid.

N-LCOs are responsible for reporting revenue and expenditure to LCOs in periodic reports, but maintain autonomy in terms of messaging and campaign content. However, this does not mean that N-LCOs might not also serve as ‘campaigners that work together,’ and as such should disclose the names of other campaign entities with which it is partnering, for example, to share in-kind resources such as office space. N-LCOs can recruit unlimited numbers of campaign volunteers, but will face limitations as to the number of paid staff it can retain. This is to assure that the size of N-LCOs does not overtake the size and capacity of the LCO that is charged with overseeing it. N-LCOs can register complaints with the CMU directly, if the LCO is seen to be interfering in autonomy, or using its oversight leverage to affect campaign approach of these subordinate entities. The non-profit legal entity status given to officially registered N-LCOs, as with the LCOs themselves, is dissolved following the conclusion of the referendum period, within a timeline deemed reasonable by the RMB, and not to occur before post-referendum campaign reports are posted and finalized.

iii. Political Parties

Political parties carry pre-constructed constituent blocks and, as such, serve a potentially high-impact mobilization function in response to the secession question. This is the case with the Catalanian referendum movement, as championed by the two large separatist parties that together make up the "Junts pel Si" pro-secession coalition. This coalition, in partnership with the far-left party, dominate the Catalanian parliament and cause destabilization by allocating state resources to sustaining the referendum movement, even despite Spanish Supreme Court’s refusal to authorize due to lack of constitutionality or a clear mandate from the people of Catalonia.⁸⁸ As this case demonstrates, political parties may incorporate into their policy platforms a position on the referendum, especially as the outcome may reconfigure power structures, including patterns of incumbency, in the state as it exists *ex ante* referendum. Political parties staking a financial position on the issue, either by providing seed funds to campaign organizations, will be required to register with the CMU according to the requirements for Campaign Contributors, and must be identified as party resources through an individual explicitly stated as the political party representative. Resources originating from public funding cannot be used. The party will then report on finances per their requirements given its formal referendum campaign identity, be that of campaign contributor, or campaign organization. But should political parties be eligible for LCO status?

Depending on the context, political parties may be leading the movement for secession and, as such, seek to establish status as a LCO. If this is the aim, then the party will, at minimum, need to fulfill the requirements to apply for this status. However, the CMU must review the application and context very carefully to ensure that the political party is not in such a partial position as to increase the risk of non-compliance with campaign regulatory procedures. This consideration is highly relevant to the LCOs oversight role in managing N-LCO campaign finance reporting. Accordingly, banning political parties from becoming LCOs to establish new entities exclusively set-up for this campaign purpose merits ample consideration. In this case, political parties can contribute political capital and human resources to the LCO applicant but would not be directly involved in its oversight. This would effectively relegate political parties to Campaign Contributor status, and all in-kind and financial donations would be documented accordingly. The decision to bar parties from LCO status effectively resolves issues of undue influence of an institution with state linkages in the referendum outcome. Given this logic, though there is minimal existing policy on the role of parties in referenda campaigns, it is strongly advised that they not be eligible as LCOs. Paramount to establishing what the IDEA Funding Political Parties and Elections Campaigns: a Handbook on Political

⁸⁸ “Catalonia Vows to Continue Independence Bid despite Court Ruling.” BBC News, November 11, 2015, sec. Europe. <http://www.bbc.com/news/world-europe-34792355>.

Finance (2013) calls ‘manufactured equality’ is the criteria that LCOs be civil society organization of a non-governmental nature.⁸⁹

As noted above, manufactured equality, or the leveling of the playing field by limiting and constraining use of public and private funds during campaigns, takes on a unique importance during the referendum moment, given the non-partisan nature of the vote itself. Voters are not deciding for one party over another, they are deciding on national status, and this decision must be extricated from the political dynamics of existing political parties, and coalitions.

iv. Corporations

For companies in which a significant percentage of ownership lies with foreign shareholders, constraints must be considered that prevent the use of foreign funds to alter the campaign field in manner that is non-representative of the opinions of the electorate (regardless of position). State-Owned Enterprises (SOEs) are defined as any for-profit corporation in which the state is invested, and has decision-making power over the entities’ management. It is assumed that SOEs have an incentive to lobby in tandem with the state’s position on secession, as so must limit participation in the same manner as government institutions. Employees of such entities can register as campaign volunteers or contributors per the standard requirements for establishing such as status, but cannot act on behalf of their company in that capacity. SOEs, like the government, cannot take a financial stake in the referendum campaign period. SOEs, like other corporate entities and the government, can provide in-kind donations of space for public meetings or polling stations but must register with the RMB to gain approval and provide the resources, the recipient of which must be disclosed on the formal contribution register. Value of any in-kind donations must be estimated and submitted to the RMB and must not exceed the value of a certain percentage of a LCOs total funds raised to date, as determined by the RMB overseeing a specific election. There must be constraints on the contributions of these entities so as to prevent their serving as conduits for the non-compliant distribution of state assets to preferred campaign entities working to promote the ‘no’ vote. For corporations that are chartered in the territory delimited by the boundaries identified in the referendum terms as the potentially new state, they can contribute in like manner as political parties. Corporations staking a financial position on the issue will be required to register with the CMU according to the requirements for Campaign Contributors and must be identified as corporate (non-individual) contributions, issued through an individual explicitly stated as the representative of that business. This person must meet contributor status requirements, mentioned in the below section on individuals as campaign entities.

v. Individuals

As stated in *V: Definition of the Electorate*, there are highly contextualized definitions of citizenship, and as a result, qualification for voting in a secession referendum. To serve as a Campaign Volunteer does not require that an individual be of voting age; any individual not employed by the state can serve sign-up to work with a campaign entity. Individuals that register with both LCOs and N-LCOs will be present in their volunteer databases, which are required to keep volunteer names on file, but not required to submit volunteer information with official periodic reporting. N-LCOs must report total number of volunteers to the CMU, and the name lists serve as backups in the event that the number of volunteers claimed require verification.

Stricter criteria apply to individuals that seek to contribute financially or materially to campaign entities. Campaign Contributors must be of legal age to vote and be present as an approved individual in the official

⁸⁹ Falguera, Elin, Samuel Jones, and Magnus Ohman, eds. *Funding of Political Parties and Election Campaigns: A Handbook on Political Finance*. Stockholm: International IDEA, 2014.

voter registry. Their names, and potentially additional biographical or contact information, must be recorded in the campaign contribution registry per each N-LCO or LCO to which the contribution is made. Contributors are also subject to contribution limits, applicable to both monetary and non-monetary gifts to campaign entities. Contributors cannot provide loans of any type to N-LCOs given their non-permanent status and the risk that this entails in affecting the campaign messaging, as recipients of loans are beholden to stakeholders along a timeline that outlasts the referendum period. LCOs may accept loans, but within a percentage of their total assets, based on fundraising projections for the loan period. This is possible because any funds remaining with the N-LCOs following the referendum period are reverted to the LCOs for management via the RMB and, as such, can contribute toward loan remittances. It is also a necessary option, given the centrality of the LCO to managing the campaigns across the territory during the referendum period. It must have adequate resources to exercise its authority.

2. Campaign Management

All campaign entities thus defined, it is necessary to note their roles respective to each other, as it pertains to entities with regulatory authority, compliance obligations, dispute making and resolution capacity.

To begin, location of the CMU is important for its campaign monitor and public reporting functions, and that requires it to closely coordinate with both the LCOs and the RMB (see relationships at right). As such, all three entities must be located a reasonable distance, assuming that propinquity reinforces the rigor of both compliance and oversight. LCO headquarters must thus be centralized, given their responsibility to regulate N-LCOs advocating for their position. This is especially critical in regions that have poor telecommunications infrastructure and diminishes in importance where Internet access and other measures of communications functional capacity indicate that physical distance between regulatory bodies and campaign management bodies is less important.

LCO Management Offices are established by each of the campaign groups to manage efforts to track the campaign content, fundraising objectives, reporting requirements, voter education efforts, etc. The LCO Management Offices house all records pertaining to the N-LCOs and their revenues, expenditures, key personnel, and other information deemed important per campaign management priorities, or RMB requirements. N-LCOs can set up offices across the territory defined by the referendum legislation, ideally with a geographic distribution that accurately reflects and incorporates all the constituencies that will vote in the referendum. This, however, is a matter of campaign strategy and is outside the purview of these guidelines. N-LCOs report to LCOs routinely, and may even send staff or volunteers to be posted at the national LCO Management Office to streamline reporting efforts, to maintain up-to-date knowledge of RMB oversight efforts.

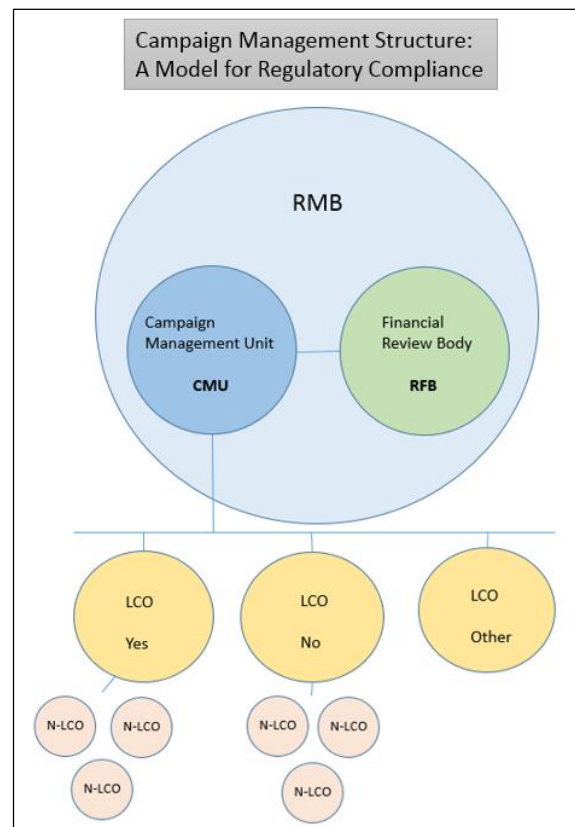


Figure 3: Campaign Management Structure

Though not highlighted in the above graphic, LCO Management Offices can be sub-divided into two main sections, including the campaign side and the administrative side. It is the administrative side that is responsible for liaising with the CMU, which serves as the main authority for making decisions when non-compliance becomes apparent. The CMU logs all registered voter lists to cross-check for membership to the Campaign Contribution registry, which it is responsible for maintaining. It compiles all contributions given to campaign entities (yes, no, other), disaggregating by N-LCOs that spend above a certain ceiling. N-LCOs that spend below this amount, to be determined by the CMU, will bear lighter reporting requirements rather than submitting a full financial report. This follows the recommendations for managing small campaigns as determined following the Scottish referendum.⁹⁰

Financial reports per LCO, and top-level N-LCO spenders, will be submitted to the CMU but reviewed separately by the FRB. This independent review process serves to secure impartiality between the RMB entities looking for non-compliance (FRB), and the entities responsible for interlocation with the LCOs, and making recommendations to RMB bodies for actions to take per non-compliant units. This approach follows standard international auditing guidelines known as the Single Audit approach.⁹¹ The RMB entity will be fully responsible for building this unit that manages campaign finance in line with its legal mandate. If possible, the RMB should set-up a website for the official publication of contribution amounts and contributor data to provide public access to finance information updated at regular intervals throughout the campaign period.

B. Campaign Finance

Secession referenda structure a contest between state and population, rather than political parties, changing the flow and function of campaigns – and their financing. The players and the regulators have been defined above, yet questions remain: How will regulators register and monitor cash flows? How to manage and resolve non-compliance with regulations? What penalties can be issued to offending parties? How will this information be shared with the public?

1. Regulations on Income

Recording and reporting on income must be done in a standardized manner, and the RMB must create this system per its requirements. The system must distinguish between corporate and individual contributions, and their contribution levels. The RMB, in coordination the CMU and the FRB, will determine the spending levels, and corresponding contribution levels. The reporting burden per each level may vary, as it historically has been managed in the Scottish referendum, as well as non-status referenda with ballot questions about policies or laws to implement (or not), known as ballot propositions in the case of the State of California.⁹²

First, the RMB must define the donors that are ineligible to give to campaign entities, known as a Donors Ban. Anonymous donations are banned due to the heightened importance of a campaign participant's identity relating to a secession referendum. Identity matters and is highly regulated during the referendum period, per voter registration requirements. Donors must meet the same level of rigor in establishing an

⁹⁰ “Scottish Independence Referendum: Report on the Referendum Held on 18 September 2014.” The Electoral Commission, December 2014. http://www.electoralcommission.org.uk/__data/assets/pdf_file/0010/179812/Scottish-independence-referendum-report.pdf.

⁹¹ “Office of Federal Financial Management Single Audit.” The White House. Accessed November 1, 2015. https://www.whitehouse.gov/omb/financial_fin_single_audit.

⁹² “Laws Governing the Initiative Process in California.” Ballotpedia. Accessed November 1, 2015. https://ballotpedia.org/Laws_governing_the_initiative_process_in_California#Funding_an_initiative_campaign.

identity. Individual campaign contributors giving below the amount that requires official registration, must be present on the registration lists. Foreign donors are also banned from contributing to referendum efforts; this is especially important to the notion of manufactured equality, because the funding space must be structured to facilitate only donations from those Contributors whose identity status is at stake given the prospect of their territory's separation from an existing sovereign. However, what if, as in the hypothetical case of a secession movement for an independent Kurdistan, would the CMU track registration of contributors, where the proposed boundaries for a new state cross multiple existing states (Syria, Turkey, Iraq)?

In this case, the RMB would need to compile voting registration records from all the districts to be incorporated into the new state, and those eligible voters comprise the voting pool for potential campaign contributors, exempt from the foreign donors ban. In this way, of the 'foreign' in the foreign ban is defined as any individual or company that is not party to a state identification status change as a result of the secession referendum outcome. Other bans exist in the international standards for regulations on income. Government employees will be banned from giving beyond the high-donor threshold, and are bound to give the smallest contribution category defined by the RMB. This is a comparatively extreme measure, when surveying the international field of campaign finance regulations on income. However, in the case of status referendums, it is essential to curb undue influence of the state, which has a strong incentive to maintain territorial integrity. As such, the government employees that work for the state(s) with potential to lose territory as a result of the referendum will have tightly controlled giving levels per period, within the donation timetable, and will be required to note they are a government employee on the form that registers their contribution to an LCO or other campaign entity. As noted above, corporations face similar constraints when providing campaign contributions; though not banned outright from giving, the corporation must meet registration criteria to give.

Second, donation timetables play a crucial role in regulating income generation. For example, the timetable determines when donations can start. Donations to the entities will be able to start with the official legal act (document) that defines the referendum period, at which time the rules and regulations of the RMB take effect. The challenge is in regulating funds amassed before that time, which are not legally required to be registered with the LCOs. This scenario has played out in ballot referenda on questions of EU membership where three top political donors, a cross-party coalition of UK investors against EU integration, raised £17 million prior to the referendum period that could be channeled unreported to campaign groups.⁹³ Given the political uncertainty of referendums and the potentially protracted timeline for arriving at a political settlement between the sovereign state and the secessionist entities, the RMB must place a very high burden of proof on all assets reported by entities applying to serve as LCOs. There must be serious scrutiny of the origin of start-up funds reported per LCO, and LCO assets prior to the campaign should in most cases be capped so that the 'yes' and 'no' camps both start with roughly equal asset values.

The frequency of donations is another broad consideration that needs to be determined by the CMU. This requirement is contingent upon reporting periods and how often a contributor can give within one reporting period. For example, if a referendum period is 14 months, then, it may be divided into 5 reporting periods, per a standard quarterly reporting approach. Then, the CMU must determine the number of times a contributor can give in specific contribution categories (roughly, low, medium, high) within that time period. When constructing these guidelines, the CMU must consider practical solutions for spending limits

⁹³ Wright, Oliver, and Nigel Morris. "EU Referendum: Three of UK's Biggest Donors to Bankroll 'out' Campaign." *Independent*, October 8, 2015, Online edition. <http://www.independent.co.uk/news/uk/politics/emb-0000-eu-referendum-three-of-uks-biggest-donors-to-bankroll-out-campaign-a6687066.html>.

to ensure equal opportunity, such as creating a formula that features a multiple of the average monthly wage, with provisions for adjustment pending inflation.⁹⁴ Arguments also exist that over-regulation of requirements for income can have a deleterious effect on efforts to democratize, which might be a motivating factor that underwrites a status referendum. However, it is also been argued that more extreme measures are needed, such as banning or capping paid political advertising.⁹⁵

RMBs, in coordination with the CMU, will also determine whether or not state funds can go to campaign entities, including direct support, tax exemptions, waivers, or in-kind donations. An example of the sort of indirect state assistance would be the waiving of postage fees for campaign materials, a state contribution that this framework supports. As previously mentioned, LCOs and N-LCOs spending over the minimum (low) category will receive non-profit status where it exists. This entitles them to certain tax exemptions, which can be seen as state support for the referendum. In this case, the net state contribution is seen as neutral, because access to it applies equally to all campaign entities otherwise eligible to take on an official N-LCO status, and registered accordingly. Direct support to campaign entities from the state is discouraged by this framework per the vested-interest rationale previously stated. However, the state may provide direct support to the RMB (see *IV: Referendum Management Body*). The state cannot earmark funds that go to specific campaign entities. The RMB will have oversight over any waivers the state provides N-LCOs in terms of policy compliance that may have monetary benefit for one referendum position over another, coordinated through the CMU.

In-kind donations, such as meeting space or office supplies, represents an area of income from the state that presents positive normative opportunity during the referendum. To promote gender balance incentives for N-LCO membership and volunteer corps, state resources might go toward rewarding female recruitment. The incentives for recruitment would be managed and distributed by the CMU, as it holds the voter registration records that verify N-LCO key personnel and volunteers. N-LCOs submitting volunteer lists with periodic financial reports can be notified by the CMU of opportunity to partake in the state's in-kind contribution to incentivize gender parity in the campaign process. Similar measures could be taken to support integration of other social minorities into the campaigns. Of course, the incentive approval system would require a check to be sure that recruits are not double-counted by different N-LCOs or over distinct reporting periods.

In addition to the suggested regulations noted above, below follows checklist categories that the CMU can utilize to determine case-specific needs for regulations on spending. The first category includes⁹⁶ enhancing financial transparency through disclosure. The use of a website to list all regulations on income for N-LCOs and a database to publish all contributions for public review will increase confidence in the system. The second category includes ensuring that state resources are not being used to hinder a referendum position. This is intended to remove the state administration from undue influence, and also to measure the use of public resources (not just funds) for campaign purposes. This will remain within the purview of the LCOs

⁹⁴ Ohman, Magnus, and Hani Zainulbhai, eds. *Political Finance Regulation: The Global Experience*. Washington, DC: International Foundation for Electoral Systems, 2009. http://www.ifes.org/sites/default/files/political_finance_regulation_the_global_experience_0.pdf, pp 47-50.

⁹⁵ Herbert E., Alexander. "Approaches to Campaign and Party Finance Issues." In *Foundations for Democracy: Approaches to Comparative Political Finance*, edited by Karl-Heinz Nassmacher. Baden-Baden, Germany: Nomos, 2001.

⁹⁶ Ohman, Magnus, ed. *Training in Detection and Enforcement (TIDE): Political Finance Oversight Handbook*. International Foundation for Electoral Systems, 2013. http://ifes.org/sites/default/files/tide_political_finance_oversight_handbook_0.pdf, pp. 12-13

and CMU to monitor and resolve, should it become apparent that state resources, in contrast to those outlined above to be used for positive normative purposes, are used for discriminatory purposes.

2. Regulations on Expenditure

LCOs and their subordinates face regulations on expenditure that accord with many of the international standards set by electoral systems experts for standard, non-status campaigns. However, as clearly established, the role of political party finance is rendered almost irrelevant. The spending of the campaign organizations substituted for this status quo subject of regulations on expenditure. Below follows a checklist for such regulations with brief elaboration on why such constraints are important to assuring a level playing field during the referendum period and in some cases before and after. The manner in which the LCOs and N-LCOs are allowed to spend their revenue can exercise serious effects on the outcome of the vote if not properly specified to address the context and the opportunities it presents for noncompliance, or at worst, fraud. The bottom-line is that the system, particularly in a one-off electoral event such as a status referendum, must aim to increase grassroots fundraising potential, so that the campaign bodies take on positions that are broadly reflective of the will of the current, or future, citizenry. Conversely, the CMU must be vigilant of inconspicuous contributions from well-resourced special interests with high-stakes incentives for seeing one outcome over another during the vote.

Regulations on expenditure must focus on the following three areas, to create clear rules to constrain N-LCO campaign activities that may knowingly or unknowingly lead to the following:

- Vote Buying Prevention
- Vote Selling Prevention
- Purchase of Media Space

Vote buying is clearly an activity with strong normative incentive to prevent, as it inherently weakens the integrity of an elections system's mandate to first and foremost establish and maintain a level playing field for the referendum. Banning vote buying must also be explicitly stated in legislation or regulations. As an additional measure against vote buying, the CMU can require that LCOs sign mutual agreements to commit to an honor code to adhere to all campaign management best practices across the board. As a component of this, the LCOs have a strong incentive to train N-LCOs in vote buying prevention, by educating them about the range of penalties they may face if they are found to be engaging in such activities. However, these provisions against vote buying assume that it is through official channels, that is the institutionalized campaign finance management system and its component campaign entities, which would be responsible for the vote buying.

To account for the possibility of non-registered contributions going toward vote buying, the CMU can work to train local NGOs and polling station staffers at the RMB to work together on discreet programs to monitor communities for incidence of vote buying.⁹⁷ These prevention entities can work within the communities to educate voters about the intrinsic value of their vote on the one hand (moral imperative), and the legal or regulatory responsibilities of campaigners and other private actors not to engage in this activity (moral hazard). This type of voter education, if conducted by LCOs themselves, on behalf of the RMB, may also slake the possibility of vote selling. Of course, punitive provisions for this transaction between citizens and formal campaign entities will be overseen by the CMU, should allegations or indications of malfeasance arise. However, this 'supply side' issue of citizens marketing votes can have more systematic implications, should non-state actors or illicit groups seek to rally groups of citizens to sell their votes in favor of an

⁹⁷ Ibid. pp. 124-125

outcome the illicit group prefers. This is a scenario that has occurred in the case of national elections (non-status) in Haiti, as elsewhere, and it must be made clear that the LCOs are committing illegal acts if consciously lending aid to these tactics, either by active contribution or passive disregard for enforcing regulations that N-LCOs are subject to regarding vote buying or selling.

The purchase of media space is another expenditure area that requires keen attention to maintain fairness through equal access. Unchecked, campaign spending can quickly eviscerate this fairness if N-LCOs, especially at the local level, begin spending races to channel messages through paid media outlets. Generally, public space for campaign advertisements must be equitably allocated, a process that can occur through the local distribution of permits to N-LCOs, which will maintain record of permits, in the event that the LCO or CMU requests an audit of media access. This applies to the installation of billboards and other fixed-space advertisements for a particular campaign position. For use of ‘air-time’ on the radio, television or live stream Internet, host companies must demonstrate that rates paid by N-LCOs are fair and equitable allocation of time per viewpoint has been taken into consideration and demonstrably applied. Ideally, national-level media outlets will provide free air-time to the LCOs to host debates or conduct voter education, including television and radio.

C. Referendum Observation: During and After

Given importance of timely tabulation to integrity of referendum result, LCOs must meet a RMB-mandated deadline for summary report submission. This will permit for dispute resolution, should any complaints be raised about spending patterns during the campaign process and potential last-minute expenditures that may have ties to fraudulent voting, or other similar non-compliant or illegal acts. The CMU must exercise particular scrutiny when tracking account withdrawals and expenditures made by campaign organizations in the final days leading up to the referendum, which may be indicative of vote buying/selling. Working backward from this final reporting moment to assess fairness and compliance with campaign regulation, it is likewise essential that the CMU carry out report reviews in an orderly, timely, and comprehensibly over the course of the referendum period (see diagram below).

Of course, in order to achieve this level of scrutiny across all reporting cycles, including the pre-campaign report, intra-campaign (quarterly) reports, and post-referendum reports, it is essential that the CMU has financial independence as a regulatory body. This places a heavy burden on the RMB to secure independent financing for the CMU, not from the state. However, if this is so, it will protect the body from budgetary reprisal for conducting investigations into N-LCOs or Campaign Contributors that an operations Donor may favor. Decisions about how to conduct investigations, and how often, can be made in narrow regulatory margin to strike this balance of achieving rigorous review of suspicious revenue generation or expenditure, while not wasting resources.⁹⁸

⁹⁸ Ibid. pp. 48-50

The CMU may also elect to sub-divide into monitoring teams to observe a range of campaign activities over the course of the referendum period, including the following: revenue generation and reporting, expenditure review and reporting, media allocation/use, and civil society and voter education.

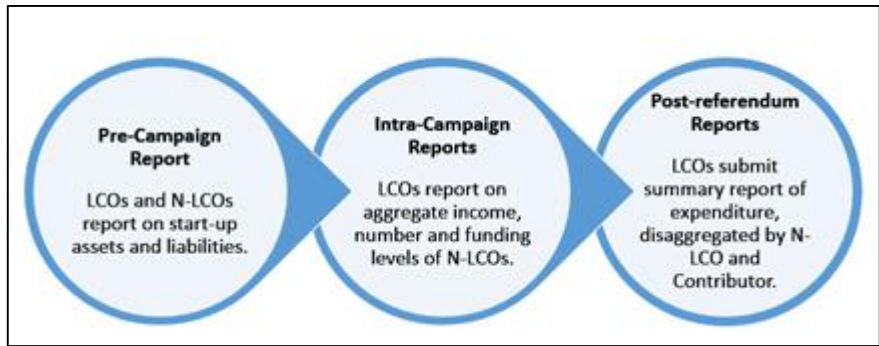


Figure 4: Timeline of Campaign Reporting

A revenue generation and reporting unit will allocate time and resources to collect and review income reports. This unit will monitor documentation for proper compliance but may also conduct site visits to meet with N-LCO campaigners to verify sources of funding. These same site visits may seek to confirm that expenditure reports are accurate. A unit devoted to expenditure review will perform a parallel function, communicating with campaign entities and the FRB, where appropriate, to resolve any disputes that may arise in spending patterns or through other bodies dedicated to dispute resolution and electoral justice within the RMB. A media allocation and use unit will monitor the campaigns' use of local, regional, national and even social media to mobilize voters in response to their positions. This unit will coordinate with the expenditure monitors, should it seem that imbalances or noncompliance with spending rules on media usage are not being followed by campaign entities. Finally, campaign observation would be incomplete without a unit devoted to coordination with non-RMB watchdog organizations in civil society. These organizations play a central role in fulfilling impartial observation of citizen behaviors during the referendum, particularly campaign volunteers, which may be working in ways that undermine the freedom and fairness of the referendum, such as blocking or marginalizing minority participation, or other considerations. Finally, in the case of a status referendum, it might be advisable to include a state monitoring unit to observe the ways in which the state is allocating (or not allocating) resources to the campaign efforts. This unit, in addition to monitoring the financial and material contributions the state may directly or indirectly make to LCOs, or other campaign entities, including Contributors, will also monitor use of the following:⁹⁹

1. Institutional resources: Material and personnel resources available to the State, including publicly-owned media
2. Financial resources: monetary assets, normally through the state budget, but in the case of dominant-party states, also the use of party resources to affect elections outcomes
3. Regulatory resources: the ability to pass laws and regulations that benefit/disadvantage specific campaign groups
4. Enforcement resources: the use of security and law enforcement institutions to address non-compliance with campaign finance laws and regulations in a manner that is biased or motivated by political interests

To increase transparency and confidence across-the-board, the CMU is encouraged to publish routine information on revenue and expenditure and disputes (both on-going and resolved) online, or in publically accessible databases. The databases should be updated in real time, given the resources to do so. These databases can be critical to international elections observation teams, and other stakeholders monitoring the

⁹⁹ Ibid. pp. 159

status referendum, to cross-check for anomalies or inconsistencies in the data (or to make sure data input is quality in the first place), to make this an effective tool for identifying and processing claims of noncompliance or potentially fraudulent funding origins or expenditures.

The CMU monitoring units can be adjusted to suit the particular conditions of a particular region that is holding a referendum, in consideration of electoral security measures, such as role of minorities or multi-ethnic voting blocs, levels and prevalence of modern communications methods, and other considerations that impact the electoral playing field as discussed by this comprehensive framework for universal referendum framework best practices.

VII. VOTING MODALITIES – INSIDE AND OUTSIDE OF THE ENTITY

A. Voting Modalities – Inside and Outside of the Entity

1. Legal Framework for Voting Modalities

Voting procedures in a secession referendum are usually defined by a referendum act, which directly governs an entire referendum. For example, the South Sudan Referendum Act 2009 (SSRA)¹⁰⁰ or the Scottish Independence Referendum Act 2013. In the case of South Sudan, chapter 4 of SSRA was on ‘Regulations and Procedures of the Referendum’. This chapter defined a big framework of definition of voters, voter registration process, polling procedures, counting and sorting procedures and so on. In addition to this, detailed rules of operations were defined by the electoral committee.¹⁰¹

2. Preparing for Polling

i. Voter Registration

Voter registration is a very important step to conduct a fair and legitimate referendum. It allows eligible voters to use their rights to vote and excludes ineligible people from voting. Different manners of voter registration will demand different cost and administrative capacity. Detailed discussions are located in *IV: Referendum Management Body*.

ii. Planning Timeline

Making a referendum calendar helps RMB to prepare for and conduct a referendum on schedule. It also let voters, political parties and media know the schedule of the referendum. This will enhance transparency and inclusiveness of the referendum. Calendars should be prepared and tailored with the information needed for each group. For example, a simple summary of a referendum calendar is helpful for voters and media while a detailed calendar is crucial for RMB staff to prepare a referendum materials on time.¹⁰²

Timelines will vary reflecting the context of each region as well. For example, time needed to complete voter registration is different in one country from another. However, there are several common features in calendars as well. Voter registration period, campaign period and the election date, announcement of results and the deadline for the submission and dispute resolution relating to the referendum process should be clearly stated.

¹⁰⁰ Southern Sudan Referendum Act 2009, 2009. <https://unmis.unmissions.org/Portals/UNMIS/Referendum/SS%20Referendum%20MOJ-Englis.pdf>.

¹⁰¹ Ibid.

¹⁰² “Electoral Management.” ACE Project. Accessed November 15, 2015. www.aceproject.org.

There are two issues regarding setting an election date (or election days). First, sometimes a referendum is combined with another poll. Though some may argue that holding more than one poll at the same time is confusing, from the administrative point of view, it is cost effective. Secondly, polling period can be a day or more. Though single-day voting is more common around the world due to security reasons or an increase in cost, multi-day voting may be suitable for several conditions. For example, multi-day voting simply provides the range of days for people to go to vote, so it may enable more people to cast their ballots. Also, with limited staff and materials, it is difficult to place an adequate number of polling stations. In that case, different polling days can be set depending on areas. For example, in the first day, area A holds a referendum and next day area B does so.¹⁰³

The Scotland referendum in 2014 was the case of single-day voting while South Sudan in 2011 was the case of multi-day voting. In South Sudan, all polling stations opened from January 9th to 15th.

iii. On polling day

Voters need to prove whether they are eligible voters or not both during registration and during voting.¹⁰⁴ To verify whether they are in fact those who they claim to be or not when voters come to polling stations is an important step to run a legitimate and reliable election. Election officers check voter's identification and voters' lists. After identification, voters get ballots. Through this process, multi-voting or electoral fraud can be prevented.¹⁰⁵

In places where many people do not carry any social documentation, voter identification cards issued at registration process are generally used to identify voters. However, sometimes eligible voters appear at polling station without voter identification cards. Rules should define whether eligible voters are still able to cast a ballot when they lose or forget their cards. For example, in South Sudan 2011 Secession Referendum, according to the South Sudan referendum Act, people who lost their identification cards lost their eligibility of voting originally. However, SSRC regulations allowed voters whose cards were stolen to cast a ballot without cards when they had documents verifying the circumstances by police and court.¹⁰⁶ Also, sometimes people forget cards or do not register beforehand. Given that they did not follow procedures, they are ineligible but sometimes polling officers recognize them and can verify if they are truly eligible or not. Rules should be clear whether people should be allowed to vote or not in those cases.

In addition, when there is a serious concern for multiple voting, indelible ink is used. Voters who have already voted are required to dip their fingers into indelible ink so that staff will know they already voted if they try to cast a second ballot.

3. Special Voting Arrangements

i. Types of Special Voting Arrangements

Besides voting at a polling station on the polling day, other methods to cast a ballot should be provided to meet special needs. Normal voting requires people to show up to a polling station in which each individual is registered during legally defined polling time. However, there are many people who cannot do that for

¹⁰³ "Voting Operations." ACE Project, n.d. <http://aceproject.org/ace-en/topics/vo/vog/vog01/vog01c>.

¹⁰⁴ "Voter Identification." ACE Project, n.d. <http://aceproject.org/ace-en/focus/voter-identification/default>.

¹⁰⁵ "The ACE Encyclopaedia: Voter Registration." The ACE Encyclopaedia. ACE Project, 2013. <http://aceproject.org/ace-en/pdf/vr/view>.

¹⁰⁶ "Observing the 2011 Referendum on the Self-Determination of Southern Sudan - Final Report." The Carter Center, 2011. http://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/FinalReport-Sudan-2011-Self-Determination-Referendum.pdf.

various reasons such as work, travel, physical disabilities, or living in a remote area, etc. Special voting arrangements enable them to participate in a referendum. It increases inclusiveness and equity of a referendum. At the same time, however, special voting arrangements increase administrative costs. The capacity of having special voting arrangements may be limited in some countries. The balance between cost and benefits should be considered.

Modalities of special voting are complex and vary vastly between countries.¹⁰⁷ Typical systems include the following:

- **Absentee Voting** is for voters who are outside of their electoral districts on the polling day.
- **Early (Advanced) Voting** allows voters to cast their ballots before a polling day.
- **Proxy Voting** allows voters to ask others to vote on behalf of themselves.
- **Out-of- Entity Voting** provides voters outside of a country the opportunity to vote
- **Institutional Voting** is when polling stations are placed in certain institutions such as jails or hospitals

Some countries may have all, some or none of these options. For example, the SSRA required the holding of Out-of-Country Voting.¹⁰⁸ Polling stations were placed in eight countries besides Sudan. It enabled 60,219 refugees and migrants outside of Sudan to participate in the decision-making process. In the case of the Scotland referendum in 2014, there were three ways to cast a ballot for eligible people including normal voting. People were allowed to vote by mail beforehand. People who wished to use mail voting applied for it by 5 pm on September 3rd and ballots were sent directly to their address. Electorates who got ballots had to return their ballots by mail before 10 pm on the polling day, September 18th. Another special voting system was voting by proxy. Voters who could not show up at polling stations during the polling period could appoint someone on whom they could rely to cast a ballot on their behalf. Though no major trouble was reported regarding voting by proxy in Scotland, this system may be too vulnerable in some countries where there is a great potential of electoral fraud or electoral violence.

ii. Out of Entity Voting

If there are many eligible migrants outside of the country, out of entity voting systems should be applied. Especially in post-war areas, this is often the case. Polling stations should be placed in countries where many eligible voters populate. This is based on idea of universal suffrage. Usually like the case of South Sudan, International Organization for Migration would be in charge of organizing out of entity voting.¹⁰⁹

In the case of South Sudan, the South Sudan Referendum Act determined to hold out-of-entity voting. Under the Act, out-of-country voting took place in Australia, Canada, Egypt, Ethiopia, Kenya, Uganda, the UK, and the United States of America following the decision made by SSRC. The SSRC estimated 376,000 external voters at first, but the actual number of people who registered to vote in those eight countries was 60,219. Though the number of people who actually registered for the referendum were far fewer than

¹⁰⁷ "Voting Operations." ACE Project, n.d. <http://aceproject.org/ace-en/topics/vo/vog/vog01/vog01c>.

¹⁰⁸ Southern Sudan Referendum Act 2009, 2009. <https://unmis.unmissions.org/Portals/UNMIS/Referendum/SS%20Referendum%20MOJ-Englis.pdf>.

¹⁰⁹ "Political Rights and Enfranchisement System Strengthening Project." International Organization for Migration, n.d. <http://www.geneseo.edu/~iompress/>.

expected, this system was evaluated well because out-of-entity voting enhanced inclusiveness and the implementation was generally successful.¹¹⁰

4. Counting Ballots and Announcing the Results

i. Counting Ballots and Announcing Results

Generally local polling stations pack ballots including unused ballots and send them to the local counting stations according to the instruction given by the central electoral committee. Local electoral committees are responsible for local counting processes and they are combined under the central electoral committee. This process can be observed by domestic electoral management bodies, international organizations, local parliament members or representatives from pro-independence group and con-independence group or another entity.

ii. Criteria for a Final Decision¹¹¹

The RMB should announce final results and a decision in accordance with a Referendum Act. It should clearly state criteria for passing a referendum. There are two types of conditions. One would be a turnout threshold. It requires a certain voter turnout for a referendum to be valid. Another option would be majority requirement. In some cases, a referendum will pass only with a simple majority of voters voting 'yes'. Others require a super majority. Conditions defining a super majority are diverse. In some countries, the majority of states need to support for passing a referendum besides support by overall majority of voters in a nation. In others, passing a referendum requires a certain proportion of votes higher than 50%.

In past referendums on independence, South Sudan required a simple majority of votes with 60% turnout threshold.¹¹² 97.58% of registered voter cast a ballot and 98.83% voted for separation. As a result, the referendum passed.¹¹³ In the case of Scotland, there was no turnout threshold and 55% yes of total votes was the condition of winning. 84.59% of registered voters turned out and 44.7% cast ballots for independence. The referendum did not pass in this case.¹¹⁴ Also, in Montenegro's referendum in 2006, 55% of votes for independence were also required with 50% turnout threshold. According to the announcement of final result, 86.5% of people turned out and 55.5% of votes were in favor of 'yes.' This referendum passed.¹¹⁵ Finally, Tokelau referendum on self-government status in New Zealand in 2007, required 2/3 pro-referendum votes with no turnout threshold to pass the referendum. 88% of registered voters turned out and 64.4% of people were in favor of self-government. However, it was below the condition, 2/3, and the

¹¹⁰ "Observing the 2011 Referendum on the Self-Determination of Southern Sudan - Final Report." The Carter Center, 2011. http://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/FinalReport-Sudan-2011-Self-Determination-Referendum.pdf.

¹¹¹ "Direct Democracy." ACE Project, n.d. <https://aceproject.org/ace-en/focus/direct-democracy/referendums>.

¹¹² "Sudan Referendum Fact Sheet." United Nations Department of Public Information, January 7, 2011. http://www.un.org/en/peacekeeping/missions/past/unmis/documents/factsheet_sudan_referendum07012011.pdf.

¹¹³ "Observing the 2011 Referendum on the Self-Determination of Southern Sudan - Final Report." The Carter Center, 2011. http://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/FinalReport-Sudan-2011-Self-Determination-Referendum.pdf.

¹¹⁴ "Scottish Independence Referendum - Results." BBC News. Accessed November 30, 2015. <http://www.bbc.com/news/events/scotland-decides/results>.

¹¹⁵ "Republic of Montenegro Referendum on State-Status 21 May 2006 - Final Report." Warsaw: OSCE/ODIHR Referendum Observation Mission, August 4, 2006. <http://www.osce.org/odihr/elections/montenegro/20099>.

referendum did not pass. As described above, winning conditions are influential on the final result. It should be carefully designed.¹¹⁶

VIII. REFERENDUM DISPUTE RESOLUTION

A. Referendum Justice

There is a possibility for voting issues to be reported to existing international bodies to decide on the resolution. There is precedent for different Referendum Resolution Bodies to be set up in response to a situation in which existing mechanisms do not suffice. For instance, Bosnia and Herzegovina saw the organization of the Election Appeals Sub-Commission to examine and arbitrate violations of the standards and procedures set up by the Provisional Electoral Commission. It was a body of both international and national judges.¹¹⁷ This joint structure added credibility to the Commission. This was set up not for a referendum, but for the inaugural elections, which essentially established the existence of the country. The RMB should determine if the Referendum Dispute Resolution Body has jurisdiction solely over the vote results or also over other voting issues.

The South Sudan referendum, on the other hand, assigned the role of resolving referendum disputes to the chairpersons located at the referendum centers along with the authority of the Consideration Committees which were comprised of three individuals chosen by the chair of each referendum center. Specific courts were set up for the purpose of the referendum to hear appeals made on the Consideration Committee decisions. The National Supreme Court would hear appeals made from these courts should the appeal process proceed to this level.¹¹⁸

Resolution of these voting challenges like voter registration and campaigns does not have to be under the jurisdiction of the same body that has jurisdiction over the validity of the referendum or announcing the final outcome.

The Referendum Dispute Resolution Body can use different mechanisms to respond to challenges. It can follow an administrative, judicial or legislative structure. An administrative structure is when the RMB has judicial jurisdiction to arbitrate referendum disputes. The judicial structure is when the regular courts have the jurisdiction to arbitrate. Legislative structures entrust this role to a legislative organ. In a referendum, the structure is likely to be administrative since judicial and legislative bodies might not exist exclusively for the region holding the referendum.¹¹⁹

B. Timelines

Referendum issues must be resolved quickly before legitimacy of the referendum is questioned. Deadlines must be established for dispute submission and the issuance of the final decision. For instance, in Bosnia and Herzegovina, their Referendum Dispute Resolution (RDR) submission must be submitted within

¹¹⁶ “Tokelau Referendum on Self-Government (2007).” ACE Project. Accessed December 6, 2015. <http://aceproject.org/today/feature-articles/tokelau-referendum-2007>.

¹¹⁷ “Bosnia and Herzegovina Election Appeals Commission Ceases Operations.” OSCE, April 5, 2001. <http://www.osce.org/bih/53438>.

¹¹⁸ “Observing the 2011 Referendum on the Self-Determination of Southern Sudan - Final Report.” The Carter Center, 2011. http://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/FinalReport-Sudan-2011-Self-Determination-Referendum.pdf.

¹¹⁹ Orozco-Henríquez, José de Jesús. *Electoral Justice: The International IDEA Handbook*. Edited by Ayman Ayoub and Andrew Ellis. Handbook Series. Stockholm, Sweden: International IDEA, 2010. http://www.idea.int/publications/electoral_justice/index.cfm.

twenty-four hours of the occurrence or discovery of the occurrence. It must be resolved within twenty-eight days by the RDR mechanism. In South Sudan, any dispute of referendum results was required to be submitted within three days of the announcement of preliminary results of the referendum. The Courts were required to come to a conclusion on the dispute within one week.¹²⁰ Scotland, on the other hand, requires that challenges to the referendum results must be submitted within six weeks of the certification of the referendum results.¹²¹

C. Determining Violations

There are several types of referendum fraud that should be investigated. The first category is general referendum fraud. Examples of this general fraud can be when an individual votes more than one time, votes without fulfilling legal obligations required, or uses documents not their own to vote, or a referendum official permits fraud to occur. The second type falls under the category of voter coercion. A referendum official could purposefully spread incorrect information about the referendum date or procedures, or civil servant could require their department to vote in a particular way. Additionally, an example of this could be when an individual, official or civil servant provides money or gifts for votes. A third category is obstructing the referendum process. An example of this is when a referendum official does not allow someone to vote who is legally able to vote, an individual or official impedes the opening or closing of a polling station, or an individual illegally removes ballots from a polling box or station. A fourth category are crimes related to voter registration. This would be if an individual uses false documentation to obtain voter registration or an individual tampers with registration materials. Furthermore, a referendum official could bar a citizen who is legally eligible to vote. The fifth and final category involves illegal campaign financing. This occurs when campaigns use funds obtained through activities not sanctioned by referendum guidelines outlined by the RMB or if campaigns use funds provided by a public servant.¹²²

The specific violations should be outlined in the mandate for the referendum. For instance, in the *Southern Sudan Referendum Act*, these referendum violations are described. Bribery for referendum votes is outlined as a referendum crime. For example, the document states, “For the purpose of this Act, the ‘practice of bribery’ means to give or offer any person: a) money, gifts or financial inducements; b) employment, employment opportunities or preferential treatment in a person’s employment.”¹²³ The *Scottish Referendum Act* also describes violations of campaign rules. It states, “A person commits an offense if a) the person – alters, suppresses, conceals, or destroys any document to which this subsection applies.”¹²⁴ The precise violations and actors at all points of the referendum cycle must be included in the mandate for the referendum to ensure clear compliance with referendum rules.

¹²⁰ Southern Sudan Referendum Act 2009, 2009. <https://unmis.unmissions.org/Portals/UNMIS/Referendum/SS%20Referendum%20MOJ-Englis.pdf>.

¹²¹ Scottish Independence Referendum Act 2013 (asp 14), 2013. http://www.legislation.gov.uk/asp/2013/14/pdfs/asp_20130014_en.pdf.

¹²² Orozco-Henríquez, José de Jesús. *Electoral Justice: The International IDEA Handbook*. Edited by Ayman Ayoub and Andrew Ellis. Handbook Series. Stockholm, Sweden: International IDEA, 2010. http://www.idea.int/publications/electoral_justice/index.cfm.

¹²³ Southern Sudan Referendum Act 2009, 2009. <https://unmis.unmissions.org/Portals/UNMIS/Referendum/SS%20Referendum%20MOJ-Englis.pdf>.

¹²⁴ Scottish Independence Referendum Act 2013 (asp 14), 2013. http://www.legislation.gov.uk/asp/2013/14/pdfs/asp_20130014_en.pdf.

D. Submission

To submit an incident of referendum fraud, registered voters can submit complaints provided they are registered in the constituency they challenge.¹²⁵ The Referendum Dispute Resolution Body will adhere to the following standards. The first is that it must be free to file a complaint. This protects the right to vote so that an individual's economic means do not hinder them from the ability to file a complaint. Second, the process will be simple.¹²⁶ It will involve submitting a form to the EMB with the name, address and identification of the individual and the nature of the fraud witnessed.¹²⁷ Third, the process will be timely enough to restore legitimacy to the referendum process before it damages credibility, which is incredibly important in the referendum.¹²⁸ Therefore, should be registered within two to five days of the incident, and it will be resolved within four to ten days, depending on the situation. This will be the case for pre-referendum fraud and fraud occurring on the referendum day.¹²⁹ Fourth, the process must be transparent. Information on the process of submitting and resolving complaints must be made widely available to the voting population. This lends credibility to the resolution process and will help make the outcome acceptable to the parties involved.¹³⁰ For example, Scotland requires the submission of challenges to be done as a petition for judicial review.¹³¹

E. Violation Consequences

There are two distinctions in the referendum crimes and their consequences. There is a difference in referendum challenges versus the determination of referendum liability. Referendum challenges are corrective in nature. The response is to annul, alter or recognize the irregularity, depending on its effect. In contrast, referendum liability is punitive. This response is to punish the person or entity at fault for the referendum crime. For instance, if referendum officials were responsible for stuffing ballots, then the referendum might be annulled. This is the referendum challenge that is corrective. Whereas, the referendum liability response is the punishment of the officials that the law requires.¹³²

Specific consequences for various levels of referendum violations vary by country. For instance, Bosnia and Herzegovina has imprisonment as the penalty for referendum fraud. They have both fines and imprisonment for voter coercion, obstruction of the electoral process and for voter registration infractions. East Timor does not have specific penalties for voter registration crimes, but they do have fines and imprisonment for referendum fraud, voter coercion and obstruction of the referendum process.¹³³

¹²⁵ "Maximum Adjudication Time for the Full EDR Process (days)." International IDEA, April 30, 2014. <http://www.idea.int/elections/ej/field.cfm?field=375®ion=2>.

¹²⁶ Orozco-Henríquez, José de Jesús. *Electoral Justice: The International IDEA Handbook*. Edited by Ayman Ayoub and Andrew Ellis. Handbook Series. Stockholm, Sweden: International IDEA, 2010. http://www.idea.int/publications/electoral_justice/index.cfm.

¹²⁷ *Ibid.*

¹²⁸ *Ibid.*

¹²⁹ *Ibid.*

¹³⁰ *Ibid.*

¹³¹ Scottish Independence Referendum Act 2013 (asp 14), 2013. http://www.legislation.gov.uk/asp/2013/14/pdfs/asp_20130014_en.pdf.

¹³² Orozco-Henríquez, José de Jesús. *Electoral Justice: The International IDEA Handbook*. Edited by Ayman Ayoub and Andrew Ellis. Handbook Series. Stockholm, Sweden: International IDEA, 2010. http://www.idea.int/publications/electoral_justice/index.cfm.

¹³³ "Maximum Adjudication Time for the Full EDR Process (days)." International IDEA, April 30, 2014. <http://www.idea.int/elections/ej/field.cfm?field=375®ion=2>.

For any individual convicted of a referendum crime in South Sudan, the individual would be imprisoned for at least six months up to two years or be fined by the special courts.¹³⁴ Scotland established a punishment of up to twelve months and/or a fine up to the statutory maximum depending on the severity of the referenda violation.

CONCLUSION

Referenda, taken collectively, constitute the most unique moments in the field of electoral policy. The referendum inherently involves conflict, and as such prompts a series of negotiations between interested parties to come to a provisional agreement that sufficiently addresses the political dynamics fomented by those that win and lose as a result of territorial status change. These are the universal environmental conditions in which all referenda take place; and, it is within this environment that a framework for free and fair elections must be constructed. This is no easy task, especially given the often long historical trajectories along which political institutions, and the citizenry, travel to arrive at the formal initiation of referendum period that will determine their future.

The legitimacy of the referendum is essential to forging the new state, and as such cannot be taken as a singular moment during which a voter approaches the ballot box to register their opinion. Rather, the referendum period, as this document clearly establishes, is comprised of a series of detailed decisions that must carefully consider the fundamental values of freeness, fairness and inclusiveness. Considerations of these electoral principles must undergird all decisions made to construct the referendum framework, in order to establish a new state (or not) under the most unimpeachable of processes, in the midst of divisive political conditions. Along a multitude of dimensions, this framework was developed to structure popular consultation on the status of a citizenry in such a manner, to freely and fairly establish the foundation of the prospective state itself. But how to achieve these aspirations?

The suggestions gathered in this Secession Referendum Framework elaborate comparative best practices along specific dimensions that contribute to the composite legitimacy of a referendum, including:

- Mandate legality to conduct the vote
- Transnational justice
- Electoral security conditions
- Definition of referendum boundaries, and the electorate
- Draft/final status question(s)
- RMB operations
- Campaign practice and financial transparency operations
- Voting modalities (domestic/international)
- Electoral justice processes, campaign and result contestation/resolution

Given that this framework seeks to guide electoral practitioners in best practices for conducting status referenda when they have the potential to occur, perhaps it is helpful to consider these dimensions in a sequential order, in rough chronological orders of priority to ensure free and fair orders of electoral operations.

¹³⁴ Southern Sudan Referendum Act 2009, 2009.
<https://unmis.unmissions.org/Portals/UNMIS/Referendum/SS%20Referendum%20MOJ-Englis.pdf>.

Universal dimensions such as these necessarily require situation-specific considerations, which demand close analysis by local and international electoral practitioners working in concert to maintain impartiality of the system, to further enhance referendum legitimacy. The counter-example that demonstrates the importance of impartiality, as a component of legitimacy, is the Crimean Status Referendum on 2014. The vote was unilaterally called and conducted by pro-Russian forces, and the framework for the popular consultation was inherently unequal, featuring the participation of no international stakeholders, and structuring the question itself so as to bind citizens in a prisoner's dilemma that renders virtually any and all responses as affirmative for secession from Ukraine. There were no provisions for the government of Ukraine to formally contest results, contravening transnational justice dimensions of electoral policy, and further signaling lack of result legitimacy.

In contrast, the status referendum in East Timor and Indonesia saw heavy reliance on international and domestic stakeholders to uphold impartiality as a principle driving process within the dimensions of electoral policy that work together to insure legitimacy. East Timorese worked through the UN to articulate a peace agreement that established the legality of a vote for greater autonomy, and eventual independence from, Indonesia. Despite the involvement of international stakeholders, the military was still able to undermine processes through violence, highlighting the importance of the electoral security dimension to assuring electoral legitimacy. This framework provides that the legality of a referendum mandate is a necessary but hardly sufficient condition for holding a status referendum that produces results that reliably reflect the will of the populace. As such, it is recommended that a peace agreement is established in advance of the remainder of the framework, suggesting that a certain amount of sequencing is important to constructing a successful referendum framework.

Boundary delimitation is a dimension of referenda electoral policy that affects both transnational justice and electoral violence considerations, and as such should be incorporated into all negotiations that seek to establish legality or peace before a referendum can take place. Boundaries may be pre-configured, as in the cases of Scotland, or Catalonia which seek devolution of power within existing formal territory. Or, boundary negotiations might demand more rigorous consideration and consultation, as in the case of the prospective state of Kurdistan, which spans no fewer than three sovereign states.

A component of legal authorization of the mandate must also include a definition of the electorate, and who is eligible to vote. This dimension is perhaps the most important from a fairness perspective, to make sure that all those individuals whose citizenship status will be affected by the outcome of the status referendum are able to contribute their position to the aggregation of popular will. The case of South Sudan, which was emerging from civil war, experienced a high number of internally and regionally displaced citizens (IDPs). As such, electoral policy had to take into account the impact of IDPs on voter registration, and define the electorate to insure maximal participation in light of these conditions.

Once mandate legality and peace agreements are in place, other dimensions can be addressed by referendum policy makers. International legal considerations and domestic security taken into account, policy for operationalization of the referendum can begin to develop. The most central component of operationalizing a referendum is to establish the legal mandate for a body that will be responsible for planning and implementing the vote. RMBs can take many forms, depending on the case, but must be set up in advance of the formal referendum period, to structure the multitude of decisions that lead to comprehensive, chronological plans to bring voters to the ballot box. Of all the dimensions of electoral policy for status referenda, the RMB is the institutional bastion of impartiality, and assures (or potentially undermines) outcome legitimacy with every action it takes.

As such, it is advised that the body be convened from existing institutional knowledge within the countries pre-existing voting systems, but be overseen or partner with international, impartial entities where devolution of power is not the goal, rather the formation of a completely new state is. This was the case with South Sudan, and the example reflects the importance of stakeholder selection in the management of the RMB, where institutional capacity considerations increased the relevance of international actors. A similar consideration would need to be made in the event of an officially sanctioned status referendum in Western Sahara; use of Morocco's electoral infrastructure would insure lack of fairness, as there is strong incentive to retain the territory, and a legacy of ceremonial elections in that country.

Campaign finance, monitoring and enforcement is complementary to the process of establishing a strong RMB dimension to the referendum policy framework. The provisions proposed in this document depend on other dimensions being pre-determined, including the definition of the electorate, and the authorization of the RMB. Campaign finance is notoriously difficult to track and enforce even in routine elections that return candidates to elected positions in government, let alone one-time status votes. Nonetheless, the Scottish framework provides normative examples of how to classify and formalize campaign entities, to link them to the RMB, and establish levels of accountability that work to achieve a level playing field for distribution of information pertaining to the positions the polity might take on the 'yes' or 'no' vote.

Concurrent with consideration of campaign finance rules and regulations, runs the priority to establish clear protocols for the policy dimension that defines how the vote will be cast. Voting modalities vary widely from case to case, and there are as many options for casting votes as there are electorates to cast them. However, one thing is absolutely certain: voting modalities cannot be determined without first building a full and accurate voter registry. The registry defines the number and needs of electors, and these factors, taken with other relating to key demographic characteristics, will determine the voting modality of best fit per referenda. Demographic characteristics include language, age, literacy rates, geographic distribution of voting population, and other considerations. Voting modality selection must also take into account allowability of proxy voting, absentee voting, institutional voting and other methods of registering the vote. Again, in the case of South Sudan, the registry initially recorded 376,000 external voters, but the RMB later determined the actual number of people who registered to vote in diaspora was only 60,219. This refinement prompted electoral implementers to reconsider the method of providing these individuals with the opportunity to vote.

Finally, the dimension of electoral justice must be considered. Electoral justice systems can be developed only once the structures of authority are determined across state, non-state, and electoral management entities charged with conducting and monitoring the status referendum. The policy dimension of electoral justice must see the big-picture political dimensions shaping the referendum, in anticipation of historical conflicts and methods of dispute resolution; it must also consider the micro-management aspects of electoral operations, to determine mismanagement, or fraud, in the institutions responsible for seeing the implementation of free, fair and inclusive referendum period. The electoral justice entities located in the RMB or judicial systems, must establish fair timelines for disputes to be raised and resolved, in a manner that harmonizes the referendum calendar, so as to buttress the legitimacy of the outcome. It must also feature clear, accessible processes for adjudication of disputes, including the criteria for investigation and interpretation of findings to make decisions to resolve disputes.


Taken together in this general sequential order, the dimensions of electoral policy for status referenda here proffered endeavor to delineate the decisions policy makers face, and the best practices for arriving at decisions that configure people, build processes, and produces an outcome that is legitimate.

ANNEXES


- Annex 1: Referenda Ballot Samples
- Annex 2: Map of Independence Referenda from 1995 to 2015 and Planned Referenda
- Annex 3: Table of RMBs by Referenda, Within the Past Twenty Years and Proposed
- Annex 4: Example Organizational Chart of a Referendum Management Body

ANNEX 1: REFERENDA BALLOT SAMPLES

Ballot Sample of East Timor Independence Referendum 1999:¹³⁵



UNAMET




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

Apakah anda **MENERIMA** usul otonomi khusus untuk Timor Timur di dalam Negara Kesatuan Republik Indonesia?

Ita Boot **SIMU** proposta autonomia espeisial ba Timor Lorosae iha Estadu Unitáriu Repúblika Indonezia nia laran?

Aceíta a autonomia especial proposta para Timor Leste integrada no Estado Unitário da República da Indonésia?



ACCEPT
MENERIMA
HA'U SIMU
ACEITO

▼

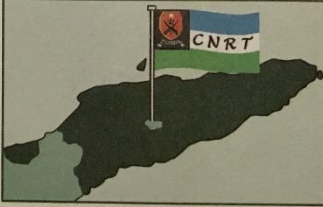
OR ATAU KA OU

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

Apakah anda **MENOLAK** usul otonomi khusus Timor Timur, yang akan mengakibatkan berpisahny Timor Timur dari Indonesia?

Ita Boot **LA SIMU** proposta autonomia espeisial ba Timor Lorosae, nebé sei lori Timor Lorosae atu haketak an hosi Indonezia?

Rejeíta a autonomia especial proposta para Timor Leste, levando á separação de Timor Leste da Indonésia?

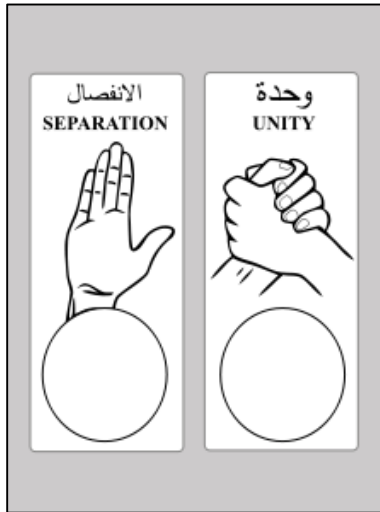


REJECT
MENOLAK
HA'U LA SIMU
REJEITO

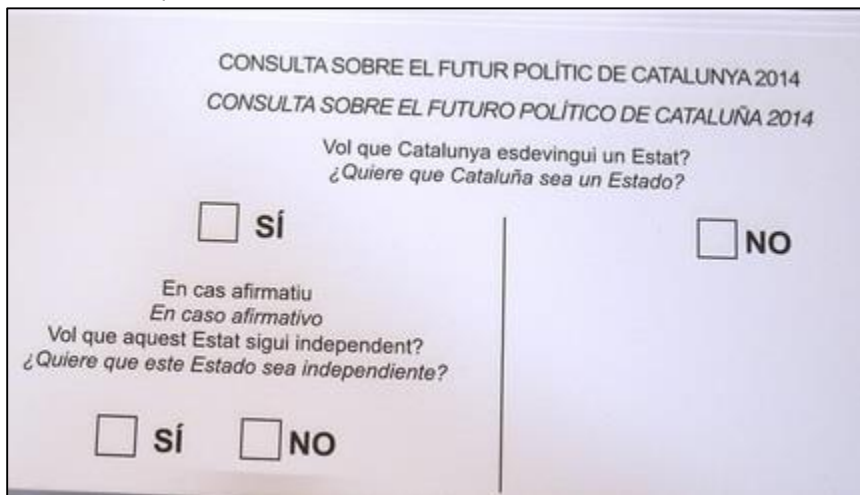
▼

¹³⁵ Photo of ballot taken by authors.

Ballot sample of South Sudanese Independence Referendum 2011.¹³⁶



Ballot Sample of Catalonia Self-Determination Referendum 2014:¹³⁷



¹³⁶ “Voting Form Used in the Referendum.” Wikipedia. Accessed November 30, 2015. https://en.wikipedia.org/wiki/South_Sudanese_independence_referendum,_2011#/media/File:Southern_Sudanese_independence_referendum_voting_form_2011.svg.

¹³⁷ “Lessons on Independence from Catalonia.” Puerto Rico Report. Accessed November 30, 2015. <http://www.puertoricoreport.com/lessons-independence-catalonia/#.Vms5auxViko>.

Ballot Sample of Crimea Status Referendum 2014:¹³⁸

Приложение 1
к Постановлению Верховной Рады
Автономной Республики Крым
от 6 марта 2014 года № 1702-6/14

Б Ю Л Е Т Е Н Ъ
для голосования на общекрымском референдуме 16 марта 2014 года

Б Ю Л Е Т Е Н Ъ
для голосування на загальнокримському референдумі 16 березня 2014 року

2014 сенеси март 16-да умумкырым референдумында рей берильмеси ичюн
БЮЛЛЕТЕНЬ

Отметьте любым знаком в квадрате тот вариант ответа, за который Вы голосуете:

Позначте будь-яким знаком у квадраті той варіант відповіді, за який Ви голосуєте:

Насыл бир вариант ичюн рей бергенинъизни ишаретнен бельгиленъиз:

1) Вы за воссоединение Крыма с Россией на правах субъекта Российской Федерации?

1) Ви за воз'єднання Криму з Росією на правах суб'єкта Російської Федерації?

1) Русие Федерациону субъекти акъларында Къырым Русиеге къошулмаасына разысынъыз?

2) Вы за восстановление действия Конституции Республики Крым 1992 года и за статус Крыма как части Украины?

2) Ви за відновлення дії Конституції Республіки Крим 1992 року і за статус Криму як частини України?

2) Сиз Къырым Джумхуриетининъ 1992 сенеси ичюн Анаяасы амельге кечирильмеси ве Къырым Украина къысмы оларакъ статусы ичюн?

Бюллетень, в котором оставлены неотмеченными или отмечены оба варианта ответа, считается недействительным.

Бюллетень, в якому залишено непозначеними або позначено обидва варіанти відповіді, вважається недійсним.

Къайд этильмеген я да эки вариант къайд этильгени заманда бюллетень керчек сайылмаз.

Бюллетень изготавливается размером 210 x 150 мм на бумаге белого цвета.

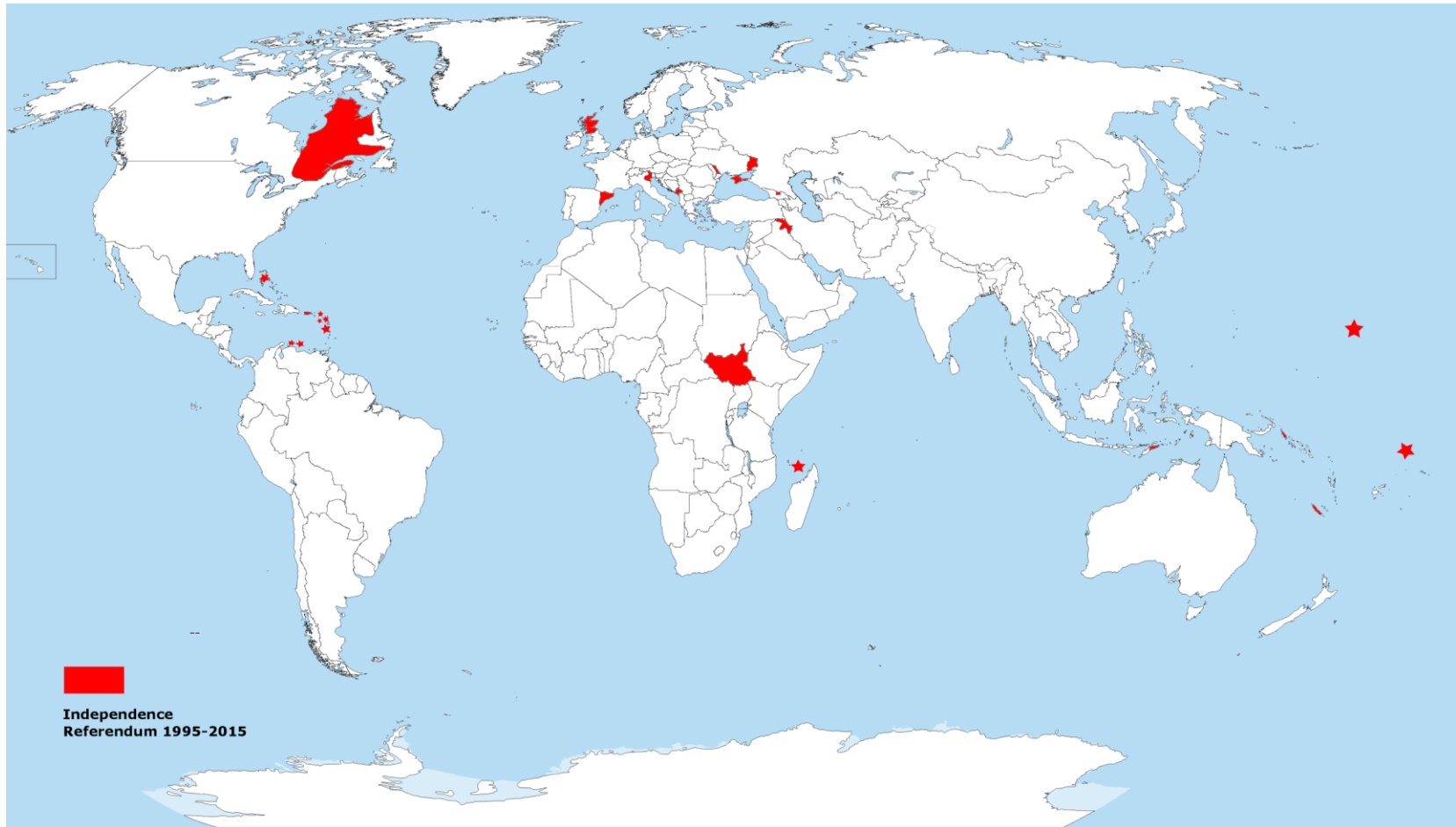
¹³⁸ BBC News. "Crimea Referendum - What Does the Ballot Paper Actually Say." Twitter. Accessed November 30, 2015. <https://twitter.com/bbcworld/status/443039946136223744>.

Ballot Sample of Scottish Independence Referendum 2014:¹³⁹

| | |
|--|--------------------------|
| BALLOT PAPER | |
| Vote (X) ONLY ONCE | |
| Should Scotland be an independent country? | |
| YES | <input type="checkbox"/> |
| NO | <input type="checkbox"/> |

¹³⁹ “Scottish Independence: What? - A Brief Guide.” The Atlantic, September 16, 2014, Online edition. <http://www.theatlantic.com/international/archive/2014/09/scottish-independence-what/380196/>.

ANNEX 2: MAP OF INDEPENDENCE REFERENDA FROM 1995 TO 2015 AND PLANNED REFERENDA



ANNEX 3: TABLE OF SELECT RMBS BY REFERENDA, WITHIN THE PAST TWENTY YEARS AND PROPOSED¹⁴⁰

| Region/Proposed State | Year | Legal Basis | Internationally Recognized? | Name of Body | Body Previously Established? | Structural Model | Size of Governing Body | International Members? |
|-----------------------|--------------------------|---|-----------------------------|--|------------------------------|----------------------------|------------------------|------------------------|
| Bougainville | Between 2015 and 2020 | Bougainville Peace Agreement | Yes | TBD | TBD | TBD | TBD | TBD |
| New Caledonia | Between 2015 and 2018 | Noumea Accord ¹⁴¹ | Yes | TBD | TBD | TBD | TBD | TBD |
| Iraqi Kurdistan | Postponed | Independent High Electoral And Referendum Commission Law ¹⁴² | No | Independent High Electoral and Referendum Commission | Yes | Independent ¹⁴³ | Nine | No |
| Chuuk | Postponed ¹⁴⁴ | Likely none ¹⁴⁵ | No | TBD | TBD | TBD | TBD | TBD |

¹⁴⁰ The table has been adapted from the list of referenda listed at “Independence Referendum.” Wikipedia. Accessed December 4, 2015. https://en.wikipedia.org/wiki/Independence_referendum.

¹⁴¹ “Noumea Accord - Digest_ [2002] AUIndigLawRpr 17; (2002) 7(1) Australian Indigenous Law Reporter 88.pdf.” Australian Indigenous Law Reporter. Accessed December 2, 2015. <http://www.austlii.edu.au/au/journals/AILR/2002/17.html>.

¹⁴² “Independent High Electoral And Referendum Commission Law.” KurdStrat, July 6, 2014. http://kurdstrat.com/2014/07/06/electoral_and_referendum_commission_law/.

¹⁴³ “Kurdistan Moves Step Closer to Independence with New Election Law.” Rudaw. July 24, 2015. <http://rudaw.net/english/kurdistan/240720141>.

¹⁴⁴ “Chuuk Independence Vote Postponed.” Radio New Zealand International, February 27, 2015, Online edition. <http://www.radionz.co.nz/international/pacific-news/267264/chuuk-independence-vote-postponed>.

¹⁴⁵ A process for independence is laid out in final report of the Chuuk Political Status Commission (“Final Report to the Chuuk State Legislature as Required by Chuuk State Law 11-12-08.” Chuuk Political Status Commission, December 15, 2014. <http://static1.squarespace.com/static/523ce201e4b0cd883dbb8bbf/t/54db4d9de4b00d5603465276/1423658397426/Political+Commission+Rpt.pdf>.) but the

| | | | | | | | | |
|-----------|------|---|-----|--|---|-------------------------------------|-------------------------------------|----|
| Catalonia | 2014 | Law on Non-referenda Consultations and Citizen Participation Article 122 of Catalonia's regional Statute of Autonomy ¹⁴⁶ | No | Central Electoral Commission ¹⁴⁷ | Yes | Independent | 15 ¹⁴⁸ | No |
| Crimea | 2014 | Resolution by deputies of the Crimean Parliament ¹⁴⁹ | No | Crimean and Sevastopol Territorial Election Commissions ¹⁵⁰ | Yes | Unable to determine during research | Unable to determine during research | No |
| Scotland | 2014 | Scottish Independence Referendum Act 2013 ¹⁵¹ | Yes | Electoral Management Board for Scotland | New Chief Counting Officer appointed but previously established secretariat | | 1 | |

Department of Justice for the Federated States of Micronesia has outlined why the secession would not be legal “FSM Department of Justice_ The Legality of Secession From the FSM.” The Fourth Branch, February 11, 2015. <http://www.tfbmicronesia.com/articles/2015/2/11/the-legality-of-secession-from-the-fsm.>

¹⁴⁶ “Catalonia Seeks an Alternative Independence Consultation after Constitutional Court’s Ban on Initially Planned Referendum.” ECAS, November 5, 2014, Online edition. <http://ecas.org/catalonia-seeks-alternative-independence-consultation-constitutional-courts-ban-initially-planned-referendum/>.

¹⁴⁷ “Election Commission Information.” Government of Catalonia. Accessed December 4, 2015. <http://www.parlament2015.cat/en/administracio-electoral/juntes-electorals/informacio-general/index.html>.

¹⁴⁸ “Election for the Parliament of Catalonia 2015: Composition of Election Commissions.” Government of Catalonia. Accessed December 4, 2015. http://www.parlament2015.cat/web/sites/parlament2015/content/Documentacio/02_Administracio_electoral/EPC-2015_Composicio_JE_1_en_20150704.pdf.

¹⁴⁹ “Crimea Parliament Declares Independence from Ukraine ahead of Referendum.” RT, March 11, 2014, Online edition. <https://www.rt.com/news/crimea-parliament-independence-ukraine-086/>.

¹⁵⁰ The Crimean and Sevastopol Territorial Election Commissions are previously established bodies (Territorial Election Commissions) responsible for the sub-national administrative implementation of elections in their respective oblast/city. See: “Elections in Ukraine: October 25 Local Elections Frequently Asked Questions.” International Foundation for Electoral Systems, October 21, 2015. http://www.ifes.org/sites/default/files/2015_ifes_ukraine_local_elections_faq_final.pdf.

¹⁵¹ Scottish Independence Referendum Act 2013 (asp 14), 2013. http://www.legislation.gov.uk/asp/2013/14/pdfs/asp_20130014_en.pdf.

| | | | | | | | | |
|--------------------------|------|--|-----|-------------------------------|----|--|-------------------------------------|---|
| Veneto | 2014 | | No | Plebiscite 2013 | | Not a governmental body; private organization | | |
| Kurdistan ¹⁵² | 2005 | n/a ¹⁵³ | No | Kurdistan Referendum Movement | No | Not a governmental body; non-governmental organization | Unable to determine during research | The body is driven in part by a diaspora community. |
| East Timor | 1999 | Agreement between the Republic of Indonesia and the Portuguese Republic on the question of East Timor ¹⁵⁴ | Yes | | | | | |

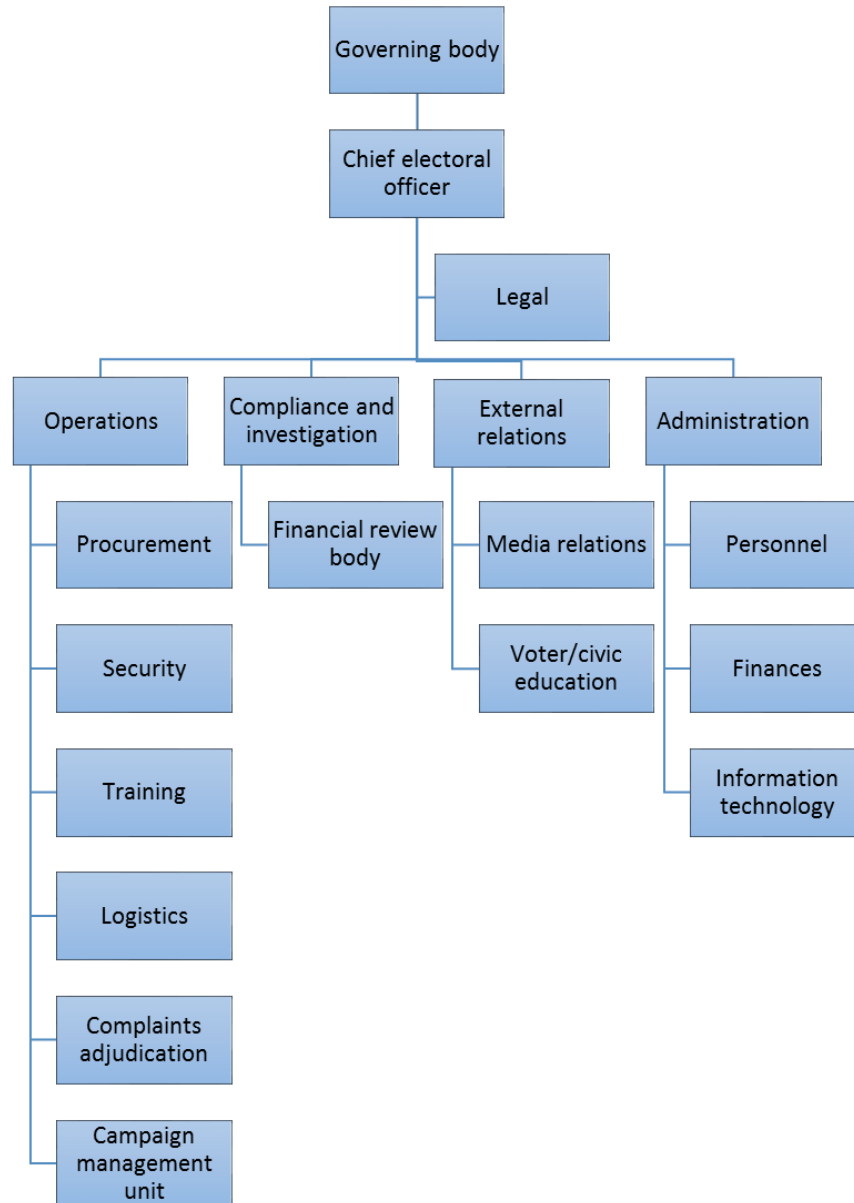
¹⁵² Berwari, Azad, and Thomas Ambrosio. "The Kurdistan Referendum Movement: Political Opportunity Structures and National Identity." *Democratization* 15, no. 5 (December 2008): 891–908. doi:10.1080/13510340802362489.

¹⁵³ The referendum was not officially sanctioned by any Kurdish bodies or even the political parties, although none stopped it from occurring concurrently with national Iraqi elections either.

¹⁵⁴ "Agreement between the Republic of Indonesia and the Portuguese Republic on the Question of East Timor," May 5, 1999. <http://peacemaker.un.org/timorleaste-agreement99>.

ANNEX 4: EXAMPLE ORGANIZATIONAL CHART OF A REFERENDUM MANAGEMENT BODY

The organizational structure of a referendum management body will be entirely dependent on the needs dictated by the context and the requirements outlined in the legal basis for the referendum. The following example organizational chart outlines a potential organizational structure based on common roles and practices for election management bodies. *This structure should not be considered the sole structure for referenda or even necessarily “best practice.”*



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