

CHAPTER 2

CHAPTER 2

2. The history and politics of external voting

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The case for external voting is usually presented as a question of principle, based on the universality of the right to vote. In reality, however, the introduction of external voting is enacted or enabled by legislation passed by elected politicians. Although there have been a variety of reasons for the enactment of external voting provisions, almost all have been the result of political impetus, and many have been controversial and even nakedly partisan.

1. A survey of the history of external voting

The first use of external voting appears to have been put in place by the Roman emperor Augustus, who is said to have invented a new kind of suffrage under which the members of the local senate in 28 newly established colonies cast votes for candidates for the city offices of Rome and sent them under seal to Rome for the day of the elections—an act which was undoubtedly based on political rather than democratic motives. In more recent times, the earliest known use of external voting took place in 1862, when Wisconsin became the first of a number of US states which enacted provisions to allow absentee voting by soldiers fighting in the Union army during the Civil War. (The franchise was defined at state level in the USA.) Political contention was from the beginning a major factor: Republicans backed external voting legislation as they believed that soldiers were likely to support Republican President Abraham Lincoln, while Democrats sympathetic to peace moves and the cause of the Confederacy opposed it. Outside the military context, New Zealand introduced absentee voting for seafarers in 1890, and Australia adopted it in 1902, although under operating arrangements which made its use outside Australia practically impossible.

Many more people were enlisted into armed forces during World War I (1914–8) than in previous conflicts. In the United Kingdom (UK), the political demand for a voice for those doing the fighting led in 1918 to the introduction of absentee voting for military

personnel, conducted by proxy. New Zealand gave the vote to all military personnel, not just those over the then voting age of 21, during the period of the war.

Canada provides more early examples of the influence of political factors in the introduction and form of external voting. Postal voting for military electors on active service was agreed at federal level in 1915: the Unionist government believed that Canadians on active military service would be likely supporters. Before the federal election which followed in 1917, the military franchise was extended. In addition, the military voter could choose the electoral district where the vote would be counted—failing which the political party chosen by the voter could do so after the results of the civilian voting in-country were known!

Another Canadian example of the influence of political factors was seen in the province of British Columbia, which enabled military personnel overseas to vote in 1916 in referendums on women's suffrage and on the introduction of the prohibition of alcohol. While the referendum on the vote for women passed easily, the result of the referendum on prohibition was very close, and the votes of overseas soldiers were critical to the rejection of the proposition. Following allegations of malpractice by the supporters of prohibition, a legislative commission of inquiry recommended that most of the overseas votes be disallowed. This recommendation was subsequently passed into law, changing the result of the referendum, and prohibition was then enacted.

France introduced external voting in 1924 to cater to a different constituency: French administrators posted to the occupied Rhineland were enabled to vote by post. World War II (1939–45) produced further momentum for external voting by active servicemen. In addition to postal voting by military personnel, Canada introduced proxy voting on behalf of prisoners of war by their closest relatives for the 1945 general election, and extended postal voting to military families in 1955. Postal voting for military personnel, merchant seamen and others working overseas on matters of national importance took place in the UK in 1945, with a three-week delay between domestic polling and counting to allow for ballot papers to be returned. France introduced proxy voting for servicemen by 1946: by 1951, postal votes and/or proxy votes were available for voters in a range of specified categories, including those on government or military service or professional business away from their home.

A guarantee that US service personnel could register for a postal vote was passed in 1942, although this was reduced in 1944 to a recommendation to states (which are the registration authorities) to enable registration. The overseas postal vote was gradually extended to cover non-military personnel serving abroad (in 1955) and all US citizens abroad (in 1968). Finally, under political pressure from US citizens overseas, the registration provision became mandatory for states in 1975.

In common with many other aspects of electoral administrative tradition, external voting provisions often passed from the legislation of a colonial power to the legislation of a newly independent state. The existence and form of external voting in Malaysia followed

its use in colonial Malaya, which had in turn derived it in the 1950s from the British legislation then in force. Postal votes were available for overseas service personnel, for overseas public servants and overseas students, and for their spouses. However, not all British colonies had introduced external voting before independence, and indeed some of the remaining British overseas territories and former colonies still do not have it.

Several French colonies retained the French proxy voting system at independence. France introduced personal voting in embassies and consulates in 1975 for presidential elections and referendums—an executive administrative initiative, because only one version of the ballot paper is required—and a number of former French colonies, for example Gabon and Guinea (Conakry), now have similar systems.

India enacted the core of its election legislation in 1950 and 1951, creating a model which was widely studied in other countries gaining independence. India at first specifically excluded proxy voting, and enfranchised its service personnel through postal voting. However, service personnel are now entitled to vote either by post or by proxy, and electors in government service outside India are entitled to vote by post.

Indonesia legislated in 1953 for its first democratic general elections. While some described the resulting law as over-complex and a search for democratic perfection, the principle of enfranchisement of all citizens, in particular migrant workers and students, led to the introduction of external voting in Indonesian embassies abroad—a mechanism that persisted through the elections of the years of authoritarianism and remained in use in the democratic era. A similar wide qualification was introduced by Colombia in 1961 (see case study).

The reasons for introducing external voting also differ according to the historical and political contexts. Thus, in several countries the introduction of the right to vote for overseas citizens was an acknowledgement of their active participation in World War I or World War II. In Spain, the introduction of external voting in 1978 had a symbolic character insofar as its inclusion in the democratic constitution meant the *ex post facto* acknowledgement of the republican emigration after the Civil War. In Argentina (1993) it reflected the government's political/pragmatic intention to maintain or strengthen the ties between emigrants and the mother country. In Austria the introduction of external voting (in 1990) followed a resolution of the Constitutional Court. The United States provides an example of those rare cases where external voting was finally enacted in response to the demands of citizens residing overseas (in 1975). While Swiss citizens had been able to travel back to Switzerland to vote for some years, the argument that Swiss sovereignty precluded foreigners from voting in Switzerland and therefore prevented the Swiss from seeking agreement for external voting was only finally overcome in 1989 (see the case study).

Political parties and actors can be the key players in introducing external voting. A provision in Honduras that had long been stalled was activated by a party which saw political advantage in doing so (see the case study). In the UK in the 1980s, the then

Conservative government saw advantage in the general enfranchisement of British citizens living overseas and enacted it, believing that many expatriates would be their supporters, but were disappointed by the very low take-up of overseas registration. Even an extension of the maximum period of overseas residence from five years to 25 did not bring the party the political benefits they anticipated.

However, communities of expatriates do often seek involvement in their country of origin, whether migrant workers seeking to retain links with their home, members of long-term diaspora communities opposed to a current or former regime, or expatriates remitting payments to relatives. Such communities can themselves be influential in lobbying for the introduction of external voting—as the Dominican Republic case study shows.

The fear of fraud in the operation of external voting provisions has sometimes been well-founded. France abolished postal voting in 1975 because of the incidence of fraud. French provisions for proxy voting before 1982 allowed proxies to be registered in any electoral district—which led in legislative elections to competition to register proxies in marginal electoral districts. Since 1982, proxies may only be registered in electoral districts with which the elector has a connection according to a list specified in the electoral law.

External voting provisions have not always proved to be sustainable. In the Cook Islands (see the case study), the undesirable effects of political party competition to fly voters overseas back for the poll led to the introduction of a separate electoral district for Cook Islanders resident overseas. Although Cook Islands elections have remained competitive, political support for the overseas seat declined and it was abolished for the 2004 election.

2. External voting in democratic transitions

The importance of political factors in the adoption and design of external voting provisions was accentuated during the democratic transitions of the 1990s. The inclusion of citizens abroad was often seen as a key element in the process of nation-building, for example, in Namibia in 1989 and South Africa in 1994.

Diaspora communities may be active in seeking a post-transition role, and may be particularly influential when they play a role in the domestic politics of major donor countries. However, such pressure is not always successful. The elections which took place in Palestine in 1996 were held under the terms of the Oslo Agreement of 1993 and the Israeli–Palestinian Interim Agreement of 1995. Under these agreements, the right of return of displaced Palestinians and their families was left for consideration in final-status negotiations. Although there was considerable pressure within the Palestinian diaspora for voting rights, no external voting provisions were introduced.

The international community frequently plays a leading or significant role in mediating transitions and even in implementing transitional elections. Transition agreements may therefore contain important and sometimes controversial external voting provisions. The General Framework Agreement for Peace signed at Dayton in 1995 led to the most complex use of external voting thus far attempted in the 1996 elections in Bosnia and Herzegovina. The issue at stake was the extent to which the ‘ethnic cleansing’ that had taken place during the conflict would be recognized in the elections. Would people who had been displaced or become refugees be able, both as a question of principle and in practice, to vote in the locality which they had left, or in a locality where they now were or where they intended to make a future home? The agreement provided for both options (see the case study). While the Organization for Security and Co-operation in Europe (OSCE) sought to implement the terms of the agreement, the political forces in Bosnia—many of which had been the major participants in the war—sought to encourage some versions of external voting, and to discourage others.

In a transitional context, the question of who implements external voting can be politically highly sensitive. The International Organization for Migration (IOM) organized external voting for Bosnia and Herzegovina in a variety of countries for several elections. When external voting for the 2004 elections in Afghanistan was being planned, Pakistan offered to organize the polling stations itself—politically a highly controversial proposal, which was not in the event accepted. The same arrangement may, however, be entirely acceptable in other circumstances. The electoral authority of the US territory of Guam organizes polling for the many citizens of the Federated States of Micronesia based in Guam, an arrangement which finds all-round support.

3. External voting and electoral system design

Political considerations are not only important in determining whether external voting takes place: they are also influential in defining its form. Many decisions relating to external voting are linked to electoral system design, another highly political aspect of democratic reform and democratic transition. Electoral system design is one of the most important elements in the institutional framework of a country, influencing as it does the political party system. Electoral system reform may be on the agenda as a result of vision or a motivation to improve democracy, or for more short-term, sectoral or even venal reasons on the part of some political participants. This is mirrored by external voting, which may be placed on the democratic agenda by those who believe strongly in the equal right of all citizens to participate—or by political forces which see potential advantage in it.

The desire to promote external voting may constrain the options for electoral system design. Conversely, the adoption of a particular electoral system may limit the options for external voting mechanisms. This can be illustrated by considering the three basic options for external voting—personal voting at an external polling site in a diplomatic mission, for example; remote voting by post, fax or some form of e-voting; and voting

by proxy. Chapter 5 looks in more detail at the administrative and practical aspects of implementation; the discussion below looks at how these relate to aspects of principle in choice of external voting method.

3.1. Personal voting and electoral system design

Personal voting at a polling station in-country is easy: all voters at the polling station will normally be voting in the same electoral district in the same election or elections, and will thus need to receive the same ballot papers. Minor exceptions (such as the small number of members of the UK House of Lords, who may not vote in legislative elections but may vote in local elections) can be accommodated.

The same is not, however, necessarily true of a polling site in for example a diplomatic mission. The electors may originate from anywhere in the country that is holding the election. Where the same ballot paper is in use across the whole country, this is not a problem: for example, everyone receives the same ballot paper in a plurality or majority election for president. The same is true when electing legislators under a List proportional representation (List PR) system in which the whole country forms one electoral district, and even when closed List PR is used in smaller electoral districts using ballot papers which only carry party names and logos.

The position is very different when candidate-based systems or systems with smaller electoral districts are used to elect legislators, and ballot papers are not the same country-wide. First, the electoral authorities have to establish how many of each ballot paper to despatch to each diplomatic mission. Then, the mission staff have to issue the right ballot paper to each external voter.

Under plurality/majority systems, for example, First Past The Post, the Two-Round System, Alternative Vote, Block Vote and Single Non-Transferable Vote, polling site officials will need to know in which district a voter is entitled to vote. The same is true under Single Transferable Vote.

If open or free List PR are used, the individual candidate lists will be different in each district, even if the same selection of parties are contesting every district. With closed List PR, the same applies if it is thought that the voter has the right to know when voting the identity of the candidates on the list of each party. Mixed systems, whether Mixed Member Proportional (MMP) or Parallel, are the most problematic, posing the challenges of both of their components simultaneously. Problems are likely to be magnified further if a decision is taken to use external voting in regional and local elections.

The task of determining which ballot paper each voter should receive may not then be simple, especially if the voter has left the home country a considerable time before. Neither voters nor polling site officials might be expected to have detailed knowledge

of precise electoral boundaries. It may be possible to use the registration process to determine the correct location of each elector and record it in a form that is accessible at polling sites, although this is a task that can consume considerable time and resources. Alternatively, electoral system designers can design versions of their chosen system in which a specific external district with reserved seats is created—as in Croatia. Another option is to allocate all external voters to a small number of electoral districts—as in Indonesia, where the external votes cast in Malaysia and Singapore are included in one of the two electoral districts in the capital, Jakarta, and all other external votes to the second Jakarta district (see the case study on Indonesia).

Even when the most recent place of residence in the home country of each elector is known, logistical challenges remain. The polling site needs to receive ballot papers for every district from the central electoral administration, and the polling site officials then need to ensure that the correct ballot paper is issued to each voter. There may be considerable potential for error and confusion. The values of electoral inclusion, electoral system sustainability and electoral integrity may pull in different directions, and a balance must be achieved.

3.2. Remote voting and electoral system design

While the electoral system design challenges for external voting using remote mechanisms are perhaps not as difficult as those using personal voting mechanisms, there are still substantial issues. While the packaging and despatch of correct ballot papers may be conducted under less time pressure, and the central election administration staff involved probably better trained and less likely to make mistakes than the officials at out-of-country polling sites, the possibility of error and confusion remains. The reliability of postal services in some parts of the world is clearly also an issue.

In addition, the electoral timetable can become a relevant factor. Ballot papers cannot be printed and despatched until nominations are closed and verified: time is then needed for international postal services to function in both directions. If the closing date for return of external postal ballot papers is set for polling day, this may not be consistent with the length of the campaign period. If it is set later than polling day, problems of the credibility of partial results may arise, especially in close elections where the external vote may be decisive. Timetable issues will be particularly difficult where a Two-Round System is in use, as the ballot papers for the second round can only be printed and despatched when the result of the first round is known.

3.3. Proxy voting and electoral system design

Of the three approaches to external voting mechanisms, proxy votes cause the least problems to electoral system designers. The problems of allocating external voters to electoral districts remain, but if this can be achieved, the proxies can be considered just as the voters themselves would be. Voters will presumably choose proxies who are

in-country and able to vote at the same polling stations as they themselves would. In any event, the choice of proxy is the voter's responsibility. A proxy voting system may, however, have other disadvantages, not least the issues that it can raise about electoral integrity.

3.4. *Timing issues*

External voting may be complex, and is always relatively time-consuming. However, where new electoral arrangements are being created, it is well known from experience that political actors will take all the time available for negotiating the form of a new election law. It is after all established negotiating practice to get maximum value for concessions by making them only when there is pressure of time to reach an agreement. This means that electoral administrators are almost certain to be operating without sufficient time to produce the ideal—or even a desirable—election. When corners need to be cut, simple systems which will work satisfactorily under pressure are therefore valuable. This may affect the choice of external voting method adopted.

The Cook Islands: seat for overseas voters abolished

Graham Hassall*

The Cook Islands is a self-governing state which established free association with New Zealand in 1965. The suffrage in relation to Cook Islanders living outside the Cook Islands has been an important issue in Cook Islands electoral politics.

In 1965, when the constitution and electoral laws were drafted, external voting was not an issue and was not thought of. Some Cook Islanders lived abroad, mainly in New Zealand and Tahiti, but there was no international air service, shipping was irregular and expensive, and the Cook Islands principle of ‘rangatira ki te ara’ implied that those who had gone away should not interfere in what went on at home. In 1974, however an international airport was built, regular and relatively cheap international flights were introduced, and at the same time party political competition was intensifying.

The Cook Islands electoral system had provision for an external seat from 1981 until 2003, and an overseas member was thus elected at general elections in 1983, 1989, 1994 and 1999 (see Hassall 2001; and Crocombe 1979). The Legislative Assembly had 22 members in 1965, the number of seats being subsequently increased to 24 in 1981 (with the constitutional amendment the Assembly was renamed ‘Parliament’) and to 25 in 1991.

External voting was established in 1981 through an amendment to the Electoral Act 1966 (Constitution Amendment (No. 9) Act) so that an ‘overseas constituency’ became one of the legislature’s 24 seats. The Electoral Act of 1966, with amendments as of 6 May 1989, Part II Constituencies, 5 (x), reads: ‘The Overseas Constituency, being the islands comprising New Zealand and all other Areas outside the Cook Islands’. This means the whole world except the Cook Islands. At that time the great majority of overseas Cook Islanders were in New Zealand.

Article 28C of the constitution provided for the election of a member for the overseas constituency who was residing ‘in New Zealand or elsewhere outside the Cook Islands’, who was a Cook Islands citizen and who was enrolled as an elector in the overseas

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constituency. Article 28 (b) provided for the election of a member by ‘postal vote, special vote, or by vote cast at one or more polling places situated outside the Cook Islands’. Voting was not compulsory, but registration was, and failure to register was an offence liable to a fine not exceeding 100 New Zealand dollars (NZD) (the currency used in the Cook Islands) on a first conviction (although there is no evidence that this fine was ever imposed).

The seat was established in the context of the growing number of Cook Islanders living abroad but the specific voting provisions restricted the number of islanders eligible to vote, since it only applied to those who had lived abroad for less than three years and who intended to return home to live permanently. This amounted to a small fraction of the total number of overseas Cook Islanders. It was the result of a move by the Democratic Party (DP) then in power to restrict the future influence of those whom they regarded as mostly loyal to the Cook Islands Party (CIP). This legislation was passed following efforts by political parties to mobilize external electors at general elections in 1974 and 1978, which the Cook Islands courts had subsequently found to be illegal. In those elections, the major political parties had chartered aircraft to fly in those who were registered as ‘absentee voters’. In the 1974 elections the DP chartered an aircraft to transport approximately 75 voters to Rarotonga, and in the 1978 elections both the DP and the CIP chartered aircraft.

Both parties now realized that the increasing number of prospective absentee voters could swing the results of an election, and thus made elaborate efforts to register voters who were resident in New Zealand. Democratic Party voters paid for the charter air fares while the Cook Islands Party members were told that their flights would be free of charge. After the CIP victory in 1978, in which the ‘fly-in’ votes had been a decisive factor, the DP filed election petitions, challenging, among other things, the legality of the votes won by flying in voters at no cost or heavily subsidized by the CIP using government funds. On 24 July 1978 the Supreme Court determined that eight of the CIP’s 15 seats had been gained by ‘unlawful conduct’ in that the CIP fly-in votes were tainted by bribery and corruption. These seats were awarded to the DP, and the CIP lost power. (High Court of the Cook Islands, Misc. nos 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 32.78, in the Matter of Elections of Members of the Legislative Assembly of the Cook Islands, unreported. See also Henry 2003.)

The use of ‘flying voters’ was made possible by the vagueness of the definition of ‘ordinary residence’ in the constitution, but there was no constitutional provision for external voting outside the Cook Islands, because when it was drafted in 1964 there were few Cook Islanders in New Zealand and no air service.

Following the establishment of the external seat in 1981, a debate ensued about whether Cook Islanders who had chosen to live elsewhere should have full representation in the Cook Islands legislature, and the high cost of the public sector in general (particularly in the context of the Cook Islands’ small and struggling economy) brought into question the cost-effectiveness of the external seat. The cost of administering the external seat has never been made public. A 1998 Commission of Political Review was unable to determine exact costs but estimated that the costs of external voting—the salary costs, fares, living costs and so on of the team of officials sent from the Cook Islands to visit communities of Cook Islanders in New Zealand and Australia to advise them about

the provisions—were too high, relative to the numbers of voters concerned, to make it worthwhile. Even the administrators of political parties agreed that there was too little interest among expatriate Cook Islanders to make the effort worthwhile. Moreover, under the terms of the free association arrangement between the Cook Islands and New Zealand, all Cook Islanders are New Zealand citizens and are therefore entitled to vote in New Zealand elections; New Zealand citizens can similarly move to Australia quite easily and take up citizenship rights in that country.

In a the general election of March 1994 voters were also asked at referendum whether the overseas constituency should be abolished. Approximately 55 per cent of the population voted in favour of keeping the seat, and the government thus took no action to remove it. However, although on this occasion the voters agreed to the continuance of the seat, public support for it declined within a few years.

In practice, while there are more Cook Islanders living outside their home country than in it, few have been motivated to register and vote in Cook Islands general elections. Out of approximately 60,000 Cook Islanders resident in New Zealand and 45,000 in Australia, only 737 registered as voters for the 1994 general election and some 569 Cook Islanders abroad actually voted (Cook Islands News and ABC News, 18 September 2002). (In 1994 there were four candidates for the overseas seat.) The reasons for the low registration numbers include a tendency for Cook Islanders to describe themselves on official forms as New Zealand citizens or as Maori, sometimes out of fear that they might be removed from these countries in the same manner as Samoans and Tongans are (although this is based on ignorance of the law, because Samoans and Tongans have less right of entry to New Zealand than Cook Islanders).

In 1998 the Commission of Political Review recommended a number of changes to the Cook Islands constitution, including reducing the number of parliamentary seats to 17—a formula that did not include an overseas seat (Commission of Political Review 1998). The future of the external seat gradually became the subject of intense speculation. At the general elections in 1999 three of the four political parties fielded candidates for the overseas seat, although an inquiry that suggested that the overseas seat cost some 100,000 NZD each year was a factor in a large proportion of the Cook Islands public favouring its abolition. In 1991 the High Court also ruled that candidates who are normally resident abroad are ineligible to represent Cook Islanders in Parliament.

In 2000 there were an estimated 55,000 Cook Islanders in New Zealand and another 30,000 in Australia. However, only 6,000 of these were eligible to vote because they had been abroad for less than three years.

In 2003 some 2,000 voters signed a petition calling not only for abolition of the overseas seat but also for a reduction in the parliamentary term from five years to three, a reduction in the number of MPs and a reduction in funding for ministerial support. When the legislature voted in 2003 on whether to abolish the overseas seat even its incumbent, Dr Joe Williams, agreed to its abolition.

Indonesia: a long-established system for external voting at diplomatic missions

Alan Wall

In 2004 Indonesians participated in a historic series of elections, in April in what are widely regarded as the most democratic elections for legislatures held since the 1955 Sukarno-era elections, and in July and September for the first direct elections for the presidency. Between 200,000 and 250,000 voters (c. 0.2 per cent of total voter turnout) voted outside Indonesia at these elections. Voting outside Indonesia for national parliamentary bodies has been a constant feature of Indonesian elections since the first post-independence direct popular election—that for the national People’s Representative Council in September 1955.

Concern to preserve the voting rights of a large external population of immigrant workers and students, mostly resident abroad for a relatively short period, had led to external voting provisions being included in the 1953 Election Law. External voting was managed by the Ministry of Foreign Affairs. Indonesians who met the qualifications to vote but were overseas and living in a city where Indonesia had diplomatic representation could register to vote for the national legislative body at the relevant embassy. They were registered to vote for the electoral district in which the Ministry of Foreign Affairs headquarters was located—the province of Jakarta. Overseas voting committees (PPLNs) were formed at each Indonesian diplomatic mission by the ambassador to manage electoral registration, voting and the counting of ballot papers.

Similar arrangements continued under the 1969 Election Law, which governed the six Suharto-era ‘elections’ for the national People’s Representative Council (DPR) held between 1971 and 1997. The first post-Suharto era election, in 1999, also continued these arrangements, although PPLNs made up of party representatives now replaced the bureaucrats of the ministries of home affairs and foreign affairs of the Suharto era. External electors could still vote only for the DPR, and their votes continued to be added to votes for the province of Jakarta.

Constitutional changes between 1999 and 2002 significantly altered the structure of the organs of the Indonesian state. They resulted in a significant overhaul of electoral management—the setting up of an independent National Election Commission (KPU), and the adoption in 2002 and 2003 of new electoral laws. Elections for the DPR and

regional representative councils (DPRDs) were now to be held using an open list proportional representation (PR) system. The system adopted requires that voters must vote for their preferred political party and may also vote for their preferred candidate from that party's candidate list for the relevant electoral district. (Previously, a closed List PR system, in which only party names/symbols appeared on the ballot papers, was used.) The KPU also now had to divide each council's area into electoral districts, each returning between three and 12 representatives. Previously, elections for the DPR had been based on the provinces as electoral districts, and elections for DPRDs were held 'at large' within each council's area. A new second chamber of the national parliament, the Regional Representatives Council (DPD), was to be elected by a Single Non-Transferable Vote (SNTV) system, using each province as an electoral district. All these elections were to be held on the same day. Subsequent presidential elections were to be held using a Two-Round election system.

The complexity of the new electoral arrangements made any significant changes to the external voting arrangements difficult. The vastly increased number of electoral districts provided even greater administrative difficulties in providing external voting facilities for elections to provincial and local representative councils. (For elections prior to 2004, electoral districts for the DPR and provincial DPRDs were equal to the number of provinces (27 in 1999), and for local DPRDs equal to the number of regencies/municipalities (*c.* 260 in 1999). For the 2004 elections there were 69 electoral districts for the DPR, 32 for the DPD, 211 for the provincial DPRDs and 1,745 for local DPRDs.) The relevant electoral laws (Law no. 12 of 2003 on Elections, and Law no. 23 of 2003 on the Election of the President and Vice-President) stated that external electors could vote only in elections for the DPR and the presidency.

The increase in the number of national electoral districts and the introduction of an open list voting system was also decisive in restricting change to the framework for external voting for DPR elections. It was argued, successfully, that it was not possible for external voting stations to cope with administrative materials for the 69 national electoral districts, and that neither the political parties nor the electoral administrators had the capacity to provide information at all external voting locations about the candidates standing on party lists in all these districts. To simplify the administration, the KPU determined that for the 2004 elections votes cast by external voters would continue to be amalgamated with votes cast in the Jakarta province. However, the Jakarta province was now split into two electoral districts for the DPR elections. Arguments were made for continuing the historical arrangement whereby all external votes were amalgamated into the votes for the electoral district where the headquarters of the Ministry of Foreign Affairs is located, but this was not accepted. Instead, external votes were divided into what the KPU believed would be relatively equal shares. Votes for the DPR from external voters in Malaysia and Singapore were amalgamated with votes for one Jakarta electoral district, and votes from external voters at all other locations were amalgamated with votes for the second Jakarta district.

The administrative arrangements for external voting for the 2004 elections were therefore similar to those for previous elections. The process was managed by the KPU, in coordination with the Ministry of Foreign Affairs. External voting facilities were located at Indonesian diplomatic missions and managed at each location by an

independent PPLN, appointed by the KPU. Election supervisory committees (Panwas) were also established at each external voting location. Panwas are a uniquely Indonesian institution, formed at each election administration site. They are responsible to the KPU and charged with supervising the election processes, handling complaints, resolving disputes that do not involve a breach of the law, and reporting on alleged breaches of the law to the relevant authority.

Indonesians overseas who met the normal qualifications to vote were able to register at the Indonesian diplomatic mission in the city in which they were resident. PPLNs at each mission were responsible for registering them: registration could be done in person, by email or by post. Electors registering overseas were not included in the population counts used to determine the number of seats in the DPR allocated to the Jakarta province, or to the districts within the province. A single electoral register was constructed for each mission, later to be broken down into lists to be used at each polling station within the mission. (The electoral law sets a maximum of 300 electors per polling station.)

Voting in person at diplomatic missions was held simultaneously with voting in Indonesia. Observers, party agents and Panwas members had the same rights to observe the election processes at external voting locations as their counterparts in Indonesia. For the 2004 elections external voters could also apply to lodge postal votes, which had to be received by the relevant mission within ten days of election day. Votes lodged in person and by post at external voting locations were counted at that location and the results faxed or emailed to the KPU's headquarters in Jakarta.

For the three elections in 2004, between 405,000 and 460,000 persons registered as external electors, of an estimated 2 million Indonesians overseas. External voter turnout at these elections, at between 55 per cent and 60 per cent, was significantly lower than turnout within Indonesia.

Funding requirements for external voting are specifically recognized in the KPU's budget. For example, in its budget proposals for the 2004 elections, the KPU sought parliamentary approval for allocations of over 57.5 billion Indonesian rupiah (IDR—c. 6 million US dollars (USD), or 13 USD per registered external voter) for the costs of administering external voting for the April 2004 legislative elections. This did not include the costs of voter information, the printing of ballot papers, and central administration for external voting. Actual costs are not known.

During the period in which new election laws were being developed for the 2004 elections there was some discussion, initiated by civil society organizations, as to whether external electors could also be eligible to vote in elections other than those for the DPR and the presidency, but such proposals were not strongly argued or seriously considered. The administration of external voting for around 2,050 national, provincial and local government electoral districts was deemed too difficult. It was also argued that, while external voters may maintain a connection to Indonesia's national affairs, this could not be said to be true of the affairs of a particular province or local government area. Since the 2004 elections, there has been no further public discussion about altering the current external voting arrangements.

Zimbabwe: highly restrictive provisions

Ozias Tungwarara

External voting by post was part of the electoral laws that were introduced in Zimbabwe after 1980 when the country attained political independence. It is limited to electors who are absent from Zimbabwe while in the service of the government, such as diplomats, civil servants, and members of the armed forces and police. An estimated 3.5 million Zimbabweans now live outside the country, mainly as a result of economic and political hardship, and about two-thirds of these are probably of voting age. This situation has given rise to increased demands by those living in the diaspora for external voting arrangements to be extended to them as well. Zimbabwean laws prohibit dual citizenship.

External voting is provided for in part XIV of the Electoral Act (Act no. 25/2005), which deals with postal voting. The act only makes reference to postal voting and does not provide for voting at a diplomatic mission. Eligibility to vote by post is limited to persons ordinarily resident in Zimbabwe who are resident in the constituency (electoral district) in which the election is to take place or were resident in that constituency 12 months preceding polling day and have good reason to believe that they will be absent from the constituency or unable to attend at the polling station by reason of being 'absent from Zimbabwe in the service of the Government of Zimbabwe' (section 71(1)(b)). The spouses of persons absent from Zimbabwe on government service are also eligible to vote by post.

Sections 71–81 of the Electoral Act describe in detail the procedure for applying for postal ballot papers, the issuing of the postal ballot papers, postal voting, the handling of the postal ballot boxes, and offences related to postal ballot votes. A person who is eligible to vote by post may apply to the chief elections officer for a postal ballot paper. The application, to be received by the chief elections officer ten days before polling day, is made on a prescribed form that the applicant signs in front of a competent witness. The chief elections officer shall number consecutively and keep every application received by him or her open for public inspection until the final result of the election is announced.

Once the chief elections officer is satisfied that the application satisfies the legal requirements, he or she will send the ballot paper to the applicant by registered post or by hand together with other documents stipulated in the act. The ballot paper shall be numbered and shall be indistinguishable from the ballot papers at other polling stations. Upon receiving the postal ballot, the voter shall produce the numbered ballot paper before a competent witness. Both the voter and the competent witness will sign a declaration of identity. The voter will then mark the ballot paper with the candidate of his preference in the presence of a competent witness but without disclosing how he or she has voted. The voter will place the marked ballot paper in an envelope marked 'ballot paper' and place it together with the identity declaration in a cover envelope for dispatch by registered post or hand it directly to the constituency election officer.

The constituency election officer shall, no later than three days after nomination day, notify each candidate of the time and place at which he or she will seal the postal ballot box. At the appointed time and place the constituency electoral officer will show the postal ballot box open and empty and then seal it with his seal and the seals of any candidates who wish to affix their seals. All postal votes received before the close of the poll will be placed unopened in that ballot box. The constituency elections officer will give each candidate 24 hours' notice of the place and time at which the postal ballot boxes and envelopes will be opened.

The electoral authorities have taken great care to ensure the transparency, credibility and security of the external voting process through the provisions described above. However, despite increasing demands, the government maintains that it has no obligation to introduce external voting arrangements to allow the growing number of Zimbabweans living outside the country to vote.

In a recent case a group of Zimbabwean citizens living in the United Kingdom, sought an order compelling the government to make arrangements to allow them to vote externally. The Zimbabwe Supreme Court (Case no. SC 22/05) ruled that the case had no merit. The ruling, made on 18 March 2005, indicated that full reasons for the judgement would be given later. At the time of writing the full judgement is still to be made available.

The applicants—who were not employed by the government but were legally resident in the UK—argued that they were entitled to exercise their right to vote in terms of the Zimbabwean Constitution and that their exclusion from voting was discriminatory and therefore unconstitutional. They further contended that the exclusion from voting of those living outside Zimbabwe curtailed their rights to freedom of expression to an extent that was not acceptable in a democratic society, and advanced the argument that the Zimbabwean Government was committed to full participation by its citizens in political and electoral processes by its citizens by virtue of being party to the Universal Declaration of Human Rights, the African Charter on Human and Peoples' Rights and the Southern African Development Community (SADC) Principles and Guidelines Governing Democratic Elections. They argued that there was a distinction between eligibility to register as a voter and eligibility to vote. The electoral law was therefore discriminatory to the extent that it permitted certain citizens to vote externally while excluding others.

In response, the Zimbabwean minister of justice, legal and parliamentary affairs,

who was cited as first respondent in the case, denied that Zimbabweans living abroad were being discriminated against by the absence of external voting arrangements. He argued that the electoral law provided for the disqualification of voters who had been absent from Zimbabwe for 12 months or more. He contended that the SADC Principles and Guidelines are a political document pegging out a road map for the region that SADC countries must follow towards a future democratic ideal, but that it is not a legal document that is binding on member states. He argued further that, while the Zimbabwean Government acknowledged that Zimbabwean citizens had the right to freedom of expression, assembly and association, the government was not discriminating against anyone but that, under the current political and economic situation, Zimbabwe was unable to allow electors from the diaspora to vote externally because of practical logistical problems. He pointed out that most of the countries in which Zimbabweans were living had adopted measures and sanctions that prohibited government officials from entering such countries. (Sanctions have been adopted by mainly the European Union countries and the United States.) This, he argued, would create an uneven political playing field where the ruling party would not have access to would-be voters while the opposition would have easy access.

It is clear that in Zimbabwe the provisions for external voting are elaborate but restrictive. There is no doubt that, given the growing number of citizens living outside the country, there is going to be increasing demand for similar arrangements to be extended to citizens who are not abroad on government service. The case referred above also raises the fundamental issue of a rights-based approach to electoral administration and how far governments should be held responsible for realizing citizens' right to vote.

Mozambique: a system that is too subjective?

Simon-Pierre Nanitelamio

According to the constitution of the Republic of Mozambique (article 170, point 2), the parliament (the Assembly of the Republic) is composed of 250 seats. They are distributed as follows: 248 are allocated to the 11 internal electoral districts within Mozambique; and two are allocated to the two external electoral districts ('Africa' and the 'rest of the world'). The rationale behind the creation of electoral districts outside the national boundaries is to preserve the voting rights of migrants. The provisions of the 1990 constitution, revised in 2004, allow Mozambican citizens living abroad to vote, in their countries of residence, not only for their representatives to the Assembly of the Republic but also in presidential elections. However, the exercise of their voting rights hinges on the existence of some basic conditions.

Both the Voter Registration Law and the General Elections Law emphasize that Mozambican citizens living abroad have the right to register as electors and vote only if and when the National Electoral Commission (NEC) considers it possible. (Since 2002, the NEC has been made up of 20 members: 18 are appointed by political parties represented in the parliament, in proportion to the number of seats they won at the last election in 1999. Ten are appointed by the ruling party, the Mozambican Liberation Front (Frente de Libertação de Moçambique, Frelimo) and eight by the Mozambican National Resistance Resistência Nacional Moçambicana, Renamo)–Electoral Union coalition. One member is nominated by the government and the president, the 20th member, is designated by the civil society organizations. An electoral reform is currently under way and the composition of the NEC may change in the future.)

Article 9 of Law no. 18/2002 of 10 October 2002, on the institutionalization of systematic electoral registration for elections and referendums in Mozambique, states that: (a) electoral registration will be conducted both within the national territory and abroad; and (b) the geographical boundaries and locations for electoral registration are (i) in the national territory: the districts and Maputo city; and (ii) abroad: at diplomatic or consular missions. The electoral registration referred to in point (ii) will be carried out only if the NEC considers that the necessary 'material conditions and control, review and inspection mechanisms' are in place in all regions.

Article 10 of the General Elections Law, Law no. 7/2004 of 17 June 2004, states that ‘Mozambican citizens registered abroad are eligible for the elections foreseen in the present law’. This is complemented by the provisions of article 11 (on Mozambican citizens living abroad) of the same law, as follows.

1. Registered citizens living abroad cast their vote at the respective diplomatic or consular mission of the Republic of Mozambique.
2. Electoral acts abroad shall take place only after the NEC has verified and confirmed that the necessary conditions with regard to the material conditions and control, review and inspection mechanisms are in place in the region(s) constituting the electoral districts of Mozambican communities abroad.
3. If the electoral acts referred to in the above point cannot take place, the NEC shall redistribute the parliamentary seats allocated to the external electoral districts to the internal electoral constituencies, according to the criteria determined in the present General Elections Law.

These provisions were also to be found in the previous electoral laws—the General Elections Law, no. 4/93 of 28 December 1993, the Voter Registration Law no. 5/97 of 28 May 1997, the General Elections Law no. 3/99 of 2 February 1999, and the Voter Registration Law no. 9/99 of 14 April 1999. One of the peculiarities of Mozambican electoral practice since the introduction of the multiparty system is that a new electoral legislation package (containing the law on electoral registration, the law on the electoral management bodies (EMBs), and a law on the type of election—municipal or general elections) has been passed each time the country has held elections—in 1993 for the 1994 general election, in 1997 for the 1998 municipal elections, in 1999 for the 1999 general election, in 2002 for the 2003 municipal elections, and in 2004 for the 2004 general election. The new electoral law usually amends and/or complements the provisions of some articles of the previous law. Once again, an ad hoc parliamentary electoral reform commission was established in March 2005, upon completion of the 2004 electoral process, to review and amend the current electoral legislation package in anticipation of the future electoral processes: the new electoral legislation package was expected to be passed at the first parliamentary session of 2006.

Thus, for electors to be registered and elections to be held abroad, the NEC must confirm that the material conditions and the control, follow-up and monitoring mechanisms are in place in the external electoral districts. However, the decision as to whether such conditions are in place could be very subjective and could become a real bone of contention among the electoral stakeholders. In fact, even though the external voting issue in Mozambique has been raised regularly since the preparations for the first democratic multiparty elections (held in October 1994), following a long period of a one-party system since independence, and even though it is provided for in the electoral law, external voting did not take place until the general elections held in December 2004.

The first attempt to carry out registration in the external electoral districts took place in 1997 in seven countries—in Malawi, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe for the Africa electoral district; and in Portugal for the ‘rest of the world’

electoral district. The preparations failed, and the attempt was a setback: only 1,694 Mozambican citizens in total turned out to register out of an estimated population of approximately 200,000 expatriate citizens. Considering that the conditions were therefore not met, the NEC did not repeat the operation in 1999 in preparation for the country's second general election.

In 2004, in the course of preparations for the third general election, scheduled for 1 and 2 December, the external voting issue was raised again. A heated debate took place within the NEC as to whether the EMB should carry out electoral registration for Mozambican citizens living abroad. Frelimo, the ruling party, was very supportive of the idea, while almost all the opposition political parties, led by Renamo, were fiercely against it on the grounds that (a) the preconditions (material conditions, control and inspection mechanisms) had not been met and (b) the legal time frame had already elapsed (arguing that electoral registration should have been conducted simultaneously in Mozambique and abroad from 28 June to 15 July 2004). In the absence of a consensus, a vote was organized during the NEC plenary session of 21 July 2004. With eight votes against the idea and ten in favour, the decision to carry out electoral registration abroad was officially taken.

With a separate budget of 400,000 US dollars (USD) totally financed by the government of Mozambique, the electoral registration operation took place from 6 to 25 September 2004, as shown in table 1, in nine countries—seven in Africa and two in Europe.

Table 1. Mozambican citizens residing abroad and numbers of registered external electors, 2004

Country of residence	Estimated population of Mozambican citizens	No. of registered external electors	No. of parliamentary seats allocated
Kenya	2,571	699	
Malawi	1,724	676	
Tanzania	8,618	3,807	
South Africa	156,939	32,186	
Swaziland	30,000	2,921	
Zambia	1,000	764	
Zimbabwe	14,575	4,812	
Germany	2,811	190	
Portugal	7,860	911	
Total	226,098	46,966	2

The sole criterion for the selection of the countries where external registration would take place was demographic—the existence in each country of a minimum of 1,000 legally registered Mozambican citizens. The figures (taken from the population estimates)

were provided to the NEC by the diplomatic missions in those countries through the Ministry of Foreign Affairs and Cooperation.

On 11 October 2004, notwithstanding another negative vote from its Renamo-appointed members, the NEC voted in favour of holding the general election in the two external electoral districts, thanks to the votes in favour of all its Frelimo-appointed members. In addition to Renamo, many other opposition political parties disagreed with the idea of holding the external voting operation on the grounds that the small number of registered electors (0.5 per cent of the total registered electorate of 9,142,151) did not justify the high costs involved and that the mechanisms for proper supervision and monitoring were not in place. However, it seems that the opposition political parties' resistance was most probably linked to the fact that the external electoral districts are considered to be strongholds of the ruling party, in addition to the fact that they did not consider the diplomatic and consular missions where the elections were to take place as politically neutral premises.

In South Africa external registration and voting were extended to the areas where migrant Mozambican citizens are concentrated, namely the mining areas. In the eight other countries those operations were limited to the premises of Mozambican diplomatic and consular missions.

No official budget for the voting operations abroad was disclosed, although part of it was included in the total budget for the 2004 elections: all the polling materials, for instance, for both internal and external voting, were produced at the same time by the same South African company.

The same voting requirements and procedures that applied in the national territory were applied for the external voting. The right to vote was exercised in person at the polling station where the elector was registered. No postal or remote voting was allowed. The NEC and the Technical Secretariat for Electoral Administration (STAE), its implementing body, sent supervision teams to the selected countries. Training programmes for the registration and polling station staff, as well as voter education campaigns, were designed by the EMBs at central and national level and run under their close supervision. The external voting took place over two successive days (1-2 December 2004), simultaneously with the voting in Mozambique.

For voters to cast their votes their names had to be included on the electoral register and the polling station staff had to verify their identity. When the polling station closed, the presiding officer proceeded immediately with the partial counting and the results were displayed at the polling station. The presiding officer immediately informed the diplomatic or consular representation of all elements of the partial count contained in the results tally sheet. The NEC supervisory teams present at each diplomatic or consular mission in turn informed the NEC headquarters in Mozambique. (In the case of in-country voting, the presiding officer of each polling station immediately informs the district or city electoral commission of all elements of the partial count contained in the results tally sheet, and the city or district electoral commission, in turn, must inform the provincial electoral commission, which must directly inform the NEC.) The NEC collated and published the results obtained by each candidate or political party in each electoral district, as well as the distribution of parliamentary seats won by each party. The official external voting results were also subject to validation by the Constitutional

Council before being publicly announced together with the in-country results.

Tables 2 and 3 show the results of external voting in the 2004 presidential and legislative elections, as validated and announced by the Constitutional Council on 21 January 2005.

Table 2: Numbers of external votes in the Mozambican presidential election, 2004

Description	Africa	Rest of the world
No. of polling stations	62	3
No. of registered electors	45,865	1,101
No. of votes cast	27,237	732
No. of valid votes	26,748	699
No. of void votes	171	24
No. of null votes	318	9

Table 3: Numbers of external votes in the Mozambican legislative election, 2004

Description	Africa	Rest of the world
No. of polling stations	62	3
No. of registered electors	45,865	1,101
No. of votes cast	26,128	732
No. of valid votes	25,638	704
No. of void votes	253	23
No. of null votes	237	5

The insignificant number of registered electors abroad may have been one of the arguments used by the stakeholders who opposed external voting in 2004, but their higher turnout (57 per cent in Africa and 64 per cent in the rest of the world, as compared to 36 per cent in-country) demonstrated migrants' willingness to participate in the political debate by electing their representatives, thus reinforcing the conviction of the stakeholders who had defended the idea that Mozambican citizens living outside their country should not be denied the right to vote in national elections.