

CHAPTER 8

CHAPTER 8

8. The political rights of migrant workers and external voting

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1. Introduction

According to estimates from a study of the International Organization for Migration (IOM), in 2005 around 190 million people (over 3 per cent of the world's population) lived in a country different from the one in which they were born. This figure barely hints at the magnitude and complexity of the international phenomenon of migration. This phenomenon has been present throughout the history of mankind, but there is no question that in recent decades it has reached proportions never seen before, and it is also presenting unprecedented challenges. In the same sense, although less recent, a study published in 1999 by the International Labour Organization (ILO) reported that at least 50 per cent of the 170 million people then estimated to be involved in international migration flows belonged to the category of economically active workers.

Experts believe that the main cause of or motivation for most large-scale international migration is still fundamentally economic. This is explained to a great extent by the fact that dominant and growing patterns of world development have accentuated regional asymmetries and the process of socio-economic polarization within most countries. Given this pattern, it is not surprising that an increasing number of people see international migration as a means of escaping unemployment, poverty and other socio-economic pressures.

In this context, a chapter devoted to the political rights of international migrant workers, and more specifically to the basic features of an external voting mechanism that seeks to benefit them, is particularly relevant to this Handbook.

Two factors operating on a global scale are creating a favourable context for defending the political rights of international migrants in general and migrant workers in particular. One has to do with an unprecedented extension and re-evaluation of institutions, rules and democratic practices, in which demands for universal suffrage are prominent,

particularly because international migrants in general and migrant workers in particular have generally been excluded until recently. The other has to do with the existence of a series of international legal instruments that expressly recognize the political rights of migrant workers, and consequently provide a basis on which they can claim their political rights—at least the right to active participation, the right to cast their vote.

The available evidence suggests that in many cases, and especially in developing countries which are emerging or restored democracies, the majority of the potential beneficiaries of external voting are the migrant workers living temporarily or permanently abroad. They account for the majority of people in the diaspora. In some cases the majority of external voters may be other categories of people, such as refugees or exiled or displaced people, but there seems to be no doubt that the most recurrent and dominant pattern is for the majority of international migrants to be working people who move from the developing countries to regions and countries of higher economic growth and economic development.

Accordingly, this chapter identifies and examines some key questions for the design, implementation and evaluation of external voting mechanisms that face the great challenge of achieving the inclusion and participation of migrant workers as potential voters.

2. Awareness of migrant workers' political rights

In the past 50 years the international community has adopted several legal instruments that recognize and promote a group of legal rights that are relevant to, and in some cases specially targeted at, the people involved in international migration movements. Even so, it is interesting to note that practically until the 1970s the political rights of immigrants in their country of origin, and in particular the rights of migrant workers, and the exercise of those rights had no place and were given no priority either in the scholarly literature or on the international political agenda. Up to that time no initiatives or concrete state policies were aimed at migrant workers.

The first important change came in the late 1970s as a result of the debate over an initiative that arose from a renewed interest within the Council of Europe member countries. In 1977 the member countries subscribed to the European Convention on the Legal Status of Migrant Workers, which was the first international legal instrument specifically to recognize the political rights of migrant workers and their right to vote and to stand for election in their country of origin. These rules were restricted to citizens of the Council of Europe member countries and were conditional on the principle of reciprocity being maintained. The convention came into force in 1983 and was to motivate some of the countries in the region to start recognizing the political rights of certain foreigners or migrants. Above all, the question of the political rights of migrants began to take on more importance and become more visible on the international political agenda and in the corresponding debate.

The greatest achievement in this area was the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted in December 1990 by the United Nations General Assembly. This convention, which entered into force in July 2003, constitutes a more rigorous effort to create an international legal instrument that is expressly directed at migrant workers and their families and respect for their human rights. However, it is important to underline two issues. First, the convention states that a group of civil, economic, social and cultural rights of non-documented migrant workers must be recognized at an international level, although the right to vote and to stand for election is not included. Second, on the other hand, it recognizes a series of additional rights only for migrant workers and their families 'who are documented or in a regular situation in the State of employment' (articles 35 and 41). Among these rights are those which concern the right to participate in public matters in the country of origin, including the right to vote and stand for election in the country of origin, but also to exercise political rights in the country of employment if that country grants them this right in the exercise of its sovereignty.

From the perspective of international law and from the point of view of some host countries, it may be relevant and even necessary to distinguish between documented or legal migrant workers and those who do not have the proper documentation, or illegal migrants. However, from the point of view of countries which are interested in promoting external voting initiatives in order to benefit all those of their citizens who are living abroad, this distinction should not govern the conception and formal design of the external voting mechanism.

It is important to keep in mind that these international legal instruments are aimed at promoting the political rights of migrant workers on two qualitatively different and even contradictory levels. They are advocating at one and the same time the recognition of political rights *by the host countries* (which is clearly not related to external voting as defined for the purpose of this Handbook) and *by the countries of origin* (which clearly places the debate in the field of external voting). While one trend aims to promote and facilitate the process of integration of migrant workers into their new political community, the other seeks to restore their ties with the political community of origin. However, this dual aspect only emphasizes the ambiguity that underlies the current issue of migrant workers' political rights and the vulnerability of those rights, which sometimes are neither recognized by the host country nor protected by the country of origin.

3. The challenges of designing an external voting mechanism that includes migrant workers

Almost by definition, the dilemmas and the level of complexity faced by those designing and implementing a mechanism for external voting differ widely from one context to another. They depend on the specific conditions, demands and expectations of every country and are related to legal, institutional and socio-political factors, as well as

financial, technical and operational issues. Developing a model that tries to incorporate migrant workers residing abroad will therefore undoubtedly create some additional challenges and complexities.

It must be borne in mind that, even though the concept of migrant workers refers to a real phenomenon, in the end it represents an analytical category that is very difficult to translate literally when designing the details of an external voting mechanism. The most suitable way to determine the extent to which a mechanism can really include migrant workers will therefore be first to identify some common elements of the phenomenon of international migration for working purposes and then from those elements to identify the requirements the external voting mechanism needs to fulfil in order to promote or guarantee the inclusion of migrant workers.

From this perspective, in general terms, we can say that there are four factors which characterize the phenomenon of international migration for economic or work reasons.

1. The first is its massive scale, that is, the fact that it involves a significant proportion of the population from the countries where the flow originates. This normally means that the share of the population that would be entitled to vote but is resident out of the country represents a significant percentage of the national whole. Consequently, the size of the diaspora not only presents a number of challenges in terms of organization and electoral logistics if an important segment of potential voters is to be enfranchised; it also means that the candidates can speculate on the possible influence of the diaspora on the outcome of an election. Even if the available comparative statistics seem to prove the contrary, in the countries that are discussing or trying external voting for the first time, it is common for different political forces to think that the potential universe of the population residing out of the country and eligible to vote will fulfil the requirements needed to register as a voter and will actually vote.

2. This phenomenon usually involves less developed countries. Persistent or recurrent problems related to economic growth may impose certain budget restrictions on the choice of a mechanism for external voting, or at least limit the potential range of available options.

3. Even if the natural destinations of the flows of international labour migration are the most economically developed regions or countries, the dynamics of the flows can easily combine patterns of geographical concentration and dispersion. Even though there are instances of international migration that is highly focused (such as Mexican workers migrating to the United States, where over 95 per cent of the labour migrants from Mexico are concentrated) and there are certain strongholds with the highest concentrations (for example, a large proportion of migrant workers from the Dominican Republic are in New York), usually those host regions or countries are more or less diversified. Once again, this factor may pose financial, organizational and logistical challenges regarding the design and coverage of an external voting mechanism.

4. Because of the predominant migration policies in the main countries of destination, an increasing proportion of migrant workers are illegal (or non-documented) workers. This issue requires two important clarifications. First, although the distinction between legal and illegal migrants may be important from the point of view of the host country, from the perspective of the home state that is interested in promoting an external voting initiative that will benefit all its citizens abroad, such a distinction should not be applicable to the conception and formal design of an external voting mechanism, which would place the state in the unacceptable position of discriminating against its own nationals depending on their migratory status abroad. Second, on the other hand, the fact that a fair proportion of the potential electorate abroad is made up of illegal migrant workers cannot be overlooked when designing and operating an external voting mechanism which aims to incorporate them. The situation of non-documented migrant workers can have an important effect on their ability to fulfil the requirements for registering as electors or their ability to vote. The irregular situation in which these people live in the host country normally makes them reluctant to approach the authorities of their country of origin in order to follow any official procedure, even those related to the protection and defence of their fundamental rights, since they fear that to do so would expose their position and lead to sanctions or reprisals. It is by no means certain that the opportunity to exercise their voting rights is a sufficient incentive in itself to overcome such reluctance and fear.

Under these conditions, it is clear that an external voting mechanism of which the main objective is the effective incorporation of migrant workers who are living temporarily or permanently out of their country of origin poses challenges and requires additional effort in terms of its conceptual design and operational characteristics. Ideally speaking, the mechanism must provide the largest possible coverage in order to take account of a massive number of electors in a diaspora which combines patterns of geographical concentration and dispersion. It also needs to offer flexible and accessible options for the registration of electors and the casting of votes, taking into account prevailing conditions as well as the perceptions and expectations of illegal migrants. Both the law and comparative experience indicate that there are models and variants that can be adjusted to practically every need.

In this sense, a first problem is that, if specific needs or exigencies are to be accommodated, the available options are often constrained by budgetary limitations. Undoubtedly the existing technological models and options may make it possible to design an external voting mechanism that is able to incorporate tens or hundreds of thousands of potential voters in the regions or countries concerned (and not always concentrated in the main urban areas) and to offer them broad facilities or options for registration and voting. However, it is clear that the design and operation of such a mechanism would be very costly and even beyond the means of many of the emerging or restored democracies.

Another determining factor may relate to the ability to reform or renew the electoral system applied *within* the country when the external voting mechanism is being shaped. This ability to reform or innovate does not mean budgetary issues related to the design or

operation of the external voting mechanism but the *political* ability to pass the necessary legal changes to support and provide a legal basis for the mechanism. Furthermore, it is practically impossible to replicate electoral procedures and mechanisms that are normally used within the country when shaping an external voting mechanism. This is linked partly to the principles of international law regarding the extraterritorial enforcement of the law and partly to practical restrictions. Thus, the very design of an external voting mechanism must take into account the need to consider and make possible the review, modification and reform of the electoral mechanisms and procedures currently used in the country.

If the current electoral system enjoys a high level of confidence on the part of political forces and public opinion, and has credibility, it can be easier to introduce the reforms required for external voting on the understanding that this will almost always imply some kind of changes, for example, to the rules, procedures and timetabling. On the other hand, if the internal electoral system is a source of controversy or if it lacks credibility, the debate on external voting can be a new source of controversy, and therefore complicate the process required to negotiate and pass the required reforms.

Finally, it is worthwhile mentioning that international law recognizes the right of states to adopt juridical norms with extraterritorial range provided that those juridical norms regulate acts taking place within their own territory. From this perspective, the ability to regulate issues related to external voting is clearly delimited. A country can regulate external voting whenever its regulations do not have extraterritorial effects and are subject to the limitations imposed by the laws of the host countries.

This principle, although generally valid, has to be qualified, however, when it is considered in the light of the framework of relations among states that are heavily involved in the international migration phenomenon: an external voting initiative can have practical effects within these relations, not necessarily at a formal level, but especially and fundamentally as regards the construction of a favourable context to guarantee its viability and efficacy. In this regard, it might be relevant to take into account the perceptions and attitudes of public opinion in the host country towards migrants in general, and especially towards migrant workers. If migrant workers are believed or perceived to be the group that will benefit most from the opportunity to vote from abroad, the matter can become highly complex, particularly if an important or a majority migrant sector happens to be in an irregular or undocumented situation. There is a big difference between an initiative that is not aimed expressly at migrant workers, or addresses them only marginally, and one that is expressly intended to benefit them, particularly if they are perceived as a problem by important sectors of public opinion in the host country. Whatever the reason for it (and the causes can be very different), prejudice on the part of public opinion against migrant populations (and not only against migrant workers or people in irregular situations) could seriously reduce the host country's willingness to offer the required support and facilities. At the same time, it could also seriously affect the potential beneficiaries' motivation to participate in elections because of fear of reprisals.

Other aspects related to the nature of the legal and political system of the host country, which could impede or help an external voting initiative, also have to be considered. As a general rule, the more democratic, open-minded and plural that political system is, the smaller the obstacles or difficulties will be to its allowing and even cooperating in the organization of elections of another country within its national territory.

4. Alternatives for design and implementation

Obviously, it is impossible to even think about the possibility of an ideal model for external voting that would guarantee the effective inclusion of working migrants. There are neither standard flows of working migrants nor standard mechanisms for the casting of votes abroad. In this case as in any other one, the most appropriate model will be the one that will fit the prevailing conditions and fulfil the specific requirements of a particular context.

Nevertheless, this does not exclude the possibility that some different approaches and experiences can be identified and assessed that could be useful when designing a mechanism bearing in mind an electorate abroad that is predominantly made up of working migrants, and in this way facing some of the complexities that this challenge implies. With this objective in mind, this chapter analyses briefly the experience of a series of countries where emigration for work is the predominant component in their pattern of international migration, and which are therefore potentially able to adopt an external voting mechanism that allows the incorporation of working migrants. Although there are no conventional parameters to clearly identify the countries with such a profile, among the 114 countries and territories that currently allow their citizens to vote abroad, we have selected four which, according to basic indicators, are characterized by strong international migration mainly for work opportunities—the Philippines, India, Mexico and the Dominican Republic.

According to available estimates, the population from these countries that is entitled to vote and residing abroad is not only made up mostly of working migrants (and the members of their families); it also represents an important percentage of the total number of electors registered within the country. For instance (and taking into consideration the fact that precise data are not available for all cases), the population that would be entitled to vote in the Dominican Republic and is resident out of the country may represent up to 25 per cent of the 5 million electors registered in the country, whereas Mexicans abroad may represent about 15 per cent of the 70 million electors registered at the beginning of 2006.

To define how the specific external voting mechanisms of this group of countries are able to accommodate migrants working abroad, we will analyse and compare three of their main components: (a) the entitlement to vote as an external voter; (b) the requirements and procedures established for the registration of external voters; and (c) the procedure used for actual voting. In the light of the factors analysed in the sections above, the degree

of inclusiveness of these three components can show how effectively the mechanisms adopted by these four countries include and integrate working migrants abroad. These three components also offer a framework within which to identify and assess the complexities and challenges that could face other countries that are considering making provision for external voting for migrant workers.

The mechanism adopted by India does not allow generalized access for working migrants abroad, since only those persons who are carrying out official duties and military personnel may be recognized as external voters. In the Philippines, Mexico and the Dominican Republic there are no restrictions of this kind, and they are therefore at least willing to include working migrants. These three countries also share two features that it is important to emphasize: (a) they only adopted mechanisms for external voting very recently (it was applied for the first time in the Philippines and Dominican Republic in 2004, and in Mexico in 2006); and (b) their adoption was to a great extent the result of pressure exerted by organized groups of migrants residing abroad.

Examination of the requirements and procedures for registration in these three countries reveals some filters that may restrict the access of migrant workers, particularly those whose stay in the host country is irregular. For the purposes of the present study, the most evident barrier is seen in Mexico and the Dominican Republic, where in order to be able to register as an elector the interested person must have an identification document which can only be obtained in the home country. If the citizen does not have this document and is unable to travel to the home country in order to obtain it within the time limits set for the registration process (a requirement that can sometimes be insurmountable), his or her ability to vote from abroad is in practical terms annulled.

It is also important to consider the procedures for registration and polling, which are very often interrelated: personal voting reduces the options for registration as an elector, whereas remote voting or mixed options extend the options. The three countries analysed clearly show the range of these variables. In the Dominican Republic the option has been personal voting, but only to be applied abroad in five countries (Canada, the United States, Spain, Puerto Rico and Venezuela) where the population resident abroad is concentrated. In this case it is possible to speak of a selective approach regarding the geographical coverage of external voting. This applies where most migrants, particularly workers, do not reside in large cities and do not have easy access to urban centres. In order to promote the registration of citizens in those five countries, the Dominican electoral registry had to send out staff to suburban areas around selected cities.

Mexico, where at the time of writing the country's first experience of external voting was about to happen, in the presidential election of July 2006, surprisingly opted for a postal voting procedure. In principle, this could expand the possibilities of coverage and access to all potential electors, notwithstanding their place of residence or their location. However, as is mentioned above, the fact that an official identification document is required and is only obtainable in person within the country contributes to limiting the potential coverage and therefore to excluding certain migrant workers abroad.

The Philippines wisely opted for a mixed procedure. At first registration centres were established in all countries where there was a diplomatic or consular representation already in place, and in some cases the authorities used mobile units to promote and facilitate the registration of interested citizens. Later on, the general rule applied was that of personal voting in the same facilities, but voters living in countries with efficient postal services were also allowed to vote by post. The system for external voting in the Philippines embodies the most appropriate elements that have to be taken into account when a country's external voters are mainly migrant workers.

5. Concluding comments

In the past few years, issues related to the political rights of international migrants in general, and those of migrant workers in particular, have begun to acquire relevance on the academic agenda as well as the international political agenda. This development has already been translated into the adoption of various international legal instruments that specifically provide for this type of right, as indicated by the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

Although the debate and regulations on external voting are not necessarily related specifically to the questions of migrant workers' political rights, there is no doubt that the concurrence of the globalization and democratization processes at the same time as international migration is growing is creating a clear demand for the full recognition of their political rights in many developing countries. The most general and visible expression of this demand is the guarantee of their right to vote. Through the exercise of this right, migrant workers seek not only to maintain or reinforce their sense of belonging to their original national political community but also to redefine the terms of their relations with the country they feel to be their own.

The design and instrumentation of mechanisms for external voting in countries which have large numbers of migrant workers abroad can face three fundamental challenges.

First, the category of migrant worker is difficult to translate into a mechanism for external voting. Above all, how reasonable or feasible is it to isolate or privilege the migrant worker category over other categories of migrants? If it is reasonable or feasible, how can migrant workers be distinguished or identified in a legal and procedural way within the whole community of migrants abroad? In contrast to mechanisms that may be specifically designed for a certain type of voter or resident abroad (e.g. only those carrying out official duties, students or refugees), there is unlikely to be strong support for distinguishing migrant workers from other kinds of potential voters.

The second great challenge is that international migration for work is often a large-scale phenomenon that exhibits diverse geographical distribution patterns, that is, it regularly involves thousands of persons (potential voters) distributed according to heterogeneous patterns (sometimes concentrated, sometimes dispersed) not only across one or several

countries of destination but also within every one of them. This means that we must make a careful assessment of the most suitable options for registering them and conducting the voting, as well as running electoral information campaigns. This assessment must take into account not only the advantages and disadvantages offered by the different models but also, and fundamentally, the administrative and financial capacities of the country or the electoral authority involved.

The third challenge lies in making the electoral regulations and procedures more flexible, and innovating or adjusting them, in order to genuinely and positively include migrant workers. On this subject, it is important to keep in mind that the regulation and control of campaign activities and the administration of electoral justice are usually very sensitive topics in developing democracies, while the opportunity to duplicate abroad certain characteristic guarantees or attributes of the domestic system will be limited. Clearly, without full confidence in the accountability and impartiality of the domestic electoral system it will be very difficult to accept adjustments or innovations abroad since as a general rule the mechanisms of control and security are likely to be weaker for the external vote.

In favourable conditions, the creation of an external voting mechanism that seeks to include migrant workers can present a good opportunity to introduce interesting innovations to several components of the electoral system, and even to try out different methods of voter registration, as well as different procedures for the conduct of the actual voting. Under adverse conditions, however, the design of the mechanism could be problematic for all those involved, and especially for the authorities responsible for organizing, conducting and overseeing elections. In any case, even if the mechanism for external voting is sufficiently flexible and well-intentioned in trying to include migrant workers overseas, the migrants' juridical, socio-economic, political and cultural conditions are likely to work against the initial intentions and expectations.

One conclusion that can be drawn at this point is that any mechanism for external voting entails a range of alternatives and variants which can be adapted to specific conditions and requirements. A universe of potential voters abroad made up mainly of migrant workers presents a series of challenges and complexities that can be addressed by a limited set of options. It is clear that from a conceptual and legal point of view it is neither possible nor desirable to design an external voting mechanism that is aimed exclusively at migrant workers, but it is also true that the legal and procedural options chosen regarding a set of basic aspects of the characteristics and reach of an external voting mechanism (Who is eligible to vote? What are the requirements and procedures for registration and voting?) will largely determine its ability to effectively include migrant workers.

The Dominican Republic: political agreement in response to demands for the right to vote from abroad

Luis Arias Núñez

As a result of a wide-ranging agreement reached between the main political and social forces on a thorough reform of the political and electoral system, as well as to correct the fraud that was widely believed to have characterized the general elections of 1994, the electoral law of the Dominican Republic, Law no. 275-97, was promulgated in December 1997. It incorporated significant changes and innovations, and article 82 made it possible for Dominican citizens who were resident abroad to vote—although only in elections for the presidency and vice-presidency of the republic.

Two main factors assisted the recognition of the right to vote from abroad. First, establishing it in the electoral legislation did not require any constitutional reform: the constitutional norms relating to the ownership and exercise of political rights do not require the vote to be cast within the national territory or in any determined electoral district. Second, it was a justifiable demand made by the different organized groups of Dominican residents abroad to which the main political forces of the country were very sensitive.

To realize this right, article 83 of Law no. 275 of 1997 authorized the electoral authority, the Central Electoral Board (CEB), to put in place the necessary measures to guarantee the implementation of external voting, and article 84 regulated its form and the related procedures. The law specified that its implementation would be considered for the presidential election of 2000 but it was up to the electoral authority to decide when it would come into effect. The CEB decided that it would not be in a position to regulate and guarantee the application of the right to vote abroad in time for the 2000 presidential election, but that it would do everything necessary to ensure its implementation for the presidential election of 2004.

With the electoral process of 2000 concluded, one of the first and main initiatives the CEB took to fulfil its commitment was to set up a commission to study voting by Dominicans from abroad. The commission was charged not only with examining the subject exhaustively, including organizing discussion forums and consultation processes with the political parties, interested sectors and so on, but also with establishing coordination mechanisms with the executive agencies the participation of which was

indispensable to running the voting abroad—especially the Ministry of Foreign Relations and its consular offices.

From the different opinions expressed in these forums and consultation processes it was clear that in order to guarantee broad participation by potential voters abroad—almost all of them migrant workers—it was essential for the legal regulation to include three basic principles—the total security of the vote, the freedom of the vote, and total respect for the integrity of voters abroad.

On this basis, in June 2001 the CEB approved the Regulation for the Registration of Electors Residing Abroad, which stipulated that registration centres would be established in the countries where Dominicans were resident and where there were consular or diplomatic offices of the Foreign Ministry, and previous consultation with the legally recognized political parties. Under this regulation, and working from the results of the consultation process with the political parties and the available information on the numbers and locations of the Dominican population abroad, the countries and cities where efforts would be focused for the registration and voting abroad were gradually defined, on the basis that there would be personal voting only.

Although the regulation emphasized that all electors had the right to vote in the 2004 presidential elections, the exceptions to this should be also emphasized. They include, for example, Dominicans found guilty of a criminal offence in the country of residence until they are rehabilitated. It is also important to note that the regulation provides specifically for persons with dual citizenship, so that Dominicans who have acquired another nationality can exercise the right to vote in Dominican elections so long as they fulfil the legal requirements, and so long as the country whose nationality they have adopted does not specifically ban the exercise of this right within its territory.

Finally, in January 2004, the CEB issued the Regulation on the Suffrage of the Dominican Abroad, which affirmed the requirements for voters abroad as well as the precise arrangements for the organization and logistics of the electoral process abroad.

Registration of electors and the implementation of voting from abroad

Essentially, to be able to vote from abroad, the citizen must (a) be in possession of a current identity and electoral card (which is issued by the electoral authority, but only within the national territory, although an update or replacement may be requested abroad); and (b) register within the correct time period for the register of electors abroad, for which electoral registry abroad offices (ERAOs) were set up.

In October 2001 the first ERAO opened in New York City, which is the foreign city with the largest number of Dominican residents. During 2002 registration offices opened in two other US cities (Miami and Boston), Canada (Montreal), Spain (Barcelona and Madrid), Puerto Rico (San Juan) and Venezuela (Caracas), and in 2003 the last two were opened in the United States (New Jersey and Lawrence). The countries and cities where the great majority of Dominican residents abroad lived were now covered. At the same time, and in order to direct, coordinate and follow up the plans and necessary programmes for the implementation of external voting, in October 2002 the Central Electoral Board set up the Division for the Vote of the Dominican Abroad. Although in principle the CEB anticipated closing the period for registration abroad in mid-

December 2003, it finally decided to extend it until 26 January 2004—less than four months before the date set for the election—in order to give Dominicans abroad greater opportunity to process their registration. At the end of this period, 52,431 electors were registered abroad.

Dominican citizens who were enrolled in the definitive register of electors residing abroad were disqualified from voting inside the Dominican Republic in the 2004 presidential election, but once that election was over they were again qualified to vote in the legislative and municipal elections to be held in 2006, in which voting from abroad was not to be allowed.

On the other hand, the 2004 Regulation on the Suffrage for the Dominican Abroad confirms that only those Dominicans who have registered at the ERAO in time and appear in the definitive register of electors residing abroad can take part in presidential elections.

For organizing the voting abroad, the regulation stipulated the creation of logistic coordination offices (LCOs), which were in charge, along with the Division for the Vote of the Dominican Abroad and after consultation with the political parties, of identifying the premises where the electoral logistical plan would be carried out—receiving, keeping and sending out election material such as the ballot papers and ballot boxes—as well as those where the polling stations would be located. The LCOs were also responsible for identifying, recruiting, training and selecting the people who would actually manage the polling stations abroad.

It is important to note that, by agreement of the electoral authority and the political parties, the polling stations abroad were installed not on the premises of diplomatic and consular representations but in nearby and easily accessible locations. The polling stations were organized in the same way as they were in-country and their staff had to meet the same requirements as are demanded in the Dominican Republic, but in addition they had to be enrolled in the registry of the district where they would carry out their functions. For the promotional and informational tasks of the registry, as well as for the identification and negotiation of the locations where the registration centres and polling stations were to be placed, the support offered by organized groups of Dominicans abroad was very important.

For election day, 16 May 2004, the CEB issued a resolution regarding the schedules for the voting from abroad. After consultation with the political parties, it decided to define a special voting schedule for the cities of Barcelona and Madrid: the polling stations would open at 09.00 hours and close at 20.00 hours local time. In other countries and cities voting would be according to the same schedule as in the Dominican Republic, from 06.00 to 16.00 hours (always local time). Except for this variation, the voting abroad was carried out according to the same principles and on the basis of the same organization as in the national territory: Dominicans abroad who were properly authorized to participate in the presidential election would go to their corresponding polling stations and mark their preference on the ballot paper by means of the free and secret suffrage. Once the voting was concluded, polling station staff, in the presence of delegates of the political parties, carried out the counting of the ballot papers and the results were set down in formal protocols which were then taken to the LCOs. Each of these offices received the protocols of the polling stations under their jurisdiction and

counted the results from all of them to transmit them to the CEB central offices in the Dominican Republic, where the final count was done.

Thus, for the presidential elections of 16 May 2004, 101 polling stations were installed in 11 cities, seven of them in the United States, and 35,042 of the 52,431 registered electors voted—a participation rate of 66.8 per cent, as the table shows.

Table: External voting in the Dominican Republic presidential election of 16 May 2004

City	No. of registered citizens	No. of valid votes	No. of votes cast	Turnout (%)
Barcelona	2,989	1,329	1,336	44.70
Boston	4,202	3,491	3,536	84.15
Madrid	5,944	2,913	2,913	49.01
Miami	2,399	1,745	1,776	74.03
Montreal	404	303	306	75.74
New Jersey	6,418	4,439	4,502	70.15
New York	24,343	16,369	16,608	68.22
Orlando	282	190	191	67.73
Puerto Rico	4,622	3,225	3,300	71.40
Tampa	261	203	205	78.54
Caracas	567	369	369	64.06
Total	52,431	34,576	35,042	66.83

Source: <<http://www.jce.do/stor/boletines/2004/Boletines2004/BExterior.asp>>.

To meet the expenses that the electoral process abroad implied, the CEB produced a budget which was submitted for consideration and approval to the executive branch and the two chambers of the legislature. The budget approved for the elections abroad was 114,581,115 Dominican pesos (DOP—c. 2.6 million US dollars (USD)).

In this, the country's first experience of voting from abroad, the main difficulties involved in organizing the voting by citizens abroad related to the logistical aspects, and specifically the shipment and distribution of election material to all the registration and voting sites. Another difficulty was linked to the need to consider the legislation of the countries where the voting abroad was carried out, and to introduce the necessary adjustments to facilitate the organization of the voting abroad.

After the 2004 external voting experience, Dominicans abroad and political parties are still interested in improving this mechanism in order to allow more citizens to participate in the 2008 presidential election. The ERAO continues to register Dominicans in the register of electors residing abroad, but there are many citizens interested in voting who do not have the necessary identity and electoral cards which, as is mentioned above,

can only be obtained for the first time within the national territory. As a compensatory measure, currently Dominicans abroad can register on the national territory and receive photographic proof of identity which they can take to the ERAO in the city where they reside to obtain their ID and electoral card. Nevertheless this subject continues to be debated, and the electoral authority has worked on a new project that proposes to modify the procedures for obtaining an identity card. This project, which must be approved by the plenary of the CEB, aims to increase to almost 300,000 the total number of citizens registered by 2008. After the 2004 elections and as of 4 December 2006, 7,027 additional citizens had registered on the list of Dominicans abroad.

Finally, it is important to note that there is currently no debate on the political agenda about modifying or improving the current arrangements.

Mexico: safeguarding the integrity of the electoral process

Carlos Navarro and Manuel Carrillo

In June 2005, following controversy and debate lasting almost ten years, the Mexican Congress finally approved a reform to the electoral law allowing Mexicans to vote from abroad. This was to be possible for the first time during the national elections of July 2006. External voting applied only to presidential elections and was by post only.

Historical background

The need to give citizens the right to exercise their right to vote from abroad and make it possible for them to do so cannot be explained without taking into account the existence of one of the largest, most persistent and most focused international migrant movements in the world—that of the millions of Mexicans who go to the United States, mainly to work. Certainly, not all the Mexicans residing permanently or temporarily abroad have migrated for work, nor are they concentrated in the United States only, but, not surprisingly, one of the main drivers for achieving the right to vote abroad has been the organization and mobilization capacity of several groups of Mexicans living in the USA, who were gradually joined by political forces, social movements and opinion leaders from Mexico.

For many years different voices had been asking for a debate about and for the introduction of a law to give Mexicans living abroad the right to an external vote, but it was only in 1996 that this demand was really met and the first juridical and institutional steps were taken to allow for this possibility to be realized. That year, as part of a large package of electoral reforms, a provision in the constitution which prevented voting from abroad was removed and a series of requirements were established in order for the Congress to provide the final ruling on this matter. Defining the arrangements for external voting took almost a decade.

The subject of heated debate

The decision-making process was very complex and lengthy. Although the electoral authority and different stakeholders worked hard and well to promote an informed debate on the basis of sound facts and figures (including holding the first international

seminars to assess the issue in comparative perspective), it was not easy for the political parties represented in the parliament to reach the agreements needed in order to pass a bill. The debate evolved in different stages. At first, the appropriateness of allowing citizens to vote when they were not resident in the country was the subject of controversy. Once the main objections in this regard had been overcome, the debate centred on evaluating the available alternative mechanisms and defining the most suitable method to guarantee that voting from abroad would preserve the essential attributes of the electoral regime that has been built up and strengthened in Mexico in recent years. Finally, the assessments focused on the cost-effectiveness of the operational options available.

The debate about preserving the main attributes of the electoral system when designing any external voting mechanism was critical. A fundamental reform process had taken place in Mexico during the late 1980s in order to deal with the serious lack of public confidence in elections and their credibility. This reform radically changed both the characteristics of the electoral organization and the conditions of the electoral contest. The legislation gradually incorporated several devices to guarantee the integrity and transparency of the organization and management of the electoral process, as well as equity and accountability in the electoral contest. During the debates over external voting, it was agreed that these were essential features of the Mexican electoral system that would be extremely difficult to replicate abroad.

There was also the question of the numbers of Mexicans residing abroad who would be entitled to an external vote. In late 1998, a commission of experts set up by the Federal Electoral Institute (Instituto Federal Electoral, or IFE, the autonomous organization responsible for managing federal elections) presented a report on this issue which made proposals for external voting by Mexicans. According to the report, an estimated 9.9 million Mexicans residing abroad would be entitled to vote—at the time equivalent to 15 per cent of the total number of citizens registered to vote in the country. Of those 9.9 million, 98.7 per cent, or almost 9.8 million, were in the United States. These estimates showed clearly the extent of the challenge, which up to this point had been the subject of much speculation. But they also provided some candidates with fuel for speculation about the possible effects of the external vote on the outcome of elections.

Although the 1996 reform of external voting was brought in with the intention of having it in place for the presidential elections of 2000, lack of agreement between the main political forces with parliamentary representation prevented the Congress from making any decision on the regulation and implementation of external voting before these elections. Nevertheless, the issue had then been settled as a priority item on the agenda of the political and legislative debate. Between 1998 and 2004, the executive branch along with legislators from different parliamentary groups presented almost 20 bills on external voting to the Congress. Some of the bills presented in the framework of the mid-term elections of 2003 advocated extending external voting to elections for deputies and senators, as well as presidential elections, and even the creation of a special electoral district that would guarantee parliamentary representation for citizens residing abroad. Again, lack of agreement among the different parliamentary forces prevented any final definition, and the target date for implementation was put back to the federal elections of July 2006.

By the end of June 2005, just before the deadline for approving legal reforms that

would be implemented during the July 2006 federal elections, the Congress finally approved a mechanism enabling Mexicans residing abroad to vote, but only for presidential elections. After assessing different alternatives, the Congress opted for postal voting, which is a major innovation for the Mexican electoral system, since every election that takes place within the country entails the voter's appearing in person at the polling site.

Voter registration

To be able to cast a vote from abroad, Mexican citizens residing in a foreign country must have a photographic voting card, which is issued free of charge by the IFE in Mexico, and then send a written request by registered post to be included in a special register of Mexican voters abroad. The photographic voting card requirement became the target for all the criticism of the external voting arrangements, since many Mexicans residing abroad do not have it, and it is only possible to get one in person within the national territory. For citizens who fulfilled this requirement, a period of three and a half months was established during which they could request registration, by post, using the official forms designed by the IFE (for the July 2006 election this period was from 1 October 2005 to 15 January 2006). An additional term of one month (up to 15 February) was established before the register of external electors was closed, in order to allow all applications in transit to be received or to allow the interested parties to correct any omission or error in requests that had been sent at the proper time.

To promote the external vote, the IFE worked with the collaboration of the Secretariat of Foreign Affairs, by means of its 139 diplomatic representations, and also with the assistance of a wide array of social organizations of Mexicans abroad, to inform citizens abroad of their right to an external vote and of the mechanisms for registering and polling. All voters enrolled abroad are temporarily removed from the national electoral register but are automatically reinstated when the relevant election is over.

The voting and the election campaign

External voting is by post only. The IFE has to send (by registered post) the documents required to cast a vote to all citizens fulfilling the requirements to be registered as voters abroad, no later than 20 May of the election year.

The counting of all votes cast abroad is carried out in one national centre in Mexico, simultaneously with the counting of the votes cast within the country, that is, starting at 18:00 on polling day. In order for the postal votes cast abroad to be included in the count, the electoral authority must receive them one day before the beginning of polling.

To guarantee equity during the electoral process and to protect the control mechanisms for the funding and financial oversight of political parties and campaigns, the mechanism approved by the Congress bans any kind of campaign activity abroad by the parties and candidates. Therefore, and in order to enable voters abroad to cast an informed and reasoned vote, the IFE agreed with the different parties on the creation of a comprehensive electoral kit that included detailed information on the platforms and programmes of the different presidential candidates, and this was distributed to all

registered voters abroad along with the official documents required to vote.

Take-up and costs of external voting

For the preliminary arrangements and the initial setting up of the external voting mechanism, the IFE invested around 119.3 million pesos (MXN—*c.* 10.8 million US dollars (USD) at a rate of exchange of 11 MXN = 1 USD) during 2005. For the implementation phase throughout 2006, it devoted another 186 million MXN (16.9 million USD), making an estimated overall cost of 305 million MXN (*c.* 27.7 million USD).

According to reliable estimates, the voting-age Mexican population residing abroad on a permanent basis is currently up to 11 million. Moreover, the IFE estimates that around 4.2 million Mexicans residing abroad have a valid photographic voting card. The combination of these two factors created high expectations that the register of external electors would be massive. However, only 40,876 Mexicans abroad finally registered for the July 2006 elections. Of those, only 32,632 (80 per cent) returned the envelopes with their marked ballot papers in time to be included in the official count of votes cast abroad. Certainly, time constraints, the inherent difficulty of reaching all Mexicans abroad who were entitled to vote and get information to them on time, the innovative approach adopted to registration and voting from abroad, and the strict eligibility criteria established all help to explain this low figure.

Accordingly, and because the external voting mechanisms have to be reviewed and improved, the first Mexican experience, like that of many other countries, indicates the need for more detailed research and a more integrated assessment in order to determine the factors that underlie its political culture and which can in turn be helpful to efforts to encourage voter turnout.

The Philippines: the first experience of external voting

Philippines Committee on Overseas Absentee Voting

In the Philippines, the right of suffrage ‘may be exercised by all citizens of the Philippines not otherwise disqualified by law who are at least 18 years of age and who shall have resided in the Philippines for at least one year and in the place wherein they propose to vote for at least six months immediately preceding the election’ (Philippine Constitution, 1987, article V: Suffrage, section 1, para. 1). Case law, meanwhile, has established that a person’s ‘intent to return’ and not his actual physical presence needs to be established to satisfy the residency requirement of the constitution.

The enactment of the Overseas Absentee Voting Law (Republic Act (RA) no. 9189) on 17 February 2003 gave life and meaning to article V, section 2, of the constitution, which mandated the Congress to provide a ‘system for absentee voting by qualified Filipinos abroad’. Its primary aim is to ensure equal opportunity for all eligible citizens of the Philippines who are living or staying abroad to exercise their fundamental right to vote. This provision of the constitution specifically recognized the role played in nation-building by Filipino overseas workers, both land-based and sea-based, who have to leave the country mainly for economic reason in order to offer a better life for their families back home. The same law also provided that Filipino citizens who are immigrants or permanent residents of other countries may exercise their right of suffrage on condition that they sign an affidavit of intent to return within three years from the approval of their application as overseas absentee voters (OAVs). The affidavit should also contain a declaration that they are not applying for citizenship in the host country.

The immigrant or permanent resident who voted in the 2004 national elections should return to the Philippines within three years after his application was approved. Should he or she fail to return to the Philippines within that period and vote again in the next national elections, they will be perpetually barred from voting in absentia and may be imprisoned for one year.

A flurry of activity followed that saw a partnership between the Commission on Elections (COMELEC) and the Department of Foreign Affairs (DFA). A Committee on Overseas Absentee Voting (COAV) was created within COMELEC, while an Overseas Absentee Voting Secretariat (DFA-OAVS) was formed at the DFA. In essence, COMELEC

is to supervise the whole overseas voting process, while the embassies, consulates and other diplomatic missions run it. COMELEC formulated the implementation rules and regulations on registration, voting, counting and the tabulation of the count ('canvassing' is the term for tabulation that is used in the Philippines law), while the different posts abroad saw to it that these were implemented in the 2004 national elections, and will do so in future elections. Training modules for the members of the Foreign Service Corps were prepared and eventually handled by COMELEC.

On 17 September 2003, the Citizenship and Re-acquisition Act (RA no. 9225) was passed. It granted natural-born citizens of the Philippines the right to regain and retain their Philippine citizenship provided they swear the Oath of Allegiance and without requiring that they give up their naturalized citizenship. This law also provided full restoration of their civil and political rights, such as (but not limited to) the exercise of their right of suffrage provided they also sign the affidavit of intent to return. As the next national elections were to be held in May 2004, the one-year residency requirement was deemed not to have been met by those who availed themselves of RA 9225. Hence, even if naturalized citizens were able to re-acquire or retain their Philippine citizenship, and even if the names of those approved for registration were included in the National Registry of Overseas Absentee Voters, COMELEC did not allow them to vote.

Based on government records and figures of the International Organization for Migration (IOM), the usual estimate of the number of Filipinos abroad is about 7 million. More than 1 million live in the USA and Canada.

Electoral registration

For the first time in Philippine history, Filipinos abroad were able to vote for the president, the vice-president, members of the Senate and the party list members of the House of Representatives in the 2004 national elections. The electoral registration period was short—from 1 August to 30 September 2003. A standard application form was provided by COMELEC.

There were two kinds of registration. Applicants had to apply for registration if they were not registered as electors anywhere in the Philippines, while those already registered as voters in the Philippines could apply for certification as OAVs.

As required by the OAV law, registrants went in person to the different posts abroad armed with their Philippine passport and other documents proving their identity. Their biometric data were captured live: their photographs, thumbprints and signatures were taken digitally. From these data, COMELEC produced the National Registry of Overseas Absentee Voters, the Certified List of Overseas Absentee Voters for each diplomatic post, and the applicant's identity document.

Field registration was also conducted outside the diplomatic missions, as not all Filipinos abroad are concentrated in the areas where missions are situated. In the Philippines, registration was conducted at the offices of the election officers in the different municipalities and cities all over the archipelago. Seafarers also filed their applications at COMELEC. Registration of Filipinos in countries where there are no Philippine diplomatic missions had to be done personally at the embassy or consulate which had consular jurisdiction over the place where they reside.

After initial verification by the diplomatic posts, all application forms were sent to the COAV in Manila and turned over to the local election registration boards (ERBs) in the different cities and municipalities all over the Philippines for the addresses given by the applicants to be verified. The applications for registration/certification were either approved by the ERBs on the basis that the applicants were indeed resident at the place claimed before leaving for abroad, or refused. Thereafter, the processed forms were returned to the COAV in Manila where the COMELEC central office is located. These approved forms became the basis of the Certified List of Overseas Absentee Voters.

Unfortunately, this cumbersome and tedious procedure proved to be a major bottleneck in the implementation of the OAV law, and eventually the DFA-OAVS and the COAV produced different statistics for the actual number of registered Filipino overseas electors.

The DFA, through the Philippine posts abroad, generated 364,187 registrants, of whom 361,884 were classified as regular OAVs. This figure is at least one-third of the estimated number of registrants submitted by the DFA prior to the start of the registration period. Of the applications received, 2,020 came from persons with dual citizenship, while 567 requested transfer from external voting back to the Philippines. Of these latter, 520 applications were granted and 47 were refused. Hence the final figure of 359,297 in the Certified List of Overseas Absentee Voters. Of the 359,297 who registered, only 2,302 were seamen.

The ERBs rejected 397 applications on the grounds that the applicant was not a resident of the city or municipality, or that the person had used an assumed name, or that he or she was unknown in the city or municipality. Due to time constraints, these applicants were not notified of the rejection of their application in time for them to file petitions for inclusion in the Certified List of Overseas Absentee Voters.

Reports from the missions confirmed that, compared to the first week of the registration period (1–10 August 2004), the number of those registering during the last week (21–30 September 2004) jumped by 643 per cent, showing the tendency of the Filipinos to act at the last minute.

By geographical area, the Asia–Pacific and Middle East regions accounted for 86 per cent of the total numbers of registrants, with almost equal number of registrants for each. Europe accounted for 10 per cent, and the Americas a modest 4 per cent. A profile of the registrants would show that most are Filipino overseas workers employed as domestic help in the Asia–Pacific region or as skilled workers in the Middle East.

The Certified List of Overseas Absentee Voters was posted on the websites of both COMELEC and the DFA-OAVS some time in February 2004, and corresponding hard and soft copies were sent to the diplomatic posts.

The voting

External voting was held in 81 Philippine embassies and consulates, three Manila economic and cultural offices (MECOs) in Taiwan, three satellite voting centres, and 18 field voting precincts. For diplomatic posts with registered seafarers, the voting was held over a 60-day period, starting on 12 March 2004, while those which had only land-based voters started voting on 11 April 2004. The deadline for voting was 10 May 2004 at 15.00, Philippine time, as required by the OAV law (which was also the close of the one-day voting in the Philippines).

The OAV law provides for the overseas absentee voter to vote in two ways. The first is *personal voting*: the registered elector has to present him- or herself before the Special Board of Election Inspectors (SBEI) at the diplomatic post where he or she is registered as an elector in order to vote. In 2004 voters trooped to the posts to cast their votes in person by writing the names of their chosen candidates in the spaces provided on the ballot papers prepared and sent by COMELEC. For each day of the voting period, the posts allotted one cardboard ballot box which had to be sealed at the end of the day regardless of whether it contained a ballot paper. (This meant 60 ballot boxes at missions where there were registered seafarers and 30 ballot boxes at missions where there were only land-based registrants.) The other method is *postal voting*: the registered voter will receive an envelope containing the ballot paper which he has to fill in and send by mail to the post where he/she is registered as an elector. This method was adopted in Canada, Japan and the United Kingdom where the postal systems are efficient and reliable.

Only 4 per cent of overseas registrants were covered by postal voting. On the other hand, personal voting was conducted in 70 countries, covering 245,627 OAVs.

The counting and tabulation of votes

Of the 359,297 registered and approved overseas absentee voters, 233,092 (65 per cent) voted in the May 2004 national and local elections. This is a considerable turnout under the circumstances and similar to the national turnout in previous national elections.

The Philippine Embassy in Havana in Cuba was the first mission to finish counting and tabulating the votes, while it took the Consulate General in Hong Kong almost 100 hours, or four days, to finish counting as each SBEI or election precinct counted more than 800 ballot papers. Counting was done manually, with the contents of the ballot papers being read aloud and individually tallied. Each precinct would then tabulate the result in the election returns provided by COMELEC. Tabulating and summing up the election returns on a per-country basis took longest—six days—in the Embassy in Riyadh, where the election returns coming from Consulate General in Jeddah and the Philippine Overseas Labor Office in al-Khobar had to be accounted for.

Geographically, the Asia–Pacific and Middle East countries posted the highest turnout by OAVs. In the Middle East, turnout would have been much higher had it not been for the security problems which plagued the region during the voting period. Most OAVs voted during the weekend in Asia–Pacific, Europe and the Americas, while in the Middle East countries most voters came on Thursdays and Fridays, which are considered weekends by most Muslims.

In countries where postal voting was adopted, turnout was only 48 per cent. Factors that affected the turnout were mail being returned to the sender because the addresses provided by the voters were insufficient, addresses as encoded at the COAV being misspelled and therefore incorrect, and a postal strike in the UK. In some instances, mail intended for a particular diplomatic post was misrouted to the COAV.

The respective chairpersons of the Board of Canvassers for each country flew in to the Philippines in time for the overseas votes to be included in the national tally.

Problems most frequently encountered

The implementation of the OAV law was a success in many ways but, as so often when new arrangements are implemented for the first time, the conduct of the voting and the implementation of the OAV law were not without problems.

1. The tasks allocated to the members of the Foreign Service Corps by the OAV law are over and above their consular duties and required special training. Registration itself took place too soon and the period of registration was too brief to enable the missions to prepare fully for the new task. Hence, the time they spent on the whole electoral process meant less time for their given functions at the posts.

2. The ERBs were not given sufficient time to be informed about the overseas absentee voting process. This led to their decisions on applications being submitted late or in some instances not submitted at all. This may explain the reason why the COAV reported a lower number of registrants compared with the figure submitted by the DFA-OAVS.

3. Misspelling and incorrect inputting or wrong data in the voters' records and IDs were attributed to the complicated application form for registration as an OAV. Most registrants complained about the numerous items to be filled in. As a result, complaints ranged from the issuing of defective IDs to names not appearing in the Certified List of Overseas Absentee Voters, although the COAV did not have any record that the applications concerned had been rejected.

4. The affidavit of intent to return, also called the 'killer clause', discouraged immigrants, permanent residents abroad and persons with dual citizenship from registering as OAVs. They cannot be sure when they will return to the Philippines, so it is difficult to say that they will return within three years of the approval of their application. Moreover, they would not risk being penalized by imprisonment if they failed to return to the Philippines as mandated by the law and voted again in the next national elections as OAVs.

Under the OAV Law, COMELEC would have to set up a monitoring mechanism to enforce this provision of the law. To date, however, it has yet to finalize the procedural rules to implement this provision of RA no. 9189 as the rules and regulations of 2003 dealt primarily with the requirements and procedures for registration, voting, vote-counting and tabulation.

5. The voting period was too long. Some posts which opened as early as 12 March 2004 did not have a single voter until the first day of voting for the land-based OAVs, as not all who had registered decided to vote. Even the 30-day voting period was perceived to be long.

6. Voter education was a particular concern for the diplomatic posts. Most OAVs, including members of the Foreign Service Corps, have been away for several years already. They had problems identifying the candidates and some were not known to them. This resulted in people voting by 'name recall', or voting for those whose names were familiar as few candidates campaigned at the different posts due to cost constraints.

The party list elections were another source of confusion. Most voters asked if they should vote for a particular category of candidate (i.e. migrants or labourers) or for the party list.

7. The low turnout at some posts was attributable to the fact that field registration was not translated into actual field voting. Hence, those registered in the field were not able to vote by reason of distance and cost.

8. The voting, counting and tabulation procedures and the corresponding forms were mostly adopted for overseas absentee voting from the local electoral process. The electoral management bodies found most of them tedious, repetitive and impractical.

9. As most voters were excited about having the chance to exercise their right of suffrage, the ballot papers were usually filled in to the last item. To this was added the problem of electors understanding ('appreciation' is the word used in the election code) of the ballot papers—for example, correctly interpreting similar-sounding names—and of election officials interpreting them and deciding which were spoiled or invalid. Although the SBEIs were trained and taught how to 'appreciate' the ballot papers, they were still apprehensive when the counting of ballot papers came. Hence, counting took time, especially as each SBEI for counting was assigned at least 500 ballot papers, if not more.

The cost of external voting

COMELEC was allotted 600 million pesos (PHP—*c.* 11 million US dollars (USD)) for the implementation of the OAV law while the DFA was given a budget of 200 million PHP (*c.* 3.7 million USD) for the year 2003 and during the 2004 national elections. For the forthcoming registration, both government agencies would be operating on the excess funds from the previous year.

The estimated average cost per registrant was 847.89 PHP (15.42 USD) while the estimated average cost per voter was 1,306.96 PHP (23.77 USD). The difference is understandable as only 65 per cent of the registrants actually voted. Overseas voting is most expensive in Havana, Cuba, while the MECO in Kaohsiung, Taiwan, had the lowest estimated cost per registrant (11.29 USD) and the embassy in Muscat, Oman, had the lowest estimated cost per voter (14.92 USD).

Recommendations for the improvement of the law

Given the problems and issues which confronted COMELEC in the implementation of the first OAV law, recommendations for its improvement have already been submitted to the Senate and the House of Representatives.

Amendments to the OAV law should be attuned to the proposed revisions of the constitutional requirement on residency and the modernized election laws of the land.

If the constitutional requirement of residency could be relaxed or even abolished because of the mere fact that OAVs are living and working abroad, the provisions on the affidavit of intent to return and the approval of the local ERB would not be necessary. If the residency requirement for OAVs could be relaxed, the election laws should also then be able to recognize the peculiarities and intricacies involved in overseas voting so that it would not be tied to the local scenario of the electoral process.

To date, COMELEC has submitted various amendments to the 1985 Omnibus Election Code for the consideration of the legislature. Suggestions from stakeholders already include automating registration and electronic voting, but the present election

laws do not allow this. A more realistic alternative is expanded postal voting. The reason for the low turnout of seafarers, who easily comprise more than 200,000 overseas workers, was the requirement that they had to register and vote in person. Understandably as well, not all overseas Filipinos live near an embassy or consulate. As long as the law requires paper ballot papers and a 'paper trail' to avoid suspicions of cheating during elections, external voting in the Philippines will continue to entail personal registration and voting.

Registration in 2005

At the time of writing, as amendments to the law were not yet in place, COMELEC is set to usher in a new, continuing registration for OAVs, beginning on 1 October 2005 and lasting until 31 August 2006, that is, for a period of 11 months. This is in response to the demand that the registration period should be longer than the mere two months of the last time.

To address the situation of having to send application forms to the local ERBs, COMELEC was to establish a Resident Election Registration Board (RERB) which would process and act upon all applications for registration at the central office of COMELEC in Manila.

Recognizing the nature of seafarers' work, COMELEC would now allow them to register at any Philippine embassy or consulate abroad. COMELEC would thereafter explore the possibility of expanding the coverage of postal voting to include other countries where there is a limited concentration of Filipinos.

The approved applications for registration/certification were to be considered as applications to vote in absentia, so that registered OAVs do not need to apply anew. COMELEC assumes that for so long as the voter does not apply for transfer of his registration records from his original post of registration to another place, whether in the Philippines or in another country, he is still residing at the same place.

Given that only a modest proportion of the people entitled to do so actually registered as OAVs during the 2003 registration, the natural reaction would be either to scrap or to suspend the implementation of the law. Some observers have attributed the low rate of registration to the perceived apathy of overseas Filipinos who cut all political ties with the country long ago. However, no one can deny the economic contribution they make to the country by way of remittances sent to their families in the Philippines. The task now is to convert this apathy into intelligent and informed votes. To deny the right of suffrage once so fiercely fought for does not seem to be the right response. Hence, if the Filipinos overseas can be made fully aware of their rights and of the potential impact of a consolidated overseas vote in the country's socio-political setting, perhaps their contribution to the political life of the country will be even greater than their economic contribution to nation-building.

Cape Verde: a large diaspora and low turnout by external voters

Nuias Silva and Arlinda Chantre

The Republic of Cape Verde is a small island country with a strong tradition of emigration which goes back to the 19th century, the result of hard living conditions. Despite the citizens' need to emigrate, however, they have never abandoned the bonds that tie them to their home country, and their currency remittances are an important source of wealth for the national economy.

In the light of this evidence, at the time of the first democratic elections held in Cape Verde, in 1991, Cape Verdeans residing abroad were immediately called upon to participate. In 1992, when a new constitution was adopted, the right of Cape Verdeans living abroad to vote was specified in the constitution. However, they can only participate in elections to the legislature under certain conditions:

- (a) they emigrated from Cape Verde not more than five years prior to the date of the beginning of voter registration; or
- (b) they have and are providing for a child or children under 18 years of age or handicapped, or a spouse or older relative habitually residing in the national territory, at the date of the beginning of voter registration; or
- (c) they are serving in a state mission or a public service position recognized as such by the competent authority, or residing outside the national territory as the spouse of a person in that position; or
- (d) if they have been resident abroad for more than five years, they have visited Cape Verde within the past three years.

It should be emphasized that the electoral law did not include any additional requirement for citizens to prove their bonds to the national territory. Cape Verdean nationality is enough, and entitlement is not affected if a person has dual or multiple nationality, even if the other nationality is that of the country where the citizen is resident at the time. It is, however, noticeable that the lawmakers were concerned to provide the suffrage only to those Cape Verdeans living abroad who retain some bonds with the country.

Citizens resident abroad were divided into three electoral districts in accordance with their residency—Africa; the Americas; and Europe and the rest of the world—each electoral district abroad electing one representative.

Those living abroad have the right to vote in presidential as well as legislative elections. Even so, because there were as many Cape Verdean citizens living abroad as were living in the national territory at the time, a solution was chosen that should not compromise national independence—otherwise the votes of citizens resident abroad could have decided the election of a president, whatever the choice of the residents in the national territory. The compromise solution was a system of weighting, as follows. Each citizen residing abroad is entitled to one vote, but these votes must not amount to more than one-fifth at most of the total votes counted in the national territory. If the total number of votes from electors registered abroad exceeds this limit, it is converted into a number equal to that limit and the number of votes cast abroad for each candidate is adjusted proportionately.

Citizens resident abroad can stand for election to the National Assembly (the parliament) but not presidential elections. Candidates for the presidency must have been resident in the national territory for three years prior to the election and cannot have dual or multiple nationality.

For elections to the National Assembly, the provisions in force in 1991 were preserved in the 1992 constitution, but the number of representatives elected by citizens residing abroad was increased, entitling those registered abroad to elect six representatives. The definition of electoral districts abroad and the distribution of seats between electoral districts was left to be determined by legislation, and this was done by the Electoral Law for the Election of the President and the Electoral Law for Elections to the National Assembly, both of 1994. The latter (Law no. 116/IV/94 of 30 December 1994) retained the definition of the electoral districts abroad provided for by the 1991 electoral legislation—Africa; the Americas; and Europe and the rest of the world. Each electoral district abroad now elects two representatives, out of 72, and has as headquarters the city of Praia, the capital of Cape Verde.

The extraordinary constitutional revision of 1995 and the ordinary revision of 1999 kept the established principles unaltered.

Having defined the current constitutional framework, let us analyse how it works in practice.

Registration

A citizen must be registered in the electoral registers in order to vote, and the electoral code establishes specific arrangements for citizens residing abroad. During the annual registration period, which abroad is from April to June (in the national territory it is from June to July), registration takes place in electoral registration commissions functioning at the country's consulates, embassies or diplomatic missions. It is worth noting that during the registration period the electoral registration commissions may, as happens in the national territory, set up mobile teams to promote the registration of citizens as close as possible to their place of residence. Outside this registration period, the consulates, embassies or diplomatic missions promote the registration of every elector residing within the geographical unit for registration who seeks any other consular services. It

can even be said that a citizen residing abroad is in a privileged position compared to a citizen residing in the national territory, since the former can register throughout the year, while a citizen residing in the national territory can do it only from June to July each year.

The management of external voting

The electoral legislation also sets down specific rules for the organization and conduct of the electoral process abroad.

As many polling stations as necessary are organized so that the number of electors for each polling station does not exceed 800. The polling stations are not confined to consulates and embassies; their number and location are determined by the individual in charge of the consular services, in accordance with the rule of the closest proximity to the voter.

The voting process is similar in all aspects to the process on the national territory. There is no postal voting for external electors.

After the polls close, each polling station board proceeds to determine the partial results. These results, together with the other electoral materials, are sent to the respective consular services, which collect all the electoral material from the polling stations under their jurisdiction. The officers in charge of the consular services then send all the elements they have received to the National Elections Commission headquarters in Cape Verde, so that it can proceed to determine the results for the three electoral constituencies abroad.

There is no separate budget for external voting.

Turnout

Despite all the efforts made to engage every citizen abroad in the major decisions affecting the country, few Cape Verdeans living abroad are registered to vote, and few participated in the legislative and presidential elections held in 2001. In 2001, a total of 28,022 citizens residing abroad were registered to vote, distributed as follows for the three electoral districts: Africa 5,720; the Americas 8,120; and Europe and the rest of the world 14,182. Only 7,558 of these registered citizens, or 27 per cent, exercised their right to vote, as follows: in Africa 2,486; in the Americas 2,812; and in Europe and the rest of the world 2,260.

According to available data from 2004, 33,998 citizens residing abroad are properly registered—5,694 in Africa, 8,152 in the Americas and 20,152 in Europe and the rest of the world. The population in the national territory was 434,625, according to the most recent census (in 2000), and projections suggest that it would have risen to 475,947 in 2005. The size of the diaspora is estimated at 500,000, including 265,000 in the USA; 80,000 in Portugal; 45,000 in Angola; 25,000 in Senegal; 25,000 in France; and 5,000 in Argentina. Of these some 50–60 per cent may be eligible to register as electors. The main challenges for the Cape Verdean electoral management bodies is therefore to achieve a higher rate of registration and a higher turnout.

