



The Migration & Development Series

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**Panel discussion on
The Human Rights of Migrants
Facilitating the Participation of Migrants in Public Life**

Migrants and external voting

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Mr Chair,

Distinguished Ambassadors and Delegates,

It is an honour to participate in this Panel Discussion on the Human Rights of Migrants. The relationship between migration and democracy raises important issues of citizenship and political participation which attracted the attention of policy makers, because of the combination of increasing trends of migratory flows, and the processes of democratic transitions and consolidation of democratic institutions that has taken place over the last decades.

International IDEA is engaged in building knowledge on key aspects of democracy building, developing analysis for influencing policy debates and agendas, and supporting democratic reforms and processes at the request of countries and at the regional level, with programmes in Latin America, Africa and South Asia. IDEA builds on its membership of 25 member states from Africa, Asia, Europe, the Americas and Oceania and an extensive network of practitioners and experts from all the regions of the world. We offer to policy makers options grounded on comparative analysis focused on such

themes as electoral processes, political parties, constitution building, gender and democracy, and the analysis of democracy.

I will present today the results of a recent analysis carried out on one crucial aspect of the relationship between migration and democracy: external voting, understood as 'provisions and procedures which enable some or all electors of a country who are temporarily or permanently outside the country to exercise their voting rights from outside the territory of the country'. The results of such analysis are available in *Voting from Abroad: The International IDEA Handbook*, recently published by International IDEA and the Institute Federal Electoral of Mexico in partnership with the International Organization of Migration (IOM).

1. Some data on migration

Although exact statistics on migration are difficult to collect, estimates show that the total number of migrants in the world may have reached 190 million in early 2005. The number has more than doubled since the 1970s. The collapse of the Soviet Union produced a high proportion of these migrants during the late 1980s and early 1990s.

The number of migrants living in developed countries is higher than the number living in developing countries, and has increased since the 1970s. It has increased mainly in North America and in the territory of the former Soviet Union, while it has decreased particularly in Asia, Latin America and the Caribbean. In 2000 the number of countries where migrants accounted for 10 per cent of the population was 70. There are six countries or areas in the world where migrants constitute more than 60 per cent of the population.

2. The issue of political rights of migrants

Against this background, a considerable problem emerges: how can people living outside their country of origin have their political rights assured? The answer to this question that is most often heard is that in our 'globalized' world the principle of universal suffrage can only be fully achieved if citizens living abroad are entitled to vote in the national elections of their home country. This argument is mainly based on different international declarations in which universal, equal, free and secret suffrage is recognized as an inalienable part of human rights (for example, the 1948 Universal Declaration of Human Rights, article 21; the 1948 American Declaration of Human Rights and Duties, article 20; and the 1969 American Convention on Human Rights, article 23). These documents do not mention external voting as an integral part of universal suffrage. The 1990 International Convention on the Protection of the Rights of All Migrant Workers, however, explicitly states that:

Migrant workers and members of their families shall have the right to participate in public affairs of their State of origin and to vote and to be elected at elections of that State, in accordance with its legislation.

The States concerned shall, as appropriate and in accordance with their legislation, facilitate the exercise of these rights (International Convention on the

3. Data on external voting

External voting is currently allowed by 115 countries and territories in the world. Of those countries, some two-thirds allow all their citizens a vote from abroad, and one third partially restrict the right to an external vote. One hundred and fifteen countries, or more than 50 per cent of the world's democracies, if for this purpose we take the criterion for being a democracy to be the 'lowest common denominator' of the holding of multiparty elections and the guarantee of universal suffrage, allow external voting. Twenty-eight African countries and 16 countries in the Americas have external voting. A fairly high number of European countries (41) allow it, as well as ten in Oceania and 20 in Asia. (See table 1.1 of IDEA's Handbook, pages 12-13).

4. Legal sources for external voting

There are three major types of source that contain the legal provisions for external voting:

- constitutions;
- electoral laws; and
- administrative regulations.

In reality, external voting is seldom provided for explicitly in constitutions (notable exceptions are provided by Portugal and Spain). Most countries enable external voting through general provisions in their electoral laws. Additional regulations on its implementation are also often set out by legislatures or electoral commissions.

5. In which types of election does external voting apply?

External voting can be applied at national or local elections or both. It can also be used for referendums and sub-national elections. It is most common for countries to allow external voting for national elections only, that is, for presidential or legislative elections.

Some countries, such as Ireland and Russia, allow external voting for all these types of election, including referendums and sub-national elections. Table 1.3 and annex A to the Handbook give details of the types of election for which external voting applies in the countries which allow external voting.

6. Categories of external elector: who is entitled to an external vote?

There are several categories of external electors in the world and different approaches to categorizing them. Social, political, cultural or ethnic circumstances all lead to migration and also, therefore, produce groups of potential external voters. This Handbook suggests that there are four main groups of people staying or residing abroad

who are entitled to vote. These are (a) migrant workers, (b) refugees and internally displaced persons (IDPs), (c) individuals in certain professional groups, such as military personnel, public officials or diplomatic staff (and their families) and (d) all a country's citizens living or staying abroad, temporarily or permanently.

I will focus my presentation on the first group: *migrant workers*. Of the 190 million people mentioned above, at least 50 per cent are migrant workers. A high proportion, or about 30–40 million, of these are illegal workers, without the proper documentation, which both makes it difficult for them to register and vote as external electors and leads to feelings of insecurity as they fear being penalized if they do.

7. Entitlement to an external vote and requirements for registration as an external elector

The right to vote externally may be limited to certain types of election. The institutional arrangements for external voting will depend first of all on who can be registered as an external elector. Various options are possible:

- all citizens living outside the state territory may be allowed to vote in national elections;
- certain legal limitations may determine which citizens can be registered as external electors;
- citizens living abroad may have the right to vote if a specified minimum number of them register with diplomatic missions in the foreign country; and
- the right to an external vote may be limited in time.

8. The procedures for external voting

There are four basic options for the procedure for external voting:

- postal voting;
- voting in diplomatic missions or military bases, or other designated places;
- voting by proxy.
- electronic or remote voting, which will increasingly be another future option

These alternatives should be examined in the context of the fundamental principle of the free, equal, secret and secure ballot. Proxy voting may be rather problematic from the perspective of democratic theory because there is no guarantee that the vote cast by the proxy—and thus possibly even the result of the election—reflects the will of the original voter. A proxy could use this procedure to obtain an additional vote and thus infringe the principle of equal suffrage. Voting in diplomatic missions may deny some external electors the right to vote if they cannot travel to the polling stations. Voting by mail may not be as transparent as voting in a diplomatic mission in the presence of state officials—and voting in a diplomatic mission depends on the perceived impartiality and integrity of those state officials. There is thus no 'best procedure' for external voting.

Much will depend on the context, such as the infrastructure of those foreign countries where external voting is to be held. The decision on suitability will depend on the costs and practical aspects of the different procedures for external voting.

9. 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.

10. The assignment of external votes to electoral districts

The last institutional aspect of external voting is the assignment of external electors to electoral districts. The institutional provisions for the assignment of external votes are politically important because they define how external votes are translated into parliamentary seats. In other words, these regulations will largely decide the extent to which external voters can influence domestic politics.

The main point of reference in the systematic classification of assignment provisions is the structure of electoral districts. Two basic options may be distinguished:

- There are extraterritorial electoral districts for external electors.
- External votes are assigned to existing electoral districts inside the country, for example, in the electoral district in which the external elector was last registered.

Each alternative has its own logic. Whereas the first stresses the special extraterritorial character of external votes, the second stresses the relation of overseas citizens to the state territory, and thus reflects the classic legal requirement of residency. The impact the external vote can have on domestic politics is different for each alternative. The political influence of external voters depends not only on the choice between the fundamental alternatives, but also on the 'institutional fine-tuning' within these models. Where there is an extraterritorial electoral district or districts, the political significance of external voters is basically determined by the representation attached to those districts in the institutional framework. This is especially true where electoral laws establish a fixed number of extraterritorial seats, often assigned to the world regions where citizens of the country live.

11. Host country issues

Host countries issues are challenging, complex and close charged. To complicate matters, external voting programmes are often conducted hastily to tight timetables. There is little clarity regarding who has the mandate to advocate, facilitate and evaluate external voting. There are no consistent policies, practices or standards guiding host governments' positions and responsibilities. Differences in political culture, administrative structure, infrastructure, and legal framework must be taken into consideration. However, there are a few components of external voting programmes that have begun to standardize.

- Any information on individuals that may come into the hands of the host country as a result of the external voting programme should be used exclusively for the external voting programme.
- The legality of an individual's residency, including a lack of documentation, does not affect an individual's eligibility to exercise his or her right to political participation.
- Participation in an external voting programme should not affect the political, economic or social inclusion of individuals within their host country in any way.
- While host countries may have a role in the registration process, usually through providing demographic data, it is important that protections are put in place to prevent foreign governments from influencing the electoral outcome through an engineered turnout by screening the registration process.
- It is critical that host countries facilitate and support the dissemination of information, including voter and civic education as well as political campaigns.
- Participation in an external voting programme should neither prevent nor delay the voluntary repatriation of refugees living in the host country.
- The political, financial and logistical obstacles to external voting programmes should be approached with the intention of overcoming them. The costs of not conducting external voting may, in the long run, be much greater.

12. Three structural problems of external voting

Specific provisions for voter registration, voting procedures, and ways of assigning external votes to electoral districts can be combined in many ways. Two points have to be made in relation to this potentially vast array of institutional arrangements: first, some individual countries have developed highly specific provisions; and, second, political decision makers must choose the 'right design' of external voting from an almost endless variety of institutional possibilities. At this point one question becomes most significant. Which *criteria* should be considered before deciding in favour of or against external voting or a certain form of external voting?

To answer this question we now look at three challenges of external voting which are essential elements when shaping the legal framework, and the normative criteria which may relate to them. The challenges are:

- political representation of citizens who are not resident or not present in their country of citizenship;
- organization of elections outside the national borders, which introduces organizational problems, questions of the transparency of voting procedures, the issue of equality of party competition and transparency in electoral fraud; and
- the resolution of disputes if the results of elections held on foreign ground, outside the judicial territory, are contested.

The degree of fairness, transparency and electoral justice of external voting bears on the whole electoral process, especially if the results abroad deviate greatly from the in-country results. In debating proposals to introduce or maintain external voting, issues of electoral justice—the transparency of electoral registration, the equality of electoral competition, the legal conduct of the act of voting, and the control mechanisms to ensure all of these—are essential in informing the process of decision. When citizens living abroad are claiming the right to vote, denying it may result in some loss of legitimacy. But it is equally important to bear in mind that an external voting process which is perceived as biased in favour of particular political interests or as chaotic may cause electoral events to lose legitimacy in the eyes of the domestic public.

13. Main issues associated with the political rights of international migrants

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.

14. External voting observation

Observing external voting may be difficult both because of lack of transparency in the process and because of lack of resources to be able to collect first-hand information from a wide geographical area. Observation may therefore in some cases be limited to the overall assessment of the conditions for external voting, or to parts of the processes.

The political conditions for external voting should always be assessed. If the very fact that external voting is permitted is controversial, it is likely that general trust in its implementation will be low.

External voting will always be less transparent than in-country personal voting in polling stations. Voting outside controlled environments will be less easy to observe than voting in controlled areas, and e-voting will produce fewer audit trails (such as ballot papers). Therefore general confidence in the EMB and the election administrators is the first criterion for observers to assess when observing external voting. Should such confidence not be in place, it is difficult to create it by observing the elections. Even if part of the process can be checked, it is difficult to ensure that the process cannot be manipulated by insiders. However, if there is general trust in the intentions of the election administrators, some parts of the process are possible to check and can be observed. They include:

- the registers of external electors;
- the validation of the voters;
- the content of the ballot material used for postal votes, and the manner in which the return of voting material is checked for correctness and against impersonation;
- the way an e-voting system is procured and validated by the EMB;
- the available audit trails; and
- security measures taken against attacks from outside and against technical failure in the case of electronic voting.

In addition, the issues regarding the secrecy of the vote and the possibility of systematic intimidation of voters should be assessed.

15. General conclusions

Three major conclusions may be drawn when considering reforms relating to external voting.

a) The introduction of external voting is likely to give rise to political controversy.

There are solid theoretical arguments both in favour of and against external voting. On the one hand, the recognition of the principle of universal suffrage is regarded as a civil right, which can be realized by the widening of political participation. On the other hand, external voting implies the electoral participation of individuals who may not be directly affected by whatever effects the result brings about.

The historical trend clearly points towards the understanding of the right to vote as an individual right of every citizen, regardless of his or her place of residence. But a move to adopt or extend external voting by a particular country needs to ensure that all stakeholders are involved in the decision-making process, and that consequent trade-offs or drawbacks—for example, restrictions on electoral freedom such as inequalities in the political rights enjoyed by different people—are considered and are thus less likely to give rise to subsequent questioning of the constitutionality or legitimacy of the electoral process.

It is also good practice for the decision-making process to take into account not merely the substance of reform proposals, but also the perception of the proposals by the electorate and by the media. As with other areas of reform of electoral process, law and regulation, the success of change may depend not only on the substance of what is agreed but on the extent and effectiveness of civic and voter education activities to explain changes to the electorate both inside and outside the country.

As with any electoral reform proposal, external voting will be particularly controversial if the votes cast externally affect the result decisively and determine the winner. Such election results will be highly controversial among the relevant political actors.

b) The debate on external voting should not be allowed to overshadow consideration of the political inclusion of foreign citizens in their country of residence. A move has been made towards this principle through the introduction in many European Union member states of voting rights for citizens of other member states. A more widespread introduction of the right to vote in the country of residence would enable individuals with foreign nationality to take part in decisions that affect their personal interest and thus create a context of responsibility—although such a move could also generate political controversy, especially if foreign citizens were thought likely to give support disproportionately to one political group and if their votes were decisive in determining the result.

c) There is no ideal institutional design for external voting. Once a decision is made in favour of introducing external voting, the resulting legal provisions must be designed to suit the particular context of the country. Above all, attention must be paid to minimizing the possible trade-offs and unintended negative side effects.

I thank you for your attention