

THE HISTORY AND POLITICS OF DIASPORA VOTING IN HOME COUNTRY ELECTIONS

Prepared by Andy Sundberg, based on information from Andrew Ellis and others sources in: "Voting from Abroad": *The International IDEA Handbook, 2007.*

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

1. A Brief History of Diaspora Voting

The first use of external voting appears to have been put in place by the **Roman** emperor **Augustus**, who is said to have invented a new kind of suffrage under which the members of the local senate in 28 newly established colonies cast votes for candidates for the city offices of Rome and sent them under seal to Rome for the day of the elections—an act which was undoubtedly based on political rather than democratic motives.

The reasons for introducing external voting also differ according to the historical and political contexts. Thus, in several countries the introduction of the right to vote for overseas citizens was an acknowledgement of their active participation in World War I or World War II.

In more recent times, the earliest known use of external voting took place in 1862, when **Wisconsin** became the first of a number of US states which enacted provisions to allow absentee voting by soldiers fighting in the Union army during the Civil War. (The franchise was defined at state level in the USA.) Political contention was from the beginning a major factor: Republicans backed external voting legislation as they believed that soldiers were likely to support Republican President Abraham Lincoln, while Democrats sympathetic to peace moves and the cause of the Confederacy opposed it. A guarantee that US service personnel could register for a postal vote was passed in 1942, although this was reduced in 1944 to a recommendation to states (which are the registration authorities) to enable registration. The overseas postal vote was gradually extended to cover non-military personnel serving abroad (in 1955) and all US citizens abroad (in 1968). The United States provides an example of those rare cases where external voting was finally enacted in response to the demands of citizens residing overseas and the registration provision became mandatory for states in 1975.

Outside the military context, **New Zealand** introduced absentee voting for seafarers in 1890, and **Australia** adopted it in 1902, although under operating arrangements which made its use outside Australia practically impossible. New Zealand gave the vote to all military personnel, not just those over the then voting age of 21, during the period of the war.

Many more people were enlisted into armed forces during World War I (1914–8) than in previous conflicts. In the **United Kingdom** (UK), the political demand for a voice for those doing the fighting led in 1918 to the introduction of absentee voting for military personnel, conducted by proxy. Postal voting for military personnel, merchant seamen and others working overseas on matters of national importance took place in the UK in 1945, with a three-week delay between domestic polling and counting to allow for ballot papers to be returned. In the UK in the 1980s, the then Conservative government saw advantage in the general enfranchisement of British citizens living overseas and enacted it, believing that many expatriates would be their supporters, but were disappointed by the very low take-up of overseas registration. Even an extension of the maximum period of overseas residence from five years to 25 did not bring the party the political benefits they anticipated. However, communities of expatriates do often seek involvement in their country of origin, whether migrant workers seeking to retain links with their home, members of long-term diaspora communities opposed to a current or former regime, or expatriates remitting payments to relatives.

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Canada provides more early examples of the influence of political factors in the introduction and form of external voting. Postal voting for military electors on active service was agreed at federal level in 1915: the Unionist government believed that Canadians on active military service would be likely supporters. Before the federal election which followed in 1917, the military franchise was extended. In addition, the military voter could choose the electoral district where the vote would be counted—failing which the political party chosen by the voter could do so after the results of the civilian voting in-country were known! Another Canadian example of the influence of political factors was seen in the province of British Columbia, which enabled military personnel overseas to vote in 1916 in referendums on women's suffrage and on the introduction of the prohibition of alcohol. While the referendum on the vote for women passed easily, the result of the referendum on prohibition was very close, and the votes of overseas soldiers were critical to the rejection of the proposition. Following allegations of malpractice by the supporters of prohibition, a legislative commission of inquiry recommended that most of the overseas votes be disallowed. This recommendation was subsequently passed into law, changing the result of the referendum, and prohibition was then enacted. Canada introduced proxy voting on behalf of prisoners of war by their closest relatives for the 1945 general election, and extended postal voting to military families in 1955.

France introduced external voting in 1924 to cater to a different constituency: French administrators posted to the occupied Rhineland were enabled to vote by post. World War II (1939–45) produced further momentum for external voting by active servicemen. In addition to postal voting by military personnel, France introduced proxy voting for servicemen by 1946: by 1951, postal votes and/or proxy votes were available for voters in a range of specified categories, including those on government or military service or professional business away from their home. The fear of fraud in the operation of external voting provisions has sometimes been well-founded. France abolished postal voting in 1975 because of the incidence of fraud. French provisions for proxy voting before 1982 allowed proxies to be registered in any electoral district—which led in legislative elections to competition to register proxies in marginal electoral districts. Since 1982, proxies may only be registered in electoral districts with which the elector has a connection according to a list specified in the electoral law.

In common with many other aspects of electoral administrative tradition, external voting provisions often passed from the legislation of a colonial power to the legislation of a newly independent state. The existence and form of external voting in **Malaysia** followed its use in colonial Malaya, which had in turn derived it in the 1950s from the British legislation then in force. Postal votes were available for overseas service personnel, for overseas public servants and overseas students, and for their spouses. However, not all British colonies had introduced external voting before independence, and indeed some of the remaining British overseas territories and former colonies still do not have it.

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

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

Indonesia legislated in 1953 for its first democratic general elections. While some described the resulting law as over-complex and a search for democratic perfection, the principle of enfranchisement of all citizens, in particular migrant workers and students, led to the introduction of external voting in Indonesian embassies abroad—a mechanism that persisted through the elections of the years of authoritarianism and remained in use in the democratic era.

A similar wide qualification was introduced by **Colombia** in 1961.

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In **Spain**, the introduction of external voting in 1978 had a symbolic character insofar as its inclusion in the democratic constitution meant the ex post facto acknowledgement of the republican emigration after the Civil War.

In **Argentina** (1993) it reflected the government's political/pragmatic intention to maintain or strengthen the ties between emigrants and the mother country.

In **Austria** the introduction of external voting (in 1990) followed a resolution of the Constitutional Court.

While **Swiss** citizens had been able to travel back to Switzerland to vote for some years, the argument that Swiss sovereignty precluded foreigners from voting in Switzerland and therefore prevented the Swiss from seeking agreement for external voting was only finally overcome in 1989.

Political parties and actors can be the key players in introducing external voting. A provision in **Honduras** that had long been stalled was activated by a party which saw political advantage in doing so.

Such communities can themselves be influential in lobbying for the introduction of external voting—as the **Dominican Republic** example shows.

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

2. Diaspora Voting In Democratic Transition Countries

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

Diaspora communities may be active in seeking a post-transition role, and may be particularly influential when they play a role in the domestic politics of major donor countries. However, such pressure is not always successful.

The elections which took place in **Palestine** in 1996 were held under the terms of the Oslo Agreement of 1993 and the Israeli–Palestinian Interim Agreement of 1995. Under these agreements, the right of return of displaced Palestinians and their families was left for consideration in final status negotiations. Although there was considerable pressure within the Palestinian diaspora for voting rights, no external voting provisions were introduced.

The international community frequently plays a leading or significant role in mediating transitions and even in implementing transitional elections. Transition agreements may therefore contain important and sometimes controversial external voting provisions.

The General Framework Agreement for Peace signed at Dayton in 1995 led to the most complex use of external voting thus far attempted in the 1996 elections in **Bosnia and Herzegovina**. The issue at stake was the extent to which the 'ethnic cleansing' that had taken place during the conflict would be recognized in the elections. Would people who had been displaced or become refugees be able, both as a question of principle and in practice, to vote in the locality which they had left, or in a locality where they now were or where they intended to make a future home? The agreement provided for both options. While the Organization for Security and Co-operation in Europe (OSCE) sought to implement the terms of the agreement, the political forces in Bosnia—many of which had been the major participants in the war—sought to encourage some versions of external voting, and to discourage others.

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In a transitional context, the question of who implements external voting can be politically highly sensitive. The International Organization for Migration (IOM) organized external voting for Bosnia and Herzegovina in a variety of countries for several elections.

When external voting for the 2004 elections in **Afghanistan** was being planned, Pakistan offered to organize the polling stations itself—politically a highly controversial proposal, which was not in the event accepted. The same arrangement may, however, be entirely acceptable in other circumstances.

The electoral authority of the US territory of **Guam** organizes polling for the many citizens of the **Federated States of Micronesia** based in Guam, an arrangement which finds all-round support.

3. Diaspora Voting and Electoral System Design

Political considerations are not only important in determining whether external voting takes place: they are also influential in defining its form. Many decisions relating to external voting are linked to electoral system design, another highly political aspect of democratic reform and democratic transition.

Electoral system design is one of the most important elements in the institutional framework of a country, influencing as it does the political party system. Electoral system reform may be on the agenda as a result of vision or a motivation to improve democracy, or for more short-term, sectoral or even venal reasons on the part of some political participants. This is mirrored by external voting, which may be placed on the democratic agenda by those who believe strongly in the equal right of all citizens to participate—or by political forces which see potential advantage in it.

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

3.1. *Diaspora Voting in Person and Electoral System Design*

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

The same is not, however, necessarily true of a polling site in for example a diplomatic mission. The electors may originate from anywhere in the country that is holding the election. Where the same ballot paper is in use across the whole country, this is not a problem: for example, everyone receives the same ballot paper in a plurality or majority election for president.

The same is true when electing legislators under a List proportional representation (List PR) system in which the whole country forms one electoral district, and even when closed List PR is used in smaller electoral districts using ballot papers which only carry party names and logos.

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

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

If open or free List PR are used, the individual candidate lists will be different in each district, even if the same selection of parties are contesting every district. With closed List PR, the same applies if it is thought that the voter has the right to know when voting the identity of the candidates on the list of each party. Mixed systems, whether Mixed Member Proportional (MMP) or Parallel, are the most

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problematic, posing the challenges of both of their components simultaneously. Problems are likely to be magnified further if a decision is taken to use external voting in regional and local elections.

The task of determining which ballot paper each voter should receive may not then be simple, especially if the voter has left the home country a considerable time before. Neither voters nor polling site officials might be expected to have detailed knowledge of precise electoral boundaries. It may be possible to use the registration process to determine the correct location of each elector and record it in a form that is accessible at polling sites, although this is a task that can consume considerable time and resources.

Alternatively, electoral system designers can design versions of their chosen system in which a specific external district with reserved seats is created—as in Croatia. Another option is to allocate all external voters to a small number of electoral districts—as in Indonesia, where the external votes cast in Malaysia and Singapore are included in one of the two electoral districts in the capital, Jakarta, and all other external votes to the second Jakarta district (see the case study on Indonesia).

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

3.2. Diaspora Remote Voting and Electoral System Design

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

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

3.3. Diaspora Voting by Proxy and Electoral System Resign

Of the three approaches to external voting mechanisms, proxy votes cause the least problems to electoral system designers. The problems of allocating external voters to electoral districts remain, but if this can be achieved, the proxies can be considered just as the voters themselves would be. Voters will presumably choose proxies who are in-country and able to vote at the same polling stations as they themselves would. In any event, the choice of proxy is the voter's responsibility. A proxy voting system may, however, have other disadvantages, not least the issues that it can raise about electoral integrity.

3.4. Diaspora Voting Timing Issues

External voting may be complex, and is always relatively time-consuming. However, where new electoral arrangements are being created, it is well known from experience that political actors will take all the time available for negotiating the form of a new election law. It is after all established negotiating practice to get maximum value for concessions by making them only when there is pressure of time to reach an agreement.

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This means that electoral administrators are almost certain to be operating without sufficient time to produce the ideal—or even a desirable—election. When corners need to be cut, simple systems which will work satisfactorily under pressure are therefore valuable. This may affect the choice of external voting method adopted.

4. Who Can Vote and How Voting Takes Place

4.1 The Number of National Diasporas Who Can Vote Today

Voting from abroad is now possible for Diaspora communities from **115** home countries. Of these, **28** come from home countries in Africa; **16** in the Americas; **20** in Asia; **41** in Western, Central and Eastern Europe; and **10** in the Pacific. Provisions for voting by Diaspora communities have been adopted by five additional countries, but rules and voting methods have not yet been decided.

4.2 Restrictions on Diaspora Members Who Can Vote from Abroad

Fourteen countries, who allow voting by their Diaspora communities, impose some time restrictions on such electoral participation. These restrictions are summarized in Table 1 below.

TABLE 1				
RESTRICTIONS ON DIASPORA VOTING				
	Country	Only a Provisional Stay Abroad Allowed	Maximum Time Abroad (Years)	Other
1	Australia		6	
2	Canada		5	
3	Chad			Voter must be enrolled in the consular registry six months before the beginning of the electoral process.
4	Cook Islands		4	Exceptions for those abroad for medical care or education.
5	Falkland Islands			Only a temporary stay in the UK is allowed.
6	Gibraltar	1		
7	Guernsey	1		
8	Guinea		19	
9	Isle of Man	1		
10	Jersey	1		
11	Mozambique			Voter must spend at least one year abroad before beginning registration as a voter abroad.
12	New Zealand		3	
13	Senegal			Voter must spend at least six months in the jurisdiction of a diplomatic representation abroad.
14	UK		15	

It is interesting to note that many of these countries setting such time limits for Diaspora voting have an historical relationship to the United Kingdom either as territories, former colonies or as members of the British Commonwealth.

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4.3 Different Types of Elections During Which Diaspora Voting is Currently Permitted

There are four principal types of elections where voting by Diaspora members can take place so far.

Presidential Elections: Diaspora members from **64** countries can participate in their home country presidential elections.

Legislative Elections: Diaspora members from **92** countries can participate in their home country legislative elections.

Sub-National Elections: Diaspora members from **25** countries can participate in their home country sub-national elections.

Referendums: Diaspora members from **38** countries can participate in their home country referendums.

Diaspora Voting in Different Combinations of Elections: Each country has a different selection of elections that permit vote from their Diaspora members. These elections are shown in Table 2 below.

TABLE 2	
ELECTIONS FOR WHICH EXTERNAL VOTING IS ALLOWED	
Type of Election	Number of Countries
Presidential Elections Only	14
Legislative Elections Only	31
Referendums Only	0
Presidential and Legislative Elections	20
Presidential Elections and Referendums	7
Presidential & Legislative Elections, and Referendums	11
Presidential & Legislative and Sub-National Elections and Referendums	6
Legislative Elections and Referendums	7
Other Combinations	19
TOTAL	115

4.4 Different Types of Diaspora Voting Methods Used

Countries use five different methods of voting for their Diaspora members today.

Voting in Person: Diaspora members from **79** countries can vote in person.

Voting by Post: Diaspora members from **47** countries can vote by postal ballot.

Voting by Proxy: Diaspora members from **16** countries can vote by proxy.

Voting by Fax: Diaspora members from **2** countries (Australia and New Zealand) can vote by fax.

Voting by the Internet: Diaspora members from **2** countries (Estonia and the Netherlands) have been able to vote by the Internet so far. (Note: American Diaspora members of Democrats Abroad were also able to vote in the 2008 overseas primary election by Internet and 48% of the total DA primary votes were cast this way).

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Different Combinations of Voting Methods: Each country has a different selection of voting methods that are available for their Diaspora members. Some offer only one voting method, but some offer several options. These different options are shown in Table 3 below.

TABLE 3	
VOTING METHODS AND OPTIONS IN USE	
Procedures	Number of Countries
Personal Voting Only	54
Postal Voting Only	25
Proxy Voting Only	4
Personal and Postal Voting	12
Personal and Proxy Voting	7
Postal and Proxy Voting	2
Personal, Proxy and Postal Voting	2
Fax	2
E-Voting (Internet)	2
Not Yet Implemented or Not Known	5
TOTAL	115

