

# CHAPTER 4

CHAPTER 4

# 4. Entitlement to vote

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## 1. Introduction

Many countries allow their citizens the right to vote in elections when they are not present in their home country. This chapter examines the ways in which countries may determine who is entitled to vote while outside the country.

Entitlement to cast an external vote is usually linked to the general entitlement to vote that applies to all eligible electors in a country. However, there are sometimes extra requirements imposed on external electors, such as a minimum period of previous residence or an intention to return to the country. In some cases only limited groups of external electors may be eligible to vote, such as diplomats, other public officials and members of the armed forces, and their families. Some countries extend the right to vote to all their citizens living abroad, regardless of the length of time they have spent out of their home country, while others impose time restrictions or require evidence of an intention to return.

Eligibility to vote is usually linked to citizenship. The definitions of citizenship that are applied can also affect which classes of people are eligible to cast external votes. This chapter discusses citizenship in this context.

Some countries, such as New Zealand and Sweden, also extend the right to an external vote to residents who are not citizens: this is sometimes referred to as the 'franchise for foreigners'. In this case different rules from those that apply to citizens are usually needed to determine whether these non-citizen residents are eligible to cast external votes.

In some countries the numbers of people eligible for an external vote are relatively small. Other countries do not allow anyone to vote if they are outside their home country. In some cases, for example, following major civil or political unrest or where national borders have changed, or where there are large numbers of migrant workers abroad,

large numbers of people may be resident outside the country and have a legitimate claim to vote. In these cases the question of who is eligible to cast an external vote may be a major issue, and determining eligibility may be crucial to the election outcome.

Once a person's eligibility to cast an external vote is established, there is usually a second requirement to be met—the need to be registered on the electoral register in order to show that that person is entitled to vote. Special registration requirements may be necessary for external electors, or external electors may be required to register in the same way as all others. Registration requirements thus introduce a second stage into the entitlement process and may serve to limit the numbers of persons who are eligible to cast an external vote.

Another aspect of entitlement, where countries are divided into electoral districts, is the electoral district in which an elector is entitled to vote. This could be determined by reference to the address at which the elector most recently resided before leaving the country, or by reference to the person's place of birth, or, where a person has never resided in the country, by reference to the address of a parent or grandparent. Another option is to provide for special districts composed entirely of external electors, particularly where large numbers of electors are concerned. In some cases, countries will also limit the types of ballot in which external electors may participate. For example, external electors may be permitted to vote in national elections for head of state or national parliament but not in local government elections. (In Switzerland, different rules apply in different cantons: see the case study.)

The chapter concludes by considering whether it is possible to identify 'best practice' principles to guide those considering adopting or amending external voting eligibility criteria.

## **2. Types of election**

Entitlement to vote is sometimes limited to particular types of election. For example, external electors may be permitted to vote in national elections for head of state or national parliament but not in local government elections. In some presidential systems in Africa and Asia, citizens living abroad have the right to vote for a president but not in elections to the legislature. Because of their distance from their mother country, citizens living abroad are allowed to influence domestic politics only to a limited extent and consequently are granted only selective rights in national elections and referendums.

## **3. Conditions for entitlement to vote**

To be entitled to cast an external vote, a person must first satisfy the general qualifications for electoral registration and voting that apply in their home country.

The entitlement to vote is generally linked to citizenship, age and residency. For example, a country may only permit a person to vote if he or she is a citizen of that country, is

18 years of age or older and has been resident in that country for at least 12 months. Determining whether a person meets these qualifications is generally straightforward while resident in the home country. However, where a person is not resident in the home country—either temporarily or permanently—determining their entitlement to an external vote generally requires the application of more complex tests of eligibility.

Determining the citizenship of a person who is absent from the home country, particularly where the person has adopted the citizenship of another country, involves interpretation of the applicable laws of citizenship. This issue is discussed below in section 3.1.

Determining a person's age may raise difficulties if the registration process requires the person to provide proof of age. In some cases, particularly that of refugees, a person may not possess documentary proof of age. Even where a person does possess proof of age, if they are applying to register to vote while outside the home country, providing that proof of age to the registration authority may be difficult. This is an issue that will need to be addressed when determining exactly how a person may register for external voting (this is discussed further below in section 5).

Applying a residency test to a person who is not resident in their home country is perhaps the most difficult aspect of determining entitlement to vote externally. Some countries deal with this issue by providing that all their citizens are entitled to vote for its elections, regardless of whether they have ever having resided in the home country. Others apply rules related to the length of time spent by the citizen in the home country and/or time spent away from the home country. This issue is discussed in section 3.2.

Some countries also impose further limitations on entitlement that restrict the classes of people who can vote while absent from the home country. For example, some countries limit the right to vote externally to citizens employed in particular occupations, such as diplomats and members of the armed forces (see table 1.4). Others restrict voting to those who are resident in particular locations, such as places where there is a specified minimum number of electors or the locations of diplomatic missions of the home country. Section 3.2 looks at this in more detail.

### **3.1. Citizenship**

Citizenship can be defined as the status of a citizen. A citizen can be defined as a member of a state or a nation. Citizenship carries with it a range of rights and duties. One of the key rights of a citizen who is of voting age is the right to vote.

Citizenship can be conferred on a person in a number of ways. A person can become a citizen by descent, by place of birth, or by naturalization.

Citizenship by descent (*jus sanguinis*, or 'law of the blood') is one of the two internationally recognized legal principles used to determine an individual's country of citizenship at birth. Generally, where this principle is applied, if one or both parents are citizens of

a country their offspring are automatically given this citizenship at birth. Under this principle, it is possible of a person to attain citizenship for a country they have never been in, or to attain citizenship for more than one country if the parents have two different nationalities.

Citizenship by place of birth (*jus soli*, or ‘law of the soil’) is the other internationally recognized legal principle used to determine an individual’s country of citizenship at birth. Where this principle applies, a person has citizenship of the country in which he or she was born. In some cases, both *jus sanguinis* and *jus soli* may apply, and this is another way in which a person may attain citizenship of more than one country.

Finally, a person may acquire a different citizenship by naturalization. While there are several ways in which this can be done, naturalization is usually granted to an immigrant after a specified period of residence.

Citizenship can also be lost. In some cases, naturalization can involve renouncing any previous citizenship held. In other cases, a person can lose his or her citizenship automatically upon becoming a naturalized citizen of another country.

In other cases, a naturalized citizen is permitted to retain other citizenships. Some countries do not permit their citizens to renounce their citizenship (for example, Greece and the United Kingdom (UK)). In these ways, many people can hold dual (or multiple) citizenship.

In determining whether a person is eligible to cast an external vote, an understanding of the relevant citizenship laws is therefore essential. Different countries’ citizenship laws vary. While a person who is currently abroad from a country might have had the status of citizen there before leaving that country, he or she may have lost the entitlement to be a citizen of that country by taking on a different citizenship.

As there are several ways in which a person may obtain dual or multiple citizenship, dual or multiple citizenship is quite common. This is not usually a cause for denying a person the right to vote in any of the countries in which they hold citizenship. However, policy makers may wish to consider whether holders of dual citizenship might have a conflict of interest in some circumstances.

Where a person who is living abroad changes citizenship by naturalization, and in the course of doing so renounces his or her previous citizenship, that person would not retain the right to vote in the country for which citizenship has been renounced.

Where the right to vote while abroad is based on citizenship, it is important that any forms used for electoral registration and for external voting ask the voter whether he or she holds citizenship of the country concerned. In the unlikely event of dual or multiple citizenship being relevant to the franchise, the relevant forms should also ask the elector whether they hold any other citizenship.

In almost all cases, the right to cast an external vote is granted only to citizens of the home country. Citizenship is therefore a minimum requirement for determining eligibility to vote externally. However, some countries, for example New Zealand and Sweden (for elections to the European Parliament) also extend the right to vote externally to residents who are not citizens. In this case different rules from those that apply to citizens are needed to determine whether these non-citizen residents are eligible to cast external votes.

### **3.2. Place of residence**

Applying a residency test to a person who is not resident in their home country is perhaps the most difficult aspect of determining entitlement to an external vote.

External electors can be categorized according to a range of typical residential circumstances. The more common categories include:

- citizens resident outside their home country who do not have a fixed intention to return to that country;
- citizens temporarily resident outside their home country who intend to return to live in that country;
- citizens in defined occupations, such as military personnel, public officials or diplomatic staff (and their families);
- citizens resident outside their home country who live in specified countries and who may be subject to special circumstances, such as refugees or migrant workers; and
- non-citizens who have been granted the right to vote in a country through residency but are temporarily outside that country.

These categories can be further qualified by limiting the right to vote externally by imposing time limits on the length of absence from the home country.

The broadest category of residential entitlement to an external vote is the first—that extended to citizens who are resident outside their home country without regard to their intention to return. Several countries extend this right to their citizens. Some allow any citizens living abroad the right to register and vote regardless of the amount of time they have spent away from the country, while others place a time limit on that right.

For example, Belarus, Bosnia and Herzegovina, Estonia, Norway, Poland, South Africa, Sweden and the United States of America all give their citizens living abroad the right to register to vote regardless of the amount of time they have spent away from the country. Countries that impose time limits on this right include Germany (25 years for persons resident in countries that are not members of the Council of Europe), New Zealand (three years for citizens, 12 months for permanent residents) and the UK (15 years).

One rationale for imposing time limits on the right to vote is that the longer citizens stay away from the home country the more they lose their ties to it. Those who have been away from the home country for a long time cannot arguably aspire to make decisions with regard to domestic politics. It is of course difficult to measure the degree of an absent citizen's attachment to his or her home country. It can depend on more than the length of absence, as the German legislation illustrates. The rationale behind the German provision is that, because of the cultural context, German citizens living in Council of Europe countries are more closely linked to their country of origin. Moreover, because about their geographical proximity they have easier access to the current political information of their home country than they would in other regions of the world (Schreiber 1985).

In some of these cases, citizens may only be registered as external electors after satisfying a minimum residency requirement in their country of citizenship (as in Germany, New Zealand and the UK). In other cases, it is possible that a person who is granted citizenship through descent may be eligible to vote in elections for their country of citizenship even though they may have never been resident in that country.

However, granting citizens living abroad the right to vote regardless of intention to return could result in citizens who have no close links with the country beyond holding citizenship exercising significant influence over the results of elections. The greater the number of citizens living abroad, the greater the influence they could have. Whether this is desirable will depend on the particular circumstances of the country. It may be desirable to extend voting rights to citizens living abroad where large numbers of citizens have left the country as refugees or as a result of civil or political unrest. The 1994 general election in South Africa is an example of such a case. In other cases such an approach has been adopted as part of a post-conflict transition to democracy, as in Cambodia in 1993, and Bosnia and Herzegovina in 1996.

The second category of entitlement to an external vote—the right extended to citizens and other permanent residents who are temporarily abroad and intend to return to their home country—is the next-broadest category. Countries that provide for this kind of voting include Australia (for registered electors who are abroad for six years or less, although extensions may be granted) and Canada (for citizens who are abroad for five years or less).

Granting the right to an external vote to persons temporarily absent from their home country caters for those people who are absent on holiday or who are out of their home country for work, study or personal reasons for relatively short periods of time. This model has the advantage of retaining the right to vote for people who have clear ties to their home country, while ensuring that people who may not have such close ties do not have the opportunity to influence elections in which they do not have a personal stake.

Third, several countries have special entitlement provisions for citizens in defined occupations, such as military personnel, public officials or diplomatic staff, and their

families. Usually this involves waiving time limits and/or providing for automatic registration. Some countries that do not have a general entitlement allowing citizens abroad to vote have special provisions that apply only to citizens in defined occupations. For example, Lesotho only provides for external voting for public officials employed at diplomatic missions and their dependents or employees, and the Republic of Ireland only provides for external voting for officials employed at diplomatic missions and for members of the armed forces. Non-resident Indian citizens who are employed by the Government of India in a post outside India (this includes the military) are eligible to register as electors. In most cases, where special entitlement provisions are made for citizens of defined occupations, those entitlements are extended to members of their families resident with them who are otherwise entitled to vote.

Fourth, the right to vote externally can be linked to residence in specified countries and/or may be limited to electors who may be subject to special circumstances, such as refugees or migrant workers.

Such restrictions on the right to vote externally may be pragmatic solutions for limiting the number of persons who are eligible for an external vote. Allowing all citizens to vote while they are abroad can add considerably to the cost of running elections, depending on the numbers involved (see chapter 5, and annex D). It is a matter of judgement whether this additional expense is justified. An interesting example is that of Senegal, where the electoral law states that citizens living abroad have the right to vote if at least 500 of them register with diplomatic missions in the foreign country. The underlying reason for this limitation is a pragmatic one—the financial and administrative costs of implementing external voting in extremely small overseas communities are out of proportion to the increase in electoral participation which its introduction might bring about (see the case study). However, such restrictions might violate the principle of electoral equality. The scope of this potential danger depends on the number of external electors involved and the geographical distribution of overseas citizens.

Similarly, another pragmatic approach that has been adopted that has limited the categories of citizens entitled to vote externally has been to restrict voting rights to those who are able to attend a particular location to vote. For example, for the Ukraine elections of December 2004, the election law provided that polling stations could be created in ‘diplomatic and other official representations and consular offices of Ukraine abroad, and in military units located outside the borders of Ukraine’. Consequently, 113 polling stations were established abroad, all located in diplomatic and consular offices. For the Iraqi elections of 2005, the Iraq Out-Of-Country Voting Program facilitated polling in 36 cities in 14 countries. Only those Iraqi voters who could attend at one of the specified polling places were able to vote outside Iraq (see the case study).

Chapter 8 discusses the special circumstances that might apply to migrant workers.

Finally, some countries extend the right to vote externally to non-citizen permanent residents. This is sometimes referred to as the ‘franchise for foreigners’. Where such non-



citizen permanent residents are normally entitled to vote while resident in the country, they may be permitted to vote if they are temporarily (but not permanently) abroad. For example, in Sweden citizens of any member state of the European Union and citizens of Iceland and Norway are entitled to vote in municipal and regional elections if they have been registered residents of Sweden for three consecutive years on election day. In some cases the rules applying to citizens and non-citizen permanent residents are different. For example, New Zealand citizens overseas are qualified to register and vote if they have been in New Zealand within the last three years; whereas permanent non-citizen residents are only qualified to register and vote if they have been in New Zealand within the last 12 months.

### ***3.3. Compulsory voting and external voting***

Those countries that have compulsory voting add another layer of complexity to the issue of determining entitlement to vote externally. In general, countries which have compulsory voting allow registered electors to escape a fine for not voting if they have a valid reason for failure to vote. Being absent from the home country would be expected to be an acceptable reason for failing to vote. In Australia, the electoral law specifically states that absence from Australia on polling day is sufficient reason for not voting. However, under a compulsory voting system, failure to vote while absent from the home country may impact on a person's ongoing right to remain registered to vote externally. For example, Australia removes a person's name from its register of external electors if the person fails to vote or fails to apply for a postal vote for a national general election.

## **4. Qualification to stand as a candidate in elections**

In determining the eligibility rules for external electors, it is important to consider whether the same eligibility rules should apply to candidates for election. Particularly where the right to vote is extended to all citizens who are resident abroad, regardless of intention to return, it may be desirable to have stricter eligibility rules for candidates. This would usually take the form of a residence requirement.

In some cases where political players may be in exile from their home country it might be desirable to allow persons resident outside the country to be candidates. This could be appropriate where a country is undergoing a transition to a new, democratic form of government, as in South Africa in 1994.

Considerations of dual or multiple citizenship may be more important for candidates than for voters. It may be desirable to prevent holders of dual citizenship from standing as candidates. For example, Australia's constitution does not allow 'a citizen of a foreign power' to sit in its national parliament. Such a provision is intended to ensure that elected members do not have divided loyalties that could lead to conflicts of interest. In practice, dual citizenship is so common that this type of provision can lead to candidates and elected members being ruled ineligible for what is arguably a technicality.

## 5. Registration of external electors

Once a person's eligibility to cast an external vote is established, there is usually a second requirement to be met—the need to be registered on the electoral register in order to show that he or she is entitled to vote. Special registration requirements may be necessary for external electors, or they may be required to register in the same way as all other electors. Registration requirements thus introduce a second stage into the entitlement process and may serve to limit the numbers of persons who are eligible to cast an external vote.

In most countries ordinary electors are registered in respect of particular locations—usually their home residence—so that they can establish their right to vote in particular electoral districts and for regional levels of government. As it may be difficult or impossible to allocate an external elector to a particular locality in the home country, it is sometimes desirable to use a special registration process for external electors.

Where the eligibility requirements and/or voting rights for external electors are different from those for in-country electors, it is essential that external electors use a separate registration process. For example, where they are entitled to vote for national elections but not local elections, the electoral register must clearly distinguish external electors.

Whether external electors are listed on a special external electoral register or are listed on the normal electoral register will depend on local circumstances. One relevant factor would be whether a country has one national electoral register or different registers for different levels of government. Another would be the level of technical sophistication of the electoral register. Australia, for example, essentially maintains one computerized national electoral register that is used for elections for all levels of government. While it has a separate registration form for external electors, their names are stored on the national electoral register with all other registered electors, with an annotation indicating that they have registered as external electors. Other countries, particularly those that have different electoral registers for different regions and/or levels of government, might be more likely to maintain separate electoral registers for external electors. Where electoral registers are kept by different authorities for different levels of government or for different regions, such as the different states in the USA, the process for registration as an external elector may vary from jurisdiction to jurisdiction and/or from place to place.

In some cases, simple registration on the normal electoral register is sufficient for an external elector to retain the right to vote, without the need for special registration as an external elector. For example, Swedish residents living abroad remain on the electoral register for an absence of up to ten years. Only those who are absent for longer than ten years need to register in order to remain on the electoral register.

People who are absent for short periods, such as those who are on holiday, generally do not need to apply for special external elector status if they are listed on the normal electoral register.

Where a person is absent for a longer period, many countries require special registration as an external elector. This is particularly important where the electoral register is regularly reviewed, and people are removed from it if they do not appear to be resident at their registered address.

Registration as an external elector usually requires the elector to complete a form, which is then processed by the authority responsible for keeping the electoral register. In some cases, the person may be required to provide documentary proof of eligibility, such as proof of citizenship, age or residence. When considering whether such evidence should be required, attention should be given to the feasibility of this requirement. If a person is applying for registration from outside the home country, the requirement that identity documents (IDs) be provided may be impractical or unreasonable. Where a country is in transition or is otherwise subject to civil instability, many citizens, particularly refugees, may not have valid IDs (see chapter 7 and the case studies on Afghanistan, Bosnia and Herzegovina, and Iraq). In these cases, the registration process may need to rely on a declaration signed by the applicant and/or a declaration signed by a witness.

In most cases it would be appropriate to apply the same level of authentication requirements to registration as an external elector as apply to the normal electoral registration process.

Where a specific external elector registration form is required, care should be taken to ensure that the form seeks sufficient information to demonstrate that the applicant is entitled to be registered. A registration form could for example require the applicant to state how they acquired citizenship, when they last lived in the home country, whether and when they intend to return to the home country (if relevant) and when they were born.

Keeping a register of external electors up to date is a difficult task. Electoral registration authorities are unlikely be able to review the status of registered external electors who are resident abroad. In practice, the most feasible approach is to rely on external electors to update their details when applying to register or when actually voting. One way to keep the electoral register free of out-of-date entries is to remove the names of those who do not vote, for example, for one or two national elections in a row.

## **6. Examples of qualifications for external voting**

While most countries' qualifications for external voting fit within the broad categories outlined above, the details usually vary from case to case. Box 4.1 lists some examples of different external voting qualifications. In most cases, the qualifications listed relate to national elections. Different rules may apply for provincial and local government elections. The list of examples is not, of course, complete. Other countries also allow their citizens to vote while abroad.

**Box 4.1: Examples of qualifications for external voting**

**Australia:** External electors must satisfy the normal requirement for electoral registration in Australia, which means that they must be Australian citizens (or British subjects who were on the electoral register in Australia on 25 January 1984). Registered electors who leave Australia and intend to return within six years can apply to be registered as ‘eligible overseas electors’ and retain the right to remain on the electoral register and vote while overseas; eligible overseas electors who are overseas for longer than six years can apply for 12-month extensions indefinitely. Spouses or children of eligible overseas electors who become entitled to register to vote while overseas by turning 18 or becoming Australian citizens may also apply for registration as eligible overseas electors. Eligible overseas electors can lose their right to be registered and to vote if they do not attempt to vote at a national general election held while they are overseas. Registered electors who go abroad but have an intention to return to live at the same address can remain on the electoral register and entitled to vote without having to register as eligible overseas electors. In this case there is no time limit.

**Belarus:** Citizens living outside Belarus can participate in elections by applying to specified diplomatic missions.

**Bosnia and Herzegovina:** Citizens living outside Bosnia and Herzegovina can register to vote.

**Canada:** Citizens who have lived abroad for less than five consecutive years since their last stay in Canada and who intend to resume their residence in Canada may apply for registration on the register of non-resident Canadians, and thereby become entitled to vote while abroad. Canadian members of the armed forces, public servants or employees of other specified organizations, and their families, are eligible to apply for registration on the register of non-resident Canadians regardless of their length of absence from Canada.

**Estonia:** Citizens residing temporarily or permanently outside Estonia may apply for registration to vote at their nearest Estonian diplomatic mission.

**Germany:** Germany has three categories of external electors qualified to apply for entry on the register of electors—German citizens who are civil servants or armed forces personnel and other salaried public employees, and their family members; German citizens resident in another Council of Europe member state, provided that after 23 May 1949 and prior to their departure they were permanently resident in Germany for an uninterrupted period of at least three months; and German citizens resident outside the Council of Europe member countries who were, prior to their departure, permanently resident in Germany for

an uninterrupted period of at least three months, and not more than 25 years have elapsed since their departure.

**India:** Non-resident Indian citizens who are employed by the government of India in a post outside India, including military personnel, are eligible to be registered as electors.

**Iraq:** For the Iraqi elections of 2005, the Iraq Out-Of-Country Voting Program facilitated polling in 36 cities in 14 countries. Only those Iraqi electors who could attend one of the specified polling places were able to vote outside Iraq.

**Ireland:** Public officials employed at diplomatic missions and members of the armed forces are the only categories of elector permitted to vote while abroad.

**Namibia:** Any holders of a valid voter registration card are eligible to vote, including citizens resident abroad.

**New Zealand:** Citizens overseas are qualified to register and vote if they have been in New Zealand within the past three years; permanent residents are qualified to register and vote if they have been in New Zealand within the past 12 months; New Zealand public servants and defence personnel and their spouses and children over 18 years of age are qualified to register and vote regardless of length of time overseas.

**Norway:** Norwegian citizens resident abroad retain the right to be registered to vote if at any time previously they have been registered at the population registry as resident in Norway. All Norwegian public servants employed as diplomatic or consular staff and their families are entitled to vote even if they have never been registered in the population register.

**Poland:** Citizens living abroad and holding a valid Polish passport may apply to be entered on the register of electors.

**Sweden:** Citizens resident abroad are included on the electoral register and remain entitled to vote if they left Sweden within the previous ten years; after an absence of longer than ten years they must notify the relevant authority if they wish to remain on the electoral register.

**United Kingdom:** British citizens living abroad are eligible to register and vote as overseas electors if their name was previously on the electoral register for an address in the UK and no more than 15 years have passed between the qualification date of that register and the date on their application to register as an overseas elector; or if they have reached the age of 18 while living abroad and they were too young to be

on an electoral register before they left the UK and a parent or guardian was on the electoral register for the address at which they were living on that date.

**United States of America:** The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) guarantees US citizens overseas the right to vote in federal elections in the United States. (Federal elections include primaries, general and special elections for the president, vice-president, senators and representatives to Congress.) The UOCAVA applies only to federal elections. However, many states in the United States have enacted legislation whereby certain categories of citizens residing overseas can vote by absentee ballot for state or local officials. The same procedures for obtaining local election ballots are used for obtaining federal election ballots.

In order to vote in either federal or state elections in the United States, most states require citizens residing abroad to register in the state of their 'voting residence'. A voting residence is the legal residence or domicile in which the elector could vote if present in that state. Military and Merchant Marine members, and their spouses and dependents, may register to vote in the domicile (state) that the member claims as his or her residence. Civilian US Government employees overseas, their spouses and dependents will generally register in the state they claim as their legal residence. In accordance with the UOCAVA, overseas citizens (not affiliated to the US Government) must vote in their last state of residence immediately prior to departure from the United States. This applies even if many years have elapsed and the person maintains no abode and has no intention of returning to that state.

Note: More comprehensive data are available on the website of the ACE Electoral Knowledge Network, <http://www.aceproject.org> (select Comparative Data).

## 7. Conclusions

The extension of the right to vote to citizens outside their home country varies enormously from country to country. Some countries allow no one to vote who is not physically present in their home country. Others allow any of their citizens to vote from anywhere in the world, regardless of whether their citizens have ever resided in the country of their citizenship. In between these two extremes, there are many variations that allow certain classes of citizens to vote.

As with so many other aspects of the electoral process, there is no single 'correct' way of deciding who should be entitled to vote externally. A model that will suit one country may be totally inappropriate in another. For example, it may be feasible to allow any

citizen of a country to vote externally, regardless of their intention to return, where the population of the home country is large and the voting influence of expatriates would not be expected to outweigh that of the home population. On the other hand, a country with a small population and a relatively large number of expatriates might be wary of handing electoral influence to a body of persons who may no longer have a direct interest in their home country.

In attempting to specify ‘best practice’ principles to guide those who are considering adopting or amending external voting eligibility criteria, it may be worthwhile to consider the purpose of the franchise. Chapter 3 discusses external voting in relation to the right to representation. The franchise is the right to vote for elected representatives. Its purpose is to allow persons to elect representatives to sit in parliament and/or the executive and to determine and administer laws on their behalf. It would therefore appear reasonable to limit the right to vote to those who have a direct interest in the determination and administration of those laws. However, if it is accepted that the franchise should *only* be granted to those with a direct interest in the process, it follows that extending the right to vote to absent citizens who have no intention to return to the home country—or to persons who hold dual citizenship and are permanent residents in another country where they are also citizens—may be seen as too generous. Indeed, it could be argued that a country’s sovereignty could be at risk if its representatives are elected in part by voters who reside abroad. It would also follow that the right to vote should be extended to absent citizens who intend to return in the foreseeable future, as they too would have a direct interest in the government of their home country. This argument would particularly apply to those who are temporarily absent in the service of their country, such as diplomats and members of the armed forces.

However, while it is easier to justify, using the principle of ‘intent to return’ as a determining factor to grant voting rights to citizens abroad may be more difficult to administer than allowing all citizens to vote while abroad. It requires, at a minimum, some form of notification from citizens who are abroad (or are going abroad) that their absence is temporary and that they intend to return to their home country. The question then arises whether notice of intent to return ought to be accepted at face value, or whether an objective test should be applied. It may be difficult to devise an objective test that is not discriminatory and contrary to the principles of universal suffrage. For example, requiring evidence of ownership of a house or property would clearly discriminate against those who do not own property and could be seen as a return to a property-based voting right. Whether this is necessary will depend on the circumstances of each country, and particularly on whether large numbers of electors are likely to register to vote while they are abroad.

Finally, what voting rights should permanent residents who are not citizens have? It is arguable that, in today’s global economy with an increasingly mobile population, the concept of citizenship may be losing its value as a determinant for the franchise. In future, countries may have to look at other criteria to determine whether a person residing abroad is eligible to vote in their elections. For the present, most countries

continue to use citizenship as the main determinant of the franchise, and many grant the franchise to their citizens abroad regardless of intention to return. No doubt the issue of the extension of the eligibility to vote externally will continue to evolve in different ways in different places.



# Senegal: a significant external electorate

Richard Vengroff

In the period leading up to the 1993 presidential elections in Senegal, under pressure from the international community and domestic opponents, the Senegalese Government convened a conference to reform and democratize the electoral processes. With the involvement of all political parties, the conference produced an important set of political reforms. These included a new electoral code; an opportunity for all political parties to be represented at polling stations; a guaranteed secret ballot; a lower voting age (18 instead of 21); an easier and expanded system of electoral registration; guaranteed access to the state media for all parties; the acceptance of foreign election monitors; a change in the balance in the allocation of seats, increasing the number of proportional representation (PR) seats decided by a national list from 60 to 70 and reducing the number of plurality seats by 10 to 50; and the putting in place for the first time of a system of external voting for both presidential and legislative elections. This new system was approved and strongly supported by all political parties. Although several opposition leaders retained some doubts about implementation, the policy itself was considered to be a sound base for free and fair elections. An independent election commission (the Observatoire National des Elections, ONEL) was established to see that the new rules were in fact implemented and to monitor the results both within Senegal and in the external constituencies. (It was replaced in 2005 by the Autonomous National Election Commission (Commission Nationale Electorale Autonome, CENA), which is responsible for control and supervision of the registration and electoral processes.)

Three important interrelated factors underlay the desire to include a mechanism for external voting beginning in 1993 and included in all subsequent electoral codes. They are (a) demographic, (b) economic and (c) social. The demographic factor is associated with the rapidly growing number of overseas Senegalese and their improving status. Many of these individuals, previously mostly involved in the informal sector, gained economic 'clout' and became more and more involved in the formal sector. They and the generation which followed were better educated, better informed politically and better placed to influence public affairs back home. They rapidly became a significant target for political parties which were looking to expand their support base not just in terms of votes but also to increase their lists of reliable donors of funds.

From an economic perspective, the financial power that Senegalese in the diaspora have vis-à-vis relatives who stayed behind in Senegal is of great importance. Overseas Senegalese, as is the case in many developing countries, remit significant sums to the home economy. Many Senegalese have learned to depend on them for financial assistance, the construction and improvement of homes, health-care costs, special events such as baptisms, marriages and funerals, and other needs. Many rural community projects which the Senegalese Government is unable to fund come to fruition thanks to remittances from abroad. As they became more aware of their potential power, overseas Senegalese became difficult for the authorities to ignore.

From a social perspective, the Conseil des Sénégalais de l'Extérieur, a government-sponsored organization designed to provide assistance to Senegalese in the diaspora, began to take on new roles. Increasingly, its members expressed the desire to make their voices heard and to get involved in making choices that affect the handling of public affairs in the mother country. Most overseas Senegalese use modern technology such as the Internet to maintain close contact with their extended families and thereby potentially exert a disproportionate influence on their networks of relations in Senegal. The government felt that providing them with an outlet in the electoral politics arena would act as a safety valve and would entail only limited costs and risks for the regime. Opposition parties saw the inclusion of external votes as an opportunity to expand their influence and revenue sources. Hence it was in the interests of all parties to concede the vote to overseas Senegalese.

## Legal provisions

The formal legal provision for external voting, as part of the electoral code, is established by and can be modified by the legislature (the *Chambre des Députés*) rather than being constitutionally mandated. All Senegalese nationals resident overseas who are 18 years of age or older (as of the date of the vote) and who are not active members of the armed forces, the police or the public service (designated positions only) are technically eligible to be included on the list of registered electors. However, for practical purposes three additional constraints are imposed. First, there must be official diplomatic representation in the country of residence. Second, voting will only take place in countries in which the official electoral register reaches at least 500 when registration officially closes. Fifteen different countries qualified during the 2000 presidential election in Senegal: nine in Africa (Burkina Faso, Côte d'Ivoire, Gabon, Gambia, Guinea, Mali, Mauritania, Morocco and Nigeria); four in Europe (Belgium, France, Germany and Italy), and the USA plus Canada in North America. Third, the formal permission of the host country for such elections to be conducted on its territory is required. There has been some limited demand for voting opportunities to be offered in additional countries, but usually only after the registered Senegalese community has grown and surpassed the 500 level, as is the case now in Canada. There is a separate register of electors in each overseas country rather than an overall list of registered overseas electors.

The elections themselves are technically overseen by Senegal's independent election commission, ONEL, with the full participation of representatives of the various political parties and candidates with a presence in the host country. Provided that a minimum of 500 electors have registered, the head of the diplomatic mission, in collaboration with

the Ministry of Foreign Affairs, will establish polling locations around the host country. Polling places are headed by a president who is a designated representative of the head of the diplomatic mission. The conditions for the actual balloting are rigorously laid out, including the use of the French-style ballot paper, private voting booths, election observers, and careful procedures for counting, verifying and controlling a voting process. Election locations are distributed in key areas of the host countries in which there are significant concentrations of Senegalese. In France, for example, there were 32 polling places set up for the over 16,000 registered electors in 2000.

The system for presidential elections is a majority Two-Round System (TRS), with the second round taking place between the two leading candidates, unless one candidate secures an absolute majority of votes in the first round. Overseas Senegalese are eligible to vote in both rounds and their votes contribute directly to the national presidential total. For legislative elections Senegal uses a mixed-member majoritarian (MMM) system, with some of the seats allocated on the basis of a plurality block vote at the department level (in 31 departments) with the district magnitude ranging from one to five seats. The remaining seats are distributed by PR using a Hare Quota system with largest remainders in a single national constituency (for the 2002 elections the distribution was 65 department seats and 55 national list seats). Voters use a single ballot paper (voting for the party only) with the party vote cumulating to both the district (department) and the national list. External votes, however, contribute only to the allocation of the national list seats. They have no separate plurality constituency and their votes are not allocated at that level. Because of the highly proportional nature of the distribution of list seats, the influence of overseas Senegalese votes could potentially be quite significant at the margins in deciding the final distribution of seats among parties.

### **Electoral impact**

To assess the importance of external voting we need only look at several recent elections. Because of the difficulty of getting to the limited number of polling stations, work demands, a shortage of information, and limited campaigning and interest, voter turnout tends to be considerably lower than it is in-country. In the critical presidential election of 2000, which produced a dramatic democratic transition, the turnout nationally was about 60 per cent in both rounds, while only 41 and 37 per cent of the registered overseas Senegalese participated in the two rounds, respectively. There is considerable variation in turnout between host countries, varying from highs of 80 per cent in Mali, and 59 per cent in Morocco, Burkina Faso and Guinea, to lows of 16 per cent in Italy, 25 per cent in Nigeria and 30 per cent per cent in Gambia. The largest numbers of external votes are cast in Côte d'Ivoire and Gambia (with over 8,300 votes each counted in 2000), Mali (7,417) and France (5,522). As few as 189 external votes were counted in Belgium, followed by Nigeria (327). The same trend holds for elections to the legislature as well.

Always of concern is the potential differential voting preferences of external and domestic voters. In the case of Senegal the larger parties, and particularly the party in power, have a clear advantage in mobilizing their supporters overseas. Some of the smaller parties lack the financial resources and local personnel to mount campaigns in so many countries and concentrate instead on those closer to home, such as Mali and Gambia. In the presidential election of 2000 the total national vote gave the incumbent president,

Abdou Diouf, 41.3 per cent of the vote while external voters offered 48 per cent support for Diouf in the first round. In the second round of the election, the advantage of the incumbent overseas was again demonstrated. Whereas Diouf received only 41.5 per cent of the second-round votes nationally, his overseas share rose to 55.5 per cent as the PS used its influence, political, regulatory and financial, to good advantage in a vain effort to mobilize enough external supporters to save the day. Since external voters account for between 4 and 5 per cent of the total vote, they can clearly have a significant influence on a close presidential election in either or both rounds.

At the legislative level those numbers can be translated directly into about three seats in the National Assembly. This can also have an important influence in a close race for control of the legislature, especially if external votes do not mirror the domestic vote. (This external vote power would of course be considerably more important if these votes counted at the department level, where a simple plurality win translates into a block of up to five seats.)

In sum, external voting enhances the legitimacy of the regime and its democratic image, and symbolically integrates a key economic group into the public affairs of the nation. While it tends to reinforce support for the largest parties, its overall political impact so far has been limited. The cost to the nation is not insignificant but the overall gains in terms of image are clearly viewed as worth the cost.

# The Marshall Islands: a high proportion of external voters

Jon Fraenkel

In the Republic of the Marshall Islands, the majority of the population vote from somewhere other than their place of residence. Not only those who are resident or working temporarily overseas, but also inter-island migrants and displaced people from the atolls that are affected by US nuclear tests are entitled to vote in their electoral district on their home island. Absentees can therefore determine the outcome of elections, and party agents travel widely overseas to attract voter support, campaigning in Hawaii, in California, and among Marshallese employed at the Tyson Foods chicken factory in Arkansas.

The Marshall Islands comprise two parallel chains of islands, the Ratak ('sunrise') and Ralik ('sunset') groups, spread across 2 million square kilometres (km) of the Pacific Ocean. Towards the north, the peoples of the Bikini, Rongelap, Enewetak and Utrik atolls were displaced by 67 US nuclear tests conducted between 1946 and 1958. Further south, Kwajalein Atoll is the site of a sizeable US military base and missile testing facility. It has the world's largest lagoon, which is used as a target for missiles fired from California under the Star Wars II programme. Nearly half of the domestic population of 50,850 (46.6 per cent) lives on Majuro, where the capital is located, and another 21.4 per cent live on Kwajalein, most of them on the islet of Ebeye near the US base (Office of Planning and Statistics 1999: 16, table 3.2).

Over 20 per cent of the population is resident outside the country. Owing to the country's Compact of Free Association with the USA, Marshallese are able to enter the USA without visas to reside or work, but they are not automatically eligible for US citizenship. Around 14,000 currently live on the US mainland, in Hawaii or in the nearby US territories of Guam and the Commonwealth of the Northern Marianas.

The 1979 constitution provides for a unicameral parliament (the Nitijela) with 33 members, including at least one member for each of the 24 inhabited atolls and coral islands, with members elected on a First Past The Post (or plurality) basis (article IV, section 2(1) of the constitution). The more populous islands have multi-member electoral districts with members elected by means of the Block Vote system. Five members are elected from Majuro, three from Kwajalein and two each from Arno, Ailinglaplap and

Jaluit. All other inhabited atolls and coral islands have a single representative. Although the population of the country increased by 65 per cent between 1980 and 1999, there were no changes in the distribution of Nitijela seats. Substantial inter-island migration to Majuro and Kwajalein has left the outer islands sparsely populated. Had electoral registration had been based on residence, the result would have been significant inequities: the 1979 constitution (article 4, section 2[4]) specifies that ‘every member of the Nitijela should represent approximately the same number of voters; but account shall also be taken of geographical features, community interests, the boundaries of existing administrative and recognized traditional areas, means of communication and density and mobility of population’. However, potential under-representation of the more urbanized atolls which receive migrants was avoided (a) by allowing electors to continue to register on their ancestral islands in the outer islands and (b) by a curious spontaneous redistricting process.

The 1979 constitution entitles electors to register either where they reside or where they hold land rights. Every person otherwise qualified to vote shall have the right to vote in one and only one electoral district, being an electoral district in which he either resides or has land rights, but a person who has a choice of electoral districts pursuant to this paragraph shall exercise that choice in any manner prescribed by law (1979 constitution, article 4, section 3[3]). Most Marshall Islanders have land rights on several atolls or islands, and hence multiple potential constituencies where they can register as electors. Marshallese society is based on a system of exogamous matrilineal clans. Clans are usually spread across several atolls, and intermarriage between peoples from different atolls is frequent. However, matrilineal inheritance does not exhaust the range of lineages and associated lands in which an individual has rights. Particularly towards the south of the group of islands, bilateral inheritance is common, and even in the more firmly matrilineal systems children may claim patrilineal land-use rights back at least five generations. Many of those who move to the urbanized centres of Majuro and Kwajalein remain on the electoral register on their island of origin. Many also shift regularly between electoral districts, either to accompany favoured candidates or to avoid ‘wasting’ votes on unlikely victors or to vote in smaller constituencies where votes count more. Strategic re-registration of urban electors to outer island electorates evens out the inequities arising from the maldistribution of seats across the country.

One study of the 1999 electoral data found that 57.1 per cent of electors registered on the outer islands (the outer islands are all the islands in the group other than Majuro and Kwajalein) were in fact resident on Mauro and Kwajalein. Absentee voters living on Majuro and Kwajalein accounted for 43.6 and 13.5 per cent of the outer island vote, respectively, with an additional 4.4 per cent coming from overseas and 6.7 per cent casting absentee ballots from one outer island to another. In the outer islands electoral districts the proportion of votes cast by people actually living there (the on-island vote) was on average less than one-third of the total, although with considerable variation between the different atolls. For nuclear-affected Rongelap, the 14.9 per cent of the voters shown as ‘on-island’ were in fact people resettled on Mejjatto Island, in the northern part of Kwajalein atoll. Similarly, on-island voters shown in the Bikini constituency were people now living on the island of Kili, where the population relocated after Operation Bravo and other nuclear tests.

For most of the outer islands, the offshore vote is larger than the on-island vote and therefore sufficient to determine electoral outcomes. When the reformist Kessai Note administration came into office in 1999, many of its crucial victories in remote constituencies occurred thanks to the addition of the votes of people living on Majuro.

According to the 1979 constitution, all Marshall Islands citizens over 18 years of age, except those who are imprisoned or certified insane, are eligible to vote. Provisions for absentee voting are contained in the 1993 Electoral Act. To qualify for registration by land rights, citizens require a supporting affidavit from customary chiefs or, in the case of qualification by residence, from local government officials. In practice, most requests for registration are granted without affidavits being submitted. In theory, registration rights can be challenged before the High Court, but this seldom occurs. The procedure for registration of overseas electors is exactly the same as the that for registration in the home electoral district. Applications for postal ballots require 'an affidavit sworn before a notary public in the country of residence' (Elections and Referenda Regulations, 1993, section 118(6)).

There are no geographical restrictions on the countries from which the voters can cast an external vote.

External voting is done exclusively by post. There is no provision for voting stations outside the republic. Those who are temporarily or permanently outside the republic vote by means of a postal ballot paper (Elections and Referenda Regulations, 1993, section 118 (1)(b)). Historically, ballot papers have been mailed in to the electoral office and, provided they meet the various requirements, are accepted no matter where they are from.

In the 2003 election, the government sent election teams to distribute ballot papers to registered voters living in the USA, which resulted in a much higher turnout on the postal absentee front.

In the wake of the 1999 election, the Marshallese Government restricted the scope for re-registration of voters between constituencies. Citizens were required to lodge applications at least a year before the 2003 polls. Yet, owing to intensification of political competition accompanying the advent of a political party-based system, a large number of voters continued to shift registration to their preferred electoral district.

