

SUPPORT TO ELECTORAL
REFORM IN PAKISTAN

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OUT-OF-COUNTRY VOTING: PRINCIPLES AND PRACTICES

SUMMARY

Out-of-country voting (OCV) has become an increasingly common feature of electoral processes worldwide. It may be offered to different types of citizens abroad, including: people on short-term stay, migrant workers, established diasporas, refugee populations and asylum seekers.

International standards for democratic elections do not contain explicit obligations for states to grant citizens abroad the right and opportunity to vote in domestic elections. Nevertheless, once introduced, the OCV process must meet the same standards of transparency, security, secrecy, integrity and genuineness as the in-country process. In practice, meeting these standards abroad raises additional challenges.

When deciding whether to opt for OCV, countries must balance the extension of universal suffrage against costs, planning needs and logistical challenges, as well as the risks for the integrity of the process. There can also be complexities related to problems of jurisdiction and relations with the host countries.

OCV can take many forms. Whether in-person or by post, at diplomatic missions or other locations, or by proxy, the choice of operation should take into account the various contexts in which it is offered, and the specific features of each voting method.

Because it occurs at a distance, OCV is prone to being less transparent and its integrity may be more difficult to guarantee. These factors make OCV more liable to manipulation and abuse than in-country voting.

Political parties may not be impartial on decisions about whether to have OCV, because OCV affects the electorate and therefore election outcomes. However, OCV not only affects political parties, but also the entire electorate.

Therefore it is crucial that decisions on the adoption of OCV be as thorough and inclusive as possible. Consultations should involve government and opposition parties alike, election authorities, civil society organisations (including representatives of the communities abroad) and the media.

1. INTRODUCTION

The advancement of democracy throughout an increasingly global and mobile world has seen the introduction or expansion of OCV in many countries, with growing attention to this practice.¹ The primary argument in favour of OCV is that, if exercised in adequate conditions, it makes universal suffrage more meaningful. In other words, more people can participate as voters and those who are elected can be more representative.

OCV potentially affects various categories of citizens, including those who are:

- abroad on a short-term basis at the time of elections
- temporarily abroad for reasons of employment
- permanently settled abroad
- refugees and asylum seekers

OCV helps those abroad to retain a political link with their country of origin. This way, citizen rights, including migrant rights, can be promoted and protected by institutions elected with the contribution of those concerned. This is particularly relevant for refugees, whose inclusion in a political process may assist their sustainable return and contribute to peace and state building.

This has been recognised by multilateral institutions (e.g., the United Nations, International Organization for Migration and the Organization for Security and Cooperation in Europe) and bilateral donors in the form of financial, technical and operational assistance provided to electoral processes organised primarily for refugees and asylum seekers. This support was reportedly found to be valuable, especially in first post-conflict or transitional elections and independence referenda, such as in Afghanistan, Bosnia-Herzegovina, East Timor, Iraq and Southern Sudan.

Yet, even when the number of citizens abroad is not high, OCV can create political difficulties. The votes from abroad can significantly affect the results in some electoral districts and the final outcome of the elections. This political impact is critical. Hence there needs to be political agreement about OCV. Otherwise, the OCV process may be controversial, accentuate political divisions and even undermine the democratic process.

¹ An overview of global practice on OCV can be found in International IDEA handbook (2007), *Voting from Abroad*. See: http://www.idea.int/publications/voting_from_abroad/index.cfm. All subsequent references in the text to this handbook are drawn from this source. Also see: Venice Commission (2011), *Report on Out-Of-Country Voting*, [http://www.venice.coe.int/docs/2011/CDL-AD\(2011\)022-e.pdf](http://www.venice.coe.int/docs/2011/CDL-AD(2011)022-e.pdf). All subsequent references in the text to this report are drawn from this source.

2. UNIVERSAL SUFFRAGE AND OCV

The universal right to participate in public affairs has been guaranteed in human rights instruments and declarations; notably, the International Covenant on Civil and Political Rights (ICCPR)² and the Universal Declaration of Human Rights (UDHR).³ It is also reaffirmed in regional commitments and obligations.⁴ A range of organisations also acknowledge that while OCV is not an obligation, states may grant the vote to citizens residing abroad.⁵

Only the International Convention for the Protection of the Rights of Migrant Workers and their Families (MWC) contains a provision about the participation in elections of citizens from abroad, although this only applies to documented migrants, their families and ratifying states.⁶ Without an authoritative interpretation of the treaty, it is not fully clear to what extent there is an obligation for ratifying states to provide OCV opportunities to migrant workers and their families.

While no international instrument establishes an obligation for a state to grant voting rights and opportunities to its citizens abroad, should OCV be adopted, international obligations related to elections apply as much as they do for in-country voting. The basic

² As of 28 November 2011, 74 countries are signatories of the ICCPR and 167 are parties to it. See:

http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtsg_no=IV-4&chapter=4&lang=en. For the full text of the ICCPR, see:

<http://www2.ohchr.org/english/law/ccpr.htm>. All subsequent references in the text to the ICCPR are drawn from this source.

³ See: <http://www.un.org/en/documents/udhr/>. All subsequent references in the text to the UDHR are from this source.

⁴ For example, the African Charter on Human and Peoples' Rights, the American Convention on Human Rights and the European Convention on Human Rights, along with even more specific instruments such as the Cairo Declaration of Human Rights in Islam and the Charter of Fundamental Rights of the European Union.

⁵ For example, the Venice Commission (2002, page 8) states in its *Code of Good Practice in Electoral Matters* that 'the right to vote and to be elected may be accorded to citizens residing abroad', without making it an obligation. See: <http://www.venice.coe.int/docs/2002/CDL-AD%282002%29023rev-e.asp>. A recent judgment of the Chamber of the European Court of Human Rights (Application against Greece No. 42202/07, 8 July 2010, paragraph 4) ruled that although there is not a general obligation on states to enable participation in elections from abroad, nonetheless it held that the failure of the Greek authorities to put such measures in place breached the right to free elections because the Greek constitution provides for its parliament to adopt legislation enabling the vote from abroad, and parliament had failed to do so. See: <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=871034&portal=hbkm&source=externalbydocnumber&tabl> (in French). The Parliamentary Assembly of the Council of Europe also adopted a more liberal resolution through which it urges member states to abolish restrictions on the right to vote, including the restriction based on residency in the home country. Paragraph 7 of Resolution no. 1459/2005 states, "Given the importance of the right to vote in a democratic society, the member countries of the Council of Europe should enable their citizens living abroad to vote during national elections bearing in mind the complexity of different electoral systems..." See: <http://www.assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta05/ERES1459.htm>.

⁶ Article 41 of the MWC stipulates that, "1. 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. 2. The States concerned shall, as appropriate and in accordance with their legislation, facilitate the exercise of these rights." To date, 45 countries are party to the MWC, including Egypt, with reservations about articles 4 and 18. For the full text of this treaty, see: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtsg_no=IV-13&chapter=4&lang=en.

principles for OCV remain those protected under article 25 of the ICCPR and article 20 of the UDHR, both of which include the right to take part in the conduct of public affairs, directly or through freely chosen representatives, without unreasonable restrictions.⁷ As article 25 of the ICCPR states:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) To have access, on general terms of equality, to public service in his country.

3. MODALITIES OF IMPLEMENTATION

The OCV Electorate

Who is eligible?

Typically, out-of-country voters should at least meet the same eligibility criteria as in-country voters, in particular regarding citizenship and age. Residency, which is also a common requirement for voting in-country, is considered in various ways by policy makers for OCV.

For example, some countries might only grant the right to vote outside the home country to voters who have been resident for a certain period of time in the country of origin or were registered to vote in-country before they went abroad. In this case, children of emigrants who have acquired the citizenship of their country of origin from their parents, and have never been residents in that country, would not be entitled to vote.

Some legislation introduces a maximum length of stay abroad, after which citizens forfeit their right to vote. This can vary from a few months (Falkland Islands) to 15 years (United Kingdom) or 25 years (Germany, except for residents living in a member state of the Council of Europe). In some cases (Philippines), a declaration of intent to return is requested, whereas in others the requirement is to stay a minimum period of time abroad (Chad, Senegal). In addition to these requirements, some countries have restricted the right to vote out of country to limited categories of citizens, such as military personnel and civil servants under assignment in a host country (Israel, Ireland).

Decisions on eligibility requirements should be carefully considered because they can significantly affect the number of potential voters and may also favour some categories within the potential OCV electorate.

Identification

Identification and establishment of citizenship are a particular concern in OCV, when access to documentation that establishes eligibility may be more difficult for certain communities. In some cases, the legislature may have to consider whether to extend the list of identity documents accepted for voting. Issues can arise for long-established diasporas, which may no longer have valid home-country official documentation, as well as for refugees or citizens from conflict-torn countries who may not have any documentation from their home country. In these cases, a refugee registration card issued by the host country or an international organisation is sometimes used.

Alternative methods for establishing one's identity and eligibility, such as a signed declaration of witnesses, may be considered. However, this approach can pose challenges: migrant populations may be geographically dispersed in the host country, resulting in lower levels of familiarity (if any).

Registration

As the number of citizens abroad is often unknown, registration of voters is especially important in order to avoid situations of insufficient or excess ballots and preparations. This unknown quantity can place a significant organisational burden on the election management body (EMB). Typical methods used in-country, such as door-to-door registration, may not be available. Display of the voter list may also be of limited effectiveness because potentially long distances can make scrutiny difficult. Hence extra measures may be needed, such as making a preliminary voter list electronically available.

Permanent registration can make the planning and conduct of OCV much easier than requiring voters to register each time before an election. Several countries establish out-of-country voter lists automatically on the basis of registers of their citizens in consulates. However some citizens abroad may not want to register with their embassy. For example, southern Sudanese refugees typically did not want to register at Sudanese embassies. Furthermore undocumented migrants may fear potential repercussions if that data is shared with the host country.

Few countries have established a requirement to return to register in-country before a specific election. This was applied for the 2006 presidential election in Mexico, for example, whereby voters were required to hold a voter card that was only issued in-country and then registered for a postal ballot. This significantly restricted access for citizens abroad.

Types of Elections Open to OCV

The right to vote for citizens residing abroad is often limited to specific types of elections, in particular to national-level elections, such as parliamentary and presidential elections. Some countries have opted for limiting participation to single-constituency elections only, such as referenda or presidential elections. Not only are these easier to administer, but arguably those abroad may have a stronger national rather than local interest.

⁷ In *Hilbe v. Liechtenstein* (dec.), no. 31981/96, ECHR 1999-VI, the European Court of Human Rights recognised that the restriction of the right to vote to citizens resident in the national territory was not *per se* an unreasonable or arbitrary requirement.

Attention has also been given to OCV in the context of first post-conflict and transitional elections, as well as elections and referenda of particular importance; e.g., the independence referenda of Southern Sudan and East Timor.

Method of Representation

Equality of the vote is enshrined in article 25 of the ICCPR. It is as relevant for out-of country voters as it is for in-country voters. Domestic law must specify in which electoral constituency the OCV votes will be counted, and how they will be translated into seats. The system of representation that is selected has an impact on maintaining a link between the voter and a specific constituency in the country, voter registration and ballot distribution (which is more complex if there is more than one constituency).

There are two primary methods of representation for OCV for parliamentary elections. First, some countries mix the votes from abroad with those of the constituency of last registration in-country. Second, other countries create special out-of-country constituencies for those abroad; e.g., in France since a 2010 reform and in Tunisia for the October 2011 Constituent Assembly elections.

Those who are elected arguably better represent the interests of citizens abroad. However constituency links for elected representatives can be problematic with such a large geographical area, which may spread over several continents.

Creating separate constituencies also raises the question of the number of seats that should be allocated based on the number of citizens resident abroad. This can be difficult to know in advance before voter registration. In addition, special OCV constituencies can be politically controversial, especially when there are concerns about the integrity of the votes coming from abroad.

To mitigate this problem, Croatia for example has a system through which it regularly reviews the number of OCV seats. In principal, when a country adopts the dedicated OCV constituency method of representation, a regular review of the number of seats should be undertaken in order to maintain equality of the vote. Such updates are probably easier to conduct when voter registration is done in a continuous manner on the basis of registration at a diplomatic mission.

Depending on the size, location and composition of the community abroad (i.e., the prevalence of refugees versus migrant workers versus diaspora, etc.), some countries allow those abroad to put forward candidates, while most others require voters abroad to vote for in-country candidates. It may be more difficult for a citizen abroad to submit a candidacy application, especially if this must be done in the home country. It can also be more challenging to meet particular requirements, such as the collection of a number of voter signatures, due to the dispersion of the electorate.

Voting Methods

When considering the various voting methods available,

decision-makers need to assess their capacity, in each specific context, to best respect the principles of free, equal, secret, secure and transparent polling.

Voting in person at diplomatic missions

Voting at a diplomatic mission may seem uncomplicated and less expensive. It can also appear to better protect the secrecy and the security of the ballot. However several issues must be carefully considered. These include: access for voters; the perception of the degree of impartiality of the civil servants conducting the poll; possible visa issues if voters have to cross an international border to vote; and the capacity of the physical premises.

Accessibility can be difficult for voters who may be far from any place of voting. This is especially problematic when voters have to travel to the voting location twice—for registering and then voting.⁸ Access also depends upon the density of the diplomatic network of the country.

When resources are scarce, the costs involved in running a polling station may have to be justified by the number of potential voters to be served. While justified by material constraints, such limitations to access can result in unequal treatment of citizens abroad with regard to their capacity to exercise their right to vote.

Turnout at a polling station opened in a diplomatic mission can also be affected by the perception of the impartiality and integrity of the civil servants managing the process. To counteract this potential problem, for the Southern Sudan referendum for example, electoral activities were held outside of Sudanese embassies and implemented by an independent body, the International Organisation of Migration (IOM).

Undocumented migrants may decide not to turn up at a polling station located in a state building for fear of being identified and repercussions in the home country. They may also fear possible prosecution or removal by host-country authorities.

There are also questions about how embassy staff will be trained and whether there is sufficient staff for such operations. Electoral operations can involve very large numbers of people and can be overwhelming for embassy staff, with potential crowd control and security issues arising. This can be problematic at diplomatic missions, where security is of particular importance. Access for observers, candidate/party agents and journalists also needs to be considered.

Voting in person at special voting centres

Voting in diplomatic missions is unsuitable for large numbers of voters, in which case the home country will have to negotiate with the host country the right to open and run polling stations at dedicated places outside the premises of diplomatic missions. This is especially the case for OCV processes organised in post-conflict and

⁸ Such journeys can also be considerable, especially if voters must come from other countries where there is no diplomatic mission, in which case visa issues may also arise.

transitional elections, where large numbers of voters typically must be accommodated.

In some cases, voting outside of diplomatic missions may be prohibited by the host country. This can be particularly problematic: if some host countries allow for such polling, but others do not, out-of-country voters from the same home country would be receiving different opportunities. This was the case with the 2006 parliamentary elections in Bulgaria, where out-of-country voters in some host countries (notably Turkey) were permitted to vote outside diplomatic missions, but others in western European countries were not (e.g., Greece, Macedonia and Germany). Canada has also prohibited voting outside of diplomatic missions, instead preferring that such voters cast postal ballots for elections in their home countries.⁹

Costs related to special OCV voting centres can be substantial; e.g., rent, security, storage, transport of materials, staff, etc. Costs can be difficult to predict until the voter registration exercise is undertaken, at which point the commitment to OCV has already been made.

Security at special voting centres can be an issue in several respects. These voting centres tend to create large crowds and can raise questions of public order that must be handled in conjunction with the host country. Difficult security situations may prevent the establishment of polling stations in areas where a large refugee population is concentrated.

The high numbers of voters at limited locations, and the long journeys voters may have to take can result in decisions to have longer registration and polling periods. However, this can create additional difficulties; e.g., it can increase the likelihood that methods for removing indelible ink will be discovered.

Special voting centre operations have sometimes been implemented by contracted organisations. This can have the advantages of perceived neutrality and an established operational centre in a country that can be the base for OCV activities. This approach also carries a risk that potential voters may not have full confidence in the contracted organisation, for example, because it is unknown or perceived as partisan.

To avoid public disillusionment and political controversy, the criteria used for deciding on OCV registration and polling locations should be clearly agreed in advance. Criteria may include: capital cities and any other cities where there are more than a specific number of out-of-country citizens. In practice, however, information on such figures is often difficult to obtain because many migrants will not be in official records.

A related issue may be demands for transportation to facilitate voter access to registration and polling. This is understandable given the cost and time implications of

travelling. While transport can increase the equality of access and universality of the vote, nonetheless it can be politically sensitive. Decisions on which groups receive transportation assistance can easily result in accusations of bias and voter frustration. Transport provision is also administratively burdensome.

Voting by post

Another option is that postal ballots are sent to registered voters at their address abroad. Voters then mark their ballot and send it back to be counted and included in the results. Voting by post can be more cost effective, as it does not involve the organisation of polling outside the home country. It is also easier for the voter because s/he does not have to travel.

With this procedure, the act of voting takes place with no guarantee that voters are casting their ballot in secret and/or free from pressure. Postal ballots also offer no protection from impersonation, in particular because there is no identification in person at the time of voting. This is a specific risk given the aforementioned challenges of identifying the OCV electorate, making the need for a transparent registration process even more important.

Postal voting also raises issues related to the time needed to prepare and transport voting material to the voter in advance and the return of cast ballots. Distributing ballots in a timely fashion can be particularly difficult for a second round of elections, when there may be little time for printing and distributing ballots. The time taken to return completed ballot papers may cause a delay in the final tabulation of results. This can be especially controversial when the results of OCV postal voting change the outcome of an election. There is also an issue of uneven levels of reliability of postal services around the world.

Voting by proxy

Voting by proxy is offered to OCV voters by some countries. It has the advantage of being technically simple and cost effective, with costs limited to producing and mailing a form that designates the proxy, and the cost of processing the proxy application.

Proxy voting applied to OCV raises the same problems of principle as proxy voting applied in-country: the voter is required to disclose his/her choice (albeit voluntarily) and there is no guarantee that the proxy will make the requested choice. The fundamental electoral principle of secrecy is compromised and there is a risk of corruption of the process. To limit this, it is critical that proxy voting include a restriction that a voter can only be the proxy of one other voter. Otherwise, proxy voting can be used as a means for fraud.

⁹ Canada has upon occasion given permission for some OCV electoral activities outside of diplomatic missions, for example for Iraqi elections and the 2011 Southern Sudan referendum

4. CHALLENGES AND RISKS

Resources and costs

What may be manageable for stable democracies with relatively few citizens residing abroad, reliable infrastructure, funds and confidence in electoral processes, may not be as straight forward for countries in transition or those with a less established history of elections, especially if there is a lack of confidence in electoral processes.

Organising OCV tends to be costly, depending on the methods of voting, and the number of voters abroad. Conducting prior registration may considerably add to the cost, in particular when the registration process involves issuing an identification document. The matter of financial resources is further complicated when the size of OCV electorates is unknown. For example, authorities need to prepare for maximum turnout, but in practice a far smaller proportion of those who are eligible may make the required journeys.

The cost of OCV raises a question about its sustainability. Large-scale post-conflict and transitional elections, such as those for Afghanistan, Iraq, Southern Sudan and Bosnia-Herzegovina, are typically the most expensive OCV operations. The Iraq January 2005 OCV operation alone was reportedly budgeted USD92 million.¹⁰ The 2004 Afghanistan OCV component cost some USD24 million.¹¹ These elections have traditionally been conducted with strong support and involvement of the international community, and usually implemented by an international organisation.

While there is no international obligation requiring countries to facilitate voting for its citizens who reside abroad, withdrawing an established practice can be politically problematic. It is also likely to raise questions about political motivations. It is difficult to take a decision that reduces the franchise.

Cases of countries abolishing OCV are relatively rare. Although the 2004 presidential elections in Afghanistan received international financial support to include OCV, the Joint Election Management Body subsequently decided not to conduct OCV for the 2005 parliamentary election (neither did the 2009 presidential elections have OCV).

There may also be significant costs for OCV voters (e.g., travel related) that are not incurred by in-country voters. Such costs may raise questions about equal access to and the fairness of the process.

Post-conflict and transitional elections

Post-conflict and transitional situations have a number of common features that have also prompted the involvement of the international community.

- Such countries tend to be weakened and impoverished by conflict.
- The number of potential voters from abroad tends to be high, as the conflict may have caused a vast number of refugees and other forced migrants. Due to high numbers of potential voters, voting has had to take place outside diplomatic premises, hence requiring the agreement of the host country.
- There can be difficulties negotiating agreements with the OCV host countries, especially if neighbouring countries were involved in the conflict.
- The country's administrative capacity tends to be insufficient for organising such a complex operation.
- The level of trust among political actors in the country tends to be low.

In these complex cases, regional interests may also result in attempts to interfere with the process, for example by: delaying the conclusion of the cooperation agreement with the home country; attempting to control the movement of voters and electoral officials through the host territory or to obtain personal data of registered voters; and not facilitating customs clearance for electoral material, including ballot papers and boxes. Among other challenges, host-country authorities may not be able to facilitate the use of schools or other free-of-charge locations for polling, nor may they be able to offer the assistance of state security personnel.

All of these issues can also affect the timely conduct of the process (see below).

Timing

OCV affects all phases of the administration of the election, including the development and printing of training material, voter information material, and distribution of ballot papers and official forms. Consequently, preparatory electoral activities need to be completed earlier than if there is no OCV. This can be significant given that electoral activities typically operate under a condensed and pressurised timetable. The time pressure can be more challenging when voters abroad have to be registered before voting, especially when there is a large population abroad, as was the case with Afghanistan and Iraq.

Timing also becomes more significant in the case of snap elections, when all phases of the election process have to be conducted under compressed legal deadlines. Holding a second round of elections also increases time pressures.

The additional challenges associated with post-conflict and transitional elections (as identified in the previous section) can impact on timing. Delays in the conduct of the process and in particular the delivery of the results can lead to controversies, especially in first-time out-of-country polls, when the expectations and political stakes are high.

¹⁰ Ben Goldsmith, *Out-of-Country voting in Post-Conflict Elections*, the ACE Project. See: <http://aceproject.org/today/feature-articles/out-of-country-voting-in-post-conflict-elections>.

¹¹ International IDEA (2007), page 162.

Party and candidate organisation and campaigning

OCV is a challenge for political parties and candidates, who need to convey their message to voters. Voters may only be able to access the campaign from what appears in the media where they are living. Although access has become easier with the internet and electronic media, these are not available to everybody. International and host-country media is not subject to home-country laws and regulations, and therefore are not bound in any way to cover electoral campaigns and candidates, or to do so in a fair manner. Moreover foreign political campaigns may be banned in the host country; e.g. they are not allowed in many Gulf States.

Campaigning through rallies and door-to-door activities in host countries is also problematic because OCV voters may be widely dispersed and the cost of conducting operations abroad. As such, there may be a greater onus on the electoral authorities to ensure that some information on all of the political candidates and parties is made available to OCV voters. This is more challenging when a significant proportion of OCV voters may be illiterate, rendering printed material alone inadequate.

Without sufficient and fair information on political candidates, voters may not be able to make an informed choice. Therefore the genuineness of the OCV process may be open to question.

Transparency and scrutiny

OCV creates substantial challenges for scrutiny by observer groups, political candidates, party agents and the media, which may not be able to extend their coverage abroad.

Fears may be mitigated when international organisations manage the OCV process. However, even in this case there is a need for scrutiny. The international organisation may not be uniformly trusted or its staff may be subject to bias, intimidation and pressure.

A system of accreditation is required that allows for easy submission by observers, candidate/party agents and media representatives in the host country. Requiring in-person submission of application forms is problematic in an OCV setting, as again an extra journey may be required, which can typically involve long distances with unreasonable cost and time implications.

Effective remedy

Access to effective remedy is a fundamental component of an electoral process, allowing for errors and manipulations to be corrected, which is key to confidence in the process. As General Comment 25 on article 25 of the ICCPR states, "There should be... access to judicial review or other equivalent process so that electors have confidence in the security of the ballot and the counting of the votes."¹²

While there should be equal protection of the electoral rights of OCV and in-country voters, in practice it is very likely to be more difficult to lodge a complaint or to follow the adjudication of complaints from abroad. Similarly, it may be more difficult to investigate for lack of both resources and jurisdiction. Problems can include lack of access to a judge and the documents needed to investigate the case, and difficulties in holding hearings.

Attempts may be made by the EMB to establish an opportunity for remedy in the host country in order to provide some opportunity for correction. While this is positive, these structures are inherently limited as they are established by the election authorities and therefore do not provide for independent review, but rather only an administrative reconsideration.

Vulnerability to manipulation

OCV electoral processes tend to be regarded as more prone to manipulation and abuse than regular in-country operations. Several critical factors explain this: reduced scrutiny from observers, political candidates, party agents and the media; limited capacity to check identity; and lack of access to effective remedy. These factors can be compounded by a lack of staff training and management check, often crowded voting conditions and no guarantee of secrecy in the case of postal or proxy voting.

From establishing the method of representation and enfranchisement, to ensuring safeguards and putting in place checks and balances, any OCV policy can be hijacked by partisan agendas. In extreme, but not uncommon circumstances, OCV may serve as an opportunity to perpetrate electoral fraud. For example, there was a sudden inflation in voters registering for OCV in the 2003 parliamentary elections in Georgia¹³ and an attempt during the 2004 presidential election in the Ukraine to create over 420 OCV polling stations in Russia for no obvious purpose.¹⁴

Possible impact on confidence in the process

Even when abuse does not take place, the fact that votes are coming from abroad, and are not cast in a manner that enjoys the same level of scrutiny as the in-country process, can create a perception that fraud can be committed, which in turn can undermine confidence in the process. As such, facilitating scrutiny by candidates/parties, observers and the media is particularly important.

These issues are compounded when there is a lack of trust in the EMB. The EMB must make decisions that will have significant political implications; e.g., where to set up polling stations, whether to provide transport and choosing a method of representation. When dealing with OCV, the domestic law should spell out sufficient objective

¹² The provisions in article 25 of the ICCPR are elaborated in General Comment 25. See: <http://www.unhcr.ch/tbs/doc.nsf/0/d0b7f023e8d6d9898025651e004bc0eb>.

¹³ OSCE/ODIHR, Final Report, Georgia 2003 Parliamentary Elections, page 11. See: <http://www.osce.org/odihr/elections/georgia/22206>.

¹⁴ OSCE/ODIHR, Final Report, Ukraine 2004 Presidential Election, page 11. See: <http://www.osce.org/odihr/elections/ukraine/14674>.

criteria for EMB decision-making so as to minimise its use of discretion.

5. CONCLUSION

When considering the introduction of OCV, decision-makers must take into account the principle of universal suffrage, and the need to protect the transparency and the integrity of the electoral process. These essential elements of democracy must be balanced against the technical, financial and logistical factors that accompany OCV processes.

OCV raises a range of questions of principle and practical implementation, and potentially has a political impact on the conduct of the process. OCV decisions determine who the electorate is and thus have a direct effect on the outcome of an election. As such, political actors may advocate for or against OCV on the basis of their own interests, with little consideration for the challenges and risks involved in this process.

The timing of debate on OCV and its modalities can affect its perceived legitimacy. A rushed decision-making and legislative process compromises inclusiveness and reduces opportunities for expert input.¹⁵ The more unsettled the political context, the more heated the debate can be and the higher the potential for controversy and disputed election outcomes. OCV can exacerbate an unstable political situation.

Hence it is important to prevent problems arising by seeking consensus and informed decision-making in good time. As the OCV process affects the interests of the whole electorate, it is crucial that decisions on the adoption of OCV be as inclusive as possible. Consultations should include representatives from the ruling and opposition political parties, the EMB, civil society organisations, including representatives from the communities abroad, and the media.

RECOMMENDATIONS

1. The decision to opt for OCV should be the result of an inclusive and informed process. Timely consultative processes should always guide the introduction or expansion of out-of-country voting rights. Consultations should include representatives from the ruling and opposition political parties, the election management body (EMB), civil society organisations, including representatives from the communities abroad, and the media. In post-conflict and transitional elections, the importance of enfranchising refugee populations or migrants forced to move because of conflict should be taken into account.¹⁶
2. When time is limited, given the risks involved, a cautious approach is recommended to take precedence over the goal of inclusion at all costs.
3. In order to maintain the equality of the vote and the right to stand, equity between the in-country and OCV processes should be sought after. All electoral processes should meet the standards contained in the International Covenant on Civil and Political Right (ICCPR) and any other relevant regional instruments.
4. OCV should be enshrined in domestic legislation, with clear principles and criteria established to limit the EMB's discretion; e.g., over the OCV implementation method, the choice of OCV host countries, the choice of registration method and polling station locations.
5. The EMB should establish regulations on OCV that are easily and immediately made public in good time. It should also facilitate regular dialogue and consultation with stakeholders in host countries.
6. Every effort should be made to provide for scrutiny by national and international observers, political candidates, party agents and the media (including host-country media).
7. Data protection should be guaranteed and voters should not suffer consequences from participating.
8. The various authorities involved in facilitating the process (the EMB, Ministry of Foreign Affairs, expatriate organisations, etc.) should extend full cooperation to one another.
9. The role of host countries should be restricted to facilitating without interfering in the election process.
10. Timely funding should be secured, with details made publicly available, as elections conducted abroad tend to add significant costs to the budget of an election.
11. International assistance for OCV in post-conflict and transitional contexts may be considered when there is an explicit commitment to full implementation of electoral standards, as contained in the ICCPR and any other relevant regional instruments.

¹⁵ DRI briefing paper no. 12, *Electoral Law Reform Processes: Key Elements for Success*. See: http://www.democracy-reporting.org/files/dri_briefing_paper_12_-_good_practices.pdf.

¹⁶ A similar viewpoint is expressed by Jeremy Grace (2007) in *Challenging the Norms and Standards of Election Administration: Standards for External and Absentee Voting*. See: http://www.ifes.org/files/Grace_absentee_standards_final.pdf.

ABOUT DEMOCRACY REPORTING INTERNATIONAL

Democracy Reporting International (DRI) is a non-partisan, independent, not-for-profit organisation registered in Berlin, Germany. DRI promotes political participation of citizens, accountability of state bodies and the development of democratic institutions world-wide. DRI helps find local ways of promoting the universal right of citizens to participate in the political life of their country, as enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

DRI has a 24-month grant from the European Union to work with Pakistani legislatures (federal and provincial) on promoting electoral reform as a follow-up to the 2008 EU Election Observation Mission. The grant also includes work with the media to improve coverage of electoral reform and local elections, and to conduct assessments of the local elections.

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