

**LEGON CENTRE FOR INTERNATIONAL AFFAIRS AND  
DIPLOMACY**



**IMPLEMENTATION OF ROPAA THROUGH GHANA'S DIPLOMATIC  
MISSIONS: PROSPECTS AND CHALLENGES BY**

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THIS THESIS/DISSERTATION IS SUBMITTED TO THE UNIVERSITY OF  
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THE AWARD OF MA IN INTERNATIONAL AFFAIRS DEGREE

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**DECLARATION**

I, the undersigned do hereby declare that this project work is the result of our own original research and that no part of it has been presented for another degree in any University.

However, all sources of materials borrowed have been duly acknowledged.

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**Supervisor's Declaration**

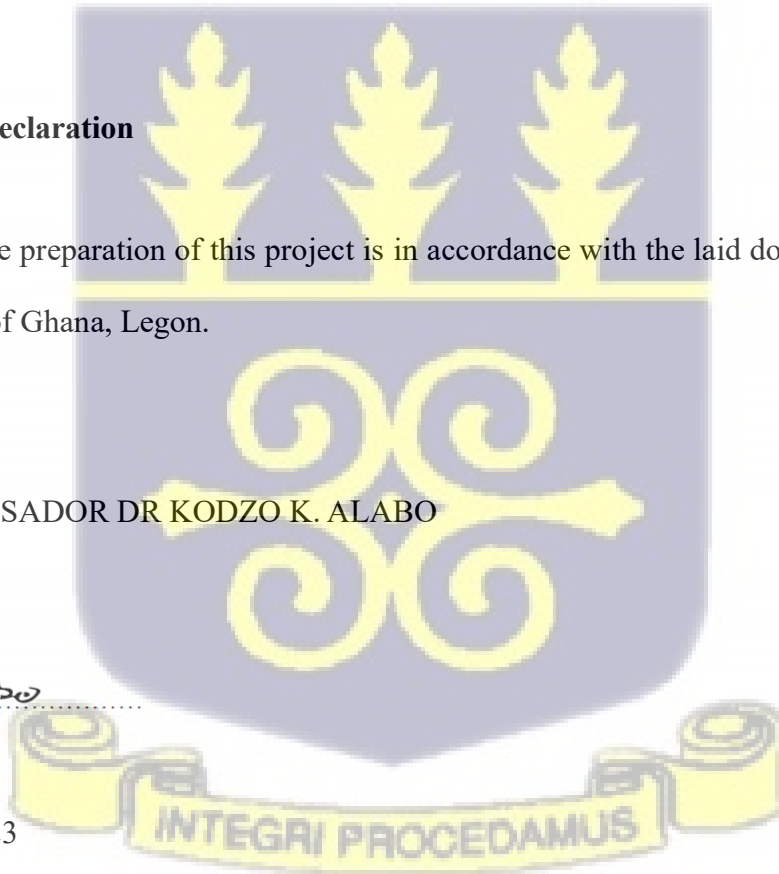
I declare that the preparation of this project is in accordance with the laid down guidelines of the University of Ghana, Legon.

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Date: 30/10/2023



**DEDICATION**

I dedicate this to God Almighty.



### **ACKNOWLEDGEMENT**

I appreciate my Supervisor, Ambassador Kodzo K. Alabo, for his unending contribution.

towards achieving this height in my academics. I say thank you!



## ABSTRACT

Increased demand by citizens to engage in democratic processes to determine governmental leadership has heightened the importance of enfranchisement of voters. Significant constitutional developments across democracies over the last century has developed reliable and efficient ways to empower and facilitate suffrage. In most democracies around the world citizens are no longer disqualified from voting rights and contesting elections based on their gender, literacy, social status, or class; simply one man to one vote. This has added credibility to the belief that voting is as inclusive, with results providing a true representation of the will of citizens. In view of this, this study is aimed at examining the reasons why Ghanaian citizens are currently disenfranchised based on their geographical location; despite constitutional provisions to do so and to also offers measures which could facilitate external voting. The Representation of the People's Amendment Act (ROPAA) (Act 699), the law that allows for Ghanaian citizens to vote from outside the country has not been executed in any election in

Ghana's history. This study "Prospects and Challenges in the implementation Of ROPAA through Ghana's Diplomatic Missions" sought to identify the key processes involved in facilitating external voting for citizens living outside the country; explore the role of host nations and key actors involved in the processes associated with overseas voting; assess the main challenges States face in implementing the ROPAA act 699; and identify how eternal voting can be successfully operationalized through Ghanaian Embassies and High Commission overseas. The study used the semi-structured interview guide to gather primary data; however, secondary data was also used for the study analysis; the study revealed some challenges such as host country negotiation, logistic and financial support. The further explored the opportunity Ghana's electoral management body (EMB) has to implement external voting by utilizing its missions abroad, potentially enabling the minimization of costs whilst also avoiding tedious negotiations with host countries.

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**CHAPTER ONE**  
**INTRODUCTION**

**1.1 Background of the Study**

All over the world, the conditions for electoral participation have varied over time and space, in early democratic societies in and around the 20th century the right to participate in national elections for parliament was dependent on age, citizenship, nationality, mental health etc. The relevance of these criteria is however, still debated even in modern democracy, as a result, voting criteria has continued to be implemented differently across various political dispensations and to varying degrees (Blais, Massicotte & Yoshinaka, 2001; Beckman, 2008). This suggests that, in some places, the governing of political activity could potentially be viewed as more egalitarian than in others. Many who are eligible to engage in political leadership elections in their country would not be entitled to that if they had been placed equally in other countries (Blais et al., 2001). While 'universal suffrage' is said to be 'everywhere,' there are obviously more common 'universal' electoral structures applied than others. Tremendous constitutional democratic developments over the last century, has ensured that suffrage has spread almost globally A sign of that is that political assessments, when it is calculated that the vote was being extended, produce the result that 'nearly all countries have taken universal suffrage law' or that at least 85 per cent of all nations 'have made provision for universal suffrage globally' (Vanhanen, 2003). More and more people are being enfranchised to vote, laws no longer disqualify citizens from voting rights and the ability to be elected is not restricted based on gender, literacy, social status or the class (Coppedge & Reinicke 1991). This has prompted many people to conclude that voting is as inclusive of democratic nations as it can be. Voting has developed to now even include a phenomenon known as external voting; giving citizens who have migrated away from their home country's an opportunity to still be involved in the politics of the that nation.

In reaction to the ramifications of more democratic development and massive globalization in the economic, social, and cultural spheres, as well as the importance of migrants in their home country, a growing number of less developed countries are now trying to give their people external votes, which are also substantial in some countries, including Ghana.

The study seeks to Identify the issues Ghana has faced in implementing the process to allow citizens living abroad to participate in elections, despite the passage of the Representation of the People's Amendment Act (ROPAA) (Act 699) enshrining that right of migrant voters in 2006. Furthermore, the study explores the plausibility of using Ghana's missions and staff abroad to aid the actualization of ROPAA. The Study will outline the key process necessary to successfully conduct an out-of-country voting process which is the embodiment of the representation of the people's amendment act, 2006 (Act 699), it is necessary to identify and explain what would ultimately be needed for ROPAA as it helps in identifying where the relevant authorities have fallen short in its application. This study also makes apparent the necessity to develop additional legislation explaining the legal framework by stating the modalities of the process and voting mechanisms in the interest of transparency and credibility of the process. Another key area of this study focuses on the ability to fund external voting, the role other countries will have to play in the process as well. Ultimately, the study intends to provide plausible options to the relevant Ghanaian authorities which could potentially solve the problems preventing the operationalization ROPAA. It is important to note that very little literature exists on this topic specific to Ghana since Act 699 is a relatively new one; hence the study relies on sources from other nations voting practices.

Additionally, external voting operations are organized on an extensive scale in post-conflict countries with such a significant number of refugees and displaced persons; thus, to allow these people to be involved in the democratic and political process in their country of origin which is

expected to contribute to national reconciliation and permanent peace (Jeremy, 2003). Around the same time, technical advancement (even if a substantial percentage of electors are outside their country of origin) will sometimes provide more efficient and effective ways to ensure that elections are free and fair (Kersting & Baldersheim 2004).

Although certain countries' constitutions grant all people the right to vote, in practice voters outside their home country are often disenfranchised in the absence of processes that would allow them to exercise this right. Though it is impossible to gather reliable immigration data, figures indicate a potential number of 190 million migrants worldwide in early 2005 (IOM 2005). Since the 1970s this number has more than doubled. The number of migrants living in developed countries has risen above that of those living in developing countries since the 1970's (IOM, 2002). It has risen mostly in North America as well as in the former Soviet Union, while in Asia, Latin America and the Caribbean, it has declined. The growing ease for migrant mobility and travel, has increased demand for external voting to be applicable in various situations meaning the number of potential external voters is increasing in the world. In certain situations, the international community has helped to arrange external elections in the last decade in the context of important intra-State tensions (Jeremy, 2003). For example, migrants and/or other people who were resident outside the country during conflicts in Cambodia, Bosnia and Herzegovina, Croatia, Mozambique, Angola and Haiti, benefited from international support for external voting practices. There were instances where large communities displaced by the war could vote; other cases were unable to guarantee their inclusion (Braun & Gratschew 2017; Jeremy 2003).

Foreign migrants are also a possible electoral influence, their voting can have major consequences on election outcomes in many situations (Braun & Gratschew 2017). Consequently, there are likely to be diverse viewpoints from political parties, sitting governments and oppositions on electoral participation. If the nation has left broader numbers of voters for political reasons, the

ruling party cannot be believed to be in favour of expanding the right to vote to these groups (Ellis, Navarro, Morales, Gratschew & Braun 2017).

Unique laws introduced by many countries to encourage ambassadors and military personnel to vote from outside the country are less divisive. There are laws where all residents of a nation living abroad may vote from outside of their country, also less contentious. Voting privileges for those who are ordinarily resident in the country but temporarily not present, including visitors, students, and business travellers must also be considered alongside in the voting systems (Ellis et al. 2017), which are intended to encourage voting. External voting in many nations is also an electoral agenda. It's a very new development historically. In Iceland, for example, seamen and fishermen even had an external vote at the beginning of the 20th century, but even in some long-standing democratic country, people who resided in other countries did not gain the right to vote until the 1980s or the 1990s, indicating the variations between countries who had practiced this for many years, and those who recently introduced that into their electoral system. External vote was adopted recently in Mexico, where it was first expanded in July 2006 (Navarro & Carrillo, 2017), and in Ghana, the law concerning the external vote was passed in 2006 but an attempt to implement in 2008 election failed.

One hundred and fifteen nations and territories worldwide are officially permitted to vote externally. Some two-thirds of these countries allow all people to vote from overseas, and a third forbid the freedom to vote outside the country partly. If, with this reason, we take the requirement that democracy would be the lowest common denominator' of the multiparty election and the promise of universal suffrage for 115 nations , or more than 50 percent of the world's democracies , external voting can be encouraged . Twenty eight African countries and 16 American countries have external voting. It is allowed by quite a significant number of European countries (41), Oceania (10) and Asia (20) (Ellis, et al., 2017).

External voting activities are nuanced, as they face serious difficulties. In democratic countries performing peacetime elections annually, external voting provisions could be integrated into electoral law by means of well-planned and realistic schedules and deadlines and enforced on each election occurrence (Jeremy 2007). However, in most interim cases, an external voting program with no personnel and frameworks where it is appropriate to allow numerous operations to take place in parallel and at high speed, must be introduced from scratch. As every planning stage and organizational benchmark leads to the last election day, the time limits are typically narrow and rigid for each phase. It is important to prepare for enough capital to deploy rapidly and at the same time equilibrating the political sensitivities of any election process – often increased in post-conflict situations. It is thus justified to consider external voting activities as emergency operations in such cases, and the parties concerned must be willing to take 'short cuts' using normal protocols not only for the long operating period but also for these operations. However, the basic laws and regulations of the elections and operations must be upheld in order that short cuts do not jeopardize overall election protection and transparency. Braun and Gratschew (2017) on external votes indicated.

*"It is incredibly stressful, and at the same time very rewarding, to operate at high workload levels, alongside hundreds or even thousands of temporary workers, frequently at distant geographical locations around the world, often across multiple social and cultural settings. To make external polling operations effective, a high degree of versatility and imagination is necessary but strong planning based on professional expertise goes a long way, as experience shows, to ensuring a successful emergency operation."*

When judging the electoral outcome, it is difficult to remove such deciding factors, such as the political general atmosphere, the availability of fair rights before an election, turnout on the election day and, of course, the number of votes itself because they have all a significant effect

on the actual results. The international community, moreover, is certainly helping to foster people's right to vote and to improve political engagement and peaceful growth by providing the means for people from abroad. Nonetheless, the Representation of the People's Amendment Act (ROPAA), passed to ensure the successful external voting, has been partially implemented or totally neglected; thus, its ineffective (Braun & Gratschew, 2017).

## 1.2 Statement of the Problem

The right to vote to determine one's representation remains one of the fundamental human rights afforded persons of age in any democratic dispensation. Article 42 of the 1992 constitution of Ghana safeguards this right to vote. It states thus, "Every citizen of Ghana of 18 years of age or above and of sound mind has the right to vote and is entitled to be registered as a voter for the purpose of public elections and referenda". Ghana, as a beacon of democracy in Africa, is no exception to this phenomenon. Indeed, with the enviable track record of peaceful elections for well over two decades, Ghana has been put in a special position on the Continent as pacesetters in democracy.<sup>1</sup>

For this reason, it is hard to fathom that up to this day, there exists no framework to operationalize the ROPAA which was enacted as far back as 2006, consequently, it has denied so many Ghanaians in the diaspora their fundamental right to partake in the election process by voting from where they are residing in the diaspora. This effectively means that those Ghanaians living abroad who are unable to return in time for elections every four years are disenfranchised by the system. This is grossly unconstitutional.<sup>2</sup>

In order to enable full participation in the election process, the study seeks to provide solutions to this challenge. The study is attempting to develop a strategy to ensure the operationalization of the ROPAA and to further entrench Ghana's democratic dispensation. The number of Ghanaians living in the diaspora has grown over the years that Ghanaians are represented in

almost all countries in the world (Adogla-Bessa, 2020). Their contributions to the Ghanaian economy have witnessed exponential growth each year, and these contributions now form a large part of our economy, making the issues surrounding external voting more pressing.

Article 45 the 1992 Constitution and the Electoral Commission Act 1993, Act 451 set out clearly the functions of the Electoral Commission, which in broad terms, include implementing the ROPAA. The Electoral Commission must be well resourced and encouraged to implement the ROPAA. The High Court presided over by His Lordship Justice Anthony K. Yeboah, in December, 2016, ordered the Electoral Commission to take steps to implement the ROPAA 2006 within twelve months. The Electoral Commission must be seen to be working towards executing this very important court ruling that borders on the fundamental voting right of those residing in the diaspora.

Currently, it is only Ghanaians studying abroad, and staff of Ghana's Missions/Embassies who are allowed to be registered and vote in elections. This is worrisome to say the least. The effect of this situation is that so many eligible Ghanaians are disenfranchised. These persons are effectively rendered spectators, not citizens in the affairs of their country. Act 699 was supposed to usher us into a new era in terms of ensuring that no eligible Ghanaian is disenfranchised by the electoral system in place. For this reason, so much effort was expended towards amending the then Representation of the People Law, 1992 PNDCL 284 which made it impossible for eligible Ghanaian abroad to be registered to vote in elections and referenda. However, it is far from being operationalized. Although there had been several challenges spotted out by scholars across different democratic States in implementing external voting system, the Mexican case study and Cape Verde case study show how unique each State challenges are and hence, it makes generalization of findings and application of solution to Ghana's issue inapplicable.

### 1.3 Research Questions

- What are the key processes involved in conducting overseas/external voting?
- What role do key actors play in the electoral process of external voting?
- What are the main challenges encountered by the Electoral Commission of Ghana in the implementation of the ROPAA Act 699?
- How can external voting be conducted through Ghanaian Embassies and High Commissions in foreign countries?

### 1.4 Research Objectives

The research objective is to develop a clear understanding of the practice of allowing citizens resident outside their home nations to participate in voting for domestic leadership and explore potential avenues Ghana may utilize as it attempts to implement overseas voting for citizens.

In view of this, the study sought to:

- Identify the key processes involved in facilitating External Voting for Citizens living outside the country.
- Explore the role of host nations and key actors involved in the processes associated with overseas voting.
- Assess the main challenges States face in implementing the ROPAA act 699.
- Identify how external voting can be successfully operationalized through Ghanaian Embassies and High Commission overseas.

### 1.5 Rationale of the Study

The aim of this study is primarily to identify and ultimately provide potential solutions to the issue of developing a framework for implementing overseas voting for Ghanaian citizens who

live in the diaspora permanently or temporarily and are not fully allowed to participate in the voting processes of Ghana. Furthermore, the study aims to unearth how the roles of international actors in the process can be well spelled out, monitored and effectuated.

Ghana has begun the process of implementing overseas voting in public elections and referenda and has faced numerous challenges in completing its objective. It is important to understand the processes involved in external voting, as this is Ghana's first attempt at conducting elections abroad for non-embassy staff and military personnel. This is a pivotal moment for Ghana's democracy and voter confidence moving forwards. Furthermore, Ghana's image and relationship with the international community will be tested based on the legitimacy and conduct of overseas voting. The revelations made in relations to these factors and how it forms the basis for further studies becomes the driving force for this study.

### **1.6 Scope of Research**

The study would look at electoral processes of selected States from the global perspective that have successfully legislated and operationalized the external voting. Also assessing the general problems associated with external voting and specifically the inability of Ghana to provide external voting since 2006 (when ROPAA passed). Additionally, this assessment focuses on the operationalization of Act 699 with particular emphasis on the roles Ghana missions abroad will have to play in the roll out of ROPAA.

### **1.7 Literature Review**

In his research report, Pallister (2020) found that the number of non-residential people voting from abroad has risen tremendously in recent decades, and an emerging literature has tried to recognize reasons that lead countries to take such foreign voting policies. His essay then added to literature by analyzing the importance of the El Salvador and Guatemala situations, both had

large expatriate communities but were reluctant to recognize outside votes. The results of Pallister (2020) revealed that the subsequent acceptance of external votes was impaired by a constant lobbying of immigrants for enfranchisement, by the dissemination of an international standard of external voting and by partisan calculations in these nations. In addition, the findings of the analysis found that the resource shortages and overcrowded electoral reform agendas were largely ignored. This accounts for lengthy gaps in the policy transition.

In its report on stakeholder citizenry and transnational electoral engagement, Baubock (2007) argued that citizenship and rights should be assigned to people who would be parties to the political community's future. He also disclosed that the normative assessment of particular agreements should be driven by this principle, though, from which specific suggestions or criticisms needs contextual explanation. While explaining how the stakeholder citizenship concept relates to the declarations of migrants in relation to their countries of origin he acknowledged that the historical and global context must first be understood, since it had shifted significantly from previous migration times. The structural reactions of democratic countries to migration are therefore the big transition. In and beyond state territory, residency is no longer as limited as it used to be. If we define citizenship like Hannah Arendt, as “a right to have rights,”<sup>3</sup> then this development must be seen as fundamentally progressive since it provides migrants, whose fundamental rights have always been precarious, with new opportunities of access to a status that entails strong obligations of states to provide such rights.

Baubock (2007) deals with one aspect concerning the challenges of external voting; thus, international citizens' freedom to vote. He complained against efforts to justify a universal right to vote externally, as well as against his general refusal as unconstitutional intervention from outside. The object of not subjecting certain people to the rules to make them is very strong. The objection is strong. However, it is in the end unconvincing because it does not recognize

how migration and the creation of democratic values have created broad political culture conception that stretches beyond territorial borders since the Second World War. Ellis et al (2007) on voting from abroad revealed that, most countries who have implemented external voting encountered host nation negotiation, representation, electoral organization, disputes resolution challenges and structural policies challenges. In reviewing several case studies, it was also noted that, there are contentions and debates over the formulation of the external voting policies. Also, cost allocation and scope of inclusion as well as the qualification of diasporans to partake in the voting process.

Also, Peltoniemi (2018) found out that globalization, European integration and accelerated migration has made life more mobile, resulting in growing regional dispersal for the electorate. To that end, the research by Peltoniemi (2018) was carried out using survey data from Finnish citizens abroad (n=1.067) to analyze trans-national political activity and emigration vote. She analyzed how domestic identity contributes to inclusion in parliamentary elections and what influences affect the voting decision of emigrants. Second, Peltoniemi explored how Finnish emigrants could characterize their transnational political involvement. Her study's main findings showed that affiliation with the sending country has little to no impact on voting probabilities in domestic parliamentary elections. Instead, the distance from nearest polling stations, political engagement, time abroad, age and education considerably affect the willingness of an emigrant to vote.

Hutcheson and Arrighi, (2015) on “keeping Pandora’s (ballot) box half-shut”: a comparative inquiry into the institutional limits of external voting in EU Member States, they compared the institutional constraints that limit the potential electoral impact of external voting in national legislative elections in the 28 Member States of the European Union (EU). It shows that the disparity in policy priorities and outcomes can be traced mainly to a number of structural constraints restricting policy reach (by citizenship and technical qualifications), limiting access by registered electors to voting, and minimizing electoral weight due to their votes (through

distinct modes of representation). They also claimed that, at least in part, the difference was triggered by a mixture of electoral and normative questions regarding their effect on electorate. Institutional limits on outside citizens' franchise can be viewed by expanding the votes to a historically exempt electorate while moderating the ramifications as a means of holding the 'door of Pandora' half-shut for unintended electoral repercussions.

## **1.8 Theoretical Framework**

The study explored two main theories for this study. The theories include the Transnational Migration Theory and the Theory of the Nature of the Suffrage. These theories are explained further in relation to the underlying aim of the study.

### **1.8.1 Transnational Migration Theory and Political Practices**

The transnational migration studies, founded in the early 1990s, have focused their work on an overview of two intertwined transformations: local restructuring that has impelled many people to live across frontiers and an increased understanding and acceptance about the transnational lives of migrants (Goldring et al., 1994; Kearney, 1994; Schiller, et al., 1992). A genuinely transnational migration industry was established in the following years, consisting of magazines, investigational agencies and countless subsidized research ventures, books, essays and hundreds of studies. A rich overview of transnational families, hometown alliances, nationalism in the country and nationalist long-distance politics, status, multiple forms of organizations, ethnicity, transition economies, faiths, social security and diaspora identities has been created (Bada 2014; Nieswand 2012; Portes & Fernández-Kelly 2015; Truong & Gasper 2011; Walsh & Näre 2016). The transitional migration theory reveals that, globalization had led to the proliferation of politics, culture and other connected factors beyond national borders such that beyond their homeland still live the reality of their culture and take interest in the political activities with their home country. Chaney (1979) described this transnational life as

“immigrants having feet on both shores”. This is the base of what Schiller (2018) discussed as the conjunctural analysis.

Clarke (2014, p. 115), a cultural studies scholar, defines conjunctural analysis as an assessment of “the forces, tendencies, forms of power, and relations of domination” which at any moment in history can lead to regional and local political, economic and social arrangements that differ from each other. The concept of conjuncture is part of a vocabulary that helps “to analyse the many determinations of concrete reality, and thus open up new possibilities for political interventions” (Koivisto & Lahtinen 2012, p.276). In view of this, the study will focus on the transnational political engagements in relation to polls.

In a zero-sum relationship, a significant number of transnational migration strategies appear asymmetrically biased against the home country. Tsuda (2012) argued that migrants are frequently oppressed in their host communities and felt more interested in the politik of transboundary home countries as well as in their societies of origin.

Political service across the national boundaries may include voting in their countries of birth, running for office and endorsing political candidates. However, engaging in domestic politics also has a higher barrier than involvement in domestic politics as individuals must be more vigilant at reducing both electoral and non-electoral distances and procedural hurdles (Peltoniemi, 2018). As a result, the more time, commitment and money migrants expend in politics in their country of birth, the less they are likely to participate in politics in their home countries. Partisan activity in one nation will, however, also positively enhance one's political commitment. Migrants who are long-standing settlers, are safer in economics and are also more likely to participate in political affairs in the country of origin, and therefore prefer to engage more in transnational home politics (Meseguer & Burgess, 2014). Acquiring citizenship thus does not diminish, but may rather improve, transboundary political participation of the country

of origin. The devotion to the policies of that country of origin may also lift the general consciousness of politics and organizational interest in the policies of the country of residence, which encourages engagement as well (Ahmadov & Sasse, 2016; Tsuda 2012).

It was suggested geographical proximity and connections to foreign institutions could be a source of transnational leverage for domestic political reform. For example, assimilation, emigrant networks and destination characteristics forecast transnational policies between emigrants who are more concerned with home politics (Ahmadov & Sasse 2016). Moreover, transnational engagement is determined by the duration of residency in the host society: the longer migrants remain in the host country, the greater the assimilation pattern, even though integration into the host country and transnational policy aren't mutually exclusive. Even if it's very unusual among migrants to engage in domestic politics, it doesn't mean that transnational political activity is entirely special. In effect, activities across borders (and thus genuinely transnational) of sending and receiving countries are very popular (Bolzman, 2011; van Bochove, 2012).

The inclusion in the home elections is a political and interconnected mechanism in the host and home countries rather than a standardized phenomena. In less thrilling votes, less voters vote, as previous study has reported. Similarly, engagement and vote actions are positively connected to interpersonal conversations on voting, communication with the parties and news on politics and conflict elections. The effect of these problems is probably less for emigrant citizens, since all votes in other countries appear 'low-profile' because they are away from the campaigns and the everyday debates (Beyer, Knutsen & Rasch 2014; Ciornei & ØstergaardNielsen 2015).

The first generation is concerned mainly with transnational governance practices, because younger generations appear to be less engaged in national politics than their parents and grandparents. However, transnational politics and rights are even wider as they will proceed between the second and even third generations (Baubock 2003). Nevertheless, through

centuries of immigrant origin, even democratic membership and freedom would gradually slip away. Those who have formed a homeland political standpoint from a distance may therefore be qualitatively distinct from those of the second and third century. Even if transnationalism remains a transitory phenomena for every migratory cohort, it does mean a significant systemic shift for the policies involved in the creation of new legal and political representatives' concepts (Baubock 2005; Østergaard-Nielsen 2001).

External citizenship is not about individuals leaving the national culture to join another. Rather, it is about citizens who are strived to continue to enjoy and exercise their political affiliation status on the territories of another national group even though they have abandoned the national state as a territorial region of coexistence. In a transnational sense, the removal of emigrants from their country of origin membership and rights restricts their freedoms and privileges in the social arenas of which they actively engage. Transnational migrants should also be viewed and classified as international residents (Baubock 2003; Rubio-Marín 2006).

There are three major reasons, as Portes (2001) argued, why transnationalism is worth paying close attention to immigration. Next, there are all reasons to expect more migration. Thousands and thousands of refugees and their counterparts in their home countries have formed and mobilized trans-national corporations for political action now and, in the future, there will be a substantial growth in the number and scale of these operations. Secondly, the mechanism of incorporation of first generation and heirs in the host community can be altered by immigrant transnationalism. The third reason why transnationalism is relevant is its impact on the development of the countries which send. In foreign countries, national parties and political forces have established offices in the towns of immigration concentration; and migrants have become increasingly important for sending countries' governments. It is therefore essential to enforce laws that involve these nationals in their country's political decisions through polls (Peltoniemi, 2018).

### 1.8.2 Theory of the Nature of the Suffrage

The Theory of the Nature of the Suffrage was promulgated by W. J. Shepard in 1912 and it looks at the connectedness between public law and political theories and how the societal transformation is impacting on these two factors. While public law was experiencing the most wonderful and far-reaching development to meet the requirements of rapidly changing social and economic conditions, political theory remained almost stationary and today is altogether inadequate to explain and interpret the deeper meaning and significance of the modern state and its governmental organization. It behoves the earnest political scientist to restore political theory to the position of honour to which it is entitled by making it once again exercise not merely an adequately interpretative but also a positively constructive function with respect to political institutions. Towards this perspective, the theory will be discussed in relation to the universal suffrage of electorates.

In the context of the nature of suffrage, five distinct systems of the suffrage surfaced in the peculiar circumstances and conditions of different poches of governmental development, have been utilized to explain or justify various electoral systems (Shepard, 1912). These are (1) the primitive tribal theory which reached its fullest and most perfect development in the city-state of antiquity, that voting is a necessary attribute of membership in the state, that the suffrage is an adjunct and function of citizenship; (2) the later feudal theory, that the Suffrage is an adjunct of a particular status, generally tenurial in character- a vested privilege, usually attached to the possession of land; (3) the theory of the early constitutional regime, that voting is an abstract right, founded in natural law, a consequence of the social compact, and an incident of popular sovereignty; (4) the theory which commands support from the majority of political scientists at the present time-the scientific theory of the suffrage-that voting is a public office, a function of government that the electorate is an organ of the state like the legislature or the executive; and (5) the ethical theory of the suffrage, which, by no means dominant at present, bids fair to

display increasing strength in the future, that voting is an important indeed a necessary and essential-means for the development of individual character, for the realization of the worth of human personality.

Shepard (1912) further noted that, the acceptance of one of two theories by one state to define the voting power of people, the other theories do not dissolve but rather effectuate these dominant theories. This assertion plays right into this study. The global nature of democracy has led too many to many States accepting voting as the natural and universal right of electorates as constitutional enshrined in many states (Bauböck 2003; Rubio-Marín 2006; Munck & Verkuilen 2002), as necessary function to be carried out by its citizens (Ahmadov & Sasse 2016; Adogla-Bessa, 2020; Beckman, 2008; Tsuda 2012) while accepting the electorate as source of power in structuring and determining the structure of governance. The manner in which one theory brings to light and effectuate the other theory as reiterated by Shepard (1912) indicated how universal suffrage has become. It therefore, places the emphasis on the need for States to extend the voting opportunities to its citizens living off the shores of their home country since it is their right and take keen interest in home politics, governance structure and plays a peculiar part in the political decision of his or her home country. The need to representation of the people's Act to be adopted as a legislative instrument and be operationalized do not only show care for citizens living outside their home country, but shows the respect attached to their universal human right, it enfranchises them, empower these citizens to still partake in the development of their country whilst keeping the transnational political interest alive.

Transnational migration simply describes the movement of persons embedded in social fields with ties and relationships in a society, relocating across nation states; these connections extend beyond social ties to economic and political connections. Therefore, it is well complemented by the theories associated with the nature of suffrage which **describes** an electorate as

consisting of a voting public with voting rights applicable to any eligible citizen not necessarily geographically located within the state. The two theories complement each other because the transnational theory affirms the importance of the connections a migrant still would have in their home country, and the rights of suffrage provide for voting rights to be afforded to individuals with value connections to a nation and also does not prevent voting rights for individuals based on location.

Popular criticism expressed by political thinkers consider suffrage as an office or function which is conferred by the state upon only such persons as are believed to be most capable of exercising it for the public good, and not a natural right which belongs without distinction to all citizens of the state such a view would suggest the rights of migrants to participate in electoral processes is determined by state laws and not an inalienable right owed to all citizens. In the similar fashion the status of migrants particularly with the validity and value of the connections with their home nation questioned and scrutinised.

## **1.9 Methodology**

### **1.9.1 Research Design and Method**

Ogunbiyi, (2014) explained that picking appropriate research method and technique are two different things; thus, the clearness of these two terms is the basis upon which the stated goal of the study is achieved. Research technique refers to the comprehension of the exploration and the methodology selected to respond to the study question (Greener, 2008).

The researcher adopted the interpretivism stances to attain the aim of the study. Interpretivist approach more often than not implies that information is gathered with an emphasis on how

individuals translate the social world and social wonders, in this way empowering alternate points of view to be researched and investigated (Matthews & Ross, 2010). An interpretive methodology is related to representative feedback from a relevant party and it is regularly called a qualitative technique of research. Patton (2008) defined qualitative data as “detailed descriptions of situations, events, people, and interactions, observed behavior, direct quotations from people about their experiences, attitudes, beliefs, and thoughts and excerpts or entire passages from documents, correspondence, records, and case histories”. The definition suggested that the data collected from qualitative research is always subjective, based on individual opinions and attitudes. The unique aspect of ROPAA being Ghana’s first foray into external voting means expertise on this topic is limited, the extent of control the electoral manage board has over the process and the relevance of other specific institutions relevant to this study such as the ministry of foreign affairs, guided the decision to utilize the qualitative research method with only ten participants; applying the interview style questions to illicit more detailed response for quality information. The study is only interested in the implementation processes involved with ROPAA which will be decided by a small group of individuals thus the sample size is appropriate.

The possible negative effect of qualitative data collection is that it cannot be generalized from the study to a large population (Sachdeva, 2009). Shaw and Gould (2002) underline a strong commitment of qualitative data to the production of new concept by establishing openness between a researcher and participants. Complete objectivity is impossible and qualitative methodology is not completely precise because human beings do not always act logically or predictably (Holloway & Wheeler, 2002).

Likewise, the research design that was picked for this study was the case study research design. A case study can be expressed technically as a phenomenon for which we report and decipher just a sole measure on any appropriate variable (Fellows & Liu, 2008). Yin (2003) likewise,

defined a case study as an experimental review that investigates a contemporary reality with a set of real experiences particularly when its limits and setting are not unmistakably self-evident. A case study revealed a thorough understanding of a bound system that involves comprehending an event, process or an individual(s) (Creswell 2007). The articles and journals used in the study in relation to the processes applied by other nations form the case study's of this study.

### **1.9.2 Source of Data**

The two main type of data to be used in the study are primary data and secondary data. The study employed a qualitative method in the data collection process through the use of interviews together with information from articles, newspapers, journals and speeches relevant to the study. Thus, the study made use of both primary and secondary data.

#### **1.9.2.1 Primary Data**

Primary data is an observed information and is obtained by the researcher himself. It is obtained from original sources, and may be by either observations, interviews or questionnaires or mixture of these (Galetto, 2016). The reviews from participants gathered during an interview became one of the sources of evidence for this research. Officers from Electoral Commission and other key actors who are concerned with the the implementation of the ROPAA Act 699 as well as the Electoral Commission of Ghana officials will be interviewed. Specifically, electoral commission of Ghana officials and Ministry of Foreign Affairs officials were interviewed.

#### **1.9.2.2 Secondary Data**

Secondary data is an already existing and gathered information for a particular reason. For instance, papers and books are sources related to secondary data (Fellows & Liu, 2008). Secondary data which was collected for the research analysis include legislative instruments, strategies and policies on external voting. Also, other legislative instruments of the selected

countries who have implemented and operationalized the external voting and journal articles on the same subject.

### **1.9.3 Sampling technique and sample size**

According to Kumar (2011) sample size is the subset of the population, thus, a smaller number of subjects picked from the population. Owing to the qualitative nature and the type of data gathering instrument used, the study considered a sample size of ten (10) which includes three deputy electoral commissioners, officials of the implementation committee, members from among the Special Budget committee and Actors from the Ministry of Foreign Affairs.

Due to the type of research methodology employed, participants were selected using the purposive sampling technique. Thus, it involves deliberate selection of dynamic sample and dividing into strata on the basis of defined characteristics and from a predetermined group to address the research question (Showkat & Parveen, 2017). The purposive sampling was used to select the respondents because, the officials who should be directly responsible for administering to the operationalization of Act 699 and its implementation were found appropriate because of their wider knowledge on the research study. The selection of the sample group base on this assertion give the investigator an access to valid response and accurate data on the basis of the research objectives. Hence, purposive sampling was chosen based on attributes of the researcher's interest and research questions for the right respondents who possess the data required for the investigation (Matthews & Ross, 2010).

### **1.9.4 Data Collection and Instrument**

The data that was collected for the study was from both primary and secondary sources. The secondary data was gathered from articles and publications on external voting and from legislations on ROPAA Act and other relevant documents found to be crucial to the study (Ghauri & Grønhaug, 2010). Journals and Articles focused on theories on Diaspora voting were used as it served as case studies to understand how other States in similar positions to Ghana

addressed the problem. The primary data on the other hand was gathered through a semistructured interview guide. Blaxter, Hughes and Malcolm (2006) see interview as a narrative method of collecting data and believes that interview provides a more in-depth insight into the study area and a well-structured questionnaire. Qualitative data which was collected for the research study was aimed at exploring the roles of actors and the electoral commission, the challenges and on the recommendations for successful operationalization of the Act. Each of the respondents was interviewed using the interview guide to ascertain the needed data. A voice recording of the responses from the participants was carried out to get the raw data. These was the data which was transcribed and edited for the chapter three empirical study.

### **1.9.5 Analytical Approach**

The empirical data that was collected from the respondents was transcribed. Data collected from the (10) respondents that was in an audio text form was transcribed using the Nvivo 12 software and it was organized based on the research objectives. The data collected was edited of any error that came up during the data gathering process before it was used. The transcription was done by transferring the audio interview text into Nvivo to be converted into written text. The incorrect statement structures was edited to reflect the actual response of the participants. After the necessary editing, the transcribed data was interpreted.

A thematic analysis was carried out for the qualitative data which was collected through exploratory interview and field notes. Braun and Clarke (2013) argued that thematic analysis should be a foundational method for qualitative analysis, as it provides core skills for conducting many other forms of qualitative analysis. It is a method for identifying, analysing, organizing, describing, and reporting themes found within a data set (Braun & Clarke, 2013).

Before, transcribing using Nnvivo Transcription, the researcher familiarized himself with the data collected by consistently listening to the recorded interview and mark out patterns and meanings. Similar action was taken after transcribing the interview into written text. Interview

transcripts from the exploratory interview carried out on 10 interviewees were assigned codes base on a pre-existing code framework adopted from Martins (2014) study. Coding allows the researcher to simplify and focus on specific characteristics of the data (Nowell1, Norris, White, & Moules, 2017). Interview transcripts were easily coded in NVivo, the documents came in multiple forms (Microsoft Word®) and without a consistent structure; hence an additional formatting was carried out. However, the NVivo software program was used to aid in the sorting and organizing the data set. Themes were identified, consistencies within the responses were established and the process of writing up report was carried out for the study

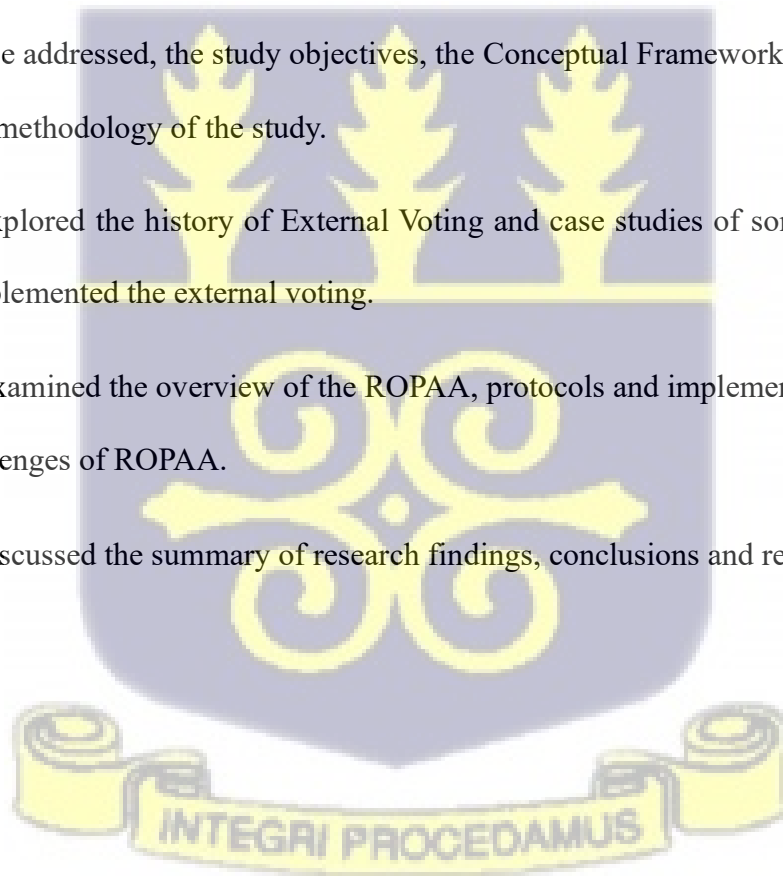
### **1.10 Organization of the Study**

Chapter One discussed the introduction to the study, the background and underlying issues that needed to be addressed, the study objectives, the Conceptual Framework, literature review and the methodology of the study.

Chapter Two explored the history of External Voting and case studies of some key countries which have implemented the external voting.

Chapter three examined the overview of the ROPAA, protocols and implementation measures, actors and challenges of ROPAA.

Chapter Four discussed the summary of research findings, conclusions and recommendations.



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## CHAPTER TWO

### TRANSNATIONAL POLITICAL PARTICIPATION: AN OVERVIEW OF EXTERNAL VOTING

#### 2.1 Introduction

This chapter addressed the overview of the transnational participation in politics by citizens mainly residing beyond the bounds of their home country. The chapter began by giving an account of the historical background of external voting. It also defined external voting and its related challenges. It continued by addressing generally, the evaluation of the external voting by looking closely at the nature of universal suffrage, the scope of inclusion and the integrity, legitimacy and accessibility.

#### 2.2 Historical Background of External Voting

The Roman emperor Augustus seems to have invented the first use of external voting by developing a new form of suffrage, whereby members of the local senate cast votes for candidates for the civic offices of Rome in 28 newly created colonies and have been sending them to Rome for the election day which is definitely a democratic act, rather than an eventual one. In 1862, when Wisconsin became the first of several United States jurisdiction that introduced rules for the absentee voting of soldiers serving in the Union's armies during the Civil War, it was the early documented use of external voting. The political controversy was from the outset a big factor; the Republicans accepted international voting laws as they assumed that Republican President Abraham Lincoln would possibly be supported by troops, while the Democrats supported the campaign for peace and Confederacy rejected it.

In 1890 New Zealand implemented absentee voting for sailors outside the military background and Australia adopted it in 1902, although operating arrangements made it almost impossible outside of Australia. During the First World War (1914–1918), more civilians became participants in military activity relative to past wars. In 1918, the political call for a voice in United Kingdom for those fighting led to a proxy vote in 1918 for non-military workers. Both military staff, were allowed the right to vote in New Zealand during the war despite location.

Introduction to and method of foreign elections, Canada offers earlier evidence of the impact of political influences. Postal voting on active-duty Military Electors was concluded in 1915, by the federal government that Canadians on active service were likely to be members of the Unionist government. The military franchise was expanded until the general election in 1917. Moreover, the military electors could select the electoral district where votes are counted — because they were informed of the outcome of a civilian election in their own region, the party which was selected by the voters.

In the province of British Columbia, a further Canadian example of the power of political considerations was seen that in 1916, military workers abroad were allowed to vote in women's suffrage consultations and in the implementation of an alcohol ban. While the women's referendum was quickly accepted, the results of the prohibition referendum was very near and the voting of foreign soldiers was key in opposing the initiative. Following claims of violence by prohibition proponents, the Parliamentary Committee of Investigation proposed that the bulk of the votes in the overseas countries be denied.

This recommendation was later adopted and the outcome of the vote was reversed and banned. France in 1924 adopted the external vote to include a different electoral area, which allows French officials to vote by mail on the occupied Rhineland. The Second World War (1939–45) gave active service members a further boost to external voting.

In addition to postal votes from military officers, Canada named the nearest relatives to proxy votes on behalf of prisoners of war for the 1945 general elections. Postal voting in the United Kingdom on national matters was conducted in 1945, with a three-week delay between domestic polls and ballot papers, including military officers, merchant seamen, and those serving in foreign countries. An assurance of the likelihood of US workers registering for a postal vote was adopted in 1942, but it was limited to a 1944 recommendation to the registering States. In 1955 the vote in the Overseas Postal Office was expanded to include non-military personnel working abroad and all US civilians abroad (in 1968). Finally, the registration clause became compulsory for States in 1975, under political pressure from US citizens abroad. In 1975.

Along with many other elements of electoral administrative tradition, foreign electoral laws also transferred from the imperial power law to a newly independent state legislation. In Malaysia the presence and form of outside voting followed in colonial Malaya, which in turn originated it from British voting Law in force in the 1950s. For staff from the foreign service, elected officials and students from the rest of the world, as well as their families, postal votes were eligible. However, before independence, not all of the British colonies had adopted foreign votes and in particular some of the remaining British Overseas Territories and colonies do not yet have them.

The French proxy voting system remained separate from many French colonies. Former French colonies, for example Gabon and Guinea (Conakry) today have identical structures. In 1975 France implemented personal elections in embassies and consulates for presidential elections and referendums by handling government initiative, so there is only one variant of the ballot paper required.

### **2.3 Defining External Voting**

External voting is understood, according to the definition used in this context, as 'provisions and procedures that allow a number or any elector of a nation that is temporarily or

permanently outside the country to exercise the voting rights from abroad' (Ryan & Teague, 2017). External voting should be distinguished from two other voting systems that are easily mistaken for it. The first is to allow foreigners in a host country who are available at municipal level in, for example, the EU, to vote in some elections in that country for people who are not nationals. In fact, it is the reverse of external voting and this subject is not protected. The second argument is that electoral rules in certain countries make it mandatory for foreign nationals who enter their country to vote at home (ACE, 2017). This law, long used in Italy, is now being implemented in several modern Eastern European democracies, including Albania and Slovakia. The right of people to vote home from abroad, however, does not correspond to external votes. The most significant aspect is that the elector is casted abroad. As these elections are solely held within the jurisdiction of the State, this cannot be considered an external vote (ACE, 2017). There are three major types of source that contain the legal provisions for external voting:

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

In general, external votes are rarely expressly provided for in the constitutions. There are important exceptions in Portugal (Constitution 172) and Spain (Constitution 68/5). Most countries provide for foreign vote in their electoral laws by general provisions. Further guidelines on its operation are also developed by legislators or election committees (Braun & Gratschew, 2007).

Externally, the right to vote can only extend to such election types. The administrative arrangements for external vote will largely focus on who may be enrolled as an outside elector. There are a variety of potential choices, such as: the right to vote for any person residing outside

the state, the right to vote for some legal limitations, the right to register as an outsider, the right to vote of people living overseas, whether the specified number of citizens registers with diplomatic missions abroad; and the right for the right to an outsider.

The current three basic choices for the external vote process are postal vote, voting in diplomatic missions or military bases or other specified locations and voting by proxy. Another choice will be more and more electronic voting in the future.

It can be debated if votes by proxy can be viewed as an external vote in strict terms, as the vote currently happens in the State bases, usually in the state's sovereigns. However, voting by proxy in diplomatic missions or military bases requires forms of foreign votes as the electors involved do not have to join their country to vote but may cast their votes from their place of residence (Ellis et al., 2017).

The underlying concept of free, fair, secret and safe voting should be discussed in the light of these alternatives. Proxy voting may be quite controversial from the democratic theory viewpoint as the proxy's vote, and thus perhaps the outcome of the election as a result, is not guaranteed to represent the original voting would (Lopez-Guerra, 2005). This method could be used by a proxy to receive extra votes, thereby breaching the principle of equal suffrage. Diplomatic missions will reject the right to vote if any external electors cannot travel to the polling stations. Mail voting cannot be as straightforward as voting for state officials on a diplomatic mission — and voting on a diplomatic mission relies on these State officials' expectations of their impartiality and honesty. Thus, for external elections, there is no 'right procedure.' Much can differ according to the background, such as the international country infrastructure, where there is an external vote. The suitability decision would depend on the costs and realistic aspects of the various external voting procedures.

The last administrative element of external elections is the redistribution of the electoral groups of external voters. Politically relevant are the institutional provisions for distributing external votes, since they determine how external votes are converted into parliamentary seats. This will effectively determine how much external voters will affect domestic politics. In short, these regulations.

The composition of the electoral districts is the primary reference point in the formal grouping of provisions. Two basic options may be distinguished:

- There are extraterritorial electoral districts for external electors (Baubock, 2007).
- External votes are assigned to existing electoral districts inside the country, for example, in the electoral district in which the external elector was last registered (Baubock, 2007).

There is a logic behind each alternative. The second emphasizes the relationship between the residents of overseas and the State territories and represents the classic legal necessity for citizenship, while the first stresses the specific extraterritorial character of external vote. Every alternative is different in terms of its effect on domestic politics (Ellis et al., 2017). The political power of foreign voters does not only rely on deciding between the simple alternatives but also on the 'institutional change' of these models. Where an electoral division or district of an extraterritorial dimension occurs, the political meaning of external electors is ultimately defined by the institutional composition of the districts. In fact, as election legislation lays out a certain number of extraterritorial seats, frequently allocated to the areas where the country's people reside (Lopez-Guerra, 2005). The classic instance is Portugal, which holds two parliamentary seats, one for European countries and one for people living abroad. Several former Portuguese colonies in Africa followed this institutional arrangement (Angola, Cape

Verde and Guinea-Bissau). The other extra-territorial model was adopted in Croatia in 1999. The new electoral legislation has also set up separate electoral districts for Croats living outside the region. But the number of external seats is not determined a priori; the cumulative number of outside votes is determined by dividing the national votes cast to the Hare quota by the number of votes cast. In other words, the number of external seats in Croatia depends on the relationship between the real number of foreign voters and the number of eligible votes in Croatia. Compared with the Portuguese model, the current level of involvement in elections and politics in this institutional context is more responsive (ACE, 2017).

Indeed, few countries have their overseas residents extraterritorial voting districts. External votes in certain circumstances are allocated to domestic constituencies and used in the redistribution of seats for the corresponding region. The electoral value of external electors is evidently more difficult to determine in these situations than in systems for a set number of extraterritorial seats. In addition, institutional variance in this model is also significant. The electoral arrangements with one countrywide electoral district are distinct from those of subnational electoral districts (Ellis et al., 2017). All things being equal, since external votes can be concentrated in a certain electoral district and can also represent a majority within that district, even though their share in the overall total number of voters is negligible, the political power of foreign constituencies is more frequent in sub-national districts. The real influence would depend once again on the particular institutional provisions. If voting districts in overseas are allocated by their former domicile in line with the majority of the situations (e.g. in Canada, Estonia and the UK), it is doubtful that there will be a geographic accumulation of external votes (Ellis et al., 2017). If the electoral district and districts of the capital, as in Indonesia, Kazakhstan, Latvia and Poland, have been named to the political scale of external voting. This solution is easier administratively: votes can be obtained at the Ministry of Foreign Affairs and passed directly to the national electoral district(s). Politically, however, this choice may cause criticism as external votes could result in an election

in the capital electoral division which varies, even in countries with a comparatively small number of inhabitants, which would have occurred without external votes (ACE, 2017).

The 1999 Russian Electoral Law legislation is a useful example of this. The second is to allow for a maximum quota of people overseas (10% of eligible electors in the respective electoral districts), who are the only ones that are resident in the same country (ACE, 2017). It decreases the chance of external determination of election outcomes. By comparison, Belarus proposes an exceptional and extremely doubtful arrangement. External votes are allocated to certain electoral districts, which have fewer registered electors than normal. This clause essentially allows the ruling elite to arbitrarily allot foreign votes to their own political benefit. Such a procedure would certainly not increase the accountability and credibility of the democratic process without specific normative requirements.

#### **2.4 External Voting Implementation Challenges**

There can be different variations of unique provisions for registering the voters, polling processes and strategies for distributing the vote to the electoral districts. There are two things we need to make in relation to this theoretically wide variety of institutional arrangements: first, certain countries have established incredibly special provisions, and second, politicians have to opt out of an apparently infinite list of institutional possibilities by having the correct configuration of external elections (ACE, 2017). One query is becoming more critical at this stage. Before voting for or against an external vote, what conditions should be considered, or a certain kind of external voting?

We are discussing the three external voting problems that are key elements in the creation of the legal system and the principles which can apply to them in response to this issue.

The problems are (ACE, 2017):

- political participation of people not living in their countries of citizenship or not present in that country;
- the organisation of elections outside the boundaries that introduce problems of organization, fairness issues of voting processes, the issue of fair competition between the parties and the transparency of electoral fraud;
- Settling issues if the outcome of votes held outside the courts are disputed.

#### **2.4.1 External voting: the problem of representation**

The reasons for outside voting refer to the concept of universal suffrage as a democratic law. The basic principle is that any person has the right to engage in any direct choice of elected state bodies, because the statute or constitution ensures the formal/judicial equality of all people (Prosser, Krimmer & Kofler, 2004).

This statement is based on one of the normative criteria: civil rights are political rights, one of which is the freedom to vote. This opinion is just a personal right for universal suffrage. However, there are also two practical components: (a) public voting contributes to the formation of state institutions and (b) democratic involvement contributes to the credibility of elected institutions (ACE, 2017).

Thus, even though special conditions, such as sickness, injury, and so on, make it impossible for the individual to vote, it is desirable to ensure the right to vote. Another special case is called indefinite and likely forced residency overseas.

Residence in the government, or also in the constituency, was one of the classic requirements of universal suffrage in the constitution and electoral laws of the country, as well as international human rights declarations. For instance, citizenship is one of the requirements which may restrict the operation of political rights, as laid down in the American Convention

on Human Rights (Article 23, 2). But the citizenship criterion has appeared meaningless in the latest discussion on external elections (Nohlen, 2005).

In cases of long-term residence overseas, a complicated dilemma occurs. Should these nationals living outside a country retain their right to control the makeup of political bodies whose decisions only apply to people who reside within the state? It may be argued that only certain people who face the repercussions of their voting choices should be eligible to vote, from the standpoint of the principle of democratic representation.

In countries that have a large number of people living abroad, that problem is especially relevant (e.g., El Salvador, Mexico or Russia).<sup>4</sup> In this context, the final outcome of the referendum would presumably be decided by foreign votes, or even vital. Since national elections have a political impact solely on national people, the presence of external voters by the domestic population may be considered unconstitutional. Cook Islands, where more people live outside than within the world, provide a classic example of such an event. Before 1981, all Cook Islanders were eligible to engage in national elections in the state territory irrespective of their citizenship. The outcome of the 1978 elections was also decided by the people residing abroad within this legal system, when a decisive majority of New Zealand electors had fled from Albert Henry's Cook Island Party.<sup>5</sup> In an appeal to the judiciary that it was illegal, the court disqualified these ballots. In addition, the legislature revised the electoral legislation so as to reserve only one single electorate for people overseas from then on. Since then, there has been minimal influence by residents around the board and the unified district in 2004 has been abolished.<sup>6</sup>

In states with greater territorial scale, the same problems can occur, particularly if there is a substantial gap between the trends of support among external voters and that between domestic

voters. In these situations, if people from abroad had a right to vote, they would become a strong force in domestic politics. Political interests benefiting from this will possibly consider external voting valid, while the victims may take the opposite view (Dundas, 2002). In this case, with the incorporation of foreign votes, the authority of the electoral system can be questioned. In the Yugoslav wars of the 1990s, Croatia was like that. During this time, President Franjo Tudjman's government took advantage of Croats' nationalistic impulses abroad. Of the 127 'remote seats' in the assembly, the government parties passed an election law. As expected, the Tudjman's Hrvatska Demokratska Zajednica won all those 12 seats during the 1995 election (Croatia Democratic Union, HDZ).<sup>7</sup> The institutional structure of external voting contributed to the majority in the incumbent government and strong complaints from both the lawyers and the public were lodged. The new 1999 election law, which the government and the opposition developed jointly, disappeared in a fixed number of extraterritorial seats. Instead, the new assignment procedure depended on the ratio of the number of external seats to the total number of valid domestic votes. This institutional reform of external seats has contributed to increase the legitimacy of elections in Croatia.<sup>8</sup>

A comprehensive and thorough study of the political consequences of external voting is particularly required in an extremely turbulent environment. The concern is whether the implementation of foreign vote would improve or weaken the integrity of an electoral institution by being used as a weapon of special political interests. In any case, the structural mode of the external vote – should it be relevant, in order to represent the particular circumstances – needs to be established with the participation of major players in the democratic process. There is no solution to 'one size fits all'.<sup>9</sup>

#### **2.4.2 External voting: the challenge of electoral organization**

Apart from the formal and legal issues mentioned above, it is a severe issue for the electoral body to recognize foreign votes. Elections outside the boundaries of a country typically entail logistical challenges, higher personal and financial burdens, and more logistic activity per elector than elections in the country. Given these logistical challenges, a key challenge is how the concept of compulsory, fair and secret voting can be enforced, democratic equity is maintained and electoral law is not broken (ACE, 2017).

Countries with external votes shall be satisfied that their citizens cast outside Canada's free and secure votes cannot be guaranteed in the same way as those held inside their own countries. In international host nations, electoral authorities cannot carry out their duties autonomously. They would cooperate with the host country's agencies and probably the executive branches of the host country (typically the foreign ministry and ministry of the interior). How can registration be organized from abroad? How is it possible to avoid double registration and substitution of vote based on multiple documents? How about the civil freedom of people in the host country who live illegally (ACE, 2017)?

Ensuring the free influence of party interests through electoral processes can be a concern for countries facing difficulties in organizing valid elections at home, especially where a large number of voters live not only outside but even clustered in a single country. There is no successful regulation of the institutional bodies of the country of origin in the election campaign of external electors. The prospect of intervention by political actors not subject to national law aggravates the risk of violating the fair playing field of electoral party elections (ACE, 2017).

#### **2.4.3 External voting and electoral dispute resolution**

The practicalities of the settlement of elections which include related operational issues to those contained in the functional aspects of the administration of external elections. Documents can

not be readily available if violations are suspected. In conducting hearings and calling witnesses there can be physical issues. As a result, the quality and execution of judicial rulings can be more contentious.

#### **2.4.4 Summary of the structural problems**

The degree of fairness, openness and democratic justice in external voting is important to the entire electoral process, especially if the outcomes in foreign countries are very different from the results in domestic voting. Things of electoral justice, such as openness of electoral registration, fair electoral competition, legal behaviour, and control structures for maintaining all these, are central to the details on the decision-making process when considering measures to create or sustain external voting. If international nationals demand the right to vote, refusing it will lead to a lack of credibility. However, it is equally important to note that an external electoral mechanism that is considered to be prejudicial or chaotic in the interests of specific political interests will lead to election events losing credibility to the national public.

#### **2.4.5 The Philippines Case Study: the first experience of external voting and Challenges<sup>10</sup>**

In Philippine history for the first time, foreign Filipinos were able to vote for the President, the Vice President, members of the Senate, and the House of Representatives' Party List Members at the 2004 national elections. There was a short period of voting registration, which ranged from 1 August to 30 September 2003. The Commission on Elections provided a standard application form (COMELEC). Two types of registration were present. If applicants were not registered as electorate, applicants had to apply for registration anywhere in the Philippines, whereas registered electors could already apply for registration as voters abroad in the Philippines (OAVs).

According to OAV law, registrants went with their Philippine passport and other identity proven papers to various places abroad. Their biometric details has been collected live: digitally taken pictures, thumbprints and signatures. From the information given, COMELEC produced for each diplomatic post a National Register of Absentee Voters, the Approved List of Absentee Voter of Overseas and a Document of identity for the claimant.

Field registration has also been carried out outside of diplomatic missions, as not all Philippines are based abroad in the areas of mission. The registrars in the electoral offices throughout the numerous municipalities and cities in the archipelago were registered throughout the Philippines. Seafarers have submitted COMELEC demands. Filipinos had to have an individually registered place of residence at an embassy or consulate with consular expertise in countries where there are no Philippine diplomatic missions.

All request forms were forwarded to the Manila Committee for Overseas Absentee Voting (COAV), and the Local Election Registration Boards (ERBs) from the numerous cities and municipalities throughout the Philippines, following initial checking by diplomatic posts, for verification at the address provided by applicants. Registration / qualification requests were either accepted by the ERB on the grounds that, before leaving for abroad, the applicants were indeed living at or denied the submission. The type was then returned to COAV, where there is the central office of COMELEC, in Manila.

Implementation of the OAV law was an accomplishment in several respects, but the conduct of the vote and implementation of the OAV law were not without difficulties, which is often the case when new laws are first introduced.

In addition to consular duties and special preparation required, the tasks delegated to members of the Foreign Service Corps under OAV legislation are. Registration itself came too quickly and the registration time was too short to allow the tasks to prepare themselves completely for the new task. So they spent less time on their respective posts in the election process.

The ERBs did not have enough time to be aware of the election procedure abroad. This culminated in their decisions about applications being submitted late or not at all in certain cases. This could explain why the COAV registered fewer registrations than the DFA-OAVS number. The explanation for this can be explained.

The complicated OAV registration submission process has been due to misspelling and inaccurate details or improper data in the voter documents and IDs. The several things to be filled in were complained by most registrants. Consequently, there was no record in the COAV that the applications involved had been refused, spanning from the issuance of faulty IDs to the names not on the Certified List of Overseas Absentee Voting Officer.

The statement of intent to return, also known as the 'killer clause,' derailed the registration of refugees, permanent foreign residents and double-citizens. They are unsure whether they are going to return to the Philippines, but within three years of their rejection of their application it is impossible to tell. In comparison, if they did not return to the Philippines by statute and did not vote again in next national elections as OAVs, then they would not be penalized by incarceration.

It took too long to vote. Only the first day of the vote for the land-based OAVs was some positions that began on 12 March 2004, as not all those who had registered decided to vote. It was also considered that the 30-day voting time was long.

The diplomatic posts involved voters schooling in particular. Most OAVs have been away for several years already, including members of the Foreign Service Corps. They had trouble identifying the applicants and some of them were not identified. This prompted voters to vote by "recall name" or to vote for others whose names were well recognized, since few candidates advertised for the various positions because of cost restrictions. Another cause of uncertainty was the election of the party list. Most voters questioned if they should vote for a group or a party list (i.e., migrants or workers).

Low representation in certain positions was due to the fact that the registration of the field was not converted to real votes in the field. Therefore, by way of distance and expenses, the people enrolled in the field did not vote.

The processes for registration, counting and tabulation and the relevant forms have mostly been taken for absentees from the democratic process of other countries. Most of them were tedious, redundant and inefficient by electoral administration bodies.

## **2.5 Normative Evaluation of External Voting**

History has indicated that there are opposing views and contestation in the establishment of an external voting law and system. From the varying view of the democrat and the republicans in the earlier days of external voting, the contention between the National Democratic Congress and the National Patriotic Party in the passage of the ROPAA, Act 2006 to the limitation of exercising the right vote by those in the diaspora as in the Zimbabwe and Mozambique case. This therefore create the need to take a normative evaluation of external voting by discussing the scope of external voting right, how it is conceptualized and made accessible whilst remaining legitimate across different countries. This section is therefore devoted to such a discussion.

### **2.5.1 Nature of Suffrage**

The first example is a more formal one, based on the basic conclusion: (1) Any adult person must have the right to vote, (2) expats are people and thus (3) expatriates must have the right to vote (Baubock, 2007). This is evidently endorsed at first glance by international conventions on human rights. Article 25 of the International Convention on Civil and Political Rights specifies that "Every citizen shall, without unreasonable restriction, have the right and opportunity to vote and to be elect by universal and equal suffrage to genuine, periodic elections." However, Article 2 makes it clear that 'each country party undertakes to ensure that the rights recognised in the present Treaty are upheld and granted to all persons within its

territories, subject to its jurisdiction. Expatriates and even temporary absentees cannot assert equal voting rights pursuant to this International Treaty.

The only international convention that explicitly demands external voting rights is the 1990 United Nations Convention on the Rights of Migration Workers, whose Article 41.1 reads, "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." This right is, however, immediately qualified in the following subparagraph 41.2, according to which "the States concerned shall, as appropriate and in accordance with their legislation, facilitate the exercise of these rights." As of September 2006, this Convention has been ratified by only thirty-four states. It has not been signed by any major immigration country and is not meant to establish widely accepted requirements for non-signatories as well (Nohlen & Grotz, 2000).

An indirect case for external elections dependent on human rights begins with the fact that most states bar noncitizens from all voting rights. In their country of citizenship, if such foreign nationals also have no external voting rights, they will be denied the opportunity to exercise their right to vote. In national elections, non-citizens' voting rights are significantly less common than those of external voters and clearly not required by human rights conventions. Thus, sending countries can have a duty based on human rights to grant such rights to expatriates.

The objection against this argument is that the right to vote only matters when exercised in relation to the particular political authority (Lopez-Guerra, 2007). Individuals have no generic voting rights which are achieved if they are given approval by another country; they only have specific voting rights in the event of their membership. In other words, if a person has been refused voting rights in my home nation, he cannot substitute for this deprivation if he is given voting rights in another country (Lopez-Guerra, 2007).

Otherwise, the statement would mean that immigration countries do not allow immigrants rights to their citizenship so long as they are allowed to vote externally. Therefore, the claim that all people have a right to universal suffrage is not based on outside votes as a principle based on civil rights. But in domestic procedural law it has served successfully (Baubock, 2007). An electoral law that mandated the ordinary residence of Austria for voting in the federal parliamentary and presidential elections was passed by the Austrian Constitutional Court in 1989 (Baubock, 2007). Explicitly in the Austrian federal constitution, residency is required only for regional and municipal elections, but not for federal elections (Baubock, 2007). Under the Federal Constitution Statute, the Bundesvolk, i.e. the "federal people," shall elect the Austrian national parliament and the federal president.

As a "federal people," the Constitutional Court has regularly viewed all Austrian citizens, regardless of their country of residence or abroad. The constitutional Court's sole objection to external voting rights was to mandate all confronted voters to enter their ballots in an electoral district. With regard to solutions to this issue in other Member States the Court noted that citizens living in Austria, on the basis of requirements such as previous dwelling, place of birth and birth of their parents, should also be allocated to the electoral districts roll (Schumpeter, 1974; Baubock, 2007).

### **2.5.2 Scope of Inclusion and Right in External Voting Right**

The rest of the countries giving foreign voting rights clearly offer citizenship rights. However, 29 countries limit qualifications for elections for different purposes such that only those groups of people have the right to vote.<sup>11</sup> To one end, those countries of which only people present on polling day will take part; on the other end those countries in which any voter can cast votes from abroad. There are five measures in between to be eventually expanded.

- 1) The first move is to grant voting rights to temporary absentees. This category occurs in Europe, Hungary and Malta. Citizens can only vote from abroad in these countries if

they have a permanent residency in the country, and Malta also require that they live in the country for not less than 6 months within the 18 months preceding voter registration.<sup>12</sup>

- 2) In the second point, permanent expatriates have to go to their country to cast their ballots on the day of voting. Israel, Greece and Turkey belong to the category; Italy already belonged to this party until the 2006 elections (Nohlen & Grotz, 2000).
- 3) The third problem relates to countries which only allow special occupational groups of people such as members of the army, diplomacy workers or external citizens employed by government to vote at external levels (Waldrauch, 2006). Ghana, India, the Irish Republic, and Zimbabwe are in this category, and so were the United States before 1975 and Canada before 1993. Denmark introduced external voting for state employees who are abroad on official business in 1970 and expanded this group in 1988 to employees of a Danish firm or an international organization, students, and those abroad for health reasons.<sup>13</sup>
- 4) In the fourth level, voting outside the country is carried out on all forms of expatriates, but only in those countries where they are resident. Senegal, for example, restricts foreign votes to countries that have registered a minimum of 500 votes in order to minimize costs.<sup>14</sup> This kind of legal limitation is very unusual. In the event that external voting is only available in embassies and consulates, there are de facto regional access limitations (Waldrauch, 2006, p.375).
- 5) The fifth stage conserves individual residency and nationality credentials. Before living in a country, voting in Norway and at U.S. elections is usually conditional, except in the United States several states offer registration for Us citizens who have never resided in the country unless a citizen's parent lives there (U.S. Department of Defence, 2007).

Additional countries set voting restrictions on the basis of citizenship abroad. After three years overseas, New Zealand people forfeit their right to vote, after five years

Canadians lose their rights to vote, Australians after six years lose that right and with U.K, after 15 years, the voting right is lost. The two conditions are mixed by having a continuous stay of three months from 1949, as do not surpass twenty-five years abroad (except citizenship in one of the existing 46 Council of Europe Member States).<sup>15</sup> The Philippines calls on external electors to issue an affidavit outlining their intent to go home and barring dual nationals or those filing for naturalization abroad. It can also be declared to Canadians eligible to vote that their residency in Canada will be reinstated (Ellis, 2007).

While the measures of this system steadily boost external voting, the system itself is not cumulative. Italy, for instance, will now be listed as the sixth and most inclusive group but has no temporary absentee out-of-country voting choices. This is a twisted side effect of a structure which considers expatriates to be a distinct group with special representation privileges.

The scale of inclusion is also critical for defining general claims about the validity of outside voting. For example, López-Guerra agrees that, "people temporarily outside should maintain their right to vote in their own nations, even if it would be expensive to grant them this right (Lopez-Guerra, 2005, p. 216).

The explanation is that they are subject to the rules of a government chosen following their return. When they are overseas. Even a sufficiently fluid territorial definition of the political culture must then be taken into account. Furthermore, people who are sent outside the country can make an equally strong argument instead of moving there for their own purposes. These expatriates (diplomats or military personnel), not because of their unique contributions, should maintain their political rights, but because they have the right, as foreign mission citizens, to participate in a political process which ultimately determines the scope of their assignments (Baubock, 2007).

Conversely, in respect to the equal strength of appeals of external voting rights, those people who have never existed and are very unlikely to ever return to their country of external citizenship. As most countries do not restrict their citizenship to the first generation born abroad, members of this community will be including those whose parents were even born abroad (Ellis, 2007). The argument that certain citizens should have external voting rights cannot be defended by a reasonable understanding of the stakeholdership. The apparent problem is that it should be agreed that residency status should be retained first and foremost. In answer, it can be proposed that citizenship should not be transferred automatically beyond the first generation born abroad.

However, members of the so-called second generation of settlers also have a plausible stake in the citizenship of their parents and, accordingly, almost every sovereign nation has external jus sanguinis clauses in its citizenship rules. However, the freedom to become a citizen at birth does not require voting rights (Lopez-Guerra, 2005). External citizenship privileges, such as diplomatic immunity and the right in a nation of citizenry to return and to inherit, represent values of a kind somewhat different from those on which the right to engage politically is conferred. The first refers to possible interests that an external citizen of the second generation might trigger during their lifetime, while the latter should presuppose that any of these interests are active (Lopez-Guerra, 2005, p. 216).

The inference is that, the second and next generations of people born outside their parent country of origin can only be accorded the right to vote internationally if they satisfy certain additional requirements, such as certain lengths of pre-residence in the country involved (which will turn them back into emigrants of the first generation), length of residence within the country, or the desire to return to return to their country of origin (Baubock, 2007).

### **2.5.3 Zimbabwean Case Study: Highly Restricted Suffrage and Inclusion<sup>16</sup>**

External postal voting was part of the electoral law introduced in Zimbabwe after 1980, when

Zimbabwe became politically independent. It is limited to electors who are not present in Zimbabwe at government service, such as diplomats, officials and military and police forces. About 3,5 million of the population of Zimbabwe currently reside outside Zimbabwe, mostly as a result of economic and political hardship. This has resulted in increased calls for external voting systems to be applied to those living in the diaspora.

In a recent case a group of Zimbabwean citizens living in the United Kingdom, sought an order compelling the government to make arrangements to allow them to vote externally. The Zimbabwe Supreme Court (Case no. SC 22/05)<sup>17</sup> ruled that the case had no merit. The ruling of 18 March 2005 revealed that full grounds for the decision would later be given.

The candidates who were not public workers but lawfully citizens, contend that they were entitled to vote under the Zimbabwean Constitution, and are racist and therefore illegal, disqualified from voting. They further contended that the exclusion from voting of those living outside Zimbabwe curtailed their rights to freedom of expression to an extent that was not acceptable in a democratic society, and advanced the argument that the Zimbabwean

Government was committed to full participation by its citizens in political and electoral processes and by virtue of being party to the Universal Declaration of Human Rights, the African Charter on Human and Peoples' Rights and the Southern African Development Community (SADC) Principles and Guidelines Governing Democratic Elections.<sup>18</sup> They submitted that there was a gap between registering as an elector and voting. Thus it was unfair to allow certain people to vote externally and exclude others. The electoral law was also discriminatory.

In reply, the Zimbabwean Minister of Justice, Legal Affairs and Parliament, who has been named the first intimate in the case, has refuted the discrimination against Zimbabweans living abroad through lack of external voting arrangements. The electoral law established that electors who had been away from Zimbabwe for 12 months or longer were ineligible. He said that the

SADC Principles and Guidelines represent a policy document that lays out the area route to a potential democratic ideal that must be adopted by SADC countries, but that they are not a legal document binding on member countries. The government recognizing the right of Zimbabwean citizens to freedom of expression, of Assembly and of Association, although the Zimbabwean government agreed that the government did not discriminate against anybody, but Zimbabwe was unable to encourage voters of the diaspora to vote outside Zimbabwe under current political and economic circumstances because of realistic logistics issues. He suggested that most of the countries in which Zimbabweans reside have taken steps and restrictions restricting the entry of government officials to those countries. This, he said, would create an uneven electoral playground in which the ruling party would not have access to the right-wing electorate and the opposition would comfortably obtain access to the polls.

It is clear that in Zimbabwe the provisions for external voting are elaborate but restrictive. There is no doubt that, given the growing number of citizens living outside the country, there is going to be increasing demand for similar arrangements to be extended to citizens who are not abroad on government service. The case referred above also raises the fundamental issue of a rights-based approach to electoral administration and how far governments should be held responsible for realizing citizens' right to vote.

### **2.5.3 Integrity, Legitimacy and Accessibility**

Do external voting mechanisms meet integrity standards for democratic elections? Are there still enough chances, without excessive expense and commitment, for all those who have a right to hold an external vote? These issues raise concerns about the completeness, accessibility and legitimacy of external votes. This segment addresses these two problems briefly.

Integrity problems may be divided into several closely related democratic voting requirements, such as authenticity, confidentiality, security and reliability. The vote should reflect the voters' authentic choice, i.e. it should be cast in a setting in which none of the voters can pressurize or

monitor how they vote. The vote must also be secret, because it can no longer connect to the individual elector once the vote has been cast. Electoral safety standards require registered and entitled voters only to be able to vote and to be able to vote on a single ballot only once. There must also be safeguards that votes after casting cannot be manipulated or destroyed. Finally, a voting system is only reliable if the mechanism to count and aggregate votes always produces the correct results in the absence of attempts at manipulation.

Both these electoral requirements cannot be entirely met by any of the widely used frameworks for external elections. Only in the safe setting of the polling station can these deficits be reduced (Baubock, 2007; Nohlen, & Grotz, 2000). The most important issues with honesty emerge from ballots and online electronic polling. This threats do not impact outward voting but even absentee voting for resident residents. The difference is that outside voters are more likely than domestic voters to use the opportunity to cast their absentee votes. As the former is easily identifiable as a specific segment of the electorate, their voting rights may be contested if suspicions of integrity are present, particularly if such votes have a decisive effect on the results. The external vote in an uncontrolled environment needs general confidence in the abuse of the system by voters, political parties and electoral authorities and in the manipulation of the vote. Such confidence is probably found in consolidated democracies that have a long-standing experience with changes in governments following democratic elections (Braun, & Gratschew, 2017).

Besides cost considerations, the main justification for relaxing standards of integrity is that this will help reach a second normative objective, which is to improve accessibility (Braun, & Gratschew, 2017). The general principle is that voting rights are not just negative freedoms because governments and other citizens do not have the right to interfere with the choice of individuals to exercise their own franchise. These are rights in the stronger sense of rights which suggest that states have a correlative obligation to provide ways to exercise their rights.

For domestic vote this is clear. Governments provide a sufficient number of polling stations to organize a register of electors, print voting ballots and create the opportunities to participate for each electorate.

However, the measurement of costs per additional elector reached which rely on particular steps to increase accessibility for various categories of voters, such as mobile voting teams visiting physically handicapped voters. As described above, voting processes that improve usability and handle costs may also jeopardize credibility. There is a tripartite balance between the normative objectives of integrity and accessibility and the objective of restricting public and private election expenses (ACE, 2017).

External voters undoubtedly are a special community that depends heavily on tailored government initiatives to take part in elections. For expatriates to have votes in their country and to expand current mail, proxy or remote e-voting schemes comparatively little additional expenditure is needed other than that appropriate for the registration procedure (ACE, 2017).

Substantial expenses will however be involved in maintaining a controlled climate in extraterritorial polling stations. If governments assign preference to electoral legitimacy and ensure that foreign citizens should not demand higher government spending per capita than domestic ones, the most possible option of mechanisms (in-country votes and embassy votes) strongly decreases accessibility (Braun, & Gratschew, 2017).

The purpose of usability can also be questioned explicitly within the framework of external voting without invoking the balance between cost and credibility. There are two arguments to this challenge: a bad version would defend the allowability of curtailing the access of foreign electors, while a good version would offer constructive reasons. These claims are reasonably good if they address the prior validity question (Braun, & Gratschew, 2017).

In the face of the poor challenge, we clearly have to prove, in all democratic elections and for all voters, that the objective of usability is distinct from the standard of honesty. Conversely, one might argue that voting rights are just rights in the domestic sense and are more like liberties for external electors with respect to connectivity. Suppose external vote is a democratically acceptable arrangement and government is not obliged, in principle, to introduce it: if it is, then it would also seem to be a weaker obligation or no duty if external voters had enough opportunities to participate.

The strong challenge begins with positive criteria to answer the question of legitimacy as to which external voting rights should be given. One plausible answer to this question is that electoral rights holders should only be those who are reasonably aware and involved in the future of the political system (Ellis, 2017). It is safe to assume that citizens permanently residing in the country generally satisfy these expectations. This assumption may need to be supported by governmental obligations, such as the provision of fundamental civic education for all citizens and the regulation of electoral campaigns to give all citizens an opportunity to give an unbiased opinion. The presumption that all adult people living outside of the country have knowledgeable voting undoubtedly does not exist. Many people could vote irresponsibly if they all vote (ACE, 2017).

Governments could deliberately reduce accessibility in order to achieve a positive selection of well-informed stakeholders among external electorates. If people from expatriates have to travel long distances to vote in an embassy or their country of citizenship, the few who will do this will likely be stakeholders. This can lead to a process of positive self-selection among potential voters, which improves the legitimacy of external elections (Baubock, 2005, p. 713).

However, both arguments are not entirely persuasive. In response to the weak challenge, it is possible to argue that even if governments have the choice of implementing external votes, they are equally free to restrict access to these rights once they choose to grant them. If my original

freedom to withdraw from my offer will not decrease or extinguish your rights after the contract is concluded if I consider to offer you an agreement under which I promise to provide a service (Baubock, 2003). Therefore, it must not be possible to solve the question whether external voting rights must be understood as freedoms or allowances by deciding whether such rights can generally be granted or retained. Instead, we need substantive arguments, such as the strong challenge (Baubock, 2003).

Should accessibility limitation be seen as legitimate as the legitimacy of the outside vote itself is indirectly increased? An empirically confirmed pragmatic objection is that self-selection caused by such voting obstacles can also have a negative influence on democratic justice and stability (Baubock, 2007). External voters uncomfortable with constraints and expenses will likely be richer, more educated or more partisan than other expatriates. Neither of these features prevents them from voting, and each of these selection mechanisms also operates domestically. However, fair election procedures must not be designed to enhance rich and highly educated public opportunities and democracy will be more stable if they provide volatile voters with incentives for participation, which are not strongly committed to any particular party or candidate (Baubock, 2007).

A more principled objection is that the democratic right is always better understood as a right and that doubts as to the legitimacy of including specific groups should not be dealt with indirectly, i.e. by restricting the scope of entitlements rather than deliberately reducing accessibility. If groups that meet a stakeholder criterion for participating in external elections are defined with sufficient precision, a functional balance is not needed to achieve this objective by selecting themselves (Baubock, 2005). Instead of providing restricted access to electoral rights for all foreign citizens, governments ought to restrict them to certain classes of citizens, but provide adequate political participation opportunities for those who have rights.

#### 2.5.4 Mexico Case Study: Safeguarding the Integrity of the Electoral Process<sup>19</sup>

For many years different voices had been calling for a debate on and introduction of a law that gave Mexicans living outside Germany the right to an external vote, but this demand was only fulfilled in 1996 and the first legal and institutional steps were taken to enable it to be realized. That year a constitutional provision which prevented voting from abroad and established a series of requirements for the conference to make the final ruling on this matter was removed as part of a broad package of electoral reforms. It took almost a decade to define the arrangements for outside voting. It was very complex and long decision-making process. Although the electoral authorities and various stakeholders worked hard and hard to advance an informed debate based on sound facts and figures, the agreements necessary to pass a bill were not easy for the political parties represented in the parliament.

The debate on the preservation of the main characteristics of an electoral system was critical when designing an external voting system. In the late 1980's, in Mexico, there was a fundamental reform process to deal with serious public distrust and credibility in elections. Both the characteristics and the conditions of the elections were radically changed by this reform. The legislation gradually incorporated several instruments to ensure the integrity, transparency and equity and accountability of the election process and organization and management. It was agreed during discussions on external voting that these were key characteristics of Mexico's electoral system which would be extremely difficult for reproduction outside the country.

However, in June 2005 the Mexican Congress finally approved an electoral reform to allow Mexicans to vote from abroad, following nearly ten years of controversy and debate. For the first time during the national elections in July 2006, this had been possible. Foreign votes only applied to presidential elections and were only by post.

## 2.6 Conclusion

Historical background gives an insight into the reasons for adopting the external voting system. In spite of the proliferation of democracy and human right, the reasons have not entirely changed. This therefore raises the issues of how best external voting that normatively be evaluated. From this perspective, the study places emphasis on evaluating it from the nature of universal suffrage and the scope of inclusiveness of people in the diaspora. Finally, in all the evaluative point, the integrity, accessibility and legitimacy were also noted to be a crucial key in conducting a successful external voting. However, the need to examine this in the Ghanaian context is discussed extensively in the next section.



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## CHAPTER THREE

### REPRESENTATION OF THE ROPAA

#### 3.1 Introduction

This chapter discusses the findings and issues surrounding the representation of the people's amendment act (ROPAA). The major issues discussed under this chapter include the contestation and debate surrounding the passage of the Representation of People's Amendment Act (ROPAA), the processes on external voting, the role played by the Electoral Management Body (EMB: herein the Electoral Commission of Ghana (EC)), host countries, political parties and independent observers. It also explores the challenges the external voting had faced that hinder the implementation of the ROPAA and how it can be operationalized through the embassies.

The nature of the representation of the people's law, 1992 (which was later amended twice in 1992 and 1994 respectively) did not entirely change when amended in 2006. The part that was affected is the level of inclusiveness in the political election by those in the diaspora. Before amendment, provisions had been made for those on diplomatic mission such as ambassadors/high commissioners, military officers and students studying abroad. Often, these people participate in the election of Ghana through proxy voting. In the most recent amendment however, all citizens of Ghana residing beyond the borders of the country have the right to partake in the elections without having to travel back home to the country. Nonetheless, the eligibility criteria

set out in the constitution to qualify as a voter do not change. Hence, all those in the diaspora have to meet the criteria of a voter per the constitution of Ghana before they can fully partake in the process.

### **3.2 The Origin, Debate, Contestation and Passage of the ROPAA**

The legislation of the representation of people's amendment act in Ghana aim at fostering inclusiveness and improving citizenship amongst all Bonafede Ghanaians. This effort represents the determination of the government to uphold one of the basic human rights of everyone; in other words, the right to be included in a democracy.

The reform of the 'ROPAA' to allow Ghanaians living outside the country to vote in national elections is probably the most contentious policy ever executed in the history of the Fourth Republic of Ghana. This amendment created waves of agitation which resulted in the Parliamentary boycott by the main opposition party, the NDC. The amendment was tabled by the ruling government of the New Patriotic Party (NPP) in Ghana's Parliament in April 2005, and ratified in Feb. 2006. To some extent, the origin of this change can be related to a prior statutory alteration of Ghanaian nationality Chapter 3 of the 1992 Ghanaian Constitution. In 1994, the NDC regime amended Article Eight of the Chapter to guarantee the dual citizenship. The new modification may also be considered to supplement the dual rule of citizenship. In brief, although the NPP government officially adopted ROPAA, its initial purpose is related to the former NDC government.

Such amendment explicitly seeks to reconcile provisions of Article 42 of the Constitution of 1992 which gives the right to vote for all citizens of Ghana with Law 284 (S.8) of the PNDC of 1992 which discriminates against Ghanaian non-Ghanaian sectors. It is worth noting that the PNDC Law was a military decree which defined space for the transition from 1992 to democratic elections. Then all previously passed military decrees were subordinate to the

Constitution following the entry into law of the 1992 Constitution. It was appropriate to repeal or reconcile those laws which did not adhere to the letter and spirit of the 1992 Constitution.

Section Eight of PNDC Law 284 allows for registration and voting for Ghanaian elections only for people serving in the service of a country outside of the country or for the United Nations or some other international body. Consequently this provision omitted a large number of Ghanaians abroad who eligible to be enrolled and elected under Article 42 of the 1992 Constitution. In reality, Article 42 provided the right to register and vote in any public election to all residents of Ghana, 18 years or older (Republic of Ghana, 1992). The challenge was clearly to streamline the laws of this country in order to expand the franchise to Ghanaian nationals abroad to enjoy the same civil and political rights. The supporters of this amendment, including the NPP administration, and the Diaspora Vote Committee (DVC) a stakeholder pressure team, insisted that the amendment to the current legislation, which permitted inclusive citizenship, was compatible with a 1992 constitution. It also established a framework for protecting and promoting the basic rights and freedoms of human beings found in Chapter Five of the constitution. As Prempeh and Asare (2003, p. 3) noted, "Citizenship, not residency rights are both right to vote and right of registration to vote."

The opposition, on the other hand, stressed institutional constraints, geographical isolation and other realistic difficulties (including financial obstacles) (Boateng, 2006). The NDC also suspected, not just because of the rush in which the government first adopted the reform of the Parliament on the eve of the December 2004 elections, which would be retracted after major civilian society and political opposition uproars, that the NPP government planned the use of this legislation to manipulate election schedule in December 2008.

The discussion on this legislation is not just the citizenry status of that group of Ghanaians who have not eligible to enjoy these rights, the contribution of the opposition in particular was a matter of practicality. The key concern was whether a heavily indebted poor country (HIPC)

like Ghana to expand its franchise to Ghanaians abroad is wise (financially and administratively). The question raised was "wouldn't Ghanaians living outside the region, most of whom in a much better economic setting, better use the money to expand their franchises to help poor people in Ghana?" In addition, a claim was made with the residential clause: whether or not Diaspora Ghanaians are eligible to vote at national elections merely because they do not pay national taxes.

The positions mentioned provided the backdrop for larger and more open arguments. The government moved out and adopted the amending bill and put in motion the legislative procedure. National public consultation was organized by the Parliament's Committee on Constitutional, Legal and Parliamentary Affairs (CLPA) to request the views of Ghanaians on the legislation. It offered both for and against interesting opinions. The leadership of the Diaspora Vote Committee was represented, including discussions with the Parliamentary Leadership and the Executive Agencies, and also addressed in media platforms and other public forums.

In the absence of the government to continue with the amending process, the Diaspora Vote Committee had threatened to request Supreme Court interpretation. After stripping roughly 30% of the civilians (who left the country), the party cited a similar act by a group of Zimbabweans living in the UK against Zimbabwe's government, thereby refusing them the right to engage in the elections in 2004. (Ghanaweb News 2006). The management, including the President, continued to give its uncompromising support and contribution to a fruitful conclusion of this amending process (Ghana News Agency, 2006b).

During the process of the amendment passing, the government and its collaborators gained traction, opposition to the reform, street protests and other modes of challenge. A new created party, the Concerned Ghanaians against the Bill and the 'Committee for Joint Action' (CJA) – all the advocacy organizations comprising of all the opposing parties – and at one point the

trade union were opposed to the amendment. The NDC opposition was also opposed. It incorporates civil, constitutional and other formal steps to resolve its challenge.

The NDC also filed a legal action at the High Court by way of its parliamentary deputy minority leader, attempting to bar the Speaker of parliament from authorizing any further parliamentary hearings on the amendment text. Different forms of dissent persisted as the court challenge awaited a verdict. The Opposition orchestrated numerous national street protests against law under the auspices of the CJA and the affected Ghanaians, one in the nation's capital and others in the provincial and district metropolis. In addition to marches, the leaders of CJA and the NDC spoke extensively in television shows expressing their disapproval of the rule. In one example, it has been stated that the NDC has cautioned that if passed, former military commandos would be mobilize to resist the law (Daily Guide Newspaper, 2005). The CJA and other organisations opposing the reform bill were eventually separated from the suspected remarks (Ghana News Agency, 2006c). For the opposition, the court case itself yielded no good outcomes.

With an often aggressive voice, the essence of the demonstration has brought other parties into the dialogue. For eg, religious organisations, the National Union of Ghana Students (NUGS) and the Congress of Trade Unions (TUC) participated, with two latter resolutions issued in favor of opposition groups. The minority party in Parliament demanded the Ghana Peace Religion Conference (GCRP), an umbrella organisation of all the various faiths in Ghana. This company launched a dialogue mechanism to mutually address the disagreements (Ghana News Agency, 2006d).

The NUGS seemed, for its part, to be in dispute with the problem. While the leadership's declaration on behalf of the Ghanaian students allegedly opposed the governmental initiative, further developments indicated that the national student front did not have a strong stance on this subject. There seemed to be a division there (Ghana News Agency, 2006e). On the other

side, the TUC released a loud and explicit warning against the mechanism of modification. The TUC and other organized labor organizations called for a press conference to postpone the amendment to the 'Representation of the Peoples' Statute, in February 2006, urging for more legislative discussion on the Bill to expand and improve the consultative mechanism (Ghana News Agency, 2006f).

The NDC opposition party in the parliament suspended its involvement in the government's operations in parliament in favor of the battle to oppose the legislation and engaged in street demonstrations. For about one week, the NDC boycotted sessions and did not partake in the final resolution to approve the amendment. The President adopted and approved the amendment.

### **3.3 The Dynamics of the Contestation and Struggles of Passage of The ROPAA In Ghana**

The struggles and difficulties around the representation of the People's Amendment Act center on applying basic human rights granted in the Constitution to people belonging to, but denying those rights, a political class. It aimed at improving the civil and political rights of historically discriminated individuals, i.e. Ghanaians living overseas, to give sense of citizenship – indeed, even citizenship in Ghana.

A crucial question about ROPAA is why Ghanaians, including some people who profess to be Democrats, will not expand a franchise that is locally valued by their friends merely because they live somewhere else? It was shocking that Ghanaians were protesting against expanding their rights to their brothers and sisters abroad, especially if the Ghanaians in general seem so proud of the fact that they put such a priority on sons and daughters living abroad that they frequently provide them with death notices and specifics of some part of the world (CDD, 2006). The government which held the authority to grant these privileges, albeit with some degree of pressure and lobbying from the DVC, would tend to be receptive to this change. In

fact, the NPP government attaches some importance and urgency to ROPAL for different reasons. One of these concerns the increased financial contributions to Ghana's economy by money transfers and other small-scale spending.

In reality, Ghana's contributions through money transfers have been a growing source of national income. The World Bank, IMF and Bank of Ghana have projected gross Ghanaians overseas payments to be between US\$500 million and US\$1 billion in 2003. As a result of the budgetary announcements of the government of Ghana, Ghana declared in 2006 that total person transfer amounted to nearly \$ 1.4 billion for 2005 (part of total private inward transactions and a large share of this transfer from Ghanaian migrants). Of the overall, the proportion of standard monthly payments was from 23.5 to 45.4 percent, with a rise of around USD 278 million in the month of October becoming the highest share reported per year (Republic of Ghana, 2006). Interestingly, these details are official transactions reported by banks and non-financial bodies (University of Ghana, 2008). It was asserted that the financial influx, along with direct contributions from those who have accumulated wealth abroad, would improve by making this large community part of the decision making process.

Such an occurrence could give the Ghanaian economy a big boost. There is also a strategic factor for it in addition to the economic benefits. Some analysts are afraid that if this right is given, the NPP party will gain future political votes from this community of people. It is possible, rather than the opposition which tried to pull the mechanism down, that the collective should vote for the party that gave them its entitlements. In fact, anecdotal data shows that most of them are more likely than the NDC, the offshoot of the PNDC, to be sympathetic to the NPP. The bulk of these Ghanaians were fleeing their country abroad under the militant regime of the PNDC governor in the 1980s and the earlier three-month military dictatorship of his in 1979.

They left after serious human rights abuses that happened during these times of self-imposed exile or as refugees. This anticipation of losing a substantial proportion of the vote on the

diaspora also explains why, considering the implementation of the Dual Citizenship Law, the NDC administration (whose architect was a representative of both the military regimes of 1979 and 1981) may have refused to change its legal representations during its term in office in the 1990s.

The rushed response of the NPP Government to the introduction by the Electoral Commission for the general elections of december 2008 (Arthur, 2007) definitely underlines this claim. This is an example. For the December 2008 elections the Electoral Commission didn't launch ROPAA citing insufficient planning in order to be able to vote for the registration of qualifying Ghanaians.

Nonetheless, it proved to be a very difficult method to streamline two incoherent laws and to reply to the letter and the spirit of the Constitution. The rule of representation that guarantees that every person of a given society enjoys this basic right to vote is the foundation for every democracy. It should again be stressed. The lack of this right suggests that there is no democracy, as Prempeh (2004) has noted. The foundation stone of Ghana's democracy is therefore Article 42 of the Constitution. Without it, people would have no effective instrument for keeping government responsible for its stewardship. He also said that any system, whether transparent or protected, attempting to limit the rights of Ghanaians or any group of Ghanaians under Article 42 is legally unallowable and incompatible.

The curiosity of right-thinking democrats is the true reason of the rebellion for the opposition party and the ordinary Ghanaians who challenged the rule. It is unclear if they genuinely opposed the legislation as a result of concern over political, financial and technical difficulties, or whether they actually opposed the idea that rights of citizenship should be expanded or returned to a large proportion of Ghanaian citizenship - rights granted by the 1992 Constitution.

If indeed this is the latter so their contribution to independence would be a transgression. It's not clear whether ROPAA will ever be implemented with the NDC party winning the general elections in December 2008.

Therefore, civil rights concepts have been heavily influenced by the statute. The government's support for this legislation appears, however, to be poor, particularly given the length (13 years) of time needed for passing it. It begs the issue again: why will a government dedicated to universal human rights be so ineffective in carrying out a legislative obligation to give people rights? It not only undermines the quest for inclusivity and contravenes the State directives enshrined in Chapter Six of the 1992 Constitution in the case of Ghana. It also undermines the search for inclusive nationality. In specific, Article 34 of the Chapter challenges the State to uphold fair and equitable access by all people, in compliance with the legislation, to public facilities and services and to promote respect for basic human rights and freedoms and for the dignity of the individual by all Ghanaians. The State

Often relevant are the complexities around civil society participation in the fighting and conflicts. It should be stressed that both intellectual and financial strength was in the capacity of the DVC Party that backed the passage of ROPAA in lobbying the government for its own interests. In the opposite, the members of the disabilities stakeholder party could not set up such a tremendous advocacy group to promote their goals, because of their past marginalisation. Instead, other civil society organisations and "think tanks," including the CDD, had to be there.

The Ghana case study with ROPAA and the 'Persons with Disabilities Statute' are cases of which disadvantaged communities are demanding inclusion, relating to basic human rights values in the center of confrontation and dispute. It also highlights the two main concerns relating to African State behavior and promotion of human rights: first, the commitment and degree to which political leadership differs in terms of upholding and preserving human rights;

secondly, the reactive aspect, as seen in this case study of African policymakers. There are interesting questions about civil rights and citizenship in Africa.

### **3.4 External Voting Process**

The processes involved in organizing an external election takes a turn from the usual processes known to the normal voting mechanism. It covers the process of bringing into force a constitutional instrument to effectuate the functions of the commissions with regard to the external voting, negotiate with the host countries, draw up timelines and budget, conduct registration and set a voting mechanism. The key processes have been discussed below.

#### **3.4.1 Developing a Legal Framework for External Voting**

The first process to organizing an external election is for the electoral commission to constitute a constitutional instrument to bring its functionalities to life. Parliament may make legislation but, once a CI has been formed by the EC, Parliament's legislation shall not be binding upon the EC. The Act 699 Representative of the People (ROPAL) was amended in 2006 by the Law of PNDC confirming the right "a citizen of Ghana who is residing outside the Republic to be registered as an elector when he or she meets the registration requirements laid out in law."

Regarding the modalities for the implementation of the Act, the law states that "The Electoral Commission shall, by Constitutional Instrument, make regulations to prescribe the modalities for the implementation of this Act." The duties, powers and composition of a legislative system for elections remained unchanged in line with Act 51 of the 1992 Constitution, after the creation of the Election Commission in Ghana in 1992. It is required that:

"The Electoral Commission shall, by constitutional instrument (CI), make regulations for the effective performance of its functions under the Constitution or any other law". It is pertinent that the mandate of the EC to engage in electoral legal reform processes is subject to Article 11(7) of the 1992 Constitution, which states that:

“Any Order, Rule or Regulation made by a person or authority under a power conferred by this Constitution or any other law shall be laid before Parliament, be published in the Gazette on the day it is laid before Parliament; and come into force at the expiration of twenty-one days after being so laid unless Parliament, before the expiration of the twenty-one days, annuls the Order, Rule or Regulation by the votes of not less than two thirds of all the members of Parliament”.

Once the modalities have been fully set by the electoral management body, various committees including the special budget committee, diplomatic representatives and the implementation committee need to be formed by the EC to see to the successful implementation of the external voting system.

### **3.4.2 Negotiation with Host Country**

The next crucial step is to negotiate with host countries on the external voting. A variety of parameters, including bilateral, geographical or foreign affairs backgrounds, can be used to pick host countries for external voting. The required capital, the presence of supporting infrastructures and expected costs can also be other criteria. The projected number of potential voters they host may be the most significant. Countries who have welcomed external voters vary from migrants from a hostile country or ethnic dispute to diaspora hosting and migrant staff. It varies in scale, community, language and infrastructure, as well as its level of growth, form of government, relationships with others, norms on human rights and level of democracy.

In general, foreign relations and agreements are beyond the electoral committees' obligations and beyond their power. Consequently, the Ghana Electoral Commission will definitely hire diplomatic missions to negotiate external voting arrangements with host countries. A typical example used by ACE (2017) is Estonia and Indonesia. In Estonia and Indonesia, the respective

ministries of foreign affairs not only negotiate host country agreements but are responsible for the coordination of external voting programmes.

After the negotiations had successfully gone through and the roles of the host countries had been spelt out, the registration and the voting mechanism needed to be carried out and set out respectively.

### 3.4.3 Registration Processes

The responses of from the interview indicated that, the registration process as carried out in Ghana would not be entirely different from those in the diaspora. Prior to the registration process, the eligibility of the potential voter will be first established. One of the Electoral Commission Officer noted that;

*“There are certain requirements from applicants who want to file an application for registration as a voter. These requirements are embodied in Section 7 of the Representation of the People’s Law, 1992 (PNDCL 284). Under the Law, any citizen who is not yet a registered voter may apply for registration, provided he or she has Citizenship, a Foreigner who has resided has changed their status to become Ghanaian citizens, has attained the age of 18 years and above, and is of sound mind.” – EC*

#### **Official 2**

When a citizen is required to cast an external vote, a second condition is normally met: he or she must be enrolled in the electoral registry to prove that he or she is allowed to vote. Voters will also be expected to register with all other voters. Requirements for registration, thus incorporating a second step into the entitlement process, restrict the number of individuals entitled to cast external votes.

This ensures that ordinary citizens will have a right to vote in individual political districts and at provincial levels of government in reference to those areas, normally their home. In the case

where the electoral commission finds it difficult or impossible to allocate an external elector to a particular locality in the home country, such a voter will be limited to only presidential voting.

In the registration process, the external elector will complete a form, which will be processed by the Electoral Commission of Ghana which is responsible for keeping the electoral register.

A documentary proof such as citizenship, birth certificate, residence, etc. of the elector would be requested to be provided as a proof of eligibility. In the case of considering whether such eligibility criterion would be used or required, the electoral commission is noted to give an attention to the feasibility of this requirement in order to ease the registration process and increase turnout. 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, it was noted that, the need to rely on a declaration signed by the applicant and a declaration signed by a witness will be required.

The EC officials interviewed stated that, in the form of the standard domestic electoral registration process the Ghana Electoral Commission will impose the same level of authorized registration criteria as an external voter. Since a particular external voter registration form is required, it should be assured that the form seeks appropriate evidence to prove that the applicant has the right to register.

Keeping a register of external electors up to date is a difficult task. Electoral registration authorities are unlikely able to review the status of registered external electors who are resident abroad, however, the Embassies and Consulates of Ghana who have citizens registered with its facet are expected help in reviewing external voters' status. Finally, registration would not be made compulsory, hence, electors will be expected to apply for registration before they can be passed through the process to be registered as a voter.

### 3.4.4 Voting Mechanism

The voting system used by Ghana is the First Past the Post and the Two-Round system. The First Past the Post method is the easiest way of using candidate-centered elections with the plurality / majority system. By picking one and only one of them, the electors will be presented with the names and votes of the nominees. It is only the one who receives the most votes who win; technically he or she may be won by two votes if only one single vote was won by any other candidate. But since no one in the first round wins an absolute majority, the voting system moves to a two-round system. This also occurs with the two top candidates (majority race) or more than two candidates (majority-plurality).

Often, some Ghanaians in the diaspora especially, those on diplomatic mission such as military men, ambassadors and high commissioners and students on government scholarship among some others are permitted by law to partake in national election and referenda through proxy voting. The C.I 15 noted that a voter who is resident outside Ghana may apply to the Commission not later than fourteen days before the polling day for the issue to him of a proxy paper for the appointment of a proxy.

However, it was revealed that, with the amendment of the people representative act, the voting mechanism will change. The interview conducted revealed that a vote will be cast through ballot at the embassies and Consulates across host countries. In counties where the embassies and the high commissions are easily accessible at the lowest of cost and the number of citizens residing there are obviously little, electors who are duly registered will vote at the embassies and Consulates. Nonetheless one of the respondents noted that:

*“Where the external voters are highly concentrated at one place, the numbers are high and they are greatly dispersed, a place to vote will be provided for the citizens with the support of the host countries.” – EC official 1*

This is due to the fact that electors will have to vote in person and restricted access to embassies and consulates may hinder these electors to participate in the democratic decisions of their country of origin. According to Braun (2007), the creation of special polling centers in countries with greater numbers of foreign citizens is one way to resolve limited access to embassies. He cited many cases, including the 2004 Dominican and the 2005 Iraqi elections. In both of these, expatriates residing in major U.S. cities were supplied with special polling stations. Aside from higher costs for voting in embassies, building polling stations abroad also requires compliance with the authorities inside the country of residence. Apart from regional focus, these opportunities can also be limited in some countries.

In view of this, external election timelines would be drawn by the electoral management ahead of negotiations with host countries. Once the negotiations become successful, timelines and activities will be communicated to the Ghanaian citizens residing in the host country. A thorough education and campaign through various channels will be made on the registration process and the eligibility criteria, the voting system and mechanism and any other relevant information will also be communicated.

*“Since it is voting in person and many may not be familiar with their electoral district, they will be limited to presidential election to make ease the electoral process and to carry it out within the stipulated budget.” – Special Budget Committee Member*

### **3.5 Role of Key Actors in External Voting**

The goal could according to ACE (2018) be to include stakeholders in the debate to strengthen existing frameworks, future preparation and experience in external voting by countries performing outside-country voting. This helps to speak about the underlying theory of presentation and how requirements such as participation and performance can be operationalized and balanced. It also includes an overview of the democratic and administrative

architecture concerns of lawmakers, electoral bodies, political parties and other members discussing reform.

### **3.5.1 Role of Electoral Management Body of Ghana** One of

the respondents of the study noted that:

*“Since 1992, the duties, powers and composition of the Electoral Commission in Ghana have remained unaltered, in compliance with Act 51 of the 1992 Constitution, in establishing a legislative system for the conduct of elections. This mandate will not change in the when designing and conducting an external election”* – **Electoral**

#### **Commission Official 2**

The duties of the electoral commission, in compliance with the 1992 constitution of Ghana, shall include, compilation and modification by the statute of the registry of voters; delimitation of electoral boundaries for national and local elections; conducting and tracking all public elections and referenda; informing voters about the democratic process and its purpose; introducing electoral register extension programs; and executing all other duties required by statute. In spite of the unchanging mandate of the electoral management body of Ghana as stated by law, it is noted that, the planning and execution of external voting requires the compliance of host nation’s statutes. In the view of ‘Electoral Commission officer 5’ who was interviewed;

*“The role played by the EC will be in unification with the appropriate authorities of the host nations where Ghanaian citizens are residents there. This is to make sure that, the laws of the host nation are not broken as far as foreign elections and territorial activities are concerned.”* – **Electoral Official 5**

### 3.5.2 Role of Host Nation

Here we must discuss the political implications of organizing elections in another world. It addresses the roles and obligations of the nations hosting foreign nationals voting during their country-of-origin elections, including protection, fraud prevention, registration in elections, electoral campaigning, voter knowledge and education, and expense of external voting services to the host country. Finally, it provides recommendations regarding administrative arrangements concerned with those and other problems.

In external voting programmes, the functions and duties of the host countries varied considerably depending on the situation, the services available and the extent of international participation and support. Many countries with external election events on their soils have minimal tasks and duties, and they are limited to the roles of facilitators rather than the planners or organizers. Although host countries may help with foreign voting, their position should not jeopardize the confidentiality of the vote or of the program's neutrality or openness. It is important that external voting programs be carried out without any control or intervention from political or government. The officials of EC interviewed noted that;

*“The host countries’ responsibility in organizing external voting is not entirely different from what the Electoral Commission of Ghana does. However, as the context of each and every external voting programme is different and may require different procedures and processes to be in place, they should be considered as broad guidelines only.” –*

**EC Official 1**

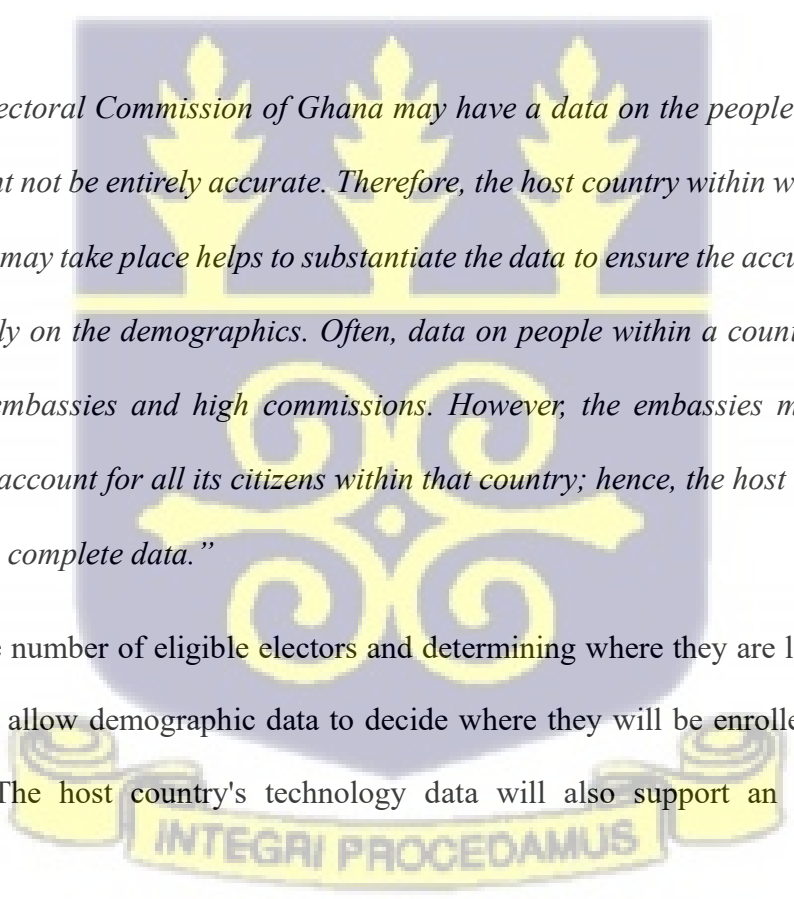
*“The role of the host nation is a complementary role to that of the EC of Ghana. Thus, it augments the effort of the Electoral management body to ensure a successful organization of the voting for those in the diaspora.” – EC Official 7*

There are some of the areas where host countries are noted by respondents and practitioners to play a role in external voting programmes and it includes; providing and protecting data,

including demographic information, locating suitable office space, ensuring freedom of movement (of election staff, monitors and observers, party officials and voters), providing customs clearances for election materials, including ballot papers, providing permits, providing travel documents, including visas, waiving any taxes or other fees, assisting in the recruitment of staff, providing adequate security, and facilitating the deployment of election observers, monitors, and political party agents.

a) ***Providing data***

A primary role of host countries in external voting programmes has been to provide a range of data and information to facilitate the process. A Ministry of foreign Affairs official interviewed noted that;



*“The Electoral Commission of Ghana may have a data on the people in the diaspora but might not be entirely accurate. Therefore, the host country within which an external election may take place helps to substantiate the data to ensure the accuracy of the data especially on the demographics. Often, data on people within a country are gathered by the embassies and high commissions. However, the embassies might be able to entirely account for all its citizens within that country; hence, the host country helps to gather a complete data.”*

Determining the number of eligible electors and determining where they are living within the host nation will allow demographic data to decide where they will be enrolled and voted on (Lacy, 2007). The host country's technology data will also support an external voting programme.

b) ***Data protection***

The data obtained within the context of an external voting network must be secured. Protection of records should be a vital aspect of the overall programme, provided that inadequate data

protection can directly impact attendance. All information on citizens registered to vote in the host country as a product of the External Voting Program must be solely used for the External Voting Program.

*“Since the data for registering Ghanaian and on external voting will be provided in part or wholly by the host country, it is important that, after the exercise, the data is protected as the data protection act may demand. Hence, an agreement needs to be entered with the host country to prevent exploitation of the data.” – ROPAA*

### **Implementation Committee Member 2**

Consistently, IDEA International noted that, the data protection obligations should extend permanently beyond the expiry of any memoranda of understanding (MOUs) or agreements signed by the host country.

#### **c) Identifying locations**

In addition to data supply, data collected revealed that host countries aid to provide public and similar premises, such as registration and polling centres, or identify appropriate facilities for electoral or temporary bureaucracy operations, as necessary. However, it has been seen from previous cases that while host countries can assist with the provision of information, the country holding the election should settle on sites for registration and polling (Lacy, 2007). The data revealed that, host country facilitate identification of location rather than choosing due to the incidence of cost of traveling to the voting centres. This was confirmed in the assertion below;

*“The number and location of registration and polling sites can influence turnout and possibly affect election results, particularly where travel costs are high and are borne by voters themselves.” – Special Budget Committee Member*

d) *Freedom of movement and Customs Clearance*

*“There are immigration laws that electoral officials of the electoral commission have to be subjected. So, as part of EC’s negotiation with the host country, the liberty should be given to the officials to go by their activities and the needed clearance as well for their equipment.” – Ministry of Foreign Affairs Official*

The interview indicates that host countries are required to contribute to the mobility of electoral staff, surveillance and monitors, political party leaders and prospective voters by promoting and encouraging these. The provision of multiple entry visa or travel licenses may provide such assistance in due course. In addition, all air, ground or sea clearances or permits required for the movement of individuals or materials in accordance with the external voting scheme are applicable to host countries. Host countries may also subsidize travel expenses or otherwise make it easy for people to cast a ballot.

As echoed by the respondents, Host countries should make sure that any facilities and content that might be required for the conduction of the foreign voting scheme will have all the necessary customs clearances and permits.

*“We expect host country to waive taxes or other fees and to recognize the other key players in the voting exercise as legitimate. Nonetheless, it is contingent on the host country to offer the electoral commission and the other key players that privilege.” –*

**EC official 2**

However, it is worth noting, this role among several others is not a mandatory role of the host country. With regard to the Iraqi foreign vote project, Canada did not accept any special legal status within Canada to the coordinating agency, International Organization for Migration (IOM), and therefore found the IOM not suitable for visa exemptions, immunity or duty-free

care (IDEA International, 2007). In particular, Canada clearly holds that the usual customs clearance procedures must be followed by imported election material.

**e) *Legality of residency and documentation***

In some cases registered citizens can be in the host country without identification or who live illegally. However, ACE (2017) noted that the lawfulness of one's residence does not affect one's right to political involvement: illegal or undocumented host countries nationals have legitimate citizenship in their country of birth, as well as their rights and obligations, including right to vote. However, the government of Ghana must cooperate with the host country in order to hold the election so that voting does not lead to expulsion or any other adverse effects on individuals. The Ministry of Foreign Affairs respondents supported this view by noting that;

*“Such risks could significantly affect levels of participation, and could affect turnout unequally across sectors of a population, thus threatening the legitimacy of the election in the eyes of some citizens.”*

**f) *Helping in Establishing Points of contact and Staffing***

According to Lacy (2007), the host country duties include the assignment of contact points in specific government departments to assist the issuance of visas or permits, customs clearance, protection, and other matters. Logistics and financial problems will emerge from the recruiting and preparation of election-related personnel in host countries, including election registration and voting. Although host countries may provide useful assistance by data supporting the identification and position of potential workers, recruiting, recruiting and training should normally be performed under the direct oversight of the country of origin or its appointed employees.

Using the Afghanistan external election as a case study, the 2004 IOM hires and trains foreign and national core workers, population mobilizers, registration and polling station staff, with the

mandate of the Afghan Joint Electoral Management Body (JEMB). Thousands of workers were hired, most of them Afghan nationals (95%), and the jobs policies preserved the gender and ethnic diversity of the workforce at all levels. In less than a week teaching was carried out. A number of host countries were especially involved in personnel problems in the 2005 Iraq elections. Turkey stated for example that clean judicial records should be kept by all local workers recruited. Germany stated that all workers should be subject to local labor regulations.

g) *Security*

It is crucially necessary to ensure the legitimacy of the election process itself and the safety and physical safety of the candidates, personnel and materials. In all ways, external voting faces particular obstacles. Cooperation between the host countries and the country of origin must be built in an environment free from abuse, persecution and coercion.

*“One of the key responsibilities of the host country is to provide the Electoral commission and its workers with security. Also, to ensure that all violence and strongarming are free of the election.”* – **Foreign Affairs Ministry Official**

Although there are no specific guidelines or best practices in this highly sensible area, protection during the electoral event is generally most convenient and cost efficient for the host country (ACE, 2017; Lacey, 2007). The use of foreign peacekeepers (in suitable situations) or private security firms may also be another choice. The topic of whether independence and protection can be assured to the same degree as in the country of origin in international voting programs when it comes to security provisions.

A majority of respondents noted that, in terms of registration and polling centers, and transportation of election content, arrangements with hosted states typically provide clear security requirements. Agreements in external voting organisations should define funding for local, national police and security forces and create mechanisms for cooperation between the

host state and election administrators. If appropriate training for the security forces is essential, election officials and administrators may prescribe training and follow the process. h)

***Preventing fraud***

The view that it opens additional pathways to bribery and can compromise the whole democratic mechanism is one of the most significant barrier to external voting. Some analysts have suggested that the implementation of foreign votes in electoral fraud-related countries will weaken popular interest in the process and endanger democracy-building.

Although it is usually the country conducting elections that is responsible for maintaining the legitimacy of the electoral process and avoiding fraud, host countries may assist by ensuring certain protections against fraud. The host country may be able to provide invaluable assistance in this regard, particularly in terms of sharing data.

***i) Information dissemination: campaigning, voter information and civic education.***

The performance of every external election initiative, including promotional materials and electoral and civic education, needs government cooperation, funding and facilitation. For instance, Sudan's cooperation and effort was important in the 1991 Eritrean referendum to educate electors in camps of refugees. The host authorities will contribute to awareness campaigns of all forms by making accessible for the political process for local and national electronic and print media, including television and radio.

External voting often presents concerns as to whether external voters in the country of origin would be granted less, equivalent or superior access to information than their counterparts. The international press and other sources of information became available to Bosnian refugees in 1996 while voters in Bosnia and Herzegovina had access to more restricted media. External voting administrators should consider whether access discrepancies to information can affect the overall credibility of the electoral process or outcomes. This is especially relevant when a

group of voters are restricted by their access to government-controlled or otherwise unequal media.

The political process is important for the campaign season, and prospective electors will access crucial input about their choices. If campaigning is permissible, host jurisdictions may promote campaigning by permitting candidates under the requirements of the existing standards of ethics. While most countries encourage voting and civic education, a country is also forbidden from campaigning on its soil by foreign citizens. In the elections to Iraq in January 2005, neither Turkey nor Canada permitted international political parties to hold elections on their own territories.

The dissemination of general political data is extremely sensitive, independent of the campaign. For the 1997 elections in Liberia, host governments were not only ineligible to vote outside their countries but also prevented the distribution within their territories of information relating to elections. The 1997 MoU between Croatia and the Refugee Election Steering Group (RESG), an ad-hoc group which coordinates Bosnia's external vote, prohibited Bosnian political groups from engaging in Croatian campaigning and restricted the types of voter or civic educational materials accessible to Croatian and Serbian language brochures 'in order not to provoke other nationalities' (Gallagher & Schowengerdt 1998, p. 202).

### **3.5.3 Role of Political Parties**

The position of political parties in an election is to appoint candidates for public office, rule and define public policy. While the primary goal of a political party is to be self-interest (winning votes), self-interest plays a role in testing and balancing the legitimacy of elections. Political parties tend to guarantee that other parties cannot abuse or exploit the mechanism in order to influence the electoral results and therefore their self-interested diligence plays an important role in ensuring that the process stays truthful. Political parties in many ways will defend democratic legitimacy. These include:

**1. Monitor the process to make sure there are no deviations from the rules or special treatment**

The voting process is closely controlled by political parties and candidates. Most political parties will track the whole process from the setting up of the election management body to political parties and the registering of candidates, registration of electors, the advertisement for the other candidates, the voting, the count and the results declared.

Political parties and candidates may act as a kind of early warning system for issues of legitimacy, if they feel that fair access to the process is not permitted or if they find it to be handled differently than other parties. The grievances to the electoral administration or policy agency could help electoral officials detect issues and help to increase transparency in the process by making their complaints public.

**2. Monitor voter registration, polling and the count for irregularities**

Partisan and nominee supervisors should ensure that the political parties' rights are secured by an election process followed. Monitors may detect theft, bigotry or other violations from legislation by means of their observations. Monitors are normally allowed to act if they do not agree the rules or laws are observed. Monitors may also certify election records, including count tallies, with their signatures. In political party monitors this is debated in depth.

**3. Publicize integrity problems**

Full disclosure by electoral management parties and tracking results will add to the process' legitimacy and accountability. Critical and high-profile reviews will stimulate national debate and promote public electoral change and disciplinary action. Good reviews will help ease public fears about questions of credibility and create interest in the system.

#### **4. Promote electoral integrity, fairness and accurateness**

In most voting systems, political parties represent one of the major checks and balances. They should uphold electoral independence and the freedom and dignity of the mechanism. This can be done in words as well as in deeds. Positive and clean efforts will help raise popular enthusiasm for the democratic process. Their engagement should be carried out across the system, collaborating with electoral administrators and observing electoral procedures and laws.

#### **3.5.4 Independent International Observers**

Individual observers are an essential tool for honesty. There are citizen associations or collective organizations of the public interest, who track the mechanism independently. Since they are involved in smooth campaigns, they should not be partisan in the election results and should, in theory, have more impartial news. Seeing a vote means carefully observing the process, collecting information about how it works and making an informed evaluation of the way it works. It has identified many tasks for observers including the legitimization of the elections, trust building, political prospects, electoral process reform and conflict prevention.

In countries that attract foreign funding from donors in elections and experiencing a political transformation, International Elections Control is now being common. Many separate organisations and the multinational donor group carry out international observations. Many international findings are objective and lead to freedom of choice, justice and competition.

International monitors detect issues and put them up to the election administration or government bodies, ensure that corrective action on problems are taken by the tracking and conditioning of donor funds, support reputation and integrity by daily media reports, and seek to increase voter trust through their advocacy. They also lead to make it easier for domestic monitors to operate on challenging cases by asking tough questions or raising the questions that

domestic monitors fear to ask, providing threats and security issues to domestic monitors in elections and serve as a dissuasion for those who wish to disrupt the mechanism by their active participation.

### **3.6 Implementation Challenges of ROPAA act 699;**

Whereas the foreign vote was crucial to democracy, it was not commonly used, in part because it was seen as stretched financial, human and security tools, but also as a result of the difficulty of dealing with the governments of host countries and because of the limitations and requirements that are necessary for portraying the common amending act to be operationalized.

#### **3.6.1 Financial Challenges**

The right to vote externally relies on giving absentees some chances to vote. The costs of external votes can be significant for voters and governments, and innovations have been developed that mitigate these costs since the public's amendment act was adopted. It was revealed by the EC Special Budget Committee member that;

*“The major constraint in implementing the ROPAA (Act 699) and making it operational is due to the financial constraints faced by the Electoral Commission of Ghana. We have critically assessed the processes we wish to use and to be frank, it is very expensive to include people in the diaspora in the voting system apart from what we have practiced over the years.”*

*“We know the incidence of cost when it comes to organizing an out-of-country voting is important. If majority of the cost is shifted to the voter, it will discourage him/her and if its greatly shifted to the government too, it will be quite difficult to finance the whole activities in addition to the one done in-country” – EC official 1*

The most central and most costly part of the election procedure is registering for electors. Often more than 50% of the total expense of conducting elections is the duty of registering and creating voting lists. These costs are influenced by different factors, including the form of voting mechanism, the administrative capability of the electoral administration authority, and the national social, economic and demographic characteristics. In addition to cost concerns, the mechanisms used also have a major effect on the legitimacy and usability of external votes.

### 3.6.2 Negotiation Challenges

The implementation of external voting schemes poses a major obstacle for agreements with host governments. Decisions on external voting, and the host countries' positions and obligations, frequently go rapidly against tight schedules. In comparison, the international community has no clarification on who has an external voting mission to advocate, promote and measure. There are no clear laws, procedures or guidelines to direct host governments on the topic of election operations in their nations, much less host governments' obligations. The chosen processes draw on a mixture of precedents, partnerships and unique opportunities.

*“The EC’s several attempt to implement the ROPAA and make it operational was also met by the challenge of having representatives to negotiate with the appropriate authorities in the countries where most Ghanaians are residents. This stalled the process and its implementation has to be severally postponed although there is a rising concern from citizens in the diaspora for being excluded in the decision-making process that could possibly affect them.” – EC official 5*

Other countries have declined to permit international elections to take place in their borders. For instance, Switzerland did not permit aliens to vote on its land until 1989 at international elections. Government hosting Liberian refugees (1997, 2005 and Cambodian refugees (1993) also collapsed, pushing refugees to repatriate to exert their right to political representation and endangering the legitimacy and viability of the democratic process.

### 3.6.3 External Voting Terms and Restrictions by Host Countries

Most countries have set laws in place that restrict citizens of other countries from voting on its soil and to some extent, certain types of voting system or mechanism can be used within its country. Canada is among the countries which allow international votes only through postal or in-country consulates and embassies within its borders. In the case of Iraq, however, Canada made a rare exception to the January 2005 election of Iraq's National Assembly to allow foreign votes in other areas of the region, considering its shallow periods, the lack of diplomatic missionary activities, Canada's general support for democratization in Iraq and (probably) significant international pressure. However, other laws in the world remained in full force, such as prohibition of lobbying.

For Bosnia and Herzegovina (1996), some European countries have refused to permit the vote outside their countries and registration and vote have been carried out only through postal services in those countries. Some of them have a statute that forbids such practices from allowing international political activity on their territory, while others have rejected such demands for reasons ranging from defense to politics. If a host nation opposes international voting practices on its territory, fear of violation of its sovereignty is always the primary concern. Today, several theorists reconsider the idea of sovereignty as one that is not hierarchical but rather based on a philosophical basis that can reach beyond fixed physical borders and rights for a public.

### 3.7 Operationalizing External Voting Through High Commissions and Embassies

Many host countries like Canada (as previously reiterated) and some European countries are permitting international voting only in embassies or consulates or postal services. In consulates or embassies of a republic, external voting also does not necessitate agreements with host countries. Similarly, the need for arrangements with the host countries is less urgent when

external elections are to be carried out by postal registration and polling. Agreements may however also be necessary to guarantee vital support for host countries.

The biggest benefit is that embassies and consulates will have a managed atmosphere to reduce problems with voting confidentiality and identity checking. This is due to the expected mechanisms to be laid by the Electoral Commission of Ghana should the ROPAA be operationalized. However, the general disadvantage of embassy voting is limited accessibility and greater travel costs for expatriates and temporary absentees who do not live near an embassy or consulate.

*“We are still in deliberation on how best we can operationalize the representative of the people’s act and possibly through the Ghana Missions in the possible host countries by evaluating the out-of-country-voting of other countries” – EC official 1*

*“The Electoral Commission can mimic the process of other countries and learn from the case studies presented in the IDEA Handbook. I have not completely read what the handbook contains but I have a fair idea it can offer guidance on how to operationalize the representation of the people’s act through the Ghanaian missions” – Foreign*

**Affairs Respondent**

In view of this assertions the out-country-voting (OCV) of Bulgaria and Egypt will be reviewed as case study in relation to how the representative of the people act was operationalized through their foreign missions.

### **3.7.1 Bulgarian Out-Country Voting Case Study**

Bulgaria, with OCV, has 20 years of history and not a really easy one. The 2011 Electoral Code of Mileov (2012) mentioned a set of easy and potentially helpful laws.

- i. OCV must be organized for all forms of elections, except for the city's ones, by the EMB – the Local Election Council (CEC). The mechanism is usually administered by the CEC, assisted by the Foreign Ministry (MFA), and embassies or consulates.
- ii. Polling stations are created in cities with embassies or consulates, subject to a declaration of intent by at least 20 electors. 100 such statements are required for other cities. Precise deadlines including the obligation to obtain approval from hosting bodies for OCV not later than 70 days before election day are laid down here and in the Electoral Code.
- iii. The OCV laws are compelled on their website by the Foreign Ministry and Embassies..
- iv. Polling station committees (PSCs) are named in consultation with political organizations by the CEC, following a request from MFA (Party quotas and consultations are usual for the appointment of all election commissions in-country, too). At least one MFA delegate must be present in every OCV PSC. If they have to travel, the Government shall pay their expenses.
- v. The CEC is mandated to "train" OCV PSCs, but only the regular CEC "Methodical Guidelines" are explicitly issued to them (kind of polling and counting manual).
- vi. vi. Ballots shall be sent via air during downloading and locally printing of type. Embassy heads officially compile voters' list based on declarations of intent by voters but anyone who is on the list on E-day, on signing an e-state declaration except double voting with a valid passport or other identification ID (proof of citizenship), will be added to the list and cast a ballot.
- vii. The OCV PSCs email to the CEC scanned results sheets within 24 hours of the closing of the elections. The first diplomatic mail would send hard copies of all papers.
- viii. At the state level, votes from outside the country are added to the number of the Parties. OCV appeals are submitted directly by the CEC.

### 3.7.2 Case Study of Egypt Out-of-Country Voting

For Egypt, it is unclear, but it is estimated, that between 6 and ten million Egyptian citizens are residing abroad. At the 2011 vote, just one month prior to the referendum was agreed to encourage voting abroad.

After this decision, Wolf (2012) said the Egyptians living outside Egypt should either register online or through consular services. This mechanism has been developed. This process has been available for 10 days with nearly 355,000 registered people during this time. Once enrolled, voters can access their ballot on the internet, print and cast their votes. The ballot had to be enclosed and the envelope sent to the consulate, along with a signed letter with the voting personal data and a national ID number. The vote had to be sent to the consulate. Voters may also visit a consulate and conclude the above protocol in person. Alternatively, the votes obtained were processed directly by the Consulates. They labelled the corresponding elector on the voters list for the purpose of identifying and avoiding attempts at multiple ballots.

The procedure has been fairly successful, but even EMB officials would agree that they were restricted by the somewhat limited time period to be approved. It is also important to remember that the protocol has not been applied in a vacuum and may depend on some primary building blocks already in place before the international vote decision was taken:

It should be remembered that a national electoral registry was already available based on the civil registration system in Egypt. Only those who are eligible could apply to vote from outside Germany. For other aspects of the democratic framework, good ICT infrastructure and trained staff were in position to run it. Voting from abroad was 'only' an additional module of an already existing system.

### 3.7.3 Representation of the People's Amendment Act Implementation Process

Consistent to the OCV carried out by the Bulgaria and Egypt, the majority of the respondents recommended the following pattern to be followed in implementing the ROPAA in Ghana through the Ghanaian Missions:

1. The Electoral Commission should establish the legal framework for operationalizing the ROPAA through Constitutional Instrument, by making regulations to prescribe the modalities for the implementation of this Act.
2. After an approval is obtained from the parliament, the Special Budget Committee and Implementation Committee should be constituted to work towards operationalizing the ROPAA. Also, the EMB should establish contact with the Foreign Affairs Ministry to take charge of the functionalities beyond the mandate of the Electoral Commission.
3. The modalities should be communicated to the relevant Ghanaian Missions, the political parties and the other key players in the registration process and voting system and mechanisms.
4. Officers should train people to handle registrations and other voting related activities at the Ghanaian Mission in the host countries. They are to handle manual registration for those who ordinarily prefer that to the online registration.
5. Online registration portal should be “add on” to Ghanaian embassies/consulates’ websites for citizens within the countries the Ghanaian missions are stationed can willingly register as voters. Also, a manual registration centres should be set out at the Ghanaian mission to carry out registrations for those who wish to undertake their registration there.
6. Rules and processes of voting should be broadcast through the various missions and their sites for electors to be abreast with the process. In person voting should be allowed at the embassies and mail voting should be allowed for remote voters who would have

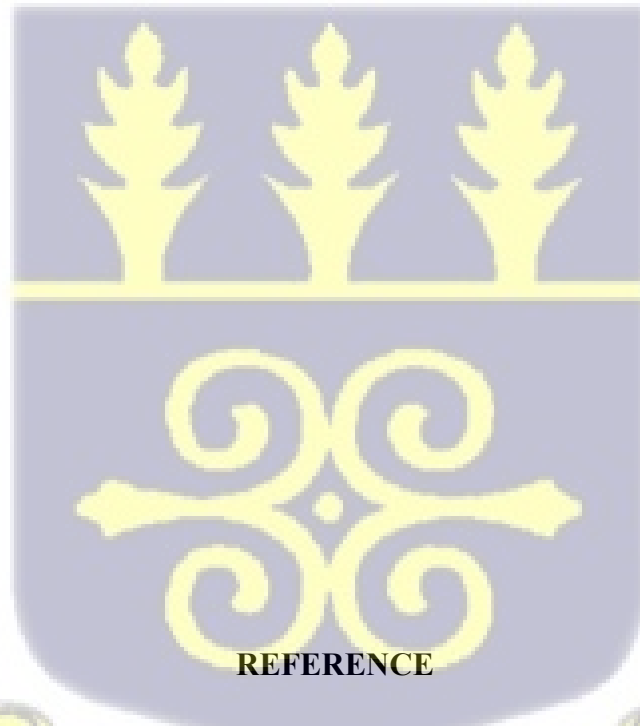
to incur much cost to get to the embassies. For those who choose to go by the postal system can get access to the ballot on the EC's website, download it, cast their vote and send it by post. A form of identification should be accompanied to authenticate the vote and to curtail duplication.

7. The votes cast should be counted before being sent to the returning officer at the Electoral Commissions for the final action to be taken.

The OVC will help to resolve the negotiation process and financial constraints which seem to be the two topmost challenges in operationalizing the representation of the people's act in Ghana by adopting the out of country voting at the consulates/embassies and/or the voting by post. Also, the difficulty of meeting the varying terms and restrictions of the host countries will be minimized or avoided by the Electoral Commission whilst upholding the right of its citizens beyond its borders.

### 3.8 Conclusion

The ROPAA which grants all Ghanaians living in the diaspora the right to exercise the right to vote and be included in the political decision of their home country has successfully been enacted despite all the contestation and opposing debates. Nonetheless, the modalities of engagement and implementation had been stalled as result of financial constraints, negotiation challenges and restrictions. It is, therefore, noted that, several countries have chalked some level of success by using their consulates/embassies to implement their external voting acts. It is, therefore, found prudent and cheap for Ghana to undertake its external voting at the various Ghanaian missions whilst adopting a dual voting system; thus, adopting the 'in-person' and 'mail voting' system which are less costly and do not require a mandatory negotiation with host countries. Hence, these recommended processes were found to be a potent means of implementing the ROPAA.



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## CHAPTER FOUR

### SUMMARY OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

#### 4.1 Introduction

This chapter addresses the summary of the main findings of the study, makes conclusions and gives recommendation on the basis of the research findings, limitation and the need for further research.

The objectives of the study were to review the various processes used by other countries that have successfully implemented external voting to identify and collate the best practice processes that are generic and fundamental. In order to assist policy makers and the appropriate authorities constituted to ensure the implementation process to give particular attention to these fundamental roles. Secondly the study aimed to explore how the roles played by key actors and host nations varies from one country to the other; to enlighten the key stakeholders in external voting on their roles to make an informed decision.

#### The studies research questions asked:

- What are the key processes involved in conducting overseas/external voting?
- What role do key actors play in the electoral process of external voting?
- What are the main challenges encountered by the Electoral Commission of Ghana in the implementation of the ROPAA Act 699?
- How can external voting be conducted through Ghanaian Embassies and High Commissions in foreign countries?

#### The research objectives were to:

- Identify the key processes involved in facilitating External Voting for Citizens living outside the country.
- Explore the role of host nations and key actors involved in the processes associated with overseas voting.

- Assess the main challenges States face in implementing the ROPAA act 699.
- Identify how external voting can be successfully operationalized through Ghanaian Embassies and High Commission overseas.

This study relied on literature from Pallister (2020) who sought to establish reasons developed countries strive to implement foreign voting policies. A report from Baubock (2007) on stakeholder citizenry and transnational electoral engagement and works from Peltoniemi (2018) and Hutcheson and Arrighi, (2015) all focusing on external voting, form the remainder or the core literature relied upon in this study; Using the lenses of the Transnational Migration Theory and the Theory of the Nature of the Suffrage in order to supplement the underlying aim of the study.

#### **4.2 Summary**

The study objectives sought to identify the key processes involved in facilitating external Voting for Citizens living outside the country, explore the role of host nations and key actors involved in the processes associated with overseas voting, assess the main challenges States face in implementing the ROPAA (Act 699) and identify how external voting can be successfully operationalized through Ghanaian Embassies and High Commission overseas. After a careful review of empirical data and interview with key stakeholders, the following findings were arrived at:

##### **4.2.1 External Voting Key Process**

The study revealed certain key processes necessary to successfully conduct an out-of-country voting exercise, essentially the embodiment of the representation of the people's amendment act, 2006 (Act 699). These processes include the development of the legal framework clearly stating the modalities affiliated with the process and of the voting mechanisms in the form of a constitutional instrument. Secondly, engaging in negotiations with host countries of Ghana

missions abroad on facilitating the process, the roles and the level of participation in organizing and executing the voting process, as well as providing logistical support. Finally registering citizens who are residents in the host countries creating a special voters register and providing voter cards as a part of setting up the voting systems; training of staff and making available provisions for all other institutional arrangements to ensure a successful out-of-country process.

#### **4.2.2 Role of Key Actors**

The study analysis revealed that in order to properly roll out ROPAA involves several actors who play diverse roles in ensuring a successful implementation of the representation of the people's amendment act, 2006 (Act 699); however, the key actors are Electoral Management Body (which is in the Ghanaian context referred to as the Electoral Commission of Ghana), host countries of Ghana's missions abroad, the political parties and the international independent observers.

The electoral management body in the ultimate oversea or out-of-country voting in Ghana and are responsible for the compilation and modification by the statute of the registry of voters; delimitation of electoral boundaries for national and local elections; conducting and tracking all public elections and referenda; informing voters about the democratic process and its purpose; introducing electoral register extension programs; and executing all other duties required by the statute. With regard to the host nations, their key role includes provision of data for electoral registration, security, prevention of fraud, enabling election campaigning, logistical support for synthesizing voter information and education, identifying locations for voting, documentation, and helping in establishing points of contact and staffing. The role of the political parties and the independent international observers are to ensure that the integrity and fairness of the election are maintained and ensure they participate within the laid out rules of engagement.

#### **4.2.3 Implementation Challenges of the Representation of the People's Amendment Act**

The study's findings further demonstrated the challenges that financial constraints have had on the implementation of the ROPAA since its enactment. Costs related to engaging host nations for negotiation form restrictions and even in instances where the meetings have occurred the costs required to meet the terms of the host countries became problematic. The cost of compiling voters' register and organizing an out-of-country voting is noted to be expensive. The cost of logistics including establishing of offices and staffing, training for staff, compiling voters register for citizens in the diaspora, training of officers, technology and other administrative costs. The cost and terms of negotiating with host nations was noted to be another challenge due to inconsistent or lack of policies, practices or standards to guide host governments on the question of foreign electoral activities being conducted on their soil, much less the responsibilities of host governments. More so, some of the host countries have restrictions or embargos placed on out-of-country voting and the terms set out for foreign countries to organize voting for their citizens are considered outrageous or beyond the modalities of the voting mechanisms and systems of the Ghanaian electoral management body.

#### **4.2.4 Operationalization of the ROPAA through the Embassies/Consulates**

In operationalizing the Representation of the People's Amendment Act (ROPAA) through the Ghanaian Missions the study has shown the relevance of the Electoral Commission establishing the legal framework for operationalizing the ROPAA through another Constitutional Instrument; thus, making regulations to prescribe the modalities for the implementation of this Act. A Special Budget Committee and Implementation Committee should be constituted to work towards operationalizing the external voting while delegating international relations issues such as negotiations with hosts nations to the Foreign Affairs Ministry.

Also, these modalities, registration process and voting system as well as mechanisms should be communicated to the Ghanaian Missions, the political parties and the other key players who

will play a part in the implementation process. The electoral officers to undertake the registration for those in the diaspora and oversee the voting process should be trained on how to handle registrations and conduct elections. Registration portals and stands should be opened at the various Ghanaian missions and its websites for citizens who are willing to register as voters in the diaspora.

Rules and processes of voting should be broadcast through the various missions and their sites for electors to be abreast with the process. In person voting should be allowed at the embassies and mail voting should be allowed for remote voters. The votes cast should be counted before being sent to the returning officer at the Electoral Commission for the final action to be taken.

#### 4.3 Conclusion

The expansion of democracy and universal suffrage had led several countries to institute the out-of-country vote otherwise known as the external or oversea voting. Ghana has been no exception in enacting the representation of the people's amendment act (Act 699) in 2006 which spells out the out-of-country voting and the inclusion of Ghanaians outside their home country in the political decision through voting. It's undoubtedly challenging for countries that had enacted the same law to implement it without flaws and constraints. Similar challenges had plagued the representation of the people's amendment act, leading to an inability to operationalize it. Therefore, it has become necessary for countries such as Ghana to learn from the flaws and constraints of other countries which have successfully implemented a similar system and have improved upon it as well as overcoming the negotiation and financial constraints. It is apparent based on this study's findings that the operationalization and implementation of external voting in Ghana has genuinely been hampered by genuine significant and formidable obstacles and certainly cannot be attributed to negligence on the part of the authorities empowered by Ghana's constitution to achieve ROPAA.

The findings outlined earlier have clearly shown that the major hurdles in the implementation of ROPAA are centered around appropriate constitutional provisions particularly around the use of Ghana missions abroad and the roles to be played by embassy staff, it is important to outline the modalities of the process and voting mechanisms through a constitutional instrument, as well as establishing the needed committees, negotiating with host countries on the process, financial and logistical constraints have also derailed ROPAA's implementation; including roles and the level of limitation in organizing and executing the voting process, registering citizens who are residents in the host countries and setting up the voting systems.

It is true that giving every citizen, including those in the diaspora, the right vote is expensive; nonetheless, the right of the citizens cannot be disrespected; in view of this, the government and the electoral management body should look at the best means to accumulate resources to ensure a successful implementation of the ROPAA. Also, there is a need for broad consultation to ensure a complete operationalization of the ROPAA 2006, (Act 699). The influence and the impact of citizens in the diaspora cannot be underrated since their inclusion in the political affairs of their home country can positively or negatively affect the economic, political and social growth of the country. Ultimately, the burden falls on the electoral commission to provide solutions in order to proceed with implementation of ROPAA and despite listed challenges the research has demonstrated the opportunity Ghana has to utilize its embassy abroad to facilitate the voting process for Ghanaians abroad, it would appear the best solution for the electoral commission is to share its responsibilities with other government institutions.

#### 4.4 Recommendations

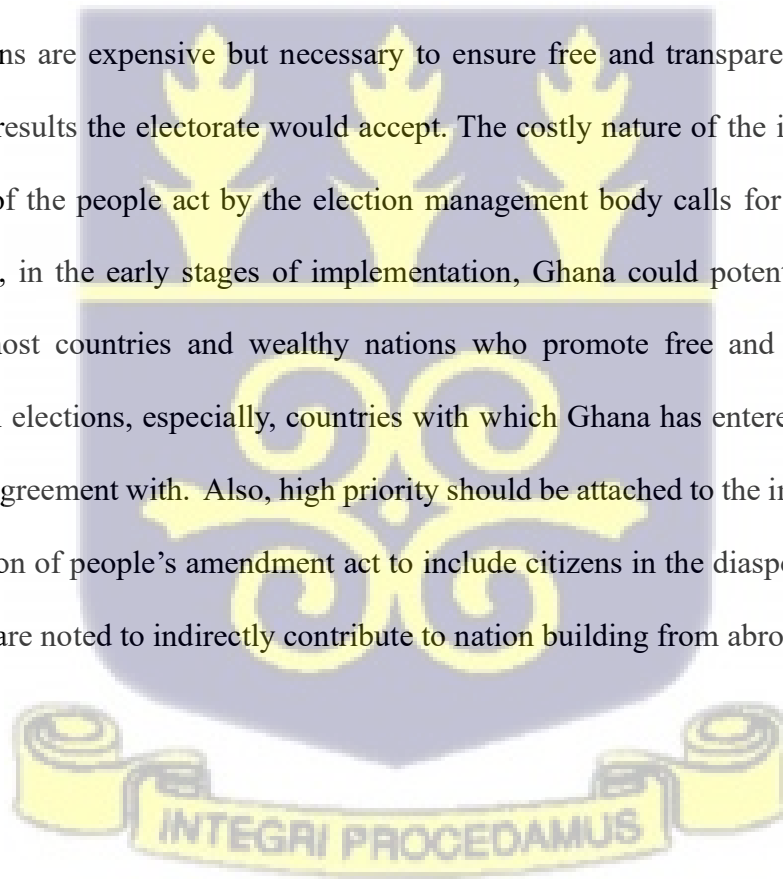
Several findings were arrived at in this study; therefore, in relation to the findings of the study, the following recommendations were made:

Since the amendment of the representation of the people's act, three successive national elections have been held in Ghana without a significant effort to operationalize ROPAA due to financial constraints logistical deficiencies and host country related challenges. Therefore, it is recommended that the Electoral Commission of Ghana should explore options available to them in terms of actual procedures (proxy voting, postal voting, voting in diplomatic missions and electronic voting) together with timeline, budgeting, logistics including many country cases studies to illustrate the different options for the introduction of external voting outside Ghana. Only Ghana's Electoral Commission has the legal rights to create voting processes in the country and it would be prudent of them to form a special committee involving all three arms of government, civil society organization and international organizations specifically to facilitate the operationalization of ROPAA. Such a committee would be able to evaluate the best options available with regard to key actors, modalities, financial support and diplomatic efforts, all of which would be necessary for Ghana to be able to provide voting rights for citizens abroad. Transparency is a key factor in democratic elections, and a committee consisting of wide-ranging stake holders will go a long way to ensure that all the processes expected to be applied are known and understood by the entire electorate even for those voting from within the country. The committee would be instrumental in the crafting, development and application of a constitutional instrument.

Institute for Democracy and Electoral Assistance (IDEA) publication on Voting from Abroad. International Organization for Migration and International Foundation for Election Systems have significant experience advising on and conducting voting from abroad; hence, the Electoral Commission of Ghana can consult or outsource the operationalization process to any of these institutions.

The attempt to adopt the voting system through the diplomatic missions of Ghana may lead to overcrowding and chaotic polling stations especially in Europe and in the US since there will be the likelihood of more Ghanaian citizens residing in these places. Such cases receive a lot of negative media attention, but certainly have little, if any, impact on election results. Nonetheless, it is important to note that other countries with even larger populations than Ghana have successfully carried out elections through foreign missions. Therefore, I would recommend that the electoral Management body needs to keep the processes as simple as possible ensuring that the process is more manageable, especially for embassies with large numbers of registered voters. Again, it is most important that all stakeholders reach mutual consensus on this.

Holding elections are expensive but necessary to ensure free and transparent processes that would provide results the electorate would accept. The costly nature of the implementing the representation of the people act by the election management body calls for the international support at least, in the early stages of implementation, Ghana could potentially rely on the support from host countries and wealthy nations who promote free and fair elections to implement such elections, especially, countries with which Ghana has entered into a bilateral or multilateral agreement with. Also, high priority should be attached to the implementation of the representation of people's amendment act to include citizens in the diaspora since citizens in the diaspora are noted to indirectly contribute to nation building from abroad.





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**APPENDIX**

**INTERVIEW GUIDE ON THE REPRESENTATION OF THE PEOPLE**

**AMENDMENT ACT, 2006**

In the partial completion of a Master's degree in International Affairs and Diplomacy, I am conducting a research on “Implementation of Representation of People’s Amendment Act (ROPAA) Through Ghana's Diplomatic Missions: Prospects and Challenges.”

The purpose of this interview is to identify the key processes involved in facilitating External Voting for Citizens living outside the country, explore the role of host nations and key actors involved in the processes associated with overseas voting, assess the main challenges States face in implementing the ROPAA act 699 and to identify how ROPAA can be successfully operationalized through Ghanaian Embassies and High Commission overseas. I would therefore like to ask you to provide me with the following details, so that I can carry out this work. All personal information will be treated very confidential.

**Thank You.**

**Saami Kojo Hassan**

**QUESTIONS ON THE IMPLEMENTATION OF THE REPRESENTATION OF  
PEOPLE AMENDMENT ACT (ROPAA) IN GHANA THROUGH ITS EMBASSIES  
AND CONSULATES FOR FUTURE ELECTIONS**

1. Kindly explain the nature of Ghana’s Representation of the People’s Amendment Act (ROPAA), 2006.
2. Does the scope of inclusion of Ghanaian citizens in the diaspora change with the Representation of the People’s Amendment Act 2006?

3. If the scope of inclusion changes to involve other Ghanaian citizens in the diaspora, can you explain the extent of inclusion of the people in the diaspora?
4. Briefly explain the laid down mechanisms of the Electoral Commission to conduct the prospective external voting.
5. Are there any possible limitations that associated to the scope of implementation of the ROPAA?
6. What type of voting system would be used in the case of the external voting if measures are being put in place?
7. Who are the key players in the external electoral process? Possibly highlight some of the key duties of these key actors.
8. Since the introduction of the ROPAA, Act 2006, implementation and operationalization had been stalled. Briefly explain the challenges encountered by the Electoral Commission that impede the successful implementation of the Representation of the People's Amendment Act, 2006.
9. How best can external voting be made operational through the various Ghana Missions in countries where Ghanaian citizens are resident?
10. Kindly recommend ways the ROPAA, 2006 implementation challenges can be overcome to be operationalized.



## ENDNOTE

- <sup>1</sup> Statement by Ekow Quansah on the Implementation of the Representation of the People's Amendment Act for election 2020 in parliament.
- <sup>2</sup> Supra, note 1
- <sup>3</sup> Hannah Arendt, *The Origins of Totalitarianism* 294 (2d ed. Harcourt Brace 1996)
- <sup>4</sup> The International IDEA Handbook. In A. Ellis, C. Navarro, I. Morales, M. Gratschew, & N. Braun (Eds.), *The International IDEA Handbook* (pp. 1–3). Trydells tryckeri AB.
- <sup>5</sup> Elections New Zealand, <[http://www.elections.org.nz/voting/how\\_vote\\_overseas.html](http://www.elections.org.nz/voting/how_vote_overseas.html)>
- <sup>6</sup> Legal Framework Challenges. <https://aceproject.org/ace-en/topics/va/legalframework/threestructural-problems-of-external-voting>
- <sup>7</sup> This is often termed as the Zagred Crisis.
- <sup>8</sup> Bešker, Inoslav. "We have Croatia: Small-toothed cattle or those who don't have money, let them learn!" Morning paper (in Croatian). Retrieved 2 October 2020.
- <sup>9</sup> Supra, Note 5
- <sup>10</sup> See Philippines Committee on Overseas Absentee Voting. (2007). Case study: Philippines. In *Voting from Abroad: IDEA International Handbook*. Sweden: Trydells tryckeri AB (pp, 193-199)
- <sup>11</sup> Nadja Braun & Maria Gratschew, *Introduction to The International IDEA Handbook on External Voting* (Int'l Inst. for Democracy and Electoral Assistance (IDEA) & Instituto Federal Electoral (IFE) eds., forthcoming 2007). Electoral Knowledge Network, Comparative Data, <http://ace.at.org/epic-en/vo/Epic-viewVO04>
- <sup>12</sup> An E-mail from Dr. Eugene Buttigieg to Rainer Baubock in 2006 indicated that, such rules lead to a disagreement when certain political parties wanted to withdraw a popular Green Party member from the register of electors because he had allegedly spent so much time in Brussels as Secretary General of the Green Party
- <sup>13</sup> *see also* ACE: Electoral Knowledge Network, Building and Sharing Knowledge on Elections, <http://ace.at.org/electoral-advice>
- <sup>14</sup> Dieter Nohlen & Florian Grotz. (2000) *External Voting: Legal Framework and Overview of Electoral Legislation*, 33 *Boletín Mexicano de Derecho Comparado* 1115. available at <http://www.juridicas.unam.mx/publica/librev/rev/boletin/cont/99/art/art4.pdf>.
- <sup>15</sup> The International IDEA Handbook Series Chapter 2 case studies
- <sup>16</sup> Tungwarara, O. (2007). Zimbabwe case study: highly restrictive provisions. In A. Ellis, C. Navarro, I. Morales, M. Gratschew, & N. Braun (Eds.), *Voting from Abroad: The International IDEA Handbook* (pp. 56–58). Trydells tryckeri AB.
- <sup>17</sup> Case No.SC.22/05. 1<sup>st</sup> respondent's opposing affidavit. February 8, 2005., p.5

- <sup>18</sup> SADC. (1992). SADC Principles and Guidelines Governing. *EISA, July*, 1–8. See also, <https://www.ohchr.org/EN/Issues/RuleOfLaw/CompilationDemocracy/Pages/SADCPrinciples.aspx>
- <sup>19</sup> Navarro, C., & Carrillo, M. (2007). Mexico case study: safeguarding the integrity of the electoral process. In A. Ellis, C. Navarro, I. Morales, M. Gratschew, & N. Braun (Eds.), *Voting from Abroad: The International IDEA Handbook* (pp. 189–192). Trydells tryckeri AB.

