

## **ST5 Sociologie du vote à distance**

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### **Why Not? What Policy Reversals Reveal about Diaspora Voting**

#### ***I. Introduction***

Around the world, allowing citizens to vote while living outside a nation's borders has become the rule rather than the exception within a remarkably short amount of time. In 1980, only 17 countries extended voting to their diasporas; now the majority of countries grant these rights (Allen et al., 2014; Collyer, 2013).<sup>1</sup> Explanations of this rapid rise in external voting<sup>2</sup> primarily focus on potential benefits to states, whether through strengthening ties to emigrants or signalling democratic inclusivity to domestic and international audiences (See Turcu & Urbatsch 2014 for a comprehensive review). With the emphasis on explaining why states adopt external voting, the question of why *not* has received comparatively little attention. Dozens of states continue to exclude their citizens abroad despite ongoing political debates and pressure from citizens inside and outside of the country. Some of these countries have passed legislation mandating diaspora voting but never implemented the practice; in others, proposals to extend votes to emigrants failed to pass legislative bodies, lost in court rulings, or were not supported in popular referendums. In order to develop a more complete theory of diaspora voting—not only policy adoption but also implementation and participation—we need to include cases of expatriate exclusion within our comparative analysis. How do political parties and state agencies engage with the diaspora constituency under conditions of both formal inclusion *and* exclusion? When do states decide the costs outweigh the benefits? How does this calculus change over time?

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<sup>1</sup>I adapt the definition of external voting rights developed by Lafleur (2013) to define emigrant voting as the ability for an individual, regardless of their profession, to participate in the elections of the country where they hold citizenship but either temporarily or permanently do not live, by casting a vote from outside of the national territory.

<sup>2</sup>There are two major categorizations of the phenomenon, with one focusing on the spatial distinction of voting outside of the state (e.g. OCV, XTV, Overseas Voting, Distance Voting), while the other emphasizes the particular group of people that have been extended voting rights (e.g. Emigrant, Expatriate, or Diaspora Voting). I believe the latter category is more conceptually clear as it emphasizes the diaspora as a particular group of political actors, rather than the location of political participation. However, external voting appears to be the dominant term most employed by the existing scholarship. Thus, I use external voting, expatriate voting, emigrant voting, and diaspora voting interchangeably.

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A handful of countries have implemented, and then abolished, diaspora voting. These cases of policy reversals, while holding the country constant, can provide causal leverage in determining the conditions under which countries include or exclude diasporas.<sup>3</sup> With the exception of Brand's case study of Morocco (2006, 2010), I know of no other extended case studies exploring policy reversals. Moreover, most of the cross-national analyses of diaspora voting employ hazard models, which drop countries from the dataset once the policy is adopted. Thus, critical cases of within-case variation disappear by design, further limiting the ability to draw insights from the context of explicit decisions to exclude diasporas.

To better identify the mechanisms shaping the decision to extend voting rights to emigrants, I trace the turbulent history of diaspora voting provision in South Africa. Over the past 20 years South Africa has changed its policy three times, organizing expansive international voting for the 1994 election, revoking the practice in 1998, then re-instating international voting for all South African citizens in 2009. At first glance, South Africa is a counter-intuitive case of policy reversal. Theoretically, the country appears to be a "most likely" case of diaspora voting given its celebrated transition to democracy and its desire to regain international standing following decades as a pariah state. In fact, the South African case is so surprising that most surveys of external voting have it wrong. Even the IDEA database has South Africa as having adopted diaspora voting since 1994 (Ellis et al., 2007), with numerous studies reproducing this inaccurate account in tables and analyses (Brand, 2010; Rhodes & Harutyunyan, 2010; Lafleur, 2013).

The details from South African case reveal an intensely partisan and often emotional debate over the inclusion of South Africans abroad. Given the central importance of the right to vote within South Africa's liberation movement led by the African National Congress (ANC), the decision in 1998 by the ANC-led government to disenfranchise an estimated 1-2 million South Africans abroad had particularly potent implications. "The ANC's position was that really, should we utilize resources to have people from the diaspora vote, those that had left?" (ANC Official, Interview 15 April 2015). Indeed, the key actors, including the ANC, opposition parties, and the Independent Electoral Commission (IEC), were primarily concerned with the costs of diaspora voting in terms of resources as well as votes. The cost/benefit analysis was framed by uncertainty over numbers of potential voters as well as dominant perceptions of the emigrant population vis-a-vis the ruling party. The South Africa story is a case of a ruling party being forced to allow voting abroad, rather than a decision to "harness the diaspora," adopt similar policies to other countries, or signal democratic inclusion to an international audience. Changing perceptions of the diaspora influenced both the debates over the policy and its implementation, as well as subsequent mobilization.

This paper was written in the middle of conducting fieldwork in South Africa; the findings are thus extremely preliminary and should be treated as such. Over the past six months I've conducted

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<sup>3</sup>Following Varadarajan (2010, p. 9), I define diasporas as "emigrant communities," a group of citizens from a nation-state that is different from where they live. I thus use diasporas, emigrants, and expatriates interchangeably throughout the paper. While a relatively inclusive definition, it suggests a conscious organization as an external national community rather than individually atomized migrants. I do not consider these communities to be monolithic, bounded, or static populations. Indeed, the demographic heterogeneity not only between diasporas from different countries, but also within the diaspora from a single country, is key to my theoretical intuitions.

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interviews with multiple officials from four political parties—ANC, Democratic Alliance (DA), Economic Freedom Fighters (EFF), and Freedom Front Plus (FF+)— as well as senior managers of the IEC tasked with implementing out-of-country voting (OOC).<sup>4</sup> I have collected extensive archival materials, including: public and internal IEC documents related to foreign voting from the elections in 1994, 2009, and 2014; legislation and transcripts of National Assembly debate around elections, migration and citizenship since 1990; and the written submissions and video recordings of the 2009 Constitutional Court cases.<sup>5</sup> I also observed voting for the 2014 South African election at the Consulate General in New York City.

Additionally, as with any single-case study, I am aware of concerns of generalizability. I am concurrently gathering data on diaspora policy debates and mobilization efforts for a handful of other countries in the SADC region, including Zimbabwe, Botswana, and Mozambique, as “the strongest means of drawing inferences from case studies is the use of a combination of within-case analysis of a single case and cross-case comparisons within a single study or research program” (George & Bennett, 2005, p.18). I will also test observable implications derived from these cases through cross-national analyses, further strengthening the possibility for causal inference (Lieberman, 2005). Taken together, the larger project aims toward a more comprehensive theory of diaspora voting that better accounts for cases of exclusion.

For this first cut, I begin by framing the decision as a cost/benefit analysis, emphasizing the cost dimensions associated with diaspora voting. Until now, the literature has focused too much on the “diaspora” and not enough on the “voting” aspect of these policies. I thus bring in political science theories of electoral enfranchisement, which emphasize partisan support, to underscore the electoral calculus involved. However, because of the high degree of uncertainty regarding emigrant populations, I argue these calculations are heavily influenced by perceptions of the government regarding citizens abroad, what I call the State/Diaspora relationship. I then trace the history of diaspora voting in South Africa between 1990-2015, revealing how uncertainty, perception, and partisanship informed the positions and behaviors of key actors. I conclude with the implications of the South African case, namely that the variable of *how* diaspora voting becomes law may provide insights into explaining subsequent levels of restrictions, mobilization, and participation.

## ***II. The Benefits and Costs of External Voting***

The rise of external voting indicates a re-conceptualization of the boundaries of political membership, and of the nation-state itself, as now extending beyond a state’s physical territory. This shift has attracted emerging scholarly attention from a number of disciplinary perspectives, including geography (Gamlen, 2008; Collyer, 2013), international law (Barry, 2006), and normative political

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<sup>4</sup>There are a number of interviews I am still in the process of scheduling. Future interviews include with former commissioners of the IEC, ANC leadership in the 1990s, current leaders in DA Abroad and the ANC branch in London, officials from StatsSA, DIRCO, and core members of the 1994 team that coordinated foreign voting in the transitional IEC and the UN Electoral Assistance Division.

<sup>5</sup>I have yet to adequately analyze the majority of the archival data. For example, I just came across a document detailing overseas voting numbers during the 1990 referendum, which begs further investigation as to diaspora voting during the apartheid era.

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theory (López-Guerra, 2005). Matters of citizenship and the implications of political inclusion and exclusion for state-building are also particularly resonant in the comparative politics literature (Brubaker, 1992; Marx, 1998; Wimmer, 2002). And yet, though political science studies of immigration remain primarily focused on questions of political inclusion within host countries (Adida, 2014; Dancygier, 2010; Benhabib, 2004), a growing literature within the discipline explores how sending states formally include or exclude their diasporas in home country politics. We can organize these explanations into three logics: instrumental, international, and inclusion.<sup>6</sup>

Instrumental explanations assume that states view diasporas as an economic resource. Concerned with the costs of permanent loss of human and financial capital (Collier, 2013), states aim to strengthen ties to emigrants working in other countries. This strategy of “harnessing the diaspora” (Leblang, 2013) encompasses a number of diaspora-friendly policies, including dual citizenship, tax incentives, and external voting. Recent scholarship suggests extensions of dual citizenship are tied to increased naturalization and higher income levels within receiving countries (Mazzolari, 2009) and higher rates of remittances and eventual return migration home (Leblang, 2013). Though recent work has uncovered increased remittances around elections, so-called “political remittance cycles” (O’Mahony, 2013; Nyblade & O’Mahony, 2014), exactly how inclusion (or exclusion) in elections directly translates to economic benefits (or losses) for the government remains unclear.

International arguments incorporate the extensive literature linking democratization to regional and international norm diffusion (Pevehouse, 2002; Elkins & Simmons, 2004; Kelley, 2012; Gilardi, 2012) to the rapid rise of diaspora enfranchisement. In other words, provision of external voting is an emerging global norm, analogous to international election monitoring (Hyde, 2011a) or quotas of women in legislatures (Bush, 2011). Two recent cross-national studies of external voting provision established strong neighbor effects (Allen et al., 2014; Turcu & Urbatsch, 2014). Allen et. al (2014, p.2) emphasize the importance of learning from other countries; as leaders observe neighbors engaging in diaspora voting “they are more likely to believe the potential benefits outweigh the risks.” Turcu and Urbatsch (2014), as well as Brand (2010) highlight the potential of organising diaspora voting as an international signalling device, whether a sign of a commitment to democracy, or a show of loyalty and reflection of ruling party power in electoral autocracies.

Inclusion theories connect the provision of external voting to periods of political liberalization. A number of scholars have noted how democratic transitions provide a “window of opportunity” for additional groups, including diaspora communities, to be part of discussions for increased electoral inclusion (Rhodes & Harutyunyan, 2010; LaFleur, 2015). Expanding the pool of potential voters may be particularly attractive in countries with proportional representation (PR) as increased numbers of voters directly lead to additional seats in legislative bodies.

The limits of instrumental and international theories of diaspora enfranchisement become apparent when thinking through the consequences of *not* providing external voting. Would we expect emigrants to stop sending remittances to their families if they are unable to vote? The failure to provide diasporas the ability to vote does not have nearly the same level of international “nam-

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<sup>6</sup>LaFleur 2015 makes similar categorisations in his recent article.

ing and shaming” potential as does, for example, refusing to allow international election monitors (Hyde, 2011b). However, the costs of expanding the electorate abroad may have very real negative consequences, especially for governments who assume citizens have left because they are unhappy with the political or economic situation. If they have already voted with their feet (Hirschman, 1970), why provide an opportunity for a disgruntled diaspora to vote against them?

### *III: Uncertainty, Perceptions, and Partisanship*

Indeed, the goal of winning an election motivates a very different set of strategic calculations than if the underlying goal is increased remittances or international reputation. From the perspective of state agencies and political parties, diaspora voting is a disproportionately expensive exercise. Electoral commissions are often under resourced and stretched thin to ensure free and fair elections within the country; organising the ability for any citizen to vote around the world raises numerous logistical and financial challenges. Political parties also have limited resources. Mobilizing potential supporters around the world is likely less important than allocating resources to campaigning within the country. Countries also fear diasporas determining the outcome of elections, including the possibility of diaspora votes “swamping” elections in small countries, while those with close races may worry about “tipping” the outcome (Baubock, 2006).

Yet rather than interrogate the implications of close elections, “political competition” theories of diaspora voting have thus far primarily focused on democratisation writ large. In contrast, the political science literature on enfranchisement emphasizes partisan logic. One class of enfranchisement theories center on the economic interests of elites and masses; parties will push to enfranchise citizens that share their economic policy preferences (Lizzeri & Persico, 2004; Llavador & Oxoby, 2005). Other theories of voting, particularly in sub-Saharan Africa, focus on ethnic dimensions of consitutencies, with politicians receiving support from co-ethnic groups at the ballot box. Other theories stress pure electoral calculus; incumbents extend the franchise to additional groups whenever the incumbent needs additional supporters (Teele, 2014; Allen et al., 2014). In short, parties enfranchise groups they believe will vote for them.

However, accurate calculations of the type and number of potential diaspora supporters may be impossible. Emigrant populations are characterized by a significant amount of uncertainty. Most diasporas, especially from the Global South, exhibit extreme socioeconomic heterogeneity. On one end of the spectrum is the population of unskilled labor migrants looking for work in countries with better economic conditions, and at the other end, highly educated skilled migrants who had the resources to leave. Thus, politically salient economic cleavages (industry v. agriculture, urban v. rural) may not be clearly defined within the diaspora population leaving politicians uncertain of electoral support within the “domestic abroad” (Varadarajan, 2010).

Further, countries simply do not know the size of the population living elsewhere. Emigrants do not always register with embassies, especially in contexts of mixed migration and high levels of undocumented mobility. Governments not only have little ability to identify the eligible numbers of voters but also gauge interest. How many of those living outside of the country plan to return or have intended to leave permanently? How many of each category actually care to partic-

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ipate?

Thus, uncertainty over the diaspora population and their political leanings (or political interest) suggests that positions on diaspora voting may not be strictly rational, or even empirical. “Political parties,” argues Lafleur (2013, p. 53) “are influenced as much by hard data as by impressions or even stereotypes about the population abroad when it comes to analyzing the impact of citizens in home country politics.” Thus, emigrant enfranchisement—or their exclusion from electoral politics—centers on recovering a key variable from Østergaard-Nielsen’s (2003) groundbreaking volume on sending country politics: the *perception* of the ruling party toward the diaspora. The question of whether a country’s emigrants are “perceived as a threat to the reputation or security of the current political regime or as a valuable or potentially valuable economic and political support” (2003, p. 22) is central to explaining variation in enfranchisement policy and implementation.

While some governments valorize emigrants as hard-working citizens and a source of economic development, others demonize their diasporas as enemies of the state, traitors for abandoning the homeland.<sup>7</sup> “Diasporas,” writes Paul Collier in his recent book *Exodus* (2013, p. 188), “are often regarded by governments as hotbeds of extremist political opposition that fuel conflict. These fears are not entirely fanciful.” A number of studies emphasize the role of diasporas in fomenting political instability back home, particularly in the case of civil wars (Salehyan, 2009; Collier & Hoeffler, 2004). If the diaspora is perceived as a credible threat to the regime, rather than enfranchise them to quell revolutionary unrest (Acemoglu & Robinson, 2000, 2006), it seems more plausible ruling parties would continue to exclude them from the electoral arena. Diasporas, even if they are highly organized, have little leverage to “conquer” these rights from governments if the state is unwilling to grant them (Przeworski, 2009).

The State/Diaspora relationship not only varies from country to country, but also evolves within the same country over time. For example, over the course of the 20th century the Mexican government position on their large emigrant community shifted from derogatory “pochos” to national heroes (Lieber, 2010; Lafleur, 2013). A change of ruling party may also open (or close) opportunities for diaspora participation, as it did in Mexico. Moreover, the State/Diaspora relationship also shifts in relation to gradual or sudden changes in emigration patterns. For “sending countries, perceptions of ‘who’ emigrants or diasporas are, are certainly not constant” (Østergaard-Nielsen, 2003, p. 211).

Electoral costs, paired with the uncertainty about the diaspora population, foregrounds the role that perceptions play in partisan calculations over diaspora voting adoption and implementation. This analysis suggests five major observable implications connecting the State/Diaspora relationship to diaspora voting:

- In countries with dominant or long-standing parties, opposition parties will lobby to enfranchise diaspora voters, assuming that negative sentiment within the diaspora will translate into votes for the opposition.

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<sup>7</sup>Governments can also ignore those citizens who have moved beyond its borders, as emigration historically served as a safety-valve for poor countries by reducing the population (Collier, 2013).

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- In countries with dominant or long-standing parties, we are more likely to observe non-legislative strategies to push diaspora voting through (e.g. judicial rulings).
- Countries where the diaspora is perceived to support the opposition will encounter increased restrictions in its implementation.
- In the event of a change in power between political parties, we should be more likely to see diaspora voting brought to the table.
- Shifting migration demographics may trigger changes in the State/Diaspora relationship, which may endogenously lead to a change in policy.

The South African case of diaspora inclusion, explicit exclusion, and then re-instatement reveals how shifting notions of who was in the diaspora and their relationship to the ANC, combined with degrees of uncertainty, shaped the positions and behaviors of the key actors involved: the ruling party (ANC), opposition parties (notably the Democratic Alliance (DA) and Freedom Front Plus (FF+)), the Independent Electoral Commission (IEC), and the Department of International Relations and Cooperation (DIRCO).

### *IV: The Politics of Diaspora Voting in South Africa 1990-2015*

South Africa is one of the most dramatic stories of democratization in the modern era. Following decades of systematic exclusion and repression based on race, the first democratic elections held on April 27, 1994 transformed the long-awaited and hard-fought dreams of the right to vote into a reality. 22 million people, patiently waiting in queues for hours, cast their ballot for one of 19 political parties. Following the victory of the once-banned African National Congress (ANC), Nelson Mandela became the country's first black president. Upon voting for the first time, he announced, "we sincerely hope that by the mere casting of a vote the results will give hope to all South Africans and make all South African realize this is our country. We are one nation."

The 1994 election was not only heralded around the world, it was held around the world; nearly 100,000 South Africans voted at 166 polling stations in 78 countries outside of their homeland. This first election was exceptional for a number of reasons, including that it was the only one until 2014 that allowed all citizens outside of the country the ability to vote.<sup>8</sup> The Electoral Act of 1998, the first piece of electoral legislation following the democratic transition, repealed all foreign voting stations, disenfranchising an estimated 2 million South Africans living outside of the country. It was not until over a decade later that external voting was reinstated for all South African citizens abroad, initially by a Constitutional Court ruling (*Richter vs. Department of Home Affairs* 2009) and subsequent legislative amendments to the Electoral Act (Act 18 of 2013).

Tracing the history of the policy reveals both the emotional and electoral dynamics at play. Political parties were centrally motivated by estimations of electoral support, but also the symbolic

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<sup>8</sup>The 2009 decision allowed citizens to vote as long as they were included in the national voter registry, thus limiting eligibility to people who presumably had lived in South Africa after 1999. The IEC created a separate international voters roll for 2014, further extending voting people that had left prior to the creation of the voters roll.

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value over who “deserved” to vote. Moreover, the ANC appointees within the IEC and DIRCO—the agencies overseeing diaspora voting—often acted in ways that corresponded with their partisan affiliation. The evolving characterizations of “who” was abroad critically shaped key actors positions on diaspora voting. I thus organise the three major eras of diaspora voting policy—inclusion, exclusion, re-inclusion—through this lens.

### *From Terrorist to Citizen: 1990-1994*

In the final years of the Apartheid regime, the white National Assembly confronted the challenges of re-integrating millions of black South Africans back into the national polity. While the majority of this population had lost citizenship through the establishment of the black homeland states within South Africa, thousands of exiles were also living outside of the country with precarious citizenship. The status of members of the ANC was particularly contentious; the banned political party was considered a “terrorist organization,” with much of the leadership stripped of citizenship after leaving the country. Indeed, from 1960-1990, the party operated in exile, its headquarters in Lusaka with branch missions throughout the world.

After decades of violence and adversarial relations, the apartheid legislators struggled with the practicalities of the exile population. Did the country want them back? If so, under what terms? The National Assembly debate over the 1991 Citizenship Act illustrates the tensions over characterizations of the diaspora and the uncertainty over its size and motivations.

DK Van der Merwe (Conservative Party): There was a specific reason why some of these people lost their citizenship. A terrorist is a terrorist, whether he is against apartheid or whatever else.

R V Carisle (Democratic Party): Exiles left South Africans for many reasons. They left because they were discriminated against. They left because they did not want to raise their children in an immoral and violent society and they left because they could not practice their politics in the party or organization of their choice...We are probably looking at half a million south Africans who left during the years of apartheid. Of this number the ANC exiles represent only 10%... Those who have left here have made a contribution around the world. We need them back. We desperately need them back.

Gene Louw (Minister of Home Affairs): The honorable member referred to approximately half a million exiles. Nobody knows the figure. Nobody knows the numbers. It is certainly not correct. I am sorry that the word “exiles” is being used. “Exiles” implies that some pressure has been exerted on a person to leave the country...(Hansard 15 February 1991).

One of the fundamental challenges of organising the 1994 election was thus how to enfranchise the majority of the population, both within and outside of the country’s borders, without a concrete understanding of the numbers of people involved. “So many people had been denied papers, or identity documents, or had screwed up ones, or were in exile,” says a longstanding member of the ANC elections team. “We wanted it to be as inclusive as possible” (Interview 15 April 2015). It



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was decided that anyone that had South African identity documents of any kind could vote.<sup>9</sup>

Resources were specifically allocated to ensure all South Africans who wanted to vote outside of the country were encouraged to participate. The Electoral Act of 1993 explicitly mandated foreign voting stations. Foreign voting received a 16 million rand budget (4.4 million USD in April 1994) with an additional 3.2 million rand (0.8 million USD) for publicity. In total, the final expenditure for foreign voting came in under 6 million (1.6 million USD). The Electoral Commission included a number of personnel dedicated to organizing and publicising foreign voting. The team coordinated extensively with South African embassies, the United Nations, and a number of anti-apartheid organisations to establish voting stations, identify and accredit monitors, and get the word out. The Commission requested Embassies to send estimates of voters in their respective countries; altogether the Electoral Commission expected upwards of a million voters to cast their ballots internationally.

While the transitional IEC and South African embassies collaborated, relations on the ground between Embassy staff and exiles were less cordial. ANC members living in the United States and United Kingdom officially lodged complaints to the Commission. An ANC official in Boston wrote the commission in March 1994: “There is no confidence by Black South Africans in the Embassy and Consulate employees. They are giving out incorrect information purposely so that they can discourage potential voters and play with time” (Vilakazi 1994). The dynamic between embassies and diasporas indicate a key site for observing the State/Diaspora relationship at work.

On April 26, 1994, 96,268 South Africans voted in both national and provincial elections at 166 polling stations in 78 countries. In fact, since international voting was held the day before the elections within the country, the first person to vote in the first democratic election in South Africa lived in New Zealand (Interview A March 27 2015). “If the experience of our voting station is any indication of the New South Africa,” reported a monitor in Los Angeles, “it will be a nation of great cooperation and mutual respect” (IEC Closing Report 1994). Following the election, the new government was formed by President Nelson Mandela with the ANC gaining 252 of the 400 seats in the National Assembly.<sup>10</sup> Since coming to power in 1994, the ANC has dominated the government, winning at least 62% percent of the vote in each of the subsequent national elections (1999, 2004, 2009, 2014).

South Africa’s first election was exceptional for a number of reasons. The inclusive nature of the transition translated to widespread international enfranchisement, a significant budget, assistance from the UN and NGOs around the world, and substantial voter turnout. Animosity between those overseeing the election abroad—namely diplomatic appointees from the apartheid regime—and the population in exile foreshadowed future dealings between South African emigrants and the state.

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<sup>9</sup>Remarkably, permanent residents—primarily migrant workers from neighboring Lesotho and Mozambique—were also allowed to vote in the 1994 election.

<sup>10</sup>I have extensively searched the IEC archives for final vote tallies of the foreign voting stations by political party without success.

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### *From Exiles to Expats: 1995-2008*

In the years immediately following the transition, the demographics of “who” was abroad began to shift. From the perspective of the ANC, “basically everyone came back, other than the people who became diplomats. People in the structures, who were active in the movement, all came back” (Interview 15 April 2015). In 1994, the international branches of the ANC were either de-activated or re-articulated as the official diplomatic representation of the new South African government, i.e. DIRCO. The attention turned inward to the great task of dismantling the apartheid system and rebuilding the country through inclusive, progressive legislation.

However the other parties in the National Assembly were continually raising concerns regarding perceived high levels of emigration out of South Africa. Throughout the 1990s, MPs from parties representing the white minority, including the New National Party (NNP) and Freedom Front Plus (FF+), would ask the Minister of Home Affairs at nearly every session of the National Assembly to supply numbers of economically active emigrants who have left the republic. A 1996 debate regarding emigration figures underscores the perceived racial and political dynamics of the new emigration:

WA Botha (FF+): The FF cannot but assume that these experts who have emigrated are all white and that this is an important reason for the ANC’s passivity in the this regard.

BC bester (NNP): The Hon Minister [of Home Affairs] said that there were no statistics on record as to why people leave. I think the ANC should take note that distrust of the future, a lack of confidence in our security forces and a lack of expectations of the future, coupled with fear, could be the reasons why people leave the country. (Hansard 14 March 1996)

The perception that South Africans were leaving because of the ANC was also shared by the ANC. “The demographics of those outside the country are overwhelmingly white, upper-middle class, deeply antagonistic to the ANC, deeply antagonistic to democracy” concludes an ANC source (Interview March 25 2015). Another ANC member, who has helped draft all electoral legislation since 1993, agreed: “I suppose it may be different if we still had a lot of people living in exile. But at the moment, a lot of the people who are overseas are people who have left South Africa because they didn’t want to live in the new democratic dispensation. So, like our attitude to them has been a little bit, kind of, ‘well %\$!& you too,’ you know what I mean? [laughs] Please don’t use the f-word” (Interview 15 April 2015).

During this period the National Assembly drafted and passed two key pieces of legislation; the 1996 Constitution, which guarantees the right to vote for every South African citizen, and the 1998 Electoral Act, which outlined the legislative framework for all subsequent elections, most importantly creating an Independent Electoral Commission (IEC) and a National Voters Roll. The Act also repealed all foreign voting stations, though it was nearly immediately amended to allow voting for the military and diplomatic corps. All parties supported the bill, and there was not a single mention of the repeal of diaspora voting during the debate.

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“The reality is nobody asked about it,” says an ANC policy official (Interview 19 May 2015). “It wasn’t an area where people saw any maximization of party political value, if I can put it that way. So nobody was really interested in it. Even the white Afrikaaner who moved to Australia in large numbers to Perth and Western Australia, they were not really interested in the National Party which was the second biggest party after the ANC in the 1994 elections because they believed that they had sold out. I mean it’s a fact of the period. Their dream of a white South Africa was crushed to pieces in 1994. So there was no argument from that side either.”

In short, the shared perception of the political parties—particularly the ANC—was that South Africans living abroad were people that had chosen to leave the country permanently because they did not support the majority-led government. These perceptions were also grounded in public negative sentiments from those outside of the country.<sup>11</sup> As a manager of the IEC said, “People that are abroad are assumed to have fled the blacks...and often in fleeing disparaged the country left right and centre. And if that’s the mentality of South Africans living abroad, do they really want to vote?” (Interview B 27 March 2015).

During this period, the political parties were not engaged with South Africans abroad. “It was such a hectic time the first 10, 15 years. In a way we neglected [them]...the ANC was so focused on the big job we had to do in the country...we didn’t do much campaigning [overseas] that I remember” (ANC official Interview 15 April 2015). The DA strategy in 1999 and 2004 was to educate their canvassers to let voters know if they were going to be temporarily abroad for particular purposes (e.g. business, vacation) they could vote on a special ballot (DA official Interview 8 April 2015). But the law excluded a number of categories of South Africans temporarily abroad, including students studying abroad and contract workers. As early as 2004 there was a growing recognition that “let’s get real now, you can be a student and still a patriot. These rules are too restrictive.” (ibid.).

### *From Emigrated to “Semi-grated”: 2009-2015*

Throughout the 2000s the political party landscape shifted considerably, with dozens of new political parties starting up, and numerous apartheid-era parties dying or reconsolidating. In 2000, the Democratic Party (DP), together with the New National Party and Federal Alliance, formed the Democratic Alliance (DA). The party has steadily increased its support, growing from the DP’s 7 seats in 1994 National Assembly to the DA’s 89 seats in 2014. The party now serves as the second largest party in the National Assembly and is the ruling party of the Western Cape Province.<sup>12</sup>

Moreover, as the opposition was gaining momentum, the ANC was in the midst of an internal crisis. In September 2008, with less than nine months before the 2009 election, President Thabo Mbeki resigned from the Presidency over his involvement with the corruption trial of then-ANC president (and future South African president) Jacob Zuma. “It seemed to many what might be a fracturing in the party,” (ANC interview 19 May 2015), “And I suppose [the opposition] would

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<sup>11</sup>I’m in the process of gathering additional archival data (e.g. media coverage, etc) to further substantiate this claim.

<sup>12</sup>In comparison, ANC currently holds 249 seats, its lowest number since the transition to democracy.

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say, ‘Now there is a wounded animal, how do you attack it?’ And that’s how I think they finally arrived at the thing to ask for the votes in the diaspora thinking that there would be large numbers and you could actually push the percentage [of ANC vote share] much much lower.”

Meanwhile, the characterization of South Africans living abroad was also evolving. After a decade where the diaspora was defined by white flight and fear over ANC leadership, there was a growing recognition that many South Africans, rather than migrating permanently, had “semi-grated,”<sup>13</sup> living abroad for a few years to study or work, but then eventually returning home. Homecoming Revolution and AfriForum, relocation agencies dedicated to encouraging and assisting South Africans move back, were thriving. In the lead-up to the 2009 elections, a number of these organisations began to press the issue of diaspora voting. AfriForum launched an online petition on its website. The London based South Africa Youth Forum Abroad (SAFYA) organised a march in December 2008 to protest their lack of voting rights while studying overseas.

In late January and early February 2009, less than three months before the election, the Constitutional Court received four separate cases of South African citizens living abroad suing the Department of Home Affairs and the IEC as violating their constitutional right to vote. Four opposition parties served as supporting partners on the cases: the DA, FF+, A-party, and Inkatha Freedom Party (IFP).<sup>14</sup> The main applicants the cases were South African citizens living and working abroad—teachers, doctors, waitstaff—throughout North America, Europe, and Asia, who did not qualify under the “temporarily abroad” category of special votes. In their affidavits, most noted their plans to return to South Africa within the next few years.

In their response to the cases, the IEC emphasized the logistical challenges posed by the context of uncertainty in relation to those abroad. They argued it would be extremely difficult to organize voting as “neither the Commission, nor the applicants, know exactly the extent of the number of voters who may wish to register and vote overseas, where they are or for how long, or what their circumstances are in relation to ordinary residence and inclusion on the voters roll” (The Electoral Commission’s Submissions to CCT 03/09, 06/09, 09/09, p.10). They also argued that the prior allowance of foreign voting in 1994 was an exceptional aspect of the historic election, justified on who was outside of the country at the time. “Foreign voting took place against the background of the fact that many of *our people* were in exile” (ibid., p. 16, italics added).

What the IEC did *not* argue within their application was the constitutionality of the provisions. As a senior manager of the IEC conceded, “I think everyone knew that we probably didn’t have a leg to stand on, and that the legislation was problematic” (Interview A 18 March 2015). In a unanimous decision, the Constitutional Court ruled that all South African citizens must have a reasonable ability to vote wherever they are in the world (Richter vs. DHA Judgment 12 March 2009). Justice O’Regan emphasised how the particularly “precious value of the vote in South Africa arises in no small measure from a history in which the right to vote was denied by a majority of our citizens”

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<sup>13</sup>I was first introduced to this term by a DA official (Interview 8 April 2015). While he employed it to discuss people temporarily living abroad, upon investigating I’ve discovered it was also used in the 1990s/2000s to describe white South Africans who moved to “whiter spaces” within the country, e.g. Cape Town or gated communities (Ballard, 2004). I need to spend more time investigating how the term was used primarily during that era.

<sup>14</sup>Both officials from the DA and the FF+ claim that these cases were uncoordinated.

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(ibid. p. 29), as well as offered a contemporary assessment of South Africans abroad:

In reaching this conclusion, I am influenced by the fact that, as several of the parties noted, we now live in a global economy which provides opportunities to South African citizens and citizens from other countries to study and work in countries other than their own. The experience that they gain will enrich our society when they return, and will no doubt enrich, too, a sense of a shared global citizenship. (p. 36-37).

Indeed, the court decision underscored the growing perception of South Africans abroad as people intending to return, a departure from the notion of permanent “white flight.” The judgment also critiqued the timing of the court cases, questioning “why this particular aspect has only been raised very late in the day in relation to legislation that has been on the statute books for years” (p. 46).

Why *didn't* the political parties try to change the legislation between 2004 and 2009? Given the dominance of the ANC, and their position vis-a-vis diaspora voting, the parties believed they had to find an alternative channel of changing the law. As a DA official contends, “The ANC have no real incentive to provide the vote to South Africans abroad given that they get a very low number of those votes. And so with our other attempts to introduce bills around this they simply vote down the bill. And so we would never have gotten it through legislatively” (Interview 31 March 2015). An FF+ member put it more starkly: “The ANC don't like all the efforts and all the attention that is given to [those] overseas. Because their people aren't overseas, their people are here. And we took them to court to force them to allow the people overseas to vote. We knew we were going to win.” (Interview 30 March 2015). Even senior managers at the IEC confirmed that without a court case, diaspora voting would not have been implemented (Interview A 18 March 2015; Interview A and B 27 March 2015).

Once the Constitutional Court mandated diaspora voting, the IEC and DIRCO had less than six weeks to organize voting in all of the embassies and consulates. While all parties and bureaucracies accepted the Constitutional Court ruling, Brigalia Bam, the ANC-appointed chairperson of the IEC, expressed her displeasure over the ruling. At a meeting in March 2009 between the DA leadership and Ms. Bam, “we were having a polite conversation, it went well, but when it got to the subject of voters abroad, somewhere along the line a nerve was hit in the chairperson of the IEC. She got angry about these South Africans abroad who had left the country, deserted the country, and were not deserving of the vote” (Interview 8 April 2015).

The Court ruling, while framed around those abroad temporarily, in fact expanded the franchise to the population of expats thought to have left permanently out of antipathy toward the ANC. Another ANC source also voiced his outrage. “The notion that the ANC should bend over backwards to allow those fascist bastards to vote?...They were trying to kill us. And they've *emigrated*. I get the rights argument, I don't agree with it, but I get the Constitutional Court decision. It sucks, but I get it” (Interview 25 March 2015). On election day, when DIRCO staff proved uncooperative at embassies and consulates, the IEC called on the ANC to intervene, calling to say “Please, can you open the bloody door? You must let them inside, you must let them vote, you can't close the queue, you can't close the door.” (ANC Interview 15 April 2015).

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The timing of the decision additionally did not allow a large window for campaigning abroad. The ANC, DA, and FF+ all sent high-level members of the party to London, the location with the largest number of registered South Africans. The parties also communicated via their website, Facebook groups, etc. But the resulting turnout—around 10,000 voters worldwide—took the opposition parties by surprise. As the Freedom Front official told me: “We were actually put off. But the 2009 [election] we were very active on this whole issue. We thought we were now going to gain another seat, etc. We will never spend money on it again” (Interview 30 March 2015). In the end, the FF+ only received 270 votes, behind the DA, COPE, and the ANC. Over three quarters of the abroad votes were for the DA.

### *Global South Africans: An Emerging Electoral Battleground?*

Following the 2009 election, both the ANC and DA re-engaged with diaspora communities, though to varying degrees. ANC re-opened first international branch in London in 2011, led by Xolani Xala, the former leader of SAFYA in London and one of the applicants in the 2009 Constitutional Court Cases. Currently the ANC constitution does not explicitly allow for branches outside of South Africa, but there have been calls for change. “It would be useful from a campaigning point of view” (Interview 15 April 2015). DA Abroad officially launched in November 2009, with 15 chapters on 5 continents. “We work on trying to make sure we identify South Africans who are living overseas, we communicate with them, we set up events where they have an opportunity to engage with senior members of the party where they are travelling abroad.” (DA official, Interview 31 March 2015). For the 2014 election DA and DA Abroad organised the “Vote Home” registration and GOTV campaign. They also trained DA members to serve as monitors at every South African embassy and consulate on election day. The Economic Freedom Fighters, a radical leftist party formed by former ANC-Youth League leader Julius Malema in 2013, did not campaign abroad, as they were a new party “not concerned too much with reaching out to those people” (Interview 25 May 2015). Even so, they still received 270 votes from abroad in the 2014 election, which the EFF official explained as a protest vote against the ANC.

In addition to mobilizing potential voters abroad, the parties continued to battle in the National Assembly over the fine print of what diaspora voting would (and would not) entail. The DA pushed for a number of provisions that could have dramatically increased numbers of international votes, including adding polling stations for every 200 registered voters, or the ability to vote electronically. They also pushed for the ability for those abroad to vote in provincial in addition to national elections. All of their efforts to broaden the scope of diaspora voting were categorically rejected. In protest, the DA ended up voting *against* the very bill they had fought for – the amended Electoral legislation mandating international registration and voting.

Act 13 of 2013 passed in December 2013, once again leaving a narrow window for the IEC to organize logistics, create training materials for DIRCO staff, and publicize both international registration and voting before the elections on May 7, 2014. As the IEC had feared, the job was particularly challenging given uncertainty over the numbers and locations of South Africans living abroad. As a member of the IEC communications team lamented, “There are no accurate lists of

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South Africans living abroad. DIRCO has none. We certainly didn't. You go on anecdotal evidence and in fact we did" (Interview B March 27 2015). They ended up paying Homecoming Revolution to send emails through their database. The IEC conducted its international registration and GOTV campaign all electronically through banner ads on South African news and sports websites, both to limit the costs as well as to avoid accusations of targeting certain locations and not others. Indeed, the IEC, especially after Commissioner Bam's outburst was made public, is particularly sensitive to accusations of partisan behavior. "The IEC needed to be seen to be doing as much as we could under the circumstances, so no one could accuse us when the votes didn't come through as they anticipated that it's got to do with something else. We can't open ourselves to criticism that we aren't reaching out to this constituency because they are not voting ANC" (Interview B March 27 2015).

The timing of the Electoral Act also meant there was no additional monies earmarked for international voting. IEC departments had to "find the money" within their existing budget. Despite longstanding claims from the ANC as well as the IEC that external voting was too expensive, the actual costs were surprisingly low. According to the logistics department, the marginal costs of printing ballots, etc was relatively little (Interview C 27 March 2015).<sup>15</sup> Operations estimated they spent about a million rand (95,000 USD) as part of the overall election budget of 1.7 billion rand (160 million USD). "This is really nothing. Remember [as] much of the costs [are] covered by DIRCO, most of the costs would be fixed costs, not variable based on the election, so [they are] covered regardless" (Interview 18 March 2015). Based on these figures, the claim that international voting is expensive must be qualified by a distinction between relative expenses (i.e. cost per voter within vs. outside of the country) and actual expenses.

All of the political parties interviewed praised the IEC for their role in organizing diaspora voting. However, although the IEC is in charge of overseeing elections in South Africa, DIRCO is the main implementation agent of international voting. "By far the biggest problem in the whole practice was DIRCO" said a DA Official (Interview 31 March 2015). "DIRCO officials were poorly prepared, briefed, trained. Many of them were disinterested, and they were obstructive." In the lead up to the election, IEC senior staff traveled to the five missions with the largest estimated numbers of voters for "readiness checks." One of these staff members recounted his distress that most of the DIRCO staff had not themselves registered to vote, including the Presiding Officer of the Election. "That was very disappointing," he noted, "because these are the people we entrusted to educate others." (Interview A March 27 2015). A DA official linked the issues with DIRCO to partisan affiliation. "Understand that a lot of DIRCO staff members abroad are deployed members of the ruling party," she noted, "there wasn't much incentive for them to be very cooperative."<sup>16</sup>

For the 2014 National Election, just over 18,000 South Africans voted around the world, compared to over 18 million within South Africa. While the DA received 22% of the vote within South Africa, they received 83% of the international votes. The ANC received a little more than 1500 votes

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<sup>15</sup>Bulk of costs directly related to international voting are the courier costs of transporting the ballots to/from embassies and consulates. I've been told by the IEC they will supply this information, but do not have it yet.

<sup>16</sup>The lack of cooperation from DIRCO extends to this research project. I have made repeated attempts to schedule interviews with DIRCO officials both in South Africa and New York City without success.

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around the world (as opposed to 11.4 million within the country). Yet, rather than ignore South Africans abroad, the current ANC perception of the diaspora is quite different than its previous stance. “We see this as a potential pool of voters that we have not yet mobilised...especially if you look who is in London, it’s becoming more and more of a racially mixed crowd, it’s very young, it’s probably people who don’t necessary have a historical loyalty to any other parties...It would be possible to get at least 100,000 votes overseas, and for the ANC it would be possible to get at least 50,000 of those votes, which is another seat in parliament. So it will take some work and will cost more than any other seat in parliament in terms of the work you have to do.” (Interview 15 April 2015). For once, the DA agrees with the ANC regarding the reason for mobilizing the diaspora constituency: “It’s worth a parliamentary seat so it’s worth our efforts to do it. Obviously the big thing for us is to give them more opportunities” (Interview 31 March 2015).

### ***V: Conclusion***

Rare cases are valuable for hypothesis generation (Gerring, 2007). In the context of diaspora voting, the most unusual cases are policy reversals—countries that have implemented, then abolished, diaspora voting. The surprising case of South Africa, with its *two* policy reversals—expansion, exclusion, and then re-instatement of voting rights for citizens abroad—provides a number of insights. Shifts in the State/Diaspora relationship shaped debates over both policy provision and implementation. The primacy of electoral interests and partisan sentiment, particularly the ANC’s continued resistance to the policy, was further indicated through three dimensions of implementation: low levels of resource provision, limiting the type of voting and locations, and negative attitudes of political appointees within DIRCO and the IEC. With diaspora voting apparently here to stay, parties have turned their attention toward mobilizing additional votes in hopes of gaining an additional seat in the National Assembly. In the lead up to the 2019 elections, we can expect to see the DA agitating for easier access to voting, while the ANC gears up to mobilize an untapped pool of younger voters overseas.

Most importantly, the South African case suggests a critical variable missing from prior analyses of diaspora voting: *how* diaspora voting becomes law. In essence, South Africa is a “false positive;” enfranchisement would not have occurred through the standard legislative channels. How many other cases of diaspora voting have been adopted against the wishes of the ruling party, via court case, referendum, or peace agreement? Indeed, by determining how the law came to pass may reveal clues as to subsequent levels of restriction as well as inform understandings of low participation. Through closer interrogation of policy reversals and negative cases, we move toward a more complete theory of diaspora voting.



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### Interviews

Source	Date	Location
ANC Member	25 March 2015	Braamfontein, JHB
ANC Official	15 April 2015	Observatory, JHB
ANC Official	19 May 2015	Killarney, JHB
DA Official	31 March 2015	Cape Town
DA Official	8 April 2015	Killarney, JHB
EFF Official	25 May 2015	CBD, Johannesburg
FF+ Official	30 March 2015	Centurion
IEC Official	18 March 2015	Centurion
IEC Official	27 March 2015 (A)	Centurion
IEC Official	27 March 2015 (B)	Centurion

### Archival Documents

Date	Title
15 Feb 1991	South African Citizenship Amendment Bill, National Assembly (Hansard)
14 Jan 1994	Act 202: Electoral Act, 1993, Government Gazette, RSA
Undated 1994	Letter to Chief Representative from Ms. Vilakazi, IEC archives
2 May 1994	Closing Report: Monitoring of Foreign Voting, IEC archives
4 Sep 1996	Emigration Interpellation, National Assembly (Hansard)
27 Feb 2009	IEC Submissions to the Constitutional Court, Constitutional Court of South Africa
12 Mar 2009	CCT 09/09: Richter vs. DHA Judgment, Con Court of South Africa
26 Nov 2013	Act 13: Electoral Amendment Act, 2013, Government Gazette, RSA

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