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# EUDO CITIZENSHIP OBSERVATORY

## *ACCESS TO ELECTORAL RIGHTS* *COLOMBIA*

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March 2015



US  
University of Sussex



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European University Institute, Florence  
Robert Schuman Centre for Advanced Studies  
EUDO Citizenship Observatory

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Access to Electoral Rights Report, RSCAS/EUDO-CIT-ER 2015/2  
Badia Fiesolana, San Domenico di Fiesole (FI), Italy

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Published in Italy  
European University Institute  
Badia Fiesolana  
I – 50014 San Domenico di Fiesole (FI)  
Italy  
[www.eui.eu/RSCAS/Publications/](http://www.eui.eu/RSCAS/Publications/)  
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[cadmus.eui.eu](http://cadmus.eui.eu)

Research for the EUDO Citizenship Observatory Country Reports has been jointly supported, at various times,  
by the European Commission grant agreements JLS/2007/IP/CA/009 EUCITAC and HOME/2010/EIFX/CA/1774 ACIT,  
by the European Parliament and by the British Academy Research Project CITMODES (both projects co-directed  
by the EUI and the University of Edinburgh). The financial support from these projects is gratefully acknowledged.

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# **Access to Electoral Rights**

## **Colombia**

**Cristina Escobar**

### **1. Introduction**

High levels of violence and internal conflict have characterised Colombia. Nonetheless, the country also has a long and rich electoral history. In spite of its violence and instability, and in contrast to many other Latin American countries, Colombia has avoided authoritarian regimes, with the exception of the military regime of the mid-twentieth century. The 1991 Colombia Political Constitution, which replaced that of 1886 and provides the foundation for electoral rights today, was drafted by the Constituent Assembly, composed of representatives of political parties, social movements, ethnic minorities, religious groups, ex-guerrilla militants (from the groups that had made peace agreements with the government by then), etc. This constituent assembly took place during a critical moment when the traditional parties and the political system had lost representation and credibility, when the state was facing years of armed opposition by the left and the growth of paramilitary forces and when well-developed drug dealing, involved with both, drastically inflamed these internal conflicts. The 1991 constitution offered opportunities of special political representation to ethnic minorities. It also opened space for the enfranchisement of non-resident citizens and non-citizen residents. While Colombia had never attracted many immigrants, it had sent hundreds of thousands abroad, particularly since the 1980s, in search of a better economic future and at the turn of the 1990s increasingly for political reasons, too.

## 2. Historical backdrop

During the first decades of Colombia as an independent state, and even in provincial elections that took place during the period of struggle for independence, suffrage was indirect and restricted by class and gender. When the previous Spanish Viceroyalty of New Granada gained its independence and became the Republic of Colombia in 1821 (known as the Gran Colombia, it included today's territories of Colombia, Ecuador, Panamá and Venezuela), suffrage was limited to Colombian married men, older than 21, property owners or with a trade or profession that would guarantee their independence; wage workers and servants were excluded (literacy was not required until 1840).<sup>1</sup> To be an elector, one had to be literate, older than 25 and have an even higher socioeconomic status than for a voter.<sup>2</sup> The law of free birth, manumission and the abolition of slave traffic<sup>3</sup> allowed sons of slaves and freed slaves to qualify as 'Colombians', one of the requirements for voting,<sup>4</sup> and there were no specific restrictions based on race. However, the economic restrictions continued to limit the participation of freedmen in the same way those restrictions limited many others, such as indigenous peoples and the large majority of mixed-race individuals. The socioeconomic and gender restrictions on the suffrage did not change when the Gran Colombia fractured (1830) and the territory that today comprises Colombia and Panama became the New Granada (1832)<sup>5</sup> or when a more authoritarian and centralist constitution was established following an internal civil war (1843).<sup>6</sup>

The Liberal federalist rise to power in the mid-Nineteenth century brought significant changes, which included the establishment of universal male suffrage and the abolition of slavery. The idea of granting suffrage to all free males was never seriously considered during the first two decades of the republic. Even a proposed alternative project of allowing popular assemblies to suggest candidates for provincial authority posts received little support because it was considered a threat to the centrist ideas of those in power (Bushnell 1954: 30). However, in the late 1840s, Liberals, seeking supporters among the broad population and inspired by the European revolutions of 1848, proposed universal male suffrage, which they were able to include in the 1853 Constitution along with the direct popular vote (Sanders 2003: 60; Bushnell 1971: 238). This constitution gave the vote to all married males older than 21 and born in the territory, who, by then, included the newly freed slaves after the law of abolition of slavery and manumission (1852) gave them access to all rights, like all other citizens.<sup>7</sup>

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<sup>1</sup> Constitution of the Republic of Colombia 1821, art 15.

<sup>2</sup> *Ibid.*, art 16.

<sup>3</sup> Law of July 21, 1821.

<sup>4</sup> Constitution of the Republic of Colombia 1830, art. 9(2).

<sup>5</sup> The property value and the income level did change but not the requirement itself. See Constitution of the Estate of Nueva Granada 1832, art. 8.

<sup>6</sup> Constitution of the Republic of Nueva Granada 1843, art. 9.

<sup>7</sup> Law 2 of 1851, art. 1.

The newly achieved universal male suffrage was short-lived. First, it was interrupted by the outbreak of the 1859 civil war and then limited when two of the seven states imposed literacy restrictions under the rule of the ultra-federalist constitution of 1868 that decentralized electoral regulations. The end of the period of universal male suffrage came when the new centralist and Catholic-friendly constitution (1886), drafted by opponents of the Liberal radicals, imposed new literacy and socioeconomic restrictions, as well as indirect vote in national elections (direct universal male suffrage was maintained in the municipal and regional elections) (Bushnell 1971: 238; Bushnell 1993: 143; Melo 1989). These restrictions were maintained during the long conservative regime that followed the downturn of Liberal federalism. Historians have pointed out that the precariousness of the extended vote in Colombia, as in other Latin American countries, was a major source of instability and that many of the civil wars in the nineteenth century, 1859-60, 1875, 1885 and even the *One Thousand Days War* (1889-1902) are associated one way or another with electoral struggles (Posada-Carbó 1994: 645-648; Posada-Carbó 1996: 6).

With the arrival to power of the Liberals in the 1930s, the constitution reforms (1936) finally lifted the literacy and socioeconomic restrictions and established universal suffrage (for all males older than 21). The regime change in the 1930s was also favourable to the development of the women's suffragist movement, which, according to scholars, was delayed in Colombia in comparison to other Latin American countries precisely because of the long conservative regime and its close relation with the Catholic Church (Coker 2000: 691). The topic of female suffrage was not, by any means, new. Indeed, one of the provinces of New Granada had actually granted suffrage 'without distinction of sex' in its 1853 constitution, although it was changed soon after, and provincial delegates to the National Congress proposed conceding women the right to vote in national elections (Coker 2000:692-693; Luna 2004:97). Nevertheless, it was not until after the Liberal changes of the 1930s that suffrage became one of the claims by groups of organized women along with equal civil rights, access to education and labour rights. The liberal reforms allowed women to fill most official posts, and achieved some of the movement's civic and economic goals, but women were still not allowed to vote. In 1945, a legal barrier was removed as women acquired the status of full citizens, which was required to vote.<sup>8</sup> However, it was not until the dictatorship of General Gustavo Rojas Pinilla (1953-1957) that women gained the right to vote,<sup>9</sup> although they did not exercise this right until 1957 when they participated in the referendum to re-establish democracy after Pinilla's fall.

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<sup>8</sup> In the 1986 Constitution ruling at the time, women were considered to be Colombians, i.e. having Colombian *nacionalidad* ('nationality'), but they did not have the status as *ciudadanas* ('citizens'), which was required for voting.

<sup>9</sup> Legislative Act No 3.

### 3. Eligibility: who has electoral rights in Colombia?

#### 3.1. Citizen residents

According to the Colombian Constitution of 1991 [art. 98], citizenship, which the constitution differentiates from nationality, is a necessary condition for exercising the right to vote and to be elected or to hold public office. Citizenship has been acquired at eighteen years of age since 1975.<sup>10</sup> Voting is a right and a duty but it is not obligatory, as in other Latin American countries.<sup>11</sup> All citizens have the right to participate in elections, referendums, and other forms of democratic participation. Citizens directly elect the president, governor, mayors, and legislative bodies at the national, regional, municipal and local levels.<sup>12</sup>

The Colombian Political Constitution allows direct election of representatives to the Andean and Latin American Parliaments [art. 227] but leaves to Congress the decision whether its representatives are chosen by the population in direct elections or by the members of Congress. Following the dictates of the agreement of the Andean Community of Nations (CAN) in 1997, which introduced direct election to the Andean Parliament,<sup>13</sup> Colombians elected directly their five representatives to the Andean Parliament for the first time in the Congressional elections of 2010.<sup>14</sup> Very low participation and a high number of blank votes (27% of votes) in this first election created controversy.<sup>15</sup> The controversy continued in the 2014 elections when more than half of the votes cast were blank. After this second election, Congress approved a new law eliminating direct election of representatives to the Andean Parliament; from that time onward, they were to be elected by Congress.<sup>16</sup> The proponents of the law argued in support of this decision based on: 1) the low participation of Colombians in Andean Parliament elections; 2) the need to avoid a costly rerun – Colombian law requires a rerun when blank votes outnumber the rest; and 3) the conclusions of a study by a specific commission (supported by the foreign affairs ministers of the CAN nations) that noted the low cost-benefit of the Andean Parliament, with high expenses and limited impact, given the non-binding character of its decisions.<sup>17</sup> The supporters of the law also argued that the change was consistent with the agreement reached by the ministers of foreign affairs of the CAN member countries in September 2013 to eliminate the Andean Parliament. The ministers had reached this conclusion – a conclusion strongly opposed by the members of the Andean Parliament – in view of the recent agreement by the members of the Union of South American Nations (UNISUR) to create the South American parliament, where, the ministers considered, the Andean Parliament could eventually migrate. Any final

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<sup>10</sup> Legislative Act No.1.

<sup>11</sup> Constitution 1991, art. 258.

<sup>12</sup> Constitution 1991, art. 260.

<sup>13</sup> 'Protocolo Adicional al Tratado Constitutivo del Parlamento Andino' ['Additional Protocol to the Constitutive Treaty of the Andean Parliament'] 23 April 1997 Sucre.

<sup>14</sup> Law 1157 of 2007.

<sup>15</sup> Consejo Nacional Electoral *Resolución* 1509 of 2010.

<sup>16</sup> Statutory Law 1729 of 2014, which repealed Law 1157 of 2007.

<sup>17</sup> *El Colombiano* November 12, 2013; *El Nuevo Siglo* April 24, 2014; Felipe Quintero, *Semana* March 26, 2014.

decision to eliminate the Andean Parliament can only be made through a protocol to the Cartagena agreement, which created the Andean Community of Nations in 1969 – at the time called the Andean Pact. Nonetheless, the legislators in Colombia decided that, in the meantime, it was possible to return to the pre-2007 mechanism of congressional election of the delegates to the Andean Parliament and to eliminate direct election.<sup>18</sup>

The 1991 Constitution denies suffrage to military personnel and police officers in active service [art. 219]. This restriction was introduced by the Liberal regime in 1930 as a reaction to the intervention of the armed forces in electoral matters in the previous years.<sup>19</sup> The restrictions on military and police electoral participation were later included in the constitutional reform of 1945 [art. 168] and retained in the new constitution of 1991.

People convicted of crimes cannot participate in elections. Those in custody but who have not been convicted (yet) of any crime have the right to vote in their respective reclusion centres and the law requires the *Registraduría Nacional del Estado Civil*, the entity in charge of issuing identity cards, registering voters and organising the elections, to provide detainees with appropriate means to cast their ballots.<sup>20</sup> However, the law forbids campaigning inside jails and penitentiaries.

## 3.2. Non-resident citizens

### 3.2.1. Eligibility

After Indonesia (1953), Colombia was the second country to extend suffrage to all its citizens abroad rather than to just specific categories of citizens – diplomatic personnel, for example – working for the state, as had been the case for many countries in the previous decades (Lafleur 2013: 18). Colombian expatriates have been able to vote in presidential elections since 1962 when the pact agreement among elites (*El Frente Nacional*), designed to end the military dictatorship (which the elites had initially supported to control the intraparty violence), re-established democracy.<sup>21</sup> This extension of suffrage was part of a more general interest in inviting all those Colombians who had been displaced internally and internationally by the political violence of the previous decades to register and vote (Serrano 2003: 117-121).

Colombians living abroad brought their own projects to the preparatory commissions of the Constituent Assembly in 1991, requesting the right to participate in legislative elections and the creation of an international district with four Senate seats. Colombian expatriates succeeded in obtaining the right to vote in congressional elections. However, they did not have enough support to gain any special district at the Senate level, though they did at the level of the House of Representatives. Hence, the 1991 Constitution gives expatriates the right to vote in legislative national

<sup>18</sup> *El Comercio* September 25, 2013; September 26, 2013.

<sup>19</sup> Law 72 of 1930.

<sup>20</sup> Law 65 of 1993.

<sup>21</sup> Law 39 of 1961, article 5.



elections and to elect representatives to the lower house.<sup>22</sup> While these rights were enacted by the Constitution in 1991, the constitutional articles were not regulated until ten years later.<sup>23</sup> Colombian expatriates participated in legislative elections for the first time in 2002. Colombians living abroad cannot vote in regional or local elections since the Constitution [art. 316] demands residency as a requirement for electoral participation in local elections.

Registration is necessary for expatriates to cast their ballots abroad, except in cases when the Colombian citizenship identification card was issued for the first time to a Colombian citizen at the same consulate where he or she expects to vote. Otherwise, registration is necessary for all Colombians who move abroad or expatriates who change residence from one consulate area to another. A citizen who is registered in another consular area, in Colombia or in another country, would have to travel to that place to cast a vote.

In order to be eligible to represent the International District in the House, a candidate must be a Colombian citizen enjoying all civil and political rights (*en ejercicio*), must be older than 25 at the time of the election (as is required of all House representatives), must have resided for five consecutive years abroad, and must have the official support of a political party or movement or a significant group of citizens recognised by the National Electoral Council.<sup>24</sup> Colombian dual nationals are able to run as candidates unless they are Colombian nationals by naturalisation and not by birth.<sup>25</sup> There is no residency requirement to be a presidential, vice-presidential or senate candidate. In these three cases, however, the candidate must be a citizen enjoying all civil and political rights, at least 30 years of age, and Colombian by birth.<sup>26</sup>

There are residency requirements to run as a candidate for regional and local elections; however, these requirements do not completely prevent expatriates from participating. There are residency restrictions on candidates for departmental deputies. To run as a departmental deputy, the candidate must have resided in any of the municipalities of the Department for at least one year prior to the election, in addition to being a Colombian citizen enjoying all civil and political rights and never having been sentenced to prison for a crime.<sup>27</sup> To be the mayor of the Capital District, the residency requirements are also strict. In this case, it is not only necessary to meet the same requirements as a Senate candidate (being Colombian by birth, older than 30, and enjoying all civil and political rights) but also to have resided in the Capital District during the three years prior to the elections.<sup>28</sup> To run as a candidate for mayor in other municipalities, the law offers some alternatives, leaving the possibility open for expatriates to participate providing that they were born or lived in the locality for a

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<sup>22</sup> Colombian Political Constitution articles 171 and 176.

<sup>23</sup> Law 649 of 2001.

<sup>24</sup> Law 649, 2001, articles 5 & 8.

<sup>25</sup> Law 43 1993, articles 28 & 29. A Colombian born abroad of Colombian parents, who registers in a Colombian Consulate or Embassy as Colombian or who lives in Colombia, is considered to be Colombian by birth [Colombian Political Constitution, art. 96].

<sup>26</sup> Colombian Political Constitution articles 191, 172, 204.

<sup>27</sup> Colombian Political Constitution, article 299 modified by article 3 Legislative Act 01 of 2007.

<sup>28</sup> Law 136 of 1994, article 86.

specific period of time. According to the law, to run for mayor, the candidate must be a Colombian citizen enjoying all civil and political rights, and must have been born in the municipality, or have resided there for one year prior to the date of candidate's registration, or during three consecutive years at any time.<sup>29</sup> The law also has strict residential requirements for candidates for municipal council member and administration board member (municipal subdivision level). In the first case, a candidate must either be born in the municipality or have resided in the municipality at least six months prior to the election date.<sup>30</sup> To run as a candidate for local administration board, a candidate must have resided or carried out a professional or work activity in the locality for at least six months prior to the election date.<sup>31</sup> The Constitution states [art. 303] that the law will regulate the requirements for running as a candidate for governor. Nevertheless, as of November 2014, Congress still had not ruled on the matter.

### 3.2.2 Modes of representation

For the Senate, which is a national district, expatriates choose their representatives from the same pool of candidates as any other Colombian living within the territorial borders. For the House of Representatives, expatriates are represented in the International District. Initially, the 1991 Constitution had assigned expatriates one of the five seats reserved in a Special District (*Circunscripción Especial*) for ethnic and political minorities, and Colombians abroad. Sharing this special district with the other minorities created a complex situation because any Colombian, independently of his or her residence, could elect these candidates. If a Colombian feels better represented by a minority candidate, he or she can elect a candidate for the Special District instead of one corresponding to the territorial district of residence (Colombia is divided into 52 Departments). While this mechanism worked fine for ethnic communities, it did not work well for Colombians abroad because it allowed Colombians back home to vote for representatives of Colombians abroad. In fact, the first elected House representative of expatriates was elected in 2002 with 75% of the votes cast in Colombia (Escobar 2007: 66). In order to resolve this impasse, the Colombian Congress distinguished the International District (one seat), to be elected only by Colombians residing abroad, from the Special District (four seats), to be elected by Colombians either abroad or in Colombia.<sup>32</sup> In 2012, the Colombian Congress approved a bill, proposed by the House representative of Colombians abroad, to reform the article 176 of the Constitution, transferring one of the seats from the Special District (now with three seats) to the International District (now with two seats).<sup>33</sup> The seat that had been reserved for political minorities and which had remained empty, due to the complicated requirements to access it, was transferred to the International District. However, as explained below, Congress is currently discussing the possibility of returning the seat to the Special District in order to provide representation to the Raizal ethnic Colombian minority.

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<sup>29</sup> Law 136 of 1994, article 86.

<sup>30</sup> Law 136 of 1994, article 42.

<sup>31</sup> Law 136 of 1994, article 123.

<sup>32</sup> Legislative Act 1 and 2 of 2005.

<sup>33</sup> Legislative Act 1, 2013.

### 3.3. Foreign Residents

Colombia, like many other South American countries, has extended political rights to foreign residents. The conjuncture of the Constitutional Assembly, which expanded the political rights of the increasing number of emigrants, also brought into the discussion the political rights of immigrants, particularly in view of possible reciprocity agreements that would benefit Colombian expatriates. The 1991 Colombian Political Constitution establishes that ‘political rights are reserved for nationals, but the law could concede foreign residents the right to vote in Colombia in municipal or district elections and general consultations’ [art. 100]. While the reciprocity agreement, which included voting rights, was signed with Spain in 1992, the constitutional article was not regulated until 2006 and does not distinguish nationalities, treating all of them equally.<sup>34</sup> Foreign residents are not allowed to run as candidates for public office at the national, regional or local levels because the status of citizenship is required to run for any of these offices.<sup>35</sup>

### 3.4. Indigenous, Afro-Colombians and Raizal ethnic minorities

The Colombian Constitution formally recognises the multi-cultural nature of the society, like many others since the 1990s in Latin America, and has favoured the political representation of its ethnic minorities (Van Cott 2000: 42). There were two important precedents to this recognition: 1) Colombia’s ratification of the International Labour Organization (ILO) Convention No. 169 of 1989, concerning Indigenous and Tribal Peoples in Independent Countries (Burgos 2003: 131), and 2) the organized movements of Indigenous people, Afro-Colombians and Raizales<sup>36</sup> that had developed in the previous decades. The 1991 constitution acknowledges the ethnic and cultural diversity of the nation [art. 7] and accepts the rights of ethnic minorities as specific and different from the universal rights offered to individuals. Along with other critical rights, such as the right to particular culture and education [art. 10], recognition of specific territories [arts. 286, 287, 329, 330] and special juridical jurisdictions [art. 336], ethnic communities also gained special forms of political representation. The Constitution reserves two seats in the National Senate, in addition to the one hundred regular seats, for representatives elected in a special indigenous district (*Circunscripción especial por comunidades indígenas*) [art.171], and reserves, as mentioned above, five seats in the House of Representatives for ethnic and political minorities and Colombians abroad [art.246]. The law that finally regulated the distribution of these seats after nine years, granted one seat in the Lower House for indigenous communities and two for Afro-Colombian communities, in addition to the ones reserved for political minorities and Colombians abroad.<sup>37</sup> In order to represent indigenous communities in the Senate or the House, the candidate

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<sup>34</sup> Law 1070 of 2006.

<sup>35</sup> Colombian Political Constitution, arts. 172, 177, 191 and 299; Law 136 of 1994 art. 42, 86 and 123; Law 1421 1993 art. 27 and 36.

<sup>36</sup> The term Raizales designates the black Creole-speaking population of the Caribbean Archipelago of San Andres and Providencia.

<sup>37</sup> Law 649 of 2001.

must have served as a traditional leader in his or her community or have been a leader of an indigenous organization recognized by the Ministry of Interior.<sup>38</sup> In the case of Afro-Colombians, the candidates must also be members of the community and have the support of an organization registered under the Division of the Ministry of the Interior for Black, Afro-Colombian, Raizales and Palenquero communities.<sup>39</sup>

The 1991 Constitution represents a qualitative and crucial change in terms of the political participation of indigenous peoples in Colombia, who represent 3.4% of the population (Dane 2005). Even though they were never formally banned from political participation because of their race or ethnic origin and gained access to electoral rights like the rest of Colombians, this constitution offers them political rights as ethnically defined social and territorial entities. Besides the strength that Indigenous organizations have obtained with their mobilizations over decades and their success in bringing three delegates to the Constituent assembly (two elected and one appointed), the institutional electoral rules have also favoured their integration into national electoral politics. The Senate operates in Colombia as a national district (every Colombian can elect from the list of national candidates, including lists from the Indigenous district) and the Special District in the House is also open to all Colombians (a voter can choose one candidate of the Special District instead of a candidate for his or her territorial district). Indigenous leaders have used the open political space and have become recognized political players in Colombian politics, with significant ups and downs, balancing the difficult task of maintaining their identity and advocating for their specific rights while, at the same time, promoting more general goals in order to appeal to a wider constituency (Laurent 2005, 2012; Van Cott 2005).

Afro-Colombians, who comprise 10.6% of the Colombian population (Dane 2005), also achieved recognition as distinct cultural communities in the 1991 Constitution, the first constitution to do this in Latin America (Van Cott 2000: 49). As with the indigenous groups, Afro-Colombians carried out mobilizations during the decades preceding the Constitutional Assembly of 1991. However, and in spite of their various efforts to coordinate diverse groups (from a powerful movement of rural communities around the rivers of the Pacific littoral to circles of intellectuals and activists in the country's urban centres), Afro-Colombians lacked the level of organization and mobilizing experience, as well as the ethnic unifying identity and public recognition possessed by the indigenous communities, and were unable to bring their own representatives to the Constitutional Assembly. However, they relied on other representative delegates, in particular the indigenous ones, and managed to include in the Constitution of 1991 a transitory article recognizing their specific rights (art T.55), which forced the legislature to enact a law within two years (Agudelo 2005; Wabgu et al. 2012). The law<sup>40</sup> includes the rights to collective property over the Pacific areas and other similar territories, but it also recognizes the cultural rights of Black communities in Colombia, establishes mechanisms to protect them (against discrimination, segregation, intimidation) and develop their cultural identity (with educational curriculums adapted to the social and cultural life of the communities)

<sup>38</sup> Colombian Political Constitution 1991 art. 171 and Law 649 of 2001 art. 2.

<sup>39</sup> Law 649 of 2001 art. 3.

<sup>40</sup> Law 70 of 1993.

and to promote their access to economic and social development. The law also reserves two of the five seats of the Special District of the Lower House for Afro-Colombians,<sup>41</sup> who have been electing their representatives since 2002.

The experience of more than twenty years of political representation of ethnic minorities in Congress has shown that there are serious challenges to this representation: first, internal competition and fragmentation, given the large number of lists and candidates competing for very few seats; second, and related to the first, a lack of support, since a very low percentage of co-ethnics actually vote for their candidates; and third, the minimum impact that those elected have had given the enormous difficulties that they face, as political electoral minorities, to promote laws in the Colombian Congress (Escandón 2011, 2013). In spite of these challenges, ethnic political representation has important symbolic relevance and significant effects in terms of public recognition.

Raizales did not obtain any representation in the Special District for ethnic minorities defined by the 1991 Constitution and the law that regulated it in 2001. However, through an initiative of the Colombian presidency, Congress is debating a project to guarantee a seat in the Lower House to the Raizal population. This proposal has created opposition among expatriates because it would entail taking away the extra seat for the Colombian expatriates that had been recently switched from the Special District to the International District.<sup>42</sup> Since the 1980s, Raizal organizations have battled increasing immigration from continental Colombia and the resulting deterioration of the ecology and economic life of the local population. Even though Raizales have not achieved any specific reserved seat in Congress, their existence as an ethnic group and the need to protect their cultural identity and the natural resources of the San Andres archipelago are recognized by an article of the 1991 Constitution that they helped write [art. 310]. This article was the basis for important legislation<sup>43</sup> that Raizales have used to support their various struggles over the years, including one that succeeded in permanently suspending hydrocarbon extraction projects in the protected marine area of the archipelago (García 2012). A problem of sovereignty has given special relevance to the region and to the demands of the local population and has forced the government to promote mechanisms of representation for the islands and specific representation for the Raizales.<sup>44</sup> Nicaragua disputed the validity of the existent treaty of maritime limits, and in a 2012 ruling, repudiated by Colombia, the International Justice Court assured the right of Colombia over San Andrés, Providencia and major cays, but concedes Nicaragua sovereignty over the waters that surrounds them (75,000 k<sup>2</sup>).<sup>45</sup>

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<sup>41</sup> Law 649 of 2001.

<sup>42</sup> *El País* November 20, 2014.

<sup>43</sup> Decree 2761 of 1991 and Law 47 1993.

<sup>44</sup> *El Tiempo* November 19, 2014; *El Colombiano* November 21, 2014.

<sup>45</sup> *BBC* May 4, 2012; *El Heraldo* May 3, 2014.

## 4. Exercising Electoral Rights

The *Registraduría Nacional del Estado Civil*, RNEC, created in 1948, is the institution in charge of maintaining the Colombian electoral census and organising elections.<sup>46</sup> Outside Colombia, where the RNEC does not maintain offices, the employees of embassies and consulates, who depend directly on the Ministry of Foreign Affairs, carry out the tasks of issuing citizenship identification cards, registering voters and candidates, and organising elections.

### 4.1. Registration Procedures: Becoming a voter

#### *Citizen residents*

According to the law, citizens can only vote in the place where they reside; electoral residence is therefore defined by the place where they appear registered in the electoral census.<sup>47</sup> Any citizen who moves to another municipality must register again. Registration can be done during the year previous to and up to two months before the election in which the voter intends to participate.<sup>48</sup> The Colombian electoral census includes all citizens who were already registered by 1988, all the new citizens who have, since then, been issued citizenship identification cards for the first time and are automatically entered in the census, and all those who have actively registered their citizenship identification cards. The census is updated daily to remove citizens who have renounced their citizenship, died, been convicted of a crime or entered the military or police service, and to include all new citizens, naturalised citizens, convicts who have served their sentence and have been released from prison, and citizens who leave the military or police. Since 2008, citizens can check the place where they are registered in the electoral census online by digitalising their citizenship identification card number on the website of the RNEC.

#### *Non-citizen residents*

In order to participate in local elections, non-resident citizens must register to vote by presenting their foreign resident identification card to the local office of the RNEC within the limits established by the law for voter registration. The RNEC maintains a separate national list of registered non-citizen resident voters, which is part of the national electoral census.<sup>49</sup>

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<sup>46</sup> Law 89 of 1948.

<sup>47</sup> Decree 2241 of 1986, Law 6 of 1990, Law 163 of 1994.

<sup>48</sup> Law 1475 of 2011, article 49.

<sup>49</sup> Law 1070 of 2006.

*Non-resident citizens*

In order to vote abroad in the legislative and presidential elections, Colombian expatriates need to register in a Colombian embassy or consulate so their new residence can be changed in the electoral census. To register, Colombian citizens must present their Colombian citizenship identification card or passport. Only those Colombians whose citizenship identification card was issued for the first time at the consulate or embassy where he or she expects to vote, and were automatically entered in the electoral census, do not need to register.

**4.2. Registration Procedure: Becoming a Candidate***Citizen residents*

To register, a candidate for any kind of elected position must have either the official support of a legally registered (*con personería jurídica*) political party or movement, or the support of a significant group of citizens whose signature list should include at least 20 percent of the number that results from dividing the number of citizens able to vote in the respective district by the number of seats or positions to be filled. In no case will more than 50,000 signatures be required. The groups of citizens should also provide a 'seriousness insurance' (*seguro de seriedad*) to cover the expenses of the campaign in case the candidate receives state support but does not obtain the minimum number of votes required to receive state compensation.<sup>50</sup> A committee of three citizens should register the candidate before an electoral authority at least one month before registration is closed and before the signature collection starts; their names and that of the candidate should be included in the signature collecting form. Candidates have one month to register, starting four months before the elections.<sup>51</sup> For the registration of lists with more than five candidates, the law requires a gender quota of at least 30 percent women.<sup>52</sup> Registration must be done at the RNEC national, departmental or municipal offices.

*Non-resident citizens*

To register as candidates, non-resident citizens must follow the same procedures as candidate registration in Colombia and register at a consulate or at the RNEC in Colombia.

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<sup>50</sup> Law 130 de 1994, article 9.

<sup>51</sup> Law 1475 of 2011, articles 28 & 30.

<sup>52</sup> Law 1475 of 2011, article 28.

### 4.3. Casting the vote

#### *Residents*

Colombian citizens are allowed to cast their ballots at the polling station where they are registered. They must present their citizenship identification card. There is no postal ballot or proxy voting. Before 1988, the vote consisted of a piece of paper with the number of the candidate written on it, which the voter deposited in the ballot box. While the vote was secret, this paper was provided by the candidate and his or her party and was misused by some politicians to control voters (Escobar 2002: 36). In 1988, the system was changed by law and now the state provides an official ballot with the names and logos of the parties and names and pictures of the presidential candidates (or numbers assigned to the candidates in the case of legislative elections), which the voters select in a private cubicle and deposit in the ballot box.<sup>53</sup> Electronic voting was approved by Congress in 2011 but was not implemented for the legislative elections of 2014, as the law had established.<sup>54</sup>

#### *Non-residents*

To cast a ballot, Colombian expatriates must approach a polling station located in the embassies and consulates. As in Colombia, to cast a ballot a voter must present his or her citizenship identification card. Some consulates with high population density, such as those of New Jersey, New York or Miami, establish additional polling stations to facilitate citizens' access. Starting with the legislative elections of 2014, Colombian expatriates have one week to cast their ballots, beginning the Monday prior to election day, which always falls on a Sunday in Colombia.<sup>55</sup>

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<sup>53</sup> Law 62 of 1988.

<sup>54</sup> Law 1475, article 39.

<sup>55</sup> Law 1475 of 2011, article 51.



## 5. Conclusion

In contrast to other Latin American countries, Colombia has a long electoral history because it has avoided authoritarian regimes, with the exception of the military regime of the mid-twentieth century. While economic and literacy restrictions to suffrage were lifted relatively early (in the 1930s) in comparison to other Latin American countries, gender restrictions lasted for two more decades, Colombia being one of the last countries to lift these restrictions. Today, as in other Latin American countries, Colombian law has imposed a candidate nominee gender quota for lists registered to run for elected official positions.

Colombia has been a pioneer in granting electoral rights to its expatriates, first, allowing them to participate in presidential elections and then in congressional elections. It is also among the small yet growing of countries where expatriates are guaranteed their own representation in Congress. As with other South American countries, Colombia has also enfranchised its non-citizen resident population at the local level. Whereas there are cases of early enfranchisement in the 20<sup>th</sup> century, Colombia is among those countries that did not enfranchise its non-resident population until after the 1990s, at the time of increased global migration, reciprocity agreements, and generalisation of human rights discourse.

In both cases, the enfranchisement of non-resident citizens and non-citizen residents, the procedures for registering and voting, and in the case of expatriates, for registering as a candidate, follow the norms that rule Colombian citizens in general.

Colombia has followed the path of other Latin American countries in recognizing specific and collective rights of its ethnic minorities, and it is among the few countries to guarantee representation in Congress to Indigenous peoples and Afro-descendants.

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