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ACCESS TO ELECTORAL RIGHTS *MEXICO*

Luicy Pedroza

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Access to electoral rights

Mexico

Luicy Pedroza

1. Introduction

Over the last four decades the transition from authoritarianism in Mexico has been a shaky political process in a society troubled by enormous challenges of unequal growth, high economic dependence on the economy of the USA, and, most troubling of all in recent years, criminal violence sparked by the ‘war on drugs’. While it is not obvious that the transition is complete - or safe from relapses -, experts on the Mexican regime transition agree that this process has been powered through electoral reforms and elections which successively opened the political system to more competition (Molinar Horcasitas 1991; Méndez de Hoyos 2006; Merino 2003; Schedler 2002) and helped to established a reliable, independent electoral authority: the Federal Electoral Institute (IFE). Among the many relevant electoral reforms in this process, the electoral rights of migrants, or more precisely of emigrants, have been a matter of political debate only in the last twenty years. This debate has coincided with unprecedented emigration rates. Today, some twelve million Mexican citizens reside in the United States, which amounts to ten per cent of the Mexican population.

In the long trajectory of political-electoral reforms in Mexico, the last reform of 2 May 2014 enfranchised emigrants for national legislative elections (only the upper house, i.e. Senate), besides the presidential elections for which they have been able to vote since 2006. Additionally, legislators seem to have reacted to the critique of many observers and evaluators of the emigrant vote regarding the restrictiveness of voting methods available and the difficulty of accessing the electoral register for emigrants (e.g. Blanco y Fornieles et al. 2013; Calderón Chelius 2010; Coordinación del voto de los mexicanos residentes en el extranjero 2012). The process of registering has been facilitated and more methods to cast the vote have been allowed, even if the precise regulation to implement them is still lacking. At the same time, the 2014 electoral reform radically changed the nature of the Electoral Institute (from IFE to INE –*Instituto Nacional Electoral*), which in the past had jealously kept a monopoly over the secure register in the electoral roll and restricted voting methods in order to guarantee the inviolability and secrecy of the individual votes of emigrants.¹

¹ Reflecting another major turn in this long process of reforms, the electoral reform of 2014 has made the IFE redundant and instead created a national electoral institute that will take over IFE as the highest electoral authority in the country, effectively becoming a semi-centralized structure for the organisation of elections. It is

Despite many significant innovations regarding the electoral rights of emigrants that will be described in this report, it is important to note that the traditional distinction between nationality and citizenship, common to many Latin American countries, still holds in Mexico. While nationality is conceived constitutionally as a link between the individual and the state, citizenship is attributed to that part of the national population that has the full exercise of political rights and obligations. Mexican nationality is granted on the terms set out in article 30 of the Constitution to those born in Mexico or born abroad of Mexican parents (male or female). According to the provisions of article 34 of the Constitution, citizenship is attributed to Mexican nationals who are over eighteen years of age and have an honest way of living². Thus, Mexican citizens are a subset of Mexican nationals, and they alone are covered by the provisions related to electoral rights.³

2. Historical background

Despite the scale of Mexico's emigrant population, discussions on the electoral rights of Mexican citizens abroad emerged only in the early 1990s in the USA, when organisations of Mexican emigrants started to form confederations (Calderón Chelius 2009) to formulate their demands to exercise what they were rightfully entitled to do as Mexican citizens: fulfil their constitutional right and duty to vote. Emigrants also claimed they had a legitimate voice in the destiny of their country of origin in exchange for their remittances. These demands took a few years to reach Mexico and they first appeared in forums of jurists and academics, where they met with distrust by the dominant party (*Partido Revolucionario Institucional, PRI*) regime, and in particular the distrust in its ideology (known as *nacionalismo revolucionario*) for any kind of open political interference in the political system coming from abroad.

A small, but decisive step was taken in 1996 in the context of a far-reaching electoral reform with the removal from article 36 of the Constitution of the territorial restriction that a citizen must vote in the district where he or she is registered, as well as, simultaneously, the inclusion of a transitional article in the new Electoral Code, the COFIPE (*Código Federal de Instituciones y Procedimientos Electorales*, art. 8) that instructed the creation of a commission of specialists in order to study the modalities to exercise the vote from abroad. This commission was installed in 1998 (Favella Herrera 2012). In 1998, too, the first proposals to effectively extend voting rights to Mexican citizens abroad entered the national parliament, but it would take seven years for these to gather enough political support. The change amounted to an ambitious normative reappraisal of emigrants from being either traitors, or, in

now justified that this electoral authority takes over the organisation of elections at the subnational level 'if major anomalies appear' in the state electoral institutes; something which was not possible in the previous federal structure of electoral organisation. To many observers, the compromise of independence and autonomy of the IFE as electoral arbiter in favour of the will of governing parties has been a stepwise development over the last fifteen years and the transformation of the IFE into INE is the result of yet another agreement between the Partido Revolucionario Institucional (PRI), back in power at the presidential office, and the Partido Acción Nacional (PAN), in order to get the latter's support for other structural reforms planned by the PRI.

² 'Son ciudadanos de la República los varones y mujeres que, teniendo la calidad de mexicanos, reúnan, además, los siguientes requisitos: I. Haber cumplido 18 años, y II. Tener un modo honesto de vivir' (Constitución Política de los Estados Unidos Mexicanos, 1917, with reforms until February 2014, Art. 34).

³ In the Mexican Constitution art. 19 still bars foreigners from any participation in political life and naturalised Mexicans are limited from the exercise of several official posts and from seeking public office, as are Mexicans with double or multiple nationality, even though the latter are effectively allowed if they sign declarations of loyalty. For further details please consult the report on Citizenship and Nationality for Mexico, by Henio Hoyo.

the best case, non-existent as political actors, into heroes of development (Calderón Chelius 2003). An important push for such a reappraisal came with the victory of the main opposition party's (*Partido Acción Nacional, PAN*) candidate, Vicente Fox, in the presidential elections of 2000. In his campaign, Fox had extolled the virtues of emigrants, proclaiming that Mexico factually extended beyond borders to wherever Mexicans were, and he promised to govern for all Mexicans. This shift in the presidential office after 71 years of PRI-rule gave legitimacy to the debate on the rights of Mexicans resident abroad, but even so it took several legislative attempts until political parties could agree on a reform to enfranchise Mexicans abroad (see Payán & Schober 2007).

The enfranchisement of non-resident Mexican citizens was achieved in 2005, when a new chapter was added to the federal electoral law to regulate the vote of Mexicans from abroad (*Libro Sexto del Código Federal de Instituciones y Procedimientos Electorales*). Since that time, Mexicans resident abroad have been able to vote in two presidential elections, and in some sub-national level elections.

Mexico is not only a federal country; it is also highly decentralised. The parliaments of states have autonomy to design their own electoral laws and the state electoral authorities organise their elections. As long as they do not contradict the laws of the federation and are in accordance with the Constitution, which is the supreme law, sub-national congresses may determine the different modalities for voting and special models of representation. Over time in the last three decades, as the political arena became more competitive and plural, and decentralization proceeded apace, states in the Mexican federation also took more advantage not only of their extended formal capacity to elaborate policy for their emigrant communities (Fitzgerald 2006), but also of the power to legislate on electoral matters regarding the specifics of the franchise for emigrants. This is the reason why, in order to provide exhaustive information on the 'Mexican case', a comprehensive collection of data on its 31 states, plus the federal district (Mexico City),⁴ with their respective electoral laws and regulatory codes would be required. This is unmanageable within the confines of this report, not only because of the sheer complexity of that task, but also because with the electoral reform of 2014 electoral legislation has changed at the federal level requiring changes at state levels, changes which had only been partially completed at the time of writing, as some states are still in the process of reviewing their emigrant rights. Thus, without claiming to provide exhaustive information, I focus in this report mostly on the federal level and provide information on sub-national level variations that are illustrative of the range of variation for each category below.

⁴ Soon the distinction between the states of the federation and the federal district will be nil, as the Senate of the Republic has approved the political reform of the Federal District (*DF*) that turns it into a state of the federation under the name '*Ciudad de México*': it will be still the capital of the federation and be the seat of the powers, but it will have a Constitution of its own and a local parliament, and autonomy in order not to depend of the Congress of the Union. The new constitution of Mexico City must be finished before January 17, 2017.

3. Eligibility: Who has electoral rights under national law?

Under national law, only citizens have electoral rights. Citizens register in the electoral roll when they turn eighteen years old, or at the first opportunity, by going to the nearest office of the INE to request registration: they are only required to fill and sign a form and have a picture taken which will appear in the register and on their ID voting card (*credencial para votar con fotografía*). Since this voting card serves as the main identification document in Mexico and is used for many purposes (from opening a bank account to renting a public bicycle), there is a great incentive for individuals to get one – and thereby enter the electoral roll - as soon as the eligibility criteria of citizenship are met. The INE completes the registration process and must produce this ID within twenty days and then informs the citizen that the card is ready to be picked up. The citizen will be required to bring another form of identification (usually birth certificate) in order to collect the card.

In Mexico, at the federal level, there are elections for president, for the upper and lower house (*Senado* and *Cámara de Diputados*, which together constitute the *Congreso de la Unión*), and since 2014, it is possible to vote in referendums. At the sub-national level, there are elections for state legislatures (*Congresos de los estados*), regional executives (*Gobernadores*) and, in some states where electoral laws and codes have regulated it, different direct democratic mechanisms such as referendums, popular initiatives and plebiscites. Furthermore, at the local level it is possible to vote for local legislatures (*Ayuntamientos*), local executives (*Presidente Municipal* or *Delegado* in the Federal District) and also, where states allow, participate through local mechanisms of direct democracy. The Mexican electoral system is mixed, guided by proportionality formulas for legislative elections and by majoritarian principles for executive elections. Although there has never been a national referendum, the results of one would be binding and would oblige Congress to take action.

Citizen residents

According to the Mexican Constitution, all citizens above eighteen years of age and with an honest way of living have the right to vote.⁵ In order to exercise that right it is required that the individual is registered in the federal roll of voters (only a one-time registration is needed), have her or his voter ID card (which require renovation every ten years), and, in case of conviction of a crime that gave rise to a sentence of imprisonment, he or she must be rehabilitated in respect of their political-electoral rights by the Electoral Court of the Judicial Power (*Tribunal Electoral del Poder Judicial de la Federación*).

Minimum age

While the age threshold to exercise active voting rights is the same at all levels, the age threshold for running as a candidate depends upon the election: 21 years of age for state and national legislatures (*Diputados*); 30 for state executives (*Gobernadores*); 25 for the Senate of the Republic (*Senadores*), and 35 for presidential elections (*Presidente*).

⁵ See arts. 34-36 of the Constitución Política de los Estados Unidos Mexicanos promulgada el 5 de febrero de 1917, Diario Oficial de la Federación, with reforms until 7 July 2014. For further details on the legal base of political rights, see *Derecho Electoral Mexicano* 2011, 23–25.

Persons with a mental disability

Citizens' rights can only be lost or suspended by a judicial sentence, and under no other circumstances. In Mexico neither the Constitution nor any other law specify anywhere that citizens with mental disabilities are disenfranchised. However, disenfranchisement of persons with mental disabilities has been practised because the officers who serve as electoral functionaries are citizens, not employees, and were led to believe that the entry into the voting poll could be denied to persons 'deprived of their mental capacities', just as to persons under the effects of drugs. This was written into the manual they had to study in order to prepare for the elections, despite the fact that in 2007 Mexico had signed up to the UN Convention on the Rights of Persons with Disabilities, which establishes that states must ensure that persons with disabilities can participate in the political and public life in equality of conditions with others, including the right to vote and be elected. Shortly before the 2012 federal election the IFE circulated a memo to its citizen electoral officers to clarify that persons with mental disabilities should not be denied their right to vote, but the notice did not reach all officers and was so late that it created confusion. In 2013 a 22-year-old citizen filed a complaint at the National Council to Prevent Discrimination (*CONAPRED*) condemning the effective disenfranchisement of many persons with mental disabilities in the election of 2012. After this, the IFE eliminated this ordinance from the citizen officer's manual, apologised, and committed itself to train the citizen electoral officers in how to assist persons with disabilities who wish to vote and how to prevent discriminatory practices during elections.

Persons convicted of criminal offences

In Mexico, prisoners are disenfranchised. They recover their citizen rights when they recover their freedom. Article 38, Section II, of the Constitution specifies that citizen rights are suspended 'for being subject to a criminal process for a crime that is punishable with imprisonment, counting from the moment that the sentence is dictated'. Likewise, article 46 of the Federal Criminal Code specifies that 'a sentence of imprisonment produces the suspension of political rights and rights of tutelage [...] The suspension will begin from the moment the respective sentence applies and will last the whole duration of the sentence'. Those who are fugitives, but against whom a sentence of imprisonment exists, are equally deprived of their citizen rights.

Despite the apparent clarity of these articles, the specific moment at which the 'criminal process' should have the effect of disenfranchising a person – its start and end - has been a matter of judicial controversy between courts of different levels in Mexico as they have differed in their interpretation of these two articles in the Constitution and the Federal Criminal Code (see Ríos Vega & Espindola Morales 2014; D. González Oropeza, Báez Silva, and Cienfuegos Salgado 2014; Alanís Figueroa 2012). Some courts have maintained the view that the suspension of political rights takes effect from the issuance of the detention order (which already amounts to a deprivation of liberty),⁶ while others interpret the conviction to be the initial point at which political rights are suspended, considering this deprivation of rights a part of the punishment of imprisonment (Luis Efrén Ríos Vega and Espindola Morales 2014).⁷ The first interpretation leads to a view that the suspension ends only with the

⁶ Suprema Corte de Justicia de la Nación, 23/2007-PS, 31 October 2007.

⁷ Tribunal Electoral del Poder Judicial de la Federación (TEPJF), SUP-JDC-20/2007, 28 February 2007 ('case Hernández'). This means the dictation of sentence, as the Federal Criminal Code, art. 46 indicates.

final decision to end the trial (either acquittal or conviction) because from that moment the citizen is no longer to 'be subject to criminal prosecution for a crime that is punishable with imprisonment' in terms of the Constitution. The latter interpretation led to the view that the constitutional restriction of citizens' rights had to be interpreted in harmony with the principle of presumption of innocence, so that only persons already detained for a criminal process can be prevented from voting, since they physically cannot go to vote, but that even if a trial process is under way, if they are physically still free, they keep their citizen rights.⁸ Later, the Electoral Tribunal of the Federal Judicial Power indicated that before a sentence of imprisonment has been pronounced, political rights cannot be suspended, as the presumption of innocence has a higher rank in the order of norms in the Constitution, being a fundamental liberty (Luis Efrén Ríos Vega 2014).⁹ This was also the interpretation supported by the Supreme Court of Justice: it is a progressive interpretation of the traditionally restrictive constitutional suspension of political rights for persons in a criminal process to the effect that its implementation remains restricted only those cases where private citizen is restricted of his or her freedom and only while this lasts (i.e. not any longer if they are on parole or are released earlier than the original sentence determined).¹⁰ This ruling is binding on all the authorities, who have to protect and prioritise the exercise of human rights. The room for interpretation had allowed local legislation to specify the conditions under which the suspension of political rights was provisory or definitive. However, the Electoral Court of the Federal Judicial Power has indicated that although the Constitution provides that the rights and prerogatives of the citizen, like the political and electoral rights, are suspended whenever a person is subject to a criminal proceeding in which the punishment is imprisonment, such suspension is neither absolute nor exclusive.¹¹ Furthermore, upon analysing the possible restrictions that the exercise of these rights may have, a reference has been made to article 23 of the American Convention on Human Rights and the interpretation made thereof by the Inter-American Court of Human Rights to determine that the compliance with and application of the international treaties signed by Mexico are mandatory for all Mexican courts and that the compliance with the case-law that the Inter-American Court develops in this matter is compulsory.

Citizens abroad

Mexican citizens who reside abroad enjoy different external voting rights depending on their state of origin within Mexico,¹² in addition to the electoral rights they enjoy to vote in presidential elections (since 2006) and for the Senate (since 2014).¹³ Mexican citizens abroad will be able to vote for the Senate for the first time in 2020 and are already empowered to vote for state executives, which will be implemented for the upcoming Michoacán elections of June 2015. According to the Federal Law of Popular Consultation,¹⁴ Mexicans residing abroad can also vote for national referendums, although only when these coincide with presidential elections. Regarding lower levels of government, such as state elections, the

⁸ Suprema Corte de Justicia de la Nación, Contradicción de tesis entre las sustentada por la SCJN y el TEPJF 6/2008-PL, 6/2008; Contradicción de tesis 23/2007-PS 2014.

⁹ Tribunal Electoral del Poder Judicial de la Federación (TEPJF), ST-JDC-22/2009, 2 March 2009 ('case Facundo').

¹⁰ Tribunal Electoral del Poder Judicial de la Federación (TEPJF), SUP-JDC-85/2007, ('case Pedraza').

¹¹ Tribunal Electoral del Poder Judicial de la Federación (TEPJF), SUP-JDC-33/2011, ('case Ortíz').

¹² For a comprehensive historical comparison of two very relevant cases within Mexico because of their high emigration rates, but also because of their dynamism in emigrant policymaking, see (Espinoza Valle 2012).

¹³ Ley General de Instituciones y Procedimientos Electorales, 2014, Art. 329, 1.

¹⁴ Ley Federal de Consulta Popular, art. 4, 2014.

LGIPE (*Ley General de Instituciones y Procedimientos Electorales*) which replaced COFIPE in 2014, does not foresee, explicitly allow, or even mention the possibility that Mexicans abroad participate in state elections, leaving this to be regulated by the state constitutions and electoral laws and codes. The states may legislate in electoral matters as long as there is no contradiction with federal law.

So far, the states of Chiapas, Zacatecas and Michoacán have made use of this power to allow Mexican citizens originally registered in their electoral districts who are abroad to participate in the election of their state parliaments. Regarding the state executives, the Federal District (Mexico City, where it already was implemented as early as 2012, together with the presidential elections), Michoacán (where it will be implemented the upcoming June 2015 elections), Zacatecas (where it will be implemented for the first time in 2016) and Chiapas states are the federal entities which allow their citizens abroad to elect the *Jefe de Gobierno* (the name of the executive head office for the Federal District), and *gobernadores*, respectively.

Regarding the right to vote in regional referendums, there is plenty of variation: 22 states have legislated and regulated on direct democracy mechanisms, from plebiscites to citizen consultations. Of these, 17 states have regulated referendums as one of those mechanisms (Zayas Ornelas 2007).

Mexicans abroad are not enfranchised for elections at the local level in Mexico with the sole exception of Zacatecas (through the condition of ‘binational residence’¹⁵). Formerly, Michoacán also allowed Michoacanos abroad to vote for local elections, but this possibility was eliminated in the last electoral reform of 2014, after two elections (2007 and 2010) in which the participation was very low and the cost of reaching Michoacanos abroad was very high (Badillo Moreno 2007).

Eligibility criteria

Generally there is no requirement of previous residence for Mexican citizens abroad to be able to vote in the elections for which they have the right (presidential and senatorial elections at the federal level; state legislatures of Michoacán, DF, Zacatecas). However, at the level of state parliaments where citizens abroad are enfranchised, there might be some restrictions. This is the case in Zacatecas and Chiapas. In the latter, for example, in order to participate in the election of the state executive (*gobernador*), emigrants must be able to show that their domicile listed on their ID card is in Chiapas, even if they reside somewhere else.¹⁶ Likewise, although there are generally no conditions relating to the time spent abroad, Chiapas allows its citizens abroad to participate in the elections for the state parliament (for one deputy in the parliament who represents the constituency of Chiapanecos abroad) if they live in a geographic entity where a ‘Federation of Chiapanecos’ exists.¹⁷ This condition reflects not only a concern for practicability, but is also connected to the unique figure of special

¹⁵ This is defined in the electoral law of Zacatecas as the condition that a person assumes in order to simultaneously possess own domicile abroad and, at the same time, domicile and neighbourhood in the territory of the state, maintaining in it house, family and interests. This is my translation of: ‘...condición que asume una persona para poseer simultáneamente domicilio propio en el extranjero; y al mismo tiempo, domicilio y vecindad en territorio del Estado, manteniendo en él, casa, familia e intereses.’ (Ley Electoral del Estado de Zacatecas 2014, Glosario, num. XXXIII).

¹⁶ Código de elecciones y participación ciudadana del Estado de Chiapas, 2014, Art. 549, I.

¹⁷ They must, as well, have not only their electoral ID card, but also the other ID document issued by consulates to Mexican migrants: the ‘matrícula consular’ (ibid. II).

representation that Chiapas has developed for its '*diputado migrante*', indirectly revealing a rationale to give rights to those citizens abroad who constitute already an established emigrant community with interests in the origin state and responding to critiques of the lack of a genuine link of representation between Michoacanos and the current '*diputada migrante*' (see Camas 2015).¹⁸

There are no restrictions on voting for expatriate citizens born abroad or to naturalised Mexicans who reside abroad. If they are not in the electoral roll or have no voter ID card, they do have to apply to be included in the electoral register, just as Mexicans born in Mexico also have to when they reach 18 years of age.

Right to stand as candidate

Under federal law Mexicans living abroad cannot be candidates for any popular election position (Consejo General del IFE 2011). However, again, there are important exceptions in the sub-national level. Some states in Mexico have created new seats in their legislatures under an innovative figure of special representation: '*candidato migrante*',¹⁹ which exists in three Mexican states: Zacatecas,²⁰ Chiapas and Guerrero. Currently there is a legislative proposal under consideration to create these seats in Jalisco. While it is within the competence of the states of the federation to regulate their own elections, the regulations to exercise passive voting rights are loosely coherent with federal law. Regarding the right to run as candidate, Mexicans abroad are generally disenfranchised at the national level (legislative and presidential elections), and this extends to the state executives (governors) but for state parliaments there are three important exceptions (as to January 2014): Zacatecans with 'binational residence' are eligible for their state legislature; more recently, Chiapas has allowed emigrants to run for office, and this possibility is now being discussed by the legislature in Guerrero. For state executives, article 116 of the Federal Constitution states that only Mexicans by birth and native of the state (meaning that they are Mexicans by virtue of having a birth connection to that particular state) *or* with a residence of at least 5 years before the election, and over 30 years of age, may be elected for governorships of states.²¹ However, in Querétaro not only Mexicans by birth are eligible, but also Queretans 'by declaration by the Legislature'. In Zacatecas not only naturalised Mexicans are eligible for popular elections positions; Zacatecans of 'binational residence' may also be elected even to local government

¹⁸ In the initial definition of the eligibility criteria for Michoacanos abroad to vote for their deputy there was no condition regarding the presence of an organisation of emigrants in their places of residence. See Reforma Electoral Estado de Chiapas, Decreto 228.

¹⁹ This is defined as follows: 'Candidato Migrante.- Es la persona que cumpliendo lo dispuesto por la Constitución Política de los Estados Unidos Mexicanos, y su Ley Reglamentaria en materia de nacionalidad y ciudadanía, pretende ocupar un cargo de elección popular, poseyendo ciudadanía zacatecana y residencia binacional' (Ley electoral de Zacatecas 2012, art. 5, VII).

²⁰ The Constitution of Zacatecas, reformed last on September 2013, states: 'La Legislatura del estado se integra con dieciocho diputados electos por el principio de votación de mayoría relativa, mediante el sistema de distritos electorales uninominales, y por doce diputados electos según el principio de representación proporcional, conforme al sistema de listas plurinominales votadas en una sola circunscripción electoral. De estos últimos, dos deberán tener al momento de la elección, la calidad de migrantes o binacionales, en los términos que establezca la ley' (art. 51).

²¹ Art. 116, I, b, reads: 'sólo podrá ser gobernador constitucional de un Estado un ciudadano mexicano por nacimiento y nativo de él, o con residencia efectiva no menor de cinco años inmediatamente anteriores al día de los comicios, y tener 30 años cumplidos el día de la elección, o menos, si así lo establece la Constitución Política de la Entidad Federativa'.

councils (*Ayuntamientos*).²² There are no other special categories of expatriates entitled to run as candidates.

Restrictions regarding residence exist for any person who wishes to run as candidate for presidential elections: candidates for the presidency must be Mexican citizens by birth and must have resided for twenty years in Mexico, and one year immediately before the election (only 30 days of absence in a year are tolerated). Candidates for the national congress generally must be Mexican citizens by birth, native of the state for which he or she is candidate, be over 21 years of age and must be resident in the state for at least six months before the election.²³ Regarding the state executives, the requirements to become governor of a state of the federation are established in each of the 31 state constitutions and they differ regarding residence. While in Zacatecas and Querétaro a residence of 5 years previous to the election is required, in Durango the residence required is 12 years. In states where non-resident citizens can be candidates at elections at the local level, domicile seems to be more decisive than residence: this is, for example, the case of Zacatecas, where ‘binational residence’ has waived the normal requisites of residence for all public posts open to popular election.

There are no restrictions on eligibility referring to time spent abroad for non-resident citizens, but – again - there is variation across states where non-resident citizens have been enfranchised with candidacy rights. These variations range from exempting such citizens from the general requirements of residence previous to the election, to greatly reducing the period that is required from them if they are emigrants. On the one hand, in Durango there is a residence requirement of 6 years prior to the election for being candidate to the state legislature, but ‘*duranguenses con calidad de migrante*’ (emigrants) are exempted from that requirement altogether. On the other hand, in Querétaro it is required that candidates for the state legislature have resided 3 years immediately before the election in Querétaro, or 6 months in the case of migrants, if it can be shown that their family remained in Querétaro during their absence.

Citizens who were born abroad are not disenfranchised from candidacy rights (with the exception of the presidency), as it is not the place of birth that is decisive in general, but the principle of acquisition of citizenship. Eligibility requires Mexican citizenship/nationality by birth, which means they may have been born abroad, but acquired Mexican nationality by virtue of having a Mexican parent (*jus sanguinis*), or they may have been born in Mexico (*jus soli*). In some states it is also tolerated that naturalised citizens are eligible if they have been declared citizens of the state by the legislature. Eligibility requirements for state legislatures are in principle built upon the requirements specified for the Chamber of Deputies of the Federation, but as shown above with the example of Zacatecas, this provides only the base: in fact, the requirements differ in important aspects across the states of the federation.

²² Constitución de Zacatecas, art. 14, IV.

²³ This applies to candidates to the chamber of Deputies; for the Senate the same requisites apply, except the minimum age for eligibility is 25 years.

Mode of Representation

Mexicans who vote from abroad are registered in the national electoral list of voters (*Lista nominal de electores residentes en el extranjero*, LNERE), which actually consists of two lists: one corresponds to their actual domicile abroad (in order to know where the votes come from), and the other corresponds to their state of reference in Mexico (in order to count the votes within Mexico and to assign them to the correct state, which is important since the reform of 2014 that enfranchised them for Senate and governor elections). In order to register in the state for the first time in the electoral register they must provide information regarding their domicile on their voter ID card: if the card was issued in Mexico, then the reference state will be the one which issued the card; if it is issued from abroad, then the reference state will be the one where the Mexican parent comes from, and if the two parents are Mexican, but from different states, the voter himself or herself selects which of the two states will be the reference. This means that the model of assimilated representation applies to all elections at the national level in which non-resident citizens may vote. In lower levels of government, such as state legislatures, assimilated representation applies. In the states where migrants are eligible for legislatures, they are usually incorporated in the party lists for proportional representation.²⁴ In some states, non-resident citizens are eligible under models of special representation that are not geographic, as is the case in Chiapas, where the law advances that there will be a special circumscription which will guarantee the representation of Chiapanecos abroad, in which political parties registered in Chiapas will participate postulating a list with a single candidate.²⁵

Foreign residents

Foreign citizens do not enjoy electoral rights in any elections held in Mexico and debates about this have not yet crossed from civil society efforts and academic forums into the formal political arena, even if in his electoral campaign the current mayor (*Jefe de Gobierno*) of Mexico City expressed his inclination to support a proposal in the legislative assembly of Mexico City to the effect of enfranchising foreign residents.

Indigenous minorities and afro-descendants

Describing neatly the electoral rights of indigenous peoples in Mexico is a tricky task. The high degree of decentralization within the already loose federal structure of the Mexican state has encouraged the emergence of a myriad of different regulations which, furthermore, have been in flux for the last decade. The key so far is that self-government according to indigenous customs (*usos y costumbres*²⁶) has been limited to municipal governments within electoral districts classified as indigenous.²⁷ The specific electoral regulation for indigenous self-government depends on the base provided by state constitutions, and ultimately on the indigenous community deciding itself for an electoral system (either party system or their

²⁴ The electoral formula is a mix of majoritarian and PR elements in all states. In Zacatecas, for example, two seats of the PR lists must include a migrant candidate or candidate with binational residence (Constitución de Zacatecas, arts. 51 and 52).

²⁵ Ley Electoral de Chiapas 2014, Artículo 35 Bis.

²⁶ The notion of '*usos y costumbres*' is ambiguous and vague: it refers to non-written norms and collective practices that have a formal and consensual character, thereby acquiring judicial value and are part of the identity of the communities (Singer Sochet 2013, 5).

²⁷ In the Mexican legislation a *municipio* is the local political, administrative, and territorial unit. *Ayuntamiento* is the government and administration of a *municipio*.

own customary system, and, in the case of the latter, the specific procedures).²⁸ At the present time, there are, in total, 28 indigenous electoral districts (9.3 per cent of the total²⁹) dispersed across eleven of the states of the federation. The determination of districts is subject to periodical reconfigurations that are made for the whole country and are controversial.³⁰ The diversity of regulations in the state constitutions regarding indigenous self-government, added to the fluctuating character of indigenous districts (and even of the local government units within these), have generated a landscape of legal inequalities for indigenous populations, which tend to be disperse and seldom overlap tidily with sub-national state borders or with electoral districts (Ramírez 2006). At the subnational level, the absence of recognition of plural composition of the nation in diverse state constitutions has given way to the lack of legitimacy of elections through political parties in many indigenous communities and their subsequent decision to take government (and justice) matters de facto into their own hands. Furthermore, even when *usos y costumbres* are allowed and applied formally, there have been controversies about their regulations: Courts have contested modifications of constitutional criteria for passive and active electoral rights, as in some *municipios* women have been barred from one or both kinds of electoral rights³¹ and others have established a different minimum

²⁸ Since the electoral reform of 2001, Art 2 of the Constitution states that: ‘The nation has a multicultural amalgamation based on its indigenous peoples which are those inhabiting the country since even before the Conquest took place and who have lived according to their own social, economic, cultural and political institutions. The self-awareness about the indigenous identity shall be the most important criteria to determine whom indigenous law will be applied to. The communities belonging to an indigenous group are those living in a territory and integrating a social, economic and cultural unit with both leaders appointed and governing practices applied by their own. The right to self-determination of indigenous people shall be granted within a general framework of autonomy according to the Constitution and in a way which preserves the national unity. State constitutions and laws shall establish the guidelines according to which indigenous peoples will be recognised as such. In doing so, State legal systems shall take into account the general principles of the law as well as ethno-linguistic and territorial criteria’. In particular, Art. 2, VII states that indigenous peoples have the right to: ‘elect, in the *municipios* with indigenous population, representatives before the *ayuntamientos*. The constitutions and laws of the states in the federation will recognize and regulate these rights in the *municipios*, with the purpose of strengthening the participation and political representation according to their traditions and internal norms’. Furthermore, the constitution recognises the right of indigenous peoples and communities to self-determination and their autonomy to ‘decide over their social, economic, political and cultural organisation; apply their own regulations and solve their own conflicts according to their own rules, the general principles supporting this Constitution, the fundamental rights and, specially, the dignity and integrity of women’, leaving open the particularities of this: ‘the law shall establish the ways in which judges and courts will validate the aforementioned regulations’. Regarding self-government, it sets the limits clearly at the municipal level, specifying their right to ‘Elect their representatives to the municipal offices located at the indigenous municipalities. State Constitutions and State laws shall enforce and regulate such a right in order to strengthen the political participation and representation of indigenous peoples in accordance with their traditions and internal regulations’ and enforce their right to ‘Submit all kind of legal lawsuits to the Mexican Courts’ (Constitución Política de los Estados Unidos Mexicanos, art. 2).

²⁹ Based on the 300 electoral districts elected by majority rule. It would be only 5.2% of the whole Chamber of Deputies, which has 500 seats (i.e. adding the 200 elected by proportional representation).

³⁰ So far the criteria to determine indigenous districts require that the population consists of 40 per cent indigenous peoples, according to data of the General Population Census, and territorial continuity of that population within the district. The last district reconfiguration 2004-2005 was contested because the dispersion of indigenous communities in the territory hampered their representation in the indigenous districts; also, the indigenous districts mixed the ethnic groups within, and only considered territorial configuration of indigenous *municipios* for majority districts (those that serve as base for the election of 300 of the 500 seats of the Chamber of Deputies), but did not include any measure to ensure that parties designate indigenous candidates for those districts.

³¹ According to Martha Singer Sochet (2013), in 1995 women had no right to vote in 18% of the *municipios* ruled by *usos y costumbres*. This is the case although the Constitution states clearly that indigenous peoples have the right to ‘elect their own authorities or representatives according to their regulations, procedures and traditional practices in order to appoint their internal governments, in a way which enforces equality of

age to be eligible. Most irregularities stem from the difficulty for communities to decide for either system (i.e. party system or *usos y costumbres*). A common de facto mix between the party system and *usos y costumbres* (e.g. the paradoxical situation of having a unique candidate supported by all parties) has led to lawsuits, elections which have been annulled and extraordinary elections. To the best of my knowledge, these issues have been resolved on a case-by-case basis.

Overall, the road to granting politico-electoral rights to indigenous peoples in Mexico has been tortuous. In comparison to other Latin American countries, Mexico has been a laggard regarding the recognition of the right of indigenous peoples to govern themselves, and still lags behind in securing any kind of special representation for indigenous peoples: there are no seats reserved for them in the federal parliament (*Congreso de la Unión*) and no quotas to secure their nomination by political parties. Affirmative action measures are left to the parties themselves to regulate and even in those cases in which parties introduced some quotas to ensure the selection of indigenous candidates, they tend to designate indigenous candidates in lower places of their closed proportional representation lists, which are the base to designate 200 of the 500 seats in the Chamber of Deputies (Báez Carlos 2010). The result: in the 2006 and 2009 legislatures of the Chamber of Deputies only seven (of 500) were indigenous. More worrisome still, experts observe that the indigenous presence in the Chamber has been insufficient to place topics relevant to their communities in the legislative agenda, and even less significant to support them in the plenum (Báez Carlos 2010: 37).

Historical context

The Zapatista uprising of 1994 made painfully clear to the whole world that Mexico had long neglected an integral part of its population, being all too complacent with some historical facts – Mexico had its first afro-descendent president in 1829, Vicente Guerrero, and its first indigenous president in 1854, Benito Juárez.

For a long time, political discourse also played a role in overstating the degree to which indigenous populations are part of the nation: the idea of being a *nación mestiza* triumphed with the Mexican Revolution in the early twentieth century, inspiring state policy and arts. Early post-revolutionary education officers and intellectuals proclaimed the virtues of a *raza de bronce* ('bronze race', a term coined by the poet Amado Nervo) or *raza cósmica*, a mix of the white European with indigenous peoples. This national myth had a healing effect for the majority of people who perceived themselves as mixed: it served to put a lid on and leave in a distant past the often painful experiences of exploitation, slavery, rape, subjugation and subservience that explained the 'mixing', all of which ran along with the happier story of the formal toleration of the freedom to marry under the Spanish Crown. Yet this myth, which may have served the majority of the Mexican population well, notoriously left out the indigenous peoples, which were surely one of the elements of the mix, but not the result of it. The indigenous population constitutes a sizeable minority in Mexico: as of 2010 it amounted to twelve per cent (about sixteen million persons, according to self-identification/ascription and language, of whom almost seven million persons speak an indigenous language).³² More

indigenous women and men for political participation within a framework respectful of both this Constitution and the States' sovereignty' (Constitución Política de los Estados Unidos Mexicanos, art. 2, I).

³² INEGI (Instituto Nacional de Estadística y Geografía), Características culturales de la población, http://www.inegi.org.mx/est/contenidos/proyectos/graficas_temas/epobla07.htm?s=est&c=27635

importantly, this myth has completely excluded the afro-descendent populations, as if they had never existed in the history of the country. Even if the proportion of afro-descendants in the population was much lower than in other Latin American –especially Caribbean– countries, their presence in the colonial time as slaves of *haciendas* on both the Atlantic and Pacific coasts, their role in the independence wars, and in further historical episodes is undeniable. They, of course, joined the mix of peoples in Mexico too, but they have never been part of the narrative of that mix. Today, their numbers are unknown, but researchers estimate it between 200,000 and 450,000 persons. In the last five years a discussion has emerged about the afro-descendent population in Mexico and their place in history, but it is incipient: the many encounters of *pueblos negros* (black peoples) so far in Mexico have received little attention from authorities. Slowly the topic is beginning to leave the academic halls of universities and research centres, and the episodic encounters of organised civil society to enter the larger forums of discussion in mass media and institutions dedicated to promoting non-discrimination (see Velázquez and Iturralde Nieto, 2012).

Regrettably, neither the extraordinary historical facts, nor the existing narratives of a mixed nation have served to eradicate the enormous socioeconomic disadvantages of either afro-descendant or indigenous populations (i.e. their vulnerability to poverty, unemployment, lower life expectancy) and the deep-rooted daily discrimination against either minority that just recently has sparked discussions about *pigmentocracia* in Mexico.

Legal Framework: levels and variations

Mexico signed the 169 ILO Convention on the Rights of Indigenous and Tribal Peoples in 1989, which entered into force in September 1990. In 1992 the Federal Constitution was reformed to recognise the ‘pluri-cultural character of the Mexican nation’ in its article 4. Even before this, legislatures of particular states had already taken a step forward, illustrating yet again that the subnational polities have been often ahead of the federation in the extension of electoral rights to more groups.

Oaxaca is the state where the political presence of indigenous groups in self-government is most developed, so it is worth mentioning as an illustration of the maximum on the range of recognition of indigenous rights. This development began in 1990, when the constitution of Oaxaca was reformed to include in its article 16 that the state ‘has a plural ethnic composition, founded in the presence of indigenous peoples that integrate it’ and, in its article 25, that ‘the respect to the traditions and democratic practices of indigenous communities will be established in the laws’. This was eleven years in advance of a similar development at the federal level. Besides this, in 1993 the Municipal Law for the State of Oaxaca established the respect of *usos y costumbres* for the election of members of the *ayuntamiento* and the secondary electoral laws also determine authorities in cases of conflict or violations of electoral rights of indigenous communities. Presently, 418 *municipios* in Oaxaca govern themselves according to their *usos y costumbres*, not only referring to the constitutional authorities, but also additional authorities in their own systems of rule (Singer Sochet, 2012: 37) - the remaining 152 *municipios* govern themselves through the political party system. Indigenous communities are free to determine not only the electoral system, but also the election procedure (from secret vote in a ballot, raising hands, drawing lines on a blackboard, standing in cues behind a candidate, etc.), with the official electoral authority serving only as an observer. Oaxaca has recently confirmed its pioneering role in the constitutional recognition of multi-ethnicity and minority groups by reforming article 16 of its

constitution again in 2013 to recognise for the afro-Mexican peoples the same self-determination rights it recognises for indigenous peoples³³.

A further example of the variation of laws for the local self-government and representation of indigenous peoples is Tlaxcala, where 24 (of 60) *municipios* allow their voters to elect representatives according to *usos y costumbres*, but where following a reform of the Constitution of Tlaxcala in 1995 also the *municipios* that govern themselves by the party regime must allow the election of a third kind of local council member, besides those elected by majority and proportional representation: the *regidores de pueblo*, who can execute municipal resources in the micro-local level (see Ramírez 2006: 7). To illustrate more variations (which are impossible to explore in more depth here), suffice it to say that the constitutions of Jalisco, Veracruz, Chiapas, Campeche, Quintana Roo also recognise *usos y costumbres*; while in Guerrero, Puebla and Sonora only secondary electoral laws recognise *usos y costumbres* without determining judicial means of conflict resolution in case of violation to the electoral rights of indigenous communities.

Current state of affairs

The development of indigenous rights in Mexico has been slow and difficult. Electoral rights in particular, are quite recent and are not yet developed to the degree that indigenous peoples would consider satisfactory. Five years after the signature of the San Andrés Agreements between the Zapatista rebels and the federal government pledging to push forward the necessary legislative and judicial changes to widen the representation and participation of indigenous peoples at the local and national level, a constitutional reform materialized in 2001 recognising the right of indigenous peoples to self-government. This reform was rejected by indigenous leaders, movements and spokespersons, and also by experts in indigenous issues, as not satisfactory in fulfilling the promises made in San Andrés. The *Convención Nacional Indígena* (National Indigenous Convention) of September 2006, for example, restated that this reform had not fulfilled their demands³⁴. Indigenous peoples are far from represented in political parties, or incorporated in politics, which is obvious in their negligible presence in popular election positions. Some measures introduced by the IFE (now INE) have aimed at increasing the electoral participation of indigenous minorities, although there seems to be a lack of coherence among these. The electoral institutes have detailed information about the linguistic distribution of indigenous communities and not only try to find neighbours of the community to serve as citizen officers for the elections, but also continually evaluate how to best reach them, even in remote locations. Regarding the promotion of a democratic culture the IFE has distributed materials promoting the art. 2 of the Constitution in indigenous languages and has a separate website to explain, illustrate, clarify and inform about the

³³ In Oaxaca, laws were reformed in the 1990s to recognize *usos y costumbres* in the constitution for 412 of the 570 *municipios* in the state (Reyes 2011: 248): in 1998 the autonomy of indigenous communities in Oaxaca was recognised.

³⁴ They had demanded, for example, a separate electoral circumscription to guarantee their participation in the Congress of the Union (Chamber of Deputies and Senate), as well as affirmative quotas commensurate with their size in the population. They had asked for a determination of electoral districts that followed geographic and cultural continuities and not simply minimum of population within a district. They had asked for a reconfiguration of *municipios* as to reintegrate their peoples in units that could guarantee participation in the free and democratic decision-making process of the *municipio*. They had asked for a reform of the party system to oblige parties to guarantee representation of indigenous peoples in the indigenous districts. Since 2001 there have been legislative proposals by leftist parties to recognize at least this last demand in the federal constitution.

plurality of values for different minority groups within Mexican democracy. Furthermore, the IFE/INE has promoted electoral participation in the mainstream media in eleven indigenous languages. Yet, this effort seems disjointed with the ultimate purpose of indigenous electoral participation: while INE collaborates with the National Institute for Indigenous Languages for the translation of the ballots for the consultations it organises for children and youth (held always parallel to the election as a measure of civic education) into some indigenous languages, the ballots for the real election are only printed in Spanish.³⁵

4. Exercising electoral rights

Registration Procedures: Becoming a voter

The electoral roll in Mexico makes a basic distinction between two groups of voters: citizens living in Mexico and citizens residing abroad.³⁶ In Mexico it is not necessary for citizens to register to vote before each election; registration is automatic after obtaining a voter ID card and remains so while that card is valid (in the past, before the reform of 2014, it was valid until the year of the last election printed on it arrived, normally covering up to two presidential/senatorial elections, four elections for the chamber of deputies and several local elections; in the future it is supposed to be valid for ten years). Citizens may check anytime online whether they are registered in the electoral roll or not.

In contrast to citizen residents, non-resident citizens must actively register to participate in presidential and national legislative elections (Senate): just like resident citizens, they must be in the electoral register and have a voter ID card, whether issued in Mexico or abroad (possible only since the electoral reform of 2014), but in any case they must request their inclusion in the list of voters before every election. After this they are habilitated automatically for all elections for which they are eligible. Also, for other elections that coincide with the elections for president/Senate, registration is automatic in the sense that it is derivative from their registration in the electoral roll for citizens resident abroad (i.e. referendums or state executive and legislative elections in states that have extended these voting rights to their citizens residing abroad when these are concurrent with federal ones). In the states where non-resident citizens are habilitated to vote for state executives or legislatures the act of registration is active: non-resident citizens with a voter ID card from that state can register before each election with their state electoral institute filling in a request form and sending it via post to the electoral institute of the state in which they want to vote with a copy of their voter ID card. For example, in Michoacán, the law specifies that the register in the '*Lista de votantes michoacanos en el extranjero*' [List of Michoacan Voters Abroad] is temporary and valid for each electoral process only. However, if this coincides with the federal elections for which they have already registered, the registry in the state electoral institute in order to vote for governors is automatic. Because referendums may potentially be organised at any level, registration of both citizen residents and citizen non-residents would always be automatic, as they would necessarily coincide with other state or federal elections and eligible voters would be registered simultaneously for both.

³⁵ The right to vote and secrecy of the vote for the visually impaired is ensured through braille frames.

³⁶ LGIPE 23 May 2014, Arts. 128, 129.

Registration in the LNERE requires meeting the requirements approved by the General Council of IFE [INE], and then requesting the Executive Director of the National Register of Electors to be entered in the electoral roll and the nominal list of citizens living abroad with a form letter they sign and send to the INE. They must also demonstrate, under strict liability and under penalty of perjury, that they live in the domicile abroad to which the ballots will be sent or, if applicable, that they own the electronic address of the medium determined by the institute. All this has to be done between the September 1 and December 15 of the year previous to the election. The request must be sent by registered mail (paid for by the INE), electronically, or delivered directly to the modules installed for this purpose at embassies or consulates and within the time limits established by the INE, and must be accompanied by the following documents: a) a legible photocopy of the front and back of the voter ID card,³⁷ signed over or marked with a fingerprint; b) a document attesting an address abroad.³⁸ Postal service stamps are taken as evidence that the registration request complies with the deadline for submission. Similarly, in cases of submission by electronic media, the date of notification of receipt of the relevant documents is attached. Applicants may confirm their enrolment at any time by telephone or electronically with the INE. The application for registration shall notify the legal effect of the decision of the Institute regarding register for any election.³⁹ Once Mexicans living abroad are registered in LNERE, they cannot vote in Mexico.

Mexican citizens abroad have been able to vote since 2006. Since that time, the IFE/INE has launched a website with several informative tools: contact forms and free phone number, frequently asked questions, pdf files with all the forms needed to request registry in the LNERE and videos explaining the process to vote from abroad. This platform – votoextranjero.mx - not only provides information on the federal electoral elections, but also redirects citizens of particular states in the federation to the information they require in order to vote for state legislatures and executives, in the cases that apply.

Casting the vote

The general method for casting a vote for citizen residents is voting at the polling station in the district where the voter is registered. This applies to elections of all levels. Besides this, for federal elections (presidential and executive) alone it is possible for citizens who, on election day, find themselves temporarily out of the electoral district where they are domiciled, to vote in *casillas especiales* (special polling stations) in every state – up to 10 in each electoral district. Proxy voting is only allowed in exceptional cases by a judicial decision for persons with disabilities.

In contrast, general methods for casting a vote available for non-resident citizens are much more varied thanks to the latest electoral reform, with the exception that the only voting method available to citizen residents is not available for them.⁴⁰ After the 2014 reform Mexicans abroad will not only be able to send their votes via registered post (paid by the

³⁷ The electoral reform of 2014 has allowed that consulates and embassies may issue the voter identity card up until 90 days in advance of the elections to allow the incorporation of new voters resident abroad into the LNERE.

³⁸ Since 2012 this can be any address –i.e. need not be associated with the name of the applicant, as was the requirement in 2006.

³⁹ LGIPE 2014, arts. 330, 331, 332 (1).

⁴⁰ In-country voting is not allowed because once they are registered in the LNERE they are temporarily eliminated from the Lista Nominal de Electores.

INE), which was the only method available earlier and was applied also for elections of lower government levels in Michoacán and Zacatecas; they will also be habilitated to vote electronically (online) for national level elections and some lower levels in states that foresee this possibility in their electoral laws (e.g. Chiapas for state legislative; DF for state executive). Furthermore, they will also be allowed to vote in person at embassies or at specified polling stations abroad for presidential elections. If regional executive elections coincide with federal elections, they may vote for these elections in embassies too, given agreements between the electoral institutes of the states and the national electoral institute, on the one hand, and the ministry of foreign affairs, on the other. At the moment, only Michoacán has subscribed to such an agreement and it does not allow voting in embassies, but it allows Michoacanos abroad to register in the *Lista Nominal* through embassies, so as to shorten the process of registry for the election for governor of Michoacán. Proxy voting is not allowed for non-resident citizens.

Finally, the counting of votes of non-resident citizens is done separately and the results are reported separately: they are reported for the President first, and then separated and assigned to the states of the federation in order to assign the corresponding votes for the Senate and state legislatures where this applies.

Registration procedure: becoming a candidate

Citizens who wish to become a candidate for any election in Mexico may register through the political parties of which they are members (the only path open until the electoral reform of 2014), or via independent candidacies (only possible since the electoral reform of 2014). Either way, the candidate must fill out a form including: full name, date and place of birth, domicile and length of residence in it; profession; voter ID number; post for which the person wants to stand. This form must be presented to the Electoral Council at the federal or state level, depending on the election. If the candidate was not born in the state where he or she seeks eligibility, proof of a minimum of 6 months residence must be given to the electoral institutes for elections to state legislatures and lower levels. As non-resident citizens cannot generally stand as candidates at either the legislative or executive national level elections, generally they cannot register. For lower levels (state legislative and executive, and local levels of governments in a few states such as Zacatecas and Chiapas), the procedure is the same as for any (resident) candidate. In other words, in states that have extended passive electoral rights to non-resident citizens the conditions for non-resident citizens are the same if not stated otherwise, except in cases such as Zacatecas where the residence condition is explicitly waived if it can be proven that the applicant has 'binational residence' (M. González Oropeza 2015).

5. Conclusion

In the Latin American context, Mexico is undoubtedly the country with the most dynamic policymaking towards emigrants. In the field of politico-electoral rights alone and thanks to the degree of federalism and decentralization on electoral matters, but also to the activism of Mexican emigrants abroad who have long fought for their right to have a voice in their communities of origin, the range of initiatives and experiences in the federal and sub-national levels has no comparison in the rest of the continent.

In the context of Mexican politics, this report on electoral rights of citizens, non-resident citizens and non-citizen residents in Mexico confirms why the electoral arena has been a major space for incremental, but eventually decisive political changes over the last decades. The latest step, the electoral reform of 2014, has accomplished three key changes: the transformation of the IFE into INE, the enfranchisement of non-resident Mexican citizens for the Senate elections and for state executive elections (*gobernadores*) - where state electoral laws allow this -, and extended opportunities for Mexicans abroad to vote through a facilitated register and more methods to cast their votes. Though the implementation of these measures still needs to be regulated in secondary laws, the mere fact that they are now contemplated as legal possibilities responds to the demands voiced by experts, emigrant activists from civil society, and academics that a cumbersome registration procedure and restrictive voting methods had to be facilitated in order to reach Mexicans abroad and to make the expensive organisation of elections abroad a worthwhile effort. With due implementation, these changes should make it easier for Mexicans abroad to participate in forthcoming elections in Mexico, at any level for which they are eligible.

Taking into consideration the larger landscape of citizenship and franchise policies in Mexico towards Mexican emigrants, it seems important to note that in recent years the efforts of the Mexican state go beyond minimal attempts at protecting and paying attention to this population. Instead, Mexico now tries to adapt state mechanisms such as voting to emigrants' real needs and living conditions. This might explain why, despite the border to the US becoming ever more sealed, the Mexican state designs policies that adapt to a population that potentially moves between two countries and is increasingly identified as 'bi-national'. This evolution has been gradual, but is observable from the adoption of the law of 'no loss of Mexican nationality',⁴¹ which was followed by the acceptance of dual nationality, and has culminated in efforts by the Mexican state to encourage the acquisition of dual nationality by helping Mexican migrants prepare for citizenship tests in the USA.

Generous towards its citizens abroad, the Mexican state remains neglectful of citizen minorities resident in the Mexican territory, especially indigenous minorities and afro-descendant populations. Currently, there are no formal mechanisms for separate representation of indigenous minorities in parliaments, and no special voting methods that aim at increasing their participation. The self-government and autonomy schemes are limited to municipal governments allowing indigenous communities to elect their own authorities and determine their own electoral arrangements for executives and councils, as long as the proper

⁴¹ This was a reform to Art. 37 of the Constitution in 1997, which led to a new Nationality Law being published in 1998.

constitutional legal frameworks are in place at the state level and they are located within indigenous electoral districts which are defined by territorial and linguistic criteria –i.e. not ethnic or cultural. The degree of variation of these conditions results in a highly uneven landscape for the electoral rights of indigenous peoples within Mexico: without further subnational regulation their constitutional right to participate politically remains generic and indeterminate. Unfortunately, the perspective is not brighter on the informal side of affairs: the presence of indigenous peoples in the public sphere remains scant, apart from occasional folklore. Similarly, the demeaning treatment of their concerns and demands by national authorities, even the highest electoral officers, is a sombre sign of the falsehood behind many of the formal half-hearted, incoherent measures and policies to encourage the participation of indigenous peoples in public life.⁴²

On the other hand, the electoral rights of immigrants (non-citizen residents) are a single empty cell in this report. It is understandable that the issue is not too pressing in a country with fewer than one per cent foreign residents, the majority of whom are pensioners who are concentrated in a few cities or foreign workers who are employed in the urban economic powerhouses of the country. A much more pressing political issue to legislate on in recent years with regard to immigration has been the situation of migrants coming from Central America who aim to cross Mexico as they move towards the USA (*‘transmigrantes’*) travelling mostly without documents. As they pass through Mexican territory, these migrants face multiple threats: from extortion by Mexican authorities, to robbery, rape, kidnapping or violent death by criminal groups. Thousands of them effectively stay in Mexico for periods much longer than intended, stuck in places as they attempt to save money to advance further north. In recent years and after horrendous killings of migrants, the Mexican authorities have taken steps to abandon the approach of criminalising migration policies and to develop instead migration policies that allow *transmigrantes* with or without documents to approach the security apparatus of the Mexican state. The aim is to reduce their vulnerability vis-à-vis corrupt migration officials and other authorities, but also to allow them to move away from the shadowy spaces where they are at the mercy of criminal groups. Still, the Mexican state is far from guaranteeing the respect of their most basic human rights, let alone assuring them of a decent standard of treatment. Transnational civil society groups across Mexico and Central America have mobilised to raise the attention of authorities and Mexican society in general to the thousands of migrants who have disappeared as they tried to cross Mexico.⁴³

Still, if the electoral rights of non-citizen immigrant residents have not been a matter of policymaking so far, it is not for an absolute lack of debate. Mexican civil society groups have organized local campaigns to raise the attention to the lack of voice of foreigners in matters that affect them, especially at the local level. This has happened especially in Mexico City, where a myriad of progressive policies have taken centre stage in the last fourteen years under the leftist *Partido de la Revolución Democrática (PRD)* party and where the local legislature is thought to be potentially sympathetic to the cause. A virtue of these efforts has been that they have framed their goal in a human rights language that is applicable to all kinds of resident immigrants: to the wealthier pensioners and ‘expats’ as much as those in more precarious situations. Although there have been some endorsements of this cause by

⁴² In May 2015 a leakage of a private phone conversation of the head of the INE, Dr. Lorenzo Córdova, revealed him ridiculing the manner in which indigenous representatives negotiate their electoral rights, mimicking their use of Spanish. After the incident, many organisations demanded that he quit his job, but he limited himself to a general apology in which he stated he had learned that while he holds a public post he must be more careful with his private communications –i.e. not an apology about the content and meaning of the communication.

⁴³ I.e. the *Movimiento Migrante Mesoamericano* or the *Caravana de madres de migrantes desaparecidos*.

politicians from the *PRD* (the same party that first made proposals on the voting rights of emigrants many years ago), the issue is still largely out of sight for policymakers. It will likely remain so as long as another long-standing ideological pillar of *nacionalismo revolucionario*, the prohibition of ‘any political involvement of foreigners in the political life of the country’, remains enshrined in the Constitution. Just as Mexican citizens abroad and advocates of the political participation of Mexican emigrants had to fight a long battle to have the constitutional barriers to their participation removed first, before any serious debate on enfranchisement could be inaugurated, so too this is the first step to tackle for those who mobilise for the enfranchisement of resident migrants in Mexico.

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