



European
University
Institute

ROBERT
SCHUMAN
CENTRE FOR
ADVANCED
STUDIES

EUDO CITIZENSHIP OBSERVATORY

ACCESS TO ELECTORAL RIGHTS

VENEZUELA

Clara Bastidas

June 2016



US
University of Sussex



<http://eudo-citizenship.eu>

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

Access to Electoral Rights
Venezuela

Clara Bastidas

June 2016

EUDO Citizenship Observatory
**Robert Schuman Centre for Advanced
Studies**

Access to Electoral Rights Report, RSCAS/EUDO-CIT-ER 2016/3
Badia Fiesolana, San Domenico di Fiesole (FI), Italy

© Clara Bastidas

This text may be downloaded only for personal research purposes. Additional reproduction for other purposes, whether in hard copies or electronically, requires the consent of the authors.

Requests should be addressed to eudo.citizenship@eui.eu

The views expressed in this publication cannot in any circumstances be regarded as the official position of the European Union

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

For information about the project please visit the project website at <http://eudo-citizenship.eu>

Access to Electoral Rights

Venezuela

Clara Bastidas

1. Introduction

In Venezuela, the institution of suffrage conceived as one of the fundamental elements of a democratic nation was introduced in the nineteenth century. A century later, under the government of Hugo Chávez, the electoral branch was formally established as a fifth separate power. The 1999 Constitution of the Bolivarian Republic of Venezuela, created the National Electoral Council (*Consejo Electoral Nacional*, CNE) as the electoral branch administering elections at all levels in the country. Prior to the establishment of the electoral branch, the Supreme Electoral Council had the status of an autonomous institute (a state agency without legal personality) and was not recognised as a public authority within the governmental structure.

Venezuela's legal framework grants electoral rights to its citizens at all levels and to foreign residents at municipal and regional levels. However, the exercise of these rights depends on the fulfillment of certain legal requirements. Electoral rights of non-resident citizens are limited, and they can participate only in presidential elections by voting in Venezuela's consular offices. In the last few years, the exercise of this right for citizens living abroad has become quite controversial, mostly due to political confrontation between the government and the political opposition residing abroad.

Moreover, as a consequence of the deep polarisation of domestic politics, the number of elections in Venezuela over the last 15 years has increased significantly, raising questions and debates related to transparency of these events.¹ On the occasion of the presidential elections of April 2014, the Carter Center (2014: 91), a non-profit United States-based electoral observation mission that monitored the presidential race, expressed that 'while the Venezuelan population, political parties, and candidates generally have shown confidence in the performance and integrity of the automated voting machines when counting votes, such trust is not automatically transferred to the particular conditions under which the vote took place, or to the capacity of the system to ensure that every registered voter can vote once and only once'.

¹ For a detailed description of the election events from 2000 to 2015, see http://cne.gob.ve/web/estadisticas/index_resultados_elecciones.php

This report first offers an overview of the historical background to the development of electoral rights in Venezuela. It proceeds by discussing eligibility to vote and stand as a candidate in different types of elections for citizen residents, non-resident citizens, and non-citizen residents. The last section of the report is dedicated to the exercise of voting rights in practice and the administration of electoral events.

2. Historical background

Venezuelan history of the early 1800s was marked by political and social instability inherent to independence efforts. The war of Venezuelan independence started on 19 April 1810, with the establishment of the Junta Suprema Defensora de los Derechos de Fernando VII – the first government of Venezuela fully autonomous from Spain. The Junta administered Venezuela until the declaration of independence of 5 July 1811.

On 11 June 1810, the Junta adopted the Suffrage Regulation, regulating voting rights in Venezuela for the first time and calling for the general election of 1811 (Fortoul 1954). The 1810 Suffrage Regulation foresaw two levels of elections: at the county and district levels. It recognised the right to vote with the following exceptions: ‘Women, minors of 25 years of age (unless they were married), the mentally ill, the hearing impaired, those with a pending criminal conviction, debtors to public funds, foreigners, transients, known vagabonds, those paying a criminal punishment, and all those who do not have an open or inhabited home, that is: those living at their neighbour’s home and expenses or are in their service, unless, according to the public knowledge, they owned at least 2,000 pesos worth of goods and cattle’ (Fortoul 1954: 223-224). The voting procedure consisted in the signing of papers or an oral declaration before two accredited witnesses in case the voter was illiterate (Magallanes 1988: 179).

The difference between active (enfranchised) and passive (disenfranchised) citizens was also stipulated in the Declaration of the Rights of the People of 1811. According to the 1811 Declaration, ‘citizens will be classified in two classes: the ones with the right to vote, and the ones without it.’ Specifically, article 10 clearly stated that neither transients (*transeúntes*), nor those without a set amount of property would be entitled to vote.

The suffrage became a salient issue in Venezuela’s politics in the subsequent years. In 1818, the Regulations for Congress Elections were adopted, providing in article 2 that ‘[a]ll free men shall have the right to vote, if in addition to being free, be Venezuelan citizens, be at least 21 years old (or minor, but married) and, in any case, owns property or labours in science or liberal arts, or mechanics’. In the same legislative act, the right to vote was also linked to economic conditions, since ‘[m]en who lack property or profession, shall be entitled to vote if proven to be lessor of agricultural land and cattle and made business with a budget of, at least, three hundred pesos’ (article 3). The exercise of voting rights was nonetheless extended to landowners whose property had been confiscated by foreign armies (article 4) (Fortoul 1954: 239).

The importance of suffrage for the development of the economic, social and political situation in Venezuela was reiterated in 1819, at the Angostura Summit (*Congreso de Angostura*), when Simón Bolívar, the political and military leader who played an important role in the independence movement of several Latin American countries, stated that ‘[i]t is not enough that our army is victorious, not enough that our enemies disappear from our land, nor that the entire world acknowledges our independence; we need to be free under the real

rules of freedom, emanating from the most sacred source, which is the peoples' will' (Congreso de Angostura 1983: 4).

2.1. Constitutions of 1830 and 1881

The constitutionalisation of the Venezuelan state in 1830 brought about new regulation of voting rights. Article 13 of the 1839 Constitution, also referred to as *Magna Carta* (Urdaneta 2007), provided that '[i]n order to be eligible to vote and stand as candidate the person had to meet the following conditions i. Hold Venezuelan nationality, ii. Be married or older than twenty-one years of age, iii. To be able to read and write and iv. Own property or have a profession with an annual income ranging between 50 and 100 pesos. The lower economic requirements for suffrage eligibility compared to the 1818 legislation were induced by wars that consumed the country between the declaration of independence and the adoption of the constitution'.² Moreover, the 1830 constitution set periodic elections every two years (article 35), with offices elected by an absolute majority of votes (article 41). Elected offices included the president of the state, the vice president, province senators, and congressmen at the provincial level (article 36).

In terms of suffrage, the Federal Constitution for the Venezuelan States of 1881 had exclusionary effects, largely attributable to wars, political turmoil and dictatorship in the country. While most of the conditions for the exercise of voting rights from the 1830 Constitution were retained, the one regarding property ownership increased. Article 26 of the 1881 Constitution limited voting rights to those who owned 'a patrimony worth six hundred pesos if living in province capitals, or four hundred pesos if living in any other village. An exception to this rule applied if the patrimony was worth 200 pesos but the men owned land with cattle' (Brewer-Carias 2008: 285-309).

2.2. Developments of the electoral system between 1936 and 1999

The electoral system implemented through the 1936 Constitution in Venezuela was majoritarian in uninominal circuits to elect municipality councils, which in turn elected congressmen to legislative assemblies. The President was appointed from among congressmen (Nohlen 1981). The subsequent 1936 Law on Constitutional and Electoral Census created the Supreme Electoral Council, acting as 'court of appeals where judgements from the states boards were reviewed'. The Council was also responsible for the supervision of elections.³

In 1945, amendments to the Law on Constitutional and Electoral Census were approved by the National Congress, bringing about two changes to the electoral system of Venezuela. First, the electoral institutions became permanent and as such received an assignation in the annual national budget. Second, proportional representation of minorities was introduced.

Proportional representation was first applied at the time of the election of the members of the Constituent National Assembly in 1946. This principle was later included in the 1947 and 1961 national constitutions. The method of closed and blocked lists that

² Venezuelan Constitution of 1830, article 14.

³ Ley del Censo Electoral 1936.

accompanied proportional representation facilitated the participation of the illiterate, as colour cards were used to distinguish among political parties. Proportional representation became characteristic of the Venezuelan political system and the regulation of it has been enshrined in all subsequent constitutions and electoral legislation.

The 1947 Constitution marked important step towards the expansion of the franchise. Article 32, point 14 stipulated the right to vote for both men and women, provided that they had reached the legal age of majority (eighteen years of age) and were not subjected to civil interdiction or a criminal conviction (that also implies political disqualification).⁴ Compulsory registration and voting were first introduced in the Electoral Code of 23 May 1958,⁵ and further cemented through article 110 of the 1961 Constitution and article 7 of the Basic Electoral Law of 1970.⁶

Constitutional changes of 1989 brought an important development regarding electoral participation, since an amendment to the Statutory Law for the Municipalities introduced the direct elections for governors. Prior to that date, the Executive Branch had directly appointed governors⁷.

In 1997, the National Electoral Council (CNE) was created,⁸ thus replacing the Supreme Electoral Council of 1936. While the Supreme Electoral Council was formally autonomous, its members were appointed by the main political parties. The presidency of the 1936 Supreme Electoral Council was reserved for one from among its members. Even though the president of the Supreme Electoral Council was designated as a non-partisan, independent candidate, the process of appointment brought about significant politicization of this institution.

To formally reduce the politicisation of electoral institutions, the CNE has been foreseen as an independent, autonomous institution. Even though the law stipulates that its members would be appointed by civil society, by the Faculty of Political Sciences and by the Citizen Power,⁹ and not linked to any political movements or organisations, the institution has commonly been a centre of controversy due to its close ties with the Hugo Chavez regime.

2.3. The 1999 Constitution of the Bolivarian Republic of Venezuela

The most significant change introduced by the 1999 Constitution was the creation of the Electoral Branch as one of the five branches of the government: executive, legislative, judicial, moral and electoral branch. CNE remains the leading authority of the electoral branch. The 1999 Constitution has formally based the exercise of electoral rights on the principles of institutional independence; working and budgetary autonomy; exclusion from

⁴ Constitución de los Estados Unidos de Venezuela, 1947.

⁵ Ley Electoral, 23 mayo de 1958. Available at: http://www.cne.gob.ve/web/documentos/la_institucion/antecedentes/1958.pdf

⁶ Ley Orgánica del Sufragio, 17 septiembre de 1970. Available at: http://www.cne.gob.ve/web/documentos/la_institucion/antecedentes/1970.pdf

⁷ Ley Orgánica del Poder Municipal. 1989. Available at: <http://pdba.georgetown.edu/Decen/Venezuela/lorm1989.html>

⁸ Ley Orgánica del Sufragio y Participación Política. 1997. (Amended in 1998 as Ley de Reforma Parcial a la Ley Orgánica del Sufragio y Participación Política. Available at: http://www.oas.org/juridico/spanish/mesicic2_ven_anexo_42_sp.pdf

⁹ Emanating from the ‘participative democracy concept’, which has been promoted by the Venezuelan government for the involvement of the communal organizations in decision-making processes.

representation of political parties within the council; impartiality; citizen participation; decentralisation of electoral administration; transparency; swiftness of the voting; and scrutiny acts. However, criticism and controversies over the partisan nature of CNE exist in practice. In particular, the CNE's authority to de-concentrate electoral centres with high population density through the creation of new mobile structures has been questioned.

Moreover, pursuant to the 1999 Constitution, suffrage is a recognised citizens' right and not a duty as had been the case in the 1961 Constitution (article 63). The principle of suffrage is 'exercised through free, universal, direct and secret elections', it is based on a personalised vote, and proportional representation is guaranteed under the Constitution.¹⁰ It is grounded in the Venezuelan concept of sovereignty, which 'resides intransferably in the people, who exercise it directly in the manner provided for in this Constitution and in the law, and indirectly, by suffrage, through the organs exercising Public Power.'¹¹ The 1999 Constitution also expanded the institution of direct elections to include additional public offices, referenda, the possibility to revoke elected officers during the exercise of their mandate, citizen assemblies, etc. It also designated reserved seats for the indigenous population of Venezuela (2 per cent of the total population) in the national and regional assemblies and municipal councils (Kroeber 2015).

In sum, despite the sequential expansion of the franchise under a series of Venezuelan constitutions, concerns over the exercise of voting rights and the functioning of the country's democracy exist in practice. Particularly, electoral institutions are considered partisan and close to the country's authorities, implying that there is a tight coupling between the governance of electoral practices and the reproduction of political power in Venezuela.

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

3.1. Resident citizens

Citizen residents are enfranchised in all types of elections: from presidential elections to elections at the county level, as well as referenda and the election of congressmen to the National Assembly.

Exercising the right to vote is not mandatory in spite of it being a 'civic duty' under article 132 of the Constitution, stipulating the 'responsibilities and participate together in the political, civic and community life of the country, promoting and protecting human rights as the foundation of democratic coexistence and social peace'.¹² The elector is permitted to choose whether to exercise his right or not, without sanction.

Following such a description of the scope of the right to vote in Venezuela, the constitution moves on to defining who is entitled to the full enjoyment of this right. The 1999 Constitution additionally mentions male and female as subjects of all rights and duties

¹⁰ Constitución de la República Bolivariana de Venezuela 1999, article 63.

¹¹ Constitución de la República Bolivariana de Venezuela 1999, article 5.

¹² Constitución de la República Bolivariana de Venezuela 1999, article 132.

stipulated in the *Magna Carta*.¹³ Specifically, in its first paragraph, article 64 defines electors as ‘all Venezuelans (by birth or naturalised, male or female) who are at least eighteen years of age (...)’¹⁴. Based on this provision, holding Venezuelan nationality is a precondition to the exercise of the right to vote at all levels and types of elections. It is, however, not a sufficient condition for the exercise of voting rights and it is accompanied with residence conditions, other requirements and limitations, as described below.

Since 1947, the age threshold has been reduced from twenty-one to eighteen years for all types of elections in the country. In its the second paragraph, article 64 defines conditions for disenfranchisement of nationals, stipulating that all Venezuelan citizens are electors ‘unless they are subjected to civil interdiction or political disqualification’.¹⁵ Civil interdiction¹⁶ applies to adults who have been declared mentally incapacitated.

Political disqualification applies as a general and ‘complementary punishment’ of imprisonment,¹⁷ without making particular distinctions based on the type or period of the punishment. Moreover, article 65 of the 1999 Constitution bans from participation in election those Venezuelans who have been convicted for crimes committed during the performance of their duties in public office. This temporary limitation depends on the severity of the criminal offence (if its punishment entails imprisonment), and includes periods after the sentence, which differ for different crimes (Garay 2001). According to Article 42 of the constitution, the limitations of the political right to vote caused by political interdiction, can only proceed after the final judgement of the judicial authority (Garay 2001). Therefore, during criminal investigation or even pre-emptive imprisonment, this political right cannot be restricted for citizens. However, political disqualification has commonly been used as grounds for disenfranchisement in Venezuela, particularly as regards the political opponents to the regime.¹⁸ This has commonly been done through administrative judgments of the Office of the Comptroller General, which often limited voting rights in cases not foreseen by the constitution).

Furthermore, the Venezuelan Constitution makes a distinction between the status of nationality and citizenship, the latter referring to a citizen as a subject of rights and duties. The full enjoyment of electoral rights is reserved to Venezuelans by birth. However, the Constitution equalises naturalised Venezuelans who entered the country before the age of seven years with Venezuela-born nationals.¹⁹ Naturalised Venezuelans who have lived in the country for at least fifteen years, have the right to stand as candidate for specific public offices listed in article 41 of the constitution.²⁰ Right to stand as candidate is premised on residence in Venezuela for at least four years prior to elections.

¹³ e.g. the 1999 Constitution uses ‘*electores y electoras*’, making an intentional distinction between male and female electors. As justified in the transitory dispositions, legislators wanted to specifically mention females as a subject of all rights enshrined in the constitution.

¹⁴ Constitución de la República Bolivariana de Venezuela 1999, article 64.

¹⁵ *Ibidem*, fn. 13.

¹⁶ See Art. 393 of the Civil Code, July 26th, 1982.

¹⁷ See Art. 16 of the Penal Code, October 20th, 2000.

¹⁸ Inter American Commission on Human Rights. Democracy and human rights in Venezuela, Chapter II. <https://www.cidh.oas.org/countryrep/Venezuela2009eng/VE09CHAPIIENG.htm>

¹⁹ See Art. 40 of the Constitución de la República Bolivariana de Venezuela.

²⁰ These are, exclusively for offices in the National Assembly, ministries, provincial government and municipalities. Running for public office for presidency, vice presidency, and all leading posts of the governmental branches are reserved to Venezuelans by birth. See article 41 *eiusdem*.

Lastly, according to Art. 85 of the Statutory Law for Suffrage and Political Participation, active members of the military are not permitted to exercise their right to vote. This limitation remains valid for as long as they actively serve in the Armed Forces.²¹

3.2. Non-resident citizens

As a general rule, Venezuelan citizens who have established permanent residence outside the country are entitled to cast votes for presidential elections, Latin American Parliament elections and national referenda. According to the electoral legislation,²² voters are only permitted to vote in the municipality or region where they reside and are registered to vote. Hence the Venezuelan legal framework does not contain provisions that allow the participation of citizens abroad in elections at the regional or local level.

Article 124 of the Statutory Law for Electoral Procedures stipulates that ‘only those Venezuelan electors who are holders of a residence permit in other countries or are under another migratory condition that is legal and permanent outside Venezuela, are entitled to vote. Also, Venezuelan diplomatic and consular officers can exercise their right to vote’.²³

According to the aforementioned law, the CNE regulates the procedure for citizens abroad to participate in elections. Nevertheless, for each electoral event that took place in Venezuela throughout the years separate informal and ad-hoc rules were in place. These informal and ad-hoc rules do not exist in any legal document regulating the exercise of electoral rights. Information for citizens abroad seeking to cast their vote is available through the newsletter or *boletín informativo* of the CNE,²⁴ which vaguely refers to article 124 of the Statutory Law for Electoral Procedures.

However, since the statutory law establishes the only clear guidelines regarding enfranchisement of those Venezuelan citizens permanently (and legally) residing abroad,²⁵ holding formal resident status in the destination country (or a migratory condition entailing a permanent stay in such country) has been the main requirement for participation in elections by citizens living abroad. Venezuelans abroad do not qualify to stand as candidates in any type of elections (Garay 2001).

Citizens residing abroad who are registered in the diplomatic or consular representation in their country of residence, are not allowed to vote if they happen to be temporarily in Venezuela on election day. Voters, whether resident citizens, citizens abroad or foreign residents, can only exercise their right to vote in the type of election allowed to them by law, in the electoral district where they are registered.

3.3 Non-citizen residents

According to Art. 64 of the 1999 Constitution, foreign residents are enfranchised to participate in county, municipal and regional elections, provided that they meet the following conditions:

²¹ Ley Orgánica del Sufragio y Participación Política, article 84.

²² Ibidem, fn. 23.

²³ Ley Orgánica de Procedimientos Electorales.

²⁴ Available at:

http://www.cne.gob.ve/web/normativa_electoral/elecciones/2012/presidenciales/documentos/boletin_informativo_n1.pdf

²⁵ Ibidem, fn. 23.

1. The resident must be at least eighteen years of age;
2. The residency must be of ten years or more and,
3. The foreigner must not be subjected to civil interdiction or political disqualification.

With regard to condition No. 2, the Transitory Disposition II of the National Constitution explains that in order to qualify as ‘resident’ and be eligible to actively participate in elections, it is not necessary to have held a resident visa for ten years, but to be able to prove that there has been an intention to live and stay in the country and that the person has actually resided in the country over this period.

Foreign residents are not allowed to participate either actively or passively in presidential or legislative elections.²⁶ Furthermore, it is worth noting that the constitution grants local, regional and county voting rights only to those foreign citizens who are legally qualified to apply for naturalisation,²⁷ after ten years of permanent residence. The legislator decided not to reduce this waiting period for those foreigners who emigrated from Latin American countries, or Spain, Italy or Portugal who can apply for naturalisation already after five years.²⁸ Between 2004 and 2006, almost half a million foreign residents were granted Venezuelan nationality, subsequently obtaining the right to political representation. This mass naturalisation campaign has been broadly criticised as electoral engineering.²⁹

4. Exercising electoral rights

4.1. Electoral registry

The Venezuelan electoral registry is the database listing all persons entitled to vote in each type of elections (whether they are resident citizens, non-citizen residents or non-resident citizens). Each person automatically registered as a voter is required to share his or her data (full name, date of birth and place of residence) in order to for his/her registration to be completed.³⁰ This information enables the CNE to assign one polling centre to the voter, which must be in the proximity of his/her address of residence.

²⁶ Constitución de la República Bolivariana de Venezuela (1999). Art. 64, first para.

²⁷ Article 33.1, Constitución de la República Bolivariana de Venezuela: ‘Foreigners who have established residence in the country for more than ten years, are entitled to apply for naturalization. If their country of origin is Latin American, or Spain, Italy or Portugal, the requirement of ten years decreases to five’.

²⁸ This is due to the geographical, cultural and historical ties Venezuela has with these countries, but also because the immigration to Venezuela has historically been from Spanish, Italian and Portuguese nationals.

²⁹ For further information on the naturalisation campaign see: Alvarez, Angel E. (2016) *Report on the Citizenship Law: Venezuela*. EUDO Citizenship Report 2016/05. Florence: EUI. Available at: <http://cadmus.eui.eu/handle/1814/40847>; Also see: Schwarz, Tobias (2016). “I won’t naturalize foreigners like crazy’: The Naturalization Campaign in Venezuela, 2004-2006”. *European Review of Latin American and Caribbean Studies* 101: 33-54

³⁰ Automatic inclusion in the registry only applies to nationals. They are then required to update and complete said information. Non-citizen residents must manifest their will to be included in the registry and follow the procedure indicated by the law.

Controversy over the public character of the electoral registry

In 2005, a group of citizens from the civic association SUMATE lodged a claim before the Electoral Court in the Supreme Tribunal of Justice, claiming ‘the incomplete publication of the Electoral Registry and the Elector’s list’, according to articles 95 and 106 of the Statutory Law on Suffrage and Political Participation.³¹ The CNE published the list of voters indicating only full names.

The claimants argued that due to the incomplete publication of the registry (addresses and status in the registry were not indicated) the party could not know who enjoyed active eligibility, since it was impossible to determine the identity and registration location of the electors. However, the court decided to reject the claim, on the grounds that the publication of all information provided by voters, which is only shared for voting purposes, shall not be made publicly available. Sharing this data with political parties would imply a privacy violation for electors, expressly recognised in the habeas data.³² However, sharing part of this data is a common practice in other countries in the region such Uruguay and Costa Rica, where political parties are provided with information on the voters, with name and ID numbers (but not their full address).

4.2. Registration Procedures: Becoming a voter

Resident citizens

The procedure to becoming a voter is thoroughly described in the Statutory Law for Electoral Procedures. Article 98 indicates that all Venezuelans of age, in possession of a *cédula* (ID), and not subjected to a judicial interdiction, are automatically included in the electoral registry. Even so, citizens are required to confirm and update their information in one of the CNE registration centres and provide the following details:³³

- Full name, ID number (*cédula*), sex, date of birth, nationality, occupation and any physical impediments.
- If illiterate, this condition must be declared.
- Full address. The exact main address, including county and municipality. The purpose of this information is to assign the voter to the nearest polling station.

Moreover, changes to address of residence need to be reported to the CNE in person, within 45 days.³⁴ Six months prior to election day, the CNE publishes a list of citizens whose registry has been cancelled or suspended, e.g. due to political disqualification. As the electoral registry closes 90 days prior to election day, citizens are required to update their information and report any errors to the CNE.³⁵

³¹ Sentencia No. 106, Sala Electoral del Tribunal Supremo de Justicia. 2 de Agosto 2005.

³² Habeas Data is embedded in Article 28 of the Venezuelan Constitution as the right of all people to access to information and data about themselves or his property contained in official or private records, with the exceptions provided by law. The rights also entails the right to know about the use and purpose given to the information, as well as requesting the correction or destruction of any wrongful or unlawful records that may affect people’s rights.

³³ Commonly, registration centres are located in CNE’s offices throughout the country, but it is also a practice to set mobile registration centres in the metro stations in order to facilitate registration and data actualisation procedures.

³⁴ Statutory Law on Electoral Procedures, Art. 100, 119.

³⁵ Statutory Law on Electoral Procedures, Art. 119

Non-resident citizens

Electors who wish to exercise their right to vote abroad, must meet the following requirements and attest them in a consular or diplomatic representation.³⁶

1. Be at least eighteen years old.
2. Submit the data update form available at the webpages of diplomatic or consular representation offices.³⁷
3. Venezuelan ID or *cédula de identidad* (original and a hard copy). Presenting a passport does not replace the requirement to present the Venezuelan ID (*cédula de identidad*).
4. ID document or residence certificate from the country of residence.
5. Consular registry.

Regarding the fourth requirement, the electoral authorities have not provided explanations as to why non-resident citizens must submit proof of legal residence in order to exercise their right to vote abroad. This may be due to the intention of the State to grant the right to vote in a Venezuelan consulate only to the nationals who are effectively and legally residing abroad and not, for instance, to those present in a foreign foreign country only for a short time. The strict registration requirements have presented a hurdle in the exercise of voting rights for many Venezuelans abroad.³⁸

Non-citizen residents

The law on electoral procedures indicates that in order to be able to exercise their right to vote in regional, municipal and county elections, eligible foreign residents must request to be included in the electoral registry before the relevant local authorities.³⁹ In the request, the individual needs to enclose all documentation proving that he or she meets the requirements to be eligible as a voter in Venezuela.

4.3. Becoming a candidate: a right reserved to nationals

Resident citizens

Regarding the right to stand as candidate, article 41 of the Constitution of Venezuela provides that only Venezuelans by birth and with no other nationality can stand as candidates for the following offices:

³⁶ These requirements have been published in local newspapers or online by Venezuelan consular or diplomatic representations worldwide. Some of them are available online at:

http://madrid.consulado.gob.ve/index.php?option=com_content&view=article&id=6&Itemid=12 (Spain) ;

<http://venezuelasambasad.com/consular/> (Sweden)

http://suiza.embajada.gob.ve/index.php?option=com_content&view=article&id=34&Itemid=54&lang=en (Switzerland)

³⁷ These updated data are then forwarded to the CNE fifteen days after their submission. Statutory Law on Electoral Procedures, Art.26.

³⁸ For further details on the barriers to the exercise of electoral rights for Venezuelans abroad see: Alvarez, Angel E. (2016) *Report on the Citizenship Law: Venezuela*. EUDO Citizenship Report 2016/05. Florence: EUI. Available at: <http://cadmus.eui.eu/handle/1814/40847>

³⁹ Statutory Law on Electoral Procedures, article 98.

- Presidency
- Vice Presidency
- Presidency and Vice Presidency of the National Assembly
- Judges for the Supreme Tribunal of Justice
- Presidency of the National Electoral Council (CNE)
- General Attorney
- General Prosecutor
- Ombudsman
- Ministries of national security, finance, and education
- Governors and Mayors of borderline states and municipalities

In order to be able to stand as candidate for the National Assembly, other ministries and for non-border states and municipalities, naturalised Venezuelans need to demonstrate continued residence in the country for at least fifteen years.

The right to run for mayor of border municipalities is reserved for Venezuelans by birth who have permanent residence in the country. The reason for this limitation is based on the government's definition of borders and border municipalities. The Supreme Tribunal of Justice's Constitutional Court elaborated on this subject in the following way:

the concept of border is not used only as a spatial limit for the scope of exercise of the State's power, but the concept is framed within a comprehensive security policy and defence of the nation, as mandated by the rules contained in Title VII of the 1999 Constitution, specifically Article 327 thereof. The explanation of this assimilation on the exercise of certain rights of Venezuelans by birth and naturalized citizens, among them political rights (active or passive suffrage), can be found on the historical stage of Venezuelan independence and the separation of the Great Colombia, where there were a group of people who, in spite of not being Venezuelan by birth (*jus soli*) or children of Venezuelans by birth (*jus sanguinis*), were in Venezuelan territory to the date of the political transformation of Venezuela in 1810, or pretended to be Venezuelans. (...) the Court notes that the prohibition of certain positions eligible for Venezuelans by naturalization has been maintained in the subsequent Constitutions of 1821, like 1830, to the current 1999. According to this Court, the border in the Venezuelan constitutional framework has a dual function, since it is essential in delimitating the exercise of State power, both within imposing its authority on space limit state-citizen relations, and out, by exercising its sovereignty with other countries. This makes it an essential element in the security and defence policy of the State, developed innovatively in the current Constitution of 1999.⁴⁰

In this sense, the Constitutional Court explained the reason why, according to the State's understanding on the importance of border territories, holding office is reserved to Venezuelans by birth: Venezuela considers border states and municipalities an area where issues of sovereignty, security and defense could be at stake, hence its governmental authorities should not have any possible affections or national identity linked to a foreign country.

⁴⁰ Judgment No. 2394 . Constitutional Court of the Supreme Tribunal of Justice. August 28th, 2003. Available at: <http://historico.tsj.gob.ve/decisiones/scon/agosto/2394-280803-02-2272%20.HTM>

Moreover, article 65 of the 1999 Constitution stipulates another limitation for passive electoral rights. Former public officials who have been convicted for criminal offences committed while in the exercise of their duties and other offences that affect national resources, are banned from participating in election as candidates. This prohibition enters into force from the moment the sentence is served.

According to article 139 of the Statutory Law on Electoral Procedures, an individual needs to present his or her candidacy 120 to 100 days prior to the election day.⁴¹ National political parties or groups of electors present candidates for the national assembly to the CNE; regional political parties or groups of electors present candidates to the regional electoral board; and both national and regional political parties or groups of electors present candidates to the municipal electoral boards. An individual is not permitted to submit his or her candidacy to more than one of the abovementioned candidacies in elections that take place simultaneously, i.e. regional elections for governors and mayors. Following the presentation of the candidacy, the CNE approves or rejects the candidacy. If CNE fails to make such declaration, the candidacy is automatically approved.⁴²

4.4. Casting the vote

Resident citizens

Voters are registered in a particular polling station, and they can only cast their vote therein. According to the Statutory Law on Electoral Procedures⁴³, the exercise of suffrage is personal. Hence only the registered voter can cast its vote on the election day. The law provides for exceptions for illiterate, visually impaired and elderly voters, who are allowed to choose a person to accompany them during the voting procedure.⁴⁴

Non-resident citizens

The general rule of automatized elections does not apply to non-resident citizens, since it is only available in electoral events taking place in Venezuelan territory. In the absence of general electoral rules regulating the exercise of voting rights abroad, ad hoc norms apply as follows: ‘The procedure to cast the vote shall be manual. The Venezuelan *cédula de identidad* is the only valid document to exercise the right. The presence of at least one (1) witness per candidate, political organizations or electoral groups is guaranteed [...]’⁴⁵.

Non-citizen residents

Non-citizen residents enjoy of the same conditions and rights of nationals in the exercise of their right to vote. The only differences derive from the type of elections they are allowed to

⁴¹ ‘Group of electors’ opens the door to any organized group supporting a particular candidate. The provision allows any Venezuelan to postulate him or herself as an independent candidate, without the support of a political party. Statutory Law on Electoral Procedures, article 141.

⁴² Regulations for the Statutory Law on Electoral Procedures, Art. 61.

⁴³ Statutory Law on Electoral Procedures, Art. 123.

⁴⁴ Statutory Law on Electoral Procedures, Art. 128.

⁴⁵ Full text is available at:

http://www.cne.gob.ve/web/normativa_electoral/elecciones/2012/presidenciales/documentos/boletin_informativo_n1.pdf

participate in. As mentioned above, the participation of non citizen residents is limited to elections at the county, municipal and regional levels. Foreign residents are required to register at a specific polling centre (that is normally close to their place of residence) and after the presentation of their non citizen resident ID (*cédula extranjera*) they are allowed to proceed to the electronic machine.

4.5. Automatisation of suffrage

Venezuela is among the few countries in the world implementing the SAV (*sistema automatizado de votación*) consisting in the use of an electronic machine for voting.⁴⁶ The laws for the automatisation of suffrage have been introduced through a 1998 amendment to the Statutory Law on Suffrage, and subsequently streamlined in the 2002 Electoral Branch Law.⁴⁷ Currently, the system is used for elections at national or local level in countries such as the Netherlands, Belgium, Switzerland, the United States of America, Mexico, Brazil, Spain and India. The SAV brings substantive advantages for the electoral procedure, including the speediness of scrutiny – which is almost immediate; increased safety levels systems that ensure confidentiality in the process; major reliability; environment-friendly procedures; usefulness of the machines for different electoral events; and facilitated audit processes.

Nonetheless, SAV's suitability to the highly polarized Venezuelan political context has also been questioned. Political opposition has strongly criticised the system for being too susceptible to manipulation from the government, and has insisted in performing audits to ensure SAV is not being used to manipulate electoral results. In its 2014 report on the Venezuelan elections, the Carter Center (2014: 6) referred to the controversy over this issue in the 2013 presidential elections, highlighting that

Candidate Henrique Capriles initially demanded a full recount of the paper receipts before accepting the results. A controversy about the meaning of “audit” and “recount” in Venezuela’s automated voting system, the intricacies of the electoral law, and imprecise communication from political actors contributed to a protracted debate over the nature of the audit demanded by the opposition. Responding to Capriles’ original petition, the CNE announced on April 18 that it would expand the citizen verification from the 53 percent already audited on election night to 100 percent of the voter tables, and Capriles accepted. Nevertheless, after the council announced the protocols for a citizen verification (phase 2) on April 26, Capriles rejected it, saying it did not include the manual voter logs needed to check the identity of voters nor the additional electoral materials requested in writing by his campaign on April 17 and April 22.

In an electoral system in which most electoral issues are regulated in detail through the constitution, the SAV has been questioned for not having been explicitly mentioned or referred to in the 1999 Constitution. Including it would imply a legitimisation of automatized suffrage at the constitutional level.

⁴⁶ Electoral technology in Venezuela. Available at:

http://www.cne.gob.ve/web/sistema_electoral/tecnologia_electoral_descripcion.php

⁴⁷ Ibidem fn16.

5. Conclusion

This reports provides a general overview of the evolution of electoral institutions in Venezuela.

From its inception in the 19th century, suffrage has expanded in Venezuela to include some of the previously disenfranchised groups. From 1947, universal and direct vote has been guaranteed in the country. The 1999 Constitution created the Electoral Branch, as one of the ‘five arms’ of the state structure (along with the executive, legislative, judicial and moral branches). However, it is not evident that the recognition of the electoral system at this level has impacted positively in the guarantee of this right.

The content and conditions of access to the franchise differ across category of voters. Whereas citizen residents find few limitations in the exercise of suffrage, non-citizen residents are generally disenfranchised, except in regional and local elections. Non-resident citizens can in principle exercise electoral rights, however with significant limitations. These limitations include the lack of formal regulations on the procedure for voting abroad, which could lead (as it already did) to multiple interpretations on the requirements and procedures on how to cast a vote before a Venezuelan diplomatic or consular representation. In this regard, there is also the exceptional requirement (compared to all the other systems where non-resident citizens are enfranchised) of providing a proof of legal residence abroad which seems to be an additional burden to expatriate citizens.

In general, the procedures are accurately described in the law and leave little space for misinterpretation (except for the case of non-resident citizens, which is an issue that certainly requires a more developed legal frame). Non-citizen residents, as well as non-resident citizens are categorically excluded from participating in elections as candidates.

Despite the continuous developments of the institution of suffrage in Venezuela, there are still plenty of challenges before all political groups come to regard the electoral system as fully reliable. For instance, even though the electoral registry has been automatized since 2009, there have been controversies over the publicly available data in the registry, and a part of the population questions the reliability of SAV. Even so, some critical aspects of the Venezuelan electoral system have been praised and supported by international observers. In its report on the election observation mission of 2014, the Carter Center underscored the high confidence of the Venezuelan population in the integrity of the automated touch-screen voting machines.⁴⁸

Venezuela is one of the countries with the most frequent electoral events in recent years. In light of the considerably broad variety of applicable legislation for electoral affairs, the quasi absence of a jurisprudence on electoral rights seems all the more surprising. This report intended to cover the essence and basis of the right to vote by describing the structure and legal framework for the exercise of suffrage. Nonetheless, in a highly politicised context such as the Venezuelan one, a full understanding of electoral affairs, warrants a broader perspective that considers also the interests of both politicians and the people.

⁴⁸ The Carter Center. *Study Mission of The Carter Center 2013 Presidential Elections in Venezuela Final Report*. April 14, 2013. Available at http://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/venezuela-final-rpt-2013-elections.pdf

Bibliography

- Brewer-Carias, Allan (2008). *Las Constituciones de Venezuela* [Constitutions of Venezuela]. Caracas.
- Congreso de Angostura de 1819-1821 (1983). *Ediciones conmemorativas del Bicentenario del Natalicio del Libertador Simón Bolívar* [Commemorative Edition of the Bicentenary of birth of the Liberator Simón Bolívar]. Tomo I.
- Constitución de la República Bolivariana de Venezuela (1999) [Constitution of the Bolivarian Republic of Venezuela (1999)]
- Constitución Federal para los estados venezolanos (1881) [Federal Constitution for the Venezuelan states (1881)]
- Constitución venezolana (1830) [Venezuelan Constitution (1830)]
- Constitución venezolana (1936) [Venezuelan Constitution (1936)]
- Ley del Censo Electoral (1936) [Law on Electoral Registry (1936)]
- Constitución de los Estados Unidos de Venezuela (1947) [Constitution of the United States of Venezuela (1947)]
- Fortoul, José Gil. (1954), *Historia Constitucional de Venezuela*. Ministerio de Educación. Dirección de Cultura y Bellas Artes.
- Garay, Juan (2001). *La Constitución Bolivariana comentada*. Caracas. Kroeber, Corinna (2015). 'Exploring the Impact of Reserved Seat Design on the Quality of Minority Representation' *Ethnopolitics*, DOI: 10.1080/17449057.2015.1051326
- Ley Orgánica del Poder Electoral (2002) [Organic Law on Electoral Powers (2002)]
- Ley Orgánica de Procedimientos Electorales (2009) [Organic Law on Electoral Procedures (2009)]
- Ley orgánica del Registro Civil (2009) [Organic Law on Civil Registry (2009)]
- Ley Orgánica para los Municipios (1989) [Organic Law on Municipalities (1989)]
- Ley Orgánica del Sufragio (1989) [Organic Law on Suffrage (1989)]
- Ley Orgánica del Sufragio y Participación Política (1998) [Organic Law on Suffrage and Political Participation (1998)]
- Magallanes, Manuel Vicente (1988) *Historia política de Venezuela* [Political History of Venezuela]. Ediciones Centauro, Caracas.
- Nohlen, Dieter (1981) *Sistemas electorales del mundo* [Electoral Systems of the World]. Madrid: Centro de Estudios Constitucionales.
- Reglamento General de la Ley Orgánica de Procesos Electorales (2013) [General Regulation of the Organic Law on Electoral Processes]
- The Carter Center (2014). *Study Mission of The Carter Center 2013 Presidential Elections in Venezuela Final Report*, April 14. Available at http://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/venezuela-final-rpt-2013-elections.pdf
- Urdaneta García, Argenis Saúl (2007). *Memoria Política N° 11, Constitución del Estado de Venezuela de 1830* [Political Memory No 11, Constitution of the state of Venezuela], Caracas.

