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Report on Citizenship Law

Ecuador

Gabriel Echeverría

1. Introduction

Citizenship is the legal status through which states establish who their members are. Thanks to this mechanism, a sharp division is established between non-members – foreigners – and members – citizens. As Rogers Brubaker (1992: 46) points out, the two categories are “correlative, mutually exclusive, exhaustive.” With the status of citizen, a person not only is permanently linked to a particular state but also acquires a set of rights and duties. In the course of history, each state has developed its own particular conception of citizenship and it has worked as a fundamental tool to maintain “the intergenerational continuity of the state” (Vink and Bauböck 2013). In particular, this tool has helped to regulate the transmission of membership to new generations and the admittance of new members when international migration takes place.

The present-day mechanisms in force in each country are typically the result of a process of cumulative adjustments. Analysis of this process offers an interesting perspective on the history of each state. Through such analysis it is possible to understand the different challenges and priorities that have arisen in the management of the state’s population. The choice of a particular principle of citizenship acquisition, the height of the barriers against naturalisation, and the degree of acceptance of dual citizenship are indicative of both the general tendencies that have been prevalent in a certain region and the particular traits in each national case.

In terms of the evolution of its citizenship regime, the case of Ecuador displays both similarities with and distinctions from the other countries in Latin America (see Acosta 2016). Concerning the former, Ecuador became an independent country at the beginning of the 19th century after emancipating from the colonial rule of Spain. This had a critical impact on its initial conceptualisation of citizenship. First, the influence of Spain and of its juridical tradition was evident. From the first Spanish constitution of 1812, the famous Cadíz constitution, Ecuador took the distinction between ‘nationals’ and ‘citizens,’ which remained central to its citizenship regime until the approval of the 1998 constitution. For most of Ecuadorian history, although all individuals who were born in Ecuador or who naturalised as Ecuadorian were considered nationals, a number of additional requirements were necessary to become citizens and access political rights (see Echeverría 2015). While the nature and scope of the requirements needed for persons to be considered nationals and citizens continually evolved during the productive history of Ecuadorian constitutionalism, the two statuses and their juridical implications remained strictly separate until 1998. In that year with the approval of the new constitution, the distinction was finally erased. From that moment on, all Ecuadorians without exception were considered citizens. However, a

distinction persisted between citizens who enjoy political rights and citizens who do not. This conceptual peculiarity of the Ecuadorian regime may cause confusion when comparing it with other regimes around the world. Although the term used in Ecuador for citizenship is '*nacionalidad*,' in order to maintain terminological homogeneity with the EUDO Citizenship project reports, from this point on I will use 'citizenship' as a synonym.

A second element of similarity to many other Latin American countries is Ecuador's embrace from the very beginning of *ius soli* as the fundamental mode of citizenship acquisition. This choice, together with its comparatively open naturalisation policy, was for a number of ideological and pragmatic reasons. Ideologically, liberal ideas, often relating to the values of the French Revolution, had a strong influence during the independence years. Pragmatically, as Acosta points out, *ius soli* represented a great tool to "create citizens out of colonial subjects and to forge national communities from colonial societies marked by stark social divisions" (Acosta 2016: 3). Moreover, in countries where inflows of immigrants were not uncommon, a mechanism that allowed rapidly transforming foreigners into citizens was certainly useful.

Finally, Ecuador has also had a tendency towards gradually accepting dual citizenship over the years. This tendency can be linked to migratory trends and the development of an expatriate community of Ecuadorians living abroad, especially in the second half of the past century. A first step was taken in 1965 with the signature of the Bilateral Treaty with Spain on Dual Nationality, which allowed citizens who naturalise in one of the countries to maintain their previous citizenship in the other. The process culminated in 1994 with a universal recognition of dual nationality.

When it comes to its particularities, the Ecuadorian case presents three elements that deserve to be highlighted. The first concerns the institutional/legal treatment of citizenship matters. As in most Latin American countries, all through the history of Ecuador the regulation of citizenship has always been dealt with by the constitution, with ordinary law playing a relatively marginal and derivative role. This sharply differs from what occurs in most European countries. A second feature is the early and stable role given to *ius sanguinis* as a mode of citizenship acquisition throughout Ecuadorian history. Although most Latin American countries included *ius sanguinis* in their first constitutions, the majority of them put this principle aside and gave priority to *ius soli* in the following years (Vonk 2014; Acosta 2016). In Ecuador instead, as occurred in Colombia (Escobar 2015), *ius sanguinis* was already introduced in its second constitution in 1835, and it has remained the other crucial mode of citizenship acquisition until today. Finally, since the approval of the 2008 constitution Ecuador has been conceptualized as a plurinational country. This means that Ecuadorian citizenship is understood as a sort of 'supranational citizenship' that bonds the members of different nations that comprise the population to the Ecuadorian state.

At present, the citizenship regime of Ecuador is regulated by the second chapter of the constitution of 2008, entitled 'Citizens' (*Ciudadanos y Ciudadanas*). The constitutional provisions are further specified and developed by the Naturalisation Law (*Ley de Naturalización*) of 1976. The regime includes three modes of citizenship acquisition and one mode of citizenship loss. The modes of acquisition are *ius soli*, *ius sanguinis* and naturalisation. Each mode has a number of limitations and specific procedures. The only mode of citizenship loss is voluntary renunciation by naturalised Ecuadorians. A new citizen's naturalisation card can also be withdrawn if he is discovered to have used fraudulent documentation in his application. Concerning dual citizenship, current regulations allow Ecuadorian citizens who obtain another citizenship to maintain that of Ecuador.

2. Historical Background

Until the approval of the 1998 constitution, the distinction between the concepts of ‘national’ and ‘citizen’ had been a fundamental feature of the Ecuadorian citizenship regime. Previously, every Ecuadorian constitution contained two distinct chapters, one that established who the members of the nation were (*nacional*) and another that established who among those members was enabled to exercise political rights (*ciudadano*). Both statuses have undergone a process of continuous evolution during the prolific history of Ecuadorian constitutionalism. In this section, the focus will centre on the historical evolution of membership of the Ecuadorian state.

The first Republican constitution of Ecuador, which was approved in 1830, eight years after independence from Spain and as *Gran Colombia* (the union formed by Ecuador, Colombia and Venezuela after the war) split up, recognised Ecuadorian citizenship for six categories of persons: 1. those born in the national territory and their children; 2. nationals of the other Gran Colombia states who had moved into the national territory; 3. soldiers who had fought for Ecuador when independence was declared; 4. foreigners who were citizens during the same period; 5. foreigners who obtain a naturalisation card (*Carta de Naturalización*) for services to the country; 6. those born in the national territory (*naturales*) who, having resided in another country, come back and declare to the authorities their will to recover their original domicile.¹ As can be observed, beyond a number of special provisions linked to a desire to stabilize the national population in a period of war and social turmoil (2, 3, 4), the basic principles adopted by the constitution were *ius soli* (1, 6) and naturalisation (5). However, no specifications were provided of the conditions and requirements for concession of the latter.

Five years later, in 1835, a new constitution was approved. The regulation of citizenship in the new document was much more detailed. Article 4 introduced a formula that became recurrent in the country’s constitutional praxis, stating “*Ecuadorians are so by birth or by naturalization.*” Article 5 specified the conditions for the first mode. It is very important to highlight that in addition to *ius soli* the *ius sanguinis* principle was introduced for the first time, although it required a re-settlement condition. Comma 2 stated that “*Ecuadorians by birth are those who, born abroad of Ecuadorian parents, decide to settle back in Ecuador.*”² As regards naturalisation, there were five possibilities. Ecuadorian citizenship could be acknowledged to: nationals of the other Gran Colombia states who had moved to the national territory; soldiers who had been fighting for Ecuador when independence was declared; foreigners who practised any science, art or industry or who owned a property or capital who had resided in Ecuador for at least five years (three years if married to an Ecuadorian man, two if married to an Ecuadorian woman, two if born in America) and declared to the authorities their intention to settle in Ecuador; foreigners who obtained a naturalisation card for their contributions to the country; and foreigners who had obtained a naturalisation card from the Colombian or Ecuadorian government and were residing in Ecuador.³

In the following decades, and until the first half of the 20th century, the conflicts that characterized Ecuadorian politics involved heated opposition between two important social and political groups. On the one hand, there were the conservative and traditionalist forces.

¹ Constitución del Estado del Ecuador 1830, Art. No. 9.

² Constitución Política de la República del Ecuador 1835, Art. No. 5.

³ Constitución Política de la República del Ecuador 1835, Art. No. 6.

These represented the interests of the county's landowners and wealthy families and had strong links with the church. For these groups, the main goal was to maintain the economic and social order inherited from the colonial era. On the other hand, there were liberal and progressive forces which represented the emerging productive and professional classes and pushed for a rapid modernization of the country. The polarization that characterized the rivalry between these forces, combined with an institutional weakness, determined great political instability. Upheavals among the population and coups d'état were a recurrent feature in these years. Each time, the drawing up of a new constitution was interpreted as a new beginning for the Republic, yet each time the re-established legitimacy was rapidly lost only a few years later.

Between 1835 and 1929, nine constitutions were approved.⁴ Nevertheless, the regime concerning citizenship remained relatively unaffected, and in the wake of the 1835 constitution a combination of *ius soli*, *ius sanguinis* and a relatively generous naturalisation policy was adopted. The approval of a new constitution generally only entailed terminological variations or minor changes to the requirements for naturalisation. Only a couple of modifications are noteworthy. In 1851, the special provisions for soldiers or participants in the independence wars were erased as the issue was no longer relevant.⁵ In the 1878 constitution, a special rule was created for individuals born in any of the 'Hispano-American republics.' They could naturalise as Ecuadorians the moment they declared a will to settle in the country. Another very interesting novelty was also introduced that year. Article 11 stated that "*No Ecuadorian, even when he/she has acquired a foreign nationality, is exempt from fulfilling the duties imposed by the Constitution and the law, as long as he/she resides in the Republic.*"⁶ At least implicitly, this provision envisages the possibility of dual nationality. Six years later, a new constitution introduced a small change regarding *ius soli*. A child of a foreigner born in the national territory would automatically become Ecuadorian only if his/her parents were residing in the country.⁷

Well into the 20th century, and after a decade of political instability had culminated in a coup d'état by a group of young officials of the Ecuadorian Army – the so-called *Revolución Juliana* – a Constitutional Assembly was elected in 1828 under the presidency of Isidro Ayora. Although this new constitution, which was approved the following year, did not significantly change the modes of citizenship acquisition, for the first time it regulated the loss of citizenship. Article 10 specified that "*An Ecuadorian citizen loses his/her citizenship: 1. When he/she obtains the citizenship of another state; 2. When he/she collaborates with a hostile nation; 3. When the naturalisation card is cancelled.*"⁸ The following article specified that citizenship could be recovered in the ways established by the law.⁹ Although the years after the approval of the new constitution brought new instability to the country, the 1929 document remained in force for more than twenty years until 1945, a true record in the history of Ecuador.

In 1941, the outbreak of the Ecuadorian-Peruvian war found the country unprepared and politically divided. After having most of its southern regions occupied by the Peruvian army, Ecuador was forced to sign the Rio de Janeiro Protocol in 1942, which entailed losing almost half of its national territory. This traumatic event had profound internal political consequences. In 1945, a new progressive constitution was promoted by the charismatic

⁴ Constitución Política de la República del Ecuador 1843; 1851; 1852; 1861; 1869; 1878; 1884; 1897; 1906.

⁵ Constitución Política de la República del Ecuador 1851.

⁶ Constitución Política de la República del Ecuador 1878, Art. No. 11.

⁷ Constitución Política de la República del Ecuador 1884, Art. No. 6, Comma 2.

⁸ Constitución Política de la República del Ecuador 1929, Art. No. 10.

⁹ Constitución Política de la República del Ecuador 1929, Art. No. 11.

figure President José María Velasco Ibarra. Only a year later, however, due to fierce opposition from the conservative forces, a more moderate version was approved. The 1946 constitution did not introduce any relevant changes concerning citizenship to that of 1929.

The decade of the 1950s brought a period of relative stability and economic growth to Ecuador. The so-called ‘banana boom’ brought significant international investment and the government was able to promote reforms that improved the lives of the population. For the first time since the twenties, two presidents – Galo Plaza Lazo and again Velasco Ibarra – were able to complete their terms. Nevertheless, the bonanza did not last long, and neither did the political stability. The Cuban Revolution, which had a tremendous impact on the whole Latin American region, also affected Ecuadorian society. On the one hand, leftist students and sectors of the nascent urban middle classes were fascinated by the ideas coming from the Caribbean and demanded deep reforms, if not the overthrow of the constitutional order. On the other hand, the ruling classes, supported by US influence, feared the possibility of communist contagion and increasingly demanded that a firm hand be used against the conspirators. As the political conflict heated, in 1963 the high command of the armed forces decided to depose President Otto Arosemena and inaugurated a three-year period of military rule. The four-man junta expelled all the leaders of the Communist Party from the country and promoted a policy of anti-communist reformism, which was, nonetheless, largely ineffective. In 1964, Ecuador and Spain signed a bilateral treaty that reciprocally recognized the possibility for their citizens who naturalised in the other country to maintain both citizenships.¹⁰ A number of further specifications were included: only those who had been citizens at birth were eligible;¹¹ political rights were recognized to those who acquired Ecuadorian or Spanish nationality via naturalisation under the Treaty;¹² citizens who had acquired the nationality of the other country prior to the entry into force of the Treaty could recover their birth nationality by following the procedure set forth in the legal system of the respective country;¹³ children of naturalised citizens who obtained the nationality of the country they were born in would also be considered citizens of the other country.¹⁴

The return to democracy in 1966 was inaugurated with the election of a new Constitutional Assembly, which approved a new constitution the following year. The regime maintained its traditional stance regarding citizenship: *ius soli*, *ius sanguinis* and generous naturalisation provisions. However, an important novelty was introduced. Article 17 stated that “*Without losing their original citizenship and on a reciprocity basis, Ibero-American and Spanish citizens can naturalise as Ecuadorians once they settle in Ecuador and request to do so.*” The same article further specified that “*On a reciprocity basis and based on the dual nationality principle, Ecuadorians will not lose their citizenship in the case that they acquire another one.*”¹⁵

The return to constitutional order did not last long. In 1968, Velasco Ibarra won the presidential election again for the fifth time, but in 1972, months before concluding the term, he was overthrown by the command of the army forces. The mild ‘nationalist and revolutionary’ dictatorship by the military, first led by General Guillermo Rodríguez Lara and from 1976 by a triumvirate, remained in power until 1978. During this period, the

¹⁰ Bilateral Treaty between Ecuador and Spain on dual nationality. Official Registry No. 463, March 23, 1965. The Treaty was revised in 1995. Article No. 8, was modified recognizing labour and economic rights to naturalised citizens, including an obligation to grant them work permits and similar documents for free.

¹¹ Bilateral Treaty between Ecuador and Spain on dual nationality, Art. No. 1.

¹² Bilateral Treaty between Ecuador and Spain on dual nationality, Art. No. 3.

¹³ Bilateral Treaty between Ecuador and Spain on dual nationality, Art. No. 6.

¹⁴ Bilateral Treaty between Ecuador and Spain on dual nationality, Art. No. 9.

¹⁵ Constitución Política de la República del Ecuador 1967, Art. No. 17.

discovery of oil in the Amazon region of the country and its exploitation allowed the state to develop an ambitious programme of infrastructure construction, industrialization and social development.

Although naturalisation has been recognized in Ecuador since the 19th century, a law that developed the relevant constitutional provisions and regulated the administrative procedures was only approved in 1976.¹⁶ The Naturalisation Law and the related regulations introduced that year are still in force today with few changes. As Article 1 clearly states, “*Naturalisation is defined as a discretionary power of the executive branch through which foreigners are recognized as Ecuadorians, and it is acquired from the day the naturalisation card is issued.*”¹⁷ Naturalisation, therefore, is not intended as a right of foreigners who satisfy certain requirements and follow certain procedures but as a concession conferred by the state. This means, for instance, that if a naturalisation request on the part of a foreigner is refused by the authorities, he or she does not have the right to appeal. The same is true if a naturalisation card (the document that certifies one is a naturalised citizen) previously conceded to a foreigner is withdrawn by the authorities.¹⁸

Facing increasing disapproval from large sectors of society, the military junta took the decision to step down from power and proposed a controlled transition to democracy which would culminate in 1978. The first step was drafting a new constitution. In a national referendum, Ecuadorians were called to choose between the previous constitution of 1967 and the new one. Eventually, the majority of the population picked the latter, which introduced a number of innovations such as acknowledgement of a role for the state in socioeconomic development, a unicameral legislature and prohibition of re-election. In terms of citizenship, this constitution, which was the last one to make the distinction between the concepts of citizen and national, finally recognized universal access to political rights as it abolished the long-lasting literacy requirement.¹⁹ No other relevant modifications were introduced.

With the return to constitutional order in 1978, Ecuador’s endemic political instability came to an end and the country enjoyed relative stability until the end of the 20th century. However, political stability did not mean social and economic stability. As in many countries of the region, the 1980s were characterized by severe budgetary adjustment policies imposed by the so-called Washington Consensus, which had a tremendous social impact. While emigration had existed before, the phenomenon now became widespread. The first significant communities of Ecuadorian expatriates were established in the United States at the end of the decade. The pioneering efforts of the associations they built made the reality of emigration increasingly visible to Ecuadorian society. Their main demand was for political recognition. The results of their lobbying efforts eventually produced a change in the citizenship regime. In a national referendum in 1994, the Ecuadorian population was asked about the possibility of allowing unconditional dual nationality. An overwhelming majority supported the initiative, and in 1995 the Ecuadorian Parliament erased the reciprocity requirement and recognized the possibility for emigrants who naturalised in any other country to maintain their Ecuadorian citizenship.

In 1997, after only one year in charge, president Abdalá Bucaram Ortíz, the self-named *el loco* (the crazy one), resigned as a result of popular protests. A new constitutional charter was then discussed and approved by a Constitutional Assembly in 1998. The new

¹⁶ Naturalisation Law. Supreme Decree No. 276. Published on 14 April 1976.

¹⁷ Naturalisation Law, Article No. 1.

¹⁸ Naturalisation Law, Articles No. 4 and No. 11.

¹⁹ See Echeverría 2015.

constitution eliminated the historical distinction between nationals and citizens. All Ecuadorians without exception were thus considered citizens and the distinction made was that between citizens with and without political rights. Regarding citizenship acquisition, the three traditional modalities were ratified. Ecuadorian citizens were: A) those born in the national territory; B) those born abroad to Ecuadorian citizens residing outside the country temporarily or because they worked for the diplomatic service or an international organization; C) those born abroad to an Ecuadorian citizen who settled back in Ecuador and manifested a wish to become Ecuadorian; D) those between 18 and 21 years of age born abroad to an Ecuadorian citizen who manifested a wish to become Ecuadorian; E) those who obtained Ecuadorian citizenship for their services to the country; F) those who obtained a naturalisation card; G) those adopted by an Ecuadorian citizen before their 18 birthday; H) those under 18 born abroad to a foreigner who naturalised as an Ecuadorian; and I) the inhabitants of foreign territories that accredited them as belonging to an ancestral Ecuadorian people. Regarding dual nationality, two cases were contemplated: A) foreigners who naturalised as Ecuadorians and whose country allowed dual nationality on a reciprocity basis; B) Ecuadorians who naturalised or had naturalised elsewhere, who maintained or were allowed to recover Ecuadorian citizenship. As can be observed, this last provision enabled a retroactive application of the dual nationality principle, which was intended to benefit the large number of Ecuadorians who had naturalised in the US and according to the previous law had to rescind their original citizenship. Concerning citizenship loss, the only case contemplated was that of withdrawal of the naturalisation card by the Ecuadorian authorities.²⁰

In the period between the end of the century and the beginning of the new one, Ecuador experienced a dramatic economic and financial crisis that changed the country forever. Hyperinflation led to the abandonment of the national currency, and unemployment caused an explosion in the emigration rate and led to the departure of almost an eighth of the total population (FLACSO-UNFPA 2006). This was the result of a long process of social and political conflict which brought with it an erosion of the political system, a spread of corruption and a highly inefficient handling of the economy (Echeverría 1997, Acosta 2002, Ramírez & Ramírez, 2005). Between 2000 and 2006, six presidents alternated in power and the country experienced great social turmoil. The crisis only came to an end after the election of President Rafael Correa in 2006. Sustained by his popularity, the young president promoted a wide range of political, economic and social reforms. The cornerstone of his programme, the so-called ‘Citizens Revolution’ (*Revolución ciudadana*), was the convocation of a Constitutional Assembly and the drafting of a new constitution. A plebiscite approved this new constitution in 2008.²¹ Correa was then re-elected twice more and he is currently close to terminating his last mandate.

²⁰ Constitución Política de la República del Ecuador 1998.

²¹ Constitución Política de la República del Ecuador 2008.

3. The current citizenship regime

Ecuador's current citizenship regime is regulated by the constitution promulgated in 2008. The constitutional provisions concerning naturalisation are integrated by the Naturalisation Law and its regulations, which were approved in 1976 and are still in force.²²

Following the 1998 constitution, the 2008 constitution does not make a distinction between the concepts of national and citizen as all previous constitutions since 1830 had done. Article 6 clearly states that "*All female and male Ecuadorians are citizens and shall enjoy the rights set forth in the Constitution.*"²³ However, unlike the 1998 text, which was consistent with this conceptual change and eliminated the concept of nationality in all its articles,²⁴ the 2008 text does not. Further on, the same article says: "*Ecuadorian nationality is a political and legal bond between individuals and the State, without detriment to their belonging to any of the other indigenous nations that coexist in plurinational Ecuador.*" Thus, the concept of nationality is reintroduced, although with a slightly different meaning. While previously being part of the Ecuadorian nation was the prerequisite for being recognized as part of the state population and then when coming of age for becoming a citizen and enjoying political rights, now Ecuador considers itself a plurinational country and Ecuadorian nationality is the bond between the members of the different local nations and the state. Although both terms, citizenship and nationality, are used in the constitution, no clear definition of the former is provided and the interrelation among the two is not explicitly elaborated, leaving room for confusion. However, the recognition of indigenous communities as nations reveals a new and unprecedented approach towards minorities on the part of the Ecuadorian state. The last sentence of Article 6 concludes: "*Ecuadorian nationality is obtained by birth or naturalisation and shall not be forfeited because of marriage or its dissolution or by acquiring another nationality.*" Thus, two main modes of citizenship acquisition are included and the principle of unconditional dual nationality, which was first introduced in 1995, is confirmed.

At present, there are three categories of Ecuadorians at birth: A) all children born in the national territory, on the basis of the *ius soli* principle (there are no exceptions to the general rule); B) all children born abroad to a mother or father born in Ecuador and their descendants up to the third degree of consanguinity, on the basis of the *ius sanguinis* principle; C) all persons belonging to communities, peoples and nations recognized by the state and living within the national territory.²⁵ On the other hand, there are five categories of naturalised Ecuadorians: A) those who obtain a naturalisation card; B) under-age adopted foreigners; C) the children of naturalised Ecuadorians who were born abroad and express this wish while minors; D) those who marry or have a common-law marriage with an Ecuadorian citizen; and E) those who are awarded Ecuadorian nationality for services to the country. The

²² In 2011, a Ministerial Agreement (*Acuerdo Ministerial No. 000004, 11 de Febrero 2011*) updated all the administrative procedures that concern naturalisation.

²³ Constitución Política de la República del Ecuador 2008, Art. No. 6.

²⁴ In the 1998 Constitution, the First Transitory Disposition specified: "*When international laws or international agreements currently in force use the term 'nationality,' this will mean 'citizenship.'* and when laws use the term '*citizenship rights,*' this will mean '*political rights.*' Constitución Política de la República del Ecuador 1998, Deposition Transitoria Primera.

²⁵ Constitución Política de la República del Ecuador 2008, Art. No. 7.

constitution highlights that the acquisition of Ecuadorian citizenship does not imply a need for individuals to abandon their previous citizenship.²⁶

The only mode of citizenship loss included in the constitution is voluntary renunciation by those who acquired Ecuadorian citizenship by naturalisation. As will be discussed later, the Naturalisation Law adds a number of other modes of citizenship loss that also only affect naturalised citizens.

3.1. The main modes of acquisition and loss of citizenship

3.1.1. Acquisition of Ecuadorian citizenship

As established by Article 6, there are two main modes of citizenship acquisition: by birth or by naturalisation. Article 7 regulates acquisition by birth and Article 8 acquisition by naturalisation. The Naturalisation Law of 1976 further specifies the details and procedure for naturalisation.

Focusing first on the provisions of the constitution, Article 7 includes three categories of Ecuadorians at birth. The text states: “*The following persons are Ecuadorians at birth:*”

“1) *Persons born in Ecuador.*”

This provision regulates the *ius soli* principle. No exceptions or specification are indicated.

“2) *Persons born abroad to a mother or father born in Ecuador and their descendants up to the third degree of consanguinity.*”

This provision regulates the *ius sanguinis* principle. Unlike the previous constitution, which differentiated between three cases and established specific requirements for each, today there is an almost unrestricted automatic application of *ius sanguinis*, including for descendants up to the third degree of people who were born in Ecuador. This generous policy can be interpreted as an important concession on the part of the state to the claims of the expatriate community during the climax of the emigration crisis.

“3) *Persons belonging to communities, peoples or nations recognized by the State living in border areas.*”

Finally, this third category includes individuals pertaining to communities, peoples or nations that live in remote and difficult-to-access areas of the country. Although the constitution does not specify which these groups are, the Organic Law on the Public Institutions of the Indigenous Peoples of Ecuador that define themselves as Nations with Ancestral Roots (*Ley Orgánica De Las Instituciones Públicas De Pueblos Indígenas Del Ecuador Que Se Autodefinen Como Nacionalidades De Raíces Ancestrales*) recognizes fourteen nations.²⁷ As previously mentioned, this is the first time in the history of Ecuador that an explicit recognition is made of these populations as proper nations. This provision opens an interesting conceptual issue. Since Ecuadorian nationality is given to individuals pertaining to other nations, then it appears to be a sort of ‘supra-national nationality.’

²⁶ Constitución Política de la República del Ecuador 2008, Art. No. 8.

²⁷ Ley Orgánica De Las Instituciones Públicas De Pueblos Indígenas Del Ecuador Que Se Autodefinen Como Nacionalidades De Raíces Ancestrales, Art. 2. The nations recognized are: Kichwa, Awa, Chachi, Epera, Tsáchila, Cofán, Secoya, Siona, Waorani, Shiwiar, Zápara, Achuar, Shuar and Andoa.

Article 8 regulates naturalisation and establishes five channels through which to obtain Ecuadorian citizenship. After discussing the constitutional provisions, the present analysis will centre on the Naturalisation Law, which details the requirements, procedures and exceptions for each case. The constitution states: *“The following persons are Ecuadorians by naturalisation:”*

“1) Those who obtain a naturalisation card”

This sub-article regulates the general procedure for foreigners who reside in Ecuador and wish to naturalise as Ecuadorian. No details of the requirements, procedures or special provisions are provided.

“2) Under-age foreigners adopted by a female or male Ecuadorian, who shall keep their Ecuadorian nationality as long as they do not express a wish to the contrary.”

A second case addressed by the constitution is that of under-age foreign children adopted by Ecuadorian citizens. It can be seen that in this case naturalisation is automatic but the ‘new’ citizen is allowed to renounce Ecuadorian citizenship if that is his/her wish.

“3) Those born abroad to a mother or father who is Ecuadorian by naturalisation shall keep their Ecuadorian nationality while they are minors, as long as they do not express a wish to the contrary.”

The third case regards under-age children of naturalised Ecuadorians who are born outside the national territory (otherwise, the *ius soli* principle would apply). They can directly apply for and be awarded Ecuadorian citizenship, but they are also allowed to renounce it if they wish to.

“4) Those who marry, or have a common-law marriage with, an Ecuadorian female or male in accordance with the law.”

The fourth channel for naturalisation is marriage or common-law marriage with an Ecuadorian citizen. Neither in this case does the constitutional text mention any details, for instance on the timing, requirements, etc.

“5) Those who obtain Ecuadorian nationality for having provided important services to the country on the basis of their talent or individual effort.”

Finally, Ecuadorian citizenship can be granted to individuals who have provided important services to the country. The concept of ‘services’ is not defined.

Article 8 concludes with two other important specifications. The first is that *“Those who acquire Ecuadorian nationality shall not be obligated to forfeit their nationality of origin.”* Dual nationality of naturalised Ecuadorians is *de facto* universally and unconditionally recognized. The second is that *“Ecuadorian nationality acquired by naturalisation shall be forfeited by express renunciation.”*

Focusing now on the Naturalisation Law approved in 1976 and its regulations, which, as mentioned, integrate the constitutional text, it is important to underline that many provisions contained in this law are in direct contrast with the provisions of the constitution. Among many of the possible examples, one is a requirement contained in the law that naturalised Ecuadorians have to renounce their previous citizenship. As we have seen, the constitution explicitly affirms that this is no longer required. In this and in all other cases, Article 424 of the constitution establishes that *“The Constitution is the supreme law of the land and prevails over any other legal regulatory framework. The standards and acts of*

*public power must be upheld in conformity with the provisions of the Constitution; otherwise, they shall not be legally binding.*²⁸

Article 1 of the Naturalisation Law is very important because it makes clear that naturalisation is not a right of foreigners who fulfil certain requirements, but instead a discretionary act on the part of the Ecuadorian government. “*Naturalisation is a sovereign and discretionary act of the Executive Branch. Ecuadorian nationality by naturalisation is acquired on the day that the resolution concerned is inscribed in the Civil Register.*”²⁹ As for the requirements for applying for a naturalisation card, Article 4 includes six: 1) being legally capable, according to Ecuadorian law; 2) being economically self-sufficient; 3) having legally resided in the country for three uninterrupted years, two for foreign men married to an Ecuadorian woman or father to an Ecuadorian son, and none for foreign women married to or widows of Ecuadorian citizens; 4) having a good record of conduct while residing in the country; 5) being able to speak and write in Spanish; and 6) having general knowledge of the history and geography of the country and of the constitution currently in force.³⁰ Article 7 lists five impediments: 1) having had a penal sentence; 2) not having sufficient economic means to sustain oneself and one’s family; 3) suffering from a chronic or contagious illness; 4) following or disseminating political doctrines that could put the republican regime or national integrity at risk; and 5) engaging in illegal or immoral practices.³¹ The procedure for obtaining a naturalisation card requires candidates to present their documentation to the Ministry of Foreign Affairs. Article 11 establishes that any person can oppose the concession of a naturalisation card to an individual, and to do this must present documentation justifying his/her plea.³² If a fraud is discovered after the concession of the card, it can be cancelled at any time.³³

3.1.2. Loss of Ecuadorian citizenship

The Ecuadorian constitution includes only one mode of citizenship loss. As mentioned, Article 8 states that naturalised Ecuadorians can renounce their citizenship by means of an express request in this sense.³⁴ The Naturalisation Law, on the other hand, specifies a number of cases in which the naturalisation card can be cancelled. In particular, these are: in the case of unlawful procedures or the use of fraudulent documentation; if the naturalised citizen becomes a moral, social or political threat; and if the naturalised citizen is absent from the country for more than three uninterrupted years without valid justification.³⁵ Cancellation of the naturalisation card entails expulsion of the individual.³⁶

²⁸ Constitución Política de la República del Ecuador 2008, Art. No. 424.

²⁹ Naturalisation Law, Art. No. 1.

³⁰ Naturalisation Law, Art. No. 4.

³¹ Naturalisation Law, Art. No. 7.

³² Naturalisation Law, Art. No. 11.

³³ Naturalisation Law, Art. No. 12.

³⁴ Constitución Política de la República del Ecuador 2008, Art. No. 8.

³⁵ Naturalisation Law, Art. No. 16.

³⁶ Naturalisation Law, Art. No. 18.

3.2. Specific rules and statuses for certain groups

As previously mentioned, in accordance with the plurinational character of the state established in article 6, the 2008 constitution includes a specific rule on the acquisition of citizenship at birth for members of “communities, peoples or nations recognized by the State and living in border areas.”³⁷ This means that individuals pertaining to the groups mentioned are considered to be Ecuadorians at birth by the state even if they are nomadic and were born or live for periods of their lives outside the national territory.

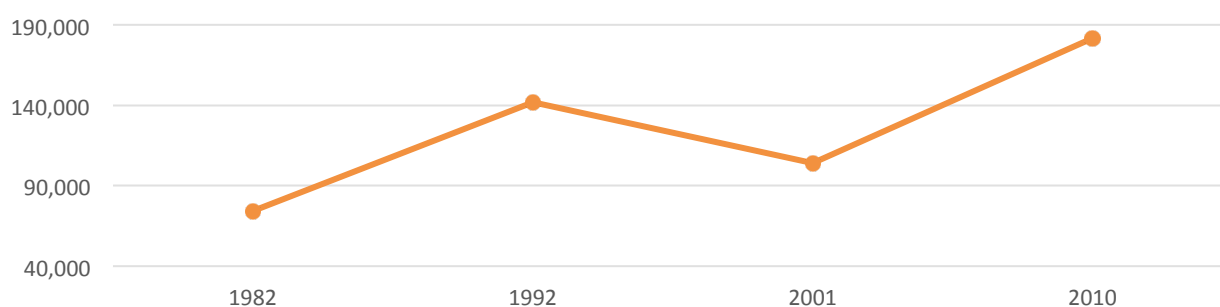
3.3. Special institutional arrangements that are peculiar to the Ecuadorian citizenship regime

No special institutional arrangements are peculiar to the Ecuadorian citizenship regime.

4. Citizenship Statistics

Data provided by the Ministry of the Exterior, which are published here for the first time, allow a preliminary public evaluation of some figures concerning citizenship in Ecuador, and in particular on the issuing of naturalisation cards. As can be seen from Figure 1, the immigrant population in Ecuador has been growing over the last decades. The foreign population regularly residing in Ecuador in 1982 amounted to 75,404 individuals, who represented 0.9% of the total population (8,138,974). Three decades later in 2010 the number had increased to 181,848 foreigners, representing 1.2% of the total population (14,483,499).³⁸

Figure 1: Total foreign nationals in Ecuador



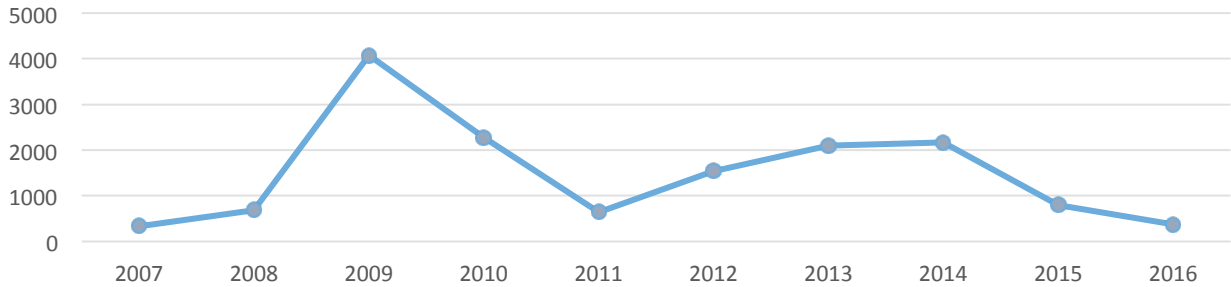
Source: Herrera, G., M. I. Moncayo & A. Escobar (2012), *Perfil Migratorio del Ecuador 2011*. Geneva: IOM

³⁷ Constitución Política de la República del Ecuador 2008, Art. No. 7.

³⁸ Herrera, G., M. I. Moncayo & A. Escobar (2012), *Perfil Migratorio del Ecuador 2011*. Geneva: IOM.

Data concerning awards of naturalisation cards are only available after 2007. After that year, in which a total of 327 cards were issued, issuance was very irregular, as can be seen from Figure 2. Two years later in 2009 a record number of 4075 cards were issued, in 2010 2276, and in 2011 a total of just 646. From then on, there was an increasing trend and a stabilization for three years around 2000 cards a year. In the last two years, the figures have again fallen below the 1000 level. All in all, these numbers of naturalisations are relatively significant and especially between 2009 and 2015 they were substantial.

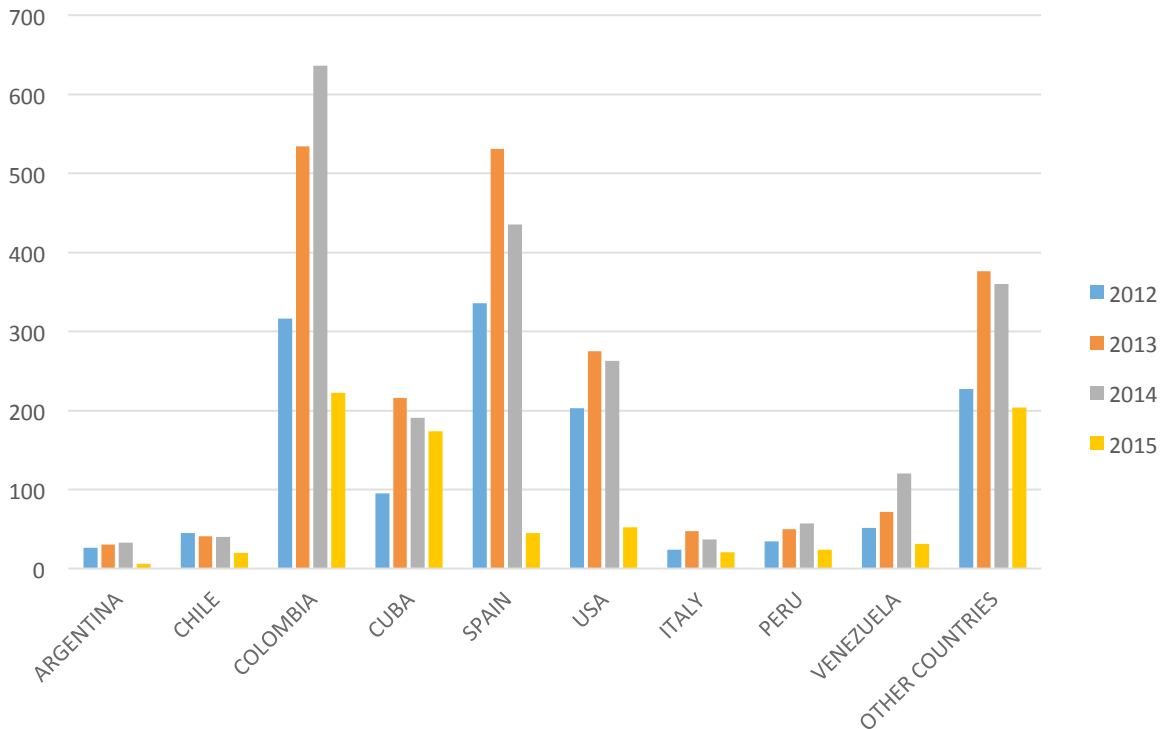
Figure 2: Total naturalisation certificates awarded per year



Source: Ministry of Foreign Affairs (2016).

Figure 3 shows the main countries of origin of those naturalised. The main features are, first, the relevance of the Colombian and Spanish contingent, which especially between 2012 and 2014 accounted for half of the total. Second, US citizens represent the third main group, although their numbers sharply decreased in 2015. Finally, Cubans, who had been migrating in important numbers since the 2000s, became the fourth, and since 2015 the third, main national group acquiring Ecuadorian citizenship.

Figure 3: Countries of origin of naturalised Ecuadorians (by year)



Source: Ministry of Foreign Affairs (2016).

5. Conclusion

The citizenship regime of Ecuador has been characterized by a combination of *ius soli* and *ius sanguinis* principles together with a relatively generous naturalisation policy since the very first years of the Republic. This particularity has been maintained over time and the regime has not undergone major changes in its history. As in many Latin American countries, Ecuadorian regulations concerning citizenship have always been a constitutional matter and ordinary laws have played a relatively marginal role.

After independence from Spain and the division of Gran Colombia, Ecuador became an independent Republic and approved its first constitution in 1830. This included *ius soli* and naturalisation as the two channels of acquisition of citizenship. A number of special provisions aimed at soldiers, citizens of Gran Colombia, or foreigners who lived in the national territory during the independence wars were adopted to allow a stabilization of the population. Five years later in 1835 the approval of a new constitution fixed the main characteristics of the Ecuadorian citizenship regime for years to come. There were three main pillars: *ius soli*, *ius sanguinis* and naturalisation.

In the subsequent decades until 1929, the endemic instability of Ecuadorian politics and society led to a total of nine constitutions being approved successively. However, none of them introduced relevant modifications to the citizenship regime. The small modifications usually concerned the requirements and the procedures connected to each channel of citizenship acquisition.

In 1929, after a period of turmoil which concluded with a military coup d'état, the so-called *Revolución Juliana*, a new constitution was approved. For the first time it introduced regulation of citizenship loss. Although the years after its approval brought new instability to the country, no further modifications were introduced for more than twenty years, until 1945, a true record in the history of Ecuador. The constitutions approved in 1945 and 1946 did not significantly change the citizenship regime, but an important modification was introduced in the constitution approved in 1966, after four years of military dictatorship. Two years previously, Ecuador had signed a bilateral treaty with Spain which allowed dual nationality on a reciprocal basis. The new constitutional text absorbed the content of the treaty and generalized its underlying principle. This constitution finally recognized universal access to political rights as it abolished the long-lasting literacy requirement.³⁹ No other relevant modifications were introduced.

A new authoritarian regime governed between 1972 and 1978 and during this period, in 1976, a law that developed the constitutional provisions and regulated the administrative procedures concerning naturalisation was approved. The trademark of the Naturalisation Law, which is still in force today, was its characterization of naturalisation as a discretionary power of the executive.

The return to democracy in 1978 was celebrated with the drawing up of a new constitution. This was the last one that made a distinction between the concepts of 'citizen' and 'national.' It recognized universal access to political rights as it abolished the long-lasting literacy requirement. Beyond this, no other relevant modifications were introduced. Although in the following years Ecuadorian politics became more stable, the social and economic situation was still precarious. The 1980s saw the beginning and consolidation of a mass migratory phenomenon. Many Ecuadorians left for the US and Europe in search of a

³⁹ See Echeverría 2015.

better future. The development of expatriate communities raised new demands and issues previously not considered by the Ecuadorian state. The efforts of emigrant associations and their pressure on the government from the early nineties produced an important change in the citizenship regime. In 1995, the Ecuadorian Parliament erased the reciprocity requirement and recognized the possibility for emigrants who naturalise in any other country to maintain Ecuadorian citizenship.

After a new phase of political instability, a new constitution was approved in 1998. It eliminated the historical distinction between nationals and citizens and so all Ecuadorians without exception were considered citizens. Regarding citizenship acquisition, the three traditional modalities were ratified. Dual nationality was possible both for foreigners who naturalised as Ecuadorians and whose country allowed dual nationality on a reciprocal basis and for Ecuadorians who naturalise or had naturalised elsewhere. This last provision enabled a retroactive application of the dual nationality principle.

At the beginning of the new century, Ecuador went through a dramatic economic crisis which had an enormous political and social impact. Between 2000 and 2006, six presidents alternated in power and almost a fifth of the total population left the country in search of a better future abroad. The election of president Rafael Correa in 2006 ended this convulse phase and inaugurated a period of renewed stability. In 2008, a plebiscite approved the current constitution.

The current citizenship regime is regulated by the constitution and the 1976 Naturalisation Law. Three main modes of citizenship acquisition are contemplated and two of citizenship loss. Ecuadorian citizenship can be acquired through:

- ius soli for all children born in the national territory;
- ius sanguinis for individuals born abroad to a mother or father born in Ecuador and their descendants up to the third degree of consanguinity;
- ius sanguinis for individuals belonging to communities, peoples or nations recognized by the state;
- naturalisation.

Ecuadorian citizenship can be lost by:

- voluntary renunciation on the part of naturalised citizens;
- cancellation of the naturalisation card if it was obtained using fraudulent procedures or documentation; when the naturalised citizen becomes a moral, social or political threat; and if the naturalised citizen is absent from the country for more than three uninterrupted years without valid justification.

The current regime allows the possibility of dual citizenship both for Ecuadorians who acquire another citizenship and for foreigners who acquire Ecuadorian citizenship.

A number of aspects of the current citizenship regime are objects of debate and may be modified in the near future. On the one hand, the 2008 constitution contains an important conceptual ambiguity that may cause confusion. The problem regards the use of the terms ‘citizen,’ ‘national,’ ‘citizenship’ and ‘nationality,’ which are not clearly defined and distinguished apart. On the other hand, the constitution has not yet been complemented with the adoption of ordinary laws (or renewal of existing ones) and regulations that develop the various features enounced. The current Naturalisation Law, which was approved in 1976, contains a number of provisions that directly conflict with the constitutional text and still

considers naturalisation as a discretionary concession on the part of the state. The Ecuadorian Congress (*Asamblea Nacional*) is currently debating a proposed Law on Human Mobility (*Ley Orgánica de Movilidad Humana*). The government intends this law to jointly regulate all aspects of human mobility, including the rights and duties of migrants; entry, stay and exit from the national territory; temporary or permanent residence of foreigners; the return of Ecuadorian migrants; acquisition of Ecuadorian citizenship; support for expatriate communities; travel documentation; asylum and refugees; the prevention of statelessness and the fight against human trafficking.⁴⁰ The draft that is being discussed does not include any substantive amendments regarding citizenship acquisition. The only noteworthy modification is removal of the possibility of cancelling the naturalisation card in the case of absence from the country.⁴¹

⁴⁰ Proyecto de Ley Orgánica de Movilidad Humana (2016).

⁴¹ Proyecto de Ley Orgánica de Movilidad Humana, 16 de Julio 2015, Art. 114.

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