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ACCESS TO ELECTORAL RIGHTS *COSTA RICA*

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Access to Electoral Rights

Costa Rica

Ronald Alfaro-Redondo

1. Introduction

In Costa Rica, the democratisation process has stretched over a long historical period. There were reversals, including political breakdowns and a civil war along the way. The expansion of the franchise occurred at different points in time and came in the wake of a) legislative reforms, b) the formation of specialised public agencies and their progressive institutionalisation over time, and c) the struggle of social and political actors pushing for changes. Overall, Costa Rica is considered, in comparative politics, as a successful case of democratic consolidation, in which democratic processes have become deeply internalised in the political culture. Scholars have identified, in a long-term perspective, the following four stages in Costa Rican transition to democracy: *liberalisation*, *political inclusion*, *democratic instauration* and complete *transition to democracy*. This pathway differs remarkably to those followed by other Latin American nations that achieved democratisation during the third wave of transitions in the early in the 1990s (Huntington, 1993).

The *Tribunal Supremo de Elecciones* (TSE), established in 1949, played a decisive role in the expansion of the franchise in Costa Rica. Following a period of significant decline in voter turnout, the EST prepared, in 2001, a profound reform of the electoral code. The new code was debated extensively by legislators and experts in the National Assembly, as well as in the media and was ultimately approved in 2009. The new electoral code brought at least two important changes: first, the creation of the *Institute of Formation and Studies on Democracy* (IFED) as the entity responsible for the promotion of democratic values and civic participation through training programmes for citizens and party members, research and publications. Second, the extension of electoral rights in national elections to those citizens who reside permanently abroad, a change that discussed in great details in the present report.

2. Historical overview

The transition to democracy in Costa Rica started in the last decades of the nineteenth century with the emergence of political cleavages which eventually developed into political parties

competing for power. The Costa Rican transition to democracy was a ‘back and forth’ process with some reversals and uncertainty, which was not completed until the 1970s (Lehoucq 1992).

Scholars have identified four different phases in the Costa Rican transition to democracy (Programa Estado de la Nación 2001). The first phase, called *liberalisation*, occurred between 1821 and 1917. *Liberalisation* refers to the process of making effective rights that protect both individuals and social groups from arbitrary or illegal acts committed by the state or third parties (Mainwaring and O'Donnell 1992). During this first phase, a minority of the population (less than 25 per cent) in Costa Rica satisfied all requirements for the franchise, which had both income and property qualifications. During that time, only coffee plantation owners, bankers, investors and traders were eligible to participate in elections that were in any event marked by significant electoral fraud and closely controlled by the executive (Molina and Lehoucq 1999).

The second stage in the move toward democratisation in Costa Rica has been described as *political inclusion*, a process which began in 1919 and ended in 1948. During this period, social and economic changes created the conditions for a more vibrant electoral competition and the inclusion of new social actors in the political system, via the creation of the Communist Party (founded in the early 1930s). As a result, workers in banana plantations and small and medium coffee plantation owners became strong social and political actors. Thus, the political competition evolved from an ‘oligarchy’, with very few influential players, into a more open and diverse system with multiple actors and veto powers. Even though the franchise was still restricted, there were progressive changes over time allowing more individuals to be part of the electorate. Consequently, voter turnout increased significantly over this phase. The period of *political inclusion* came in the wake of a civil war in 1948, a key episode that inaugurated a new political era and radically transformed the political arena.

The approval of the Political Constitution in 1949 established a quasi-universal suffrage (chiefly, with the enfranchisement of women) and set up the institutional mechanisms to organise periodic, free and fair elections in what known as the period of *democratic instauration* (1949-1975). Political changes have been accompanied by other institutional transformations, which were equally significant. The electoral system was made independent and free from interference of the Executive Branch. The 1949 constitution provided for the creation of a fully autonomous body, the Electoral Supreme Tribunal (EST), which was given exclusive and independent responsibility for the organisation, management and supervision of suffrage-related acts (Political Constitution, article 9). A centralised ‘National Voter Register’ was also created the same year.

Despite these important steps, communist parties (labelled as ‘anti-democratic’) remained excluded from the electoral process, in accordance with article 98 of the Constitution. This article, in its original form, recognised citizens’ right to form political parties in order to participate in national politics, but required that those parties respect the constitutional order of the Republic. It explicitly prohibited the creation and functioning of political parties whose ideological platforms, activities or international linkages could undermine a) the pillars of the political regime, and b) the sovereignty of the country. As a result, four communist and leftist parties were formally excluded from electoral competition.

The fourth and last phase of *complete transition to democracy* started in 1975, with a far-reaching electoral reform. The right to vote finally became ‘universal’ and electoral competition, open and free. Since then, communist and leftist parties have been able to participate in the electoral process. The principle of inclusion was forcefully restated in 1997, with another Constitutional reform:

‘All citizens have the right to organise themselves in parties in order to participate in national politics, provided that such parties are committed in their platforms to respect the constitutional order of the Republic. Political parties shall express political pluralism, contribute to the formation and manifestation of popular will and shall be fundamental instruments for political participation. Their creation and the exercise of their activities shall be free within a context of respect for the Constitution and the law. Their internal structure and operation shall be democratic’ (Constitutional reform, Law No.7675, July 2, 1997).

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

Citizen residents

The legal threshold for voting in Costa Rica for citizen residents is 18 years of age (as amended by Law N° 4763, May 17, 1971).

According to article 91 of the Constitution, electoral rights may be suspended: a) by judicially declared interdiction; or b) by a judgment imposing the penalty of suspension of the exercise of political rights.

Although these two conditions exist in the legislation, there have been no cases of disenfranchisement of mentally disabled persons or prisoners, even those who have committed severe crimes. The legislation lacks clear rules and procedures to implement these conditions, which have remain almost unnoticed by political actors, the media, and the general public. In fact, unlike other countries, the EST implemented a program in the early 2000s for installing polling stations in prisons and to register prisoners, allowing them to exercise suffrage in all prisons across the country.

Citizens abroad

In sharp contrast to the electoral rights of citizen residents, the rights of citizens who reside permanently abroad have been ignored until very recently in the legislation. Since February 2014, non-resident citizens have been entitled to cast their vote in presidential elections in embassies and consulates in different cities around the world. In order to do so, they must voluntarily register online. Alternatively, these citizens may cast their votes if they return to the country on Election Day provided that their identification card is still valid. Importantly for our purposes, non-resident citizens do not have the right to stand as candidates in any type of elections.

There are several additional restrictions on the right to stand for election: on persons who hold multiple nationalities, on those who have been naturalised as Costa Rican citizens, and on those who were born abroad, as explained in greater details below.

Foreign residents

In Costa Rica, foreign residents do not enjoy any electoral rights in any type of elections. According to Art. 19 of the Constitution ‘foreigners have the same individual and social rights and duties as Costa Ricans, with the exceptions and limitations established by the Constitution and by the laws. They may not intervene in the political affairs of the country, are subject to the jurisdiction of the courts of justice and the authorities of the Republic, and

may not have recourse to diplomatic channels, except as provided in international conventions.’

The requirements and procedures to apply for citizenship through naturalisation are established by Law N° 7065, May 21, 1987, which states that ‘anyone who applies for naturalisation must provide evidence of good behaviour, demonstrate that he has a known occupation or means of livelihood, show that he speaks, writes and reads the Spanish language, submit himself to a comprehensive test on the history and the values of the country, promise to reside within the national territory on a regular basis and swear to respect the constitutional order of the Republic’ (Political Constitution, article 15).

Furthermore, naturalised citizens must wait for twelve months after obtaining a certificate of naturalisation before they can exercise their political rights. Even then, their right to stand as candidate remain restricted. For instance, naturalised citizens are not entitled to run as candidate in Presidential elections. In a similar vein, the right to stand as candidate in National Parliamentary elections is reserved to citizens by birth or to naturalised citizens who acquired Costa Rican nationality at least ten years before the election. Specifically art. 108 of the Constitution states that: ‘The requirements to become a Member of Parliament are: a) To be a citizen and enjoy full exercise of his/her rights; b) To be a Costa Rican citizen by birth, or by naturalisation with a minimum of ten years of residence in the country after naturalisation; and c) To be at least twenty-one years of age’.

4. Exercising electoral rights

Registration Procedures: Becoming a voter

Article 93 of the Constitution establishes that ‘suffrage is a fundamental and compulsory civic duty and is exercised through a direct and secret ballot by citizens registered in the Civil Registry’. Although voting is officially mandatory, the electoral legislation lacks any penalties or sanctions for those who do not vote, although there has been debate as to whether such sanctions ought to be included in the electoral code. This section introduces the main characteristics of the procedures of registration on relevant electoral rolls for each category of eligible voters.

Citizen residents: Voter registration is an automatic process in Costa Rica. Therefore, there is no need for citizen residents to re-register for each election. The Civil National Register (CNR), a public institution created in 1949 in charge of administering the registration procedure, is a centralised entity under the administrative control of the EST . The CNR assigns a unique and universal identification number to each eligible voter based on the province where he/she was born. Upon turning eighteen, which is the legal age threshold for voting, Costa Rican citizens are automatically added in the national list of eligible voters and receive an identification card issued by the CNR, free of charge. This identification card includes personal and socio-demographic information (e.g. a photograph, name of parents, date of birth, and current place of residence), and constitutes the only official document recognised as proof of identity by all public and private institutions. It is mandatory for the State to provide citizens with an identity card to exercise suffrage, valid for ten years (article 95 of the Constitution).

Non-resident citizens: For the first time in in the 2014 Presidential elections, non-resident citizens have been entitled to cast their vote in embassies and consulates in different cities around the world. To do so, they had to voluntarily register through an online application. They were required to fill out a form and specify their preferred place to vote, provide a recent picture, and send their fingerprints to the relevant office. After registration, each voter received a confirmation via email that included the location of the polling station and other electoral details. Similar to citizen residents, the registration of expatriates was subjected to a deadline (five months before the election). All these requirements were designed, implemented and administered by an internal department in the EST.

Registration procedure: becoming a candidate

Citizen residents can run as candidates only through a political party. The legislation does not provide for the possibility to run as an independent candidate for any type of elected office. Within each party, there are different procedures for registering as candidates. Candidates are usually required to a fee to the party, the amount of which varies according to the position open for election. In other words, the fee to register as a candidate is higher for some positions than others. In the main parties, presidential candidates compete in primary elections (some are open to any voter; others are restricted to party affiliates only). Moreover, candidates for the National Assembly compete in party primaries that start at the lowest administrative level in 473 districts across the country. Successful candidates at the district level subsequently compete at the municipal, provincial and national levels, successively. At the end of the process, party national bodies (called party assemblies, with an average size of 100 members) choose candidates in internal meetings and rank them by order of preference on the party lists. Because the ballot methods are based on *closed party lists*, candidates bargain and negotiate within party assemblies in order to occupy the first positions in the lists.

Casting the vote

The only method for casting a vote available for citizen residents is at the polling station where they are registered. The EST has prepared some material designed for facilitating the voting procedures for specific segments of the electorate, such as blind voters and indigenous populations. Ballot papers in Braille are provided for the blind thus protecting the secrecy of their vote. In the case of indigenous groups, who represent around 2% of the total population (2011 census), there have been two important changes in their electoral rights in the last 25 years. Firstly, Law n.º 7225 (*Ley de Inscripción y Cedulación Indígena*, approved in 1991) includes norms and rules which facilitate the registration of indigenous individuals and requires polling stations to be located in the proximity of their place of residence. Secondly, the EST has produced electoral material, including ballot papers, in several indigenous languages. These advances reflect the attention that the EST and other entities have paid to the promotion of electoral rights and to the inclusion of traditionally excluded groups. This is remarkable in the case of Costa Rica, a country with a small indigenous population in comparison to other Latin American neighbours. There are, however, no special provisions in the legislation for indigenous election candidates, such as special representation through reserved seats at the local or national level. Instead, indigenous candidates compete as any other contender for seats.

As for expatriates, the only method for casting a vote is to attend polling stations at embassies and consulates or any other special polling stations located in the country where

the person is registered as a voter. Voters then follow the same procedure described for residents.

5. Conclusion

The expansion of electoral rights in Costa Rica was a process that evolved over a considerable period of time, contributed to the progressive removal of exclusions and restrictions that were in place in the original legislation and political culture, expanding rights to electoral minorities and traditionally excluded populations. The importance attributed to the foundation and gradual development of autonomous and stable institutions, facilitated the development of democratic norms that have been influential in a region known for the fragility of its democratisation process.

Electoral rights in Costa Rica are protected through different legal mechanisms, including through the Constitutional Court. In 1974, the minimum age for voting was lowered from 20 to 18 years of age. Voter registration is automatic, thereby effectively removing barriers to electoral participation. Although the law provides for the suspension of electoral rights on grounds of criminal offense or mental disability, there has been no case of disenfranchisement for either of those reasons. Conversely, the Electoral Supreme Tribunal (EST) has a long tradition of producing voter-friendly electoral material in order to encourage the effective participation of traditionally excluded groups. It also made considerable effort to establish polling stations in remote areas as well as in prisons and hospitals.

By contrast, Costa Ricans abroad were not allowed to vote until the presidential election of 2014. In a reform approved in 2009, lawmakers selected the model of ‘consular voting’ and rejected alternative voting methods, such as electronic voting. Non-residents are not entitled to vote in national Parliamentary elections and are excluded from the right to stand as candidate in any type of elections.

There are some restrictions on the right to stand as candidate for persons who hold multiple nationalities, those who were naturalised and those who were born abroad. Moreover, these citizens are not represented in the National Assembly or local governments. Furthermore, naturalised citizens are not entitled to exercise electoral rights in local, regional elections and national elections until twelve months after obtaining a certificate of naturalisation. Representatives in the National Assembly must be Costa Ricans by birth, or by naturalisation with a requirement of ten years of residence in the country after naturalisation.

In addition, citizen residents can run as candidates only through a political party. Running as an independent candidate is explicitly prohibited. Within each party, there are different procedures for registering as candidates. Which usually requires aspiring candidates to pay a fee to the party that varies depending upon the position they intend to run for.

Finally, the only method for casting a vote available for citizen residents is to attend the polling station where an individual is registered, or at the embassy in the case of non-resident citizens. The EST has discussed the possibility of introducing e-voting mechanisms and conducted a pilot project in 2006, but the method has not been generalised to this date.

References

- Dahl, R. A. (1971). *Polyarchy: Participation & Opposition*. Place of publication: Yale University Press.
- Franklin, M. N. (2004). *Voter Turnout and the Dynamics of Electoral Competition in Established Democracies since 1945*. Place of publication: Cambridge University Press.
- Huntington, S. P. (1993). *The Third Wave: Democratization in the late twentieth century* (Vol. 4). Place of publication: University of Oklahoma Press.
- Lehoucq, F. E. (1992). *The origins of democracy in Costa Rica in comparative perspective* (Doctoral dissertation, Duke University).
- Linz, J. J. and A. C. Stepan (1978). *The breakdown of democratic regimes, Latin America*. Baltimore, STATE: Johns Hopkins University Press.
- Mainwaring, S. and G. A. O'Donnell (1992). *Issues in democratic consolidation: the new South American democracies in comparative perspective*. Place of publication: University of Notre Dame Press.
- Molina, I. and Lehoucq, F. (1999). *Urnas de lo inesperado: fraude electoral y lucha política en Costa Rica (1901-1948)*. PLACE: Editorial Universidad de Costa Rica.
- O'Donnell, G. A. and P. C. Schmitter (1986). *Transitions from authoritarian rule: Tentative conclusions about uncertain democracies*. PLACE: Johns Hopkins University Press.
- O'Donnell, G. A. (1994) 'Delegative democracy'. *Journal of democracy*, 5.1: 55-69.
- Programa Estado de la Nación. (2001). Auditoría ciudadana de la calidad de la democracia. Programa Estado de la Nación *San José*.

