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ACCESS TO ELECTORAL RIGHTS *GUATEMALA*

Bernadette Pezzarossi

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Access to Electoral Rights¹

Republic of Guatemala

Bernadette Pezzarossi

1. Introduction

There are six types of elections in Guatemala. In the first type of elections, the presidential elections, citizens decide on the state's executive power, consisting of the President and the Vice President of the Republic. In the second type, the municipal elections, citizens elect mayors and municipal boards for each municipality. The third and fourth type of elections in Guatemala are both for the Congress of the Republic. However, while the first one is based on a district list, in the latter, representatives are elected through a nationwide list. In the fifth type of elections, citizens decide on the representatives to the Central American Parliament – PARLACEN. The sixth and last type of elections in Guatemala are referendums, better known as 'popular consultations'.

Presidential elections, elections for mayor and referendums all require an absolute majority, meaning that half of the votes plus one are needed for a proposal to win. The presidential election also has a second round, a procedure that has been in place since the enactment of the current Electoral and Political Parties Law in 1985.² Elections for municipal bodies, elections for members of the Congress of the Republic (both on a national and a district list basis) and elections to the Central American Parliament abide by a mathematical formula based on an electoral quotient called 'proportional representation of minorities'.³

Guatemala is electorally divided into 22 geographical areas called 'departments' (*departamentos*), with the exception of the department of Guatemala, which is divided into a Central District and the District of Guatemala. The Central District consists only of the municipality of Guatemala while the rest of the municipalities of the department of Guatemala compose the District of Guatemala. Hence, there is a total of 23 electoral districts, or departments, in the Republic of Guatemala. Each of the 22 departments has a different number of municipalities, with a total number of 338 municipalities throughout the country.

¹ The 'Report on access to electoral rights: Republic of Guatemala' was originally published in Spanish and subsequently translated by Ms. Mariana Mendes. The original report 'Acceso a los derechos electorales: República de Guatemala', first published in July 2015, can be consulted online at:

http://cadmus.eui.eu/bitstream/handle/1814/36497/EUDO_CIT_ER_2015_08_Guatemala.pdf?sequence=1

² Ley Electoral y de Partidos Políticos de diciembre de 1985. Full text at:

<http://pdba.georgetown.edu/Parties/Guate/Leyes/LeyPartidos.pdf>

³ Art. 28, Ley Electoral y de Partidos Políticos de diciembre de 1985. Full text at:

<http://pdba.georgetown.edu/Parties/Guate/Leyes/LeyPartidos.pdf>

The Political Constitution of the Republic of Guatemala (CPRG), enacted in 1985 and in effect since 1986, establishes a 'Political and Electoral Regime' in Chapter I of Title V – Structure and Organization of the State. Art. 223 of the Constitution guarantees the free formation and functioning of political organisations and delegates to Decree 1-85, Electoral and Political Parties Law (LEPP), all issues related to the exercise of suffrage, political rights, political organisations, authorities, electoral organs and the electoral process. The Electoral and Political Parties Law has constitutional status and is thus part of the legal hierarchy of Guatemala, immediately after the Political Constitution of the Republic. It takes precedence over the rest of the legislation, that is, 'ordinary' laws, regulations and judicial resolutions. The 1985 Constitution regulates the political rights and duties of citizens in art. 136. These consist of registering in the Citizens Registry, to vote and/or to run for public office and to participate in political activities. The Constitution ensures the freedom and effectiveness of the suffrage, safeguards the transparency of the electoral process, defends the principle of 'changeability', and asserts that there is no re-election in the exercise of the Presidency. Art. 37 also establishes the right to petition in political matters. The fundamental pillars of Guatemalan electoral politics consist therefore of the election method, the requirements and prohibitions to run for President, Vice President or member of Congress (Arts. 157, 162, 164, 184, 185, 168 CPRG) and the principle of no re-election of the president (Art. 187 CPRG). The latter is of special importance given that its purpose is to avoid the consolidation of a dictatorship.

In the Republic of Guatemala there is no legislation that allows Guatemalan citizens who reside abroad or foreign residents in the national territory to vote or to become candidates for election to public office. However, due to problems experienced in the 2011 election, the Supreme Electoral Court initiated a debate to reform the Electoral and Political Parties Law. Representatives of political parties and civil society organisations were present in these discussions. The final proposal to reform the Law was delivered by the Supreme Electoral Court to the Congress of the Republic on 6 August 2012. The Congress considered the bill on 24, 29 and 31 October 2013, approving it through the agreement 5-2013 and sending it on to the Constitutional Court so as to assess its constitutionality. The Court's opinion was favourable, even though several unconstitutional articles were found. The reform has not been confirmed by Congress yet and therefore has not entered into force.

An Article establishing the execution and approval of a special law to regulate and implement the right to vote of Guatemalan citizens residing abroad was part of the above mentioned proposal to reform the Electoral and Political Parties Law. However, this proposal did not include either the right to become a candidate abroad or the rights of foreign residents in Guatemala to vote or to become a candidate.

Politicians, leaders of civic organisations, migrants' organisations, academics and other actors informed on electoral rights and process in Guatemala, are aware of the precariousness of the Guatemalan electoral system and the urgent need to undertake deep reforms to strengthen it. Efforts have been made by the Supreme Electoral Court, the Commission of Electoral Affairs of the Congress of the Republic and citizens' platforms in order to place the electoral reform on the political agenda and thus attain a better dynamic between the electoral system, the party system and the political system. Nonetheless, debates, research and proposals on this matter remain limited.

2. Historical Background

Guatemala's electoral system was instituted in 1945, starting with the Political Constitution enacted by the National Constituent Assembly. Decree 255 – Electoral Law – was approved in 1946. Before the establishment of an electoral system *per se*, the Political Constitution of 1879 recognised direct suffrage of military officers over eighteen years of age and literate males older than 21 who had a job or means of subsistence.

In 1887, the right to vote was extended to males who possessed a degree from any academic centre in the country, but it was only from 1935 onwards that the right to vote was granted universally to (literate) males over eighteen years of age, although with the constraint of exercising a profession (Supreme Electoral Court 1998: 12).

On 28 November 1944, the Revolutionary Junta in power issued Decree no. 17 containing the fundamental principles of the 20 October Revolution,⁴ including: 'The constitutional recognition of political parties of democratic quality, organised in accordance to the law and in representation of the minorities in the collegial bodies of popular representation' (Guerra Roldán 1996: 16).

The 1945 Constitution set out a Civil Registry, in which males over the age of eighteen were obliged to register. Registration was optional for woman and illiterate persons. The Constitution also ruled that Guatemalans had the right to organise themselves through political parties, whose registration should be in accordance with the Electoral Law. Furthermore, it instituted representation for minorities in the election to collegial bodies and established the National Election Board and the Civil Registry as electoral authorities (Guerra Roldán 1996: 17).

It should be mentioned that the 1946 Electoral Law also introduced the system of party lists, even though independent candidacies were also permitted (Supreme Electoral Court 1998: 12). Under this system presidents Juan José Arévalo and Jacobo Árbenz Guzmán were elected, in accordance with the will of the majority.⁵ The forced resignation of president Árbenz in 1954 was followed by the establishment of consecutive and short-lived *juntas*, a tumultuous period that resulted in Colonel Carlos Castillo Armas taking power on 7 July 1954. Once the movement he headed showed signs of consolidation, a constituent assembly was convened and the Constitution of 2 February 1956 enacted. It proclaimed (art. 29) that 'The Law will regulate the exercise of suffrage...' and (art. 35) 'creates an Electoral Court which shall be considered an administrative organ...' (Sáenz Juárez 2002: 7).

The Constitution of 1956 continued the restriction of the recognition of citizenship to literate women. Political parties were recognised as public law institutions in a special chapter dedicated to them and were granted exclusivity to nominate candidates to the offices of president of the Republic and members of Congress. Effective and compulsory suffrage for literate people was established, as well as the right to representation in collegial bodies of minorities (Guerra Roldán 1996: 17).

After the assassination of Colonel Castillo Armas in 1957, the interim President Luis Arturo González López launched a call for elections. Lawyer Miguel Ortiz Pasarelli was declared winner of the 1957 elections, a result that was forcefully contested by one of the

⁴ Editor's note: 20 October Revolution refers to the 1944 military coup led by Jacobo Arbens, which resulted in the ousting from power of Jorge Ubico and the end of dictatorship.

⁵ Editor's note: Juan José Arévalo was elected in 1944, Jacobo Árbenz in 1951.

opposition candidates, General Miguel Idígoras Fuentes. Congress subsequently declared the first election invalid. The second election of 1958 resulted in the victory of General Idígoras Fuentes. However, his term in office was short lived, due to the consequences of the military uprising of 13 November 1960. This uprising marked the start of what would subsequently become a guerrilla movement that lasted for the following 36 years. These events also which engulfed Guatemala in protracted internal armed conflict (Sáenz Juárez 2002: 8).

In March 1963, President Idígoras Fuentes was ousted by his minister of defence, Colonel Enrique Peralta Azurdia, who then took power as Chief of Government of the Republic. Peralta Azurdia called a constituent assembly that was responsible for drafting the 1965 Constitution, in which the Electoral Court has been omitted and replaced by ‘the Electoral Registry and Council, with autonomous functions and jurisdiction throughout the Republic.’ (art 34) (Sáenz Juárez 2002: 8).

The 1965 Constitution granted the rights of citizenship to all Guatemalans, male or female, over the age of 18.⁶ Suffrage was declared universal and secret, compulsory for literate people and optional for illiterate persons. Political parties were recognised as public law institutions and, in order to register with the Electoral Registry, they were required to have a minimum of 50,000 affiliates, of which at least twenty per cent were required to be literate (Guerra Roldán 1996: 17).

From 1965 until the coup d’état of March 1982, the electoral system revolved around a Director of the Civil Registry, appointed by the Executive with the support of an Electoral Council. The latter was composed by (1) one full and one alternate member nominated by each of the legally registered political parties that had obtained fifteen per cent of the vote in the last election; (2) one full and one alternate member chosen by the Congress of the Republic; and (3) one full and one alternate member designated by the State Council (Supreme Electoral Court 1998: 13).

In 1970, General Carlos Arana won the presidential elections. Subsequently, a military regime was put in place by means of a pact among generals (the highest ranking officers) who established a rotating presidency system. Ruling through their own party, they nonetheless formed alliances with other center-right and extreme right parties. These eventually lost legitimacy for various reasons, the main one being that they openly manipulated electoral processes (García Laguardia 1999: 21). Indeed, throughout the history of Guatemala, this period stands out for suspicions of electoral fraud and high contestation of electoral processes.

The rotating presidency system brought to power General Lucas García in 1978. The coup d’état that ousted him from power in 1982 started a period in which the Guatemalan political system would undergo multiple changes. Initially, triumvirate - a military junta - was set up. It issued the Government Fundamental Statute. The junta was subsequently dissolved and in 1982 General José Efraín Ríos Montt became the president through a coup d’état. In 1983, Ríos Montt was himself overthrown by another coup d’état, through which General Oscar Mejía Victores assumed the presidency over the country (Sáenz Juárez 2002: 8).

⁶ Editor’s note: The 1965 Constitution differentiated between *nationality* and *citizenship*, whereby the former denoted strictly the legal status of individual and the latter referred to the rights of citizenship. Please refer to the EUDO Citizenship country profile pages for further information: <http://eudo-citizenship.eu/country-profiles/?country=Guatemala>

In 1983 decree-laws of the Head of State 30-83, 31-83 and 32-83 were issued, respectively containing the Organic Law of the Supreme Electoral Court, the Law on Registration of Citizens and the Law of Political Organisations (Supreme Electoral Court 1998: 14). Decree 30-83 instituted the Supreme Electoral Court. The Law on Registration of Citizens and the Law of Political Organisations were also promulgated.

In 1984, the election of members to the National Constituent Assembly took place . This was the first electoral process carried out by the current Supreme Electoral Court. The National Constituent Assembly elected on that occasion issued the Political Constitution of the Republic of Guatemala and the Political Parties and Electoral Law (Decree 1-85). Both came into effect in 1986.

In 1985 the *de facto* head of the state enacted specific regulations needed for general elections, including, the elections of President, Vice President, and members of the Congress and municipal boards. These new regulations came into force on 3 November 1985 and the Political Constitution of the Republic entered into effect on 14 February 1986. Under this brand new electoral system, Vinicio Cerezo Arévalo took office as President.

Arguably, due to the frequent co-option of power by military leaders – toppling governments and perpetuating instability –substantial changes to the Guatemalan electoral system were key for initiating a new democratic era in the country. Under Guatemala’s new constitutional and electoral order, the Supreme Electoral Court was in theory no longer subject to the executive branch and to political organisations, as had been the case in past. This resulted in the consolidation of a new system, in which Guatemala did not revert to having a military officer as a president, at least up until the 2011 general elections when the ex-army general Otto Pérez Molina was elected.

3. Eligibility

3.1. Citizen Residents

Age: Art. 2 of the Electoral and Political Parties Law establishes that all Guatemalans over the age of eighteen are citizens. Art. 3 of that same law (sect. c, d and e) determines citizens rights – the right to vote and be elected, to exercise suffrage and to run for public offices.

The legal voting age is set at eighteen. The minimum age to become a candidate for the Congress, to run for the post of mayor or the municipal board is also eighteen. However, the minimum age to run for the presidential or vice presidential offices is different. Art. 185 of the Political Constitutions stipulates that the candidate must be over the age of forty.

Mental Disability: Art. 4 of the Electoral and Political Parties Law determines the suspension of citizens’ rights to people with mental disabilities. A civil judge decides on an individual’s ineligibility after consideration of the respective case. The applicable legal norms for trials declaring mental incompetence (*Declaratoria de interdicción*) are the Civil Code of Guatemala (Decree-Law 106 of the Head of Government) and the Code of Civil Procedure (Decree-Law 107 of the Head of Government).

Art. 5 of the Electoral and Political Parties Law grants the possibility of regaining citizens' rights by means of a judicial rehabilitation procedure before a civil judge.

Persons criminally convicted: In accordance with art. 4 of the Electoral and Political Parties Law, citizens who have been convicted of a criminal act also have their rights suspended. Art. 5 of the same law establishes that citizenship-related rights are recovered once the individual completes the sentence handed down by the trial judge.

Art. 5 of the Electoral and Political Parties Law also grants the possibility to criminally convicted persons to regain citizens rights via amnesties or pardons. Pardons are granted by the President of the Republic, even though this practice has not taken place since Alfonso Portillo's presidency (2000-2004). Criminally convicted persons are thus unable to exercise the right to vote and to run as candidates for any elected office. However, people in pre-trial custody – detained people who are under investigation but have not been convicted yet – are entitled to vote and to run for office. In practice however, people in custody do not exercise either the right to vote or the right to become a political candidate. The Supreme Electoral Court claims that the reason for this is insecurity inside the prisons.

Specific Prohibition: Sect. a) of art. 15 of the Electoral and Political Parties Law establishes that citizens on active service in the National Army or in police forces are forbidden from voting, as well as citizens holding a permanent appointment in any committee or office of a military nature. Section b) of that same Article specifies that those who have their citizens' rights suspended are also forbidden from voting. This includes individuals who have been declared mentally disabled, criminally convicted persons as well as people who have lost citizenship.

3.2 Non-resident citizens

Eligibility criteria

Guatemala's legislation does not regulate the rights to vote or to run for office of Guatemalan citizens who do not reside within its territory, regardless of the level or type of election.

Guatemalan citizens who are resident in other countries and wish to vote can do so if registered at the Citizens Registry. Moreover, they are required to exercise their voting rights in the territory of Guatemala. This is because the only way to cast a ballot in Guatemala is on-site, through polling stations in the district where the voter is registered.

Modes of representation

As stated above, Guatemalan citizens who reside outside the country cannot exercise their electoral rights while abroad. However, their records remain in the Citizens Registry, meaning that they are eligible to vote in case they enter the country. There are no restrictions as far as the type of elections in which they can vote is concerned. While there are no laws regulating this matter, there are no prohibitions either and practice has shown that it can happen.

Naturally, many Guatemalan citizens who have migrated no longer vote in elections in this country. For that reason, the reform of the Electoral and Political Parties Law in 2012 included an Article establishing that after two elections in which a citizen has been inactive, i.e. did not vote, he/she will be removed from the Citizens Registry at the Supreme Electoral Court. This is a means to attain a more reliable register of citizens since illegal migration produces inaccurate data in public records and national statistics.

3.3 Foreign residents

Foreigners residing within the national territory are all placed within the same category. None have electoral rights of any type – they cannot vote, run for candidates in local elections (mayor or member of the municipal board), regional elections (members of Congress elected on a district list basis) or national elections (members of Congress via nationwide lists and executive power).

Reciprocity treaties or any other type of agreements have not served to advance the electoral rights of foreign residents. The same applies to citizens of states that are part of an international organisation. That said, nationals of Central American countries have access to a special legal procedure in order to become Guatemalan citizens. This right is granted by art. 145 of the Political Constitution for the sole reason that they are nationals of the republics of Central America.

Central American citizens do not need to fill any other requirement in order to proceed with the naturalisation process. For instance, they do not need to meet requirements related to residence within the territory of Guatemala. Moreover, they are able to retain their nationality of origin, which does not affect in any way the exercise of their electoral rights.

The reason why a citizen from another Central American country who has gone through the required legal procedure can exercise electoral rights in Guatemala is because ‘they are considered Guatemalans of origin’. Thus, they can vote or run as candidates, as was the case with the presidential candidate Patricia de Arzú, the wife of the former president Álvaro Arzú. Born in the Republic of El Salvador and following the procedure stipulated by law, she became a Guatemalan citizen and ran for the presidential office in 2011.

Likewise, citizens possessing dual nationality (even when the second nationality does not correspond to a Central American country), can exert electoral rights at all times – either to elect or to be elected – when their original nationality is Guatemalan. This is the case, for instance, of citizens of Guatemalan origin who apply for naturalisation in European states as direct descendants of a national from a European country.

A foreign citizen of a non-Central American state can naturally apply for naturalisation too by means of a legal procedure. This type of citizen, however, must comply with some of the following requirements:

- a. Be domiciled in the Republic of Guatemala and have resided within the country during the past five years, provided he/she has not left national territory for more than six consecutive months or periods that, added up, amount to one year or more.
- b. Be domiciled in the Republic of Guatemala and have resided within national territory during the past two years, provided that he/she has not left the country

for more than one consecutive month or periods that, added up, amount to more than two months, and fall within the following categories:

1. If he/she has provided important services to Guatemala or contributed to economic, social or cultural development, in a way that the Executive Power deems worth taking into consideration;
2. If he/she has resided in a Central American country in the three years before arriving in Guatemala;
3. If he/she has renowned scientific, artistic or philanthropic merit; and
4. If he/she is stateless or of indeterminate nationality.

The Constitution of the Republic of Guatemala establishes the following in art. 146: ‘naturalised Guatemalans have the same rights as citizens of Guatemalan origin, except for the limitations that the Constitution sets’. This means that, on the one hand, naturalized citizens who come from non-Central American states, without prejudice to having dual nationality, can exercise the same rights as Guatemalans of origin as far as casting the vote is concerned. On the other hand, their rights to be elected are limited by the Constitution since one of the requirements to be a candidate for popularly elected offices is to have Guatemalan origin. Hence naturalised Guatemalans cannot run for office.

3.4 Electoral rights of indigenous communities

Despite the fact that there have been no recent population censuses, in accordance with the last population estimates and projections – based on the National Censuses XI of Population and VI of Housing 2002 and the National Living Conditions Survey – ENCOVI 2011 –, Guatemala’s National Statistics Institute estimates that in 2012 Guatemala is ethnically composed of 39.8 per cent indigenous people and 60.2 per cent non-indigenous people (INE 2013: 13).

The four dominant ethnic groups in Guatemala are the Maya, the Garífuna, the Xinca and the Mestizo, better known as Ladino. There are naturally a plethora of ethnic languages in Guatemala. Many indigenous people, nevertheless, speak Spanish since its general use impelled them to learn it.

The Spanish language is constitutionally recognized as the official one in the country, even though there have been various institutional efforts to incorporate other languages. For example, the Constitutional Court has released translations of the Political Constitution in various Mayan languages together with the translation of other laws. Moreover, the Supreme Electoral Tribunal has made efforts to facilitate the right to vote for indigenous peoples by printing ballot papers in different Mayan idioms, when these are prevalent in a certain geographical area.

Despite the above efforts, indigenous peoples remain severely under-represented at national levels of government, especially considering their overall numbers in the country. The Constitution grants special protection to the different ethnic groups when it comes to their way of life, customs, wearing of traditional clothing, idioms, among other issues, but Guatemalan legislation does not contain any specific norm or prerogative that regulates the electoral rights of people belonging to any ethnic community.

In the general elections of 2007 and 2011, Guatemalan citizens elected 158 representatives for the Congress of the Republic. In 2007, seventeen indigenous people were elected, representing 10.8 per cent of the seats, while in 2011 twenty-two indigenous became members of Congress, accounting for 13.9 per cent of the seats (Vásquez: 2013: 80). In the 2011 General Elections, out of the ten binomials that applied for the presidential and vice presidential offices, only two were Mayan indigenous people, that is, 10 per cent of the candidates.

To address the issue of underrepresentation of indigenous communities, art. 54 of the 2012 Supreme Electoral Court's proposal to reform the Electoral and Political Parties Law proposed to amend art. 212 of the underlying law. The proposal stipulated that linguistic communities where the population is mainly indigenous should have about 50 per cent of candidates belonging to linguistic minorities and different ethnic communities. However, the Commission of Electoral Affairs of the Congress of the Republic presented its own reform proposal in 2012. This draft bill did not include any prerogative for people belonging to an ethnic community or linguistic minority.

The indigenous legislative agenda is composed of five draft bills, which have been presented in the Congress' plenary sessions. The topics covered are: indigenous jurisdiction, indigenous people's rights, sacred sites, community radios and consultations with indigenous people (local referendums). The last three initiatives have already been given a favourable opinion, but are still waiting for the final approval of the plenary (Batres: 2011: 1).

There are at least two major reasons why the indigenous legislative agenda is lagging behind. Firstly, the systemic problems of the Guatemalan state generate a slow and politicised dynamic within the Congress. Consequently, congressmen and women seldom discuss and approve new legislation, regardless of its content. Secondly, since there are so few indigenous representatives at the national level, there are few voices able to push this agenda forward.

4 The exercise of electoral rights

4.1 Registration procedure: becoming a voter

In accordance with art. 8 of the Electoral and Political Parties Law, registration in the Citizens Registry is necessary to vote or run for office. Registration as a citizen does not happen automatically and therefore is managed by the Citizens Registry of the Supreme Electoral Court. The procedure is free of charge.

Art. 9 of same law determines that a citizen who wishes to vote in the elections should be registered as a citizen at least three months before the election day, in addition to being in possession of an official identification document.

The regulations of the Electoral and Political Parties Law define in detail the registration procedure in the Citizens Registry in Art. 4, transcribed below:

'Citizens who wish to register to vote or to update their district of residence, should go to any delegation, sub-delegation or registration centre of the Registry of Citizens.'

This procedure is personal, free of charge and non-delegable. To the abovementioned ends, the citizen shall provide the required information. He/she will present the identification document established by the applicable law and, when filling out the corresponding form, the responsible authority will provide him/her with a ticket stating the date in which the citizen shall present him/herself again. On this occasion, the original form will be handed in and, if possible, the identification document.

The registration number and the municipality where the right to vote will be exercised are indicated in the latter. The ticket will not be handed in in municipalities with an automated procedure and where the data of the person concerned can be instantly verified.

If possible, the identification document established by the law will be immediately issued and the registration number placed on it; otherwise the Supreme Electoral Tribunal will establish the required mechanism to certify his/her registration'.

4.2 Registration Procedure: becoming a candidate

A written request is needed in order to register as a candidate. The Supreme Electoral Tribunal provides registration forms before each election in order to facilitate the procedure. Art. 214 of the Electoral and Political Parties Law specifies that this form shall comprise at the very least: the full names of the candidates, the number of their personal identification document, their registration number at the Citizens Registry, office and position for which the candidate is running and the name of the political organisation backing him/her. To this, a birth certificate and a copy of the personal identification document shall be attached.

The Supreme Electoral Court, based on art. 53 of the Regulation of the Electoral and Political Parties Law, requires that individuals who run for office provide a sworn statement avowing they meet all the legal requirements and that their candidacy is not subject to any prohibition.

Finally, based on arts. 16 and 30 of the Law on Integrity and Liability of Public Servants, the Supreme Electoral Court requires that the candidate's integrity in the management of public funds be verified, in this case by the Comptroller General's Office (*Contraloría General de Cuentas*). The document issued by the latter shall make it clear that there are no complaints or pending court cases against the candidate for mismanagement of public funds in positions held previously.

It should also be noted that registering as a candidate is only possible within the territory of Guatemala since there are no consular procedures to that effect and the registration is performed manually.

A Guatemalan citizen who enters the territory of the Guatemalan Republic, is registered in the Citizen's Registry, meets the legal requirements and does not fall within the prohibitions laid down by the law, can also run as a candidate. Although there are no norms regulating this matter, there is not a prohibition either. The case of former Vice President Rafael Espada is illustrative in this regard. Having lived abroad for a number of years, Espada returned to the country to run as a vice presidential candidate in 2008.

In order to become a candidate for the presidential or vice presidential office, art. 185 of the Constitution establishes that candidates must be Guatemalans of origin, citizens in good standing and over forty years of age. Besides these, candidates for president and vice president, as any other candidates, should present a sworn declaration stating that they do not fall within the limitations set by law. In effect, art. 186 of the Political Constitution of the Republic of Guatemala institutes special prohibitions of candidacy in this regard. The following are banned from running for President or Vice President:

- a. The leader and chiefs of a *coup d'état*, armed revolution or similar movement, who have overthrown the constitutional order, or those who as a consequence of such events have assumed the position of head of government;
- b. The person already exercising the position of President or Vice-President of the Republic when elections are held or who had exercised them for any period of time within the presidential term when elections are held;
- c. Relatives to the fourth degree of consanguinity and second degree of affinity of the President or Vice President of the Republic, when the latter is in office, and those of the persons referred to in the first paragraph of this Article;
- d. The person who has been Minister of State for any period of time in the six months prior to the election;
- e. Members of the army, except for those who have resigned or retired for at least five years before the date of the call for elections;
- f. The faith leaders of any religion or cult; and
- g. The judges of the Supreme Electoral Court.

The two examples below illustrate the significance of the above restrictions to candidacy.

The first took place in the 2003 elections, when the Supreme Electoral tribunal rejected Efraín Ríos Montt's registration as presidential candidate. This was based on sect. a) of art. 186 on grounds that Ríos Montt had taken part in the 1982 *coup d'état*. The Supreme Court of Justice confirmed this decision, following a writ of *amparo*. However, after the appeal against this ruling, the Constitutional Court granted protection to Ríos Montt who was then allowed to run for president based on the argument that art. 186 only applied to events that had taken place within the current constitutional order, which had begun in 1986 (court file number 1089-2003 of the Constitutional Court).

The second case took place at the time of the 2011 elections. The Supreme Electoral Court rejected Sandra Torres' attempt to register as presidential candidate, based on para. c) of art. 186 of the Constitution. Sandra Torres was the ex-wife of the former President Álvaro Colom and divorced him just a few days before standing for election. This time the Supreme Court of Justice and the Constitutional Court (file number 2906-2011), following the writ of *amparo* and the final appeal respectively, were unanimous in confirming the Supreme Electoral Court's ruling on the grounds that Torres committed fraud. Because she had served as First Lady during Colom's presidency, the constitutional prohibition to run as President was considered to be clear.

Another important aspect related to the eligibility to run as a presidential candidate is the prohibition of re-election of anyone who has held the Presidency for more than two years. This prohibition, considered a key principle in Guatemala is stipulated in art. 187 of the Constitution. In fact, the Constitution considers the defence of this principle a duty of every Guatemalan citizen.

As far as the requirements to become a member of Congress are concerned, art. 162 of the Constitution sets the same criteria regardless of the type of list a candidate run under (regional or national). The requirements are: being of Guatemalan origin, enjoying his or her full rights as citizen and, therefore, being over eighteen years of age.

Art. 164 of the Constitution regulates that the following cannot run for Congress:

- a. The officials and employees of the Executive and Judicial organisms and of the Court and Comptroller General's Office, as well as magistrates of the Supreme Electoral Court and the director of the Register of Citizens. Those performing teaching duties and professionals in the service of social welfare institutions are exempted from the above-mentioned prohibition;
- b. Contractors of public works or enterprises funded by the state or the municipality, their sponsors and those who, because of such projects or enterprises, have pending claims of their own;
- c. Relatives of the President of the Republic and of the Vice President up to the fourth level of consanguinity or second level of affinity;
- d. Those who, having been sentenced by a final judgment of the Court of Auditors, have not settled their responsibilities;
- e. Those who represent the interests of companies or persons using public services; and
- f. Military personnel in active service.

In the same Article, the Constitution regulates that if the elected member of Congress finds that he or she falls under any of the prohibitions mentioned above at the time of the election or thereafter, his or her seat will be declared vacant, except when subject to para. a) and e). In those cases, the candidate can chose between the exercise of the underlying functions or the office of representative to the Congress. In addition, the Constitution establishes that the election of a member of Congress is null if he or she was an official exercising jurisdiction in the electoral district for which he or she is a candidate or if he or she has exercised it three months prior to the date on which the election is held.

Finally, in order to stand for local elections, either to become a mayor or a member of the municipal board, art. 43 of the Municipal Code determines that candidates must be of Guatemalan origin, be registered in the municipal district for which they are a candidate, be in full exercise of their citizen rights and know how to read and write.

Naturally, there are also prohibitions against running for these positions, as set out in art. 45 of the Municipal Code. The following are not eligible to become candidates at these levels of government:

- a. Those who have been legally disqualified by a final sentence for having committed an intentional crime or those who face pre-trial custody.
- b. Those who, directly or indirectly, have taken part in public services, contracts, licenses or supplies to or on behalf of the municipality;
- c. Those who are in debt to the municipality, either through bail money or because of an unjustified debit balance;
- d. Those who are a relative, in the degrees established by law, of those currently in office.

Art. 212 of the Electoral and Political Parties Law determines that legally recognised political parties can nominate candidates for every popularly elected office, while civic committees can only do so for the positions of mayor and members of the municipal board. Guatemala's electoral system does not allow independent candidacies, meaning that the support of a political organization – a political party or a civic committee – is needed in order for an individual to become an eligible candidate.

4.3. Methods for casting a vote

The only method for casting a vote in elections in Guatemala, applicable to all types of elections, is through a polling station situated in the municipality where the voter is registered. Elections for the various levels of government all take place on the same day.

The voting procedure is paper-based. The Supreme Electoral Court is responsible for printing the list of voters – so-called electoral rolls – that correspond to each polling station. Citizens can only cast a ballot at the polling station in which they are registered, with the exception of the polling station staff (*Juntas Receptoras de Votos*), who vote at the stations where they are working. Voters must present their identification document, sign the electoral roll and be fingerprinted digitally to confirm their identity.

Art. 5 of the Regulation of the Electoral and Political Parties Law establishes that citizens are obliged to notify the Registry of Citizens of a change in residency so as to update their personal identification document and register them in the electoral roll of the municipality to which they have moved.

Finally, it should be made clear that no other voting methods, such as mail bailout, proxy voting or e-voting, have ever been implemented in Guatemala. If, however, the voting system is ever extended to Guatemalan citizens residing abroad (without requiring them to return to Guatemala to vote), these alternative voting methods will need to be considered.

5. Conclusion

The turbulent history of Guatemala has produced frequent changes in the electoral system, its institutions and the electoral rights it carries. Historical development brought different constitutions and laws regulating electoral issues and with them a progressive increase in the recognition of citizens' rights.

The right to vote underwent gradual changes: at first, it was only attributed to literate males; later it was extended to every literate male and female; and it eventually became a universal right, without distinctions based on gender or education. During various historical periods, casting a ballot was a compulsory exercise for certain categories of people and optional for others; and later the right to a secret ballot was recognised. Currently, suffrage is voluntary, universal and secret. Nowadays, every Guatemalan over the age of eighteen is able to exercise the electoral rights that are conferred upon him or her. The exercise of suffrage is a right to which every Guatemalan resident in the country is entitled. However, in order to be able to exercise it, inscription in the Registry of Citizens is required. Yet, the Guatemalan legislation does not recognise any type of electoral right to foreign residents. It also contains no provisions the vote of Guatemalan citizens residing abroad. The only

method for casting a vote in Guatemala is on-site at the polling station of the municipality where the voter is registered.

The evolution of the mechanisms to facilitate the exercise of electoral rights still has a long way to go in the country. The Guatemalan electoral system is in need of not only an expansion of the mechanisms to exercise electoral rights, but also of ways to facilitate the political participation and representation of every citizen, irrespective of their ethnic origin, gender or socioeconomic condition. To this end, new legislation needs to be accompanied by internal democracy mechanisms within political parties. A further urgent matter related to the electoral rights in Guatemala is allowing independent candidacies to public offices.

Even though Guatemala's electoral system privileges representativeness, in practice it has not succeeded in truly including certain groups of the population. A reform through which political parties could more easily become genuine public institutions – strong, inclusive and capable of making justice to the political power bestowed upon them – should be taken into account as a valuable next step towards a more representative system.

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