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REPORT ON CITIZENSHIP LAW: EL SALVADOR

Isabel Rosales

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European University Institute, Florence
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EUDO Citizenship Observatory

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El Salvador***

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Citizenship Law

El Salvador

Isabel Rosales

1. Introduction

El Salvador is the smallest country in the Central American region. Surrounded by Guatemala, Honduras and Nicaragua, El Salvador has about 6,141,350 (2015 est.) inhabitants in barely 21,041 sq km total area.¹ The country has one of the highest population densities on the continent (291 H/km) and is among the poorest countries in the Latin American region. A distinctive feature of this country has been migration. El Salvador is a territorial space that has historically witnessed different forms of immigration and emigration. Its geographic location makes it a transit space that allows easy mobilisation from South and Central America to North America or from the North to the South. Hence it is important that El Salvador is analysed in the context of migration, as a country of destination, transit, origin and return.

Four main events have contributed to El Salvador's demographic and migratory changes. First, though independent as of 1821, the region's livelihood did not change substantially until the late nineteenth century, when coffee and then other export harvests were introduced. The liberal reforms at that time privatised communal lands, displacing thousands of peasants and initiating a pattern that endures to this day: an oligarchy in control of both the land (dedicated to export over subsistence harvests) and the military, on the one side, and a majority of the population battling perpetual poverty, on the other. The combination of precarious agricultural labour with people displaced from the land brought about seasonal, rural-to-rural as well as rural-to-urban and intraregional migration – a phenomenon that lasted until the second half of the twentieth century (Torres-Rivas 2007; Roniger 2011).

The second major event that had an impact in El Salvador was the war between El Salvador and Honduras in 1969. This conflict is known as 'the soccer war' or the 'hundred hour war'. The cause of the war was the Central American Common Market economy, more concretely the economic crisis and commercial conflicts concerning immigration from El Salvador to Honduras. The roots of the war had to do with issues over land reform in Honduras and immigration and demographic problems in El Salvador which still have an

¹ The CIA World Factbook: <https://cia.gov/library/publications/the-world-factbook/geos/es.html>.

impact in El Salvador because of the high number of Honduran migrant-workers in the country.

The third main event was the demographic change brought about by the civil war between the military-led government and the Farabundo Martí National Liberation Front (FMLN), an organisation of five left-wing guerrilla groups. The civil war erupted in 1979 and lasted for 12 years. One of the main consequences of this event was a rise in Salvadorians fleeing the country, mainly to the United States. However, even after the signing of Peace Accords in 1992, the number of citizens leaving the country did not decrease. On the contrary, during the 2000s Salvadorian citizens continued to migrate to the United States in large numbers. In 2012, it was calculated by the Ministry of Foreign Affairs that around 25 percent of Salvadorian nationals (close to 2.5 million people) now reside in the U.S., more than half of whom lack formal documentation.

Lastly, one of the main changes in El Salvador in recent years is related to border securitisation resulting from a regional strategy. After 11 September 2001 there was an increase of border surveillance brought about by regional policies such as the Plan Merida or Plan Sur.² These policies have had consequences in El Salvador in that they led to an increase of violence to counter drug trafficking and the persecution of migrants along the borders. This situation not only led to a rise in international and intraregional migration in the country, but also brought new ideas for smugglers on how to avoid the new controls as well as a rise in smuggling and trafficking of people (Rosales 2013; UNODC 2010). Another important consequence of the rise of border securitisation is a rapid increase in deportations, from 5,561 in 2003 to 20,045 people in 2007 (Sørensen 2010).

This report has four main sections. First, it introduces the historical background and evolution of the nation building process which set the basis for the citizenship regime in El Salvador. Second, it describes the current characteristics of grounds for acquisition and loss of Salvadorian citizenship. The third section explains the current debates and reforms of the citizenship regulation in the country. Lastly, the conclusions present a summary of the report and point to future research avenues.

2. Historical background and evolution

2.1. Setting the basis for citizenship

Independence from Spain in 1821 brought about inclusion and exclusion dynamics that became part of the citizenship projects led by Central American states emerging from the end of colonial rule (Roniger 2011). Shortly after Central America declared independence from the Spanish Empire it was annexed by the First Mexican Empire in 1821, but quickly regained its independence and formed the Federal Republic of Central America in 1823. This was a sovereign state, which consisted of the territories of the former Captaincy General of Guatemala of New Spain until 1841. However, from 1838 to 1840 the federation descended into civil war.

The nations that formed the Central American Republic were always in conflict with each other, mainly because of clashes between conservative and liberal factions. On the one

² Plan Merida refers to an agreement between the United States and Mexico aimed at combatting transnational crime in Central America. Plan Sur refers to the deportation of illegal aliens from Guatemala to Nicaragua, El Salvador, and neighboring countries.

side, the majority of liberals believed in a system that would create many changes in the early nineteenth century. For example, the Liberals wanted to create a republic with greater democracy and supported freedom of religion as well as breaking up monopolies and moving towards an economy of free trade. On the other side, the Conservatives favoured existing systems and hierarchies, a monarchy to maintain the Church's privileged position, and favoured the status quo of trade dominated by Spain. The Conservatives were generally supportive of class stratification and opposed radical change in government in Latin America. After several internal wars to cement a sense of national identity, the various political factions were unable to overcome their ideological differences and the federation collapsed in 1841.

There were several other attempts to reunite Central American nations in the former union in the nineteenth and early twentieth centuries, none of which succeeded. The first attempt was in 1842 led by former President Francisco Morazán, who wanted to create a Confederation of Central America that would include El Salvador, Guatemala, Honduras and Nicaragua. A second attempt was made in 1852 when El Salvador, Honduras and Nicaragua created the Federation of Central America that lasted less than a month. Another attempt by the same countries was made from 1896 to 1898 and named the Greater Republic of Central America. The last attempt occurred from 1921 to 1922 when El Salvador, Guatemala, Honduras and Costa Rica formed a second Federation of Central America which aimed at forming one state with one Constitution (Roniger 2011).

Thus, for decades someone born in Honduras could become president of El Salvador or a Guatemalan could be appointed Minister of Foreign Affairs, not only of his country but also of Costa Rica for example. Likewise, in the 1830s and 1840s it was not uncommon for cities in Honduras to place themselves under the protection of Guatemala or El Salvador. In the 1850s, a key war of late independence, known as 'the national war' was fought by Central Americans led by Costa Ricans. Throughout the nineteenth century, armies and militias operated in the region freely and at the end of that century there were attempts at political reunification in the region. In the 1910s and 20s a movement of activists from several Central American countries tried to bring back the Central American nation. In the twentieth century, children in Guatemalan schools still sang an anthem to Central America and only afterwards their own national anthem (Roniger 2013). It is clear that citizenship in Central American countries needs to be understood from two perspectives: citizenship and political membership from a Central American regional perspective (because of the shared geopolitical and historical characteristics as well as similar shared contemporary challenges), but also from the perspective of separate nation-states.

In Central America, as in many other parts of Latin America, the establishment of nation states was facilitated by the continuity of institutions, bureaucracy and actors stemming from colonial times. The inherited backwardness as a result of the Spanish colonisation, the international coffee crisis and the blood-stained political struggles of the oligarchies to control governments restrained economic growth, social progress and institutional consolidation (Torres-Rivas 2007). Political stability in the region was therefore not easily reached. However, in the last decades of the nineteenth century, permanent economic links with the world market were established through agricultural exports, predominantly coffee exports.

In 1914, the total population of the region was less than 4 million inhabitants, 60% of whom lived in El Salvador and Guatemala. Banana and coffee plantations accounted for about 80% of Central American exports. This economy was directly linked to the North American market, because the export products passed from national to North American hands. The labour market was put together by 'mozos colonos' who were poor peasants linked to coffee farms and due to 'inherited indebtedness' were essentially indentured servants, which was even stricter when the peasants belonged to indigenous populations. Immigration in Central America started intra-regionally, and even now intra-regional immigrants continue to be the

biggest flow in the Central American region. The main populations who started migrating from El Salvador to Guatemala and vice versa were sharecroppers, peasant lot owners and day labourers during the cane cutting season and agricultural peasants in banana plantations (Torres-Rivas 2007).

From 1913 to 1931, El Salvador's peace among the landowner elite was ensured by family monopolies, which took over presidencies through elections without democracy, and authoritarian control. The oligarchy was not willing to lose this stability until one of the members of this dynasty called elections in 1931 and allowed the communist party of El Salvador to participate in them. However, the coffee elites together with the military, expelled the president and installed a military regime in order to curtail a potential political drift to the left. This was the beginning of what would be the longest military regime in Latin America: the military stayed in power for half a century from 1931 to 1982 (Torres-Rivas 2007).

2.2. Citizenship-related ideas and practices

A major reason the the military coup resulted in such a firm and lengthy entrenchment, was that in 1932 an uprising of peasants allied with communist movements taking place in Izalco, El Salvador. The uprising ended with the death of 30,000 indigenous peasants at the hands of the military. After the massacre, the oligarchy in power prohibited all kinds of indigenous movements as an attempt to prevent anti-ethnic violence and to convert Salvadorian society into a homogeneous one without any indigenous populations. Many indigenous populations, such as the Lenca and Nahua, discarded dress and languages out of fear for the authorities, thereby contributing to the official discourse of a homogeneous nation. In the nineteenth century, citizenship in Mesoamerica was an elite-citizenship, in the sense that it was an attribute of educated and economically independent males (Sabato 1999). Indigenous populations were not treated as citizens and this exclusion persisted long after colonial times (Annino 1999; Venturoli and Zanotelli 2013). Historians and social scientists have analysed the exclusionary process of the construction of citizenship as connected to the creation of *Criollo* and *Ladino* identities,³ where the national elite persistently neglected the multicultural setup of El Salvador and relegated indigenous populations to the category of the 'other' in a racist duality. There is still debate whether such duality between Ladinos and 'indios' as part of the national citizenship regime was first articulated in the liberal discourse of the Reform period around 1871 or whether the politics of *ladinisation* were adopted during the 1930s. However, there is agreement as to how the promotion of a Ladino identity stood above the indigenous sectors, whose identities were marginalised (Taracena Arriola 1993).

Since the late nineteenth century, national elites have tried to unify the nation state as entailing the complete miscegenation of indigenous and immigrant populations, affecting access to their citizenship rights. This has effectively kept the indigenous and immigrant populations hidden from the political and social structures that should support them as citizens. After the massacre of the peasant uprising, also called *La Matanza* ('slaughter'), indigenous populations in El Salvador ended up representing 1 percent of the population. They were, effectively, exterminated in a concerted effort at genocide. The state discourse consistently stressed that the nation was racially homogeneous and had no significant presence of 'indios', arguing that this differentiated El Salvador from Guatemala's 'backwardness' (Roniger 2011).

³ To preserve the Spanish Crown's power in the colonies, the Spanish colonial society was based on an elaborate caste system, which related to a person's degree of descent from Spaniards. The *Criollo* comprised locally born people of proven unmixed Spanish ancestry. *Ladino* came into use during the colonial times to refer to the Spanish-speaking population who belonged neither to the colonial elite of *Peninsulares* (born in Spain) or *Criollos*, nor to the indigenous populations.

Under the dictatorships of the 1930s, the white, creole and Ladino elites, influenced by social evolutionism and the racialist ideas gaining ground in Western Europe, promoted ideas on ‘the improvement of the race’ by eugenics, the control of intermarriage, and immigration. The citizenship regime actively targeted white people to improve lineage. The dictator Maximiliano Martínez, who admired Hitler and Mussolini, wrote a law called the Immigration Limitations, prohibiting the entry of Africans, Asians, Arabs, Gypsies, and many others into the country (Roniger 2011). However, the immigration of North and Central Europeans was welcomed in order to ‘whiten’ the population. These events further strengthened the Salvadorian denial of indigenous and African roots.

Between 1945 and 1980, important changes in the economy took place that brought about changes in demographic dynamics. The introduction of agrarian capitalism in El Salvador carried out the de-structuration of peasant economies. The production of cotton and sugar led to the loss and waste of land of many small parcel-peasants. Thus, El Salvador went from an agricultural economy to a self-employed one either in the service or industry sectors. Alongside this economic change, a population explosion occurred. In 1945, the whole Central American region numbered around 7 million inhabitants. However, by 1980 the population had mushroomed to 20 million people. Alongside these socio-demographic changes, urbanisation increased from 14 to 43 percent between 1945 and 1980. The amount of people living in the capitals came to be over 25 percent of the total population, greatly increasing the stratification of class and the growth of the favelas. Urban growth was accompanied by internal migration of various kinds. The Salvadorian peasant population was pushed to the Honduran border and the middle class to the United States (Pérez Fabregat 2014). The border between Honduras and El Salvador was characterised by the failure of both governments to control it. From the earliest decades of the nineteenth century there are reports of transborder movements, mainly relating to populations fleeing wars. Yet in 1969, the two countries went to war for the consolidation of the national territory of the border area. All these facts contributed to demographic change as well as immigration and emigration.

2.3. From post-war to contemporary citizenship policies

The crisis of the 1980s included a deterioration of wages, repression of union movements, as well as informalisation as a powerful catalyst for the restructuring of the Salvadorian labour market and that of Central America more generally (Robinson 2003). According to Pérez Sáinz (2005), there are four tendencies of the Central American labour market due to globalisation that explain current conditions: (1) the deregularisation of formal employment, new proletarianisation among those who have become wage workers in agro-export plantations, maquiladora factories and tourism industries;⁴ (2) the rising exclusion because of high levels of underemployment; (3) emigration; and (4) the rise of self-employment, generally in the informal economy. These tendencies are important to understand the three main types of immigration occurring in El Salvador and the Central American region. Because of the sugar plantation industry, in the 1980s the number of seasonal workers or daily contract labourers (instead of permanent employees) started to increase. Thus, there was an explosion of the informal urban economy. This had as a consequence that peasants started migrating to urban centres.

Later on, armed conflicts in El Salvador from 1980 to 1992 and in Guatemala from 1960 to 1996, as well as the Nicaraguan revolution from 1960 to 1990, contributed to internal immigration as well as intra-regional immigration. Much of this internal and intraregional

⁴ Maquiladora factories import duty-free materials for product assembly. They export the assembled product, commonly to countries where the materials came from.

immigration was from rural to urban zones and migrants started working mainly in the ‘informal’ economy (Robinson 2003). The end of the wars in the mid-1990s throughout the region left thousands of workers in precarious employment situations, alongside ex-soldiers and ex-guerrilla combatants.

By the mid-1990s, El Salvador reversed its long policy of ethnic homogeneity and started to *promote* ethnicity as an asset and indigenous populations became visible again. Nonetheless, this change was mainly brought about as a state strategy to attract international tourism. It started in 1986, when El Salvador joined a regional venture together with Guatemala, Belize, Honduras and the southern states of Mexico to be part of the Mayan World (*Mundo Maya*) initiative with the aim of attracting tourism to the country. The paradox of this initiative is that while it gained visibility for the indigenous populations, it ended up prompting the redefinition of the Lenca and Nahua identity into a broader intra-regional ‘Mayanisation project’ (Tilley 2002).⁵ Thus, Lenca and Nahua identity was once again made invisible by the Salvadorian state by homogenising them in the region as Mayas.

Another contemporary phenomenon that affected citizenship policies from the mid-1990s to 2015 is emigration in the whole region (specifically access to rights for citizens living abroad). However, El Salvador’s case regarding the percentage of population abroad compared to other Central American countries is striking. According to El Salvador’s Foreign Affairs Ministry, it is estimated that 2.5 million Salvadorians live abroad out of a total population of 6,227,491.⁶ As many Salvadorians left El Salvador for the United States, they sent remittances to their home country. The Inter-American Development Bank calculates that the sum sent home by Salvadorians in 2014 was around 4 billion dollars. This is a great contrast to the earnings from coffee, the country’s main export product, which was only 227 million dollars in 2013 (Central America Data: The Regional Business Portal 2015). Remittances sent from the United States are equivalent to 14 percent of the country’s gross national product (GNP). El Salvador’s foreign trade is equivalent to 15 percent of its GNP. This means that remittances from Salvadorian emigrants provide strong support to the country’s economy by paying for imports, thereby helping to sustain its productive activities and perhaps even providing financial liquidity (Colburn and Cruz 2007).

2.3. Citizenship legislation from the nineteenth to the twentieth century

El Salvador’s first Constitution in 1824 introduced for the first time the topic of citizenship in its Article 5. It aimed to control entry and exit of both goods and persons. In 1841, the second Constitution recognised the existence of Salvadorians by birth and by naturalisation. It also stated rules for foreigners residing in El Salvador, which were established in Articles 4 to 7. This Constitution re-introduced some elements of the Federal Republic of Central America, among them by providing nationality to any Central American citizen by birth.⁷

A study of migration made by the Directorate General of Immigration (*Dirección General de Migración y Extranjería*, or DGME) states that one of the main authorities

⁵ The Nahua and Lenca populations historically were ethnically and culturally related to the Toltecs, as well as to the earlier Nahua and spoke an Aztec-related language called Nawat. Therefore, they are not Mayan descendents. Nevertheless, in an attempt to attract tourism, Lenca and Nahua identities were ‘sold’ as Maya (Tilley 2002).

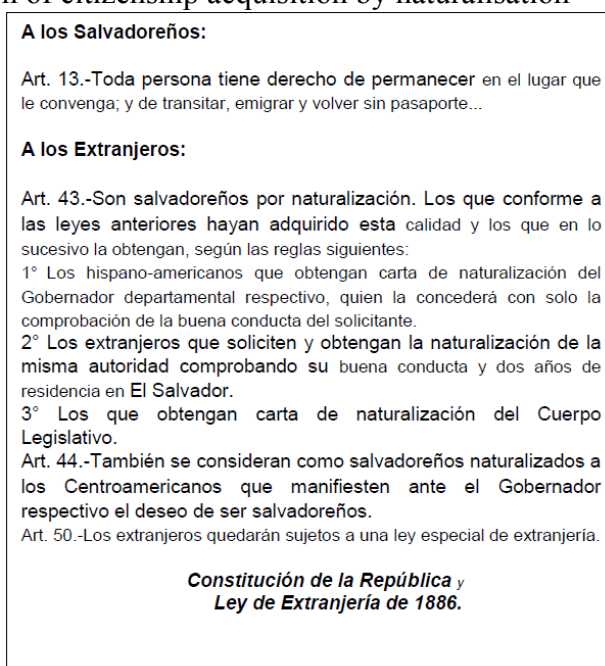
⁶ This statement was made by the Vice Minister of Salvadorians abroad: Juan José García in 2010 (Ministerio de Relaciones Exteriores de El Salvador 2015) and can be found here: http://www.rree.gob.sv/index.php?option=com_k2&view=item&id=4357:gobierno-del-presidente-funes-reitera-compromiso-por-impulsar-el-voto-en-el-exterior&Itemid=1489.

⁷ This means any citizen from a Central American state that used to be a part of the Federation of Central America in the nineteenth century.

responsible for keeping track of incoming and outgoing nationals⁸ and foreigners was the Customs of the Ministry of Economy and War at the time (now the Ministry of Economy) in 1863. This institution was responsible for keeping records of all maritime movements, since immigrants entered the country more often by sea than by land, the authorities focused more on maritime transport and control of goods and people (Ardón 2011). Article 8 of the 1871 Constitution defined the ways in which a foreigner could obtain naturalisation through *vecindad* (residency). It gave special benefits to Hispano-Americans, who only needed to reside one year in the country as opposed to other foreigners who needed two years' residence.

Shortly after, the Constitution of 1864 described the requirements for foreigners to become Salvadorian by naturalisation or residence and also defined the criteria for loss of citizenship. The Constitution of 1883, in turn, provided for automatic naturalisation in Article 34 for any foreigner who accepted employment in the public sector (teachers excluded). Article 36 introduced the distinction between citizenship by birth and by naturalisation. The 1886 Constitution stated in Article 50 that foreigners would be governed by a special law, revealing a first interest in regulating the entry of immigrants (see figure 1). In 1886, when the first *Ley de Extranjería* (Law on Foreign Issues)⁹ was promulgated, the entity responsible for its implementation was the Ministry of Foreign Affairs.

Figure 1 First regulation of citizenship acquisition by naturalisation



Source: (Dirección General de Migración y Extranjería n.a., 9)¹⁰

⁸ In official documents as well as in newspapers in El Salvador, citizens are referred to as nationals.

⁹ Law on Foreign Issues or Aliens Act.

¹⁰ Translation: "To the Salvadorians. Art 13. Each individual has the right of abode in the place chosen by them; to transit; emigrate and return without a passport..."

To foreigners. Art. 43. To Salvadorians by naturalisation. Those who received this status in line with previous rules, the following transitory provisions apply: 1) Hispano-Americans obtain naturalisation card from the respective departmental governor, who will grant it upon certification of good conduct; 2) Foreigners seeking naturalisation from the same authority need to evidence good conduct and two years of residence in El Salvador; 3) Those receiving the naturalisation card from the legislature. Art. 44. Central Americans who express their desire to be Salvadorians before the governor are also considered Salvadorians. Art. 50. Foreigners are subject to a special aliens law. *Constitution of the Republic and Aliens Act 1886*"

In 1901, immigrants were at the time referred to as ‘passengers’ because the majority entered the country by sea. The procedure followed for the registration of these immigrants was to write down their names and data in a book record. This type of migration was named ‘Movimientos de Buques’ (ship mobilisations). Persons crossing terrestrial borders were not systematically controlled and could only be detected if the police discovered foreigners in places to stay overnight such as lodges, hotels and boarding houses as well as monitoring sites such as railways, docks, coastlines and borders. This was called ‘Movimientos de Pasajeros’ (passenger mobilisations) (Dirección General de Migración y Extranjería n.a.).

In 1925, the first Law on Issuance and Endorsement of Passports was enacted to provide nationals and foreigners leaving the territory with relevant documents. The task was performed by the Ministry of Foreign Affairs. Apart from issuing passports the Ministry were also responsible for providing visas to nationals and foreigners inside and outside the country (Ardón 2011). Just like in other Central American countries, in El Salvador the Police were in charge of writing immigration control reports. Within the Police, the department of Traffic and of Special Investigations was in charge of controlling the movement of emigration and immigration flows and to provide options for the ‘floating population’.¹¹

In 1933, the Central Office of Migration as mentioned in the Law on Foreign Issues, was created. This office would later become (and currently is) the Directorate General of Immigration. This was a major change to the citizenship norm because it aimed at systematically controlling borders. Nevertheless, it was not until 1938 that the state of El Salvador *per se* started to take records of people crossing borders.

Major changes were subsequently introduced by the Constitution of 1950. Article 11 provided citizenship by birth to Central Americans, which is different from when they could only acquire citizenship through naturalisation. That is, Central American citizens previously only had the choice to acquire citizenship by naturalisation. Article 12 gives privileged access to Hispano-Americans, who only need to live in the country for one year to be able to acquire citizenship by naturalisation, while five years’ residence is required for all other foreigners. The Constitution also states that spouses of Salvadorians may acquire citizenship by naturalisation after having resided for two years in the country and having renounced their original citizenship. However, pursuant to Article 14, Central American citizens may hold dual citizenship. A major change of this Constitution is that it grants citizenship to those at a legal age taking both genders into account, and not only men as in previous Constitutions.

3. Current citizenship law

3.1. General norms and legal interpretation

Current norms relating to citizenship (*ciudadanía*) and nationality (*nacionalidad*) in El Salvador draw mainly on the Constitution which has been in effect since 1983. The second legislative instrument on citizenship is Legislative Decree 2772, called the 1933 Law on Migration (*Ley de Migración*), the current version of which has been in force since 1958. This law describes the regulation of the organisation and coordination of services related to the entry and exit of foreigners and nationals in Salvadorian territory.

¹¹ Floating populations refers to people who resided in El Salvador but were not yet considered citizens.

In a very broad sense, citizenship (*ciudadanía*) is obtained once an individual reaches the age of 18 years, the age of majority in El Salvador, stated by the Constitution in Article 71. The difference between citizenship and nationality (*nacionalidad*) made by El Salvador's Constitution is that citizenship refers to the political rights given to a citizen.¹² Citizenship includes the political rights to vote; to form political parties according to the law and to join existing parties; and to hold public office, in compliance with the requirements determined by the Constitution and secondary laws. However, for foreign residents the Constitution declares that those foreigners who directly or indirectly participate in the internal politics of the country shall lose the right to reside in it. This is also mentioned in the Law on Foreigner Issues which states that foreigners in the country shall enjoy the same rights as nationals with the exception of political rights, and are subject to the same obligations (Article 12). The Electoral Code goes so far as to state that foreigners participating in political activities will be expelled from the territory (Article 247).

Nationality, by contrast, is defined as the legal bond between a person and a state. The Constitution is the main regulation on this regime, and is based upon a combination of *ius soli* and *ius sanguinis* (Article 90). *Ius soli* states that nationality of origin will be granted to everyone born on Salvadorian territory. An exception is made for children of diplomats and children born to illegal or temporary residents (Article 48). However, the children of diplomats are able to choose whether they want to be nationalised.

Ius sanguinis states that nationality will be granted to children of a Salvadorian father or mother born in the country or abroad, on the condition that one of the parents must present a valid ID to verify the *ius sanguinis* nexus.

El Salvador's Constitution also allows dual and multiple nationalities to Salvadorians by birth (Article 91), provided the other country allows it. If a Salvadorian would like to acquire Guatemalan nationality, for instance, this would be possible without having to renounce Salvadorian nationality. By contrast, this would not be possible with Honduras, a country which does not allow dual citizenship.

Lastly, nationality can be granted to any citizen from a Central American state, specifically from any state that used to be part of the Federal Republic of Central America. This could be due to the fact that Central America is a region that shares a close geographical relationship and a historical background with similar geopolitical and international challenges. While states evolved separately due to divergent elite interests in each country during the two centuries since independence, the transnational dimension persists in the region (Roniger 2013).

3.2. Acquisition of citizenship

The modes of acquisition and loss of citizenship are also laid down in the Constitution, which moreover states the rights and duties of Salvadorians.

Regarding naturalisation, the complete criteria included in Article 23 are the same as for voting rights: reaching the age of majority (18 years), with no distinction of gender.

Art. 90 of the Constitution states that national Salvadorians are those who were born in El Salvador (section 1), those of a Salvadorian father or mother (section 2) and those citizens from Central American states that used to belong to the Federal Republic of Central America (section 3).

Citizens of any state can be naturalised and Article 92 of the Constitution provides

¹² Compare Title 3 (Articles 71-89) and Title 4 (Articles 90-100) in Chapter 3 of the Constitution which read, respectively, 'Citizens, their political rights and duties in the electoral body (*Los ciudadanos, sus derechos y deberes políticos y el cuerpo electoral*)' and 'Nationality (*La nacionalidad*)'.

four ways to naturalise under Salvadoran law:

- a) Those from Spain or Hispano-American states who have had one year of residency in the country;
- b) Foreigners of any origin who have had five years of residency in the country;
- c) Those who have rendered outstanding services to El Salvador;
- d) Those foreigners who are married to a Salvadorian and can prove that they have had two years of residency in the country before or after the marriage.

The privileged position of citizens from Spain and Hispano-America compared to ordinary naturalisees is a clear colonial heritage from Spain and it is noteworthy that no major changes have been made in this regard since the Constitution of 1871. An example of naturalisation for providing outstanding services to El Salvador is the naturalisation of the priest Flavian Mucci in 1992. This type of naturalisation needs to be approved by legislative decree.¹³

Foreigners of any country not only need to have been resident in El Salvador for five years, they also need to comply with the following requirements: swear an oath of loyalty; not be a citizen of a country with which El Salvador is at war; and there must be no convictions of crimes or criminal proceeding initiatives against the person both abroad or in the country. The Ministry of Interior is the institution in charge of granting naturalisation, as stated in the Law on Foreigner Issues which has been in force since 1986. This law further declares that the essential requirement for naturalisation is the statement of willingness to be a citizen.

3.3. Loss of citizenship

On the loss of citizenship, Article 94 of the Constitution states that naturalisation can be revoked because of a non-authorized prolonged residence abroad, specifically for residing more than two consecutive years in the country of birth or absence from Salvadorian territory for more than five consecutive years, except when authorized by the Salvadorian authorities. The other way to lose it would be because of a final legal judgement, decree, or sentence by a legitimate Salvadoran representative. However, naturalisation lost due to residence abroad can be recovered (Article 94 of the Constitution and Article 36 of Law on Foreigners), which is not the case for loss due an enforceable sentence. According to Article 62 of the Penal Code, if a naturalised Salvadoran commits an offense against the legal interests of the State or crimes of international concern, the person shall be liable to the additional penalty of permanent loss of Salvadoran citizenship.

It is also possible to renounce Salvadorian nationality, irrespective of whether it was acquired by birth or by naturalisation. Resigning nationality is a voluntary act. This is also the case for Salvadorians who have been deported and decide to return from the United States to El Salvador (even after having spent many years abroad and perhaps having acquired U.S. citizenship). El Salvador offers individuals the possibility to reclaim her or his Salvadorian nationality in cases where she/he renounced it. Returned Salvadorian citizens may get back their nationality by submitting proof of having had nationality of origin. Even so, it is very unlikely that a Salvadorian with U.S. citizenship would resign to their Salvadorian citizenship because El Salvador allows dual citizenship. It has been suggested that this may be a nationalist measure that migrant-sending governments implement in order to keep the loyalty

¹³ In the case Mucci, it was Decree Nr. 133 named 'Meritorious Son of El Salvador'. Priest Mucci, who was born in the United States, was granted naturalisation because of his extraordinary social work in the country (Orantes 2004).

of their citizens abroad towards their home country (Rosales 2014).

Regarding suspension of citizenship, the Constitution lays down criteria regarding the loss of the right to vote. These criteria are: a) legal sentence for criminal acts that might result in a prison sentence; b) mental incapacity; and c) juridical sentence (Article 74). Regarding loss of citizen rights, the Constitution states the following reasons: a) corrupt conduct; b) legal sentence for criminal acts; c) buying or selling votes in the elections; d) those subscribing acts, proclaiming, promoting and supporting the continuation of the President beyond his government period; e) public officials and others restricting voting.

Lastly, the Constitution states that foreigners will lose their right of residence if they participate directly or indirectly in the domestic politics of the country (Article 97).

4. Current political debates and reforms

At present, there are no legislative reforms or public discussions about immigrants coming to El Salvador. The main current political debate concerning citizenship focuses on the extension of rights to Salvadorian citizens living abroad, particularly in the United States. Salvadorians have migrated there since the armed conflict in El Salvador in the 1980s. The United States was open to receive a certain amount of immigrants at the time, but as soon as the Peace Agreements were signed in 1992 and later with the attacks of 11 September 2001, the imposition of stricter immigration controls in the following years made it difficult for many Salvadorians to continue emigrating and applying for asylum in the U.S. Nevertheless, the number of Salvadorian immigrants in the U.S. has not decreased in the last decade. Even so, only in recent decades has the Salvadorian state taken significant formal steps to extend political rights, such as the vote abroad.

For most of its tenure, the National Republican Alliance (*Alianza Republicana Nacionalista*, or ARENA), which dominated Salvadorian politics during the period of 1989 to 2009 did not focus on emigrant citizenship rights. The pattern of interaction between El Salvador and its emigrants only began to change in 2010, when the Farabundo Martí National Liberation Front (*Frente Farabundo Martí para la Liberación Nacional* or FMLN), left wing opposition party won the elections. Newly elected President Funes rewarded this support by committing to making it possible for Salvadorians to vote abroad in presidential elections. The law permitting absentee ballots was passed in 2013. So far, however, citizens abroad have not been able to exercise their vote, as the last presidential elections were in 2014, when the changes had not yet been implemented.

Another issue relates to the fact that the three main pieces of legislation regulating citizenship are outdated. It is important to acknowledge that the current Constitution has been in force since 1983, and that the Law on Migration and the Law on Foreign Issues were issued in 1958 and 1986 respectively. All relevant pieces of legislation date from a period when the Salvadorian population was violently oppressed by the state. Furthermore, the Law on Foreign Issues was enforced during the worst years of the armed conflict in the 1980s in El Salvador. One of the main objectives of the legislation is to broaden police functions and it was created within the framework of an anti-communist security doctrine.

In this connection, it should be mentioned that a draft bill was elaborated in 2000, on instructions from the President of the Republic, by the Minister of the Interior. The draft bill is named 'Law on Migration and Foreigners Issues'. In its preamble, it considers that legislation on migration should promote and strengthen relations of mutual collaboration with the other republics of Central America, and it aims at strengthening the capacities of the Salvadoran State in protecting the rights and obligations of foreigners in El Salvador as stated

in the Constitution. The bill has not yet been submitted to the Legislative Assembly.¹⁴ While the bill aims at substituting both the Law on Migration and the Law on Foreign Issues, at the time of writing this report there was no online record of this proposal being submitted to the Legislative Assembly. Therefore, it is not possible to determine the stage of the bill or its exact content.

One important current debate is about the rights of immigrant workers in El Salvador. According to last population census in 2007 there are about 37,820 foreigners in El Salvador (DIGESTYC 2007). This number is of course an approximation, given that it is impossible to have exact numbers on migrants who are in transit from other Central American countries through El Salvador to the United States. Immigrant workers come mostly from Guatemala (21%), Honduras (28%) and Nicaragua (19%). In fact, the Central American foreign population in El Salvador comprises 71% of the total foreign population (DIGESTYC 2007). However given the lack of recent statistics, as well as the fact that some of these migrants come only temporarily to work and then return to their countries makes it difficult to know of any challenges they have regarding nationalisation or access to citizenship rights. Following the debate on immigrant workers in El Salvador, it is also important to note that despite El Salvador subscribing to the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, it has not led to significant legislative adjustments or policy measures to improve the condition of the working population. In fact, the deficient statistical database makes it difficult to measure and adequately characterise intraregional migration flows that move into their territories, which is an obstacle that delays the identification of policies and modernisation of legal frameworks that facilitate the migration regularisation of immigrant workers. (Morales Gamboa 2012).

Another trending topic is the proliferation of institutions regarding migration. In 2011, the Legislative Assembly approved the ‘Law on Assistance and Protection of Migrants and their Families’ (Legislative Decree 655). This law was originally proposed by the FMLN in 2010 and at the same time ARENA, which proposed a similar bill.¹⁵ Its aim is to assist emigrants and their families in several issues that might result from the migratory process. As an outcome of this Law, the ‘National Committee for the Assistance and Protection of Migrants and their Families’ (CONMIGRANTES) was created. This institution is in charge of formulating and keeping up with current migration debates in the country. Similar to what was proposed by FMLN and later approved as Decree 655, ARENA’s proposal aimed to create a Committee with the purpose of formulating public policies related to protection, and providing opportunities to, migrants. The main difference is that this committee would include not only government institutions but also the private sector (Ardón 2011). An institution created for migrants abroad is the ‘Directorate for Salvadorians Abroad’, within the Ministry of Foreign Affairs which has three sub-directions. The first one is in charge of engaging with citizens abroad, the second one follows all media to keep track of migrants disappearing on their way to the United States (many migrant-disappearances have taken place in Mexico¹⁶), and the third direction focuses on the expansion of consular services.

One more current debate has to do with the Law on Migration, which has been considered by human rights organisations as a result of the national security discourse. The

¹⁴ More particularly, the bill has not been presented to the Foreign Affairs, Central American Integration and Salvadorians Abroad Legislative Committee (*Relaciones Exteriores, Integración Centroamericana y Salvadoreños en el Exterior*). Interview by the author with Karina Sosa, President of the Foreign Affairs, Central American Integration and Salvadorians Abroad Legislative Committee, November 2015.

¹⁵ In 2010, FMLN proposed bill Nr. 1639-7-2008-1 and ARENA proposed bill Nr. 1639-7-2008-2. This evidences that both parties are proposing similar laws regarding migrants rights.

¹⁶ In 2011, the *Comisión Nacional de Derechos Humanos* (National Human Rights Commission (CNDH)) released a report stating that around 11,000 migrants (presumably Central Americans) were kidnapped over a period of six months on their way to the United States via Mexico.

Directorate General of Immigration (DGME) has made efforts to bring systematic migration control regarding emigration and immigration as part of the state security framework. An example of this is that in 2002 a measure of national security for immigration control was implemented. This aimed at replacing civilian employees in border-crossings by agents of the National Civil Police, reinforcing the statement that immigration is a security issue. These changes occurred after the creation of the Ministry of Interior in December 2001.¹⁷ The Salvadorian government took all of these measures after the attacks of 11 September 2001 in the United States. However, the DGME does not acknowledge that these changes were made as a result of this event; rather, it states that they are part of a policy that responds to changes in the domestic security demands. This response may indeed be partly true, as there has been in the last decade an increase in human trafficking in Central America (Rosales 2013), which has brought about the situation that many foreign citizens who were victims of human trafficking, or smuggled migrants who had been heading to the U.S., ended up remaining irregularly in El Salvador. These individuals usually do not go to the authorities either to denounce their experiences, or to start the naturalisation procedure, because they are afraid of being returned to their countries of origin, which may not be safe for them.

5. Conclusion

One of the main difficulties in El Salvador is the lack of statistics about the total of foreigners living in the country. The last census was conducted in 2007 and indicated that there were a total of 37,820 foreigners living in the country, which is 0.66 percent of the total population. The majority of these foreigners come from other Central American countries. Given the fact that El Salvador is a region of migrant origin, transit, destination and return, it is of great importance to improve its statistical system both at the domestic and at the regional level.

Identity plays an important role in El Salvador's regulation of citizenship. This can be observed clearly with the fact that nationalisation can be granted to those citizens born in Central American countries which formed the Federal Republic of Central America in the nineteenth century and who do not need to resign their citizenship. This persists until today, since the latest bill for a new 'Law on Migration and Foreigners Issues' also has a component that asks for a better treatment of the Central American neighbour population, the citizens who migrate the most to El Salvador for reasons of work.

However, this regional 'pride' has brought about some confusion regarding the acquisition of citizenship, particularly for Central American citizens. El Salvador, Guatemala, Honduras and Nicaragua share a free mobility regional agreement called CA-4. In conjunction with the privilege of granting nationality to citizens of these countries, this has resulted in many citizens from other Central American countries moving to El Salvador thinking that they are free to reside there without registering at the Ministry of Interior's DGME – the institution in charge of granting nationality as well as residence permits. This is clearly a combination of misinformation at both the domestic level and regional level. By improving communication platforms between the DGME's of these countries, this problem could be reduced.

Regarding the creation of institutions, it is important to mention that the proliferation of institutions to provide services for Salvadorians abroad is strongly related to a government discourse that both parties have created in the last decade in order to increase loyalties from emigrants abroad and their families living in El Salvador and also to comply with the regional

¹⁷ The Ministry was formerly a Secretariat.

pressures of migrant-Human Rights protection.

While El Salvador's government has put all of its efforts into focusing on Salvadorians abroad, policies for the protection and providing of services to citizens coming to the country have been relegated to a security discourse. This is not a surprise given the fact that El Salvador's geographical position makes it a passing route of, among other things, drugs and people. The fact that the U.S. wants to keep all of the problems outside its borders confronts the Mexico-Central America-Colombia corridor with many challenges that need to be dealt with regionally. Many of these regional solutions are security-oriented for both emigrants and immigrants. The paradox with this approach is that El Salvador is constantly advocating for a better handling of its emigrant community abroad, but it is not providing the same consideration to immigrants coming to its territory.

Finally, in light of the evidence presented in this report, some future avenues for further research include: a) the improving of statistics to be able to draw implications for permanent, working and transit citizens coming to El Salvador; b) the monitoring of regional work markets and conditions as well as living conditions of Central American citizens going to El Salvador; c) the challenges faced by citizens in the acquisition of political, social and economic rights and obligations; d) broadening the discussion on citizens living under irregular conditions and possible ways to grant them rights. This discussion is usually very important in traditional 'migrant-receiving countries' but it does not mean that this is not an important topic for 'sending states' as well, and e) the monitoring of migrant children (both abroad and in El Salvador). It is known that there are many unregistered children of immigrants within El Salvador. This has proved to be a problem when these immigrants (many of Honduran and Nicaraguan origin) try to register their children at school. Many persons who are irregularly in El Salvador may not register their children because of the fear of being deported to their countries of origin, while Salvadorians living abroad may lack trust in their own consulates to the extent that they do not register their children who are born abroad.

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