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# EUDO CITIZENSHIP OBSERVATORY

***ACCESS TO ELECTORAL RIGHTS***

***PARAGUAY***

Magdalena López

April 2016



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# Access to Electoral Rights

## Paraguay<sup>1</sup>

*Magdalena López*

### 1. Introduction

Paraguay had different procedures for voting and electing officials, as much for the period recognized by indigenous dominance as during colonial times, independence, and the current day. In 1911, through an electoral law, legislation was passed regarding the vote for men older than eighteen years of age, changing the system from ‘voice vote’ to a written vote; this made illiteracy one of the central problems for this voting system (added to other factors of racial, economic, or gender-based, etc. nature). Years later, in 1916, Act No. 223 made the use of ballots mandatory.<sup>2</sup>

Paraguay is a unitary country in which, generally, electoral laws and rights come from the national state, which is to say ‘from above’. Elections are organized at three levels: National, Departmental [State or Provincial], and Municipal, in addition to an International Level, which consists of voting for representatives who will make up, along with those of other countries, the parliament of the regional union MERCOSUR<sup>3</sup> (the Mercosur Parliament [el Parlasur]).

Since the fall of the dictatorship, following the approval of the new political organization (Constitution and democratic laws) there are two periods for holding elections: in one local elections are carried out and in the other all additional levels together. Paraguayan citizens living abroad have the right to vote following the

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<sup>1</sup> The ‘Report on Electoral Rights in Paraguay’ was originally published in Spanish and subsequently translated by Elaine Newton-Bruzza. The original report ‘Acceso a los derechos electorales : Paraguay’, first published in september2015, may be consulted online at [http://cadmus.eui.eu/bitstream/handle/1814/37016/EUDO\\_Cit\\_2015\\_16\\_Paraguay.pdf?sequence=1&isAllowed=y](http://cadmus.eui.eu/bitstream/handle/1814/37016/EUDO_Cit_2015_16_Paraguay.pdf?sequence=1&isAllowed=y)

<sup>2</sup> ‘The Electoral Law from 23 August 1911 established the secret ballot, although with the real limitations that may be deduced from the regulation transcribe below. Article 63, pt. a) ‘Each voter shall present to the president of the polling station... a ballot on white paper... which expresses which candidate or candidates he is voting for.’ Indeed, observing the degree of instruction of the common voter and political pressures, nothing guaranteed that the content of the ballot reflected that voter’s will. Voting continued to be done by candidates, with the eventual consequences already indicated (...). Electoral Law No. 223, from 28 November 1916, modified the 1911 law with regard to the election system for the legislative chambers and established the ‘suffrage of the incomplete electoral list’ (Art. 3rd). Voting continued to be by candidates although those elected could not all be from the same party, thus the adopted system assured the participation of the minority (Lezcano Claude, 2012).’

<sup>3</sup> The countries that form part of the Common Market of the South [Mercado Común del Sur], MERCOSUR, are: originally, Brazil, Uruguay, Argentina, and Paraguay (Founding documents: Treaty of Asunción of 1991 and Ouro Preto Protocol [Protocolo de Ouro Preto] of 1995). Later, Venezuela was added and Bolivia is still in the process of joining.

Constitutional Amendment approved in 2011 that modified Article 120 of the constitution, which since 1992 had denied expatriate Paraguayans political rights. Likewise, non-citizens who have permanent residency in Paraguay are eligible to vote (and to be elected) only in municipal elections, as will be detailed later. Legislative elections at all levels use the D'Hondt electoral method and executive elections use the majority system.

As recognized in the Constitution (Article 140), Paraguay is a bilingual country (Spanish and Guaraní). However, although all public offices must offer information and materials in both languages, this requirement is not always met. In spite of the fact that this may seem like a problem unrelated to voting rights, it is very connected because, for example, if people whose only language is Guaraní cannot access information in their own language, they would have to find a translator or interpreter of those laws and rights, which could become an obstacle.

The laws (especially the law most relevant to electoral matters: No. 834 from the year 1996) are constantly modified and amended, which creates an intricate web of regulations given that the previous bodies of the law are partially altered, eliminated, added to, and supplemented with new incorporations or modifications. Many times the 'finished' version is not published in its entirety (something on which the Superior Court of Electoral Justice [Tribunal Superior de Justicia Electoral: TSJE] may be found working). For example, in the legislative digest (available online) the published National Constitution of 1992 is the original from 1992 without including in its body the amendment effected in 2011 regarding Article 120.

Currently, there are three major virtual reservoirs of voting information: (1) the Legislative Digest of Parliament [Digesto Legislativo del Parlamento], (2) the Section for Information on Legislation [Sección de información de legislación] of the Superior Court of Electoral Justice (3) the Library and Central Archive of the National Congress [Biblioteca y Archivo Central del Congreso Nacional]. One of the problems that can be observed upon comparing these three resources is that often the information given is contradictory or disparate (for example, the date of when the law was ratified or took effect is different, which requires reviewing each law internally).

On the other hand, many times laws are superimposed or supplemented and the lack of 'popularity' of the topic of voting causes the lack of information to the public.

All of this, although it may be considered a minor problem, increases the difficulty of the people to understand the laws, the systems, and their political-electoral rights, at the same time that it grants the electoral judiciary (an organization that is not formed by citizen vote) great power to delimit the definitions of the law and settle legal accusations in the case of, for example, electoral fraud, incompatibility of candidatures, etc.

Debates surrounding electoral laws<sup>4</sup> among Paraguayan citizens are not very numerous, and are particularly scarce compared with the quantity of laws on electoral subjects that are passed and with the relevance of the subject. What follows is a brief analysis of Paraguay's historical characteristics in order to comprehend the existing arguments behind the current electoral laws and their immediate antecedents.

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<sup>4</sup> This refers to electoral laws in general, rather than strictly to electoral rights in particular because the latter depend on the first and are encompassed by these.

## 2. Brief Review of Electoral Rights And Laws in Paraguay, Historical Antecedents, and Regulations<sup>5</sup>

Paraguayan political history in the Twentieth century can be divided into periods of party government, which although they were interrupted managed to maintain power for many years. For example, between 1904 and 1940, the Partido Liberal [Liberal Party] (or PLRA: Partido Liberal Radical Auténtico [Authentic Radical Liberal Party], a name that it acquired later) held power (with the interruption of 1912; experiencing a civil war in 1922 and 1923; and living through ‘Febrerista Revolutions’ [‘Revolución Febreristas’] in 1936 and 1937. Between 1940 and 1948 a dictatorship lead by General Morínigo, which has been called the ‘party-less dictatorship’, directed the country’s plans, opening the door to a period of government by the Partido Colorado [Colorado Party] (or ANR: Asociación Nacional Republicana [National Republican Association]) from that moment until 2008, when an outsider, ex-bishop of the Catholic Church, Fernando Armindo Lugo Méndez, won the presidency. ANR has since returned to the presidency in 2013.

It is especially interesting to focus on the period corresponding to the ANR, given that of its six decades in power (1948-2008), 35 years belonged to the dictatorship of General Alfredo Stroessner Matiauda (1954-1989). This is very relevant for understanding the country’s fate, as well as for analysing the antecedents through which electoral decisions were made in Paraguay about the transition to democracy (decisions that, manifested in regulations, are still valid today).

Stroessner sustained his government by means of diverse mechanisms among which a few parallels to other regional dictatorships can be recognized. He erected an authoritarian government with a prebendary structure, supporting at the same the Colorado Party, the state, and the Armed Forces, having an active legislative body.<sup>6</sup> With regard to his political enemies, dissidents, and militants from other forces not functioning on behalf of his power, Stroessner earmarked them for exile, illegality, or he persecuted them, violating their human rights.

Another characteristic of the Stroessner government was the proliferation of electoral laws. In fact, the centre of political decisions surrounding electoral topics (who would be elected, under what system, how the posts would be assigned, etc.) had a preferential place in this period. Stroessner maintained, throughout his dictatorship, a fictitious but functional division of power, by which the regulations and laws of this period were put to the vote in the House of Representatives. This republican façade was accompanied by a façade of democracy, which was sustained by the periodic call for elections in order that the people might legitimize the dictatorship through voting. However, the entire framework of elections, prevailing voting system, and passage of laws was maintained by electoral fraud, political violence, the force disappearance of people (including in the decade of the ‘70s, in agreement with regional dictatorships, Paraguay participated in the so-called Operation Condor [Operativo Cóndor] through which was established, among other things, an agreement for cooperation in the deportation and handing over of prisoners considered ‘dangerous’ for the various dictatorships, generally militants from left-

<sup>5</sup> These ideas were discussed previously in López, 2012.

<sup>6</sup> For more in-depth study of the period of the Stroessner government see: Nickson (2010); Soler (2009); Yore (1992); Lezcano (1989).

wing parties and organizations), elimination and silencing of opponents, political and labour exile of leaders of opposing factions, hard-line anticommunism, limitations of movements and parties, among other actions. In this context, Stroessner modified the electoral system and laws with the consensus of Parliament for the purpose of assuring his re-election, changing the electoral norm to majority and also changing the structure of legislative power.

It must be considered that the underlying originality is in the fact that a dictatorship does not need to maintain a regime based on laws with a democratic façade, or at least it is not there where its power and capacity for dominion resides. Nevertheless, Stroessner changed the electoral laws each time that he might be in danger of violating one and, in fact, modified the constitution and the necessary laws to guarantee his re-election (keeping his stay in power from violating any of them). The next section will analyse some of the laws and regulations that were passed during the Stroessner government.

## 2.1. The Stroessner Government and the Regulatory Organization of the State<sup>7</sup>

As mentioned, both the coup and the Stroessner government were supported by one of the two oldest traditional parties of the country and of the region. In addition to carrying out actions for control and social coercion, it also set in motion a series of strategies that sought to ‘legitimise’ those actions, protecting itself in the necessity of an order, to reverse the imbalance and instability of previous Paraguayan political life.

Rivarola (1988: 180) stated that ‘in order to avoid being considered authoritarian or dictatorial, the Stroessner government made use of democratic mechanisms’. Among those which can be named is the creation of a pseudo-institutional system that tinged the regime with a legalistic hue that, although it never overcame its status of façade, served as its principal legitimization and for the prolongation of the dictatorship, which lasted 35 years (among those legal mechanisms debated and approved in this period can be found the Electoral Statute—Legislative Decree No. 204—from 1959 and its modification in 1960, the ‘67 Constitution, and the modification of ‘77).

Stroessner’s dictatorship was based on two constitutions with which he constructed his power. One of them, the Political Charter decreed in 1940, inherited from the government of General José Félix Estigarribia, was in effect between 1954 and 1966. In 1962, that *Carta Magna* was re-interpreted via the Electoral Law 776.

The other constitution was that of 1966, slightly amended in 1977, which was replaced by the current National Constitution in 1992. In a study on these regulations, Yore y Palau (2008) determined that the Estigarribia Charter [Carta de Estigarribia] gave rise to a case of presidential ‘Cesarism’ that ceded to the Executive Power a nearly absolute role in state political decisions. Due to this, Stroessner’s domination was strengthened. Both the Constitution of 1940<sup>8</sup> as well as that of 1967 permitted

<sup>7</sup> Some of these ideas were discussed previously in López, 2013.

<sup>8</sup> Constitution of the Republic of Paraguay of 1940. Article 47. ‘The President of the Republic shall serve five years in office and shall be able to be re-elected for one more term. His/Her power ends the same day of expiration of the term, in the absence of some event that may have interrupted the term becoming a reason for completing it later. The President receives a salary paid by the National

presidential re-election, but only for one term of office. Later, following the modification made in 1977 indefinite re-election was approved.<sup>9</sup>

While the 1940 Political Charter was in effect, a unicameral Legislative Body was imposed, called the House of Representatives, ‘who shall be comprised of members directly elected by the public, in accordance with the electoral law that shall be enacted at the appropriate time, at the rate of one for every twenty-five thousand inhabitants’ (Article 67, National Constitution of Paraguay, 1940). Afterwards, Stroessner renewed the functioning of the two Houses, making it official in the Constitution of 1967. Scavone Yegros (2010:250) explains that the 1940 Political Charter hoped to generate a strong state wherein the central actor was the executive power. ‘The President of the Republic increased his authority, by which he could dissolve Congress, decree Martial Law on his own, and dictate decree-laws during legislative recess’.

On the other hand, the institution of Vice President was eliminated and a State Council was created, composed of ‘the Ministers of the Executive Power, the Rector of the National University, the Archbishop of Paraguay, a business representative, two representatives from agricultural industries, a representative from manufacturing industries, the President of the Bank of the Republic, and two members of the Armed Forces, one from the Army and the other from the Navy, holding the minimum rank of Colonel, retired. The manner of appointment of Councillors who are not ex officio shall be determined by law. The members of the first State Council shall be appointed by the President of the Republic’ (Article 62. National Constitution of Paraguay, 1940).

In 1959, five years after the beginning of the dictatorship, with the passing of regulation No. 204 it was determined that the electoral system utilized for the formation of the Legislative Body would be that of the majority bonus system, agreeing that the winning party of the elections would be granted two thirds of the seats in the House of Representatives, leaving the other third to the other parties, making it impossible for them to be capable of a real veto.<sup>10</sup> Said resolution gave centrality to the Electoral Boards, formed by a system similar to that of the House of Representatives, who functioned as an extension of the party receiving the most votes and who could be dissolved by the Representatives.

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Treasury, unalterable during the term of office, and may not be employed in any other position or receive any other remuneration for the duration of the office’.

<sup>9</sup> Following modification, Article 173 of the 1977 Constitution would state: ‘The President of the Republic shall be elected by direct general polling that shall be carried out at least six months prior to the expiration of the constitutional period that may be underway, and shall be able to be re-elected’.

<sup>10</sup> Article 8 of the Electoral Statute. Decree-Law No. 204 of 1959, stated ‘The members of the House of Representatives, Delegates to the National Constituent Assembly, members of the Municipal Boards and of the Electoral Boards, shall be elected by direct and secret vote by the citizens by a complete list and by proportional representation, in the manner outlined as follows: The adopted system of representation consists of assigning two thirds of the posts to the party that shall have obtained the majority number of valid votes. To fill the remaining posts, the proportion shall be determined in the following manner: The total of valid votes cast in favor of the minority parties shall be added and divided by the number of posts to be filled; the result shall be the first electoral quotient for the minority; this quotient shall be the divisor of the number of valid votes cast in favor of each of the minority parties. The respective allocations having been made, if one or more posts remain to be provided for, these shall be allocated to the list of the minority party that may have obtained the greatest number of votes. The established system shall be applied in the same way for alternates’.



The Central Electoral Board [La Junta Electoral Central], the most important, was composed of six Members, appointed by majority vote of the House of Representatives, the presidency and three more members of which must belong to the majority party, and the other two member to the minority parties, likewise there would be six alternates appointed as the directors. ‘The alternates will substitute for the directors of the same party and will not receive a salary when they are not functioning as directors’ (Article 157 of the Electoral Statute. Decree-Law No. 204, 1959).

Perhaps the most problematic issue to affect the regime was re-election. The 1967 Constitution, as mentioned previously, established that the president could be re-elected only once. Likewise, later on, Article 175 established that the period of presidential government could not be extended.<sup>11</sup> However, as Stroessner was already in his third term of command, he declared that ‘in accordance with Article 174 of this Constitution the current presidential term shall end on 15 August 1968. For those presidential terms succeeding this date, and to the effect of the eligibility and re-eligibility of the President of the Republic, only those terms that have been completed from then shall be taken into account.’ (Article 236. National Constitution of Paraguay 1967), in this way he got the following term to be considered his first, in spite of it being the fourth.

In 1967, a bicameral Congress was restored (which remains in effect to this day), but the Executive Body was permitted to dissolve the Houses if it was considered so necessary.<sup>12</sup> Another way to guarantee the prominence of the Executive Body was to sanction its legal authority to enact decree-laws.<sup>13</sup>

During Stroessner’s dictatorship (1954-1989), women’s suffrage was enacted in Paraguay, the last country in the region to acquire this right. Act No. 704, passed specifically on 5 July 1961 under the title ‘Political Rights of Women’, affirmed in its first article [that] ‘The same political rights and obligations are granted to women as are to men’. From that moment, women had passive and active political rights, although it was not until 1996, when gender quota<sup>14</sup> was approved with Act 834, that they were able to begin to compete with more influence in positions of power.

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<sup>11</sup> 1967 National Constitution of Paraguay. ‘Article 175—The President of the Republic shall leave office on the same day of the expiration of the term for which s/he was elected, without any event extending his/her mandate.

<sup>12</sup> 1967 National Constitution of Paraguay. Article 182 ‘The Executive Body shall decree the dissolution of Congress for serious matters attributable to it and that may put the equilibrium of the powers of the state in jeopardy, or in some other way affect the regulatory validity of this Constitution or the free development of the institutions created by it. In the same decree that mandates the dissolution of Congress, the Executive Body shall call for elections of Senators and Deputies, which shall be completed during the constitutional period, unless there remain a year or less until the termination of said period. These elections shall be carried out within a three-month period’.

<sup>13</sup> 1967 National Constitution of Paraguay. Article 183. ‘During the recess of Congress or this body finding itself dissolved for any reason, the Executive Body shall be able to dictate Decrees with the force of the law, with the decision of the State Council and with the obligation of submitting them to the consideration of the Houses, within the first sixty days of the next ordinary period of sessions’.

<sup>14</sup> Article 32 of Act 834/96, subsection R cites ‘Appropriate mechanisms for the promotion of women to elective posts at a percentage no lower than twenty per cent and the naming of a significant proportion of women to public positions of authority. For the purpose of guaranteeing women’s participation in the collegiate bodies upon election, their internal nomination as candidates shall make provision for one female candidature per five places on the lists, in order that this body shall appear anywhere but at the rate of one female candidate for every five positions to be chosen from. Each party, movement, or alliance sponsoring lists remains free to establish precedence (...)’.

Nevertheless, Paraguay continues to have very low female political participation compared with other countries in the region.<sup>15</sup>

Resuming chronological order, in 1989, once Stroessner was deposed through a coup d'état lead by Rodríguez (also a member of the Colorado Party and of the Armed Forces), the transition began and the incoming general called for elections, triumphed, and commenced with important changes to regulatory matters, with the purpose of redirecting the country towards democracy.

With regard to rules and regulations, in 1990 a reform of the Electoral Code was adopted that established:

substantial modifications in electoral engineering, some of which were reflected in the subsequent Constitution and others were set aside—the right to the presentation of independent candidates<sup>16</sup> and balloting for executive posts were discarded<sup>17</sup>— establishing the figure of the candidature of outsiders without institutional-partisan allegiance. This regulation designated the D'Hondt method<sup>18</sup> as the system for the distribution of seats. This code, combined with the Constitution that will be detailed below, was replicated to a large extent in Act No 834- current Electoral Code (with modifications) at present (López, 2013: 143).

Subsequently, when in 1992 the National Democratic Constitution was enacted, the consequences and continuity of the dictatorship were still very strong. In fact, some lessons learned during the dictatorship were embodied in the *Carta Magna* and are still valid to the present (for example: the prohibition of the re-election of the president). Some of the characteristics of current electoral laws shall be addressed here.

## 2.2. Democracy and Electoral Processes. Current Law

As stated previously, the two most relevant current regulations for referring to voting rights are the 1992 National Constitution and Act 834 from 1996. The new constitution replaced the Stroessner dictatorship, declared Paraguay to be a

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<sup>15</sup> For more information about women's suffrage and political participation in Paraguay, I recommend reading Cerna Villagra (2014); Bareiro & Echaure (2009) Bareiro (2007); Bareiro, López, Soto & Soto (2004). To analyze this information from a regionally comparative perspective, Archentti & Tula (2007) are recommended.

<sup>16</sup> Article 1 of Act No 1 – Electoral Code of 1990: 'Suffrage is a political right and duty that enables the elector to participate in the constitution of elected authorities, through the intermediary of political parties or independent candidates, as pursuant to Law'.

<sup>17</sup> Article 256, subsection 2, of Act No 1– Electoral Code of 1990: 'The elected candidate shall be the one who shall obtain more than fifty per cent (50%) of the total of votes cast. If this majority shall not be reached a new election shall be held within the period of thirty (30) days, in which only the two candidates with the majority of votes shall participate'.

<sup>18</sup> The D'Hondt system is an instrument utilised to 'convert votes into seats', that is to say, to transform the number of votes received by a party into seats within the Chamber. Depending on the method used the results will vary in obvious ways. The great divide between these systems is: majoritarian and proportional. The D'Hondt system is proportional, while that which was previously used in Paraguay—majority rule—is, obviously, the majority. Proportional systems tend to represent within Congress, in the most exhaustive way, the plurality of the vote and of society.

presidential regime, and reorganized the Parliament,<sup>19</sup> establishing 45 seats for senators (who would be elected in direct elections in a single national constituency) and 80 for deputies (elected from the base of regional representation). Additionally, it confirmed direct voting in internal party elections, established the proportional system (D'Hondt) for the allocation of parliamentary seats, determined that presidential re-election would remain prohibited,<sup>20</sup> and also prohibited Paraguayan citizens living abroad from voting. As will be explained later, this was changed in 2011 by a constitutional referendum through which it was voted in favour of restoring citizenship to emigrants (Halpern, 2012; y López & Halpern, 2012).

The 1992 Constitution also introduced a few relevant changes to balance state powers. The justification for these clauses was found in the recent and earlier history of the country. Taking those antecedents into account, the Constituent Assembly of 1992 created the figure/office of Governor and departmental Board in order to set up greater decentralization of presidential power, subdividing state administration among other sectors. With the same purpose in mind, the Executive Body lost its capacity to dissolve the legislative body and to enact decree laws.

Many of the decisions and measures adopted by the new constitution, sanctioned and promulgated 20 June 1992, were strongly influenced by the recent dictatorship that occupied 35 years of the political life of the country. Both the categorical rejection of the re-election of the president and the denial of political rights to Paraguayan citizens living abroad, are examples of this tendency.<sup>21</sup> The *Carta Magna* of '92 is still in effect and has only undergone an amendment in its Article 120 in 2011.

The current electoral code is Act No. 834, with modifications incorporated by laws that contributed variations of a more administrative than structural nature. Among the most important of those contributions to electoral matters in recent times are: Law No. 3212 from 2007 that organizes the political institutions known as coalitions; Law No. 4559 that changes the system of enrolment in the registers; the incorporation of the electronic vote in some municipal constituencies (Law No. 1825 from 2001); their supplementation with the use of electronic ballots (Law No. 3017 from 2006); the delayed law that establishes the freeing up of the lists (the end of closed ballots) with which congressmen and women are elected (Law No. 4584 from 2012); the expansion of the rights of electoral and partisan alliances with the creation of the role of consensus (Law No. 3212 from 2007); in addition to the Constitutional Amendment No. 1. In 2015, legislation was passed to allow the re-election of mayors (Executive Body at local level).

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<sup>19</sup> 'The Legislative Body shall be exercised by Congress, composed by a House of Senators and another of Deputies' (Article 182 of the 1992 National Constitution of Paraguay. See also Articles 221 and 223.

<sup>20</sup> 1992 National Constitution. Article 229 –'REGARDING THE DURATION OF THE TERM OF OFFICE. The President of the Republic and the Vice President shall server for five non-extendable years in the exercise of their offices, to begin on 15 August following the elections. They may not be re-elected under any circumstances. The Vice President shall only be able to be elected President for the following term if s/he may have resigned the post six months prior to general polling. Anyone who has served as president for more than twelve months shall not be able to be elected Vice President of the Republic'.

<sup>21</sup> During the Stroessner regime, a campaign persecution and slander of immigrants and exiled Paraguayans was carried out. These people were accused of being traitors, communists, absentees from the great problems of the homeland, or perpetrators of illegal actions. They were never referred to by the dictator as citizens or equals.

### 3. Eligibility Criteria: Who may exercise political rights by law?

According to Article 152 of the National Constitution, Paraguayan citizens are all those persons having native Paraguayan nationality and from eighteen years of age, and all those persons having naturalized Paraguayan nationality after two years of having obtained it. Lezcano Claude (2015: 97-98) explains that ‘The population component of the Paraguayan State is comprised of native Paraguayans, naturalized Paraguayans, and foreigners with permanent residency. The Constitution establishes the equality of all inhabitants of the Republic, in diverse aspects and without discrimination, on principle, in relation to foreigners (cf. Arts. 46 and 47 Cn.)’.

Below some of the specifics of electoral regulation will be analysed, including those concerning political rights (or the practice of citizenship) and the limits imposed on the same; for example, suspensions of persons under legal investigation, of those deprived of their liberty, of those who have some type of incapacitating disability, etc.

#### 3.1. Some General Approximations of the Powers and Political Rights of Paraguayan Citizens Living Within National Territory

As described in the Electoral Code, specifically in Article 109, ‘the Permanent Civic Registry shall be composed of the National Civic Registry and that of Foreigners. (...)’ and in the two subsequent articles, it explains that Paraguayan citizens shall enrol in the National Registry and in the Registry for Foreigners, non-citizens may vote legally.<sup>22</sup> In order to vote both Paraguayan citizens and authorized foreigners must enrol in the Permanent Civic Registry.

Legally, each citizen older than eighteen years of age (Article 120 of the National Constitution and 2 of the Electoral Code) is permitted to exercise his/her political rights (active and passive), except for persons with incapacitating mental disabilities and those deprived of their liberty by judicial sentence. Voting is compulsory. Citizens older than 75 years of age are excused from this obligation (but maintain their right to exercise it) as established by Act 834/96 in Article 94 (section A).<sup>23</sup> Current electoral legislation does not discriminate in any way (neither positive

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<sup>22</sup> Act No 834/96. ‘Article 109. – The Permanent Civic Registry shall be comprised of the National Civic Registry and that of Foreigners. Political parties, movements, and alliances shall be able to obtain printed copies of these or on magnetic media for computer use. Article 110. – The National Civic Registry shall be formed with the qualified enrolment of Paraguayan citizens who are not exempt by law. Article 111. –The Civic Registry for Foreigners shall be formed with the qualified enrolment of people having said condition who are legally able to vote’.

<sup>23</sup> Act No. 834/96. ‘Article 94. – They are exempt from the voting requirement: a) persons older than seventy-five years of age; b) magistrates of the electoral jurisdiction and judicial personnel affected by the elections; c) those persons who for work-related reasons, summarily justified before the local judicial authority, may find themselves more than fifty kilometres from their corresponding polling place; d) those persons whose illness prevents them to travel to their corresponding polling place, each instance of which may be proven with a certificate from the attending physician or from the administration of the care institution where s/he may be admitted; and e) those persons who perform public service functions that may not be interrupted.’

nor negative) regarding binomials: rural/urban zones, indigenous/non-indigenous population, given that all have the same active and passive political rights.<sup>24</sup>

One of the difficulties recorded until 2012, was the non-automatic personal enrolment of voters who reached eighteen years of age. This requirement of auto-enrolment generated a complex dynamic in the electoral process. Upon reaching eighteen years of age, citizens should go to the establishment (or wait for the official visit from the organization to his/her territory) to join the National Civic Registry. Regulation 834, Article 113, cites ‘Paraguayan citizens and foreigners who are authorized to vote are obligated to enrol in the Permanent Civic Register as set forth in this Code’. This allowed many Paraguayans to avoid enrolling and additionally gave rise to the proliferation of party strategies of dubious legality that included, for example, affiliating people with a party, without their express consent, at the moment of enrolling in the Permanent Civic Registry.

Another example comes from the figure of the ‘preparer’—the person charged with completing the forms—that was progressively associated with corrupt actions and with the ‘buying’ of votes and voting choices. Law No. 4559 from December 2011 in its first article affirms, ‘It is established that Paraguayan men and women who are eighteen years of age, who meet the requirements for voting, and who hold a civil identity card, shall be automatically enrolled in the Permanent Civic Registry, under the Electoral Register Directorate. This procedure shall become a permanent record, to the extent that the persons are of the required age’. This law sought to resolve the mentioned problems, however, it is not a retroactive law, meaning that Paraguayan citizens who were eighteen years old before its passing and who were not enrolled, still must do so on their own responsibility and in person.

### ***Age Requirement for the Exercise of Passive and Active Political Rights***

All Paraguayan citizens who are of eighteen years of age are allowed to vote in all types of elections (municipal, gubernatorial, general, and also for the Mercosur Parliament). This age limit has not been changed, unlike other countries in the region who have lowered the age limit, such as Argentina, setting the limit to sixteen years, two less than before. In order to run as a candidate in the different elections, Paraguay establishes minimum age requirements that vary according to the type or level of the election.

At the national level, in order to be a deputy candidate, the interested party should be 25 years or older, while for senator the minimum is 35. The same age (35 years) is the minimum required for candidates for president and vice president as established in Article 228 of the National Constitution. At the departmental level, the candidate must be at least 30 years of age to run for the office of governor, while to be a member of the Departmental Board [Junta Departamental] s/he should be at least 25 years old, as stated in Article 162 of the Constitution. At the local level, the minimum age for candidates is 25 for mayor and 23 to become a member of the Municipal Board [Junta Municipal].

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<sup>24</sup> With regard to the binomial Female-Male the implementation of ‘gender quotas’ for Parliament could be considered a case of positive discrimination.

***‘Reduced’ Rights I: The Case of People with Disabilities That Prevent Them From ‘Acting With Discernment’***

Article 153 of the National Constitution,<sup>25</sup> Part 2, expresses that persons with a disability declared in trial shall not enjoy the rights of citizenship, if and when said disability may be an obstacle to their acting freely and with discernment. On the other hand, Act 834/96, in Article 91 (Part b), expressly prohibits deaf-mute citizens to vote unless they can communicate in writing or by other means.<sup>26</sup>

With regard to their rights to be elected, as dealt with in the prevailing regulation, citizens should meet the same conditions as those required for electors, that is, in order to be candidates they should satisfy the requirements demanded of them to be voters. According to Article 153, persons with the mentioned disability cannot be candidates. Article 95 of the Electoral Code (Act 834/96)<sup>27</sup> establishes that any person is eligible as long as s/he does not fall into the disqualifications as stated by the laws and by the constitution. The ‘disqualifications’ are described in Articles 153 (previously cited), 197 (which expressly stipulates the disqualifications for becoming senator and deputy, specifically), and 198 (which stipulates relative disqualifications) of the National Constitution.

It remains to be mentioned that Paraguay has committed to complying with the Convention on the Rights of Disabled People (approved and regulated within the country by Law No. 3540) guaranteeing by this means access to all rights on the part of this group.<sup>28</sup> In that sense, TSJE has been carrying forward improvement programs

<sup>25</sup> 1992 National Constitution: ‘Article 153 – REGARDING THE SUSPENSION OF EXERCISE OF CITIZENSHIP. The exercise of citizenship shall be suspended: 1) by the adoption of another nationality, barring international reciprocity; 2) *by disability declared in court, which impedes acting freely and with discernment*, and 3) when the person may be serving a prison sentence for a conviction. The suspension of citizenship concludes upon the legal cessation of the determining cause.’ (Emphasis in text is mine).

<sup>26</sup> Act No. 834/96: ‘Article 91. – Electors shall not be: a. those persons judicially proscribed from voting; b. *deaf-mutes who are not able to make themselves understood in writing or by other means*; c. enlisted soldiers and non-commissioned officers of the Armed Forces and Police Force and students of military and police institutions; d. those who are detained or deprived of their freedom by order of a qualified judge; e. those persons convicted and sentenced to a prison term or electoral disqualification; and, f. those persons held in contempt of civil or military court.’ (Emphasis added).

<sup>27</sup> Act No. 834/96: ‘Article 95. – Those Paraguayan citizens from the age of eighteen years who do not fall under the causes for ineligibility established in the National Constitution and laws are eligible for any elective office. Likewise are naturalised citizens eligible, albeit with the limitations established in the National Constitution; Non-citizen resident in the county are eligible for municipal offices under the terms that will be established hereinafter.’

<sup>28</sup> Specifically with respect to political rights, the law states ‘ARTICLE 29. PARTICIPATION IN PUBLIC AND POLITICAL LIFE. States Parties shall guarantee to disabled persons political rights and the opportunity to practice them on an equal basis with others and shall pledge to: a) Assure that disabled persons may be able to completely and effectively participate in public and political life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity of disabled persons to be elected, in other forms by means of: i) the guarantee that the electoral procedures, facilities, and materials shall be adequate, accessible, and easy to understand and utilize; ii) the protection of the right of disabled persons to cast their ballot in secret in elections and public referendums without intimidation, and to stand effectively as candidates in elections, filling posts and performing any public office at all levels of government, facilitating the use of new technologies and support technologies where applicable; iii) the guarantee of free expression of the will of disabled persons as electors and with this end, when it may be necessary and upon their request, to permit that a person of their choice lend them assistance for voting; b) Actively promote an environment in which disabled persons may fully and effectively participate in the conduct of public affairs, without discrimination and on an equal basis with others, and to foment their participation in

to achieve higher accessibility to the vote (for example, the program ‘Accessible Vote’<sup>29</sup> [‘Voto Accesible’] of 2015 in municipalities for people with motor disabilities—in addition to women who are in late-term pregnancy and people above the age of 75).

### ***‘Reduced’ Rights II: Convicts Sentenced to Deprivation of Liberty***

In spite of the fact that there have been changes at the regional level and that certain exceptions have been incorporated in other countries, in Paraguay those persons effectively deprived of their liberty, who are fulfilling a judicial sentence, have the exercise of their citizenship suspended. That is to say, their rights to vote or to be voted to public office have been cut off. This sanction is temporary and shall be revoked when the conditions of this disqualification are reversed.

This prohibition may be found in the already mentioned Articles 153 and 197 of the National Constitution.<sup>30</sup> Likewise, specifically in Article 91 of the Electoral Code (in Parts e and f), previously cited, it is clear that those people who are serving a sentence that deprives them of liberty and those who have been declared legally in contempt of civilian or military court may not be voters.

## **3.2. Paraguayan Citizens Living Abroad**

As mentioned, the constitutional Referendum of 2011 held during the government of Fernando Lugo and largely demanded by the organizations of Paraguayan migrants in all of their host countries,<sup>31</sup> changed the National Constitution for the first time since its enactment in 1992 and gave expatriate citizens with permanent residency abroad the ability to exercise their civic rights and to be able to vote from their country of residence for the offices of their country of birth.<sup>32</sup> Likewise, it put passive rights on

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public affairs and, among other things: i) their participation in non-governmental organisations and associations related to the public and political life of the country, including the activities and administration of political parties; ii) the constitution of organisations of disabled persons who may represent these persons at an international, national, regional, and local level, in their incorporation into said organisations’.

<sup>29</sup> The program for the accessible vote, or home vote, is regulated by the Resolution of the TSJE No. 270 of 2014 and is valid for the 2015 municipal elections.

<sup>30</sup> 1992 National Constitution: ‘Article 197 – REGARDING DISQUALIFICATIONS. Candidates for senator or deputy may not be: 1. *those persons convicted and sentenced to deprivation of liberty, for the duration of the prison term*; 2. those persons convicted and sentenced to ineligibility for the exercise of public office, for the duration of that term; 3. those persons convicted of the commission of electoral crimes, for the duration of the sentence; 4. Judicial Magistrates, representatives of the Public Ministry, the Attorney General of the Republic, the Sub-Comptroller, and the members of the Electoral Judiciary; 5. ministers or clergy of any creed; 6. representatives or agents of businesses, corporations, or national or foreign entities that may be concessionaires of state services, or of the execution of works or provision of goods for the State; 7. military and police personnel in active service; 8. candidates for President of the Republic or for Vice President; and 9. owners and co-owners of media outlets’.

(Emphasis in text is mine).

<sup>31</sup> This was a long-awaited accomplishment for the Paraguayan immigration organisations, above all those of Argentina, Brazil, and Spain, who since 1992 had pushed to recover their rights that were amputated in Article 120.

<sup>32</sup> Voters were called upon to vote by responding YES or NO to the following question: ‘Are you in agreement with the amendment of Article 120 of the National Constitution, which shall be drafted as follows: ‘Voters are Paraguayan citizens, without distinction, who have reached eighteen years of age.

the same level, insomuch as it authorized them to stand as candidates (schemes for which must be gradually resolved, given that the legislation still has not been completely adopted).

The Referendum was a call to modify Article 120 ('Regarding the Electors') which previously cited [that] 'Voters are Paraguayan citizens residing in national territory, without distinction, who have reached eighteen years of age. Citizens are electors and eligible, with no restrictions other than those established in this Constitution and by law. Non-citizens with permanent residency shall have the same rights in municipal elections'. At present it adds a line that maintains that Paraguayans living abroad are also voters.<sup>33</sup>

Of those authorized to vote in this Referendum, in effect only 12.6% did so. The results were 77.51% for YES and 21.34% for NO (according to data provided by the Superior Court of Electoral Justice). Which gave rise to the electoral modification. Due to the recent nature of the amendment and to a certain especially lengthy tempo on the part of the Superior Court of Electoral Justice, even today (2015) the specifics of this new right and how it will be carried out by the migrants are not clear. The legislation has not been completely *aggiornada* [brought up to date] and, for the moment, migrants may only vote for offices that are elected in national constituencies. That is, they are excluded from the election of candidates at the regional and local levels. The entire organizational and regulatory framework is anchored in Resolution 32 of the Superior Court of Electoral Justice, dated 29 January 2013.

Likewise, as an experiment, in 2011 the TSJE dispatched personnel and financing to carry out 'enrolments' in different parts of the world. Employees of the embassies or consulates were not used as agents for enrolment in the different countries, rather special commissions of electoral functionaries were sent to certain areas in some countries (which was repeated for the 2013 elections).

From the early beginnings of the initiative, migrant organizations protested that this was a way of wasting resources and that they would not be able to enrol all of the migrants so that they could vote as the law authorized them. To the obstacle of geographic considerations (authorizing the enrolment of immigrants in only a few cities of the migration destinations), was added that of time (the active enrolment period was criticised as being very short), and both factors greatly impacted the quantity of Paraguayan citizens living abroad who would be able to register to be able to exercise their right to vote overseas for the first time.

The TSJE announced a new round of enrolment in August and September of 2015, utilizing the same system as before. However, since the middle of April reports

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Paraguayans living abroad are voters. Citizens are voters and eligible, with no other restrictions than those established in this Constitution and by law. Non-citizens with permanent residency shall have the same rights in municipal elections'. (Voter's ballot from the 2011 Referendum).

<sup>33</sup> According to López (2013) and to López & Halpern (2012) the low participation may be attributable to 'the few resources that the traditional political parties allocated to publicizing, propaganda, and effective transfer of affiliates on 9 October. Neither the ANR nor the PLRA mobilized their structures as they habitually do for general and local elections. (...) In the second instance, the order was carried forward emphatically by the political groups linked with Lugo but not to the traditional parties (neither to the PLRA which formed the APC), resulting in this being a key factor in the lack of citizen involvement' (López, 2013: 179). Halpern (2005) gives two more reasons more in analysing the politicisation of Paraguayan immigrants: the role of mass media communication (replicating the posture of the traditional parties with respect to disdain for emigrates) and the lack of policies for bestowing citizenship carried out by the state.



about the possibility of carrying out this operation were dismissed repeatedly by the organization's authorities, arguing the lack of economic resources.

## **4. Criteria for Political Participation**

### **4.1. Paraguayan Citizens Living Abroad**

As previously mentioned, prior to 2011, only citizens residing in Paraguay were permitted to vote in any type of elections. This situation caused many Paraguayan migrants living in neighbouring countries (Brazil and Argentina) to have to travel to Paraguay in order to exercise their right to vote, hiding the fact that they were living outside of the country and giving their residence as the last address they had before emigrating.

That is, Paraguayan citizens living permanently outside of the country were not allowed to vote, even though they might return temporarily to the country, because the requirement for being able to actively exercise their political right to elect their representatives was completely determined by the geographic variable: they had to prove their residency in Paraguay and not in their host country. However, in practice, Paraguayans who were living in neighbouring countries (with shared borders such as Brazil and Argentina) who wanted to participate in elections, would travel to Paraguay and vote there, giving the address that was still listed on their Paraguayan documents.

For this reason, it can be shown that there was not very strict control and even that political parties would encourage their members to pursue this strategy (at times facilitating means of transport). Since 2011, following the constitutional amendment residency within the country is no longer a requirement for exercising political rights, and expatriate Paraguayans are legally entitled to the same political rights as those who live within the territorial boundaries of the country (although this is still not completely reflected in practice).

However, there are still no clear or established procedures for standing as a candidate from abroad or for how to vote in regional or local elections.<sup>34</sup> In particular, currently there are no prohibitions against migrants standing as candidates but neither is there a clear policy regarding for which offices and under what circumstances they may do so.

The TSJE Resolution No. 32 establishes that 'expatriate voters may elect the President, Vice President, Senators, and Mercosur Parliament members' (Article 3. Offices for Election). The inconsistencies between this Resolution and the Constitution are evident. While the first confers political rights to expatriate citizens

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<sup>34</sup> All information referring to this specific point (which has still not been correspondingly declared by law) is regulated by resolutions from the Superior Court of Electoral Justice. For example, 82/2013. – By which are appointed the members of the recipient foreign polling stations in the Argentine Republic.

81/2013. – By which are appointed the members of the recipient foreign polling stations in the United States of America.

80/2013. – By which are appointed the members of the recipient foreign polling stations in Spain.

32/2013. – By which the regulation for Paraguayans living abroad to vote is approved.

only for a group of elections based on type and level, the second authorizes that right extensively. On the other hand, Parliament has not ruled regarding the enactment of new laws that comply with existing conditions.

This point will be taken up in the next section, although a final legal element with respect to the political rights of Paraguayans living abroad should be included. Article 153 of the National Constitution establishes that Paraguayans who adopt another nationality shall lose their citizens' rights, unless there is an international reciprocal treaty with the other country. One must keep in mind this regulation and analyse the migrant's situation with regard to his/her citizenship in a host country and counterbalance said legal status with the existence (or none) of agreements for multiple citizenship.

### ***Forms of Electoral Representation of Immigrant Paraguayans Living Abroad***

It was previously explained that the TSJE (and also Parliament) still ought to go back over, modify, or create many legal regulations with the purpose of establishing all of the requirements and methods for the real practice of political rights of the Paraguayan population that lives outside of the country. Specifically, one of the chief factors is the way in which immigrants are represented. Currently no concrete format exists, such as for the selection of Parliamentary seats specifically designated for immigrants or the creation of a section whereby votes may be distributed into seats; however, extraterritorial electoral districts were in fact created in Spain, Argentina, and the United States; countries in which cities where Paraguayans could vote were designated.

In the general elections of 2013, the first and only case until this day, the locations were: in Argentina, Buenos Aires, La Plata, San Justo, Misiones, and Formosa; in the United States, Washington, New York, Miami, and Westchester; and in Spain, Madrid, Barcelona, Malaga, and Bilbao.

This order of specific places at which to vote made electoral participation very difficult for the migrant community, resulting in 21,982 Paraguayans registered (more than 16,000 were located in Argentina), of which only a small portion voted. With this number, expatriate Paraguayans comprised the second smallest and perhaps poorest represented voter district, given that the amount of Paraguayan migrants living abroad exceeds 600,000.

Specifically, their vote is counted in a different way from the rest of the votes, dividing these under the name of 'overseas'.<sup>35</sup> They only vote in elections for national districts (president, vice president, senators, and Mercosur Parliament members), without being able to vote for other types of offices. To give an example, in the 2013 elections, 'Overseas' was considered to be an extra section in the official registry of electoral computations (department number 18) for the purposes of enrolment and the recounting of votes. However, those ballots contributed to the national share of the votes and did not generate any type of specific legislative seat. Expatriate Paraguayans will not be able to vote this year (2015) in municipal elections, but they will be able to do so again in the 2018 general elections.

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<sup>35</sup> For example, if candidate A receives 1,000 votes, the Electoral Judiciary shall provide the information as to the make-up of this electoral support, explaining that, hypothetically, 4% of the votes originated from outside of the country (about which it shall be able to determine from which city in Spain, Argentina, or the United States they come from).

It is important to remark that the claims of the migrants, especially from their organizations, surrounding the lack of information and the lack of solutions to the problems just encountered in 2013, are still being raised and the answers from the Electoral Judiciary are insufficient or have been non-existent.

#### **4.2. Foreign Population Living in Paraguay: Political Rights of Non-Citizen Emigrants Living within Paraguayan Borders**

Foreigners who reside in Paraguay are not permitted to vote or to stand as candidates, except for municipal elections, in which they may exercise their passive and active political rights as indicated in both the National Constitution (Article 120, before and after its amendment), and the Fundamental Municipal Law [Ley Orgánica Municipal] (No. 3966), in effect since 2010. They may not participate in any of the following levels and types of elections: (1) Referendums, (2) Constitutional Assemblies, (3) Elections of the Mercosur or Parlasur Parliaments, (4) Elections at the departmental [province or state] level (neither executive nor legislative), (5) General elections (neither executive nor legislative).

Any foreigner, who has permanent residency in the country and is not disqualified by any of the causes that cancel the exercise of citizenship, may be a candidate and voter in municipal elections. They may be elected as and elect mayors or part of the municipal legislative body. In a comparative study, Modolo (2012) shows that only Paraguay and Brazil require permanent legal residence in order for immigrants living within their territories to be able to vote (of a total of ten countries in the region, among which are included: Argentina, Bolivia, Brazil, Colombia, Chile, Ecuador, Paraguay, Peru, Uruguay, and Venezuela), Paraguay being the only one that does not require a minimum time of residency. Likewise, the author explains how the named countries restrict or authorize the active and passive electoral rights of the migrant communities that live within their borders. Within the typology that Modolo (2012: 81) establishes, Paraguay is of the restrictive regime type, given that it only guarantees both types of participation at the local level.

Although Lezcano Bolla (2015: 97-98) shows that the right to join political parties or movements would seem to be recognized only for Paraguayan citizens, the Fundamental Municipal Law recognizes that immigrants, at least those in local districts, have the same rights as Paraguayan citizens, which means that this participation could exist at this level.<sup>36</sup> Paraguay does not establish special differences among resident non-citizen for granting political rights. The law does not require a minimum length of residency for foreigners living in Paraguay in order for them to be able to exercise their rights at a local level, but it does require a type of permanent legal residence in the country. Foreigners must be enrolled in the Civic Registry specifically designated for their status as immigrants.

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<sup>36</sup> Law No. 3.966/2010. 'Article 23. Requirements for becoming mayors or town councillors. To be Mayor, the requirements are: to be a Paraguayan citizen, at least twenty-five years of age, native of the municipality or with residency therein of at least five years. To be Councillor, the requirements are: to be a Paraguayan citizen, at least twenty-three years of age, native of the municipality or with residence therein of at least three years. Both the Mayor and the Councillor must not be found ineligible per the disqualifications set forth in the National Constitution and in the electoral laws. *Foreigners with permanent residency shall have the same rights as Paraguayan citizens*'. (Emphasis added).

Finally, even though in some countries the proliferation of voter reciprocity agreements is a common strategy for achieving certain special participation of the migrant community in the host country and country of origin, in Paraguay it is a strategy that has been extensively utilized. An example of a bilateral agreement is that signed with Spain (Law No. 3980 of 6 May 2010), which approved the exchange of diplomatic notes between the Republic of Paraguay and the Kingdom of Spain regarding the participation of immigrants at the local level. However, in the case of Paraguay, that agreement only confirms the right of Spanish immigrants with permanent residency to participate in local elections, already recognized in the Constitution and in the Fundamental Municipal Law. Aside from this agreement, there do not exist any treaties or specific laws for the members of Mercosur, consequently citizens from member states of this regional union who resided in Paraguay do not have special electoral treatment outside of what is determined by Paraguayan laws and the Mercosur agreements.

## **5. Indigenous Populations: Equal Under the Constitution, Different in Practice**

Paraguay is a country with a strong indigenous presence. One of its two official languages is the indigenous language Guaraní and this is spoken by a large sector of society. In spite of this demographic, cultural, and historical make-up, Paraguay has still not created the necessary tools/instruments for recognizing the ancestral rights of these social groups.

With specific regard to electoral matters, the participation of indigenous minorities has not been a topic that has been greatly considered, nor have there been established any specific regulations; however in the National Constitution a section is dedicated just to these communities, more specifically, Chapter V in its Articles 62 and 67. The *Carta Magna* ‘recognizes the existence of indigenous peoples, defined as cultural groups prior to the formation and organization of the Paraguayan state’ (National Constitution. Article 62). Later, in Article 65, it guarantees indigenous peoples the right to participation in political, economic, social, and cultural life. However, this is not found to be duly backed by concrete actions to guarantee and ensure their electoral participation and representation.

For example, they are not specially mentioned in the Electoral Law (No. 834 of 1996) and there are no planned procedures for generating specific representation of the indigenous communities as there are in other countries. Neither do administrative and logistical organizations exist specifically designated to achieve their real inclusion in political life. Furthermore, the polling places are not in special locations considering the characteristics of the indigenous population, nor are there special parliamentary quotas for this community.

Recently, between May and October of 2015, the Superior Court of Electoral Justice, accompanied by the Paraguayan Institute of the Indigene [Instituto Paraguayo del Indígena (INDI)], carried out a projected titled ‘Strengthening of the Electoral Participation of the Indigenous Peoples of Paraguay’ that sought, according to the same institution, to train indigenous communities in civic-electoral matters, increasing their participation in elections. This is one of the few activities specifically targeting

this population carried out solely with the aim of informing and promoting electoral rights and duties; due to its recent completion it is still too early to measure results.

It is worth mentioning that the situation of the indigenous population is very complex in Paraguay, considering that their economic inclusion is conflictive and relegated within the present capitalist system, as well as their relationship to the land and nature that has been violated by agricultural and ranching production, along with the devastation of the environment in which they originally developed their activities. Likewise, their incorporation into urban areas has been especially difficult due to problems with accessing dignified work and housing.

It is impossible to understand the process by which this population accesses political and electoral rights without taking into account the general situation of systematic violation of human rights in which they find themselves. An example of this vulnerability and its connection with voting practice is the report of corruption related to the ‘buying’ of votes or with the seizure of identification cards of these populations on election days.

## **6. Exercising Electoral Rights**

### **6.1. Registration Process: Becoming a Voter**

The following will analyse the ways in which different social groups begin to practice their political rights. Keep in mind that suffrage is compulsory, as the constitution establishes the vote as a right and a duty.<sup>37</sup>

#### ***Paraguayan Citizens Residing in Paraguay***

As previously explained, becoming a voter in Paraguay follows general guidelines in all types of elections and at all levels. Following the ratification of Law 4559/2011, all Paraguayan citizens who reach eighteen years of age shall be automatically enrolled in the Permanent Civic Registry, which, as long as they do not fall into any of the disqualifications outlined in the regulations, makes them voters.

By the same logic, those persons older than eighteen years of age who did not fall under this law (because they were already older when it came into effect) must enrol on their own within the structure of the Electoral Judiciary. After enrolling, Paraguayan citizens shall be able to vote with their identity card (even if expired) in the previously established locations for that purpose. This process is valid for all elections at all levels.

With respect to the act of voting, the TSJE carries out campaigns and publicity spots in a manner in keeping with the context of the different elections, with the purpose of disseminating and educating about this democratic practice. The following figure shows one of the graphics used toward this end.

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<sup>37</sup> National Constitution. ‘Article 118 – REGARDING SUFFRAGE. Suffrage is the right, obligation, and public function of the elector. It constitutes the foundation of the democratic and representative system. It is founded on the universal, free, direct, equal, and secret vote; under public scrutiny and control and in the system of proportional representation’.

Figure 1: Voting process. Instructions for casting the ballot



Source: Superior Court of Electoral Justice [Tribunal Superior de Justicia Electoral]

### *Non-Citizens Residing in Paraguay*

Foreigners, when they have acquired permanent residence, may vote exclusively in municipal elections. The administrative requirement is very similar to that of Paraguayan citizens, with the difference that their enrolment is carried out in the Civic Registry for Foreigners. Law 4559/2011 establishes that electoral officials should make connections with immigrant communities in order to obtain the pertinent information and also to be able to automate this type of enrolment.

### *Paraguayan Citizens Living Abroad*

‘Becoming’ a voter is a different process for Paraguayan citizens who live abroad. They must enrol specifically during a set period of time and at a geographic location that is announced ahead of time by the electoral officials. This process has already been explained, but it is important to summarize/reiterate/emphasize that to be on the registry they must live in one of the cities where the TSJE has sponsored the presence of its functionaries/officials and should enrol only during the period assigned by that institution. The same is true for those who have enrolled and indeed wish to vote in the elections: they must present themselves for voting at the places set up for said option (which does not include all of the Paraguayan embassies and consulates around the world).

The body of the resolution that regulates this process states ‘they shall be electors for voting in the polling locations authorized in foreign countries those Paraguayan citizens residing overseas, who are enrolled in the Permanent Civic Register and who have no legal impediment for exercising active suffrage’ (Article 5. Electors. Resolution 32/2013). It is not clear in the text of the law whether Paraguayans who live in other cities or countries are able to travel and enrol themselves in cities where they do not live (with the purpose of participating) but cases have been reported of Paraguayans who have done this. For example, while living in other parts of Spain they came to Madrid to enrol (repeating said operation in order to vote effectively) Voters may vote using their ID card [ID-Cédula de Identidad] (even if expired) or their passport.

## 6.2. Registration Process: Becoming a Candidate

### *Paraguayan Citizens and Foreigners Residing in Paraguay*

The registration process for Paraguayan citizens who live in the country, in order to stand as candidates, is the same for all types and levels of elections; likewise it shall be the same that non-citizen residents in Paraguay shall use for local elections, according to current legislation.<sup>38</sup> As per Article 85 of Act 834/96, it can be affirmed as an essential feature that ‘all citizens legally eligible have the right to stand as candidates for political movements, for the various elected national, departmental, or municipal offices, single and multi-candidate elections’.

The next remarkable feature is the prerequisite of being nominated for that office by a political party, alliance, movement, or pact, although it is not required to exclusively belong to such group.<sup>39</sup> However, some parties do specifically require this, and the minimum length of party membership and the ability, or not, to become a candidate at various levels depend on the internal rules of each organization.

All information on the formalisation of candidacies may be found in Act 834/96, in Chapter II of the same title, in Articles 155 to 164, inclusive; and in Chapter III information can be found about disqualifications and contestations of candidacies, in Articles 165 through 169. The candidacy must be the result of internal elections in which the votes of the affiliates have been direct, free, equal, and secret (Article 33 of the Electoral Code, Act 834]. The winner or winners of the internal elections shall be the elected candidate/s to participate and compete in the elections, provided that his/her/their candidacy is recognized, the win accepted, and the nomination not contested by the Superior Court of Electoral Justice. Following the resolution of the internal elections and the acceptance of the results, the TSJE shall provide a colour and a number to be published on the voting ballot; the number shall represent each candidate with its respective political organization.

<sup>38</sup> For an in-depth study that compares the requirements imposed for candidates running for office at a regional level in Latin America, Paraguay being one of the cases studied, Freidenberg (2003) is recommended.

<sup>39</sup> Act No. 834/96: ‘Article 33. - The statutes of the political parties shall establish the necessary means by which the various bodies that represent them at the national, regional, departmental, or local level shall be made up of citizens elected through a direct, free, secret, and equal vote of its affiliated members. In order to be a candidate of a party of any elected office, the candidate must be elected by a direct, free, secret, and equal vote of the members. Political parties shall be able to present and support candidacies for elected offices of persons not affiliated with the same’.

The candidacies must be presented to the electoral judiciary in time, within the first four months after opening the call for elections or only one month in some specific cases that are determined by the Constitution. It is not possible to present independent candidacies that are unaffiliated with political organisations, although the parties, movements, alliances, coalitions may present external candidates who have passed through an internal selection system.

The Superior Court of Electoral Justice sets forth the following generic requirements (that is, those that are similar for all offices) that are briefly summed up in four: (1) Be enrolled in the Permanent Civic Register. (2) Be nominated by an organization recognized by the Electoral Judiciary that may be a party as well as an alliance, a pact, or a movement. (3) Be the result of an internal competition/election according to pre-established rules set by the political organization. (4) Meet the requirements for the office and not be ineligible for the same. Later, each office may append specific requirements with relation to age, time and place of residence, etc.

In the case of legislative offices, the type of ballot used for their candidature is known as a ‘blanket list’ [‘lista sábana’], that is to say, a blocked and closed ballot (a long list of names of candidates in a particular order that may not be changed nor may the voter choose only some and throw out others). This generated a wave of protests in recent years, above all focused in the capital, Asunción, organized under the slogan ‘Out with Blanket Lists’ [‘Fuera Listas Sábanas’] that tried to change this election dynamic. With the Ballot Law, already approved and whose coming into effect has been delayed since 2013, this practice would come to an end.

Finally, foreigners with permanent residency in Paraguay may be executive and legislative candidates in local-municipal elections and the procedures must be the same as have been previously described, although their enrolment is done in a different registry.

### ***Paraguayan Citizens Living Abroad***

With respect to Paraguayans who are living abroad and their right to stand as candidates Resolution 32/2013 (fundamental on this subject) does not provide any type of mechanism. On its part, the National Constitution sustains, in Article 120, that ‘citizens are electors and eligible, with no restrictions other than those established in this Constitution and by law and following its amendment equates Paraguayans with citizens having residency in the country.

In this sense, it can be deduced that the regulation still has not been effectively updated and no express prohibition has been drawn up, while neither has there been a guarantee of procedures by which said participation may be made viable. Likewise, it is important to mention that for some offices, the demand for living in the district is a necessary requirement; consequently, in the case of putting into effect the right of Paraguayan citizens living abroad to stand as candidates, these requirements should also be modified or legal exceptions to them established.<sup>40</sup>

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<sup>40</sup> To give an example, in order to be governor, the candidate must be a native Paraguayan, be older than 30 years of age, and be a native of the department with residency in same of at least one year; or for five years if the candidate is not a native of the place in which s/he is running (Available in the National Constitution. Article 162. – Regarding Requirements).



### **6.1.2. Ballot Casting for Residents and Non-Residents. Praxis of the political right to vote**

The method chosen for casting the vote is the same in all cases of elections, outside as well as inside the country, and for legislative elections as executive elections at the international, national, regional, or local level.

This consists of voting in spaces especially selected for doing so, the voter going to the district that was assigned to him or her (in the case of residents, near their home and in the case of non-residents, in relation to where they inhabit and where they enrolled). This is the most-used system in the South American region, above all for citizen voters residing in the country.

In order to be able to carry out this voting system in specific locations (for example, within the country the institutions may be schools and outside of the country, consulates) Paraguay is divided into eighteen departments (seventeen correspond to the interior of the country and one to the exterior), each one of which is divided into districts. Each of these districts is divided into zones, which in turn are finally divided into venues. These venues may be divided into rural and urban depending on the area in which they are located. Within each rural and urban venue are found the polling stations where the act of voting is, in effect, carried out. To give a concrete example, in the 2013 elections, the department of Concepción was divided into nine districts of four zones, with sixteen urban venues and eleven rural, in which were recorded 597 polling stations (487 urban and 110 rural). The residents living in those areas must go to those establishments of which the TSJE has previously informed them and cast their vote there; voting in another constituency being prohibited except for specific cases of persons involved in urgent tasks or those related to the act of voting.

Non-residents must also go to their assigned polling station located in the city of the country (which may be Argentina, the United States, or Spain at present, the inclusion of Uruguay and Brazil being proposed for upcoming elections). This space shall be available in embassies or consulates and other establishments that the Electoral Judiciary will announce in advance.

## **7. Conclusions**

As did other countries in the region, Paraguay underwent changes in the body of electoral regulations and in the way of guaranteeing the exercising of political rights for the different social communities that live outside and within its territory. Its electoral system is especially challenging, inasmuch as the creation of electoral legislation is too broad and often too complex to be understood in depth. Many of its current electoral laws were incorporated in the shadow of a dictatorship lasting 35 years that profoundly affected the country, as much in its political as well as economical and social structure.

The creation of the Superior Court of Electoral Justice,<sup>41</sup> which dates from the nineties, made evaluation, publication, and control of election results at once more formal and professional as well as secure and effective. This body, not elected by means of popular vote, but which rather answers to a ‘meritocratic’ selective process, the same type that is established for the judges of the Supreme Court of Justice,<sup>42</sup> makes it an unelected political body with great power over the electoral life of the country.

To summarize what has been explained here, it could be said that Paraguayan citizens living in the country are eligible to vote upon reaching eighteen years of age in any kind of election and at all levels. Likewise, they may exercise their passive electoral rights, as long as they are not prevented by any of the specific factors and depending on the minimum age threshold required for each office (23 for the local legislative body, 25 for mayor, Deputy, or member of the departmental legislative body, 30 for running for Governor, and 35 for Senator, President, or Vice President). People with mental disabilities and persons sentenced to prison by a court may not vote nor be elected regardless. For their part, deaf-mute people who do not have other means of communicating may not stand as candidates.

Before the amendment of the Constitution, Paraguayan citizens living abroad were not able to vote from their countries of residence. Currently they may do so, although the system that has been chosen for this has been vastly criticized by immigrant communities. Immigrants, non-citizen Paraguayans, who are residents in the country may exercise their active and passive political rights only and exclusively in local elections.

The process for enrolling in the Civic Registry is, currently, automatic but previously tended to be personal (active). This created a combination of problems that were not completely resolved, given that the Law that made the process automatic is not retroactive and does not apply to the population over eighteen years of age (just as neither has it been completely implemented in the case of immigrants). The immigrant population’s right to exercise active and passive political practices at the local level is a positive aspect and one that is shared by other nearby countries.

The complete denial of political rights to sentenced prisoners depriving them of their liberty has undergone some changes in the region, Paraguay being one of the countries that upholds full restriction. (Argentina allowed prisoners to vote in 2006, following a decree signed by President Néstor Kirchner, the *Decree 1291*; Peru guaranteed the same in 2014; and Bolivia also allows prisoners to vote).

In spite of this, considering the amendment to Article 2013 of the Constitution, the side-lined proposal for unlocking the ‘blanket lists’ for legislative offices and the incorporation of automatic enrolment as the format for electoral registration, are elements that give evidence to a gradual and relative ‘improvement’ in voting conditions and in the exercising of political rights. With the purpose of continuing this tendency, the incorporation of special methods that will guarantee the representation of certain marginalized groups or communities in spaces of power, for example by reserving seats in Congress for minorities or for Paraguayans who live abroad (considering that they make up approximately 10% of the population) should be

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<sup>41</sup> For more information about the Electoral Judiciary from a comparative perspective with the region, a reading of Orozco Henríquez (1996) and Sobrado González (2006) is recommended.

<sup>42</sup> This information may be found in Article 257 of the National Constitution.

considered. Likewise, ways of supporting and encouraging integration into political life, not only as voters and constituents but as candidates, the indigenous communities, and including considering some system of preferential representation for candidates from the rural area, could be planned.

On the other hand, representation could be improved through changing the electoral formula that transforms votes into seats (for example, combine the D'Hondt system with others, such as the Hare or Niemeyer systems) or through the introduction of the two-round or runoff system in executive offices in order to gain legitimacy and, at the same time, involve the population in political practice. Additionally, it would be of great help in simulating the exercising of political rights to increase the number of polling places abroad and to consider the already-discussed registration by internet or vote by post, which could lower the state's costs and reduce complications for non-resident citizens.

It must be remarked that one of the most necessary and relevant variables in the Paraguayan case is to improve and enable more channels of communication amount electoral authorities and the population (Paraguayan, immigrant, resident, and non-resident); give that one of the greatest current problems is the widespread lack of knowledge of electoral topics (voting, type of election, compulsory nature or not, rights, duties, obligations, etc.). This fault could be clearly seen in the framework of the constitutional Referendum where the greater part of the population lacked pertinent information.

Finally, it is considered that the incorporation of procedures and regulations that achieve a more active civic participation would be of great help. The connection between representatives and represented mediated only by the act of voting every two or five years is a dynamic that tends to generate a more electorally 'passive' citizenry. The increase of election practices both in quantity and quality (issues on which to vote) would serve to impede this process. Likewise, stimulating the public's participation in political organizations of various natures would be a measure with a tendency to positive results.

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