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# REPORT ON CITIZENSHIP LAW: GUATEMALA

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**Report on Citizenship Law: Guatemala**

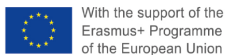
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# Report on Citizenship Law

## Guatemala

*Juan Carlos Sarazua*

*(Trans. Lucrecia Rubio Grundell)*

### 1. Introduction

As other Latin American states under construction, Guatemala was heir to the electoral practices promoted by the Constitution of Cádiz (1812). This Constitution initiated the trajectory to define the contours of citizenship in social contexts distinguished by the existence of societies with structured political hierarchies. In this sense, a central element in the Guatemalan case that made it different to the rest of Central America was the presence of a majoritarian indigenous population that had been segregated by Spanish legislation, with particular duties and rights that distinguished it from the white and mestizo populations. This condition marked the construction of citizenship. Another important factor was an enormous territorial fragmentation. Before political independence (1821), territorial unity was marked by two provincial deputies with jurisdiction over all of Central America and Chiapas. In twenty years, this unity was fragmented, eventually giving way to the formation of five independent States. All of this led to a gradual loss of control over the territory on behalf of the authority established in Guatemala City, increasingly restricting the scope of application of citizenship laws to the dimensions of contemporary Guatemala. A third element was migration to the country, which took place in a different way than in the rest of the continent. While not reaching the quotas of the Rio de la Plata or Chile, it was always the source of capital and the origin of a part of the economic elite that has had a preponderant role in public life. For this reason, even today, the Constitution and the Nationality Law specify in detail the rules for the naturalisation of foreigners, but slightly neglect the different possibilities open for those who have dual citizenship or for the inclusion of voting from abroad, given the Guatemalan population abroad, especially in the United States.

The 1985 Constitution speaks of Guatemalans and citizens. The former are those who have Guatemalan nationality, either of origin or by naturalisation. The latter are those who have reached the age of majority and have no legal impediments or criminal proceedings to elect and be elected to public office. Similarly to other cases, Guatemalans cannot be deprived of their nationality. But, in contrast, Guatemalans of origin cannot renounce their nationality, unless it is mandatory when assuming another nationality. On the other hand, those naturalised can be deprived of it based on whether they are considered a threat to the country and for breaking the law. That is, it establishes important differences between one and the other.

## 2. Historical Antecedents

The independence of Central America was obtained without war, but it involved the struggle to join the Mexican Empire (1822-1823), the failure of which forced the political elites to try to build an autonomous political project. After several vicissitudes, the federal model was accepted, for which the Constitution of the Republic of Central America was issued in 1824. It established that the territory of the Federation of Central America was made up of five States (Guatemala, El Salvador, Honduras, Nicaragua and Costa Rica) as well as the conditions for accessing citizenship. The constitutional text confirmed the elimination of slavery, decreed in 1823. It defined as citizens “all the inhabitants of the Republic, natural born or naturalised, when they are married or older than eighteen years old, provided they practice a useful profession or have known means of subsistence”<sup>1</sup>. On its part, the constitution of the State of Guatemala, issued in 1825, ratified the principle of *ius soli* as the basis of citizenship because, at the same time, the conception of citizenship defended by the authorities during that decade was also based on a territorial criterion. Some authors have even acknowledged that there was some consensus among the intellectuals of the time on the recognition of a civic citizenship that would gradually integrate all inhabitants<sup>2</sup>. That is to say, that birth in the territory of the Federation and the State was the criterion with more weight at the time in the definition of citizenship, provided that means of subsistence were guaranteed. This last condition referred to the possible exclusion of those who had relations of dependency with others (peons, peasants or indigenous people) and who did not prove their economic autonomy. The role of territory as the axis of nationality is understandable in cases such as the one being discussed, because it represented the fastest way of integrating a political body that would serve as the supporting base of the State. Both constitutional texts also recognised that those born abroad to Central American (or Guatemalan) parents were considered *natural* provided that their parents were on an official mission or that their absence from the territory did not exceed five years. These sought to avoid the depopulation of the Federal Republic and the State. It is also the origin of the fact that the current constitutional order of Guatemala maintains the transmission of nationality without having to be born in the territory. That is to say, from the beginning these two elements were the fundamental basis of the definition of nationality of origin<sup>3</sup>.

Regarding foreigners, both texts established the necessary guidelines to be recognised as naturalised. To this end, *nature cards* were granted for: a) relevant services, b) scientific or artistic knowledge not available in the republic, c) settlement of at least five years, d) residence for three years for those who settled with the whole family, e) those who contracted marriage in the republic and f) those who acquired

<sup>1</sup> Constitución Federal de la República de Centro América, 1824, Art. 14.

<sup>2</sup> Constitución del Estado de Guatemala, 1825, art. 46. Teresa García Giraldez “Nación cívica, nación étnica en el pensamiento político centroamericano” en Casaús Arzú, Marta y Peláez Almengor, Oscar (Comps) *Historia intelectual de Guatemala*. Guatemala: CEUR/UAM/AECI, 2001, pp. 51-117.

<sup>3</sup> Constitución Federal..., Art. 16.

real estate of a certain size. These conditions were compounded by the fact that the status of *naturalised* was granted to foreigners, including Spaniards, who had sworn independence and those from any of the republics of America that wanted to settle in the territory<sup>4</sup>. Although federal constitutional regulations established a broad base for the inclusion of foreigners into the new republic. Noteworthy, in practice, there were several cases in which foreigners resorted to consular protection, when available, in order to protect their pecuniary interests, affected in many cases by wars and forced loans. In turn, *Spaniards* faced exile for their political opinions and a lack of diplomatic representation<sup>5</sup>.

The so-called Conservative Period (1839-1871) under the aegis of the caudillo Rafael Carrera, marked the end of the Federation of Central America and the issuance of the *Law of Guarantees* or *Declaration of the Rights of the State and its inhabitants* in 1839. With the objective of guaranteeing territorial unity it recovered the *Laws of the Indies*, as a calculated form of segregation, guaranteeing autonomous spaces for the indigenous communities in exchange for their loyalty to the State and to avoid the propagation of indigenous discontent as in Yucatan and Chiapas. Undoubtedly, the new legislation did not avoid contradictions between the new economic projects that had begun, but it did allow for the segregation of indigenous populations to be integrated into the political dynamic. In this sense, the Law of Guarantees of December 5<sup>th</sup>, 1839, made it clear that the State of Guatemala was “sovereign, free and independent”. This is why it was composed of all the populations contained within the limits recognised by the new Assembly. Only in this way could the separation of the Los Altos region (the current western part of Guatemala) be avoided. On the other hand, it claimed the protection of the Catholic faith to distinguish itself from the discontent provoked during the previous liberal government<sup>6</sup>. With regard to citizenship, it should be noted that it considered as Guatemalan “all those born in the State or naturalised in it according to established rules or those to be established by the Constitution”<sup>7</sup>. For its part, it defined citizenship as a “right to which prerogatives and obligations are attached, which only those with the qualities required by the Constitution can enjoy”<sup>8</sup>. At first sight, it seems that it allowed citizenship more broadly. But in the following article it stated that “although all men have equal rights by nature, their condition in society is not the same, which depends on circumstances *that are not to be levelled by any human power*”. As will be discussed later, the Law of Guarantees accepted the recreation of the Indian republics in a republican context, with the aim of segregating the majoritarian indigenous population from the exercise of citizenship, cutting off the possibility of a greater rebellion, as had happened in 1837-1839. With this, the support of important indigenous sectors in Los Altos was guaranteed, so as to safeguard territorial unity.

After years of little political stability, resignations and exiles, the caudillo Rafael Carrera was able to forge a much stronger alliance with the country’s

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<sup>4</sup> Constitución Federal..., Art. 15, 17-19. Todas estas condiciones fueron ratificadas por la Constitución estatal de 1825.

<sup>5</sup> Jordana Dym “Citizen of which republic? Foreigners and the construction of national citizenship in Central America, 1823-1845”, *The Americas*, 64 (4), april 2008, 477-510.

<sup>6</sup> Declaración de los Derechos del Estado y sus Habitantes, 1839, Sección 1.

<sup>7</sup> Se debe anotar que los integrantes de la Asamblea en 1839 que emitió esta Declaración de los Derechos del Estado y sus Habitantes, esperaban emitir en un tiempo corto un texto constitucional. Se estableció un proyecto en 1845, pero nunca se aprobó.

<sup>8</sup> Declaración de los Derechos del Estado y sus Habitantes, Sección 2, art. 1 y 2.

economic elite, as well as with foreign merchants. This achievement would be expressed in the issuance, at last, of a constitutional text in 1851 called the *Constitutive Act*. In this text Guatemalans were defined as a) all those born in the Republic, b) those who were in Guatemala at the time of independence, c) those born abroad to Guatemalan parents, d) the natives of other Central American States settled in the country and e) naturalised foreigners. In the case of the latter, they could be considered naturalised if they accepted the official appointment as such. For its part, the Constitutive Act established as citizens “Guatemalans who have a profession, trade or property that provides them with means to subsist independently”<sup>9</sup>. Although it is true that the constitutional text was quite general, new criteria excluding indigenous populations were established in secondary laws, as happened in November 1851<sup>10</sup>. Other criteria for the loss of citizenship status were to take arms against the authorities, or for a sentence of corporal punishment. It could also be suspended in the case of a criminal process, for fraudulent debts, “notoriously flawed” behaviour and for judicial interdiction. This constitutional regulation was in force until 1871, when the coffee-growing liberals of Los Altos reached power.

The political changes that took place after 1871 built the political bases of the Modern State in Guatemala because, despite some modifications, the Constitution issued in 1879 was in force until 1944. This marked an almost seventy year period in which the landscape was transformed in order to cultivate coffee, a fact that was at the centre of considerations regarding citizenship, as will be discussed later. The Constitution divided Guatemalans into the natural and the naturalised. The first were people born in the country regardless of the father’s nationality (except in the case of diplomats); “the children of a Guatemalan father or the illegitimate children of a Guatemalan mother, born abroad from the moment they reside in the republic, and even without this condition, when, according to the laws of the country of birth, they have the right to choose their nationality and opt for the Guatemalan”. Those who came from Central America and lived in the country were also seen as natural<sup>11</sup>. On the other hand, “Hispanic Americans” who had their residence in the country were considered naturalised Guatemalans, as long as they did not retain their nationality of origin, and those foreigners who had or obtained the nature card and, finally, foreigners who accepted an official position which required the enjoyment of citizenship were considered naturalised. For its part, Guatemalans “over 21 years old and who have income, trade, industry or a profession that provides them with means of subsistence” were citizens. With this it repeated a condition that was already in the federal and state constitutions of the 1820s. To the above, the new constitution added “all those who belong to the army being over 18 years old”. With this last condition, the Government of Justo Rufino Barrios confirmed a central element of social mobility: the role of the armed forces as a means of accessing citizenship. The Conservative Government had not recognised this fact constitutionally, although in practice military officers, both frontline and reserve, had several privileges. But the difference was largely territorial. The conservatives relied mostly, though not exclusively, on military units from the east and the centre. In contrast, the Liberals after 1871 had Los Altos as their military base, where the heads of state between 1873 and 1920 came from, as well as the main military leaders<sup>12</sup>. The power struggles

<sup>9</sup> Acta Constitutiva de la República de Guatemala, 1851, art. 1.

<sup>10</sup> Hipótesis principal del estudio de Arturo Taracena et. al.

<sup>11</sup> Ley Constitutiva de la República de Guatemala, 1879, art. 4-6.

<sup>12</sup> Ley Constitutiva de la República de Guatemala, art. 8 y 10.

amongst liberals themselves forced the reform of this condition in 1885. Thus, Article 8 eliminated the access to citizenship for the simple fact of belonging to the army. This same article emphasised that citizenship could be accessed if one knew how “to read and write, or had income or industry, trade or a profession that provided with means of subsistence”. That is, faced with the practice of military caudillismo, the opportunity was opened to people who could read and who did not necessarily belong to the armed forces<sup>13</sup>.

## 2.1. Women, indigenous populations and others

From 1823, with the formation of the Federal Republic, the political elites doubted the way to proceed with regards to the indigenous, mestizo, mulatto and black population within the framework of a community of citizens, with shared rights and obligations that were supposed to be equal. As heirs of colonial hierarchies, each of these population groups had been differentiated by means of colonial regulations. The challenge, then, was to integrate all within citizenship but this step implied the renunciation of ascribing privileges and different obligations to each. Given the majoritarian presence of the indigenous population, the elites in Guatemala oscillated over the years between their assimilation and segregation with regards to citizenship rights. In a study focusing on the way the state and the political elites approached the construction of the Guatemalan nation over almost two centuries (1824-1985), it became apparent that the inclusion of the indigenous population within citizenship rights was part of an intense debate. There were steps directed towards their integration into the body of citizens and also steps to take them backwards in order to guarantee their segregation or differential treatment. One of the fundamental conclusions was that the state used secondary regulations to consolidate differentiated treatment towards the indigenous people, as forced labour on farms, transport and road construction. This was fundamental for the economic project of “modernisation” between the late nineteenth and the whole of the twentieth century. This means that although the different constitutions often opened up citizenship rights to a larger part of the population with the passing of time, secondary legislation differentiated the treatment of indigenous people and was the basis for their exclusion from citizenship rights. Yet the gradual opening marked by the constitutions was quickly used by the mestizo and mulatto population to take ownership of the citizenship rights they guaranteed. This was possible because of their role in the military, their access to education, their denunciations of land, but above all because of their proper use of the Castilian language. This differentiating experience was particularly marked in the region of Los Altos (current West of the Republic), where most coffee farmers and militaries in power came from after 1871. At the same time, this was fuelled by widespread racism on behalf of foreign coffee growers, mostly Germans but not exclusively. Hence the conception of the country divided into Ladinos and indigenous populations spread with the formation of the oligarchic state (1871-1944). Secondary legislation that helped create this segregation with regards to citizenship included municipal regulations (1824) and forced labour ones (1830, 1877, 1893, 1894 and 1934), amongst others<sup>14</sup>. As expressed in a statement from a political Club in the

<sup>13</sup> Reformas de la Constitución de la República, 1885.

<sup>14</sup> Arturo Taracena et al. *Etnicidad, estado y nación en Guatemala, 1808-1944*, Antigua Guatemala: CIRMA, 2002 y Arturo Taracena, *Invención criollas, sueño ladino, pesadilla indígena: Los Altos de región a Estado, 1750-1871*, Antigua Guatemala: CIRMA, 2000. Matilde Gonzalez-Izas, *Territorio, actores armados y formación del Estado*, Guatemala: URL, 2014.



north of the country in 1920, headed by one of the most active indigenous leaders in the region: “We are the ones who must demand from the August national congress the rights that belong to us (...) During its ninety years of independence, the AUTHORITIES have refused to recognise the citizenship and freedom of the Indian (...) It is the duty of the authorities of the republic to ensure that its inhabitants enjoy their rights, which are: freedom, equality and security of the person, honour and property”<sup>15</sup>.

Access to citizenship on behalf of women and enslaved people also faced serious problems. Since the 1820s, women were not considered citizens in the same way as their male parents, siblings or children. Like the rest of Latin America, women were not part of the Assemblies, ministries or any other high position within state institutions. Almost always political representation was held by the head of the family. Although much remains to be investigated regarding the Guatemalan case, it is known that a serious attempt to grant women full access to citizenship occurred in 1921, with the attempt to reform the constitution at a time when the country was still suffering the legacies of a long dictatorship (1898-1920), the crisis left by earthquakes and epidemics (1917-1919) and was at the outset of an important social upheaval in which the first worker organisations participated that were not co-opted by the government in power. However, this proposal did not succeed. This constitutional reform, which did not mature given the political changes of the moment, did not include feminine suffrage because when voted it was surpassed by a single vote. It was with the 1944 constitution that female suffrage was achieved<sup>16</sup>.

### 2.3. Immigration

The members of the National Constituent Assembly in 1823, and the legislative bodies that followed, established guidelines to promote immigration, especially the type seen as most appropriate for the promotion of agriculture and the occupation of territories scantily controlled in the vicinity of Lake Izabal and the Caribbean coast. This was compounded by the danger that the scant control exerted over the whole north represented, given the fear of losing the district of Flores, today Petén, to Belizean or Yucatecan hands. This was reflected in the issuance of the decree on immigration of January 22<sup>nd</sup>, 1824. The latter guaranteed several privileges for foreigners who decided to move to Guatemala and Central America. Foreigners who already lived in the country or who had arrived recently, had the right to request on behalf of local authorities (municipalities) the status of neighbour. This was done by registering in the respective registers and “from the date of this entry you will be considered a neighbour, and the time indicated by the constitution of these states will begin, to enjoy citizenship rights within them, enjoying of course, all others inherent to naturalisation and without prejudice of being able to attain the special citizenship card by the means detailed in the fundamental law”<sup>17</sup>. The right guaranteed by this law empowered the new neighbours to obtain land. With these rights, legislators

<sup>15</sup> Greg Grandin *Panzós la última masacre colonial: Latinoamérica en la Guerra Fría*. Guatemala: AVANCSO. 2007, p. 45.

<sup>16</sup> Jorge Mario García Laguardia. *Constituciones Iberoamericanas: Guatemala, México*: IIJ-UNAM, 2006.

<http://biblio.juridicas.unam.mx/libros/5/2210/4.pdf>

<http://biblio.juridicas.unam.mx/libros/libro.htm?l=2210> Consultado, 10 de enero de 2014.

<sup>17</sup> Manuel Pineda de Montt, *Recopilación de las leyes de Guatemala*, T. I, Guatemala: Imprenta La Paz, Guatemala, 1868, pp. 815-816.

sought to promote the inclusion of European populations because, given the vision of development they held, they saw European day labourers as more apt for the “development” of agriculture. In 1829 an order of the Assembly established that foreigners with a nature card had the same rights as a native in terms of national taxation, as was the case with tobaccoists<sup>18</sup>. In a serious attempt to attract settlers, the formation of colonial companies was authorized in much of eastern and northern Guatemala in 1834. Tax exemptions and rights over land and production were to increase the population. Novel attempts in 1842 did not yield the expected results. The intention to populate the Caribbean coast was only possible with the arrival of the United Fruit Company at the end of the nineteenth century, which fostered the migration of workers from the entire Caribbean basin<sup>19</sup>.

During the 1860s, two connected phenomena took place. The first was the beginning of the coffee boom in the country, a factor that completely transformed the country in just a few decades. The other, was the increasing arrival of foreigners with the intention of taking advantage of this new economic cycle. Colombians, Italians, Americans, but above all Germans, were incorporated into economic life. The government issued a new law on foreigners to take advantage of these newcomers. The law issued on February 29<sup>th</sup>, 1868 stipulated that new immigrants had to obey the laws of the country in order to obtain “naturalisation without the formalities that they require, substantiating the exercise of a profession, of trade or industry, and not having been convicted for some crime, and are exempted from direct contributions and military service”. This was compounded by an exemption from occupying municipal positions during ten years. In addition, for those who married a Guatemalan, these privileges were extended five years<sup>20</sup>. At the beginning of the twentieth century, the presence of foreigners in the country had increased to such an extent that they occupied central positions in the economy, as was the case with several German merchants and landowners, who had acquired a pre-eminent position in coffee and finance. The Immigration Act of 1909 made it clear that foreigners were divided into three categories. The first was formed by those who arrived without a contract but with the real intention of settling in the country. The second category was those hired by companies or individuals, which was quite common given the growing number of German coffee-growing farms or American companies. And the third, were those hired by the Government. This same law made it clear that only foreigners who “prove their morals and aptitudes” would be accepted (Article 1.). For this reason, the law affirmed that, beyond obeying the law and Guatemalan authorities, immigrants’ responsibility was also to comply with the commercial contracts that had brought them to the country and under no circumstances could they use the diplomatic channel for conflict resolutions. In exchange for this, the law guaranteed them, depending on the case in hand, land, the preservation of their previous nationality and the exemption from council or military positions (Art. III, VII, XI). At the same time, it prohibited immigration of people of the “Mongol race”, of criminals convicted for common crimes and people over 60 (Article IV). Chinese immigration, as in other

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<sup>18</sup> Pineda de Montt, *Recopilación...*p. 820.

<sup>19</sup> William Griffith *Empires in the Wilderness: Foreign colonization and development in Guatemala, 1834-1844* University of North Carolina Press, 1965 y Steven Gillick, “Life and Labor in a Banana Enclave: Bananeros, The United Fruit Company, and the Limits of Trade Unionism in Guatemala, 1906-1931” Phd Diss...; Tulane University, 1994.

<sup>20</sup> Pineda, p. 841-42. Ver también Regina Wagner, *Los alemanes en Guatemala, 1828-1944*, Guatemala: Asociación Alejandro Von Humboldt, 1991.

countries of the American continent, was always seen as pernicious for the interests of the country. Because of this, it was the object of ridicule and of attempts to stop it in the following decades (Barreno, 2004).

The new legislation on foreigners and migration issued in 1936 during the dictatorship of Jorge Ubico (1931-1944) was part of a process of institutional consolidation marked by the concentration of power in favour of Ubico and the labour regulations inclined to meet the requirements of German landowners. While during the first years of the 1930s the new government was seen as effective in dealing with the consequences of the 1929 crisis, dictatorial tendencies became increasingly visible. This was the case of the municipal law of 1935, in which municipal autonomy was sacrificed by means of the appointment of mayors by the Executive. Those dissatisfied with the government, sometimes former Ubico supporters, tried unsuccessfully to stop his re-election so as to avoid a new dictatorship, as was also the case of the attempt against the government in 1934. At the same time, the revolt and massacre that took place in the West of El Salvador in 1932 inclined Jorge Ubico to militarise the government even more and to watch over the population in general in order to avoid political risks.

The other central element to understand the course of action established in the new Immigration Law was the attempt to identify and supervise the population in general by means of the registration of all inhabitants in the country. The Civil Identity Act of August 5<sup>th</sup>, 1931, required the registration of “Guatemalans and foreigners” in the Civil Registry of each municipality. This was combined with a change in the military recruitment process in order to promote a more precise control of inhabitants and foreigners. The specific case of the Immigration Act of 1936 reproduces some principles already established in other regulations on the rights of foreigners, classifying them as domiciled and transient, the classification applied to immigrants (Article 8). On the other hand, it defines as foreign those born outside the territory to non-Guatemalan parents, to a foreigner and a Guatemalan mother, and those born to Guatemalan parents who have lost their nationality, etc. (Article 1). Regarding the latter case, it is noteworthy that it could be applied to all expatriates who had to leave the country for political reasons. On the other hand, the law reiterated that those born in any other Central American State could be considered as natural Guatemalans if they expressed their decision before the authorities. It should also be noted that explicit prohibitions to enter Guatemala, for “ethnic reasons”, included those “individuals of yellow or Mongol race”, those of “black race”, gypsies, the eloped or convicted and those expelled from other countries that “profess communist or anarchist ideas” (Article 10).

### 3. Contemporary Citizenship Regime

In Guatemala, the forms of acquisition, loss or suspension of citizenship are based on the 1985 Constitution and the 1966 Nationality Law (with some reforms).

#### 3.1. Modes of Acquisition of Citizenship

In Guatemalan legislation, the two main forms of acquiring nationality of origin are well defined: offspring and place of birth. The combination of both establishes a mixed model because both *ius soli* and *ius sanguinis* give access to nationality. In this sense, the Constitution establishes, first, the nationality of origin of “those born in the territory of the Republic”, compounded by those born in Guatemalan ships and aircrafts. That is, it recognises that *ius solis* is transmitted by any vehicle or transport that recognises the sovereignty of the country. One can observe here the continuity between the first Constitution of the State of 1825 and the current one. This requirement facilitates access to Guatemalan nationality for anyone born in the territory. As the Constitution does not explicitly reject it, this may include children of non-domiciled foreign parents and those of expatriates. It guarantees in a broad way the right to nationality. Guatemala thus follows a pattern that is more frequent in the American sphere as it responds to the marked interest of receiving a constant flow of migrants, as mentioned in previous sections<sup>21</sup>.

With the law, it can be affirmed that these were the intentions of the members of the National Constituent Assembly and the Congress of the Republic when issuing these legal regulations, through in practice enormous difficulties have been reported for those born on Guatemalan territory but to foreign parents in an irregular migratory status. In this case, the Constitution does establish the right of children born in Guatemalan territory to nationality. To the contrary, one of the hardest difficulties reported has been to register these children, as the law establishes that such registration has to be done with valid personal documents: identification cards (or IPR) and passports with legal stay. In the case of migrants who are going to another destination, not having this documentation prevents children born in Guatemala during their parent’s journey from enjoying the right to nationality guaranteed by the Constitution<sup>22</sup>.

In this sense, the Civil Code clearly states that residence in the country is “constituted voluntarily by residence in a place with the intention of remaining in it”, and this last condition is recognised as “the continuous residence for one year in the place. The previous presumption will cease if it is verified that residence is accidental or in another place”<sup>23</sup>. In this way, the Guatemalan Civil Code is quite broad. However, the Migration Act of 1998 established time limits for the recognition of domicile to foreigners, applicable to transient migrants. First, it recognises two categories of foreigners in the country: non-resident and resident. The former are divided into persons in transit or tourists, and the latter into temporary and

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<sup>21</sup> Vonk “Guatemala”

<sup>22</sup> Carol Girón Solórzano, “Estudio migratorio de Guatemala”, en *Estudio comparativo de la legislación y políticas migratorias en Centroamérica, México y República Dominicana*, INDECES, 20p. 299-300.

<sup>23</sup> Código Civil, art. 32 y 33.

permanent<sup>24</sup>. While it is true that these laws establish that Guatemala is governed by international human rights conventions, as analysts point out, in practice, the grey area occupied by those born in the country to migrants is maintained.

At the same time, it establishes that Guatemalans of origin can be those born on foreign soil but to a Guatemalan father or mother. It clarifies that no natural Guatemalan or Guatemalan of origin may be deprived of his or her nationality. In this sense, the Constitution defends that under no arbitrary act, can Guatemalans of origin be deprived of the right<sup>25</sup>. As for *ius sanguinis*, the constitutional text allows nationality to be recognised to those born abroad but who receive the nationality thanks to the recognition of their parents as Guatemalans. If one takes into account that an important part of the Guatemalan population has migrated to the United States, this article guarantees that the children of this sector of the population do not to lose their nationality. However, in the long term, this constitutional guarantee does not assure access to political rights while on foreign territory, as shown by the debate on the voting rights of Guatemalans in the United States, whose organisations have requested the right to vote from abroad as other countries do, such as Ecuador. This measure has not been accomplished by any government, although it is common for presidential candidates to meet with Guatemalan citizens in that country to meet this demand. It is the best example of the difficulties in dealing with conflicts caused by the scant attention that is paid to the consequences of migration.

For its part, the 1985 Constitution maintains the tradition of previous constitutional documents in establishing a strong link between the States of the former Federation of Central America, as it considers Guatemalans of origin those coming from these States that domicile in the country with the firm intention of settling there. This is realised in practice by means of the respective communication of the interested parties with the authorities. Although this measure is not reciprocal with all the Central American States, it is an example of the connection that has always been considered to exist between the political communities of the Isthmus. This is compounded by the possibility of them maintaining their nationality of origin. M. Vonk notes that this would be an important example for other communities of States, such as the European Union, where the time of residence necessary to opt for nationality is registered in each Member State separately, not as a common space<sup>26</sup>. Foreigners can opt to become naturalised if they have been domiciled in the country for a period of at least five years prior to applying, without breaks that add up to more than one year or six consecutive months. Foreigners who have ten years of residence, even in different periods, can also apply for naturalisation. The objective of this condition is to ensure that nationality is given to people with roots and work in the country, that have created lasting ties within Guatemalan society and that have respected the country's legal order. This window has been used by some migrants and is part of the historical tendency of constitutional norms to favour immigration.

On the other hand, there are other important cases in which foreigners with a period of residence of at least two years, with a total absence of no less than two

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<sup>24</sup> Ley de Migración, art. 12.

<sup>25</sup> Como lo reconoce Claudia de la Roca "Problemática jurídica en relación al derecho de la nacionalidad de origen en nuestra legislación" Tesis de licenciatura, Universidad Francisco Marroquín, 1996. Disponible en <http://www.tesis.ufm.edu.gt/pdf/2162.pdf>

<sup>26</sup> Constitución de la República de Guatemala, 1985, Art. 144-145; Vonk, "Guatemala". 231.

months, and who have shown “good conduct and to have a profession, art, trade or other decorous way of living” are granted access to nationalisation: a) if they provide an important service to Guatemala in different spheres (economic, social or cultural). Based on a shorter period of residence, this condition allows foreigners who have played an important role because of their skills, knowledge and actions to quickly access naturalisation. Like the other conditions for naturalisation, this requirement is favourable to selective immigration. b) If they can prove they have resided three years in another Central American country prior to applying. This is another condition that reinforces the links maintained with the rest of the States of the Isthmus and that has been present in different constitutions. c) If they have “scientific, artistic or philanthropic merit”. In the same way as it was done at the end of the nineteenth century, in the decade between 1944 and 1954, and in more recent years, the arrival of qualified people (engineers, artists and teachers) helped create institutions, centres of diffusion and university professionalisation. In this way, the circulation of people with skills beneficial for the country is facilitated. And, d) if they are stateless or of an indeterminate nationality. This last condition is very particular to Guatemala and to a few cases in the Western Hemisphere, as it allows people who have been left without a nationality to have direct access to legal recognition<sup>27</sup>. Another important case is that of Guatemalans who have had to renounce to their nationality of origin for a foreign one because the laws of that country require so. Only in such case, can a Guatemalan renounce to his or her nationality, as “once acquired it is inalienable”. As soon as they return to the country and are domiciled, they can recover their nationality<sup>28</sup>.

With regard to foreigners who have settled in Guatemala, the application for naturalisation must follow the respective procedure. It starts with a request to the departmental governor, with the respective documentation that guarantees the requirements established by law, among them, proficiency in Spanish if it is not their mother tongue. Once the official has verified that the documentation meets the requirements established in the law, it passes to the Ministry of Foreign Affairs and the Public Ministry. After the approval of these instances, the file can be passed to the President of the Republic, who decides the issuance of the respective agreement recognising the nationality of the applicant<sup>29</sup>.

### 3.2. Modes of Loss of Citizenship

The Constitution clearly states that nationality cannot be denied to any Guatemalan, which serves as a shield to prevent people from being denied a right recognised by international conventions. For its part, it also establishes that Guatemalans cannot renounce to their nationality, except when nationalised in another country whose legislation establishes an obligation to withdraw<sup>30</sup>. In the case of naturalised Guatemalans, the Nationality Law establishes that any person who has been naturalised by relying on false documents is subject to losing the acquired right. This implies the possibility of becoming stateless, a situation that is condemned by international law<sup>31</sup>. On the other hand, naturalisation rights may also be revoked in

<sup>27</sup> Ley de Nacionalidad, 1966, art. 33-34 y Vonk, “Guatemala”.

<sup>28</sup> Nacionalidad, art. 3.

<sup>29</sup> Ley de Nacionalidad, 1966, art. 34-35.

<sup>30</sup> Ley Nacionalidad, art. 3.

<sup>31</sup> Vonk. “Guatemala”. Ley de Nacionalidad, art. 22.

cases where the naturalised Guatemalan: a) takes part in “activities against the internal or external security of the State”, without a judicial process being necessary. That is, naturalisation can be revoked without the need for a nullity statement on behalf of a judge. b) invokes “foreign sovereignty over Guatemala”, as in the case of dual citizenship. In such case, the State does not admit another sovereignty for naturalised Guatemalans. c) refuses to defend the country from threats or does not follow his or her citizenship duties. This is a central fact as the history of the second half of the twentieth century was marked by the Internal Armed Conflict (1960-1996). With this measure, the fidelity of naturalised Guatemalans was guaranteed, although it has its roots in the beginnings of its republican history. d) if the person has a serious criminal record before naturalisation that is not reported during the naturalisation application. e) for defects in the marriage process with which he or she got the nationality<sup>32</sup>. The loss of nationality for naturalised people means that they can no longer apply for it, except for those who demonstrate a justified absence before the authorities or according to international human rights agreements<sup>33</sup>.

### **3.3. Differences among naturalised Guatemalans and those of origin**

The 1985 Constitution establishes some important differences between the Guatemalans of origin and those who have had access to the nationality through other channels established in the law. Because of the fear of insecurity in the border areas, the Constituent Assembly established that only Guatemalans of origin or from “societies with the same quality” could be landowners in the fringes near the border, a strip with a limit of fifteen kilometres. At the beginning of the twentieth century there was a serious conflict on the northern border with Honduras that involved one of the banana companies which had territorial rights on both sides of the border. The condition described in the article of the Constitution seeks to prevent such events from recurring. But on the issue of political rights, the Constitution establishes that only Guatemalans of origin have the right to apply for the positions of deputies, president, vice-president, magistrate (Supreme Court of Justice and the Constitutional Court), judges and military officers. In the latter case, the Constitution adds two important limitations. The first is that the Guatemalan of origin that opts to be a military officer cannot have solicited “a foreign nationality at any time”. In addition, members of the military and security forces cannot vote. Another differentiating element is the Agreement established between Guatemala and Spain in 1961<sup>34</sup>.

### **3.4. Double Nationality Treaty with Spain**

In 1961 the governments of Spain and Guatemala agreed to recognise the right of their citizens to accede to the nationality of the counterpart. That is, they agreed to respect the right of their nationals to decide when transferring their residence to one of the signatory parties. For this, the “Nationality Agreement” between both States was reached. It established that thanks to the “deep spiritual and material ties” that existed between Guatemala and Spain, Guatemalans and Spaniards were authorised “by birth”<sup>35</sup> to acquire Spanish or Guatemalan nationality by the “sole fact of establishing their residence in Spain or Guatemala”. This article clarifies the

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<sup>32</sup> Ley Nacionalidad, Art. 56.

<sup>33</sup> Ibid, art. 53 y 58.

<sup>34</sup> Constitución Política 1985, art. 123, 162, 185, 207, 247 y 248.

<sup>35</sup> Incluyó a la nacionalidad por filiación.

possibility of accessing Spanish nationality for Guatemalans who move to the Peninsula, as well as Spaniards living in Guatemala, both cases thanks to the respective registry. The agreement established reciprocity in cases where a national acquires the nationality of the counterpart and then returns to its country of origin. In that case, he or she could recover their original nationality. The beneficiaries of this agreement could enter the other State without a visa, only the passport would be requested<sup>36</sup>.

#### 4. Contemporary debates

The creation of legal regulations on dual nationality in Guatemala has its gaps. On the one hand, it recognises dual citizenship for Central American cases, but does not regulate this condition in all its aspects. It accepts for example that Guatemalans with double passports can leave or enter the country with any available document. That is, it recognises the existence of such condition. But it does not specify other possible conflicts, leaving in the air solutions to other situations such as voting abroad<sup>37</sup>. Above all, given the huge number of Guatemalans residing in the United States who cannot travel to the country to vote. In this sense, the Supreme Electoral Tribunal only recognises the districts located in the country, thus denying them the opportunity to vote, a right that is exercised in other countries. According to some estimates of the United States Census for 2010, it was estimated that there were 1,044,209 people in the country who identified themselves as Guatemalan, representing 2.1% of the total number of Hispanics or Latinos. That is, the sixth largest Latin group<sup>38</sup>. Of the binomials that participated in the last elections of September 6<sup>th</sup>, 2015, only 3 of 14 agreed to meet with Guatemalan migrant organisations in the United States to discuss the possibility of reforming the Electoral and Political Parties Law in order to allow voting from afar. It is a struggle that has been going on for many years, but the different governments have not wanted to make an effort in this sense despite the fact that remittances from the United States are equivalent to 10% of the GDP<sup>39</sup>.

Another debate concerning citizenship regards the construction of strong institutions accompanied by internal democratisation, a dilemma that goes beyond the periodical exercise of elections, having to do with the form of citizen participation before and during the electoral process. The best example is with local elections, as happens in the Development Councils/Municipalities. The exacerbation occurred in the 1990s as a result of the decentralisation of the State, a process that made them both receive more decisional space and allocation of funds. With this, the election of

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<sup>36</sup> Convenio, 1961.

<sup>37</sup> Lourdes Lima Conde, “Análisis jurídico y doctrinario del uso al derecho de la doble nacionalidad americana-guatemalteca en forma automática de los migrantes guatemaltecos nacionalizados americanos” Tesis licenciatura, Universidad de San Carlos de Guatemala, 2009, 62-80. Disponible en [http://biblioteca.usac.edu.gt/tesis/04/04\\_8172.pdf](http://biblioteca.usac.edu.gt/tesis/04/04_8172.pdf)

<sup>38</sup> Rosa Tock “El voto Guatemalteco en Estados Unidos, *Plaza Pública*, 3 de enero de 2012, disponible en <http://www.plazapublica.com.gt/content/el-voto-guatemalteco-en-estados-unidos>

<sup>39</sup> Arecey Martínez “No Votamos, pero Sí Contamos: el voto de los migrantes”, *Plaza Pública*, 26 de septiembre de 2015. Disponible en <http://www.plazapublica.com.gt/content/no-votamos-pero-si-contamos-el-voto-de-los-migrantes>



mayors is perhaps the most conflictive arena in the whole country, since the group that access local power can distribute resources discretionally in a much more extensive manner. And one of the defects of several electoral processes has been to bring groups outside the municipality to vote for a candidate. This defect was based on the fact that municipal bodies were in charge of the Citizen Registry and issuance of identity documents. Although the law for the issuance of identity document has been modified, it remains an important defect that affects voting.

## 5. Conclusions

Similar to other Latin America states, the republican system in Guatemala (and Central America) relied on the concept of *ius soli* to guarantee rights as citizens for those born in the territory. This condition was also the basis of the incipient Central American and Guatemalan nationalism, that is, territory as part of the nationalist imaginary. The issuance of state and federal constitutions (1824-1825) thus marked the first stages of public life. As for the foreigners who came to Guatemala during the years of the Federation (1824-1839), they managed to find a space within legislation by using the opportunity to become “neighbours, as a way of gaining local political influence, as the study by Jordana Dym (2008) suggests. However, in the same way, many of these foreigners maintained the inaccuracy of their citizenship ascription to take advantage of the protection provided by the first foreign consuls, in order to avoid forced loans or the requirement of resources.

From a long-term perspective, it becomes visible that the principles of *ius solis* and *ius sanguinis* have been a part of the mixed model that defines Guatemala today. To reach this point, the last stages of the nineteenth century, with the formation of the liberal model, left their mark on this trajectory. Throughout the nineteenth century, governments imposed limitations on constitutional texts and other laws to reduce access to citizenship. Examples like that of the military between 1871 and 1885 show this situation. Women, like other displaced sectors of the Guatemalan population, were not recognised as citizens during most of the Republican period. It is in 1944 that women acquired the right to vote.

For this reason, the constitutional text of 1985 is crucial because it broadened the recognition of citizenship rights generally. If we pay attention to what the text says, it differs from other constitutions in that it generalises access to citizenship. However, as other authors have established, the foundations of the Constitution also allow for guardianship, but in this case dressed in citizenship language coated in the “protection” of indigenous populations.

The great challenge of citizenship in Guatemala is to meet the requirements established by migration. On the one hand, population passing through Guatemala faces serious problems because it does not guarantee minimum rights for those who pass through its territory. As mentioned in the text, this is by the difficulties for registering births. On the other hand, the non-acceptance of the exercise of political rights for Guatemalans who are outside the territory, for the most part in the United States, is a clear sign of the contradiction between the law (guarantee of nationality

and that Guatemalans do not they can lose it) and the little interest in voting from abroad. Finally, each one of these topics constitutes a new research agenda to cover these issues which are a pending task, unlike other cases in Latin America.

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