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REPORT ON CITIZENSHIP LAW: BOLIVIA

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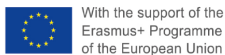
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Report on Citizenship Law

Bolivia

Maria Lorena Leiva Salinas

(Trans. Lucrecia Rubio Grundell)

1. Introduction

The concept of citizenship in Bolivia emerged in relation to the modern state. It entailed a qualitative shift in terms of civil society's conquest of, and participation in, public spaces and areas of decision-making affecting the political community. In addition, citizenship acted as a control mechanism and a way to curb the arbitrariness of the state. Citizenship developed alongside the liberal state, as the institution in charge of safeguarding rights and responsibilities. It became the basis of the legal and moral relationship between individuals and the state.

From a historical perspective, the notion of citizenship reveals the currency of a set of individual rights that were progressively conquered in a long history of social struggles and conflicts. Marshall and Bottomore¹ establish a sequence, with the conquest of civil rights first, political rights later, and then social ones, also called second generation rights. However, given the context, characteristics and dynamics of particular social formations, these also assumed their own temporality and scope.

Bolivia became an independent state in 1825 and promulgated its first Magna Carta a year later. Since the first constitution, Bolivia distinguished between nationality and citizenship. From this first regulation we see that nationality can be acquired by birth *ius soli* and *ius sanguinis*, and by naturalisation. Nationality is a right that every person in Bolivian territory has, and which past constitutions also guaranteed. Citizenship is defined as the right to be eligible for and hold public office, as well as being able to elect state representatives.

We will see that Bolivia has experienced many reforms, which were often inappropriate. The issues of nationality and citizenship were not properly taken care of by governmental authorities. The New Constitution has not entailed substantial changes in terms of the structure and functional organisation of the state. These respond to the classic liberal republican model of the division and balance of powers, and of political representation based on popular sovereignty and on the election of authorities by suffrage under the principles of universality and equality before the law.

The regulation of citizenship and nationality in Bolivia does not fully reflect the complexity of social relations in the state. The relevant legislation was approved by the Constituent Assembly without much debate, and without further exploration of the underlying issues. This explains why no norms complementing the constitution have been adopted, and the dispersed regulations issued in over 200 years of independence have been maintained.²

¹ T. Marshall, y T. Bottomore. *Ciudadanía y clase social*, España: Alianza Editorial, 1998.

² "Tensiones irresueltas en torno a la ciudadanía y la interculturalidad", en: Figueroa, Consuelo (Ed.) Chile y américa latina democracias, ciudadanías y narrativas históricas, Universidad Diego Portales, RIL eds. Santiago-

2. Historical Background

Bolivia has currently gone through 18 political constitutions. Over the renditions, it has evolved in many areas, such as fiscal control and the delegation of powers, amongst others, yet in relation to nationality and the acquisition and/or loss of citizenship not many advances have been made.

The first Bolivian Constitution, adopted in 1826 – one year after the founding of the Republic – included a series of legal precepts coming from modern contractarianism that were adopted from foreign constitutional texts and mechanically incorporated into Bolivia's Magna Carta. Hence the 1826 constitution was strongly influenced by the ideas of the French Revolution and the North American Declaration of Independence, in which the inalienable rights of man were universally proclaimed.

In this way, the first constitution proclaimed Bolivia a Popular Representative Republic, and established that sovereignty resided with the people. At the time, however, large social majorities were excluded from the constitutional norm, and isolated from national political life. These groups were not considered citizens of the new state as they did not comply with the minimum constitutional requirements, such as those of an economic nature, of gender, and of literacy in Spanish.

At the time of its foundation, Bolivia had an Aymara and Quechua-speaking indigenous population of approximately 800,000 people, the number of the so-called whites or 'criollos' reached 200,000, and those typified as mestizos or 'chollos' amounted to 100,000³. The electoral body was composed of a small elite of one 'practicing citizens' per one hundred inhabitants. The electoral body met every year in provincial capitals in order to, amongst other things, prevent the inclusion of new citizens into active practice, exclude the 'undesired' ones, and choose and propose lists for the hierarchical positions.

One of the critical issues regarding citizenship that the first Bolivian constitutions dragged well into the nineteenth century was the difference that was established between 'Bolivians' and 'citizens'. Bolivians were considered to be those born on the territory, to a Bolivian mother or father who had fought for freedom in the battles of Junín and Ayacucho; while being a citizen required being Bolivian, married or over 20 years of age, knowing how to read and write, having employment, industry or professing some science or art, but without being subjected to another in domestic servitude.

While all Bolivians enjoyed the civil rights granted to citizens, they were deprived of the exercise of elections, of obtaining jobs in the State and of acceding to public office. These first constitutional versions did not speak of rights as such, but of guarantees, ensuring all Bolivians civil liberty, individual security, property, equality before the law, freedom of expression, of mobilisation, and inviolability of residence and correspondence. Finally, freedom of labour was established, and slavery abolished, together with hereditary jobs and privileges. On their part, Bolivians had the duty to submit to the Constitution and to laws, respect and obey authorities, contribute to public expenditures, sacrifice their property and their life "if the Republic so required", and safeguard public liberties. An article of the Bolivian Constitution stipulates that citizenship would be suspended, among other things, for "being a

Chile, 2013. Miradas al nuevo texto constitucional (varios autores), Vicepresidencia del Estado Plurinacional de Bolivia, Idea-Internacional, La Paz 2010

³ Herbert Pentlnad en Klein. Origenes de la Revolución Nacional Boliviana. La Paz:Ed. Juventud, s.f.

notorious drunk, gambler or beggar ... buying or selling votes in elections or disturbing their order”⁴.

Regarding political citizenship, there is from the outset a clear gap between the principles of universal and modern citizenship set out in constitutional norms and the absence of real participation on behalf of social majorities. In this way, though independence and the beginning of republican life substituted the administrative political apparatus and replaced some dominant classes with others, the previous economic and social structure of exploitation and exclusion was maintained by means of internal colonialism, which adequately defines post-republican power relations.

As a result, the symbols issued by the state as elements of national belonging or integration –key for the construction of citizenship– only reached certain and small elites, essentially miners, estate owners or those linked to commerce.

The following constitutions of 1831⁵ and 1834⁶ did not change the forms of nationality acquisition, but simply removed the benefit for those who had fought for freedom in Junín and Ayacucho. They reflect continuity in what pertains to rights. The few changes that could be found between one constitution and another responded, normally, to sectarian, political or personal interests of the groups in power, or the presidents or governments of the moment⁷.

The constitution of 1839⁸ is the first to introduce the concepts of nationality by birth or naturalisation. Those that could acquire nationality by birth were: 1° Those born on the territory of the Republic to Bolivian parents. 2° Those born outside the Republic to Bolivian parents employed in her service, or emigrated out of love for the cause of independence. 3° Those born outside the Republic, of a Bolivian father or mother, provided they expressed their desire to be domiciled in Bolivia, by registering in the National Registry. 4° Those born in the Republic, of foreign parents, provided they register in such Registry when they reach the age of twenty-one.

And the way to acquire nationality by naturalisation was: 1° Foreigners who, renouncing to their rights as foreigners, registered in the National Registry. 2° The victors of Junín and Ayacucho; and those who had fought on the territory of the Republic for its freedom and independence.

The constitution of 1843,⁹ stipulated that nationality could be obtained by birth (naturals) or by means of civil laws regulating the acquisition and loss of nationality for the ones seeking admission. The constitutional reform thus established the distinction between ‘Bolivians’ and ‘inhabitants’. While the former had to guarantee the conservation of public liberties, contribute to public expenditures, and serve and defend the Republic, the latter had simply to live subjected to the Constitution and the Law, and respect and obey authorities, constituted as mere passive recipients of state regulations. At the same time, legal rights were introduced, such as that no inhabitant could be tried for civil or criminal liabilities except by the courts designated by law.

The constitution of 1851¹⁰ is even more ambiguous, as in its second article it established in general terms that at 21 years of age, all Bolivians have the capacity to exercise

⁴ Ciro Felix Trigo. *Las Constituciones de Bolivia*, (actualizado por Jorge Abun R. 1961-2002), La Paz: Ed. Fondo Editorial de la Biblioteca y Archivo Historico de H. Congreso Nacional , Segunda Edición, 2003.

⁵ Constitución Política del Estado de 1831

⁶ Constitución Política del Estado de 1834

⁷ Trigo, *op. cit*

⁸ Constitución Política del Estado de 1839

⁹ Constitución Política del Estado de 1843

¹⁰ Constitución Política del Estado de 1851

their civil and political rights. Furthermore, that the law would establish the exceptions and the cases in which they were suspended. It does not speak at all nor distinguish between the acquisition of nationality and/or citizenship. During all these years there was no law that regulated this in a special way, hence there was a legal vacuum.

The constitution of 1851 introduced a first chapter referring to the public law of Bolivians. Unlimited individual rights, freedoms and guarantees were established therein, under the principle of equality before the law, pointing out that “the enjoyment of the guarantees and rights that this Constitution grants to every man, whatever his origin and belief, is subjected to the fulfilment of the duty: respect and obedience to the Law and constituted authorities”¹¹. What does this qualitative shift respond to?

By the middle of the century, a new historical phase had begun, characterised by the incursion of ‘caudillos’, who oriented their policies towards the popular sectors. In some cases they were leaders of popular origin like Manuel Isidoro Belzu. The beginning of the phase of political instability was marked by state coups and changes of government, called ‘barbarous caudillismo’. At the same time, structural problems persisted. While the great majority of the population lived in rural areas, and only about 120.000 people in cities, the only way to acquire certain social mobility was through migration to the latter, learning Spanish and labour integration. Yet they were denied access to political power¹².

The political constitution of the state adopted on 5 August 1861¹³ does not explicitly speak of nationality. Only article 12 highlights generally that all Men in Bolivia enjoy civil rights and that the exercise of such rights would be regulated in civil law. Article 13 speaks of the acquisition of citizenship: point one establishes as a requisite what other constitutions had previously mentioned in relation to nationality adding that “The residence of ten years matters to have acquired citizenship without prior declaration”.

The constitution of 1871¹⁴ copies what was stated in the constitution of 1861 (article 24. Item 1). Once again, by means of the constitution of 1878 the concepts are regulated and separated, establishing that one can be Bolivian by birth or naturalisation. This second one explains that those who enjoy such right are: “1. The children of a Bolivian father or mother, born in a foreign territory, by the mere fact of living in Bolivia. 2. Foreigners who, settled for one year in the Republic, declare their will to settle before of the municipality of the place where they reside. 3. Foreigners who, by privilege, obtain a charter of the Chamber of Deputies”. On this occasion we see that one could obtain citizenship by naturalisation on behalf of two Bolivian authorities, the municipality and/or the Chamber of Deputies. This procedure was new.

With regards to the previous ones, the Constitution of 1880 was the most elaborate. The latter was the result of a national convention within which the foundations of political representation were laid, remaining in force until 1938.

By the beginning of the 20th century, the demographic situation had hardly changed since the founding of the Republic: the increase was only of 500,000 inhabitants, which remained essentially rural, and 85% of the urban population was concentrated in only five cities. The economic domination scheme was modified, passing from the era of silver to that of tin; and although the political organisational logics of the elites were transformed, this was not reflected in the modification of civil and political rights.

¹¹ Trigo, op. cit.

¹² Herbert Pentland en Klein. *Orígenes de la revolución nacional boliviana*. La Paz: Ed. Juventud, 1968.

¹³ Constitución Política del Estado de 1861

¹⁴ Constitución Política del Estado de 1871

In this phase, civil society began to self-organise and express its economic and social demands, fostering significant conflicts such as strikes and peasant uprisings in defence of communal lands and against the violation of human rights on behalf of local authorities. The constitution of 1880¹⁵ established the same parameters in order to be considered Bolivian, not introducing any variation in what had been legislated by government thus far.

According to demographic data, around 1930, only between 300.000 and 400.000 persons were registered as literate, and thus qualified to become citizens, out of a total of 2,000,000 inhabitants¹⁶. The Chaco war (1932-1935), which pitted Bolivia against Paraguay, in addition to a thunderous military defeat, had important internal political consequences, as it enabled, for the first time, the encounter of Bolivians from all corners of the country who had been forcefully recruited. This gave way to what was called “the democratisation of the trenches”, which led to the development of national consciousness. The construction of the project of the Bolivian nation was embodied in the organisation of alternative political parties and expressions to those in existence, representing a broader political and symbolic universe, which questioned the domination of anti-national and colonial oligarchies. In effect, the consequences of the Chaco war and the changes that followed would create the conditions for a more active participation of society in politics and the organisation of their demands, for example, against the landowning regime and the ‘pongueaje’, which entailed servile submission to landowners without any legal defence or justice against their abuse and corporal punishment.

The constitution of 1938¹⁷ introduced new contrivances for regulating the issues of citizenship and nationality:

A) the specific mention that women who were married to a foreigner did not lose their nationality and that foreign women married to a Bolivian could acquire the Bolivian nationality as long as they resided in the country .

B) the loss of nationality which occurs in the following cases: “1) for taking arms or providing services in enemy armies during times of war and 2) For providing the same services in foreign armies, in time of civil or international war, without permission of the Government”. This is interesting, as none of the previous constitutions mention the possibility of losing nationality for any of these reasons. The loss of nationality was understood to occur when acquiring a new one and it could be recovered when returning to live in the country.

C) nationality could be acquired by foreigners who had resided in the country for three years and who had obtained the citizenship card; the word residence appears for the first time, replacing the word ‘settle’.

It is in this context of social and emancipatory changes that the constitution of 1938 was approved. This marked a watershed in memory because it expressed the new emerging ideology and entailed the end of classic constitutionalism governed by liberal individualism and private property.

In this way, social constitutionalism was introduced –or second generation rights– which translated into the inclusion of social rights and new civil and political rights, such as the right to meet and associate for different purposes that were not contrary to the security of the State, to receive instruction and teach under the supervision of the State, and the right to strike. These rights had already been established years before by other countries in the region. Along with this, the State was given social responsibilities and all types of servitude were disapproved,

¹⁵ Constitución Política del Estado de 1880

¹⁶ Klein, *op.cit.*

¹⁷ Constitución Política del Estado de 1938

establishing that no one could be forced to exercise personal labour without fair remuneration and full consent. Various constitutionalists agree that this Magna Carta is a true proclamation of human rights.

In a specific section called “Of the Peasantry”, the state, for the first time, “recognises and guarantees the legal existence of indigenous communities”, recognising them a right to their own legislation and to be instructed in integral indigenous schools. However, these advances, albeit significant, were not expressed in the rest of the constitution, which probably reflected the national situation, in which, as pointed out by Zavaleta, they had only a sporadic presence within the framework of the state¹⁸. It was in the Constituent Assembly of 1938, when, for the first time, they participated alongside oligarchic and elitist sectors, veterans of war and representatives of the workers, trade unions and left-wing intellectuals.

There were two very close consecutive constitutional reforms, one on 24 November 1945¹⁹ and the second on 26 November 1947²⁰. The first did not change what had been regulated in terms of acquiring nationality, and even maintained what the 1938 constitution added regarding the loss of nationality.

However, the 1947²¹ amendment introduced very substantial changes such as: 1. That all those born in the territory of the Republic are Bolivians, except the children of foreigners servicing their governments and the children of foreigners who are transient, delegated to the latter, that at the age of eighteen they can decide if they wish to adopt the nationality of their parents or the Bolivian one. It also introduced the possibility of acquiring Bolivian nationality for foreigners who had resided in Bolivia for 2 years and who declare before the respective Departmental Municipal Council their desire to acquire it, having to renounce to their previous nationality. The requirement of permanence of two years was reduced to one in the following cases: a) those who have a Bolivian spouse or children; b) those who own real estate or introduce an industry or invention useful for the community; c) those who are railway and transport businessmen; d) those who are religious officials; e) those who are immigrants hired by the Government. This constitution granted many advantages in terms of acquiring nationality, it opened the possibility to many people and was not as limited as previous constitutions. It also recuperates the loss of nationality for acquiring a foreign one, noting that it is enough to be domiciled in Bolivia to recover it.

This was the longest period in which there were no constitutional reforms. On 2 February 1967²² the constitution is modified once again, adding an issue to the acquisition of nationality. Article 37 of the constitution establishes that nationality by naturalisation can be obtained by Spaniards and Latin-Americans who acquire Bolivian nationality without renouncing their nationality of origin, where there are reciprocal agreements of plural nationality with their respective governments”. Never before had the legislation spoken of plural nationality. According to the historical context and as noted above, Bolivia subscribes a dual nationality agreement with Spain, however, this article leaves open the possibility that a person can obtain more than one nationality.

¹⁸ René Zavaleta. “Consideraciones generales sobre la historia de Bolivia (1932-1971)”. En: *América Latina, historia de medio siglo*. México: Ed. S XXI, 1979.

¹⁹ Constitución Política del Estado de 1945

²⁰ Constitución Política del Estado de 1947

²¹ Constitución Política del Estado de 1947

²² Constitución Política del Estado de 1967

By Supreme Decree 6201²³ of 12 September 1962 the agreement of dual nationality with Spain was approved and by Law 208²⁴ of 19 December 1962 the agreement was ratified, which established the reciprocity of the agreement for the acquisition of nationality. The same constitution indicated that those who accepted the plural nationality regime would not lose their Bolivian nationality.

In 1968, legislators adopted a constitution that did not expressly say anything about nationality and citizenship, assuming that civil laws would be the ones to regulate acquisition and loss. In 1831, the first Civil Code of the Republic was drafted -which lasted until 1973- and which, at the time, was praised by the elites for its modern character despite having received strong criticism from other sectors, who considered it a mere copy of foreign legislations and for being deliberately incomplete and tendentious nature.

In 1994 and 1995 modifications were introduced in the 1967 constitution, though it did not change any of the articles on nationality.

The reform of the political constitution of April 13th, 2004²⁵, maintained the same ways of acquiring nationality by blood or naturalisation, and still mentions plural nationality. What is interesting is that it established that Bolivian nationality is no longer lost by obtaining a foreign one; and it added that those who had acquired Bolivian nationality would not be forced to renounce to their nationality of origin.

Suspension and/or loss of citizenship

Citizenship, throughout Bolivian history, could be suspended or lost.

The first constitutions established both possibilities, outlining different causes for each. The suspension of citizenship could take place for: 1^o dementia; 2^o being declared a fraudulent debtor; 3^o being criminally prosecuted for a crime deserving corporal or infamous punishment, 4^o being a notorious drunk, gambler or beggar; being a citizen was a matter of honour, not anyone could be considered such, hence it is not surprising that the causes for its suspension were tied to honour.

Later we see that this changed, as the Constitution of 1861 only established as grounds for the suspension of citizenship having been accused or persecuted for being a debtor to the State, a regime that was maintained until 1938.

From 1826 to 1880 the causes for losing citizenship were: 1. Public treason 2. Naturalisation in a foreign country. 3. Having suffered corporal or infamous punishment by judicial conviction 4. Accepting jobs, titles or emoluments of another Government, without the consent of the Senate.

From 1939 until today, citizenship can only be suspended; it can no longer be lost.

From this brief historical account some conclusions can be inferred regarding the course of citizenship in Bolivia. First is the evidence of a huge gap between a “modern” institutional scaffolding, the fundamental bases of which were imported and adapted in a whimsical way by authorities, and completely unrelated to the reality of the State. Secondly, the idea of citizenship embodied in legal rules, which was strongly embedded with discrimination and social differentiation. For example, in the distance between Bolivians and citizens established by the constitutions of the nineteenth century, from which we can infer that

²³ Decreto Supremo 6201

²⁴ Ley 208

²⁵ Constitución Política del Estado de 2004

citizenship was restricted to a small urban group, literate, masculine and with particular economic conditions. Can one speak, in these conditions, of the exercise of citizenship?

Thirdly, the part of society that remained outside of the State attained, over time, certain achievements that allowed inclusion of some demands through social struggles and organisational processes. In this sense, the conquest of rights was not a state concession, on behalf of the ruling classes, but the result of social mobilisations and strategic actions that systematically teared out from the state rights and dispositions that, while often only formal, in their enunciation traced the horizon of change. This is the case, for example, of the constitutional recognition of Bolivia as multicultural and pluri-ethnic in the mid-nineties, which, although at the time was projected in some formal laws and in a change of orientation of public policies, did not signify a substantial transformation in the relation of the State with society. Finally, the history of Bolivia shows the deficits of the citizenship-building process, as well as the set of challenges that still need to be worked on in its various dimensions: civil, socio-political, social and cultural.

3. The contemporary citizenship regime in Bolivia

The constitution that currently governs legislation in Bolivia and offers the general guidelines to legislate on the acquisition or loss of nationality or citizenship, is the Political Constitution of the State approved on 7 February 2009²⁶ by means of a popular consultation to all Bolivians.

This regulation, in article 141, establishes that nationality can be acquired by *birth or naturalisation*. Nationality by birth is determined either through *ius soli* or *ius sanguinis*. Naturalisation is defined as “*the voluntary change of one nationality for another. From another perspective, naturalisation is considered a sovereign act of the state, by virtue of which national status is conceded or denied to the foreigner that requests it, subject to compliance with the respective requirements.*”²⁷

The way in which nationality is acquired, whether by birth or naturalisation, makes no difference as regards the rights and responsibilities of citizenship.

3.1. Nationality

3.1.1. By birth

All persons born within Bolivian territory can acquire the country’s nationality, with the exception of the children of foreign diplomats. Likewise, nationality can be obtained by persons who are born abroad, but one of the parents must be Bolivian.

Anyone born in Bolivia is considered Bolivians, in line with the *ius soli* principle. The current legislation has not changed much with compared to previous constitutions, with the exception of provisions related to transient foreigners.

The procedure for acquiring nationality, on behalf of all those born in Bolivia that are not covered by the exception proposed by the regulation, is done before the National Service.

²⁶ Constitución Política del Estado 2009

²⁷ Trigo 2003, 465.

We also see that the legislation still maintains nationality by blood since anyone born abroad to Bolivian parents can acquire Bolivian nationality, irrespective of the place of residence. Previously, children of Bolivian expatriates had also to express their will to reside in the country in order to acquire Bolivian nationality.²⁸

For people born abroad to Bolivian parents, the procedure that must be followed is in accordance with the provisions of Supreme Decree 216²⁹ of 22 July 2009. These provisions establish that the acquisition of Bolivian nationality by children born abroad to Bolivian parents requires completing the formality of registration in the Birth Register of the consulates of the Plurinational State of Bolivia. The consuls and diplomats in charge of consular affairs are the competent officials to carry out the formalities related to the acquisition of nationality through the procedure of registration in the Birth Register.

3.1.2. By naturalisation:

The Bolivian constitution regulates the naturalisation of foreigners in article 142³⁰, which establishes that this way of acquiring nationality by naturalisation is for foreign persons who reside in the country for a determined period of time in an uninterrupted manner, who manifest their will to obtain it and comply with the requirements established by law.

The requirement of uninterrupted residence in order to acquire nationality by naturalisation is three years. However, the rule grants the exception that it can be of two years for persons who marry a Bolivian, have Bolivian children, children adopted by Bolivian parents, as well as persons who provide military service to Bolivia at the required age and according to Law;³¹ or that service the country in the National Legislative Assembly.

It leaves open that the established time of residency for naturalisation may vary in cases where reciprocal agreements with other states exist, prioritising Latin Americans.

Uninterrupted residence according to the legislation is an important factor for foreigners to acquire Bolivian nationality. These people must be legally in the country, and fulfil the requirements established by the legislation.

It establishes that this permanence must be under the guardianship of the State, that is to say, it must be legal, with an authorised visa to reside in the country, which must have been processed before migration.

Foreigners must explicitly and voluntarily express that they wish to acquire Bolivian nationality and comply with the requirements established in the Migration Law, of 8 May 2013 and its Supreme Decree No. 1923, of 13 March 2014.

Regretfully, Bolivia is still a country in which one encounters huge bureaucracy in the realisation of any procedure. In order to be able to naturalise, a series of requirements must be met, which means that foreigners find themselves with one impediment after another, as the requirements are extensive and depend on other instances to which they must previously turn.

Naturalisation by permanence³² is processed before the central office or before the departmental administrations of the General Directorate of Migration, habilitated by means of

²⁸ Constituciones, 1826, 1831, 1834, 1939, 1843, 1880, 1961, 1967, 1994, 2004.

²⁹ Decreto Supremo 216

³⁰ Constitución Política del Estado 2009

³¹ Decreto Supremo reglamentario N° 1923

³² Decreto Supremo reglamentario N° 1923 Art. 20 párrafo II

procedures established in internal regulations, and is granted by the President of the Plurinational State of Bolivia, through Supreme Resolution.

The procedure of naturalisation for services to the country differs from the previous ones since it is done before the Plurinational Legislative Assembly. According to Bolivian writers, there are no cases in constitutional history in which nationality had been granted as a privilege³³.

3.1.3. Loss of nationality

The current legislation is incomplete given that it indicates the cases in which nationality is not lost in article 143; for example, stating that no Bolivian who marries a foreigner will lose their nationality of origin and that one does not lose Bolivian nationality by acquiring a foreign citizenship.

But it does not establish when it can be lost. The constitution prior to the current reform did establish that one of the causes for losing Bolivian nationality was the acquisition of another citizenship.

The new constitutional reform, in the records that are held, did not engage in any discussion regarding the elimination of this part by the appointed commission. Therefore, it creates a vacuum since currently there is no cause for which nationality could be lost.

3.1.4. Dual nationality

The current constitution, in establishing that by marrying a foreigner or vice-versa one does not lose Bolivian nationality, allows for double nationality. The regulatory norm that supports this was promulgated by Supreme Decree 27698, of 24 August 2004, which regulates nationality and its recovery. This rule establishes that immigration authorities are the ones who must address the issues of migration, nationality and naturalisation in the administrative order, in the exercise of their jurisdiction and competence.

The consular offices of Bolivia are in charge of managing the registration of children of Bolivian parents born abroad in the Civil Registry, as well as fulfilling the role of Notaries of Public Faith; and both have the responsibility to process any request for the recovery of nationality.

Currently, many people are benefiting from, and making use of, this legal resource, the place that is most often processing this type of procedure is Argentina, where a large percentage of Bolivians have gone to reside.

3.2. Citizenship

Only those declared and registered as Bolivians can be citizens, and they may exercise their citizenship through political participation from the age of 18, regardless of their level of education, occupation or income.

Throughout the constitutions that Bolivia has had, we can see an evolution in the requirements established for granting citizenship. The first constitution as was mentioned before was quite demanding and led to inequality. The present constitution has broadly opened

³³ CIRO FELIX TRIGO, DERECHO CONSTITUCIONAL BOLIVIANO, 2003/PAG. 467

the acquisition of the right to participate openly in the political rights that every person should be able to exercise.

Textually, the Political Constitution of the State³⁴ states that citizenship consists: “1. *in attending as a voter or being eligible for training in, and exercise of, functions within the organs of public power; and 2. in the right to exercise public functions without other requirements than suitability, apart from the exceptions established in Law*”. These exceptions refer to the age, profession, and professional experience that are required for the official position to which one is applying.

One of the new features that the constitution presents is that it only speaks of the suspension of citizenship and not of the loss of it, as it appeared at the beginning of its regulation.

Art. 144³⁵ in its third part simply states that citizenship will be suspended for the following reasons: For taking arms and serving in enemy armed forces during times of war, for defrauding public resources and for public treason³⁶.

These causes are typified in the Bolivian Penal Code, in the Quiroga Santa Cruz Law and the Tax Law, and they must be judged and convicted, and the suspension of citizenship will last as long as the sentence does.

4. Conclusion

The recent crisis and the transformations that are taking place in Bolivia have exposed a series of unresolved historical fractures. Thus, the new political configuration and in the State Constitution, approved in January of 2009, have sought solutions to these visible ruptures.

These crisis factors can be grouped, at least, into four fundamental cleavages that constitute the background of the current Bolivian process: an *economic* one, which comes from short-term memory, that is, from the crisis of the neoliberal model established in the eighties and nineties and reflected in the persistence of high poverty and inequality rates in the country; the second, is derived from the crisis of the *system of political representation* and the displacement of parties as protagonists of such system and as mediators between the State and society, in light of the emergence of new actors; the third stems from the crisis of the *centralist State* on which the Republic was founded almost 200 years ago, which, on repeated occasions, has been subjected to questioning and demands for transformation, demonstrating its limitations; and, finally, linked to the long-term memory anchored in the 500 years of Spanish colonisation that was later reproduced in internal colonialism, which revealed a long history of ethno-cultural exclusion which materialised in a state built on an elitist institutional scaffolding that left outside its borders Bolivia’s socio-cultural reality.

The crisis that unfolded as a result the cycle of protests initiated by social movements in 2000, led to the demand for deep state transformation, revealing the different unresolved fractures which came together at the moment of the crisis.

This process put at the centre of the debate the issue of citizenship from the perspective of its different anchorages: social or socio-economic citizenship, which exposed the deficits in living conditions, inequality, lack of access to basic services and unemployment. The deficits

³⁴ Constitución Política del Estado 2009

³⁵ Constitución Política del Estado 2009 Art. 144

³⁶ Constitución Política del Estado 2009 Art. 28

of political citizenship, given the absence of effective participation on behalf of social actors in the field of decision-making and the lack of attention on behalf of the state to their needs and demands. And, above all, the notion of citizenship itself, linked to the claim of the universality of rights and to their individual nature, installing a new paradigm of citizenship that comes from collective rights and from the community as the subject of law.

In Bolivian history, the notion of citizenship that has predominant has tended to systematically ignore its multi-societal character³⁷. Founded on “the negation of the other”, it has devastated, many times and in different ways, ethnic and cultural diversity and has imposed the uniform and homogenising mechanisms of the Rule of Law. In effect, the category of citizenship based on universality and homogenisation - according to which everyone is free and equal in the public sphere, and relegating to the private sphere the discussion of particularities and differences - has been overshadowed by reality itself, tensing the universal conception of rights in a country that contains diverse nations and multiple identitarian referents.

The challenge posed by the new Constitution lies in the reaffirmation of difference within the framework of equality and participation, which is a difficult task to specify and resolve.

The new Charter, approved by referendum on 25 January 2009 and promulgated in February, was the product of a controversial process of political polarisation and conflict in which the hegemony of the ruling party finally prevailed. The content of the text includes the demands of trade union and indigenous organisations, grouped in the so-called “unity pact” - the social base of the current government - which were later negotiated with representatives of the ruling party and the political opposition.

Among the most relevant aspects of the new text is the notion of a ‘Plurinational Communitarian State’, which recognises the 36 native peasant indigenous nations and peoples that cohabitated in Bolivian territory before colonialism, as well as their legal-political and cultural structures, their own norms and procedures, and their relationship to the land and the territory. In addition, it adopts an *autonomic* and *decentralised* nature in response to the centralism that governed national life since the founding of the Republic and that had been questioned several times in Bolivian history, as in the federal revolution of 1899, although without major repercussions.

In summary, the native peasant indigenous paradigm is central in the new Constitution and it traverses the text, collecting its discursive and symbolic principles and values, while at the same time establishing its institutional exercise in the configuration of the new State. Moreover, the new protagonist of the Bolivian State is the native indigenous peasant, giving an important weight to the collective rights of the community.

In addition, a set of rights, new and old, of various kinds - civil, political, social, environmental and intercultural, such as the right to life, to water, to food, to education, to health, to the habitat and housing, of access to basic services such as drinking water, sewage, electricity, residential gas and others, acquired constitutional rank in the new text. The rights chapter covers almost one hundred articles in the Constitution while, interestingly, duties are limited to one. For example, education is constituted as a supreme function and responsibility of the state, and is defined as unitary, public, universal, democratic, participatory,

³⁷ Este concepto se refiere a “la coexistencia y sobreposición de diferentes sociedades o matrices de relaciones sociales de diversa cualidad y tiempos históricos”, fuertemente conectado al concepto de sociedad abigarrada de René Zavaleta Mercado, en Luis Tapia, *La condición multisocietal. Multiculturalidad, pluralismo, modernidad*. La Paz: Ed. CIDES-Muela del Diablo, 2002.

communitarian, decolonising and of quality, being characterised as intracultural, intercultural and plurilingual.

From the beginning, we can see that in the legislation the terms ‘citizenship’ and ‘nationality’ were sometimes confused, leading legislators to move forward and backward in their regulation. The social moment and the constant change of rulers that the country experienced were also highly influential, given that the latter led to every constitutional reform.

At first the regulations appeared to be general and comprehensive, however compliance must have been difficult. For example, the first legislations established that a profession or trade with an income was able to be granted citizenship and to exercise political rights, illiteracy was high, which seriously discriminated the majority of Bolivians in the exercise of these rights.

Another considerable fact is the bureaucracy that exists in Bolivia, although apparently the procedure is easy to comply with theoretically, in reality this is not the case. The procedure for obtaining the necessary requirements is quite extensive and difficult to comply with, in addition to the scant efficiency that is found when carrying out such procedures. The National Office of Migration is an institution that still has to progress in reducing procedures and giving better service to the people who request them. Otherwise, we will see the increase of illegal people without valid papers in the country.

Among the successes, we can highlight that the new Political Constitution of the State accepts that Bolivians can choose to be citizens of other countries without this entailing the loss of their Bolivian nationality. This is a success since previously many expatriates had had opted not to naturalise in other countries for fear of losing their Bolivian citizenship. As a result, they could not access some of the political rights, such as electing senior officials, in the destination countries.

There are still issues awaiting legislation, like the loss of nationality acquired by naturalisation, or regarding double nationality that one has to use the same one when entering and/or existing the country.

Bolivia is currently experiencing a process of integration, in which each and every person born or living in Bolivia can assert their rights and be granted the guarantees that correspond; that all can take part in the decisions important for the nation, there is still a long way to go but important steps have been made.

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