



THE POLITICAL RIGHTS OF MEXICAN MIGRANTS: NATIONALITY AND CITIZENSHIP IN MEXICO

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ABSTRACT. This note explores the state of political rights of Mexicans living abroad. After multiple reforms to Mexican legislation, the political rights of Mexican migrants are still not fully protected. Absentee voting is the only political right Mexican migrants can exercise. The first reforms that granted Mexicans the possibility of retaining their nationality were the cornerstone for the following reforms on the implementation of absentee voting. It is important to understand explains the difference between citizenship and nationality in Mexican laws. The note gives a general overview of the lack of uniformity in the use of these two concepts in international practice. The note also invites us to reflect on the political rights mentioned in international instruments, such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the American Convention of Human Rights. The issue of the full implementation of active and passive political rights of Mexicans living abroad remains unsolved despite the reforms made to Mexican legislation.

KEY WORDS: *Citizenship, nationality, political rights, absentee voting.*

RESUMEN. Esta contribución trata de explicar los derechos políticos de los mexicanos residentes en el extranjero. Después de múltiples reformas a la legislación mexicana, los derechos políticos de los migrantes mexicanos aún no están completamente protegidos. El voto a distancia es el único derecho político que puede ser ejercido por los migrantes mexicanos. Al inicio este artículo trata el fenómeno migratorio mexicano, así como las razones y consecuencias de la reticencia de los migrantes mexicanos para adquirir una nacionalidad extranjera. Las primeras reformas que permitieron a los mexicanos conservar su nacionalidad mexicana fueron el pilar para las siguientes reformas que concluyeron con la implementación del voto a distancia. Posteriormente se explica la diferencia entre la

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ciudadanía y la nacionalidad en las leyes mexicanas. Es necesario aclarar que el estatus de ser ciudadano en México confiere los derechos políticos. La autora proporciona una aproximación general a la falta de uniformidad en el uso de estos dos conceptos en la práctica internacional. Asimismo, nos invita a reflexionar haciendo referencia a los derechos políticos contemplados en los instrumentos internacionales como la Declaración Universal de los Derechos Humanos, la Convención Internacional de Derechos Civiles y Políticos, la Convención Internacional para la Protección de los Derechos de los Trabajadores Migrantes y sus Familias, así como la Convención Americana sobre Derechos Humanos. Posterior a esta aproximación, la pregunta sobre la implementación completa de derechos políticos activos y pasivos de los mexicanos residentes en el extranjero continúa aún abierta después de varias reformas a la legislación mexicana.

PALABRAS CLAVE: *Ciudadanía, nacionalidad, derechos políticos, voto a distancia.*

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I. INTRODUCTION

Mexico is the third largest emigration country in the world, after China and India.¹ With millions of migrants around the world² and the more than 22.8 Billion U.S. dollars in remittances³ they send back to Mexico, the phenom-

¹ See Facts and Figures, International Organization for Migrations, <http://www.iom.int/cms/en/sites/iom/home/about-migration/facts--figures-1.html> (Last visited March 25, 2011).

² At least in United States there were more than 30 million people, according to the U.S. Census Bureau. "Population growth between 2000 and 2010 varied by Hispanic group. The Mexican origin population increased by 54 percent and had the largest numeric change (11.2 million), growing from 20.6 million in 2000 to 31.8 million in 2010". Information taken from the Sharon R. Ennis, Merarys Ríos-Vargas & Nora G. Albert, *The Hispanic Population: 2010*, 2010 U.S. CENSUS BUREAU 2 (May 2011). Available at: <http://www.census.gov/prod/cen2010/briefs/c2010br-04.pdf> (Last consulted March 25, 2011).

³ <http://www.banxico.org.mx/SieInternet/consultarDirectorioInternetAction.do?accion=consultarCuadroAnalitico&idCuadro=CA11§or=1&locale=es/>.

enon of migration is important economically, as well as politically and culturally.

Mexicans living in the United States roughly represent the same population as those living in Mexico City. Today the U.S. state of California has the largest Mexican population after Mexico City.⁴ Of that population at least 10 million Mexicans citizens were identified as potential electors for the 2006 Mexican presidential elections.⁵ With this number of Mexicans voters, the Federal Electoral Institute (Instituto Federal Electoral, IFE) in charge of implementing absentee voting,⁶ had a huge target audience to reach for the 2006 presidential elections and later for the 2012 presidential election.

To understand the political rights of Mexicans living abroad (most of them in the United States), it is important to consider the history of migration from Mexico to United States. In the first part of this article, I will briefly present the history of the Mexican migration.

In the second part, I will tackle two different terms that are used in Mexican legal discourse to refer to specific groups of population: nationals and citizens. These legal terms are linked to certain rights and obligations of specific groups of people. Most importantly, citizenship allows Mexicans to obtain and exercise their political rights. Nevertheless, to get Mexican citizenship it is necessary to be a Mexican national.

In the third part, I will present the political rights of migrants in an international context, as in the Universal Declaration of Human Rights, the Covenant on Civil and Political Rights (ICCPR), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the American Convention on Human Rights. Political rights belong to the group of so-called first generation human rights, but Mexican legislation has yet to fully implement them.

In the fourth part, I explain Mexicans' political rights, in particular the right to absentee voting. Even though absentee voting in the 2006 presidential elections was granted, voter participation was low, as it was in the 2012 presidential elections. Mexican immigrants are included in Mexico's political affairs, but only to the extent of their right to vote.

⁴ In the western region of the United States, Mexicans number 16,464,100 according The Hispanic Population: 2010 issued May 2011, p. 7, available at <http://www.census.gov/prod/cen2010/briefs/c2010br-04.pdf> (Last consulted on March 25, 2011).

⁵ Leticia Calderón Chelius & Nayamín Martínez Cossío, *La democracia incompleta: La lucha de los mexicanos por el voto en el exterior*, in LETICIA CALDERÓN CHELIUS (COORD.), *VOTAR A LA DISTANCIA. LA EXTENSIÓN DE LOS DERECHOS POLÍTICOS A MIGRANTES, EXPERIENCIAS COMPARADAS* 219 (Instituto Mora, 2nd. ed., 2004).

⁶ See Constitución Política de los Estados Unidos Mexicanos [Const.], *as amended*, Art. 41, base III, Diario Oficial de la Federación [D.O.], 5 de febrero de 1917 (Mex.). "The organization of federal elections is a public funded activity performed by a public autonomous agency named Federal Electoral Institute..."

In the fifth part, I share some reflections on the implementation of the political rights of Mexicans living abroad.

II. A BRIEF HISTORY OF MEXICAN MIGRATION

The first time a large number of Mexicans went to live in the United States was due to extraordinary political circumstances. Under the Treaty of Guadalupe-Hidalgo (1848), Mexico ceded the territory that now forms the states of Texas, California, Arizona, New Mexico, Nevada, Utah and parts of Colorado to the United States.⁷ Consequently, significant numbers of Mexicans suddenly found themselves living in the United States of America. They then had to decide if they wanted to stay in their ancestral lands or if they wanted to “return” to Mexico.

The first wave of Mexican “immigration” to the United States therefore happened without people having to move from one country to another. If people actually moved, they were Mexicans moving from their ancestral lands south, back to their country: “...Mexican nationals that were left in the middle of lost Mexican territory unburied their dead and migrated south.”⁸ These political and legal events did not take into account the desire of the Mexican population to remain on their ancestral land.

The second and most important wave of Mexican migration to the United States was in 1917 and again in 1942 when U.S. farm workers left their fields to fight in the war. The U.S. and Mexican governments created the “Bracero”⁹ program that brought Mexican farmers to the U.S. countryside on a seasonal basis.

“The program between 1942 and 1964 was the largest, admitting almost five million Mexicans (some individuals returned year-after-year, but one to two million Mexicans participated). However, there were more apprehensions of Mexicans illegally in the US than of legal Bracero admissions during this period.”¹⁰ Field owners encouraged irregular migrants to come to the United States because these migrants were not subject to the sanitary, health,

⁷ See PATRICIA MORALES, *INDOCUMENTADOS MEXICANOS* 13 (Grijalbo, 1982).

⁸ The original reads: “...los connacionales que quedaron en la mitad del México perdido desenterraban a sus muertos y se trasladaban al sur”, in PATRICIA GALEANA (ED.), *LA MIGRACIÓN MÉXICO- ESTADOS UNIDOS Y SU FEMINIZACIÓN, CUADERNOS DE AMÉRICA DEL NORTE II* 7 (CESAN-UNAM, 2008), see also PATRICIA GALEANA (COORD.), *NUESTRA FRONTERA NORTE* 40 (Patricia Galeana coord., Segob-AGN, 2008).

⁹ The Bracero program was established in 1942 by both governments as a solution to the lack of farmers in the United States. Under this program, the War Manpower Commission hired Mexican farmers who were called *braceros* (strong arms). This program remained in effect for 22 years. See MORALES, *supra* note 7, at 99-113.

¹⁰ AGUSTIN ESCOBAR ET AL., *MIGRATION AND DEVELOPMENT: MEXICO AND TURKEY* 6 (University of Konstanz, 2006).

safety and payment conditions that the Mexican government had negotiated early on in the program to protect migrants from possible abuse. “Meanwhile, many rural Mexicans became dependent on seasonal US farm jobs to support their families, and faced a fall in their usually rural areas of origin did not develop during the Bracero years.”¹¹

In the 1960s, some *maquiladoras* (i.e. assembly plants) were set up within Mexican borders. Their main goal was first to assemble products with imported duty-free components using cheap Mexican labor force, and then to export the final products.¹²

From 1980s to today, migration flows have changed. In the past, immigrants were mainly male farmers who abandoned their fields in northern Mexico. Later, female migration¹³ started and now entire families are migrating. People with different educational backgrounds and even university degrees are now working in the service and construction sectors in the United States, which represents a brain drain for Mexico.¹⁴

Mexicans immigrants find it difficult to adapt in foreign societies due to, among other factors, to not knowing the language and cultural differences. But perhaps the most important factor is the lack of integration to the host society.¹⁵

Many Mexicans living abroad before 1998 did not seek to acquire foreign citizenship because that implied renouncing their Mexican nationality. Some of the consequences of losing their Mexican nationality included losing their rights as Mexican citizens, as well as the impossibility to retain ownership of their lands in Mexico¹⁶ since adopting a new citizenship or nationality makes them foreigners under Mexican law. According to the Mexican Constitution:

Article 27

The Nation has an original right of property over the lands and waters within the boundaries of the national territory. The Nation has and will have

¹¹ *Id.*

¹² See Oscar J. Aranda & Margarita Escalante de Aranda: *Las empresas maquiladoras en México. Implicaciones económicas y jurídicas*, in VÍCTOR CARLOS GARCÍA MORENO (COMP.), ANÁLISIS DE ALGUNOS PROBLEMAS FRONTERIZOS Y BILATERALES ENTRE MÉXICO Y ESTADOS UNIDOS, 29-40 (UNAM, 1982).

¹³ Levine, Eliane, *Empleos para mujeres mexicanas migrantes en Estados Unidos*, in GALEANA, *supra* note 8, at 69.

¹⁴ See Juan Artola V., *Migración internacional: escenarios y desafíos*, in CECILIA IMAZ BAYONA, ¿INVISIBLES? MIGRANTES INTERNACIONALES EN LA ESCENA POLÍTICA 20 (UNAM, 2007).

¹⁵ See Alarcón, Norma, *...Pero no pareces mexicana*, in MARTISA BELAUSTEGUIGOITIA (COORD.), GÜERAS Y PRIETAS. GÉNERO Y RAZA EN CONSTRUCCIÓN DE NUEVOS MUNDOS 35-46 (UNAM, Programa Universitario de Estudios de Género, 2009); see also Lucía Melgar, *Sin ton ni son: los vericuetos de las fronteras invisibles*, *id.*, at 59-69.

¹⁶ See JORGE A. BUSTAMANTE: MIGRACIÓN INTERNACIONAL Y DERECHOS HUMANOS, 89 (UNAM, 2002).

the right to transfer its property's domain to private individuals in order to create private property rights.

*...Only those persons recognized as Mexicans by birth or by naturalization as well as Mexican corporations shall have a right to acquire legal domain over lands, waters and their accessories. They shall also be entitled to acquire lands, waters and their accessories... within an extension of one hundred kilometers from the national borders inland and of fifty kilometers from the seashore inland, foreigners shall never be allowed to acquire direct domain over lands and waters*¹⁷ (emphasis added.)

Until 1998, Mexico had endorsed single nationality. This meant that Mexican nationals could not keep their Mexican nationality once a foreign country conferred them nationality or citizenship.¹⁸

By losing their nationality and citizenship, Mexicans were excluded from participating in any kind of political affairs. Moreover, to a large extent, Mexicans living abroad were not integrated into the new society. Hence, even in the host society, they could not exercise political rights. To recover their rights in Mexico, Mexicans must renounce the new acquired nationality and regain the Mexican one through a long and complicated process. Aware of this, Mexican authorities reformed the Article 37 of the Mexican Constitution¹⁹ to allow Mexicans abroad to preserve their Mexican nationality even if they adopt a foreign nationality or citizenship. One consequence of this reform was regaining their political rights, which will be fully explained in the following section.

III. NATIONALITY AND CITIZENSHIP: ARE THESE CONCEPTS SYNONYMS?

Unlike other countries, Mexican legislation makes a distinction between the concepts of nationals and citizens. Preserving Mexican nationality was a step toward the possibility of retaining Mexican citizenship and with it, the ability to exercise political rights in Mexico.²⁰

The concepts of "national," "citizen," "resident" and "foreigner" are commonly used terms to justify the different treatment between individuals

¹⁷ Constitución Política de los Estados Unidos Mexicanos [Const.], *as amended*, Art. 41, base III, Diario Oficial de la Federación [D.O.], 5 de febrero de 1917 (Mex.).

¹⁸ See Federal Official Gazette dated January 18 1934, stating that Mexican nationality can be lost by the acquisition of a foreign nationality. The original reads:

"Artículo 37

A. La nacionalidad mexicana se pierde:

I. Por adquisición voluntaria de una nacionalidad extranjera;"

Available at <http://www.juridicas.unam.mx/infjur/leg/constmex/pdf/rc016.pdf> (Last consulted March 25, 2011).

¹⁹ Article 37 states that: "(A) The Mexican nationality by birth shall never be revoked". *Id.*

²⁰ See JORGE CARPIZO & DIEGO VALADÉS, *EL VOTO DE LOS MEXICANOS EN EL EXTRANJERO*, 24-24 (UNAM-Porrúa, 2002).

living in the same territory. What are the circumstances of nationality and citizenship, and the subsequent duties and rights for the 214 million migrants around the world²¹ today?

Sometimes, nationality and citizenship are treated indistinctly. It appears that there is a very thin line between these two concepts. The term nationality designates:

...a political-legal term, or a sociological term, although on most occasions it is difficult to distinguish between them because one concept does not exclude the other... nationality is a twofold relationship, between single individuals, on the one side, and formal States on the other. Moreover there has to be a formally recognized *vinculum* (link between them).²²

Nationality is “a union of masses of men of... hereditary society, of common spirit, feeling and race bound together especially by language and customs in a common civilization which gives them a sense of unity and distinction from all foreigners quite apart from the bond of the state.”²³

Nationality is understood as the bond that links people with common descendants, culture, language, territory, customs, traditions, identity and religion seeking common purposes that express this sense of belonging through activities organized by the State. This bond then establishes double duty-right conditions between nationals and the State.

Nationality can be acquired at birth or thereafter. Nationality acquired at birth is called original nationality, and it is normally acquired on the basis of *ius soli*, that is, the individual acquires the nationality of the country in which he or she was born, or *ius sanguinis*, when the individual acquires the nationality of the country of his or her parents no matter the place of birth. When the nationality is acquired later, it is normally acquired through the procedure of naturalization, by which the individual, after fulfilling certain requirements, acquires the nationality of a given State.²⁴

Today the concept of nationality presents difficulties in the face of a complex globalized society in which dual or multiple nationality²⁵ is possible.

²¹ International Organization for Migration, Fact and Figures, information can be consulted at <http://www.iom.int/jahia/Jahia/about-migration/facts-and-figures/lang/en> (Last consulted March 25, 2011).

²² CARMEN TIBURCIO: THE HUMAN RIGHTS OF ALIENS UNDER INTERNATIONAL AND COMPARATIVE LAW, 3-4 (Kluwer Law International and Marinus Nijhoff Publishers, 2001).

²³ S. Herbert, *Nationality and its Problems*, cited by JOSEPH BERNARD, NATIONALITY ITS NATURE AND PROBLEMS, 21 (Allen and Unwin LTD, 1929).

²⁴ TIBURCIO, *supra* note 22, at 8.

²⁵ “Multiple nationality is the condition in which individuals hold the nationality of more than one State.” Peter J. Sapiro, in THE MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW, at www.mpepil.com (Last consulted March 25, 2011).

Sometimes States confer nationality to individuals even if links of common spirit, common language or cultural bonds are not well proven. In some cases, nationality is given by means of an administrative process, thus losing the true meaning of belonging.

The International Court of Justice referred to the term nationality²⁶ in the case of *Liechtenstein v. Guatemala*, (also known as the Nottebohm case). The Court defined “...nationality as a ‘legal bond having at its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties...’”²⁷ In this case, the International Court of Justice coined the concept *real and effective nationality* based on the “factual ties between the person concerned and one of the States whose nationality is involved.”²⁸ Mr. Friedrich Nottebohm was born in Germany, was living and had his business in Guatemala, and adopted the nationality of Liechtenstein. When he demanded protection from Liechtenstein as a Liechtenstein national, his *real and effective nationality* could not be proven and the claim was dismissed.²⁹

States are free to legislate on the matters of nationality and there are international standards that guide and limit certain related aspects. For example, Article 15 of the Universal Declaration of Human Rights states that “(1) Everyone has the right to a nationality, (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.” Nothing in the Declaration makes any mention of citizenship.

Article 20 of the American Convention on Human Rights on the right to nationality indicates: “1. Every person has the right to a nationality. 2. Every person has the right to the nationality of the state in whose territory he was born if he does not have the right to any other nationality. 3. No one shall be

²⁶ “The term ‘nationality’ appeared, denoting the quality of that which was national. Soon after it also acquired a third sense, indicative of citizenship”. JOSEPH, *supra* note 23, at 21.

²⁷ Kay Hailbronner, *Nationality in Public International Law and European Law*, in E. BAUBÖCK ET AL., PUBLIC INTERNATIONAL LAW AND EUROPEAN LAW, IN ACQUISITION AND LOSS OF NATIONALITY, 36 (Amsterdam University, 2006).

²⁸ “Different factors are taken into consideration, and their importance will vary from one case to the next: there is the habitual residence of the individual concerned but also the center of his interests, his family ties his participation in public life, attachment shown by him for a given country and inculcates in his children, etc.”. The information was consulted on the International Court of Justice web-page at <http://www.icj-cij.org/docket/index.php?p1=3&k=26&case=18&code=lg&p3=4> (last visited March 25, 2011).

²⁹ See the Nottebohm Case (*Liech. v. Guat.*), 1955 I.C.J. 4, 18 (April 6). This judgment states: “The Government of Liechtenstein claimed restitution and compensation on the ground that the Government of Guatemala had acted Towards Mr. Friedrich Nottebohm, a *citizen* of Liechtenstein, in manner contrary to international law. Guatemala, for its part, contended that the claim was inadmissible on a number of grounds, one of which related to the *nationality* of Nottebohm, for whose protection Liechtenstein had seised the Court.

In its Judgment the Court accepted this plea in bar and in consequence held Liechtenstein’s claim to be inadmissible”. The emphasis is added.

arbitrarily deprived of his nationality or of the right to change it.”³⁰ Again, citizenship is not mentioned in this regional instrument.

According to Article 24 of the International Covenant on Civil and Political Rights (ICCPR) “3. [e]very child has the right to acquire a nationality.”³¹ In this case, citizenship is also not mentioned.

Why do the above mentioned instruments not deal with the concept of citizenship? Is it because citizenship is used as synonym of nationality? Is it just a confusion despite the fact that nationality and citizenship have been recognized as being two different terms albeit closely related?

Although citizenship is sometimes used to refer to nationality, the two concepts are quite different. The term citizenship can be traced back to Ancient Rome to describe the membership in the political community.

In international law citizenship is generally called nationality. This is somewhat [an] ambiguous term, since in many languages it is also used for membership of a [an] ethno-national group that need to be [re]established as independent state. In a related sense, the concept is also used for distinguishing states composed of several “nationalities” from nation states... Nationality refers to the international and external aspects of the relation between an individual and a sovereign state, whereas citizenship pertains to the internal aspects of this relation that are regulated by domestic law.³²

It is the right of States to determine who their citizens are in their domestic laws. Some examples of the different uses of the terms nationality and citizenship in national legal systems can be observed. One example is China, which considers itself a multinational State.³³ Chinese nationality is acquired only by those whose parents (or at least one of them) are (is a) Chinese nationals or if the person was born in China. India, on the other hand only refers to citizenship³⁴ via *ius soli* and *ius sanguinis*. In the U.S. Code, nationals are citizens or non-citizens with a permanent allegiance to the United States.³⁵

³⁰ The American Convention on Human Rights is available at the Inter-American Commission on Human Rights web page available at: <http://www.cidh.oas.org/Basicos/English/Basic1.%20Intro.htm> (Last consulted March 25, 2011).

³¹ The International Covenant on Civil and Political Rights is available at the web page of the Office of the United Nations High Commission for Human Rights at: <http://www.cidh.oas.org/Basicos/English/Basic1.%20Intro.htm> (Last consulted March 25, 2011).

³² RAINER BAUBÖCK (ED.), *MIGRATION AND CITIZENSHIP. LEGAL STATUS, RIGHTS AND POLITICAL PARTICIPATION* 16 (Amsterdam University Press, 2006).

³³ China Nationality Law of the People's Republic of China, September 10, 1980. Article 2: The People's Republic of China is a unitary multinational state; persons belonging to any of the nationalities in China shall have Chinese nationality. Information available at: <http://www.novexcn.com/nationality.html> (Last consulted March 25, 2011).

³⁴ Constitution of India, as modified to December 1, 2007, Part II Citizenship, English version of the Indian Constitution is available at: <http://indiacode.nic.in/coiweb/welcome.html> (Last consulted March 25, 2011).

³⁵ U.S. Code Title 8, Chapter 12, Subchapter § 1101, 2006, (22) The term “national of

We must consider the term “citizenship” and distinguish it from “nationality”, with which, as has already been observed, it is frequently confused. Etymologically the term citizen means the inhabitant of a city in the original use of the world as equivalent of the state. Citizenship properly used describes the status of a person as a constituent member of a state who possesses full national rights of that state and owes it his allegiance.

The fundamental difference between nationality and citizenship is that nationality is subjective whilst citizenship is objective. Nationality relates to a condition of the mind or feelings or mode of life; whilst citizenship is a political status.³⁶

In some Latin American countries, it is common to distinguish between nationals and citizens.³⁷ Article 30 of the Mexican Constitution states that:

The Mexican nationality shall be acquired either by birth or by naturalization.

A. The Mexicans by birth shall be:

I. The individuals born within the Republic’s territory whatever their parent’s nationality might be;

II. The individuals born abroad from Mexican parents who were born within national territory,³⁸ from a Mexican father who was born within national territory or from a Mexican mother who was born within national territory;

III. The individuals born abroad from naturalized Mexican parents, from a naturalized Mexican father or from a naturalized Mexican mother; and

IV. The individuals born aboard Mexican ships or airplanes whether military or commercial.

B. The Mexicans by naturalization shall be:

I. The foreigners who have obtained a naturalization Declaration from the Foreign Affairs Secretary;

II. The foreigners married to Mexicans who live within national territory and fulfill all legal requirements.³⁹

the United States” means (A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

³⁶ BERNARD, *supra* note 23, at 27.

³⁷ Just to mention some examples see (a) Argentina: Law 345 Citizenship and naturalization Articles 1 Argentineans and Article 2 citizens by naturalization. (b) Bolivian Constitution Chapter I Nationality, Articles 36 and 37 and Chapter II Citizenship, Articles 40 and 41. (c) Chilean Constitution, Chapter II Nationality and Citizenship, Article 10 on Chilean nationals, Article 13 Chilean citizens. (d) Colombian Constitution Title III on the inhabitants of Colombia Chapter I on Colombian Nationals Article 96, Chapter II on the Colombian citizens Article 98. (e) Costa Rican Constitution Article 13 on Costa Rican nationals and Article 90 on Costa Rican citizens. (f) The Constitution of El Salvador states who is a national of El Salvador in Article 90 and who is a citizen in Article 71.

³⁸ This fragment was reformed in 1998 to avoid granting individuals born from parents in the United States Mexican nationality without any limits.

³⁹ Constitución Política de los Estados Unidos Mexicanos [Const.], *as amended*, Art. 41, base III, Diario Oficial de la Federación [D.O.], 5 de febrero de 1917 (Mex.).

In the other hand, the concept of citizenship⁴⁰ is used to describe the bond between individuals and the State mainly through political participation. In Mexico, one cannot be a citizen without being a national first, but one can be national even if one is not a citizen (as the case of children or the mentally ill). For the ancient Greeks, citizenship was a concept that was used as a positive quality of individuals and understood as active membership in society.⁴¹

“Citizenship has three aspects, namely, that citizens have a say in political decision-making; access to courts of law that are manned by cocitizens; and guarantee of minimum socioeconomic conditions of existence.”⁴²

Article 34 of the Mexican Constitution specifies who is considered a Mexican citizen: “The citizens of the Republic shall be those individuals who are considered as *Mexicans* and fulfill conditions as follows: I. To be at least 18 years old, and II. To have an honest way of life.”⁴³

In the Mexican scenario, millions of migrants stood to lose their Mexican nationality, Mexican citizenship and the rights derived from these categories when adopting foreign citizenship before the reform made to the above-mentioned Article 37.

The membership status that represents being a citizen also includes the possibility to exert individual will. Today when one out of every 33 people is a migrant⁴⁴ and every sovereign State controls its own borders, the right of free exit is considered a human right. Unfortunately, there is not a corresponding right to the rest of the states to admit migrants to enter their territories neither to recognize them as nationals or citizens.

The relevance of the reform to Article 37 of the Mexican Constitution, which declares that Mexican nationality by origin shall never be revoked, opened up the possibility for all Mexicans abroad (who were at least 18 years old) to regain Mexican citizenship and with it, their political rights.

In trying to distinguish Mexican nationals’ duties and rights from those of Mexican citizens, the Constitution states that:

Article 31. Mexicans shall have duties as follows:

⁴⁰ According to Herman R. Van Gunstern, “The term citizenship is used in a strict sense to refer to the status of political equality and participation.” HERMAN R. VAN GUNSTERN, *A THEORY OF CITIZENSHIP, ORGANIZING PLURALITY IN CONTEMPORARY DEMOCRACIES* 12 (Westview Press, 1998).

⁴¹ “The word ‘citizen’, derived from *civitas*, is distinctively Latin in origin. However, the idea of citizenship, understood as active membership of and participation in a body politic, is generally regarded as emerging first in Greece at about 600-700 BC.” PAUL BERRY CLARKE, *CITIZENSHIP* 4 (Pluto Press, 1994).

⁴² VAN GUNSTEREN *supra* note 40, at 13-14.

⁴³ Constitución Política de los Estados Unidos Mexicanos [Const.], *as amended*, Art. 41, base III, Diario Oficial de la Federación [D.O.], 5 de febrero de 1917 (Mex.).

⁴⁴ International Organization for Migration, Fact and Figures, information can be consulted at <http://www.iom.int/jahia/Jahia/about-migration/facts-and-figures/lang/en> (Last consulted 25 March 2011).

I. Mexicans shall send their sons, daughters or pupils to either public or private schools in order to provide them not only with preschool education but also with primary and secondary education and even military instruction according to the law.

II. Mexicans shall attend civic and military instruction within the timetables established by the city in which they live in order to be prepared to claim their rights as well as to get acquainted with the use of weapons and with the military discipline;

III. Mexicans shall enroll themselves and serve in the National Guard under the law in order to defend the Nation's independence, territory, honor, rights and interests as well as the interior peace and order, and;

IV. Mexicans shall contribute to finance the federal spending as well as to finance the spending of the state or municipality which they live at. Likewise, they shall contribute to finance the Federal District's public spending.⁴⁵

As stated in Article 31, the duties of Mexicans tend to promote cultural bonds, the connections of co-existence, common interests and sentiments through education (subjective elements). Mexican immigrants find it difficult to fulfill these duties, first because the education they have received, as well as that of their children or wards, in foreign countries are related to the host country. Of course, consulates help by distributing materials on Mexican facts, but this will never replace the education provided by educational authorities in Mexico.

The duty to attend civic and military instruction or enrolling in the National Guard is impossible to fulfill since migrants live abroad. While the remittances Mexican migrants send to Mexico represents a very important source of income for Mexico after oil and before tourism and exportations, but they are not taxes that contribute directly to financing federal spending.

Article 35 of the Mexican Constitution states that citizens are entitled to:

I. *Vote at popular elections;*

II. *Be elected* to any public office or appointed to any employment or commission which requires certain legal qualities to be fulfilled;

III. *Associate* freely and individually with others in order to participate in the country's political affairs;

...⁴⁶

It is clear that political rights are derived from being citizens. This article of the Mexican Constitution refers to the prerogative to vote, to be elected, and to associate freely, as well as to participate in political affairs. However these entitlements are diminished in the case of Mexican immigrants as will be seen in Part V.

⁴⁵ Constitución Política de los Estados Unidos Mexicanos [Const.], as amended, Art. 41, base III, Diario Oficial de la Federación [D.O.], 5 de febrero de 1917 (Mex.). Emphasis is added.

⁴⁶ *Id.*

Article 36 of the Mexican Constitution states the duties of Mexican citizens:

I. To register himself at the respective council tax office, declaring his property as well as his industry, profession or work; he also shall register himself in the National Register of Citizens under the law. The National Register of Citizens as well as the Mexican Citizen Identity Card's issuing procedures shall be considered as public interest services and the State shall be therefore in charge of them.

The citizens' participation shall be authorized under the law;

II. To enroll in the National Guard;

III. *To vote in the popular elections* under the law;

IV. *To perform the duties of officers elected by popular vote which shall never be unpaid ones, and*

V. *To perform the municipal official duties, the electoral ones and those reserved to juries*⁴⁷ (emphasis is added).

Mexican immigrants have encountered difficulties to fulfill their duties as Mexican citizens because: paying taxes in Mexico when working and living abroad would be double taxation. In order to avoid that, double taxation agreements must be signed between Mexico and the host country.

Enrolling in the National Register of Citizens to obtain a Mexican Citizen Identity Card is impossible outside Mexico as it not allowed to be done outside the territory of the Mexican Republic: consulates and embassies are not authorized to do so. Without a Mexican Citizen Identity Card, it is not possible to take part in popular elections or absentee voting. This means that Mexicans need to return to Mexican territory to get this identity card if they did not travel with it at the time of emigration. If the card was lost or stolen, they need to return to Mexico to get a new one. The process in getting the new identity card can take from two weeks to one month.

Article 36, parts III, IV and V, deal with the political rights to elect and be elected in popular elections. As stated above, the first step to allow Mexican immigrants to take part in Mexican political affairs required conceding that Mexicans still uphold the bonds of culture, language, interests and sentiments with the Mexican nation recognized by its nationality. This was the argument used to allow migrants to regain Mexican citizenship and with it, the possibility of regaining the rights and duties enshrined in Articles 35 and 36 of the Mexican Constitution.

In Mexico, nationals and citizens are dealt with separately in the Constitution. Rights, entitlements and duties derived from these statuses have different purposes. Nationality indicates the bond that Mexicans abroad still have with the Mexican nation and the concept of citizen serves the purpose of linking migrants to Mexican political affairs.

⁴⁷ *Id.*

Each national system handles the concepts of nationality and citizenship differently. Then, it can be concluded that the term nationality refers to a legal-political and sociological term that links individuals through common feelings, ways of thinking, life, cultural bonds and interests; while citizenship confers political rights.

In some national systems, there is no distinction made between nationals and citizens. "Each country will define, according to its laws, who are its nationals. As there is no uniformity in the laws of nationality of the various countries..."⁴⁸

In the following section, the political rights derived from citizenship status internationally, as well as the political rights that correspond to migrants, will be discussed.

IV. THE POLITICAL RIGHTS OF MIGRANTS IN AN INTERNATIONAL CONTEXT

Political rights are the rights that empower citizens to participate in the administration or establishment of the government within the State to which they are members. "Political rights, as rule, are granted only to citizens. Therefore citizenship is a specific concept in international law, applying to the individual national of a certain State, who is in full enjoyment of political rights. Citizen is not a synonym for national. It means the person who has enjoyment of political rights, and, as seen, not necessarily all nationals are citizens."⁴⁹

Political rights are derived from citizenship status. In ancient Rome, those rights were exercised only by Roman citizens excluding foreigners, non-citizens and women. Eventually some foreigners could participate in the politics, at least in Greece where "several early legislators were foreigners, called when the situation among the ruling class became so bad that no impartial citizen could be found to accomplish the task."⁵⁰

It was not until the French Declaration of the Rights of Men and Citizens in 1789 that a distinction was made between fundamental rights and political rights. The distinction between men and citizens was not well established, but it was inferred that political rights were conferred to citizens.

The unequal situation between citizens with political rights and citizens without them moved people to fight against the restrictions placed on exercising these political rights, such as that of poll tax:

[b]y October 1789, in a move reminiscent of an earlier Rome, citizens were divided into two types: those who could vote and those who could not, active citizens and passive citizens... Under the terms of the 1789 law the assembly

⁴⁸ TIBURCIO, *supra* note 22, at 1.

⁴⁹ *Id.* at 178.

⁵⁰ *Id.* at 179.

decreed payment of a poll tax as a voting qualifications. Deputies to the assembly were to be chosen by those who had paid the basic poll tax.⁵¹

Restrictions on women voters also had to be abolished before political rights became accessible to every citizen and today, universal suffrage is possible in some countries.

Political rights are understood as: the right to vote and to be elected, the right to exercise public service in general, the right to perform specific functions in the Executive and participation in within the State in which one is citizen. Some authors consider freedom of assembly and freedom of thought part of political rights, but others such as Carmen Tiburcio and Manfred Nowak disagree with that.⁵²

Political rights are protected by international documents like the Universal Declaration of Human Rights and international law instruments like the International Covenant on Civil and Political Rights, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the American Convention of Human Rights. With respect to migrants, one has to inquire about their political rights both in the country they emigrated from and in the country to which they immigrated.

Article 21 of the 1948 Universal Declaration of Human Rights indicates that “1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives...”⁵³

The Declaration refers to “everyone” instead of citizens or nationals. The previous section discussed the lack of uniformity in the use of these concepts in national legal systems. Each legal system decides the requirements individuals must fulfill to exercise political rights, such as being a specific age or registering on an electoral list.

The Universal Declaration is too broad to refer to political rights when it mentions the “right to take part in the government.” Notwithstanding, it is very careful to draw attention to the point that everyone can do so in “his country.”

Political rights cannot be restricted without justification. The distinction between aliens and citizens and the difference in the rights they can enjoy as

⁵¹ CLARKE, *supra* note 41, at 16.

⁵² See the opinion of TIBURCIO, *supra* note 22, at 177. “Liberty of thought and opinion are not dealt with under this category, for they cannot be understood as political right. Thinking is an activity inherent to human nature and consequently, expressing thoughts is also something which should be consider as basic to the individual and which therefore cannot be classified under the same heading as voting, being elected, or other similar activity and consequently suffer the same restriction.” See also MANFRED NOWAK, U.N. COVENANT ON CIVIL AND POLITICAL RIGHTS. CCPR COMMENTARY 265 (N. P. Engel, Publisher, 2nd revised edition, 2005).

⁵³ Universal Declaration of Human Rights. Available on-line at the United Nations webpage at: <http://www.un.org/en/documents/udhr/index.shtml> (Last consulted March 25, 2011).

citizens is not considered discriminatory or arbitrary; on the contrary, it is a situation accepted worldwide.

As stated in the above-mentioned Article 21 of the Universal Declaration of Human Rights, migrants included in the broad concept of “everyone” can take part in the government of the countries of which they are citizens. However, this does not mean that migrants can exercise the political rights of the country to where they immigrated, but there are cases in which it is possible to do so.⁵⁴

Article 25 of the 1966 International Covenant on Civil and Political Rights (ICCPR) stipulates that:

[e]very citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2⁵⁵ and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

⁵⁴ See references to New Zealand in VOTO EN EL EXTRANJERO: EL MANUAL DE IDEA INTERNACIONAL (IFE, 2009). Available at: http://www.idea.int/publications/voting_from_abroad/sp.cfm.

See also TIBURCIO, *supra* note 22, at 181, where she mentions some example of countries that allow foreigners to vote: “...This is the case with Denmark, which in its ordinary legislation, since 1981, grants aliens who reside in the country for more than three years, without regard to their nationality, the right to participate in local elections. Spain, in its Constitution, admits that, on condition of reciprocity, aliens may participate in elections at local level. Hungary also grants resident aliens the right to participate in local elections. Ireland grants aliens who reside in the country for more than 6 months the right to vote in local elections. The Netherlands Constitution admits that aliens who have been living in the Netherlands for more than 5 years can vote at local level. The Portuguese Constitution provides for the participation of aliens in local elections on condition of reciprocity. Paraguayan Constitution allows foreigners to vote in municipal elections...”

⁵⁵ International Covenant on Civil and Political Rights, Article 2.

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.⁵⁶

The Covenant thus limits the right to vote to citizens, but it does not clarify what is to be understood by this concept. States therefore seem to be free to choose between the socio-cultural concept of nationality and the more neutral concept of citizenship.

The rights mentioned in this legal instrument are: the right to take part and conduct of public affairs, the right to vote and be elected (universal and equal suffrage, secret ballot and periodic and free elections), and the right to equal access to public service. Migrants can exercise these rights if the national legal systems of the States of which they are citizens provide access to these rights. For example, more than 100 countries allow their migrants to vote from abroad.⁵⁷ It is evident that the political rights of migrants are limited due to national legal restrictions and administrative or operational barriers, as well as the significant financial expense it represents.

Article 41 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW), adopted by General Assembly resolution 45/158 of 18 December 1990, ratified by Mexico in 1999, and entered into force in 2003 sets forth that:

1. Migrant workers and members of their families shall have the right to participate in public affairs of their State of origin and to vote and to be elected at elections of that State, in accordance with its legislation.

2. The States concerned shall, as appropriate and in accordance with their legislation, facilitate the exercise of these rights.

The ICMW establishes the right to participate in public affairs, as well as to vote and to be elected at elections (although it does not specify the kind of elections). These are the political rights migrant workers and members of their families may exercise. This Covenant does not refer the terms citizen or national, but it clearly states that political rights must be exercised according to the legislation of each State.

Article 23 of the 1969 American Convention on Human Rights (ACHR) indicates that:

⁵⁶ JOHANN BAIR, *THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS AND ITS (FIRST) OPTIONAL PROTOCOL. A SHORT COMMENTARY BASED ON VIEWS, GENERAL COMMENTS AND CONCLUDING OBSERVATIONS BY THE HUMAN RIGHTS COMMITTEE* 119-115 (Peter Lang, 2005).

⁵⁷ Jean-Michel Lafleur, *Why Do States Enfranchise Citizens Abroad? Comparative Insights from Mexico, Italy and Belgium*, 11 (4) *GLOBAL NETWORKS* (forthcoming 2011) (manuscript at 2, on file with authors).

1. Every citizen shall enjoy the following rights and opportunities:
 - a. to take part in the conduct of public affairs, directly or through freely chosen representatives;
 - b. to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and
 - c. to have access, under general conditions of equality, to the public service of his country.
2. The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.

Both the ACHR and the ICCPR refer to citizenship status as being able to exercise political rights. Like the ICCPR, the ACHR also recognizes: the right to take part and conduct of public affairs, the right to vote and be elected (universal and equal suffrage, secret ballot and periodic and free elections) to be exercised in the State of which one is a citizen. Again, migrant participation needs to be regulated separately by each national legal system.

Since migration flows are a constant feature in the globalized world, the participation of aliens in the public life of the place where they live has started to be questioned:

In 1992, the Treaty on the European Union established the participation of aliens — nationals of other European countries — in the public life of the community. This convention grants resident aliens, nationals of other EU countries, the right to freedom of expression, the right to reunion and the right to associate. Additionally, the Convention stimulates the States which are party to this Convention to create organizations to represent the alien at local level. Finally the Convention also allows aliens, residing for more than 5 years in a specific European member country, the right to vote and be elected at local level.⁵⁸

From the international instruments analyzed above, it can be noted that the political rights of migrants may be granted in the countries they are considered citizens and that every national legal system can stipulated restrictions on these rights. Until now, only a few States give migrants the right to vote in local elections, but the right to take part in and conduct public affairs and the right to be elected is restricted to citizens of the States that confer that status.

In the following section, the political rights of Mexican migrants will be presented. Even though Mexico is not the first State to allow its citizens abroad to participate in national political affairs, it is the volume of potential voters (10 million people) that makes this case stand out. Absentee voting for Mexicans was made possible for first time in the 2006 presidential elections, but low voter participation was seen again in the 2012 presidential elections. This can

⁵⁸ TIBURCIO, *supra* note 22, at 180.

have two different interpretations, namely: was it the lack of voter interest or the lack of proper means to effectively implement absentee voting?

V. IS ABSENTEE VOTING: THE ONLY POLITICAL RIGHT OF MEXICAN MIGRANTS?

As mentioned above, Mexico is not the first State to implement absentee voting. “Today there are 115 countries that allow some form of external voting.”⁵⁹ In Mexico, the first attempt to promote absentee voting was in 1929 when

...a leader of Mexican Revolution, Jose Vasconcelos, conducted a vigorous campaign among Mexicans abroad for his candidature for the presidency. After this early episode, both the Mexican authorities and Mexicans abroad largely ignored the issue. The failure to actively to promote such legislation for decades was primarily due to the fear of the *Partido Revolucionario Institucional* (PRI), the party in power for 71 years, to grant political rights to citizens who would not support it.⁶⁰

After that first attempt, the timeline for the legal process that allowed absentee voting can be described as follows:

- 1) The reform of Article 36 of the Mexican Constitution in 1996, allowed Mexicans outside their electoral circumscription to vote in a different circumscription.
- 2) On February 22, 2005, the Chamber of Deputies approved the initiative on granting suffrage to Mexicans living abroad.
- 3) On April 27, 2005, the Senate approved the draft decree that would add the chapter on the vote of Mexicans living abroad to the Federal Code of Federal Institutions and Procedures (In Spanish *Código federal de Instituciones y Procedimientos Electorales*).
- 4) On June 30, 2005, the reform was signed and published by presidential decree.⁶¹

We can see that the only political right Mexican migrants have gained after the reforms introduced in the national legal system is the right to vote. In 2006, absentee voting in presidential elections was possible. Even today, Mexican migrants are excluded from participating in other popular elections, such as voting for senators, deputies or local authorities. The right to take part

⁵⁹ Lafleur, *supra* note 58.

⁶⁰ *Id.* at 5.

⁶¹ See Electoral Gazette 89. Acuerdo del Consejo General del Instituto Federal Electoral Relativo a las Asignaciones Presupuestarias Necesarias Durante el Ejercicio Fiscal 2005. Available at www.ife.org.mx/documentos/DIR-SECRE/gaceta.../gaceta89/4-G89-04.pdf.

and conduct of public affairs, the right to be elected by universal and equal suffrage or the right to equal access to public service have not been granted.

Mexicans with a second nationality cannot: “Be elected to any public office or appointed to any employment or commission which requires certain legal qualities to be fulfilled”⁶² as indicated in the Mexican Constitution as a political right of Mexican citizens.

Mexican migrants need to return to Mexican territory to participate as candidates in public offices, and they need to comply with specific periods of time residing in Mexico. But the most important point is that certain public offices are restricted to Mexicans by origin⁶³ that have not acquired a second nationality. This constitutes a clear distinction between the political rights of Mexicans in national territory and Mexicans abroad.

On the other hand, Mexico does not recognize political rights for aliens living in its national territory; in fact, it is forbidden by Article 33 of the Mexican Constitution. Even though this is closely linked to the subject of this article, this specific point is not covered in the present work. However, it is worth nothing that according to Eliseo Aja and Laura Díez Bueso, some of the reasons considered for denying aliens political rights are, in general: 1. Foreigners must be naturalized under the laws of the host country if they want to exercise political rights and this is a slow and expensive solution. 2. Foreigner participation in politics represents an attempt to infringe national sovereignty. 3. The participation of foreigners in politics is understood as going against national identity and patriotism because national needs and aspirations are unknown to them.⁶⁴

Mexicans abroad want to participate in elections because they feel they are still part of the Mexican community even if they live abroad. They send remittances to their families back home and hence, want to participate in the political decisions that will directly affect the future course of the country.

The electoral authorities published that 81% of the Mexicans abroad participated in the last presidential elections. However, it has to be pointed out that the percentage only referred to the list of Mexicans that registered on a nominal list that was created in order to send the corresponding ballots. This list was made a few months before the elections and many Mexicans were unable to complete the registration process. Therefore, millions of potential

⁶² Constitución Política de los Estados Unidos Mexicanos [Const.], *as amended*, Art. 41, base III, Diario Oficial de la Federación [D.O.], 5 de febrero de 1917 (Mex.).

⁶³ Nuria González Martín, “Régimen jurídico de la nacionalidad en México”, in CUADERNOS CONSTITUCIONALES MÉXICO-CENTROAMÉRICA. CENTRO DE ESTUDIOS CONSTITUCIONALES MÉXICO-CENTROAMÉRICA, 47-48 (UNAM, Institute of Legal Research, 1999). The author listed some Mexican Laws that prevent Mexicans with a second nationality from running for specific public offices and that must be reformed.

⁶⁴ See Eliseo Aja and Laura Díez Bueso, *La participación política de los inmigrantes*, in 10 LA FACTORÍA, (Oct. 1999-Jan. 2000). Available at <http://www.lafactoriaweb.com/articulos/aja.htm> (Last consulted March 25, 2011).

voters did not vote. Thus, only 32,632 of the potential 4 million voters cast their votes. This rather poor outcome reflects the large number of irregular migrants. This number did not have a significant effect on the elections: The elected president Felipe Calderon won the elections by a margin of 243,898 votes.⁶⁵

The low participation of Mexicans living abroad in the presidential elections was seen again in 2012: only 40,737 ballot papers were received.⁶⁶

The cost of Mexican absentee voting stands in stark contrast with its potential impact. Every vote cost 290 Mexican pesos.⁶⁷ Had the granting of voting rights to Mexicans abroad been a complete success and all 4 million had voted, it would have translated into a cost of one billion Euros (twenty billion Mexican pesos). It is clear that at this cost, it would be impossible to finance a successful campaign for Mexicans abroad to vote in Mexican elections.⁶⁸

VI. CONCLUDING REMARKS

There is no a uniformity in the use of the concepts of national and citizen. It has been clearly demonstrated that citizenship status is needed to exercise political rights. In the international instruments studied above, the quality of citizen is mentioned as clearly referring to political rights.

It is also evident that according to international practice, migrants have political rights in the country of which they are citizens. There are different instruments that protect the political rights of citizens, but these do not necessarily mention the political rights of migrants, as in the case of the Universal Declaration of Human Rights and the American Convention of Human Rights and the International Covenant of Civil and Political Rights. All these international documents mention citizenship status as a requirement to exercise political rights.

In the Mexican case, it is clear that migrants are able to vote in presidential elections, but it is necessary to implement better ways to exercise political rights by opening up the possibility of being elected. This will encourage migrants to vote from abroad and at the same time, it could overcome the problem of low migrant participation in elections.

⁶⁵ Information available at: http://mxvote06.ife.org.mx/libro_blanco/pdf/tomoV/anexo%206.pdf.

⁶⁶ *Id.*

⁶⁷ See FEDERICO VÁZQUEZ AND JÜRGEN MORITZ (EDITS.), *EL TRIANGULO DE LAS BERMUDAS. EL FINANCIAMIENTO DE LA POLÍTICA EN MÉXICO. PERSPECTIVAS PROGRESIVAS* (Friedrich Ebert Stiftung, 2007). Available at www.fesmex.org/.../Libro%20Triangulo%20de%20las%20Bermudas.pdf (Last consulted March 25, 2011).

⁶⁸ Information available at: http://mxvote06.ife.org.mx/libro_blanco/pdf/tomoV/anexo%206.pdf (Last consulted March 25, 2011).

We cannot speak of democracy if a large part of the Mexican population cannot exercise their political rights. Of course, the political rights of Mexicans living abroad must include the right to be elected too.

As the Universal Declaration states, it is important that “Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.” So it is pertinent to ask what attempts are being made by the different States to achieve this task?

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