

Colombia: representation of emigrants in the Congress

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The first Colombian electoral legislation (Law no. 39) was issued in 1961. It established that Colombians with permanent residence abroad could vote in presidential elections. Agreement on this provision was promoted by the exodus caused by political instability and the dictatorial regime (1953–7). The provision was first applied in the 1962 election, when there were 3,227 registered electors outside Colombia. In 1986, when the existing Electoral Code was decreed, article 116 confirmed the possibility of voting abroad in presidential elections.

Although this was not expressly contemplated in the electoral legislation, in November 1990 Colombian residents abroad were called on to participate in the election of members of a Constituent National Assembly, which prepared a new text of the constitution. Article 171 of the new constitution (1991) established that not only Colombian permanent residents abroad, but also those who were temporarily out of the country could vote. It also allowed residents abroad to vote in elections to the Senate, which took place for the first time in 1994.

Article 176 of the constitution also created a special electoral district in the Chamber of Representatives in order to ensure the participation of ethnic groups, political minorities and Colombians resident abroad. However, this did not come into effect until 2001, when Law no. 649 established that the special electoral district would have a total of five seats, one of which would be for a representative of Colombians residing abroad, two for black communities, one for indigenous communities and one for political minorities. This provision was first applied in 2002. It is important to note that this election was controversial as a result of a ruling by the Constitutional Court which gave electors in-country the option of voting in the election for the external voters' seat. The result of this ruling was that only 3,000 of the 9,000 votes in favour of the winning candidate were actually cast by Colombians living abroad. Subsequently, in December 2005, the international electoral district was specifically regulated by a decree which established that only votes cast by Colombian citizens abroad would be counted to determine who would be the special representative of Colombians abroad in the lower chamber. It was applied in March 2006, in the most recent legislative election.

Although the electoral legislation does not refer specifically to the participation of Colombians abroad in the mechanisms of direct democracy, this has happened twice: (a) in the election of members for the Constituent National Assembly of 1991; and (b) in the referendum on corruption and bad political practices, promoted by the president and held in 2003, in which a wide-ranging constitutional reform was submitted to the people of Colombia, and 41,398 citizens abroad voted.

On 28 August 2006 the National Electoral Council handed the Senate a draft a proposal for reform of the Electoral Code. It suggests adding one paragraph that lists all types of election for which external voting is allowed. Although external voting arrangements for presidential elections are contained in the Electoral Code. The paragraph in the constitution, dispositions for legislative elections are only contained in the constitution; and it would also include all direct democracy practices at national level.

Electoral registration and the conduct of elections

Regarding the procedure and requirements for the registration of electors abroad, the national government issues a decree before every election enabling the premises of Colombian embassies and consulates to be used as polling stations for external voters. Later, the National Registry of the Civil State (NRCS, Registraduría Nacional del Estado Civil), which is the authority that organizes and runs elections both in-country and out-of-country, sends a resolution by which it fixes the period when identity documents can be issued abroad, at least 15 days ahead of election day. (There are two electoral management bodies, the National Electoral Council (NEC), which is responsible for guaranteeing the impartiality and transparency of the electoral processes and general scrutiny, and for resolving challenges presented by the candidates, their proxies or electoral witnesses, according to the relevant articles of the Electoral Code; and the NRCS, whose president is designated by the NEC, and which is in charge of the electoral registers and the organization of elections.) The NRCS also determines at what places this is to be done and appoints polling station staff. It is possible to register as an elector simply by presenting a certificate of citizenship or a valid passport, but to actually vote it is compulsory to have the latter, which is issued by the NRCS.

The Directorate of the Electoral Census of the NRCS compares the certificates of the citizens who are registered as electors abroad with those who are registered in-country. If an elector is found to be registered twice, the first registration is annulled. On election day, the electoral register is posted in a public place next to the election precinct, a copy is given to the polling site managing committee, and a third copy is given to the embassy or consulate.

The senior diplomat at the embassy or consulate designates as polling station staff four Colombian citizens who are resident locally—two incumbents and two substitutes—who must belong to different political parties which have representation in the Congress, in such a way that no one political grouping is dominant. The list of polling station staff is established 15 days before election day and is posted in a visible place at the embassy or consulate ten days before the election.

Candidates for the external voters' seat in the special electoral district must present

a registration form at the appropriate Colombian embassy or consulate at their place of residence and have to comply with the following requirements: they must be over 25 years of age on the date of the election; they must demonstrate to the electoral authorities that they have resided abroad for a minimum of five continuous years; and they must be endorsed by a political party or a political movement which is properly recognized by the NEC, or a social movement or a significant group of citizens.

The representative in the Chamber of Representatives who is chosen for this special electoral district is subject to the general rules on congressmen's incapacities and conflicts of interest, and must reside on the national territory while he or she holds the position.

The voting abroad, like the voting in-country, is by means of universal, direct, equal and secret suffrage. Article 258 of the constitution obliges the electoral authorities to offer the tools that guarantee electors the exercise of their right to vote by means of a printed paper ballot or electronic device. (In 2004 a bill was approved assigning to the electoral authorities the responsibility of implementing electronic registration and voting, both in Colombia and abroad, within five years, that is, not later than 2009. This provision is being considered as part of a bill to reform the Electoral Code which is currently before the Congress at the initiative of the NEC.)

Currently, to organize elections abroad, the National Registry of the Civil State provides the necessary elements in the 'election package', which consists of ballot papers and electoral certificates (voting proof or written evidence showing that the voter has actually voted), the electoral register, special envelopes, the forms for registering the results and the ballot boxes. This package is sent ten days ahead of election day, thus guaranteeing that it will be received at its destination two days before election day.

The scrutiny of the votes cast abroad is the responsibility of the National Electoral Council, which is the authority in charge of the scrutiny of all national voting, declaring the results of the election and issuing the relevant credentials (certificates given to the candidates chosen).

In matters of access to the mass media, election propaganda and the financing of political parties abroad, there are no specific stipulations: the electoral campaigns and election propaganda are governed by the provisions of the constitution in the terms of the political reform of 2003, and by the Basic Statute on the Parties and Political Movements (Law no. 130 of 1994). The norms established by this law and the constitution are interpreted and applied to the activities of candidates abroad. The campaign can only start six months before election day, and there is a time limit on election propaganda of three months before election day.

The electoral campaigns of the political parties and movements, as well as the significant groups of citizens that candidates represent, are financed out of state resources in proportion to the number of valid votes obtained by each list, according to a formula previously determined by the National Electoral Council. The NEC also establishes the limits on campaign expenditure, and verifies that the resources the parties and political movements receive are legal, and that they observe the established ceiling on campaign expenditure; to ensure this, the political parties and movements must publish this information within one month of election day. There are quite severe sanctions for violations of the ceiling on campaign expenditure, including the loss of rights to reimbursement of expenses, and loss of the seat won by the candidate. In the latter case,

when the parties register lists for multi-member electoral districts, if a single member of a list exceeds the ceiling on expenditure, the party loses all the seats it has obtained in that electoral district.

The implementation of voting abroad does present difficulties of a technical, administrative and operational nature. Because of distance, lack of technology and the short time that passes between the closing of the electoral registers and the actual election, the main difficulty lies in carrying out the electoral census abroad in order to confirm the list of people who are entitled to vote; however, in the elections of 2002 it was possible, for the first time, to set up a daily exchange of information with the diplomatic missions by email. This helped to integrate the Electoral Roll of Resident Colombian Citizens Abroad rapidly and smoothly, as well as assisting comparison with the National File of Identification, and the subsequent deletion of duplicate names to avoid the issuing of duplicate ballot papers.

On polling day itself, technical problems related to data transmission do appear, preventing electoral material from being sent and distributed in one delivery. Thanks to technological advances, however, these problems are on the verge of being overcome.

Cost

In the Senate elections of 2002, 365 polling stations abroad were set up. The production of election packages cost 22,600 US dollars (USD); their shipment and set up costs in the 66 countries where voting took place came to 161,930 USD, making an approximate total of 184,530 USD, or approximately 2 USD per registered elector. This funding originates from the election budget of the National Registry of the Civil State.

Turnout

In 1998, in elections to the Senate, external voters cast 17,049 votes. In 2002, that number increased to 40,688. In the March 2006 legislative elections, participation by external voters was expected to increase considerably, since as of 2005 the electoral census included many more external electors, but participation remained almost the same as in 2002, with turnout at roughly 15 per cent of external electors (see the tables).

Turnout is usually higher in presidential elections than in legislative elections. In the presidential elections of May 2002, participation by external voters represented over 64 per cent of the 165,631 registered external electors. In the May 2006 presidential election, 38 per cent of registered external electors voted. Usually a higher number of potential external voters register for presidential elections than for other elections. The main reasons for this are that external electors, as opposed to in-country electors, have to register for each and every election, and interest in presidential elections is normally higher than interest in legislative elections.

Table 1: Participation of Colombians abroad in the 2002 elections

Election	No. of registered external electors	No. of polling stations installed	Total no. of votes	No. of valid votes	Turnout (%)
Presidential (1 round, May)	165,631	534	106,931	106,375	64.56
Senate (10 March)	94,296	365	40,688	38,918	43.149
Special representative in the Chamber of Representatives (10 March)	94,296	365	39,983	37,672	42.402

Source: Calculated from data of the National Registry of the Civil State (Registraduría Nacional del Estado Civil de Colombia), <<http://www.registraduria.gov.co/eleccion2002/e/vsenadoi.htm?1>>.

Table 2: Participation of Colombians abroad in the 2006 elections

Election	No. of registered external electors	Total no. of votes	No. of valid votes	Turnout (%)
Presidential (28 May)	319,045	121,155	120,540	37.97
Senate (March)	273,385	42,588	38,767	15.57
Special representative in the Chamber of Representatives (March)	273,385	41,165	37,176	15.05

Source: Calculated from data of the National Registry of the Civil State (Registraduría Nacional del Estado Civil de Colombia), <<http://www.registraduria.gov.co/eleccion2002/e/vsenadoi.htm?1>>.