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REPORT ON CITIZENSHIP LAW: PERU

Oscar Andrés Pazo Pineda

June 2015



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European University Institute, Florence
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Report on citizenship law¹

Peru

*Oscar Andrés Pazo Pineda*²

1. Introduction

The right to nationality has had a very particular meaning, especially when referring to the Latin American region. Before independence, Spanish rule over the continent had posed various questions in regard to people's true 'identity'. The subsequent independence of various countries, including Peru, and the emergence of a considerable amount of new states raised the need of distinguishing the native from the foreigner. The right to nationality played a fundamental role in this process since it allowed people born in Peruvian territory to strengthen their bounds with the new motherland.

However, the acquisition of Peruvian nationality was not always a straightforward matter, not least because many Spaniards had settled in the country and it was not clear how to proceed in such cases. Despite initially generating serious disagreements among Peruvians themselves – in particular legislators –, a certain consensus was achieved with time. Europe's stability, and the situation in relation to the remaining American countries, fostered the recognition of the right to nationality at the constitutional level.

Nowadays, the Peruvian legislation has broadly embraced that right. This situation has benefited from the fact that, fortunately, the Peruvian Constitution of 1993 did not tie the hands of the legislator. Instead, it gave room for the law to recognise the limits and scope of such right. The continuous and progressive ratification of human rights international treaties has also contributed to having this right particularly safeguarded.

¹ The 'Report on Citizenship Law in Peru' was originally published in Spanish and subsequently translated by Ms. Mariana Mendes. The original report 'Informe sobre la ciudadanía : Peru', first published in May 2015, may be consulted online at

http://cadmus.eui.eu/bitstream/handle/1814/35740/2015_08_Peru_citizenship_ES.pdf?sequence=1

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Moreover, Peru has recently finished consolidating this right both at the local and the international level through the ratification of the convention against statelessness, therefore committing to the adoption of every possible measure to avoid any person being left without nationality. One should add that, under the 1993 Constitution, several constitutional and legal clauses has given the possibility for local judges to interpret fundamental rights – including the one to nationality – in conformity not only with international treaties but also taking into account the parameters developed by international organs in charge of interpreting those treaties such as the Inter-American Court of Human Rights (which has already emitted decisions against the Peruvian state in this matter).

The present study deals precisely with these topics. First of all, how the independence prompted a debate around the recognition of the right to nationality and how foreign norms constituted a significant source of influence; subsequently, how this right was recognised in the successive constitutional documents, including its regulation in the present day. This will allow us to, finally, examine its practical effects in light of the studies undertaken by local statistical bodies so as to demonstrate whether Peruvian norms constitute a hindrance or an incentive to nationalisation.

2. Historical overview

In Peru, any legislative antecedent related to the provision or recognition of the right to nationality should necessarily be traced back to Spain's regulations, the country that colonised various territories in America until the second decade of the nineteenth century. The Constitution of 1812³, which, according to several Peruvian historians⁴, was the first to come into force in Peru, established in art. 5 that the following categories of persons qualified as Spanish: i) people who were free and *avecindadas* (holding resident status) in Spanish territories, as well as their children; ii) foreigners who had obtained the so-called *cartas de naturaleza* (naturalisation letters) or those who iii) had ten years of *vecindad* (resident status), granted according to the law, in any town or village of the monarchy. An incipient distinction between nationality acquired by birth and attained through naturalisation could therefore already be observed. In this respect, the importance of this Constitution is visible in that it was not only the first to be proclaimed and sworn (at least formally) in Peruvian territory, but also in the fact that 'those born in Spanish domains in one or another part of the world were, with no distinction, considered Spanish'⁵. This somehow contributed to decrease the degree of controversy in subsequent debates on this topic in Peru, since the right to nationality was already broadly recognised by the former colonial power.

³ Full text of the Constitution available at

http://www.congreso.es/docu/constituciones/1812/ce1812_cd.pdf

⁴ Peruvian historian Juan Vicente Ugarte del Pino pointed emphatically that 'to expect to thoroughly comprehend the history of American, constitutionalism, and in particular Peruvian, without studying the first constitution that governed Spanish America is the same as to expect to understand a theatre play when arriving at the end of the second act or to read half a book'. See: Ugarte del Pino, Juan Vicente. *Historia de las Constituciones del Perú*. Editorial Andina S.A. Printed in Lima, Peru (1978), p. 23.

⁵ Pareja Paz-Soldán, José. *Historia de las Constituciones nacionales (1812-1979)*. Fondo Editorial de la Pontificia Universidad Católica del Perú. Printed in Lima, Peru (2005), p. 39.

Examining the normative regime in place at the time of the Spanish monarchy's rule in America is an important preliminary task. The reason for this is that the first Constitution to be approved and debated in Peruvian territory, dating back to 1823, had similar provisions in regard to 'the political status of Peruvian'. Thus, according to art. 10, the following were considered Peruvian: i) free men born in Peruvian territory; ii) children of a Peruvian mother or father, even if born outside the Peruvian territory; and iii) those naturalised by the Peruvian state or who had obtained a 'naturalisation letter'⁶.

Peruvian citizenship was also attributed on the basis of the status of *vecinda* (*residence*), for a period of at least five years. A strong influence of the Spanish normative regime is thus noticeable, a degree of similarity that will be kept in future constitutional texts.⁷ It is also noteworthy that, in the Peruvian case, there is no reference to citizenship as a fundamental right, but as a 'political state'. This is understandable given the context of the time, when relatively few freedoms were considered 'fundamental'. In fact, in art. 193 of the Constitution of 1823 various 'constitutional guarantees' were recognised as 'inviolable'⁸ by society and the state. However, nationality was conceived of more as a privilege granted by the state than as a right, especially when it came to naturalised people. In the same vein, there is no reference to the 'Peruvian nationality' at the time but to the quality of being a Peruvian citizen. One should recall, as Valentín Paniagua does, that, in reality, people who could enjoy all the rights were denominated 'citizens'. In this respect, the *Estatuto Provisional de José de San Martín* rightly stated that people who were 'natural' could be 'elevated to the rank' of citizen (art. 2)⁹. It is therefore important to take into account such terminological precision when referring to the situation of foreigners at the time.

Even though the Constitution of 1823 already established the criteria under which one acquired Peruvian nationality, it was the Constitution of 1839 that distinguished for the first time Peruvians 'by birth' and Peruvians 'by naturalisation'. Art. 5 specified the conditions to be recognised as a Peruvian by birth whereas art. 6 dealt with naturalisation requirements, encompassing a large amount of categories¹⁰.

⁶ There were, however, norms already regulating the situation of foreigners in Peruvian territory before this Constitution. As José Agustín de la Puente Candamo points out, 'the expression of the new spirit of independence is the legal text of 17 October 1821, declaring that foreign residents in Peru have the same rights as the citizens of the state, as well as similar obligations'. De la Puente Candamo, José. *La Independencia del Perú*. Fondo Editorial del Congreso del Perú. Printed in Lima, Peru (2013), p. 233.

⁷ There were, evidently, some variations, but the underlying principles were the same. For instance, art. 11 of the Constitution of 1826 also granted Peruvian nationality to the 'Liberators of the Republic' and reduced the time of *vecindad* to three years. The Constitution of 1828 incorporated foreigners that had served in the Army and Navy of the Republic (art. 4). Under this Constitution and, in general, considering the context of the time, it has been argued that the project of Simón de Bolívar in this part of the continent delayed, to a certain extent, the formation of nationalities. See: Belaúnde, Víctor Andrés. *Peruanidad*. Ediciones Librería Studium. Printed in Lima, Peru (1965), p. 315. On the other hand, the Constitution of 1834 included foreigners that had married a Peruvian woman and that exercised some profession or art, with the additional requisite of having stayed two years in the territory of the Republic (art. 3).

⁸ The right to nationality was, obviously, not among those guarantees. This article of the Constitution makes reference to civil freedom, property, freedom of the press, equality before the law, among others.

⁹ Paniagua Corazao, Valentín. *Los orígenes del gobierno representativo en el Perú, Las elecciones (1809-1826)*. Fondo de Cultura Económica y Pontificia Universidad Católica del Perú. Printed in Lima, Peru (2003), p. 279.

¹⁰ For example: i) foreigners admitted to the service of the Republic, in accordance with art. 88, constitutional restriction 5°; ii) foreigners that had loyally served the Army or the Navy; iii) Foreigners *avecinaados* since 1820 registered in the Civil Registry, among others.

This structure would be respected in the successive constitutions of 1856¹¹, 1860 and 1920. The Constitution of 1979, which was the one in force before the current Constitution of 1993, made explicit reference to ‘nationality’. This is not a minor detail given that all the previous texts made reference to ‘Peruvian citizenship’. Indeed, the idea of ‘citizen’ will be progressively left aside in favour of an explicit fundamental right to nationality¹². In any case, this has not at all prevented the intimate connection between nationality and Peruvian identity, that is, the formation of a civic conscience. Hence, for example, the interesting study of Rey de Castro, shedding light on the historical circumstances that enabled the formation of a ‘Peruvian nationality’¹³.

Besides, a special mention must be made of the Constitution of 1828, a text of liberal tendency. In the words of the jurist Manuel Vicente Villarán,

‘the Constitution of 1828 was exceptional insofar as it provided for the granting of Peruvian nationality to individuals not born in Peruvian territory. It favoured excessively those born in other parts of America, those foreigners who had served in the Republic’s Army and Navy as well as foreigners *avecindados* in the country since the 1820’.¹⁴

The reason why this legal text deserves to be mentioned lies not only in its excessive generosity when it comes to the recognition of nationality, but also in the fact that it prompted various debates regarding the possibility of recognising this right in such broad terms. Villarán also reminds us that ‘the Constitution of 1834 [the one that entered into force after the Constitution of 1828] reacted against this. Public sentiment in this matter had changed, mostly as a result of civil wars and struggles among parties in which foreigners had taken part’¹⁵. In this regard, historian Jorge Basadre points out that in 1832 the deputy Manuel Zapata presented a project to forbid foreigners’ access to employment (even when citizenship had already been obtained), a proposal which stopped short of being approved only because the then President was in the meantime removed from office.¹⁶

¹¹ Nonetheless, Valentín Paniagua reminds us that ‘up to the Constitution of 1839, foreign residents originally from other Latin-American countries or foreigners who participated in the war of emancipation were, almost automatically, recognized as Peruvians. Beginning with the Constitution of 1856, the current formulation was adopted, that is, prior compliance with a few formalities – that have changed over time – in order for nationality or naturalisation to be obtained’. See: Paniagua, Valentín. *El derecho de sufragio en el Perú*. In: *Revista Elecciones*, 2 (2). Printed in Lima, Peru (2003), p. 65.

¹² Gabriela Chiaramonti, for instance, emphatically sustains that the concepts of ‘citizenship’ and ‘representation’ in the Peruvian case, which operated in practice for most of the nineteenth century, are a direct influence of electoral processes in Cádiz. This explains, for example, why the idea of ‘citizenship’ has a municipal root, which accounts for why it is considered part of the same category as ‘vecino’. In this regard, see: Chiaramonti, Gabriela. *Ciudadanía y representación en el Perú, 1808-1860: los itinerarios de la soberanía*. Fondo Editorial de la Universidad Nacional Mayor de San Marcos. Printed in Lima, Peru (2005).

¹³ In this case, the concept of nationality is intimately linked to the old concept of citizenship, that is, the existence of a national entity that binds the person with his or her territory. For further information on the formation of a ‘Peruvian nationality’, consult: Rey de Castro, Alejandro. *El pensamiento político y la formación de la nacionalidad peruana., 1780-1820*. Fondo Editorial de la Universidad Nacional Mayor de San Marcos. Printed in Lima, Peru (2008).

¹⁴ Vicente Villarán, Manuel. *Páginas Escogidas*. Talleres Gráficos P.L. Printed in Lima, Peru (1962), p. 61.

¹⁵ *Ibid.*, p. 61.

¹⁶ Basadre, Jorge. *La Iniciación de la República. Tomo Primero*. Fondo Editorial de la Universidad Nacional Mayor de San Marcos. Printed in Lima, Peru (2002), p. 214.

Thus, in the Peruvian case there were serious difficulties on the path towards the full recognition of this fundamental right. However, apart from such episodes, the general tendency of republican governments and its supporters was to extend the scope and recognition of political rights, which was the trend that became ultimately consolidated in Peru. Following these brief historical and conceptual considerations, the next section examines in details the current Peruvian legislation in regard to its provisions on nationality¹⁷.

2. Current regulations on the right to nationality in Peru

Constitutional Provisions

Firstly, the Constitution in force since 1993 recognises in its art. 52 that those born in the territory of the Republic are considered Peruvian. It also includes in this category ‘those born abroad to a Peruvian mother or father, registered in the corresponding Registry during their minority [or those who] acquired nationality by naturalisation or by option while residing in Peru’¹⁸. Art. 53, for its part, delegates to the law the issue of regulating the conditions to acquire or recover nationality.

However, independently of what has been established in the 1993 Constitution, it is worth remarking that the Constitutional Court has recognised in its jurisprudence¹⁹ that human rights treaties, ratified by the Peruvian state, have constitutional status.²⁰ The importance of this detail lies in the fact that Peru has ratified several international instruments related to the recognition and protection of the right to nationality.²¹ For example, one of the first steps towards the recognition of that right in the region, the Inter-American Convention on the Nationality of Woman, was signed by the Peruvian state on 26 December 1933, although its ratification is still pending.²²

¹⁷ Gargarella, Roberto. *La sala de máquinas de la Constitución. Dos siglos de constitucionalismo en América Latina (1810-2010)*. Katz Editores. Printed in Buenos Aires, Argentina (2014), p. 29.

¹⁸ Peru’s Constitutional Court has held that, ‘in regard to the ways to obtain nationality recognized by our country, nationality can be acquired either by birth or by naturalisation. In the first case, our regulations include those born in the territory of the country, minors who have been abandoned and reside in the country and those born abroad to a Peruvian mother or father registered in the corresponding Consulate Registry while under-age’. See: Constitutional Court of Peru. Court file 00737-2007-PA, premise 12. As far as naturalisation is concerned, the Court makes reference to art. 3 of the Nationality Law, which we will deal with subsequently. It is interesting to note that the Court makes no reference to the option of acquiring Peruvian nationality in accordance with art. 4 of the law.

¹⁹ The current Constitution of 1993 does not have any clause related to the status of human rights treaties. However, the previous Constitution (1979) clearly stipulated in art. 105 that ‘the precepts included in human rights treaties have constitutional hierarchy. They cannot be modified except by the procedure that regulates Constitutional reform’.

²⁰ The Peruvian Constitutional Court, in various sentences, made reference to the constitutional status of human rights treaties. Among them, the following are available for consultation: Court file 00025-2005-PI/TC and 0026-2005-PI/TC, premise 26; Court file 00024-2009-AI, premise 12.

²¹ Peru is part of the American Convention on Human Rights, which recognizes in art. 20 the right to nationality. This treaty was adopted via Decree-Law 22231 and ratified on 12 July 1978. In the same vein, Peru is part of the International Covenant on Civil and Political Rights, which recognizes in art. 24, sect. 3, the right of every child to acquire nationality. This treaty was adopted by means of Decree-Law 22128, culminating in the Peruvian state’s adherence on 12 April 1978.

²² In any case, according to the provisions of the Vienna Convention on the Law of Treaties, a state is obliged to refrain from acts which would defeat the object and purpose of a treaty, if it has signed the

Without prejudice to the above, and independently of the relevance of human rights treaties, Peruvian legislation also grants an interpretative function to the decisions of international organisms responsible for interpreting such treaties. In this sense, art. V of the Preliminary Title of the Code of Constitutional Procedure recognises that the decisions of international organisms are parameters of interpretations for judges and members of the Constitutional Court. In the Peruvian case, the Inter-American Court of Human Rights has issued two relevant sentences as far as the right to nationality is concerned, namely the cases of Castillo Petruzzi and of Baruch Ivcher, both against the Peruvian state.

In the Petruzzi case against Peru, the Inter-American Court had to determine whether or not the trial of four Chilean citizens by a Peruvian military tribunal violated their right to nationality. In this instance, the Court did not find arguments related to the responsibility of the state, but took the occasion to specify that the right to nationality, recognised in art. 20 of the American Convention on Human Rights, entails that ‘if an alien acquires this link to a given state, it is understood that he has satisfied the conditions that the state sets to ensure that an effective link exists between the candidate for citizenship and the system of values and interests of the society with which he seeks to fully associate himself; it is natural, therefore, that the conditions and procedures for its acquisition should be governed primarily by the domestic law of that state’²³.

The most relevant case when it came to determining the international responsibility of the Peruvian state for the infringement of the right to nationality was the one of Baruch Ivcher. In this occasion, the Court determined that Baruch did not lose Peruvian nationality by express renunciation, the only means through which it can be lost according to the 1993 Constitution. Instead, he was arbitrarily deprived of nationality when his nationality title was suspended. Furthermore, the Court considered that the authorities responsible for annulling his nationality title – the Migration and Naturalisation Directorate – did not have the competence to do so and was hierarchically subjected to the authority that had granted him the right to nationality, the President of the Republic of Peru.²⁴ In this sense, the Inter-American Court is of the opinion that the violation of the right to nationality is, in principle, subject to domestic law found that the infringement of the necessary procedures to withdraw nationality constituted a breach of domestic law.

Similarly, the Constitutional Court of Peru also had the opportunity to pronounce itself in this regard, sustaining that

treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty.

²³ Inter-American Court of Human Rights. Case of Castillo Petruzzi vs. Peru. Judgement of May 30, 1999, p. 99.

²⁴ Inter-American Court of Human Rights. Case of Baruch Ivcher vs. Peru. Judgement of February 6, 2001, para. 96.

‘the motives usually recognised by international law for the loss of nationality are: the request for the withdrawal of nationality, the acquisition of a foreign nationality and the admission to the public service or the armed forces of another state. By contrast, as recognised in section 2 of art. 15° of the 1961 Convention on the Reduction of Statelessness, states may not deprive any person of their nationality on racial, ethnic, religious or political grounds.’²⁵

Statutory Provisions governing the right to nationality

As mentioned previously, art. 53 of the Constitution places the procedures for granting Peruvian nationality to further developments as prescribed by law. This is how Law 26574, also known as the Nationality Law was established.

The present legal text replaced the former Law 9148 dating back to 1940, which laid out the procedures and requirements that foreigners had to comply with in order to obtain Peruvian nationality. According to this text, which made explicit reference to the then existing Constitution of 1933, Peruvian nationality could be granted to foreigners of legal age domiciled in the territory of the Republic for more than two consecutive years and whom, in addition, had renounced their nationality. In conformity with art. 1 of Law 9148, the granting of nationality was a competence of the Ministry of Foreign Relations, subject to the completion of certain requirements such as knowing how to read and write Spanish and exercising a profession, craft or occupation. The law also required, although in an indeterminate way, that foreigners demonstrate ‘morality and good conduct’ and had not been declared civilly incapable. One curious point is that art. 2 allows the Ministry of Foreign Relations to reject the granting of nationality, without stating the concrete reason, should public interest be endangered. In this way, various precepts recognised by Law 9148, now repealed, could be considered as infringing on the right to nationality and affecting the principle of legality inasmuch as the grounds on which nationality could be lost were not accurately defined.

The current law, however, departs in several ways from the repealed law. First of all, the Law 26574 has the Constitution of 1993 as a reference. Secondly, it no longer requires foreigners who opt for naturalisation to be able to read or write Spanish, although it still requires ‘moral integrity’, however imprecise and indeterminate this requirement might be.

In addition, the law extends the recognition of nationality in ways that were not explicitly contemplated in the Constitution. By regulating aspects that were not directly mentioned in the constitutional text, doubts as to the possible unconstitutional nature of this law could be generated. Nevertheless, one should keep in mind that, as previously mentioned, the Constitution of 1993 comprises a clause delegating this issue for further development in the law, therefore allowing it to regulate other circumstances for the acquisition of Peruvian nationality: i) nationality by birth; ii) nationality by naturalisation and iii) naturalisation by option.

In conformity with art. 2 of the aforementioned law, those who are considered Peruvian by birth are:

²⁵ Constitutional Court of Peru. Court file Tribunal Constitucional del Perú. Court File 00737-2007-PA, premise 10.

1. People born in the territory of the Republic.
2. Minors who have been abandoned, resident in the territory of the Republic, born to unknown parents.
3. People born in foreign territory, children of a father or mother of Peruvian nationality by birth, registered while under-age in the corresponding Civil Registry of Peru's Consular Office's Births Section. This right is only granted to descendants up to the third generation.

In addition, art. 3 establishes that Peruvian nationality by *naturalisation* is granted to foreigners who demonstrate the willingness to be so and, in addition, meet the requirements of legally residing for two consecutive years in the territory of the Republic, legally exercising a profession, craft or occupation, having no criminal record and showing good conduct and moral integrity. Without prejudice to this, art. 3 also offers the possibility of granting Peruvian nationality to foreign residents who, because of their distinguished services to the Peruvian nation, are awarded such honour by the Congress of the Republic, at the suggestion of the President of the Republic.

Finally, art. 4 makes reference to the people who can acquire nationality by *option*:

i) people born outside the territory of the Republic, children of foreign parents, who reside in Peru from the age of five and who, at the moment of reaching the age of majority, according to Peruvian law, manifest their will to become Peruvian before the competent authority.

ii) foreigners united by marriage with a Peruvian and residing, in this condition, for at least two years in the territory of the Republic, who expressed their will to become Peruvian before the competent authority. A spouse naturalised on the basis of marriage does not lose Peruvian nationality in cases of divorce or death of the spouse; and

iii) people born in foreign territory, children of a father or mother of Peruvian nationality, who, once the age of majority is reached, manifest their will to become Peruvian before the competent authority.

Contrary to its predecessor, the current nationality law regulates the conditions for the loss, reacquisition and dual nationality. As far as loss is concerned, art. 7 states that Peruvian nationality is lost when it is explicitly renounced before the competent authority²⁶. As for reacquisition, art. 8 stipulates that Peruvians by birth have the right to do so once they have established their domicile in the territory of the Republic for at least one consecutive year. It also requires that the person expressly declares his or her will to reacquire Peruvian nationality and exercises a known profession, craft or occupation, in addition to showing good conduct and moral integrity.

²⁶ According to the first Final and Transitory Provision of the Nationality Law, the referred competent authority is the Naturalisation Directorate of the Ministry of Interior's Migration and Naturalisation General Directorate. In cases where the procedure takes place outside Peruvian territory, the competent authority is the corresponding Consular Office.

In regards to dual nationality, art. 9 establishes that Peruvians by birth who adopted the nationality of another country do not lose their Peruvian nationality, unless they have explicitly renounced it before the competent authority. The law also specifies that dual nationality does not entitle naturalised foreigners to rights that are exclusive of Peruvian by birth. In the same vein, Peruvians by birth who benefit from double nationality do not lose the exclusive rights that are granted to them by the Constitution. This is in conformity with art. 53 of the Constitution, which states that Peruvian nationality cannot be lost. As a result, multiple nationality is possible in Peru.

According to the law, for the acquisition of double nationality, a request to the Ministry of Interior must be submitted together with a few other documents. Apart from this, the only requirements are that the individual is at least eighteen years of age and has a minimum of two consecutive years of legal residence in the country by the time of application, provided that he or she has not been away for more than 183 days (consecutive days or accumulated in one year), with the exception of cases where the individual holds an authorisation of absence issued by the Migration and Naturalisation General Directorate (DIGEMIN)²⁷.

It should be noted that the Nationality Law initially adopted permitted the cancellation of naturalisation. However, with the adoption of Law 27532, the articles that regulated this matter were annulled.²⁸

Non-statutory provisions governing the right to nationality

Even though Law 26574 regulates the various provisions regarding the right to nationality, this text was implemented via Supreme Decree 004-97-IN, which also deserves consideration here. As with the original law, the latter was modified by Supreme Decree 010-2002-IN.

With the incorporation of the modifications to the initial regulations of the Nationality Law, the submission of the following documents is now required in order to acquire nationality via naturalisation²⁹:

- 1) Completion of the form F-006 (free of charge).
- 2) Receipt of payment to the Bank of the Nation for procedural fees (S/. 569.50 *nuevos soles*).

²⁷ All the requirements and forms are available for consultation under the following link:

<https://www.migraciones.gob.pe/index.php/obtencion-de-la-doble-nacionalidad/>.

²⁸ According to art. 12 of the Nationality Law, naturalisation was cancelled for the following motives:

- a. Criminal offenses against the state and national defence.
- b. Criminal offenses against public security, in the form of illegal drug trafficking.
- c. Crimes of terrorism and high treason, as specified in Decree-Laws 25475, 25659 and their amendments.
- d. Acts that can affect national security and the interest of the state, upon report of the competent organisms.
- e. For having improperly obtained naturalisation, transgressing the established norms and requirements.
- f. For disturbing Peru's relations with other states or international organisms.
- h. For reasons that affect public interest and national interest.

²⁹ A list of these requirements is available in the webpage of the National Migration Authority, under the following link:

https://www.migraciones.gob.pe/pdf/servicios_nacionalizacion_nacionalidad_por_naturalizacion.pdf.

- 3) Written request to the President of the Republic, according to an established form.
- 4) Be eighteen years of age or older, have a minimum of two consecutive years of legal residence in the country by the time of application and not having been away for more than 183 consecutive days or accumulated in one year (the last two years are analysed independently), except in cases where the individual holds an authorization of absence issued by DIGEMIN. For the computation of the two years of residence, the period in which one is absent while holding this special permit is discounted.
- 5) Original birth certificate, record or registration issued by the competent authority in the country of origin, duly attested by the Peruvian Consul or by the Consular Representation of the country of origin accredited in Peru and by Peru's Ministry of Foreign Relations.
- 6) Presentation of the original and photocopy of the passport and the *carné de extranjería* (alien registration card) showing residency and payment of the annual foreigner's tax.
- 7) A sworn statement regarding health, real place of residence and criminal, police and judicial records, according to an established form.
- 8) Pass the evaluation exam.
- 9) Attach the documents in accordance with his or her current migratory status and present proof of economic solvency, with a minimum annual net income of 10 UIT (Peruvian Tax Unit).
- 10) INTERPOL's international exchange file (*Ficha de Canje Internacional*).
- 11) Return of the *Carné de Extranjería* valid at the time it is handed over, for its respective cancellation.

National legislation establishes these general requirements, without prejudice of additional ones that can be demanded in cases of workers, independent investors, clergy or independent professionals. Applications must be submitted to DIGEMIN's Area of Document Processing or to decentralised bodies in the provinces, in cases where they exist. The decision to grant nationality is made by the President of the Republic, meaning that in instances where the outcome is not favourable to the applicant, any appeal will necessarily have to be settled by the same President, who holds the highest hierarchal post in the public sector, in accordance with art. 39 of the 1993 Political Constitution.

3. Statistical studies on the recognition of nationality in Peru

Various statistical studies have been conducted in regard to the acquisition of the right to nationality in Peru. As far as this research is concerned, the number of foreigners who obtained Peruvian nationality through naturalisation is particularly relevant to investigate since this will allow us to infer whether the requirements regulated by the law foster the acquisition of nationality or not. In the same way, we can also draw conclusions in terms of foreign people's predisposition to obtain Peruvian nationality.

In regard to foreigners who obtained Peruvian nationality, statistical data reveals that the growth in numbers has been progressive. In fact, a joint study elaborated by the National Institute of Statistics and Information Technology (INEI), the National Migration Authority and the International Organization for Migration³⁰, covering the period between 2001 and 2012, compiled the following data:

Year of naturalisation	Number of naturalised persons
2001	589
2002	544
2003	658
2004	715
2005	786
2006	770
2007	747
2008	938
2009	1,022
2010	1,014
2011	1,211
2012	1,118

As a trend, it can be observed that, with the exception of short intervals, the number of foreigners who obtained naturalisation in Peru has increased over the past ten years while remaining relatively low. The figures, however, are rather small, especially when compared with the high number of Peruvians who emigrate to foreign countries³¹.

³⁰ The study elaborated by these three institutions is entitled: *Perú. Estadísticas de la emigración internacional de peruanos e inmigración de extranjeros (1990-2012)*. It was completed in 2013 and is available under the following link:

http://www.inei.gob.pe/media/MenuRecursivo/publicaciones_digitales/Est/Lib1102/libro.pdf.

³¹ According to official statistics, 1,940,817 Peruvian citizens emigrated in the period between 1990 and 2007. See: International Organization for Migration, National Institute of Statistics and Information Technology and the Migration and Naturalisation General Directorate. *Perú: Estadísticas de la migración internacional de peruanos*. Printed in Lima, Peru (2008), p. 21.

4. Current political debates and the prospects of reform

It is clear that, with the signing of several international treaties and, in particular, the conventions against statelessness, Peru has now a vast legislation when it comes to access to nationality.

A draft law to reform the Constitution has been recently presented. In fact, the draft bill 4419/2014-CR intends to modify some of the already consolidated bases of the process of acquisition of nationality. In accordance with this proposal, art. 53 of the Constitution³² should read along the following lines:

‘Art. 53:

Peruvian nationality cannot be lost, even if another nationality is acquired either through marriage, residence or naturalisation. The law is in charge of regulating exceptional cases and establishing norms to avoid legal conflicts’.

The reason behind this proposal is that, although the current law allows dual nationality, renunciation of a prior nationality (in this case Peruvian) is required by several countries in order for the new one to be obtained. This, according to what is stated in the draft law, harms the Peruvians residing in the countries whose internal legislation imposes such requirements³³. The fate of this draft bill is still pending on the decision of the Congress’ Constitution and Regulations Committee. According to internal procedures, a favourable opinion is still missing as well as, at a later stage, its submission to the Congress. In addition, it should be kept in mind that the Constitution imposes special requirements when it comes to constitutional reform, a procedure that is quite more complicated than the amendment of an ordinary law³⁴.

A different draft law carrying implications for the recognition of the right to nationality (even though focusing on a different matter) was recently filed. The draft bill 2647/2013-CR³⁵, which addressed the issue of civil union for same-sex partners, regulated the possibility of acquiring Peruvian nationality by this means. Thus, in conformity with art. 4.b.6, the civil partner had the right to acquire Peruvian nationality in case he or she was a foreigner, after two years of the celebration of the non-marital civil union with a Peruvian citizen. The Congress of the Republic rejected this draft bill.

³² The current art. 53 states the following: The law regulates the means to acquire or re-acquire nationality. Peruvian nationality cannot be lost, except when it is explicitly renounced before the competent authority.

³³ The draft law can be consulted under the following link:

[http://www2.congreso.gob.pe/Sicr/TraDocEstProc/Contdoc03_2011.nsf/0/2c279dda56e8f79605257e28007479a1/\\$FILE/PL0441920150415.pdf](http://www2.congreso.gob.pe/Sicr/TraDocEstProc/Contdoc03_2011.nsf/0/2c279dda56e8f79605257e28007479a1/$FILE/PL0441920150415.pdf).

³⁴ According to art. 206 of the current Constitution, ‘every constitutional reform must be approved by the Congress with an absolute majority of the legal number of its members and it must be ratified by a referendum. The referendum can be withheld when Congress’ agreement occurs in two successive ordinary legislative sessions, with a favourable vote which, for each of them, has to be superior to the two thirds of the legal number of congressman’.

³⁵ This draft law can be consulted under the following link:

[http://www2.congreso.gob.pe/Sicr/TraDocEstProc/Contdoc02_2011_2.nsf/d99575da99ebf305256f2e006d1cf0/588055827c08debd05257be4005f45ec/\\$FILE/PL02647120913.pdf](http://www2.congreso.gob.pe/Sicr/TraDocEstProc/Contdoc02_2011_2.nsf/d99575da99ebf305256f2e006d1cf0/588055827c08debd05257be4005f45ec/$FILE/PL02647120913.pdf).

Despite these pending issues, the Peruvian state recently ratified the two conventions on statelessness, part of the United Nations' universal system. It first ratified the Convention relating to the Status of Stateless Persons, adopted in New York on 28 September 1954³⁶. Similarly, parliamentary debate culminated in the ratification of the Convention on the Reduction of Statelessness of 1961³⁷. The endorsement of both international treaties contributes to enhance Peru's recognition of the right to nationality.

5. Conclusions

In light of the above, the following conclusions may be derived:

1. The historical recognition of the right to nationality in Peru was strongly influenced by the regulations specific to the colonial period, as it can be inferred from the provisions of the Cadiz Constitution of 1812. Nationality was thus granted, to some extent, in a generous way.
2. The influence of the Cadiz's assembly (*Cortes de Cádiz*) led to the employment of terms that are no longer commonly used, such as 'Peruvian citizenship' or 'representation'. In addition, 'citizenship' was, at the time, conceived more as a privilege than as a fundamental right. The catalogue of constitutional guarantees was quite limited and nationality was not among them.
3. Broadly speaking, the first Peruvian Constitutions granted the right to nationality without any overtly demanding requirements. This was favoured by the fact that several of those who opted for Peruvian nationality had fought for the cause of independence at the time of emancipation.
4. This did not prevent that, in certain historical moments, suspicion towards foreigners resulted in the adoption of draft laws that were more restrictive in the recognition of their rights.
5. Peru's twentieth century Constitutions granted nationality on two grounds: birth and naturalisation. This was also present in the nineteenth century Constitutions, though there were no adequate regulations in this regard.
6. Peru, nowadays, has constitutional, statutory and non-statutory norms in regard to the right to nationality.
7. As far as constitutional provisions are concerned, Peru has recently become a part of several human rights treaties, including the two conventions against statelessness. It is also part of the American Convention on Human Rights and the International Covenant on Civil and Political Rights, instruments that also recognise the right to nationality.

³⁶ The Peruvian state ratified the referred international instrument on 23 January 2014.

³⁷ Ratified on 18 December 2014. For more information related to the member states, consult: https://treaties.un.org/pages/ViewDetails.aspx?src=UNTSOnline&tabid=2&mtdsg_no=V-4&chapter=5&lang=en.

8. When it comes to conferring nationality, the current Constitution of 1993 refers to the circumstances under which it is granted by birth and naturalisation. In particular, art. 53 delegates the regulation of the ways through which nationality can be acquired or re-acquired to the law.
9. Law 26574 develops the conditions under which nationality is granted, in accordance with art. 53 of the Constitution. The Nationality Law, as it is known, sets three scenarios under which nationality is granted: by birth, naturalisation, or the so-called ‘ naturalisation by option’.
10. In regard to the acquisition of nationality through naturalisation procedures, although the total numbers have not always increased, it is possible to affirm that a growing number of foreigners opt for Peruvian nationality via naturalisation.

