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REPORT ON CITIZENSHIP LAW: HONDURAS

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Report on Citizenship Law
Honduras

Henio Hoyo

1. Introduction

Before the Spanish conquest, the territory of Honduras was inhabited by an array of indigenous groups. Among them were the Mayas, who built large urban centres such as Copán in the north, but that were abandoned due to unknown reasons in the same way as other Mayan cities.However, groups of Mayan ancestry and other indigenous populations such as *lencas* and *misquitos* continued to inhabit the region.

On 30 July 1502, during his fourth voyage, Columbus arrived at the island of Guanaja in the current Honduran department of Islas de la Bahía, and subsequently explored the Eastern coast of Central America. The actual Spanish conquest of the territory did not take place until 1524, when it became part of the Captaincy General(*Capitanía General*) of Guatemala. Thiscomprised most of Central America[1] and formally it was a dependencyof the Viceroyalty of New Spain, with the capital in Mexico City – even if infact it was mostly autonomous from it.

TheCaptaincy General gained independence from the Spanish crown in September 1821, roughly at the same time as New Spain. In fact, for a brief period both regions were united in the First Mexican Empire (1821-1823). However, the fall of the Empireand its replacement by a Republic in Mexico strengthened the claims for independence of the former Captaincy. In this way, the Federal Republic of Central America was born in July 1823. The new federation was short-lived, due to tensions among its constituent parts. Its dissolution during 1838-1840 led to five independent republics: Guatemala, El Salvador, Honduras, Nicaragua and Costa Rica.Honduras had a complicated political history during most of the 19th and 20th centuries, reflected in numerous governmental and constitutional changes, as we will see below.

According to the most recent census (2013), Honduras has 8,303,771 inhabitants, 717,618 of whombelong to anethno-cultural minority (*grupospoblacionales*). In most cases, this refers to one of seven indigenous

[1] The exceptionswere Belize, where indigenous resistance against Spaniards lasted longer, before being occupied by English settlers; and Panama that belonged to the Viceroyalty of New Granada (currently Ecuador, Colombia and Venezuela).

groups.[2]However, there are two smaller, but culturallyand historically important non-indigenous groups: the *Garífuna* and the English Blacks (*negrosingleses*),totalling 43,111 and 12,337 persons respectively(Instituto Nacional de Estadística *et al*. 2016c, 2016d).[3]The Garífunas are the result of the mixture, during the 17th century, of Africans fleeing slavery with natives of the island of Saint Vincentin the Lesser Antilles– currently part of Saint Vincent and the Grenadines. After the English conquest of the island, thousandsof its inhabitants were deported,so thatin 1797 between 2,000 and 4,000 arrived to Roatán Island, in the current Honduran department of Bay Islands. They later settledon the mainland and then expanded their presence also to coastal zones of Belize, Guatemala and Nicaragua, while keeping their own language and ethno-cultural identity(Anderson 2007; ENCARIBE 2016). In turn, *negrosingleses* are the English-speaking descendants of African populations that arrived to the Bay Islands from nearby English colonies like Jamaica and Grand Cayman(Amaya 2005) and who retain a strong Caribbean English cultural identity.

2. Historical background

Two features of the history of Honduras had a strong influence on its laws regarding nationality/citizenship. The first is its convoluted political history, marked by very frequent government changes, coups d'état, civilian and/or military uprisings, and civil wars during both the 19th and 20th centuries. Indeed, the last instance of serious political instability in the country was as recent as 2009, after a constitutional crisis and coup d'état ousted President José Manuel Zelaya as he allegedly was aiming to change the current 1982 Constitutionto allow for his re-election.[4]

[2] Namely, Lenca, Maya -Chortí, Misquito, Nahua, Pech, Tolupán and Tawahka (601,019 persons in total). The Lenca account for almost 2/3 of the total number (Instituto Nacional de Estadística *et al*. 2016d).

[3] The ethno-cultural data of the 2013 census also include 61,151 persons classified as 'others'.

[4] Manuel Zelaya won the presidential elections in 2005 for the Liberal Party of Honduras. His administration was characterised by an approach similar to the left-wing governments of Latin America, particularly Chavez' Venezuela. In 2008, Zelaya announced a national ballot to ask citizens for the convenience of a referendum (to be held simultaneously with the national and local elections of 2009) to call a new Constituent Assembly. This was perceived as an attempt by Zelaya to enable re-election, which is strictly forbidden by the 1982 constitution. The attempt was deemed unconstitutional by the Supreme Court, but Zelaya went ahead with the poll, thereby creating a constitutional crisis which was deepened by his decision to dismiss the Chief of the Armed Forces after he refused to distribute the ballots for the poll. The armed forces subsequently captured Zelaya and sent him into exile, while an interim government was set up headed by the leader of the National Congress, Mr. Roberto Micheletti. However, Zelayawas to return surreptitiously later in the year, and took refuge in the Brazilian embassy in Tegucigalpa. This intensified tensions between his supporters and those of the *de facto* government of Roberto Micheletti.
The coup d'état was faced with unanimous international condemnation. Such lack of legitimacy affected not only the interim government, but also the 2009 elections and the resulting government of Mr. Porfirio Lobo. The crisis was solved in 2010 only, after international mediation. Zelaya was allowed to leave the Brazilian embassy and take refuge in Dominican Republic. He would return to Honduras once again in 2011, creating a new

As a consequence of such a complex history, Honduras hashad at least thirteenConstitutions since its independence(Ramos Soto 2009: 389) some of them lasting just a couple of years, and/ornever enforced due to continuing political unrest.Because of such a complexpolitical landscape, many laws were promulgated but not enforced, or very frequentlyexperienced changes– including, of course, those regulating the acquisition and loss of Honduran citizenship, as outlined below.

The second major characteristic shaping nationality/citizenship law in Hondurasis the drive towards integration with other countries of Central America. As mentioned, Honduras, Guatemala, El Salvador, Nicaragua and Costa Rica were part of the Captaincy General of Guatemala during the Spanish colony. These states also achievedindependence together, and briefly formed a federation afterwards. But since the 1838-1840 break-up of that federation, the relations between the five successor states have beennotoriously complicated, including frequent wars, border disputesand diplomatic tensions during the 19th and early 20th centuries.In spite of complicated relations, there were also multiple (unsuccessful) attempts to re-create a political union among all, or at least some of these countries. One of the last attempts took place in 1921, when a federation comprising Guatemala, El Salvador and Honduras was created. Although it lasted only a year, its Constitutionwas quite influential and therefore it is commonly cited as part of the legal history of Honduras– even if it was never implemented and, in any case, referred to a (legally) different state.[5]

The drive towards regional integration still exists today, as attested by the Central American Integration System and its institutions, be they political(e.g. Central American Parliament), judicial (Central American Court of Justice) or economic/financial (Central American Bank for Economic Integration). Further integration policies includea common visa and free transit zone between El Salvador, Guatemala, Honduras and Nicaragua, as well as special treatment granted tonationals of the other Central American countries in local law, including laws regarding citizenship acquisition.

A note about 'nationality' and 'citizenship'

In Honduras, as in other Latin American countries, there is an important conceptual distinction between 'nationality' (*nacionalidad*) and 'citizenship' (*ciudadanía*). The first refers refers to membership in the Honduran nation-state, thus corresponding to the term 'citizenship' as used ininternational law: a legal relationship between the individual and an internationally recognised sovereign political entity. In turn, *ciudadanía* refers only to the individual's entitlement to political rights – therefore achieved upon reaching legal age.

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political party that nominated his wife, Xiomara Castro, for President in 2013. She took 29 per cent of the votes, losing to Juan Orlando Hernández.

[5] Quite frequently, the same applies to the other Constitutions resulting from the different attempts at creating a Central American federation. These Constitutions are generally taken into account as part of Honduran legal history. However, the particular text(s) considered seems to vary according to the author and objective. To avoid confusion, I will focus on the analysis of the 'domestic' Honduran Constitutions and laws, using those of the Federations only as auxiliaries or when they are truly relevant to underline specific points.

This differentiation between *nacional* and *ciudadano* was introduced in the first Constitution of the State of Honduras (1825) and has been maintained since.[6] Accordingly, the 1982 Constitution, currently in force, devotes its Title II to the matter. It first defines who are Honduran nationals and how such nationality can be acquired or lost (arts. 22 to 29), and then specifies that all Honduran nationals upon reaching legal age (18 years - art. 36) become *ciudanos*. Thus, it is possible for a person to be a Honduran 'national', but not a Honduran 'citizen' – which, in fact, is the status of all minors.

It is also important to note that since 2003, *nacionalidad* by birth cannot be revoked, but *ciudadanía*(political rights) can be suspended in case of judiciary procedures against the person.Similarly, it may belost altogether in certain cases, e.g. in case of treason; when helping a foreign country or a foreign person in a diplomatic reclamation against Honduras; or in certain political offences such as "inciting, supporting, or promoting the continuity or re-election of the President", among others (arts. 41-42).

Notwithstanding this differentiation, in this report the term 'citizenship' is used in its internationally accepted definition of a legal relationship between the individual and a political entity.[7] When it is convenient to distinguish between the two concepts, the original terms in Spanish will be used.

2.1. Citizenship acquisition

The 1824 Constitution of the Federal Republic of Central America, of which Honduras was a part, set anius soli regime supplemented with qualified ius sanguinis. It also regulated naturalisation for various reasons, including declaration, marriage, and 5-year residence(República Federal de Centro América 1824, arts. 14-16). In contrast, the first Constitution of the State of Honduras (1825) did not specify who should be considered as a Honduran citizen, or how such citizenship would be acquired or lost. The following Constitution(1831) mentioned 'natural' and 'naturalised' citizens, but did not elaborate further. It was only inthe 1839 Constitution that some guidelines were set.

Citizenship by birth

Art. 6 of the 1839 Constitution introduced universal ius solias the basis of citizenship acquisition, as well as the option of 'naturalisation letters' for foreigners. It also stated that naturalisation in a foreign country would lead to loss of Honduran citizenship(art.11). The following Constitution (1848) maintained ius soli, but also introduced a qualified ius sanguinis for those born abroad, if the parents were engaged in official commissions; in scientific, artistic, or commercial activities; or 'temporarily exiled' (1848 Constitution, art. 6).LaterConstitutions of the 19th century introduced further variations andius sanguinis became the main principle in 1894. Such variations continued in the constitutions of the early 20th century.

[6]This distinction was also stated in the 1824 Constitution of the Federal Republic of Central America, of which Honduras was a part.
[7]Therefore, corresponding to the notion of *nacionalidad*in Honduras.

It was only in 1936 that a stable system was adopted, based on ius soli as the main the principle, supplemented with ius sanguinis for those born abroad from either a Honduran mother or father. The Constitution of that year, however, specified that such ius soli would not apply to foreigners in transit (*extranjerostranseúntes*) or children of diplomats. The following 1957 Constitution kept these provisions, but also extended ius solito (a) foundlings and (b) persons born on Honduran ships or planes, either commercial or military, regardless of their location at the time of birth (art. 17). Ius sanguiniswas kept for those born abroad.

Eight years later, a new Constitution(1965) removed the exclusion of children of foreigners in transit – therefore introducing a truly universal ius soli, with the exception of children of diplomats. It also modified the provisions regarding births in ships and aeroplanes, specifying that ius soli would apply to ships from the armed forces, or to any commercial ship in the territorial waters of Honduras.[8]

Finally, the current 1982 Constitution kept all the provisions regarding ius soli mentioned above. But at the same time, it restricted ius sanguinis for children born abroad to those born from Honduran citizens by birth – that is, not from naturalised parents. This was further specified in a 2001 interpretative decree, conditioningius sanguinis to clear proof of the Honduran citizenship by birth of at least one parent (Honduras 2001).

Central Americans as 'naturals'

The treatment of citizens of other Central American countries is a very interesting case. The 1824 Constitution of the Central American Federation set common guidelines for all its members. Then, the 1839 Honduran Constitution stated that one requirement to be President of the Republic was to be 'Central American' by origin, with at least seven years as a 'citizen' of Honduras (art. 47). In this way, a person that inhabited other regions of the firstFederation could be a Honduran President. The 1848 Constitution of the State of Honduras went a step further, recognising as Honduran citizens all thosecoming from 'other parts of the Republic' – probably another reference to integration attempts, as five years earlier a Confederation comprising El Salvador, Honduras and Nicaragua was established but, once again, quickly dissolved.

The next Constitution (1865) explicitly stated that Central Americans residing anywherein Honduras would be considered as Honduran (art. 9, par. 3). This was repeated in following Constitutions, and the 1894 Constitutioneven specified that such Central Americans would be considered as Honduran 'naturals' (*Hondureñosnaturales*) – that is, not as naturalised but as native citizens. Later constitutions kept this provision but regulated its application. For instance, the 1936 Constitution introduced a one-year residence requirement, whilethe 1957 Constitution

[8] In the constitutional text of 1957, ius soli was applied automatically to all ships and planes from Honduras, treating them as 'extensions of the national territory' – in the same way that countries like Mexico do. Therefore, a child born on a Honduran plane or ship was deemed to have been born in Honduras regardless of the location of the ship or aircraft at the moment of birth. After 1965, this notion would only apply to military vehicles; but at the same time, ius soli became extended to any births in the territorial waters of Honduras, regardless of the nationality of the ship wherein the birth took place.

requiredreciprocity with the country of origin. The 1982 Constitutionfinally changed such special treatment for Central Americans, offering them instead a privileged *naturalisation*scheme after just one-year of residence.

Naturalisation and preferential schemes

As stated above, naturalisation was first mentioned, but not elaborated, in the 1831 Constitution, and that of 1939 mentioned 'naturalisation letters' as a way to acquire citizenship. The1848 Constitution specified the requirements for naturalisation, namely: acquisition of property and fouryears of residence; marriageto a Honduran woman and two years of residence; or direct grant of naturalisation by the Legislative. These grounds were kept in the following Constitutions almost until the end of the 19th century, with some variations in residence requirements.

The 1894 Constitution deleted any reference to naturalisation through marriage or property acquisition. Instead, it simply specified naturalisation by request after one-year ofresidence for Hispanic Americans (see 'preferential naturalisation schemes' below) or twoyearsfor anyone else. The text from 1936 changed residence requirements to two and four years respectively, but this was reversed in 1957. Currently, the residence requirements are one year for Central American citizens by birth; two years for Spaniards and Ibero-Americans[9]by birth; and three years for anyone else.

In this sense, Honduras has a long history of preferential naturalisation schemes of three main types: (1) by marriage, (2) by national origin, and (3) by migratory status. Regarding the first, it is quite interesting to note that the 1848 Constitution – the one introducing the provision – mentioned marriage to a *female* Honduran citizen as a cause of lowering the residence requirement from four to two years, but it made no reference at all to marriage to a Honduran male. This was repeated in the Constitutions of 1865 and 1873, in both cases lowering the residence requirement to one year only.

Any mention of naturalisation through marriage was deleted in the Constitution of 1894 and would not appear again until that of 1965. It should be noted, however, that it did appear in the 1921 'Constitution of the Central American Republic'(another ill-fated federation, comprising Honduras, Guatemala and El Salvador)as it mentioned marriage to a *male* citizen as a ground for preferential naturalisation – but not the other way around. However, as stated above, preferential naturalisation on grounds of marriagein a constitutional text of Honduras alone would have to wait until 1965, when it was re-introduced making no gender differentiation, and also not specifying anyresidence requirements.In the 1982 Constitution, it was restricted to those marrying Honduran citizens by birth only.

[9] The term *Iberoamérica* (Ibero-America or Iberian America) alludes to the countries in the Americas that once were colonies of a country of the Iberian Peninsula – that is, of Spain or Portugal. Therefore, it includes all Spanish-speaking countries plus Brazil. In turn, *Latinoamérica*designates the American countries where a Latin language (Spanish, Portuguese, or French) is either official or spoken by the majority of the population – therefore adding Haiti. However, in the literature such differentiation is not always utilised, especially in the English-speaking one.

A second main cause for preferential naturalisation has beennational origin. This was introduced in 1848, offering Honduran citizenship immediately upon requestfor those born in 'one of the Republics of America'(art. 11). Preferential treatment for national origin disappeared in subsequent Constitutions, but it was re-introduced in 1894for 'Hispanic-Americans' after one-year of residence. The text of 1924 waschanged to include Spaniards, as well as all Latin Americans (therefore adding Brazil and possibly Haiti).[10]This was further expanded in 1957 to include citizens of all the countries of the Americas, also after just one year of residence. The trend towards inclusion was reversed in the 1982 Constitution, which went back to offerprivileged naturalisation to Spaniards and Ibero-Americans only, and also increased the residence requirement to two years.

The third main cause has been migratory status. Compared to the other two, this has been a quite recent development. The 1957 constitution introduced a paragraph in Art. 19 granting privileged naturalisation to immigrants brought by the Honduran government to take part in 'agricultural or industrial activities', yet subject to one-year of residence as well as other requirements. This provision is directly related to population and development policies promoted by the Honduran governments during the second half of the 20th century, and has been kept since – but adding 'scientific' activities to the list as well.

Overall, naturalisation policies in Honduras (both ordinaryand preferential naturalisation) seem to be quite generous. However, it must be noted that both naturalisation and immigration to Honduras have been historically small, as foreign-born persons have never constituted more than 5 per cent of the population(Flores Fonseca 2012: 10; Suazo 2011: 332).Of course, there are communities that not only migrated to Honduras but even gained economic and political importance, such as Arabs – particularly Christian Palestinians – and Jews in San Pedro Sula (see Romero Ballivián 2014). Also important was the flow of refugees from other Central American countries,particularly from El Salvador and Nicaragua during the civil wars in the 1980s in those countries. Their numbers have beenestimatedbetween 26,580 and 37,000 recognised refugees, plus ca. 200,000 non-recognisedrefugees and displaced persons (Carranza y Chang 2002: 163; OIT y CECC/SICA 2011: 22).

The available data for the last three decades seem to confirm that migration flows to Honduras are small and, in fact, that the total number of foreign-born persons in the country have barely changed in 15 yearsexcept for an abrupt decrease in 2001, as seen in table 1 below. What is more, the sources of migration to Honduras are very specific.Almost three-quarters of all foreign-born persons come from just four countries: the United States and Honduras' neighbouring countries(see table 2). In this way, international migration to Honduras is mostly of the regional and trans-border type; also, in the case of the US, most of it is probably linked to return migration.

[10] It should be noted that the inclusion of Spaniards was inherited from the 1921 'Central American Republic' Constitution. Also, the inclusion of Haiti as a 'Latin American country' is sometimes debated, depending on the criteria used (geographical, historical, and/or linguistic).

Table 1–Foreign-born nationals in Honduras	
Year	Persons
1998	34,387
2001	27,976
2007	35,734
2013	37,912
Sources:Carranza y Chang (2002); OIT y CECC/SICA (2011);Instituto Nacional de Estadística *et al*. (2016b)	

Table 2–Main countries of origin (2013 census)		
Country	Persons	% of all immigrants
United States	8,432	22.24%
El Salvador	7,434	19.61%
Nicaragua	6,910	18.23%
Guatemala	4,894	12.91%
Five top countries	27,670	72.99%
Source: Instituto Nacional de Estadística *et al*. (2016b)		

Overall, theforeign-born persons in Honduras in 2013 make for just 0.45 per cent of the total population (8,303,771 persons). What is more, they tend to be both urban and territorially concentrated: nearly half the foreigners live in two departments: 25.88 per cent in Francisco Morazán, which includes the capital Tegucigalpa,and 20.23 per cent in Cortés, a northern department that includes both the industrial city of San Pedro Sula and the largest port of the country, Puerto Cortés(Data of the 2013 census. Instituto Nacional de Estadística *et al*. 2016a, 2016c).

Decree 26-90-E (Special Naturalisation Law)

On 21January 1991, a Special Naturalisation Law (*Ley Especial de Cartas de Naturalización*) was published(Honduras 1990). It offereda special regime of naturalisation specifically to persons of Chinese origin. Because of this, it was also known as Law for the Naturalisation of Far East Citizens (*Ley para la Naturalización de CiudadanosOrientales*). It offered expedited naturalisation upon the investment, or straightforward 'donation', of 25,000 USD per applicant, plus $3,000 for each accompanying dependant.

In return, the applicant would receive the Honduran passport without obligation of taking residence in the country (enabling them to continue immediately to a third country, most probably the United States); they would be exempted from renouncing their previous citizenship (a privilege extended to no other naturalised Honduran) and they would enjoy tax exemptions if they chose to settle in Honduras. This law can thus be considered as a perfect example of'citizenship for sale' programs.

The Law was meant to be in force for one year only but as its implementation faced important delays, it was extended for another six monthsin January 1992. At the end of this period, the official number of persons who had benefited from the Law was between two and three thousand. However, a judiciary investigation concluded in 1994 that the process had been affected by large-scale corruption, including procedural irregularities, the issue of falsified passports, and exorbitant 'extra' payments made to the officers in charge. What is more, even after the official termination of the program, an international criminal network that included Honduran diplomats kept selling passports illegally (Reyes y Tamayo 1997; Suazo 2011: 330). The subsequent scandal was known as '*Chinazo*'. It is not clear how, or if, the Law had substantive and lasting benefits for the country.

Territorial changes and citizenship

As stated above, the relationship between the Central American republics has beencomplex, and even hostile in some periods. One instance was the so-called 'Soccer War' of 1969, which in fact was caused by economic interests, land and sea border conflicts, and increasing migration (either documented or not) of Salvadoran citizens to work in agricultural fields in Honduras. The armed confrontation lasted just over four days, but a peace treaty was not signed until 1980. As part of the treaty, both countries agreed to submit their border disputes to the International Court of Justice (ICJ).The ICJ ruled over the matter in 1992, granting around 2/3 of the disputed land zones to Honduras and the rest to El Salvador.

The rule had evident consequences for the inhabitants of these areas, especially regarding their citizenship. As a consequence, both countries signed a Convention in 1998 (Honduras 1999) that, among other things: (1) recognised the right for native or resident persons in those territories to freely choose either the Honduran or the Salvadoran citizenship; (2) stated that such a choice means individuals would be recognised as citizens-by-birth by the respective country; (3) that those who opted for a citizenship different from that of the state now in control of the territory would retain their residence rights; and (4) that all property rights of the inhabitants would be respected, regardless of the change in jurisdiction. Points (2) and (4) were of crucial importance for the Salvadoran communities that had been transferred to Honduras, because the HonduranConstitution states that only Hondurans by birth can own properties in a strip of 40 km from the international borders. Neither foreigners, nor naturalised citizens are entitled to the provisions under the ruling (art. 107, 1982 Constitution).

The population that, in principle, could acquire Honduran citizenship by birth in this way is around 5,000 persons. However, in many cases, the process of granting official IDs to those who have opted for it has been extremely slow – to the point that some persons have only recently received their documents, while others are still living in a legal limbo two decades after the ICJ handed down its verdict (Díaz 2012; Lawn 2013; SDHJGD 2015).

2.2. Loss and recovery

The 1839 Constitution stated three causes for total loss of citizenship: naturalisation in a third state; judicial sentence 'without rehabilitation'; or by acceptance of 'employment, rent, or distinction from any other government, except those of Central America' (art. 11, Constitution of 1839).[11]This was kept for the rest of the Constitutions of the 19th century but, surprisingly, the one from 1894 removed any mention of loss of citizenship (even due to naturalisation in a third country). Theoretically, this could have opened the door to *de facto*dual citizenship.[12]

The 1904 Constitution did not mention loss of citizenship either, and had such remarkable provisions as allowing foreigners to have posts in local (e.g. municipal) administrations (art. 13). Naturalisation in a third country,and employment without permission in a foreign government besides those of Central America, were causes of loss of

[11] In turn, political rights (*ciudadanía*) were heavily restricted, e.g. they would be denied to debtors, jobless persons, those having a 'vicious behaviour' or to domestic servants, among others.

[12] The 1894 Constitution also made employment by a country outside Central America a cause for suspension of citizenship, but not the loss of it (art. 22).

citizenship, not of nationality.[13]In turn, a provisionwas introduced to specify that, while in Honduras, no Honduran-born person can claim to be, or be treated as a foreigner – even if the person renounced his/her Honduran citizenship and became a naturalised citizen of a third country.[14] In this sense, Honduran citizenship was 'permanent' for some purposes, and no person who formerly was a Honduran could demand protection fromhis or her new state.

The Constitution of 1924 introduced important changes. Its art. 22stated, on the one hand, that Honduran citizenship would be lost if (a) the person accepts titles or awards from a foreign government, except scientific, literary, philanthropic or artistic ones; or (b) if the person performs a military or political function for a foreign country. But on the other hand, it also stated that citizenship could be recovered by judiciary means, or by renunciation of any other foreign citizenship acquired. Therefore, Honduras introduceda type of 'dormant' citizenship that could be recovered by declaration – but not dual citizenship as such.

However, the 1936 Constitution introduced a stricter approach, first by making no reference to recovery of citizenship, and second by re-introducing the following grounds for loss: (a) naturalisation in a foreign country; (b) withdrawal of naturalisation ('*cancelación de la carta de naturalización'*) and (c) assistance to enemies in times of war, (art. 12, 1936 Constitution). The subsequent 1957 Constitution eliminated loss due to 'assistance to enemy', but kept the other two.

Finally, both the 1965 and 1982 Constitutionsfollowed the same line, keeping (a) and (b) above as causes of loss of citizenship; but at the same time, the Constitutions re-introduced 'dormant' citizenship for Honduran citizens-by-birth. In the case of the text from 1965, citizenship could be recovered by request immediately after relocation, or automatically, after two years of residence in Honduras(arts 21-22). What is more, there was no demand for renunciation of the foreign citizenship, so dual citizenship was possible (even if it was not officially accepted except with Spain). The current Constitutionmaintainstheseprovisions (arts. 28-29, 1982 Constitution).

2.3. Dual Citizenship

In 1966, Honduras signed a treaty with Spain, allowing dual citizenship on a reciprocal basis (*Estado Español y República de Honduras* 1966). This meant that both Spanish and Honduran citizens by birth, but not naturalised ones, were able to naturalise in the other country without losing his or her original citizenship. The treaty also set the general principles and the jurisdiction that would be applicable tosuch dual citizens – namely, the laws of the country where he or she had their normal residence. Finally, it also allowed the recovery of the original citizenship for persons of Spanish or Honduran origin who naturalised in the other country before 1966. This treaty is still in force, even if the recognition in 2003 of dual citizenship for Hondurans-by-birth has made it somewhat redundant.

On 22 October 2002, a decree reforming arts. 28 and 29 of the 1982 Constitution was published in order to allow dual citizenship for Hondurans-by-birth. The decree was ratified on 11March 2003 and entered into force on 16 April 2003.As in other Latin American countries, the main grounds for the Honduran adoption of dual citizenship were, on the one

[13] However, the 1904 Constitution did not re-incorporate judicial sentences as a cause of loss of citizenship.
[14] Art. 22, par. 2 in the 1904 Constitution ; art. 7, par. 3 in that of 1924; art. 8 (1936); art. 20 (1957); art. 18 (1965); art. 25 (1982).

hand, the activism of emigrant communities of Honduran origin, particularly their demands for keeping their social and political rights as citizens in Honduras; and on the other hand, the need to protect those Hondurans in the wake of anti-immigrant legislation and policies, particularly in the US(Escobar 2015: 184, 187; Hernández Juárez 2003: 149-153).

The new versions of arts.28 and 29 state that Honduran citizens by birth cannot be deprived of their citizenship (*nacionalidad*), even if they naturalise in a third country. The reformed articles also stated that a new Nationality Law would be promulgated to regulate such matters, including the exercise of political rights. This law was never introduced – at least not with that name. Instead, a Law on Migration and Alien Status (*Ley de Migración y Extranjería* – hereafter LME) was introduced, together with its respective Regulations (hereafter LME-Reg).

In this sense, LME took the role of the promised Nationality Law. However, both the LME and LME-Reg touch on many additional topics, such as: (a) immigration to Honduras and categories of resident foreigners; (b) asylum; and (c) migration and visa procedures. Nationality *per se* is covered in LME in a rather brief manner, namely in a single chapter that comprises four articles (89-92) and deals with naturalisation.

LME also mandated the creation of a responsible governmental unit within the Ministry of Governance and Justicethat would be in charge of implementing the law:The General Directorate of Migration and Alien Status (*Dirección General de Migración y Extranjería,* hereafterDGME). Even if DGME was organised promptly, an executive decree of 30June 2014 substituted DGME with a new National Institute for Migration (*Instituto Nacional de Migración,* - hereafterINM) with the same attributions, but seemingly more autonomy(Honduras 2014b).[15]

There are not enough data or statistics specifying how many Hondurans opted for naturalisation in a third country after the 2002-2003 constitutional and legal reforms. However, it is important to note that these reformsapplied to Honduran citizens by birth only. Naturalised citizens of Honduras are still subject to automatic loss of citizenship, not only in the case of naturalisation in a third country(as specified in the reformed art. 29, 1982 Constitution) but also in other, rather arbitrary situations, e.g. when the person 'becomes unworthy of the Honduran citizenship' due to 'justified and grave grounds' (LME, art. 65, par. 4).

3. Current citizenship regime

Currently, Honduran legislation and principles on citizenship incorporate a diverse, sometimes contrasting array of provisions. For instance, the country applies a very liberal, almost unqualifiedversion of ius soli for citizenship acquisition but at the same time, citizenship by virtue of ius sanguinis is far more restricted. The laws alsocontain provisions that seem to be frankly discriminatory.

[15] A law that might be seen as complementary to LME in some respects is the 2014 Law on Protection of Honduran Migrants and their Families (*Ley de Protección de los HondureñosMigrantes y sus Familiares*) It deals with the rights and duties of Hondurans abroad, their families both inside and outside Honduras, and return rights and procedures. It also specifies the political rights of Hondurans abroad.

The same contradictions can be seen regarding naturalisation: on the one hand, general requisites and schemes for it are seemingly generous, e.g. regarding residence time and privileged naturalisation schemes. However, after naturalisation, it is quite evident that far from being considered as equals, naturalised citizens of Hondurans are subject to a strikingly restrictive legal regime that,in fact,accordsthem in a status of 'quasi-aliens'.

2.1. Citizenship acquisition

Acquisition of *citizenship by birth*in Honduras follows a combination of universal ius soli, with qualified ius sanguinis. That is, besides children of foreign diplomats, all persons born in the territory of the Republic of Honduras are automatically citizens by birth. This also applies to foundlings(art. 23, 1982 Constitution). What is more, ius soli is applied to births in warships or military planes of Honduras – as theseare considered extensions of Honduran territory – as well as births in commercial ships located in the territorial waters of the country.[16]

In contrast to this liberal and egalitarian approach, ius sanguinis is used in a far more restricted form, namely that in the case of birth abroad, citizenship is only transmitted if one of the parents is a Honduran citizen by birth – not by naturalisation (art. 23, 1982 Constitution). This not only seems to be openly discriminatory, but it might also lead to statelessness in some cases (see 'inequalities and imbalances' below). What is more, the differentiated treatment has been reinforced in the last years, for instance by a decree from2001 which further underlinedthat acquisition of citizenship by ius sanguinis should apply only if (a) at least one of the parents was born in Honduran territory,*and this could be legally attested*; and (b) if one of the parents was born abroad, and she/he*can demonstrate her*/*hisentitlement* to Honduran citizenshipby ius sanguinis (Honduras 2001).

As regards naturalisation, at first glance therequisites are not particularly severe. Theyinclude standard requirements, such as having legal capacity and means for living (or being a dependant), as well as no criminal record in the country. Naturalisation also requires an individual to beproficient in Spanish and to pass a test of knowledge of history, geography, and the Constitution of Honduras (art. 89, LME; art. 63, LME-Reg).[17]

Legal residence is also required for naturalisation, and it is remarkably liberal: three consecutive years for ordinary naturalisation, which is lowered to two years for Spaniards and Ibero-Americans, and to one year for Central Americans (art. 24. 1982 Constitution). Furthermore, naturalisation after just one year is allowed for members of immigrant groups that have been brought and sponsored by the Honduran government for 'scientific, agricultural and industrial goals'. Finally, naturalisation can be achieved through direct grant by the National Congress, in recognition of 'extraordinary services' to Honduras;and by ius matrimonii (art. 24, 1982 Constitution).

However, the latter case is noteworthy. To begin with, art. 24 of the Constitution specifically states that naturalisation of a spouse,only appliesto foreigners married to a Honduran citizen-by-birth, not to spouses of naturalised citizens.In this way, the

[16] However, some cases seem to be excluded by the phraseology of this article. For instance, it seems that the following cases are excluded in principle: (1) births in commercial aeroplanes from Honduras, while being outside the national territory; (2) births in foreign aeroplanes crossing Honduran airspace; and (3) births in commercial ships with the Honduran flag, but outside of Honduran territorial waters.
[17] In case of failure, the test can be repeated only once (art. 89, LME)

differentiation between both groups appears even in a matter where international standards, and particularly Latin American practice, does not allow for such differentiation.[18] Even more striking is the fact that,even in the case of simple *residence*(not naturalisation) on grounds of marriage, thespouse has to be a Honduran by birth, not by naturalisation (art. 36, LME; arts. 20, 37, 38, LME-Reg).[19]

In turn, naturalisation *procedures*seem to be quite complicated. They not only involve DGME/INM for several procedures and paperwork, but also many other instances that include, but are not limited to the General Direction of Criminal Investigation,as well as all local courts corresponding to the present and each of the past addressesof the person in Honduras. Each of these should certify the absence of criminal records. In addition, the candidate must presentcertificates of no fiscal debts (atboth national and local levels); and certificates from both the Social Security Institute as well as the National Institute of Professional Training, if she/he is an employer. Finally, after obtaining acquiescence from DGME/INM, the person should take a public oath of allegiance and be inscribed at the National Registry of Persons (*Registro Nacional de las Personas*,hereafter RNP) as a naturalised Honduran(LME-Reg, arts 90-91; Honduras 2004b, arts. 73-74).

Not only is this system complicated, but it also offers a large degree of discretion for the diverse authorities involved – and of uncertainty for the applicant. What is more, the current transition of DGME to INM, makes it difficult to determine the precise responsibilities and duties that each office within INM has regarding naturalisation. As a matter of fact, there is no information at all regarding naturalisation procedures onthe INM webpage (Instituto Nacional de Migración 2016) and most documents available there, are still related to DGME, not to INM.

These bureaucratic difficulties, uncertainty and wide discretional powers act as strong deterrents for naturalisation. In spite of these issues, 51 persons were inscribed in the RNP as naturalised citizens of Honduras in 2013 (versus 59 persons in 2014, and 108 personsin 2015)(Hondudiario 2015; Registro Nacional de las Personas 2013; SDHJGD 2014).[20]

2.2. Loss and Renunciation

Before 2002, Honduras had a regime of ‘dormant citizenship’ for its citizens by birth. This meant that any person who had lost citizenship – for instance, due to naturalisation in a third country – could recover it by request after (re)taking residence in the Republic (arts. 28 and 29, original wording).After the 2002-2003reform of both articles, no Honduran by birth can be deprived of Honduran citizenship, even after naturalisation in a third country (art. 28 as amended).

However, once more this does not apply to naturalised Hondurans. These personswill lose their citizenship automatically(1) in case of naturalisation in a third country, or (2) if their citizenship is withdrawn (art. 29 of the 1982 Constitution, as amended).The latter case is

[18] In fact, in the EUDO Citizenship database there is no other country that incorporates such differentiation. See EUDO Citizenship Observatory (2013)- mode A08: spousal transfer of citizenship.
[19] It should be noted that, in case of divorce, the foreign spouse could lose their residence rights with immediate effect, unless she/he is able to obtain another immigration category (art. 38, LME-Reg).
[20] This number does not include the 304 inhabitants of the formerly disputed areas between El Salvador and Honduras, who finally received their documents as Honduran citizens by birth in 2015 (see 'Territorial Changes and Citizenship' above; also SDHJGD 2015).

important, as both LME (art. 65) and LME-Reg (art. 92) specify that naturalisation can be withdrawn if the person 'becomes unworthy of the Honduran citizenship'. Neither is the precise meaning of this clause clear, and neither is it clear which authorities would be involved in initiating, processing and passing such judgement – of course, beyond the President of the Republic himself who, according to LME has the authority to concede, deny, or withdraw naturalisations (art. 63). Overall, such a system leaves the naturalised citizen in a very vulnerable position, and its discretionary nature might open the door for misuse and political interests.

3.3. Inequalities and imbalances of the current citizenship regime

As mentioned above, the Constitutions of the 19th and early 20th centuries had some gender-based provisions, particularly regarding naturalisation. However, today we cannot identify clear gender imbalances in citizenship/nationality laws of Honduras. In the same way, there is no indication of legal discrimination along ethnic/cultural lines in such laws. Of course, there is abundant literature regarding the social, economic, and political discrimination faced by certain ethnic groups in Honduras (e.g. *Garífunas*) but, at least de jure, there is no evidence of discrimination against them regarding the acquisition and lossof citizenship/nationality.

What is striking is the substantial andevident inequalitybetween citizens by birth and citizens by naturalisation, which amounts to open discrimination. Certainly, such a pattern is certainly not privative of Honduras: others countries in the continent (such as Mexico) also have legal provisions that put naturalised citizens in a clearly subordinate position vis-à-vis citizens by birth (see for instance Carbonell 2006; González Martín 2000; Hoyo 2015, 2016). Yet in the Hondurancase,this unequal treatment is taken tothe extreme. There are several instances of it, but for the purposes of this report,we identify the following categories:

Inequalities in citizenship acquisition, loss, and residence rights

- Citizenship acquisition:As explained above, a person born abroad will be Honduran by birth, only if the mother or father is alsoa Honduran by birth (1982 Constitution, art. 23). Therefore, *ius sanguinis does not apply to the children of naturalised Hondurans*. On the one hand, this is an openly discriminatory treatment between (arguably equal) citizens. On the other hand, but also implies a risk of statelessness, e.g. if the person is born abroad in a country that does not apply ius soli, and one (or both) of the parents are naturalised Hondurans who cannot transmit citizenship to their children.

  The same discriminatory treatment can be found in naturalisation through marriage. Currently, art. 24, point 6 of the Constitution explicitly states that a person can only obtain citizenship in this way if the Honduran spouse is a citizen by birth. Therefore, marriage to a naturalised Honduran does not entitle the spouse to naturalisation.As said above, Honduras is the only country of the Americas that makes such differentiation, but the reasons for it are not clear.

- Citizenship loss:Since 2003 Honduran citizenship by birth cannot be lost in any way, but naturalised Hondurans are excluded from it.Consequently,the latter face a double disadvantage: (1) they will lose their Honduran citizenship if they opt for another one; and (2) they can be deprived of their citizenship through 'cancelation of the naturalisation letter' (Constitution 1982, art. 29). This deprivation of citizenship can happen for such vague reasons as 'serious and justified grounds making the

naturalised citizen unbecoming of Honduran nationality' (LME, art. 65; LME-Reg, art. 92).

This givesenormous discretionary powersto the Honduran authorities (Suazo 2011: 334-337) and, of course, there is an inherent risk that the decisions will be based onsubjective or purely political considerations. Indeed, withdrawal of naturalisation has been enforcedin cases that hint at the desire to get rid of political opponents or critics. One such case was that of the Catholic priest Father Andrés Tamayo, an environmental and socio-political activist who,in 2009,was deprived of hisHonduran citizenship by naturalisation,arguably due to his support ofthe deposed president Zelayaafter the 2009 constitutional crisis(COMUN-Noticias 2009). What is more, in 2010 President Lobo himself announced that five more persons would be deprived of naturalisation, because 'there are some naturalised persons that cannot have a political participation'(Proceso Digital 2010). Supporters of the deposed President Zelaya were also threatened in this way. At least one of the persons involved was able to win an habeas corpus at the Supreme Court against the deprivation of citizenship (Prensa 2011; RNS 2010). However, this might not be applicable to all cases, because in the current legislation, the person deprived of Honduran citizenship acquired by naturalisation can be subjected to immediate expulsion from the country (LME-Reg, art. 122 par. 7).

- Residence rights for family members:As noted above, both LME and LME-Regspecify that residence rights for spouses, partners or parents of citizens are only applicable to Hondurans by birth, not to naturalised ones (LME, arts. 35-36; LME-Reg, arts. 20 and 35-37; see also Suazo 2011: 362-365). These provisions put a direct challenge to both the principle of equality among citizens, and of family unity in migratory issues; and it is even more remarkable given the fact that registered refugees in Honduras are entitled to family reunification (LME, art 47; LME-Regarts. 53-54).

Inequalities in social, property, and labour rights

- Political rights: Naturalised citizens can vote, but they are barred from almost every single political post,at both the national and local levels. Such exclusion from political rights is stipulated in several articles of the 1982 Constitution; in arts. 98 to 100 of the Law on Elections and Political Organisations (*Ley Electoral y de las OrganizacionesPolíticas*, hereafter LEOP)(arts. 98 to 100, Honduras 2004a);and in a number of other pieces of secondary legislation(see e.g. Suazo 2015).

  It is important to note that this legalised exclusion of naturalised citizens has become even stricter in the last few years. For instance, the original text of LEOP allowed naturalised citizens to perform political functions at the municipal level, as long as they had at least 5 years of residence in the corresponding place (art. 100, LEOP). However, a wide reform of the law in 2007 amendedthe Article, specifying that local posts would be the exclusiveprivilege of Hondurans by birth (Honduras 2007). In a similar way, naturalised Hondurans are currently barred from any electoral function at any level, with the exception of the right to take part in poll stations (art. 32).

  The 2007 change to art. 100 of LEOP, implemented to exclude naturalised citizens from local posts, was challenged at the Supreme Court on grounds of unconstitutionality (Corte Suprema de Justicia de Honduras 2009). However, the Court upheld the exclusion, asserting among other reasons that 'among Honduran citizens-by-birth there is a more inextricable and close link with the fatherland, by

virtue of ius soli and ius sanguinis, than the link that exists in naturalised citizens'.[21] This evidences some of the deeply ingrained, ideological considerations behind the differentiation between citizens by birth and by naturalisation in Honduras.

- Property and labour rights:Naturalised citizens also face special restrictions in areas that, in theory, should be equally availabletoall citizens. For instance, art. 107 of the Constitution states that all non-urban properties within 40 km along the borders and coasts, as well as all properties on islands, can be acquired or owned exclusively by Honduran citizens by birth (Const. 1982, art. 107). In this way, such properties are barrednot only to foreigners, but to naturalised Hondurans as well.

  Besides their exclusion from political posts,as described above, naturalised citizens are also legally prohibited from entering the Civil Service (art. 11, Civil Service Law, 1968). In this way, most jobs and functions in the public sector are legally inaccessible to naturalised Hondurans. What is more, such limitations are replicated as well in certain areas of the private sector. For instance, art. 74 of the 1982 Constitution states that only Hondurans by birth can be directors of newspapers or radio/ TV stations, or be in charge of their 'intellectual, political and administrative orientation' (art. 74). Therefore, both foreigners and naturalised citizens are excluded from substantive positions in media, thus being challenged in their ability to have a public voice.

Other instances of inequality, imbalances or problems in citizenship laws

- There have been instances where the unequal treatment of naturalised persons also has effects on their descendants, even when they are citizens-by-birth themselves. One case was that of José Carlos Isidro Lozano Guillén, a young conscript whoin 1990 was expelled from the Military Aviation Academy, as the regulations of theAcademy specified that all recruitsought to be Honduran citizens by birth, and also have parents who are citizens by birth. Mr. Lozano was Honduran by birth but his father was a naturalised citizen of Spanish origin. The decision was appealed at the Supreme Court, which conceded *habeas corpus* to Mr. Lozano (Corte Suprema de Justicia de Honduras 1996).
- It is also important to mention some important voids in Honduran legislation on citizenship. For instance, no comment is made, either in the Constitution or in secondary legislation, on the position of foreign children adopted by Honduran nationals. This is related to the fact that the country still lacks a proper Nationality Law, which could set common principles, and then regulate all its matters in a coherent and integral way, including acquisition (both by birth andby naturalisation), loss, dual citizenship, as well as inparticular cases like thatregarding adoption from abroad.
- Finally, we must underline that one of the pervasive problems in the current citizenship regime in Honduras is the wide degree of discretion allowed by the current laws to governmental officers, in each of the areas relevant to citizenship and migration. This, taken together with a complicated bureaucracy and overall opacity of administrativeprocedures, leaves a naturalisedindividualin a very vulnerable position.

[21] Original text in Spanish: "Esta tendencia o pensamiento [de la Constitución Hondureña] supone que en los hondureños por nacimiento existe un vínculo patrio más indisoluble y estrecho por razón del jus solis y el jus sanguinis que el que existen en los hondureños por naturalización" (Corte Suprema de Justicia de Honduras 2009).

4. Current political debates and reform plans

Having consulted the information available on the webpage of the National Congress of Honduras and its Information Access webpage (Congreso Nacional de Honduras 2016a, 2016b), nobill, proposal or substantive discussion regarding reforms to citizenship laws (that is, as *nacionalidad*) could be found. Furthermore, no substantive political or public debates could be found on the topic.

Most news regarding citizenship/nationality issues are about the distribution of official IDs (which accounts for the recognition of citizenship) to inhabitants of the former territories in dispute between El Salvador and Honduras, fixed in 1992 by a decision of the International Court of Justice. The inhabitants of these zones, e.g. the town of Nahuaterique, have since been living in a sort of limbo as their recognition as citizens-by-birth of Honduras has taken more than two decades, while legal and socio-political problems are extensive in the zone (International Court of Justice 1992; Lawn 2013; SDHJGD 2015). In any case, public attention is generally focused not in citizenship as such, but on migration issues – either about Hondurans migrating elsewhere, or about their return to Honduras.

5. Conclusions

The complex political history of Honduras had a direct impact on both its constitutional history in general, and its citizenship/nationality regulations in particular. It is true that the present Constitution has been in force for more than 30 years, thus bringing stability to the country and allowing for the creation of more detailed legislation in several areas. However, Honduras still faces serious difficulties in two areas pertinent to citizenship/nationality.

One of such areas is implementation, e.g. regarding regularisation of the status of populations in formerly disputed areas, or the extension of effective citizenship rights for all Hondurans, both within the country and overseas. However, such issues arebeyond the scope of this report.

The second area is perhaps more important: the inequalities, imbalances and voids found in citizenship/nationality laws *per se*. This is a clearly represented by the status given to naturalised Hondurans who, in fact, are ‘quasi-foreigners’ entitled to a limited number of rights such as voting, but deprived from many other andmore substantive rights such as the transmissionof citizenship to their children by ius sanguinis, or the extension of their citizenship to foreign spouses. Both rights, among many others,are treated as privileges reserved for Honduran citizens-by-birth. Also, as mentioned above, since 2003 Hondurans by birth are entitled to dual citizenship, but naturalised citizens are not. What is more, they might still be subjected to deprivation of citizenship on various grounds, including one as vague and prone to abuses as to be found ‘unworthy’ of it.

The fact that naturalised citizens of Honduras are subjected to such a large number of openly discriminatory provisions;and that naturalisation is not regulated either *per se* or in a comprehensive Nationality Law, but just together with migration and alien status as currently happens in LME,are indicators of a deeply-ingrained ideology of mistrust, or even of an exacerbated nationalism. This has created legally-sanctionedinequalities among Hondurans who, as citizens, are in principle equal before the law.

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